

# What the Proposed Title IX Regulations Might Mean for UNC Charlotte

January 30, 2019

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Dr. Michelle Reinken, Title IX Coordinator

## Agenda

- ▶ Background/Context
- ▶ Rule-Making Process
- ▶ The Proposed Regulations
- ▶ Current UNC Charlotte Process
- ▶ Questions



## Background/Context

- ▶ What is “the law” on Title IX (or any other subject)?
  - ▶ Statute = law passed by Congress
  - ▶ Regulations = rules enacted by an agency (USDA, DOJ, DOD, etc.) that interpret Congress’s statute
  - ▶ Guidance = opinion letter by an agency regarding its current enforcement standards



## Background/Context

- ▶ Title IX statute (1972) → “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
- ▶ Title IX regulations (1975)
- ▶ Only guidance documents since then

## Background/Context

- ▶ Dep't of Education under Obama
  - ▶ Issued seminal guidance on Title IX in 2011 and 2014
  - ▶ Issued various other guidance documents throughout terms
- ▶ Congress reauthorized Violence Against Women Act in 2013; regulations were enacted in 2014
  - ▶ Included educational and procedural requirements on universities
- ▶ Dep't of Education under Trump
  - ▶ Rescinded many Obama guidance documents, including 2011 and 2014
  - ▶ Issued interim guidance in Sept. 2017 pending formal rule-making
  - ▶ Began rule-making process in 2018

## Rule-Making Process

- ▶ Proposed Title IX regulations were released in November 2018
- ▶ Stakeholders (or really anyone) have until January 30, 2019 (today!) to submit comments
- ▶ Dep't of Education's Office for Civil Rights (OCR) must review all comments and respond to them
- ▶ Already more than 85,000 comments submitted
- ▶ No timeline for if/when final regulations will be enacted



## The Proposed Regulations (a.k.a. What Might Change)

### The Proposed Regulations

- ▶ Remember that these are still only PROPOSED regulations! Nothing has changed yet.
- ▶ We'll only highlight significant proposed changes.
  - ▶ We won't cover all of the proposed regulations
  - ▶ Many of the proposed rules comport with our current process or would require only minor changes
- ▶ IF the proposals are enacted in their current form, there will be a lot of discussion and decisions to make, so we cannot tell you now exactly how UNC Charlotte's process might change.

## The Proposed Regulations: Coverage

- ▶ New definition of sexual harassment:
  - ▶ (1) *Quid pro quo* harassment (“this for that”)
  - ▶ (2) Hostile environment harassment
    - ▶ Unwelcome conduct on the basis of sex that is **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the recipient’s education program or activity
  - ▶ (3) Sexual assault (rape or fondling)
- ▶ Behavior that would likely be excluded:
  - ▶ Sexual exhibitionism
  - ▶ Certain types of sexual contact without consent
  - ▶ Certain types of sexual harassment
  - ▶ Certain types of sexual exploitation

\* 34 CFR § 106.44(e)

## The Proposed Regulations: Coverage

- ▶ New jurisdictional requirements:
  - ▶ Within university’s program or activity AND
  - ▶ Against a person in the United States
- ▶ New liability standard:
  - ▶ Title IX Coordinator (or other official with authority to correct) has actual knowledge of sexual harassment allegations AND
  - ▶ University is deliberately indifferent to the report
    - ▶ Clearly unreasonable response in light of known circumstances



\* 34 CFR § 106.44(a) & (e)(6)

## The Proposed Regulations: Procedure

- ▶ University must investigate formal (written & signed) complaints
  - ▶ From complainant, or
  - ▶ From Title IX Coordinator in case of multiple complainants and same respondent
- ▶ University must provide supportive measures (*e.g.* counseling, academic accommodations, mutual no-contact orders, etc.) even in absence of formal complaint if necessary to restore complainant's access to education
- ▶ University cannot rely on complainant's, respondent's, or witnesses' testimony unless they submit to live cross-examination by an advisor (could be via Skype)

\* 34 CFR § 106.44(b)(1) & (e)(5)  
 \* 34 CFR § 106.44(b)(3) & (e)(4)  
 \* 34 CFR § 106.45(b)(3)(vii)

## The Proposed Regulations: Flexibility

- ▶ Standard of evidence
  - ▶ Universities may use either preponderance of the evidence or clear and convincing evidence standard (but must be same for similarly serious violations)
- ▶ Resolution
  - ▶ Universities may facilitate an informal resolution process, like mediation or restorative justice, at any time prior to reaching a determination
- ▶ Other violations
  - ▶ Universities may still pursue student conduct violations for behavior that falls outside new Title IX definitions



\* 34 CFR § 106.45(b)(4)(i)  
 \* 34 CFR § 106.45(b)(6)  
 \* NPRM Preamble

## Current UNC Charlotte Process (a.k.a. What Doesn't Have to Change)

### Title IX Office – Cone 349



**Dr. Michelle Reinken**  
Title IX Coordinator



**Alex Tompkins**  
Case Manager



**Christine Weigel**  
Lead Investigator



**Chris Willauer**  
Investigator

# Case Management and Student Support

## Accommodations

- Academic
- Housing
- Safety Planning
- No Contact Orders



## Resources:

- CAPS
- Student Health Center
- Police and Public Safety (PPS)
- Off-Campus Victim Advocacy
- Local Hospitals



# IPV Guide

## RESOURCES

### On-Campus and Confidential

The following confidential resources are always available for students. However, it is important to note that if you need to rely on these resources the University has limited ability to fully respond. At no point, a student can also need to use the services and resources available through the Title IX Office and Police and Public Safety.

