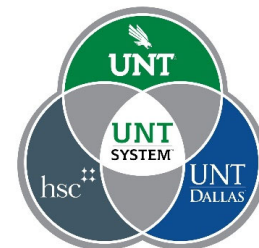


Title IX Hearing Officer Training

WELCOME



We are glad you have joined. We will get started momentarily.

- Please mute your microphone during the presentation.
- Be mindful of background noise when unmuted.
- Questions will be saved for the end of each session. Use the chat box to post your question or “Raise your Hand”.
- Add your name and pronouns (optional) to your profile so we know who is participating today.
- Your moderator is: Angela Brown (*pronouns: she/her/hers*)
Sr. Director of System Administration HR and Equal Opportunity.

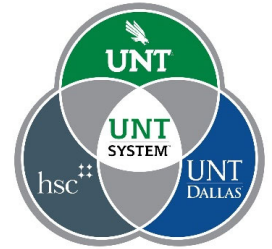


UNT System Hearing Officer & Hearing Panel Training

AGENDA

	Training Session/Description	Presenter	Session Time
	DAY ONE: September 2, 2020		
	Introduction & Kickoff	Angela Brown	9:00a
1	Institutional Policies & Terminology: <ul style="list-style-type: none"> • Role of Hearing Officer • Primacy of the policy • Due process • Impartial investigation and adjudication • Respondent presumed not responsible • Preponderance of the evidence standard • Definition of sexual harassment and totality of circumstances 	Jarrold Jenkins	9:05a – 9:45a
2	Bias: <ul style="list-style-type: none"> • Awareness • Implicit bias • Cultural humility • Microaggressions 	Shani Moore	9:50a – 10: 50a
	Break		10:50a – 11:00a
3	LGBTQIAA+ <ul style="list-style-type: none"> • Bias • Terminology • Sexual misconduct in LGBTQIAA+ context 	Kathleen Hobson	11:00a - Noon

End of DAY ONE



Your Presenters...

Module 1

Policy

Jarrod Jenkins

Assistant Director,
Equal Opportunity, UNT

Pronouns: he/him/his



Module 2

Bias Awareness

Shani Barrax Moore

Director, Diversity &
Inclusion, UNT

Pronouns: she/her/hers



Module 3

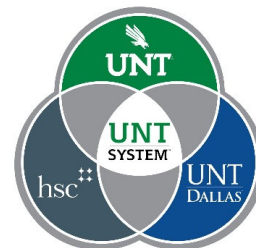
Gender & Sexuality
Bias

Kathleen E. Hobson

Director, Pride Alliance,
UNT

Pronouns: they/them/theirs





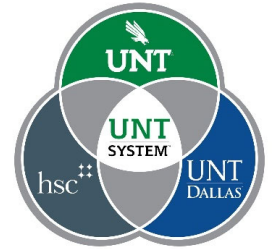
Hearing Officer Training: The Policy

September 2, 2020

Jarrod Jenkins

Assistant Director, Equal Opportunity

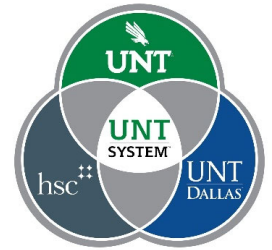
UNT Denton



Agenda

1. Role of the Hearing Officer
2. Title IX Sexual Harassment Policy
 - a. Terms Defined
 - b. Questions Answered
 - c. What would you do?
3. Takeaways

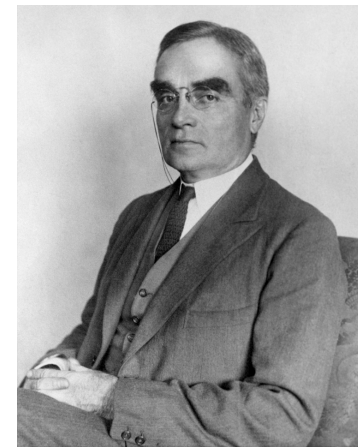




Role of the Hearing Officer

Why are we here?

1. Protect victims
2. Protect the innocent
3. Punish wrongdoers
4. Find the truth
5. Decide what's right
6. "Do justice." – Judge Learned Hand
↓
social



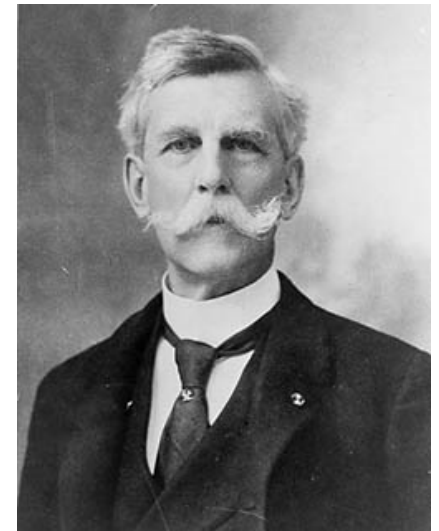
Role of Hearing Officer



“That’s not my job. It is my job to apply the law.”

- Justice Oliver Wendell Holmes, Jr.

- Our job is to apply the policy
 - We lack omniscience
 - Best way to fulfill other, loftier ambitions



Role of Hearing Officer



- Come with an open mind
- Recuse yourself if necessary
- Suspend final judgment until decision time
- “With great power comes great responsibility.”
- Knowing and applying the policy will:
 - Minimize bias and unfairness
 - Give best chance of finding truth
 - Most often lead to best result
 - Provide due process to all parties



Due Process



- Constitutional safeguards preventing arbitrary deprivation of property rights in education and employment
- Procedural due process
 - Notice and chance to respond to all allegations
 - Neutral decision maker
 - Compliance with written policies and procedures
- Substantive due process
 - Fair and impartial investigation, decision, discipline
 - Decisions rationally based on evidence
 - Not arbitrary or capricious



“Due Process” in Title IX



Mentioned 686 times in preamble, gives parties right to:

- Written notice of allegations and sufficient information to prepare for interviews.
- Be accompanied by advisor of their choice, who may or may not be an attorney.
- Discuss allegations under investigation without restriction.
- Gather and present relevant evidence without restriction.
- Present fact and expert witnesses.
- Know and review in/exculpatory evidence.
- Review draft investigation report before finalized.
- Argue for inclusion of “directly related” evidence at hearing.
- Ask relevant questions of other party and witnesses, through advisor, at hearing.

