

Arizona College of Nursing Title IX Training

For Title IX Coordinator, Investigators, Decisionmakers and
Informal Resolution Facilitators

Agenda

- Roles of Title IX Coordinator, Investigator, Decisionmaker and Facilitator.
- ACN Obligations in Response to Sex Discrimination Allegations:
 - Supportive Measures
 - Emergency Removal
 - Prohibited Disclosure of PII
 - Informal Resolution Process
- Relevant Evidence and Impermissible Evidence
- Formal Grievance Processes:
 - Sex Discrimination
 - Sex-based Harassment
- How to Serve Impartially and Avoid Bias and Conflicts of Interest
- Additional Title IX Coordinator Training
 - Pregnancy and Related Conditions
 - Response to Sex Discrimination
 - Recordkeeping

Roles – Title IX Coordinator,
Decisionmaker,
Investigator, Facilitator

General

- The Title IX Coordinator, and individuals chosen as investigators, decisionmakers and facilitators must be knowledgeable on ACN's Title IX Policy and the Department of Education's Title IX regulations, starting at 34 C.F.R. § 106.1
- Some essential skills these individuals will need:
 - Demonstrates fairness; neutrality; able to gain trust of parties and witnesses
 - Communication and listening skills
 - Effective questioner
 - Attention to detail; organized; able to deal with deadlines; no procrastination
 - Ability to deal with an individual's emotions and emotional topics
 - Approachable
 - Able to control the process and parties to ensure timely resolution
- These individuals may want to explore taking outside training to assist them in performing these roles.
- The Title IX Coordinator can act as investigator and decisionmaker:
 - The facilitator in an informal resolution process cannot be the same person as the investigator or the decisionmaker.
 - The decisionmaker on an appeal cannot have been previously involved in the Formal Grievance Procedure on which the appeal is made.
- The Title IX Coordinator, and individuals chosen as investigators, decisionmakers and facilitators cannot have a conflict of interest or bias for or against any party or witness and must act in an impartial manner.
- The Title IX Coordinator can outsource the investigator, decisionmaker and facilitator functions to outside professionals.

Title IX Coordinator

- All schools must designate and authorize *one person* as Title IX Coordinator
 - The Title IX Coordinator has responsibility to coordinate ACN's efforts to comply with its responsibilities under Title IX
 - The Title IX Coordinator can delegate responsibilities to one or more individuals
 - ACN can have more than one person with the Title IX Coordinator title, but it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the ACN's consistent compliance with its responsibilities under Title IX

Investigator

- The main job of the investigator is to gather relevant evidence to aid ACN in determining whether the complaint contains allegations that reasonably may constitute sex discrimination.
 - The Investigator is responsible for conducting interviews with all parties and witnesses, sharing investigative evidence with all parties for their review, and writing the investigative report.
- The Investigator can also act as Decisionmaker, weighing the relevant evidence and determining based on a preponderance of that relevant evidence gathered whether sex discrimination or sex-based harassment occurred and providing ACN's written determination on the complaint to the parties.

Decisionmaker

- The Decisionmaker acts a judge or arbitrator, weighing the relevant evidence to determine whether sex discrimination or sex-based harassment occurred based on a preponderance of the relevant evidence and issuing a “verdict” in the form of a written decision.
 - ❑ The decisionmaker hears the relevant evidence and decides whether allegations in a complaint of sex discrimination or sex-based harassment have been proven.

Facilitator

- The informal resolution process allows the parties to discuss the complaint and explore a variety of solutions outside the formal investigation or complaint resolution process.
- The facilitator of an informal resolution process acts like a mediator.
 - A neutral party that assists parties in resolving a complaint of sex discrimination or sex-based harassment.
 - Helps to facilitate discussion and guide the parties toward a mutually acceptable agreement.
- A facilitator does not make a binding determination on the complaint.
 - Helps to guide the parties toward a mutually acceptable agreement.
 - If the parties fail to reach an agreement, the Formal Grievance Process resumes.

