Three Rivers College Title IX Team Training

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College Policies

SR 2120 Title IX for Students

PR 4840 Title IX for Employees

Definitions

Sexual Harassment

Quid Pro Quo

Hostile Environment

Specifics Offenses

Quid Pro Quo

- **An employee**
- Expressed or implied
- **Conditioning an aid, service, or benefit of the College**
- On an individual's participation in **unwelcome sexual conduct**

Hostile Environment

- Unwelcomed conduct
- Reasonable person
- So severe, pervasive, ***and*** objectively offensive
- That it effectively denies a person's equal access to education program or activity (i.e., creates a hostile environment)

Hostile Environment

So severe, pervasive, ***and*** objectively offensive:

- Frequency
- Severity
- Context
- Physically threatening or humiliating
- Impact on access to educational program or activity

Specific Offences

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

Advisor

- Parties may have an advisor of their choice, who may be, but is not required to be, an attorney

Retaliation

- Cannot intimidate, threaten, coerce, or discriminate against any individual
- For the purpose of interfering with a right under Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

Retaliation

- Must remain confidential:
  - Individuals who made a report
  - Complainant
  - Respondent
  - Witnesses
- Exceptions: to conduct an investigation, hearing, or judicial proceeding

Consent

- Knowing, voluntary, and clear permission by word or action to engage in sexual activity
- “To give permission”
- Consent can be revoked at any moment
- The absence of “no” does not mean “yes”

Consent

- Consent is informed, actively given, and mutually understood and accepted
- Coercion, intimidation, and incapacity prevent consent
- Consent to one form of conduct does not imply consent to any other form of conduct
- Consent can be withdrawn

Consent

Incapacitation:

- “A state where someone cannot make a rationale, reasonable decision because they lack the capacity to give knowing consent”
- Ex: to understand the “who, what, when, where, or how” of their sexual interaction

Two Pathways

Two Pathways

Actual Knowledge

Notice of sexual harassment or allegations of sexual harassment

Formal Complaint

Written and signed complaint alleging sexual harassment and requesting the College investigate

Two Responses

Actual Knowledge

Prompt response

Supportive measures

Option for emergency removal

Option for administrative leave

Formal Complaint

Evaluation of Complaint

Investigation

Hearing

Determination

Appeal

Actual Knowledge

Actual Knowledge

Actual Knowledge

Report to Title IX Coordinator

Supportive Measures

Grievance Procedures

Consider Complaint

Supportive Measures

Supportive Measures

- Available before or after a formal complaint or when no complaint has been filed
- Can be offered to Complainant, Respondent, or both
- Non-disciplinary, non-punitive
- Free, individualized services

Supportive Measures

- Title IX Coordinators are responsible for implementation
- Must record any supportive measures taken
- If supportive measures are not part of school's response, schools must specify why
- Offer to both Complainant and Respondent

Examples of Supportive Measures

- Counseling
- Extensions of deadlines
- Modifications of work or class schedules
- Mutual restrictions on contact between parties
- Changes in work or housing locations
- Building escort services
- Leaves of absence
- Increased security and monitoring of certain areas of the building

Emergency Removal

An immediate threat to the physical health or safety of an individual

- Must conduct an individualized safety and risk analysis
- Must provide Respondent with notice and an opportunity to challenge the decision

Admin Leave

May place employee Respondent on administrative leave during grievance procedure

Formal Complaint

Grievance Procedures

Filing of Complaint	Evaluation of Complaint	Investigation of Complaint
Live Hearing	Determination	Appeal

Filing Complaint



Who Can Be Complainant

Who can file a Formal Complaint?

- Student or employee
- Parent or Guardian
- Title IX Coordinator
- For Sexual harassment or Retaliation only

Who will be the Complainant?

- Student or Employee
- Must be Student or Employee at time of Complaint

Response to Formal Complaint

Basics of Grievance Procedure

- Any provisions must apply equally to all parties
- Procedures must be in writing
- No Conflicts of Interest
- No Bias for or against Complainants or Respondents

Basics of Grievance Procedure



Objective Evaluation of Evidence



Describe range of disciplinary sanctions, remedies, supportive measures



No Use of Privileged Information



Procedure for Appeals

Basics of Grievance Procedure



Presumption of “not responsible” until a determination



Prompt time frames



Treat Complainant and Respondent Equitably

Evaluation of Complaint

Initial Steps

- Written Notice
- Mandatory Dismissal
- Discretionary Dismissal
- Consolidation



Investigation of Complaint

Investigator

- Determined by Title IX Coordinator
- Investigator must be unbiased and without conflict of interest to both Complainant and Respondent
- Consider outside investigator if conflict of interest (e.g., if complaint against Title IX Coordinator)



Investigations

1. Collect Evidence
2. Conduct Interviews
3. Allow Parties to Review Evidence
4. Investigative Report



Live Hearing

Live Hearing

- The decision-maker cannot be Title IX Coordinator or investigator
- Each party's advisor can ask other party and any other witnesses all relevant questions and follow-up questions



Logistics

- Can be done simultaneously via technology with parties in separate rooms
- Decision-maker and parties must be able to see and hear the party or witness answering questions



Witnesses

- Colleges can work with witnesses regarding scheduling of a hearing and the ability to permit witnesses to testify remotely
- Colleges cannot retaliate against a party or witness for participating or not participating
- Witnesses cannot be compelled to appear at a hearing
- Parties must have an equal opportunity to present witnesses
- Both parties face the same limitations inherent in a lack of subpoena power



Recording or Transcript

- Colleges must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and view



Determination



Reliance on Statements

- The decision-maker cannot rely on the statements of a party or witness who does not submit to cross-examination
- “Submit to Cross-Examination” means answering those questions that are relevant
- If a party or witness was not called by a party’s advisor to be cross-examined, or was not asked a particular question about a particular statement in the investigative report, the decision-maker is not precluded from relying on a statement by a party or witness who was not given the opportunity to be cross-examined



Determination

- For the College, the decision-maker will follow the “Preponderance of Evidence” Standard
- The burden of proof is met when a reasonable person would accept as “more likely than not” that a fact is true or an incident occurred
- Decision-maker must issue a written determination regarding responsibility
- Single investigator model is prohibited



Written Determination

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact supporting the determination
- Conclusions regarding the application of the school’s Code of Conduct to the facts



Written Determination

- Statement and rationale for result of each allegation
  - Determination regarding responsibility
  - Any disciplinary sanctions
  - Future remedies
- The procedures and bases for the Complainant and Respondent to appeal

Appeals

Appeals

- Must offer both parties an appeal from a determination or a dismissal of a formal complaint or an allegation therein based on:
    1. Procedural irregularity
    2. New evidence
    3. Conflict of Interest or Bias



Appeals

- Notify the other party in writing when an appeal is filed
- New decision-maker on appeal
- Give both parties an opportunity to submit a statement supporting or challenging the outcome
- Issue a written decision simultaneously to both parties



Questions?

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