

2025 Title IX Training

Title IX Coordinator, Investigators, Advisors, Hearing Officers, Appeal Officers

Introductions

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Learning Outcomes

This training is designed to address the following subjects:

- Jurisdiction and key definitions under Title IX
- The terms of Webster University's Title IX Policy on Sex Discrimination, Including Sexual Harassment
- Service in Title IX roles with impartiality
 - Avoiding prejudgment of facts
 - Recognizing conflicts of interest
 - Avoiding bias
- Scope and functions of Title IX roles

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.
- It is a violation of Title IX for the University to respond with **deliberate indifference** to **actual knowledge** of sexually harassing conduct occurring in its education program or activity.

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
 - Domestic violence – Dating violence – Sexual assault – Stalking (DDVSAS)
- Occurring in the University’s “education program or activity”
- Occurring against a person in the United States

For reports of domestic violence, dating violence, sexual assault, sexual harassment or stalking that occur...

- Off-campus, involving students:
 - the University’s Student Conduct Office will handle.
- Off-campus, involving employees:
 - the University’s Human Resources Department will handle.
- Outside of the United States:
 - other University policies, including the University’s policy on Equal Employment Opportunity, will govern.

“Sexual Harassment”

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

1. A University employee conditioning aid, benefit, or service 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. (a) Sexual assault
 - a. (b) Dating violence
 - b. (c) Domestic violence
 - c. (d) Stalking

Sexual Harassment:

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

The Meaning of “Program or Activity”

- “Education program or activity” includes:
 - all of the operations of the University;
 - locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the harassment occurs;
 - buildings owned or controlled by University-recognized student organizations; and
 - off-campus harassment if the University exercised substantial control over the context and the alleged harasser.
- Cyber-based Harassment – “Use of email, the internet or other technologies may constitute sexual harassment as much as use of in-person, postal mail, handwritten or other communications.”

Quid pro Quo Harassment

- *Quid pro quo* harassment must...
 1. be performed by an **employee** of the University;
 2. take the form of a **bargain** for some type of University “aid, benefit, or service” in exchange for any kind of sexual conduct; and
 3. be “**unwelcome**.”
- *Quid pro quo* harassment covers a broad range of sex-based and sexual conduct.
- *Quid pro quo* harassment “should be interpreted broadly” (per Dept. of Education guidance).
- Conduct falling far short of sex may still form the basis of a *quid pro quo* claim, e.g., sex-based or other sexual conduct such as back rubs or touching students’ shoulders or thighs).

Quid pro Quo – Employee Requirement

- *Quid pro quo* harassment does not exist under Title IX unless it is carried out by an **employee of the University**.
- Non-employees who are part of the University community are not included in this requirement, including:
 - Non-employee students
 - Volunteers
 - All others not deemed to be a University employee
- However, the unwelcome conduct of a non-employee individual may still constitute sexual harassment under the second or third prongs of the Title IX definition.

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. For instance:
 - the **age and position** of the complainant.
 - a **power imbalance** in the respondent-complainant relationship may, in some circumstances, allow such an inference.

Quid pro Quo – Unwelcome Requirement

For Title IX purposes, *quid pro quo* harassment must involve conduct that was “unwelcome” when it occurred.

- The notion of what is “unwelcome” is measured by the complainant’s subjective perspective.
 - **Acquiescence** by a complainant does not necessarily undermine a *quid pro quo* claim:
 - When a complainant acquiesces to unwelcome conduct in a *quid pro quo* context to avoid potential negative consequences, such “consent” does not necessarily mean that the sexual conduct was welcome or that *quid pro quo* harassment did not occur.
 - *Quid pro quo* harassment does not depend on whether the individual resists and suffers the threatened harm or submits and avoids the threatened harm.

“Severe, Pervasive and Objectively Offensive”

To qualify as sexual harassment under the second prong, 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:
 - a. severe;
 - b. pervasive; **and**
 - c. objectively offensive.

Title IX vs. Title VII

CAUTION: The Title IX standard for sexual harassment differs from the “Hostile Work Environment” standard under Title VII of the Civil Rights Act.

- The U.S. Department of Education explicitly rejected requests to align these legal standards.
- In doing so, the Department observed that “an institution of higher education differs from the workplace.”

