

North American Trade Schools TITLE IX POLICY

TITLE IX POLICY STATEMENT

North American Trade Schools is committed to maintaining a safe and healthy educational and work environment free from discrimination or harassment based on age, race, color, sex, gender, sexual orientation, religion or creed, national or ethnic origin, or disability. North American Trade Schools, in accordance with Title IX of the Education Amendments of 1972 and 34 C.F.R. Part 106, does not discriminate on the basis of sex, including in admissions and employment, nor will it permit or tolerate sex discrimination or sexual harassment against a student, employee, or other member of the North American Trade Schools community.

All students and employees are expected to comply with this Title IX Policy and take appropriate measures to create an atmosphere free of harassment and discrimination. Any inquiries regarding Title IX or North American Trade Schools's Title IX Policy and Procedures can be directed to the Title IX Coordinator as provided below, the U.S. Assistant Secretary of Education for Civil Rights, or both.

TITLE IX POLICY AND PROCEDURES

I. When This Policy Applies

A. Notice

North American Trade Schools will respond to reports or allegations of sexual harassment that are received either by North American Trade Schools's Title IX Coordinator or by any North American Trade Schools official who has authority to institute corrective measures on behalf of North American Trade Schools. These officials include the Director of Admissions, Education Director, Director of Career Services, Financial Aid Director.

B. Sexual Harassment Defined

For purposes of this Title IX Policy, sexual harassment is defined broadly to include any of three types of misconduct on the basis of sex:

1. any instance of quid pro quo harassment by an employee, i.e., where the employee conditions the provision of an aid, benefit, or service of North American Trade Schools on an individual's participation in unwelcome sexual conduct;
2. any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to North American Trade Schools's educational programs or activities; or
3. any instance of sexual assault (as defined in the Clery Act) or dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act).

C. Scope of this Title IX Policy

This Title IX Policy applies to conduct or allegations of conduct that involve one or more North American Trade Schools students or employees. To be covered by this Policy, the conduct or alleged conduct must have occurred either on campus or in an North American Trade Schools-controlled program or activity, whether the program or activity is on-campus or off-campus. This Policy also applies to conduct in any building owned or controlled by North American Trade Schools or by a student organization that is officially recognized by North American Trade Schools, as well as to online and electronic conduct. However, this Policy applies only to conduct occurring against a person who is in the United States.

For allegations that fall outside of the scope of this Policy, North American Trade Schools may address allegations of student misconduct as potential violations of the North American Trade Schools' Code of Conduct.

II. REPORTING TO THE TITLE IX COORDINATOR

North American Trade Schools is committed to providing clear, accessible channels for reporting to the Title IX Coordinator. Any person may report a claim of sex discrimination or sexual harassment, which will initiate North American Trade Schools's response, whether or not the person reporting is the person alleged to be the victim. There is no need to schedule an in-person appointment with the Title IX Coordinator or an North American Trade Schools official to make a report. Any person may report sex discrimination or sexual harassment at any time, including during non-business hours, by using the telephone number or e-mail address of the Title IX Coordinator, or by meeting with or sending a written complaint to the Title IX Coordinator Matt Daly at the office address below.

Title IX Coordinator
6901 Security Blvd Suite 16
Baltimore, MD 21244
410-298-4844
mdaly@natradeschools.edu

New Castle School of Trades Campus Director
Jim Buttermore
4117 Pulaski Rd
New Castle, PA 16101
724-964-8811
jbuttermore@ncstrades.edu

III. DEFINITIONS

The following definitions apply under this Title IX Policy:

1. A “complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. A “respondent” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
3. A “report of sexual harassment” is a complaint reported to the Title IX Coordinator, or to Any departmental Director or supervisor who then gives notice as required to the Title IX Coordinator. A report may be oral and informal. The complainant may file a formal complaint at the same time as making a report or may later proceed to file a formal complaint.
4. A “formal complaint” is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that North American Trade Schools investigate the allegation of sexual harassment. The filing of a formal complaint triggers North American Trade Schools’s complaint resolution process described in Part V of this Policy.

