

Title IX
Coordinator
Training



GOMBOS | LEYTON

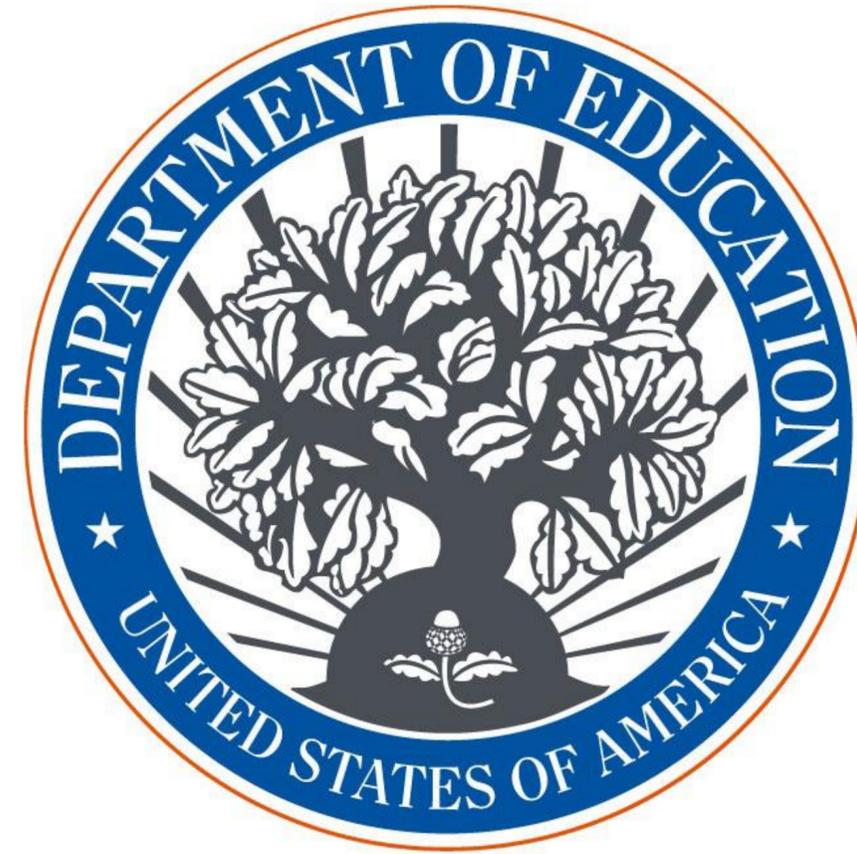
ATTORNEYS

Title IX of the Education Amendments of 1972

34 CFR 106.31(a) (implementing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq).

“...no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”





- All public and private elementary and secondary schools, school districts, colleges and universities (institutions of higher education or IHEs) receiving any federal financial assistance must comply with Title IX.
- Title IV Program Participation Agreement Terms and Conditions: IHE certifies that it will comply with Title IX as a condition of Title IV program participation.

NOTICE OF THE TIX COORDINATOR

34 CFR § 106.8(a)

- A school “shall designate at least one employee to coordinate its efforts to comply with its responsibilities, which employee shall be referred to as the “Title IX Coordinator”
- A school “must notify all students, parents or legal guardians of elementary and secondary school students, employees... of the name or title , office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.”

**PUBLIC
NOTICE**

Sexual Harassment

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
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 institution's education programs or activities; or
3. **sexual assault, domestic violence, dating violence, or stalking.**



Stalking



Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

1. Fear for his or her safety or the safety of others; or
2. Suffer substantial emotional distress.

A TIX Coordinator's duty is to respond to a report of Sexual Harassment within a "program or activity"

The scope of the institution's education program or activity includes locations, events, or circumstances over which the institution has exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and shall also include any building owned or controlled by a student organization that is officially recognized by the institution.



34 CFR § 106.2(h): Program or Activity means all the operations of A college, university, or other postsecondary institution



Reporting an allegation to the TIX Coordinator

- Students, employees or third parties - may make a report concerning sexual harassment or sex discrimination whether or not they are the victim of that behavior.
- Complainants and third parties are encouraged to report sexual harassment as soon as possible to allow the institution to respond promptly and effectively.
- A report is a notification of an incident of sexual misconduct to the Title IX Coordinator.
- A report may be accompanied by a request for (1) supportive or interim measures; (2) no further action; (3) the initiation of the formal complaint process; and/or (4) a request to initiate an informal resolution process. Informal resolution can only occur after a formal complaint is filed. Filing a formal complaint initiates the institution's formal Title IX grievance process.