Analyzing Whether the Conduct was Unwelcome

- Prohibited “sex-based harassment includes unwelcome conduct of a sexual nature but also includes unwelcome conduct devoid of sexual content that targets a particular sex.”
- When conducting a jurisdictional analysis, the Title IX Coordinator should identify whether the allegations, if true, would establish that the alleged conduct was welcome or 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

- In analyzing “severity,” the University must consider whether such occurrence was severe from the perspective of a **reasonable person** in the complainant’s position.
- Many factors may weigh on whether conduct is “severe”:
 - Ages of the parties
 - Number of parties involved
 - Disability status of parties
 - Positions of authority of the involved parties
- The following examples of conduct may not satisfy the “severity” requirement:
 - Rubbing a student’s back
 - Discussion of sexual issues, even if that offends some people who hear the discussion
 - “Vulgar or indecent” speech
 - Microaggressions

Analyzing Pervasiveness

- Merriam-Webster defines “pervasive” as “existing in or spreading through every part of something.”
 - The Dept. of Ed refused to remove the “pervasive” requirement despite concerns raised that a single incident of severe harassment may never satisfy the requirement.
- Examples of possible “pervasive” conduct:

- Disseminating “revenge porn.”
- Conspiring to sexually harass people (e.g., 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

- This inquiry focuses on whether the harassing conduct “deprives the complainant of *equal* access, measured against the access of a person who has not been subjected to the sexual harassment.”
 - 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.

Scenario 1

An African American female — who is the only African American in a psychology class — has alleged that her professor has been asking her on dates and telling her about his sexual experiences during one-on-one meetings. She has filed a formal complaint and alleges that the professor’s conduct makes her very uncomfortable. She also says that the same professor never calls on her in class but repeatedly calls on the white students who do not

have their hands up. The professor is very friendly to the white students but is demeaning in his responses to her when she asks questions during lectures.

- Does this conduct fall under Title IX's jurisdiction?
- Why or why not?

Scenario 2

A student ("RP") has reported the following incident to you:

On Friday night, RP and a group of friends were heading over to Weber's Front Row. Upon their arrival, RP saw her History professor. RP and the Professor made eye contact and RP waved. Professor came over and hugged RP. RP froze and did not hug Professor back. RP felt uncomfortable but did not say anything.

The next week, RP and friends went to Weber's again, where RP saw the same professor. Professor hugged RP again. After class on Monday, RP stayed behind to tell Professor that she was not comfortable with him hugging or touching her. He apologized and said he didn't mean anything by it — he is just friendly and hugs everyone. Professor also told RP that he was sorry if he made her uncomfortable. RP said ok.

A few weeks later, RP stayed after class to ask Professor a question about the upcoming midterm. While talking to Professor, he put his hand on RP's lower back and let it linger there for at least a minute.

- What guidance do you have for RP?
- To whom would you report this?
- Does this fall under the Title IX definition of sexual harassment under Title IX?

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
 - 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.

Fondling → “Criminal Sexual Contact”

- In June 2025, the FBI replaced the term “Fondling” in its National Incident-Based Reporting System (NIBRS).
- Prior to June 2025, “Fondling” was defined as:
 - The touching of the private body parts of another person.
 - Without consent of the victim.
 - For the purpose of sexual gratification.
 - This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment.
- The UPDATED term, “**Criminal Sexual Contact**,” is defined as:
 - The intentional touching of the clothed or unclothed body parts OR
 - The forced touching by the victim of the actor’s clothed or unclothed body parts.
 - Without consent of the victim.
 - For the purpose of sexual degradation, sexual gratification or sexual humiliation.
 - This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

Examples of “Criminal Sexual Contact”

Under the revised term, behaviors that may now constitute “criminal sexual contact” include:

- Kissing
- Rubbing another’s shoulders, back or arms
- Hugging
- Caressing another’s cheeks
- Pulling another’s hair

IF such behavior is done without consent and for the purpose of sexual degradation, gratification or humiliation.

Domestic Violence

The statutory definition of “Domestic violence” is:

Felony or misdemeanor crimes of violence committed by:

1. a current or former spouse or intimate partner of Victim,
2. a person with whom Victim shares a child in common,
3. a person who is or has cohabitated with Victim as a spouse or intimate partner,

4. a person similarly situated to Victim's spouse under domestic or family violence laws, or
5. any other person against an adult or youth victim who is protected from that person's acts under domestic or family violence laws.

See 34 U.S.C. § 12291(a)(8).

