TITLE IX SOLUTIONS

2020 TITLE IX DECISION MAKER TRAINING

A Certificate Course



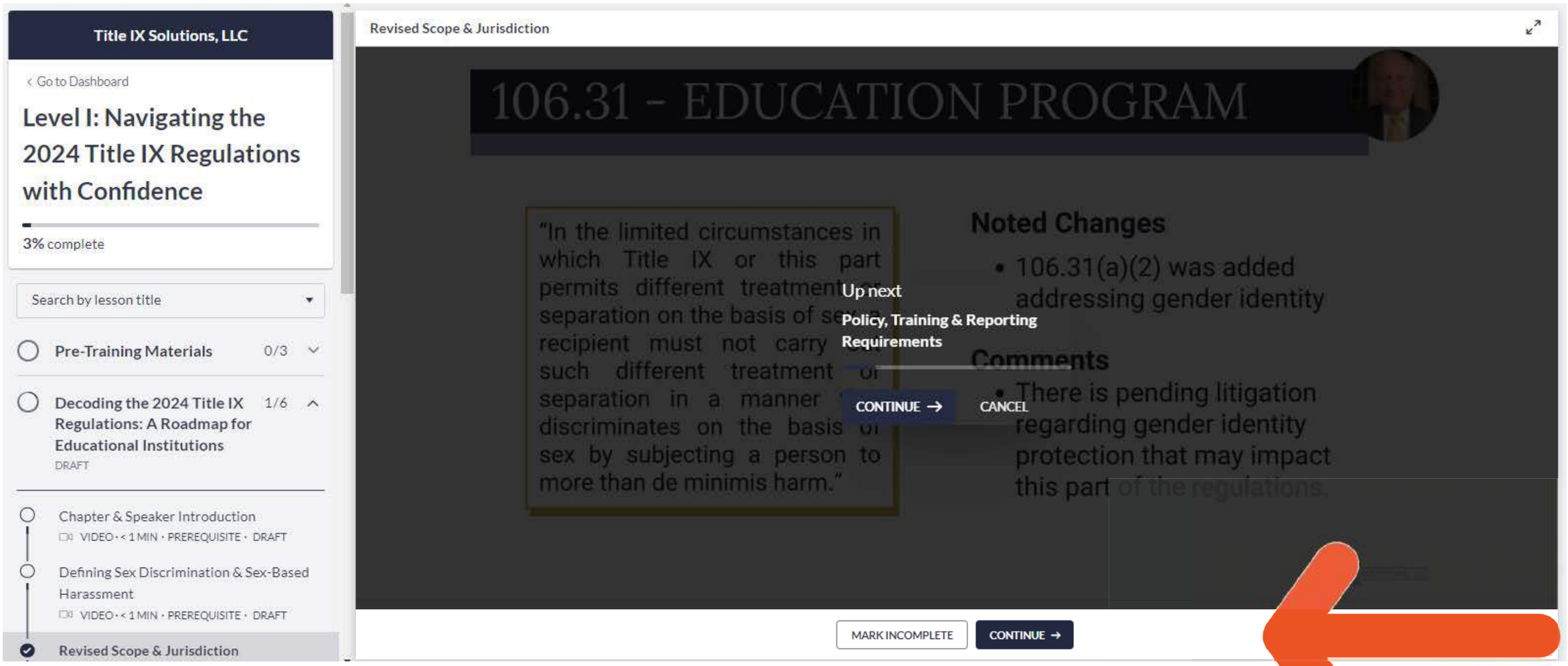
COURSE OVERVIEW

1. An Introduction to Title IX
2. Overview of the Title IX Regulations
3. Role of the Title IX Decision-Maker
4. The Investigation Report and File
5. Evaluating Policy Violations
6. Understanding Relevance
7. Facilitating Pre-Hearing Meetings
8. Conducting a Title IX Hearing
9. Drafting the Written Determination Regarding Responsibility
10. The Appeal Process
11. Understanding Trauma

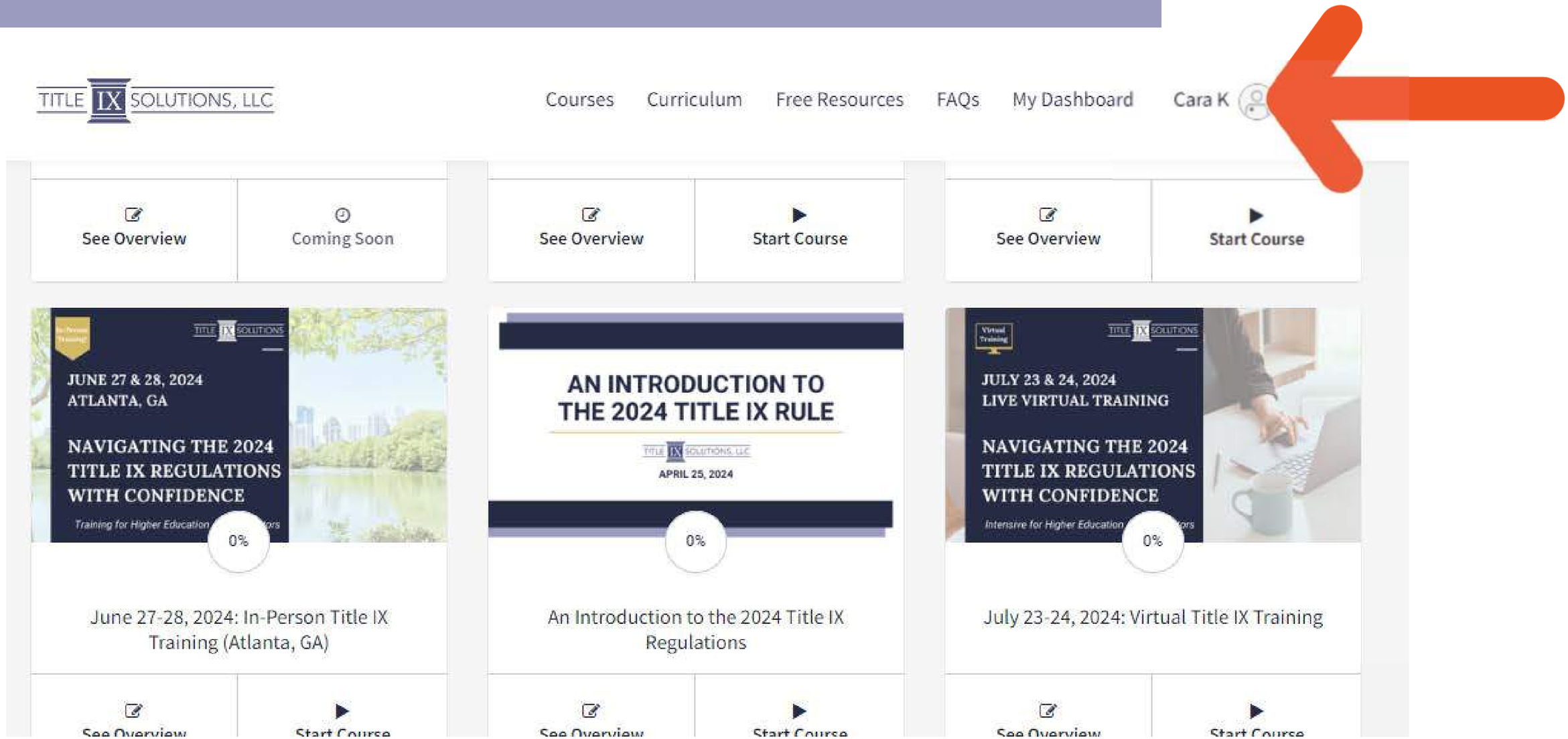
LEARNING OBJECTIVES

- Examine a comprehensive investigation report and file.
- Identify the roles and responsibilities of each Party in the adjudication process.
- Evaluate evidence and questions for credibility and relevancy.
- Conduct a compliant, due process-centered adjudication process.
- Synthesize information to evaluate potential policy violations and draft a written determination.

LESSON COMPLETION



STEPPING AWAY



CERTIFICATE OF COMPLETION



THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

CARTER WILSON

FOR SUCCESSFULLY COMPLETING

LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS WITH CONFIDENCE

ON JULY 18, 2020

Learning Objectives:

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

IX INSTITUTE

Cara Kuhn

CARA KUHN
Training Coordinator
Title IX Solutions, LLC

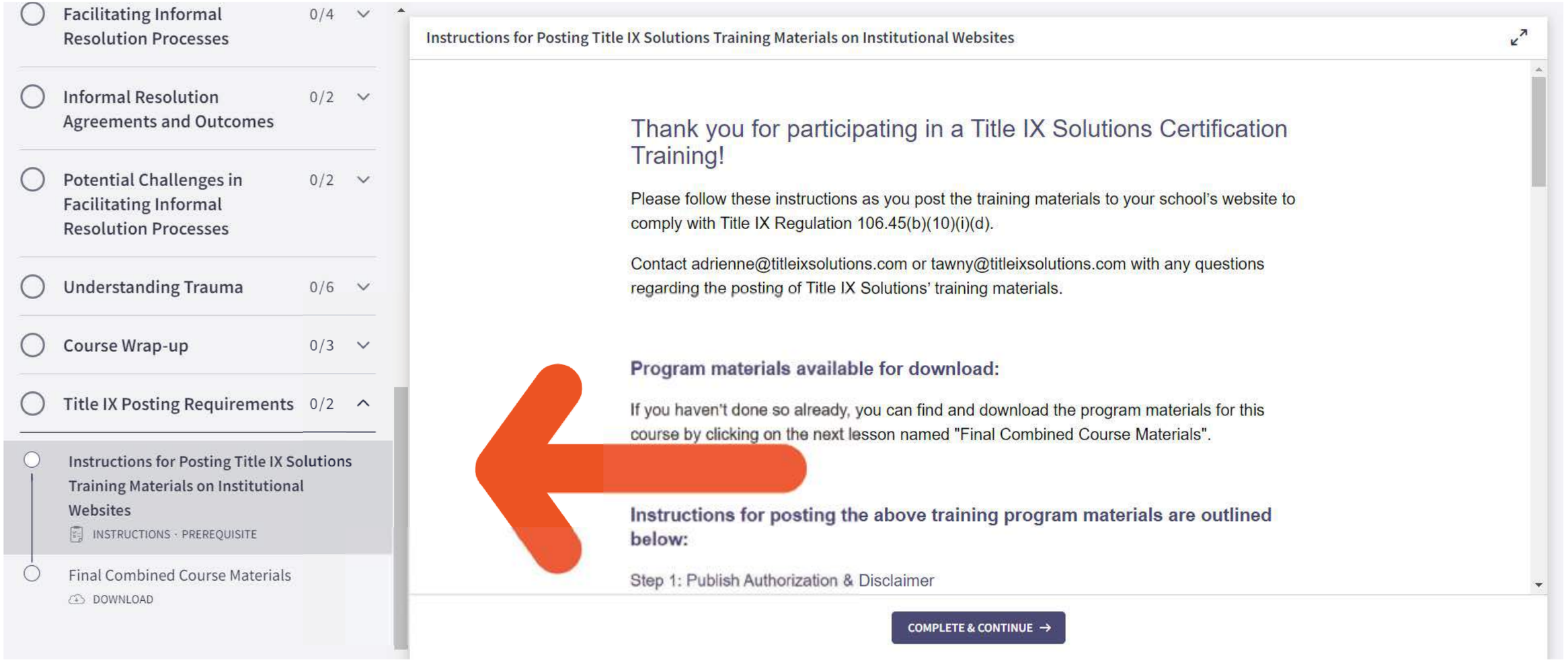
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POSTING REQUIREMENTS

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

Such training materials must also be kept for seven years.

POSTING REQUIREMENTS



COURSE SUPPORT





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



An Introduction to the 2024 Title IX Regulations



July 23-24, 2024: Virtual Title IX Training

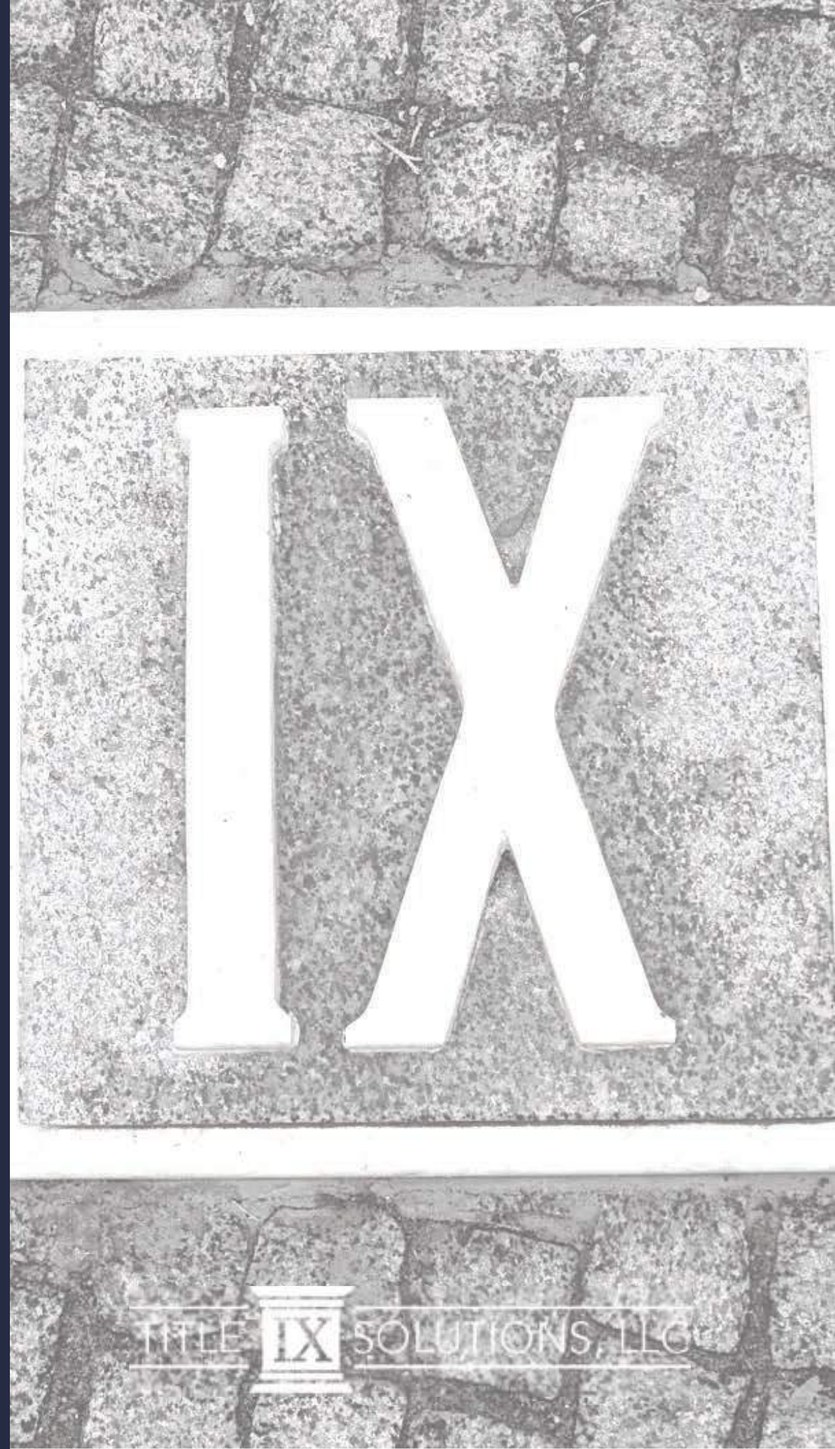
Use code INTRO24REGS to save $100

THANK YOU!



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AN INTRODUCTION TO TITLE IX





SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

IN THIS CHAPTER

IX

HISTORY OF TITLE IX



TITLE IX DEFINITIONS



PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW OF THE TITLE IX PROCESS

HISTORY OF TITLE IX



Title IX of the Education Amendments of 1972

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

20 U.S.C. §1681(a)

CREATION OF TITLE IX

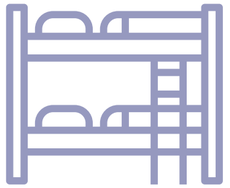
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

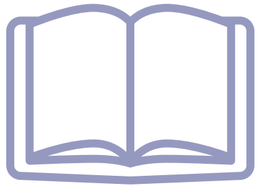
Designed initially to address inequities in:



Admissions



Residence Life



Academic Opportunities



Extracurricular Activities

WHO IS PROTECTED?

All students regardless of:

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

All genders are included

Employees - faculty, staff, administrators

Applies to:

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

BRIEF HISTORY OF TITLE IX



JUNE 23, 1972

Title IX becomes law and addresses sex-based discrimination



APRIL 4, 2011

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



AUGUST 14, 2020

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

NOTE ON THE 2024 REGULATIONS

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

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

TITLE IX DEFINITIONS



ACTUAL KNOWLEDGE

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

REPORT VS. COMPLAINT

REPORT

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

FORMAL COMPLAINT

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

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REMINDER:



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

SUPPORTIVE MEASURES

WHAT?

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

WHEN?

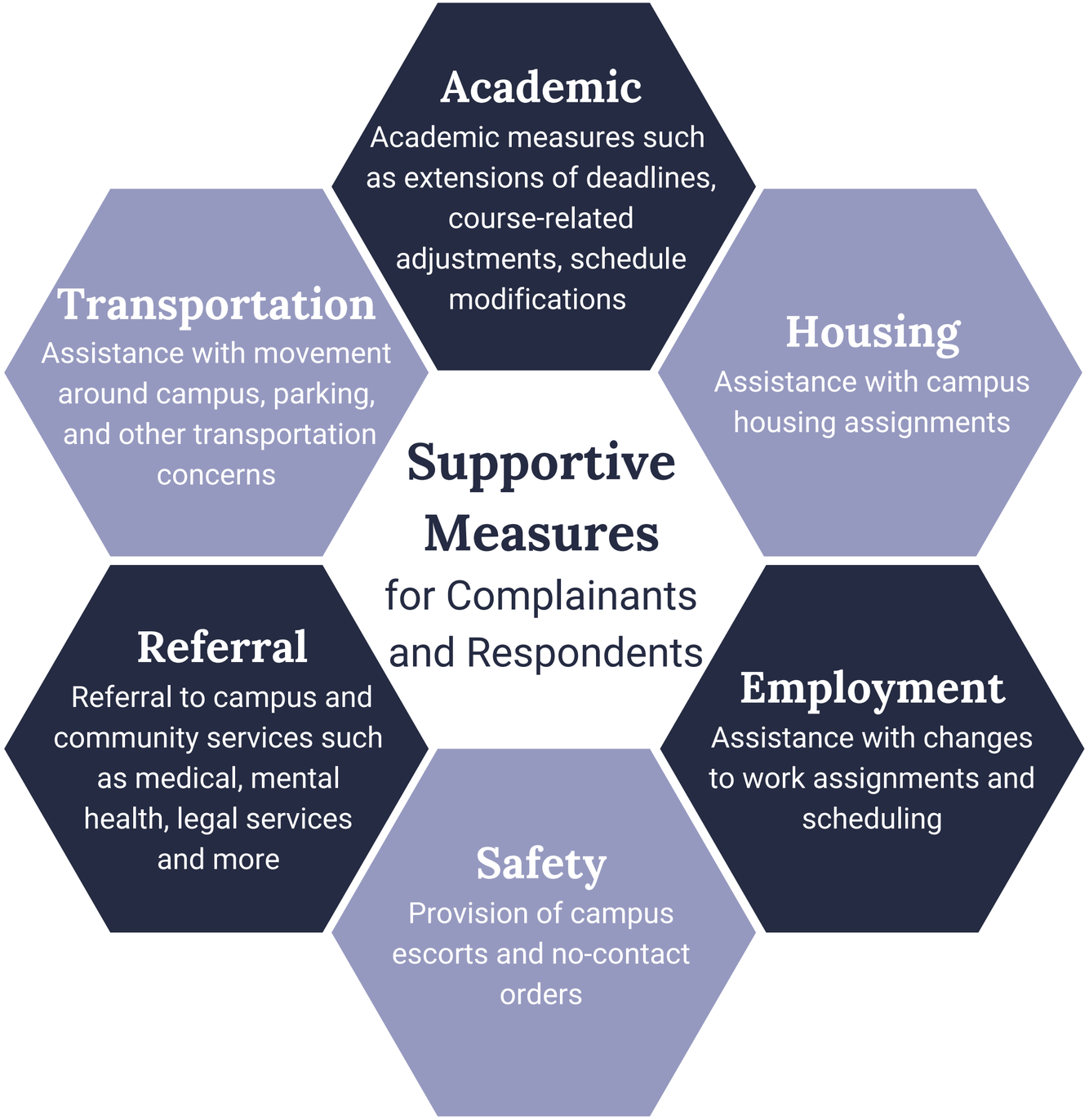
- Available before or after filing a complaint or where no complaint has been filed

WHY?

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

HOW?

