

MAINE COMMUNITY COLLEGE SYSTEM
Training
for
TIX Coordinators and Investigators
August 3, 2020

Presenters:

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TRAINING OBJECTIVES

To inform participants of the new Title IX Regulations and their impact on MCCS policies and procedures governing allegations of sexual harassment.

SEXUAL HARASSMENT

Sexual harassment is a form of discrimination on the basis of sex

“Sex” includes gender, sexual orientation, gender identity and gender expression

Prohibited by federal and state law

LAWS PROHIBITING SEX DISCRIMINATION

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- Prohibits discrimination on the basis of sex in employment
- Includes discrimination based on sex stereotypes, sexual orientation, and transgender status (*Bostock v. Clayton County, GA*)
- Enforced by the federal Department of Labor's Equal Employment Opportunity Commission

THE MAINE HUMAN RIGHTS ACT

- Prohibits discrimination on the basis of sex, including sexual orientation, gender identity and gender expression, in employment and education
- Enforced by the Maine Human Rights Commission

TITLE IX

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities and employment.

- All institutions receiving federal financial assistance are subject to Title IX, including Maine's public institutions of higher education
- Applies to all of MCCS academic programs and activities and its operations
- Applies to both students and employees
- Enforced by the federal Department of Education's Office of Civil Rights

VIOLENCE AGAINST WOMEN ACT (VAWA)

Requires certain information be provided to complainants of allegations of sexual assault, stalking, dating violence and domestic violence

Imposes certain procedural requirements for the handling of complaints involving the VAWA categories of conduct

Requires educational campaigns for new and returning students and employees, including local definitions of the VAWA categories, and steps to keep oneself safe and to be an effective bystander

The VAWA categories have been included in the Title IX definition of sexual harassment

NEW TITLE IX REGULATIONS

What Are “Regulations?”

Permanent rules enacted by Congress to enforce a federal statute, such as Title IX

Have the effect of law

Compliance is mandatory

NEW TITLE IX REGULATIONS

Effective August 14, 2020

Add new definition of “sexual harassment,” to include existing forms of sexual harassment (quid pro quo and hostile environment), AND:

Sexual Assault

Stalking

Dating Violence

Domestic Violence

NEW TITLE IX REGULATIONS

What else?

Impose a significant new procedural framework for handling conduct governed by Title IX

Why?

DOE believes that the new regulations will bring a greater degree of uniformity, objectivity and fairness to the process for handling Title IX conduct

IMPACT OF TITLE IX REGS ON POLICIES AND PROCEDURES

MCCS Policy 202 (Sexual Harassment) revised to incorporate new requirements, including:

- TIX definition of Sexual Harassment

- TIX jurisdictional requirements

- Different procedures for TIX and non-TIX conduct

Consensual Relations now in stand alone policy – new 215

MCCS Procedure 201.1/202.1 (complaints of discrimination and sexual harassment) revised to reflect for non-TIX conduct only

IMPACT OF TIX REGS ON POLICIES AND PROCEDURES

contd

NEW MCCS Procedure 202.2

Incorporates the many new procedural requirements from receipt of complaint to final resolution-**for TIX conduct only**

Incorporates VAWA procedural requirements as well

Serves as detailed checklist to ensure compliance with TIX and VAWA requirements

IMPACT OF TIX REGS ON POLICIES AND PROCEDURES

contd

Student Sexual Misconduct and Sexual Assault Procedure (Procedure 501.1)

- Revised to reflect solely for conduct NOT subject to TIX regs/ Procedure 202.2
- Revised to make clear applies to relationship violence and stalking

Student Code of Conduct (Policy 501)

- Revised to reflect existence of separate procedures for TIX conduct and for non-TIX conduct

IMPACT ON PERSONNEL REQUIREMENTS FOR HANDLING OF TIX COMPLAINTS

If determined that a complaint alleges conduct within the scope of TIX, a minimum of four different people required to fill mandatory roles

