



TITLE IX APPEALS OFFICER TRAINING

OBJECTIVES:

- Increase Familiarity with Key Definitions
- Appeal Procedures
- Additional Information and Considerations
- Questions

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KEY DEFINITIONS

WHAT IS TITLE IX?

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

TITLE IX SEXUAL HARASSMENT

Includes the following behaviors with respect to participation in the College's educational programs or activities, which include locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurred. Title IX Sexual Harassment is conduct on the basis of sex that satisfies one (1) or more of the following:

- An employee conditioning the provision of an aid, benefit or service on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational program or activity; or
- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)A(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

WHAT ACTIONS CONSTITUTE AN INFRACTION?

- Preferential treatment or promises of preferential treatment in exchange for submitting to sexual conduct;
- Jokes, discriminatory displays/publications in the workplace, unwelcome sexual advances, propositions, comments, etc.;
- Non-consensual sexual intercourse;
- Non-consensual sexual contact;
- Sexual exploitation (voyeurism, taking pictures, distributing pictures, prostitution, administering date rape drugs, etc.);
- Relationship or intimate partner violence; and
- Stalking.

PARTIES TO A TITLE IX CASE

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

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

Appellant

An individual who applies to a higher authority for a reversal of the decision of a lower authority.

CONSENT

Consent:

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

TITLE IX SEXUAL ASSAULT

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

- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Rape** - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

TITLE IX INTERPERSONAL VIOLENCE

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

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

TITLE IX STALKING

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

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COLLEGE ROLE & JURISDICTION

THE COLLEGE'S ROLE:

Once there is knowledge of sexual harassment/sexual misconduct:

- Take immediate and appropriate steps to **investigate** what occurred; and
- Take prompt and effective action to:
 - ✓ **Stop the harassment**
 - ✓ **Remedy the effects**
 - ✓ **Prevent the recurrence**

This is regardless of whether or not the reporting party makes a formal complaint or asks the school to take action.

SCOPE OF TITLE IX JURISDICTION

- The complainant is an individual participating in a College educational program or activity; which include locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurred;
- The alleged incident or action happened against a person in the United States; and
- The conduct meets the definition of Title IX Sexual Harassment as outlined previously.

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APPEAL PROCEDURES

GROUNDS FOR APPEAL:

- **Procedural Error:** There was a procedural error or omission that occurred that significantly impacted the outcome of the matter (e.g., material deviation from established procedures, etc.).
- **New Evidence:** To consider new evidence, unavailable during the original hearing or investigation, that if true and credible, could substantially impact the original finding or sanction.
- **Conflict of Interest:** The Title IX personnel (investigators, coordinators and decision-makers) had a conflict of interest or bias, that affected the outcome of the matter.

PROCEDURE FOR APPEAL:

- Request for Appeal will be reviewed by the Appeal Reviewer to determine that it meets one of the three (3) grounds for Appeal;
- If the Request for Appeal is approved it will be forwarded to the Equity Officer and Appeals Committee, and then shared with ALL parties (Complainant, Respondent, Advisors, Investigator(s), and Original Hearing Officer) who may respond to the Appeal in writing;
- All Responses to an Appeal will be shared with ALL parties; and

PROCEDURE FOR APPEAL:

The Appeals Committee will then review the Appeal and Responses and will make one of the following determinations within fourteen (14) calendar days of receiving the Appeal:

- The Appeal is denied and the original findings are affirmed. This decision is final and there is no Appeal to this decision permitted by any party; or
- The Appeal is upheld and being forwarded to the Title IX Coordinator for appropriate placement in the process based on the grounds under which the Appeal is granted.

The decision will be communicated to ALL parties (including Title IX Coordinator) barring exigent circumstances, of the Appeals Committee's decision. Title IX Coordinator will oversee retention of all records in accordance with appropriate rules and regulations.

PROCEDURE FOR APPEAL

If a **procedural error** significantly impacted the outcome of the hearing, either:

- Remand the case back to the original hearing body with instruction to repair the procedural error; or
- Remand the case to be reheard by a new Hearing Officer (cases where the procedural error is so profound as to render the original officer too biased or influenced).

PROCEDURE FOR APPEAL:

If it is necessary to consider **new evidence** unavailable during the original hearing or investigation but is now available and could substantially impact the original finding or sanction, either:

- Remand the case back to the original hearing body with instruction to consider new evidence;
- Remand the case to be reheard in its entirety by a new Hearing Body (cases where the new evidence is accompanied by a procedural error so profound as to render the original officer too biased or influenced); or
- In rare cases, the Appeals Committee may alter the finding or sanction based on new evidence.

PROCEDURE FOR APPEAL:

If a **conflict of interest** was present and significantly impacted the outcome of the hearing, either:

- Remand the case back to the original hearing body with instruction to repair the procedural error; or
- Remand the case to be reheard by a new Hearing Officer (cases where the procedural error is so profound as to render the original officer too biased or influenced).

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ADDITIONAL INFORMATION AND CONSIDERATIONS

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- The Appeals Committee serves as the decision maker for all Title IX appeals submitted after the Hearing Officer has issued their finding;
- Appeals Committee member should not have been involved in the investigation;
- All appeals must be in writing to the Equity Office within seven (7) calendar days after receipt of a dismissal or determination and must meet one of the grounds for appeal previously outlined;
- Presumptive stance is that the initial finding is correct. Burden is on the appellant to show error based on a grounds for appeal;
- Appeals are not intended to be a re-hearing of the allegations. In most cases they are confined to a review of the written documentation of the original hearing, and pertinent documentation related to the grounds for appeal; and
- The Appeals Committee may request information regarding procedure from the investigator or Title IX Coordinator.

ADDITIONAL INFORMATION AND CONSIDERATIONS:

- Know and reinforce (compliance with) College policy regarding Title IX (Policy - 1320, 2320, 3320);
- The College uses the preponderance of evidence standard; and
- The College applies a presumption of innocence relative to the alleged violation of Title IX.

QUESTIONS

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