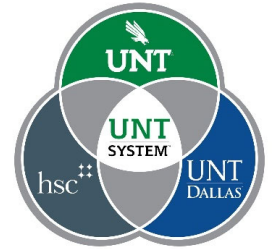


Due Process in UNT Policy



- Read 2,000+ pages of preamble, regulations before every hearing?
 - No, but resource is available
 - Requirements in regs reflected in UNT Policy
 - Applying UNT Policy will fulfill due process requirements
- Investigator fulfills many requirements before case comes to you:
 - Written notice of allegations
 - Written notice of meetings and interviews
 - Collection of evidence
 - Review of evidence and Investigative Reports





Title IX Sexual Harassment Policy

Hearing Process Overview



Before

- Investigation completed, parties may review all evidence collected
- Hearing Officer notifies participants of hearing in writing at least 10 days in advance
- Hearing Officer and Panelists review Investigative Report and all evidence collected

During

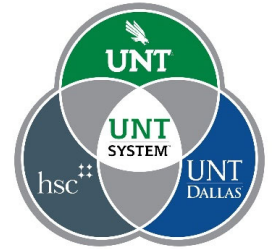
- Hearing most likely on Zoom and will be recorded
- Parties may make opening and closing statements
- Investigator, parties, and witnesses questioned by HO, HP, and advisors
- **HO rules on relevancy of all questions**

After

- HO and HP determine responsibility on all allegations and write decision
- If policy violation found, HO and HP determine sanctions and remedies
- Both parties may appeal



Knowing the Policy



- Read the policy applicable to your case (*i.e.*, Denton, HSC, Frisco)
 - Policies for campuses should overlap, but don't assume
- Reread parts that apply to your case
- It is your manual, road map, recipe for success
- It will define terms
- It will answer many questions





What is “Consent”?

Words or actions that show an active, knowing, and voluntary agreement to engage in each instance of sexual activity

- Can be revoked at any time
- Absent when activity exceeds scope of previously given consent
- **Cannot** be gained by force, coercion, manipulation, threat, or administration of substances that impair ability to consent
- **Cannot** be given while incapacitated or unconscious (*e.g.*, passed out from drugs or alcohol)



16.007 – Title IX Sexual Harassment



Conduct on the basis of sex that is one or more of:

- a. Quid pro quo – (1) an employee (2) conditioning an aid, benefit, or service of the University on an individual’s participation in (3) unwelcome (4) sexual conduct;
- b. (1) Unwelcome conduct (2) determined by a reasonable person to be (3) so severe, pervasive, **and** objectively offensive that it (4) effectively denies a person equal access to education program or activity;
- c. Sexual assault, dating violence, domestic violence, or stalking

Sexual Assault



- **Rape** - penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim
- **Fondling** - touching private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or permanent mental incapacity
- **Incest** - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape** - sexual intercourse with a person who is under the statutory age of consent (17 in Texas)



VAWA and Clery



- **Dating violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Existence of the relationship is determined by length of relationship, type of relationship, frequency of interaction. Includes sexual or physical abuse or the threat of such abuse.
- **Domestic violence** – felony or misdemeanor crime of violence committed against a current or former spouse or intimate partner, person with whom Respondent has a child, or anyone else protected by domestic or family violence laws . . .
- **Stalking** – engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress

UNT Policy 16.007

Questions Answered



1. Question: What presumptions should I make?

1. Answer: *Respondent is presumed not to be responsible for the conduct alleged in the Formal Complaint and will not be determined to be responsible unless the preponderance of the evidence establishes the individual engaged in the conduct at the conclusion of the Grievance Process.*

- Can't assume policy violation based solely on allegation
 - “Well, he must have done something or she wouldn't have accused him.”
Don't think like that.
 - Instead, think, “An allegation has been made. What does the evidence show?”

UNT Policy 16.007, VII.I.



Questions Answered

2. Question: What standard of evidence am I using?

2. Answer: *The preponderance standard shall be used during all stages of the formal resolution process.*

3. Question: What does “preponderance of the evidence” mean?

3. Answer: *more likely true than not true . . . also referred to as the greater weight of the evidence.*

- Fair coin toss = 50/50
- Randomly drawing a red card in standard deck of cards = 50/50
- Randomly drawing a red card or a “2” = $28/52 = 53.8/46.2$

Questions Answered



4. Question: Can the hearing be completed by paper correspondence?

4. Answer: No. *University will provide a Live Hearing, as outlined in this Policy, to resolve the allegations.* Can be a virtual or in-person hearing.

5. Question: Do I have to give notice to anyone about the live hearing?

5. Answer: Yes. Must give written notice to participants and advisors at least 10 days before hearing to tell them date, time, location, purpose, allegations, summary of collected evidence.

Questions Answered



6. Question: Does the live hearing have to be recorded?

6. Answer: Yes. *The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the University. The recording or transcript will be available for the parties to inspect and review, upon request.*

7. Question: Can the parties ask each other or witnesses questions?

7. Answer: No. Advisors ask questions on behalf of parties. Advisors submit questions to HO at start of hearing, and can ask relevant follow up questions. HO rules on relevancy of all questions from advisors.

UNT Policy 16.007, VII.J.15; VII.J.10.

Questions Answered



8. Question: What if a party does not submit to cross-examination?

8. Answer: *If a party or witness refuses to submit to any cross-examination questions, the Hearing Panel will not rely on any statement of that party or witness in making a determination of responsibility. The panel may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions at the hearing.*



UNT Policy 16.007, VII.J.12.

Questions Answered



9. Question: What does Hearing Officer do at the hearing?

9. Answer: *Decide all questions and objections concerning procedural matters and evidence, including the relevance of exhibits and testimony. . . . May call and question participants who testify at the hearing. . . . May consult with UNT System Office of General Counsel concerning the hearing. **Rules on relevancy of questions before participant answers and must explain any decision to exclude a question as irrelevant.***



UNT Policy 16.007, VII.J.8., 10.

Questions Answered



10. Question: What information is irrelevant? **Answer:**

- Privileged information, and
 - Attorney-client privilege and medical information not required to be disclosed, and parties cannot ask questions related to privileged information
 - Parties *can* disclose such information by waiving privilege in writing
- Complainant's prior sexual history
 - Complainant's sexual predisposition or prior sexual behavior is irrelevant
 - Except to show someone other than Respondent committed alleged conduct
 - Except to show prior sexual behavior between Complainant and Respondent offered to prove consent

UNT Policy 16.007, VII.J.11.

Questions Answered



11. Question: Who makes the final determination about allegations?

11. Answer: The determination of responsibility or non-responsibility must be by majority vote of 1 HO and 2 HPs. HO prepares written determination that includes allegations, process, findings of fact, conclusion, rationale, sanctions, remedies, rights to appeal.

