

# ADVISOR TRAINING: What's your role in the Title IX grievance process and how can you best serve?



# 2020 Training Dates

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- Wednesday, August 5, 2020 @ 1:00-2:30 PM
- Thursday, August 6, 2020 @ 10:00-11:30 AM
- Tuesday, August 18, 2020 @ 9:00-10:30 AM
- Thursday, August 20, 2020 @ 1:00-2:30 PM

All training will be conducted virtually.

Roll-call at the top of the hour will mark attendance.

Attendance logs will be sent to your Title IX Coordinator.

Training will be posted on the Title IX website following the August 6<sup>th</sup> training.

# Pre-Training Question

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What word best describes your feelings about serving as a Title IX Advisor?

**The Role of an Advisor**

**Introduction to the 2020 Title IX  
Regulations: Policy Changes**

**Conflict of Interest and Bias**

**Important Parts of an Advisor's Role**

**Rules of Decorum/Etiquette**

**Quiz**



**AGENDA**

During the training, we will test your knowledge via quizlets



## **As a designated Title IX Advisor, you may be selected by an employee or a student to serve as their Advisor through the Title IX grievance process**

- The role of an Advisor is a very important one that is designed to provide the Parties in a Title IX grievance process assistance and support throughout the entire proceeding.
- Advisors should be familiar with the Title IX policy as well as other policies that may be implicated during a Title IX investigation.
- Advisors should be familiar with the Title IX procedures, such as the informal resolution process, inspection of evidence/records, dismissals of complaints, the live hearing (and cross-examination), and the appeal process.

## **THE IMPORTANCE OF THE ADVISOR**

# Who can serve as an Advisor?

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Under the new Title IX Regulations, an Advisor may be a friend, a family member, an attorney, a neighbor, or other individual of the party's choosing.

The institution should have a group of Advisors available for selection.

The Regulations require an Advisor be offered, but it does not require:

1. An Advisor be used (at the hearing, an Advisor is required to conduct cross-examination),
2. That Advisors be equally trained or knowledgeable, or
3. That the same Advisor be used throughout the Title IX Process.

# Advisors: who, what, when & why Quizlet

Advisors are required for Complainants and Respondents in all stages of the Title IX Resolution Process.

**TRUE or FALSE**

If one party selects an attorney as an Advisor, the other party must select an attorney as well so that the Advisors are equitable.

**TRUE or FALSE**





# Introduction to the 2020 Title IX Regulations

# **Substantial Policy Changes: This policy applies to employees and students equally**



1. When and how an institution receives “actual knowledge” of sexual harassment or allegations of sexual harassment.
2. The definition of sexual harassment.
3. The definition of a school’s “education program or activities” and “in the United States.”
4. Expanded obligation to ensure is educational community knows how to report to the Title IX Coordinator.
5. The institution’s obligation to respond (in a manner not deliberately indifferent)
6. Definition of formal complaint (incl. mandatory and discretionary dismissals)
7. The requirement for live hearings.
8. Standards of Evidence
9. Appeals required

# Actual Knowledge, Definition of Sexual Harassment, and Definition of Program of Activity, in the U.S.

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**Actual knowledge**: Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any Official with Authority (authority to institute corrective measures on behalf of the institution). Mandatory reporters ≠ convey actual knowledge.

**Definition of Sexual Harassment**: Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

**Education program or activity includes**  
locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

**Against persons in the United States.**

*Conduct that does not meet this definition can be addressed through the code of conduct or employee conduct policies*

# **Expanded obligation to ensure knowledge of how to report**

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Each school must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.

## **Mandatory Response Obligation**

A school must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means in a way that is not clearly unreasonable in light of the known circumstances.

Offering supportive measures, Title IX Coordinator promptly contacting Complainant to discuss their wishes to file a formal complaint, contacting law enforcement, and following a grievance process.

# Policy Changes Quizlet #1

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Two students in a Math class have been talking about the amount of homework in their class. One student turns to the other and says, “if you sleep with me, I will do your homework.” This situation is covered under the new Title IX Regulations.

**TRUE or FALSE**

Kevin, a current student, has been receiving threatening and violent emails and text messages from a male student who was part of the Ireland study abroad trip from which Kevin recently returned. The male student who is sending the emails to Kevin is still in Ireland. This situation is not covered under the new Title IX Regulations.

**TRUE or FALSE**

# Formal Complaint

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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** (Complainant must be participating in or attempting to participate in the education program or activity).

A formal complaint may **be filed in person, by mail, or by electronic mail**, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method the school designates.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant. The Title IX Coordinator must comply with requirements for all **Title IX personnel to be free from conflicts and bias**.

# **The grievance process must provide for a live hearing.**

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At the live hearing, cross-examination is permitted.

