

Title IX Informal Resolution Training

July 17, 2024

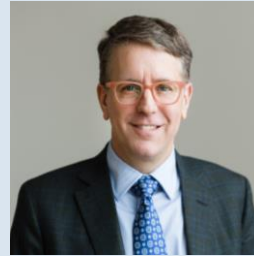
Carl Crosby Lehmann and Kari Hohn



Meet Our Team



Sean Somermeyer
Partner



Carl Crosby Lehmann
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Mary Dunnewold
Partner



Nina Harris
Director



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Director

Ballast Offerings

1

Drafting & Updating

Policy and process development and review

2

Training

Legally compliant Title IX and non-discrimination trainings tailored to individuals' roles and knowledge base

3

Investigators, Alternative Resolution Facilitators, & Decision-makers

Trained, skilled, experienced, and practical

4

Interim Roles

Interim services to fill gaps in various Title IX positions

5

Advice & Coaching

Legal and non-legal advising

Ballast Philosophy & Approach



Collaborative partnerships that honor institutional knowledge and values



Practical solutions that are compliant and make sense for your specific institution and community



Reasonable and fair pricing that acknowledges the financial constraints institutions are facing



First-hand experience and understanding from individuals who have previously worked within higher education institutions

Agenda

- Legal overview and required training
- Informal Resolution process overview
 - What has happened already?
 - Role of the Facilitator
- Pre-process logistics
- Conducting an Informal Resolution process
- Wrapping up the process

Legal Overview

Types of Discrimination

Discriminatory Treatment

Harassment

Anti-Retaliation

Discriminatory Treatment

Disparate Treatment

Intentional
Discrimination

Legitimate Non-
Discriminatory Purpose

Disparate Impact

Facially Neutral But Results
in Adverse Impact

Discriminatory Intent Not a
Necessary Factor

Bona fide qualification /
Necessity



Harassment

Quid Pro Quo

Something for something

Abuse of position of authority

VAWA Crimes

Sexual Assault

Dating Violence

Domestic Violence

Stalking

Hostile Environment

Conduct relating to protected class status

Unwelcome

Severe **or** pervasive

Purpose or effect of creating a hostile work/educational environment

Reasonable person in complainant's shoes

Sexual Harassment & Title IX Compliance Requirements

Publish Notice of Nondiscrimination

Designate Title IX Coordinator

Disseminate Policy

Investigate Complaints

Adopt and Publish Fair and Equitable Grievance Procedures

Train Individuals with Heightened Responsibilities

Train Students and Employees

Retaliation

- Mistreatment directed at employee/student who has:
 - Complained about discrimination
 - Participated in an investigation, hearing or other proceeding
 - Refused to participate in an investigation, hearing or other proceeding
- Includes mistreatment for raising discrimination that affects others
- Also includes mistreatment of individuals closely related to someone who has complained
- Conduct that would dissuade a reasonable person from bringing a complaint or participating in an investigation
- **Must be part of your Title IX grievance process**

Clery Obligations – The WHO

Campus Security Authorities (CSAs)

- Campus police / security personnel
- Individuals with responsibilities for campus security
- Individuals assigned to receive reports of crimes
- An official with significant responsibility for campus events and activities including student discipline and student judicial processes

