



R³ Resources: Who's Who on the Title IX Team – Higher Education Edition

This document describes the standard roles and associated responsibilities for robust Title IX Teams in the Higher Education system



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Who's Who on the Title IX Team – Higher Ed. Edition

Introduction

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The 2020 release of significantly revised federal Title IX regulations (hereinafter, the “Regs”) brings an opportunity for education institutions to renew their commitment to providing environments that are free from sex- and gender-based discrimination and misconduct. Given the wide variety of institutional structures and needs, there is no one Title IX staffing structure that will work universally; however, there are standard roles and associated responsibilities that should be thoughtfully distributed to positions within the institution that have the appropriate level of authority and access to processes, systems, and people to fulfill those responsibilities. Title IX responsibilities should be assigned to positions rather than people, meaning that the responsibilities should be permanently incorporated into position descriptions and not be shifted around the institution based on the individual knowledge and skill set of the person who holds a specific position at any given time.

Cultivating an institutional culture of Title IX compliance and commitment to the principles of equity, educational access, and inclusion that are sustainable throughout leadership and staff transitions that are common in higher education requires significant coordination and human and financial capital. For example, according to the [2018 ATIXA Member Survey](#), 64% of Title IX Coordinators (hereinafter “TIXC”) at responding institutions have been in their role for three years or fewer. Recognizing the high turnover rate in Title IX-related positions makes it all the more important to establish comprehensive and effective team structures for prevention and response to matters of sexual misconduct and gender equity. The extensive new Regulations will require a comprehensive evaluation of current structures, processes, training, and responses. Regardless of an institution’s current structure, there will likely need to be significant staffing growth in the areas of equity and compliance for the foreseeable future.

The Title IX Team

ATIXA recommends establishing a cross-functional team of professionals with distinct Title IX-related responsibilities in order to effectively manage institutional compliance and respond to complex, sensitive matters in a timely and thorough manner as required by law. Title IX teams are led by the TIXC and typically include representatives from student affairs, athletics, academic affairs, human resources, law enforcement, medical and/or mental health services, and victim advocacy.

A team structure allows for individuals with specific areas of expertise and access points to people, policies, and processes, to work in coordination to implement a comprehensive, institution-specific compliance program. Effective teams reduce communication silos, provide a comprehensive view of current compliance efforts and areas for improvement, help to tailor prevention programs to specific populations, and engender trust within the institution.

Below are descriptions of the standard roles and associated responsibilities for robust Title IX Teams.

Title IX Coordinator

The Title IX Coordinator is the recipient's (institution's) designated Title IX compliance authority. The Title IX Coordinator may have other responsibilities within the institution; however, the institution must ensure that the designated TIXC is:

1. Independent and able to avoid conflicts of interest;
2. Reports to or is a member of the institution's senior leadership; and
3. Has the institutional authority to effectively coordinate the institution's compliance efforts and responsibilities under Title IX¹.

¹ OCR's 2015 Guidance regarding the Role of the Title IX Coordinator <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

The Title IX Team

Title IX Coordinator - cont.

While the TIXC may function as an investigator in the smallest or most resource-strapped environments, this is not recommended. Separate investigators should be deployed if available to allow the TIXC to objectively assess the institution's compliance with Title IX and advise senior leadership of compliance concerns that may arise. The TIXC cannot serve in a decision-making capacity in a grievance or disciplinary process².

TIXCs should be focused on systemic policy, process, and prevention topics including assessing campus climate and current program effectiveness; collaboration and cooperation with campus and community partners; and ensuring other members of the Title IX Team have the appropriate knowledge, skills, training, and resources necessary to successfully fulfill their responsibilities. Recommended institution-wide responsibilities for TIXCs include:

- Providing annual and ongoing training and performance evaluation for Deputy Coordinators, Investigators, Decision-Makers, Appeal Decision-Makers³, Advisors⁴, and Advocates⁵.
- Providing supervision to Deputy TIXCs and Investigators as appropriate. This should be at least a dotted line, if not a direct line relationship for purposes of the Title IX function.
- Coordinating regular review and revision of institutional policy and procedures for preventing and responding to reports of alleged sex- and gender-based discrimination and misconduct.

² Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

³ This can be a little awkward if Decision-Makers or Appeal Decision-Makers outrank the TIXC, but for Title IX purposes, they are overseen by the TIXC, who has overall compliance responsibility. If the institution created a system where the TIXC oversees people to whom the TIXC reports, perhaps the institution ought to examine the logic of who the institution has chosen as Decision-Makers.

⁴ This assumes advisors who are district employees or contractors.

⁵ This assumes advocates who are district employees or contractors.

The Title IX Team

Title IX Coordinator - cont.

