

TITLE IX TRAINING

Clafin University
Session I - August 2020

TRAINING AGENDA

- I. Jurisdiction & Key Title IX definitions**
- II. Claflin University's Title IX policy**
- III. Serving in Title IX roles with impartiality**

TITLE IX

- 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 U.S.C. § 1681

DISCRIMINATION ON THE BASIS OF SEX

- The University receives “Federal financial assistance”; thus, its education programs and activities are covered by Title IX.
- A university that responds with deliberate indifference to actual knowledge of sexually harassing conduct occurring in its education program or activity has violated Title IX. - *Gebser v. Lago Vista Independent Sch. Dist.*, 524 U.S. 274 (1998).
- “Whether gender-oriented conduct rises to the level of actionable harassment thus depends on a constellation of surrounding circumstances, expectations, and relationships, . . . including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.” *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 651 (1999).

TITLE IX JURISDICTION

- All of the following elements must be satisfied to trigger Title IX jurisdiction:
 - Discrimination on the basis of sex, including sexual harassment as defined under Title IX
 - *Quid pro quo* harassment,
 - Severe, pervasive and objectively offensive harassment, or
 - Certain criminal conduct: sexual assault, stalking, domestic violence, dating violence
 - Occurring in the University’s “education program or activity”
 - Occurring against a person in the United States

SUPREME COURT CASELAW

Gebser – Teacher on Student Harassment

- High school student sued a school district under Title IX for a teacher's sexual harassment of the student.
- No liability because the district lacked actual notice of the harassment.

Davis – Student on Student Harassment

- Student in the fifth grade was the victim of repeated acts of sexual harassment by a classmate over a 5–month period.
- The harassment was both verbal and physical
- The classmate pleaded guilty to criminal sexual misconduct.
- Multiple victims complained about the classmate's misconduct.
- Harassment allegedly had a concrete, negative effect on the student's ability to receive an education.

KEY DEFINITIONS - PARTIES

- **Complainant** – The complainant is an individual who is alleged to be the victim of conduct that could cause sexual harassment.
- **Respondent** – The respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Title IX Coordinator** – The Title IX Coordinator is designated and authorized by Clafin to oversee the investigation and adjudication of allegations of sexual harassment under Title IX.
- **Advisor** – The advisor conducts cross examination of individuals testifying in a live hearing under Title IX. A party may engage an advisor of the party's choice, but Clafin must appoint an advisor if a party does not have one.

THE MEANING OF “SEX” UNDER TITLE IX

Title IX sexual harassment covers:

- “gender harassment” and “unwanted sexual attention” (assuming it is sufficiently severe, pervasive and objectively offensive), and
- applies equally to all persons regardless of sexual orientation or gender identity.

In June 2020, the U.S. Supreme Court held that the term “sex” in Title VII of the Civil Rights Act provided protection against discrimination with respect to sexual orientation and transgender status.

THE MEANING OF “PROGRAM OR ACTIVITY”

- **Broad Definition** - Title IX broadly defines the concept of “education program or activity” to include all of the following examples:
 - “all of the operations” of Claflin University;
 - locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs;
 - buildings owned or controlled by a University-recognized student organizations; and
 - off-campus harassment if Claflin University exercised substantial control over the context and the alleged harasser.
- **Cyber-based Harassment** - “[U]se of e-mail, the internet, or other technologies may constitute sexual harassment as much as use of in-person, postal mail, handwritten, or other communications.”

SEXUAL HARASSMENT DEFINED

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

- (1) An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (a/k/a "*quid pro quo* harassment");
- (2) 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 University's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

QUID PRO QUO HARASSMENT

Title IX *quid pro quo* harassment exists where:

- The harassment was performed by an employee of the University;
- The harassment took the form of a bargain for some type of University “aid, benefit, or service” in exchange for any kind of sexual conduct; and
- The sexual contact at issue was “unwelcome.”

Covers a Broad Range of Sex-Based and Sexual Conduct

- “*Quid pro quo* harassment should be interpreted broadly.” – Dep’t of Educ., preamble, p. 447, n. 644 (emphasis added).
- Conduct falling far short of sex may form the basis a *quid pro quo* claim, e.g., “sex-based or other sexual conduct (e.g., back rubs or touching students’ shoulders or thighs).” – Preamble 447, n. 643.

