

# **TITLE IX TRAINING**

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**2025**

2020  
Regs  
Rapid  
Response

R<sup>3</sup>

# 2020 Title IX Regs Overview:

Commitment Beyond Compliance for  
Colleges and Universities

# Your Faculty



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# Current State

- Withdrawn:
  - 2011 Dear Colleague Letter (DCL)
  - 2014 Q&A on Title IX and Sexual Violence
  - 2016 DCL on Transgender Students
- Still in effect:
  - 1975 Regs, as amended
  - 2001 OCR Revised Sexual Harassment Guidance (has force and effect of law; conflicts with 2020 Regs)
  - 2003 DCL on Title IX and Free Speech
  - 2010 DCL on Harassment and Bullying
  - 2013 DCL on Pregnant and Parenting Students
  - 2015 DCL on the role of Title IX Coordinators
  - 2017 Q&A on Campus Sexual Misconduct issued as interim guidance, still apparently in place



# Trumping Title IX

- 2020 Title IX Regulations
- Issued May 6<sup>th</sup>, 2020 (Publication date May 19<sup>th</sup>, 2020)
- Effective and enforceable August 14<sup>th</sup>, 2020, which is 85 days from today
  - Amend the Code of Federal Regs. and have force and effect of law
  - Some provisions already mandated by due process case law in some jurisdictions
  - Intervening variables (litigation and election) may impact enforcement in the shorter or longer term
  - Lawsuits against Regs anticipated from:
    - SSAIS, ACLU, NWLC, etc.
- Regulations are significant, legalistic, surprisingly prescriptive, very due-process heavy, and go well beyond what any court has required under 5<sup>th</sup>/14<sup>th</sup> Amendment case law.

# Regulations have the Force and Effect of Law

- **Laws** passed by Congress (e.g.: Title IX) – Enforceable by courts/OCR
- **Federal regulations** promulgated under Title IX have **force and effect of law**, meaning they are enforceable by OCR
- What effect will these regulations have on courts?
  - Controlling weight (substantive/legislative)?
  - Persuasive weight (procedural/interpretive)?
  - Could form the basis of Section 1983 actions (personal liability)
  - Could constitute deliberate indifference (?) or disparate treatment
- OCR “regulatory guidance” or “sub-regulatory guidance”
  - Influential but not strictly enforceable (e.g., 2011 and 2015 DCLs)
- State and local pre-emption issues – 2020 regs pre-empt state law

# Commitment Beyond Compliance

- Industry standards = the floor. Best practices = the ceiling.
- Statutes, case law, and federal regulations set the floor.
- Some states have laws that exceed federal requirements and do not conflict with 2020 Regs. Where they do conflict, Regs control.
- Aiming for the floor = doing the bare minimum
  - Will continue the cycle of inequity and unfairness; Activists won't stand for it
- Civil rights issues demand more than the bare minimum
- Effect of new “not deliberately indifferent” OCR standard is to institutionalize deference, rather than encourage excellence.
  - OCR: Congrats, you didn't completely ignore invidious discrimination.



# Regulatory Changes

- Grievance Procedures
- Jurisdiction
- Notice to Institution / Notice to Parties
- Definition of Sexual Harassment
- Supportive Measures
- Formal Investigation and Hearing
- Due Process Elements

# Shifting Terminology

ATIXA IS SHIFTING ITS TERMINOLOGY TO MATCH THE NEW REGS

- You = Recipient
- Various titles = Title IX Coordinator
- Reporting Party = Complainant
- Responding Party = Respondent
- Resolution = Grievance Process
- ATIXA model policy offenses NCSC/NCSI = sexual assault
- Intimate Partner Violence = Dating and domestic violence

AND OCR DEFINITIONS OF THESE OFFENSES MUST BE ADOPTED:

- Including OCR definition of Sexual Harassment, Clery Act definition of sexual assault, and VAWA definitions of DV/DV and stalking.
- How will recipients exceed the floor OCR is setting with these terms/definitions?

# Grievance Procedures

- Must include:
  - Presumption that responding party is not responsible until determination is reached
  - “Reasonably prompt” timeframes
    - Requirement to set specific timelines for major stages of the grievance process now gone
  - Range of possible sanctions and remedies (mirrors Clery Act mandate)
  - Description of standard of evidence
  - Bases and procedures for appeal
    - Appeal now required, equitably, on three grounds
  - Range of supportive measures available to all parties
    - Note shift from “interim measures” terminology



# Promptness

- Reasonably prompt timeframes for the conclusion of the grievance process, including reasonably prompt timeframes for filing and resolving appeals
- Concurrent law enforcement investigation does **not** relieve the burden of the school to investigate
- Temporary delays for “good cause” and with written notice of the delay to parties
  - Complexity of the investigation
  - Concurrent law enforcement investigation with time-dependent release of evidence
  - Delays for administrative needs are insufficient

# Jurisdictional Issues

- Emphasizes the *Davis* standard
  - Control over the harasser and the context of the harassment
  - “education program or activity” means...
    - locations, events, or circumstances under substantial control
    - any building owned or controlled by an officially recognized student organization
- Regulations specify “harassment...against a person in the United States”
  - Off-campus conduct, study abroad programs, or school-sponsored international trips – “nothing in these final regulations would prevent...”



# Jurisdictional Issues

- The definition of sexual harassment arguably covers the in-program effects of out-of-program misconduct (though not the misconduct itself)
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
  - OCR adopts in the discussion a fairly broad definition of what could constitute attempting to participate

# “Deliberate Indifference” Standard

- A recipient with **actual knowledge** of sexual harassment in an education program or activity of a recipient in the United States must respond in a manner that is **not deliberately indifferent**
- Mandatory dismissal
  - Does not constitute sexual harassment (§ 106.30)
  - Does not fall within jurisdiction
    - Program or activity inside the United States
    - Complainant participating in or attempting to participate in ed program
- Does not preclude action under another policy (General Non-Discrimination Policy, conduct code, etc.)

# Notice

- Distinct procedural steps - **actual knowledge** and **formal complaint**
  - Actual knowledge = notice of sexual harassment [or allegations] to TIXC
  - Formal complaint = document filed by a complainant or signed by TIXC alleging sexual harassment against a respondent and requesting investigation
  - TIXC is not party when signing formal complaint
- Constructive notice/respondent superior – insufficient under TIX, but can be acted upon discretionarily by a recipient
- **Actual knowledge** triggers the obligation to offer supportive measures, explain grievance process
- **Formal complaint** triggers the obligation to investigate
- Multiple reports mandate for TIXC to file complaint – provision removed from final regs



# “Appropriate School Officials”

- Shift in “Responsible Employee” designations
- Previous definition
  - Who has the authority to take action to redress the harassment; or
  - Who has the duty to report harassment or other types of misconduct to appropriate officials; or
  - A student could reasonably believe has this authority or responsibility
- New definition
  - Title IX Coordinator
  - Any official of the recipient who has authority to institute corrective measures on behalf of the recipient
  - Any employee of an elementary and secondary school

# “Appropriate School Officials”

- Change tracks the *Davis* standard for actual notice
- Therefore, a report must go to Title IX Coordinator or any official who has the authority to institute corrective measures
  - Most faculty in higher education **do not** have sufficient authority
  - Knowledge by employee who is harasser does not constitute actual knowledge by employer/recipient
- Broad implications for K-12 employees
- Restricts OCR enforcement mandate for responsible employees, but IHEs have discretion to keep current policies or define a broader mandated reporter requirement



# Definition of Sexual Harassment

- Sexual Harassment is conduct on the basis of sex meeting one of the following conditions:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

# Neutrality, Conflict of Interest, Objectivity

- Grievance process must treat parties “equitably”
  - Must be designed to restore or preserve access to education programs
  - Must include enhanced due process protections before disciplinary sanctions are imposed
- Prohibits conflict-of-interest or bias with coordinators, investigators, and decision-makers against parties generally or against an individual party
- All relevant evidence obtained must be **objectively** evaluated
- Mandates training on appropriate investigation, hearing, evidence, credibility, bias, conflict of interest

# Supportive Measures

- Previously referred to by OCR as “interim measures”
- Non-disciplinary, non-punitive individualized services for all parties
- Must not unreasonably burden parties, protect the safety of parties and educational environment, and deter harassment
- Must be offered to complainant upon notice of harassment
- Must be available before, after, or in lieu of formal complaint
- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, **mutual** restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, etc.



# Emergency Removal

- May remove a respondent from a recipient's education program or activity on an emergency basis, provided that the school:
  - Undertakes an individualized safety and risk analysis,
  - Determines that an immediate threat to the *physical* health or safety of students or employees justifies removal, and
  - Provides the responding party with notice and an opportunity to challenge the decision immediately following the removal
- May place a non-student employee respondent on administrative leave during the pendency of an investigation under current procedures for doing so

# Notice to Parties

- Upon receipt of formal complaint, must provide written notice to the parties:
  - Relevant grievance procedures
  - Allegations with sufficient details: identity of parties, implicated policies, date, location if known
  - Statement that the respondent is presumed not responsible
  - Parties may request to inspect and review relevant evidence
  - Sufficient time to prepare a response
- Ongoing notice
  - Any reasonable delay for good cause
  - Any additional allegations
  - All hearings, interviews, and meetings requiring attendance with sufficient time to prepare



# Advisor of Choice

- Advisor can be anyone – no restrictions in proposed regulations (though the advisor has a choice in the matter)
- Must allow advisor to be present at all meetings, interviews, hearings
  - May not restrict who may serve as advisor
  - May restrict advisor participation as long as applied equally to all parties
- If a party does not have an advisor to conduct cross-examination at hearing, the IHE must provide one
  - No fee or charge
  - Advisor of recipient's choice
  - May be an attorney
  - Can't be "fired" by party, but can be nullified by non-cooperation

# Burden of Proof on School to Gather Evidence

- Procedures should clearly articulate that the burden of proof and burden of gathering evidence rests with the school, not the parties
  - So it's not required that a respondent prove welcomeness or consent, the recipient must prove unwelcomeness or non-consent
- “Sufficient to reach a determination”
- Equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Evidence collected by law enforcement *or any other source*
- Contracted/outourced investigators do not absolve the school of responsibility for this provision

# Party Access to Evidence/Report

- Regulations mandate creation of an investigation report
  - Report fairly summarizes all relevant evidence
  - What should go into a report? See our recent blog on this topic.
- Prior to the completion of the report, all evidence directly related to allegations must be provided to parties
  - Parties must have at least 10 days to review and submit written responses prior to finalizing investigation report
  - Parties must receive finalized report to review and submit written responses 10 days prior to hearing
  - Essential to develop a clear protocol and workflow for these steps



# Live Hearing/Questioning

- Mandated live hearing for higher education
- Parties and witnesses must attend hearing and submit to live, advisor-led cross-examination
  - Otherwise **all statements** submitted by absent party must be excluded
- Hearing administrator may not be Title IX Coordinator, the investigator, or the appeals officer
- Provisions for separate rooms, video-based hearing
  - Must be able to clearly hear and see other parties



# Live Hearing/Questioning

- **Must allow live cross-examination** to be conducted exclusively by each party's advisor
  - Verbal, direct, in real time
- Each party must be permitted to ask the other party and all witnesses all relevant questions and follow-up questions
  - Including questions challenging credibility
- Each question must be cleared by hearing administrator after being posed
- Questions deemed irrelevant may be excluded with rationale provided (other bases for exclusion allowed? options other than exclusion?)
- Must exclude complainant's sexual disposition or prior sexual behavior unless specifically relevant

# Due Process: Evidence

- All relevant and reasonably available evidence must be considered – inculpatory and exculpatory
- No restrictions on discussing case or gathering evidence
- Equal opportunity to:
  - Present witnesses
  - Present evidence
  - Inspect all evidence, including evidence not used to support determination
- No limits on types/amount of evidence that may be offered, except must be relevant and respect “rape shield” provision
- Includes all evidence directly related to the investigation, even evidence that determination does not, or will not, rely upon

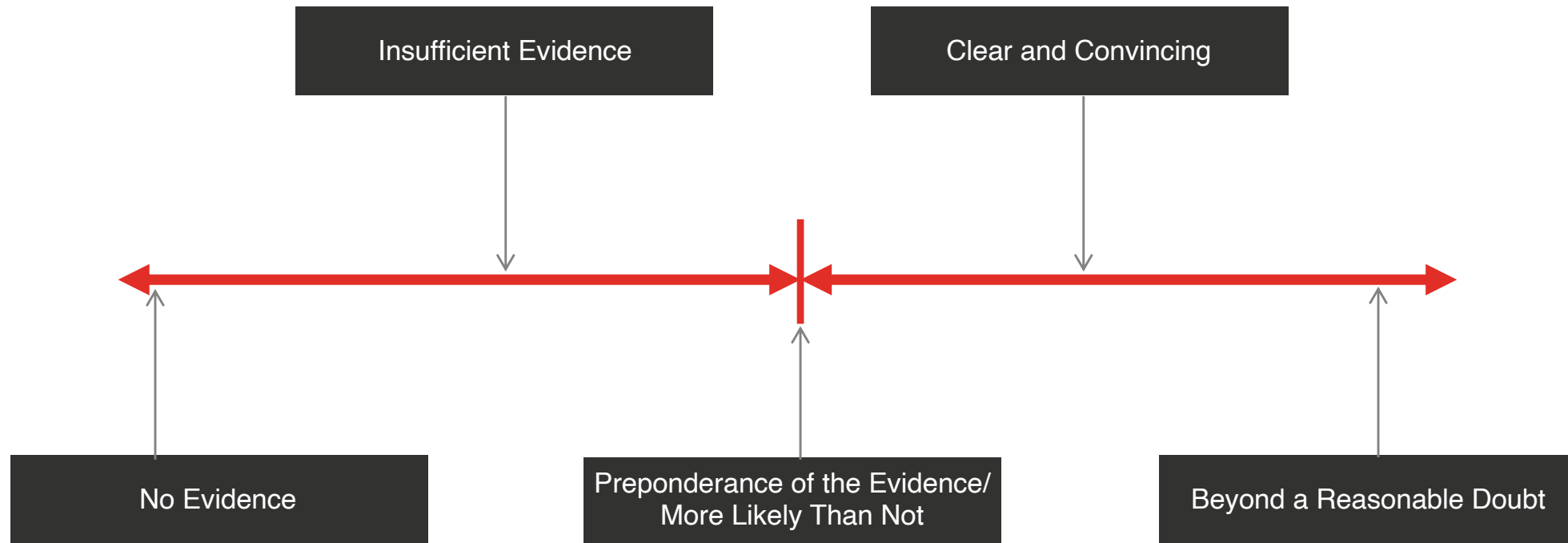
# Standard of Proof

- Current industry standard is preponderance of the evidence
- OCR says recipients must now apply either the preponderance of the evidence standard or the clear and convincing evidence standard
- Standard of evidence must be consistent for all formal complaints of sexual harassment, regardless of policy or underlying statutory authority
- Must also apply the same standard of evidence for complaints against students as for complaints against employees, including faculty



# Understanding Evidence Thresholds

## EVIDENTIARY STANDARDS



# Written Determinations

- Required elements for written determinations:
  - Allegations potentially constituting sexual harassment (§ 106.30)
  - All procedural steps taken
  - Findings of fact supporting the determination
  - A determination on each allegation regarding responsibility, any disciplinary sanctions, remedies
  - The recipient's procedures and permissible bases for the complainant and respondent to appeal.
  - Document how recipient's response was not deliberately indifferent

# Appeals

- Must offer equitable appeal based on determination or dismissal of any allegations
- All parties receive notification of any appeal
- Opportunity for all parties to support or oppose outcome
- Written decision with rationale delivered simultaneously to the parties
- Appeal decision-maker cannot have had any other role in the investigation or resolution process
- “Reasonably prompt” timeframe for producing appeal decision



# OCR Enforcement

- OCR will continue to administratively enforce by:
  - Conducting investigations based on complaints filed with the U.S. Dept. of Education.
    - Narrower in scope than previous Obama-era practice
  - Engaging in “voluntary compliance” reviews and investigations
- Compensatory requirements (counseling, tuition, etc.) can be imposed.
- May include equitable and injunctive actions as well as financial compensation to victims of discrimination or regulatory violations
- OCR still retains authority to withhold federal funding; however, this power has never been used.

# “Not Deliberately Indifferent”

- Mandatory steps upon notice (§ 106.44)
  - Promptly contact the complainant to discuss the availability of supportive measures
  - With or without filing formal complaint, inform complainant of supportive measures and respect complainant’s wishes
  - Explain to the complainant the process for filing a formal complaint
- Mandatory steps upon formal complaint (§ 106.45)
  - Follow detailed grievance process requirements
  - Offer informal resolution options
  - Dismiss complaint if no jurisdiction or no *prima facie* sexual harassment allegation

# Informal Resolution

- Considerations
- Requirements



# Informal Resolution Options

- School and parties will determine when informal resolution is appropriate
  - “[I]n responding to sexual harassment, it is important to take into account the needs of the parties involved in each individual case, some of whom may prefer not to go through a formal complaint process.”
- Does not preclude certain offenses from informal resolution
- DOES preclude informal resolution for allegations that an employee harassed a student, so presumably, employee-on-employee informal resolution is permissible.

# Requirements of Informal Resolution Options

- Informal resolution allowed at any time prior to a final determination at discretion of TIXC
  - Formal complaint is required
- Must provide detailed notice to the parties:
  - Allegations
  - Requirements of the process
  - Circumstances which would preclude formal resolution
  - Consequences of participation
- Must obtain voluntary, written consent

# Additional Issues

- Training
- Impact on Employees
- Record-Keeping



- Robust training mandates
- Investigators, coordinators, decision-makers, appeal officers, informal resolution facilitators
  - Conflicts of interest and bias
  - Definition of sexual harassment
  - Investigation, credibility, evidence
  - Report and rationale-writing
  - Hearings, appeals, informal resolution
  - No sex stereotypes, promote impartiality
  - Training materials must be maintained for seven years and posted publicly on recipient's website

# Impact on Employees

- Regulations often refer exclusively to “students,” but employees are also protected
- Wholesale revision of faculty resolution/employee grievance processes may be necessary
- Union employees – diminished right to an advisor because of union representation?
- Extends significant due process protections for at-will employees accused of misconduct – not at will anymore under Title IX?
- Potential inequity in employee processes for Title VII-based sexual harassment
  - More due process for sex discrimination than other forms of discrimination

# Record-Keeping

- Certain records must be created, retained, and available to the parties for at least seven years:
  - Sexual harassment investigation including any responsibility determination, any disciplinary sanctions imposed, and any remedies implemented
  - Any appeal and related result(s)
  - Any informal resolution implemented
  - Any supportive measures implemented
- For each conclusion, school must document the rationale for its determination
- School must document measures taken to preserve/restore access to education programs/activity



# Questions?



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# **TITLE IX TRAINING**

**2024**





# **Title IX Coordinator Certification Higher Education**

## **Session 1: Title IX Roles and Responsibilities**

**Presented by: Richard F. Verstegen**





# **Title IX Coordinator Certification Higher Education**

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# Overview



I

## Introduction

- Scope of Discussion
- Impact of Regulations

II

## Basics of Title IX

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## Procedural Requirements

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## Responsibilities of Title IX Coordinator

V

## Conclusion





# Introduction

## Poll Question

How would you best describe your position with the school?

- Only Title IX responsibilities
- Mainly student services with some Title IX
- Mainly human resources with some Title IX
- Other



# Introduction

- Title IX procedural requirements
- Other responsibilities
  - Addressing conflicts of interest
- Recordkeeping and monitoring







# The Basics

# History Leading to Title IX

- **Road to Title IX**
  - Protections for women gained significant momentum from the racial movement of the 1960s.
  - After the Civil Rights Act of 1964, women's rights activists sought greater protection in the law.
  - In 1970, Representative Edith Green (D-Ohio) drafted legislation prohibiting sex discrimination in education.
  - In 1972, Title IX was enacted.

# The Law

- **Title IX**
  - No person in the U.S. 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.
- **Title IX Regulations**
  - 34 C.F.R. 106
- **Enforced by Office of Civil Rights/state education agencies**



# Application of Title IX

- **Scope of Title IX**
  - All public and private elementary and secondary schools, school districts, colleges and universities receiving federal funds (“recipients”) must comply with Title IX.
  - Application of Title IX is institution-wide.
  - All students (as well as other persons) at recipient institutions are protected by Title IX.



# Application of Title IX

## Programs or activities

- **General prohibition**
  - Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. 34 C.F.R. s. 106.31(a).

# Application of Title IX

## Programs or activities

- Specific prohibitions
  - Except as provided in this subpart, an educational institution in providing any aid, benefit, or service to a student, may not, on the basis of sex:
    - Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of any aid, benefit, or service;
    - Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
    - Deny any person such aid, benefit, or service;
    - Subject any person to separate or different rules of behavior, sanctions, or other treatment; or
    - Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.
- 34 C.F.R. s. 106.31(b)



# Application of Title IX

- **Discipline**
  - Title IX prohibits a recipient from subjecting any person to separate or different rules of behavior, sanctions, or other treatment, such as discriminatory discipline, based on sex.
  - See Dear Colleague Letter, Nondiscriminatory Administration of Discipline, January 8, 2014.



# Application of Title IX


- **Employment and benefits**
  - A recipient is also generally prohibited from discriminating on the basis of sex in employment or recruitment.
  - This includes employment actions, such as hiring, promotion, compensation, grants of leave, and benefits.
  - These provisions also protect against discrimination based on an applicant's or employee's pregnancy or marital or parental status.

