

Carnegie Institute, Troy
550 Stephenson Hwy. #100-110
Troy MI 48083

Title IX Non-Discrimination & Grievance Process Policy

School of Allied Health Since 1947

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Version 1.0

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QUICK REFERENCE GUIDE

Carnegie Institute

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Carnegie Institute

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Office of Student Services

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Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

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Carnegie Institute

Title IX Non-Discrimination & Grievance Process Policy

I. Introduction

Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex in any education program or activity operated by a recipient that receives federal financial assistance. As an educational institution subject to Title IX, Carnegie Institute¹ has adopted this Title IX Non-Discrimination & Grievance Process Policy (the “Policy”).² As set forth in detail herein, Carnegie Institute.

- Does not discriminate on the basis of sex, including in admissions and employment, and is committed to providing an educational and workplace environment that is free from sex-based discrimination, harassment, and retaliation;
- Prohibits discrimination on the basis of sex in its educational programs and activities, as required by law;
- Is committed to promoting fairness and equity in all aspects its operations; and
- Values and promotes the equal dignity of all community members and is committed to the pursuit of just resolutions with respect the rights of all parties involved.

This Policy is adopted to prevent discrimination prohibited under Title IX and provide a prompt, fair, and impartial process to address complaints of alleged discrimination based on sex.

Inquiries about this Policy or the application of Title IX may be referred to Carnegie Institute’s Title IX Coordinator, the Assistant Secretary of the Department of Education’s Office for Civil Rights, or both.

II. Overview of Title IX Policy and Grievance Process: General Provisions

Responsibilities of the Title IX Coordinator

The Title IX Coordinator oversees implementation and enforcement of this Policy, which includes primary responsibility for coordinating the School’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

¹ Carnegie Institute may be referred to interchangeably as the “School” throughout this Policy.

² All capitalized terms not defined within this Policy are defined in Appendix A.

The School's Title IX Coordinator is identified below and may be contacted with questions about this Policy, to file a report or formal complaint, or to otherwise assist individuals in ensuring equal access to the School's educational programs or activities in compliance with Title IX.

Carnegie Institute

Title IX Coordinator: Bonnie Normile, RN

Office of Education

550 Stephenson Hwy. #100-110, Troy MI 48083

Tel.: (248)589-1078

Email: bnormile@carnegie-institute.edu

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Web: www.carnegie-institute.edu

Individuals may also contact the U.S. Department of Education's Office for Civil Rights with Title IX questions. *(Please note that inquiries to OCR alone are not sufficient to allow appropriate responsive action by the School. To ensure your concern is appropriately addressed under this Policy, please file a report with the School's Title IX Coordinator).*

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How to Make a Report or Formal Complaint of an Alleged Title IX Violation

Any person may report alleged sex discrimination, sexual harassment, or retaliation to the Title IX Coordinator, irrespective of whether the reporting person is the alleged victim of such conduct. A report is differentiated from a Formal Complaint (“Complaint”), which is a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the School investigate the allegation(s) and implement the School’s Grievance Process. A report or complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail at any time (including during non-business hours), using the contact information in the section immediately above or as described below:

1) To one of the Title IX Coordinator(s):

Carnegie Institute
Title IX Coordinator: Bonnie Normile, RN
Office of Education
550 Stephenson Hwy. #100-110, Troy MI 48083
Tel.: (248)589-1078
Email: bnormile@carnegie-institute.edu
Web: www.carnegie-institute.edu

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Email: lingraham@carnegie-institute.edu
Web: www.carnegie-institute.edu

2) By school’s telephone #: 248.589.1078

After Making a Report or Formal Complaint

Upon receipt of a report or Complaint, the Title IX Coordinator shall undertake an initial assessment to determine appropriate next steps as required under this Policy, including making an initial threat assessment to ensure there is no immediate danger to Complainant or the campus community and, if there is, to take appropriate action, which may include emergency removal of Respondent as described below.

The Coordinator shall contact Complainant to discuss the availability of appropriate supportive measures that may be implemented with input from the Complainant irrespective of, and in addition to, any resolution process including the formal Grievance Process, and will notify Complainant about the right to have an advisor.

If the report has been made without filing a Complaint, the Title IX Coordinator will review the allegations and discuss options with the Complainant, including the option of proceeding with a Complaint. If the Complainant does not want to proceed with a Complaint, the Coordinator may initiate a Complaint if the Coordinator determines that a Complaint is warranted.

If the Complainant files a Complaint, or the Title IX Coordinator initiates a Complaint, the matter will proceed as described under the Grievance Process.

After submission of a Complaint and after notifying the Respondent of the Complaint's allegations, the parties will be notified of the availability of informal resolution, as applicable. All parties must voluntarily consent in writing to any informal resolution process. The parties may withdraw such consent at any time and resume the formal Grievance Process.

At all stages of the process, irrespective of any resolution or grievance process which may be implemented, responsive and reasonable supportive measures will be implemented to ensure continued access to the School's educational program or activities.

Emergency Removal of Respondent

The School reserves the right to remove a Respondent from its education program or activities on an emergency basis when the Respondent poses an immediate threat to the health or safety of any student or campus community member. The School will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. If an emergency removal is imposed, the Respondent will be given notice of the removal and the option to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the removal should not be implemented. Emergency removal decisions are not subject to Appeal.

Administrative Leave of Employee Respondent

Respondents that are School employees may be placed on administrative leave during the pendency of a grievance process as determined by the School and the Title IX Coordinator.

Complainant's Decision to Pursue a Complaint

If a Complainant does not wish to be identified, does not wish for an investigation to take place, or does not want a Complaint to be pursued, the Complainant may make such a request to the Title IX Coordinator, who will evaluate the request in light of the duty to ensure campus safety and compliance with state and federal law. The School will comply with Complainant's wishes unless the Coordinator determines that initiating a Complaint is warranted under the circumstances.

If the Coordinator independently initiates a Complaint, the Complainant may have as much or as little involvement in the process as the Complainant desires. The Complainant retains all rights of a Complainant under this Policy irrespective of participation level. Irrespective of whether a Complaint is filed, the School shall offer supportive measures to ensure Complainant's continued access to the School's educational program and activities. If the Complainant elects not to file a Complaint, the Complaint shall retain the right to file a Complaint later.

Complaint Dismissal

Mandatory Dismissal

The School must dismiss a Complaint if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Complaint does not constitute sexual harassment as defined in under Title IX; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the School (including buildings or property controlled by recognized student organizations); and/or
- 3) The School does not have jurisdiction over the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a Complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the School.

Discretionary Dismissal

The School may dismiss a formal complaint or any allegations therein if at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegation therein; or
- 2) The Respondent is no longer enrolled in or employed by the School; or
- 3) Circumstances prevent the School from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

Upon any dismissal, the School shall promptly send written notice of the dismissal and its rationale simultaneously to the parties. This dismissal decision is appealable by any party under the

procedures for appeal below.

Dismissed Complaints may include conduct that could be considered a potential violation of the School's **Code of Conduct** and may be addressed through other applicable, non-Title IX conduct policies and procedures accordingly.

Consolidated Complaints

If a Complaint involves one or more Complaint, Complainant and/or Respondent and allegations arising out of the same set of circumstances, the School may elect to consolidate complaints.

Time Limits on Reporting

There is no time limitation on making a report or Complaint. However, acting on reports or Complaints is significantly impacted by the passage of time and occurrence of other events (including, but not limited to, the rescission or any revision of this Policy), and is at the discretion of the Title IX Coordinator, who may, among other things, document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate. Additionally, if the Respondent is no longer subject to the School's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

Anonymous Report or Complaint

If a Complainant makes a report anonymously, it will be investigated by the School to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or Remedies can be provided. Anonymous reports typically limit the School's ability to investigate and respond, depending on what information is shared. In some situations, the Title IX Coordinator may proceed with the issuance of a Formal Complaint even when the Complainant's report has been made anonymously.

Confidentiality

The School shall undertake reasonable efforts to preserve the confidentiality of reports and Complaints. The School shall not disclose any report or Complaint except as provided herein and as necessary to effectuate this Policy, or as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99, or as required under applicable law.

Certain professionals have a legal and/or ethical responsibility to maintain communications made in the scope of their professional roles in strict confidence.³ Some of these roles include licensed professional counselors/mental health providers, licensed medical and health care providers, victim advocates, ordained/licensed clergy, licensed attorneys and rape crisis or domestic violence

³ In highly limited circumstances, such as when presenting an immediate threat or danger to another, or when subject to a court order, confidential communications may be revealed without the consent of a party.

resources. Complainants or Respondents wishing to speak to someone confidentially are encouraged to seek out such resources. Communications with such professionals are considered legally privileged and cannot be revealed without a party's express written consent.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the School's education program or activity, including measures designed to protect the safety of all parties or the School's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available upon receipt of a report or a complaint alleging possible sexual harassment. At the time that supportive measures are offered, the School will inform the Complainant, in writing, that they may file a formal complaint with the School either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The School shall maintain the confidentiality of the supportive measures to the greatest extent reasonably practicable, provided that confidentiality does not impair the School's ability to provide supportive measures or otherwise fulfill its obligations under this Policy. The School will implement measures in a way that does not unreasonably burden the other party.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, referral to medical or healthcare services, referral to community-based services, 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.

Amnesty for Complainants and Witnesses *as required by applicable State of Michigan law*

The School encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the School community that Complainants choose to report misconduct to School officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the School may offer parties and witnesses amnesty from minor violations of other School policies – such as underage alcohol consumption or personal use of illicit drugs – that may be associated with the incident.

Amnesty is not applicable to more serious allegations, such as physical abuse of another or illicit drug distribution.

Right to an Advisor

The parties have the right to select an advisor of their choice to accompany them to any or all meetings and interviews during the resolution process. There are no limits on who can serve as an advisor; it may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. Under Title IX, cross-examination is required during the hearing, and must be conducted by the parties' advisors. If a party selects an advisor of their choice, this advisor must perform cross-examination on their behalf during the hearing, as the parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an advisor, or the advisor does not appear for a hearing, the School will provide one for the limited purpose of conducting cross-examination on behalf of the party.

An advisor who is also a witness to the allegations in the complaint creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s) and may, but will not necessarily, impact the Final Determination.

The School cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not select or retain an attorney or cannot afford an attorney, the School is not obligated to provide the other party with an attorney.

Conflict-of-Interest & Bias

Title IX Personnel are trained to ensure they have no conflict of interest and are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise any concern involving bias, conflict of interest or other misconduct by any Title IX Personnel contact the School's President/other applicable school personnel, Robert J. McEachern at rmceachern@carnegie-institute.edu or 248.589.1078 to report your concern.

Resolution Timeline

The School will make a good faith effort to complete the resolution process fairly and promptly. Duration of a matter that proceeds through the Formal Grievance Process is determined by many factors including, but not limited to, the cooperation and availability of the parties and witnesses, potential concurrent criminal investigations, and the School closures, among others. The School will avoid all undue delays within its control and will grant reasonable extensions of time, upon written request and showing of good cause, by a party. The School shall provide the parties written notice of delays and/or extensions, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Notifications to Parties

All notifications to the parties noted herein will be made by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed and/or received in-person, notice will be presumptively delivered.