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



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AMNESTY PROVISION

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

SCENARIO



Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

CONFIDENTIALITY

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

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
  - Interfering with any right or privilege under Title IX
  - Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

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RETALIATION

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



EXAMPLE ONE:

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



EXAMPLE TWO:

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

REMEDIES AND SANCTIONS

REMEDIES

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

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy

SANCTIONS

- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

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EDUCATION PROGRAM OR ACTIVITY

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

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

STANDARD OF PROOF

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

Preponderance of the Evidence

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

Clear and Convincing

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

STANDARD OF PROOF

Preponderance of the Evidence

Anything that tips the scale to more than 50/50

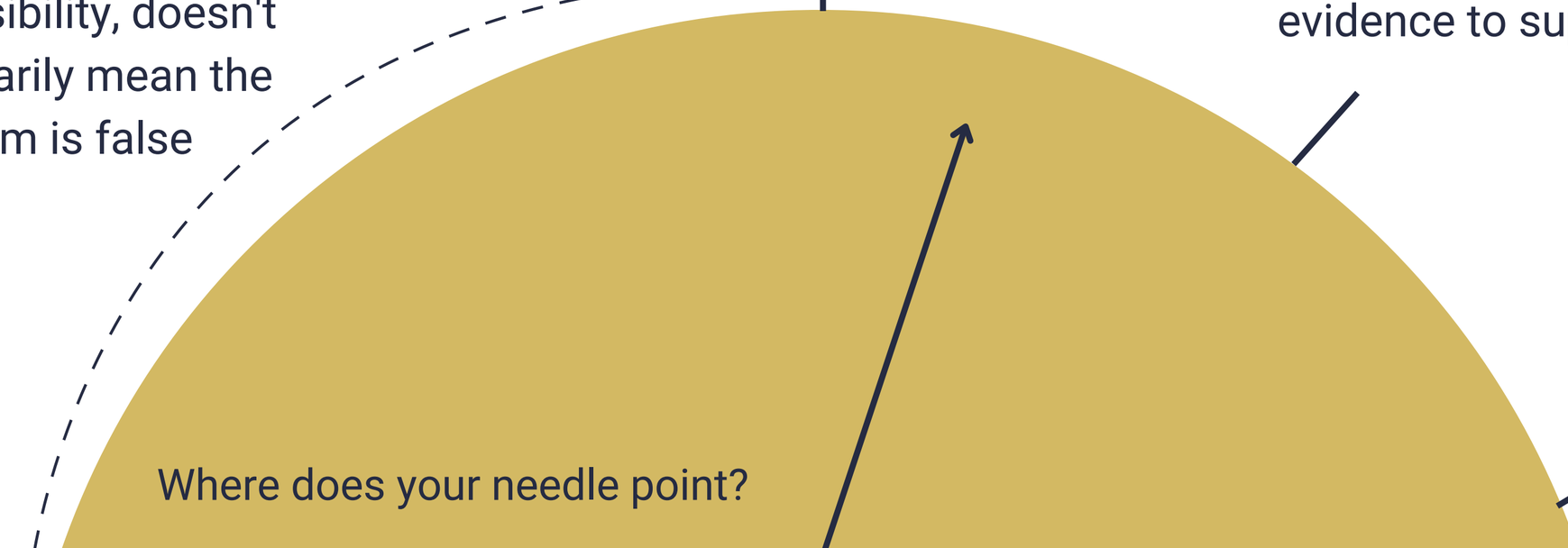
Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Clear and Convincing

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

Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support



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PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW

TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- Institution size
- Institution type
  - K-12
  - Community/two-year colleges
  - Four year colleges and universities
  - Public/private
- Institution structure and resources
  - Organizational charts and reporting
  - Full-time/part-time
  - Budget



TITLE IX PERSONNEL

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



Title IX Coordinator



Deputy Coordinators



Title IX Investigator



Decision-Maker



Informal Resolution Facilitator



Advisor



Appellate Decision-Maker

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TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

CAN

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

CANNOT

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

TITLE IX COORDINATOR



Ensure Compliance



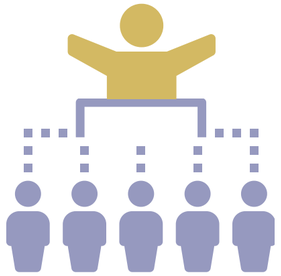
Monitors barriers to reporting



Receive reports



Training



Oversees grievance procedures



Offers supportive measures



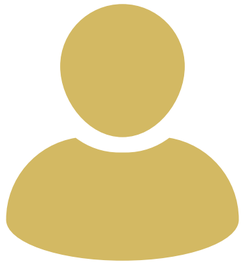
Creates policy and procedures



Determine initiation of complaint

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TITLE IX INVESTIGATOR

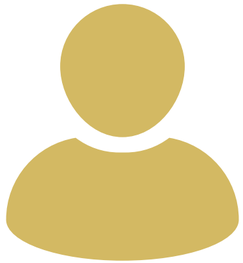


MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.

RESPONSIBILITIES:

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

TITLE IX DECISION-MAKER



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

RESPONSIBILITIES:

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

APPELLATE DECISION-MAKER

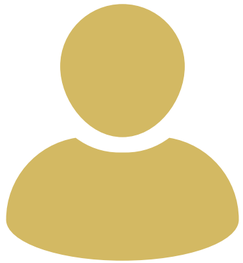
MAY BE A SINGLE APPELLATE DECISION-MAKER OR APPELLATE PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

RESPONSIBILITIES:

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

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

INFORMAL RESOLUTION FACILITATOR



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

RESPONSIBILITIES:

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

ADVISOR

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



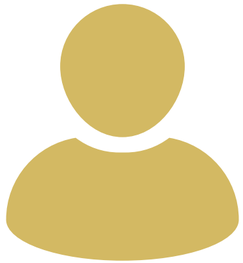
An Advisor may be, but is not required to be, an attorney.



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

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

ADVISOR



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

RESPONSIBILITIES:

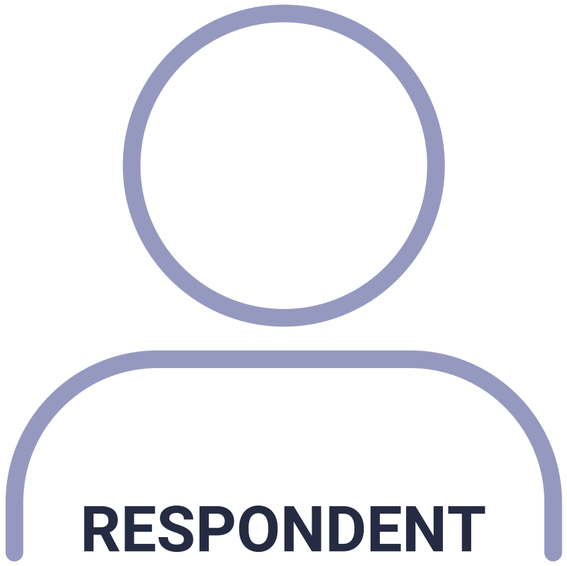
- Supports their Party by accompanying them during interviews, meetings, and the credibility assessment process
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing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

PARTIES IN THE PROCESS

ASIDE FROM THE TITLE IX PERSONNEL WHO TAKE PART IN THE FACILITATION OF THE GRIEVANCE PROCESS, WE WILL ALSO SEE THESE INDIVIDUALS INVOLVED:



COMPLAINANT



RESPONDENT



WITNESS

COMPLAINANT

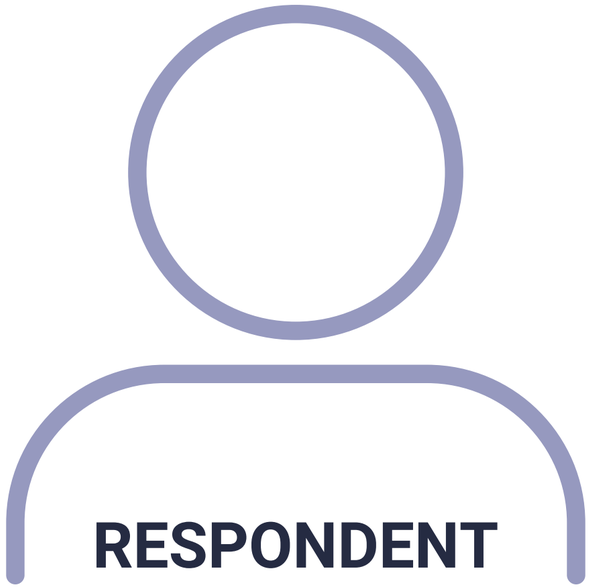
ALLEGED TO BE THE VICTIM OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT



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

RESPONDENT

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



RESPONDENT

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

WITNESS

INDIVIDUALS THAT ARE IDENTIFIED IN THE GRIEVANCE PROCESS AS HAVING INFORMATION THAT MAY SUPPORT OR REFUTE ALLEGATIONS OF SEXUAL HARASSMENT.



WITNESS

- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

OVERVIEW OF THE TITLE IX PROCESS



DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

GOAL OF TITLE

ULTIMATELY, THE GOAL OF TITLE IX IS TO:



Stop the harassment or discrimination



Prevent future recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

GRIEVANCE PROCESS

1. **INTAKE & REVIEW**
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. DECISION-MAKING PROCESS
6. WRITTEN DETERMINATION
7. APPEAL

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

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. **FORMAL COMPLAINT**
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. DECISION-MAKING PROCESS
6. WRITTEN DETERMINATION
7. APPEAL

- Starts the grievance process
- Must be a written document

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. **NOTICE OF ALLEGATIONS**
4. INVESTIGATION
5. DECISION-MAKING PROCESS
6. WRITTEN DETERMINATION
7. APPEAL

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

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. **INVESTIGATION**
5. DECISION-MAKING PROCESS
6. WRITTEN DETERMINATION
7. APPEAL

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

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. **DECISION MAKING PROCESS**
6. WRITTEN DETERMINATION
7. APPEAL

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

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

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. DECISION MAKING PROCESS
6. **WRITTEN DETERMINATION**
7. APPEAL

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

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GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. DECISION MAKING PROCESS
6. WRITTEN DETERMINATION
7. **APPEAL**

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

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INFORMAL RESOLUTION

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

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

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OVERVIEW OF THE TITLE IX REGULATIONS



IN THIS CHAPTER



INTRODUCTION TO THE TITLE IX REGULATIONS



SEXUAL HARASSMENT AND RECIPIENT RESPONSE



TITLE IX GRIEVANCE PROCESS FOR FORMAL COMPLAINTS



SPEAKER

PATRICK MATHIS, J.D.

CO-FOUNDER & MANAGING MEMBER

TITLE IX SOLUTIONS

INTRODUCTION TO THE TITLE IX REGULATIONS



TITLE IX COVERAGE

POSTSECONDARY INSTITUTIONS

Includes:

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

ELEMENTARY & SECONDARY SCHOOLS

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

WHAT IS A RECIPIENT?

§106.2

Definitions

"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."

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COMPLIANCE WITH THE REGULATIONS

RECIPIENTS MUST COMPLY WITH THE REQUIREMENTS OF TITLE IX AS OUTLINED UNDER THE REGULATIONS.

Recipients may:

- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

- Provide details regarding policies or procedures which are not addressed in the regulations

SCHOOL'S REQUIRED RESPONSE

PROMPT AND EQUITABLE GRIEVANCE PROCEDURES



Sex Discrimination



Sexual Harassment

(§106.45)

ALWAYS REFER TO YOUR SCHOOL'S TITLE IX POLICY!

WHEN IS SEXUAL HARASSMENT ACTIONABLE?



When it denies a person equal access to education

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TITLE IX'S APPLICATION

REGULATIONS APPLY EQUALLY TO ALL PERSONS, REGARDLESS OF:



Gender Identity or Expression

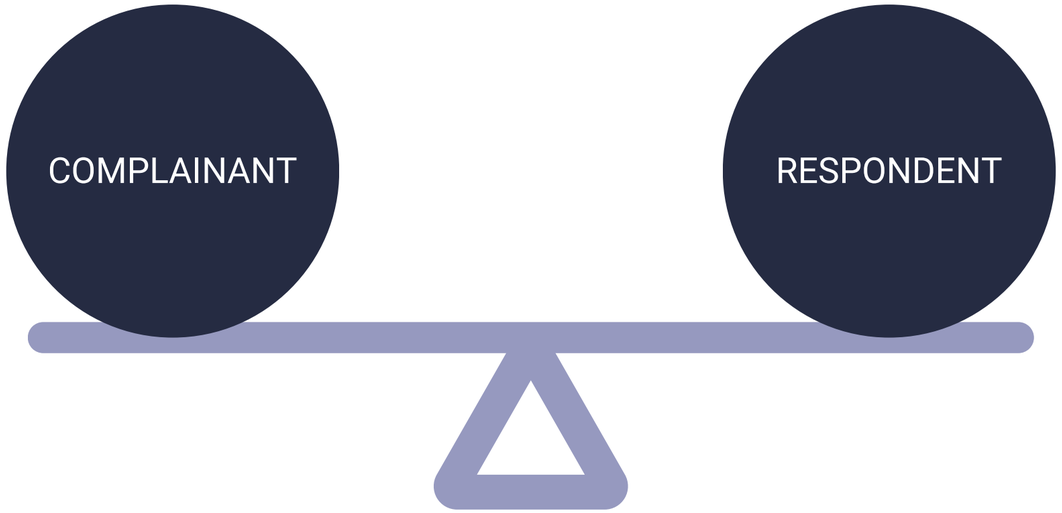


Sexual Orientation

TREATMENT OF THE PARTIES

A SCHOOL MUST TREAT BOTH PARTIES EQUITABLY AND EQUALLY THROUGHOUT THE PROCESS.

This includes supportive measures, investigations, and the grievance process



BIAS AND CONFLICT OF INTEREST

§106.45 (b)(1)(3)

Grievance process for formal complaints of sexual harassment

"…that any individual designated by a recipient as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

TITLE IX PERSONNEL

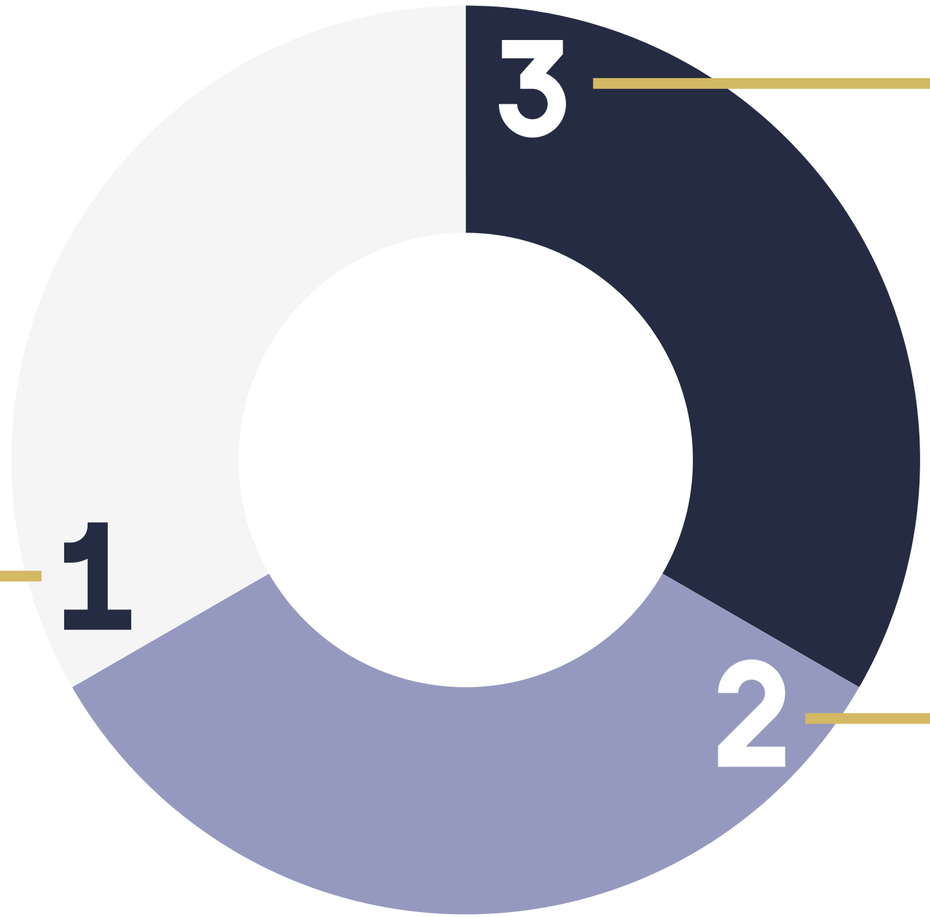


Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

SEXUAL HARASSMENT AND RECIPIENT RESPONSE



SEXUAL HARASSMENT



SPECIFIC OFFENSES

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

HOSTILE ENVIRONMENT HARASSMENT

- Davis Standard

QUID PRO QUO HARASSMENT

*conduct **on the basis of sex** that satisfies one or more of the following categories

SEXUAL HARASSMENT

1

QUID PRO QUO

DEFINITION:

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

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

SEXUAL HARASSMENT

2

HOSTILE ENVIRONMENT

DEFINITION:

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

SEXUAL HARASSMENT

3

DEFINED ACTS

SPECIFIC OFFENSES DEFINED UNDER THE FBI'S UNIFORM CRIME REPORTING (U.C.R) PROGRAM.

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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

20 U.S.C. 1092(f)(6)(A)(v)

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:

1. Fear for his or her safety or the safety of others; or
2. Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

CONSENT



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.

RECIPIENT'S RESPONSE

THRESHOLD CRITERIA (ALL FOUR MUST BE MET):

- 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

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

§ 106.11
Application

Recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority.

- 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

RECIPIENT'S RESPONSE

Schools must not act in a manner that is deliberately indifferent, meaning:

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

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

- Treat Complainants and Respondents equitably by offering supportive measures

WHEN DO THEY APPLY?

WHAT DO THEY INCLUDE?

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

RECIPIENT'S RESPONSE

SUPPORTIVE MEASURES

§ 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

RECIPIENT'S RESPONSE

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

TITLE IX GRIEVANCE PROCESS FOR FORMAL COMPLAINTS



GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. DECISION-MAKING PROCESS
6. WRITTEN DETERMINATION
7. APPEAL

INFORMAL RESOLUTION WINDOW

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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:

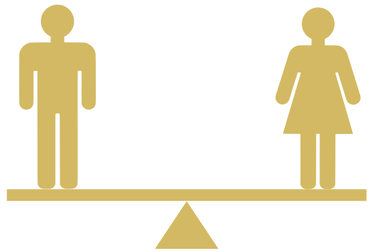


REQUIRE OBJECTIVE EVALUATION OF RELEVANT EVIDENCE

- 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:



REQUIRE TITLE IX PERSONNEL NOT HAVE BIAS AND CONFLICT OF INTEREST

- 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.

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

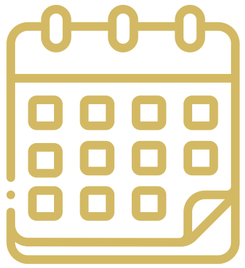


INCLUDE A PRESUMPTION THAT RESPONDENT IS NOT RESPONSIBLE UNTIL A DETERMINATION IS MADE

- 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

- Title IX policies should 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

BASIC REQUIREMENTS

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

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ROLE OF THE DECISION-MAKER



IN THIS CHAPTER



OVERVIEW OF THE DECISION-MAKER ROLE



DUE PROCESS



AVOIDING BIAS AND CONFLICTS

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SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR

TITLE IX SOLUTIONS

OVERVIEW OF THE DECISION-MAKER ROLE



TITLE IX STIPULATIONS

- May be employee(s) of the institution or may be external individual(s) hired by the institution.
- May be a single Decision-Maker or a panel of multiple Decision-Makers.



The Decision-Maker CANNOT be the Title IX Coordinator or the Title IX Investigator(s) from the same case.

If an informal resolution process has taken place and was unsuccessful, the Decision-Maker cannot be the same person as the Informal Resolution Facilitator.

RESPONSIBILITIES OF THE DECISION-MAKER



POSTSECONDARY INSTITUTIONS

Under the Title IX Regulations (§106.45), postsecondary institutions' grievance processes must allow for a live hearing.

Responsibilities of the Decision-Maker in these processes include:

- Review the formal complaint, investigative report, and evidence
- Conduct pre-hearing meeting(s) (if offered)
- Oversee the Title IX hearing process
  - Supervise the conduct of the involved Parties and Advisors
  - Make relevancy determinations for all questions asked.
  - Determine the relevance of questions posed by Advisors (cross-examination) and explain decisions to exclude as not relevant
- Apply the school's standard of evidence to the facts
- Draft and issue a written determination regarding responsibility

RESPONSIBILITIES OF THE DECISION-MAKER



K-12 INSTITUTIONS AND DISTRICTS

K-12 Institutions/Districts do not have the requirement to hold live hearings. However, they may choose to utilize live hearings if they wish. Otherwise, the institution must present the opportunity for Parties to submit questions in writing.

Responsibilities of the Decision-Maker in these processes include:

- Review the formal complaint, investigative report, and evidence
- Facilitate pre-hearing meeting(s) (if offered)
- Oversee the Decision-Making process
  - Shuttle written questions between Parties and Advisors
  - Ask Parties and Witnesses clarifying questions, if necessary
  - Determine the relevance of questions posed by Advisors (cross-examination) and explain decisions to exclude as not relevant
- Apply the school's standard of evidence to the facts
- Draft and issue a written determination regarding responsibility

TRAINING REQUIREMENTS

INSTITUTIONS MUST ENSURE DECISION-MAKERS RECEIVE TRAINING ON:



The definition of sexual harassment in § 106.30;



The scope of the recipient's education program or activity;



How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;



And how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

TRAINING REQUIREMENTS

INSTITUTIONS MUST ENSURE DECISION-MAKERS RECEIVE TRAINING ON:



Use of technology if a live hearing is conducted remotely.



Relevancy determinations, including when questions about a complainant's sexual predisposition or prior sexual behavior are not relevant, except under specific conditions



Institutional policies and timelines, the standard of evidence, and how to apply those policies in decision-making.



Other laws or policies applicable to your institution or district, such as State and local laws and policies under which non-Title IX conduct may be adjudicated

ADDITIONAL CONSIDERATIONS



Under Title IX, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.



The burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school, not either of the Parties.

GRIEVANCE PROCESS

1. INTAKE & REVIEW
2. FORMAL COMPLAINT
3. NOTICE OF ALLEGATIONS
4. INVESTIGATION
5. HEARING
6. WRITTEN DETERMINATION
7. APPEAL

The Decision-Maker participates during this portion of the grievance process

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TIMELINE OF A DECISION-MAKER'S RESPONSIBILITIES



Engaged to serve as Decision-Maker in an active case

Receives investigation report and file from Title IX Investigator

Conducts thorough review of all information provided in the investigation report and file

Holds pre-hearing conference with Parties and Advisors

Facilitates live hearing or written decision-making process (K-12 institutions)

Drafts and issues the written determination regarding responsibility

DECISION-MAKER ATTRIBUTES

- The ability to understand law and policy and apply them to decision-making
- Critical thinking to determine the relevance of evidence and questions.
- The ability to craft professional and thorough written determinations.
- Effective communication with parties and advisors.
- Comfort in making tough but equitable decisions.

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GUIDING PRINCIPLES

THE OUTCOMES OF TITLE IX CASES CAN BE DEEPLY IMPACTFUL FOR ALL PARTIES INVOLVED AND EVEN THE GREATER COMMUNITY.

THEREFORE, DECISION-MAKERS ARE TO:



Use school policy to guide decision-making



Uphold the integrity of the Title IX process



Remain objective (and recuse if not possible)



REMINDER:

A Decision-Maker's goal is not to find someone responsible for violating Title IX or school policy. Their goal is to ensure the Parties have an equal opportunity to fully share their stories, then apply the standard of proof to the facts.

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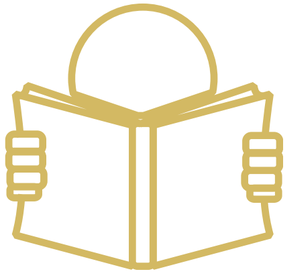
PRACTICAL TIPS FOR SUCCESS

BREATHE



Breathe and remain calm—the role carries responsibility, but you are capable.

READ EVERYTHING



Policy, investigative reports, and supplemental information. Be an informed Decision-Maker.

DISCOMFORT



Become comfortable with discomfort—sensitive subject matter is often part of the role, and addressing it professionally is key.

