Title IX Coordinator & Deputy Annual Training

SUMMER 2026

Agenda

- Title IX Overview
- Oversight of reports and Grievance Procedures / Scenario
- Q&A / Discussion

Disclaimer

This training is designed to provide general information about Title IX practices and considerations. While attorneys are facilitating the session, the content shared does not constitute legal advice and does not establish an attorney-client relationship. For guidance on specific cases or legal obligations, participants should consult their institution’s legal counsel.

Title IX Overview

- Essential compliance elements
- Training mandates
- OCR's role, including recent changes
- The Clery Act & VAWA
- Relationship between laws
- What about FERPA?
- MN State Law
- Title VI



Title IX Basics

Prohibits sex discrimination in education programs and activities

Applies to students, employees, volunteers, etc.

Includes sexual harassment

Essential Compliance Elements

Institutions must:

- Respond promptly in a manner that is not “deliberately indifferent”
- Investigate formal complaints
- Follow and publish the grievance process outlined in the regulations
- Take action to *stop the harassment, prevent the recurrence, and remedy the effects*
- Designate a Title IX Coordinator
- Publish a Notice of Nondiscrimination
- Disseminate a policy prohibiting sex discrimination
- Offer supportive measures
- Conduct training for Title IX personnel and those with heightened responsibilities
- Train students and employees

Training Mandates

DEFINITIONS

- Sexual harassment
- Education program or activity

OTHER

- Sexual harassment
- Institutional policies and procedures
- Any technology for live hearings
- Training materials must be posted on institution's website and maintained for seven years
- Training cannot rely on sex stereotypes

CONCEPTS

- Conducting an impartial investigation and hearing process
  - … While protecting the safety of complainants and promoting accountability
- Serving impartially, without bias, and without conflicts of interest
- Relevance regarding questions, evidence, and the investigation report
- Dynamics of sexual assault, dating violence, dating violence, and stalking

Department of Education
Office for Civil Rights (OCR)

- Establishes compliance standards
- Regulatory and sub-regulatory guidance
- Dear Colleague Letters, Amendments to Title IX Regulations, Q&As, Notices of Interpretation

What about the Department of Justice?

Department of Ed announced on June 16, 2026, that civil rights enforcement will shift to the Department of Justice.

What does this mean for higher ed institutions?

DOE/OCR v. DOJ

OCR FOCUS AND APPROACH

Voluntary resolution

Mediation and compliance

Broadly address cases filed with the agency

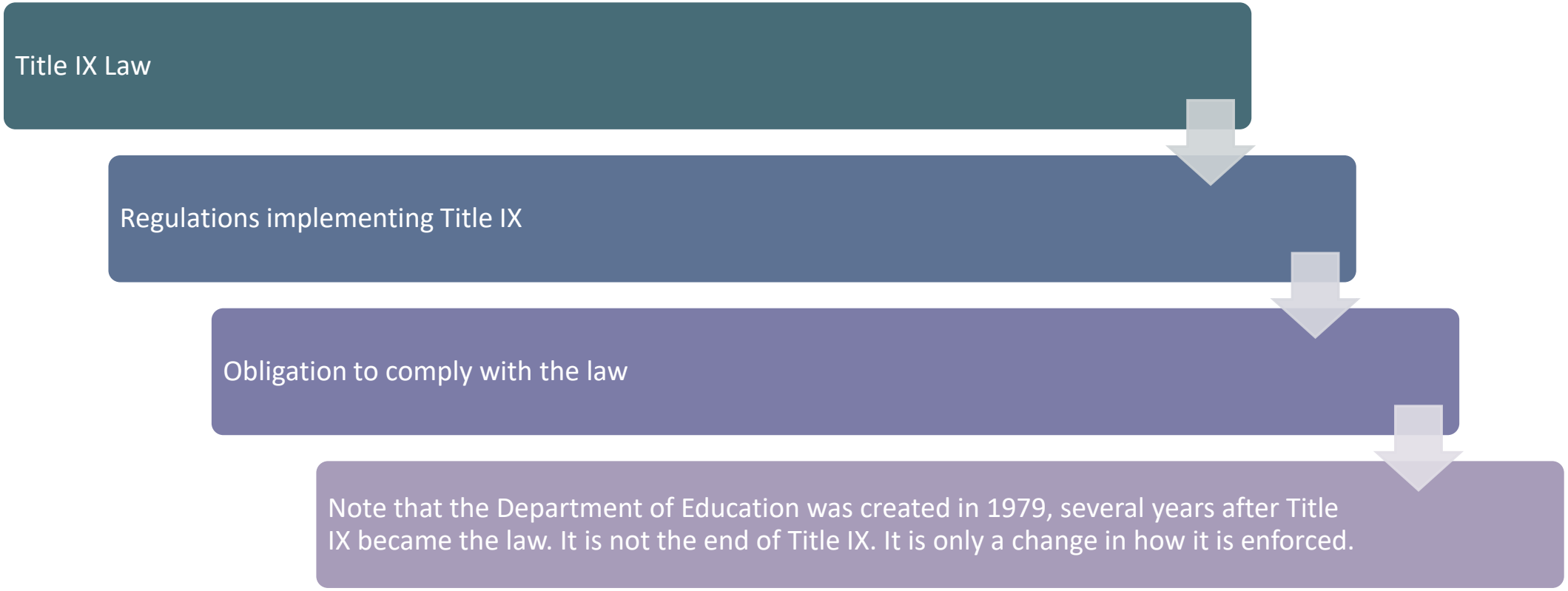
DOJ FOCUS AND APPROACH

Litigation/law enforcement model

Formal investigations and data requests

Selective intake

What is not changing





What should institutions do to be prepared?

Continue to follow the law.

Review compliance documentation practices, then document, document, document.

Apply your policies consistently.

Respond promptly to allegations and formal complaints.

The Clery Act and the Violence Against Women Act (VAWA)

CLERY

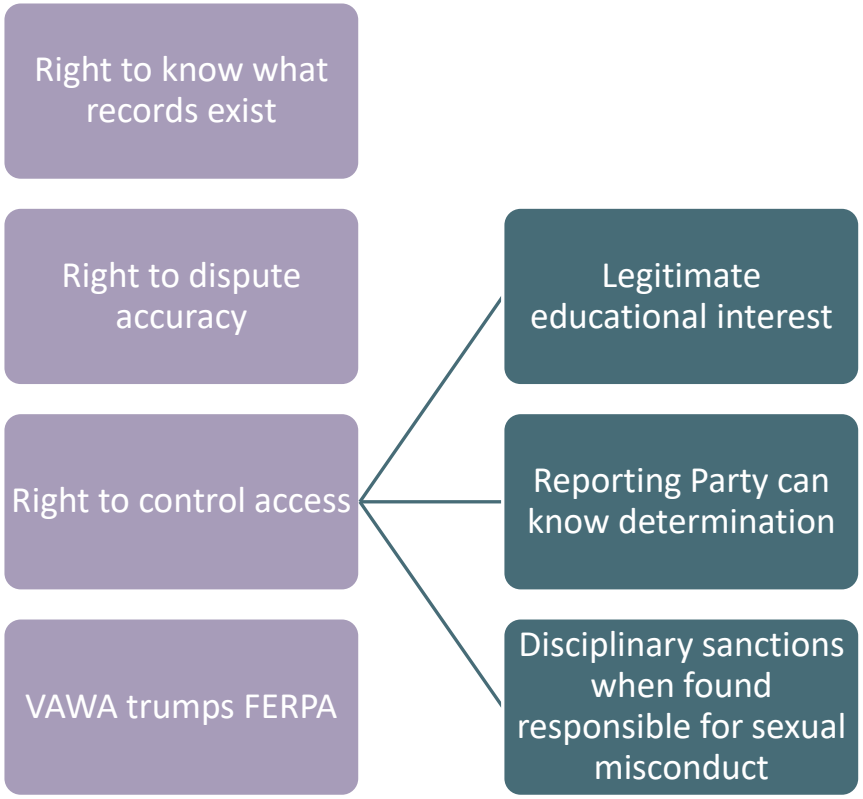
- Consumer protection law
- Institutions must provide accurate, timely, and complete information on specific types of crimes that occur on or adjacent to campus, including sexual assault
- Clery Act violations come with significant fines
- Policy, procedure, prevention, and training requirements for
  - Dating violence
  - Domestic violence
  - Stalking
  - Sexual assault
- Requires Annual Security Report including institution's policies and crime statistics

VAWA

Institutions must:

- Prohibit sexual assault, dating violence, domestic violence, and stalking
- Provide clear definitions for the above misconduct and for consent
- Incorporate training and prevention programs for administrators, students, and employees

What about FERPA?



