



Association of
Title IX Administrators

April 29, 2021

Massachusetts' New Campus Sexual Assault Law

What Institutions Need to Know



Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

OVERVIEW AND BACKGROUND

- New law signed by Gov. Baker on January 12, 2021.
- Applies to public or private degree-granting higher education institutions operating in Massachusetts
- Promoted by a coalition of student and survivor advocates
 - Dubbed “Every Voice Bill”
 - First written by student advocates in 2015
 - Support from national partner organizations
- Governs “**Sexual misconduct**,” which includes sexual violence, dating violence, domestic violence, gender-based violence, violence based upon sexual orientation or gender identity/expression, sexual assault, sexual harassment, or stalking.
 - Broader definition than “sexual harassment” under 2020 Title IX regulations.

KEY COMPONENTS/TOPICS

1 Enhanced Intake and Confidential Resources

2 Policies and “Website Checklist”

3 Required MOUs

4 Training

5 Climate Surveys

6 Implementation Timing and Planning

CONFIDENTIAL RESOURCES

- Designate at least one confidential resource
 - May not be Title IX Coordinator or “Official with Authority” under Title IX (person who is required to report to the TIXC)
 - Can be an employee or can be outsourced to an off-campus resource
- Can include “categories of employees”
 - Counseling Centers, Health Centers
- If < 1000 students, may partner with another MA institution to provide

CONFIDENTIAL RESOURCES: ROLES AND RESPONSIBILITIES

- Available to explain to both students and employees (incl. respondents). Upon request:
 - Reporting options (and effects of each)
 - Counseling and crisis services (on-campus and local)
 - Medical and health services (on-campus and local)
 - Available supportive measures (academic and housing)
 - Institutional disciplinary process
 - Legal processes by local law enforcement
- Must affirmatively notify complainant of rights regarding protective and no-contact orders.
- Trained in awareness and prevention of sexual misconduct and trauma-informed response

CONFIDENTIAL RESOURCES: ROLES AND RESPONSIBILITIES

- Coordinate and can serve as a proxy with on- and off-campus providers if requested by reporting party
 - Academic, living, transportation, or working arrangements
 - Not intended to “trigger” Title IX formal complaint
 - Not a “report” unless otherwise required under state or federal law
- Must maintain confidentiality
 - May not disclose information without prior written consent, including cross-examination under Title IX
 - Privileges confidential communication in criminal/civil proceedings
- No conflict of interests (with adverse parties)
 - *Begs question of having multiple individuals identified as confidential resource providers*

POLICIES

- Acknowledges existing policy requirements under Title IX
 - Seeks to synthesize consistent with state and federal law
- If your institution still needs to adopt policy and procedures consistent with 2020 Title IX regulations, recommend that you start there
- Must be publicly available on institution website
 - In an accessible format (web accessibility)
 - Available in writing upon request
 - Provide to reporting party upon receiving a report
 - Send to all students and employees annually via e-mail by August 20th
- Establish procedures for regular review and updates
 - Consider input from internal and external constituencies

POLICIES

- Must include:
 - Procedures to report regardless of where incident occurred
 - Where to receive immediate emergency assistance
 - Forensic/SANE exam to preserve evidence
 - Contact info to receive medical treatment on-campus (if applicable) and/or off-campus
 - Descriptions of counseling, health, safety, and academic and other support services available on-campus or in the local community
 - Contact information for rape crisis center and/or domestic violence program

POLICIES

- Must include information on the rights of students or employees to:
 - Notify (or not) campus and/or local law enforcement, including state police
 - Receive assistance from campus in making notification
 - Obtain a court-issued protective order and/or institution-issued no-contact order, and who to notify on campus of a court-issued order
 - Concurrently use campus process and external criminal or civil processes
 - Institution-based supportive measures that include academic, housing, transportation, or working arrangements (regardless of where the incident occurred)

POLICIES MUST RECITE SEVERAL “TITLE IX COMPONENTS”

- Institution’s procedures for resolving complaints promptly and equitably, including:
 - Notice will be given to the respondent that includes the date, time, and location of the alleged incident and the specific policies violated
 - Articulate the portion of the policy alleged to be violated by the specific conduct
 - Arguably more specific than notice required under Title IX
 - Impartial investigation and hearing OR disciplinary process is conducted by individuals who receive at least annual training
 - Presumption of non-responsibility
 - Equal opportunity to inspect and review evidence
 - Advisor of choice
 - Standard of evidence
 - Parties will be provided with a copy of hearing procedures

POLICIES RECITE SEVERAL “TITLE IX COMPONENTS”