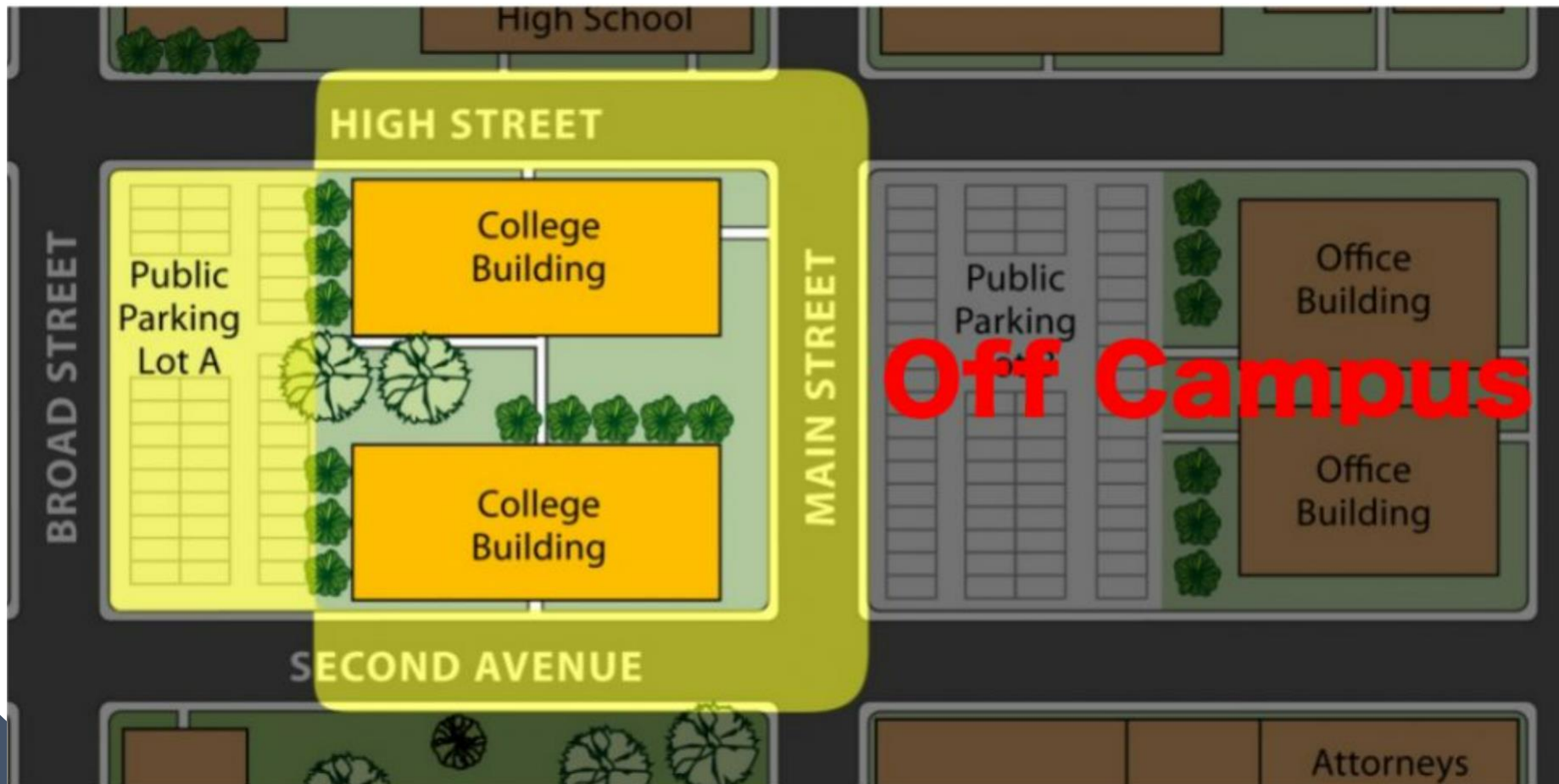
Clery Obligations – The WHAT

Serious crimes – Murder/Homicide; Sexual Assault; Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; Arson; Drug/Alcohol/Weapons Violations

Hate Crimes

Domestic/Dating Violence and Stalking

Clery Obligations – The WHERE



Clery Obligations – The WHEN

Immediately:

Timely Warnings / Emergency Notifications

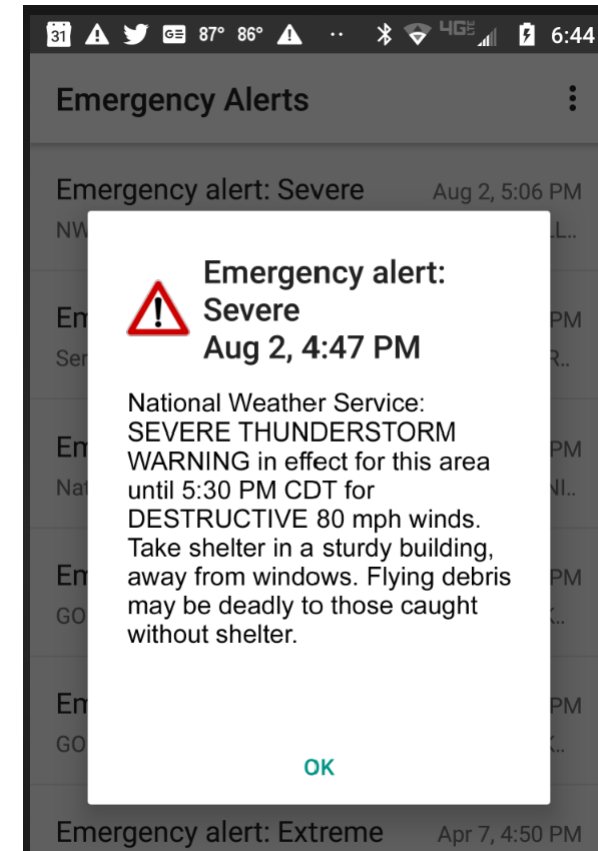
Annually:

