

# Laboratory School - Title IX Investigator and Decision-Maker Training

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Title IX requires that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on:

- ▶ The NEW definition of sexual harassment in § 106.30;
- ▶ What Title IX applies to in terms of the scope of the recipient's education program or activity
- ▶ How to conduct a Title IX process including investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and
- ▶ How to serve impartially in your role, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

# OCR Resources Shared with Staff

- ▶ <https://www.youtube.com/watch?v=TdfT5R8ibm4> OCR Webinar: Title IX Regulations Addressing Sexual Harassment (released May 8, 2020)
- ▶ <https://www.youtube.com/watch?v=i-BCnhUsJ4s> OCR Webinar on New Title IX Protections Against Sexual Assault (released July 7, 2020)
- ▶ <https://www.youtube.com/watch?v=48UwobtiKDI> OCR Webinar on Due Process Protections under the New Title IX Regulations (released July 21, 2020)
- ▶ [https://www.youtube.com/watch?v=yQ4-S5\\_Jahw](https://www.youtube.com/watch?v=yQ4-S5_Jahw) OCR Webinar on Conducting and Adjudicating Title IX Hearings (released on July 23, 2020)
- ▶ [https://www.youtube.com/watch?v=YA5S2\\_A3UAY](https://www.youtube.com/watch?v=YA5S2_A3UAY) OCR Short Webinar on How to Report Sexual Harassment under Title IX (released on July 27, 2020)
- ▶ <https://www.youtube.com/watch?v=XzSJ4uNspq8> OCR Short Webinar on the First Amendment and Title IX (released July 29, 2020)

# Sexual Harassment

Defined by federal law as the following:

- ▶ An employee of the Illinois State University, including Laboratory School employees, conditions the provision of aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct; or
- ▶ Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access or
- ▶ Any instance of sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).
- ▶ For reporting obligations, refer to University Procedure 1.2.4

# University Program or Activity

- ▶ For Title IX purposes, the University will only have jurisdiction over a matter if the alleged conduct occurred as part of a University program or activity (including Laboratory School programs or activities)
- ▶ Program or activity is defined as the following:
  - ▶ Locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context of the harassment
  - ▶ Buildings owned or controlled by a recognized student organization
- ▶ Allegations that are not a part of a University program or activity are subject to mandatory or permissive dismissal for Title IX purposes, pursuant to University Policy 1.2.
  - ▶ Please note the case may still move forward in another university process
- ▶ Mandatory or permissive dismissals will be determined by the Title IX Coordinator (for example, an incident occurs outside of the United States on a Study Abroad trip)

How to conduct an investigation and complaint process including final adjudication procedure, appeals, and issuing decisions for formal complaints - Procedure 1.2.5.

- ▶ Prior to a formal complaint, the Laboratory Schools must report possible allegations of sexual harassment to OEOA; OEOA will consult on immediate next steps, which may include but are not limited to outreach to the Complainant and offering of supportive measures
- ▶ Formal complaint is received, reviewed, and assigned to investigator and it is determined the conduct was part of a University program or activity
  - ▶ Supportive measures offered (regardless of formal complaint)

# Continued

- ▶ Complainant, Respondent, and their parent/guardian notified of OEEOA investigation with the following information:
  - ▶ Alleged violations of the policy, and when applicable, alleged violations of the Code of Student Conduct
  - ▶ Supportive Measures
  - ▶ Identities of the parties
  - ▶ A summary of the conduct at issue. This includes when and where it allegedly occurred, if known
  - ▶ The potential specific violations
  - ▶ The Respondent and their parent/guardian will be informed they are presumed not responsible for the alleged conduct and that a determination regarding responsibility is not made until the conclusion of the complaint process
  - ▶ If during the investigation there is evidence obtained or disclosed that establishes additional potential violations, the Respondent will be informed in writing at the time

# Continued

- ▶ Complainant and their parent/guardian provided an opportunity to interview with the Investigator
- ▶ Respondent and their parent/guardian provided notice of opportunity to interview with Investigator and any additional information
- ▶ Gather evidence from both parties, and any additional evidence reasonably available to the University as noted on prior slide
- ▶ Both parties, witnesses, and their parent/guardians that are interviewed provided a draft copy of statement to provide relevant and appropriate feedback

# Continued

- ▶ Both parties and their parent/guardians provided an opportunity to review all evidence gathered during the investigation (10 University business days to review)
- ▶ Both parties and their parents/guardians provided draft investigation report and relevant evidence (10 University business days to review and provide feedback)
- ▶ Both parties and their parents/guardians provided final investigation report prior to the Final Case Adjudication Procedure for a ten (10) day review period.
- ▶ The final investigation report is forwarded to both parties, their parent/guardians, and to a member of the Office of Equal Opportunity and Access (not the investigator) and the Laboratory School Building Principal or designee simultaneously, as the final decision makers.