# Application of Title IX

- **Other areas**
  - Admission
  - Pregnancy
  - Sexual harassment
  - Athletics





The background image shows a person's hands typing on a laptop keyboard. Overlaid on this are several semi-transparent icons representing procedural steps: a warning triangle, a document with three checkmarks, a set of scales, a document with three exclamation marks, a document with a key, and a circular checkmark. A blue and yellow diagonal graphic element separates the title from the footer.

# Procedural Requirements



## Poll Question

How much experience do you have with Title IX issues?

- Less than 1 year
- Between 1 and 5 years
- Between 5 and 10 years
- More than 10 years



# Procedural Requirements

## Subpart A- Introduction

- Changes to Section 106.8— procedural requirements
  - Must designate and authorize at least one employee to coordinate its efforts to comply with responsibilities under this part
  - Employee must be referred to as the “Title IX Coordinator.”
  - Must notify certain persons of the name or title, office address, email address, and telephone number of the Title IX Coordinator
  - The persons include applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations, holding collective bargaining or professional agreements with the institution.

# Procedural Requirements

## Subpart A– introduction

- Changes to Section 106.8– procedural requirements
  - Must disseminate a policy of non-discrimination
  - Must notify same persons (1) that the institution does not discriminate on the basis of sex in the education program or activity that it is operates and (2) that it is required by Title IX and this part not to discriminate in such a manner
  - Must state in notice that this requirement not to discriminate extends to admission (if applicable) and employment
  - Must state in notice that inquires about the application of Title IX and this part may be referred to the Title IX Coordinator, the Assistant Secretary, or both

# Procedural Requirements

## Subpart A- Introduction

- Changes to Section 106.8– procedural requirements
  - Must follow publication requirements
  - Must prominently display the contact information for the Title IX Coordinator (discussed above) and the policy (discussed above) on:
    - Its website, and
    - In each handbook or catalog that it makes available to the persons (discussed above).
  - Must not distribute publication stating that the institution treats groups differently on the basis of sex, except as permitted under Title IX



# Procedural Requirements

## Subpart A– introduction

- Changes to Section 106.8– procedural requirements
  - Must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part
  - Must adopt and publish a grievance process that complies with 34 CFR 106.45 for formal complaints of sexual harassment
  - Must provide persons (above) notice of the grievance procedure and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond
  - Applies only to sex discrimination occurring against a person in the U.S.

# Grievance Procedure

- **Important elements**

- Notice to students and employees of the grievance procedures, including where complaints may be filed
- Application of the grievance procedure to complaints filed by students or on their behalf alleging sexual discrimination carried out by employees, other students, or third parties
- Provisions for adequate, reliable, and impartial investigations of complaints
- Written notice to the complainant perpetrator of the outcome of the complaint
- Assurance that the institution will take steps to prevent recurrence of any sexual discrimination and remedy discriminatory effects on the complainant and others, if appropriate
- Designated and reasonably prompt time frames for the major stages of the complaint process

# Grievance Process

- **Grievance process components**
  - Basic requirements
  - Investigation
  - Hearing
  - Determination regarding responsibility
  - Appeals



# Grievance Process– Basic Requirements

- Must treat complainants and respondents equitably
  - Provide remedies to a complainant where a determination of responsibility has been made against the respondent.
  - Follow a grievance process that complies with this part before the imposition of any disciplinary sanctions or other actions against a respondent.
- Require an objective evaluation of all relevant evidence and provide that credibility determinations may not be based on person's status.
- Require that any individual designated by an institution as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias.



# Grievance Process– Basic Requirements

- Includes a presumption that the respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process
- Includes reasonably prompt time frames for conclusion of the grievance process
  - Must include process that allows for temporary delay for good cause with written notice to complainant and respondent of the delay and the reasons for action
  - Good cause may include considerations such as absence of a party, a party's advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

# Grievance Process– Basic Requirements

- Describe the range of (or list) possible disciplinary sanctions and remedies that the institution may implement following determination of responsibility.
- State whether the standard of evidence to be used to determine responsibility is preponderance of the evidence or clear and convincing evidence.
  - Must apply same standard for formal complaints against students as for formal complaints against employees
  - Must apply same standard to all formal complaints of sexual harassment

# Grievance Process– Basic Requirements

- Include the procedures and permissible bases for the complainant and the respondent to appeal.
- Describe the range of supportive measures available to complainants and respondents.
- Must not require, allow, rely upon, or otherwise use questions or evidence that constitute information protected under a legally recognized privilege, unless person has waived privilege







# Responsibilities of Title IX Coordinator



## Poll Question

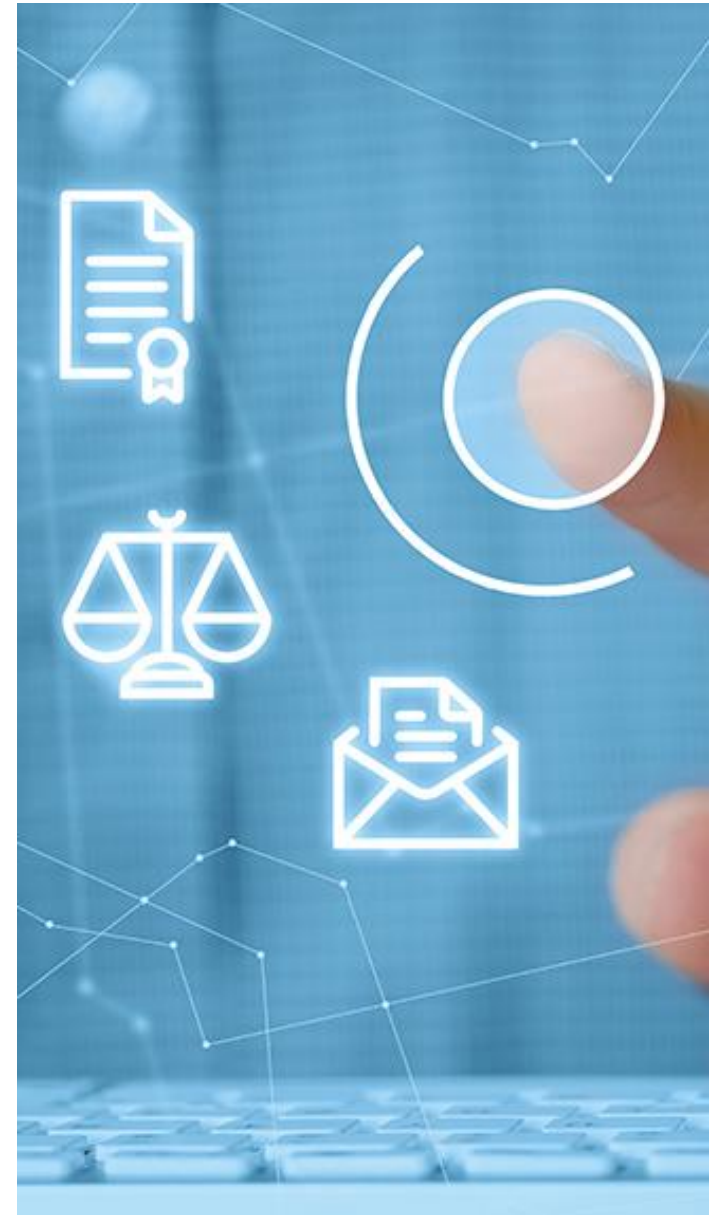
How many sexual discrimination (not harassment) cases do you receive each year?

- Around 0 to 5
- Around 6 to 10
- More than 10



# Designating a Title IX Coordinator

- An institution must designate at least one employee to coordinate its efforts to comply with Title IX.
- An institution may choose to have a number of employees responsible for Title IX matters.
- However, it is advisable to give one official responsibility for overall coordination and oversight of sexual harassment complaints to ensure consistent practices and standards.



# Title IX Coordinator Conflicts of Interest

- **Title IX Coordinator role**
  - The Title IX coordinator's role should be independent to avoid any potential conflicts of interest.
  - The Title IX coordinator should report directly to the institution's senior leadership.
  - Title IX does not categorically exclude certain employees from serving as Title IX coordinators. However, institutions should not select an employee whose job responsibilities might create a conflict of interest.

# Obligation to Title IX Coordinators

- Institutions have specific obligations to ensure that the Title IX coordinator is visible to the institution's community.
- Provide coordinators with access to information regarding incidents of sex-based harassment and other relevant information.
- Ensure that Title IX coordinators receive appropriate training and have thorough knowledge in the areas over which they have responsibility.





# Title IX Coordinator Responsibilities

- **Title IX coordinator responsibilities**
  - Coordinate institution's compliance with Title IX, including grievance procedures for resolving Title IX complaints.
  - Coordinate institution's response to all complaints involving sex discrimination.
  - Remain knowledgeable and updated about Title IX and the institution's policies and procedures.
  - Provide training and technical assistance on school policies related to sex discrimination.
  - Assist with surveying the school climate and analyze the information obtained from any survey.
  - Monitor participation in athletics and across academic fields to identify disproportionate enrollment based on sex.

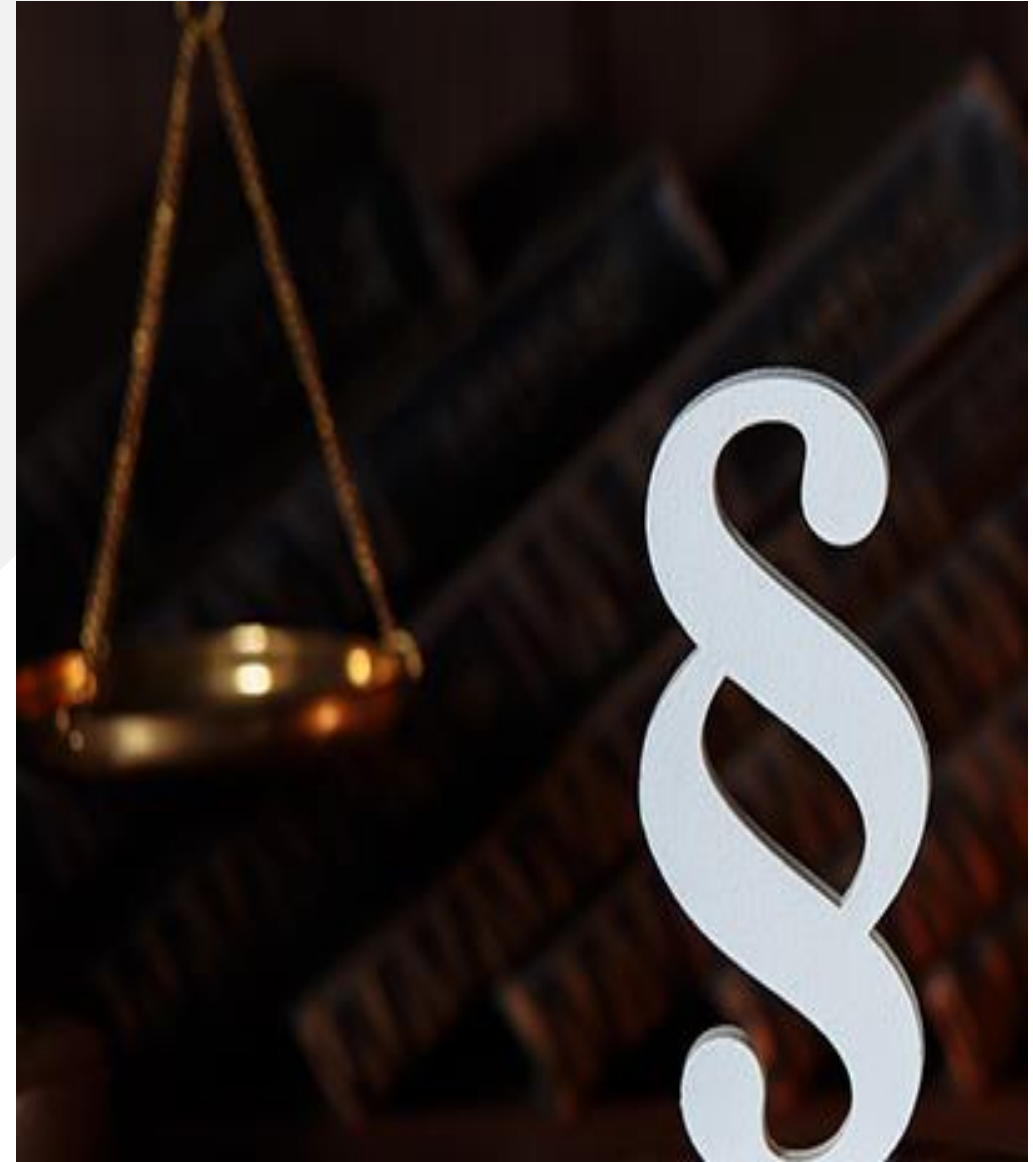


# Title IX Reporting

- **Reports of discrimination/harassment**
  - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment).
  - Any person may report in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

# Title IX Reporting

- **Reports of discrimination/harassment**
  - A person may report sex discrimination, including sexual harassment, at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address listed for the Title IX Coordinator.
  - Notice of sexual harassment (actual knowledge) includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.





# Title IX Complaints

- **Other options**
  - File a complaint with OCR.
  - Send a letter to OCR enforcement officer.
  - Not required to use the school's grievance process before filing a complaint
  - File a lawsuit in court claiming a violation; there is no need to file with OCR before filing a suit in court.



# Recordkeeping Requirements

- An institution must maintain for a period of seven years the following records:
  - Each sexual harassment investigation including (1) any determination regarding responsibility and any audio or audiovisual recording or transcript, (2) any disciplinary sanctions imposed on the respondent, and (3) any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
  - Any appeal and the result therefrom;
  - Any informal resolution and the result therefrom; **and**

# Recordkeeping Requirements

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
  - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
  - The institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity.

# Recordkeeping Requirements

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
  - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.



# Recordkeeping Requirements

- **An institution must maintain for a period of seven years the following records:**
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
  - An institution must make these training materials publicly available on its website.



# Training Required

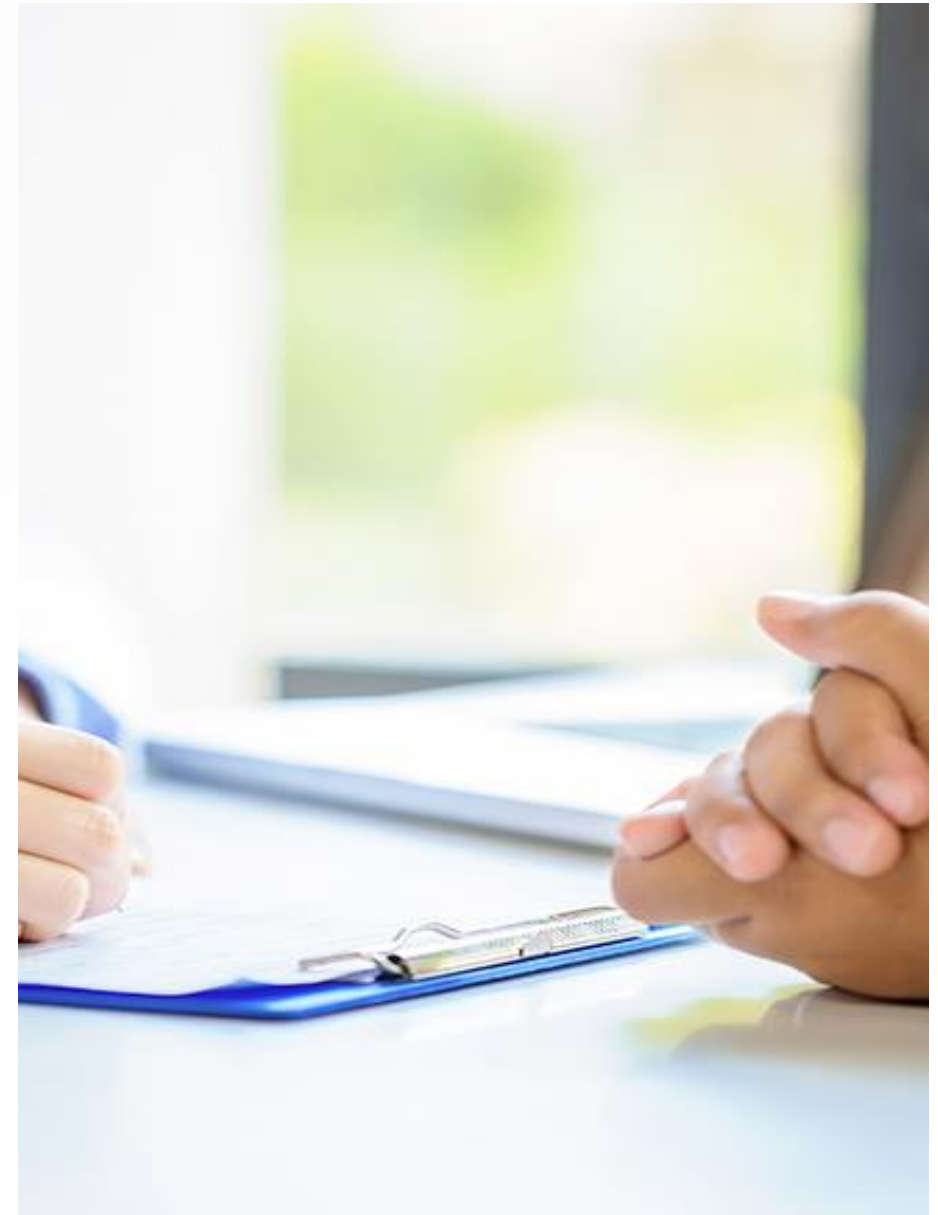
- **An institution must ensure that Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must receive training on:**
  - The definition of sexual harassment
  - The scope of the institution's education program or activity
  - How to conduct investigations and the grievance process, including hearings, appeals and informal resolution processes
  - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias

# Training Required

- **An institution must ensure that decision-makers receive training on:**
  - Issues of relevance of questions and evidence, including when questions and evidence of the complainant's sexual predisposition or prior sexual behavior are not relevant
  - Any technology to be used at a live hearing
- **An institution must ensure that investigators receiving training on:**
  - Issues of relevance to create an investigative report that fairly summarizes evidence
- **Any materials must not rely on sex stereotypes and must promote impartial investigations and adjudications.**

# Title IX Complaints

- **Policies need to consider**
  - Interaction when claims also involve other protected classes (race, disability, etc.)
  - Interaction with other state laws
  - Interaction with overlapping federal laws (Title VII)
  - Interaction with student code of conduct





# Conclusion







# Conclusion

- Need to recognize roles and responsibilities
- Need to monitor activity on campus in all areas
- Need to maintain records in all areas



**Richard Verstegen**  
**Attorney**

# Questions?



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# Title IX Coordinator Certification Higher Education

Session 2: Developing Policies and Conducting Investigations

Presented by: Richard F. Verstegen







Policies

**CareerLearning**

**Title IX Coordinator Certification Higher Education**  
**Session 2: Developing Policies and Conducting Investigations**

**Presented by: Rick Verstegen**

# Overview



I

## Policies and Procedures

- Grievance Procedure
- Grievance Process

II

## Investigations

- Reports
- Formal Complaints
- Investigation
- Determination
- Appeal

III

## Conclusion

**POLICIES**

**PROCEDURES**

# Policies and Procedures



# Title IX Complaints

- Policies need to consider
  - Interaction when claims also involve other protected classes (race, disability, etc.)
  - Interaction with other state laws
  - Interaction with overlapping federal laws (Title VII)
  - Interaction with student code of conduct





# Grievance Procedure

- **Important elements**

- Notice to students and employees of the grievance procedures, including where complaints may be filed
- Application of the grievance procedure to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties
- Provisions for adequate, reliable, and impartial investigations of complaints
- Written notice to the complainant and alleged perpetrator of the outcome of the complaint
- Assurance that the institution will take steps to prevent the recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate
- Designated and reasonably prompt time frames for the major stages of the complaint process

# Grievance Procedure

- **April 2014 Guidance (rescinded)**
  - The April 2014 Guidance (now rescinded) included additional suggestions for grievance procedures.
  - No longer suggested, but may be included:
    1. A statement of the school's jurisdiction over Title IX complaints;
    2. Adequate definitions of sexual discrimination;
    3. Reporting policies and protocols, including provisions for confidential reporting

# Grievance Procedure

- **April 2014 Guidance (rescinded)**
  4. Identification of the employee or employees responsible for evaluating requests for confidentiality;
  5. Notice that Title IX prohibits retaliation;
  6. Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
  7. Notice of available interim measures that may be taken to protect the student in the educational setting;
  8. The evidentiary standard that must be used in resolving a complaint;
  9. Notice of potential remedies for students;
  10. Notice of potential sanctions against perpetrators; **and**
  11. Sources of counseling, advocacy, and support.

