

# **Title IX Training**

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# Background

Title IX of the Education Amendments Act of 1972:

*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, including admissions and employment.*

# Background

- The U.S. Department of Education's new regulations implementing Title IX were published in the Federal Register on May 19, 2020 and become effective August 14, 2020.  
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>
- Universities that receive federal financial assistance must notify applicants, students, and employees of their compliant Title IX procedures, provide training for personnel who implement those policies, and publicly post training materials, on or before August 14, 2020.

# Changes in New Regulations

- Narrower definition of Sexual Harassment for Title IX to apply
- New Jurisdictional Criteria for Title IX to apply
- The University need not investigate Title IX allegations unless a Formal Complaint is submitted
- Interim Measures are replaced by Supportive Measures

# Changes in New Regulations

- Grievance process requires live hearing and cross-examination
- Separation of investigator and decisionmaker roles
- Discretion regarding Reporting Officials
- Narrower definition of Actual Knowledge
- Increased availability of Informal Resolution

# Agenda

- Requirements to Comply with Title IX Training Rules
- Terms to Know (and why they are important)
- Sexual Harassment Definition and Jurisdictional Requirements
- Reporting

# Agenda

- Investigation
- Hearing
- Appeal
- Informal Resolution
- Serving Impartially
- Policy Review and Questions

# Compliance with Title IX Training Requirements



# Required Personnel

- Title IX Coordinator(s)
- Investigators
- Decision-Makers
- Any person who facilitates an Informal Resolution Process

# Required Topics

- Definition of Sexual Harassment
- The scope of Educational Program or Activity
- How to conduct investigations, hearings, appeals, and informal resolution processes

# Required Topics

- How to serve impartially including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Technology for live hearings

# Required Topics

- Issues of Relevance:
  - Complainant's sexual predisposition and prior sexual behavior
  - Questions and evidence during hearings
  - Preparing an Investigative Report that fairly summarizes relevant evidence

# Terms to Know

- **Complainant:** Any individual who is alleged to be the victim of sexual harassment.
- **Respondent:** Any individual who is reported to be the perpetrator of sexual harassment.

# Sexual Harassment Defined

Conduct based on sex that satisfies one or more of the following:

- (1) An employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct or
- (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

# Sexual Harassment Defined

**Sexual Assault:** Any nonconsensual sexual act or any sexual act with a Complainant lacking capacity to consent including, without limitation:

- Rape, sexual battery, sexual abuse, fondling, incest, statutory rape, and sexual coercion;
- Any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force;

# Sexual Harassment Defined

## Sexual Assault (continued):

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch a person or themselves with or on any of these body parts;
- Any sexual intercourse, however slight, with any object, by a person upon another person that is without consent and/or by force. Intercourse includes vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.



# Sexual Harassment Defined

**Dating Violence:** Violence committed by a person—

- A. Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; 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.
  - iii. The frequency of interaction between the persons involved in the relationship.

# Sexual Harassment Defined

**Domestic Violence:** 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, or by any other person against a Complainant who is protected from that person's acts under Iowa law.

# Sexual Harassment Defined

**Stalking:** A course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

# Quick Review

Title IX does not apply unless the conduct meets the Title IX definition for Sexual Harassment, which includes:

- Quid Pro Quo Sexual Harassment;
- Unwelcome Conduct Sexual Harassment;
- Sexual Assault;
- Dating Violence;
- Domestic Violence; and
- Stalking.

# Retaliation is Prohibited by Title IX

**Retaliation:** Intimidating, threatening, coercive, or discriminatory conduct directed to an individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report of complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing.

# Jurisdictional Criteria for Title IX Application

1. The conduct must have occurred against a person in the United States;
2. The conduct must have occurred within an Education Program or Activity of the University; and
3. The Complainant must be participating in or attempting to participate in an Education Program or Activity of the University at the time the complaint is submitted.

# Jurisdictional Criteria

## Title IX Requirement

The conduct must have occurred against a person in the United States.

## Consequences

- Title IX does not apply to conduct at an overseas conference, study abroad program, or international exchange program.
- Other policies prohibiting sexual harassment, discrimination, consensual relationships, and unethical conduct may apply.

# Jurisdictional Criteria

## Title IX Requirement

The conduct must have occurred within an Education Program or Activity of the University.

## Consequences

- Title IX does not apply if the University does not operate the program or activity where the conduct occurred or does not have control over the Respondent and the context of the conduct.
- Other policies prohibiting sexual harassment, discrimination, consensual relationships, and unethical conduct may apply.



