TITLE IX REFRESHER

April 15, 2026

SOUTH DAKOTA
BOARD of REGENTS

WELCOME

AGENDA

- Introductions
- Current Title IX Framework and Application
- BOR Updates
- Q&A

THE CURRENT TITLE IX COMPLIANCE FRAMEWORK

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

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OVERVIEW

A. Defining Sexual Harassment

B. Title IX Policy

C. Federal Enforcement Actions/Case Law

D. South Dakota Law Considerations

E. Hypotheticals

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A. Defining Sexual Harassment

Sexual Harassment

Quid Pro Quo

Hostile Environment

Sexual Assault, Dating Violence, Domestic Violence or Stalking

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QUID PRO QUO HARASSMENT

HOSTILE ENVIRONMENT HARASSMENT

SEXUAL ASSAULT
DATING/DOMESTIC
VIOLENCE AND STALKING

Never

Assume

Consent

BOR POLICY
1.4.1 Sexual Harassment

DEFINITIONS

POLICY

INSTITUTIONAL RESPONSE

SUPPORTIVE MEASURES

GENERAL REQUIREMENTS

INVESTIGATION

HEARINGS

ADMINISTRATIVE REVIEW

TITLE IX COORDINATOR

RETALIATION

RECORD PRESERVATION

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B. Title IX Policy

NOTICE AND INSTITUTIONAL OBLIGATION TO ACT

Notice to the TIX Coordinator or any official of the Recipient who has authority to institute corrective measures on behalf of the recipient triggers the obligation to act.

Requires ACTUAL KNOWLEDGE, not constructive notice or vicarious liability

BOR Policy 1.4.1 defines Actual Knowledge

JURISDICTION: EDUCATION PROGRAM OR ACTIVITY

Current TIX Reg	BOR Policy 1.4.1
Locations, events, or circumstances over which the recipient exercised substantial control over both: • the Respondent and • the context in which sexual harassment occurs.	Includes but is not limited to: • Land • Buildings • Facilities • Adjacent streets • Adjacent sidewalks
Any building owned or controlled by a student organization that is officially recognized by a post secondary institution	Any building owned or controlled by a student organization that is officially recognized by the institution
Education program or activity in the United States	Education program or activity in the United States

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REPORT VS. COMPLAINT

Report	Complaint
Any person can make a report Verbal or written Title IX Office or Law Enforcement TIX Coordinator must contact Complaint to discuss supportive measures	Written document Signed by Title IX Coordinator Investigator initiates investigation Send known parties Notice of Allegations

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ORAL REPORT BEST PRACTICES

- Promptly contact the complainant
- Document your interaction
- Offer supportive measures
- Consider Complainant's wishes
- Explain the formal complaint process
- Provide a copy of BOR Title IX Policy

Remember, an oral report constitutes actual knowledge

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SUPPORTIVE MEASURES ARE:

- Non-disciplinary and non-punitive
- Offered at no cost
- Designed to restore or preserve equal access
- Cannot unreasonably burden the other party
- Apply to complainants without the filing of a formal complaint
- Provided confidentiality
- Provided to the complainant and the respondent
- Detailed in BOR Policy 1.4.1 Subsection 2.1

A supportive measure includes explaining the process for filing a formal complaint.

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INVESTIGATION

1. Burden of proof
2. Burden of gathering evidence
3. Parties are permitted to inspect and review evidence gathered during the investigation
4. Evidence must be directly related to the allegations
5. Investigative report is made available to each party and their advisor for review and response
6. Final investigative report sent to parties and advisors 10 days prior to hearing

2020 REGULATIONS INVESTIGATION REQUIREMENTS

Formal Complaint
- Filed by Complainant OR
- Signed by TIX Coordinator

Notice of Allegations
- With sufficient detail and time for a party to prepare for an initial interview

Investigation
- Thorough search for relevant facts and evidence
- Conducted by a trained investigator who is free from conflicts and bias

Evidence Review
- Of any evidence that is directly related to the allegations

Written Responses to Evidence
- 10-day review period
- Parties may submit a written response

Investigative Report
- Fairly summarizes relevant evidence
- Includes inculpatory and exculpatory evidence

Written Responses to Report
- 10-day review period
- Parties may submit a written response

Don't forget to check BOR Policy 1.4.1 Section 4

THE GRIEVANCE PROCESS MUST INCLUDE

FILE REVIEW	REPORT REVIEW	HEARING
Parties and advisors review all evidence collected for 10 days and provide written response	Investigative report is provided to parties for 10 days for review and written response	Hearing occurs before a decision maker that is not the Coordinator or the investigator

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HEARING REQUIREMENTS

- Live hearings
- Conducted before a hearing examiner
- Parties can be physically or virtually present
- Audio, audiovisual, or transcript of hearing required
- 15 days advance notice required
- Hearing notice to include statements outlined in BOR Policy 1.4.1 Subsection 5.2

HEARINGS

- Only relevant cross-examination and other questions may be asked of a party or witness.
- If a party does not have an advisor present at the live hearing, the recipient must provide an advisor for that party free of charge to conduct cross-examination on the party's behalf.
- The chosen advisor may be, but is not required to be, an attorney.

Title IX Regulations May 19, 2020; § 106.45(b)(6)(i)
More detail in BOR Policy 1.4.1 Subsection 5

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CROSS–EXAM BY ADVISOR

- A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear.

