



TITLE IX TRAINING

Attorney Advisors

What is Title IX?

- Title IX of the Education Amendments of 1972 is a federal law which states that:
 - *“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”*
- Title IX and other corresponding federal regulations create a framework of requirements for how higher education institutions in the United States are to handle the types of cases that fit into the definition above.

Scope of Title IX

- Title IX applies to sexual misconduct cases when DBU has: (1) actual knowledge of (2) sexual harassment in an (3) education program or activity that (4) occurs in the United States.
- Sexual Harassment under Title IX means:
 - (i) an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct [Quid pro quo harassment];
 - (ii) unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity [Hostile Environment Harassment]; or
 - (iii) sexual assault as defined in 34 CFR 668.46(a) [Sexual Assault, Dating Violence, Domestic Violence, and Stalking].”

Scope of Title IX (continued)

- Title IX only applies to formal complaints arising from a University “educational program or activity,” which include locations, events, or circumstances over which DBU exercises substantial control over both:
 - (i) the respondent; and
 - (ii) the context in which the sexual harassment occurs.
- Title IX obligations will extend to off-campus incidents if any of the three conditions are met:
 - (i) the off-campus incident occurs as part of the recipient’s operations pursuant to 20 U.S.C. 1687 and 34 CFR 106.2(h);
 - (ii) the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to §106.44(a); or
 - (iii) the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution pursuant to §106.44(a).”

Other DBU Processes relating to Sexual Misconduct

- Texas Education Code Subchapters E-2 and E-3 also prohibits sexual harassment, sexual assault, domestic or dating violence, and stalking, and places requirements for how higher education institutions in Texas are to handle these types of cases.
- In many situations, the definitions in these state laws may overlap with the federal Title IX laws and regulations, and thus those cases would be handled using DBU's Title IX compliant procedures. However, in certain cases, Texas law provides additional requirements outside the scope of Title IX. For instance, this may happen where the geography of the case or the persons involved in the case fall outside the strict definitions under Title IX, but nonetheless still fall within the guidelines of Texas law.

DBU's Sexual Misconduct Policy

DBU's Sexual Misconduct Policy may be found at:

www.dbu.edu/title-ix

Definitions

- (a) Complainant – An individual who is reported to have experienced conduct which would violate DBU's Sexual Misconduct Policy, regardless of whether the individual makes a report or seeks disciplinary action.
- (b) Respondent – An individual who has been accused of conduct which would violate DBU's Sexual Misconduct Policy.
- (c) Witness – An individual who may have information relevant to a report of prohibited conduct.

Definitions

- (d) Confidential Consultant – An individual provided by DBU to Complainants and Respondents who is available to pray with the party, assist them in seeking counseling or medical care, assist them with other needs, provide information about DBU’s policies, provide important information about the hearing and process, and serve as a general guide and consultant for the party.
- (e) Advisors - An individual who provides either a Complainant or a Respondent with advice and counsel regarding their case. In Title IX Cases, the Advisor may also serve the function of performing cross-examination of witnesses, as detailed in Section 7. Complainants and Respondents may select an advisor of their choice to advise them. This advisor does not have to be, but may be, an attorney. DBU will provide a pool of licensed attorneys from which the parties may select an advisor free of charge if they are unable to obtain an advisor of their own or would prefer to use this pool of attorneys to select an advisor.
- (f) Title IX Coordinator - The Title IX Coordinator directs compliance with DBU’s Sexual Misconduct Policy and Title IX. The Title IX Coordinator will be informed of all complaints or reports of violations of this policy and shall oversee DBU’s centralized response to ensure compliance with DBU’s values, Title IX, and other applicable laws.

