

The Salon Professional Academy (TSPA) is committed to providing an educational environment that is free of sexual discrimination, sexual harassment, and sexual violence. While this policy serves as TSPA's commitment to complying with Title IX requirements, it also serves as a call to action to build on the decades of progress and pave the way forward as we strive.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any education program or activity that receives federal funding.

Under Title IX, discrimination based on sex includes:

- Excluding, separating, denying benefits to, or otherwise treating a person differently based on gender
- Sexual Harassment
- Sexual violence, which includes sexual assault, relationship violence, and stalking

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

In the event of a Title IX complaint, where a Title IX Coordinator, Adjudicator or Investigator must review the complaint through its complaint process, annual trainings are certified and obtained through the following resources for the Title IX Coordinator, adjudicator, investigator and informal resolution officers to ensure that Complainants and Respondents will be treated equally and fairly following the Title IX requirements:

The Compliant/Grievance Policy and Procedure can be found in the Student Handbook or Admissions Office. The Title IX Coordinator may also be contacted at [TitleIXCoordinator@tspacoloradosprings.com](mailto:TitleIXCoordinator@tspacoloradosprings.com)

AACS at <https://www.aacstraining.org/courses/CM140?sn=CM140>:

This course is designed to assist personnel at all levels of an educational institution in the understanding of the provisions of Title IX of the Education Amendments of 1972 ("Title IX"), and the Clery Act as it was amended in the Violence Against Women Reauthorization Act of 2013. ("VAWA"). These laws require that all individuals in an educational institution understand and comply with the laws in terms of what is prohibited behavior in relation to sexual harassment and/or sexual violence, and what steps are to be followed when such prohibited conduct occurs. This course gives the participants information about the laws, as well as procedures to follow, to provide for the rights of all individuals under the laws. It also provides additional resources to assist educational institutions in continuing to build and strengthen their Title IX and VAWA policies, procedures and training throughout the year.

The sexual harassment and full campus security/annual security report may be obtained in the Admissions Office at The Salon Professional Academy.

# Title IX Coordinator Training

AACS 2023 Training

# Reference Materials

- Reference materials:
  - Institution's Title IX Policy and Grievance Procedures
  - Institution's most recent Clery Act Annual Security Report
  - [Other Institutional policies, procedures, and program materials relevant to Title IX and the Violence Against Women Act (VAWA)]

Why This Matters

# Sexual Harassment/Violence in Colleges

- As of September 2015, there were over 130 postsecondary education institutions under investigation by the Department of Education's Office for Civil Rights (OCR) for Title IX Violations
- Investigations focus on the school's handling of sexual violence and harassment complaints

# Title IX

# Sources of Law

- Statutory: Title IX, VAWA
- Regulatory: Federal regulations 34 CFR §§ 668.46 (VAWA)
- Guidance: Dear Colleague Letters and Office for OCR Q&A

# Title IX

No person in the United States shall on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.

# Gender Discrimination

- “Denial of access to education” is interpreted very broadly
- Includes:
  - express bans based on gender
  - treating students differently based on gender
  - discrimination based on gender
- Discrimination includes sexual harassment and sexual violence

# What Is Sexual Harassment?

- Unwelcome conduct of a sexual nature
- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive school environment
- Sexual harassment is prohibited by school policy and is unlawful

# What Is Sexual Violence?

- Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent)
- A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion
- Sexual violence can be carried out by school employees, other students, or third parties
- All such acts of sexual violence are forms of sex discrimination prohibited by Title IX

# What's Changed?

- Title IX has always prohibited discrimination, including sexual harassment
- Following VAWA, schools have to do more to detect and prevent discrimination, including sexual violence, in addition to responding to allegations of such
- Schools' obligations have been expanded and the August 2020 final rule includes a prescribed grievance process with an investigative process. These rules also outline a live hearing process allowing for cross-examination by designated advisors for each party.
- An appeal process, available to both parties, must be established.

# Sex vs. Gender

- Note that the language in the statute refers to “sex” not gender
- This has been interpreted to cover “gender stereotypes”— i.e., the roles that men and women traditionally play
- Students and employees are protected from discrimination/harassment/sexual violence on the basis of their sex
- Extends to the LGBT community

# Who Is Protected?

- Title IX's sexual harassment and discrimination provisions (including sexual violence) extend to both employees and students
- This means that for employees, in addition to guaranteeing their rights under other state and federal laws, the school has additional obligations under Title IX

# Where Does Title IX Apply?

- Extends to all school-related activities — on and off campus, over which the school exercised substantial control, and the act was against a person in the United States

# Compliance Checklist

- Schools must establish the following:
  - Notice of Nondiscrimination
  - Title IX Coordinator(s)
  - Grievance Procedure
  - Means to conduct investigations and hearings
  - Appeal procedures

# Notice of Nondiscrimination

- Puts students and employees on notice of their rights under Title IX
- Provides information for contacting the school's Title IX coordinator and OCR
- It's okay to update via catalog addendum or other notice; must also include in a public facing website

# Notice of Nondiscrimination Checklist

Must include the following:

- ✓ The school does not discriminate on the basis of sex in its education programs and activities
- ✓ The school is required by Title IX not to discriminate in this way
- ✓ Questions regarding Title IX may be referred to the Title IX Coordinator or the OCR
- ✓ Name, office address, phone, and email address of the Title IX Coordinator(s)

