Illinois Institute of Technology
Annual Training on Sexual Harassment, Dating Violence, Domestic Violence and Stalking
August 2022
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Title IX Training Requirements
Goal: To promote impartial investigations and adjudications of formal complaints of sexual harassment
Who must be trained:
• Title IX Coordinators
• Investigators
• Decision-makers
• Any person who facilitates an informal resolution process

Recordkeeping:
• Training materials must be maintained for 7 years and posted on website.

Illinois Tech Training Schedule
Day 1: August 15, 2022 (1:00 – 4:00 p.m.)
• Legal Landscape: Title IX and other applicable Federal and State laws
• Illinois Tech discrimination policies and procedures
Day 2: August 16, 2022 (1:00 - 4:00 p.m.)
• Roles and responsibilities
• The Title IX process:
  • Evaluation
  • Support Services
  • Investigation

Day 3: August 17, 2022 (10:00 a.m. - 12:00 p.m.)
• The Title IX Process
  • The hearing process & written determination
  • The appeals process
  • Informal resolution

Day 4: August 18, 2022 (9:00 – 11:00 a.m.)
• Ensuring equity and due process and avoiding bias in the investigation and resolution process
• Questions and answers and looking forward

What is Title IX?
Title IX is a federal statute that prohibits sex discrimination in education programs and activities that receive federal financial assistance.

“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 Amendment of 1972, 20 U.S.C. § 1681(a)
**Overview of Legal Landscape Relating to Title IX**

- **Respondents**
  - Title IX – gender bias
  - Due process
  - Breach of contract
  - Intentional infliction of emotional distress
  - Defamation

- **Complainants**
  - Title IX – deliberate indifference
  - Tort law – negligence/duty of care
  - Breach of contract
  - Intentional infliction of emotional distress

**Illinois State Law**

- Preventing Sexual Violence in Higher Education Act:
  - University must develop a clear, comprehensive sexual violence policy
  - Response due within 12 hours of receipt of report
  - Preponderance of the evidence standard
  - Advisor
  - Bill of Rights for student survivors
  - Amnesty policy
  - Appeal rights
  - Extensive training
  - Annual reports to Attorney General and IL Dept of Human Rights

**Federal Regulations and Agency Action**

- May 6, 2020: ED issues its final rule adopting revised Title IX regulations
- August 14, 2020: Trump Administration Title IX regulations go into effect
- March 8, 2021: President Biden issues executive order directing ED to propose Title IX policy changes within 100 days
- June 2021: ED holds public hearings on Title IX
- Also in June 2021: ED issues notice of interpretation on Bostock
  - ED will enforce Title IX’s prohibition on discrimination on the basis of sex to include
    - discrimination based on sexual orientation
    - discrimination based on gender identity
- June 23, 2022: ED proposes changes to regulations on the 50th Anniversary of Title IX
  - ED will conduct a separate rulemaking to address Title IX’s application to athletics
- September 12, 2022: Deadline for public comments on ED’s proposed changes to Title IX

**Key Concepts in the Title IX Regulations**

- Deliberate indifference
- Procedural requirements – generally for sex discrimination, and specifically for sexual harassment
- Revised scope of Title IX sexual harassment
- Explicit discretion to address sexual misconduct outside the scope of Title IX sexual harassment

**Title IX Procedural Requirements**

- Title IX Coordinator
- Notice of nondiscrimination
- Grievance procedures
  - General — Sex Discrimination
  - Specific — Sexual Harassment
- Retaliation
- Recordkeeping
Title IX Coordinator

- Each school must designate at least one Title IX Coordinator
- The Title IX Coordinator cannot be the same person as the Hearing Officer(s) or the Appeals Decision-maker(s)
- Contact information for the Title IX Coordinator must be included in the nondiscrimination notice:
  - name or title,
  - office address,
  - electronic mail address, and
  - telephone number

Nondiscrimination Notice - Content

The notice must state that:
- The school does not discriminate on the basis of sex in the education program or activity that it operates
- The school is required by the Title IX statute and regulations not to discriminate on the basis of sex
- The nondiscrimination requirement extends to admission and employment
- Inquiries about Title IX may be referred internally to the Title IX Coordinator, externally to the U.S. Department of Education, Office for Civil Rights (OCR), or to both

Nondiscrimination Notice – Distribution

Notice must:
- Include the Title IX Coordinator’s contact information
- Be prominently displayed on the website and in each handbook or catalog
- Be provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school

Illinois State Law: Nondiscrimination Policy

- Requires "comprehensive policy" concerning sexual violence, domestic violence, dating violence and stalking
- Elements of policy:
  1. Definition of consent
  2. Reporting procedures regardless of where incident occurred
  3. Response procedures
  4. Survivor’s "bill of rights"
  5. Information about the nearest medical facility for free exam
  6. Information about sexual assault crisis centers
  7. Available interim protective measures and accommodations
  8. Complaint resolution procedures
  9. Available sanctions
  10. Amnesty provisions for good faith reports of policy violations
  11. Retaliation protections

Illinois State Law: Public Notice

- On website, must prominently publish, timely update and make following information easily available:
  - “Comprehensive policy”
  - Options and resources for “survivors”
  - Title IX Coordinator(s) name, contact info
  - Explanation of the role, reporting obligations and level of confidentiality for:
    - Title IX coordinator(s)
    - Responsible employees
    - Campus security authorities (Clery)
    - Mandated reporters (state law)
  - Contact info for confidential advisors, counseling services, and confidential resources
  - Contact information for community-based, State and national hotlines

Illinois State Law: Notice of Rights and Options for Complainants

Must provide complainants with concise written notice “in plain language” of their rights & options, including:
1. The right to report or not report the incident to the school, law enforcement or both, including information about the right to privacy and which reporting methods are confidential;
2. Contact information for the Title IX coordinator(s), confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement;
3. The right to request and receive assistance from campus authorities in notifying law enforcement;
4. The ability to request interim protective measures and accommodations for survivors, including without limitation changes to academic, living, dining, working, and transportation situations, obtaining and enforcing a campus-issued order of protection or no contact order if such protective measures and accommodations are reasonably available, and an order of protection or no contact order in State court;
5. The school’s ability to provide assistance, upon request, in accessing and navigating campus and local health and mental health services, counseling and advocacy services;
6. A summary of the school’s complaint resolution procedures, if the complaint reports a violation of the comprehensive policy.
**Title IX Liability Standard**

A school with actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States must respond in a manner that is not deliberately indifferent.

