

Title IX Coordinator Training

The TIX Team

- CCSNH Title IX Coordinator
- College Title IX Coordinator
- Deputy Coordinators if applicable
- Investigators
- Decision Makers
- Advisors
- Hearing Facilitators

Title IX Coordinator Roles & Responsibilities

- Create & implement policy & procedures
- Point person for reports, complaints, & intakes
- Contact for government inquiries
- Oversight of prompt & equitable grievance procedures
- Coordinating employee grievance processes
- Coordinate investigations
- Ensure compliance with final sanctions & remedies
- General Title IX compliance oversight
- Training oversight

Investigator Role & Responsibilities

- Conduct reliable, prompt, fair, and impartial investigations
- Work with TIXC to develop investigation strategy
- Identify and interview parties and witnesses
- Identify, organize, and compile relevant information
- Maintain accurate and thorough investigation records and notes
- Collect evidence that is included in report
- Provide notices to the parties in conjunction with TIXC
- Create an investigation report that fairly summarizes relevant evidence

Decision Maker Role & Responsibilities

- Determine whether institution's policy has been violated based on preponderance of evidence
- Complete an assessment of the credibility of the parties and witnesses
- Decisions must be based on the specific policy alleged to have been violated
- Decisions must be impartial and free of substantive bias
- Determine appropriate sanctions/discipline when a policy violation is found
- Draft a written determination that outlines the rationale for the finding(s)

Appeal Decision Maker Role & Responsibilities

- Make determination on a party's request for an appeal
- Review written submissions from parties
- May review investigation report or other evidence gathered during investigation/hearing
- May need to speak with Investigator, Decision-maker, parties, or witnesses
- Review of case should be limited to the grounds noted in the appeal request
- Draft a written determination that outlines the rationale for the outcome

Advisor Role & Responsibilities

- Parties have the right to have an advisor of their choice to assist them throughout the process, to include attending any meetings and interviews
- No mandate to provide an advisor to the parties at the outset of the process
- If party does not have an advisor at the hearing, the institution must provide an advisor to conduct the cross-examination on behalf of the party during the live hearing
- Must be provided at no cost to the party
- No mandate to train advisors however, it is advisable to do so for all institution-appointed advisors (best practice)

TIX Team Training Requirements

- Robust training mandates
 - Training materials cannot include sex stereotypes
 - Should promote impartiality
- Should be updated/repeated annually to align with best practices
- Training materials must be maintained for seven years and posted publicly on website
- The most recent materials used to train the Title IX Team should be posted

TIX Team Training Requirements Cont.

- Training must include:
 - Definition of sexual harassment - Scope of the institution's education program or activity - How to conduct an investigation including hearings, appeals, and informal resolution processes - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias - Use of any technology to be used at a live hearing - Issues of relevance for both questions and evidence, including when questions and evidence about the Complainant's prior sexual behavior is not relevant - Issues of relevance regarding the creation of an investigation report that fairly summarizes relevant evidence
- OCR sets the minimum training requirements, best practices are that institutions cover a broader range of topics

Title IX Legal Landscape

- 20 U.S.C. § 1681 & 34 C.F.R. Part 106 (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 educational program or activity receiving federal financial assistance.”
- Key Related Issues
 - Sex-Based Discrimination - Sexual Harassment - Quid Pro Quo - Hostile Environment - Sexual Assault - Domestic Violence - Dating Violence – Stalking – Retaliation - Program Equity - Recruitment, Admissions, & Access – Pregnancy – Athletics - Employment, Recruitment, & Hiring - Extra-curricular activities – Housing - Access to Course Offerings - Salaries & Benefits – Financial Assistance – Facilities – Funding - Sex, Sexual Orientation, & Gender Identity

