



TITLE IX TRAINING

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CS **Partners**



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Title IX of the Education Amendments of 1972

“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 USC §1681(a)

Title IX Compliance Requirements

- Title IX Coordinator designation
- Notice of nondiscrimination
 - Provide the Title IX Coordinator's contact information
 - Publish on the website and in the student handbook
- Grievance procedures
- Training

Title IX Scope

What does it mean in a “*program or activity*”?

- Any locations, events, or circumstances over which the Academy exercised substantial control over both the alleged harasser and the context in which the sexual harassment occurred.
- It includes conduct occurring against a person in the United States.

Sexual Harassment Defined

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- Conditioning the provision of aid, benefit, or service on a person's participation in unwelcome sexual conduct (*quid pro quo* harassment);
- 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 Academy's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking as defined by federal law.

Other Definitions

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Actual Knowledge** of sexual harassment or allegations of sexual harassment occurs when notice
 - is given to the Title IX Coordinator, any Academy official who has the authority to institute corrective measures, or any Academy staff of an elementary and secondary school; and
 - the response must be prompt and in a manner that is not deliberately indifferent. The Academy is **deliberately indifferent** only if its response is clearly unreasonable in light of the known circumstances.

Other Definitions (cont.)

- ***Supportive measures*** are
 - non-disciplinary, non-punitive individualized services offered as appropriate, without a fee to both the Complainant and Respondent before or after filing a formal complaint, or where no formal complaint has been filed
 - designed to restore or preserve equal access to the Academy's program or activity, including measures to protect the safety of all parties or deter sexual harassment
 - Examples include, but are not limited to, counseling, modifications to class schedules, monitoring

Grievance Procedures

The procedures must provide for the prompt and equitable resolution of Title IX complaints including,

- Equal treatment of the Complainant and the Respondent
- No sanctions will be imposed against the Respondent until the grievance process is complete
- A requirement that the Title IX Coordinator, investigators and decision makers be free from conflicts of interest or bias against the Complainant and the Respondent
- Reasonably prompt timelines
- Objective evaluation of all evidence
- Description of supportive measures and possible remedies

General Response to Sexual Harassment

- Any person may report sexual discrimination, including sexual harassment, regardless of whether that person is the alleged victim of the reported conduct.
- The report may be made in person, by mail, by email, or by telephone.
- The report may be made at any time, including during non-business hours.
- Academy staff are required to report allegations of sexual discrimination, including sexual harassment, to the Title IX Coordinator.
- The report should
 - identify the alleged victim and alleged perpetrator, and
 - describe the alleged conduct, including date, time and location.

General Response to Sexual Harassment

- Upon receiving a report, the Title IX Coordinator must contact the alleged victim of the reported conduct to
 - discuss the availability of supportive measures,
 - consider the alleged victim's wishes with respect to supportive measures,
 - inform the alleged victim of the availability of supportive measures with or without filing a formal complaint, and
 - explain the process of filing a formal complaint.
- Before imposing any discipline against the alleged perpetrator, the Academy must follow the grievance process.

Formal Complaints

- A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against the Respondent and requesting that the Academy investigate the allegation of sexual harassment.
- All formal complaints must include the following information to the extent it is available:
 - the identity of the individual believed to have engaged in, or be engaging in, conduct that could constitute sexual harassment (the “Respondent”);
 - a detailed description of the facts upon which the complaint is based, including date and time;
 - a list of potential witnesses; and
 - the resolution sought by the Complainant.

Formal Complaints (cont.)

- Once the formal complaint is received, the Academy will attempt to conclude the grievance process within sixty (60) business days of receipt of the formal complaint. The timeline may be subject to temporary delays or limited extensions for good cause.
- The Title IX Coordinator will consider whether any supportive measures should be provided to protect the Complainant and the Respondent from further sexual harassment or retaliation.
- The Title IX Coordinator will provide simultaneously written notice of the allegations to both the Complainant and the Respondent including
 - Notice of the grievance procedures, including the informal resolution process
 - Notice of the allegations in sufficient detail to allow the Respondent to prepare a response
 - Statement that the Respondent is presumed not responsible and that responsibility will be determined at the end of the grievance process
 - Notice that the parties have a right to have an advisor (not required to be an attorney)
 - Notice of their right to inspect and to review evidence
 - Notice of the prohibition in the code of conduct against knowingly making false reports of sexual harassment or providing false evidence during the grievance process

Investigations

- The Title IX Coordinator will assign an investigator who will initiate the investigation. The Title IX Coordinator cannot be the investigator.
- The burden of gathering evidence and burden of proof are on the Academy.
- The investigation will include:
 - Interview with Complainant
 - Interview with Respondent
 - Interviews with witnesses relevant to the allegations
 - Documentation or other information presented by Complainant, Respondent or witnesses relevant to the allegations

Investigations (cont.)

