

GCTS Title IX
Training for Investigators and Adjudicators—Handout Notes
Summer 2020

Link to training: <https://web.microsoftstream.com/video/29537cec-e876-438a-8d82-0f0aa0853768>

Additional training includes the following:

CCCU Title IX Training – Part One

<http://www.trainedsolutions.com/portfolio-item/cccu-title-ix-trngpart1/>

CCCU Title IX Training – Part Two

<http://www.trainedsolutions.com/portfolio-item/cccu-titleix-trngpt-2/>

Invited Participants: Title IX Coordinator, Investigators and Adjudicators from each campus

Date: Tuesday, July 28th 10:30am. Via TEAMS

Introduction: Name, role at GCTS, experience with Title IX matters

Guiding question for us: What does it look like to love our neighbor in the context of a Title IX report/investigation/hearing?

Purpose: Provide updates and training for investigators at all GCTS campuses.

Roles:

Title IX Coordinator: The coordinator is responsible for...

- Receiving reports of sexual harassment and sexual discrimination. This means that all members of our community must have access to the coordinator's contact info.
- Publishing all our notices of non-discrimination.
- Adopting and publishing grievance procedures.
- Cannot be decision-maker/adjudicator but may be an investigator. Can enforce procedural rules at hearings.

Investigator: Each campus should have at least 2 people trained on how to do an investigation—that training includes what we are doing today. Cannot be decision-maker/adjudicator

Adjudicator: In case of a hearing, we need to have someone identified to decide on cases. Hearings will be “live” in separate rooms with technology enabling that. (Can be a panel.) Ideally this will be someone from another campus to avoid bias.

What is GCTS’s Obligation: *We must respond promptly when the institution has knowledge of sexual harassment in an education program or activity of the institution against a person in the US.*

Our response must treat the complainant and respondent equitably by providing supportive measures and following a grievance process that complies with regulations before disciplinary sanctions, etc. are imposed.

Official points of training:

1. Definition of sexual harassment
2. Scope of institution’s ed program
3. How to conduct investigation and grievance process, hearings, appeals, informal resolution processes, impartiality, conflicts of interest and bias
4. Decision makers (Adjudicators) need to be familiar with technology, issues of relevance of questions and evidence (including when questions and evidence about complainant’s sexual predisposition or prior sexual behavior are not relevant)
5. Investigators need to receive training on issues of relevance to create a report that fairly summarizes relevant evidence
6. Training must be publicly available on our website

Definitions:

Sexual Harassment means conduct on the basis of sex if someone’s aid, benefit or service of the institution on an individual’s participation in unwelcome sexual conduct (quid pro quo). Unwelcome conduct is determined by what a reasonable person to be so severe, pervasive, and objectively offensive that effectually denies a person equal access to the institution’s education program or activity (hostile environment).

Sexual Assault is any unwanted, coerced, or forced sexual contact or intercourse, or sexual contact or intercourse with someone who is not able to give consent (e.g., incapacitated by alcohol or drugs or is asleep). Sexual assault can involve the sexual penetration of any body orifice, but also includes other unwanted sexual contact, including Statutory Rape (minor under 16 in Massachusetts). Victims can be either women or men. Most victims/survivors know the perpetrators who may be the victim’s/survivor’s best friend, lover, partner, date, family member, neighbor, teacher, employer, doctor, or classmate. The perpetrator can be a husband, wife, boyfriend, or girlfriend. Sexual assault can occur between members of the opposite sex or same sex. Alcohol, date rape drugs, or other substances may be involved.

Consent is an agreement between participants to engage in sexual activity. Consent must be given freely, not assumed. Alcohol or drug use can render a person incapable of giving consent.

