

Title IX **ADVISORS**

2023 Training

Introduction

Basics

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Process

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Expectations

TRAINING AGENDA



Title IX ADVISORS

2023 Training

Scope of Training

For individuals serving as Title IX Advisors under the Title IX Regulations

- Advisors appointed by the college
- Will be available to non-college advisors

What is Title IX?

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).

Final Rule Requirements

Basics

- With actual knowledge of sexual harassment that meets the new regulations, the college must respond promptly
- The college must provide a Title IX Advisor if requested by a complainant or respondent (Title IX sexual misconduct)

Basics

Types of Cases

Allegations of the following behaviors involving students, employees or a combination of both

Sexual Harassment

**Interpersonal
Violence**

Sexual Assault

Quid Pro Quo

Stalking

**NOT for Discrimination or
Gender-Based Harassment**

Basics

Title IX Sexual Harassment

Conduct that satisfies one or more of the following:

1. Quid Pro Quo

- An employee making education benefits available by participation of unwelcome sexual conduct; or

Title IX Sexual Harassment

Is this an example of Quid Pro Quo?

A manager tells a subordinate employee that the subordinate employee will not move from part-time to full-time unless the subordinate employee perform sexual favors for the manager. The subordinate employee says no and as a result the subordinate employee remains at the part-time level and another subordinate employee with less experience is promoted to a full-time status.

Answer: Yes

Title IX Sexual Harassment

Is this an example of Quid Pro Quo?

A faculty member tells a student that the student can increase their grade from a “C” to a “B” if the student sends the faculty member sexy pictures of themselves.

Answer: Yes

Title IX Sexual Harassment

Basics

2. Hostile Environment - Unwelcome conduct that a reasonable person would determine is:
 - SO severe,
 - SO pervasive, **AND**
 - Objectively offensive that it prevents equal access to an education program or activity;

Title IX Sexual Harassment

Is this an example of a Hostile Environment?

Student A repeatedly gropes Student B's buttocks when the two are on the elevator in the F-wing. Student B has no romantic interest in Student A and has told Student A to stop. But Student A persists, causing Student B to use the stairs instead of the elevator and to avoid Student A in other areas of the campus.

Answer: Yes

Title IX Sexual Harassment

Is this an example of a Hostile Environment?

Student A asks Student B to go on a date, and Student B says “no.” Student A then repeatedly posts messages on social media using various vulgar terms that suggest Student B is promiscuous. When Student A and Student B attend a shared biology class, Student A mutters these vulgar terms toward Student B, loud enough for others to hear. Student B blocks Student A on the social media platform and drops the biology class to avoid Student A.

Answer: Yes

Title IX Sexual Harassment

Basics

3. Prohibited behaviors defined in the Clery Act:

- Sexual Assault
- Dating violence
- Domestic violence, or
- Stalking as defined in VAWA

Basics

Title IX Jurisdiction

Institution's program or activity in the United States

- On the college's property
- Sponsored or affiliated events of the college
(substantial control)
- Includes online courses
(conducted in the USA)

Basics

Adjudication Processes

Students & Employees

- A single Decision-Maker will hear all complaints that are not informally resolved
- Per the regulations, an informal resolution process is not an option for student complaints against an employee

Title IX **ADVISORS**

Roles



Title IX Coordinator

Appointed by Delta College (*trained annually*)

Responsibilities:

- Determines if a complaint meets the jurisdiction requirements
- Ensures that both parties receive appropriate supportive measures
- Ensures compliance of the entire process
- Oversees the entire process
- Provides training to all roles
- Ensures that parties have advisors

Deputy Coordinator/Investigator

Appointed by Delta College (trained annually)

Responsibilities:

- Gathers all relevant evidence
- Organizes all relevant evidence
- Determines whether evidence is relevant based on the complaint
- Does not make a determination on the facts (for TIX)

Decision-Maker

At Delta College, the Vice Presidents fulfill this role

Responsibilities:

- Runs the live cross-examination hearing
- Makes relevancy determinations on questions asked
- Makes final determinations on policy violations
- Writes the final decision (notice of outcome)

Appellate

At Delta College, the Deans/Executive Directors fulfill this role

Responsibilities:

- Determines if appeal meets the requirements to move forward
- Reviews appeal and case documentation
- Makes appeal determination
- Writes the final appeal outcome

Advisors

At Delta College, any full-time employee

Responsibilities:

- Completes advisor training
- Accompanies a complainant or respondent to meetings with the investigator (background role)
- Reviews evidence and investigation reports with party
- Cross-examines the opposing party during a live hearing
 - The hearing is where the advisor has the most active role
 - Questions are provided by the party
 - Advisors are not responsible for developing the questions

Title IX Resolution Process



Report/Notice of Complaint



Report/Notice of Complaint

Process

- A report of misconduct is filed under Title IX
 - Formal request of complainant to investigate the allegations or
 - Initiation of the Title IX Coordinator (*severity of report*)
- Notice of the investigation sent to the parties (*which includes information on advisors and how to select*)
- Optional informal resolution option presented, as the college deems appropriate; both parties must agree to this process

Process

Report/Notice of Complaint

ADVISOR'S ROLE:

- None.
- Advisors have not yet been identified at this point in the process.
- Possibly assist a complainant in filing a complaint.

Process

Investigation



Investigation

Purpose

To collect relevant inculpatory and exculpatory evidence sufficient to permit an impartial decision-maker to determine if the reported sexual harassment occurred

- Inculpatory: supports that the allegations are true
- Exculpatory: supports that the allegations are NOT true

Process

Inculpatory & Exculpatory

Examples

Inculpatory (supports that the allegations are true)

- *A screenshot of a message that is from the respondent to the complainant that fits the definition of sexually harassment.*

Exculpatory (supports that the allegations are NOT true)

- *A voicemail message from the complainant that says, "I said 'yes' at the time and I wanted to have sex with you until I realized that that was all you wanted from me."*

Investigation

Process

- Investigator interviews:
 - Complainant and their relevant witnesses
 - Respondent and their relevant witnesses
- Investigator follows up with any questions/clarification:
 - Complainant
 - Respondent
- Investigator goes back and forth with the parties until there are no further questions for either party

Process

Basics

Evidentiary Considerations

- The college has the burden of proof AND burden of gathering evidence
- Both parties are allowed to present evidence and call witnesses to try to prove their claims and defenses
 - Hearings may include fact or expert witnesses
 - Delta uses the preponderance of the evidence standard

Investigation

ADVISOR'S ROLE:

DO:

- Help prepare for meetings and interviews
- Be present party during meetings and interviews

DON'T:

- Inhibit communication between the investigator and party
- Disrupt meetings or interviews
- Argue with the investigator
- Present evidence or make a case for the party

Process

Investigation

ADVISOR'S ROLE:

Behavior Violations

- May be excluded from future participation
- Can be dismissed by the party
- Investigation can be put on hold until a new advisor is found or appointed

Process

Advisor Expectations

Are these Behaviors Appropriate?

During the interview, a party's advisor repeatedly interrupts the investigator by asking questions or sharing information on behalf of the party.

At the end of the 10-day period to review the evidence, the advisor writes her own response to the evidence and submits it on behalf of the student.

Answer: No

Advisor Expectations

Is this appropriate Advisor behavior?

When the investigator emails the student directly to schedule an interview, the advisor calls and tells the investigator that the investigator is to communicate solely through the advisor and not send any emails directly to the student.

