



# HWS Adjudicator Training

Office of Title IX Programs and Compliance

# Understanding Title IX

## The Law

*“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.”*

20 USCA Sec. 1681



# The Colleges' Title IX and Sexual Misconduct Policy prohibits:

## **Title IX Prohibited Conduct**

- 1. Must have occurred in the United States*
- 2. Must have occurred in the Colleges' education program or activity*

- Title IX Sexual Harassment
- Title IX Sexual Assault
- Title IX Dating Violence
- Title IX Domestic Violence
- Title IX Stalking

## **Community Standards Prohibited Conduct**

- Non-Title IX Sexual harassment
- Gender-based harassment
- Non-Title IX Sexual Assault
- Sexual exploitation
- Non-Title IX Intimate partner violence
- Physical Assault in relation to Sexual Violence
- Non-Title IX Stalking
- Retaliation
- Discrimination



# Title IX Prohibited Conduct

A potential violation of Title IX Prohibited Conduct must meet the following criteria:

- The conduct is alleged to have occurred in the United States
- The conduct is alleged to have occurred in an HWS education program or activity
- The conduct is alleged to have occurred on or after August 14, 2020

If the above criteria are met, the below represent specific *covered sexual harassment* violations:

**a. Title IX Sexual Harassment:**

- An employee conditioning educational benefits or participation in unwelcome sexual conduct (i.e. quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;

**b. Title IX Sexual assault** (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;

# Title IX Prohibited Conduct

c. **Dating violence** (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any 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.

d. **Domestic violence** (as defined in the VAWA amendments to the Clery Act), which includes any 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 New York State domestic or family violence laws 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 New York state.

# Title IX Prohibited Conduct

e. **Stalking** (as defined in the VAWA amendments to the Clery Act), meaning 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.

## Community Standards Prohibited Conduct

- **Non- Title IX Sexual harassment**
- **Gender-based harassment**
- **Non- Title IX Stalking**
- **Sexual exploitation**
- **Non-Title IX Intimate partner violence**
- **Discrimination**
- **Non- Title IX Sexual assault**
  - Sexual intercourse without affirmative consent
  - Sexual contact without affirmative consent
- **Physical Assault (context of TIX SMP)**
- **Retaliation**

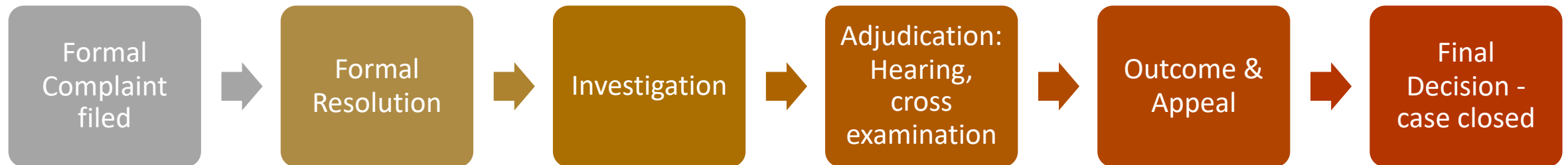
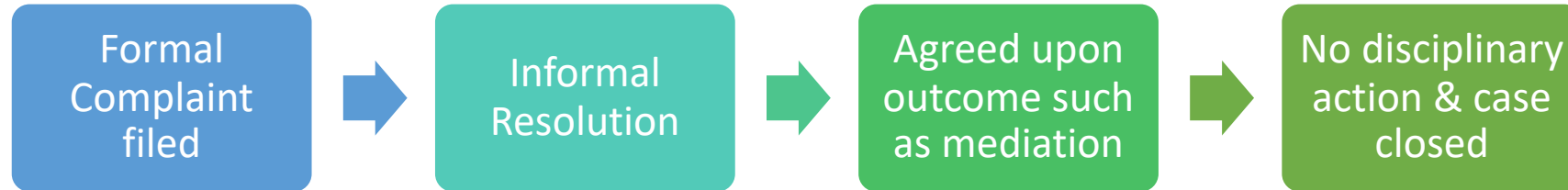
# Role of the Adjudicator

- Your task as the Adjudicator is to determine if a policy violation(s) has occurred.
- The Respondent is presumed to have not violated the policy.
- You will oversee a hearing, which will include all the involved parties and witnesses.
  - Some adjudicators may be serving in an administrative review capacity and not oversee a hearing.
- You will need to determine whether each element of the policy violation is proven to by the preponderance of evidence standard.