Clery Act Reporting

Reports or complaints of sexual assault, domestic violence, dating violence, and/or stalking that pose a serious or continuing threat of bodily harm or danger to members of the campus community may trigger a timely warning obligation by the School under the Clery Act. If a warning is deemed necessary, the School will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

In addition, the School is obligated to report and disclose crimes under the Clery Act, including the crimes of sexual assault, domestic violence, dating violence and stalking as defined in this Policy, for statistical reporting purposes only. Reports of these crimes do not include personally identifiable information and therefore preserves the confidentiality of any involved parties.

Retaliation

The School prohibits retaliation under this Policy. Retaliation may include intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 Policy and procedure. Alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The School will take appropriate action to protect individuals who fear that they may be subjected to 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 under this Policy and procedure does not constitute retaliation. Relatedly, a determination of responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

The School's Mandatory Response Obligations

Carnegie Institute's mandatory response obligations under this Policy arise when Carnegie Institute has Actual Knowledge of conduct that may constitute sexual discrimination, harassment, or retaliation, as defined herein. Actual Knowledge occurs when the Title IX Coordinator or a School official with authority to implement corrective measures ("OWA"⁴ official with authority)

⁴ The following have been identified and designated as OWAs: Robert J. McEachern.

becomes aware of the potential occurrence of such conduct. In these cases, the School must act to stop, remedy and prevent future recurrence of prohibited conduct through application of this Policy.

Notice, Dissemination and Publication of Policy

Title IX requires Carnegie Institute to notify applicants for admission or employment as well as students, employees, and, if applicable, unions or professional organizations holding collective bargaining of collective agreements with the School, of this Policy. Carnegie Institute complies with Title IX's notice requirements, including prominently publishing its Non-Discrimination & Grievance Process Policy and contact information for the Title IX Coordinator on its website and in other publications.

III. Sexual Harassment Defined, Jurisdiction & Scope of Policy

Sexual Harassment Defined

For purposes of this Policy and the grievance process, Sexual Harassment has the meaning set forth below. Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender and/or gender identity of those involved.

Sexual Harassment means:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. A School employee,
 - b. conditions the provision of an aid, benefit, or service of the School,
 - c. on an individual's participation in unwelcome sexual conduct; and/or
- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the School's education program or activity.
- 3) Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.

- b. Forcible Rape:
 - i) Penetration,
 - ii) no matter how slight,
 - iii) of the vagina or anus with any body part or object, or
 - iv) oral penetration by a sex organ of another person,
 - v) without the consent of the Complainant.
- c. Forcible Sodomy:
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or against that person's will (non-consensually), or
 - iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Sexual Assault with an Object:
 - i) The use of an object or instrument to penetrate,
 - ii) however slightly,
 - iii) the genital or anal opening of the body of another person,
 - iv) forcibly,
 - v) and/or against that person's will (non-consensually),
 - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e. Forcible Fondling:
 - i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly,
 - iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f. Sex Offenses, Non-forcible:
 - i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by applicable State of Michigan law.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16 in the State of Michigan.

- 4) Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the State of Michigan or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Michigan.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
- a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.
- For the purposes of this definition—
- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and meanings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent: Consent is knowing permission to engage in sexual activity that is voluntarily given through clear verbal communication or by unambiguous behavior.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Carnegie Institute to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to an alleged sexual assault violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Jurisdiction of the School

If the Respondent is unknown or is not a member of the School community, the Title IX Coordinator will assist the Complainant as requested in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement to file a police report upon request.

Further, even when the Respondent is not a member of the School’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the School may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from School property and/or events. All vendors serving the School through third-party contracts are subject to the policies and procedures of their employers, or if applicable, to these policies and procedures to which their employer has agreed to be bound by their contracts.

Scope of the School's Educational Program and Activities

For purposes of this Policy, the School's educational program or activities includes locations, events, or circumstances, within the U.S., where the School exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by the School or by a student organization that is officially recognized by the School. It also includes online, and cyber manifestations of conduct prohibited by this Policy, when those behaviors occur in or have an effect on the School's education program and activities or use the School networks, technology, or equipment.

IV. Formal Grievance Process

If a Formal Complaint is filed, the matter will proceed through the Grievance Process as outlined below and will include an objective investigation, live hearing with opportunity for cross-examination and the right to appeal. This process will treat complainants and Respondents equitably. Any provisions, rule or practice adopted by the School as part of the grievance process, other than those required under Title IX and its implementing regulations will apply equally to both parties. The process will include an objective evaluation of all relevant evidence (inculpatory and exculpatory), will be conducted by trained Title IX Personnel, free from any known conflict of interest or bias, and presumes Respondent's non-responsibility until and unless demonstrated otherwise by the evidence and after a Final Determination as been rendered. Disciplinary sanctions or punitive measures will not be imposed against a Respondent unless and until there has been a finding of responsibility after application of the process. If at any stage of the investigation it is determined that conditions exist warranting dismissal, the complaint will be dismissed. Complainant will continue to be entitled to appropriate supportive measures in such cases.

The School requires impartiality in the process by ensuring there are no actual or apparent conflicts of interest or disqualifying biases of any Title IX Personnel. The parties may, at any time during the resolution process, raise a concern regarding bias, conflict of interest, or any irregularity which may taint the impartiality of the process. Such concerns should be reported in writing to the Title IX Coordinator(s), or the President/other applicable school official, who will evaluate the concern and take appropriate corrective action to ensure integrity of the process.

Notice of Allegations

The Title IX Coordinator(s) will provide written notice of the allegations to the Respondent and Complainant upon receipt of a Formal Complaint. The notice will be provided prior to any initial meeting or interview with the Respondent and their advisor, if applicable, allowing sufficient advanced notice to prepare.

The notice will include:

- A meaningful summary of all allegations,
- The identity of the parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),

- The specific policies alleged to have been violated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Respondent is presumed not responsible for the reported misconduct unless and until a Final Determination has been rendered at the conclusion of the process,
- Notice that the parties will be given an opportunity to inspect and review all directly related and relevant evidence obtained during the investigation,
- The School's policy on retaliation,
- Information about the privacy of the process,
- The right to have an advisor of their choice, who may be, but is not required to be, an attorney,
- The School's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,]
- Detail on how the party may request disability accommodations during the interview process,
- An instruction to preserve any evidence that is directly related to the allegations.

Investigation

Trained Investigators will be assigned to investigate allegations contained in a Formal Complaint and will do so objectively. The burden to collect all evidence related to the allegations, including both inculpatory and exculpatory, rests on the School, and not on the parties. Investigators must be free from bias and conflicts of interest. Depending on the complexity of the case, more than one Investigator may be assigned.

Investigation Timeline

The School will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. The School may undertake a reasonable delay in its investigation under appropriate circumstances. Such circumstances include, but are not limited to, a concurrent law enforcement investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The School will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates as warranted. The School will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the School will implement supportive measures as deemed appropriate.

Concurrent Law Enforcement Investigation or Criminal Proceedings

The School's grievance process is an administrative procedure required under Title IX to address sexual discrimination, and therefore is separate and independent of any law enforcement investigation or criminal proceedings. While a law enforcement investigation may necessitate a temporary delay in the School's grievance process, such law enforcement investigation does not replace the School's grievance process, as the School is legally obligated to address and remedy potential sexual harassment in its educational programs and activities as set forth in this Policy.

The Investigation Process

Investigators serve free from conflict of interest, objectively and without bias. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses and obtaining available, relevant evidence. The School, not the parties, bears the burden of gathering evidence and burden of proof. Parties have equal opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigation will be conducted within a reasonably prompt timeframe, allowing for thorough collection and evaluation of all evidence related to the allegations. The investigator will keep the parties informed as to estimated timelines, and any delays.

Prior to the conclusion of the investigation, the parties will be provided with an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, (whether or not it will be used in reaching a determination. The parties will have a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence.

The Investigator will incorporate any relevant feedback provided by the parties during the review process, and the final report is then shared with all parties and their advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing.

Role and Participation of Witnesses in the Investigation

Witnesses who are School employees are expected to cooperate with and participate in the School's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a Policy violation and may warrant discipline.

Interviews may occur in-person or remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used. The School will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

Evidentiary Considerations in the Investigation

The investigation includes collection of all evidence directly related to the allegations, which is not otherwise privileged. Only evidence which is also deemed relevant is summarized in the

investigative report which is considered by the Decision-Maker(s), in rendering a determination of responsibility. All parties are provided the opportunity to review all non-privileged evidence gathered during the investigation which is directly related to the allegations in the complaint, whether or not it is also included in the investigative report. All parties are also provided with a copy of the investigative report summarizing relevant evidence only.

Relevant evidence does not include evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, and are offered to prove consent.

Privileged evidence is likewise excluded from both the investigation, investigative report and hearing unless a party expressly waives this privilege in writing and consents to the release of this information during the grievance process.

Investigative Report

Upon conclusion of the investigation, the Investigator will create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing, will send the report to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.

The Hearing

Upon conclusion of the investigation and distribution of the investigative report to the parties, the matter will proceed to the hearing stage of the grievance process. The hearing will be offered live, in real-time and will include cross-examination. A Decision-maker(s) will be appointed to preside over the hearing, evaluate the evidence and make a determination as to each allegation in the complaint. The Decision-maker will be independent and neutral, and will not have had any previous involvement with the investigation. Investigators, Title IX Coordinator (or designee) or advisors are prohibited from serving as Decision-makers.

The School reserves the right to adopt any hearing protocols, which will be applied and be made available equally to both parties, to ensure the efficiency, order and decorum of the hearing process. Any such protocols will be provided in writing to the parties, witnesses and participating individuals at least ten (10) days prior to the scheduled hearing date.

The School may designate an administrative facilitator of the hearing, which may include the Title IX Coordinator, as long as they do not have a conflict of interest.

The School may conduct the hearing virtually at their discretion or upon request of a party. Request for remote participation by any party or witness should be directed to the Title IX Coordinator made at least five (5) business days prior to the hearing.

The Decision-maker may question the parties and any witness at the hearing.

Only relevant questions, testimony and evidence may be proffered at the hearing, and the Decision-maker will make determinations as to relevancy of every question posed by an advisor during cross-examination before it is answered, and of any evidence offered.

Privileged evidence or testimony, likewise, may not be proffered during the hearing, without a party's waiver and written consent allowing its consideration at the hearing.

Parties may not conduct cross-examination. Advisors only will conduct cross-exam on a party's behalf. Only relevant questions will be allowed.

Parties, advisors, witnesses, and all participating individuals are expected to behave respectfully during the hearing. Harassing, intimidating or disruptive behavior will not be tolerated, and the School reserves the right to exclude anyone from participation in the process that fails to comport themselves accordingly.

An audio or audiovisual recording, or transcript will be made of the hearing, and will be made available to the parties for inspection and review. No other recording of the hearing will be allowed.

Evidentiary Considerations in the Hearing

Only Relevant Evidence Allowed

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. Only evidence, which is directly related to the allegations, not subject to an enforceable legal privilege and not otherwise excludable as described here is considered relevant.

