

Title IX Coordinator Training Online Course

Class Five: Title IX Training & Policies

Marjory Fisher

Associate Vice President and Title IX Coordinator, Columbia University

Melinda Grier

Melinda Grier Consulting

Janet Judge

Education and Sports Law Group

Kimberly Hewitt

Vice President for the Office for Institutional Equity, Duke University

May 31, 2023

PLEASE NOTE: Training Course Only. Does Not Constitute Legal Advice.

Class Overview



- Audiences To Be Trained
- Elements of a Good Training Program
- Benefits and Perils of Trauma-Informed Training
- Auditing Training Materials
- Developing and Revisiting Policies
- Records Retention and Posting

Who Do You Train?

The Regulations (Title IX Personnel)

- Title IX Coordinators
- Investigators
- Decision-makers
- Anyone who facilitates an informal resolution process



Consider Training Others, even though not Required by the Regulations

- Title IX staff who are not identified by the regulations
- Officials With Authority to take corrective measures
- Other individuals with the responsibility to report sexual harassment – former Responsible Employees
- Campus Safety Authorities (CSAs)
- The Campus Community
- Confidential employees

And Athletics!



- NCAA Board of Governor's Policy:
https://ncaaorg.s3.amazonaws.com/ssi/violence/NCAA_CampusSexualViolencePolicy.pdf
- [NCAA Sexual Violence Prevention Tool Kit](#)
- [Task Force Recommended Timeline](#) (PDF)
- [Task Force Recommended Checklist](#) (PDF)
- [Administrator FAQ](#)
- [Student-Athlete FAQ](#)

Access Sample Policies and Procedures:

- Select the “Membership” tab on [ncaa.org](https://www.ncaa.org).
- Select “My Apps” from the dropdown menu and log in using your affiliated credentials. *Note: If you do not have access to MyApps please contact your NCAA Applications Administrator at your school or conference to gain access.*
- Select the “Membership Secure Resources” icon.
- Review the legal disclaimer and view the current sample policies and procedures documents that are available.

Annual Attestation Process Resources

NCAA Policy & Principles

- 2014 NCAA Board of Governors resolution – addressing sexual violence is integral to responsible intercollegiate athletic programs
- 2017 Association Policy adopted. Multiple updates/revisions
- Overarching Policies
 - Athletic Department integrated into overall campus policies & processes addressing sexual and interpersonal violence.
 - Ongoing, comprehensive education for student-athletes, coaches and athletic administrators using the NCAA Sexual Violence Prevention Toolkit as a guide.
 - Athletic programs should serve as leaders to support campus-wide sexual and interpersonal violence prevention initiative, including involvement of student-athletes in meaningful ways.

Required Annual Attestation Re: Training to be signed by University Chancellor/President, AD and Title IX Coordinator

1. The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence.
2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator*, are readily available within the department of athletics, and are provided to student- athletes.
3. All student-athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements.

NCAA Policy Update in the Next Class – For this Year

4. All incoming, continuing, and transfer student-athletes must complete an annual disclosure related to discipline or criminal conviction for sexual, interpersonal or other acts of violence.
5. Institutions have taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined or criminally convicted of sexual, interpersonal or other acts of violence.
6. Institutions recruiting an incoming or accepting a transfer student-athlete must have a written policy directing staff to gather information from former institution about whether student-athlete left under threat of discipline, was disciplined, or was criminally convicted for sexual, interpersonal, or other acts of violence.

Elements of a Good Training Program

Planning & Preparation

- Who must or will be trained and on what topics?
- Who will conduct training?
- What are the *most effective* and efficient methods of training?
 - In person, hybrid or virtual
 - Combination or by constituent groups
 - Timing
- What training resources are available, including internal?
- What are campus priorities with respect to training/education?
- How will you address issues of bias and avoid stereotypes?

Required Training

A school must ensure that Title IX Personnel receive training on:

- the definition of sexual harassment;
- the scope of the institution's education program or activity;
- how to conduct an investigation and the grievance process including hearings, appeals and informal resolution processes, as applicable; and
- how to serve impartially

Required Training

Title IX Personnel training continued:

- Avoiding prejudgment of the facts at issue, conflicts of interest and bias.
- The impact of intersections of identity: sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic.
- Implicit bias.

Required for Investigators



- Conducting a fair and thorough investigation.
- Determining relevance in order to prepare an investigative report that fairly summarizes relevant evidence.