Remember: The "on the basis of sex" element must still be satisfied.

Dating Violence

The statutory definition of "Dating violence" is:

Violence committed by a person

1. who is or has been in a social relationship of a romantic or intimate nature with Victim; and
2. where the existence of such a relationship is determined based on the:
 - a. length of the relationship,
 - b. type of relationship, and
 - c. frequency of interaction between the persons involved in the relationship.

See 34 U.S.C. § 12291(a)(10).

Remember: The "on the basis of sex" element must still be satisfied.

Stalking

The statutory definition of "Stalking" is:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

1. fear for their safety or the safety of others; or
2. suffer substantial emotional distress.

See 34 U.S.C. § 12291(a)(30).

Remember:

- 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)

Scenario 3

A Webster student has informed you that they recently broke-up with their girlfriend who is also a Webster student. The split was amicable, and they agreed to stay friends. However, after a couple of weeks, the Reporting Party (“RP”) said they noticed that when they come out of class, their ex is always standing in the hallway outside of the classroom and wanting to know what they are up to. The ex also saw RP talking to another girl on campus and texted RP, asking who the other girl is and why RP was talking to her. The ex then started sending inappropriate Instagram messages and threatening text messages to RP.

- What should happen next?
- What if the ex attends Maryville instead of Webster? Does this information change Title IX’s jurisdiction over this matter?

Scenario 4

A student discloses that they are being “sexually blackmailed” by a fellow student with whom they had a previous sexual relationship but are not currently together.

Specifically, the complainant has received multiple threats via text messages and emails that sexually explicit content of the complainant will be posted if the complainant does not talk to the respondent.

- Considerations?
- Next steps?
- What if the complainant has a history of academic probation and withdrawals from classes?

Consent and incapacitation Section

Consent and Incapacitation

Alcohol use does not cause sexual assault, but it can be a major contributing factor.

- Research studies have found that about 50% of sexual assaults on college campuses involve a situation in which the perpetrator, the victim, or both were consuming alcohol.
- Sexual assaults were more likely to occur in settings where alcohol was consumed (e.g., parties, bars). Potential perpetrators seek out such settings as a way of finding vulnerable individuals.

Sexual assaults involving alcohol more often occur among individuals who know each other casually as acquaintances, rather than among individuals in romantic relationships.

Alcohol consumption is associated with aggression and loss of inhibition.

- Several decades of research have demonstrated that alcohol can increase the likelihood of intimate partner violence. When a relationship situation is potentially dangerous, alcohol can be seen as “adding fuel to the fire.”
- Alcohol might increase sexual arousal, disinhibition and aggression among perpetrators; heavier drinkers also have personality characteristics that are associated with perpetration (e.g., antisocial behavior, orientation toward impersonal sex).
- Perpetrators might also use alcohol as a means to justify their behavior or diminish their level of responsibility.

Source: <https://nida.nih.gov/sites/default/files/sexualassault.pdf>

Consent

- Central topic for cases involving sexual misconduct
- What is consent?
- What is **not** consent?

The term ‘consent’ means an affirmative and willing agreement to engage in a specific form of sexual contact with another person.”

-- (Webster University Title IX Policy, Section VI(B)(3).)

- In other words:
 - 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.

What Is Not Consent

- Consent cannot be inferred from the absence of a “no.”
- Consent to some sexual acts does not constitute consent to others, nor does 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, including without limitation the following, should be considered:

1. the presence or absence of affirmative words or actions indicating a willingness to engage in sexual contact,
2. whether a reasonable person would have understood the words and acts at issue as expressing consent; and
3. 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.

“Consent Tea” Video

Force — Incapacity — Consent

1. **Was force used by the respondent to obtain sexual access?**
2. **What clear words or actions by the complainant gave the respondent permission for the specific sexual activity that took place?**
3. **Was the complainant incapacitated?**

Under Webster University’s Title IX Policy, “A person is mentally or physically **incapacitated** when that person lacks the ability to make or act on considered decisions to engage in sexual activity.”

Force

- Because consent must be voluntary (an act of free will), consent cannot be obtained through use of force.
- Types of Force to consider:
 - Physical violence — hitting, restraint, pushing, kicking, etc.
 - Threats & Intimidation — anything that gets the other person to do something they wouldn’t ordinarily have done absent the threat.
 - Coercion — frequency, intensity, duration, isolation.

