Title IX/Deputy Title IX Coordinator – 2024 ACCS Training

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ASSUMPTIONS

- To maximize our time and due to previous training sessions, we will not cover the basics of Title IX law, rule or regulations concerning sexual harassment. We assume you have already had training on these topics.

- Everyone in this training is either the Title IX Coordinator or Deputy Title IX Coordinator at their institution.

- You are familiar with the current ACCS Title IX Policy and Procedures for your institution.

DESIGNATION OF THE COORDINATOR

- “Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities…, which the employee must be referred to as the “Title IX Coordinator.” (2020 Title IX Rule)

- “If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient’s consistent compliance with its responsibilities under Title IX. As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.” (2024 Title IX Rule)

POLICY, PROCEDURES, & PUBLICATION

- " The recipient must notify 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 recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator..."

- "Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section."

- "A recipient 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 and a grievance process that complies with §106.45 for formal complaints as defined in §106.30. A recipient must provide to persons entitled to a notification under paragraph (a) of this section notice of the recipient's grievance procedures 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."

Title IX – Not Only Sexual Harassment

SEX DISCRIMINATION (2024)

- The exclusion from participation in, denial of benefits from, or subjection to unfavorable treatment in any educational or employment-related program or activity on the basis of sex. The discrimination can be based in whole or in part, upon the individual's actual or perceived protected characteristic.
- Sexual harassment or sex-based harassment is a form of sex discrimination.
- Examples of sex discrimination that is not sexual or sex-based harassment:
    - Sex-based pay disparity
    - Sex-based scholarship inequity
    - Disparate treatment that is not harassing

DISCRIMINATION - DISPARATE TREATMENT

- Actions that treat similarly situated persons differently on the basis of a prohibited classification (sex).
    - Has the College, through its officials, treated people differently on the basis of sex?
- To establish disparate treatment, the fundamental task is to show that similarly situated persons were treated differently because of, or on the basis of sex.
- The treatment does not have to be done in bad faith or ill will, but intent is important. Disparate treatment prohibits unjustified sex-based distinctions regardless of the motivation behind those distinctions.

DISCRIMINATION - DISPARATE IMPACT

- Focuses on the consequences of a facially sex-neutral policy or practice
- The core inquiry focuses on the results of the action taken, rather than the intent
    - Adverse impact
- Not discrimination if the institution can prove that there was a “substantial legitimate justification” for the policy or practice

HOUSING

- A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees, or requirements or offer different housing services or benefits related to housing
- A recipient may provide separate housing on the basis of sex
    - Housing should be proportionate in quantity to the number of students of that sex applying for such housing; and
    - Comparable in quality and cost to the student.
- A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

HOUSING & GENDER IDENTITY (2024)

- "With respect to commenters' questions about whether § 106.31(a)(2) prohibits a recipient from excluding students from sex-separate housing consistent with their gender identity, it does not, because of the express carve-out for sex-separate living facilities under 20 U.S.C. 1686. But that is the extent of the reach of 20 U.S.C. 1686, and nothing in the statute or final regulations precludes a recipient from voluntarily choosing to adopt policies that enable transgender students to access sex-separate housing consistent with their gender identity."

- The Department of Education does not expect housing to be included in the provision of facilities that students may use in alignment with their gender identity. An institution can choose to adopt such policies allowing transgender students to access sex-separate housing consistent with their gender identity if they so choose.

FINANCIAL ASSISTANCE

- When a recipient provides financial assistance to any student participating in an educational program or activity, the recipient must ensure that it does not provide different types or amounts of assistance, limit eligibility for such assistance, apply different criteria, or otherwise discriminate in the provision of financial assistance on the basis of sex.

FINANCIAL ASSISTANCE – SINGLE SEX SCHOLARSHIPS

- Generally, a school may not administer scholarships, fellowships or other forms of financial assistance that impose a preference or restriction on the basis of sex, with limited exceptions.

