OVERVIEW OF THE TITLE IX PROCESS FROM START TO APPEAL

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WHAT IS TITLE IX?

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in education programs that receive federal funding. Title IX specifically states:

- *"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."*
- Title IX regulations, which are promulgated by the Department of Education, instruct institutions how to implement Title IX, including how to respond to certain sexual harassment complaints.

The U.S. Department of Education's Office for Civil Rights is the primary body tasked with oversight and enforcement of Title IX.

TITLE IX APPLIES TO CHAFFEY COLLEGE

1. Title IX applies to "recipients of Federal financial assistance."
2. Title IX requires that recipients of federal financial assistance ensure that a student is not denied or limited in the ability to participate in or benefit from a school program or activity on the basis of sex.
3. Chaffey College is a recipient of Federal financial assistance and therefore Title IX applies to the College.

WHAT DOES TITLE IX COVER?

Title IX and the Title IX regulations cover, but are not limited to:

- Sex-based harassment (e.g., hostile environment, *quid pro quo*, etc.)
- Sexual and dating violence
- Gender discrimination
- Stalking
- Pregnancy discrimination
- Certain forms of retaliation
- Non-discrimination in athletic programs

DEFINITION OF SEX-BASED HARASSMENT PURSUANT TO TITLE IX REGULATIONS

According to 34 § 106.30, Sexual Harassment means conduct on the basis of sex under one or more of following:

1. Quid Pro Quo Harassment

Employee conditions the provision of an aid, benefit, or service of the recipient on the Complainant's participation in unwelcome sexual conduct

2. Hostile Environment Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies Complainant equal access to the recipient's education program or activity

DEFINITION OF SEX-BASED HARASSMENT PURSUANT TO TITLE IX REGULATION 34 C.F.R. § 106.2 (CONT.)

Conduct on the basis of sex under one of following:

3. Other Sexual Acts

-Sexual assault per 20 U.S.C. 1092(f)(6)(A)(v): Includes Forcible and Nonforcible Sex Offenses

-Dating violence per 34 U.S.C. 12291(a)(10)

-Domestic violence per 34 U.S.C. 12291(a)(8)

-Stalking per 34 U.S.C. 12291(a)(30)

WHO ARE THE PEOPLE INVOLVED IN A TITLE IX MATTER?

Generally speaking, the following people will play a role in the Title IX process:

- 1. Title IX Coordinator
- 2. Investigator
- 3. Decision-Maker
- 4. Appeal Officer Decision-Maker

WHAT ARE THE BASIC REQUIREMENTS FOR TITLE IX GRIEVANCE PROCEDURES? (34 C.F.R. § 106.45)

1. Ensure that complainants and respondents are treated equitably, as set forth by the Title IX regulations;
2. Require that any person designated as a Title IX Coordinator, investigator, or decision-maker have proper training and do not have a conflict of interest or bias for or against complainants or respondents;
3. The College operate with the presumption that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the recipient's grievance procedures for complaints of sex discrimination;

WHAT ARE SOME OF THE REQUIREMENTS FOR TITLE IX GRIEVANCE PROCEDURES? (34 C.F.R. § 106.45)

4. Establish reasonably prompt timeframes for the major stages of the grievance procedures (complaint, investigation, evidence review, hearing, appeal), including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay;
5. Require the College to take reasonable steps to protect the privacy of the parties and witnesses during the pendency of a recipient's grievance procedures;
6. Require an objective evaluation of all evidence that is relevant—including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

WHAT ARE SOME OF THE REQUIREMENTS FOR TITLE IX GRIEVANCE PROCEDURES? (34 C.F.R. § 106.45)

7. Exclude certain types of evidence, and questions seeking that evidence, as identified in the Title IX regulations. Evidence to be excluded includes:

I. Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

II. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the recipient obtains that party's or witness's voluntary, written consent for use in the recipient's grievance procedures; and

III. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.