- Working with appropriate offices/departments to ensure program access and equity.
- Establishing an assessment schedule to review compliance efforts, campus climate, and program effectiveness.
- Conducting the preliminary inquiry for all reported incidents⁶.
- Tracking systemic or pattern incidents and taking remedial actions to prevent their recurrence.
- Providing an annual report to the campus community including statistics, education and prevention efforts, and continuing practices.
- Providing regular updates to the President/Chancellor, Executive Cabinet, Board of Trustees, etc.
- Maintaining complete records of all sex- and gender-based discrimination and misconduct reports and the institution's response to each. Records must be maintained for a period of at least seven years.
- Tracking systemic or pattern incidents and taking remedial actions to prevent their recurrence.
- Providing an annual report to the campus community including statistics, education and prevention efforts, and continuing practices.
- Providing regular updates to the President/Chancellor, Executive Cabinet, Board of Trustees, etc.
- Maintaining complete records of all sex- and gender-based discrimination and misconduct reports and the institution's response to each. Records must be maintained for a period of at least seven years.
- Overseeing communication protocols with respect to information shared by the institution with parties/witnesses/advisors and other participants in the resolution process.

⁶ This function can be delegated to deputies.

The Title IX Team

Title IX Coordinator - cont.

- Facilitating regular liaison with institutional legal counsel, as appropriate.
- Responding to media and records requests in accordance with the Family Educational Rights and Privacy Act (FERPA) and institutional policy, if appropriate.
- Serving as an outer circle member of the institution's behavioral intervention team (BIT) and referring individuals to the team as necessary.
- Establishing memoranda of understanding (MOUs) for information sharing and service coordination with campus law enforcement/security, local law enforcement agencies, local educational agencies/districts, and community-based response agencies (e.g. rape crisis centers, victim advocates, medical providers, mental health providers).
- Developing and maintaining accurate web and print-based publications with information about policy, process, and resources for applicants, employees, students, third parties, witnesses, reporting/responding parties, as well as individuals looking to provide support for reporting or responding parties.
- Recruiting and training campus-based advisors for reporting and responding parties.
- Ensuring accurate statistical reporting for Clery Act compliance.
- Coordinating disclosures of policy/procedure with the institution's Clery Act compliance manager⁷.
- Training or assuring training of all mandated reporters/responsible employees and intake professionals.
- Coordinating with and/or serving as liaison with any campus victim advocacy program.
- Complying with the Title IX duty to stop, prevent, and remedy known sex/gender discrimination.

⁷ VAWA/Clery Act reporting incorporates policies that fall under Title IX. Make sure that all versions of published policies are current and use the same version, whether published by campus law enforcement/security division or the Title IX office.

The Title IX Team

Title IX Coordinator - cont.

- Training or ensuring training of all TIXCs, Deputy Coordinators, Investigators, Decision-makers and any person who facilitates an informal resolution process consistent with the extensive and specific requirements in the new Regs § 106.45 b(1)(iii).

In addition to institution-wide efforts, the TIXC (or designee) also serves as the individual responsible for the intake and evaluation of reports alleging sex- or gender-based discrimination or misconduct or retaliation. The TIXC should review each report and: (1) respond to any immediate health or safety concerns raised by the report, including determining any initial support measures for all parties; (2) offer the institution's immediate support and assistance; and (3) assess the nature and circumstances of the report to determine whether the reported conduct rises a potential policy violation, whether the reported conduct is within the scope of the institution's sex discrimination and misconduct policy, and the appropriate manner of resolution under such policy. As part of the initial review and implementation of early support measures, the TIXC may consult with campus law enforcement/security, student conduct, academic affairs, human resources, BIT/threat assessment team (TAT), or other appropriate institutional administrators.

If a report will move forward for an investigation, the TIXC shall assign one or more appropriately trained investigators who are free from conflicts of interest or bias for or against any party. The TIXC (or designee – often the investigator) will provide notice to the parties of the investigation – which includes a detailed summary of the allegations, the applicable policies, the identity of the complainant, the applicable procedures, and the name and contact information of the assigned investigator(s). Investigation reports and any supplements may be reviewed by the TIXC for completeness and clarity prior to being provided to the parties.

⁸ For a detailed list of notice requirements, visit the Title IX Coordinator Checklist in this document on [Page 22](#).

The Title IX Team

Title IX Coordinator - cont.

There will be circumstances in which an informal resolution of a report is either requested or deemed more appropriate than a formal investigation. In those situations, the TIXC shall be the gatekeeper for assessing whether an informal resolution is appropriate, and either be responsible for facilitating the informal resolution or for assigning one or more appropriately trained facilitators who are free from conflicts of interest or disqualifying bias to facilitate the informal resolution. Any informal resolution must be voluntary on the part of the parties and evidenced by written consent.

Regardless of formal or informal resolution of a report alleging sex- or gender-based discrimination or misconduct, the TIXC shall maintain complete and detailed records of any actions, including any supportive measures taken in response to a report or formal complaint. Investigation records must include notices of outcome, any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve access to the institution's education program or activity. These records must be maintained for a period of at least seven years. The institution shall also maintain records of any appeal and the result therefrom, any informal resolution, and all materials used to train coordinators, investigators, and decision-makers with regard to sexual harassment. The documentation must include the basis for any conclusions/decisions, that the institutional response was not clearly unreasonable, and that the institution has taken measures designed to restore or preserve access to the institution's educational program or activity⁹.

