

Gordon State College

Title IX Training Manual

Student to Student Focused

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What is Title IX?

"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..."

When does the College respond?

§ 106.44(a) – When the College has actual knowledge of sexual harassment in an education program or activity of the University against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent.

Actual Knowledge

§ 106.30(a) - "Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient."

Title IX Jurisdiction/Scope

- A. In the United States
- B. § 106.44(a): Education program or activity includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- C. Formal Complaint may be filed by Employee, Student, Applicant for admission/employment or by Title IX Coordinator/Designee

Examples

Education program or activity

- On campus locations (e.g., dorms, classrooms)
- On or off-campus university events (e.g., athletic events, music festivals)
- Activities in buildings controlled by officially registered student organization (e.g., sororities and some fraternity houses)
- Actions that use College-controlled technology (e.g., equipment, networks)
- Circumstances over which the College exercised substantial control over the respondent and the context in which the harassment occurs (e.g., internships)

Everything else is not

- Activities in off-campus, non-GSC locations (e.g., bars, private housing)
- Activities in buildings controlled by non-officially recognized organizations (e.g., some fraternities)
- Personal travel

Is it Title IX Sexual Misconduct?

Nonconsensual sexual contact between two students in an off-campus apartment.

- NO. Not “in the education program or activity.”

Professor makes lewd comments to student in class on one occasion.

- NO. Not “severe, pervasive, and objectively offensive.”

Nonconsensual sexual intercourse between two students in a study abroad program.

- NO. Not “in the United States.”

Nonconsensual sexual intercourse between two students in a dorm room.

- YES.

Sexual Misconduct

When Sexual Misconduct does occur, all members of the College community are strongly encouraged to report it promptly through the procedures outlined in this Policy. The purpose of this Policy is to ensure uniformity throughout the USG in reporting and addressing sexual misconduct. This Policy applies to all members of the USG and Gordon State College community. This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment, or the due process clauses of the Fifth and Fourteenth Amendments.

For full list and definitions, see the [Gordon State College Student Code of Conduct](#).

Key Categories of Prohibited Conduct

Sexual Misconduct	Dating Violence
	Domestic Violence
	Sexual Exploitation
	Sexual Harassment
	Stalking
	Nonconsensual Sexual Contact
	Nonconsensual Sexual Penetration



Sexual Misconduct Jurisdiction

- Institution property
- Institution-sponsored or affiliated events
- Off campus as defined by the institution policies

D. Domestic or abroad

Sexual Harassment (Ref. University of Colorado)

§106.30: Conduct on the basis of sex that satisfies one or more of the following:

Quid Pro Quo Sexual Harassment: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

Hostile environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

"*Sexual assault*" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "*dating violence*" as defined in 34 U.S.C. 12291(a)(10), "*domestic violence*" as defined in 34 U.S.C. 12291(a)(8), or "*stalking*" as defined in 34 U.S.C. 12291(a)(30).

Examples

A professor tells a student she'll give them an "A" if they'll sleep with her – *Quid Pro Quo Harassment*

A student repeatedly sends another student graphic pornography using a College-owned computer – *Hostile environment*

A student engages in sexual intercourse with another student, while that student was too intoxicated to consent – *Sexual assault*

Consent

- A. Informed and freely & actively given
- B. Requires mutually understandable words or actions indicating a willingness to engage in mutually agreed-upon sexual activity

Coercion

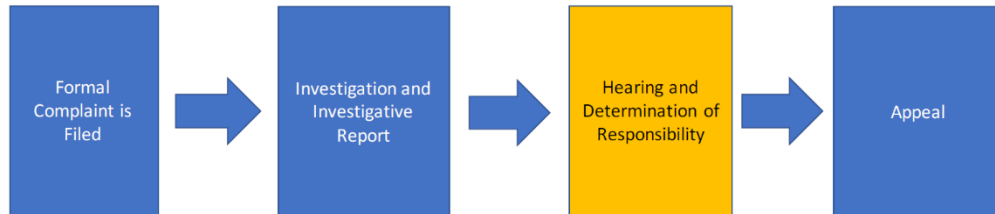
- A. Means to exert power or control over another person by use of force, pressure, manipulation, threats, or intimidation in an effort to compel participation in sexual activity.
- B. Determinations regarding whether actions or statements amount to coercion will be made on a case-by-case basis. For example, repeated advances or requests to engage in sexual activity may or may not amount to coercion depending on all the relevant facts and circumstances.

