





## Who must be trained?

- ‡ Institutional Title IX Coordinator(s), investigators, decision makers (including those responsible for an appeal) and those responsible for handling appeals), and any person responsible for facilitating informal resolutions

## Training topics must include:

- ‡ How to conduct an investigation and grievance process (including hearings, appeals, and informal resolutions)
- ‡ How to remain impartial, including avoidance of prejudgment of the facts, conflicts of interest, and bias
- ‡ For decision makers:
  - ‡ Issues of relevance of questions and evidence, including that predisposition or prior sexual behavior are not relevant.
  - ‡ How to use any technology utilized at live hearings
- ‡ For investigators:
  - ‡ Issues of relevance in order to create an investigative report that fairly summarizes relevant evidence



# Bias and Conflicts of Interest

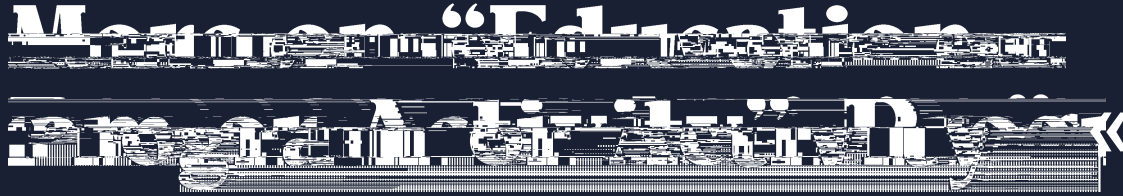
- ‡ Title IX personnel (Title IX Coordinators, investigators, decisionmakers, persons designated to facilitate informal resolutions) cannot have conflicts of interest for or against complainants or respondents generally, or for a complainant or respondent individually.
- ‡ Existence of bias should be based on a reasonable person standard.
- ‡ Types of bias to be aware of and avoid:
  - ‡ Sexstereotypes as evidence.
  - ‡ Prior affiliations as evidence.
  - ‡ Evaluating bias based on outcomes.





# Definitions [BOR Policy]

‡ Actual Knowledge Notice of sexual harassment or allegations of sexual harassment to a Title IX coordinator, any employee with the authority to institute corrective measures, or any employee at the Special Schools. Imputation of knowledge based solely on vicarious



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campus.

‡ Includes offcampus incidents under certain conditions:

‡ If an institution exercises substantial control over both the respondent and the context of the alleged sexual harassment.

‡ If the alleged sexual harassment occurs at an offcampus building owned or controlled by a student organization recognized by the institution (i.e. a fraternity or sorority).



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‡ Multiple factors, such as whether the institution funded, promoted, or sponsored the event or circumstance in which the alleged harassment occurred, should be considered but no single factor is determinative. p. 30197.

‡ The preamble to the updated regulations notes that statutory and regulatory

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digital platforms, and computer hardware or software owned or operated by, or used in the operations of an institution, such that certain online harassment may fall within the scope of Title IX. p. 30202 (citing 20 U.S.C. 1687; 34 CFR 106.2(h))



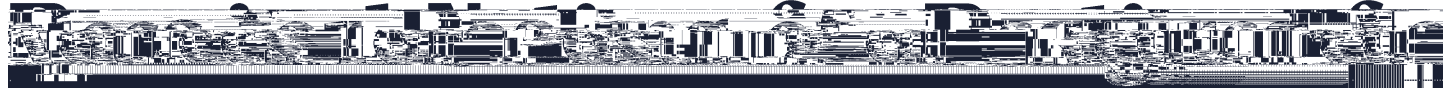
## Definitions [BOR Policy]

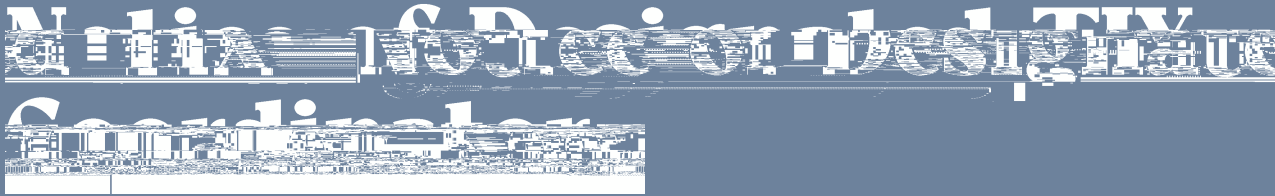
- ‡ Formal Complaint: A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment. 1:17.B.6.
- ‡ Respondent: An individual that has been reported to be the perpetrator of conduct that could constitute a violation of BOR Policy 1:17. 1:17.B.8.
- ‡ Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:
  - ‡ An employee of an institution conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
  - ‡



# Other Key Terms

- ‡ Supportive Measures: Non-disciplinary, non-punitive individualized services offered to a complainant or respondent. 1:17.B.10.
- ‡ Deliberately Indifferent: A manner or response that is





‡ An institution must designate at least one Title IX Coordinator. 1:17.C.8.1.

