



**COLLIN
COLLEGE**

Introduction to the 2020 Title IX Regulations

How to report Dating Violence, Domestic Violence, Gender-Based Harassment, Retaliation, Sex Discrimination, Sexual Assault, Sexual Harassment, and Stalking

1. Report to the Title IX Coordinator or the Deputy Title IX Coordinator
2. File an electronic report:
<https://c0bkr412.caspio.com/dp/eaab3000c5296cbdacd74b438776>
3. File a mandatory report (for Collin employee's only):
Log in to CougarWeb with your Collin College username and password. Click on the "My Workplace" tab, and then click on the "Mandatory Reporting Form (Dating Violence, Sexual Assault, Sexual Harassment, and Stalking)" link in the "Crisis Response" box.

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Bias and Value Neutrality

- **Unconscious bias** is a quick and often inaccurate judgment based on limited facts and our own life experiences. These judgments can give individuals and groups both unearned advantage and unearned disadvantage in the workplace. People can be biased about just about anything—not just things like gender, skin color, or age, but also things like communication style or what someone does in their free time. Unconscious bias is not intentional—it's part of the lens through which we see the world. In our everyday lives, when people don't fit our internalized expectations, we can sometimes have difficulty seeing their talents, motivations, and potential clearly which can mean we interact with them less effectively. When we understand how biases influence our behavior, we can take action to create an inclusive culture.
- **Value Neutrality:** refers to the duty and responsibility of [a person] overcome [their] personal biases while conducting any research. It aims to separate fact and emotion and stigmatize people less. It is not only important in sociology but outlines the basic ethics of many disciplines.

Unconscious Bias <https://www.mslearning.microsoft.com/course/72169/launch>

Value Neutrality: <https://www.sociologygroup.com/value-neutrality-meaning-examples/>

Bias

- For purposes of the Title IX grievance process, the Title IX Coordinator and designated investigators, hearing officers, decision-makers, or any informal resolution facilitators must be free from the following:
 - Conflicts of interest or bias “for or against” complainants; and
 - Conflicts of interest or bias “for or against” respondents; or
 - Conflicts of interest or bias “for or against” an individual complainant; or
 - Conflicts of interest or bias “for or against” an individual respondent.

Relevance

Evidence is relevant if:

1. It has a tendency to make a fact more or less probable than it would be without the evidence; and
2. The fact is of consequence in determining the action.

Relevancy is not an inherent characteristic of any item of evidence, but exists only as a relation between an item of evidence and a matter properly provable in the case. Does the item of evidence tend to prove the matter sought to be proved? (As the famous legal authority McCormick put it long ago, “A brick is not a wall.”)

Examples of Relevance

- **Example:** Dolly Madison is charged with stealing costume makeup from a drugstore the night before Halloween. The prosecution wants to offer evidence that Dolly's mom had refused to buy her a Halloween costume. The evidence is relevant to prove that Dolly had a motive for stealing the makeup.
- **Example:** Same case. The prosecution also wants to call the drugstore manager to testify that the makeup department suffers more thefts than any other department of the drugstore. This testimony would be irrelevant because it does not relate specifically to Dolly.
- **Example:** Lance Sellot is charged with drunk driving. The prosecution wants to offer evidence that Lance is a member of a violent street gang. The evidence is irrelevant because the crime charged has nothing to do with gang activities. The evidence would only serve to stir up bias against Lance.
- **Example:** Clare Voyant is charged with car theft. She was arrested in her home, and the prosecution wants to offer evidence that the arresting officer found marijuana and an unregistered handgun there. Unless the prosecution can establish that the gun and drugs were somehow involved in the theft, there's nothing to connect them with the crime. Again, the evidence would do almost nothing other than predispose the judge or jury against the defendant.

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Excluding Evidence

- Under Federal Rule of Evidence 403, a court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following:
 - Unfair prejudice
 - Confusing the issues
 - Misleading the jury (or decision-maker)
 - Undue delay
 - Wasting time
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Excluding Evidence—General Examples

- Unfair prejudice
 - Evidence used to injection excessive emotion, hostility, or irrational effects (i.e. the citizenship, race, religion, pregnancy of an individual when such is not relevant)
- Confusing the issues
 - Evidence about developments in related legal proceedings
- Misleading the jury (or decision-maker)
 - Evidence about the failure to prosecute or discipline other parties
- Undue delay
- Wasting time
- “Needlessly” presenting cumulative evidence
 - Calling more than one witness to establish a fact already established
 - Playing a tape recording of a conversation when the matter has been established by testimony or other evidence

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Rape Shield Law

- For the live hearing, the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - Offered to prove someone else committed the alleged conduct; or
 - Involve specific incidents of prior sexual behavior between the two parties, and are offered to prove consent.
- Under Federal Rule of Evidence 412, VAWA, and the laws of many states, a defendant in a rape case cannot introduce evidence of the victim's sexual history in an attempt to disprove the prosecution's case, subject to some statutory exceptions.
- Some general examples include:
 - Evidence of a victim's prior sexual history
 - Evidence of a victim's sexual behaviors or sexual predisposition
 - Evidence of a victim's alleged chastity or promiscuity
 - Evidence of prior accusations by the victim

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Burden of Proof

- For purposes of investigations under the college's Title IX resolution process, the burden of gathering evidence and the burden of proof will fall on Collin College and the investigator, not on each of the parties.