12. Question: Who makes the final determination about sanctions?

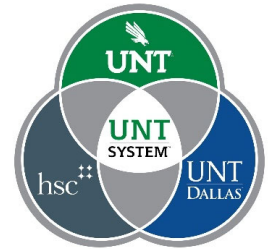
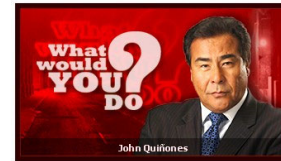
12. Answer: HO and HPs. Options listed in UNT Policy 16.007, VII.L.

13. Question: Who makes the final determination about appeals?

13. Answer: Appellate Officer.

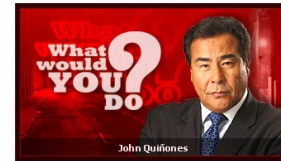
UNT Policy 16.007, VII.J.6., 13.; VII.J.13.f.; VII.M.

What would you do?

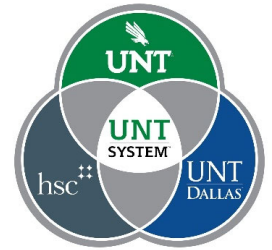


1. In opening statement, Complainant alleges for the first time that Respondent engaged in stalking, which was not investigated, in addition to sexual assault, which was investigated.
2. Complainant does not appear for hearing.
3. Respondent appears for hearing by himself and tells you, “I fired my worthless advisor.”
4. Respondent loudly disagrees while Complainant is giving opening statement and answering questions from HO and HPs.

What would you do?

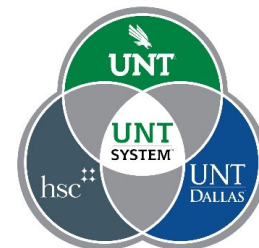


5. Complainant's advisor asks investigator how many investigations she has done, how many of her investigations resulted in violations, if she has ever been sexually assaulted or sexually assaulted anyone, and why she is "competent" to investigate.
6. Complainant's advisor asks Respondent how many times he has been accused of sexual assault, his GPA, how many DUI's he has, how many "other crimes" he has committed.
7. Respondent's advisor asks Complainant how often she gets drunk, how many boyfriends she has had, whether she was a virgin before meeting Respondent, if she is on any medications, if she has been diagnosed with a mental illness.



Takeaways

Takeaways



1. Read, know, apply policy
 - a. Regulations and UNT System OGC can be a resource
2. Formulate questions and focus attention on elements of allegations
 - a. Basis of sex, unwelcome, consent, severe, pervasive, objectively offensive, penetration, private body parts, course of conduct, etc.
3. HO is in control, must rule on relevance of all questions
4. Err on side of relevance, ask why question is relevant
 - a. Except for privileged information or Complainant's prior sexual history
5. Written determinations state reasons

Questions?





Title IX Hearing Panel Decision Form

Decision Date: [date]

Parties

Complainant

[name]

[position]

Respondent

[name]

[position]

Complainant's Advisor

[name]

[position]

Respondent's Advisor

[name]

[position]

Hearing Panel Members

Hearing Officer

[name]

[position]

Hearing Panel Member 2

[name]

[position]

Hearing Panel Member 3

[name]

[position]

Procedural History: On [date], Complainant filed a formal complaint alleging Respondent engaged in [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation].

[Name, position of investigator] investigated the allegations in this case. The investigation began on [date]. Investigator notified Respondent of the allegations on [date]. Investigator[s] provided the Complainant, Respondent, and Hearing Panel the evidence collected as well as an Investigative Report summarizing that evidence. The parties were permitted to review and comment upon the Investigative Report before it was finalized.

The Hearing Officer notified the parties and their advisors on [date] that a live hearing would be held regarding the allegations in this case. A Hearing Panel convened on [date(s)]. The hearing was held electronically on Zoom. The parties and their advisors were provided the opportunity to make opening and closing statements. The parties' advisors were provided the opportunity to pose questions to witnesses. In reaching its determinations, the Hearing Panel did not consider the statements of any witnesses who were not subjected to questioning by the parties' advisors when the parties or their advisors made it known to the Hearing Panel that they wished to question those witnesses.

The Hearing Panel simultaneously notified the parties and their advisors of its determinations by sending this Decision Form to their respective email addresses.

Allegation 1: Respondent violated UNT Policy 16.007's prohibition against [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation].

Allegation 1 Determination: [Substantiated / Unsubstantiated]

Allegation 1 Analysis: UNT Policy 16.007 prohibits [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation], which it defines as [definition].

Using the preponderance of evidence standard, the Hearing Panel determined that there was in/sufficient evidence to substantiate that [Respondent] violated UNT Policy 16.007.

[Discussion of significant findings of fact, conclusions about application of UNT Policy to facts, and rationale for the determination. If necessary, analysis of consent and credibility of witnesses. [Title 34 § 106.45\(b\)\(7\)](#)]

Allegation 2: Respondent violated UNT Policy 16.007's prohibition against [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation].

Allegation 2 Determination: [Substantiated / Unsubstantiated]

Allegation 2 Analysis: UNT Policy 16.007 prohibits [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation], which it defines as [definition].

Using the preponderance of evidence standard, the Hearing Panel determined that there was in/sufficient evidence to substantiate that [Respondent] violated UNT Policy 16.007.

[Discussion of significant findings of fact, conclusions about whether the alleged conduct occurred, and rationale for the determination. If necessary, analysis of consent and credibility of witnesses.]

Allegation 3: Respondent violated UNT Policy 16.007's prohibition against [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation].

Allegation 3 Determination: [Substantiated / Unsubstantiated]

Allegation 3 Analysis: UNT Policy 16.007 prohibits [sexual harassment / sexual assault / rape / fondling / incest / statutory rape / dating violence / domestic violence / stalking / sexual coercion / sexual exploitation / failure to report / retaliation], which it defines as [definition].

Using the preponderance of evidence standard, the Hearing Panel determined that there was in/sufficient evidence to substantiate that [Respondent] violated UNT Policy 16.007.

[Discussion of significant findings of fact, conclusions about whether the alleged conduct occurred, and rationale for the determination. If necessary, analysis of consent and credibility of witnesses.]