Submitting a Formal Complaint



- A complaint consists of written allegations of sexual harassment against a Respondent .
- A formal complaint commences an official investigation into the Respondent's alleged conduct and initiates the handling of the complaint according to the Title IX grievance procedures.
- Only the Complainant or Title IX Coordinator may file a formal complaint.
- The Title IX Coordinator will try to defer to the Complainant's wishes whether to file a formal complaint. However, if the Title IX Coordinator determines that pursuing an investigation into the allegations is necessary for the safety of the community or other reasons, he or she may sign the formal complaint to initiate the grievance process notwithstanding the Complainant's decision not to pursue a formal complaint.



Preliminary Inquiry/Actions

- The Title IX Coordinator, in consultation with others as necessary, will conduct an initial assessment of the allegations, the reporting party's desired course of action, and interim measures to protect the safety of the Complainant or the community.
- The goal is to prevent any hostile educational or workplace environment from developing at the institution.
- If a report made to the Title IX Coordinator involves a serious or immediate threat to the campus community, the institution will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the Complainant.

Preliminary Inquiry/Actions: Dismissal



- If a Complainant chooses to pursue a formal complaint, the institution must follow the grievance process, unless the Title IX Coordinator determines, after a preliminary inquiry, that the alleged conduct, even if proven, is not prohibited conduct for one of three reasons:
 1. The alleged conduct did not occur in scope of the institution's education program or activity, or
 2. The alleged conduct does not meet the policy's definition of sexual harassment, or
 3. The alleged conduct did not occur to a person located in the United States
- If the formal complaint is dismissed, the Complainant will be provided written notification of that decision, which will include the reasons for the dismissal.
- A determination that the alleged conduct does not warrant initiating the grievance process does not preclude the institution from taking action to address any prohibited conduct/actions under another provision of its Code of Conduct.

Notice of Formal Complaint

- The TIX must prepare a written notice that a formal complaint has been filed. The notice will include:
 1. The identities of the parties involved in the incident, if known;
 2. The conduct allegedly constituting sexual harassment, as defined in this policy, if known;
 3. The date and location of the incident, if known;
 4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 5. An explanation of the parties' right to have an advisor present throughout the grievance process; and
 6. An explanation of the institution's prohibition against knowingly making false statements or knowingly submitting false information during the grievance process.