# Grievance Process

- **Grievance process components**
  - Basic requirements
  - Notice of allegations
  - Dismissal of formal complaint
  - Consolidation
  - Informal resolution
  - Investigation
  - Hearing (not required in K-12 schools)
  - Determination regarding responsibility
  - Appeals
  - Recordkeeping



# Sexual Harassment Complaint Form

## Policies and Procedures

## Poll Question

- **How many sexual harassment cases have you addressed since August 2020?**
  - Around 0 to 5
  - Around 6 to 10
  - Around 11-20
  - More than 20



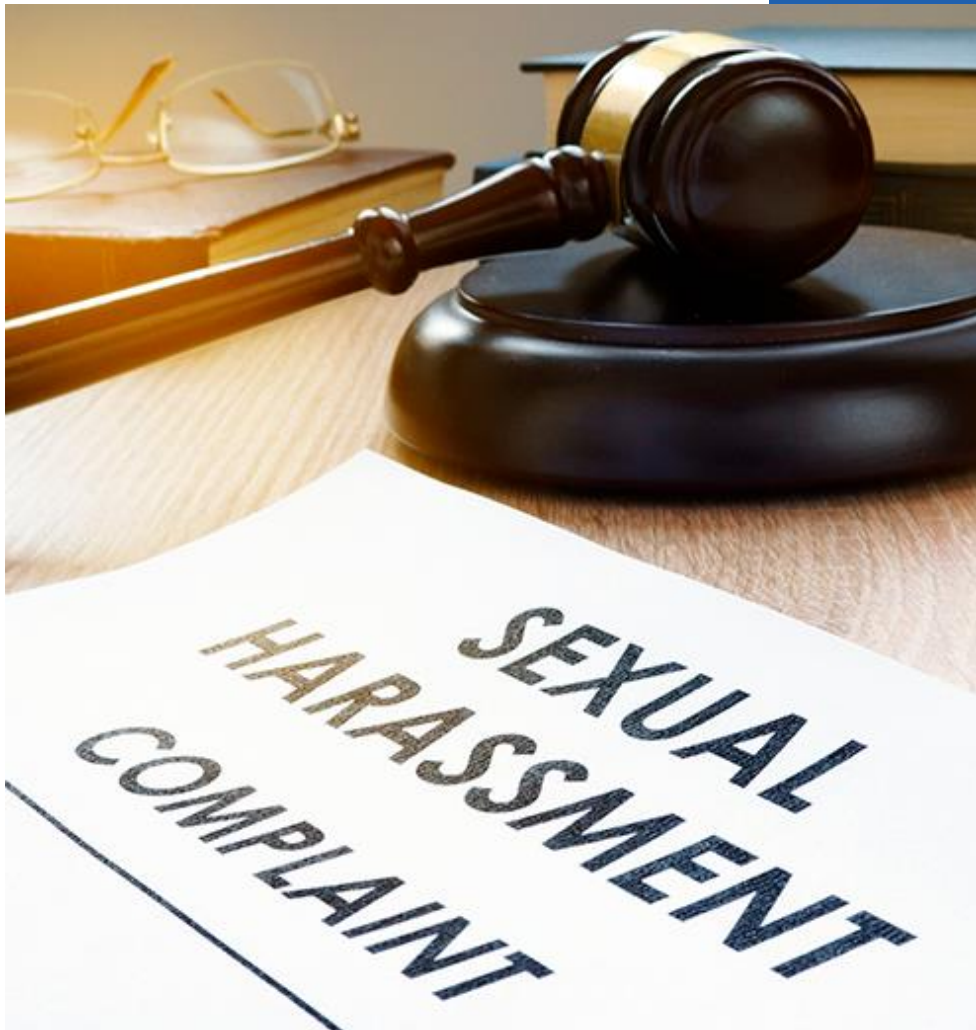
# Responding to Sexual Harassment Allegations

- Absence of formal complaint, must still respond in a manner that is not deliberately indifferent. No investigation is required, but the institution must do something.
- Schools must treat complainants and respondents equitably by offering supportive measures to a complainant and by following a grievance process under 106.45 before the imposition of any disciplinary sanctions or other actions against a respondent.

# Definitions– Recognizing Sexual Harassment

- **Sexual harassment**
  - An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo);
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; **or**
  - Sexual assault, dating violence, domestic violence, or stalking (as defined by law).



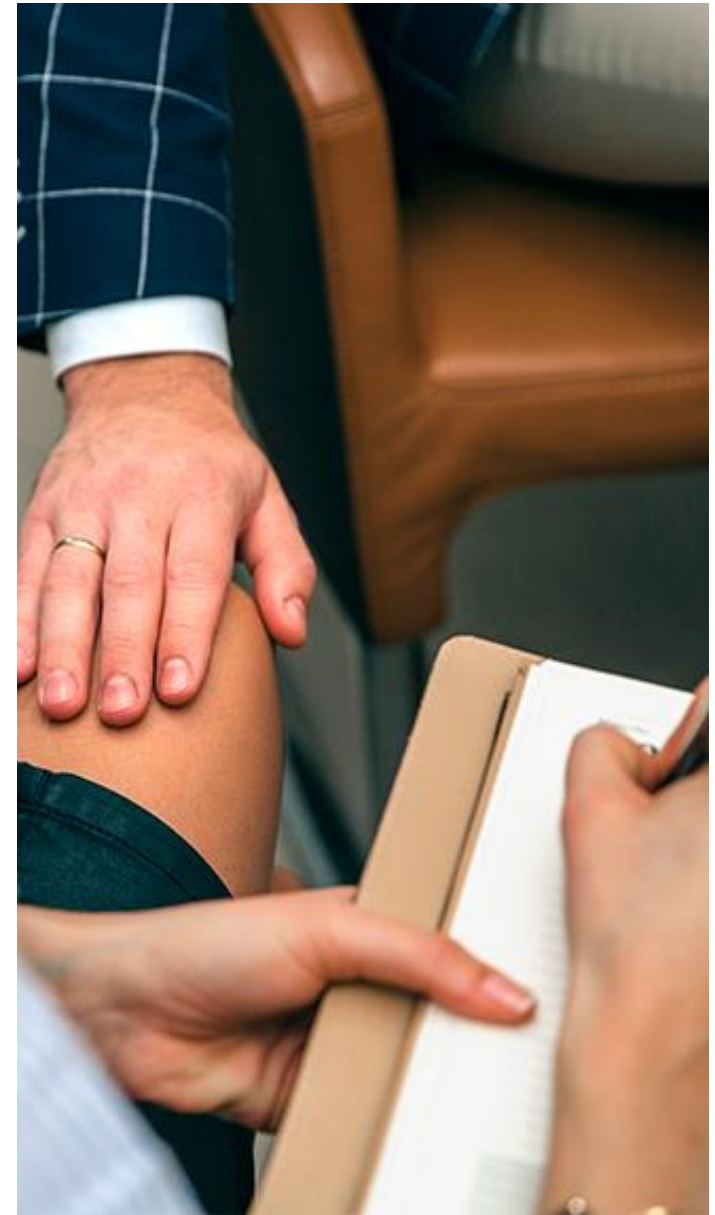


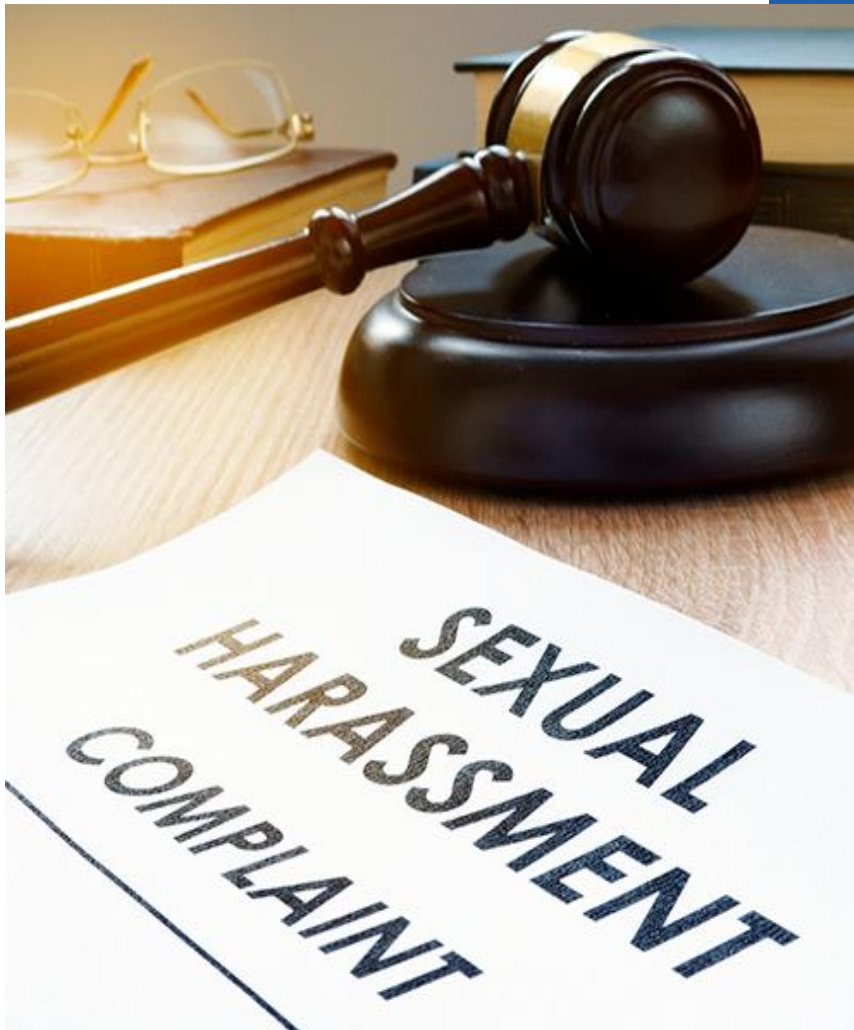
# Responding to Sexual Harassment

- An **institution** with **actual knowledge** of sexual harassment in an **education program or activity** of the institution against a **person in the U.S.** must **respond** promptly in a manner that is not deliberately indifferent.
- A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

# Obligation to Respond– Actual Knowledge

- **Notice of sexual harassment or allegations of sexual harassment to:**
  - Title IX Coordinator
  - Any official of the institution who has the authority to institute corrective measures on behalf of the institution
  - Any employee of an elementary or secondary school
- **Imputation of knowledge-based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.**





# Obligations for Responding Within the Education Program or Activity

- **Within the education program or activity**
  - Includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

# Definitions– Parties

- **Complainant**

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- The complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed

- **Respondent**

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment



# Responding to Sexual Harassment Allegations

- Title IX Coordinator must promptly:
  - Contact the complainant to discuss the availability of supportive measures,
  - Consider the complainant's wishes with respect to supportive measures,
  - Inform the complainant of the availability of support measures, **and**
  - Explain to the complainant the process for filing a formal complaint.



# Responding to Sexual Harassment Allegations

- **Supportive measures**
  - Means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent, before or after the filing of a formal complaint or where no formal complaint has been filed
  - Are designed to restore or preserve equal access to the institution's education program or activity without unreasonably burdening the other party



# Responding to Sexual Harassment Allegations

- **Supportive measures**
  - Includes measures designed to protect the safety of all parties or the institution's environment or deter sexual harassment
  - May include counseling, extensions of deadlines or course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures

# Response to Sexual Harassment Allegations

- **Supportive measures**
  - The institution must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures.
  - The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.





# Response to Sexual Harassment Allegations— Emergency Removal

- **Nothing precludes the institution from removing a respondent from the education program or activity on an emergency basis.**
  - The institution must undertake an individualized safety and risk analysis, determine that immediate threat to health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide the respondent with notice and opportunity to challenge following the removal.
  - This provision may not be construed to modify any rights under IDEA, Section 504, and ADA.

# Response to Sexual Harassment Allegations—Administrative Leave

- Nothing precludes the institution from placing a non-student employee respondent on administrative leave during the pendency of a grievance process.
- These provisions may not be construed to modify any rights under Section 504 or the ADA.





# Formal Complaints

- **Formal complaint**
  - A document filed by the complainant or signed by the Title IX Coordinator (1) alleging sexual harassment against a respondent and (2) requesting the institution investigate the allegation of sexual harassment
  - A document filed by the complainant means a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.



# Formal Complaints

- **Formal complaint**
  - Complainant must be participating or attempting to participate in the education program or activity of the institution with which the formal complaint is filed.
  - Complaints may be filed with the Title IX Coordinator in person, by mail, by email, by using contact information, or by another method designated by the institution.
  - Institution must follow the grievance process.
  - Supportive measures must be offered as appropriate.



# Grievance Process– Dismissal

- **Dismissal of complaint**
  - If conduct, if proved, would not constitute sexual harassment
  - If conduct did not occur in the education program or activity
  - If conduct did not occur against a person in the U.S.
  - Institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part.
  - Such a dismissal does not preclude action under another provision of the recipient's code of conduct.
- **Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.**

# Grievance Process– Dismissal

- **Dismissal of complaint**
  - The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
    - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
    - The respondent is no longer enrolled or employed by the institution; **or**
    - Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- **Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.**

# Grievance Process– Informal Resolution

- An institution may not require (as a condition of enrollment, employment, or another right) a waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.
- An institution may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.



# Grievance Process– Informal Resolution

- At any time, prior to reaching a determination regarding responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
- Informal resolution requires an institution to follow certain requirements, including (1) providing the parties a written notice disclosing certain information (described below); (2) obtaining the parties' voluntary, written consent to the informal resolution process; and (3) ensuring that it does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



# Grievance Process– Informal Resolution

- The written notice to the parties must disclose:
  1. The allegations;
  2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations (provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint); **and**
  3. Any consequences resulting from participating in the informal resolution process, including records that will be maintained and could be shared.

## Poll Question

- **Have you used any informal resolution process in your sexual harassment cases?**
  - Yes for both students and employees
  - Yes, for students only
  - Yes, for employees only
  - No



# Grievance Process—Consolidation

- An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.





# Grievance Process– Investigations

- Upon receipt of a formal complaint, an institution must provide written notice to parties who are known.
- **Written notice must include:**
  - Notice of recipient's grievance process
  - Notice of allegations of sexual harassment, including sufficient details known at that time (i.e., identities of the parties involved in the incident if known, the conduct allegedly constituting sexual harassment and the date and location of the alleged incident)



# Grievance Process– Investigations

- **Written notice must also:**
  - Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - Inform the parties that they may have an advisor of their choice who may be an attorney and that they may inspect and review evidence.
  - Inform the parties of any provision in the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.



## Grievance Process— Investigations

- Written notice must be provided with sufficient time to prepare a response before any initial interview.
- If other allegations are investigated later, notice must be provided of the additional allegations to the parties whose identities are known.

# Grievance Process– Investigations

- **An institution must:**
  - Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties.
  - The institution cannot access, consider, disclose, or otherwise use a party's records that are made and maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for the grievance process.

# Grievance Process– Investigations

- **An institution must:**
  - Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
  - Not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence; **and**
  - Provide parties with the same opportunities to have others present during any grievance proceeding, including an advisor of their choice, but may establish reasonable restrictions regarding participation.



# Grievance Process— Investigations

- **An institution must:**
  - Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
  - Create an investigation report that fairly summarizes relevant evidence.
  - Investigator must be able to assess credibility and identify relevant evidence.
  - Relevant evidence is evidence and testimony that directly relates to the issues disputed or discussed.



# Grievance Process— Investigations

- **An institution must:**
  - Prior to the completion of the investigative report, the recipient must send to each party and the party's advisor, the evidence subject to review and inspection in an electronic format or a hard copy.
  - The parties must have 10 days to submit a written response, which the investigator must consider prior to completing the investigation report.

# Grievance Process— Investigations

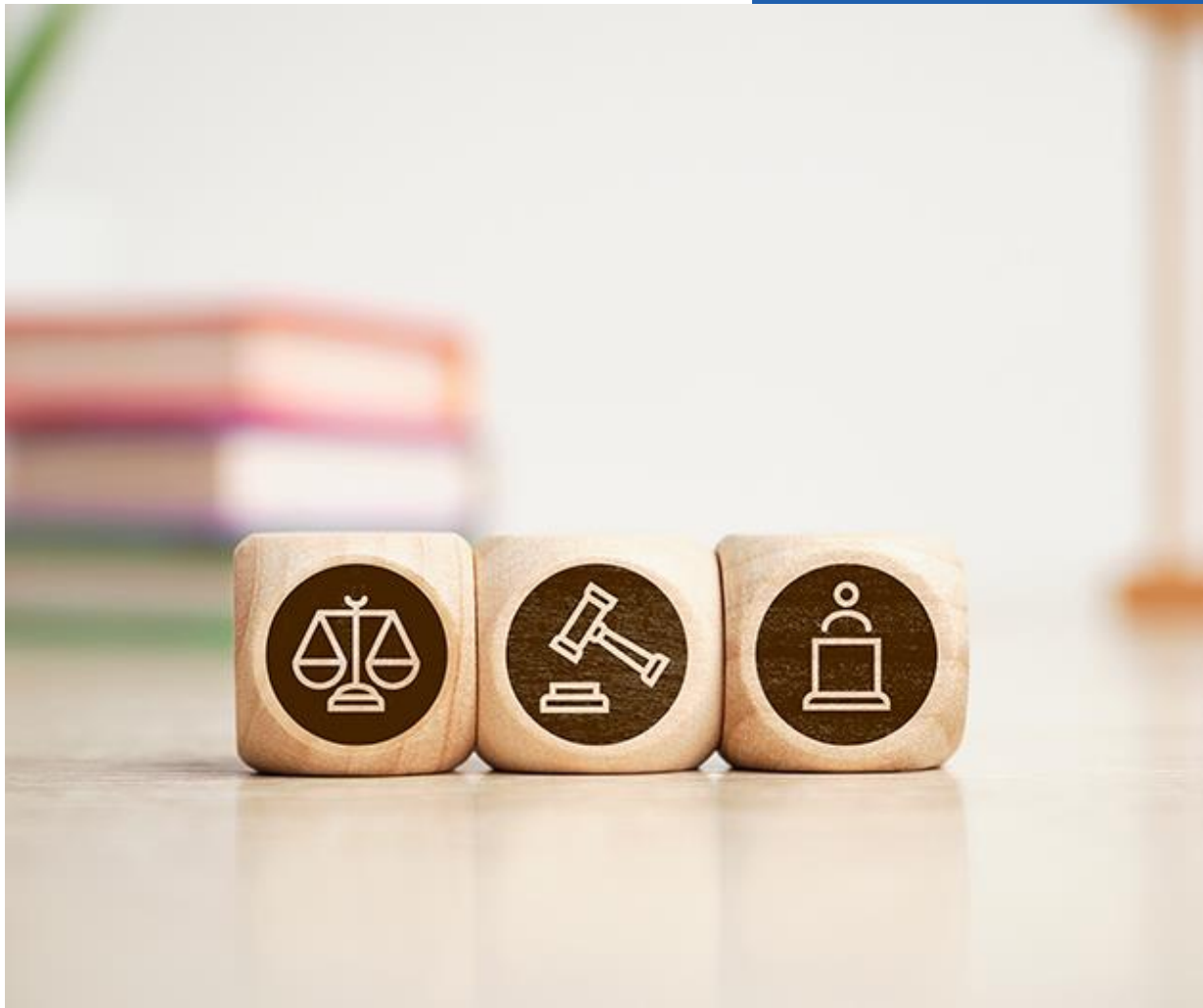
- **An institution must:**
  - At least 10 days prior to a hearing (if a hearing is required) or other time of determination regarding responsibility, send to each party and the party's advisor the investigation report in an electronic format or hard copy, for their review and written response.



# Grievance Process– Investigations

- **Possible investigation report contents**
  - Summary of the complainant's allegations and response of the accused
  - Summary of the persons interviewed and a statement about their credibility
  - Presentation of the findings of fact
  - Summary of relevant standards and other statements concerning process
  - Careful consideration should be given concerning whether the report should include conclusions about the allegations and recommendation for disciplinary or other corrective action.





## Responsibility Decision-Maker

- Not Title IX Coordinator or Investigator
- Must issue written determination regarding responsibility
- Determination must apply evidence standard.

## Poll Question

- Who do you use as responsibility decision-makers?
  - School employees
  - Outside legal counsel
  - Outside administrators



# Grievance Process– No Live Hearing

- Elementary and secondary schools may, but need not, provide for a hearing.
- With or without a hearing, after the institution has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

# Grievance Process– No Live Hearing

- The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



# Grievance Process– Live Hearings

- **Post-secondary institutions must provide a live hearing.**
  - The decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
  - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally (notwithstanding the discretion of the institution to otherwise restrict the extent to which advisors may participate in the proceedings).
  - At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answer questions.

# Grievance Process– Live Hearings

- **Post-secondary institutions must provide a live hearing.**
  - Only relevant cross-examination and other questions may be asked of a party or witness.
  - Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
  - If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

# Grievance Process– Live Hearings

- **Post-secondary institutions must provide a live hearing.**
  - Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
  - Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

# Determination

- **Written determination must include:**
  - Identification of the allegations potentially constituting sexual harassment;
  - A description of the procedural steps taken from the receipt of the formal complaint to the determination, including any notifications to the parties, interviews, site visits, methods used to gather other evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of the recipient's code of conduct to the facts;





# Determination

- **Written determination must include:**
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the institution to the complainant; **and**
  - The institution's procedures and permissible bases for the complainant and respondent to appeal.



# Determination

- **Written determination**
  - The institution must provide the written determination to the parties simultaneously.
  - The Title IX Coordinator is responsible for the effective implementation of any remedies.





# Appeal

- An institution must offer both parties an appeal from a determination of responsibility, and from an institution's dismissal of a formal complaint or any allegations contained therein.
- If appeal, the decision is final after appeal.
- If no appeal, then the decision is final on the date on which an appeal would no longer be considered timely.

