

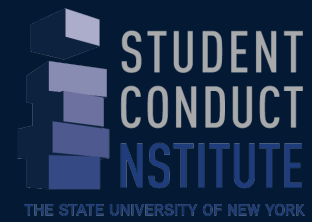
Mishka Woodley, J.D., LL.M.
Assistant Counsel, OGC

Alexander Wheeler, M.S.Ed
Assistant Director, SCI

November 2022

SCI LIVE@ DISTANCE BASIC COMPLIANCE
TRAINING, DAY 1

WELCOME TO DAY ONE — MEET YOUR TRAINERS



Mishka Woodley, J.D., LL.M.
Assistant Counsel
SUNY Office of General Counsel
Mishka.Woodley@suny.edu



Alexander Wheeler, M.S.Ed
Assistant Director
Student Conduct Institute
Alexander.Wheeler@suny.edu



CREDIT AND ATTENDANCE

Training Goals

- ✓ Complete **ALL** annual compliance requirements through **full attendance** over the course of four sessions.
- ✓ **Earn 8 hours of training credit** and fulfill all required SCI training topics upon completion of this training.
- ✓ Receive credit on your online **transcript** and download your annual compliance certificate directly from your SCI **dashboard**.

Slides will be posted at
system.suny.edu/sci/postedtraining

TRAINING TOPICS

Title IX Training Topics

(at least one time; annually as best practice):

- TIX Conflicts & Bias
- TIX Investigative Reports
- TIX Relevant Evidence
- TIX Technology
- TIX Investigation & Grievance Procedures
- TIX Jurisdiction
- TIX Sexual Harassment

VAWA/Clery Training Topics

(annual):

- Understanding Sexual & Interpersonal Violence
- Investigation Process
- Adjudication Process
- Consent
- Cultural Awareness
- Understanding the Conduct Participant Experience*
- Federal Legal Requirements

ONLINE TRAINING



The screenshot shows a web browser window with the URL <https://scidigital.suny.edu/ultra/institution-page>. The page features a navigation sidebar on the left with options: Home, Activity Stream, Active Modules, SCI Support & Resources, Calendar, Messages, Grades, User Dashboard, and Sign Out. The main content area includes a welcome message, a large banner for the online learning platform, and a section for the online training dashboard. A red arrow points to a link at the bottom of the dashboard that says "Click Here to Access the Online Training Dashboard".

Home

Getting Started K-12 Research Research Projects Regs TIX Docs SCI Docs

scidigital.suny.edu

Welcome!

WELCOME TO THE STUDENT CONDUCT INSTITUTE ONLINE LEARNING PLATFORM

We are excited to have you learning with us! Click the link below to get started.

NEW to SCI? [CLICK HERE! Introduction to the Online Learning Platform](#)

8.27.21 SCI MEMBERSHIP UPDATES, including our Fall 2021 Live@Distance schedule can be viewed [here](#).

Student Conduct Institute Online Training Dashboard

ONLINE TRAINING DASHBOARD

- ✓ Sign-up for Courses
- ✓ Complete Modules
- ✓ Check Progress
- ✓ Print Transcripts

EARN YOUR SUNY SCI CERTIFICATE

[Click Here to Access the Online Training Dashboard](#)

ONLINE TRAINING: TOPICS AND HOURS



Getting Started K-12 Research Research Projects Regs TIX Docs SCI Docs

Loggea in as Learner
Learner

Dashboard
Sign-Up for Course
Print Transcript

Competency Legend

- Law
- Foundations of Practice
- Conduct Theory
- Content Area Expertise

Search for Courses... Find Course Proceed to Enrolled Courses >>>

Advanced Filters

Title IX: Conflicts of Interest and Bias All Content Creators All Delivery Methods All locations

All Training Topics

- Title IX: Conflicts of Interest and Bias
- Title IX: Investigation & Grievance Procedures
- Title IX: Investigative Reports
- Title IX: Jurisdiction
- Title IX: Relevant Evidence
- Title IX: Sexual Harassment
- Title IX: Technology
- Adjudication Process*
- Conflict of Interest & Bias (NY, MA)*
- Consent*
- Cultural Awareness*
- Disability (MA, NH)*
- Federal Legal Requirements*
- Investigation Process*
- Remedial Actions (NY, MA, OR)*
- Reporting & Confidentiality (NY, IL, MA)*
- State Legal Requirements*
- Trauma-Informed Practice (NY, IL, MA, NH, CT, MN)*
- Understanding Sexual & Interpersonal Violence*

Learning Path
Compliance Learning

2021-2022: Law & The Hearing Panel
Online | Jul 1, 2021
99601 seats available
Hours: 0.5
Sign-up Info

2021-2022: Legal Framework for Understanding Conflicts of Interest and Bias
Online | Jul 1, 2021
99234 seats available
Hours: 0.5
Info Sign-up

2021-2022: Title IX Final Rule Basics
Online | Jul 1, 2021
99138 seats available
Hours: 0.75
Info Sign-up

CODE WORDS

Do This

Not That

Verification #1 - Live@Distance Basic Compliance #1(Day 2-4)  

Questions Responses

Verification #1 - Day 2 - Open to all

Thank you for joining us for our Live@Distance Basic Compliance Training series. To obtain SCI credit for attending this training, please fill in the code word and submit this form when prompted during the presentation. You have 15 minutes to submit your response.