Title IX Coordinator

Investigator

Advisor

Decision maker

Fifth possible role if informal resolution is attempted

Sixth possible role if appeal from decision maker's findings

TITLE IX ROLES

TIX Coordinator

Complaint intake

Issue complaint

Provision of VAWA required information

Oversight of interim measures

Determination of within scope of TIX or not

Oversight of investigation

Oversight of hearing and appeal processes

Maintain communications with parties/provide required letters and notices

Implementation and oversight of sanctions

Maintain records

TITLE IX ROLES

Investigator

Fair and unbiased investigation

Collection and preservation of evidence

Understanding of relevant and irrelevant evidence

Understanding of prohibited and permitted use of evidence of complainant's prior sexual history

Understanding of use of confidential records

Provision of evidence to the parties

Preparation of draft report summarizing relevant evidence

Provision of draft report to parties for comment

Preparation of final report

TITLE IX ROLES

Advisor

Reviews the evidence gathered by the investigator and can comment in writing

Reviews the draft report and can comment in writing

Conducts cross examine of the other party and the other party's witnesses at the live hearing

Each party entitled to one of own choosing- can be anyone

College must appoint one if party at hearing with no advisor

Is not student's spokesperson or representative to the College

Must conform to College's rules for live hearing

Can be removed by the decision maker if fails to conform to rules

TITLE IX ROLES

Decision Maker

- Presides over and controls the live hearing
- Conducts direct questioning of the parties and witnesses
- Rules on relevance of questions and evidence
- Makes findings of fact and responsibility
- Coordinates with College on sanctions
- Prepares written summary of findings and sanctions

TITLE IX ROLES

Appeal Decision Maker

College president or designee

Reviews grounds for appeal and statements in support of /
opposition to grounds

Issues written decision on appeal

Informal Resolution Facilitator

Person skilled in facilitating/mediating

Meets with parties

Attempts to facilitate resolution of complaint

Execution of resolution agreement

New Regulations

Disclosures

Jurisdiction

Definitions

Reporting versus Formal Complaint

Mandatory Dismissal

Discretionary Dismissal

Informal Resolution Available

Investigation

Live Hearings

Finding Report

Appeals Available

Disclosures

- Current student and employees; prospective students and employees, Unions
 - Non-Discrimination statement
 - Title IX Coordinator contact information
 - On Website
 - In Catalog
 - In Handbooks
 - Policy and Grievance Procedures
- Training Materials
 - Powerpoints
 - Handouts

Jurisdiction

- An institution with *actual knowledge of sexual harassment* in an *education program or activity*...against a person in the United States.
 - Actual knowledge is:
 - Notice of sexual harassment or allegations of sexual harassment to Title IX Coordinator or Institution official who has authority to institute corrective measures.
 - Institution official is President, Deans, HR Managers.
 - All notices of sexual harassment must be forwarded to Title IX Coordinator.
 - Institution that has Actual Knowledge must respond promptly or may be found to be deliberately indifferent.
 - Education program or activity is:
 - Locations, events, or circumstances over which the Institution exercises substantial control over both the respondent and the context.

Sexual Harassment Definitions

- **Sexual Harassment, on the basis of sex:**
 - **Quid pro quo** where an employee of the MCCS conditions the provision of a College aid, benefit, or service upon a person's participation in unwelcome sexual conduct.
 - **Unwelcome conduct** that a reasonable person would deem severe, pervasive, and objectively offensive.
 - **VAWA offenses**
 - Dating violence
 - Domestic violence
 - Sexual Assault
 - Stalking

Definitions - VAWA

- **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:
 - the length of the relationship;
 - the type of relationship; and,
 - the frequency of interaction between the persons involved in the relationship.

Definitions - VAWA

- **Domestic Violence** is felony or misdemeanor crimes of violence committed:
 - by a current or former spouse or intimate partner of the victim;
 - by a person with whom the victim shares a child in common;
 - by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
 - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Definitions - VAWA

- **Sexual Assault** is an offense that meets the following definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting System:
 - Rape is 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.
 - Fondling is 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 their age and/or because of their temporary or permanent mental incapacity.
 - Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape is sexual intercourse with a person who is under the statutory age of consent. In Maine, the age of consent is 16.

Definitions - VAWA

- **Stalking** is when an individual engages in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for his or her safety or the safety of others; or
 - Suffer substantial emotional distress.