**What is actual knowledge?**

- Notice or allegations of sexual harassment made to a Title IX Coordinator or to any official of the school who has authority (OWA) to institute corrective measures on behalf of the school
- Notice may be in the form of a report or complaint
- Notice can be provided in writing or orally
- Notice may be provided anonymously

**Official with Authority (OWA)**

Official with Authority (OWA):
An employee explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of the school.

Not the same as a Responsible Employee:
An employee who is required by school policy to report any sexual harassment that they observe or learn about.

**What is an educational program or activity?**

- Locations, events, or circumstances over which the school exercised substantial control over both the Respondent and the context in which the sexual harassment occurs
- Any building owned or controlled by a student organization that is officially recognized by a school

**Against a person in the United States?**

- Based on the text of the statute, “No person in the United States” shall be discriminated against on the basis of sex
- Title IX does not apply to sexual harassment that occurs outside of the United States
- Study abroad programs – sexual harassment in these programs is not covered, even if it is a school study abroad program

**Deliberate Indifference**

- Same Title IX liability standard for private and administrative (OCR) litigation
- Defined by the regulations as “clearly unreasonable”
- Institutions must maintain records that demonstrate that the institution’s response to Title IX sexual harassment was not deliberately indifferent, including records relating to:
  - Supportive measures
  - The investigation and resolution of a formal complaint
Formal Complaint

- Formal complaints must be signed and filed by a Complainant who is enrolled or employed (or an applicant).
- May also be filed by Title IX Coordinator.
- A school may dismiss complaint against a Respondent who is not enrolled or employed.

Reports of Sexual Harassment

- Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s oral or written report.
- A report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

What is Sexual Harassment?

1. Quid pro quo
2. Violence Against Women Act (VAWA) categories:
   - Sexual assault
   - Domestic violence
   - Dating violence
   - Stalking
3. Hostile environment

Sexual Harassment – Quid Pro Quo

An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct.

Sexual Harassment – Violence Against Women Act (VAWA) Categories

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault

As defined in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(iv), means an offense classified as a forcible or nonforcible sex offense under the FBI uniform crime reporting system, which defines “forcible rape” as “the penetration, no matter how slight, of the vaginai or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” The FBI defines “forcible fondling” as “the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.”
**Dating Violence**

As defined by VAWA at 34 U.S.C. §12291(a)(10), means violence committed by a person—

A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and

B. where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

**Domestic Violence**

As defined by VAWA at 34 U.S.C. §12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

**Stalking**

“Stalking,” as defined by VAWA at 34 U.S.C. §12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.

**Sexual Harassment – Hostile Environment**

- Unwelcome conduct
- Of a sexual nature
- As determined by a reasonable person
- That is so severe and pervasive and objectively offensive
- That it effectively denies a person equal access to an education program or activity

**Illinois Law: Consent**

Consent is:

i. a freely given agreement to sexual activity,

ii. A person’s lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent,

iii. A person’s manner of dress does not constitute consent,

iv. A person’s consent to past sexual activity does not constitute consent to future sexual activity,

v. A person’s consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another, and

vi. A person can withdraw consent at any time.

**Illinois Law: Incapacitation**

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following:

- Person is incapacitated due to the use or influence of alcohol or drugs;
- Person is asleep or unconscious;
- Person is under age; or
- Person is incapacitated due to a mental disability.
What are grievance procedures?

A school must:
• Provide notice of its grievance procedures and grievance process, including how to report or file a complaint of sex discrimination or sexual harassment, and how the recipient will respond.
• Adopt and publish grievance procedures for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX.
• For formal complaints of sexual harassment, the grievance process must comply with new specific requirements in the Title IX regulations.

Title IX Grievance Process for Sexual Harassment – 10 Requirements

The grievance process must:
1. Treat Complainants and Respondents equitably
2. Require an objective evaluation of all relevant evidence
3. Prohibit bias and conflict of interest
4. Include a presumption that the Respondent is not responsible
5. Include reasonably prompt timeframes, with extensions for good cause

Title IX Grievance Process for Sexual Harassment – 10 Requirements

6. Include a standard of evidence: Preponderance (more likely than not) or Clear and Convincing (highly probable)
7. List the possible disciplinary sanctions and remedies
8. Describe the appeal procedures (mandatory)
9. Describe the supportive measures available to both parties
10. Restrict the use of information protected by privilege

Illinois State Law: Grievance Procedures

• Procedure should “begin promptly and proceed in a timely manner”
• Names of individuals who will resolve complaints and opportunity to request substitution for conflict of interest or sexual
• Preponderance of the evidence standard
• Information on how to obtain available interim protective measures and accommodations
• Protect privacy of both parties and witnesses in any proceeding, meeting or hearing
• Both parties must have the opportunity to provide or present witnesses
• Parties may not directly cross examine one another but may – at discretion of the presiding official – suggest and have questions posed to the other party
• Have an adviser at any meeting or proceeding
• Right to appeal
• School shall not disclose identity of either party, except as necessary to resolve complaints, implement interim measures and accommodations as when provided by State or federal law

Title IX Regulations: Retaliation

No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Title IX statute or regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
**Title IX Regulations: Recordkeeping**

- Must maintain for seven (7) years records of –
  - Each sexual harassment investigation, including:
    - any determination regarding responsibility
    - any audio or audiovisual recording or transcript of any hearing, or, if applicable, other meetings
    - any disciplinary sanctions imposed on the Respondent
    - any remedies provided to the Complainant
  - Any appeal and the result of the appeal
  - Any informal resolution and the result of the informal resolution process
  - All Title IX training materials used to train officials involved in the investigation and resolution of Title IX sexual harassment cases

**Title IX Regulations: Retaliation**

The school must keep confidential the identity of:
- Any individual who has made a Title IX report or complaint
- Any Complainant
- Any individual who has been reported to be the perpetrator
- Any Respondent
- Any witness

*Exception:* As may be permitted by the FERPA statute or regulations, or as required by law or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding.
Students

Harassment

Sexual Reproting as a basis for discrimination.

applicants are asked and the response is not used
an applicant to self-identify their sex, but only if all
Recipient must not make pre-admission inquiries
physical condition.

policies as any other temporary disability or
pregnancy, childbirth, termination of pregnancy, or
Recipients must treat disabilities related to
termination of pregnancy, or recovery.

any person on the basis of pregnancy, childbirth,
Recipient must not discriminate against or exclude

differently based on sex.

student or applicant that treats individuals
potential parental, family, or marital status of a
Recipients must not apply any rule, relating to

discrimination on the basis of sex, sex
characteristics, pregnancy or related conditions, sexual
orientation, and gender identity. Proposed § 106.15.