MN State Statute 135A.15 Overview

INSTITUTIONS MUST:

- Incorporate sexual harassment policy requirements
- Inform victims of their rights
- Include **specific** reporting procedures and disciplinary processes in their policy
- Incorporate an amnesty policy
- Coordinate with law enforcement
- Health services must be confidential and screen for sexual violence and harassment
- Provide an online reporting system that permits anonymous reports
- Report annual statistics on **sexual misconduct**
- Data privacy stipulations
- Training requirements for administrators, campus security, and students
- Full Statute Link

“Sexual misconduct” includes:

- Sexual Assault, Dating Violence, Domestic Violence and Stalking
- Sexual Extortion
- Sex Trafficking
- Nonconsensual Dissemination of Sexual Images and Deepfake Sexual Images

MN State Statute 135A.15

Minn. Stat. § 135A.15 (2025)

Sexual harassment "includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- (3) that conduct or communication has **the purpose or effect of substantially interfering** with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

For cases involving a student Respondent, hearings are required **if requested** by either party. If no live hearing, must incorporate direct questioning from decision-maker(s).

Retaliation

"Retaliation" means intimidation, threats, coercion, or discrimination against a reporting party, responding party, or witness for the purpose of interfering with any right or privilege 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 under this section, including in nondisciplinary restorative justice services.

"Institutions must have a policy prohibiting retaliation that specifies **what constitutes retaliation** and **possible actions for students and employees** if retaliation occurs. Retaliation against the reporting party, responding party, or witnesses resulting from a person's participation in a campus sexual misconduct investigation is prohibited."

A Note about Title VI



Note that last year we included information about Title VI but have removed most of that information from this year's training. Annual training on Title VI is not currently required.



Keep in mind that the basic approach to responding to a complaint is the same: timeliness, party support, investigation, and fair adjudication are all critical. If you have questions about this, we are happy to help.

Title VI Reminder

Protects all students and employees from discrimination based on race, color, or national origin in programs (including schools) that receive federal financial assistance.

- National origin includes shared ancestry (including shared Jewish, Palestinian, Arab, or Muslim ancestry) and/or association with these national origins/shared ancestry.

Focus is on ensuring institutions provide equal opportunities so that everyone has full access to all the benefits and programs within the institution.

The reach is vast when considering an institution's "programs and activities" – admissions, employment, financial aid, grading, athletics, conduct, housing, etc.

Retaliation also prohibited under Title VI.

When does Title IX apply?

- Defining sexual harassment
- Defining education program or activity
- Parties' relationships with the institution
- When Title IX does *not* apply



Quid Pro Quo

- Employee conditions an outcome on an individual's participation in unwelcome sexual conduct

Hostile Environment

- Unwelcome conduct that is **so severe, pervasive, and objectively offensive** that it denies a person equal access to a program or activity

VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual harassment =
conduct on the basis of sex that satisfies at least one of the above

Hostile Environment Considerations

- Perspective of a “reasonable person” (consider age, abilities, positions of authority, etc.)
- Is it “severe, pervasive, **and** objectively offensive”?
- Does the conduct deny “equal access”? Does not need to be a total or complete loss of access, but **equal**?
- Consider the type of misconduct, how often it happened, where it took place, etc.

Sexual Assault

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

Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without their consent, including instances where they are incapable of giving consent because of age or temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Note: “Fondling” recently changed to “Criminal Sexual Conduct” in the FBI’s National Incident-Based Reporting System User Manual

“The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

The forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.”

Title IX regulations point to Clery definition, and Clery definitions points to NIBRS definition. OCR has not issued guidance about whether this changes the expected definition under Title IX.

It’s murky!

Sexual Assault contd.

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

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent

Sexual assault with an object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity

Sexual Misconduct

Remember policy must also address **sexual extortion**, **sex trafficking** and **deepfake images**.

MN Law changed sexual assault to sexual misconduct, which is defined to include:

- Sexual assault
- Domestic violence
- Dating violence
- Stalking
- Nonconsensual distribution of sexual images including deepfakes depicting intimate parts or sex acts
- Sexual extortion
- Sex trafficking

Interacting with Complainants:
Dynamics of Sexual Violence

- Most victims know the perpetrator.
- The vast majority of incidents go unreported to law enforcement.
- Alcohol and/or drugs are involved in many instances of assault (particularly on college and university campuses).
- Most sexual assaults are committed without severe physical violence and without a weapon.
- Most victims do not physically resist during an assault.

https://evawintl.org/wp-content/uploads/Module-2_Dynamics-11.9.2020.pdf
https://rainn.org/effects-sexual-violence

Nonconsensual distribution of sexual images including deepfakes depicting intimate parts or sex acts

Revenge porn

Deepfake = “an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said” (Merriam Webster definition)

Extortion

Subdivision 1. **Crime defined.** (a) A person who engages in sexual contact with another person and compels the other person to submit to the contact by making any of the following threats, directly or indirectly, is guilty of sexual extortion:

(1) a threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling;

(2) a threat to make or cause to be made a criminal charge against the complainant, whether true or false;

(3) a threat to report the complainant's immigration status to immigration or law enforcement authorities;

(4) a threat to disseminate private sexual images of the complainant as specified in section 617.261, nonconsensual dissemination of private sexual images;

(5) a threat to expose information that the actor knows the complainant wishes to keep confidential; or

(6) a threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing.

Sex trafficking

Subd. 7a. **Sex trafficking.** "Sex trafficking" means:

(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or

(2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

Consent

Institutions are not required to maintain a particular definition of consent; however, they should include a definition in their policy.

Consent is words or overt actions by a person clearly and affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact.

Incapacitation

- An individual's physical and/or mental inability to make informed, rational judgments
- Incapacitated individuals cannot give consent to sexual contact
- Intoxication vs. Incapacitation
- Examples include: sleep, unconsciousness, or intermittent consciousness
- Signs include: slurred speech, difficulty walking, vomiting
- May also exist due to mental or developmental disability
- **Frequent decision point for adjudicators:** *1) Was the complainant incapacitated; and 2) did or should the respondent (or a reasonable person) know/have known?*

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the Complainant;
- By a person with whom the Complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Complainant under domestic or family violence laws;
- By any other person against an adult or youth Complainant who is protected from that person's acts under domestic or family violence laws.

Power & Control Wheel for Teen Dating Violence

This tool explains some of the ways an abusive partner may use power and control to manipulate a relationship.