Title IX Legal Landscape - Cases

- FRANKLIN V. GWINNETT PUBLIC SCHOOLS 503 U.S. 60 (1992)
 - Supreme Court held sexual harassment constitutes sex discrimination under Title IX
 - Private right for recovery of monetary damages under Title IX
- GEBSER V. LAGO VISTA INDEP. SCHOOL 524 U.S. 274 (1998)
 - The Supreme Court ruled individuals cannot recover monetary damages against the school unless: 1. An official of the educational institution must have had **“actual notice”** of harassment; 2. The official must have authority to “institute corrective measures” to resolve the harassment problem; AND 3. The official must have “failed to adequately respond” to the harassment and, in failing to respond, must have acted with **“deliberate indifference.”**
 - Harassment must be **“severe, pervasive, and objectively offensive”**

Essential Compliance

- Once a mandatory reporter has actual notice of sexual harassment/sexual misconduct, the institution must:
 - Take immediate and appropriate steps to investigate what occurred
 - The obligation to respond is absolute, even if just an initial assessment is completed
 - Take prompt and effective action to **stop** the harassment, **prevent** the recurrence, & **remedy** the effects
 - This is regardless of whether the Complainant makes a formal complaint or asks the school to take action

Essential Compliance Cont.

- **INVESTIGATIONS:** Thorough, Reliable, Impartial
- **PROCESS:** Prompt, Fair, Equitable
- **REMEDIES:** Act Reasonably to Stop Discrimination/Prevent Reoccurrence, Act Equitably to Remedy

OCR & Title IX

- The Office for Civil Rights (OCR) under the U.S. Department of Education is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment
- OCR administratively enforces Title IX by:
 - Conducting investigations of complaints filed by an individual, a representative, or a group
 - Engaging in compliance reviews

Civil Lawsuits vs. Administrative Action

- Lawsuits
 - Filed in federal court
 - Monetary damages and/or injunctions
 - Requires actual notice & deliberate indifference
- Administrative Action
 - Initiated by the OCR
 - Voluntary compliance or findings
 - Requires actual OR constructive notice (“knew or should have known”)

Key OCR Guidance

- Rescinded but helpful:
 - 2001 OCR Revised Sexual Harassment Guidance
 - 2011 Dear Colleague Letter (DCL)
 - 2014 Q&A on Title IX and Sexual Violence
 - 2015 DCL on the Role of Title IX Coordinators; TIX Resource Guide
 - 2016 DCL on Transgender Students
 - 2017 Q&A on Campus Sexual Misconduct

Key OCR Guidance Cont.

- In Effect
 - 2003 DCL on Title IX and Free Speech
 - 2010 DCL on Harassment and Bullying
 - 2013 DCL on Pregnant and Parenting Students
 - 2020 Amendments to Title IX Regulations
 - 2020 Q&A on Final Title IX Rule
 - 2021 Q&A on Title IX and Single Sex Scholarships, Clubs, and other Programs

Violence Against Women Act & Clery

- VAWA Section 304 created extensive new policy, procedure, training, education, and prevention requirements for sexual assault, stalking, dating violence, & domestic violence
- Written information to victims regarding on and off campus resources, remedies, interim measures, and resolution options
- Listing of policy and procedural elements & key training elements/requirements
- Required educational programs and campaigns
- Prohibits retaliation

When Does Title IX Apply?

- Title IX applies and jurisdiction is required when the recipient has:
 - Control over the harasser (Respondent) AND control over the context of the harassment
- “Education program or activity” means:
 - locations, events, or circumstances under substantial control
 - any building owned or controlled by an officially recognized student organization

When Does Title IX Apply Cont.

- Personal Jurisdiction
 - At the time of filing a formal complaint, Complainant must be participating in or attempting to participate in the institution's education program or activity.
 - OCR adopts a broad definition of what could constitute “attempting to participate”
 - When is a “student” a “student”?— should be designated in policy
 - If Respondent is not affiliated with the institution in any way, the institution lacks authority to take disciplinary action
 - (Employee of an outside company (e.g., vendor, construction worker, etc.); guest or invitee; prospective student; former student; former employee; student from another institution)

When Does Title IX Apply Cont.

- Covered Programs
 - All programs using facilities of the funding institution
- Geographic Jurisdiction
 - TIX cases must be dismissed (under TIX) if did not occur against a person in the U.S.
 - Could potentially apply if property is owned/controlled by the school OR is being used for a program or sponsored event (best to check with staff attorney)
 - The definition of sexual harassment arguably covers the in program effects of out-of-program misconduct (though not the misconduct itself)

When Does Title IX Apply Cont.

