

# Interim Title IX Training

August 2020

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# Introduction

- How we got here
- Politics & the Constitution
- IX & Clery
- Follow the letter of “new IX” & the spirit

# Definition of Sexual Harassment

*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;
- (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; or
- (3) “Sexual assault” as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), “dating violence” as defined in [34 U.S.C. 12291\(a\)\(10\)](#), “domestic violence” as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or “stalking” as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

# Many reasons to know s/h definition

- S/h is the only alleged offense that gets a formal hearing.
- S/h contains “traditional” sexual harassment – which is changed; quid pro quo, and “Clery crimes.”
- So, what happens to other alleged offenses?
  - Informal resolution – no
  - Offenses or allegations that don’t go to a formal process and hearing
- Again, are there conflicts between the new IX and Clery?

# How we educate

- The College notifies applicants for admission and employment, incoming and current students, and incoming and current employees of this policy and procedure. In addition, new and current students and employees will be provided with educational materials to promote familiarity with this policy. Newly hired employees and current employees responsible for reporting sexual misconduct will be provided with training. Furthermore, annual training will be provided to investigators and those responsible for implementation of Title IX.
- The educational programs and training provide ongoing awareness and prevention campaigns that also identify safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such bystander. Additionally, information is provided on risk reduction so that students, faculty/staff may recognize warning signs.

The following are pieces we will emphasize – but don't forget these! Did you do your homework:-)?

- Clergy written rights and responsibilities
- Confidentiality – under both Clergy and IX
- Emergency removals & administrative leave
- Burden of proof is?
- Dismissal, consolidation or delay of complaints
- Written determinations of responsibility
- Difference between protective/supportive and remedy/sanction
- Recordkeeping

# First step on the process: Notice

Upon receipt of a formal complaint, Arizona College will provide the following written notice to the parties who are known.

- Notice of the College's grievance process;
- Notice of the allegations of sex/gender harassment potentially constituting sex/gender harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sex/gender harassment, and the date and location of the alleged incident, if known.

# What else is in the notice?

- The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- The written notice will inform the parties of the provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process ; and
- If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the first notice provided, the College will provide notice of the additional allegations to the parties whose identities are known.



# How to conduct an investigation; or, what are the main principles in this stage?

- This is not just the investigation itself, but the stage before the actual hearing.
- Without looking at the new IX P & P, who can tell us something about it, maybe something that is different from before?
- Now, let's go through it , with...
- Questions and discussion!

These are the guardrails; no sub for the P & P!  
But, among other things, AC:

- Will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties
- Will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so for this grievance process
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence

And, also, regarding the investigation stage,  
AC...

- Will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- Will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding
- However, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

# More...

- Will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- Will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
- This includes the evidence upon which the College does **not** intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- Prior to completion of the investigative report, the College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

# Hearings

- At the live hearing, the decision-maker(s) will 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 will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings.
- At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- 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(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

# More on hearings

- If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that 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.

# And more...and more to know in the P & P!

- 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 College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

# Appeals

Arizona College will offer both parties an appeal from a determination regarding responsibility, and from any dismissal of a formal complaint or any allegations within the formal complaint, on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



# More on appeals

As to all appeals, Arizona College will:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy and procedure
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result
- Provide the written decision simultaneously to both parties.

# How to apply Rape Shield protections

- For complainants only
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that 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.

# Technology

- AC will have hearings via GoToMeeting.
- GoToMeeting is a web-hosted service that allows for online meetings, desktop sharing, and video conferencing and enables the College staff to meet with each other, student or colleagues via the Internet in real-time.
- Transmissions are protected with high-security encryption and optional passwords.
- By combining a web-hosted subscription service with software installed on the host computer, transmissions can be passed through highly restrictive firewalls.
- Everyone will be trained on this before any hearing is held. Don't be afraid to ask for help!

# End with the Important Presumption

- Respondent is NOT responsible for the alleged conduct
- Until a determination regarding responsibility is made
- At the conclusion of the grievance process!

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- Again, how to handle Clery: assumption of victim
- Treat Complainant as victim for Clery crimes (what are those, again?)
  - Protective measures become supportive
- Treat Respondent as innocent until proven guilty!
  - Then, response becomes remedy/sanction and not protective/supportive