Violence Intervention Program

If you would like to speak to a counselor about your relationship or someone you know please call our confidential hotline at

1-800-664-5880

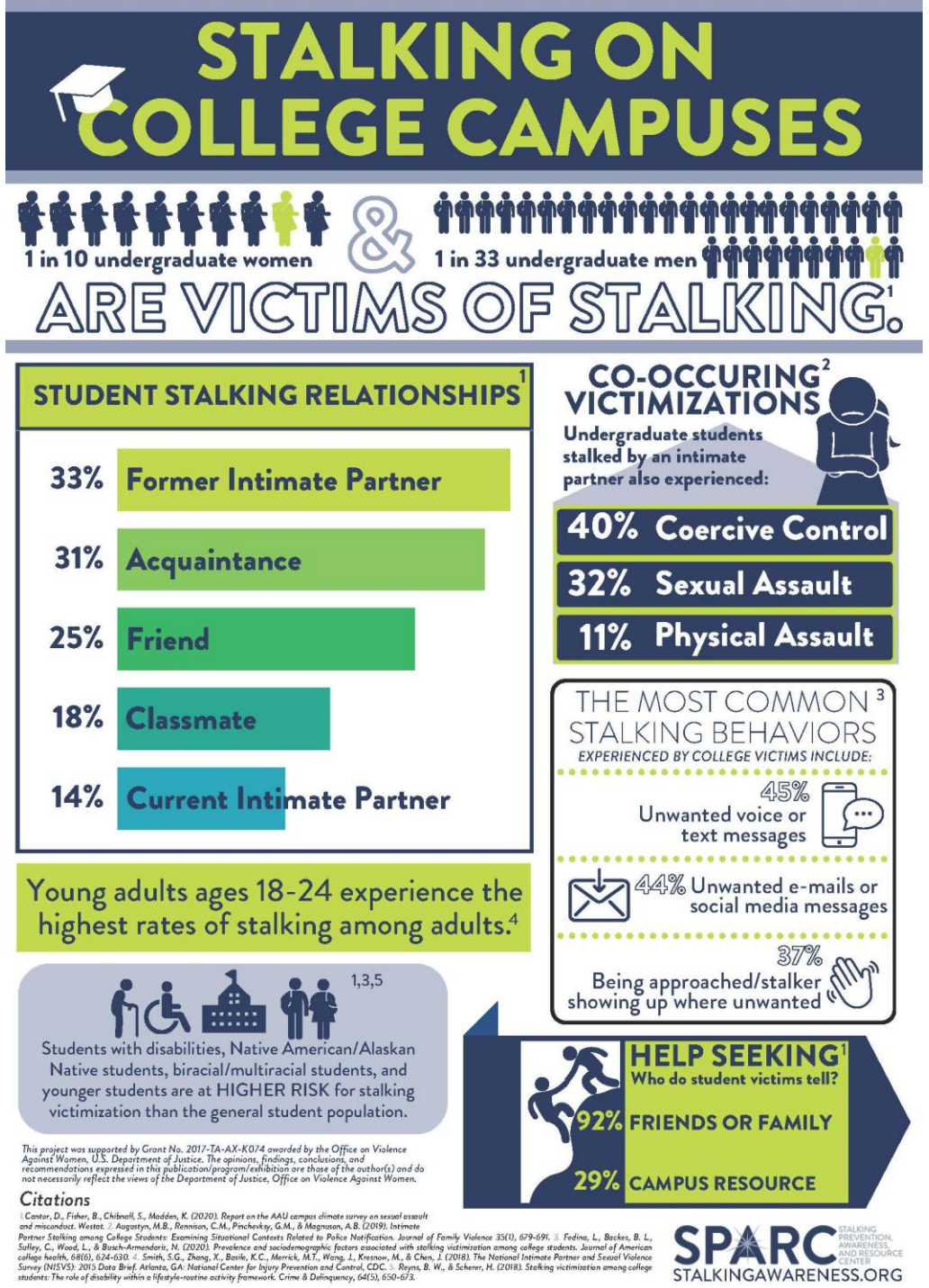
https://www.wafwc.org/tdv

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Course of conduct means **two or more acts**, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

https://www.stalkingawareness.org/fact-sheets-and-infographics/



Sexual exploitation

A form of sexual harassment that involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

- taking sexual advantage of another person without consent;
- taking advantage of another's sexuality; or
- extending the bounds of consensual sexual contact without the knowledge of the other individual.

Retaliation

Any intimidation, threats, coercion, or discrimination against any individual because the individual has made a report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.



Education Program or Activity under Title IX

WHAT DOES IT MEAN?

- Locations, events, or circumstances…
- On or off campus…
- Over which the institution exercises substantial control over the context in which the harassment took place.

ADDITIONAL REQUIREMENTS:

- Must have occurred within the United States.
- Includes conduct that occurred in any building owned or controlled by an officially recognized student organization.
- Institution must also have exercised substantial control over the responding party.

Parties' relationship with the institution

REPORTING PARTY

Must be participating or attempting to participate in the institution's education program or activity at the time of filing a Formal Complaint.

**Broad interpretation of "participating or attempting to participate in"*

RESPONDING PARTY

An institution's ability to take disciplinary action under Title IX is limited when the Responding Party is not affiliated with the institution.

**But… should still consider appropriate action steps to facilitate reporting party's participation in education programs and activities.*

Which process should we use?

Does the allegation fit under Title IX?
If not Title IX, what about VAWA? MN law?

Consider:

The severity of the allegation (severe, pervasive, AND objectively offensive?)	Where it occurred (on/off campus, US or abroad, etc.)	The roles of the involved parties (students, visitors, employees, alumni, etc.)

Notes about Sex-Based Discrimination

Discrimination based on sex is prohibited under Title IX; however, institutions are not obligated to implement all the same Grievance Process requirements as stated in the regulations in order to address and/or investigate those types of concerns.

Current federal administration has moved the definition of discrimination away from “disparate impact.” There is controversy about this, and it is an evolving area.

Currently, “on the basis of sex” is interpreted strictly and does not encompass gender and sexual orientation. But state law prohibits discrimination on those bases.

Title IX personnel roles and responsibilities

- Title IX Coordinator role and responsibilities
- Role of the investigator
- Role of decision-makers
- Role of advisors



Title IX Coordinator: Role and Responsibilities

Must designate at least one Title IX Coordinator

Should have significant autonomy and seniority

May be housed in various departments/divisions, depending on the institution

- Creates and implements legally compliant policy and procedures
- Oversees response to reports and formal complaints as well as informal and grievance procedures
- Implements supportive measures and facilitates connection to resources
- Ensures sanction and remedy compliance
- Training oversight
- Recordkeeping

Investigator: Role and Responsibilities

- Can be internal or external
- Burden to collect sufficient evidence
- Conducts fair, prompt, and impartial investigations
  - Identifies witnesses and evidence
  - Provides parties opportunity to submit evidence
  - Identifies factual issues
  - Maintains records, recordings, etc.
  - Creates an investigation report
- Works in coordination with the Title IX Coordinator, particularly around evidence and report review
- Maintains impartiality and avoids bias
- Receives annual training



Decision-makers: Role and Responsibilities

HEARING PANEL MEMBERS & ADJUDICATOR(S)

- Attends and conducts a live hearing
- Determines whether the institution's policy has been violated under the appropriate standard of evidence
- Determines sanctions, if necessary
- Writes a Notice of Decision that includes a rationale for the finding
- Avoids bias and conflicts of interest
- Receives annual training

APPEAL OFFICER(S)

- Determines a ruling on a party's appeal by reviewing appropriate investigation/hearing materials
  - Not a "re-do" of the investigation
- May meet with parties
- Writes a Notice of Decision that includes a rationale for the outcome
- Avoids bias and conflicts of interest
- Receives annual training

Advisors

- Advisors assist parties throughout the process; can be attorneys, advocates, friends, family members, mentors, etc.
- Parties have the right to an advisor of their choice
- Advisors may attend meetings and interviews with the party
- If a party does not have an advisor, the institution must provide an advisor to conduct cross-examination on the party's behalf **during the hearing**. These advisors are not required to be trained
- Consider Advisor Guidelines for both the general process as well as the hearing

Conflicts of Interest

Demonstrated position taken *for* or *against* reporting or responding parties individually or generally

A material connection to the parties, witnesses, or issues that would cause a reasonable person to question impartiality

Immediately disclose any potential conflicts of interest to the Title IX Coordinator

Conflicts of interest may be raised on appeal

Incorporate an avenue for parties to raise potential conflicts of interest early in the process

Kinds of Bias

Implicit bias: Tendency to attribute positive or negative qualities to a group of individuals. It can be fully non-factual or be an abusive generalization of a frequent trait in a group to all individuals of that group.

Cognitive bias: A systematic, unconscious error in thinking that affects how we process information, make decisions, and form judgments.

Frequent implicit biases

- Race
- Gender
- Gender identity
- Gender expression
- Sexual orientation
- Religion
- National origin
- Ethnicity
- Age
- Disability
- Marital status
- Veteran status

Avoiding Implicit Bias

Intentionality: Be aware of implicit biases and remember to stop and check yourself periodically. Ask a colleague to review. Ask yourself if you would reach the same conclusions if parties were a different gender, race, etc.