# Appeal

- **The appeal must be on the following bases:**
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainants or respondents that affected the outcome of the matter;
- **The institution may offer an appeal equally to both parties on additional bases.**



# Grievance Process– Investigations

- **For any appeal, the institution must:**
  - Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
  - Ensure that the appeal decision-maker is not investigator, responsibility decision-maker, or Title IX Coordinator.
  - Ensure that the appeal decision-maker complies with standards (no conflict of interest).



# Appeal

- **For any appeal, the institution must:**
  - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
  - Issue a written decision describing the result of the appeal and the rationale for the result.
  - Provide the written decision simultaneously to both parties.





**FINAL  
THOUGHTS**

# Conclusion

# Title IX Proposed Regulations

- **June 23, 2022 Proposed Regulations**
  - Sex discrimination applies to sexual orientation, gender identity, and sex characteristics.
  - New definition of sex-based harassment, including hostile environment that looks at “sufficiently severe or pervasive” conduct
  - New definition of confidential employees
  - New response requirements, including eliminating the definition of actual knowledge and deliberately indifferent



# Title IX Proposed Regulations

- **June 23, 2022 Proposed Regulations**
  - Requires institutions to address off-campus conduct
  - Expands the definition of complainant
  - Requires institutions to provide supportive measures to students and employees in instances involving any sex discrimination
  - Sets forth additional training requirements
  - Combining grievance procedures for sex discrimination and sexual harassment complaints in certain instances



# Conclusion

- Need to review policies
- Need to include a grievance process in your policies
- Need to identify different individuals to serve as investigators and follow the process



# Title IX Coordinator Certification Higher Education

Session 3: Specific Topics for Title IX Coordinators

Presented by: Richard F. Verstegen







**Title IX Coordinator Certification Higher Education**  
**Session 3: Specific Topics for Title IX Coordinators**

**Presented by: Rick Verstegen**



# Overview



I

## Specific Topics

- Athletics
- Pregnancy
- Employment
- LGBTQ

II

## Policy Considerations

III

## Conclusion

# Title IX

- **Title IX regulations**
  - “The purpose of this part is to effectuate title IX of the Education Amendments of 1972... which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance...” 34 C.F.R. s. 106.1.
  - Other regulations found under 34 C.F.R. part 106.







**Athletics**

## Poll Question

- **Have you had to address any issues with discrimination in athletics within the last 5 years?**
  - Yes, dealing with lack of sports based on student interests
  - Yes, dealing with financial issues
  - Yes, dealing with other issues
  - Other







# Title IX Athletics

- **Regulations**
  - The regulations implementing Title IX contain specific provisions relating to athletic opportunities.
  - “No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.” 34 C.F.R. s. 106.41(a)

# Title IX Athletics

- **Regulations– separate teams**
  - Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.
  - However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport.
  - For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact. 34 C.F.R. s. 106.41(b)

# Title IX Athletics

- **Regulations– equal opportunity**
  - A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. 34 C.F.R. s. 106.41(c).
  - In determining whether equal opportunities are available the Director will consider, among other factors:
    1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
    2. The provision of equipment and supplies;
    3. Scheduling of games and practice time;

# Title IX Athletics

- **Regulations– equal opportunity**
  - *Equal opportunity*
  - In determining whether equal opportunities are available the Director will consider, among other factors:
    4. Travel and per diem allowance;
    5. Opportunity to receive coaching and academic tutoring;
    6. Assignment and compensation of coaches and tutors;
    7. Provision of locker rooms, practice and competitive facilities;
    8. Provision of medical and training facilities and services;
    9. Provision of housing and dining facilities and services;
    10. Publicity.



# Title IX Athletics

- The Department's Title IX regulations prohibit sex discrimination in interscholastic, intercollegiate, club, or intramural athletics offered by a recipient institution, including with respect to:
  - Student interests and abilities;
  - Athletic benefits and opportunities; **and**
  - Athletic financial assistance.



# Title IX Athletics

- **Three-part test**
  - **Under the three-part test, an institution must meet at least one of three benchmarks:**
    1. Whether participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; **or**
    2. Where the members of one sex have been and are underrepresented among athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; **or**

# Title IX Athletics

- **Three-part test**
  3. Where the members of one sex are underrepresented among athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

# Title IX Athletics

- **Part one– substantial proportionality**
  - Where an institution provides athletic participation opportunities for male and female students in numbers substantially proportionate to their respective full-time student enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes.
  - This part of the test establishes a safe harbor for institutions that have distributed athletic opportunities in numbers substantially proportionate to the gender composition of their student bodies.



# Title IX Athletics

## Part one– substantial proportionality

- Analysis:
  - First, determine the number of participation opportunities afforded to male and female athletes in the school's athletic program.
  - Second, determine whether athletic opportunities are substantially proportionate.
  - OCR recognizes that exact proportionality is not required in order to satisfy this test. Disparities are acceptable where they result from modest fluctuations in enrollment patterns.

# Title IX Athletics

- **Part two– history of program expansion**
  - OCR finds compliance where an institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex.
  - This test is satisfied where an institution is continually expanding athletic opportunities in an ongoing effort to meet the needs of the underrepresented gender, and persists in this approach as interest and ability levels in its student body rise.

# Title IX Athletics

- **Part two— history of program expansion**
  - OCR will review the entire history of the athletic program, focusing on the participation opportunities provided for the underrepresented sex.
  - To meet the requirements, it is not necessary to show annual or constant efforts, but only continuing efforts of program expansion.



# Title IX Athletics

- **Part three– accommodating interests/abilities**
  - This part considers whether there are concrete and viable interests among the underrepresented sex that should be accommodated.
  - An institution can satisfy part three where there is evidence that the imbalance does not reflect discrimination.





# Title IX Athletics

## Part three– accommodating interests/abilities

- To ascertain whether the interests of students are being fully and effectively accommodated, OCR will consider whether there is:
  1. Is there unmet interest in a particular sport?
  2. Is there sufficient ability to sustain a team in the sport?
  3. Is there a reasonable expectation of competition for the team?
- If all of these conditions are met, the Department of Education will find that an institution has not fully and effectively accommodating the interests and abilities of the underrepresented sex.

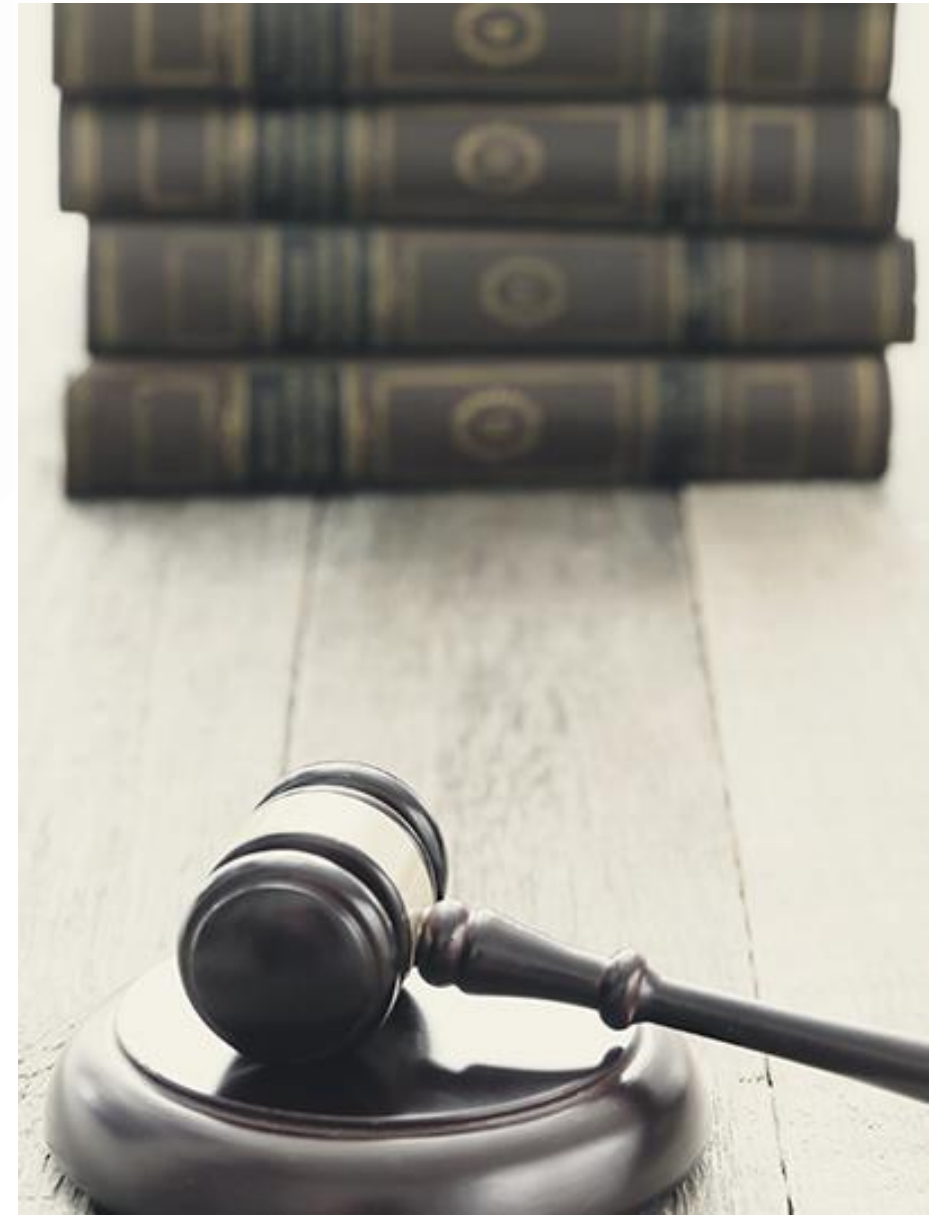


# Title IX Athletics

- **Benefits and opportunities**
  - In determining whether an institution is providing equal opportunity in athletics, the regulations require the Department to consider, among others, the following factors (a.k.a. the “*laundry list*”):
    1. The provision of equipment and supplies;
    2. Scheduling of games and practice time;
    3. Travel and per diem allowances;
    4. Opportunity for coaching and academic tutoring;
    5. Assignment and compensation of coaches and tutors;
    6. Provision of locker rooms, and practice and competitive facilities;

# Title IX Athletics

- **Benefits and opportunities**
  - In determining whether an institution is providing equal opportunity in athletics, the regulations require the Department to consider, among others, the following factors (a.k.a. the “laundry list”):
    7. Provision of medical and training facilities and services;
    8. Housing and dining services;
    9. Publicity;
    10. Recruitment; and
    11. Support services.





# Title IX Athletics

- **Nondiscriminatory justifications**
  - Sports that require more resources because of the nature of the game (i.e., football = \$\$\$\$)
  - Special circumstances, like a surge in demand
  - Special operational expenses, such as tournaments



# Title IX Athletics

- **Scheduling**
  - OCR will evaluate the scheduling of the athletic program as a whole.
  - Five factors for consideration:
    1. The number of competitive events offered per sport
    2. The number and length of practices
    3. Time of day competitive events are scheduled
    4. Time of day practices are scheduled
    5. Number of pre-season and post-season competitive opportunities





# Title IX Athletics

- **Coaching**
  - Three factors to compare:
    - Availability of coaches and volunteer assistants
    - Assignment of coaches
    - Compensation
  - Coaching equivalency is evaluated as a whole and not by comparing the boys' and girls' coaches in each sport.

# Title IX Athletics

- **Locker rooms and facilities**
  - Compliance factors for locker room, practice, and competition facilities:
    - The quality and availability of the facilities provided for practice and competitive events;
    - Exclusivity of use of facilities for practice and competitive events;
    - Availability of locker rooms;
    - Quality of locker rooms;
    - Maintenance of practice and competitive facilities; **and**
    - Preparation of facilities for practice and competitive events.

# Title IX Athletics

- **Additional resources**

- For more information about the obligation to provide equal athletic opportunities and to effectively accommodate students' athletic interests and abilities, please review:
  - Dear Colleague Letter: Part Three of the Three-Part Test (April 20, 2010), available at <http://www.ed.gov/ocr/letters/colleague-20100420.html>;
  - Dear Colleague Letter: Athletic Activities Counted for Title IX Purposes (September 17, 2008), available at <http://www.ed.gov/ocr/letters/colleague-20080917.pdf>



# Title IX Athletics

- **Additional resources**

- For more information about the obligation to provide equal athletic opportunities and to effectively accommodate students' athletic interests and abilities, please review:
  - Dear Colleague Letter: Further Clarification of Intercollegiate Athletics Policy Guidance (July 11, 2003), available at <http://www.ed.gov/ocr/title9guidanceFinal.html>;
  - Dear Colleague Letter: Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (January 16, 1996), available at <http://www.ed.gov/ocr/docs/clarific.html>; and
  - Title IX Policy Interpretation: Intercollegiate Athletics (December 11, 1979), available at <http://www.ed.gov/ocr/docs/t9interp.html>.

# Pregnancy



## Poll Question

- Have you had to address any issues with discrimination in pregnancy within the last 5 years?
  - Yes, dealing with harassment
  - Yes, dealing with discrimination
  - Yes, dealing with both harassment and discrimination
  - Other



# Title IX– Pregnancy

- **General requirements**
  - Title IX prohibits generally discrimination on the basis of sex in education programs and activities.
  - Title IX regulations specifically prohibit discriminating against any student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
  - Title IX regulations also prohibits a school from applying any rule related to a student's parental, family, or marital status that treats students differently based on their sex.







# Title IX– Pregnancy

- **General requirements**
  - Title IX prohibits discrimination on the basis of sex in many aspects within education.
    - Programs and services
    - Employment
- Title IX's focus has been on not making certain stereotypes of pregnant students or employees within education.

# Title IX– Pregnancy

- **General requirements**
  - Title IX regulations also emphasize the need to treat certain pregnant students similar to students with temporary disabilities.
  - In this respect, certain accommodations may need to be provided to students who are pregnant.



# Title IX Pregnancy



- **OCR guidance**
  - On June 25, 2013, the Office for Civil Rights (OCR) issued a Dear Colleague Letter on pregnancy and parenting discrimination.
  - The Department of Education also issued Supporting the Academic Success of Pregnant and Parenting Students in June 2013.

# Title IX Pregnancy

- **OCR guidance**
  - Focus on concerns with 16 through 24-year-olds who were not enrolled in high school and had not earned a high school diploma or alternative credential
  - Students give a range of reasons for dropping out of high school, both school-and family-related
  - Pregnancy is consistently the most common family-related reason given by female students.





# Title IX– Pregnancy

- OCR guidance
  - Title IX guidance details how the law applies to a range of specific educational activities and policies that affect pregnant and parenting students, including:
    - Class and school activities;
    - Excused absences and medical leave;
    - Accommodations;
    - Harassment; **and**
    - Policies and procedures.

# Title IX Pregnancy

- **Regulations**

- An educational institution in providing any aid, benefit, or service to a student, may not, on the basis of sex:
  - Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;
  - Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
  - Deny any student such aid, benefit, or service;
  - Subject students to separate or different rules of behavior, sanctions, or other treatment; or
  - Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.

34 C.F.R. s. 106.31.

# Title IX– Pregnancy

- **Regulations**
  - Title IX regulations expressly prohibit using parental status as a means of discriminating on the basis of sex in programs and activities. 34 C.F.R. s. 106.40.
  - General rule: An educational institution shall not apply any rule concerning a student actual or potential parental, family, or marital status which treats students differently on the basis of sex.





# Title IX Pregnancy

- **Regulations**
  - A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. 34 C.F.R. s. 106.40(b)(1)



# Title IX Pregnancy

- **Regulations**

- A recipient may require such a student to obtain certification of a physician that the student is physically and emotionally able to continue participation, so long as such certification is required of all students for other physical or emotional conditions requiring the attention of the physician. 34 C.F.R. s. 106.40(b)(2).
- A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students. 34 C.F.R. s. 106.40(b)(3).

# Title IX Pregnancy

- **OCR guidance**
  - Under Title IX, it is illegal for schools to exclude a pregnant student from participating from any part of an educational program or activity.
  - This applies to specific classes, extracurricular activities, honor societies, and other activities.
  - Educational institutions must allow students to continue to participate in classes even though they are pregnant.

# Title IX Pregnancy

- **OCR guidance**
  - Educational institutions can allow students to choose whether to participate in special instructional programs or classes for pregnant students. Students can participate if they want to, but schools cannot pressure them to do so.
  - Any alternative program must provide the same types of academic opportunities as the institution's regular program.
  - Educational institutions must allow students to participate even though they are pregnant and not require them to submit a doctor's note.

# Title IX Pregnancy

- **OCR guidance**
  - To ensure a pregnant student's access to its educational program, when necessary, an educational institution must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status.
  - Educational institutions must provide pregnant students with the same special services it provides to students with temporary medical conditions.
  - This includes at-home tutoring or independent study.



# Title IX Pregnancy

- **OCR guidance**
  - Educational institutions may require a pregnant student or student who has given birth to submit medical certification for school participation but only if the school also requires such certification from all student with physical or emotional conditions requiring the attention of a physician.
  - Schools should not presume that a pregnant student is unable to attend school or participate in school.

# Title IX– Pregnancy

- **Excused absences and medical leave**
  - In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began. 34 C.F.R. 106.40(b)(5).



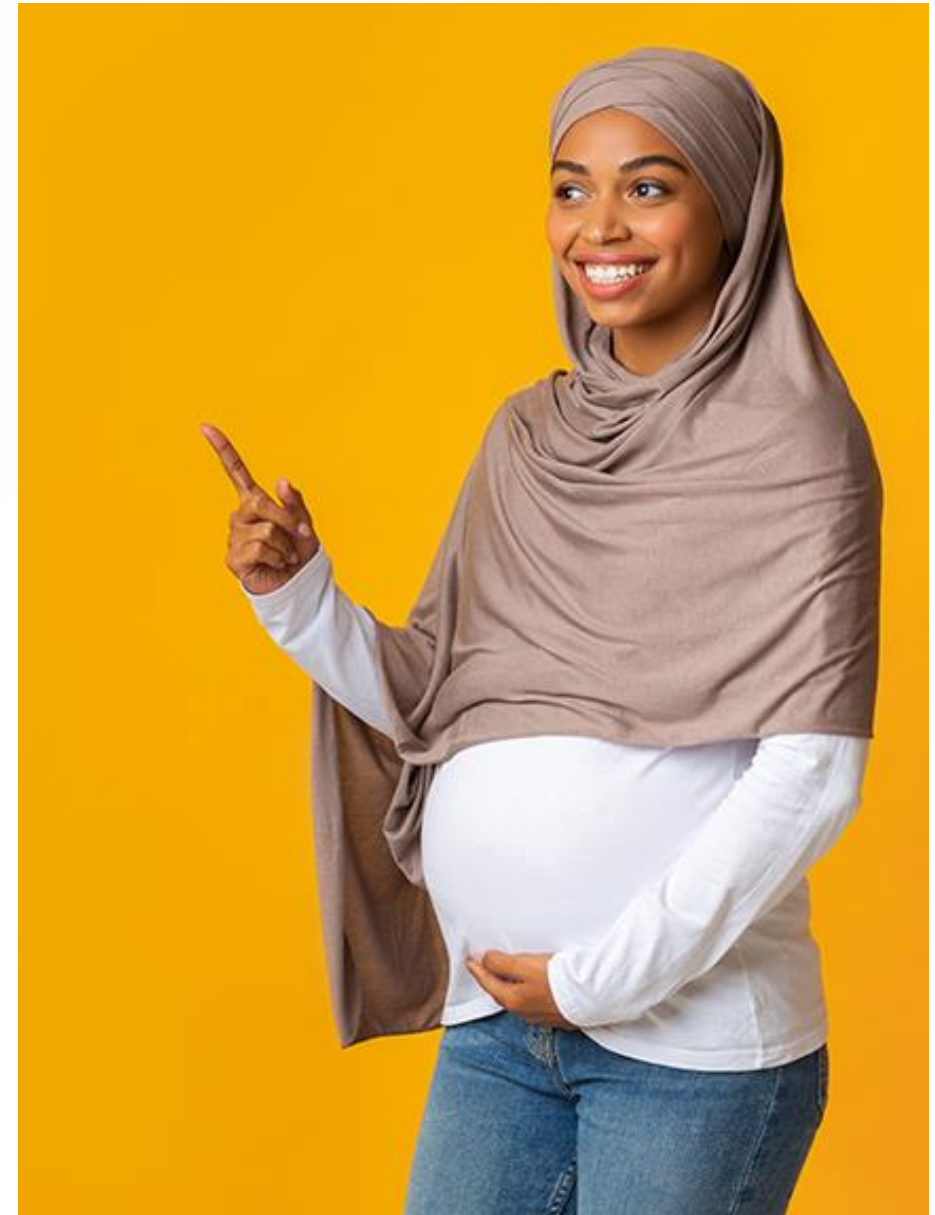


# Title IX Pregnancy

- **Excused absences and medical leave**
  - Educational institutions must excuse absences due to pregnancy and childbirth for as long as the doctor deems the absences medically necessary.
  - Educational institutions must allow the student to return to the same academic status as before the student's medical leave began, which should include giving students the opportunity to make up any work missed while the student was out.
  - Other options may also be offered, such as retaking a semester.