FOUNDATIONAL QUESTIONS

THE DECISION-MAKER IS ULTIMATELY RESPONSIBLE FOR APPLYING EVIDENCE TO THE STANDARD OF PROOF TO OBJECTIVELY ANSWER THE FOLLOWING QUESTIONS:

1. Did the alleged incident(s) occur?
2. Does the alleged conduct violate the school's policy?

1 DID THE ALLEGED INCIDENT(S) OCCUR?

CONSIDERATIONS INCLUDE:

- Parties' statements about the alleged incident
- Witness statements about the alleged incident
- Inculpatory and exculpatory evidence about the alleged incident
- If the Complainant and Respondent were present during the alleged incident
- Nature of the relationship between the Parties at the time of the alleged incident
- Communications and actions before and after the alleged incident

2 DOES THE ALLEGED CONDUCT VIOLATE THE SCHOOL'S POLICY?

- Apply the appropriate standard of evidence to answer this question
- Analyze the definitions of the relevant policy violations
  - Review every word of the definition
  - Example: 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 school's education program or activity;
- Review additional terms outlined in the school's policy, such as consent and incapacitation

DUE PROCESS



DUE PROCESS AFFORDED BY TITLE IX

"Whether due process is conceived in terms of constitutional due process of law owed by State actors, or as principles of fundamental fairness owed by private actors, the final regulations prescribe a grievance process grounded in principles of due process for the benefit of both Complainants and Respondents, seeking justice in each sexual harassment situation that arises in a recipient's education program or activity."

p. 86, Preamble to the
Title IX Regulations, 2020

IMPORTANCE OF DUE PROCESS

PROCEDURAL DUE PROCESS PROVIDES "AT A MINIMUM NOTICE AND THE OPPORTUNITY TO BE HEARD." (p. 88, Preamble to the 2020 Title IX Regulations)

A grievance process created with due process as its central tenet creates outcomes that are:

- ACCURATE
- LEGITIMATE
- REPLICABLE
- FAIR

DUE PROCESS REQUIREMENTS

DECISION-MAKERS MUST ENSURE:

- Equity for both parties, providing an opportunity to present evidence and respond to allegations, either in a live hearing or through alternative procedures.
- A fact-based, neutral approach that considers all relevant and not impermissible evidence.
- Proper notice of allegations and the opportunity for each party to respond before a determination of responsibility.
- Allows for the cross-examination of Parties through relevant questions asked at a live hearing (or in writing for K-12 entities).

DUE PROCESS REQUIREMENTS

DECISION-MAKERS MUST ENSURE:

- Equal opportunity for the Parties to present Witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Equity for both Parties to inspect and review any evidence obtained as part of the investigation so that each Party can meaningfully respond to the evidence.
- Allows for each Party the right to an Advisor of their choice.
- Does not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

DUE PROCESS UNDER TITLE IX

IF A RESPONDENT IS FOUND NOT RESPONSIBLE FOR VIOLATING TITLE IX:

- Complainants are offered supportive measures designed to restore or preserve equal access to education programs and activities
- Respondents are not subject to sanctioning

IF A RESPONDENT IS FOUND RESPONSIBLE FOR VIOLATING TITLE IX:

- Complainants are offered remedies designed to restore or preserve equal access to education programs and activities
- Respondents are subject to sanctioning

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FAIRNESS & TRANSPARENCY

DECISION-MAKERS MUST PROVIDE TRANSPARENCY THROUGHOUT THE GRIEVANCE PROCESS, ENSURING:



Ensure Parties have equal access to information and evidence along with timeframes and preparation.



Ensure Parties and Advisors have the opportunity to fully cross-examine all present at the live hearing and remain consistent when making relevancy determinations

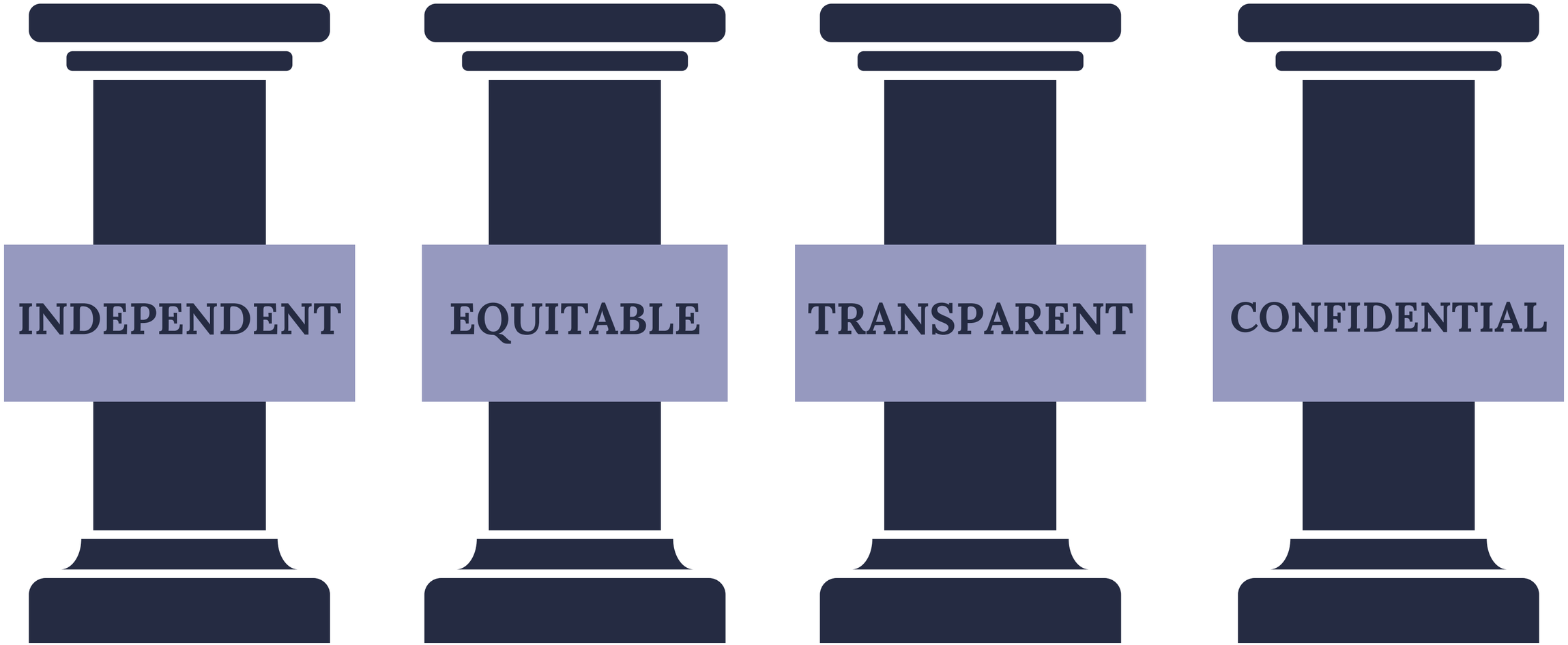


Thoroughness in the final written determination, outlining findings, the rationale for the decision, and any sanctions imposed.

AVOIDING BIAS AND CONFLICTS



DECISION-MAKING PILLARS



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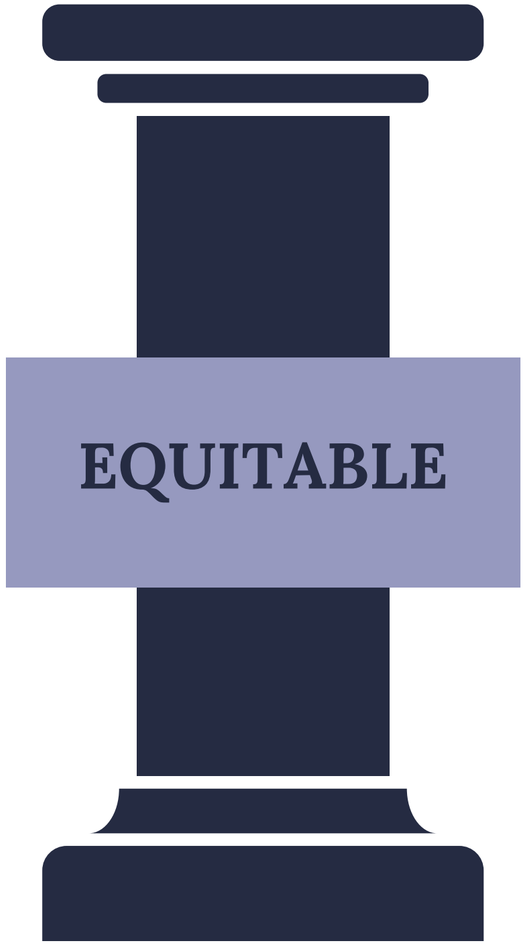
DECISION-MAKING PILLARS



- Remain free from any conflicts of interest or biases for or against Complainants or Respondents generally or an individual Complainant or Respondent
- Remain separate from the other stages of the Title IX grievance process
    - Has not served as the Coordinator, Investigator, Advisor, or Appellate Officer for the same case

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DECISION-MAKING PILLARS



- Provide all Parties the same
  - Information
  - Timelines
  - Documentation
  - Rights
  - Benefits

DECISION-MAKING PILLARS



- Communicate procedures, options, timelines, and outcomes clearly to Parties
- Provide rationales for decisions regarding hearing procedures, scheduling, relevance, determinations regarding responsibility, etc.

DECISION-MAKING PILLARS



- Information must be kept private and only shared on a need-to-know basis, consistent with Title IX regulations and institutional policy.

IDENTIFYING CONFLICT OF INTEREST

A LEGITIMATE CLAIM OF CONFLICT OF INTEREST CAN BE THE BASIS OF AN APPEAL.

- Anticipate potential conflicts of interest when assigned as a Decision-Maker
- Allow time prior to the hearing for Parties to disclose potential conflicts of interest
- Evaluate and assign a new Decision-Maker if conflicts are present

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WHAT CONSITUTES A CONFLICT OF INTEREST?

- Conflicts of interest arise when there is a **real** or **perceived** personal or private interest that may prevent a Title IX Coordinator, Investigator, or Decision-Maker from carrying out their role impartially
- Conflicts of interest are not explicitly defined under the Title IX Regulations
- Conflicts of interest may be more difficult to navigate within smaller institutions or school districts

EXAMPLES OF POTENTIAL CONFLICT



PERSONAL RELATIONSHIP WITH A PARTY OR PARENT/GUARDIAN OF A PARTY

Example: A Decision-Maker is close family friend and has known the Party for years and outside of the academic program.



POSITION OF POWER OVER A PARTY NOT RELATED TO THE TITLE IX PROCESS

Example: The assigned Title IX Decision-Maker is one of the Party's professors in a course in which they are currently enrolled.



PREVIOUS KNOWLEDGE ABOUT A PARTY THAT COULD IMPACT THE ABILITY TO ADJUDICATE THE CASE

Example: A Decision-Maker was a former conduct officer who adjudicated other code of conduct violations involving a Party.

REMINDER:

Simply knowing a Party or Advisor does not necessarily constitute a conflict of interest. The type of relationship and length of the relationship, and power dynamics should be considered. If any of these factors would prevent an individual from serving in their role objectively and without advantage or disadvantage to a Party, they will likely need to be removed from the grievance process for that case.

IDENTIFYING BIAS

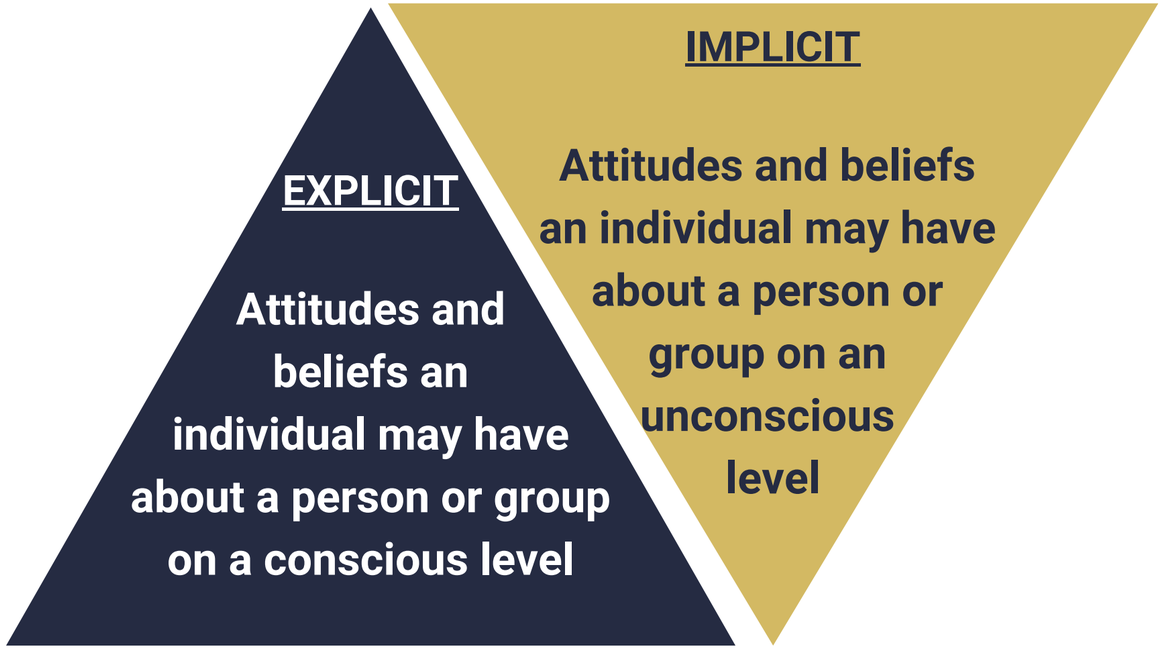
A LEGITIMATE CLAIM OF BIAS CAN BE THE BASIS FOR AN APPEAL.

Consider personal biases and how they may affect your ability to serve objectively

Recuse yourself from a case if biases may impact the process or determination

WHAT CONSITUTES A BIAS?

DECISION-MAKERS MUST AVOID BOTH EXPLICIT & IMPLICIT BIASES:



- Title IX Regulations specifically references "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Recusal may be required if the Decision-Maker believes they cannot be impartial due to personal views or experiences

EXAMPLES OF POTENTIAL CONFLICT



PREJUDGMENT

Example: A Decision-Maker, upon hearing the summary of an upcoming case and before hearing all relevant facts, has formed an opinion believing the Respondent to be responsible for the alleged conduct.



BIAS FOR OR AGAINST COMPLAINANTS OR RESPONDENTS GENERALLY

Example: A Decision-Maker also serves as a volunteer advocate at the local Rape Crisis Center and frequently and publicly makes posts on social media about "believing all survivors."



BIAS FOR OR AGAINST A SPECIFIC COMPLAINANT OR RESPONDENT

Example: An Investigator has a set of religious beliefs that create bias against a Complainant who identifies as queer.

PERCEPTION OF BIAS



Even if no actual bias exists, Decision-Makers must ensure that the **perception of bias** is avoided, as it can undermine the trust and fairness of the Title IX process.

- EXAMPLE: A sexual assault survivor may be perfectly capable of setting aside their experience to adjudicate a Title IX sexual assault case. However, if this individual is outspoken about their experience and has shared their story and experience in front of campus audiences, a Respondent may feel as though they will not receive a fair hearing.

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THE INVESTIGATION REPORT & FILE



IN THIS CHAPTER



ELEMENTS OF THE INVESTIGATION REPORT



INTERVIEW SUMMARIES



EVIDENCE SUMMARIES



THE INVESTIGATION FILE



ANALYZING THE REPORT AND FILE



SAMPLE REPORT

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SPEAKER

SUSANNA MURPHY

LEAD INVESTIGATOR

TITLE IX SOLUTIONS

ELEMENTS OF THE INVESTIGATION REPORT



INVESTIGATION REPORT REQUIREMENTS

AT THE CONCLUSION OF THE INVESTIGATION, THE INVESTIGATOR MAY PREPARE A WRITTEN REPORT WHICH WILL:

- 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

ELEMENTS OF THE INVESTIGATIVE REPORT

ALLEGATIONS INVESTIGATED

Allegations, if proved, that meet the definition of Sexual Misconduct

- *Should be roughly identified in the Formal Complaint*

Alleged form(s) of sexual misconduct

- *Sexual Harassment, Dating Violence, Domestic Violence, Sexual Assault, Stalking*
- *Copy full definitions from policy*
- *Many forms of prohibited conduct are also dependent upon factors such as consent, length or type of relationship between the Parties, number of alleged incidents, etc.*

ELEMENTS OF THE INVESTIGATIVE REPORT

ALLEGATIONS INVESTIGATED

Allegations, if proved, that DO NOT meet the definition of Sexual Misconduct

- *Other policies implicated?*
- *Harassment not based on sex or gender*
- *Sexual misconduct that does not fall under Title IX's scope, but may need to be addressed under another policy*

ELEMENTS OF THE INVESTIGATIVE REPORT

RELEVANT POLICIES, PROCEDURES, GUIDELINES AND STANDARDS



Sexual Misconduct Policy



Additional Relevant Institutional Policies

ELEMENTS OF THE INVESTIGATIVE REPORT

PROCEDURAL STEPS TAKEN BETWEEN RECEIPT OF FORMAL COMPLAINT AND CONCLUSION OF INVESTIGATION

TIMELINE

- The importance of documentation during the interviewing process presents here
- Utilize communication logs, activity logs, or other templates that document your information-gathering timeline
- Provide the following:
  - Dates of notices
  - Interview dates
  - Date of provision of investigation file
  - Dates of responses to investigation file, etc.

ELEMENTS OF THE INVESTIGATIVE REPORT

PROCEDURAL STEPS TAKEN BETWEEN RECEIPT OF FORMAL COMPLAINT AND CONCLUSION OF INVESTIGATION

- Documentation if a Party or Witness does not respond or declines to participate in the investigation
- Documentation of communication with other departments or off-campus sources (i.e., local police)
- Documentation of supportive measures in place during the investigation

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ELEMENTS OF THE INVESTIGATIVE REPORT

SUMMARY OF RELEVANT EVIDENCE

The “meat” of the Investigation Report which should include:

- Summaries of interviews with Complainant, Respondent, and witnesses
- Summaries of evidence, with exhibits attached
  - Reference the evidence log and appendix which should contain relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation



THE WRITTEN REPORT SHALL NOT MAKE FINDINGS OF FACTS OR CONCLUSIONS REGARDING THE APPLICATION OF FACTS TO THIS POLICY.

THIS IS THE RESPONSIBILITY OF THE DECISION-MAKER!

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ELEMENTS OF THE INVESTIGATION REPORT

A presentation of facts and analysis of consistencies and inconsistencies in the information collected

**Optional to Include*

INTERVIEW SUMMARIES



KEY QUESTIONS

Information gathered in the investigative interviews should attempt to answer these questions:

? **Did the alleged incident occur?**

? **Is the alleged incident a policy violation?**

Upon reading the investigation report, you will get a deeper understanding of the following...

1

IDENTITIES AND DATES

TIME, DATE, LOCATION OF INTERVIEW, AND IF AN ADVISOR WAS PRESENT

- Explanation of the interviewee's relation to the case
  - Complainant, Respondent
  - If a witness, who are they?

EXAMPLE



“Joshua Kaplan was the person working the front door of Myers Hall on the night of November 28.”

2

SUMMARY OF RESPONSES

SYNTHESIS OF PARTIES STORY

The investigation report should transform the individual's responses into a coherent narrative.

2

SUMMARY OF RESPONSES

INTERVIEWS MAY BE ORGANIZED INTO SUB-SECTIONS WHEN DEALING WITH MULTIPLE ALLEGATIONS

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, the report could be organized into sections related to each policy violation

EXAMPLE



Relationship with a history of dating violence and sexual assault

2

SUMMARY OF RESPONSES

DIRECT QUOTES FROM THE INDIVIDUALS MAY BE INCLUDED

- Direct quotes are extremely powerful and useful for those reading the report

2

SUMMARY OF RESPONSES

DO NOT CONFLATE AN INDIVIDUAL'S STATEMENTS WITH FACT.

- If a Complainant says the incident occurred at 9:00 PM, your summary should read: "NAME OF COMPLAINANT stated that the incident occurred at 9:00 PM" rather than "The incident occurred at 9:00 PM."
    - Start a longer narrative section with: "The following is what Sam recalled:"
- CONSIDER: Note at the conclusion of your interview summary if evidence (photographs, text messages, surveillance footage, etc.) support or refute the interviewee's statements

OPINIONS SHOULD NOT BE A PART OF THE SUMMARIES

3

INTERVIEW OBSERVATIONS

OPTIONAL (BUT BE CONSISTENT ACROSS PARTIES):

- Did the individual ask for a break?
  - Note how many breaks
- Was the individual accompanied by an Advisor?
- Did the Advisor attempt to speak on the individual's behalf?
  - What occurred?
  - Only include if noteworthy
- Did the individual bring any evidence to the interview?
  - What was brought?
  - How was it presented?

EVIDENCE SUMMARIES



EXAMPLES OF SUMMARIZING EVIDENCE

MAY SIMPLY BE A LIST OF ALL EVIDENCE, REFERENCING ITS APPENDIX NUMBER.

VIII. Table of Appendices

Documents and evidence obtained during the course of the investigation such as the formal complaints and Notices of Investigation can be found in the attached Appendices.

Additionally, each investigative interview was recorded by Investigator Chapman with the consent of the interviewee. The transcripts of each interview can also be found in the attached Appendices.

A list of Appendices is as follows:

Appendix No.	Description	Date Received
Appendix A	Jacob Smith Formal Complaint to the Title IX Coordinator	January 3, 2022
Appendix B	Amanda Parsons Formal Complaint to the Title IX Coordinator	January 4, 2022
Appendix C	Jacob Smith Email to the Title IX Coordinator with additional allegations	January 6, 2022
Appendix D	Notice of Allegations to Smith - Complainant	January 7, 2022
Appendix E	Notice of Allegations to Parsons - Complainant	January 7, 2022
Appendix F	Notice of Allegations to Thompson – Respondent	January 7, 2022
Appendix G	Smith Interview Transcript	January 9, 2022
Appendix G-1	Smith Interview Recording	January 9, 2022

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EXAMPLES OF SUMMARIZING EVIDENCE

YOU MAY ALSO DECIDE THAT SPECIFIC PIECES OF EVIDENCE REQUIRE AN EXPLANATION.

