



2020 TITLE IX ADVISOR TRAINING

A Certificate Course



COURSE OVERVIEW

1	An Introduction to Title IX
2	Role of the Advisor in the Title IX Grievance Process
3	FAQ with Professional Title IX Advisors
4	Understanding Trauma
5	Title IX Hearings- Expert Analysis
6	Informal Resolution Processes- Expert Analysis

LEARNING OBJECTIVES



Gain an understanding of the definition of sexual harassment under Title IX.



Develop an understanding of the Title IX process for investigations, hearing and informal resolution processes.



Identify the advisor's role during each stage in the Title IX Grievance Process



Learn strategies for effectively supporting Complainants and Respondents in a trauma-informed way.

LESSON COMPLETION

Title IX Solutions, LLC

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Level I: Navigating the 2024 Title IX Regulations with Confidence

3% complete

Search by lesson title

Pre-Training Materials0/3

Decoding the 2024 Title IX Regulations: A Roadmap for Educational Institutions1/6

Chapter & Speaker IntroductionVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Defining Sex Discrimination & Sex-Based HarassmentVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Revised Scope & Jurisdiction

Revised Scope & Jurisdiction

106.31 – EDUCATION PROGRAM

“In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm.”

Up next

Policy, Training & Reporting Requirements

CONTINUE →

Noted Changes

• 106.31(a)(2) was added addressing gender identity

Comments


• There is pending litigation regarding gender identity protection that may impact this part of the regulations.

MARK INCOMPLETE


CONTINUE →


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STEPPING AWAY




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Cara K 




See Overview




Coming Soon




June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)




See Overview




Start Course




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Start Course




An Introduction to the 2024 Title IX Regulations




See Overview




Start Course




See Overview




Start Course



July 23-24, 2024: Virtual Title IX Training



See Overview



Start Course



CERTIFICATE OF COMPLETION

THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

CARTER WILSON

FOR SUCCESSFULLY COMPLETING

*LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS
WITH CONFIDENCE*

ON JULY 18, 2020

Learning Objectives:

- Articulate the key changes outlined in the revised 2024 Title IX regulations, including the updated scope of sex-based harassment and discrimination
- Explain the new requirements for institutions in responding to complaints, including investigation procedures and timelines
- Identify and differentiate the roles of various Title IX personnel within your institution
- Develop strategies for implementing the new Title IX regulations effectively within your educational setting through policy and practice
- Facilitate prompt, equitable, and compliant grievance processes of sex-based harassment and discrimination complaints
- Apply best practices to foster a safe and inclusive education program



Cara Kuhn
CARA KUHN
Training Coordinator
Title IX Solutions, LLC



POSTING REQUIREMENTS

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

Such training materials must also be kept for seven years.

POSTING REQUIREMENTS

Facilitating Informal Resolution Processes

0/4

▼

Informal Resolution Agreements and Outcomes

0/2

▼

Potential Challenges in Facilitating Informal Resolution Processes

0/2

▼

Understanding Trauma

0/6

▼

Course Wrap-up

0/3

▼

Title IX Posting Requirements

0/2

▲

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

INSTRUCTIONS · PREREQUISITE

Final Combined Course Materials

DOWNLOAD

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

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

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

Program materials available for download:

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

Instructions for posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer


COMPLETE & CONTINUE →


TITLE IX SOLUTIONS, LLC

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June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



An Introduction to the 2024 Title IX Regulations



July 23-24, 2024: Virtual Title IX Training
Use code INTRO24REG to save \$100

THANK YOU!



TITLE IX SOLUTIONS, LLC

—
AN
INTRODUCTION
TO TITLE IX



SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

IN THIS CHAPTER

A large, white, serif Roman numeral 'IX' centered within a white square frame.

HISTORY OF
TITLE IX



TITLE IX
DEFINITIONS



PARTICIPANTS IN THE
TITLE IX PROCESS



OVERVIEW OF THE
TITLE IX PROCESS

HISTORY OF TITLE IX



Title IX of the Education Amendments of 1972

“

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

”

20 U.S.C. §1681(a)

CREATION OF TITLE IX

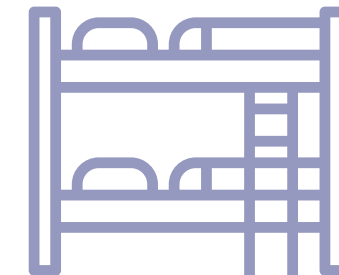
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

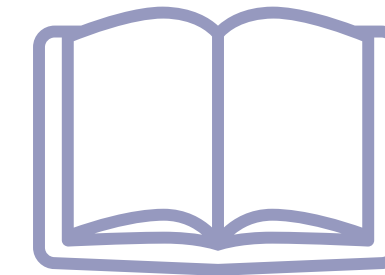
Designed initially to address inequities in:



Admissions



Residence
Life



Academic
Opportunities



Extracurricular
Activities

WHO IS PROTECTED?

All students regardless of:

- Sexual Orientation
- Gender Identity
- Nationality
- Immigration Status
- Race
- Ability

All genders are included

Employees - faculty, staff, administrators

Applies to:

- State and local educational agencies that receive federal funding
 - Vocational, professional, and higher education institutions

BRIEF HISTORY OF TITLE IX



JUNE 23, 1972

Title IX becomes
law and addresses
sex-based
discrimination



APRIL 4, 2011

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



AUGUST 14, 2020

New regulations go into
effect, requiring all
educational institutions
to follow specific
procedures in response
to sexual harassment

NOTE ON THE 2024 REGULATIONS

IN APRIL OF 2024, THE DEPARTMENT OF EDUCATION RELEASED NEW REGULATIONS EXPANDING THE SCOPE OF TITLE IX.

- Many states have challenged these new regulations through injunctions which has led to different school and states following different Title IX guidance.
- Title IX is a continually evolving landscape which makes training that much more important!

DEAR COLLEAGUE LETTER 2025



On February 4, 2025, the Department of Education released a new Dear Colleague letter that announced that the Final Rule and 2024 Title IX Regulations are no longer effective in any jurisdiction. This is in light of the *Tennessee vs. Cardona* court decision on January 9, 2025.

TITLE IX DEFINITIONS



ACTUAL KNOWLEDGE

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

REPORT VS. COMPLAINT

REPORT

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

FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination

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REMINDER:



**MAKING A REPORT OR A COMPLAINT
TO YOUR INSTITUTION OR
CONFIDENTIAL RESOURCE IS NOT
EQUIVALENT TO FILING CHARGES
WITH LAW ENFORCEMENT.**

SUPPORTIVE MEASURES

WHAT?

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

WHEN?

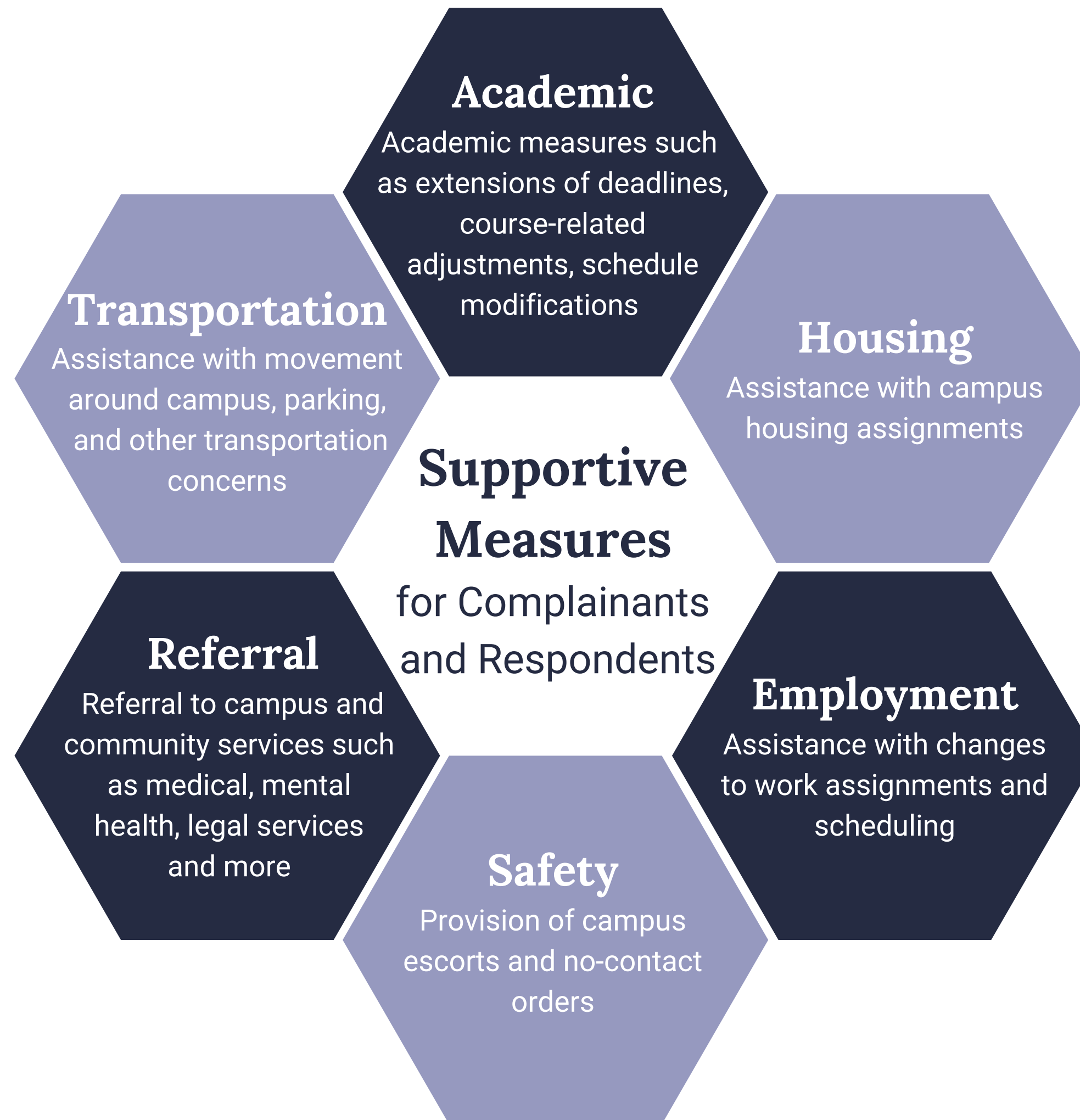
- Available before or after filing a complaint or where no complaint has been filed

WHY?

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

HOW?

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



AMNESTY PROVISION

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

ADVISOR TIP



Remind your party of the amnesty provision if it is referenced in the school's policy.

CONFIDENTIALITY

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

ADVISOR TIP



Keep an eye out for confidentiality agreements or something similar from the Title IX Coordinator. You may need to sign this document.

