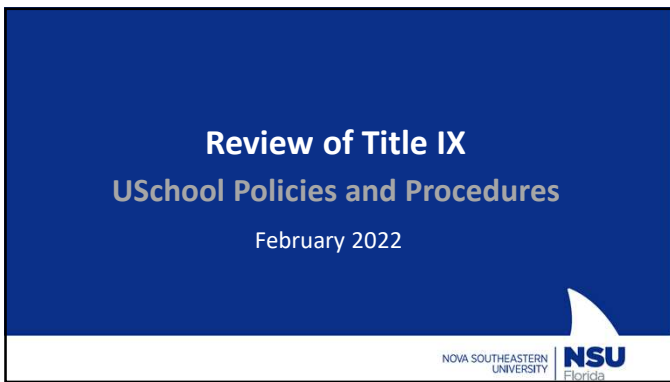
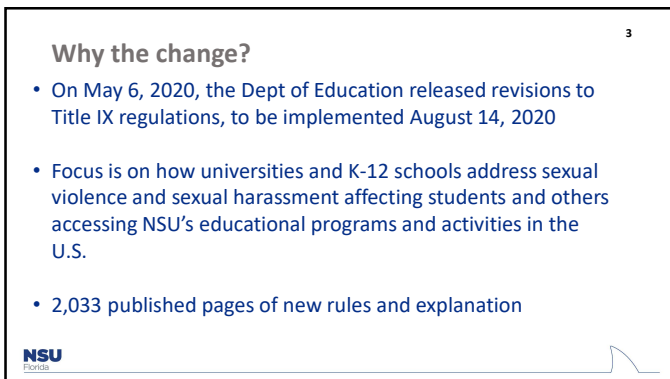




1



2




3

4

Major Changes to Title IX Regulations

- Re-defines and limits the type of sexual harassment under Title IX
- Creates quasi-judicial due process standards requiring:
 - Written formal complaint from victim (or parent)
 - Sharing of all evidence and reports with all parties
 - Opportunity to ask questions of other party
 - Specific timeframes imposed during investigation
 - Specific grounds for dismissal and for appeals
 - Required training for investigators and decision-makers
 - Cannot impose discipline until Title IX process occurs



4

5



What does this mean?

Narrows the scope of what the Dept of Ed expects NSU to address under Title IX:

Type of prohibited behavior (violation)	Where & when behavior occurred (jurisdiction)
---	---

↓

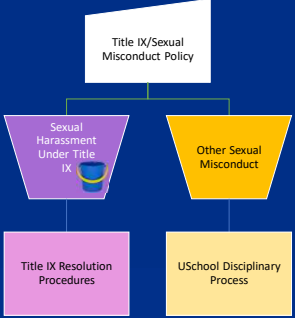

Requires specific procedures for those cases that are found to be subject to Title IX

5

What does this mean?

- Narrows the scope of what the Dept of Ed expects schools to address under Title IX:
 - Type of behavior
 - Jurisdiction (when, where, who)
- Requires specific procedures for those incidents that fall under Title IX
- Gives schools authority to address sexual misconduct outside of Title IX under other policies/procedures

6

7

New Definition of Title IX Sexual Harassment

Limited to:

- Unwelcome **“quid pro quo”** sexual harassment by a school employee against a student;
- Sexual harassment that is “so severe, pervasive, and objectively offensive that it effectively **denies a person equal access**” to educational programs; or
- Acts that meet the VAWA definition of a **sex offense** of sexual assault, dating violence, domestic violence, or stalking.
- In addition, Title IX prohibits **retaliation** against any person for pursuing their rights under Title IX.

NSU
Florida

7

8

New Jurisdiction of Title IX (i.e. where and when)

- The complainant must be a student/person accessing NSU’s educational programs **in the United States**, and
- NSU must have **substantial control over the alleged perpetrator and the context of harassment**, and
- A formal complaint must be made by an affected person who is **enrolled or trying to access** an NSU program/activity
 - Parents may file a complaint on behalf of an under 18-year-old student

NSU
Florida

8

9

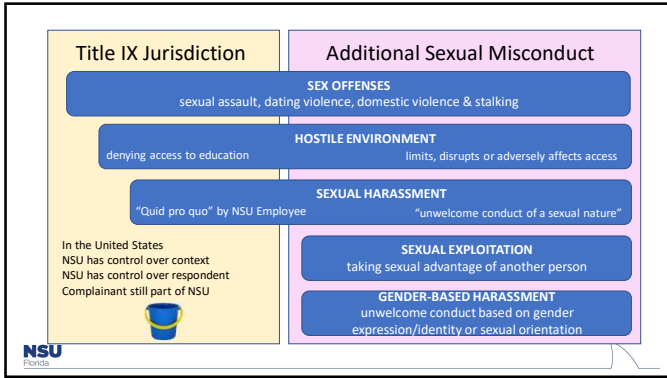
Limitations of “New” Title IX

The diagram consists of three overlapping circles. The top circle is blue and labeled 'Definition of Sexual Harassment'. The bottom-left circle is yellow and labeled 'Jurisdiction over Educational Activity or Program & Respondent'. The bottom-right circle is red and labeled 'Complainant Identity/ Accessing Educational Activity or Program'. The intersection of all three circles is labeled 'Title IX'. Arrows point from various scenarios to the circles and their intersections.