IV. WHEN A REPORT OF SEXUAL HARASSMENT IS MADE

A. Supportive Measures

Upon receiving a report of sexual harassment, North American Trade Schools will offer supportive measures to the complainant and the respondent, as appropriate, as reasonably available, and without fee or charge. The Title IX Coordinator will promptly contact the parties confidentially to discuss the availability of supportive measures, consider the parties’ wishes with respect to supportive measures, inform the parties of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Supportive measures will include non-punitive and non-disciplinary individualized services that are designed to ensure equal educational access, protect safety, or deter sexual harassment without being unduly burdensome to the other party. Supportive measures are coordinated by the Title IX Coordinator and, among other things, may include:

1. academic support services and accommodations, including the ability to reschedule exams and assignments, transfer course sections, or withdraw from courses without penalty;
2. assistance in connecting to community-based counseling services;
3. assistance in connecting to community-based medical services;
4. assistance with obtaining personal protective orders;
5. mutual restrictions on communication or contact between the parties; or
6. a combination of any of these measures.

Notwithstanding any other provisions of this Title IX Policy, North American Trade Schools may remove a respondent from an educational program or activity on an emergency basis if North American Trade Schools undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of a student or other individual justifies removal, and provides respondent with notice and an opportunity to challenge the decision immediately following the removal. North American Trade Schools also may place a non-student employee respondent on administrative leave during the pendency of the complaint resolution process.

B. After a Report Is Made

A complainant may, but is not required to, file a formal complaint that will initiate North American Trade Schools's complaint resolution process, including an investigation, as set forth in Section V of this Title IX Policy. The complainant's wishes will be respected regarding whether North American Trade Schools investigates, except that the Title IX Coordinator may sign a formal complaint to initiate an investigation over the wishes of the complainant if the Title IX Coordinator determines that such action is not clearly unreasonable in light of the known circumstances.

Unless the formal complaint resolution process results in a determination that a respondent was responsible, North American Trade Schools will not impose disciplinary actions or take any other actions under this Policy that are not supportive measures. North American Trade Schools will not restrict the rights of any person, including the subject of a report filed with the Title IX Coordinator, that are protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

V. COMPLAINT RESOLUTION PROCESS

A. Institutional Obligations

North American Trade Schools is committed to a consistent, transparent complaint resolution process for resolving formal complaints of sexual harassment. At all stages of the complaint resolution process, North American Trade Schools and its representatives will:

1. require objective evaluation of all relevant evidence, whether inculpatory or exculpatory;
2. avoid credibility determinations based on a person's status as a complainant, respondent, or witness;
3. require Title IX personnel (including Title IX Coordinators, investigators, decision-makers) to be free from conflicts of interest or bias for or against complainants or respondents;
4. train all Title IX personnel on issues of relevance;
5. not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege;

6. not access or use any party's medical, psychological, or similar treatment records unless North American Trade Schools first obtains the party's voluntary, written consent to do so;
7. not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders"); and
8. keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

B. Resolving Formal Complaints

A formal complaint filed and signed by a complainant or signed by the Title IX Coordinator initiates North American Trade Schools's formal complaint resolution process. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of North American Trade Schools. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed above for the Title IX Coordinator.

A formal complaint filed by a complainant must include the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a complaint resolution process and must comply with requirements for Title IX personnel to be free from conflicts and bias.

Upon receipt of a formal complaint, the Title IX Coordinator will promptly provide written notifications to all known parties. This notification will include the following information:

1. Notice of the allegations constituting potential sexual harassment, including all relevant details known at the time. These details will include, at a minimum, the identities of the parties involved in the incident(s), if known, the alleged conduct that could constitute sexual harassment, and the date and location of the alleged incident(s), if known.
2. A statement that the respondent is presumed not responsible for the alleged conduct unless a determination regarding responsibility is made at the conclusion of the complaint resolution process.
3. A description of North American Trade Schools's complaint resolution process, including the rights and responsibilities of the parties during the investigation, hearing, and appeal process.

North American Trade Schools may, in its discretion, consolidate multiple formal complaints where the allegations arise out of the same facts.

If the allegations in a formal complaint are not within the scope of this Policy because they do not meet the Title IX definition of sexual harassment, or because the alleged activities did not occur in North American Trade Schools's education program or activity against a person in the United States, then North American Trade Schools must dismiss the formal complaint for

purposes of Title IX. In such case, North American Trade Schools will promptly send written notice of the decision to dismiss the complaint and the reasons for such decision to both parties. Even if the formal complaint is dismissed, however, North American Trade Schools still may address the allegations as potential violations of the North American Trade Schools Code of Conduct.

C. Investigations

The Title IX Coordinator will designate one or more individuals to investigate the formal complaint (i.e., the Investigator). The Investigator will begin an investigation as soon as practicable and generally not later than 10 business days after the written notice of the formal complaint was delivered to all parties. The Investigator, however, will ensure that the respondent receives sufficient time to prepare prior to any initial interview.