GENERAL STEPS IN THE TITLE IX COMPLAINT AND GRIEVANCE PROCESS

1. Receipt of complaint and Coordinator meets with the complainant
2. Coordinator reviews the complaint to determine if it meets the requirements set forth in the Title IX regulations. Coordinator must determine:
   A. Does the alleged conduct, if proven, meet one of the definitions of Title IX sexual harassment?
   B. Does the College have jurisdiction over the matter and parties? If not, does some other College policy apply?
   C. An education program or activity includes locations, events, or circumstances over which the recipient (College) exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. At time of filing the formal complaint, the Complainant must be participating or attempting to participate in recipient's education program or activity.

GENERAL STEPS IN THE TITLE IX COMPLAINT AND GRIEVANCE PROCESS (CONT.)

D. Current Title IX Regulations require that the College must dismiss the formal complaint if the conduct alleged:

- Would not constitute sexual harassment as defined in §106.30 even if proved
- Did not occur in the recipient's education program or activity
- Did not occur against a person in the United States

Such dismissal does not preclude action under another provision of recipient's Code of Conduct, Board Policy/Administrative Procedure or California law

GENERAL STEPS IN THE TITLE IX COMPLAINT AND GRIEVANCE PROCESS (CONT.)

3. The Coordinator informs a Complainant of the right to file or not to file a formal complaint and the right to supportive measures even if a formal complaint is not filed. If no formal complaint is filed, the Title IX Coordinator informs Complainant of right to file a formal complaint at a later time. The Title IX Coordinator also assesses, despite Complainant's decision, whether to independently initiate a complaint if the failure to initiate an investigation would be clearly unreasonable considering the circumstances (e.g. based on a safety threat).
4. If the matter shall proceed to the formal process, Coordinator will notify both parties of the complaint via a "Notice of Allegations." The NOA is a comprehensive document that explains the Title IX grievance process in detail. It also contains anti-retaliation language and information regarding securing advisors. We cover the NOA in more detail later in this training.
5. Investigation of the Complaint – this can be done by a trained College employee or by a trained third-party investigator

GENERAL STEPS IN THE TITLE IX COMPLAINT AND GRIEVANCE PROCESS (CONT.)

6. Evidence Review by parties and submission of comments
7. Hearing and written decision by the impartial decision-maker. Parties shall receive the written decision at the same time.
8. Appeal

*The Coordinator may work with parties to achieve a mutually agreed upon informal resolution, in writing, at any time throughout the process (but before the decision-maker's decision as to whether sex discrimination has occurred). Both parties must agree to the informal resolution. Informal resolution is not available for employee on student harassment matters.

COORDINATOR'S NOTICE OF ALLEGATIONS (NOA) TO THE PARTIES OF THE TITLE IX COMPLAINT

The Notice of Allegations is critical part of the Title IX process. The Coordinator's Notice of Allegations to the parties should include, among other things:

- Description of the allegations
- Statement that Respondent is presumed not to be responsible for the alleged conduct until a determination is made at the conclusion of the grievance procedures.
- That the Complainant and Respondent will be treated equitably.
- Explain the grievance process in a meaningful and thorough manner (investigation, evidence review, hearing & decision, appeal)

COORDINATOR'S NOTICE OF ALLEGATIONS (NOA) TO THE PARTIES OF THE TITLE IX COMPLAINT (CONT.)

- Establish reasonable timeframes for the process moving forward
- Remind parties about supportive services
- Inform parties about anti-retaliation policies
- Identify parties' rights and responsibilities
- Make parties aware about informal resolution options, and help facilitate an informal resolution when parties are agreeable

WHAT DO INVESTIGATORS DO AS PART OF THEIR TITLE IX INVESTIGATION?

- ✓ Federal regulations require that the investigation report fairly summarizes relevant evidence (34 C.F.R. § 106.45(b)(5)(vii))
- ✓ The Investigator shall interview all relevant witnesses
- ✓ The Investigator shall obtain and assess all evidence that is available
- ✓ The Investigator shall write a comprehensive initial report and deliver it to the parties and their advisor
- ✓ The Investigator shall allow for parties to review the report and submit a written response

WHAT DO INVESTIGATORS DO AS PART OF THEIR TITLE IX INVESTIGATION? (CONT.)

