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Title IX Hearing Officer Training

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Scope

Training for those serving as Title IX Hearing Officers in matters involving allegations of Sexual Misconduct as defined by the Amendments to the 2020 Code of Federal Regulations

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Some Initial Questions

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Why have I never heard of this role until now?

The federal requirement for a live hearing with a Hearing Officer in Title IX sexual misconduct cases is new and was codified into law in 2020. Prior to that, some colleges and universities chose to have live hearings, but it was not required.

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Is this a legal proceeding?

No. Live Title IX hearings as discussed in this training are NOT civil or criminal legal proceedings. They are internal investigative processes and have only internal administrative repercussions. Court rules, including Rules of Evidence, do not apply in these proceedings.

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If I serve as a Hearing Officer, does that mean I work for Valencia?

If you are serving as a Hearing Officer, you are performing services for Valencia College as an external, independent contractor. While you are required to comply with and follow Valencia's policies, you are not an employee. If you are an attorney, while serving as a Hearing Officer you do not represent Valencia or its employees.

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What kinds of cases will I be asked to hear?

The live hearing requirement applies ONLY to allegations of Title IX sexual misconduct as outlined in College Policy 6Hx28:2-01. You will not be asked to hear cases involving discrimination or harassment based on sex or gender that do not fall under the college's definition of Title IX sexual misconduct.

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What help and resources will I have?

In addition to this training, you will have access to Valencia policies and materials relevant to the case in which you are involved. Should you need clarification or have process questions, you can consult with Valencia's Title IX Coordinator or Valencia's General Counsel. All determinations made as to the merit of the allegations and the decision regarding the responsibility of the Respondent(s), however, will be your own.

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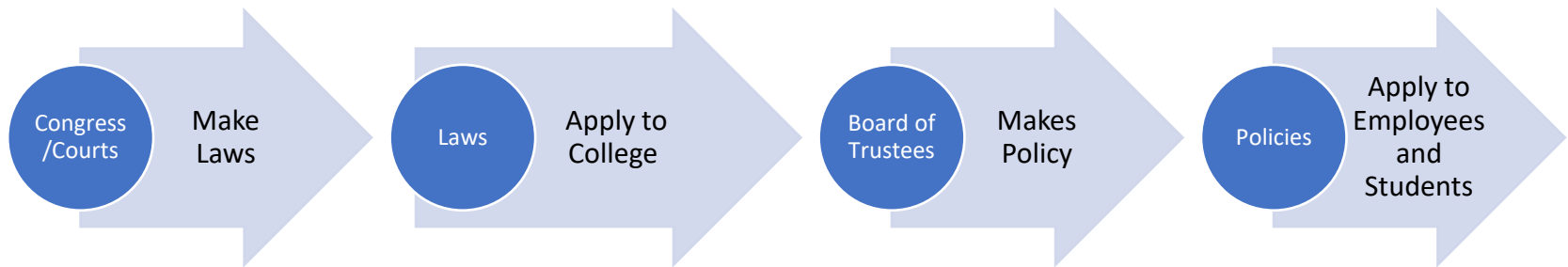
The Process

Part I Overview

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Which Rules Apply?



You are determining violations of Valencia's policy,
NOT of external laws

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Applicable College Policies

- Policy 6Hx28:2-01 Discrimination, Harassment and Related Conduct
- Policy 6Hx28:8-03 Student Code of Conduct
- Policy 6Hx28:3E-08 Disciplinary Action

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Policy 2-01

Prohibits discrimination on the basis of sex in education programs and activities and includes:

- *Quid pro quo* harassment demonstrated by an employee
- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- Title IX Sexual Assault, Title IX Interpersonal Violence, and/or Title IX Stalking

Provides for an investigation and ultimate finding as to whether allegations of prohibited conduct are supported by a preponderance of the evidence

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Policy 2-01

As Hearing Officer, you do not perform the investigation

- Those functions are performed by Valencia's EO team and the results are provided to you and to all parties

The live Title IX hearing is the last step of the investigation, where evidence is actually presented and you make a decision

To require a live Title IX hearing, the alleged conduct must have occurred on a Valencia campus or in a Valencia program or activity

