

# Policy on Sexual and Gender-Based Misconduct

ECRT Training

October 1, 2021

# Today's Topics

- Policy
- Employee Procedures
- Student Procedures
- Transitioning
- Data/Record Maintenance Updates, Examples, and Reminders

# Policy

- Expanded definition section
- Small caps = defined term
- Clarified definition of Student
- Minor changes to IRO
  - Practical changes
  - Language changes to be more clear

# IROs

- IROs have reporting obligations with respect to information they learn in the scope of employment
  - Entire employment - not limited to information learned in the role that makes them an IRO
- All are encouraged to report even when not required to do so

# IROs: Scope of Employment

- Officials with Authority - every second of every day in every place including personal time/setting
  - No exemptions
- Student employees: when they are actually at work
  - RAs: information learned from or about resident in their hall
  - Exempt disclosures
- Other IROs: in for a penny, in for a pound in professional context (not personal)
  - Exempt disclosures

# Exempt Disclosures

- Sexual misconduct awareness events
- Classroom/academic assignment
- IRB research
- Peer support group organized and offered by a confidential resource, when IRO is a member of the peer support group

\*TIXC has discretion to identify programs/events as exempt from IRO obligations

**\*\*\*\*\*NO EXEMPTIONS FOR OFFICIALS WITH AUTHORITY\*\*\*\*\***

# Title IX Legal Update

- **Regulations:** If a party or witness does not submit to cross-examination, the Hearing Officer cannot rely on any statement by that party/witness in reaching a determination regarding responsibility (CFR 106.45(b)(6)(i))
- **Massachusetts federal district court:** vacated that particular provision only (arbitrary and capricious) and remanded to ED for further consideration
  - *Victim Rights Law Center et. al. v. Cardona*

# Title IX Legal Update

- **Department of Ed:** 8/24/2021 guidance letter
  - Ceasing enforcement of that provision
- UM 10/1/2021 *Student Procedures* and *Employee Procedures* reflect this change
- Hearing Officer may now consider (if relevant):
  - Statements during investigation
  - Emails, texts, etc.,
  - Statements about the alleged conduct
  - Police report, SANE records, etc.,



# Changes to Employee Procedures

- Adaptable Resolution pilot
- Appeals in all SGBM investigations
- Consideration of statements without cross

# Changes to Student Procedures

- University Provided Advisor - expanded scope
  - Investigation through hearing
- Emergency Removal
- Consideration of statements without cross
  - *Doe v. Baum* still applies to student matters

# Intake: Equity Specialists

- Report comes in, is assigned to an Equity Specialist and Investigator
- Equity Specialist sends Complainant outreach, report receipt confirmation, and any other follow up with reporter
- Equity Specialist may do some initial information-gathering that is useful for responding to the concern but not investigative in nature

# Initial Complainant Meeting: Equity Specialist

- No initial action needed by Investigator
- If Complainant does not respond, Equity Specialist will be responsible for follow-up outreaches, communicating with TIXC for closure or other steps
- If Complainant responds the initial meeting will be with the Equity Specialist, ideally scheduled for a time Investigator can also be available for questions or interview

# Investigator (and possible UPA) Entry

- If Complainant has in depth questions about investigation process, or wants to pursue an investigation, the Investigator will meet with Complainant
- Interview can be first or second meeting, depending on Complainant's preference and Investigator availability
- Complainant can have a University-provided advisor as early as first meeting
  - Equity Specialist will arrange
- Equity Specialist will also be working on any supportive measure requests, connection to law enforcement, resources, etc.,
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# Formal Complaint (Investigation)

- Equity Specialist and Investigator will coordinate closely on outreach to Respondent when a Formal Complaint is filed
- Respondent can have a University-provided advisor as early as first meeting (investigation)
- Equity Specialist will talk to Respondent about resources, supportive measures, process overview and Equity Specialist role, etc.,
- Investigator will cover thorough discussion of process, allegations, and conduct interview (can be same or second meeting)

# Requests for Adaptable Resolution

- If Complainant requests to open or learn more about AR and TIXC gives preliminary approval, the Equity Specialist will connect them with ARC to meet
- If after meeting with ARC they want to pursue AR and TIXC continues to approve moving forward, C tfiles a Formal Complaint
- ECRT notifies Respondent, who may then choose to meet with Equity Specialist and ARC
- If Respondent agrees and TIXC gives final approval, ARC coordinates and DCCRTIXO tracks in iSight

