TITLE IX
COORDINATOR
TRAINING

TITLE IX SOLUTIONS, LLC
WELCOME
Training Instructors

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Title IX Solutions, LLC
Part One
(2.20.2024)
Training Agenda

Times listed in Eastern

1:00 p.m. – 1:15 p.m. | Welcome

1:15 p.m. – 2:30 p.m. | Overview of the Title IX Regulations

2:30 p.m. – 2:45 p.m. | Break

2:45 p.m. – 3:30 p.m. | Reports and Intake Meetings

3:30 p.m. – 4:15 p.m. | Title IX Incident Evaluation

4:15 p.m. – 4:45 p.m. | Notice of Allegations and the Start of the Grievance Process

4:45 p.m. – 5:00 p.m. | Part One Debrief and Q&A
Part Two
(2.21.2024)
Training Agenda

Times listed in Eastern

1:00 p.m. – 1:15 p.m. | Welcome Back

1:15 p.m. – 2:00 p.m. | Title IX Investigations

2:00 p.m. – 3:00 p.m. | Title IX Decision-Making Processes

3:00 p.m. – 3:15 p.m. | Break

3:15 p.m. – 4:15 p.m. | Title IX Outcomes, Sanctions, and Remedies

4:15 p.m. – 4:45 p.m. | Additional Requirements and Best Practices

4:45 p.m. – 5:00 p.m. | Part Two Debrief and Q&A
## Learning Objectives

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

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<th>Objective</th>
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<td>Describe the key provisions of Title IX, including its scope, forms of prohibited discrimination, and the responsibilities of educational institutions in ensuring compliance</td>
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<td>Understand reporting procedures for complaints of sexual harassment and conduct incident evaluations to initiate the appropriate response</td>
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<td>Oversee compliant, effective, and impartial investigation, adjudication, and/or informal resolution of alleged Title IX violations</td>
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<td>Develop a trauma-informed framework for communicating with parties in Title IX complaints</td>
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<td>Outline the responsibilities of the Title IX Coordinator that fall outside of the Title IX grievance process</td>
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Let’s enjoy a quick activity!
Overview of the Title IX Regulations
In This Session

INTRODUCTION TO THE TITLE IX REGULATIONS

DEFINING TITLE IX SEXUAL HARASSMENT

BASIC REQUIREMENTS FOR THE TITLE IX GRIEVANCE PROCESS FOR FORMAL COMPLAINTS
Introduction to the Title IX Regulations
Title IX of the Education Amendments of 1972

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

Postsecondary Institutions

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

Elementary and Secondary Schools

Includes:
- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools
Some key issue areas addressed under Title IX:

- Recruitment, Admissions & Counseling
- Athletics
- Financial Assistance
- Employment
- Treatment of LGBTQI+ Students
- Sex-Based Harassment
Evolution of Title IX

- **June 23, 1972**: Title IX signed into law
  - **1977**: Alexander v. Yale
  - **1980s - 1990s**: U.S. Supreme Court decisions
- **April 4, 2011**: Dear Colleague letter issued
- **May 7, 2020**: "Final" Title IX rule released
- **June 23, 2022**: Changes to Title IX proposed
Evolution of Title IX

JUNE 23, 1972

- Title IX is signed into law
- Follows the Civil Rights Act of 1964 to address discrimination based on sex
- Implementation requires designation of Title IX Coordinator, public grievance procedures, and compliance-oriented district staff
- Most well-known for its impact on:
  - Admissions
  - Academic Opportunities
  - Athletics
Evolution of Title IX

1977

1980s - 1990s

- Alexander v. Yale
  - First lawsuit using Title IX to argue sexual harassment as discrimination

- U.S. Supreme Court Decisions
  - Sexual harassment and sexual assault = sex discrimination
Evolution of Title IX

APRIL 4, 2011

- U.S. Department of Education's Office for Civil Rights releases "Dear Colleague Letter"
- States sexual harassment of students, including sexual violence, interferes with students' rights to their education free from discrimination and is therefore prohibited by Title IX
- Explains schools’ responsibility to take immediate and effective steps to end sexual harassment and violence (references OCR's 2001 Guidance)
Evolution of Title IX

- DOE releases the "final regulations" governing campus sexual assault under Title IX
- Followed a formal notice-and-comment process
- Explicitly defines sexual harassment and procedural requirements for educational institutions
- Has the "force of law" behind it (unlike the Dear Colleague Letter)
- Currently in effect for primary, secondary, and postsecondary schools
Evolution of Title IX

- DOE releases proposed changes to Title IX
- Would modify procedural requirements and expand protections
- New Title IX Regulations have yet to be released (as of February 2024)
What is a Recipient?

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

34 CFR § 106.2 - Definitions.
Recipients must comply with the requirements of Title IX as outlined under the 2020 Regulations.

Recipients may:
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;
- Provide details regarding policies or procedures which are not addressed in the regulations.
Compliance with the Regulations

Recipients **must**: 

- Have “prompt and equitable” grievance procedures for complaints of sex discrimination
- Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment
When is Sexual Harassment Actionable?

When it denies a person equal access to education
Title IX's Application

Regulations apply equally to all persons, regardless of:

- Gender identity or expression
- Sexual orientation
Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators.
Defining Title IX Sexual Harassment
Definitions of Sexual Harassment

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

1. **Quid Pro Quo Harassment**
2. **Unwelcome Conduct** that is so "Severe, Pervasive and Objectively Offensive" that it effectively denies a person equal access to education
3. **Sexual Assault**, **Dating Violence**, **Domestic Violence**, **Stalking**
An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access
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.
Specific offenses defined under the FBI’s Uniform Crime Reporting (U.C.R.) program.

Sexual Assault

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

- Forcible Rape
- Forcible Sodomy
- Sexual Assault with an Object
- Forcible Fondling

Sex Offenses, Nonforcible:
Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

- Incest
- Statutory Rape

Dating Violence

Violence committed by a person

a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
   i. The length of the relationship.
   ii. The type of relationship.
   iii. The frequency of interaction between the persons involved in the relationship.

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

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

a. by a person with whom the victim shares a child in common,

b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,

d. or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

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

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

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

34 U.S.C. 12291(a)(30)
The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.
Incident constitutes sexual harassment as previously defined

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

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

Alleged harassment must have occurred within the United States
Schools must not act in a manner that is *deliberately indifferent*, meaning:

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

We will discuss more about the required response in the sessions to come!
Actual Knowledge Defined

§ 106.30 Definitions.

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

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

Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge
Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge
Education Program or Activity Defined

§ 106.44 Recipient's response to sexual harassment.