- There are limited circumstances in which a school may take affirmative action with respect to forms of financial assistance or programs to overcome the effects of conditions which resulted in limited participation in its education program or activity by persons of a particular sex.

    - For example, OCR has acknowledged that "schools might, under certain circumstances, provide scholarships to women in programs that are traditionally dominated by men (such as certain STEM fields).

SINGLE SEX CLUBS, ORGANIZATIONS, AND PROGRAMS

- Social fraternities and sororities, YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls as well as voluntary youth service organizations are exempt for membership practices purposes.
- Beauty pageants are generally an exception the rule as well as any awards, including financial, made to members of one sex.

ATHLETICS

- 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.

- Equal opportunity in college and university athletic programs is measured by:

    - the benefits, opportunities, and treatment given to men's and women's teams;

    - how a school is awarding athletic scholarships and financial assistance; and

    - how a school is meeting students' athletic interests and abilities.

ATHLETICS

- Areas of importance: equipment and supplies, scheduling games and practice time, travel and daily allowance, coaching, academic tutors, locker rooms and fields, courts or other facilities for practice and competition, medical and training facilities and services, housing and dining services, publicity, recruitment
- Does your school provide athletic gear of equivalent quality, quantity, suitability, condition, and availability for athletes on men's and women's teams?
- Do men's and women's teams both have a reasonable opportunity to compete before an audience?
- Do the men's and women's teams play an adequate number of regular season games or other competitions for the team's division level?
- Do athletes on men's and women's teams have locker rooms/weight rooms of equivalent quality and size?
- Are the number and length of practice sessions equivalent for women's and men's teams in the same or similar sports?
- Do athletes on women's and men's teams have equivalent accommodations when traveling overnight?
- Do men's and women's teams have coaches with equivalent qualifications?
- Are the conditions of the playing fields, courts, pools, and other practice/game facilities for men's and women's teams equivalent?
- In evaluating a school's compliance with Title IX, OCR will consider a variety of factors such as, but not limited to, the examples in the following questions. Please note, OCR would also consider whether your school has a nondiscriminatory reason for any difference in benefits, opportunities, or treatment in the athletic program, such as differences based on unique aspects of particular sports.

ATHLETIC SCHOLARSHIPS

- To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

- For example, if 45% of the participants in the school's athletic program are women, then women should receive about 45% of the available athletic financial assistance. The number of scholarships for men and women does not need to be equal. Likewise, the dollar value of individual scholarships does not need to be equal for athletes on men's and women's teams.

ATHLETIC DONATIONS

- Colleges can accept voluntary support for teams from booster clubs, parents, and others. Those donations cannot justify discrimination under Title IX in your school's benefits, opportunities, and treatment offered to its men's and women's teams. If booster clubs provide support for only men's teams, for example, your school must ensure that women's teams receive equivalent benefits, opportunities, and treatment. In addition, if booster clubs provide more support to men than women in your school's athletic program, or vice versa, then your school must ensure that the benefits, opportunities, and treatment are equivalent for both men and women in its athletic program.

- Once a university or college receives a monetary donation, the funds become public money, subject to Title IX's legal obligations in their disbursement.

Title IX Policy & Grievance Procedures for Sexual Harassment Complaints

ACCS TITLE IX POLICY & PROCEDURES OVERVIEW

- Two different procedures
  - Title IX Policy & Procedures for Sex-Based Harassment Complaints (any Sex-based harassment involving a student Complainant or student Respondent)
  - Title IX Policy & Procedures for Sex Discrimination Complaints (any Employee/employee sex-based harassment and any sex discrimination complaints that are not sex-based harassment)
- 620.03 - Title IX Grievance Procedures for Complaints of Sex Discrimination or Sex Based Harassment not Involving a Student Complainant or Respondent
- 800.01 - Title IX Grievance Procedures for Complaints of Sex-Based Harassment Involving a Student Complainant or Respondent
- 800.02 - Title IX Grievance Procedures for Complaints of Sex Discrimination Involving a Student Complainant or Respondent