ACN's Obligations in
Response to Sex
Discrimination Allegations

ACN Obligations –Supportive Measures

- ACN will offer and coordinate reasonable supportive measures as appropriate and without fee or charge for the complainant and/or respondent.
 - To restore or preserve that person's access to ACN's education program or activity.
 - To provide support during ACN's formal or informal resolution process to minimize disruption to that party's participation in an education program or activity.
- Supportive measures are available to a complainant regardless of whether they wish to pursue any formal or informal resolution process outlined in this policy.
 - Available regardless of whether the discrimination or harassment they have experienced occurred during or prior to their joining ACN community
- Supportive measures implemented cannot:
 - Impose an unreasonable burden on either party.
 - ACN must conduct a fact-specific inquiry to determine whether supportive measures constitute an unreasonable burden on a party.
 - Be imposed for punitive or disciplinary reasons.

ACN Obligations –Supportive Measures (cont.)

- ACN cannot disclose information about supportive measures to persons other than the person to whom they apply.
 - ❑ Cannot inform one party of supportive measures provided to another party unless:
 - Necessary to provide the supportive measure.
 - Necessary to restore or preserve a party's access to the education program or activity.
 - One of the exceptions to the disclosure of personally identifiable information applies.
- Title IX Coordinator and the ACN employee who has ADA responsibilities can coordinate if a party has a disability
- ACN can modify or terminate previously approved supportive measures based on the changed circumstances of the parties or based on information obtained in the grievance process.
 - ❑ Modifications can be requested by a party or be made on the recommendation of the Title IX Coordinator.
 - ❑ A party can appeal the modification or termination of supportive measures.

Supportive Measures (cont.)

Supportive measures may include:

- Counseling;
- Reasonable academic accommodations (e.g., extending deadlines or other course-related adjustments);
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Ordering the complainant and respondent to have no further contact with each other and/or other third parties;
- Leaves of absence;
- Modifying class schedules, extracurricular activities, or working arrangements;
- Providing training and education programs related to sex-based harassment.
- Any other measure which can be tailored to the involved individuals to achieve the purposes and goals of ACN's Title IX Policy.

ACN Obligations – Emergency removal

- ACN can remove a respondent from its education program or activities on an emergency basis.
 - ❑ ACN must conduct an individualized safety and risk analysis
 - ❑ Based on that analysis ACN must conclude:
 - That respondent poses an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination; and
 - Those allegations justify removal.
- Respondent must receive written notice of the removal.
- Respondent can challenge the decision immediately following the removal.
- Emergency removal decisions are not subject to further appeal.

ACN Obligations – Privacy and Prohibited Disclosure of PII

- The Formal Grievance Process will remain private to the extent permissible by law
 - ACN cannot guarantee privacy in all situations and will balance privacy and other competing interests on a case-by-case basis.
 - Formal Grievance Process records may be produced subject to a lawful subpoena.
- Parties and witnesses cannot disseminate or otherwise disclose information or evidence obtained solely through their participation in a Formal Grievance Process.
 - ACN will address any violations under its code of conduct.
- ACN will not disclose personally identifiable information it has obtained in its enforcement of this policy except where:
 - ACN has obtained prior written consent from an individual with a legal right to consent to disclosure;
 - The information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
 - Necessary to carry out the purposes of this policy, including action taken to address conduct that reasonably may constitute sex discrimination in ACN's education program or activity;
 - Required by federal law or regulation; or
 - To the extent such disclosures are not otherwise in conflict with Title IX, when required by state or local law or when permitted under FERPA.

ACN Responsibilities - Informal Resolution Process

- ACN may offer the parties to a complaint relating to sex discrimination or sex-based harassment the opportunity to engage in informal resolution procedures.
 - Available any time prior to the resolution of a formal resolution process
 - Both parties must agree in writing to participate
 - ACN cannot force parties to participate
 - Anytime prior to resolution, a party can withdraw from the informal resolution process and initiate or resume the Formal Grievance Process
- ACN has sole discretion to offer an informal resolution process to the parties.
 - ACN can determine an informal resolution process is not appropriate when, among other reasons, ACN determines that the alleged conduct would present a future risk of harm to others.
- The Title IX Coordinator will assign a trained facilitator to lead the informal resolution process.
 - The facilitator will have no conflict of interest or bias toward any party.
 - The facilitator will not be the same person as the investigator or the decisionmaker.
- Resolution through an informal resolution process ends the Formal Grievance Process on those allegations.
 - ACN will maintain records on the informal resolution process
 - ACN will advise parties how, if at all, information disclosed in the informal grievance process will be used if the Formal Grievance Process resumes.

