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East Stroudsburg University

PROCESS OF A TITLE IX INVESTIGATION

Training Note

This training was created for University Conduct Board members at East Stroudsburg University in Pennsylvania.

Training materials are provided on the Student Conduct and Community Standards website to adhere to the Title IX Federal Regulations of 2020.

Questions about training materials can be directed to SCCS and/or the Title IX Coordinator.

Title IX Investigative Process

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against **on the basis of sex** in seeking access to any educational program or activity receiving federal financial assistance.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- ▶ Defines the meaning of “sexual harassment” – severe AND pervasive
- ▶ Addresses how the University **must** respond to reports of misconduct falling within the definitions of Regulatory Prohibited Conduct under this Policy, and
- ▶ Mandates a grievance (or resolution) process the University **must** follow before issuing disciplinary sanctions against a person accused of Regulatory Prohibited Conduct under this Policy.

Title IX Investigative Process (2)

- Need to ensure it is activity or conduct that is in fact covered by Title IX Jurisdiction
- If there is sexual misconduct/harassment/discrimination/assault that is not covered by Title IX, then the student could still file a complaint what will be investigated and resolved through the Student Conduct process.
- Title IX jurisdiction – conduct:
 - Must have occurred within an educational program or activity;
 - Must have occurred in the United States;
 - Must have occurred in an area/location where University has substantial control over the Respondent/context

Sexual Misconduct that occurs in a student's residence that is a private house or apartment and not university housing is **NOT** covered under Title IX

Title IX Investigative Process (3)

- ▶ What happens when a concern/complaint of Title IX sexual misconduct/assault/harassment/discrimination is reported?
- ▶ Complainant has a few options:
 - ▶ * Complainant can do nothing;
 - ▶ Complainant can respond to Title IX Coordinator and explain situation, but request that nothing be done. Exception to this;
 - ▶ Complainant can request a formal investigation occur;
 - ▶ Complainant can request that informal mediation be attempted;
 - ▶ Complainant can request supportive measures no matter any option they choose.

Title IX Investigative Process (4)

- ▶ Formal Investigation
- ▶ Evidentiary Considerations:
 - ▶ Burden of proof is on the University at all times;
 - ▶ The Respondent, throughout the process, is deemed to have a presumption of innocence;
 - ▶ Due Process is at the heart of the investigation and both parties provide information, identify witnesses, and provide any information that they believe is relevant to the investigation.

Investigative Process (5)

- ▶ Role of the investigator is that of a **neutral fact gatherer**.
- ▶ Purpose of the investigation is to create the **investigative report**, which is used to determine whether the preponderance of the evidence standard has been met – i.e. whether it is more likely than not that the allegation did in fact occur.
- ▶ This investigative report is viewed by both parties.
- ▶ The investigative report does not state whether or not the alleged violation has occurred – rather, the report will indicate whether there has been shown, by a preponderance of the evidence, the investigation showed that it was more likely than not that there may be a violation and it should be referred to Student Conduct and Community standards for a live hearing.

Investigative Process

- ▶ **Report:**
- ▶ Once Title IX Report is finalized and reviewed by the parties, then there is a conference with Student Conduct and Community Standards. The report is explained, the rationale for concluding that the preponderance of the evidence standard was met is provided, and then is effectively “handed off” to Student Conduct.
- ▶ At the hearing, it will usually be the Title IX Coordinator who will be called to walk the Board through the investigation, at the request of the Chair.
- ▶ The report is part of the packet for review by the Board in making their determination.

Contact Information

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