Email *

Valid email

This form is collecting emails. [Change settings](#)

First Name *

Exactly as listed on your training registration

Short answer text

Chat

To: **Everyone** ▼

More ▼

Type message here...

TRAINING SCHEDULE

Day 1 (TODAY)

Hour 1: Due Process Basics

Hour 2: Title IX Laws & Regulations



Day 2

**Incident Reported
Conduct Process Initiated**

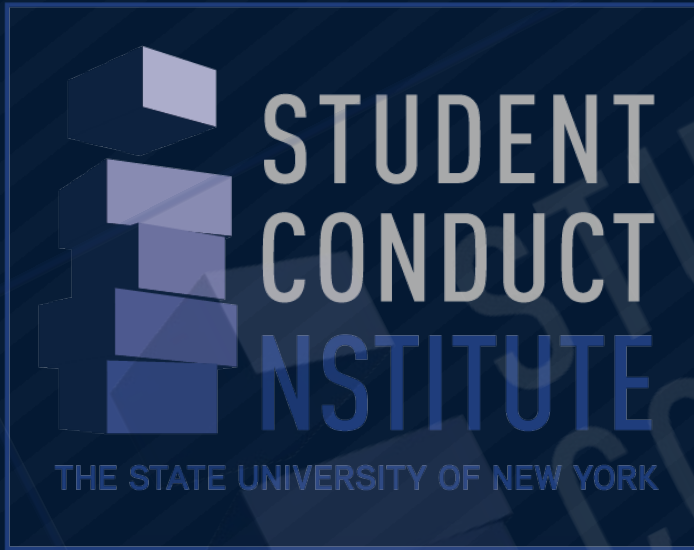
Day 3

**Investigations
Pre-Hearing Preparations
Hearings**

Day 4

**Decisions
Appeals
Implementation & Wrapping Up**

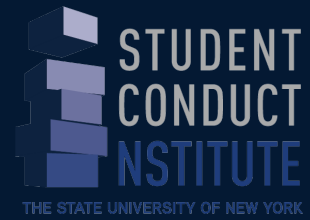




Mishka Woodley, J.D., LL.M.
Assistant Counsel
Office of General Counsel

SCI LEGAL COMPLIANCE BASICS: DUE PROCESS BASICS

DISCLAIMER

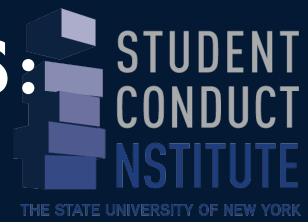


This presentation is for informational purposes only. These materials do not constitute an attorney-client privilege and shall not be construed to create an attorney-client relationship. This PowerPoint should not be used as legal advice.

Any legal questions should be directed to your appropriate institutional legal counsel.



THE LEGAL FOUNDATIONS OF DUE PROCESS: CONSTITUTION, STATUTES & REGS



U.S. Constitution: 14th Amendment, Section 1

- *Prohibits the deprivation of life, liberty, or property*
- *Prohibits denial to any person the equal protection of laws.*

Statutes

- Title IX of the Education Amendments of 1972
- The Clery Act (federal)
- Violence Against Women Act (VAWA) (federal)
- Family Educational Rights and Privacy Act (federal)
- NYS Education Law 129-B (state)
 - *(Sexual assault, dating violence, domestic violence and stalking prevention response policies and procedures.)*

Rules & Regulations: (State /Federal)

- Title IX of the Education Amendments of 1972



CONSTITUTIONAL STANDARD- DUE PROCESS



No state shall
“deprive any person of life,
liberty, or property, without
due process of law.”

*14th Amendment,
Section 1,
U.S. Constitution*



THE JOURNEY TO COMPLIANCE- DUE PROCESS

Communication

Community

Clarity

Timeliness

Consistency

Transparency

EQUITY

Confidentiality/ Privacy

What Else????...

CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK

Knowledge/ Notice of Alleged Conduct *(Formal/ Informal)*

- ✓ What is the subject-matter of the overarching issue?
- ✓ Are there sub-parts to the issue?
- ✓ What is the harm alleged?
- ✓ What is the remedy sought?

Jurisdiction: People

- ✓ Who are the complainant/respondent?
- ✓ Are there other parties involved?

Jurisdiction: Place & Time

(on-campus/ off-campus)

- ✓ Where and when did the conduct occur?
 - Buildings owned or controlled by the campus?
 - Used by officially recognized organizations?
 - Events?
 - Circumstances?
 - Public perception of affiliation?

CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK

Institutional Responsibility *(Legally, Ethically, Etc.)*

- ✓ What is the institution's legal role and responsibility related to the matters at issue?
- ✓ What laws, policies, and procedures must be followed to fulfill the legal requirements?
- ✓ What is the institution's role and responsibility from of mission, values, vision, and/or ethics standpoint?

