

## **Title IX: What Has Changed?**

The new Title IX changes, effective August 14, 2020, include several changes to the law's scope and the procedures colleges and universities must follow when notified of potential violations. NCCC already incorporates due process requirements under New York State's Enough Is Enough legislation, including the opportunity to inspect and review evidence and to appeal a hearing determination to an appeals panel. NCCC's Title IX Policy governs claims of sexual harassment and sexual violence that fall under Title IX. The most significant changes include the following:

### **Limiting the physical jurisdiction of Title IX.**

Previously, Title IX applied broadly, requiring schools to take action on harassing conduct even when that conduct occurred off-campus, or in NCCC programs abroad. The new Title IX regulations apply only in cases where the alleged misconduct took place within the United States, and the alleged misconduct took place within NCCC's "education program or activity." This means that conduct that occurs in locations outside of NCCC's ownership or control, including off-campus locations, would not fall under Title IX, nor would conduct that occurs outside of the United States, even if it is part of a Study Abroad experience. Similarly, online conduct that does not use NCCC's computers or networks would not fall under Title IX. It is important to note that individuals who experience sexual harassment or sexual violence in places or activities outside of the jurisdiction of Title IX may still report this under other NCCC policies and procedures, file complaints with the Division of Human Rights, EEOC, as well local authorities protecting individuals from sexual harassment and discrimination.

### **Limiting who may file a complaint under Title IX.**

In order to file a formal complaint, the complainant must be participating, or attempting to participate, in a NCCC program or activity at the time the formal complaint is filed. This means that graduates, former students, or visitors to campus cannot file a formal Title IX complaint. It is important to note that these individuals may still report sexual misconduct under other NCCC policies and procedures, file complaints with the Division of Human Rights, EEOC, as well local authorities protecting individuals from sexual harassment and discrimination.

### **Requiring actual knowledge of sexual harassment.**

Previously, Title IX applied to sexual harassment that a school knew or should have known about. In order for schools to be responsible for sexual harassment under Title IX, the new regulations **require that they be provided with "actual knowledge" of the harassment.** This occurs when the College's Title IX Coordinator or other individuals who have authority to "institute corrective measures" receive notice of sexual harassment.

### **Requiring the filing of a formal complaint to initiate discipline**

In order to proceed with disciplinary action for conduct and allegations that fall under Title IX, the College must be in receipt of a formal complaint that a complainant signs and submits electronically or in writing. If the Title IX Coordinator believes that an investigation is necessary to protect the safety of the complainant or the NCCC community, the Title IX Coordinator may file a complaint on the complainant's behalf, even if the complainant does not wish to do so. In this case, the complainant will receive notice of any hearing dates, findings, or other relevant developments.

### **Providing notice to the respondent upon filing of the complaint.**

The College must provide the respondent to a complaint with notice of the allegations and the opportunity to secure an advisor of choice prior to any meetings or interviews under the Title IX process. An advisor must be chosen and if one is not chosen by the respondent the college will assign an impartial advisor. It is important to note that criminal investigations are conducted separately from Title IX investigations and are not subject to the Title IX notice requirement and are handled by local authorities.

### **Allowing an advisor of choice the opportunity for cross-examination.**

Complainants and respondents to a complaint may have an advisor of choice, who may ask questions of the other party after the hearing officers conduct their own questioning. Please note that the Title IX regulations do not allow parties to conduct cross-examination directly. The advisor of choice may be an attorney, but this is not required. The advisor may be anyone the party chooses, including the party's parent, sibling, or other relative, or a friend, another student or a NCCC employee. NCCC will provide an advisor if the party does not have one as an advisor for both the complainant and respondent is required for the hearing and will be the only individuals other the hearing officer to speak. The respondent and claimant will be represented by the advisor.

### **Allegations of Misconduct that Fall Outside of Title IX's Jurisdiction**

NCCC's [Student Code of Conduct](#) prohibits sexual harassment and sexual violence that falls outside of the Title IX's jurisdiction. NCCC is required to address this conduct under New York State's Enough is Enough legislation, and under the New York State Human Rights Law as well as Equal Employment Opportunity Coalition. NCCC will hear sexual harassment and sexual violence claims that fall outside of Title IX, including but not limited to the following circumstances:

- The conduct occurred in a NCCC Study Abroad program outside of the United States;
- The conduct occurred in an off-campus location where the College did not have substantial control or ownership;

- The complainant is not currently pursuing or attempting to pursue a College education program or activity. This includes former students and visitors to campus;
- The conduct occurred online, not using the College's networks or computer resources;
- Any other circumstances where Title IX would not apply to the situation.

### **Supportive Measures**

Individuals who have experienced sexual violence and individuals who have been accused of sexual violence have the right to receive supportive measures from the College. This is the case regardless of whether a person has decided to file a formal Title IX complaint or is eligible to do so. Supportive measures are non-disciplinary and non-punitive. As appropriate, supportive measures may include, but are not limited to, the following:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Restrictions on contact between the parties (no contact orders)
- Changes in work or housing
- Leaves of absence
- Increased security and monitoring of certain areas of the campus