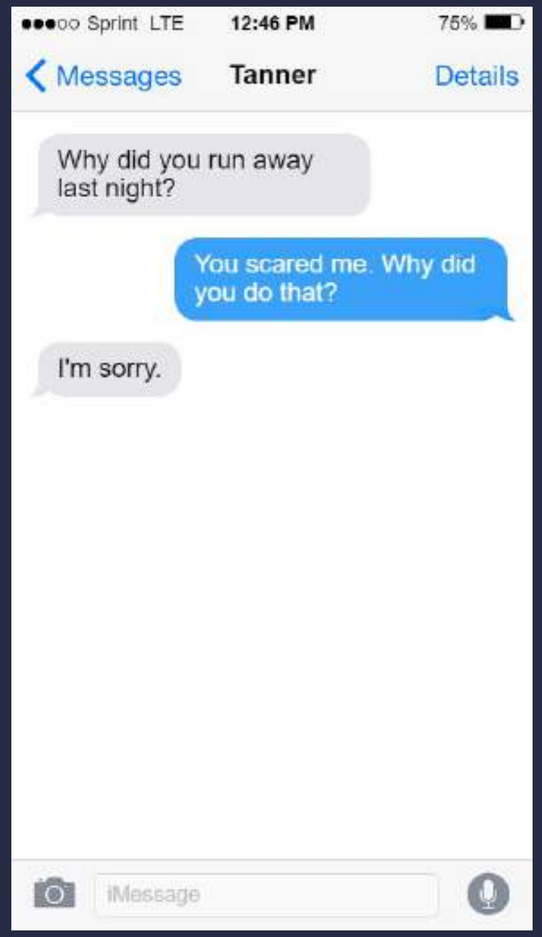


Example: Security camera video recording from Sentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

Security camera video recording was obtained from Sample University Police Department (SUPD)

Saved as SUPD_Evidence_2.mp4 in Investigation File

Still image from 00:18:14 Attached to Investigation Report as Appendix K



Example: Screenshot of text message received by Complainant Jacob Smith timestamped on January 2, 2022 at 8:07 AM. Alleged to be sent by Respondent Tanner Thompson. Screenshot was provided by Complainant Smith.

Saved as Smith_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

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EXAMPLES OF SUMMARIZING EVIDENCE

NOTING INCONSISTENCIES

Example: Screenshot of text message exchange alleged to be between Complainant Jacob Smith and Respondent Tanner Thompson on January 2, 2022 timestamped at 8:07 AM. Screenshot was provided by Respondent Thompson.

NOTE: There are inconsistencies between the messages displayed on the screenshot of the exchange provided by Complainant Smith and the screenshot provided by Respondent Thompson.

The screenshot provided by Respondent Thompson contains a text message from the Respondent stating, "My bad. I just wanted to play a prank and jump out with that Halloween mask on. You always say how much you like scary movies. I saw how much it upset you and then you just ran back to your dorm room. I didn't mean to scare you that badly."

The text reply from Complainant Smith states, "It's totally ok. I just didn't know what was going on!"

These messages are absent from the image provided by Complainant Smith.



THE REPORT SHOULD LAY OUT

THE INVESTIGATION REPORT, INCLUDING THE SUMMARIES OF INTERVIEWS AND EVIDENCE, ANSWERS THE FOLLOWING QUESTIONS:

WHO
Who was involved?

WHAT
What are the allegations?

WHEN
When did the incident occur?

WHERE
Where did the incident occur?

WHY
Why and how did the incident occur?

KEEP IN MIND

THE INFORMATION PROVIDED MAY NOT DEFINITIVELY ANSWER ALL OF THESE QUESTIONS, BUT PIECING TOGETHER INFORMATION MAY HELP GAIN A CLEARER PICTURE.

- Complainant states that the incident occurred at 1:00 PM on Tuesday, June 15th
- Respondent states that the incident occurred at 11:30 AM on Tuesday, June 15th
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the building at 11:00 AM, and the Respondent swiped in to access the building at 12:00 PM

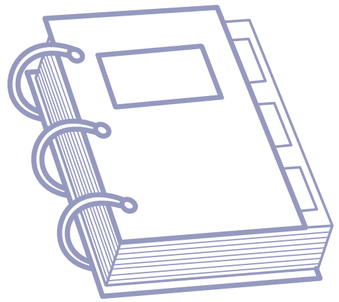
THE INVESTIGATION FILE



WHAT IS THE INVESTIGATION FILE?

AT THE CONCLUSION OF THE INVESTIGATION, PREPARE WHAT WE REFER TO AS AN INVESTIGATION FILE:

- May also be referred to as a case file or case binder
- Can be:



hard copy

or



digital

WHAT DOES THE INVESTIGATION FILE CONTAIN?

ALL EVIDENCE OBTAINED AS PART OF THE INVESTIGATION THAT IS DIRECTLY RELATED TO THE ALLEGATIONS RAISED IN A FORMAL COMPLAINT TO THE COMPLAINANT AND RESPONDENT.

- No information is filtered from the file at this point
- Parties have had an equal opportunity to inspect and review all of the directly related evidence
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a party or other source

WHAT DOES THE INVESTIGATION FILE CONTAIN?

- Includes evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a determination regarding responsibility
    - For instance, where evidence is directly related to the allegations, but the investigator does not believe the evidence to be credible and thus does not intend to rely on it
- All evidence must be made available to the parties, but not all evidence may be “relevant”
    - Reviewing the investigation file provides the Advisor and the party the opportunity to argue whether certain evidence is relevant or not

AFTER PARTIES REVIEW

THE FINAL INVESTIGATION REPORT IS CREATED.
IT SHOULD CONTAIN THE FOLLOWING:

- Relevant elements of the parties' written responses (or absence thereof)
- Any additional relevant evidence
- Rationales for changes made after the review and comment period

ELEMENTS OF INVESTIGATION FILE



First, check to see if your school has a template or predetermined method of organizing the investigation file.

Generally, it should contain the following elements:

TABLE OF CONTENTS

1

- Organized for quick reference as the files can become large
- Separated into major sections and even subsections, if necessary, to help parties, Advisors, and Decision-Maker locate key information

INVESTIGATION REPORT

2

- This report will not be finalized until the Parties and Advisors review and respond within the required ten day review period
- Includes allegations, relevant policies/guidelines and other standards and procedural steps, as well as:
  - Fairly summarizes relevant evidence
    - Summaries of Interview (summary for every interview conducted)
    - Summaries of Evidence

LIST OF INTERVIEWS & EVIDENCE



- Communications log
- Evidence log

WITNESS INTERVIEWS



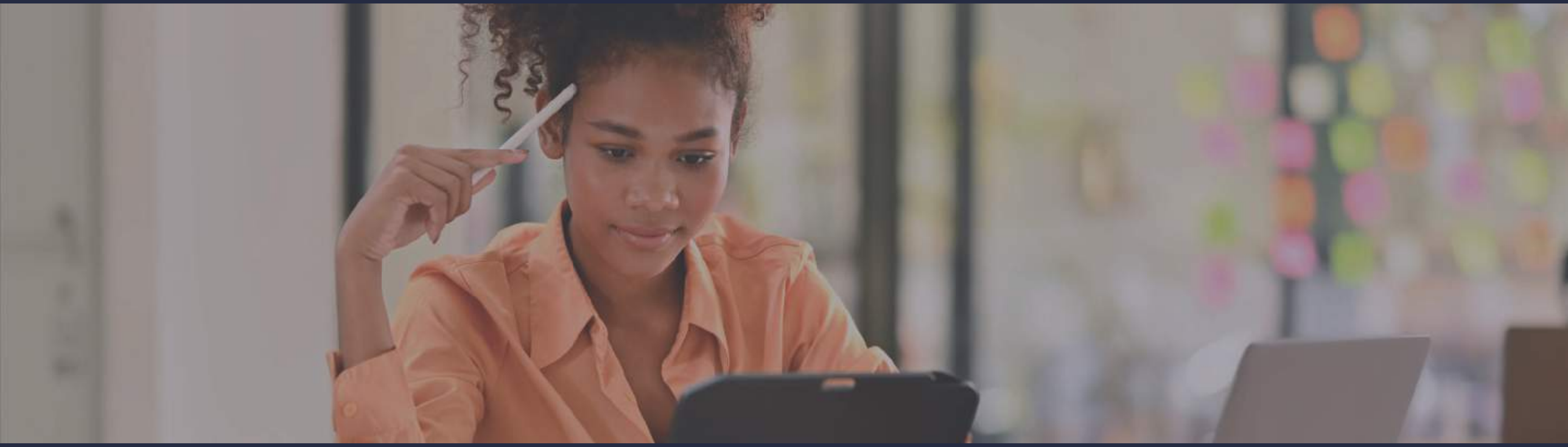
- If interviews are recorded, each interview should have the following documentation:
  - Transcript of interview
  - Recording of interview (if available)

APPENDICES

5

- Contains relevant documentary and physical evidence
  - Examples: electronic records, written statements, photographs, surveillance video, copies of text messages or emails, snapchats, restraining orders, or other documentation
- Evidence should be catalogued and organized into appendices with numbers or letters corresponding to the line in the evidence log
  - Save for the final task

ANALYZING THE REPORT AND FILE



REVIEWING THE INFORMATION

READ THE INVESTIGATIVE REPORT AND ENTIRE INVESTIGATIVE FILE CAREFULLY.

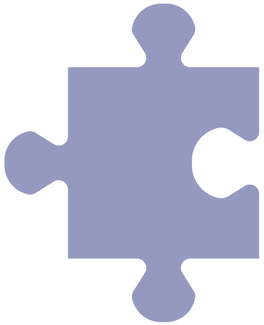
- The report and evidence can be the primary basis for the decision of the Decision-Maker.
- The contents may not be repeated at the hearing itself.

GOALS FOR THE REVIEW PROCESS

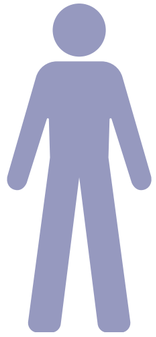
1	2	3



Determine what needs to be asked at the hearing



Determine what information is missing (if any)



Determine which Witnesses should appear at the hearing

EXCLUDED INFORMATION

Ideally, all information gathered by the investigator should be discussed in the report and included in the file

At some schools, however, the Investigator might exclude from the report and file information that the investigator deemed irrelevant

BEST PRACTICE: The Decision-Maker should determine what is and what is not relevant, not the Investigator

If you believe information has been excluded that you would like to review, do not hesitate to communicate with the Investigator or Coordinator to obtain the information

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WEIGHING THE EVIDENCE

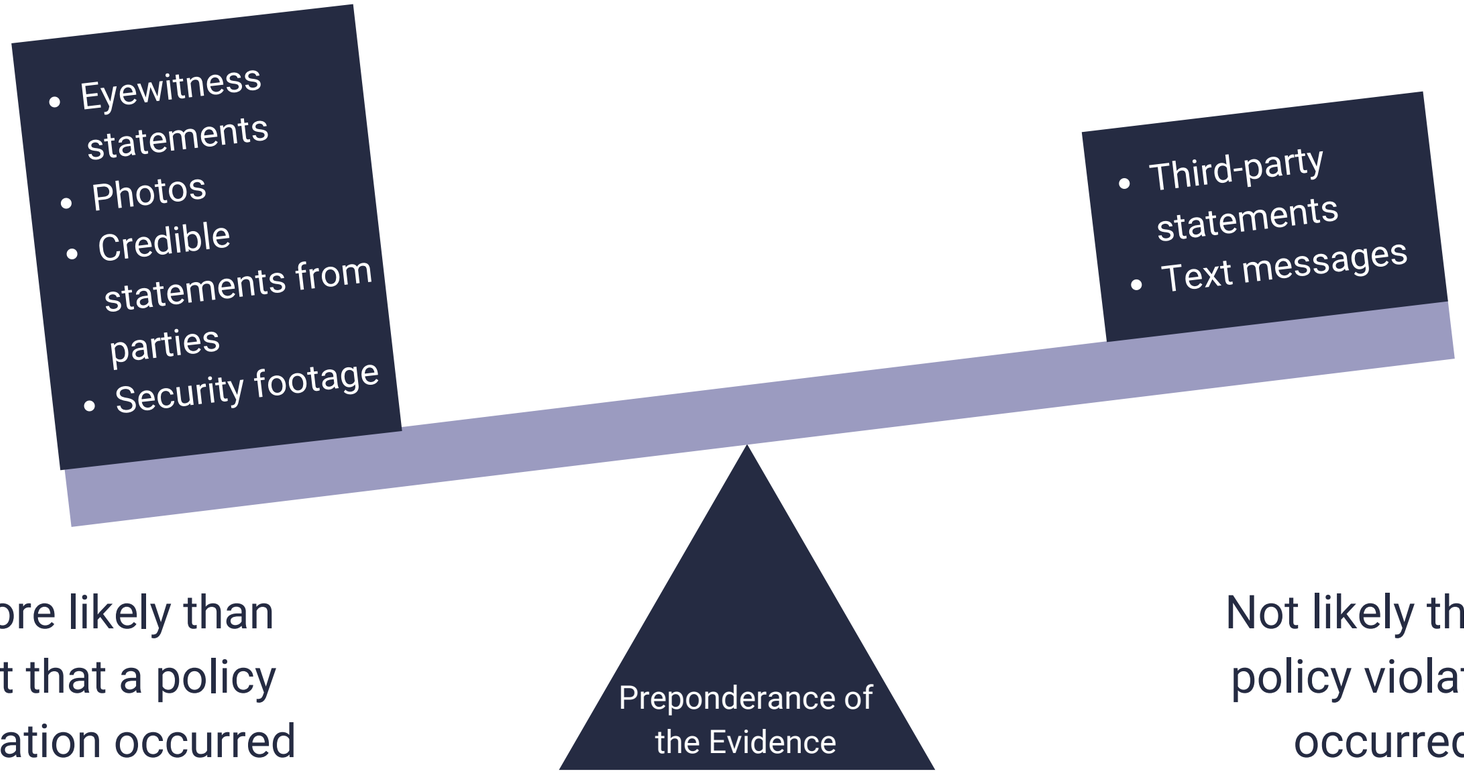
UPON ANALYZING THE INVESTIGATION REPORT AND FILE, YOU MAY BEGIN TO CONSIDER THE WEIGHT OF EACH PIECE OF EVIDENCE, AS WELL AS THE CREDIBILITY OF STATEMENTS. YOU'LL WANT TO CONSIDER THE FOLLOWING:

- Parties' statements and credibility
- Witness statements and credibility (eyewitnesses vs. third-party information)
- Evidence gathered and the sources from which it was obtained

Begin thinking about which pieces of information hold the most weight as it relates to the allegations.

STANDARD OF EVIDENCE

NOW IS THE TIME TO REVIEW THE STANDARD OF PROOF AND EXAMINE HOW THE INFORMATION GATHERED IN THE INVESTIGATION TIPS THE SCALE. YOU WILL CONTINUE TO GATHER INFORMATION DURING THE HEARING OR QUESTIONING PROCESS.



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SAMPLE REPORT



TITLE IX SOLUTIONS, LLC

CONTENTS

I. ALLEGATIONS

II. IMPLICATED POLICY

III. STANDARD OF PROOF

IV. PRESUMPTION OF NON-RESPONSIBILITY

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

- A. CASE PROGRESSION
- B. LIST OF INTERVIEWS

VI. SUMMARY

VII. EVIDENCE

VIII. APPENDIX

I. ALLEGATIONS:

The following was alleged in the ABC College Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent John Doe engaging in unwanted sexual contact through touching the Complainant’s [Jane Smith’s] buttocks under her underwear. Respondent also allegedly placed hands on Complainant’s face and leaned in and tried to kiss the Complainant prior to her turning their head and verbally refused. This allegedly occurred while in the bathroom at the XX Eating Club Fall formal."

This is alleged to have occurred on or about January 25, 2021 at the Madison Performing Arts Halls on ABC College’s campus.

II. IMPLICATED POLICY

The Complaint was filed alleging the following 2020 Sexual Discrimination and Sexual Misconduct Policy “Title IX Policy” (hereinafter referred to as “the Policy”), and section was violated:

Then cite to the specific policy and sections and definitions.

PROHIBITED CONDUCT:

- Allegation/Incident 1: Section B. Sexual Misconduct

- Sexual Assault- Sexual assault defined in 20 U.S.C. 1092(f)(6)(A)(v), is an offense classified as a forcible or non-forcible sex offense ....

Sections III(A) and III(C) of The Policy provides its definition and examples of consent, as follows:

Consent: Lack of consent ...

III. STANDARD OF PROOF

The Hearing Panel shall employ the Preponderance of Evidence/Clear and Convincing Standard in evaluating the facts and circumstances of this matter, according to the ABC College 2020 Title IX Sexual Harassment Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to the ABC College Sex Discrimination and Sexual Misconduct Policy there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

a. Case Progression

Pre-Formal Complaint

On Saturday, March 17, 2021 Jane Doe contacted her advisor, Chantel Johnson, to arrange a meeting. On Sunday, March 18, 2021, Jane Doe sent an email to the ABC Title IX office stating that she “was the victim of non-consensual sexual touching while asleep” (Appendix B). She attached to that email a statement she had typed detailing her allegations and including electronic messages between herself and John Doe (Appendix C).

On March 19, 2021, Jane met with Chantel Johnson. Jane alleged that she had been sexually assaulted by John. Rather than discuss the details of her allegations, Jane shared with MS. Johnson her typed allegations that she had forwarded to the Title IX office (Appendix C). On March 21, 2021, Jane met with Title IX Coordinator Victor Ramirez, to discuss her reporting options, her rights and discuss supportive measures. …

Formal Investigation

On March 30, 2021, Jane filed a formal, written and signed Complaint with the Title IX Office. That Complaint alleged “sexual assault” and “Unwelcome Sexual Contact”.

On April 2, 2021, a Notice of Investigation and Allegation was sent to the ...

DATE	ACTION
x/x/2021	Formal written complaint filed by Complainant via email and acknowledged by Title IX Office x/x/21
x/x/2021	Title IX Coordinator held follow up with meeting with Complainant post formal written complaint to clarify and questions about the process, rights or options shared at time of initial reporting
xxxx	Notice letter issued to Complainant and Respondent via email
xxxx	Title IX Coordinator email to External Investigator with instruction to begin investigation process
xxxx	Title IX Coordinator Informed Respondent they have the right to meet to discuss rights and options
xxxx	Investigator reached out to Complainant to establish initial contact to begin scheduling initial interviews

DATE	ACTION
xxxx	Informed Parties the name of the external Investigator, Martha Collins
xxxx	Title IX Coordinator met with Respondent to share rights, options and procedural steps
xxxx	Process Delay-Investigation due to campus spring recess; Parties and Investigator Notified by Title IX Coordinator
xxxx	Title IX Coordinator informed Respondent, Complainant, and Investigator that the process (investigation phase) will continue effective this date.
xxxx	Investigator shared Draft Investigation Report with Complainant and Respondent
xxxx	Respondent emailed Investigator Response to Draft Report
xxxx	Complainant emailed Investigator Response to Draft Report

b. List of Interviews

- On April 22, 2022, Jane Doe was interviewed via Zoom. Jane did not choose to have an Advisor present.
- Witness 1 was interviewed via Zoom on April 24, 2022.
- Witness 2 was interviewed via Zoom on April 28, 2022.
- Etc.

VI. SUMMARY

All relevant information that was shared during the interviews of the Parties and Witnesses are contained in this report. Other information that is directly related but not deemed relevant, remain in the Investigation File but were not incorporated herein.

The following is a summary of undisputed facts:

Jane Doe is a student at ABC College and lives in Smithson Hall on the Burlington Campus with a roommate. As of the date of the alleged incident Jane was dating Witness 1 who also is a student at ABC.

INTERVIEW OF JANE SMITH

The following is an account of Jane’s interview:

Jane was planning to attend the Fall Formal with Witness 1 after attending an off-campus "pre-gaming party.....

Interview of John Doe:

...

Interview of Witness 1:

...

VII. EVIDENCE

Jane provided the following items:

- Word document description of what occurred including most of her texts with John
- Messages between herself and Witness 1 (Appendix C)
- Messages between herself and John

John provided the following items:

- Snapchat screenshot (Appendix H)

Witness 1 provided the following items:

- Messages between himself and ...

Witness 2 provided the following items:

- Messages between herself and Jane

Witness 3 did not provide any physical evidence

VIII. RESPONSES TO DRAFT REPORT

On May 11, 2021 Respondent submitted a response to the Draft Report (Appendix J) requesting the investigator include the description he provided in his interview of Jane's jeans being "very tight". This was incorporated into the report.

On May 14, 2021 Jane submitted a response to the Draft Report, which suggested a number of edits. The following changes were made in response to her submission:

- The labelling of Appendix H was corrected from G to H;
- Jane first arrived on campus after winter break, before the rest of the student body, for basketball practice.

IX.	Appendix
A.	Notice of Investigation and Allegations
B.	Email from Jane to Title IX Office, first reporting the allegation
C.	Formal Written Complaint of Jane, attached to email to TIX Office
D.	Case Report
E.	Floor Plan of Simpson Concert Hall
F.	Messages between Jane and Witness 1 provided by Jane
G.	Messages between Jane and Witness 1 provided by Witness 1
H.	Messages between John and Witness 4 provided by Witness 4
I.	Respondent’s Response to Draft Report
J.	Complainant’s Response to Draft Report

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EVALUATING POLICY VIOLATIONS



IN THIS CHAPTER



UNDERSTANDING ELEMENTS OF OFFENSES



QUID PRO QUO SEXUAL HARASSMENT



HOSTILE ENVIRONMENT SEXUAL HARASSMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING



SPEAKER

SUSANNA MURPHY

LEAD INVESTIGATOR

TITLE IX SOLUTIONS

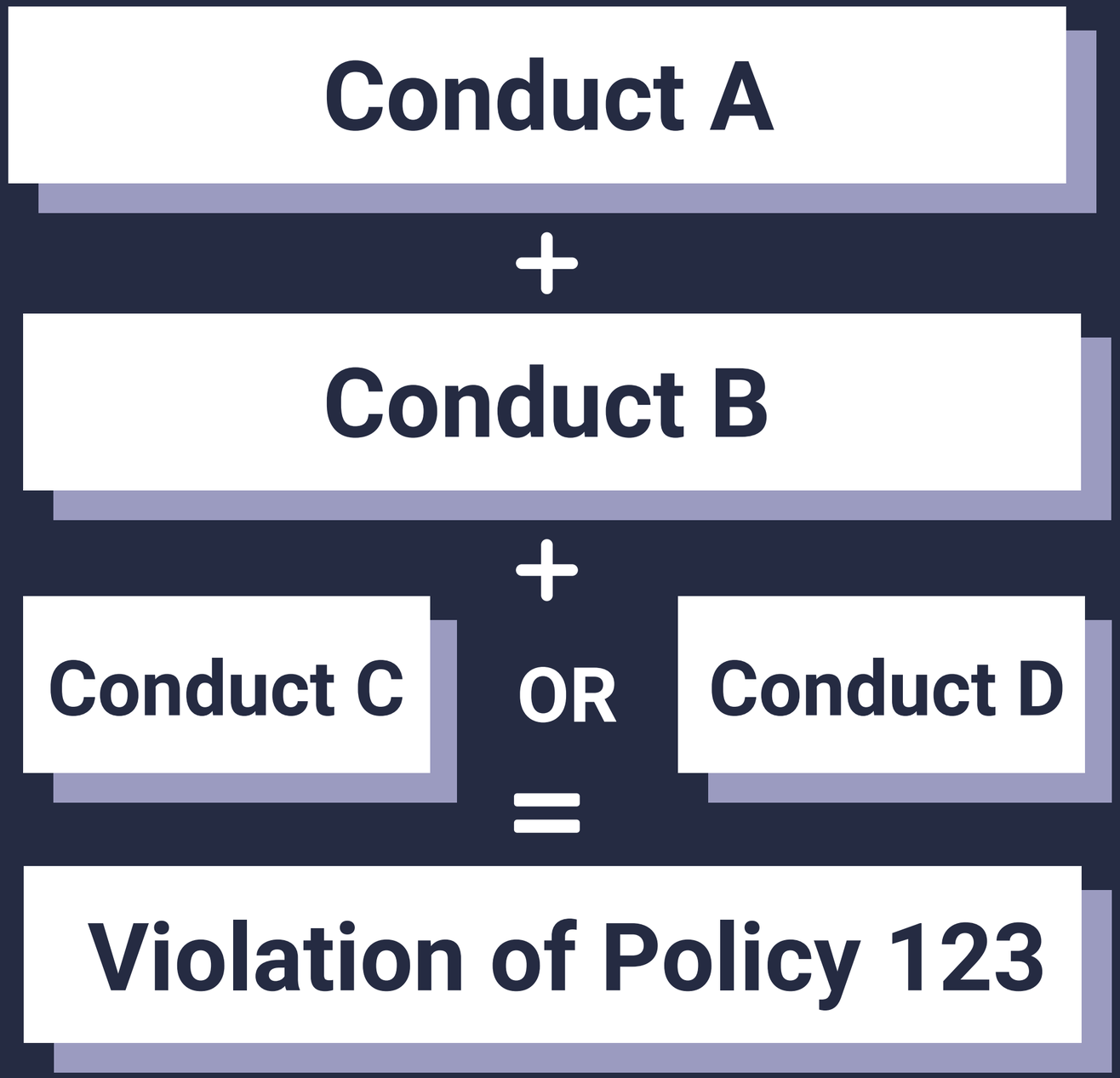
UNDERSTANDING ELEMENTS OF OFFENSES



WHAT DO WE MEAN BY ELEMENTS?