The hearing does not consider the following which are deemed not relevant: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

Privileged Evidence Must be Excluded

Evidence subject to any recognized legal privilege will not be allowed in the hearing without the prior written waiver of the privilege and consent for its consideration during the grievance process.

When a Party/Witness Refuses to Submit to Cross-Examination

If a party or witness does not attend, or chooses not to submit to cross-examination at the hearing, the Decision-maker may not rely on any prior statement made by that party or witness in the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Final Determination as to Responsibility and Standard of Proof

Upon completion of the hearing, the Decision-maker will deliberate privately and will render a finding as to each allegation in the complaint by applying the preponderance of the evidence; clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged. The decision will be provided simultaneously to the parties through the issuance of a written determination letter, delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official the School records, or emailed to the parties' the School-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The determination letter will include:

1. Identification of the allegations potentially constituting sexual harassment as defined under the Policy;
2. 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 evidence, and hearing held;
3. Findings of fact supporting the determination;
4. Conclusions regarding application of the School's code of conduct to the facts;
5. A statement, and rationale for, the results as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the School imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Schools' education program or activity will be provided by the School to the Complainant; and
6. The School's permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final after expiration or exhaustion of any appeal rights.

Sanctions, Disciplinary Action & Remedies

The School may consider a number of factors when determining a sanction and/or remedy and will focus primarily on actions aimed at ending, and preventing the recurrence of, discrimination, harassment, and/or retaliation and the need to remedy the effects its effects on the Complainant and campus community. Sanctions will be imposed upon either expiration of the appeal window, or after Final Determination on any appeal filed.

Sanctions or actions may include, but are not limited to, those listed below. These may be applied individually or in combination and the School may assign sanctions not listed, as deemed appropriate.

Applicable Student Sanctions:

Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any School policy, procedure, or directive will result in more severe sanctions/responsive actions.

Required Counseling: A mandate to meet with and engage in either School-sponsored or external counseling to better comprehend the misconduct and its effects.

Probation: A written reprimand for violation of School policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any School policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the School.

Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend School-sponsored events.

Withholding Diploma: The School may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

Other Actions:

Applicable Employee Actions:

Warning – Verbal or Written

Performance Improvement/Management Process

Required Counseling

Required Training or Education

Probation

Loss of Annual Pay Increase

Loss of Oversight or Supervisory Responsibility

Demotion

Suspension with pay

Suspension without pay

Termination

Other Actions: In addition to or in place of the above sanctions, the School may impose any other sanction as deemed appropriate.

False Allegations and Evidence

Making deliberately false and/or malicious accusations, knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation are policy violations subject to discipline.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions imposed, the Title IX Coordinator may implement additional long-term Remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These Remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education for the individual and/or the community
- Alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Training or awareness campaigns
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Adjustments to academic deadlines, course schedules, etc.
- Modified campus security measures

At the discretion of the Title IX Coordinator(s), certain long-term support or measures may also be provided to the parties even if no Policy violation is found.

The School will maintain the privacy of any long-term Remedies, provided privacy does not impair the School's ability to provide these services.

Failure to Comply with Disciplinary Sanctions or other Remedies

Respondents are expected to comply with any disciplinary sanction or remedy as set forth in the Final Determination or in response to a final outcome. Failure to abide by the sanction(s)/action(s) whether by refusal, neglect, or any other reason, may result in additional disciplinary action, including suspension, expulsion, and/or.

Appeals

Any party may file an Appeal on the following grounds. Appeals must be submitted in writing to the Title IX Coordinator(s) within **7** days of the delivery of the Notice of Outcome. After expiration of the appeal window, the determination will be considered final, and any applicable sanctions will be imposed.

Grounds for Appeal

Appeals may be made on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. 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
3. 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 specific Complainant or Respondent that affected the outcome of the matter.

Any sanctions imposed as a result of the Final Determination are stayed during the appeal process.

Title IX personnel with prior involvement in the matter will not be permitted to serve as a Decision-maker in the appeal. Appeals will not include a hearing. A decision on the merits will be based on information provided in the appeal document. If an appeal is based on the availability of new evidence, this evidence must be described with specificity and must be available for review within a reasonably prompt timeframe for consideration.

The appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, and the rationale supporting the findings. Appeal decisions will be made within **seven (7)** business days, barring exigent circumstances, including the review of new evidence not immediately available for submission with the appeal request. Decisions on appeal will be made by applying the **preponderance of evidence OR clear and convincing and convincing standard.**

Notification of the appeal outcome will be made in writing and will be delivered simultaneously to the parties by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed and/or received in-person, notice will be presumptively delivered. Decisions on appeal are considered final.

Record Retention

The School shall maintain the following records related to the implementation of this Policy for at least seven years:

1. Reports or Formal Complaints alleging sexual discrimination, including harassment.
2. Records of any dismissal of a Formal Complaint.
3. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
4. Any disciplinary sanctions imposed on the Respondent;
5. Any Remedies implemented by the School designed to restore or preserve equal access to

- the School's education program or activity;
6. Any appeal and the result therefrom;
 7. Any Informal Resolution and the result therefrom;
 8. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The School will make these training materials publicly available on the School's website. (Note: If the School does not maintain a website, the School must make these materials available upon request for inspection by members of the public.); and
 9. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the School's education program or activity; and
 - c. If no supportive measures were provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Revision of this Policy

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated subject to any relevant change in law or School policy, and on a recurring periodic basis, by the Title IX Coordinator. The School reserves the right to make changes to this Policy as necessary, which become effective when published.

This Policy will not restrict any rights guaranteed against government action by the U.S. Constitution and should be interpreted accordingly and should also be construed to comply with the most recent government regulations or applicable judicial decisions.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

V. Appendix A: Definitions

Actual Notice. Notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any official of the School who has the authority to institute corrective measures on behalf of the School. The School receives notice when an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

Complainant. An individual who is alleged to be the victim of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Consolidated Complaint. A formal complaint with more than one Complainant or Respondent arising when multiple parties submit formal complaints arising out of the same facts and circumstances and as deemed appropriate for consolidation by the Title IX Coordinator.

Deputy Title IX Coordinator. Any employee delegated with responsibility for compliance with Title IX and this Policy by the Title IX Coordinator, and acting within the scope of authority of a Title IX Coordinator as set forth herein.

Education Program or Activity. Locations, events, or circumstances where the School exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by the School or by a student organization that is officially recognized by the School.

Final Determination: A decision rendered and provided in writing to the parties of a Formal Complaint after application of the School's Grievance Process concluding whether or not Respondent is responsible for conduct alleged within a Formal Complaint in violation of this Policy.

Finding: A conclusion within the Final Determination as evaluated under the burden of proof that a specific allegation within a Formal Complaint did or did not occur.

Formal Complaint. A document filed and signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the School investigate the allegation(s).

Formal Grievance Process. The method of formal resolution designated by the School to address conduct that falls within the scope of this Policy, and which complies with the requirements of 34 CFR Part 106.45.

Decision-maker(s). A trained individual with responsibility for making a Final Determination as set forth in the School's Grievance Process. A Decision-maker must maintain neutrality and cannot perform the function of either the Title IX Coordinator or Investigator.

Informal Resolution Process. An alternative resolution process which may be available to the parties to seek Resolution of a Formal Complaint in lieu of the Formal Grievance Process. Informal resolution is facilitated by appropriately trained individuals, is made available at the discretion of the School and as deemed appropriate by the Title IX Coordinator, and offered only if informed, voluntary and written consent is made by all parties to a complaint. Any party may opt-out of the informal process at any time, and the matter will proceed through the Formal Grievance Process. Examples of informal resolution include, but are not limited to, mediation and restorative justice.

Investigator. A trained individual responsible for fulfilling the School's burden of gathering and evaluating all evidence related to allegations within a Formal Complaint as required under the School's Grievance Process.

Mandated Reporter. An employee of the School who is obligated by Policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

Official with Authority. An employee of the School explicitly vested with the responsibility to implement corrective measures for Title IX harassment, discrimination, and/or retaliation on behalf of the School.

Parties. The Complainant(s) and Respondent(s), collectively.

Remedies. Post-Finding actions directed to the Complainant and/or the community implemented to address safety, prevent the recurrence of harassment, and ensure continued access to the School's educational program.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Sanction. A disciplinary consequence imposed by the School on a Respondent who is found to have violated this Policy.

Sexual Harassment. Behavior or conduct as defined under Title IX and its implementing regulations at 34 CFR 106, and as more fully articulated in this Policy.

Title IX Coordinator. The School's employee responsible for ensuring compliance with Title IX.

Title IX Personnel. Those individuals collectively tasked with implementation of this Policy and Grievance Process including specifically, the Title IX Coordinator (including any designees as applicable), any Investigator or any Decision-maker.

Title IX Coordinator Training

Part 1 of 3

Training materials are copyrighted by T9Now and are licensed for the exclusive use of purchasers. No unauthorized or unlicensed use is permitted. These training materials are informational in nature and should not be construed as legal advice.

Title IX Coordinator Training

July 2020

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Organization & Content

01

- History & Context
- Conflicts of Interest, Bias & Impartiality
- Title IX Personnel
- Key Terms
- Record-keeping

02

- Sexual Harassment
- Mandatory Response Obligations
- What to do When You Receive a Report/Complaint