Incapacity

- First, was the complainant incapacitated at the time of the sexual activity?
 - Could the complainant make rational decisions?
 - Could the complainant appreciate the situation and address it consciously such that any consent was informed ?
 - Knowing who, what, when, where, why and how.
- Second, did the respondent know of the incapacity?

- **Or**, should the respondent **have known** from all the circumstances (reasonable person)?

Incapacitation

“The term ‘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.”

-- (Webster University Title IX Policy, Section VI(B)(5).)

Possible Signs of Incapacitation

- A person is considered incapacitated, or unable to give consent, if they cannot understand the when, where, why, how or who of a sexual encounter.
- Warning signs include:
 - Difficulty walking, stumbling or falling down;
 - Being unable to stand or walk without assistance;
 - Slurred speech or an inability to communicate clearly;
 - Inability to focus or confusion about what is happening;
 - Urinating, defecating or vomiting; or
 - Combativeness, emotional volatility or other marked change in demeanor.

Assessing Incapacitation

- Assessing incapacitation is very fact-dependent.
- The use of alcohol or drugs may, but does not automatically, affect a person’s ability to consent to sexual contact.
- If the degree of intoxication goes beyond the stage of mere reduced inhibition and causes the victim to not understand the nature and consequences of the sexual contact, the person cannot provide consent.

Blackout Example

- Blackout = incapacitation.
- Blackout = no working form of short-term memory, thus unable to understand who, what, when, where, why or how.
- Partial blackout must be assessed as well.

Respondent Drunkenness

- Whether the complainant consented to sexual contact does not depend on whether the respondent was drunk.
- The complainant’s incapacitation will be assessed based on whether a reasonable sober person would have been able to ascertain that the complainant was incapacitated.
- If the complainant was incapacitated, but:

- The respondent did not know it.
- If the complainant was incapacitated at the time of sexual contact, and the respondent knew or should have known it, the sexual contact occurred without consent.

Consent 4

What clear words or actions by the complainant gave the respondent permission for the specific sexual activity that took place?

Consent is:

- Positive (affirmative)
- Unambiguous (clear)
- Voluntary (freely given)
- Clear words or actions
- Indicates permission to engage in mutually agreed upon (sexual) activity

Scenario 5

A student (“RP”) reported to you that they are in a friend group with five other students. One of RP’s friends, Austin, is openly gay. After heavily drinking one night, Austin snapchatted a picture of his privates to everyone in the friend group. Everyone felt super awkward and addressed it with Austin the next day. Austin said that he was really drunk and apologized. A few weeks later, Austin sent nude pictures of himself only to the females in the friend group. When RP confronted Austin about it, he said that it was a joke and he’s not even into girls so RP needs to calm down.

- Should RP report this?
- To whom would RP report this?
- Would this fall under Title IX’s jurisdiction? Why or why not?

Avoiding Bias & Pre-Judgment

- Witnesses may see the same event but interpret it differently.
[Graphic of two people looking at a number from either end and seeing either the number 6 or the number 9.]
- Individual backgrounds may solidify parts of an incident in a witness’ mind, while other details remain vague.
- Everyone has assumptions
- It is important to be aware of assumptions so that the hearing is fair

Bias

- “Bias” is defined as “an inclination of temperament or outlook; *especially* a personal and sometimes unreasoned judgment” (Merriam-Webster Dictionary)
OR simply: a preference
[Cartoon of two scientists. First says, “Did you read my paper on confirmation bias?”
The second responds, “Yes, but it only proved what I already knew.”]
- Unchecked bias can negatively impact the Title IX process.
- Title IX process must be fair and evidence based.

Blind Spots: Enhance Objectivity

Recognizing the “Halo vs. Horns Effect” and Overcoming “Confirmation Bias”

Avoiding Bias

Recusal is necessary where a Title IX team member (e.g., Title IX coordinator, Investigator, Hearing Officer, Appeal Officer, or Mediator) has a bias for or against a particular individual or with respect to Complainants or Respondents, in general.

Examples of situations in which a Title IX team member may not be able to be impartial/unbiased:

- One of the involved individuals is a friend or family member of the Title IX team member.
- There is a strong personal history (positive or negative) with an individual.
- The individual is a previous resident (RA), mentee (OL/CL), or student (faculty/staff member) with whom the Title IX Team Member has cultivated a close relationship to include the sharing of personal, confidential information about the individual.