# Jurisdictional Criteria

## Title IX Requirement

The Complainant must be participating in or attempting to participate in an Education Program or Activity of the University at the time the Formal Complaint is submitted.

## Consequences

- Title IX does not apply if the Complainant is not a student, employee, or applicant for employment or admission.
- Other policies prohibiting sexual harassment, discrimination, consensual relationships, and unethical conduct may apply.

# Terms to Know

**Education Program or Activity:** All programs and activities operated by the University, including locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged conduct occurs.

# Terms to Know

**Formal Complaint:** A document submitted to the Title IX Coordinator by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment.

# Reporting Sexual Misconduct

- Confidential Resources cannot report to the Title IX Coordinator or anyone else
- Non-Confidential Resources are encouraged to report to the Title IX Coordinator
- Reporting Officials must report to the Title IX Coordinator

# Reporting Officials

- The University is charged with Actual Knowledge of sexual misconduct if a Reporting Official is aware of the sexual misconduct.
- When the University has Actual Knowledge, it is required to respond in accordance with Title IX.

# Terms to Know

**Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or to any official who has authority to institute corrective measures on behalf of the University ("Reporting Official").

# Terms to Know

**Reporting Official:** Reporting Officials are required to notify the Title IX Coordinator when they have knowledge of potential allegations of sexual misconduct. When any Reporting Official has notice of sexual harassment or allegations of sexual harassment, DMU is obligated to respond promptly.

# Pre-Investigation Activity

- Title IX Coordinator learns of alleged misconduct and meets with Complainant
- Complainant or Title IX Coordinator initiates Formal Complaint
- Title IX Coordinator sends parties notice of the allegations and appoints investigator(s) free of conflict or bias



# Terms to Know

**Advisor:** A person selected to provide advice to a party for all, or a portion, of the grievance process. Complainants or Respondents may be accompanied by one Advisor to any Title IX related proceeding. Advisors are not mandatory, except that an Advisor is required to cross-examine other parties and witnesses during a live hearing. If a party does not have an Advisor for cross-examination, DMU will provide one for the purpose of conducting cross-examination during a live hearing. Cross-examination is the only time an Advisor may speak for a party or directly address another party.

# Terms to Know

**Supportive Measures:** Services offered to a Complainant or Respondent to restore or preserve equal access to DMU's Education Programs and Activities, protect the safety of any party or the DMU community, or deter sexual harassment. Supportive Measures are non-disciplinary, non-punitive, and confidential to the extent possible. Supportive Measures may be offered even if a Complainant does not submit a Formal Complaint.

# How to Conduct Investigations

Step 1. Review the Formal Complaint, § 106.45(b)(5) of the new regulations, and the Investigation Process section of the Title IX Policy on page 8.

- Responsibility for gathering evidence.
- Discretion to investigate allegations with consideration of unique circumstances.
- Equal treatment of the parties.
- Notice requirements.

# How to Conduct Investigations

## Step 2. Interview Complainant and Respondent.

- Provide written notice of date, time, location, and purpose 5 days before the interview.
- Prepare questions to gather key information.
  - Witnesses, Consent, Incapacitation, Documents
  - What happened then? Do you remember anything else about \_\_\_\_\_? Can you provide more information about that? I'm not sure I am clear on \_\_\_\_\_?
  - Do you need to take a break?
  - Will you please contact me if you think of additional witnesses or evidence?

# How to Conduct Investigations

Step 3. Prepare an investigation plan and timeline that allows you to provide a preliminary investigative report within 10 business days after interviewing the parties. Include:

- Witness interviews
- Evidence to be collected from parties and witnesses
- Build in time to conduct additional interviews and gather evidence after you begin writing
- If the investigation plan changes, document the change and the reason for the change

# How to Conduct Investigations

Step 4. Prepare the preliminary investigative report and simultaneously provide the report and all evidence to the parties and their advisors for their inspection, review, and written response.

- Parties have ten days to provide their written responses.
- If written responses are received, the Investigator(s) must carefully consider the responses and follow up with additional interviews and evidence-gathering if necessary before preparing the final report.

# Investigative Reports

- Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant and should not be included.
- Unless:
  - Such evidence is included as evidence that someone other than the Respondent is responsible for the alleged conduct
  - Such evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is included as evidence of Consent

# Investigative Reports

- The report must fairly summarize all relevant evidence.
- Both inculpatory and exculpatory.
  - No discretion to include only evidence that indicates the Respondent is responsible for the conduct, nor does the investigator have discretion to include only evidence that tends to show the Respondent is not responsible for the conduct.
- The report must describe all procedural steps taken in the investigation.