03

- Investigation
- Hearing
- Dismissals
- Appeals
- Sanctions & Remedies



Part 1

History & Evolution of Title IX

Underlying Principles

Supreme Court Framework

Overview of Major Provisions & Procedural Protections

Training Requirements

Bias, Conflict of Interest & Impartiality

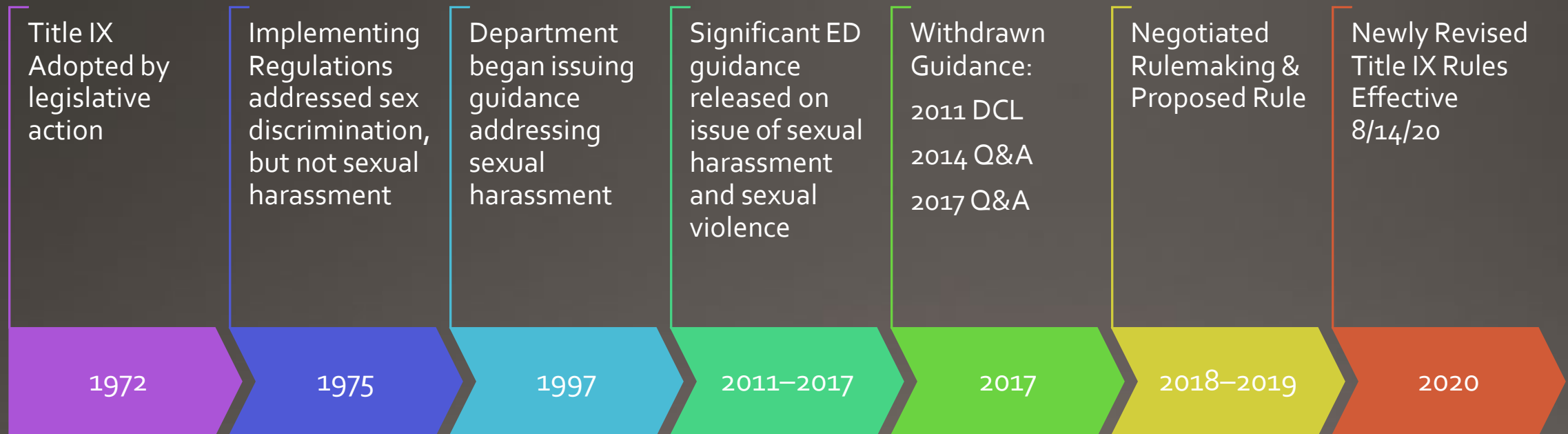
Title IX Personnel

Key Terms & Definitions

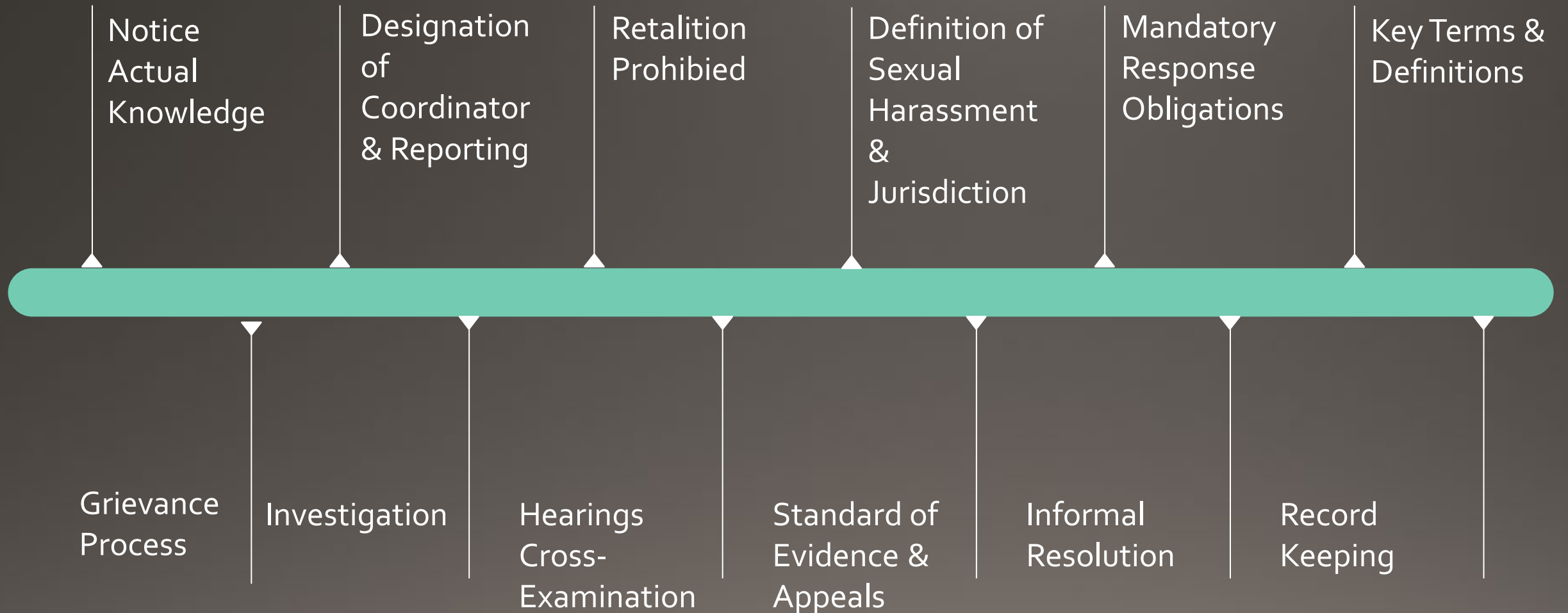
Record Keeping



History & Evolution



FINAL TITLE IX RULE MAJOR PROVISIONS



Principles Underlying the New Rules

| | |
|------------|--|
| Protect | Protect Due Process & Fundamental Fairness |
| Improve | Improve Integrity of the Grievance Process |
| Effectuate | Effectuate Purpose of the Law in Preventing Sex Discrimination |





Supreme Court Framework

Gebser v. Lago Vista Independent School District (1998 524 U.S. 274)

Davis v. Monroe County Board of Education (1999 526 U.S. 629)



Supreme Court Framework

1. Sexual Harassment
2. Actual Knowledge
3. Deliberate Indifference



Three-Pronged Definition of Sexual Harassment

1. Unwelcome sexual conduct that is so severe and pervasive and objectively offensive it effectively denies a person equal educational access
2. Quid Pro Quo
3. Clery/VAWA Sex Offenses

**Quid Pro Quo and Clery prongs do not have to be severe, pervasive and objectively offensive; a single incident falling within the scope of either could constitute prohibited sexual harassment*



Actual Knowledge

- Notice of sexual harassment or allegations of sexual harassment
- Made to the Title IX Coordinator
- Or to any school official who has the authority to institute corrective measures on behalf of the school



Deliberate Indifference

- Was the school's response clearly unreasonable in light of the known circumstances?
- Did the school respond meaningfully to every report of alleged sexual harassment whether or not it triggered the formal grievance process?



Deliberate Indifference

The school's response:

- **Must be Prompt**
- **Must Include offering supportive measures to complainant**
- **Ensures the Title IX Coordinator contact each complainant to discuss supportive measures**
- **Considers complainant's wishes regarding supportive measures**
- **Informs the complainant of the availability of supportive measures with or without filing a formal complaint**
- **Explains the process for filing a formal complaint**
- **Treat the parties equitably (*i.e. not identically, but equitably*)**
- **Follows the grievance process before imposing any disciplinary sanctions on respondent**
- **Effectively implements remedies designed to restore or preserve educational access**



Procedural Protections 106.45

| CITATION | SUMMARY |
|-----------------------|--|
| 106.45(a) | School's treatment of parties may constitute discrimination |
| 106.45(b)(1)(i)-(x) | Grievance Process Requirements |
| 106.45(b)(2) | Written Notice of Allegations to Both Parties |
| 106.45(b)(3)-(b)(4) | Formal Complaints Must be Investigated, Dismissals, Consolidation |
| 106.45(b)(5)(i)-(vii) | Investigation Requirements |
| 106.45(b)(6) | Cross Examination Conducted by Advisor |
| 106.45(b)(7) | Independent/Neutral Decision-maker, Standard of Evidence Same, Written Determination |
| 106.45(b)(8) | Appeals: Procedural Irregularities, New Evidence, Bias or Conflict of Interest |
| 106.45(b)(9) | Informal Resolution: Voluntary, Written Consent. Not Allowed for Employee Respondent |
| 106.45(b)(10) | Record Keeping, Publication of Training Material |
| | |



Mandatory Training Requirements 106.45(b)

- ✓ *On Title IX's definition of "sexual harassment"*
- ✓ *On the scope of the school's education program or activity*
- ✓ *On how to serve impartially, including by avoiding prejudgment of the facts at issue*
- ✓ *On how to avoid conflicts of interest and bias*
- ✓ *Any materials used to train must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.*
- ✓ *On how to conduct an investigation and grievance process*
- ✓ *Decision-makers must 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 a complainant's sexual predisposition or prior sexual behavior are not relevant*
- ✓ *Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence*



Mandatory Training Requirements 106.45(b)

**ALL training materials must be made publicly available on school's website.*

**Training materials must be maintained for seven years.*





How to Serve Impartially, Including by Avoiding Prejudgment of the Facts



How to Avoid Conflicts of Interest and Bias





Avoiding Sex Stereotypes

Any materials used to train must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment



Title IX Personnel

| Title | Responsibilities | Training | Status |
|--|--|---|---|
| Title IX Coordinator (multiple &/or deputies) | Coordinate, Intake Reports & Complaints, Tg analysis, Initiate Formal Complaint, Implement Supportive Measures | Sexual Harassment, Investigation & Grievance Procedure, Hearings, Appeals & Informal Resolution (as applicable); Impartiality, Relevance, Privilege | Must be Employee May Not Serve as Decision-Maker |
| Investigator | Conduct Fair, Objective and Impartial Investigation, Differentiate b/w Related & Relevant Evidence & Privilege | Sexual Harassment; How to Conduct an Investigation, Impartiality, Relevance, Privilege, Report-Writing | Staff or External May Not Serve as Decision-Maker |
| Decision Makers | Evaluate Evidence, Make & Write Decision, "Rule" on Relevancy during Cross-Examination | Sexual Harassment, Hearing Process, Technology, Evidence/Relevancy | Staff or External Cannot Serve in Any Other Capacity |
| Advisor(s) | Question Opposing Party & Witnesses | None required | Party provided Staff or External |
| Informal Resolution Facilitator | Informal Resolution Processes | Informal Resolution Processes | Staff or External |
| | | | |



Title IX Personnel: Official with Authority(OWA)

- Described in 34 CFR 106.30
- Notice to OWA is Actual Knowledge
- OWA determination is fact specific, depending on circumstances unique to each school
- Training, ability or obligation to report does not equal OWA
- School may designate OWA



School “must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities” under Title IX

Intake reports and complaints

Threat & Tg Applicability Assessments

Offer & coordinate supportive measures

- “The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures”

May investigate if can do so objectively & without bias

- *ED cautions against conflict of interest*

“Responsible for effective implementation of any remedies”

What Does the Title IX Coordinator Do?



Title IX Coordinator Role 106.8

- Must be an employee with the specific job title “Title IX Coordinator”
- Must publish and disseminate this employees contact information with your policy
- Must have the requisite authority to fulfill their responsibilities in compliance with the law



Investigators, Decision-makers & Facilitators

- Rule prohibits “single-investigator model”
- Coordinator *may* serve as investigator as long as can do so conflict and bias-free * *note the Department cautions on this*
- Schools may structure T9 team as best suits their needs otherwise, as long as they ensure objectivity and impartiality



Complainant
& Respondent

Formal
Complaint

Supportive
Measures

Actual
Knowledge

Consent

Sexual
Harassment

Key Terms & Definitions 34 CFR 106.30



Complainant & Respondent 106.30

- Parties to the complaint: alleged victim and alleged perpetrator of conduct that could constitute sexual harassment.
- Complainant: participating or attempting to participate in program or activity
- Respondent: enrolled or under recipient's control




Formal Complaint 106.30

- 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.
- May be filed in person, by mail, by electronic mail, or by other methods identified by school.
- “document filed by a complainant” is either a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the one filing the formal complaint.




Supportive Measures


Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no complaint has been filed.



Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party.



Obligated to offer (with or without a formal complaint) and to engage in an interactive discussion with complainant regarding their wishes.



Must be kept confidential to the extent possible to allow implementation.