- **The institution takes discretionary jurisdiction over incidents off-campus or on non-school property, but under other policies, not Title IX but outlines in Process B**

When Does Title IX Apply Cont.

- Subject Matter
 - Sexual Harassment as defined in the 2020 Title IX regulations
 - Sex/Gender discrimination
 - includes sexual orientation and gender identity
 - Any other policy violation that is sex/gender-based that causes a discriminatory effect (e.g., hazing, bullying, arson, vandalism, theft, etc.)
 - Pregnant and parenting discrimination
 - Retaliation

When Does Title IX Apply Cont.

- Limitations
 - Actions/conduct/speech protected by academic freedom
 - Pedagogically appropriate to the subject matter of course in question
 - Actions/conduct/speech protected by the First Amendment
 - Merely offensive conduct cannot be disciplined at a public school
- **Must be severe, pervasive, and objectively offensive**

When Does Title IX Apply Cont.

- Limitations
 - Behavior could still violate and be addressed under:
 - Institutional harassment/discrimination policies
 - Student handbook/conduct policies
 - Technology/acceptable use policies
 - Employee handbook/conduct policies
 - Institution should still take steps to provide support and resources to Complainant and campus community even if conduct is not under jurisdiction or covered under policy
 - Take other action (trespass the person, academic supports, etc.)

Creating & Implementing Policy/Procedure

- Policies
 - Should clearly define expected & prohibited conduct
 - Should be regularly updated, revised, and assessed
- Procedures/Process
 - Should clearly direct parties to appropriate resources
 - Should provide for the equitable remedying of complaints

Creating & Implementing Policy/Procedure

- TIXC must be an integral part of the policy/procedure development and review process
- Ensure legal accuracy
 - Beware of multiple conflicting or varying versions of published policy
 - Internally maintain copies of old policies/procedures for reference in the event of a lawsuit, etc.
- Students and employees should know policy exists, how it works, and how to file a complaint
 - Ensure that policy and procedures are published and posted widely – RSA 188:H requirement
 - Must be included on website and all handbooks/catalogs given to applicants for admission and employment, students, employees, and unions

Required Title IX Definitions

- **Sexual Harassment** is conduct on the basis of sex meeting one of the following conditions:
 - An employee of the institution conditioning the provision of an aid, benefit, or service of the Recipient on an individual's participation in unwelcome sexual conduct;
 - 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 Recipient's education program or activity; or
- “Unwelcomeness” is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent)
- Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances

Required Title IX Definitions

- **“Severe”**
 - Physical conduct is more likely to be severe
 - Accompanied by threats or violence
 - Consider the circumstances (e.g., the ability for Complainant to remove themselves from the harassment)
- **“Pervasive”**
 - Widespread
 - Occurring in public spaces is more likely to be pervasive
 - Frequency of conduct is often a variable in assessing look to intensity and duration
 - Unreasonable interference with school or job

Required Title IX Definitions

- **“Objectively Offensive”**
 - Factors: Age, relationship of parties, number of persons involved, frequency, severity, physical threat, humiliation, intimidation, ridicule, abusive
- Must consider the totality of circumstances
 - Whether conduct unreasonably interfered with complainant's education/work performance
 - Effect of complainants mental/emotional state
 - Whether the speech or conduct is covered under the 1st Amendment

Required Title IX Definitions

- **Sexual Assault** is any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.
 - **Rape** - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - **Sodomy** - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Required Title IX Definitions

- **Sexual Assault with an Object** - To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Fondling** - The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Required Title IX Definitions

- **Incest** - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New Hampshire law.
- **Statutory Rape** - Nonforcible sexual intercourse with a person who is under the statutory age of consent of sixteen in New Hampshire

Required Title IX Definitions

- **Dating Violence** is 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 shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - For the purposes of this definition, 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.

Required Title IX Definitions

- **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, 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
 - 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.

Required Title IX Definitions

- **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
 - The TIX regulations insist this definition not be interpreted to violate First Amendment.