QUID PRO QUO – EMPLOYEE REQUIREMENT

- *Quid pro quo* harassment does not exist under Title IX unless it is carried out by an employee of Clafin University. Thus, none of the following categories of people can engage in *quid pro quo* harassment under Title IX:
 - Non-employee students
 - Volunteers
 - All “others not deemed to be a recipient’s employee”
- If the respondent is not an employee of the University, the *quid pro quo* analysis should end.

QUID PRO QUO – BARGAIN REQUIREMENT

- *Quid pro quo* harassment can occur where the “bargain” proposed is communicated expressly or impliedly.
- Context matters when inferring a *quid pro quo* “bargain” has been proposed.
 - “the age and position of the complainant is relevant to this determination.” – Preamble, p. 447, n. 643.
 - a power imbalance in the respondent-complainant relationship may, in some circumstances may allow such an inference. – Preamble, p. 446, n.642.

QUID PRO QUO – UNWELCOME REQUIREMENT

- For Title IX purposes, *quid pro quo* harassment must involve conduct that was “unwelcome” when it occurred as determined from the complainant’s subjective perspective.
- Acquiescence does not necessarily undermine a *quid pro quo* claim.
- The Department of Education has explicitly recognized that “*quid pro quo* harassment does not depend on whether ‘the student resists and suffers the threatened harm or submits and avoids the threatened harm...’” – Preamble p. 448, n. 645.

ILLUSTRATIONS OF THE *QUID PRO QUO* ANALYSIS

Is this an example of *quid pro quo* harassment under Title IX?

- A Claflin student studying abroad in Europe is told by a professor that the student will receive an “A” in the professor’s class if the student allows the professor to perform oral sex on the student.
- A University dean tells a University professor that the dean will approve the professor’s leave request in exchange for sex, which the professor does not consider welcome.
- A University professor offers to pay for an adjunct instructor’s ticket to attend the NCAA Final Four basketball games in exchange for sex.

NO

YES

NO

ILLUSTRATIONS OF THE *QUID PRO QUO* ANALYSIS

Is this an example of *quid pro quo* harassment under Title IX?

- A student-member of University-recognized fraternity tells a Freshman classmate that he will be accepted into the fraternity if he engages in oral sex, which the Freshman classmate does not want.
- A coach employed by the University offers a 15-year old volleyball star an athletic scholarship in exchange for sex.

NO

YES

SEVERE, PERVASIVE AND OBJECTIVE OFFENSIVE

- To qualify as sexual harassment under the second prong of Title IX's definition of that term, the following elements must be satisfied under a "reasonable person" standard:
 - 1) The conduct must be based on sex;
 - 2) The conduct must be unwelcome;
 - 3) The conduct must effectively deny access to an education program or activity of the University because it is so:
 - severe;
 - pervasive; and
 - objectively offensive.

NOTE: The Title IX standard differs from the Title VII standard for harassment.

ANALYZING WHETHER THE CONDUCT WAS UNWELCOME

- Title IX sexual harassment includes both:
 - **unwelcome conduct of a sexual nature**
 - **unwelcome non-sexual conduct that targets a particular sex.**
- The Title IX Coordinator should determine whether the allegations, if true, would indicate that the alleged conduct was unwelcome by the complainant when it occurred.
- When investigating a formal complaint, the investigator should ask whether each act of alleged harassing conduct was welcome or unwelcome by the complainant when it occurred.

ANALYZING SEVERITY

- Many factors may weigh on whether conduct is “severe” under the second prong of the Title IX definition:
 - Ages of the parties
 - Number of parties involved
 - Disability status of parties
 - Positions of authority of the involved parties
- The Department of Education identifies the following examples of conduct that may not satisfy the “severity” requirement:
 - Rubbing a student’s back – Preamble, p. 447, n. 643.
 - Discussion of “sexual issues even if that offends some people who hear the discussion” - Preamble, p. 460
 - “Vulgar or indecent” speech – Preamble, pp. 460-61
 - Microaggressions – Preamble, p. 495

