

Title IX Coordinator & Deputy Annual Training

AUGUST 7, 2025

Agenda

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



Title IX Overview

Title IX Basics

Prohibits gender
discrimination in
education programs
and activities

Applies to students,
employees,
volunteers, etc.

Includes sexual
harassment

Essential Compliance Elements

Institutions must:

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

Training Mandates

DEFINITIONS

- Sexual harassment
- Education program or activity

OTHER

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

CONCEPTS

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

Office for Civil Rights (OCR)

ROLE

- Establishes compliance standards and guidance
- Enforces Title IX through investigations and compliance reviews

GUIDANCE

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

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

CLERY

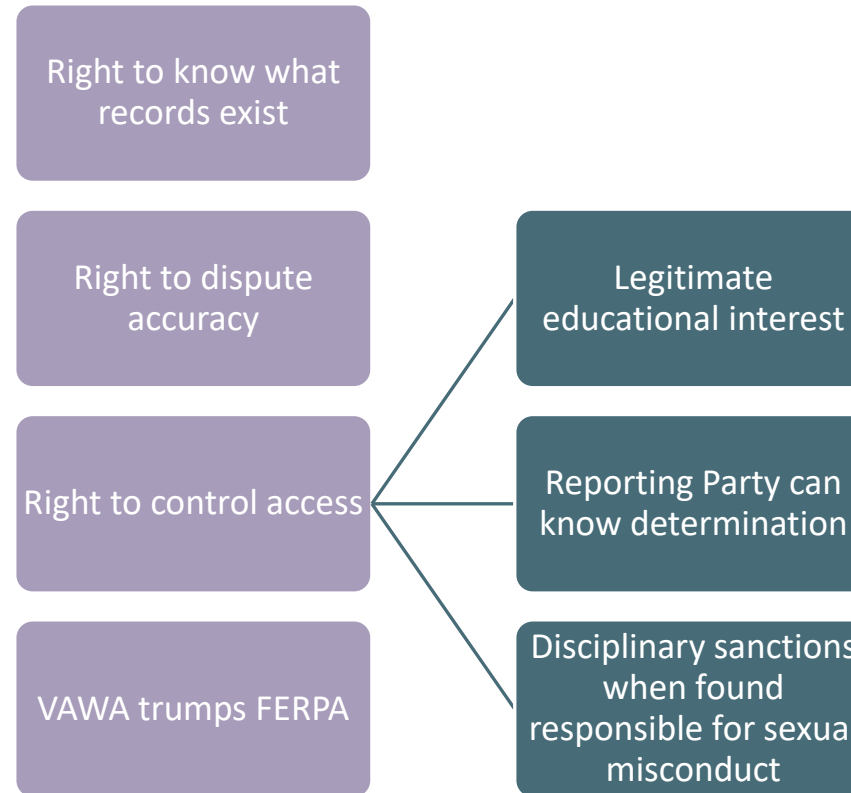
- Consumer protection law
- Institutions must provide accurate, timely, and complete information on specific types of crimes that occur on or adjacent to campus, including sexual assault
- Clery Act violations come with significant fines
- Policy, procedure, prevention, and training requirements for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

VAWA

Institutions must:

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

What about FERPA?



MN State Statute 135A.15

INSTITUTIONS MUST:

- Incorporate sexual harassment policy requirements
- Inform victims of their rights
- Include reporting procedures and disciplinary processes in their policy
- Incorporate an amnesty policy
- Coordinate with law enforcement
- Health services must be confidential and screen for sexual violence and harassment
- Provide an online reporting system that permits anonymous reports
- Report annual statistics on **sexual misconduct**
- Data privacy stipulations
- Training requirements for administrators, campus security, and students
- Allow advisors to make opening and closing statements during a hearing (now dropped)
- [Full Statute Link](#)

“Sexual misconduct” includes:

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

MN State
Statute
135A.15

Sorting out Title IX and Other Sexual Harassment Cases Following 2025 Amendments

State Law mandates parties be offered the option of a live hearing for all sexual harassment cases

“Both the reporting and responding parties must have equal opportunities to challenge the credibility of the other party and witnesses through either a live hearing or questioning conducted by a decision-maker”

Broader definition of sexual harassment under state law

Title IX 2020 regulations: requires conduct to be “severe, pervasive, **and** objectively offensive” and limited to incidents occurring within a program or activity

Minnesota Human Rights Act: defines sexual harassment as “severe **or** pervasive,” applies to incidents on property owned or leased by the institution, but only covers cases where the respondent is a student



When does Title IX apply?

