



Title IX Training

TSUS Office of General Counsel

Presented by Darren G. Gibson, Littler Mendelson, P.C.
January 11, 12, & 25, 2023



January 11, 2023 | TSUS Title IX Policy and Grievance Procedure

(Target Audience: All Persons Involved in Sexual Misconduct Process)

8:30 AM **Welcome** Kelly Wintemute
Speaker introductions, attendance, housekeeping...

8:40 - 8:45 AM **Introduction to Case Study** Darren Gibson

- Anonymous complaint if unwanted attention, non-consensual sex, and stalking of undergrad by graduate student working in same lab
- Reported conduct occurred both on and off campus and virtually
- Alleged sexual assault involves both parties drinking
- Complainant first reported to faculty member
- Potential retaliation by faculty member

8:45 - 9:45 AM **1. Overview of Texas State University System Sexual Misconduct Policy & Procedures** Darren Gibson

- a. Definition of Sexual Misconduct (Title IX and Non-Title IX) and Retaliation
- b. Key provisions, including Equitable Treatment, Standard of Evidence, Conflicts of Interest, Prohibition on Providing False Information
- c. Supportive Measures (3.8) and best practices
- d. Informal Resolution (3.9) and best practices
- e. Confidentiality (3.15)
- f. Remedies and Sanctions (3.11 and 3.12)

9:45 - 10:00 AM **Break**

10:00 - 11:00 AM **2. Sexual Misconduct Grievance Process under TSUS Policy** Darren Gibson

- a. Reporting Incidents of Sexual Misconduct, including both victim reporting and mandatory employee reporting (section 4)
- b. Classifying Sexual Misconduct (5.1)
- c. Title IX Sexual Harassment Grievance Process (section 7)
 - i. Formal Complaint (7.1-7.2) and Notice of Allegations (7.3)
 - ii. Role of Advisor (7.4)
 - iii. Consolidation of Complaints (7.6)
 - iv. Investigation (7.7-7.8) [addressed further in sessions 4 & 5]

- v. Formal Complaint (7.1-7.2) and Notice of Allegations (7.3)
- vi. Role of Advisor (7.4)
- vii. Consolidation of Complaints (7.6)
- viii. Investigation (7.7-7.8) [addressed further in sessions 4 & 5]
- ix. Notice of Hearing, Copy of Report, and Instructions (7.9-7.10)
- x. Live Hearings (7.11-7.19) [addressed further in session 6 & 7]
- xi. Written Decision (7.20)
- xii. Appeals (7.21)
- d. Non-Title IX Grievance Process (section 8)
 - i. Focus on key differences
 - ii. Role of Title IX Coordination in Findings and Recommended Sanctions (8.5)
 - iii. Role of Component Administration in sanctions (8.6-8.7)
 - iv. Disputing Findings or Sanctions (8.8)
 - v. Appeals (9)

11:00 - 11:45 AM

3. Applying Policy to Case Study

Darren Gibson

- a. Intake and Confidentiality
- b. Assessment of Allegations (Title IX vs. Non-Title IX)
 - i. Applicable sexual harassment standard
 - ii. Off-campus conduct
 - iii. Virtual conduct
- c. Supportive Measures
- d. Consideration of Informal Resolution
- e. Intersection of SB 212 and how to handle potential failure to report
- f. Template Investigation Notice Letters
- g. Template Supportive Measure Notice

11:45 - 12:00 PM Q&A

January 12, 2023 | Investigations and Live Hearings

(Target Audience: All Persons Involved in Sexual Misconduct Process)

8:30 - 9:30 AM

4. Investigations (Title IX Coordinators, Deputies, and Investigators)

Darren Gibson

- a. Overall strategy for planning an investigation
- b. Documenting the investigation
- c. Gathering evidence, including electronic evidence
- d. Interviews and interviewing techniques
- e. Types of questions and handling personal subject matters
- f. Trauma informed investigations
- g. How to handle hostile witnesses or advisors
- h. Dealing with Consent, Coercion, and Incapacitation
- i. Chronology
- j. Drafting the report

9:30 - 10:00 AM 5. Investigation of Case Study Darren Gibson

- a. Brainstorm potential sources of relevant evidence
- b. Case Planning and Template Investigation Checklist
- c. Interview strategies and key topics
- d. Template Chronology
- e. Template Report

10:00 - 10:15 AM Break

10:15 - 11:00 AM 6. Live Hearings Darren Gibson

- a. Role of Decision Maker, Parties, Advisors, and Witnesses
- b. Prehearing matters - setting the ground rules and expectations
- c. Conducting the Live Hearing
- d. Hearing location
- e. Recording the hearing
- f. Rules of decorum and enforcement
- g. Party statements
- h. Relevancy determinations of questions
- i. Handling objections and inquiries from advisors
- j. Hearsay rule and developments in 2021
- k. Fair and equitable treatment of all parties
- l. Drafting the Written Decision

11:00 - 11:45 AM 7. Mock Live Hearing of Case Study Darren Gibson

- a. Template Hearing Script
- b. Introductions by Decision Maker / Hearing Officer
- c. Opening statements by parties
- d. Questioning of parties and relevancy determinations
- e. Handling aggressive advisor and objections
- f. Testimony by the investigator
- g. Closing statements by parties
- h. Template Written Decision
- i. Template Appeal Decision

11:45 - 12:00 PM Q&A

January 25, 2023 | Intersection of Title IX with Clery and VAWA, SB 212, and Title IX Enforcement

(Target Audience: Title IX Coordinators, Deputy Coordinators, Office of General Counsel)

8:30 - 9:45 AM **8. Clery, VAWA, Prevention & Campus Safety 101:** Darren Gibson

- a. Clery Act basics
- b. History of Clery and VAWA
- c. Clery crimes and reporting requirements
- d. Clery geography
- e. Compliance guidelines and updated Clery Appendix to FSA Handbook
- f. Intersection with Title IX (definitions, jurisdictional scope)
- g. Clery Annual Security Report
- h. Emergency notifications and timely warnings
- i. Warning signs of IPV and sexual violence
- j. Threat assessment tools
- k. Emergency removals

9:45 - 10:15 AM **Q&A**

10:30 - 10:45 AM **Break**

10:45 - 11:15 AM **9. SB 212 and TCHEB Reporting Obligations** Darren Gibson

- a. Mandatory Reporting under SB 212
- b. Scope of reporting obligation under statute versus TCHEB Rules
- c. Sanctions and definition of “knowingly”
- d. Quarterly Reports under SB 212
- e. Presidential Reports under SB 212
- f. TCHEB substantial compliance rulemaking

11:15 - 11:45 AM **10. Title IX Enforcement** Darren Gibson

- a. OCR oversight and investigations
- b. Examples of recent OCR investigations and outcomes
- c. Private litigation
 - i. Landmines to consider during grievance process
 - ii. Recent cases from Texas

11:30 - 11:45 AM **Q&A**

