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# Title IX Investigator Refresher Training

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# Training for Investigators – Required under the 2020 Regulations

How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Definition of sexual harassment

Scope of the Recipient's education program or activity

How to conduct an investigation

Understanding “relevant evidence” in order to create an investigation report that fairly summarizes all relevant evidence

# We will also cover the following topics:

Understanding the Role of a Title IX Investigator

Overview of Georgia Tech's Sexual Misconduct Policy

The Complaint Process

Investigation Considerations

Formal Adjudication

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# Serving Impartially

Impartiality is essential to the sexual misconduct grievance process.

To serve impartially means to:

- ❖ **Avoid prejudging** the facts at issue;
  - ❖ Be free from actual, perceived or potential **conflicts of interest**;  
and
  - ❖ Recognize and **avoid bias** that can cause prejudgments and lead to improper decisions.
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# Avoid Prejudgment of the Facts at Issue

Prejudgment refers to forming an opinion about a situation or person before knowing or considering all of the facts. It often occurs when allegations involve sexual conduct, sexual history, and alcohol or other drug use.

Example: Complainant and Respondent were in a previous sexual relationship which was consensual so the Investigator assumes consent to the sexual activity at issue was given.

Sex stereotypes often lead to prejudgment and are to be avoided. An example of a sex stereotype is a belief men cannot be sexually assaulted.

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# Be free from actual, perceived or potential Conflicts of Interest and Bias

The Title IX Coordinator, Investigator, Decision-maker, or any person designated by a Recipient to facilitate an informal resolution process must not:

Have a conflict of interest or bias for or against Complainants or Respondents generally, or

For or against an individual Complainant or Respondent

Bias and conflict of interest by Investigators that impact the outcome are grounds for appeal

Let's explore conflict of interest and bias. What do these mean?

# Conflicts of Interest

## Three Types

### **Actual:**

- a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation (Ex: The investigator's niece is the Respondent in a sexual assault case).

### **Perceived:**

- a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities (Ex: The investigator previously had a friendship with the Complainant's father).

### **Potential:**

- a personal interest or obligation could conflict with one's official duties and responsibilities in the future (Ex: The investigator and Complainant serve on a nonprofit board which meets and socializes once a quarter).
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# When does a Conflict of Interest Disqualify You?

- When it prevents you from being able to impartially participate.
  - All perceived, actual, or potential conflicts of interest should be immediately disclosed to the Title IX Coordinator.
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# What is Bias in the TIX Context?

A "bias" is a prejudice or tendency of belief in favor of or against someone. Biases are based on stereotypes and not actual knowledge of the individual or a particular circumstance. Biases are harmful because they can lead to prejudgments and discriminatory practices.

Example: When meeting with Title IX Complainants for the first time, the TIX Coordinator asks, "Who is the Respondent and what is it you allege he did?" (Assumes all respondents are male)

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# Recognizing Bias

Biases are often “implicit,” meaning we have attitudes towards people or associate stereotypes with them without our conscious knowledge. You cannot rely on sex stereotypes – typical notions of what men or women do or do not do -- when conducting investigations.

Understanding bias is particularly important in the Title IX/Sexual Misconduct context because:

- Most evidence is circumstantial rather than direct
  - There are stigmas associated with sex, alcohol, and drugs
  - Improper sex-based bias prevents reliable outcomes
  - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing
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# Tips for Avoiding Bias

- Treat Complainants and Respondents equitably

Pay attention to your language. Be mindful of what you say and how you say it.

- Avoid generalizations
  - Question your thinking and challenge your assumptions by considering whether you would draw the same conclusions if the situation involved other people (of a different sex, race, sexual orientation, socio-economic status and so on); and
  - Listen to the whole story and gather all relevant facts before making any conclusions
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[Watch this OCR video on Title IX Bias:](#)

[https://www.google.com/search?q=youtube+avoiding+bias+in+title+ix&rlz=1C1GCEA\\_enUS971US971&oq=youtube+avoiding+bias+in+title+ix&aqs=chrome..69i57j69i64.14788j0j15&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:3724db80,vid:bg5Drwo0xRc](https://www.google.com/search?q=youtube+avoiding+bias+in+title+ix&rlz=1C1GCEA_enUS971US971&oq=youtube+avoiding+bias+in+title+ix&aqs=chrome..69i57j69i64.14788j0j15&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:3724db80,vid:bg5Drwo0xRc)

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# Overview of Title IX

# Title IX

The law states that:

"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..."