Annual Security Report

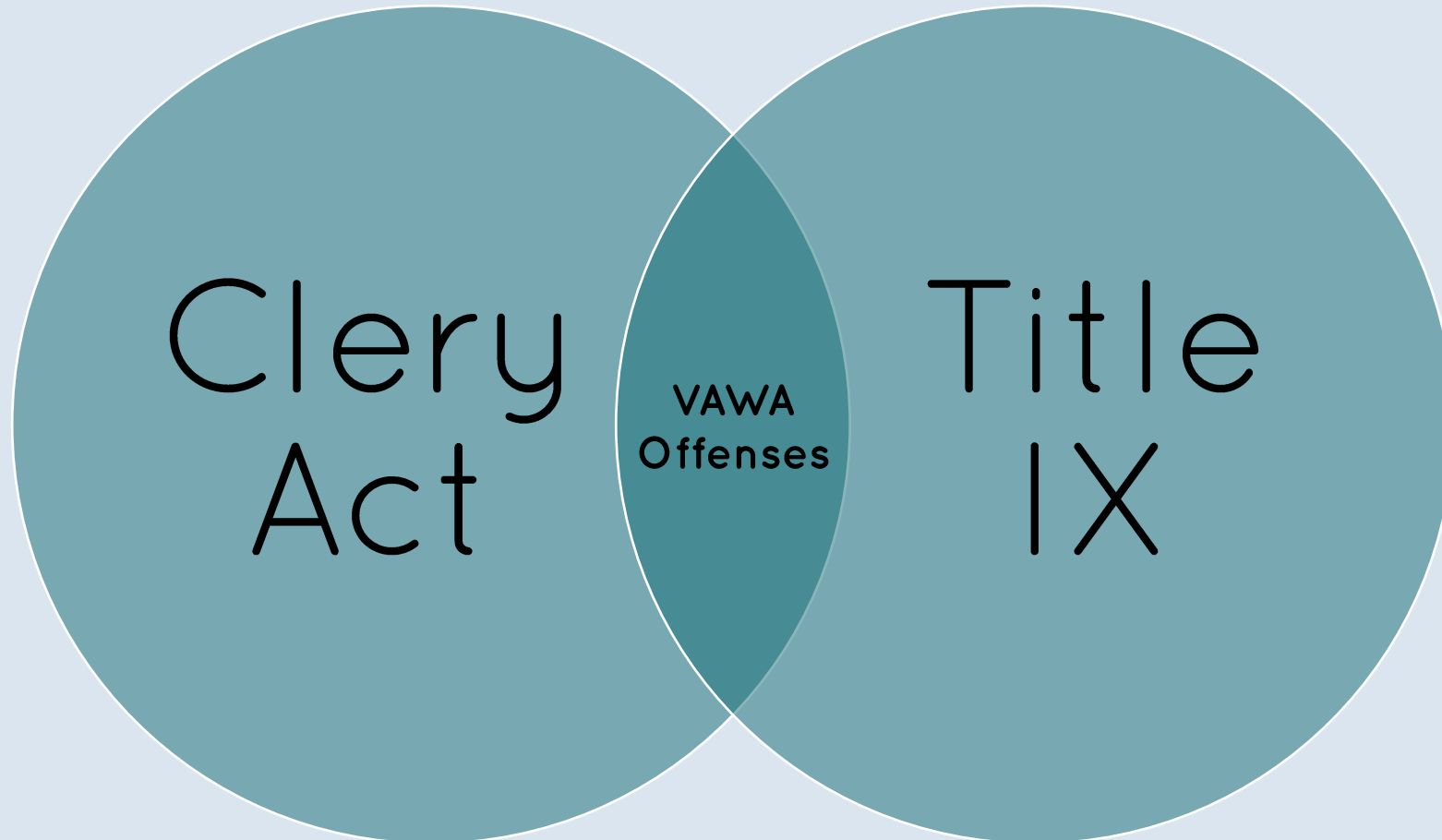
Report to DOEd

When Requested:

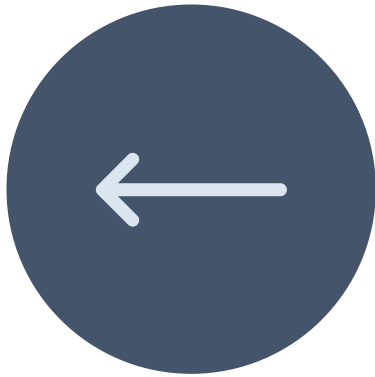
Maintain a daily crime log



Relationship between Laws



FERPA



**RIGHT TO
ACCESS**



**RIGHT TO
CONTROL
DISCLOSURES**



**RIGHT TO
DISPUTE
ACCURACY**

FERPA – What is an “Education Record”



**DIRECTORY
INFORMATION**



**OTHER PERSONALLY
IDENTIFIABLE INFORMATION**

FERPA – Right to Access

- Any Information Maintained About Student
 - Exceptions: Parent's Financial Information and Recommendation Letters
- Must Reasonably Specify Information Requesting / No Right to Standing Requests
- 45 Days to Respond
- Not Required to (Re)Create Records that Never Existed / No Longer Exist

