

What the Proposed Title IX Regulations Might Mean for UNC Charlotte

January 30, 2019

Sarah Edwards, Associate General Counsel
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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 - ▶ Rescinded many Obama guidance documents, including 2011 and 2014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 not conducted a full review. At any 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**
1010 Howe
Corner of Cameron Blvd
(Charlotte, NC) 703
Hours: Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday
8:00 AM - 5:00 PM
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- Student Health Center**
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- Dean of Students Office**
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- Center for Wellness Promotion**
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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, housing, accommodations, proactive resources, and investigation/mediation procedures.

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Off-Campus

Using the services of these off-campus resources may not limit a student's ability to utilize on-campus resources. These may be used, especially with a stipulation of these off-campus resources.

- Safe Alliance**
Safe Alliance provides help and support for those impacted by domestic violence and sexual assault through a variety of programs and services, including: advocacy, support groups, and legal assistance.
- Charlotte Domestic Violence Shelter (Confidential)**
Charlotte Domestic Violence Shelter
401 E. 7th Street, Suite 401, Charlotte, NC 28202
Phone: (704) 342-3410
- Off-Campus Victim Advocacy Network (OCVAN)**
OCVAN provides the rights and needs of crime victims by educating victims and police, victim support services, coordinating reports on campus.
- Armed Health**
Armed Health provides support for students who are active-duty military or veterans.
- Charlotte Children and Family Support Center**
Charlotte Children and Family Support Center
401 E. 7th Street, Suite 401, Charlotte, NC 28202
Phone: (704) 342-3410
- Sexual Assault Response Team (SART)**
SART provides support for students who have experienced sexual assault.
- Student Health Production Medical Center**
Student Health Production Medical Center
1010 Howe, Charlotte, NC 28202
Phone: (704) 342-3410