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
 - Interfering with any right or privilege under Title IX
 - 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 Title IX

RETALIATION

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



EXAMPLE ONE:

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



EXAMPLE TWO:

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

ADVISOR

TIP



Listen to your party. Have they experienced retaliation? Do they feel that their friends (witnesses) are being forced, coerced, or threatened?

REMEDIES AND SANCTIONS

REMEDIES

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

SANCTIONS

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

EDUCATION PROGRAM OR ACTIVITY

THE EDUCATIONAL PROGRAM OR ACTIVITY INCLUDES ALL OPERATIONS OF THE SCHOOL, BOTH ON OR OFF CAMPUS.

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

STANDARD OF PROOF

STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.

Preponderance of the Evidence

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

Clear and Convincing

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

STANDARD OF PROOF

Preponderance of the Evidence

Anything that tips the scale to more than 50/50

Clear and Convincing

More likely to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

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

Where does your needle point?

PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW

TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- All Title IX personnel are **prohibited from having a conflict of interest or bias for or against Complainants or Respondents** generally or the specific Complainant or Respondent participating in the process.
- As the Title IX Advisor, **you** may be the only person “on your party’s side” during the Title IX process.
 - You will likely be the only person permitted to attend all interviews & meetings.
 - You will be the only person to accompany your party during the hearing & conduct cross-examination.
 - You are the only person permitted under Title IX to be “partial” to your party.

ADVISOR
TIP



Be aware of potential conflicts of interest or biases for or against your party from Title IX personnel during the process.

TITLE IX PERSONNEL

EXCEPT FOR THE TITLE IX COORDINATOR, TITLE IX PERSONNEL MAY BE INTERNAL OR EXTERNAL.



Title IX
Coordinator



Deputy
Coordinators



Title IX
Investigator



Decision-
Maker



Informal Resolution
Facilitator



Advisor



Appellate
Decision-Maker

TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

CAN

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

CANNOT

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

ADVISOR
TIP



The Title IX Coordinator will be your point of contact for all of your questions related to the Title IX process.

COMPLAINANT

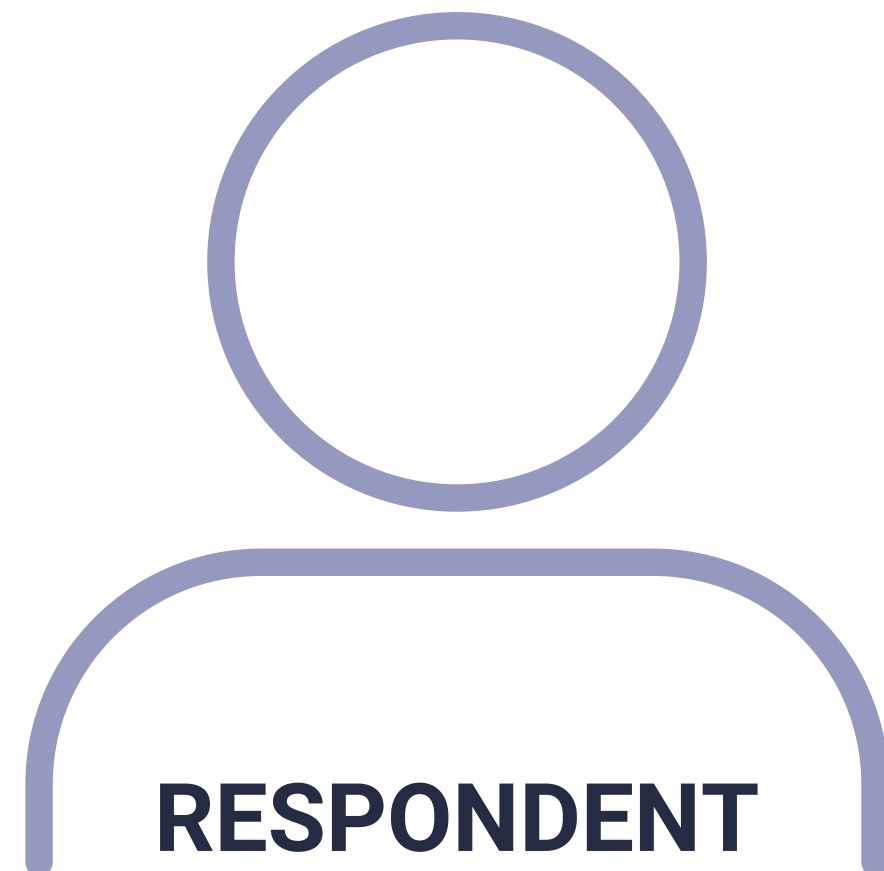
ALLEGED TO BE THE **VICTIM** OF CONDUCT THAT COULD
CONSTITUTE SEXUAL HARASSMENT



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

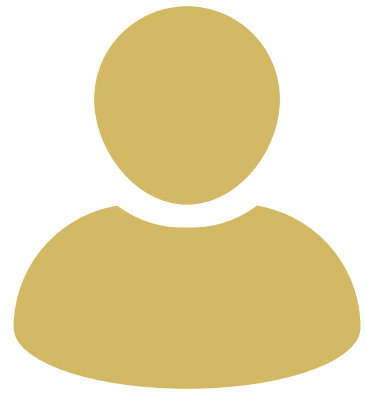
RESPONDENT

REPORTED TO BE THE ALLEGED **PERPETRATOR** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT.



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

TITLE IX INVESTIGATOR

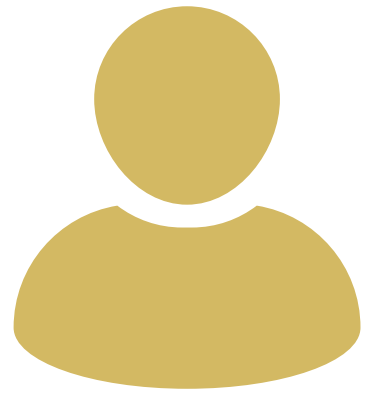


MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.

RESPONSIBILITIES:

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

TITLE IX DECISION-MAKER

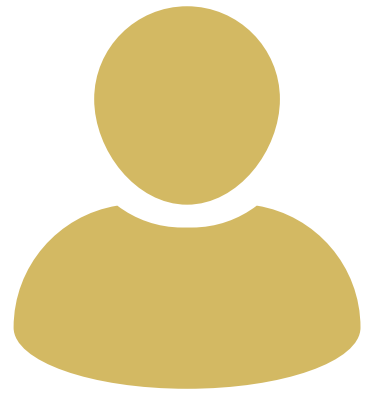


**MAY BE A SINGLE DECISION-MAKER OR A HEARING PANEL,
SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).**

RESPONSIBILITIES:

- Oversees and facilitates the Title IX adjudication process, including a hearing if the school has one
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the credibility assessment process
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

APPELLATE DECISION-MAKER



MAY BE A SINGLE APPELLATE DECISION-MAKER OR APPELLATE PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

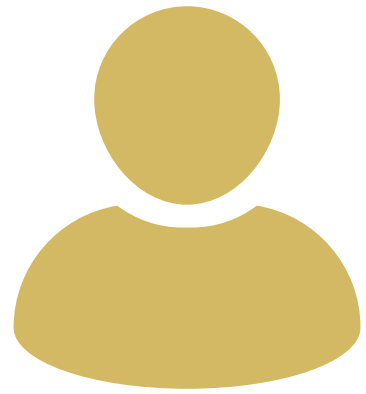
RESPONSIBILITIES:

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



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

INFORMAL RESOLUTION FACILITATOR

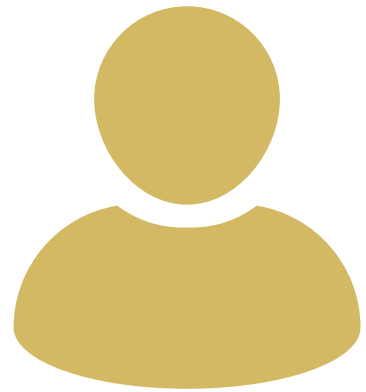


MAY BE A SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR. CAN BE THE TITLE IX COORDINATOR.

RESPONSIBILITIES:

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

ADVISOR



COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.



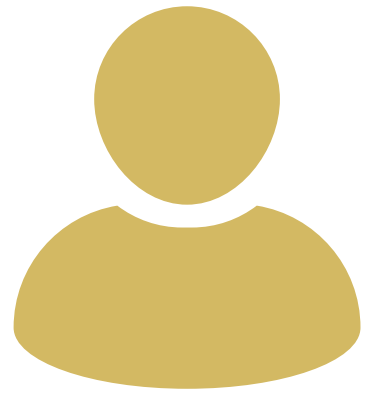
An Advisor may be, but is not required to be, an attorney.



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

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

ADVISOR



COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.

RESPONSIBILITIES:

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

OVERVIEW OF THE TITLE IX PROCESS

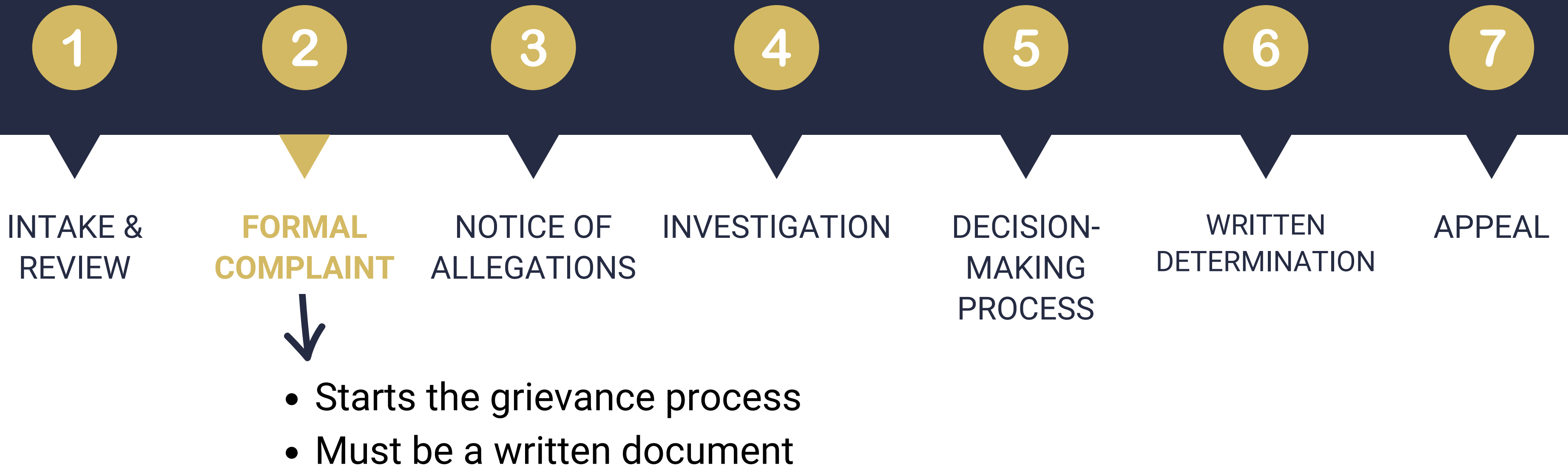


GRIEVANCE PROCESS



- Title IX Coordinator must respond in a way that's not deliberately indifferent
- Meet with the Complainant to discuss supportive measures and process for a formal complaint

