

Three Rivers College Pregnancy Accommodation and Title IX

Mickes O'Toole
Grant Wiens and Abbey Widick

1

What is the PWFA?

Pregnant Workers Fairness Act

Requires a covered employer to provide a “reasonable accommodation” to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”

2

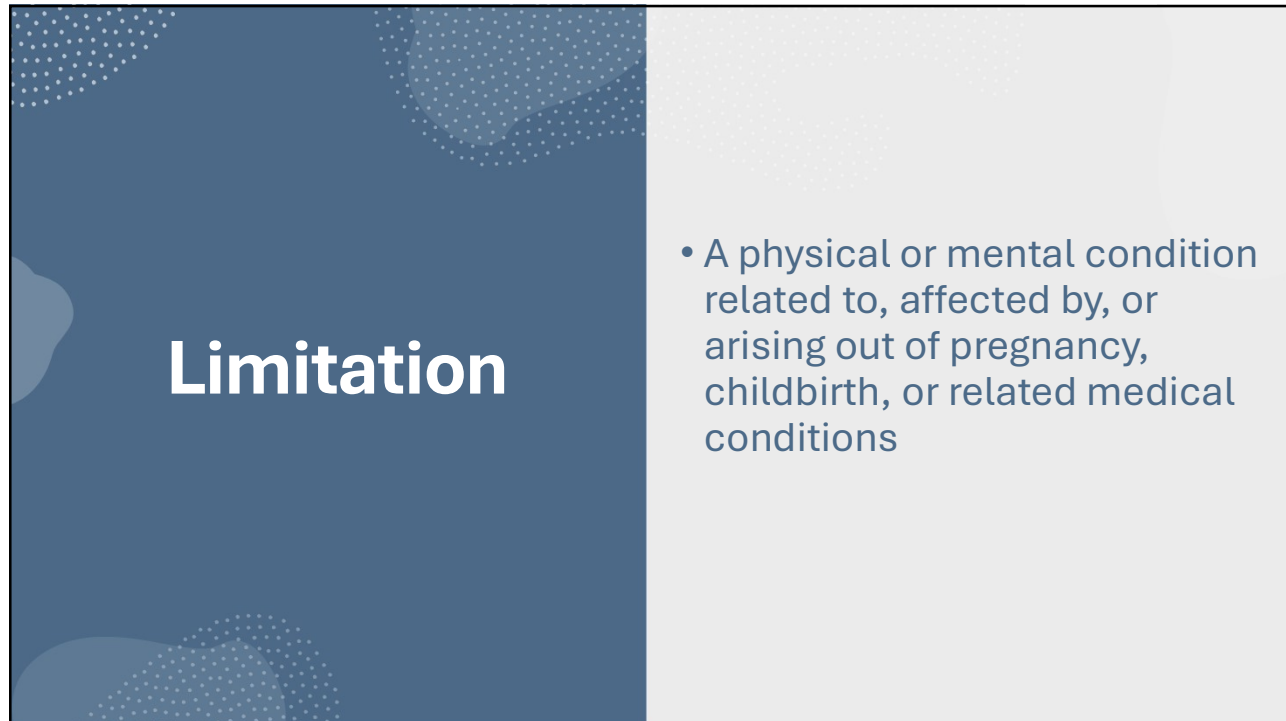
Definitions

3

Pregnancy, childbirth, or related medical conditions

- ***Pregnancy and childbirth***- the pregnancy or childbirth of the specific employee in question, including:
 - Current pregnancy
 - Past pregnancy
 - Potential or intended pregnancy (infertility, fertility treatment, and the use of contraception)
 - Labor
 - Childbirth (including vaginal and cesarean delivery)
- ***Related medical conditions***- medical conditions relating to the pregnancy or childbirth of the specific employee in question