Due Process: Grievance Processes *(Formal/Informal)*

- ✓ Investigations
- ✓ Interviews/ Meetings
- ✓ Panels/ Hearings
- ✓ Communications/ Notices

Support & Remedy Mechanisms

- ✓ Supportive Measures
- ✓ Interim/Emergency Removals/ Suspensions
- ✓ Informal Resolutions/ Sanctions

CONDUCT RESPONSE: LEGAL FOUNDATIONS- CASE LAW

Goldberg v. Kelly, 397 U.S. 254 (1970) – Supreme Court

- Established a due process right to a full hearing before termination of welfare benefits.
- Individual interest in the benefit significantly outweighed the interest in the government to adjudicate eligibility in a more expedited manner.

Wisconsin v. Constantineau, 400 U. S. 433 (1971) – Supreme Court

- Established a due process right to notice and an opportunity to be heard where a person's good name, reputation, honor or integrity is at stake.

Mathews v. Eldridge, 424 U.S. 319 (1976) – Supreme Court

- Procedural due process must be evaluated by balancing:
 - The interests of the individual
 - The interest of the government in limiting procedural burdens
 - The risk of curtailing individual interests under the current processes
 - The degree that additional procedures would reduce risk of error

CONDUCT RESPONSE: LEGAL FOUNDATIONS- CASE LAW

Dixon v. Alabama . 293 F.2d 150 (5th Cir. 1961) – (Alabama, Florida Georgia, Texas, Louisiana, Mississippi)

- **LANDMARK DECISION-** Leading case on due process for students in public education
- Outlines due process requirements before removal from a public institution
- Must include notice and an opportunity to be heard
- Goodbye to in *loco parentis* to discipline and expel students

Goss v. Lopez, 419 U. S. 565 (1975) – Supreme Court

- Further clarified due process rights related to rights to a hearing and reasonable sanction timelines when suspensions and expulsions are at issue.
- **10+ Day suspension-** compulsory public schools must conduct a hearing before suspending a student for more than 10 days.
- **Fewer than 10 Days-** notice and a “hearing” is requirement prior to student suspension.
- U.S. Supreme Court’s last word on due process in public schools

DUE PROCESS: CASE LAW APPLICATION

- What are the individual/ institutional interests and rights at issue?
- Do the interests or rights of either party significantly outweigh that of the other in any substantive areas?
- Is the individual's good name, reputation, honor or integrity at stake?
- Are there risks to curtailing the individual's interests?
- Do additional procedural processes reduce the chance of errors in the final determination and outcome?
- How burdensome is the procedural process for either party – is it reasonable?
- Do the proposed sanctions reasonably align with the weight of the proposed offense?
- Does the opportunity to be heard align coincide with the severity of the alleged conduct and its related sanction?

DUE PROCESS: WHEN & HOW MUCH?

Greater
Process
Owed

General Conduct
Charge

Academic disciplinary charge
(e.g., Academic dishonesty)

Less
Process
Owed

Lack of academic progress
dismissal (e.g., Academic
Performance)



DUE PROCESS: DISABILITY RIGHTS CONSIDERATIONS

- Advise at intake or charge
- Equity vs. equality
- Fundamental alteration of programming is not a required accommodation.
- Disability does not excuse misconduct
- Disability cannot be basis for discipline
- Individuals posing as a “direct threat” are not entitled to accommodation.



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

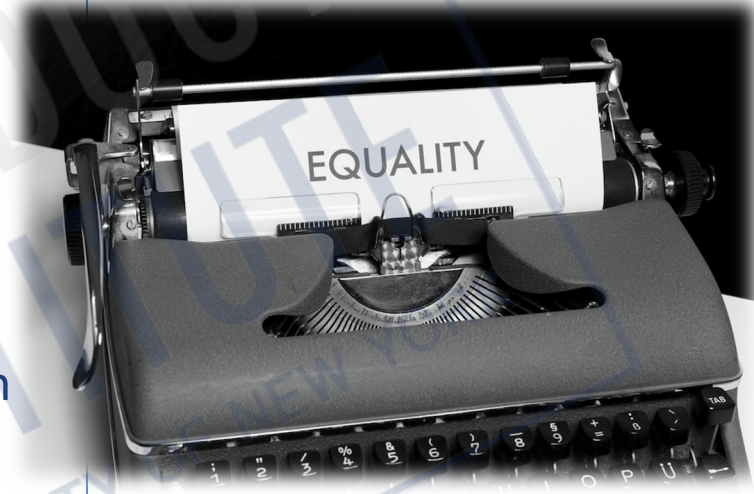
No person in the United States shall . . .

- 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.



TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

- Denying admission in an educational program based on sex.
- Disqualifying individuals from candidacy for opportunities on the basis of sex -
- Providing unequal access to resources based on sex
- Engaging in gender-based or sexual harassment, such as unwelcome comments, advances, etc.



