



TITLE IX – SEX DISCRIMINATION AND SEXUAL HARRASSMENT
Training for Canadian Valley Technology Center Title IX Responsible Personnel

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NOTES

The Guiding Principles of Title IX and U.S. Department of Education’s Final Rules

- Sexual Harassment recognized as Sex Discrimination;
- Supportive measures for complainants and respect for complainant’s decisions (for example to file or not to file a complaint);
- Fair grievance (hearing) process that ensures both parties have access to claims, defenses, supporting information and materials, and equivalent notice of all parts of process (includes presumption that the respondent is not responsible for claimed conduct);
- Appeal process available to complainant and respondent; and
- Assurance of non-discrimination, free speech protection, and due process.

Key Definitions

Actual Knowledge—notice of sexual harassment or allegations of sexual harassment to CVTC’s Title IX Coordinator, or any official of CVTC who has authority to institute corrective measures on behalf of CVTC, or (for secondary students) to any employee .

Complainant—person alleged to be the victim of conduct that could constitute sexual harassment.

Formal Complaint—a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that CVTC investigate the allegation of sexual harassment.

Respondent—person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Harassment—

- An CVTC employee conditioning the provision of an aid, benefit, or service 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 CVTC’s education programs or activities; or
- Any of the following as defined in federal law: sexual assault as defined in the Clery Act; dating violence as defined in the Violence Against Women Act (VAWA); domestic violence as defined in the VAWA; stalking as defined in

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the VAWA.

Supportive Measures—nondisciplinary, nonpunitive individualized services offered as appropriate and reasonably available (without fee or charge) to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. to restore or preserve equal access to programs or services.

Key Title IX Personnel

Title IX Coordinator

- Responsible for CVTC-based day-to-day compliance with CVTC's Title IX policy;
- Develops, monitors, and oversees compliance with policies, procedures and practices;
- Receives reports or complaints of sex discrimination and harassment;
- Contacts the complainant promptly, discusses and offers supportive services and explains the Title IX grievance process;
- Determines whether complainant wishes to file a formal complaint;
- Provides written notice to the complainant and respondent of the grievance process, informal resolution process, and allegations (with details);
- Explains that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- Notifies the parties of the right to have an advisor to assist them and to inspect and review evidence;
- Explains that knowingly making false statements or providing false information is a violation of the code of conduct and subject to disciplinary action;
- Makes determination regarding a formal investigation;
- Makes determination regarding mandatory or permissive dismissal;
- Ensures that training is delivered to all individuals affected by CVTC's Title IX policy at all levels;
- Protects all reporters, complainants, respondents, witnesses and others from retaliation for reporting sexual harassment or participating or refusing to participate in any Title IX grievance process; and
- Documents, collects and retains records of all sexual harassment reports, investigations, hearings, and appeals.

Investigator

- Explains to both parties the investigative process and that the burden of gathering evidence and burden of proof is with CVTC—not the parties;
- Meets personally with complainant (subject to extraordinary circumstances);
- Meets personally with respondent (subject to extraordinary circumstances);

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- Presumes that respondent is not responsible for the alleged conduct;
- Collects physical and documentary evidence;
- Meets personally with witnesses (subject to extraordinary circumstances);
- Provides equal opportunity for both parties to present witnesses and evidence;
- Provides written advance notice to parties and their advisors of date, time, participants, purpose, location, etc. of investigative interviews, evidence obtained and opportunity to respond;
- Provides parties and their advisors opportunity to review all evidence related to the allegations in the complaint at least 10 days prior to the completion of the final investigation; and
- Prepares written report that fairly summarizes the relevant evidence and provides report to parties/advisors for review and written response at least 10 days before a hearing or determination of responsibility.

Informal Resolution Facilitator

- Informs parties in writing of the mediation process and their respective rights;
- Requires filing of a formal complaint of discrimination and no issue of sexual violence; not available when the Complaint alleges an CVTC employee harassed a student or sexual violence involved;
- Makes clear that participation is completely voluntary and requires the freely given written consent of both parties;
- Works with parties to mediate issues and differences in the hope of arriving at a mutually agreeable resolution;
- If parties agree to voluntary resolution, a written agreement is prepared, provided to both parties, and signed by both parties;
- If both parties are not in agreement, the complaint is returned to the Title IX Coordinator for referral to the Hearing Officer for a hearing;
- No appeal is available because mediation requires agreement or no resolution is reached; and
- If resolution not reached, neither party may introduce evidence of the voluntary resolution process during the hearing.

Hearing Officer Obligations

- Promptly discloses any conflict of interest that would make the Officer ineligible to serve as the Hearing Officer including any conflict that develops after the live or non-live hearing begins;
- Avoids making a judgment prior to conducting the hearing and receiving the relevant and admissible testimony and evidence;
- Promptly reports to the Title IX Coordinator any third-party effort to improperly influence a decision prior to or during the live or non-live hearing;
- Listens carefully to all testimony presented during the live or non-live hearing, reviews all documents or other evidence received, and asks questions to clarify areas of confusion;

- Ensures a clear understanding of the incident or events in question before deliberations and decision reached and transmitted to parties;
- Decides the outcome and sanctions (if applicable) based on the evidence presented, hearing notes, CVTC policy and credibility assessments; and
- At the conclusion of the live or non-live hearing—provides any notes in a sealed envelope to the Title IX Coordinator for inclusion with all materials related to the Title IX complaint.

