



# Title IX Coordinator Training



***Be bold. Be great. Be State.***

# Course Objectives

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- ✓ What is Title IX of the Educations Amendment Act
- ✓ Definition of Sexual Harassment/Sexual Violence
- ✓ Definition Equal Opportunity in Educational Programs & Pregnancy Rights under Title IX
- ✓ Why a Title IX Coordinator
- ✓ Duties and Responsibilities of the Title IX Coordinator
- ✓ Fairness and Impartiality
- ✓ The Importance of understanding Biases and Stereotypes
- ✓ Title IX Grievance Process
- ✓ Title IX Policy & Procedures

# Title IX of the Education Amendments Act of 1972

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## Is a Federal Law that states:

- *"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 of the Education Amendments Act of 1972

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- Title IX addresses:
  - Sexual Harassment and Sexual Violence in Education
  - Equal opportunity in educational programs
  - Discrimination based on pregnancy
- It is the college's responsibility to take immediate steps to address any sexual discrimination, sexual harassment, or sexual violence

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# Title IX Sexual Harassment

What is it?

## What is the Definition of Sexual Harassment/Sexual Violence under title ix

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Sexual Harassment is defined by utilizing a three-prong approach on the bases of conduct of a sexual nature that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "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).

# Prong 1

## Quid Quo Pro

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- Conditioning provision of an aid, benefit, or service based on participation in unwelcomed conduct of a sexual nature.
  - Quid Quo Pro
    - This for that
  - Mainly conducted by those in a position of authority.
  - One incident is sufficient to initiate a Title IX Grievance Process

# Prong 2

## Hostile Environment

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- Unwelcomed sexual conduct that is severe, pervasive, and objectively offensive.
- Behavior includes the subtypes of sexual harassment (Third Party, Sexual Favoritism, Sex-Based)
- The conduct effectively denies equal access and must occur within the context of an educational program or activity.
- Determined by a reasonable person standard (standing in the shoes of the complainant)
- *This Behavior is so frequent or serious that it effectively denies a person equal access to the educational program or activity.*

## Prong 3. Sexual Assault

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- Sexual Assault – a forcible or non-forcible sex offense including rape, attempted rape, sodomy, fondling, statutory rape.
- Dating Violence - violence by a person who is or has been in a romantic or intimate relationship.
- Domestic Violence – violence by a former or current spouse, intimate partner, co-parent, live in partner, youth, or categories under other state law.
- Stalking – fear of own safety, or safety of another, or to suffer substantial emotional stress.
- One incident is sufficient to initiate a Title IX Grievance Process

# Sexual Harassment Jurisdictional Criteria

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- For sexual harassment to be considered within the authority of Title IX the alleged conduct must:
  - ✓ Meet the Title IX definition of Sexual Harassment.
  - ✓ The act must occur in the Institution's educational programs or activities (on or off campus).
  - ✓ The act must have occurred against a person within the United States.

## Mandatory Reasons for Dismissal of A Title IX Complaint

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- **The College must dismiss the complaint if the allegations:**
  - ✓ Do not meet the Title IX definition of Sexual Harassment.
  - ✓ Alleged Incident did not occur in a NSC educational program or activity, or
  - ✓ If the conduct occurs outside of the United States.
- ❖ **Dismissal under Title IX does not preclude action under the College's Code of Conduct provisions.**

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# Equal Opportunity in Educational Programs

What does that mean?

# Equal Opportunity in Educational Programs

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- Title IX requires that women and men be provided equitable opportunities to participate in educational programs which include, but are not limited to:
  - ❖ Athletics
  - ❖ Course Offerings
  - ❖ Counseling & Counseling materials
  - ❖ Financial Assistance
  - ❖ Student Health & Insurance Benefits
  - ❖ Housing
  - ❖ All other programs and activities offered

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# Discrimination based on pregnancy

What is this?

# The Pregnant student

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- Pregnant and parenting students are protected under Title IX :
  - ❖ Title IX protections covers all aspects of the educational program (in and out of the classroom). This includes school sponsored extracurricular activities, internships, athletics, financial aid, scholarships, career counseling, and lab and clinical work.
  - ❖ Title IX requires the institution to excuse absences for pregnancy, childbirth, or related conditions for as long as the doctor states is medically necessary.
  - ❖ Title IX requires the institution to provide pregnant students with services and accommodations equal to those provided to non-pregnant students.