‡ An institution must notify applicants for admission and employment, students, employees, and all professional organizations holding professional agreements with

- ‡ Name/Title;
- ‡ Office address;
- ‡ Email address; and
- ‡ Telephone number.

1:17.C.8.3.

‡ Institutions must prominently display the Title IX Coordinator contact information on their website and in any handbook or catalog made available to persons required to receive notice. 1:17.C.8.3; 106.8(b)(2)(

## Notice of Contents

‡ Any applicable Title IX policy must be included on an  
contact information. 1:17.C.8.3.

‡ The policy should include:

- ‡ a statement that the institution does not discriminate on the basis of sex in education program or activities operated by the institution,
- ‡ that Title IX prohibits such discrimination.
- ‡ that the prohibition on discrimination extends to admission and employment,
- ‡



- ‡ Institutions must provide notice of the complaint procedures and process, including how to report or file a complaint of sexual harassment or discrimination, and how the institution will respond.
  
- ‡ Complaint procedures are specified in BOR Policy 1:17 and include:
  - ‡ Institutional response requirements and procedures:
    - ‡ Supportive measures;
    - ‡ List of possible disciplinary sanctions or remedies in the event of a violation,
  - ‡ Receipt of a formal complaint;
  - ‡ Investigations;
  - ‡ Hearings;
  - ‡ Petitions for Administrative Review;
  - ‡ Informal Resolutions.











# Response Obligations

- ‡ Complainants and respondents must be treated equitably, through the offer of supportive measures, without or without the filing of a formal complaint, and when a formal complaint is filed, by following the BOR grievance process outlined in Policy 1:17 prior to imposing any disciplinary sanctions or actions that are not supportive measures.  
1:17.C.2.
- ‡ The process must be completed in a reasonably prompt timeframe.
  - ‡ Deadlines occurring prior to a hearing on a formal complaint may be extended by an institution for good cause and with written

# Response Obligations

- ‡ Upon receipt of any report of sexual harassment, the Title IX Coordinator must:
  - ‡ Promptly contact the complainant to discuss the availability of supportive measures;
  - ‡

# Response Obligations



- ‡ If a formal complaint is filed, an institution must initiate the grievance process.
  - ‡ Formal complaints are those that:
    - ‡ Allege sexual harassment;
    - ‡ Are made by person (or their parent) who allegedly experienced the harassment and is participating or attempting to participate in an education program or activity;
    - ‡ Are signed by the complainant or the Title IX Coordinator;
    - ‡ A respondent may be unidentified in a formal complaint. The institution must still investigate, as the investigation may identify a respondent. The identified parties would then receive the required notice. If the investigation did not identify a respondent, the complaint would be dismissed.
  - ‡ Request an investigation
- 1:17.C.3.1





# Written Notice of Formal Complaints

When a formal complaint is filed, an institution must provide written notice within five working days to the known parties. The notice must contain:

Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interviews.

Sufficient details include:

- Identities of involved parties, if known;
- Conduct allegedly constituting sexual harassment;
- Date and location of the alleged incident, if known.

1:17.C.3.1-3.1.1



Written notices must also contain:

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.

A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney; that the advisor may accompany the party to related meetings or proceedings; and that the party and their advisor may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.

If any restrictions on the role of or participation by an advisor have been established, a statement informing the parties of those restrictions shall also be included.

A statement of the maximum disciplinary sanction(s) that may be imposed on a respondent following a determination of responsibility by the institution.

The process for informal resolution of the complaint.



If, during the course of an investigation, an institution decides to investigate allegations about the complainant or respondent that were not included in the original notice of the formal complaint, the institution must provide notice of the additional allegations to those parties whose identities are known.

1:17.C.3.2

Where allegations of sexual harassment arise out of the same facts or circumstances, an institution may consolidate formal complaints alleging misconduct:

- By one complainant against more than one respondent, or
- By more than one complainant against one or more respondents.

1:17.C.3.3.



Within 10 days of receiving a formal complaint, the institution must determine if the conduct alleged, if taken as true, would constitute sexual harassment, and if the allegations contained in the formal program or activity.