CURRENT PRACTICES THAT WILL CONTINUE

- Written notice of the allegations and available resolution processes
- A presumption that a Respondent is not responsible until the evidence proves otherwise
- A resolution process that is equitable, transparent to the participants, and allows access to evidence prior to any final determination
- Reasonable and appropriate supportive measures for all parties
- Prompt notification of final determinations
- Sanctions that are commensurate with the severity of policy violations, considering the Respondent's prior disciplinary history and any aggravating or mitigating factors
- A team of well-trained Title IX professionals who are free from conflicts of interest or bias

KEY CHANGES AND PROTECTIONS (2024)

- Revised and updated definitions of offenses, including sex-based harassment
- Expanded supportive measures for impacted parties
- A variety of potential resolution processes, including informal resolution
- Expanded mandated reporting obligations for employees
- Broader protections for pregnancy and related conditions
- Clarification of how Title IX protects LGBTQIA+ members of our community
- Greater flexibility in how the institution approaches Title IX rights and protections

ACCS TITLE IX POLICY & PROCEDURES - 2024

SBH for Students

- Actual relevant evidence or an investigative report that accurately summarizes this evidence
- Hearings will continue to be mandatory
- Hearing Decisionmaker will conduct cross examination of both parties, not advisors (means advisors are no longer required to be provided by the institution for purposes of cross-examination)
- Separate Investigator and Decisionmaker
- Appeal Procedures

SBH for Employees/SD

- Actual relevant evidence or an investigative report that accurately summarizes this evidence
- No hearing component
- Investigator will be the Decisionmaker (single investigator model)
- Appeal Procedures

TITLE IX GRIEVANCE PROCEDURES - FORMAL

- Reporting of Incident (Notification)
- Initial Assessment/Evaluation/Triage (Supportive Measures, Complaint Dismissals, Emergency Removals/Administrative Leave)
- Formal Investigation & Investigative Report
- Hearing
- Appeal

ACCS TITLE IX POLICY & PROCEDURES – TIMELINES (2024)

- Initial Evaluation: 10 BD after initial discussion with Complainant and party has 5 BD to appeal any dismissal after notification
- Challenging Supportive Measures: 3 BD for party to challenge after notification and 3 BD for Coordinator to send challenge to SMR
- Challenging Emergency Removals: 3 BD for Respondent to challenge after notification and 3 BD for Coordinator to send challenge to Decisionmaker
- Evidence Review: 10 BD for parties to review and respond
- Hearing Outcome: 14 BD for Decisionmaker to render decision
- Appeal Outcome: 5 BD for party to appeal after notification and 10 BD for Appeal Decisionmaker to render a decision
- Request for Delay/Extended Timelines: 3 BD for Coordinator to approve or deny delay/extend deadline

REPORTING OF INCIDENT/NOTIFICATION

2020

- The College is required to respond to a report of sexual harassment once there is "actual knowledge" by either the Title IX Coordinator or an "Official with Authority (OWA)."
- A formal complaint form must be signed by the Complainant or the Title IX Coordinator to begin an investigation or informal resolution.
- Only a person student or employee or Title IX Coordinator can bring a complaint of sexual harassment.

2024

- The College is required to respond to a report of sexual harassment once there is "information about conduct that may constitute sex discrimination."
- **There is no longer a formal complaint form. Complaints are an oral or written request to the College that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX.**
- A student, employee, the Title IX Coordinator, **a former student or employee, or a person with the right to make a complaint on behalf of the Complainant** can bring a complaint of sex-based harassment.

INITIAL ASSESSMENT/EVALUATION/TRIAGE

- Identify any immediate safety concerns
- State the College's obligation to address sexual harassment/sex discrimination
- Give the Complainant the time to give limited details of the incident
- Offer supportive measures
- Inform Complainant of their options
- Desired Outcome (what would you like to see happen?)