GRIEVANCE PROCESS

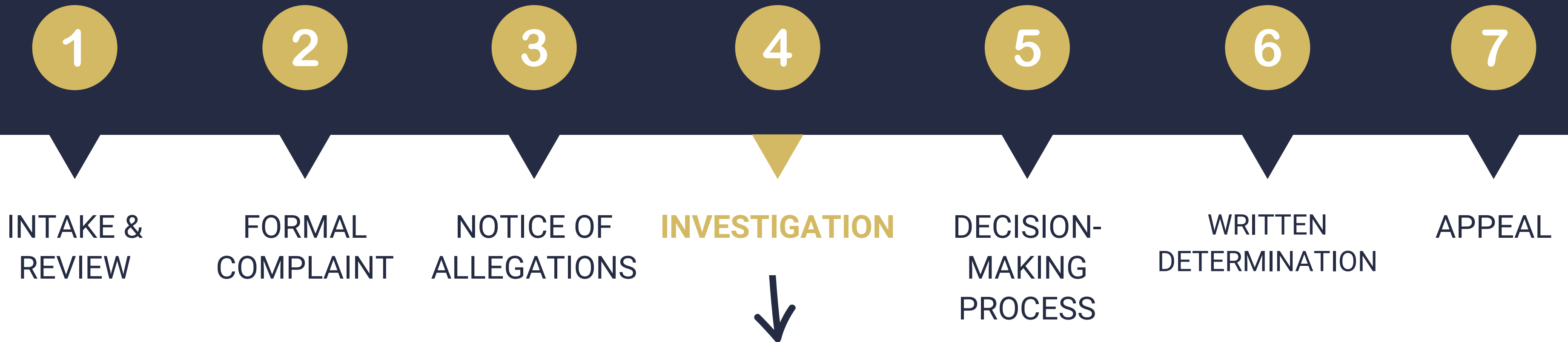


GRIEVANCE PROCESS



- Provided to both parties outlining the grievance procedures, information about the allegations, prohibition of retaliation, and the parties' rights

GRIEVANCE PROCESS



- Parties have the opportunity present witnesses and evidence
- Parties also have the right to access, review and respond to evidence gathered during the investigation

GRIEVANCE PROCESS



- Decision-maker has opportunity to question parties and witnesses to evaluate allegations and assess credibility

*Some conduct does not require a live hearing. The Title IX Coordinator will be able to help identify cases when a live hearing is required and cases when it is not.

GRIEVANCE PROCESS



- Standard of evidence is used to determine whether a policy violation occurred
- Notification is issued to the parties in writing

GRIEVANCE PROCESS



- Parties have the right to appeal the process on the following bases:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that would change the outcome

INFORMAL RESOLUTION

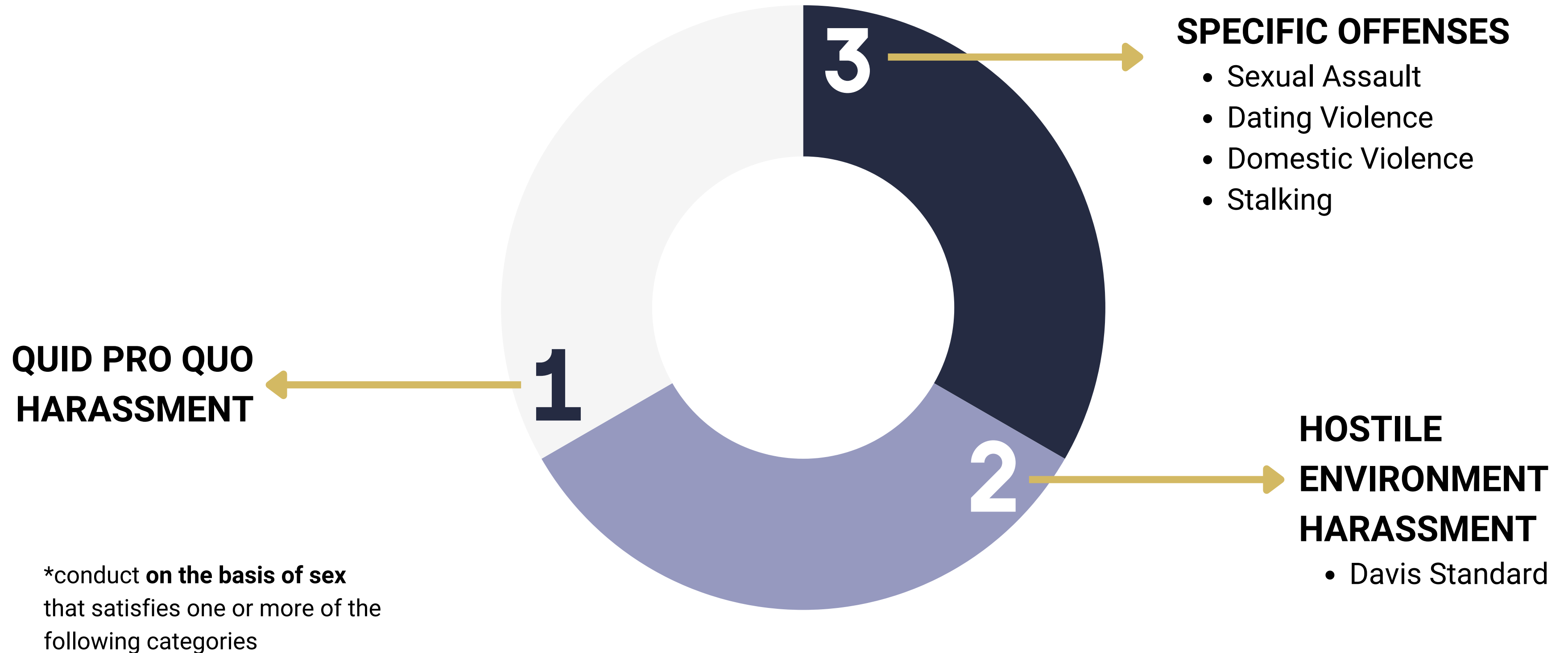
AT ANY TIME PRIOR TO DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED, A SCHOOL MAY OFFER TO A COMPLAINANT AND RESPONDENT AN INFORMAL RESOLUTION PROCESS.

- Cannot offer informal resolution if the complaint includes allegations that:
 - An employee engaged in sexual harassment of an elementary school or secondary school student
 - Process would conflict with Federal, State or local law
- Schools cannot require or pressure the parties to participate in an informal resolution process.
- The school must obtain the parties' voluntary consent to the informal resolution process

DEFINING SEXUAL HARASSMENT



SEXUAL HARASSMENT



SEXUAL HARASSMENT

1

QUID PRO QUO

DEFINITION:

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

SCENARIO



Dr. Smith tells Amy, a graduate student, that her research funding and recommendation letter for a prestigious fellowship depends on them going out for drinks and spending time together after hours. Amy feels uncomfortable but fears rejecting the invitation will jeopardize her academic career.

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

Unwelcome conduct determined by a reasonable person to be so **severe**, **pervasive** and **objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity.

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

Unwelcome conduct determined by a reasonable person to be so **severe**, **pervasive** and **objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity.

- ☒ Severe
- ☒ Pervasive
- ☒ Objectively Offensive

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

EXAMPLES MAY INCLUDE:

- Sexual flirtations, advances, or propositions
- Requests for sexual favors
- Jokes or comments of a sexual nature
- Cyber or electronic harassment of a sexual nature
- Verbal commentary about an individual's body
- Disseminating photos or videos without consent
- Visual conduct such as leering or making gestures
- Unwanted kissing

SEXUAL HARASSMENT

2

HOSTILE ENVIRONMENT

DEFINITION:

Unwelcome conduct determined by a reasonable person to be so **severe**, **pervasive** and **objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity.

SCENARIO



Alex (they/them) regularly faces sexual jokes and unwanted comments about their appearance from peers in the locker room. When asked to stop, Alex's peers continue to harass them, making Alex feel unsafe and uncomfortable.

SEXUAL
HARASSMENT

3

**SPECIFIC
OFFENSES**

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

*As defined by the Clery Act

SEXUAL
HARASSMENT

3

SEXUAL
ASSAULT

DEFINITION:

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

TYPES OF SEXUAL ASSAULT:

- Rape
- Fondling
- Incest
- Statutory Rape (sex with a minor)

*as defined in Code of Federal Regulations (Title 34, Part 668, Subpart D, Appendix A)

SEXUAL
HARASSMENT

3

DATING
VIOLENCE

DEFINITION:

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship

SEXUAL
HARASSMENT

3

DOMESTIC
VIOLENCE

DEFINITION:

Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
- Shares a child in common with the victim
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

SEXUAL
HARASSMENT

3

STALKING

DEFINITION:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

EXAMPLES:

- Repeated, unwanted communication by phone, email, mail, texting, social media, etc.
- Repeatedly leaving or sending the victim unwanted items or presents
- Making direct or indirect threats to harm
- Damaging or threatening to damage personal property
- Repeatedly posting information or spreading rumors about the victim

CONSENT

THE REGULATIONS DO NOT INCLUDE A DEFINITION OF CONSENT, BUT IT DOES REQUIRE SCHOOLS TO ADOPT A DEFINITION OF CONSENT.






ADVISOR TIPS:

- Advisors need to review the school's definition of "consent" in the sexual harassment policy.
 - Definitions of consent vary and are often influenced by state laws
 - Lack of consent or inability to give consent is important
 - Evidence or witness statements supporting or refuting the parties' statements about consent are important

CONSENT

QUESTIONS TO ASK YOURSELF THAT RELATE TO CONSENT:

-  **WAS THE COMPLAINANT INCAPACITATED?**
-  **WHY IS CONSENT PERCEIVED TO BE PRESENT OR ABSENT IN THIS CASE?**
-  **WAS CONSENT GIVEN UNDER COERCION, FORCE, OR THREATS?**

NON-TITLE IX INCIDENTS

SCHOOLS TYPICALLY ADDRESS NON-TITLE IX INCIDENTS, OFTEN REFERRED TO AS "SEXUAL MISCONDUCT."

