

# TITLE IX APPEALS OFFICER TRAINING

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# Objectives:

- Review Role
- Increase Familiarity with Key Definitions
- Review Important Considerations
- Increase Familiarity with Key Processes
- Questions & Answers

# Key Definitions

# WHAT IS 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 **education program or activity** receiving Federal financial assistance.”*

# PARTIES TO A TITLE IX CASE

## Complainant

- ❖ An individual who brings forth a report of a violation against whom a possible violation occurred. An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

## Respondent

- ❖ An individual accused of a violation. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

# CONSENT

- Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- Consent can be withdrawn at any time during a sexual activity by expressed word or action.
- Consent to some activity cannot be presumed consent to other activity.

# Title IX Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - Conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
  - Unwelcome conduct that a reasonable person would determine is “so severe, pervasive, and objectively offensive” that it effectively denies a person equal access to the school’s education program or activity (includes employment); or
  - Sexual assault (as defined in the Clery act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

# What actions constitute an infraction?

- ▶ Preferential treatment or promises of preferential treatment in exchange for submitting to sexual conduct
- ▶ Jokes, discriminatory displays/publications in the workplace, unwelcome sexual advances, propositions, comments, etc.
- ▶ Non-consensual sexual intercourse
- ▶ Non-consensual sexual contact
- ▶ Sexual exploitation (voyeurism, taking pictures, distributing pictures, prostitution, engaging in sexual relations while knowingly infected with HIV/STD w/o informing the other person, administering date rape drugs, etc.)
- ▶ Relationship or intimate partner violence
- ▶ Stalking



# Title IX Sexual Assault

As defined in the Clery Act, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- A. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- B. B. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. C. Rape: 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 victim.
- D. D. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

# Title IX Interpersonal Violence

Includes the definitions of Domestic Violence and Dating Violence as defined in the Violence Against Women Act (VAWA) Domestic Violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner.

- ▶ Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.
- ▶ Dating Violence is violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include “digital abuse”, the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.

# Title IX Stalking

- ▶ As defined in the Violence Against Women Act (VAWA), stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

# Roles & Important Considerations

# BARTON'S ROLE:

Once there is knowledge of sexual harassment/sexual misconduct:

- 1). Take immediate and appropriate steps to **investigate** what occurred
- 2). Take prompt and effective action to:

**Stop the harassment**

**Remedy the effects**

**Prevent the recurrence**

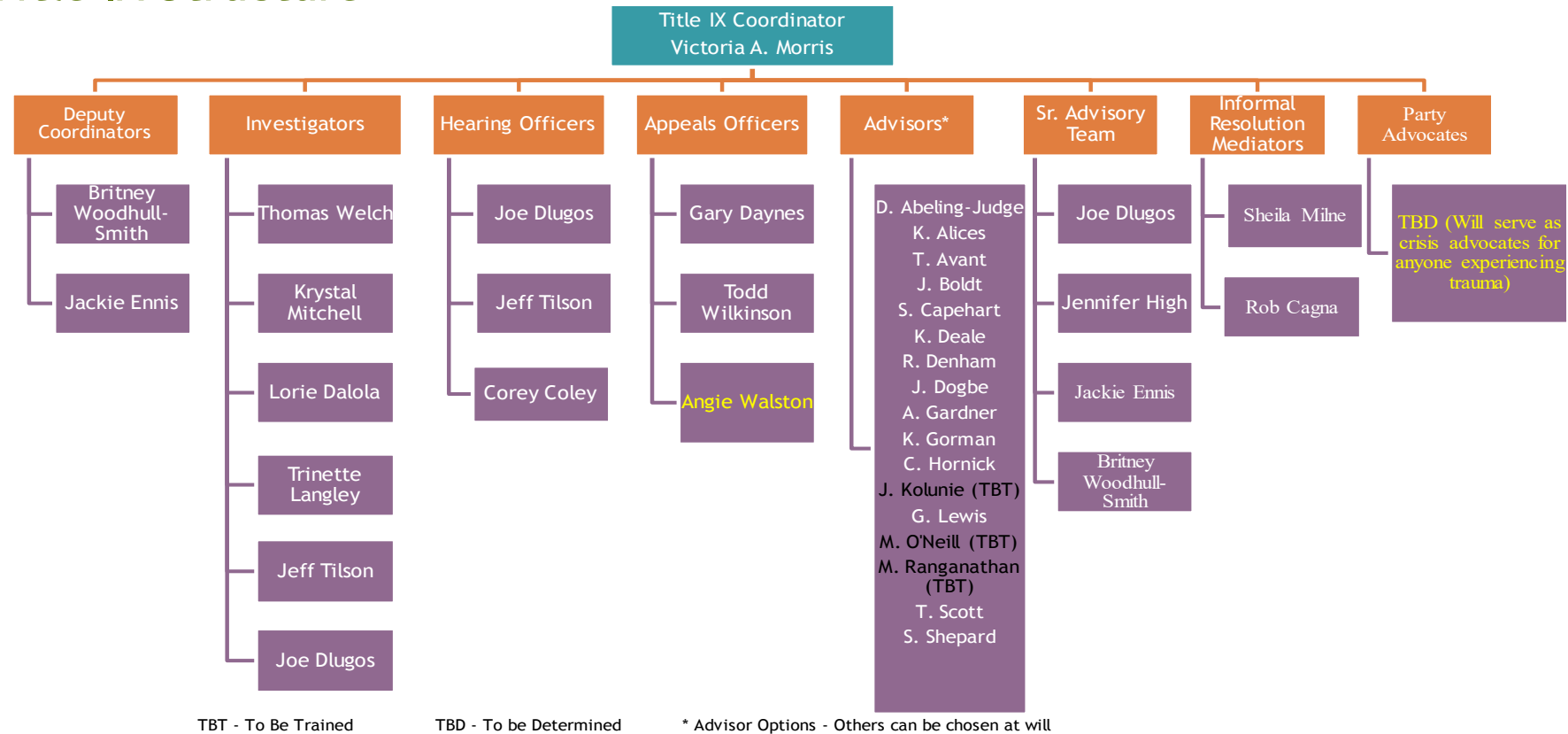
This is regardless of whether or not the Reporting Party makes a formal complaint or asks the school to take action. Title IX Coordinator can also make formal complaint in lieu of the Complainant.

