

LEVEL I:
TITLE IX
DECISION-MAKER
TRAINING

TITLE  SOLUTIONS, LLC



COURSE OVERVIEW

1	An Introduction to Title IX	7	Facilitating Pre-Hearing Meetings
2	Overview of the Title IX Regulations	8	Conducting a Title IX Hearing
3	Role of the Title IX Decision-Maker	9	Drafting the Written Determination Regarding Responsibility
4	The Investigation Report and File	10	The Appeal Process
5	Evaluating Policy Violations	11	Understanding Trauma
6	Understanding Relevance		

COURSE GOALS

- ➔ Examine a comprehensive investigation report and file
- ➔ Identify the roles and responsibilities of each Party in the hearing process
- ➔ Evaluate evidence and questions for relevancy
- ➔ Conduct a compliant, due process-centered live hearing
- ➔ Synthesize information to evaluate potential policy violations and draft a written determination

Lesson Completion

Title IX Solutions, LLC

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**Level I: Title IX
Decision-Maker Training**

6% complete

Search by lesson title

- Course Introduction 0/2
- An Introduction to Title IX 1/5
- Lesson and Speaker Introduction**
VIDEO < 1 MIN
- The History of Title IX
VIDEO < 1 MIN
- Title IX Definitions
VIDEO < 1 MIN
- Participants in the Title IX Process

Lesson and Speaker Introduction



Up next
The History of Title IX
In this lesson we will explore the history of Title IX in the chapter.

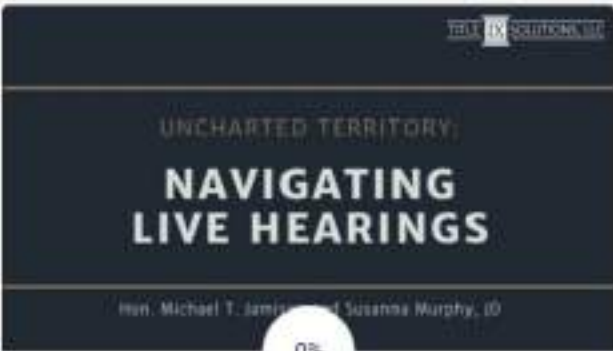


CONTINUE → CANCEL

MARK INCOMPLETE **CONTINUE →**



Stepping Away



See Overview	Start Course	See Overview	Replay Course	See Overview	Start Course
					
Uncharted Territory: Navigating Live Hearings		Plotting the Course: Title IX Investigation Preparation		Emphasizing Support and Prevention: A New Direction for Title IX	
See Overview	Start Course	See Overview	Start Course	See Overview	Start Course

Certificate of Completion

THIS CERTIFICATE OF COMPLETION IS AWARDED TO

Tucker Wood

FOR SUCCESSFULLY COMPLETING



Level I: Title IX Decision-Maker Training

Learning Objectives: ● Examine a comprehensive investigation report and file. ● Identify the roles and responsibilities of each party in the hearing process. ● Evaluate evidence and questions for relevancy. ● Conduct a compliant, due process-centered hearing. ● Synthesize information to evaluate potential policy violations and draft a determination of responsibility.

Issued: {{ 2022-11-10 }}

Expires: {{ 2022-11-10 }}

Certificate ID: {{ Credential ID }}

TAWNY ALONZO
Director of Training
Title IX Solutions, LLC

Title IX Posting Requirements

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

Title IX Posting Requirements

0% complete

Search by lesson title

- Course Introduction 0/2
- An Introduction to Title IX 0/5
- Understanding Trauma as an Investigator 0/6
- Title IX Posting Requirements 0/2
- Instructions for Posting Title IX Solutions Training Materials on Institutional Websites**
INSTRUCTORS
- Final Combined Course Materials
DOWNLOAD

TEACH ONLINE WITH THINKIPIC

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions training event!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact adrienne@titlexsolutions.com with any questions regarding the posting of Title IX Solutions' training materials.

Program materials available for download:


If you haven't done so already, you can find and download the program materials for the Title IX in Motion by click on the next lesson named "Final Combined Course Materials".

Posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer

Include the following Authorization & Disclaimer on your institution's website alongside our training program materials:

COMPLETE & CONTINUE →



Course Support

[Courses](#)[Curriculum](#)[Free Resources](#)[FAQs](#)[My Dashboard](#)[Tawny A](#)[Admin](#)[My Account](#)[Support](#)[Sign Out](#)

Expert and practitioner-led



Title IX Solutions, LLC is proud to offer you trainings through our institute.

These trainings will equip you with real-world skills, knowledge, and tools to build your confidence in navigating the Title IX landscape.

What is Title IX Solutions, LLC?

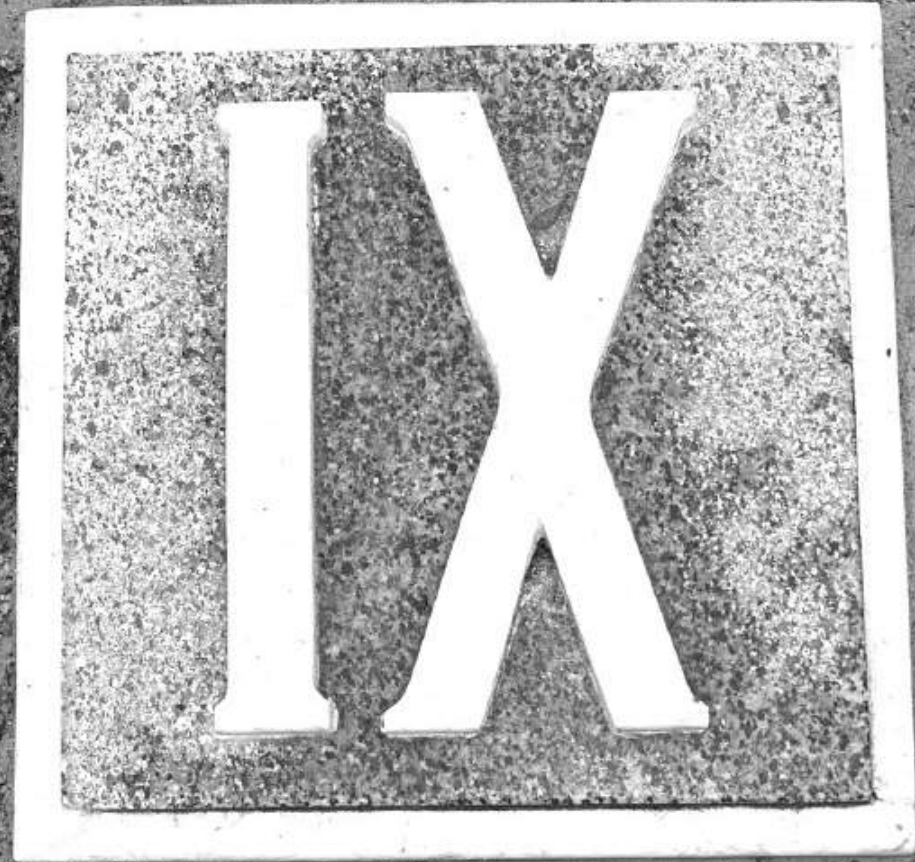
Title IX Solutions' vetted Title IX experts include a network of professional investigators as well as an unparalleled pool of experienced decision-makers, informal resolution facilitators, and advisors. This team provides a full suite of Title IX services or "solutions" to higher education institutions and K-12 school districts. Leveraging their diverse backgrounds and areas of expertise allows for comprehensive, a multidisciplinary approach to Title IX cases. Title IX Solutions establishes best practices in addressing sexual harassment at educational institutions across the United States and abroad.

THANK YOU

TITLE  SOLUTIONS, LLC



An
Introduction
to Title IX



IN THIS CHAPTER



HISTORY OF
TITLE IX



TITLE IX
DEFINITIONS



PARTICIPANTS IN
THE TITLE IX
PROCESS



OVERVIEW OF THE
TITLE IX PROCESS

History of Title IX



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[.]”

”

Creation of Title IX

Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

Designed initially to address inequities in:



Admissions



Residence
Life



Academic
Opportunities



Extracurricular
Activities

Who is Protected?