TITLE IX DISCRIMINATION PROHIBITION ON THE BASIS OF SEX IN EDUCATIONAL PROGRAMS/ACTIVITIES

Title 34 OF THE CFR Part 106 Subpart D

**Sexual harassment = Sex
discrimination in educational
programs or activities**

**Effective implementation
of remedies for victims**

**Prompt & supportive
responses to alleged
victims**

**Due process protections for
alleged victims & alleged
perpetrators.**



**Prompt resolutions to
allegations**

**Predictable & fair grievance
processes**

TITLE IX REQUIREMENTS: GRIEVANCE PROCESS HIGHLIGHTS

- **Formal Complaint**
- **Jurisdiction** (only within the United States)
- **Educational Programs & Activities:** (on-campus/ off-campus)
 - Locations (including buildings owned or controlled by institutions and used by officially-recognized campus organizations), Events, or Circumstances
- **School must have substantial control over both:**
 - the *respondent* and
 - the *context* in which the sexual harassment occurs.
- **Actual Knowledge**
 - Notice to Title IX Coordinator or school official with authority to institute corrective measures on behalf of the school.
- **Supportive Measures, Removals/Suspensions, Informal Resolutions, Investigation, and Hearings**

TITLE IX REQUIREMENTS: RIGHTS & PROTECTIONS

- Right to an Advisor
- Right to have Access to Disability Accommodations
- Right to Equitable Treatment for Complainants AND Respondents
- Rights to Evidence Related to the Compliant
- Conflicts of Interest and Bias are prohibited
- Retaliation is Prohibited
- Confidentiality/ Privacy are Required with Caveats
- Right to Appeal under Specified Circumstances
 - *Procedural Irregularity*
 - *New evidence*
 - *Conflict of Interest or Bias*



TITLE IX: SEXUAL HARASSMENT SCOPE

- **Quid Pro Quo** : A school employee conditioning education benefits on participation in unwelcome sexual conduct; or
- **Unwelcome conduct** that *a reasonable person* would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- **Sexual assault** (as defined in the Clery Act), or
- **Dating violence, domestic violence, or stalking** (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))