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

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

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

Administrative Leave

- Applies to non-student employees
Explicitly stated in Title IX

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

- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
  - Intention to interfere with the individual’s rights under Title IX; or
  - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX
Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a “complainant,” “respondent,” “party,” or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.”
Basic Requirements for the Title IX Grievance Process for Formal Complaints
Title IX Grievance Process

INTAKE/REVIEW

FORMAL COMPLAINT FILED

NOTICE OF ALLEGATIONS SENT TO PARTIES

INVESTIGATION

DECISION-MAKING PROCESS

WRITTEN DETERMINATION

APPEALS PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)
Basic Requirements

A recipient's grievance process **MUST**:

- Treat Complainants and Respondents equally
- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties
Basic Requirements

A recipient's grievance process **MUST:**

- Require objective evaluation of relevant evidence
- Consider both inculpatory and exculpatory evidence
  - Inculpatory = Corroborating evidence
  - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person’s status as a Complainant, Respondent, or witness
Basic Requirements

A recipient's grievance process **MUST**:

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

Require Title IX personnel not have bias and conflict of interest.
Basic Requirements

A recipient's grievance process **MUST**:

- Include a presumption that Respondent is not responsible until a determination is made.
- Punitive measures may not be put in place until a finding of responsibility has been issued.
- Think "innocent until proven guilty" in the criminal justice system.
Basic Requirements

A recipient's grievance process **MUST:**

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

A recipient's grievance process **MUST**: 

- Describe range of possible disciplinary sanctions and remedies
- Ensure these ranges are communicated in policy and procedural documents
Basic Requirements

A recipient's grievance process **MUST**:

- State the standard of evidence

  - A school may elect to apply either:
    - The preponderance of evidence ("more likely than not") standard; or
    - The clear and convincing evidence ("highly probable") standard

- The same standard of evidence must be used for:
  - Formal complaints against students as is used for formal complaints against employees, including faculty
  - All formal complaints of sexual harassment
Basic Requirements

A recipient's grievance process **MUST**:

- Include the permissible bases for appeal

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

A recipient's grievance process **MUST**:

- Describe the range of supportive measures available
- Ensure these ranges are communicated in policy
A recipient's grievance process **MUST**:

- Not require or rely on privileged information, unless waived.

  - This would include information such as:
    - Medical records
    - Academic records protected under FERPA
    - Conversations with privileged individuals such as counselors or clergy
Reports and Intake Meetings
In This Session

- TITLE IX REPORTING
- INTAKE MEETINGS
- FORMAL COMPLAINTS
Title IX Reporting
As stated in the Title IX Regulations, any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator.

"Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator."

34 CFR §106.8(a)
Title IX Coordinator

Reports made

Third-party

Reports made

Parent/Legal Guardian

External
External Reporting Considerations

Consider the various individuals outside of the school setting who may report incidents of sexual harassment to your Title IX Coordinator.

Who are they?
What would their experience be if they sought out information on how to report Title IX sexual harassment?

What do you want them to know?
What information do you want them to have access to?
How can you make the process of reporting easier for them?
Students

Employees

Reports made

Title IX Coordinator

Reports made

Internal
Internal Reporting Considerations

Consider how many employees you have at your institution.
From the top down, what is your level of confidence that each employee could articulate their reporting responsibilities under Title IX?
How will you provide training on these responsibilities?

Consider the way your students interact with each type of employee at your institution.
Do students know employee reporting requirements under Title IX?
How would you communicate this to them?
"Notice of sexual harassment to elementary and secondary school employees, who may include principals, teachers, school counselors, coaches, school bus drivers, and all other employees will obligate the recipient to respond to Title IX sexual harassment."

2020 Preamble to the Title IX Regulations, p. 332-333
“For all recipients, notice to the recipient’s Title IX Coordinator or to “any official of the recipient who has authority to institute corrective measures on behalf of the recipient” (referred to herein as “officials with authority”) conveys actual knowledge to the recipient and triggers the recipient’s response obligations. Determining whether an individual is an “official with authority” is a legal determination that depends on the specific facts relating to a recipient’s administrative structure and the roles and duties held by officials in the recipient’s own operations.”

(pp.50-51 Preamble to the Title IX Regulations)

Consult institutional policy and other relevant state laws to determine who must report and what they must report.
What must the Title IX Coordinator do next to ensure the institution is not acting with deliberate indifference?
What do the Title IX Regulations say?

(Hint: §106.44 Recipient’s response to sexual harassment provides the answer.)

The Title IX Coordinator is responsible for doing....

"The Title IX Coordinator must...

- promptly contact the Complainant to discuss the availability of supportive measures,
- consider the Complainant’s wishes with respect to supportive measures,
- inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint,
- explain to the Complainant the process for filing a formal complaint."

these four important things.
How should you go about this?
The Regulations, as they're written, could be satisfied in an email with the following:

- A written statement or graphic sent to the Complainant explaining the availability of supportive measures and providing a few examples
- A brief, written statement explaining the process for filing a formal complaint
- A sentence explaining the availability to utilize supportive measures even if a formal complaint is not filed.

If the Complainant responded to this email and the Coordinator considered their wishes as they relate to supportive measures, they would technically be compliant.
However, *could* and *technically* are not best practice.

"...the Department has tailored a deliberate indifference standard for administrative enforcement purposes by adding specific obligations that every recipient must meet as part of every response to sexual harassment, including offering supportive measures to Complainants through the Title IX Coordinator engaging in an interactive discussion with the Complainant about the complainant’s wishes, and explaining to the Complainant the option and process for filing a formal complaint."

This is meant to be a thoughtful, in-person discussion!
Intake Meetings
Title IX Grievance Process

- Intake/Review
- Formal Complaint Filed
- Notice of Allegations Sent to Parties
- Investigation
- Decision-Making Process
- Written Determination
- Appeals Process

Informal Resolution (optional, but may be initiated in this window)
Promptly contact the Complainant to discuss the availability of supportive measures.

Questions to consider

1) What is considered prompt?
2) How will I initiate contact?
3) Who do I need to include in my initial contact?
4) What will be said in my initial contact?
5) What if the Complainant does not respond to my attempts to contact?
§ 106.30
Definitions.

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

- Intended to restore Complainant's access to educational program or activity
1) What is considered prompt?
As soon as you receive the report, you should reach out. (If the report is received after business hours, on the weekend, or a holiday, contact on the first business day you return.) However, if the report suggests an immediate threat or safety risk, ensure immediate communication.

2) How will I initiate contact?
Best practice is to initiate contact in writing for recordkeeping, but in some cases, you may need to make a phone call. *Remember to document date and time, as well as what was shared.*

3) Who do I need to include in my initial contact?
The Complainant, as well as their parent/legal guardian if the party is a minor.

4) What will be said in my initial contact?
Introduction, brief explanation of Title IX and your reason for reaching out, request for meeting, helpful documents (processes, policy, list of supportive measures)
5) What if the Complainant does not respond to my attempts to contact?