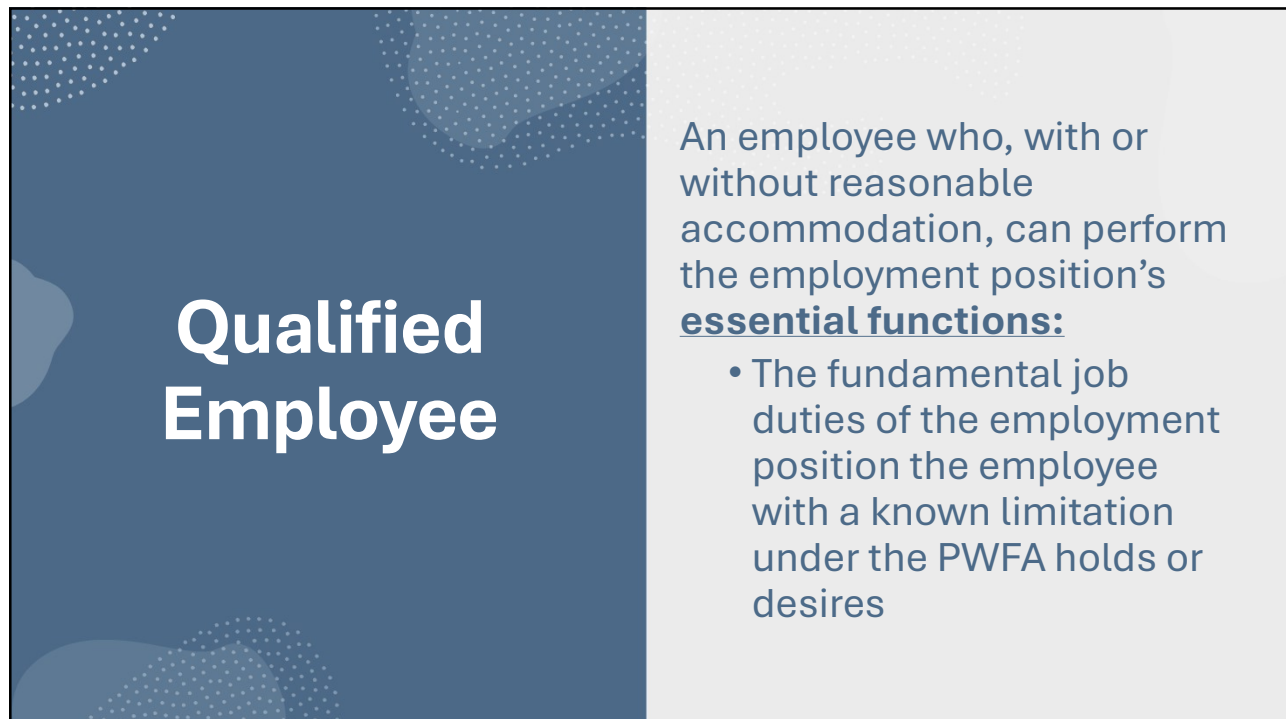
4

The slide features a dark blue background on the left with white dotted patterns and a light gray background on the right. The word "Limitation" is written in large white font on the blue background. A single bullet point is listed on the gray background.

Limitation

- A physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions

5

The slide features a dark blue background on the left with white dotted patterns and a light gray background on the right. The words "Qualified Employee" are written in large white font on the blue background. A paragraph and a bullet point are listed on the gray background.

Qualified Employee

An employee who, with or without reasonable accommodation, can perform the employment position's **essential functions**:

- The fundamental job duties of the employment position the employee with a known limitation under the PWFA holds or desires

6

Qualified Employee

Employee **is** qualified if:

- Employee is reasonably expected to be able to perform the essential functions, with or without a reasonable accommodation, **at the end of the leave** if time off is granted

7

Qualified Employee

Employee **is** qualified even if they cannot perform one or more essential functions but:

1. Inability to perform an essential function is for a temporary period;
2. Essential function could be performed in the near future; and
3. Inability to perform essential functions can be reasonably accommodated

