What the Proposed Title IX Regulations Might Mean for UNC Charlotte

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Sarah Edwards, Associate General Counsel
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

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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  - Rescinded many Obama guidance documents, including 2011 and 2014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)

- 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
Interim Measures
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?