Supportive Measures 106.30

- Non-disciplinary, non-punitive
- Individualized services that may be offered to the complainant *or respondent* free of charge
- That do not **unreasonably** burden the other party
- May include services to protect the safety of all parties as well as the school's educational environment or to deter sexual harassment
- Must be kept confidential to the extent possible
- Schools must document the facts and circumstances that render the supportive measures they have implemented appropriate *and* must also document rationale if they do not implement supportive measures explaining how this decision was not *deliberately indifferent*



Supportive Measures 106.30

- Must promptly contact the complainant to discuss the availability of supportive measures
- Must consider complainant's wishes
- Must inform complainant of the availability of supportive measures with or without filing a complaint



Actual Knowledge 106.30(a)

- “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”
- “Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge”
- “the mere ability or obligation” to report “or having been trained to do so” does not equal actual knowledge



Consent

- Not Defined in Regulations
- Critical Contested Issue in Many Cases
- Affirmative Consent Required in Some States
- California “Yes Means Yes”
- New York “Enough is Enough”



Consent

- Must clearly define and consistently apply your definition
- The school carries the burden of collecting sufficient evidence to reach a final determination, not the parties
- Especially when using an affirmative consent standard, be mindful that you do not misuse it by requiring the respondent to prove the existence of consent or likewise shift the burden to a complainant to prove the absence of consent



Record Keeping



Recordkeeping 106.45(b)(10)

- Seven Year Retention Period
- Reports & Complaints
- Any Action Taken in Response
- Basis for Conclusions that Response Was Not Deliberately Indifferent
- Supportive Measures
- Rationale If No Supportive Measures
- Other Measures to Restore or Preserve Equal Access
- Dismissal Records
- Investigation Records, Determinations, Recording of Hearing
- Record of Sanctions/Discipline or Remedies
- Appeals & Decision
- Training Material
- Informal Resolution & Outcome



Record Keeping 106.45(b)(10)(ii)

- Schools need to create a record to demonstrate why and how their response and actions were not deliberately indifferent.
- Documentation of emergency removals and administrative leaves for employee respondents must also be maintained.



Re-Cap & Key Takeaways

- Definition of sexual harassment and scope of rule is significantly narrowed
- Supportive measures are emphasized and always required
- Due process and fundamental fairness must be preserved
- Record keeping requirements include documentation that school's response was not deliberately indifferent



Part 2 Preview

- Sexual Harassment Defined
- Mandatory Response Obligations
- What to do When You Receive a Report/Complaint



Title IX Coordinator Training

Part 2 of 3

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Organization & Content

01

- History & Context
- Conflicts of Interest, Bias & Impartiality
- Title IX Personnel
- Key Terms
- Record-keeping

02

- Sexual Harassment Definition
- Scope & Jurisdiction
- What to do When You Receive a Report/Complaint
- Dismissals
- Grievance Process Timeframe

03

- Investigation
- Hearing
- Dismissals
- Appeals
- Sanctions & Remedies



Part 2

- Definition of Sexual Harassment
- Reports & Complaints
- Does Title IX Apply? Scope & Jurisdiction
- What to Do When You Receive a Report of Sexual Harassment
- Dismissals
- Reasonably Prompt Timeframe



Definition of Sexual Harassment 3-Prongs

| | |
|--------------------------|--|
| Quid Pro Quo | <i>Employee</i> Conditions Something of Value for Sexual Favor |
| <i>Davis</i> Standard | So Severe, Pervasive and Objectively Offensive |
| VAWA Crimes | Sexual Assault, Stalking, Dating & Domestic Violence |



Sexual harassment 106.30

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)



Sexual harassment: Quid Pro Quo

- Applies solely to an employee respondent
- Involves an abuse of authority by an employee
- Doesn't require a showing of severity, pervasiveness or offensiveness
- Need not be explicit, could be implied



Sexual harassment: Severe, Pervasive, Offensive (*Davis*)

- *“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”*
- *directed at verbal or expressive conduct*
- *evaluated under the “reasonable person standard” taking into consideration the characteristics of the alleged victim*



Sexual harassment: Clery/VAWA Crimes

- “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).



Sexual Assault

- Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
- Includes any sexual act directed against another person without their consent, including rape, sodomy, sexual assault with an object, fondling, incest and statutory rape



Sexual Assault & Consent

- What is key with sexual assault is CONSENT, or the lack thereof
- The new regs DO NOT DEFINE CONSENT; this is left up to institutions
- Some states do have laws that mandate a specific definition of CONSENT
- Must clearly define and consistently apply your definition
- The school carries the burden of collecting sufficient evidence to reach a final determination, not the parties
- Especially when using an affirmative consent standard, be mindful that you do not misuse it by requiring the respondent to prove the existence of consent or likewise shift the burden to a complainant to prove the absence of consent



Dating Violence

- **(10) DATING VIOLENCE** The term “[dating violence](#)” means violence committed by a person—
- **(A)** who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- **(B)** where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - **(i)** The length of the relationship.
 - **(ii)** The type of relationship.
 - **(iii)** The frequency of interaction between the persons involved in the relationship.



Domestic Violence

8) DOMESTIC VIOLENCE THE term “[domestic violence](#)” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or [youth](#) victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.



Stalking

- **(30)STALKING** THE term “[stalking](#)” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
(A)fear for his or her safety or the safety of others; or
- **(B)**suffer substantial emotional distress.



Retaliation Prohibited 106.71

“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner.”



Jurisdiction & Scope

Who? What? When? Where? Why?



Jurisdiction & Scope

Who?

Any person may report; Complainant must be actively attempting to participate in educational program or activity; Respondent must be enrolled or under recipient's control

What?

Conduct that meets the definition of sexual harassment

When?

No SOL/time limit as long as other conditions met

Where?

In the U.S. & within the school's educational program or activity

Why?

"on the basis of sex"

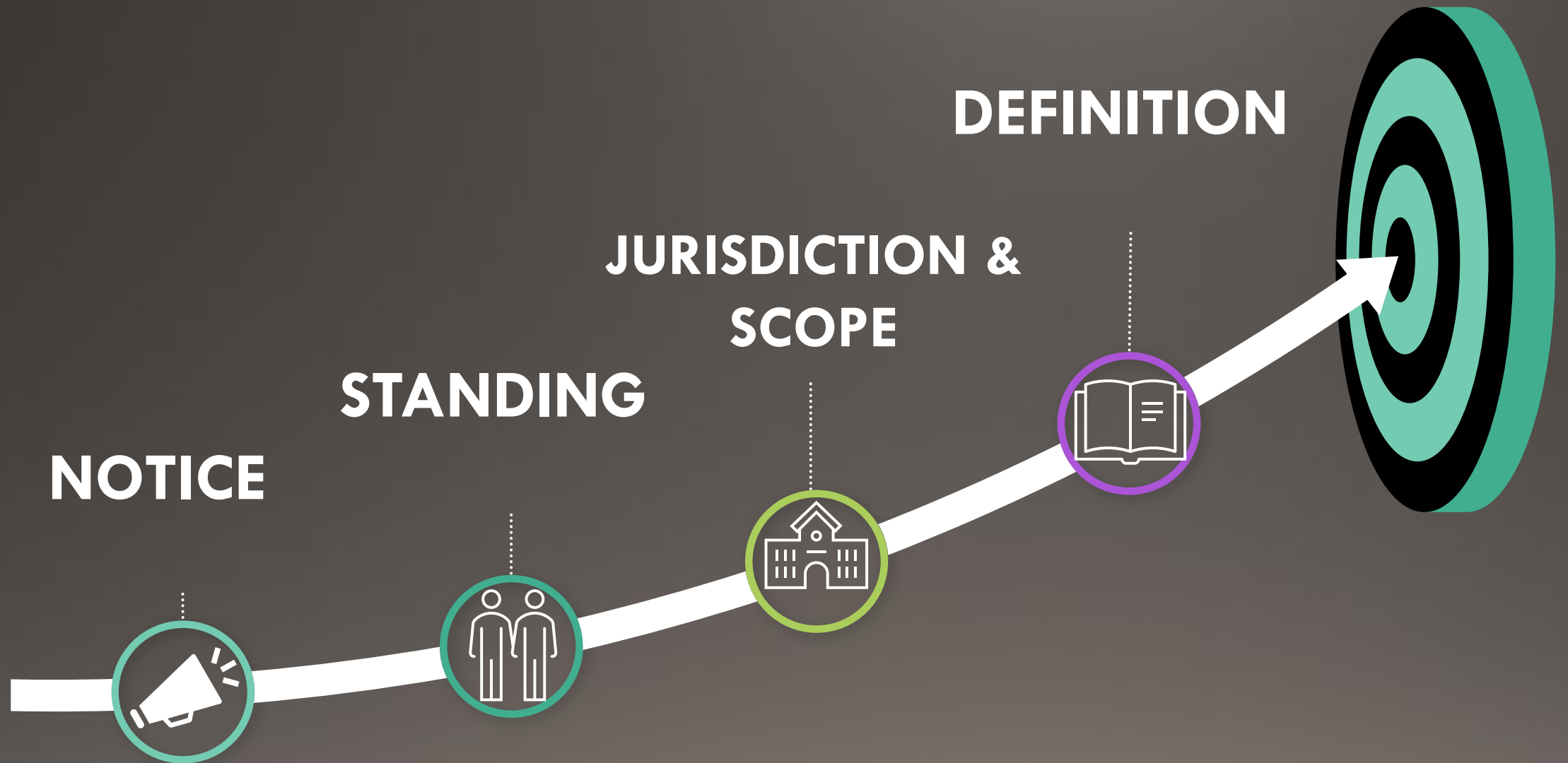


Educational Program or Activity 106.44

- Locations, events, or circumstances where the school exercises substantial control over both:
 - the Respondent
 - the context in which the alleged sexual harassment or discrimination occurs
 - includes any building owned or controlled by the school or by a student organization that is officially recognized by the school.



