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Title IX Hearing Training

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AGENDA

- Introduction
- Overview of Title IX Law
- Formal Grievance Process Overview
- Decision-Maker Mission and Role
- Title IX Scope and Definitions
- OIE Scope and Definitions
- Conflict of Interest and Bias
- Due Process
- Live Hearing



Eugene Smith,
Title IX Coordinator



Teri Green, Title VI Coordinator



Sholeh Nourbakhsh, Investigator



Angelica Ramirez, Investigator



Ms. Judith De Los Santos
Civil Rights Case Manager

Title IX Hearing

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.



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Title IX

- Title IX is a gender equity law
- Equity refer to the understanding that not all individuals have access to the same resources and opportunities.
 - Equity focuses on providing support and resources to reduce disparities in access to the education program.
 - Title IX seeks to remedy the inequities sexual harassment and sex discrimination create.



Title IX

- Compliance
 - The regulations require TCU to stop, prevent, and remedy the circumstances. This guides our equity and compliance work.
- 1. STOP discriminatory conduct.
- 2. PREVENT recurrence, on both individual and institutional levels.
- 3. REMEDY the effects of discrimination, for both the individual and the community.

Title IX

Title IX Grievance Process Overview

1. Prompt Resolution
 1. Complete without undue delay.
 2. Title IX regulations do not define “prompt”
 1. 60-90 business days is a good guide
 3. Grievance process may take longer than expected.
 1. Anticipate, mitigate, and document delays
 2. Communicate with parties regarding delays

Title IX

Title IX Grievance Process Overview

1. Equitable Resolution
 1. Treat all parties equitably
 2. Ensure that all parties have opportunity to fully participate in the grievance process
 3. Make certain that all Title IX team member operate without bias and/or conflict of interest

Title IX

Investigation Steps

1. Receive Notice/Complaint
2. Initial Inquiry
3. Determine Basis for Investigation
4. Notice of Investigation
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Transfer Final Investigation Report

Title IX

Formal Resolution

1. Gather Evidence
2. Assess Credibility and Evidence
3. Synthesize Area of Dispute and Agreement

Title IX

Parties' and Advisors' Review of Report and Evidence File

- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format and hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
- Dean of Students sends the final investigation report to the parties and Advisor for review at least 10 days

prior to the decision-making phase/hearing.

Title IX

Decision-Making Under Title IX

1. All institution must hold a live hearing
 1. DM can ask relevant questions
 2. Advisors can ask relevant questions on behalf of parties
2. TIXC and Investigator may not serve as Decision-Maker

Role and Responsibilities

1. Providing an educational process
2. Making a safe community
3. Upholding the institution's policy

4. Ensuring a fair process

Title IX

Decision-Maker Training Requirement

1. Definition of sexual harassment
2. Scope of the institution's education program and activity
3. How to conduct an investigation and grievance process including hearing, appeals, and informal resolution processes, applicable
4. How to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias
5. Issues of relevance for investigations and hearings
6. Use of any technology to be used at a hearing

Title IX

Decision-Maker Training Requirement

1. Decision-makers have no side, other than the integrity of the process
2. DM must a thorough understand of:
 1. Institutional policy and procedures, including the investigation process
 2. Whether you are addressing an alleged incident(s), a pattern, or a culture/climate complaint, and what findings are necessary based on that.
 3. Best practices for asking good questions
 4. DM procedures and management
 5. Evidence and how to weigh it and apply it to the institutional policy by the standard of evidence
6. How to analyze credibility
7. How to make determinations, decide sanctions/remedies, and write a rationale.

Title IX

Decision-makers need to be an organized manager and multi-tasker with:

1. Effective questioning skills
2. Strong writing skills
3. Subject matter expertise
4. Analytical skills

OIE Scope

- **Policy 1.008 Jurisdiction**

This policy applies to conduct that takes place:

- On the campus or TCU premises;
- In the context of any TCU-related or sponsored education program or activity, regardless of location;
- Through the use of TCU-owned or provided technology resources; or
- Off-campus when the conduct is likely to have an adverse effect on TCU and/or the pursuit of its objectives, members of the TCU community, or is likely to create, continue or contribute to a hostile environment.

OIE Scope

- **Discrimination:**

According to Equal Employment Opportunity Commission (EEOC), discrimination is unfair treatment because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information.

- **Harassment:**

A form of discrimination that is unwelcome verbal or physical conduct that is severe, persistent or pervasive enough creates a hostile, intimidating, or offensive environment for a protected class.

Protected Classes

- Race
- Color
- Religion
- National Origin or Ancestry
- Ethnic Origin
- Sex (including gender, pregnancy, sexual orientation, and gender identity)
- Age (40 or older)
- Physical or Mental Disability
- Veteran Status

- Disability
- Genetic Information



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Sexual Harassment: Section 106.30

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies a person equal access** to the recipient's education program or activity; or
- (3) **"Sexual assault"** as defined in 20 U.S.C. 1092(f)(6)(A)(v), **"dating violence"** as defined in 34 U.S.C. 12291(a)(10), **"domestic violence"** as defined in 34 U.S.C. 12291(a)(8), or **"stalking"** as defined in 34 U.S.C. 12291(a)(30).