⁹ Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

The Title IX Team

Deputy Coordinator(s)

Deputy Coordinators are individuals designated by an institution to assist with management and implementation of population-specific compliance strategies and programs. Most institutions will designate a Deputy Coordinator for each of the following populations: students, employees (faculty and staff), third parties (vendors, contractors, volunteers, etc.), and athletics (if applicable). It is also common for some institutions to situate a deputy in academic affairs. Another common model is seen in institutions which are comprised of multiple physical locations, which may choose to designate Deputy Coordinators for each of their locations. Deputy Coordinators are considered thought-leaders on the Title IX Team and should be organizationally situated to effect broad-scale change and garner stakeholder buy-in. They implement supportive measures for their respective populations and avoid role conflict related to Title IX matters. For example, it is recommended that a Deputy Coordinator for Students not supervise Decision-Makers and also serve as an Appeal Decision-Maker.

Individuals designated as Deputy TIXCs are often responsible for coordinating the selection and implementation of primary prevention and awareness programs, bystander intervention programs, and ongoing prevention and awareness campaigns for their respective populations addressing sex- and gender-based discrimination and misconduct, including, but not limited to, sexual harassment, sexual assault, intimate partner violence (dating violence, domestic violence), and stalking. Mechanisms to account for attendance, completion, or exposure (such as hits on a website) should also be implemented to demonstrate compliance efforts.

Deputy TIXCs should be mindful of population-specific needs, trends, and issues related to sex- or gender-based discrimination or misconduct and provide thought-leadership for ongoing inclusion efforts. Recommendations for Deputy TIXC actions are delineated by population below.

The Title IX Team

Deputy Coordinator(s) - cont.

STUDENTS

- Ensure student medical services (if any) are inclusive of the gender spectrum and student health insurance includes coverage for pregnancy and gender-related medical needs.
- Ensure that the institution has services equitably available to all students.
- Confirm that campus sources for contraception and menstrual products and placement of child changing facilities are distributed in a manner that is accessible by all genders.
- Collaborate with staff responsible for oversight of student organizations to ensure (1) membership policies are not discriminatory, (2) organizations are provided with guidance related to their own response to allegations of member misconduct based on sex or gender, (3) organizations are provided with training focused on event management that includes information about sex- and gender- issues that are common within organizations, and (4) organizations are educated about how policy applies to individuals and organizations.
- Provide training to non-employee (volunteer) student organization advisors regarding the policy, process, and resources available for reports of sex- and gender-based discrimination or misconduct, and how the institution would like them to respond when they become aware of an allegation.
- Ensure the institution has an equitable procedure in place for making decisions regarding facility use in environments that are typically segregated by gender including, but not limited to, residential facilities, restrooms, locker rooms, and campus recreation facilities.
- Establish an equitable protocol for student travel which will include the sharing of sleeping or bathing facilities.
- Designate institutional authority for providing non-disability-related pregnancy and parenting adjustments for students.
- Work with the registrar and other appropriate entities to establish a preferred name policy, including providing easily accessible information to students about such policy.

The Title IX Team

Deputy Coordinator(s) - cont.

STUDENTS - cont.

- Work with students to ensure that support measures within their purview/division/department are implemented and effective at assuring/restoring educational program access.
- Establish co-investigation protocols as appropriate with early college, dual enrollment, and other site-specific educational extension programs.
- Coordinate with study abroad and international travel representatives to provide information regarding reporting and support options at international sites, including applicable laws and crime statistics.

EMPLOYEES AND THIRD-PARTIES

- Ensure the institution has an equitable procedure in place for making decisions regarding facility use in environments that are typically segregated by gender including, but not limited to, residential facilities, restrooms, locker rooms, and campus recreation facilities.
- Ensure that the institution has services equitably available to all employees (and third parties as deemed appropriate)
- Designate institutional authority for providing non-disability-related pregnancy and parenting adjustments for employees and third parties.
- Work with human resources and other appropriate entities to establish a preferred name policy, including providing easily accessible information to employees about such policy.
- Develop and distribute a syllabus statement template for faculty to notify students of faculty responsibilities as mandated reporters.
- Collaborate with faculty development to provide information on creating gender-inclusive curriculum and academic spaces.
- Work with new employee orientation professionals to include appropriate information about Title IX in all new employee onboarding.

The Title IX Team

Deputy Coordinator(s) - cont.

EMPLOYEES AND THIRD-PARTIES - cont.

