

Human Resources' Ten Commandments for Title IX Compliance

Introduction

It is my privilege to join your meeting today. I am here to discuss Title IX and your Title IX compliance obligations as HR professionals. You play a major role in the College's successful implementation of its Title IX policy.

As you know, Title IX is part of the Education Amendments of 1972, which protect individuals from discrimination based on sex in education programs and activities that receive federal financial assistance. Title IX is not just about students. It applies to faculty, staff, and administrators, whether they are the alleged victims or perpetrators. HR must be as vigilant about Title IX as it is about other employee rights and responsibilities. While nearly all of the recent Title IX focus has been on student-on-student misconduct, the law starts with the words "No person", not "No student." Faculty, administrators, staff, and students all benefit from its protections and are all held accountable to its standards. And today, no matter who you voted for or who is running the administration, students expect the right thing to be done.

Title IX violations are often symptoms of a broken culture. As the guardian of the culture, HR plays an essential role in continually assessing and cultivating its health. That is, HR is the biggest tool in the College's compliance arsenal. To that end, I have carved in stone the ten commandments of compliance for HR professionals. Consider these gospel.

COMMANDMENTS

1. THOU SHALL UNDERSTAND WHAT BEHAVIOR TITLE IX PROHIBITS.

- Title IX prohibits sex discrimination and sexual misconduct.
- Sex discrimination is conduct that denies or limits an individual's ability to benefit from or fully participate in educational programs or activities or employment opportunities because of that individual's sex, gender, or sexual orientation.
- Examples of the types of sex discrimination that are covered under Title IX include, but are not limited to, discrimination in a school's classes and programs; discrimination in regard to recruitment, admission, counseling, financial assistance, discipline, extra-curricular activities; discrimination based on pregnancy; and the failure to provide equal opportunity in athletics.
- Sexual misconduct includes sexual harassment, gender-based harassment, sexual violence, domestic violence, dating violence, and stalking.
- It also prohibits retaliation against any person who reports sex discrimination or sexual misconduct, assists someone making such a report, or participates in any manner in an investigation or resolution of a sex discrimination or sexual misconduct complaint.
- It prohibits a trinity of abuses: sex discrimination; sexual misconduct; retaliation.

2. THOU SHALL RECOGNIZE THE DISTINCTION OF "RESPONSIBLE EMPLOYEES."

- A "responsible employee" is any employee who has authority to take action to redress sex discrimination or sexual misconduct; OR
- Has been given the duty of reporting incidents to Title IX Coordinator or designee; OR
- An employee whom a student could reasonably believe has this authority or duty.

- In its policy, the District lists these individuals as responsible employees: Title IX Coordinator; Vice Chancellor for Student Services; the Chancellor; College Presidents and Provosts; Athletic Director; Department Chairpersons; Faculty members; District Police Authority
- Responsible employees must report all known relevant details about alleged sex discrimination or sexual misconduct to the Title IX Coordinator, including but not limited to the names of all involved or present, date, time, and location. ***This is not discretionary.***
- All other employees are not under a statutory mandate to report any possible sex discrimination or sexual misconduct; however, they are strongly encouraged to make such a report.

3. THOU SHALL KNOW WHO IS COVERED BY TITLE IX.

- Students
- Employees
- Applicants for employment
- Independent contractors
- Visitors

4. THOU SHALL NOT IGNORE THE SIGNS OF A PROBLEM; YOU ARE EXPECTED TO NOTICE.

- Title IX mandates action.
- It mandates a response to all complaints.
- It requires institutions to affirmatively investigate all alleged violations.
- Your failure to do so violates the statute and exposes the District to liability.

For example, in March 2016 a group of eight female former students of the University of Tennessee filed a case against the university in federal court. The primary basis for their lawsuit is that the university violated Title IX by creating a hostile environment that allowed for multiple sexual assaults to

occur and ***were indifferent and unreasonable in responding to sexual assault claims by victims.***

- Inaction is betrayal.

5. THOU SHALL THOROUGHLY REVIEW THE DISTRICT'S UPDATED TITLE IX POLICY AND IMPLEMENTING REGULATIONS.

- You will be expected to familiarize yourself with the policy, its procedures, and your obligations.
- The District sponsors interactive training, like this one, to provide the skills and knowledge necessary to enforce the policy.

6. THOU SHALL NOT DISCOURAGE OR PRESUME.

- Do not discourage the filing of Title IX complaints or assess someone's credibility.
- The fact that someone may work at a strip club does not mean that he or she was asking for abuse or to be subject to sexual misconduct.
- Avoid phrases like "Are you sure you want to do this?" Or "these complaints can be tied up forever in administrative procedures."

7. THOU SHALL NOT BE A GOOD SAMARITAN BY TRYING TO CONDUCT YOUR OWN INVESTIGATION.

- You are not allowed to do so.
- You must adhere to the proper procedures.
- "The helping hand that strikes again."

8. THOU SHALL NOT RETALIATE AGAINST AN INDIVIDUAL FOR FILING A COMPLAINT.

- The District must address complaints of sex discrimination and sexual misconduct. It may not take adverse action against the complainant-victim for his or her complaint.
- You must keep a victim safe from other retaliatory harassment or behavior.

9. THOU SHALL UNDERSTAND THAT THE DISTRICT IS COMMITTED TO CREATING AND MAINTAINING A CAMPUS THAT IS SAFE AND RESPECTFUL—WHERE SEX DISCRIMINATION AND SEXUAL MISCONDUCT OF ANY KIND HAVE NO PLACE.

- As leaders, it is incumbent to walk the talk of compliance.
- Compliance starts at the top.
- IT'S YOUR RESPONSIBILITY.

10. THOU SHALL BE AWARE OF THE CONSEQUENCES OF VIOLATING TITLE IX.

- Title IX allows a private right of recovery for monetary damages against an institution (when the institution has knowledge of a violation and responds with deliberate indifference).
- The government also has the ability to terminate an institution's federal funding. This could be catastrophic to the District.
- As should be apparent, the consequences are life-defining. For everyone involved.