



TITLE IX ADVISOR TRAINING

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Objectives:

- Review Role
- Increase Familiarity with Key Definitions
- Review Important Considerations
- Increase Familiarity with Key Processes
- Questions & Answers

Key Definitions

WHAT IS TITLE IX?

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

PARTIES TO A TITLE IX CASE

Complainant

- ❖ An individual who brings forth a report of a violation against whom a possible violation occurred. An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

- ❖ An individual accused of a violation. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

CONSENT

- Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- Consent can be withdrawn at any time during a sexual activity by expressed word or action.
- Consent to some activity cannot be presumed consent to other activity.

Title IX Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
 - Conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
 - Unwelcome conduct that a reasonable person would determine is “so severe, pervasive, and objectively offensive” that it effectively denies a person equal access to the school’s education program or activity (includes employment); or
 - Sexual assault (as defined in the Clery act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

What actions constitute an infraction?

- ▶ Preferential treatment or promises of preferential treatment in exchange for submitting to sexual conduct
- ▶ Jokes, discriminatory displays/publications in the workplace, unwelcome sexual advances, propositions, comments, etc.
- ▶ Non-consensual sexual intercourse
- ▶ Non-consensual sexual contact
- ▶ Sexual exploitation (voyeurism, taking pictures, distributing pictures, prostitution, engaging in sexual relations while knowingly infected with HIV/STD w/o informing the other person, administering date rape drugs, etc.)
- ▶ Relationship or intimate partner violence
- ▶ Stalking

Title IX Sexual Assault

As defined in the Clery Act, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- A. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- B. B. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. C. Rape: The 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 the consent of the victim.
- D. D. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

Title IX Interpersonal Violence

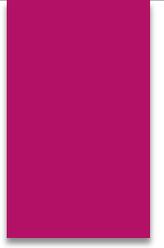
Includes the definitions of Domestic Violence and Dating Violence as defined in the Violence Against Women Act (VAWA) Domestic Violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner.

- ▶ Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.
- ▶ Dating Violence is violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include “digital abuse”, the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.

Title IX Stalking

- ▶ As defined in the Violence Against Women Act (VAWA), stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

Roles & Important Considerations



BARTON'S ROLE:

Once there is knowledge of sexual harassment/sexual misconduct:

- 1). Take immediate and appropriate steps to **investigate** what occurred
- 2). Take prompt and effective action to:

Stop the harassment

Remedy the effects

Prevent the recurrence

This is regardless of whether or not the Reporting Party makes a formal complaint or asks the school to take action. Title IX Coordinator can also make formal complaint in lieu of the Complainant.

Advisor Role:

- ▶ Serves to advise and support individuals involved in a potential Title IX infraction.
 - ▶ This may be:
 - ▶ a student or an employee
 - ▶ Reporting Party (Complainant) or Responding party (Respondent)
- ▶ Providing support (phone calls and/or meetings throughout the process).
 - ▶ Attend all meetings with the party that are called by Title IX personnel:
 - ▶ Title IX Coordinator, Investigators, Hearing Officer
 - ▶ Prior to any hearing that is held, the advisor is a silent and non-participating presence who solely observes and provides support during the investigation process (the advisor only speaks to the party by whom they were invited (complainant or respondent)).

Advisor Role:

- ▶ Review evidence and investigation reports
- ▶ Cross-Examine parties and witnesses at live hearings (questions provided by claimants and respondents—advisors are not responsible for developing questions asked during a live hearing)
 - ▶ Can only ask relevant questions
 - ▶ Must be mindful of rape shield (prevents you from asking questions about past sexual behavior unless):
 - ▶ Information is offered to prove that someone other than the responding party is responsible.
 - ▶ Information is offered to prove that the reporting party gave consent. For example, a non-verbal gesture that has been used in the past.

Advisor Role:

- ▶ If protected records are needed—the parties must provide signed, written permission for it to be used.
- ▶ Decision maker/hearing officer will approve all questions before they can be answered during the hearing.
- ▶ Parties must attend hearing. Otherwise, all statements made by absent or uncooperative parties must be excluded (from the final determination).
- ▶ If a party doesn't show to the hearing, the advisor can still be questioned.

What Doesn't a Title IX Advisor Do?

- ▶ Act as legal counsel
- ▶ Speak on behalf of the complainant or respondent
- ▶ Ask cross examination questions not requested by the complainant or respondent
- ▶ Determine finding of responsibility for any other College policy

Important Considerations:

- ▶ Important to be objective and serve the party with their best interest in mind without prejudice and partiality.
 - ▶ Must set aside impressions or biases you have from movies, TV, news, other cases in which you have been involved, and personal opinions.
- ▶ Everyone involved in a Title IX hearing must support an objective evaluation of the evidence.
 - ▶ Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding.
 - ▶ Before you serve in any Title IX case, you must ensure that you do not have a Conflict of Interest.

