

New Title IX Regulations: The Impact on Our Campus

Office of Title IX Compliance and Training
May 20-21, 2020

ST MARY'S
COLLEGE of MARYLAND
The National Public Honors College



Outline

Background

Campus Snapshot

The New Regulations

Next Steps

Our Commitment and Our Goal

In the midst of changing laws and regulations, The St. Mary's Way remains firm.

We are committed to ensuring that all of our Title IX actions are based in respect, sensitivity, and dignity for all of our students, faculty, and staff members.

Background

2011, 2014	Obama administration issues Title IX guidance
Sept. 2017	Betsy DeVos, Secretary of Education under President Trump, addresses Title IX <i>We share a message with SMCM community</i> Trump administration releases new interim Title IX guidance, withdrawing most Obama-era guidance
Nov. 2018	Trump administration releases new proposed Title IX regulations <i>We host meetings and share information for SMCM community</i>
Nov. 2018 - Jan. 2019	Notice and comment period - over 124,000 comments received
May 2020	Trump administration releases final Title IX regulations <i>We share a message with the SMCM community and begin hosting meetings</i>
Aug. 2020	New Title IX regulations are implemented

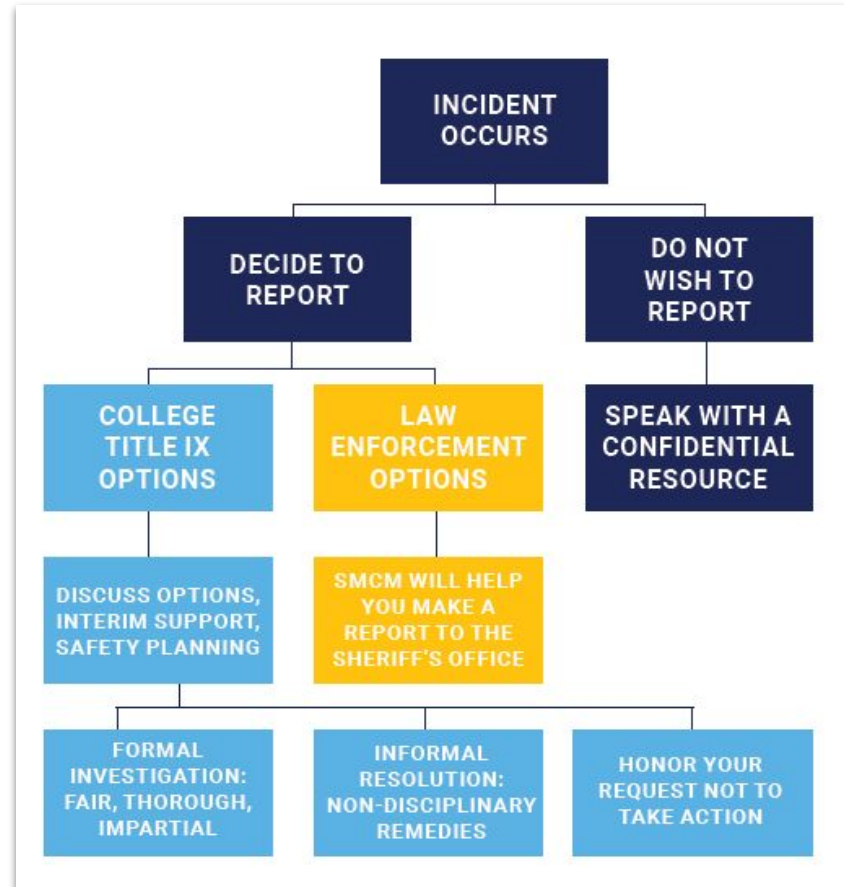
Campus Snapshot

Title IX Team

<p>Michael Dunn</p> <p>Director of Title IX Compliance and Training/ Title IX Coordinator</p>	<p>Kyle Bishop</p> <p>Deputy Title IX Coordinator, Assistant Dean of Students</p>	<p>Shannon Jarboe</p> <p>Deputy Title IX Coordinator, AVP of Human Resources</p>	<p>Leonard Brown, Jr.</p> <p>Vice President for Student Affairs, Dean of Students</p>