- May be "sexual harassment" but occurred outside of the U.S. or school's program or activity; or
- May have occurred in an educational program or activity but is not defined as "sexual harassment."
- School may follow a parallel Title IX grievance process or a completely different process (referenced in Code of Conduct, Employee Handbook, etc.).

ADVISOR
TIP



Advisors may be included in these processes. You must clearly understand which grievance process taking place and the parties' rights in each process.

TITLE IX SOLUTIONS, LLC

ROLE OF THE ADVISOR IN THE GRIEVANCE PROCESS



IN THIS CHAPTER



PREPARING FOR THE
TITLE IX GRIEVANCE
PROCESS



INVESTIGATION
PROCESS



LIVE HEARINGS AND
CROSS EXAMINATION



ELEMENTARY AND
SECONDARY
INSTITUTIONS



DETERMINATION OF
RESPONSIBILITY AND
APPEALS



OPTIONAL ELEMENTS
OF THE TITLE IX
PROCESS



SPEAKER

SUSANNA MURPHY

TITLE IX SOLUTIONS
LEAD INVESTIGATOR

PREPARING FOR THE TITLE IX GRIEVANCE PROCESS



GETTING STARTED

TOP 5 TASKS TO COMPLETE WHEN ASKED TO BE AN ADVISOR

1. Clarify which grievance process will take place
2. Review the school's Sexual Harassment Policy
3. Review the school's Guidelines or Expectations of the Advisor
4. Communicate with your Party
5. Communicate with the Title IX Coordinator

1

CLARIFY THE GRIEVANCE PROCESS



HAS A FORMAL COMPLAINT BEEN FILED AND THE NOTICE OF ALLEGATIONS BEEN SENT TO START THE TITLE IX GRIEVANCE PROCESS?



DOES THE SCHOOL USE AN ALTERNATE COMPLAINT RESOLUTION PROCESS FOR NON-TITLE IX SEXUAL HARASSMENT OR SEXUAL MISCONDUCT?

2

REVIEW THE SEXUAL HARASSMENT POLICY



DO YOU FULLY UNDERSTAND THE PROCEDURES?



**ARE YOU FAMILIAR WITH YOUR PARTY'S RIGHTS
UNDER TITLE IX & UNDER THE SCHOOL'S POLICY?**

3

REVIEW EXPECTATIONS OF THE ADVISOR

SCHOOLS MAY ESTABLISH GUIDELINES REGARDING THE ADVISOR'S ROLE IN THE TITLE IX PROCESS.

- Typically provided by the Title IX Coordinator
- If not provided, ask the Title IX Coordinator to direct you to this resource.

COMMON GUIDELINES

- Title IX Investigators may only permit advisors to speak when directly asked a question during the interviews.
- Some schools prohibit advisors from speaking during the interviews.
 - This guideline is often implemented to encourage parties to share their perspectives in their own words.

4

COMMUNICATE WITH YOUR PARTY

MEET WITH YOUR PARTY PRIOR TO ANY MEETING OR INTERVIEW

- Aim to understand their perspective, concerns, etc.
 - Where are they are in the Title IX process?
 - Have they met with the Title IX Coordinator?
 - Have they been interviewed by the Title IX Investigator?
- Set expectations on boundaries and sharing of information
- Keep in communication with your party throughout the process
- Stay in touch with your party after the grievance process is complete

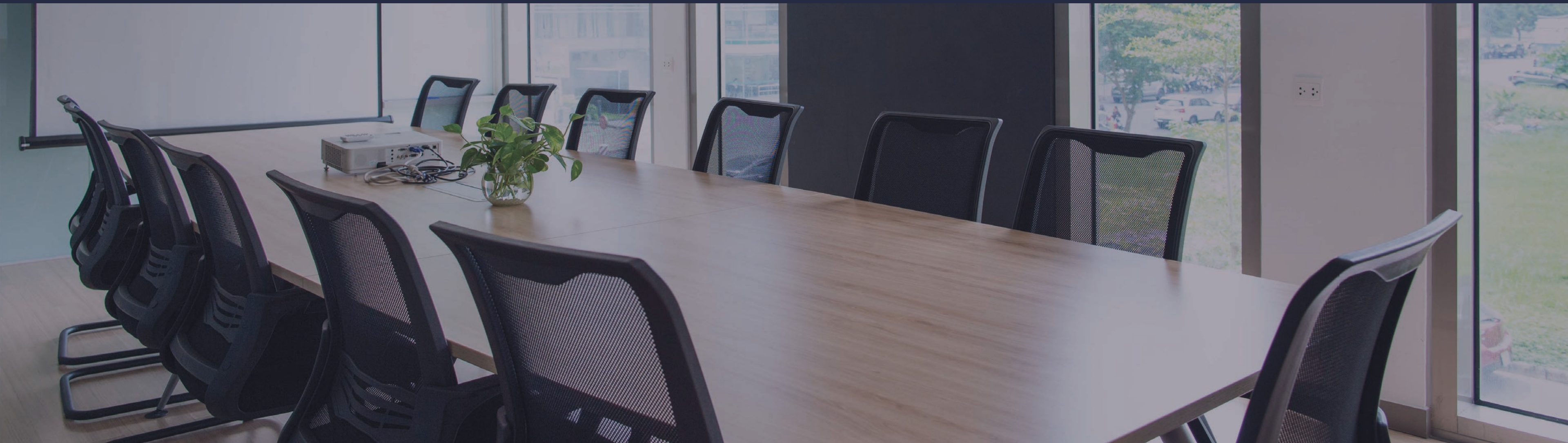
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COMMUNICATE WITH THE COORDINATOR

THE TITLE IX COORDINATOR IS YOUR POINT OF CONTACT FOR ANY QUESTIONS YOU HAVE ABOUT THE TITLE IX PROCESS

- Ask questions about the Title IX Grievance Process
- Review & sign Non-Disclosure, Confidentiality and/or FERPA agreements
- Review & sign waivers allowing the school to copy you on emails sent to the party (notices of interviews, meetings, hearings, etc.), if available
 - Discuss this option with your party prior to signing & obtain their consent.

INVESTIGATION PROCESS



ELEMENTS OF THE INVESTIGATION



INTERVIEWS

ADVISORS ARE PERMITTED TO ATTEND BUT NOT REQUIRED TO BE PRESENT FOR THE INTERVIEW TO OCCUR.

INVITATION TO INTERVIEW

- A right under Title IX
- Sent to the party several days before the scheduled interview so that your party has sufficient time to prepare to participate in the interview

ENCLOSED IN THE INVITATION

- Date & Time of Interview
- Location of Interview
- Participants, including the name & title of the Title IX investigator
- Purpose of the Interview



Do you or your party foresee a potential conflict of interest or bias on the part of the Title IX Investigator?

INTERVIEWS

THE ADVISOR'S ROLE WILL LIKELY BE LIMITED DURING THE INTERVIEW.

PREPARING FOR THE INTERVIEW

- Review potential questions
- Listen to their story
- Provide feedback, if solicited
- Mention that you may not be permitted to speak during the interview

DURING THE INTERVIEW

- Let your party speak
 - This is their interview
- Is your party struggling?
 - Do they need a break? Water?
 - Can you help clarify what they may be trying to say?
 - Should you stop the interview?

EVIDENCE COLLECTION

COMPLAINANT & RESPONDENT HAVE AN EQUAL OPPORTUNITY TO:



Present witnesses, including
fact & expert witnesses



Gather & present evidence
(inculpatory and exculpatory)



Discuss the allegations under
investigation

EVIDENCE COLLECTION

BURDEN OF PROOF

- Burden of proof and burden of gathering evidence sufficient to reach a determination rest on the school, not the parties or their advisors.

PROHIBITED EVIDENCE

- The school cannot access, consider, disclose, or use treatment records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in this capacity.
 - School can only obtain such records with the party's voluntary, written consent.

PARTY & ADVISOR EVIDENCE REVIEW

TITLE IX INVESTIGATOR MUST PROVIDE BOTH PARTIES & THEIR ADVISORS AN EQUAL OPPORTUNITY TO INSPECT AND REVIEW ANY EVIDENCE OBTAINED AS PART OF THE INVESTIGATION THAT IS DIRECTLY RELATED TO THE ALLEGATIONS RAISED IN THE FORMAL COMPLAINT.

- We refer to this information as the Investigation File.
- Schools may also use the term preliminary investigative report to refer to this information.

INVESTIGATION FILE

WHAT IS IT?

- All evidence directly related to the allegations
- Includes evidence that the school does not intend to rely upon when reaching a determination.
- Inculpatory & exculpatory evidence

WHAT TO DO WITH IT?

- Carefully review the investigation file
- Understand what is “relevant” versus “directly related” evidence
- Inspect & review the evidence within 10 days
- Submit a written response to the investigative report



All evidence must be made available to the parties, but not all evidence may be “relevant.” Reviewing the investigation file provides you and your party the opportunity to argue if certain evidence is relevant or not.

QUESTIONS TO ASK WHILE REVIEWING THE FILE



**DOES IT CONTAIN EVIDENCE OF PAST
SEXUAL MISCONDUCT?**



IS THERE EVIDENCE OF CONSENT?



**IS THERE EVIDENCE OF PAST
BEHAVIOR?**

- Does this evidence directly relate to the allegations or is it character evidence?



**WERE ALL RELEVANT WITNESSES
INTERVIEWED?**



**WERE ALL DOCUMENTS SUBMITTED AND
CONSIDERED?**

INVESTIGATIVE REPORT PREPARATION

THE INVESTIGATOR PREPARES THE INVESTIGATIVE REPORT

- Considers the parties' (and advisors') responses to the Investigation File
- Creates the Investigative Report to fairly summarize relevant evidence
- If hearing is required, sends the report to the parties and advisors at least 10 days prior to the hearing
- If hearing is not required, sends the report to the parties and advisors at least 10 days prior to the determination

PARTIES AND ADVISOR REVIEW & RESPONSE

YOU MAY DISAGREE WITH WHAT THE INVESTIGATOR DETERMINES AS “RELEVANT” EVIDENCE

- Make the argument for or against that evidence in your written response
 - There may be evidence you want to include or exclude
- Argue for or against that evidence to the decision-maker at the hearing



REMINDER:

WHAT IS NEVER “RELEVANT” UNDER TITLE IX?



- Evidence about a Complainant’s sexual predisposition
- Evidence about a Complainant’s prior sexual behavior, except when:
 - Questions & evidence are offered to prove someone other than Respondent committed by alleged conduct; or
 - Questions & evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.

