

# Title IX Training

*Introduction to Title IX*

The background features several concentric circles in light gray, some solid and some dashed, creating a ripple effect. A large red callout box is centered on the page, containing the main title and subtitle. The callout box has a rectangular top and a pointed bottom.

# Overview of Title IX

Responsibilities, Roles, Descriptions

# Definition

- 20 U.S.C. 1681 & 34 CFR Part 106 (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 educational program or activity receiving federal financial assistance.

# Title IX Targets

1. Admissions
2. Financial Aid
3. Athletics

## Supreme Court Cases:

- 1980 - US Department of Education was created. Oversight transferred to Office of Civil Rights (OCR)
- Supreme Court ruled “employment discrimination” comes with Title IX’s prohibition - 1982

## Two Areas of Title IX

### **DISCRIMINATION**

- Sex Discrimination
- Program Equity

### **HARASSMENT**

- Quid pro Quo
- Hostile Environment
- Retaliation

# Essential Elements

- Once a “responsible employee” has either actual notice or constructive notice of sexual harassment/sexual misconduct, the school must:
  - Take immediate and appropriate steps to investigate what occurred, even if it is a preliminary inquiry

# Prompt Action

Prompt and Effective Action means:

- Stop the harassment
- Remedy the effects
- Prevent the recurrence

**OR our duty is to:**

**Investigate**

**Stop the harassment**

**Remedy**

**Prevent**

# The IX Commandments

We must be:

- Thorough, prompt, & end the discrimination
- Reliable, effective, and prevent the recurrence
- Impartial, equitable, remedy the effects upon the victim and community



# Definitions

- **Reporting Party – victim or “Affected Party”**
- **Respondent – alleged perpetrator**

# Supreme Court

- Numerous cases were reviewed by the courts
- One notorious case by Supreme Court
- Cannon v. University of Chicago
- Finding:
  - There is an implied private right of action under Title IX
  - Agreed that Title IX had federal interest in discrimination in education

## 2001 Guidance

- Required to post a non-discrimination statement
- Must offer effective reporting/response protocol
- Must have a grievance process

# 2011 Guidance

- **Central office of Title IX Coordinator**
- **Sexual violence is a form of sexual harassment**
- **Preponderance of evidence standard**
- **Promptly investigate**
- **Equity in process (investigation by neutral party)**
- **Equity in appeal (process for this)**
- **Mediation not allowed for sexual violence cases**

# 2014 Guidance

## Training, Education, and Prevention - employees

- Responsible employees
- All employees must know what to report, to whom, and how
- What is the nature of sexual violence
- How to prevent and identify sexual violence

# 2014 Guidance

## Training, Education, and Prevention - students

- What constitutes sexual violence
- What is unwelcome conduct via the school's policies
- The school's definition of consent applicable to sexual conduct
- Reporting options available: includes formal reporting and confidential options
- The school's policies, grievance procedures, and sanctions used to process sexual violence complaints
- Need to be done throughout the academic year

# Title IX Coordinator

## Responsibility and Authority

- Is notified of ALL Title IX complaints/reports
- Coordinates all responses to complaints
- Assigns the investigators
- Monitors the outcome of inquiries or investigations
- Identifies and addresses patterns
- May determine the outcome or institutional response to complaint
- Reporting party must be protected from retaliation

# Training

- Those associated with Title IX must be “well-trained” and up-to-date on their responsibilities
- Includes knowledge of applicable laws, policies, guidance, regulations, institutional policies, and procedures



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# Training

## Important Title IX areas:

- Recruitment, admissions, and counseling
- Financial assistance
- Athletics
- Sex-based harassment
- Pregnant and parenting students
- Discipline
- Employment
- Retaliation
- Information collection and reporting

## Responsible Employee

Any employee who:

- Has the authority to take action to redress the harassment
- Has the duty to report harassment or types of misconduct to appropriate officials
- Is someone a student could reasonably believe has the authority or responsibility
- **Therefore, all employees (except confidential employees) need to be trained regarding their obligation to *immediately* report harassment to the Title IX office**