Quid Pro Quo

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

Hostile Environment

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

VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

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

Hostile Environment Considerations

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

Sexual Assault

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

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

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

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

Sexual Assault contd.

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

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

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

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

Sexual Misconduct

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

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

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

Interacting with Complainants: Dynamics of Sexual Violence

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

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

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

Revenge porn

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

Extortion

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

- (1) a threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling;
- (2) a threat to make or cause to be made a criminal charge against the complainant, whether true or false;
- (3) a threat to report the complainant's immigration status to immigration or law enforcement authorities;
- (4) a threat to disseminate private sexual images of the complainant as specified in section 617.261, nonconsensual dissemination of private sexual images;
- (5) a threat to expose information that the actor knows the complainant wishes to keep confidential; or
- (6) a threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing.

Sex trafficking

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

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

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

Consent

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

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

Incapacitation

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

Dating Violence

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

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

Domestic Violence

A felony or misdemeanor crime of violence committed:

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

Power & Control Wheel for Teen Dating Violence

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



**Violence
Intervention
Program**

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

1-800-664-5880

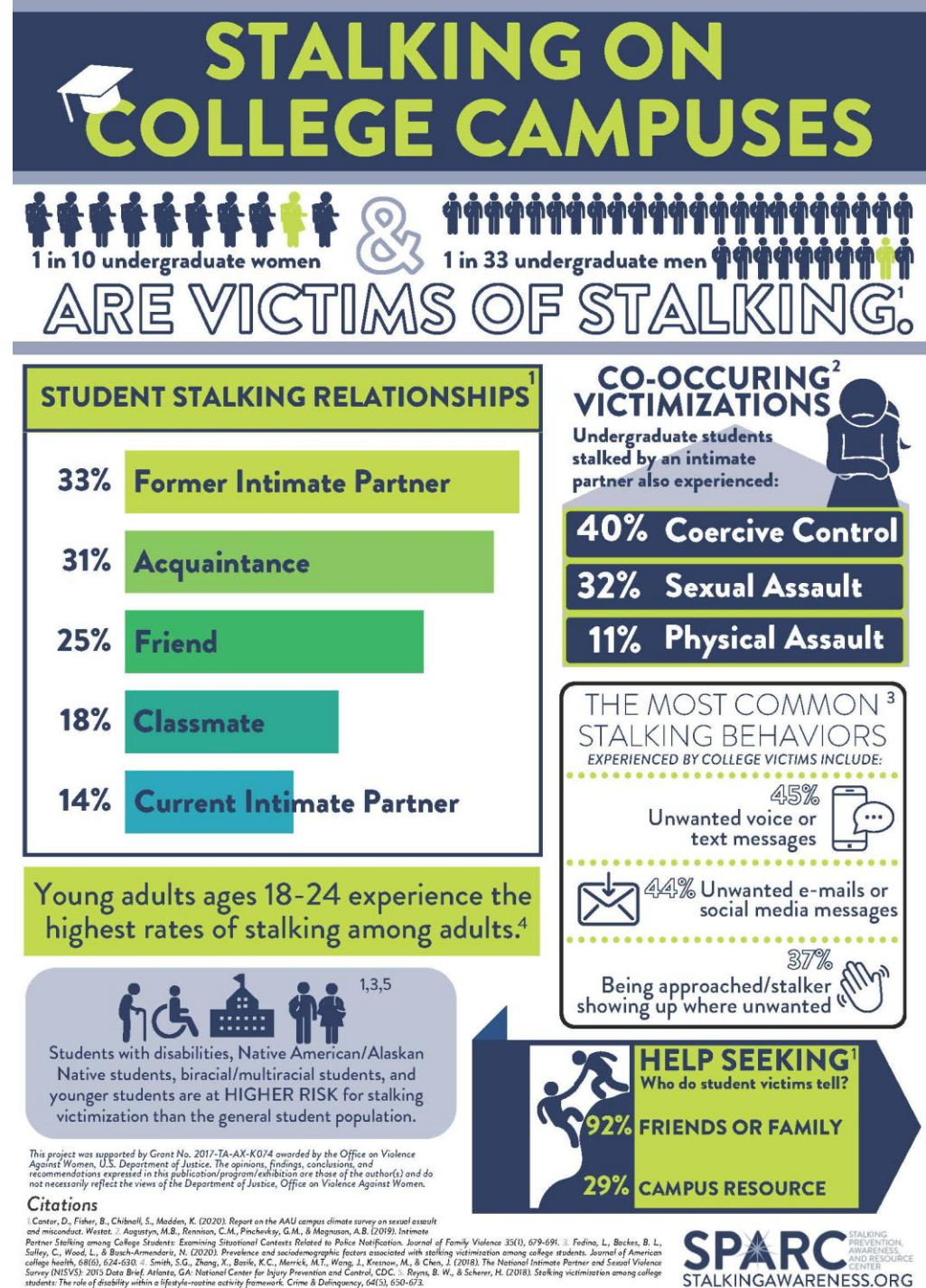
<https://www.wafwc.org/tdv>

Stalking

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

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

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



Sexual exploitation

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

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

Retaliation

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



Education Program or Activity under Title IX

WHAT DOES IT MEAN?

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

ADDITIONAL REQUIREMENTS:

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

Parties' relationship with the institution

REPORTING PARTY

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

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

RESPONDING PARTY