1. Advisors

During the investigation process, each party will have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney. The advisor may assist with all written submissions made by a complainant or a respondent, may assist with preparing questions or other information for the complainant or the respondent to be used at the hearing, and may facilitate scheduling and other processes. During any meeting or proceeding, the advisor may be present to observe and provide support and counsel to the participant. The advisor may not present evidence on a party's behalf, present argument, examine witnesses, testify, or disrupt or otherwise obstruct meetings or proceedings.

2. Investigation Procedures

The Investigator will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather information relevant to the complaint. Although the burden of investigation remains on North American Trade Schools, the Investigator will provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. The Investigator will send written notice of any investigative interviews, meetings, or hearings to the parties and their advisors, allowing each party adequate time to prepare in advance.

North American Trade Schools will complete the investigation as quickly as possible, generally within 60 days. The investigative process may be delayed or extended at the Investigator's discretion for good cause, such as the absence of parties or witnesses, concurrent law enforcement activity, or the accommodation of disabilities.

The complainant, respondent, witnesses, and others sharing information with the Investigator are expected to provide all relevant and truthful information and to do so at their earliest opportunity to facilitate prompt resolution. North American Trade Schools's students remain subject to the North American Trade Schools Code of Conduct during investigations and may be subject to

discipline for making false statements or knowingly submitting false information during the investigation.

3. Coordination with Law Enforcement

If North American Trade Schools is made aware that there is a concurrent criminal investigation, the Investigator will inform any law enforcement agency that is conducting its own investigation that an North American Trade Schools investigation is also in progress. The Investigator will ascertain the status of the criminal investigation and determine the extent to which any evidence collected by law enforcement may be available to North American Trade Schools in its investigation.

At the request of law enforcement, North American Trade Schools may agree to temporarily defer part or all of its own investigation (or subsequent hearing) until after the initial evidence-gathering phase of the law enforcement investigation is complete. The Investigator will communicate with the parties, consistent with the law enforcement request and North American Trade Schools's obligations, regarding procedural options, anticipated timing, and the implementation of any necessary interim measures.

4. Preliminary Report

When the investigation is complete, the Title IX Investigator will provide the parties with a preliminary report, which will include, as applicable, the complainant's statement, the respondent's statement, each witness statement, and either a copy or written summary of any other information the Investigator deems relevant. The preliminary report will be provided in an electronic format that restricts the parties from downloading or copying the evidence. Each party will have 10 business days to review the preliminary report and to provide written feedback. Each party's written feedback, if any, will be attached to the final investigative report.

5. Final Investigative Report

After consideration of the parties' final responses to the preliminary report, or after 10 business days have elapsed without comment, the Investigator will prepare and send to the parties and to their advisors a final investigative report that fairly summarizes relevant evidence and that includes the parties' written feedback, if any. The report will be in electronic format or hard copy. The parties will have at least 10 business days after receipt of the final investigative report to prepare for the scheduled live hearing.

D. Informal Resolution

At any time after a formal complaint has been filed, if the Title IX Coordinator believes that the complaint may be amenable to informal resolution, the Title IX Coordinator will give notice to the parties of their ability to choose an informal resolution option. However, an informal resolution process may not be used to resolve allegations that an employee sexually harassed a

student. Further, an informal resolution process may not be offered unless a formal complaint has been filed.

The notice of the informal resolution option will include a statement of the allegations, a description of the informal resolution process, and a statement that at any time prior to the finalization of an informal resolution decision, any party has the right to withdraw from the informal resolution process and resume the formal resolution process with respect to the formal complaint.

Each party has five business days to indicate in writing to the Title IX Coordinator if the party wishes to pursue the informal resolution option. If both parties give written, voluntary, and informed consent to the information resolution option within five business days, North American Trade Schools will begin the informal resolution process.

Participation in the informal resolution process is completely voluntary. North American Trade Schools does not require any party to participate in the informal resolution process. Each party has an unconditional right to withdraw from the informal resolution process and resume the formal resolution process.

If the parties elect to pursue informal resolution, the Title IX Coordinator will designate a Mediator to administer the informal resolution process and will provide the Mediator with the final investigative report. If an investigation was not completed when the parties chose the informal resolution option, the Title IX Coordinator will give to the Mediator any available investigation information.