Answer: No

Review

Process



Review

Investigation Review & Pre-Hearing

- Both parties have a 10-day review and comment period for both the draft investigative report/evidence and then again for the final investigative report/relevant evidence
- Pre-Hearing conference with the party and the Decision-Maker to discuss procedures, any relevant stipulations, witnesses needed to attend and to resolve any matters raised in review comments
- Hearing notice sent to both parties with hearing date, location and other hearing information

Review

ADVISOR'S ROLE:

- Review Title IX Sexual Harassment Policy and appropriate procedures with the party
- Review investigation report and provided materials with the party
- Communicate with assigned party
 - Collaboratively draft cross-examination questions
 - Answer procedural questions
 - Attend pre-hearing conference

Process

Hearing

Process



Hearing

Purpose

- To hear testimony and receive non-testimonial evidence so that the Decision-Maker can:
 - Determine facts under the preponderance of the evidence standard (50% + the weight of a feather)
 - Apply those facts to the policy
 - Issue a written determination resolving the complaint
 - Impose discipline/remedial measures as necessary
- Not a civil or criminal legal proceeding

Process

Hearing

Length

- No set times
- Can be set by the Decision-Maker
- Decision-Maker may set time limits for questioning of each party/witness
- Decision-Maker may preclude questioning that is collective or duplicative

Process

Hearing

Participants

- Decision-Maker
- Advisors (*if none, institutional advisors assigned for hearing*)
- Title IX Coordinator/Investigator
- Involved parties
- Witnesses (*as they are called to testify*)
- Equity Office support (as needed)
- HR Director (*only for employee respondents*)

Process

Hearing

Location

At Delta, hearing will be done virtually

- All parties must be on campus to participate in the hearing
- Must be recorded
- No other person may record hearing

Process

Hearing

Hearing Outline

- Call to Order by the Decision-Maker
- Opening statements
- Presentation of information and witnesses
 - Investigator presents report
 - Questioning of investigator
 - Questioning of parties and witnesses
- Closing Statements
- Hearing Wrap Up: Decision-Maker

Process

Hearing

Final Determinations

- Determinations of responsibility and sanctions are made by decision-makers/hearing officers (CANNOT be Title IX Coordinator or Investigator)
- Will be submitted to the Title IX Office within 5 business days following the hearing

Process

Hearing

Due Process Considerations

- Cross examination by a party's advisor
 - Institutions must provide an advisor if a party does not have one
 - Ideal that parties select and bring an advisor
- Relevancy determinations

Hearing

ADVISOR'S ROLE:

- Perform cross-examination of the other party and any witnesses (parties cannot directly question each other)

Process

What is Cross-Examination?

“the essential function of cross-examination is not to embarrass, blame, humiliate, or emotionally berate a party, but rather to ask questions that probe a party’s narrative in order to give the decision-maker the fullest view possible of the evidence relevant to the allegations at issue.” (30319)

Hearing

What is Cross-Examination?

Questions Preparation

- Intended to advance the asking party's perspective
- Questions must be relevant to the complaint
 - Irrelevant questions will not be able to be answered
- For sexual assault cases, information that would be prohibited under rape shield laws will not be permitted. Only permitted if:
 - Demonstrates someone else other than the respondent committed the alleged misconduct
 - Demonstrates consent between the parties

Questioning

Is this permissible under the rape shield laws?

Student A has accused a faculty member of sexual harassment. The advisor for the faculty member asks Student A: “Is it true that you slept with another student in the class before you claimed that the faculty sexually harassed you?”

Answer: No

Questioning

Is this permissible under the rape shield laws?

*Student A has accused Student B of sexual assault. Student A testified that Student B had intercourse with Student A without using a condom, which Student A states Student A would never have agreed to because Student A always requires protection. The Advisor for Student B asks Student A: “**But didn’t you have unprotected sex with Student B a week prior? And didn’t you tell Student B it was ‘okay’ that Student B didn’t wear a condom?**”*

Answer: Yes

What is Cross-Examination?

Questions Preparation

- How do I know what questions to ask?
 - Review the nature of the allegations
 - Review the definitions of the alleged type of harassment
 - Consider facts that support your party's position that are given elements of whether the harassment is either met or not met
 - Prioritize your questioning to focus on most compelling
 - Consider questions that will bear on credibility

What is Cross-Examination?