Avoiding Prejudgment

Presumption of Non-Responsibility

- Respondents are entitled to a presumption of non-responsibility for violating Webster’s Title IX Policy until they are adjudicated otherwise through a Title IX grievance process.
 - The presumption of non-responsibility is not interpreted to mean that a respondent is considered truthful or that the respondent’s statements are credible or not credible, based on the respondent’s status as a respondent.

Considering the “Stakes”

- Credibility should not be determined based on an individual’s status as a complainant or respondent.

- 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.

Timeline of a Title IX Case

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 CHRO) 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

- Anyone who believes they have experienced sexual harassment may file a Formal Complaint.
- Webster'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.
- A **Formal Complaint** can be either
 - filed by the complainant, or
 - signed by the Title IX Coordinator if the complainant chooses not to file, subject to specific limitations.

Formal Complaints Filed by a Complainant

Standards for filing a Formal Complaint:

- Complainant must be **participating, or attempting to participate in, education program or activity.**
- Formal complaint must:
 - be **filed with the Title IX Coordinator**, either in person, by mail, by electronic mail, or direct contact with Title IX Coordinator.
 - be **signed physically or digitally by Complainant** or must otherwise indicate that the complainant is filing the formal complaint.
 - **include allegations that, if true, would constitute sexual harassment** as defined under Title IX.

Formal Complaints Signed by the Title IX Coordinator

The Title IX Coordinator can sign a formal complaint alleging sexual harassment against one or more respondents and request that the University investigate the allegation of sexual harassment.

Before doing so, the Title IX Coordinator will consider these factors:

- the **severity and pervasiveness** of the alleged sexual harassment;
- any **pattern** of alleged misconduct attributed to Respondent (e.g., serial predation);
- the **risk of serious harm** to any student, employee or other individual associated with the University;
- whether Complainant's allegations involved **violence, threats, use of weapons**, or similar factors;
- whether 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 will:

- Perform a conflict-of-interest analysis
- Perform a jurisdictional analysis
- Provide notice of allegations to Respondent
- Offer supportive measures to Respondent (NOTE: such supportive measures should already have been offered to Complainant)
- Assign an investigator who does not have a conflict of interest
- Identify the appropriate decision-maker who does not have a conflict of interest

Title IX – Deadlines

Generally, the Formal Complaint should be investigated and adjudicated within 90 days of the date on which it was filed by Complainant or signed by Title IX Coordinator.

The Title IX Coordinator can extend timelines for good cause, for instance:

- Complexity of the circumstances surrounding an allegation;
- Scheduled/unscheduled breaks, campus closures;
- Absence of a party, a party's advisor, or a witness;
- Concurrent law enforcement activity; or
- Need for language assistance or accommodation of disabilities.

The Title IX Coordinator will provide written notice to the parties explaining the reason for any extension.

Title IX – Supportive measures

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. [See IX Policy, § V.]

Definition

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Purpose

To **restore or preserve equal access to the University’s education program or activity** without unreasonably burdening the other party.

Confidentiality

Information regarding the offering and providing of Supportive Measures **must be treated confidentially**.

- **Exception:** limited disclosures of information regarding Supportive Measures can be disclosed if needed to avoid impairing the University’s ability to provide the supportive measures.

Supportive Measures

Supportive Measures are available whether or not a person chooses to file a formal complaint. They are:

- individualized;
- available to both parties; and
- non-punitive

Examples

- Counseling,
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules,
- Campus escort services,
- Mutual restrictions on contact between the parties,
- Changes in work or housing locations,
- Leaves of absence,
- Increased security and monitoring of certain areas of the campus, and
- Other similar measures

Title IX – Mandatory Dismissals

The Title IX Coordinator must dismiss a Formal Complaint if it contains allegations that fit into any of the following categories:

1. Conduct that would not constitute sexual harassment under Title IX
2. Conduct that did not occur in the University's education program or activity, or
3. Conduct that did not occur against a person in the United States

Title IX – Permissive Dismissals

The Title IX Coordinator has discretion to dismiss a formal complaint (or any part thereof) at any time for the following reasons:

1. Complainant notifies Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein;
2. Respondent is no longer enrolled or employed by the University;
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination about the allegations in the Formal Complaint.