The Mediator retains discretion to meet with either or both of the parties individually prior to reaching a decision. The Mediator will issue an informal resolution decision simultaneously to all parties, including:

1. the information from the formal complaint;
2. any information gathered during a previous investigation;
3. any new information the Mediator gathered from the parties;
4. a preliminary analysis and finding of whether or not there was a violation of the North American Trade Schools Code of Conduct and/or the North American Trade Schools Title IX Policy; and
5. if appropriate, sanction(s) with rationale(s) based on the severity of the case and any past related incidents.

The parties have five business days to respond to the informal resolution decision. If neither party disagrees with the decision within five business days, the decision is finalized and the matter is considered resolved and closed through this informal resolution process. The Title IX Coordinator will send the parties a letter to inform them the matter has been resolved and the case is closed with regard to the North American Trade Schools resolution process.

If either party disagrees with the Mediator's decision, the party may inform the Title IX Coordinator within five business days of receipt. The matter will then proceed through the formal complaint process.

In the event of any of the following developments:

- if either party declines the initial offer of an informal resolution option;
- if five business days pass from the initial notice of the informal resolution option with no response from a party;
- if any party gives written notice of withdrawal from the informal resolution process; or
- if any party gives written notice of disagreement within five business days of the Mediator's decision,

then the Title IX Coordinator will notify the parties and their advisors of the need to convene a formal hearing. If an investigation previously was suspended when the parties chose the informal resolution process, the Investigator will complete the investigation and the parties will have 10 business days for preparation, from the time of receipt of the final investigative report to the time of the scheduled formal hearing. If the investigation was previously completed and the parties previously received the final investigative report, then from the time of the current formal hearing notice, the parties will have at least 10 business days for preparation prior to the time of the scheduled formal hearing.

E. Formal Hearing

When a complaint is not resolved informally, the Title IX Coordinator will notify the parties and help to make any needed accommodations for the formal hearing. At any time prior to a final determination at the end of the formal hearing, the complainant and respondent can choose to accept an informal resolution decision previously offered. Each party must give written, voluntary agreement to the previously offered informal resolution decision, after which the decision is finalized and the hearing is terminated.

The Title IX Coordinator will choose one or more individuals to conduct the formal hearing, who shall be designated the Decision-maker(s). The Decision-maker(s) must be free from bias or conflict of interest and may not include the Title IX Coordinator or any person who served as the Investigator.

Live hearings may be conducted with all parties physically present in the same location or, at North American Trade Schools's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. At the request of either party, North American Trade Schools will provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. In advance of the live hearing, the Decision-maker(s) will receive training on any technology to be used at the hearing.

1. Advisors

Hearings are closed to the public. Parties may be accompanied at the hearing by one advisor who may be, but need not be, an attorney. If a party does not have an advisor present at the hearing, then North American Trade Schools will provide, without fee or charge to that party, an advisor of North American Trade Schools's choice (who may be, but is not required to be, an attorney) to conduct cross-examination on behalf of that party.

2. Cross-examination

At the hearing, North American Trade Schools will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. This cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Decision-maker(s) will first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant. The Decision-maker(s) will exclude as irrelevant any evidence regarding the complainant's prior sexual behavior unless this evidence is offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the Decision-maker(s) will not rely on any statement of that party or witness in reaching a determination regarding responsibility. In such case, however, the Decision-maker(s) will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

3. Standard of Evidence

The standard of evidence to determine responsibility in hearings under this Policy is the preponderance of the evidence standard, which means more likely than not. If this standard is not met, the respondent is presumed not responsible for the alleged conduct. Under the preponderance of the evidence standard, it is possible for an investigation, hearing and/or appeal to reach an inconclusive determination.

4. Record of Hearing

North American Trade Schools will create an audio or audiovisual recording, or transcript, of any live hearing and will retain this record for seven years after the hearing. No camera, TV, or other equipment, including cellphones, will be permitted in the hearing room except as arranged by North American Trade Schools.

F. Written Determinations of Responsibility

Following the hearing, the Decision-maker(s) will consider all of the evidence and make a determination whether the respondent is responsible for the alleged conduct. The Decision-maker(s) will issue a written determination regarding responsibility to the parties simultaneously. The written determination will include:

1. identification of the allegations potentially constituting sexual harassment;
2. a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. findings of fact supporting the determination;
4. conclusions regarding the application of North American Trade Schools's Code of Conduct and/or Title IX Policy to the facts;
5. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions/remedies to be imposed, and whether remedies designed to restore or preserve equal access to North American Trade Schools's education program or activity will be provided by North American Trade Schools to the complainant; and
6. North American Trade Schools's procedures and permissible bases for the complainant and respondent to appeal.