—United States Code

# Title IX Sexual Harassment §106.30

- Conduct on the basis of sex that satisfies one or more of the following:
  - (i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
  - (ii) **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;** or
  - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA

# Title IX Jurisdiction

- The complaint falls within Title IX when:
- It alleges sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking (**VAWA violations**)
- **AND** the conduct:
  - • Happened in the United States;
  - • Occurred where the Institute controls the context of the incident (in connection with an educational program or activity, at Institute sponsored or affiliated events, on property or buildings owned or controlled by the Institute or officially recognized student organizations [**substantial control is key**]);
  - • At the time of filing the complaint, the complainant is participating in or attempting to participate in the Institute's education program or activity.







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# Updated Sexual Misconduct Policy

# Sexual Misconduct Policy

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graph TD; A[Sexual Misconduct Policy] --- B[Title IX]; A --- C[Other Sexually Based Behavior]
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Title IX

Other Sexually  
Based Behavior



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# **Prohibited Conduct: Definitions & Jurisdiction**

# Key Categories of Prohibited Conduct

Sexual  
Misconduct

Dating Violence

Domestic Violence

Sexual Exploitation

Sexual Harassment

Stalking

Nonconsensual Sexual Contact

Nonconsensual Sexual Penetration

# Dating Violence

**Violence** committed by a person who is or has been in a **social relationship of a romantic or intimate nature** with the alleged victim.

- Includes sexual or physical abuse
- Includes threats of such abuse
- The existence of a covered relationship is based on the totality of the circumstances

# Domestic Violence

**Violence** committed by:

- a current **spouse**, former spouse or **intimate partner**
- a person whom **shares a child**
- a person who is **cohabiting** with or cohabitated with the alleged victim

# Stalking

Engaging in a **course of conduct** directed at a specific person that **would cause a reasonable person to fear for his or her safety** or the safety of others OR suffer **substantial emotional distress**.

- Can be direct actions or through third parties
- Could include the use of devices or other methods
- Includes following, monitoring, observing, surveilling, threatening, communicating to or about a person, or interfering with a person's property

# Sexual Exploitation

**Taking non-consensual or abusive sexual advantage** of another for **one's own advantage or benefit**, or for the benefit or advantage of anyone other than the one being exploited.

Examples include:

- Non-consensual photos, videos, or audio of sexual activity
- Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity was consensual
- Intentionally and inappropriately exposing one's breast, buttocks, groin, or genitals in non-consensual circumstances



# Nonconsensual Sexual Contact

Any **physical contact** with another person of a **sexual nature without the person's consent**.

Includes:

- Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts

# Nonconsensual Sexual Penetration

Any **penetration** of another's body parts without the person's consent.

Includes:

- Penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part
- Contact between the mouth of one person and the genitals or anus of another person

# Sexual Harassment (Student on Student)

Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), **determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access** to participate in or to benefit from an institutional education program or activity in violation of Title IX.

# Knowledge Check (Student on Student)

- Which of the following is likely to constitute severe, pervasive, and objectively offensive conduct such that it is covered under Title IX?
    - A single unwelcome hug by another student
    - A professor making repeated sexually suggestive and harassing comments to her students
    - A student being subject to repeated harassing comments and one incident of having another student expose their genitals close to her.
    - Several unrelated, unrepeated incidents of brief unwanted touching by
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# Sexual Harassment (Other than Student on Student)

**Unwelcome verbal, nonverbal, or physical conduct**, based on sex (including gender stereotypes) that may be any of the following:

- Implicitly or explicitly a **term or condition of** employment status in a course program or activity (Quid pro Quo)
- **A basis for** employment or education decisions; OR
- Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an **intimidating, hostile, or offensive** work environment
- Note: Behavior may rise to the level of a Title IX violation

# Consent

- **Words or actions** that show a **knowing and voluntary** willingness to engage in a **mutually agreed upon** sexual Activity
- Past consent ≠ Present consent
- The scope of consent matters
- Can be invalidated by: force, intimidation, incapacitation, or withdrawal



# Comparing Jurisdiction

## Title IX

- Institution's program or activity in the United States
  - Institution property
  - Institution sponsored or affiliated events [**substantial control** is key]
  - Buildings owned or controlled by officially recognized student organizations
  - Complainant is a participant at time complaint is filed
  - VAWA Violations

## Sexual Misconduct

- Institution property
- Institution-sponsored or affiliated events
- Off campus as defined by the institution policies
- Domestic or abroad
- Respondent is a student or employee at time complaint is filed
- Includes other violations (sexual exploitation)



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# The Complaint Process



## Formal Complaint § 106.30

- A document filed by a Complainant OR signed by the Title IX Coordinator
- Alleges Sexual Harassment (Title IX)
- Requests an investigation
- **Note:** must be filed while the Complainant is participating in or attempting to participate in an education program or activity

# Complaint Process

- If not a Formal Complaint under Title IX may be a complaint under Sexual Misconduct
- **Recommended:** Confirm with the Complainant (in writing) that they wish to investigate their claims
- Once a complaint is filed the timeframe for completion begins

# Complaint Consolidation

- Permissible consolidation when allegations arise out of the same facts or circumstances:
  - Against more than one Respondent
  - By more than one Complainant against one or more Respondents
  - Cross complaints
- Parties must have the opportunity to object; institution makes final determination



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# **Support Services & Interim Measures** §106.30

- Non-disciplinary, non-punitive individualized services must be offered to the Complainant
  - USG policy requires offering support services to Respondents as well
- Offered upon receiving a report [no Formal Complaint is required]
- Ex: counseling, modifications to work or class schedules, mutual no contact directives

# **The Investigation Process**

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# Overview of Investigation Process

1. Complaint filed by Complainant or Title IX Coordinator
  2. TIXC assesses complaint and makes a determination regarding jurisdiction
  3. TIXC issues Notice of Investigation (NOI) to Complainant and Respondent
  4. TIXC appoints investigator
  5. Investigation strategy established
  6. Investigator conducts comprehensive investigation
    - Witness interviews
    - Evidence gathering
  7. Investigator drafts and submits initial summative assessment detailing investigation and evidence collected (“draft report”)
  8. Investigator meets/consults with Title IX Coordinator to review draft report and evidence
  9. Draft report and all evidence directly related to the allegations is provided to parties and their advisors for inspection and review. Parties are given 10 business days for written response
  10. Investigator reviews parties’ written responses, if any, and determines whether further investigation or changes to the investigation report are necessary
  11. Investigator completes final report, which is provided to the parties for review and response at least ten days prior to hearing
  12. If matter is not informally resolved, TIXC refers it to the appropriate Institute department for hearing, resolution, and appeal.
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# Understanding the Role of an Investigator

# Your Role

- A neutral institutional fact finder and gatherer
  - Fair and unbiased review of matter
- Follow the Policy
  - Standard of proof
  - Avoid burden shifting





# **Remember**

**As an Investigator, you  
have no side other than  
the integrity of the  
process!**

# Evidentiary Considerations § 106.45(b)(5)

- The burden of proof AND burden of gathering evidence is on the institution

# Standard of Evidence

Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence



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# Relevant and Directly Related Evidence

Evidence is **relevant** when it tends to prove or disprove an issue in the complaint.

Evidence is **directly related** when it is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

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# Directly Related, Not Relevant

Complainant wants to introduce evidence that she is an officer in a conservative Christian campus organization and is outspoken about the need to remain a virgin until marriage. She took a purity pledge witnessed by those in her organization. Complainant seeks to bolster her credibility regarding her claim of not being inclined to consent because of her religious beliefs, NOT to prove that she is a virgin. She also argues that while the policy prohibits introduction of sexual history, it does not prohibit introducing non-history.