FERPA – Right to Control Disclosures

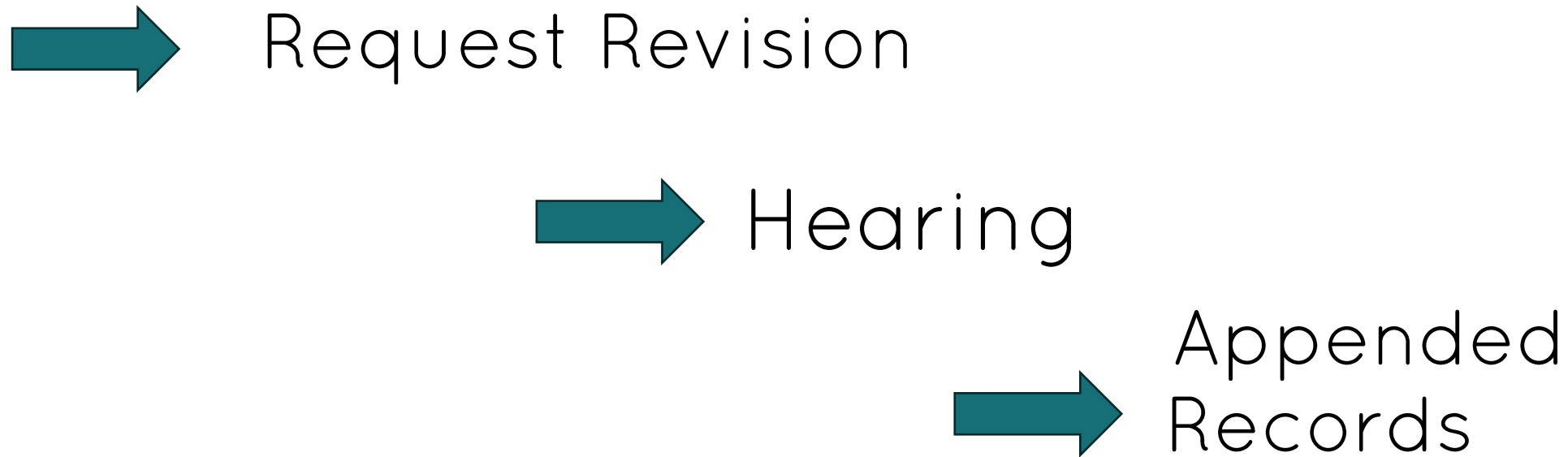
General Rule – Must have Student's Consent

Exceptions:

- Parents of “Dependent” Students
- Title IX Records for Parties and Advisors
- Legitimate Educational Interests
- Subpoena / Court Order
- Health / Safety Emergency
- Employment Records / Treatment Records / Public Safety Records

And there's more...

FERPA – Right to Dispute Accuracy of Records



Not For Use to Dispute Decisions / Only Inaccuracies in Records

MN State Statute 135A.15

Institutions must:

- Incorporate sexual harassment policy requirements
- Inform victims of their rights
- Include 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 ~~assault~~ **misconduct**

MN State Statute 135A.15

Misconduct Includes:

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

Title IX's Broader Scope

- Distinguishing between sex discrimination and sex-based harassment
- Nondiscrimination Policy & Notice
- New scope of education program or activity
- Parties' relationships with the institution
- When Title IX does not apply

