Sexual Misconduct, Title IX, and New Federal Guidance

Presented by Mackenzie Wilfong
Title IX Legal & Regulatory Landscape

April 2011
OCR 2011 "Dear Colleague Letter"
First time in 35 years to ever a decade.
Graded and quantified diligence for higher education to address sexual misconduct on campus
Addressed the history of prior findings.
Aimed to provide guidance to the future.

March 2013
Violence Against Women Act (VAWA)
Passed by President Obama in March 2013
Established the first campus sexual assault survivors' rights.
Increased financial aid availability.
Provided schools with resources to address sexual misconduct.

May 2013
University of Montana
OCR Resolution Agreement
OCR issued a letter and found that the University had failed to provide a safe environment for all students.
The University agreed to implement comprehensive policies and procedures to address sexual misconduct.

April 2014
White House Task Force Report
Overview of www.whitehouse.gov
Details on the federal law and enforcement.
Provided guidance on how to implement policies and procedures.

July 2014
Senator Claire McCaskill survey and Report
Savern of the 2014 survey.
Outlines the need for better education and outreach.
Supporting details in the report.

Sept. 2014
Peaking Federal Legislation
Passed by Congress.
Increases funding and accountability for educational institutions.
Support for students and survivors.

Aim to provide a safe environment for all students.

Timeline:
April 2011
March 2013
May 2013
April 2014
July 2014
Sept. 2014
OCR 2011 "Dear Colleague Letter"

First DCL on Title IX in over a decade.

Clarified and expanded obligations for higher education to address sexual assault on campus.

Attempted to clarify standard of proof, training requirements, Title IX coordinator requirements.

It seemed like extensive guidance at the time.
Violence Against Women Act (VAWA)

Signed by President Obama in March 2013.

Regulations are still in proposed rule making stage.

Amended the Clery Act and changes a great deal about the Annual Security Report.

Requires significant education, prevention, and awareness programming.
University of Montana OCR Resolution Agreement

Rare joint OCR and DOJ investigation.

OCR deemed it the "blueprint for colleges and universities throughout the country to protect students from sexual harassment and assault."

DOJ and DOE required resolution agreements with the University, campus law enforcement, Missoula local law enforcement, and the District Attorney’s office.

Missoula and campus law enforcement now have written investigation procedures worth reviewing.
White House Task Force Report

Creation of www.notalone.gov

Campus climate survey toolkit

Sample MOU with rape-crisis/domestic violence centers

Sample reporting and confidentiality protocol

Still no sample MOU with local law enforcement (but see NACUA)
Senator Claire McCaskill survey and Report

Survey of 440 four-year institutions

July 9, 2014 report from Sen. McCaskill’s Subcommittee

Interesting stats in the report - it is worth reviewing
Pending Federal Legislation

Campus Accountability and Safety Act (CASA)

Survivor Outreach and Support Act (SOS)

Hold Accountable and Lend Transparency Act (HALT)
Institutional Obligations - At a High Level

Once an institution knew or should have known of sexual harassment, sexual misconduct, or sexual violence the institution must take prompt and appropriate steps to investigate what occurred and take prompt and effective action to... end the harassment prevent its recurrence remedy its effects
Sexual Harassment

Quid Pro Quo
&
Hostile Environment

think exchange of sexual favors
Subjective and objective
Severe or pervasive
Sexual Misconduct

sexual misconduct is a broad term encompassing any non-consensual contact of a sexual nature and is defined in your institutional policies often in your Student Code of Conduct.
Sexual Violence
Can include VAWA and Oklahoma definitions of:

- Rape
- Sexual Assault
- Domestic/Partner violence (VAWA)
- Dating/Relationship violence (VAWA)
- Stalking (VAWA)
Institutional Obligations - At a High Level

Once an institution knew or should have known of sexual harassment, sexual misconduct, or sexual violence the institution must take prompt and appropriate steps to investigate what occurred and take prompt and effective action to... end the harassment, prevent its recurrence, remedy its effects.
Who is OCR?

Regional office structure and Kansas City regional office.

OCR complaint process

Case Processing Manual key provisions to know
Thank you for your time and attention

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