The Decision-maker(s) will strive to issue the written determination regarding responsibility within 14 days after the hearing. Either party may appeal the determination by filing a written appeal, as described below, within 10 business days after receipt of the determination regarding responsibility. If no appeal is filed, the determination regarding responsibility becomes final 10 business days from the date of delivery to the parties.

The Title IX Coordinator is responsible for effective implementation of any sanctions or remedies required by the determination of responsibility. The list of potential sanctions or remedies includes one or more of the following:

For Students:

- Written warning
- No-contact orders
- Removal from specific courses or activities
- Disciplinary probation
- Suspension
- Expulsion
- Transcript notation

For Employees:

- Written warning
- Performance improvement plan

- Required training or education
- Loss of annual pay increase
- Suspension with or without pay
- Termination

G. Dismissing the Formal Complaint or Individual Allegations

North American Trade Schools may dismiss the formal complaint or any allegations in the formal complaint if at any time during the investigation or hearing:

1. the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any specific allegations in the formal complaint;
2. the respondent is no longer enrolled or employed by North American Trade Schools; or
3. specific circumstances prevent North American Trade Schools from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.

North American Trade Schools will promptly send written notice of a dismissal and reason(s) simultaneously to the parties.

H. Appeals

Either party may appeal from a determination regarding responsibility, or from North American Trade Schools's dismissal of a formal complaint or any allegations, on the following bases:

1. procedural irregularity that affected the outcome of the matter;
2. newly discovered evidence that was not reasonably available prior to the determination of responsibility that could affect the outcome of the matter; or
3. one or more of North American Trade Schools's Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

A notice of appeal must be in writing and must be filed with the Title IX Coordinator within 10 business days after the delivery of the decision to be appealed. The notice of appeal must include the name of the complainant, name of the respondent, the decision or action being appealed, and an explanation of the grounds for appeal.

Upon receiving a notice of appeal, North American Trade Schools will provide formal notice to the parties of the appeal. Each party will be given a minimum of 10 business days to provide a written statement supporting or challenging the appealed action.

The Title IX Coordinator will designate an Appeal Officer to hear and make a decision with regard to the appeal. The Appeal Officer must be free from bias or conflict of interest and must not be the Title IX Coordinator, the Investigator, or the Decision-maker(s).

As soon as is reasonably practicable, and generally within 14 days after receipt of the parties' written statements, the Appeal Officer will issue a written decision regarding the appeal simultaneously to both parties. The decision will describe the result of the appeal and the rationale for the decision. The decision of the Appeal Officer is final.

VI. RETALIATION PROHIBITED

Retaliation against any person who files a complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited. This Policy prohibits any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against any person reporting or filing a complaint or any person cooperating in the investigation under this Policy. Action is deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy. All parties should be aware of the following stipulations:

- Charging an individual with Code of Conduct violations that do not involve sexual harassment, but that arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a Title IX complaint resolution proceeding does not constitute retaliation, but a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
- The exercise of rights protected under the First Amendment does not constitute retaliation.

A person who believes retaliation has occurred should notify the Title IX Coordinator. The Title IX Coordinator will take prompt corrective action if the complainant or the alleged victim (if not the complainant) experiences retaliation or is subjected to further violation of this Policy.

Retaliation may result in disciplinary or other action independent of the sanctions or remedies imposed in response to the underlying allegations of sexual harassment.

VII. RECORDS RETENTION

North American Trade Schools shall retain appropriate records for a period of seven years, including records relating to any reports of sexual harassment. The records will include actions taken by North American Trade Schools, including any supportive measures taken in response to the report. If supportive measures were not provided, North American Trade Schools will document the reasons for this response.

The institution also will retain records relating to any formal complaints. These records will include the investigation, the informal resolution process (if applicable), hearing, written determination, and (if applicable) the appeal and result.

Title IX Coordinator Training

Sample Template

What We'll Cover Today

- Overview of Title IX
- Forms of gender discrimination
- Compliance checklists
- Title IX Coordinator role
- Model training

Reference Materials

- Reference materials:
 - Institution's Title IX Policy and Grievance Procedures
 - Institution's most recent Clery Act Annual Security Report
 - [Other Institutional policies, procedures, and program materials relevant to Title IX and the Violence Against Women Act (VAWA)]

Why This Matters

Sexual Harassment/Violence in Colleges

- As of September 2015, there were over 130 postsecondary education institutions under investigation by the Department of Education's Office for Civil Rights (OCR) for Title IX Violations
- Investigations focus on the school's handling of sexual violence and harassment complaints

Title IX

Sources of Law

- Statutory: Title IX, VAWA
- Regulatory: Federal regulations 34 CFR §§ 668.46 (VAWA)
- Guidance: Dear Colleague Letters and Office for OCR Q&A

Title IX

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

Gender Discrimination

- “Denial of access to education” is interpreted very broadly
- Includes:
 - express bans based on gender
 - treating students differently based on gender
 - discrimination based on gender
- Discrimination includes sexual harassment and sexual violence

What Is Sexual Harassment?