<p>Helen Ann Lawless</p> <p>Title IX Investigator/ Prevention Specialist</p>	<p>Erin McDonnell</p> <p>Senior Woman Administrator, Dept. of Athletics/ Head Lacrosse Coach</p>	<p>Kelly Muldoon</p> <p>Staff Therapist/ Sexual Assault Advocate</p>	<p>Tressa Setlak</p> <p>Director of Public Safety</p>

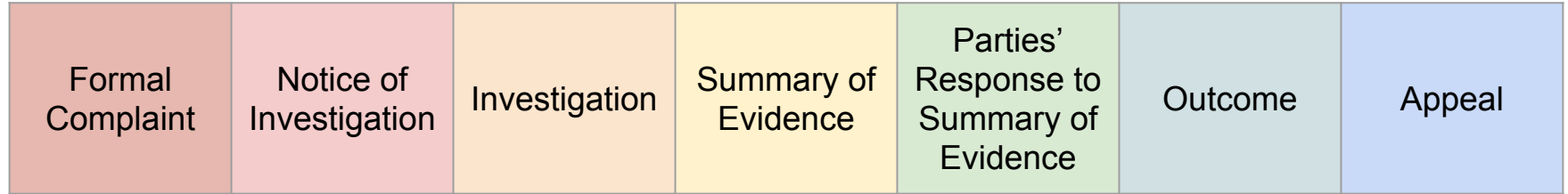
Our current policy,
student procedures, and
employee procedures
are available at
www.smcm.edu/title-ix

Current SMCM Policy and Processes



Current SMCM Policy and Processes

Formal resolution process for *students*:



Civil rights investigator model since 2016; a hearing model before then

Formal resolution process for *employees* is similar but without the creation of the summary of evidence

2020 Campus Climate Survey

January 21 – February 11, 2020

27% response rate (down from 31% in 2019)

Overrepresentation of white and female student populations

Analysis and conclusions by the Office of Institutional Research (Thank you!)

Executive Summary

Student opinions are on a positive upswing on every survey measure, including perceptions of campus culture, perceptions of faculty/staff/administrators, knowledge of Title IX campus resources, and helpfulness of campus resources.

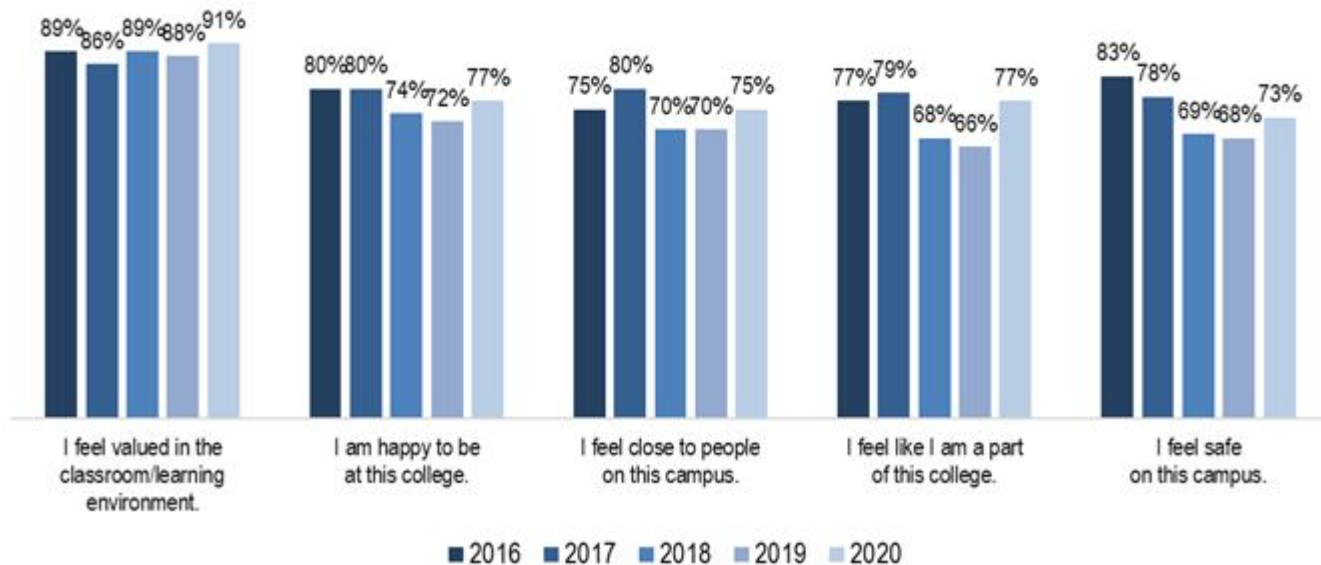
In particular, participant perceptions of Title IX-related policies and processes have substantially improved compared to previous surveys, reaching their ***most positive values in five years.***