Learning: Consider gaining more insight into the experiences and lives of different groups and individuals through reading, conversations, and personal experience. Expanded knowledge and insight can help you continue to develop empathy and understanding and to reduce unwarranted assumptions.

Some Types of Cognitive Bias

Confirmation bias: Seeking out evidence that aligns with our initial assumptions while disregarding or discounting the significance of contradictory information.

Priming: Tendency to be influenced by the first presentation of an issue to create a preconceived idea of it

Halo effect: Tendency for positive impressions to influence other evaluations.

Attribution effect: The tendency to attribute others' behaviors to their character rather than to situational factors.

Conformity effect: The influence of the views of the majority of a group.

Framing: Tendency to narrow the description of a situation to guide to a selected conclusion.



Avoiding Cognitive Bias

Hear all the evidence in the case before you decide the case.

Be careful to seek out evidence contrary to your initial impression or hypothesis.

Take a mental break from the case and see if your evaluation changes.

Make sure the analysis of a case evaluates evidence on both sides.

Even if you have decided a case one way, trying writing it out the other way.

Oversight of Reporting and Grievance Procedures

SCENARIO



Scenario

We will be taking you through a scenario involving an alleged dating violence situation involving two students at Midwest University, Amara and Blair. Each alleges that the other engaged in conduct that may align with the definition of dating violence.

After discussing each step in the process, we will talk about the Title IX Coordinator's responsibilities at that stage and what would happen next for Amara and Blair.

Rights of the Parties throughout the Process

Notice of policies, meetings, investigation, outcome, etc.	**Supportive measures (*cannot penalize responding party in any way unless and until they are found responsible*)**	**Impartial Title IX personnel**	**Ability to discuss allegations**
Advisor of choice	**Opportunity to identify witnesses and provide evidence**	**Ability to review evidence and investigation report**	**Ability to appeal**

Reporting Methods

- Direct communication from the reporting party to the Title IX Coordinator
- Third-party reports from faculty, concerned friends, RAs, etc.
- Online reports
- Anonymous reports

Employee Reporting Requirements

CONFIDENTIAL RESOURCES

- Not required to report disclosures to the Title IX Coordinator
- Legally privileged
- Includes licensed counselors; individuals associated with a religious order/denomination; licensed healthcare providers; victim advocates

**While working within the above capacity*

OFFICIALS WITH AUTHORITY TO INSTITUTE CORRECTIVE MEASURES

- Required to report instances or disclosures of sexual harassment to the Title IX Coordinator
- Who this applies to will depend on your institution
- Deans? Directors? RAs?

OTHER EMPLOYEES

- Institutions have discretion re: reporting requirements
- Consider requiring all non-confidential employees to report disclosures or instances of sexual harassment to the Title IX Coordinator
- What about student employees?

Confidential Resources

When an individual discloses any form of sexual harassment to a confidential resource, the resource should discuss the following with the individual:

- Reporting options and rights (with an offer to assist with reporting)
- Campus resources and supportive measures
- The institution’s retaliation policy
- The importance of preserving evidence



Responding to a Report

After receiving a report:

- Title IX Coordinator should reach out to the affected individual **quickly**
- Offer the affected individual an initial conversation
- Email resources the individual might need/want to take advantage of right away
- Acknowledge that if the individual does not choose to engage right now, that you will always be available going forward
- However, delaying complaints or law enforcement reports can make investigating more difficult

Scenario

You (the Title IX Coordinator at Midwest University) receive a phone call from a faculty member, George. George shares that Blair, a student in his class, is struggling and falling behind academically. George says he had a long talk with Blair about it, and he is concerned about Blair's mental health. Blair shared that he is in a difficult dating relationship and is considering making a Title IX report. George doesn't know the name of the other person in the relationship, but, at George's prompting, Blair did share some of the incidents that have been difficult for him.

George tells you they had this talk several weeks ago, around midterms, and he thought things would get better with Blair after that, but they haven't. Blair asked him not to tell anyone.

What next steps do you take in response to this information?

What about anonymous reports?

- If the report names the individual who experienced the misconduct, reach out to that individual ASAP
- If the report only names the individual who perpetrated the misconduct, consider next steps (meeting? Available evidence?)
- If possible, consider reaching out to the reporter for additional information
- Consider potential patterns (i.e., multiple reports from the same location? About the same person?)
- Duty to attempt remedies

Scenario

Via your online reporting form, you receive a report from Colton, a student at Midwest. Colton reports that he was at a party a few weeks ago, and that he saw an interaction between two students, who he knows are dating, that really concerned him. In the reporting form, Colton states that he does not want to share the names because both students are his friends. He checks the box that says, “I need resources/support.”

What steps do you take to respond to this report?

Initial Conversation with a Reporting Party

PROCESS OPTIONS:

- Law enforcement report
- Grievance Process
  - Informal Process
- Taking time to decide what to do next, if anything
- Potential for TIXC Formal Complaint
- Preservation of evidence
- Other options permitted by your policy, if not Title IX?

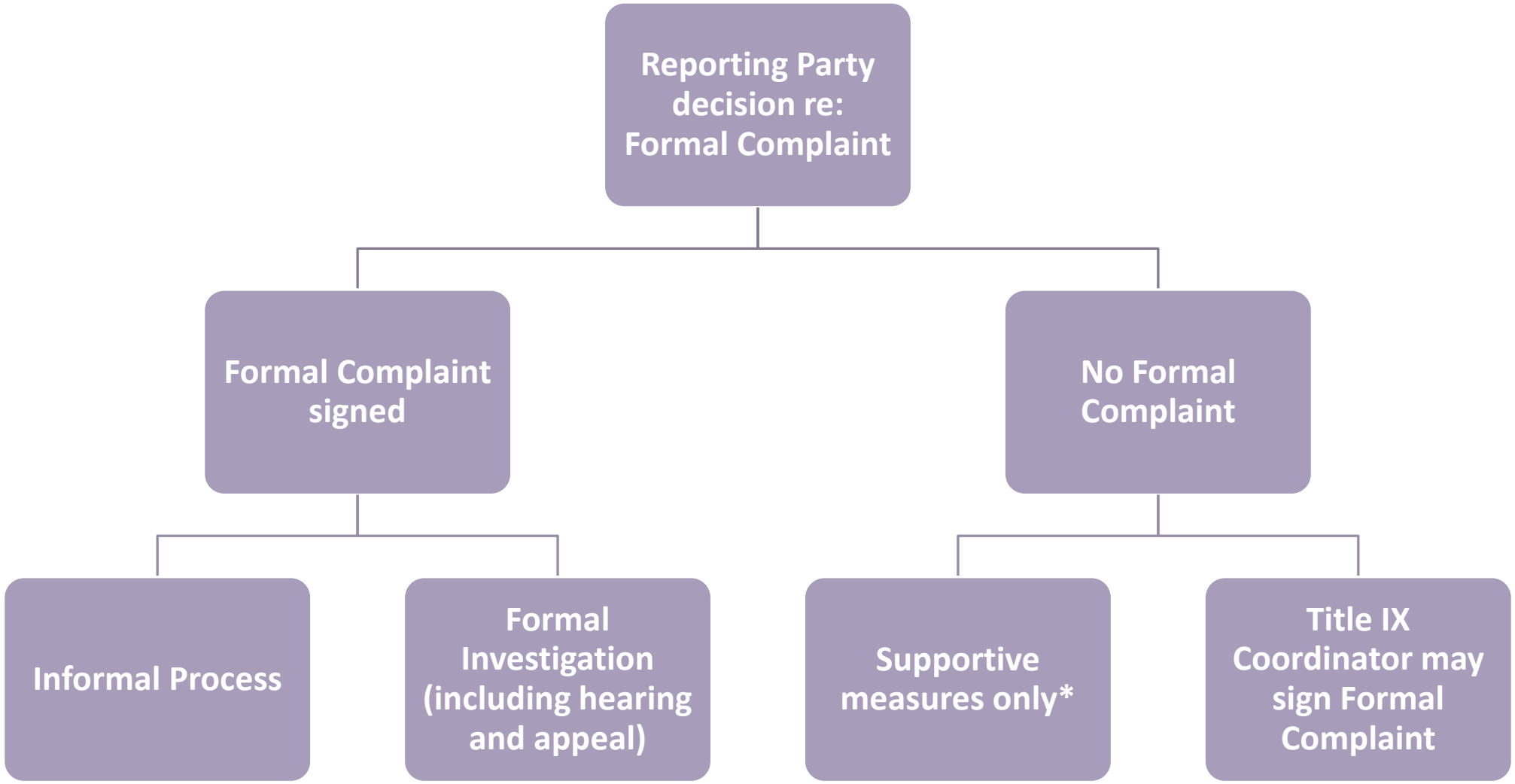
SUPPORTIVE MEASURES

- Cannot be punitive
- No-contact directives
- Accommodations for housing, classes, etc.
- Confidential resources
- Community resources
- Campus security escorts
- Etc.