TITLE IX ASSESSMENT



Formal Complaint 106.30

- A formal complaint is a “*document filed by complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting recipient investigate the allegation of sexual harassment*”
- Schools should not take the requirement of a written formal complaint to create “bureaucratic loopholes” or technicalities to avoid initiating the grievance process



Filing a Formal Complaint

- goal is to make filing a complaint “as accessible as possible”
- may be filed with the Title IX Coordinator in person, by mail or by electronic mail
- schools may identify “any additional method”
- formal complaint can’t be filed by phone; schools could use an online submission portal
- rules do not restrict the method in which a REPORT may be received
- schools must disclose the contact information for the Title IX Coordinator PROMINENTLY on their website and in any catalog or handbook
- Complaints may be consolidated if involve multiple complainants or respondents and allegations arise out of the same set of circumstances



Formal Complaint Signed by a Title IX Coordinator

- only the Title IX Coordinator may initiate a complaint if the complainant does not want to
- the decision to move forward is made on behalf of the school, not the complainant
- school has an obligation to uphold and comply with Title IX and an obligation not to act with deliberate indifference
- if the allegations would warrant disciplinary action, the school cannot institute punitive or disciplinary action without first going through the grievance process

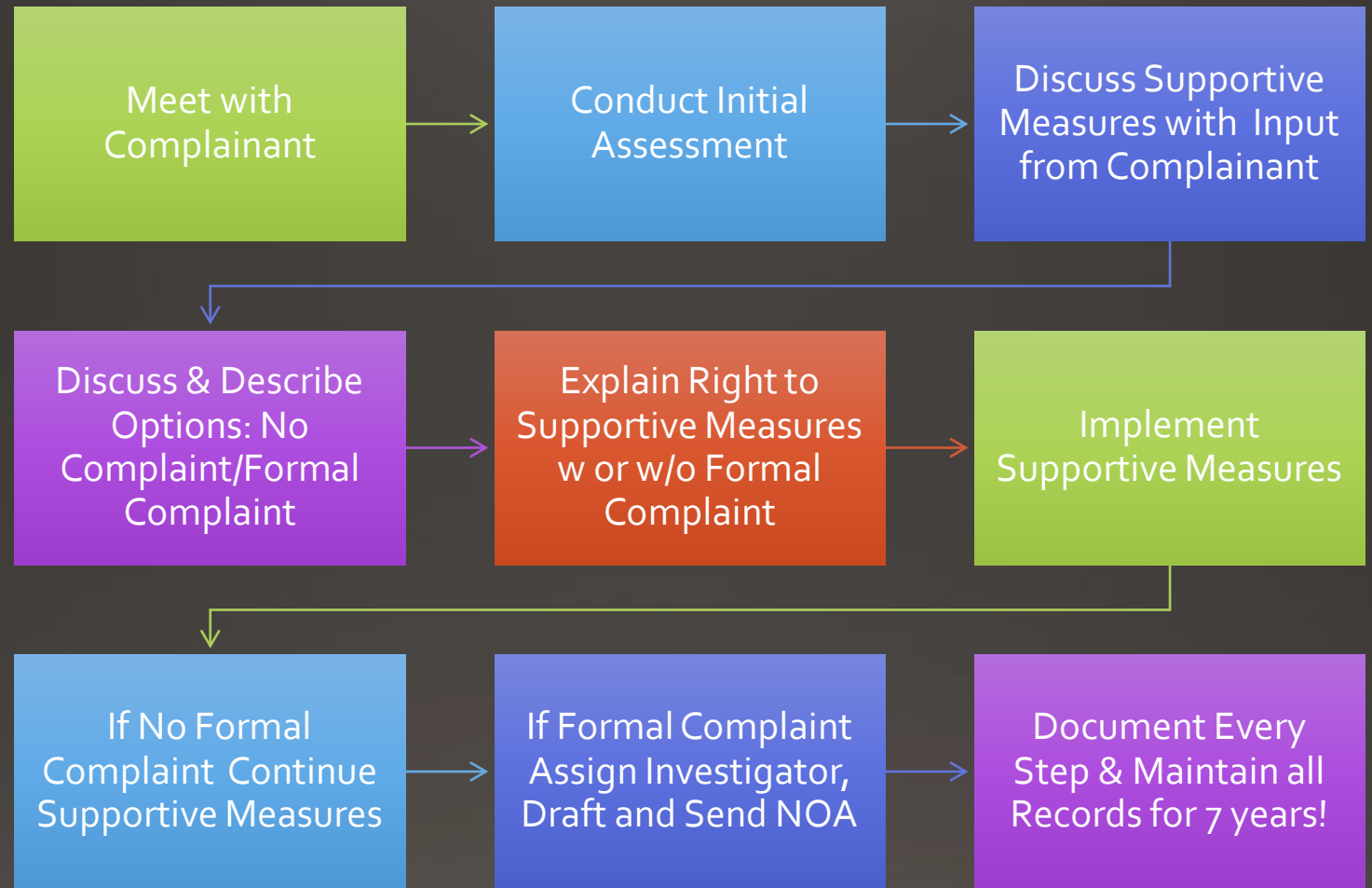


Anonymous Reports & Complaints

- regulations do not prohibit schools from implementing anonymous reporting
- the school has actual knowledge when such a report goes to the Title IX Coordinator or OWA
- school is under an obligation to respond in a manner that is not deliberately indifferent
- coordinator may initiate a formal complaint even if complainant's identity is unknown



What to Do When You Receive a Report

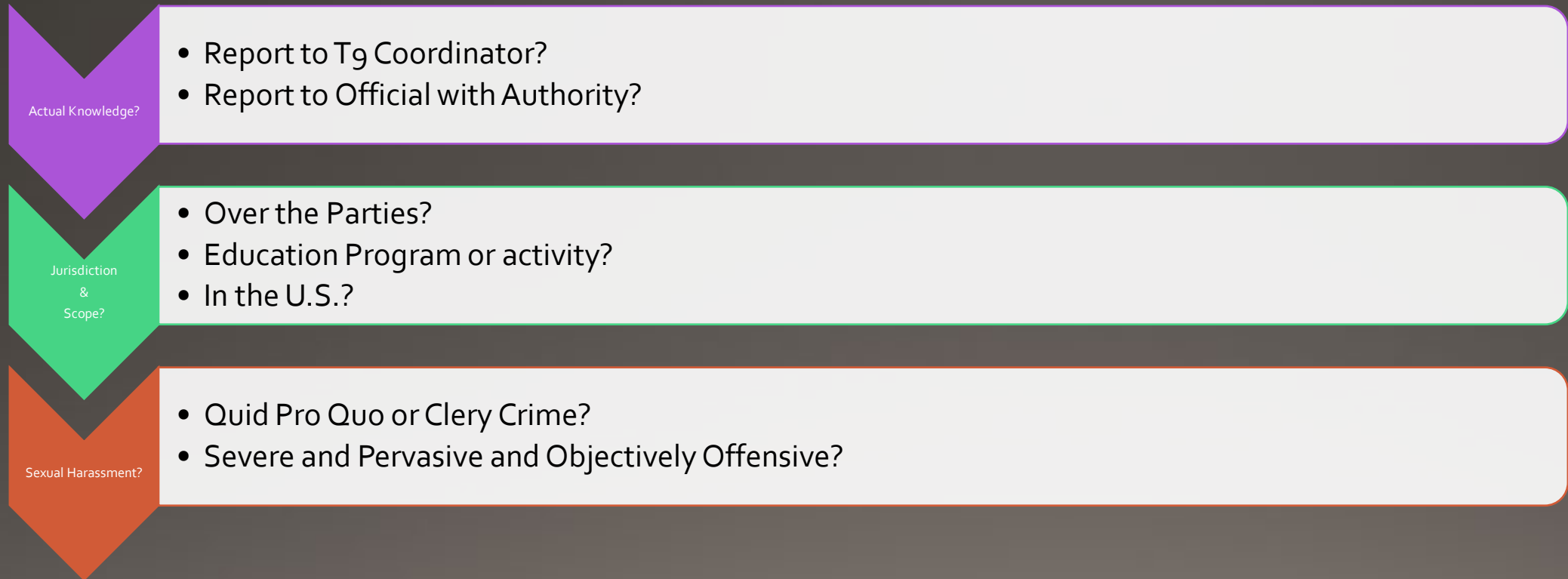


Emergency Removal 106.44(c)

- Emergency: Immediate Threat to Physical Health or Safety
- Arising out of the Allegations of Sexual Harassment
- Based on an Individualized Risk and Safety Assessment
- Must Allow for Immediate Challenge
- 106.44(d) Authorizes Administrative Leave for Employees



Assessing a Report or Complaint



If Allegation Does Not Trigger Title IX Response

- implement supportive measures
- refer to non-Title IX misconduct process
- adjust code of conduct process for non-T9 sexual misconduct



Title IX Sexual Harassment or Code of Conduct Violation?



Supportive Measures

- Referral to counseling, medical/health services
- Referral to employee assistance program
- Mutual no-contact orders
- Student financial aid counseling
- Altering campus housing
- Altering work arrangements
- Safety planning
- Providing campus escorts
- Providing academic accommodations
- Increased campus security
- Timely warnings
- Visa and immigration services
- LOAs/ scheduling modifications



Dismissals 106.45(b)(3)

Doesn't meet definition or jurisdictional requirements

Complainant wants to withdraw complaint

Respondent is no longer enrolled or employed

Specific circumstances prevent school from gathering evidence sufficient to reach a determination



Mandatory Dismissals 106.45 (b)(3)(i)

- 1. would not constitute sexual harassment as defined in 106.30, even if proved,*
- 2. did not occur in the recipient's educational program or activity,*
- 3. or against a person in the United States*



Discretionary Dismissals 106.45 (b)(3)(ii)

1. Complainant notifies the Coordinator in writing that they would like to withdraw the complaint, or any allegation therein
2. The respondent is no longer enrolled or employed by the school
3. Specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint



Dismissals 106.45 (b)(3)

- apply to individual allegations or to an entire complaint
- the parties must receive written notification and reasons for any dismissal
- mandatory dismissals are appealable



Informal Resolution 106.45(b)(9)

- Can only be offered after a formal complaint is filed
- Must provide written notice disclosing allegations, details and consequences of the process
- Both parties must voluntarily consent in writing to the informal process
- Cannot be used in cases where respondent is an employee
- Either party may withdraw from the informal process, which would trigger the formal grievance process
- Facilitators must be trained and impartial, free from conflicts & bias
- School may not pressure/condition informal resolution on enrollment or employment



Reasonably Prompt Timeframes

106.45(b)(1)(v)

- School determines timeframe as long as it is reasonably prompt
- Must balance due process and fundamental fairness with prompt resolution
- Includes appeals and informal resolution processes
- Administrative delay is not sufficient “good cause”



Reasonably Prompt Timeframes

106.45(b)(1)(v)

Delays & Extensions

- Must be Temporary, Limited & for Good Cause
- Must provide written notice to parties



Reasonably Prompt Timeframes

106.45(b)(1)(v)

- Administrative Delay
 - *School's inefficiency not good cause*
- Availability of Parties & Witnesses
- Law Enforcement Activity
- Accommodations for Disabilities
- Language Assistance



Reasonably Prompt Timeframes

106.45(b)(1)(v)

Concurrent Law Enforcement Activity

- distinct, separate and independent processes
- obligated to respond to T9 allegations irrespective of criminal matter
- law enforcement investigation could justify a delay or extension
- delay cannot be protracted or open-ended

Availability of Parties & Witnesses

- must try to accommodate individuals' schedules to allow their meaningful participation
- parties may participate remotely
- a party or witness cannot indefinitely delay the grievance process by refusing to cooperate
- the process can proceed even in the absence of a party or witness
- must keep nonparticipating party informed



Part 2 Re-cap & Key Takeaways

1. *A school must respond if the allegations meet the definition of sexual harassment, the conduct occurred in the scope of the school's educational program or activity, in the US, and both the respondent and complainant are enrolled/engaged or under the school's control*
2. *Once triggered the school must respond with supportive measures that ensure complainant's continued access to the educational program or activity, whether or not, a formal complaint is filed; the Coordinator will conduct an assessment to determine next steps*
3. *If a case doesn't fall within the scope of T9 it must be dismissed and may be handled under the school's other policies*
4. *Informal resolution is an option for schools if the parties agree after a formal complaint is filed and must adhere to the informal resolution requirements*
5. *The entire process must be resolved within reasonably prompt timeframes that allows for reasonable delay or extensions for good cause*



Part 3 Preview

The Grievance Process

- *Investigation*
- *Hearing & Cross-examination*
- *Appeal*
- *Sanctions & Remedies*



