

Blue Cliff College

Coordinator
Title IX Training

Title IX

- Title IX provides "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

A Little History...

- 2020 Trump-era Title IX rules increased procedural protections in schools' grievance resolution procedures.
 - Presumption that respondent was not responsible for misconduct;
 - Respondent required to have notice of charges, access to all evidence, and have live hearings with cross-examination;
 - Narrowed definition of sexual harassment and limited jurisdictional reach of Title IX.
- 2024 Biden-era Title IX rules (effective August 1, 2024) expanded protections for LGBTQI+, clarified school obligations for pregnant and parenting students, and introduced new procedures for handling complaints and investigations.
- 2025 – Biden-era Title IX rules struck down nationwide after a federal judge in Kentucky found the Department overstepped its statutory authority, followed by a statement by the U.S. Department of Education announcing it would revert back to the 2020 Trump-era Title IX rules.

Themes in the 2020 Rule

- Schools must address sexual harassment if it is so “severe” and “pervasive” that it “effectively denies” a person equal access to a school program or activity, only if:
 - The sexual harassment occurs off-campus and inside the U.S.:
 - In a school program or digital platform;
 - In an official student group’s building; or
 - Under the school’s “substantial control.”
 - The complainant was participating or trying to participate in school at the time of filing the complaint.
- Institutions of higher education must respond to alleged sexual harassment if a Title IX coordinator or an official with “authority to institute corrective measures” has actual knowledge of it.
- Schools must resolve complaints of sex discrimination in a “prompt” manner and must respond to sexual harassment in a way that is not “deliberately indifferent.”
- Schools must offer supportive measures even if there is no investigation.
- Schools can use an informal resolution process, such as mediation or a restorative process, to resolve a formal complaint of student-on-student sexual harassment.
- Schools cannot retaliate against anyone to (i) interfere with their Title IX rights or (ii) punish them for their participation or lack thereof in a sex discrimination proceeding
- Schools cannot discriminate against students based on pregnancy or related conditions. Related conditions include childbirth, termination of pregnancy, and recovery from any of these conditions.

Blue Cliff College's Education Program or Activity

An "Education Program or Activity" consists of the following:

- Campus events
- Travel associated with an education program or activity
- Any other Blue Cliff College sponsored education program or activity.

Sex Discrimination Defined

“Sex Discrimination” includes, but is not limited to:

- Discrimination based on:
 - Sex characteristics
 - Physiological sex-based characteristics, including person’s anatomy, hormones, and chromosomes associated with male or female bodies.
 - Pregnancy or related conditions; or
 - Sex in connection with parental, family, or marital status
- Excluding from participation, denying benefits, or otherwise subjecting to discrimination any person based on sex in a manner that subjects them to more than de minimis harm, except with respect to:
 - Housing; and
 - Athletic teams.

Pregnancy or Related Conditions

Blue Cliff College may not discriminate against any student on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of Blue Cliff College.

- **Medical Certification Requirements** - Blue Cliff College may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.
- **Separate Programs for Pregnant Students** - If Blue Cliff College operates a portion of its education program or activity separately for pregnant students, Blue Cliff College shall ensure that the separate portion is comparable to that offered to non-pregnant students.
- **Treatment as a Temporary Disability** - Blue Cliff College shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which Blue Cliff College administers
- **Leave of Absence and Reinstatement** - In the event a student does not qualify for leave under Blue Cliff College's leave policy, Blue Cliff College shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

Equal Admission Practices

Blue Cliff College must not base admission decisions on sex by:

- Ranking applicants separately by sex.
- Setting numerical limits on the number or proportion of admitted students based on sex.
- Treating applicants differently based on sex.

Admission Tests & Criteria

- Admission tests or criteria must not have a disproportionate negative impact on applicants based on sex, unless:
 - The test validly predicts success in the program.
 - No alternative test is available that avoids the adverse impact.

Prohibited Discriminatory Practices.

