

# **TITLE IX DECISION MAKER TRAINING**

AUGUST 12, 2020

Title IX Decision Maker Training



Maine Community  
College System

## TRAINING OBJECTIVES

The objectives of this training are to provide Title IX Decision Makers with information regarding the MCCS sexual harassment policy, procedure and Live Hearing Rules and to provide information in compliance with the training requirements for the Decision Maker role.

## 2020 TITLE IX REGULATION REQUIREMENTS

Title IX regulations were adopted by the federal Department of Education in May 2020, with an effective date of August 14, 2020.

The regulations impose significant procedural requirements on the process for handling complaints of sexual harassment.

As a result of the new regulations, MCCS adopted a Title IX complaint procedure and revised existing policies and procedures.

# MCCS SEXUAL HARASSMENT POLICY

MCCS Policy 202 governs sexual harassment and includes definitions of sexual harassment under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Maine Human Rights Act.

# MCCS TITLE IX COMPLAINT PROCEDURE

MCCS Procedure 202.2 governs sexual harassment complaints within the scope of Title IX.

Procedure 202.2 mirrors the requirements of the Title IX regulations.

## SEXUAL HARASSMENT UNDER TITLE IX

Under the regulations, “sexual harassment” for purposes of Title IX includes acts of *qui pro quo* by an MCCS employee; unwelcome conduct based on sex that is so severe, pervasive and objectively offensive that it effectively denies a person equal access to MCCS programs and activities; sexual assault; dating and domestic violence; and stalking. The definitions for each category of conduct are set forth in MCCS Policy 202 and Procedure 202.2.

# TITLE IX DEFINITIONS OF SEXUAL HARASSMENT

**Quid pro quo-** An employee of the MCCS conditions the provision of a College aid, benefit, or service upon a person's participation in unwelcome sexual conduct.

**Unwelcome conduct** on the basis of sex that a reasonable person would deem severe, pervasive, and objectively offensive.

# Title IX Definitions of Sexual Harassment contd

- **Sexual Assault** is an offense that meets the following definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting System:
  - Rape is 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 victim.
  - Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age and/or because of their temporary or permanent mental incapacity.
  - Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Statutory Rape is sexual intercourse with a person who is under the statutory age of consent. In Maine, the age of consent is 16.



## Title IX Definitions of Sexual Harassment contd

**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 victim. The existence of such a 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

# Title IX Definitions of Sexual Harassment contd

**Domestic Violence** is 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.

# Title IX Definitions of Sexual Harassment contd

**Stalking** is when an individual engages in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress.

# TITLE IX JURISDICTIONAL REQUIREMENTS

Mandatory dismissal from the Title IX procedure is required if:

- The alleged conduct would not constitute sexual harassment under the Title IX sexual harassment definitions, even if proved;
- The alleged conduct was against a person not in the United States;
- The alleged conduct was against a person not participating, or attempting to participate, in an MCCS educational program or activity; or,
- The alleged conduct was not at an MCCS location, not during an MCCS activity or program, or the MCCS did not have substantial control over both the respondent and the context.

Complaints dismissed from the Title IX process may be subject to action under other MCCS policies, including the Student Code of Conduct.

## LIVE HEARING REQUIREMENT

The new regulations also require a live hearing for all formal complaints of Title IX sexual harassment.

The parties and their witnesses have an opportunity to present evidence at the live hearing.

The live hearing is presided over by the Decision Maker.

# ROLE OF THE DECISION MAKER

The responsibilities of the Decision Maker are described in the Live Hearing Rules, which govern the live hearings required by the new regulations.

The responsibilities include overseeing the hearing, monitoring the behavior of the participants, conducting direct questioning of the parties and witnesses, ruling on the relevancy of questions asked during cross examination, managing the electronic technology required for the hearing, and making written findings of responsibilities.

# RULINGS ON RELEVANCY

The Decision Maker must rule on the relevancy of each cross examination question asked by the parties' Advisors, prior to the question being answered.

Questions are relevant if the evidence sought will make a material fact at issue more or less probable.

Questions that have already been asked and answered are not relevant and may be excluded by the Decision Maker.