Broader Scope

Covers all forms of gender discrimination & retaliation

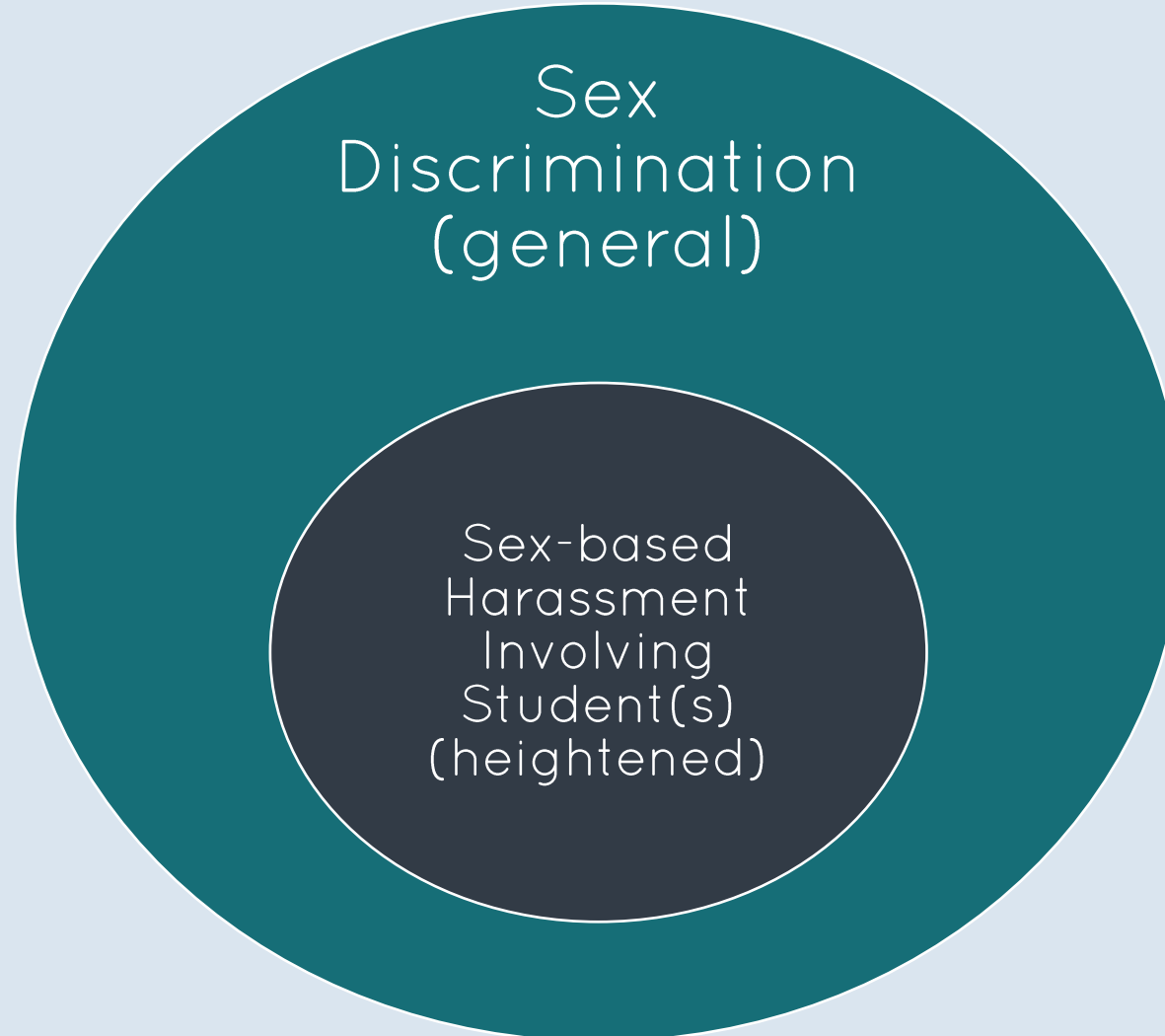
Covers all conduct impacting participation in a program or activity in the U.S.

Covers students, employees and third parties participating (or attempting to participate) in programs or activities

Grievance
Process for
Discrimination on
Basis of Sex
Complaints

Grievance
Process for Sex-
Based
Harassment
Involving Student

Grievance Processes



Pregnancy and Parenting

- Pregnancy or related conditions = pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- Institutions must treat pregnancy or related conditions in the same way and under same policies as other temporary medical conditions
- Cannot discriminate on the basis of current, potential, or past pregnancy or related conditions or on the basis of current, potential, or past parental, family, or marital status

Gender identity

In the circumstances where it is ok to separate or treat differently on the basis of sex, institutions cannot do so by subjecting a person to **more than de minimis harm**.

“Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”

Sexual harassment =

conduct on the basis of sex that satisfies at least one of the following:

Quid Pro Quo

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

Hostile Environment

- Unwelcome sex-based conduct that is subjectively and objectively offensive and is so severe **or** pervasive that it limits or denies a person's ability to participate in/benefit from program or activity

VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

Hostile Environment Considerations

- Perspective of a “reasonable person” (consider age, abilities, positions of authority, etc.)
- Does it meet the definition (“so severe or pervasive”)?
- 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.

Examples of Sexual Harassment

- Unwelcome sexual flirtations, advances, touches, or propositions
- Verbal abuse of a sexual nature
- Requests for sexual favors
- Recording video or photographs of a sexual nature without consent
- Cyber harassment
- Punishing or threatening to take adverse action against a subordinate or student for refusing to comply with sexual demands

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

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



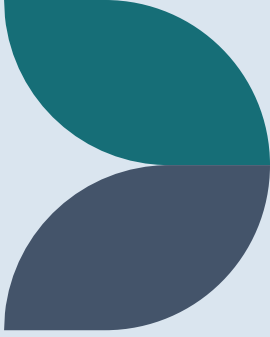
Sexual Misconduct

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

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”

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.

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.

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.

What are some examples of sexual exploitation?

Nondiscrimination Policy

Statement that institution does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity including, but not limited to, admissions and employment.

Notice of Nondiscrimination

Statement of nondiscrimination policy with information on how to report concerns.