ANALYZING PERVASIVENESS

- Merriam-Webster defines “pervasive” as “existing in or spreading through every part of something.”
- The Department of Education refused to remove the “pervasive” requirement despite concerns raised that a single incident of severe harassment may never satisfy the requirement.
- Dept. of Education examples of possible “pervasive” conduct comprised of a single action:
 - Disseminating “revenge porn,”
 - Conspiring to sexually harass people (such as fraternity members telling new pledges to “score”),
 - Other unwelcome conduct that harms and humiliates a person on the basis of sex, particularly where the unwelcome sex-based conduct involves widespread dissemination of offensive material or multiple people agreeing to potentially victimize others and taking steps in furtherance of the agreement

ANALYZING OBJECTIVE OFFENSIVENESS

- Whether conduct is “objectively offensive” must be evaluated from the perspective of “a reasonable person in the complainant’s position.”
- This standard may be satisfied regardless of whether the respondent intended to offend.
- This exercise must not rely on sex stereotypes, e.g., considering offensiveness from a “male perspective” or “female perspective”; applying a “boys will be boys” approach, etc.

ANALYZING WHETHER EDUCATIONAL ACCESS IS IMPACTED

- No concrete injury is required, but evidence of unequal educational access may include:
 - Skipping class to avoid a harasser;
 - A declining GPA;
 - Difficulty concentrating in class.
- What is not necessary to satisfy this requirement?
 - Failing a class;
 - Dropping out of school;
 - Experiencing any “particular symptoms” following alleged harassment.
- The nature of the relationship between the harasser and victim can be critically important to this analysis.

RESPECTING ACADEMIC FREEDOM

- Sexual harassment under Title IX must be understood in a manner that respects academic freedom and First Amendment rights.
- The Department endorses a different standard when speech, rather than conduct, is alleged as sexual harassment:
- **Speech-based harassment** is subject to First Amendment limitations that limit the scope of Title IX's prohibition of such harassment.
 - *Quid pro quo* exception: "While *quid pro quo* harassment...involves speech, the speech is, by definition, designed to compel conduct"; thus, it can constitute per se actionable harassment.
- **Conduct-based harassment** does not raise the same First Amendment concerns.

SEXUAL ASSAULT

- All forcible and nonforcible sex offenses described in the FBI's Uniform Crime Reporting system constitute sexual assault under Title IX.
- Examples:
 - Forcible rape and attempted rape – Preamble, p. 541
 - Forcible sodomy
 - Forcible Fondling
 - Sexual assault with an object
 - Statutory rape
 - Incest
- The offenses constituting sexual assault depend on the absence of consent of the victim.
- The intent of the respondent is relevant to only one form of sexual assault: Fondling, which is touching another person “for the purpose of sexual gratification.”

DOMESTIC VIOLENCE

- The term “domestic violence” is defined by statute to mean:
 - “felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction”

See 34 U.S.C. § 12291(a)(8).

NOTE: Must be “on the basis of sex” to trigger Title IX

DATING VIOLENCE

- The term “dating violence” is defined by statute to mean: “violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship[,], (ii) The type of relationship[, and] (iii) The frequency of interaction between the persons involved in the relationship.”

See 34 U.S.C. § 12291(a)(10).

NOTE: Must be “on the basis of sex” to trigger Title IX

STALKING

The term “stalking” is defined by statute to mean:

“engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”

See 34 U.S.C. § 12291(a)(30).

- Stalking must be “on the basis of sex” to constitute Title IX sexual harassment
- Other forms of stalking that are not sex-based (e.g., stalking an athlete due to celebrity worship rather than sex), no Title IX violation occurs.

CONSENT

For purposes of the Title IX Policy, the term consent means a knowing, voluntary agreement to engage in a specific form of sexual contact with another person.

- Clear "yes," verbal or otherwise, is necessary
- Must be ongoing throughout a sexual encounter and can be revoked at any time
- The clearest way to establish consent is through explicit, direct communication between (or among) the parties about the decision to engage in sexual activity

INSUFFICIENT EVIDENCE OF CONSENT

- The absence of a “no” does not permit an inference of consent.
- Consent to some sexual acts does not constitute consent to others
- Past consent to a given act constitute present or future consent.
- Consent cannot be obtained by threat, coercion, or force.
- Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition.