# iSight Updates

- Notes or to-dos for (not exhaustive):
  - Party outreach
  - Party responses, requests
  - SUPPORTIVE MEASURES
  - Resource connections, notable referrals
  - Meeting/call summary
  - Formal Complaint and potential Policy violations at issue
    - After Complainant interview, update iSight details - issue types and subtypes
    - Notification: note to list specific potential Policy violations



# iSight Updates in Early Stages

## **iSight allegation note example:**

Potential Policy Violations are:

1. **Sexual Assault and/or Title IX Misconduct**

As alleged, the 11/1/21 incident falls under SGBM Sexual Assault definition, TIXM Sexual Assault definition and TIXM criteria. If TIXM criteria is not supported by POE, the conduct may nonetheless constitute SGBM Sexual Assault.

2. **Sexual Harassment and/or Title IX Misconduct**

As alleged, the October 2020-March 2022 pattern of behavior falls under SGBM Sexual Harassment definition, TIXM Sexual Assault definition and TIXM criteria. If TIXM criteria is not supported by POE and/or POE does not support SPOO threshold, the conduct may nonetheless constitute SGBM Sexual Harassment.

3. **Retaliation**

# Deputy Coordinator for Civil Rights and Title IX Outcomes

- Coordinating phase transitions in both Student, Employee SGBM and Employee TIXM processes
- Hearing Cases:
  - Investigator connects parties to DCCRTIXO at final report stage
  - Distribution of final report
  - Coordination/oversight of scheduling pre-hearing meetings and hearing
  - Available during hearing times as first line for hearing officer issues
  - Coordinating review of hearing outcomes, distribution for sanctioning determinations, simultaneous distribution to parties
  - Coordinating appeals process and follow-up thereafter
  - Identification of possible other remedies/interventions
  - Monitoring sanction completion in both student and employee cases

# Deputy Coordinator for Civil Rights and Title IX

## Outcomes

- Non-hearing Cases:
  - Investigator connects campus partners with DCCRTIXO in pre-report meeting
  - Investigator connects campus partners with DCCRTIXO alongside final report distribution
  - Coordination of sanction and remedy determination
  - Coordination of simultaneous distribution to parties of sanctions/corrective action
  - Coordinating appeals process and follow-up thereafter
  - Identification of other possible remedies/interventions
  - Monitoring sanction completion in both student and employee cases

# iSight Closure

- Confirm every all fields are complete and accurate
  - Did the issue types/subtypes, case subtype, location, etc., change as ECRT learned more?
- Throughout a case, the case status comment should include ONLY the most recent update - delete older updates (they are retained in the History tab so they are not lost when deleted; iSight entries and data reports are much easier to read when the status comment is up to date and only the most recent update)
- At closure, the case status comment should indicate the case is closed, with very brief reference as to the outcome
  - “Closed. Investigation report issued on 12/22/21 with a finding of no violation; no sanctions; no appeals.”
  - “Closed. Respondent is unidentified, Complainant did not respond to multiple outreach attempts, and no further action is identified as possible/appropriate.”
  - “Closed. Conduct as alleged does not constitute a Policy violation. Complainant was granted supportive measures; ECRT had an educational conversation with Respondent and connected department chair with OL to arrange for bystander intervention training for department faculty.”

# iSight Closure

- Resolution comment:
  - Does not need to be exhaustive detail but does need to capture, at a high level, what happened, for example:
    - Title IX Misconduct Process concluded with findings as follows:
      1. Sexual Assault and/or Title IX Misconduct  
Violation (Title IX Misconduct, inclusive of Sexual Assault)
      2. Sexual Harassment and/or Title IX Misconduct  
Violation (Sexual Harassment only; no violation as to Title IX Misconduct)
      3. Retaliation  
No violation (insufficient evidence to conclude Respondent was aware of Complainant's protected activity at the time of the adverse action)
- SGBM Investigations, Adaptable Resolution/Mediation, and Reviews:
  - ES will audit at closure

# Other Updates

- Effective 10/1/21, no cases need to be entered into Advocate upon initial report
  - Cases that are reported via Advocate
- Manual is coming VERY SOON!
- MM Deputy Title IX Coordinator
- Support Coordinator