- All students regardless of:
 - Sexual orientation
 - Gender identity
 - Nationality
 - Immigration status
 - Race
 - Ability
- Boys and men as well as girls and women
- Employees, such as teachers, staff, and administrators
- Recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums

Evolution of Title IX



JUNE 23, 1972

Title IX becomes law and addresses sex-based discrimination



APRIL 4, 2011

Guidance expands Title IX to include sexual harassment, dating and domestic violence, sexual assault, and stalking



AUGUST 14, 2020

Newest guidance changes the way schools respond to incidents of discrimination and harassment



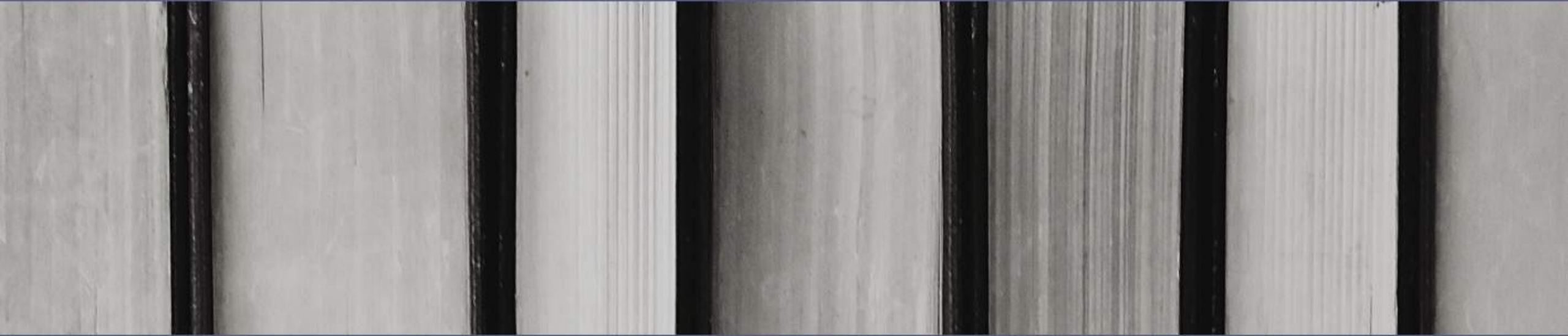
Title IX Today



JUNE 23, 2022

Department of Education releases Title IX Notice of Proposed Rulemaking proposing expanded scope and revised guidelines

Title IX Definitions



Actual Knowledge

- "[N]otice 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" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

Report vs. Formal Complaint

Report

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

Report vs. Formal Complaint

Both reports and formal complaints are:



A means for the school to obtain "actual knowledge"



NOT equivalent to filing charges with law enforcement

Supportive Measures

What?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sexual harassment

When?

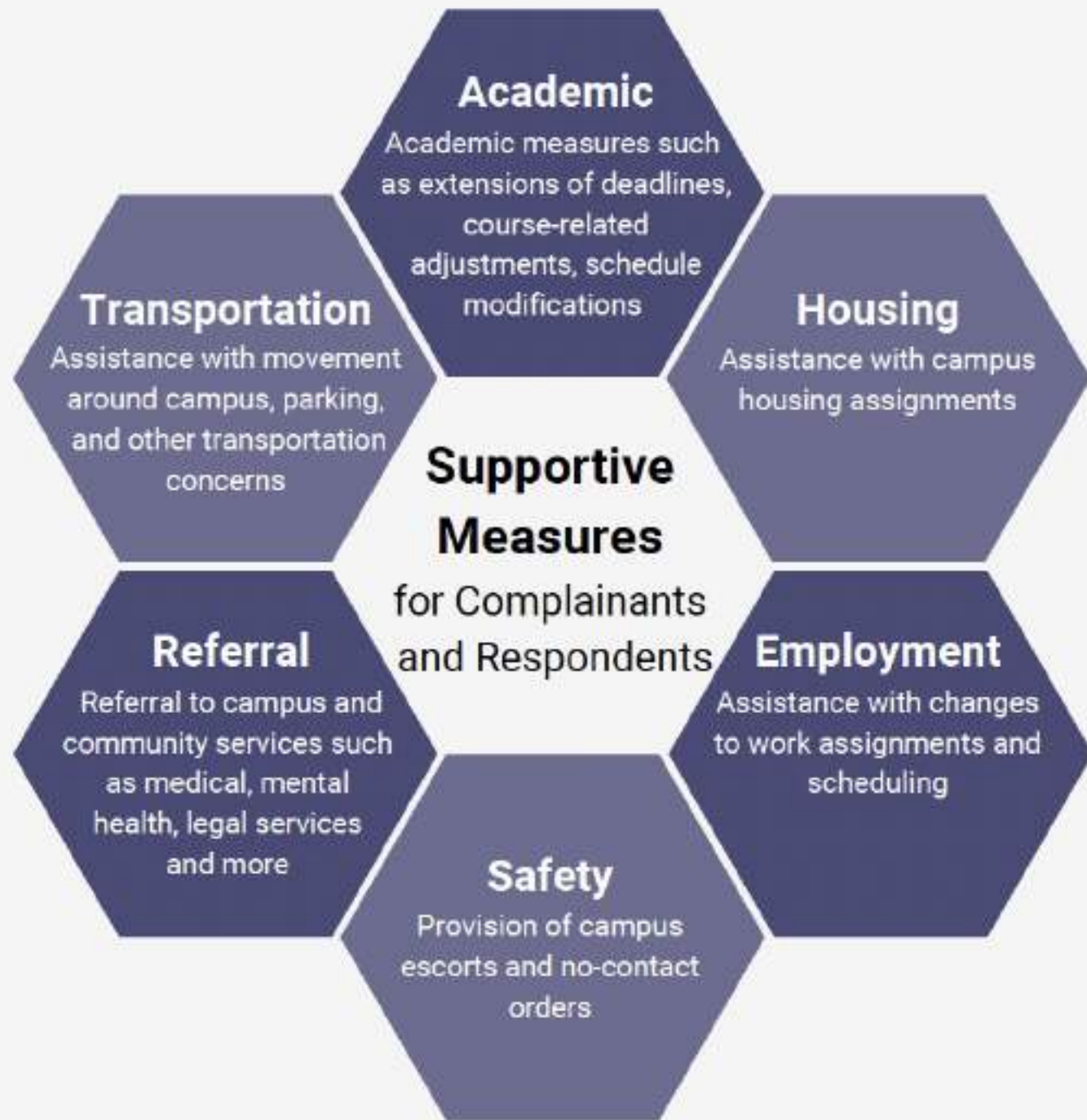
- Available before or after filing a formal complaint or where no formal complaint has been filed

Why?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

How?

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



Amnesty Provision

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school policies (e.g., Code of Conduct) when participating in a Title IX investigation

SCENARIO

Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

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

Retaliation

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



Example One:

Friends of the Complainant intimidating the Respondent, or vice versa.



Example Two:

School personnel discriminating against an individual for refusing to participate in the Title IX process.

Remedies and Sanctions

REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

SANCTIONS

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy
- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

Education Program or Activity

The educational program or activity includes all operations of the school, both on or off campus.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
 - The Respondent, and
 - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

Standard of Evidence

Standard used to determine whether or not a sexual harassment policy violation occurred.

Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

Standard of Evidence

Preponderance of the Evidence
Anything that tips the scale to more than 50/50

Clear and Convincing
More likely to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt
Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

Participants in the Title IX Process



Overview

Title IX personnel vary, depending upon several factors:

- Institution size
- Institution type
 - K-12
 - Community/two-year colleges
 - Four year colleges and universities
 - Public/private
- Institution structure and resources
 - Organizational charts and reporting
 - Full-time/part-time
 - Budget



Title IX Personnel

Except for the Title IX Coordinator, Title IX personnel may be internal (from the campus community) or external (local attorneys, consultants, etc.).



Title IX
Coordinator



Deputy
Coordinators



Title IX
Investigator



Decision-
Maker



Informal Resolution
Facilitator



Advisor



Appellate
Decision-Maker

Title IX Coordinator

Every school must have a Title IX Coordinator.

CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
 - Dean of Students, Director of Human Resources, etc.

CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

Title IX Coordinator

Responsibilities:

- Ensures compliance with federal, state, and local law, as well as other school policies
- Receives reports of sexual harassment
- Creates, reviews, and implements policy and procedures
- Facilitates and oversees grievance process including hearings, informal resolution processes, and appeals
- Creates/monitors training of Title IX staff and campus community

Title IX Investigator

May be the Title IX Coordinator, other school employee, or independent contractor.

Responsibilities:

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

Title IX Decision-Maker (Hearing Officer)

May be a single Decision-Maker or a hearing panel, school employee(s), or independent contractor(s).

May NOT be the Title IX Coordinator or Title IX Investigator.

Responsibilities:

- Oversees and facilitates the Title IX hearing
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the hearing
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

Appellate Decision-Maker

May be a single Appellate Decision-Maker or Appellate Panel, school employee(s), or independent contractor(s).

May NOT be the Title IX Coordinator, Investigator, or Decision-Maker.

Responsibilities:

- Reviews the appeal from the Party & the other Party's response (if any)
- Drafts and issues the final determination

Specific appellate procedures vary at every school, so refer to the school's policy for details.

Informal Resolution Facilitator

May be the Title IX Coordinator, school employee, or independent contractor.

Responsibilities:

- Provides information to the Parties and Advisors about the informal resolution process
 - Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

Advisor

Complainant and Respondent have the right to an Advisor of their choice.