Title IX Coordinator Training

Part 3 of 3

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Organization & Content

01

- History & Context
- Conflicts of Interest, Bias & Impartiality
- Title IX Personnel
- Key Terms
- Record-keeping

02

- Sexual Harassment Definition
- Scope & Jurisdiction
- What to do When You Receive a Report/Complaint
- Dismissals
- Grievance Process Timeframe

03

- Investigation
- Hearing
- Dismissals
- Appeals
- Sanctions & Remedies



Part 2 Review

- Definition of Sexual Harassment
- Reports & Complaints
- Does Title IX Apply? Scope & Jurisdiction
- What to Do When You Receive a Report of Sexual Harassment
- Dismissals
- Reasonably Prompt Timeframe



Part 3

- Grievance Process
- Due Process & Fundamental Fairness
- Investigation
- Evidentiary Considerations
- Hearing
- Cross-Examination
- Appeals
- Sanctions & Remedies



Mandatory Training Requirements 106.45(b)

- ✓ *On Title IX's definition of "sexual harassment"*
- ✓ *On the scope of the school's education program or activity*
- ✓ *On how to serve impartially, including by avoiding prejudgment of the facts at issue*
- ✓ *On how to avoid conflicts of interest and bias*
- ✓ *Any materials used to train must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.*
- ✓ ***On how to conduct an investigation and grievance process***
- ✓ *Decision-makers must 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 a complainant's sexual predisposition or prior sexual behavior are not relevant*
- ✓ *Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence*



Procedural Protections 106.45

| CITATION | SUMMARY |
|-----------------------|--|
| 106.45(a) | School's treatment of parties may constitute discrimination |
| 106.45(b)(1)(i)-(x) | Grievance Process Requirements |
| 106.45(b)(2) | Written Notice of Allegations to Both Parties |
| 106.45(b)(3)-(b)(4) | Formal Complaints Must be Investigated, Dismissals, Consolidation |
| 106.45(b)(5)(i)-(vii) | Investigation Requirements |
| 106.45(b)(6) | Cross Examination Conducted by Advisor |
| 106.45(b)(7) | Independent/Neutral Decision-maker, Standard of Evidence Same, Written Determination |
| 106.45(b)(8) | Appeals: Procedural Irregularities, New Evidence, Bias or Conflict of Interest |
| 106.45(b)(9) | Informal Resolution: Voluntary, Written Consent. Not Allowed for Employee Respondent |
| 106.45(b)(10) | Record Keeping, Publication of Training Material |
| | |



Grievance Process: Basic Requirements

- (i) Treat parties equitably
- (ii) Require objective evaluation of all relevant evidence
- (iii) Train Title IX personnel & post all training on web-site
- (iv) Include a presumption that respondent is not responsible
- (v) Include reasonably prompt time frames
- (vi) Describe the range of, or list, possible disciplinary sanctions and remedies
- (vii) State standard of evidence: preponderance or clear and convincing
- (viii) Include process and bases for appeals
- (ix) Exclude privileged evidence



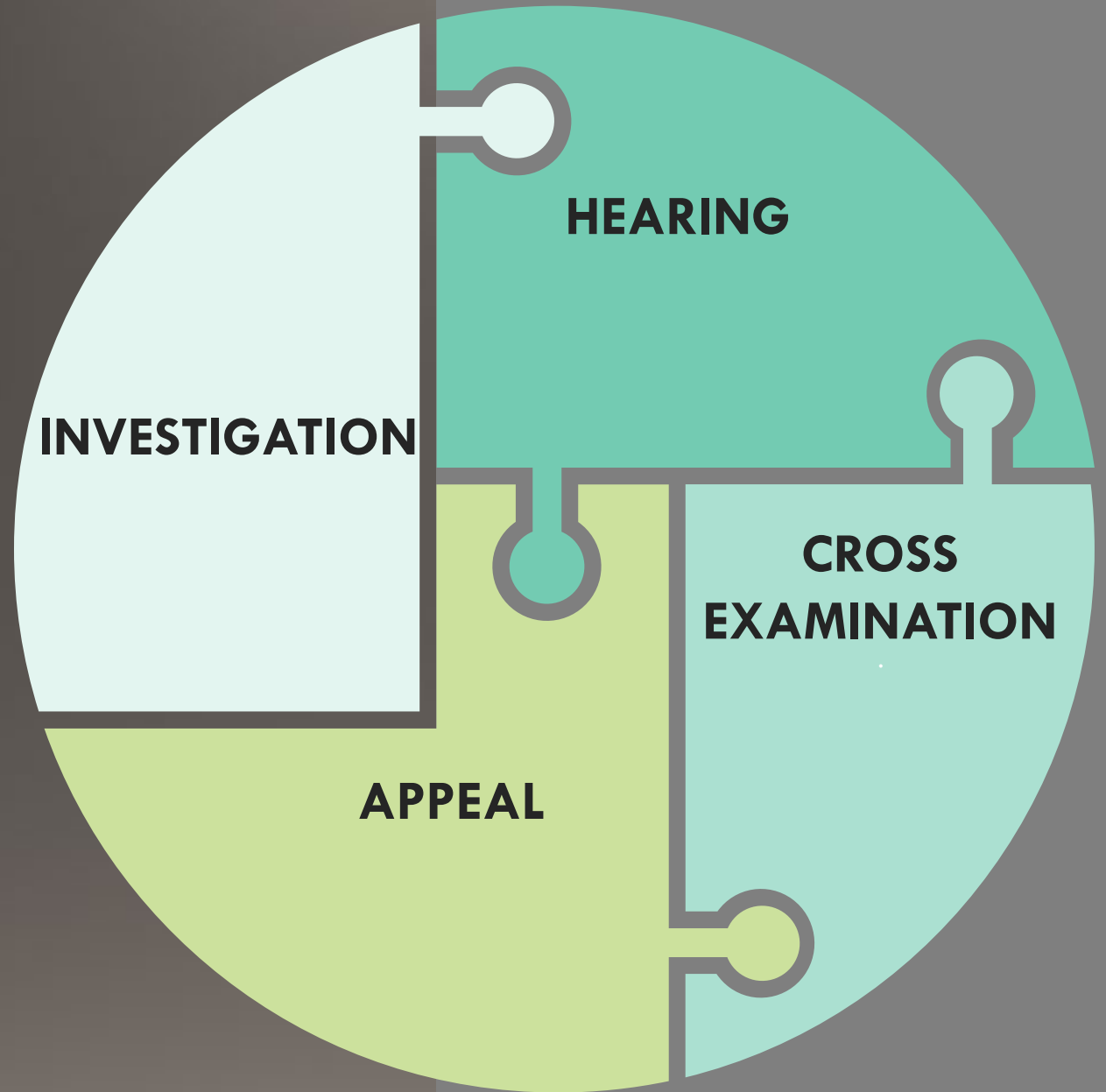
School's treatment of parties may constitute discrimination 106.45(a)

(a) A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination...

(b)...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...apply equally to both parties.



FORMAL GRIEVANCE PROCESS: MAJOR COMPONENTS



Treat parties equitably 106.45(b)(1)(i)

(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 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 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;



Require objective evaluation of all relevant evidence 106.45(b)(1)(ii) Title IX personnel must be conflict & bias free

(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....



Presumption of Non-Responsibility 106.45(b)(1)(iv) Reasonably Prompt Timeframes

- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility at the conclusion of the grievance process.
- Include reasonably prompt timeframes for the conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-terms, good cause delays or extensions of timeframes



Describe the range of, or list, possible disciplinary sanctions and remedies 106.45(b)(1)(vi)

(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;

Title IX Coordinator responsible for effective implementation of remedies: addressed under § 106.45(b)(7)(iii)

- *Sanctions/discipline are punitive, the intent is to punish and prevent future recurrence; Focus is on the respondent
- *Remedies are provided ensure equal access; Focus is on the victim, or on the campus community at large
- *Both sanctions and remedies are imposed after a finding of responsibility
- *Remedies are similar to supportive measures, but they differ in that supportive measures are offered prior to any grievance process (or without a grievance process) and may not be punitive or unreasonably burden the respondent
- *Remedies, however, are implemented after a finding of responsibility and they may place a burden on respondent and may be punitive
- *Remedies MUST be implemented upon a finding of responsibility



State standard of evidence: preponderance or clear and convincing 106.45(b)(1)(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;

- *Standard must be used consistently across all cases
- *Same standard must apply to both student and employee cases
- *Preponderance: 51% or more likely that conduct did or did not occur
- *Clear and Convincing: higher bar, evidence is more than 51% but less than beyond a reasonable doubt



Include process and bases for appeals 106.45(b)(1)(viii) and Range of Supportive Measures 106.45(b)(1)(ix)

- ✓ Describe the procedures and permissible bases for the complainant and respondent to appeal;
- ✓ Describe the range of supportive measures available to complainants and respondents



Privileged Evidence Inadmissible 106.45(b)(1)(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 in writing.

- ✓ medical records
- ✓ psychological records
- ✓ attorney-client communications
- ✓ spousal privilege
- ✓ school remains subject to any other applicable privacy laws



Notice of Allegations (NOA) 106.45(b)(2)

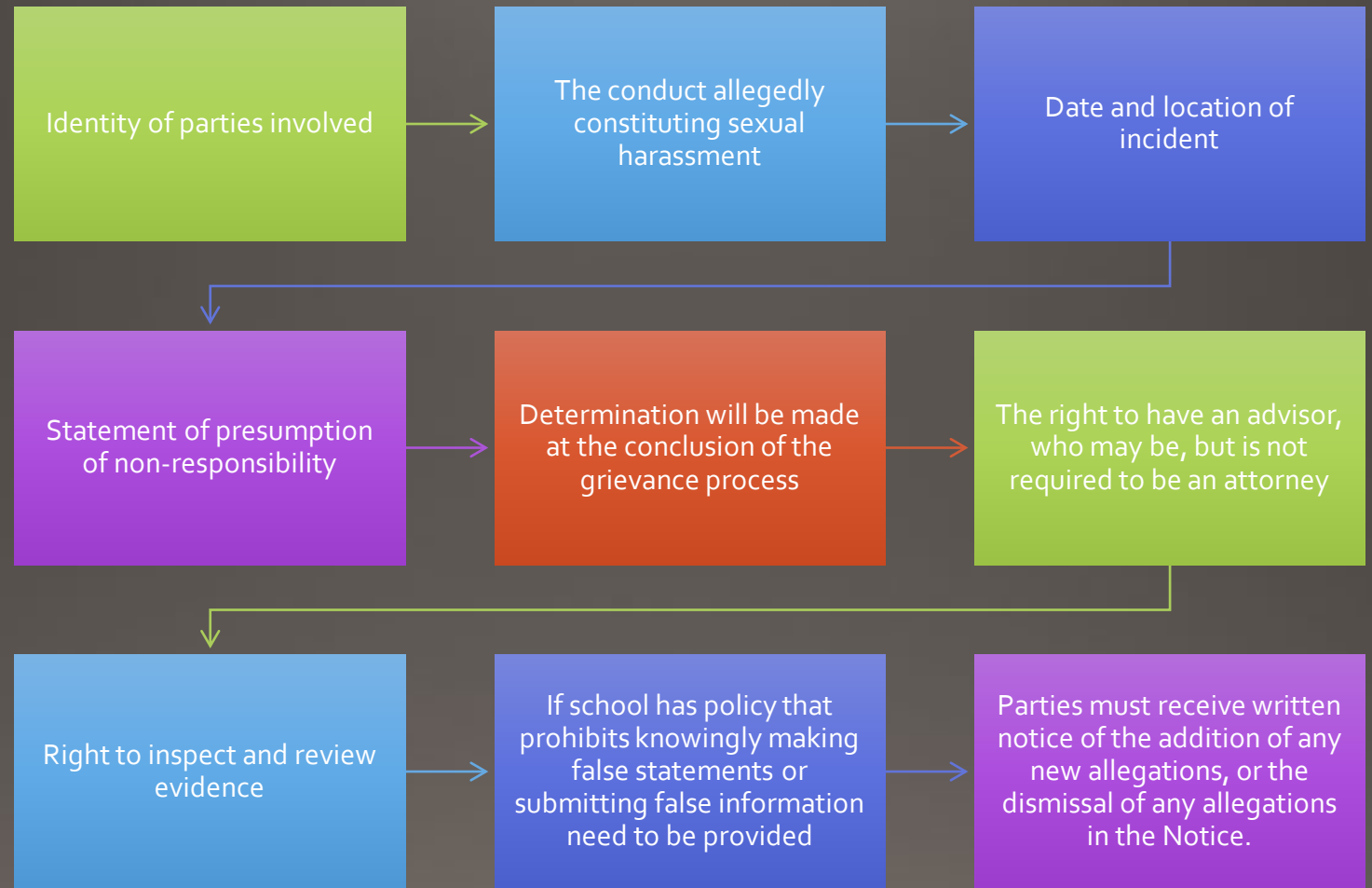
Notice of allegations—(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(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.