- Vary your attempts to contact and document all attempts.
  - Email, phone calls to Complainant and parent, final attempt with a trackable letter or email
  - Some case management systems provide thorough tracking of all communications

- Decide how many attempts you will make before closing the case for non-contact.

- Ensure you have at least provided information about the availability of supportive measures, as well as the process for filing a formal complaint as those are required under Title IX.
Consider the Complainant’s wishes with respect to supportive measures

Questions to consider

1) How can I inform the Complainant of which supportive measures may be available?
2) How can I ensure supportive measures are available?
3) What does it mean to "consider" their wishes?
4) What materials can I send home with the Complainant?
1) How can I inform the Complainant of which supportive measures may be available?
   Provide a general list or infographic of the areas in which supportive measures may be available. Note that the list is not exhaustive and other options may be available upon communication of the Complainant's needs.

2) How can I ensure supportive measures are available?
   Coordinate with all possible partners (academic, administrative, extracurricular, community, health, safety) to understand processes and potential for measures.

3) What does it mean to "consider" their wishes?
   Do not promise any supportive measure until you know it is feasible. There are some things a Complainant may ask for that are not within the realm of possibility.
4) What materials can I send home with the Complainant?

Supportive Measures

- **Academic**
  - Academic measures such as extensions of deadlines, course-related adjustments, schedule modifications

- **Extracurricular**
  - Modified schedules for practice or competition

- **Employment**
  - Assistance with changes to work assignments and scheduling

- **Safety**
  - Provision of campus escorts, increased security measures, and no-contact orders

- **Referral**
  - Referral to campus and community services such as medical, mental health, legal services and more

- **Transportation**
  - Assistance with movement around campus, parking, and other transportation concerns

Handout containing:
- Explanation of supportive measures
- Information regarding your role in implementing any supportive measures needed
- Range of supportive measures available
- Helpful campus and community resources
Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint.

Questions to consider:
1) How will I communicate this?
2) How long will these supportive measures need to be in place?
1) How will I communicate this?
   After explaining the process for submitting a formal complaint and giving an overview of the grievance process, simply let the Complainant know they can receive supportive measures by working with you, regardless of which option they choose. Empathetically inform them that you are there to help them, but you want to give them as much agency as possible to decide what is right for them.

2) How long will these supportive measures need to be in place?
   There is no expiration date for supportive measures, with or without a formal complaint in place. This will need to be a continued conversation between the Title IX Coordinator and the Complainant.

   You will want to consider the impact to the Complainant's education program or activity and how supportive measures might alleviate that impact.
Explain to the Complainant the process for filing a formal complaint

Questions to consider

1) How can I best explain this process?
2) What information does the Complainant need to know to make the most informed decision?
3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?
1) How can I best explain this process?
   Share policy and any procedural documents/handouts you have. Be thorough, but do not overwhelm the Complainant with complicated language. Answer any questions they might have regarding what would follow a formal complaint.

2) What information does the Complainant need to know to make the most informed decision?
   The Complainant needs to be aware of the policy, rights as a Complainant in a Title IX case, the Title IX grievance procedure, potential outcomes, and resources available. Ensure you have provided all of this information to the Complainant so there are no "surprises" if they choose to submit a formal complaint.
Tips for the Intake Meeting

- Seek more details to help you perform the incident evaluation. However, do not turn this into an investigative interview...that comes later!
- Use empathetic communication and use trauma-informed techniques to allow for choice and voice of the Complainant.
- Practice active listening. Repeat Complainant's statements back to them. "So what I am hearing you say is..."
- Be prepared. Have all handouts and documents printed and readily available.
- Follow up. If you have not heard from the Complainant following the intake meeting, check in to see if there are any questions to answer.
- Discuss timeline for filing complaint with the Complainant.
Formal Complaints
Formal Complaint

§106.30 Definitions.

"means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment."

- Can be a physical document or an electronic document (email, Word document, etc.)
- Must contain a physical or electronic signature of the Complainant
- OR it can be signed by the Title IX Coordinator if it is decided the Coordinator will file without the Complainant's participation in the process (usually following a safety and risk assessment)
**Report vs. Formal Complaint**

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

**Formal Complaint**
- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant or Complainant's parent or guardian (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party
Parental/Guardian Rights

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<th>§ 106.6(g)</th>
<th>Exercise of rights by parents or guardians.</th>
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<td>“Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a “complainant,” “respondent,” “party,” or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.”</td>
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There is no statute of limitations on filing a formal complaint. However, the Complainant “must be participating or attempting to participate in the recipient’s education program or activity” at the time of filing.
Tawny,

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

Best,

Rhonda
March 10, 2023

To the Sample University Title IX Coordinator,

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

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

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

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

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

Signed,

Alex Baker
Consolidation of Formal Complaints

Schools **may** consolidate formal complaints:

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

1) How can I best explain this process?
2) What information does the Complainant need to know to make the most informed decision?
3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?
3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?

"These final regulations obligate a recipient to initiate a grievance process when a Complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a Complainant and only initiates a grievance process against the Complainant’s wishes if doing so is not clearly unreasonable in light of the known circumstances."

(p. 71 Preamble to the Title IX Regulations)

Explain the need to protect the safety of both the Complainant and greater school community. If the allegations are serious and pose risk of further harm to the Complainant or others, an investigation is necessary.

Inform the Complainant of their right to not participate, but gently inform them that their participation in the Title IX grievance process would be of great help.
If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party.
What criteria would be relevant in helping a Title IX Coordinator decide whether to move forward with a complaint?
Title IX Incident Evaluation
CONDUCTING A TITLE IX INCIDENT EVALUATION

UNDERSTANDING SAFETY & RISK ASSESSMENTS
Conducting a Title IX Incident Evaluation
Title IX Incident Evaluations

Also referred to as a "preliminary assessment" of an incident.

**Who**
Conducted by the Title IX Coordinator

**What**
Analysis of the alleged incident to determine if the misconduct could be considered sexual harassment under Title IX, if proven

**When**
- Upon learning of an alleged incident
- During and after the intake meeting
- Throughout the Title IX process

**Why**
To determine how the school will address the alleged incident and identify which grievance procedures to implement
First, consider whether the conduct was sex-based, including, based upon gender identity and/or sexual orientation.

If so, utilize the four "threshold criteria" outlined in the Title IX Regulations.
Four Threshold Criteria

The following must be considered when evaluating potential Title IX incidents:

1. School has “actual knowledge” of an allegation of the incident of sexual harassment
2. Alleged harassment occurred within the United States
3. Incident constitutes sexual harassment as previously defined
4. Conduct occurred within the school’s own education program or activity
1. Does the school have "actual knowledge"?

Recall how the Title IX Regulations define this:

“Notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”
2. Did the incident occur in the U.S.?