Executive Summary

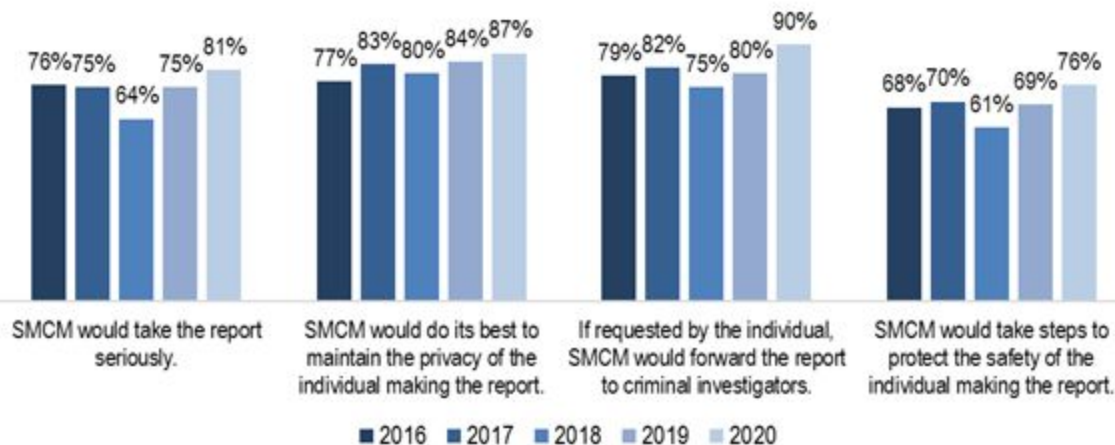
There continue to be some students who are dissatisfied with Title IX processes and procedures, and comments reveal that the reasons remain similar to previous years – perceptions of few consequences for offenders, mishandling of cases, and general concerns about safety on campus.

Among all survey respondents, **22%** indicated that they had experienced sexual assault or sexual violence since coming to the College, a slight increase from the 20% reported in 2019 but still below the reported rates for 2018 and 2017.

Perceptions of Campus Culture



Perceptions of How the College Would Handle an Incident of Sexual Misconduct - Part 1



Perceptions of How the College Would Handle an Incident of Sexual Misconduct - Part 2



Comments About Title IX

The ***most frequent theme*** among the comments, expressed by 21 participants (34%), was ***positive sentiment regarding the Title IX office*** and/or process.