- Blue Cliff College must not:
 - Apply rules related to parental, family, or marital status of students or applicants.
 - Discriminate against or exclude applicants due to pregnancy, childbirth, termination of pregnancy, or recovery.
 - Ask about an applicant's marital status before admission (e.g., requiring "Miss" or "Mrs." titles).

Education Programs or Activities

Blue Cliff College must not discriminate based on sex when providing financial aid, benefits, or services. This means:

- *Equal Treatment*: All students must be evaluated using the same criteria.
- *No Differences in Support*: Aid, benefits, or services must be provided equally and in the same manner for all students.
- *No Denial of Support*: Students cannot be denied aid, benefits, or services based on sex.

Blue Cliff College must not:

- Enforce separate or different rules of behavior, sanctions, or treatment.
- Support or assist any organization or agency that discriminates based on sex.
- Limit any person's rights, privileges, advantages, or opportunities due to sex.

Sexual Harassment

“**Sexual Harassment**” means conduct on the basis of sex that is:

- **Quid pro quo harassment.** An employee, agent, or other person authorized by Blue Cliff College to provide an aid, benefit, or service under Blue Cliff College’s program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
- **Hostile environment harassment.** Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from Blue Cliff College’s education program or activity (i.e., creates a hostile environment).
- **Sexual assault.** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
- **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; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship;
- **Domestic violence.** Felony or misdemeanor crimes committed by a person who:
 - Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
 - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
 - Shares a child in common with the victim; or
 - Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person’s safety or the safety of others; or
 - Suffer substantial emotional distress.

Title IX Coordinator

- Complaints of Sexual Harassment should be reported to Blue Cliff College's Title IX Coordinator in accordance with Blue Cliff College's Title IX Complaint/Grievance Procedure Policy.
- Grievance procedures for sex discrimination (not including sexual harassment) are no longer required to be included in a Title IX grievance policy. These complaints should be handled separately and similarly to how Blue Cliff College handles all other discrimination complaints.
- Individuals experiencing harassment or discrimination also have the right to file a formal grievance with the United States Department of Education:

Assistant Secretary, Office for Civil Rights ("OCR")
U.S. Department of Education
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone – 800-421-3481
Fax – 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov
Web: <https://ocrcas.ed.gov/contact-ocr>

Roles and Responsibilities of Title IX Coordinator

- Oversees implementation and enforcement of the Title IX Complaint/Grievance Policy.
- Responds promptly to information regarding sexual harassment.
 - Response must be in a manner that is not deliberately indifferent, or in a manner that is clearly unreasonable in light of the known circumstances.
- Oversees the grievance process in response to a formal complaint of sexual harassment.

Roles and Responsibilities of Employees

- All employees must receive training promptly upon hiring on:
 - Blue Cliff College's obligation to address Sexual Harassment in its education or activity;
 - The scope of conduct that constitutes Sexual Harassment under Blue Cliff College's Title IX Policy; and
 - Employees' notification and information obligations under Blue Cliff College's Title IX Policy.
- It is the responsibility of all employees to review Blue Cliff College's Title IX policy and comply with it.

Roles and Responsibilities of Investigators

- Gather relevant evidence to aid Blue Cliff College in determining whether the complaint contains allegations that reasonably may constitute sexual harassment.
- Conducting interviews with all parties and witnesses, sharing investigative evidence with all parties for their review, and writing the investigative report.
- The investigator cannot act as a decisionmaker.

Roles and Responsibilities of Decision Makers

- Conduct a formal hearing, if any.
- Issue a written determination regarding responsibility.
- Weigh the relevant evidence and determine based on a preponderance of the evidence standard, whether Sexual Harassment occurred.
- Provide Blue Cliff College's written determination on the formal complaint to the parties.

Roles and Responsibilities of Facilitators

- Acts like a mediator.
- A neutral party that assists parties in resolving a formal complaint of Sexual Harassment.
- Helps to facilitate discussion and guide the parties toward a mutually acceptable agreement.
- A facilitator does not make a binding determination on the Formal Complaint. If the parties fail to reach an agreement, the formal grievance process resumes.