Definitions

- (g) Special Investigators – Individuals who are appointed to carry out all initial investigations, gather evidence, and report their findings to the ACTS Committee.
- (h) Hearing Panel – A panel of ACTS Committee members who will serve as adjudicators for a case. The Hearing Panel will hear witnesses and review evidence provided at the hearing, analyze the Investigator’s Report, deliberate on whether a violation of DBU’s Sexual Misconduct Policy occurred, and issue sanctions if a violation is found. Section 6 and Section 8 of DBU’s Sexual Misconduct Policy delineate how Hearing Panel members will be chosen in Title IX Cases and Texas Law Cases.
- (i) Hearing Officer - The Senior Legal Counsel to the President will serve as the Hearing Officer, and will be responsible for deciding all procedural questions, relevancy determinations, or other evidentiary questions that may arise and ensuring that all parties and Advisors follow the Hearing and Evidence Manual, which will be provided to the parties and their advisors along with the original notice of the case
- (j) Special Adjudicator – An individual who will handle all appellate proceedings utilizing the previous reports and evidence, but also allowing the parties to bring additional evidence, witnesses, and testimony. At this hearing the Special Adjudicator will utilize the rules outlined in the Hearing and Evidence Manual, and will be responsible for deciding all procedural, relevancy, or evidentiary questions that may arise and ensuring that all parties and Advisors follow the Hearing and Evidence Manual. At the appellate hearing, the Special Adjudicator will hear witnesses and review evidence provided at the hearing, analyze the Investigator’s Report, deliberate on whether a violation of DBU’s Sexual Misconduct Policy occurred, and issue sanctions if a violation is found.

Key Title IX Personnel to Know

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ACTS Committee

The Advocates for Campus Trust and Safety (ACTS) Committee is an integral part of administering this Sexual Misconduct Policy. The role of this committee is to: a) help coordinate the overall education and prevention efforts for the campus community relating to sexual misconduct; and b) serve as an investigative and decision-making body when violations of this policy are alleged. Members of the ACTS Committee are appointed by the President of the University and represent a broad cross-section of the campus community, including, but not limited to, Academic Leadership, Student Affairs, Human Resources, Athletics, and the Legal Affairs Office of the University.

Hearing Panels will be chosen from the ACTS Committee (as detailed in later slides)

Advisors

- Complainants and respondents may select an advisor of their choice to advise them in these proceedings. This advisor does not have to be, but may be, an attorney. DBU will provide a pool of licensed attorneys from which the parties may select an advisor free of charge if they are unable to obtain an advisor of their own or would prefer to use this pool of attorneys to select an advisor.
- Role of the Advisor:
 - *1) have an initial meeting with the Client and provide counsel and advice to the Client throughout the case*
 - *2) attend the Client's interview(s) with DBU's Special Investigators;*
 - *3) represent the Client during the Title IX Hearing and perform cross examination on all adverse witnesses;*
 - *4) file an appeal and represent the student at the appellate hearing if the Client requests an appeal and one is available under the designated reasons for appeal found in DBU's Sexual Misconduct Policy.*

Presumptions, Burden of Proof, and Clear and Convincing Evidence Standard

- ***Presumptions***- All Respondents in cases under DBU's Sexual Misconduct Policy are presumed not responsible for a violation of this policy until they are proven responsible. There will be no presumptions of credibility or bias given for any party or witness; each party or witness's credibility will be objectively judged and weighed, and each party will be objectively treated with respect and without bias.
- ***Burden of Proof***- In proving whether a Respondent is responsible for a violation of DBU's Sexual Misconduct Policy, the University will bear the burden of gathering evidence and proving responsibility.
- ***Clear and Convincing Evidence Standard***- In assessing whether a Respondent is responsible, the University will use the clear and convincing evidence standard, which is defined as follows: "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

The Basic Procedural Timeline for a Title IX Case



*An Informal Resolution Process may be offered to the parties in certain types of cases, and if chosen, this process could lead to a resolution of the case before the Hearing Phase begins

The Basic Procedural Timeline for a Title IX Case

■ Step 1: Reporting an Allegation [Section 5(a)]

There are three ways that reports of sexual misconduct can be made: 1) reporting to Confidential Sources; 2) reporting to Mandatory Reporters; and 3) reporting directly to the Title IX Coordinator or another official listed as having authority to institute corrective measures.

As the names imply, the University has designed the Confidential Sources as people who may listen to complaints and will not be required to report the details of that complaint to DBU's Title IX Office.

On the other hand, any report made to any of the Mandatory Reporters must be reported by that Mandatory Reporter under Texas law to the Title IX Coordinator or one of the DBU officials with authority to institute corrective measures.

Even where a report is made to a Mandatory Reporter or the Title IX Coordinator, the complainant will still have the right to make the decision on whether to fully move forward with instituting a formal complaint.