Notice of Allegations



Sufficient Details of NOA 106.45(b)(2)(B)

- ✓ Identities of the parties involved in the incident, if known,
 - ✓ Conduct allegedly constituting sexual harassment
 - ✓ Date and location of the alleged incident, if known
 - ✓ 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
 - ✓ Right to an advisor of their choice, who may be, but is not required to be, an attorney
 - ✓ Right to inspect and review evidence
 - ✓ Include any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- *Protect PII (SS#, homes address, phone numbers, etc) to extent possible*



Formal Complaints Must be Investigated

Dismissals & Consolidation 106.45(b)(3)-(5)

Formal Complaints Must be Investigated

- must undertake an investigation in all cases where a formal complaint is filed
- concurrent law enforcement activity or investigation could justify delay *but* any such delay would only apply *after* the NOA is provided
- investigative techniques used in criminal setting would not necessarily apply; no delay in NOA or investigation; parties must have notice and opportunity to prepare

Mandatory Dismissal

- if allegations do not meet the definition, scope and jurisdictional requirements of Title IX they must be dismissed

Consolidation

- may (but are not required to) consolidate complaints





Investigation: Rights of the Parties



Investigator

Preamble: “Final regulations leave recipients..... flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient’s own employees are expected to perform these functions free from conflict of interest and bias”

- Single investigator model prohibited (Investigator cannot be decision-maker)
- May have more than one investigator on a case
- Title IX Coordinator may serve as Investigator, although this could raise issues in terms of potential conflict of interest or bias
- Conflict & bias of Title IX personnel is a basis for appeal
- Schools must have process to ensure no conflict/bias and *may* provide a process for parties to assert claims of conflict/bias during the investigation



Burden of Proof 106.45(b)(5)(i)

**The burden of gathering evidence and the burden of proof must remain on schools not the parties*

- Both parties have the right to provide evidence and witnesses, but it is not their responsibility
- It is the school's job to conduct the investigation, track down and gather all of the evidence possibly and interview witnesses...
- The school is neutral during this process, they are not focusing on gathering evidence to prove respondent "guilty" or to prove respondent is not responsible; they are not "building a case"
- The goal is a truth-seeking mission; gather everything so that a neutral decision maker can reach an accurate determination based on the facts



Opportunity to Present Evidence 106.45(b)(5)(ii)

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

*note witnesses may be “expert” witnesses although what constitutes an expert witness, and who qualifies as an expert, is not defined

*same rules/evidentiary considerations would apply, i.e. evidence concerning complainant’s prior sexual behavior is not relevant (with limited exceptions), privileged evidence is inadmissible unless waived, etc.



Right to Discuss the Allegations & Gather Evidence 106.45(b)(5)(iii)

- ✓ Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (no gag orders)
- ✓ Parties have the right to discuss the allegations with anyone they choose with limited exceptions:
 - ✓ no-contact directive
 - ✓ retaliatory manner



Right to an Advisor 106.45(b)(5)(iv)

Parties must have the same ability to select an advisor of choice, who may be, but need not be an attorney

- ✓ Parties can choose anyone to be their advisor
 - ✓ friend, parent, classmate, attorney
- ✓ Role of advisors
 - ✓ provide support, accompany party to meetings/interviews
 - ✓ adversarial with respect to their role in the hearing and in conducting cross examination
- ✓ School may limit to advisor's role with respect to their participation
- ✓ Any rules around the role of advisors must apply equally to both parties
- ✓ If a party does not have an advisor, the school must provide one at no cost to the party for the limited purpose of conducting cross exam during the hearing
- ✓ Advisor does not have to match the qualifications of the other party's, so if the other party has an attorney, the school is not obligated to provide an attorney



Written Notice 106.45(b)(5)(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;

*School must balance promptness with procedural protections/due process



Opportunity to Review Evidence & Investigative Report

Prior to completion of investigative report, school must send to parties and their advisors, all evidence gathered that is directly related to the allegations, inculpatory & exculpatory, and provide at least 10 days to review and respond in writing

Final investigation report must fairly summarize relevant evidence and be provided to party and the party's advisor at least 10 days prior to a hearing with an opportunity to review and respond in writing



Investigation Requirements 106.45(b)(5)(vi) Right to Inspect Evidence

Schools must send the parties *and their advisors*:

- ✓ **ALL** evidence directly related to the allegations
 - **will include relevant **and irrelevant evidence** including that which would otherwise be excluded under the rape shield protections*
- ✓ includes evidence the school will not use/rely in making a decision
- ✓ includes inculpatory or exculpatory evidence whether obtained from a party or other source
- ✓ electronic format or a hard copy, otherwise, method and format of delivery up to school
- ✓ parties must have *at least 10 days* to submit a written response
 - *consider when determining reasonable timeframes
- ✓ the investigator will consider parties input prior to completion of the investigative report
- ✓ evidence *must be made available at hearing*



Investigation Requirements 106.45(b)(5)(vii) Right to the Investigative Report & Evidence

AFTER the initial review period which includes all evidence:

- ✓ the investigator will finalize the investigative report incorporating feedback received from the parties as appropriate.
- ✓ The final report will summarize RELEVANT evidence
 - * will exclude evidence about complainant's prior sexual history with two limited exceptions
- ✓ The final report must be provided to the parties and their advisors in electronic or hard copy, at least ten (10) days prior to the hearing, with an opportunity to respond in writing.



Dismissals 106.45(b)(3)

Doesn't meet definition or jurisdictional requirements

Complainant wants to withdraw complaint

Respondent is no longer enrolled or employed

Specific circumstances prevent school from gathering evidence sufficient to reach a determination



Evidentiary Considerations

Burden of Proof: school carries the burden to collect evidence

Related-to: all evidence that is related to the allegations; includes relevant and irrelevant evidence

Relevant: all evidence directly related to the allegations EXCEPT evidence related to the complainant's prior sexual behavior unless it is offered to provide identity or consent

Privileged: evidence subject to a legally recognized privilege, attorney-client, physician-patient, spousal, clergy, medical/health or psychological records

Statements of non-cooperating party or witness: the statements of a party or witness that does not submit to cross examination may not be considered by the decision-maker in rendering a decision

Appeal: appeal based on procedural irregularity could include appeal of a decision to include or not include evidence based on categorization as relevant or not, or on school's failure to objectively evaluate all relevant evidence



Independent/Neutral Decision-maker 106.45(b)(7)

- ✓ *Decision-maker must be independent*
- ✓ *Appeal decision-maker must also be independent, they must be different from the hearing decision-maker, so you will need to have two trained decision-makers available for every case in the event a party appeals*
- ✓ *Schools may utilize multiple decision-makers in a case, such as a panel, within their discretion*
- ✓ *Decision-maker makes relevancy determinations during the hearing, after each question, and prior to each answer during cross, will need to provide the rationale for any determination that evidence is not relevant*



Live Hearing

Cross-examination must be conducted the party's advisor of choice (or school provided if party does not have one):

- ✓ directly
- ✓ orally
- ✓ in real time
- ✓ never by a party personally

*At the request of either party, the recipient must provide for the entire hearing to occur with the parties located in separate room with technology enabling the parties to see and hear each other

*Live hearings may be conducted with all the parties physically present in the same location or, at the school's discretion, any or all parties, witnesses or other participants may appear at the live hearing virtually.



Relevancy & Rape Shield Protections

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.



Non-Cooperating Party or Witness

- If a party or witness does not submit to cross examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility;
- However, the decision-maker cannot draw an inference based solely on that party's or witness's absence or refusal to answer questions
- School has no ability to compel either parties or witnesses to cooperate, appear at the hearing, provide testimony or otherwise participate in the process



Record of Hearing

Schools must create an audio or audiovisual recording, or transcript of the hearing

- ✓ Must maintain for seven-years
- ✓ Parties have the right to inspect



Written Determination 106.45(b)(7)

The written determination must include:

- Allegations potentially constituting sexual harassment
- Procedural steps taken
- Findings of fact
- Conclusions regarding the application of code of conduct to the facts
- Statement and rationale for each allegation
 - Including determination of responsibility
 - Any disciplinary sanctions & applicable remedies
- Bases & procedure for Appeal



Appeals

Appeals of final determination or dismissal MUST be offered to both parties on the following bases:

Procedural irregularity that effecting outcome

New evidence, not reasonably available at the time of determination, that could affect the outcome

Title IX Coordinator, Investigator or Decision-maker had a conflict of interest or bias



Part 3 Re-cap & Key Takeaways

- Formal Grievance Process requires that respondent must be presumed not responsible, and must incorporate the principles of due process & fundamental fairness
- The school carries the burden of proof and must conduct an impartial investigation, allowing the parties to provide evidence and witnesses and an opportunity to inspect and meaningfully respond to ALL evidence prior to completion of a final investigative report
- The school must provide a live hearing with cross examination conducted by advisors; only relevant and non-privileged evidence may be considered
- Both parties have a right to appeal under four different bases
- Sanctions may only be imposed after a finding of responsibility and Remedies must be afforded to complainant after a finding of responsibility



Supplemental Training Materials/Suggestions, and updates to the Rules will be posted at www.T9Now.com or you may contact me directly at Christine@T9Now.com with any questions.

Thank you!



Title IX Coordinator Training

Part 3 of 3

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