

COASTAL BEND
COLLEGE
COMPREHENSIVE
TITLE IX TRAINING

TITLE  SOLUTIONS, LLC





CBC Smart Start provides all students with FREE tools and support to help them succeed in college.

WWW.COASTALBEND.EDU/OEP

WELCOME

Training Agenda

8:30 a.m. - 8:45 a.m. | Welcome

8:45 a.m. - 10:00 a.m. | Overview of the Title IX Regulations

10:00 a.m. - 10:15 a.m. | Break

**10:15 a.m. - 11:15 a.m. | Title IX Investigation Procedures
& Best Practices**

**11:15 a.m. - 12:15 p.m. | Strategies for Establishing
Rapport & Optimizing Trust**

12:15 p.m. - 1:00 p.m. | Lunch

Training Agenda

1:00 p.m. - 2:00 p.m. | Title IX Decision-Making Processes

2:00 p.m. - 2:30 p.m. | Determining Relevance

2:30 p.m. - 2:45 p.m. | Break

2:45 p.m. - 3:30 p.m. | Title IX Outcomes, Sanctions, and Remedies

3:30 p.m. - 4:30 p.m. | Role of the Title IX Advisor

4:30 p.m. - 4:45 p.m. | Training Debrief and Q&A

Learning Objectives

As a result of this training, participants will be able to:

Identify the scope and purpose of Title IX

Recognize students' rights and due process considerations under Title IX

Understand requirements for the grievance procedures prescribed by the Title IX Regulations

Analyze challenges administrators may face when incidents of sexual harassment occur



Overview of the Title IX Regulations

Session Speaker

Patrick B. Mathis

J.D., L.L.M., M.B.A.

Co-Founder, Managing Member
Title IX Solutions, LLC



In This Session



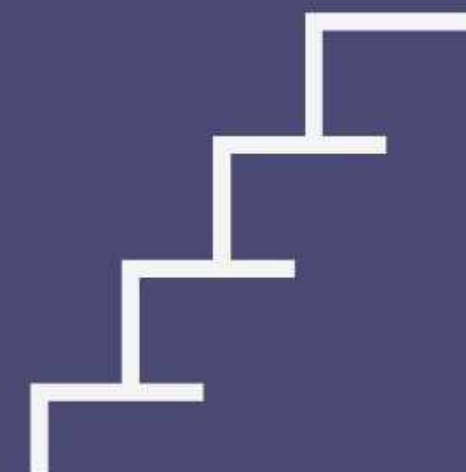
INTRODUCTION TO
THE TITLE IX
REGULATIONS



DEFINING TITLE IX
SEXUAL
HARASSMENT



SEXUAL
HARASSMENT AND
RECIPIENT RESPONSE



TITLE IX GRIEVANCE
PROCESS FOR
FORMAL
COMPLAINTS

Introduction to the Title IX Regulations



Title IX of the Education Amendments of 1972

“

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”

”

Title IX Coverage

Postsecondary Institutions

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

Elementary and Secondary Schools

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

What is a Recipient?

34 CFR § 106.2 - Definitions.

"Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof."

Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the regulations.

Recipients may:

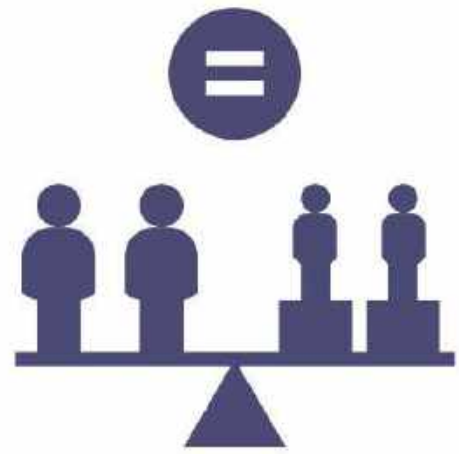
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

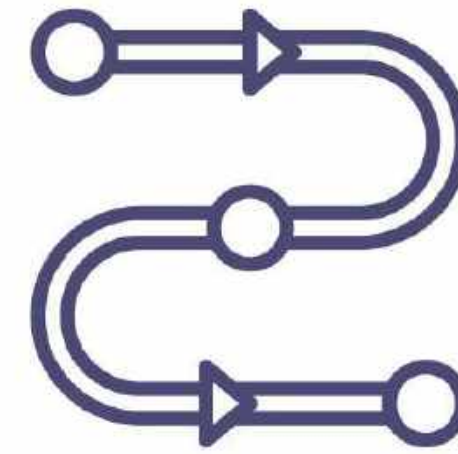
- Provide details regarding policies or procedures which are not addressed in the regulations

Compliance with the Regulations

Recipients must:



Have “prompt and equitable” grievance procedures for complaints of sex discrimination



Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment

When is Sexual
Harassment
Actionable?



When it denies a
person equal
access to education

Title IX's Application

Regulations apply equally to all persons, regardless of:



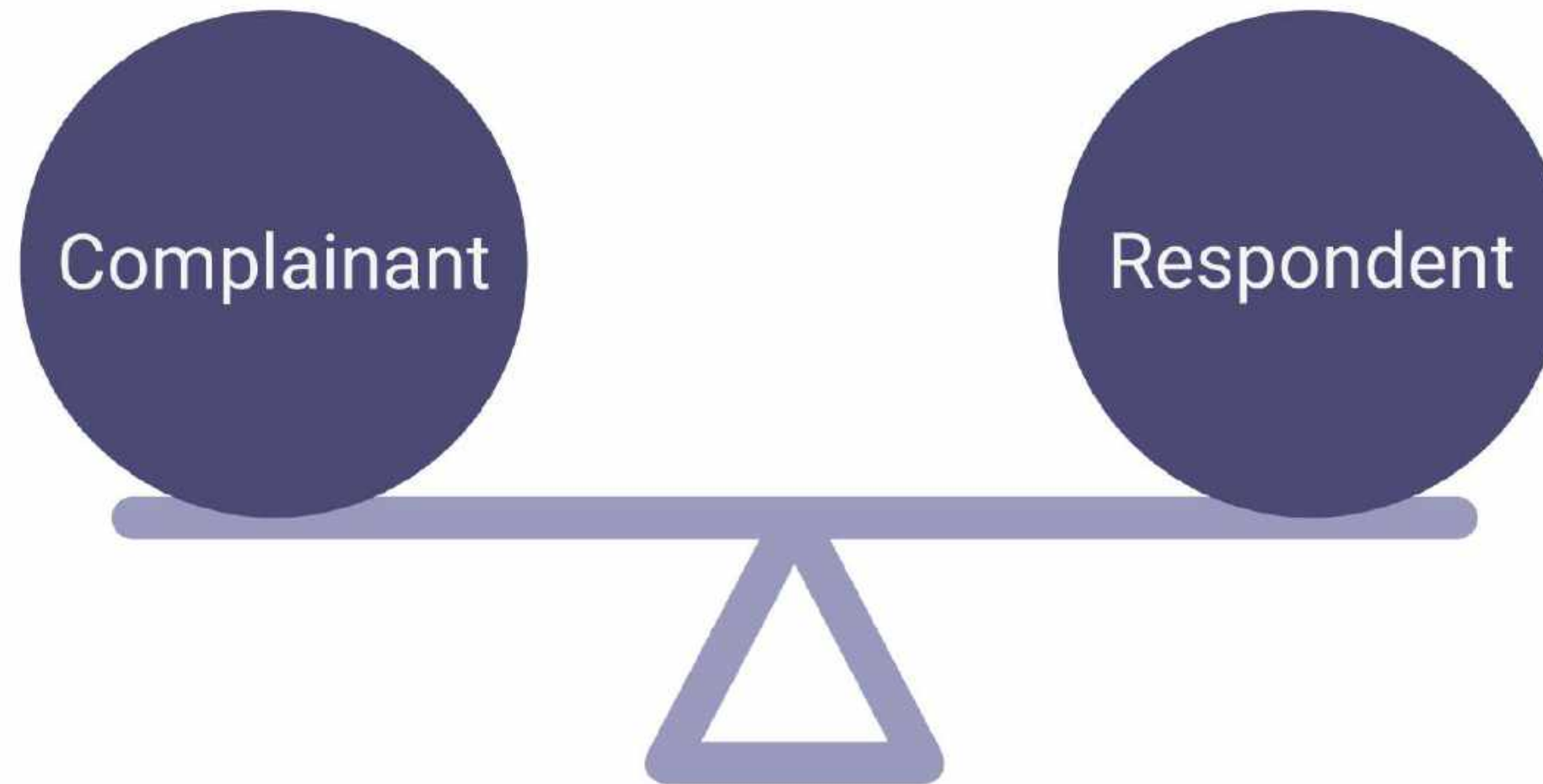
Gender identity or expression



Sexual orientation

Treatment of the Parties

A school must treat both parties equitably and equally throughout the process including supportive measures, investigations, and the grievance process.



Bias and Conflict of Interest

§ 106.45 (b)(1)(3)
Grievance process
for formal
complaints of
sexual harassment.

"...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."



Recipients should have objective rules for determining when a Title IX administrator has a bias or conflict of interest, as well as a process by which parties can assert these claims.

Title IX Personnel



Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

Defining Title IX Sexual Harassment



Definitions of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of three types of behavior:

1

**QUID PRO QUO
HARASSMENT**

2

**UNWELCOME
CONDUCT THAT
IS SO "SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE" THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

1

QUID PRO QUO HARASSMENT

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

2

UNWELCOME CONDUCT THAT IS SO “SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE” THAT IT EFFECTIVELY DENIES A PERSON EQUAL ACCESS TO EDUCATION

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.

“Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; rape; sexual assault as defined by law; sexual battery; sexual coercion; and other sexually motivated conduct, communications, or contact.

Examples may also include forms of dating violence, domestic violence, or stalking, such as physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student’s family members, or members of the student’s household; destroying the student’s property; threatening to commit suicide or homicide if the student ends the relationship; tracking the student; attempting to isolate the student from friends and family; threatening a student’s spouse or partner; or encouraging others to engage in these behaviors.”

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

Specific offenses defined under the FBI's
Uniform Crime Reporting (U.C.R) program.

20 U.S.C. 1092 (f)(6)(A)(v)

Sexual Assault

Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

Sex Offenses, Nonforcible:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

Dating Violence

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.

34 U.S.C. 12291(a)(10)

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. 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.

34 U.S.C. 12291(a)(8)

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Consent



The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

Consent Defined at Coastal Bend College



“Consent’ means a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual conduct. Consent to one act does not imply consent to another. Consent to engage in sexual conduct with one person does not imply consent to engage in sexual conduct with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual conduct establishes a presumptive lack of consent.”

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

Sexual Harassment and Recipient Response



Recipient's Response

Schools must not act in a manner that is deliberately indifferent, meaning:


"...clearly unreasonable in light of the known circumstances."

Recipient's Response


Threshold criteria (all four must be met):



Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

Actual Knowledge Defined

§ 106.30 Definitions.

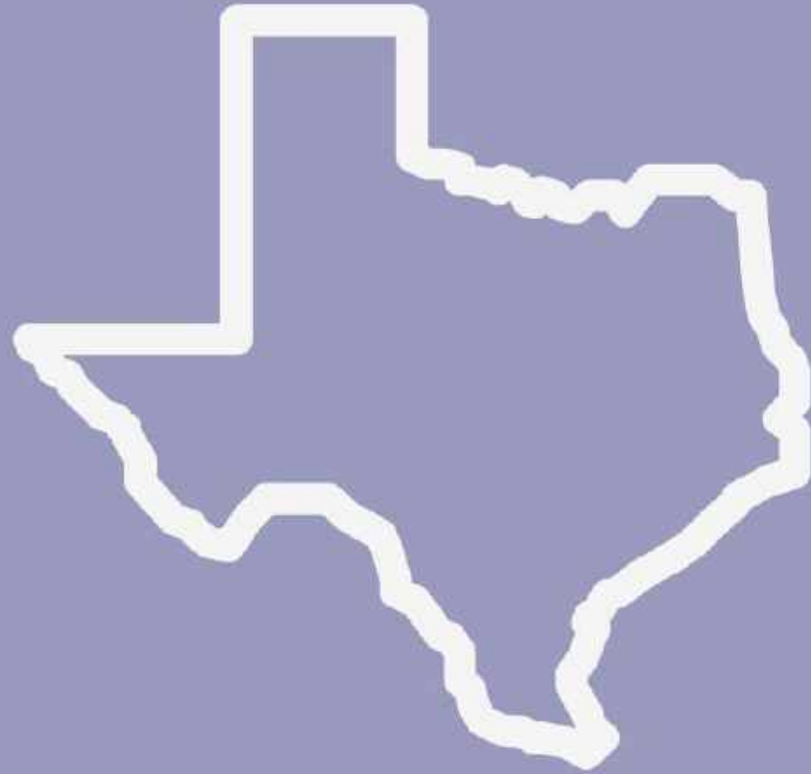
"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school"

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be "written or oral, by observation, via a newspaper article or other means"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

Texas Senate Bill 212



“An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.”



“All employees, with the exception of confidential employees, are designated as responsible employees for purposes of compliance with state law. The Title IX coordinator and deputy Title IX coordinator are authorized to institute corrective measures and must have actual knowledge of a Title IX complaint in order to constitute notice to the College District under the federal Title IX regulation.”

Confidential Resources at Coastal Bend College

“Designated confidential employees include certain licensed professional counselors, licensed professional social workers, and other employees with a professional license requiring confidentiality who are working within that license.

The confidential employee shall not be required to disclose information regarding an incident of prohibited conduct that constitutes personally identifiable information about a student or other information that would indicate the student’s identity without the student’s consent, unless the person is disclosing information as required for inclusion in the College District’s annual security report under the Clery Act.”

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

Education Program or Activity Defined

§ 106.44

Recipient's response
to sexual harassment.

“Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

Examples of the Education Program or Activity



Conversations taking place on school-owned technology such as an iPad or Chromebook



A bus ride to a competition or class/organization trip

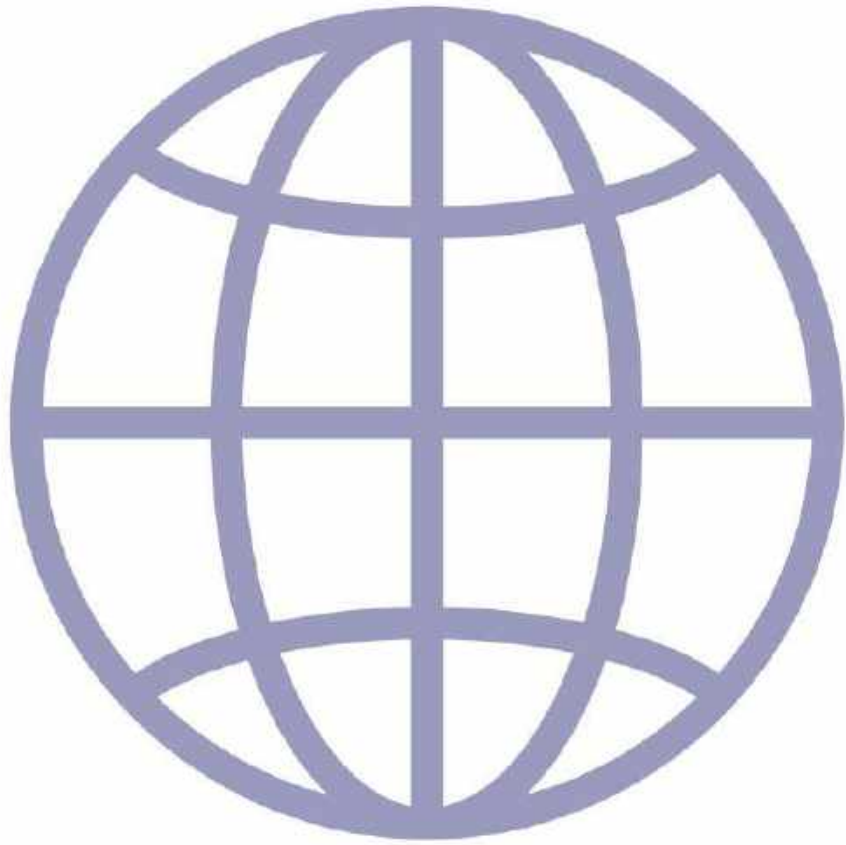


A school event taking place after school hours on property owned, leased, or managed by the college



A sporting event taking place at a venue rented by the college

Incidents Outside of the United States



- Exchange and/or study-abroad programs are not subject to the requirements under the Title IX regulations
- Schools may still choose to address sexual harassment involving students abroad
 - Provision of supportive measures
 - Adjudication under other policies or the student code of conduct

Recipient's Response

Qualifying Incidents of Sexual Harassment

- Treat Complainants and Respondents equitably by offering supportive measures



When do they apply?



What do they include?

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

Recipient's Response

Qualifying Incidents of Sexual Harassment

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

Recipient's Response

Qualifying Incidents of Sexual Harassment

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.



Communication tip: Create a template for this initial meeting invitation.

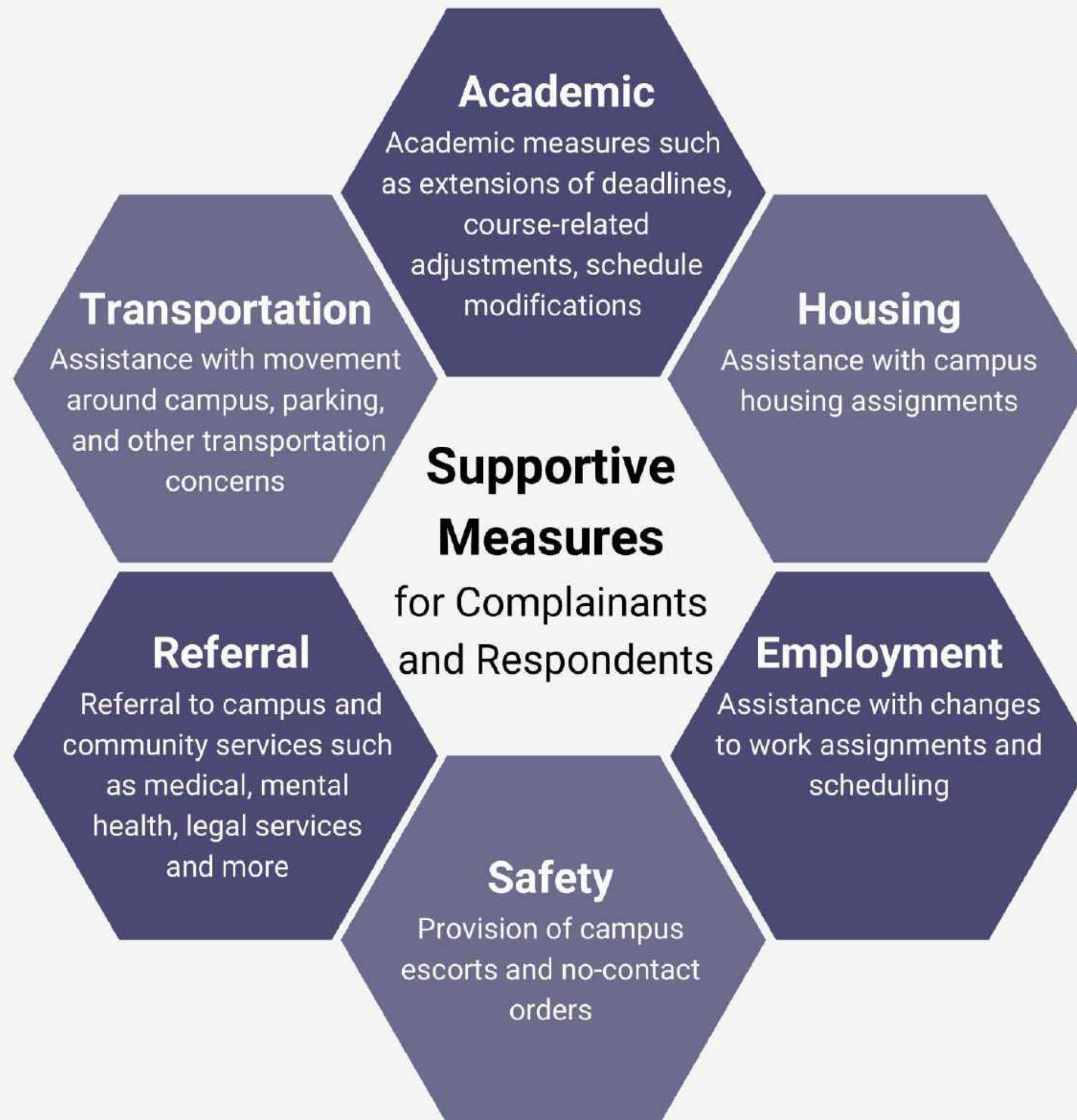
Recipient's Response

Supportive Measures

§ 106.30 Definitions.

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

- Intended to restore Complainant's access to educational program or activity

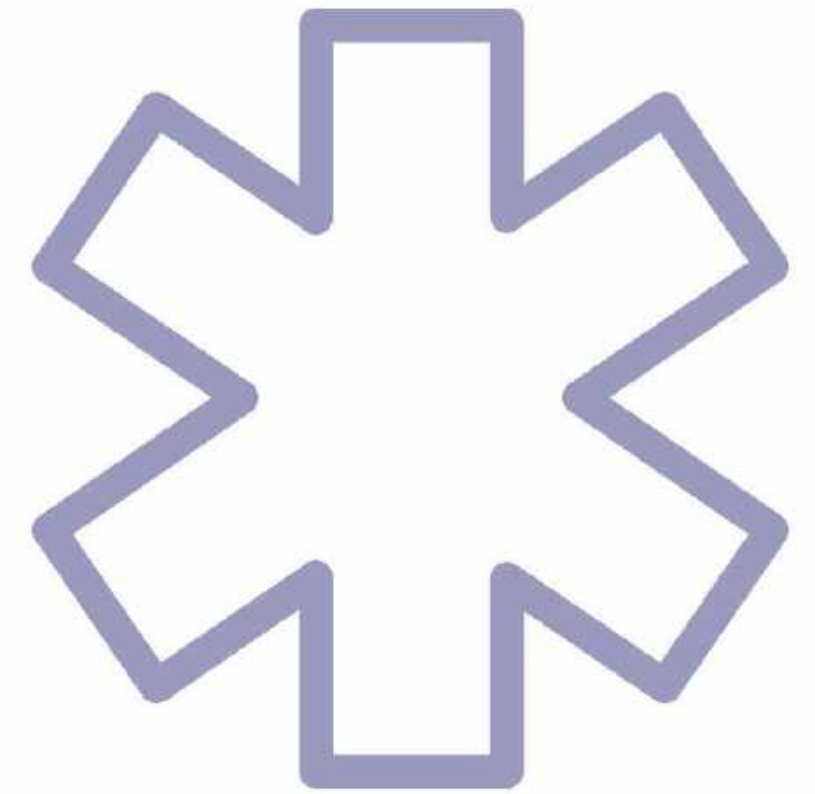


Recipient's Response

Emergency Removal

- ❖ Conduct a safety and risk analysis
- ❖ Determine if there is an immediate threat to physical health or safety
- ❖ Provide Respondent with notice and opportunity to challenge the decision

 Communication tip: Create a template for the written notice of emergency removal.



Recipient's Response

Administrative Leave

- ❖ Applies to non-student employees



Confidentiality

- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
 - Identities of these individuals will be known to the individuals conducting the Title IX process

Retaliation

- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
 - Intention to interfere with the individual's rights under Title IX; or
 - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX

Title IX
Grievance
Process for
Formal
Complaints



Formal Complaint Defined

§ 106.30 Definitions.

"Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment"

- May be filed by parent or guardian who has a legal right to act on behalf of an individual
- At the time of filing, complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- May be filed in person, by mail, or by electronic mail
 - Can use the contact information required to be listed for the Title IX Coordinator or any additional method designated by the school
- Must contain the Complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
- If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party

Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

Would not constitute sexual harassment as defined in §106.30 even if proved

Did not occur in the recipient's education program or activity

Did not occur against a person in the United States



Dismissal does not preclude the school from investigating and adjudicating under another provision of the school's Code of Conduct.

Dismissal of a Formal Complaint

School MAY dismiss if the conduct alleged in the formal complaint:

Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

The Respondent is no longer enrolled or employed by the recipient

Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

Consolidation of Formal Complaints

Schools may consolidate formal complaints:

- ❖ Against more than one Respondent
- ❖ By more than one Complainant against one or more Respondents
- ❖ By one party against the other, where the allegations arise out of the same facts or circumstances

Basic Requirements

A recipient's grievance process MUST:



Treat Complainants and Respondents equally

- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties

Basic Requirements

A recipient's grievance process MUST:

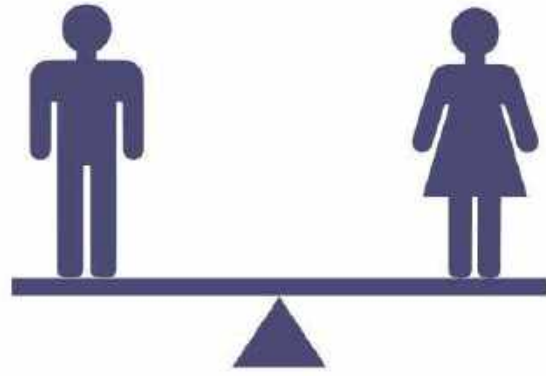


Require objective
evaluation of relevant
evidence

- Consider both inculpatory and exculpatory evidence
 - Inculpatory = Corroborating evidence
 - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person's status as a Complainant, Respondent, or witness

Basic Requirements

A recipient's grievance process MUST:



Require Title IX
personnel not have bias
and conflict of interest

- Title IX personnel must be trained
- Title IX personnel must *“not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent”*
- Title IX personnel should consider recusing themselves if they are unable to serve impartially.