# Investigation Guidelines

## When does the Title IX office investigate?

- Actual notice
- Constructive notice
- Potentially when rumors, gossip, social media, etc. brings an issue to our attention
- Once notice exists, the duty to investigate is ***absolute***
  - May be an inquiry
  - May be a comprehensive investigation

# Actual Notice

## Examples:

- Individual files a Title IX grievance
- Individual notifies Title IX coordinator or deputy coordinator
- Individual reports to a “responsible” employee
- Responsible employee witnesses potential harassment
- Indirect notice through media, social media, video, on campus information that is going around

## Constructive Notice

### Examples:

- Pervasiveness of the harassment is enough the university should have known
- Harassment is widespread, openly visible, or well known to students or staff
- OCR concludes the school should have known from a report to an employee who had a reporting duty, but failed to do so

## What will those in the Title IX office do?

1. Notify the reporting party of their options
2. What process will be available to them, regardless of how long they wait
3. CCU will support them (housing, class schedule, assignments, no contact orders, and so on)
4. CCU will engage in ways to limit the effect of the behavior of the Reporting Party
5. If the information is a threat to the community, may be forced to investigate, but the Affected Party(s) will be notified of the process

What will those  
in the Title IX  
office do?

6. Explain to the Reporting Party our actions may be limited if privacy is requested
7. Explain we cannot guarantee privacy
8. Only those needing to know will be informed/contacted
9. Explain/train those informed about confidentiality expectations

# The Clery Act

## Timely Warning:

- To keep the campus community informed about safety and security issues on an ongoing basis
- An institution must alert the campus community of applicable crimes



# Emergency Notification of Criminal Offenses

For example:

- **Criminal homicide: murder and non-negligent manslaughter, manslaughter by negligence**
- **Sexual assault: rape, fondling, incest, statutory rape**
- **Robbery: aggravated assault**
- **Non-Clery Reporting: diseases, weather related emergency**

## When does Title IX Apply

- On campus issues
- Off campus issues related to our programs or activities, if deemed an institutional program
- All programs using facilities funded by federal money
- Most likely will include: summer camps, those using fields, Event Center, etc.
- Visitors and guests
- Subcontractors and vendors

# When does Title IX Apply

- Hostile environment – sexual harassment
- Quid Pro Quo
- Retaliatory harassment
- Sexual violence
- Sex discrimination

# When does Title IX Apply

## Examples:

- Stalking
- Hazing
- Bullying
- Arson
- Vandalism
- Theft
- Any other policy that is sex based that causes a discriminatory effect

# Victim Bill of Rights

## The school must:

- Give equal notification to the Reporting Party and the Respondent
- Inform the *Affected Party* of counseling services
- Inform the *Affected Party* of option to notify law enforcement
- Inform the *Affected Party* of options to avoid the accused

# Clery Amendment: Section 304

- **Must have policy, procedure, training, education and prevention requirements for:**
  - Sex assault
  - Stalking
  - Dating violence
  - Domestic violence

# VAWA Section 304

## Sexual Assault:

- An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the FBI
- Against a person's will
- Where victim cannot give consent or incapable of giving consent

# VAWA Section 304

## Primary Crimes:

- Murder and non-negligent manslaughter
- Negligent manslaughter
- Robbery
- Rape
- Fondling
- Statutory rape
- Dating violence
- Domestic violence
- Stalking



## How you can help

### Understand the duties of the Title IX Coordinator:

- Training for employees, investigators, appeals officers, and others who are in position to abide by Title IX
- Contact for government inquiries
- Point person for campus complaints
- Implements Title IX policy
- Prevention and remediation of sex discrimination, sexual harassment, sexual assault
- Prevention of stalking, intimate partner violence, bullying
- Equitable grievance process
- Assigns and supervises investigators
- Prevention of retaliation
- Oversight of athletics gender equity
- Stop, prevent and remedy
- Assures compliance with final sanctions

# Conclusion

## Conclusion:

- Having knowledge of Title IX
- Your role and responsibilities
- Questions?

