



September 27, 2023  
Equity and Inclusion

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# Title IX Coordinator Training

**NOTE: new federal regulations  
anticipated to be released October 2023.**

MINNESOTA STATE

# Equity and Inclusion

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# TITLE IX

- **Title IX Coordinator Training**
  - Employee Investigations & Investigative Report Writing
  - Decisionmaker Training (for 1B.1 & 1B.3)
  - 1B1 Investigator Training
  - 1B3 Investigator Training
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- *Additional offerings being explored*
    - *Bias, conflict of interest, and serving impartial*
    - *Supportive measures, intakes, and dismissals*
    - *Informal Resolution*
    - *Gender Equity in Athletics*

# Agenda

Title IX Overview

Adjacent Federal and State Laws

Areas of Compliance

Campus Title IX Coordinating



# Title IX Overview

"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."

Title IX of the Education Amendments of 1972 (34 CFR Part 106)



# Federal Financial Aid

Assurance that the institution of higher education commits to take whatever action necessary to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination.



# Title IX Coordinator

Designated employee, reports to senior leader

At least one person, at all time

- “Title IX Coordinator” to coordinate the efforts to comply with and carry out the responsibilities under the law, including any investigation of any complaint alleging noncompliance or alleging any actions which would be prohibited



# : Independent

Independent to avoid conflicts of interest

- ❑ Actual, perceived, or potential clash between one's professional duties and personal interests
  - Family, friendships, social factors, YWCA board, etc.
- ❑ Actual, perceived, or potential friction among competing/ multiple professional duties and responsibilities
  - Advocacy for survivor's group or respondent's group, investigating vs. decision-making roles, director of athletics



# : Visible and with Authority

Must be visible

- Contact information must be made available: name/title\*, office address, email address, and telephone number

Protected from unlawful retaliation

Authority to coordinate, keep and review records, recognize patterns of discrimination or systemic problems in the institution

# : Trained

## Appropriately trained

- Must have comprehensive knowledge in all areas over which they have responsibility, including policies and procedures
- Materials used must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment
- All training materials must be publicly available

# : Knowledge: definition

Must know:

- Definition of sexual harassment  
(conduct on the basis of sex)
  - Employee conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct [*Quid pro quo*]
  - 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 institution's education program or activity [Hostile environment]
  - Sexual assault; dating, intimate partner, and relationship violence; and stalking [Clery crimes]

# : Knowledge

Must know:

- Scope of education programs & activities: locations, events, circumstances under substantial control; student owned, recognized
- How the processes of 1B.3.1 and 1B.1.1 procedures work (including informal resolution)
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias; understanding relevance of questions and evidence

# Dissemination of Policy

- Annual notice to current students, employees, union and professional orgs (w. CBAs)
- Continuous notice to applicants for admissions and employment
- Notice must include statement of nondiscrimination on the basis of sex\* in the education programs and activities that it operates as required by Title IX, including Admissions and Employment
  - inquiries about application of Title IX: Title IX Coordinator, Assistant Secretary of Civil Rights, or both.

# Published Grievance Procedures

- Publish and reference system procedures relevant to Title IX (1B.3.1) that provide for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the policy
- Notice to all current and perspective students and employees as well as union reps shall include how to report/file a complaint of sex discrimination, how to report/file a formal complaint of sexual harassment, and how the institution will respond
- The procedures must only apply to sex discrimination occurring against a person in the United States\*

# : Report Repository

Receive reports of sex discrimination

- Any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by email, or by other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Receive formal complaints of sexual harassment

- A formal complaint may be filed in person, by mail, or by email to the Title IX Coordinator.



# : Campus Response

Respond to actual knowledge of sexual harassment

- Promptly contact complainant to discuss availability of supportive measures, consider complainant's wishes with respect to supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint of sexual harassment.
- Coordinate effective implementation of supportive measures
- Implement any remedies imposed following determination of responsibility in grievance process for formal complaints