Hostile environment harassment is only unwelcome
harassment, as defined by reference to
VAWA. Harassment, as defined by reference to
and stalking to the definition of sexual
misconduct that includes sexual assault, quid pro
quo harassment, and retaliatory harassment.

Sexual harassment is sexual assault and

added domestic violence, dating violence,
constitute a sexually hostile environment.

hostile environment is only unwelcome conduct determined by a reasonable
and objectively effective.
Illinois Tech Discrimination Policies and Procedures

Illinois Tech Policy

www.iit.edu/title-ix/title-ix-compliance

Illinois Tech Policies and Procedures – Key Terms

“Title IX Team” - The group of individuals responsible for addressing reports and inquiries of Title IX Sexual Harassment, including the Title IX Coordinator or designee, Title IX Investigators, individuals assigned by the Title IX Coordinator to perform assigned functions, Title IX Informal Resolution Facilitators, individuals assigned by the Title IX Coordinator to perform assigned functions, and Title IX Decision-makers. Individuals on the Title IX Team may be employees of Illinois Tech and/or third-party professionals retained by Illinois Tech to perform assigned functions.

“Officials With Authority” - Includes any official designated by Illinois Tech to have authority to institute corrective measures on behalf of the institution, specifically: President, Provost, Vice Presidents and Provosts, and the Title IX Coordinator.

“Title IX Coordinator” - The individual designated and authorized by Illinois Tech to coordinate its efforts to comply with and carry out its responsibilities under the regulations implementing Title IX at 85 Fed. Reg. 30026, 30026-30579. The identity of and contact information for the Title IX Coordinator is contained in Article IV, Section J and other sections of this Student Handbook, which information is also available on the Title IX Office website at https://www.iit.edu/title-ix/title-ix-compliance. The Title IX Coordinator may delegate authority to perform any task under this Title IX Sexual Harassment Process to any duly designated individual.

“Title IX Respondent” - An individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

“Title IX Complainant” - An individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.

“Title IX Informal Resolution Facilitator” - An individual designated by the Title IX Coordinator to seek an informal resolution of a Formal Title IX Complaint in accordance with this Title IX Sexual Harassment Process. The Title IX Informal Resolution Facilitator cannot be the Title IX Coordinator, Title IX Investigator, Title IX Decision-maker, or Title IX Appellate Decision-maker assigned to the same Formal Title IX Complaint, must be free from conflicts of interest or bias against complainants and respondents generally and against an individual Title IX Complainant or Respondent, and must be trained to properly implement the Title IX Sexual Harassment Process and to serve impartially.

“Title IX Decision-maker” - An individual designated by the Title IX Coordinator or designee to reach a determination regarding responsibility in a Formal Title IX Complaint by applying the preponderance of the evidence standard of proof in a proceeding conducted in accordance with this Title IX Sexual Harassment Process. The Title IX Decision-maker cannot be the Title IX Coordinator, Title IX Investigator, Title IX Informal Resolution Facilitator or Title IX Appellate Decision-maker assigned to the same Formal Title IX Complaint, must be free from conflicts of interest or bias against complainants and respondents generally and against an individual Title IX Complainant or Respondent, and must be trained to properly implement this Title IX Sexual Harassment Process and to serve impartially.

“Title IX Appellate Decision-maker” - An individual designated by Illinois Tech to conduct an appeal required by Title IX and this Title IX Sexual Harassment Process. The Title IX Appellate Decision-maker cannot be the Title IX Coordinator, Title IX Investigator, Title IX Decision-maker, or Title IX Informal Resolution Facilitator assigned to the same Formal Title IX Complaint, must be free from conflicts of interest or bias against complainants and respondents generally and against an individual Title IX Complainant or Respondent, and must be trained to properly implement this Title IX Sexual Harassment Process and to serve impartially.

Illinois Tech Policies and Procedures - Key Concepts

ILLINOIS TECH COMMUNITY REPORTING FORM

Illinois Institute of Technology

Community Reporting Form

Reported By:

Email:

Phone:

Incident Date:

Community-Reporting Form Available Here
From the Title IX Sexual Harassment Process:

**Right to Pursue Other Remedies Not Impaired.** The right of a person to resolve a report or complaint under this policy shall not be impaired by the person’s pursuit of other remedies, such as criminal complaints, civil actions, or the like. Use of this policy and the processes hereunder do not make the pursuit of other remedies subject to a complaint under this policy. Illinois Tech will conduct its own investigation, although in some cases due to another process may be warranted or required.

The Players in the Title IX Process

- **Title IX Coordinator**
- The parties (students, employees, visitors)
- Responsible employees
  - “Official with authority to take corrective action”
- Investigators
- Witnesses
- Informal Resolution Facilitator
- Those responsible for providing supportive measures
- Advisors
- Hearing officer or hearing panel (also called “Decision-maker”)
- Appeals Decision-maker

Requirements for the Players

- Must be trained on applicable policies and laws
- Must be impartial and unbiased
  - Except for Advisors
- Must keep confidential the information shared during meetings and throughout the investigation and resolution process.

Title IX Coordinator

- Responsible for coordinating overall Title IX compliance
- Cannot be a Decision-maker at the hearing or appeals stage
- Responsible for the implementation of supportive measures and remedies
- Receives reports and formal complaints of Title IX Sexual Harassment
- Provides information to the parties about the process
- Investigates requests for confidentiality
- Decides whether to investigate or dismiss an allegation or complaint
- Determines if emergency removal or administrative leave is appropriate
- Retains all the records
The Parties

Complainant
- An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- The university must dismiss the complaint if, at the time of filing a formal complaint, the Complainant was not participating in or attempting to participate in the education program or activity of the university.

Respondent
- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- The university may dismiss a formal complaint if the Respondent is no longer enrolled or employed by the university.

Responsible Employees
An employee who is required by school policy to report any sexual harassment that they observe or learn about.

Reporting Obligations

Official with Authority (OWA)

Official with Authority (OWA):
An employee explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of the school.