ACN Responsibilities - Informal Resolution Process (cont.)

- If the parties reach a resolution, the parties will enter an informal resolution agreement that is binding only on the parties.
- Potential terms that may be included in an informal resolution agreement include but are not limited to:
 - Restrictions on contact.
 - Restrictions on the respondent's participation in one or more of ACN's programs or activities or attendance at specific events.
 - Restrictions ACN could have imposed as remedies or disciplinary sanctions had ACN determined at the conclusion of the Formal Grievance Process.
- Even if the parties reach an informal resolution, the Title IX Coordinator may take appropriate prompt and effective steps to ensure that complained of conduct does not continue or recur within ACN's education program or activity.

Relevant Evidence vs. Impermissible Evidence

Relevant Evidence

- The Investigator or Decisionmaker must determine what evidence is relevant and what evidence may be impermissible and excluded from the record.
- The Investigator or Decisionmaker can only base their determination on whether sex discrimination or sex-based harassment occurred based on relevant evidence.
- Evidence is “relevant” when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
 - The evidence offered tends to prove or disprove a disputed fact; and
 - The fact a party attempts to prove is of consequence to the outcome of the case.
- Questions are “relevant” when they seek evidence that may aid in showing whether the alleged sex discrimination or sex-based harassment occurred.

Impermissible Evidence

- “Impermissible evidence,” regardless of relevance, includes:
 - Information that is privileged under federal or state law unless the party has waived their privilege over such information (e.g., attorney-client privilege; doctor-patient privilege);
 - Records maintained by a physician, psychologist, or other recognized professional providing treatment to the party or witness unless the party or witness has consented to the use of such records in the Formal Grievance Process; and
 - Information about the complainant’s sexual interests or prior sexual conduct.
- Exception: when evidence about the complainant’s prior sexual conduct is offered
 - To prove that someone other than the respondent committed the alleged conduct; or,
 - About specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment.

Formal Grievance Process: Sex Discrimination

Notice of Allegations

- The Title IX Coordinator will provide written notice of the allegations in the written complaint to respondent.
- Notice includes:
 - Information on the Formal Grievance Process, including the informal resolution process
 - To the extent that information is available and can be disclosed:
 - The identities of the parties involved in the incident(s).
 - The conduct alleged to constitute sex discrimination.
 - The date(s) and location(s) of the alleged incident(s).
 - That each party is entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.
 - That retaliation is prohibited.
- If the investigation uncovers new issues outside of the scope of the written notice, ACN will provide a supplemental written notice describing the additional allegations under investigation.

Dismissal of Complaints

- ACN may dismiss a complaint of sex discrimination where:
 - It cannot identify the respondent after taking reasonable steps to do so.
 - The respondent is not participating in ACN's education program or activity and is not employed by ACN.
 - Complainant voluntarily withdraws some or all the allegations in the complaint and any remaining conduct alleged in the complaint, if any, would not constitute sex discrimination.
 - After reasonable efforts to clarify the allegations with the complainant, ACN determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination.
- Supportive measures remain available to the complainant and respondent.
- ACN will notify Complainant of the dismissal of the complaint and the reasons for doing so.
 - If the respondent received notice of the complaint, the respondent also receives notice of the dismissal.
- The dismissal is subject to appeal.
 - In the event of an appeal, ACN will assign a trained decisionmaker who did not take part in the investigation of the allegations or the decision to dismiss the complaint.

Prompt Investigation

- ACN will promptly investigate and respond to complaints of sex discrimination.
 - ACN will provide for adequate, reliable, and impartial investigation of all complaints
 - The burden is on ACN —not on the parties—to gather sufficient evidence to determine whether sex discrimination occurred.
 - Gather sufficient evidence to determine whether sex discrimination occurred
 - Provide an equal opportunity for the parties to present fact witnesses and relevant evidence.
 - Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
 - Provide each party with an equal opportunity to access the relevant evidence, or an accurate description of this evidence.
 - Provide each party with a reasonable opportunity to respond to the evidence or to the accurate description of the evidence.
 - Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the Formal Grievance Process.
- ACN will also:
 - Establish reasonably prompt timeframes for the major stages of the Formal Grievance Process.
 - Allow reasonable extensions on a case-by- case basis for good cause with notice to the parties that includes the reason for the delay.
- ACN may consolidate complaints of sex discrimination when the allegations of sex discrimination arise out of the same facts or circumstances.