**Explain that access to these resources is not contingent upon moving forward with a formal complaint*

NEXT STEPS FOR TIXC:

- Does the reported incident fall within the scope of your policy? If so, which process would apply?
- Notify others at the institution who need to know?
- Timely warning?
- Emergency removal?
- TIXC Formal Complaint if reporting party declines Grievance Process?



**Reporting party may initiate Formal Complaint in the future.*

Scenario

Colton eventually shares with you that one of the students involved in the situation that concerned him was Amara, a friend of his. He was concerned that Blair was yelling at Amara at the party in an intimidating way. Based on this information, you send Amara an email asking if she would like to meet.

Amara responds to your email and asks to meet with you the next day. How do you approach your conversation with her?

After your conversation with George, you reached out to Blair by email, but he did not respond. Do you take any additional action about Blair at this point?

Starting the Grievance Process

FORMAL COMPLAINT INITIATED BY REPORTING PARTY

- Can initiate at any time
- Requests an investigation
- Must be signed and in writing, but can be on paper or electronic (i.e., via email)

FORMAL COMPLAINT INITIATED BY TIXC

Consider:

- Egregiousness of allegations?
- Use of weapon?
- Risk? Threat?
- Availability of evidence?
- Discuss with Deputies or Title IX Team
- If proceeding, notify reporting party

What does “prompt” mean?



Regs require reasonably prompt timeframes



Temporary delays for “good cause” are ok, as long as they’re accompanied with written notice of the delay to the parties



Incorporate grievance process timeframes into your policy, but build in opportunity for discretion (case complexity, law enforcement investigation, breaks, etc.)



Consider incorporating weekly updates to the parties

Dismissal

MANDATORY DISMISSAL

TIXC required to dismiss a formal complaint if:

- at the time of the complaint, the reporting party is not participating/attempting to participate in the institution's program/activity
- the alleged conduct, even if proved, would not meet the sexual harassment definition
- the alleged conduct did not occur in the institution's program or activity
- the alleged conduct happened outside the U.S.

PERMISSIVE DISMISSAL

TIXC may dismiss a formal complaint prior to a final decision if:

- Reporting party withdraws from the process (needs to be in writing)
- Responding party is no longer a student/employee at the institution
- Circumstances prevent the institution from collecting sufficient evidence

If dismissing for any reason…

- Must notify the parties in writing and include rationale for dismissal
- Appeals of dismissals are permitted
- Consider initiating a different disciplinary process under a separate policy (Code of Conduct? Was the allegation a VAWA offense?)

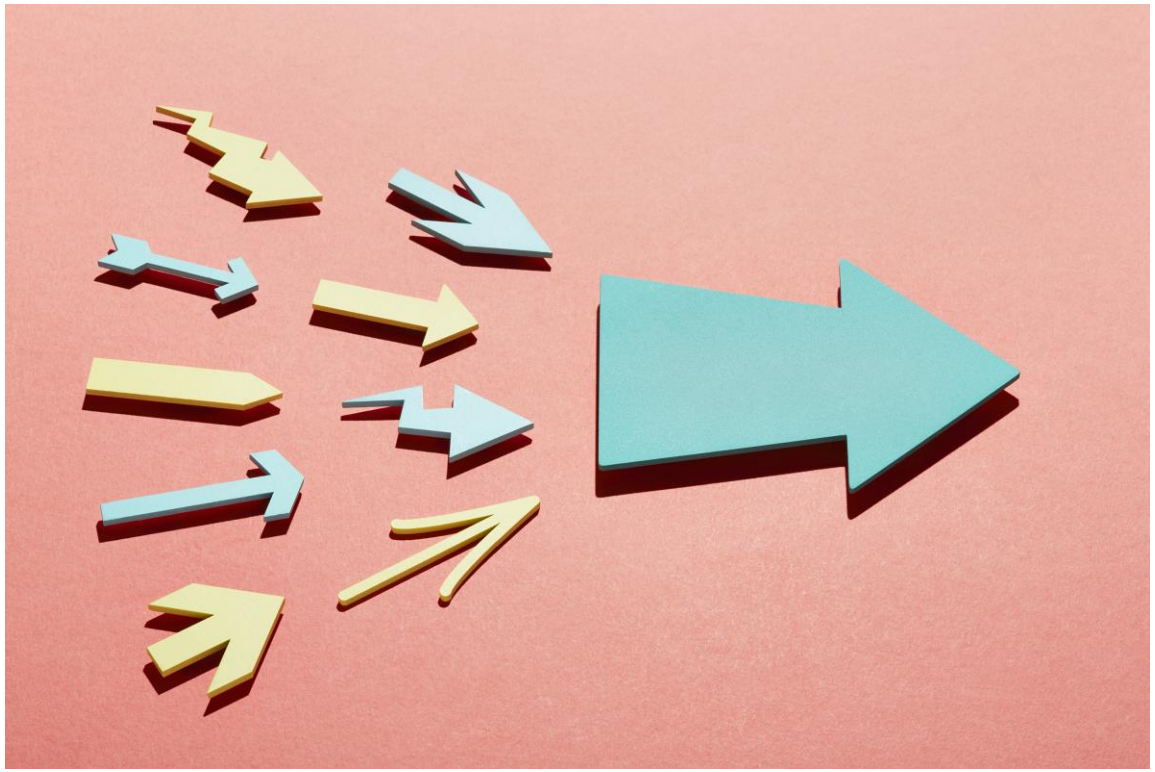
Emergency removal & administrative leave

INSTITUTION MAY REMOVE A STUDENT RESPONDING PARTY IF:

- Institution goes through an individualized safety/risk assessment
- Institution decides that an immediate threat to the physical health or safety arising from the allegations exists
- Institution provides the responding party an opportunity to challenge the removal decision

INSTITUTION MAY PLACE NON-STUDENT EMPLOYEES ON LEAVE:

- while a Grievance Process is pending



Consolidating complaints

An institution may consolidate formal complaints as to allegations

- Against more than on respondent
- By more than one complainant against one or more respondents, or
- By one party against the other party

"where the allegations of sexual harassment arise out of the same facts or circumstances."

Scenario

You had an initial meeting with Amara, and at the meeting she said she wanted to think about her options. The next day, you receive an email from her saying she wants to pursue the complaint process. You make an appointment to meet with her again the following day to sign the formal complaint.

An hour after you make the appointment with Amara, you receive an email from Blair, asking to meet with you. You have not yet notified him that Amara is pursuing a formal complaint against him.

How do you respond to Blair?

Notice of Allegations

- Notice of grievance process and the informal process
- Information about the allegations known at the time (names, conduct constituting sexual harassment, date and location of incident)
- Responding party presumed not responsible, and that the determination of responsibility occurs at conclusion of the process
- Rights of parties to an advisor, to review evidence, etc.
- Any code of conduct provision prohibiting knowingly making false statements/submitting false information
- Provide with sufficient time for parties to prepare a response
- **If additional allegations arise during the process, provide an amended or additional notice to both parties*

Initial Conversation with Responding Party

- Could send Notice of Allegation and not meet with Respondent; however, this doesn't always save time in the end or serve your process well.
- Meeting live (in person or via Zoom) prior to sending the NOA provides the Respondent an opportunity to hear about what's going on from a human and to get any immediate questions answered.
- Live meetings also allow you to gauge whether Respondent will be needing more immediate support services/measures.
- Go over NOA together, any No-Contact Order parameters, the prohibition of retaliation, and what the next steps of the process are going to be.
- Ask about supportive measures and help Respondent understand your role as a resource for all parties involved.