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# Investigator Training

First steps to Investigations at CCU

# Title IX Structure

President/VP  
Business  
Affairs

Title IX  
Coordinator  
(Rick Garris)

Athletics  
(Compliance)

Deputy  
Coordinator -  
CUS (Sharon  
Felker)

Deputy  
Coordinator -  
CAGS (Dave  
Bechtold)

Deputy  
Coordinator -  
HR (Lauren  
Williams)

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# Civil Rights Investigation Model

- **Pass out this model and discuss**

## Competencies of Coordinators, Deputies, Investigators

### What is the skill set of those working with Title IX

- Strategic process
- Questioning
- Evaluate evidence
- Establishing rapport
- Reporting writing
- Work with Affected Party/Respondent
- Equitable treatment – neutrality
- Observe patterns
- Understand false complaints
- Determine what is consent
- Force/incapacity
- Psychology of the accused

# Investigator Training

- **Must know the institutional policies**
- **Knowledge of and apply federal and state laws; along with institutional policies**
- **Use investigative techniques i.e., able to effectively interview witnesses**
- **Cultural sensitivity**
- **Analyze evidence**
- **Synthesize evidence to write complete and accurate reports**
- **Willing to attend third party training offsite**

# Hostile Environment

Consider the totality of circumstances:

- Effect of the alleged victim's mental or emotional state
- Was the conduct directed at more than one person
- Did the conduct unreasonably interfere with the alleged victim educational or work performance
- Was the information such it was offensive, discourteous, or rude



## Severe

“The more severe the conduct, the less need there is to show a repetitive series of incidents (pervasive) to prove a hostile work environment; particularly if the conduct is physical. A single or isolated incident of sexual violence/harassment may create a hostile work environment.”

- Physical is more likely to be severe without need for repetition
- “An attempt to grab a female student breasts or a student’s genital area or buttocks (2001 OCR Guidance)
- Consider the circumstances i.e., victim’s ability to escape the harassment

# Pervasive

- Widespread
- Openly practiced
- Well known among students or employees – reputation of a department or housing situation...
- Was it in public spaces? ...more likely to be pervasive
- Was it a regular practice? ...more likely to be pervasive (2001 OCR Guidance)
- Frequency intensifies or increases in duration
- Unreasonable interference
- Meritor v. Vinson, 477 U.S. 57 (1986) – “A gauntlet of sexual abuse”

# Persistent

- Repeated: intensity, duration, welcome
- Defined by: trying to do something or try to do something even though people want you to stop
- Continuing beyond the usual, expected, or normal time, not stopping or going away (Meriam-Webster)

# Objectively Offensive

- Reasonable person standard (contextual)
- I know it when I see it...
- Age and relationships of accuser/accused
- Number of persons involved
- Frequency
- Severity
- Physically threatening
- Humiliating
- Ridicule
- Abusive

Examples of  
Severe, Pervasive,  
Objectively  
Offensive

**Student based:**

- Student sexts pictures; email of similar
- Colleague discussion posts
- Revenge or retaliatory exchange
- Watching porn on library or work computer

**Staff/Faculty based:**

- Giving a student a back rub
- Sex talk/demonstrations of sexual nature
- Telling dirty jokes
- Calling others/students names of a sexual nature

# Quid Pro Quo

- Unwelcome sexual advances
- Requests of a sexual favor
- Verbal or physical conduct of sexual nature
- All expecting this for that; a reward for a sexual favor

## Non-Consensual Sexual Intercourse or Sexual Contact

**Non-consensual sexual intercourse or sexual contact is:**

- **Any sexual intercourse that is however slight, with any object, by one person upon another person, that is without consent and/or is by force.**

# Sexual Contact

## Includes:

- Breasts, buttock, groin, genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts  
OR
- Any other intentional bodily contact in a sexual manner



# Intercourse

Defined as:

- Vaginal or anal penetration, by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

# Sexual Exploitation

Occurs when one person takes non-consensual or abusive advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Can be a broad policy that fits your culture within your school.

