

BOWDITCH & DEWEY, LLP | OCTOBER 25, 2023

SEXUAL MISCONDUCT & TITLE IX TRAINING

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PART 4: AIC POLICY AND PROCEDURES



SEXUAL MISCONDUCT POLICY

Revised 10/24/22

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AIC SEXUAL MISCONDUCT POLICY

APPLIES TO

- Students
- Employees (faculty and staff)
- Third parties (guests, vendors, contractors, etc.)



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AIC SEXUAL MISCONDUCT POLICY (CONT'D)

ONE GRIEVANCE PROCESS FOR ALL SEXUAL MISCONDUCT

- Title IX sexual misconduct
- Off-campus conduct that meets definitions in policy
- On-campus conduct that meets definitions in policy

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KEY DEFINITIONS

CONSENT



- Freely and affirmatively communicated willingness to participate in sexual activity
 - Expressed by words or unambiguous actions
 - Person who initiates sexual activity must get consent
 - Consent is required for all sexual activities

INCAPACITY



A PERSON WHO IS INCAPACITATED IS UNABLE TO GIVE CONSENT BECAUSE THEY LACK THE ABILITY TO MAKE INFORMED, RATIONAL JUDGMENT

- Result of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place
- Incapacitation can result from drug and alcohol consumption
 - An extreme form of intoxication

CANNOT BE OBTAINED BY FORCE

Includes threats, intimidation, coercion

DISCUSS: WHAT IS COERCION?

Continued pressure after a clear decision

TITLE IX SEXUAL HARASSMENT

- Occurs within Title IX Jurisdiction
- 5 Categories:
 - 1. Quid pro quo
 - Sexual Harassment (severe, pervasive AND objectively offensive)
 - 3. Sexual Assault
 - 4. Dating/Domestic Violence
 - 5. Stalking



TITLE IX SEXUAL HARASSMENT - JURISDICTION

- Occurs in the U.S.
- Occurs within the College's educational program or activity
 - Location, events, or circumstances over which College exercises substantial control
 - Control over Respondent and context
 - Building owned by College or student organization
- Complainant must be participating or attempting to participate in education program or activity at the College.



TITLE IX SEXUAL HARASSMENT – QUID PRO QUO



- An employee of the College conditioning the provision of an aid, benefit or service of the College on an individual's participation in unwelcome sexual conduct
 - Does not involve student vs. student relationships
 - Can involve employee vs. employee

TITLE IX SEXUAL HARASSMENT — SEXUAL HARASSMENT



- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity.
 - If does not meet severe, pervasive, and objectively offensive, it may be another type
 of sexual misconduct

TITLE IX SEXUAL HARASSMENT — SEXUAL ASSAULT



- Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Includes:
 - Rape
 - Sodomy
 - Sexual Assault with an Object
 - Fondling
 - Incest

What about attempts?

TITLE IX SEXUAL HARASSMENT — DOMESTIC/DATING VIOLENCE



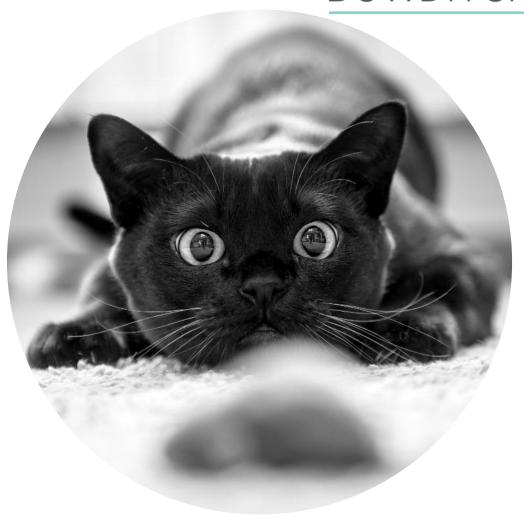
A CRIME OF VIOLENCE COMMITTED BY A:

- Current or former spouse or intimate partner
 - Intimate partner relationship with romantic or physical intimacy, or emotional dependence
 - Anywhere from "hook-up relationship" to marriage
- Individual with child in common
- Person who is cohabiting with or has cohabited with
- Social relationship of romantic/intimate nature
 - Determined based on reporting individual's statement about length/type of relationship and frequency of interaction

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TITLE IX SEXUAL HARASSMENT – STALKING

- Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to
 - Fear for their safety or the safety of other's
 - Suffer substantial emotional distress
- Course of conduct = 2 or more acts,
 including indirect acts through third parties



JURISDICTION – NON-TITLE IX

- Includes conduct outside of the U.S.
- Includes off-campus conduct which has the effect of interfering with a Community Member's equal access to the College's employment or educational programs and activities.



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NON-TITLE IX SEXUAL HARASSMENT



ANY UNWELCOME CONDUCT OF A SEXUAL NATURE WHEN:

- Submission to or rejection of such conduct is an explicit or implicit term or condition of employment or academic standing (quid pro quo)
- Creates a hostile environment
 - Must be sufficiently severe OR pervasive

SEXUAL EXPLOITATION



TAKING NON-CONSENSUAL OR ABUSIVE SEXUAL ADVANTAGE OF ANOTHER

- Voyeurism, exhibitionism
- Sharing nude or sexually explicit photographs
- Graffiti
- Prostitution offenses
- Knowingly exposing another to STIs

OTHER SEXUAL MISCONDUCT

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- Inducing incapacitation
 - For the purpose of prohibited conduct
- Aiding or facilitating misconduct
- Attempt

RETALIATION IS PROHIBITED

Seeking retribution against an individual for exercising their rights under the policy, making a report or complaint, testifying, participating, or refusing to participate in investigation



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REPORTING 34 C.F.R. 106.45(B)(10)



REPORTS

- Can be made to designated employees
 - Student Affairs
 - HR
 - Athletics
 - Police

- Can be made anonymously
 - Formal complaint cannot be made anonymously
- TIXC may file formal complaint

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APPEALS

APPEALS



- Can be made from dismissal, or Chief Hearing Officer's determination
- Bases:
 - Procedural irregularity that affected outcome
 - New evidence that was not reasonably available at time of determination which could affect outcome
 - Conflict of interest/bias
 - Sanction inconsistent with gravity of offense

APPEALS (CONT'D)



IF APPEAL IS GRANTED

- May refer back to Chief Hearing Officer for procedural irregularity or new information
- Bias/inappropriate sanctions may be addressed directly by Appellate Officer

QUESTIONS?



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