8

Nondiscrimination

through Reasonable Accommodations

9

Pregnant Workers Fairness Act

1. It is unlawful for an employer **not** to make **reasonable accommodations** to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an **undue hardship**

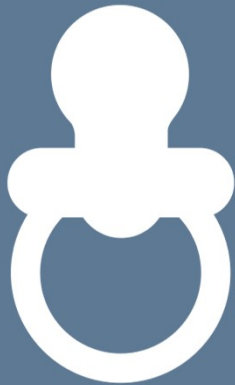
10

Pregnant Workers Fairness Act

2. It is unlawful for an employer to **require** a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process

11

Not Required to Accept Accommodation



- Employees are not required to accept an accommodation
- But if employee rejects a reasonable accommodation and as a result cannot perform the essential functions of their position, the employee is no longer a “qualified employee”

12

Pregnant Workers Fairness Act

3. It is unlawful for an employer to deny **employment opportunities** to a qualified employee if such denial is based on the need of the covered entity to make reasonable accommodations

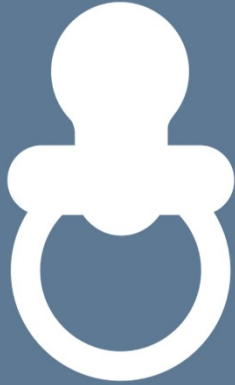
13

Pregnant Workers Fairness Act

4. It is unlawful for an employer to require a qualified employee to **take leave**, whether paid or unpaid, if another reasonable accommodation can be provided without undue hardship on employer

14

Requested Leave



- Leave can be a reasonable accommodation if:
 - Request or selected by the employee, or
 - Only reasonable accommodation that does not cause undue hardship on employer

15

Pregnant Workers Fairness Act

5. It is unlawful for an employer to **take adverse action** in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation

16

Pregnant Workers Fairness Act

6. It is unlawful to discriminate or retaliate against an employee for opposing unlawful discrimination or participating in a proceeding under the PWFA

7. It is unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise of their PWFA rights

17

Interactive Process ***under the Pregnant Workers Fairness Act***

18

Interactive Process

An informal, interactive process between the College and the employee seeking an accommodation under the PWFA.

- Identify the known limitation under the PWFA
- Identify the adjustment or change at work that is needed due to the limitation
- Identify potential reasonable accommodations

19

Communication to Employer



- Employee must communicate to employer:
 1. They have a limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions and
 2. Need an adjustment or change at work due to the pregnancy, childbirth, or related condition.

20

Communication to Employer



- Communication can be made by:
 - Employee, or
 - Employee's representative (family member, friend, union representative, health care provider, or other representative)
- Communication can be made verbally or in writing

21

Communication to Employer



- Communication may be made to:
- A supervisor/ manager/ someone who has supervisory authority for the employee or who regularly directs the employee's tasks (or the equivalent for an applicant),
 - Human resources personnel,
 - Another appropriate official, or
 - College's ADA Compliance Officer

22

Documentation



Employer may request supporting documentation from employee if reasonable under the circumstances:

- To determine whether employee has a condition related to pregnancy
- To determine whether employee needs an adjustment or change at work due to the limitation

23

Documentation



Not reasonable to request documentation:

- If limitations and adjustments are obvious and employee self-confirms
- When College already has sufficient information
- Accommodation is available to others without documentation

24

Documentation



Not reasonable to request documentation for the following accommodations:

- Time and/ or place to pump at work
- Modifications related to pumping at work
- Time to nurse during work hours

25

Documentation



Types of Documentation Requested must also be Reasonable:

- Cannot be required on a specific form
- Minimum documentation that is sufficient to confirm:
 1. The condition
 2. Its relation to pregnancy
 3. Adjustment or change that is needed
- Can include documentation from health care provide

26

No Unnecessary Delay



- Cannot unnecessarily delay providing an accommodation
- Offer an interim reasonable accommodation during interaction process
- Must respond more promptly if the accommodation is:
 - Needed for a short time
 - Simple, rather than complex