IN THE ADMINISTRATIVE TITLE IX GRIEVANCE PROCESS, WE ARE TALKING ABOUT TITLE IX POLICY VIOLATIONS

- Sexual Harassment
  - Quid Pro Quo Harassment
  - Hostile Environment Harassment
  - Specific Offenses
    - Sexual Assault
    - Dating/Domestic Violence
    - Stalking



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Conduct A ✓

+

Conduct B ✓

+

Conduct C ✓ OR Conduct D ✗ OR Conduct E ✗

=

Violation of Policy 123

TITLE IX SOLUTIONS, LLC

Conduct A ✓

+

Conduct B ✓

+

Conduct C ✓ AND Conduct D ✗ AND Conduct E ✗

=

Violation of [illegible]

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TITLE IX COORDINATOR GATEKEEPING

- A level of gatekeeping has already taken place upon receipt of the Formal Complaint
- The Title IX Coordinator is the individual responsible for identifying the potential implicated policy violation
- The Decision-Maker's role is to determine whether the Respondent is responsible for the policy violation(s) using the institution's standard of proof

REVIEW THE ELEMENTS

- Determine what facts (elements) are in dispute
- Study the evidence that is relevant to each disputed fact (element).
  - In other words, what would prove or disprove the fact (element)?
- If the investigation report contains conclusions regarding disputed issues or credibility, determine if the evidence clearly supports those conclusions. The Decision-Maker is ultimately responsible for coming to these conclusions.

SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

TITLE IX SOLUTIONS, LLC

QUID PRO QUO
SEXUAL HARASSMENT



SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

TITLE IX SOLUTIONS, LLC

WHAT IS QUID PRO QUO?

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

Employee of the recipient

+

conditioning the provision of an aid, benefit, or service of the recipient

+

on an individual's participation in unwelcome sexual conduct.

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SCENARIO

A guest speaker at your institution telling a student that they might be able to get an internship with their company if the student gets dinner with the guest speaker

Employee of the recipient

+

conditioning the provision of an aid, benefit, or service of the recipient

+

on an individual's participation in unwelcome sexual conduct.

HOSTILE ENVIRONMENT HARASSMENT



SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

TITLE IX SOLUTIONS, LLC

WHAT IS HOSTILE ENVIRONMENT?

"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."

Unwelcome conduct on the basis of sex

+

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.

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FACTORS TO CONSIDER

WHETHER A HOSTILE ENVIRONMENT HAS BEEN CREATED INCLUDES CONSIDERATION OF THE FOLLOWING:

- Age
- Sex
- Disability Status
- Position of Authority
- Relationship Dynamics
- Conduct
- Duration and Frequency
- Effect or Hardship Created

SEXUAL ASSAULT



SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

TITLE IX SOLUTIONS, LLC

SEXUAL ASSAULT DEFINITION

"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 the consent of the victim."

20 U.S.C. 1092(f)(6)(A)(v)



THIS NEW DEFINTION OF SEXUAL ASSAULT NOW INCLUDES:

- Rape
- Sodomy
- Criminal Sexual Contact
- Sexual Assault with an Object
- Incest
- Statutory Rape

SEXUAL ASSAULT DEFINITION

OFFENSES INCLUDE:

Criminal Sexual Contact	The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of **sexual degradation, sexual gratification, or sexual humiliation**. OR The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

20 U.S.C. 1092(f)(6)(A)(v)

SEXUAL ASSAULT DEFINITION

OFFENSES INCLUDE:

Sodomy	Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
Sexual Assault with an Object	The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical in capacity.

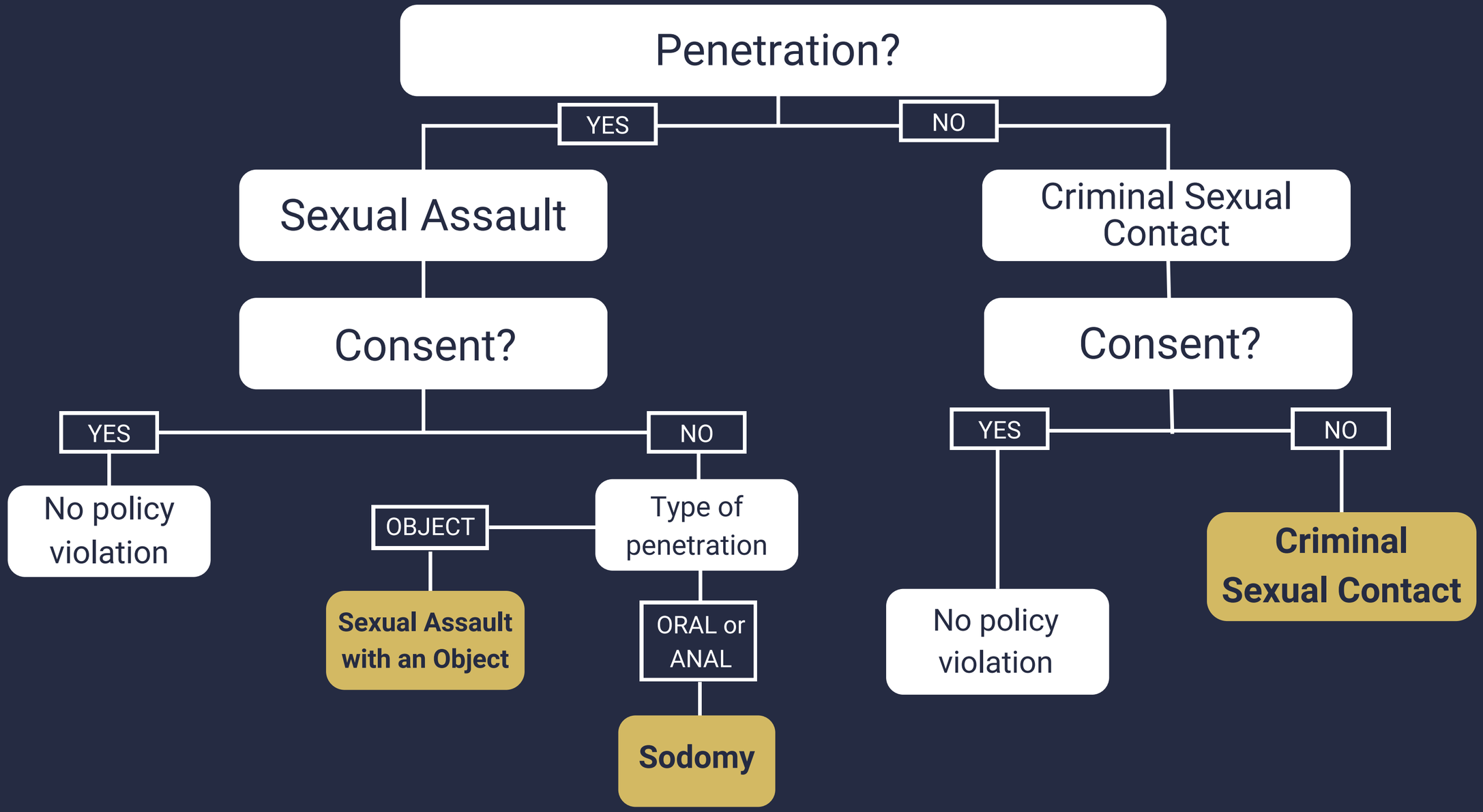
20 U.S.C. 1092(f)(6)(A)(v)

SEXUAL ASSAULT DEFINITION

OFFENSES INCLUDE:

Incest	Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
Statutory Rape	Sexual intercourse with a person who is under the statutory age of consent.

20 U.S.C. 1092(f)(6)(A)(v)



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FACTORS TO CONSIDER

- Relationship of the Parties
- Ages of the Parties
- Mental and Physical Incapacitation
  - Permanent
  - Temporary
- Definition of Consent
- "for the Purpose of Sexual Gratification"
- Anatomical Considerations

DATING AND DOMESTIC VIOLENCE



SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

DATING VIOLENCE DEFINITION

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 DEFINITION

Felony or misdemeanor crimes committed by a person who:

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

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

STALKING



SEXUAL HARASSMENT



QUID PRO QUO



HOSTILE ENVIRONMENT



SEXUAL ASSAULT



DATING AND DOMESTIC VIOLENCE



STALKING

SPECIFIC OFFENSES

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STALKING DEFINITION

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

1. fear for his or her safety or the safety of others; or
2. suffer substantial emotional distress."

34 U.S.C. 12291(a)(30)

Engaging in a course of conduct directed at a specific person

+

that would cause a reasonable person

+

Box A

to fear for his or her safety

OR

to fear for safety of others

OR

Box B

suffer substantial emotional distress

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FACTORS TO CONSIDER

Number of Incidents

Threat of Harm or Perceived Threat of Harm

Effect of Conduct on Complainant

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UNDERSTANDING RELEVANCE



IN THIS CHAPTER



UNDERSTANDING
RELEVANCE

TITLE IX SOLUTIONS, LLC



SPEAKER

THE HONORABLE JUDGE RIEHL

DECISION-MAKER AND INFORMAL RESOLUTION FACILITATOR

IMPORTANCE OF RELEVANCE



The Title IX Regulations make it clear that ALL questions asked within a Title IX hearing **must** be relevant.

WHAT DOES THIS MEAN AND HOW WILL IT BE DETERMINED?

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RULING ON RELEVANCE

THE DECISION-MAKER WILL BE RESPONSIBLE FOR RULING ON THE RELEVANCY OF EVERY QUESTION ASKED DURING THE HEARING. THEY MUST ALSO EXPLAIN ANY DECISION TO EXCLUDE A QUESTION AS IRRELEVANT.

This may be accomplished in one of two ways:

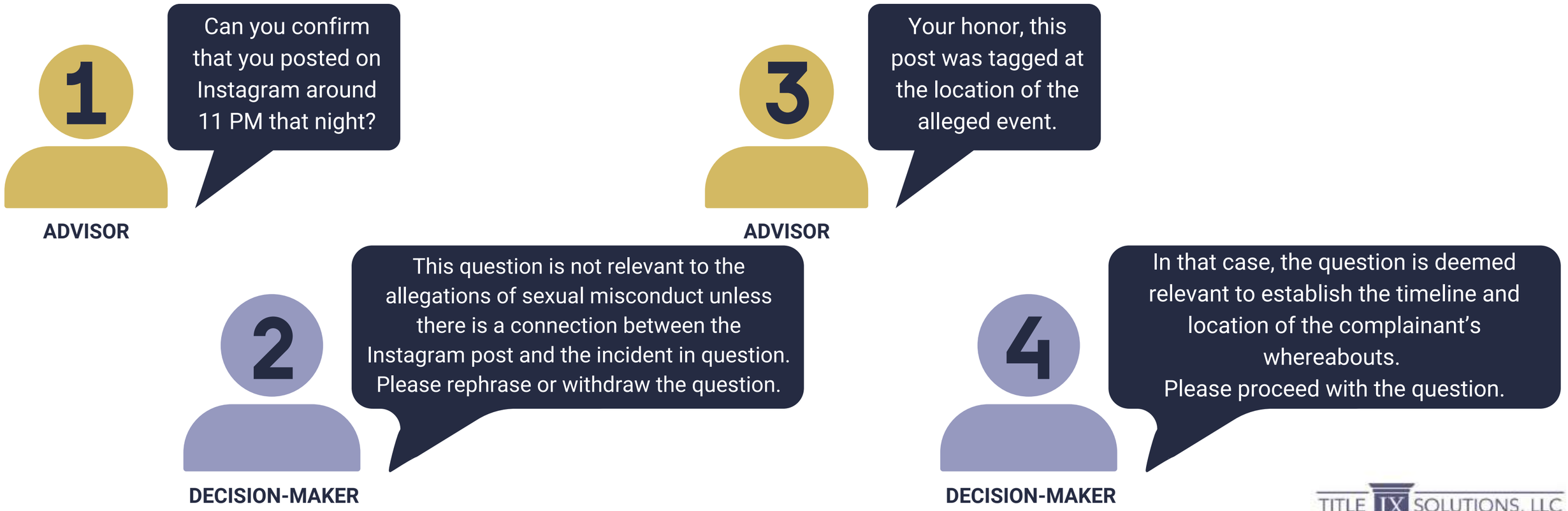
1. Reviewing submitted questions prior to the hearing.

2. Ruling on questions during the hearing before a witness or party answers.

   *In the K-12 setting, questions may be submitted in writing and "shuttled" between the Parties by the Decision-Maker.

QUESTIONING CADENCE

- Following the Advisor's question, the Decision-Maker will rule on the relevance of the question
- Can be awkward at first, but becomes smoother as the hearing progresses



WHAT IS NEVER RELEVANT?

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

EXAMPLE:



"She has dated, and slept with me and my roommate in the past. We kind of look alike. She was so intoxicated that she thought I was him and went into his room. It wasn't me. Ask anyone at the party."

WHAT IS NEVER RELEVANT?

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 concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent

EXAMPLE:



"We have a safe word during sex. I have an entire email thread about it. We agreed that if we weren't comfortable with something, we would say the word. They never said the word that night and they have every single time we've engaged in something they're not comfortable with."

WHAT IS NEVER RELEVANT?

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

- 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

DIRECTLY RELATED VS. RELEVANT

Neither term is explicitly defined in the Title IX Regulations.

DIRECTLY RELATED

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: A receipt from a movie the Complainant and Respondent attended on the night of an alleged sexual assault.

RELEVANT

Evidence that is connected to the complaint or allegations that would make a disputed fact more or less probable.

Example: A receipt from a bar the parties attended after the movie showing the Complainant consumed seven mixed alcoholic drinks.

DIRECTLY RELATED VS. RELEVANT

Directly related evidence is a broader term than relevant evidence.

- All directly related evidence is included in the investigation file.
- Only relevant evidence, however, is summarized in the investigation report.



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INCULPATORY

CORROBORATING EVIDENCE

- Witness statements
- Prior complaints alleging similar conduct
- Physical evidence such as text messages to friends bragging about the conduct

EXCULPATORY

CONTRADICTING EVIDENCE

INCULPATORY

CORROBORATING EVIDENCE

- Witness statements
- Prior complaints alleging similar conduct
- Physical evidence such as text messages to friends bragging about the conduct

EXCULPATORY

CONTRADICTING EVIDENCE

- Physical evidence, such as an audio recording, demonstrating the incident did not happen as alleged
- Complainant told another person the conduct didn't happen
- Respondent was with someone else during incident

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ADMISSABILITY IN TITLE IX HEARINGS

SCHOOLS' ADMISSIBILITY STANDARDS

- Schools do not adhere to the same strict rules of evidence as courts. Title IX regulations prevent schools from adopting rules that would exclude relevant evidence.
- What about relevance of the following?

EXAMPLE:



- Polygraph test results
- Voice stress analysis
- Sexual assault forensic exam kits
- Character witnesses
- Expert witnesses

RELEVANCE DETERMINATION PRACTICE

COMPLAINANT'S CLOTHING

During an interview, the Complainant, Maria, describes wearing a short dress and high heels at the time of the alleged incident. The Respondent, Jake, argues that Maria's attire suggests she was inviting sexual advances. Maria asserts that her choice of clothing is irrelevant to the issue of consent.

- How would you determine the relevance of Maria's clothing to the case?
- Would the nature of her attire have any bearing on the assessment of consent?

RELEVANCE DETERMINATION PRACTICE

USE OF ALCOHOL OR DRUGS

The Complainant, David, reports being highly intoxicated at a party where the incident occurred. He remembers consuming several drinks but has fragmented memories of the night. The Respondent, Emily, also admits to drinking but claims they both were aware and consensual during the encounter.

- How does the use of alcohol by both parties impact the relevance of their ability to give consent?
- What considerations are necessary when evaluating their state of intoxication?

RELEVANCE DETERMINATION PRACTICE

EMOTIONAL STATE

The Complainant, John, testifies that he felt extremely anxious and frightened during the encounter with the Respondent, Lisa. He argues that his emotional state prevented him from giving clear consent. Lisa contends that John never expressed any discomfort at the time.

- How would John's emotional state during the incident influence the determination of relevance in evaluating consent?
- What factors would you consider in assessing his claims?

RELEVANCE DETERMINATION PRACTICE

MENTAL HEALTH DIAGNOSES

The Complainant, Rachel, has a diagnosed anxiety disorder and depression, which she discloses during the investigation. The Respondent, Ben, argues that Rachel's mental health issues affect her credibility and perception of the event.

- To what extent should Rachel's mental health diagnoses be considered relevant?
- How would you balance this information while evaluating her credibility and the overall case?

RELEVANCE DETERMINATION PRACTICE

ARREST & CRIMINAL RECORDS

The Complainant, Lucy, has a prior arrest for a minor theft offense, which occurred two years before the incident. The Respondent, Mark, believes this information is relevant to her character and credibility.

- Should Lucy's past criminal record be considered relevant in this Title IX hearing?
- How would you evaluate its impact on her credibility and the case's overall context?

RELEVANCE DETERMINATION PRACTICE

OCCUPATION

The Complainant, Tom, is a student working part-time as a bartender. The Respondent, Sarah, argues that Tom's occupation, which involves a high-stress environment and frequent interactions with intoxicated patrons, might influence his behavior and credibility.

- Is Tom's occupation relevant to the case?
- How would you assess the impact of his job on the events in question and his credibility?

RELEVANCE DETERMINATION PRACTICE

PRIOR COMPLAINTS & THEIR DISPOSITION

The Complainant, Hillary, has had filed multiple complaints against various respondents over the last two years, though none have resulted in sanctions. The Respondent, Adam, believes this pattern supports his claims on Hillary's disposition.

- How should Hillary's prior complaints be treated in terms of relevance?
- What is the significance of the outcomes of these previous cases in your determination?

RELEVANCE DETERMINATION PRACTICE

PRIOR COMPLAINTS & THEIR DISPOSITION

The Respondent, Mike, has had previous complaints filed against him for similar behavior, though none resulted in sanctions. The Complainant, Anna, believes this pattern supports her allegations.

- How should Mike's prior complaints be treated in terms of relevance?
- What is the significance of the outcomes of these previous cases in your determination?

RELEVANCE DETERMINATION PRACTICE

DATING HISTORY

The Complainant, Laura, and the Respondent, Alex, have a history of dating but broke up a few months before the alleged incident. Laura claims this history is relevant to understanding the context of the night in question.

- How should Laura and Alex's dating history influence the relevance determination?
- What factors are important when considering past relationships in the context of consent?

RELEVANCE DETERMINATION PRACTICE

PREVIOUS SANCTIONS

The Respondent, Sam, has previously been sanctioned for academic dishonesty. The Complainant, Zoe, suggests this history reflects on Sam's character and credibility.

- Is Sam's history of academic dishonesty relevant to the Title IX hearing?
- How would you weigh this information in the context of the current allegations?

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RELEVANCE DETERMINATION PRACTICE

STATEMENTS TO MENTAL HEALTH PROFESSIONALS

The Respondent, Kristen, disclosed details of the incident to her therapist, stating she felt sorry for the conduct. The Respondent, Kristen, argues that statements made in a therapeutic setting should not be considered.

- How relevant are Kristen's statements to her mental health professional?
- What weight should these statements carry in the hearing?

RELEVANCE DETERMINATION PRACTICE

GRADES & CHARACTER REFERENCES

The Complainant, Beth, provides prior grades and proof of her good academic standing. The Respondent, Nathan, argues that academic performance and standing are irrelevant to the incident.

- To what extent should Beth's grades and academic standing be considered in the hearing?
- How do these factors influence the relevance and credibility of her testimony?

RELEVANCE DETERMINATION PRACTICE

GRADES & CHARACTER REFERENCES

The Respondent, Ethan, provides character references from his baseball coaches who attest to his outstanding leadership on the team. The Complainant, Mia, argues that leadership on the team and character references are irrelevant to the incident.

- To what extent should Ethan's leadership and character references be considered in the hearing?
- How do these factors influence the relevance and credibility of her testimony?

KEY TAKE-AWAYS

RELEVANCY DOES NOT EXIST IN A VACUUM

It is always contextual, situational, and based on the fact pattern of the specific case.

WHAT IS RELEVANT IN ONE CASE MAY NOT BE RELEVANT IN ANOTHER

Decision-makers must consider the totality of the circumstances in each case to determine relevance.

EXCEPTIONS UNDER TITLE IX REGULATIONS

Such as a complainant's prior sexual history, unless it fits specific exceptions or privileged communications (e.g., medical, legal, counseling) unless waived.

FINAL THOUGHT

Did you find this section relevant?