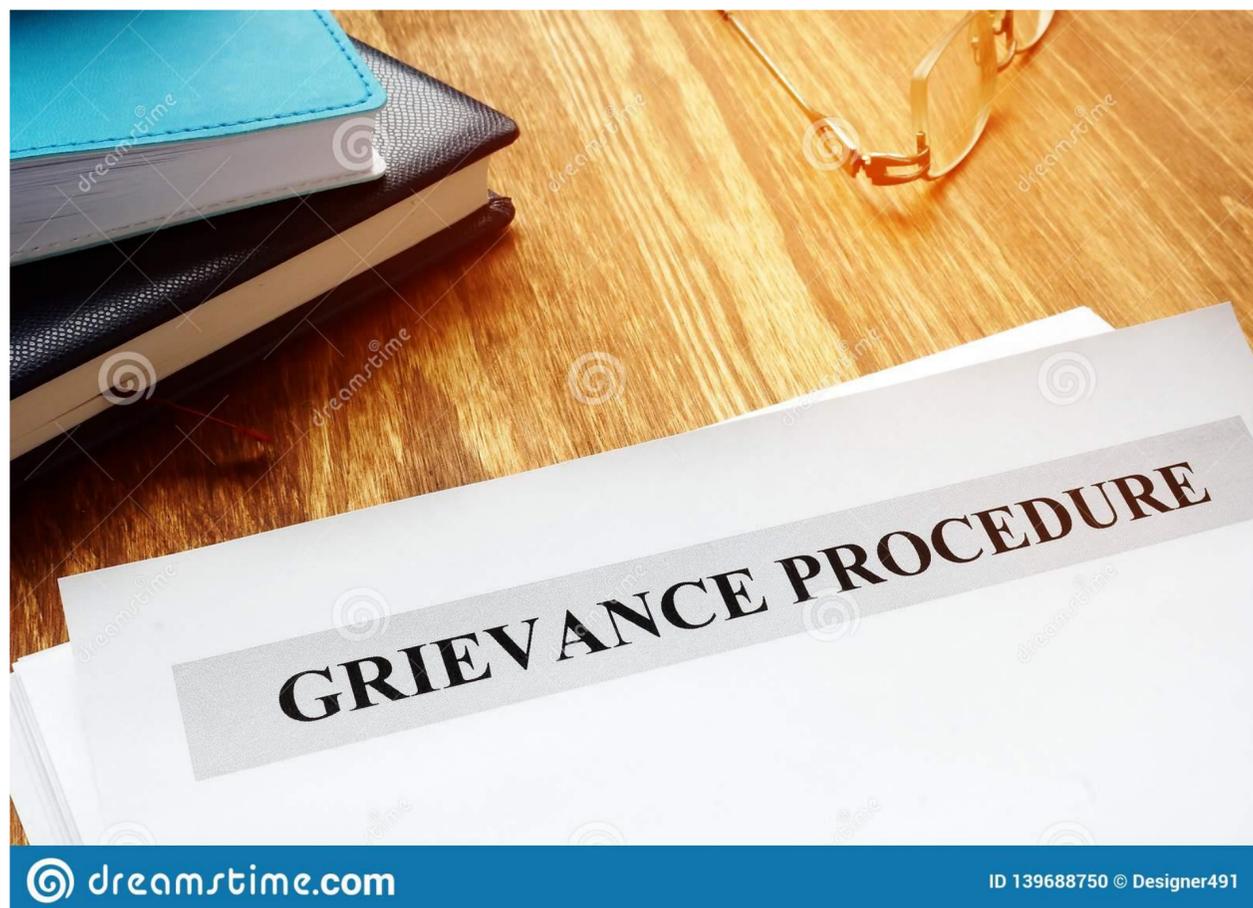
The Grievance Process

- Once the Title IX Coordinator determines that allegations in a formal complaint could, if proven, constitute sexual harassment, the institution will initiate its Title IX grievance process.
- The Title IX grievance process is designed to fairly investigate allegations of sexual harassment, determine responsibility for any alleged violations, and provide remedies designed to restore or preserve equal access to the institution's education programs and activities.
- The institution's Title IX grievance process will:
 1. Treat Complainants and Respondents equitably;
 2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness;
 3. Presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.



The Grievance Process- Timing Issues

- The institution will resolve all cases in a prompt and timely manner, however, the timeline will vary based on the circumstances of the case, including scheduled and unscheduled breaks in the academic calendar, availability of the parties and witnesses, scope of the investigation, need for interim actions, and unforeseen or exigent circumstances. The parties will be periodically updated on the status of their case.
- Requests for extension are disfavored and will not be granted absent a showing of good cause that is based on extraordinary circumstances. However, if a party believes circumstances require an extension of deadlines, he or she must notify the Title IX Coordinator before the passing of the deadline, in writing, explaining why the deadline must be extended. The Title IX Coordinator will decide whether the deadline should be extended. If a deadline is extended, it will be extended for all parties.



The Grievance Process- Advisors

- All parties may have an advisor of their choice to accompany them through the grievance process. A party's advisor may be, but is not required to be, an attorney. A party may have his or her advisor present at any meeting, interview, or other appearance the party is entitled to attend.
- If the Title IX Coordinator, an investigator, hearing decision-maker, or other campus official determines that an advisor is acting in a manner intended to improperly disrupt or interfere with the grievance process, the advisor will receive a warning.
- Any subsequent attempt to disrupt or interfere with the grievance process will result in the advisor's immediate removal from the proceedings, and he or she will be barred from further participation in the Title IX grievance process. Unless the Title IX Coordinator, investigator, decision-maker, or other campus official determines that an advisor's misconduct is part of a party's deliberate attempt to disrupt or delay the grievance process, the proceedings will be suspended to allow a party to replace his or her advisor.

TIX Coordinator's Role In the Investigation

- The TIX Coordinator oversees but does not conduct the investigation.
- Prior to the conclusion of the investigation, the TIX Coordinator will provide the parties and their advisors the opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations in the formal complaint.
- The parties will then have ten (10) Business Days to submit a written response to the TIX Coordinator, which the investigator will consider prior to completing his or her investigative report.
- The parties may submit a written response to the investigative report for consideration by the hearing decision-maker. However, a response to the investigative report must be received by the Title IX Coordinator no later than five (5) Business Days before the hearing.
- The TIX Coordinator will simultaneously provide all submitted written responses to the parties at least three (3) Business Days before the hearing.



TIX Coordinator's Role In the Investigation

- If at any time during the investigation, the institution determines that any conduct alleged in the formal complaint (1) would not constitute sexual harassment, as defined in this policy, even if proved, (2) did not occur in the institution education program or activity, or (3) did not occur against a person in the United States, the institution must dismiss the formal complaint with regard to that conduct. If other conduct is alleged in the formal complaint, the grievance process will continue with regard to those allegations only.
- The institution may also dismiss the formal complaint, or any allegations in the formal complaint, if at any time during the investigation or hearing (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations in the formal complaint; (2) the Respondent is no longer enrolled at, or employed by, the institution; or (3) specific circumstances prevent the institution or the investigator from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.