Process:

1. Report provided. Options presented to party (use “complainant” and “respondent” terminology)
 - a. At this point, GCTS has an obligation to respond, including providing supportive measures. Complainant’s identity may be kept confidential from respondent.
 - i. Title IX Coordinator must promptly contact complainant to discuss supportive measures and explain process for filing formal complaint.
 - ii. Note: A respondent may be removed on an emergency basis if we do an individualized safety and risk analysis, determine an immediate threat to physical health or safety is present, and provide respondent with notice and an opportunity to challenge the decision immediately following the removal.
 - b. Formal complaint
 - i. Initiates grievance process.
 - ii. Document filed by a complainant or signed by Title IX Coordinator alleging sexual harassment against a respondent requesting investigation. Filed in person, via mail or email. Cannot be anonymous.
 - iii. Complainants and respondents must be treated equitably
 - iv. Grievance process:
 1. Objective evaluation of all relevant evidence
 2. No conflicts of interest, or bias
 3. Presumption of non-responsibility; prompt timeframes; describe range of possible sanctions
 4. Describe appeal bases and procedures; describe range of supportive measures
 5. Be sure permission is given for privileged information and/or treatment records.
 6. Written notification of process: notice of allegations must be given (id of parties, conduct, date and location if known). Must also note that respondent is presumed not responsible, responsibility is determined at conclusion of process, right to advisor, right to inspect and review evidence, notice of policy about providing false statements. Also written notification of the meetings.
 7. Prior to completing the investigation report, equal opportunity to inspect and review evidence directly related to allegations—hard copy or electronic format. Party has 10 days to submit response (which is taken into account prior to report).
 - v. Dismissed if not sexual harassment, did not happen as part of ed program, was not in the US. May be dismissed if complainant withdraws complaint, respondent is no longer enrolled or employed by institution, or sufficient evidence cannot be gathered to make a determination.

- vi. Hearings: live, rules apply equally to everyone, advisors ask questions, may challenge credibility (we can provide an advisor if needed). Either party can request a hearing where r and c are in separate rooms.
 - 1. Questions are asked by each other's advisor, never by complainant or respondent. Must be "directed, orally, and in real time." Recordings of hearings must be made available for review (we will do all hearings via zoom).
 - 2. Questions can include challenges of credibility.
 - 3. Questions must be relevant (as determined by the adjudicator who must explain why it's not relevant.)
 - 4. Complainant's sexual behavior or predisposition is not relevant unless this is offered to prove someone other than the respondent committed the conduct or questions and evidence concern specific incidents of c's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - 5. If someone (party or witness) does not submit to cross-examination at the hearing, the adjudicator cannot rely on any statement they made in determining responsibility.
- vii. Written determination must include:
 - 1. Identification of allegations
 - 2. Procedural steps since complaint
 - 3. Findings of fact
 - 4. Conclusion regarding application of code of conduct to facts
 - 5. Statement of rationale for result of each allegation
 - a. Determination of responsibility
 - b. Disciplinary sanctions
 - c. Whether remedies were provided to complainant
 - 6. Appeal information
 - 7. Simultaneous delivery to parties
 - 8. Becomes final either the date they receive the written determination of appeal or the date at which an appeal would no longer be timely.
- viii. Appeals: must be offered to both parties (from determination of responsibility or dismissal of formal complaint)
 - 1. Appeals based on:
 - a. Procedural irregularity that affected the outcome of the matter
 - b. New evidence not reasonably available time of determination that could affect the outcome of the matter
 - c. Conflict of interest by Title IX Coordinator, investigator or decision-maker.
 - d. Could be another base offered to both parties.
 - 2. Requirements for appeals:
 - a. Notification in writing of appeal to other party
 - b. Appeal officer different than Title IX Coordinator, investigator, and adjudicator at hearing

