

## **Title IX Coordinator Training Online Course**

### **Class Five: Title IX Training & Policies**

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PLEASE NOTE: Training Course Only. Does Not Constitute Legal Advice.

## **Class Overview**



- Audiences To Be Trained
- Elements of a Good Training Program
- Benefits and Perils of Trauma-Informed Training
- Auditing Training Materials
- Developing and Revisiting Policies
- Records Retention and Posting

## Remaining Questions

- Can a complainant appeal when a school chooses to dismiss a complaint because the respondent is no longer enrolled? If the respondent re-enrolls during a later trimester, must we need re-open the complaint if the complainant requests it?
- Do you agree we could limit the length of appeals statements? If so, does it depend on number of allegations/findings?
- Can you limit advisor shopping when it appears to be a delay tactic?
- I see that there is a section in the Case Processing Manual about appeals. Do you have any words of wisdom with regard to replying to appeals?



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## Who Do You Train?

## **The Regulations (Title IX Personnel)**

- Title IX Coordinators
- Investigators
- Decision-makers
- Anyone who facilitates an informal resolution process



## **Consider Training Others, even though not Required by the Regulations**

- Title IX staff who are not identified by the regulations
- Officials With Authority to take corrective measures
- Other individuals with the responsibility to report sexual harassment – former Responsible Employees
- Campus Safety Authorities (CSAs)
- The Campus Community

# And Athletics!



NCAA Board of Governor's Policy:

[https://ncaaorg.s3.amazonaws.com/ssi/violence/NCAA\\_CampusSexualViolencePolicy.pdf](https://ncaaorg.s3.amazonaws.com/ssi/violence/NCAA_CampusSexualViolencePolicy.pdf)

[NCAA Board of Governors Campus Sexual Violence Policy Implementation Task Force](#)

[NCAA Sexual Violence Prevention Tool Kit](#)

[Task Force Recommended Timeline](#) (PDF)

[Task Force Recommended Checklist](#) (PDF)

[Administrator FAQ](#)

[Student-Athlete FAQ](#)

Access Sample Policies and Procedures:

- Select the "Membership" tab on [ncaa.org](https://ncaa.org).
- Select "My Apps" from the dropdown menu and log in using your affiliated credentials. *Note: If you do not have access to MyApps please contact your NCAA Applications Administrator at your school or conference to gain access.*
- Select the "Membership Secure Resources" icon.
- Review the legal disclaimer and view the current sample policies and procedures documents that are available.

#### Annual Attestation Process Resources

In the fourth year of the policy, the [following schools](#) attested that they have followed the policy requirements.

[Attestation Process FAQ](#)

## NCAA Policy:

In August 2014, the NCAA's Board of Governors' Executive Committee passed a resolution that specifies that appropriately addressing sexual violence is integral to responsible intercollegiate athletics programs. Specifically, the resolution states that addressing sexual violence:

- (1) Is consistent with the values and principles articulated in the NCAA Constitution;
- (2) Is mandated by state and federal laws; and
- (3) Must be part of a collaborative effort with campus policies.

In 2016, the Board of Governors appointed a Commission to Combat Campus Sexual Violence. The Commission drafted the following aspirational culture statement for colleges and universities as:

A positive and thriving athletics team culture that revolves around respect and empathy for all, fostering a climate in which all feel that they are respected, valued and contributing members of their teams, athletics programs and institutions; and creating an environment in which students (athletes and non athletes alike) feel safe and secure, both emotionally and physically, and are free of fears of retaliation or reprisal. The positive culture exuded by a member institution's NCAA teams is the catalyst for a positive culture across an entire campus.

The Commission recommended the Board of Governors adopt an Association-wide policy to reinforce previous efforts of the Association in addressing campus sexual violence. The Board of Governors' adopted this policy.

The NCAA also produced a Toolkit in 2016, updated in 2019, that has not been updated since the publication of the 2020 Regs.

