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What Has Changed in the Era of #MeToo?
How Higher Education Can Respond to the New National Conversation

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Not Just Hollywood . . .
The Problem Persists…
On Campus and Off…
Education Department Under Trump

- Uncertain policy environment
- “The era of rule by letter is over”
  Betsy DeVos, Secretary of Education
- 2011 “Dear Colleague Letter” on sexual violence withdrawn
- 2016 Guidance regarding transgender students rescinded
- 2017 Q&A on campus sexual misconduct
  - Burdens of proof:
    - Preponderance of evidence
    - Clear and convincing evidence
  - No fixed time frame to complete Title IX investigation
  - Appeals process
- New rules on Title IX anticipated, not yet issued
What Can We Expect Next?

- EEOC charges alleging sex-based harassment
  - 2011: 12,461
  - 2013: 12,379
  - 2015: 12,573
  - 2017: 12,428

- Reports of sexual assaults on campuses (2017 Bureau of Justice statistics)
  - 2001: 2,200
  - 2013: 5,000
  - 2014: 6,700
What’s Expected of Schools?

- Proactive
- Innovative
- Immediately responsive
Assessing Culture

- Common theme
- Tone at/from the top?
- Open and honest discourse
- Culture of respect
- Demonstrated accountability
What Policies Are Implicated?

- Prohibition on sexual harassment, sexual violence, relationship violence, stalking, and related misconduct
- Code of student conduct
- Prohibition on discrimination
- Drug and alcohol policy
- Upstander/bystander intervention
- Fraternity and sorority risk management
- Privacy and confidentiality
- Student athlete code of conduct
- NCAA Board of Governors Policy on Campus Sexual Violence
- Anti-retaliation
Best Practices for Policies

• **What works:**
  – Coherent, consistent policy throughout the institution, covering all campus constituencies
  – Taking into account unique campus culture and values
  – Carefully defined terms, with detailed discussion of conduct that is prohibited/problematic
  – Participation of all segments of campus community (administration, faculty, staff, students)
  – Clear reporting guidelines with multiple reporting channels

• **What does not:**
  – Policies not specifically tailored to the institution
  – Inadequate publicity of policies
What Constitutes Consent?

- Verbal consent
- Implied by conduct
- Pressured or bullied into consent
Training

• **Who?**
  – All employees
  – All students – men and women, bystanders
  – Fraternities and sororities
  – Student athletes
  – “First responders” and investigators

• **What?**
  – Sexual violence
  – Relationship violence
  – Sexual harassment
  – Discrimination
  – Substance and alcohol abuse
  – Campus culture and values

• **How?**
  – Coordinated and integrated education
  – Structured training
  – Informal focus groups/roundtables
  – Peer education and prevention
  – Staff courses
  – Campus-wide programming
Best Practices for Protocols

- Title IX coordinator
- Responsible reporter/employee
- Standardized procedures
- Tracking of reports
- Investigative capacity
- Victim support services
- Resources for respondents
- External reports
- Ongoing review and assessment
Effective Enforcement

- Educational objectives
- Discipline
  - Second chances
  - Zero tolerance
- Proactive measures
Tricky Issues

• Handling “stale” claims
• Confidentiality
• Overcorrection
  – “The Mike Pence Rule”
• Interim measures
• Crisis management
Questions
Thank You!

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