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Title IX Advisor Training

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# Scope

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

- This training is being offered to Title IX Advisors appointed by the College
- The training is not offered to Title IX Advisors selected independently by Complainants or Respondents, however the training materials are available online

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# Some Initial Questions

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# Why have I never heard of this role until now?

The requirement that the College provide a Title IX Advisor if requested by a Complainant or Respondent in Title IX sexual misconduct cases is new and was codified into law in 2020. Prior to August 14, 2020 parties were afforded the opportunity to bring a Title IX Advisor, but the role of the Title IX Advisor has changed.

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# Is this a legal proceeding?

No. Live Title IX investigations and 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 Title IX Advisor, does that mean I work for Valencia?**

If you are serving as a Title IX Advisor, you are performing services for Valencia College as a part time employee. You are required to comply with and follow Valencia's policies and procedures. If you are an attorney, while serving as a Title IX Advisor you do not represent Valencia or its employees.

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# What kinds of cases will I be asked to advise on?

The requirement that a Title IX Advisor be provided to parties applies ONLY to allegations of Title IX sexual misconduct as outlined in College Policy 6Hx28:2-01. You will not be asked to advise on 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.

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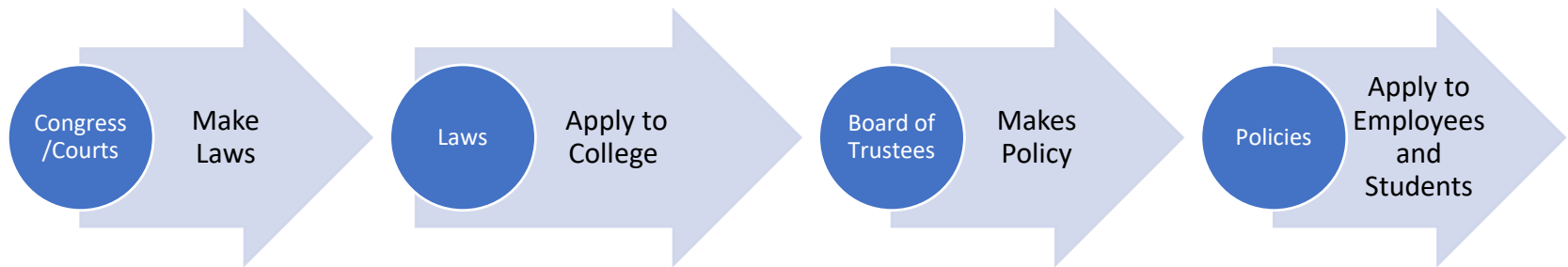
# The Process

## Part I Overview

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# Which Rules Apply?



You are advising parties with 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 a Title IX Advisor, 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 the Hearing Officer makes 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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# The Process

## Part II Prohibited Conduct

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# Kinds of Cases You May Advise On

- 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 Title IX Advisor Role

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# What Does a Title IX Advisor Do?

- Accompany a Complainant or Respondent to meetings with investigators
- Review evidence and investigation reports
- Cross examine the opposing party during a live hearing
  - Questions are provided by Complainant or Respondent
  - The Title IX Advisor is not responsible for developing the questions asked during a live hearing

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# What Doesn't a Title IX Advisor Do?

- Act as legal counsel
- Speak on behalf of the Complainant or Respondent
- Ask cross examination questions not requested by the Complainant or Respondent
- 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 a Title IX Advisor, 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 Title IX Advisor in a prior case
- Being paid to serve as a Title IX Advisor
- 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 final decisions

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# General Ethical Considerations

Beyond conflicts of interest, as an impartial decision-maker a Title IX Advisor must approach their service impartially and without any prejudgment

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

Title IX Advisors should act in the best interest of their advisee and at their request and should not pursue their own agenda

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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 investigation and 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

The following are grounds for dismissal of a complaint:

- 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

- Investigators will provide advance written notice to Complainants and Respondents in advance of any subsequent interviews, meetings, or requests for meetings.
- Both the Complainant and Respondent may select a Title IX Advisor to participate
  - The Title IX Advisor may be an attorney.
  - The College will provide a Title IX Advisor upon request to a Complainant or Respondent, at no cost.

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# Investigation Evidence

Upon review of all information gathered the investigator will provide via electronic or hard copy format, to the Complainant and Respondent and their respective Title IX Advisors, all evidence directly related to the allegations with at least ten (10) College business days to inspect, review, and respond.

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# Investigation Final Report

After the ten (10) College business day review period has passed, and upon review of any written response from the Complainant and/or Respondent, the investigator will provide a final investigation report to the Complainant and Respondent and their respective Title IX Advisors summarizing all relevant evidence. This investigation report will be provided to both the Complainant and Respondent and each will be given ten (10) College business days to provide a written response to the investigator.

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# Investigation Meetings

The Title IX Advisor may accompany the Complainant or Respondent to any meeting with an investigator or a College employee.

- Persons who serves as Title IX Advisors should plan to make themselves available for meetings throughout the process.
- The Title IX Advisor is a silent and non-participating presence who solely observes and provides support during the investigation process.
- During proceedings, the Title IX Advisor may speak only to the party by whom they were invited.

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# Investigation Meetings

During the investigation, the Title IX Advisor will not participate or represent the Complainant or Respondent with the exception of cross examination of the opposing party during the Title IX Hearing.

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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
- Analysis of information provided

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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

- 1) Title IX Hearing Officers will 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 will be allowed
- 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
- 4) No opening or closing statements

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# The Title IX Hearing Ground Rules

- 5) Title IX Advisors may ask questions, but may not make statements or speeches
- 6) Parties may not ask questions of the opposing party
- 7) In the event a party is not willing to be cross examined, their testimony and/or statements may not be considered in the final determination

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Questions?