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# Title IX Coordinator

**What is a Title IX Coordinator?**

# What is a Title IX Coordinator?

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- Higher education institutions receiving federal funding are required to designate a coordinator who is responsible for matters associated with Title IX.

- The Title IX Coordinator is the institutions expert on all matters relating to Title IX and should be available to the College Community for advice and assistance.
- The Title IX Coordinator is responsible for answering to all complaints of possible/alleged sex discrimination and coordinating proper responses to the complaints.
- The Title IX Coordinator is responsible to ensure that the institution is in compliance with Federal and State law and Institutional policy governing Title IX.

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# Duties and responsibilities of the Title IX Coordinator

## Thorough Knowledge of Title IX Law and Campus Policies

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- ✓ The Title IX coordinator must be aware of each type of discrimination covered under Title IX.
- ✓ The Title IX coordinator needs to be well versed with the institutions policies and procedures on sex discrimination and sexual misconduct.
- ✓ The Title IX coordinator should be involved with the creation of campus policies to ensure they are in compliance with Title IX requirements.

# Investigations

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- One of the most challenging responsibilities of the Title IX Coordinator is investigating complaints and ensuring disciplinary actions are taken.
- When a person reports sex discrimination or allegations of sexual misconduct, the Title IX coordinator must handle the investigation from the beginning of the process through the end.
- The Title IX Coordinator may act as the Investigator if necessary
  - *The Title IX Coordinator must be accessible and available to meet with any individual(s) promptly who needs guidance or wants to file a complaint.*

# Coordinate Campus Climate Surveys

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- ✓ The Title IX Coordinator has the responsibility to oversee the institutions sex discrimination and sexual violence prevention initiatives to ensure Title IX compliance. For example, by providing student training to help prevent sexual violence on campuses, such as dating and domestic violence, stalking, sexual assault and harassment.
- ✓ To understand if these prevention efforts are making a difference, the OCR recommends conducting a campus climate survey. This is managed by the Title IX Coordinator in order to analyze the information collected and measure the success and failures of the prevention efforts.

# Providing Supportive Measures to the Reporting Parties

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- The Title IX Coordinator will assist in providing and finding resources for the affected parties (both Complainant & Respondent).
- These measures may consist of providing information to services such as:
  - ✓ Counseling and Psychological Services
  - ✓ Medical Facilities
  - ✓ Classroom or Academic Management
  - ✓ Separation of Parties Involved
  - ✓ Community Services (Rape Crisis Center, Domestic Violence Shelters, Victims of Violent Crimes resources, County and State, etc.)
  - ✓ Title 4 – Chapter 8 – Section 13 provides an in-depth list of available supportive measures
- The respondent and complainant must have equal opportunity to receive supportive measures upon request.

# Collaboration with Other Departments

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- **Title IX Coordinators Need to Collaborate with Other Departments**
- The Title IX Coordinator are responsible for collaborating with other departments to ensure compliance with Title IX laws and institutional policies.
- The Title IX Coordinator will develop relationships with human resources, general counsel, public safety, student affairs, etc. to ensure that each department is in compliance with Title IX, is educating their employees and students about Title IX and the Office of Institutional Equity, and to work together to provide a safe and secure campus environment .

# Institutional Training and Postings

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- ✓ The Title IX Coordinator will ensure that training requirements are offered to all students and employees.
- ✓ The Title IX Coordinator will ensure that the trainings are tracked, and appropriate records and reports are maintained.
- ✓ The Title IX Coordinator will ensure that the required trainings used to train the Title IX Coordinator, Title IX Investigators, and Title IX Decision Makers are posted on the website and made available to the community.
- ✓ The Title IX Coordinator will ensure that all publications and webpages contain information regarding the Title IX contact for the institution.
- ✓ The Title IX Coordinator will ensure that the College Community receives a copy of the policy (Title 4, Chapter 8, Section 13) electronically on an annual basis.

# Safe & Secure Environment

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- ❖ The Title IX Coordinator has numerous responsibilities to ensure that the institution maintains Title IX compliance.
- ❖ But more importantly, they are the key to providing a safe and secure environment that is free from sexual violence and discrimination for our employees to work and our students to learn. An environment that welcomes and supports all students, employees, and visitors.

# Emergency Removal of Student

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- The College may remove a student or employee from an educational program or activity if there is an immediate and eminent threat to the safety of the community.
- To do so, the College must:
  - ✓ Determine if there is an immediate threat to individuals or the College Community, and
  - ✓ Must provide the respondent with a notice and an opportunity to challenge the decision immediately following removal.