SUPPORTIVE MEASURES

- It is very important that the Title IX Coordinator give the Complainant the opportunity to accept any possible supportive measures at the initial meeting.
- The Complainant has the option to accept or deny any supportive measures.
- The Complainant can request supportive measures anytime throughout the notification and grievance process.
- You must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

SUPPORTIVE MEASURES

- It is very important that the Title IX Coordinator give the Respondent the opportunity to accept any possible supportive measures at the time of notification of the allegations.
- The Respondent has the option to accept or deny any supportive measures.
- The Respondent can request supportive measures anytime throughout the notification and grievance process.
- You must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

AMNESTY POLICY (2024)

The College strongly encourages students to report incidents violating the policy related to discrimination, harassment, sex-based harassment, and related inappropriate conduct. The College's primary concern is the safety of the members of the college community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the College reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting sex-based harassment or other prohibited conduct or for students acting as a witness during the formal grievance procedures. The College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

WHO CAN FILE A COMPLAINT?

2020

- Complainant (have to be participating or attempting to participate in the College's education program or activity)
- a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX
- Title IX Coordinator

2024

- Complainant (have to be participating or attempting to participate in the College's education program or activity)
- a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX
- Title IX Coordinator
- **a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the College's education program or activity when the alleged sex discrimination occurred**

INITIAL ASSESSMENT

- Is the person making the notification someone who can be defined as a Complainant?
- Does the incident potentially meet the definition of sexual harassment under Title IX?
- Does the College have jurisdiction in the matter?
    - Does the College have substantial control/disciplinary authority over the Respondent?
    - Was the location of the incident on campus or on property owned or controlled by the College?
    - Did the incident occur in the United States?

TITLE IX COORDINATOR AS COMPLAINANT

- Factors to Consider:
  - the Complainant's request not to proceed with initiation of a complaint;
  - the Complainant's reasonable safety concerns regarding initiation of a complaint;
  - the risk that additional acts of sex discrimination would occur if a complaint is not initiated;
  - the severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
  - the age and relationship of the parties, including whether the Respondent is an employee of the College;
  - the scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
  - the availability of evidence to assist in a Decisionmaker in determining whether sex discrimination occurred; and
  - whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

TITLE IX SEXUAL HARASSMENT DEFINITION

2020

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the College 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 school's education program or activity (Hostile Environment)
- Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act

2024

- An employee, agent, or **other person authorized by the recipient** to provide an aid, benefit, or service under the recipient's education program or activity **explicitly or impliedly** conditioning the provision of such an aid, benefit or service on a person's participation in unwelcome sexual conduct (Quid Pro Quo)
- Unwelcome sex-based conduct that, based on the totality of the circumstances and is **subjectively and objectively, and is so severe or pervasive that it limits or denies** a person's ability to participate in or benefit from the recipient's education program or activity (Hostile Environment) ; **Fact specific inquiry**
- Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act (Specific Offenses)

COMPLAINT DISMISSALS

2020

- Provides grounds for mandatory or permissive dismissal
- Upon dismissal, the recipient must send written notice of dismissal and reasons for dismissal
- Party can appeal dismissal

2024

- **No more mandatory dismissal**
- **All dismissals are discretionary**
- Must provide written notice of dismissal and basis
  - Supportive measures should still be offered to the Complainant
  - Must notify the Respondent of the dismissal and offer supportive measures if the Respondent has already been notified of the complaint
- Provides similar appeal process

EMERGENCY REMOVALS

2020

- The College must undertake an individualized safety and risk analysis, determine that an **immediate threat to the physical health or safety** of any student or other individual arising from the allegations of sexual harassment justifies removal.
- The College must provide the Respondent notice and an opportunity to appeal the removal.

2024

- The College must undertake an individualized safety and risk analysis, determine that **an immediate and serious threat to the health or safety** of any students, employees, or other persons arising form the allegations of sex discrimination justifies removal.
- Physical threat requirement no longer needed
- Institutions may place **employee** Respondents on administrative leave during grievance process
- The College must provide the Respondent notice and an opportunity to appeal the removal.