Assessing Credibility

- The decisionmaker will question parties and witnesses.
 - Objectively evaluate all relevant evidence, including:
 - Inculpatory evidence - evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility.
 - Exculpatory evidence - evidence that tends to show a party was not responsible.
- The decisionmaker will adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.
- If the decisionmaker is not persuaded by a preponderance of the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must conclude that no sex discrimination occurred.

Determination of Whether Sex Discrimination Occurred

- ACN will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred.
 - “Preponderance of the evidence” means proving that something is more likely true than not true.
 - Presenting enough evidence to convince the decisionmaker that sex discrimination either occurred or did not occur
- The decisionmaker will provide the parties with a written determination that includes the rationale for the decisionmaker’s determination and the procedures and permissible bases for appeal
- If the determination finds that sex discrimination occurred, the Title IX Coordinator will:
 - Coordinate the provision and implementation of remedies to a complainant and other persons whose equal access to ACN’s education program or activity was limited or denied by sex discrimination.
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions.
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within ACN’s education program or activity.
- No party or witness will face discipline for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.

Appeal

- Either party can appeal the determination.
- The appeal is not an opportunity to re-argue the facts Appeals are limited to the following issues:
 - The party has discovered new and relevant evidence that was not reasonably available at the time the determination was made that could alter the outcome.
 - Allegations that the decisionmaker deviated from the policy or procedure in a way that changed the outcome of the case.
 - Evidence that the Title IX Coordinator, investigator or decisionmaker was biased or had a conflict of interest, and such bias or conflict of interest changed the outcome of the case.

Appeal (cont.)

- Appeals are in writing and must be filed within 10 days of the delivery of the determination.
 - The appeal request must include the basis for the appeal and all evidence in support of the request.
 - The non-appealing party has an opportunity to respond.
- Discipline imposed will be suspended pending the outcome of the appeal.
- The Title IX Coordinator will assign a trained and impartial decisionmaker who was not previously involved in the Formal Grievance Procedure to hear the appeal.
- The appellate decisionmaker can dismiss a groundless appeal.
- The appellate decisionmaker will review the appeal materials submitted by both parties.
 - If required to address the appeal issues, the appellate decisionmaker may also choose to interview the investigator(s) and/or any other person that participated in the investigation and decision-making process.
- The appellate decisionmaker will make a final decision on the appeal within thirty (30) days of the filing of the appeal.
 - The original decision may be upheld, reversed, or modified (which includes the possibility that different or additional sanctions may be imposed).
 - Modification of sanctions can only place a greater burden on the respondent if the appeal was filed by the complainant
 - The appellate decisionmaker may also refer the matter to the same or different investigator(s) for additional investigation and a new decision-making process.
- There are no further appeals available. The decision on appeal is final.

Complaints of Sex-Based
Harassment Involving a
Student Complainant or
Student Respondent

General Comments

- The procedures for addressing complaints of sex-based harassment involving a student complainant or student respondent incorporate and add to the procedures for addressing sex discrimination complaints.
- If the complainant or respondent is both a student and an employee, ACN will undertake a fact-based determination on whether the party's primary relationship with ACN is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

Written Notice of Allegations

- The written notice of the allegations will include the following additional information:
 - Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made finding the respondent responsible.
 - Prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
 - The respondent may have an advisor of their choice who may be, but who is not required to be, an attorney.
 - The parties are entitled to an equal opportunity to access (i) the relevant and not otherwise impermissible evidence; or (ii) an investigative report that accurately summarizes this evidence and, upon request of a party, equal access to the relevant and not otherwise impermissible evidence.
 - The ACN code of conduct prohibits a party from making false statements or knowingly submitting false information.
- ACN will provide a supplemental written notice describing the additional allegations under investigation if the investigation discloses new issues.
- ACN may reasonably delay providing the written notice of allegations if, after conducting an individualized safety and risk analysis and not based on mere speculation or stereotypes, ACN has reasonable concerns for the safety of any person because of providing this notice.