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# Bias & Stereotypes

why is understanding important?

# College environment

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- One of the main responsibilities of NSC's Title IX Office is to provide a safe and secure environment, free from discrimination, for our employees to work and our students to learn.
- To do this we must first recognize that not all people will embrace the idea of diversity, which is differences between people. This is a good thing.
- They will discriminate, which is reacting to those differences in a negative way.
- This behavior is caused by biases or prejudice, conscious or unconscious, in which all people possess.

# Biases' & Stereotypes

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- **Bias:**

- Is defined as a feeling or preference that interferes with impartial judgment for or against; usually considered to be unfair. This is more commonly known as prejudice.

- **Stereotypes:**

- A widely held, but fixed and oversimplified image or idea of a particular group of people, lacking any individuality. grouping individuals together and making a judgment about them without knowing them.

# Examples of Stereotypes

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- All Blacks are good athletes.
- White men can't jump.
- Men are strong and do all the work.
- Women are not as smart as men.
- Guys are messy and unclean.
- Black people have rhythm.
- All jocks are dumb.
- All blondes are dumb.
- All Mexicans are lazy and came into America illegally.
- All Arabs and Muslims are terrorists.
- All Jews are rich/cheap/greedy.
- All Asians are good at math.
- All Irish men are alcoholics.
- All politicians are philanderers and think only of personal gain and benefit.
- Females are only concerned about physical appearance.
- All women drive badly
- British people are all snobs
- Italian men are short.
- Arabs drive taxis or own convenience stores.

Stereotypes create a negative impact and cause the belief of untruths. They put up blinders which inhibits the ability of an individual to recognize the positive strengths and qualities of another.

# Types of Biases

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- **Conscious or Explicit:**

- In the case of explicit or conscious bias, the person is very clear about his or her feelings and attitudes, and related behaviors are conducted with intent.
- This type of bias is processed neurologically at a conscious level as declarative, semantic memory, and in words.
- Conscious bias in its extreme is characterized by overt negative behavior that can be expressed through physical and verbal harassment or through more subtle means such as exclusion.

- **Unconscious or Implicit:**

- Implicit or unconscious bias operates outside of the person's awareness.
- It can be in direct contradiction to a person's beliefs and values.
- Implicit bias is dangerous in that it automatically seeps into a person's affect or behavior and is outside of the full awareness of that individual.
- Implicit bias can interfere with decision-making, and professional relationships such that the goals that are established are compromised.
- These biases are associated with stereotyping.

# Overcoming Biases

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- To overcome biases, we must:

- ✓ First recognize that we have them.

*Be honest with yourself and admit to having the biases*

- ✓ Then understand why we have them.

*Was it taught by your environment or did a negative experience cause the bias?*

- ✓ Then make a conscious effort not to let them control our decisions.

*Take control of the bias! Understand the cause and work out the solution to let it go!*

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# Title IX Grievance Procedure

