



Annual Training for Advanced Title IX Coordinators and Deputy Coordinators

SEXUAL MISCONDUCT POLICY CHECKLIST

The following checklist for sexual misconduct policies (checklist) highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies as part of their overall response to sexual misconduct. This is an adaptation of the checklist released by the White House Task Force. While not all items are necessarily required by Title IX or the Violence Against Women Reauthorization Act, this document can be used as a guided checklist for developing effective sexual misconduct policies. However, the institutions should not adopt the checklist, in part or in whole, without first engaging in a comprehensive drafting process that considers the unique aspects of the institution and its student body. The items listed in the checklist are intended to be guidelines, neither exhaustive nor exclusive, to help a school cover the important bases.

The policy of each institution will vary in detail, specificity, and components, reflecting differences in state or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences.

The following checklist highlights elements that are particularly important for institutions to consider when drafting sexual misconduct policies:

1. Introduction

- a. Notice of Nondiscrimination.
- b. Statement of the school's commitment to address sex discrimination, which includes sexual harassment, sexual violence, and sexual misconduct.
 - i. Statement that the school will take steps to prevent recurrence of sexual harassment, sexual violence, and sexual misconduct and to correct its effects on complainants and others.

2. Scope of the Policy

- a. Identify the persons, conduct, locations (including off-campus), programs, activities, and relationships covered by the school's sexual misconduct policy.
- b. Explain policy and disciplinary jurisdiction applies to off-campus conduct that impacts/has continuing effects on the educational or employment environment.
- c. Explain that the policy applies to all students, employees, and third parties, regardless of sexual orientation or gender identity.

3. Definitions

- a. Clearly define all conduct prohibited by the policy, including:
 - i. Sex discrimination;
 - ii. Sexual harassment;
 - iii. Sexual misconduct;
 - iv. Hostile environment caused by sexual harassment;
 - v. Sexual assault;
 - vi. Domestic violence;
 - vii. Dating violence;
 - viii. Stalking;
 - ix. Retaliation
- b. Additional terms that should be defined include:
 - i. Consent;
 - 1. the input of students and sexual assault experts can be helpful in developing a definition of consent. At minimum, the definition should recognize that:
 - a. consent is a voluntary agreement to engage in sexual activity;
 - b. someone who is incapacitated cannot consent;
 - c. past consent does not imply future consent;

- d. silence or an absence of resistance does not imply consent;
 - e. consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
 - f. consent can be withdrawn at any time; and
 - g. coercion, force, or threat of either invalidates consent.
 - 2. The policy's definition may set a higher standard than state law, but cannot be less stringent than the applicable state law.
- ii. Incapacitated;
 - 1. Such as:
 - a. due to the use of drugs or alcohol;
 - b. when a person is asleep or unconscious; or
 - c. because of an intellectual or other disability that prevents the student from having the capacity to give consent.
 - 2. The policy's definition may set a higher standard than state law, but cannot be less stringent than the applicable state law.

4. Title IX Coordinator

- a. Identify the school's Title IX coordinator and deputy coordinators (if any).
- b. Briefly explain each individual's role in the school's overall response to sexual misconduct.
- c. Include contact information for the Title IX coordinator.
- d. Provide references to sections of the policy that provide greater details regarding the Title IX coordinator's duties.

- e. At a minimum, the Title IX coordinator is responsible for:
 - i. Overseeing all Title IX complaints;
 - ii. Identifying and addressing any patterns or systemic problems that arise during the review of such complaints; and
 - iii. Assisting in answering any other questions related to these policies and procedures.

