



Annual

# TITLE IX TRAINING

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OCTOBER 2023



**Part I:  
JURISDICTION &  
KEY TITLE IX DEFINITIONS**



**Part II:  
CLAFLIN UNIVERSITY'S  
TITLE IX POLICY**



**Part III:  
SERVING IN TITLE IX ROLES  
WITH IMPARTIALITY**



**PART IV:  
PROPOSED CHANGES FOR 2023**

# TRAINING AGENDA

# Serving in Title IX Roles with Impartiality

PART THREE



# CONDUCTING A CONFLICTS ANALYSIS

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When analyzing whether a conflict of interest exists, the Title IX Coordinator should do the following:

- ✓ Self-reflect on whether the Title IX Coordinator has a conflict with respect to any aspect of the formal complaint.
- ✓ Ask each person assigned to a role in the Title IX case to confirm in writing the absence of a conflict of interest.
- ✓ Disqualifying conflicts include any relationship or other circumstance that would prevent an individual from approaching the case free of bias, prejudice of the facts or partiality.



# SERVING IN TITLE IX ROLES WITH IMPARTIALITY

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Serving

- WITHOUT BIAS

Serving

- WITHOUT PREJUDGMENT OF THE ISSUES

Serving

- WITHOUT CONFLICTS OF INTEREST

# AVOIDING BIAS

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No aspect of the Title IX grievance procedures can be influenced by bias.

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No reliance on sexual stereotypes is permitted (e.g., considering reasonableness from a “female perspective” or from a “male perspective”; harboring views such as “boys will be boys,” etc.)

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Improper bias includes bias against complainants and respondents generally, as well as bias against the individual Complainant or Respondent in a particular case.

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Consideration should be given to statements and conduct outside of the Title IX process when determining whether someone can credibly serve in a Title IX role with impartiality. (Examples: “I believe all women” or “I believe all victims.”)

# AVOIDING PREJUDGMENT

## What does avoiding prejudice mean?

- Approach your Title IX role with an open mind.
- Set aside what you may have heard about a particular case outside of the grievance process to ensure that there is no prejudice.
- Do not determine a person's credibility based on their status as a Complainant or a Respondent.
- Give each party equal benefits of the doubt.
- Approach your role with respect for the presumption of non-responsibility that applies to all Respondents.

*Title IX personnel are not prevented from understanding and taking into account each party's interests and the "stakes" at issue for each party, yet what is at stake does not, by itself, reflect on the party's truthfulness. (Preamble, p. 810)*

# AVOIDING CONFLICTS OF INTEREST

**Examples of instances in which a conflict of interest may require recusal from serving in a Title IX role:**

A close personal relationship exists with a party or key witness.

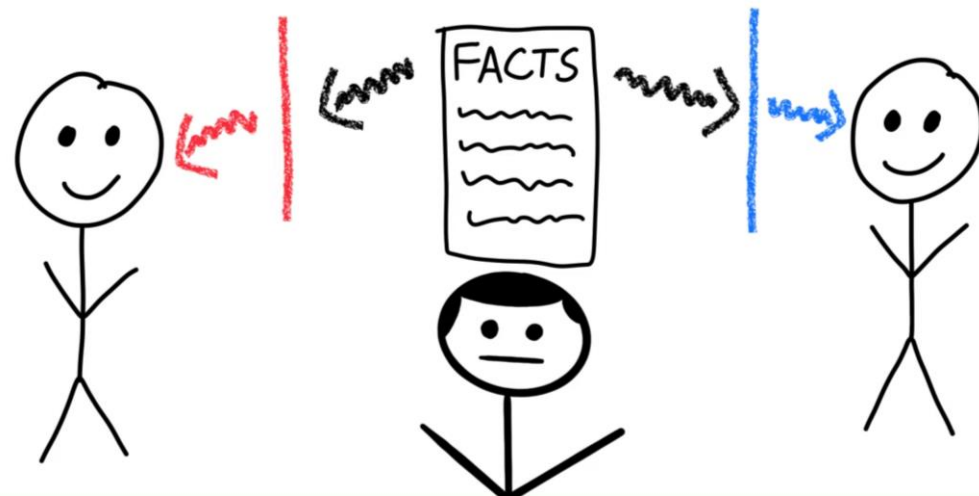
A strong personal history (positive or negative) exists with any party or key witness that cannot be placed aside by the person holding the Title IX role.

A reporting relationship exists between an individual and the Title IX team member (i.e., a supervisor-employee relationship).



# UNDERSTANDING “CONFIRMATION BIAS”

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<https://www.youtube.com/watch?v=wo3xpigljts>

# HYPOTHETICAL #1

A freshman student athlete reports that after drinking in his residence hall, he then attended a party hosted by upper classmen who are teammates. He reports that he was given several drinks while at the party and has few memories after the first hour. He reports he woke up on the couch of the apartment and found that he was not wearing pants. He reports there was another individual on the couch, who also was not wearing pants. He reports that he called an Uber and returned to his residence hall and then called his RA later that day.

**WHAT QUESTIONS MUST WE CONSIDER?**

# HYPOTHETICAL #1

## QUESTIONS TO CONSIDER:

*Did freshman student-athlete believe he had been sexually assaulted?*

*Was the freshman student-athlete reporting for purposes of receiving supportive measures or does he want the University to investigate his allegations?*

*Does the University exercise “substantial control” over the other individual on the couch?*

*Does the University exercise “substantial control” over the apartment building where the incident occurred?*

*What reporting obligations does the RA have?*

# HYPOTHETICAL #2

Complainant (“CP”) and Respondent (“RP”) meet at a party and drink *heavily* throughout the evening. CP & RP talk about going back to RP’s apartment.