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Policies 8-03 and 3E-08

If and when there is a finding that someone has violated Policy 2-01 by engaging in prohibited conduct, these policies provide the mechanism for remedying the effects of the conduct and ensuring that it does not recur

Students may be subject to any possible sanction as outlined in the Student Code of Conduct policy

Employees may be subject to any possible discipline as outlined in the Disciplinary Action policy

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Policies 8-03 and 3E-08

If you make a decision finding responsibility, prior to determining and issuing a sanction you may consult with Valencia employees who oversee Student and Employee conduct processes, as well as the Title IX Coordinator or an employee's supervisor, in deciding appropriate remedies

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The Process

Part II Prohibited Conduct

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Kinds of Cases You May Hear

- Title IX sexual harassment, Title IX sexual assault, Title IX stalking, or Title IX interpersonal violence
 - Involving students, employees, or a combination
- Quid Pro Quo harassment by employees

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Title IX Sexual Assault

As defined in the Clery Act, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

B. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

D. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

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[Valencia Policy 6Hx28:2-01](#)

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Title IX Interpersonal Violence

Includes the definitions of Domestic Violence and Dating Violence as defined in the Violence Against Women Act (VAWA)

Domestic Violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.

Dating Violence is violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include “digital abuse”, the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.

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[Valencia Policy 6Hx28:2-01](#)

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Title IX Stalking

As defined in the Violence Against Women Act (VAWA), stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

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[Valencia Policy 6Hx28:2-01](#)

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Title IX Sexual Harassment

Misconduct based on sex that is severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access, and/or an employee conditioning the provision of an aid, benefit, or service to a student on the basis of participation in Title IX Sexual Misconduct.

***This is not the same definition of sexual harassment utilized in Title VII cases or in Florida's anti-discrimination laws.*

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[Valencia Policy 6Hx28:2-01](#)

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The Process

Part III Hearing Officer Role

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What Does a Hearing Officer Do?

- Preside over a live Title IX hearing
- Ask questions of the respondent and complainant, as well as their witnesses
- Maintain order and decorum of the parties and their advisors at the Title IX hearing
- Determine what evidence is relevant and may be presented at the Title IX hearing

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What Does a Hearing Officer Do?

- In the case of a factual dispute, determine the credibility of the witnesses
- Perform an objective evaluation of relevant evidence
- Determine whether a respondent is responsible under Valencia's policies
- If a respondent is found responsible, determine and impose an appropriate sanction

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What Doesn't a Hearing Officer Do?

- Represent or advocate for any party or any position in the proceeding
- Determine a finding of responsibility for any other college policy

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Do You Have a Conflict of Interest?

Everyone involved in a Title IX hearing must support an objective evaluation of the evidence.

Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding.

Before you serve as Hearing Officer, you must ensure that you do not have a Conflict of Interest.

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Things That Could Be A Conflict of Interest

- A family relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding
- A personal relationship with a party, an advisor, or a witness that leads you to give that individual advantage or disadvantage in the proceeding
- A business relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding

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Things That Could Be A Conflict of Interest

- Giving any financial assistance or gifts to a party or a witness in the proceeding
- Receipt of any financial assistance or gifts to a party of witness in the proceeding
- Prior knowledge about a party outside of what is learned in the proceeding that bears on your decision of responsibility

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Things That Are Not A Conflict of Interest

- Having a prior relationship with Valencia
- Having served as a Hearing Officer in a prior case
- Being paid to serve as a Hearing Officer
- Identifying as a certain sex or gender
- Having legal knowledge or training
- If you are an attorney, merely having represented clients in sex-based harassment cases in the past

Valencia is not a party to the proceedings

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Conflict of Interest

- If you think you may have a conflict of interest, advise the Title IX Coordinator immediately
- Parties may raise conflicts of interest as a basis for appealing your decisions

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General Ethical Considerations

Beyond conflicts of interest, as an impartial decision-maker a Hearing Officer must approach their service impartially and without any prejudice

You must set aside impressions or biases you have from movies, TV, news, other cases in which you have been involved, and personal opinions

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Ethical Considerations

DO NOT: Rely on sex stereotypes

“Women are manipulative and they lie.”

