



LORAS
COLLEGE™

Hearing Board Training

TRAINING FOR TITLE IX HEARING BOARDS

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What is Title IX of the Education Amendments of 1972

“ 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”

What does Title IX Require

- A school “shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities” under the law, including the investigation of complaints.
- Loras College’s Title IX coordinator is Nancy Z. Fett, LMSW. Her role includes:
 - Design, oversight, distribution, and implementation of Title IX policies
 - Development and implementation of college-wide educational programs, including training
 - Oversight of all Title IX complaints including: Grievance initiated, Interim measures (if necessary), Grievance processing, Documentation and notice, Non-retaliation provisions
- Other areas where students can choose to report situations or circumstances that fall under Title IX law: Residence Life, Campus Safety, Dean of Students Office, Human Resources, online reporting in Advocate

A Call to Action...

- The Office of Civil Rights in April 2011 issued what was called a “Dear Colleague” letter to colleges and universities.
- This letter outlined the need for a national “call to action” regarding statistics surrounding sexual violence:
 - 1 in 5 women are victims of completed or attempted sexual assault while in college
 - 6.1% of males were victims of completed or attempted sexual assault during college
- The letter provided guidance to schools regarding student-on-student sexual violence and:
 - Guidance on the unique concerns in sexual violence cases
 - School’s independent responsibility to investigate and address incidents of sexual misconduct
 - Interplay between Title IX, FERPA, Clery Act, and VAWA (all laws that pertain to the reporting of specific types of crimes)
 - Role of criminal investigations

Obligations Under Title IX

- Once a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate. Initially, the letter indicated it should take no more than 60 calendar days to complete an investigation. The current administration (DeVos) has removed this time guideline; however, Loras continues to use this deadline as best practice guidance.
- If sexual violence has occurred, prompt and immediate steps to end the sexual violence, prevent its recurrence, and address its effects **MUST** be taken by the college.
- The college must take steps to protect the Complainant as necessary, including interim steps and accommodations taken prior to the final outcome of the investigation (housing or classroom changes, escorts, counseling, etc.).
- The college must provide grievance procedures for students to file complaints of sex discrimination, including complaints of sexual violence.
- All processes must contain an equal opportunity for both parties to present witnesses and other evidence for a fair process.

Obligations Under Title IX Continued

- Grievance procedures must use the preponderance of evidence standard to resolve complaints. This means the deciding parties (at Loras, the College Hearing Board) must determine if it is “more likely than not” an incident occurred and what if any sanctions should be applied.
- Unlike most other crimes, Title IX requires that the college notify both parties of the outcome of the complaint and appeal rights. In this process, the Complainant and Respondent have equal rights to notification and appeal.

What acts of misconduct are under the umbrella of IX?

Acts of sexual misconduct are covered under the umbrella of Title IX. This includes:

- Verbal: Insults, threats, jokes, or comments...
- Nonverbal: Posting pictures, noises...
- Physical: Touching, pinching, brushing....
- Sexual Abuse/Sexual Assault/Rape: any sexual act between persons with non-consensual sexual intercourse, sexual contact, and sexual exploration
- Sexual Exploitation: incapacitation of another person, recording, voyeurism...
- Sexual Harassment: unwelcome sexual advances...
- Dating Violence: relationship violence
- Domestic Violence: violence in a relationship where subjects live together and are in a relationship
- Stalking: following, pursuing, trespassing, in a way that a normal person would fear

CONSENT

- Title IX requires a clear definition of consent. Loras College believes..." Consent is informed through mutually understandable words, which indicate a willingness to participate in mutually agreed upon sexual activity. Furthermore, at any time during consensual sexual activity, a person may refuse to continue further with any sexual activity. From the point of refusal; previous consent is rendered invalid."
- Additional information about sexual misconduct, consent, and other Title IX related issues can be found in the Loras College Student Handbook.

Title IX Grievance Process

- Student Development receives a report of sexual misconduct, and a Title IX investigation begins an investigation packet.
- The investigator meets with Complainant(s), provides medical attention if appropriate, provides general review of regulations, identifies forms of support, discusses accommodation if appropriate, and seeks to determine Complainant's wishes for process
- Based on the Complainant's request, the process can move forward through the college's conduct system, move through the legal system, move through both systems, or remain as a report on file with no additional action.
- At Loras, all cases regarding any aspect of sexual misconduct are heard by the College Hearing Board.