27

No Unnecessary Delay



- Acceptable reasons for a delay:
 - Employer requests reasonable supporting documentation
 - Employer provides employee sufficient time to obtain and provide supporting documentation

28

Accommodations



1. Reasonable accommodation
2. For a qualified employee or applicant
3. Known limitation
4. Related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions
5. Accommodation will not cause the employer an “undue hardship”

29

Reasonable Accommodations



- To allow employee or application to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees
- Modifications or adjustments to:
 - Job application process
 - The work environment
 - Manner or circumstances under which the position is customarily performed
- Includes suspension of essential functions

30

Reasonable Accommodations: Leave



Includes:

- Leave during pregnancy, to recover from childbirth, miscarriage, stillbirth, or other related medical conditions
- To attend health care appointments or receive health care treatments
- Ability to choose whether to use paid leave or unpaid leave if allowed for others

31

Reasonable Accommodations: Lactation



- Breaks
- Space for lactation:
 - In reasonable proximity
 - Not a bathroom
 - Shielded from view and free from intrusion
 - Regularly cleaned
 - Has electricity, seating, and surface for pump
 - Proximity to sink, running water, and refrigerator
- Nursing during working hours
- Modifications under the PUMP Act

32

Temporary Suspension of Essential Function



- Reasonable if employee is unable to perform one or more essential functions with or without a reasonable accommodation
- Employee must be qualified employee:
 - Inability to perform is temporary
 - Can perform essential functions in near future
 - Inability to perform can be reasonable accommodated)

33

Temporary Suspension of Essential Function



- Must provide unless undue hardship on employer
- Factors:
 - Length of time
 - Other work for employee to accomplish
 - Nature and frequency of essential function
 - Whether provided to other employees
 - Whether others can provide essential function
 - Whether functions can be postponed

34

Effective Accommodations



Accommodation must provide equal opportunity to:

- Attain the same level of performance, or
- To enjoy the same level of benefits and privileges as are available to a similarly situated employee

35

Undue Hardship on Employer



- Significant difficulty or expense
- Considered in light of factors:
 - Nature and cost of accommodation
 - Financial resources, number of total employees, effect on expenses
 - Size of business, location of facilities
 - Type and function of employer
 - Impact of accommodation

36

Undue Hardship on Employer



Not likely to cause undue hardship:

- Carry a water bottle
- Allow additional restroom breaks
- Allowing employee to stand
- Allowing employee to sit
- Allowing eating and drinking breaks

37

Example #1



- Anne gives her supervisor a doctor's note stating that, due to her morning sickness from her pregnancy, she needs to avoid certain smells that make her nauseous.
- Her supervisor asks for Anne's doctor to provide records of her complete medical history.
- **Is this legal?**

38

Example #2



- Susan gives an HR employee a note from her midwife stating the limitation and described the needed work adjustment.
- The HR employee says the documentation needs to be from a physician only.
- **Is this legal?**

39

PUMP Act

Providing Urgent Maternal Protections for Nursing Mothers Act

40

What is the PUMP Act?

Additions to the Fair Labor Standards Act that require employers to provide “reasonable break time” for an employee to express breast milk

41

What is the PUMP Act?



Must provide **reasonable break time** for an employee to express breast milk for 1 year after the child’s birth each time such employee has the need to express the milk

42

Reasonable Break Time



- Must be relieved from all duties if unpaid break
- Compensated during break if still working
 - Or if paid breaks given to other employees
- Cannot require doctor's note

43

Private Place



Must **provide a place**, other than a bathroom which may be used by an employee to express breast milk

44

Private Place



- Place shielded from view
- Free from intrusion from coworkers and the public
- Does not have to be a permanent space
- Must be available when employee needs it

45

No Retaliation



- Cannot discharge or in any other manner discriminate against any employee because such employee has filed any complaint or proceeding under the PUMP Act, or has testified, or has served or is about to serve on an industry committee

