Technical College
System of Georgia

# Title IX

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Technical College System of Georgia

# Presentation Outline

**This Title IX Presentation will cover the following topics:**

- **Background & Overview of the Title IX Regulations**
- **Individual Roles Associated with Title IX**
- **Prohibited Conduct Under Title IX**
- **TCSG's Jurisdiction Under the Title IX Regulations**
- **Components of the Title IX Grievance Process**

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# Title IX Overview & Roles

# Title IX Overview

- **What is Title IX?**
  - A federal civil rights law that prohibits discrimination based on sex in education
- **What do the regulations require?**
  - They require all recipients (colleges/TCSG) to ensure that no student, employee or third party participating in or attempting to participate in an education activity or program is discriminated against based on sex. They do this by creating or revising Title IX procedures, identifying a Title IX Coordinator and other key personnel, training all key personnel, alerting all members of the college community about Title IX policies, and publishing the name of the Title IX Coordinator, policies, procedures and training materials on their website
- **Who is responsible?**
  - The recipients (colleges/TCSG) need to have the necessary key personnel (Title IX Coordinator, System Wide Investigators, VPSA, trained and in place to effectively respond to a Title IX complaint
- **How do you effectively implement what is required?**
  - Ongoing training, publishing and publicizing to all members of the college community about Title IX

# Title IX Regulations – New and Prior

- **On May 6, 2020, the U.S. Department of Education issued the 2,033 page document:**
  - U.S. Department of Education unveiled a final rule which changes how colleges and universities that receive federal funds must handle allegations of sexual assault and harassment under Title IX of the Education Amendments of 1972
  - This amended the regulations implementing the Title IX of the Education Amendments of 1972 and which contained the new Final Regulations
  - The rule takes effect August 14, 2020

- **Developments that led to the Final Regulations and New NPRM on Horizon:**
  - November 2018, the U.S. Department of Education issued proposed changes to Title IX procedures as called the Notice of Proposed Rulemaking or NPRM
  - U.S. Department of Education received over 124,000 comments during a 6 month public comment period following release of the NPRM
  - 18 months later, the final regulations were issued
  - June 23, 2022 – Another NPRM issued by U.S. Department of Education
  - September 12, 2022 – Public Comment Period Closed on New NPRM
  - TBD – Final Regulations Issued

# Your TCSG Title IX Team

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- Kim Ellis – Title IX & Equity Coordinator
- Brannon Jones – System Wide Title IX Investigator
- Kristen Plybon– Staff Attorney
- Josh McKoon – TCSG Legal Counsel

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# The Title IX Coordinator

- **Monitoring the colleges compliance with Title IX – Providing appropriate education and training.**
  - Coordinating the investigations, responses and resolutions of all reports under this policy
  - Ensuring appropriate actions to eliminate sexual harassment, prevent its recurrence and remedy its effects
  - Reviewing regularly the effectiveness of the efforts of the recipient to ensure that the educational setting is free from sexual harassment

- **The Title IX Coordinator should make themselves:**
  - Accessible
  - Available to meet with any student, employee or third party to discuss this policy or the accompanying procedures
  - Visible
  - Should have a trained designee or designees who are equipped with the same skills and abilities to execute the duties of the Title IX Coordinator and the office when the Coordinator is unable to do so or when there is a need
  - Must receive appropriate training to discharge their responsibilities
  - Deliver continuous and updated training to the college community

# The System Wide Investigator

- **System Wide Investigator**
  - Housed at the TCSG State Office
  - Title IX Coordinator will assist as the co-investigator
  - Must be impartial, unbiased and free from conflicts
  - Oversees the prompt, thorough gathering of all facts based on the filing of formal complaint
  - Effectively communicates with all participants throughout and involved in the investigation
  - Provide notice of any good faith delays
  - Understands relevance to create an investigative report that fairly summarizes relevant evidence

# The Advisors

- **Advisors**
  - The 2020 Title IX regulations have created the advisor position. If either party does not have an advisor to accompany them through the investigative process, including interviews and the live hearing, the college must provide one for them.
  - The primary role of the advisor is to serve as the party's advocate, advise them through the process, and cross-examine other parties in the live hearing. (similar to a lawyer in a court room)
  - The provided Advisor can be a college employee or an attorney contracted by the college.
  - Colleges should have a pool of advisors who could participate in Title IX investigations and hearings in case there are multiple complaints or respondents, or multiple simultaneous investigations.

