

# Title IX Personnel Training

2021-2022

# Title IX

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.” (20 U.S.C. § 1681)
- “...longstanding legal authority establish(es) that sexual harassment of students can be a form of sex discrimination covered by Title IX.” (Revised Sexual Harassment Guidance, 2001)
- “A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging [sexual harassment]...” (34 CFR 106.8(c))
- “A recipient’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX” (34 CFR 106.45(a))

# Definition of Sexual Harassment

- In accordance with 34 CFR 106.30, **Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - (1) An employee of the [College] **conditioning** the provision of an aid, benefit, or service of the [College] on an individual's participation in unwelcome sexual conduct;
  - (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies a person equal access** to the [College's] education program or activity; **or**
  - (3) **Sexual Assault** as defined in 20 U.S.C. 1092(f)(9)(A)(v),
  - (4) **Dating Violence** as defined in 34 U.S.C. 12291(a)(10),
  - (5) **Domestic Violence** as defined in 34 U.S.C. 1229(a)(8), or
  - (6) **Stalking** as defined in 34 U.S.C. 12291(a)(30).

# Definition of Sexual Assault

- **Sexual Assault** as defined in 20 U.S.C. 1092(f)(96)(A)(v):
  - (1) the **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 Complainant;
  - (2) the **touching** of the private body parts of another person for the purpose of sexual gratification, **without the consent** of the Complainant, including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental incapacity;
  - (3) sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
  - (4) sexual intercourse with a person who is **under the statutory age** of consent.

# Definition of Dating Violence

- **Dating Violence** as defined in 34 U.S.C. 12291(a)(10):
- Violence committed by a person: (1) who is or has been in a **social relationship of a romantic or intimate nature** with the Complainant; and
- (2) where the existence of such a relationship will be determined based on a **consideration of the following factors** (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
- Dating Violence includes, but is not limited to, **sexual or physical abuse or the threat of such abuse**. Dating Violence does not include acts covered under the definition of Domestic Violence.

# Definition of Domestic Violence

- **Domestic Violence** as defined in 34 U.S.C. 1229(a)(8):
- Actions of violence committed by
  - (1) a **current or former spouse or intimate partner** of the Complainant;
  - (2) a person **with whom the victim shares a child** in common;
  - (3) a **person who is cohabitating with or has cohabitated with** the victim as a spouse or intimate partner;
  - (4) a person **similarly situated to a spouse** of the victim under the domestic or family violence laws of [Massachusetts]; or
  - (5) 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 Massachusetts**.
- In interpreting the term "violence" in this definition, the College will consider, but is not limited to, the types of actions that constitute felonies or misdemeanors under Massachusetts state law.

# Definition of Stalking

- **Stalking** as defined in 34 U.S.C. 12291(a)(30):
- Engaging in a **course of conduct directed at a specific person** that would cause a **Reasonable Person** to:
  - (1) **fear** for the person's safety or the safety of others; or
  - (2) suffer **substantial emotional distress**.
- For the purpose of this definition, course of conduct means **two or more acts**, including, but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicated to or about a person, or interferes with a person's property.
- Substantial emotional distress means **significant mental suffering or anguish** that may, but does not require medical or other professional treatment or counseling.

# Response to Sexual Harassment

- “A recipient with **actual knowledge** of sexual harassment in an **education program or activity** of the recipient against a person in the United States, **must respond promptly in a manner that is not deliberately indifferent.**” (34 CFR 106.44(a))
- “Actual knowledge means **notice of sexual harassment or allegations of sexual harassment to [the] Title IX Coordinator or any official of the [College] who has authority to institute corrective measures on behalf of the [College].**...” (34 CFR 106.30(a))
- Designated Officials include **Office of the Dean of Students, Office of the Provost, and Human Resources.**



# Scope of Education Program or Activity

- In accordance with 34 CFR § 106.44, education program or activity includes:
  - (1) **locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context** in which the Sexual Harassment occurs, and
  - (2) any **building owned or controlled by a student organization** that is **officially recognized** by the College.
- [Campus Map](#)