An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing

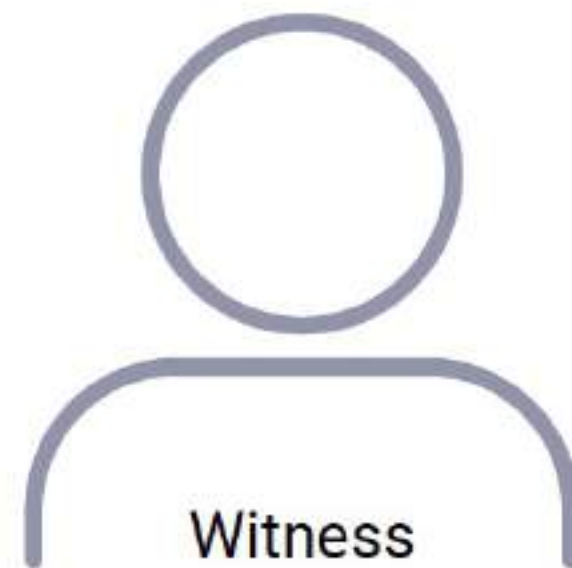
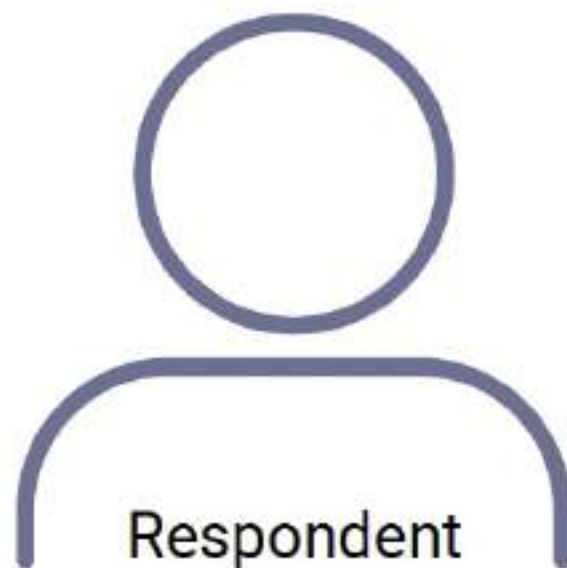
Advisor

Responsibilities:

- Supports their Party by accompanying them during interviews, meetings, and the hearing
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

Parties in the Process

Aside from the Title IX personnel who take part in the facilitation of the grievance process, we will also see these individuals involved:



Complainant

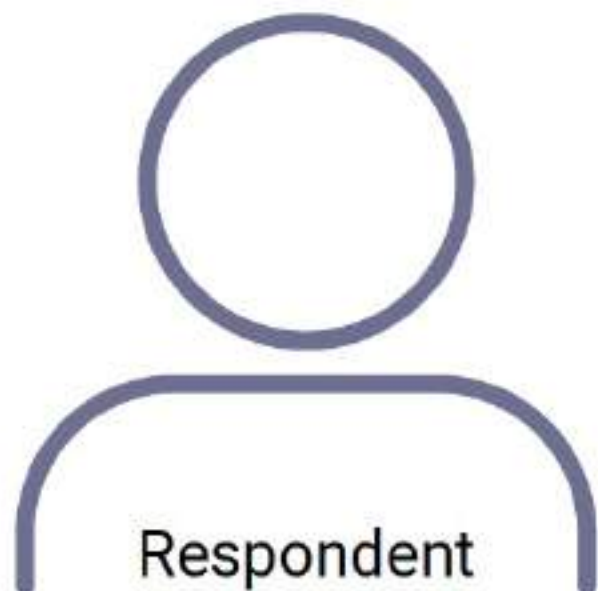
Alleged to be the victim of conduct that could constitute sexual harassment.



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the formal complaint is filed
- There may be more than one Complainant in a case

Respondent

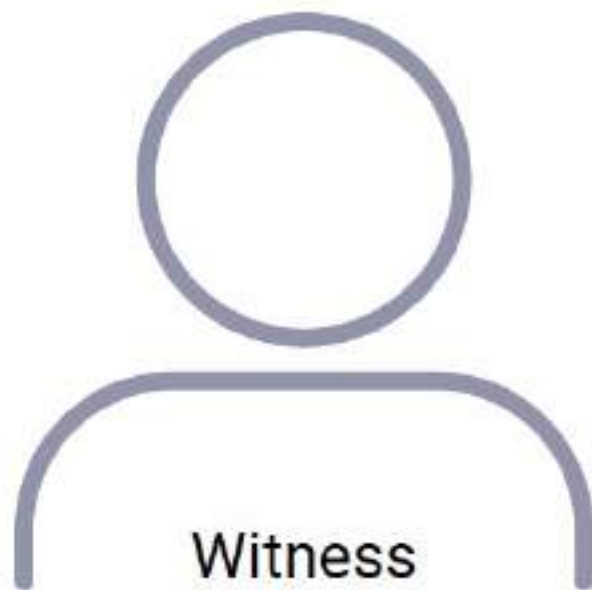
Reported to be the alleged perpetrator of conduct that could constitute sexual harassment.



- May be a student, employee, community member, or non-community member
 - The school's ability to respond to incidents perpetrated by non-community member
Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

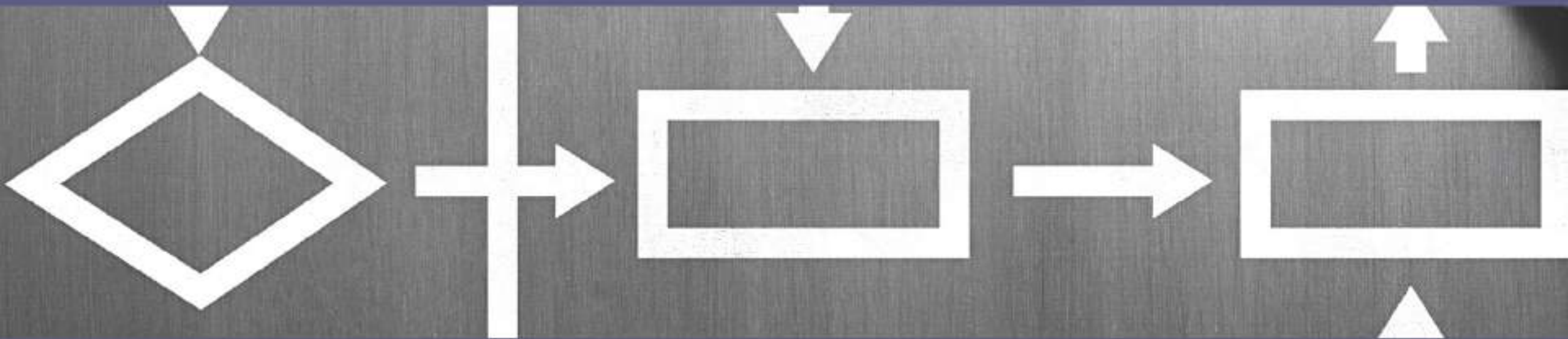
Witness

Individuals that are identified in the grievance process as having information that may support or refute allegations of sexual harassment.



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

Overview of the Title IX Process



During the
Title IX
Grievance
Process a
School Must:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

During the Title IX Grievance Process a School Must:

- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of evidence
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege

Title IX Requirements

Ultimately, the goal is to:



Stop the harassment or discrimination



Prevent further recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

Leading up to the Title IX Process

- 1 The report is submitted to the Title IX Coordinator:**
 - Any person may report sexual harassment
 - Responsible employees and mandatory reporting
- 2 Upon receipt of a report, the Title IX Coordinator must:**
 - Respond in a manner that is not deliberately indifferent
 - Contact and attempt to meet with the Complainant (if known)
 - Discuss the availability of supportive measures and consider the Complainant's wishes with respect to them
 - Explain the process for filing a formal complaint

They may also:

- Conduct a safety and risk analysis
- Assess information from the report and conversation with the Complainant to determine if the alleged incident would be considered sexual harassment under Title IX

Leading up to the Title IX Process

- 3 If the alleged incident is preliminarily determined to violate Title IX:**
 - Complainant or Title IX Coordinator may file a formal complaint
 - If a Complainant does not wish to file a formal complaint, but a risk assessment determined the potential for more harm to the Complainant or greater campus community, the Title IX Coordinator may choose to file
 - If the alleged incident does not potentially violate Title IX on its face, it may be adjudicated under a different institutional policy
- 4 After a formal complaint is filed, the Title IX grievance process begins.**

Title IX Grievance Process

INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION

(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Title IX Grievance Process

INTAKE/ REVIEW

- Title IX Coordinator provides a gatekeeping function
 - Conducts a jurisdictional review to decide whether a report falls under Title IX or another policy
- Conversations with Reporting Party and/or Complainant
- Information-giving stage
- Supportive measures may be implemented

Title IX Grievance Process

NOTICE OF ALLEGATIONS SENT TO PARTIES

- Title IX Coordinator notifies Parties of allegations that may constitute Title IX sexual harassment
 - Informs Parties of rights and options under the grievance process
 - Presumes the Respondent is not responsible
- Preparation for the investigation stage

Title IX Grievance Process

INVESTIGATION

- Title IX Investigator's primary function
- Information-gathering stage which includes:
 - Interviewing of Witnesses and Parties
 - Gathering evidence
 - Inspecting and reviewing evidence
 - Drafting investigation report
- May require the most time during grievance process

Title IX Grievance Process

INFORMAL RESOLUTION

(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

- May take place any time after a formal complaint is filed and any time prior to reaching a determination regarding responsibility
- Informal process of resolving a complaint that must be continually agreed upon by both Parties
- Could include:
 - Mediation or Restorative Justice
 - Education
 - Acceptance of Responsibility
- Cannot be used for employee on student complaints

Title IX Grievance Process

HEARING

- The decision-making stage of the grievance process
- Facilitated by either a single Decision-Maker or panel
- Includes:
 - Pre-hearing meeting
 - Live hearing or written decision-making process with cross-examination by the Parties' Advisors
- Must be provided in postsecondary, may be provided in elementary and secondary, but not required

Title IX Grievance Process

WRITTEN DETERMINATION

- Prepared by the Decision-Maker(s)
- Applies the standard of proof outlined in the Title IX sexual harassment policy
- Determines if the Respondent is responsible or not responsible for violating the Title IX sexual harassment policy
- May address multiple allegations
- Includes sanctions and remedies if a Respondent is found responsible

