
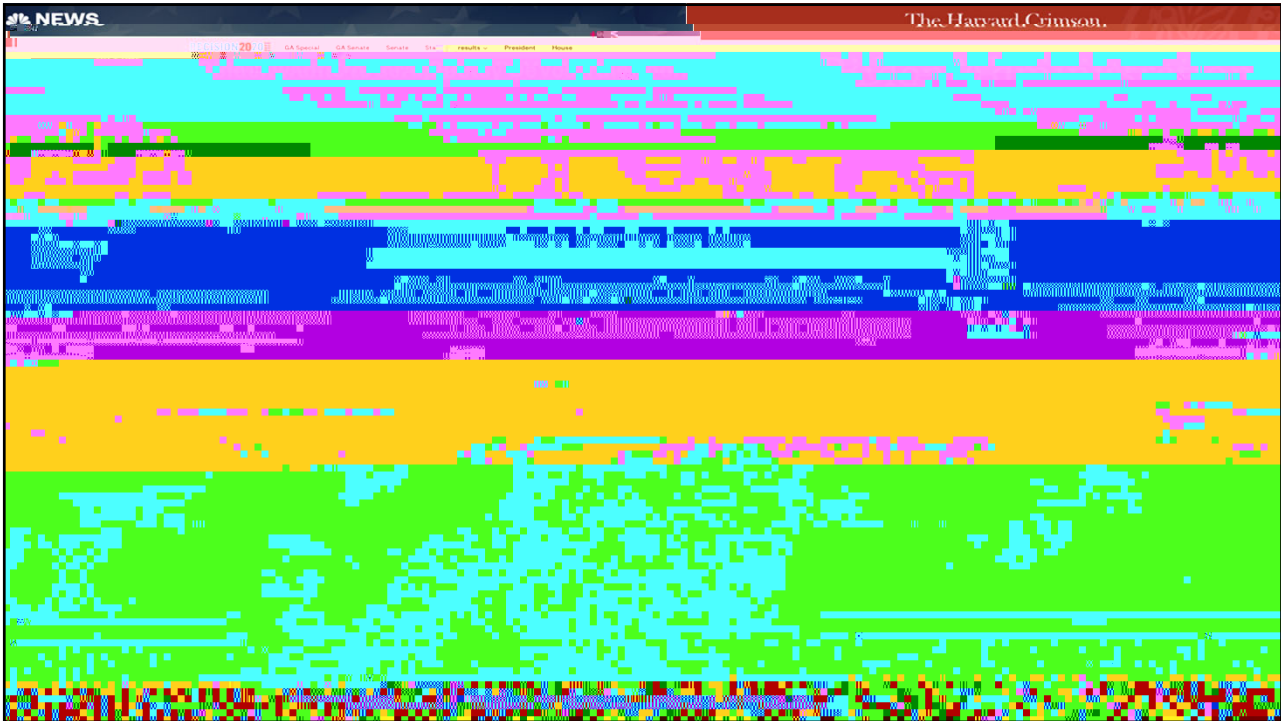


What's Next?

What is going to happen to the DeVos Title IX Rules under President Biden?



3



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Litigation Challenges

- Know Your IX, et al. v. DeVos filed May 14, 2020 in D. Md.
 -



What Comes Next from ED

- Notice of Formal Rulemaking
 - Anticipated in June 23, 2021 letter regarding Title IX 49th Anniversary
- Confirmation that Title IX prohibits discrimination on the basis of sexual orientation and gender identity
- Enforcement Approach



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In the meantime,

The remaining rules are the law, and any college receiving federal funds must obey them.



