

# Title IX Officer Training

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# Content Warning

Engage in self care as needed.



# What is Title IX?

- What is Title IX?
  - Federal law
  - Governs certain areas of gender equity, sex discrimination, and sexual harassment
  - Requires universities to have a certain set of policies and processes to resolve complaints
- What does our policy cover?
  - Sexual harassment
  - Sexual violence
  - Dating violence
  - Domestic violence
  - Stalking
  - Non-consensual sexual contact
  - Sexual exploitation
  - Gender based hazing or bullying
  - Pregnancy
- JCU's Sexual Harassment & Interpersonal Violence Policy covers more than the law requires



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.

What do you notice?



# Scope of Our Policy

- Applies to the following community members:
  - Enrolled students
  - Employees
  - Vendors
  - Contractors
  - Visitors/Guests
  - Third party field experience partners
  - Volunteers
- On campus conduct
- Off campus conduct that affects a substantial university interest
- Does not apply to complaints regarding employment matters not involving sexual harassment or interpersonal violence, governed by Title VII of the Civil Rights Act, and resolved through other University policies

# Definitions



# Complainant

An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment and Interpersonal Violence.



# Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment and Interpersonal Violence.

# Advisor

The Advisor may be a friend, mentor, advocate, family member, attorney or any other person a party chooses.

The role of the Advisor is to **offer guidance and advice** to the advisee throughout the process.

Advisor may be present at interviews and any other proceedings, but, with the exception of a Title IX Sexual Harassment hearing, may **not** speak on behalf of the advisee.

# Sexual Harassment (Title IX)

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo** - An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct
- **Unwelcome Conduct** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity of the University
  - **Non-TIX Sexual Harassment Resulting in a Hostile Environment** - sufficiently serious (severe, pervasive, OR objectively offensive) OR unreasonably interfere with employment or educational experience
- **Clery Crimes** - Sexual assault, dating violence, domestic violence, or stalking

# Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant which includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

# Domestic Violence

Any felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the State of Ohio,

OR

The use or attempted use of physical abuse or sexual abuse,

OR

Any pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a Complainant, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior by:

- A person who is a current or former spouse or intimate partner of the victim or similarly situated to a spouse of the Complainant;
- A person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner;
- A person who shares a child in common with the Complainant; or
- A person who commits acts against a youth or adult Complainant who is protected from those acts under the domestic or family violence laws of the State of Ohio.

# Sexual Assault

- **Sex Offenses, Forcible** - Any sexual act, or attempted sexual act, directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent
  - Forcible Rape
  - Forcible Sodomy
  - Sexual Assault withy an Object
  - Forcible Fondling
- **Sex Offenses, Nonforcible** - Nonforcible sexual intercourse
  - Incest
  - Statutory Rape

# Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

**Course of Conduct** - two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property

**Reasonable Person** - a reasonable person under similar circumstances and with similar identities to the Complainant

**Substantial Emotional Distress** - significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling

# Consent

- **Freely, actively and knowingly** agrees at the time to participate in a particular sexual act with a particular person
- Requires **mutually understandable** words and/or actions that demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity
  - Mutually understandable when an objective, reasonable person would consider the words and/or actions of the parties to have reached agreement to engage in the particular sexual activity
  - In the absence of mutually understandable affirmative words or actions, it becomes the responsibility of the initiator (the person who wants to engage in a specific sexual activity) to obtain effective consent from the other partner
- Has time boundaries
- Existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish consent for future sexual activity
- Regardless of the state of the Respondent, the University will **use the perspective of a "sober and reasonable person"** in determining whether one should have known about the impact of the use of alcohol; drugs; the deceptive administering of any drug, intoxicant or controlled substance; mental illness, etc. on another's ability to give consent.



# Consent (cont.)

Consent does **not** exist if...

- Agreement only inferred from a person's silence or lack of resistance
- Threat of physical force, harm or intimidation; or there is **coercion**
- Under the age required by law in the jurisdiction in which the act took place
- Someone engaging in sexual behavior knew or should have known that the other person was **incapacitated**

# Incapacitation

When a person is unaware, blacked out, asleep, unconscious, unable to make rational/reasonable decisions and/or otherwise physically or mentally helpless to give effective consent.

