

Title IX Policy and Procedure:

*Appeals Board Training –
Title IX Grievance Procedure
for Staff*

February 2022



Agenda:

- Define sexual harassment under Title IX
- Define the scope of the college's Title IX jurisdiction
- Grounds for appeal
- Issues of relevance
- Avoiding pre-judgement of facts, conflict of interest, and bias

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 & 34 C.F.R. Part 106)

Sexual harassment is a form of sex discrimination

Title IX Sexual Harassment

- Conduct on the basis of sex that constitutes:
 - An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct;
 - 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 recipient's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking.

Title IX Sexual Harassment

- Sexual assault
 - An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - Forcible sex offense: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - Nonforcible sex offense: Unlawful, nonforcible sexual intercourse.

Title IX Sexual Harassment

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

Title IX Sexual Harassment

- Domestic violence
 - Includes 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 Oregon 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 Oregon (ORS §135.230).

Title IX Sexual Harassment

- Stalking
 - Engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to:
 - (A) fear for their safety or the safety of others; or
 - (B) suffer substantial emotional distress.

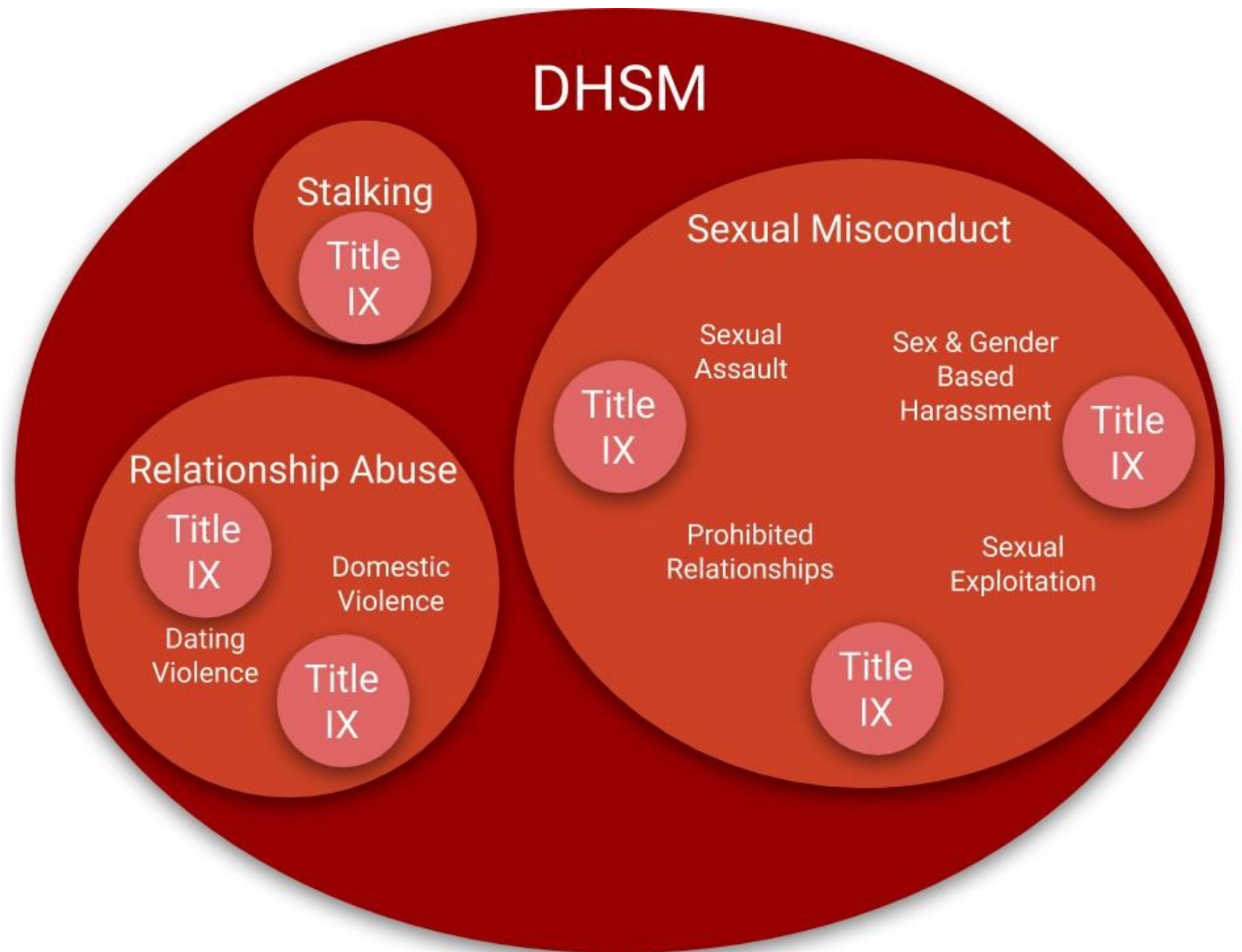
Title IX Policy & Procedures

- Apply to allegations of Sexual Harassment (as defined in the Title IX Policy) that:
 - Occurred within the college's education program or activity;
 - Against a person in the United States

Education Program or Activity

- Locations, events, or circumstances over which the college exercised substantial control over both the Respondent and the context in which Sexual Harassment occurs; includes any building owned or controlled by a student organization that is officially recognized by the college

Title IX & DHSM



Title IX Appeals

- Identifying the nature and scope of the issues
- Analyzing the appeal(s) and response(s) according to the grounds for appeal
- Determining the appeal outcome

Title IX Appeal Grounds

- Procedural irregularity that affected the outcome of the matter;
- Newly discovered evidence that could affect the outcome of the matter; and/or
- Conflict of interest or bias by the Title IX Coordinator, deputy Coordinator, investigator, Hearing Officer, or other decision-makers that affected the outcome of the matter.