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

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

Which process should we use?

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



Consider:

The severity of the allegation (severe, pervasive, AND objectively offensive?)

Where it occurred (on/off campus, US or abroad, etc.)

The roles of the involved parties (students, visitors, employees, alumni, etc.)

A Note about Sex-Based Discrimination

Discrimination based on sex or gender (i.e., adverse or preferential treatment based on someone's sex, gender identity, sexual orientation, etc.) is still prohibited under Title IX; however, institutions are not obligated to implement all the same Grievance Process requirements as stated in the regulations in order to address and/or investigate those types of concerns.



Title IX Personnel Roles & Responsibilities

Title IX Coordinator: Role and Responsibilities

Must designate at least one Title IX Coordinator

Should have significant autonomy and seniority

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

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

Investigator: Role and Responsibilities

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



Decision-makers: Role and Responsibilities

HEARING PANEL MEMBERS & ADJUDICATOR(S)

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

APPEAL OFFICER(S)

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

Conflicts of Interest



Biases *for* or *against* reporting or responding parties individually or generally



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



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



Conflicts of interest may be raised on appeal



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

Avoiding Bias

Bias = tendency to like or dislike; may involve stereotypes

Might be implicit

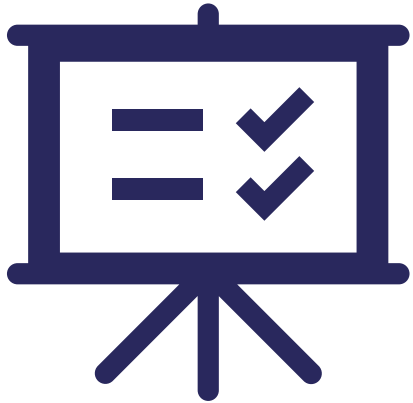
Avoid prejudgment of the facts

Frequent implicit biases

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

Advisors

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



Title VI Overview

Title VI Overview

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

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

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

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

Retaliation also prohibited under Title VI.

Title VI Prohibitions

DISPARATE TREATMENT

- Intentional discrimination (intentionally treating persons differently because of their **actual or perceived** race, color, or national origin)
- Intent to discriminate need not be malicious
- Legitimate non-discriminatory purpose?

DISPARATE IMPACT

- Discriminatory effect, regardless of intent
- Otherwise neutral policy or practice that has a disproportionate and adverse effect on individuals of a certain race, color, or national origin
- Focus is on result, not intent

Title VI – Hostile Environment Theory

To establish a violation of Title VI under the hostile environment theory, must find:

1. A hostile environment based on a protected classification existed;
2. Institution had actual or constructive notice of it; and
3. Failed to take prompt and effective action to:
 - a. End the harassment;
 - b. Eliminate the environment and its effects; and
 - c. Prevent the harassment from recurring.

Title VI – Hostile Environment Theory

OCR historically interprets Title VI to mean that the following types of harassment creates a hostile environment:

Unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a recipient's education program or activity.

Harassing acts need not be targeted at the complainant to create a hostile environment.