Reporting and Information Obligations – Pregnancy

Reporting and/or complaints regarding pregnancy should be handled following the procedures outlined in the Student Complaint/Grievance Procedure Policy located in the applicable Blue Cliff College Academic Catalog.

Reporting and Information Obligations – Sex Discrimination

Incidents of sexual misconduct, other than Sexual Harassment, or discrimination should be handled following the procedures outlined in the Student Complaint/Grievance Procedure Policy located in the applicable Blue Cliff College Academic Catalog.

Reporting and Information Obligations –Sexual Harassment

Mandatory Reporting Requirements

- Certain Blue Cliff College employees must notify the Title IX Coordinator if they have actual knowledge of potential sexual harassment.
 - This applies to employees who have the authority to take corrective action on behalf of Blue Cliff College. (e.g., Dean, Campus President)

Understanding "Actual Notice"

- Actual Notice occurs when the Title IX Coordinator or an official with authority to implement corrective measures is informed of sexual harassment or allegations.
- Simply having the ability or obligation to report, or being trained to provide guidance, does not mean an individual has corrective authority.
- A report to the Title IX Coordinator qualifies as "Notice" under Title IX.

How to Report

- Anyone can report sex discrimination or sexual harassment, including:
 - In-person
 - By mail
 - By phone
 - By email
 - Any other method ensuring the Title IX Coordinator receives the report
- Reports may be made at any time, including outside business hours, using the listed contact methods.

Blue Cliff College's Obligation to Respond

If Blue Cliff College has actual knowledge of sexual harassment occurring within an education program or activity in the U.S., it must respond promptly and without deliberate indifference.

Initiation of a Sexual Harassment Complaint - Informal

- When the Title IX Coordinator has Actual Knowledge of conduct that reasonably may constitute Sexual Harassment or receives an informal complaint of Sexual Harassment, the Title IX Coordinator must promptly contact the complainant to:
 - Discuss the availability of supportive measures (with or without the filing of a formal complaint) and consider the complainant's wishes with respect to supportive measures;
 - Explain to the complainant the process for filing a formal complaint.

Supportive Measures

What Are Supportive Measures?

- Blue Cliff College provides reasonable, non-punitive supportive measures to both the complainant and respondent at no cost.
- These measures help restore or preserve access to education programs and minimize disruption during the resolution process.

Availability of Supportive Measures

- Supportive measures are available regardless of whether a formal or informal resolution process is pursued.
- They must not impose an unreasonable burden on either party and are not disciplinary or punitive in nature.

Determining & Implementing Supportive Measures

- Blue Cliff College conducts a fact-specific inquiry to ensure fairness and avoid undue burden on any party.
- Supportive measures remain confidential, and details are not shared with the other party unless necessary for implementation.

Modifying or Terminating Supportive Measures

- Supportive measures may be modified or terminated if circumstances change.
- Changes can be requested by the affected party or made based on the Title IX Coordinator's recommendation.

Supportive Measures Cont'd

Supportive Measures may include:

- Counseling;
- Reasonable academic accommodations (e.g., extending deadlines or other course-related adjustments);
- Campus escort services;
- Increased security and monitoring of certain areas of the campus;
- Ordering the complainant and respondent to have no further contact with each other and/or other third parties;
- Leaves of absence;
- Modifying class schedules or working arrangements;
- Any other measure which can be tailored to the involved individuals

Initiation of a Sexual Harassment Complaint - Formal

Written Notice Upon Formal Complaint

- When a formal complaint of Sexual Harassment is received, the Title IX Coordinator will provide written notice to both parties, which includes:
 - Details of the allegations, including:
 - Identities of the involved parties
 - The policy alleged to be violated
 - Description of the alleged conduct
 - Date and location of the alleged incident
 - Right to an advisor of their choice.
 - Right to review evidence gathered during the investigation.
 - A statement that the respondent is presumed not responsible until a final determination is made.
 - A reminder that knowingly making false statements or submitting false information is prohibited.
 - Information about the College's informal resolution process (if applicable).

