



Title IX Decision Maker and Informal Resolution Process Facilitator Training

January 2022

Policy 311-A

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Introduction

Vermont State Colleges has several policies to address our obligations relating to specific legal challenges: sexual misconduct, discrimination, harassment, and abuse of minors.

This training will provide The Title IX/Policy 311-A Hearing Officer(s) with an overview of these policies, as well as provide specific information regarding a Hearing Officer's role.

Overview

- Current Title IX regulations effective August 14, 2020
- Policy 311-A (sexual harassment/assault policy)

TITLE IX REGULATIONS

Title IX

- Prohibits discrimination on the basis of sex in any federally-funded education program or activity
- Protects ALL students
- Protects ALL employees
- Enforced by Dept. of Education's Office for Civil Rights

Title IX and Current Regulations

- The definition of Title IX sexual harassment covers:
 - A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called **quid pro quo harassment**)
 - Unwelcome conduct on the basis of sex that is so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity
 - **Sexual assault**, as defined under the Clery Act

Clery Act: The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

- Requires all colleges and universities that participate in federal financial aid programs to keep and report information about crime on or near their campuses.
- Employees designated as Campus Security Authorities under the Act are required to report certain crimes to their campus Office of Public Safety to comply with the Act.
- The Offices of Public Safety for the member Colleges will include any reported incidents of **dating violence, domestic violence, sexual assault, and stalking, along with other crimes**, in the campus daily crime log and annual security report, as required by the Clery Act.
- Public Safety also responsible to issue timely warnings of crimes or threats to the VSC community or if it becomes aware of such reports made to local law enforcement.
- No personally identifying information is included in the public reports required by the Act.

Title IX and Current Regulations

Schools obligated to respond to complaints when:

1. The school has actual knowledge of sexual harassment;
2. that occurred within the school's own "education program or activity";

This means conduct occurs in a location, at an event, or in a circumstance where VSC exercises substantial control over both the respondent and the context in which the conduct occurs

3. against a "person in the United States."

POLICY 311-A

Title IX at VSC: Policy 311-A

VSC addresses Title IX through Policy 311-A, which has the following Policy Statement:

The VSC is committed to maintaining an educational and working environment free from all forms of sex discrimination, including sexual harassment ... and committed to maintaining an educational and working environment free from sexual exploitation, domestic violence, dating violence, sexual assault, and stalking.

Policy 311-A

- VSC Policy 311-A: *Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, Sexual Assault, and Stalking*
 - Defined **scope of coverage**
 - Includes a prohibition on “retaliation”
 - Terms throughout
 - “complainant”
 - “respondent”

Policy 311-A: Scope of Coverage

- Controlling definition: **Prohibited Conduct**
 - **Title IX Sexual Harassment**
 - Within VSC “program or activity”
 - » exercises substantial control over both the respondent and the context in which the conduct occurs
 - » in any building owned or controlled by a student organization recognized by VSC
 - Within the United States
 - **Non-Title IX Sexual Misconduct**
 - Nearly identical definitions BUT can include off-campus conduct (outside “program or activity”)

Policy 311-A: Scope of Coverage

Title IX & Non –Title IX Sexual Harassment includes:

- Quid Pro Quo Sexual Harassment
- Severe, Pervasive and Objectively Offensive Sexual Harassment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Sex-based Stalking

Policy 311-A: Scope of Coverage

- **Non-Title IX Sexual Misconduct**
 - Same conduct as Title IX Sexual Harassment, but broader application, outside “programs or activities”

POLICY 311-A IMPLEMENTING PROCEDURES

Policy 311-A: Implementing Procedures

- Provides supportive measures
- Spells out the process for
 - Receiving reports and initial review of allegations
 - Sending out notice to parties
 - Investigation (interviews, gathering evidence)
 - Drafting and reviewing investigation report
 - Live hearing and adjudication of responsibility
 - Sanctions and appeals

Policy 311-A: Implementing Procedures

Two Outcomes:

– Formal Decision

– Informal Resolution

- Only if all parties and Title IX Coordinator agree it would be appropriate
- Could use mediation or restorative justice model