# Stalking

- A course of conduct directed at a specific person, on the basis of actual or perceived actions that is unwelcome AND would cause a reasonable person to fear
- Repetitive and menacing
- Pursuing, following, harassing, or interfering with the safety of another
- Can include technology

# Prompt & Equitable Investigations

- We must act promptly
- We must continue to have movement in the case, witness meeting, talking with Reporting Party or Respondent...
- Goal is to solve as soon as practicable
- Is more than 6 months practicable? NO
- However, the more complex the potentially longer the investigation

# Preponderance of Evidence Standard

- 50% plus a feather
- Will continue to review and analyze and try to come to this conclusion
- Can a case be inconclusive – probably not
- If we do our investigation properly it is plausible we can come to a conclusion of this by following the evidence

# Intake Meetings

- Designate a member of the investigation team as the intake officer for the allegations.
- The same person conducting the intake should then serve on the investigation team.
- If the allegations have already been made, share them with the investigation team.

# Intake Meetings

- The intake officer should get the allegations in writing: Have the reporting party write a statement.
- Recognize that there may be the need to edit the written statement to remove extraneous or prejudicial information
- Accept a written statement from the reporting party if it's already written (as long as the reporting party understands that under FERPA, you may need to share it with the responding party).
- Use your first interview with the reporting party as the basis for the allegations.

# Intake Meetings

- Thank the reporting party for being willing to come forward.
- Develop a rapport with the reporting party, allowing time for the interview to wander, and to gently accept information about an emotional/difficult/embarrassing experience.
- Don't guide the oral interview unless you need to. Allow the reporting party to narrate without interruption. Clarify what you need to when the narration is complete.
- If the flow is interrupted, use open-ended questions to get it going again (e.g., "Tell me more about that," or "Please continue your description of that night.>").
- Do not insinuate with questions.
- Instead, ask specific, precise questions to get precise answers when they are needed.
- If an answer is unexpected, follow-up on why that is.



# Intake Meetings

- Do not ask questions that could be perceived as blaming, even if you don't mean to.
  - If you realize that you have asked such a question, then reframe it, and/or apologize.
- Use trauma-informed interview techniques, and an understanding of how trauma impacts your interview and the evidence.
- Record the interview. Inform the Reporting Party of your desire to do this and help them become comfortable with the process.
- Take notes. It is a good idea to have a note taker.

## What if they bring an Advisor

- If the reporting party brings an advisor or support person to the interview:
  - Advisors should be able to communicate with their advisees during the interview.
  - A reporting party may be more comfortable having eye contact with the advisor, rather than being seated side-by-side.
- Advisors should only speak you when you address them, or off-the-record. They may not present evidence.

# Intake Meetings

- Choose neutral, comfortable turf for the interview. Avoid displays of power. Being casually dressed is a good idea.
- Ensure privacy by turning off the phone, closing the door, if the reporting party is comfortable with it, etc.
- Describe the purpose of the investigation and the interview.
- Describe your role as the investigator.
- Explain the investigation process.
- Emphasize the non-retaliation policy.

# Intake Meetings

- Do not promise absolute confidentiality, but assure privacy and explain the difference.
- Ask the Reporting Party what outcome they desire, but do not promise or guarantee that any outcome will happen.
- If using written allegations, they should be as specific as possible, and should be signed and dated by the reporting party.
- Obtain a witness list from the reporting party.