Not the same as a Responsible Employee

Investigator

- Cannot be a Decision-maker
- Conducts the investigation of a formal complaint
- Conducts interviews of the parties and witnesses
- Collects evidence
- Sends evidence to parties for review and response
- Prepares an investigation report
- Provides draft investigation report to the parties for review and response
- Prepares final investigation report

Witnesses

- Important to explain privacy and confidentiality – what will happen to the information they provide?
- All of the witnesses requested by a party?
- In-person or remote interviews

Informal Resolution Facilitator

- Conducts the informal resolution process
- Obtains the voluntary, written consent from the Complainant and the Respondent before beginning the informal resolution process
- Prepares a written informal resolution agreement if needed
Parties may be accompanied by an advisor of their choice to any meeting or proceeding. The advisor may be, but is not required to be, an attorney. They are not allowed to disrupt the process. The advisor must provide free of charge for the hearing process if the party does not have an advisor. The advisor's absence is considered "good cause" for temporarily delaying the investigation.

The advisor provides and assists the party with:
- Inspecting any evidence that is directly related to the allegations
- Reviewing and responding to the evidence provided to the parties by the investigator at the end of the investigation
- Reviewing and responding to the draft investigation report prepared by the investigator and provided to the parties

They must be provided free of charge for the hearing process if the party does not have an advisor. The advisor's absence is considered "good cause" for temporarily delaying the investigation.

The advisor provides and assists the party with:
- Inspecting any evidence that is directly related to the allegations
- Reviewing and responding to the evidence provided to the parties by the investigator at the end of the investigation
- Reviewing and responding to the draft investigation report prepared by the investigator and provided to the parties

If a party does not have an Advisor for the hearing, the institution must provide a qualified Advisor free of charge to that party.

Options: law student, employee trained to conduct cross-examination, lawyer

Illinois State Law - "Confidential Advisors"

Each confidential advisor must, at a minimum, do all of the following:
- Inform the individual of their choice of possible next steps regarding reporting options and possible outcomes, including reporting under the college or university's comprehensive policy and notifying local law enforcement.
- Notify the individual of resources and services for survivors of sexual violence, including but not limited to, student services available at campus and through community-based resources, such as sexual assault crisis centers, medical treatment facilities, counseling services, legal resources, medical forensic services, and mental health services.
- Ensure the individual's rights and the college or university's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by the college or university or a criminal or civil court.
- Provide confidential services to and have privileged, confidential communications with the individual in accordance with the Code of Civil Procedure.
- Upon the individual's request, liaise with campus officials, community-based sexual assault crisis centers, or local law enforcement and, if requested, assist the individual with contacting and reporting to campus officials, campus law enforcement, or local law enforcement.
- Upon the individual's request, liaise with the necessary campus authorities to secure interim protective measures and accommodations, and complaint resolution procedures.

Decision-makers

- For written determination and sanctions, the Hearing Officer or Hearing Panel
- For appeals, the Appeals Decisionmaker
- Decisionmakers cannot be the same as the Title IX Coordinator or Investigators
### Hearing Officer/Panel Chair

- Presides over hearing
- Enforces the rules of order and decorum in the hearing
- Makes relevancy determinations
- Provides parties with access to the evidence during hearing
- Issues written determination of responsibility and, if applicable, sanctions
- Ensures hearing is recorded
- Sends the written determination simultaneously to the Complainant and the Respondent

### Appeal Officer

- Decides on an appeal filed by either party
- If an appeal is filed, the other party is notified in writing
- Provides a reasonable time from the date in the notice for the parties to submit their arguments in writing in support of or against the dismissal or written determination
- Prepares a written appeal determination
- Sends the written appeal decision simultaneously to the parties

### Evaluation

Key Steps -- from the beginning to the end of the grievance process

- Supportive Measures
- Evaluation
- Investigation
- Hearing and Determination
- Appeal
- Informal Resolution

### The Title IX Process

- COMPLAINT
- EVALUATION
- INVESTIGATION
- DETERMINATION
- SANCTIONS
Evaluation – Players

- Title IX Coordinator
- and/or the Investigator
- Complainant and/or reporter
- Respondent (maybe)

Evaluation

Must determine whether the alleged misconduct is within the scope of Title IX:
1. If no, the Title IX regulations do not apply and the school can dismiss the complaint.
2. If yes, the school must respond in a manner that is not deliberately indifferent.
   - By providing supportive measures in all cases.
   - And, if a formal complaint was filed, by following the specific grievance process requirements.

Evaluation

Is the alleged misconduct within the scope of Title IX?

- YES
  - Must not respond with deliberate indifference
  - Must offer supportive measures
  - Was a formal complaint filed?
    - If yes, must also comply with Title IX grievance requirements

- NO
  - Must dismiss formal complaint as Title IX matter
  - May address as a non-Title IX matter

Dismissals – Mandatory

Must dismiss if the conduct alleged in the formal complaint:
1. Would not constitute sexual harassment as defined even if proved,
2. Did not occur in the school’s education program or activity, or
3. Did not occur against a person in the United States

Dismissals – Permissive

May dismiss at any time if:
1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the school; or
3. Specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissals – Notice and Recordkeeping

Notice
- Upon dismissal of allegation or complaint, must provide written notice to the parties of (1) the dismissal and (2) the rationale for the dismissal.
- Dismissal decision may be appealed by either party

Recordkeeping – recommended
- Include records of any dismissal determination with other Title IX records for 7 years
Confidentiality Requests

• Assess!
  – Risk to the student and broader community
  – Provide a safe and non-discriminatory environment for all students

• Factors:
  – Seriousness of the alleged actions
  – Age of the complainant
  – Other complaints against same person
  – Rights of the accused to receive information

Written Notice of Investigation

The written notice must:
• Describe the grievance process including any informal resolution
• List the allegations, including sufficient details (the identities of the parties, the alleged misconduct, and the date and location of the misconduct).
• 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 process
• Inform the parties that they may have an advisor of their choice and may inspect and review evidence
• Describe any provision that prohibits knowingly making false statements or knowingly submitting false information
• Be updated as necessary if new or different allegations arise

Illinois State Law - Written Notice of Rights and Options

The written notice to the Complainant must include:
• The right to report or not report the alleged incident to the higher education institution, law enforcement, or both, including information about the survivor’s right to privacy and which reporting methods are confidential;
• The contact information for the higher education institution’s Title IX coordinator or coordinators, confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement;
• The right to request and receive assistance from campus authorities in notifying law enforcement;
• The ability to request supportive measures, including an order of protection or no-contact order in State court;
• The institution’s ability to provide assistance, upon their request, in accessing and navigating campus and local health and mental health services, counseling, and advocacy services; and
• A summary of the institution’s complaint resolution procedures, if a violation of the institution’s policy is alleged.