# Scope of Education Program or Activity

- Examples falling within the scope of the College's education program or activity may include incidents occurring:
  - on campus property
  - at off campus property owned by the College
  - at off campus Wheaton-sponsored activities
  - on a Wheaton-sponsored domestic trip
- Examples falling outside of the scope of the College's education program or activity include incidents occurring outside of a Wheaton-sponsored activity:
  - at private residences off campus
  - at public places off campus outside of Wheaton-sponsored activities

# Responding to Reports

- After receiving a report of Sexual Harassment, the Title IX Coordinator must take a number of initial steps. These initial steps are not an investigation, rather they are steps that will enable the College to **assess the need to take any immediate action to address the safety and health needs of the parties and the College community** and to **determine next steps** for investigating the reported conduct and **the need for any Supportive Measures**.
- Offer Supportive Measures **with or without the filing of a formal Complaint** (academic, housing, work accommodations; connecting with resources; mutual orders of no contact; non-disciplinary interventions to deter Sexual Harassment).
- Make disclosures regarding the **right to report to law enforcement** and the **College's prohibition of and response to Retaliation**.
- In consultation with CCRT administrators, conduct a **threat assessment** and take appropriate steps to mitigate.

# Responding to Reports

- The Title IX Coordinator must explain to the Complainant the process for filing a Formal Complaint. If, at this time, the Complainant requests that the process not move forward, the College will weigh that request and the reasons for it against the College's obligation to address any risk of harm to the Complainant or other individuals in the community and the nature of the incident or conduct at issue.
- In **certain circumstances**, the Title IX Coordinator may determine that it would be **unreasonable in light of the known circumstances not to investigate** the allegations of Sexual Harassment. In those circumstances, the **Title IX Coordinator must file a Formal Complaint**.

# Formal Complaints

- “At the time of filing a formal complaint, a **complainant must be participating in or attempting to participate in** the education program or activity of the [College]...” (34 CFR 106.30(a))
- “A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator...and by any additional method designated by the [College]” (34 CFR 106.30(a))
- The formal complaint must contain the **complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing** the formal complaint. (34 CFR 106.30(a))
- Where the Title IX Coordinator signs a Formal Complaint, the **Title IX Coordinator is not a Complainant or otherwise a party** to the matter. (34 CFR 106.30(a))

# Basic Requirements of the Grievance Process

- “Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with [Title IX Regulations] before the imposition of any disciplinary sanctions or other actions that are not supportive measures...against a respondent.” (34 CFR 106.45(b)(1)(i))
- Conduct objective evaluations of all relevant evidence and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness. (34 CFR 106.45(b)(1)(ii))
- Require Title IX Personnel to be adequately trained and that they not have conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. (34 CFR 106.45(b)(1)(iii))
- “Include a presumption that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.” (34 CFR 106.45(b)(1)(iv))
- “Include reasonably prompt time frames for conclusion of the grievance process...” (34 CFR 106.45(b)(1)(v))

# Basic Requirements of the Grievance Process

- Describe the range of possible disciplinary sanctions and remedies. (34 CFR 106.45(b)(1)(vi))
- State the standard of evidence as the preponderance of the evidence standard and apply the same to all formal complaints. (34 CFR 106.45(b)(1)(vii))
- “Include the procedures and permissible bases for the complainant and Respondent to appeal.” (34 CFR 106.45(b)(1)(viii))
- “Describe range of supportive measures available to complainant and respondent.” (34 CFR 106.45(b)(1)(ix))
- “Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.” (34 CFR 106.45(b)(1)(x))

# Conducting the Grievance Process: Investigation

- If a Formal Complaint is filed, the formal investigation phase will commence and include the steps outlined below.
- Notice of Investigation. The Title IX Coordinator, in consultation with the Procedural Coordinator, will provide the parties with a copy of the Formal Complaint, the Policy, and written notice of the investigation.
- The notice of the allegations potentially constituting Prohibited Conduct must include sufficient details known at the time, including: (1) the identities of the parties involved in the incident, if known; (2) the conduct allegedly constituting Prohibited Conduct as defined in the Policy; and (3) the date and location of the alleged incident, if known.
- Include all other information required under the Policy, including the right to have an advisor.