Basic Requirements

A recipient's grievance process MUST:

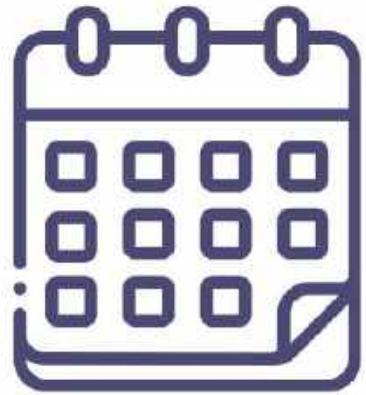


Include a presumption that Respondent is not responsible until a determination is made

- Punitive measures may not be put in place until a finding of responsibility has been issued
- Think "*innocent until proven guilty*" in the criminal justice system

Basic Requirements

A recipient's grievance process MUST:



Include reasonably prompt time frames

- Title IX policies should include reasonably prompt time frames for filing and resolving appeals, informal resolution processes, and more
- The grievance process may be delayed for good cause, which could include:
 - Absence of a party or party's advisor
 - Request from law enforcement to pause for concurrent investigation
 - Acquiring accommodations such as language assistance, disabilities

Basic Requirements

A recipient's grievance process MUST:



Describe range of possible disciplinary sanctions and remedies

- Ensure these ranges are communicated in policy and procedural documents

Basic Requirements

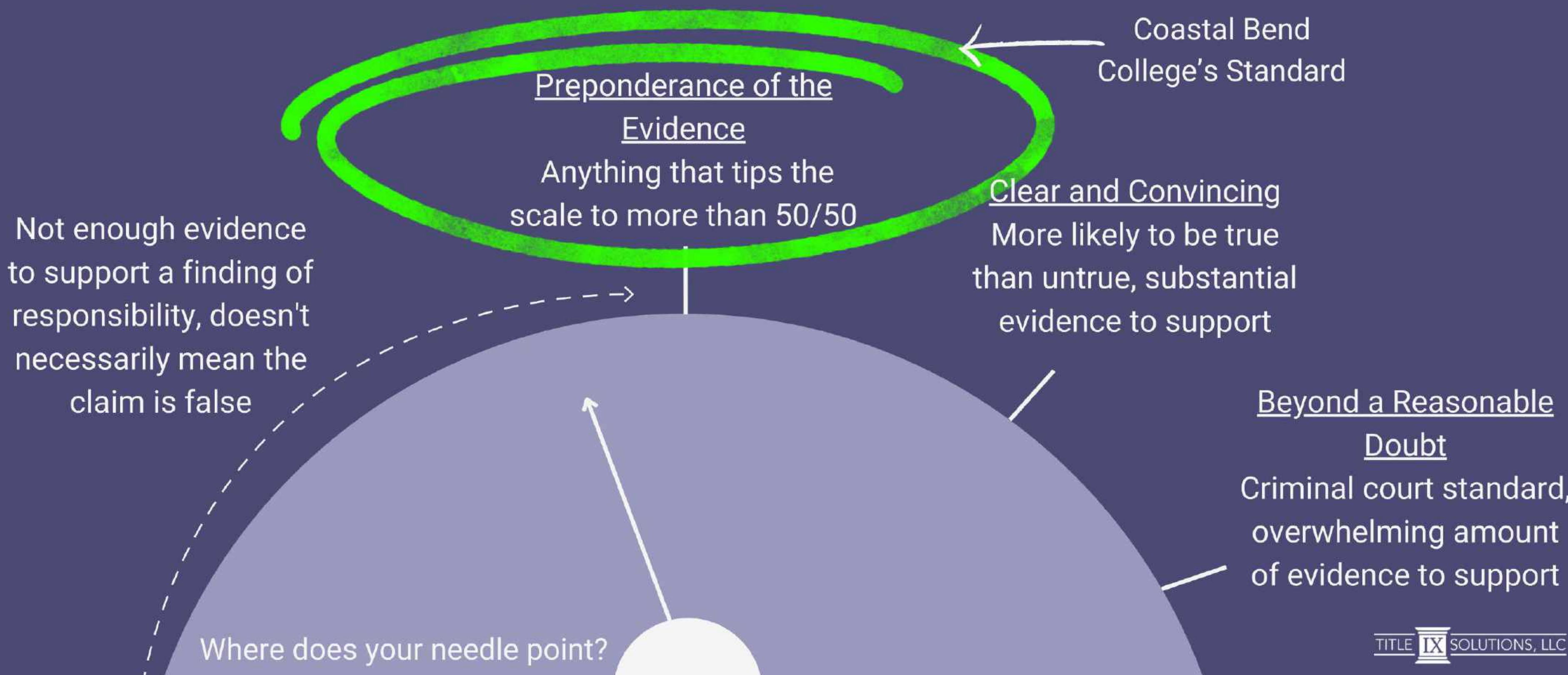
A recipient's grievance process MUST:



State the standard of evidence

- A school may elect to apply either:
 - The *preponderance of evidence* (“more likely than not”) standard; or
 - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
 - Formal complaints against students as is used for formal complaints against employees, including faculty
 - All formal complaints of sexual harassment

Standards of Evidence



Basic Requirements

A recipient's grievance process MUST:



Include the permissible
bases for appeal

- Title IX allows for appeals of the final determination of responsibility

Basic Requirements

A recipient's grievance process MUST:



Describe the range of
supportive measures
available

- Ensure these ranges are communicated in policy

Basic Requirements

A recipient's grievance process MUST:



Not require or rely on
privileged information,
unless waived

- This would include information such as:
 - Medical records
 - Academic records protected under FERPA
 - Conversations with privileged individuals such as counselors or clergy



Questions?





Break until 10:15 AM



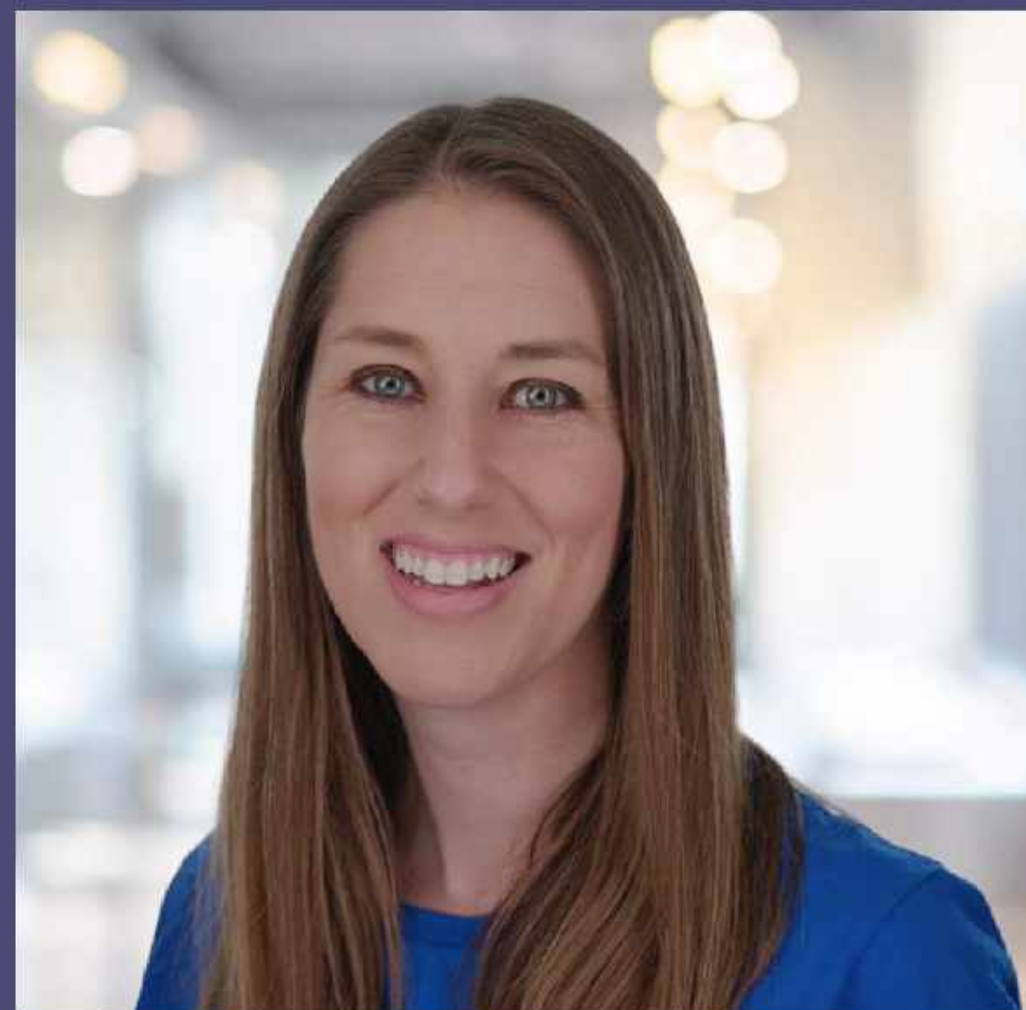
Title IX
Investigation
Procedures and
Best Practices

Session Speaker

Tawny Alonzo

M.S.

Director of Training, Investigator
Title IX Solutions, LLC



In This Session



CONDUCTING
COMPLIANT
TITLE IX
INVESTIGATIONS

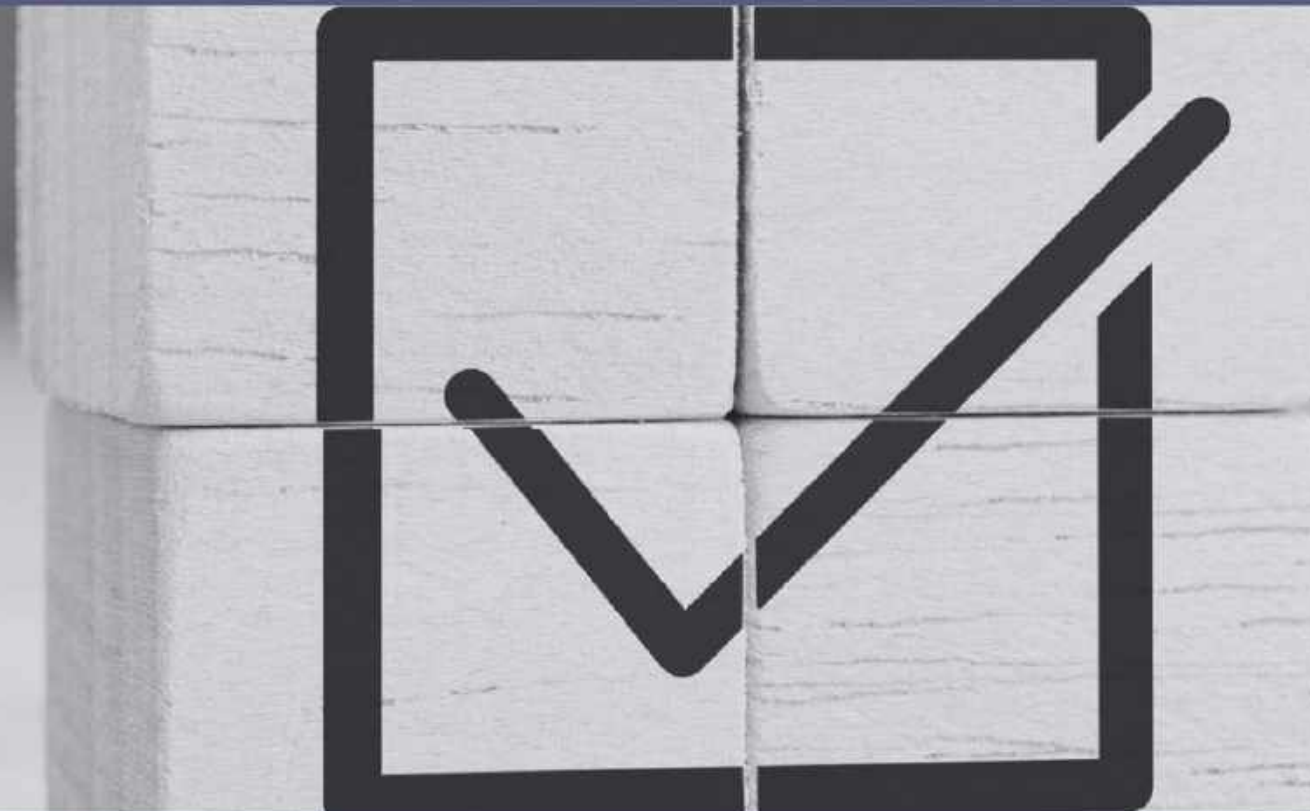


PLANNING A
PROMPT,
THOROUGH, AND
IMPARTIAL
INVESTIGATION



THE
INVESTIGATION
REPORT AND FILE

Conducting Compliant Title IX Investigations



Title IX Grievance Process

WE ARE
HERE



Notice of Allegations

Notice of Allegations must contain:

- Notice of the school's grievance process
- Sufficient details of the allegations, including:
 - Identities of the parties involved;
 - The conduct allegedly constituting sexual harassment;
 - The date and location of the alleged incident(s)
- Sufficient time period for the parties to prepare a response before interview
- Presumption of not responsible
- Determination of responsibility at the conclusion of the grievance process
- Allowance of an Advisor
- Right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements

Sample Notice of Allegations



March 14, 2023

Jordan Reynolds

Sent electronically to jreynolds@sisd.edu

PERSONAL AND CONFIDENTIAL

The Sample University ("SU") Title IX Office has received a Formal Complaint from Alex Baker ("Complainant") alleging that you ("Respondent") have engaged in conduct that may be a violation of Sample University's Sexual Harassment policy.

Complainant alleges the following:

On March 3, 2023 at approximately 7:00 PM, Complainant and Respondent attended an event honoring graduating seniors held on the Sample High School campus. Following the event, the Complainant alleges the Respondent engaged in the following conduct in the band hall:

- Respondent kissed Complainant without consent;
- Respondent placed their hand up Complainant's dress and inside of their underwear without consent.

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample University Sexual Harassment Policy, SU Policy 237.

237(4)(iii) "Sexual assault"- includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly against that person's will where the victim is incapable of giving affirmative consent.

(b) Fondling: The touching of private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

237(4)(ii) "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of SU conditioning the provision of an aid, benefit, or service of SU on an individual's participation in unwelcome sexual conduct (commonly referred to as "quid pro quo");

Sample Notice of Allegations

(b) Unwelcome conduct determined by a person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to SU's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").

The Respondent is considered "not responsible" for violating SU's policy unless and until the Sample University Title IX office determines at the conclusion of the grievance process, by a preponderance of the evidence, that the Respondent is responsible for the conduct. The burden is on Sample University to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, conduct a live hearing for the cross-examination of the parties, and reach a final determination for all matters alleged. The parties have a right to inspect, review, and respond to all evidence obtained during the investigation.

You may have an advisor of your choice assist or represent you in this process. This individual may be but is not required to be an attorney. The advisor may be present for any meeting, investigative interview, or hearing conducted during this formal grievance process. Your advisor may also inspect and review any evidence obtained as part of the investigation. The advisor shall be responsible for representing you and conducting the cross-examination process in the live hearing, as parties are not allowed to directly question each other.

Sample University Policy 237 prohibits the Complainant, Respondent and any witness from knowingly making false statements or knowingly submitting false information during any portion of the formal grievance process. Additionally, SU expressly prohibits retaliation. Sample University or any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. If you believe you have been retaliated against, please contact the Title IX Coordinator immediately.

Request for Meeting

Your presence is requested at an initial investigative interview meeting on March 21, 2023 at 8:30 AM. This meeting will be held at the Oakley Administration Building on 123 Main Street. Sample University has assigned an Investigator, Elizabeth Abdnour, to investigate the sexual harassment allegations reported by Complainant. As mentioned previously, you may have an advisor of your choice accompany you to this meeting.

If you have any questions regarding this Notice of Allegations or the Title IX formal grievance process, please do not hesitate to contact me.