- Unwelcome conduct of a sexual nature
- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment
- Sexual harassment is prohibited by school policy and is unlawful

What Is Sexual Violence?

- Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent)
- A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion
- Sexual violence can be carried out by school employees, other students, or third parties
- All such acts of sexual violence are forms of sex discrimination prohibited by Title IX

What's Changed?

- Title IX has always prohibited discrimination, including sexual harassment
- Following VAWA, schools have to do more to detect and prevent discrimination, including sexual violence, in addition to responding to allegations of such
- Schools' obligations have been expanded and the August 2020 final rule includes a prescribed grievance process with an investigative process. These rules also outline a live hearing process allowing for cross-examination by designated advisors for each party.
- An appeal process, available to both parties, must be established.

Sex vs. Gender

- Note that the language in the statute refers to “sex” not gender
- This has been interpreted to cover “gender stereotypes”— i.e., the roles that men and women traditionally play
- Students and employees are protected from discrimination/harassment/sexual violence on the basis of their sex
- Extends to the LGBT community

Who Is Protected?

- Title IX's sexual harassment and discrimination provisions (including sexual violence) extend to both employees and students
- This means that for employees, in addition to guaranteeing their rights under other state and federal laws, the school has additional obligations under Title IX

Where Does Title IX Apply?

- Extends to all school-related activities — on and off campus, over which the school exercised substantial control, and the act was against a person in the United States

Compliance Checklist

Compliance Checklist

- Schools must establish the following:
 - Notice of Nondiscrimination
 - Title IX Coordinator(s)
 - Grievance Procedure
 - Means to conduct investigations and hearings
 - Appeal procedures

Notice of Nondiscrimination

Notice of Nondiscrimination

- Puts students and employees on notice of their rights under Title IX
- Provides information for contacting the school's Title IX coordinator and OCR
- It's okay to update via catalog addendum or other notice; must also include in a public facing website

Notice of Nondiscrimination Checklist

Must include the following:

- ✓ The school does not discriminate on the basis of sex in its education programs and activities
- ✓ The school is required by Title IX not to discriminate in this way
- ✓ Questions regarding Title IX may be referred to the Title IX Coordinator or the OCR
- ✓ Name, office address, phone, and email address of the Title IX Coordinator(s)

Title IX Coordinator

Title IX Coordinator(s)

- Schools must designate and authorize at least one employee to coordinate its efforts to comply with Title IX responsibilities
- Responsible for investigating complaints and enforcing school policy
- Can be one or more individuals

Title IX Coordinator Duties

- Core responsibilities:
 - oversee the school's response to Title IX reports and complaints
 - identify and address any patterns or systemic problems
- Must be:
 - knowledgeable of the requirements of Title IX, the school's policy and procedures, and all complaints raising Title IX issues
 - informed of all reports raising Title IX issues
 - given the training, authority, and visibility to fulfill these duties

Grievance Procedure

Grievance Procedure

- Schools must:
 - adopt and publish grievance procedures
 - respond promptly in a manner that is not “*deliberately indifferent*” – meaning in a way that is not clearly unreasonable in light of known circumstances
- Can be included in ordinary grievance process, but must meet all the requirements of Title IX

Grievance Procedure Checklist

- ✓ **Notice** to students and employees of Grievance procedures
- ✓ Application of the **grievance procedure** to complaints filed by students (or on their behalf) alleging sexual violence carried out by employees, other students, or third parties
- ✓ Provisions for adequate, reliable, and impartial **investigation** of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence
- ✓ Provision of a **live hearing** with cross examination by each party's advisor
- ✓ Provision of an **appeal** process for certain items impacting outcome

Include the following...