TIX Coordinator's Role In the Investigation

- The TIX Coordinator or the investigator may modify the list of allegations based on additional information learned during the investigation. In that event, the parties will receive notice of the new allegations prior to the inclusion of a new allegation in an amended formal complaint.



TIX Coordinator's Role in the Hearing



- The TIX Coordinator will notify the parties of the time and location of the hearing at least ten (10) Business Days prior to the hearing. Parties and their advisors are expected to adjust their schedules to attend the hearing. Hearings will not be rescheduled absent emergencies or extraordinary circumstances.
- Within two (2) Business Days of the hearing, either party may request that the hearing be conducted with parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.
- The institution may also, at its discretion, allow any or all parties, witnesses, or other participants appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

TIX Coordinator's Role in the Hearing/Appeal



- If Respondent intends to introduce evidence of the Complainant's past sexual behavior, Respondent must provide notice to the TIX Coordinator and decision-maker at least five (5) Business Days in advance of the hearing accompanied by a written motion that specifically describes the evidence and states the purpose for which it is to be offered.
- The TIX Coordinator will provide a copy of the notice and motion to the Complainant
- If a party wishes to appeal, he/she must send a notice of his/her intent to appeal, by email, to the TIX Coordinator within seven (7) Business Days after the institution sends the determination to the parties' institution email accounts.
- Once the Title IX Coordinator receives a valid notice of intent to appeal, the Title IX Coordinator will notify all parties of the appeal, the ground(s) on which the appeal is sought, and the procedures for the appeal.



Supportive Measures

- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- Supportive measures are available to the Complainant and Respondent regardless of whether the Complainant files a formal complaint.

Interim Measures – Removal of Respondent



- The Title IX Coordinator may remove a Respondent from his or her educational program or activity if the Title IX Coordinator determines that **an immediate threat to the physical health or safety of any student or other individual** arising from allegations of sexual harassment justifies removal.
- If the Title IX Coordinator determines that allegations of sexual harassment justify removal, he or she will provide the Respondent with notice of the removal to the Respondent's institution's email address and the Respondent must immediately leave all campus activities and may not return at any time pending the resolution of the complaint.
- Respondent has the right to challenge removal decisions in writing.
- The Title IX Coordinator may also place a non-student employee Respondent on administrative leave during the pendency of a grievance process.

Dealing with requests for Confidentiality

- The TIX Coordinator should make every effort to respect a request for confidentiality and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.
- Confidentiality cannot be guaranteed in all circumstances.
- It may be necessary to override a request for confidentiality in order to meet Title IX obligations;

In such cases, the information should only be shared with individuals who are responsible for handling the IHE's response to incidents of sexual violence.

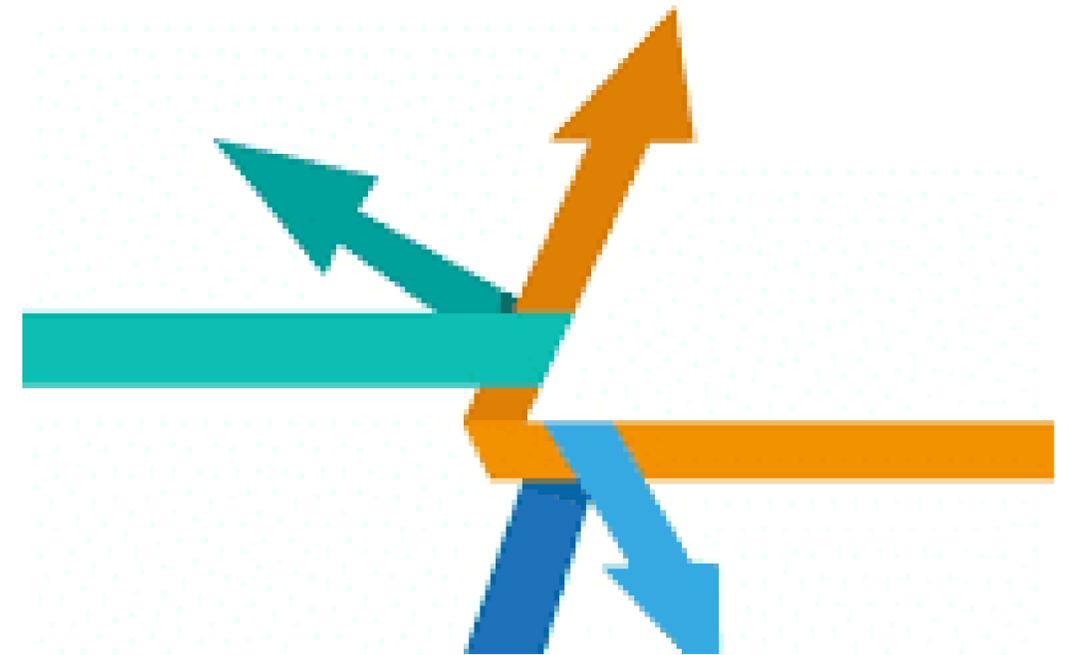
- Records created in response to a report or complaint of sexual harassment will be subject to FERPA.
- The TIX Coordinator will treat as confidential all information related to supportive measures, to the extent that such confidentiality does not interfere with the ability of the institution to provide the supportive measures.