Procedural Steps for Title VI and Title IX

1. Report / Intake

- Who is the best person for this? Make this clear to your community.
 - Consider job descriptions, conflicts of interest, status of the reporter, etc.
 - If it's a Title IX concern, route through Title IX Coordinator.
- Offer resources (confidential resources, campus resources, local resources, law enforcement if applicable, etc.)
- Offer accommodations as applicable (academic, housing, employment, etc.)
- Offer options to address the concern (formal grievance process, informal resolution, restorative justice process, no-contact directive, educational conversation, report to law enforcement, etc.)
 - Clarify at what point the institution has a duty to proceed, even against reporting party's wishes

Procedural Steps for Title VI and Title IX

2. Investigation

- Not nearly as many requirements for Title VI as for Title IX
- May use internal or external investigator, depending on your policy
- Institutional burden to collect sufficient evidence
- Title IX requires institutions to allow parties to have an advisor of their choice
- Title VI does not have the same formal complaint or notice requirements as Title IX
- After investigating, Title IX requires evidence/report review and response periods (FERPA exception)
 - Consider what information Title VI parties will have access to, if any

Procedural Steps for Title VI and Title IX

3. Adjudication

- Title IX requires a live hearing with cross-examination for adjudication purposes, and must provide an advisor to a party who doesn't have one
- Title VI has flexibility for adjudication – could utilize the investigator as the decision-maker, a hearing, a single decision-maker who is not the investigator, etc.

4. Determinations

- Title IX requires written determinations sent to both parties that include a rationale for the decision (FERPA exception)
- Title VI does not require a written rationale. Consider limitations on what you can share with each party. Typically cannot share outcome with reporting party.

Current Federal Landscape

- Increased enforcement post Israel/Hamas even under Biden Administration
- In high-profile resolution agreements, OCR found:
 - Schools failed to promptly respond to incidents of Title VI harassment
 - Often premature classification of incidents as “free speech”
 - School offices had inconsistent responses to reports
 - Including responding differently to incidents that occurred in-person versus online
 - Some responsive processes were terminated if a reporting party did not reply to initial outreach email

Current Federal Landscape

- In these resolution agreements, schools were required to:
 - Conduct annual training that includes Title VI and national origin examples.
 - Conduct proactive climate assessments.
 - Conduct reviews of responses to incidents.
 - Review or revise policies that address discrimination/harassment standards and distinguish between protected speech and harassment.
 - Provide consistent and transparent procedures for responding.

Current Federal Landscape

Under Trump Administration:

- DCL interpreting *Harvard* decision—targeting “DEI”(among other things) and threatening federal funding.
- What does/will OCR enforcement look like—regional offices slashed.
- Enforcement via high-profile acts against high-profile targets. Remains to be seen what will be done beyond this.
- Enforcement focused on preferred subjects.

Current Federal Landscape

What enforcement is supposed to look like

- Termination of funding limited to “particular program or part thereof” and only after:
 - Express finding on the record
 - Opportunity for a hearing
 - Continued failure to comply
 - Determination that compliance cannot be secured voluntarily
 - Notice to House & Senate Committees and 30 days pass



Title IX Reporting and Grievance Procedures

Scenario

We will be taking you through a scenario involving an alleged sexual assault reported by a student, Maia, at Green University. Maia alleges that River, another student, assaulted her after they had been drinking at a party a few weekends ago.

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

Rights of the Parties throughout the Process

Notice of policies,
meetings, investigation,
outcome, etc.

Supportive measures
*(cannot penalize
responding party in any
way unless and until they
are found responsible)*

Impartial Title IX
personnel

Ability to discuss
allegations

Advisor of choice

Opportunity to identify
witnesses and provide
evidence

Ability to review
evidence and
investigation report

Ability to appeal

Reporting Methods

Direct communication
from the reporting
party to the Title IX
Coordinator

Third-party reports
from faculty,
concerned friends,
RAs, etc.

Online reports

Anonymous reports

Employee Reporting Requirements

CONFIDENTIAL RESOURCES

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

**While working within the above capacity*

OFFICIALS WITH AUTHORITY TO INSTITUTE CORRECTIVE MEASURES

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

OTHER EMPLOYEES

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

Confidential Resources

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

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



Responding to a Report

After receiving a report:

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

Scenario

You (the Title IX Coordinator at Green University) receive a report from a class dean. The class dean shares that a student disclosed that they were sexually assaulted after a party a few weeks ago. Apparently, the student tried talking to their RA about it to get support, but the student is still really struggling and is falling behind academically.

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

What about anonymous reports?

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

Scenario

Via your online reporting form, you also receive a report from Danny Johnson, a student at Green. Danny reports that he was at a party a few weeks ago, and that he saw some behavior from another student that really concerned him. What steps do you take to respond to this report?