Required for Informal Resolution Facilitators



- How to conduct informal resolution processes. (85 FR 30405)
- Document or make public?

Required for Decision-makers:

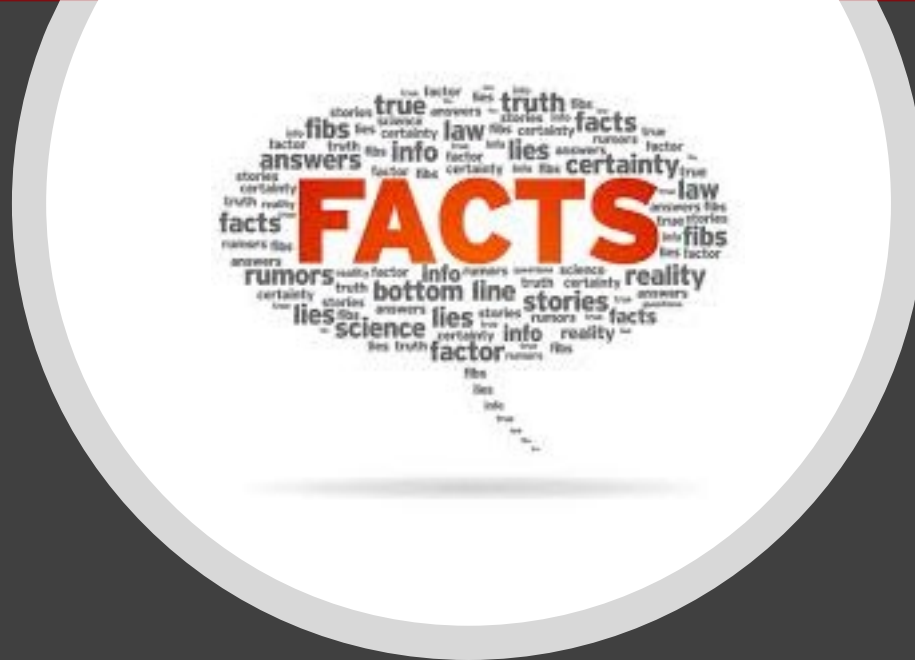


- Training on any technology to be used at a live hearing.
- Training on issues of relevance, including how to rule on evidence during a hearing and how to apply the rape shield protections provided only for complainants.
- Include training around the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Other Training Topics

Investigator	Decision-maker
<ul style="list-style-type: none">• Questioning• Institutional policies• Responsibility for proposed findings and conclusions• Redacting privileged information• Coordinating investigation with supportive measures	<ul style="list-style-type: none">• Managing the process• Hearing protocol• Institutional policies• Questioning• Preparing findings and conclusions