Examples of "Special Circumstance" Dismissals

- Complainant has ceased participating in the process.
- The passage of time results in the University's inability to gather evidence sufficient to reach a determination regarding responsibility.
- The Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.
- Respondent is not under the University's authority (e.g., a non-student, non-employee individual who came onto campus and allegedly sexually harassed a complaint), and the University has no way to gather evidence sufficient to make a determination.

Title IX – Procedure Upon Dismissal

After a Formal Complaint has been dismissed on Mandatory or Permissive grounds, the Title IX Coordinator will:

- inform Complainant(s) and Respondent(s) simultaneously in writing of the decision to dismiss and the reason(s) for that decision;
- provide an opportunity for either Party to appeal the dismissal; and
- transfer the dismissed allegations to the University's Student Conduct office or Human Resources if allegations contained in the Formal Complaint may implicate policies administered by either of those departments.

Grounds for Appealing Dismissal of Formal Complaint

Either Complainant or Respondent may appeal the Title IX Coordinator's decision to dismiss a Formal Complaint.

The grounds for appeal are:

1. Procedural irregularity affected the outcome of the matter.
2. New evidence was not reasonably available at the time the determination regarding dismissal was made that could affect the outcome of the matter.
3. The Title IX Coordinator, Investigator(s), or Decision-maker 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.

Title IX – Emergency Removals & Admin Leave

Emergency Removals for Student-Respondents

- The University has the discretion to implement an emergency removal of a Respondent where an individualized risk assessment reveals an **immediate threat to the physical health or safety of any student or other individual** arising from the allegations of sexual harassment.
- If Respondent is issued an emergency removal from campus, Respondent will have an immediate opportunity to challenge the removal.

Administrative Leave for Employee-Respondents

- Non-student employees can be placed on administrative leave
- Administrative leave can be paid or unpaid, at the University's discretion

Title IX – Role of Title IX Investigator

Following the filing of a Formal Complaint, the Title IX Investigator will perform the following tasks:

- Analyze and disclose whether Investigator has any conflicts of interest
- Evaluate relevant evidence
- Provide Complainant and Respondent with the same opportunities to be accompanied to any related meeting or proceeding by the Advisor of their choice
- Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to any Party whose participation is invited or expected with at least ten (10) calendar days for the Party to prepare to participate.

The Investigator cannot restrict Complainant or Respondent from discussing the allegations under investigation or gathering and presenting relevant evidence.

Collecting Evidence in an Investigation

- Complainant and Respondent will be given equal opportunity to inspect any evidence directly related to the allegations raised in a Formal Complaint—regardless of whether the University intends to rely on it in reaching a determination regarding responsibility—and inculpatory or exculpatory evidence, regardless of the source.
- The evidence given to the parties for inspection and review must consist of all evidence directly related to the allegations.
- Determinations as to whether evidence is “relevant” are made when finalizing the Investigative Report.

Irrelevant Evidence

- If evidence has no logical bearing upon any point placed at issue by the Formal Complaint, it will be deemed irrelevant and not considered in the investigation.
- If evidence is relevant but fits into one of the following categories, it will not be collected or considered:
- Any evidence that is legally privileged (e.g., attorney-client privileged communications)—unless the privilege has been waived;
- Complainant’s sexual predisposition;
- Complainant’s prior sexual conduct, UNLESS such conduct is being provided to show:
 - the presence of consent, or
 - Respondent is not the party who engaged in the alleged harassment

Investigative Actions to Avoid

An investigator should never do any of the following things:

1. Ask for privileged information.
2. Impose a “gag order” on the parties.
3. Disclose information about an ongoing Title IX case to anyone outside the scope of the investigation work.
4. Give preferential treatment to any party.
5. Consider irrelevant evidence or otherwise investigate matters outside of the formal complaint.
6. Decide the outcome of a formal complaint. Under the Title IX Policy, a hearing officer—not the investigator—decides whether the respondent is responsible for a violation.

Investigative Reports

- Before finalizing the Investigation Report, Investigator will give Complainant, Respondent, and their respective Advisors an opportunity to inspect and review the draft Investigation Report and corresponding evidence in an electronic format or a hard copy.
- Parties will have at least 10 calendar days to submit a written response regarding information contained in the Investigation Report or evidence.
- Investigator will consider the written responses (if any) prior to completion of the Investigative Report.
- At least 10 days prior to the live Title IX hearing, Investigator will provide the final Investigation Report to Complainant, Respondent, and their respective Advisors.