Disciplinary Sanctions: Because the Hearing Panel determined that the allegations in this case were [unsubstantiated, no disciplinary sanctions will be imposed upon Respondent. / substantiated, the following disciplinary sanctions will be imposed upon Respondent:

1. Sanction 1
2. Sanction 2 etc.]

Remedies for Complainant: [Whether remedies designed to restore or preserve equal access to UNT's education program or activity will be provided by UNT to the complainant. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. [106.45\(b\)\(1\)\(i\)](#)]

Right to Appeal: Either Complainant or Respondent may appeal the determinations in this Decision Form on the following three bases:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence that could affect the determination regarding responsibility was not available at the time the determination was made;
3. New evidence that could affect the outcome of a decision to dismiss the Formal Complaint or an allegation in the complaint was not available at the time the decision was made; or
4. The Title IX Coordinator, investigator, or Hearing Panelist had a conflict of interest or bias for or against the parties (general or specific) that affected the outcome of the matter. [106.45\(b\)\(8\)](#).

Appeals that the parties wish to make must:

- a. Be provided in writing to the Hearing Officer;
- b. Be within [10] business days of the date of this decision, which is listed at the top of the first page of this Decision Form;
- c. State the basis (listed above as procedural irregularity, new evidence, or conflict of interest or bias) for the appeal; and
- d. State all the support the appellant wants considered by the appeals officer.

If neither party submits a timely appeal that satisfies the requirements listed above, the determinations in this Decision Form will be final.

For the reasons discussed in the preamble, the Secretary amends part 106 of title 34 of the Code of Federal Regulations as follows:

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION

PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.2. Section 106.3 is amended by revising paragraph (a) to read as follows:

§106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part, such recipient must take such remedial action as the Assistant Secretary deems necessary to remedy the violation, consistent with 20 U.S.C. 1682.

* * * * *

3. Section 106.6 is amended by revising the section heading and adding paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 106.6 Effect of other requirements and preservation of rights.

* * * * *

(d) *Constitutional protections.* Nothing in this part requires a recipient to:

(1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;

(2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or

(3) Restrict any other rights guaranteed against government action by the U.S. Constitution.

(e) *Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA)*. The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

(f) *Title VII of the Civil Rights Act of 1964*. Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.

(g) *Exercise of rights by parents or guardians*. Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.

(h) *Preemptive effect*. To the extent of a conflict between State or local law and title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.

4. Section 106.8 is revised to read as follows:

§ 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures.

(a) *Designation of coordinator*. Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator." The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective

bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

(b) *Dissemination of policy*—(1) *Notification of policy*. Each recipient must notify persons entitled to a notification under paragraph (a) of this section that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.

(2) *Publications*. (i) Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section.

(ii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by title IX or this part.

(c) *Adoption of grievance procedures.* A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30. A recipient must provide to persons entitled to a notification under paragraph (a) of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

(d) *Application outside the United States.* The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.

5. Section 106.9 is revised to read as follows:

§ 106.9 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

6. Section 106.12 is amended by revising paragraph (b) to read as follows:

§ 106.12 Educational institutions controlled by religious organizations.

* * * * *

(b) *Assurance of exemption.* An educational institution that seeks assurance of the exemption set forth in paragraph (a) of this section may do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization. An institution is not required to seek assurance from the Assistant Secretary in order to assert such an exemption. In the event the Department notifies an institution that it is under investigation for noncompliance with this part and the institution wishes to assert an exemption set forth in paragraph (a) of this section, the institution may at that time raise its exemption by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization, whether or not the institution had previously sought assurance of an exemption from the Assistant Secretary.

* * * * *

7. Add § 106.18 to subpart B to read as follows:

§ 106.18 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

8. Add § 106.24 to subpart C to read as follows:

§ 106.24 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

9. Add § 106.30 to subpart D to read as follows:

§ 106.30 Definitions.

(a) As used in this part:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent. The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be

filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or

the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

(b) As used in §§ 106.44 and 106.45:

Elementary and secondary school means a local educational agency (LEA), as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.

Postsecondary institution means an institution of graduate higher education as defined in § 106.2(l), an institution of undergraduate higher education as defined in § 106.2(m), an institution of professional education as defined in § 106.2(n), or an institution of vocational education as defined in § 106.2(o).

10. Add § 106.44 to subpart D to read as follows:

§ 106.44 Recipient's response to sexual harassment.

(a) *General response to sexual harassment.* A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. A recipient’s response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Department may not deem a recipient to have satisfied the recipient’s duty to not be deliberately indifferent under this part based on the recipient’s restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

(b) *Response to a formal complaint.* (1) In response to a formal complaint, a recipient must follow a grievance process that complies with § 106.45. With or without a formal complaint, a recipient must comply with § 106.44(a).

(2) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

(c) *Emergency removal.* Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

(d) *Administrative leave.* Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

11. Add § 106.45 to subpart D to read as follows:

§ 106.45 Grievance process for formal complaints of sexual harassment.

(a) *Discrimination on the basis of sex.* A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.

(b) *Grievance process.* For the purpose of addressing formal complaints of sexual harassment, a recipient’s grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.

(1) *Basic requirements for grievance process.* A recipient’s grievance process must—

(i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient’s education program or activity. Such remedies may include the same individualized services described in § 106.30 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

(ii) Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness;

(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope

of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

(v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

(vi) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;

(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

(viii) Include the procedures and permissible bases for the complainant and respondent to appeal;

(ix) Describe the range of supportive measures available to complainants and respondents; and

(x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

(2) *Notice of allegations*—(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the

identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

(ii) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

(3) *Dismissal of a formal complaint*—(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

(4) *Consolidation of formal complaints.* A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

(5) *Investigation of a formal complaint.* When investigating a formal complaint and throughout the grievance process, a recipient must—

(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of

treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient 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;

(v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

(vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to

conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(6) *Hearings.* (i) For postsecondary institutions, the recipient's grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant,

respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

(ii) For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for a hearing. With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

(7) *Determination regarding responsibility.* (i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section.

(ii) The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the recipient's code of conduct to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

(iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

(8) *Appeals.* (i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(ii) A recipient may offer an appeal equally to both parties on additional bases.

(iii) As to all appeals, the recipient must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

(9) *Informal resolution.* A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to

participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient –

(i) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

(ii) Obtains the parties' voluntary, written consent to the informal resolution process; and

(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

(10) *Recordkeeping.* (i) A recipient must maintain for a period of seven years records of –

(A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

(ii) For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

12. Add §_106.46 to subpart D to read as follows:

§ 106.46 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

13. Add § 106.62 to subpart E to read as follows:

§ 106.62 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

14. Subpart F is revised to read as follows:

Subpart F—Retaliation

Sec.

106.71 Retaliation

106.72 Severability

Subpart F—Retaliation

§ 106.71 Retaliation.