# Conducting the Grievance Process: Investigation

- Designation of Investigator(s). When appointing the investigator(s), the College will designate at least one internal and/or external investigator to conduct a prompt, fair, equitable and impartial investigation of the reported conduct and prepare an investigative report. At the College's discretion, more than one investigator may be assigned.
- The Title IX Coordinator will provide the parties with the name of the investigator(s). As soon as possible, but no later than three (3) days after receiving notice of the identity of the investigator(s), the parties can inform the Title IX Coordinator (in writing) of any conflicts or potential conflicts of interest with regard to the selected investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if a different individual should be assigned as investigator(s). The Title IX Coordinator's decision regarding any conflicts is final.

# Conducting the Grievance Process: Investigation

- Nature of the Investigation. Investigative meetings may be conducted in person or virtually, as required by federal mandate.
- The investigation provides an opportunity for fact-finding and will include separate interviews with the Complainant, Respondent, and any relevant witnesses.
- The investigator(s) will provide the parties with advance notice of meetings at which their presence is required. Parties will be afforded an equal opportunity to present witnesses and other inculpatory and exculpatory evidence.
- At no point will the investigation require both parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party or any witness directly during the investigation, determination, or appeal process. The parties may ask questions of the other party and/or witnesses at the hearing, described in Section VI(2)(c)(iii) of the Policy, but all such questions must be asked through the party's Advisor.

# Conducting the Grievance Process: Investigation

Determining Issues of Relevance: Review complaint and answer

- Determine potential violations of the Policy along with their **definitional elements** (this serves as the foundation to relevance)
- What parts of the policy may have been violated?
- What are the undisputed facts? Which ones are significant to the investigation of Prohibited Conduct?
- What are the facts in dispute? Which ones are significant to the investigation of Prohibited Conduct?
- Who do you need to interview and in what order?
- What should be the order of interview questions and phrasing (being trauma informed here)?
- What evidence gathering needs to be done?
- What is the investigation timeline (creating a roadmap)?

# Conducting the Grievance Process: Investigation

Determining Issues of Relevance: Analyze definitional elements:

- Stalking: Engaging in a course of conduct **directed at a specific person** that would **cause a Reasonable Person** to:
  - (1) **fear for the person's safety or the safety of others; or**
  - (2) **suffer substantial emotional distress.**
- For the purpose of this definition, **course of conduct means two or more acts**, including, but not limited to acts in which the stalker **directly, indirectly, or through third parties, by any action, method, devise, or means, follows, monitors, observes, surveils, threatens, or communicated to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish** that may, but does not require medical or other professional treatment or counseling.

# Conducting the Grievance Process: Investigation

Interview Techniques for gathering the relevant facts:

- Offer interviewees an opportunity to tell their story in narrative form, avoid interrupting, prompt or focus the interviewee as needed
- Direct the interview by responding to relevant comments, focusing less on irrelevant comments
- Follow up to obtain detailed accounts
- Keep questions short, avoiding compound questions
- Generally ask open-ended questions, clarifying with direct questions
- Avoid judgmental questions but do ask the difficult ones, being mindful of emotional impact and being trauma informed when doing so
- Allow for silence

# Conducting the Grievance Process: Investigation

(Cont'd) Interview Techniques for gathering the relevant facts:

- Ask follow up questions instead of making assumptions
- Use them to clarify important information, develop underlying facts and details, test contradictions, find out the factual basis for an opinion, check degree of certainty and accuracy of quotes, obtain better evidence when an interviewee's answers are vague or conditional, assess consistency of answers
- Employ "looping" approach: ask the question, listen to the answer, repeat back the answer asking if you understand it correctly, allow for clarification / ask for further clarification
- Ask about the source of information (documentation / other witnesses) and ask specific questions to determine the relevance of the information.

# Conducting the Grievance Process: Investigation

- Each party may have a single Advisor present during any meeting, interview, or hearing, held pursuant to the Policy. Except to the extent expressly permitted in the hearing phase outlined below, the Advisor may advise their respective party privately, but cannot act as a speaking advocate at a meeting.
- An Advisor is subject to the same privacy expectations applicable to others in attendance and must also abide by any applicable state and federal laws. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process.
- The Advisor is not permitted to attend a meeting or proceeding without the party they are advising being present without the prior approval of the Title IX Coordinator, at their discretion.
- The College reserves the right to take appropriate action regarding any Advisor who disrupts the process, or who does not abide by the restrictions on their participation.