Understanding the Process

# Parties involved in a Title IX Grievance

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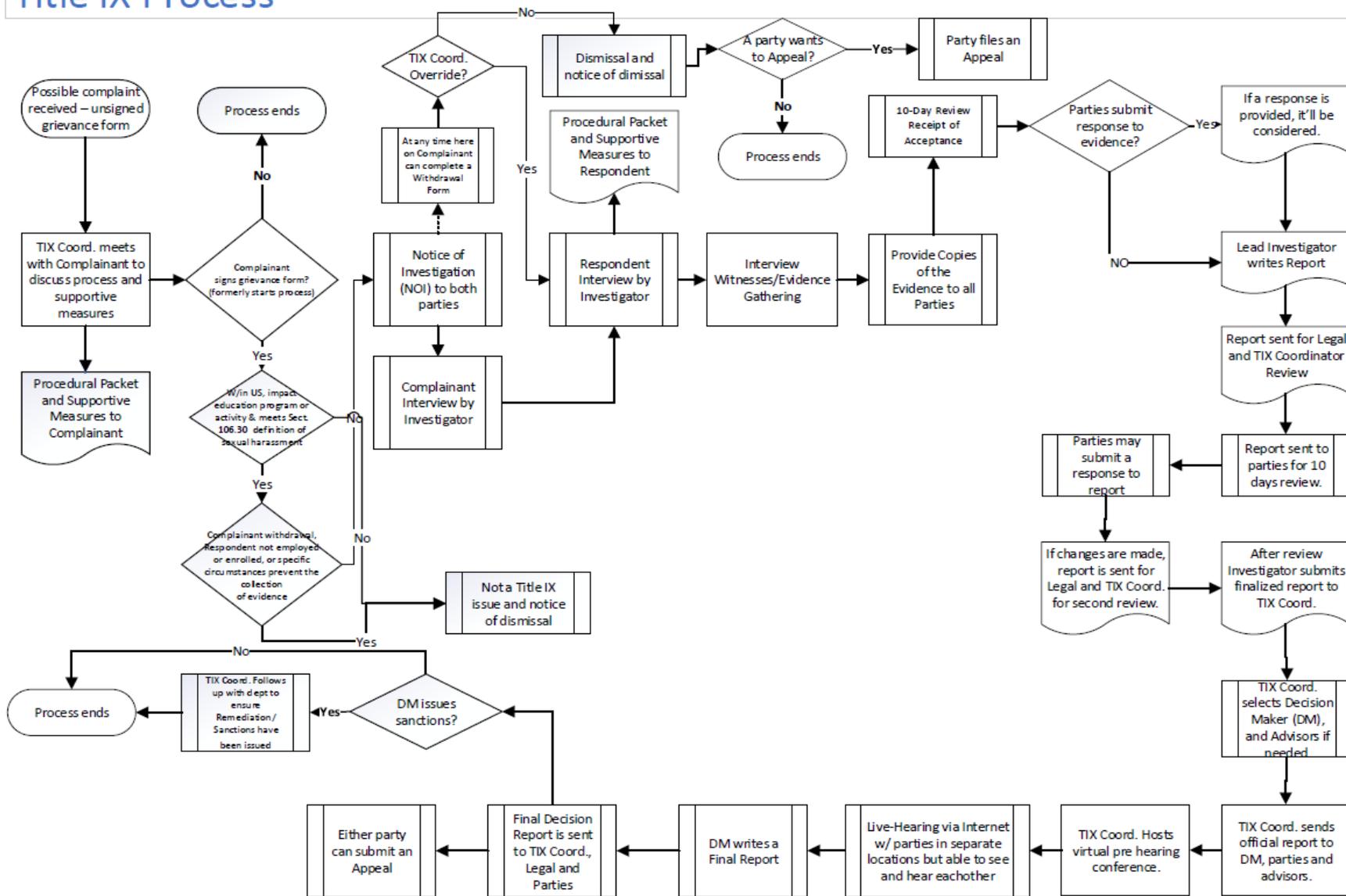
- Complainant means an individual(s) who is alleged to be the victim of conduct that could constitute sexual harassment.
- Respondent means an individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Reporting party means the complainant(s) and respondent(s).
- Advisor is an individual that accompanies the complainant or respondent to any related meeting or proceeding in order to offer them support. The reporting party chooses their advisor, who may be, but is not required to be, an attorney. The reporting parties can not be limited in whom they choose to be the advisor.
- Witness means an individual(s) that have or could potentially have information related and/or relevant to the alleged incident.

# Facilitators of a Title IX Grievance Procedure

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- Title IX Coordinator
- Title IX Investigator
- Dismissal Appeal Decision-Maker (If applicable)
- Live-Hearing Decision-Maker
- Determination Appeal Decision-Maker (If applicable)

# Title IX Process



June 22, 2020

## Title IX Grievance Process - Simplified

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- Step 1: NSC Notified of Possible Title IX Incident.
- Step 2: Title IX Coordinator Meets with Possible Complainant.
- Step 3: Complaint Filed
- Step 4: Investigators send Notification of Investigation
- Step 5: Complainant interviewed by Investigator
- Step 6: If necessary, complaint dismissed
- Step 7: If necessary, dismissal appealed
- Step 8: Respondent interviewed by Investigator
- Step 9: Witnesses interviewed and Evidence Collected
- Step 10: Related evidence given to reporting parties and advisors
- Step 11: Investigative Report Written
- Step 12: Investigative Report given to appropriate personnel.
- Step 13: Live-Hearing Conducted
- Step 14: Decision-Maker completes the written determination of responsibility
- Step 15: If necessary, determination of responsibility appealed
- Step 16: If necessary, sanctions and remedies applied.
- Step 17: If necessary, Title IX Coordinator follows-up with department to ensure sanctions/remedies applied.