- c. No conflict of interest or bias
 - d. Both parties have reasonable and equal opportunity to submit written statements in support of or challenging the outcome
 - e. Written decision describing result of appeal and rationale
 - f. Simultaneous delivery of results to parties
 - c. Informal Resolution: any time prior to determination, and informal resolution may happen (i.e. mediation) if:
 - i. Parties provided written notification of allegations, requirements of informal resolution process (including when it precludes the parties from resuming a formal complaint for same allegations. Prior to agreeing to a resolution, parties can jump back into the formal process). Consequences and records resulting from participating in the informal resolution process could be shared.
 - ii. Voluntary written consent to informal process must occur.
 - d. Supportive measures (interim): not disciplinary and offered freely and appropriately, designed to restore or preserve equal access to education, protect the safety of everyone, be confidential, coordinated by the Title IX Coordinator. This can happen with or without a formal complaint.
2. Investigations: interviews, evidence, etc.
- a. Burden of proof and gathering of evidence is the institution's responsibility.
 - b. Report:
 - i. Fairly summarizes relevant evidence
 - ii. Send report to parties in hard copy or electronic format
 - iii. Sent 10 days prior to hearing.
 - iv. Parties may respond in writing.
 - c. Standard of evidence
 - i. Preponderance of evidence: there is greater than 50% chance that the claim is true means that the burden of proof is met.
 - ii. This standard is what we will use for all complaints.
 - d. Opportunity to review and respond to directly related evidence (so that no withholding of evidence charge is possible and so that discussion on relevancy can happen.)
 - i. Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence directly related to allegations.
 - ii. 10 days to submit a written response.
 - iii. Investigator must consider written response before completing investigation report
 - iv. Must make all that evidence available at hearing.
 - v. Ensure privacy—info only for grievance process, may not be disseminated or disclosed. We can use a non-disclosure agreement.
 - e. Evidence:
 - i. Documents collected (texts, emails, social media posts, photos and videos)
 - ii. Other: police reports, security footage, wifi access point records
 - iii. Witness interviews must be recorded or summaries provided by investigator
 - iv. Investigator must gather evidence directly related to the allegations, whether or not the recipient intends to rely on that evidence.

- v. Directly related evidence includes: sexual history. Privileged info only with waiver of privilege. Treatment records only with written consent. Only non-directly related info can be redacted. Can hear arguments on relevancy. Exclude questions with caution!
 - vi. Maintain excellent records!
 - vii. All parties may submit evidence prior to time when parties can inspect and review evidence. Additional evidence possible after review period in limited circumstances. If this happens, review can again occur. No further response now. (Parties will receive investigation report summarizing evidence and can respond. Parties can also inspect and review all directly related evidence at any hearing and refer to evidence during the hearing.)
3. How to prepare for a hearing:
- a. Adjudicator reviews complaint, notices and investigation report
 - b. Identify ultimate questions to be decided
 - c. Determine which witnesses will need to be present for hearing (who is relevant to decision based on investigation report, must have been previously identified in the investigation process.)
 - d. Encourage parties to submit cross-examination questions in advance (to determine relevancy and expedite hearing with no consequence for not doing so.)
4. Retaliation: prohibited!
- a. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
 - b. Charges against someone for code of conduct violations (not sex discrimination or sexual harassment) but arise out of the same context as the report of sex discrimination, or a report/complaint of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
 - c. Accusing someone of false statements does not constitute retaliation, provided that a determination regarding responsibility alone, is not sufficient to conclude anyone made a materially false statement in bad faith.
 - d. The recipient MUST keep confidential the identity of complainants, respondents and witnesses except as permitted by FERPA or required by law to carry out a grievance process.
 - e. Complaints alleging retaliation are filed under the grievance process for sex discrimination (not sexual harassment grievance process).
5. Recordkeeping: For 7 years we must maintain pretty much all material related to investigation and adjudication, as well as training materials for everyone involved in Title IX issues.

Key points:

Hearings: Live, separate rooms with technology, transcript or recording,

Witnesses must be available for cross examination in the hearing, otherwise their statements cannot be considered.

Each party must have an advisor (can be an attorney or can be provided by the school). Can conduct cross examination.

We cannot rely on “statements” –made during hearing, but also to statement of the party or witness who does not submit to cross-examination.

Everything Title IX goes into effect on August 14, 2020.

(Title IX grievance process complies with most VAWA requirements—VAWA also requires officials who receive annual training, and timely notice of meetings to the other party. With Title IX, there are copies of evidence that must be given to each party; for VAWA access to evidence is given to both parties.)

We will only be using this process for Title IX, and VAWA. Other sexual misconduct cases will go through the Pastoral Guidance Committee or our regular disciplinary processes. The Title IX Coordinator will determine which process applies in consultation with the person who received the initial report and/or potential investigators.