# Intake Meetings

- When the Title IX Report is completed explain the Reporting Party and Respondent will share the outcome of the allegations with each for final editing and verification.
- Inform reporting parties to be discreet about sharing their allegations widely with others:
  - Responding parties are increasingly willing to use defamation claims to silence accusers.
  - Talking about the allegations widely may also increase the risk of retaliation.
- Inform reporting parties that they will be kept up-to-date on the progress of the investigation.
- Let them know when they are likely to hear from you again.

Source: Investigation in a Box, ATIXA

# Equity – Importance of being Unbiased

- Prompt,
- Thorough,
- Impartial
- If you cannot do this, you should excuse yourself from the investigation

# Dual Investigator Model

- **CCU uses a dual investigator model**
- **No investigation should be done by one individual**
- **Two investigators provide more resources and ability to analyze the facts/evidence**
- **Helps with report writing**

## What about using Campus Security?

- Legal standards for criminal v. Title IX investigations are different...and dual interests
- Police or security reports may not determine if harassment occurred
- Need for a focused report and review of evidence through Title IX lens and CCU policies
- Title IX trained people are the experts of policies and Title IX laws/regulations
- Just not a sound idea or solution



# Reasonable Cause

- A complaint must be supported by reasonable cause to permit it's full pursuit...moving from an inquiry to an investigation

# Investigation Steps

## **A Review:**

- **Notice or complaint**
- **Preliminary investigation**
- **Comprehensive investigation, if necessary**
- **Charges/allegations**
- **Finding**
- **Sanction**
- **Appeal**

# Evidence

Assign weight of evidence based on:

- Documents – supportive writings and documents
- Electronic – photos, text, videos, emails
- Real evidence – physical evidence
- Direct – testimonies
- Circumstantial – not eyewitness based, but compelling
- Hearsay – outside of direct information, but could be important to follow up on
- Character – of little value or relevance

# Evidence

- Evidence is any kind of information presented with the intent to prove what took place.
- If the information is considered relevant to prove or disprove a fact at issue, it should be admitted and used.
- If credible, it should be considered. Certain kinds of evidence may be relevant to the creditability of the witnesses, but not to the charges/allegations.

# Credibility

- To assess credibility is to assess the extent to which you can rely on a witness's testimony to be accurate and helpful in your understanding of the case.
- It is not synonymous with truth
- Memory errors do not necessarily destroy a witness's credibility
- Nor does evasion or being misleading
- Do not focus on inconsistent or irrelevant inaccuracies or inconsistencies

# Credibility

## Factors:

- Demeanor – non verbal language
- Non-cooperation – short, abrupt answers or refusal to answer
- Logic/consistency – I'm struggling to develop a timeline, can you help me and they don't make sense
- Corroborating evidence – can they help here?

# Findings

**We use a probable statement approach:**

- It is less than likely
- It is more likely than not

**We base on how the institutional policies apply:**

- Use specific policy language to determine if a policy violation is more likely or less likely than not
- Apply the evidence to the policy
- Assess credibility of witness statements
- Cite correct reasons for conclusion
- Sanctions are determined by Title IX Coordinator or Senior Management or others assigned by the President

# Appeal

- CCU will assess if an appeal is consistent with the appeal policy
  - Based on new evidence not available during investigation
  - Investigator bias
- If yes, an appeal is permitted
- Purpose of appeal is not to overturn decision, but to review if process was followed



# Conclusion

## **Title IX Commandments**

Let's remember to be:

- Thorough, prompt, & end the discrimination
- Reliable, effective, and prevent the recurrence
- Impartial, equitable, remedy the effects upon the victim and community

# Questions

- Final thoughts?

## Source

- Materials used are for internal use at CCU; they are not to be reproduced and all ATIXA copyright laws are expected to be adhered to.
- Materials are from ATIXA Training, Title IX Coordinator Slide Packet, and their Investigation in a Box materials.
- CCU has a Super Membership with ATIXA and recommends all Coordinators, Deputy Coordinators, and Investigators attend their trainings.
- This is not to replace any ATIXA trainings. It is meant to help with the responsibilities of any newly appointed Title IX roles at CCU.