Reporting vs Formal Complaint

- Report
 - Actual knowledge
 - Oral, in writing
 - Triggers mandatory response, but does not trigger Title IX procedures
- Formal Complaint
 - Actual knowledge
 - In writing, signed
 - By complainant, or
 - By Title IX Coordinator
 - Triggers Title IX procedures

Mandatory Dismissal

- Mandatory Dismissal:
 - The alleged conduct would not constitute sexual harassment under the Title IX sexual harassment definitions, even if proved;
 - The alleged conduct was against a person not in the United States;
 - The alleged conduct was against a person not participating, or attempting to participate, in an MCCS educational program or activity; or,
 - The alleged conduct was not at an MCCS location, not during an MCCS activity or program, or the MCCS did not have substantial control over both the respondent and the context.
- May be referred to other disciplinary process.

Discretionary Dismissal

- The MCCS has the discretion to dismiss a Formal Complaint if:
 - The complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the Formal Complaint or any allegations therein;
 - The respondent is no longer enrolled at or employed by the MCCS; or
 - Specific circumstances prevent the MCCS from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

BOTH Mandatory and Discretionary Dismissals may be appealed to the Appeal Decision Maker.

Informal Resolution Available

- At any time prior to reaching a final determination of responsibility if both parties agree to participate in writing. The parties may, until the Informal Resolution has been agreed upon, leave the process and return to the Formal Grievance process. If the process fails and the parties cannot agree on a resolution, the complaint shall be referred to the Formal Grievance process.
- Informal Resolution is not available if the respondent is an employee.
- The Information Resolution process must be facilitated by a trained individual.

Informal Resolution Available continued

- Resolutions must be in writing and signed by both parties. Once the agreement is reached the parties cannot pursue the Formal Grievance process for the same conduct.
- Information disclosed by the parties during the Informal Resolution process is confidential and may not be used as evidence during Formal Grievance process.
- Agreements to participate in the Informal Resolution process, Informal Resolutions, and the referral to the Formal Grievance process shall be kept as records.

Investigations

- Written notices of all dates, times, locations, purposes of meetings. Advisor, if party has one, can attend, but cannot participate.
- Cannot use any privileged information/material without voluntary signed consent.
- Direct evidence disclosed to both parties and to Advisors, along with draft investigation report, with 10 days for party to respond.
- Final investigation report sent to parties and to Advisors, at least 10 days prior to Live Hearing. Any response must be provided to Decision Maker.

Live Hearings

- Rules for Live Hearing
- Examination and Cross-Examination
 - Parties may be in separate rooms, but with technology must be able to synchronously see and hear one another, witnesses, the Advisors, and the Decision Maker.
 - Decision Maker will perform examination of parties and witnesses
 - Party Advisor will perform cross-examination of party and witnesses
 - **Party that does not submit to cross-examination – statements cannot be used.**
- Evidence Available
 - Relevant evidence must be available to both parties.
- Technology Assist
 - Parties can be in separate rooms
 - Witnesses can participate remotely
- Recorded and to parties, but not Advisors

Finding Report

- Decision Maker issues Finding Report
 - In writing, with procedural history, rationale, finding of responsibility.
 - Distributed simultaneously to parties
 - Not distributed to Advisors

Appeals Available

- Available to both parties.
- Three grounds for appeals:
 - 1. Procedural irregularities affecting the outcome;
 - 2. New evidence that was not previously available that would affect the outcome; and
 - 3. Bias or conflict of interest on the part of the Title IX Coordinator, the Investigator, or the Decision Maker.
- President or designee is the Appeal Decision Maker.

Q & A

Resources

Policies:

202

501

Procedures:

201.1/202.1

202.2

501.1

Regulations:

34 C.F.R. §106

NACUA Matrix:

https://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/200517-nacua-title-ix-final-regulations-grid-with-preamble-final.pdf?sfvrsn=64707ebe_2

Training Videos:

<https://www.youtube.com/playlist?list=PLYrJQ3qn6Pn15VmKJDQ01CDJeNLXhL4bm>

SUNY Joint Guidance:

<https://system.suny.edu/sci/tix2020/>

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