Indicators of incapacitation include, but are not limited to:

- Inability or diminished ability to accurately discern one's environment (who, what, where, when and/or how)
- Slurred speech; vomiting; severe intoxication
- Loss of voluntary/involuntary motor skills
- Disjointed speech patterns (unable to follow a conversation or verbalize complete thoughts)
- Sleepiness that demonstrates an inability to control one's ability to stay awake; and/or outrageous or unusual behavior

# Coercion

A person engages in threats, sexual pressuring or oppressive behavior to force another person to engage in unwanted sexual activity.

- Real or perceived power differentials between the individuals involved may create an atmosphere conducive to coercion
- Differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied, or the initiator's knowledge that the pressure is unwanted
- When one party has any professional responsibility for another's academic or job performance or professional future (i.e. faculty member and student, supervisors and employees etc.), consent may be difficult to assess, may be deemed not possible, and may be construed as coercive

# Overview of the Process



# What do next steps look like?

- Report submitted by a community member
- Title IX Coordinator reaches out via email to the community member reported to have been impacted
  - No obligation to respond to the email from the Title IX Coordinator
  - Will reach out twice to ensure the email was received

James Greenwolf (jgreenwolf@jcu.edu)

Outreach from Title IX

Hi James,

My name is Emily Sherwood, and I'm the Title IX Coordinator for John Carroll University. My job is to follow up on concerns related to sexual harassment, interpersonal violence, and any other form of sex discrimination so that students, staff, and faculty can have an educational and work environment free from discrimination. Another part of my job is to help people understand their [resources](#), including where they can [file a report](#) or matter of concern and where they can get support whether they can seek support as a reporting party or respondent.

I recently received your report, and I wanted to follow up with you regarding your options and resources for support.

Please see the attached infographics for more information about how my office can support you, including how to schedule a meeting with me. You are not required to meet with me. However, if you would like to meet with me, you may bring a support person and you do not have to report details regarding what happened in order to get support.

Please let me know if you have any questions. I look forward to meeting with you.

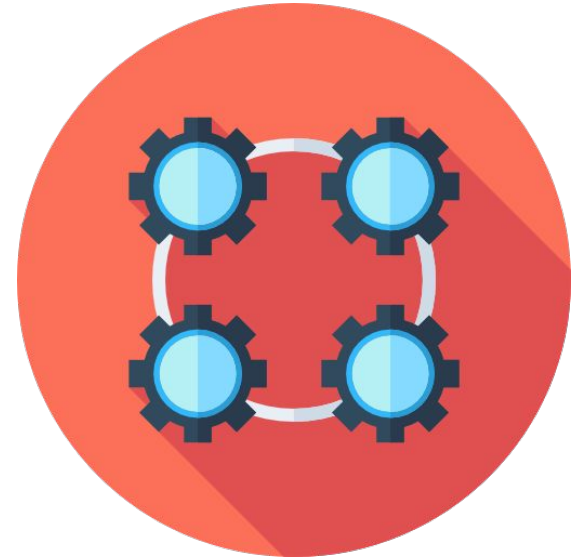
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she/her/hers



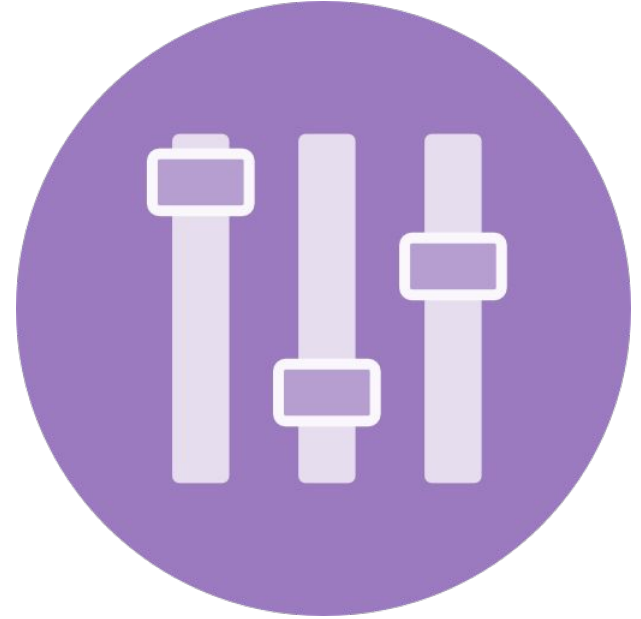
# What do next steps look like?