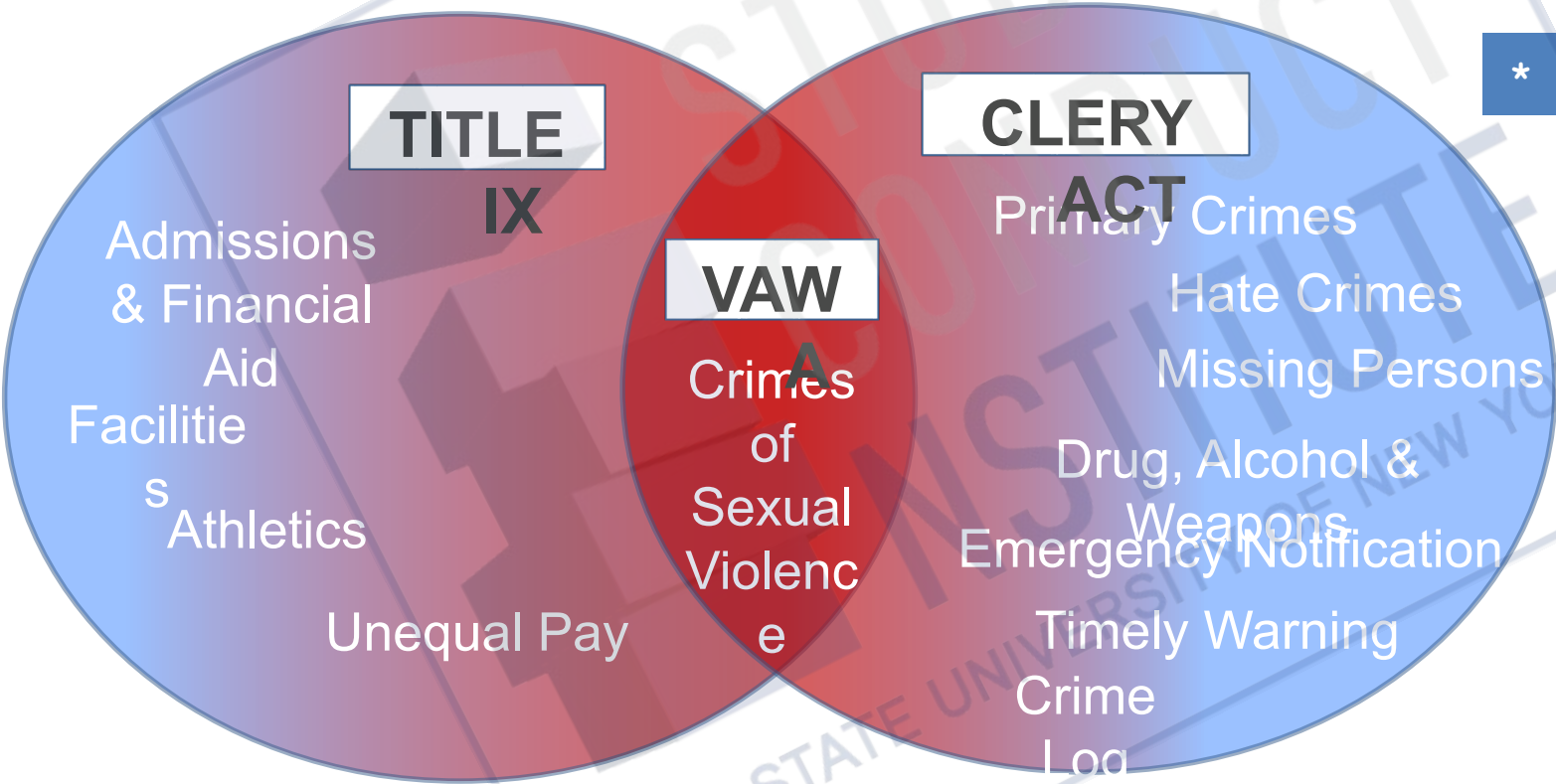
TITLE IX: SEXUAL HARASSMENT SCOPE

- **Sexual Assault**
- **Dating Violence**
- **Domestic Violence**
- **Stalking**
- **Sex offenses**- *any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.*
 - *Rape*
 - *Sodomy*
 - *Sexual assault with an object*
 - *Fondling*
 - *Incest*
 - *Statutory Rape*



THE VIOLENCE AGAINST WOMEN ACT (VAWA) & THE CLERY ACT

* State Law?



VIOLENCE AGAINST WOMEN ACT (VAWA) KEY REQUIREMENTS

- Disciplinary procedures must include a fair, prompt, and impartial investigation and resolution and be conducted by “officials” who receive “annual training”
- Must publish all available sanctions for Clery crimes
- Mandatory written notifications
- Access to an advisor, who may be an attorney
- Publish a statement of the standard of evidence



Reauthorized
in
March 2022

CLERY ACT / VAWA TRAINING MANDATE

Campus Investigators must be trained annually in:

- Conducting investigations of sexual violence
- Issues involved with domestic violence, dating violence, stalking or sexual assault
- Promoting victim safety and accountability
- Impartiality and avoiding “actual” and “perceived” conflicts of interest

DISCUSSION ROUNDUP

FOUNDATIONAL TOOLS



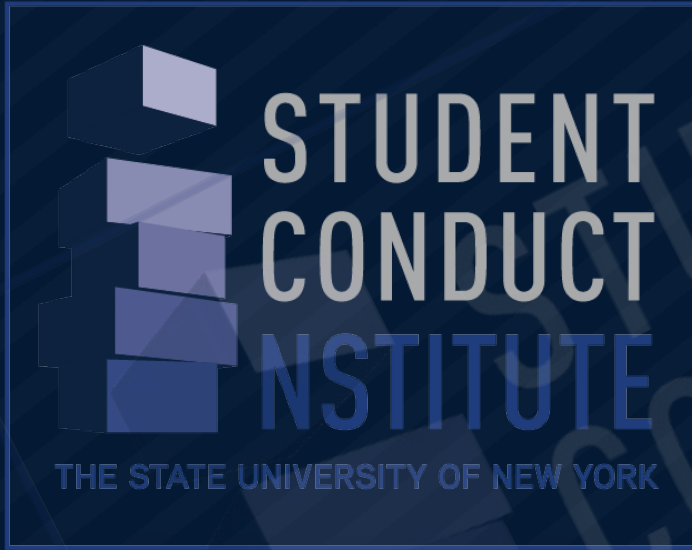
Neutrality : Always keep fairness, equity, and ethics at the forefront of all policy and decision making.

Competence: Know Your Policies and Codes- especially as related to student rights.

Consistency: Ensure policies and codes are maintained and routinely updated across facilities, departments, and programs.

Accuracy: Ensure that all forms of media, including websites, social media, etc. reflect your current institutional details, policies, procedures, etc.

Balance: Strategically balancing student rights and responsibilities, employee rights and responsibilities, and administrative efficiency is key to long-term success.



Mishka Woodley, J.D., LL.M.
Assistant Counsel
Office of General Counsel

SCI

FEDERAL LAWS & REGULATIONS
GOVERNING
TITLE IX INVESTIGATIONS

JURISDICTION

- Only within the United States
- Educational programs & activities: (on-campus/ off-campus)
 - Locations,
 - Events, or
 - Circumstances
- Over which the school exercised substantial control over both:
 - the respondent and
 - the context in which the sexual harassment occurs.



NOTE: Includes any building owned or controlled by institution and used by officially-recognized campus organization

NOTICE TO COLLEGES & UNIVERSITIES “SCHOOLS”

“**Actual knowledge**” is defined as:

Notice of sexual harassment or allegations of sexual harassment to:

- A school’s Title IX Coordinator or
- Any official of the school who has authority to institute corrective measures on behalf of the school



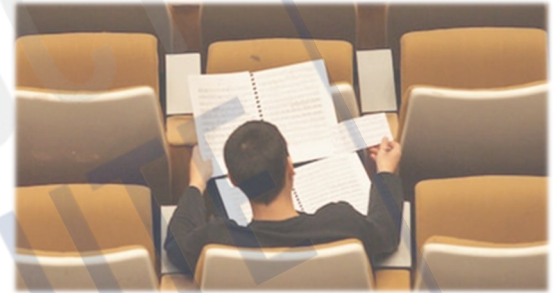
NOTE: “Notice” includes, but is not limited to, a report of sexual harassment to a Title IX Coordinator as described in the final rule

FORMAL COMPLAINTS

Who can file a formal complaint?