- Also:
 - May have restrictions on evidence, such as prior sexual history and character evidence
 - *Arguably a restriction on “character evidence” is at odds with the Title IX regulations if a decision-maker finds it “relevant.”*
 - Parties will not be allowed to directly question each other
 - Informed in writing of the results of a hearing not later than seven business days; include hearing process info
 - Institution will not disclose names except to carry out this process or as permitted under state or federal law

INTERSECTION OF TITLE IX'S GRIEVANCE PROCEDURE AND MA LAW PROCEDURES

Title IX

- Title IX applies when jurisdictional factors are met (including one of the definitions under Section 106.30)

Massachusetts law

- Massachusetts law applies to *all* allegations of sexual misconduct

Does your campus currently have two different sexual misconduct procedures?

- One for incidents covered by Title IX? (“Process A”)
- One for other forms of sexual misconduct? (“Process B”)

Starting August 1st your “Process B” will have to comply with the MA law.

- A hearing is not required
- Many other elements track with Title IX regulations (see previous slides)

FINAL REQUIRED POLICY ELEMENTS

- Summary of the employee disciplinary process for incidents of sexual misconduct
- Range of sanctions or penalties imposed
- Summary of institution's policy on retaliation
 - Prohibit retaliation against:
 - Anyone who reports
 - Assists someone else in making a report
 - Participates in an investigation
- Amnesty policy for complainant and witnesses
 - Applies to students
 - Unless report made in bad faith
 - Unless conduct put health/safety of another person at risk

WEBSITE CHECKLIST

- Anonymous report mechanism (can be online or otherwise)
- Annual Security Report (under Clery Act)
- Telephone/website for a local, state, or national 24-hour hotline that provides information on sexual misconduct
 - Rape, Abuse, and Incest National Network (RAINN) hotline:
 - 800-656-HOPE; www.rainn.org
 - National Sexual Violence Resource Center (nsvrc.org)
 - Maintains database of local organizations
- Name and contact information (and keep up-to-date!):
 - Title IX Coordinator
 - Confidential Resource(s)
 - Description of the role and services

WEBSITE CHECKLIST (CONT.)

- Name and location of nearest facility for forensic/SANE exam
 - Transportation (and how to be reimbursed)
- Sexual misconduct policies and procedures
 - Including investigation and adjudication process
- Reporting options for students and employees
- Process for requesting interim/supportive measures
 - Academic, living, transportation, working situation

REQUIRED NOTIFICATIONS TO CAMPUS COMMUNITY (LIKELY TO LIVE IN YOUR POLICY)

- Required notifications to students/employees of the institution's existing obligations to:
 - Investigate or address misconduct, including anonymous reports
 - Assess need for timely warning/emergency notification, including release of complainant's identity in very rare situations
 - Disclose identity of complainant to another student, employee, or a third party

REQUIRED MOUS



LOCAL LAW ENFORCEMENT MOU

- Purpose is to establish roles and responsibilities related to prevention and response to both on-campus and off-campus incidents
- Required even if you have a sworn LE on your campus
- Develop policies and procedures (consistent with confidentiality and privacy laws):
 - Clarify jurisdictional issues based on location and type of incident
 - Provide for cross- or multi-jurisdictional response and investigation, where appropriate
 - Establish protocols when student or employee consents to release of information
 - Methods for notifying DA
 - Methods for sharing reports under Clery Act and facilitating timely warnings and emergency notifications

LOCAL CRISIS SERVICE CENTER MOU

- Applies to institutions that do not provide its own sexual assault crisis service center
- Must enter into MOU with a local center AND a community-based domestic violence program
 - Provide an off-campus alternative
 - Ensure that access to counseling or advocacy is free either on-campus or off-campus
 - Encourage cooperation and cross-training opportunities
 - Centers/programs must be funded by state dept of health (see lists included in course materials)

LOCAL CRISIS SERVICE CENTER MOU

- MOU may include an agreement (including fee structure) to provide confidential victim services:
 - Case consultation and training fees for institutional employees who serve as confidential resources
 - Student education and prevention programs
 - Staff training and prevention curricula
 - On-campus space (office) for an advocate from the community program to meet with students or employees
- If institution acts in good faith but is unable to execute an MOU, then Dept of Higher Education may waive the requirement.