(a) *Retaliation prohibited.* No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as

may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

(b) *Specific circumstances.* (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

§ 106.72 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

15. Add subpart G to read as follows:

Subpart G – Procedures

Sec.

106.81 Procedures

106.82 Severability

Subpart G – Procedures

§ 106.81 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR part 101. The definitions in § 106.30 do not apply to 34 CFR 100.6-100.11 and 34 CFR part 101.

§ 106.82 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

Subject Index to Title IX Preamble and Regulation [Removed]

16. Remove the Subject Index to Title IX Preamble and Regulation.

17. In addition to the amendments set forth above, in 34 CFR part 106, remove the parenthetical authority citation at the ends of §§ 106.1, 106.2, 106.3, 106.4, 106.5, 106.6, 106.7, , 106.11, 106.12, 106.13, 106.14, 106.15, 106.16, 106.17, 106.21, 106.22, 106.23, 106.31, 106.32, 106.33, 106.34, 106.35, 106.36, 106.37, 106.38, 106.39, 106.40, 106.41, 106.42, 106.43, 106.51, 106.52, 106.53, 106.54, 106.55, 106.56, 106.57, 106.58, 106.59, 106.60, and 106.61.

[FR Doc. 2020-07057 Filed: 5/7/2020 8:45 am; Publication Date: 5/22/2020]



Bias Awareness for Objective Decision-Making

Shani Barrax Moore

Director of Diversity and Inclusion

UNT

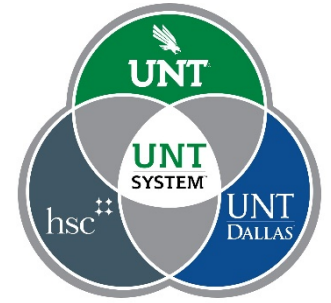
When and how do biases begin?



Racial bias may begin in babies at six months, U of T research reveals

Professor Kang Lee says lack of exposure to other races may be the cause of racial bias in babies (photo from Shutterstock)

April 11, 2017



Explicit vs. Implicit Bias

Bias: an unfair preference for or dislike of something

Explicit: clear and obvious

Implicit: implied; not stated, but understood in what is expressed

Explicit bias is:

Conscious

Deliberate

Conspicuous

Identifiable

Implicit bias is:

Unconscious

Denied

Hidden

Insidious

Why are we talking about this?



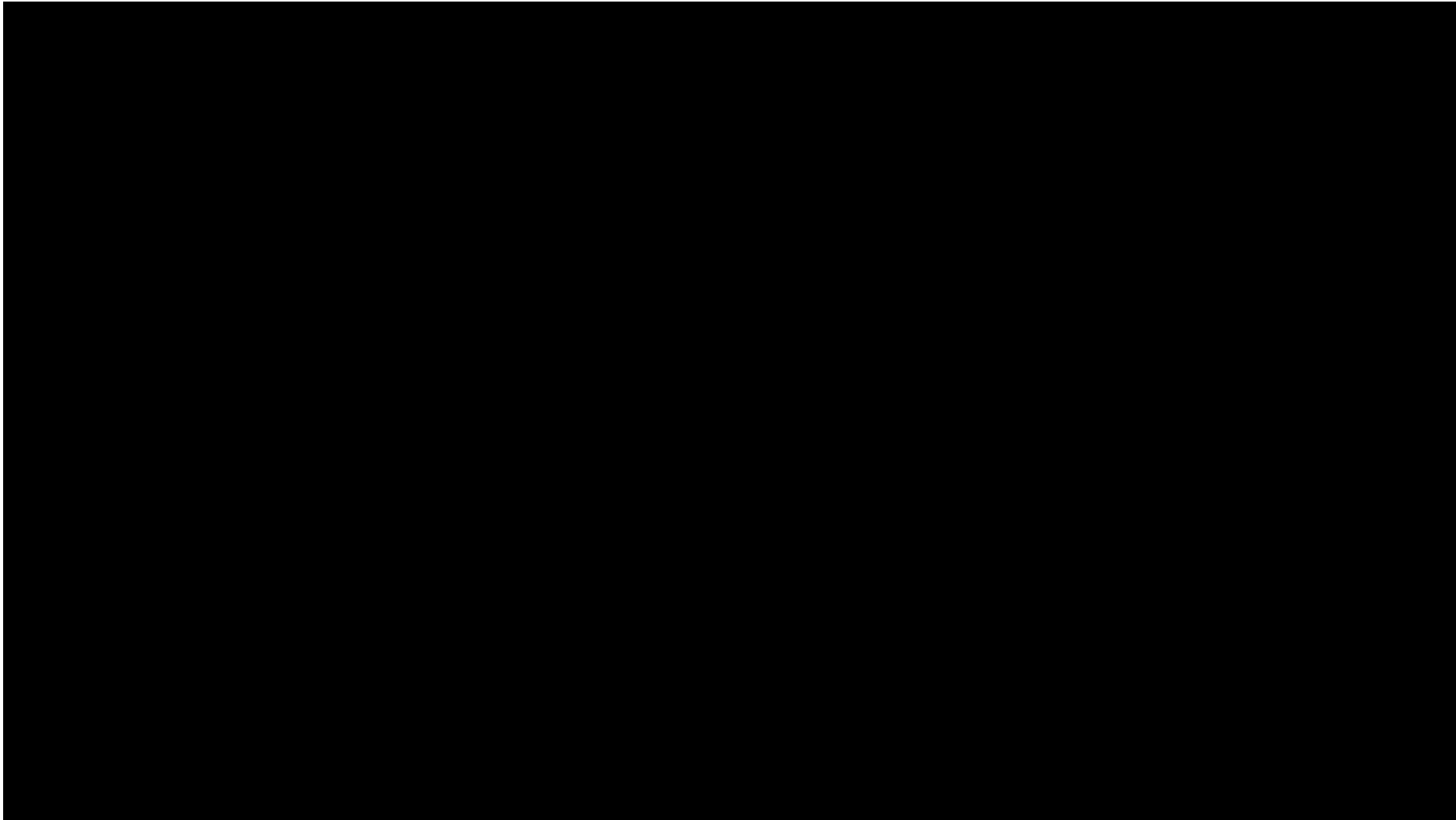
Our brains play tricks on us.

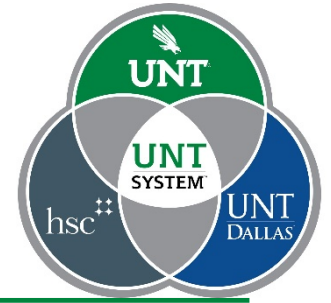
We make snap judgments about the world around us.
These snap judgments are the result of unconscious bias.



