

TITLE IX TRAINING - INFORMAL RESOLUTION FACILITATOR & DECISION MAKER



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TITLE IX TRAINING AREAS

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- Key Definitions
- Key Roles
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 - Title IX Investigator
 - Title IX Advisor
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 - Decision Maker
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 - Optional Informal Resolution Process
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WHAT IS TITLE IX

No person in the United States shall on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.

- Final Rule published 5-19-2020 (85 Fed Reg 30026)
- Effective August 14, 2020
- Amends 34 CFR Part 106
- 2011 Q&A and 2001 OCR guidance remain good to the extent consisted with Final Rule



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KEY DEFINITIONS

Sexual Harassment

- Under the 2020 Final Rule, Sexual Harassment is conduct on the basis of sex that falls into one or more of the following 3 categories (definition located in 34 CFR 106.30)
 - **Quid Pro Quo** – An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
 - **Hostile Environment** – 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
 - **Sexual Violence** – “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)



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KEY DEFINITIONS CONTINUED

Sexual Violence

- **Sexual Assault:** As defined in 20 U.S.C. 1092(f)(6)(A)(v), means an offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
- **Dating Violence:** As defined in 34 U.S.C. 12291(a)(10), means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and, the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence:** As defined in 34 U.S.C. 12291(a)(8), 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.
- **Stalking:** As defined in 34 U.S.C. 12291(a)(30), means 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.



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KEY DEFINITIONS CONTINUED

Consent: Informed, voluntary, and revocable. Consent is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity. It must be given without coercion, force, threats, or intimidations. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Retaliation: Acts or attempts to retaliate or seek retribution. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence, reprisal and/or an adverse action related to employment or education. Retaliation may be committed by or against an individual or a group, and that a reporting party, responding party or third party may commit or be subject of retaliation.



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KEY ROLES – TITLE IX COORDINATOR

- The single point of contact for all complaints and issues relating to Title IX issues – discrimination, sexual harassment, and sexual violence
- Responsible for investigating complaints and enforcing school policy

Platt College Title IX Coordinator

Megan Clifton

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KEY ROLE – TITLE IX COORDINATOR DUTIES

- Oversee the school's response to Title IX reports and complaints
- Identify and address any patterns or systemic problems
- Selects and assigns the Informal Resolution Facilitator and/or Decision Maker
- Determines if informal resolution should be utilized
- Coordinates timing and location of Live Hearing
- Implements any remedies as decided by the Decision Maker
- Attends all Informal Resolutions and Live Hearings
- Oversees appeals process
- Ensures all policies and procedures are followed



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KEY ROLES – TITLE IX INVESTIGATOR

- Platt College has determined that the Title IX Coordinator will also serve as the Title IX Investigator
- The Title IX Investigator cannot be the Decision Maker or the Informal Resolution Facilitator
- The Title IX Investigator must conduct an impartial investigation to gather the facts from all parties and witnesses
- The Title IX Investigator must put the Decision Maker or the Informal Resolution Facilitator in the best possible position to understand relevant evidence for the Live Hearing



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KEY ROLES – TITLE IX ADVISOR

- Parties have the right to an advisor or their choice
- An Advisor is required for a live hearing, if the parties have not selected an Advisor the school will appointment an Academic Dean or Program Director
- While no training is required, all Advisor's will receive training on the Informal Resolution Process and Live Hearing
- All selected Advisor's will be provided guidelines and expectations



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KEY ROLES – INFORMAL RESOLUTION FACILITATOR (IRF)

- Platt College has determined that the Human Resource Manager, Director of Student and Academic Affairs, and/or the Director of Student Financial Services will serve as the IRF
 - In cases that involve an employee the Human Resource Manager will be recused from serving as an IRF
- The Title IX Coordinator will appointment one IRF per formal complaint received
- The IRF must be free of bias and any conflicts of interest
- The IRF must be trained on the Informal Resolution Process
- The Title IX Coordinator cannot serve as the IRF



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KEY ROLES – DECISION MAKER

- Platt College has determined that the Human Resource Manager, Director of Student and Academic Affairs, and/or the Director of Student Financial Services will serve as the Decision Maker. Under no circumstances with the same person serve as both the IRF and Decision Maker for the same formal complaint
 - In cases that involve an employee the Human Resource Manager will be recused from serving as an IRF
- The Title IX Coordinator will appointment one Decision Maker per formal complaint received
- The Decision Maker must be free of bias and any conflicts of interest
- The Decision Maker must be trained on the Live Hearing process
- The Title IX Coordinator cannot serve as the Decision Maker



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TITLE IX COMPLAINT PROCESS OVERVIEW & GRIEVANCE PROCESS

- Platt College employees have a duty to report prohibited conduct to the Title IX Coordinator when they become aware of such conduct
- Victims of or witnesses of sexual misconduct need to notify the Title IX Coordinator as soon as possible.
- To file a formal complaint the complainant needs to submit their complaint in writing either in person, by mail or electronic mail to the Title IX Coordinator