# Title IX Pregnancy

- **Pregnancy and athletics**
  - NCAA has provided significant guidance on this issue.
  - See NCAA Pregnant and Parenting Student-Athletes, Resources and Model Policies.  
<http://www.ncaa.org/about/resources/inclusion/pregnant-parenting-student-athletes>





# Title IX Pregnancy

- **Relevant cases**
  - *Ivan v. Kent State University*, 863 F.Supp. 581 (concluding that the university articulated legitimate reasons to overcome any claim of discrimination).
  - *Varlesi v. Wayne State University*, Case No. 14-1862 (affirming a jury award of nearly \$850,000 after finding discrimination against a pregnant student).
  - *Stewart v. City University of New York* (2013) (settlement after an administrative complaint after allegations that the university refused to allow her to make up assignments).
  - *Kostal v. Logan University* (2013) (settlement after an administrative complaint allegations that the university refused to allow her to make up work).

# Title IX Pregnancy

- **Additional resources**
  - *Guidance:* Strategies to Assist Educators in Supporting Pregnant and Parenting Students
    - Administrators, Teachers, Counselors.
- *Guidance:* Programs Designed to Support Pregnant and Parenting Students
  - Prenatal, Parenting, and Life Skills Programs
  - Child Care and Early Learning Programs
  - Dropout Prevention Programs



**Other Areas**

# Title IX Employment

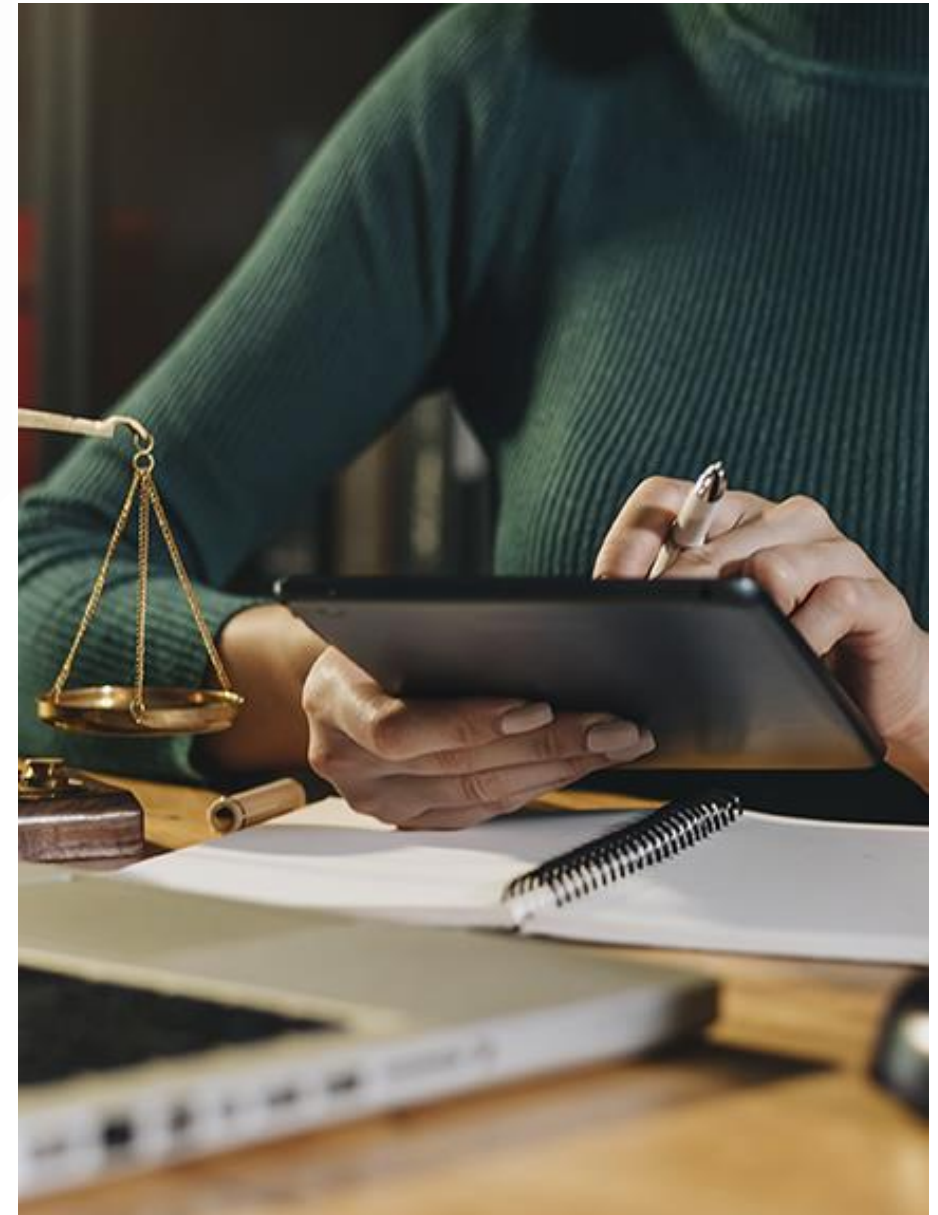
- **Employment**
  - In recruitment, hiring, rates of pay, job assignments, benefits, and other terms or conditions of employment, an educational institution may not discriminate against persons on the basis of sex. 34 C.F.R. s. 106.51.
  - Recruitment. 34 C.F.R. s. 106.53.
  - Compensation. 34 C.F.R. s. 106.54.
  - Job classification and structure. 34 C.F.R. s. 106.55.





# Title IX Employment

- **Employment**
  - Fringe Benefits. 34 C.F.R. s. 106.56.
  - Advertising. 34 C.F.R. s. 106.59.
  - Pre-employment Inquiries. 34 C.F.R. s. 106.60.
  - Sex as bona-fide occupational qualification. 34 C.F.R. s. 106.61.



# Title IX Employment

- **Employment and status**
  - Under 34 C.F.R. s. 106.57, an educational institution shall not apply any policy or take any employment action:
    - Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
    - Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

# Title IX Employment

- **Employment and status**
  - Pregnancy as a Temporary Disability. An educational institution shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.
  - 34 C.F.R. s. 106.57(c).

## Poll Question

- Have you had to address issues with discrimination within LGBTQ students within the last 5 years?
  - Yes, dealing with harassment
  - Yes, dealing with discrimination
  - Yes, dealing with both harassment and discrimination
  - Other







# Title IX LGBTQ

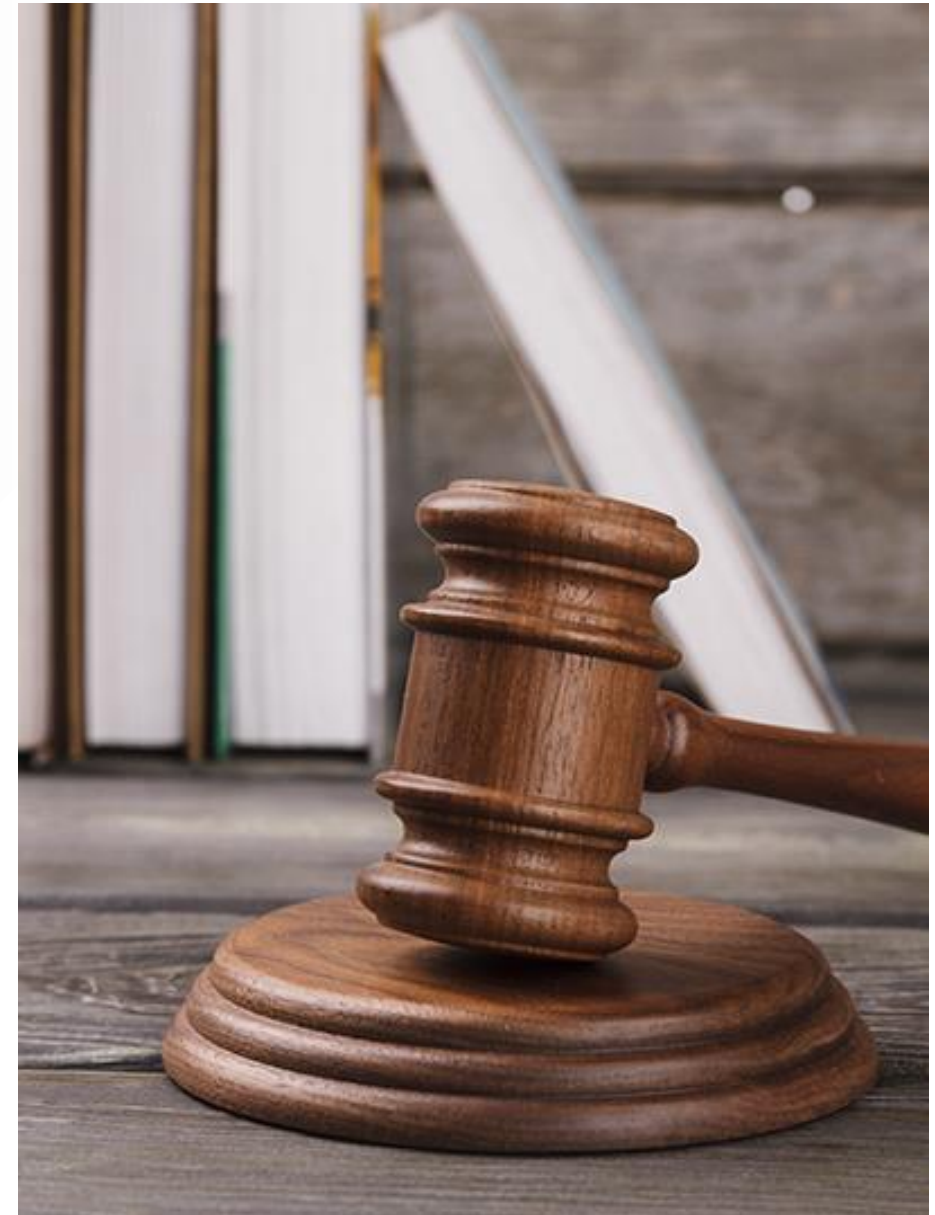
- **Students and LGBTQ**
  - On February 22, 2017 the Department of Justice and the Department of Education rescinded their respective prior guidance on gender identity issues. The Department of Justice and the Department of Education withdrew the statements of policy and guidance.
  - [DOJ Dear Colleague Letter February 22, 2017](#)

# Title IX LGBTQ

- **Students and LGBTQ**
  - On June 15, 2020, the U.S. Supreme Court held that discrimination on the basis of an individual's status as homosexual or transgender constitutes sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964. See [Bostock v. Clayton Cty., Ga., 140 S. Ct. 1731, 1741 \(2020\)](#).
  - The Supreme Court held: “[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

# Title IX LGBTQ

- **Students and LGBTQ**
  - In 2017, the Seventh Circuit decided an appeal from the U.S. District Court for the Eastern District of Wisconsin. Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.D.A. 1034, 1039-42 (7th Cir. 2017).
- The Whitaker case involved the following topics:
  - Restroom use,
  - Title IX, and
  - The Equal Protection Clause.



# Title IX LGBTQ

- **Students and LGBTQ**
  - Fourth Circuit Court of Appeals decided that restroom policies segregating transgender students and denying transgender students accurate transcripts are unconstitutional and violate Title IX. *Grimm v. Gloucester*, 972 F.3d 586 (4th Cir. 2020).
  - The District argued that it had the ability to create sex-segregated restrooms and that the act in and of itself isn't discriminatory. The court stated that while the act of creating the sex-segregated restrooms may not have been discriminatory – the school board's notion of what "sex" means was discriminatory.





# Title IX LGBTQ

- **Students and LGBTQ**
  - Biden Executive Order
    - The Executive Order makes the policy statement that all persons should receive equal treatment under the law without regard to their gender identity or sexual orientation.
    - The Order bases these policy statements in Title VII of the Civil Rights Act of 1964 and the Supreme Court's recent ruling on that law, *Bostock v. Clayton County*.

# Title IX LGBTQ

- **Students and LGBTQ**
  - Safest route is to assume that students who are transgender are protected under Title IX and to work with these students on an individual basis to accommodate them with respect to the use of restrooms and locker rooms, preferred names and pronouns, school-sponsored activities, and athletics
  - In responding to requests from students who are transitioning or transgender, an institution should consider: (1) institution policies and procedures; (2) how to maintain student confidentiality; (3) how to make the institution's facilities accessible for the student; and (4) possible harassment/retaliation.

A hand is placing a wooden block with a lightbulb icon on top of a row of four wooden blocks with gear icons. The lightbulb is yellow, and the gears are black. The background is a light blue gradient.

# Conclusion

# Conclusion

- Need to consider various areas
- Need to identify policies
- Need to ensure staff is trained in various areas







# Title IX Coordinator Certification Higher Education

Session 4: Case Studies and Compliance Audits

Presented by: Richard F. Verstegen





# CASE STUDY

**CareerLearning**

**Title IX Coordinator Certification Higher Education**  
**Session 4: Case Studies and Compliance Audits**

**Presented by: Richard F. Verstegen**

# Overview

I

## Case Studies

- On-Campus Discrimination
- Off-Campus Harassment
- Sexual Assault

II

## Working With Law Enforcement

III

## Retaliation/Confidentiality

IV

## Other Issues

V

## Conclusion





# Case Studies





# Case Study

- **Discrimination– athletics**
  - The institution decides to hire a women's softball coach, who is a recent former player at the college.
  - The institution had received other applications, but the institution believed that the former player would be a good fit for the position.
  - A player is very upset with this selection, arguing that the men's baseball team has more experienced coaches and the college is violating Title IX because it failed to provide the women with the same type of coaching.
  - The player wants to file a complaint.

## Poll Question

- **How should the college handle this issue?**
  - Inform the student-athlete of the ability to file a complaint under your Title IX grievance procedure
  - Inform the student-athlete of the ability to file a complaint under your Title IX grievance process
  - Inform the student-athlete that the school is not going to address these types of issues
  - Do nothing



# Case Study

- **Harassment– in school**
  - A professor observes an exchange between a male and female student. The male tells the female, “Here comes the hottest thing in this hallway. Looking good as always Maddy!” The female responds, “Shut up, Jake!” The male responds, “Ok, but I’m great kisser. Text me.” The female responds, “Cut it out. We’ll see you later.”
  - The professor has never observed any similar conduct by Jake in the past.
  - The professor wonders whether to report this conduct.



## Poll Question

- **Must the professor report this conduct to the Title IX Coordinator as Title IX harassment?**
  - Yes
  - No
  - Not sure







# Case Study

- **Harassment– in school/possible crime**
  - A female student meets with an academic advisor. She tells the advisor that she broke up with her ex-boyfriend about a month ago, and he has been following her.
  - He cornered her that morning in an isolated stairwell of the university and said that he's been watching her all the time. He said he can't stand the thought of her dating someone else, and that if she doesn't stop hanging out with this new guy, someone is going to end up hurt. He then grabs her arms, pushes her against a wall, and tries to kiss her.
  - The advisor reports this information to the Title IX Coordinator.

## Poll Question

- **Must the advisor report this conduct to the Title IX Coordinator as Title IX harassment?**
  - Yes
  - No
  - Not sure

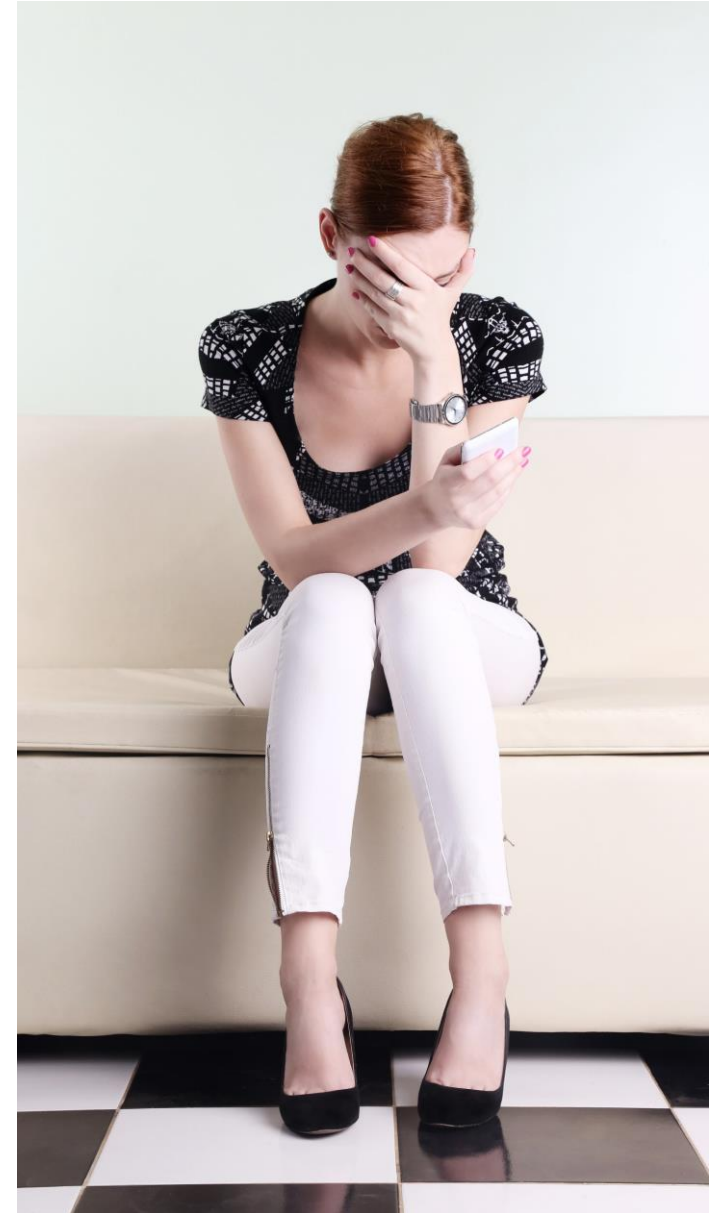


# Case Study

- **Harassment– employment**
  - A female employee reports that she overheard her supervisor state that “some days there is a too much estrogen in this office.” Three other women share the workspace.
  - During her evaluation, her supervisor meets with her and cites her need for improvement in certain areas. The female employee reacted by getting very upset and crying during the meeting. The supervisor then stated, “I know women can be emotional, but you’ve got to address this calmly and professionally.”
  - The female employee believes the comments showed harassing conduct toward her. She reports this conduct to the Title IX Coordinator.

# Case Study

- **Harassment– off campus**
  - Female student reports that a Snapchat was sent to her from another male student. The Snapchat contained inappropriate sexual comments about the student and inappropriate images. The Snapchat is sent off-campus and over personal devices.
  - The student reports this conduct to the dean of students who is not the Title IX Coordinator. The female student also states that the male student's friends have been asking her about the Snapchat at school that morning and pressuring her to “hook up” with their friend. The dean then reports this conduct to the Title IX Coordinator.







**Complaints**

**Addressing Complaints**

# Addressing Complaints

## Working With Law Enforcement

- An institution should notify complainants of the right to file a criminal complaint, if applicable.
- If applicable, an institution should work with law enforcement to learn when the evidence gathering stage of the criminal investigation is complete.
- A Title IX investigation will never result in incarceration.



# Addressing Complaints– Retaliation

- No institution or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by 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.
- Intimidation, threats, coercion, or discrimination (including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sexual discrimination, or a report or formal complaint of sexual harassment), for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

# Addressing Complaints– Retaliation

- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under Title IX.
- The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation (provided however that a determination regarding responsibility, alone, is not sufficient to conclude that a party made a materially false statement in bad faith).

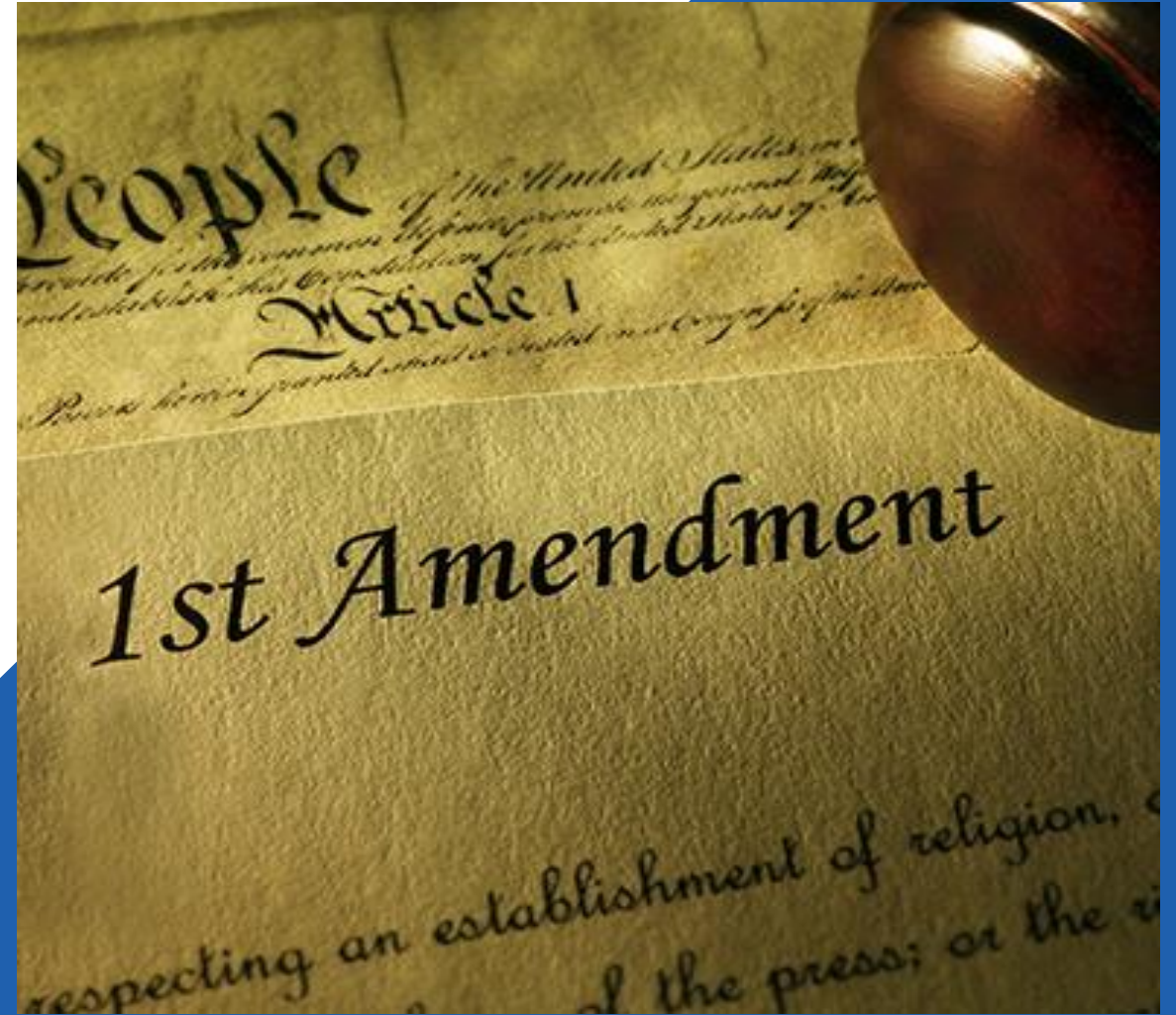


# Addressing Complaints– Confidentiality

- An institution must keep confidential the identity of any individual who made a report or complaint of sex discrimination (including any individual who has made a report or filed a formal complaint of sexual harassment), any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness.
- This confidentiality applies except as may be permitted by FERPA, or as required by law, or to carry out the purposes of Title IX (including the conduct of any investigation, hearing, or judicial proceeding arising thereunder).

