



Title IX Training

New Regulations and Title IX Procedure

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30 CFR § 106.45(b)(1)(iii)

Specific training requirements for Title IX coordinators, investigators, decision-makers or facilitators

Training on the definition of sexual harassment under § 106.30;

Training on the investigation and grievance activities;

Training on how to conduct the investigation and grievance process;

Training on how to serve impartially, including avoiding prejudgment of facts at issue, conflicts of interest, and bias;

Training on issues of relevance to create an investigative report

Scope, Applicability & Jurisdiction

All students, faculty, staff, affiliates, and others participating in College programs and activities in the U.S. are subject to the Title IX procedure;

Programs and activities

In the U.S.

Applicants for admission/employment as well

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Definitions

Sexual harassment

Definitions: Consent

- Consent is given verbally or non-verbally, based on an active, informed, mindful, freely decided choice. Intoxication may make this legally impossible. Consent means that you cannot make assumptions about what your partner does or does not want. Absence of clear signals of consent is a signal to stop.
- Consent eliminates the need to engage in force and resistance behaviors. There is *no* "implied consent" or "silence" as a signal of consent.
- *SUBMISSION DOES NOT EQUAL CONSENT!*
- *Force* is any physical or psychological influence that coerces or intimidates another person. Force is considered to be a coercive influence on the other party. NOTE: *To be valid, consent must be given prior to or contemporaneously with sexual activity.*

Definitions: Non-forcible sexual violations

- Incest
 - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Nebraska law;
- Statutory rape
 - Non-forcible sexual intercourse with a person who is under the statutory age of consent in Nebraska. The age of consent in Nebraska is 16.

Definitions: Dating and Domestic Violence

- Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship, the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating Violence does not include acts covered under the definition of Domestic Violence
- Domestic Violence: A felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the Complainant;
 - By a person with whom the Complainant shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska;
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Nebraska.
- To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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- Supportive measures



Formal Complaint

- Complainant
 - Participating or attempting to participate in education program or activity;
- Title IX Coordinator
 - Not clearly unreasonable in light of known circumstances;
 - The status of the Respondent and whether Respondent has authority over students and/or staff;
 - Whether there have been multiple reports;
 - The seriousness of the alleged misconduct;
 - Whether there is a likelihood that the Respondent would be a danger to the Complainant or the SCC community;
 - Age of the complainant;
 - Whether conduct can be effectively addressed through another type of intervention; and
 - Ability of SCC to obtain relevant evidence.
- Notice of Formal Complaint
 - Simultaneous notice to parties
 - Must contain:
 - Description of allegations with sufficient details;
 - Statement of presumed non-responsibility;
 - Statement regarding advisors;
 - Information about SCC policy violations for making knowingly false statements.

Initial Response

- Make initial assessment of formal complaint;
 - Dismissal/referral if not within Title IX;
 - Partial dismissal/referral or discretion to resolve together if arising out of same facts/circumstances;
- Informal resolution
 - First opportunity is after formal complaint filed, then anytime thereafter;
 - Limitations:
 - Both parties must consent;
 - Cannot be a condition of enrollment/employment;
 - Parties can withdraw and resume formal process at any time;
 - Cannot be offered if student is Complainant and employee is Respondent.

- Written notices
 - Parties expected to be present;
- Written notice of who is expected to be present;

Investigation

- Gathering evidence;
 - Burden is on College;
 - Parties must be given opportunity to present all relevant evidence;
- What is/is not relevant?
 - Not defined in regulations;
 - Past sexual history;
 - Questions and evidence about complainant's past sexual activities, relationships, or behavior are not relevant, unless such questions and evidence are offered to prove that someone other than respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of
 - Medical records;
 - College cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary written consent to do so;
 - Privileged information;
 - Expert witnesses.

Investigation

- Review of all evidence directly related to the allegations raised in the formal complaint;
 - Including evidence on which Investigator DOES NOT intend to rely;
 - Inculpatory and exculpatory evidence;
- **Parties' response to the evidence**
 - *Before* investigative report is issued;
 - This is not the objections phase; opportunity to identify new/rebuttal evidence;
 - 10 days!!!
- Investigative report
 - Must “fairly” summarize evidence;
 - No pre-judgment of facts;
 - Credibility determinations.
- ~~§ 4-107 requires investigative report, if parties respond~~

Post-investigation

- Mandatory dismissal:
 - Conduct alleged in the Formal Complaint does not constitute Title IX Prohibited Conduct or did not occur against a person in the United States;
- Discretionary dismissal:
 - Respondent is no longer enrolled at or employed by the College;
 - Specific circumstances prevent College from gathering sufficient evidence to reach a determination; or
 - Complainant informs Title IX Coordinator in writing that Complainant desires to withdraw formal complaint.
- Referrals
- Notice of Dismissal and Right to Appeal
- Set for Hearing

Hearing

- Creation of hearing file
 - Redactions;
 - Hearing Officer makes determinations.
- Response to hearing file:
 - what they believe the evidence shows;
- Hearing schedule
 - Requires significant coordination: parties, advisors, witnesses, Hearing Officer;
 - Cannot rely on statements if party/witness does not submit to cross-examination.

Hearing

- Format

- Physically present or virtual;
- Either party may request separate rooms, or College can require in its discretion;
- Simultaneously see and hear each party/witness;
- Recorded

- Hearing support persons

- Conduct live, oral cross-examination;
 - Unless parties stipulate in advance to submit to written cross-examination, questions conducted by Hearing Officer

- Investigator will be available to answer any questions from Hearing Officer about investigation process during hearing.

Hearing/Appeal

- Hearing officer

- Makes relevance determinations and weight of evidence;
- Issues written determination regarding responsibility;
- Sanctions on respondent/remedies for complainant;

- Appeals

- Bases for appeal:

- Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing party?
- Was there any substantive new evidence that was not available at the time of the decision or hearing that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- Did the Title IX Coordinator/Investigator or Hearing Officer have a conflict of interest or bias for or against complainants or respondents that affected the outcome?
- For matters that proceeded to sanctioning and imposition of remedies, are the sanction and/or remedies ones that could have been issued by reasonable persons given the findings in the case?

Bias/Conflict

- Did the Title IX Coordinator, Investigator, or Hearing Officer have a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter?
 - No definitions of conflict of interest or bias under regulations;
 - If you are a fact witness to the allegations at issue, or have a personal relationship with one of the parties/witnesses, that may constitute bias/conflict;
 - Avoid pre-judgment of any report, each case is unique;
 - Uphold fairness, equity, due process, remain partial and objective.

Other requirements under regulations

- Recordkeeping

- For a period of seven (7) years, SCC must maintain records of
 - Each investigation, including any determination of responsibility
 - Transcripts of Hearings
 - Disciplinary sanctions/remedies provided
 - Appeals and results
 - Informal resolutions
 - Training materials
 - Supportive Measures offered to all Complainants, or if Supportive Measures not offered, reasons why not
 - All actions taken in response to reports or Formal Complaints and the basis for the conclusion that the response was not deliberately indifferent
 - Any measures taken to restore or preserve equal access to education programs or activities