- Provide information on policy and expectations for contractors and vendors including, but not limited to, food service providers, custodial service providers, construction companies, contracted security, and landscape service providers.
- Coordinate with internship, practicum, co-op, or similar placement organizations/sites to provide information on institutional expectations for hosting students, including providing an environment that is free of sex- or gender-based discrimination or misconduct. Develop a protocol for responding to reported misconduct occurring at such sites.
- Review information provided to camp and conference participants, as well as parents or guardians of minor participants, to ensure that they are apprised of the institution's non-discrimination policy and available resource and reporting options.
- Work with employees to ensure that support measures within their purview/division/department are implemented and effective at assuring/restoring educational program access.

ATHLETIC EQUITY

- Ensure compliance with any conference or governing body requirements for training/education and student athlete transfer and/or eligibility policies.
- Establish an assessment schedule to review compliance efforts, department climate, and program effectiveness.
- Implement metrics to assess athletic gender equity (1) for participation under the three-part test, and (2) for other athletic benefits and opportunities.
- Identify locations that would necessitate Clery Act statistical reporting related to athletic team travel and provide information to the Clery compliance coordinator.

The Title IX Team

Deputy Coordinator(s) - cont.

ATHLETIC EQUITY - cont.

- Conduct a comprehensive review of spirit groups that are associated with athletic events (e.g. dance team, cheerleaders, bat persons, mascots) including, but not limited to: group names, marketing materials, attire/costumes, audition requirements, responsibilities, and choreography to ensure there is not an actual or perceived exclusion from participation based on sex or gender. ATIXA recommends avoiding naming conventions such as Lady Raiders, Raiderettes, and Raider Girls.
- Provide training during the new athletic staff onboarding process and on an annual basis focused on compliant recruiting practices, including a prohibition against sanctioning, supporting, or funding any sex or gender-based behaviors or tactics in recruitment processes (e.g. parties including exotic dancers or sex workers, using subjective attractiveness as a criterion for tour guide selection).
- Review information provided to camp participants, as well as parents or guardians of minor participants, to ensure that they are apprised of the institution's non-discrimination policy and available resource and reporting options.
- Establish an equitable process for reviewing athletics employment applicants, including coaches, and any previous involvement with sex or gender-based misconduct under a previous employer.
- Educate any booster and/or fundraising groups about institutional requirements for equity under Title IX and their impact on compliance.

The Title IX Team

Investigators

Investigators are individuals designated by an institution to conduct reliable, prompt, fair, and impartial investigations of sex- and gender-based discrimination and misconduct reports, including identifying and interviewing parties and witnesses; identifying, organizing, and compiling relevant information; maintaining accurate and thorough investigation records and notes; and writing clear, concise, and comprehensive investigation reports. The TIXC shall ensure that the assigned Investigator(s) for any specific case have the appropriate knowledge and training (consistent with the requirements of 34 CFR §106.45 b(1)(iii)) and are free from conflicts of interest or bias for or against any party involved in the reported incident(s) prior to case assignment or as soon as a conflict is apparent. The assigned investigator(s) are required to provide written notices and updates to the parties, including any temporary delay or limited extension of the timeframes for investigation provided in policy and the reasons for that action. Notice shall also be provided if the investigator determines that there are additional allegations to investigate which were not included in the initial notice provided by the TIXC upon commencement of the investigation¹⁰.

An investigator shall provide equal opportunities for the parties to provide witnesses and inculpatory and exculpatory information and equal opportunities for the parties to have others present during any proceeding. Any time a party is invited or expected to participate in a portion of the process, the party shall be provided written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, and provided sufficient time for the party to prepare to participate¹¹.

The investigator also provides the parties the same opportunity to review all evidence gathered during the course of the investigation, regardless of whether it will be used to make a decision. The evidence must be provided in a manner and in a timeframe that allows the parties to meaningfully respond to the allegations prior to completion of the investigation.

¹⁰ Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

¹¹ Ibid

The Title IX Team

Investigators - cont.

Upon completion of an investigation, the Investigator(s) shall produce an investigative report that fairly summarizes relevant information. The investigative report shall be reviewed for completeness and clarity by the TIXC prior to being shared with the parties. The Investigator provides the parties and their advisors with a copy of the investigative report that fairly summarizes the relevant evidence for their review, prior to the report being finalized. The investigator provides the parties at least ten days to review and provide a written response to the report. Upon receipt of the written responses, the investigator considers the written comments and incorporates as deemed appropriate. The final investigative report shall be forwarded to the assigned Decision-Maker as determined by the TIXC and institutional policy.

Decision-Makers

Decision-Makers are individuals or groups who have the authority to determine whether or not institutional policy was violated in accordance with the specified standard of proof and to determine appropriate remedies and corrective action/sanctions. The TIXC may not serve as a Decision-Maker, nor may the individual(s) who investigated the reported incident(s). Decision-Makers must be appropriately trained (consistent with the requirements of 34 CFR §106.45 b(1)(iii)) and be free from conflicts of interest or bias for or against any party involved in the reported incident(s). For incidents in which a student or student group is the Respondent, the Decision-Maker is traditionally an individual or group from the dean of students or student conduct office. For incidents in which an employee or third-party is the Respondent, the Decision-Maker is most often an individual or group from the human resources department.