- Intake meeting with the Title IX Coordinator
  - Do not need to say what happened in order to receive support
  - Complainant determines if they want to pursue a formal process in most cases
  - Title IX Coordinator may decide to engage in a formal process in rare circumstances that involve a larger safety concern/threat to the campus community
- Complainant may elect to file a formal complaint
  - Investigation and hearing
  - Resolution by agreement
- Primary goal is to **ensure the community member has access to our educational programs and/or activities**

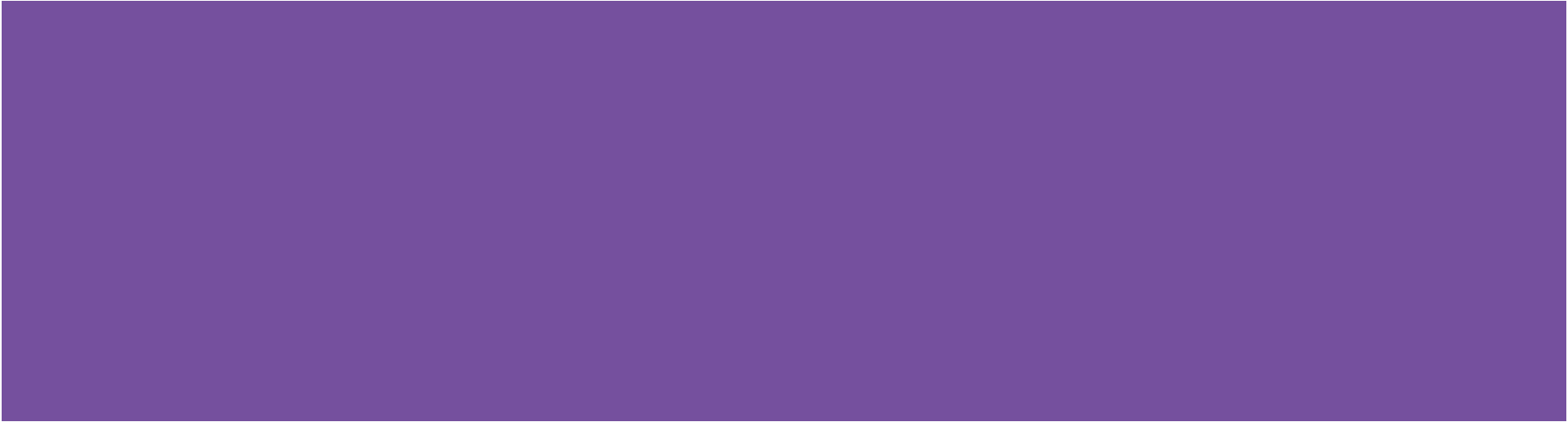


# What are supportive measures?

- What is a supportive measure?
  - Restore/preserve equal access to educational programs or activities
  - Should not unreasonably burden the other party
  - **Non-punitive**
- Examples of supportive measures
  - Counseling
  - Course adjustments
  - Employment adjustments
  - No contact directives
  - Leave of absence
  - Safety planning with JCUPD



# Filing a Formal Complaint





# Dismissal

- Complaints may be dismissed by the TIX Coordinator if no violation of the Interim Sexual Harassment and Interpersonal Violence Policy is alleged
  - May be referred to another office
  - Usually DoS, Human Resources, or an Academic Dean
- Complainant may withdraw their formal complaint
- May dismiss if the Respondent is no longer enrolled at the university
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination



## Process A - TIX

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- Only covers conduct that occurs within an educational program or activity (traditionally on-campus conduct)
- Specific legal definitions of violations
- Requires live hearing and cross examination

## Process B - Non-TIX

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- Covers conduct that occurs off-campus or outside of the United States
- Broader definitions of violations
- Live hearing and cross examination not required