# Scope of Jurisdiction

- ▶ Incidents that take place in the United States:
  - ▶ On the campus or campus-owned property
  - ▶ At College-sponsored events or programs (on or off campus)
  - ▶ That could create a downstream discriminatory effect or hostile environment on the campus (e.g., 2 or more students or employees are involved, online/cyber harassment)
  - ▶ Where the College has control over the respondent or the context of the harassment.

# Title IX Structure for Support:

## Title IX Structure



# General Appeals Information:

1. Appeals Officer serves as the decision maker for all appeals submitted after the Hearing Officer as issued his/her finding.
2. All appeals must be in writing to the Title IX Appeals Officer.
3. Presumptive stance is that the initial finding is correct. Burden is on the appellant to show error based on a grounds for appeal.
4. All sanctions are to be implemented, barring extreme exigent circumstances. Final exams, graduation, and/or proximity to end of term are NOT considered exigent circumstances.
5. Appeals are not intended to be full re-hearings or the allegations. In most cases they are confined to a review of the written documentation of the original hearing, and pertinent documentation related to the grounds for appeal.
6. The Appeals Officer may request information regarding procedure from the investigator or Title IX Coordinator.



# Grounds for Appeal:

- ▶ **Procedural Error:** There was a procedural error or omission that occurred that significantly impacted the outcome of the hearing by the Title IX Coordinator or during the investigation (e.g., substantiated bias, material deviation from established procedures, etc.).
- ▶ **New Evidence:** To consider new evidence, unavailable during the original hearing or investigation, that if true and credible, could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- ▶ **Disproportionate Sanctions:** The sanctions are disproportionate for the nature of the violation.

# Procedure for Appeals:

1. Request for Appeal submitted in writing to Appeals Officer within 3 business days of notification of the outcome of the formal investigation.
2. Appeals Officer should not have been involved in the investigation.
3. Appeals Officer will review the Request for Appeal and assess its merit based on credibility, plausibility, and weight.
4. Any Request for Appeal is shared with ALL parties (Complainant, Respondent, Advisors, Investigator(s), and Original Hearing Officer) who may respond to the Request in a "Response Memorandum."
5. All Response Memorandums must be submitted to the Appeals Officer for consideration within 3 days of their notification of the Request for Appeal.
6. All Response Memorandums will be shared with ALL parties.

