

2026 Title IX Administrator Annual Training

Deputy Coordinators, Decision Makers, Appeal Officers, Investigators,
Advisors, Confidential Resources, and Support Staff

Davis & Elkins College & West Virginia Wesleyan College
Amy Kittle, Title IX Coordinator

D&E and WVWC EMPLOYEES

While we wait,
please scan the
QR code to
provide helpful
information
about future
trainings.

Future Training Planning Questions



Introductions: Your name, role, primary institution, and an image below with a description of why you selected it.



Resources, Templates, and Supplemental Trainings

- Google Drive for WVWC
- Teams for D&E
- Please do not put sensitive information in these locations!! Use Guardian for all case file and related information.

Policy Updates

- 1 New Deputies: Taran Woford (D&E and WVWC); Alison Whitehair (WVWC); Becky Swisher (WVWC)
- 2 Updated Statement of Nondiscrimination
- 3 Changed the definition of fondling to include criminal sexual contact to reflect changes at the federal level

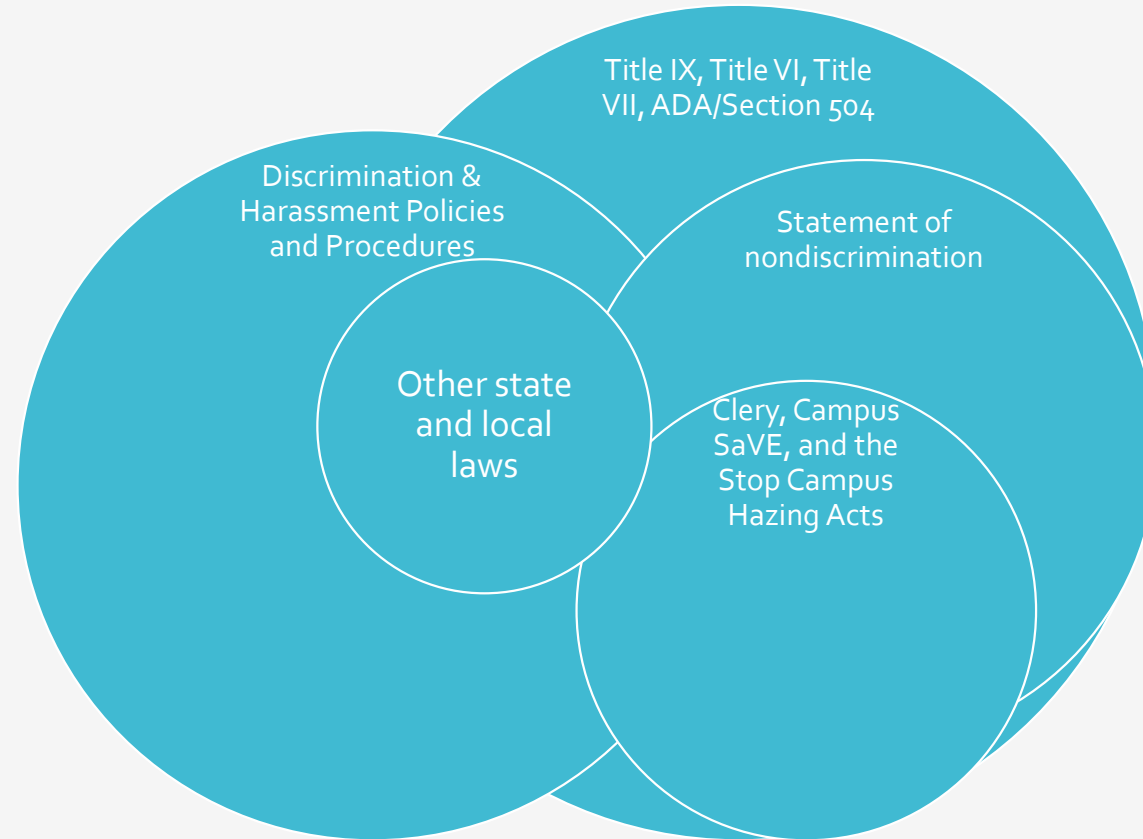


Regulations Update

- No new updates YET.
- OCR and DOJ are the enforcement agencies for Title IX, Title VI, Section 504, and the ADA.
- EEOC will no longer engage in enforcement activities against disparate impact under Title VII.
- OCR/DOJ will no longer engage in enforcement activities for disparate impact under Title VI.
- So far none of these changes are regulatory, and the ones that will be did NOT go through a Notice and Comment period.
- Anticipated new Title IX law that will specify that Title IX ONLY prohibits discrimination and harassment on the basis of sex.
- BPJ vs. West Virginia and the implications.

CHAOS

The Rules





Stop, Prevent, and Remedy

When all else fails.

Statements of nondiscrimination

West Virginia Wesleyan College does not discriminate on the basis of race, sex, color, national or ethnic origin, creed, ancestry, marital/family status, veteran status, sexual orientation, sex characteristics, pregnancy, religion, age, disability or blindness, or any other characteristic protected by local, state or federal law, to include Title VI, Title VII, Title IX, Section 504, and the Age Discrimination Act, in the administration of its admission policies, scholarship and loan programs, educational programs, employment, athletic programs, co-curricular activities, or other College administered programs. WVWC's nondiscrimination policies may be accessed at <https://www.wvwc.edu/title-ix/>. For inquiries about the application of these laws in WVWC's programs activities or to file a report, contact the Title IX Coordinator at titleix@wvwc.edu or 304-621-1316.

Davis and Elkins College does not discriminate on the basis of race, sex, color, national or ethnic origin, creed, ancestry, marital/family status, veteran status, sex characteristics, pregnancy, religion, age, disability or blindness, or any other characteristic protected by local, state or federal law, to include Title VI, Title VII, Title IX, Section 504, and the Age Discrimination Act, in the administration of its admission policies, scholarship and loan programs, educational programs, employment, athletic programs, co-curricular activities, or other College administered programs. D&E's nondiscrimination policies may be accessed [here](#). For inquiries about the application of these laws in D&E's programs activities or to file a report, contact the Title IX Coordinator at 100 Campus Drive, Elkins, WV detitleix@dewv.edu, or 304-621-1316.