Title IX Grievance Process

APPEALS PROCESS

- Allowed under the Title IX Regulations for the following reasons:
 - Procedural irregularity
 - New evidence not available during the investigation
 - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker(s)
- Institutional policies may contain additional bases for appeal



Overview of the Title IX Regulations

IN THIS CHAPTER



INTRODUCTION TO
THE TITLE IX
REGULATIONS



SEXUAL HARASSMENT
AND RECIPIENT
RESPONSE



TITLE IX GRIEVANCE
PROCESS FOR FORMAL
COMPLAINTS

Introduction to the Title IX Regulations



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

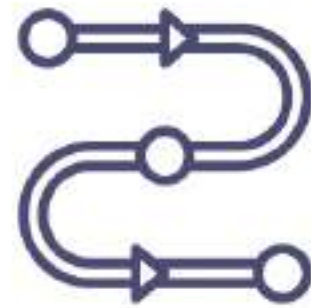
- Provide details regarding policies or procedures which are not addressed in the regulations

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:



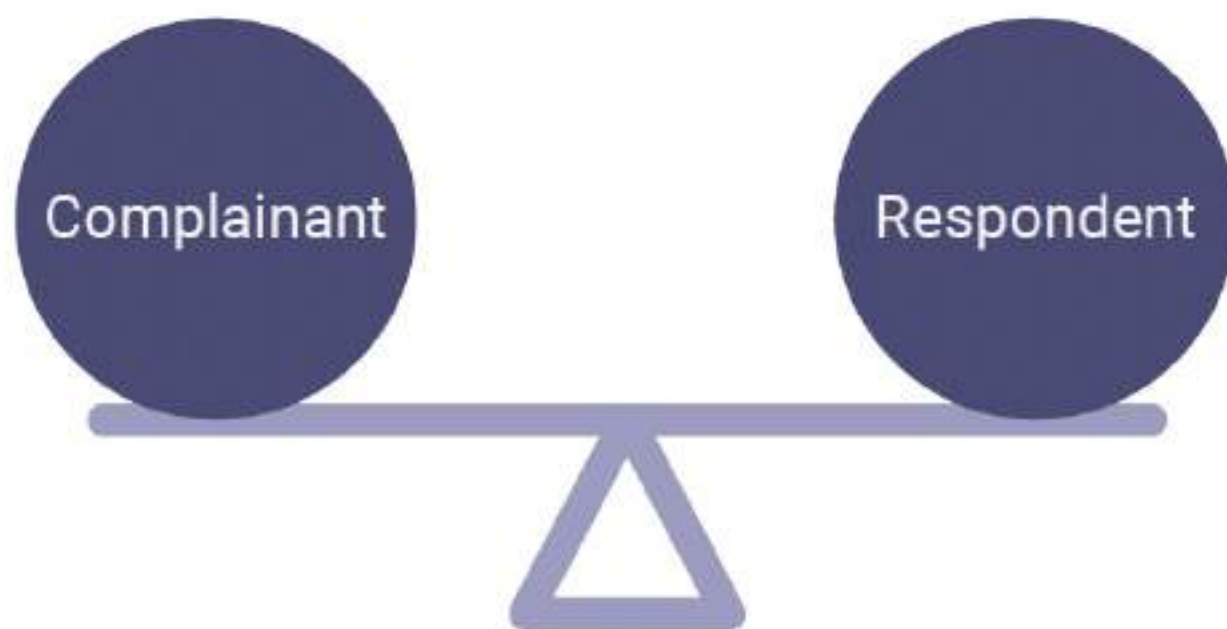
Gender identity or expression



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."

Title IX Personnel



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

Sexual Harassment and Recipient Response



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

**“SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE”**

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.

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.

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

Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

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

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

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

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

- ❖ Safety and risk analysis
- ❖ Immediate threat to physical health or safety
- ❖ Provide Respondent with notice and opportunity to challenge the decision



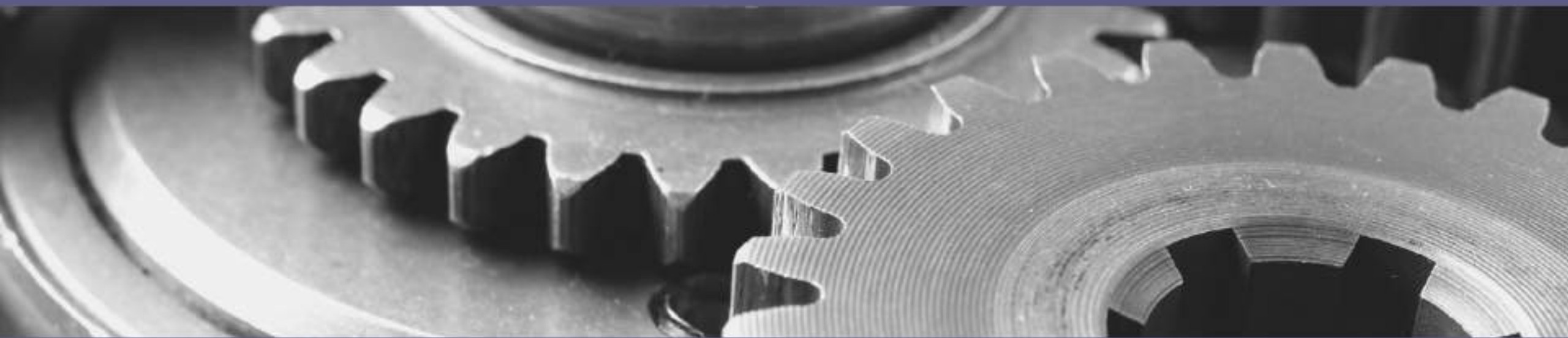
Recipient's Response

Administrative Leave

- ❖ Applies to non-student employees



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



A complaint will not be dismissed because a Complainant remains at or leaves the school.

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

Grievance Process

A recipients grievance process MUST:



Treat Complainants
and Respondents
equally



Require objective
evaluation of
relevant evidence



Require Title IX
personnel not have
bias and conflict of
interest



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



Include reasonably
prompt time frames



Describe range of
possible disciplinary
sanctions and
remedies



State the standard
of evidence



Include the
permissible bases
for appeal



Describe the range
of supportive
measures available



Not require or rely on
privileged information,
unless waived

Grievance Process

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

Grievance Process

A recipient must investigate a formal complaint.

- The Title IX Coordinator may also serve as the Investigator
- Burden of proof and gathering of evidence is on the school
- Medical and similar privileged records are not available unless the party (or parent/guardian) provides written consent for release
- Both Parties must be given the equal opportunity to present witnesses and evidence
- Neither party may be restricted in their ability to discuss the allegations or gather and present relevant evidence

Investigation of Formal Complaints

- Both parties have the right to an Advisor throughout the grievance process
- School must give written notice of any meeting in which the party is required to participate
- Parties and their Advisors must be given equal access to inspect and review all evidence gathered
- Parties must be given at least ten days to file a written response regarding the investigation evidence
- School may require the parties to submit any additional evidence prior to the finalization of the investigation report

Investigation of Formal Complaints

- Evidence provided to the parties must also be available at the hearing with each party having equal access
- Investigator must complete a report that fairly summarizes relevant information at least ten days prior to a scheduled hearing, and;
 - Must provide copies to each party and their Advisors
- Investigator may include recommended findings or conclusion in the investigative report
 - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

Grievance Process

Hearings

- The Decision-Maker in a hearing cannot be the same person as the Title IX Coordinator or the Investigator



A postsecondary school must provide for a live hearing



A live hearing is optional for elementary and secondary schools, though the parties must be given the opportunity to:

- Review the investigation report
- Submit written relevant questions of any party or witness to the Decision-Maker
- Receive answers to those questions
- Submit limited follow-up questions prior to a determination by the Decision-Maker

Grievance Process

Hearings



The recipient may consolidate cases arising from the same facts



Hearings may occur with parties present in the same geographic location or live, virtually



If a party does not have an Advisor, one must be provided by the institution



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance

Grievance Process

Written Determination

- Made by a Decision-Maker(s) who is/are not the Title IX Coordinator or Investigator
 - Must not have bias or conflict of interest.
- Determination reached by applying standard of evidence adopted by the school
- Written determination must include:
 - Identification of the allegations
 - Description of the procedural steps taken
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the recipient's code of conduct to the facts
 - Statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility
 - Any disciplinary sanctions the recipient imposes on the Respondent
 - Whether remedies designed to restore or preserve equal access to education program
 - Bases for appeal

Grievance Process

Written Determination



The recipient must provide the written determination to parties simultaneously



Determination is final after appeal determination (if appeal was filed) or upon expiration of appeal window



School is responsible for provision of remedies

Grievance Process

Standard of Evidence

- A school may elect to apply either:
 - The preponderance of evidence (“more likely than not”); 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

Grievance Process

Appeals

- Must offer an appeal process with the following bases of appeal
 - Procedural irregularity
 - New evidence, not previously available, that could affect the outcome
 - The Title IX Coordinator, Investigator or Decision-Maker had a conflict of interest or bias
- Can provide additional bases, but must do so equally to both parties
- Appeal Decision-Maker cannot have a conflict of interest and cannot be the Title IX Coordinator, Investigator, or Decision-Maker, must be trained
- Parties must be notified in writing of
 - Other party's decision to appeal
 - Decision rendered upon review of the appeal
- Parties must be offered opportunity to provide written argument

Grievance Process

Informal Resolution

- School may offer informal resolutions of alleged incidents
 - Mediation, restorative justice, or other forms of alternative dispute resolution
- Does not require a full investigation or adjudication
- Must be voluntary, with the parties being fully informed of the process and options and the parties must consent in writing to the process
- Informal resolution cannot be offered or facilitated by a recipient in a case involving an employee's sexual harassment of a student

Role of the Decision- Maker



IN THIS CHAPTER



OVERVIEW OF THE
DECISION-MAKER ROLE



DUE PROCESS



AVOIDING BIAS AND
CONFLICTS

Overview of the Decision-Maker Role



Title IX Stipulations

- May be employee(s) of the institution or may be external individual(s) hired by the institution.
- May be a single Decision-Maker or a panel of multiple Decision-Makers.