# Formal Complaint Process: *Students*

## All forms of Prohibited Conduct





## Conflicts of interests:

### Checks and balances

- TIXC does not serve as investigator or adjudicator
- Different individual(s) serve as investigator, adjudicator, and appeal panelists

Official's gender, current or past work history, or support or opposition of certain causes

Prior contact with either party



# Defining Implicit Bias:

Attitudes or stereotypes that affect our understanding, actions, and decisions, in an unconscious manner.

Favorable and/or unfavorable.

Activated involuntarily and without an individual's awareness or intentional control.

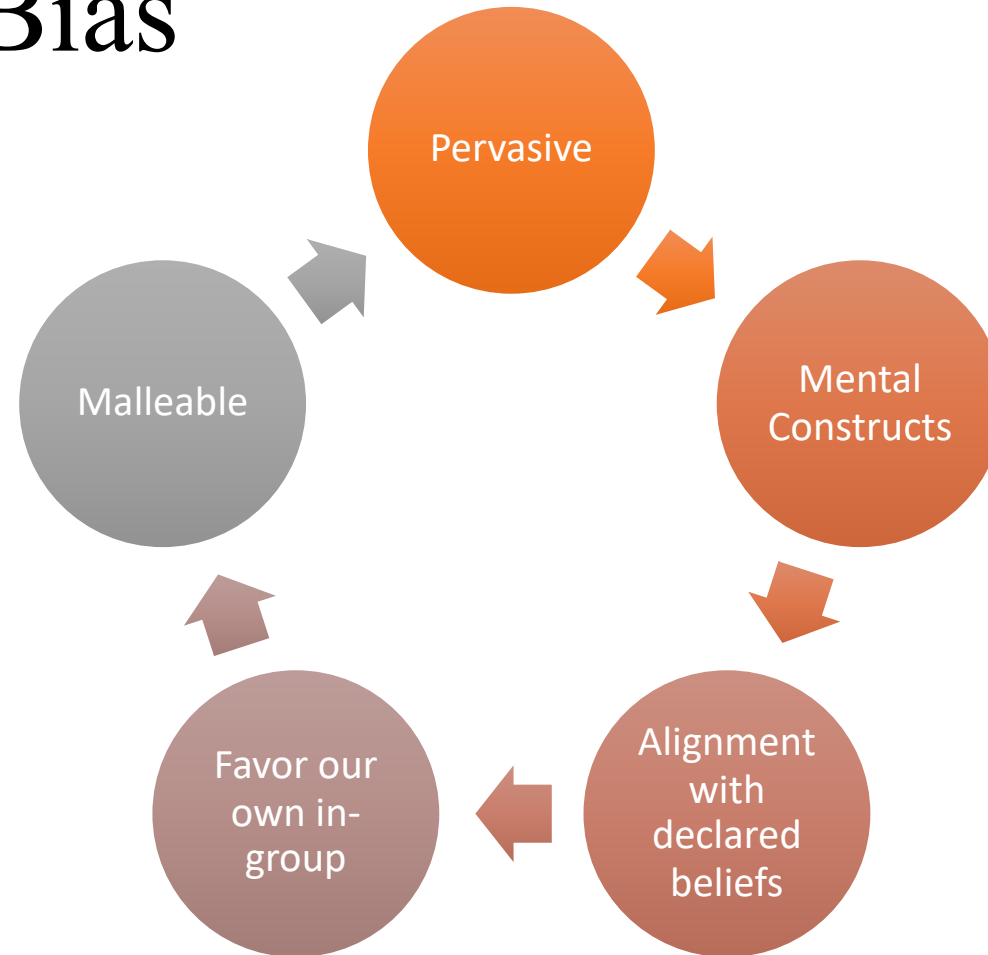
- Explicit bias is something that someone may choose to conceal for social and/or political correctness.