The Title IX Team

Decision-Makers - cont.

The Decision-Maker will facilitate a live hearing process, including permitting the parties to ask the other part(ies) and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted by the party's Advisor of choice and must exclude information about the Complainant's sexual behavior or predisposition, unless such information is offered to prove that someone other than the Respondent committed the alleged conduct, or the information concerns specific incidents of the Complainant's sexual behaviors with respect to the Respondent, and is offered to prove consent. The Decision-Maker must explain to the party's advisor asking cross-examination questions any decision to exclude questions as not relevant. Either party may request that cross-examination take place with the parties located in separate rooms with technology enabling the Decision-Maker and the parties to simultaneously see and hear the party answering the questions¹².

Upon the conclusion of the hearing, the Decision-Maker shall issue a written determination to all parties simultaneously. Such determination may not rely upon any statement of any party or witness who does not make themselves available for cross-examination during the live hearing. The written determination shall include:

- i. Identification of the section(s) of the institution's code of conduct alleged to have been violated;
- ii. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- iii. Findings of fact supporting the determination;

¹² Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
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Decision-Makers - cont.

- iv. Conclusions regarding the application of the institution's code of conduct to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and any remedies provided to the reporting part(ies) designed to restore or preserve access to the institution's education program or activity; and
- vi. The institution's procedures and permissible bases for the reporting and responding parties to appeal¹³.

Appeal Decision-Makers

If an institution offers an opportunity to appeal the Decision-Maker's original decision, the case will then be assigned to an Appeal Decision-Maker. An Appeal Decision-Maker may be an individual or a group and cannot have otherwise been involved in the case up to the point of receiving an appeal request. Appeal Decision-Makers must be appropriately trained (consistent with the requirements of 34 CFR §106.45 b(1)(iii)) and be free from conflicts of interest or bias for or against any party involved in the reported incident(s).

The Title IX Regs require an institution to offer an appeal to all parties, and require that all parties have an equal opportunity to appeal. The Regs provide three specific grounds for appeal in CFR §106.45 b(8), which must be incorporated into your procedures. Upon receipt of an appeal request, the Appeal Decision-Maker must notify the other part(ies) that an appeal has been submitted, as well as the Decision-Maker whose decision is subject to appeal.

¹³ Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
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Appeal Decision Makers - cont.

Each party shall be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. ATIXA recommends that the Decision-Maker submit a written response addressing any alleged process errors occurring during the hearing portion of the case resolution and/or any specific issues raised about how they reached their decision.

Following a complete review of all submitted information for consideration in the appeal, the Appeal Decision-Maker shall issue a written determination to all parties simultaneously. Such determination shall include the result of the appeal and the rationale for the result.

Advisors

An Advisor is an individual selected by any party to assist them throughout the institution's resolution process. While institutions cannot restrict who an individual selects as their Advisor, ATIXA recommends that the parties be advised of the potential issues related to choosing an Advisor who has a conflicting role within the process, such as being a witness¹⁴, Co-Respondent, etc. An institution may restrict the Advisor's role in the process, such that they are not allowed to provide evidence directly, but the Advisor may assist the party during interviews, meetings, and any hearing. However, if there is a hearing, then the Advisor must be given the opportunity to question/cross-examine witnesses and the other part(ies). The party is not permitted to engage in cross-examination, directly, and must do so through their advisor.

In circumstances in which an individual does not have an Advisor for a hearing, the institution must provide that party with an Advisor to conduct cross-examination¹⁵.

¹⁴ Generally, witnesses do not have process advisors themselves, though any witness can be advised outside the process if they choose to be.

¹⁵ Department of Education Final Regulations for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May 2020)
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

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Advisors - cont.

ATIXA recommends recruiting and training an internal pool of individuals who are willing and capable of serving as an Advisor to any party and providing this list of Advisors to all parties upon the commencement of an investigation. Advisors employed by the institution shall be considered confidential for the limited purpose of advising a specific individual for a specific case unless they have knowledge that their client is providing false or misleading information to the institution¹⁶. It is also recommended to invite non-employees who are frequently selected by individuals to serve as Advisors at the institution to any training made available to affiliated Advisors.

Advocates

Advocates are individuals who may or may not be employed by an institution for the purpose of providing confidential support and resources independent of or in conjunction with a sex- or gender-based discrimination or misconduct resolution process. Advocates are typically trained to provide crisis response services and connection to law enforcement, legal, health, and other emergency services. Advocates are often involved in assisting with the provision of supportive measures for reporting or responding parties, such as academic adjustments, employment adjustments, housing relocation, and coordination of medical or mental health services.

¹⁶ *Doe v. Ohio State University* 311 F.Supp.3d 881 (Ohio 2018).

The Title IX Team

Responsible Employees - cont.