Required Title IX Definitions

- **Retaliation:** Recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Required Title IX Definitions

- Retaliation Cont.
 - The institution must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by FERPA
 - **Specific circumstances: the exercise of rights protected under the First Amendment does not constitute retaliation or charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. (Just because a respondent was found not responsible does not mean the complainant made a false statement and/or had bad faith)

Sexual Misconduct Definitions

- **Sexual Exploitation** occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.
 - Examples: Invasion of sexual privacy - Non-consensual digital, video, or audio recording of nudity or sexual activity and/or unauthorized sharing or distribution - engaging in voyeurism - going beyond the boundaries of consent (such as letting a friend hide in the closet to watch you having consensual sex) - knowingly exposing someone to or transmitting an STI - intentionally or recklessly exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals – sexually based bullying may also be a form of sexual exploitation

Sexual Misconduct Definitions

- **Sex-Based Discrimination:** Different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.
- **Disparate Treatment Discrimination:** Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
 - Excludes a person from participation in;
 - Denies a person benefits of; or
 - Otherwise adversely affects a term of condition of a person's participation in a College program or activity.
- **Disparate Impact Discrimination:** Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in disproportionate impact on the basis of sex that:
 - Excluded a person from participation in;
 - Denies a person benefits of; or
 - Otherwise adversely affects a term of condition of a person's participation in a College program or activity.

Consent Construct

- Informed, knowing, and voluntary (freely given)
- Active (not passive)
- Creates mutually understandable permission regarding the conditions of sexual activity
- No means no, but nothing also means no. Silence and passivity do not equal consent.
 - I like to use the stoplight analogy – yellow also means no consent
- Given immediately prior to or contemporaneously with the sexual or intimate activity
- Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
- Cannot be obtained by use of physical force, threats, intimidation, or coercion
- Cannot be given by someone known to be or who should be known to be mentally or physically incapacitated

3-Pronged Approach to Evaluating Consent

1. Was force used by the Respondent to obtain intimate access?
2. Was the Complainant incapacitated? If so, did the Respondent know or should have known?
 - Respondent didn't see Complainant drinking but Complainant is displaying clear signs of having consumed alcohol - stumbling, mumbling, vomiting, slipping in & out of consciousness etc.
 - Intoxication of the Respondent cannot be used as a reason they did not know the Complainant was incapacitated or defend unwelcome behavior/force
3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual/imitate action that took place?
 - Appropriate “level ups”
 - Clear non-verbal signals that show lack of consent
 - What a “reasonable person” could have interpreted
 - Unenthusiastic vs. non-consensual

1st Amendment Considerations

- Consider Location – open forum/limited open forum/closed forum
- Factor academic freedom
- Incitement of disruption/breach of peace, defamation, true threat, & obscenities are unprotected speech
- Fine balance with hate speech – could be harassment if severe, pervasive, & objectively offensive

The Process & Procedures

- Incident
 - Complaint or notice to TIXC
 - Intake with Complainant
- Initial Assessment
 - Jurisdiction? Policy violation implicated? Informal or formal resolution?
 - Informal process would conclude (though could be reopened at later date) after steps taken & documented (educational conversation, NCO, supportive measures, etc.)
- Formal Investigation & Investigative Report
 - Notice to parties
 - Respondent meeting to review rights
 - Appointing investigator & scheduling interviews with parties & witnesses
 - Assisting in evidence collection
 - Report drafted & reviewed by TIXC/parties & opportunity for party comments
 - Report finalized

The Process & Procedures

- Hearing & Letter of Decision
 - Hearing if under TIX
 - Decision Maker appointed
 - Letter of Decision written with findings of responsible/not responsible & sanctions assigned
- Appeal
 - If filed by either party, appoint appeal decision maker to review appeal request
 - Write letter of appeal decision (decision stands, vacate, remand, etc.)