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FACILITATING PRE-HEARING MEETINGS



IN THIS CHAPTER



FACILITATING PRE-HEARING MEETINGS



SPEAKER

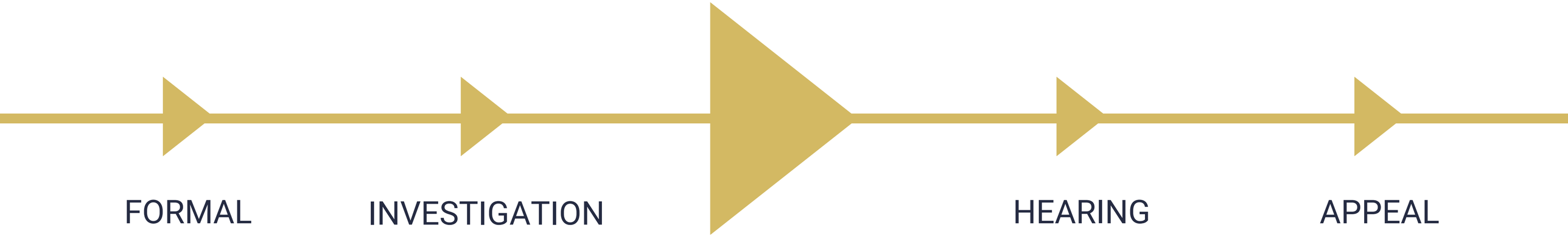
THE HONORABLE JUDGE RIEHL

DECISION-MAKER AND INFORMAL RESOLUTION FACILITATOR

WHAT IS THE 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 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 in dealing with sex discrimination and sex-based harassment
- If allegations involve staff or faculty, pre-hearing meetings are particularly important

WHEN IS THE PRE-HEARING MEETING?

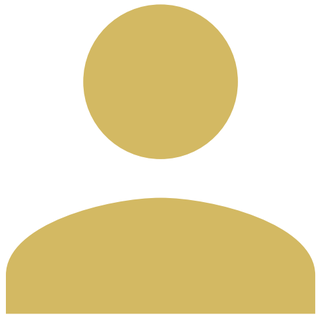


It is held following the issuance of investigation report and after Parties and their Advisors have had the opportunity to review and respond to evidence.

PRE-HEARING CHECKLIST

1. Clarify purpose of hearing
2. Reiterate standard of evidence
3. Discuss hearing procedures
4. Review rights and responsibilities
5. Confirm Witness attendance
6. Explain relevancy of evidence
7. Review logistics and needs
   (i.e. reasonable accommodations for parties with disabilities)
8. Answer Parties' questions

WHO IS SEATED AT THE TABLE?

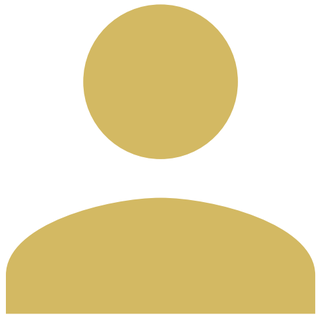


DECISION-MAKER

- Conducts the pre-hearing conference
- Sets deadlines for Witness disclosures
- Sets the hearing date, unless it has already been set by the Coordinator
- Advises all present of the rules and procedures to be followed at the hearing
- An opportunity to determine if the parties believe that the Decision-Maker has a bias because bias is a basis of appeal

The Decision-Maker sets the “rules of the road.”

WHO IS SEATED AT THE TABLE?

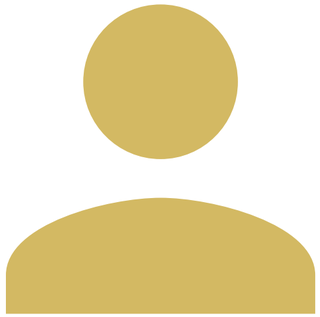


TITLE IX COORDINATOR

- Has the burden of proof in any hearing
- Requests Witnesses to appear at the hearing
- Facilitates the hearing itself (logistical)
- Serves as the record-keeper of the hearing
- In certain instances, the Title IX Coordinator can be the complainant

The Title IX Coordinator is the overseer of the process

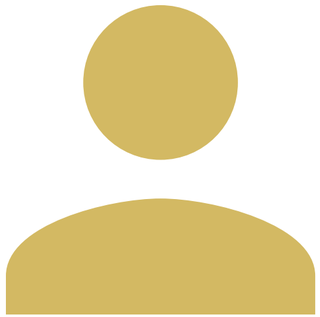
WHO IS SEATED AT THE TABLE?



COMPLAINANT

- Victim of the alleged misconduct
  - May also be the reporting party or the Title IX Coordinator
- May have questions about the process and how it works
- Pre-hearing conference allows them to ”put a face” to the Decision-Maker

WHO IS SEATED AT THE TABLE?

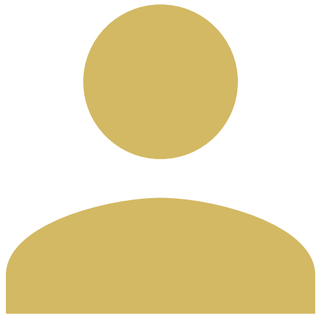


COMPLAINANT'S ADVISOR

- Represents the interests of the Complainant
- Only individual allowed to cross-examine Respondent and Witnesses
- Has the opportunity to clarify evidentiary issues and questions during the pre-hearing conference
- Establishes Witnesses expected to be called for the hearing
- Becomes acquainted with the rules and procedures of the hearing

Advisor can be an attorney or not. It is the Complainant’s choice.

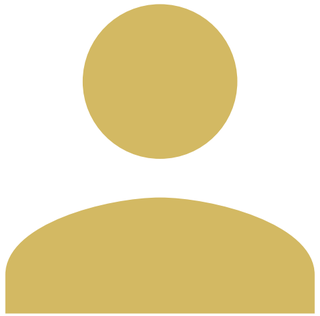
WHO IS SEATED AT THE TABLE?



RESPONDENT

- Reported to be the perpetrator of the alleged misconduct
  - AKA: the responding party
- May have questions about the process and how it works
- Pre-hearing conference allows them to "put a face” to the Decision-Maker

WHO IS SEATED AT THE TABLE?



RESPONDENT'S ADVISOR

- Represents the interests of the Respondent
- Only individual allowed to cross-examine Respondent and Witnesses
- Has the opportunity to clarify evidentiary issues and questions during the pre-hearing conference
- Establishes Witnesses expected to be called for the hearing
- Becomes acquainted with the rules and procedures of the hearing

Advisor can be an attorney or not. It’s the Respondent’s choice.

REMINDER:



PARTIES MAY SELECT NON-ATTORNEY ADVISORS.

Acknowledge power imbalances that might be created.

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IMPORTANCE OF THE PRE-HEARING MEETING

MOST INDIVIDUALS HAVE NOT PARTICIPATED IN THIS TYPE OF HEARING.

- The many “unknowns” surrounding the live hearing may be anxiety-inducing for the Parties
- Pre-hearing meetings may help ease some anxiety because the Decision-Maker addresses many of the “unknowns” associated with the live hearing
- Unfortunately, this does not mean that the Parties will not be anxious during the hearing

BENEFIT TO THE PARTIES AND ADVISORS

- Allows Parties to put a face with the name of the Decision-Maker
- Parties may begin to fully understand the hearing process
- The process and potential consequences of the Title IX process may become "real"
- After the pre-hearing meeting, some parties may decide to move forward with informal resolution (if permitted)
- May make the live hearing more efficient, focused, and effective

BENEFITS TO THE DECISION-MAKER

- Clarifies the authority of the Decision-Maker(s) in front of the Advisors and Parties
- Ensures Parties and Advisors have the same understanding of and expectations for the live hearing
- Anticipates any issues and troubleshoot before the hearing begins
- Slows the process down to allow more thoughtful decision-making

COORDINATING THE PRE-HEARING MEETING

- Schedule with the Parties separately (or together if warranted)
- Ensure the meeting occurs well before the anticipated hearing date to accommodate any requests for changes or special needs
- Provide an Advisor if the Party does not already have one
- Ask Parties to bring their list of cross-examination questions for review
- Select your videoconferencing platform for the hearing
- Send a written summary of the pre-hearing meeting to all Parties and Advisors upon conclusion

SAMPLE MEETING AGENDA

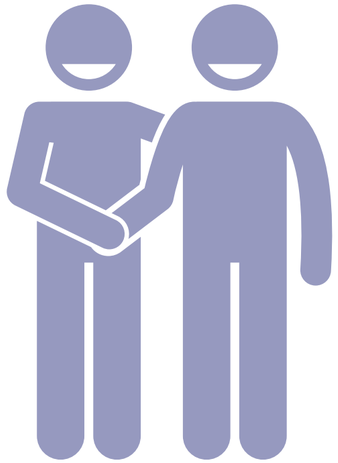
1. INTRODUCTIONS
2. HEARING PREPARATION
3. REVIEW PROCEDURE
4. OUTLINE LIVE HEARING RULES
5. ESTABLISH TIMEFRAME
6. ANSWER QUESTIONS

INTRODUCTIONS

1



Parties



Advisors

IX

Title IX Team

HEARING PREPARATION

2

- Confirm Parties’ access to investigative report and evidence
- Confirm Witness participation

REVIEW PROCEDURE



- Consult your school policy
- If your policy does not establish procedures, create a flow for the hearing

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OUTLINE LIVE HEARING RULES



- Authority of the Decision-Maker at the hearing
  - Permission to speak, requests for breaks, etc.
- Consequences of not submitting to cross-examination
- Expectations of rules and decorum
  - Punctuality, inclusive language, prohibited behavior, etc.
- Relevance under Title IX
  - Evidence that may aid the Decision-Maker in determining whether the allegation occurred

ESTABLISH TIMEFRAME

5

- Share date and time for live hearing
- Explain potential length of hearing
  - Half day, full day, multiple days
- Discuss technology logistics pertaining to time of witnesses or break out rooms for the parties to discuss privately

ANSWER QUESTIONS



- Discuss any barriers, concerns, needs, or worries
- Ensure no questions are left unanswered, this is the time to clarify for all parties

A DECISION-MAKER'S PERSPECTIVE



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CONDUCTING A TITLE IX HEARING



IN THIS CHAPTER



TITLE IX REQUIREMENTS FOR LIVE HEARINGS



CRAFTING QUESTIONS FOR THE PARTIES



HEARING LOGISTICS



HEARING PROCEDURES

TITLE IX SOLUTIONS, LLC



SPEAKER

JIM REEVES

DECISION-MAKER & INFORMAL
RESOLUTION FACILITATOR

TITLE IX REQUIREMENTS FOR LIVE HEARINGS



TITLE IX GUIDANCE ON HEARINGS

THE LIVE HEARING IS ONLY REQUIRED FOR POSTSECONDARY INSTITUTIONS.

- K-12 schools may have hearings, but they are not subject to the same requirements under 106.45(B)(6)
- K-12 schools must allow for the written submission of relevant questions for Parties and Witnesses prior to Decision-Maker's determination is made
- K-12 Decision-Makers will need to consult policy to determine which avenue is utilized, as well as specific procedures and timelines

TITLE IX GUIDANCE ON HEARINGS

AT A LIVE HEARING, THE DECISION-MAKER:

"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."

34 C.F.R. § 106.45(b)(6)

TITLE IX GUIDANCE ON HEARINGS

CROSS-EXAMINATION MUST TAKE PLACE:

DIRECTLY

ORALLY

IN REAL TIME



Must be conducted through an Advisor of choice and NEVER by the Complainant or Respondent

TITLE IX GUIDANCE ON HEARINGS

IF REQUESTED BY EITHER PARTY, THE SCHOOL MUST PROVIDE FOR THE HEARING TO OCCUR WITH PARTIES IN SEPARATE ROOMS, SUPPORTED VIA TECHNOLOGY.

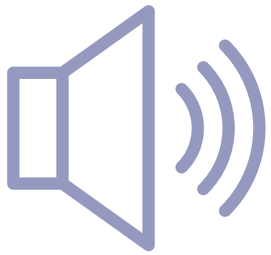


There is also the option for any or all Parties and Witnesses to participate remotely, via technology (at the school's discretion).

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RECORDKEEPING

SCHOOLS MUST CREATE ONE OF THE FOLLOWING RECORDS OF THE HEARING TO PROVIDE TO THE PARTIES FOR INSPECTION AND REVIEW:



AUDIO RECORDING



AUDIOVISUAL RECORDING



TRANSCRIPT

Any Title IX records, including the live hearing record and written determination must be kept for at least seven years.

TITLE IX ADVISORS

- Remember, Parties will be accompanied by an Advisor of their choice who may be, but is not required to be, an attorney
  - Advisors are allowed to attend any meeting but are required for the hearing
  - Parties may have been utilizing Advisor support throughout the full grievance process
  - Others will just engage with Advisors for the hearing
- May be a parent, friend, teacher, coach, etc.
  - Keep this in mind as cross-examination proficiency will vary greatly
  - Some may need more guidance during the hearing
- If a Party has not selected an advisor prior to the hearing, one must be provided by the school (free of charge)
- Restrictions may be placed on Advisor participation but must be applied equally to both Parties' Advisors

CRAFTING QUESTIONS FOR THE PARTIES



QUESTION CONSIDERATIONS

- Should be based on facts in dispute
  - Could be clear conflict between statements provided by Parties (he said/she said)
  - Parties may not dispute that events happened, but they may have disagreement about certain elements of the policy violation



Whether it was unwelcome



Whether it was based on sex



Whether it was severe, pervasive, and offensive

  - Dispute could center around consent (if the Parties are legally able to consent)

QUESTIONING CHECKLIST

- What information do I need to know to prove or disprove an element of the policy violated?
- What is the best question to ask to generate an informative answer?
- Which Party or Witness will I need to question to obtain this information?
- Can this information be found anywhere in the investigation report or file?
- Is this statement or action corroborated?

QUESTION CONSIDERATIONS

GOOD QUESTIONS ARE:

OPEN-ENDED

Prompts the party to share more broadly.

NON-LEADING

Do not guide the Parties to the answer you want to hear.

SINGULAR

Avoid complicated, multi-part questions.

CLEAR

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

SENSITIVE

Though questions need to be direct, consider emotions that may be evoked by asking. Practice empathy.

BEST PRACTICE FOR QUESTIONING

OPEN-ENDED

- We shouldn't need to seek the Parties' entire narratives as they were provided during the investigative interviews
- Decision-Makers may still need to seek more information using open ended questions
- Important for obtaining more than "yes" and "no" responses

Instead of:

"Was he intoxicated?"

Try:

"Can you tell me about his behaviors that made you believe he was intoxicated?"

BEST PRACTICE FOR QUESTIONING

NON-LEADING

- As the Decision-Maker is completely neutral, avoid leading Parties to answers through your questions
- Do not put words or emotions on a Party that are not their own
- Parties may feel boxed in to agreeing with the question

Instead of:

"That probably made you mad, didn't it?"

Try:

"How did that make you feel?"

BEST PRACTICE FOR QUESTIONING

SINGULAR

- Multiple part questions can be confusing and clunky
- Parties may not answer all questions asked in a series

Instead of:

“What did the Respondent say to you in class and how did this impact your academics and ability to participate in the marching band?”

Try formulating as three separate questions:

"What did the Respondent say to you in class?"

"How did this impact your academics?"

"How did this affect your ability to participate in the marching band?"

BEST PRACTICE FOR QUESTIONING

CLEAR

- Avoid prefacing questions with long statements
- Avoid being wordy or using complex terms when simple language will suffice

Instead of:

"You mentioned in your investigative interview on August 20, 2022 that the Complainant texted you prior to the party you both attended on the evening of July 14, 2022. I'd like to understand more about this text message exchange. Could you dissect your text message conversation? "

Try:

"Could you walk me through your text message conversation with the Complainant on the evening of July 14, 2022?"

BEST PRACTICE FOR QUESTIONING

SENSITIVE

- Use empathy when questioning both Parties, as this is a stressful and emotional process
- Avoid questions which may come across as judgmental or blaming

Instead of:

"Why did you continue your relationship with her after she allegedly punched you?"

Try:

"Can you tell me about the nature of your relationship following the alleged assault?"

REMINDER:



ADVISORS MAY NOT FOLLOW THESE SAME QUESTIONING PRACTICES.

Asking a poorly worded question is not the same as asking an irrelevant one. Recall this as you rule on each question during cross-examination.

HEARING LOGISTICS



PREPARING FOR THE HEARING

- The Title IX Coordinator will communicate with Parties and Witnesses following the pre-hearing meeting
  - All will receive written notice with date, time, and location of the hearing with sufficient time to prepare
  - Coordination with multiple Parties and Advisors can be challenging
- The Title IX Coordinator will secure physical space, if the live hearing is taking place on-campus, or will coordinate videoconferencing (Zoom, Google Meet, Teams, etc.)



Remember: These hearings are confidential and all person's must be accounted for in the hearing.

ON-CAMPUS HEARINGS

- Think about the physical space and determine your needs for the hearing
- Plan for assistance from the Title IX Coordinator and secure administrative assistance from someone who can be a "runner"
- Consider the following:
  - Seating arrangements and positioning
  - Access to technology, phone, Wi-Fi
  - Proximity to an office for supplies or copies, if needed
  - Provision of water, tissues etc. for Parties
  - Appropriate waiting area for Witnesses
  - Spaces for breaks or private conferring with Advisor
  - Method of recording
  - Consider any special accommodations needed by Parties or Witnesses

REMOTE HEARINGS

- Think about the technology and determine your needs for the hearing
- Plan for assistance from the Title IX Coordinator and secure assistance from a member of your campus' IT department for troubleshooting
- Consider the following:
  - Ensure all Parties, Advisors, and Witnesses have access to technology and conferencing platform needed
  - Consider any special accommodations needed by Parties or Witnesses
  - Conduct tests to ensure all technology is working
  - Set up virtual breakout rooms for the Parties and their Advisors
  - Create plan for Witnesses to be called and admitted to hearing when ready

HEARING RULES AND DECORUM

- Consult school policy and work with Title IX Coordinator to create a set of standard rules for the hearing
- Consider the following:
  - Rules for participation from Parties and Witnesses
  - Rules for participation from Advisors
  - Rules for breaks, both within the same day and continuation to another day, if needed
  - Consequences for not following the rules (How will this be handled?)
- General decorum for all participants should be professional, respectful, and orderly

DECISION-MAKER DECORUM

- As the facilitator of the hearing, Decision-Makers will set the ultimate example
- Set the standard of professionalism, respect, and order
  - Do not allow emotions in the room to dictate your decisions
  - Remain objective and impartial throughout
- Practice active listening and reduce all distractions
- Be mindful of posture, mannerisms, and reactions
- As this is an administrative process and not a TV court room, remember the following:
  - There are no climactic "gotcha" moments
  - You are there to instruct and assist as well- help Parties, Witnesses, and Advisors if they do not understand something

SUPPORT

- As previously mentioned, Decision- Makers will have support from the Title IX Coordinator in aspects of preparing for and facilitating the hearing
- Determine if there are other individuals from whom you will need support
- Parties receive guidance from Advisors, but who will guide you?
  - Contact your school's general counsel to attend the hearing or be on-call to assist you with legal advice
  - When in doubt, take a break and seek guidance from your resources
  - Do not force any action or decision - You can slow the process down

HEARING PROCEDURES



ORDER OF THE HEARING

- Title IX Regulations do not provide any specific guidance on the inner-workings of the hearing
- The order and specific components of the hearing will be determined by the school and it's policy - consult with your Title IX Coordinator
- The following is an example of best practice procedures, but it is just one of several ways a hearing may be structured

HEARING AGENDA

1. Opening of the Hearing
2. Opening Statements
3. Introduction of Testimonial Evidence
4. Closing Statements
5. Closing of the Hearing

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1 OPENING OF THE HEARING

FACILITATED BY THE DECISION-MAKER WHO WILL:

- Welcome Complainant, Respondent, and Advisors to the hearing
- Discuss rules, decorum, and hearing procedure for all individuals involved
- State the date and time for the official record
- Answer any final questions or clarify information needed prior to the start of the hearing
- Proceed to opening statements

2 OPENING STATEMENTS

FACILITATED BY THE DECISION-MAKER WHO WILL ASK COMPLAINANT AND RESPONDENT (OR THEIR ADVISORS) TO PRESENT AN OPENING STATEMENT WHICH MAY:

- Outline the issues that the Party and their Advisor would like to refute
- Provide an overview of the facts and evidence
- Describe the evidence that supports their statements (or their Party's statements)
- Present what the Party and their Advisor expect to prove during the hearing

Typically, the Complainant gives the first opening statement, followed by the Respondent. Parties may waive their presentation of an opening statement.

3 INTRODUCTION OF TESTIMONIAL EVIDENCE

FACILITATED BY THE DECISION-MAKER WHO WILL ALLOW ADVISORS TO CONDUCT DIRECT AND CROSS-EXAMINATION OF THE PARTIES AND WITNESSES.

Decision-Makers also conduct their own questioning of the Parties and Witnesses.



Decision-Makers will rule on relevancy of **all** questions prior to the Parties and Witnesses answering. They may also ask for clarification from Advisors on the relevancy of questions.

DIRECT AND CROSS-EXAMINATION

COMPLAINANT'S CASE

- Typically, the Decision-Maker will ask the Complainant to provide testimonial evidence first
- Opportunity to present Complainant and Witnesses called by Complainant for direct examination
- Present new evidence (if any, ideally should have been discussed at pre-hearing conference to allow for inspection by both Parties)
- Cross-examination of the Complainant and Complainant's Witnesses by the Respondent’s Advisor
- Advisors may object to irrelevant questions asked of their Party or Witnesses

DIRECT AND CROSS-EXAMINATION

RESPONDENT'S CASE

- Once the Complainant has completed the sharing of their testimony, the Respondent will share theirs
- Opportunity to present Respondent and Witnesses called by Respondent for direct examination
- Present new evidence (if any, ideally should have been discussed at the pre-hearing conference to allow for inspection by both Parties)
- Cross-examination of the Complainant and Complainant's Witnesses by the Respondent's Advisor
- Advisors may object to irrelevant questions asked of their Party or Witnesses

DIRECT AND CROSS-EXAMINATION

DECISION-MAKER'S EXAMINATION

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

4 CLOSING STATEMENTS

FACILITATED BY THE DECISION-MAKER WHO WILL ASK COMPLAINANT AND RESPONDENT (OR THEIR ADVISORS) TO PRESENT A CLOSING STATEMENT.

- Final statement by the Parties or their Advisors to the Decision-Maker
- Summarizes the relevant evidence and arguments
- Asks the Decision-Maker to find that the evidence will support the determination in that Party's favor
- May be an impact statement by the Complainant or mitigation statement by the Respondent

Typically, the Complainant gives the first closing statement, followed by the Respondent.

Parties may waive their presentation of a closing statement.

5 CLOSING OF THE HEARING

FACILITATED BY THE DECISION-MAKER WHO WILL:

- Announce Parties have completed the submission of all evidence
- Announce the closing of the hearing
- State the date and time for the record
- Provide information regarding next steps and timeline
- Dismiss the Parties and begin preparing the determination regarding responsibility

RULING ON RELEVANCE

- Remember, Decision-Makers will be determining the relevance of each question asked prior to the Parties answering such questions
- Reasons to reject questions:
  - Question is seeking information that is never relevant under Title IX (rape shield, privileged information)
  - Question is not relevant to the complaint and facts being discussed
  - Question has already been answered in the hearing
- Decision-Makers may seek clarity from the Advisor as to why the question is being asked to understand relevance
- Provide a thorough explanation as to why a particular question is not allowed
  - Transparency is a must

REFUSAL TO PARTICIPATE

- 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.