Initial Conversation with a Reporting Party

PROCESS OPTIONS:

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

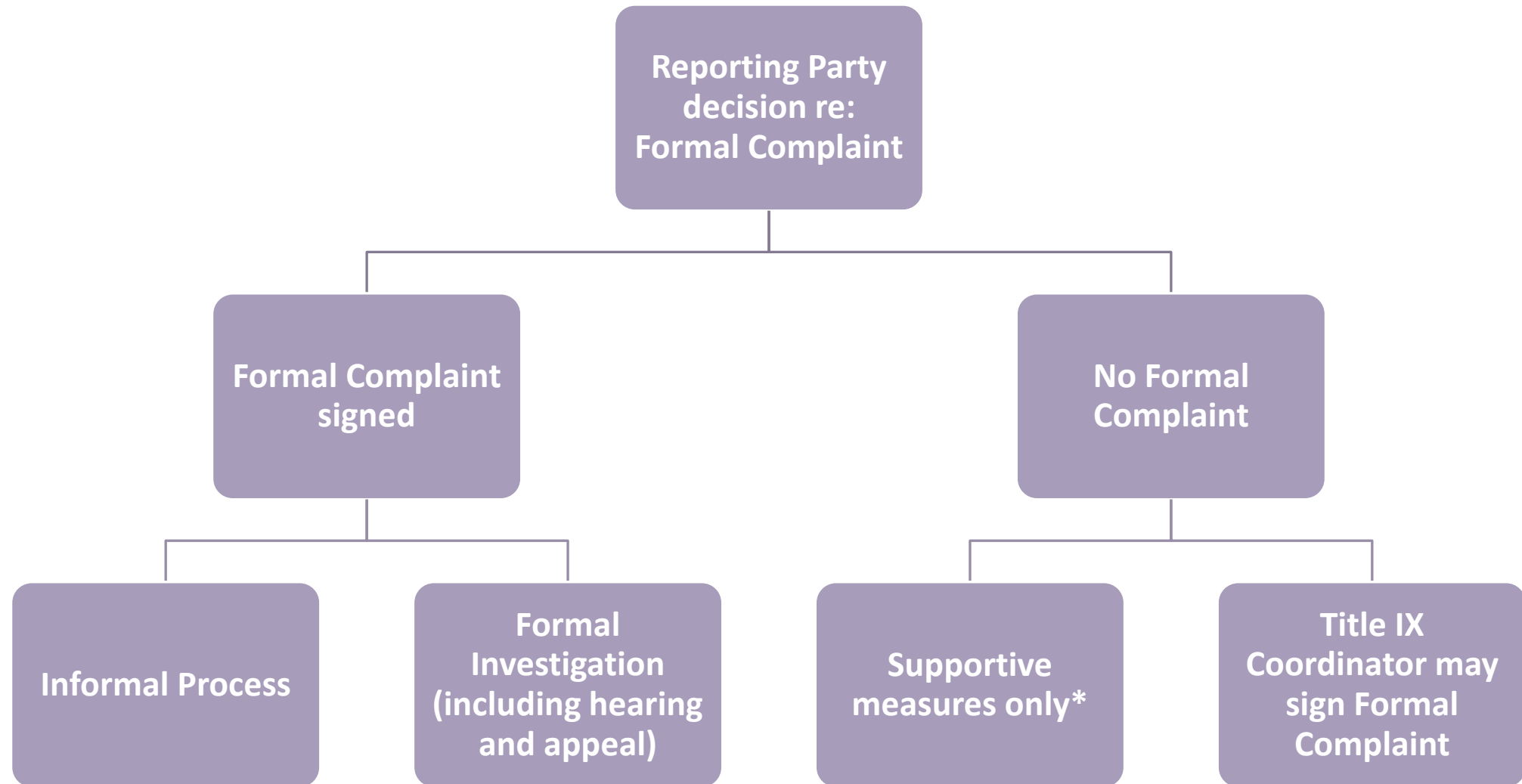
SUPPORTIVE MEASURES

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

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

NEXT STEPS FOR TIXC:

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



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

Scenario

Danny eventually shares with you that one of the students involved in the situation that concerned him was Maia A. Based on this information and the information from the class dean, you send Maia an email asking if she would like to meet.

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

Starting the Grievance Process

FORMAL COMPLAINT INITIATED BY REPORTING PARTY

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

FORMAL COMPLAINT INITIATED BY TIXC

Consider:

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

What does “prompt” mean?



