Title IX Coordinator Training
August 4, 2020

Presenter:
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TRAINING OBJECTIVES

To inform Title IX Coordinators on issues of bias, discrimination, and conflict of interest, and to review the procedures governing a Title IX Formal Complaint.
Bias

- Affinity Bias – like likes like
- Appearance Bias – looks, weight, height
- Attribution Bias – under/over valuing contributions by a certain group
- Confirmation Bias – seeking information that confirms belief/thinking
- Conformity Bias – groupthink
- Halo/Horn Effect – prior knowledge impacting current belief/thinking
- Name Bias – perceptions of background based on name
Discrimination

- Ability (ADA, Rehabilitation Act)
- Age (ADEA)
- Race/Color/National Origin (Title VII, Title VI)
- Religion (Title VII)
- Sex, which includes sexual orientation, gender, gender expression and gender identity (Title VII/Title XI)
Conflict of Interest

- Actual Conflict
- Appearance of Conflict
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- Tools and Templates
- Definitions
- Reports and Formal Complaints
- Dismissals
- Grievance Procedures
  - Formal Process: Notice
  - Formal Process: Emergency Removal
  - Informal Resolution
  - Formal Process: Investigation
  - Formal Process: Live Hearing
  - Formal Process: Appeals
- Discipline
- Retaliation
- Protective Orders
- Record Retention

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• Tools and Templates (bold indicates already created)
  • Intake Form
  • Procedure Tracking
  • Notice Template
  • Emergency Removal/Opportunity to be Heard Template
  • Informal Resolution Templates
    • Agreement to attempt
    • Resolution Agreement
    • Failed process; referral to Formal Process
  • Investigator Cover Letters Templates – Draft Report, Final Report
  • Investigator Report Template
  • Notice of Live Hearing Template
  • Rules for Live Hearing
    • Cover Letter for Recording Distribution Template
    • Decision Maker Finding Report Template
    • Decision Maker How to Appeal Template
    • Notice of Appeal Template
    • Appeal Decision Maker Ruling Template

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- Definitions
  - Complainant
  - Consent
  - Dating Violence
  - Domestic Violence
  - Quid Pro Quo
  - Respondent
  - Retaliation
  - Sexual Assault
  - Stalking
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• Reports and Formal Complaints
  • Reports
    • Oral or written
    • Can come from anywhere – Complainant, Institutional Authority, faculty, friend
  • Trigger obligation to respond
    • Reach out to Complainant
    • Meet with Complainant
    • Offer supportive measures
    • Provide information if a VAWA offense
    • Explain Formal Complaint and Procedures, including that they are NOT required to file a Formal Complaint.
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• Reports and Formal Complaints
  • Supportive Measures
    • Are individualized, non-disciplinary services – without fee or charge
    • Designed to restore or preserve equal access to education program or activity
    • Cannot unreasonably burden the other party
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- Reports and Formal Complaints
  - Formal Complaints
    - Written, signed
    - Complainant, or, Title IX Coordinator
    - Triggers TIX Procedure
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- Procedures - Dismissals
  - Mandatory
    - Analysis
    - Referral to Dean of Students
  - Discretionary
    - Might be at any time in the process
    - Might include a referral to Dean of Students

- Dismissals can be appealed
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- **Procedure – Formal: Notice**
  - To both parties, simultaneously, and must include:
    - Details of the allegation – parties, conduct, date, location
    - Details of the Procedure
    - Both parties may receive supportive measures and TIXC will work with each party respectively. If VAWA offense, include VAWA information.
    - Can have advisor of their choice
    - May review/inspect evidence
    - Respondent is presumed not responsible and determination regarding responsibility comes at end of process
    - MCCS bears burden of proof
    - Informal Resolution available
    - False statements violate MCCS policy
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- Procedure – Formal: Emergency Removal
  - Available at any time until finding of responsibility
  - Must conduct individualized safety and risk analysis; and
  - Determine there is an immediate risk of physical health or safety to any person arising out of the allegations of sexual harassment.
- Written notice of the emergency removal
- Opportunity to be heard immediately after the removal
- Student contacts Dean of Students; employee contacts HR
- Dean of Students/HR decision is final
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- Procedure – Informal Resolution
  - Must be facilitated by a trained individual
  - Different types may be available
  - Can opt into Informal Resolution at any time until finding of responsibility – bilateral: both parties must agree in writing to participate
  - Can opt out of Informal Resolution at any time until Resolution reached and signed – unilateral: one party can stop the Informal Resolution process
  - Once out, can’t opt back into Informal Resolution process
  - Once out, automatically in Formal process
  - Information shared/admissions made during Informal Resolution process cannot be used as evidence in Formal process
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• Procedure – Formal: Investigation
  • Written notices
  • Voluntary signed permissions for privileged materials
  • Direct evidence disclosure – with draft report – and 10 days for parties to respond
  • Responses incorporated into Final Report
  • Final Report sent at least 10 days prior to Live Hearing

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- Procedure – Formal: Live Hearing
  - Rules for Live Hearing – Decision Maker will facilitate/enforce
  - Evidence available to both parties
  - Examination and Cross Examination
    - Cross is performed by Advisor
    - Parties do not have to submit to cross; if they do not, “statements” cannot be considered by the Decision Maker when making findings of responsibility.
    - Likewise, no negative inference can be drawn by Decision Maker re: party’s decision not to submit to cross
  - Technology assist, if requested, to have parties in separate rooms
  - Technology assist, if needed, to allow witnesses to participate remotely
  - Must be recorded (at least audio) and distributed to parties prior to distribution of Findings Report
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• Procedure – Formal: Finding Report
  • In writing
    • Allegations;
    • Procedure;
      • Including notifications to parties, interviews, methods to gather evidence
    • Finding of facts;
    • Application of policy;
    • A statement of, and rationale for results as to each allegation, including determination of responsibility, disciplinary sanctions and/or remedies
  • Distributed simultaneously to parties
  • Not distributed to Advisors
  • Includes grounds for appeal and how to file appeal
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• Procedure – Formal: Appeal
  • President or Designee is the Appeal Decision Maker

• Three grounds for appeals:
  • 1. Procedural irregularities affecting the outcome;
  • 2. New evidence that was not previously available that would affect the outcome; and
  • 3. Bias or conflict of interest on the part of the Title IX Coordinator, the Investigator, or the Decision Maker.

• Available to both parties:
  • 2 days to file an appeal,
  • Notice to both parties that they have 5 days to submit materials.
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• Discipline
  • If found responsible, student discipline is consistent with 501.1 and ranges up to dismissal from College
  • If found responsible, employee discipline ranges from counseling to dismissal from employment
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- Retaliation Prohibited
  - Individuals who report in good faith
  - Individuals who file Formal Complaint
  - Individuals who participate in Investigation
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- Protective Orders
  - Complainants can seek out temporary or permanent Court-ordered protections
    - Restraining order
    - No contact
  - Only police, not MCCS Security, can enforce
  - Complainants (and TIXC) should let Security know if a court-ordered protection is in place, so that it can be prepared to contact the police if necessary.
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• Record Retention
  • All materials – procedural including Informal Resolution, investigatory, hearing (including recordings), findings, disciplinary sanctions, remedies are kept for seven years.
Questions?
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