## Resolution by Agreement

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- May be used in an any situation where Process A or Process B may be utilized
- Both parties need to opt into the process
- Respondent cannot be an employee
- May continue an investigation at any time

# Timeline

- Intake meeting with the Complainant
  - Complainant may elect to not meet, take no action, just receive supportive measures, or file a formal complaint
- Formal Complaint is filed
- Notice of Investigation is sent
- Investigation begins
  - Amount of time varies
  - Usually takes several weeks
- Preliminary report is sent to the parties
  - 10 calendar days to review report
  - May respond or request further investigation
- Final report is sent to the parties
  - 10 calendar days to review
- Hearing is held
  - Often takes several hours
  - Ask those involved to hold most of the day
- Notice of Outcome is issued to both parties
  - Must be issued within five business days of the hearing



\*Policy provides goal of completion of resolution process = 120 days

# Notice of Investigation

- Send to both parties when a formal complaint is filed
- Notice of Investigation has:
  - Allegations
  - Alleged violations
  - Policy
  - Prohibition on retaliation
  - Resources
  - Offer to Respondent to meet
- Sent before an investigation or resolution by agreement process begins



# Investigation

- Investigators will reach out to both parties for interviews
- Interview witnesses and collect other evidence as needed
- Amnesty
  - Will provide amnesty for minor violations
  - Want to encourage parties and witnesses to be honest
- Compile the investigation report
- Resource Folder
  - Formal complaint
  - Initial report
  - Notice of Investigation
  - Script for interviews
  - Emails templates
  - Example investigation report



# Hearing

- Complaint Review Panel (CRP) will consist of three (3) members
- Led by a non-voting hearing chair
- Decision-makers will ask questions of the parties (and witnesses in some cases)
- Resource Folder
  - ATIXA Sanctioning Guide
  - Policy
  - Alleged violations
  - Investigation report
  - Hearing script
  - Guide for asking questions

# Hearing

Process A (TIX)	Process B (Non-TIX)
Live hearing	Parties appear separately
Witnesses may be questioned by parties and decision-makers	Witnesses do not appear at the hearing
Cross examination by parties' advisors	No cross examination
Audio recording	No recording

# Preponderance of the Evidence

**MORE LIKELY THAN NOT**





# Notice of Outcome

- Sent to both parties within five business days of the hearing
- Notice of Outcome includes:
  - Finding on each alleged policy violation
  - Any sanctions (if applicable)
  - Rationale supporting each essential finding
- Important for the rationale to be discussed and documented
  - Helps the parties understand the decision
  - Demonstrates that the policy was applied appropriately



# Appeals

The grounds for appeal are:

- A 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
- 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; and/or.
- Disciplinary sanction(s) imposed are substantially outside the parameters or guidelines set by the University for this

# Appeals (cont.)

- Must be received within five (5) business days of receiving the Notice of Outcome
- Will be heard by a Appeal Review Panel (APR)
  - Led by a non-voting chair
  - APR will consist of three (3) members
- Chair will determine if appeal is timely and satisfies the grounds for appeal
- Not a full re-hearing of the case but just deciding if appeal should be granted
- May take several actions:
  - Affirm original findings
  - Remand the case
  - Alter the sanctions

