

New OCR Title IX Regulations Released May 6, 2020				
New Regulation	Current Process	Changes to implement	IMPACT 1-Severe 2 – Moderate 3- None	Other Comments/Next Steps
		General Changes		
<p>Expanded Role of the TIX Coordinator. The TIX Coordinator facilitates the process, is a gatekeeper, provides supportive measures, due process, oversees grievance and appeal process, appoints investigators, decision makers, advisors, and ensures no bias or conflict of interest and full compliance with regulations. Ensures policies are present relating to pregnant and parenting students, monitors equity within athletics, ensures non-sex discriminatory hiring practices and consultant with matters of female-only school programs. § 106.8(a)</p>				
<p>Standard of evidence needs to be either preponderance of the evidence or clear and convincing for all claims of sexual harassment for faculty, staff and students.</p>				Update Policy to include.

<p>Definitions of Sexual Harassment is conduct that is so severe, pervasive, and objectively offensive that it denies equal access to education program or activity. Ensure your definitions for Sexual Assault, Dating Violence, Domestic Violence and Stalking are in compliance. §106.30</p>				<p>Update policy to include.</p>
<p>Terminology for Complainant, Respondent, Grievance, and recipient. §106.30</p>				
<p>Actual Knowledge of sexual harassment triggers the duty for the recipient to respond. A recipient must designate individuals with authority to implement corrective measures as well as the Title IX Coordinator and communication of these individuals. §106.30</p>				
<p>Title IX Jurisdiction Title IX only applies to sexual harassment that meets new definitions, occurs within an education program or activity, and within the USA by a current member of the MCW student body or employee. Can consider conduct not under TIX to be conduct that is in violation of other policies or codes of conduct.</p>				
<p>Education Program or Activity means locations, events or circumstances over which the recipient exercises substantial control over both the respondent and the context in which</p>				

<p>the sexual harassment occurred (and occurs in any building owned or controlled by a student organization that is officially recognized by the recipient).</p>				
<p>Mandatory Dismissals. Must do a mandatory dismissal of any case that does not meet the TIX new regs. Can reinstate under alternative policy/procedure if you wish. §106.45(b)(3)(i)</p>				
<p>Discretionary Dismissals. May dismiss the formal complaint when there is written request by complainant, if the respondent is no longer enrolled or employed, or if there are specific circumstances that prevent gathering of sufficient evidence. §106.45(b)(3)(ii)</p>				
<p>Notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, including: TIX Coordinator name and title; office address; electronic mail address; and telephone number, non-discrimination statement, questions</p>				

may be referred to TIX Coordinator or the Assistant Secretary or both, and notice of the grievance procedure including how to report a complaint, and how you will respond. §106.8				
Presumption of Innocence clearly outlined in policy, and investigation notice. Interim measures must account for presumption of innocence. Must treat parties equitably. §106.8				
Establish a policy that does not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.				
Respond promptly in a manner that is not deliberately indifferent to actual knowledge of a complaint. §106.44				
		Reporting of TIX Violations		
If a complainant (or another individual) comes forward and makes a verbal report only of a Title IX violation but does not wish to file a formal written report, TIX Coordinator must reach out to the complainant if that is not the party who came forward and must always provide supportive measures to the individual the report was made				

about, explain reporting process, etc. Recipient adheres to the complainant's wishes on whether to file a formal complaint when possible.				
Complainant files a written formal complaint of a Title IX violation. The complaint is a document submitted by a complainant or signed by the TIX Coordinator. It is then reviewed, and unless it does not meet requirements of Title IX, it must be investigated and go to hearing or informal resolution process if parties are in agreement.				
Supportive Measures must be non-disciplinary, non-punitive individualized services offered as appropriate to complainant when a party with actual knowledge is provided information about a violation and/or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. §106.44(a)(b)				Design measures to restore equal access to education programs or activities and to protect safety of all parties and/or deter sexual harassment.
Must do a safety and risk assessment to determine if immediate threat is present and if so, implement the removal of a student/employee. §106.44(c)				
Provide process for the Challenge of a decision for removal of party due to threat assessment. §106.44(c)				