PHASE 1

General Information and Determination to
Proceed with Investigation

For Title IX purposes, what constitutes sexual harassment?

1. A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
 - This offense is 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.
2. Sexual assault, dating violence, domestic violence, or stalking (as defined in the Clery Act and the Violence Against Women Act); or
 - This offense is 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.
3. Unwelcome conduct determined by a reasonable person to be so severe, AND pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity;

Collin College is required to respond,
in a manner that is not deliberately
indifferent, when:

1. Collin College has actual knowledge of sexual harassment
 - a. Notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge (e.g. a formal complaint is submitted AND signed by the complainant or the Title IX coordinator) and triggers Collin's response obligation;
 - b. Any person (e.g., the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail.

2. The sexual harassment occurred within the school's education program or activity
 - a. "education program or activity" includes situation over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.

3. The sexual harassment occurred against a person in the United States

Collin College must offer supportive measures, even if a formal complaint is not filed. Supportive measures may include, but are not limited to the following:

1. Schedule change (classes or campus change)
2. Move dorm rooms
3. On campus employment schedule change
4. counseling
5. class extensions (due dates, exams, etc.)
6. mutual restrictions on contact between parties
7. campus escort
8. leave of absence
9. Class or work modification

If a formal complaint does not fall under Title IX, Collin may address the allegations under our discipline process, in addition to providing supportive measures.

Collin College's Grievance Process

Must:

1. Give both parties: (i) written notice of the allegations, (ii) equal opportunity to select an advisor of the party's choice (who may be an attorney), (iii) an equal opportunity to submit and review evidence throughout the investigation;
2. Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party;
3. Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
4. Not presume that the respondent is not responsible during the grievance process ("presumption of innocence"), so that Collin College bears the burden of evidence gathering and proof, and the standard of evidence is applied correctly;

Collin College's Grievance Process

Must:

5. Use either the preponderance of the evidence standard or the clear and convincing evidence standard. The same standard will be used for both student and employee investigations and decisions. Collin College uses the preponderance of the evidence standard;
6. Ensure that the decision-maker is not the same person as the investigator or the Title IX Coordinator (no single investigator models anymore);
7. Hold a live hearing and allow cross-examination by party advisors (never by the parties personally);
8. Require objective evaluation of all relevant evidence (inculpatory and exculpatory) and avoid credibility-determinations based a on person's status as a complainant, respondent, or witness
9. Include "rape shield" protection for complainants and protect them from inappropriately being asked about prior sexual history;

Collin College's Grievance Process

Must:

10. Send both parties a written document regarding responsibility and explain how and why the decision maker reached their conclusions;
11. Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
12. Offer both parties equal opportunity to appeal;
13. Protect any individual from retaliation for reporting sexual harassment or participating (or not participating) in any Title IX grievance process;
14. Make all materials used to train Title IX personnel publicly available on Collin's website;
15. Document and keep records of all sexual harassment reports and investigations.

PHASE 2

Investigation

Title IX Investigations

1. Collin College holds the burden of gathering evidence as well as the burden of proof, not the parties;
2. Both parties must be given equal opportunity to present facts and expert witnesses and other inculpatory and exculpatory evidence;
3. Collin College must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g. no “gag orders”);
4. Written notice of any investigative interviews, meetings and hearings must be sent to both parties;
5. Collin must send both parties, and their advisors, all evidence directly related to the allegations, with 10 days to inspect, review, and respond to the evidence;

Title IX Investigations

6. Collin must send both parties, and their advisors, an investigation report, with 10 days to inspect, review, and respond to the evidence;
7. If the investigation determines that the alleged behavior(s) do not rise to the level of a Title IX violation, Collin College must dismiss the formal complaint;
8. Collin College, at their discretion, may dismiss a formal complaint or allegation if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint;
9. If multiple formal complaints are received that are based on the same facts, Collin College can consolidate those formal complaints.

