

Effective Practices for Preventing Sexual Harassment

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Universities and other entities that receive federal financial assistance (recipients) from HHS are required to administer their education and student health programs in environments free of sex discrimination, which includes sexual harassment as a form of sex discrimination.²

HHS' Office for Civil Rights (OCR) enforces Title IX of the Education Amendments Act of 1972 (Title IX) and its implementing regulations.³ Title IX imposes specific obligations on universities and other recipients to ensure their education programs are administered free of sex discrimination, which includes sexual harassment.⁴ For example, the HHS Title IX implementing regulations require recipients to notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate the university's Title IX responsibilities.⁵ Recipients must also adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging sexual harassment in a recipient's education and student health programs.⁶ In addition, recipients should proactively evaluate their programs and enact policies and procedures that ensure their activities, including research, education, and health program environments do not deny or limit an individual's ability to participate in or benefit from the program at issue on the basis of sex.⁷ Recipients of HHS funds are also responsible for ensuring that their sub-grantees and contractors administer their programs in an environment free from sex discrimination and sexual harassment.⁸

¹ Note: To ensure consistent application of Title IX, HHS applies the definition of sexual harassment contained in the [U.S. Department of Education Amendments to Regulations Implementing Title IX of the Education Amendments of 1972](#). 85 Fed. Reg. 30574 (May 19, 2020).

² See generally Delegation of Responsible Employee and Adoption of Grievance Procedures, 45 C.F.R. § 86.8(b).

³ See [HHS Regulations Implementing Title IX of the Education Amendments of 1972, 45 CFR Part 86](#)

⁴ *Id.*

⁵ *Id.* at 86.9

⁶ *Id.* at 86.8(b)

⁷ *Id.* at 86.3(b)

⁸ *Id.* at 86.4

Some Examples of Sexual Harassment Include:

- Unwanted pressure for sexual favors;
- Unwanted sexual gestures (e.g., leering, sexually suggestive looks, obscene gestures, etc.);
- Unwanted texts, emails or photos that are sexual in nature;
- Unwanted deliberate touching or physical stalking behavior; and,
- Attempted or actual rape, sexual coercion, dating violence, domestic violence, or sexual assault.⁹

Effective Practices in HHS-Funded Programs Generally:

Prevention

Universities and other recipients should endeavor to create a culture that promotes respectful communication and appropriate relationships, and that is responsive to reports of sexual harassment. To accomplish this, recipients should consider implementing effective policies and practices that improve the recipient's ability to prevent and resolve sexual harassment. Recipients should also consider adopting practices for evaluating their programs in order to improve their overall program culture.

Some effective practices universities could consider for preventing sexual harassment and improving program culture may include:

- Sharing, posting and distributing a sexual harassment policy that:
 - Defines sexual harassment as a prohibited form of sex discrimination, in clear language with easy to understand relevant examples;
 - Clearly describes how and where to file grievances and complaints consistent with Department of Education regulations;¹⁰
 - Post and distribute material that: define and include examples of sex discrimination, including sexual harassment, sex abuse, and sexual assault; provide the name, office address and telephone number of the employee or employees appointed to coordinate the university's Title IX responsibilities; provide information advising individuals they can file a complaint of sex discrimination directly with HHS; and inform individuals via website or other

⁹ Sexual assault is described as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. *See* Clery Act, 20 U.S.C. § 1092(f). According to the Rape, Abuse and Incest National Network (RAINN), the largest anti-sexual violence organization, sexual assault "refers to the sexual contact or behavior that occurs without explicit consent of the victim". According to their website, "some forms of sexual assault include attempted rape, fondling or unwanted sexual touching, forcing a victim to perform sexual acts, such as oral sex or penetrating the perpetrator's body, [and] penetration of the victim's body, also known as rape." *See* Sexual Assault, RAINN, www.rainn.org/articles/sexual-assault.

¹⁰ *See* 34 CFR Part 106. *See also*, 85 Fed. Reg. 30574 (May 19, 2020).

outreach material how the Title IX complaint and investigation process works; and,

- Inform the university community of: the university's responsibilities, obligations and protections available to individuals under Title IX; that the university will resolve discrimination complaints fairly and with due process; that complaints of sexual harassment may be filed directly with HHS; and, that retaliation against persons for filing a grievance or participating in the grievance process is prohibited.
- Posting notices in conspicuous locations and font sizes (e.g., entry ways and waiting areas) advising visitors, students, employees and others that sexual harassment of students, researchers, trainees, faculty and others participating in university programs and activities is prohibited. Notices should encourage reporting of prohibited conduct and include contact information for the name, office address and telephone number of the employee or employees appointed to coordinate the university's Title IX compliance responsibilities, as well as provide information on how to file a complaint with HHS OCR.
- Providing a sex discrimination notice in publicly distributed material, including on internal and external webpages, advising that sexual harassment is prohibited in all university programs and activities. The notice should include the name, office address, and telephone number of the university employee designated to coordinate compliance with Title IX, as well as information on how to file a complaint with HHS OCR.
- Implementing job performance standards for the employee or employees designated to coordinate the university's compliance with Title IX to ensure communication and cooperation with campus police, student organizations, and employee groups in order to strengthen and coordinate cross-campus prevention efforts.