<p>Provide written notice to parties upon receipt of a formal complaint that includes: notice of the grievance process, allegations that includes identities of the parties, alleged conduct constituting sexual harassment under §106.30, date and location of incident(s), statement of presumed innocence, information about advisors, and code of conduct information about prohibiting false statements/providing false evidence, and . §106.45</p>				
		<p>Grievance Process § 106.45</p>		
<p>Investigate the allegations and ensure the burden of proof and burden of gathering evidence is sufficient to reach a determination of responsibility rests on the recipient and not on the parties.</p>				
<p>Provide protections to ensure complainants are not required to divulge any medical, psychological, or similar privileged records.</p>				
<p>Investigation Report must be written by the investigator and parties names redacted with a key for the parties to use when they complete their review. If a party is not attending the hearing, the evidence submitted by that party, it must be redacted. Include a</p>				

credibility assessment but no credibility determination or findings.				
Provide an equal opportunity to the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.				
Access to Evidence Must offer each party the same meaningful access to any information that will be used. Parties must be provided a copy of the investigative report prior to its completion and given at least 10 days to review and provide a written response. After finalizing the investigative report, and at least 10 days prior to a hearing, provide the final investigation report to parties to review and submit a written response.				Determine if 10 days is calendar or business days.
Pre-hearing meetings by the hearing decision maker/panel with each party/advisors to discuss procedures.				
Determine if process will include a Hearing panel or officer.				
Live Hearings must be held for resolution of a formal complaint unless parties agree to informal				Recipients have the flexibility to use technology to conduct

<p>resolution. Hearing officer/panel cannot be the same as the TIX Coordinator or investigator. Hearing Officer or panel must determine whether a question is relevant and explain any decision to exclude questions as not relevant.</p>				Title IX investigations and hearings remotely.
<p>Parties who are students cannot be forced to appear at a hearing and cannot be retaliated against for not appearing. Employees who are witnesses can be compelled to attend. Decision makers cannot draw an inference about the determination regarding responsibility based solely on the a party's absence from the live hearing.</p>				
<p>Each party must select an advisor of their choice to perform cross examination during a live hearing. Recipient must provide an advisor if a party requests one. §106.45(b)(6)(i)</p>				
<p>Recording must be done for each live hearing and provided to the parties for review.</p>				
<p>Exclude testimony and statements from any party or witness who refuses to submit to cross examination at a hearing.</p>				
<p>Cross examination is conducted by an advisor all relevant questions and follow-up questions including those that challenge credibility.</p>				

<p>Informal Resolution is now permitted after a formal complaint is filed for any type of case where both parties agree. This can only occur after written notice is provided to the respondent. Any party may withdraw from the process at any time. §106.45(b)(9)</p>				
<p>Determination of Responsibility and simultaneously issuing of a written determination by the hearing officer/panel to the parties. Must include identification of allegations, description of procedural steps taken, findings of fact supporting the determination, conclusions regarding the application of policy to the facts, disciplinary sanctions, remedies, and whether there will be continuance of supportive measures.</p>				
<p>Offer equal right of Appeal to both parties. Can limit reasons allowable for an appeal to procedural irregularity, new evidence, conflict of interest or bias, and other items the recipient would like to offer.</p>				
<p>Appeal decision maker is not the same person as the decision maker(s) of the initial determination of responsibility. Cannot be the investigator or Title IX Coordinator.</p>				
<p>Appeal process must provide the parties a reasonable and equal</p>				

<p>opportunity to submit a written statement.</p>				
<p>Retaliation is prohibited. No recipient or other person may intimidate, threaten, coerce or discriminate against any individual for making a complaint, report, or participation in an investigation or hearing under TIX.</p>				
<p>Record Retention of TIX case files and training materials for 7 Years. §106.45(b)(10)</p>				
<p>Dismissals of a formal complaint or allegations only permitted when a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations or if the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent MCW from gathering evidence sufficient to reach a determination as to the formal complaint or allegations. §106.45(b)(3)(i)</p>				
<p>Training of TIX staff, advisors, decision makers, those who conduct informal resolution process, and hearing panel members must provided. Training must include definitions, scope of</p>				

program/activity, how to conduct a grievance process, serving impartially, due process, presumption of innocence, how to use technology for process, issues of relevance of questions and evidence, issues of relevance to create investigative report that fairly summarizes evidence.				
Provide Training for faculty, staff and students.				
Post latest training materials for TIX personnel on your website by August 14, 2020. §106.45(b)(10)(D)				
Consider communication needs for campus.				