

Title IX Training

Coordinators, Decision-Makers &
Investigators



Title IX is a federal law that says ...

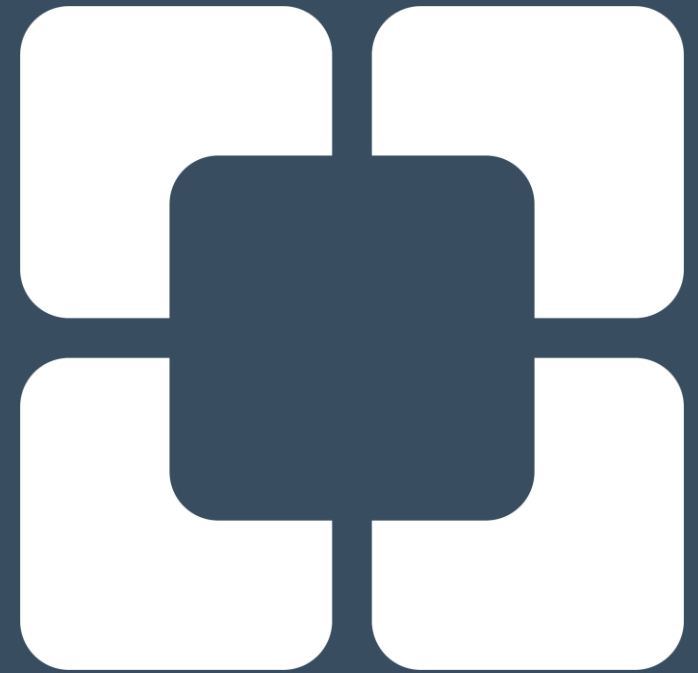
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S. Code § 1681(a)

Training Requirements

1. Definition of Sexual Harassment
2. Scope of Title IX at CCF
3. Resolution of Reports
 - a) Resolution process
 - b) Serving Impartially
 - c) Determining relevance and fairly summarizing evidence (Investigators)

Definition of Sexual Harassment



Sexual Harassment Definition

Conduct on the basis of sex when:

1. An employee conditions the provision of aid, benefit or service on participation in unwelcome sexual conduct; or
2. Unwelcome conduct determined by a “reasonable person” to be so “severe, pervasive and objectively offensive” that it effectively denies a person equal access; or

3. Sexual Violence

- Sexual Assault;
- Dating Violence;
- Domestic Violence; or
- Stalking




Scope of Title IX at CCF



Educational Programs & Activities

Any program or activity offered at Cleveland Clinic or by Cleveland Clinic employees in the scope of their duties that is educational in nature beyond on-the-job training, general interest, or routine continuing education programs.



Educational Programs & Activities

- Residencies
- Clinical Rotations
- Affiliate degree programs
- Allied Health programs
- Research and other fellowships
- Internships
- Middle school, high school and college programs

In addition ...

Title IX only applies to “locations, events, or circumstances in which [CCF] exercises substantial control over both the respondent and the context in which sexual harassment occurs.”



Resolution of Reports



Resolution of Reports

- a) Resolution process
- b) Serving Impartially
- c) Determining relevance and fairly summarizing evidence



Resolution Process



Confidentiality

- Must keep complainant & respondent identity confidential except as necessary to carry out TIX process or as required by law;
- Breach of confidentiality may be retaliation;
- Retaliation complaints follow TIX process.
- BUT, parties may not be restricted from discussing the allegations or gathering and presenting evidence.

Overview of Process

- In response to report, Title IX Coordinator reaches out to complainant and offers supportive measures;
- Resolution of report only possible after formal complaint;
- Complainant and Respondent both have equal rights to supportive measures, support person/advisor, information.

Formal Complaint

Complainant may seek informal resolution or formal investigation by completing formal complaint. Formal complaint must:

- Allege sexual harassment against a respondent and request investigation/informal resolution
- Must be signed by Complainant or TIX Coordinator (for health and safety)
- May come in person, by mail or email.

Notice

Upon receipt of formal complaint, the parties must be sent a notice that includes:

- Allegations, incl. identity of parties, conduct, date and location of incident.
- Statement that respondent is “presumed not responsible” and determination made at conclusion of process;
- Both parties may have an advisor who may be an attorney;
- Statement that false statements/false info is a violation of code of conduct

Dismissal of Formal Complaint

- Must dismiss complaint when:
 - Does not meet sexual harassment definition;
 - Did not occur in educational program;
 - Did not occur within geographic scope of TIX.
- May dismiss when:
 - Complainant withdraws complaint;
 - Respondent no longer employed/enrolled;
 - “specific circumstances” prevent evidence gathering

Informal Resolution

- May not be used when employee alleged to have sexually harassed student/trainee;
- Must provide written notice describing allegations; how informal resolution conducted; right to withdraw; and record keeping
- Any party may withdraw before final agreement signed.

Formal Investigation

- Cleveland Clinic has burden to gather sufficient evidence to determine responsibility;
- Investigators must be free from conflict of interest or bias;
- Parties may provide witnesses, incl. experts, and evidence;
- Determinations made on preponderance of evidence standard.

Report

- Prior to drafting report, parties must get access to all information and 10 days to review and respond;
- Report must “fairly summarize relevant evidence”; recommend factual findings and determinations;
- Report must be sent to parties, who may review and respond.

Decision-Making

- Determination Panel will facilitate the asking and answering of questions from parties to witnesses/other parties;
- Once completed, Panel will determine if respondent is responsible;
- Written determination incl. findings of fact, explanations, sanctions; notice of appeal.

Appeal

- Any party may appeal to Chief Academic Officer or designee;
- Bases for appeal:
 - Procedural error that “materially adversely affected” outcome;
 - New evidence not reasonably available; and
 - TIX coordinator, investigator, panel members had conflict of interest or bias.

Serving Impartially



Serving Impartially

- Avoid conflicts of interest
 - Review any existing relationships with parties with TIX coordinator or Law Department
- Maintain an open mind
 - Do not draw conclusions before receiving all available information;
 - Do not use stereotypes or statistics;
 - Explore discrepancies in information received.

Serving Impartially, cont.

- Consider all relevant information
 - Evaluate both inculpatory and exculpatory evidence
- There must be a preponderance of evidence for all findings/determinations
 - All relevant evidence, considered together, must show that it is “more likely than not” that the conduct occurred; if not, there is insufficient evidence to make a finding

Determining Relevance & Fairly Summarizing Evidence



Determining Relevance

- Relevant evidence includes parties own statements, witness statements, other evidence.
- Relevant evidence includes inculpatory and exculpatory evidence
- Credibility may not be based on status as complainant or respondent

Determining Relevance, contd.

- May not exclude relevant evidence because it is:
 - Is unduly prejudicial
 - Concerns prior bad acts
 - Is character evidence



Excluded Evidence

- Complainant's sexual history, except:
 - Complainant's prior sexual behavior offered to prove someone other than respondent committed conduct; or
 - Specific incidents of complainant's prior sexual behavior with respondent to prove consent
- Information protected by a legally recognized privilege.



Summarizing Evidence (Investigators)

- Describe procedural history;
- Include relevant policy provisions;
- Generally, include complete party/witness statements;
- List/attach other evidence and source.

Recommendations

- Factual findings:
 - Document evidence – not rumors, opinions;
 - Reconcile contradictory evidence;
 - Use factual description of events;
 - Avoid impressions, speculation, legal conclusions.
- Policy determinations:
 - Analyze each policy provision separately (only those in notice); and
 - Apply factual findings to policy requirements.



Every life deserves world class care.