LIVE HEARINGS AND CROSS EXAMINATIONS



HEARINGS

ADVISORS ARE REQUIRED TO ACCOMPANY THE PARTY TO THE HEARING. ONLY ADVISORS MAY CONDUCT CROSS-EXAMINATION OF WITNESSES AND THE OTHER PARTY.

INVITATION TO THE HEARING

- A right under Title IX
- Sent to the party several days before the scheduled hearing so that your party has sufficient time to prepare to participate in the hearing
- May include additional guidelines or information about preparing for the hearing & cross-examination

ENCLOSED IN THE INVITATION

- Date & Time of Hearing
- Location of Hearing
- Participants, including the name & title of the Title IX Decision-Maker
- Purpose of the Hearing
- Same information should be enclosed when inviting the party to any pre-hearing meeting

WHAT TO EXPECT

POSTSECONDARY INSTITUTIONS

- Title IX Grievance Process must include a live hearing.
- The Title IX Coordinator and/or Decision-Maker may circulate procedural rules or guidelines & Rules of Decorum.
- A Pre-Hearing Meeting may take place before the hearing.
- The hearing must be live, either in-person or virtual.

ADVISOR
TIP



If you do not receive Rules of Decorum or Hearing Guidelines, ask the Title IX Coordinator for this information.

RIGHTS OF YOUR PARTY

- At the request of either party, the school must allow the live hearing to take place with the parties located in separate rooms, using technology to allow the Decision-Maker & parties to simultaneously see & hear cross-examination.
- Recording (audio or audiovisual) or a transcript of the hearing will be made available to the parties for their inspection & review.
- Each party has the right to cross-examine the other party & witnesses
 - Cross-examination must be conducted by the advisor.

CROSS-EXAMINATION

WHO?

- Advisors are permitted to question witnesses & the other party
- If a party does not have an advisor present, the school must provide an advisor without fee or charge to the party.
 - The advisor will be of the school's choice

WHY?

- To establish facts and/or challenge credibility of witnesses and parties

HOW?

- Directly, orally, and in real time by the party's advisor
- Only relevant questions may be asked of a party or witness
- The Decision-Maker will determine the relevancy of questions before the party or witness answers.
 - Decisions to exclude a question as irrelevant will be explained.



WHAT IF A PARTY OR WITNESS DOES NOT SUBMIT TO CROSS-EXAMINATION?

- If a Party does not attend the hearing or refuses to answer certain questions at a hearing the Decision-Maker cannot draw an inference about the determination based SOLELY on the individual's absence from the hearing or refusal to answer questions.



DO I HAVE TO CROSS-EXAMINE WITNESSES AND THE OTHER PARTY?

- Title IX provides the “opportunity” for each party (through the advisor) to conduct cross-examination. Cross-examination is not required.
- Advisors are also not required to conduct cross-examination “to the fullest extent possible.”

POST-HEARING IMPACT STATEMENTS

SOME SCHOOLS INVITE THE PARTIES TO WRITE AND SUBMIT IMPACT STATEMENTS TO THE DECISION-MAKER.



ADVISOR TIPS:

- Review the school's policy to find out if this an option for your party.
- Note when the statement should be submitted to the Decision-Maker.
- Review the expectations of the advisor to understand your role in this process.
- Drafting the impact statement will likely be the responsibility of the party, but your party may ask you to proofread their statement.

TIPS TO HELP YOUR PARTY PREPARE



ENSURE THAT YOUR PARTY UNDERSTANDS WHEN AND WHERE THE HEARING IS TAKING PLACE.



RELAY ALL INFORMATION ABOUT THE FORMAT OF THE HEARING TO YOUR PARTY.



DISCUSS POTENTIAL CROSS-EXAMINATION QUESTIONS THAT MAY BE ASKED OF YOUR PARTY & HELP PREPARE RESPONSES.



EXPLAIN THEIR RIGHT TO SUBMIT OR NOT SUBMIT TO CROSS-EXAMINATION & THE CONSEQUENCES OF EACH OPTION.

ELEMENTARY AND SECONDARY INSTITUTIONS



DETERMINATION OF RESPONSIBILITY

THE TITLE IX PROCESS MAY, BUT IS NOT REQUIRED TO, INCLUDE A HEARING.

- With or without a hearing, the school must send the investigative report to the parties to review & respond.
- Before reaching a determination of responsibility, the Decision-Maker must:
 - Provide each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness,
 - Provide each party with the answers, and
 - Allow for additional, limited follow-up questions from each party.

WHAT IS NEVER RELEVANT?

AS OUTLINED IN THE TITLE IX REGULATIONS, THE FOLLOWING EVIDENCE IS NEVER RELEVANT:

- Evidence about a Complainant's sexual predisposition
- Evidence about a Complainant's prior sexual behavior, except when:
 - Questions & evidence are offered to prove someone other than Respondent committed by alleged conduct; or
 - Questions & evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.



Decision-Maker must explain to the party proposing the questions any decision to exclude a question as irrelevant.



REMINDER:



**AFTER THE FINAL DETERMINATION
REGARDING RESPONSIBILITY IS
ISSUED, THE PARTIES HAVE THE
RIGHT TO AN APPEAL.**

DETERMINATION OF RESPONSIBILITY AND APPEALS



DETERMINATION OF RESPONSIBILITY

THE DECISION-MAKER MUST ISSUE A DETERMINATION REGARDING RESPONSIBILITY.

- Must apply the standard of evidence referenced in the school's policy.
- Required to include specific information, as stated in Title IX.
- Written determination will be provided to the parties simultaneously.
- If an appeal is not filed, determination is final when submission of an appeal is no longer considered timely.
- If an appeal is filed, determination is final when the determination in response to the appeal is issued.
- Title IX Coordinator is responsible for effective implementation of remedies.

STEP

1

**AFTER THE
DETERMINATION**

REVIEW THE DETERMINATION & CONSIDER THE BASES FOR APPEAL:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
- Additional bases of appeal provided in the school's policy

STEP

2

**AFTER THE
DETERMINATION**

ASK YOUR PARTY IF THEY WANT TO APPEAL THE DETERMINATION.

- Questions to consider:
 - Has the other party appealed & does your party need to respond?
 - If there is no appeal, has the Title IX Coordinator communicated with your party to explain how sanctions or remedies will be implemented?

RIGHT TO APPEAL

BOTH PARTIES HAVE THE OPPORTUNITY TO APPEAL THE DETERMINATION OF RESPONSIBILITY.

- Refer to the school's policy to learn about how to file an appeal.
 - Parties are often required to submit a written appeal to the Title IX Coordinator within a specific number of days following the issuance of the written determination.
- What happens if an appeal is filed?
 - The school will notify the other party in writing, implement appellate procedure for both parties equally, and give parties an opportunity to submit a written statement.
 - The Appellate Decision-Maker will review the appeal, the other party's response, and other case information.
 - The Appellate Decision-Maker will issue a written decision to the parties.
 - Title IX Grievance Process is complete upon the issuance of the appeal decision

SANCTIONS & REMEDIES

**AFTER THE CONCLUSION OF THE GRIEVANCE PROCESS,
CHECK ON YOUR PARTY.**



**HAVE THE SANCTIONS BEEN CLEARLY
EXPLAINED & ISSUED?**



ARE THE REMEDIES IN PLACE?

OPTIONAL ELEMENTS OF THE TITLE IX PROCESS



INFORMAL RESOLUTION

TITLE IX PERMITS INFORMAL RESOLUTION, BUT IT MUST BE VOLUNTARY



Informal resolution cannot be required as a condition of enrollment, continuing enrollment, employment, or continuing employment.



A school cannot require the parties to participate.



A school may not offer informal resolution unless a formal complaint is filed.

YOUR PARTY'S RIGHTS

IF INFORMAL RESOLUTION TAKES PLACE, THE SCHOOL MUST:

- ❶ Provide the parties a written notice disclosing:
 - The allegations
 - Requirements of the informal resolution process
 - Preclusion from resuming a formal complaint arising from the same allegations
 - Right to withdraw from the informal resolution process prior to agreeing to a resolution and resume the grievance process
 - Consequences resulting from participating in the process (records).
- ❷ Obtain the parties' voluntary, written consent to the process.



REMINDER:



**SCHOOLS CANNOT OFFER OR
FACILITATE AN INFORMAL
RESOLUTION PROCESS TO RESOLVE
ALLEGATIONS THAT AN EMPLOYEE
SEXUAL HARASSED A STUDENT.**

DISMISSAL OF A FORMAL COMPLAINT

SCHOOLS ARE REQUIRED TO INVESTIGATE THE ALLEGATIONS IN A FORMAL COMPLAINT. HOWEVER, THE INVESTIGATION MAY UNCOVER NEW INFORMATION ABOUT THE INCIDENT.

- Under Title IX, a school must dismiss the formal complaint of sexual harassment under Title IX if at any point during the investigation or hearing process it is determined that the alleged conduct:
 - Would not constitute sexual harassment under Title IX, even if proven
 - Did not occur in a school education program or activity
 - Did not occur against a person in the United States.

DISMISSAL OF A FORMAL COMPLAINT

A SCHOOL MAY DISMISS THE FORMAL COMPLAINT OF SEXUAL HARASSMENT UNDER TITLE IX IF AT ANY POINT DURING THE INVESTIGATION OR HEARING PROCESS THE FOLLOWING OCCURS:

- The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
- The Respondent is no longer enrolled or employed by the school
- Specific circumstances prevent the school from gathering evidence sufficient to reach a determination.

IF A COMPLAINT IS DISMISSED

A DISMISSAL MUST CONTAIN SPECIFIC INFORMATION, SUCH AS:

- Statement of dismissal
- Reason(s) for dismissal
- Alternate complaint resolution procedures (if applicable)
- Statement that each party has the right to appeal

IF A COMPLAINT IS DISMISSED

HOW TO RESPOND TO THE DISMISSAL AS AN ADVISOR:

- Communicate with your party
 - If a Complainant, did they request the dismissal?
 - Would they like to appeal the dismissal?
On what basis?
 - Would they like the incident to be addressed under a different school policy?
 - Would they still like supportive measures?
- Contact the Title IX Coordinator to better understand the dismissal, if necessary.