ANALYZING CONSENT DISPUTES

- If consent is placed in dispute by a party, all relevant facts and circumstances should be considered.
- Examples:
 - the presence or absence of affirmative words or actions indicating a willingness to engage in sexual contact,
 - whether a reasonable person would have understood the words and acts at issue as expressing consent; and
 - whether there are any circumstances, known or reasonably apparent to any of the involved parties, demonstrating incapacitation or any other inability to make a voluntary choice to engage in sexual contact.

INCAPACITATION

Incapacitation means a person's physical and/or mental inability to make informed, rational judgments to the extent that the individual is incapable of giving consent.

Circumstances That May Cause Incapacitation:

- Uses of force or coercion
- Unconsciousness
- Significant illness
- Drug and alcohol abuse (e.g., blackouts due to intoxication, etc.)
- Disability status

MECHANICS OF THE TITLE IX POLICY

- Claflin's Title IX Policy prohibits all forms of sex discrimination, including sexual harassment, that occur against persons in the United States with respect to any of Claflin's education programs or activities.
- Other University policies address sexual misconduct to the extent such conduct falls outside the scope of conduct prohibited by the Title IX Policy.
- Claflin reserves the right to address under other policies any misconduct that is outside the scope of Title IX's concept of "sexual harassment."

FUNDAMENTAL PRINCIPLES

- Claflin's Title IX Policy requires equal treatment for all parties.
- Reliance on sex stereotypes is prohibited.
- Due process must be respected and provided in all procedures and processes under the Title IX Policy.
- Claflin will treat Complainants and Respondents equitably by offering to Complainants supportive measures, and by following a grievance process that complies with Section IV of the Title IX Policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

TITLE IX POLICY – REPORTING PROCEDURES

- Any person can make a report of sex discrimination, including sexual harassment, under Claflin's Title IX Policy.
- When the University's Title IX Coordinator or President has actual knowledge of a sexual harassment allegation, the grievance procedures under the Title IX Policy are triggered.
- All other supervisory employees and faculty of the University must report sexual harassment to the Title IX Coordinator.
- A complainant does not have to file a formal complaint in any case where a report of sexual harassment is made.
- Without a formal complaint, no Title IX investigation will occur under the Title IX Policy, but supportive measures will be offered and Claflin may address the reported conduct under its other policies.

TITLE IX POLICY – STANDARD OF PROOF

- The standard of proof identifies the level of evidence needed to cause a hearing officer to conclude that the policy has been violated.
- The standard of proof that applies to the Title IX Policy is the **PREPONDERANCE OF THE EVIDENCE** standard.
- Under this standard, the evidence must be sufficient to cause the hearing officer to believe that it is “more likely than not” that a violation of the Title IX Policy occurred.

TITLE IX – TIMING CONSIDERATIONS

- An individual can make a report of sexual harassment to the University at any time.
- The “actual knowledge” (i.e., notice to Title IX Coordinator or University President) of sexual harassment triggers these response obligations:
 - Promptly contact the complainant
 - Offer supportive measures
 - Consider the complainant’s wishes with respect to supportive measures,
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 - Explain how to file a formal complaint

FORMAL COMPLAINTS

Clafin's Title IX Policy defines "formal complaint" as a document alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment where such document is:

- Filed by a complainant with the Title IX Coordinator, or
- Signed by the Title IX Coordinator

FORMAL COMPLAINTS FILED BY A COMPLAINANT

Standards that must be satisfied when a complainant files a formal complaint:

- The complainant must be **participating, or attempting to participate in**, the education program or activity of the University.
- The formal complaint must be **filed with the Title IX Coordinator**. It can be filed in person, by mail, by electronic mail, or by using the contact information for the Title IX Coordinator in the University's Title IX Policy.
- The formal complaint must be **signed physically or digitally by the complainant** or must otherwise indicate that the complainant is filing the formal complaint.
- The formal complaint must **include allegations that, if true, would constitute sexual harassment** as defined under Title IX.

FORMAL COMPLAINTS SIGNED BY THE TITLE IX COORDINATOR

In deciding whether to sign a formal complaint, the Title IX Coordinator will consider these factors:

- the severity and pervasiveness of the alleged sexual harassment;
- any pattern of alleged misconduct attributed to the Respondent (e.g., serial predation);
- the risk of serious harm to any student, employee or other individual associated with the University;
- whether the complainant's allegations involved violence, threats, use of weapons, or similar factors;
- whether the complainant's allegations have prompted the involvement of law enforcement and/or criminal proceedings; and/or
- any other factor, whose consideration is permitted by applicable law, that directly or indirectly implicates the University's interests in providing a safe and productive learning environment.