Title IX+: Addressing Sexual Misconduct Outside the Scope of Title IX

Federal regulations are a floor, not a ceiling.

IIT’s policies and procedures go beyond Title IX

If the alleged conduct in a formal complaint is outside the scope of Title IX, the school:
• Must dismiss the formal Title IX complaint as a Title IX matter
• May address the conduct with non-Title IX policies and procedures

Supportive Measures
Supportive Measures -- Players

- Title IX Coordinator
- The Complainant
- The Respondent
- University departments involved in implementing supportive measures

Supportive Measures

The Title IX Coordinator must:
- promptly contact and inform the Complainant of the availability of supportive measures
- consider the Complainant’s wishes and use an interactive process
- document decisions relating to supportive measures
- coordinate the implementation of supportive measures

Offered to the Complainant and the Respondent:

Non-disciplinary, non-punitive individualized services

- Designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.

The school must maintain as confidential any supportive measures provided, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the measures.

Examples of Supportive Measures

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

Supportive Measures -- Recordkeeping

With respect to the school’s response to a report or formal complaint of sexual harassment, the school must create and maintain for a period of seven (7) years:
- Records of any actions, including any supportive measures
- Documentation as to the basis for its conclusion that its response was not deliberately indifferent, and that it has taken measures designed to restore or preserve equal access to the school’s education program or activity
- If supportive measures are not provided to the Complainant, the school must document the reasons why its response was not clearly unreasonable in light of the known circumstances

The Investigation
Grievance Process Requirements

1. Treat Complainants and Respondents equitably
2. Require an objective evaluation of all relevant evidence
3. Prohibit bias and conflict of interest
4. Include a presumption that the Respondent is not responsible
5. Include reasonably prompt timeframes, with extensions for good cause

Grievance Process Requirements (cont.)

6. Include a standard of evidence:
   Preponderance
7. List the possible disciplinary sanctions and remedies
8. Describe the appeal procedures
9. Describe the supportive measures available to both parties
10. Restrict the use of information protected by privilege

Investigation -- Players

• Title IX Coordinator
• Investigator
• The parties
• Witnesses

Specific Requirements for Investigation

In any investigation, the school must:
1. Ensure that the burden of proof and the burden of gathering evidence rest on the school, not the parties
2. Provide equal opportunity for the parties to present witnesses, including fact and expert witnesses
3. Not impose any gag-orders
4. Allow advisor of choice
5. Provide written notice of hearings, interviews and other meetings

Specific Requirements for the Investigation

6. Provide an equal opportunity for parties to inspect and review evidence
7. Provide the evidence to the parties for review and response prior to the draft investigation report
8. Create an investigation report “that fairly summarizes relevant information” – does not include findings of responsibility
9. Provide the draft investigation report to the parties for review and response prior to the hearing
10. Provide live hearing – no single-investigator model
Issues of Relevancy

- The Investigation Report must fairly summarize the relevant information.
- Questions and evidence about the complainant's sexual predisposition and 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,
  - 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.

Adequate, Reliable, and Thorough Investigation

Key Tenets:
- Follow the University's policies and procedures.
- Investigate all allegations of sexual violence and sexual harassment.
- Gather sufficient relevant information:
  - Interview all relevant witnesses and, to extent practicable, all witnesses identified by the parties.
  - Obtain relevant physical and documentary evidence, including evidence that corroborates witness statements.

Investigation -- Recordkeeping

Must maintain for a period of seven (7) years records of each sexual harassment investigation, including:
- Any determination regarding responsibility
- Any audio or audiovisual recording or transcript of the hearing or, if applicable, other meetings

Investigative Plan

At the start of the investigation:
Have a roadmap for your investigation of what information you need to collect and how you want to collect this information.

At the end of the investigation:
Use the roadmap to write the investigation report and written determination.

Investigative Plan – Identifying the elements of a policy violation

1. Quid pro quo
2. Violence Against Women Act (VAWA) categories:
   - Sexual assault
   - Domestic violence
   - Dating violence
   - Stalking
3. Hostile environment

Sexual Assault – Rape

Policy Definition: The carnal knowledge of another person without the consent of said person.

Elements (example)
1. Carnal knowledge --
   - Penetration
   - Forcibly (or against will)
   - No matter how slight
   - Of vagina or anus
   - With any body part or object
2. Consensual incapacitation
Investigative Plan – Identifying the elements of a policy violation

**Sexual Assault – fondling**

**Policy Definition**

The touching of the private body parts of another person for the purpose of sexual gratification, including instances where the person is incapable of giving consent.

**Elements (example)**

1. Touching of private body part of another person
2. For the purpose of sexual gratification
3. Forcibly and/or
4. Without consent/incapacitation

---

**Sexual Assault – domestic violence**

**Policy Definition**

As defined by VAWA at 34 U.S.C. §12291(a)(10), means violence committed by a person—

A. Who has been in a social relationship of an intimate nature with the victim; and
B. Where the existing of such a relationship shall be determined by the length and type of the relationship and the frequency of the interactions of the persons involved.

**Elements (example)**

1. Violence
2. On the basis of sex
3. By a person in a romantic or intimate relationship with the complainant

---

**Sexual Assault – dating violence**

**Policy Definition**

As defined by VAWA at 34 U.S.C. §12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family laws of the jurisdiction.

**Elements (example)**

1. Violence
2. On the basis of sex
3. By a current or former spouse or intimate partner or
4. By a person who is or has cohabited with the complainant

---

**Sexual Assault – stalking**

**Policy Definition**

As defined by VAWA at 34 U.S.C. §12291(a)(18), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

--fear for his or her safety or the safety of others; or
--suffer substantial emotional distress.

**Elements (example)**

1. Engaging in a course of conduct
2. On the basis of sex
3. That would cause a reasonable person to fear for their safety or the safety of others or suffer emotional distress

---

**Sexual Assault – sexual harassment**

**Policy Definition**

Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to IIT’s education program or activity.

**Elements (example)**

1. Unwelcome conduct
2. Of a sexual nature
3. Determined by a reasonable person to be so severe and pervasive and objectively offensive
4. That it creates a sexually hostile environment (where person is effectively denied or limited in access to education program or activity)

---

**Retaliation**

**Policy Definition**

Intimidation, threats, coercion or discrimination against an individual for the person of interfering with rights protected under Title IX.

**Elements (example)**

1. Protected activity
   • Made complaint or report
   • Participated or refused to participate in investigation or hearing
2. Adverse action
3. Causal connection
4. Legitimate justification?
5. Pretextual justification?
Assessing a Hostile Environment

- Totality of the circumstances
- Objective vs. Subjective perspectives
- Big Question: Was the action sufficiently serious to deny or limit ability to participate or benefit from educational program?