VIOLENCE RISK ASSESSMENT (VRA)

- To assess an individual's level of risk for potential, actionable violence prior to an emergency removal, the Title IX Coordinator may use the violence risk assessment process available via a referral to the Recipient's behavioral intervention team (BIT)/threat assessment team (TAT)/CARE team, or to an outside assessor.

- Violence Risk Assessment (VRA) is a broad term for the use of an interview and/or validated instrument(s) to assess the potential for violence or danger an individual may pose to others. VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, or other BIT/CARE Team members.

- A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of vague, conditional, and/or direct threats 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.

WRITTEN NOTICE OF ALLEGATIONS

Notice Sent to Parties

- Simultaneous Written Notice of Allegations to Both Parties
  - Formal Complaint
  - Grievance and Appeals Process
  - Possible Sanctions and Remedies
  - Availability of Advisors
  - Statement of Respondent's Presumption of Non-Responsibility
  - Review and Inspect Evidence
  - Provision on Making False Statements or Submitting False Information

FORMAL INVESTIGATION & REPORT

- The College will provide for adequate, reliable, and impartial investigation of complaints.
- The burden is on the College—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment occurred.
- The Investigator will provide each party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.
- The Investigator will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.
- The Investigator will review all evidence gathered through the investigation into a investigative report and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- **The Title IX Coordinator does not play a formal part in the investigation other than to continue supportive measures if needed and supervise the Investigator, also if needed.**

HEARINGS

2020

- The recipient's sexual harassment grievance process **must** provide for a live hearing.
- Can hold hearing (either at a party's request or the institution's discretion) in separate rooms using technology
- Must use audio or audio visually record and make the recording available to the parties
- Detailed provisions regarding questions and cross-examination of parties and witnesses
- If party does not have an advisor, the recipient must provide an advisor of the recipient's choice without fee or charge.

2024

- The recipient's **sex-based harassment** grievance process **may, but need not**, provide for a live hearing.
- If a live hearing is offered, can still do so (either at a party's request or the institution's discretion) in separate rooms using technology
- Must continue to audio or audio visually record and make recording available to the parties
- **Institutions have the option to have the decision maker ask questions and follow-up questions to parties and witnesses, including those proposed by the parties to the decision maker, either in one-on-one meetings with the parties/witnesses or in a live hearing.**
- Institutions can still choose to allow advisors to question parties and witnesses at a hearing. If an institution makes that choice, it must provide an advisor to a party who does not have one.

HEARINGS

- The Decisionmaker is the Hearing Officer.
- The Title IX Coordinator should only act as the facilitator of the hearing. Their main role should be to handle any logistics/planning of the hearing. The Title IX Coordinator may also handle communications with the parties, witnesses, etc.
- The Title IX Coordinator should ensure that the hearing is audio or audio visually recorded.

APPEALS

The College will offer an appeal from a dismissal of a complaint or determination whether sexual harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, Investigator, Decisionmaker, or Informal Resolution Facilitator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
- Sanctions were disproportionate to the policy violation(s). (2024 Policy Only)

SANCTIONS

- Disciplinary sanctions means consequences imposed on a Respondent following a determination under Title IX that the Respondent violated the College's prohibition on sex discrimination. (2024)
- The person who determines the sanctions should be determined by your Policy. In ACCS Policy, the Decisionmaker determines sanctions. Who administers the sanctions should be an institutional decision, but the Title IX Coordinator is responsible for documentation.
- The determination regarding responsibility becomes final on the date that the College provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.
- The written determination on responsibility and sanctions, if applicable, are postponed until the decision on the appeal is sent to the parties. Supportive measures will remain in place during the appeal period.

SANCTIONS

Students

- Reprimand
- Required Counseling
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Other Actions: In addition to, or in place of, the above sanctions, the College may assign any other sanctions as deemed appropriate.

Employees

- 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
- Shift or schedule adjustments
- 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 College may assign any other responsive actions as deemed appropriate.