**Who are your local advisors?**

# Decision Maker

- **Decision Maker - administrative determination proceeding or, when applicable, reviews appeals:**
  - Must be impartial, unbiased and free from conflicts
  - Must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
  - Title IX Coordinator and System Wide Investigators cannot serve as the Decision Maker

- **Impartiality:**
  - Administrative hierarchy, employment relationships and professional experiences or affiliations (such as a self-described survivor or feminist) are not automatically prohibited conflicts of interest
  - Recipients have discretion to decide how best to implement the prohibition on conflicts of interest and bias, including providing a process for parties to assert claims of conflict of interest or bias during the investigation
  - Recipients are not required to use outside unaffiliated Title IX personnel to avoid conflicts and may use their own employees to comply with the final regulations

# Understanding Title IX

## Title IX Specifics

# Definitions

- Sexual Harassment
- Actual Knowledge
- Supportive Measures
- Formal Complaint
- Deliberate Indifference
- Grievance Process
- Standard of Proof (Preponderance of the evidence or clear and convincing)
- Formal Resolution
- Due Process
- Outcome Determinations
- Appeal

# Prohibited Conduct Under Title IX

- **Sexual Harassment**
- **Sexual Assault**
- **Domestic Violence**
- **Dating Violence**
- **Stalking**
- **Retaliation**
- **General Sex Discrimination**
- **Unwelcome Conduct**

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# Sexual Harassment and Assault

- **Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:**
  - (1) 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 (also known as quid pro quo harassment)
  - (2) 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
  - (3) "Sexual assault" as defined in the 20 U.S.C. 1092(f)(6)(A)(v) (4) "Dating violence" as defined in 34 U.S.C. 12291(a)(10) (5) "Domestic violence" as defined in 34 U.S.C. 12291(a)(8) (6) "Stalking" as defined in 34 U.S.C. 12291(a)(30)

- **Definition (2) uses the Davis standard not the Title VII standard Definitions for (3)-(6) are found in the Clery Act and Violence Against Women Act (VAWA)**

- **Dual Enrollment:**
  - Physically subject to Title IX jurisdiction

- **Sexual assault is defined as an offense that meets the definition of :**
  - Rape, Fondling, Incest, Statutory rape as defined in the FBI's Uniform Crime Reporting System

# Stalking and Retaliation

- **Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:**
  - Fear for the person's safety or the safety of others
  - Suffer substantial emotional distress

- **Retaliation against any person for exercising their rights under Title IX is prohibited:**
  - No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX
  - Its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX or its implementing regulations

- **If the individual engaging in retaliatory acts is a student or third party, the recipient may:**
  - Take discipline against the student
  - Issue a no-trespass order against the third party

- **The final regulations seek to prohibit retaliation in a broad manner and not only to the Complainant**

- **The retaliation prohibition applies to acts against complainants, witnesses or any other individual involved in any manner with the investigation, proceeding or hearing**

# Dating and Domestic Violence

- **Dating violence is defined as:**
  - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
  - The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship
  - The type of relationship, and the frequency of interaction between the persons involved in the relationship

- **For the purposes of this definition dating violence includes, but is not limited to:**
  - Sexual or physical abuse or the threat of such abuse
  - Dating violence does not include acts covered under the definition of domestic violence

- **A felony or misdemeanor crime 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 the jurisdiction in which the crime of violence occurred
  - 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 the jurisdiction in which the crime of violence occurred

# Jurisdiction

- **Title IX obligations extend to sexual harassment incidents that occur off campus if any of three conditions are met:**
  - If the off-campus incident occurs as part of the college's "operations"
  - If the college exercised substantial control over the respondent and the context of the alleged sexual harassment that occurred off campus
  - If a sexual harassment incident occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