Confidential means that a formal report will not be made to the Title IX Office or Police.

- Center for Counseling and Psychological Services**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
8:00 AM - 5:00 PM  
Saturday 10:00 AM - 3:00 PM  
Evening (by appointment)  
1000 Sikes (on-site)  
1000 Sikes (on-site)
- Student Health Center**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
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- Title IX Coordinator**  
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- Dean of Students Office**  
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- Center for Wellness Promotion**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
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- Department of Intergroup Development**  
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### On-Campus and Private

Using the services of the following offices allows students to have access to official university responses and services, including academic or housing accommodations, protective resources, and investigation/mediation procedures.

Confidential means that a formal report will not be made to the Title IX Office or Police.

- Center for Counseling and Psychological Services (CAPS)**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
8:00 AM - 5:00 PM  
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Evening (by appointment)  
1000 Sikes (on-site)  
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- Student Health Center (SHC)**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
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- Title IX Coordinator**  
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- Police and Public Safety**  
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- Center for Wellness Promotion**  
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- Department of Intergroup Development**  
1000 Sikes  
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and Mary Swanson Hall  
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### Off-Campus

Using the services of the following offices allows students to have access to official university responses and services, including academic or housing accommodations, protective resources, and investigation/mediation procedures.

Confidential means that a formal report will not be made to the Title IX Office or Police.

- Safe Alliance**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
8:00 AM - 5:00 PM  
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Evening (by appointment)  
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- North Carolina Victim Assistance Network (NCVAN)**  
1000 Sikes  
Corner of Cameron Blvd  
and Mary Swanson Hall  
Charlotte, NC 28203  
Phone: (704) 687-3300  
Hours: Monday - Friday  
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- Armed Health**  
1000 Sikes  
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1000 Sikes (on-site)  
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- Student Health Production Medical Center**  
1000 Sikes  
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### Explanation of On-Campus Confidential Resources

Confidential means that a formal report will not be made to the Title IX Office or Police.