Relevant evidence tends to prove or disprove an issue in the complaint. Is it an issue in the complaint that the complainant was predisposed to consent or not consent? No; people can change their minds. The issue is whether, regardless of predisposition, she did in fact consent. This information is **directly related, not relevant**, as it does not prove or disprove consent. It is also barred by the 2020 Title IX regulations as evidence about Complainant's sexual predisposition.

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# Legal Privilege

Information protected by legal privilege may not be accessed, disclosed or relied upon unless a waiver is obtained

- attorney – client
  - medical
  - psychiatric/psychological
-

# Rape Shield Protection

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless such questions and evidence are offered to prove:

1. that someone other than the Respondent committed the alleged conduct or
  2. consent between the parties during the alleged incident.
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# Rights of Complainants and Respondents during the Investigation

Right to:

- present witnesses, including fact and expert witnesses
  - present inculpatory and exculpatory evidence
  - discuss the allegations under investigation without restriction
  - gather and present relevant evidence without restriction
  - be accompanied to any related meeting or proceeding by Advisor of their choice, who may be, but is not required to be, an attorney
  - written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
  - inspect and review evidence and draft investigation report before finalized
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# Advisors

## Title IX Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- Provided a copy of the investigation report and directly related information
- All communication will be between the institution and the party

## Sexual Misconduct Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- All communication will be between the institution and the party

## **False Statements**

Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a system or institution official.

## **Amnesty**

For Students:  
Information reported by an individual during an investigation concerning use of drugs or alcohol will not be used against that individual in a disciplinary proceeding.

# Retaliation §106.71

- **Who is protected:** Reporters, Complainants, Witnesses, Respondents, even those who choose to not participate
- **What is protected:** Intimidation, threats, coercion, discrimination
  - Ex. Charging individuals for code of conduct violations that arise out of the same facts or circumstances

# The Investigation Report §106.45(5)(vii)

- Must fairly summarize relevant evidence
- An objective evaluation of the information [inculpatory and exculpatory]
  - Credibility assessments cannot be based on a person's status
- Final report provided to the parties at least 10 days calendar days prior to the hearing

# Access to Information § 106.45(b)(5)(vi)

- Parties have a right to review the investigation report prior to its finalization
- Parties have a right to receive a copy of all directly related information
- Procedurally can occur simultaneously or at different times
- 10 calendar days to review



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# Informal Resolution

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# Considerations

- The institution is a party to the informal resolution
  - Informal resolution is appropriate
  - The terms of the informal resolution are appropriate
- Parties must engage in the process voluntarily
- Parties may end the informal resolution process any time prior to reaching the terms

# Informal Resolution under Title IX §106.45(b)(9)

- Not permissible for student allegations against employees
- A Formal Complaint must be filed
- The parties have received notice and explanation of the process and consequences of informal resolution
- The parties have voluntarily agreed to engage in the process





# Formal Adjudication

## **Live Hearing** §106.45(b)(6)

- The Final Rule mandates a bifurcated process
- Final determinations of responsibility and sanctions are made by decision-makers
  - CANNOT be the Title IX Coordinator or assigned investigator
- New due process considerations
  - Cross examination
  - Relevancy determinations
  - Impact of party or witness refusal to submit to cross-examination

# Adjudication Processes

## Students

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

## Employees

- Title IX matters not informally resolved will be heard by a designated decision-maker
  - Single decision-maker OR panel
- Sexual Misconduct matters not informally resolved will be resolved according to previously established procedures
  - Institutions may choose to offer a hearing

## **The Written Decision** §106.45(b)(7)

- Provided to both parties simultaneously must include:
  - The allegations
  - The procedural steps from the complaint through determination
  - Findings of fact supporting the determination
  - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
  - Information on the appeals process

# Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Grounds for an appeal:
  - New information
  - Procedural Error
    - Ex. Bias or conflict of interest of Title IX personnel
  - Finding inconsistent with the weight of the information



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# Questions