Responsible Employees are those individuals designated by an institution who have a responsibility to promptly notify the TIXC when they receive information that may implicate an institutional duty under Title IX and/or institutional policy. Despite the Regs limiting this mandate to individuals who have the responsibility to implement corrective measures, ATIXA recommends that all non-confidential employees be designated Responsible Employees (OCR calls these “Individuals with Authority” now, and ATIXA prefers the term “mandated reporter.” Additionally, ATIXA recommends that the institution create a list of those positions and individuals that the institution determines have the responsibility and authority to implement corrective measures, as well as a list of all other positions and individuals that the institution deems mandated reporters. All employees are expected to report any behaviors required under existing state law (e.g. abuse of minors, etc.). Training for Responsible Employees should occur both during their onboarding process when joining the institution or transitioning into a role that the institution has designated as a Responsible Employee, and at regular intervals throughout their employment.

Individuals who are not employed by the institution cannot be designated as Responsible Employees; however, they can be trained on the institution’s reporting procedures and encouraged to follow them. It is advisable to provide training to non-employees who volunteer to serve as student organization advisors, as well as individuals who staff student housing facilities that are not owned or operated by the institution, such as fraternity or sorority house staff or private residence halls.

Responsible Employees are encouraged to notify individuals of their reporting requirement prior to receiving a disclosure that may require reporting. Many faculty members include a statement in their syllabus, and academic advisors, case managers, and other administrators include information in their introductory information when first meeting with a student. Responsible Employees should be well-versed in the institution’s process and available resources and provide such information to any individual who makes a disclosure involving sex- or gender-based discrimination or harassment.

The Title IX Team

Legal Counsel

The involvement of Legal Counsel (hereinafter Counsel) in Title IX-related matters will vary greatly depending upon the culture of the institution and whether or not counsel is in-house. In any instance, Counsel should be serving in an advisory capacity rather than an approval role. Counsel can be especially helpful in navigating intersecting, overlapping, and conflicting laws, policies, and regulations. Many institutions will have a Counsel representative present any time a party has selected an attorney as their Advisor. Counsel may also assist with responding to records requests, subpoenas, and advising institutions of potential risks for a specific course of action.

Title IX Coordinator Checklist

- Receive annual training on the Regs' definition of sexual harassment, sex- and gender-based discrimination, misconduct, and retaliation, including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, and stalking, due process, remediation, supportive and interim measures, long-term remedies, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias, training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, issues of relevance to create an investigative report that fairly summarizes relevant evidence;
 - o Ensure that all TIXCs, investigators, decision-makers and any person that facilitates any kind of Title IX-based resolution (including informal) are trained according to these requirements;
- Notify all students and employees:
 - o Of the institution's grievance procedures to students, parents/guardians, and employees, including how to report sex discrimination and how to file or respond to a complaint of sex discrimination.
 - o That a report can be made by anyone at any time.
 - o Of the name or title, office address, e-mail address, and telephone number of TIXC and other Title IX contacts.
- Train all employees on their reporting obligations.
 - o Provide individual(s) making a disclosure with information about reporting and support options.

Title IX Coordinator Checklist - cont.

- Notify applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution that the institution does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX to not discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to employment and admission, and that inquiries about the application of Title IX may be referred to the TIXC, to the U.S. Department of Education's Office for Civil Rights, or both.
 - This policy statement must be prominently displayed on the institution's website and in each handbook or catalog that it makes available to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution.
- An initial review of a report of sex- or gender-based discrimination or misconduct shall include:
 - Assessment of the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident;
 - Addressing immediate physical safety and emotional well-being;
 - Notifying the Complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
 - Notifying the Complainant of the right to seek medical treatment;
 - Notifying the Complainant of the importance of preservation of evidence;
 - Communicating necessary details of the report to the institution's law enforcement department or other security entity to enter the report into the institution's daily crime log if required by the Clery Act;
 - Following institutional protocol for assessing the reported conduct and discern the need for a timely warning under the Clery Act;
 - Providing the Complainant with written information about on- and off-campus resources;

Title IX Coordinator Checklist - cont.

- o Notifying the Complainant of the range of supportive measures available, regardless of whether they choose to participate in an institutional or law enforcement investigation;
 - o Consider the wishes of the Complainant with respect to supportive measures
 - o Providing the Complainant with an explanation of the available procedural options, including the process for filing a formal complaint;
 - o Discussing the Complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g. confidentiality concerns);
 - o Notifying the Complainant of the right to be accompanied at any meeting by an Advisor of choice;
 - o Assessing for any pattern of conduct by the Respondent;
 - o Assessing for any pattern of conduct in the reported location of the incident(s);
 - o Explaining the institution's policy prohibiting retaliation, that the institution will take prompt action when retaliation is reported, and how to report acts of retaliation; and
 - o Determining the age of the Complainant; and if the Complainant is a minor, or was a minor at the time of the reported incident(s), make the appropriate notifications under institutional policy and law¹⁷.
- Ensure that the Respondent is notified and receives written information on available resources and options, consistent with the list outlined above, as applicable.
 - Coordinate an emergency removal process that uses an individualized safety and risk analysis, removing a student only when it is determined there is an immediate threat to the physical health or safety
 - o Provide the opportunity for an immediate challenge of the removal
 - Keep confidential the identities of the Complainant, Respondent, any third-party reporter, and any witness, except as permitted by FERPA, or to carry out the purposes of Title IX.
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¹⁷ Baylor University's Sexual and Gender-Based Harassment and Interpersonal Violence Policy-
<https://www.baylor.edu/titleIX/doc.php/249242.pdf>

Title IX Coordinator Checklist - cont.