46

Example #1



- Katie is a new mother and a secretary at the College. She is breastfeeding.
- Administration told her to go to an empty conference room which is unused, very clean, but does not lock.
- **Is this legal?**

47

Example #2



- Madison is a janitor.
- Supervisor gives all employees a 15 minute break.
- Madison using the break to pump, but needs additional break time to finish pumping.
- The Supervisor denies her request for more time.
- **Is this legal?**

48

Example #3



- Trisha is a food service worker.
- Trisha plans the upcoming meals while pumping breast milk.
- She is compensated for this time.
- Is this correct?

49

Example #4



- Lauren is a landscaper.
- She is required to attend a meeting at 3:00pm.
- She requests break time to pump during this time.
- Her supervisor denies this request.
- **Is this legal?**

50

Title IX Training

51

What is Title IX?

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

52

DOE Regulations

Trump Rule Released – May 6, 2020

Biden Rule Released – April 19, 2024

Biden Rule Enjoined in Missouri – July 24, 2024

53

July 26, 2024, Injunction



The screenshot shows the top portion of a web article. At the top left is the IHE logo with the text 'Inside Higher Ed'. To the right are navigation links: a search icon, 'Register', 'Login', 'Become a Member', and 'Find A Job'. Below this is a date indicator 'July 26, 2024' with a small orange dot. The main headline is 'New Title IX Rule Now Blocked in 21 States' in a large, bold, black font. Below the headline is the byline 'By Katherine Knott'.

54

Where Does Title IX Apply?

In a school's education program or activity in US

- In locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the sexual harassment occurs

55

Notice and Publication

College must adopt, publish, and implement:

- Notice of nondiscrimination
- Nondiscrimination policy
- Title IX grievance procedures

56

Title IX Coordinators

<p>Ann Matthews Dean of Student Services Westover Administration Building - First Floor, Room 112 2080 Three Rivers Blvd, Poplar Bluff, MO 63901 573-840-9669 amatthews@trcc.edu</p>	<p>Kristina McDaniel Director, Human Resources Westover Administration Building - First Floor, Room 108 2080 Three Rivers Blvd, Poplar Bluff, MO 63901 573-840-9695 kristinamcdaniel@trcc.edu</p>
---	--