# Grievance Process Step 1:

## NSC Notified of Possible Title IX Incident.

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- NSC Receives notification of a possible Title IX incident by:
  - Grievance Form Received
  - Phone call
  - Email
  - In person
  - Other

# Grievance Process Step 2:

## Title IX Coordinator Meets with Possible Complainant.

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- Provide an overview of the process.
- Provide complainant with a Procedural Packet.
  - Procedural Packet Includes but is not limited to:
    - Grievance Form (if necessary)
    - Title 4, Chapter 8, Section 13 and Title IX Policy
    - Investigation process
    - Appeal process
    - Live-hearing process
    - Decision process
    - Available resources/supportive measures.
- Describe applicable supportive measures.

# Grievance Process Step 2 - Continued

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- Supportive Measures are non-disciplinary / non-punitive individualized services, given without fee to the reporting parties. These supportive measures are designed to restore or preserve equal access to NSC's education program or activity without burdening either the complainant nor the respondent
- Supportive measures may include CAPS; EAP; extensions of deadlines; modifications of work or class schedules; security escorts on and off campus; leaves of absences; no contact sanctions given between the reporting parties; *etc.*
- The supportive measures are given regardless if a formal complaint has been filed or not.
- The supportive measures are confidential, to the extent that maintaining confidentiality does not impair the ability of providing the supportive measures.
- For example, change of work hours would require informing the supervisor of the supportive measure. However, the reasoning / details of the complaint remain confidential.

## Grievance Process Step 3:

### Complaint is filed.

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- There are two ways a complaint is filed. The Complainant signs and submits the OIE Grievance Form or the Title IX Coordinator signs the OIE Grievance Form.
  - If either of the above occurs, then the Title IX grievance process MUST begin.
- The Title IX Coordinator only signs the grievance form in the event the complainant does not want to file the complaint and the Title IX Coordinator believes the allegations must be investigated. The Title IX Coordinator's signature overrides the Complainant's wishes and is conducted at the discretion of the Title IX Coordinator.
  - If this occurs, then the Title IX Coordinator does not become the Complainant. The new complainant listed in the process will be listed as NSC.
    - As previously stated, if the original complainant decides to not file, then they still receive supportive measures.

# Grievance Process Step 4:

## Investigators send Notification of Investigation

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- The Notification of Investigation (NOI) is sent by the Title IX Investigator to both reporting parties simultaneously.
- The NOI informs the reporting parties that a formal Title IX Grievance Process has been authorized.
- The NOI must include sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Sufficient details include:
  - The allegations that have been filed that constitute sexual harassment as defined by Title IX
  - Identities of the parties involved in the incident, if known
  - Date and location of alleged incident
- During the investigation, if allegations are presented that were not listed in the original NOI, then the Title IX Investigator must notify, simultaneously, all reporting parties of the new allegations being investigated.

## Grievance Process Step 4- Continued

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- The NOI must also include:
  - A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process.
  - Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
  - Inform that the advisor will be a part of the entire process; will receive a copy of all related evidence; and must participate in the Live-hearing process.
  - A statement informing the parties of the prohibition against knowingly making false statements or submitting false information during the complaint process.
  - A statement informing the parties that retaliation is illegal.
  
- \*\*\*After the NOI has been sent, at any point moving forward, the Complainant can request to withdraw their complaint.\*\*\*

# Grievance Process Step 5:

## Complainant interviewed by Investigator

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- During the interview with the complainant, they must have an advisor.
  - If they do not have an advisor, then one will be provided by NSC at no cost.
  - If NSC provides an advisor, then the advisor will not be an attorney (as stated in NSHE BOR Handbook, Title 4 – Chapter 8 – Section 13).
- Investigators obtain incident information and applicable evidence
- Witness information obtained (if applicable)
- Evidence received from Complainant

# Grievance Process Step 6:

If necessary, complaint dismissed

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- There are two forms of dismissals: Discretionary and Mandatory
- Discretionary:
  - Where a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
  - Where the respondent is no longer enrolled or employed by the recipient.
  - Where specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the allegations contained in the formal complaint.
    - *I.e.* where a complainant refuses to participate in the grievance process (but also has not decided to send written notice stating that they wish to withdraw)
- Mandatory:
  - Not meeting the Section 106.30 definition of sexual harassment
  - Alleged Incident did not occur in a NSC educational program or activity, or
  - Did not occur within the United States

## Grievance Process Step 6 - Continued

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- If the complaint is dismissed, then all reporting parties must be notified simultaneously.
- The dismissal notification must include:
  - State the justifications for dismissing the complaint.
  - Statement informing all reporting parties that a Title IX Dismissal does not prevent NSC from utilizing a Non-Title IX Grievance Procedure as listed in the Board of Regent's Handbook, NSHE Code, or other NSC code of conduct policies. (If a Non-Title IX Grievance Procedure will be used, then the reporting parties are to be notified).
  - Give both the complainant and the respondent an equal opportunity to appeal the dismissal.