- Restatement of Nondiscrimination Policy;
- Statement that inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Office for Civil Rights, or both;
- The name or title, office address, email address, and phone number of the Title IX Coordinator;
- How to locate the Nondiscrimination Policy and Grievance Procedures;
- How to report information about conduct that may constitute sex discrimination and how to make a complaint of sex discrimination;
- Ensure that Notice of Nondiscrimination is published in a prominent location on institution's website;

For each handbook, catalogue, announcement, bulletin, application for admission, and employment application either:

- Include the full contents of the Notice of Nondiscrimination, or
- Include a statement that the institution prohibits sex discrimination in all programs and activities; that concerns or questions may be reported to the Title IX Coordinator, and provide a link of the full Notice of Nondiscrimination from the institution's website

Program or Activity under Title IX

- All sex discrimination occurring under a recipient's education program or activity in the United States
- Obligation to address a sex-based hostile environment in an education program or activity even when some conduct alleged to be contributing to the hostile environment
 - occurred outside the recipient's education program or activity, or
 - outside the United States

Parties' relationship with the institution

Reporting Party

Must be a student or employee; or an individual participating or attempting to participate in the institution's education program or activity at the time of alleged discrimination

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

Responding Party

The person alleged to have violated policy prohibiting discrimination. 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.*



When Title IX does not apply

- Conduct that occurs outside the US unless contributing to hostile environment sex-based harassment
- Sexual harassment that occurs outside an institution's education program or activity unless contributing to hostile environment sex-based harassment

Title IX personnel roles and responsibilities

- Title IX Coordinator role and responsibilities
- Training mandates
- Role of the investigator
- Role of decision-makers
- Avoiding bias and conflicts of interest
- Role of advisors

Title IX Coordinator Responsibilities



RESPOND TO
CONCERNS



ACTIVELY MONITOR
FOR BARRIERS



Title IX Coordinator: Role and Responsibilities

Must designate at least one Title IX Coordinator

Should have significant autonomy and seniority

Consider how the Coordinator best fits into the institution's organizational chart

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

Training Requirements

	All employees	Investigators	Decisionmakers	Persons responsible for grievance procedure or supportive measures	Informal Resolution Facilitators	Title IX Coordinator / Title IX Team
Duty to address sex discrimination in programs and activities	✓	✓	✓	✓	✓	✓
Definitions of sex discrimination and scope of conduct covered (including sex-based harassment and accommodating pregnancy and related conditions)	✓	✓	✓	✓	✓	✓
Reporting obligations including responsibility to provide Title IX Coordinator name, contact and other information when notified of a student's pregnancy or related conditions	✓	✓	✓	✓	✓	✓
Institution's duty to respond promptly and effectively to reports of sex discrimination; duty to identify and address barriers to reporting; duties of non-confidential employees to report or otherwise respond when aware of conduct that may reasonably constitute sex discrimination		✓	✓	✓		✓
Grievance procedures under institution's policy		✓	✓	✓		✓
How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias		✓	✓	✓	✓ – No need to cover avoiding prejudgment of facts	✓

Training Requirements	All employees	Investigators	Decisionmakers	Persons responsible for grievance procedure or supportive measures	Informal Resolution Facilitators	Title IX Coordinator / Title IX Team
Rules and practices surrounding the institution's informal resolution process					✓	✓
Duty to coordinate efforts to comply with Title IX and Coordinator's responsibility for ultimate oversight of institution's Title IX obligations						✓
Specific actions to be taken to prevent discrimination and ensure equal access for students who are pregnant or have a related condition						✓
Overseeing institution's prompt and effective response to sex discrimination reports including: equitable treatment of parties; notifying the complainant of the grievance process and any informal resolution process (and same to the respondent if complaint is made); initiating the grievance process; determining whether institution should initiate a complaint; taking remedial steps regardless of whether a complaint is initiated						✓
Offering and coordinating supportive measures for parties						✓
Recordkeeping for at least 7 years of: all complaints of sex discrimination; institution's response; whether the grievance or informal process used; resulting outcome of any process used; all training materials to be made available to anyone upon request						✓

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-maker: Role and Responsibilities

- Could be investigator, adjudication panel, or hearing officers
- Must provide process to question parties and witnesses to adequately assess credibility
- If process includes a hearing, allow advisors to provide opening and closing statements and assist with questions
- Determines whether the institution's policy has been violated under the preponderance of evidence standard of review
- Determine sanctions - could be separate decision-maker(s) from responsibility decision-maker(s)
- Provides a written determination whether sex discrimination including a rationale
- Avoids bias and conflicts of interest
- Receives annual training



Appeals Officer: Role and Responsibilities

- Determines party's appeal under relevant appeal process (sex discrimination vs. sex-based harassment involving a student)
- May meet with parties
- Provides written determination 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 under the student sex-based harassment process (may also permit under the general grievance process for sex discrimination and non-student sex-based harassment)
- Advisors may attend meetings and interviews with the party
- Consider Advisor Guidelines for process
- What if an advisor is being overtly disruptive or not adhering to your Advisor Guidelines?

What happened
prior to the
Informal Resolution
Process?