Other Considerations:
- Type, frequency, duration of conduct
- Identity and relationship between parties
- Number of individuals involved
- Age and sex of parties
- Size of school, location of incident(s), context of incident(s)
- Other gender-based incidents

Investigative Plan

- Identify elements of policy violation
- Identify evidence -- documents and testimony -- needed to complete the investigation and identify the best sources and means of obtaining each type of evidence.
- Identify what you are looking for -- who, what, where, how, when -- to put together a chronological timeline of the events.

Types of Evidence – Testimonial

Interview all relevant witnesses and, to extent practicable, all witnesses identified by the parties.
1. Parties and all other individuals with “first-hand” knowledge
2. Individuals with “second-hand” knowledge
3. All of witnesses identified by parties?

Types of Evidence – Physical

- Closely review complaint or report from complainant
- Obtain relevant physical evidence
  - Medical evidence
  - Swipe cards
  - Emails
  - Phone records (text/voice-mail messages, photos/videos)
  - Snapchat, Instagram, Facebook, and other forms of social media
  - Videos from security cameras or residence hall cameras
  - Security or police reports, if any
  - Preserve physical evidence

Interviewing Techniques – Do’s and Don’ts

<table>
<thead>
<tr>
<th>General Principles</th>
<th>Do</th>
<th>Don’t</th>
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<tbody>
<tr>
<td></td>
<td>Ask open-ended questions</td>
<td>Ask leading questions</td>
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<tr>
<td></td>
<td>Ask questions that address all five senses</td>
<td>Ask questions that imply agreement</td>
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<td></td>
<td>Give interviewee plenty of time to answer question</td>
<td>Ask multiple choice questions</td>
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<tr>
<td></td>
<td>Clearly outlining information</td>
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<table>
<thead>
<tr>
<th>Sample Question</th>
<th>Do</th>
<th>Don’t</th>
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<tbody>
<tr>
<td>Tell me about...</td>
<td></td>
<td>Why didn’t you...</td>
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<tr>
<td>Tell me what you were thinking when...</td>
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<td>What did you mean when you said...</td>
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<tr>
<td>What did you remember about...</td>
<td></td>
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</tr>
</tbody>
</table>
Interviewing Techniques – Do’s and Don’ts

**Basic Interview Questions**

- Who committed the alleged act?
- Was anyone else involved?
- What exactly occurred?
- What was said and by whom?
- When did the act occur?
- Where did the act occur?
- How did you react? How did the incident affect you?
- Are there other individuals who may have relevant information?
- Did you talk to anyone of the incident?
- Ask for available evidence (e.g., social media)
- What else do you want to tell me about what happened?

Complainant’s Sexual Predisposition and Prior Sexual History

Generally, the Complainant’s sexual predisposition and prior sexual history are not relevant, except where offered to prove:

- Someone other than the Respondent committed the misconduct at issue
- The parties have a prior sexual relationship and the information is provided to show consent

Consent

- When determining whether consent was present, Illinois Tech will consider whether a reasonable person in the same circumstances should have known whether the other party could or could not consent to the sexual activity. Thus, to have sex with someone who you know to be, or should have known to be incapable of making a rational, reasonable decision about a sexual situation is a violation of this policy.

- Consent is not present when an individual does not have the capacity to give consent, voluntarily or involuntarily, due to age (younger than 17 in Illinois), physical condition, or disability that impairs the individual’s ability to give consent.

- **Voluntary**: Consent must be freely given and cannot be the result of force (violence, physical restraint, or the presence of a weapon); threat or coercion (defined below); or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).

- **Present and ongoing**: Consent must exist at the time of the sexual or intimate activity. Consent to previous sexual or intimate activity does not imply consent to later sexual or intimate acts; similarly, consent to one type of sexual or intimate activity does not imply consent to other sexual or intimate acts. Consent may also be withdrawn at any time by the person making known, by articulated word or concrete action, his or her intention to withdraw it, and thereupon, the sexual or intimate activity should immediately cease.

- **Incapacitation**

  - i. The inability to understand the nature of the activity or to give knowing consent;
  - ii. The inability to understand the “who, what, when, where, and how” of a situation;
  - iii. When a person is sufficiently intoxicated, high, intellectually disabled or the like such that the person is not capable of understanding and appreciating what is happening; or
  - iv. The legal inability to give effective consent because of age or declared incompetent.
Consent and Incapacitation

Assess whether the respondent knew or should have known that the complainant was incapacitated and unable to give affirmative consent.

Signs of possible incapacitation:
- Slurred or incomprehensible speech
- Unsteady Gait
- Combativeness
- Emotional Volatility
- Vomiting
- Incontinence

Analyzing Consent – General Factors

The following factors can aid in the determination:
- How drunk was the victim? The more intoxicated the victim was, the less likely it is that the person was capable of consenting.
- Was the person conscious or unconscious? Did the person regain consciousness during the sexual assault? Did the person pass out? If so, what did the accused do?
- Did the person black out? Did the person vomit?
- Could the person speak? Was the person slurring? Was the person able to communicate coherently?
- Was the person able to walk or did someone (in particular, the defendant) have to carry the person? Did the person have to lean on someone?

Investigation Report

1. Allegations potentially constituting sexual harassment
2. Applicable policy
3. Procedural steps (taken from complaint receipt through final investigation report, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence)
4. Findings of fact
   - Accounts provided by parties and witnesses
   - Description of relevant evidence obtained

Recordkeeping Reminder

Must maintain for a period of seven (7) years records of each sexual harassment investigation, including:
- any determination regarding responsibility
- any audio or audiovisual recording or transcript of the hearing or, if applicable, other meetings

The Scales: Evaluating the Evidence

- Apply the preponderance of the evidence standard:
  - Which has the greater weight?
  - "More likely than not"
  - 50% and a feather

Methods for Evaluating the Evidence - Chart
Physical Evidence of Sexual Assault

The most reliable evidence is in the center – the evidence gets less reliable the further it is from the center.

Testimony of the parties

Text from friend of Complainant to another friend about the incident

Statements regarding either party's good character

Texts between the parties

Methods for Evaluating the Evidence - Bullseye

Methods for Evaluating the Evidence - Scales

Assessing Credibility

- Consider all the information and ask:
  - Is the story this person is telling believable?
  - Does this person have a reason to lie or to be less than forthcoming?
  - Is this person's story consistent with the other evidence in the case? If not, why not?
  - Does the witness seem to be telling the truth?
  - Are inconsistencies or memory deficiencies the result of trauma?
  - Has the respondent engaged in similar behavior in the past?