Sincerely,

Tawny Alonzo

Sample University Title IX Coordinator

talonzo@su.edu

(618) 555-1234

Discovery of New Allegations

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

- If new allegations come to light, do not forget to send an updated Notice of Allegations to both parties.



Communication tip: Create a template for both the written notice of allegations and an addendum for new allegations discovered.

Title IX Grievance Process

WE ARE
HERE



"The investigation shall be completed within a reasonable time, not to exceed 60 days from the date of the report."

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

INTAKE/
REVIEW

FORMAL
COMPLAINT
FILED

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS



Title IX Investigations



Title IX personnel involved:

- Title IX Coordinator
- Title IX Investigator(s)



Objectives of this stage:

- Gather statements and evidence from Parties and witnesses
- Summarize all relevant evidence in a report to provide to the Decision-Maker




Milestones of this stage:

- Planning the investigation
- Conducting interviews
- Providing evidence for Parties to review
- Creating an investigation report

Initiation of the Grievance Process

A Recipient must investigate a formal complaint.

- The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the parties



“The Recipient cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with the provision of treatment to the Party, unless the Recipient obtains the Party's written, voluntary consent to do so for the grievance process”

IX

Title IX Requirements

During the investigation, the school **must**:

“Provide an equal opportunity for the Parties to present witnesses (including fact and expert witnesses), and other inculpatory and exculpatory evidence”

- Do not restrict the ability of the parties to present evidence!
 - The Investigator should be open to receiving any and all evidence provided by parties and/or witnesses.
 - A relevance determination can be made at a later time to determine what will be included in the investigation report.

IX

Title IX Requirements

During the investigation, the school **must**:

“Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;”

- Gag orders are not allowed!
- A school may place restrictions on discussing specific evidence or sharing the investigation report.

IX

Title IX Requirements

During the investigation, the school **must**:

“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

- Do not deny the party an opportunity to have an Advisor present!

IX

Title IX Requirements

During the investigation, the school **must**:

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;

- Keep all notices in writing and provide parties ample time to prepare!

IX

Title IX Requirements

During the investigation, the school **must**:

“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;”

IX

Title IX Requirements

During the investigation, the school **must**:

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”

- Save everything collected as a part of the investigation!
- The entire investigation file will be provided to the parties and their advisors.

Planning a Prompt, Thorough, and Impartial Investigation



Forming an Investigative Team

Factors to Consider:

- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Conflicts of interest and/or actual and perceived biases
- Gender balance
- Native language of the parties
- Rapport



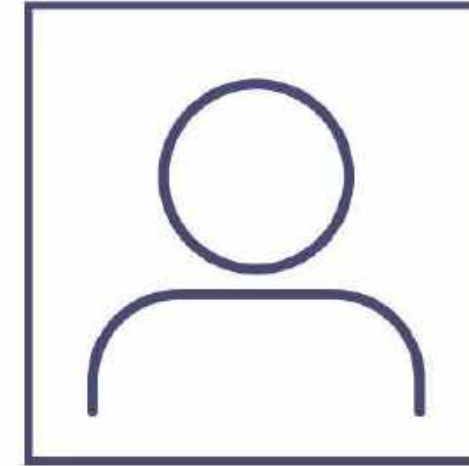
 Communication tip: Create a template for the notice of formal complaint under Title IX to send to your investigation team.

Team of Two Investigators



LEAD INVESTIGATOR

- Coordinates with the Title IX Coordinator and the Parties
- Leads investigative interviews
- Drafts the Investigative Report and prepares the Investigation File



CO-INVESTIGATOR

- Takes notes during interviews, notes questions, and asks questions during the interview if prompted by the Lead Investigator

Documents to Review



Institutional Title IX / Sexual Harassment Policy and Procedures

- FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION-SEX and SEXUAL VIOLENCE
 - FFDA- Student Policy
 - DIAA- Employee Policy



Initial Report (if available)



Formal Complaint



Notice of Allegations (Notice of Investigation)



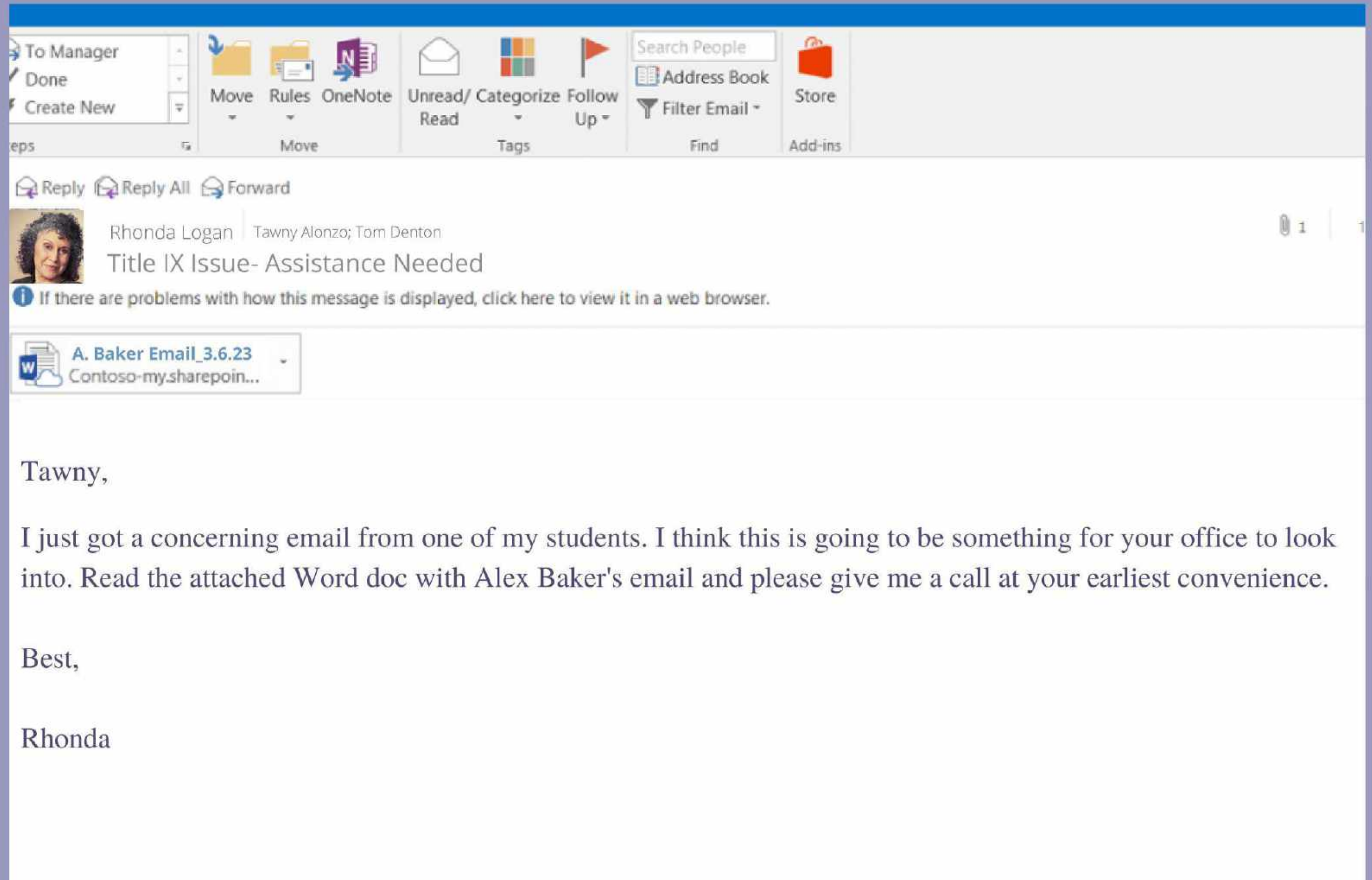
Internal Templates

Institutional Title IX / Sexual Harassment Policy and Procedures

Your policy outlines key definitions, investigation procedures, rights of the parties, and Coastal Bend College's overall requirements under Title IX.

- Review the Policy and Procedures numerous times and at every stage of the investigation process
 - The Policy and Procedures must be followed throughout the investigation
- Review the Rights of the Parties
 - For example: Parties are not required to participate in the investigation, have the right to share their account and have it on the record, and may have an Advisor
- Direct Parties and Witnesses to the Policy and Procedures
- Direct questions or concerns about the Policy or Procedures to the Title IX Coordinator

Sample Initial Report



To Manager
Done
Create New

Move
Rules
OneNote


Unread/Read
Categorize
Tags


Follow Up


Search People
Address Book
Filter Email

Store
Add-ins

Reply Reply All Forward

 Rhonda Logan | Tawny Alonzo; Tom Denton
Title IX Issue- Assistance Needed

 If there are problems with how this message is displayed, click here to view it in a web browser.

 A. Baker Email_3.6.23
Contoso-my.sharepoin...

Tawny,

I just got a concerning email from one of my students. I think this is going to be something for your office to look into. Read the attached Word doc with Alex Baker's email and please give me a call at your earliest convenience.

Best,

Rhonda

Sample Formal Complaint

Sample Formal Complaint

March 10, 2023

To the Sample University Title IX Coordinator,

On the night of March 3rd, a Friday, the Music Department held a celebratory dinner for all seniors who will be graduating this spring. The students, department faculty, and some program alumni were invited to attend the event which was held in the main banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two Music Department faculty members, one of which was my professor Dr. Logan, and three other students, one of which was Jordan Reynolds. I thought the dinner was pleasant and overall, conversation seemed pretty normal. However, there was a cash bar provided, with wine and beer, and I saw Jordan Reynolds drinking quite a bit. I noticed Jordan getting louder and more talkative with each drink they had. I saw Jordan drink four beers, but I don't know if they had more than that because I was not around them until we were seated. I don't drink, so I didn't visit the bar.

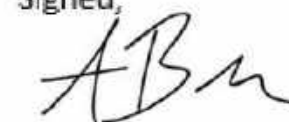
When the event was over, Dr. Logan asked if she could have some help taking two boxes of table decorations back to the Music Department administrative office also in Briggs Hall. I wanted to be helpful, so I volunteered to take a box back. Jordan immediately jumped in saying they would join me. I was somewhat annoyed because they were clearly intoxicated and had been looking at me strangely all night.

Dr. Logan informed me that the main office was unlocked and that we could place the boxes behind the main reception desk. Dr. Logan said she would lock up later when she gathered her personal belongings from her office. Jordan and I walked down the hall to the Music Department office where it was extremely dark. We put the boxes behind the reception desk as Dr. Logan instructed us to do. I felt weird about being in there with them, so I immediately made my way to the door so I could go to my car and go home. Jordan ran to the door and pushed it closed, pinning me between themself and the door. I was terrified. Jordan told me we should "take advantage of the privacy" and started telling me how attracted they are to me. I froze and couldn't say anything or even more. Jordan forcefully began kissing my neck and had my arms held down to my side. Jordan started pulling my dress up and put their hand inside my underwear. I started to squirm around and felt myself crying. Jordan said something like, "You'll enjoy it if you just let it happen," and told me we should keep going. As they started to unbuckle their belt, I had enough space to push them away and ran out the door as fast as I could.

As I was running down the hall, I passed Dr. Logan, who I think saw me crying. I couldn't stop because I was afraid Jordan would follow me into the parking lot. I missed classes on Monday because I didn't want to risk bumping into Jordan on campus. One of the classes I missed was Dr. Logan's capstone class, which I never skip. I emailed her to tell her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just broke down and told her everything.

I would like to file a formal complaint against Jordan Reynolds. I feel unsafe and scared.

Signed,



Alex Baker

Internal Templates

Consider creating templates for the following correspondence.
Templates may include:



Invitation to
Interview



Interview
Preamble



Advisor
Agreement



Notice of
Review of
Investgation
File



Notice of
Investigative
Report



Investigative
Report
Format

Getting Started

Before drafting your plan, confirm that you have completed the following steps:

- Formed your investigative team
- Reviewed key documents
- Conducted an assessment for potential conflicts of interest or biases
- Preserved any potential evidence
- Communicated with the Title IX Coordinator about the case

Key Questions to Keep in Mind

- ① What is the alleged incident and did it occur?
- ② Is the alleged incident a policy violation?

As investigators, these questions help us:

- Understand the scope of the investigation and what is “relevant” and “directly related”
- Recognize key words from policy violations to address during the investigation
- Focus the investigation planning, interview questions, interview summaries & investigative report

Drafting the Investigation Plan

At a minimum, the Investigation Plan includes:

- ① Names of the Investigators
- ② Names of the involved parties
- ③ Summary of allegations
- ④ Definitions of alleged policy violations
- ⑤ Witness list
- ⑥ Order of interviews for parties and witnesses
- ⑦ Evidence list
- ⑧ Preliminary investigation timeline

Drafting the Investigation Plan



Start with any information you already know.

Input information from the Notice of Allegations, Formal Complaint, and initial report!

Remain flexible and focused.

Even the most efficient investigations can be time-consuming.