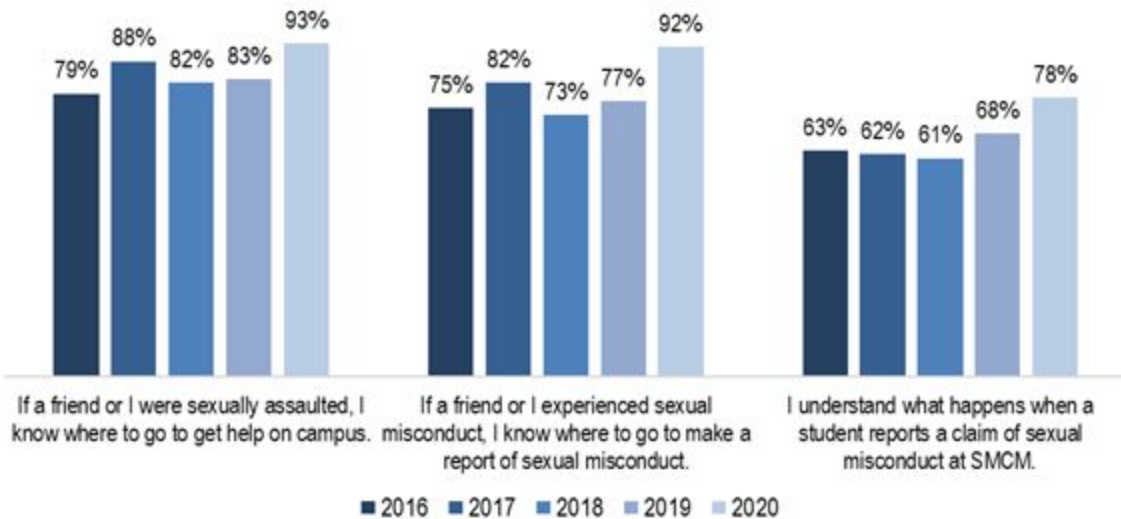
The ***leading concern***, addressed by 13 participants (21%), was regarding ***insufficient consequences for offenders***, remarking on alleged perpetrators being able to remain on campus and/or remaining in proximity to victims on campus.

Close behind were reports by 11 respondents (18%) of ***dissatisfaction with Title IX procedures***, including the perception that sexual misconduct cases were mishandled and/or cases were not taken seriously.

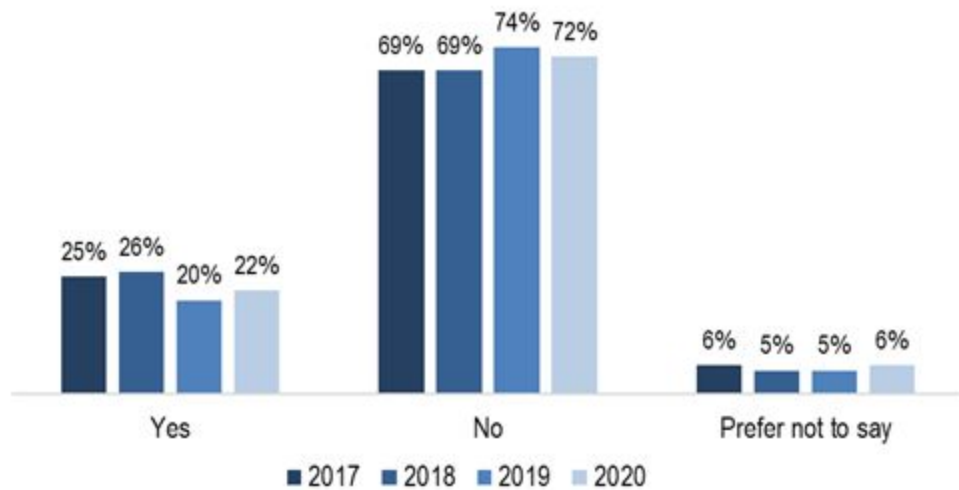
Conclusions

Compared to all previous surveys since 2016, participant perceptions have ***substantially improved*** in all scenarios ... These improvements across all survey items in this section are ***highly encouraging***.

