

Title IX Investigator Training

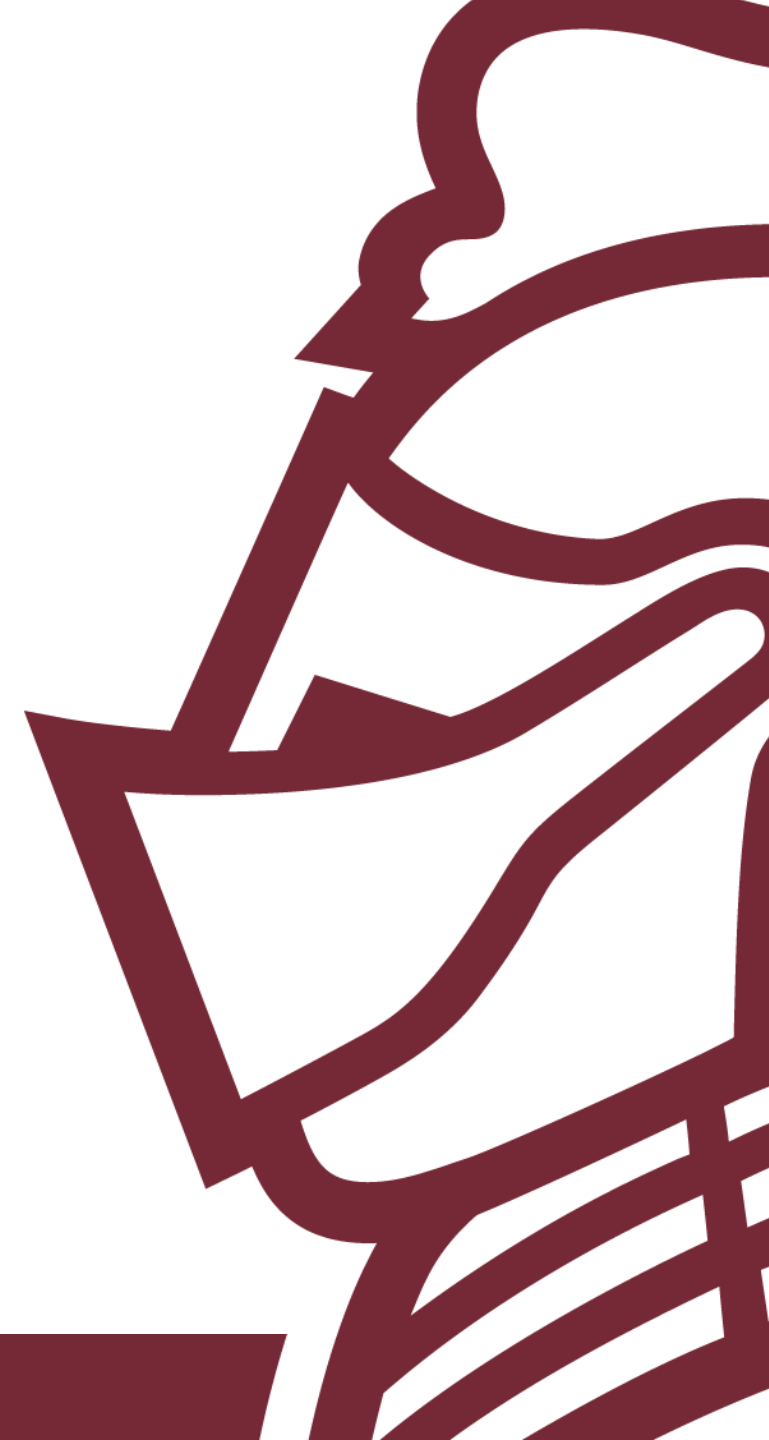
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Content Advisory

This training will address difficult topics including sexual violence, harassment, and discrimination. The content may be triggering and you are welcome to take a break if needed.

Offensive or graphic language, including slang and profanity, may be used to illustrate issues and scenarios that arise in the Title IX realm.



Agenda

- Legal Framework
- Overview of Title IX Team Roles
- Title IX Policy Overview
- Jurisdiction and Definitions
- Title IX Process
- Bias, Conflict of Interest, and Recusal
- Interviewing Skills
- Evidence
- Investigation Report
- Role at Hearing
- Role in Appeals

Legal Framework and Overview



Title IX: From 37 Words to Hundreds of Pages

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.