TITLE IX – RESPONSE TO A FORMAL COMPLAINT

- Upon the filing or signing of a formal complaint, the Title IX Coordinator takes the following actions:
 - Performs a conflict of interest analysis
 - Performs a jurisdictional analysis
 - Provides notice of allegations to the respondent
 - Offers supportive measures to the respondent (note: such supportive measures should already have been offered to the complainant)
 - Assigns an investigator (who does not have a conflict of interest)
 - Identifies the appropriate decision-maker
 - Determines whether emergency removal or admin leave should occur
- A case should be investigated and adjudicated within 90 days of the date on which a formal complaint is filed by a complainant or signed by the Title IX Coordinator.
 - The Title IX Coordinator can extend timelines for good cause
 - The Title IX Coordinator will provide written notice to the parties explaining the reason for any extension.

TITLE IX – MANDATORY DISMISSALS

- **Mandatory Dismissal.** The Title IX Coordinator must dismiss a formal complaint insofar as it contains allegations that fit into any of the following categories:
 - conduct that would not constitute sexual harassment under Title IX
 - conduct that did not occur in the University's education program or activity, or
 - conduct that did not occur against a person in the United States

TITLE IX – PERMISSIVE DISMISSALS

Permissive Dismissal. The University has discretion to dismiss a formal complaint (or any part thereof) at any time (during an investigation or hearing) for the following reasons:

- the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- the respondent is no longer enrolled or employed by the recipient; or
- specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

Case Transfer. When deciding to dismiss a formal complaint, the Title IX Coordinator should transfer the dismissed allegations to the University's Student Conduct office or Human Resources if such allegations may implicate policies administered by either of those departments.

INFORMAL RESOLUTION OPTION

- Claflin's Title IX Policy allows the parties to a formal complaint to elect voluntarily to engage in informal resolution procedures in lieu of an investigation and/or hearing.
- Informal resolution can be elected at any time prior to the issuance of a post-hearing written determination.
- The grievance process will be held in abeyance while an informal resolution process is pending.
- All parties to a formal complaint must consent in writing.
- Any party can withdraw from an informal resolution process at any time prior to a resolution occurring.
- If an informal resolution process ends without resolution, the case returns to the grievance process.

TITLE IX – INVESTIGATION STAGE

- A conflict-free investigator will be assigned to a case by the Title IX Coordinator.
- The investigator is responsible for collecting and considering all available, relevant evidence. The investigator must perform an **objective evaluation** of all relevant evidence.
- The investigator must give each party equal opportunities to present and inspect evidence collected.
- All persons involved with an investigation must treat the investigator (and all other Title IX team members) with dignity and respect.
- All persons involved with an investigation must maintain professional decorum throughout the investigation.
- No threats of violence or other harm should be tolerated at any time during an investigation.

TITLE IX – INVESTIGATION REPORT

- Before an investigation report is completed, the investigator must allow the parties (and their advisors, if any) to inspect all of the evidence collected in the investigation with at least 10 calendar days to submit a written response to such evidence.
- Following that inspection stage, the investigator will prepare an investigation report fairly summarizing all relevant evidence collected in the investigation.
- The investigator must send the investigation report to the parties and their advisors at least 10 calendar days prior to any hearing on a formal complaint for their review and written response (if they choose to submit one).
- The investigator must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- Any party whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.

TITLE IX – HEARING STAGE

- The Clafin University Title IX Policy requires a live hearing to take place on any formal complaint that is not resolved or dismissed.
- Hearings may take place in person or using a virtual platform. The University determine the virtual platform to be utilized if a hearing occurs virtually.
- Any party can request a virtual hearing in lieu of a live hearing.
- The hearing officer (or such person's designee) will act as the host of a virtual hearing and will preside over all hearings—regardless of whether such hearings occur in person or virtually.
- Virtual hearings must be conducted in a manner that allows the parties, their advisors and the hearing officer to see and hear all participants at all times while the hearing is taking place.
- If audio or video lapses at any time for a party or an advisor, it is such person's responsibility to notify the hearing officer immediately.