# Grievance Process Step 7:

If necessary, dismissal appealed

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- Per Title 4 – Chapter 8 – Section 13 of the Board of Regents Handbook, any party has five (5) calendar days to appeal the dismissal of the complaint.
- An appeal can only be filed if it is based on the following:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias that affected the outcome of the matter
- If any appeal has been filed based on the above, then all parties involved must be notified, simultaneously, that an appeal has been filed.

# Grievance Process Step 7 - Continued:

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- The Decision-Maker for the appeal must be an individual who has not been involved in the Grievance Process at this point.
  - I.E., the Appeal Decision-Maker may NOT be the Title IX Coordinator, Title IX Investigator, or Live-Hearing Decision-Maker.
- During the appeal process, all parties must have an equal opportunity to submit a written statement in support of, or challenging, the dismissal decision. This written statement must be submitted within five (5) calendar days of the dismissal notice.
- After the parties have submitted their written statement or the deadline to submit their statement has passed, the Appeal Decision-Maker must issue a written decision within five (5) calendar days to the reporting parties, simultaneously, describing the result of the appeal and rationale for the result.

# Grievance Process Step 8:

## Respondent interviewed by Investigator

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- During the interview with the Respondent, they must have an advisor.
  - If they do not have an advisor, then one will be provided by NSC at no cost.
  - If NSC provides an advisor, then the advisor will not be an attorney (as stated in NSHE BOR Handbook, Title 4 – Chapter 8 – Section 13).
- Before discussing the allegations/incident information, the Investigators inform the Respondent of the Grievance Process.
- Investigators provide the Respondent with a Procedural Packet
  - The Procedural Packet is the same packet the Complainant received from the Title IX Coordinator
- Investigators obtain incident information and applicable evidence
- Witness information obtained (if applicable)
- Evidence received from Respondent
- Lastly, the Investigators will request from the respondent, a written response to the allegations. The Respondent will have one (1) calendar week to submit their response.

# Grievance Process Step 9:

## Witnesses interviewed and Evidence Collected

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- The Investigators will obtain statements from witnesses provided by the parties involved and, when applicable, other relevant witnesses that were identified by the Investigators.
- Additionally, during this step, the investigators will be conducting a diligent search for additional evidence related to the complaint.
- Evidence include, but not limited to, the following:
  - Emails
  - Texts
  - NSC Security Camera Footage
  - Photos
  - Etc.

# Grievance Process Step 10:

## Related evidence given to reporting parties and advisors

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- Once the statements and evidence have been collected, the investigator must provide all obtained documents to the reporting parties.
- The reporting parties and their advisors are to receive the statements and evidence simultaneously.
- The reporting parties and their advisors have ten (10) calendar days to review all related evidence and statements.

# Grievance Process Step 11:

## Investigative Report Written

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- During the ten (10) day review of the evidence, all parties must be given equal opportunity to submit statements either supporting or questioning the evidence.
  - If statements were submitted to the Investigators, then the Investigators will take these statements into consideration.
- After the parties have submitted their statements or the ten (10) calendar days have past, the investigator will write the Investigative Report.
- The Investigate Report fairly summarizes all statements; summarizes all relevant evidence; and provides a chronology of the events that occurred during the investigation.

# Grievance Process Step 12:

## Investigative Report given to appropriate personnel

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- Once the Investigative Report has been completed, the Investigators will provide the report to the reporting parties and their advisors for another ten (10) day review.
- All parties must be given equal opportunity to submit statements either supporting or questioning the Investigative Report.
  - If statements were submitted, then the Investigators will take these statements into consideration.
- After the parties have submitted their statements or the ten (10) calendar days have past, the Investigative Report will be given to the Title IX Coordinator.
- It is the responsibility of the Title IX Coordinator to provide the Investigative Report to the Live-Hearing Decision-Maker.