Investigation

- ACN will provide the parties and witnesses written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate
 - ☐ The parties will have the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice
 - ACN will determine in its discretion and on a case-by-case basis the extent to which an advisor may participate in proceedings
 - Any restrictions imposed will apply equally to the parties
 - ☐ The parties will have the same opportunities to have persons other than the advisor of the parties' choice present during any meeting or proceeding
- ACN will exercise its discretion in allowing the parties to present expert witnesses and any such determination will apply equally to the parties.
- Reasonable extension of timeframes can be granted on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay.
- Each party and the party's advisor will have an equal opportunity to access (i) the relevant and not otherwise impermissible evidence; or (ii) an investigative report that accurately summarizes this evidence and, upon request of a party, equal access to the relevant and not otherwise impermissible evidence.
 - ☐ The parties will have a reasonable opportunity to review and respond to the evidence or the investigative report prior to the determination whether sex-based harassment occurred

Process for Questioning Parties and Witnesses

- The decisionmaker will question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.
- Questioning of the parties and witnesses must take place as follows before the decisionmaker determines whether sex-based harassment occurred:
 - The investigator or decisionmaker will ask questions during individual meetings with a party or witness.
 - Each party can propose questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during any individual meetings with a party or witness.
 - Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.
- The decisionmaker will not allow unclear or harassing questions.
- The decisionmaker may choose to place less or no weight on a party or witness who refuses to respond to questions deemed relevant and not impermissible
 - The decisionmaker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

Live Hearing

- ACN *does not* have to hold a live hearing
 - ☐ School can hold a live hearing in its discretion.
 - ☐ Under the ACN Title IX Policy, a party can request a live hearing, but ACN can decide in its discretion whether to grant that request.
- The decisionmaker will question parties and witnesses.
- ACN decides the remaining process on a case-by-case basis.
 - ☐ Decisionmaker will decide:
 - When a party will have the opportunity to respond to the evidence - prior to the live hearing, during the live hearing, or both.
 - Process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses including questions challenging credibility.
 - Whether to allow each party to propose questions that the party wants the decisionmaker to ask of any party or witness, or allow each party's advisor to ask any party or witness questions.
 - The decisionmaker will not allow advisor questioning if only one party has an advisor.
 - Whether to conduct a live hearing with the parties physically present in the same geographic location or conduct the live hearing with the parties physically present in separate locations.
 - Whether to create an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.

Written Determination

- Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, ACN will use the preponderance of the evidence standard to determine whether sex-based harassment occurred and issue a written determination.
- The written determination will include:
 - A description of the alleged sex-based harassment;
 - Information about the policies and procedures that ACN used to evaluate the allegations;
 - The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
 - Any disciplinary sanctions imposed on the respondent, and whether remedies other than the imposition of disciplinary sanctions will be provided to the complainant, and, to the extent appropriate, other students identified as experiencing the effects of the sex-based harassment; and
 - Procedures for the complainant and respondent to appeal.

How to Serve Impartially and Avoid Bias and Conflicts of Interest

Treat Complainant and Respondent Equitably and Equally

- Promptly investigate and respond to complaints
- Apply the same procedures/processes in the same way to both parties
 - Provide equal time and opportunities for each party
 - Same opportunity and ability to obtain, review and present evidence
 - No disciplinary sanctions imposed until an adverse determination is made in the grievance process
 - Only provide remedies to the complainant if respondent is found responsible
- No negative presumption against the respondent
- Do not make credibility determinations based on a person's status as a complainant, respondent, or witness
- Take reasonable steps to protect the privacy of the parties and witnesses
- Only consider relevant evidence
 - Make reasoned decisions based on the relevant evidence

Title IX coordinator, investigator, facilitator and decisionmaker must not have a conflict of interest or bias

