

# **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

## MCCS Procedures 202.2

- 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: Finding Report
  - Formal Process: Appeals
- Discipline
- Retaliation
- Protective Orders
- Record Retention

# MCCS Procedures 202.2

- 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



## MCCS Procedures 202.2

- Definitions
  - Complainant
  - Consent
  - Dating Violence
  - Domestic Violence
  - Quid Pro Quo
  - Respondent
  - Retaliation
  - Sexual Assault
  - Stalking



## MCCS Procedures 202.2

- 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.



## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- Reports and Formal Complaints
  - Formal Complaints
    - Written, signed
    - Complainant, or, Title IX Coordinator
    - Triggers TIX Procedure

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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



## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- 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.

## MCCS Procedures 202.2

- 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

## MCCS Procedures 202.2

- Retaliation Prohibited
  - Individuals who report in good faith
  - Individuals who file Formal Complaint
  - Individuals who participate in Investigation

## MCCS Procedures 202.2

- 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.

## MCCS Procedures 202.2

- 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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