# Addressing Complaints– First Amendment

- **Consider First Amendment issues.**
  - In cases of alleged harassment, the First Amendment must be considered if issues of speech or expression are involved.
  - First Amendment rights may apply to the rights of complainants, respondents, or third parties.



# Addressing Complaints– FERPA

- **Consider student records issues.**
  - There will need to be a balance between confidentiality of student records and due process considerations.
  - Institutions may need to disclose evidence as part of the process which may bring concerns with disclosure of confidential student records.

# Addressing Complaints– Recordkeeping

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
  - Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
  - The institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity.



# Addressing Complaints– Recordkeeping

- **For each response for an allegation of sexual harassment, an institution must create, and maintain for a period of seven years, the following records:**
  - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
  - The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

# Addressing Complaints– Recordkeeping

- An institution must maintain for a period of seven years the following records:
  - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
  - An institution must make these training materials publicly available on its website.





# Compliance Review





# Compliance Review

- **Focus of review**
  - Content of your policies and forms
  - Training provided by the institution
  - Knowledge of various individuals who are responsible for investigating such issues, and
  - Overall application of the policies on such incidents



# Compliance Review

- **Key questions**
  - When you receive a report, what steps do you take?
  - When you receive a report, what sort of steps do you take to prevent recurrence of the alleged sexual harassment? Do you consider changes to the interim measures during the course of the investigation? How do you monitor these interim measures?
  - When you conduct your investigation, do you allow the alleged perpetrator to have a representative present? Do you approach such investigations in an objective and impartial manner?





# Compliance Review

- **Key questions**
  - Based on the alleged conduct, at what point do you contact law enforcement?
  - At what point do you resume your investigation?
  - When you receive allegations of inappropriate behavior by students or staff, do you follow up on such allegations?

# Compliance Review

- **Key questions**
  - After completing an investigation, how do you document your final outcome or conclusions?
  - After completing your investigation, do you follow up with the victim or perpetrator to determine whether there has been any recurrence?
  - In what circumstances do you recommend discipline for any sort of sexual misconduct?





# Policies

## Compliance Review

- **Review of policies**
  - Interim steps;
  - Evidentiary standard;
  - Definitions of sexual harassment;
  - Reporting policies and protocols;
  - Potential remedies for student victims and potential sanctions for perpetrators;
  - Sources of counseling, advocacy, and support;  
**and**
  - Notice of prohibition of retaliation.



# Compliance Review

- Review of personnel
  - Specific training that they have received on the sexual discrimination and harassment policies;
  - Knowledge of the policies and forms; **and**
  - Application of these policies and forms in specific matters.





# Compliance Review

- **Possible issues**
  - Referral of matters to others;
  - Investigations of issues consistent with policies;
  - Interim measures considered, but mostly with alleged perpetrator;
  - Filling out forms in a meaningful manner; **and**
  - Delay in investigation or resuming investigations, when law enforcement involved.

# Compliance Review

- Revisions to various policies
  - Designating coordinators
  - Notice of non-discrimination
  - Grievance procedures
  - Clery Act/VAWA





# Conclusion





# Conclusion

- Need to consider how to work with law enforcement
- Need to maintain and create records as necessary
- Need to consider other requirements, including retaliation and First Amendment



# **TITLE IX TRAINING**

**2022**



## Title IX, Clery & FERPA: Policy Development, Compliance & Ethical Considerations



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1

## Webinar Objectives

- Discuss the challenges of counseling services managing requests for information from health services, the campus BIT/CARE team, students, parents, third-party subpoenas, and security clearance requests.
- Explore why it is important to define, prior to care, whether counseling services fall under FERPA or state confidentiality laws.
- Gain insight into what mental health services should be offered to stay in compliance with Title IX.
- Review ways to present aggregate data from counseling to stay in compliance with school Clery expectations.
- Learn best practices when it comes to counseling policy and procedure manuals.



2

# Scenario Based Training

- Rather than provide a page-by-page review of policy and notes on these topics, we decided to build out this training based on scenarios.
- Drs. Murphy and Van Brunt will share their expertise in student affairs, faculty, and counseling services to guide you through a dozen common scenarios that arise in this space.
- The next slide will provide some additional resources and guidance related to understanding the next steps.



3

# Resources

## **Family Educational Rights and Privacy Act (FERPA) Statute: 20 USC § 1232g**

<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section1232g&num=0&edition=prelim>

## **FERPA Regulations: 34 CFR Part 99**

<https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=1&SID=717aafb0e19bcffaf40b4b007335b2d9&ty=HTML&h=L&mc=true&n=pt34.1.99&r=PART>

## **FERPA Summary, FAQs & Guidance Letters from Department of Education**

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

## **Clery Act Essentials**

[https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18\\_Clery-Act-Essentials\\_rev2.pdf](https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18_Clery-Act-Essentials_rev2.pdf)

## **Rights & Options Under Clery**

[https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18\\_Rights-and-Options\\_r2.pdf](https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18_Rights-and-Options_r2.pdf)

## **Violence Against Women Act (VAWA) Definitions and Terms (Clery Checklist)**

[https://clerycenter.org/wp-content/uploads/2017/04/VAWA\\_Checklist.pdf](https://clerycenter.org/wp-content/uploads/2017/04/VAWA_Checklist.pdf)

## **Title IX Final Rule Fact Sheets and Resources**

<https://sites.ed.gov/titleix/policy/>

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>



4



## Scenario Based Training

A Clery request by campus safety to identify the number of students who came to counseling that experienced a sexual assault.



- Work with them, not against them
- Consider aggregate data
- Have them send what they have, give a +1, +2



5

## Scenario Based Training

A counseling center providing sexual assault advocacy services for female but not male students, since their treatment providers do not have experience with advocacy for male sexual assault



- Core of Title IX is equity
- Talk optics with counseling
- What do you need to provide services to both?
- Sexual orientation/gender identity problems with this policy?



6

## Scenario Based Training

Some of the counselors at your school have a license but are unsure if they fall under FERPA or state confidentiality laws to govern their interactions with students.



- This can work and isn't a bad model
- Be clear up front with students
- Be consistent in services
- Consider a brochure/website to clarify



7

## Scenario Based Training

The school is unsure about whether it should offer confidential resources to students considering a Title IX report or if the school should direct them to counseling support.



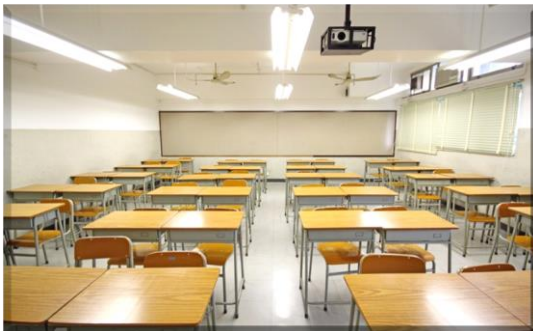
- Diversity of choice in Title IX services
- Understand what CR is and what training is needed
- Must be for reporting and responding (see first bullet)



8

## Scenario Based Training

The campus BIT requests information from counseling services about a student who made threats during a classroom discussion. The student is in counseling and the services are confidential.



- Consider advising for release of information
- Have a policy before the crisis
- Assess the question behind the question



9

## Scenario Based Training

The counseling service is approached by the FBI to obtain a security clearance on a graduating senior counseling center client.



- Need the signed release of information from the student
- They are looking at MAJOR red flags and very little else
- While unnerving, this happens - seek guidance from seasoned directors



10

## Scenario Based Training

A student is hospitalized from health services for psychiatric reasons. The Dean requests details about what happened, and health services is unable to share due to confidentiality.



- Think about this issue prior to crisis; could there be a policy written into health services?
- Are other departments involved that fall under FERPA?
- Is there a HIPAA exemption here?



11

## Scenario Based Training

A student shares they have been stalked by another student with their faculty, who happens to be a psychologist. The faculty doesn't think they have to report this because of confidentiality.



- Clarify rules of reporting in syllabus and coordinate with Title IX office
- While there may be confidentiality in the counseling center, that is not their role here



12



# Scenario Based Training

A new counseling center director is tasked to create a counseling manual for their department. They are unsure of how to go about this.



13

## Counseling Manual

- Is this a manual of policy or procedures?
- Is there an internship or training program that should have its own?
- What problems or issues are trying to be solved with this manual?
- Are there other schools of similar background, size and location that might be willing share?
- Lean into the professional organizations, you will be surprised at how much people are willing to share.

**American College Counseling Association (ACCA)**

[www.collegecounseling.org](http://www.collegecounseling.org)

**Association of College and University Counseling Centers (AUCCCD)**

[www.aucccd.org](http://www.aucccd.org)



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# **TITLE IX TRAINING**

**2021**

**THE 2021 ATIXA SEXUAL HARASSMENT MODEL POLICIES AND PROCEDURES (AMPP)**

***Version 5 Published Fall 2021***

***THIS DOCUMENT IS STILL BEING REVIEWED AND REVISED FOR COMPLIANCE WITH THE 2020 TITLE IX REGULATIONS AS ADDITIONAL GUIDANCE IS PROVIDED BY THE OPEN CENTER OR THROUGH CASE LAW.***

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## **ATIXA SEXUAL HARASSMENT MODEL POLICY AND PROCEDURES (AMPP)**

This model policy and procedures can be implemented at large or small campuses and within public universities, private colleges, and community colleges. ATIXA recognizes that schools vary in size, structure, governance, capacity, and resources and has drafted this model to comply with the federal 2020 Title IX Regulations. It is intended to help recipients comply with Title IX and VAWA § 304.

ATIXA cannot fully anticipate how the U.S. Department of Education's Office for Civil Rights (OCR) will interpret its final regulations and cautions users that updates to this model may be necessary as OCR provides additional clarifications and technical guidance. Wherever possible, ATIXA has endeavored to maintain first principles and industry standards, rather than following the minimum to meet new regulatory requirements.

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## POLICY: SEXUAL HARASSMENT, INCLUDING SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND RETALIATION

*All text offered in [brackets] throughout this document is optional language. All gray highlighted text must be customized by the end-user or deleted if not needed. Please find and replace the word “Recipient” throughout with the name of your institution or University/College/Institute etc. as appropriate.*

### 1. Glossary

- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- **Appeal Decision-maker** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- **Confidential Resource** means an employee who is not a [Mandated Reporter](#) of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when the Recipient is in normal operation.
- **Decision-maker** means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compare to [Relevant Evidence](#), below.
- **Education Program or Activity** means locations, events, or circumstances where Recipient exercises substantial control over both the Respondent and the context in which the sexual harassment and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the Recipient.
- **Final Determination** is a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding** is a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).



- **Formal Complaint** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in sexual harassment or retaliation for engaging in a protected activity against and requesting that the Recipient investigate the allegation(s).
- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by the Recipient to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- **Grievance Process Pool** includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- **Informal Resolution** means a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- **Investigator** means the person(s) authorized by the Recipient to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- **Mandated Reporter** means an employee of the Recipient who is obligated by policy to share knowledge, notice, and/or reports of sexual harassment and/or retaliation with the Title IX Coordinator [and/or their supervisor].<sup>1</sup>
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means a Recipient employee who has the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the Recipient.
- **Parties** means the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Grievance Process detailed [below](#) and defined [above](#).
- **Process B** means any process designated by the Recipient that **only** applies when Process A does not, as determined by the Title IX Coordinator.
- **Recipient** means a postsecondary education program that is a recipient of federal funding.

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- **Relevant Evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies** are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Recipient's education program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity under this Policy.
- **Resolution** means the result of an Informal Resolution or Formal Grievance Process.
- **Sanction** means a consequence imposed on a Respondent who is found to have violated this Policy.
- **Sexual Harassment** is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See [Section 16](#) for greater detail.
- **Student** means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the Recipient.
- **Title IX Coordinator** is at least one official designated by the Recipient to ensure compliance with Title IX and the Recipient's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the [Grievance Process Pool](#).

## 2. Rationale for Policy

Recipient is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation for engaging in a protected activity.

Recipient values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Recipient has developed policies and procedures that provide a

prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation.

### **3. Applicable Scope**

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this Policy is reported, the allegations are subject to resolution using Recipient's "Process A" or "Process B,"<sup>2</sup> as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Recipient community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Recipient community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as [guests, visitors, volunteers, vendors, contractors, invitees, and campers]. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

Recipient recognizes that reports and/or Formal Complaints under this Policy may include violations of other Recipient policies; may involve various combinations of students, employees, and other members of the Recipient community; and may require the simultaneous attention of multiple Recipient departments. Accordingly, all Recipient departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable Recipient policies, to provide uniform, consistent, efficient, and effective responses to alleged sexual harassment or retaliation.

### **4. Title IX Coordinator**

The [Title OR Name] serves as the Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating Recipient's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent sexual harassment and retaliation prohibited under this Policy. All parties will be provided with a comprehensive [electronic] brochure detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

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<sup>2</sup> Conduct occurring before August 14, 2020 can be resolved using Process B.

## 5. Independence and Conflict of Interest

The Title IX Coordinator [manages the Title IX Team and] acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, sexual harassment, or retaliation by the Title IX Coordinator, contact the Recipient President or other appropriate official [insert contact information here]. Concerns of bias, sexual harassment, retaliation, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

## 6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Name:

Title IX Coordinator

Office of xxxxxxxxxxxxxx

Location/Address:

(###) ###-###

Email:

Web:

Include all relevant Title IX Team members here as well, and, if applicable, the general delineated responsibilities of each.

[Recipient has determined that the following administrators are Officials with Authority (OWAs) to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed above, these OWAs may also accept notice or complaints on behalf of the Recipient. List all Officials with Authority here:]

Recipient has also classified [many/most/all] employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation. The section below on [Mandated Reporting](#) details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:  
Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

May note [local OCR office contact](#) information here

If Recipient operates a medical school, include HHS OCR contact information here (required)

Add contact information for any other applicable federal or state agency (e.g., DOJ). Federal grantees should indicate NASA, NOAA, NIH, etc. as applicable agencies per the terms of the grant.<sup>3</sup>

For complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)<sup>4</sup>

## **7. Notice/Complaints of Sexual Harassment and/or Retaliation**

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the [Title IX Coordinator](#) [or deputy/deputies/Officials with Authority] (repeat contact information from above). Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the [Title IX Coordinator](#) or any other official listed.
- 2) [Report online, using the reporting form posted at [insert URL]. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The Recipient tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not

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<sup>3</sup> Consult grant terms and program participation agreements for specific disclosures required.

<sup>4</sup> EEOC has jurisdiction over Title IX employment claims. We recommend providing local EEOC office contact information in this section. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate your local office's contact info.



identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because the Recipient respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows the Recipient to discuss and/or provide supportive measures.]<sup>5</sup>

3) Report using the sexual harassment hotline ###-###-####.

4) Add any other campus reporting options here (supervisors, etc.).

As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by the Recipient for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the Recipient investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **8. Supportive Measures**

Recipient will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the Recipient’s education program or activity, including measures designed to protect the safety of all parties and/or the Recipient’s educational environment and/or to deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Recipient will inform the Complainant, in writing, that they may file a Formal Complaint with the Recipient either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The Recipient will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the Recipient’s ability to provide those supportive measures. Recipient will act to ensure as minimal an academic/occupational impact on the parties as

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<sup>5</sup> Modify this section if you offer an online complaint option, as opposed to merely filing an online report. Not all institutions consider online reports to be formal complaints.

possible. The Recipient will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- [Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator]

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

## **9. Emergency Removal**

The Recipient can act to remove a student Respondent from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator [in conjunction with the Behavioral Intervention Team (also known as BIT/BAT/TAT/CARE, etc.) using its standard objective violence risk assessment procedures].

When an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested [in a timely manner], objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The Recipient will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: [removing a student from a residence hall, [temporarily re-assigning an employee], restricting a student's or [employee's] access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics].

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions (link) for interim action are applicable instead of the above emergency removal process.

## **10. Promptness**

Once a Recipient has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the Recipient will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Recipient procedures will be delayed, Recipient will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **11. Confidentiality/Privacy**

Every effort is made by the Recipient to preserve the confidentiality of reports.<sup>6</sup> Recipient will not share the identity of any individual who has made a report or Formal Complaint of sexual harassment or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sexual harassment or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA)<sup>7</sup> or its implementing regulations;<sup>8</sup> FERPA or as required by law; or to carry out the purposes of 34 C.F.R. Part 106,

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<sup>6</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Recipient employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the Recipient’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the Recipient’s Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The Recipient has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 28. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

<sup>7</sup> 20 U.S.C. 1232g

<sup>8</sup> 34 C.F.R. § 99

including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The Recipient reserves the right to determine which Recipient officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: [Office for Institutional Equity, Division of Student Affairs, Integrity and Compliance Office, Recipient Police, and the Behavioral Intervention/Threat Assessment Team]. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The Recipient may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically [below](#).

## **12. Jurisdiction**

This Policy applies to the Recipient's education program and activities, to conduct that takes place on property owned or controlled by the Recipient, at Recipient-sponsored events, and in buildings owned or controlled by the Recipient's recognized student organizations. The Respondent must be a member of Recipient's community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprives a person of access to Recipient's education program or activities. The Recipient may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Recipient interest.

Regardless of where the conduct occurred, the Recipient will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial Recipient interest includes:



- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others, or significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the educational interests or mission of the Recipient.

If the Respondent is unknown or is not a member of the Recipient community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the Recipient can assist in contacting local or institutional law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the Recipient's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator or [add advocate contact here, if available].

In addition, the Recipient may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Recipient property and/or events. All vendors serving the Recipient through third-party contracts are subject to the policies and procedures of their employers [and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts].

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the Recipient where sexual harassment policies and procedures of the facilitating or host organization may give the Complainant recourse.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Recipient's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

[When notice/complaint is affected by significant time delay, the Recipient will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.<sup>9</sup> Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2020. For alleged incidents that occurred prior to August 14, 2020, previous versions of this Policy will apply. Those versions are available from the Title IX Coordinator.]

### **14. Online Sexual Harassment and/or Retaliation**

Recipient policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Recipient's education program and activities or when they involve the use of Recipient networks, technology, or equipment.

Although Recipient may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to Recipient, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Recipient community.

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<sup>9</sup> There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would have to be consented to by the parties and/or carefully vetted with legal counsel.

[Public Recipients: Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the Recipient's control (e.g., not on Recipient networks, websites, or between Recipient email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.]

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the Recipient only when such speech is made in an employee's official or work-related capacity.]

## **15. Policy on Nondiscrimination**

[Insert Recipient non-discrimination disclosure here and apply it specifically to ensure this Policy is not enforced in discriminatory ways.]

## **16. Sexual Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State/Commonwealth/District of [insert state] regard sexual harassment as an unlawful discriminatory practice.

The section below describes the specific forms of legally prohibited harassment that are also prohibited under Recipient Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Recipient Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

Recipient has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. **Sexual Harassment**, as

an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex,<sup>10</sup> or that is sexual in nature, that satisfies one or more of the following:

**1) Quid Pro Quo:**

- a. an employee of the recipient,
- b. conditions<sup>11</sup> the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct.

**2) Sexual Harassment:**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to the Recipient's education program or activity.<sup>12</sup>

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<sup>10</sup> Including gender identity, gender expression, sexual orientation, and sex stereotypes.

<sup>11</sup> Implicitly or explicitly.