Laws, Regulations, Sub-Regulatory Guidance, Case Law

Title IX



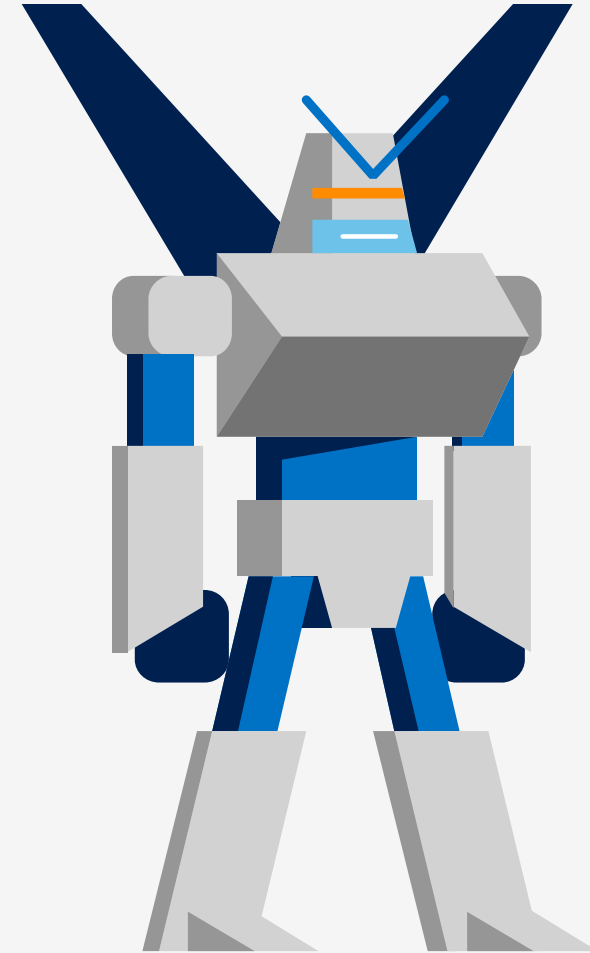
Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits **sex discrimination in education and in education employment.**

- *"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."*

Reporting Obligations

Anyone who has witnessed or is aware of an act of Prohibited Conduct is encouraged to report.

- 1 EVERYONE is required to report the abuse or neglect of a minor.
- 2 Unless otherwise noted, all Employees must report incidents of Prohibited Conduct under our Discrimination and Harassment Policies to the Title IX Coordinator and all other crimes to the Office of Public Safety/Safety & Security.
- 3 Counselors and Chaplains are **not** required to report Prohibited Conduct or crimes (unless it is child abuse or threats of imminent harm to self or to others).
- 4 Others who are designated as confidential, but who do not have a legal privilege (e.g. Director of CCIA, Ombudsperson) are **not** required to report Prohibited Conduct to the Title IX Coordinator, but are **required** to report de-identified Clery crimes to the Director of Public Safety/Safety & Security.



Notice

- Actual Notice: when a report is made to the Title IX Coordinator or an Official with Authority. An Official with Authority is defined as someone who has the authority to institute corrective measure on behalf of the College. The list of Officials with Authority is included in an appendix to our policies and procedures. Actual Notice triggers an institution's duty to respond in matters of Title IX Sexual Harassment.
- Constructed Notice: when a report is made to a Responsible Employee or in instances in which a school did know or should have known about prohibited misconduct. Constructed Notice triggers an institution's duty to respond to all forms of discrimination and biased based harassment that is not Title IX Sexual Harassment.

Privacy, Confidentiality, and Anonymity.



Privacy Considerations

- All records generated through the Policy and Procedures on Discrimination, Harassment, and Title IX Sexual Harassment are subject to consideration under FERPA, employment law, and institutional record retention and keeping policies.
- Institutions are prohibited to restrict complainant's and respondent's ability to discuss the allegations under investigation or to present evidence. Although the parties are not immune from legal claims of defamation.
- Retaliation, intimidation, and witness manipulation are prohibited and should be addressed by the institution.

Bias and Conflict of Interest

- All Title IX Administrators participating in a resolution process must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants and respondents generally. If an acting Title IX Administrator has concerns that they cannot conduct a fair or unbiased process, they must report those concerns to the Title IX Coordinator.

Bias

One's gender, current or past work history, support or opposition to particular causes or political affiliations do not, in and of themselves indicate bias.

- The Title IX Coordinator signing a complaint is not an act of bias.
- Participating in an emergency removal process is not act of bias unless the knowledge presented in the process biases the employee.
- Advisors may not serve for a complainant or a respondent *in the same case*.

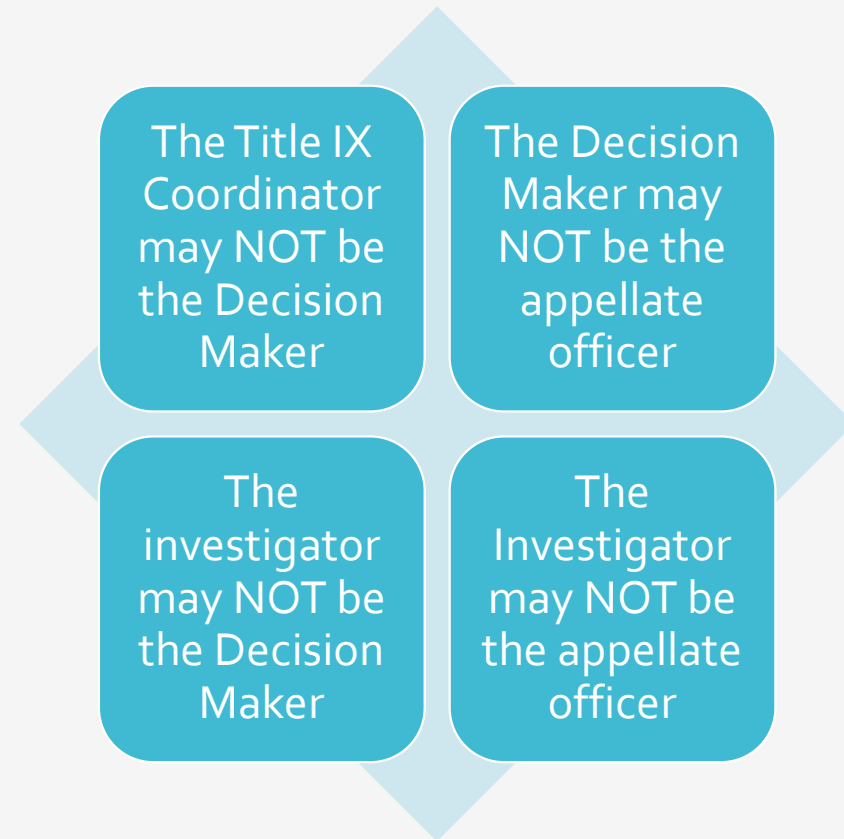
Is it Bias?