- **Exception:**
  - Nothing in these final regulations prevents a college from addressing conduct that is outside the Department's jurisdiction due to the conduct constituting sexual harassment occurring outside the college's education program or activity, or occurring against a person who is not located in the United States
  - Dismissal of a formal complaint because the allegations do not meet the Title IX definition of sexual harassment, does not preclude a college from addressing the alleged misconduct under other provisions of the college's own code of conduct

- **Protects any person for conduct that takes place "in the United States" and an "education program or activity" includes:**
  - locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the harassment occurs
  - any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

# Jurisdiction - Educational Program or Activity

- **Locations, events or circumstances over which the college exercises substantial control over both the respondent and the context in which the harassment occurs and Includes:**
  - any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
  - must be in the United States
  - can be on campus or off campus
  - for IHEs, includes fraternity or sorority houses

- **"Program or activity" encompasses "all of the operations" of a recipient which may include:**
  - computer
  - internet networks
  - digital platforms
  - computer hardware
  - software owned, operated by or used in the operation of the recipient

# Title IX Process Overview

## Steps To The Title IX Process

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# The Complaint Process

- A party who experiences alleged Title IX prohibited conduct may submit a written Title IX complaint, or under appropriate circumstances, the Title IX Coordinator may submit a written Title IX complaint on their behalf. Only the Complainant or Title IX Coordinator can submit a complaint.

- Once the Title IX Coordinator has been made aware of the complaint by the Complainant, the first step is to speak with the Complainant to determine (1) if there is in fact a complaint, (2) if the complaint falls under Title IX, (3) gather as much initial information as possible (date, location, contact info, potential witnesses, etc.), and (4) have the complainant submit a written and signed initial statement.

- The Title IX Coordinator is not to "interview" the Complainant, Witnesses, or the Respondent at this time.

- The Title IX Coordinator will assess the complaint to determine if support measures are needed, and will inform the Complainant of the process and next steps.

- If the allegation is Clery-related or VAWA-related, the Title IX Coordinator is required to inform the campus police department of an alleged crime. The Coordinator will also provide the Complainant with the opportunity to speak with campus police or inform the local police department.

# Notifying The Technical College System

- The Title IX Coordinator will submit the complaint into the TCSG Title IX Intake Form on the TCSG website:
  - https://tcsg.edu/about-tcsg/system-office-services/legal-services/title-ix/
  - Password: TitleIX
- The Title IX Coordinator and Statewide Title IX Investigator will discuss the complaint, initial information, and schedule interview times for all parties involved. At this time, the Title IX Coordinator will also inform the Advisors and Decision-Maker of the impending investigation.
- If there is a conflict of interest for the Title IX Coordinator, this is the time to assign another Title IX designee to co-investigate the allegation.
- Once notified by the Title IX Coordinator or HR Director, the Statewide Title IX Investigator has 45 calendar days to complete a Title IX investigation, which includes a 10-day review and response period.

# Pre-Investigation Process

- The Statewide Investigator and Title IX Coordinator or HR Director will create a plan for the investigative interviews, including: identifying all parties involved, setting the order of party interviews, listing questions to ask, gathering pertinent evidence, etc.
- The Title IX Coordinator will gather the contact information for both the Complainant and Respondent so that they can be sent an official notice of investigation by the Statewide Title IX Investigator. Generally, this will be the first notification to the Respondent.
- The Title IX Coordinator will notify both parties that they have the right to bring an Advisor of their choice to the investigative interview. If either the Complainant or Respondent does not have an Advisor, the college is required to provide an advisor for them prior to, and to attend, the interview.
- The Title IX Coordinator will work with the Statewide Title IX Investigator to schedule the location and time of the interviews that is conducive to both parties' schedules and ensures they are separated by proximity and time from the other party.