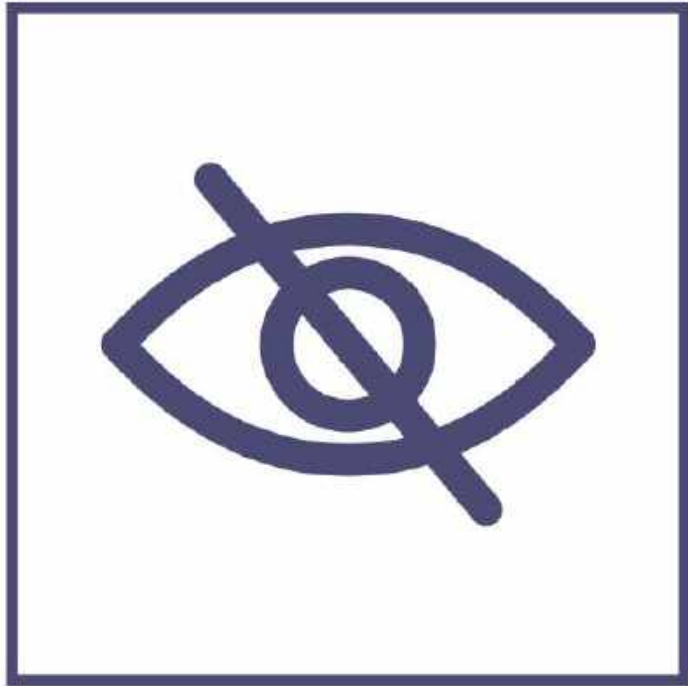
Key Considerations

As you prepare to interview parties and witnesses, keep in mind the following:

- Title IX is an administrative, not judicial, process
- Investigators must remain objective and impartial
 - This does not mean you cannot have empathy
- Challenging process for all individuals involved can be emotional and time-consuming
- Consistent Communication can alleviate challenges
 - Build in moments for your own self-care and reflection

Structure the Environment

- The interview space itself is often overlooked!
 - Locate a space on campus with several elements in mind, including:



PRIVACY



SAFETY



COMFORT



SPACE

Virtual Investigative Interviews

It is much harder to control the setting with virtual interviews

- Tell the party/witness exactly how to join the meeting
 - Check parties' access to technology
 - Troubleshoot technology issues
- Advise the appropriate setting for the interview (if possible)
 - Private space, comfortable seating, etc.
- Advise what they should bring such as tissues, water, etc.
- Control your own setting
 - Maintain successful eye-contact, appropriate lighting, privacy, etc.

Scheduling Interviews

Interview the
Complainant before
Respondent and
witnesses

Typically one to
two interviews
per person, but
could be more

Allow at least one
hour for each
interview

Be patient and
flexible in
scheduling, but do
not unreasonably
delay process

Delays for Good Cause

"...a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;"

34 CFR §106.45(b)(1)(v)

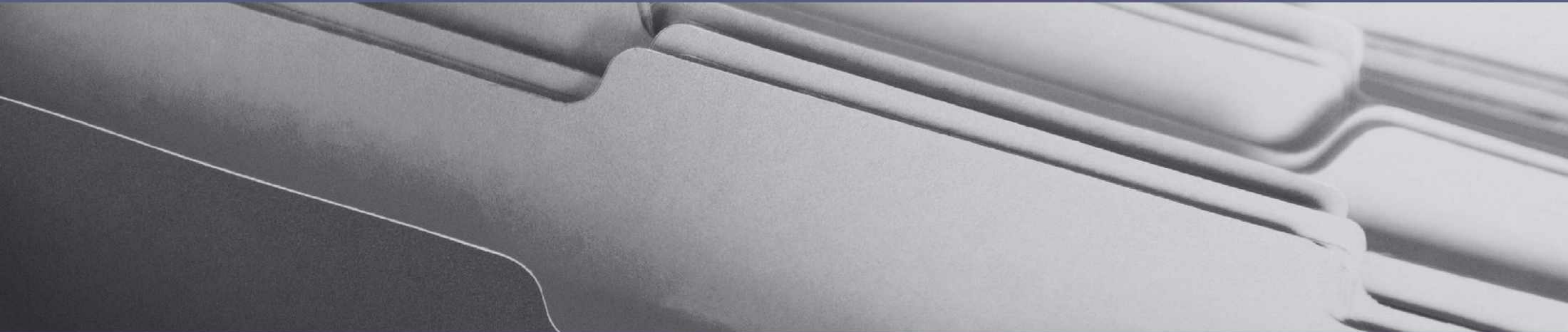
Are the following delays for good cause?

A Party's attorney
Advisor is booked
for the next two
months

The Respondent is
leaving the country
for a semester-
long study abroad
experience

The Title IX
Investigator has
been waiting six
weeks for security
footage to be
provided by
Campus Police

The Investigation Report and File



What is the Investigation File?

At the conclusion of the investigation, Investigators must prepare what we refer to as an investigation file:

- May also be referred to as a case file or case binder
- May be a hard copy or digital

What does the Investigation File contain?

ALL EVIDENCE obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to the Complainant and Respondent

- Do not filter out any information from the file at this point unless completely unrelated
- Parties must have an equal opportunity to inspect and review all of the directly related evidence
 - Investigators may also send evidence to Advisors, with consent
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a party or witness

What does the Investigation File contain?

- Includes evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a determination regarding responsibility
 - For instance, where evidence is directly related to the allegations, but the Investigator does not believe the evidence to be credible and thus does not intend to rely on it
- All evidence must be made available to the parties, but not all evidence may be “relevant”
 - Reviewing the investigation file provides the Advisor and the party the opportunity to argue whether certain evidence is relevant or not

Relevant vs. Directly Related

Directly related evidence is a broader term than relevant evidence. All directly related evidence is included in the investigation file. Only relevant evidence, however, is summarized in the investigation report.

Directly
related

Relevant

Once the Investigation File is Prepared

- Title IX Coordinator will provide the file to the Complainant, Respondent, and Advisors
- *“At least ten days prior to the completion of the investigation report, the College District must send each party and the party’s advisor evidence subject to inspection and review. The parties may submit a written response for consideration by the investigator.”*
- Investigators will share any written response with the other party and will consider any written response prior to completing the investigation report



The audience for the Investigation File is the Complainant, Respondent, Advisors, and Decision-Maker(s).

After Parties Review the Investigation File

Create the final investigation report:

- Incorporate relevant elements of the parties' written responses (or absence thereof) into the investigation report
- Include any additional relevant evidence
- Make any necessary revisions
- Finalize the report
- Document all rationales for changes made after the review and comment period

The Investigation Report

“The investigators shall prepare a written report summarizing the relevant investigation information. The final investigative report shall be filed with the Title IX coordinator within ten days following the completion of the investigation.

The Title IX coordinator or deputy Title IX coordinator shall provide the investigation report, within the extent permitted by the Family Educational Rights and Privacy Act (FERPA) or other law, to the complainant and the respondent promptly following receipt. The parties shall be given ten days to respond to the report.”

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION

Investigation Report Requirements

At the conclusion of the investigation, the investigator will prepare a written report which will:

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the PROCEDURAL STEPS taken between receipt of the formal complaint and the conclusion of the investigation,
- ✓ Fairly summarize relevant evidence
 - Parties accounts
 - Witness statements
 - Physical evidence

REMINDER

The written report shall not make findings of facts or conclusions regarding the application of facts to this policy.

This is the responsibility of the Decision-Maker.


Report Writing Preparation and Helpful Hints

- You might consider writing as you go
- You may see questions you forgot to ask or points that need clarification - go back and ask
- Carve out the necessary time



Questions?






Strategies for
Establishing
Rapport &
Optimizing
Interviews

Session Speaker

Tom Denton

Co-Founder, Director of Investigations
Title IX Solutions, LLC





Lunch break until
1:00 PM

The Title IX Decision- Making Process



Session Speaker

Elizabeth Abdnour

J.D.

Investigator and Advisor
Title IX Solutions, LLC



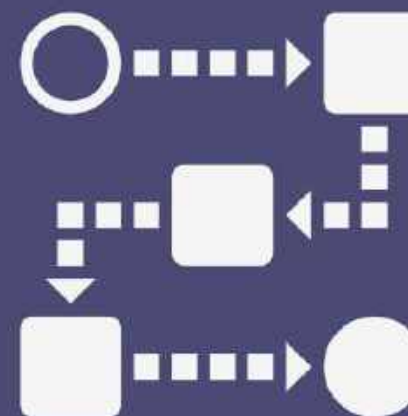
In This Session



TITLE IX
REQUIREMENTS FOR
LIVE HEARINGS



PREPARING FOR THE
HEARING

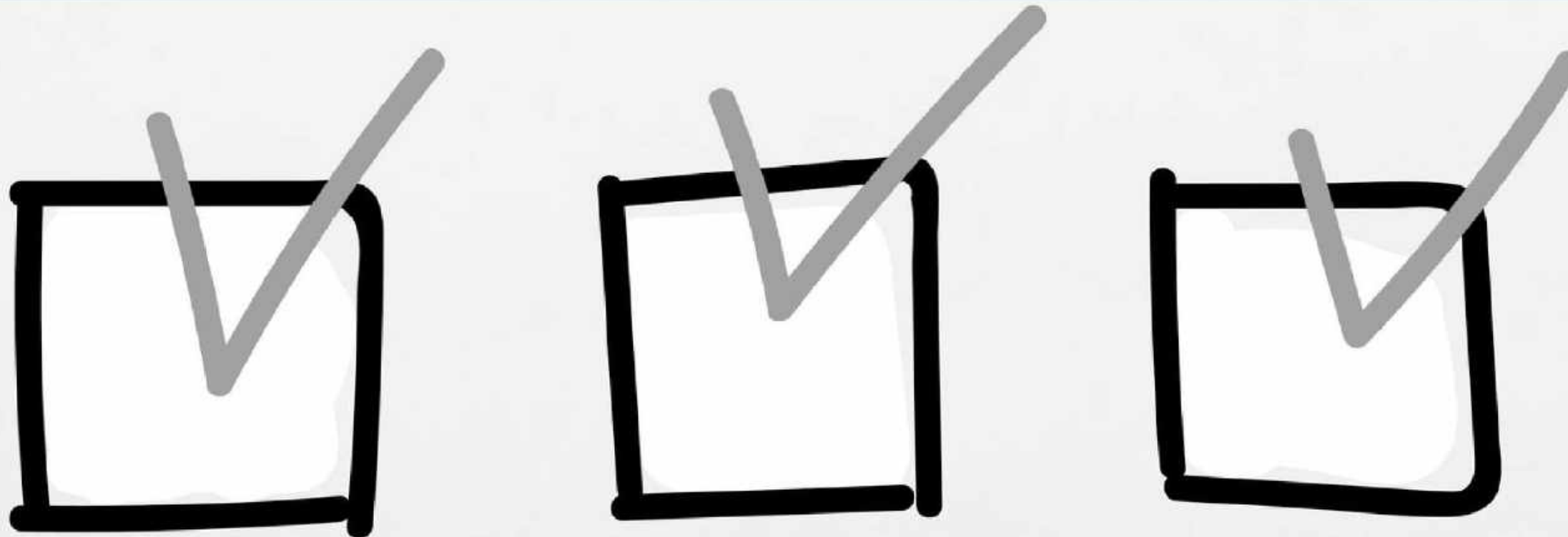


HEARING
PROCEDURES



KEY ELEMENTS OF THE
DETERMINATION
REGARDING
RESPONSIBILITY

Title IX Requirements for Live Hearings



Title IX Regulations Guidance on Hearings

The live hearing is required at postsecondary institutions.

At a live hearing, the Decision-Maker:

"must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility."

34 C.F.R. § 106.45(B)(6)

Title IX Regulations Guidance on Hearings

Cross-examination must take place:

DIRECTLY

ORALLY

IN
REAL TIME



Must be conducted through an Advisor of choice and NEVER by the Complainant or Respondent

Title IX Regulations Guidance on Hearings

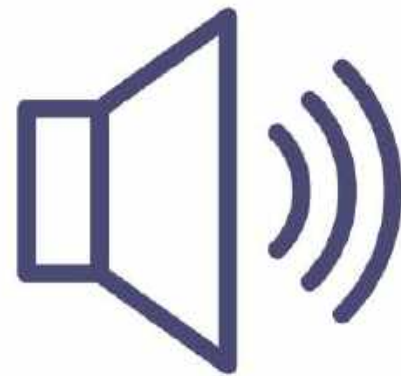
If requested by either party, the school must provide for the hearing to occur with parties in separate rooms, supported via technology.



There is also the option for any or all parties and witnesses to participate remotely, via technology (at the school's discretion).

Recordkeeping

Schools must create one of the following records of the hearing to provide to the Parties for inspection and review:



Audio Recording



Audiovisual Recording



Transcript

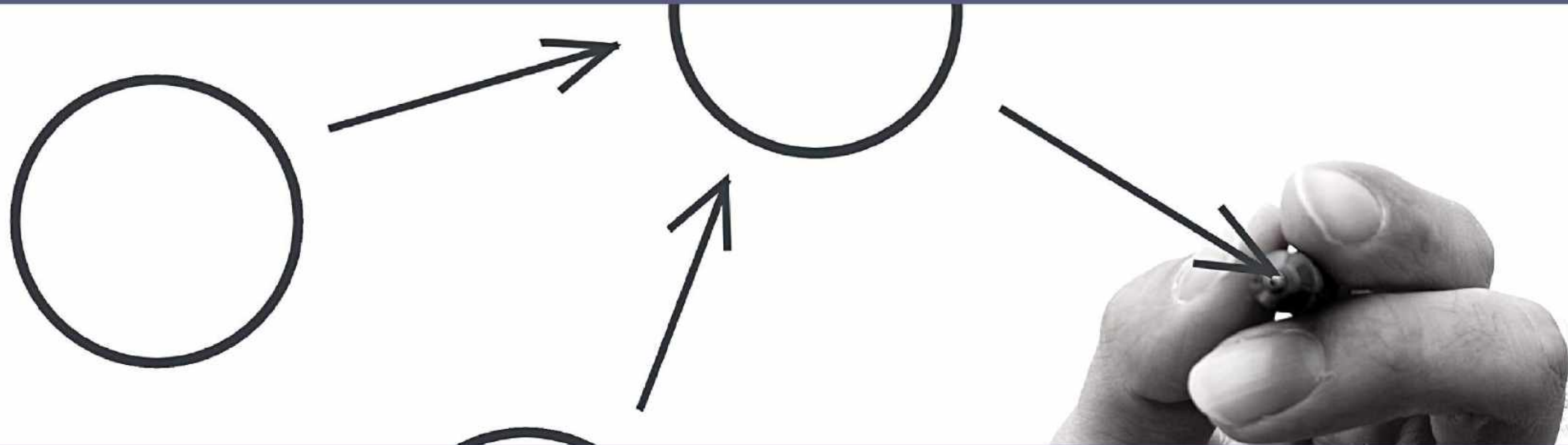
As with all Title IX records, the live hearing record and written determination must be kept for at least seven years.