Scenario

You arrange to meet with Blair the next day, after you have met with Amara.

How should you structure this meeting?

What information should you share with Blair during this meeting?

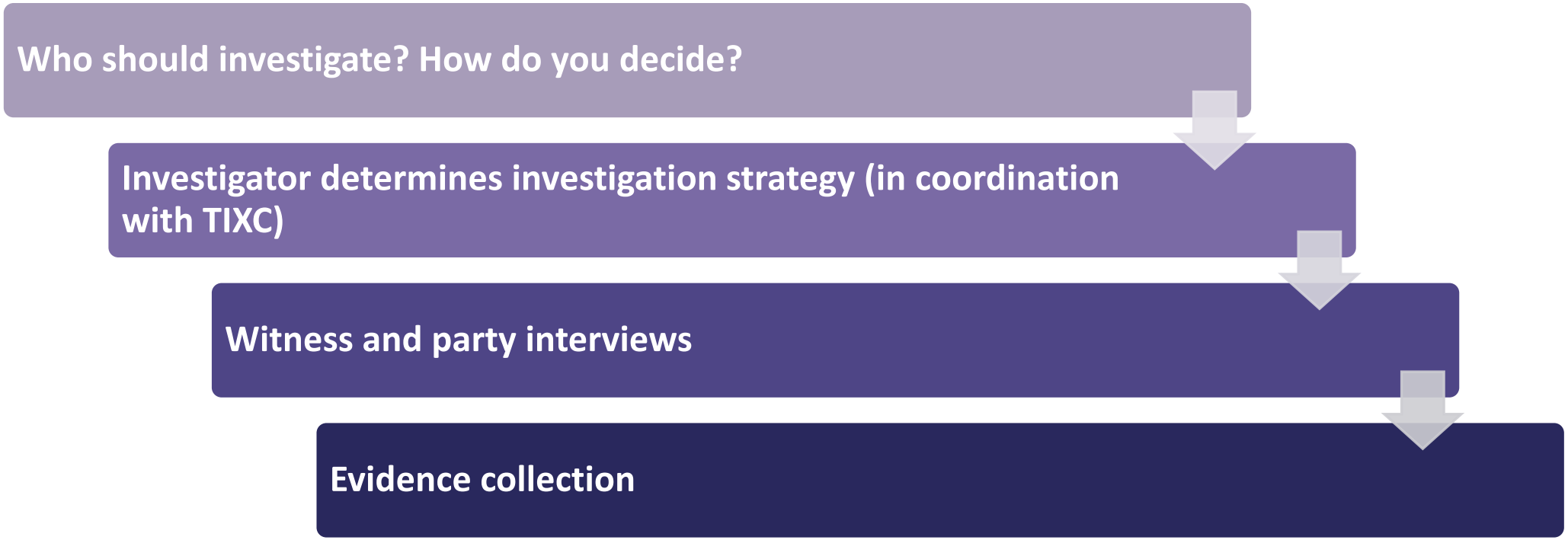
Scenario

In the meeting, Blair shares details about the ways in which he believes Amara has been abusive towards him. He says he wants to also file a complaint against her. He tells you he is talking to an attorney about his case.

How do you respond?

What are your next steps?

The Investigation



Scenario

Both Amara and Blair have signed formal complaints, and you have sent the Notices of Allegations. What are your next steps?

What information do you provide to the Investigator?

What else do you need to do?

Relevant Evidence

No definition particular to Title IX.

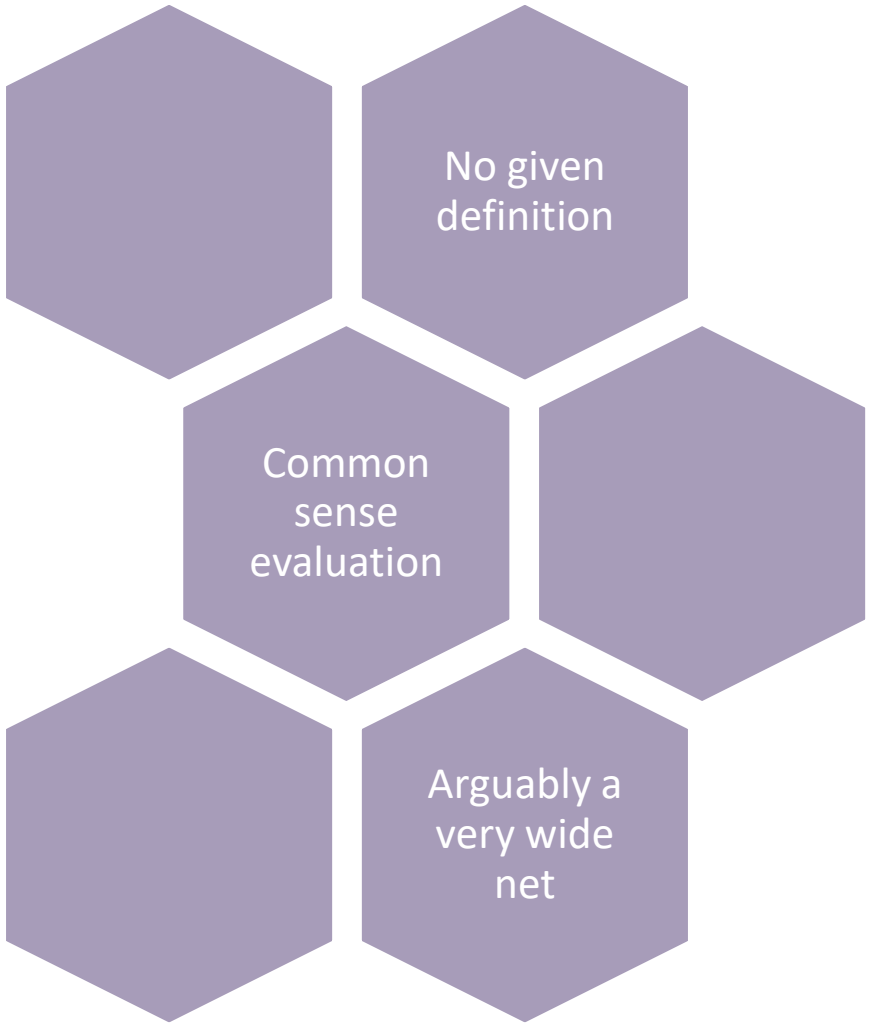
Does the evidence tend to **prove** or **disprove** the allegations?

A determination regarding relevancy can rely on logic, experience, or science.

FED. R. EVID. (401), Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/rules/fre/rule_401

Directly Related Evidence

Under Title IX regulations, institution is required to share all “directly related evidence” with the parties during the evidence review process.



What about…

- Evidence related to sexual history?
- Privileged information?
  - Cannot require or allow this unless privilege has been waived by the party
- Treatment/health records?
  - Only permissible if party provides voluntary, written consent to include
- Redactions?
- Ensuring parties/advisors don't share the evidence with others?
- Can/should parties see each other's responses to the evidence?
- Close of evidence?

Reporting Party's sexual behavior

Information about a reporting party's sexual behavior or predisposition is not permitted in the Investigation Report or during the hearing *unless*:

- The information is being used to prove someone other than the responding party committed the misconduct

  OR

- The information relates to prior sexual behavior between the reporting and responding parties and is submitted *in an effort to prove consent*

Scenario

Blair contacts you because an investigator working for his attorney has spoken with several of the witnesses in this case, and he wants to submit those statements for the case file. He also wants to submit reference letters from two faculty members and his boss in the student activities office.

What do you tell him?