Elements of a High Quality Report

1. Date of report, names of parties, investigator
2. Procedural history
3. Allegation(s)
4. Applicable policies and procedures
5. Description of investigation
6. Information considered during investigation (witnesses questioned, documents and other evidence)
7. Interim Measures
8. Findings of fact
9. If required by policy, analysis and conclusion – whether the alleged conduct violated the policy and evidentiary standard – preponderance of the evidence
10. Responses by complainant and respondent
Elements of a High Quality Report

- Allegation
- Facts
- Policy
- Analysis
- Conclusion
- Sanction

Hearing & Written Determination

Hearing – Players
- Hearing officer — not the same person as the Investigator, the Title IX Coordinator or the Appeal Decision-maker
- The parties
- Witnesses
- Title IX Coordinator (in administrative, not substantive role)
- The Investigator (as possible witness)

Obligation to Serve Impartially
- Avoid prejudgment of the facts at issue
- Presumption for Respondent
- No bias or conflicts of interest
- For the individual Complainant
- For the individual Respondent
- For Complainants or Respondents generally
- Apply the relevant facts to the appropriate policy

Hearing – Location and Logistics
- May be held in the same geographic location or virtually
- Specific location to be determined by the school
- Technology must allow the parties, their advisors and the Hearing Officer to see and hear one another and any witnesses
Orderly Hearings: Logistics to Think About

- Information parties should have before the hearing
- Any accommodations required by the parties
- Physical space and use of remote technology—before, during and after hearing
- Plan for order of hearing
- Plan for recording hearing
- Plan for handling/keeping evidence
- Have contact information for Title IX Coordinator and General Counsel's office

Cross-Examination

- Only relevant cross-examination may be asked of a party or witness.
- The Hearing Officer must decide if a question is relevant before it is answered and explain any decision to exclude a question.
- Caselaw: If a party or witness does not submit to cross examination at the live hearing, the Hearing Officer may rely upon any statement in reaching a determination regarding responsibility.

Technology for Hearing

- No specific technology required
- Examples: Zoom, Microsoft Teams meetings
- Must be in real time
- Must enable hearing attendees to see and hear one another
- Be sure the technology has the necessary security protections
- Provide accommodations for individuals with disabilities
- Train Hearing Officer(s) how to use the specific technology for the hearing

Access to the Evidence

Parties must be allowed with access to the evidence during the hearing

Hearing Order

- Hearing Officer opening remarks (including hearing ground rules)
- Opening Statements
  - Complainant
  - Respondent
- Cross-Examination
  - Of Complainant by Respondent’s advisor
  - Of Respondent by Complainant’s advisor
- Witness testimony and cross-examination
- Closing statements
- Hearing Officer concluding remarks

Cross-Examination – Provision of an Advisor

If a party does not have an advisor present at the live hearing, the university must provide without fee or charge to that party, an advisor of the university’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
Written Determination

- Must provide the written determination to the parties simultaneously
- The determination regarding responsibility becomes final either on the date that the school provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely

Determination must include:
- Allegations
- Procedural steps
- Findings of fact
- Conclusions regarding the application of the policy to the facts using the applicable standard of evidence
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies will be provided by the school to the Complainant
- Appeal procedures available to both parties and the permissible bases for an appeal

Sanctions

Student discipline can involve a range of consequences, which may range from supportive measures to suspension and expulsion.

Discipline for employees also includes a range of options, including:
- A letter of reprimand
- Reassignment
- Suspension with or without pay
- Discharge or recommendation for discharge
- Notifying legal authorities
- Taking legal action against the employee

Hearing -- Recordkeeping

Must maintain for a period of seven (7) years records of each sexual harassment investigation, including:
- any determination regarding responsibility
- any audio or audiovisual recording or transcript of the hearing or, if applicable, other meetings
- any disciplinary sanctions imposed on the Respondent and any remedies provided to the Complainant

Appeals
Appeal – Players

- Appeal Decision-maker --- not the same person as the Hearing Officer, the Investigator(s), or the Title IX Coordinator
- The parties

Appeals

Either the Respondent and/or the Complainant may appeal:

- The dismissal of a formal complaint or any allegations
- A determination regarding responsibility and/or sanctions, if applicable

Title IX – Appeal Requirements

Information about appeal option must be included in the dismissal letter and/or the written determination letter

After an appeal is filed by one party…

- The other party is notified in writing that an appeal has been filed
- Both parties may file an appeal within 5 calendar days of the written determination

Information to be Considered

The Appeal decision maker will consider:

- The written determination issued by the Hearing Officer
- The written request for an appeal
- The written responses submitted by each of the parties to support their positions

Basis of Appeals

Appeals may be filed based only on the following:

1. Procedural irregularity
2. New evidence
3. Bias or conflict of interest
4. The sanction is disproportionate with the violation
Complainant appeals a dismissal by asserting that:
• newly discovered evidence demonstrates that the misconduct in fact does meet the definition of sexual harassment under the Title IX regulations
• there was procedural irregularity because the alleged conduct in fact does meet the definition of sexual harassment and thus mandatory dismissal was inappropriate

1. Examples:
   • Institution’s failure to evaluate all relevant evidence
   • Erroneous relevancy determinations by Hearing Officer
2. Must affect the outcome of the matter

1. The “new” evidence was not reasonably available at the time of the determination, and
2. Must affect the outcome of the matter

1. The Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias:
   • For or against the individual Complainant
   • For or against the individual Respondent
   • For or against Complainants or Respondents generally
2. The conflict of interest or bias affected the outcome of the matter.

• Similar misconduct = similar sanctions?
• Based on specifics of particular matter
  ▪ Seriousness of misconduct
  ▪ Respondent’s prior disciplinary history
  ▪ Impact

• Appeal Decision-maker issues a written decision describing the result of the appeal and the rationale for the result
• Provides the written decision simultaneously to both parties
• The appeal decision is final
Possible Appeal Outcomes

• Dismiss the appeal
• Change the determination of responsibility
• Change the sanctions decision
• Send case back to Hearing Officer to reconsider determination of responsibility and/or sanctions
• Send the case back to Title IX office for new investigation because of bias in the previous investigation

Title IX Informal Resolution

Informal Resolution – Players

• Title IX Coordinator
• Informal Resolution Facilitator
• The Parties

Informal Resolution

• “The Title IX Informal Resolution process aims to restore a sense of safety to the person who experienced harm, restore or maintain access to educational and/or employment opportunities, and in some instances repair harm.”
• “The Title IX Informal Resolution Facilitator does not have the power to make a decision for either party, but will attempt to help them find a mutually agreeable resolution and create a document for execution by all parties that summarizes the freely agreed-upon solutions.”