Title IX Appeal Grounds

- **Procedural irregularity**
 - Was there an error in process?
 - e.g., I was found responsible for a policy violation for which I was not provided prior notice;

my advisor was not allowed to ask questions of witnesses during the hearing;

the determination was based on a clear and convincing standard of evidence

Title IX Appeal Grounds

- **Procedural irregularity**
 - Limited to the processes that are provided
 - e.g., the procedure provides for 10 business days to respond to investigative information;
- the procedure does not provide for advisors to participate in investigative meetings on behalf of a party

Title IX Appeal Grounds

- **Procedural irregularity**
 - What does the process allow for? What does it require?
 - e.g., “If either the Complainant or Respondent does not have an Advisor for the live hearing, an Advisor of the College’s choosing will be assigned at no cost to the Party.”
- “The live hearing may be conducted virtually or with all Parties physically present in the same location.”
- “The President will appoint an appeals board that shall consist of at least two vice presidents/deans”
- “The Hearing Officer reserves the right to remove an Advisor who treats a Party or Witness in an abusive, intimidating, harassing, or disrespectful manner.”

Title IX Appeal Grounds

- **Procedural irregularity**
 - If there was a procedural error, did it affect the outcome?

Title IX Appeal Grounds

- **New evidence**
 - What constitutes “new” evidence?
 - What reasons are offered for it not having been previously provided or available?

- If it is new, would it affect the outcome?

Title IX Appeal Grounds

- **Conflict of interest or bias**
 - Was there conflict of interest or bias?
 - The Deputy Title IX Coordinator had a conflict of interest because...
 - The investigator was biased against me because...
 - The hearing officer was biased against complainants in general because...
 - If yes, did it affect the outcome?

Issues of Relevance

- The investigator summarizes relevant evidence
- The hearing officer makes determinations regarding questions and evidence during the hearing
- The hearing officer makes determinations of policy violation
- VP/Deans consult with HR to determine sanctions

Issues of
Relevance –
complainant's
sexual
predisposition
or prior sexual
behavior

- Not relevant, unless
 - offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Prejudgment of facts, conflict of interest, & bias

- Avoiding a prejudgment of the facts
- Conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent



Questions & Discussion