TIXC Initial Conversation with Reporting Party

Process Options:

- Law enforcement report
- Grievance Process
- Informal Process
- Taking time to decide what to do next, if anything
- Potential for TIXC Complaint
- Preservation of evidence

Supportive Measures:

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

**Access to these resources is not contingent upon moving forward with a complaint*

Next steps for TIXC:

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



Informal Resolution: Notice Requirements

Before initiating process must provide notice to the parties of:

- The allegations
- The requirements of the informal process
- The right to withdraw at any time
- That any resolution will preclude future grievance procedures arising out of the same allegations
- Potential terms that may be requested
- The records that will be maintained
- Notification that an agreement is binding only on the parties
- Whether and how the institution could utilize information obtained through the informal process in a grievance procedure
- Statement that the institution reserves the right to take other appropriate steps to end any sex discrimination and prevent its recurrence even if the matter is resolved via Informal Resolution
- Facilitator cannot be investigator or decisionmaker
- Facilitator must be trained; cannot have a conflict of interest or bias



Informal Process Overview

Informal Process

Title IX Requirements

- Must be voluntary; parties must provide written consent to participate
- ~~Formal complaint required~~
- Allowed at any time prior to final responsibility decision being made
- TIXC has discretion
- TIXC still responsible for addressing discrimination
- ~~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

Can use at any time prior to final determination of responsibility.

Can use for any type of report/allegation(s).

What is Mediation?

- ❖ A process where the parties meet with an impartial and neutral person who assists them in the negotiation of their differences.
- ❖ Mediation leaves the decision power totally and strictly with the parties.
- ❖ The mediator does not decide what is "fair" or "right," does not assess blame nor render an opinion on the merits or chances of success if the matter is investigated.
- ❖ The mediator acts as a catalyst between opposing interests attempting to bring them together by defining issues and eliminating obstacles to communication, while moderating and guiding the process to avoid confrontation and ill will.

Modified from JAMS

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 Considerations

- Requirement that a successful resolution via the informal process will preclude future grievance procedures arising out of the same allegations.
- 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? Do you want to prohibit the use of the informal process for certain cases?
- What potential terms will be available through this process?
- Assess potential impact on community.
- How will you maintain documentation of how internal decisions were reached re: whether to offer informal resolution?

Your Role as a Facilitator

Facilitator role

- Remain impartial
- Do not need to know all the details of the reported incident
- Explain to parties their rights and the limitations of the process
- Attempt to determine agreeable outcomes for both/all parties
- You are not an advisor and it is not within your scope to consider either party's interests
- Refrain from judgment or opinions about the validity of a matter
- Avoid conflicts of interest and bias

Conflicts of Interest



Biases *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 partiality



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

Avoiding Bias

Bias = tendency
to like or dislike;
may involve
stereotypes

Might be
implicit

Avoid
prejudgment of
the facts

Frequent implicit biases

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

Conflict, or not?

- Complainant is a star athlete and her coach is a member of the panel pool.
- Respondent worked with one of the decision-makers on a potential conduct violation.
- Susan, the investigator, majored in Women and Gender Studies as an undergrad.
- Complainant is an Econ major, and one of the decision-makers is an Econ professor.

Pre-process Logistics

Pre-Process Goals

- ☐ Explain Process to parties
- ☐ Opportunity to ask questions and make informed decisions
- ☐ Institution weighs in on whether to permit Informal Resolution
- ☐ Make necessary preparations



Explaining the Process

- Meet with parties separately
- Explain purpose and logistics
 - Not an investigation
 - Either party can discontinue the process
 - Binding only if agreement reached / never imposed
 - Permitted to have an advisor*
 - Identify mediator and discuss bias / conflict issues
- Support process without selling



Prepare for Questions

How long will this take?

What do most people do?

Why aren't you punishing him?

Why would I do this when I didn't do anything wrong?

Do I need a lawyer?

Will it look bad if I don't agree?

Will we be in the same room?



Important Question...

What information will be documented and could potentially be shared through an informal resolution process? Parties will want to know the answer to this...

Conducting an Informal Resolution Process

Initial Conversation

- Meet with parties separately
- Confirm no concerns about bias / conflict of interest
- Discuss Facilitator's role in process
- Recommend having an advisor
- Not an investigation / feel free to share information (can that be shared later?)
- Remind of option to discontinue
- Answer questions



Facilitator Strategies

- Be an active listener
- Remain impartial / neutral
 - As to what happened
 - As to terms of resolution
- Seek to understand not only the “what” but the “why” before asking what parties want
- Be realistic about options
- Don’t push an outcome
- Use email to summarize and document

Take your time

- Explain this may take multiple meetings / let time be on your side (within reason)
- Keep moving and keep parties invested in process
- Want informed and voluntary agreement



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

Potential Terms of Resolution

- Suspension
- No contact order
- Nondisparagement
- 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**



Next Steps: When does it end?