Why Use Informal Resolution?

From the perspective of the parties:
• To achieve more control over the process
• To avoid the formal resolution process, including the investigation and the hearing
  ➢ Less formal
  ➢ Less intimidating
  ➢ Fewer people involved (no witnesses)
• To resolve the matter more quickly
• May be a more fair and equitable result?
• To reach a creative resolution that may not be possible under the formal resolution process (e.g., apology)
Informal Resolution - Timing

Informal resolution is available at any time:

- After filing of a formal complaint
- Before a determination of responsibility is reached

Informal Resolution – Appropriate Uses

Not available for allegations that an employee sexually harassed a student

Informal Resolution – Voluntary

- Informal resolution is voluntary
- IIT will obtain the parties' voluntary written consent to informal resolution
- At any time prior to agreeing to a resolution, any party may withdraw from the informal resolution process and resume the grievance process

Structural Considerations

- Include clear descriptions of the informal resolution procedures in the policy and other information
- Separate investigation and informal resolution process and personnel
- Maintain separate records for informal resolution and formal investigation and hearing process

Spectrum of Conflict Resolution

- Empower Participants
  - Providing opportunity for dialogue between parties
  - Immediate Parties Only
- Trained Personnel in Mediation
  - Mediator's Role is a True Neutral
- No Blame
- Limited Safeguards
  - Question of confidentiality
- Focus on Shared Interests
- Seek Mutually Satisfying Resolutions

Principles of Mediation
The Mediation Process

- Mediator's Opening Remarks
- Opening Statements by Parties/Counsel
- Parties Share Perspectives
- Parties Identify Issues
- Parties Generate and Evaluate Options
- Partes Negotiate to Arrive at Mutually Agreeable Resolution
- Mediator Drafts Memo that Captures What Parties Agreed Upon

Principles of Restorative Justice

- Acceptance of responsibility
- Focus on repairing the harm caused
- Empower participants: the people most affected by the incident should be able to participate in its resolution
- Providing opportunities for dialogue between parties
- Community and institutional stakeholder participation
- Trauma-informed safeguards

The Restorative Justice Process

Preconference
- Voluntary, complainant-driven

Conference
- What happened from your perspective?
- What have you thought about since?
- What harm was caused? What was the impact?
- How can the harm be addressed?
- How can trust be restored?

Post-conference
- Support for one or both parties

Promoting Informal Resolution

It is important to promote the informal resolution option:
- in the training provided to students and employees
- in the institution's written Title IX policy and grievance procedures
- in informational materials relating to sexual harassment
- in discussions between the Title IX Coordinator and each of the parties

Possible Results

- Participation in educational programming
- No-contact agreements
- Modifications of academic, work and living arrangements
- Assistance with requesting academic allowances and extensions
- Writing an impact statement
- Writing a statement acknowledging harm caused

Success Stories

- An increase in university informal resolutions vs. formal investigations and hearings
- Increased and successful use of informal resolution by federal civil rights agencies
Informal Resolution – Recordkeeping

Must maintain for a period of seven (7) years records of any informal resolution and the result of the informal resolution process.

Avoiding Bias and Ensuring a Fair and Equitable Process

Understanding the Effects of Trauma on the Brain

NHS Lanarkshire: https://youtu.be/4-scKYx24aA

Effects of Trauma

- Possible impact on memory and memory recall
- Inconsistent or incomplete descriptions of facts
- Counterintuitive behaviors

Effects of Trauma

- Conducting a trauma-informed investigation does not mean that the result is inaccurate or biased in favor of the complainant.
- To the contrary, it helps to ensure that the evidence is considered in a thoughtful and informed manner.

Homework

Take the implicit bias test:
https://implicit.harvard.edu/implicit/takeatest.html
-- from Project Implicit
Project Implicit Test

What did you learn about bias from taking the test?

Avoiding Bias and Ensuring Equity and Due Process in the Title IX Process

- Investigations
- Training
- Outreach

What’s My Role in the Title IX Investigation Process?

- To make or assist the University in making an impartial, fair and unbiased determination as to whether a University policy or procedure was violated
- Temptation to be an advocate
  - For Complainant
  - For Respondent
- Don’t give into it!

*Except for advisors

Explicit and Implicit Bias

Explicit or conscious bias
When a person is very clear about their feelings and attitudes and related behaviors are conducted at a conscious level and with intent.

Implicit or unconscious bias
Bias that operates outside of the person’s awareness and can be in direct contradiction to a person’s espoused beliefs and values.

https://nccr.georgetown.edu/bias/module-3/1.php

Examples of bias

- Biases are often based on stereotypes, rather than actual knowledge of an individual or circumstance. These prejudgments can lead to poor decision-making or discrimination.
- Individuals in positions of authority have more power to do harm with their implicit biases than individuals who do not.

Another example

Weapon Bias: Split-Second Decisions and Unintended Stereotyping
Gender and sex stereotyping:
Examples of gender or sex stereotyping:

• Men are dominant while women are submissive
• Women are emotionally sensitive while men are emotionally detached
• Men are analytical and perform better at STEM while women are nurturing and perform better at art or music
• Men and women should dress according to their gender

Bias in the Investigation and Resolution Process:
Examples of bias in the investigation and resolution process:

• Victim-blaming
• Inquiring about irrelevant sexual history
• Questioning credibility based on prior interactions in other contexts
• Questioning motive based on political views or social media posts

Understanding Unconscious Bias:
A good resource:

Microsoft Training Video:

Perspectives: What can we do about it?
Mitigate:

• Recognize the implicit biases you carry
• Interrupt your automatic thoughts when they occur
• Increase awareness of bias and its impact – but awareness alone is not enough
• Ongoing process – not a one-time session
• Need to manage bias
• Calling out stereotyped views
• Give information that contradicts stereotypes
• Gathering more individualized information about people
• Reflecting on counter-stereotypical examples
• Increasing interactions with different kinds of people
• Practicing new behaviors

Questions and Answers:

Unconscious Bias Training that Works, Harvard Business Review,
https://hbr.org/2021/09/unconscious-bias-training-that-works