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- All received formal complaints in writing will be reviewed within five (5) business days and an investigation plan will be established
- At the conclusion of the investigation the formal complaint will be recommend for one of the following options: 1) Dismissed (by either the complainant or the Title IX Coordinator if complaint is unfounded), 2) Recommended for Informal Resolution (must be agreed upon by both parties), or 3) Live Hearing



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FORMAL COMPLAINT RECEIVED BY TITLE IX COORDINATOR – INVESTIGATION

- In response to formal complaints of sexual misconduct, the College will conduct an impartial investigation to gather facts. The Title IX Coordinator will communicate with both the Complainant and Respondent.
- Both parties will receive equal opportunity to provide information, witness statements, evidence, and other information that may be necessary.
- Both the Complainant and the Respondent will be afforded equitable rights and access during the investigative process. The College may not require a reporting party to participate in a formal investigation that he or she has initiated.
- The investigation will consist of interviewing the Complainant, the Respondent, and any witnesses.
- The Title IX Coordinator will, conduct an impartial investigation to gather the facts.
- All information gathered will be given directly to the assigned Informal Resolution Facilitator or Decision-Maker.
- The investigation process will begin within five (5) business days of receipt of the formal complaint.
- At the end of the investigation the formal complaint will move to either Informal Resolution or Live Hearing, if not dismissed



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OPTIONAL INFORMAL RESOLUTION PROCESS

- The Informal Resolution process can only be utilized after a Formal Complaint has been submitted to the Title IX Coordinator and an investigation has occurred
- The Informal Resolution process is discretionary and can only be used as long as both parties give voluntary, informed, written consent to attempt informal resolution
- At any time before resolution, a party can withdraw from the Informal Resolution process and resume the grievance process
- The Informal Resolution process **cannot** be used to resolve allegations that an employee sexually harassed a student
- The Title IX Coordinator determines if informal resolution should be utilized
- Once all parties have agreed in writing to participate in Informal Resolution, they will be provided the rules of process
- Informal Resolution can be technology facilitated, if needed
- Informal Resolution can result in an agreement between the parties
 - Supportive Measures
 - Voluntary acceptance of disciplinary action



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OPTIONAL INFORMAL RESOLUTION PROCESS GOALS

- The goal is to help the Complainant and Respondent to reach an agreement on their terms
 - The IRF should discuss potential resolution terms
- The IRF needs to be compassionate and neutral
 - The IRF cannot take sides
 - The IRF cannot make assumptions



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LIVE HEARING

- Postsecondary institutions must provide a live hearing, if the parties do not agree to Informal Resolution
- The Live Hearing must include the following:
 - Opportunity for parties' advisors to examine and cross-examine witnesses, including challenging the credibility of witnesses
 - Examinations must be direct, oral, and in real time (Advisors)
 - Parties may be required to stay in separate rooms with live video + audio connection
 - Only relevant questions may be asked



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LIVE HEARING – CROSS EXAMINATION

- If a party does not submit to cross-examination at a live hearing, the Decision Maker cannot rely on that party's statements in reaching a determination
- Decision Maker also cannot draw an inference regarding responsibility based solely on that party's absence from live hearing



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LIVE HEARING – PRESUMPTION OF INNOCENCE

- Decision Maker ensures that the College does not take action and impose sanctions until the grievance process has been applied
- Does not mean that the Decision Maker should presume that the alleged harassment did not occur
- No prejudgment of the facts at issue



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LIVE HEARING - RELEVANCE

- Determined by Decision Maker (with explanation)
- Evidence is relevant if it is pertinent to proving whether facts material to the allegations are more or less likely to be true
 - Repetition of the same question is irrelevant
- A Complainant's sexual predisposition or prior sexual behavior is not relevant, unless;
 - Offered to provide that someone other than the Respondent committed the alleged conduct; or
 - To prove consent



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LIVE HEARING - EVIDENCE

- **Direct**
 - Evidence that directly links a person to a crime, without the need of any inference (for example, they were seen committing the crime).
- **Circumstantial**
 - Evidence that implies a person committed a crime, (for example, the person was seen running away from the crime scene). There must be a lot of circumstantial evidence accumulated to have real weight.
- **Character Evidence**
 - Evidence that concerns a party's character or prior bad acts
 - Can be considered if relevant
 - Decision Maker must objectively evaluate
- **Inculpatory**
 - Inculpatory evidence is evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.
- **Exculpatory**
 - Exculpatory evidence is evidence favorable to the respondent (defendant) that exonerates or tends to exonerate the defendant of guilt.