- The investigator, a faculty member, has had a student respondent in class three times. The faculty member is fond of the student respondent and feels that they are an honest trustworthy student who makes good decisions.
- A Decision Maker was overheard making statements that *may be* perceived as anti-trans last semester. The DM is now asked to make a decision in a case with a trans person as the complainant.
- An investigator, a faculty member, is asked to investigate a case in which the Complainant is a fellow faculty member.
- A student complainant is the ex-boyfriend of the Title IX Coordinator's child.
- The Decision Maker in a case is also the Provost and did not grant a grade appeal that is now an element in an investigation.

Think Pair Share

- Take a moment to think about a time when bias might have impacted a decision you made in the work place.
- Identify strategies you or others might use to avoid biased based decision making.
- Pair up with a neighbor (or two or three) and discuss.
- Share with the larger group.

Conflict of Interest



Documentation Considerations

- 1 All case notes, files, documents, evidence, and such should be shared in Guardian. The entire case file from report to closure should be stored in Guardian.
- 2 Once a case is closed, do not keep related files on your computer.
- 3 If you are an appeal officer, please send ALL relevant information to the Title IX Coordinator for inclusion in the Guardian file once the appeal window/process has concluded.
- 4 Do *not* use the shared Google Drive or the Teams Channel to share sensitive information.



Notes and Other Documentation

Interviews are to be recorded by the INVESTIGATOR. Once an interview summary or transcript has been “approved” by a party, please destroy any interview notes.

If you are making notes in the case (e.g. Guardian) or sending another notes or documentation, please consider the following:

- Prioritize clarity, accuracy, and concision. Only include the relevant information.

- The purpose of notes is to keep track of decisions and discussions that can be referenced in the future.

- Be factual and be aware of biased language.

- Follow up emails to in person discussions are an important kind of documentation.

- Imagine these notes are part of a records request and will be reviewed by the person about whom you are writing and/or their defense attorney.

Scope of Programs and Activities

All of the College's operations, including, but not limited to, "traditional educational operations, faculty and student housing, campus transportation services, campus dining services, the bookstore, and any other commercial activities."

Title IX Jurisdiction

In order for Title IX to apply, the alleged conduct must have occurred in a College or University program or activity *in the United States*. There must be a nexus between conduct and the sponsored program or activity.

Discrimination & Harassment

Sex-Based Discrimination

- ✓ Sexual Harassment
- ✓ Title IX Sexual Harassment
 - ✓ Quid Pro Quo
 - ✓ Hostile Environment
 - ✓ Sexual Assault
 - ✓ Dating/Domestic Violence
 - ✓ Stalking
 - ✓ Retaliation



We use this framework for other forms of biased based discrimination and harassment as well.

Title IX Sexual Harassment

- Defined in our policy and the 2020 regulations as the following conduct that occurs on the basis of sex:
 - Quid Pro Quo harassment
 - Sexual Harassment that is severe, pervasive, and objectively offensive
 - Sexual Assault
 - Dating/Domestic Violence
 - Stalking
 - Retaliation

What about off campus sexual harassment?

- Did the Title IX Sexual Harassment occur at a an off campus apartment or location not controlled by the institution or a recognized organization?
- Did the Sexual Harassment occur in another country?

☐ No, Title IX does NOT apply.

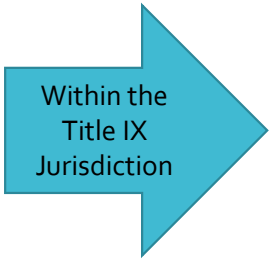
What about off campus Title IX Sexual Harassment?

- Did the harassment occur as part of the institution's educational program or activity?
- Did the harassment occur on a property owned or controlled by the College or a recognized student organization?

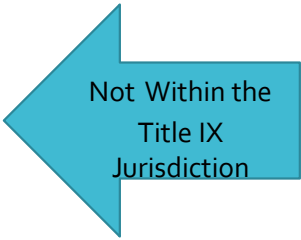
☐ Yes, Title IX Applies.

While Title IX may not apply to incidents that occur off campus or in another country, the Policy and Procedures on Discrimination, Harassment, and Title IX Sexual Harassment, Student Codes of Conduct, and Employee and Faculty Handbooks ***STILL*** apply.

The institution is still required to remedy any on-campus effects the misconduct might have cause.



Title IX Sexual Harassment (Process A)	Non-Title IX Sexual Harassment (Process B)
Sexual harassment	Sexual harassment
Sexual assault	Sexual assault
Dating violence	Dating violence
Domestic violence	Domestic violence
Stalking	Stalking
	All other policy violations: discrimination and harassment based on a protected identity



Break Time



Roles in the process



Title IX Coordinator: Oversees the process, ensure federal compliance, and that policy and procedures all followed; issues all formal correspondence and notice related to a process

Deputy Coordinators: Depending on the respondent classification, they may be a hearing chair, decision maker, or an appellate officer; may also act as the Title IX Coordinator

Investigator: the person or people who are neutral fact gatherers of evidence and responsible for drafting and finalizing the investigation report

Advisor: a person who assists complainants or respondents and understanding the policies and procedures and aid them in their decision making throughout the process; advisors have a role in live (Process A) hearings

Advisors May Be

- An advisor of choice (The advisor is chosen by the party and entitled to accompany the party to all meetings, interviews, hearings, etc)

OR

- A College appointed advisor (This advisor may accompany by the party throughout the entire process; however, unless requested, an advisor will only be appointed if the party has not selected on by the time of a “live” (Process A) hearing

Advisor Requirements

- Advisors of choice may be family, friends, roommates, faculty, staff, attorneys, or anyone else
- Advisors may not advise on both “sides” of the same complaint or in the same case
- Must be transparent about availability and any possible conflicts of interests or commitments
- Advisors may not be a confidential employee or resource

Let's talk about advisors who may also be witnesses.