- Ensure retaliation protections for those who made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing pertaining to Title IX.
- Coordinate with appropriate institutional or community partners to implement supportive measures as applicable for all parties.
- Select one or more appropriately trained and knowledgeable Investigator(s) for the case and provide all information collected to that point to the Investigator(s).
- Oversee an equitable appeals process that:
 - o Allows for an appeal if a formal complaint is dismissed
 - o Notifies the parties when an appeal has been filed
 - o Provides the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging an appeal;
 - o Uses an impartial appeals officer or panel;
 - o Allows the parties to appeal on at least three specifically articulated grounds (listed in the Regs)
 - o Provides a written decision, including a rationale for the result, simultaneously to the parties;
- Provide for effective implementation of all remedies.
- Monitor and record compliance with all assigned sanctions.
- Ensure First Amendment protections in relation to Title IX issues.
- Create and maintain (for seven years) records of any actions taken, including supportive measures, in response to a formal complaint of sexual harassment;
 - o Document the basis for its conclusion that its response was not deliberately indifferent;
 - o Document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity;

Title IX Coordinator Checklist - cont.

- o If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances
 - o Any appeals and the result therefrom
 - o Any informal resolution and the result therefrom
 - o Maintain copies of all materials used to train Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution process.
 - o Make these materials available on the institution's website, or if the institution does not have a website, make the materials available for inspection.
- Upon receipt of a formal complaint, the TIXC must provide written notice to the parties who are known, with sufficient details and with sufficient time for the parties to prepare a response before any initial interview, including:
- i. Notice of the institution's grievance procedures (usually provided by a web link);
 - ii. Notice of the allegations constituting a potential violation of the institution's policy including sufficient details known at the time, and with sufficient time to prepare a response before any initial interview;
 - iii. The identities of the parties involved in the incident(s), if known;
 - iv. The specific section of the institution's policy that was allegedly violated;
 - v. The specific conduct allegedly constituting a policy violation;
 - vi. The date, time and location of the alleged incident(s), if known;
 - vii. That the parties may have an advisor of their choice, who may be an attorney, who has a right to inspect and review evidence;
 - viii. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

Title IX Coordinator Checklist - cont.

- x. Prohibition against knowingly making false statements or knowingly submitting false information in the grievance process;
- xi. The name and contact information of the assigned Investigator(s);
- xii. Information about the parties' respective rights and responsibilities;
- xiii. The institution's prohibition against retaliation;
- xiv. The importance of preserving any potentially relevant information in any format; and
- xv. How to challenge participation by the Investigator(s) on the basis of a conflict of interest or bias.

Deputy Title IX Coordinator Checklist

- Receive annual training on the Regs' definition of sexual harassment, sex- and gender-based discrimination, misconduct, and retaliation, including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, and stalking, due process, remediation, supportive and interim measures, long-term remedies, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Notify TIXC of population-specific concerns or issues raised implicating potential sex- or gender-based discrimination or misconduct.
- Provide TIXC with copies of all training, prevention, and awareness materials as well as attendance or completion records, as applicable.
- Consult with TIXC regarding any sex- or gender- based policy, process, or protocol changes before they are finalized.

Investigator Checklist

- Receive annual training on the Regs' definition of sexual harassment, sex- and gender-based discrimination, misconduct, and retaliation, including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, and stalking, due process, remediation, supportive and interim measures, long-term remedies, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias, training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, issues of relevance to create an investigative report that fairly summarizes relevant evidence;
- Self-check that there aren't any conflicts of interest or disqualifying biases of any Investigator for or against any party involved in the assigned case.
- Identify and interview parties and witnesses.
- Identify, organize, and compile relevant information.
- Maintain accurate and thorough investigation records and notes, including:
 - o Dates, times, means, and content of communication with parties, witnesses, Advisors, TIXC, Counsel, and/or others;
 - o Date, times, means, and content of non-verbal information submitted for consideration in the investigation, such as photos, recordings, or screenshots.
- Compile a clear, concise, and comprehensive investigative report.
- Provide written notices and updates to the parties, including any temporary delay or limited extension of the timeframes for investigation provided in policy and the reasons for that action.
- Provide written notice to the parties if the Investigator determines that there are additional allegations to investigate which were not included in the initial notice provided by the TIXC upon commencement of the investigation.

Investigator Checklist - cont.