5. Immediate Action and Assistance Following an Incident of Sexual Misconduct

- a. Identify and provide contact information for the trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation (e.g., obtain needed resources, explain reporting options, and help navigate the reporting process).
- b. Provide emergency numbers for on- and off-campus safety, law enforcement, and other first responders (e.g., the Title IX coordinator).
- c. Explain the importance of preserving evidence as may be necessary to the proof of sexual assault or a VAWA crime, or in obtaining a protection order.*¹
- d. Identify health care options, both on- and off- campus:
 - i. Include options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services.
 - ii. Discuss the option of seeking medical treatment in order to preserve evidence. And include steps victims should take to preserve evidence of covered violence and/or stalking.
 - iii. Identify where/how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE).
 - iv. List locations, including contact information, for an advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider.
- e. Explain the rights of victims and the institution’s responsibilities regarding orders of protection, no contact orders, restraining orders, or

¹ An asterisk (*) connotes mandatory items as set forth in the VAWA final regulations, 668 CFR § 668.46.

similar law orders issued by a criminal, civil, or tribal court or by the institution.*

- f. Identify other services available on- and off- campus.

6. Reporting Options and Considerations

- a. Describe policies governing confidentiality.
 - i. Identify confidential resources.
 - ii. Consider whether to identify those “responsible employees” who must report incidents (including personally identifying details) to the Title IX coordinator. Consider particularly how a school will ensure that a student understands an employee’s reporting obligation before he or she reveals any information to that employee.
 - iii. Describe what information will be kept confidential and what information may be disclosed, to whom it will be disclosed, and why (FERPA, Clery, state law privileges).
 - iv. Explain when the school may not be able to honor a student’s request that his or her name not be disclosed to the alleged perpetrator or that no investigatory or disciplinary action be taken. Identify the employee responsible for evaluating such requests for confidentiality or no action.
 - v. Explain institution's mandatory reporting obligations; cross-reference mandatory reporting policy.
 - vi. Explain how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will:.*
 - 1. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of identifying information about the victim, to the extent permissible by law.*

- 2. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.*
- b. Reporting to the institution.
 - i. Explain how and to whom the alleged offense should be reported.*
 - ii. Identify the Title IX coordinator.
 - iii. Identify other designated employees.
 - iv. Discuss responsible employees.
 - v. Cross-reference confidential resources.
 - vi. Differentiate report from complaint.
 - vii. Explain the process for third-party and anonymous reporting.
 - viii. Describe when school will grant amnesty from student conduct policies.
- c. Reporting to law enforcement.
 - i. Explain options regarding law enforcement and campus authorities, including notification of the victim's option to:*
 - 1. Notify proper law enforcement authorities, including on-campus and local police;*
 - 2. Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses;* and
 - 3. Decline to notify such authorities.*
 - ii. Explain that a report to law enforcement is not necessary for school to proceed with an investigation.
- d. Explain the school's reporting obligations under the Clery Act, including the annual reporting responsibilities of campus security authorities and the school's obligation to issue timely warnings.

- e. Align a complainant's reporting options with applicable state law.

7. Resources and Interim Measures

- a. Provide information about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both on campus and in the community.*
- b. Provide information about academic assistance.
- c. Include contact information.
- d. Cross-reference resources listed under Immediate Action & Assistance.
- e. Explain options for, available assistance in, and how to request changes to academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.*
- f. Identify additional resources and interim measures available, such as no contact orders and changing the alleged perpetrator's living arrangements or course schedule.

8. Complaint Procedures

- a. Identify and explain Title IX coordinator(s) roles and responsibilities.
- b. Identify investigators, adjudicators, sanctioning officials, and appeals officials or explain process for selecting them.
- c. Identify each type of disciplinary proceeding used by the institution and explain how the institution determines which type of proceeding to use based on the circumstances of an allegation.*
- d. Explain how to file a disciplinary complaint.*
- e. Explain the steps, anticipated timelines, and decision-making process for each type of disciplinary complaint.*
- f. Explain informal process, if applicable; state that mediation is never appropriate in sexual assault cases.
- g. Provide equitable rights and transparency to the parties.
- h. Discuss interaction with law enforcement.