Effective Questioning

- Clear and precise
- Advances a party's position with respect to one or more elements of the alleged harassment
- Asked in a purposeful order
- Prioritized and edited for greatest effect

Hearing

Questioning

Considering this definition of Fondling
what elements should be considered?

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Questioning

Develop Relevant Questions for Example #1

The respondent is accused of stalking the complainant by lurking near their car in the parking lot. The respondent has admitted to lurking once but denies that they lurked a second time. The complainant has stated that they clearly saw the respondent the first time but only saw a shadow move near their automobile the second time.

- 1. In the second incident, you didn't actually see the respondent's face?*
- 2. You saw the back of a person near your car and believe it to have been the respondent?*
- 3. And you are assuming because you saw the respondent near your car once before, that person you may have seen could have been the respondent?*
- 4. But you actually don't know the respondent was outside your car a second time?*

Questioning

Develop Relevant Questions for Example #2

The complainant accused the respondent of kissing the complainant on the lips when the complainant only consented to “talking with the respondent.” The respondent claims the complainant consented to kiss them because the complainant did not say before they started talking that they did not want to kiss the respondent.

1. *So you leaned forward and kissed the complainant on the lips?*
2. *And before that, the two of you were only talking?*
3. *And before that, the two of you had not discussed kissing, right?*
4. *And you had your hand on the back of the complainant’s head as you were kissing?*
5. *And you never stopped to ask if the complainant was okay with this, right?*

What is Cross-Examination?

Manner of Questioning

- Address respectfully using a preferred title of courtesy (Mr., Ms., Mrs., Dr., Professor...)
- Use an even and appropriate tone of voice
- Do not use intimidating physical actions

Hearing

What is Cross-Examination?

Expectations

- Be respectful
- Act with dignity
- Use decorum (there will be rules of conduct)
- Advisors can be replaced for failing to conduct appropriate cross-examination

Hearing

Hearing Decorum of the Advisors

Are these Behaviors Permissible?

A complainant's advisor rolls their eyes and clears their throat during portions of the respondent's testimony that the advisor believes is not credible.

During questioning of the complainant, the respondent's advisor yells at the respondent saying, "you are a rapist!"

Answer: No

Hearing Decorum of the Advisors

Are these Behaviors Permissible?

After the decision-maker rules a question as not relevant, the advisor begins to argue with the decision-maker that their question is relevant.

A party advisors consistently yells, “objections” when the other advisor asks irrelevant questions.

As a party is testifying, the advisor supporting them nods his head when the party gives a “good” answer and shakes his head side to side when the party says something unhelpful.

Answer: No

Relevance

Before a party or witness may answer a question, the Decision-Maker must first determine whether the question is relevant and explain the reason if determined irrelevant.

Hearing

Relevance

DOE did not define relevance

- “Ordinary meaning of relevance should be applied throughout the grievance process”
- “Can be made by layperson recipient officials impartially applying logic and common sense”
- “Cross-examination must focus only on questions that are relevant to the allegations in dispute”
- “Ensure that questioning is relevant, respectful and non-abusive”
- Must include inculpatory and exculpatory evidence

Merriam-Webster’s Definition: *Related to the matter at hand*

Relevance

Relevant Evidence & Questioning

- Tends to make a fact more or less probable than it would be without the evidence
- Determined by considering the form of alleged harassment
- Focuses on the allegations in dispute
- Is respectful and non-abusive
- Can't use information provided by recognized professionals without voluntary written consent
- Traditional style aimed to elicit short response
- Rebuttals will be limited

Hearing

Relevancy

#1 - Is the question relevant?

Student A has accused Student B of sexual assault by having sex with Student A while they were travelling for a sport tournament. Student A said they were sleeping and woke up with Student B performing oral sex on them.

*Advisor for Student B asks Student A: “**Did you remove your clothing before Student B performed oral sex on you?**”*

Answer: Yes

Why? The action could imply consent.