# Grievance Process Step 13:

## Live-Hearing Conducted

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- Once the Live-Hearing Decision-Maker is in possession of the Investigative Report, they will conduct the live-hearing.
- The Live-Hearing must include a cross-examination of the evidence, witness(es), and the statements obtained during the investigation.
  - The cross-examination is conducted by the party's advisor. At NO time will the reporting parties themselves directly question the other.
- The cross-examination must be conducted directly, orally, and in real time. Additionally, the live-hearing may be conducted with all parties physically present in the same locations or virtually through the assistance of technology.
  - If the live-hearing is held virtually, then the technology used must allow the live-hearing to still be held in real time. Additionally, all involved in the Live-Hearing must see and hear each other, and all witnesses.
- The Live-Hearing must either be transcribed or recorded with the use of audio/visual technology. The transcript or recording will be provided to the reporting parties and their advisors for the review.

# Grievance Process Step 14:

## Decision-Maker completes the written determination of responsibility

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- At the conclusion of the Live-Hearing, it is the responsibility of the Live-Hearing Decision-Maker to complete the written determination of responsibility.
- The written determination of responsibility must be issued within fourteen (14) calendar days.
- The written determination of responsibility informs the reporting parties of the outcome of the Grievance Procedure.
  - i.e., is the respondent, responsible or not responsible for the alleged incident outlined in the filed complaint.
- The Decision-Maker must submit the written determination of responsibility to the Title IX Coordinator, the reporting parties, and the advisors simultaneously.

# Grievance Process Step 15:

If necessary, determination of responsibility appealed

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- Per Title 4 – Chapter 8 – Section 13 of the Board of Regents Handbook, any party has five (5) calendar days to appeal the dismissal of the complaint.
- An appeal can only be filed if it is based on the following:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias that affected the outcome of the matter
- If any appeal has been filed based on the above, then all parties involved must be notified, simultaneously, that an appeal has been filed.

## Grievance Process Step 15 - Continued:

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- The Decision-Maker for this appeal must be an individual who has not been involved in the Grievance Process at this point.
  - I.E., the Determination Appeal Decision-Maker may NOT be the Title IX Coordinator, Title IX Investigator, Dismissal Appeal Decision-Maker, or Live-Hearing Decision-Maker.
- During the appeal process, all parties must have an equal opportunity to submit a written statement in support of, or challenging, the dismissal decision. This written statement must be submitted within five (5) calendar days of the determination notice.
- After the parties have submitted their written statement or the deadline to submit their statement has passed, the Appeal Decision-Maker must issue a written decision within five (5) calendar days to the reporting parties, simultaneously, describing the result of the appeal and rationale for the result.

# Grievance Process Step 16:

If necessary, sanctions and remedies applied

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- The written determination of responsibility is considered final when:
  - The date to file an appeal has expired
  - The appeal process is completed
- Only when the written determination of responsibility is finalized may sanctions and/or remedies be applied.
- If there are sanctions, then the Decision-Maker will notify the appropriate personnel of the sanctions to be enforced.
  - I.e., if the student is determined responsible, then student conduct will be notified.
  - If employee, then their department/supervisor will be notified.
- The Decision-Maker will not provide all information regarding the complaint.
  - ONLY the applicable sanctions may be given.
- It is the responsibility of the Title IX Coordinator to apply any remedies, if applicable.

# Grievance Process Step 17:

If necessary, Title IX Coordinator follows-up with department to ensure sanctions/remedies applied.

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- It is the responsibility of the Title IX Coordinator to ensure all remedies and/or sanctions have been issued.
- Once all remedies and/or sanctions have been applied, the Grievance Procedure ends, and the case is closed.

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# The Title IX Coordinator

The requirements

# The requirements of the Title IX Coordinator

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- Title IX Coordinator must:
  - Understand relevancy
  - Understand how to weigh the evidence
  - Serve Impartially
  - Recognize bias and stereotypes
  - Understand where the burden of proof rests

# Relevance

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- “Relevant” means a question or evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the question or evidence
  - (Title 4 – Chapter 8 – Section – 13).
- The Title IX Coordinator must consider the relevancy of questions and evidence, both inculpatory and exculpatory
  - Inculpatory: causing blame; to be imputed; to incriminate. Evidence favorable to the complainant.
  - Exculpatory: anything that clears someone or something of guilt. Evidence favorable to the respondent.