“Real men are aggressive.”

“A lady wouldn’t put herself in that position.”

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Ethical Considerations

DO NOT: Make credibility determinations based solely on the sex or gender of a party

“I’m going to believe the woman because women have been ignored for too long in other cases and we need to balance things.”

“He was a boy scout so he is a man of honor, even though her version of events seems plausible.”

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Ethical Considerations

DO NOT: Make credibility determinations based solely on a person's status as a reporting or responding party in a matter

“Anyone who would file a complaint about something like this is crazy.”

“If this woman would go so far as to file a formal complaint, then he must have done it.”

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Ethical Considerations

DO: Approach the proceeding with an open mind and without any preconceived notions

Look at every decision you make as an objective evaluation of the facts and policies

Treat every participant and witness with respect

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The Process

Part IV Nuts & Bolts

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Formal Complaint

In circumstances when a Complainant wishes the College to take action under this policy, they must submit a formal, written complaint.

The formal complaint is a document submitted by the Complainant alleging Title IX Sexual Misconduct under College policy and indicates a request by the Complainant that the College investigate the allegations.

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Formal Complaint

Formal complaints will be investigated unless:

- The allegations in a formal complaint do not meet the definition under Title IX Sexual Misconduct under the policy or did not occur within the College's Educational Program or Activity
- The Complainant withdraws the request to investigate
- The Respondent is no longer enrolled or employed by the College

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Investigation

After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the investigator will:

- Meet with the Complainant and Respondent with their chosen Advisors and any reported witnesses
- Gather any evidence provided by involved parties
- Create an investigation report outlining the information provided in the course of the investigation

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Investigation Final Report

The final investigation report will include:

- Summary of allegations
- Timeline of events
- Summary of meetings with parties and witnesses
- Any evidence provided by the parties

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The Title IX Hearing Questions Presented

- Did the prohibited conduct occur as alleged?
- If the conduct did occur, does that conduct violate the College's policy?
- If the policy was violated, what is the appropriate action to remedy the effects of the conduct and prohibit its recurrence?

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The Title IX Hearing Ground Rules

The Hearing Officer will give opening remarks explaining:

- Outline of the proceeding
- The issues in the case
- Expectations of the participants
- Process for presenting evidence
- Process for objections
- Process for determining relevance
- Time limitations and breaks

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The Title IX Hearing Ground Rules

1) Begin with the presumption that the respondent is *not responsible* for a violation of college policy

2) Only evidence relevant to the questions presented on the previous slide should be allowed

- Duplicative and repetitive questions are not relevant
- When any witness is being cross-examined, the hearing officer should advise the witness to pause before answering so that relevance can be determined
- The Hearing Officer may ask questions

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The Title IX Hearing Ground Rules

3) In sexual assault cases, information that would be prohibited under Rape Shield laws (evidence of the reporting party's prior sexual history with people other than the responding party) should not be permitted

- History of sexual contact between the parties is not relevant based on the college's definition of consent

4) Opening or closing statements are not required, but if allowed must be provided to both parties

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The Title IX Hearing Ground Rules

5) Advisors may ask questions, but may not make statements or speeches

6) Parties may not ask questions of the opposing party

7) If participants violate these rules or otherwise disrupt the proceeding, you may remove them and proceed with the Title IX hearing in their absence

8) In the event a party is not willing to be cross examined, their testimony and/or statements may still be considered in the final determination

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The Title IX Hearing Standard of Proof

In all Title IX hearings, determinations are made according to the preponderance of the evidence standard.

Other ways of expressing this standard:

- more likely than not
- 50.1% of the evidence
- the evidence is equal but one party is more credible than the other

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The Title IX Hearing Decision

Go back to the questions presented:

- Is there a preponderance of evidence to suggest the prohibited conduct occurred as alleged?
- If the conduct did occur, does that conduct violate the College's policy?
- If the policy was violated, what is the appropriate action to remedy the effects of the conduct and prohibit its recurrence?

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The Title IX Hearing Decision

- The decision is not made at the Title IX hearing
- Your decision is made after you have considered all of the relevant evidence and college policies, and will be communicated to the parties in writing

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Questions?