Once at RP’s apartment, RP asks if CP wants to have sex and CP says “No, I just want to go to bed. But let’s cuddle.” CP & RP go to sleep in RP’s bed, a twin mattress.

In the morning, CP awakes and finds an asleep RP “spooning” CP’s body. One of RP’s hands is touching CP’s breast and RP has an erection that is pressing against CP’s body.

CP believes CP is a victim of sexual assault and files a Formal Complaint.

**WHAT QUESTIONS MUST WE CONSIDER?**

**DOES THIS INCIDENT, IF TRUE, CONSTITUTE SEXUAL HARASSMENT UNDER TITLE IX?**

# HYPOTHETICAL #2

## SOME QUESTIONS TO CONSIDER?

- Did sexual intercourse occur?
- Was CP incapacitated to the point of not being able to give effective consent?
- Is the apartment on-campus or off-campus?
- Is CP engaged or attempting to engage in a University program or activity?
- Is RP under the control of the University?

## IS THIS SEXUAL HARASSMENT UNDER TITLE IX?

Conduct on the Basis of Sex?

Severe?

Pervasive?

Objectively Offensive?

Based on a Reasonable Person?

U.S. DEPARTMENT OF EDUCATION

# Proposed Changes to Title IX Regs for 2023

PART FOUR



# DISCLAIMER

The following slides contain a high-level overview of the U.S. Department of Education's proposed changes to the Title IX regulations.

This is being provided for informational purposes only, and is subject to change in accordance with the Department's Notice of Proposed Rulemaking.

These proposed changes will not have the force of law until the Department issues its Final Rule.

# Expand Definition of “On the Basis of Sex”

Expand Title IX’s definition of “on the basis of sex” would be expanded to include discrimination based on:

- **Sex stereotypes**
- **Sex characteristics**
- **Sexual orientation**
- **Gender identity**
- **Pregnancy or related conditions**
- **Parental status, including:**
  - ✓ adoptive parents
  - ✓ step-parents
  - ✓ legal guardians



# Include Definition of “Retaliation”

- **Retaliation** would be defined as “intimidation, threats, coercion, or discrimination against anyone because the person has reported possible sex discrimination, made a sex-discrimination complaint, or participated in any way in a university’s Title IX process.”
- A university would be prohibited from taking action against a student or employee for the purpose of intimidating, threatening, coercing, or discriminating against someone because they provided information or made a complaint regarding sex discrimination.
- **Peer retaliation**, which would be defined as retaliation by one student against another student, would also be prohibited.

# Expand Protections for Pregnancy- Related Conditions

Universities would be required to provide the following accommodations for students, applicants, and employees:

- **reasonable modifications for pregnant students** (e.g., alternative testing arrangements)
- **reasonable break times for pregnant employees**
- **lactation space for both students and employees**

# Eliminate the “Formal Complaint” Requirement

Universities would have an obligation to respond to conduct that may constitute sex discrimination under Title IX by any informal means such as:

- **One who witnesses sex discrimination.**
- **One who hears about sex discrimination allegations from a complainant or witness.**
- **One who receives information or a written or verbal complaint about sex discrimination from someone other than the complainant, such as:**
  - another student
  - a parent
  - a member of the local community
  - the media.

# Provide Rights to Legal Representatives

The following individuals would be allowed to participate in any grievance procedure on behalf of a student:

- **Parents**
- **Guardians**
- **Other authorized legal representatives**

# Revise Definition of “Hostile Environment”

## CURRENT DEFINITION:

Unwelcome sex-based conduct only if it is “so **severe, pervasive, and objectively offensive**” that it effectively denies a person equal access to the university’s education program or activity.

## PROPOSED DEFINITION:

Unwelcome sex-based conduct that is **sufficiently severe or pervasive** that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person’s ability to participate in or benefit from the university’s education program or activity.

# Expand Scope of Title IX Jurisdiction

Sex-based harassment that occurs in a university's "education program or activity" would include:

- **Conduct that occurs off-campus when the respondent is a university representative or otherwise engaged in conduct under the university's disciplinary authority.**
- **Conduct that occurs outside the university's education program or activity.**
  - ✓ Complaints may be filed by former students or employees who are not participating or attempting to participate in an education program or activity.
- **Conduct that occurs outside the United States.**

# Expand List of “Employees with Authority” (i.e., Mandatory Reporting Obligations)

Universities would require the following employees to notify the Title IX Coordinator of conduct that may constitute sex discrimination under Title IX:

- ❑ **Employees who have authority to take corrective action.**
- ❑ **Employees who have responsibility for:**
  - **administrative leadership,**
  - **teaching, or**
  - **advising.**

All other employees would be obligated to notify the Title IX Coordinator or provide the individual with the Title IX Coordinator’s contact information and information about reporting.

“Confidential Employees” would not be obligated to notify the Title IX Coordinator about possible sex discrimination—only provide the individual with the Title IX Coordinator’s contact information and information about reporting.

# Other Important Proposed Changes

- **Universities may offer an informal resolution process, if appropriate, whenever it receives a complaint of sex discrimination or has information about conduct that may constitute sex discrimination under Title IX in its education program or activity.**
  - The current regulations permit informal resolution only if a formal complaint alleging sexual harassment has been filed.
- **Live Title IX hearings would be permitted, but not required.**
- **Decisionmaker may be the same person as the Title IX Coordinator or investigator.**
  - The current regulations state that the decisionmaker cannot be the same person as the Title IX Coordinator or the investigator(s).



THANK  
YOU

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