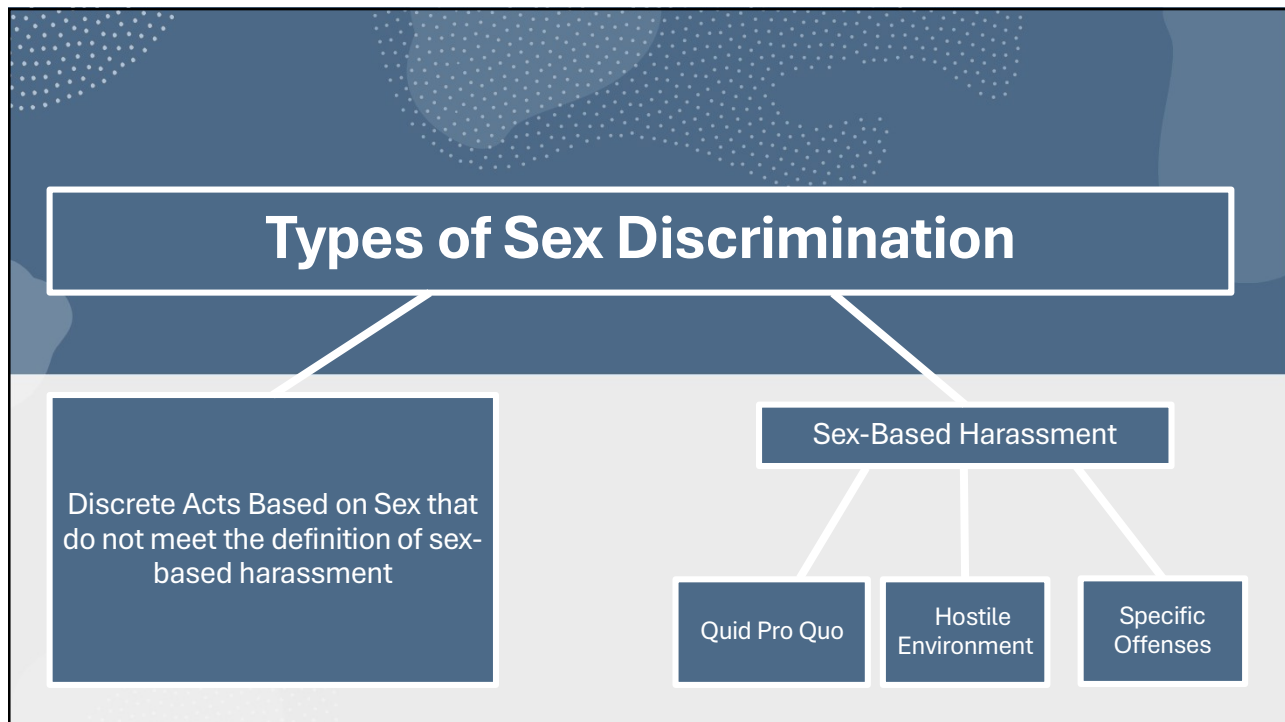
57

Title IX Policies

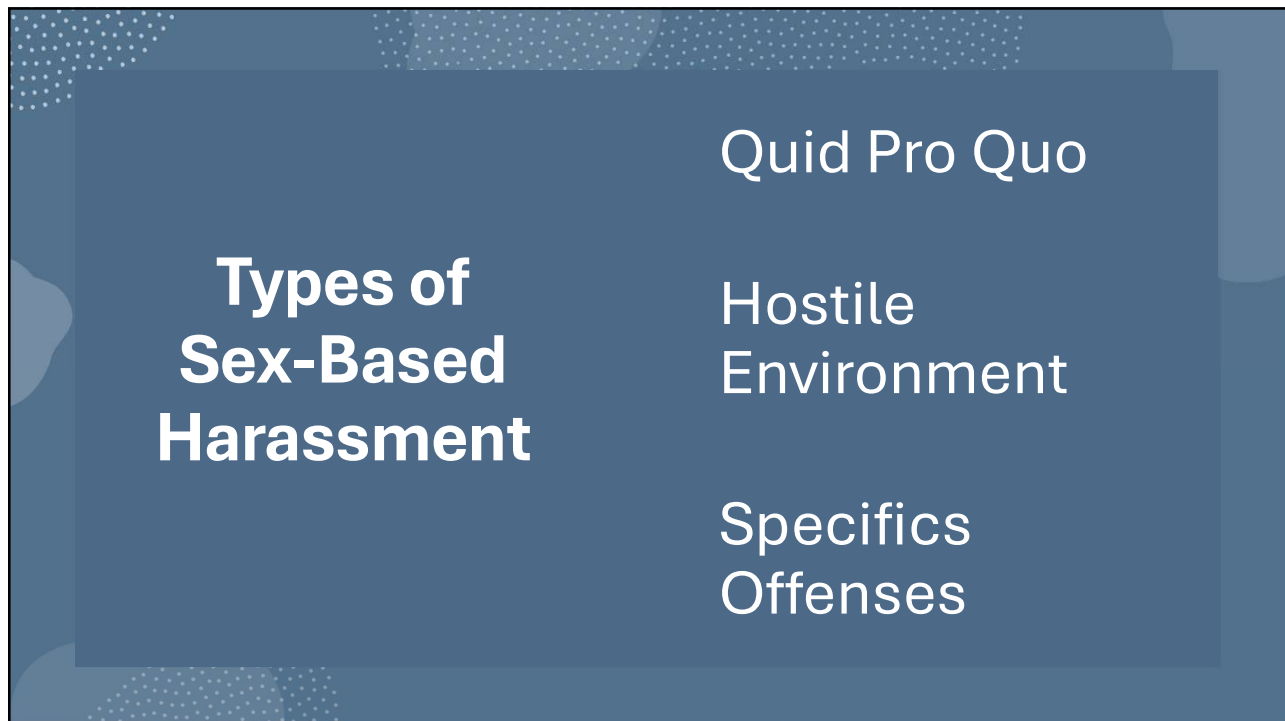
SR 2120 Title IX for Students

PR 4840 Title IX for Employees

58



59



60

Quid Pro Quo

- An employee
- Expressed or implied
- Conditioning an aid, service, or benefit of the school
College
- On an individual's participation in unwelcome sexual conduct

61

Hostile Environment

- Unwelcomed conduct
- Reasonable person
- So severe, pervasive, ***and*** objectively offensive
- That it effectively denies a person's equal access to education program or activity (i.e., creates a hostile environment)

62

Specific Offences

A diagram consisting of a light blue circle containing four dark blue rounded squares. Each square contains one of the following terms: Sexual assault, Dating Violence, Domestic Violence, and Stalking.

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

63

Retaliation

- Cannot intimidate, threaten, coerce, or discriminate against any individual
- For the purpose of interfering with a right under Title IX 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 Title IX

64



65

2 Pathways

<p><u>Actual Knowledge</u> Notice of sexual harassment or allegations of sexual harassment</p>	<p><u>Formal Complaint</u> Written and signed complaint alleging sexual harassment and requesting the College investigate</p>
---	--

66

2 Responses

Actual Knowledge

1. Must promptly respond
2. Supportive measures
3. Option for emergency removal
4. Option for administrative leave

Formal Complaint

1. Formal Complaint
2. Evaluation of Complaint
3. Investigation
4. Exchange of Questions
5. Determination
6. Appeal

67

College's Response


- Must response promptly and in a way that is not “deliberately indifferent”
- “Deliberately Indifferent” = clearly unreasonable in light of the known circumstances