Reporting an Allegation (Continued)

DBU Personnel with Authority to Institute Corrective Measures:

- Title IX Coordinator
- Deputy Title IX Coordinators
- Vice President of Student Affairs
- Provost
- Dean of Students
- Director of Human Resources
- Senior Legal Counsel to the President

Confidential Resources:

- Dr. Jordan Davis, LPC (Director of Counseling and Spiritual Care) - 214-333-5288; jordan@dbu.edu
- On-campus licensed professional counselors and staff at the DBU Counseling Center
- On-campus Confidential Consultants (after an allegation has been made)

Mandatory Reporters:

- “Mandatory Reporters” include all faculty, adjunct faculty, full-time staff members, non-student worker part-time staff members, and student workers employed in Campus Security, Police, or as Resident Assistants.

The Basic Procedural Timeline for a Title IX Case

■ Step 1: Reporting an Allegation [Section 5(f) and (g)]

f. Amnesty

In order to encourage reports of conduct prohibited under this policy, an individual who, in good faith, reports being the victim of, or witness to sexual harassment, sexual assault, dating or domestic violence, or stalking, or who assists in the investigation of a report, will be entitled to amnesty from disciplinary actions by the University relating to code of conduct violations that occurred as a part of the incident in question or which were reasonably related to the incident. DBU reserves the right to investigate whether a report was made in good faith before granting amnesty. Additionally, amnesty does not apply to the reporting individual's own acts, if any, of sexual misconduct.

g. Good Faith & False Statements

Allegations must be made in good faith and not made out of malice. It is a violation of DBU policy to knowingly make a false, malicious, or frivolous accusation of discrimination, harassment, sexual misconduct or retaliation. However, mere failure to prove a complaint is not equivalent to a false, malicious, or frivolous accusation. All parties, witnesses, and advisors in any proceeding under this policy are expected to be honest and truthful when meeting with Title IX officials, investigators, when testifying in any proceeding, providing written evidence, or engaging in any other communication relating to a proceeding under this policy. It is a violation of this policy for any party, witness, or advisor to make a false or misleading statement of any kind in a communication that is part of these proceedings.

The Basic Procedural Timeline for a Title IX Case

■ Step 2: Initial Complaints [Section 5(e)]

Initially, a complaint that received by an official with authority to institute corrective measures (whether coming directly from the complainant or from a mandatory reporter) will be considered an informal complaint.

In order to move forward in the process of being investigated and adjudicated, Title IX Cases and Texas Law Cases must move from being an informal complaint to a formal complaint by meeting the following guidelines:

- an allegation of a Title IX case is made; and
- either
 - *The alleged victim makes the choice to move forward with the investigation and adjudication of the case by signing a written formal complaint document ; or*
 - *If the alleged victim does not wish to sign a formal complaint document, the Title IX Coordinator will utilize the procedure found in Section 7 and may, on his/her own motion, sign a formal complaint document if it is determined that the allegation involves such a significant risk to the safety of the overall community that it is necessary to initiate formal complaint procedures on the Title IX Coordinator's own motion to protect the community at large. Otherwise, as per the Section 7 guidelines, if it is decided that the allegation does not involve a significant risk to the safety of the overall community, the Title IX Coordinator may close the case.*

Formal complaints may be withdrawn at any time by a complainant, though if a complaint is withdrawn, the Title IX Coordinator will still utilize the procedure found in Section 7 and may, on his/her own motion, sign a formal complaint if necessary.

The Basic Procedural Timeline for a Title IX Case

- Step 3: Initial Actions [Section 5(i)]
 - *Choosing a Procedure*
 - *Determining the Severity Level*
 - *Determining Appropriate Supportive Measures*
 - *Offering Informal Resolution Process (if available for this type of case)*

The Basic Procedural Timeline for a Title IX Case

■ Step 3 (continued)– Informal Resolution Process

– *Not available in all cases, including...*

- 1) Non-Consensual Sexual Penetration; 2) Domestic or Dating Violence; 3) allegations that an employee committed sexual harassment, sexual assault, dating/domestic violence, or stalking against a student; or 4) other situations where good cause exists in favor of DBU protecting its faculty, staff, students, and visitors by not allowing the parties to engage in an Informal Resolution Process.