- Similarly, where one party does not appear and that party's advisor of choice does not appear, a recipient-provided advisor must still cross-examine the other, appearing party "on behalf of" the non-appearing party, resulting in consideration of the appearing party's statements but not the non-appearing party's statements (without any inference being drawn based on the non-appearance).

Title IX Regulations May 19, 2020; Preamble at 85 F.R. 30346

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CONCLUDING A HEARING

- A hearing examiner issues a proposed determination to the president/superintendent
- Institution issues a written determination regarding responsibility
- Determination is simultaneously provided to the parties
- Title IX Coordinator implements any remedies

See BOR Policy 1.4.1 Sub 5 for further details

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DETERMINATION OF RESPONSIBILITY

- Decision-maker(s), cannot be the same person(s) as the Title IX Coordinator or the investigator(s)
- Must issue a simultaneous written determination regarding responsibility, including
- Identification of the allegations
- Description of the procedural steps taken from the receipt of the formal complaint through the determination
- Findings of fact supporting the determination
- Conclusions regarding the application of the policy to the facts
- Sanction, if any, and remedies for a Complainant
- Rationale as to finding and sanction
- Appeal procedures

- *Title IX Regulations May 19, 2020; § 106.45(b)(7) see also BOR Policy 1.4.1 Subsection 5*

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DISMISSAL

A recipient may dismiss a complaint of sex discrimination made through its grievance procedures for any of the following reasons:

1. Unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not a student or employee of the institution;
3. The complainant voluntarily withdraws any or all allegations, the Title IX Coordinator declines to initiate a complaint, and without the complainant's withdrawn allegations, the conduct that remains would not constitute sex discrimination under Title IX; or
4. The conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part.

*Prior to dismissing the complaint, the recipient must make reasonable efforts to clarify the allegations with the complainant.

Title IX Regulations May 19, 2020; § 106.45(d)(1)

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CONSOLIDATION

A recipient *may* consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

Title IX Regulations May 19, 2020; § 106.45(e)

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PETITION FOR ADMINISTRATIVE REVIEW

A Complainant or Respondent may petition for administrative review of an institution's proposed determination by petitioning the Executive Director of the Board of Regents no later than 10 working days after notice of decision is received. Petitions for review are limited to the following:

1. Procedural Irregularity
2. New Evidence
3. Conflict of Interest or Bias of the investigator or decision maker

See BOR Policy 1.4.1 Subsection 6

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INFORMAL RESOLUTION

At any point prior to reaching a determination of responsibility, the institution
May facilitate an informal resolution process, such as mediation, that does not involve

A full investigation and adjudication, provided that the institution:

1. Provides written notice disclosing allegations, requirements of informal resolution, circumstances to resume a formal complaint, consequences of informal resolution, and what records will be maintained.
2. Obtains voluntary written consent of the parties
3. Does not offer to informally resolve allegations of an employee harassing a student.

See BOR Policy 1.4.1 Subsection 7

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RETALIATION

No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

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C. Federal Enforcement Actions and Case Law

FEDERAL ENFORCEMENT ACTIONS: SEXUAL HARASSMENT

- No OCR Resolution Agreements related to Sexual Harassment have been posted under the new administration
- Last Sexual Harassment Resolution Agreement posted was from January 17, 2025
- April 6, 2026, Press Release from Department of Education rescinds parts of several resolution agreements reached after alleged Title IX violations

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FEDERAL ENFORCEMENT ACTIONS: BATHROOMS

Western Carolina University (NC):

- Investigation opened: May 8, 2025
- Basis – a student complaint alleging:
  - The university allows transgender students to access bathrooms and housing in accordance with their gender identity
  - The university announced that it would not make any changes in response to the 2025 Executive Orders regarding gender identity
  - Investigation remains open

** All other investigations in this area are school districts, not institutions of higher education.*

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TITLE IX ENFORCEMENT THROUGH TITLE VI

Title IX elements have been included in recent Title VI resolution agreements

Brown University:

- Resolution Agreement reached July 30, 2025, with HHS and ED

- Define “male” and “female” for the purpose of all University practices, policies, and procedures, including Brown athletics, consistent with the definitions adopted in gender identity Executive Orders.

- Offer housing, shower, and restroom access in a manner that allows male-only and female-only options.

- Not perform gender reassignment surgery or prescribe puberty blockers or hormones to any minor child for the purpose of aligning the child’s appearance with an identity that differs from their sex.

TITLE IX ENFORCEMENT THROUGH TITLE VI

Columbia University:

- Resolution Agreement reached July 23, 2025, with HHS and ED

- Uphold Title IX by providing safe and fair single-sex housing options and all-female sports, locker room, and showering facilities

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D. South Dakota Law Considerations

NON-DISCRIMINATION IN SCHOOLS

South Dakota law prohibits schools or districts from adding LGBTQ+ protections to their nondiscrimination policies.

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OPPOSITE SEX LIMITATIONS

SDCL 20-13-60 prohibits entry to Public changing rooms, sleeping quarters, and restrooms designated exclusively for the opposite sex in:

(1) A building or facility owned by the state or by a political subdivision of this state; or

(2) A space leased to or occupied by the state or by a political subdivision of this state.

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ANY QUESTIONS?