Title IX Advisors

- Remember, parties will be accompanied by an Advisor of their choice who may be, but is not required to be, an attorney
 - Advisors are allowed to attend any meeting but are required for the hearing
 - Parties may have been utilizing Advisor support throughout the full grievance process
 - Others will just engage with Advisors for the hearing
- May be a parent, friend, teacher, coach, etc.
 - Keep this in mind as cross-examination proficiency will vary greatly
 - Some may need more guidance during the hearing
- If a party has not selected an advisor prior to the hearing, one must be provided by the school (free of charge)
- Restrictions may be placed on Advisor participation but must be applied equally to both parties' Advisors

We'll touch more on the role of the Advisor in a bit!

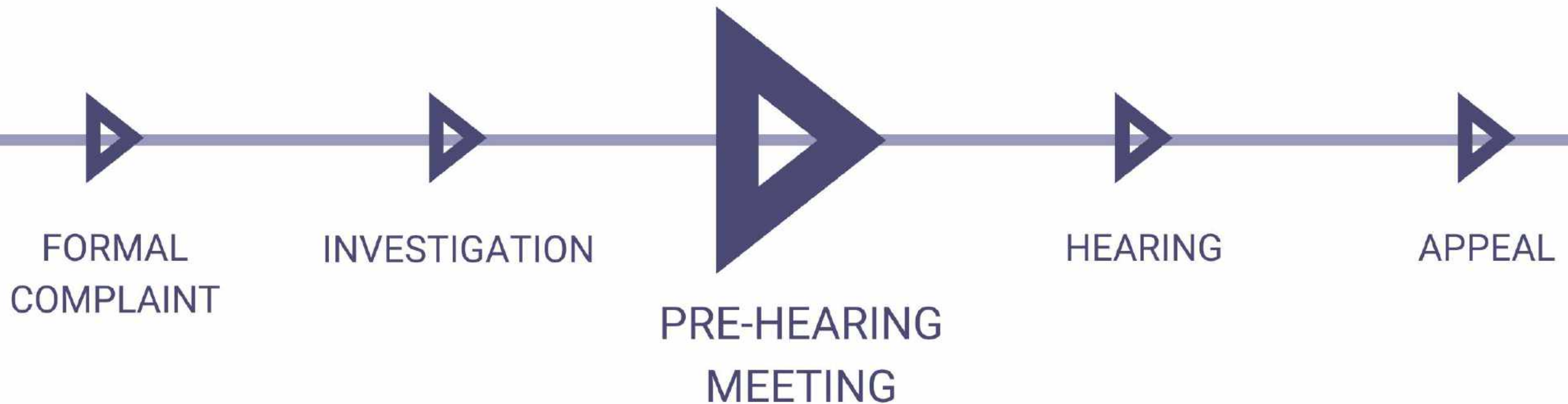
Preparing for the Title IX Hearing



What is a Pre-Hearing Meeting?

- Meeting before the hearing to walk through guidelines, expectations, and more for parties, Advisors, and the Decision-Maker
- Led by the Title IX Coordinator or Decision-Maker(s)
- Not mandated by Title IX regulations, but permitted
- Prepares all parties (and the Decision-Maker) for the live hearing
- Seen as a best practice for Title IX hearings
- If allegations involve staff or faculty, pre-hearing meetings are particularly important

When is the Pre-Hearing Meeting?



It is held following the issuance of investigation report and after parties and their Advisors have had the opportunity to review and respond to evidence.



Communication tip: Create a template for the written invitation to the pre-hearing meeting.

Importance of Pre-Hearing Meetings

Most individuals have not participated in this type of hearing.

- The many “unknowns” surrounding the live hearing may be anxiety-inducing for the parties
- Pre-hearing meetings may help ease some anxiety because the Decision-Maker addresses many of these “unknowns” associated with the live hearing
- Benefits include:
 - Ensuring parties and Advisors have the same understanding of and expectations for the live hearing
 - Anticipating any issues and troubleshooting before the hearing begins
 - Slowing the process down to allow more thoughtful decision-making
 - May make the live hearing more efficient, focused, and effective

Preparing for the Hearing

- The Title IX Coordinator will communicate with parties and witnesses following the pre-hearing meeting
 - All will receive written notice with date, time, and location of the hearing with sufficient time to prepare
 - Coordination with multiple parties and Advisors can be challenging
- The Title IX Coordinator will secure physical space, if the live hearing is taking place on-campus, or will coordinate videoconferencing (Zoom, Google Meet, Teams, etc.)

On-Campus Hearings

- Think about the physical space and determine your needs for the hearing
- Plan for assistance from the Title IX Coordinator and secure administrative assistance from someone who can be a "runner"
- Consider the following:
 - Seating arrangements and positioning
 - Access to technology, phone, Wi-Fi
 - Proximity to an office for supplies or copies, if needed
 - Provision of water, tissues etc. for Parties
 - Appropriate waiting area for Witnesses
 - Spaces for breaks or private conferring with Advisor
 - Method of recording
 - Consider any special accommodations needed by Parties or Witnesses

Remote Hearings

- Think about the technology and determine your needs for the hearing
- Plan for assistance from the Title IX Coordinator and secure assistance from a member of your campus' IT department for troubleshooting
- Consider the following:
 - Ensure all parties, Advisors, and witnesses have access to technology and conferencing platform needed
 - Consider any special accommodations needed by parties or witnesses
 - Conduct tests to ensure all technology is working
 - Set up virtual breakout rooms for the parties and their Advisors
 - Create plan for witnesses to be called and admitted to hearing when ready

Hearing Rules and Decorum

- Consult school policy and work with Title IX Coordinator to create a set of standard rules for the hearing
- Consider the following:
 - Rules for participation from parties and Witnesses
 - Rules for participation from Advisors
 - Rules for breaks, both within the same day and continuation to another day, if needed
 - Consequences for not following the rules (How will this be handled?)
- General decorum for all participants should be professional, respectful, and orderly

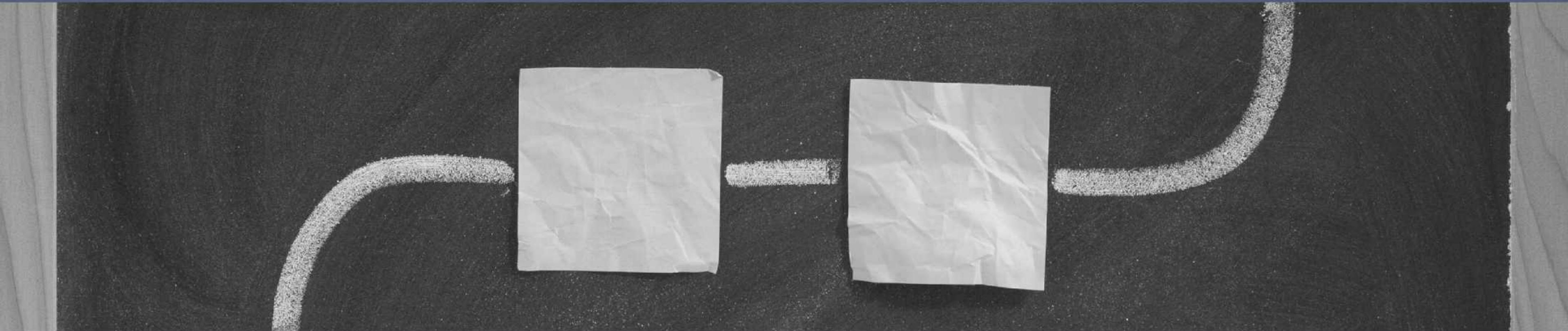
Decision-Maker Decorum

- As the facilitator of the hearing, Decision-Makers will set the ultimate example
- Set the standard of professionalism, respect, and order
 - Do not allow emotions in the room to dictate your decisions
 - Remain objective and impartial throughout
- Practice active listening and reduce all distractions
- Be mindful of posture, mannerisms, and reactions
- As this is an administrative process and not a TV court room, remember the following:
 - There are no climactic "gotcha" moments
 - You are there to instruct and assist as well- help parties, witnesses, and Advisors if they do not understand something

Support

- As previously mentioned, Decision-Makers will have support from the Title IX Coordinator in aspects of preparing for and facilitating the hearing
- Determine if there are other individuals from whom you will need support
- Parties receive guidance from Advisors, but who will guide you?
 - Contact your school's general counsel to attend the hearing or be on-call to assist you with legal advice
 - When in doubt, take a break and seek guidance from your resources
 - Do not force any action or decision - You can slow the process down

Hearing Procedures



Order of the Hearing

- Title IX Regulations do not provide any specific guidance on the inner-workings of the hearing
- The order and specific components of the hearing should be determined by your school policy or procedures
- The following is an example of best practice procedures, but it is just one of several ways a hearing may be structured



Communication tip: Create a template for the written notice of hearing.

Hearing Agenda

Opening of the Hearing

Opening Statements

Introduction of Testimonial Evidence

Closing Statements

Closing of the Hearing

Hearing Agenda

Opening of the Hearing

Facilitated by the Decision-Maker who will:

- Welcome Complainant, Respondent, and Advisors to the hearing
- Discuss rules, decorum, and hearing procedure for all individuals involved
- State the date and time for the official record
- Answer any final questions or clarify information needed prior to the start of the hearing
- Proceed to opening statements

Hearing Agenda

Opening Statements

Facilitated by the Decision-Maker who will ask Complainant and Respondent (or their Advisors) to present an opening statement which may:

- Outline the issues that the party and their Advisor would like to refute
- Provide an overview of the facts and evidence
- Describe the evidence that supports their statements (or their party's statements)
- Present what the party and their Advisor expect to prove during the hearing

Typically, the Complainant gives the first opening statement, followed by the Respondent. Parties may waive their presentation of an opening statement.

Hearing Agenda

Introduction of Testimonial Evidence

Facilitated by the Decision-Maker who will allow Advisors to conduct direct and cross-examination of the parties and witnesses.

Decision-Makers also conduct their own questioning of the parties and witnesses.



Decision-Makers will rule on relevancy of ALL questions prior to the parties and witnesses answering. They may also ask for clarification from Advisors on the relevancy of questions.

Direct and Cross-Examination

COMPLAINANT'S CASE

- Typically, the Decision-Maker will ask the Complainant to provide testimonial evidence first
- Opportunity to present Complainant and witnesses called by Complainant for direct examination
- Present new evidence (if any, ideally should have been discussed at pre-hearing conference to allow for inspection by both parties)
- Cross-examination of the Complainant and Complainant's witnesses by the Respondent's Advisor
- Advisors may object to irrelevant questions asked of their party or witnesses

Direct and Cross-Examination

RESPONDENT'S CASE

- Once the Complainant has completed the sharing of their testimony, the Respondent will share theirs
- Opportunity to present Respondent and witnesses called by Respondent for direct examination
- Present new evidence (if any, ideally should have been discussed at the pre-hearing conference to allow for inspection by both parties)
- Cross-examination of the Complainant and Complainant's witnesses by the Respondent's Advisor
- Advisors may object to irrelevant questions asked of their party or witnesses

Direct and Cross-Examination

DECISION-MAKER'S EXAMINATION

- Opportunity for the Decision-Maker to ask questions of Complainant, Respondent, and witnesses
- Provides opportunity for final clarification before drafting the determination regarding responsibility

Hearing Agenda

Closing Statements

Facilitated by the Decision-Maker who will ask Complainant and Respondent (or their Advisors) to present a closing statement.

- Final statement by the parties or their Advisors to the Decision-Maker
- Summarizes the relevant evidence and arguments
- Asks the Decision-Maker to find that the evidence will support the determination in that party's favor
- May be an impact statement by the Complainant or Respondent (which may only be used to influence severity of sanction)

Typically, the Complainant gives the first closing statement, followed by the Respondent. Parties may waive their presentation of a closing statement.

Hearing Agenda

Closing of the Hearing

Facilitated by the Decision-Maker who will:

- Announce parties have completed the submission of all evidence
- Announce the closing of the hearing
- State the date and time for the record
- Provide information regarding next steps and timeline
- Dismiss the parties and begin preparing the determination regarding responsibility

Ruling on Relevance

- Remember, Decision-Makers will be determining the relevance of each question asked prior to the parties answering such questions
- Reasons to reject questions:
 - Question is seeking information that is never relevant under Title IX (rape shield, privileged information)
 - Question is not relevant to the complaint and facts being discussed
 - Question has already been answered in the hearing
- Decision-Makers may seek clarity from the Advisor as to why the question is being asked to understand relevance
- Provide a thorough explanation as to why a particular question is not allowed - *transparency is a must*

Refusal to Participate in the Hearing



It is the right of each party and witness not to attend the hearing. They also have the right to refuse answering any or all questions asked during the hearing.

Determining Credibility

- The live hearing is the Decision-Maker's opportunity to determine credibility of the parties and witnesses
- Credibility of statements and evidence by parties and witnesses may be weighed when making your determination
 - Ask yourself, "Is this plausible?"
- Credibility considerations
 - Motives
 - Consistency in statements (recall trauma may impact this)
 - Supporting evidence (witnesses, physical evidence to corroborate versions of events)
 - Demeanor



Be aware, hearings can range from hours to days, depending on the complexity of the situation and the number of parties and witnesses to be questioned.

Pace yourself and allow for breaks when needed. Do not burn yourself or the parties out. The proceedings can always continue on the following day.

Key Elements of the Written Determination Regarding Responsibility



What is a Determination Regarding Responsibility?

- Drafted and issued by the Decision-Maker after the live hearing
- Based upon relevant evidence and testimony obtained during the grievance process applied to the school's standard of proof
- Contains various sections, notably a statement of, and rationale for, the result of each alleged policy violation (i.e., "responsible" or "not responsible" for violating the policy)
- Also referred to as the "Written Determination"



Communication tip: Create a template for the written determination regarding responsibility.

Introduction to the Written Determination



Includes six (6) key elements, as described under Title IX.



Must be shared with the parties simultaneously.