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Definitions

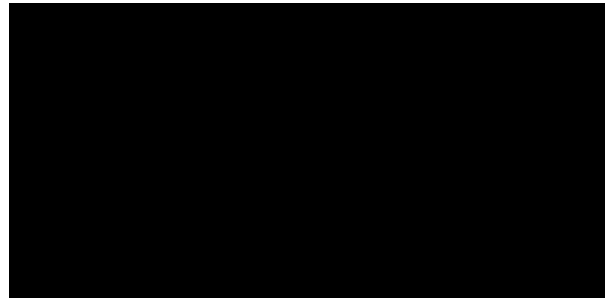
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Definition of Sexual Harassment

Sexual Harassment includes one or more of the following:

1. Quid Pro Quo
2. Hostile Environment
3. Clery Definitions

§106.30(a)



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Quid Pro Quo

- Conditioning provision of an aid, benefit or service on participation in unwelcome sexual conduct
- Carried out by an employee



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Hostile Environment

- Unwelcome sexual conduct
- “So severe, pervasive, *and* objectively offensive”
- “Effectively denies equal access”
- “Determined by a reasonable person”
 - “[S]tanding in the shoes of the complainant.” (Preamble, p. 514)



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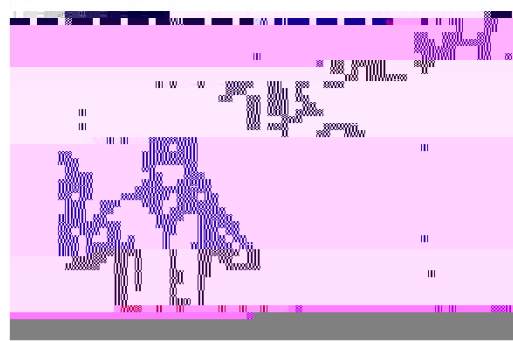
Clery Definitions

- **Sexual Assault** – a forcible or non-forcible sex offense under the FBI UCRS (as defined by the Clery statute) including NIBRS
 - Forcible -- Any sexual act “directed against another person without the consent of the victim including if the victim is incapable of giving consent.”
 - Focus on proscribed actions rather than terms
- **Dating Violence** – violence by a person who is



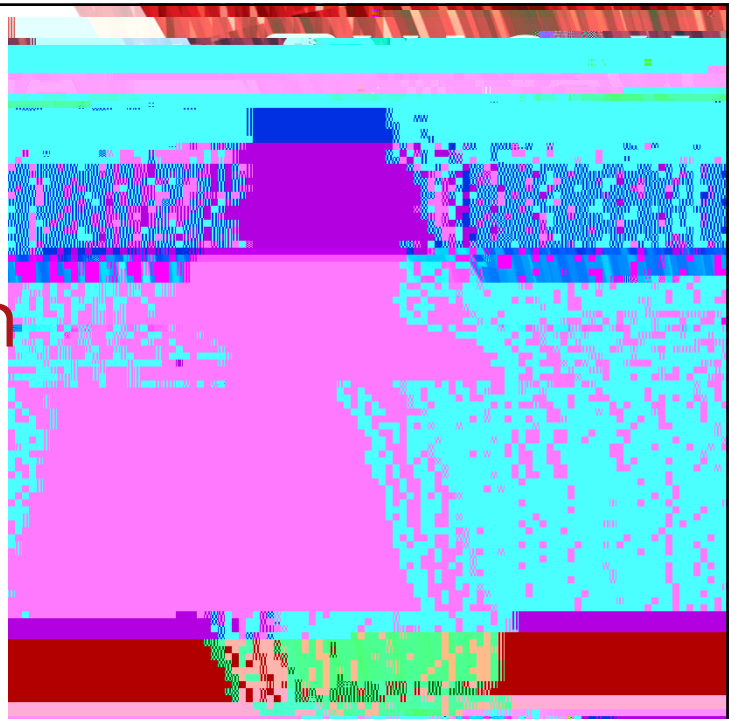
Actual Knowledge

- Institution has actual notice of sexual harassment or allegations when reported to the:
 - Title IX Coordinator(s)
 - Official With Authority to Take Corrective Actions (OWA)
- Not a respondent
- Not others who may or must report



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Jurisdiction



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Education Program or Activity