CONFIDENTIALITY

Avoiding Bias and Conflicts of Interest

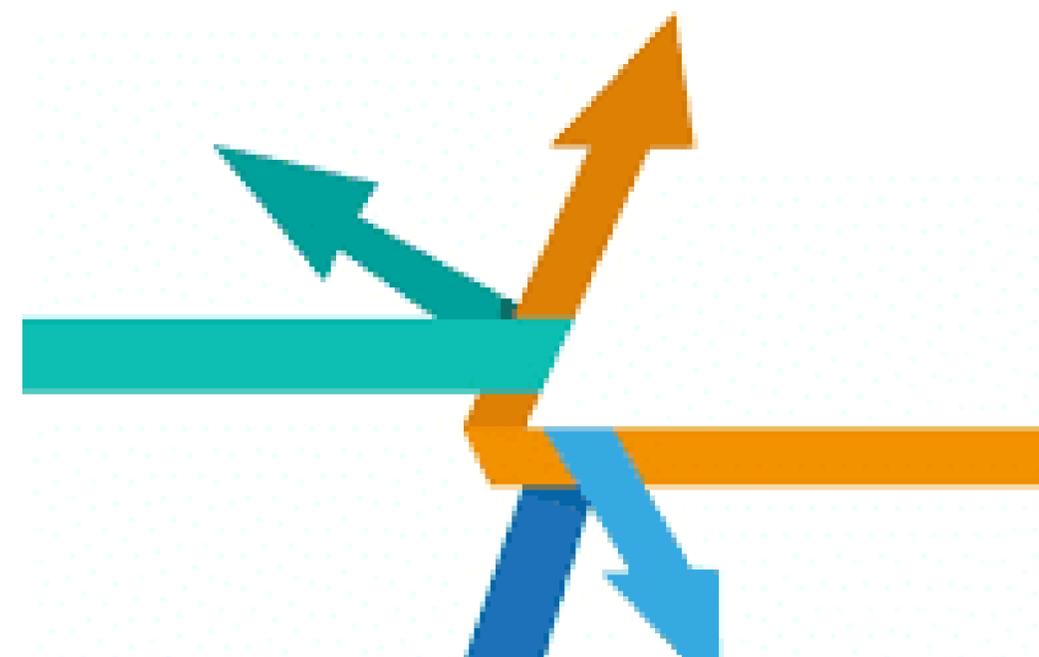
- The TIX Coordinator must ensure that the investigation, hearing, and appeal (if any) are administered fairly and without bias against any party.
- A party wishing to raise the issue of a potential conflict of interest or bias must notify the Title IX Coordinator of the bias or conflict of interest within two (2) Business Days of being advised of the identity of the investigator or decision-maker or within two (2) days of the date the party discovers, or reasonably should have discovered, the existence of the alleged bias or conflict of interest.
- The TIX Coordinator will determine whether a conflict of interest exists.
- A TIX Coordinator should disqualify him or herself from serving in the capacity of TIX Coordinator if the TIX Coordinator's impartiality might also be reasonably questioned based on the application of the above factors to the TIX Coordinator.



Avoiding Bias and Conflicts of Interest

The TIX Coordinator may consider the following factors when assessing a claim of bias or conflict of interest:

1. the investigator or decision-maker has a personal bias or prejudice concerning a party or a party's representative or has personal knowledge* of facts that are in dispute in the proceeding.
2. the investigator or decision-maker's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is: (a) a party to the proceeding; (b) acting as a party's representative; (c) a person with more than a de minimis interest that could substantially be affected by the proceeding; or (d) likely to be a material witness in the proceeding.
3. The investigator, decision-maker, or any member of the that person's family has an economic interest in the controversy or in a party to the proceeding.
4. The investigator or decision-maker has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit that person to reach a particular result or rule in a particular way in the proceeding.





Questions
Answers