Incapacitation

- A. The lack of ability to make rational, reasonable judgments as a result of alcohol consumption, other drug use, sleep, the taking of any so-called "date-rape" drug, unconsciousness, or blackout. An incapacitated person cannot make rational, reasonable decisions because that person lacks the ability to fully understand the who, what, where, or how of their sexual interaction.
- B. Determining whether an individual is incapacitated requires an individualized assessment. Incapacitation is a state beyond drunkenness or intoxication, in which alcohol, drugs, or other factors render one unable to make fully informed judgments or have an awareness of consequences.

- C. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known of the other individual's incapacitated state. While incapacitation may be caused by drugs or alcohol, it also includes the state of being asleep, during which time a person is unable to provide effective consent.

The Four Stages of the University's Formal Grievance Process



Graphic Courtesy of the University of Colorado Hearing Officer Training

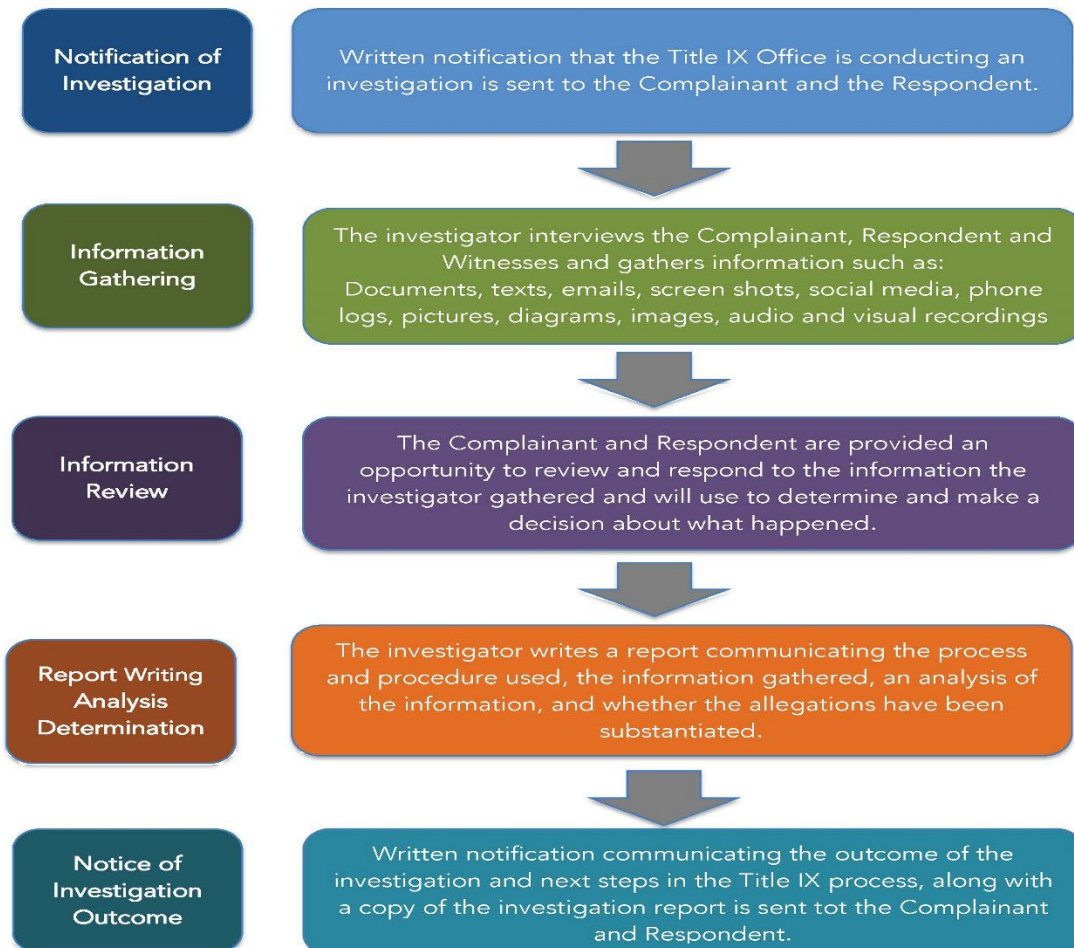
Formal Complaint

A Formal Complaint is a written document filed by the Complainant or signed by the Coordinator alleging sexual harassment, as defined by Title IX and its implementing regulations, against a Respondent and requesting that the institution open an investigation.

The Complainant must be participating in or attempting to participate in the education program or activity of the institution occurring within the United States at the time of the filing.

Investigation

TITLE IX INVESTIGATION FLOWCHART



Informal Resolutions

Allegations of Sexual Misconduct may be resolved informally.

- A. The Complainant, the Respondent, and the institution must agree in the informal resolution process and to the terms of the informal resolution.
- B. The alleged Complainant(s) and Respondent(s) have the option to end informal resolution discussions and request a formal process at any time before the terms of an informal resolution are reached.
- C. Matters resolved informally shall not be appealable.

The Hearing Process

Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued.

What does a hearing officer do? (Reference: Shorter University)

- A. Preside over a live Title IX hearing.
- B. Ask questions of the complainant, respondent, and witnesses to elicit and clarify information.
- C. Maintain order and decorum in the hearing.
- D. Determine the relevance of evidence presented in the hearing.
- E. Determine the credibility of testimony.
- F. Render an objective opinion as to whether a respondent is responsible under GSC's policies.