The Decision-Maker CANNOT be the Title IX Coordinator or the Title IX Investigator(s) from the same case.

If an informal resolution process has taken place and was unsuccessful, the Decision-Maker cannot be the same person as the Informal Resolution Facilitator.

Responsibilities of the Decision-Maker



Postsecondary Institutions

As required under §106.45 of the Title IX Regulations, postsecondary institutions' grievance processes must allow for a live hearing. The Decision-Makers in these cases will:

- Review the formal complaint, investigative report, and evidence
- Conduct pre-hearing meeting(s) (if offered)
- Oversee the Title IX hearing process
 - Supervise the conduct of the involved Parties and Advisors
 - Ask Parties and Witnesses clarifying questions, if necessary
 - Determine the relevance of questions posed by Advisors (cross-examination) and explain decisions to exclude as not relevant
- Apply the school's standard of evidence to the facts
- Draft and issue a written determination regarding responsibility

Responsibilities of the Decision-Maker



K-12 Institutions and Districts

K-12 Institutions/Districts do not have the requirement to hold live hearings. However, they may choose to utilize live hearings if they wish. Otherwise, the institution must present the opportunity for Parties to submit questions in writing. The Decision-Makers in these cases will:

- Review the formal complaint, investigative report, and evidence
- Facilitate pre-hearing meeting(s) (if offered)
- Oversee the Decision-Making process
 - Shuttle written questions between Parties and Advisors
 - Ask Parties and Witnesses clarifying questions, if necessary
 - Determine the relevance of questions posed by Advisors (cross-examination) and explain decisions to exclude as not relevant
- Apply the school's standard of evidence to the facts
- Draft and issue a written determination regarding responsibility

Training Requirements

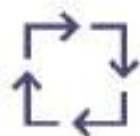
"A recipient must ensure that Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process, receive training on:



The definition of sexual harassment in § 106.30;



The scope of the recipient's education program or activity;



How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;



And how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias." §(106.45(b)(1)(iii)

Training Requirements

Additional Title IX training requirements for Decision-Makers include:



"A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing; and



Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b) (6) of this section." §(106.45(b)(1)(iii)

Training Requirements

In addition to the Title IX Regulations, Decision-Makers must also familiarize themselves with:

- Institutional policies, including:
 - Key policy terms
 - Relevant timelines
 - Standard of evidence
- Other laws or policies applicable to your institution or district, such as:
 - State and local laws
 - Policies under which non-Title IX conduct may be adjudicated

Additional Considerations for Decision-Makers



Under Title IX, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.



The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school, not either of the Parties.

Title IX Grievance Process

The Decision-Maker participates during this portion of the grievance process



Timeline of a Decision-Maker's Responsibilities

Engaged to serve as Decision-Maker in an active case

Receives investigation report and file from Title IX Investigator

Conducts thorough review of all information provided in the investigation report and file

Holds pre-hearing conference with Parties and Advisors

Facilitates live hearing or written decision-making process (K-12 institutions)

Drafts and issues the written determination regarding responsibility

Attributes of the Decision-Maker

It is important to have the ability to:

- Understand applicable policy and apply it to decision-making
- Evaluate evidence carefully
- Use critical thinking skills to determine relevance of evidence and questions
- Craft professional and thorough determinations
- Communicate effectively with Parties and Advisors
- Remain comfortable making tough but equitable decisions

Guiding Principles

The outcomes of Title IX cases can be deeply impactful for all Parties involved and even the greater community.

Therefore, Decision-Makers are to:

Use school policy to guide decision-making

Uphold the integrity of the Title IX process

Remain objective (and recuse if not possible)



A Decision-Maker's goal is not to find someone responsible for violating Title IX or school policy. Their goal is to ensure the Parties have an equal opportunity to fully share their stories, then apply the standard of proof to the facts.

Helpful Hints

BECOME
COMFORTABLE
WITH
DISCOMFORT

Do not shy away from or fear using anatomically correct words and/or asking questions about private and emotional events.

BE
INFORMED

Read EVERYTHING pertaining to the case, including applicable policies, investigative reports, and supplemental information.

BREATHE

Yes, the role carries a great deal of responsibility, but you are capable.

You can do this!

Foundational Questions to Note

The Decision-Maker is ultimately responsible for applying evidence to the standard of proof to objectively answer the following questions:

- 1** Did the alleged incident(s) occur?
- 2** Does the alleged conduct violate the school's policy?

1

Did the alleged incident(s) occur?

- Apply the appropriate standard of evidence to answer this question
- Considerations include:
 - Parties' statements about the alleged incident
 - Witness statements about the alleged incident
 - Inculpatory and exculpatory evidence about the alleged incident
 - If the Complainant and Respondent were present during the alleged incident
 - Nature of the relationship between the Parties at the time of the alleged incident
 - Communications and actions before and after the alleged incident

2

Does the alleged conduct violate the school's policy?

- Apply the appropriate standard of evidence to answer this question
- Analyze the definitions of the relevant policy violations
 - Review every word of the definition
 - Example: 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 school's education program or activity;
- Review additional terms outlined in the school's policy, such as consent and incapacitation

Due Process



Due Process Afforded by Title IX

"Whether due process is conceived in terms of constitutional due process of law owed by State actors, or as principles of fundamental fairness owed by private actors, the final regulations prescribe a grievance process grounded in principles of due process for the benefit of both Complainants and Respondents, seeking justice in each sexual harassment situation that arises in a recipient's education program or activity."

p. 86, Preamble to the
Title IX Regulations, 2020

Importance of Due Process

Procedural due process provides "at a minimum notice and the opportunity to be heard." (p. 88, Preamble to the 2020 Title IX Regulations)

A grievance process created with due process as its central tenet creates outcomes that are:

Accurate

Legitimate

Replicable

Fair

What does due process look like under Title IX?

- Creates equity for both Parties, such as the opportunity to present one's own view of the alleged conduct
- Delivers fact-based outcomes
- Provides adequate notice of allegations and opportunity to respond
- Allows for the cross-examination of Parties through relevant questions asked at a live hearing (or in writing for K-12 entities)



Due process under Title IX is intentionally different from that in criminal proceedings.

What does due process look like under Title IX?

- Provides an equal opportunity for the Parties to present Witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Provides both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation so that each Party can meaningfully respond to the evidence
- Provides each Party the right to an Advisor of their choice
- Does not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence

What does due process look like under Title IX?

If a Respondent is found not responsible for violating Title IX:

- Complainants are offered supportive measures designed to restore or preserve equal access to education programs and activities
- Respondents are not subject to sanctioning

If a Respondent is found responsible for violating Title IX:

- Complainants are offered remedies designed to restore or preserve equal access to education programs and activities
- Respondents are subject to sanctioning

Decision-Maker's Provision of Due Process

- Ensure Parties have equal access to information and evidence
- Ensure Parties have equitable timelines and preparation, such as providing consistent timeframes for events such as the pre-hearing conference and live hearing
- Ensure Parties and Advisors have the opportunity to fully cross-examine all present at the live hearing
- Remain transparent and consistent when making relevancy determinations
 - Prioritize transparency and thoroughness when drafting the determination regarding responsibility

Avoiding Bias and Conflicts



Pillars of a Fair Title IX Process



INDEPENDENT

- Remain free from any conflicts of interest or biases for or against Complainants or Respondents generally or an individual Complainant or Respondent
- Remain separate from the other stages of the Title IX grievance process
 - Has not served as the Coordinator, Investigator, Advisor, or Appellate Officer for the same case



EQUITABLE

- Provide all Parties the same information, timelines, documentation, rights and benefits

Pillars of a Fair Title IX Process



TRANSPARENT

- Communicate procedures, options, timelines, and outcomes clearly to Parties
- Provide rationales for decisions regarding hearing procedures, scheduling, relevance, determinations regarding responsibility, etc.



CONFIDENTIAL

- Share information only on a need-to-know basis, according to the Title IX Regulations and institutional policy

Identifying Conflicts of Interest

A legitimate claim of conflict of interest can be the basis of an appeal.

Anticipate potential conflicts of interest when assigned as a Decision-Maker

Allow a time prior to the hearing for Parties to disclose a potential conflict of interest

Evaluate and assign a new Decision-Maker if a conflict of interest arises

What constitutes a conflict of interest?

- Conflicts of interest arise when there is a real or perceived personal or private interest that may prevent a Title IX Coordinator, Investigator, or Decision-Maker from carrying out their role impartially
- Conflicts of interest are not explicitly defined under the Title IX Regulations
- Conflicts of interest may be more difficult to navigate within smaller institutions or school districts

Examples of Potential Conflicts



Personal relationship with a Party or parent/guardian of a Party

Example: A Decision-Maker is close family friend and has known the Party for years and outside of the academic program.