What does this mean?

- A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.
- The decisionmaker must not draw an inference about whether sexual harassment occurred based solely on a party's or witness's refusal to respond to such questions.

DETERMINING CREDIBILITY

- The live hearing is the Decision-Maker's opportunity to determine credibility of the Parties and Witnesses
- Credibility of statements and evidence by Parties and Witnesses may be weighed when making your determination
  - Ask yourself, "Is this plausible?"
- Credibility considerations
  - Motives
  - Consistency in statements (recall trauma may impact this)
  - Supporting evidence (witnesses, physical evidence to corroborate versions of events)
  - Demeanor

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HELPFUL TIPS

DECISION-MAKERS ARE THE ULTIMATE AUTHORITY IN THE ROOM AND SET THE RULES AND TONE FOR THE HEARING

- Ensure participation from the Parties, Witnesses, and Advisors follow those rules
- Authority =/= Authoritative. Maintain professionalism and neutrality

READ THE ROOM

- Cue in on non-verbal communication to mitigate any issues
- Call breaks, if necessary, to reduce stress and emotion

BE FLEXIBLE

- If the structure or order of the hearing or questions needs to adapt due to unforeseen circumstances, allow it (e.g. Witness having trouble accessing technology while another is ready)

TAKE NOTE!



- Hearings can range from hours to days, depending on the complexity of the situation and the number of Parties and Witnesses to be questioned.
- Pace yourself and allow for breaks when needed. Do not burn yourself or the Parties out. The proceedings can always continue on the following day.

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DRAFTING THE WRITTEN DETERMINATION REGARDING RESPONSIBILITY



IN THIS CHAPTER



KEY ELEMENTS OF THE DETERMINATION REGARDING RESPONSIBILITY



BEST PRACTICES FOR MAKING A DETERMINATION REGARDING RESPONSIBILITY

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SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR

TITLE IX SOLUTIONS



SPEAKER

CJ LARKIN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

KEY ELEMENTS OF THE WRITTEN DETERMINATION REGARDING RESPONSIBILITY



DETERMINATION REGARDING RESPONSIBILITY

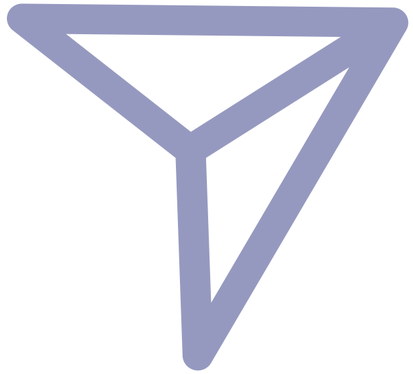
DECISION-MAKER'S DETERMINATION WHETHER SEXUAL HARASSMENT OCCURRED

- Drafted and issued by the Decision-Maker after the live hearing or K-12 decision-making process
- 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)
- Can be referred to as the "Written Determination" or "Notice of Outcome"

INTRODUCTION TO THE WRITTEN DETERMINATION



Includes six (6) key elements, as described under Title IX.



Must be shared with the parties simultaneously.



Specific timeline and procedures for issuing the Written Determination can be found in the school's Sexual Harassment Policy ("School Policy").

KEY ELEMENTS

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

KEY ELEMENTS

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

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

1

IDENTIFICATION OF THE ALLEGATIONS POTENTIALLY CONSTITUTING SEXUAL HARASSMENT AS DEFINED UNDER TITLE IX

- Found in the Notice of Allegations or Investigative Report and inserted directly into the Written Determination
- All allegations contained in the Written Determination must be consistent with the allegations provided to the Parties in prior notices
- If the allegations are unclear, confirm with the Title IX Coordinator
- Determination includes:
  - Information about the alleged incident(s)
  - Definitions of the alleged policy violations

Allegations

The Allegations made by Complainant to Scenario College's Title IX Office were made via Scenario College's online report form on September 1, 2022, giving rise to potential violations of Scenario College's Sexual Harassment and Sexual Misconduct Policy by Respondent, which prohibits sexual harassment. The Allegations are as follows:

A. On the night of August 25, 2022, Complainant alleges that Respondent touched her breasts in the kitchen of the Delta Tau Chi fraternity house without her consent.

B. On the morning of August 26, 2022, Complainant alleges that Respondent digitally penetrated her vagina in the bathroom of the Delta Tau Chi fraternity house while Complainant was "blacked out" after consuming alcohol.

OR

C. Respondent touched Complainant's breasts in the kitchen of the Delta Tau Chi fraternity house after she told him to stop and stay away from her.

D. Respondent put his fingers inside of the Complainant's vagina while she was "blacked out" in the bathroom of the Delta Tau Chi fraternity house.

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Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will in instances where the victim is incapable of giving consent.

Non-Consensual Sexual Penetration: Any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. Intercourse means: vaginal or anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

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2

DESCRIPTION OF THE PROCEDURAL STEPS TAKEN FROM RECEIPT OF FORMAL COMPLAINT THROUGH THE DETERMINATION

PROCEDURES SHOULD:

- Document the entire grievance process
- Include notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held
- Procedural steps may be found in the Investigative Report and/or provided to the Decision-Maker by the Title IX Coordinator and Investigator
- Decision-Makers must add procedural steps related to the decision-making portion of the grievance process (i.e., pre-hearing meeting and hearing).

On September 2, 2022, the Title IX Coordinator met with the Complainant to review the relevant policies and procedures and discuss resources and supportive measures and answer any questions. Complainant did not have an advisor present.

On September 5, 2022, Complainant submitted a formal complaint to the Title IX Coordinator via email.

On September 10, 2022, the Title IX Coordinator sent a Notice of Allegations to the Complainant and Respondent, advising the parties that a formal complaint had been filed by Complainant against Respondent alleging violations of Scenario College's policies and procedures. The Notice stated that a Title IX investigator would be assigned to the case to investigate the allegations in accordance with Scenario College's Sexual Harassment and Sexual Misconduct Policy ("Policy). The specific allegations were included, and the parties were directed to the relevant sections of the Policy. The Notice specifically stated:

[INSERT ALLEGATIONS & ALLEGED POLICY VIOLATIONS]

On September 11, 2022, the Title IX Coordinator met with Respondent to review the relevant policies and procedures and discuss resources and supportive measures and answer any questions. No advisor was present.

On September 17, 2022, Title IX Investigator Singh interviewed Complainant about the allegations with Complainant's advisor present.

On September 18, 2022, Title IX Investigator Singh interviewed Respondent about the allegations. Respondent did not have an advisor present.

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3

FINDINGS OF FACT SUPPORTING THE DETERMINATION

- Includes relevant facts provided in the Investigative Report and facts established during the live hearing or the K-12 decision-making process
- Includes statements provided by the Parties and Witnesses during the investigation and live hearing or K-12 decision-making process*
- Includes an analysis of inculpatory and exculpatory evidence
- Includes an analysis of disputed and undisputed facts

*Reference your school's policy to determine if the Decision-Maker may or may not rely upon any statements provided by a Party or Witness who does not submit to cross-examination in reaching the final determination regarding responsibility.

The following facts are undisputed by the parties and by the evidence:

- Complainant is a freshman at Scenario College and lives in Apple Residence Hall.
- Respondent is a junior at Scenario College and lives in the Delta Tau Chi fraternity house.
- Respondent met Complainant in their "Introduction to Buddhism" course on the morning of August 25, 2022. After class Respondent invited Complainant to a party hosted by the Delta Tau Chi fraternity that same evening.
- On August 25, 2022, Members of the Delta Tau Chi Fraternity hosted a "Welcome to the Jungle" party at the Delta Tau Chi fraternity house. The party started at 10:00 pm.
- Complainant, Witness 3, and Witness 5 consumed Coors Light Beer prior to arriving at the Delta Tau Chi fraternity house.
- Complainant, Witness 3, Witness 5, and Witness 8 arrived at the Delta Tau Chi fraternity party at approximately 11:00 pm.

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4

CONCLUSIONS REGARDING THE APPLICATION OF SCHOOL'S CODE OF CONDUCT TO THE FACTS

- Decision-Maker “matches up” conduct that allegedly constituted Title IX sexual harassment with the relevant portions of the school's Code of Conduct that the conduct also violates
- Nests the policy violations within the Code of Conduct to help the Parties better understand how rules unique to the school’s Code of Conduct affect the determination and/or consequences of the written determination
- Explicitly states the names of the institutional policies that are being applied to the alleged policy violation

Applicable Scenario College Policy

The alleged conduct may potentially violate the following sections of the College's Sexual Harassment and Sexual Misconduct Policy:

> Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will in instances where the victim is incapable of giving consent.
>
> Non-Consensual Sexual Penetration: Any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. Intercourse means: vaginal or anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

Additional definitions contained in the College's Sexual Harassment and Sexual Misconduct Policy relevant to the allegations are as follows:

> Consent: "Consent" must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Consent can be expressed verbally or nonverbally. Consent must be active, not passive. Silence or absence of resistance does not imply consent...
>
> Incapacitation: Incapacitation can occur through excessive alcohol or drug use or for other reasons such as unconsciousness, being asleep, or being otherwise physically unable to respond fully and effectively to the environment, such that they cannot make a knowing agreement to sexual activity.

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5

A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

1. A DETERMINATION REGARDING RESPONSIBILITY;

- Apply the standard of proof outlined in the school's policy to the evidence to make a determination
  - Preponderance of the evidence standard vs. clear and convincing standard
- Be explicit about the rationale for the result as to each allegation
  - Cite the Parties' statements, Witness statements, evidentiary findings, etc.
  - Outline conflicting statements and indicate why or why not specific statements or evidence is credible and supports or does not support a finding of responsibility.
- Include a statement of, and rationale for, the result of each allegation

- **Allegation #1. On the night of August 25, 2022, Complainant alleges that Respondent touched her breasts in the kitchen of the Delta Tau Chi fraternity house without her consent.**

The Complainant and the Respondent agree on some facts related to the allegation of forcible fondling but fundamentally disagree on whether it was consensual. The Complainant stated that the fondling of her breasts occurred in the Delta Tau Chi fraternity house at the "Welcome to the Jungle" party while she was alone with the Respondent. Respondent stated that he was mixing alcoholic drinks called "jungle juice" with Witness 4 when Complainant came into the kitchen and pressed her breasts, stomach, pelvis, and front of her thighs against his back. Respondent then stated that when he turned around to talk to Complainant, he was holding up two red solo cups of jungle juice in front of his chest and his hands brushed against the Complainant's breasts. Witness 4 testified that he was with Respondent in the kitchen making jungle juice and saw Respondent's face blush after turning around and touching Complainant's breasts with his [Respondent's] hands full with cups of juice. Witness 4 stated that he heard Respondent immediately apologize to Complainant. Witness 8 stated that she saw Complainant leave the kitchen and that Complainant told her that Respondent just "tried to feel her up."

[ADDITIONAL CONTEXT]

Based upon the evidence and statements provided during the investigation and live hearing, the Decision-Maker is able to determine that, by a preponderance of the evidence standard, the Respondent touched Complainant's breasts in the Delta Tau Chi fraternity house kitchen. However, the evidence and statements pertaining to the purpose of the Respondent's actions (which is a key element of the Policy's definition of forcible fondling) does not reach the threshold of proof by a preponderance of the evidence that the Respondent's conduct constituted forcible fondling and consequently violated the school's Sexual Harassment and Sexual Misconduct Policy, based on the credibility of the following:

- [PROVIDE ADDITIONAL STATEMENTS AND RATIONALE FOR THE DETERMINATION BASED UPON CASE-SPECIFIC FACTS]

Therefore, the Decision-Maker determines that the Respondent is not responsible for violating the school's Sexual Harassment and Sexual Misconduct Policy.

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A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

2. ANY DISCIPLINARY SANCTIONS THE SCHOOL IMPOSES ON THE RESPONDENT;

- Disciplinary sanctions are punitive measures implemented for the Respondent following a determination of responsibility
- Refer to the school policy for a list or range of possible disciplinary sanctions
- Title IX does not prescribe specific sanctions for each type of conduct
  - Discretion is left to schools to determine sanctions on a case by case basis
  - Some schools may have specific guidelines or matrices for sanctioning according to each policy violation

5

A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

2. ANY DISCIPLINARY SANCTIONS THE SCHOOL IMPOSES ON THE RESPONDENT;

- Confirm with the Title IX Coordinator if the Decision-Maker is responsible for determining sanctions
  - Some institutions require the Decision-Maker to determine sanctions, while other institutions have a separate Sanctioning Officer or Body to determine sanctions.
- Student and employee cases may have different sanctioning process
- Regardless of who determines the sanction(s), all sanctions must be included in and issued with the final written determination



SANCTIONS

- Verbal or written warning
- Mandatory education or counseling
- Community service
- Removal from campus housing
- Removal from extracurricular activity or sports team
- Disciplinary probation
- Withholding of diploma
- Expulsion
- Termination from employment
- Loss of faculty tenure

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Sanctions

In accordance with Section X. of Scenario College's Sexual Harassment and Sexual Misconduct Policy, upon making a determination that the Respondent is responsible for the alleged policy violation, the Decision-Maker is required to determine a disciplinary sanction that is appropriate to the violation. In this case the Respondent has been found responsible for a very serious form of sexual harassment, nonconsensual sexual penetration, as he digitally penetrated an individual who he reasonably should have known was incapacitated.

[INSERT CONSULTS WITH DISCIPLINARY ADMINISTRATORS, RATIONALE FOR DETERMINATION OF SANCTION, AND ANY OTHER INFORMATION RELEVANT TO THE SANCTIONING PROCESS.]

Therefore, I have determined the Respondent shall serve a period of suspension from Scenario College, effective the November 1, 2020, and continue through the last day of the Spring 2023 semester. Enclosed with alongside this Determination in a separate document are the terms of the suspension, including guidelines for seeking reenrollment following the termination of the suspension.

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Although the Respondent has not been found responsible for violating the Scenario College's Sexual Harassment and Sexual Misconduct Policy and is therefore not subject to sanctioning, the Adjudicator recommends Scenario College provide supportive measures to the Complainant in order for her to feel safe on campus and obtain equal access to her education.

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A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

3. 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.

- Remedies are defined as the actions taken to preserve or restore the Complainant's access to the recipient's educational program or activity
- Remedies may look similar to supportive measures already instituted during the grievance process, however, with a finding of responsibility, remedies may be punitive and/or burden the Respondent
- The Written Determination does not outline the remedies; it simply states whether remedies will be provided to the Complainant

5

A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

3. 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.

- Remedies will look different for every Complainant as they must be appropriate to the individual facts and circumstances of each case
  - Keep in mind that the purpose of remedies is to restore or preserve the Complainant's equal access to education
- The Title IX Coordinator is responsible for effective implementation of the remedies
- If a Respondent is not found responsible, the school may offer supportive measures to the Complainant at its discretion

REMEDIES

- Academic accommodations or adjustments
- Housing adjustments
- Increased security or safety measures
- Education and prevention efforts
- Changes in work assignment or role
- No-contact orders
- Medical or counseling services



Remedies

In accord, the Decision-Maker recommends Scenario College provide the Complainant with remedies designed to restore or preserve equal access to the College's educational programs or activities in order to return Complainant to an employment environment free of Respondent's sexual harassment.

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6

THE SCHOOL'S PROCEDURES AND PERMISSIBLE BASES FOR THE COMPLAINANT AND RESPONDENT TO APPEAL

- Information about appeals can be copied directly from the school's policy
- Both parties have the right to appeal
- The Appellate Officer cannot be the same person as the Decision-Maker
- The determination regarding responsibility becomes final either on the date that the school 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.

Appeals

In accordance with the Scenario College Sexual Harassment and Sexual Misconduct Policy, either complainant or respondent may file a written notice of appeal of a determination or dismissal of a formal complaint within seven days after receiving the written determination or notice of dismissal. The notice of appeal must be delivered to the Title IX Coordinator within such seven-day period by email, personal delivery, certified mail or overnight delivery service.

A party may appeal from a) determination regarding responsibility, and b) the College's dismissal of a formal complaint or any allegations therein, on the following bases:

A. Procedural irregularity that affected the outcome of the process;

B. 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 process; and

C. 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 process.

The appeal decision-maker will be free of bias as well as conflict of interest and will not be the Title IX Coordinator, investigator involved in the investigation, or decision-maker who reached the determination regarding responsibility or dismissal. The appeal decision-maker will have received required training under Title IX.

[CONTINUED...INSERT FULL "APPEALS" SECTION FROM THE POLICY]

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BEST PRACTICES FOR MAKING A DETERMINATION REGARDING RESPONSIBILITY



PREPARING TO DRAFT

BEFORE DRAFTING A WRITTEN DETERMINATION, DECISION-MAKERS MAY ASK THEMSELVES THE FOLLOWING QUESTIONS:

- Has the institution prepared a template for Decision-Makers to utilize?
- Do Decision-Makers have access to sample or previous Written Determinations for review?
- Has the Decision-Maker accessed and thoroughly reviewed all information gathered during the investigation and live hearing/K-12 decision-making process?

PREPARING TO DRAFT

ADDITIONAL CONSIDERATIONS FOR DECISION-MAKERS:

Has the Decision-Maker thoroughly reviewed the school's Sexual Harassment Policy and Title IX Regulations?

When must the determination be sent to the Parties?

- Title IX requires the grievance process to be reasonably prompt, and many school policies provide explicit timelines.

UNDERSTANDING THE AUDIENCE

A CLEAR DETERMINATION IS IMPORTANT BECAUSE MANY INDIVIDUALS WILL HAVE ACCESS TO IT. THE INTENDED AUDIENCE INCLUDES:

- Complainant, Respondent, and Advisors
- Appellate Officer (if an appeal is filed)
- Title IX Coordinator
- School's General Counsel (possibly)
- Parties' parents or guardians (if applicable)
- Part of the school's record of the Title IX grievance process and may be reviewed by external parties should litigation arise

GETTING STARTED

A WHITE BLANK PAGE CAN BE INTIMIDATING. CONSIDER STARTING YOUR WRITTEN DETERMINATION BY INSERTING THE FOLLOWING INFORMATION:

- **Title**: Identify the Decision-Maker, Complainant, Respondent, and school by name.
- **Introduction:** State the names of the Decision-Maker, Complainant, and Respondent. Then provide information about the live hearing, such as the date and location of the hearing as well as the hearing attendees. (Parties, Advisors, Witnesses, school administrators, etc.)

GETTING STARTED

COMPLIANCE WITH TITLE IX AND THE SCHOOL'S POLICY ARE CRITICAL. SET YOURSELF UP FOR SUCCESS BY NOTING REQUIRED INFORMATION.

- **Section Headers:** Title IX and (likely) the school's policy outline the six sections that must be included in the written determination. Create a section header with a brief description of the required information to help you create a compliant written determination.
- **School Policy:** Note the page number of the school policy outlining the requirements for the written determination to reference throughout the writing process.



APPLYING FACTS TO THE STANDARD OF PROOF AND MAKING A DETERMINATION

Decision-Makers must remain objective and clearly explain their rationale as to the result of each allegation.

WHAT DOES THIS MEAN?

REVIEWING THE DETERMINATION

RECALL THAT THE DECISION-MAKER ULTIMATELY APPLIES EVIDENCE TO THE STANDARD OF PROOF TO OBJECTIVELY ANSWER TWO KEY QUESTIONS:

1. Did the alleged incident(s) occur?
2. Does the alleged conduct violate the school's policy?

Does the written determination address these questions in some manner?

FINALIZE THE DETERMINATION

ATTENTION TO DETAIL MATTERS! CONFIRM THAT THE WRITTEN DETERMINATION IS CLEAR, CONCISE, AND COMPLIANT.

- Proofread, proofread, proofread!
- Typos, misspellings of names, and other blunders must be avoided.
- Document and paragraph formatting, fonts, and "voice" must be consistent.
- Revisit Title IX and School Policy Requirements to confirm the Written Determination is complete and compliant.
- Sign the written determination.

LIFELONG IMPACT

REGARDLESS OF THE OUTCOME, THE DECISION-MAKER'S DECISION WILL IMPACT THE PARTIES' FUTURES. HOW DOES THIS AFFECT DECISION-MAKERS?

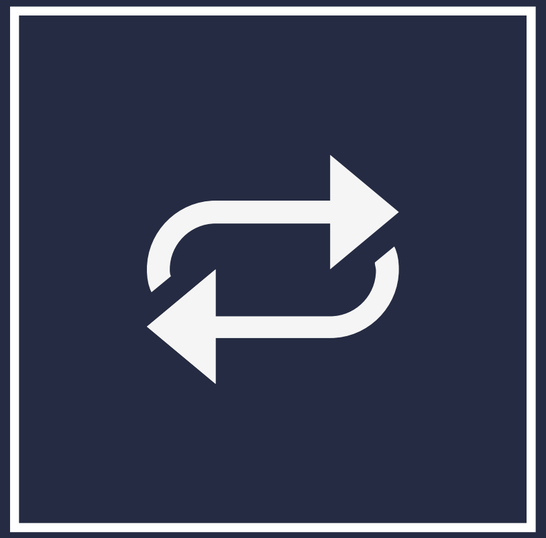
- The importance of the role of the Decision-Maker cannot be overstated
- Written determinations must be clear, concise, and contain articulated conclusions
- If one or both Parties appeals your determination, it does not mean that your determination was "bad" or "wrong"

TITLE IX SOLUTIONS, LLC

THE APPEAL PROCESS



IN THIS CHAPTER



THE APPEAL PROCESS



SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

APPEALING A DECISION

1. Title IX Regulations stipulate that a school must provide an appeal from a determination regarding responsibility

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

3. 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.

APPEALING A DECISION

4. Parties must be notified in writing when an appeal is filed

5. Appeal procedures must be implemented equally for both Complainant and Respondent

6. Parties must have a reasonable opportunity to submit a written statement supporting or challenging the determination

7. Parties must be issued simultaneously a written decision describing the result of the appeal and the rationale, drafted by the Appellate Decision-Maker

BASES OF APPEAL

PROCEDURAL IRREGULARITY THAT AFFECTED THE OUTCOME OF THE MATTER.

1. Respondent was only given four days to inspect evidence and provide a written response when the Title IX Regulations stipulate parties have ten days.
2. Complainant was not allowed to cross-examine one of the Respondent's witnesses who was present during the hearing due to "time constraints"
3. The Respondent was not allowed an Advisor in the pre-hearing meeting.

§106.45(b)(8)

BASES OF APPEAL

NEW EVIDENCE THAT WAS NOT REASONABLY AVAILABLE AT THE TIME THE DETERMINATION OR DISMISSAL WAS MADE, WHICH COULD AFFECT THE OUTCOME OF THE MATTER.

1. A previously unknown Witness came forward with information regarding the incident after hearing about the incident from a friend.