Promptness

- Reasonably prompt timeframes for the conclusion of the process
- Temporary delays for “good cause” and with written notice of the delay to parties
 - Complexity of the investigation
 - Concurrent law enforcement investigation with time-dependent release of evidence (1-to-2-week delay at most)
 - Delays for administrative needs are insufficient
- Institutions are required to make a “good faith effort” to resolve allegations promptly
- Some recommend a 60-day aim, have found it often takes months to fully resolve
 - Will update policy to ensure school breaks are not counted in a timeframe
- The grievance process must be conducted according to the timelines in the institutions policy (planning to update)
 - Document all delays/extension and rationale(unresponsive parties, holidays, etc)
 - Periodically update the parties throughout the process

Equity Requirements

- Equity – acknowledges systematic barriers with targeted fixes
- Various forms of notice — policies and procedures, investigation, hearing, outcome (finding and sanction), etc.
- Notification of outcomes to parties permitted by FERPA and also required by Clery (outcome and sanctions)
 - Will be synchronizing with formats/templates/forms for all TIX offices across the system
- Opportunities to present witnesses and provide evidence during investigation
- *Ability to discuss the allegations without restriction*
 - Often a misconception & something parties might request – we do not put “gag orders” in place
- Ability to inspect and review evidence and investigation report
- Provide the same rights for an Advisor
- All parties entitled to appeal

Equity Requirements

- Additionally required by Clery & VAWA to “provide a prompt, fair, and impartial process from the initial investigation to the final result.”
- BOTH parties are entitled to the same opportunities to have a support person/advisor of their choice at any proceeding or related meeting.
- Both parties must be simultaneously informed in writing of:
 - The outcome that arises from an allegation
 - Outcome: Finding, sanction, and rationale
 - The institution’s procedures for appeal
 - Any change to the results that occurs prior to the time that such results become final
 - When such results become final

Equity Requirements

- Be sure to not put into place contact restrictions that are too broad or punitive
 - We cannot institute anything constituting a ‘sanction’ without an investigation & finding
 - This includes removing a respondent from a class/dorm unless an emergency threat of violence
 - NCOs are available, students can seek RFAs if desired
 - We do NOT enforce, they can call the police
- TIXC will also interact with other policies such as Faculty & Employee grievance procedures, Student conduct/discipline process, Faculty & Employee discipline processes, Academic appeal process, Athletic department policies/processes and “team rules”, etc.

Reports & Intakes

- TIXC is the designated person to conduct intakes
 - The Complainant may reach out to you or you reach out to them if they fill out a complaint form/a third party reports
- This outreach should include a summary script & attached rights form, advisor form, advisor list, & resource packet (will be included in our shared drive)
- Intakes will consist of taking the report from a student, discussing supportive measures, & discussing potential paths forward/answering investigative questions
 - Don't make promises in the intake – always best to discuss/consider paths forward based on Complainants wishes & then email an action plan
 - Always allow space & time for Complainants to process/make decisions – no need to make a decision in your office that day. Offer to let them take time to think about it & you will check in in a few days
 - Be sure to ask enough questions to properly assess for charging, but not too many
 - This limits the amount of times they will need to tell their full story – the investigator will need an extremely detailed account
 - Make sure you get names with proper spelling if the student is willing to provide!
 - Take detailed intake notes – these will be kept in Maxient & shared with the investigator

Reports & Intakes cont.

- After the Complainant shares what has happened, discuss options to stop the alleged conduct/harassment & discuss supportive measures
 - Educational conversations, NCOs, counseling center connection, academic support connection, connection with local law enforcement, connection with local DV/SV resources, alternate housing, alternate work study, no trespass orders
- Briefly review the investigative process
 - This is a lot of information & can be overwhelming, so just hit the highlights
 - Ask if they have any questions but also let them know they can email you at any time with additional questions as they come up
- Let the Complainant know you will follow-up via email with an action plan
 - Always outline in writing (and include the necessary documentation if you haven't already) as this minimizes legal risk
- “Actual Notice” is not defined by the intake date, but when ANY mandatory reporter learns of the conduct
 - Should report IMMEDIATELY
 - Mandatory reporter will be designated in our policy update as any employee of the institutions & students with leadership positions
 - No confidentiality options – must report to TIXC
- Clery Reporting obligations
 - Must report any Clery crime categories to your designated campus Clery officer
 - What, Where, When – no names