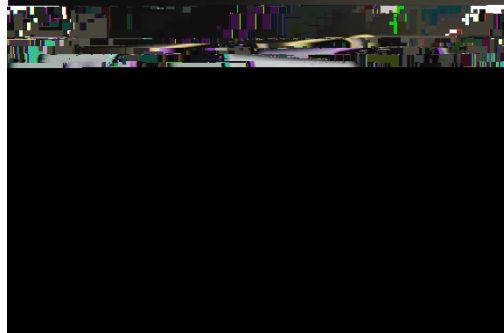
- Locations, events, or circumstances over which IHE exercises substantial control over *both* the respondent and the context in which the sexual harassment occurred, **or**
- Any building owned or controlled by a recognized student organization, **and**
- Against a person in the United States

Filing a Formal Complaint



Filing a Formal Complaint

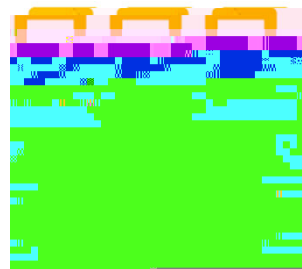
- Filed by the Complainant or signed by the Title IX Coordinator.
- Requests that the IHE investigate the allegations of sexual harassment.
- In person, by mail, email or approved method with Complainant's signature.
- Complainant must be participating in or attempting to participate in the IHE's education program or activity. Title IX Coordinator may file even if the Complainant is not associated in any way to protect other students.



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The Formal Complaint: More Than One Respondent

- *May* consolidate formal complaints against more than one respondent, or by one party against the other party
 - Allegations arise out of the same facts or circumstances.
- Complaints may be filed and sanction imposed *only* against individuals, not groups

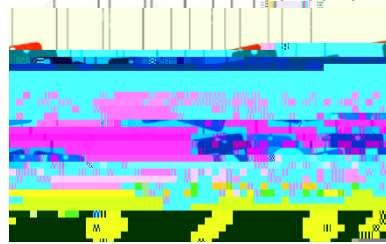


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Written Notice of Allegations

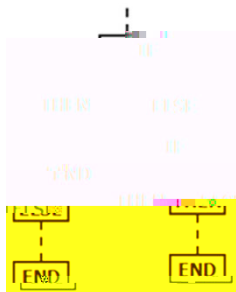
- Notice of the grievance process.
- Notice of the allegations, including sufficient details and time to prepare a response *before* the initial interview.
- Statement that the respondent is presumed not responsible.
- Right to advisor of choice.
- Right to inspect and review evidence.
- Any prohibition of false statements or information.

Provide updated notice with any later discovered additional allegations.



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Dismissals



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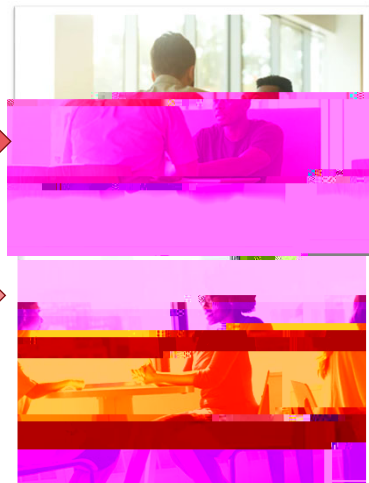


Supportive Measures

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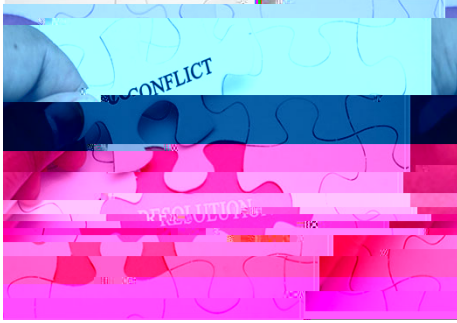
Response to a Report

- Offer *supportive measures* promptly to the Complainant.
- Explain the process for filing a formal complaint.
- Consider the Complainant's wishes as to supportive measures.
- Follow a grievance process that complies with the regulations *before* imposing any disciplinary sanctions or other actions that are not supportive measures against the Respondent.



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Informal Resolution Requirements



- Only *after* a formal complaint is filed
 - At any point in the process
 - May return to formal process if informal resolution does not resolve the matter
- All forms of sexual harassment
 - *NOT* – Allegations of employee against student harassment
 - *ONLY* – When the institution deems it appropriate



Note

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