- i. Set forth parameters and clarify what information may and may not be shared during a parallel investigation with law enforcement (e.g., via a memorandum of understanding with local law enforcement).
- i. Explain the processes for preserving evidence.
- j. Provide the respondent and complainant equitable rights during the investigative process.
- k. Explain/cross-reference interim measures: that where necessary, the school will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to change housing or dining facilities; change work schedules; alter academic schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator's living arrangements or course schedule.
- l. Explain/cross-reference the school's response if a complainant's request for confidentiality limits the school's ability to investigate a particular matter. A school may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the school's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.
- m. State that proceedings will:*
 - i. Provide a prompt, fair, and impartial investigation and resolution;* and
 - ii. Be conducted by officials who receive annual training on the issues related to sexual harassment, domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and decision-making process that protects the safety of victims and promotes accountability.*
- n. Advisors: explain the persons who may attend and/or participate in the process and the extent of that participation.

- i. Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice* – Sexual Assault & VAWA Crimes Only.
 - ii. Must not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding (must permit attorneys)* – Sexual Assault & VAWA Crimes Only.
 - 1. However, the institution 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.
 - iii. Outline the parties' rights, if any, to have advisors present for cases that do not involve allegations of sexual assault or a VAWA crime.
 - 1. Right to advisor must be equal.
 - 2. Limitations on who can serve as advisor must be equal.
 - 3. Limitations on role of advisor must be equal.
- o. Timing
 - i. Designate reasonably prompt timeframes within which the proceedings will be completed.*
 - ii. Describe the process for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay.*
 - iii. OCR says average from complaint to decision/sanctions is 60 days (excluding appeal).
- p. Conflicts of Interest
 - i. State that proceedings will be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.*
 - ii. Describe procedure for reporting conflicts and requesting removal of investigator/adjudicator.

- q. State that the proceeding will be conducted in a manner that:
 - i. Includes timely notice of meetings at which the accuser or accused, or both, may be present.* – Sexual Assault & VAWA Crimes Only.
 - ii. Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.* – Sexual Assault & VAWA Crimes Only.

- r. Standard of Evidence
 - i. State the standard of evidence that will be used during any institutional conduct proceeding arising from such a report.*
 - ii. Title IX requires the preponderance-of-the-evidence standard (more likely than not).

- s. If using a hearing process: Outline the rights and roles of both parties in the adjudication process, including:
 - i. Notice of hearing(s) to both parties.
 - ii. Access to all information used in hearing.
 - iii. An opportunity for both parties to present witnesses and other evidence, including:
 - 1. a description of the types of evidence that may or may not be presented, including but not limited to:
 - a. prohibiting questioning or evidence about the complainant’s prior sexual conduct with anyone other than the respondent; and
 - b. clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.
 - 2. if the school conducts a hearing, and generally allows for cross-examination, a description of alternative methods that preclude the respondent from personally cross-examining the complainant.

- a. Disclose all sanctions and rationale to both parties for cases of sexual assault or VAWA crime.*
 - b. Only disclose to complainant those sanctions imposed on the respondent that relate to the complainant for other Title IX matters.
- 3. Other steps the school has taken to eliminate the hostile environment and prevent recurrence.
- iii. A statement that the school will not require a party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the re-disclosure of information related to the outcome of the proceeding.

9. Appeal Procedures

- a. Describe the appellate procedures (if appeals are permitted), including:
 - i. Grounds for appeal, e.g.;
 - 1. New evidence;
 - 2. Unfair investigation/hearing;
 - 3. Failure to follow policy; and
 - 4. Sanctions too severe/lenient.
 - ii. Standards of review.
 - iii. The individual(s) that will decide appeals or the process for selecting such individual(s).
 - iv. The applicable reasonably prompt time frames.

10. Retaliation

- a. Ensure the policy prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or disciplinary process (e.g., as a witness), and explain that the school will take strong responsive action if retaliation occurs.
- b. Provide instructions and contact information for reporting retaliation.