# Review Period and Question Submissions

- ▶ During the ten (10) day review period for the final investigation report, both parties and their parent/guardians may submit written, relevant questions that party wants asked of any party or witness to the decision-makers
- ▶ Before the questions are submitted to a party, the decision-maker from OEQA must first review the questions to determine whether the questions are relevant and explain any decision to exclude a question as not relevant. If determined irrelevant, the party may challenge the exclusion
- ▶ When deemed relevant, the decision-makers will provide each party with the answers, and allow for additional, limited follow-up questions from each party

# Relevance of Evidence

- ▶ All evidence that is used to render a decision must be relevant and appropriate
- ▶ Relevant information can be both inculpatory and exculpatory (covered on a prior slide)
- ▶ Both parties have the right to provide relevant information, including but not limited to providing names of and/or information or statements from factual and/or expert witnesses
- ▶ The Investigator **MUST** gather other relevant information reasonably available to the University. This includes but is not limited to, documents, photographs, social media, communications between the parties, and other electronic records as appropriate
- ▶ In general - medical and counseling records are confidential, unless they are voluntarily shared with the Investigator. Any information from medical records that is confidential and/or irrelevant must be redacted by the PARTY. The Investigator, when relevant and appropriate, will summarize the medical records in the preliminary report to be shared with both parties.

# Final Determination

- ▶ At the conclusion of the final case adjudication procedure, the decision-makers will reach a decision for the alleged violations, on the basis of whether there is a preponderance of information the Respondent violated each cited University and Laboratory School regulation
- ▶ The decision-makers will prepare a finding of fact and then the Building Principal or designee will impose sanctions for violations found, if any
- ▶ A decision letter will be sent to the Complainant, Respondent, and their parent/guardian simultaneously no later than seven (7) University business days after the conclusion of the final case adjudication procedure.
- ▶ This may be delayed if the decision-makers need additional time to review the information given by the parties during the questioning process and the parties and their parent/guardian will be notified of any delay.

# Appeals

- ▶ Both parties and their parents/guardians can appeal the outcome of findings
- ▶ The criteria for filing an appeal are:
  - ▶ Procedural irregularity that affected the outcome of the matter
  - ▶ New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
  - ▶ Disproportionate sanction the appellant is contending that the sanction is not appropriate for the finding of the case
  - ▶ The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter

# Appeals Continued

- ▶ The parties and their parent/guardian have ten (10) days to request an appeal, beginning on the date of delivery to the decision letter via email
- ▶ The Superintendent or designee (not someone involved as a decision-maker) will review the information provided by the appellant, as well as all case information to ensure the appeal meets criteria noted above and may invite appellant to provide further information
- ▶ Both parties and their parents/guardians will be notified in writing within five (5) business days of when an appeal has been filed. Both parties will have an equal opportunity to submit a written statement in support of, or challenging, the outcome within five (5) days of the notice being sent
- ▶ Within ten (10) days of the close of the comment period, the Superintendent or designee will review all information and submit a recommendation either granting or denying the appeal to the President of Illinois State University
- ▶ The President or designee will issue the final decision to all parties within ten (10) days. The President or designee's decision is considered final

# How to Serve Impartially Without Prejudgment of Facts at Issue

- ▶ Make sure that you do not have a conflict of interest with any party involved (student, staff, friend, partner, etc.)
- ▶ Remember, the Respondent is presumed not to be in violation
- ▶ Be open to any and all evidence as presented
- ▶ Weigh the evidence equally, including inculpatory and exculpatory evidence
  - ▶ Inculpatory is evidence is used to show the Respondent may be responsible.
  - ▶ Exculpatory is evidence used to show the Respondent may not be responsible.
- ▶ Listen intently, without judgment, when someone is providing information related to the alleged incident
- ▶ If you believe you are not capable of serving impartially on a particular matter, notify the Title IX Coordinator immediately.

# How to Avoid Bias and Conflicts of Interest

- ▶ Be aware of any preconceived notions you have about matters of sexual harassment
  - ▶ Stereotypes related to gender roles - “Males are always respondents” and “Only females can be victims of dating violence and sexual assault”
  - ▶ Educate yourself on issues of conscious and unconscious bias through internal and external sources - Health Promotion and Wellness, Student Affairs, Diversity Advocacy, University Speakers
  - ▶ When you believe you may have a conflict of interest- immediately notify the Title IX Coordinator to discuss. Do not put yourself and the University in a position that leads to an unfair and bias process
  - ▶ Educate yourself on all aspects of the University process and Title IX requirements to understand the rights and responsibilities afforded to all parties. When you have questions, reach out to the Title IX Coordinator and ask.
  - ▶ Look externally and internally for opportunities related to Diversity, Equity, and Inclusion to address potential bias.

## Posting of Training and Records Retention

- ▶ This training will be publically shared and posted on the Office of Equal Opportunity and Access Website
- ▶ A copy of this training will be retained for seven (7) years.
- ▶ Investigators, decision-makers, and the Title IX Coordinator must receive eight (8) hours of training annually.