PHASE 3

Live Hearing

Live Hearing

1. Collin's grievance process must provide for a live hearing;
2. The decision maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions that challenge credibility;
3. Cross-examination must be conducted directly, orally, and in real time, by the party's advisor of choice and never by a party personally;
4. Collin College 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;

Live Hearing

5. Only relevant cross-examination and other questions may be asked of the party or witness. The decision maker must first determine the relevance of the question before either party or witness may answer the cross-examination or other questions. If the decision maker determines that a question is not relevant they must explain to a party's advisor it was not deemed relevant;
6. If a party does not have an advisor present at the live hearing, Collin College must provide one. This advisor would be chosen by the college;
7. Collin must create an audio or audiovisual recording (or transcript) of any live hearing.

PHASE 4

Written Determination

Written Determination

1. Collin College will use the preponderance of evidence standard for all Title IX cases (both student and employees);
2. The decision maker must write a determination regarding responsibility with findings of facts, 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;
3. The written determination must be sent to both parties simultaneously along with information on how to appeal.

PHASE 5

Appeals

Appeals

1. Collin College must offer an appeal from a determination regarding responsibility and from a dismissal of a formal complaint for the following reasons:
 - 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

Informal Resolution

1. Collin College can choose to offer and facilitate an informal resolution (e.g. mediation), as long as both parties give voluntary, informed, written consent to attempt said informal resolution.
2. The informal resolution process can only be done if a formal complaint was filed first.
3. The informal resolution process is NOT an option to resolve an allegation that an employee sexually harassed a student.

Key Terms

Actual Knowledge: Actual knowledge means notice of dating violence, domestic violence, gender-based harassment, sex discrimination, retaliation, sexual assault, sexual harassment, or stalking (i.e., “prohibited conduct”) or allegations of prohibited conduct to the appropriate Title IX coordinator or designee who has authority to institute corrective measures on behalf of Collin College. This standard is not met when the only individual with actual knowledge of prohibited conduct is the respondent. The term “notice,” as used in this paragraph, includes, but is not limited to, a report of prohibited conduct to the appropriate Title IX coordinator or designee.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment

Decision Maker/Hearing Officer: A specially trained Collin employee who oversees the live hearings. This person determines relevance of the evidence and determines what cross-examination and other questions can be asked during the live hearing. They also ensure that Collin’s Title IX process has been followed. Once the live hearing has concluded, the decision maker/hearing officer determines responsibility. They must provide both parties with their written determination that includes their rationale and what evidence they used in making their decision. This must be done for all allegations. The decision maker/hearing officer also sends both parties information about their option to appeal.

Key Terms

Deliberate Indifference: Deliberate indifference occurs when an institution of higher education with actual knowledge of dating violence, domestic violence, gender-based harassment, retaliation, sex discrimination, sexual assault, sexual harassment, or stalking (i.e., prohibited conduct) in the institution's education program or activity against a person in the United States responds in a manner that is clearly unreasonable in light of the known circumstances. When an institution of higher education responds in a clearly unreasonable manner, that response constitutes intentional discrimination. Failing to promptly respond once an institution of higher education has actual knowledge of prohibited conduct can also be considered deliberate indifference.

Education Program or Activity: Education program or activity includes locations, events, or circumstances over which Collin College exercised substantial control over both the respondent and the context in which the dating violence, domestic violence, gender-based harassment, retaliation, sex discrimination, sexual assault, sexual harassment, or stalking (i.e., prohibited conduct) occurred; and also includes any building owned or controlled by a student organization that is officially recognized by Collin College.

Key Terms

Exculpatory evidence: evidence that is favorable to the defendant (i.e. respondent) that exonerated or tends to exonerate the defendant of guilt.

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

Inculpatory evidence: evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.

Official with Authority: An “official with authority” is any Collin College employee to whom notice of an incident of dating violence, domestic violence, gender-based harassment, retaliation, sex discrimination, sexual assault, sexual harassment, or stalking triggers Collin College's response obligations under *Title IX*; and who have authority to institute corrective measures on behalf of Collin College. Collin College's OWAs include, but are not limited to, the Title IX coordinators, deputy Title IX coordinators, dean of students, associate deans of students, and student conduct officers.

Key Terms

Preponderance of Evidence Standard: More likely that not to have occurred or there is a greater than 50% chance that the claim is true.

Rape Shield Law: a law that limits the ability to introduce evidence or cross-examine complainants about their past sexual behavior.

Relevant Evidence: evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence.

Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Key Terms

Supportive Measures: Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to Collin College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Collin College's educational environment, or deter prohibited conduct. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Collin College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality will not impair Collin College's ability to provide the supportive measures. The appropriate Title IX coordinator or designee is responsible for coordinating the effective implementation of supportive measures.

References

U.S. Department of Education Title IX Final Rule Overview: Guiding Principles.

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-overview.pdf>. Accessed July 31, 2020.

Summary of Major Provision of the Department of Education's Title IX Final Rule.

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>. Accessed July 31, 2020.

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<https://www.collin.edu/titleix/>. Accessed August 14, 2020.