

TITLE IX TRAINING FOR FACILITATORS

Three Rivers College



AGENDA

- Title IX Sexual Harassment
- Informal Resolution
- How to Serve Impartially
- Types of Informal Resolutions
- Recordkeeping

DEFINITIONS



THREE RIVERS COLLEGE POLICY

Three Rivers College is committed to providing equal opportunity in all areas of education, recruiting, hiring, retention, promotion, and contracted service. The college further commits itself to the policy that there shall be no unlawful discrimination of race, color, religion, sexual orientation, disability, age, gender, or national origin.

THREE RIVERS COLLEGE POLICY

The College's equal opportunity policy extends to prohibitions against unlawful harassment of students or employees relating to the individual's race, color, religion, disability, age, sex, or national origin. This prohibition against harassment includes, but is not limited to, disparaging comments, written materials, physical assaults, sexual harassment, verbal threats, and offensive pranks.



New Sexual Harassment Definition

- Quid Pro Quo Harassment
- Hostile Environment
- Harassment under the Violence Against Women Act & Clery Act

QUID PRO QUO HARASSMENT

- An employee conditioning an aid, service, or benefit of the college on an individual's participation in unwelcome sexual conduct
- Does not need to be evaluated for “severity, pervasiveness, and objective offensiveness”
- Expressed or implied

HOSTILE ENVIRONMENT

- Unwelcome conduct
- Reasonable person
- So severe, pervasive, and objectively offensive
- Effectively denies a person's equal access to education program or activity

HARASSMENT UNDER VAWA & CLERY ACT

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



SEXUAL ASSAULT

- Rape
- Sodomy
- Sexual Assault with an Object
- Fondling
- Incest
- Statutory Rape

DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Existence of relationship determined based on consideration of the length, type, and frequency of interaction
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence



DOMESTIC VIOLENCE

Felony or misdemeanor crimes of violence committed by:

- Current or former spouse or intimate partner of the victim
- Person with whom the victim shares a child in common
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- Person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri
- Person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri

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



LOCATION

- In an educational program or activity-locations, events, or circumstances over which the college exercised substantial control over both the Respondent and the context in which the sexual harassment occurs



CONSENT

Three Rivers Definition:

- Knowing, voluntary, and clear permission by word or action to engage in sexual activity.
- “To give permission”
- Consent can be revoked at any moment.
- The absence of “no” does not mean “yes”



CONSENT

Incapacitation:

- “A state where someone cannot make a rationale, reasonable decision because they lack the capacity to give knowing consent.
- Ex: to understand the “who, what, when, where, or how” of their sexual interaction

RETALIATION

Adverse treatment in response to seeking protection under Title IX

May be independent basis for charge or litigation

Examples include harassment in educational program, discipline, denial of participation

INFORMAL RESOLUTIONS

Goal:

Give parties the freedom to choose the resolution options that is best for them and give colleges the flexibility to craft processes that serve the unique education needs of their community

BENEFITS AND DRAWBACKS

Benefits:

Shortening overall time frame

Greater party control

Increases compliance with
outcomes

Customized remedies

Drawbacks:

Crucial to assure consent to
informal resolution is truly
voluntary

Delays investigation and
determination if no agreement
reached

AVAILABILITY



Only available when a formal complaint is filed



Not available for complaints alleging an employee harassed a student



College cannot require waiver of formal grievance process as condition of enrollment or employment



College cannot require parties to engage in informal resolution process



TIMING

- After filing of a formal complaint (not available outside of grievance process)
- Participating in Informal Resolution process tolls the investigation
- At any time before determination of responsibility
- Right to withdraw: Can withdraw from informal resolution “at any time” before agreeing to a resolution



VOLUNTARY PROCESS

- Aim is to resolve the formal complaint without formal investigative process and a hearing to determine responsibility
- Need written, voluntary consent of both parties to begin and to reach an agreement

1. Notice of allegations
2. Requirements of the process
3. Circumstances that preclude parties from resuming formal process
4. Right to withdraw
5. Notice that consequences and records from the process will be maintained
6. Notice of confidentiality parameters



WRITTEN
NOTICE

TYPES OF INFORMAL RESOLUTION

- Mediation
- Arbitration
- Negotiations
- Restorative Justice
- Settlement Discussions

Colleges can decide to offer, or not offer, these processes but are required to inform the parties of the nature and consequences of such informal resolution processes.

WHO SHOULD BE A FACILITATOR

01

Facilitator must be unbiased and without conflict of interest to both complainant and respondent

02

Consider outside facilitator if conflict of interest (e.g., if complaint against another decision-maker)

03

Can be the Title IX Coordinator, another trained employee, or a trained 3rd party in dispute resolution

HOW TO SERVE IMPARTIALLY



- Avoid prejudice of the facts at issue
- No Complainant should be ignored or met with judgment or disbelief



- Presumption of not responsible for Respondent
- Avoid conflicts of interest

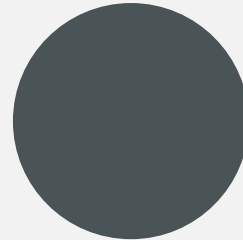


- Avoid bias or prejudice for or against Complainants or Respondents generally or as individuals

POTENTIAL RESOLUTIONS



Unlike supportive measures, informal resolutions may include disciplinary and punitive measures.



Must be agreed upon by both parties. Final agreement precludes a live hearing on the same allegations.

Goal is to have a signed agreement reflecting both parties' mutually agreed upon solution.

RECORDKEEPING

- Document beginning of resolution process
- Document agreed-upon resolution
- Records must be kept for 7 years
- Must keep any record that the college creates to investigate an allegation, regardless of later dismissal or informal resolution

QUESTIONS