Key Documents

1. Intake Form
2. Non-discrimination statement (including on website)
3. Notice of allegations
4. Advisor agreements
5. Policy

Examples of Title IX Conduct:

1. Quid pro quo harassment based on sex by an employee (supervisor basing a promotion on participation in sexual advance; professor conditioning grade on participation in sexual advance.)
2. Severe, pervasive, and objectively offensive harassment based on sex such as: texts or comments based on sex; multiple incidents of unwanted kissing or touching; multiple incidents of gossip around sexual relations
3. VAWA crimes (sexual assault, domestic violence, dating violence, stalking)

Case studies:

1. Student conditions benefit on participation of sexual advance.
2. Professor makes a comment about a student’s body
3. Staff member makes a sexual joke

Legal obligations:

1. We must respond to Title IX and VAWA issues. Our legal obligations are present here.
2. We must respond to other issues of conduct based on our community life statement and biblical principles. These include:
 - a. Quid pro quo harassment by a student
 - b. Hostile environment that occurs outside a program or activity, or outside the US
 - c. Sexual harassment is not sufficiently severe, pervasive and objectively offensive that it denies someone equal access to education program or activity.

How to take an initial report:

- Explain to complainant that his or her identity can be confidential in this process or their identity can be revealed and find out preference.
- Explain difference between formal and informal complaint. Result doesn't change but means of communication does—informal is with written and verbal discussion, formal requires identity and specific kinds of updates and reports at certain intervals. We normally begin with informal and are happy to move to formal as needed or requested. Hearings are more likely in formal complaints.
- Ask for written description of what happened with as much detail is possible. Names, dates, locations, etc. Confidentiality can be maintained when discussing situation with respondent.
- Ask for what desired resolution would be (examples include but are not limited to):
 - Nothing
 - Apology
 - Disciplinary action
 - Other
- If safety is concern, contact respondent immediately and put no contact order in place, both verbally and written, making sure that respondent knows that their side of the story will be heard as soon as possible, but priority now is to create a sense of safety through no contact.
- Investigate claims (see above information and work in conjunction with Title IX Coordinator)
- Meet with respondent and let them know about complaint. Ask if they would like to share anything with you about this and explain how the investigation procedure works (see above)
- Make sure respondent is clear on the no contact and whatever details of that are relevant at that point in time if space is to be shared.
- Help complainant and respondent know that we will share as much information as we are able to, but because of student privacy laws, particularly the complainant may not be aware of disciplinary response. We know that can be difficult but ask them to trust that we will respond.
- Always document phone calls and conversations.
- Help complainant and respondent understand that we absolutely support Matthew 18 as a seminary, the government asks us to walk a slightly different process in cases like this, so that's why direct conversation between complainant and respondent may not be possible.

Here are the key provisions to the Title IX regulations provided by the [DOE](#) :

- Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex.
- Provides a consistent, legally sound framework on which survivors, the accused, and schools can rely.
- Requires schools to offer clear, accessible options for any person to report sexual harassment.
- Empowers survivors to make decisions about how a school responds to incidents of sexual harassment.

- Requires the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders.
- Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities.
- Restores fairness on college and university campuses by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing.
- Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused.
- Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty.
- Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records.
- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding.
- Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely.
- Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment.

From: <https://www.safecolleges.com/doe-releases-new-title-ix-regulations/>

GCTS Intake Form for Potential Title IX Case

Name of person coming with complaint: (ID of alleged victim can be confidential in this process—note if confidential)	
Name of respondent:	
Names of other parties and their roles:	
Date of incident:	
Location of incident:	
Details of incident (complainant should be invited to write his or her own account and person receiving the complaint should read it and ask for clarification if needed.)	
Witnesses present (names and contact info if possible):	
Desired outcome of report (options include but are not limited to nothing, apology, discipline, etc.)	

Key points to explain:

1. There is a difference between a formal and informal complaint. Result won't necessarily change but means of communication does—informal is with written and verbal discussion, formal requires identity and specific kinds of updates and reports at certain intervals. Hearings are more likely in formal complaints. We normally begin with informal and are happy to move to formal as needed or requested.
2. If safety is a concern, the respondent will be contacted immediately regarding a no contact order, both verbally and written, making sure that respondent knows that their side of the story will be heard as soon as possible, but priority now is to create a sense of safety through no contact.
3. Help complainant and respondent know that we will share as much information as we are able to, but because of student privacy laws, particularly the complainant may not be aware of disciplinary response. We know that can be difficult but ask them to trust that we will respond.
4. Document each interaction.