Title IX – Standard of Evidence

Preponderance of the Evidence Standard

- The preponderance of the evidence standard governs all cases alleging sexual harassment as defined in Title IX
- “Preponderance of the evidence” means that the evidence is enough to cause the decision-maker to believe that a particular fact is **more likely than not to be true**

Presumption of Innocence

- There is a presumption that the Respondent did not violate the policy until a determination otherwise is reached through the grievance process.

Burden of Proof

- The University bears the burden of proof and of collecting relevant information

Title IX – Role of Advisor

- The Title IX Coordinator will coordinate the appointment of an Advisor for a Complainant or Respondent who has not engaged an Advisor.

Key Expectations of an Advisor:

- The primary role of the Advisor is to conduct the cross-examination of other Party(ies) and/or witness(es) during a live Title IX hearing.
- Other key areas of responsibility for an Advisor may include, without limitation:
- Accompany the assigned Party to investigatory interviews with the Title IX Investigator
- Review the Investigation Report with the Assigned Party

- Attend any pre-hearing meetings in preparation of the live hearing
- Assist the Assigned Party with formulating the questions to be asked of the other Party(ies) and/or witness(es) during the live hearing
- Conduct cross-examination of the other Party(ies) and/or witness(es) during the live hearing
 - Advisor is not being appointed to act as the Assigned Party’s attorney or to give legal advice to the Party.
- Support the Assigned Party by serving as a resource for the Title IX grievance process (e.g., obtaining supportive measures such as counseling services, academic accommodations, etc.). **REMEMBER, if you are unsure about the answer to a question, please reach out to the Title IX Coordinator.**

Title IX – Role of Hearing Officer

- The Hearing Officer is the decision-maker for all Title IX cases
- In preparation of a hearing, the Hearing Officer should complete the following steps:
 - Analyze and disclose any conflict of interest
 - Review the hearing packet (which the Title IX Coordinator will provide) prior to the hearing, which includes:
 - Investigation Report
 - Statements
 - Incident Report(s)
 - Letters
 - Guidelines for Hearing
 - Develop a comprehensive set of relevant questions Hearing Officer will ask Complainant, Respondent, and/or witnesses at the live hearing to assist with Hearing Officer’s decision-making process.
 - Schedule individual pre-hearing conferences with Complainant and Respondent and their respective advisors to discuss hearing procedures and expectations.
 - Topics to be covered may include:
 - Overview of hearing procedures, timelines for completion, etc.
 - Review rules of decorum
 - Confirmation of date, time, location, and other logistical details about the live hearing
 - If applicable, Hearing Officer may also consider conducting a “cross-reference” of questions each Party has prepared for cross-examination at the live hearing in order to minimize the duplication of questions

Live Hearing Procedures

- Hearing Officer will preside over the hearing, administer procedural rules, and maintain order during the hearing.
 - For hearings held virtually, Hearing Officer (or a delegate) will act as the host for the virtual meeting platform
 - Complainant and Respondent (along with their respective Advisors) have equal opportunity to appear and participate in the hearing
 - Witnesses may also be called to participate in the hearing
- Hearing Officer will administer direct questioning.
- Each Party's Advisor will have an opportunity to cross-examine any and all Testifying Parties.
- Before a Testifying Party answers a cross-examination question, Hearing Officer will determine the relevancy of such question.
- Complainant and Respondent each have an opportunity to provide a closing statement no longer than 5 minutes in length.

Refusals to Submit to Cross-Examination

Remember: In reaching a determination regarding responsibility, the Hearing Officer may consider statements made by parties or witnesses **even if those parties or witnesses did not participate in cross-examination at the live hearing**. This includes, but is not limited to:

- statements made during the investigation;
- emails or text exchanges between the parties leading up to the alleged act;
- statements about the alleged act that satisfy the regulation's relevance rules; and
- police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents.

Written Determination

- Hearing Officer will issue a written determination of whether a Title IX Policy violation has occurred in each case.
- Hearing Officer must send the written determination to all parties simultaneously.
- The written determination must include:
 - the allegations potentially constituting sexual harassment;
 - a description of the procedural steps taken from the receipt of the formal complaint through the determination;
 - findings of fact supporting the determination;
 - conclusions regarding the application of the University's Title IX Policy to the facts;

- the result (and rationale) as to each allegation, including a determination regarding responsibility;
- any disciplinary sanctions the University imposes on the Respondent;
- any remedies to be provided to the complainant; and
- the procedures and permissible bases for an appeal.