Regs require reasonably prompt timeframes



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



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



Consider incorporating weekly updates to the parties

Dismissal

MANDATORY DISMISSAL

TIXC required to dismiss a formal complaint if:

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

PERMISSIVE DISMISSAL

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

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

If dismissing for
any reason...

Must notify the parties in writing and include rationale for dismissal

Appeals of dismissals are permitted

Consider initiating a different disciplinary process under a separate policy (Code of Conduct? Was the allegation a VAWA offense?)

Emergency removal & administrative leave

INSTITUTION MAY REMOVE A STUDENT RESPONDING PARTY IF:

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

INSTITUTION MAY PLACE NON-STUDENT EMPLOYEES ON LEAVE:

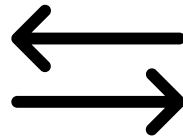
- while a Grievance Process is pending

Consolidation of Complaints

“An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, ***where the allegations of sexual harassment arise out of the same facts or circumstances.***”

Cross-Complaints

How does your institution handle situations where both parties have complaints against the other?



Scenario

Maia emails you the day after your intake with her, saying she wants to pursue the complaint process. She asks you what the next steps are but also wants to know what would happen if she were to change her mind at some point about pursuing an investigation.

How do you respond?

Notice of Allegations

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

Initial Respondent Conversation

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

Scenario

You meet with River in person to let him know about Maia's allegation. River tells you that the interaction between him and Maia was "enthusiastic" and completely consensual. He becomes upset during the conversation, tells you his mom is an attorney, and they are going to sue the University. He also hints that he is not in a good place with his mental health.

What steps do you take with River?

The Investigation

Who should investigate? How do you decide?

Investigator determines investigation strategy (in coordination with TIXC)

Witness and party interviews

Evidence collection

Responsibilities of the TIXC During an Investigation

- Update Notice of Allegations if new allegations arise
- Dismiss complaints if information learned by investigator constitutes a dismissal
- Assist with any unexpected information learned by the Investigator (new potential complainants, significant mental health concerns, unrelated conduct concerns, etc.)
- Help hold Advisors accountable to institutional guidelines
- Assist with investigation strategy if needed
- Provide notices of meetings to the parties
- Provide contact information of parties and witnesses, and help with scheduling interviews if needed
- Help setting up interview rooms/virtual meeting links if needed
- Transmit any evidence already provided by the parties to the Investigator
- Facilitate the evidence and report review stage
- Work with Investigator regarding investigation timeline and close of evidence

Scenario

Now that Maia has signed a formal complaint and you have sent the Notice of Allegations, what steps do you take to get the investigation started?

What information do you provide to the Investigator?

What else do you need to do?

Relevant Evidence

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

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

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

Directly Related Evidence

No given definition

Common sense evaluation

Arguably a very wide net



What about...

- Evidence related to sexual history?
- Privileged information?
 - Cannot require or allow this unless privilege has been waived by the party
- Treatment/health records?
 - Only permissible if party provides voluntary, written consent to include
- Redactions?
- Close of evidence?

Reporting Party's sexual behavior

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

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

OR

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

Scenario

River contacts you because he wants the investigator to talk to two other students he dated last year because, he tells you, they will provide evidence that he “always asks for consent.” What do you do?

Directly Related Evidence Review

MUST:

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

NEXT STEPS & QUESTIONS TO CONSIDER

- If responses are submitted, investigator considers them prior to completing the Investigation Report.
 - Can/should parties see each other’s responses to the evidence?
 - Do the responses prompt a need for additional evidence collection? Some other action?
- What if evidence is submitted during or after the review period?
- **How do you ensure parties/advisors don’t share the evidence with others?**

Investigation Report and Review

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

Scenario

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

During the evidence and report review period, Maia states in her written response that she has now heard that River is known for being “grabby” at campus parties. She asks that the investigator reopen the investigation and interview students about these allegations. What should you and the investigator do?