- A statement of the **school's jurisdiction** over Title IX complaints
- Adequate **definitions** of sexual harassment (which includes sexual violence) and an explanation as to when such behavior creates a hostile environment
- Explanation of **how to report** complaints, including provisions for confidential reporting
- Identification of the employee responsible for evaluating requests for **confidentiality** (Title IX Coordinator)

Definitions

- **Complainant** – an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint** – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

Reporting Violations

School Response Requirements

- Prompt response, explaining **process to file formal complaint**
- Provision of **supportive measures**
- Statement that Title IX **prohibits retaliation**
- Explanation of a student's **right to file a criminal complaint** and a Title IX complaint simultaneously
- Explanation of available **interim measures** that may be taken to protect the student in the educational setting
- A list of **evidentiary standards** that will be used (preponderance of the evidence or the clear and convincing evidence standard) in resolving a complaint
- A list of **potential remedies** for students, potential sanctions against perpetrators, and sources of counseling, advocacy, and support

Training

Training

- In addition to the Title IX Coordinator(s), training materials must be made available on the school's website
- Training for employees and students should include:
 - contact info for the Title IX coordinator
 - school's obligations under Title IX
 - recognizing & reporting harassment, discrimination, and sexual violence
 - school's policies & procedures
 - prevention
- No specified number of hours or frequency — must be done “regularly”

Investigations

Tips for a Successful Investigation

1. Treat all complaints seriously
2. Begin immediately
3. Select investigator carefully (need not be the Title IX Coordinator)
4. Prepare before interviews – review complaint, school policies, student and/or employee files
5. Conduct a thorough investigation – when, where, what, who – and cover the same questions with all interviewees
6. Document, document, document

Investigations and Hearings

- “Investigation” refers to the **process the school uses** to resolve Title IX complaints
- Includes the **fact-finding** investigation and any **hearing** and **decision-making** process the school uses to determine:
 - whether or not the conduct occurred; and,
 - if the conduct occurred, what actions the school will take to end the conduct, eliminate the hostile environment, and prevent its recurrence
 - prevention may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population

Investigations and Hearings (continued)

- Must be **adequate, reliable, impartial, and prompt**
- Must include the **equal opportunity** for both parties to present witnesses and other evidence
- May include a **hearing** to determine whether the conduct occurred, including cross examination with party advisors
- May offer and facilitate **informal resolution** options if both parties consent to attempt such (except allegations that an employee sexually harassed a student)

Investigations and Hearings (continued)

- School **may** choose the standard of evidence - "preponderance of the evidence" or "clear and convincing evidence"
- Both parties must be notified, in writing, of the **outcome** of both the complaint and any appeal
- The school must provide a right of **appeal** to both parties

What If the Claim Lacks Merit?

- Or the investigation is inconclusive?
- Document in the same fashion
- State that the school was either unable to corroborate the claims or is unable to conclude that the incident more likely than not occurred as reported by complainant
- No corrective actions will be issued
- Complainant may choose to change classes if he or she has not already done so

Preventing Discrimination

Preventing Discrimination

- The school is always under an obligation to prevent discrimination, including a hostile environment and sexual violence
- This includes preventing retaliation against those who make good faith complaints of Title IX violations
- It also includes taking steps while an investigation is pending to prevent ongoing harassment and retaliation

Other Concerns

Other Considerations

- FERPA
 - Title IX trumps FERPA per OCR
 - Conflict can come up in investigations
- Clery Act
 - A sex crime reported to the school – even off campus – may trigger Clery Act & Title IX obligation
- Parents, media, & others
 - Stick to school policy

Hypotheticals

#1 - Student Bonding

- Janice is a new student. A fellow student, Eric, invites her out for drinks after class. Over drinks, Eric asks whether they can have dinner sometime. Janice laughs off the suggestion, and they continue drinking together. At the end of the evening, Eric again asks her to dinner. She says “No.” They end the evening on a friendly note.
- The following day, Eric sends an IM to Janice’s smart phone and again asks her out. Janice responds that she has a partner. Over the next few months, Eric and Janice email one another with jokes and videos, some of which are sexual in nature.
- A couple months later Janice files a claim of sexual harassment claiming that Eric makes her uncomfortable, and it began as soon as she started school.

Investigation

- Is an investigation merited?
- Where do you start?
- What questions would you ask?
- Examples:
 - Tell me what happened (avoid “yes” and “no” answers; narratives are helpful)
 - Did you let him know you were uncomfortable with his behavior?
 - What triggered the report?

#2 - Inappropriate Behavior in Class

- Lauren and Gail often joke around in class and make sexually charged comments or innuendoes. The instructor has overheard the comments many times and does not know if anyone is uncomfortable with the comments.
- Should she report the behavior to the Title IX Coordinator?