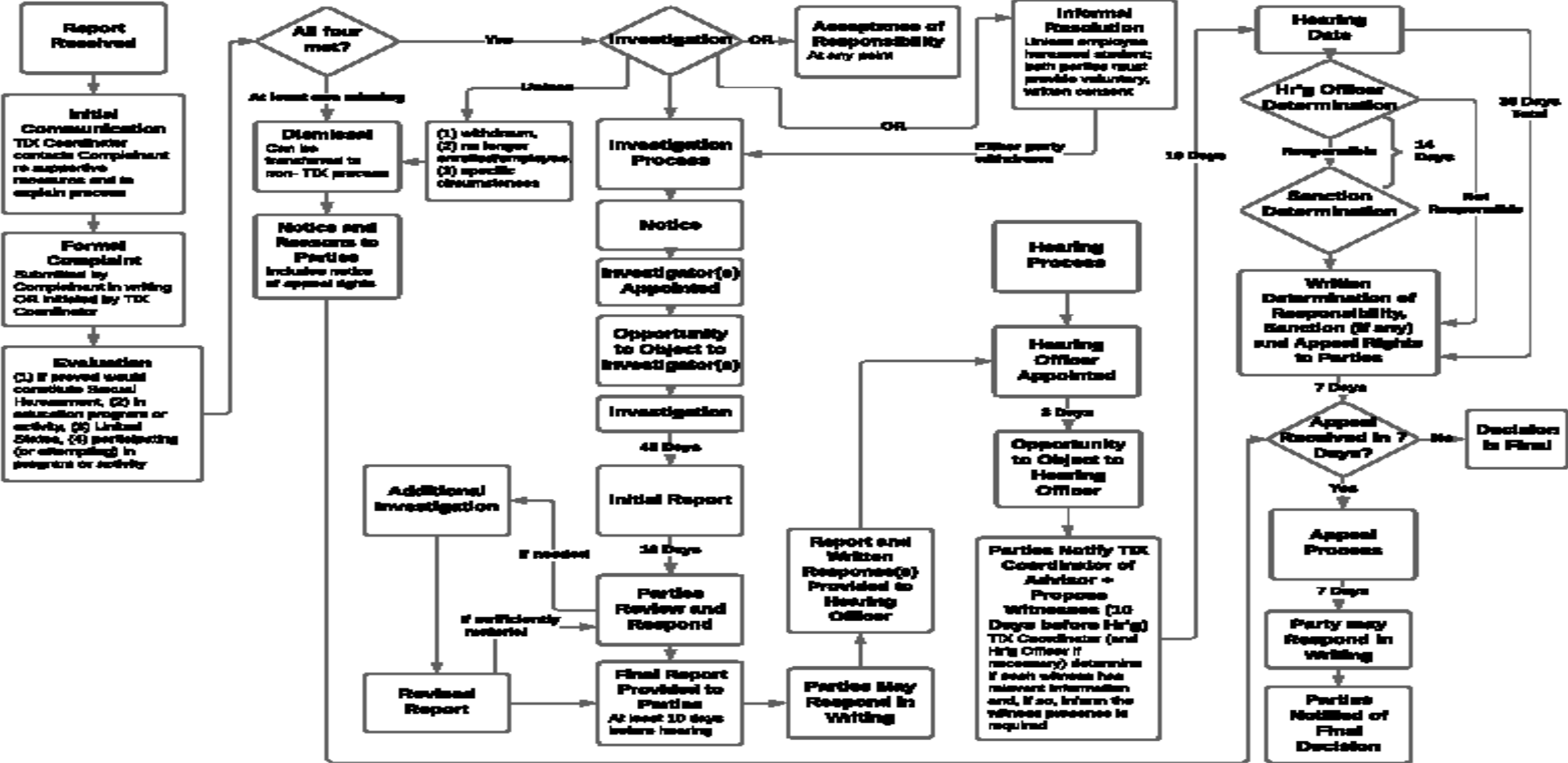
WHO MAKES THE FORMAL DECISION IN TITLE IX/311-A MATTERS?

Policy designates the Hearing Officer to determine responsibility and the Responsible College Administrators (RCA) to determine sanctions (if appropriate), as follows:

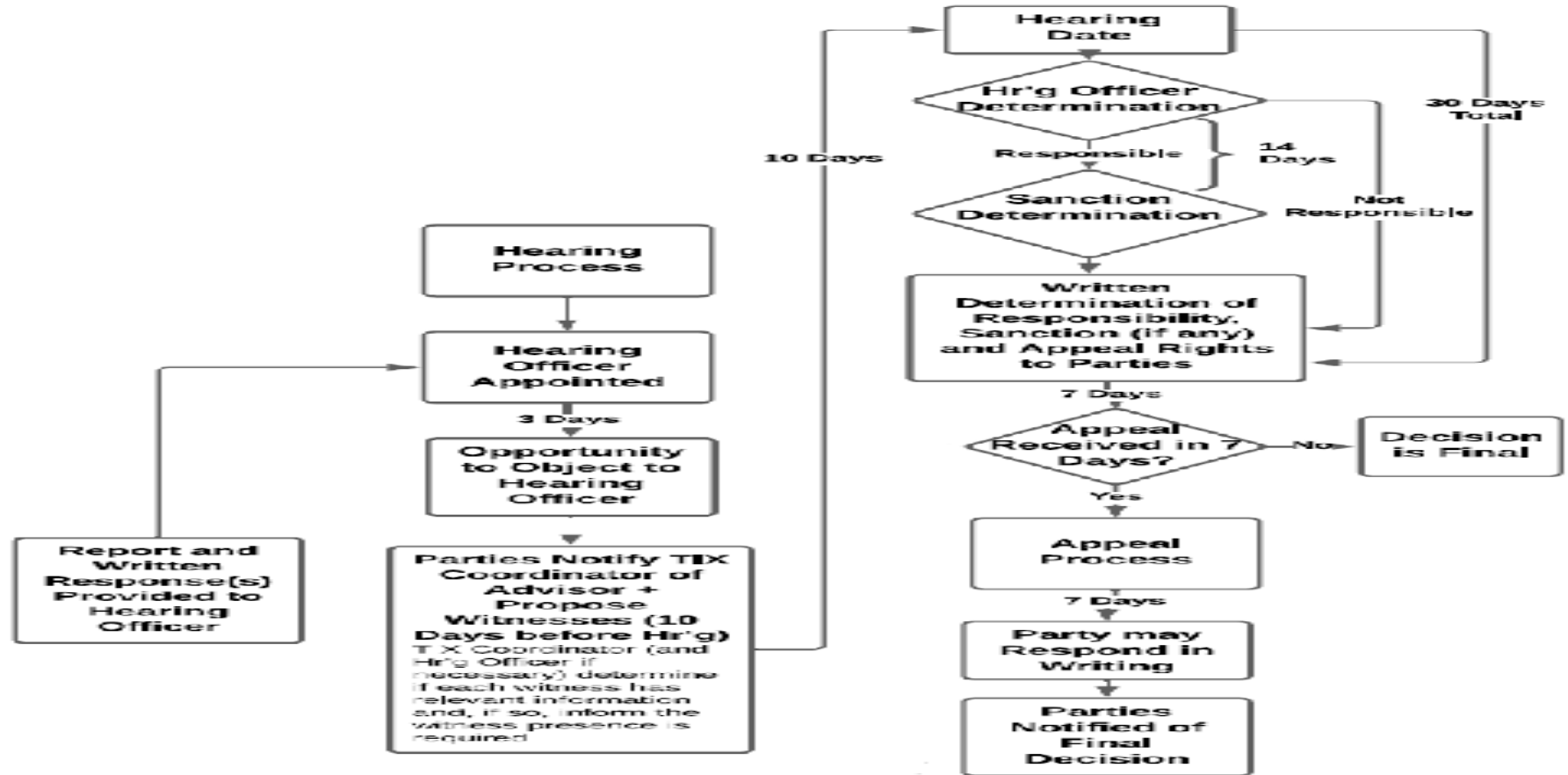
- Complaints involving students → RCA Dean of Students/designee
- Complaints involving employees → RCA President/designee
- Complaints involving Chancellor or Trustee → RCA Board Chair

PROCESS

THE PROCESS



HEARING PROCESS FOCUS



THE HEARING

THE HEARING OFFICER

- Serve impartially
 - Avoid prejudgment of the facts at issue, bias, and conflicts of interest
- Preside over the hearing
- Objectively evaluate all relevant evidence
 - Inculpatory & exculpatory
- Independently reach a determination regarding responsibility
 - Cannot give deference to an investigation report

THE HEARING

- Live – virtual or physically present
- With Cross-Examination
 - *An opportunity for the Hearing Officer to ask questions of parties/witnesses, and to observe how parties/witnesses answer questions posed by the other party*
- Results in a determination of responsibility

THE DETERMINATION

- Hearing Officer will must make the determination regarding responsibility
- Preponderance of the evidence standard applied
- Prepare a written determination
- Sanction(s) on the Respondent (if necessary) will be imposed by the RCA upon review of, or in collaboration with, the Hearing Officer's determination

THE DETERMINATION : IMPORTANT CONSIDERATIONS

- Respondent must be presumed not responsible
- Determination is based on an objective evaluation of all relevant evidence (including inculpatory and exculpatory)
- Credibility is not determined by an individual's status as a Complainant, Respondent, or a witness.