# Federal Compliance

OCR = Office of Civil Rights

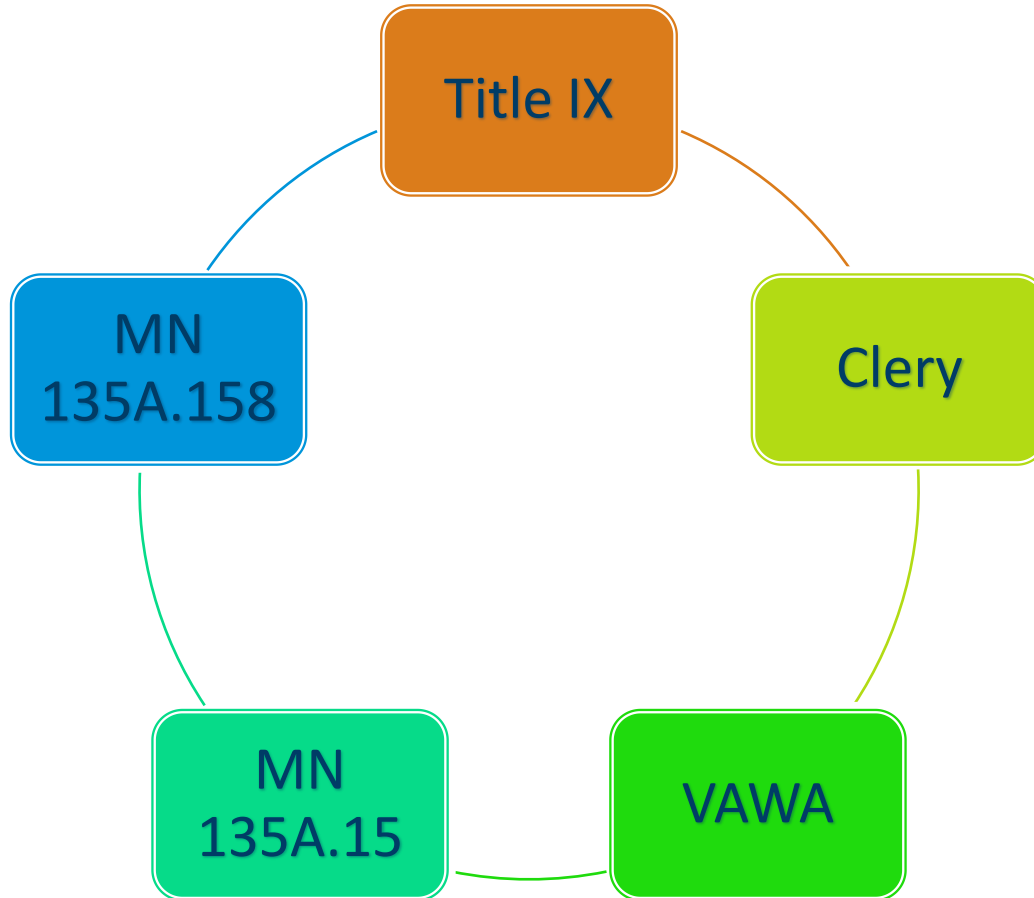
- Enforces laws prohibiting discrimination in federally assisted educational programs and activities
- Establishes compliance standards to be applied in investigations and enforcement
- Minimum:
  - Promptly respond when allegations are known
  - Offer supportive measures, regardless of report or campus complaint process
  - Follow grievance process to address and resolve allegations
  - Remedy the effects
  - Follow regulations as stated

# OCR Resolution Agreements

- College- College professor/sexual harassment of female students; campus investigation confirmed hostile environment on basis of sex; outcome not shared with all affected students
- Several K12 matters
  - Failed to appropriately investigate assaults, even after reported to police; failed to provide interim measures, to take effective steps to prevent reoccurrence, to remedy hostile environment; failed to consistently send annual notices (UT)
  - Coordinator not coordinating efforts to comply with Title IX; failed to investigate; didn't notify people who the Coordinator was (NJ)

- Additional K12 matters
  - Relying on law enforcement investigation; no centralized tracking or maintaining of complaint files; Coordinator's limited ability due to holding multiple positions (TX)
  - Miscoding of sex-based harassment; didn't document multiple complaints brought forward; didn't adequately document District's responses (WI)
  - Repeatedly failed to address effects on targeted students, to prevent recurrence; didn't take sufficient steps to prevent recurrence; and failed to provide adequate notice of the investigation outcomes; no system to monitor Title IX compliance or to identify emergent patterns or systemic problems (CA)

# Adjacent Federal and State Laws



# Jeanne Clery Act

## Amended by VAWA, Oct. 2014

- Inclusion in crime report of the following: sexual assault, domestic violence, dating violence, and stalking
  - Required updates to policy and procedure
  - Required documentation maintenance of these matters
- Requires reporting of crime stats: daily crime log, annual security report
- Includes a duty to warn/timely warnings
- Primary prevention and awareness programs for all incoming students and new employees
- Campus brochure (VAWA § 304): info for victims, shared with mandated reporters and OWAs

# Violence Against Women Act

## Reauthorization and effective Oct. 2014

Prompt, fair, and impartial process: initial investigation to final result

Process must be consistent with institution's policies and transparent to both parties

Both parties shall have:

- Equal opportunities to have others present, including advisor of choice
- Timely notice of meetings and who will be present
- Timely and equal access to information used during disciplinary meetings and hearings