Notices for Interviews, Meetings & Hearings

- Separate written notices will be provided for any investigative interview, meeting, or hearing.
- Notices will include:
 - Date, time, location
 - Participants
 - Purpose of the meeting

Additional Allegations

- If new allegations arise during the investigation, the Title IX Coordinator must provide an updated notice to the involved parties.

Mandatory Dismissal of a Formal Complaint

When Required

- The Title IX Coordinator must dismiss a formal complaint if the conduct alleged in the formal complaint:
 - Does not meet the definition of Sexual Harassment;
 - Did not occur in Blue Cliff College's education program or activity; or
 - Did not occur against a person in the United States.
- Blue Cliff College shall provide the parties with written notice of a dismissal, and the reason for the dismissal.
- Dismissal of the formal complaint under Blue Cliff College's Title IX Policy does not preclude Blue Cliff College from investigating the allegations under a different Blue Cliff College or institutional policy.

Discretionary Dismissal of a Formal Complaint

The Title IX Coordinator may dismiss a formal complaint where:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or allegations;
 - The respondent is no longer enrolled or employed by Blue Cliff College; or
 - Specific circumstances prevent Blue Cliff College from gathering evidence sufficient to reach a determination regarding the formal complaint or allegations therein.
- Blue Cliff College shall provide the parties with written notice of a dismissal, and the reason for the dismissal.
 - Dismissal of the formal complaint under Blue Cliff College's Title IX Policy does not preclude Blue Cliff College from investigating the allegations under a different Blue Cliff College institutional policy.

Standards Governing the Formal Complaint Process

Impartiality & Fairness

- Title IX personnel (Coordinator, investigators, decision-makers, and informal resolution facilitators) must:
 - Remain free from conflicts of interest or bias toward either party.
 - Objectively evaluate all relevant evidence.
 - Avoid credibility judgments based on a person's role as complainant, respondent, or witness.

Due Process for Respondents

- Blue Cliff College will not impose discipline on a respondent without completing the required grievance process.
- The respondent is presumed not responsible until a final determination is made.

Right to an Advisor

- Both parties may have an advisor of their choice present at any stage of the process.
- The advisor may attend all meetings but must be present at the live hearing to conduct cross-examinations.
- If a party does not have an advisor for the live hearing, Blue Cliff College will provide one at no cost.
- Cross-examinations must be conducted by the advisor—the complainant and respondent cannot question each other directly.

Investigation

Prompt & Fair Investigation

- Blue Cliff College will promptly investigate all complaints of Sexual Harassment in an adequate, reliable, and impartial manner.
- The burden of gathering evidence falls on Blue Cliff College, not the parties.

Fair Evidence Collection & Access

- Blue Cliff College cannot access or use a party's medical or psychological records without voluntary, written consent.
- Both parties have an equal opportunity to:
 - Present fact and expert witnesses.
 - Submit inculpatory (evidence against a party) and exculpatory (evidence in favor of a party) evidence.
 - Discuss allegations and gather relevant evidence.

Investigation Cont'd

Rights During the Grievance Process

- Both parties may have an advisor of their choice (including an attorney) present during any grievance proceeding.
- Blue Cliff College may establish participation rules for advisors, but they must apply equally to both parties.
- Equal access to evidence:
 - Both parties can inspect and review all evidence directly related to the allegations, even if Blue Cliff College does not rely on it in making a determination.
 - Before the investigation concludes, Blue Cliff College will provide electronic or hard copies of the evidence to both parties and their advisors.
 - Each party has 10 days to submit a written response, which the investigator will consider before finalizing the report.

Use of Evidence in Hearings

- All evidence subject to inspection and review will be available at any hearing.
- Both parties must have an equal opportunity to reference evidence during the hearing, including for cross-examination.