Implicit bias is something that is not accessible and resides in the subconscious.

Kirwan Institute, <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>



# Key Characteristics of Implicit Bias



# Pre-hearing: Adjudicator responsibilities

- Impartiality
- Trauma informed as to all parties
- Prejudgment of facts
- Awareness of sex stereotypes & non-discrimination
- Review of Final Investigative Report
- Determining witnesses for hearing



# Pre-hearing (cont.): Adjudicator responsibilities

- Use of OneHub
- Technology
  - In-person hearing will still be audio/video recorded
  - Ability to have video or other evidence live on screen
  - Remote hearing will utilize Zoom



# During the hearing: Adjudicator responsibilities

- Use of script
- Format:
  - Opening remarks
  - Presentation by parties
  - Questions and Cross-examination
  - Witnesses
  - Closing Remarks
- Expectations of decorum
- Advisors



# During the hearing (cont.): Adjudicator responsibilities

- Evaluating credibility
  - Disclosure and context
  - Demeanor
  - Interest
  - Detail
  - Corroboration
  - Common Sense
  
- Types of evidence



# During the hearing (cont.): Adjudicator responsibilities

## Questioning Techniques

- Prepare in Advance What Questions You will Ask
  - Carefully Review the Report and All Documents
  - Focus on Disagreements in the Evidence
  - Focus on Inconsistencies
  - Focus on What Doesn't Make Sense to You
- Be Polite and Respectful to All Parties
- Be alert to your non-verbal communication
- Pay attention to tone of voice and volume level
- Avoid asking questions that imply a value judgment
- Maintain attentive posture and good eye contact
- Exercise reflective listening in framing next question



# During the hearing (cont.): Adjudicator responsibilities

## Issues of relevance

- Generally prohibited questions:
  - Questions about the complainant's sexual predisposition or prior sexual behavior\*
  - Questions health, including mental health
  - Questions that are not pertinent to the alleged conduct
  - Questions that are rude, unkind, or intended to bully
  - Speculative questions
  - Questions that the party wouldn't know the answer to



## **During the hearing (cont.): Adjudicator responsibilities**

### **Evaluation of Affirmative Consent**

- Words or actions that clearly indicate willingness to engage.
- Presence of coercion?

### **Evaluation of Incapacitation**

- Respondent knowledge of incapacitation?
- Reasonable person in same situation known that the other party was incapacitated?
- State beyond drunkenness or intoxication

### **Evaluation of hostile environment**



# Post-hearing: Adjudicator responsibilities

- Deliberation – sent within 7 days post hearing
- Outcome letter
  - Includes detailed rationale (see policy)
- Sanctioning
  - Any student who is found responsible for Sexual Assault (involving sexual intercourse) will receive a sanction ranging from suspension to expulsion.
  - Any student who is found responsible for Sexual Assault (involving sexual contact) will receive a sanction ranging from conduct warning to expulsion.
  - Any student who is found responsible for any other form of Prohibited Conduct will receive a sanction ranging from conduct warning to expulsion.
- Impact/Mitigation Statements



# Dynamics of Sexual Assault

- Many victims are reluctant to report, seek services, or resolution.
- Delays in reporting are very common
- Wavering levels of participation
- Most assaults committed by someone known to victim
- Little to no physical evidence, most common issue is consent
- Very emotionally charged situation
- Adjudicator decisions often made based on credibility



# Dynamics of Sexual Assault (continued)

- Demeanor
  - “Perfect victim”
- Habits and reflexes (Hopper)
- Victims questioning of events and actions
- Effect of victim’s own misconceptions



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