TITLE IX – HEARING PROCEDURES

- The hearing officer is responsible for maintaining, and has the discretion to maintain, professional decorum in all hearings.
- The hearing officer will administer all direct questioning.
- Advisors will be allowed to conduct cross examination of all persons testifying at a hearing; however, before a cross-examination question is answered, the hearing officer shall rule on whether the question can be permitted.
- Advisors who fail to comply with hearing procedures or directives from the hearing officer will be barred from the hearing. Claflin University will offer an alternative advisor to a party whose advisor has been barred from a hearing.
- A party has no right to “fire” an appointed advisor so long as the advisor is performing the obligation of posing relevant cross-examination questions that the party desires to be asked.
- Claflin’s Title IX Policy does not allow for *ex parte* communications with hearing officer.

TITLE IX – POST-HEARING WRITTEN DETERMINATION

- The hearing officer will consider the evidence presented at the hearing (with the exception of testimony submitted by a party who refuses to submit to cross-examination) and will issue a written determination on each issue presented by the formal complaint.
- The written determination will contain all of the information required in Section IV(D)(4)(h) of the Title IX Policy.
- The Title IX Coordinator is responsible for sending the written determination to the parties and should do so within one business day of receiving it from the hearing officer.
- The Clafin University Title IX Policy does not permit motions or requests for reconsideration. Instead, a party who wishes to challenge any aspect of a written determination must use the appeal procedures to do so.

TITLE IX – APPEAL PROCEDURES

- Any party to a formal complaint can appeal the written decision of a hearing officer. Such appeals must be filed within 10 days of the date on which the Title IX Coordinator has provided notice of the hearing officer's decision to the parties.
- Available grounds for an appeal:
 - Procedural irregularity that affected the outcome
 - New evidence not reasonably available that could affect the outcome
 - Conflict of interest by institutional participants that affected the outcome.
- To the extent an appeal is filed on a basis other than one of the above-mentioned grounds, it will be dismissed.
- Within 10 days of the notice of appeal being provided, each party can submit a written statement (up to 15 pages) in support of, or opposition to, the appeal.

TITLE IX – APPEAL DECISIONS

- Bearing in mind the time line for Title IX grievance processes under Clafin’s Title IX Policy, the appeal officer shall issue a written decision after the briefing period has ended.
- The written decision shall describe the result reached and the rationale(s) for that result.
- The written decision shall be provided simultaneously to the parties by the Title IX Coordinator.

TITLE IX – APPEAL FINALITY

A determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or on the eleventh (11th) calendar day following Claflin's provision of the hearing officer's written determination to the parties (if no appeal is filed by either party during the 10-day period for filing an appeal).

CONFIDENTIALITY AND RETALIATION

- Except where required otherwise by law or to carry out a grievance procedure or grievance process under Clafin's Title IX Policy, those holding roles in the Title IX process must maintain strict confidentiality regarding Title IX cases.
- Retaliation is strictly prohibited under the Title IX Policy:
 - for making a report or formal complaint of sex discrimination, including sexual harassment
 - for participating in good faith in any grievance procedure or grievance process
 - for choosing not to participate in a grievance procedure or grievance process

SERVING IN TITLE IX ROLES WITH IMPARTIALITY

Serving with impartiality means:

- Serving without bias
- Serving without prejudgment of the issues
- Serving without conflicts of interest

AVOIDING PREJUDGMENT

What does avoiding prejudice mean?

- Approach a Title IX role with an open mind.
- Those serving in Title IX roles must set aside what they 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 the individual's status as a Complainant or Respondent.
- Give each party equal benefits of the doubt.
- 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
- Approach Title IX roles with respect for the presumption of non-responsibility that applies to Respondents.

AVOIDING BIAS

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

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

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”
- “I believe all victims.”

AVOIDING CONFLICTS OF INTEREST

Examples of where a Title IX team member may have a conflict of interest that requires recusal:

- A close personal relationship exists with a party or key witness.
- There is a strong personal history (positive or negative) with any party or key witness that cannot be placed aside by the person holding the Title IX role.
- One of the individuals is an employee who reports to the Title IX team member as such party's supervisor.

THANK YOU