- G. Determine and impose appropriate sanctions.

What does a hearing officer not do?

- A. Represent or advocate for any party or any position in the proceeding.
- B. Conduct any part of the investigation into allegations of sexual misconduct.
- C. Hear appeals of the decision rendered from the live hearing.
- D. Determine a finding of responsibility for any other GSC policy.

Parties in the Hearing

- 1. Complainant - An Individual who is alleged to have experienced conduct that violates GSC's policy on sexual misconduct.
- 2. Respondent - Individual who is alleged to have engaged in Conduct that violates GSC's policy on sexual misconduct.
- 3. Advisor - Both the Complainant and the Respondent, as parties to the matter, shall have the opportunity to use an advisor (who may or may not be an attorney) of the party's choosing at the party's own expense.
 - a. Role is to conduct cross-examination: directly, orally, and in real time.
 - i. Must permit all relevant questions and follow-up questions, including those challenging credibility.
 - b. If a party does not have an advisor, the College must provide an advisor to conduct cross-examination on behalf of that party.
 - c. If a party does not appear and that party's advisor does not appear, a GSC-provided advisor must still cross-examine any other party or witness who appears

Your Role as the Hearing Officer (Reference: University of Colorado)

- 1. Conduct the hearing
 - a. Enforce the Rules of Decorum
 - b. Make relevancy determinations
 - c. Ask relevant questions
- 2. Make a Written Determination of Responsibility
 - a. Findings of fact
 - b. Conclusions regarding the application of the Policy to the facts

- c. A statement of, and rationale for, a determination regarding responsibility

Conducting the Hearing (Reference: University of Colorado)

A. DO

- a. Follow the University's policies and procedures
- b. Judge each case on its facts
- c. Objectively evaluate the evidence
- d. Treat the parties equally
- e. Conduct the hearing in manner that does not allow even a perception of bias for or against any party
- f. Continue to evaluate bias throughout the process

B. DO NOT

- a. Rely on stereotypes about how men or women purportedly behave
- b. Use data about sexual violence (even if accurate) to consider particular allegations of sexual harassment
- c. Draw inferences about credibility based on a party's status as a complainant or respondent
- d. As Decision-maker, be influenced by other school officials in reaching a decision
- e. "I've seen this before – classic party case."
- f. "One drunk girl can ruin a young man's life."