An institution shall dismiss a formal complaint if the allegations, if taken as true, either  
Fail to constitute sexual harassment; or  
program or activity.

1:17.C.3.4-3.4.2.





An institution may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, one of the following occurs:

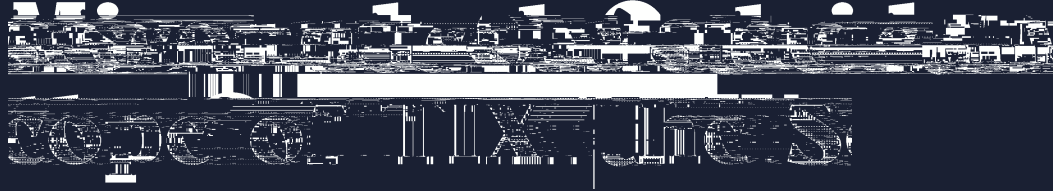
A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

The respondent is no longer enrolled or employed by, or otherwise affiliated with, the institution;

Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

1:17.C.3.5.





Allegations of harassment not constituting sexual harassment will be handled pursuant to the appropriate policy:

Protected class-based harassment - BOR Policy 1:18.

Student harassment BOR Policy 3:4.

Non-protected class-based employee harassment applicable employee class conduct/disciplinary policy





May include:

Counseling;

Extension of deadlines or other course-related adjustments;

Modifications of work or class schedules;

Campus escort services;

Mutual restrictions on contact between the parties;

Changes in work or housing locations;

Leaves of absence;

Increased security and monitoring of certain areas of campus;

and/or

Other similar measures.

1:17.C.2.1.1.





## Factors to consider regarding burden on the parties

education opportunities and benefits

Supportive measures should not amount to sanctions (non-punitive)

Scope of the supportive measure in relation to the burden on the parties

or activity on an emergency basis may be permitted under certain circumstances.

One-way or mutual no-contact orders may be appropriate in certain circumstances.

1:17.C.2.1.4; pp. 30182-84.





# Informal Resolutions

When can informal resolutions be utilized?

A complaint has already been filed;  
the complaint does not include allegations against an employee filed by a student;  
both parties voluntarily consent to the information resolution in writing; and  
the institution gives the parties written notice of the allegations containing:

The allegations; and

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, provided that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including records that will be maintained or could be shared.





# Informal Resolutions

## Informal Resolution Facilitators:

Are subject to the same training and impartiality requirements as Title IX Coordinators, investigators, and decisionmakers.

Could serve as witnesses in a subsequent grievance proceeding:

If this possibility was disclosed to the parties in the written notice prior to the start of the informal process.

However, South Dakota law declares all mediation communications confidential unless certain exceptions are met.

1:17.C.2.2.5; p. 30401; SDCL 13A-4, 13A-8.



# Relevance

Why is it important for coordinators to understand relevance?

Instruction on relevance is a specific training requirement because it applies in multiple phases of the grievance process.

Must be considered during the investigation, hearing, and administrative review phases of the grievance process.

An institution bears the burden to ensure that evidence sufficient to reach a determination regarding responsibility is gathered.

inculpatory and exculpatory, is required.

1:17.C.2.2.3; 1:17.C.4.1.

Relevance is not defined in the regulations, but the preamble

whether facts material to the allegations under investigation

# Investigations



## Burden of Proof

The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution. 1:17.C.4.1.

But equal opportunity shall be provided to the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

investigationst cannot restrict the ability of either party to discuss the allegations under investigation or to gather/present relevant evidence. 1:17.C.4.3.

## Report

The institution is responsible for compiling an investigative report. 1:17.C.4.7. This function has been assigned to dedicated system investigators.



# Investigations - Lives

## Scope of an Investigation

Allegations identified in a formal complaint. 1:17.C.3.1.

If the investigation identifies additional allegations and the institution decides to investigate those allegations against the complainant or respondent that fall within the scope of sexual harassment, the institution must provide notice of the additional allegations to the known parties. 1:17.C.3.2.

Consolidation of complaints where applicable. 1:17.C.3.3.



# Use of Templates

System templates for the Notice of Complaint and Notice of Hearing were developed and distributed to each campus in August 2020. They continue to be the requirements.



First, Fifth, Fourteenth Amendments to the U.S. Constitution: The new regulations

by the First Amendment or deprive any party of due process guaranteed by the Fifth and Fourteenth Amendments. 1:17.C.2.2.

Other areas to consider:

FERPA

Title VII

Title VI

Clery Act

Violence Against Women Act (VAWA)

IDEA

Section 504 of the Rehabilitation Act

ADA

HIPAA

Criminal law