# Investigation Process

- The Statewide Investigator and Title IX Coordinator or HR Director will interview all parties involved, gather supporting evidence, and discuss circumstances surrounding the investigation.
- The Statewide Investigator will write the initial draft report. The initial draft report and supporting evidence will be sent to both parties and their advisors. Both parties have 10 days to review and respond to the draft report.
- After the 10-day review and response period, the Statewide Investigator will consider any responses given, include them in the report, and make a final determination on the complaint in a final investigative report. The report will be sent to the Title IX Coordinator to be disbursed to both parties and their Advisors.

# Post-Investigation Process

- After receiving the final investigation report and disseminating it to both parties and their Advisors, the Title IX Coordinator will collaborate with the Decision-Maker to begin the process of scheduling the live hearing at least 10 days after the parties receive the report.

- The report will determine if the allegation is substantiated or not, and if the behavior rises to a violation of their appropriate procedure. If a violation is substantiated, the Title IX Coordinator will need to inform the Decision-Maker to prepare for an impending live hearing as a part of the grievance procedure.

- If a Title IX violation is not substantiated, but during the investigation, the investigators determine there may be a violation of the Student Code of Conduct, the information will be forwarded to the appropriate local personnel for investigation.

# Pre-Live Hearing Process

- Both parties are required to have a second 10-calendar day preparation period prior to participating in a live hearing.
- The Decision-Maker is the presiding officer of the live hearing.
- The role of the Advisors is to cross-examine the other party and/or any witnesses, if applicable, during the live hearing.
- The Title IX Coordinator is not necessarily involved in the live hearing, but will serve in the role of Hearing Coordinator. This role is responsible for managing the logistics of the hearing, including confirming Decision-Maker attendance, confirming party and witness attendance, arranging technology for recording the hearing, making arrangements if a party requests to be in a separate location from the other party, etc.

# Live Hearing Process

- The Hearing Coordinator (*Title IX Coordinator*) and Decision-Maker will confirm both parties have Advisors present. If not, the hearing will need to be postponed until both parties have an Advisor.
- The Hearing Coordinator (*Title IX Coordinator*) will initiate the selected recording option for the hearing. (Ex. WebEx, court reporter, film, etc.). The college is responsible for making a record of the hearing.
- The Decision-Maker will open the hearing by explaining the purpose and procedure.
- Advisors of each party will introduce relevant evidence and question witnesses (if applicable), including the other party.
- The Decision-Maker has the right to ask questions of the parties and witnesses (if applicable).

# Post-Live Hearing Process

- The Decision-Maker will send both parties a written determination. The written determination will make findings of fact, reasons for decision, sanctions (if any), and instructions for appeal, within 10 business days after the hearing.

- The results of the Decision-Maker's written determination will either: (1) Dismiss the complaint, (2) impose sanctions, or (3) either party can appeal.

# Appeal Process (Post Investigation)

- If the investigation is completed with an unsubstantiated conclusion (a finding that the alleged behavior did not occur or did constitute a Title IX violation), which would result in not having a live hearing, the Complainant can appeal the decision.

- Within 10 calendar days from receiving the final investigation report, the Complainant can appeal the results of the investigation. The appeal must be submitted in writing to Title IX Coordinator, up to 6,000 words.

- Appeals are approved on limited grounds:
  - Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?
  - Was there any substantive new evidence that was not available at the time of the decision or Hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
  - Did the Investigator or Co-investigator (Title IX Coordinator) have a conflict of interest or bias for or against Complainant that affected the outcome of the matter?
  - The option to appeal based on sanctions being too harsh would not apply in this situation because sanctions are only given after live hearings.

# Post Investigation Continued

- The Title IX Coordinator will send the appeal to the TCSG Commissioner or his designee. The Title IX Coordinator will also send the appeal to the other party for response.
- The other party has 10 calendar days to respond to the appeal.
- The Title IX Coordinator has the right to submit a written response to the appeal, but is not required to.
- The TCSG Commissioner or his designee will have 10 business days after receiving all appeal documentation to submit a final notice of outcome appeal.
- The Respondent does not have the option to appeal after an investigation with an unsubstantiated conclusion because Title IX requires substantiated complaints to proceed to a live hearing. The Respondent will have the opportunity to appeal a decision after the live hearing.