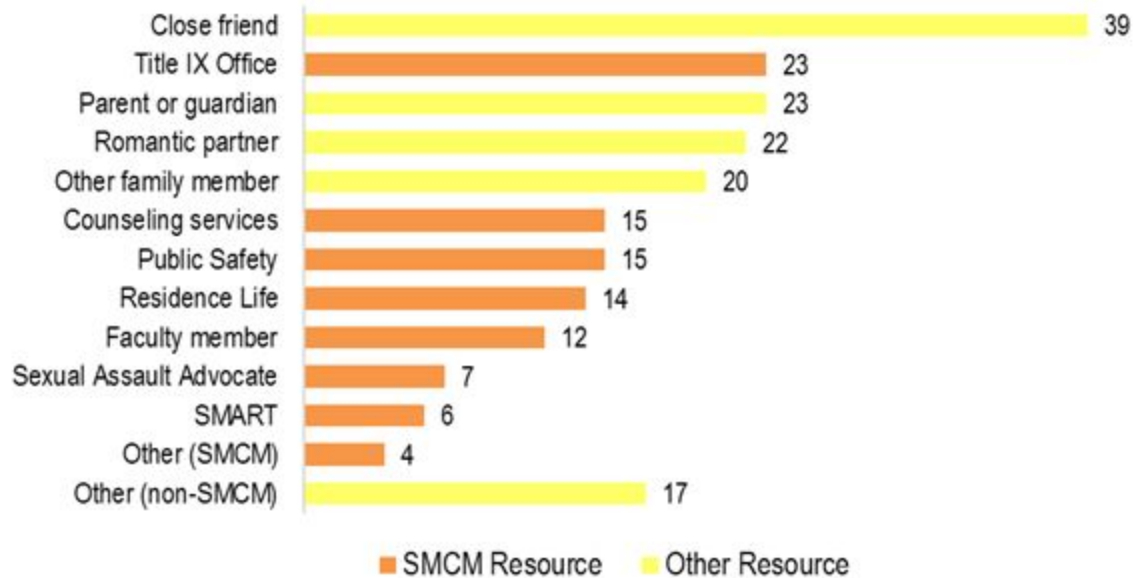
Knowledge of Campus Resources



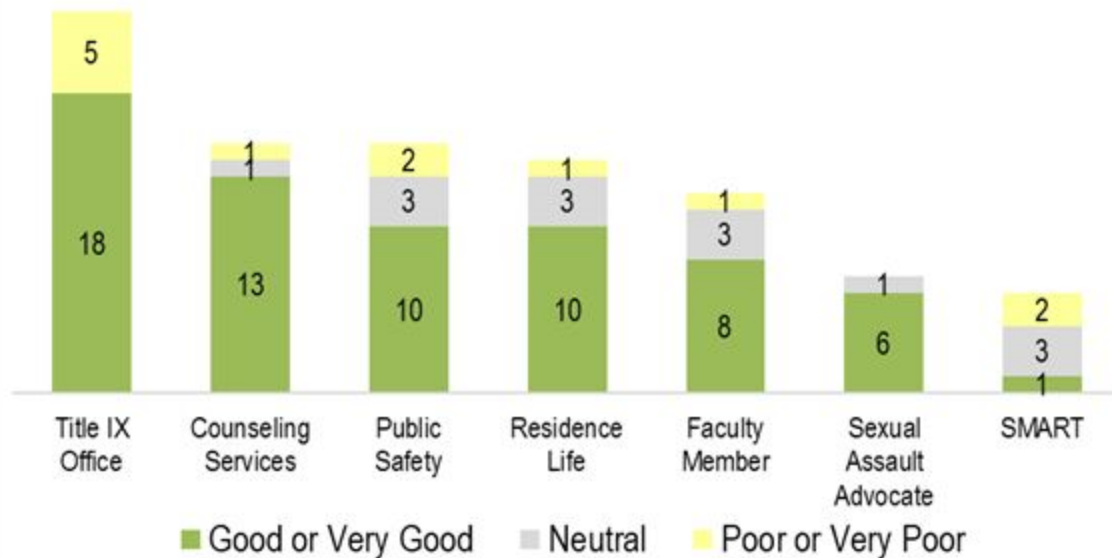
Incidences of Sexual Assault or Sexual Violence



Whom Participants Told about the Incident



Quality of Help - SMC M Resources



Any questions or
comments?