## NCAA Policy: Overarching Principles

1. Intercollegiate athletics departments should be informed on and integrated in overall campus policies and processes addressing sexual and interpersonal violence prevention and acts of sexual violence, particularly those related to adjudication and resolution of matters related to sexual and interpersonal violence.
2. Intercollegiate athletics departments should review annually the most current Checklist Recommendations of the NCAA Sexual Violence Prevention Toolkit, using it as a guide with resources to conduct ongoing, comprehensive education for student-athletes, coaches and athletics administrators.
3. Intercollegiate athletics programs should utilize their platform to serve as leaders on campus through engagement in and collaboration on efforts to support campus-wide sexual and interpersonal violence prevention initiatives. This includes involving student-athletes in prevention efforts in meaningful ways across the campus, including encouraging use of leadership roles on campus to support such efforts.



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### Required Annual Attestation: University Chancellor/President, AD and campus Title IX Coordinator

1. The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence.
2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator\*, are readily available within the department of athletics, and are provided to student-athletes.
3. All student-athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements.
4. All incoming, continuing and transfer student-athletes have completed an annual disclosure related to their conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Transfer student-athletes also must disclose whether a Title IX proceeding was incomplete at the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by the member institution.
5. Institutions have taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.\*\* In a manner consistent with federal and state law, all NCAA member institutions must share relevant discipline information and incomplete Title IX proceedings as a result of transfer with other member institutions when a student-athlete attempts to enroll in a new college or university.
6. An institution choosing to recruit an incoming student-athlete or accept a transfer student-athlete must have a written procedure that directs its staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the student left the institution with an incomplete Title IX proceeding, was disciplined through a Title IX proceeding or has a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Failure to have it written and to gather information consistent with that procedure could result in penalties.

[Note: Item Nos. 4 to 6 above require attestation beginning with the 2022-2023 academic year attestation.]

## **NCAA Policy continued:**

- Athletics department will cooperate with college or university investigations into reports and matters related to sexual and interpersonal violence involving student-athletes and athletics department staff in a manner compliant with institutional policies for all students.
- Schools that do not submit the required attestations will be prohibited from hosting any NCAA championship competitions for the next applicable academic year.
- International member schools and schools that do not receive federal funding, or are otherwise exempt from Title IX must submit an annual attestation from the President, AD and Title IX coordinator or institutional staff member with comparable responsibilities
- \*\*A person who has been disciplined through a Title IX proceeding or criminally convicted, regardless of the degree, and whether the result of a plea or court determination, of either of the following:
- Interpersonal Violence is defined to include violence that is predominantly caused due to the relationship between the victim and the perpetrator, including dating and domestic violence.
- Sexual Violence is defined to include both forcible and non forcible sex offenses, ranging from sexual battery to rape.
- Other Acts of Violence is defined to include murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury



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## **Elements of a Good Training Program**

## Planning & Preparation

- Who must or will be trained and on what topics?
- Who will conduct training?
- What are the *most effective* and efficient methods of training?
  - In person, hybrid or virtual
  - Combination or by constituent groups
  - Timing
- What training resources are available, including internal?
- What are campus priorities with respect to training/education?
- How will you address issues of bias and avoid stereotypes?



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## Required Training

A school must ensure that Title IX Personnel receive training on:

- the definition of sexual harassment;
- the scope of the institution's education program or activity;
- how to conduct an investigation and the grievance process including hearings, appeals and informal resolution processes, as applicable; and
- how to serve impartially



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## Required Training

Title IX Personnel Continued:

- Avoiding prejudgment of the facts at issue, conflicts of interest and bias.
- The impact of intersections of identity: sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, or other characteristic.
- Implicit bias



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## Required for Investigators



- Conducting a fair and thorough investigation.
- Determining relevance in order to prepare an investigative report that fairly summarizes relevant evidence.



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# Required for Informal Resolution Facilitators



- How to conduct informal resolution processes (85 FR 30405)
- Document or make public?



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# Required for Decision-makers:

- Training on any technology to be used at a live hearing.
- Training on issues of relevance, including how to rule on evidence during a hearing and how to apply the rape shield protections provided only for complainants.
- Include training around the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.