# Appeal Process (Post Hearing)

- Within 10 calendar days from receiving written determination, either party can appeal the results of the hearing. The appeal must be submitted in writing to the Hearing Coordinator (*Title IX Coordinator*), up to 6,000 words.

- Appeals are approved on limited grounds:
  - Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?
  - Was there any substantive new evidence that was not available at the time of the decision or Hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
  - Did the Title IX Coordinator, Investigator(s), or Decision-Maker have a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter?
  - For matters that proceeded to Sanctioning and imposition of Remedies, are the Sanction and/or Remedies ones that could have been issued by reasonable persons given the findings of the case?

- The Hearing Coordinator (Title IX Coordinator) will send the appeal to the TCSG Commissioner or his designee. The Hearing Coordinator (*Title IX Coordinator*) will also send the appeal to the other party for response.

# Post Hearing Continued

- The other party has 10 calendar days to respond to the appeal.
- The Title IX Coordinator has the right to submit a written response to the appeal, but is not required to.
- The TCSG Commissioner or his designee will have 10 business days after receiving all appeal documentation to submit a final notice of outcome appeal.

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# Case #1 – Off-Campus Sponsored Event

- At a TCSG-sponsored automotive club weekend expo (college-paid transport/lodging), Student A reports non-consensual sexual contact by Student B in hotel after team dinner. A was heavily intoxicated (witnesses confirm slurring/blackouts); B claims consent. A missed sessions due to trauma.
- Key Questions to Consider:
  - Jurisdiction
  - Coordinator Actions
  - Potential Pitfalls
  - Consent

# Case #2 – Quid Pro Quo Harassment

- Welding student provides texts showing instructor implying better grades for "personal time." Student fears project retaliation; initial request for no formal action, but grade already affected.
- Key Considerations:
  - Employee as Respondent
  - Confidentiality vs. Safety
  - Suggested Supportive Measures?
  - Options to Resolve?
  - Title IX sole track for this complaint?
  - How to handle anonymity requests

# Case #3 – Cyber Stalking & Harassment

- Nursing student reports classmate's repeated threats, photo sharing, and uninvited clinical site appearances. No on-campus incidents, but causes class/clinical avoidance; evidence: screenshots, tags.
- Key Considerations:
  - How to measure "severity" or "pervasiveness"
  - Jurisdictional issues?
  - Interim measures?
  - Other non-Title IX considerations?

# Case #4 – Dating Violence in Clinical Setting

- Dual-enrollment high school student reports physical abuse (bruising) by dating partner (fellow student) off-campus, but incidents spill into clinical externship at partner hospital (TCSG-arranged). The student expresses fear of partner retaliation during shared shifts.
- Key Considerations:
  - Jurisdiction
  - Coordination with partners?
  - Other concerns?

# Case #5 – Retaliation After Informal Report

- Student informally reports another student for unwelcome comments in group project. The student making the unwelcome comments then spreads false rumors online leading to the reporting student's isolation, missed group work, and anxiety. A formal complaint follows which includes retaliation.
- Key Considerations:
  - Separate or combined investigations?
  - Interim measures?
  - Challenges as to retaliation claim?
  - What sanctions are appropriate?

# Case #6 – Alcohol-Involved Assault

- At off-campus party (not sponsored), a student who is heavily intoxicated alleges assault by another student. Texts show the complaining student said "no" earlier in the evening – witnesses describe the student as being unable to stand. The respondent claims the encounter was "mutual" and the medical report notes high BAC for the complaining student.
- Key Considerations:
  - Incapacitation and ability to consent
  - What are key pieces of evidence here?
  - Investigator role in collecting intoxication evidence?
  - Remedies?

# Wrap-Up & Best Practices

- Always prioritize supportive measures and impartiality
- Document thoroughly; coordinate with statewide partners
- Refer back to annual training and materials made available from TCSG System Office on Title IX
- Do not hesitate to call with questions or concerns; be proactive
- TCSG Procedure 6.1.2p is a great resource to look back to if concerned about process or procedures
- Josh McKoon, General Counsel, jmckoon@tcsg.edu, 404-679-5972

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Questions?

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