- Questions or evidence about the Complainant's prior sexual behavior are not relevant, unless
 - to prove consent; or
 - to prove someone else other than the Respondent committed the alleged sexual harassment.
- Questions or evidence that is protected by a legally required privilege cannot be used, unless the person holding the privilege waives the privilege.

Investigations (cont.)

- Both parties are entitled to the same opportunity to present witnesses, to receive written notices, and to review evidence.
- After an evidence review period, the investigator finalizes the investigative report and provides it to both parties. The investigative report summarizes the relevant evidence but does not determine responsibility.
- The parties are given time to review the investigative report and to submit written responses prior to the decision maker making a determination of responsibility.

Emergency Removal

- Removing the Respondent from the Academy is permitted under limited circumstances.
- The Title IX Coordinator or designee must conduct a safety and risk assessment to determine if there is an immediate threat to the physical health or safety of any student arising from the allegations.
- The Respondent must be given notice and an opportunity to challenge the decision.

Dismissal

- The Academy must dismiss a formal complaint when the alleged conduct
 - does not meet the definition of sexual harassment; or
 - did not occur in the Academy's program or activity; or
 - did not occur in the United States.
- The Academy can still address the occurrence under the student code of conduct.

Dismissal (cont.)

- The Academy may, at its discretion, dismiss a formal complaint if
 - the Complainant withdraws the formal complaint in writing; or
 - the Respondent is no longer enrolled at the Academy; or
 - specific circumstances prevent the Academy from gathering evidence sufficient to reach a determination, e.g., the passage of time, lack of cooperation by the Complainant
- For both mandatory and permissive dismissals, the Academy must give the parties written notice of the dismissal and the reasons for the dismissal.

Determination of Responsibility

- The Title IX Coordinator will assign a decision maker to issue a decision of responsibility. The Title IX Coordinator cannot be the decision maker.
- The decision maker shall consider the totality of the evidence and determine by a preponderance of the evidence whether the alleged conduct constitutes sexual harassment.
- A copy of the final decision will be sent to both parties and will include
 - the allegations
 - the procedural steps taken during the grievance process
 - the findings of fact supporting the determination
 - any sanctions that will be imposed on the Respondent and any remedies that will be provided to the Complainant
 - information on how to file an appeal

Informal Resolution

- The informal resolution process is allowed only if a formal complaint is filed and if both parties
 - are given written notice of their rights, and
 - provide written, voluntary consent to the process.
- The process may include arbitration, mediation or restorative justice.
- Either party may withdraw from the process at any time, and at which time the formal complaint process resumes.
- Informal resolution is not an option in complaints alleging that a staff member has sexually harassed a student or that a student has sexually assaulted another student.

Remedies

Remedies for the Complainant might include, but are not limited to:

- ensuring that the Complainant and the Respondent do not attend the same class
- providing counseling services
- providing academic support, such as tutoring
- providing an escort to ensure that the Complainant can move safely between classes and activities

Remedies (cont.)

Consequences imposed on a Respondent who is determined to have committed sexual harassment might include, but are not limited to:

- suspension of extracurricular activities, such as athletics
- in school discipline, such as detention, Saturday school, or writing assignments
- short term suspension
- long term suspension or expulsion

Appeal

- A Complainant or Respondent who is dissatisfied with a dismissal or a final determination may appeal for:
 - procedural irregularities that affected the outcome of the complaint
 - new evidence that was not reasonably available at the time of the dismissal or final determination that could affect the outcome of the complaint
 - conflict of interest or bias by the Title IX Coordinator, investigator or decision-maker against the Complainant or Respondent that affected the outcome of the complaint
- The Title IX Coordinator will assign a decision maker for the appeal process. The Title IX Coordinator cannot be the decision maker on appeal.

Appeal (cont.)

- The original determination of responsibility will stand if:
 - An appeal is not filed in a timely manner; or
 - The appealing party failed to show an error or a compelling reason to overturn the original determination of responsibility.
- No further review will be permitted beyond the appeal.

Confidentiality

The Academy must keep confidential the identity of the Complainant, Respondent, and witnesses, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), as required by law, or as necessary to carry out a Title IX proceeding.

Retaliation

- Retaliation against a person who makes a report or files a complaint alleging sexual harassment or retaliation, or participates as a witness in an investigation is expressly prohibited by Title IX regulations.
- Complaints alleging retaliation may be filed according to the Academy's grievance procedures.

Record Keeping

- The Academy must maintain all records related to alleged sexual harassment for a minimum of seven (7) years.
- These records include, but are not limited to,
 - investigation records
 - disciplinary sanctions, supportive measures, and remedies
 - appeal records
 - informal resolution records
 - training materials

Thank you!



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