Directly Related Evidence Review

MUST:

- Provide review of evidence “directly related” to the allegations for parties and their advisors
- Include inculpatory and exculpatory evidence
- Include evidence upon which the institution does not intend to rely upon in making a decision
- Allow at least 10 days for review and submission of a response
- Provide copies of evidence directly to parties/advisors in electronic or hard copy format
- Evidence must be made available for review at the hearing

NEXT STEPS

- If responses are submitted, investigator considers them prior to completing the Investigation Report
- Additional evidence collection needed? Other action?
- What if evidence is submitted during or after the review period?

Investigation Report and Review

- Summary of relevant evidence written by the Investigator
- Must be made available for parties and advisors to review (in hard copy or electronic format) 10 days prior to hearing
- Written responses to the report are permitted and provided to the hearing panel
- Consider having the investigator share the report with the TIXC prior to sharing with the parties/advisors to ensure adherence to the institution's policies and procedures
- Some institutions share a draft investigation report with the parties during the evidence review period


All Evidence obtained during investigation
Directly Related Evidence
Relevant Evidence

Scenario

The investigator issues their “close of evidence” to the parties and lets you know that you can now move on to the evidence review and response period.

How do you approach this phase of the process? What steps do you take?

In her written response to the investigation report, Amara states that there were several times during the relationship when she only had sex with Blair because he threatened self-harm if she didn’t. She did not mention anything about this in her conversations with you or the investigator.

What should you do?

Informal Process

REQUIREMENTS

- Must be voluntary; parties must provide written consent to participate
- Formal complaint required
- Allowed at any time prior to final decision being made
- Title IX Coordinator has discretion
- Unavailable when responding party is an employee and reporting party is a student

VARIOUS APPROACHES

- Alternative resolution (i.e., restorative justice, dialogue facilitation, etc.)
- Shuttle diplomacy or negotiation
- Responding party does not need to accept responsibility to access informal process, but that can be written into your policy if desired

Informal Process Considerations

Does completing an informal process mean that the reporting party can no longer resume/initiate the investigation process?

What records will be maintained, and with whom could they be shared?

What outcome is necessary to stop, prevent, and address effects of the harassment?

What types of allegations are more/less appropriate for informal resolution?

Consider the parties and whether this type of resolution could truly be successful.

What if the allegation is especially egregious – is informal resolution still an option?

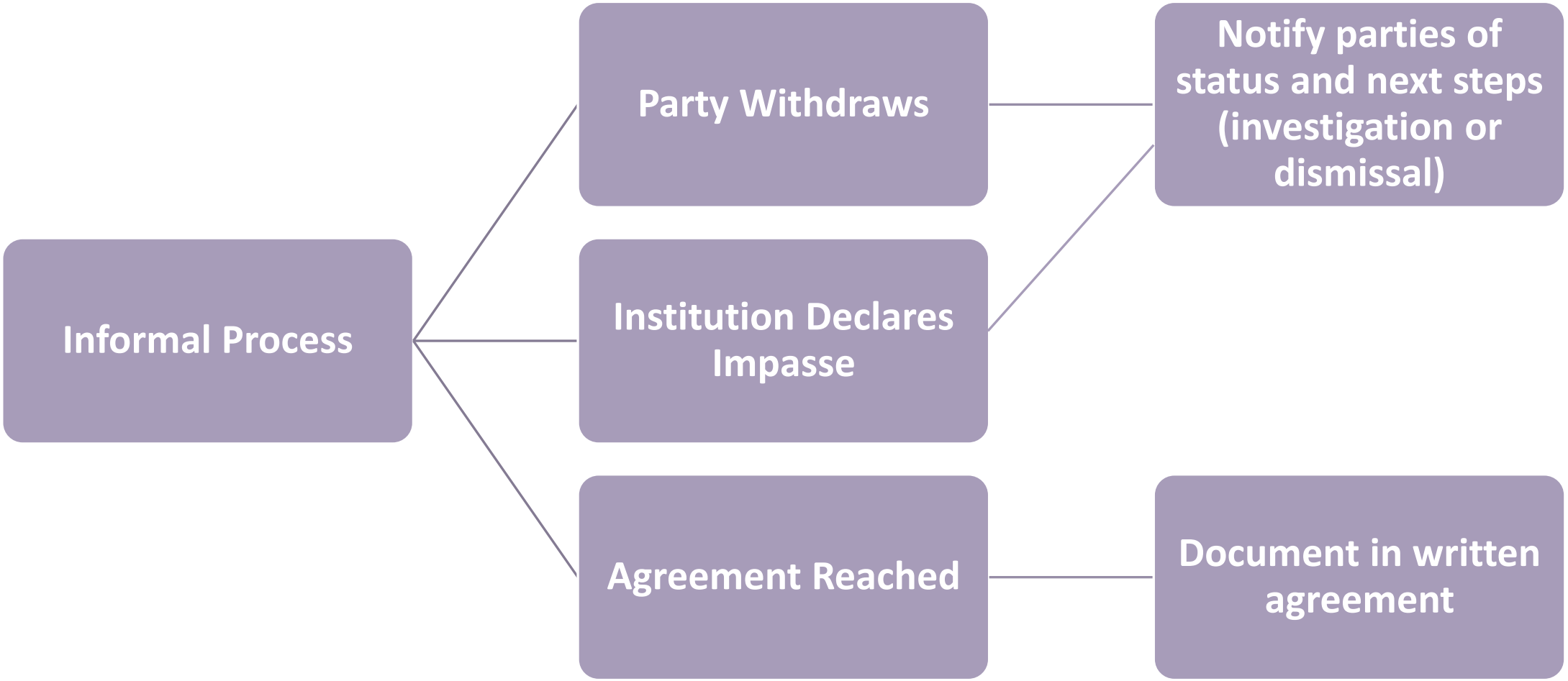
Pros and Cons

PROS

- Quick
- Low/No confrontation
- Parties in control
- Parties feel heard
- Focus on resolution; not conflict
- Less resources and risk

CONS

- Coercive?
- Doesn’t hold perpetrators accountable?
- Lack of due process?
- Puts community at risk?
- Party changes mind?


Informal Process
Party Withdraws
Institution Declares Impasse
Agreement Reached
Notify parties of status and next steps (investigation or dismissal)
Document in written agreement

Scenario

After the investigation report review period, Blair notifies you that he would like you to pursue the Informal Resolution Process. You talked about informal resolution with both parties earlier in the process, but neither party was open to it at that point.

How do you respond?

What information do you need from each party?

Potential Terms of Informal Resolution

- Suspension
- No contact order
- Non-disparagement agreement
- Change in classes (now and future)
- Change in residence hall (now and future)
- Withdrawal from athletics team or co-curricular activities
- Reimburse expenses
- Boundary counseling and other mental health or addictions services
- No further action or investigation
- No admission of responsibility
- Agreement not to sue
- Impact of not following terms

Scenario

During the informal resolution process, Amara tells the facilitator that she wants Blair to leave the institution until she graduates, at which point he could return. When the facilitator brings this request to Blair, he says he's unwilling to leave the institution voluntarily, but he will negotiate about campus space usage, voluntarily leave a shared activity, and give Amara room draw priority.

You believe that informal resolution is likely to be the best outcome for both students. Is there anything you can do to help them get to an agreement?

The Hearing

- Must be live but can be virtual (must include video)
- Provides opportunity for parties' advisors to ask questions of the other party and witnesses
- Institutions must provide an advisor to parties who do not have an advisor during the hearing specifically for the questioning portion
- Can have a single decision-maker or multiple, but someone must make relevancy determinations during the hearing
- TIXC or another individual may be present to enforce hearing decorum and process
- Must be recorded

Who attends the hearing?

- Decision-maker(s) / Hearing Panel members
- The parties and their advisors
- Witnesses who the parties or the decision-makers have identified as needing to be present for questioning
- Title IX Coordinator may attend (to help with logistics, decorum issues, hearing process, etc.)
- General counsel may attend (or be on standby for questions)
- Investigator may attend

Hearing technology



This will vary depending on the institution.



Decision-makers need to be trained in how to use their institution’s hearing technology.