# Procedure for Appeals:

7. After considering the Request for Appeal and Response Memorandums, the Appeals Officer will make one of the following determinations within 3 business days of receiving the final Response Memorandum.
  - ▶ The Request for Appeal is denied and the original findings are affirmed. This decision is final and there is no appeal to this decision permitted by any party.
  - ▶ The Request for Appeal is upheld and being forwarded to the Title IX Coordinator for placement in the process based on the grounds under which the appeal is granted.
8. Any decision will be communicated to ALL parties (including Title IX Coordinator) within 3 business days, barring exigent circumstances, of the Appeals Officer's decision.
9. Title IX Coordinator will oversee retention of all records in accordance with the College records policy and/or advice from legal counsel.

# Procedure for Appeals:

- ▶ If Procedural Error that significantly impacted the outcome of the hearing, either:
  - ▶ Remand the case back to the original hearing body with instruction to repair the procedural error
  - ▶ Remand the case back to be reheard by a new Hearing Officer (cases where the procedural error is so profound as to render the original officer too biased or influenced)

# Procedure for Appeals:

- ▶ If it is necessary to consider new evidence unavailable during the original hearing or investigation but is now available and could substantially impact the original finding or sanction, either:
  - ▶ Remand the case back to the original hearing body with instruction to consider new evidence
  - ▶ Remand the case back to be reheard in its entirety by a new Hearing Officer (cases where the new evidence is accompanied by a procedural error so profound as to render the original officer too biased or influenced)
  - ▶ In rare cases, the Appeals Officer may alter the finding or sanction based on new evidence

# Procedure for Appeals:

- ▶ If it is found that the sanctions are disproportionate to the responsible violation of policy, the case will be:
  - ▶ Remanded to the Title IX Coordinator to recommend new sanctions based on the Appeal

# Sample Template:

Dear [Party Name],

I am writing to confirm receipt of your Request for Appeal based on the grounds of \_\_\_\_\_. By copy of this email and per the Barton College appeals process, your Request for Appeal is being shared with all parties, including [names of other party, investigators, hearing officers]. These individuals will have 3 days to submit a Response Memorandum to the Request for Appeal. Response Memorandums will be shared with all parties.

A determination of this Appeal will be made within 3 business days of receiving any submitted Response Memorandums. I will communicate my decision to you and all other parties within 3 business days following my determination, barring exigent circumstances. Thus, I anticipate communicating a decision by [date].

For additional information about the Appeals process, please see pages 107 – 109 of the Student Handbook.

# Sample Template: Determination Ltr.

## **Background**

On (Date) Hearing Office (Name) issued a finding and sanction in a Title IX case involving (Name) as respondent. (Hearing Officer) found (Respondent) responsible for (Title IX Charge), and issued a sanction including (1) (Sanction), (2) (Sanction), and (3) the continuation of a no-contact order between (Respondent) and (Name), the complainant. These sanctions were applied to reflect the severity of the act, and to permit the complainant to complete her education at Barton without concern about any future interactions with (Respondent)

In an appeal dated (Date), (Name) appealed the sanction, arguing that it was disproportionate to the finding. (Name of Person) issued a response memorandum on (Date), which argued that the sanction was in keeping with policy and practice at Barton College. The complainant, (Name), issued a response memorandum on (Date), supporting the initial sanction.





# Sample Template: Determination Ltr.

## ***Finding***

Barton College's Title IX policy is found in the *Bulldog Handbook*. The section on sanctions (pp. 109-110) indicates that sanctions are applied to (1) protect the college community, and (2) indicate acceptable parameters for behavior. Sanctions are to consider, among other things, the severity of the violation, the respondent's willingness to change his/her behavior, the need to bring violations to an end, and the need to remedy the effect of the respondent's actions. The *Handbook* then lists possible sanctions. The list includes among other things, suspension, and restrictions or conditions on the respondent's behavior.

The appeals section of the policy (pp. 114-116) indicates that the "presumptive stance of the Appeals Officer is that the initial finding is correct (114)" and places the burden on the appellant to provide evidence sufficient to change the Hearing Officer's decision.

# Sample Template: Determination Ltr.

## ***Finding***

(Name) provided no evidence to suggest that the sanctions were disproportionate to the action. The sanctions applied in this case clearly meet the standards of the college, as defined in its Title IX policies. They are also in keeping with sanctions assigned in previous cases of non-consensual sexual intercourse.

Therefore, the Hearing Officer's sanctions are upheld, and the appeal is denied.

Under Barton College policy (*Bulldog Handbook*, 115), the decision of the Appeals Officer in this matter is final.

Signed

Appeal's Officer

# Important Considerations:

- ▶ Important to be objective and serve the party with their best interest in mind without prejudgment and partiality.
- ▶ Everyone involved in a Title IX hearing must support an objective evaluation of the evidence.
  - ▶ Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding.
  - ▶ Before you serve in any Title IX case, you must ensure that you do not have a Conflict of Interest.