- ✓ The Investigator will submit a final report and share it with the parties (and their advisor)
- ✓ Investigator does not make decision about whether the Respondent is "responsible" for violation of sexual harassment policy – the decision-maker makes this determination.
- ✓ The Investigator shall provide a copy of the final report to the decision-maker
- ✓ The Investigator shall submit the final report to parties at least 10 days prior to the hearing. We recommend that the investigator submit the final report to the decision-maker at the same time they submit it to the respective parties. The Coordinator can assist with this.
- ✓ The Coordinator serves as a liaison with the Investigator.
- ✓ The investigator often relies on the Coordinator to send witness notifications, discuss timelines, help with investigation obstacles (often witness availability issues)

ADDITIONAL INFORMATION REGARDING THE INVESTIGATOR

- The Title IX regulations contemplate that the investigator may be called to testify at the hearing. There are some limitations, though. (34 C.F.R. § 106.45(b)(6)(i).)
- The investigator can make a recommendation in the report, but the decision-maker has an independent obligation to objectively evaluate evidence
- The Investigator should maintain a comprehensive Investigation File, which should include the NOA and any supplemental NOA, copies of District policies relied upon, transcripts, notes, witness contact logs, and evidence files.
- The Title IX Coordinator should be a valuable resource for the Investigator and assist with sending witness notices, gathering policies upon request, etc.

DECISION-MAKER'S ROLE

- Reviews Final Investigative Report with "fresh eyes" to see if information is missing or incomplete
- Facilitates "live cross-examination" for parties through the parties' advisors
- Makes conclusions about whether alleged conduct occurred and the decision about responsibility for a policy violation
- Prepares written determination with findings of fact, conclusions, and rationale for the result as to each allegation
- Recommends sanctions for Respondent and remedies for Complainant

TITLE IX APPEALS

Either party may submit an appeal of the Decision-maker's Findings. Appeals may only be submitted on the following grounds:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

WHAT HAPPENS ONCE AN APPEAL IS RECEIVED?

Once a timely appeal is received, the District shall:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of 34 CFR section 106.45;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

APPEAL DECISION MAKERS

As the appeal decision-maker, you are a neutral and unbiased reviewer of the appeal. In this regard, 34 C.F.R. section 106.45(b)(1)(iii) requires that an appeal decision-maker:

-Not have a conflict of interest or bias against complainants or respondents (both generally and specifically to the parties in issue)

-Receive training in the definition of sexual harassment found in 34 C.F.R. section 106.30

-Must be impartial and not prejudge facts in issue

-Cannot rely on sex stereotypes, and must promote impartial adjudications

WHAT WILL THE APPEAL DECISION-MAKER REVIEW?

- The appeal decision-maker will review the original complaint, investigation report, the Hearing Officer's written decision, and appeal (plus any response to the appeal that the other party submits, should they opt to do so).
- The appeal decision-maker only considers the appeal as it relates to a procedural irregularity that affects the outcome of the formal complaint; any new evidence that was not reasonably available at the time the written determination was submitted, or whether there was a conflict of interest or bias affecting the outcome of the formal complaint.
- The appeal decision-maker must issue a written decision with the result of the appeal and the rationale behind such result within 45 days of receiving the appeal. The written decision must be issued to both parties simultaneously.

EMPLOYEE DISCIPLINES RELATED TO TITLE IX

Once there is a decision by the hearing officer and the appeal process has been exhausted, if there is a finding regarding employee misconduct, the recommended sanction shall be sent to the District's Human Resources. Human Resources will then proceed with the appropriate discipline process as outlined by the Education Code, Board Policies, and/or respective collective bargaining agreement.

TITLE IX RESOURCES

- American Council on Education: https://www.acenet.edu/Policy-Advocacy/Pages/Campus-Safety/Resources-on-Title-IX-Regulations.aspx
- California Department of Education: https://www.cde.ca.gov/re/di/eo/genequitytitleix.asp
- U.S. Dept. of Education: https://www.ed.gov/laws-and-policy/civil-rights-laws/sex-discrimination/sex-discrimination-2
- Association of Title IX Administrators (ATIXA): https://www.atixa.org/