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LIVE HEARING – EVIDENCE LIMITATIONS

- The College cannot use, rely on or seek disclosure of information protected under legally recognized privilege unless party has waived privilege
 - Attorney/Client, Doctor/Patient
 - Medical Records



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LIVE HEARING – RULES & EXPECTATIONS

- All participants are to act professionally at all times
- The Decision Maker will lead the Live Hearing
- Scheduled breaks will be agreed upon prior to the start of the Live Hearing
- Disruptions to the Live Hearing will be strictly prohibited
- Witness badgering is strictly prohibited
- Any party unwilling to comply with the rules and expectations of the Live Hearing will be removed
 - Removed participants will be relocated to a separate room equipped with audio + visual technology, as needed



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DECISION/SANCTIONS/REMEDIAL MEASURES

- It is the Decision Makers responsibility to do the following when making a determination
 - Review the school policy
 - Review the evidence
 - Assess the credibility of evidence and witness statements (assessing the extent to which you can rely on the statement)
 - Assess consistency of the story
 - Evaluate evidence in light of standard of evidence
 - Preponderance of Evidence: Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance the claim is true



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DECISION/SANCTIONS/REMEDIAL MEASURES CONTINUED

- Written Determination will require
 - Use of published standard of evidence, preponderance of evidence
 - Identify the allegations constituting sexual harassment
 - Describe procedure from formal complaint through hearing
 - Make findings of fact and conclusions
 - Provide a rationale for the outcome on each allegation and imposition of any sanctions
 - State the procedures and allowable bases for any appeal
 - Must be provide simultaneously to both parties



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DECISION/SANCTIONS/REMEDIAL MEASURES CONTINUED

Sanctions

- Sanctions are determined by the Decision Maker
- Sanctions are imposed on the Respondent
- Sanctions must be reasonable and based on the severity of the behavior
- Sanctions may be educational
- The Decision Maker must determine what is appropriate based on the case specifics
- The Decision Maker in conjunction with the Title IX Coordinator must take steps to confirm the documented sanctions are enforced
- Sanction Examples include but are not limited to: Warning, Suspension, Termination, No Contact Order, Counseling and Additional Training



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DECISION/SANCTIONS/REMEDIAL MEASURES CONTINUED

Remedies

- Remedies are required to be provided to the Complainant when a Respondent is found responsible
- The Title IX Coordinator is responsible for implementation of all remedies
- Remedies must be designed to maintain Complainant's equal access to education and may include supportive measures
- Remedies do not need to be non-disciplinary or non-punitive and do not need to avoid burdening the respondent



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APPEALS

- Both Parties have the right to appeal a determination regarding responsibility
- The College's dismissal of a Formal Complaint or any allegations therein if:
 - (1) procedural irregularity affected the outcome of the matter;
 - (2) there is newly discovered evidence that could affect the outcome of the matter; and/or
 - (3) Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.
- An appeal must be submitted in writing to the Title IX Coordinator within ten (10) days of the delivery of the Written Determination.



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RECORD KEEPING

- All Title IX records must be maintained for seven (7) years
- All records must include basis for conclusion, indicate that response was not deliberately indifferent, and measures taken to restore or preserve equal access to the education program or activity
- Information is shared internally between administrators who need to know in order to complete their job duties. When information must be shared to permit the investigation to move forward, the Parties will be informed.
- Privacy of the records specific to the investigation is maintained in accordance with state law and the federal FERPA statute. Any public release of information needed to comply with the timely warning provisions of the Clery Act will not include the names of Complainant or information that could easily lead to a Complainant's identification. Irrespective of state law or public records access provisions, information about Complainants is maintained privately in accordance with Title IX and FERPA.



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IMPARTIALITY, BIAS AND CONFLICTS OF INTEREST

Fair and Impartial Investigation

- § 106.45 requires recipients to adopt a grievance process where Title IX Coordinators, investigators, decision makers, and persons who facilitate informal resolutions are free from conflicts of interest and bias and are trained to serve impartially without prejudging the facts at issue



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IMPARTIALITY, BIAS AND CONFLICTS OF INTEREST CONTINUED

Impartiality

- Cannot have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent
- Must avoid prejudgment of the facts at issue
- No one should be automatically believed or not believed
- Objectively evaluate all relevant evidence



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IMPARTIALITY, BIAS AND CONFLICTS OF INTEREST CONTINUED

Conflict of Interest

- When an individual has competing interests or loyalties
- Potential to reap personal gain from decisions, actions or inaction
- Inclination to filter decision through lens of self-interest



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IMPARTIALITY, BIAS AND CONFLICTS OF INTEREST CONTINUED

Bias

- Prejudice in favor of or against an individual or situation
- Disproportionate weight in favor or against certain facts that prevents objectivity
- Insensitivity to facts that otherwise would be significant
- Avoid inferences based on whether someone is a Complainant or Respondent



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Questions?



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