2. A Respondent was able to recover an email containing a conversation with the Complainant he previously believed to be deleted.

§106.45(b)(8)

BASES OF APPEAL

CONFLICT OF INTEREST OR BIAS BY THE TITLE IX COORDINATOR, INVESTIGATOR(S) OR DECISION-MAKER(S)

1	Respondent discovered the Decision-Maker has made several public statements on social media about their unwavering support for sexual assault survivors and their extreme distrust of males.
2	Complainant learned the Title IX Investigator is an involved athletic booster for the football team which the Respondent plays on.

§106.45(b)(8)

OPTIONAL BASES OF APPEAL

SCHOOLS MAY PROVIDE OTHER BASES OF APPEAL AS LONG AS THEY APPLY EQUALLY TO BOTH PARTIES.

SANCTIONS BEING INADEQUATE OR EXCESSIVE

1	The Complainant appeals, citing that the sanction of mandatory counseling for stalking was insufficient.
2	Respondent appeals, stating a sanction of termination of employment was excessive for his offense of sexual harassment as a previous co-worker received a written warning for a similar offense.

§106.45(b)(8)



Review your school policy to identify if additional bases exist

APPEAL OUTCOMES

IF A REQUEST FOR APPEAL IS DENIED, THE ORIGINAL DETERMINATION STANDS AND THE TITLE IX GRIEVANCE PROCESS CONCLUDES.

- This does not mean Parties will not seek action or resolution outside of Title IX *(e.g. filing a complaint with the Office for Civil Rights or pursuing legal action)*



If the Parties do not submit their appeal within the timeframe specified in the policy, the original determination stands and the Title IX grievance process concludes.

APPEAL OUTCOMES

IF A REQUEST FOR APPEAL IS ACCEPTED, THE APPELLATE DECISION-MAKER WILL REVIEW AND CONSIDER THE INFORMATION.

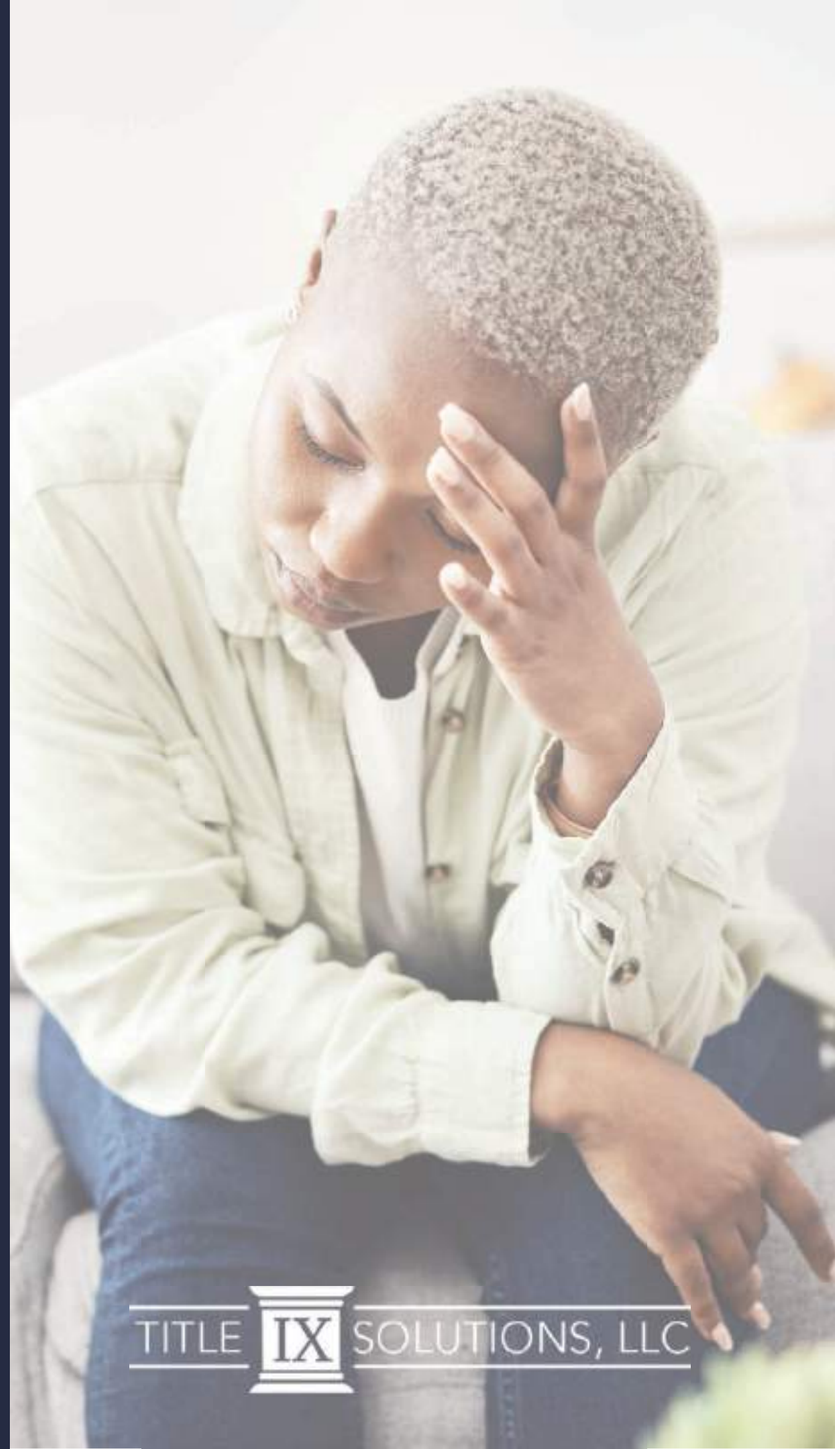
AT THE CONCLUSION OF THEIR REVIEW, THE FOLLOWING ARE POSSIBLE:

Appellate Decision-Maker upholds original determination	Appellate Decision-Maker determines the appeal was valid under one of the listed bases
• Title IX grievance process ends	• New investigation may take place • New hearing may take place • If policy allows sanctions to be appealed, a new sanction may be imposed

TITLE IX SOLUTIONS, LLC

UNDERSTANDING TRAUMA

Dr. Jessica Groleau, Ph.D



IN THIS CHAPTER



INTRODUCTION TO TRAUMA



RECOGNIZING PERSONAL BIAS



TRAUMA-INFORMED COMMUNICATION



PROMOTING EMPOWERMENT



UNDERSTANDING TRAUMA AS AN DECISION-MAKER

TITLE IX SOLUTIONS, LLC

SPEAKER



DR. JESSICA GROLEAU, PH.D

LICENSED CLINICAL PSYCHOLOGIST

UNDERSTANDING TRAUMA



WHAT IS TRAUMA?

DEFINITION OF TRAUMA

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

CONSIDER EACH PARTY'S EXPERIENCES

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

NEUROBIOLOGY OF TRAUMA

BRAIN STEM ("REPTILIAN BRAIN")

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

LIMBIC SYSTEM ("EMOTIONAL BRAIN")

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

FRONTAL LOBES ("EXECUTIVE BRAIN")

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

NEUROBIOLOGY OF TRAUMA

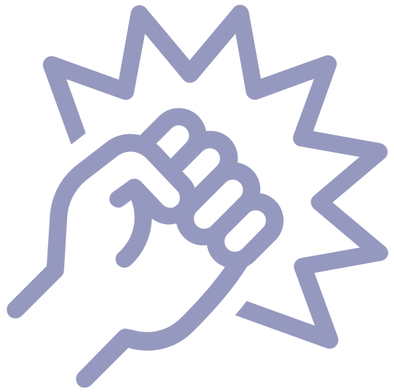
LIMBIC SYSTEM RESPONSE

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

DISCONNECTION OF FRONTAL LOBES

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

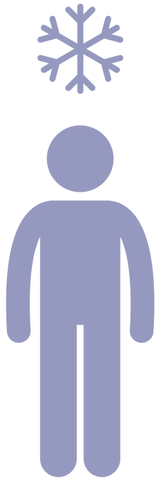
HUMAN STRESS RESPONSE



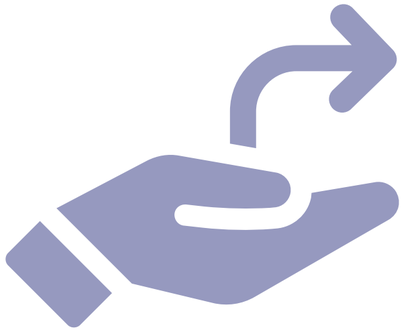
FIGHT



FLIGHT



FREEZE

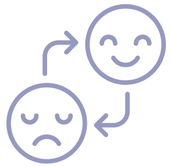


FAWN

WHAT DOES THIS MEAN FOR TITLE IX?



Fragmented, incomplete memories are common



Emotional dysregulation is expected

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



The fawn or freeze responses may appear to be consent



Discussing the event is retraumatizing

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

RECOGNIZING PERSONAL BIAS



PERSONAL BIAS

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

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



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

BIAS VS. CONFLICT OF INTEREST

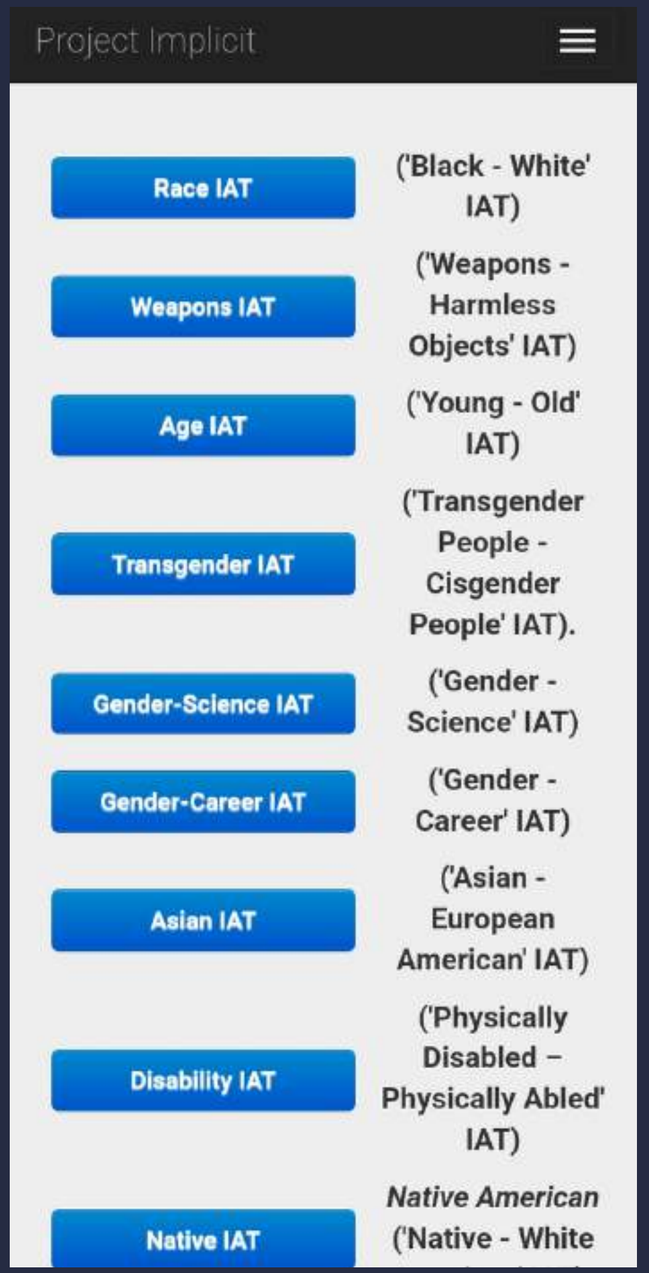
BIAS

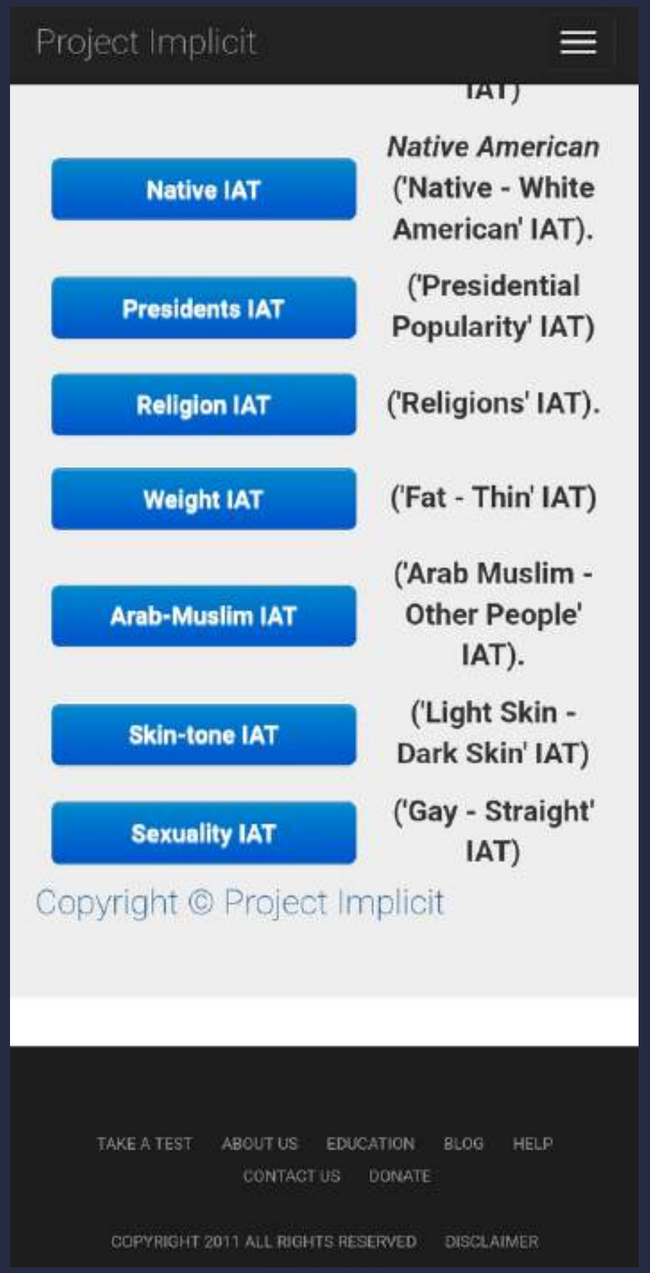
- Having a personal history with sexual misconduct
- Holding stereotyped gender beliefs about sexual violence
  - i.e. perpetrators are males
- Internalization of rape culture
  - Often leads to skepticism or blaming of the Complainant

CONFLICT OF INTEREST

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

IMPLICIT BIAS TESTS





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RECOGNIZING PERSONAL BIAS

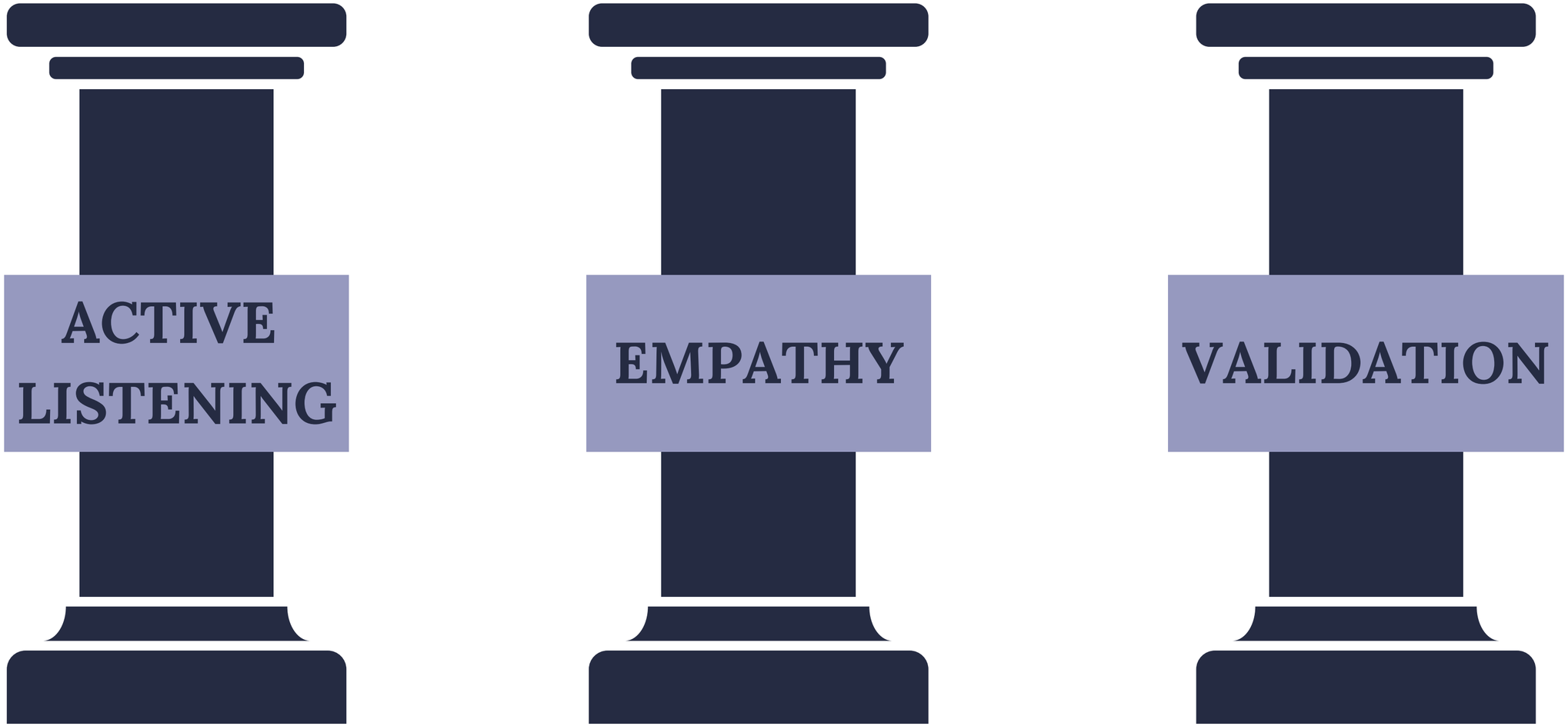
IS YOUR PERSONAL BIAS AFFECTING YOUR ABILITY TO BE OBJECTIVE?

- Introspection
  - Implicit Bias Tests
    - https://implicit.harvard.edu/implicit/selectatest.html
- Having implicit bias does not make you a bad person (we all have it)
  - Managing your implicit biases will make you a better Title IX professional
- Questions to ask yourself:
  - What does the information at hand cause me to believe about those involved? Why?
  - When should an individual recuse themself from a case because they are unable to overcome personal bias?

TRAUMA-INFORMED COMMUNICATION



FOUNDATIONS OF A TRAUMA-INFORMED APPROACH



EMPATHY

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

COMMUNICATING EMPATHY

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

"That sounds incredibly scary."

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

VALIDATION

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

DO

Share your own similar reactions, if you have them:

“I would feel really angry too.”

“It makes sense that you would feel that way.”

DON’T

Tell someone how they should feel:

“You shouldn’t let this bother you so much.”

Question their responses:

“Are you sure that is what happened?”

Validation ≠ Agreement

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ACTIVE LISTENING

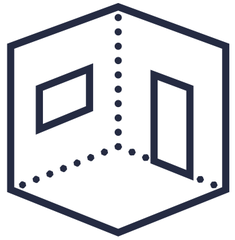
A COMMUNICATION TECHNIQUE THAT SERVES THE FOLLOWING PURPOSES:

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

STRATEGIES FOR ACTIVE LISTENING

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

ADDITIONAL STRATEGIES



CONSIDER THE ENVIRONMENT

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



FOCUS ON EACH PARTY AND THEIR NEEDS

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



KEEP A HEALTHY EMOTIONAL DISTANCE

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

DE-ESCALATION

CONFRONTATION IS POSSIBLE

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

STRATEGIES FOR DE-ESCALATION

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

PROMOTING EMPOWERMENT



EMPOWERMENT

EMPOWERMENT = VOICE AND CHOICE

- What could empowerment look like for each Party?
- How can you, as an administrator in the Title IX process, identify resources to help empower a Party?
  - You need to be neutral and objective, but you can refer each Party to other sources of support or advocacy
- What may each Party consider to be possible obstacles to empowerment?
- How may you address them?

TOOLS FOR EMPOWERMENT

ASK THE PARTY:

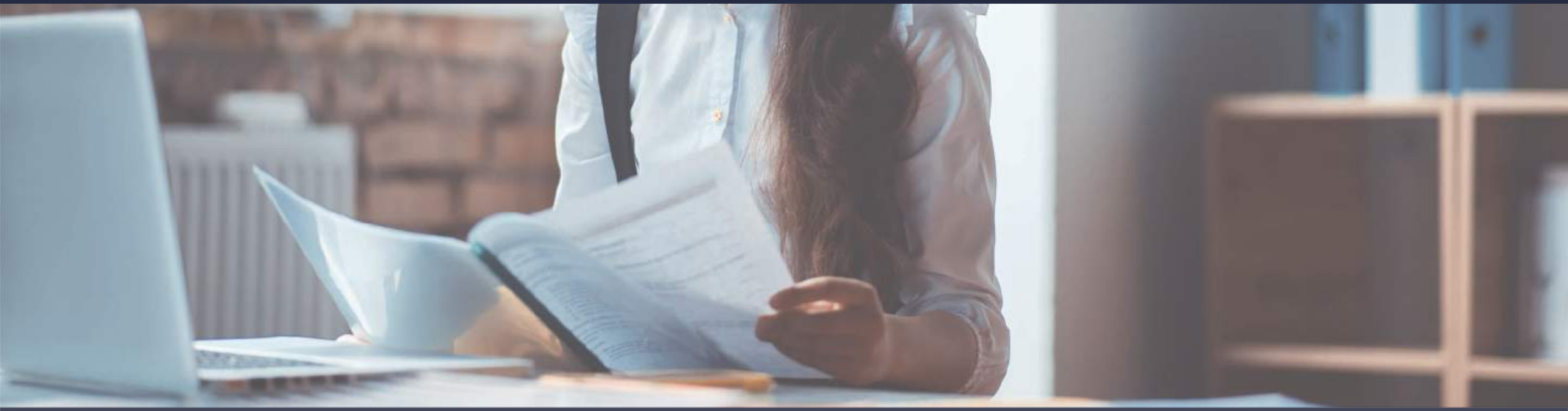


How are you feeling?
Do you feel safe?
How can I help you feel safer?
What do you need right now?
What do you need throughout the duration of the Title IX process?
How do you feel about participating in the Title IX process?
What steps of the Title IX process concern you?



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

UNDERSTANDING TRAUMA AS A DECISION-MAKER





DECISION-MAKER QUESTION AND ANSWER

1. What biases do I need to confront in order to be most effective in my role?
2. What can I do to minimize re-traumatization throughout the Title IX process?