The human tendency to judge a book by its cover has become a source of extensive psychological study. The science of snap judgments is more than just figuring out what we can tell by looking at each other. Knowing how people size each other up from day to day has significant implications for identifying and subduing implicit bias, discrimination, and stereotyping.

Are you biased? I am | Kristen Pressner





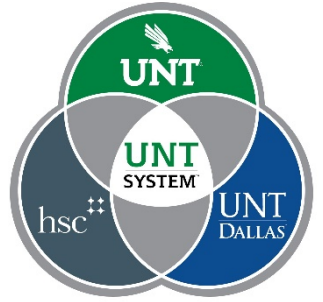
Implicit Association Test

- Developed in 1998 by psychologists at Harvard, UVA and U. Washington to measure implicit biases
- Determines initial, unconscious reactions to visual stimuli
- Results only calculated if you provided spontaneous, not deliberate reactions (validity)

“The Project Implicit site has been functioning as a hands-on science museum exhibit, allowing web visitors to experience the manner in which human minds display the effects of stereotypic and prejudicial associations acquired from their socio-cultural environment.”

– Project Implicit

IAT Assigned Tests



Skin Tone

Transgender

Mental
Illness

Weight

Breakout Room Activity #2: IAT Reflection & Stereotypes



- You will now move to a Breakout Room to share your IAT test results.
 - You will need to reference your pre-work questions and your IAT results.
- We will open the Breakout Rooms and you will automatically be moved to your Breakout Room.
- **Part One:** Share which test you took and discuss what you think contributed to these results. *Do not discuss hand-eye coordination or any factors other than social effects.*
- **Part Two:** Each Breakout Room will be assigned one IAT test stereotype to discuss.
 - The name of your Breakout Room is the IAT test stereotype you are assigned.
 - Using your Participant Guide Pages 4-7 or a piece of paper, list some stereotypes relating to your stereotype.
 - **Assign someone to take notes (we suggest they have a laptop).** They will be responsible for sharing your Breakout Room discussion with the larger group.
- Groups will meet for **20 minutes (15 minutes IAT sharing, 5 minutes stereotypes).** There will be a timer visible at the top of your Zoom window.
- *If you finish early, you can return to the main room.*

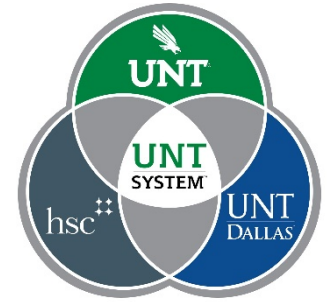
Pre-Work Reflection Questions



- What test did you take (Skin Tone, Sexuality, Gender-Career, or Mental Illness)? Overall, what did you think of the test?
- What do you think contributed to the results? Please consider **social effects and lived experiences**, rather than the technical implications of the test, such as hand-eye coordination.
- What are some stereotypes relating to the test's identity focus (Skin Tone, Transgender, Weight, or Mental Illness) that may have contributed to your results?

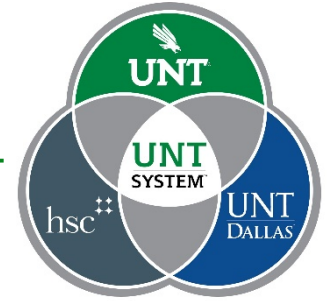
Bias Awareness and Socialization Participant Guide

Breakout Room 1 *Stereotype Group: Skin-Tone*



Light Skin	Dark Skin

Large Group Discussion: Per Group

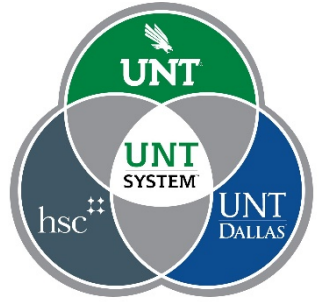


What stereotypes did your group come up with?

Share your stereotypes by the two different columns (ex. light/dark, thin/overweight, cisgender/transgender physical/mental illness,)

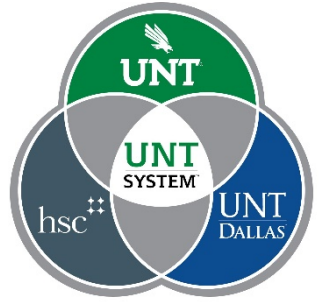
Send a private chat with your stereotypes

Breakout Room 1: Skin-Tone



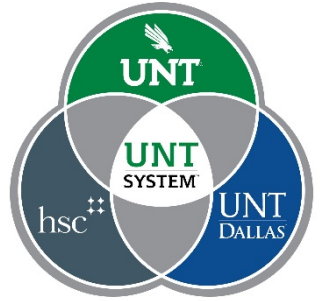
Light Skin	Dark Skin

Breakout Room 2: Weight



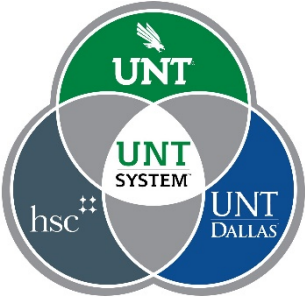
Thin	Overweight

Breakout Room 3: Transgender



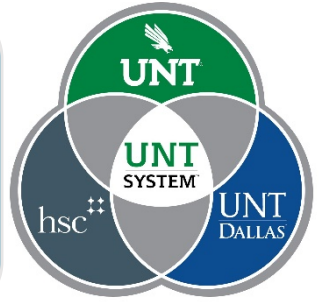
Cisgender	Transgender

Breakout Room 4: Mental-Illness



Physical Illness	Mental Illness

For further reflection...



- How might your biases and some of these stereotypes affect your role as a Title IX hearing officer?
- How can you manage them effectively?
- How can “Flip it to Test It” be useful in your role as a Title IX hearing officer?



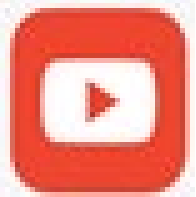
@DiversityUNT



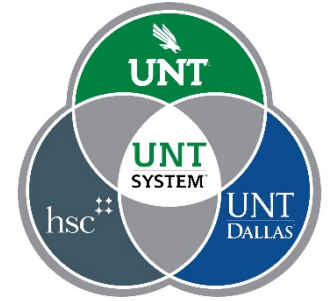
@UNT DiversityInclusion



@untdiversity



**Division of Institutional
Equity and Diversity**



Diversity & Inclusion

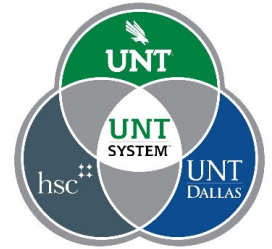
Diversity.Inclusion@unt.edu

940-565-3119

ied.unt.edu/diversity-inclusion

Thank you for your time!