Incidents may occur during school-sponsored programs abroad. However, the Department of Education requires incidents to occur in the U.S. to be considered "sexual harassment" under Title IX.

**YES**

Incident may be considered Title IX sexual harassment.

**NO**

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.
3. Would the incident constitute sexual harassment?

Reminder: Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of three types of behavior:

1. **QUID PRO QUO HARASSMENT**
   - Is the alleged Respondent an employee?
   - Does the incident involve the conditioning of an aid, opportunity, benefit, etc. upon the Complainant's participation in the unwelcome conduct?

2. **SEXUAL ASSAULT**  
   - How was the conduct unwelcome?
   - What would make this conduct severe, pervasive, and offensive?
   - How has the Complainant's access to education been impacted?

   **DOMESTIC VIOLENCE**  
   - What is the relationship and dynamic between the parties?

3. **“SEVERE, PERVERSIVE AND OBJECTIVELY OFFENSIVE” CONDUCT**
   - Is consent in question?
   - What is the relationship and dynamic between the parties?
Keep in mind that this is a preliminary assessment of the incident - not a definitive determination as to whether the Respondent is responsible for the alleged misconduct.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incident may be considered Title IX sexual harassment.</td>
<td>Determine if other school policies apply to the incident and are therefore initiated. Continue to offer supportive measures.</td>
</tr>
</tbody>
</table>
4. Did the incident occur within the school’s own education program or activity?

Locations, events, or circumstances over which:

- Institution exercised substantial control over the Respondent
- Institution exercised substantial control over the context in which the sexual harassment occurred
4. Did the incident occur within the school’s own education program or activity?

This can be a difficult question to answer at this stage of the process.

**YES**

Incident may be considered Title IX sexual harassment.

**NO**

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.
What if I'm unsure about a Title IX threshold criterion?

- **Consult with other Title IX administrators**
  Discuss general details within the confidential circle of colleagues.

- **Review past Title IX cases**
  Have cases with similar circumstances been addressed under Title IX? Why or why not?

- **Err on the side of caution**
  It is preferable to initiate the Title IX grievance process and learn more about the incident as the process unfolds.
What if I find out a criterion isn't met after initiating the Title IX process?

THE SCHOOL MAY BE REQUIRED TO DISMISS THE FORMAL COMPLAINT UNDER TITLE IX

Upon dismissal of a formal complaint, the school must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.
If Title IX Does Not Apply

- Identify other school policies that may address the alleged misconduct (student/employee handbook, nondiscrimination or bullying policy, etc.)
- Offer the Complainant supportive measures
- Invite the Complainant to an intake meeting
- Keep an open mind - you may learn more about an incident after meeting with the Complainant and then determine that Title IX does apply to the incident
- Document your evaluation process and next steps
School **MUST** dismiss if the conduct alleged in the formal complaint:

- Would not constitute sexual harassment as defined in §106.30 even if proved
- Did not occur in the recipient’s education program or activity
- Did not occur against a person in the United States

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

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

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

⚠️ A complaint **will not** be dismissed because a Complainant remains at or leaves the school.
Let's Practice Evaluating Incidents

If the answer is "yes," continue up the step ladder.

1. Is the misconduct sex-based?
2. Does the school have "actual knowledge" of the incident?
3. Did the incident occur in the U.S.?
4. Does the incident constitute Title IX sexual harassment?
5. Did the incident occur within the school's own education program or activity?

If the answer is "no," evaluate if other school policies apply to the incident and offer supportive measures.
• Joseph reports that his classmate, Joanna, pulled his backpack and made him fall on the bus.

• Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday.

• Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert.

• Jessica's brother reported that her boyfriend assaulted Jessica last night.
• Joseph reports that his classmate, Joanna, pulled his backpack and made him fall, and then kissed him on the bus.

• Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday before he would let her sign up for math team.

• Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert and is now sending him explicit messages to his school email address.

• Jessica's brother reported that her boyfriend assaulted Jessica in the stairwell during the on-campus basketball game last night.
Understanding Safety and Risk Assessments
What is a Safety & Risk Assessment?

Based on the details of a report, it may be necessary for the Title IX Coordinator to conduct a safety and risk assessment or contact the appropriate authorities at their institution to conduct such an assessment.

- Required **before** Emergency Removal of a Respondent
- An individualized safety and risk analysis conducted by the Title IX Coordinator to determine if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.
- If Emergency Removal is necessary, the Title IX Coordinator must provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Document the basis for this individualized outcome with facts specific to the report.
Let’s practice evaluating incidents.
Jonathan, a first-year student at your institution, scheduled a meeting with his Graduate Hall Director. In this meeting, Jonathan shares that his roommate, Seth, has been coming back to their on-campus room intoxicated and will get into bed with him. Jonathan informs you that Seth put his hands down Jonathan’s pants last night. He asks if there is any way someone can help him switch rooms.

The Graduate Hall Director fills out an incident form as is instructed by policy and forwards it to you, the Title IX Coordinator.
Munira has been an employee of your school for five years. She phones you to tell you that she has been experiencing harassment from a new co-worker, Ashton. Ashton has been making snide comments about Munira’s hijab as well criticizing her openly for taking approved breaks for prayer. She wants to file a complaint against Ashton and is looking for your guidance.
Calli and Marshall are members of student senate. They informed their faculty advisor that two other members of student senate, Rebecca and Aiden, started a text chat where those invited rate the attractiveness of others in the organization. Calli and Marshall are uncomfortable with the content of the chat as Rebecca and Aiden make frequent sexual comments.

The faculty advisor calls you, the Title IX Coordinator, to tell you about the incident.
Addison and Bailey have been dating for two years. They are currently on a study abroad experience in Argentina. While in Argentina, Addison and Bailey get into an argument. Addison physically assaults Bailey, resulting in Addison’s arrest.

Stacey, the Director of Study Abroad Experiences notifies you of the incident. When Stacey spoke with Bailey, she learned that the relationship has been abusive for months and this is not the first time Addison has physically assaulted Bailey.
Bryson is the star wide receiver on the football team. He has been getting a great deal of attention on national media for his on-field accomplishments. His mother calls you, the Title IX Coordinator, with a concern that her son is being stalked by an admirer.