Legal Framework

- Actual Knowledge: Any official with authority to institute corrective measures receives notice of sexual harassment occurring in the University's education program or activity within the United States.
 - Triggers obligations
- Deliberate Indifference: a response that is clearly unreasonable in light of the known circumstances
- Violence Against Women Act
- 6th Circuit precedent



Due Process

- Specific NOIA
- Historically Respondent-focused, but also applies to Complainants
- Presumption of not responsible
- Burden of proof
- Right to Advisor
- Right to present witnesses and evidence
- Unbiased, fundamentally fair decisions made in good faith with reasonable sanctions
- Right to appeal



Title IX Team Roles

- Chief Title IX Officer/Title IX Coordinator
- Deputy Title IX Coordinators
- Investigators
- Hearing Officers/Decision-Makers
- Appeal Officers
- Alternate Resolution Facilitators
- Advisors



Title IX Overview

Bellarmino's Sexual Discrimination and Misconduct Policy prohibits:

- Discrimination on the basis of sex, sexual orientation, gender identity, gender expression, pregnancy/parenting status
- Sexual harassment
- Sexual assault
- Domestic/Dating violence
- Stalking
- Sexual exploitation



Title IX Report Intake and Response

The Title IX Office receives reports from mandatory reporters, friends, peers, and directly from students and employees.

Chief Title IX Officer or Deputy will email the student or employee impacted by the alleged conduct. This email will include resources and an invitation to meet.

They are not obligated to meet, but if they choose to do so the meeting can take place over Teams or in person. They can bring a friend or support person with them.

Immediate safety concerns are addressed. Resources will be provided. Resolution options will be discussed (if they are ready). A follow up email will be sent with a summary of discussion, resources, and resolution options.

Follow up / Check in



Resolution Options

Supportive Measures

- Academic adjustments
- Change to room/residence hall assignment
- Security escort, other safety planning
- No contact order
- Campus ban
- Referral to support services
- Assistance reporting to law enforcement or seeking order of protection

Formal Complaint Filed

1. Alternative Resolution
2. Formal Grievance Process

Jurisdiction and Definitions



Jurisdiction

- Title IX applies to applicable behavior that is perpetrated against someone who is participating in or attempting to participate in the University's educational program or activity in the United States.
- Educational program or activity means locations, event, or circumstances over which the University exercises **substantial control**.
- Assessment is completed by CTIXO when a formal complaint is filed, prior to a NOIA being issued.
- Complaints must be dismissed when the alleged conduct would not constitute a qualifying act or the conduct does not fall within Title IX's jurisdiction.

Can be referred to other processes for resolution.



General Definitions

- Consent: permission that is clear, knowing, voluntary, and expressed prior to engaging in and during a sexual act.
- Education program or activity: locations, events, or circumstances where Bellarmine University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Bellarmine University.
- Official with authority: an employee of Bellarmine University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Bellarmine University.



Sexual Harassment Definitions

- Quid Pro Quo: An employee conditioning University educational benefits, aids, or services on participation in unwelcome sexual conduct
- Unwelcome Conduct: Conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity
 - If true, is it SPOO?
 - Reasonable person standard
 - “Severe” is based on the circumstances.
 - Physical or verbal?
 - Ability for Complainant to escape
 - Threats, embarrassment, humiliation?
 - “Pervasive” is also circumstantial.
 - Widespread, open, public
 - Reputation
 - Frequency, intensity, regularity, and duration of conduct
 - Unreasonable interference with school or job
- “Objectively offensive” is something you know when you see.



Sexual Assault Definitions (Forcible)

- Forcible sexual acts directed toward another person without their consent. These include:
- **Forcible Rape**
- **Forcible Sodomy**
- **Sexual Assault with an Object**
- **Forcible Fondling**



Sexual Assault Definitions (Non-forcible)

- Non-forcible sexual acts directed toward another person without their consent. These include:
- **Incest**
- **Statutory Rape**
- **Dating Violence**
- **Domestic Violence**
- **Stalking**

Title IX Process



Formal Grievance Process



Bias, Conflict of Interest, and Recusal



Mandates and Considerations

- Regulations require impartial processes with fair resolutions.
- Regulations prohibit conflicts of interest and bias with Coordinators, Investigators, and Decision-Makers.
- Simply knowing a party or having previously disciplined them is typically not sufficient alone to create a conflict if objectivity is not compromised.
 - TIXC's preference is to avoid this anyway due to perception
- You can request your own recusal or a party may request it. Final determination on recusal is made by TIXC.



Bias and Prejudice

- Bias
 - Implicit or Explicit
 - Preference or tendency to like or dislike
 - Formed from stereotypes, cultural experiences, and expectations of the people around you
- Prejudice
 - Pre-conceived opinions that are not based on fact, reason, or actual experience
 - Biases and prejudices can be for or against entire groups or specific people



Common Biases in Title IX

- Gender Bias
 - Showing favoritism toward a gender identity/expression
- Racial Bias
 - Showing favoritism toward one race over another or associating negative traits to specific races
- Confirmation Bias
 - Interpreting ambiguous evidence to support one's own opinions/position
- Affinity Bias
 - Unconscious tendency to gravitate toward those who have similar identities to us