Position of power over a Party not related to the Title IX process

Example: The assigned Title IX Decision-Maker is one of the Party's professors in a course in which they are currently enrolled.



Previous knowledge about a Party that could impact the ability to investigate or adjudicate the case

Example: A Decision-Maker was a former conduct officer who adjudicated other code of conduct violations involving a Party.



Simply knowing a Party or Advisor does not necessarily constitute a conflict of interest. The type of relationship and length of the relationship, and power dynamics should be considered. If any of these factors would prevent an individual from serving in their role objectively and without advantage or disadvantage to a Party, they will likely need to be removed from the grievance process for that case.

Identifying Bias

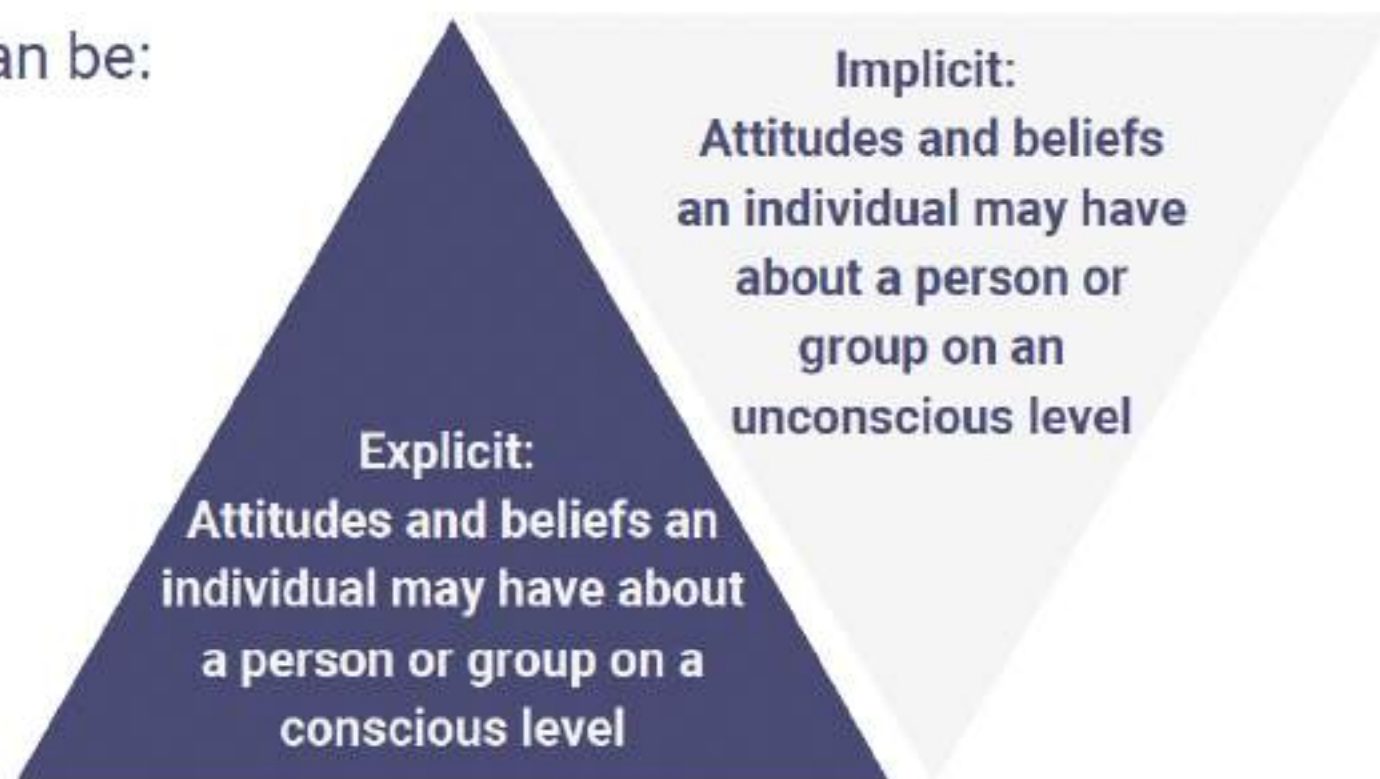
A legitimate claim of bias can be the basis for an appeal.

Consider personal biases and how they may affect your ability to serve objectively

Recuse yourself from a case if biases may impact the process or determination

What constitutes a bias?

- Title IX Regulations specifically references "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Biases can be:



Examples of Potential Bias



Prejudgment

Example: A Decision-Maker, upon hearing the summary of an upcoming case and before hearing all relevant facts, has formed an opinion believing the Respondent to be responsible for the alleged conduct.



Bias for or against Complainants or Respondents generally

Example: A Decision-Maker also serves as a volunteer advocate at the local Rape Crisis Center and frequently and publicly makes posts on social media about "believing all survivors."



Bias for or against a specific Complainant or Respondent

Example: An Investigator has a set of religious beliefs that create bias against a Complainant who identifies as queer.



As with conflicts of interest, the Parties' perception of bias must be considered. It may be that an individual is unbiased in their role as a Decision-Maker but aspects of their identity and experiences may create concern for Parties.

For example, a sexual assault survivor may be perfectly capable of setting aside their experience to adjudicate a Title IX sexual assault case. However, if this individual is outspoken about their experience and has shared their story and experience in front of campus audiences, a Respondent may feel as though they will not receive a fair hearing.

The Investigation Report and File



IN THIS CHAPTER



ELEMENTS OF THE
INVESTIGATION
REPORT



INTERVIEW
SUMMARIES



EVIDENCE
SUMMARIES



THE INVESTIGATION
FILE



ANALYZING THE
REPORT AND FILE



SAMPLE REPORT

Elements of the Investigation Report



Investigation Report Requirements

At the conclusion of the investigation, the Investigator will prepare a written report. The report shall:

- ✓ 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, including all notifications to the parties, interviews with the Parties, interviews with other Witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ Fairly summarize relevant evidence

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that meet the definition of Sexual Misconduct

- *Should be roughly identified in the Formal Complaint*

Alleged form(s) of sexual misconduct

- *Sexual Harassment, Dating Violence, Domestic Violence, Sexual Assault, Stalking*
- *Copy full definitions from policy*
- *Many forms of prohibited conduct are also dependent upon factors such as consent, length or type of relationship between the Parties, number of alleged incidents, etc.*

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that DO NOT meet the definition of Sexual Misconduct

- *Other policies implicated?*
- *Harassment not based on sex or gender*
- *Sexual misconduct that does not fall under Title IX's scope, but may need to be addressed under another policy*

Elements of the Investigation Report

Relevant Policies, Procedures, Guidelines and Standards



Sexual
Misconduct
Policy



Additional
Relevant
Institutional
Policies

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

Timeline

- The importance of documentation during the interviewing process presents here
- Utilize communication logs, activity logs, or other templates that document your information-gathering timeline
- Provide the following:
 - Dates of notices
 - Interview dates
 - Date of provision of investigation file
 - Dates of responses to investigation file, etc.

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

- Documentation if a Party or Witness does not respond or declines to participate in the investigation
- Documentation of communication with other departments or off-campus sources (i.e., local police)
- Documentation of supportive measures in place during the investigation

Elements of the Investigation Report

Summary of Relevant Evidence

The “meat” of the Investigation Report

- Should include:
 - Summaries of interviews with Complainant, Respondent, and Witnesses
 - Summaries of evidence, with exhibits attached
 - Reference the evidence log and appendix which should contain relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation

Elements of the Investigation Report



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!

Elements of the Investigation Report

(Optional to Include)

A presentation of facts and analysis of consistencies and inconsistencies in the information collected

Interview Summaries



Key Questions

Information gathered in the investigative interviews should attempt to answer these questions:

- Did the alleged incident occur?
- Is the alleged incident a policy violation?

Upon reading the investigation report, you will get a deeper understanding of the following...

Identities and Dates

- Time, date, location of interview and if advisor present
- Explain the interviewee's relation to the case
 - Complainant, Respondent
 - If a Witness, who are they?
 - Example: *“Joshua Kaplan was the person working the front door of Myers Hall on the night of November 28.”*

Summary of Responses

The investigation report should transform the individual's responses into a coherent narrative.

Summary of Responses

Interviews may be organized into subsections when dealing with multiple allegations.

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, the report could be organized into sections related to each policy violation
- Example: Relationship with a history of dating violence and sexual assault

Summary of Responses

Direct quotes may be cited from the individual's interview.

- Direct quotes are extremely powerful and useful for those reading the report

Summary of Responses

An individual's statements should not be conflated with fact.

- If a Complainant says the incident occurred at 9:00 pm, ideally, a summary should read: "*NAME OF COMPLAINANT stated that the incident occurred at 9:00 pm*" rather than "*The incident occurred at 9:00 pm.*"
- It may be noted at the end of an interview summary if evidence (photographs, text messages, surveillance footage, etc.) supports or refutes the interviewee's statements

OPINIONS SHOULD NOT BE A PART OF THE SUMMARIES

Interview Observations

Investigator may include answers to the following questions:

- Did the individual ask for a break?
 - Note how many breaks
- Was the individual accompanied by an Advisor?
- Did the Advisor attempt to speak on the individual's behalf?
 - What occurred?

Evidence Summaries



Examples of Summarizing Evidence

May simply be a list of all evidence, referencing its Appendix Number.

VIII. Table of Appendices

Documents and evidence obtained during the course of the investigation such as the formal complaints and Notices of Investigation can be found in the attached Appendices.