Bryson comes in to speak with you and tells you that an older woman, who he believes to be a local resident, has been showing up all over campus and places he frequents in town. She has been leaving cryptic notes on his car and has been posting messages on his girlfriend's Instagram page saying, “You will be out of the picture soon.” He is fearful for his safety, as well as his girlfriend's.
Raina is a sophomore in Mr. Pruitt’s Art Appreciation class at Legacy High School. She visits her high school, Mrs. Bradbury in tears after class one day. She discloses to Mrs. Bradbury that Mr. Pruitt showed the class several works of art with nudity in them, which was jarring and offensive to her. She would like to drop the class. Mrs. Bradbury is not quite certain whether this is a Title IX issue or not, but she reports it to the Title IX Coordinator out of an abundance of caution.
Notice of Allegations and Start of the Grievance Process
In This Session

DRAFTING THE NOTICE OF ALLEGATIONS

INITIATING THE TITLE IX GRIEVANCE PROCESS
Drafting the Notice of Allegations
Title IX Grievance Process

WE ARE HERE

INTAKE/REVIEW
FORMAL COMPLAINT FILED
NOTICE OF ALLEGATIONS SENT TO PARTIES
INVESTIGATION
DECISION-MAKING PROCESS
WRITTEN DETERMINATION
APPEALS PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)
Purpose of the Notice of Allegations

- Transparent
- Consistent
- Compliant

TITLE IX PROCESS
Upon receipt of a formal complaint, the Title IX Coordinator must issue written notice to the Parties, if known. The Notice must contain the following information:

1. Notice of the allegations potentially constituting sexual harassment under Title IX, including:
   - Sufficient details known at the time, such as:
     - Identities of the Parties involved in the incident (if known)
     - Description of the conduct allegedly constituting Title IX sexual harassment
     - Date and location of the alleged incident (if known)
Helpful Hint

IDENTITIES OF STUDENTS CAN BE SENSITIVE.

Although names must be included in the Notice, consider defining the appropriate individuals as "Complainant" and "Respondent" in the opening paragraph and then refer to the students with such terms throughout the Notice.
<table>
<thead>
<tr>
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<th>Statement</th>
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<tr>
<td>2.</td>
<td>Statement that if, during the course of an investigation, the school decides to investigate allegations about the Complainant or Respondent that are not included in the Notice, the school will provide written Notice of the additional allegations to the parties whose identities are known</td>
</tr>
<tr>
<td>3.</td>
<td>Statement that the Respondent is presumed not responsible for the alleged conduct unless and until the determination of responsibility is final</td>
</tr>
</tbody>
</table>
# Elements of the Notice of Allegations

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<tr>
<td>4.</td>
<td>Notice and copy of the school’s Title IX grievance process</td>
</tr>
<tr>
<td>5.</td>
<td>Statement that the Parties have the right to inspect and review evidence collected during the investigation</td>
</tr>
<tr>
<td>6.</td>
<td>Statement that a determination of responsibility is made at the conclusion of the grievance process</td>
</tr>
<tr>
<td>7.</td>
<td>Option for informal resolution, if appropriate and permitted</td>
</tr>
</tbody>
</table>
Contextualizing These Elements

➢ Provide basic information about Title IX and the school’s requirements under the Regulations

➢ Include an overview of the Title IX process and explain what happens next (e.g., interview with an Investigator)

➢ Summarize the Parties' rights under Title IX (e.g., right to participate or refuse to participate in the process, right of a parent or guardian to act on behalf of a party, right to supportive measures, etc.)
Helpful Hint

MAKE THE TITLE IX POLICY AND PROCEDURES ACCESSIBLE TO THE PARTIES

Include a hyperlinked URL to the applicable policy in the Notice, attach a digital copy of the policy to the email, and attach physical copy of the policy to the printed letter to the Complainant and Respondent.
8. Statement that the Parties have a 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.
- Parties have the option to include the Advisor in any meeting or interview.
Helpful Hint

ASK THE PARTY TO SHARE THE NAME OF THEIR CHOSEN ADVISOR

This allows the Title IX Coordinator to communicate with the Advisor and share information about the Title IX process. This also helps the Title IX Coordinator recognize if a Party is unable to find an Advisor and therefore assist in identifying an Advisor, if necessary.
Elements of the Notice of Allegations

9. Notice to expect an initial interview with the Title IX Coordinator or Investigator
   • Provide sufficient time for the Party to prepare for any initial interview

10. Reference to any provision in the school's code of conduct or other policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
Additional Elements to Include

- Provide the name and contact information of the Title IX Coordinator and Investigator (if known)
- Include a statement that retaliation is prohibited, and define retaliation under Title IX
- Relay confidentiality expectations, as outlined under Title IX and school policy (sometimes referred to as “privacy” within a policy)
- Provide a list of campus and community support resources
- Provide information about disability services and the process for requesting reasonable accommodations
Recall...

Retaliation

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

Recall...

Title IX states each school or “recipient” must:

- Keep confidential the identity of:
  - Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment,
  - Any complainant
  - Any individual who has been reported to be the perpetrator of sex discrimination
  - Any respondent
  - Any witness

- Except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
Practical Tips

› Prepare the Notice of Allegations on school letterhead, then attach it to an email

› Consider the reading level of the Parties and do your best to use accessible language

› Make yourself available to Parties and the Advisors so they can ask questions, discuss the process, etc.

› Proofread this Notice! Misspellings impact trust and confidence

› Send these notices to both the Complainant and Respondent at the same time
Initiating the Title IX Grievance Process
A formal complaint has been filed. Now what?

In addition to preparing the Notice of Allegations, the Title IX Coordinator is responsible for initiating the Title IX process. Key responsibilities include:

- Engaging Title IX team members
- Contacting Parties’ Advisors
- Communicating with the Parties
Engaging Title IX Team Members

Select team members:

- Title IX Investigator
- Decision-Maker
- Appellate Decision-Maker
- Informal Resolution Facilitator (optional)

Share with team members the following information:

- Date of the formal complaint
- Potential timeline of the grievance process and their expected participation
- Confidentiality requirements
- Reminder that 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
  - Provide the names of the Complainant & Respondent
  - Inform Title IX personnel that they must contact you immediately and recuse themselves from the case if they have a conflict of interest or bias
- Copy of the Title IX or Sexual Harassment Policy
Contacting the Parties' Advisors

With the Party's permission, contact each Advisor to provide the following information:

- Explain your role as the Title IX Coordinator
- Explain their role and responsibilities as an Advisor
- Provide a copy of the Title IX or Sexual Harassment policy
- Provide Advisor guidelines and explain confidentiality and information sharing
- Invite to a meeting or phone call to answer questions and discuss process

What if a Party doesn't have an Advisor?
Communicating with the Parties

Facilitate a transparent and equitable process by providing regular updates to the Parties.

**Supportive Measures**
Check in to confirm supportive measures are meeting the Parties’ needs and/or offer alternative measures.

**Status Updates**
Provide status updates, explain which stage of the Title IX process is taking place, and outline what to expect in the coming weeks.

**Introductions**
Share the name of the Title IX Investigator, Decision-Maker, Appellate Decision-Maker, and Informal Resolution Facilitator, when appropriate.

**Availability**
Reiterate the Title IX Coordinator’s role and availability to answer questions in person, via email, etc.

Note: Schools must send written notice of procedural delays to the Parties and include reasons for delay.
What else should we do when initiating the Title IX grievance process?