The Advisor can

- Accompany the advisee through all phases of the resolution process and explain each step of the process.
- Assist the advisee in understanding the Notice of the Investigation, allegations, and relevant policy.
- Help the advisee to decide about whether to file a formal Title IX sexual harassment complaint or to appeal the dismissal of a formal complaint.
- Help the advisee think through options, such as initiating or cooperating with an informal resolution.

The Advisor must

- Sign a confidentiality agreement
- Maintain decorum during interviews, meetings, and if Process A, hearings
- Conduct cross-examination in “live” Process A hearings.

The Process



Process A (Title IX Sexual Harassment)

Title IX receives report

Reach out to reported victim with supportive measures and explain the grievance process

If no formal complaint is filed, the matters is resolved.

If a formal complaint is filed, there is an opportunity for dismissal and appeal.

If the complaint is not dismissed, the Title IX Coordinator will issue a notice of investigation that includes the allegations.

An investigator will be assigned and an investigation will be conducted.

Both complainants and respondents will be able to review and comment on the investigation report at least ten days prior to the report being finalized.

Both complainants and respondents will have at least ten days to review all evidence prior to a hearing.

A live hearing is held

Informal resolutions are possible; must be requested in writing and agreed upon by both parties and the Title IX Coordinator

Incidents in which there is a student complainant and an employee respondent may NOT be resolved informally

A decision is made; both parties have the right to appeal

- Requires a formal complaint
- A hearing during which each party will have an advisor responsible for questioning
- A decision will be rendered by the appropriate Decision Maker (Deputy Coordinator)
- The decision is appealable

An informal resolution is possible at any stage of the process, so long as it is requested in writing and the parties and College agree.

Formal Complaint

Process A

Is a document (including an electronic submission) filed by a complainant with a signature or signed by the Title IX Coordinator alleging Title IX sexual harassment in a College education program and requesting initiation of Title IX resolution/grievance procedures.

In instances in which I have met with the Complainant and reviewed supportive measures and our policies and procedures, I typically require formal complaints in writing via an official email.

Formal complaints

Process A

- The complainant must be a current member of the campus community or attempting to participate in an institution's education program or activity at the time of the Formal Complaint.
- Third-parties may not file formal complaints on the behalf of another.
- In rare cases, the College may move forward without a formal complaint (aka, the Title IX Coordinator signs the complaint) if there is additional independent corroborating information of the misconduct reported such as other reports involving the same party or pattern of assault or abuse, a history of arrests or violence, use of a weapon, or other relevant evidence.

Formal complaint signed by the Title IX Coordinator

- Must consider the reported victim's wishes and must be a "reasonable" decision "in light of the known circumstances."
- Must take into account whether or not the alleged misconduct was that of an employee, part of a pattern of behavior by a respondent, egregious or violent in nature, or other similar factors.
- Must take into consideration of the institution's duty to respond based on the requirements of which law or rule governs the misconduct.

Formal Complaint

Process A

There **must** be a formal written complaint to trigger an institution's grievance process that includes the following

- Options for an informal resolution
- An investigation
- A live hearing
- Rights to appeal

Dismissal of a Formal Complaint

May occur upon receipt, after an initial interview with the reported victim, or during an investigation, but before a hearing

Must be provided simultaneously in writing to both parties

May be appealed by either party

Dismissals under Title IX

Process A



Mandatory

- The alleged behavior did not occur in the United States
- The alleged behavior did not occur within the College's/University's programs or activities
- The complainant is not participating or attempting to participate in the College's/University's programs or activities

Discretionary

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any of the allegations
- The Respondent is no longer enrolled or employed by the College Specific circumstances limit our ability to gather evidence sufficient to reach a determination regarding the alleged behavior
- (Dismissals under Process B are Discretionary.)

A note about the dismissal of a formal complaint...



Supportive measures are still offered.