- A person who is currently participating in the education programs or activities of the institution
- A person who is attempting to participate in those programs or activities
- The Title IX Coordinator

Institutions **must** investigate all “formal complaints” filed with the Title IX Coordinator



TITLE IX: SEXUAL HARASSMENT SCOPE

- **Quid Pro Quo** : A school employee conditioning education benefits on participation in unwelcome sexual conduct; or
- **Unwelcome conduct** that *a reasonable person* would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- **Sexual assault** (as defined in the Clery Act), or
- **Dating violence, domestic violence, or stalking** (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))

SEXUAL HARASSMENT: KEY DEFINITIONS

“**Sexual assault**”- “an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

- 20 U.S.C. 1092(f)(6)(A)(v)

“**Stalking**” – “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.”

- 34 U.S.C. 12291(a)(30)

(Consult with Institutional Counsel Regarding Application of the FBI Uniform Crime Reporting System definitions for Rape, Sodomy, Sexual Assault w/ an object Fondling Incest and Statutory Rape)

SEXUAL HARASSMENT: KEY DEFINITIONS

“Dating violence”-

- Violence committed by a person who is or have been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such relationship shall be determined by on consideration of the following factors (i) the length of the relationship, (ii) the type or relationship, (iii) the frequency of interaction between the persons involved in the relationship.”
- 34 U.S.C. 12291(a)(11) see also 12291(a)(10)

SEXUAL HARASSMENT: KEY DEFINITIONS

“Domestic violence”- “Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

- 34 U.S.C. 12291(a)(8)

INTAKE PROCESS AND SUPPORTIVE MEASURES

Title IX Coordinator is responsible for “coordinating the effective implementation of supportive measures,” even where no formal complaint is filed. 34 C.F.R. § 106.30(a).

Examples of **supportive measures** (See, 85 Fed. Reg. 30026, 30401)

- ✓ counseling
- ✓ extensions of deadlines or other course-related adjustments
- ✓ modifications of work or class schedules and locations
- ✓ Campus escort services
- ✓ changes in housing locations
- ✓ Mutual restrictions on contact between parties
- ✓ increased security & monitoring of areas of the campus



EMERGENCY REMOVALS/ INTERIM SUSPENSIONS

- Emergency Removal may be used where:
 - Person poses threat of **immediate physical harm**
 - Threat arises from allegations of sexual harassment
 - Depends on individualized safety and risk assessment
- Must provide opportunity for “immediate” opportunity to challenge the removal (need not be a formal hearing)

NOTE: Interim suspensions are prohibited for Title IX student-respondents



MANDATORY AND DISCRETIONARY DISMISSAL

- Institutions **must dismiss** formal complaints that don't fall within the statutory criteria for the Title IX grievance process.
- Institutions **may dismiss** complaints that do meet the criteria if:
 - A complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any allegations in it;
 - The respondent is not enrolled/ employed by the institution; or,
 - If specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

Note: Institution may still investigate through a non-Title IX process

TITLE IX INVESTIGATION: PROMPT PROCESS

All time frames must be published based on a specific number of days with room for “good cause” delay.

Rules (and case law) balance prompt resolution and adequate time to prepare and respond to charges.

Courts have identified the following delays as unjustified:

- *Year-long delay in finishing the investigation*
- *Attributable to winter/summer break*
- *Attributable to athletics events/eligibility*
- *Institutional operational/admin error*
- *Physical harm to respondent/complainant*



TITLE IX INVESTIGATION: IMPARTIAL PROCESS

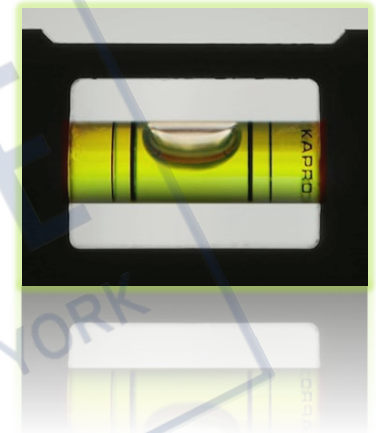
Must collect *exculpatory* and *inculpatory* evidence

- Exculpatory = *increases probability of a finding of non-responsibility/ non-liability*
- Inculpatory = *increases probability of a finding of responsibility/ liability*

Must follow code

Cannot have bias or conflict of interest

REMINDER: *Investigations and findings of innocence and guilt are not applicable to Title IX grievances. Title IX procedures are administrative processes and are not civil or criminal in nature!*