# Types and Weight of Evidence

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- Direct
  - Supports the case exactly
    - Video surveillance showing the respondent's actions
    - Legally obtained / admissible audio recordings that capture the sexual remarks
    - Alleged incident witnessed by multiple others and all give same statement
    - Respondent admits to conducting the alleged behavior/act
  - Best Evidence, great weight given when determining responsibility
- Corroborating
  - Evidence that supports other evidence
    - There was a witness present during the incident and their statement supports either the complainant or respondent.
    - emails / texts / photos / etc. that supports either the complainant or respondent.
  - 2<sup>nd</sup> best evidence, good weight given when determining responsibility

# Types and Weight of Evidence, continued

- Character

- NOT useful
  - He/she good person / bad apple
  - Demeanor during interview / live-hearing
  - He/she is creepy, so they definitely did it
- No weight given

- Circumstantial

- Evidence can be used to INFER but not PROVE a conclusion. Opposite of Direct.
  - Alleged patterned evidence. I.e.,
    - the respondent has allegedly conducted the same behavior in the past.
  - Controversial
    - Just because an individual has done it in the past, does not prove they did the behavior this time
  - Hearsay,
    - She said he did this, he said he did not. (No corroborating evidence)
- In Title IX Grievance Procedure, determinations can't be made based on inference.
- No weight given

# Being Impartial

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- There can be no conflicts of interest. If there is a conflict of interest, then one can not be the Title IX Coordinator.
- The Title IX Coordinator can not be for or against complainants or respondents generally or an individual complainant or respondent.
- If a complainant is given an opportunity, then the respondent must be given the same opportunity and vice versa.
- The Title IX Coordinator will avoid prejudgment of the facts at issue.
- The Title IX Coordinator will treat all parties the same regardless of their status as a complainant, respondent, or witness.
- The Title IX Coordinator must keep in mind that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process.
- The Title IX Coordinator will be free of bias and avoid making decisions based on stereotypes.
- Examples of biases and sex stereotypes to avoid:
  - The complainant is automatically right because they're the victim.
  - Determination of responsibility will only be made at the END of the Grievance Procedure and must be based upon the preponderance of the evidence.
  - Only men can sexually harass others
  - One's gender, sex, sexual orientation, etc. must NOT be used against them when determining responsibility.

# Burden of Proof

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- The burden rests on NSC.

- The Burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on NSC and not on the reporting parties.

- When making a determination, the evidentiary standard of Preponderance is to be used.

- Preponderance of the evidence means the evidence establishes that it is more likely than not that the prohibited conduct occurred (i.e., 50% plus a feather).

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# The Title IX Coordinator

Understanding your role

# Title IX Coordinator's Grievance Process responsibilities.

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- Meet with the possible complainant
  - Provide procedural packet
  - Through an interactive discussion with the possible complainant determine the applicable supportive measures
- At no time will questions be asked regarding information that is protected under a legally recognized privilege.
  - i.e., attorney client, doctor-patient, FERPA, HIPPA, etc.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are NOT relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

# Title IX Coordinator's Grievance Process responsibilities Continued.

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- If ADA accommodation(s) are requested by the complainant during the interactive discussion with the Title IX Coordinator, then the Title IX Coordinator is responsible for providing the reasonable accommodation(s).
  - If technology is needed to meet the accommodation(s), then it is the responsibility of the Title IX Coordinator to coordinate with OTS to receive the equipment and applicable training.
- Oversee the Grievance Process
  - Provide the Decision-Maker with the completed Investigative Report

# Title IX Coordinator's Grievance Process responsibilities Cont.

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- The written determination of responsibility is considered final at the conclusion of the appeal process or when the date to file an appeal has expired.
- Only when the written determination is finalized may the sanction or remedy be issued.
- Supervise the issuing of the sanctions and/or remedies
  - If applicable, ensures the sanctions have been issued by the appropriate department.
  - If applicable, through an interactive discussion with the actual complainant determine the remedies.
- After the sanctions and/or remedies, if any, are imposed the Grievance Process ends and the Title IX case is closed.

# Consent

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- Conduct is unwelcome if it is done in the absence of consent.
- “Consent” means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.
  - Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.
  - Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
  - Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
  - Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.
  - Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
  - The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression.

*Title 4 – Chapter 8 – Section 13*

# Title IX Resources

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- NSHE Policy – Title 4, Chapter 8, Section 13

• <https://nshe.nevada.edu/wp-content/uploads/file/BoardOfRegents/Handbook/title4//T4-CH08%20Student%20Recruitment%20and%20Retention%20Policy%20Equal%20Employment%20Opportunity%20Policy%20and%20Affirmative%20Action%20Program%20for%20NSHE.pdf>

- Title IX Resources

• <https://www2.ed.gov/policy/rights/guid/ocr/sex.html>

# Questions



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Training Facilitated by  
NSC Title IX  
Coordinator