# Conducting the Grievance Process: Investigation

- Content of Investigative Report. The investigator(s) will create an investigative report that fairly summarizes relevant evidence, a separate section where the investigator(s) point out relevant consistencies or inconsistencies (if any) between all sources of information, and a separate section describing the investigator(s)' assessment of the credibility of parties and witnesses, and attach any relevant evidence gathered, whether inculpatory (i.e., proving the responsibility of a party) or exculpatory (i.e., proving that a party did not commit the conduct alleged)
- The investigative report will not include a determination as to whether a party has violated the Policy or what sanctions may be appropriate. These determinations will be made as described in Section VI(2)(d) of the Policy.



# Conducting the Grievance Process: Investigation

An investigative report that fairly summarizes relevant evidence will **impartially** include:

- the allegation(s).
- identification of parties, advisors, witnesses, as appropriate.
- dates of interviews and actions taken.
- a description of the investigator's attempt to interview parties/witnesses who declined to participate.
- A description of documents examined.
- A description of the investigator's attempt to obtain documents or physical evidence that was not obtained.

# Conducting the Grievance Process: Investigation

(cont'd) An investigative report that fairly summarizes relevant evidence will **impartially** include:

- a description of the relevant policies.
- a summary of the factual information presented during the investigation phase
- a separate section where the investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information. Consistency with other sources: Is interviewee's information consistent with information from other sources? Internal consistency: Is the interviewee's information internally consistent?
- a separate section assessing credibility by describing the investigator(s') perception of the interviewee's demeanor

# Conducting the Grievance Process: Investigation

- Review of the Investigative Report by the Parties. Both parties will be informed of their opportunity to review the entire investigative report and that they may submit written comments and/or questions about the content of the investigative report to the investigator(s) within ten (10) calendar days.
- The time to submit written comments can be extended by the Title IX Coordinator, with parity for the parties.
- After reviewing the submissions, if any, from the parties, the investigator(s) may determine that either additional investigation is required or no further investigation is needed.
- The investigator has the sole discretion to determine if any information or questions submitted are irrelevant and therefore not to be considered and will be redacted. If further investigation is conducted, the investigator(s) will include any additional relevant information in the investigative report.

# Conducting the Grievance Process: Investigation

- If, at any point in the review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to cross examination in the hearing described in Section VI(2)(c)(iii) of the Policy, the investigator may revise the investigative report to remove information provided by the witness so as not to impact the hearing.
- If this decision is made prior to the Parties' review, it will be noted in a cover memo to the investigative report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the hearing.
- The investigative report will then be finalized. Any submissions made by either party, as well as any other documentation deemed relevant by the investigator(s), will be attached to the investigative report.

# Conducting the Grievance Process: Live Hearing

- Notice of Hearing. The Procedural Coordinator will notify the Complainant and the Respondent in writing of the time and date of the hearing at least ten (10) business days prior to the hearing date.
- Designation of a Decision-maker(s). The College will designate at least one internal and/or external decision-maker to conduct a prompt, fair, and equitable hearing.
- The Procedural Coordinator will provide the parties with the name of the decision-maker(s). As soon as possible, but no later than three (3) days after receiving notice of the identity of the decision-maker(s), the parties can inform the Procedural Coordinator (in writing) of any conflicts. The Procedural Coordinator will consider the nature of the conflict and determine if a different individual should be assigned as decision-maker(s). The Procedural Coordinator's decision regarding any conflicts is final.

# Conducting the Grievance Process: Live Hearing

- Nature of the Hearing. Hearings may be conducted in person or virtually, as required by federal mandate.
- Decision-maker(s) will maintain broad authority to determine the process, timing and conduct of the hearing. For example, the decision-maker(s) will determine:
  - the order of presentation, timing and overall duration of the hearing;
  - what information and evidence will be heard;
  - what information and questions are relevant to the determination of the matter; and
  - what cross-examination questions will or will not be permitted.