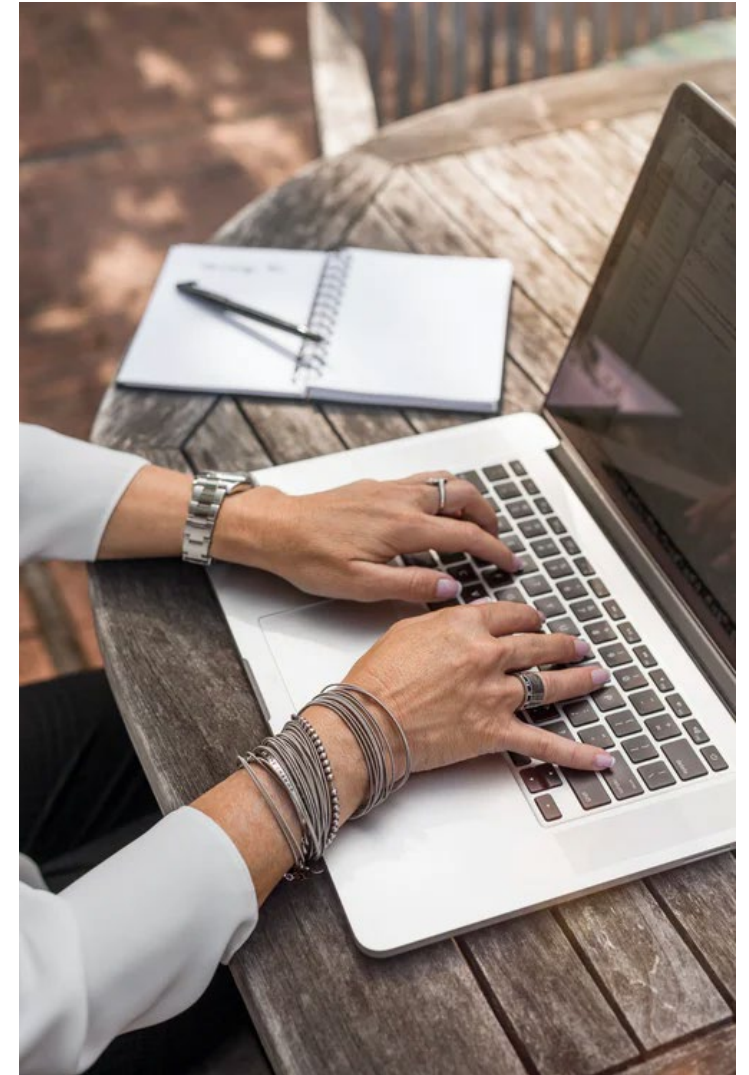
The Investigative Report



- Defines the investigator's role
- Reports the material facts
 - Context matters
 - Facts not opinion
- Identifies any gaps
- Keep a neutral voice

Training Transparency

- Post all training materials for Title IX personnel on publicly available website. (If no website, then make materials available for members of the public to inspect.)
- Ensure the materials posted are up-to-date, reflecting the most current training provided.



And Athletics!



Benefits and Perils of Trauma- Informed Training

How to Be Fair to All

Benefits	Perils
<ul style="list-style-type: none">• May help those interviewed retrieve memories• May help those interviewed stick with the process• May prevent re-traumatizing witnesses	<ul style="list-style-type: none">• May be perceived to favor Complainants• May be perceived as less intense questioning or cross-examination of witnesses• May be misused by untrained questioners

Auditing Training Materials

When & What to Audit

- Who was trained
- Was training effective
 - Measured outcomes
 - Observed outcomes
- How often to monitor
- Documenting monitoring



**Policies:
Management,
Notice, and
Some
Reminders**

Managing the Policies

Developing policies	Monitoring policies
<ul style="list-style-type: none">• Existing institutional policies• Existing laws, agreements & practices• Identify conflicts and concurrences and harmonize or change• <i>Include stakeholders</i>	<ul style="list-style-type: none">• Changes in law, regulations, guidance or institutional needs• Changes in related laws or guidance, e.g. FERPA, state APA• Effectiveness• <i>Include stakeholders</i>

Notification and Dissemination

- Title IX Coordinator contact info must be distributed and prominently displayed on the institution website, and in each handbook or catalog made available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations with CBAs.
- Nondiscrimination Policy, stating:
 - that the institution does not discriminate on the basis of sex in education programs or activities it operates.
 - That the institution is required by Title IX not to discriminate.
 - That the institution's nondiscrimination policy extends to admission and employment.
 - That inquiries about the application of Title IX may be referred to the school's Title IX Coordinator, to OCR, or to both.

Adopt & Publish

- Adopt and publish:
 - grievance procedures that provide for the prompt and equitable resolution of student *and* *employee* complaints alleging *any* action prohibited under Title IX.
 - a grievance process that complies with 106.45 for formal complaints as defined in 106.30.

Notice

WHAT: Notice of the school's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school will respond.

TO WHOM: applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school.

Policy Decision Point: Framework

All-in-One Policy:

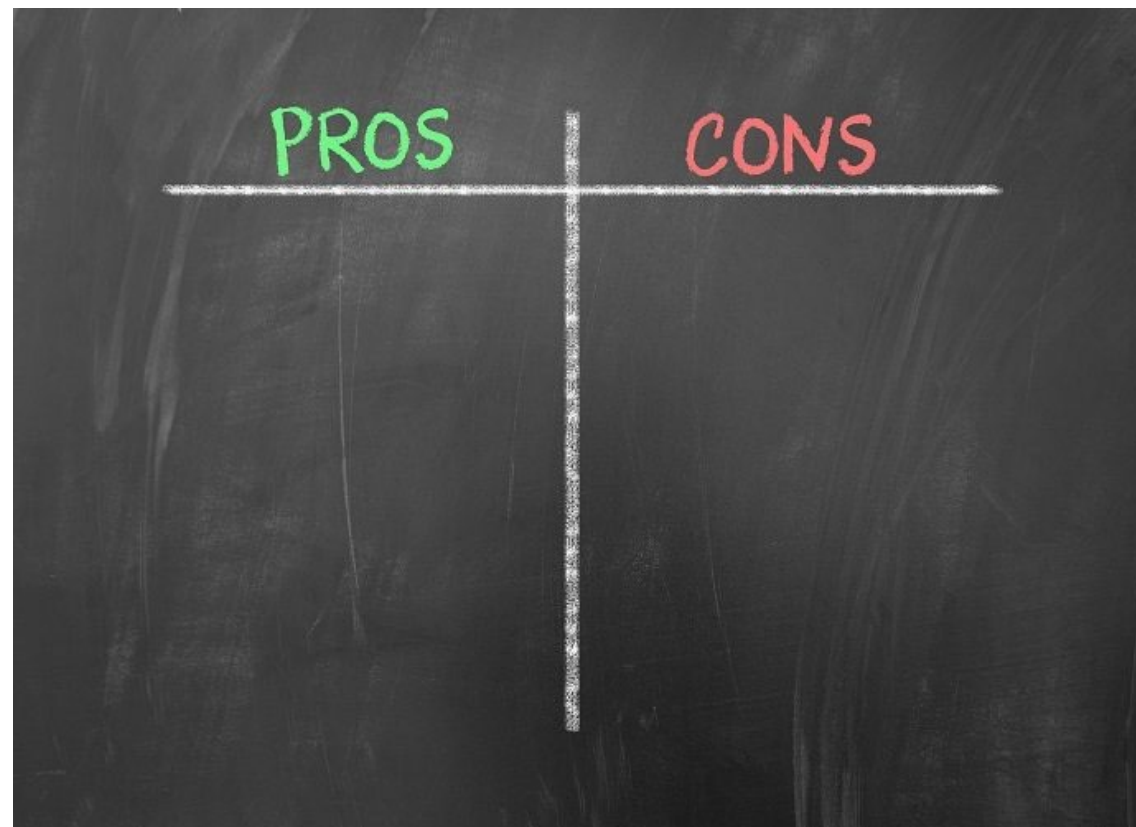
1. Treat all the Same; or
2. Decision Trees

Two Policies: If not TIX, then ...

1. Title IX Regulation+
2. Everything Else

Three plus:

1. TIX Regulation Conduct
2. Other Sexual Misconduct
3. Other Prohibited Conduct





Policy Definitions (examples)

Plus, Clery Annual Security Report Policies

- Title IX Coordinator
- Officials with Authority
- Other Reporters, if any.
- Confidential Resources
- Knowledge
- Complainant/Respondent
- Supportive Measures
- Formal Complaint
- Prohibited Conduct
 - Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- Consent
- Informal Resolution
- Evidence
 - Directly Related
 - Relevant
 - Weight
- Standard of Review
 - Deliberate Indifference
 - Education Program or Activity
 - Emergency Removal

FOCUS

Please Note:

Where there is a conflict between State or local law and Title IX regulations, Title IX regulations win.

Record Retention 7 Years



- **For formal complaints:**
 - Investigation
 - Determination of responsibility
 - Transcripts or recordings of hearings
 - Sanctions and/or Remedies, if any
 - Appeal, if any, and result
 - Informal resolution and result, if any
- **For all reports, regardless of whether there is a formal complaint:**
 - Actions taken and supportive measures, if any, provided in response to a formal complaint.
 - Basis for a determination that the institution was not deliberately indifferent.
 - Measures to restore or preserve equal access or reasons why not providing support was not clearly unreasonable under the circumstances.
- **All training materials for Title IX personnel**

And Athletics!



Accommodating Pregnant & Parenting Students

- Shall not discriminate based on pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery unless the student voluntarily requests to participate in a separate program or activity.
- Consider for pregnant & parenting students
 - Individualized academic plans
 - Programs and services designed to maintain educational progress
- Proposed regulations
 - Title IX Coordinator arrange reasonable accommodation





Proposed Changes

Required to train all employees

- When they must notify the Title IX Coordinator about sex discrimination
- How students can report sex discrimination
- The scope of conduct that constitutes sex discrimination

Title IX Coordinator required to monitor for barriers to reporting

Title IX Coordinator responsible for accommodations for pregnant & parenting students.

Training for employees who have responsibility related to grievance procedures or supportive measures:

- Specific topics & institution obligations
- Grievance procedures
- Serving impartially
- Relevance

Training related to informal resolution for facilitators

Identify and train all confidential employees

Questions?

Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.