# Pre-Hearing Activity

- The final investigative report and all evidence is provided to the Title IX Coordinator, the parties, and the parties' advisors.
- The Title IX Coordinator designates one or more individuals free of conflicts of interest and bias to serve as decisionmakers.
- The Title IX Coordinator consults with the parties, advisors, and decisionmakers and determines the hearing date.
- The Title IX Coordinator provides written notice of the hearing date no less than 10 days prior to the hearing.

# Technology for Live Hearings

- Title IX hearings must be live, recorded, and may be held in-person or remotely using videoconferencing that allows the parties to simultaneously see and hear the party or the witness answering questions.
- The decisionmaker(s) must promptly consult with the Title IX Coordinator and the University's technology personnel to determine the appropriate and available videoconferencing technology.
- Decisionmaker(s) are responsible for learning or arranging training to enable recording and operation of the videoconferencing platform.

# Relevancy of Questions and Evidence at Live Hearings

- Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant and should not be admissible at the hearing.
- Unless:
  - Such evidence is admitted as evidence that someone other than the Respondent is responsible for the alleged conduct
  - Such evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is admitted as evidence of Consent

# Pre-Hearing Meeting

Decisionmakers have discretion to require a pre-hearing meeting with the parties and their advisors to cover:

- Role of Advisors
- Order of Hearing
- Hearing Rules
- Standards for relevancy and admissibility
- Other matters of concern

# The Hearing Process

- Decisionmakers have discretion to determine the order of the hearing provided the parties are treated equally.
- Considerations include:
  - Availability of witnesses
  - Type of evidence to be presented
  - Needs of the parties

# The Hearing Process

## Suggested Hearing Order:

1. Introductions and Order of Hearing
2. Investigator presents the final investigative report and answers questions posed by the Decisionmaker(s) and Advisors.
3. Individuals present statements and answer questions posed by Decisionmaker(s) and Advisors in this order: Complainant, Complainant's witnesses, Respondent, Respondent's witnesses.

# Terms to Know

**Preponderance of the Evidence**: Standard of proof used to determine responsibility. The standard of proof for a substantiated finding in the Formal Resolution Process is "preponderance of the evidence" – that is, evidence which, taken as a whole, shows that it is more likely than not that a violation of the policy occurred.

# The Hearing Process

- Following presentations and questioning, the Decisionmaker(s) will dismiss the parties and deliberate.
- The Decisionmaker(s) are to use Preponderance of the Evidence as the standard of proof to determine responsibility.
- The Decisionmaker must provide the Title IX Coordinator a written decision and recommended Sanctions and Remedies, if any.



# Terms to Know

**Sanctions:** Disciplinary action imposed upon a Respondent after a determination of responsibility following a grievance process that complies with this policy and Title IX.

**Remedies:** Measures to restore or preserve the Complainant's equal access to DMU's Education Programs and Activities.

# The Appeal Process

- Any party may appeal a finding regarding responsibility or a decision to dismiss allegations from the Title IX process.
- Permissible bases for appeal:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available that could affect the outcome of the matter; and
  - Evidence of conflict of interest or bias that affected the outcome of the matter.

# The Informal Resolution Process

- Alternative path to resolution in some situations.
- Initiated any time after a Formal Complaint is filed.
- No investigation, hearing, determination of responsibility or appeal.
- Both parties must agree in writing.
- Facilitated by an individual trained in mediation or other comparable training.
- Any party or DMU may choose to resume the formal process at any time before agreement.

# Serving Impartially

- Avoid prejudice based on past conduct, appearance, academic or job performance.
- Be aware of factors that create an appearance of bias or conflict of interest.
- Take seriously the admonishments to treat all parties equitably and consider the timing, setting, and tone of all meetings, interviews, and pre-hearing activities.
- Treat Advisors of Complainants and Respondents equally.

# Dismissal of Formal Complaints

- At Complainant's Request
- If Respondent is no longer a student or employee
- If circumstances prevent DMU from gathering sufficient evidence
- Dismissal is appealable

# False Statements

- False statements by participants may lead to discipline under the Code of Student Conduct or discipline of employees.
- A determination regarding responsibility, alone, is not evidence of a false statement.

# Recordkeeping

- Records related to Title IX proceedings must be retained for 7 years.
- Live hearings must be recorded or transcribed.
- Training materials must be posted on DMU's website.

# Law Enforcement

- Differing standards for responsibility, prosecution, and conviction.
- Processes may run concurrently and have different results.
- Cooperation with law enforcement investigations.
- Assistance for Complainants who wish to report to law enforcement.



# Thank you.



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