

## **Title IX Compliance**

### **Notice of Non-Discrimination**

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the gender of students and employees of educational institutions which receive federal financial assistance.

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.

College Title IX Coordinators in accordance with Title IX regulations, the College has designated a Title IX Coordinator and Deputy Title IX Coordinator for faculty and staff. The Title IX Coordinator is charged with monitoring compliance with these regulations, questions regarding Title IX, as well as concerns and complaints of non-compliance. The Title IX Coordinator is responsible for receiving student complaints of sexual harassment, including sexual assault, sexual violence or other sexual misconduct.

### **What is Title IX?**

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance. Title IX prohibits sexual misconduct, including sexual harassment which is a form of gender discrimination.

Programs and activities that receive funds from the United States Department of Education (ED) must operate in a nondiscriminatory manner. Title IX prohibits discrimination on the basis of sex in: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment. Additionally, Title IX prohibits retaliation against any person because he or she opposed an unlawful educational practice or policy, or made charges, testified or participated in any complaint action under Title IX. An act of retaliation in any manner is considered a violation of Title IX. For a more detailed understanding of these protections please see ED Title IX regulations (Volume 34, Code of Federal Regulations, and Part 106).

Students: If you are a student who believes you have been subjected to (1) sexual harassment by College faculty or staff; or (2) any other form of gender discrimination under Title IX, you may report such misconduct or file a formal complaint with the Title IX Program Coordinator. Complaints must be submitted in writing not more than 300 days after the incident(s) in question. The entire complaint procedure and complaint form can be found on Livingstone College's website.

What is sexual harassment and sexual violence? Sexual harassment is any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment also includes sexual violence, defined as physical acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol.

A number of acts fall into the category of sexual violence including, but not limited to rape, sexual assault, sexual battery, and sexual coercion.

### **What is interpersonal violence?**

The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards a partner in an intimate relationship. Including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Interpersonal Violence can be a single act or a pattern of behavior in relationships. Intimate partner relationships are defined as short or long-term relationships (current or former) between persons intended to provide some emotional/romantic and/or physical intimacy. Interpersonal Violence includes:

Domestic Violence – includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 the jurisdiction

Dating Violence - 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. Stalking – engaging in a course of conduct directed at specific person that would cause a reasonable person to: Fear for his or her safety or the safety of other; or suffer substantial emotional distress

If you are a student who believes you have been or are the victim of sexual harassment, including sexual assault, sexual violence or other sexual misconduct, by another College student, you may report such conduct or file a complaint under Title IX with the Title IX Program Coordinator. Complaints of student sexual misconduct are addressed by the Sexual Misconduct Hearing Panel and are governed by the College's "Sexual Misconduct Policy and Procedures."

Employees: If you are an employee who believes you have been subjected to discrimination under Title IX, including sexual harassment, or who wishes to file a complaint under Title IX, you can do so with the Title IX Deputy in the Human Resources Office.

Federal and state laws prohibit the taking of retaliatory measures against any individual who files a complaint in good faith.

### **Definition of Sexual Harassment for Title IX Purposes**

Sexual harassment is broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Prohibits sex-based misconduct in a manner consistent with the First Amendment. Quid pro quo harassment and Clery Act/ VAWA offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.

### **Occurring in a School's "Education Program or Activity" and "in the United States"**

The Title IX statute applies to persons in the United States with respect to education programs or activities that receive federal financial assistance. Livingstone College will respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by Livingstone College (such as a fraternity or sorority house). Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. Livingstone College may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

### **Assessable Reporting to the Title IX Coordinator**

The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the "Title IX Coordinator." Livingstone College prominently display on their websites the required contact information for the Title IX Coordinator. - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator.

### **School's Mandatory Response Obligations: The Deliberate Indifference Standard**

Must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Must offer supportive measures to the person alleged to be the victim (referred to as the "complainant"). The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. Must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. Must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. Investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. Affirm that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations *for purposes of Title IX* but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.

### **School's Mandatory Response Obligations:**

#### **Defining "Complainant," "Respondent," "Formal Complaint," "Supportive Measures"**

When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment),

A complainant is defined as an individual *who is alleged to be the victim* of conduct that could constitute sexual harassment.

- This clarifies that any third party as well as the complainant may report sexual harassment.
- While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.

A respondent is as an individual who has been reported to be the perpetrator of conduct **that could constitute sexual harassment.**

#### **Grievance Process, General Requirements**

Prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. The grievance process must:

- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- The grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

#### **Investigations**

Must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.

During the grievance process and when investigating:

- The burden of gathering evidence and burden of proof must remain on schools, not on the parties.
- Must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.
- Must send written notice of any investigative interviews, meetings, or hearings.
- Must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- Must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- Must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
- May, in discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- Must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- May, in discretion, consolidate formal complaints where the allegations arise out of the same facts.
- Protects the privacy of a party’s medical, psychological, and similar treatment records by stating that the school cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.

### **Live Hearings & Cross-Examination**

The grievance process must provide for a live hearing:

- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- 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 regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination 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.
- Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.

Must create an audio or audiovisual recording, or transcript, of any live hearing.

### **Rape Shield Protections for Complainants**

Rape shield protections for complainants deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

### **Standard of Evidence & Written Determination**

Requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The grievance process is consistent by requiring applying the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).

- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each

allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

### **Appeals**

Must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

- May offer an appeal equally to both parties on additional bases.

### **Informal Resolution**

Allows Livingstone College, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained.

Livingstone College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, Livingstone College may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Livingstone College must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### **Retaliation Prohibited**

Prohibits retaliation.

- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.

- Livingstone College must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

- Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.

- The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statements.