Informal/Alternative Resolution

Informal Process

REQUIREMENTS

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

VARIOUS APPROACHES

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

Informal Process Considerations

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

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

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

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

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

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

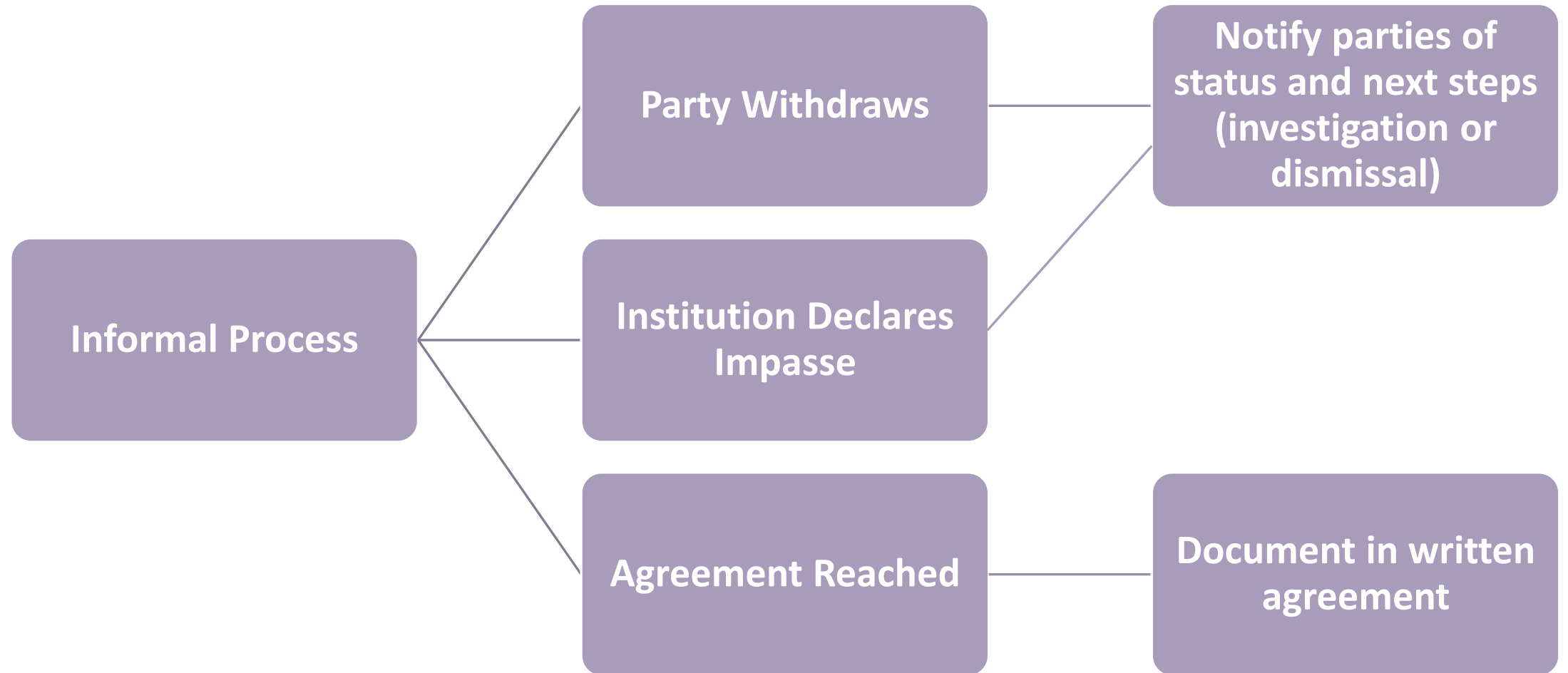
Pros and Cons

PROS

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

CONS

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



Scenario

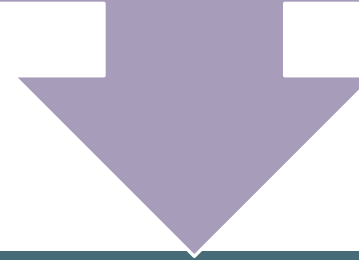
After the evidence review period, Maia notifies you that she would be open to trying the Informal Resolution Process. How do you respond?

Potential Terms of Resolution

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

Scenario

During the informal resolution process, Maia tells the facilitator that she wants River to leave the institution until she graduates, at which point he could return. When the facilitator brings this request to River, he says he's unwilling to leave the institution voluntarily.



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



The Hearing

The Hearing

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

Who attends the hearing?

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

Hearing technology



This will vary depending on the institution.



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



Remember that hearings need to be recorded.

Hearing Preparation

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

Pre-hearing meetings

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

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

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

Scenario

River emails you asking lots of logistical questions about what to expect during the hearing. You let him know that it is your practice to conduct pre-hearing meetings with each party and their advisor prior to the hearing, so that everyone knows what to expect.