REQUIREMENTS OF WRITTEN DETERMINATION

- Identify the VSC's Policy 311-A alleged to have been violated
- Describe the procedural steps taken from the receipt of the complaint through the determination
- Findings of fact supporting the determination
- Conclusions regarding the application of definition in VSC's Policy 311-A to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility
- Identify VSC's appeal's basis and process

SERVE IMPARTIALLY

- Avoid prejudgment of the facts at issue, conflicts of interest, and bias
- Cannot rely on stereotypes

BEING IMPARTIAL

- There can be no conflicts of interest
- If there is a conflict of interest, then one can not be the Decision-Maker
- The Decision-Maker can not be for or against complainants or respondents generally or an individual complainant or respondent
- If a complainant is given an opportunity, then the respondent must be given the same opportunity and vice versa
- The Decision-Maker will avoid prejudgment of the facts at issue
- The Decision-Maker will treat all parties the same regardless of their status as a complainant, respondent, or witness
- The Decision-Maker must keep in mind that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process
- The Decision-Maker will be free of bias and avoid making decisions based on stereotypes

AVOID PREJUDGMENT

- Cannot pass judgment on the allegations presented by either party or witnesses
- Cannot jump to any conclusions without fully investigating the allegations and gathering all the relevant facts and evidence from all the parties involved
- Title IX Coordinators and other personnel may not “believe” one party or the other

AVOID PREJUDGMENT Cont'd

- Sex stereotypes prohibited
 - Decisions must be based on individualized facts, and not on stereotypical notions of what “men” and “women” do or not do
- Best Practices:
 - Leave all stereotypes about men and women at the door (including prior experiences connected to previous cases or personal matters)
 - Approach the allegations (of both parties) with neutrality at the onset
 - Treat both parties equally and provide equal opportunity to present evidence, witnesses and their perspectives of the event.

SELF –DISCLOSE CONFLICT OF INTEREST

- If Title IX personnel feel that they have a conflict of interest and are incapable of acting impartially, they should step down from their role in the Title IX process immediately.

Bias and Stereotypes

- **A Decision-Maker must be free of bias and stereotypes**
 - A bias is a feeling or preference that interferes with an impartial judgment for or against; usually considered to be unfair
 - A stereotype is a widely held, but fixed and oversimplified image or idea of a particular group of people, lacking any individuality
- **Examples of biases and sex stereotypes to refrain from:**
 - The complainant is automatically right because they're the victim
 - Determination of responsibility will only be made at the **END** of the Grievance Procedure and must be based upon the preponderance of the evidence
 - Only men can sexually harass others
 - One's gender, sex, sexual orientation, etc. must **NOT** be used against them when determining responsibility

Bias and Stereotypes Cont'd

- **Conscious or Explicit:**
 - In the case of explicit or conscious bias, the person is very clear about his or her feelings and attitudes, and related behaviors are conducted with intent
 - This type of bias is processed neurologically at a conscious level as declarative, semantic memory, and in words
 - Conscious bias in its extreme is characterized by overt negative behavior that can be expressed through physical and verbal harassment or through more subtle means such as exclusion
- **Unconscious or Implicit:**
 - Implicit or unconscious bias operates outside of the person's awareness.
 - It can be in direct contradiction to a person's beliefs and values.
 - Implicit bias is dangerous in that it automatically seeps into a person's affect or behavior and is outside of the full awareness of that individual.
- **Implicit bias can interfere with decision-making, and professional relationships such that the goals that are established are compromised**
 - These biases are associated with stereotyping.

Overcoming Bias and Stereotypes

To overcome biases, we must:

- **First**, recognize that we have them.
 - Be honest with yourself and admit to having the biases
- **Second**, understand why we have them.
 - Was it taught by your environment or did a negative experience cause the bias?
- **Third**, make a conscious effort not to let them control our decisions.
 - Take control of the bias! Understand the cause and work out the solution to let it go!

VSC's Title IX/Policy 311-A Website

<https://resolve.vsc.edu/>

VSC

Questions?