Initial Assessment

- Discuss with Systems TIXC to determine if jurisdiction exists & what action plan would make the most sense moving forward
 - Confidentiality requests – the student may only want to report but take no action at this time (always try to accommodate if possible)
 - Informal resolution vs. formal resolution
 - Educational conversations
 - Let Complainants know that while you can keep their name anonymous, there is no guarantee Respondent won't figure out who made the report (might not necessarily if comments were made in a big group, but if one on one likely)
 - Bring in respondent to office – start by letting them know that at this time this is not a disciplinary conversation
 - Outline the alleged behavior & let them know that if it continues that there may be a TIX investigation launched
 - They may try to argue or defend themselves – remind them this is not disciplinary & if you receive no additional reports then the issue is closed

Initial Assessment

- No Contact Orders
 - Communication based, NOT distance based (can request RFA in courts if needed)
 - Not disciplinary – do not show up on record
 - Should be sent to residence director & public safety
- Academic accommodations
 - Long term should be connected to academic support
 - Short term assignment/class excusals can be made by TIXC
 - Email template to professors will be in shared drive
- Decide if a formal complaint needs to be made
 - Remember reports are different than formal complaints

Formal Complaint

- PDF will be included in shared drive
- Fill out as much as you can
 - Names with correct spelling are necessary
- A short blurb outlining the alleged harassment
 - This will be more refined in the NOAI
- Ask the Complainant to electronically sign & send back to you
- If TIXC launches, they will sign formal complaint
 - Look for Pattern, Predation, Threat, Violence/Weapon, Minors

Notice of Allegations & Investigation

- Complainant & Respondent will receive via email – this will be respondents notice of an investigation
 - Template for email will be included in drive
 - In respondent email include resource packet, advisor list, advisor form, & rights form
- Template will be found in drive – need to fill in allegations, charges, & respondent meeting date/time
 - Allegation wording needs to be very specific & careful
 - Need to include specifics, names, dates, & times
- Must contain names & exact allegations – needed so Respondent can respond
- Meeting with Respondent
 - Review allegations, discuss investigative process & rights, & answer any questions

Informal Resolutions

- Both parties can agree in writing to informal resolution after formal complaint & NOAI are filed
 - Unavailable for employee on student harassment
 - NOT appropriate for high level offenses
 - Either party can revoke at any time prior to completion
- Can include required education, acceptance of responsibility, and/or restorative justice
 - Required counseling, education courses, letter of apology, or facilitated restorative justice conversation

Formal Resolutions - Investigations

- TIXC is responsible for outlining extent of investigation, appointing investigator (template in shared drive), coordinating with investigator, timeline compliance, facilitating all notice to parties, & assuring smooth investigation generally
- Regular communication with investigator to identify witnesses, need of 2nd interview, etc.
- Ensure recording/transcript of investigator interviews
- Review investigative report
- May use external investigators for high level cases
 - Can be helpful for impartiality to have an external entity
 - Not best practice to use public safety

Investigation Timeline

- Appointment of Investigator – Investigator reaches out to set up virtual interviews – Investigator meets with parties & witnesses (records & transcribes) – Writes draft report including interview & all evidence gathered – TIXC sends draft report to parties – Parties have 10 days to submit comments – Investigator/TIXC review comments to see if any additional evidence/interviews are needed – Final report (including comments) completed & sent to parties
 - Investigator does not draw conclusions from report, simply lays out interviews & evidence

Investigations cont.