# Conducting the Grievance Process: Live Hearing

## Issues of Relevance of Questions and Evidence

- Evidence is any kind of information presented with the intent to prove what took place. Certain types of evidence may be relevant to the credibility of a party or witness, but not to the allegations.
- **With regard to the allegations central to the complaint**, decision-makers must pay close attention to the type of Prohibited Conduct implicated by the allegations and determine relevance based on the definition (and its elements, see above) of the Prohibited Conduct at issue. Decision-makers should allow questions and evidence that:
  - is pertinent to the elements of the prohibited conduct; and
  - provides the full context of the information
  - verifies facts or addresses uncorroborated accounts
  - addresses inconsistencies and explanations that appear implausible

# Conducting the Grievance Process: Live Hearing

## Issues of Relevance of Questions and Evidence

- **With regard to making credibility determinations**, Decision-makers should consider
  - the consistency of an account, internally and with other accounts and evidence (corroborating evidence)
  - the inherent plausibility of all information given
  - the amount of detail (facts) provided (factual detail should be assessed against accounts that have no supporting detail)
  - demeanor
  - cooperation or non-cooperation
  - motive to falsify or lack thereof



# Conducting the Grievance Process: Live Hearing

- Each party may have an Advisor present at the hearing who will be subject to the same expectations and limitations pertaining to the investigation phase, however Advisors may also be present during the hearing for the limited purpose of conducting cross-examination on behalf of the party.
- If a party does not have an advisor of their choice present at a hearing, the College will provide one, without fee or charge to the party.
- At a time and manner deemed appropriate by the decision-maker(s), the Advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility.

# Conducting the Grievance Process: Live Hearing

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Information protected under a legally recognized privilege (*e.g.*, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not permitted unless the person holding the privilege has waived the privilege.

# Conducting the Grievance Process: Live Hearing

- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The decision-maker(s) will not draw an inference about the determination regarding responsibility based *solely* on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. (Any decision-makers will receive training on technology used during the hearing.
- The College will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties for inspection and review.

# Conducting the Grievance Process: Live Hearing

- Determination Regarding Responsibility. The decision-maker(s) will issue a written determination regarding responsibility using the preponderance of the evidence standard. (“more likely than not” or 50.1% that a fact exists; that a violation of the Policy occurred)The written determination will include:
  - identification of the allegations potentially constituting Prohibited Conduct;
  - a description of the procedural steps taken from the College of the Formal 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;
  - findings of fact supporting the determination;

# Conducting the Grievance Process: Live Hearing

(Cont'd) The written determination will include:

- conclusions regarding the application of the Policy to the facts;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies will be provided by the College to the Complainant
- the College's procedures and permissible bases for the Complainant and Respondent to appeal.
- The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

# Conducting the Grievance Process: Appeals

- Within ten (10) days of receiving written notice of the decision-maker's determination on responsibility and sanctions (or dismissal of a Formal Complaint or any allegations therein), either party may appeal the decision.
- Bases for Appeals. Appeals must be based on one or more of the following:
  - procedural irregularity that affected the outcome of the matter;
  - new evidence that was not reasonably available at the time the determination regarding responsibility or sanction was made, that could affect the outcome of the matter; and
  - the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

# Conducting the Grievance Process: Appeals

- Notice of Appeal and Opportunity to Respond. The College will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The Complainant and Respondent will be provided with a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Appellate Officer. The Appellate Officer will decide the merits of any appeal and in so doing, may consult with the Title IX Coordinator, the investigator(s), the decision-maker(s), and any other individual that the Appellate Officer deems appropriate.

# Conducting the Grievance Process: Appeals

- Appeal Determinations. The purpose of the appeal is not to rehear the case; rather, it is to determine if there is sufficient information presented to allow a reconsideration of the decision-maker's determination. The Appellate Officer may affirm all or part of the decision (which includes the sanction, as well as the determination of responsibility) or may refer the matter to the investigator(s) or decision-maker(s) for further consideration. The Appellate Officer will provide specific instructions with any referral. In the event of a referral, the Appellate Officer may mandate such further proceedings as the Appellate Officer deems appropriate under the circumstances, consistent with the Policy. When reaching an appeal determination, the Appellate Officer will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.