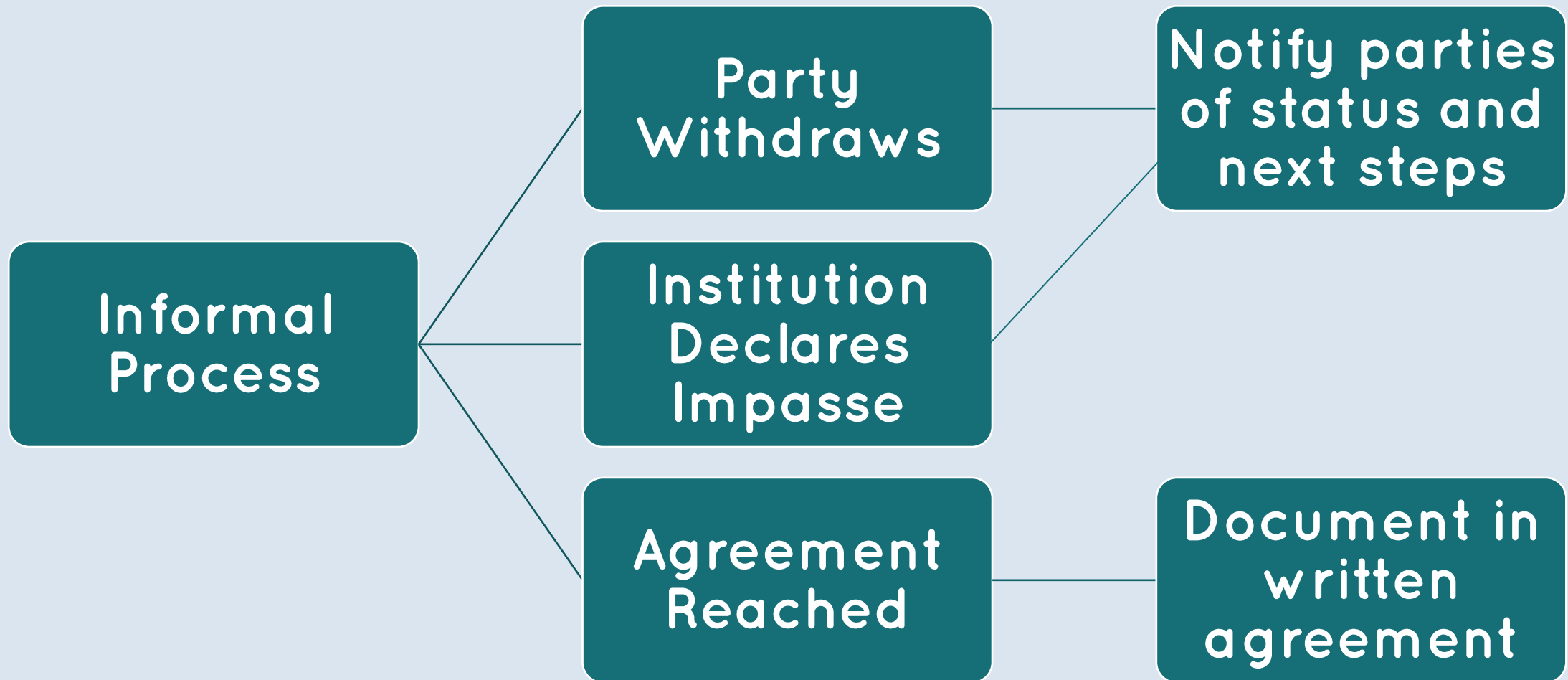
- Keep going with process or...
- Declare impasse or...
- Either party may bow out or...
- Agreement reached.



Collaboration with Title IX Coordinator

- How often should you provide status updates to the Title IX Coordinator?
- What are some reasons why you might need to get the Coordinator's input or involvement?
- Should you confer with the Coordinator prior to finalizing the agreement?

Wrapping up the Process



Documenting Mediated Settlement

- Summary of process / voluntary & not an investigation
- Reviewed and approved by institution
- Identified facilitator / opportunity to raise conflicts/bias concerns
- Details about the terms of the agreement
- Facilitator has no duty to advise of rights or protect rights
- Agreement is binding and may adversely impact parties' rights
- Impact of noncompliance (separate disciplinary process and/or nullification of agreement)

What next?

The Facilitator's job is done!

Consider what notes/documentation you should share with the Coordinator for recordkeeping purposes.

Title IX Coordinator will be responsible for maintenance of the agreement and ensuring its terms are upheld.

If you have any feedback about how the process went or areas for improvement next time, consider sharing those with the Coordinator.

Recordkeeping

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



Records to maintain:

- Any informal resolution and the outcome of the process
- Consent forms
- Documents related to decisions about whether to offer informal process
- Training materials for informal resolution facilitators

Discussion

Examples of successful informal resolution processes?

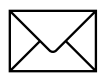
Examples of unsuccessful informal resolution processes?

- What went wrong?
- Lessons learned?

Helpful Resources (all free!)

- Ballast Title IX Policy & Procedure Implementation Guide (2024)
- Ballast 2024 Title IX Regulations Webinar
 - <https://somsull.com/ballast/ballast-resources/>
- Ballast Office Hours
 - <https://somsull.com/ballast/ballast-trainings/>
- U.S. Department of Education Policy Resource
 - [resource-nondiscrimination-policies.pdf \(ed.gov\)](https://www.ed.gov/resource-nondiscrimination-policies.pdf)

Keep in touch!



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