– Both parties must consent to using this process

– Mediation-Style Process

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Investigation Phase

- *Led by DBU Special Investigators (1-2 per case)*
- *Will interview Complainant and Respondent*
- *Will interview other witnesses and seek other evidence (e.g., text messages, social media posts, etc.)*
- *Notice for interviews: typically 2 days notice*
- *Each party may select an advisor of his/her choice who may accompany him/her to any investigative meeting, but the advisor will not participate in such meeting.*
- *Interviews will be recorded and transcribed*

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Investigation Phase (continued)

- Upon concluding the evidence-gathering portion of the Investigation Phase, the Special Investigator(s) will prepare a written Investigator's Report
- All evidence directly related to the allegations in the case will be provided to the parties as a part of the Investigator's Report
- Either party may provide a written response to the Special Investigator's Report via email to TitleIX@dbu.edu by the next regular business day (Monday through Friday, other than University holidays) at 10 a.m. following ten (10) days from when the Special Investigators' Report was sent to the parties.
- Any written response received from a party will be considered by the Special Investigator(s), who may alter the Report and/or append the response(s) as appendices to the Report.
- Upon making any changes and appending any responses, the Special Investigator(s) will provide the Final Report to the Title IX Coordinator, the ACTS Committee, the parties, and their Advisors.

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Investigation Phase (continued)

- As per state law, if a student withdraws from DBU or an employee resigns his/her employment with DBU pending an investigation as to whether the student or employee committed sexual harassment, sexual assault, dating/domestic violence, or stalking, DBU will continue the investigation or disciplinary process and will not issue a transcript to the student until a final determination regarding responsibility is made

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing

■ Pre-Hearing Meeting

- *To assist in the disposition of the case, the Hearing Officer may request a brief meeting with the parties and their advisors after the conclusion of the investigation and prior to the hearing in the case. The purpose of this meeting will be to:*
 - (a) Discuss the rules of procedure for the hearing;
 - (b) Discuss expectations regarding decorum;
 - (c) Exchange a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of the hearing, who will be called to testify at hearing, stating their address, telephone number, email, and the subject of the testimony of each such witness;
 - (d) Exchange a list of expert witnesses who will be called to testify at trial, if any, stating their address, telephone number, email address, and the subject of the testimony and opinions that will be proffered by each expert witness;
 - (e) Such other matters as may aid in the disposition of the case.
- *Pre-Hearing Meetings may be held virtually at the discretion of the Hearing Officer. If a meeting is not deemed necessary by the Hearing Officer, the Hearing Officer may send information on 3.4(a), (b), and (e) above via email to the parties and their advisors and require that the parties and their advisors to submit 3.4(c) and (d) above to the Hearing Officer and each other no later than two (2) days prior to the Hearing.*

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing

- Hearing Panel
 - For Standard cases, the following individuals will make up the hearing panel, and will serve as adjudicators for these cases:
 - *Cases Where the Respondent is a Student: VP for Student Affairs, Deputy Title IX Coordinator for Students, and Senior Legal Counsel to the President*
 - *Cases Where the Respondent is an Employee: Provost, Deputy Title IX Coordinator for Employees, and Senior Legal Counsel to the President*
 - For Severe cases, a quorum of at least five (5) members of the ACTS Committee must be present for the hearing, with the persons listed above as adjudicators for the Standard cases being required members of the hearing panel.
- Hearing Officer
 - In both Standard and Severe cases, the Senior Legal Counsel to the President will serve as the Chair of the Hearing Panel, and will be responsible for deciding all procedural questions, relevancy determinations, or other evidentiary questions that may arise and ensuring that all parties and Advisors follow the Hearing and Evidence Manual

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing

- Hearings will be held in-person unless extenuating circumstances necessitate a virtual hearing
- Hearing Procedures
 - Hearing procedures will be outlined more fully in the Hearing and Evidence Manual
 - In general, both parties will be given the opportunity to make an opening statement and their advisors will be given the opportunity to present witnesses and cross-examine all opposing parties or witnesses.*
 - A party may not be present in the same room while the other party is presenting his/her testimony, though he/she may watch the proceedings in another room via video conference while his/her Advisor (if any) asks cross-examination questions.
 - Hearing Panel members will also be given the opportunity to ask questions of all witnesses.

*The procedure for cross-examination will be slightly different in Texas Law Cases. Each party may submit a list of potential cross-examination questions prior to the hearing, and if approved as being relevant and not in violation of the Hearing and Evidence Manual rules, the Senior Legal Counsel to the President will ask these questions to the person for whom the questions were meant.