Please complete your evaluation via Qualtrics link.



Title IX Hearing Officers Training: Gender and Sexuality Bias

Kathleen E. Hobson

Pronouns: they/them/theirs

Director, UNT Pride Alliance

Land Acknowledgement

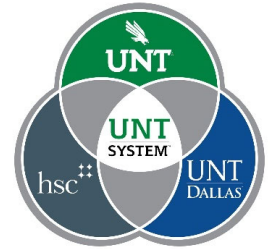


Before we begin I would like to read a land acknowledgement. Land Acknowledgement is a formal statement that recognizes and respects Indigenous Peoples as traditional stewards of this land and the enduring relationship that exists between Indigenous Peoples and their traditional territories. To recognize the land is an expression of gratitude and appreciation to those whose territory we reside on, and a way of honoring the Indigenous people who have been living and working on the land from time immemorial.

It is important to understand the long existing history that has brought us to reside on the land, and to seek to understand our place within that history. Land acknowledgements do not exist in a past tense, or historical context: colonialism is a current ongoing process, and we need to build our mindfulness of our present participation. It is also worth noting that acknowledging the land is Indigenous protocol.

I would like to open our time together today by acknowledging that the land on which we gather is the occupied/unceded/seized territory of the Wichita, Caddo, and Comanche tribes. These tribes have stewarded this land throughout the generations and we would like to pay our respects to elders, both past and present.

Objectives

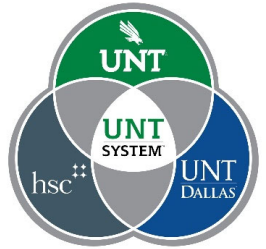


After this session, participants will be able to:

- Articulate the differences between sex assigned at birth, gender identity, gender expression, sexual attraction/sexuality, and romantic attraction
- Articulate the differences between cissexism and heterosexism
- Recognize how gender and sexuality bias can occur in Title IX cases

Ground Rules

- Challenge Yourself
- Confidentiality
- Empathy
- Open Mind
- Participation
- Respect



Your Role



- What will your role be in Title IX cases?
- Why is it important to educate yourself about gender and sexuality bias and discrimination?

UNT Nondiscrimination Policy Statement

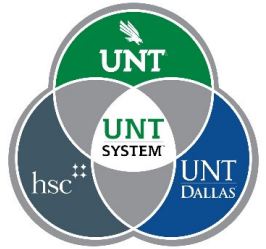


The University of North Texas does not unlawfully discriminate on the basis of race, color, national or ethnic origin, religion, **sex, sexual orientation, gender identity or expression**, age, disability, ancestry, genetic information, or veteran status in its application and admission process, educational programs and activities, university facilities, or employment policies. The University takes active measures to prevent such conduct and immediately investigates and takes remedial action when appropriate.

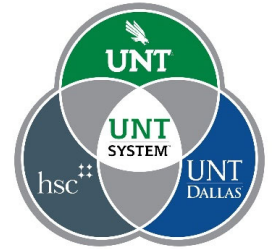
Visit edo.unt.edu/equal-opportunity to see the full, and most current policy.

Offered Definitions

- *Sex Assigned at Birth:*
- *Gender Identity:*
- *Cisgender:*
- *Gender Expression:*
- *Sexual Attraction (Sexuality):*
- *Romantic Attraction:*



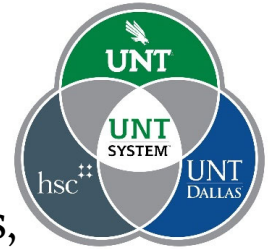
Page1 Activity - #1



Write your best guess at a definition for each term.

Text someone. Google it. Cheat!!!

Offered Definitions



- *Sex Assigned at Birth*: A medically assigned status based on chromosomes, hormones, and sex/reproductive organs.
- *Gender Identity*: A individual's personal experience and concept of their own gender. Gender identity is not determined by sex assigned at birth and cannot be defined by others.
- *Cisgender*: A person whose sex assigned at birth matches their gender identity, based upon what society has prescribed (assigned female at birth and identifies as a woman, assigned male at birth and identifies as man).
- *Gender Expression*: The ways in which a person externally communicates their gender to others.
- *Sexual Attraction (Sexuality)*: Attraction that deals with sexual desire, contact, or interest in another person(s), or lack thereof. Physical attraction.
- *Romantic Attraction*: Attraction that deals with romantic desire, contact, or interest in another person(s), or lack thereof. Emotional attraction.

Privilege, Power, & Oppression



Heterosexism

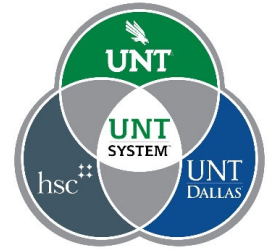
A system of attitudes, bias, and discrimination that upholds heterosexuality and systematically oppresses other sexualities. It also includes the presumption that all people are heterosexual and that man+woman attractions and relationships are the norm and therefore superior.

Cissexism

A system of attitudes, bias and discrimination that upholds cisgender identities and systematically oppresses other gender identities. It also refers to the assumption that one's gender is determined solely by a sex assigned at birth, and that cisgender people are the norm and therefore superior.

Page 1 Activity - #2

Read the scenario.



Is any bias occurring? If so, what is it?



Gender Pronouns

Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

Subjective	Objective	Possessive	Reflexive	Example
She	Her	Hers	Herself	She is speaking. I listened to her. The backpack is hers.
He	Him	His	Himself	He is speaking. I listened to him. The backpack is his.
They	Them	Theirs	Themselves	They are speaking. I listened to them. The backpack is theirs.
Ze	Hir/Zir	Hirs/Zirs	Hirself/ Zirself	Ze is speaking. I listened to hir. The backpack is zirs.

[t transstudent.tumblr.com](https://transstudent.tumblr.com)
[f facebook.com/transstudent](https://facebook.com/transstudent)
twitter.com/transstudent

Design by Landyn Pan

For more information,
go to transstudent.org/graphics

TSER
Trans Student Educational Resources

<https://transstudent.org/graphics/pronouns101/>

How to Introduce Yourself with Your Pronouns

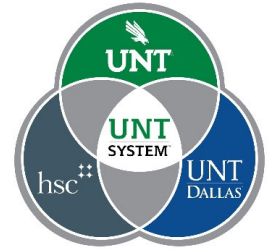


You: “Hi, I am Taylor. I use she/her/hers pronouns. What are your name and pronouns?”