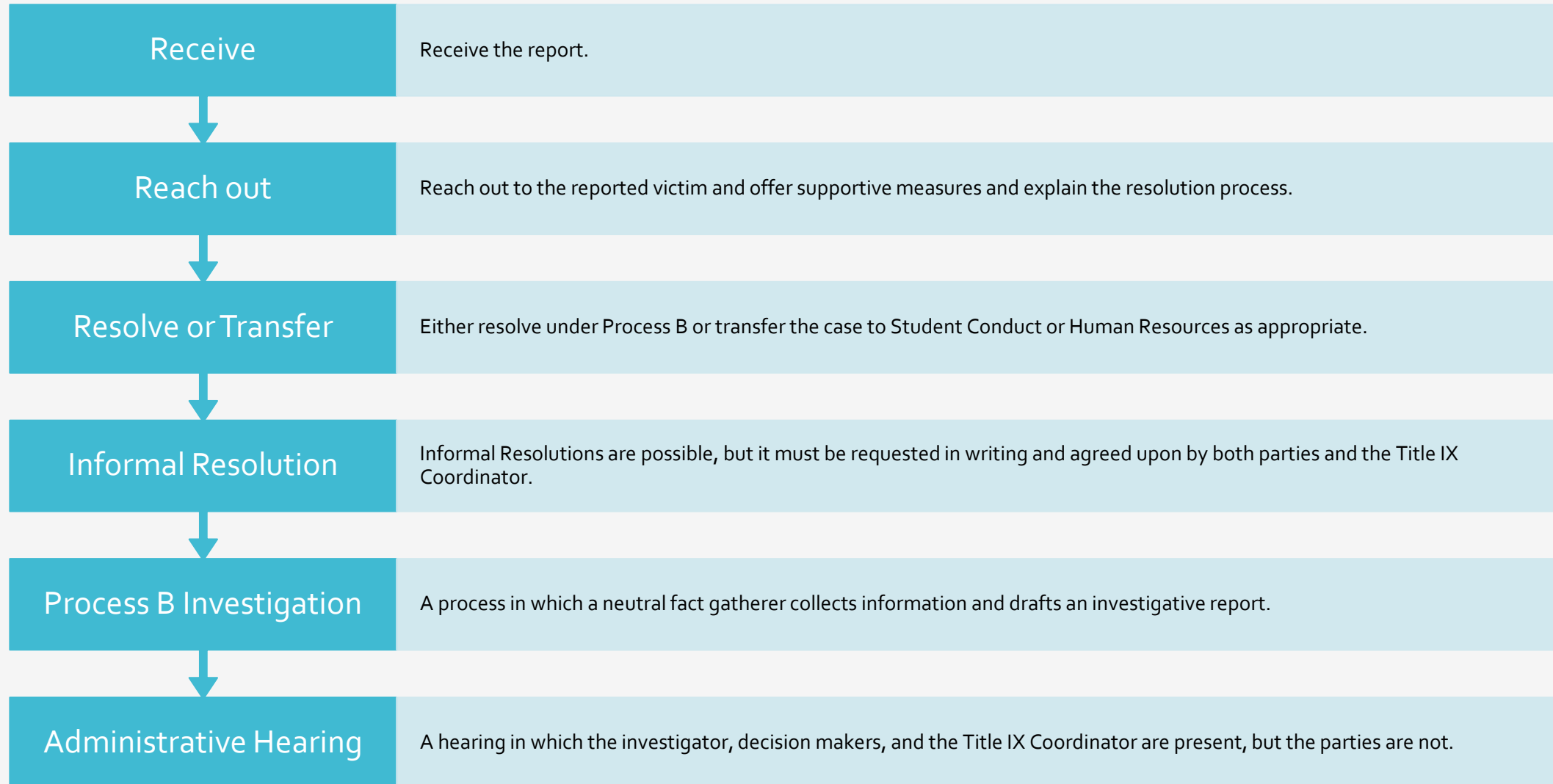


The dismissal can be appealed by a complainant or a respondent.



If appropriate, the misconduct will still be investigated and addressed under another process.

Process B



Supportive Measures

Designed to restore or preserve equal access to the institution's programs and activities without unreasonably burdening the other party. This includes measures intended to protect the safety of all parties and/or the campus community.

Supportive Measures

Non-disciplinary and non-punitive

Individualized

Offered as appropriate and reasonably available

Without fee or charge

Available to both parties regardless of whether or not a formal complaint is filed

Supportive Measures Examples

Counseling

Extensions of
deadlines or other
course related
adjustments

Modifications to
class or work
schedules

Campus escort
services

No Contact
Orders**

Changes in work
and housing
locations

Leaves of absence

Increased security
or monitoring of
certain campus
areas

Interim Measures

May still be implemented if (and only if)

- An emergency removal process that includes an individualized safety and risk analysis that determines if there is an immediate threat to the **physical** health or safety to campus community members *arising from the allegations of sexual harassment* is implemented
- The purpose is to protect the physical health and safety of impacted individuals and not to penalize a respondent while the grievance process is pending.
- Students must be given immediate notice and an opportunity to question decision of removal or other punitive actions.
- Employees may still be placed on administrative leave during the grievance proceedings.

Informal Resolutions

A voluntary process, requested in writing, that resolves formal complaints in a way other than a hearing that is agreed upon by both parties and the College.

Informal resolutions

- A formal complaint must have first been filed with Title IX Sexual Harassment is alleged.
- The parties must voluntarily agree to participate in writing.
- The parties must be informed in writing how the process will work and the possible consequences for participating which includes information about how the records will be maintained or could be shared.
- The parties must be allowed to withdraw from an informal resolution up until it is finalized.

Informal resolutions may not be implemented to resolve allegations that an employee engaged in Title IX sexual harassment of a student.

Investigations

A fair and impartial process conducted by the institution to collect evidence (inculpatory and exculpatory) sufficient for a decision maker to determine whether the misconduct occurred.

Investigation Overview

- Trained investigator(s)
- Fair and impartial (evidence gathering, not fact finding)
- Written Notice of Allegations (Amended as needed)
- Ensure investigation participants have advanced written notice of interviews
- Understand the burden of evidence collection belongs to the institutions
- Cannot access medical, mental health, or other privileged materials without voluntary written consent
- Understand that parties are not restricted in discussing the allegations
- Ensure that both parties have the right to present witnesses (even experts) and evidence
- Ensure that both parties have at least ten days to review and respond to any evidence prior to a finalized report (Process A)
- Ensure that both parties have at least ten days to review and respond to final investigation report prior to a hearing (Process A)
- Ensure both parties have at least five days to review and respond to final investigation report prior to a hearing (Process B)

Investigation Considerations

- Investigations must be conducted in a reasonably prompt time frame (90 Business Days Max; Goal is 30 to 60 Business Days)
- As investigators learn more, it is possible and even likely that the notice of allegations might be amended
- Identify relevant policy elements and required procedures.

Notice of Interview(s)

- Comes from the Investigator
 - Directly to the participant and if relevant, the advisor
 - Includes the date, location (format), and purpose of the interview or an invitation to provide availability
 - Allows enough time for the participant to prepare for the interview

Amnesty

The College will generally not pursue disciplinary action against a student who makes a good faith report or who participates truthfully as a party or witness in the resolution process related to Prohibited Conduct, for personal consumption of alcohol or other drugs (underage or illegal) or other minor misconduct which would otherwise be a violation of the Student Code of Conduct, Handbook, or other policies, provided the misconduct did not endanger the health or safety of others. The College may, however, engage in an assessment or educational discussion or pursue other non-disciplinary options regarding the ancillary misconduct, including alcohol or other drug use.

After the investigation...

Title IX Sexual Harassment (Process A)

- Investigator will prepare a Draft Investigation Report
- Complainants and respondents will have a minimum of ten days to review and inspect all **relevant or directly related** evidence
- The Investigator will prepare a Final Investigation Report
- Complainants and respondents will have a minimum of ten days prior to the live hearing to review and inspect all **relevant** evidence
- A live hearing

All other Prohibited Conduct (Process B)

- Investigator will prepare a Draft investigation Report
- Complainants and Respondents will have a minimum of ten days prior to the administrative hearing to review and inspect all the **relevant** evidence
- An administrative hearing

Hearings

If the Respondent is a student, the Chair will be the Vice President for Student Affairs

If the Respondent is an employee, the Chair will be the Director of Human Resources.

If the Respondent is a member of faculty, the Chair will be the VPAA.

Live Hearings (Process A)

A “live” meeting designed to allow the decision-makers to hear testimony and receive non-testimonial evidence to determine by the preponderance of the evidence standard whether or not the policy has been violated.

Hearing Overview

Process A

- May be conducted virtually so long as the decision-makers, the parties (and their advisors) can simultaneously see and hear the party or witness speaking.
- Complainants and respondents can request to be located in separate rooms so long as they can hear and observe each other in real-time.
- Must be recorded or transcribed.