Relevancy

#2 - Is the question relevant?

A coach is accused of sending nude pictures of themselves to Student B and stated that if Student B did not report the behavior, Student B would receive more playing time.

*The advisor for the complainant asks the Coach: “**Didn’t you tell another coach that as long as you aren’t touching a student athlete, you did not feel that you were violating Title IX?**”*

Answer: Yes

Why? The comment may help corroborate that the allegation is true.

Relevancy

#3 - Is the question relevant?

The complainant alleges that the respondent engaged in dating violence by slapping the complainant during an argument.

The advisor for the respondent asks the complainant: “Isn’t it true that the only reason why you reported this is because you were embarrassed that this took place in front of other people?”

Answer: No

Why? The reason of the report has no bearing on whether or not the allegation is true.

Relevancy

#4 - Is the question relevant?

Student A has accused Student B of touching their private parts after a class on campus.

*The advisor for Student A asks Student B: “**You have been taking classes just to get financial aid, haven’t you?**”*

Answer: No

Why? Financial Aid has nothing to do with the allegations.

Relevancy

Develop Relevant Questions Scenario #1

The respondent is accused of making sexual comments to the complainant when the complainant was in the swimming pool.

Start with the definition of the prohibited behavior.

- 1. What did the respondent say to you?*
- 2. What did you say in response?*
- 3. Was anyone else around you that may have heard?*
- 4. Did you tell anyone about what was said to you?*

Relevancy

Develop Relevant Questions Scenario #2

The complainant has accused the respondent of hostile environment sexual harassment. The complainant stated that she told a friend and a faculty member about the harassment.

Start with the definition of the prohibited behavior.

- 1. How do you know the complainant?*
- 2. Please describe what your interactions with the complainant are like.*
- 3. What did the respondent say or do to you?*
- 4. Why do you think the complainant is saying you've done this?*

Relevance

Always Irrelevant

Definitions:

- Predisposition: *the complainant's dress, lifestyle or speech*
- Sexual Behavior: *all activities that involve actual physical conduct or that imply sexual intercourse/conduct*
 - Unless it is to prove that someone else other than the respondent committed the alleged misconduct
 - Unless to show consent between the parties
 - Consent: *knowing, voluntary and clear permission by word or action to engage in sexual activity*

Hearing

Relevance

Always Irrelevant

- Cannot use information from a physician, psychiatrist, psychologist or other recognized professional without the voluntary and written consent
- Cannot use information protected by a legally recognized privilege without a waiver
- Duplicative evidence may be deemed irrelevant
- Remember, the following can never be used:
 - Evidence of a complainant's sexual behavior with anyone other than the respondent is not permitted
 - Questions/evidence about a respondent's sexual predisposition or prior sexual behavior are not subject to any special consideration and should be evaluated based on relevancy.

Hearing

Relevance

What if your question was deemed irrelevant?

- If you understand the scope of the decision, move on to another question
- If you do not understand the scope of the decision, you may respectfully request an explanation

Hearing

Relevance

Advisors are not permitted to argue with the Decision-Maker like a lawyer

- You are a non-legal advisor
- You are not providing legal advice
- You are not a prosecutor or a defense attorney
- You are not required to engage in “zealous advocacy”
- Your role is to ask appropriate questions to reasonably support the case of your party
- The party can challenge the relevancy determination, but the decision-maker has the final say so on relevancy

Hearing

Relevance

Other Evidentiary Exclusions

- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant
- Information that would be prohibited under rape shield laws will not be permitted

Hearing

Notice of Outcome



Notice of Outcome

Process

- Notice of Outcome provided simultaneously to both parties (within 8 business days) which will include:
 - The allegations
 - The procedural steps from the complaint through the determination
 - Findings of fact supporting the determination
 - Determinations regarding responsibility, sanctions (and remedies) along with supporting evidence and rationale
 - Appeal information

Process

Notice of Outcome

ADVISOR'S ROLE:

- None specifically.
- Party may share with their advisor and/or seek counsel on an appeal.