Consider the following questions:

› Is it possible to confer with colleagues about a difficult case while maintaining the required level of confidentiality? Who might be appropriate or inappropriate to share information with?

› Is another safety and risk assessment necessary?

› How can we move the process forward?
Questions?
TITLE IX
COORDINATOR
TRAINING

TITLE IX SOLUTIONS, LLC
WELCOME BACK!
Training Instructors

Tawny Alonzo
Director of Training
Title IX Solutions, LLC

Elizabeth Abdnour
Advisor and Investigator,
Title IX Solutions, LLC
Part Two

(2.21.2024)

Training Agenda

Times listed in Eastern

1:00 p.m. – 2:00 p.m. | NOA + Title IX Investigations

2:00 p.m. – 3:00 p.m. | Title IX Decision-Making Processes

3:00 p.m. – 3:15 p.m. | Break

3:15 p.m. – 4:15p.m. | Title IX Outcomes, Sanctions, and Remedies

4:15 p.m. – 4:45p.m. | Additional Requirements and Best Practices

4:45 p.m. – 5:00 p.m. | Part Two Debrief and Q&A
Questions from yesterday?
Title IX
Investigations
In This Session

- Conducting Compliant Title IX Investigations
- Understanding the Coordinator’s Role in Title IX Investigations
Conducting Compliant Title IX Investigations
Title IX Grievance Process

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INTAKE/REVIEW
FORMAL COMPLAINT FILED
NOTICE OF ALLEGATIONS SENT TO PARTIES
INVESTIGATION
DECISION-MAKING PROCESS
WRITTEN DETERMINATION
APPEALS PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)
Purpose of the Title IX Investigation

- Gather statements from Parties and witnesses and for the official record
- Collect evidence that is directly related to the allegations in the formal complaint
- Allow Parties to inspect and review all directly related evidence as it relates to the allegations
- Summarize relevant evidence in an investigative report to be provided to the Title IX Decision-Maker
The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the Parties.

A Recipient **must** investigate a formal complaint.

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

§106.45 (b)(5)(i)

**Key document- Waiver of privileged information**
A Recipient **must** investigate a formal complaint.

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

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

§106.45 (b)(5)(i)

**Key document- Waiver of privileged information**
Title IX Requirements

During the investigation, the school must:

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

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

§106.45 (b)(5)(ii)
Inculpatory vs. Exculpatory

**Inculpatory** = Evidence which tends to corroborate the allegations

**Exculpatory** = Evidence which tends to contradict the allegations
Title IX Requirements

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

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

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

§106.45 (b)(5)(iii)
Title IX Requirements

During the investigation, the school must:

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

§106.45 (b)(5)(iv)
Title IX Requirements

- Do not deny the Party an opportunity to have an Advisor present!
- Their parent(s) or legal guardian(s) should also be in the room if the Party or witness is a minor.

Key document- Advisor participation agreement
Title IX Requirements

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

“Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;”

§106.45 (b)(5)(v)

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

Key document- Notice of Meeting/Notice of Interview
Title IX Requirements

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

“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

§106.45 (b)(5)(vi)

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

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

“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;”

§106.45 (b)(5)(vi)

- Ensure your communicated timelines are compliant with this requirement.
Title IX Requirements

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

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

- Ensure you follow this timeline.
- Allow ample time for the parties to review and respond to the report.

Key document- Investigation report template
Elements of the Investigation Report

- Identify the allegations
- Identify relevant policies, guidelines, and other standards
- Explain the procedural steps taken between receipt of the formal complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- Fairly summarize relevant evidence
Understanding the Coordinator’s Role in Title IX Investigations
Factors to Consider:

- Levels of training

  “A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence...”

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

• Initial Report
• Formal Complaint
• Notice of Allegations
• Any meeting notes from interactions with Complainant, Respondent, or Witnesses
Sending Required Communication

- Notice of Meeting/Notice of Interview
- Notice of Delays for Good Cause
- Investigation file
- Investigation report
• Assisting Investigator(s) in investigation interview preparation
  ◦ Order of interviews
  ◦ Creating a cursory timeline
  ◦ Drafting questions
• Being made aware of delays for good cause
• Ensuring required response periods are being observed
  ◦ 10 days for response to investigation file
  ◦ Provision of investigation report 10 days prior to decision-making process
• Provide administrative support for Investigator(s)
  ○ Secure rooms
  ○ Assist with technology
  ○ Order transcripts
• Review documents
  ○ Questioning scripts/playbooks
    ▪ May consider having bookend meetings with the Investigator(s) to determine if questions have yielded the necessary information
  ○ Investigation file
  ○ Investigation report
• Serve as a resource for parties and Advisors
  ○ Provide information regarding process-related issues or questions
  ○ Coordinate and monitor supportive measures
Key Considerations

As the Investigator prepares to interview Parties and Witnesses, keep in mind the following:

- **Title IX is an administrative, not a criminal or even civil, process**
- **Investigators must remain impartial**
  - Impartiality does not mean you cannot have empathy
- **Challenging process for all individuals involved can be emotional and time-consuming**
- **Consistent Communication** can alleviate challenges
  - Build in moments for self-care and reflection for you and your Investigation team
Title IX Decision-Making Processes
In This Session

CONDUCTING COMPLIANT TITLE IX DECISION-MAKING PROCESSES

UNDERSTANDING THE COORDINATOR’S ROLE IN TITLE IX DECISION-MAKING PROCESSES
Conducting Compliant Title IX Decision-Making Processes
Title IX Grievance Process

WE ARE HERE

INTAKE/REVIEW
FORMAL COMPLAINT FILED
NOTICE OF ALLEGATIONS SENT TO PARTIES
INVESTIGATION
DECISION-MAKING PROCESS
WRITTEN DETERMINATION
APPEALS PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)
Purpose of the Decision-Making Process

- Review the investigative report, evidence, and parties’ responses to the report provided by the Title IX Investigator(s)
- Provide an opportunity for Parties’ Advisors to ask relevant cross-examination questions of Parties and Witnesses (including to challenge credibility)
- Provide an opportunity for the Decision-Maker to ask relevant questions of Parties and Witnesses
- Provides an opportunity for Parties and Witnesses to answer questions
- Provides an opportunity for the Parties to share additional information before the Decision-Maker makes a determination regarding responsibility
Title IX Requirements

“The decision-maker(s)...cannot be the same person(s) as the Title IX Coordinator or the Investigator(s)...”

§106.45 (b)(7)(i)

- Title IX Decision-Makers must also be free of conflict of interest and bias!
- You may have more than one Decision-Maker, such as a panel.
Title IX Requirements

“For postsecondary institutions, the recipient’s grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each Party’s advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”

§106.45 (b)(6)(i)

- This is a non-negotiable aspect of the decision-making process in higher ed.
- Advisors play their most critical role in this portion of the grievance process.
Title IX Requirements

“If a Party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that Party, an Advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.”