- Both parties have the right to present witnesses, present evidence, discuss allegations, be accompanied by advisor and/or support person, receive written notice of process, & inspect/review all evidence in investigative report
- Report will be made available on Maxient to prevent downloads & links can be shut off after designated time
- ALL relevant evidence must be included/considered
 - Surveillance footage, emails, snapchats, texts, social media posts

Decision Makers

- The TIXC cannot be decision maker but will coordinate closely
- Appointed in writing to parties (template email in shared drive)
- Decision maker will participate in hearings (TIXC can be hearing facilitator)
- Will use **preponderance of evidence** standard
 - Is it more likely than not – think of a tipped scale
 - Be sure to explain this standard to both parties in initial intakes/meetings

Letters of Decision

- Decision Maker will assess credibility
 - Assessing if a party gives different accounts over the course of the investigation or if it does not match that of witnesses
 - Memory errors, evasion, or misleading do not necessarily destroy credibility but can
 - Trauma informed assessment
 - Should refrain from focusing on irrelevant inaccuracies
- Letter should address each allegation & institutional policy violation alleged & concretely cite reasons for this conclusion
- Assign appropriate sanctioning

Sanctions

- Determine what is appropriate with decision maker & TIXC (and HR if employee)
- Sanctions must be reasonable
 - Student Sanctions: Expulsion, suspension, disciplinary probation, required educational courses
 - Employee Sanctions: Termination, suspension, probation, performance improvement plan, educational courses
- TIXC ensures sanctions are implemented
 - Often working with Registrar to ensure respondent can't register for classes/notations on transcripts if needed/additional requirements for suspension/expulsion
 - Documentation to ensure mandatory training

Emergency Removals & Administrative Leave

- An institution may remove a student Respondent from campus on an emergency basis
 - Must conduct a safety & risk assessment
 - Violence risk assessments can be helpful
 - Determining if an immediate threat to the physical healthy/safety of any individual arises
- Must provide Respondent with written notice & opportunity to challenge decision
 - Can plead case to designated position making the decision (usually best to have it not be TIXC, could be a risk manager)
- Employees may be put on administrative leave pending the process in conjunction with HR
- Clery Act Timely Warnings & Emergency Notification
 - Campus must be notified of crimes reported
 - Emergency warnings go out for emergencies (active shooter, unknown assault)

Dismissals

- The TIX Coordinator **MUST** dismiss the complaint at any time if the alleged conduct:
 - Would not constitute sexual harassment as defined, did not occur in the Recipient's education program or activity, did not occur against a person in the United States, or the Complainant is not participating or attempting to participate in Recipient's program at time of complaint
- The TIX Coordinator **MAY** dismiss the complaint if:
 - Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations, Respondent is no longer enrolled or employed by Institution, specific circumstances prevent the Institution from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations
- ***Should often be a last resort – having an investigation & letter of finding on file (even if inconclusive) can eliminate some legal risk
 - Letter will be on file if Respondent applies to certain jobs or another institution
 - Can be helpful for Respondent if they want to show a finding of not responsible as the exitance if a TIX investigation will show up on their record
 - Can be helpful for Complainant if they want something on record
 - Can be helpful to institution if Respondent ever attempts to reenroll
- Template for Dismissals will be in shared drive
- Dismissal from TIX does not preclude institution from other conduct investigations/disciplinary actions

Appeals

- Appeals must be offered under regulations
- Either party can appeal decision – appeal process clearly outlines in documentation provided to parties throughout the process
- Appeal Decision Maker will be different than original
- Party must submit written appeal to TIXC by timeline outlined in decision
 - Party can cite procedural irregularity that affected outcome
 - New evidence that was not available at time of determination that could affect outcome
 - Conflict of interest
 - Additional cited grounds
- TIXC accepts or denies appeal based on above grounds
- Options: Decision Stands – Sanction Adjusted – Remand (new investigation or new hearing)

General Compliance

- STOP PREVENT REMEDY
 - Always ensure timely steps to implement appropriate supportive measures
 - Follow-up to ensure measures were implemented
 - Be sure to report violations of NCOs to conduct office
 - Work with conduct office to ensure they take violations seriously
 - Identify patterns & systematic problems
 - Look to survey results
 - Respond with informational campaigns, programming, & training opportunities
 - Keep good relationships with on & off campus resources as to provide good access for parties

General Compliance

- Athletics Gender Equity
 - Equity in experience & sexual harassment/climate & culture
- Always document
 - Regularly updating policies, trainings, website, resource packet
 - Keeping documentation of all party communication & all required documentation

NH Specific TIX Related Law

- RSA: 188H
 - Survey
 - Training
 - Taskforce