68

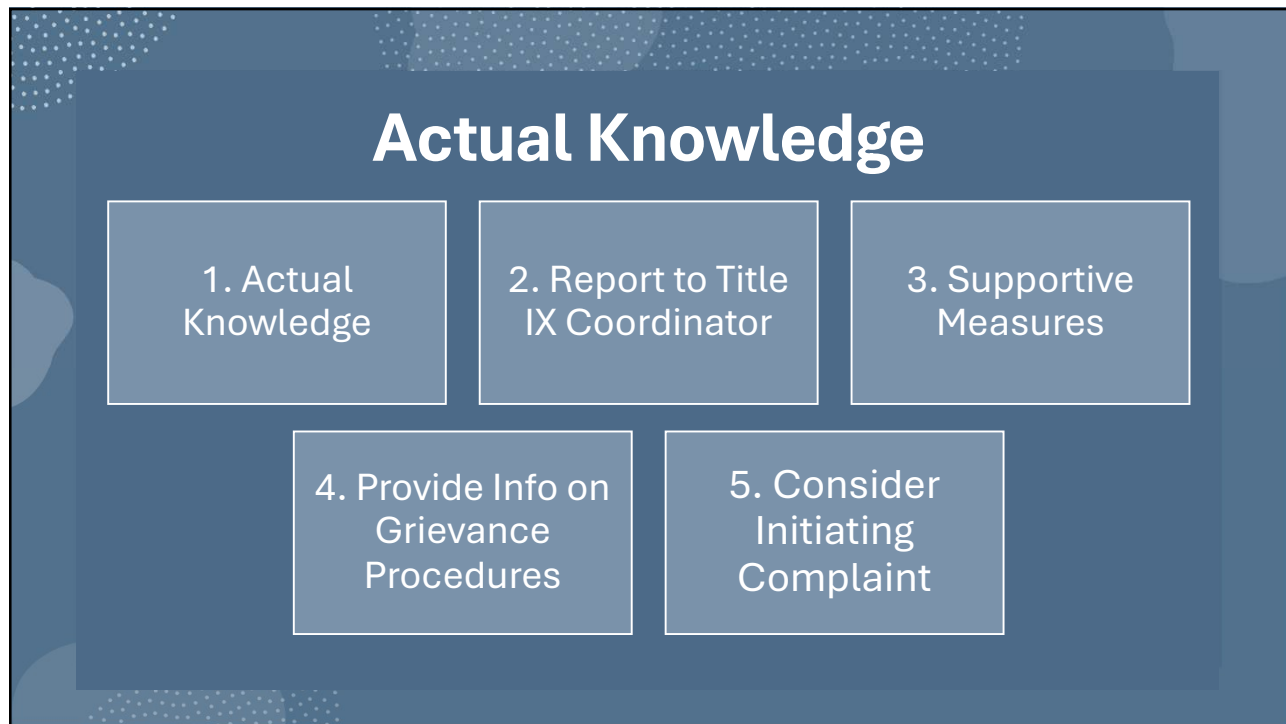
Actual Knowledge

69

Mandatory Reporter

- 
- PR4840: any part-time or full-time employee of the College who receives notice a student or employee may have been the victim of a suspected Title IX incident
 - When they have actual knowledge (notice) of sexual harassment or allegations of sexual harassment
 - Report to Title IX Coordinator

70



71



72

Supportive Measures

- Available before or after a formal complaint or when no complaint has been filed
- Can be offered to Complainant or Respondent, or both
- Non-disciplinary, non-punitive
- Free, individualized services

73

Supportive Measures

Purpose

- Designed to restore or preserve equal access to education
- Protect the safety of all parties, protect school's educational environment
- **Deter** sexual harassment

74

Prohibited Supportive Measures

- Unreasonably burden either party
- Be imposed for punitive or disciplinary reasons
- Be disclosed to others (including the other party) unless necessary to provide the supportive measures or ensure access

75

Emergency Removal & Admin Leave

Student Emergency Removal:
An immediate threat to the physical health or safety of an individual

Staff Administrative Leave:
May place employee Respondent on administrative leave during grievance procedure

76

Formal Complaint


77



Formal Complaint

- Written and signed formal Complaint requesting that the College investigate
 - Description of allegation (date, location, witnesses)
 - As practical, in Complainant's words

78



Who Can Be Complainant

Who can file a Formal Complaint?

- Student or employee
- Parent or Guardian
- Title IX Coordinator
- For Sexual harassment or Retaliation only

Who will be the Complainant?

- Student or Employee
- Must be Student or Employee at time of Complaint

79

Title IX Team

<h3>TITLE IX COORDINATOR</h3> <ul style="list-style-type: none"> • Coordinates school College's compliance efforts 	<h3>INVESTIGATOR</h3> <ul style="list-style-type: none"> • Investigates allegations in a formal complaint and creates investigative report
<h3>DECISION-MAKER</h3> <ul style="list-style-type: none"> • Weighs the evidence and issues a written determination of responsibility 	<h3>FACILITATOR</h3> <ul style="list-style-type: none"> • Facilitates an informal resolution process, upon parties' consent, that does not involve a full investigation

80

Basics of Grievance Procedure



Any provisions must apply equally to all parties



Procedures must be in writing



No Conflicts of Interest



No Bias for or Against Complainants or Respondents

81

Basics of Grievance Procedure



Objective Evaluation of Evidence



Describe range of disciplinary sanctions, remedies, supportive measures



No Use of Privileged Information



Procedure for Appeals

82

Basics of Grievance Procedure



Presumption of “not responsible” until a determination



Prompt time frames



Treat Complainant and Respondent Equally

83

Grievance Procedures

1. Filing of Written & Signed Complaint

2. Evaluation of Complaint

3. Investigation of Complaint

4. Live Hearing

5. Determination

6. Appeal

84



85