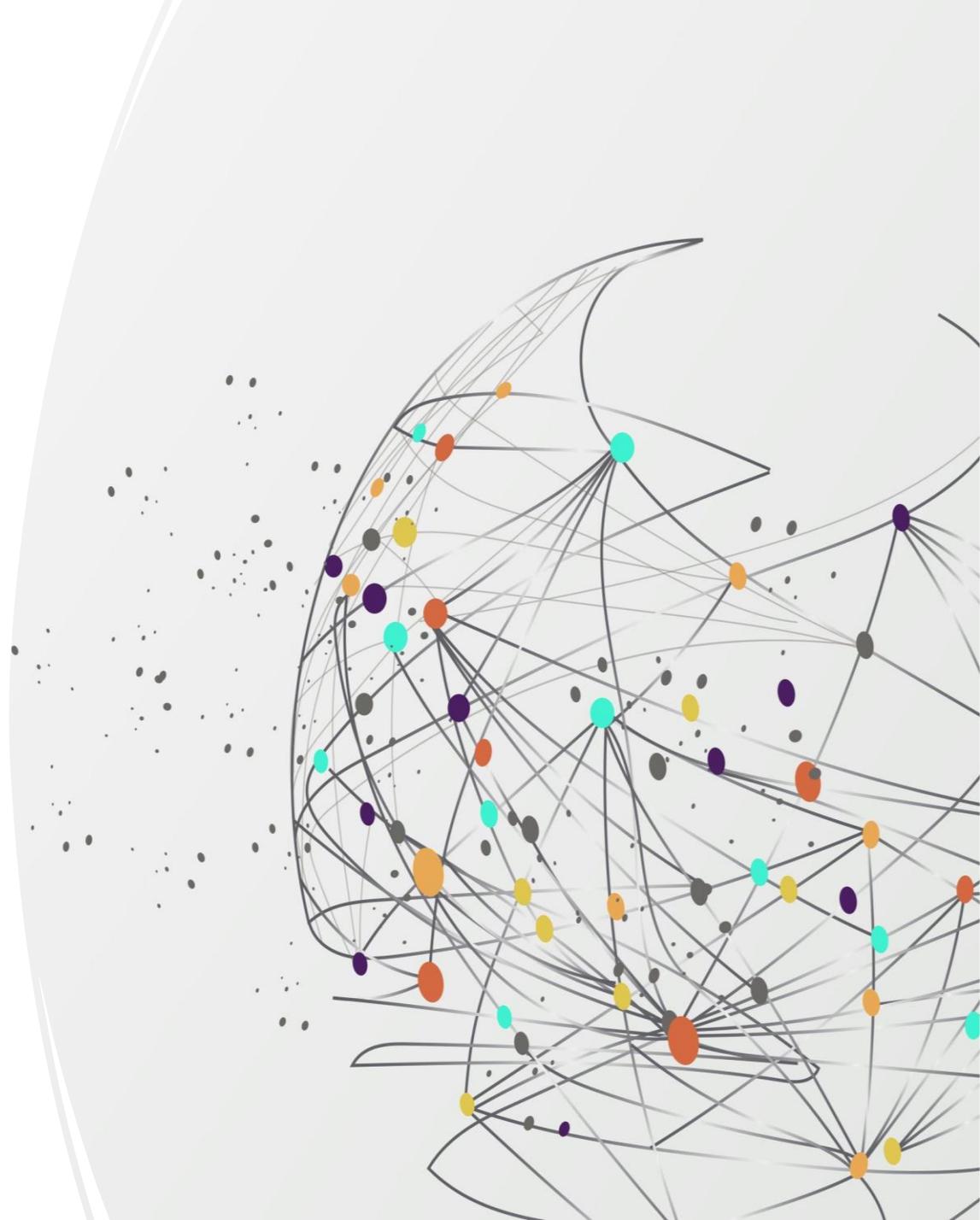


The Legal Framework and Best Practices for Detecting, Preventing, and Responding to Sexual Misconduct Arising in Student Health, Athletic Medicine, and Academic Medical Centers