Evidence that exceeds the scope of the investigation and is not necessary to prove the fact in question is not relevant and may be excluded.

# RAPE SHIELD PROHIBITION ON EVIDENCE OF COMPLAINANT'S PRIOR SEXUAL HISTORY

Evidence of Complainant's prior sexual history is irrelevant and cannot be used for any purpose, with two exceptions:

1. Specific incidents of the Complainant's prior sexual behavior with the Respondent offered for purpose of proving consent.
2. Evidence of Complainant's sexual history to prove someone other than the Respondent committed the alleged act.



# USE OF EVIDENCE SUBJECT TO A LEGALLY RECOGNIZED PRIVILEGE

The Decision Maker must be familiar with legally recognized privileges and not allow evidence subject to such a privilege unless the holder voluntarily waived the privilege.

Examples of legally recognized privileges:

- Medical and Mental Health Treatment Records
- Attorney – Client communications

## NO CONFLICT OF INTEREST OR BIAS

Any person designated as a Decision Maker must have **no conflicts of interest or bias** for or against either complainants or respondents generally or an individual complainant or respondent.

The Decision Maker must be impartial and not prejudice the allegation.

# WHAT IS CONFLICT OF INTEREST OR BIAS?

- Considering an individual's status as a complainant or a respondent as a negative or positive.
- Harboring a bias for or against an individual complainant or respondent.
- Applying sex stereotypes as a factor in consideration of credibility.

## EXAMPLES OF CONFLICT OF INTEREST OR BIAS

- All complaints of sexual assault by a female against a male are true and the complainant should be believed over the respondent.
- Stereotypical notions of male and female behavior.
- Reliance on statistical evidence to support credibility of one party over the other.
- Prior relationship with party that materially affects ability to remain impartial.

# IMPLICIT BIAS

**Subconscious** assumptions, stereotypes and unintentional actions towards others based on factors such as physical appearance, sexual orientation, gender expression or identity, race, religion, gender, age, disability, national origin, socioeconomic status, etc.

Unconsciously affects your understanding, decisions and actions regarding certain types of people.

Can be positive or negative in nature.

# EXAMPLES OF IMPLICIT BIAS

Unconsciously:

- Viewing an attractive, athletic, academically successful student as more likely to be telling the truth than an unattractive, unathletic, struggling student. (“Halo” effect)
- Viewing a witness of your race or ethnicity as more credible than a witness of a different race or ethnicity.
- Prejudging someone based on their status as a complainant or respondent.

# CHECK YOURSELF FOR IMPLICIT BIAS

The Implicit Association Test was developed by university researchers in the late 1990s. It evaluates response times for associations that are either consistent or inconsistent with common socio-cultural stereotypes and helps to identify areas of implicit bias.

The test can be accessed at :

<https://implicit.harvard.edu/implicit/takeatest.htm>

## TECHNOLOGY AT HEARING

The College will provide the Decision Maker with access to Zoom, which will be used to enable the parties, their Advisors and the Decision Maker to see each other if seated in separate rooms, to enable witnesses to participate remotely, and to record the live hearing.



# HEARING TECHNOLOGY contd

In advance of the hearing, the Decision Maker will send each party, Advisor and witness an invitation to join the Zoom hearing by following the instructions at

<https://support.zoom.us/hc/en-us/articles/201362183-Inviting-others-to-join-a-meeting>.

Prior to the start of the hearing, the Decision Maker will place witnesses into separate waiting rooms by following the instructions at <https://support.zoom.us/hc/en-us/articles/360022174112-Using-a-Waiting-Room-with-Zoom-Rooms>.

## HEARING TECHNOLOGY contd

When the Decision Maker is ready to start the hearing s/he will follow the Recording instructions at <https://support.zoom.us/hc/en-us/articles/203741855-Cloud-recording>.

The Decision Maker will click the Pause/Stop button when a break is called in the hearing, click Record to restart after a break, and click Pause/Stop at the end of the hearing.

## HEARING TECHNOLOGY contd

The Decision Maker will share the recording with the Title IX Coordinator by logging in to his/her Zoom account, clicking on My Recordings and then clicking on Share under the recording. A window will pop up with the link to share the recording.

Questions?



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