Assessing Credibility

- The decision-maker will
 - Question parties and witnesses.
 - Objectively evaluate all relevant evidence, including:
 - Inculpatory evidence - evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility.
 - Exculpatory evidence - evidence that tends to show a party was not responsible.
- The decision-maker will adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of Sexual Harassment.
- If the decision-maker is not persuaded by a preponderance of the evidence that Sexual Harassment occurred, whatever the quantity of the evidence is, the decision-maker must conclude that no Sexual Harassment occurred.

Hearings

When Is a Live Hearing Required?

- If a formal complaint is not or cannot be resolved through informal resolution, Blue Cliff College will hold a live hearing.
- The hearing will be overseen by the campus President/Executive Director or another trained designee, separate from the Title IX Coordinator or investigator.

Cross-Examination & Questioning

- Each party's advisor may question the other party and witnesses with relevant follow-ups, including credibility challenges.
- Cross-examination must be:
 - Conducted directly, orally, and in real time.
 - Only by the advisor, not by the party personally.
- If a party does not have an advisor, Blue Cliff College will provide one at no cost to conduct cross-examination.

Hearing Format & Participation

- Hearings may be conducted in person or virtually as long as all participants can see and hear each other in real time.
- Telephone-only participation is not permitted.
- At the request of either party, hearings may be conducted with parties in separate rooms, using technology to maintain visibility and audio access.
- Blue Cliff College will create an audio or audiovisual recording or transcript of the hearing and make it available for inspection and review.

Hearings Cont'd

Rules on Questioning & Evidence

- Only relevant questions may be asked.
- Decision-makers must determine question relevance before a party or witness answers.
- Questions about a complainant's sexual history or behavior are not relevant, except:
 - To prove that someone other than the respondent committed the alleged conduct.
 - If related to prior sexual behavior with the respondent, offered to prove consent.

Impact of Non-Participation

- If a party or witness does not submit to cross-examination, the decision-maker cannot rely on their statements in determining responsibility.
- However, no inference about responsibility can be made solely based on a party's or witness's absence or refusal to answer questions.

Determination of Whether Sexual Harassment Occurred

Standard of Proof: Preponderance of the Evidence

- Blue Cliff College uses the preponderance of the evidence standard.
- This means proving that something is more likely true than not true.
- The decision-maker must assess if there is enough evidence to conclude that Sexual Harassment occurred or did not occur.

Written Determination Provided to Parties

- The decision-maker will issue a written determination that includes:
 - Allegations: A summary of the reported Sexual Harassment.
 - Procedural Steps Taken: Details of the investigation, including:
 - Notifications to parties
 - Interviews with parties and witnesses
 - Site visits
 - Evidence-gathering methods
 - Hearings held
 - Findings of Fact: Summary of evidence supporting the determination.
 - Application of Conduct Policies: How College policies apply to the facts.
 - Final Decision:
 - Determination of responsibility for each allegation.
 - Any disciplinary sanctions imposed on the respondent.
 - Any remedies provided to the complainant to restore access to education.
 - Appeal Process: Explanation of appeal rights for both parties.

Determination of Whether Sexual Harassment Occurred Cont'd

Finalizing the Determination

- The written decision is provided simultaneously to both parties.
- The decision is final:
 - If no appeal is filed, when the appeal deadline passes.
 - If an appeal is filed, when the appeal decision is issued.
- The Title IX Coordinator ensures the implementation of remedies.

No Automatic Discipline for Statements

- No party or witness will face disciplinary action for making a false statement or engaging in consensual sexual conduct, based only on whether the Sexual Harassment allegation was determined to have occurred or not.