CONSOLIDATION OF FORMAL COMPLAINTS

CONSOLIDATION OCCURS WHEN THE ALLEGATIONS OF SEXUAL HARASSMENT ARISE OUT OF THE SAME FACTS OR CIRCUMSTANCES

- Allegations of sexual harassment are against more than one Respondent
- Allegations of sexual harassment are by more than one Complainant against one or more Respondents

TITLE IX SOLUTIONS, LLC

FAQ WITH TITLE IX ADVISORS

SPEAKERS



SUSANNA MURPHY

INVESTIGATOR AND ADVISOR



LIZ ABDNOUR

INVESTIGATOR AND ADVISOR

TITLE IX SOLUTIONS, LLC

UNDERSTANDING TRAUMA

Dr. Jessica Groleau, Ph.D



IN THIS CHAPTER



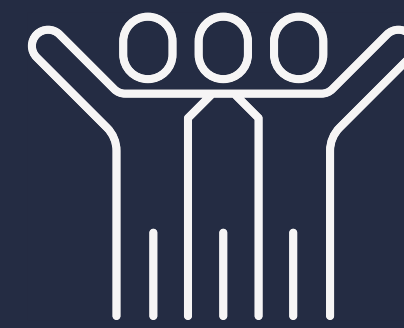
INTRODUCTION TO
TRAUMA



RECOGNIZING
PERSONAL BIAS



TRAUMA-INFORMED
COMMUNICATION



PROMOTING
EMPOWERMENT



Q&A WITH
DR. GROLEAU

SPEAKER



DR. JESSICA GROLEAU, PH.D

LICENSED CLINICAL PSYCHOLOGIST

UNDERSTANDING TRAUMA



WHAT IS TRAUMA?

DEFINITION OF TRAUMA

- Subjective
- Real or perceived threat
- Manifests differently in each person

CONSIDER EACH PARTY'S EXPERIENCES

- One or both Parties have likely already experienced trauma, either:
 - Prior to the incident (childhood experiences, family history, collective memory, etc.)
 - During the incident
 - As a result of being accused of the alleged incident
 - Through a combination of these experiences
- One or both Parties may be currently experiencing trauma during the Title IX grievance process

NEUROBIOLOGY OF TRAUMA

BRAIN STEM ("REPTILIAN BRAIN")

- Involuntary survival processes (heartbeat, breathing, etc.)

LIMBIC SYSTEM ("EMOTIONAL BRAIN")

- Regulates the body's stress response
- Plays an important role in memory and learning

FRONTAL LOBES ("EXECUTIVE BRAIN")

- Responsible for cognitive skills including ability to rationalize, plan, self-monitor, and control one's responses
- Important for voluntary movement

NEUROBIOLOGY OF TRAUMA

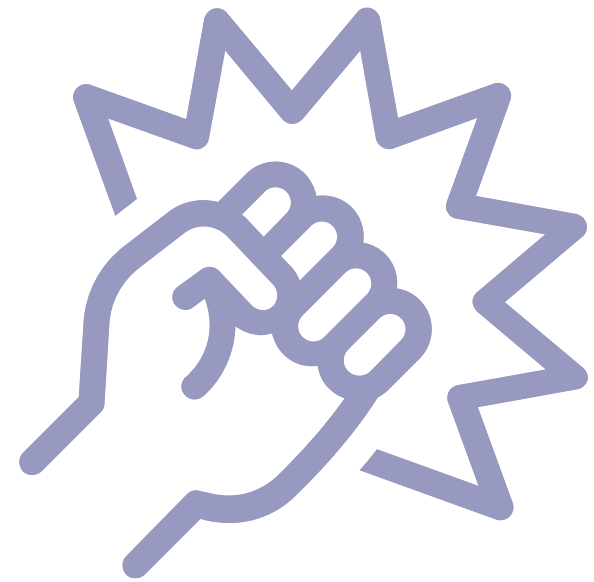
LIMBIC SYSTEM RESPONSE

- Amygdala (“fear center”) is activated
 - All resources are re-directed toward survival

DISCONNECTION OF FRONTAL LOBES

- Executive functioning goes “offline”
- Interferes with cognition, voluntary muscle movement, and ability to process the experience later on
 - This is functional and protective

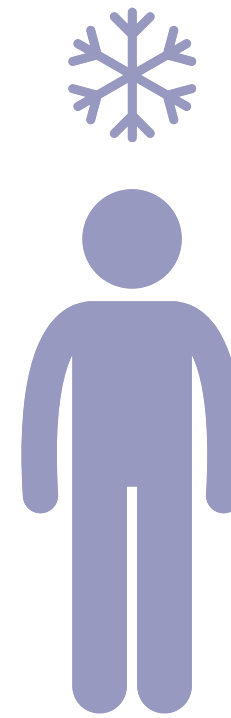
HUMAN STRESS RESPONSE



FIGHT



FLIGHT

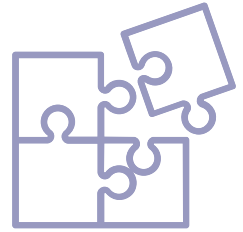


FREEZE

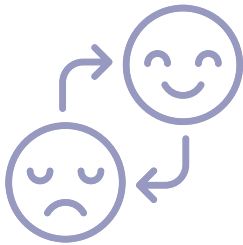


FAWN

WHAT DOES THIS MEAN FOR TITLE IX?



Fragmented, incomplete memories are common



Emotional dysregulation is expected

- Can appear in a variety of ways: inappropriate affect (laughter), extreme anxiety, numbing/disconnection



The fawn or freeze responses may appear to be consent



Discussing the event is retraumatizing

- Try to limit the number of interviews, questions, etc.

RECOGNIZING PERSONAL BIAS



PERSONAL BIAS

A TENDENCY, INCLINATION, OR PREJUDICE TOWARD OR AGAINST SOMETHING OR SOMEONE.

- Biases are universal
 - We are all products of our own personal histories, cultures, and many other factors that shape the ways in which we see the world
 - Biases are automatic and often outside of conscious control
- Biases are not always bad
 - i.e. an inclination toward healthy lifestyle behaviors
- Biases can be based on stereotypes or inaccurate information



It is crucial that you understand your biases in order to be most effective in your role.

BIAS VS. CONFLICT OF INTEREST

BIAS

- Having a personal history with sexual misconduct
- Holding stereotyped gender beliefs about sexual violence
 - i.e. perpetrators are males
- Internalization of rape culture
 - Often leads to skepticism or blaming of the Complainant

CONFLICT OF INTEREST

- Having a personal relationship with one or more parties
- Holding multiple relationships with one or more parties
- There is any way in which you could benefit (or be harmed) from the outcome of the investigation

RECOGNIZING PERSONAL BIAS

IS YOUR PERSONAL BIAS AFFECTING YOUR ABILITY TO BE OBJECTIVE?

✓ Introspection

- Implicit Bias Tests

- <https://implicit.harvard.edu/implicit/selectatest.html>

✓ Having implicit bias does not make you a bad person (we all have it)

- Managing your implicit biases will make you a better Title IX professional

✓ Questions to ask yourself:

- What does the information at hand cause me to believe about those involved? Why?

- When should an individual recuse themselves from a case because they are unable to overcome personal bias?

IMPLICIT BIAS TESTS

Project Implicit

- Race IAT ('Black - White' IAT)
- Weapons IAT ('Weapons - Harmless Objects' IAT)
- Age IAT ('Young - Old' IAT)
- Transgender IAT ('Transgender People - Cisgender People' IAT).
- Gender-Science IAT ('Gender - Science' IAT)
- Gender-Career IAT ('Gender - Career' IAT)
- Asian IAT ('Asian - European American' IAT)
- Disability IAT ('Physically Disabled - Physically Abled' IAT)
- Native IAT *Native American* ('Native - White American' IAT).

Project Implicit

- Native IAT *Native American* ('Native - White American' IAT).
- Presidents IAT ('Presidential Popularity' IAT)
- Religion IAT ('Religions' IAT).
- Weight IAT ('Fat - Thin' IAT)
- Arab-Muslim IAT ('Arab Muslim - Other People' IAT).
- Skin-tone IAT ('Light Skin - Dark Skin' IAT)
- Sexuality IAT ('Gay - Straight' IAT)

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TRAUMA-INFORMED COMMUNICATION



FOUNDATIONS OF A TRAUMA-INFORMED APPROACH



EMPATHY

- The ability to understand and share the feelings of another
 - Doesn't mean that you fully "get it" – because you don't
 - You can try to put yourself in your party's shoes
- Not the same as sympathy!
 - Sympathy is rarely helpful in these situations
 - Most trauma survivors report that sympathy exacerbates feelings of shame/embarrassment

COMMUNICATING EMPATHY

“I can see how painful this is for you to talk about.”

“That sounds incredibly scary.”

“There are resources here on campus to support you through this.”

VALIDATION

Recognition or affirmation that a person or their feelings, opinions, and experiences are real or worthwhile.

DO

Share your own similar reactions, if you have them:

"I would feel really angry too."

"It makes sense that you would feel that way."

DON'T

Tell someone how they should feel:

"You shouldn't let this bother you so much."

Question their responses:

"Are you sure that is what happened?"

Validation ≠ Agreement

ACTIVE LISTENING

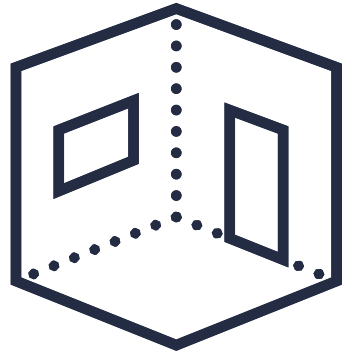
A COMMUNICATION TECHNIQUE THAT SERVES THE FOLLOWING PURPOSES:

1. Ensures that you understand what the other person is saying accurately
2. Communicates to the other person that you are listening

STRATEGIES FOR ACTIVE LISTENING

- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *"Did I understand that correctly?"*
 - *"I want to make sure I am hearing you."*
- Ask open-ended questions:
 - *"Can you tell me more about..."*

ADDITIONAL STRATEGIES



CONSIDER THE ENVIRONMENT

- Allow each Party to choose the meeting place, if possible
- Consider comfortable seating, tissues, water, privacy, etc.



FOCUS ON EACH PARTY AND THEIR NEEDS

- Refrain from sharing own stories & experiences
- Create an open space for them to talk (no judgement)
- Aim to understand each Party's perspective



KEEP A HEALTHY EMOTIONAL DISTANCE

- Self-care is crucial
- Boundaries are okay (and even healing!)
- Direct each Party to campus resources that can provide support

DE-ESCALATION

CONFRONTATION IS POSSIBLE

- Title IX processes may be intense, and emotions may run high
- Confrontation may occur between you and either Party or their Advisor

STRATEGIES FOR DE-ESCALATION

- Keep personal emotions in check
- Create physical space
- Allow for silence & patience for decisions
- Practice validation, active listening & empathy

PROMOTING EMPOWERMENT



EMPOWERMENT

EMPOWERMENT = VOICE AND CHOICE

- ① What could empowerment look like for each Party?
- ① How can you, as a Title IX Advisor, identify resources to help empower your party?
 - You can refer each Party to other sources of support or advocacy
- ① What may each Party consider to be possible obstacles to empowerment?
- ① How may you address them?

EMPOWERMENT

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TOOLS FOR EMPOWERMENT

ASK THE PARTY:

How are you feeling?