- Provide equal opportunities for the parties to provide witnesses and inculpatory and exculpatory information and equal opportunities for the parties to have others present during any proceeding.
- Provide written notice any time a party is invited or expected to participate in a portion of the process; the party shall be provided written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, and provided sufficient time for the party to prepare to participate.
- Produce an investigative report that fairly summarizes relevant information.
- Provide the investigative report to the TIXC to review for completeness prior to being sharing with the parties.
- Provide the parties a copy of the investigative report for their review and response at least ten days prior to a hearing.

Decision-Maker Checklist

- Receive annual training on the Regs' definition of sexual harassment, sex- and gender-based discrimination, misconduct, and retaliation, including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, and stalking, due process, remediation, supportive and interim measures, long-term remedies, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias, training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, issues of relevance to create an investigative report that fairly summarizes relevant evidence;
- Self-check that there aren't any conflicts of interest or disqualifying bias of any Decision-Maker for or against any party involved in the assigned case.

Decision-Maker Checklist - cont.

- Review the investigation report prior to the hearing and prepare questions for each of the parties.
- Provide written notice any time a party is invited or expected to participate in a portion of the process; the party shall be provided written notice of the date, time, location, participants, and purpose of all hearings investigative interviews, or other meetings, and provided sufficient time for the party to prepare to participate.
- Facilitate hearing according to institutional procedures, accounting for cross-examination to be conducted by the parties' Advisors.
 - Document questions intended for parties or witnesses who were not present for the live hearing.
 - Document questions which were asked, and a party or witness declined to answer.
 - Document questions that were deemed not relevant during cross-examination by the parties' Advisors.
- Provide a written determination to the parties simultaneously. The written determination must include:
 - i. Identification of the section(s) of the institution's code of conduct alleged to have been violated;
 - ii. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of the institution's code of conduct to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and any remedies provided to the Complainant designed to restore or preserve access to the institution's education program or activity; and
 - vi. The institution's procedures and permissible bases for the parties to appeal.

Appeal Decision-Maker Checklist

- Receive annual training on the Regs' definition of sexual harassment, sex- and gender-based discrimination, misconduct, and retaliation, including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, and stalking, due process, remediation, supportive and interim measures, long-term remedies, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias, training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, issues of relevance to create an investigative report that fairly summarizes relevant evidence;
- Provide an equitable appeals process;
- Review submitted appeals to determine whether it cites any of the permissible grounds for appeal
- Self-check that there aren't any conflicts of interest or disqualifying bias of any Appeal Decision-Maker for or against any party involved in the case or involving any Investigator or Decision-Maker in the assigned case.
- Notify all parties in writing upon receipt of an appeal request, including providing options and deadlines for their response to the appeal.
- Review all information submitted for review by the specified deadline.
- Make a determination for each appeal ground cited in the appeal request.
- Provide a written determination to the parties simultaneously, including the result of the appeal and the rationale for the result.

Advisor Checklist¹⁸

- Receive annual training on institutional policy, process, and Advisor responsibilities; and effective advising and questioning.
- Ensure that the party understands the role of the Advisor in the institution's process.
- Assist the party with preparing for any interviews, meetings, or hearings.
 - o Review all evidence
 - o Listen to client's account of the reported incident(s) without judgement.
 - o Explain process steps as applicable.
 - o Discuss information that may be relevant to submit for consideration.
 - o Discuss potentially relevant witnesses.
 - o In a hearing, prepare and question/cross-examine the parties and witnesses during the hearing.

Advocate Checklist¹⁹

- Receive annual training on institutional policy, process, advisor responsibilities, and effective advising.
- Receive annual training on sex- and gender-based discrimination and misconduct including, but not limited to, sexual harassment, intimate partner violence (dating violence, domestic violence), sexual assault, stalking, and retaliation.
- Collect and disseminate resource information for campus- and community-based law enforcement, legal, health, and other emergency services.
- Establish working relationships with local emergency service providers.

¹⁸ Applicable when the advisor is an employee or contractor of the district or school.

¹⁹ Applicable when the advisor is an employee or contractor of the district or school.

Responsible Employee Checklist

- Complete Responsible Employee training during employee onboarding process and during regular intervals as specified by the institution.
- Take steps to notify individuals of Responsible Employee status as appropriate for employment role within the institution (e.g. academic advisor, faculty, supervisor).
 - o Create a list of those positions and individuals that the institution determines have the responsibility and authority to implement corrective measures
 - o Create a list of all other positions and individuals that the institution deems responsible employees.
 - o Remind all employees of their obligations to report any behaviors required under existing state law (e.g. abuse of minors, etc.).
- Promptly report any disclosure of potential sex- or gender-based discrimination or misconduct to the TIXC.
- Ensure that the individual(s) making a disclosure are aware of Responsible Employee report to the TIXC.
- Provide individual(s) making a disclosure with information about reporting and support options.
- Refrain from discussing any disclosures with anyone other than the TIXC or designee.
- Avoid treating any party differently based on a disclosure of alleged sex- or gender-based discrimination or misconduct.

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