Remember that hearings need to be recorded.

Hearing Preparation

- Hearing format and structure (breaks, length, etc.)?
- Review the Investigation Report and evidence
- What questions will the hearing officer ask parties/witnesses during the hearing?
- Which witnesses does the hearing officer want present, if any, during the hearing?
- Which witnesses do the parties want present, if any, during the hearing?
- Who will make relevance determinations (if more than one decision maker)?
- Does either party need a school-appointed advisor?
- Consider conducting pre-hearing meetings with each party and their advisor

Pre-hearing meetings

- Not required, but suggested good practice to meet with each party and their advisor in advance of the hearing to discuss:
  - The hearing process and what to expect
  - Expectations regarding decorum, advisors' participation, how any technology will be used during the hearing
  - Review the cross-examination phase of the hearing
  - Whether the parties want any witnesses present at the hearing
- Can be facilitated by the Chair, Decision-maker, and/or the TIXC

Role of the Hearing Panel Chair (or sole Decision-Maker)

- May facilitate the hearing, with assistance from TIXC.
- Make relevancy determinations for all questions asked during the hearing.
- Make determinations about appropriateness of questions or information provided (cannot be irrelevant, abusive, or overly repetitive).
- Ensure advisors stay in line with hearing decorum guidelines.

Scenario

Blair emails you asking many logistical questions about what to expect during the hearing. You let him know that it is your practice to conduct pre-hearing meetings with each party and their advisor prior to the hearing, so that everyone knows what to expect. He also wants to bring his mom to the pre-hearing meeting, in addition to his attorney. His mom is also an attorney.

What is your plan for the pre-hearing meetings with the parties?

Scenario

Amara asks to meet with you a week before the hearing. In the meeting, she tells you she knows Blair has a “high-powered attorney,” so she is no longer comfortable using a campus dorm director as her advisor. She would like to know what her options are.

How do you respond?

During the Hearing

Managing the Hearing



BREAKS



ADVISORS



PARTIES' EMOTIONS

Relevancy Determinations

Does the information help determine if there was a policy violation?

Does it **"move the dial"** in proving or disproving the allegations?

<u>Off limits:</u>

- Medical or treatment records without voluntary, written consent
- Reporting party's prior sexual history (with two exceptions)
- Legally privileged information unless party waives privilege

Other issues

- Know where the line is regarding evidence or questioning intended only to harass or embarrass another party
- What about Responding Party's prior or subsequent misconduct?
- What about evidence or questioning that is duplicative or repetitive?

Scenario

During the hearing, Blair's attorney takes a very formal approach to questioning Amara. She asks Amara many repetitive questions and prompts her to repeat information clearly included in the written record. Amara is in tears at several points.

Blair shows increasing signs of emotional dysregulation while Amara talks. He begins muttering and fidgeting in his chair.

What issues might you be concerned about?

Should you as the Title IX Coordinator take any action?

Making a Determination

STANDARD OF EVIDENCE

Preponderance of the evidence ("more likely than not" / 50.1% likely) OR the clear and convincing standard

PROCESS

Hearing panel members need to meet after the hearing to deliberate.

Determine which policy definitions apply to the allegations.

CONSIDERATIONS FOR DECISION-MAKERS

- What are the undisputed facts and what are the disputed facts?
- What does the evidence show regarding the disputed facts? Which evidence is most credible? Why?
- Using the appropriate standard of evidence, did a policy violation occur? Analyze each element of a policy definition under the evidence standard.
- What is the rationale for your decision?

Sanctions

- Need to stop, prevent, and remedy!
- Consider educational and developmental sanctions
- Engage in a risk assessment to help determine appropriate sanctions
- Sanctions should reflect the severity of the behavior (consider prior misconduct)
- Consider any loss/injuries to the Reporting Party or the institution and how to rectify those, if possible
- Can consider past cases of similar misconduct with assistance from Title IX Coordinator

Common Sanctions & Remedies

STUDENTS

- Probation
- Loss of leadership positions
- Loss of privileges
- Housing changes
- Limited access to campus
- Counseling or required education
- Suspension
- Expulsion

EMPLOYEES

- Loss of leadership positions
- Loss of privileges
- Required education
- Disciplinary letter
- Unpaid suspension
- Demotion
- Termination

Notice of Decision

NEEDS TO INCLUDE:

- Allegations
- Procedural steps
- Findings of fact
- Decision regarding responsibility
- Rationale for each allegation/decision
- Sanctions, if applicable
- Whether remedies will be provided
- Appeal process information

OTHER REQUIREMENTS:

- Deliver notice simultaneously to the parties
- Decision/sanctions become final when parties are notified of the appeal decision OR when the deadline to submit an appeal has passed

Scenario

The decisionmakers let you know that they are finding Blair responsible for violating the policy but not Amara. They ask you to weigh in on what appropriate sanctions would be for your institution, given past sanctioning history and campus culture.

What information should you provide them?

Who sends out the Notice of Decision?

How do you determine when it should be sent?

Do you take any special steps under these circumstances?

The Appeal Process

Available to both parties for final determination of responsibility and dismissal of formal complaints

Required reasons for appeal:

Procedural irregularity that affected the outcome	New evidence that was not reasonably available at the time the decision was made that could affect the outcome	Conflicts of interest or bias from an official involved in the case that affected the outcome

Can allow additional grounds for appeal if desired

Appeal Process contd.

REQUIREMENTS

- Appeal decision-maker cannot have been previously involved in the process
  - No conflict of interest or bias
  - Required training
- Timeframe for accepting appeals?
- Let parties know if an appeal was received and that the other party has an opportunity to respond
- Must send appeal decision and rationale to parties simultaneously

POSSIBLE APPEAL DETERMINATIONS

- Hearing Panel decision stands
- Hearing Panel decision overturned
- Sanction adjusted*
- Remand
  - New investigation
  - New hearing or re-hearing
  - Sanctions-only re-hearing

Scenario

Blair appeals the decision. In his written appeal, he states that he strongly disagrees with the decision, and he reiterates that Amara consented to all of their sexual interactions, that he was not abusive towards her, and that she was abusive towards him.

What are your responsibilities as Title IX Coordinator?

Steps once the Process is Over

- Notice to parties that the process is over
- Sanction and remedy adherence and monitoring; respond to violations
- Checking in with parties as appropriate, particularly regarding ongoing supportive measures
- Additional prevention measures? School-wide messages, campaigns, training, etc.?
- Recordkeeping
- Feedback mechanism regarding the Title IX process?

Scenario

Per your usual process, you follow up with Amara a couple of weeks after the process ends. She does not respond to your email. You try again the following week, and she again does not respond. Another student on your Title IX advisory board tells you they heard she was not coming back to school.

What do you do?

General Title IX Oversight

- Recordkeeping and documentation
- Managing campus climate
- Assessing compliance



Recordkeeping

Records must be retained for at least **seven years**.



Records to maintain:

- Actions taken and responses to reports
- Investigation and adjudication documents, recordings, etc.
- Training materials for decision-makers, investigators, Title IX Coordinators/Deputies, and informal resolution facilitators

Campus Climate Management

- Periodic campus climate surveys are useful in determining experiences or perceptions on campus that you might not be aware of
- Strategies for combatting misperceptions about Title IX?
  - Focus groups or individual meetings
  - Targeted resource development and deployment
  - Bolstering website content
  - Community-wide messages
  - Forums or events
  - Consider engaging campus partners and student leadership
  - What about managing repercussions stemming from individual cases?

Scenario

A year after being found responsible, Blair has returned to campus after completing his suspension and the terms outlined in the Notice of Decision. Blair makes an appointment with you, and at the appointment, he tells you he is being “ostracized” on campus and that the water polo team has voted to not allow him to join their team this year because they don’t want to associate with a “rapist.” He sees this as retaliation for his participation in a Title IX process.

What do you do?

Assessing Compliance



Templates and checklists for all steps of the process



Documentation processes



Internal reviews



Feedback mechanisms from parties



Internal case debriefs with team members



Professional development

Thank you!



HELLO@WEAREBALLAST.COM



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