- Does your school have a pool of trained Advisors?
- A Party may choose to utilize a school-provided Advisor much earlier than at the live hearing.
- This individual may be a parent, friend, coach, or other non-attorney individual.
“Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party’s advisor of choice and never by a Party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.”

§106.45 (b)(6)(i)

- Never allow a Party to question or speak to the other Party in the live hearing.
- You may establish rules for the Advisor, however, they must be applied to both Parties’ Advisors.
"Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant."

How many drinks did you consume at the party?

Relevant. Please answer.

Three.
"At the request of either Party, the recipient must provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions."

- Parties can be, but are not required to be in the same room.
- Videoconferencing and remote technology is permitted, as long as the hearing is live and in real time.

§106.45 (b)(6)(i)
Title IX Requirements

“Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.”

§106.45 (b)(6)(i)

- This recording and/or transcript must be kept for seven years as required by Title IX Regulations regarding recordkeeping.
- Your school policy may dictate which format is provided to Parties for inspection and review.
Let’s discuss relevance as it relates to the Title IX grievance process.
Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

<table>
<thead>
<tr>
<th>Directly Related</th>
<th>Relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence that is connected to the complaint but <strong>does not</strong> tend to prove or tend to disprove the complaint or allegations.</td>
<td>Evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.</td>
</tr>
</tbody>
</table>

Example: A receipt from a lunch date at the campus dining hall between the Complainant and Respondent. (Provided by the Complainant at their investigative interview.)

Example: An email with attached nude images the Respondent allegedly sent to the Complainant later that evening via the Respondent’s campus email account. (Provided by the Complainant at their investigative interview.)
As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

Evidence about a Complainant’s prior sexual behavior, except when:

Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;” or

Questions and evidence concerning specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent are offered to prove consent.
What is Never Relevant Under Title IX?

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

EXAMPLES:

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

Consider creating a waiver of rights to privacy of these records for Parties who wish to submit privileged information as evidence.
Refusal to Participate in the Hearing

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

- If the Party refuses to submit to cross-examination, the Decision-Maker:

  "must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party’s or Witness’s absence from the live hearing or refusal to answer cross-examination or other questions"

§106.45 (b)(6)(i)
A federal court vacated regulatory language in the 2020 amendments that prohibited decision-makers in postsecondary schools from relying on statements by individuals who did not submit to cross-examination during a live hearing. As a result, postsecondary schools are no longer subject to this language.

A Decision-Maker can rely on previous statements of a Party or Witness, even if they choose not to participate in the hearing.
Decision-Making Process

PRE-HEARING MEETING

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

LIVE HEARING

- This will be the formal opportunity for the Parties to be cross-examined via Advisors
- The Decision-Maker will preside over the hearing, while the Title IX Coordinator may be present to assist with facilitation
Best Practices: Hearing Order

1. Opening of the Hearing
2. Opening Statements
3. Questioning of Parties and Witnesses
4. Closing Statements
5. Closing of the Hearing
Title IX Grievance Process

1. Intake/Review
2. Formal Complaint Filed
3. Notice of Allegations Sent to Parties
4. Investigation
5. Decision-Making Process
6. Written Determination
7. Appeals Process

Optional: Informal Resolution (may be initiated in this window)
What is a Determination Regarding Responsibility?

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

Title IX states that the written determination must include:

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

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

6. The school's procedures and permissible bases for the Complainant and Respondent to appeal.
Title IX Requirements

“The recipient must provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.”

Send these at the same time and document!

§106.45 (b)(7)(iii)
Factors to Consider:

- Levels of training

“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”

- Conflicts of interest and/or actual and perceived biases

- Availability to conduct the decision-making process, including the live hearing
Sharing Known Information With the Decision-Maker(s)

- Formal Complaint
- Notice of Allegations
- Investigation Report
- Investigation File (Evidence)
Sending Required Communication

- Notice of Meeting (for any pre-hearing meetings)
- Notice of Hearing
- Procedural requirements regarding the live hearing
- Written Determination Regarding Responsibility
Monitoring Timeline

- Pre-hearing meetings
- Assisting Decision-Maker(s) in live hearing preparation
  - Reviewing policy for specific procedural requirements
  - Creating a cursory script or agenda
- Timeline for drafting written determination
- Being made aware of delays for good cause
- Monitoring the duration of the live hearing
- Monitoring for appeal submission following the issuance of the determination
Providing Support

- Provide administrative support for Decision-Maker(s)
  - Secure rooms,
  - Assist with set-up of technology and troubleshoot
  - Creating record of hearing
  - Order transcripts (if needed)
  - Facilitate the hearing
  - Provide evidence to Decision-Maker, parties, and Advisors upon request
  - Coordinate witnesses (if needed)
- Review documents
  - Written determination regarding responsibility
- Serve as a resource for Parties and Advisors
  - Provide information regarding process-related issues or questions
  - Coordinate and monitor supportive measures
Title IX
Outcomes, Sanctions and Remedies
Aside from initial review, which could include adjudicating a matter under a non-Title IX policy and dismissal of formal complaints, these are the potential outcome points for a Title IX complaint:

- **Written Determination is Issued**
  - Respondent is found not responsible
  - Respondent is found responsible

- **Appeal Process**
  - No appeal sought, Title IX case is closed
  - Appeal sought

Occurs following a determination regarding responsibility.
Title IX Regulations require schools to do the following:

"Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility."

34 CFR §106.45(b)(1)(vi)

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

34 CFR §106.45(b)(7)(ii)(E)
Title IX Requirements

Title IX Regulations require schools to do the following:

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

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

34 CFR §106.45(b)(1)(viii)
If the Respondent **is not** found responsible, the school may continue to offer supportive measures to the Complainant where practical.

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

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

This is a non-exhaustive list of potential sanctions. Consult with administrators who are trained on conduct violations to come up with a range for your institution.

- Education or service
- Written warning
- In-school suspension
- Suspension from school
- Expulsion
- Verbal warning
- Removal from team or activity

Employee sanctions can also range from verbal warning to termination.
Coordinator Training Point

Who will ultimately be responsible for determining student sanctions if the Respondent is found responsible? What if the Respondent is an employee?
What Are Remedies?