Process

Appeal

Process



Appeal

Process

- Must meet one of following three grounds to be accepted:
 - New evidence
 - Procedural error
 - Conflict of interest/bias
- Opportunity to provide written statement to support or challenge the appeal
- Appellate reviews the appeal and case and issues final determination

Process

Appeal

ADVISOR'S ROLE:

- Support party, as requested, with writing statements and answering any procedural questions.
- Do not write the appeal for the party. Only provide support.

Process

Overall Advisor Expectations

- Be willing to advise any party, respondent or complainant
- Actively engage and be attentive during the hearing
- Adhere to Board and College policies and procedures

Do's



Overall Advisor Expectations

- Avoid biases
- Allow the party to lead
- Act in the best interest of your party
- Be open minded and without preconceived notions
- Make decisions based on facts
- Treat all participants with respect
- Maintain confidentiality
 - Title IX Harassment complaints are covered under FERPA

Expectations

Confidentiality

Is confidentiality being upheld?

The advisor for a party is contacted by the Collegiate (student newspaper) seeking confirmation that the party has been accused of sexual assault and that a hearing is set for next week.

The parent of an advisee emails the advisor requesting to have a phone call to “discuss the case.” The advisee (a student that is 18 years or older) has not provided written consent for the advisor to speak to a parent.

Answer: No

Confidentiality

Is confidentiality being upheld?

An advisor notifies his supervisor that he has been assigned as an advisor to a hearing that will take place during work hours. Before excusing the advisor's absence of regular job duties, the supervisor demands to know who the parties are and what the nature of the allegations are.

Answer: No

Don'ts



Overall Advisor Expectations

- Act as legal counsel
- Speak on behalf of your party
- Ask cross examination questions not requested by your party
- Determine a finding of responsibility for any other college policy
- Have a conflict of interest *(personal or professional that may affect your ability to be fair and impartial to all parties)*

Expectations

Don'ts



Overall Advisor Expectations

Conflict of Interest Examples

- **Actual:** a direct conflict between one's official duties and responsibilities, and a competing interest or obligation.
An advisor is friends with the complainant's family
- **Perceived:** a situation where it could be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities
The decision-maker previously had a relationship with the family member of the respondent
- **Potential:** where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.
The Title IX Coordinator and a faculty complainant co-chaired a committee and socialize outside of work on occasion.

Expectations

Conflict of Interest

Is this a conflict of interest?

Employee A accuses Employee B of sexual harassment. The college assigns an advisor for Employee A whose spouse directly supervises Employee B.

Answer: Yes

Is this an example of bias?

An advisor that has been selected by the College for a hearing is also on the board of a local non-profit dedicated to sexual assault advocacy. During a speech at the non-profit's annual gala, the advisor states: "It is wrong to assume that the respondent is innocent. I believe wholeheartedly that victims do not lie about being sexually assaulted."

Answer: Yes

Bias

Is this an example of bias?

An advisor assigned to a sexual assault complaint has repeatedly told colleagues that the advisor believes most complaints are a result of victims “regretting that they got drunk.” He tells a co-worker: “If both parties were drinking, it is not fair to hold anyone responsible for a sexual assault. They both knew that sex could be a result of intoxication.”

Answer: Yes

Don'ts



Overall Advisor Expectations

- Avoid stereotypes (*examples below*)
 - There are no false reports of rape.
 - People who are dating can't commit sexual assault against each other.
 - Anyone who would go into another's bedroom drunk must have wanted to have sex.
- Don't make objections
 - Advisors are not allowed to make objections; only a party can
 - The Decision-Maker will make final decision on relevancy
 - You are an advisor under our policy
 - Parties must seek legal counsel regarding criminal matters

Expectations

Concerns & Questions

If you have questions about your role,
please contact the Title IX Office

titleix@delta.edu

989-686-9547

Expectations

Title IX **ADVISORS**