# VAWA, continued

- Officials shall be trained annually, including having no conflict of interest or bias for or against either party
- Reasonably prompt timeframe, which may be extended for good cause with written notice to both parties, stating the delay and the reason
- Both parties shall receive simultaneous notification, in writing, of the result of the proceeding, including rationale, sanctions, available appeal, and any changes to the results, and when the results become final

# VAWA, 2022

## Reauthorization and effective Oct. 2022

- Revised and expanded definitions
- Funding for increased services and support for survivors from underserved and marginalized communities, including LGBTQIA+ survivors
- Funding for pilot program: Sexual violence restorative practices
- Task Force on Sexual Violence in Education
- Mandated campus climate survey
- Examination of student loan issues



# Sexual Assault Climate Survey

Secretary of Ed: make available via secure, accessible online portal

- a standardized online survey tool
- Postsecondary student experiences
- Domestic violence, dating violence, sexual assault, sexual harassment, stalking (Clery/VAWA categories)
- Fair & unbiased, scientifically valid & reliable
- Anonymized results
- Responses: confidential, not included in crime stats
- Federally administered; campus may add elements
- Adequate, random, representative sample size

## Survey questions: student experiences, trauma-informed

- Demographic info
- Incidence & prevalence
- Knowledge of policies & procedures
- If reported to campus, to law enforcement
- Contextual factors (e.g. force, incapacitation, coercion)
- If accused also a student
- Why/why not report to institution
- Impact of situation on victim's education
- Impact & effectiveness of prevention & awareness programs
- Impact & effectiveness of complaint process
- Attitudes toward sexual violence and harassment



## Report & publication

- Department of Education
  - By March 15, 2024, Sect. of Ed must prepare biennial report regarding data, submitted to Congress
  - Campus-level data, attributed by name of campus
  - Comparisons permitted across institutions and campuses
  - No individual survey responses
- Campus report
  - Campus-level results within areas reported by the Dept of Ed, published on website
  - Report must be readily accessible, usable by individuals with disabilities
  - Campus-level results of any campus added elements

# Sexual Harassment & Violence Policy

## Minnesota State Statute 135A.15

- Required policy, including sexual assault definition, victims' rights, and uniform amnesty
- Coordination with local law enforcement
- Online reporting system, including anonymous reports
- Data collection and reporting to OHE (due Oct 1)
- Comprehensive training, 10-day deadline
- Student health services screening; counseling designated staff

# Student Parents & Pregnant Students

## Minnesota State Statute 135A.158

Fact sheet must be provided to students

- Legal rights
- List of resources: support student parents and pregnant students
- List of resources: prenatal care, child care, transportation, housing
- Available in languages reflected as primary of the institutions' student body

# Areas of Compliance



# Admissions & Recruitment

- Courses and programs may not limit admissions and recruitment by sex or gender; career counseling should not encourage or discourage based on sex or gender
- Offers for admissions shall not limit or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom
- No admission rule shall be applied concerning actual or potential parental, family, or marital status of a student or application which treats them differently on the basis of sex

# Pregnant & Parenting Students

- Pregnancy
- False pregnancy
- Childbirth
- Termination or loss of pregnancy
- Related conditions and/or recovery



## Additional Considerations

Be mindful of words

- Mother and Father
- Mothering room vs. Lactation room

Law is foundation; institution can build upon it

- Birthing complications; care of newborn
- Foster, adoptive parents, parents who have surrogate



## Legal protections

- No discrimination based on identified pregnancy and parenting conditions
- Right to absences and leave
- Right to activities and Athletics
- Right to accommodations and adjustments
- Right to complain/report

## Right to absences and leave

- Medically necessary = must be excused
- Regardless of professor's or instructor's policy
- Student must not be penalized
  - Opportunity to make up any missed credit
  - Exams, regular deadlines, participation/attendance points
- Required note submission = only if required for other medical conditions
- While on leave, work may not be completed
- Develop a plan for make up work

## Right to activities and Athletics

- Extracurricular activities, including leadership positions, club sports, intramurals
- Participation in collaborative programs renting institutional facilities
- Student athletes
  - Decision-makers = doctor, athletic trainers
  - Medical documentation = if for other medical conditions
  - Scholarships = keeping benefits while in recovery, renewal of award

## Right to accommodations and adjustments

- Accommodations: Pregnancy-related disabilities: covered under Americans with Disabilities Act (ADA)
- Adjustments: Temporary medical conditions = same special services

## Examples of possible adjustments

A larger desk, table/chair in lieu of desk

Elevator access

Breaks during class, as needed

Rescheduling tests or exams

Allowing flexibility with group projects

Excusing absences due to pregnancy, childbirth, or related circumstances

Developing a learning plan for assignments missed due to pregnancy or related circumstances