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

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

(p. 1458 Preamble to the Title IX Regulations)
Supportive Measures for Complainants and Respondents

Extracurricular
Modified schedules for practice or competition

Employment
Assistance with changes to work assignments and scheduling

Safety
Provision of campus escorts, increased security measures, and no-contact orders

Academic
Academic measures such as extensions of deadlines, course-related adjustments, schedule modifications

Transportation
Assistance with movement around campus, parking, and other transportation concerns

Referral
Referral to campus and community services such as medical, mental health, legal services and more

Remedies for Complainants

Extracurricular
Modified schedules for practice or competition

Employment
Assistance with changes to work assignments and scheduling

Safety
Provision of campus escorts, increased security measures, and no-contact orders

Academic
Academic measures such as extensions of deadlines, course-related adjustments, schedule modifications

Transportation
Assistance with movement around campus, parking, and other transportation concerns

Referral
Referral to campus and community services such as medical, mental health, legal services and more

Many more options

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

- Title IX Regulations stipulate that a school must provide the Parties an equal opportunity to appeal the determination regarding responsibility.

- The appeal process is available to both the Complainant and Respondent.

- The Appellate Decision-Maker cannot be the Decision-Maker that made the determination, the Title IX Coordinator, or the Title IX Investigator for the case.
  - The Appellate Decision-Maker must be trained in accordance with Title IX.
Title IX Requirements

Title IX Regulations require schools to do the following:

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

34 CFR §106.45(b)(8)(ii-iii)
Title IX Regulations require every school to utilize these bases for appeal:

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

34 CFR §106.45(b)(8)
If one or both Parties does not seek an appeal or does not submit an appeal within the time allotted in the policy, the case will be closed and the determination stands.

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

- Determination upheld
- Determination remanded back to the Hearing Officer for review
- A new investigation
- A new hearing
- Overturning the decision regarding responsibility
Informal Resolution Options
Informal resolution under Title IX provides Parties the opportunity to resolve complaints outside of the formal grievance process.

Informal resolution processes are to be:

<table>
<thead>
<tr>
<th><strong>TRANSPARENT</strong></th>
<th><strong>SAFE</strong></th>
<th><strong>VOLUNTARY</strong></th>
</tr>
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<tbody>
<tr>
<td>• Provide clear, consistent communication to the Parties</td>
<td>• Provide emotional and physical safety</td>
<td>• Obtain voluntary, written consent</td>
</tr>
<tr>
<td></td>
<td>• Conduct safety and risk analysis (optional)</td>
<td>• Highlight right to withdraw prior to the agreement</td>
</tr>
<tr>
<td></td>
<td>• Put safety measures in place (optional)</td>
<td></td>
</tr>
</tbody>
</table>
Informal Resolution Participation

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

INFORMAL RESOLUTION
(MAY BE INITIATED IN THIS WINDOW)

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

§106.45 (b)(1)(v)
Informal Resolution Location

VIRTUAL
ON CAMPUS
OFF CAMPUS
IN WRITING
Benefits of Informal Resolution

Informal resolution has the potential to:

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

- Undergo a less intimidating process than the grievance process
- Explore potential for less harsh outcomes
- Provide input regarding outcomes of the process
- Minimize re-traumatization
- Reduce embarrassment for both Parties
- Allow an opportunity for interaction and open dialogue
- Participate in a more personal experience
"A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the Parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed."

§ 106.45(9)
What does this mean?

- Schools cannot take away a Parties' right to an investigation and adjudication process following a formal complaint of sexual harassment.
- Schools cannot require any Party to participate in an informal resolution process. It is a 100% optional process and requires buy-in from both Parties.
- The informal resolution process can only take place once a formal complaint has been filed.
"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)
Written notice of informal resolution provided to the Parties must include:

"The allegations,"

which can be pulled directly from:

- The Formal Complaint
- The Notice of Allegations

§ 106.45(9)
Written notice of informal resolution provided to the Parties must include:

"Requirements of the informal resolution process, including:
• Circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations,"

which can be pulled directly from:

§ 106.45(9)

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

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

which can be pulled directly from:

§ 106.45(9)

Title IX Regulations
Written notice of informal resolution provided to the Parties **must** include:

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

This can be pulled directly from: § 106.45(9)

Institutional Policy
The Title IX Regulations do not specify the exact processes institutions must use to carry out the informal resolution function. Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.

Types of Informal Resolution

- Joint sessions
- Private meetings
- Mediation
- Restorative Justice

Common school-based informal resolution processes
What is the role of the Informal Resolution Facilitator?

- Serving neutrally, impartially
- Facilitating the conversation between Parties
- Providing physical and emotional safety
"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."

(Preamble to the 2020 Title IX Regulations, p. 1369)
Who may serve as the Informal Resolution Facilitator?

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

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

Questions to Consider
- Why has the Title IX Coordinator been assigned as the IR Facilitator?
- Is the Title IX Coordinator truly comfortable fulfilling this role?
- Does the Coordinator have the necessary skills to fulfill this role?
Who may serve as the Informal Resolution Facilitator?

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

Rationale

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

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

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:

- Providing proper notice to all students, prospective students, parents, employees, unions and professional organization of the Title IX Coordinator name and contact information and how and where to report.
- Disseminating a nondiscrimination notice and compliant policy.
Title IX Requirements for Coordinators

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:

- Ensuring the school’s Title IX policy is compliant with the grievance procedure requirements under Title IX Regulations.
- Training Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process, and publishing the training.
Title IX Requirements for Coordinators

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:

- Ensuring Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process does not have a conflict of interest or bias for or against Complainants or Respondents.

- Following requirements for Title IX recordkeeping.
Notice of Coordinator and Dissemination of Policy

Best practice includes:

- Publishing in visible places, such as:
  - Institutional websites
  - Pamphlets
  - Student code of conduct manuals
  - Employee manuals
  - Materials shared by faculty to students
  - Collective bargaining agreements

- Performing checks to ensure information is accurate and up-to-date
Title IX Policy Compliance

Best practice includes:

- Conducting benchmarking and developing a checklist of Title IX policy requirements and any relevant state requirements.

- Forming a Title IX team to review the school’s Title IX policy, and reviewing annually.
Title IX Training

Best practice includes:

- Posting training materials such as recordings or powerpoint slides on the Title IX website or making available to inspect.
- Training annually to remain current on Title IX trends and regulatory changes.
- Ensuring students and employees are aware of their rights and responsibilities under Title IX by creating engaging trainings.
Developing a recordkeeping system and providing training on recordkeeping. Records include:

- All emails related to a report or complaint
- Handwritten and typed notes
- Memos of phone calls
- Investigation recordings or transcripts
- Investigation report, including all evidence obtained
- Written determination
- Appeals documentation
- Internal communications about the report or complaint

Records **must** be kept for seven years.
Tips for Coordinators

Advocate for the Title IX Coordinator to have proper authority, training, and resources.

Put time, energy, and resources into prevention education and efforts.
- Awareness is prevention
- Visibility is prevention
- Communication is prevention
- Cultural understanding is prevention

Remember that Title IX is about preserving or remedy in access to education, it is not a criminal or legal process.

Research and develop relationships with campus and community partners.
Thank you!