Someone New: “Uhhhh- I’m John?”

You: “Oh – pronouns are words used to refer to someone in the third person, like she, or he, or they. How do you want me to refer to you when you’re not around?”

Recovering from Mispronouncing: You



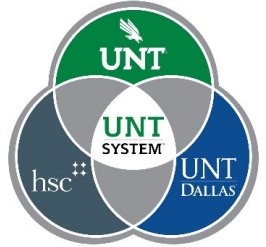
“Kathleen is so great! She... excuse me I should have said they – have been a great resource for students.”

Recovering from Mispronouncing: A Colleague

Colleague: “Kathleen is so great! She has been a great resource for students.”

You: “Kathleen actually uses they/them pronouns. They are a great resource though.”

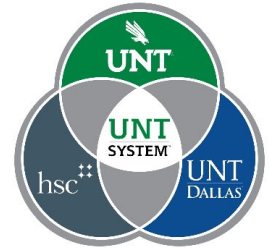
Page 2 Activity - #1



What examples of gender or sexuality bias or discrimination have you experienced in Title IX cases?

Read the example scenarios. What bias could occur for hearing officers or their teams in these scenarios?

Ways to Put Inclusion Into Practice



- Use pronouns on business cards, nametag, signature, Zoom.
- Introduce with pronouns in conversation, class, and meetings.
- Ask for other people’s pronouns.
- Correct people when they mispronoun or misgender someone
- Use non-gendered language to address groups (instead of “ladies and gentlemen”): Friends, colleagues, students, scholars, (esteemed/respected) guests, folks, y’all.
- When hearing a case, consider the implications that sex assigned at birth, gender identity, gender expression, and sexuality might have on your perception.

Resources

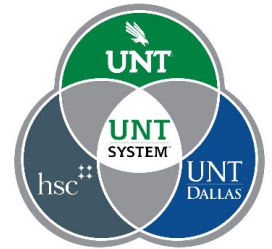
- Resources on Personal Pronouns

<https://ied.unt.edu/pronouns>

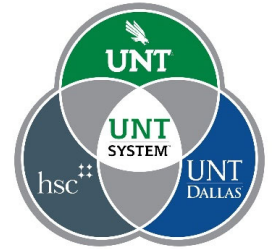
<https://www.mypronouns.org/>

- Trans Student Educational Resources

<https://transstudent.org/>



Links to Videos



Here are a few videos that give more information and context to the lives of trans people:

- Move Over, Gender Binary!: Tyler Ford
<https://www.youtube.com/watch?v=F-N4-PMMdI0>
- A Trans History: Time Marches Forward And So Do We
<https://www.youtube.com/watch?v=N-lhWEVByZo>
- Trans Love In The Black Community: Living Color | NBC
<https://www.youtube.com/watch?v=81aCnP6AM6Q>
- The Pain & Empowerment of Choosing Your Own Gender: Alok Vaid-Menon
<https://www.youtube.com/watch?v=j7Gh2n9kPuA&t=68s>
- DRAW MY LIFE: KAT BLAQUE
<https://www.youtube.com/watch?v=QQqGCfa-oEo>

Pride Alliance

Address: University Union 372

Phone: 940.565.2589

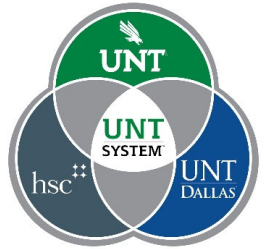
Email: pridealliance@unt.edu

Website: <https://ied.unt.edu/pridealliance>

Social Media: UNTpride   

Thank you for your time! Please fill out the evaluation via

Qualtrics link: <https://tinyurl.com/UNTIX9220>



Terminology

Term	What do you think this word/term means?	How did your best guess differ from our offered definitions?
1. <i>Sex Assigned at Birth</i>		
2. <i>Gender Identity</i>		
3. <i>Cisgender</i>		
4. <i>Gender Expression</i>		
5. <i>Sexual Attraction (Sexuality)</i>		
6. <i>Romantic Attraction</i>		

Sexuality and Gender-Based Discrimination

<p>Heterosexism A system of attitudes, bias, and discrimination that upholds heterosexuality and systematically oppresses other sexualities. It also includes the presumption that all people are heterosexual and that man + woman attractions and relationships are the norm and therefore superior.</p>	<p>Cissexism A system of attitudes, bias and discrimination that upholds cisgender identities and systematically oppresses other gender identities. It also refers to the assumption that one's gender is determined solely by a sex assigned at birth, and that cisgender people are the norm and therefore superior.</p>
---	---

Using the definitions for heterosexism and cissexism above, determine what bias, if any, is occurring:

1. A woman you work with is teased because she doesn't shave her legs.
2. After sharing their pronouns during introductions in a meeting, a person starts receiving many questions from their colleagues about how they/them/their pronouns work.
3. A cisgender man is talking to his coworkers. Someone asks him if he's got a girlfriend yet.
4. During a conversation with a trans person, you ask what their 'real name' was.
5. Someone uses the wrong pronouns when referring to someone else.

How Might Sexuality and Gender-Based Discrimination Occur in Title IX Cases?

1. A trans woman who is a UNT student goes to meet with the faculty advisor who will be assigning her student teaching. The faculty member explains that it will be difficult for her to be a student teacher and that because she has facial hair, an adam's apple, very small breasts, and a visible outline of a penis through her dress, she does not look like a woman, which will be concerning for children and their parents. The student files a complaint of sexual harassment against the faculty member.
2. Two cisgender men, JT and Rob, are faculty members at UNT. After a faculty meeting JT and Rob go back to Rob's house to watch TV. Upon arriving, Rob restrains JT and forces him to have an erection. Then, Rob forces JT to put his penis into Rob's mouth. JT files a complaint of sexual assault.
3. Two non-binary students, Jordan and Rox, both assigned female at birth, have been dating and having sex. They begin to have sex using a strap-on dildo for vaginal penetration. Jordan (the student wearing the strap-on) also penetrates Rox's anus. Rox files a complaint of sex assault, with the assertion that they did not consent to anal penetration.
4. Two cisgender men, Mateo and Jessie, are staff members at UNT and work in the same office. For years they have slapped each other's butts in the office after hard day and said "good game". Jessie has recently started tapping the crotch of Mateo's pants instead, often grazing his penis. Mateo has asked Jessie to stop multiple times, but Jessie continues the behavior. Mateo files a complaint of sexual assault.