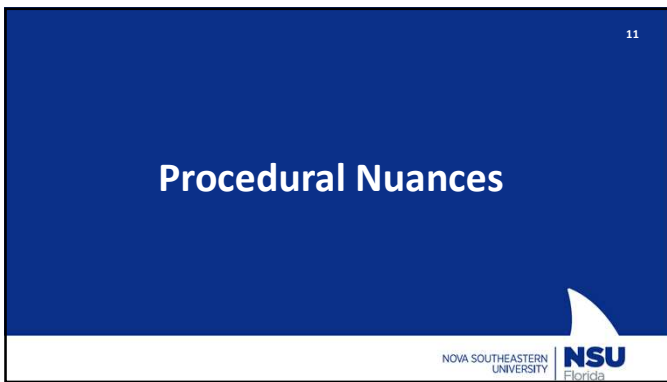
- Definition of Sexual Harassment:**
 - Student does not find teacher’s sexual advances to be unwelcome
 - Student sexually assaults another student while on a school study abroad trip
 - Over the weekend, a student extorts sexual images from another student via Snapchat causing student to not want to come to school
- Jurisdiction over Educational Activity or Program & Respondent:**
 - Student hugs and touches others on thighs and stomachs in school
 - Student sexually assaults another student after school across the street from campus
 - Student cyber-harasses another while they are at their homes
 - Student gropes multiple peers while off-campus/out of school
- Complainant Identity/ Accessing Educational Activity or Program:**
 - Student flashes International students residing outside of U.S. during Zoom study group
 - Student waits until after graduation to report sexual harassment by a teacher

NSU
Florida
Image content credit: Melissa Carleton, 7/8/2020 Presentation to FIGURMA

9



10



11

Standard for Compliance 12

- The Office for Civil Rights (OCR) will use the “deliberately indifferent” standard for compliance or “clearly unreasonable in light of the known circumstances” i.e., will only hold a school non-compliant if it:
 - Fails to follow Title IX procedural requirements
 - Fails to follow school’s own policies and procedures
 - Fails to timely review/process claims or respond to parties
- “Actual notice” – when a U School employee sees or hears about alleged sexual harassment


The NSU Florida logo is at the bottom left.

12

13

Procedural Requirements

- Must offer supportive measures to a victim student
- Must explain option to file a formal complaint
- Formal complaint must come from victim (or parent) or Title IX Coord.
- Must provide written notice of investigation
- Must investigate all formal complaints
- Must follow process before imposing ANY discipline
- Must share all evidence and investigation summary with the parties and their advisor
- Cannot require confidentiality or limit parties from discussing case
- Must separate roles – investigator, decision-maker, coordinator
- Must train annually those roles




13

14

Supportive Measures

- Non-disciplinary, non-punitive individualized services offered as available and appropriate for no cost to the parties
- Designed to preserve students' access to their educational activities without "unreasonably burdening" the other party
 - Counseling, mutual no-contact orders, change in schedules, virtual participation, extension of class assignments, etc.
 - Does NOT include suspension from athletic team or student club




14

15

Emergency Removal

- Limits interim removal of a student (removal from campus, suspension from program including athletic participation, etc.) **only** if it is determined that the student poses an immediate threat to health or safety to any individual.
- Student must be offered opportunity to challenge the decision immediately after the removal.




15

16

Dismissal of Complaints

- Complaints **MUST** be dismissed under Title IX by NSU when:
 - Even if true, does not meet Title IX definition of sexual harassment, or
 - Did not occur towards person accessing NSU programs or activities in the U.S.
- Complaints **MAY** be dismissed under Title IX by NSU when:
 - Complaint provides notice in writing of withdrawing complaint, or
 - Respondent is no longer enrolled or employed by NSU, or
 - Circumstances prevent NSU from gathering enough information to reach a determination.

Dismissal under Title IX does not preclude NSU from addressing the behavior under a different policy and/or procedure.




16

17

Outcome & Appeals

- Outcome letter must include more information, such as rationales and a timeline
- NSU **must** offer the parties an opportunity to appeal the final decision and/or dismissal of any part of a complaint on the basis of:
 - Procedural irregularity that affected the outcome;
 - New evidence not reasonably available at the time the decision was made that could affect the outcome; or
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome.




17

18

Personnel & Training Requirements

- ALL U School employees are required to report Title IX incidents
- Annual training required for all persons involved in investigating, making decisions (including appeals) and Title IX Coordinator
- Specific topics must be covered including:
 - Definitions of Title IX sexual harassment and application at NSU
 - How to conduct an investigation, hearing, or grievance process
 - How to serve impartially - avoiding prejudgment, conflicts of interest, and bias
 - Relevance of evidence and questions, including about prior sexual history
- Training materials must be posted online



18

19

Implications




19

20

What does this mean?

- Policy updated in USchool Handbook
 - Narrows scope of what falls under Title IX – all other issues referred to regular disciplinary process
- Procedures updated in USchool Handbook
 - Emergency removal, appeals, investigation process
- Training every year for investigators, decision-makers, and appeals decision-makers

Review the Title IX/Sexual Misconduct Policy & Title IX Resolution Procedures p. 35-38




20

21

When you see a potential issue.....

1. Get initial information
 - Initial review vs formal investigation
2. Follow any applicable mandatory reporting requirements
3. Offer supportive measures
4. Offer right to file a formal complaint
5. Contact Title IX Coordinator
6. Provide written summary of information (including student names) for Title IX Coordinator's files




21

22

Anticipated Challenges


- Determining “Is it Title IX” is key
 - MUST use Title IX procedures for Title IX situations
- More prescriptive process for Title IX sexual harassment
- Limited ability to remove from athletic teams or school unless the actual threat to health or safety standard is met
- Lengthier timeline due to review periods imposed
- Increased annual training requirements
- Process appears more “court-like”
- Limits school response without a formal complaint



22

23

Questions & Discussion



23