The Investigation



Appointing an Investigator

- Subject Matter
- Bandwidth
- Review for bias or conflict of interest
- Even when a true conflict does not exist, we want to avoid the appearance of a conflict
- Ideally two investigators per case
 - Flexibility
 - Brainstorming



Launching the Investigation

- Strategy
- Templates
- Record-Keeping
- FERPA considerations
- Creating a timeline



Guiding Principles

- The University bears the burden of proof in Title IX cases.
- Respondents are presumed not responsible for alleged violations
- All parties are entitled to fair, equal treatment and a prompt resolution of the case
- Delays
 - Good cause
 - Notice to parties
 - Accommodations



Interviewing

- Understand trauma's impact on individuals
 - Physical implications
 - Thinking rationally
 - Memory
 - Reasons people don't report
- Physical aspects of the interview
- Defining a person's experience-what you say matters
- Don't take more control than necessary
- Do not place blame



Scheduling

- Give yourself time to prepare
- Allow for at least one hour and leave a buffer before your next obligation
- Allow yourself time to reflect and organize notes
- Decide the most beneficial order of interviews
- Interview Request Letter



Uncooperative Parties and Witnesses

- Students are not required to participate in the Title IX Process
 - Importance of record-keeping
 - Noting uncooperativeness
- Credibility
- Impact of uneducated advisors



Interviewing v. Interrogating

- Interviews should be conversational and elicit information in a non-accusatory manner
- Your goals during the interview will be to learn all relevant facts, establish a timeline, and understand each individual's perception of the events.
- You should never aim to make a party or witness feel intimidated.



Interviewing Skills

- Warm up, establish ground rules, and remain professional.
- Familiarize yourself with the specific allegations and the policy.
- Ask a variety of questions, establish a timeline, and follow-up as much as needed.
- Be flexible!!!!
- Ask about witnesses and other evidence.
- Clarify terms and phrases.
- Acknowledge the impact that this is having on the interviewee.
- Be prepared to be questioned.



Post-Interview

- When to alert CTIXO
- Interview Summary
- Correction, re-interview, etc.
- Incorporation into DRE File and Investigation Report



Directly Related Evidence File

- CTIXO manages distribution
- Includes all DRE, even non-relevant evidence
- Parties have access for 10 business days
- During the 10-day review period and in writing:
 - Parties may submit additional evidence to the Investigator or make requests.
 - Parties can request further interviews.
 - Parties can make arguments about relevancy.

Evidence



Evidentiary Standard and Burden of Proof

- Bellarmine utilizes the preponderance of the evidence standard.
 - More likely than not that a policy violation occurred; 50.01%
 - Slightest tip of the scales of justice
- The University bears the burden of proving a policy violation
 - Difference between this and court



Relevance

- Decision-makers can only rely on **relevant** evidence.
- Evidence is relevant if it tends to make a fact at issue more or less likely to be true.
- Relevant evidence is not the same as directly related evidence.
- Irrelevant evidence includes:
 - Questions about a Complainant's prior sexual behavior or predisposition, unless: (1) offered to prove that someone other than the Respondent committed the alleged act; or (2) offered to show prior sexual behavior between the parties to prove consent.
 - Undisclosed medical records and privileged information.



Lack of Restrictions

- **All** relevant evidence must be considered. Court rules of evidence do not apply.
 - Documents, hearsay, etc.
- The University cannot restrict parties from discussing the case with others or impede their ability to gather evidence.
- All parties must have an equal opportunity to present witnesses and evidence, and to inspect all evidence gathered.
- The University cannot impose a limit on the types or amount of evidence offered.



Types of Evidence

- Interviews/Summaries
- Direct testimony
- Physical evidence
- Digital evidence
- Records maintained by the University
- Law enforcement and other records
- **All relevant evidence must be objectively evaluated and considered**, but you must use your discretion in giving weight to each piece.

The Investigation Report



Writing the Report

- Focus only on relevant evidence
- Be specific, consider that people may read in the future
- Use formal language when possible
- Write in past tense
- Third person objective point of view
- Use direct quotes when possible
- Avoid biased language and jargon
- Word choice



Components

- Jurisdictional Analysis and Scope of Investigation
- Applicable Policies and Procedures
- Definitions
- Standard of Evidence
- Investigation Timeline
- Factual Allegations
- Witnesses and Interview Summaries
- Summary of Other Evidence
- Appendices



Finalizing the Report

- Redactions
- Final review by CTIXO
- Must be shared at least 10 business days prior to hearing
- No discussions with potential decision-makers



Investigator's Role at Hearing

- All parties and advisors present
- Prepare to present Investigation Report
- Prepare to submit to cross-examination. **YOU** are a key witness
- Do not volunteer your opinions—focus on the facts



Investigator's Role in Appeals

- One ground for appeal is bias or conflict of interest of an Investigator.
- If a determination is appealed based on your alleged bias or conflict, you can prepare a response and submit it to the Appeals Officer.

Questions?