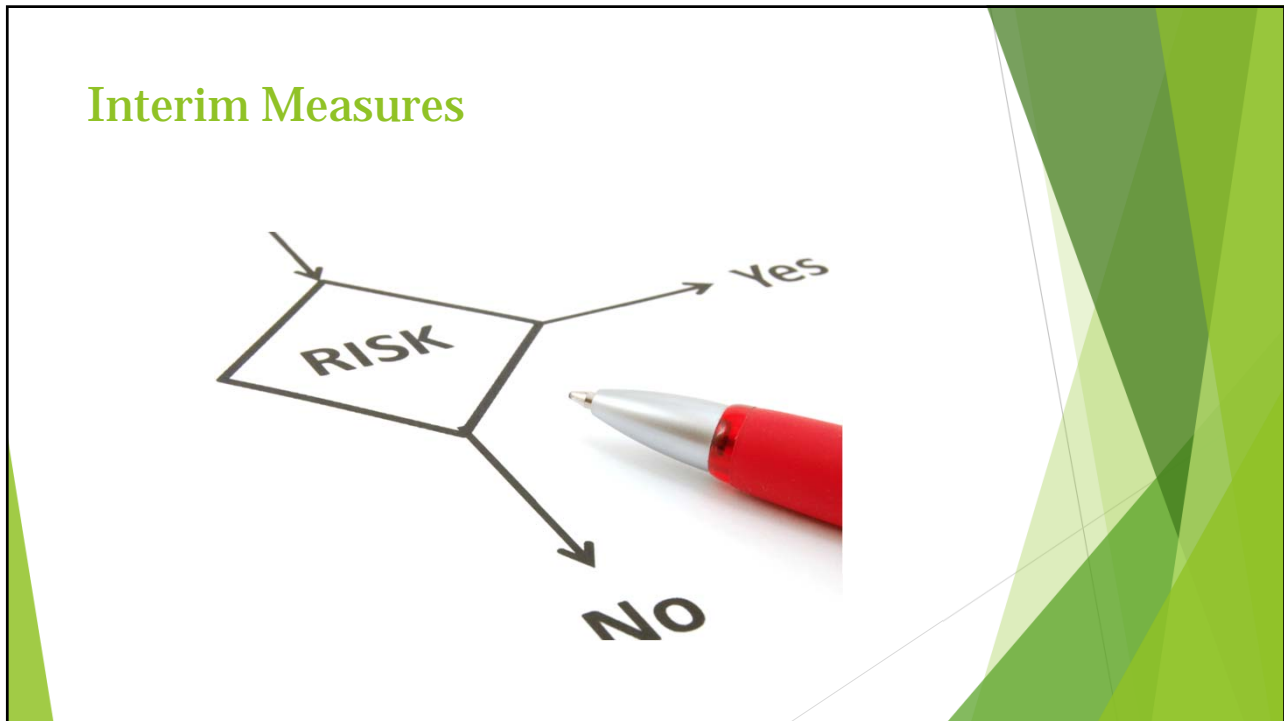
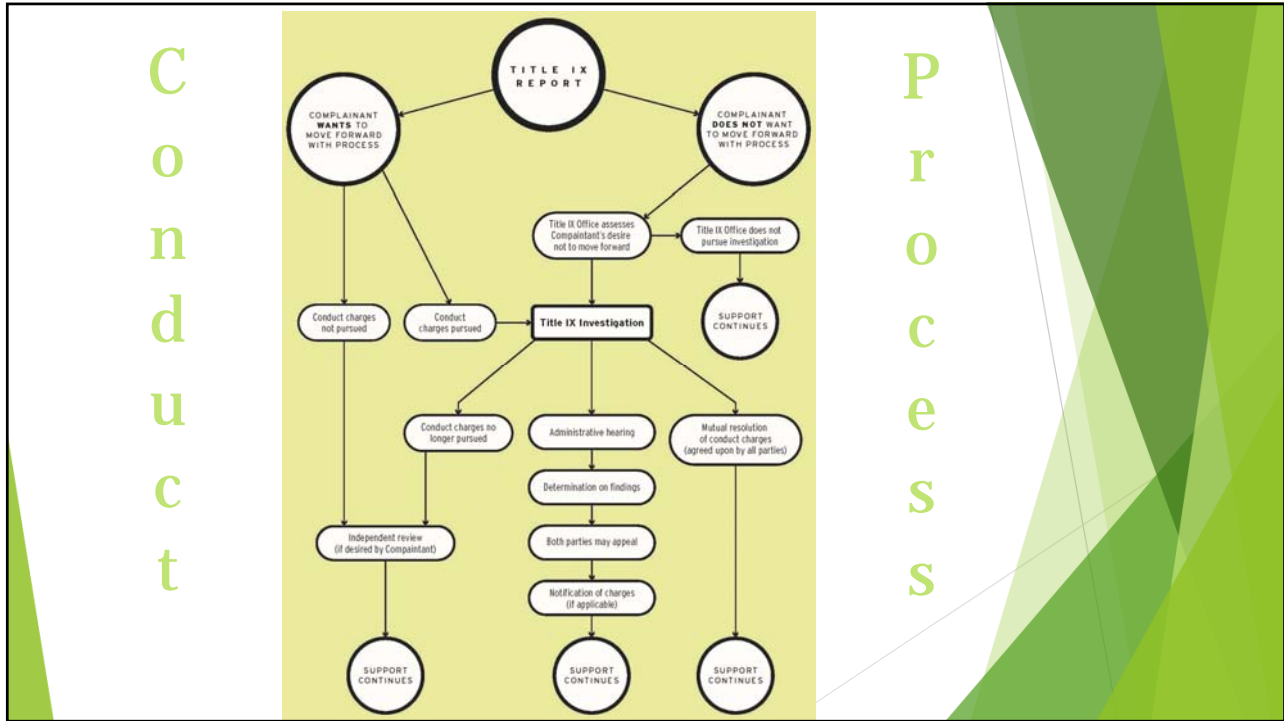
Explanation of On-Campus Confidential Resources

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The Student Health Center (SHC) provides support for students who have experienced sexual assault or domestic violence.



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.