Hearing Requirements

Process A

- Decision-maker must independently evaluate questions for relevance; questions about past sexual conduct are generally not permitted.
- Party's advisors must be allowed to conduct live questioning of other party and witness.
- Any rules implemented by the institution must apply to both parties.
- Decorum is required of advisors, and Hearing Chairs have the authority to limit participation of advisors who cannot maintain decorum.

Decision-maker's determination

Process A

- Must consider all the admissible testimony and non-testimonial evidence
- Evaluate evidence for relevance, weight, and credibility
- Analyze and resolve facts under our policy using the preponderance of the evidence standard

Administrative Hearings (Process B)

A meeting designed to allow the decision-makers to deliberate on the evidence and ask questions of the investigators to determine by the preponderance of the evidence standard whether or not the policy has been violated. Parties and advisors will be made aware of administrative hearing's dates and times, but they will not be present.

Appeals

- An equal opportunity for complainants and respondents to appeal or challenge a decision to dismiss or the outcome of a hearing on limited specified grounds

If the Respondent is a student, the written appeal shall be submitted to the VPAA.

If the Respondent is an employee, the written appeal shall be submitted to the Vice President for Student Affairs.

If the Respondent is a member of faculty, the written appeal shall be submitted to the Director of Human Resources.

Appeals

- Are granted **ONLY** in the following circumstances
 - Procedural irregularity that affected the outcome or decision
 - New evidence, that was not *reasonably* previously available that could affect the outcome or a decision
 - The Title IX Coordinator, Investigator(s), or Decision-maker had a conflict of interest or a bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome or decision
 - The Sanction is excessively severe considering the cumulative conduct/disciplinary record of the Respondent

Third-parties may not file an appeal on behalf of a complainant or respondent.

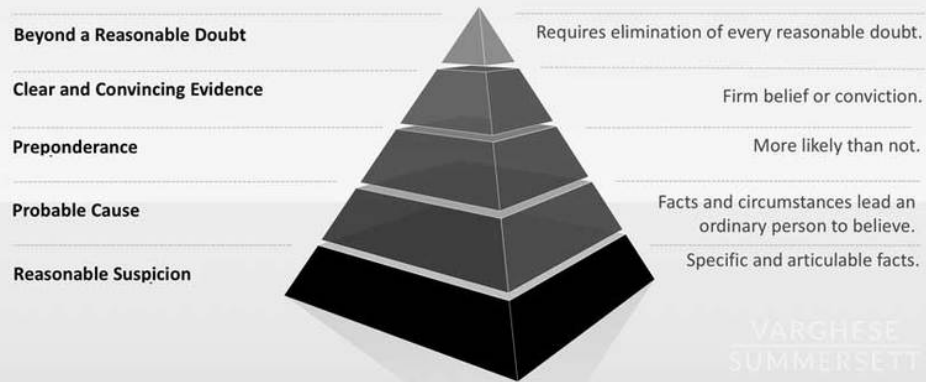


Evidence and
Credibility

Evidence Standard

In Title IX sexual harassment cases and other forms of Prohibited Conduct, the *preponderance of the evidence* standard will be used to determine whether or not a person is found responsible for violating our policies.

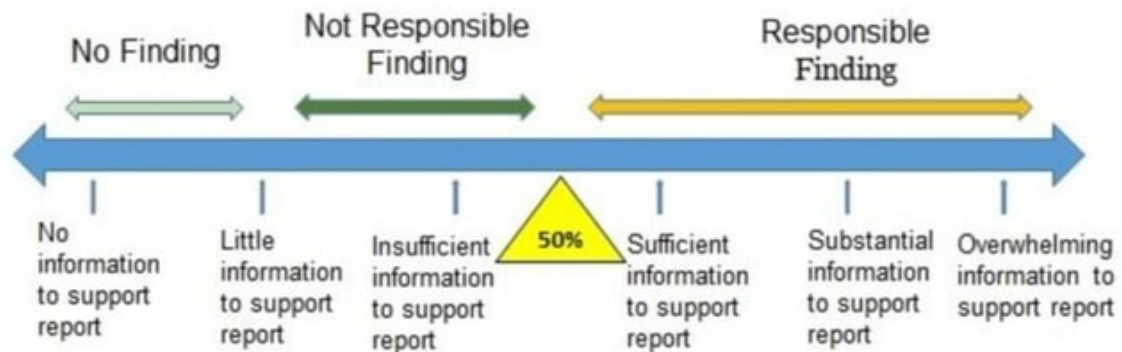
BURDENS OF PROOF



Why a pyramid? | As the level of proof required rises, the fewer number of cases meet the level of proof.

Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



Preponderance of the Evidence



Greater Weight of the Evidence

Relevance

The College is expected to apply the “plain and ordinary meaning” of relevance.

Questions

- Not directly related to the allegations will generally be irrelevant.
- That ask whether the facts material to the allegations are more or less likely to be true will generally be considered relevant.
- That are relevant but are asked in an abusive or argumentative manner maybe required to rephrased in an appropriate manner.

Questions that are always irrelevant:

- Questions and evidence about a complainant's sexual predisposition or prior sexual behavior UNLESS
 - The questions and/or evidence about the complainant's prior sexual behavior are asked or offered to prove that someone other than the respondent committed the alleged misconduct; OR,
 - The questions and/or evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are asked or offered to prove consent.
- Questions and evidence that seeks the disclosure of legally privileged materials unless the party has given *prior* voluntary written consent.
- Duplicative questions

Weighing the Evidence

More weight

- Directly related & relevant
- Corroborating
- Convergent
- Credible
- Consistent

Less weight

- Directly related & irrelevant
- Contradictory
- Conflicting
- Not credible
- Inconsistent

Assessing Credibility

Credibility Assessment - When some of the evidence requires the evaluation of one person's word against another, investigators and decision makers should follow guidance from the Office of Civil Rights to weigh evidence and credibility. The evaluation of evidence may take into account:

- **Detail and Consistency:** The accuracy of each person's account should be compared in an attempt to evaluate honesty and consistency.
- **Demeanor:** While emotional responses vary widely, each party's reactions and behavior after the alleged incident could be evaluated as part of a decision.
- **Action taken:** The timing of a report may be considered, although either an immediate or delayed report could be reasonably explained. Actions taken after the alleged encounter may also be considered.
- **Other contemporaneous evidence:** Verbal or electronic communication with friends or family (and their reactions), any other form of written details, and the timing of such communications may be factors in a decision.

