Student Information Sessions:

Title IX & Sexual and Gender-Based Misconduct

June 24, 2020

SKIDMORE

Guiding Values

- Cultivating a campus culture of respect, safety, and support
- Preventing re-traumatization and re-victimization
- Upholding equity and fundamental fairness
- Maintaining clarity and transparency about the College's policies and processes
- Implementing practices that can be realistically supported by the resources available at the College
- Meeting compliance with both state and federal mandates

Background

- Title IX of the Education Amendments of 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.”

- On November 16, 2018, the U.S. Department of Education (ED) released their proposed Title IX regulations

- On May 6, 2020, the ED announced new regulations for the first time since 1975

Background

- Federal regulations under Title IX have the **force and effect of law**
- Federal regulations generally supersede state laws
- "Sub-regulatory guidance" has helped **shape** institutional policies & processes:

Still in effect:

- ✓ 2001 OCR Revised Sexual Harassment Guidance*
- ✓ 2003 Dear Colleague Letter (DCL) on Title IX and Free Speech
- ✓ 2010 DCL on Harassment and Bullying
- ✓ 2013 DCL on Pregnant and Parenting Students
- ✓ 2015 DCL on the Role of Title IX Coordinators
- ✓ 2017 Q&A on Campus Sexual Misconduct

Withdrawn:

- ✓ 2011 DCL
- ✓ 2014 Q&A on Title IX and Sexual Violence
- ✓ 2016 DCL on Transgender Students

Major Changes: Overview

- Implementation date of **August 14, 2020**
- “Recipients” include all educational institutions, programs, and activities that receive federal funding
- Among other changes to existing policies and processes, major provisions in the new regulations will impact:
  - Definitions & jurisdiction
  - Terminology & language
  - Formal notice
  - Adjudication process
  - Evidence sharing
  - Timeline
  - Informal resolution options

Major Changes: Definitions

- Narrower definition of “sexual harassment”
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct *(quid pro quo);*
  - 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 recipient’s education program or activity;
  - Sexual assault, dating violence, domestic violence, or stalking, as defined in the Clery Act which includes Violence Against Women Reauthorization Act of 2013 (VAWA) amendments to the Clery Act
- Retaliation

Major Changes: Jurisdiction

- Narrower geographical jurisdiction
  - Institution-affiliated location, event, or circumstance
  - Any building owned or controlled by an officially recognized student organization of the institution
- Must be within the United States

Major Changes: Terminology and Language

- Institutions are expected to incorporate terms and definitions used by ED into their policies
  - “Reporting Individual” → “Complainant”
  - “Responding Student” → “Respondent”
  - “Interim measures” → “Supportive measures”

- Policies and procedures must include a presumption that the respondent is not responsible until a determination regarding responsibility is made at the conclusion of the grievance process

Major Changes: Official Notice to the Institution

- Narrowed scope of notice of sexual harassment
  - “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient

Major Changes: Live Hearing

- All institutions of higher education are now **required** to hold live hearings

- Live hearing includes cross-examination "directly, orally, and in real time by the party's advisor of choice and never by a party personally."
  - Screening questions in real time
  - May be conducted virtually or with accommodations
  - Implications for not participating in cross-examination

Major Changes: Evidence

- Complainant's sexual predisposition or prior sexual behavior are not allowed, with two exceptions:
  - Offered to prove that someone other than the respondent committed the conduct
  - Concerns specific incidents with respect to the respondent and are offered to prove consent

- Equal opportunity to inspect and review **any** evidence directly related to the allegations raised in a formal complaint
  - Privilege protections

- Use same evidentiary standard for both student and employee cases

Major Changes: Timeline

- 10 days to respond to evidence before investigation report is completed
- 10 days to respond to investigation report before hearing is held
- Must work within “reasonably prompt time frames,” but the regulations do not specify what that means

Major Changes: Informal Resolution Process

- More flexibility to incorporate an informal resolution process
  - **May be implemented at any time** prior to reaching a finding of responsibility
  - **May be withdrawn at any time** prior to agreeing to a resolution
  - May not be used in cases where an employee is the respondent
- The 2020-2021 SGBM policy was prepared to include an Alternative Resolution Process (ARP)
  - No party will ever be forced or coerced into pursuing the ARP

Working Within Required Changes

- **Any acts of SGBM that fall outside the new sexual harassment definition and jurisdiction boundaries will continue to be protected against and addressed by other institutional policy**
  - Student Bill of Rights still stands
  - Upholding affirmative consent standard, including incapacitation element
  - Upholding amnesty policy
  - Expanding trainings to include peer-to-peer programs
  - Maintaining “responsible employee” obligation
  - Continuing use of hybrid model for investigation and adjudication
  - Continuing to offer an advisor of choice for any party that does not have one

Pathways & Options

If you **don't** want a report to be made to the TIX Coordinator:

Confidential Resources

- *On-campus*: Counseling Center, Health Services
- *Off-campus*: Wellspring, Saratoga Hospital ER, Saratoga Planned Parenthood/Schenectady Planned Parenthood, NYS Sexual Violence Hotline

Anonymous Resources

- Victim Advocates, PHEs

If you **do** want to report to the TIX Coordinator:

You may contact Joel Aure directly or any other responsible employee, who will relay the information provided to Joel Aure

When meeting with the Title IX Coordinator, you will be offered information and resources on:

- Formal investigation process
- Alternative resolution process
- Request for no further action
- Supportive measures

Student Survey Feedback: Informing Today's Presentation

- Most frequently cited **questions about Title IX changes**:
  - What are the changes and how will they be implemented?
  - How is Skidmore protecting survivors?
  - Is Skidmore implementing the changes/can Skidmore keep current Title IX policies?
- Most frequently cited **information students wanted to see addressed**:
  - Communication of resources
  - Skidmore's response
  - Comparison of former policy to new regulations
- Most frequently cited **accommodations requested** for information session:
  - Closed captioning, making a recording of session available, trigger/content warning, transcript of session

Student Survey Feedback: Reactions and Student Impact

- Majority (77%) **do not support** the changes
  - Negative impact on survivors
  - Changes protect respondents
  - Fear
- 7% **support** the changes because
  - Changes treat respondents fairly
  - Request Skidmore enforce changes
- Students most frequently addressed off-campus SGBM and cross-examinations in their responses

- Majority (99%) reported that **Skidmore's values align with their own**
  - 59% believe Skidmore **does not demonstrate** those values
- Most frequently cited values students hold/wish to see Skidmore uphold:
  - Cultivating equity and preventing traumatization and victimization, victim-directed support, speedy and effective punishment, transparency, wider availability of resources

Student Feedback Questions

To provide anonymous feedback please submit questions at:

https://bit.ly/2XqV505

Resources

Questions about today's session may be directed to Gabriela Melillo, Title IX Deputy Coordinator for Student Affairs (gmelillo@skidmore.edu) and Lorri Riggs, Assistant Dean of Student Affairs for Student Success (lriggs@skidmore.edu).

Title IX Coordinator: Joel Aure (jaure@skidmore.edu)

Skidmore Counseling Center: 518-580-5555

Skidmore Victim Advocates:

- Jen McDonald (jmcdonal@skidmore.edu)
- Wendy Walker (hwalker@skidmore.edu)
- Kim Golemboski (kgolembo@skidmore.edu)

Wellspring 24/7 Confidential Hotline: 518-584-8188

Please visit skidmore.edu/sgbm for more detailed information and resources.

Follow @skidmoretitleixwg on Instagram for updates from current students.