Title IX Scope and Definitions

Types of Sexual Harassment

- Domestic Violence
- Dating Violence
- Stalking
- Sexual Exploitation
- Sexual Assault
 - Non-consensual Sexual Contact
 - Non-consensual Sexual Intercourse
 - Incest
 - Statutory Rape

Discrimination Based on Sex

- Sex based stereotypes
- Quid Pro Quo
- Hostile Environment

- Retaliation

OIE Definitions

- **Consent** - consent to sexual activity is: action(s) or words that a reasonable person would understand to communicate voluntary permission among participants to engage in mutually agreed upon sexual activity. Consent cannot be obtained through force, threat of force, coercion, intimidation, or by taking advantage of another person's incapacitation. An individual is incapacitated and cannot give consent if a reasonable person would conclude, based on the information available, that the individual is not capable of giving consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. A person may not be capable of giving consent as a result of the consumption of alcohol and/or other drugs, or due to a temporary or permanent physical or mental health condition.

OIE Definitions

- **Unreasonable Conduct** - Unreasonable conduct is conduct that is more than merely subjectively offensive or harmful. For conduct to be considered unreasonable under this policy, the conduct must be objectively offensive, or offensive to a reasonable person of similar identity.

Consent

- **1. Force** – Was force used by the Respondent to obtain sexual or intimate access?
- **2. Incapacity:** Was the Complainant incapacitated?
 - If so, did the Respondent know?
 - Should the Respondent have known that the Complainant was incapacitated
- **3. Consent** – What clear words or actions by Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?
- Note: The intoxication of the Respondent can not be used as a reason they did not know of the Complainant's incapacity.

Force

- Was force used by the Respondent to obtain sexual or intimate access?
 - **Physical violence**
 - Restraint, hitting, pushing, kicking
 - **Threats**
 - Objective and subjective analysis
 - **Intimidation**
 - Implied threat that menaces and/or causes reasonable fear
 - **Coercion**
 - Unreasonable amount of pressure for sexual access (isolation, frequency, intensity, and duration)

Incapacity

- Was the Complainant incapacitated?
- Incapacitation: a state where an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing consent.
 - Unable to understand who, what, when, where, why, or how
 - Incapacity does not mean impaired, drunk, intoxicated, or under the influence
 - Insufficient situational awareness
 - Lack of consequential awareness

Incapacity

- What was the reason for incapacity?
 - Alcohol or other drugs
 - Mental and cognitive impairment
 - Injury
 - Asleep or unconscious
- Blackouts are frequent issues
 - Blackout does not mean incapacitation (automatically)
 - Partial blackout must be assessed as well
 - Memory absent, but verbal and motor skills may still function

Incapacity

- Slurred Speech
 - Scent of alcohol on the breath
 - Shaky equilibrium; disorientation
 - Passing out/unconsciousness
 - Throwing up
 - Known blackout
 - Outrageous or unusual behavior
-
- Incapacitation determination is made contextually in light of all the available relevant evidence.

Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but;
 - The Respondent did not know **AND**
 - The Respondent would not have reasonably known of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
 - The Respondent **knew it or caused it** – policy violation
 - The Respondent **should have known it (reasonable person)** = policy violation
 - The Respondent's own intoxication cannot be used as a defense

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than previous similar situations?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
 - Develop timeline analysis
- Determine if the Respondent provided any substances to the Complainant

Consent Analysis

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 - The Respondent did not know **AND**
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 - The Respondent **should have known it (reasonable person) = policy violation**
 - The Respondent's own intoxication cannot be used as a defense

Consent Analysis

- **What clear words or actions by Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?**
 - Evaluate relevant sexual or intimate pattern or history between the parties.
 - Consider whether verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree was consensual.
 - Critical to gather evidence regarding detailed and specific intimate behaviors
 - Analysis has objective and subjective elements

Conflict of Interest

- **Decision maker must not have a conflict of interest or bias for or against the following:**
 - Complainant, generally
 - Respondents, generally
 - The parties involved in the complaint
 - Subject matter or details of the complaint itself
- **Consider a perception of a conflict or bias, even if none exists in fact**
 - This is not required but the Title IX Coordinator has the authority to substitute a DM based on perception alone but the parties but provide facts of bias.

Review Hearing Officer Training

- **Please review the hearing officer training handout for more information on the following:**
 - Due Process
 - Live Hearing Requirements
 - Understanding the Evidence
 - Relevance
 - Credibility Assessment
 - Weighing and Analyzing Evidence
 - Determining Sanctions
 - Written Determination
 - Appeals
 - Recordkeeping



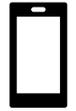
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An aerial photograph of the Texas Christian University (TCU) campus, showing a dense cluster of buildings with red-tiled roofs, green lawns, and trees. The word "QUESTIONS?" is overlaid in large, white, bold, sans-serif font in the center of the image. The image is framed by a white diagonal border on the left and bottom right sides.

QUESTIONS?

The logo for Texas Christian University (TCU), featuring the letters "TCU" in a bold, purple, serif font with a registered trademark symbol (®) to the right.

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