Important Considerations:

- ▶ Know and reinforce (compliance with) College policy (contact orders, no retaliation, responding to meeting requests, process, etc.)
- ▶ The College uses the preponderance of evidence standard (based on the preponderance of evidence, it is more likely than not that the respondent is responsible, is not responsible or there is no finding).
- ▶ The College applies a presumption of innocence (the respondent is not responsible) relative to the alleged violation of Title IX.

Conflict of Interest Examples:

- ▶ A family relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding.
- ▶ A personal relationship with a party, an advisor, or a witness that leads you to give that individual advantage or disadvantage in the proceeding.
- ▶ A business relationship with the parties, their advisors, or anyone who may serve as witnesses in the proceeding.
- ▶ Giving any financial assistance or gifts to a party or a witness in the proceeding.
- ▶ Receipt of any financial assistance or gifts from a party or a witness in the proceeding.
- ▶ Prior knowledge about a party outside of what is learned in the proceeding that bears on your decision of responsibility.

Ethical Considerations:

- ▶ Do not rely on stereotypes (“A lady wouldn’t put herself in that position.” “Real men are aggressive.”, etc.).
- ▶ Do not make credibility determinations based solely on:
 - ▶ sex or gender of a party (“He was a boy scout so he is a man of honor even though her version of the events seem plausible.”)
 - ▶ a person’s status as a complainant or respondent (“If this person would go so far as to file a formal complaint, than the respondent must have done it.”).
- ▶ Do:
 - ▶ Treat every participant and witness with respect

Key Processes

Formal Complaint:

- In circumstances when a complainant wishes the College to take action under this policy, they must submit a formal, written complaint. The formal complaint is a document submitted by the complainant alleging Title IX Sexual Misconduct under College policy and indicates a request by the complainant that the College investigate the allegations.

Formal Complaint:

- Formal complaints will be investigated unless:
 - The allegations in a formal complaint do not meet the definition under Title IX Sexual Misconduct under the policy or did not occur within the College's Educational Program or Activity
 - The Complainant withdraws the request to investigate
 - The Respondent is no longer enrolled or employed by the College
 - We have no control over the respondent

No Contact Orders:

- As a general rule, a No-Contact order is put into place immediately once a report is filed:
 - *As a standard practice, when a report is made, we ask that both parties refrain from any contact with the other. Therefore, effective immediately, a "No Contact Order" is being issued. You should therefore have no contact, for any reason at any time, with _____ from this point forward unless the "No Contact Order" has been lifted by my office and you have been contacted directly by me accordingly.* Be advised that you are to have no **direct** or **indirect** contact with _____, be it written, verbal, electronic, physical, or otherwise. Direct contact refers to any contact initiated by you. Indirect contact refers to any contact initiated toward _____ by a third party (another individual or individuals) on your behalf. **Because you live in the same dorm, someone from the Resident Life department will be reaching out to you today as well to** discuss relocation. This no contact order will then extend to _____ dorm and you should therefore not enter it for any reason once the relocation takes place, regardless of which one of you will be relocated. Any violation of this no contact order will result in serious consequences. Further, I will be issuing similar instructions to _____, directing _____ to have no direct or indirect contact with you, nor to enter your dorm for any reason.

Investigation:

- Title IX Coordinator conducts a “little i” investigation.
- After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the investigator will:
 - Meet with the complainant and respondent with their chosen advisors and any reported witnesses
 - Gather any evidence provided by involved parties
 - Create an investigation report outlining the information provided in the course of the investigation

Investigation:

- Investigators will provide advance notice to complainants and respondents in advance of any subsequent interviews, meetings, or requests for meetings.
- Both the complainant and respondent may select an advisor to participate.
 - The Title IX advisor may be an attorney.
 - The College will provide a Title IX advisor upon request to a complainant or respondent, at no cost.
- Once the investigation is concluded, the investigators will provide an electronic or hard copy format, to the complainant and respondent and their respective Title IX advisors, all evidence directly related to the allegations with at least ten (10) College business days to inspect, review, and respond prior to the hearing being established.

Informal resolution process

- ▶ College may offer once a formal complaints is received, except when it's alleged an employee harassed a student
- ▶ Must have signed agreement by both parties
- ▶ Either party can withdraw from an informal resolution process prior to agreeing to a resolution and resume the grievance process with respect to the formal complaint.
- ▶ Title IX Coordinator may deny request depending on factors involved.

Retaliation

- ▶ Expressly prohibited against any individual for exercising Title IX rights.
- ▶ A complaint about retaliation will be handled as Title IX infraction.
- ▶ Includes charging student with other code of conduct violations arising out of Title IX for the purpose of interfering with any right or privilege secured by Title IX.

Q&A