Assessing Credibility

- Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- Demeanor: Did the person seem to be telling the truth or lying? Why?
- Motive to falsify: Did the person have a reason to lie?
- Corroboration: Is there witness testimony (eye-witnesses, people who saw the person after the alleged incidents, or people who discussed the incidents with them at or around the time they occurred) or physical evidence that corroborates the party's testimony?



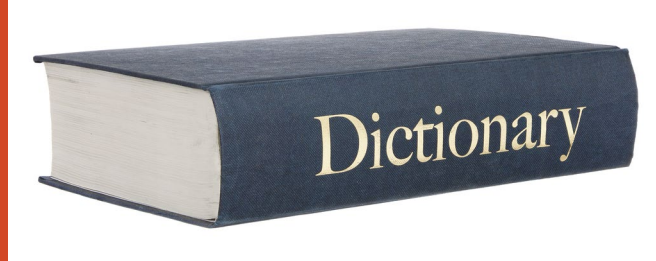
Who is
telling the
truth?

Lunch Time





Prohibited Conduct Definitions



Discrimination is conduct that is based on an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, **sex***, sexual orientation, genetic information, sex characteristics, and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in the College's program or activities. Policy and procedures that intentionally or unintentionally create a disparate impact on a protected group or person are also considered a form of discrimination if they result in an exclusion from a benefit or access to an education program or activity. This includes failure and refusal to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities or who are pregnant.

Discrimination

** Discrimination on the basis of sex still falls under Title IX, but it does NOT constitute Title IX Sexual Harassment, and will be resolved under "Process B."*

Is it prima facie discrimination?

- Sam, a black student and four year wrestler, has the best record on the team. He expected to be named the Team Captain his senior year; however, the team captain position was awarded to Dan, a white second year transfer wrestler who does not have a strong performance record.

Discrimination

- ❑ Conduct that is based on a person's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services, religion, creed, sex, sexual orientation, genetic information, sex characteristics, AND
- ❑ Excludes a person from participation in, denies the person benefits of, OR
- ❑ Adversely affects a term or condition of a person's employment, education, on campus living environment, or participation in a College program or activity, OR
- ❑ Policies and procedures that intentionally or unintentionally create a disparate impact if they result in an exclusion from a benefit or access to an education program activity (e.g. failure or refusal to provide reasonable accommodations consistent with state and federal law to persons with disabilities or who are pregnant).

A hostile environment is created when a person is subjected to biased based or sexual harassment that is so severe, pervasive, OR objectively offensive as determined by a reasonable person that it limits or denies a person's ability to participate in a program or activity.

Hostile Environment

Is it a hostile environment?

- From a reasonable person's perspective consider the following
 - The type of misconduct
 - The frequency of the misconduct
 - Where the misconduct occurred
 - The roles of the relationship between the individuals
 - Is the speech protected under the First Amendment?

(Subjective offensiveness alone is not enough to create a hostile environment.)

Bias Based Harassment is a form of Discrimination that creates a Hostile Environment, as defined by this Policy, and is based upon an individual's race, sex, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex characteristics sexual orientation, genetic information. Harassment, which is a form of Discrimination, may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, email, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Bias Based Harassment

Is it prima facie bias based harassment?

- An employee who is Sikh wears a turban and a religious bracelet (kara) to work. Over several months, a coworker repeatedly asks if he is a terrorist or knows one and makes jokes about explosives.

Bias Based Harassment

- ❑unwelcome conduct,
- ❑that occurs on the basis of a protect class
- ❑determined by a reasonable person,
- ❑to be so severe, pervasive, or, objectively offensive,
- ❑that it effectively denies a person equal access to the College education program or activity.

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.

Title IX Sexual Harassment means Quid Pro Quo Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and severe, pervasive, and objectivity offensive Sexual Harassment that it effectively denies as student or employee unequal access to an Educational Program or Activity that occurs in the Title IX Jurisdiction. Note the standards required for Title IX Sexual Harassment are more than the standards for Sexual Harassment and Hostile Environment Harassment.

Title IX Sexual Harrasment

Title IX Sexual Harassment

- ❑ Quid Pro Quo Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Harassment that is:
 - ❑ unwelcome conduct,
 - ❑ that occurs on the basis of sex
 - ❑ determined by a reasonable person,
 - ❑ to be so severe, pervasive, AND, objectively offensive,
 - ❑ that it effectively denies a person equal access to the College education program or activity.

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.

Sexual Exploitation

is an act or a failure to act that involved a member of the College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.



When an authorized agent of the college explicitly or impliedly conditions the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct

Quid Pro Quo

Is it prima facie quid pro quo harassment?

- Professor and student have grown fairly close throughout the semester, and according to others, their relationship seems “inappropriate” and overly flirtatious. Many students believe the student is flirting with the faculty member to garner favor as the faculty member is extremely influential in this academic field. Finally, one day, the professor tells the student that if they have sex, the professor will give an A-grade. The student welcomes this offer, and she has sex with the professor. An A-grade is awarded, and it leads to an internship and ultimately a dream job.

QUID PRO QUO

- ☐ an employee of the College,
- ☐ conditions the provision of an
 - ☐ aid, or
 - ☐ benefit, or
 - ☐ service of the Recipient,
- ☐ on an individual's participation in unwelcome sexual conduct.
- ☐ Implicitly or explicitly

Any sexual act direct against another person, without the consent of the victim, including instances where the victim lacks the ability to consent. Sexual assault can occur between individuals of the same or different sexes or genders. Sexual assault includes the following:

Non-consensual penetration: actual or attempted 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 affirmative consent of the victim. This includes penetration forcibly and/or against the person's will or in instances where the victim is incapable of giving affirmative consent because of their youth or because of their temporary or permanent mental physical incapacity.

Fondling (criminal sexual contact): the intentional touching of clothed or unclothed body parts of another person for the purpose of sexual degradation, sexual gratification, or sexual humiliation, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity or intoxication.

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory rape: sexual intercourse with a person who is under the statutory age of consent.