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing (continued)

- *Order of Hearing.* The agenda for the hearing will be as follows:
 - *Introductory Procedural Remarks and Notices made by the Hearing Officer*
 - *Evidentiary Portion of the Hearing*
 - Complainant's Opening Statement
 - Direct Examination by Complainant's Advisor
 - Cross-Examination of Complainant by Respondent's Advisor
 - Additional Time for Questions from the Hearing Panel to the Complainant
 - Testimony of Witnesses Provided by Complainant
 - Cross-Examination of these Witnesses by Respondent's Advisor
 - Additional Time for Questions from the Hearing Panel to these Witnesses
 - Respondent's Opening Statement
 - Direct Examination by Respondent's Advisor
 - Cross-Examination of Respondent by Complainant's Advisor
 - Additional Time for Questions from the Hearing Panel to the Respondent
 - Testimony of Witnesses Provided by Respondent
 - Cross-Examination of these Witnesses by Complainant's Advisor
 - Additional Time for Questions from the Hearing Panel to these Witnesses
 - *Deliberations*
 - Charge to the Committee provided to the Hearing Panel
 - Committee Deliberations and Final Ruling

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing (continued)

- *Alleged victims may not be asked questions about their prior sexual behavior or sexual predisposition unless the evidence of prior sexual behavior is offered to prove someone other than the respondent committed the alleged offense, or where prior sexual behavior evidence is specifically about the complainant and the respondent and is offered to prove consent.*
- *As mandated by Title IX regulations, the statements of any party who is not willing to submit to cross-examination will not be considered by the hearing panel when making its decision on responsibility. However, the Hearing Panel will not draw any adverse inference based on the mere fact that an individual refused to submit to cross-examination [Title IX Cases Only]*

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing (continued)

- At the conclusion of the hearing, the Hearing Panel will deliberate and make a ruling as to whether, under a clear and convincing evidence standard, the respondent violated this policy.
- If a violation is deemed to have occurred, the ACTS Committee will also issue appropriate remedies and sanctions against the respondent.
- Remedies and sanctions will be determined based on the seriousness of the misconduct and the responsible respondent's prior disciplinary history.
- After the hearing, a written determination will be drafted and given to the parties and their Advisors
- Likewise, the recording of the hearing will be transcribed within a reasonable time and made available to the parties and their Advisors.

The Basic Procedural Timeline for a Title IX Case

■ Step 4: Hearing (continued)

– Notations on Transcripts

- If, as a result of sanctions other than sanctions for academic or financial reasons, a student is ineligible to reenroll at DBU, state law mandates that DBU include on the student's transcript a notation stating that the student is ineligible to reenroll in DBU for a reason other than an academic or financial reason. On request of a student or at the discretion of the University, DBU may remove this notation if: (1) the student is eligible to reenroll at DBU; or (2) DBU determines that good cause exists to remove the notation.

The Basic Procedural Timeline for a Title IX Case

■ Step 5: Appeals

- Within ten (10) days of the issuance of the written determination, either party may request an appeal in writing to the Title IX Coordinator.
- Reasons for Appeal:
 - procedural irregularity;
 - new evidence exists which was not available at the hearing; or
 - conflict of interest/bias.
- Additionally, the President of the University, who may choose to consult with the Special Adjudicator, will review the written ruling and the proceedings of the ACTS Committee. In the President's discretion the President may also institute an appeal.
- If an appeal is instituted, all parties will receive written notice

The Basic Procedural Timeline for a Title IX Case

■ Step 5: Appeals (continued)

- The Special Adjudicator will handle all appellate proceedings utilizing the previous reports and evidence, but also allowing the parties to bring additional evidence, witnesses, and testimony.
- At this hearing the Special Adjudicator will utilize the rules outlined in the Hearing and Evidence Manual, and will be responsible for deciding all procedural, relevancy, or evidentiary questions that may arise and ensuring that all parties and Advisors follow the Hearing and Evidence Manual.
- The Special Adjudicator may also, on his/her own motion, request any documents, witnesses, or additional evidence that he/she deems necessary for the fair adjudication of the matter.
- Standard: Clear and Convincing Evidence Standard
- Ruling: May sustain or overrule the previous ruling and/or any sanctions
- This ruling will be final

ANY
QUESTIONS?

