

## **GCTS Title IX**

### **Training for Investigators and Adjudicators**

*Summer 2023*

**Date:** August 9, 2023. Via TEAMS; session will be recorded for reporting purposes

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

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

#### **Agenda:**

**Introduction:** Name, role at GCTS

**Review:** Title IX roles; Process

**Updates:** Due process, steps of investigation

**Practical things:** Resources in TEAMS

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#### **Title IX Roles:**

*Title IX Coordinator:* Jana Holiday. 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. Investigators cannot be decision-makers, but may be the coordinator.

*Decision-Maker/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. Ideally the decision maker will be someone from another campus to avoid potential bias. We can have a single person or a panel (our goal will be to have 3 people on the panel). The decision-maker cannot be the investigator. Appeal is to a separate person who was previously uninvolved.

**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.*

**Title IX:** “No person in the US 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.”

**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 by which someone conditions the provision of aid, benefit or service on an individual’s participation in unwelcome sexual conduct (quid pro quo). Unwelcome conduct (hostile environment) is conduct on the basis of sex that constitutes unwelcome conduct determined by 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). (“Unwelcome” is subjective.)

**Sexual Assault** is any sexual act directed against another person, without the consent of the Complainant including instances where the complainant is incapable of giving consent (e.g., incapacitated by alcohol or drugs or is asleep).

Sexual assault includes rape, sodomy, assault with an object, fondling, incest and/or statutory rape.

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.

**Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety, or the safety of others; or suffer substantial emotional distress.

## Title IX Process:

1. Report provided to GCTS (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 or trained designate 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 (identification 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). Respondent and Complainant will be in separate rooms (this is GCTS’s decision).
      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, an 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 50.1% or greater 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 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: (new 2023)
  - 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.)
  - e. Community standards identify who constitutes sexual harassment within the GCTS community however the definitions and procedures used are from the Title IX requirements.
  - f. Decision-maker is not looking at what is right or wrong, but if there was a policy violation proven by our standard of evidence.
  - g. Is the evidence relevant, reliable/credible and will we rely on it as supporting a rationale?
- 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. False statements can be addressed under the GCTS community life statement and is not retaliation.
  - 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:**

Witnesses must be available for cross examination in the hearing, otherwise their statements cannot be considered. Advisor (required) to participants is who does the 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 went into effect on August 14, 2020; updates were made summer 2021

(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.

*Investigations are to be:  
thorough, reliable, and impartial.*

*Process is to be:  
prompt, effective, and equitable*

*Remedies are to:  
act reasonably to stop discrimination, act reasonably to prevent recurrence and  
to act equitably to remedy effects.*

**Key Documents:**

1. Intake form (see below)
2. Policy (in current Student Handbook)
3. Non-discrimination statement (including on website)
4. Notice of allegations (see below)
5. Advisor agreements (needs to be developed)
6. Nondisclosure Agreement (needs to be developed)

**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)

**Are the following part of Title IX:**

1. Professor makes a comment about a student's body
2. Staff member makes a sexual joke every day for a week.
3. Student is invited to join a study group on the condition that they perform certain sexual acts on the leader.

**Obligations:**

1. We must respond to Title IX and VAWA issues.
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.

**Due Process (new Aug 2023)**

1. Procedural due process: are we following our written process? We must be consistent and make sure there is clear notification and that student rights are maintained.
2. Substantive due process: (in the decision itself) fair and impartial, rational and in good faith. The conclusion must be reasonably reached from the evidence provided.
3. In 2020 it was changed so that witnesses (even expert witnesses such as sexual assault nurse examiners SANE) can be included. Inculpatory and exculpatory evidence (something did or did not occur), allegations can be discussed, evidence can be gathered and presented, written notice of allegations, sufficient time to prepare for hearing, etc.

**Steps of an Investigation (new Aug 2023)**

1. Complaint received.
2. Initial assessment and jurisdiction determined.
3. Basis for investigation (incident, or pattern).
4. Notice given to parties.
5. Investigation plan.
6. Investigation commences (interviews of witnesses, gathering evidence, etc.).
7. Draft report.
8. Title IX Coordinator reviews report and evidence.



9. Parties and advisors given report (10 days given for response).
10. Final report with evidence summarized and analyzed given to parties for review and written response at least 10 days prior to the hearing.
11. Hearing occurs.