### Counseling and Psychological Services (CAPS)

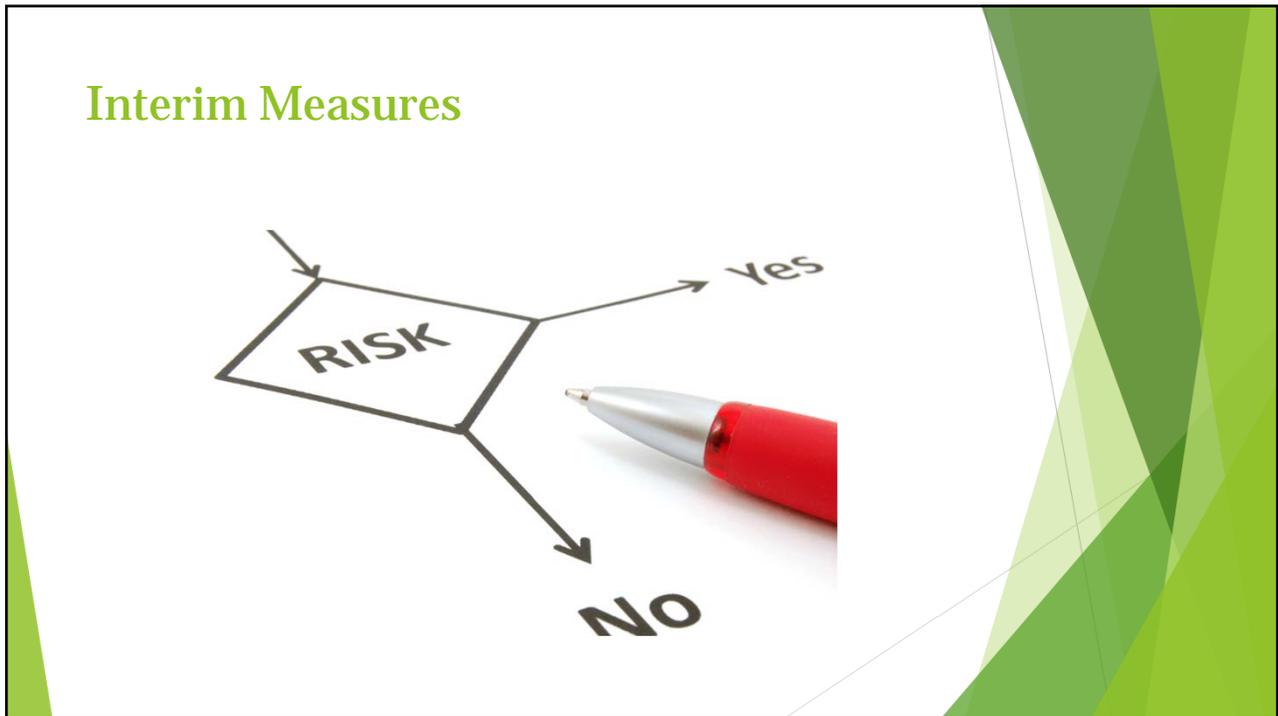
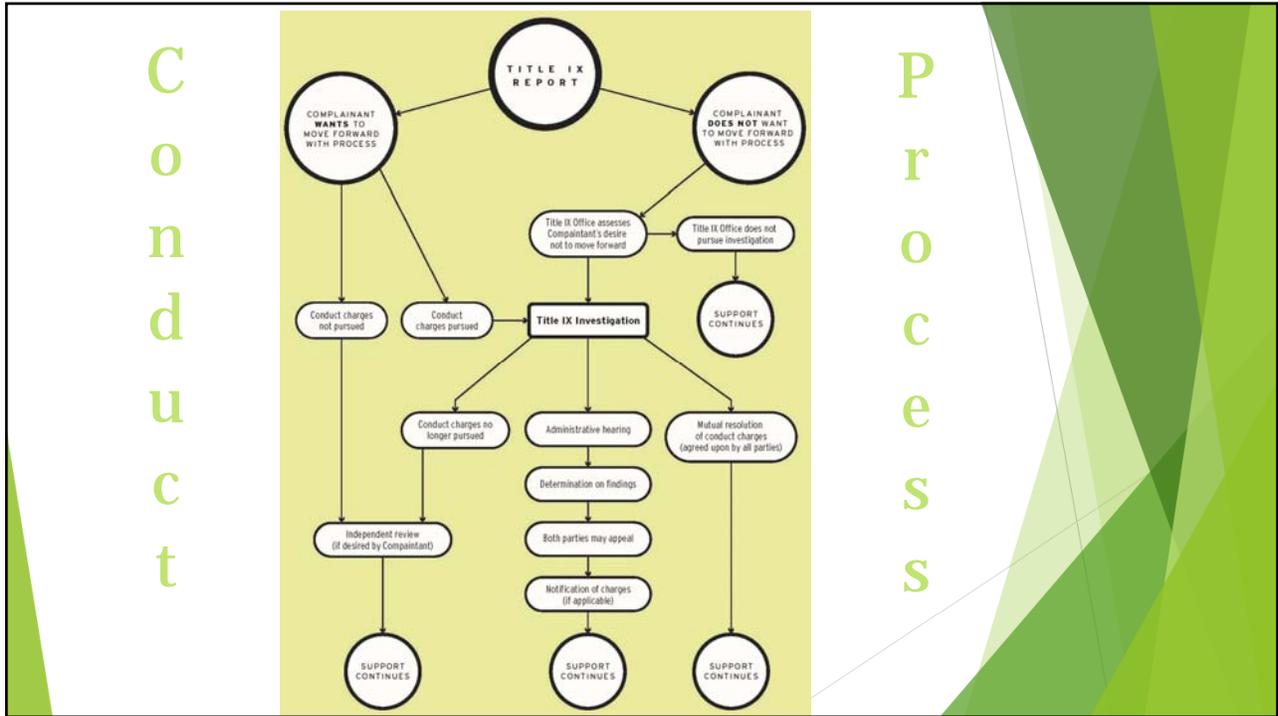
CAPS is a confidential resource for students seeking support for managing the impact of intergroup violence. Students can work with counselors to discuss their needs for campus restoration and accommodations and to provide peer support and resources. CAPS services include individual and group therapy for both victims of intergroup violence, aggressors, and community members, and discussion about options for managing other campus-related concerns including Police and Public Safety and Title IX Offices.

### The Center for Wellness Promotion (CWPP)

The CWPP provides a confidential resource for students seeking support for managing the impact of intergroup violence. Students can work with counselors to discuss their needs for campus restoration and accommodations and to provide peer support and resources. CWPP services include individual and group therapy for both victims of intergroup violence, aggressors, and community members, and discussion about options for managing other campus-related concerns including Police and Public Safety and Title IX Offices.

### The Student Health Center (SHC)

The SHC provides a confidential resource for students seeking support for managing the impact of intergroup violence. Students can work with counselors to discuss their needs for campus restoration and accommodations and to provide peer support and resources. SHC services include individual and group therapy for both victims of intergroup violence, aggressors, and community members, and discussion about options for managing other campus-related concerns including Police and Public Safety and Title IX Offices.



## Police

- A victim/survivor may choose whether to report an incident to police. Their options include:
  - Contacting police (either campus police or local police);
  - Choosing not to contact police;
  - Being assisted (by you) in notifying police.
- The university process (including academic and housing accommodations, counseling or other wellness help, and the student disciplinary process) is completely separate from a criminal case.



Questions?