“The hearing officer shall create a written determination regarding responsibility in accordance with law and College District procedures within five days following the hearing and submit the determination to the parties simultaneously.”

FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION SEX
AND SEXUAL VIOLENCE POLICY

Key Elements of the Written Determination

Title IX states that the written determination must include:

- 1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX;
- 2 Description of the procedural steps taken from receipt of formal complaint through the determination;
- 3 Findings of fact supporting the determination;
- 4 Conclusions regarding the application of school's code of conduct to the facts;

Key Elements of the Written Determination

Title IX states that the written determination must include:

- 5 A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility;
 - Any disciplinary sanctions the school imposes on the Respondent;
 - Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant; and
- 6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.

1

Identification of
the allegations
potentially
constituting sexual
harassment as
defined under Title
IX

- Allegations may be found in the Notice of Allegations or Investigative Report and inserted directly into the Written Determination
- Allegations contained in the Written Determination must be consistent with the allegations provided to the parties in prior notices
- If the allegations are unclear, confirm with the Title IX Coordinator
- Determination includes:
 - Information about the alleged incident(s)
 - Definitions of the alleged policy violations

2

Description of the procedural steps taken from receipt of formal complaint through the determination

- Documents the entire grievance process
- Includes notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held
- Procedural steps may be found in the investigative report and/or provided to the Decision-Maker by the Title IX Coordinator and Investigator because many procedural steps occur prior to the Decision-Maker's involvement in the process
- Decision-Makers must add procedural steps related to the decision-making portion of the grievance process (i.e., pre-hearing meeting and hearing)

3

Findings of fact supporting the determination

- Includes relevant facts provided in the Investigative Report and facts established during the live hearing
- Includes statements provided by the parties and witnesses during the investigation and live hearing
- Includes an analysis of inculpatory and exculpatory evidence
- Includes an analysis of disputed and undisputed facts

4

Conclusions regarding the application of school's code of conduct to the facts

- Decision-Maker “matches up” conduct that allegedly constituted Title IX sexual harassment with the relevant portions of the school's Code of Conduct that the conduct also violates
- Nests the policy violations within the Code of Conduct to help the parties better understand how rules unique to the school’s Code of Conduct affect the determination and/or consequences of the written determination
- Explicitly states the names of the institutional policies that are being applied to the alleged policy violation

5

A statement of, and rationale for, the result as to each allegation, including:

- A determination regarding responsibility;
- Any disciplinary sanctions the school imposes on the Respondent; and
- Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant.

We will talk more about these in the session on outcomes, sanctions, and remedies!

6

The school's
procedures and
permissible bases
for the Complainant
and Respondent to
appeal

- Information about appeals can be copied directly from policy
- Both parties have the right to appeal
- The Appellate Officer cannot be the same person as the Decision-Maker
- The determination regarding responsibility becomes final either on the date that the school provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely



Questions?

Understanding Relevance

YES
NO →

The Importance of Relevance

The Title IX Regulations make it clear that ALL questions asked within a Title IX hearing must be relevant.

What does this mean and how will it be determined?

When Will the Decision-Maker Rule on Relevance?

The Decision-Maker will be responsible for ruling on the relevancy of **EVERY** question asked during the hearing. They must also explain any decision to exclude a question as irrelevant.

This may be accomplished in one of two ways:

- 1** Questions may be submitted to the Decision-Maker to review prior to the hearing.
- 2** Decision-Makers may rule on each question before a Witness or Party answers at the hearing.

Questioning Cadence

- Following the Advisor's question, prior to the party or witness answering, the Decision-Maker will rule on the relevance of the question
- Can be awkward at first, but provides a pause before an answer is given
- Will become easier as the hearing progresses



What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;" or

EXAMPLE:

"She has dated, and slept with, me and my roommate in the past. We kind of look alike. She was so intoxicated that she thought I was him and went into his room. It wasn't me. Ask anyone at the party."

What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent."

EXAMPLE:

"We have a safe word during sex. I have an entire email thread about it. We agreed that if we weren't comfortable with something, we would say the word. They never said the word that night and they have every single time we've engaged in something they're not comfortable with. How else would I know that wasn't ok?"

Note: The same rules do not apply to the sexual predisposition or history of the Respondent

What is Never Relevant Under Title IX?

Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy



Consider creating a waiver of rights to privacy of these records for parties who wish to submit privileged information as evidence.

Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

Directly Related

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: A receipt from a movie the Complainant and Respondent attended on the night of an alleged sexual assault.

Relevant

Evidence that is connected to the complaint or allegations that would make a disputed fact more or less probable.

Example: A receipt from a bar the parties attended after the movie showing the Complainant consumed seven mixed alcoholic drinks.

Directly Related vs. Relevant

Directly related evidence is a broader term than relevant evidence. All directly related evidence is included in the investigation file.

Only relevant evidence, however, is summarized in the investigation report.

Directly
related

Relevant

Inculpatory
vs.
Exculpatory

Witness
statements

Physical
evidence such as
text messages to
friends bragging
about the
conduct

Prior
complaints
alleging similar
conduct

Inculpatory=
Corroborating Evidence

Inculpatory
vs.
Exculpatory

Exculpatory= Contradicting Evidence

Physical evidence,
such as an audio
recording,
demonstrating the
incident did not
happen as alleged

Respondent
was with
someone else
during incident

Complainant told
another person
the conduct
didn't happen

Evidentiary Rules of Admissibility

Schools do not have the same rules of admissibility for evidence as courts of law, nor may they impose such rules that would exclude relevant evidence.

What about relevance of the following?

- Polygraph test results
- Voice stress analysis
- Sexual assault forensic exam kits
- Character witnesses
- Expert witnesses

Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

The Complainant's clothing

Use of alcohol or drugs by any Party or Witness

Emotional state of Parties or Witnesses

Mental health diagnoses of Parties or Witnesses

Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

Arrest record of a Party or Witness

Criminal record of a Party or Witness

Occupation of a Party or Witness

Prior complaints filed by the Complainant

(and if so, their disposition)

Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

Prior complaints filed against the Respondent
(and if so, their disposition)

Dating history of the Parties

Previous sanctions imposed by the institution or another institution

Party telling a mental health professional they need to apologize

Relevance Determination Practice

Let's discuss some examples and rule on their relevance:

A Party's grade in class

A statement from the party's coach about outstanding leadership and conduct on the team

Key Takeaways



Relevancy does not exist in a vacuum. It is contextual, situational, and specific to the fact pattern of the case.




What is relevant in one case will not always be relevant in another. The totality of the circumstances will dictate what is relevant (*with the exception of those items never allowed under Title IX Regulations*).



Questions?



Break until 2:45 PM



Title IX Outcomes, Sanctions and Remedies

Session Speaker

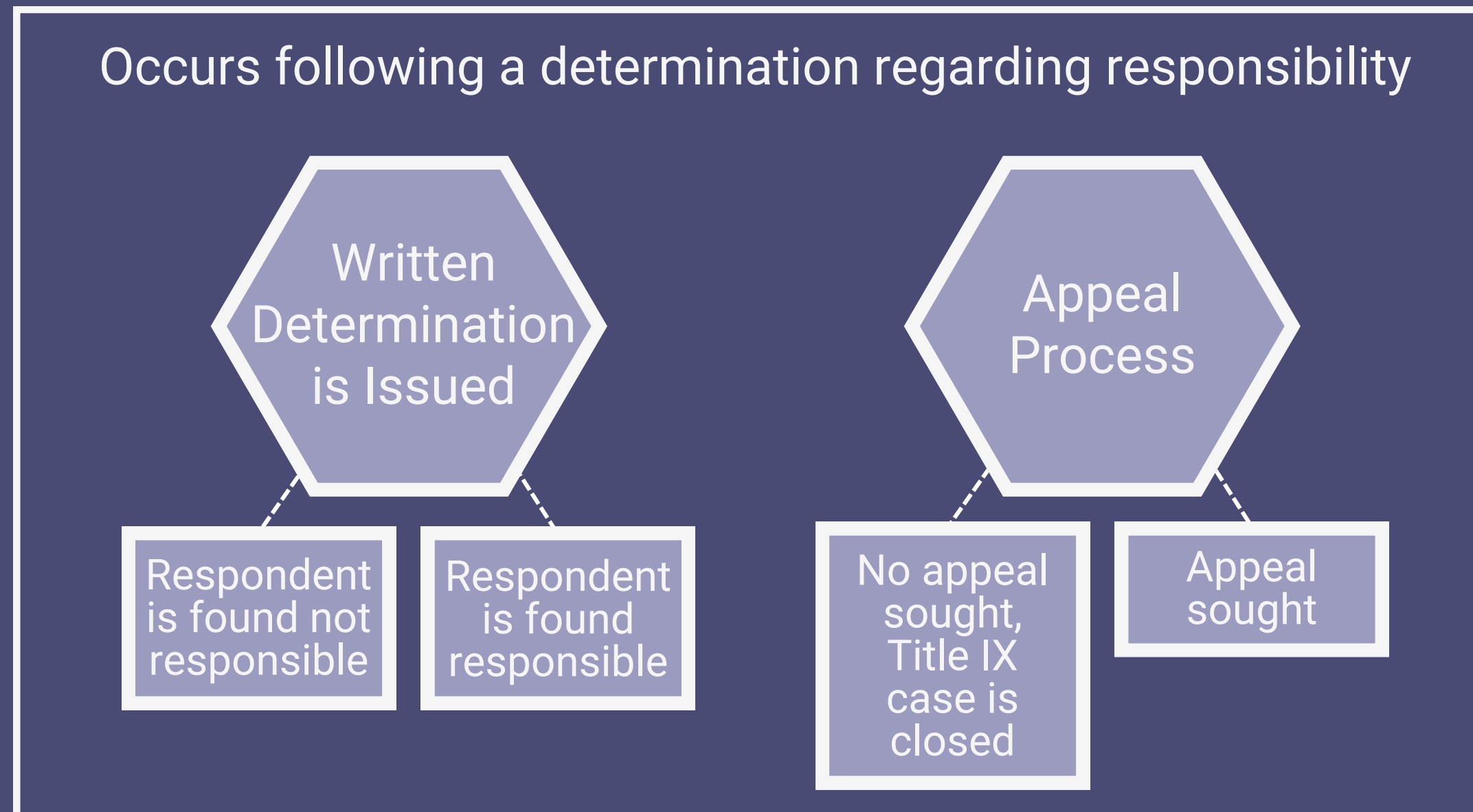
Adrienne Mathis

Executive Director
Title IX Solutions, LLC



Possible Title IX Outcomes

Aside from initial review, which could include adjudicating a matter under a non-Title IX policy and dismissal of formal complaints, these are the potential outcome points for a Title IX complaint:



Title IX Requirements

Title IX Regulations require schools to do the following:

"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."

34 CFR §106.45(b)(1)(vi)

"The sanction/remedy must be accompanied by a written rationale detailing the result as to each allegation, a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the Complainant."

34 CFR §106.45(b)(7)(ii)(E)

Title IX Requirements

Title IX Regulations require schools to do the following:

Implement sanctions and/or remedies that restore or preserve the Complainant's equal access to the school's education program or activity, if a Respondent is found responsible.

"Include the procedures and permissible bases for the complainant and respondent to appeal."

34 CFR §106.45(b)(1)(viii)

Outcomes Following the Written Determination



If the Respondent is not found responsible, the College may continue to offer supportive measures to the Complainant where practical.

- Engage in a conversation with the Complainant (and parents/legal guardians) to determine what is needed and for what length of time.
- Revisit this conversation at regular intervals to gauge the need for continued measures.

If the Respondent is found responsible, sanctions and remedies will be put into place.

Range of Sanctions

These are examples of disciplinary and corrective action listed in Coastal Bend College's *FREEDOM FROM DISCRIMINATION, HARASSMENT, AND RETALIATION* policy:

Implementing the disciplinary measures described in policy

Providing a training program for those involved in the complaint

Providing a comprehensive education program for the College District community

Providing counseling for the victim and the party who engaged in prohibited conduct

Increasing staff monitoring of areas where prohibited conduct has occurred

Reaffirming the College District's policy against discrimination and harassment

Taking other actions described in College District regulations

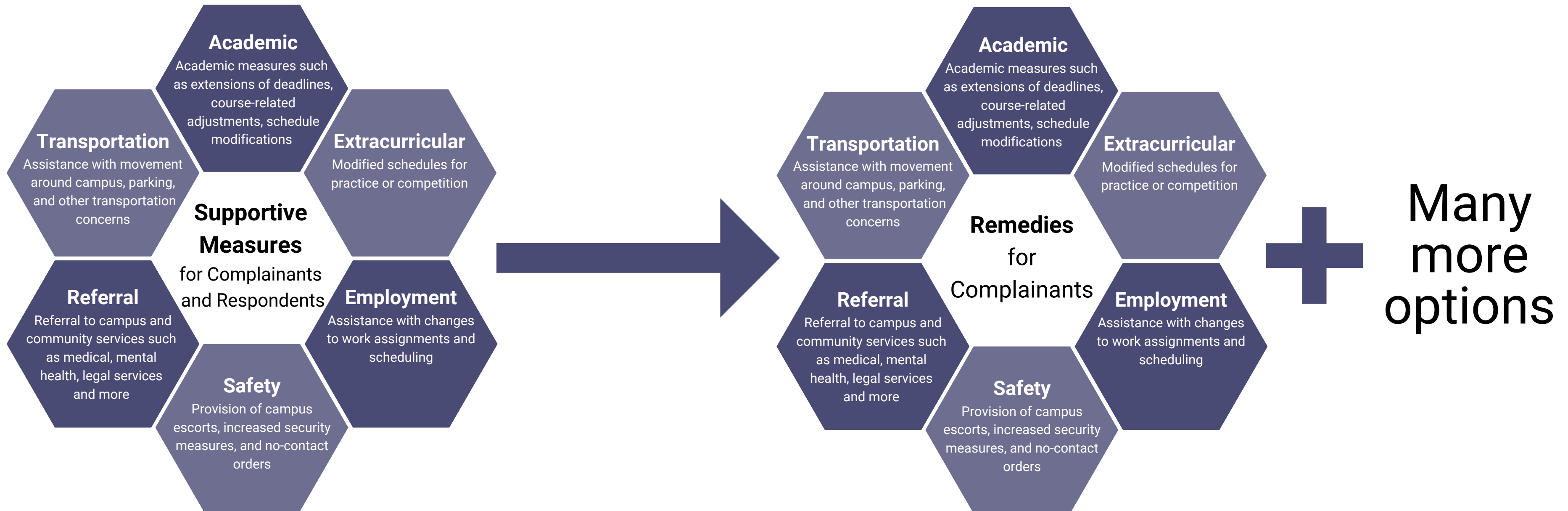
What Are Remedies?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."