#### **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.

#### **Updates to Guidance in 2021 (per [CHE](#)) :**

1. Even if something falls outside of Title IX definitions, we can still respond to the issue.
2. Some off campus incidents will still need to be investigated if we “exercised substantial control” over the person who committed the harm, as well as “the context in which the alleged sexual harassment occurred.”

3. We can designate faculty or staff to respond if needed, and formal written complaints aren't the only thing that would lead us to involvement/investigation.
4. If someone is a "threat to others" they can be removed from campus even if the investigation has not concluded.
5. We can set timelines for finishing investigations even if we aren't required to do so.
6. If students don't appear at the live hearing, their statement (even if it includes a confession) cannot be included.

**Proposed [Updates to Guidance in 2022](#) (per [CHE](#))**

Major change: return to single investigator model (no hearing required)

Per DOE:

*The proposed regulations would:*

- *Clearly protect students and employees from all forms of sex discrimination.*
- *Provide full protection from sex-based harassment.*
- *Protect the right of parents and guardians to support their elementary and secondary school children.*
- *Require schools to take prompt and effective action to end any sex discrimination in their education programs or activities – and to prevent its recurrence and remedy its effects.*
- *Protect students and employees who are pregnant or have pregnancy-related conditions.*
- *Require schools to respond promptly to all complaints of sex discrimination with a fair and reliable process that includes trained, unbiased decisionmakers to evaluate the evidence.*
- *Require schools to provide supportive measures to students and employees affected by conduct that may constitute sex discrimination, including students who have brought complaints or been accused of sex-based harassment.*
- *Protect LGBTQI+ students from discrimination based on sexual orientation, gender identity, and sex characteristics.*
- *Clarify and confirm protection from retaliation for students, employees, and others who exercise their Title IX rights.*
- *Improve the adaptability of the regulations' grievance procedure requirements so that all recipients can implement Title IX's promise of nondiscrimination fully and fairly in their educational environments.*
- *Ensure that schools share their nondiscrimination policies with all students, employees, and other participants in their education programs or activities.*

(Currently the guidance is open for comment by the DOE)

For more info, check out this [Fact Sheet](#).

**Trauma-Informed Response:**

**1. What is Trauma?**

“Trauma is an emotional response to a terrible event like an accident, rape or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea.” (American Psychological Association) Emotional signs can include sadness, anger, denial, fear, and shame. They can lead to nightmares, insomnia, difficulty with relationships, or emotional outbursts. (<https://integratedlistening.com/what-is-trauma/>)

## 2. How do we respond to those who have experienced trauma?

Principles include the following (<https://www.traumainformedcare.chcs.org/what-is-trauma-informed-care/>):

- Provide physical and psychological safety.
- Be trustworthy and transparent.
- Be responsive.
- Provide agency/empowerment.

Sometimes memory is impacted immediately following trauma—be aware that could be the cause of someone’s story “not lining up.” Shame/guilt/self-blame which can result in minimization is a common response as well. Some people feel anger, prefer isolation, or experience anxiety, shaking or nightmares.

## 3. How do we avoid re-traumatization?

“Re-traumatization occurs when a person re-experiences a previously traumatic event, either consciously or unconsciously. This can be caused by stressors that are similar to the environment or circumstance of the original trauma, such as smell, physical space, lighting, imagery, memory, or even a new relationship that mimics a previously traumatic one.” (<https://www.onlinemswprograms.com/resources/social-issues/how-to-be-mindful-re-traumatization/>)

One challenge for us is that we need to be forensic (gathering evidence) but also Christian and empathetic as we do so.

Key tips:

- Avoid extensive interviews in favor of shorter conversations.
- Identify potential triggers.
- Prioritize consent so the person experiences agency (let them know they don’t have to answer upsetting questions.)
- Be transparent about why you are asking what you are asking and what you will do with the information.

### Resources:

Experience: <https://www.loyola.edu/department/counseling-center/services/students/concerns/sexual-assault/reactions>

Care: <http://socialwork.buffalo.edu/social-research/institutes-centers/institute-on-trauma-and-trauma-informed-care/what-is-trauma-informed-care.html>

Recovery: <https://www.helpguide.org/articles/ptsd-trauma/recovering-from-rape-and-sexual-trauma.htm>

Developing empathy: <https://www.pvaz.net/DocumentCenter/View/8943/Common-Feelings-of-Survivors-of-Sexual-Assault>