Appeal

- Blue Cliff College must offer both parties an appeal from its decision regarding responsibility, and from its dismissal of a formal complaint or allegations contained in the complaint,
- The appeal is not an opportunity to re-argue the facts. Appeals are limited to the following issues:
 - Procedural irregularity that affected the outcome of the matter
 - The party has discovered new and relevant evidence that was not reasonably available at the time the determination was made that could alter the outcome.
 - Evidence that the Title IX Coordinator, investigator or decisionmaker was biased or had a conflict of interest, and such bias or conflict of interest changed the outcome of the case.

Notification & Equal Opportunity for Both Parties

- Blue Cliff College must notify both parties in writing when an appeal is filed.
- Both parties have a reasonable, equal opportunity to submit a written statement:
 - In support of or challenging the outcome.

Appeal (cont.)

Role of the Appellate Decision-Maker

- The Title IX Coordinator will assign a trained, impartial decision-maker who was not involved in the original grievance procedure.
- The appellate decision-maker will issue a final decision on the appeal within 30 days of the appeal filing.

Possible Outcomes of the Appeal

- The original decision may be:
 - Upheld
 - Reversed
 - Modified (including the possibility of different or additional sanctions).
- If the complainant files the appeal, sanctions may only be increased.

Additional Investigation

- The appellate decision-maker may refer the case back to the investigator(s) for further investigation and a new decision-making process.

Final Written Decision

- The written decision will be provided to both parties simultaneously.
- No further appeals are allowed—this decision is final.

Sanctions

Steps After a Finding of Sexual Harassment

- If the determination finds that Sexual Harassment occurred, the Title IX Coordinator will:
 - Provide and implement remedies for the complainant and others whose access to Blue Cliff College's programs or activities was impacted by the harassment.
 - Coordinate disciplinary sanctions for the respondent and notify the complainant of any sanctions imposed.
 - Take appropriate and effective actions to prevent further harassment within Blue Cliff College's programs or activities.

Possible Disciplinary Sanctions

- Sanctions are determined on a case-by-case basis and may include:
 - *Warning*: Written notice that further misconduct may lead to more severe action.
 - *Disciplinary Probation*: Exclusion from privileged activities for a set period, with potential additional conditions. Violating probation or any Blue Cliff College policies could lead to further discipline.
 - *Restriction on Contact*: Prohibiting the respondent from contacting the complainant.
 - *Suspension*: Exclusion from Blue Cliff College premises, classes, and activities for a specified period.
 - *Expulsion*: Permanent termination of student status and exclusion from Blue Cliff College activities and privileges.
 - *Termination*: Termination of employment (for employees).
 - *Other Sanctions*: Other disciplinary measures, either in addition to or instead of those listed.
 - *Multiple Sanctions*: Multiple sanctions may be applied for a single violation.

Employee Sanctions

Employees are also subject to disciplinary actions as per Blue Cliff College policies, separate from the Title IX process. These actions may differ from or be unrelated to the outcome of the Title IX proceedings.

Emergency Removal

- Blue Cliff College may temporarily remove an individual from campus on an interim basis during the pendency of a formal complaint in limited emergency circumstances where there is an immediate threat to physical health or safety. Before taking this emergency measure, Blue Cliff College must
 - Undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any person arising from the allegations of Sexual Harassment;
 - Make an affirmative determination that such an immediate threat exists based on its individualized safety and risk analysis; and
 - Provide the respondent with notice and an opportunity to challenge the emergency decision immediately following the respondent's removal.

Informal Resolution Process

What is the Informal Resolution Process?

- After a Formal Complaint is filed, Blue Cliff College may offer the parties an opportunity to engage in an informal resolution process, such as mediation or an informal settlement conference.
- Important: College will not offer or facilitate informal resolution where the allegations involve an employee sexually harassing a student.

Participation Requirements

- Voluntary, Informed Consent: Both parties must agree in writing to participate in the informal resolution process.
- Blue Cliff College will provide written notice to both parties explaining:
 - The allegations involved.
 - The requirements and consequences of participating.
- Right to Withdraw: Either party may withdraw from the informal resolution process at any time before reaching a resolution and resume the Formal Grievance Process.