Do you feel safe?

How can I help you feel safer?

What do you need right now?

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

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

What steps of the Title IX process concern you?



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

QUESTION & ANSWER WITH DR. GROLEAU



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TITLE IX HEARINGS



TITLE  SOLUTIONS, LLC

IN THIS CHAPTER



INTRODUCTION TO THE
HEARING PROCESS



PREPARING FOR A
TITLE IX HEARING



PARTICIPATING IN
THE TITLE IX HEARING

SPEAKERS



PATRICK MATHIS

CO-FOUNDER
TITLE IX SOLUTIONS



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DECISION-MAKER AND INFORMAL
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INTRODUCTION TO THE TITLE IX HEARING PROCESS



WHY IS THERE A HEARING?

THE BURDEN TO DETERMINE RESPONSIBILITY IS ON THE SCHOOL.

During the hearing, advisors may demonstrate to the Decision-Maker that the allegations in the formal complaint are true or untrue.

IF ADVISING A COMPLAINANT

- Advisors present facts to support the Complainant's allegations & help the school determine that a policy violation did, in fact, occur.

IF ADVISING A RESPONDENT

- Advisors present facts to refute the allegations & help the school determine that your party did not violate Title IX.

WHAT DO ADVISORS DO?

DURING THE HEARING, THE ADVISOR MAY SUPPORT OR REFUTE THE INVESTIGATIVE REPORT, DEPENDING UPON THE EVIDENCE REFLECTED IN THE REPORT.

IF AN INVESTIGATIVE REPORT SUPPORTS THE COMPLAINANT'S ALLEGATIONS:

- Complainant's advisor will present evidence & witnesses to support the Investigative Report.
- Respondent's advisor will present evidence & witnesses to refute the facts developed during the investigation.

IF AN INVESTIGATIVE REPORT SUPPORTS THE RESPONDENT'S DENIAL OF THE ALLEGATIONS:

- Complainant's advisor will present evidence & witnesses to refute the facts developed during the investigation.
- Respondent's advisor will present evidence & witnesses to support the Investigative Report.

WHY SUPPORT OR REFUTE?

ALL PARTIES, ADVISORS, AND THE DECISION-MAKER WILL HAVE READ THE INVESTIGATIVE REPORT PRIOR TO THE HEARING.

- The hearing provides each party the opportunity to challenge evidence included in the Report, particularly through challenging the credibility of witnesses and/or the other party.
- **Don't need to challenge evidence in the Investigative Report?**
 - Advisors are not required to challenge the credibility of the other party or witnesses through cross-examination.
 - Discuss this with your party.

PREPARING FOR A TITLE IX HEARING



STEPS TO PREPARE






STEPS TO PREPARE FOR THE TITLE IX HEARING:

1. Review school's procedural rules or guidelines
2. Identify if you need to support or refute the Investigative Report
3. Craft cross-examination questions
4. Prepare for & attend the pre-hearing meeting (if any)

1

REVIEW SCHOOL'S PROCEDURAL RULES OR GUIDELINES

THESE RULES MAY ADDRESS:

-  Written responses to the Investigative Report
-  Pre-hearing briefs
-  Pre-hearing meetings
-  Acceptable & unacceptable conduct during the hearing
-  Submission of an impact statement

2

SUPPORT OR REFUTE THE INVESTIGATIVE REPORT

TO MAKE THIS DETERMINATION, CONSIDER THE FOLLOWING STEPS:

- 1 Review the Full Investigation File
- 2 Compare the Investigation File with the Investigative Report
- 3 Outline what should be refuted or supported during the hearing
- 4 Identify & prepare witnesses that will support your party's statements
- 5 Prepare your party for the hearing
- 6 Prepare cross-examination questions to challenge the other party & their witnesses

STEP

1

REVIEW THE FULL INVESTIGATION FILE

- Potential Contents of the Investigation File:
 - Investigator's notes, summary of the investigation, etc.
 - Communication between the parties
 - Text messages, emails, direct messages via social media, etc.
 - Interview transcripts (recordings may be available)
 - Additional evidence such as security footage, call history, etc.



Investigation file is all “directly related” evidence, not just “relevant” evidence included in the Investigative Report.

STEP

2

COMPARE THE INVESTIGATION FILE WITH THE INVESTIGATIVE REPORT



Does the Investigative Report support or refute your party's statements?



Is the information in the Report consistent and fair to your party?



Do you agree about what has been included in the Report?

- How might you support or refute this information during the hearing?
- Does your party have additional evidence to submit?

STEP

3

OUTLINE WHAT CAN BE SUPPORTED OR REFUTED

- ? Is any evidence included in the Report privileged and obtained without the party's consent?
- ? Is any evidence or statement clearly irrelevant under Title IX but included in the Report?
- ? Are witnesses' statements consistent or do they conflict? Why?
- ? What elements of the other party's statement do not align with your party's statements?

STEP

4

IDENTIFY AND PREPARE SUPPORTING WITNESSES

- Who might be able to support your party's statements?
 - Were they with your party when the alleged incident occurred?
 - Did your party see someone immediately before or after the alleged incident?
 - Would a character witness be appropriate?
- How will they support your party's statements?
 - Practice questioning each witness
 - Tell them the exact questions you will ask them at the hearing & ask them to respond
 - Prepare them for cross-examination
 - Ask them potential questions & help them prepare responses

STEP

5

PREPARE YOUR PARTY FOR THE HEARING



Will you or your party be expected to provide opening & closing statements?



Should you consider “direct examination” of your party?

- Direct examination is asking your own party questions to clarify or refute elements of the Investigation Report



Prepare your party for cross-examination

- Brainstorm potential cross-examination questions from the other party’s advisor
- Help your party prepare responses to the other party’s questions
- Explain their right to refuse to answer a question

STEP

6

PREPARE CROSS EXAMINATION QUESTIONS

- Identify who you will cross-examine.
- Ask yourself why you are questioning the other party or witness.
 - What element of their credibility do you need to challenge?
- How will you cross-examine the party or witness?
 - What do you need to ask to reach your goal?
 - Confrontation is not required. This is not a courtroom.
 - Questions should be relevant.
 - Respect is important, even during cross-examination.



DO I NEED TO CROSS EXAMINE?

Will cross-examination help you reach your goal of supporting or refuting the Investigative Report?

IF NO

- You are not obligated to cross-examine the other party or witnesses.

IF YES

- Be intentional about who you cross-examine & how.

3

CRAFT CROSS-EXAMINATION QUESTIONS



WHY ARE YOU CROSS-EXAMINING THE PARTY OR WITNESS?



WHAT SPECIFIC INFORMATION SHOULD YOU FOCUS ON WHILE QUESTIONING THE PARTY OR WITNESS?

CONSIDERATIONS:

- Trauma experienced by the other party or witness
- Trauma experienced by your party as you cross-examine
- Potential for confrontational or adversarial moments during this time
- These are students or employees of your party's community. This is not a courtroom.

LEADING QUESTIONS

LEADING QUESTIONS SUGGEST THE DESIRED ANSWER OR PROMPT THE WITNESS OR PARTY'S RESPONSE

Examples:

LEADING

“Is it true that you told John that you did not want to have sex?”

NON-LEADING

“What did you say to John about having sex with him?”

OPINIONS & CONCLUSIONS

DO NOT ASK WITNESSES OR PARTIES FOR THEIR OPINIONS OR CONCLUSIONS ABOUT ISSUES THAT ARE NOT WITHIN THEIR PERSONAL SCOPE OF KNOWLEDGE

Examples:

SEEKING OPINION

“Did John know that you did not want to have sex with him?”

ALTERNATIVE

“What did you say to John about having sex with him?”

HEARSAY

- Generally, witnesses may not be asked about what other people have said about a topic if the purpose of the question is to prove that the other person's statement is true

EXAMPLE



“What did Mary tell you about John’s conduct on the night of the alleged incident?”

DECISION-MAKERS RULE ON RELEVANCE

- Only relevant questions may be asked during the hearing process.
- Before a witness or party answers the question, the Decision-Maker must first determine whether the question is relevant.
- The Decision-Maker must explain any decision to exclude a question as irrelevant.

SCHOOLS MAY APPROACH THIS REQUIREMENT IN VARIOUS WAYS:

- Questions may be submitted to the Decision-Maker to review prior to the hearing.
- Decision-Makers may rule on each question before a witness or party answers at the hearing.
- Decision-Maker rules that questions are deemed relevant unless they interject.

CONCERNED A QUESTION IS NOT RELEVANT?



**ADVISORS MAY RESPECTFULLY OBJECT TO
QUESTIONS ASKED BY THE OTHER PARTY'S
ADVISOR OR BY THE DECISION-MAKER.**

Advisors typically object for one of two reasons:

1. Relevance of the question
2. Type of question asked

CHARACTER WITNESSES

ARE CHARACTER WITNESSES RELEVANT OR IRRELEVANT?

- They may be relevant, but their purpose is limited.
- Character witnesses typically speak to the credibility of a party.
 - Consider calling character witnesses that speak to the credibility of your own party.
 - You may challenge the credibility and/or scope of knowledge of the other party's character witnesses during cross-examination.
- The Decision-Maker should know how to weigh the relevance of a character witness's statement while reviewing the Investigative Report and/or during the hearing transcript.

CONCLUSION

ADVISORS NEED TO BE THOUGHTFUL WHEN PREPARING FOR THE HEARING.

- How can you further convince the Decision-Maker that your party's statements are true?
- Consider the “big picture” and the details.

PARTICIPATING IN THE TITLE IX HEARING



4

ATTEND PRE-HEARING MEETING

THE DECISION-MAKER MAY INVITE THE PARTIES AND THEIR ADVISORS TO A PRE-HEARING MEETING.

- If the Decision-Maker does not call for a meeting, the Advisor may request it.

WHAT IS A PRE-HEARING MEETING?

- An opportunity for the parties and their advisors to:
 - Review the rules of the hearing
 - Understand the expectations for the hearing
 - Finalize the hearing agenda
 - Request preliminary information from the parties and their advisors

WHAT TO PREPARE

DECISION-MAKERS MAY INVITE THE PARTIES & THEIR ADVISORS TO SUBMIT THE FOLLOWING INFORMATION AT THE PRE-HEARING MEETING:

- Questions or topics the parties wish to ask or discuss at the hearing
 - Decision-Maker may rule on relevance at this time
- A list of witness to be called at the hearing
- A list of questions the advisor plans to ask their own witnesses at the hearing
- A list of questions the advisor plans to ask while cross-examining the other party
- A response to the investigation report

REMINDERS

- Title IX Hearings must be live.
- The school must create an audio recording, audio-visual recording, or transcript of the hearing, which will be made available to the parties for inspection & review.
- Decision-Maker cannot be the same person as the Title IX Coordinator, Investigator, or Informal Resolution Facilitator.
- The following content is based on the Title IX Solutions Decision-Makers' experiences & procedural rules. Advisors must refer to the school's own rules and guidelines when participating in a Title IX hearing.