TITLE IX GRIEVANCE PROCEDURES - INFORMAL

- Informal Resolution
- Respondent Admission of Responsibility

INFORMAL RESOLUTION

- Informal resolution does not involve an investigation, adjudication hearing, or disciplinary action against a Respondent and is not appropriate for all forms of conduct under these Procedures. Both parties must voluntarily agree in writing to participate in the informal resolution process.

- Informal resolution may result in the following remedies: establishing supportive measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; and any other remedy that can be tailored to the involved individuals.

INFORMAL RESOLUTION

- Factors to consider when determining whether to allow Informal Resolution for a complaint:
  - The Parties' amenability to Informal 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
  - Respondent's disciplinary history
  - Whether an emergency removal or other interim action 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 (e.g., time, staff, etc.)

RESPONDENT ADMISSION OF RESPONSIBILITY

- When a Respondent accepts responsibility of all charges associated with the allegations, it does not involve an investigation or adjudication hearing.

- The Respondent is willing to accept responsibility for violating the Title IX Policy and is willing to agree to actions that will be enforced similarly to sanctions.

- If a Respondent accepts responsibility for some charges associated with the allegations, but not all, a formal investigation or informal resolution process will need to be done to adjudicate the remaining charges.

REMEDIES

- A Complainant must be provided with remedies where the outcome shows the Complainant was victimized by sexual harassment; and a Respondent must be afforded a fair grievance process before disciplinary sanctioning.
- Remedies must be designed to “restore or preserve equal access to the College’s education program or activity.”
- May include the same services described as supportive measures.
- Unlike supportive measures, though, remedies may in fact burden the Respondent, or be punitive or disciplinary in nature.
- Remedies are mandatory for institutions to implement.

Other Responsibilities

TRAINING REQUIREMENTS

2020

- Training for Title IX team on the grievance process for sexual harassment only (no frequency requirement)
- No training requirements for students under proposed regulations (still must comply with VAWA)
- VAWA - requires annual training for all higher education employees involved in responding to allegations of sexual assault, dating violence, domestic violence, or stalking.
- All training materials must be made available on institution's website

2024

- Title IX team on the grievance procedures
- No training requirements for students under proposed regulations (still must comply with VAWA)
- **Training required for all types of sex-based discrimination, not just sexual harassment**
- **All employees on identifying and reporting sex-based discrimination (annually), including student employees, adjuncts, temporary employees**
- **Also trained at time of hire and changing of roles**
- **Specific training for Informal Resolution Facilitators**
- **Specific training for Title IX Coordinators**
- **Specific training for Confidential Employees**

RECORDKEEPING

An institution must maintain for a period of seven years records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, Investigators, Decisionmakers, and any person who facilitates an informal resolution process. An institution must make these training materials publicly available on its website, or if the institution does not maintain a website the institution must make these materials available upon request for inspection by members of the public.
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications…, records documenting the actions the recipient took to meet its obligations… (2024 regulations)

DUAL ENROLLMENT

"In circumstances in which a student is enrolled in two recipient institutions at the same time, each recipient has its own obligations to protect participants from sex discrimination under Title IX. Neither should assume that the other institution is solely responsible for responding to a complaint of sex discrimination from a student participating in both programs, particularly because effective supportive and remedial measures, to the extent appropriate, may implicate both institutions." (2024 Preamble)

BARRIER ANALYSIS (2024)

A recipient must require its Title IX Coordinator to:

- Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX…; and take reasonably calculated steps to address the barrier
- Barriers could include: a recipient's Title IX reporting and complaint processes and grievance procedures, inaccessible complaint reporting processes, confusing grievance procedures that lack transparency, and difficult-to-reach Title IX Coordinators or staff who discourage individuals from making reports
- Monitoring could include climate/campus surveys.
- Reasonably calculated steps could include trainings targeted at a particular academic department or other subdivision of the recipient where the barriers were identified; in-depth training for specific program staff; or widespread training for staff and students, enhanced training for employees with Title IX responsibilities, including training to ensure that they are free of conflicts of interest and do not discourage reporting; and the development and circulation of user-friendly Title IX materials.
- Recipients can tailor their response to the circumstances of their educational environment and the identified barriers to reporting.