INVESTIGATIVE PROCESS

Evidence Collection

Interviews of parties & witnesses must take place after Notice of Allegations

Both inculpatory & exculpatory evidence must be collected

Evidence will be directly related to the allegations

The collection process may include evidence that institution does not intend to rely on

Evidence Sharing

Parties may review evidence with advisors present

May set reasonable rules around evidentiary review and sharing

Redaction of “irrelevant” evidence

- Mandatory inspection process with 10-day min. review period

Investigative Report

- Summarizes relevant evidence directly related to allegations

Cannot make determination regarding responsibility- sole role of the hearing panel

Parties must have opportunity to review at least 10 days before hearing

NOTICE REQUIREMENTS: SUBSTANCE

- Allegations of sexual harassment
- Identities of parties, if known, including the complainant's name
- Date, time, and location of the incident, if known
- Parties' basic procedural rights
- Presumption of non-responsibility

NOTICE REQUIREMENTS: ADVISORY SUPPORT

- Notice must inform parties of right to advisor, who may be attorney
- School does not need to pay for attorney
- Reasonable restrictions ok...
- Unless they conflict with cross-examination role

LIVE HEARING PROCESS FUNDAMENTALS

All parties, advisors, witnesses, and decision-makers must be present at the same time either physically or remotely via secure technology.

- Decision-makers

- Must be able to see and hear parties and witnesses (either physically or via secure technology).
- Ask questions of the parties and witnesses.
- Decide whether or not question is relevant.

- Advisors

- ask relevant cross-examination questions. (*Does the question make a fact at issue more or less likely to be true?*)

- **“No Adverse Inference” Rule –**

- No inference of responsibility from decision not to testify



LIVE HEARING PROCESS FUNDAMENTALS

CROSS-EXAMINATION

The opportunity for an advisor to cross-examine parties and witnesses is a Title IX mandate

The Title IX “Suppression Rule” has been VACATED

- *Victims Rights Law Center v. Cardona* (D. Mass. 2021)
 - Check out SCItations Blog for more
- Office of Civil Rights (OCR) Letter, August 24, 2021
 - <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>
- OCR Q&A Update June 28, 2022
 - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

LIVE HEARING PROCESS EXCLUSIONS

Specific exclusions governing Title IX hearings:

- **“Rape Shield”** (with two exceptions). 34 C.F.R. § 106.45(6)(i).
 - Offered to prove someone else committed alleged conduct
 - Offered to prove consent
- **Privileged information.** 34 C.F.R. § 106.45(1)(x).
- **Undisclosed medical records.** See, 85 Fed. Reg. 30026, 30294
- **Duplicative questions.** See, 85 Fed. Reg. at 30331.



RESPONSIBILITY DETERMINATION PROCESS

- Identify the **allegations** potentially constituting sexual harassment
- Describe the **procedural steps** taken.
- Identify **findings of fact** supporting the determination.
- Identify which **section of the Code of Conduct** respondent has/has not violated.
- **For each allegation**, provide statement of and rationale.
 - Responsibility determination
 - Disciplinary sanctions
 - Remedies
- Describe the recipient's **appeal** procedures

TITLE IX: CONFLICTS & BIAS

Prohibited

Conflicts of Interest and Bias

- For or against complainants and respondents generally
- For or against the specific parties
- Overlapping investigator, decision-maker, and appeals roles

Not a *per se* conflict or bias

- Gender, research interests, work history
- Advocacy background
- Title IX Coordinator serving as Title IX Investigator
- Title IX Coordinator serving as facilitator in informal resolution process

TITLE IX: CONFLICTS & BIAS

“In the intimate setting of a college or university, prior contact between the participants is likely and does not per se indicate bias or partiality.”

Gorman v. Univ. of Rhode Island,
837 F.2d 7, 15 (1st Cir. 1988).

ACTUAL VS. PERCEPTION OF BIAS

Actual bias is a high *legal* standard, but *perception* of bias is in the eyes of the parties to the process and should be avoided.

- *Liability* arises from:
 - truly lop-sided investigations and adjudications, or
 - statements of investigator or panelist showing presumption of responsibility based on sex stereotypes, or
 - misapplying trauma-informed practice to explain away all inconsistencies in complainant's statements



APPEALS PROCESS

Three (3) mandated grounds for appeal:

1. **Procedural irregularity** that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
2. **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;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a **conflict of interest or bias** for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

RETALIATION PROHIBITION

Title IX prohibits retaliation against people who seek to assert their Title IX rights. (Section 106.71):

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

ZERO TOLERANCE!