Additionally, each investigative interview was recorded by Investigator Chapman with the consent of the interviewee. The transcripts of each interview can also be found in the attached Appendices.

A list of Appendices is as follows:

Appendix No.	Description	Date Received
Appendix A	Jacob Smith Formal Complaint to the Title IX Coordinator	January 3, 2022
Appendix B	Amanda Parsons Formal Complaint to the Title IX Coordinator	January 4, 2022
Appendix C	Jacob Smith Email to the Title IX Coordinator with additional allegations	January 6, 2022
Appendix D	Notice of Allegations to Smith - Complainant	January 7, 2022
Appendix E	Notice of Allegations to Parsons - Complainant	January 7, 2022
Appendix F	Notice of Allegations to Thompson - Respondent	January 7, 2022
Appendix G	Smith Interview Transcript	January 9, 2022
Appendix H	Smith Interview Recording	January 9, 2022

Examples of Summarizing Evidence

You may also decide that specific pieces of evidence require an explanation.

Example: Security camera video recording from Gentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

Security camera video recording was obtained from Sample University Police Department (SUPD)

Saved as SUPD_Evidence_2.mp4 in Investigation File

Still image from 00:18:14 Attached to Investigation Report as Appendix K



Example: Screenshot of text message received by Complainant Jacob Smith timestamped on January 2, 2022 at 8:07 AM. Alleged to be sent by Respondent Tanner Thompson. Screenshot was provided by Complainant Smith.

Saved as Smith_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

Examples of Summarizing Evidence

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Example: Security camera video recording from Gentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

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Saved as Smith_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

The Report Should Lay Out:

Who, What, When, Where, Why, and How

- The investigation report, including the summaries of interviews and evidence, answers the following questions:

Who was involved?

What are the allegations?

Where and when did the incident occur?

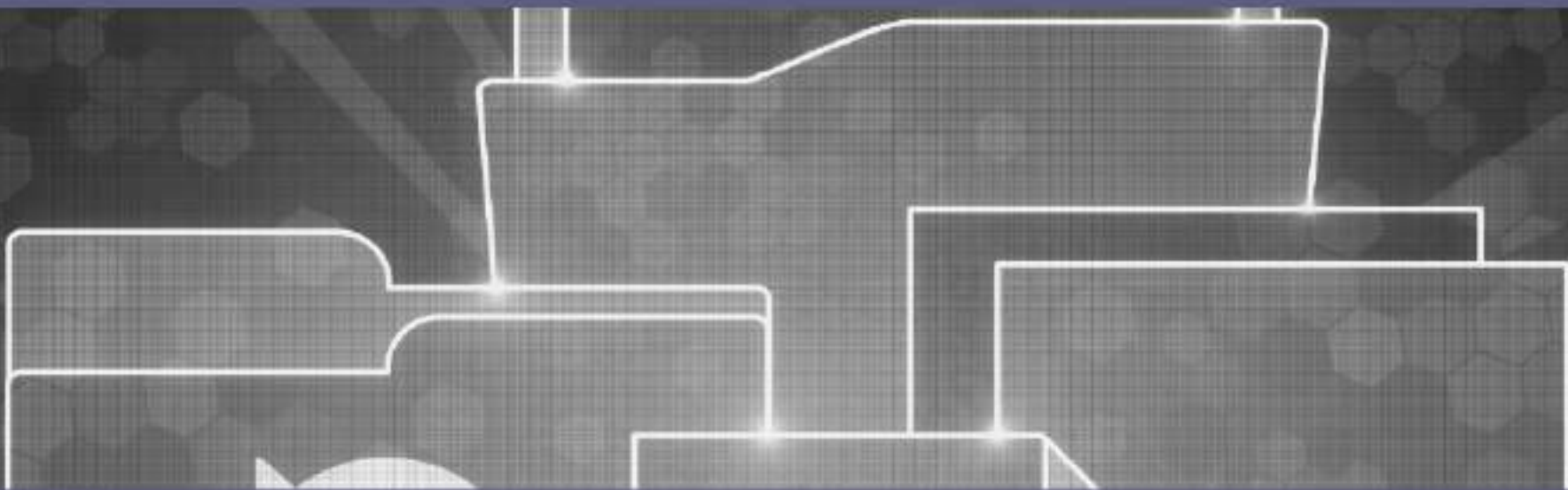
Why and how did the incident occur?

Keep in Mind

The information provided may not definitively answer all of these questions, but piecing together information may help gain a clearer picture.

- Complainant states that the incident occurred at 1:00 PM on Tuesday, June 15th
- Respondent states that the incident occurred at 11:30 AM on Tuesday, June 15th
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the building at 11:00 AM, and the Respondent swiped in to access the building at 12:00 PM

The Investigation File



What is the Investigation File?

At the conclusion of the investigation, 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 file



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.

- No information is filtered from the file at this point
- Parties have had an equal opportunity to inspect and review all of the directly related evidence
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a party or other source

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

After Parties review the investigation file:

The final investigation report is created. It should contain the following:

- Relevant elements of the parties' written responses (or absence thereof)
- Any additional relevant evidence
- Rationales for changes made after the review and comment period

Elements of the Investigation File



Schools may have a template or predetermined method of organizing the investigation file.

Generally, it should contain the following elements:

Table of Contents

1

- Organized for quick reference as the file can be large
- Separate major sections and create subsections, if necessary, to help Parties, Advisors, and the Decision-Maker locate key information

Investigation Report

2

- This report will not be finalized until the Parties and Advisors review and respond within the required ten day review period
- Includes allegations, relevant policies/guidelines and other standards and procedural steps, as well as:
 - Fairly summarizes relevant evidence
 - Summaries of Interview (summary for every interview conducted)
 - Summaries of Evidence

List of Parties Interviewed and Evidence Submitted



- Communications log
- Evidence log

Witness Interviews



- If recorded, each interview should have the following documentation:
 - Transcript of interview
 - Recording of interview (if available)

Appendices

5

- Contains relevant documentary and physical evidence
 - Examples: electronic records, written statements, photographs, surveillance video, copies of text messages or emails, snapchats, restraining orders, or other documentation
- Evidence will likely be catalogued and organized into Appendices with numbers or letters corresponding to the line in the evidence log

Analyzing the Report and File



Reviewing the Information

Read the investigative report and entire investigative file CAREFULLY.

The report and evidence can be the primary basis for the decision of the Decision-Maker. The contents may not be repeated at the hearing itself.

Goals for the Review Process



Determine what
needs to be
asked at the
hearing




Determine what
information is
missing
(if any)




Determine which
Witnesses
should appear at
the hearing


Excluded Information




Ideally, all information gathered by the investigator should be discussed in the report and included in the file



At some schools, however, the Investigator might exclude from the report and file information that the investigator deemed irrelevant



Best practice - the Decision-Maker should determine what is and what is not relevant, not the Investigator



If you believe information has been excluded that you would like to review, do not hesitate to communicate with the Investigator or Coordinator to obtain the information

Weighing the Evidence

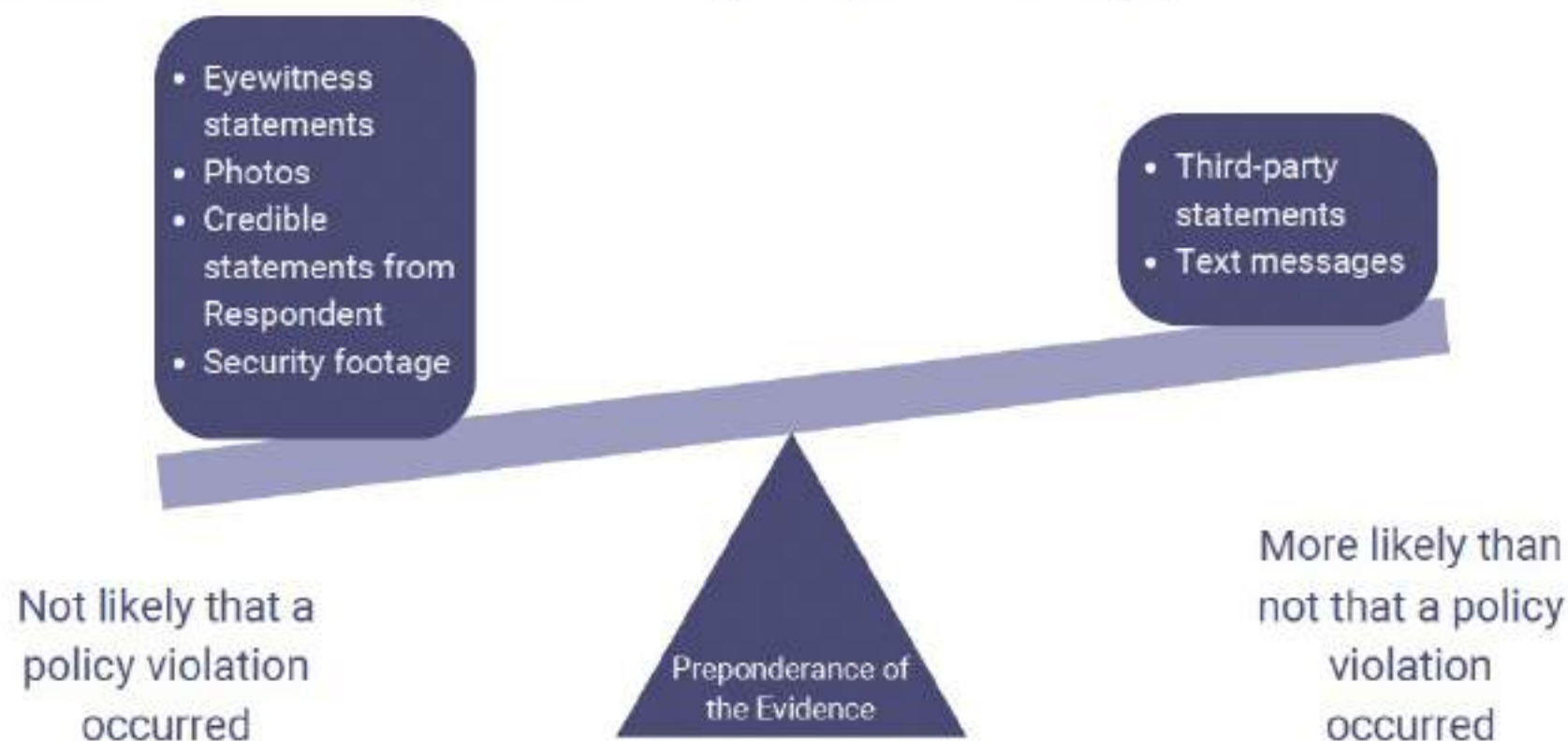
Upon analyzing the investigation report and file, you may begin to consider the weight of each piece of evidence, as well as the credibility of statements. You'll want to consider the following:

- Parties' statements and credibility
- Witness statements and credibility (eyewitnesses vs. third-party information)
- Evidence gathered and the sources from which it was obtained

Begin thinking about which pieces of information hold the most weight as it relates to the allegations.

Standard of Evidence

Now is the time to review your institution's standard of proof and examine how the information gathered in the investigation tips the scale. You will continue to gather information during the hearing or questioning process.



Sample Report



Contents

I. ALLEGATIONS

II. IMPLICATED POLICY

III. STANDARD OF PROOF

IV. PRESUMPTION OF NON-RESPONSIBILITY

V. PROCEDURAL STEPS AND INVESTIGATION
TIMELINE

A. CASE PROGRESSION

B. LIST OF INTERVIEWS

VI. SUMMARY

VII. EVIDENCE

VIII. APPENDIX

I. ALLEGATIONS:

The following was alleged in the ABC College Notice of Investigation and Allegation (NOAI) (Appendix A):

"The alleged actions include Respondent John Doe engaging in unwanted sexual contact through touching the Complainant's [Jane Smith's] buttocks under her underwear. Respondent also allegedly placed hands on Complainant's face and leaned in and tried to kiss the Complainant prior to her turning their head and verbally refused. This allegedly occurred while in the bathroom at the XX Eating Club Fall formal."

This is alleged to have occurred on or about January 25, 2021, at the Madison Performing Arts Halls on ABC College's campus.

II. IMPLICATED POLICY

The Complaint was filed alleging the following 2020 Sexual Discrimination and Sexual Misconduct Policy "Title IX Policy" (hereinafter referred to as "the Policy"), and section was violated:

Then cite to the specific policy and sections and definitions.

PROHIBITED CONDUCT:

- Allegation/Incident 1: Section B. Sexual Misconduct
- Sexual Assault- Sexual assault defined in 20 U.S.C. 1092(f)(6)(A)(v), is an offense classified as a forcible or non-forcible sex offense

Sections III(A) and III(C) of The Policy provides its definition and examples of consent, as follows:

Consent: Lack of consent...

III. STANDARD OF PROOF

The Hearing Panel shall employ the Preponderance of Evidence/Clear and Convincing Standard in evaluating the facts and circumstances of this matter, according to the ABC College 2020 Title IX Sexual Harassment Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to the ABC College Sex Discrimination and Sexual Misconduct Policy, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

a. Case Progression

Pre-Formal Complaint

On Saturday, March 17, 2021 Jane Doe contacted her advisor, Chantel Johnson, to arrange a meeting. On Sunday, March 18, 2021, Jane Doe sent an email to the ABC Title IX office stating that she “was the victim of non-consensual sexual touching while asleep” (Appendix B). She attached to that email a statement she had typed detailing her allegations and including electronic messages between herself and John Doe (Appendix C).

On March 19, 2021, Jane met with Chantel Johnson. Jane alleged that she had been sexually assaulted by John. Rather than discuss the details of her allegations, Jane shared with MS. Johnson her typed allegations that she had forwarded to the Title IX office (Appendix C). On March 21, 2021, Jane met with Title IX Coordinator Victor Ramirez, to discuss her reporting options, her rights and discuss supportive measures. ...

Formal Investigation

On March 30, 2021, Jane filed a formal, written, and signed Complaint with the Title IX Office. That Complaint alleged “sexual assault” and “unwelcome sexual contact.”

On April 2, 2021, a Notice of Investigation and Allegation was sent to the...

DATE	ACTION
x/x/2021	Formal written complaint filed by Complainant via email and acknowledged by Title IX Office x/x/21
x/x/2021	Title IX Coordinator held follow up with meeting with Complainant post formal written complaint to clarify and questions about the process, rights or options shared at time of initial reporting
XXXX	Notice letter issued to Complainant and Respondent via email
XXXX	Title IX Coordinator email to External Investigator with instruction to begin investigation process
XXXX	Title IX Coordinator informed Respondent they have the right to meet to discuss rights and options
XXXX	Investigator reached out to Complainant to establish initial contact to begin scheduling initial interviews

DATE	ACTION
XXXX	Informed Parties the name of the external Investigator, Martha Collins
XXXX	Title IX Coordinator met with Respondent to share rights, options and procedural steps
XXXX	Process Delay-Investigation due to campus spring recess; Parties and Investigator Notified by Title IX Coordinator
XXXX	Title IX Coordinator informed Respondent, Complainant, and Investigator that the process (investigation phase) will continue effective this date.
XXXX	Investigator shared Draft Investigation Report with Complainant and Respondent
XXXX	Respondent emailed Investigator Response to Draft Report
XXXX	Complainant emailed Investigator Response to Draft Report

b. List of Interviews

- On April 22, 2022, Jane Doe was interviewed via Zoom. Jane chose not to have an Advisor present.
- Witness 1 was interviewed via Zoom on April 24, 2022.
- Witness 2 was interviewed via Zoom on April 28, 2022.
- Etc.

VI. SUMMARY

All relevant information that was shared during the interviews of the Parties and Witnesses are contained in this report. Other information that is directly related but not deemed relevant, remain in the investigation file but were not incorporated herein.

The following is a summary of undisputed facts:

Jane Doe is a student at ABC College and lives in Smithson Hall on the Burlington Campus with a roommate. As of the date of the alleged incident Jane was dating Witness 1 who also is a student at ABC.

INTERVIEW OF JANE SMITH

The following is an account of Jane's interview:

Jane was planning to attend the Fall Formal with Witness 1 after attending an off-campus "pre-gaming party..."

Interview of John Doe:

...

Interview of Witness 1:

...

VII. EVIDENCE

Jane provided the following items:

- Word document description of what occurred including most of her texts with John
- Messages between herself and Witness 1 (Appendix C)
- Messages between herself and John

John provided the following items:

- Snapchat screenshot (Appendix H)

Witness 1 provided the following items:

- Messages between himself and ...

Witness 2 provided the following items:

- Messages between herself and Jane

Witness 3 did not provide any physical evidence

VIII. RESPONSES TO DRAFT REPORT

On May 11, 2021 Respondent submitted a response to the Draft Report (Appendix J) requesting the Investigator include the description he provided in his interview of Jane's jeans being "very tight." This was incorporated into the report.

On May 14, 2021 Jane submitted a response to the Draft Report, which suggested a number of edits. The following changes were made in response to her submission:

- The labelling of Appendix H was corrected from G to H;
- Jane first arrived on campus after winter break, before the rest of the student body, for basketball practice.

IX.	Appendix
A.	Notice of Investigation and Allegations
B.	Email from Jane to Title IX Office, first reporting the allegation
C.	Formal Written Complaint of Jane, attached to email to TIX Office
D.	Case Report
E.	Floor Plan of Simpson Concert Hall
F.	Messages between Jane and Witness 1 provided by Jane
G.	Messages between Jane and Witness 1 provided by Witness 1
H.	Messages between John and Witness 4 provided by Witness 4
I.	Respondent's Response to Draft Report
J.	Complainant's Response to Draft Report



Evaluating
Policy
Violations

Promoting Empowerment



Empowerment

Empowerment = Voice and Choice

- ① What could empowerment look like for each Party?
- ② How can you, as an administrator in the Title IX process, identify resources to help empower a Party?
 - You need to be neutral and objective, but you can refer each Party to other sources of support or advocacy
- ③ What may each Party consider to be possible obstacles to empowerment?
- ④ How may you address them?

Tools for Empowering a Party

Ask the Party:

How are you feeling?

Do you feel safe?

How can I help you feel safer?

What do you need right now?

What do you need throughout the duration of the Title IX process?

How do you feel about participating in the Title IX process?

What steps of the Title IX process concern you?



Remember the foundations of empathy, validation, and listening.
How can you best support each Party and address their needs?

Understanding Trauma as an Decision-Maker



Decision-Maker Q&A



1. What biases do I need to confront in order to be most effective in my role?
2. What can I do to minimize re-traumatization throughout the Title IX process?