Case Study – Formal Process

REPORTING OF INCIDENT

The Dean of Students at your institution called you this morning to report that Tori, a female student just came into their office to report that they were “sexually assaulted” by Sam, a male student, over the weekend at her residence hall room. The Dean lets you know that Tori stated she in not in any immediate danger but is “afraid” of seeing Sam around campus since they are in the same major (nursing) and both are on their respective basketball teams and see each other quite a lot around campus. The Dean also said that Tori stated she had been to the hospital for treatment.

The Dean stated that Tori did not want to file a police report and would not give specific details on the sexual assault. The Dean told Tori that they are mandated to report the incident to the Title IX Coordinator and Tori seemed to be okay with that. The Dean let Tori know that the Title IX Coordinator would be contact with her. The Dean stated that after the meeting Tori left and went home and did not attend any of her classes or basketball practice that day.

What is your immediate next step?

INITIAL ASSESSMENT

Tori has agreed to come in for a meeting with you. You meet with Tori in your office three days after you received the report from the Dean. During the course of the meeting, Tori gives you the following information:

- She is friendly with Sam, but they are not in a dating relationship. Sam came over with a couple of her other friends to her residence hall room to study for a nursing exam and “one thing led to another” after both had had a “few drinks”. She stated she and Sam went to her bedroom and he asked if he could kiss her and she said yes. But then Sam unzipped and attempted to take her pants off. She told him she did not want to take her pants off. She said that Sam put his fingers down her pants and “put his fingers inside of me”. She said she screamed and told him to leave. She said Sam then left her room and then her apartment.

- She stated she is not in any immediate danger. She does not wish to file a police report at this time.

- She stated she has not been to class or basketball practice since the incident and has told her instructors and coaches that she is sick. She is “afraid” to see Sam around campus.

- She is not sure what she wants to do, but she wants Sam to face the consequences of what he has done.

What other information, if any, do you want to get from Tori? What are your next steps?

NOTICE TO RESPONDENT

After thinking about her options, Tori calls you a few hours after your initial assessment meeting and tells you that she wants to have a formal investigation. She wants to continue her supportive measures during the investigation as well. Tori signs the Formal Complaint Form. You assign an investigator to the case. You send out the Notice of Allegations/Investigation to both parties, along with putting a mutual no contact order in place. After the notices go out, you immediately get a call from Sam wanting to know what the notice is about. You speak with Sam and he agrees to come meet with you the next morning.

What information do you give Sam during your meeting?

What information are you looking to get from Sam during your meeting?

INVESTIGATION AND REVIEW OF EVIDENCE

During the course of the investigation, Sam states that he is being retaliated against because of the Title IX allegations. Sam states the mutual no contact order feels like it is “punishing me” for “something I didn’t do”. Sam states his coach just talked to him about potentially suspending him from the team until the case is finalized. Also, Sam stated that a few of the students in the nursing program have deleted him from chat groups and study groups due to the allegations.

Does this appear to be possible retaliation?

If so, what are your next steps?

HEARING

Tori calls you two days before the hearing to request that the hearing be postponed for two weeks due to her advisor (not College provided) having to prepare documents for another case. Tori states that if the delay is not granted, she and her advisor will not be able to participate in the hearing.

What are your next steps?

APPEAL

Sam if found responsible for the charges of sexual harassment and sexual assault in violation of your institution's Title IX Policy. Sam submits a timely appeal on the basis of conflict of interest/bias. He states the both you and the Investigator showed clear bias in male Respondents. In his statement, he provides as supporting documentation:

- Lack of same offerings of supportive measures
- Referring the Complainant as a “victim”
- The investigative report being “sympathetic” to the Complainant

What would be your next steps?

Questions?