Action

Universities should consider taking specific actions that help prevent or reduce the occurrence of sexual harassment, which may include the following:

- Conducting regular employee and faculty training on Title IX rights, requirements and prohibitions, including how to recognize, prevent, and respond to incidents of sexual harassment;
- Budgeting adequate resources for fairly and expeditiously investigating complaints of sexual harassment;
- Hiring a sufficient number of staff with experience investigating sexual harassment, and retaining specialized consultants to evaluate policies and procedures for creating education, work, and health service environments free of sexual harassment;

- Providing multiple avenues for filing sex discrimination complaints, including but not limited to, filing complaints in person, by email, and through grievance forms, which should all be accessible on the university website;
- Treating all parties who are associated with a sexual harassment complaint with respect to ensure confidence in the complaint and investigation process;
- Maintaining confidentiality of persons involved in the investigative process (i.e. complainant, respondent, reporters of harassment, witnesses, *etc.*);
- Ensuring outreach material, complaint websites, and other communications inform program participants that they are not limited to a university's Title IX complaint process and can file complaints of discrimination or retaliation, including harassment, directly through [OCR's Complaint Portal](#); and,
- Taking prompt and appropriate corrective action where investigations result in a finding of sexual harassment, including referral to OCR where appropriate or to local law enforcement where harassment involves criminal behavior.

Evaluate and Improve

Developing an environment that prevents or reduces the occurrence of sexual harassment starts with an assessment of the effectiveness of existing policies and procedures for preventing and resolving complaints of sexual harassment.

Some effective evaluation practices universities should consider may include:

- Conducting anonymous, program-wide surveys to determine whether sexual harassment is occurring in university programs and activities – including questions to determine whether sexual harassment is perceived as being tolerated within any particular segment of university programs or activities;
- Conducting annual reviews of sex discrimination policies and prevention efforts, and implementing updated policies and procedures as needed to address new or recurring issues, including those specifically addressing sexual harassment; and,
- Offering free, supportive measures to students and employees, even when a person does not want to engage in a formal grievance process. Support measures include actions that are designed to deter future instances of sexual harassment, protect safety, and ensure equal access to education programs and student health programs. Some examples of supportive measures include, but are not limited to:
 - Emotional, spiritual, and psychological support through counseling or other means;
 - Mediation and dispute resolution;
 - Housing or class reassignments;
 - Professional counseling; and
 - Protective escort services.

Effective Practices Specific to University Health and Medical Settings

Universities that receive funds from HHS should know that that their student health facilities (on or off campus) and programs are also subject to Title IX's prohibition on sexual harassment. Because students seek health care through university health programs that sometimes involve sensitive physical examinations or states of undress, covered providers should consider implementing protective protocols that may include:

- Encouraging patients to have a support person and/or same sex chaperone who is a member of the health care team present during the examination;
- Providing patients with detailed information of what will happen during the examination and securing informed consent; and,
- Maximizing privacy by asking patients to remove only the minimum amount of clothing and for the minimum amount of time necessary for the examination.

Effective Practices Specific to Research Settings

Universities that receive federal financial assistance must administer all their programs and activities in compliance with Title IX, including research conducted on university campuses or research hosted or sponsored by universities that receive federal financial assistance. Accordingly, universities should consider adopting policies and practices that help to prevent sexual harassment in research programs and related activities, including conferences, speaking engagements, *etc.* Some preventative measures universities should consider to ensure students, researchers, support staff, and others work in an environment free of sexual harassment may include:

- Training program directors and principal investigators on Title IX requirements and, specifically, the prohibition of sexual harassment;
- Posting notices in research facilities and at research related events that advise researchers, students, staff, and other participants that sexual harassment is prohibited. The notices also should provide information on how to file a complaint with the university and HHS OCR;
- Including a notice in program outreach material stating that sexual harassment is prohibited, and that provides information on how to file a complaint with the university and HHS OCR; and,
- Advising researchers, interns, and other research support staff when assigning such persons, that sexual harassment is prohibited and provide information on how to file a complaint with the university and HHS OCR.