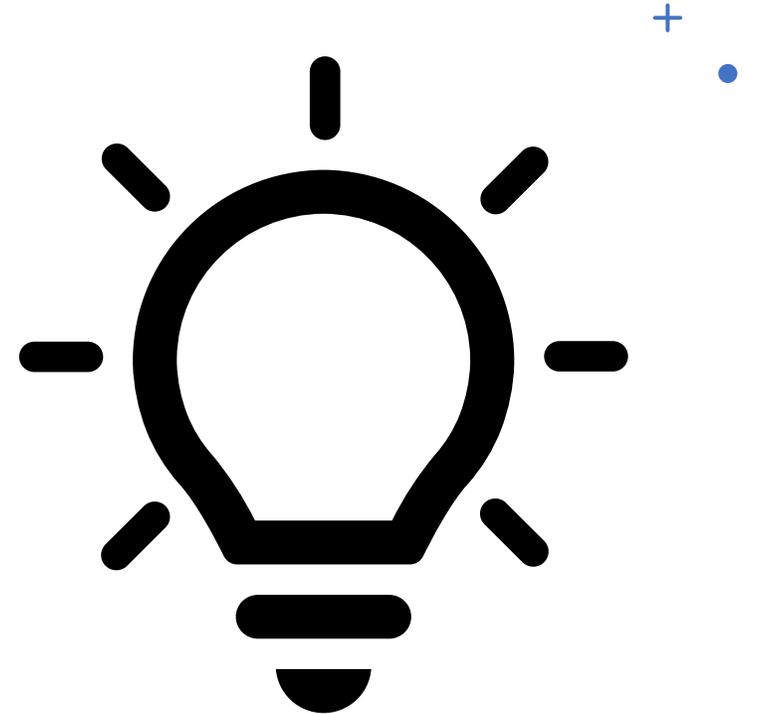
Sonya Sanchez, Senior Counsel
University of California



2020 Title IX Regulations

“Congress did not exempt academic medical centers that receive Federal financial assistance from Title IX.”

85 Fed. Reg. 30,026, 30,446 (May 19, 2020).



2020 Title IX Regulations

Title IX applies to academic medical centers

- part of the postsecondary institution,
- affiliated with the postsecondary institution, or
- “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the context of the harassment and the respondent, 34 C.F.R. 106.44(a).



Key Takeaways: MSU and USC Resolution Agreements (ED-OCR)

- Independent authority of Title IX office
- Adequate notice of Notice of Non-Discrimination and Anti-Harassment Statement where "Student Affairs and Athletics" regularly post notices
- Independent experts
- Personnel files
- Employee sanctions
- Climate and training
- Centralized Reporting

Goal: "fully assess and remedy" any sex discrimination caused by identified employees that denied a student the ability to participate in or benefit from university programs or that unreasonably interfered with an individual's work performance or opportunities

HHS-OCR Resolution Agreement with MSU

- Revise non-discrimination notices and sexual misconduct policies
- Improve Title IX and Section 1557 investigation and resolution processes
- Institute new chaperone policy
- Maximize patient privacy during sensitive exams

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES

**OFFICE FOR
CIVIL RIGHTS**

HHS-OCR Regulatory Landscape

- Title IX and 45 C.F.R. Part 86
 - HHS Guidance *Effective Practices for Preventing Sexual Harassment* (issued September 2020)
- Patient Protection and Affordable Care Act section 1557
 - 45 C.F.R. Part 92
 - Section 1557 of the ACA extends the protections of Title IX and other civil rights statutes to, *inter alia*, “any health program or activity, any part of which is receiving Federal financial assistance” from HHS.



Litigation

- Causes of Action
 - Title IX
 - 42 U.S.C. § 1983 (public colleges & universities)
 - Gross Negligence
 - Negligent Supervision
 - Negligent Retention
 - Civil Battery
 - Intentional infliction of emotional distress





Promising Practices

PRACTICAL TAKEAWAYS

Preventative Measures Related to Clinical Visits



Establish Minimum Standards for Chaperone Policies at All Clinical Locations



Supplemental Credentialing Application Questions



Due Diligence in Health Acquisitions, Affiliations, and Joint Ventures



Boundaries Training, Procedural Guidelines, and Patient Education



Ensuring Title IX's Independence and Responsiveness

Reporting

- Ensure Reports Are Properly Made and Directed
- Make Certain That Reports Have Impact
- Do Not Forget Health Privacy



Investigations

- Interdisciplinary Case Management Team Model
- Interim Measures
- Experts and Conflicts of Interest
- External Reporting Obligations
- Attorney-Client Privilege

Adjudication and Discipline

- Coordination of Policies (i.e., Title IX Policy, LCME Technical Standards, Threat Assessment Team)
- Reporting Obligations (i.e., state medical boards, Child Protective Services)
- Identifying Decisionmakers (A decisionmaker regarding responsibility may be different than a decisionmaker regarding sanctions.)

Questions?