Spring 2020 Case Report

The Title IX Office received **14 Title IX reports** (compared to 25 in spring 2019) and **7 non-Title IX reports**

Sources of reports

- Staff members (7)
- Reporting parties (4)
- Faculty (4)
- Public Safety (2)
- Resident Assistants (2)
- Witnesses (2)

Spring 2020 Case Report

Issues reported:

- Sexual harassment (4)
- Sexual assault – unknown (3)
- Retaliation (2)
- Non-consensual sexual intercourse (1)
- Dating violence (1)
- Stalking (1)
- Sexual exploitation (1)
- Gender-based harassment (1)
- Non-Title IX issues (7)

Resolution of Spring 2020 Reports

Proceeded as far as possible given limited information - 7

Informal resolution - 5

Honored request for confidentiality - 2


Non-Title IX issues - 7

Formal Resolutions 2019-20

This year, the Title IX Office conducted 6 formal investigations (compared to 8 in 2018-19 and 7 in 2017-18)

- 4 investigations resulted in findings of responsible
- 1 investigation resulted in findings of responsible and not responsible
- 1 investigation is pending

Student sanctions ranged from disciplinary probation to expulsion



**Any questions or
comments?**

The New Regulations

Sources

Department of Education Office for Civil Rights [Newsroom](#)

[Unofficial copy](#) of the regulations - 2,033 pages!

[Press Release: U.S. Department of Education Releases Final Title IX Rule](#)

References at the end of this slide deck include more information

Check out our statements from [November 2019](#) and [May 2020](#)

Department of Education Perspective

Working “to protect students from sexual misconduct and restore fairness and due process to our campuses”

“Taking historic action” so that “that all students are safe to learn and achieve without facing sexual harassment and sexual assault...”

“Ensuring even-handed justice” so that “schools can no longer inflict longstanding harm against students before providing basic, fair procedures....”

“Making our schools safer” by “working every day to protect America’s students and survivors of sexual misconduct....”

Department of Education Perspective

Guiding Principles

“Historic Recognition of Sexual Harassment as Sex Discrimination”

“Supporting Complainants & Respecting Complainants’ Autonomy”

“Non-Discrimination, Free Speech, and Due Process”

“Sexual Harassment” Defined

Sexual Harassment includes three types of sexual misconduct:

1. **Quid pro quo harassment:** A school employee conditioning an educational benefit or service upon a person’s participation in unwelcome sexual conduct
2. Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school’s education program or activity

A Closer Look at Sexual Harassment Language

New Title IX Regulation Language:

“Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school’s education program or activity”

Based on a 1999 Supreme Court decision, *Davis vs. Monroe County Bd. of Ed.*, articulating the standard for a hostile environment

Current SMCM Policy Language:

“Sufficiently **serious, pervasive or persistent** as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard”

Based on Title VII workplace or public accommodations standard

According to DOE, *Davis* applies because of differing First Amendment/academic freedom concerns in education and the workplace

“Sexual Harassment” Defined

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3. **Sexual assault, dating violence, domestic violence, or stalking** (as defined by the Clery Act and the Violence Against Women Act)

When Schools Must Respond to Sexual Harassment

Consistent with Supreme Court precedent and the text of Title IX, a school must respond when:

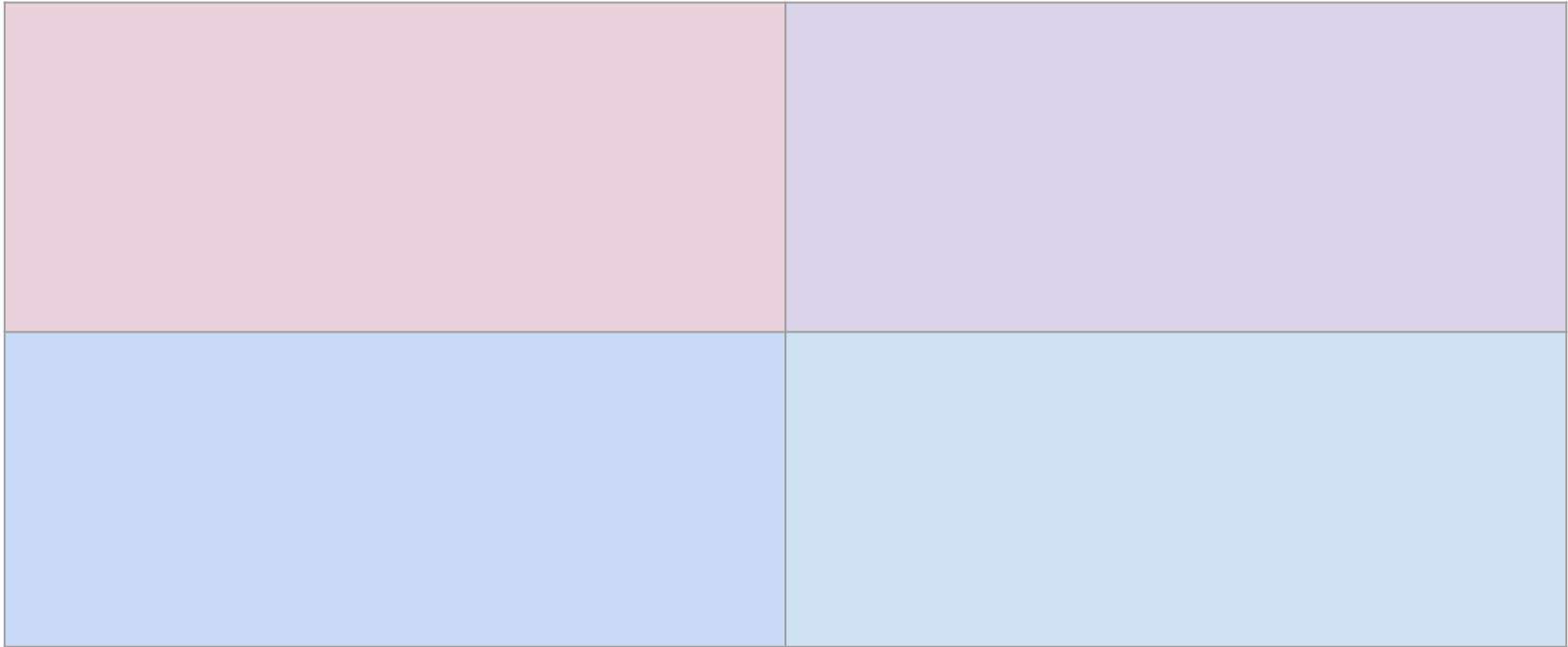
(1) the school has **actual knowledge** of sexual harassment;

Actual knowledge - Notice to a Title IX Coordinator or to an official with authority to institute corrective measures on the school's behalf

(2) that occurred within the school's **education program or activity**;

(3) against a person in the United States.

Schools' Response to Sexual Harassment



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If the alleged conduct **does not fall under Title IX**, a school may address the allegations under the school's own code of conduct and provide supportive measures

Requirements for “A Fair Grievance Process” - 1/6

Give both parties **written notice** of the allegations, an equal opportunity to select an **advisor** of the party’s choice (who may be, but does not need to be, an attorney), and an **equal opportunity** to submit and review evidence throughout the investigation

Use **trained Title IX personnel to objectively evaluate** all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party

Requirements for “A Fair Grievance Process” - 2/6

Protect parties' privacy by requiring a **party's written consent** before using the party's **medical, psychological, or similar treatment records** during a grievance process

Obtain the parties' voluntary, written consent before using any kind of **informal resolution** process, such as mediation or restorative justice, and **not** use an informal process where an employee allegedly sexually harassed a student

Requirements for “A Fair Grievance Process” - 3/6

Apply a presumption that the respondent is not responsible during the grievance process (often called a **presumption of innocence**), so that the school bears the burden of proof and the standard of evidence is applied correctly