# Important Considerations:

- ▶ Know and reinforce (compliance with) College policy (contact orders, no retaliation, responding to meeting requests, process, etc.)
- ▶ The College uses the preponderance of evidence standard (based on the preponderance of evidence, it is more likely than not that the respondent is responsible, is not responsible or there is no finding).
- ▶ The College applies a presumption of innocence (the respondent is not responsible) relative to the alleged violation of Title IX.

# Conflict of Interest Examples:

- ▶ A family relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding.
- ▶ A personal relationship with a party, an advisor, or a witness that leads you to give that individual advantage or disadvantage in the proceeding.
- ▶ A business relationship with the parties, their advisors, or anyone who may serve as witnesses in the proceeding.
- ▶ Giving any financial assistance or gifts to a party or a witness in the proceeding.
- ▶ Receipt of any financial assistance or gifts from a party or a witness in the proceeding.
- ▶ Prior knowledge about a party outside of what is learned in the proceeding that bears on your decision of responsibility.

# Key Processes

# Formal Complaint:

- In circumstances when a complainant wishes the College to take action under this policy, they must submit a formal, written complaint. The formal complaint is a document submitted by the complainant alleging Title IX Sexual Misconduct under College policy and indicates a request by the complainant that the College investigate the allegations.

# Formal Complaint:

- Formal complaints will be investigated unless:
  - The allegations in a formal complaint do not meet the definition under Title IX Sexual Misconduct under the policy or did not occur within the College's Educational Program or Activity
  - The Complainant withdraws the request to investigate
  - The Respondent is no longer enrolled or employed by the College
  - We have no control over the respondent



# No Contact Orders:

- As a general rule, a No-Contact order is put into place immediately once a report is filed:
  - *As a standard practice, when a report is made, we ask that both parties refrain from any contact with the other. Therefore, effective immediately, a "No Contact Order" is being issued. You should therefore have no contact, for any reason at any time, with \_\_\_\_\_ from this point forward unless the "No Contact Order" has been lifted by my office and you have been contacted directly by me accordingly.* Be advised that you are to have no **direct** or **indirect** contact with \_\_\_\_\_, be it written, verbal, electronic, physical, or otherwise. Direct contact refers to any contact initiated by you. Indirect contact refers to any contact initiated toward \_\_\_\_\_ by a third party (another individual or individuals) on your behalf. **Because you live in the same dorm, someone from the Resident Life department will be reaching out to you today as well to** discuss relocation. This no contact order will then extend to \_\_\_\_\_ dorm and you should therefore not enter it for any reason once the relocation takes place, regardless of which one of you will be relocated. Any violation of this no contact order will result in serious consequences. Further, I will be issuing similar instructions to \_\_\_\_\_, directing \_\_\_\_\_ to have no direct or indirect contact with you, nor to enter your dorm for any reason.

# Investigation:

- Title IX Coordinator conducts a “little i” investigation.
- After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the investigator will:
  - Meet with the complainant and respondent with their chosen advisors and any reported witnesses
  - Gather any evidence provided by involved parties
  - Create an investigation report outlining the information provided in the course of the investigation

# Investigation:

- Investigators will provide advance notice to complainants and respondents in advance of any subsequent interviews, meetings, or requests for meetings.
- Both the complainant and respondent may select an advisor to participate.
  - The Title IX advisor may be an attorney.
  - The College will provide a Title IX advisor upon request to a complainant or respondent, at no cost.
- Once the investigation is concluded, the investigators will provide an electronic or hard copy format, to the complainant and respondent and their respective Title IX advisors, all evidence directly related to the allegations with at least ten (10) College business days to inspect, review, and respond prior to the hearing being established.

# Informal resolution process

- ▶ College may offer once a formal complaints is received, except when it's alleged an employee harassed a student
- ▶ Must have signed agreement by both parties
- ▶ Either party can withdraw from an informal resolution process prior to agreeing to a resolution and resume the grievance process with respect to the formal complaint.
- ▶ Title IX Coordinator may deny request depending on factors involved.

# Retaliation

- ▶ Expressly prohibited against any individual for exercising Title IX rights.
- ▶ A complaint about retaliation will be handled as Title IX infraction.
- ▶ Includes charging student with other code of conduct violations arising out of Title IX for the purpose of interfering with any right or privilege secured by Title IX.

Q&A