Title IX – Appeals

- Appeals will be offered to both parties on the following grounds:
 - 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
- The Title IX Coordinator will notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- The non-appealing party must be given a chance to respond.

Title IX – Role of Appeal Officers

- A panel of three Appeal Officers will decide a Title IX appeal.
- The primary responsibilities of the Appeal Officer is to:
 - Analyze and disclose any conflict of interest.
 - Review all appeal materials relating to the case, including (without limitation) the notice(s) of appeal and briefing submitted by each party, all of which the Title IX Coordinator will provide to the Appeal Officer.
- The presiding Appeal Officer will convene a meeting of the Appeal Officers to confer about the issues on appeal.
- Each Appeal Officer will vote on whether to affirm or overturn the challenged decision based on a review of each issue on appeal and upon considering only issues that have been properly appealed under the University’s Title IX Policy.
- The Appeal Officer chairing the appeal panel will issue a written decision based on the majority vote of the Appeal Officers.
- Appeal Officers will apply the preponderance of evidence standard in deciding an appeal and will decide the outcome of the appeal by majority vote.
- In instances where a total of three individuals are not available to serve as Appeal Officers, the University will appoint a single Appeal Officer to decide the outcome of an appeal, and such person’s decision shall be final.

Briefing Schedule

Appellate briefs must be submitted:

- to the Title IX Coordinator within **10 calendar days** following the notice/decision date;
- in MS Word format;
- electronically (via email) to the Title IX Coordinator.

The Appeal Officer presiding over the case may grant an extension of time to submit such briefing.

Briefing Standards

Appellate briefs should:

- take the form of a written statement in support of, or challenging, the outcome of a live hearing
- NOT exceed 15 pages of double-spaced text (exclusive of any attachments).

The presiding Appeal Officer has the discretion to extend the page limitation.

Title IX – Decision and Finality of Appeals

- Following the briefing period, the Appeal Officer presiding on the panel will issue a written decision describing the result of the appeal and the rationale for the result.
- The written decision will be provided simultaneously to the parties by the Title IX Coordinator.
- A determination regarding responsibility becomes final either on the date that the recipient 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 the University's provision of the written determination to the parties (if no appeal is filed by either party during the 10-day period for filing an appeal).

Title IX – Informal Resolution

Permissible only after a formal complaint is filed

- Parties must provide voluntary, written consent after receiving detailed notice of allegations and explanation of informal resolution process
- Students cannot be compelled to agree to informal resolution as a condition of enrollment
- Informal resolution is never permitted in instances in which a University employee is accused of sexually harassed a student

Procedures for Informal Resolution

- The University (via the Title IX Coordinator) will facilitate the informal resolution process with the consent of the parties.

- An informal resolution process can occur at any time prior to reaching a determination regarding responsibility.
- If a formal complaint is resolved through an informal resolution process, the parties will be prevented from resuming a formal complaint arising from the same allegations that were included in the resolved formal complaint.
- If a party chooses to withdraw from an informal resolution process at any time prior to a resolution being reached, the formal complaint shall return to the grievance process.

Confidentiality

- Except where required otherwise by law or to carry out a grievance procedure or grievance process under Webster University's Title IX Policy, those holding roles in the Title IX process must maintain strict confidentiality regarding Title IX cases.
- This includes:
 - Names
 - Details
 - References to hearing and/or incident

Retaliation

According to the Department of Education, "at least 35% of college students who experience sexual harassment do not report it because of shame, fear of retaliation, and fear of not being believed."

Retaliation is strictly prohibited under, and can be addressed 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

Victims of retaliation can include, Complainants, Respondents, witnesses or anyone who participates or refuses to participate in any Title IX proceeding.

Examples of Retaliation

- **Retaliatory actions may include:**
 - intimidation
 - threats
 - coercion
 - discipline

- adversely affecting immigration status
 - withholding supportive measures
 - breaching confidentiality (except as permitted by FERPA)
- The Department of Education instructs that Title IX’s anti-retaliation provision is “purposefully broad.”
- Retaliatory actions may be taken by individuals other than the Complainant or Respondent
 - Example: a friend or relative of the Complainant or Respondent (i.e., “peer retaliation”)

Thank You!

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