Use either the **preponderance of the evidence** standard or the **clear and convincing** evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees)

Requirements for “A Fair Grievance Process” - 4/6

Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (i.e., **no civil rights models**)

For postsecondary institutions, **hold a live hearing and allow cross-examination by party advisors** (never by the parties personally)

Protect all complainants from inappropriately being asked about prior sexual history (“**rape shield**” protections)

A Closer Look at Hearings

Hearings must be live but not necessarily in the same space

Expert witnesses must be allowed

Cross-examination must be done directly, orally, in real time, by the adviser

If a party will not sit for cross-examination, their statements will not be considered

Parties have 10 days to review the final investigative report before the hearing, and also have 10 days to review all evidence before the investigative report is finalized

Requirements for “A Fair Grievance Process” - 5/6

Send both parties a **written determination** regarding responsibility explaining how and why the decisionmaker reached conclusions

Effectively implement **remedies for a complainant** if a respondent is found responsible for sexual harassment

Offer both parties an **equal opportunity to appeal**

Requirements for “A Fair Grievance Process” - 6/6

Protect any individual, including complainants, respondents, and witnesses, from **retaliation** for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process

Make **all materials used to train** Title IX personnel publicly available on the school’s website

Document and **keep records** of all sexual harassment reports and investigations for seven years

Next Steps



Thinking about
the floor
(*compliance*)
and the ceiling
(*best practices*)

Four Big Challenges (So Far) to Resolve by August

1. Developing **new resolution processes** for formal investigations, informal resolutions, and sexual misconduct that does not fall under Title IX
2. Determining the status of **responsible employees**, or officials with authority
3. Aligning **policy and procedures for students, faculty, and staff**, mindful of employee handbooks and collective bargaining agreements
4. Identifying and training **investigators, hearing officers, appeal officers (and advisers?)** to serve in the formal resolution process -- and posting training materials online

Next Steps

Stay connected with professional organizations nationally and in Maryland

Work with Office of the Attorney General to implement new regulations

Provide regular updates to campus as this process continues

Revise policy, procedures, and other materials by August

In the new academic year, inform and educate the campus about new policies and procedures

Our Commitment and Our Goal

In the midst of changing laws and regulations, The St. Mary's Way remains firm.

We are committed to ensuring that all of our Title IX actions are based in respect, sensitivity, and dignity for all of our students, faculty, and staff members.

References - 1/2

Title IX Regulations Addressing Sexual Harassment (Unofficial Copy), May 6, 2020,

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

PRESIDENT DONALD J. TRUMP IS WORKING TO PROTECT STUDENTS FROM SEXUAL MISCONDUCT AND RESTORE FAIRNESS AND DUE PROCESS TO OUR CAMPUSES, May 6, 2020,

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-fact-sheet.pdf>

U.S. Department of Education Title IX Final Rule Overview, May 6, 2020,

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf>

Summary of Major Provisions of the Department of Education's Title IX Final Rule, May 6, 2020,

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

References - 2/2

The Association of Title IX Administrators (ATIXA), *Summary of 2020 Title IX Regulations and Quick Tips*, © 2020

ATIXA, *Top Ten Myths of the New OCR Title IX Regs*, © 2020


ATIXA Webinar, *Ten Things to Know About the New Title IX Regulations*, May 11, 2020

ACE Webinar, *Discussing the Title IX Final Rule*, May 11, 2020

NASPA Rapid Response Webinar, *Understanding the Final Title IX Rule and Its Impact*, May 14, 2020

Clery Center and Student Conduct Institute Webinar, *Keeping Focus: Reviewing Clery Act Requirements in Light of New Title IX Regulations*, May 19, 2020

AASCU *Title IX Updates Webinar*, May 19, 2020

A stone fountain with a central column and three water jets, set in a garden. In the background, there is a large brick building with a gabled roof and several windows. The scene is surrounded by green grass, bushes, and trees.

**Any questions or
comments?**

Thank You!

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