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

Managing the Hearing



BREAKS



ADVISORS



PARTIES' EMOTIONS

Relevancy Determinations

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

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

Off limits:

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

Other issues

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

Scenario

During the hearing, Maia says she had 8 shots of vodka in about an hour at the party before the sexual encounter with River, and that he was encouraging her to drink more and pouring her shots. In her interview, Maia said she had 4 shots of vodka at the party, and she did not mention River encouraging her to drink or pouring shots. She also refers to River as “the rapist” several times during her statement.

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

What issues might you be concerned about?
Should you as the Title IX Coordinator take any action?

Making a Determination

STANDARD OF EVIDENCE

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

PROCESS

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

Determine which policy definitions apply to the allegations.

CONSIDERATIONS FOR DECISION-MAKERS

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

Sanctions

**Need to stop, prevent,
and remedy!**

**Consider educational
and developmental
sanctions**

**Engage in a risk
assessment to help
determine appropriate
sanctions**

**Sanctions should reflect
the severity of the
behavior (consider prior
misconduct)**

**Consider any
loss/injuries to the
Reporting Party or the
institution and how to
rectify those, if possible**

**Can consider past cases
of similar misconduct
with assistance from
Title IX Coordinator**

Common Sanctions & Remedies

STUDENTS

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

EMPLOYEES

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

Notice of Decision

NEEDS TO INCLUDE:

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

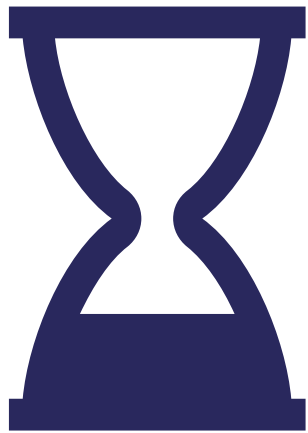
OTHER REQUIREMENTS:

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

Scenario

The decision-makers let you know that they are finding Respondent responsible for violating the policy. They ask you to weigh in on what appropriate sanctions would be for your institution, given past sanctioning history and campus culture.

What information should you provide them?
Who sends out the Notice of Decision?
How do you determine when it should be sent?



Appeals and Process Wrap-Up

The Appeal Process

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



Required reasons for appeal:

Procedural irregularity that affected the outcome

New evidence that was not reasonably available at the time the decision was made that could affect the outcome

Conflicts of interest or bias from an official involved in the case that affected the outcome

Can allow additional grounds for appeal if desired

Appeal Process contd.

REQUIREMENTS

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

POSSIBLE APPEAL DETERMINATIONS

- Hearing Panel decision stands
- Hearing Panel decision overturned*
- Remand
 - New investigation
 - New hearing or re-hearing
- *(Could adjust sanction if institution has an appeal ground related to sanctions)*

Scenario

River appeals the decision. In his written appeal, he states that he strongly disagrees with the decision and reiterates that Maia consented to all of their interactions.

What are your responsibilities as Title IX Coordinator?

Steps once the Process is Over

Notice to parties that the process is over

Sanction and remedy adherence and monitoring; respond to violations

Checking in with parties as appropriate, particularly regarding ongoing supportive measures

Additional prevention measures? School-wide messages, campaigns, training, etc.?

Recordkeeping

Feedback mechanism regarding the Title IX process?

Scenario

Maia contacts you a month after the determination to tell you that she is being triggered every time she passes the dorm the incident occurred in, and she is thinking about leaving school.

What do you do?



General Title IX Oversight

Recordkeeping

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



Records to maintain:

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

Campus Climate Management

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

Scenario

A year later, River is returning to campus after completing his suspension and the terms outlined in the Notice of Decision. You receive an email from a concerned student that includes screenshots of posts on YikYak, an anonymous social media platform. The posts all relate to the Maia/River matter and demonstrate that some students are angry that River is back on campus. Many posts target River specifically and refer to him as a “rapist” and some use vaguely threatening language. Other posts target “the administration” and claim that they “went easy on” River because his parents have a lot of money and pay full tuition.

What do you do?

A week later, you find out that one of the students who has been posting on YikYak and spreading misinformation about the case and the Title IX process in general is named Jenny. Do you reach out to Jenny? If so, what do you say?

Assessing Compliance



Templates and
checklists for all
steps of the process



Internal reviews



Feedback
mechanisms from
parties



Internal case
debriefs with team
members



Professional
development

Thank you!



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