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## Other Training Topics

Investigator	Decision-maker
<ul style="list-style-type: none"><li>• Questioning</li><li>• Institutional policies</li><li>• Responsibility for proposed findings and conclusions</li><li>• Redacting privileged information</li><li>• Coordinating investigation with supportive measures</li></ul>	<ul style="list-style-type: none"><li>• Managing the process</li><li>• Hearing protocol</li><li>• Institutional policies</li><li>• Questioning</li><li>• Preparing findings and conclusions</li></ul>



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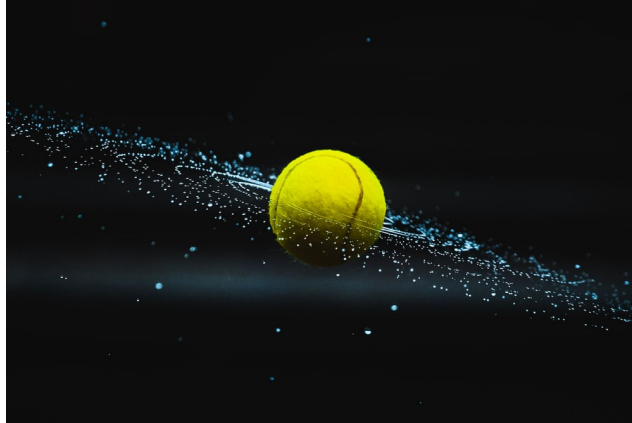
## Training Transparency

- Post all training materials for Title IX personnel on publicly available website. (If no website, then make materials available for members of the public to inspect.)
- Ensure the materials posted are up-to-date, reflecting the most current training provided.



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## **And Athletics!**



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## **Benefits and Perils of Trauma- Informed Training**

## How to Be Fair to All

Benefits	Perils
<ul style="list-style-type: none"><li>• May help those interviewed retrieve memories</li><li>• May help those interviewed stick with the process.</li><li>• May prevent re-traumatizing witnesses</li></ul>	<ul style="list-style-type: none"><li>• May be perceived to favor Complainants</li><li>• May be perceived as less intense questioning or cross-examination of witnesses</li><li>• May be misused by untrained questioners</li></ul>

## Auditing Training Materials

## When & What to Audit

- Who was trained
- Was training effective
  - Measured outcomes
  - Observed outcomes
- How often to monitor
- Documenting monitoring



## Policies: Management, Notice, and Some Reminders

## Managing the Policies

Developing policies	Monitoring policies
<ul style="list-style-type: none"><li>• Existing institutional policies</li><li>• Existing laws, agreements &amp; practices</li><li>• Identify conflicts and concurrences and harmonize or change</li><li>• <i>Include stakeholders</i></li></ul>	<ul style="list-style-type: none"><li>• Changes in law, regulations, guidance or institutional needs</li><li>• Changes in related laws or guidance, e.g. FERPA, state APA</li><li>• Effectiveness</li><li>• <i>Include stakeholders</i></li></ul>



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## Notification and Dissemination

- Title IX Coordinator contact info must be distributed and prominently displayed on the institution website, and in each handbook or catalog made available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations with CBAs.
- Nondiscrimination Policy stating:
  - that the institution does not discriminate on the basis of sex in education programs or activities it operates.
  - That the institution is required by Title IX not to discriminate.
  - That the institution's nondiscrimination policy extends to admission and employment.
  - That inquiries about the application of Title IX may be referred to the school's Title IX Coordinator, to OCR, or to both.



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## Adopt & Publish

- Adopt and publish:
  - grievance procedures that provide for the prompt and equitable resolution of student *and* employee complaints alleging *any* action prohibited under Title IX.
  - a grievance process that complies with 106.45 for formal complaints as defined in 106.30.