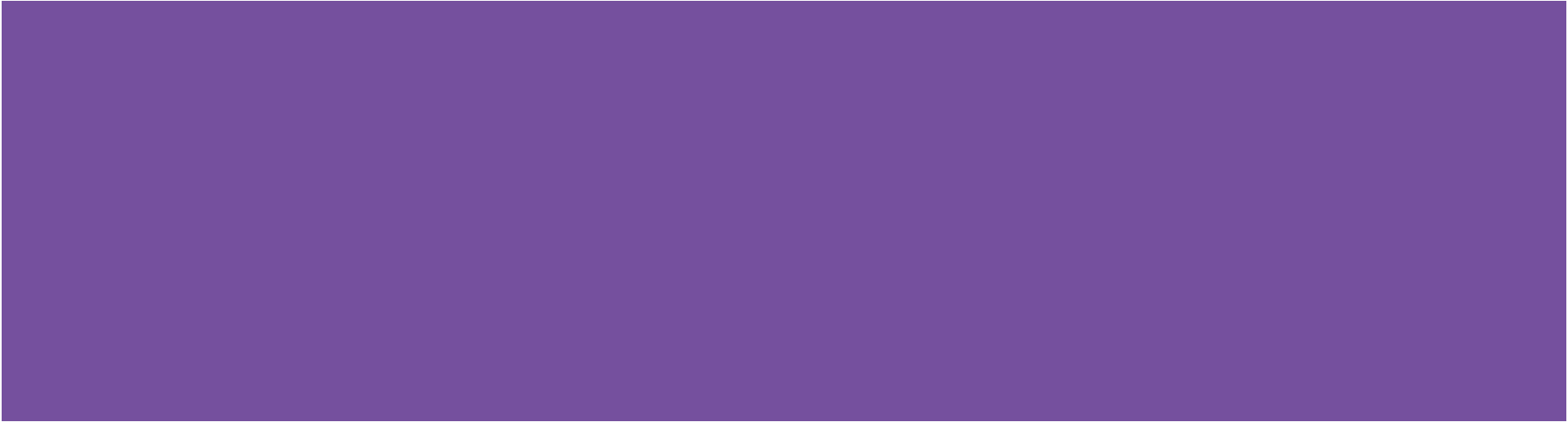


# Resolution by Agreement

- Cooperative way for the parties to resolve the concern
  - Shuttle mediation between the two parties conducted by a facilitator
  - Both parties must opt into the process
  - Agreement is enforced by JCU
- Parties may decide to pursue an investigation at any point before an agreement is reached
- Not available to student Complainant and a faculty/staff Respondent



# Skills



# What does it mean to be impartial?

- **Avoiding pre-judgment**
  - Statistics are not determinative of individual cases
  - Avoid filling evidentiary gaps with information that is not available
  - Parties may not behave how you expect them to
- **Conflicts of interest**
  - Connections to the parties
  - Relationships with organizations that the parties are a part of
- **Bias**
  - Be aware of your own biases
  - Base judgements on the available facts and information



# What information is relevant?

- TIX Coordinator or Hearing Chair will make relevance determinations
  - TIX Coordinator → Investigation
  - Hearing Chair → Hearing
- Questions to consider...
  - Does this help me decide if it is more likely than not that a violation occurred?
  - Does this question help me create a complete account of this particular incident or set of circumstances?
  - Does this question reflect a bias or pre-judgement?



# What information is NOT relevant?

- Character evidence
- Prior sexual history/Sexual predisposition
  - Generally not relevant
  - May be relevant to determine how consent was granted previously in the relationship between the parties if consent is at issue
  - Remember that consent to one sexual act does not constitute consent to another
- Prior conduct history
  - May be utilized in sanctioning
  - Decision-makers will not be made aware of prior history unless Respondent is held responsible
- Information protected by a legal privilege
- A party's treatment records
- A party declining to participate
  - Both parties have the right not to participate
  - Make decision based on the information available



# What factors go into determining credibility?

- **Consistency**
  - Determine where narratives diverge between the parties
  - Consider how witness narratives and other evidence aligns with those narratives
- **Plausibility**
  - What narrative seems more likely than not to be the most plausible?
  - Keep in mind how bias may play a role in making plausibility determinations
- **Detail**
  - Level of detail may differ between accounts
  - May need to ask question to draw out some of the details
- **Corroborative evidence**
  - Texts/Snapchats/Etc.
  - Witness statements
- **Post-incident behavior of the parties**
  - Conversations with friends or others after the incident
  - Performance in classes or other activities
  - Interactions between the parties

# How do we ensure that information is private?

- Avoid talking about the case with others
  - Can speak to other decision-makers/investigators on the case and the TIX Coordinator
  - Be aware of the venue in which conversations take place
- Review case files in a private area
- Refer questions about the case to the TIX Coordinator
- Documents created by JCU are watermarked and parties made aware that the documents should not be shared widely
  - May share their experience
  - Goal is to ensure both parties' privacy is respected as much as possible



# Zoom Tutorial



# Questions?