(p. 1458 Preamble to the Title IX Regulations)

Remedies may simply be a continuation of supportive measures already in place or entirely new measures implemented.



IX

Training Scenario

A freshman student, Cammy, was found responsible for repeatedly touching the butt of the Complainant during their lab class, after being told to stop by the Complainant. It was found that it happened 10-20 times over the period of two weeks. Cammy admitted to doing it and apologized profusely. She said she tried to stop, but just couldn't. Cammy signed a waiver to release medical records and accommodations through the ADA office for autism spectrum disorder, which causes her to misinterpret social situations, and has no history of misconduct.

What do you think would be an appropriate sanction?

Appealing a Decision

- Title IX Regulations stipulate that a school must provide the Parties an equal opportunity to appeal the determination regarding responsibility
- The appeal process is available to both the Complainant and Respondent
- The Appellate Decision-Maker cannot be the Decision-Maker that made the determination, the Title IX Coordinator, or the Title IX Investigator for the case
 - The Appellate Decision-Maker must be trained in accordance with Title IX

Title IX Requirements

Title IX Regulations require schools to do the following:

- Notify the other Party in writing when an appeal is filed
- Implement appeal procedures equally for both Parties
 - The school policy should contain specific procedures and timelines
- Provide both Parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result
 - Provide the written decision simultaneously to both parties

34 CFR §106.45(b)(8)(ii-iii)

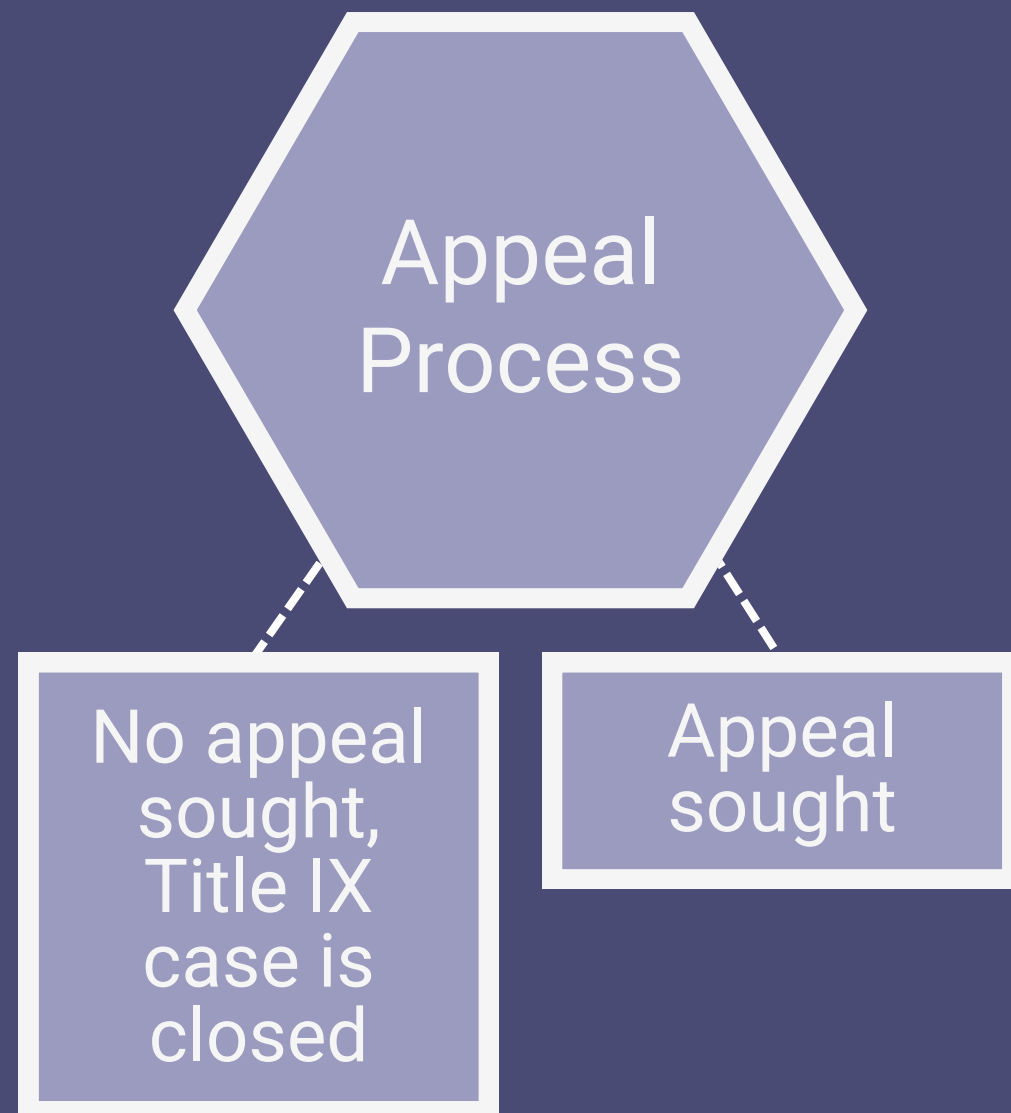
Required Bases for Appeal

Title IX Regulations require every school to utilize these bases for appeal:

- A** Procedural irregularity that affected the outcome of the matter;
- B** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C** The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

34 CFR §106.45(b)(8)

Appeal Process Outcomes



If one or both parties does not seek an appeal or does not submit an appeal within the time allotted in the policy, the case will be closed and the determination stands.

If one or both Parties seeks an appeal, the basis of appeal will be reviewed. If it is approved, an Appellate Decision-Maker will make a determination, which could result in:

- Determination upheld
- Determination remanded back to the Hearing Officer for review
- A new investigation
- A new hearing
- Overturning the decision regarding responsibility

Informal Resolution Options

Informal Resolution Cornerstones

Informal resolution under Title IX provides Parties the opportunity to resolve complaints outside of the formal grievance process.

Informal resolution processes are to be:

TRANSPARENT

- Provide clear, consistent communication to the Parties

SAFE

- Provide emotional and physical safety
- Conduct safety and risk analysis (optional)
- Put safety measures in place (optional)

VOLUNTARY

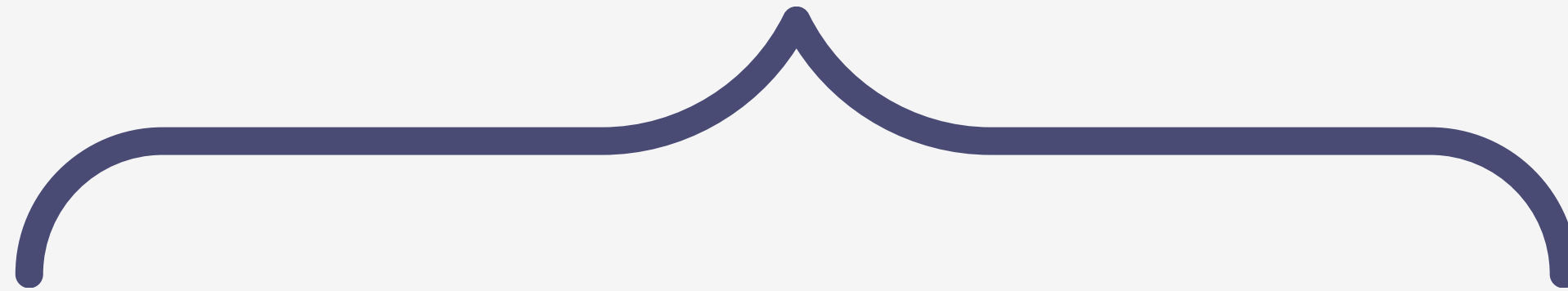
- Obtain voluntary, written consent
- Highlight right to withdraw prior to the agreement

Informal Resolution Participation

- Under Title IX, schools must obtain the parties' written, voluntary consent to participate in the informal resolution process
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student
- Advisors are permitted to participate, but the school may impose restrictions on participation
- Emergency Removal may be considered, if appropriate

INFORMAL RESOLUTION

(MAY BE INITIATED IN THIS WINDOW)



A party may withdraw from the informal resolution process at any time and proceed with the formal grievance process.

INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN
DETERMINATION

APPEALS
PROCESS

Title IX Grievance Process

Reasonably Prompt Time Frames

"Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action."

§106.45 (b)(1)(v)

Informal Resolution Location



VIRTUAL



ON CAMPUS



OFF CAMPUS



IN WRITING

Benefits of Informal Resolution

Informal resolution has the potential to:

- Empower Complainants and Respondents to address incidents through a process that best suits their needs
 - Parties determine the outcome
 - Resolution can be creative
- Enhance institutional and Party autonomy by providing schools and Parties with flexibility in addressing unique situations
- Provide a more timely and less expensive option than the live hearing or decision-making process
- Present an opportunity to educate and change behavior
- Allow for confidential results
- Yield remedies which are more customized to the needs of the unique situation and involved parties

Goals for the Parties



- Undergo a less intimidating process than the grievance process
- Explore potential for less harsh outcomes
- Provide input regarding outcomes of the process
- Minimize re-traumatization
- Reduce embarrassment for both Parties
- Allow an opportunity for interaction and open dialogue
- Participate in a more personal experience

What do the Title IX Regulations say about informal resolution?

"A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the Parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed."

§ 106.45(9)

What does this mean?

- ◆ Schools cannot take away a Parties' right to an investigation and adjudication process following a formal complaint of sexual harassment.
- ◆ Schools cannot require any Party to participate in an informal resolution process. It is a 100% optional process and requires buy-in from both Parties.
- ◆ The informal resolution process can only take place once a formal complaint has been filed.

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

Final Complaint
Received

INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS

RECALL: Informal Resolution can happen
at any point within this timeframe.

Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

"The allegations,"

§ 106.45(9)

which can be pulled directly from:



The Formal
Complaint



The Notice of
Allegations

Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

"Requirements of the informal resolution process, including:

- Circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations,"*

§ 106.45(9)

which can be pulled directly from:



Institutional Policy

Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

"Requirements of the informal resolution process, including:

- At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,"*

which can be pulled directly from:

§ 106.45(9)



Title IX Regulations

Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

"Requirements of the informal resolution process, including:

- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared."*

§ 106.45(9)

This can be pulled directly from:



Institutional Policy

Types of Informal Resolution

The Title IX Regulations do not specify the exact processes institutions must use to carry out the informal resolution function.

Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.

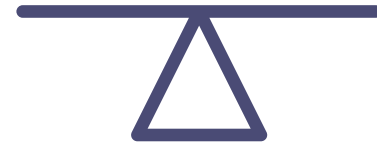
**Common
school-based
informal
resolution
processes**

**Joint sessions,
private
meetings, or
combination**

Mediation

**Restorative
Justice**

What is the role of the Informal Resolution Facilitator?



Serving neutrally, impartially



Facilitating the conversation between Parties



Providing physical and emotional safety

Training Informal Resolution Facilitators

"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."

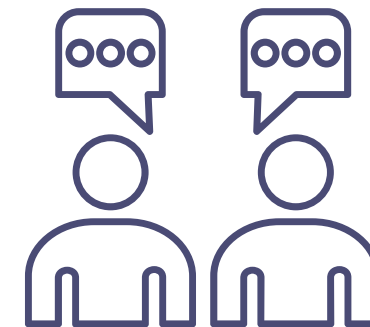
(Preamble to the 2020 Title IX Regulations, p. 1369)



Title IX
definition of
sexual
harassment



Scope of the
education
program or
activity



How to
conduct
informal
resolution
processes



How to serve
impartially

Who may serve as the Informal Resolution Facilitator?

The Title IX Coordinator is not precluded from serving as the Informal Resolution Facilitator.

Potential Challenges

- Perceived or actual conflict of interest and/or bias
- Confusion of dual role

Questions to Consider

- ① Why has the Title IX Coordinator been assigned as the IR Facilitator?
- ① Is the Title IX Coordinator truly comfortable fulfilling this role?
- ① Does the Coordinator have the necessary skills to fulfill this role?

Who may serve as the Informal Resolution Facilitator?

The Investigator and Decision-Maker may not serve as the Informal Resolution Facilitator in the same case.

Rationale

- Allows Investigators and Decision-Makers to remain unbiased should the Parties return to the formal grievance process
- Eliminates role confusion
- Ensures Facilitators are present to facilitate the conversation – not gather evidence or make a decision prior to or after



Best Practice: Separate this role from all other Title IX roles and provide clarity on the responsibilities of the Informal Resolution Facilitator.

Questions?

Role of the Title IX Advisor



Session Speaker

Elizabeth Abdnour

J.D.

Investigator and Advisor
Title IX Solutions, LLC



Title IX's Allowance of an Advisor

Recall the following from the Title IX regulations:

“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;”

§ 106.45 (b)(5)(iv)

What are Advisors there for?

- Help the party understand their rights
- Assist the party in understanding the policy
- Help the party understand and prepare for the process
- Help the party put their best foot forward
 - Strengths and weakness
 - What evidence might support their position?
- Provide moral support

Key Points of Advisor Participation in the Grievance Process





What should I do in the initial meeting with my party?



How can I prepare my party for investigative interviews?



How can I prepare my party for the hearing?



What if I recognize bias on the part of Title IX personnel?



What if the hearing doesn't go according to plan?



What if the other party has an attorney Advisor?



What if my party says something I believe to be untrue?



Questions?