<sup>12</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

3) **Sexual Assault**, defined as:

- a. Any sexual act<sup>13</sup> directed against a Complainant,<sup>14</sup>
  - without their consent, or
  - instances in which the Complainant is incapable of giving consent.<sup>15</sup>
- b. **Incest:**
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by [insert state] law.
- c. **Statutory Rape:**
  - Non-forcible sexual intercourse,
  - with a person who is under the statutory age of consent of [insert age in your state].

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<sup>13</sup> A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

Rape:

- [The carnal knowledge of a Complainant OR Penetration], no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity."

Sodomy:

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>14</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

<sup>15</sup> This definition set is not taken from NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that the Recipient interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.



4) **Dating Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - b) Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence**,<sup>16</sup> defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here], or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of [insert your state here].

6) **Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

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<sup>16</sup> To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Recipient reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy. The most serious offenses are likely to result in suspension/expulsion/termination.

[Insert a more specific sanctioning rubric here if you use one.]

#### A. Unethical Relationships Policy (See [Appendix D](#))

#### B. Force, Coercion, Consent, and Incapacitation<sup>17</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a

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<sup>17</sup> The state definition of consent is [ ], which is applicable to criminal prosecutions for sex offenses in [State] but may differ from the definition used by the Recipient to address policy violations. [Included for Clery/VAWA Sec. 304 compliance purposes]

certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent** is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the **Recipient** to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>18</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus Recipient’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

## **17. Retaliation**

Protected activity under this Policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

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<sup>18</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Recipient will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Recipient and any member of Recipient's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 and procedure.

Filing a complaint under Process B<sup>19</sup> could be considered retaliatory if those allegations could be subject to Process A, when the Process B allegations are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, Recipient carefully vets all complaints to ensure this does not happen, and to ensure that complaints are routed to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that a determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **18. Mandated Reporting**

All Recipient employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, although there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution official unless a Complainant has requested the information be shared.

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<sup>19</sup> Any other institutional procedures for resolving allegations of misconduct that are not compliant with 34 C.F.R. § 106.45.



If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the reporting options at Recipient for a Complainant or third party (including parents/guardians when appropriate):

#### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- [On-campus licensed professional counselors and staff]
- On-campus health service providers and staff
- On-campus Victim Advocates
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a licensed health professional)
- Community-based (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional counselors [and/or the Employee Assistance Program] are available to help free of charge and may be consulted on an emergency basis during normal business hours.

[Employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical

information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner].

## **B. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given anonymously (i.e., without identification of the Complainant) to the Title IX Coordinator by a Mandated Reporter. The Mandated Reporter cannot remain anonymous themselves.

[If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.]

Anonymous notice will be investigated by the Recipient to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the Recipient's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. [Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.]]

## **C. Mandated Reporters and Formal Notice/Complaints**

All Recipient employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the Recipient.

Supportive measures may be offered as the result of such disclosures without formal Recipient action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of Recipient Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in sexual harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the Recipient is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of sexual harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **19. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the Recipient proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process, [usually upon completion of an appropriate violence risk assessment].

[The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the Recipient to pursue formal action to protect the community.]

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the Recipient's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the Recipient proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the Recipient's ability to remedy and respond to notice may be limited if the Complainant does not want the Recipient to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the Recipient's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the Recipient to honor that request, the Recipient may offer [Informal Resolution](#) options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Recipient, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **20. Federal Timely Warning Obligations**

Recipient must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The Recipient will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **21. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate Recipient policies.

## **22. Amnesty**

The Recipient community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Recipient officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Recipient community that Complainants choose to report misconduct to Recipient officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Recipient maintains a policy of offering parties and witnesses amnesty from minor policy violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. [The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students



within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.]

### **A. Students**

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the [Campus Police]).

The Recipient maintains a policy of amnesty for students who offer help to others in need. [Although policy violations cannot be overlooked, the Recipient may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.]

### **B. Employees:<sup>20</sup>**

[Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the [unethical relationship policy] and is then assaulted in the course of that relationship might hesitate to report the incident to Recipient officials.]

The Recipient may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.]

## **23. Federal Statistical Reporting Obligations**

Certain institutional officials—those deemed Campus Security Authorities—have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property

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<sup>20</sup> This section is optional as most traditional policies only offer amnesty to students. If a Recipient decides not to include this section, the “student” section can simply be merged into the amnesty section.

- 3) VAWA-based crimes,<sup>21</sup> which include sexual assault, domestic violence, dating violence, and stalking
- 4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations

All personally identifiable information is kept private, but statistical information must be shared with [campus law enforcement] regarding the type of incident and its general location (on or off campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include: student affairs/student conduct staff, [campus law enforcement/public safety/security], local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **24. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The Recipient will inform the Complainant of the importance of preserving evidence by taking the following actions:

### **Sexual Assault**

- Seek forensic medical assistance at the [specify] hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container [available from...].
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **Stalking**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.

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<sup>21</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages showing a request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

## **RESOLUTION PROCESS<sup>22</sup> FOR ALLEGED VIOLATIONS OF THE SEXUAL HARASSMENT POLICY (KNOWN AS PROCESS “A”)**

### **1. Overview**

Recipient will act on any formal or informal notice/complaint of violation of the Sexual Harassment Policy (“the Policy”) that is received by the Title IX Coordinator<sup>23</sup> or any other Official with Authority by applying these procedures, known as “Process A.”

[The procedures below apply to all allegations of sexual harassment or retaliation involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which Policy provisions above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all Policy offenses listed above.]

OR

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) involving students, staff, administrators, or faculty members.

If a dismissal occurs under Process A, please see [insert process link here] for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.<sup>24]</sup>

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<sup>22</sup> For Recipients with Formal Grievance Processes enabling students and/or employees to challenge Recipient action, it is recommended that allegations under this policy be exempted from that process and replaced with the resolution process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX.

<sup>23</sup> Anywhere this procedure indicates “Title IX Coordinator,” the Recipient may substitute a trained designee.

<sup>24</sup> Consult with qualified legal counsel on the complex interaction between the regulations and union rights under collective bargaining agreements.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice of an alleged policy violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the Recipient needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

The Recipient uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If so, the Recipient will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, and/or their effects.

## **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>25</sup> engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.

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<sup>25</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.



- If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves [because a violence risk assessment indicates a compelling threat to health and/or safety].
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determines the appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution<sup>26</sup> [ , which informal mechanism may serve the situation best or is available,] and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue

If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that Title IX regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply [ , which Resolution Process is applicable,] and will refer the matter accordingly [ , including referring the matter for resolution under Process B, if applicable]. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX that does not limit the Recipient’s authority to address a complaint with an appropriate process and remedies.

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<sup>26</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

## **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the [insert name of team] as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct and/or climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to permit a voluntary withdrawal by the Respondent
- 8) Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
- 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
- 10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT)/CARE team members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable

violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the Recipient's process for VRA can be found in [Appendix E](#).

## **B. Dismissal (Mandatory and Discretionary)<sup>27</sup>**

The Recipient must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by the Recipient (including buildings or property controlled by recognized student organizations), and/or the Recipient does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Recipient's education program or activity<sup>28</sup>

The Recipient may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by the Recipient
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, the Recipient will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal (See [Section 37](#)). [The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.]

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<sup>27</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>28</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

#### **4. Counterclaims**

The Recipient is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The Recipient permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor<sup>29</sup> of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>30</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

[As a public entity, Recipient fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the Recipient will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses [are OR are not] permitted to have union representation or Advisors in grievance process interviews or meetings.]

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<sup>29</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), but some Recipients do permit more than one. If the Recipient allows more than one Advisor for one party, they should do so for all parties.

<sup>30</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

[OPTIONAL INCLUSION: The Recipient may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.]

#### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the Recipient community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the Recipient, the Advisor will have been trained by the Recipient and be familiar with the Recipient's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by the Recipient, the Advisor may not have been trained by the Recipient and may not be familiar with Recipient policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

#### **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The Recipient cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the Recipient is not obligated to provide an attorney.

[Where applicable under state law or Recipient policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although Recipient prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives].



### **C. Advisors in Hearings/Recipient-Appointed Advisor**

Under the Title IX regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the Recipient will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

### **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Recipient's policies and procedures.

### **E. Advisor Violations of Recipient Policy**

All Advisors are subject to the same Recipient policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the Recipient. Advisors are expected to advise their advisees without disrupting proceedings. [Advisors should not address Recipient officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>31</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.]

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with the Recipient's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the Recipient requiring the party to use a different Advisor or

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<sup>31</sup> Subject to the state law provisions or Recipient policy above.

providing a different Recipient-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

The Recipient expects that the parties may wish to have the Recipient share documentation and evidence related to the allegations with their Advisors.

The Recipient provides a consent form that authorizes the Recipient to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Recipient is able to share records with an Advisor.

[If a party requests that all communication be made through their attorney Advisor, the Recipient [will OR will not] comply with that request OR will comply with that request at the discretion of the Title IX Coordinator.]

[Advisors appointed by the institution will not be asked to disclose details of their interactions with the advisees to institutional officials or Decision-makers.]

#### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. [These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Recipient. Advisors will be asked to sign Non-Disclosure Agreements (NDAs). Recipient may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Recipient's privacy expectations.]

#### **H. Expectation of an Advisor**

The Recipient generally expects an Advisor to adjust their schedule to allow them to attend Recipient meetings/interviews/hearings when planned, but the Recipient may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Recipient may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **J. Assistance in Securing an Advisor**

[Recipient can provide attorneys, law faculty, or law students as Advisors in the Resolution Process.]

The Recipient maintains a listing of local attorneys who may offer discounted or pro bono services [here \(link\)](#).

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

## 6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with Recipient Policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. Recipient encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the Recipient's primary resolution approach unless Informal Resolution is elected by all parties and the Recipient.

### A. Informal Resolution

Three options for Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism [including mediation, restorative practices, facilitated dialogue, etc.], as described below, often before a formal investigation takes place (See [Section B](#))
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (See [Section C](#))

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. [The parties may not enter into an agreement that requires the Recipient to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can

agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is “Accepted Responsibility.”] The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the Recipient will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the Recipient.

The Recipient will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **B. Alternative Resolution Approaches**

Alternative Resolution is an informal approach [, including mediation, restorative practices, facilitated dialogue, etc.] by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may look to the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties’ amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties’ motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties



- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all the parties and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the Recipient are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Recipient policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.<sup>32</sup>

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented in order to effectively stop the sexual harassment or

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<sup>32</sup> The parties may not want discussions that take place within Informal Resolution to be admissible in a later Formal Grievance Process, but essential facts must and do transfer from the informal process to the formal. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **7. Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators<sup>33</sup> (“the Pool”) to carry out the process. [Members of the Pool are announced in an annual distribution of this policy to all students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office].

The list of Pool members and a description of the Pool can be found at [\(link\)](#)

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- [To serve in a facilitation role in Informal Resolution or Alternative Resolution if
- appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)]
- [To perform or assist with initial assessment]
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **B. Pool Member Appointment**

The Title IX Coordinator [, in consultation with the President,] appoints the Pool,<sup>34</sup> which acts with independence and impartiality. [Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, the Recipient can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills,

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<sup>33</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles

<sup>34</sup> This does not preclude the Recipient from having all members of the Pool go through an application and/or interview/selection process.

aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.]

### C. Pool Member Training

Pool members receive annual training [jointly OR based on their respective roles]. This training includes, but is not limited to:

- The scope of the Recipient's Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the Recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

The materials used to train all members of the Pool are publicly posted here [\[insert link\]](#).

#### **D. Pool Membership [Example]**

The Pool includes:

- 4 or more Chairs: one representative from Human Resources and one from Student Affairs, etc.
  - who respectively chair hearings for allegations involving student and employee Respondents
- 3 or more members of the Academic Affairs administration and/or faculty
- 3 or more members of the administration/staff
- 1 representative from Campus Safety
- 2 representatives from Human Resources
- 1 representative from Athletics

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result

- A statement that the Recipient presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about the Recipient's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that the Recipient's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- [A link to the Recipient's VAWA Brochure]
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of any allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, [mailed to the local or permanent address(es) of the parties as indicated in official Recipient records],<sup>35</sup> or emailed to the parties' Recipient-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

The Recipient will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal, if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

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<sup>35</sup> Caution if this is your standard notification practice, as it may serve to notify parents/guardians, and thus violate the confidentiality provisions of the retaliation section of the regulations.



## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with [Title].

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The Recipient operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The Recipient will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **13. Investigation Process Delays and Interactions with Law Enforcement**

The Recipient may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The Recipient will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The Recipient will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, Recipient will implement supportive measures as deemed appropriate.

Recipient action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **14. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. [Recordings of interviews [are OR are not] provided to the parties, [and OR but] the parties will have the ability to review the [transcript OR summary] of the interview once the investigation report is compiled.]

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- [Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report]
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each

party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. [Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).]

- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- [Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback]
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and advisors are also provided with a file of any directly related evidence that was not included in the report

## **15. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the Recipient are strongly encouraged to cooperate with and participate in the Recipient's investigation and Resolution Process. Student witnesses and witnesses from outside the Recipient community are encouraged to cooperate with Recipient investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The Recipient will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **16. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of [and consent to]<sup>36</sup> audio and/or video recording.

## **17. Evidentiary Considerations**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation, unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker(s)—unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker [or Decision-makers] from the Pool and provide a copy of the investigation report and the file of directly related evidence. [Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker(s) depending on the context and nature of the alleged misconduct].

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<sup>36</sup> Consent of the interviewer and interviewee is required in “dual-party recording” states.



## **19. Hearing Decision-maker Composition**

The Recipient will designate a single Decision-maker or a [three]-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the [three] members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

## **20. Additional Evidentiary Considerations in the Hearing**

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming the Recipient uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on [the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged OR clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged].

## **21. Hearing Notice**

No less than ten (10) business days prior to the hearing,<sup>37</sup> the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the Recipient will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>38</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.

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<sup>37</sup> Unless an expedited hearing is agreed to by all parties.

<sup>38</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Recipient and remain within the 60-90 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) [or have proffered a written statement or answered written questions], unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as

soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

#### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration of a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

[The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.]

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the

hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will OR will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Sexual Harassment Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent),<sup>39</sup> Advisors to the parties, any called witnesses, [the Title IX Coordinator] and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused. [The Investigator(s) will remain present for the duration of the hearing.]

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

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<sup>39</sup> Subject to the Recipient's Code of Organizational Conduct.



However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

[The Chair AND/OR hearing facilitator then conducts the hearing according to the hearing script]. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator/case manager appointed by the Title IX Coordinator.]<sup>40</sup>

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). [The Investigator(s) will be present during the entire hearing process, but not during deliberations.]

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

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<sup>40</sup> If not conflicted out by previous involvement, the Title IX Coordinator may serve as the hearing facilitator/case manager.

## **29. Testimony and Questioning**

Once the Investigator(s) present(s) the report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **30. Refusal to Submit to Questioning; Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

[An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily relieved from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.]

### **31. Hearing Recordings**

Hearings (but not deliberations) are recorded by the Recipient for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the Recipient will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. [If a panel is used, a simple majority vote is required to determine the finding.] The preponderance of the evidence OR clear and convincing evidence standard of proof is used. [The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.]

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will review any pertinent conduct history provided by [appropriate administrator] and will [recommend/determine] the appropriate sanction(s) [in consultation with other appropriate administrators, as required].

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), credibility assessments, and any

sanction(s) [or recommendation(s)] and rationale explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement is typically three to five (3-5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. [The Notice of Outcome will then be reviewed by legal counsel.] The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within 3/5/7/? business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Recipient records,<sup>41</sup> or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the Recipient from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the Recipient is permitted to share such information under state or federal law; any sanction(s) issued which the Recipient is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the Recipient's educational or employment program or activity.

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<sup>41</sup> Again, consider the confidentiality implications of sending mail to a home address.

The Notice of Outcome will also include information on when the results are considered final by the Recipient, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

### **34. Rights of the Parties (See Appendix C)**

### **35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

#### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:<sup>42</sup>

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<sup>42</sup> Recipient policies on transcript notation will apply to these proceedings.



- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Recipient policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Recipient-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Recipient. [Insert transcript notation here if applicable.]
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Recipient-sponsored events. [This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, [subject to any applicable expungement policies.]]
- *Withholding Diploma*: The Recipient may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- *Revocation of Degree*: The Recipient reserves the right to revoke a degree previously awarded from the Recipient for fraud, misrepresentation, and/or other violation of Recipient policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

## B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student organizations singly or in combination:<sup>43</sup>

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<sup>43</sup> Subject to Recipient's Organizational Code of Conduct.

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any Recipient policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of Recipient funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in Recipient-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the Recipient.
- *Expulsion:* Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges:* Restricted from accessing specific Recipient privileges for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in sexual harassment and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*

- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other responsive actions as deemed appropriate.

### **36. Withdrawal or Resignation Before Complaint Resolution**

#### **A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the Recipient, the Resolution Process typically ends with a dismissal, as the Recipient has lost primary disciplinary jurisdiction over the withdrawn student. However, the Recipient may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the Recipient will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. [The student who withdraws or leaves while the process is pending may not return to the Recipient in any capacity.<sup>44</sup> Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all Recipient locations.]

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to Recipient unless and until all sanctions, if any, have been satisfied.

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<sup>44</sup> Could OCR see this as a penalty? No idea, so best to confer with your legal counsel on this section before including.

## **B. Employees:**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process ends with dismissal, as the Recipient has lost primary disciplinary jurisdiction over the resigned employee. However, the Recipient may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the Recipient will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the Recipient or any Recipient location, and the records retained by the Title IX Coordinator will reflect that status.

[All Recipient responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.]

## **37. Appeals**

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within [3,5,7] business days of the delivery of the Notice of Outcome.

A [three]-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator OR A single Appeal Decision-maker will Chair the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process. [A voting Chair of the Appeal panel will be designated by the Title IX Coordinator.]

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

## A. Grounds for Appeal

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given 3/5/7/? business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds of this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within 3/5/7/? business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses [will be shared with the Appeal Panel/Chair,] and the [Chair/Panel] will render a decision within no more than 3/5/7/? business days, barring exigent circumstances. [All decisions [are



by majority vote and] apply the preponderance of the evidence OR the clear and convincing evidence standard.]

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation. [If the original sanctions include separation in any form, the Recipient may place a hold on official transcripts, diplomas, graduations, course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.]

## **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the

sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). [Option: When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.]
- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Chair/Decision-maker(s) may order a new investigation and/or a new hearing with new Pool members serving in Investigator and Decision-maker roles.
- [The results of a remand to a Decision-maker(s) cannot be appealed.] The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the Recipient or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community

- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies the Recipient owes the Respondent to ensure no effective denial of educational access.

The Recipient will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the Recipient's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Decision-maker(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Recipient. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **40. Recordkeeping**

Recipient will maintain for a period of [at least] seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation

- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to the Recipient's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Recipient will make these training materials publicly available on Recipient's website. (Note: If the Recipient does not maintain a website, the Recipient must make these materials available upon request for inspection by members of the public.)
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to the Recipient's education program or activity
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

Recipient will also maintain any and all records in accordance with state and federal laws.

#### **41. Disability Accommodations in the Resolution Process**

Recipient is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the Recipient's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Disability/Access Services or [Appropriate HR individual if employee], who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing sexual harassment, sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The Recipient reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, government regulations, or court holdings.

This document does not create legally enforceable protection beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective [INSERT DATE].



## **APPENDIX A: PROHIBITED CONDUCT EXAMPLES**

### **Examples of possible Sexual Harassment:**<sup>45</sup>

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually oriented jokes and pictures to hundreds of other students via social media. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to nonbinary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being nonbinary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not sexually or romantically interested in Chris. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their gender identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement.

One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that

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<sup>45</sup> ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.

out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

#### Examples of Stalking:

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go and relentlessly pursued Student B. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’s car, both on-campus and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the tutor did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill’s incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone.

They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth. Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

#### Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B: AN ATIXA FRAMEWORK FOR INFORMAL RESOLUTION (IR)**

ATIXA has framed a process for IR that includes three options:

- 1) A response based on supportive measures
- 2) A response based on a Respondent accepting responsibility
- 3) A response based on alternative resolution, which could include various approaches and/or facilitation of dialogue

Alternative resolution approaches such as mediation, restorative practices, and transformative justice are likely to be used more and more often by colleges and universities. ATIXA does not endorse these approaches as better or worse than other formal or informal approaches.

ATIXA believes that if they are to be used in and are effective for sex offenses, they need to be carefully and thoughtfully designed and executed and be facilitated by well-trained personnel who take the necessary time to prepare and lay a foundation for success. Although no approach is a panacea, the framework below can help to lay that foundation, regardless of which approach(es) are used.

Here are the principles to be considered in supporting various approaches to Informal Resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversionary resolution (although a Formal Complaint must be filed if you are within 34 C.F.R. § 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternative Resolution approaches to IR must be facilitated by the Recipient or a third party. There may be value in creating clearly agreed-upon ground rules, which the

parties must sign in advance and agree to abide by, otherwise the Informal Resolution process may be deemed to have failed.

- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. Evidence elicited within the “safe space” of the IR facilitation could be later admissible in the formal resolution unless all parties determine it should not be. This will be clearly spelled out as a term of the decision to engage in the IR process.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a restorative circle approach with many constituents, in order to ensure confidentiality.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.
- IR can result in an accord or agreement between the parties (Complainant, Respondent, Recipient), which is summarized in writing by and enforced by the Recipient. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties, that are enforceable by the Recipient. These can be part of the agreement.
- As a secondary goal, IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by the Recipient as part of the agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.
- Institutions must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches to ensure they are civil, age-appropriate, culturally competent, reflective of power imbalances, and maximize the potential for the Resolution Process to result in catharsis, restoration, remedy, etc., for the Complainant(s).



## **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to Recipient officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by the Recipient regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by the Recipient to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Recipient officials.
- The right to have Recipient policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Recipient officials from reporting sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by Recipient officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the Recipient in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Recipient law enforcement and/or other Recipient officials.

- The right to be informed of available supportive measures, such as counseling; advocacy; health care; [legal,] student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to a Recipient-implemented no-contact order [or a no-trespass order against a non-affiliated third party] when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - [Relocating an on-campus student's housing to a different on-campus location
  - Assistance from Recipient staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options]
- The right to have the Recipient maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the Recipient's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any Recipient meeting or interview involving another party, when possible.
- The right to identify and have the Investigator(s), Advisors, and/or Decision-maker(s) question relevant available witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.

- The right to have inadmissible sexual predisposition/prior history or irrelevant character evidence excluded by the Decision-maker(s).
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10)-business-day period to review and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and have at least ten (10) business days to review and comment on the report prior to the hearing.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received [at least eight hours of] relevant annual training.
- [The right to a Hearing Panel that is not single sex in its composition, if a panel is used.]
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Recipient representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.

- The right to the use of the appropriate standard of evidence, [preponderance of the evidence OR clear and convincing evidence] to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- [The right to have an impact and/or mitigation statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.]
- The right to be promptly informed of the finding(s) and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the Recipient is considered final and any changes to the Final Determination or sanction(s) that occur after the Notification of Outcome is sent.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by the Recipient.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX D: MODEL UNETHICAL RELATIONSHIPS POLICY**

### **EXPECTATIONS REGARDING UNETHICAL RELATIONSHIPS<sup>46</sup>**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). In reality, these relationships may be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. The Recipient does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the Recipient. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this Policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Resident Assistants (RAs) and students over whom the RA has direct responsibility. While no relationships are specifically prohibited by this Policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

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<sup>46</sup> This section is offered as an optional inclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations. Regardless, violation of this policy is a Human Resources/Employee Relations matter and should not be addressed under this resolution process unless the elements of the definition of harassment are met.

## **APPENDIX E: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of **risk factors** that escalate the potential for violence
- 2) A determination of **stabilizing influences** that reduce the risk of violence
- 3) A contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
- 4) The application of **intervention and management** approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.



Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,<sup>47</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>48</sup> Looking Glass,<sup>49</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>50</sup> Historical Clinical Risk Management (HCR-20),<sup>51</sup> and MOSAIC.<sup>52</sup>

The VRA is conducted independently from the Title IX process, informed by it, but free from pressure to result in a specific outcome. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT/CARE or threat team's member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

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<sup>47</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>48</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>49</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>50</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>51</sup> [hcr-20.com](http://hcr-20.com)

<sup>52</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

## **APPENDIX F: TITLE IX POLICY STATEMENT SAMPLE TEMPLATE**

Recipient adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. The Recipient does not discriminate in its admissions practices [except as permitted by law], in its employment practices, or in its educational programs or activities on the basis of sex/gender.<sup>53</sup> As a recipient of federal financial assistance for education activities, Recipient is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes [sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status].

Recipient also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by Recipient policy.

Any member of the institutional community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the Recipient community on the basis of sex is in violation of the [name of policy].

Any person may report sex discrimination (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by [indicate method].

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please visit [link] or contact the Title IX Coordinator.

Individuals who believe they have experienced sex discrimination, harassment, and/or retaliation in violation of Recipient policy should contact the following:

- **[Individual with Oversight for All Non-Discrimination]**  
Office Location  
Mailing Address  
Telephone:  
Email:

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<sup>53</sup> Insert other protected characteristics/reporting resources if this statement will be used to more broadly address discrimination beyond Title IX.

- **[Title IX Coordinator]**

Office Location  
Mailing Address  
Telephone:  
Email:

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, and/or the [appropriate state agency].

- **[State Non-Discrimination Entity]**
- **[EEOC Field Office]**
- **[OCR District/Field Office or appropriate office for each applicable agency]**

- **Assistant Secretary for Civil Rights**  
**Office for Civil Rights, National Headquarters**  
U.S. Department of Education  
Lyndon Baines Johnson Dept. of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
Fax: 202-453-6012; TDD: 800-877-8339  
Email: OCR@ed.gov

Within any Resolution Process related to this Policy, Recipient provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

Short/Blurb Format:

Recipient does not discriminate in its employment practices or in its educational programs or activities on the basis of sex/gender.<sup>54</sup> Recipient also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internally or externally. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please contact the Title IX Coordinator or the Assistant Secretary of Education within the Office for Civil Rights (OCR). [link]

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<sup>54</sup> Insert other protected characteristics/reporting resources if this statement will be used to more broadly address discrimination beyond Title IX.

## **APPENDIX G: ATIXA RECORD MAINTENANCE AND ACCESS MODEL POLICY**

### **Policy Scope:**

This policy covers records maintained in any medium that are created pursuant to the Recipient's [name of policy] and/or the regular business of the Recipient's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable state and/or federal law, including the Title IX regulations, FERPA, and/or the Clery Act/VAWA § 304. The Title IX Office controls the dissemination and sharing of any records under its control.

### **Types of Records Covered Under this Policy:**

Records Pertaining to the Resolution Process. These records include, but are not limited to:

- Documentation of notice to the institution including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation
- Documentation related to the Resolution Process
- The final investigation report
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal resolution records
- Notices of Outcome
- Records documenting that the Recipient's response was not deliberately indifferent
- Any other records typically maintained by the Recipient as part of the case file

Specific examples of records pertaining to the Resolution Process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to the processing of an investigation;

correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove the Respondent; correspondence with the parties; medical, mental health, medical, and forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the Resolution Process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

**Drafts and Working Files:** Preliminary drafts and “working files” are not considered records that must be maintained by the Recipient, and these are typically destroyed during the course of an investigation or at its conclusion. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

**Attorney Work-Product:** Communications from the Title IX Office or its designees with the Recipient’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

### **Record Storage:**

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in [database, digital and/or paper] format. The complete file must be transferred to the Title IX Office within fourteen (14) business days of resolution of the complaint (including any appeal), if the file is not already maintained within the Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the parties. Parallel records [should/should not] be maintained in the Office of Student Conduct and/or Human Resources, respectively [and should be maintained in accordance with the security protocols of those offices]. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Title IX Office [and in a separate aggregate annual Clery Act composite file, as well].

Recipient will maintain an access log of each case file, showing when and by whom it was accessed, and for what purpose.

### **Record Retention:**

All records created and maintained pursuant to the Policy must be retained indefinitely by the Title IX Office [in database, digital, and/or paper form] unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

### **Record Access:**

Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion [or via permission levels within the database] [or insert a list of the titles of employees who have permanently approved authorizations into policy or in a separately maintained document]. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant Recipient policies and procedures.

Student parties may request access to their case file. The Recipient will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of the recipient in the process (Complainant, Respondent, Hearing Decision-maker; Complainant's Advisor, etc.).



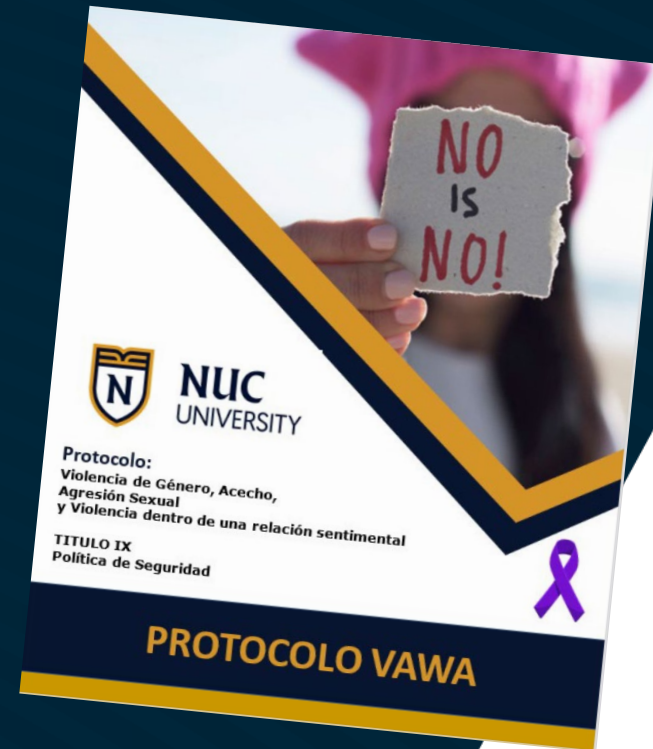
**Record Expungement:**

Insert any applicable expungement provisions here.

**Record Security:**

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored [in the Title IX Office, designated secure storage area, and/or with the campus law enforcement entity]. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file.

# Protocolo VAWA



*Directora Corporativa Asuntos Estudiantiles y Efectividad Institucional*  
*9/15/2021*



# Introducción



La Organización Mundial de la Salud (2003) define la violencia como el uso deliberado de la fuerza física o el poder, ya sea en grado de amenaza, contra uno mismo, otra persona, un grupo o comunidad, que cause o tenga muchas probabilidades de causar lesiones, muerte, daños psicológicos, trastornos del desarrollo o privaciones. La violencia se puede dividir en tipología; en el siguiente diagrama se puede conceptualizar la tipología de la violencia y su naturaleza.



Según OMS, 2002



# Contexto Legal



**Clery Act.** El 5 de abril de 1986, una estudiante de la Universidad de Lehigh, Jeanne Clery, de 19 años fue violada y asesinada en su dormitorio de la residencia universitaria. En su memoria se nombró la ley hoy conocida como Clery Act. Esta ley establece que toda institución de educación superior, colegios y universidades que reciben fondos de Título IV, divulgue las estadísticas de actos delictivos en sus facilidades y ofrezca información preventiva sobre la seguridad a la comunidad universitaria. La ley ha tenido enmiendas en los años 1992, 1998, 2000 incluyendo más exigencias a las instituciones, requiriendo procedimientos de prevención, intervención y protocolos de manejo de casos asociados a la violencia de tipo sexual en las facilidades, colindancias o zonas aledañas a la institución.



# Contexto Legal



**Violence Against Women Act. (VAWA)** es una ley federal que fue aprobada en 1994 y ratificada por el presidente Bill Clinton. Fue el resultado de muchos años de organización de grupos de mujeres. VAWA proporcionó financiación, protección legal e infraestructura para hacer frente a la violencia contra las mujeres. Con enmiendas posteriores en el 2000, 2005 y 2014.



# Contexto Legal



**Título IX.** Regulación federal que exige a las instituciones de educación superior el desarrollo de políticas institucionales responsivas al Título IX de las Enmiendas de Educación de 1972. Este título prohíbe la discriminación sexual, lo cual incluye la violencia sexual, en los programas y actividades de educación. Todas las escuelas públicas y privadas, distritos escolares, colegios y universidades que reciben fondos federales deben cumplir con Título IX. Todos los estudiantes están protegidos por el Título IX, sin importar discapacidad, nacionalidad extranjera, situación inmigratoria, u orientación o identidad sexual.



# Política Título IX

NUC University, en cumplimiento con las leyes y regulaciones de no discriminación, promueve un ambiente de bienestar integral en la comunidad universitaria, adoptando las disposiciones de Título IX para promover la educación y atender querellas de hostigamiento sexual, que presenten conductas tan severas, penetrantes y objetivamente ofensivas que efectivamente niega a una persona la igualdad de acceso al programa o actividad educativa de la institución.



# Procedimiento



Designar al menos, tres funcionarios distintos que lleven a cabo diferentes pasos del proceso de quejas del Título IX. Dos funcionarios adscritos al recinto o centro y el Coordinador Institucional de Título IX.



Promover durante el proceso de investigación, el respeto y apoyo a las víctimas y la preservación de los derechos del debido proceso tanto para la víctima como para el victimario.



Responder con prontitud a las personas que presuntamente son víctimas de acoso sexual.



Notificar a los estudiantes, empleados y otras personas sobre el proceso de querellas para la tramitación de informes y quejas sobre discriminación sexual, incluyendo el acoso sexual.







Ofrecer medidas de apoyo en respuesta a una denuncia o a una queja formal de acoso sexual, completando los referidos a otros servicios, según sea necesario.



# Procedimiento






-  Seguir un proceso de reclamación justo para resolver las acusaciones de acoso sexual cuando un miembro de la comunidad universitaria solicita una investigación o un Coordinador del Título IX decide en nombre del querellante que es necesario realizar una investigación.
-  Reconocer la intersección del Título IX, el Título VII y la ley FERPA, así como los derechos legales de los padres o tutores para actuar en nombre de los individuos con respecto a los derechos del Título IX, según aplique.
-  Prohibir expresamente las represalias contra los estudiantes u otro miembro de la comunidad universitaria por ejercer derechos en virtud del Título IX.
-  Divulgar la información de contacto del Coordinador del Título IX.



## Procedimientos para manejo de casos y querellas de violencia doméstica, acoso, agresión sexual y violencia dentro de una relación sentimental



-  Ley Pública 101-542 conocida como el Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act “Cley Act”.
-  Ley Pública 113-4 Violence Against Women Reauthorization Act of 2013 (VAWA).
-  Título IX y demás leyes federales; aunque otras leyes estatales podrían aplicar.

Este procedimiento es parte de la Política Institucional sobre Seguridad de NUC estableciendo el manejo institucional de los casos reportados. Toda querella interna será trabajada tomando como base la Política de Seguridad Institucional, los Protocolos, el Reglamento Estudiantil y el Manual de Empleado según aplique.



# Procedimientos para manejo de casos y querellas de violencia doméstica, acoso, agresión sexual y violencia dentro de una relación sentimental

**Casos de violencia doméstica.**

**Casos de violencia en una relación sentimental**

**Casos de acoso**

**Casos de agresión sexual sexual**





## Procedimientos para manejo de casos y querellas de violencia doméstica, acoso, agresión sexual y violencia dentro de una relación sentimental



Pasos de la investigación	Tiempo Estipulado
Repuesta al referido o querella: <ul style="list-style-type: none"><li>✓ Contacto a la alegada víctima.</li><li>✓ Activación del Protocolo de seguridad, si el agresor interno o externo a la comunidad universitaria.</li></ul>	2 días o 48 horas
✓ Completar y proveer el borrador de la investigación a las partes involucradas, según sea solicitado.	12 días
✓ Tiempo para recibir la retroalimentación de las partes.	8 días
✓ Completar y emitir el reporte final del caso.	8 días

## Campañas informativas y de prevención



Charlas y talleres de capacitación dirigidos a la comunidad universitaria.



Opúsculo institucional que contendrá información relevante a definiciones y estrategias de prevención en el recinto. También explicará brevemente cómo buscar ayuda en la institución y externa. a) Promoción trimestral de opúsculo en la población de estudiantes de nuevo ingreso.



Campaña en los medios de comunicación masiva sobre orientaciones a víctimas potenciales.



Se administrará anualmente una encuesta estudiantil sobre seguridad de los recintos y sobre la efectividad de las campañas informativas y de prevención.



Congreso anual para hombres (Agresores potenciales).



Divulgación anual de la política de Seguridad a toda la comunidad universitaria.



# Coordinador de Título IX y Personal Institucional de apoyo

NUC University cuenta con Yamaira Serrano como Coordinadora Institucional de Título IX, ubicada en la Oficina de Recursos Humanos. Tel 787-780-5134 Ext. 4182 disponible también en [querella@nuc.edu](mailto:querella@nuc.edu). El personal de apoyo para el manejo de las situaciones descritas en este documento será capacitado semestralmente para la prevención y manejo de los casos. La coordinadora de Título IX en colaboración con el personal de apoyo del recinto y de las Oficinas de Asuntos Estudiantiles será responsable de las campañas de prevención y divulgación de información.

# Glosario

Empleado	Toda persona empleada en el NUC ya sea empleado regular, probatorio, transitorio, de confianza o por contrato.
Lugar de trabajo	Cualquier espacio en el que una persona realiza funciones como empleado o empleada y los alrededores de ese espacio.
Relación de pareja	Relación entre cónyuges, ex cónyuges, personas que cohabitan o han cohabitado, las que sostienen o han sostenido una relación consensual íntima, las que han procreado un hijo (a) entre sí y las que sostienen una relación de noviazgo. Incluye las relaciones entre personas del sexo opuesto y personas del mismo sexo.
Cohabitar	Sostener una relación consensual similar a la de los cónyuges en cuanto al aspecto de convivencia, independientemente del sexo, estado civil, orientación sexual, identidad de género o estatus migratorio de cualquier persona involucrada en la relación de pareja.
Persona que incurre en actos de violencia doméstica	Persona que emplea fuerza física o violencia psicológica o persecución contra su pareja.
Persecución o acecho	Mantener a una persona bajo vigilancia constante o frecuente con presencia en los lugares inmediatos o relativamente cercanos al hogar, escuela, trabajo o vehículos en el cual se encuentra la persona, para infundir temor o miedo en el ánimo de la persona prudente y buen uso de la razón.
Peticionado	Toda persona contra la cual se solicita una orden de protección.
Grave daño emocional	Surge cuando como resultado de la violencia doméstica, la persona que es objeto de la conducta manifiesta de forma recurrente una o varias de las siguientes características: miedo paralizador, desesperanza, sentimientos de frustración, sentimientos de inseguridad, des validez, baja autoestima y otras conductas similares, cuando sea producto de actos u omisiones reiteradas.



# Glosario

Intimidación	Toda acción o palabra que manifestada en forma recurrente tiene el efecto de ejercer una presión moral sobre el ánimo de una persona, la que, por temor a sufrir algún daño físico o emocional en su persona, sus bienes o en la persona de otra o de otro, es obligada a llevar a cabo un acto contrario a su voluntad.
Discriminación sexual	Discriminación basada en el género.
Orden de Protección	Todo mandato expedido por escrito bajo el sello de un tribunal, en el cual se dictan medidas a una persona que incurre en actos de violencia doméstica para que se abstenga de incurrir o llevar a cabo los mismos.
Víctima/sobreviviente	Cualquier persona que haya sido objeto de actos constituidos de violencia doméstica.
Violencia doméstica	El empleo de violencia física, violencia psicológica sexual, intimidación o persecución contra una persona por parte de su pareja para causarle daño físico a sus bienes o a terceras personas para causarle grave daño emocional.
Violencia psicológica	Un patrón de conducta constante ejercida en deshonor, descrédito o menosprecio al valor personal, limitación irrazonable al acceso y manejo de los bienes comunes, chantaje, vigilancia constante, aislamiento, privación de acceso a alimentación o descanso adecuado, amenazas de privar de la custodia de los hijos (a), destrucción de objetos preciados por la persona.
Patrono	Toda persona natural o jurídica que emplee uno o varios empleados, obreros, trabajadores y al jefe, funcionario, gerente, oficial, gestor, administrador, superintendente, capaz, mayordomo, agente o representante de dicha persona natural o jurídica.
Violencia física	Es cualquier acto que cause daño no accidental, usando la fuerza física o algún objeto, tipo de arma, o a terceros que pueden provocar lesiones internas, externas o ambas.



# Glosario

Violencia o agresión sexual	Utilizar la violencia al realizar acercamientos sexuales y tratar a la pareja como objeto sexual. Exigir relaciones sexuales sin el consentimiento ni deseo de la pareja. Obligar a la pareja a prácticas sexuales no deseadas y agredirla en sus partes sexuales.
Violencia Doméstica	Se define como un delito de violencia cometido por un esposo(a) o pareja actual o pasado de la víctima, por una persona con quien la víctima comparte un hijo(a), por una persona que vive o ha vivido con la víctima como esposo(a) o por cualquier otra persona en contra de una víctima adulta o joven que esté protegida de los actos de esa persona bajo las leyes de violencia doméstica de la jurisdicción.
Acecho	Se define como “conducta mediante la cual se ejerce una vigilancia sobre determinada persona, se envían comunicaciones verbales o escritas no deseadas a una determinada persona, se efectúan actos de vandalismo dirigidos a determinada persona, se hostiga repetidamente mediante palabras, gestos o acciones dirigidas a intimidar, amenazar o perseguir a la víctima o a miembro de su familia”. También se define como participar en un tipo de conducta dirigida a una persona en específico que le causaría a una persona razonable sentir temor por su seguridad o la seguridad de otros o sufrir angustia emocional sustancial.
Agresión Sexual	El asalto o agresión sexual y el abuso sexual es cualquier tipo de contacto sexual no deseado. Todos tienen el derecho de decidir lo que quieren y lo que no quieren hacer sexualmente. No todos los asaltos sexuales son “ataques” violentos. Forzar o presionar a una persona a hacer algo que no desean o que no hayan consentido es un asalto sexual.
Violencia Dentro de una Relación Sentimental	significa violencia cometida por una persona que está o ha estado en una relación social de naturaleza romántica o íntima con la víctima y donde la existencia de tal relación se determinará basada en una consideración de los siguientes factores: La duración de la relación, El tipo de relación, La frecuencia de la interacción de las personas envueltas en la relación.







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