### Notice

**WHAT:** Notice of the school's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school will respond.

**TO WHOM:** applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school.



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## Policy Decision Point: Framework

### All-in-One Policy

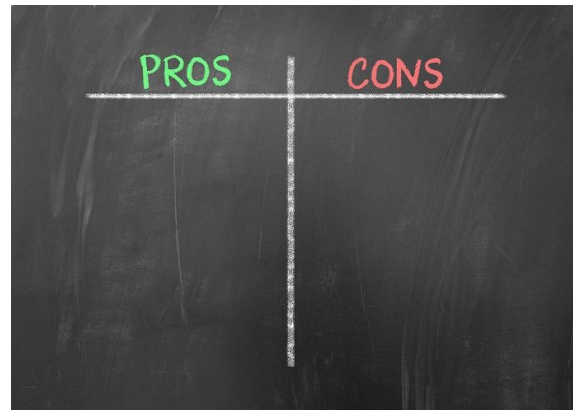
1. Treat all the Same; or
2. Decision Trees

### Two Policies: If not TIX, then ...

1. Title IX Regulation+
2. Everything Else

### Three plus:

1. TIX Regulation Conduct
2. Other Sexual Misconduct
3. Other Prohibited Conduct



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## Policy Definitions:

- Actual Knowledge
- Complainant/Respondent
- Supportive Measures
- Formal Complaint
- Prohibited Conduct
  - Sexual Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- Consent
- Title IX Coordinator
- Officials with Authority
- Other Reporters, if any.
- Confidential Resources
- Standard of Review
- Evidence
  - Directly Related
  - Relevant
  - Weight
- Deliberate Indifference
- Education Program or Activity
- Informal Resolution
- Emergency Removal



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## Please Note:

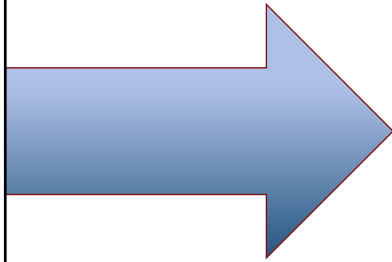
Where there is a conflict between State or local law and Title IX regulations, Title IX regulations win.



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## Don't Forget Clery ... Annual Security Report Policies



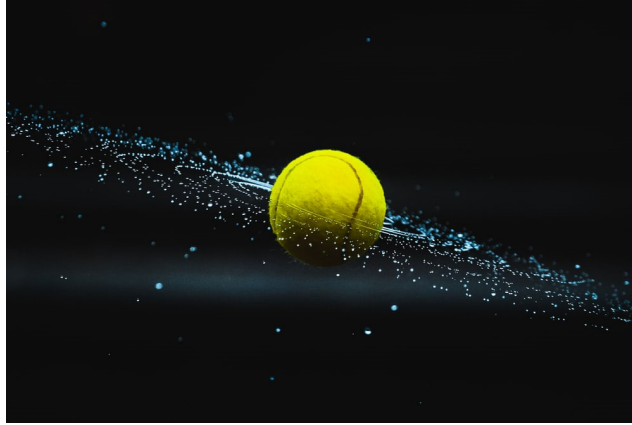
- Description of proceedings and processes for filing and handling complaints of sexual assault, dating violence, domestic violence and stalking.
- The standard of evidence used in disciplinary actions for covered offenses.
- List of possible sanctions for covered offenses.
- Range of protective measures available to victims.
- Assurances that proceedings will be prompt, fair, impartial & conducted by trained officials.
- Equal opportunity for parties to have an advisor chosen by the party.
- Simultaneous notification of result, process for appeal and when final.
- Description of primary prevention and awareness programs.
- Procedures for victims to follow if a covered crime occurs.
- Notification of services and accommodations for victims.

## Record Retention 7 Years



- For formal complaints:
  - Investigation
  - Determination of responsibility
  - Transcripts or recordings of hearings
  - Sanctions, if any
  - Remedies to Complainant, if any
  - Appeal, if any, and result
  - Informal resolution and result, if any
- For all reports, regardless of whether there is a formal complaint:
  - Actions taken and supportive measures, if any, provided in response to a formal complaint.
  - Basis for a determination that the institution was not deliberately indifferent.
  - Measures to restore or preserve equal access or reasons why not providing support was not clearly unreasonable under the circumstances.
- All training materials for Title IX personnel

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## **Questions?**

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