College Hearing Boards

- In the event of an incident involving possible sanction of suspension or expulsion, the incident will be considered by the College Hearing Board.
- In some instances, at the discretion of the Dean of Students or his/her designee, a formal administrative hearing may be held due to the nature of the complaint or infraction of College policy.
- In instances of Title IX hearings, as indicated in Questions and Answers on Title IX Regulations on Sexual Harassment July 2021, rules of decorum may be established for hearing boards, and will be shared with participants at the time of the hearing.

Hearing Board Participants

- Chair (only votes when tie)
- Representative of the College (not a decision maker)
- 6 Board Members (Decision Makers):
 - 2 Students
 - 2 Staff
 - 2 Faculty
- Respondent
- Advisors
- Complainant
- Witnesses (optional)

Prior to the Hearing Board

- Prior to Hearing
 - Investigation
 - Hearing Notice
 - Meeting with Respondent to discuss process
 - If applicable, meeting with Complainant to discuss process
 - Case Review by Hearing Board members, respondent and complainant (if applicable)

Hearing Board Outline

- Hearing Convened
 - Introductions and call to order
 - Review of Charges
 - General review of the case
 - Respondent, Complainant, Witnesses
 - Opportunity to add information and/or clarify
 - Closing and dismissal of respondent and other involved parties
 - Closed door deliberation for Hearing Board Members
 - Determine if responsible
 - Outcome

Updates to Title IX – Grievance Process

- The decision-maker in a hearing cannot be the same person as the Title IX Coordinator or the investigator
- The Hearing Board should establish hearing rules of decorum
- A postsecondary school must provide for a live hearing
- You may grant breaks in live hearings
- If a party or witness does not submit to cross examination, the individual's statements cannot be relied on by the decision maker in determining whether the respondent engaged in the alleged harassment (even if the individual is unable to participate due to death or disability). Police reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross examination)

Updates to Title IX – Grievance Process Continued:

- The decision maker may consider certain types of statements where the statement itself is the alleged harassment, even if the party does not submit to cross examination. For example, a text, email, or audio/video recording sent by the respondent is permissible even if the respondent does not submit to cross examination. In these situations, the decision maker is evaluating whether the statement was made or sent.
- If a party or witness submits to cross examination but doesn't not answer a question posed by the decision maker, the decision maker may still rely on that party's statement.
- A recipient may consolidate cases when allegations arise out of the same facts or circumstances
- Live hearings may be conducted with all parties physically present at the same location or, at the recipient's election, any or all parties, witnesses and other participants may appear at the live hearing virtually, provided all participants can simultaneously see and hear each other

Updates to Title IX – Grievance Process Continued:

- Either party may request that a hearing be held with the parties in separate rooms with technology enabling the parties and the decision-makers to see and hear witnesses
- If a party does not have an advisor at the live hearing, the recipient must provide an advisor of the recipient's choice, without charge to the party, who may be an attorney, to conduct cross examination. The advisor may be an attorney.
- At the hearing, each party must be given the opportunity for relevant questions and cross-examination to be conducted by the party's advisor of the other party and any witnesses including challenging credibility. The cross examination must be conducted directly, orally and in real time and only by the party's advisor, never by the party
- Only relevant questions may be asked of a party or witness in cross examination or other questions and before a question is answered the decision maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant

Updates to Title IX – Grievance Process Continued:

- The regulations focus on the investigator and decision-maker considering relevant evidence. A recipient may not adopt evidentiary rules of admissibility that might serve to exclude relevant information (i.e. lie detector results, rape kits, etc), or because it may be unduly prejudicial, relate to prior bad acts, or constitute character evidence
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove 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.
- If a party or witness does not submit to cross-examination at the live hearing the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination of responsibility. However, the decision-maker(s) cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Sanctioning

If the Respondent is found responsible, the hearing board members will determine sanctioning. Sanctioning is meant to be educational and to offer the Respondent the opportunity to reflect, restore and repair their role within the Loras College community.

Conclusion of Student Hearing Board

- Outcome delivered
- Opportunity to appeal
- Case closed