#3 - Trouble with a Partner

- Yvette confides in her instructor that she and her boyfriend, also a student, have been having issues in their relationship. As a result, Yvette has lost focus at school and is struggling in classes. The instructor did not ask specifically what the “issues” were.
- Should the instructor give the Title IX Coordinator a call?

#4 - Salon Client

- A regular client of the school's salon always asks for the same student to provide his services. Other students remark that the client gives them the creeps. The requested student has made no such comments.
- Another student comments to the instructor that she feels bad for the requested student and thinks this client makes the student uncomfortable.
- Should the instructor involve the Title IX Coordinator?

#5 - Giving the Up/Down

- An employee of the school tends to give everyone the up/down look from head to toe. It doesn't make Jill uncomfortable, but she's noticed this tendency many times. The employee seems to do this with everyone, male and female alike.
- Are there possible Title IX issues implicated? Why or why not?

#6 - Easygoing Instructor

- Sam is a relaxed, easygoing instructor. She is not offended by student jokes or inappropriate comments. The school instructs her that she needs to tighten the reins in her classroom.
- She begins to tighten the reins and reprimands Shelly, a chronic offender.
- Shelly complains that whenever males in her class have said similar things in the past, they have not been disciplined and complains that Sam is singling her out based on her gender.
- What are the obligations of the school to investigate the claim?

#7 - Uptight Bystander

- Michelle does not like all of the sexually related jokes and banter that she hears in the classroom.
- She complains to the Title IX Coordinator that she believes it is a hostile environment.
- The Title IX Coordinator interviews other students, and no one else seems bothered in the least.
- What actions, if any, should the school take?

Mock Training for Employees and Students

(starts here)

Title IX

Sexual Harassment, Violence, and Discrimination Prevention for Students
[XYZ School]

Presented By:
[Imaso Luckytobe]
Title IX Coordinator

Introduction

- Title IX Coordinator NAME
 - Office location
 - Telephone number
 - Email address
- I am responsible for ensuring the school is in compliance with its Title IX obligations.

What Is Title IX?

Title IX

- Prohibits sex-based discrimination in schools that receive any kind of federal funding, including this institution
- Sexual harassment and sexual violence are forms of sex discrimination
- Includes harassment based on gender stereotyping
- It also extends to employees of the school

Why Are We Providing This
Training?

Title IX Training

- School policy prohibits discrimination on the basis of gender, including sexual harassment and sexual violence
- The school wants to ensure that you know about this policy, how it is enforced, and how to report violations
- Retaliation against anyone reporting violations of this policy is prohibited

What Is Sexual Harassment?

Sexual Harassment

- Unwelcome conduct of a sexual nature
- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment

Sexual Harassment Myths

- ✗ Only women can be sexually harassed
- ✗ There is no such thing as same-sex harassment
- ✗ A person has to be the direct object of the harassment to be a victim
- ✗ Instructors can't be harassed by students
- ✗ The harasser must have a sexual interest in the victim

Who Is Protected By Title IX?

Title IX Applies to Employees and Students

- Title IX applies to employees and students of the school in the United States
- It protects both men and women; it applies regardless of sexual orientation
- Sexual harassment between people of the same gender is prohibited, just as harassment between individuals of opposite gender is prohibited

Where Does Title IX Apply?

On and Off-Campus Conduct

- Title IX prohibits sexual harassment both on and off campus
- Title IX applies to school activities that occur off campus where the school exercises substantial control
- Title IX may also apply to non-school related off-campus activity if it creates a hostile environment at school

Third Parties

Third Party Harassment

- Students/staff are protected from harassment by persons who are neither students nor employees of the school, if such conduct occurs at the school or at a school related activity

How to Report Violations

Reporting Violations

- The school's policy provides how you should report violations of the school's policy against gender discrimination
- Violations should be reported to the Title IX coordinator
- Reports may be made by the complainant personally, by a representative, or a combination of the two

Investigation of Complaints

Investigation of Complaints

- When the school receives a complaint, the Title IX Coordinator will initiate an investigation
- A determination will be made whether the complaint is valid or not
- Retaliation is prohibited at all times, including while the investigation is pending

Questions?



Certificate of Completion

This is to certify that

Matt Daly

has successfully completed the requirements for the following online course:

CM140 - Title IX and VAWA Training: Building Safer Campuses

on

November 02, 2021

Continuing Education Credit: 4 Hours

Verification Email: admin@maxknowledge.com

Verification Code: 7e28832fb27f3951690f09a4699edf90