Sexual Assault

(Non-Consensual Penetration, Fondling, Incest, Statutory Rape)

Consent

Agreement, approval, or permission to some act or purpose given knowingly, willingly, and voluntarily by a competent person.

Silence, by itself cannot constitute consent.

Consent to one sexual act does not constitute consent to a different sexual act.

Previous consent cannot imply consent to future sexual acts.

Consent is required regardless of the parties' relationship status or sexual history.

Incapacity to Consent

A person is less than sixteen year's old;
Mentally incapacitated;
Physically unable to resist; or
Is so intoxicated as to be incapacitated* (i.e., unable to knowingly and intentionally make decisions for him or herself).

**Intoxication from alcohol or drug use, alone, does not bar Consent.*

Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person, under the circumstances, should know that the alleged victim is incapacitated.

The presence of Forcible Compulsion also makes consent impossible.

Is it prima facie sexual assault?

- A student forced a hug and a kiss on another student.

Sexual Assault

- ❑ Any sexual act directed against another person,
- ❑ without the consent of the Complainant,
- ❑ including instances in which the Complainant is incapable of giving consent.
- ❑ This would include having another person touch a person sexually, forcibly, or without their consent.

Includes actual or attempted non-consensual penetration, fondling, incest, and statutory rape.

Investigation Construct

- Force
- Consent
- Capacity



Break Time



Dating Violence

Any act violence or threat of violence

Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; **and,**

Where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

Is it prima facie dating violence?

- Two students had hooked up a couple of times, but were not dating exclusively. Student A wanted to become exclusive, and the Student B did not which resulted in an hours long argument in which Student B was not able to leave Student A's dorm room. Eventually Student B tried to force their way out, which resulted in Student A shoving Student B up against the wall, leaving visible bruises on their arm and later sending dozens of ominous text messages demanding to know their location.

Dating violence

- ☐ Violence or threats of violence,
- ☐ on the basis of sex,
- ☐ committed by a person,
- ☐ who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

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—

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

Domestic violence

- ☐ Violence or attempted violence, or,
- ☐ Attempted or physical or sexual abuse or
- ☐ A pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim to include verbal, psychological, economic, or technological abuse that may or may constitute criminal behavior
- ☐ committed by a current or former spouse or intimate partner of the Complainant,
 - ☐ with whom
 - the Complainant shares a child in common, or
 - by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of West Virginia, or
 - 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 West Virginia.

To categorize an incident as Domestic Violence, 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.

Stalking

Stalking means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to: fear for their safety or the safety of others; or suffer Substantial Emotional Distress.

Course of Conduct means two or more acts, including, but not limited to, acts in which the stalker 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.

Substantial Emotional Distress for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

which the crime of the violence occurred.

Is it prima facie stalking?

- A now former employee grew fond of a co-worker while they were employed together. After resigning from the College, they continue to text and the former employee asked for a date which the current employee politely and ever-so gently declined. Two days later, the former employee shows up at the College and the end of the current employee's shift with flowers. The current employee tells them they are not interested and to never contact them again. Two days later, the former employee is waiting outside of the College and sends 15 text messages asking to meet and to talk about the flowers and rejection.

Stalking

- ❑ engaging in a course of conduct,
- ❑ directed at a specific person, that
 - would cause a reasonable person to fear for the person's safety, or
 - the safety of others; or
 - Suffer substantial emotional distress.

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.

Consider whether or not the behavior is sex or gender based.

Additional Violations

Reported instances of these additional violations maybe resolved through an investigation occurring under the purview of this Policy or resolved under either the Student Code of Conduct or through the Office of Human Resources at the discretion of the Title IX Coordinator.

Unauthorized Disclosure: Distributing or otherwise making public materials created or produced during an Investigation or Resolution Process except as required by law or as expressly permitted by the College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

False Statements: Making a materially false statement in bad faith in the course of the resolution of a Report or a Formal Complaint under this Policy is prohibited and does not constitute Retaliation as defined in this Policy, provided, however, that a determination regarding responsibility (or lack thereof), alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. Materially false statements or intentional misrepresentation will be resolved through the Student Code of Conduct process or through Human Resources.

Failure to Report: Unless otherwise noted by this Policy, all employees of the College are required to report instances of Prohibited Conduct that are disclosed or known to the employee. Failure to Report will be made known to the Director of Human Resources and the Cabinet member responsible for the functional area in which the employee works.

Case Study



You are acting Title IX Coordinator or helping someone decide if they should file a formal complaint, what are you going to do?

- An instructor of religion is teaching a class on the Old Testament. A trans student taking the class has frequent friction with the instructor over the instructor's narrow interpretations of scripture and conservative beliefs about the value of religion as a tool of social control. In class, the instructor has twice failed to use the student's chosen name, and has defended herself, saying that she uses the name on the class registration roster for all students. The student finds out from classmates that the instructor misgenders the student in conversations with these classmates. The student approaches the instructor to address the misgendering and is told by the instructor that there are only two genders, and that the instructor only refers to students by their birth-assigned sex.

You are acting Title IX Coordinator or helping someone decide if they should file a formal complaint, what are you going to do?

- Justin is a junior. Hadley is a sophomore. Justin comes to Hadley's room with some mutual friends to watch a movie. Justin and Hadley, who have never met before, are attracted to each other. After the movie, everyone leaves, and Justin and Hadley are alone. They soon become more intimate. They start to make out. Justin verbally expresses his desire to have sex with Hadley, but she isn't ready to have sex with Justin since they just met. At the same time, she likes him and doesn't want to scare him off, so she decides to satisfy him with oral sex, hoping they can get to know one another better in the future before engaging in vaginal intercourse. Perceiving the oral sex to be foreplay, Justin stops Hadley during the consensual oral sex, lays her back on the bed, takes off her clothes, and engages in intercourse with her. Hadley is unresponsive during the intercourse.

You are acting Title IX Coordinator or helping someone decide if they should file a formal complaint, what are you going to do?

Four days before the end of the semester, a student files a report alleging that their instructor did not allow him to use their accommodations and treated them and the other black students in the course worse than the other (mostly) white students.

The student has initiated a grade appeal process, but did not show to the meeting with the instructor and instead filed the above referenced report.

The accused professor is actually the person who referred the student to disability services, but the instructor never received notice as to what accommodations the student was entitled to.



Questions?

2026 Title IX Administrator Annual Training



Attendance