HEARING AGENDA

- ➊ Opening of the Hearing
- ➋ Opening Statements
- ➌ Introduction of Testimonial Evidence
- ➍ Closing Statements
- ➎ Closing of the Hearing

STEP

1

FACILITATED BY THE DECISION-MAKER, WHO WILL:

- Call the hearing to order
 - Announce the date & time, type of case, and names of the parties & their advisors
- State the specifics of the allegations related to the allegations of sexual harassment
- Announce the Standard of Evidence used at the School to be used during the hearing
- Reiterate that only relevant questions may be asked during cross-examination
 - Title IX does not prohibit hearsay or character evidence.
 - Question about the Complainant's sexual predisposition or prior sexual behavior are not relevant & not allowed

STEP

2

DECISION-MAKER MAY ASK THE PARTIES OR THEIR ADVISORS FOR AN OPENING STATEMENT.

What is an opening statement?

- Outlines the issues that the party & their advisor would like to refute
- Provides an overview of the facts & evidence
- Describes the evidence that supports their statements (or their party's statements)
- Presents what the party and their advisor expect to prove during the hearing
- Typically, the Complainant gives the first opening statement, followed by the Respondent
 - Parties may waive their opening statement

STEP

3

TESTIMONIAL EVIDENCE: DIRECT & CROSS EXAMINATION

- 1 Complainant's Case
- 2 Respondent's Case
- 3 Decision-Maker's Examination of Parties & Witnesses

ADVISOR
TIP



Advisors of non-attending parties may still represent the absent party at the hearing by calling witnesses & cross-examining the other party & witnesses.

DIRECT AND CROSS-EXAMINATION

COMPLAINANT'S CASE

- Typically, the Decision-Maker will ask the Complainant's advisor to provide testimonial evidence first.
- Opportunity to present witnesses & party for direct examination
- Present new evidence (if any)
- Cross-examination of the Complainant & witnesses by the Respondent's advisor
 - Be alert & watch for irrelevant questions asked of your party or witnesses

DIRECT AND CROSS-EXAMINATION

RESPONDENT'S CASE

- Opportunity to present witnesses & party for direct examination
- Present new evidence (if any)
- Cross-examination of the Respondent & witnesses by the Complainant's advisor
 - Be alert & watch for irrelevant questions asked of your party or witnesses

DIRECT AND CROSS-EXAMINATION

DECISION-MAKER'S EXAMINATION

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

STEP

4

DECISION-MAKER MAY ASK THE PARTIES OR THEIR ADVISORS FOR A CLOSING STATEMENT.

What is an closing statement?

- Final statement by the parties or their advisors to the Decision-Maker
- Summarizes the relevant evidence & arguments
- Asks the Decision-Maker to find that the evidence will support the determination in that party's favor
- Typically, the Complainant gives the first closing, followed by the Respondent
 - Parties may waive their closing statement

STEP

5

FACILITATED BY THE DECISION-MAKER, WHO WILL:

- Announce that the parties have completed the submission of all evidence
 - States the time
- Announce the hearing is closed
- Leave the hearing & prepare the written determination of responsibility

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INFORMAL RESOLUTION



TITLE  SOLUTIONS, LLC

IN THIS CHAPTER



PREPARING FOR
INFORMAL RESOLUTION



PARTICIPATING IN THE
INFORMAL RESOLUTION
PROCESS

SPEAKERS



JIM REEVES

INFORMAL RESOLUTION
FACILITATOR AND ADVISOR



KIM KIRN

INFORMAL RESOLUTION
FACILITATOR AND ADVISOR

PREPARING FOR INFORMAL RESOLUTION



FORMS OF INFORMAL RESOLUTION

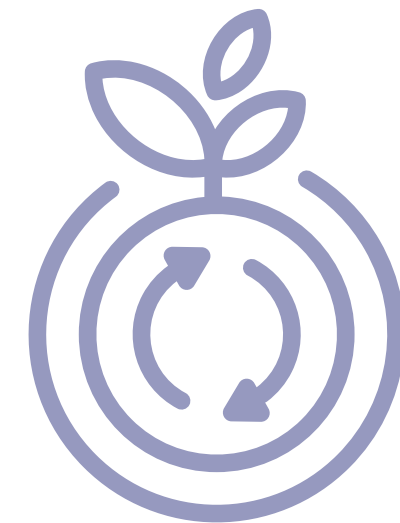
REGARDLESS OF THE FORM OF INFORMAL RESOLUTION, BOTH PARTIES MUST VOLUNTARILY AGREE & PROVIDE WRITTEN CONSENT TO PARTICIPATE IN THE INFORMAL RESOLUTION PROCESS.



MEDIATION



ARBITRATION



RESTORATIVE JUSTICE

MEDIATION



- Informal process
- Parties discuss alleged incident, explain its impacts, and decide on the outcome
- Mediator is neutral facilitator to help parties communicate effectively
 - May provide recommendations, if appropriate
- Parties maintain power to determine final resolution

ARBITRATION



- More formal process
- Parties provide evidence to the arbitrator
- Arbitrator determines the final resolution of the case

RESTORATIVE JUSTICE



- Often a component of mediation
- Focuses on various questions:
 - Who was harmed?
 - What was the harm?
 - What needs to be done to repair the harm?
 - Who needs to take steps to repair the harm?

PRE-MEETING BRIEF

GENERALLY INCLUDES:



Each party's perspective on what happened during the alleged incident.



Each party's desired outcome(s) from the informal process.

INVITATION TO INFORMAL RESOLUTION

1

Form of Informal Resolution

2

Allegations

3

Requirements of the Informal Resolution Process

- Circumstances precluding parties from resuming formal complaint process
- Right to withdraw from the informal resolution process
- Records maintained or shared as a result of the process
- Requirement to obtain written, voluntary consent from parties
- Date, time, location, participants & purpose of process
- Name & title of informal resolution facilitator

4

Procedural Guidelines for Informal Resolution Process

ROLE OF THE ADVISOR



**ADVISORS SHOULD ENSURE THAT
THEIR PARTY UNDERSTANDS
WHAT THE INFORMAL
RESOLUTION PROCESS ENTAILS
FOR EACH PARTY.**

QUESTIONS TO ASK YOUR PARTY



**ARE THEY VOLUNTARILY PARTICIPATING
IN THE INFORMAL RESOLUTION PROCESS?**



**WHAT FORM OF INFORMAL RESOLUTION ARE
THEY WILLING OR NOT WILLING TO
PARTICIPATE IN?**



**WHAT ARE THE ADVANTAGES AND
DISADVANTAGES OF EACH OF THE INFORMAL
PROCESSES?**



**WHAT DO THEY WANT THE OTHER PARTY TO
KNOW BEFORE THE CONCLUSION OF THE
INFORMAL RESOLUTION PROCESS?**



**WHAT DO THEY WANT TO KNOW FROM THE OTHER
PARTY BEFORE THE CONCLUSION OF THE
INFORMAL RESOLUTION PROCESS?**

PREPARE YOUR PARTY TO TELL THEIR STORY

DISCUSS WITH YOUR PARTY:

- What happened during the alleged incident
- How the incident has impacted them
- What proposals your party would like to make for resolution
- The importance of speaking to be heard & understood



Parties must avoid name-calling, derogatory language, and interrupting the other party.

ADDITIONAL DISCUSSION POINTS



What might the other party say during this process?



How will your party feel about what the other party might say?



How does your party plan on responding?

HOPE & EXPECTATIONS

DISCUSS WITH YOUR PARTY THEIR EXPECTATIONS OF THE INFORMAL RESOLUTION PROCESS.

EXAMPLES

- Do they prefer an informal setting?
- Do they want to discuss how they have been impacted either by the alleged incident or the Title IX process?
- Do they want to discuss or agree upon outcomes for the informal process?
- Do they wish to remain in school and graduate?
- Do they want disciplinary action?
- Would they like an apology or for the alleged incident to be acknowledged?
 - Discuss what a “good” apology looks like to them.

WHAT WILL BE YOUR ROLE?

DISCUSS WITH YOUR PARTY THEIR EXPECTATIONS OF YOUR INVOLVEMENT IN THE INFORMAL RESOLUTION PROCESS.

- The parties should be the focus of the informal resolution process, especially during mediation and restorative justice.
- School's policies may restrict the advisor's participation.
- Advisors are not required to participate in the informal resolution process.



REMINDER:

CONCLUDING THE INFORMAL RESOLUTION PROCESS

- Your party has the right to stop the informal resolution process any time before an agreement is reached & resume with the Title IX investigation and hearing process.
- In mediation and restorative justice processes, a resolution agreement signed by both parties will conclude the matter.

SUPPORT YOUR PARTY

EVEN IF YOU CANNOT PARTICIPATE DURING THE INFORMAL RESOLUTION PROCESS OR WILL ATTEND THE MEETINGS, REMEMBER THAT YOU ARE STILL YOUR PARTY'S ADVISOR.

DO YOUR BEST TO:



Answer any
questions they have



Address any
concerns or fears



Seek clarification from
the Title IX Coordinator

PARTICIPATING IN THE INFORMAL RESOLUTION PROCESS



GETTING STARTED

1 Introductions

- Complainant, Respondent, and School may be present
- Informal Resolution may occur in person or virtually
- Parties may be in the same room or separate rooms

2 Signing Agreements

- Confidentiality or Mediation Agreement

INITIAL CAUCUS

THE INITIAL CAUCUS WITH THE INFORMAL RESOLUTION FACILITATOR IS AN OPPORTUNITY FOR THE PARTY AND THEIR ADVISOR (IF PRESENT) TO:

- Learn about the process from the facilitator
- Ask questions about the process
- Clarify terms used during the process
- Understand potential outcomes

OPENING STATEMENT



Do you want to make a presentation?



Does your party make an opening statement?



What are the pros & cons of an opening statement?

ADVISOR
TIP



**Listen with an open mind
and an open heart.**

ADVISOR ROLE

LISTEN CAREFULLY & HELP YOUR PARTY NAVIGATE THE INFORMAL RESOLUTION PROCESS.

- Ask to speak to your party privately, if necessary
- Manage your party's expectations
 - Is their desired outcome possible? How might they need to compromise?
- Take notes during the process
- All parties and advisors need to put aside their egos
- What is holding back a resolution?

SETTLEMENT AGREEMENT

WHAT IS A SETTLEMENT AGREEMENT?

- Written
- Requires the parties' signatures
- Binding for all parties
- Will likely be reviewed by an attorney