Cross-examination must be conducted directly, orally, and in real time by the party's Advisor of choice. If party has no Advisor, institution must assign one for cross-examination.

The live hearing will occur with the parties located in separate rooms with technology enabling the decisionmaker and parties to simultaneously see and hear the party answering questions

Before a Complainant, Respondent, or witness answers a cross examination or other question, the Decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.



# More on Live hearings

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If a party or witness does not submit to cross examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility and cannot draw an inference 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.

Advisors ask questions. The parties cannot.

Schools must create an audiovisual recording, and make it available to the parties for inspection and review.

# Standard of Evidence

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An institution can choose to use either the preponderance of the evidence or clear and convincing evidence.

The evidence standard used in Title IX cases must be the same used for formal complaints against students as for formal complaints against employees, including faculty.

# Appeals required

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Institutions must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations

## **Grounds for appeal:**

procedural irregularity that affected the outcome of the matter;

new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

# Policy Changes Quizlet #2

1. A formal complaint may be filed in person, by mail, or by electronic mail.

**TRUE or FALSE**

2. It is permissible to prepare your cross-examination questions and submit them to the Decision-maker before the hearing for a relevance determination.

**TRUE or FALSE**



# **Advisors must be free from conflicts of interest**

## **What is a conflict of interest?**

It refers to any time that an Advisor has a personal interest (whether actual, potential or perceived) that conflicts with the interests of their Advisee.

It does not require personal gain to be a conflict of interest.

The best way to ensure you don't face a conflict of interest challenge is to avoid it altogether.

Don't talk about your work

Don't talk about your opinions

Don't talk about your friends (at work)

# Free from Bias:

Bias can exist in many forms

Confirmation Bias: Favoring information that confirms preconceptions

Clustering Illusion: Seeing patterns in random events

Stereotyping: Expecting a group or person to have certain qualities without having real information about them

Blind-spot Bias: Failing to recognize one's own biases

Avoid the perception of bias.

# Important Parts of an Advisor's Role

## Emergency Removal Process

The institution can act to remove, on an emergency basis, a Title IX Respondent entirely, or partially, from its education program or employment activities, when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any individual justifies such a removal.

Advisors should encourage Advisees to request an expedited review and to look for the least restrictive emergency action.

## Inspection of Evidence/Records

*First Inspection Period:* At the end of the investigation, BUT BEFORE a report is drafted, the parties have 10 days to review all of the evidence collected during the investigation.

*Second Inspection Period:* After the final investigative report is written, BUT BEFORE the hearing. The parties can review the final investigative report.

Advisors should request a copy of the documents & encourage a written statement.

# Rules of Decorum/Etiquette

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During meetings and proceedings, **Advisors are expected to** be civil and not engage in behavior that violates collegial standards, such as talking over someone, yelling, interrupting, taking an aggressive stance towards someone (i.e., shaking a fist or standing too close to someone's face), or any other behavior that is deemed disruptive.

**Advisors are not to** disrupt any meeting or proceeding by making opening or closing statements or by advising their advisee to refuse from answering questions.

**Advisor is not permitted to** interrupt or interject while the someone is testifying or being interviewed, make formal "objections" based upon rules of evidence, file motions, briefs, or written statements on behalf of a party, or otherwise delay or obstruct a proceeding.



# Advisor Expectations

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Advisors are expected to adjust their schedules to allow them to attend scheduled meetings and proceedings. Title IX Coordinators may make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient, but only if the advisee agrees to the provision.

# End of the Presentation Quiz

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1. A party cannot change their Advisor until the investigation is complete, but before the hearing. **TRUE or FALSE**
2. The expectation is that institutions act in a manner that is reasonable in light of the circumstances. **TRUE or FALSE**
3. Your Advisee has been removed from their employment on an emergency basis during the pendency of the action and asks you what they should do. What do you advise?
  - a. *There is nothing that can be done.*
  - b. *Request an expedited review*
  - c. *Appeal the removal*
  - d. *Ignore the removal*

# Another question

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4. Your Advisee has asked that you read a statement they prepared at the beginning of their interview with the Title IX investigators. How do you respond?
  - a. *Read the statement at the beginning of the meeting*
  - b. *Ask the investigators for permission to read the statement*
  - c. *Inform the Advisee that you are not permitted to read the statement*
  - d. *Ignore your Advisee's request*

# Two more questions

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5. Advisors should not get too personal in their conversations with their Advisee because they may expose information that leads to an allegation of conflict of interest.

**TRUE or FALSE**

6. During the inspection and review period, as an Advisor, you must review the documents with your Advisee because it is not permitted to review it independently.

**TRUE or FALSE**



Training created by Melissa Flores, Associate General Counsel, Sr. at Maricopa County Community College District, 2020.  
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