Hearing Officer Actions

- Responsible for written communications to parties regarding the date, time, location of hearing, complainant's rights, respondent's rights and other particulars of the hearing;
- Determines, based on classification of students involved as complainant and respondent, whether hearing will be live or non-live;
- Ensures that only relevant, admissible evidence is introduced during the live or non-live hearing:
 - Relevant evidence is evidence tending to prove or disprove the claims or defenses
 - Questions and evidence regarding the complainant's sexual predisposition or prior sexual behavior are not relevant unless: such questions or evidence is to prove that someone other than the respondent committed the conduct alleged; that the conduct alleged by the complainant was consensual; students are not under 16; and questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent
 - If evidence is deemed not relevant, the hearing officer must explain why the testimony or evidence was not relevant
 - Generally, a party will not be permitted to seek, rely upon or use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege unless the person holding the privilege has waived it (e.g., privileges may involve a physician, psychiatrist, psychologist, lawyer or other recognized privilege)
- Manages and administers the live hearing process in a fair and impartial manner (live hearings will typically be conducted when complaints involve adult students but do not involve secondary students):
 - Opening statements
 - Complainant's testimony and evidence
 - Cross-examination (by respondent's advisor)
 - Questions by hearing officer
 - Respondent's testimony and evidence
 - Cross-examination (by complainant's advisor)
 - Questions by hearing officer

- Deliberations of hearing officer
- Determination of outcome based on preponderance of evidence standard (more likely than not to have occurred or not occurred)
- If determination is that respondent is not responsible for violation of the policy—then complaint will be dismissed—subject to the right of appeal
- If the determination is that respondent is responsible for violation of the Title IX policy—then hearing officer will identify sanctions
- Notifies parties in writing of outcome of live hearing by certified mail (or other agreed upon notice) within 5 business days after the live hearing concludes; and
- Notifies both parties of right to appeal and appeal procedures.

Non-Live Hearing for Complaints Involving Secondary Students

- Hearing Officer, in consultation with Title IX Coordinator, determines whether a hearing involving secondary students should be conducted as a live or non-live hearing;
- Hearing Officer communicates with both parties regarding the procedures for a non-live hearing, the rights of both parties to submit testimony and evidence in writing; the right of both parties to receive all testimony and evidence submitted in writing; and the right of each party to respond to the other party's submission of testimony and evidence;
- Hearing Officer provides at least 10-days for each party to respond to the other party's testimony and evidence (a party can waive the 10-day time period to respond as long as the waiver is provided to the Hearing Officer in writing);
- Hearing Officer considers only relevant, admissible evidence in reaching a decision;
- Hearing Officer ensures that parties to the non-live hearing have all available testimony and evidence and an opportunity to fully respond to all testimony and evidence submitted;
- Hearing Officer's written decision addresses all issues presented, is provided to both parties within the same time period, and includes an explanation of the analysis and conclusions reached regarding each issue presented.

Appellate Decision-Maker

- Receives written appeal or appeals (must be received within 5 calendar days of appealing party's receipt of hearing decision);
- Provides written acknowledgement of receipt of appeal and provides description of appeal procedures;
- Reviews appeal content to determine whether the appeal cites at least one of the required appeal criteria and criteria cited is adequately supported:
 - Hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or respondent resulted from this

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- New evidence which could have substantially affected the outcome of the hearing discovered following the hearing and evidence was not available at the time of the hearing
- Sanction determined by Hearing Officer inappropriate for the violation (only utilized when a sanction is inherently inconsistent with CVTC's procedures or precedent)
- Reviews the entire record of the original live or non-live hearing (including documents and other evidence);
- Enters decision to affirm or not to affirm the Hearing Officer;
- If decision of the Hearing Officer is not affirmed, determines whether to:
 - Return the matter to the Hearing Officer with instructions for reconsideration
 - Return the matter to the Hearing Officer with instructions related to changes or additions to sanctions
 - Reverse the decision of the Hearing Officer and enter new decision
 - Affirm decision of the Hearing Officer but adjust sanctions (may be more or less harsh)
 - Reverse decision of Hearing Officer and order a new hearing to be conducted by a different Hearing Officer
 - Take additional or different actions consistent with the issues on appeal
- Communicates to parties (within 10 calendar days of receiving the Hearing Officer's decision) final or other decision (if not final).

In Summary

- Develop and maintain a thorough knowledge of CVTC's Title IX policy
- Understand key Title IX roles and how they relate to one another
- Address reports or complaints of sex discrimination and sexual harassment promptly and without prejudice regarding innocence or guilt
- Identify and offer supportive measures appropriate to the incident or events
- Treat parties fairly and equitably
- Maintain a complete record of actions taken in response to report or complaint of Title IX violation
- Communicate clearly and in writing at all stages of the process