Key Points

- Availability: Informal resolution is available any time after the formal complaint is filed.
- Consent: Both parties must agree in writing to engage in the process—Blue Cliff College cannot force participation.
- Withdrawal: Parties may withdraw at any time prior to reaching a resolution and resume the Formal Grievance Process.

Role of the Facilitator

- The Title IX Coordinator will assign a trained facilitator to lead the informal resolution process.
- The facilitator will:
 - Be impartial and have no conflicts of interest or bias toward either party.
 - Be separate from the investigator or decision-maker.

Outcome of Informal Resolution

- If a resolution is reached, the Formal Grievance Process will end for the allegations addressed through informal resolution.
- Blue Cliff College will maintain records of the informal resolution process.
- Blue Cliff College will also inform the parties about how any information disclosed during the informal process may be used if the Formal Grievance Process resumes.

Informal Resolution Process (cont.)

Informal Resolution Agreement

- If the parties reach a resolution, the parties will enter an informal resolution agreement that is binding only on the parties.
- Potential terms that may be included in an informal resolution agreement include but are not limited to:
 - Restrictions on contact.
 - Restrictions on the respondent's participation in one or more of Blue Cliff College's programs or activities or attendance at specific events.
 - Restrictions Blue Cliff College could have imposed as remedies or disciplinary sanctions had Blue Cliff College determined at the conclusion of the Formal Grievance Process.
 - Even if the parties reach an informal resolution, the Title IX Coordinator may take appropriate prompt and effective steps to ensure that complained of conduct does not continue or recur within Blue Cliff College's education program or activity.

Training

- The Title IX Coordinator and all personnel involved in the Title IX process are responsible for learning and must know the following:
 - The definition of Sexual Harassment;
 - The scope of Blue Cliff College's education program or activity;
 - How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable; and
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
 - 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.

Record Keeping

- The Title IX Coordinator must create and maintain for seven (7) years, records of any actions (including any supportive measures) taken in response to a report or complaint of Sexual Harassment.
 - These records shall include, at a minimum:
 - For each report the Title IX Coordinator receives of information about conduct that reasonably may constitute Sexual Harassment under Title IX, records documenting the actions Blue Cliff College took to meet its obligations under Title IX;
 - For each complaint of Sexual Harassment records including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any supportive measures provided to the complainant;
 - Any appeal and the result therefrom;
 - Any informal resolution; and
 - All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process.

Anti-Retaliation Policy

- Blue Cliff College prohibits retaliation, including peer retaliation, in its education program or activity. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its applicable regulations, or because the individual made a report or complaint, testified, assisted, or participated in or refused to participate in any manner in an investigation, proceeding, or hearing afforded by any process outlined in this policy. Any retaliation complaints should be reported to the Title IX Coordinator.
- 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 constitutes retaliation. Exercising rights protected under the First Amendment does not constitute retaliation. 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 does not constitute retaliation.
- Blue Cliff College will 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 or required by applicable law. Complaints alleging retaliation may be filed according to the grievance procedures for Sex Discrimination.

How to Serve Impartially and Avoid Bias and Conflicts of Interest

Treat Complainant and Respondent Equitably and Equally

- Promptly investigate and respond to complaints
- Apply the same procedures/processes in the same way to both parties
 - Provide equal time and opportunities for each party
 - Same opportunity and ability to obtain, review and present evidence
 - No disciplinary sanctions imposed until an adverse determination is made in the grievance process
 - Only provide remedies to the complainant if respondent is found responsible
- No negative presumption against the respondent
- Do not make credibility determinations based on a person's status as a complainant, respondent, or witness
- Take reasonable steps to protect the privacy of the parties and witnesses
- Only consider relevant evidence
 - Make reasoned decisions based on the relevant evidence

Title IX Coordinator, Investigator, Facilitator and Decisionmaker Must Not Have a Conflict of Interest or Bias