- The Title IX coordinator, investigator, facilitator and decisionmaker need to act with integrity and in an independent and impartial manner.
 - Must not have conflicts of interest – e.g., personal knowledge of the disputed facts, a personal or family relationship with a party or witness, or a personal bias concerning a party to the complaint or any witness
 - If a Title IX coordinator, investigator, facilitator and decisionmaker has a conflict of interest they cannot be involved in investigating or deciding a formal grievance or facilitating an informal resolution process
 - The facilitator of an informal resolution process cannot be the same person who acts as the investigator or decisionmaker on the complaint
 - The Title IX Coordinator can act as investigator and decisionmaker on a complaint
- Make every effort to ensure you are conscious of—and effectively counter—influences that promote prejudicial attitudes and bias.
 - You may have many unconscious implicit mental processes, including implicit memories, implicit perceptions, implicit attitudes, and implicit stereotypes
 - Think how your mental shortcuts based on implicit mental processes can influence decision making and may lead to unintentional, but real, adverse bias.
- The onus is on the investigator, facilitator, decisionmaker or Title IX Coordinator to make sure that their mind is “right” and that they can be impartial – blank slate – with no prejudgment based on age, sex, appearance, dress, behavior, etc.
 - Decision points exist from the moment of initial contact with parties until the determination has been issued. Each decision point is an opportunity for investigator, facilitator, decisionmaker or Title IX Coordinator to make choices that can influence the parties or process.
 - How they deal with those choices will color the view of the parties and witnesses as to the fairness of the process.
- A conflict of interest or bias for against complainants/respondents in general or the specific parties is a specific ground for appeal.

Do not rely on sex stereotypes or prejudice evidence

- The Title IX coordinator, investigator, facilitator and decisionmaker need to judge the relevant evidence on its merits, and not influenced by their reaction to the party or witness providing the information.
 - Avoid emotionally reacting to the witness either pro or con.
 - Hear the evidence; do not let emotion cloud your decision making.
- Do not decide until you have heard and weighed *all* the evidence.
 - You cannot fairly assess a case until all relevant evidence is heard
 - It is normal to assess the evidence and its relevance as the matter progresses, but a full determination should wait for the completion of all evidence and a full consideration of that evidence
- Pay attention to all relevant evidence
 - Even if the outcome appears clear, don't shut down your consideration based on hearing a portion of the evidence.
- Listen to words of the party or witness without considering other factors that may cloud your receiving or understanding of the evidence.
 - Don't prejudge the evidence because of outside factors – you cannot be swayed by outside pressure, public outcry, fear of criticism or self-interest.
 - Be aware of your emotional reaction to various things – e.g., appearance, race/ethnicity, status as a complainant or respondent, gender identity, sexual orientation - and how those factors might impact your reaction to the party or witness and their evidence.

Ensure Fair Process

- The investigator, facilitator, decisionmaker or Title IX Coordinator should conduct themselves in a way that is fair to all parties.
- Avoid conduct and statements that give the appearance of partiality toward or against any party.
 - ❑ Use a consistent form of addressing each party; e.g., don't call the complainant by their first name and address the respondent as "Mr. or Ms."
- Make decisions in a timely, just, independent and deliberate manner
 - ❑ Need to start writing the determination immediately after you receive all the evidence; don't wait and try to get it done at the last minute.
 - ❑ After you have received all the evidence, writing a brief synopsis of the facts of the case and a preliminary approach to analyzing the relevant facts. This will be helpful to keeping the relevant evidence fresh in your mind as you write the determination.

Additional Title IX Coordinator Training

Pregnancy and Related Conditions

- ACN must not discriminate in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions
 - ❑ ACN can allow a student to voluntarily participate in a separate portion of its education program or activity provided ACN ensures that the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions
- ACN must take specific actions to promptly and effectively prevent sex discrimination and ensure equal access to ACN's education program or activity *once the student* notifies the Title IX Coordinator of the student's pregnancy or related conditions

Pregnant and Lactating Students and Employees

- When a student informs an institution of the student's pregnancy or related conditions, a ACN employee must:
 - Provide that person with the Title IX Coordinator's contact information; and
 - Inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the education program or activity.
- Being so advised of the resources available through the Title IX Coordinator, it then becomes the choice of the student to go to the Title IX Coordinator.
- The Employee only must provide the information when directly informed by the student
 - No employee obligation to inform Title IX Coordinator if they learn a student is pregnant.
 - No employee obligation to act based on secondhand information.
 - No employee obligation to follow up with the student to ensure whether the Title IX Coordinator has been advised of her condition.
 - No employee obligation to act based on supposition or observation.