- ✗ Intimidation
- ✗ Threats
- ✗ Coercion
- ✗ Discrimination
- ✗ Charges for a code of conduct violation for the purpose of interfering with any right or privilege secured by Title IX

SEXUAL HARASSMENT: ADMINISTRATION/ STUDENT

- Review your campus Title IX grievance policy and become very familiar with its associated definitions for sexual harassment.
- Student should know who the Title IX Coordinator is on campus
- Help students identify / clarify your campus policies
- Work with student groups that focus in this area
- Proactively encourage and cultivate a college environment of safety and for all



THE LEGAL FOUNDATIONS OF TITLE IX DUE PROCESS:

U.S. Department of Education Laws & Policy Page-
<https://www2.ed.gov/policy/>

- ~~○ 1997/2001 Sexual Harassment Guidance~~
- ~~○ April 2011 Dear Colleague Letter and April 2014 Q&A~~
- ~~○ September 2017 Dear Colleague Letter~~
- November 2018 Notice of Proposed Rulemaking (“NPRM”)
- **May 19, 2020: Title IX Final Rules (effective August 14, 2020)**
- **April 6, 2021: Dear Stakeholders Letter**
- **July 2021 Q&A + August 24, 2021 Letter to Stakeholders**
 - **Q&A Updated June 28, 2022**

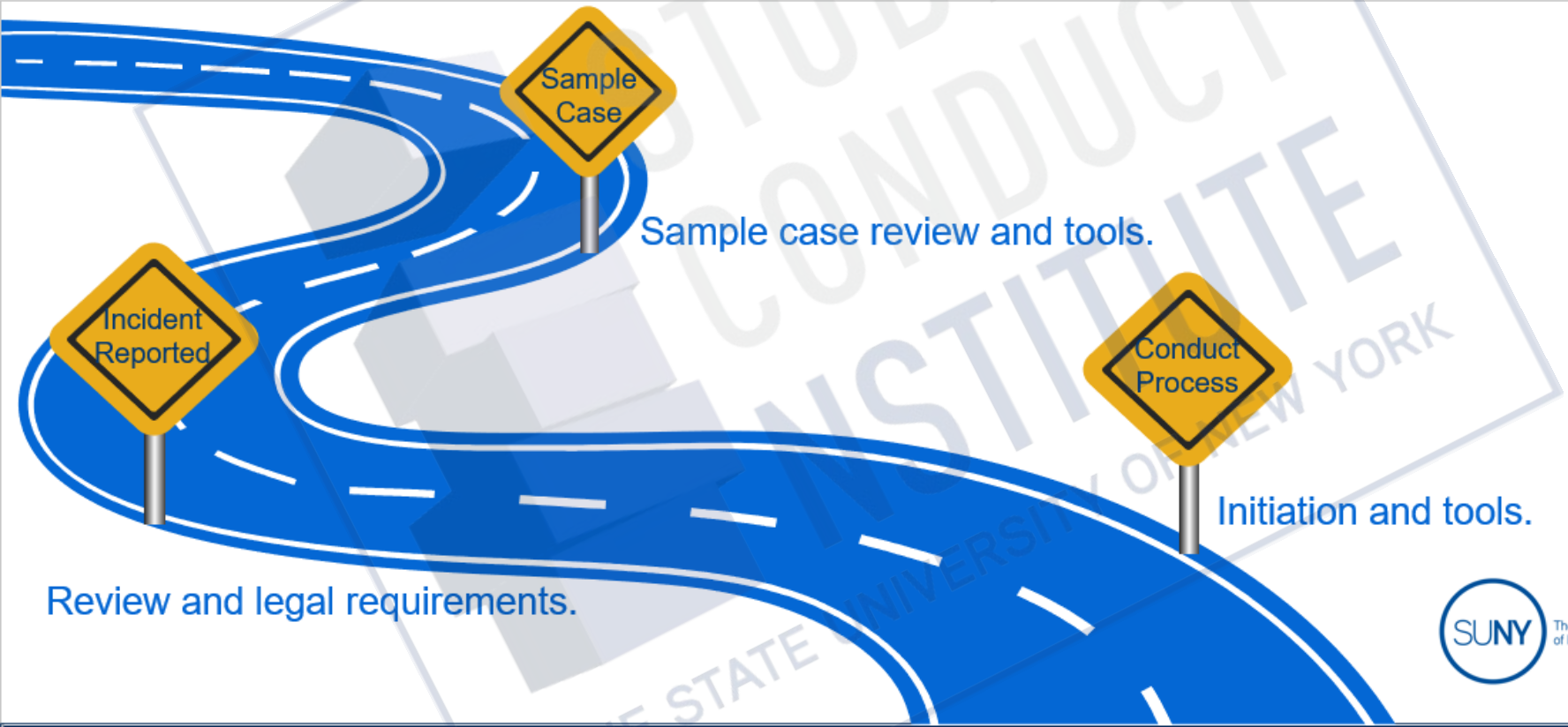


SEXUAL HARASSMENT: 2022 TITLE IX NPRM – HIGHLIGHT

- The definition of “sexual harassment” changes to “sex-based harassment”
- “Sex discrimination” includes “sex-based harassment”
- The formal complaint requirement is removed.
- The geographic coverage is expanded
- The Title IX Coordinator’s role is expanded
- The live hearing requirement is relaxed
- Removes the “deliberate indifference standard”
- Expands training requirements



WHAT'S NEXT?



QUESTIONS




suny.edu

system.suny.edu/sci/news

system.suny.edu/sci/tix2020

system.suny.edu/sci/tixnprm2020



**STUDENT
CONDUCT
INSTITUTE**

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York