C. Logistics (USG)

- a. At the request of either party, the parties must be permitted to be in separate rooms
- b. Hearings may be conducted in-person or via videoconferencing.
 - i. Decision-makers must receive training on how to use technology
- c. Have available all directly related information
- d. Institutions permitted to establish rules of decorum (See [GSC Student Code of Conduct](#))
- e. All hearings must be recorded.

D. Preparing for the Hearing

- a. Review the investigative report, all relevant evidence, and all directly related evidence
- b. Be familiar with the applicable policies and procedures
- c. Review whether the matter involves Title IX Sexual Misconduct or Non-Title IX Sexual Misconduct
- d. Conduct the pre-hearing conference with the parties and their advisors, where you will:
 - i. Identify the parties' advisors, support person(s), and any witnesses
 - ii. Set the date and time of the hearing
 - iii. Establish the order of parties and witnesses in the hearing
 - iv. Identify exhibits that will be presented
 - v. Remind parties and advisors of evidentiary rules applicable to their process

E. Relevancy

- a. Only relevant cross-examination and other questions may be asked of a party or witness.
- b. Before a party or witness answers a cross-examination question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude it.
- c. You may allow the advisors to conduct cross examination without pausing for an affirmative ruling on relevance, only interjecting when there are relevance concerns.

F. What is not considered “relevant?”

- a. Information protected by a legally recognized privilege
- b. Any party’s medical, psychological, and similar records unless waived
- c. All questions and evidence of a complainant’s sexual predisposition
- d. All questions and evidence of a complainant’s prior sexual behavior, unless offered for 2 exceptions
- e. Statements of a party who has not submitted to cross examination

G. Conflict of Interest

- a. Everyone involved in a Title IX case must support an objective evaluation of the evidence.
- b. Objectivity includes the absence of any personal or professional interest that affects the ability to be fair and impartial to all parties in the proceeding and which affects the outcome of the proceeding.
- c. Before serving as a Hearing Officer, you must ensure that you do not have a conflict of interest
- d. Examples
 - i. Personal relationship with a party, advisor, or witness that leads you to give an advantage or disadvantage to one party in the proceeding
 - ii. Business relationship with a party, advisor, or witness
 - iii. Giving/receiving financial assistance or gifts to/from a party, advisor, or witness involved in the proceeding
 - iv. Prior knowledge about a party outside of what is learned in the proceeding that influences your decision of responsibility
- e. If you think you may have a conflict of interest, advise the Title IX Coordinator immediately.
- f. Parties may raise conflict of interest as a basis for appealing decisions.

H. Bias

- a. A tendency, natural inclination, prejudice toward/against something, someone, or a group/class of people
- b. Cognitive shortcuts which can result in prejudgments that may lead to improper decisions or discriminatory practices
 - i. Prejudgment refers to passing judgment prematurely or without sufficient reflection or investigation.
 - 1. Example: A Complainant was crying while making a sexual harassment report. You conclude that the display of emotion suggests the Complainant is telling the truth.
 - ii. Neither Complainants nor Respondents should be met with prejudgment throughout the Title IX process.
- c. “Preconceived notion” or stereotype based on generalizations apart from hearing the facts of a particular situation
- d. You may or may not be aware of your own biases
- e. Biases can be (and often are) implicit, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.

- f. Implicit biases are attitudes or beliefs that you may have “picked up” from culture, media, life-experience or upbringing
- g. Types of Bias
 - i. Affinity: unconscious tendency to get along with or believe others who are like us
 - ii. Anchoring: tendency to fixate on initial information and fail to adjust for subsequent information
 - iii. Halo Effect: allowing a positive first impression of someone to influence your overall perception of them
 - iv. Confirmation: tendency to focus on information which supports what someone already believes, while ignoring facts that go against those beliefs, despite their relevance
 - v. Authority: tendency to attribute greater accuracy/importance to the opinion of an authority figure (unrelated to its content) and be more influenced by that opinion
- I. Impartiality
 - a. Do NOT rely of sexual stereotypes
 - i. Men are sexually aggressive and/or likely to commit sexual assault.
 - ii. Women are manipulative or feel guilty about sexual experiences and lie.
 - iii. A lady wouldn't put herself in that position.
 - b. DO NOT make credibility determinations based solely on a person's sex or gender