Facilitating alternative work assignments due to pregnancy or related circumstances

## **Right to complain/report**

### **Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education**

- Sex (including pregnancy, child birth, and related medical conditions)
- Marital status
- Familial status

### **Board Policy 1B.3 Sexual Violence**

#### **System Procedure 1B.1.1 Investigation and Resolution**

#### **System Procedure 1B.3.1 Response to Sexual Violence and Title IX Harassment**



# Athletics

## (intercollegiate, club, intramurals)

- Equitable opportunities to participate
  - Substantial proportionality (to enrollment)
  - History and continuing practice of expansion
  - Effective accommodation of interests and abilities
- Equitable benefits and opportunities within offerings
  - Equipment, scheduling, travel, coaching, facilities, publicity, etc.
- Proportionality of financial assistance
  - Regardless of where the money comes from
  - Tiering: caution

## Equity in Athletics Disclosure Act, Annual Report

**NCAA/NSIC programs:** additional educational & disclosure requirements

- Governors Policy on Campus Sexual Violence
- Prevention education
- Attestation Process





# Employment

- Prohibitions
  - Quid pro quo
  - Severe, pervasive, and objectively offensive
  - Criminal offenses
- Equitable employment practices
  - Recruitment, pre-employment inquiries
  - Payment, Compensation, benefits
  - Treatment of pregnancy
- Title IX vs. Title VII obligations

# Training

## Publishing Title IX Personnel Training Materials:

- Title IX Coordinator, Investigators, Decisionmakers, Facilitators
- Since August 20, 2020, maintained for 7 years
- All training materials used, PPT slides/PDF
- Training requirements include
  - Title IX definition of sexual harassment, understanding scope of institution's education programs and activities, investigation, informal resolution, and grievance processes, serving impartially (relevance of questions, evidence; avoiding prejudgment, conflicts of interest, bias; no relying on sex stereotypes)

## For everyone at the institution:

- What Title IX is, Who Title IX protects, What Title IX protects against
- Employee reporting obligations, if any
- How to report and Who to report Title IX incidents, matters
- How to file a formal Title IX complaint
- Campus Title IX policy and procedures
- What are individual rights under Title IX
- Resources available to students and employees
- How the institution responds to reports

# Grievance Process

- Reporting sexual harassment can prevent future incidents from occurring and remove a source of intimidation or tension from the workplace and/or learning environment.
- Incidents of sexual harassment shall be addressed as timely and effectively as possible to prevent possible recurrences.
- While timely reports are encouraged, reports of incidents may be made regardless of when the incident took place.

## Board Policies and System Procedures

- Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education
- Board Policy 1B.3 Sexual Violence
- System Procedure 1B.1.1 Investigation and Resolution
- System Procedure 1B.3.1 Response to Sexual Violence and Title IX Harassment

## Prompt, effective, and equitable process

Reporting process including signed, formal complaint

Good faith effort to reasonable, timely process

- Document all delays and extensions
- Periodically update involved parties during the process

Equitable forms of notice and process rights (present witnesses and evidence; advisor of their choice\*)

Impartial investigators, investigation, hearing, and decision-makers

Equitable remedies and rights to appeal



## Informal Resolution: Voluntary agreement by both parties

### Minnesota State Guide:

- Grounded in motivational interviewing practices,
- Uses restorative questioning to identify and address harm and respondent accountability, and
- Uses shuttle diplomacy to identify and negotiate options for agreement.

Lack of participation and/or requests to withdraw from this process result in re-examining the matter under formal procedures (1B.3.1, 1B.1.1, etc.) and/or notice to end process

## **Confidentiality: Complainants, witnesses can't be anonymous**

Limits to how the institution can respond

Consider offering delay in reporting

Provide resources, supportive measures

Evaluate threat and actions by employees (Title VII)





## **Investigation that is thorough, reliable, and impartial**

Title IX Coordinator is designated by the institution

- Ensures Title IX protocol for process
- Repository for all complaints and reports of sex, gender based harassment, misconduct, violence
- Approves informal resolution agreements
- Oversees, or designates oversight for, the completion of any assigned outcomes





# Steps for Coordinating

1. Title IX Coordinator is visible
2. Publishing Minnesota State policies and procedures
3. Required prevention training for students, first 10 days
4. Online reporting form
5. System training options and requirements
6. Data disclosures
7. Campus process and systems
8. Pregnant and parenting student procedures
9. Record management
10. Team approach considerations

# Additional Resources

- US Dept of Education: Title IX webpage
- Office of Civil Rights Resolutions and Agreements
- Mn Office of Higher Education, Sexual Violence Prevention and Response
- ATIXA- national organization, member resources and active listserv



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