Pregnant and Lactating Students and Employees

- Once a student notifies the Title IX Coordinator of her pregnancy, the Title IX Coordinator must:
 - Inform the student of the ACN's obligations and restrictions on recipient disclosure of personal information, as well as provide the recipient's notice of nondiscrimination.
 - Provide the student with the option of individualized, reasonable modifications as needed to prevent discrimination and ensure equal access to the recipient's education program or activity.
 - Allow the student to voluntarily access any separate and comparable portion of ACN's education program or activity
 - Allow the student a voluntary leave of absence for, at minimum, the medically necessary time and reinstatement upon return.
 - Ensure the student's access to a clean, private space for lactation.

Pregnant and Lactating Students and Employees - Modifications

- ACN must consult with the student on modifications to meet student's individualized needs.
- ACN has no obligation to make modifications for a pregnant student that fundamentally alter the nature of the education program or activity.
- No matter when informed by the student, ACN needs to respond promptly and effectively to ensure that equal access to educational program or activity.
- ACN must not require supporting documentation to obtain modifications above.
 - Unless the documentation is necessary and reasonable for ACN to determine the reasonable modifications
 - Requiring supporting documentation *is not necessary and reasonable* for these modifications:
 - allowing pregnant student food/water in class;
 - sit or stand in class as needed;
 - more frequent restroom and other intermittent breaks;
 - class absences for medical appointments;
 - access to online education (if available);
 - changes in schedule or course sequence;
 - extensions for class work and exams;
 - change in physical space or supplies (e.g., different desk; larger uniform; footrest);
 - elevator access.

Response to Sex Discrimination

- The Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX, to take the following actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects:
 - Treat the complainant and respondent equitably.
 - Offer supportive measures for the complainant.
 - If complaint is made, initiate ACN's Formal Grievance Process.
 - Notify the parties of the complaint, the Formal Grievance Process, and Informal Resolution Process.
 - Make a fact-based determination on whether to initiate a complaint of sex discrimination in situations where no complaint is filed or the complaint is withdrawn when there may be a risk of ongoing safety concerns if not addressed by ACN
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.
- The Title IX Coordinator is not required to take any of the actions above if the Title IX Coordinator reasonably determines that the conduct as alleged could not constitute sex discrimination

Fact-Based Determination

- If a report received by the Title IX Coordinator contains information suggesting there may be an ongoing safety or health concerns if not addressed by ACN, or the alleged conduct prevents ACN from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator will undertake a fact-based assessment to determine whether to initiate a formal resolution process even if a complainant only wishes to have their concerns documented.
- The Title IX coordinator must consider the following factors:
 - The complainant's request not to file a formal complaint;
 - The complainant's reasonable safety concerns regarding the filing of a formal complaint;
 - The risk of future incidents of discrimination or harassment if a formal complaint is not filed;
 - The severity of the alleged behavior in the report;
 - The relationship between the parties, including whether the respondent is an employee of ACN;
 - The scope of the allegations or the existence of prior reports demonstrating concerns of on-going or a pattern of discrimination or harassment;
 - The ability of ACN to gather evidence to substantiate the allegations, including whether the complainant or other witnesses are willing to participate in a formal or informal resolution process; and
 - Whether there are alternative methods of ending the discrimination or harassment and preventing its recurrence available to ACN.
- If the Title IX Coordinator decides to initiate a complaint, the Title IX Coordinator will notify the complainant prior to doing so and will address the complainant's reasonable concerns about the complainant's safety or the safety of others.

Recordkeeping

- ACN must create, and maintain for seven (7) years, records of any actions (including any supportive measures) taken in response to a report or complaint of sex discrimination
 - For each report the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination, records documenting the actions ACN took to meet its obligations under Title IX
 - For each complaint of sex discrimination records including any determination regarding responsibility
 - Including any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any supportive measures provided to the complainant
 - Any appeal and the result of the appeal
 - Any informal resolution
 - Training materials

Recordkeeping

- The Title IX Coordinator must maintain notes of reports and interactions with complainants and records associated with complaints and the grievance process
- The Department gave no guidance on how to track or log oral reports;
 - ❑ ACN has discretion to set up the process that works for its situation.
 - ❑ The ACN has discretion on how its documents reports ACN receives and the steps taken in response
- ACN will have to maintain information from complaint cases and its resolution
 - ❑ ACN will need to identify a secure process with adequate storage space and limited access to house information on Title IX complaints