TRAINING REQUIREMENTS – APPLICABLE LAWS



MANDATORY TRAINING UNDER STATE LAW

- New students and employees:
 - Within 45 days of matriculation or employment
 - Primary prevention and awareness of sexual misconduct
 - Include:
 - Civil rights laws (i.e., Title IX; Mass. Civil Rights Act) that govern sex- and gender-based harms
 - Role of drugs and alcohol on consent
 - Reporting options (incl. confidential and anonymous)
 - Policies and procedures, including sanctions and penalties
 - Name, contact info, and role of confidential resource
 - Bystander intervention strategies and risk reduction
 - Other opportunities for prevention and awareness programming

MANDATORY TRAINING UNDER STATE LAW

- Individual who “participates in disciplinary process”
 - Title IX Coordinator, investigators, decision-makers, appeals decision-makers, informal resolution facilitators
 - Consider others who might meet this definition on your campus:
 - Student conduct officers, human resources, residential life, campus police/safety
- Training should include:
 - Info on working with and interviewing individuals who experienced sexual misconduct
 - Info on conduct that constitutes sexual misconduct
 - Role of drugs and alcohol on consent
 - Effects of trauma, including any neurobiological impact

MANDATORY TRAINING UNDER STATE LAW

- Continued:
 - Cultural competence; effect on individuals' background, including national origin, sex, ethnicity, religion, gender identity, gender expression, and/or sexual orientation
 - Compassionate, sensitive, and equitable communication with reporting party, including background factors that may necessitate assistance locating services
 - How sexual misconduct may impact individuals with development or intellectual disabilities
 - Due process needed to ensure proceedings are impartial and fundamentally fair
- Title IX Coordinators and Public Safety/Campus Police
 - Awareness and prevention of sexual misconduct

CLIMATE SURVEYS

- Survey of all students
- Not less than every four years
- Must allow for anonymous responses
- Prohibit disclosure of identifying information

REQUIRED SURVEY TOPICS

- Number of reported and unreported incidents
- When and where incidents occurred
- Student awareness of institutional policies and procedures
- Whether a student reported, and if so, to whom/where
- Whether student was:
 - referred to local, state, campus or other resources
 - Referred to victim support services, including medical and legal
 - Provided info about resources, protection against retaliation, school-based supportive measures, civil and criminal remedies
- Contextual factors (force, incapacitation, coercion?)
- Demographic info
- Perceptions of campus safety and confidence in institution

SURVEY APPROACHES: USE THE MODEL SURVEY OR INDIVIDUALIZED APPROACH

- Establishes state-wide survey task force
 - Model questions
 - Recommendations on achieving statistically valid response rates and addressing non-response bias
- Institutions may develop and use its own survey if:
 - Designed to provide the institution with data needed to inform policies and prevention
 - Meets quality standards determined by commissioner
 - Includes a certain subset of questions
- Likely to see some additional state regulations on surveys

PUBLISHING SURVEY RESULTS AND ANNUAL REPORTING REQUIREMENTS

- Survey results:
 - 120 days after completion and analysis
 - Post a summary on institution's website
- Annual Report must be submitted annually to state Dept. of Higher Education
 - December 1
 - Total number of reports made to TIXC
 - Number investigated by local or state LE
 - Number of students/employees found responsible and not responsible for campus policy violations
 - Number of disciplinary actions imposed
 - State Dept. of Higher Education will establish additional reporting details (form and manner).
 - Will aggregate data at state level.

IMPLEMENTATION DEADLINE AND PLANNING

- Implementation deadline – August 1, 2021
- Survey implementation will occur later due to coordination required at the state level
- ATIXA's recommended approach:
 - **Now:** MOUs and policy work
 - especially if you did not fully implement Title IX yet
 - **Summer:** Training for employees, website edits
 - **Fall:** Training for new students, Survey planning

ATIXA SUMMER CERTIFICATION SERIES (SCS)



Title IX Coordinator & Administrator

- **June 7-8:** Title IX Coordinator Level One: Foundations
- **June 9:** ADA/504 Coordinator
- **June 10-11:** Title IX Coordinator Level Two: Pressures, Politics, Sanctions, Minors, and MOUs



Civil Rights Investigator

- **June 7-8:** Civil Rights Investigator Level One: Foundations
- **June 10:** Title IX Athletics
- **June 10-11:** Civil Rights Investigator Level Two: Advanced



Hearing Officer

- **June 21-22:** Title IX Hearing Officer and Decision-Maker
- **June 23:** Title IX Hearing Chairs
- **June 24:** Title IX Hearing Advisors
- **June 25:** Title IX Hearing Officer and Decision-Maker: Interactive Mock Hearing (Non-certifying)

WHY SCS?

1.

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2.

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3.

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1. Host a training exclusively for your school, college, or organization.
2. Host a regional training that is open for registration to other schools, colleges, and organizations.

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