- The Title IX coordinator, investigator, facilitator and decisionmaker need to act with integrity and in an independent and impartial manner.
 - Must not have conflicts of interest – e.g., personal knowledge of the disputed facts, a personal or family relationship with a party or witness, or a personal bias concerning a party to the complaint or any witness
 - If a Title IX coordinator, investigator, facilitator and decisionmaker has a conflict of interest they cannot be involved in investigating or deciding a formal grievance or facilitating an informal resolution process
 - The facilitator of an informal resolution process cannot be the same person who acts as the investigator or decisionmaker on the complaint
 - The Title IX Coordinator can act as investigator on a complaint
- Make every effort to ensure you are conscious of—and effectively counter—influences that promote prejudicial attitudes and bias.
 - You may have many unconscious implicit mental processes, including implicit memories, implicit perceptions, implicit attitudes, and implicit stereotypes
 - Think how your mental shortcuts based on implicit mental processes can influence decision making and may lead to unintentional, but real, adverse bias.
- The onus is on the investigator, facilitator, decisionmaker or Title IX Coordinator to make sure that their mind is “right” and that they can be impartial – blank slate – with no prejudgment based on age, sex, appearance, dress, behavior, etc.
 - Decision points exist from the moment of initial contact with parties until the determination has been issued. Each decision point is an opportunity for investigator, facilitator, decisionmaker or Title IX Coordinator to make choices that can influence the parties or process.
 - How they deal with those choices will color the view of the parties and witnesses as to the fairness of the process.
- A conflict of interest or bias for against complainants/respondents in general or the specific parties is a specific ground for appeal.

Do Not Rely on Sex Stereotypes or Prejudge Evidence

- The Title IX coordinator, investigator, facilitator and decisionmaker need to judge the relevant evidence on its merits, and not influenced by their reaction to the party or witness providing the information.
 - Avoid emotionally reacting to the witness either pro or con.
 - Hear the evidence; do not let emotion cloud your decision making.
- Do not decide until you have heard and weighed *all* the evidence.
 - You cannot fairly assess a case until all relevant evidence is heard
 - It is normal to assess the evidence and its relevance as the matter progresses, but a full determination should wait for the completion of all evidence and a full consideration of that evidence
- Pay attention to all relevant evidence
 - Even if the outcome appears clear, don't shut down your consideration based on hearing a portion of the evidence.
- Listen to words of the party or witness without considering other factors that may cloud your receiving or understanding of the evidence.
 - Don't prejudge the evidence because of outside factors – you cannot be swayed by outside pressure, public outcry, fear of criticism or self-interest.
 - Be aware of your emotional reaction to various things – e.g., appearance, race/ethnicity, status as a complainant or respondent, gender identity, sexual orientation - and how those factors might impact your reaction to the party or witness and their evidence.

Ensure Fair Process

- The investigator, facilitator, decisionmaker or Title IX Coordinator should conduct themselves in a way that is fair to all parties.
- Avoid conduct and statements that give the appearance of partiality toward or against any party.
 - Use a consistent form of addressing each party; e.g., don't call the complainant by their first name and address the respondent as "Mr. or Ms."
- Make decisions in a timely, just, independent and deliberate manner
 - Need to start writing the determination immediately after you receive all the evidence; don't wait and try to get it done at the last minute.
 - After you have received all the evidence, writing a brief synopsis of the facts of the case and a preliminary approach to analyzing the relevant facts. This will be helpful to keeping the relevant evidence fresh in your mind as you write the determination.

Essential Skills

- The Title IX Coordinator, and individuals chosen as investigators, decisionmakers and facilitators should possess the following essential skills :
 - Demonstrates fairness; neutrality; able to gain trust of parties and witnesses
 - Communication and listening skills
 - Effective questioner
 - Attention to detail; organized; able to deal with deadlines; no procrastination
 - Ability to deal with an individual's emotions and emotional topics
 - Approachable
 - Able to control the process and parties to ensure timely resolution
- These individuals may want to explore taking outside training to assist them in performing these roles.