# Conducting the Grievance Process: Informal Resolution

- At any time prior to reaching a determination regarding responsibility, the College may facilitate **an informal resolution process** such as mediation, that does not involve a full investigation and adjudication, provided that the College:
  - provides to the parties a **written notice disclosing the allegations**, the **requirements of the informal resolution process** including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, and **any consequences resulting from participating in the informal resolution process**, including the records that will be maintained or could be shared;
  - obtains the parties' **voluntary, written consent** to the informal resolution process; and
  - does not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Prohibited Conduct with a student.

\*\*\*At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.

# Serving Impartially: Avoiding Prejudgment

Avoiding prejudgment of the facts at issue

- Do not rush to judgment
- Consider the full context of the information you have received (continued relationships, apologies, and other facts of this nature are not necessarily dispositive)
- Do not guess at facts or make assumptions. What additional information is available and what further investigation is necessary to gather the information?
- Decision-makers must consider the type of evidence and weigh it appropriately. You may assign weight to evidence based on:
- Documentary evidence (e.g., supportive writings or documents).

# Serving Impartially: Avoiding Prejudgment

(Cont'd) Avoiding prejudgment of the facts at issue

- Electronic evidence (e.g., photos, text messages, and videos).
- Real evidence (i.e., physical object).
- Direct or testimonial evidence (e.g., personal observation or experience).
- Circumstantial evidence (i.e., not eyewitness, but compelling).
- Hearsay evidence (e.g., statement made outside the hearing, but presented as important information).
- Assigning weight to evidence is important because reaching preponderance of the evidence is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. Consider:
  - Direct Evidence vs. Indirect Evidence
  - Credible vs. Not Credible

# Serving Impartially: What is Bias?

- A bias is a tendency, inclination, or prejudice toward/against someone
  - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance
  - They are frequently based on a person's gender, race, or sexual orientation
  - In effect, biases are "shortcuts" our mind makes that can result in prejudgments, which may lead to improper decisions or potentially discriminatory practices
- Biases can be (and are often) **implicit**, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.
  - You may or may not be aware of your own biases – so you need to be vigilant about removing them from your thinking!

# Serving Impartially: Avoiding Bias

## Tips for Avoiding Bias

- Bias is something that we all have in some way and it can affect how our brains interpret and categorize information.
- Practice self-awareness by identifying your own potential biases and **actively** putting them aside for the duration of the process.
- Ask yourself how bias might come into the process of interviewing and/or making a determination? Identify this at the outset.
- Be mindful of how beliefs or biases about sexual and gender-based misconduct come into play for you and keep those in check by ensuring you are focused on gather facts and making determinations based on facts.
- Employ strategies to regularly check in on and minimize the effects of bias. Subvert the bias by “flipping” the narrative and asking yourself whether you would interview the same way or reach the same determination.

# Serving Impartially: What is a Conflict of Interest?

- A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions
- Conflict of interests may arise from family, friendships, faculty member relationships, financial investments, or other social factors
  - Example of Potential Conflict: The Title IX coordinator is close family friends with a Complainant's parents.
  - Example of Potential Conflict: The investigator and Respondent are co-owners of a side business that resells textbooks on campus

# Serving Impartially: What is a Conflict of Interest?

(Cont'd)

- An **actual** conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation
- A **perceived** conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities
- A **potential** conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future

# Serving Impartially: Avoiding Conflicts of Interest

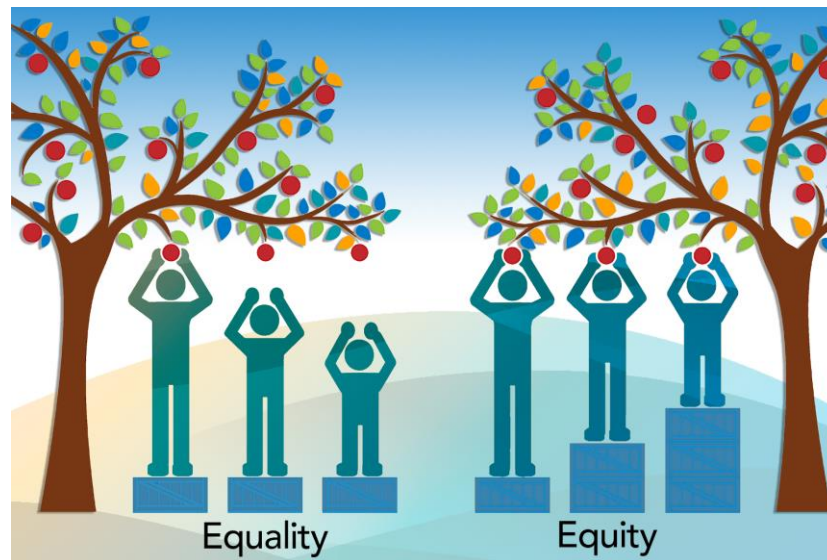
Tips for Avoiding Conflicts of Interest:

- Evaluation of Conflicts: Whether a person could reasonably perceive that a bias exists?
- Does a bias exist for or against complainants or respondents generally? (if yes, the person cannot serve)
- Does a bias exist for or against a specific complainant or respondent? (if yes, the person cannot serve)
- Do you know any of the parties or witnesses involved?
- What is the nature of any current or previous relationship with them?
- In light of the relationship, do you feel that you could be fair and impartial?
  - If yes, at a minimum there is a requirement to disclose the potential conflict and the Title IX Coordinator will determine whether there should be a recusal
  - If no, recusal



# Serving Impartially: Defining Equity

- Equity is defined as “the state, quality or ideal of being just, impartial and fair.” The concept of equity is synonymous with fairness and justice.
  - It is helpful to think of equity as not simply a desired state of affairs or a lofty value. To be achieved and sustained, equity needs to be thought of as a structural and systemic concept.



# Serving Impartially: Recognizing a Stress, Crisis and Trauma Response

- It is important to understand the differences between stress, crisis and trauma and how they may manifest in respondents and complainants, respectively, throughout the grievance process
- Stress management, psychological support and crisis management most directly apply to the respondent
- Trauma-informed approaches most directly apply to the complainant

## Psychological Definitions

### Stress

- External events
- Typical coping strategies are taxed

### Crisis

- Coping mechanisms are overwhelmed
- External support needed

### Trauma

- Acute awareness of threat to life/safety
- Psychobiological response - sustained

# Serving Impartially: Recognizing a Stress and Crisis in Respondents

- Everyone experiences **stress**. Stress can have physical, cognitive and emotional impacts, including changes in behavior
- While some stress can be motivating, too much stress may result in *distress* – and can impair ones ability to function normally



# Serving Impartially: Recognizing a Stress and Crisis in Respondents

- If distress is prolonged or experienced to an extreme degree, an individual may experience a *psychological crisis*
- A crisis occurs from an accumulation of stress or when a situation overwhelms someone's ability to cope
- When in crisis, outside intervention is often required to help restore basic functioning and ensure mitigate worsening of health or mental health concerns

## Potential Psychological Impact



Aslan, 2008

# Serving Impartially: Recognizing Trauma in Complainants

- Understanding trauma includes an understanding of specific, psychological responses that are activated during a traumatic event. These responses are distinctly different from a more common stress response
- The American Psychiatric Association specifies that experiences in which *Exposure to actual or threatened death, serious injury or sexual violence* may precipitate Acute or Post-Traumatic Stress Disorder



# Serving Impartially: Recognizing Trauma in Complainants

- Traumatic events, including experiencing or being threatened with sexual or physical violence, prompt a survival response that may include long-term psychological and biological impacts. These include but are not limited to:
  - Impaired memory
  - Physiological reactivity
  - Difficulty processing information
  - Mood changes
  - Social or emotional withdrawal
  - Avoidance, Numbing

## Trauma memories

We remember trauma less in words  
and more with our feelings and our  
bodies

[van der Kolk & Fisler, 1995]

- Information is stored as:
  - Images or pictures
  - Physical sensations
  - Feelings
  - Behaviors



- They can be triggered by external reminders of the trauma
- Memories can feel as intense as at the time of the original trauma

# Serving Impartially: Recognizing a Stress, Crisis and Trauma Response

- It is important that the psychological wellbeing of both respondents and complainants is prioritized and supported throughout the grievance process
- Understanding how stress, crisis and trauma impact our brains and bodies can help inform the type of support a participant may need at any point in the process
- Facilitators of the grievance process should be aware of institutional and outside resources to assist in mental health support and psychological wellbeing throughout an institution's response to gender-based and sexual violence