# Title IX Coordinator(s)

- Schools must designate and authorize at least one employee to coordinate its efforts to comply with Title IX responsibilities
- Responsible for investigating complaints and enforcing school policy
- Can be one or more individuals

# Title IX Coordinator Duties

- Core responsibilities:
  - oversee the school's response to Title IX reports and complaints
  - identify and address any patterns or systemic problems
- Must be:
  - knowledgeable of the requirements of Title IX, the school's policy and procedures, and all complaints raising Title IX issues
  - informed of all reports raising Title IX issues
  - given the training, authority, and visibility to fulfill these duties

# Grievance Procedure

- Schools must:
  - adopt and publish grievance procedures
  - respond promptly in a manner that is not “*deliberately indifferent*” – meaning in a way that is not clearly unreasonable in light of known circumstances
- Can be included in ordinary grievance process, but must meet all the requirements of Title IX

# Grievance Procedure Checklist

- ✓ **Notice** to students and employees of Grievance procedures
- ✓ Application of the **grievance procedure** to complaints filed by students (or on their behalf) alleging sexual violence carried out by employees, other students, or third parties
- ✓ Provisions for adequate, reliable, and impartial **investigation** of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence
- ✓ Provision of a **live hearing** with cross examination by each party's advisor
- ✓ Provision of an **appeal** process for certain items impacting outcome

# Include the following...

- A statement of the **school's jurisdiction** over Title IX complaints
- Adequate **definitions** of sexual harassment (which includes sexual violence) and an explanation as to when such behavior creates a hostile environment
- Explanation of **how to report** complaints, including provisions for confidential reporting
- Identification of the employee responsible for evaluating requests for **confidentiality** (Title IX Coordinator)

# Definitions

- **Complainant** – an individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Formal Complaint** – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment

# Reporting Violations

# School Response Requirements

- Prompt response, explaining **process to file formal complaint**
- Provision of **supportive measures**
- Statement that Title IX **prohibits retaliation**
- Explanation of a student's **right to file a criminal complaint** and a Title IX complaint simultaneously
- Explanation of available **interim measures** that may be taken to protect the student in the educational setting
- A list of **evidentiary standards** that will be used (preponderance of the evidence or the clear and convincing evidence standard) in resolving a complaint
- A list of **potential remedies** for students, potential sanctions against perpetrators, and sources of counseling, advocacy, and support

# Training

- In addition to the Title IX Coordinator(s), training materials must be made available on the school's website
- Training for employees and students should include:
  - contact info for the Title IX coordinator
  - school's obligations under Title IX
  - recognizing & reporting harassment, discrimination, and sexual violence
  - school's policies & procedures
  - prevention
- No specified number of hours or frequency — must be done “regularly”

# Investigations

# Tips for a Successful Investigation

1. Treat all complaints seriously
2. Begin immediately
3. Select investigator carefully (need not be the Title IX Coordinator)
4. Prepare before interviews – review complaint, school policies, student and/or employee files
5. Conduct a thorough investigation – when, where, what, who – and cover the same questions with all interviewees
6. Document, document, document

# Investigations and Hearings

- “Investigation” refers to the **process the school uses** to resolve Title IX complaints
- Includes the **fact-finding** investigation and any **hearing** and **decision-making** process the school uses to determine:
  - whether or not the conduct occurred; and,
  - if the conduct occurred, what actions the school will take to end the conduct, eliminate the hostile environment, and prevent its recurrence
  - prevention may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population

# Investigations and Hearings (continued)

- Must be **adequate, reliable, impartial, and prompt**
- Must include the **equal opportunity** for both parties to present witnesses and other evidence
- May include a **hearing** to determine whether the conduct occurred, including cross examination with party advisors
- May offer and facilitate **informal resolution** options if both parties consent to attempt such (except allegations that an employee sexually harassed a student)

# Investigations and Hearings (continued)

- School **may** choose the standard of evidence - "preponderance of the evidence" or "clear and convincing evidence"
- Both parties must be notified, in writing, of the **outcome** of both the complaint and any appeal
- The school must provide a right of **appeal** to both parties

# What If the Claim Lacks Merit?

- Or the investigation is inconclusive?
- Document in the same fashion
- State that the school was either unable to corroborate the claims or is unable to conclude that the incident more likely than not occurred as reported by complainant
- No corrective actions will be issued
- Complainant may choose to change classes if he or she has not already done so

# Preventing Discrimination

- The school is always under an obligation to prevent discrimination, including a hostile environment and sexual violence
- This includes preventing retaliation against those who make good faith complaints of Title IX violations
- It also includes taking steps while an investigation is pending to prevent ongoing harassment and retaliation

# Other Considerations

- FERPA
  - Title IX trumps FERPA per OCR
  - Conflict can come up in investigations
- Clery Act
  - A sex crime reported to the school – even off campus – may trigger Clery Act & Title IX obligation
- Parents, media, & others
  - Stick to school policy

# Investigation

- Is an investigation merited?
- Where do you start?
- What questions would you ask?
- Examples:
  - Tell me what happened (avoid “yes” and “no” answers; narratives are helpful)
  - Did you let him know you were uncomfortable with his behavior?
  - What triggered the report?