LEVEL I: TITLE IX INVESTIGATOR TRAINING

TITLE IX SOLUTIONS, LLC



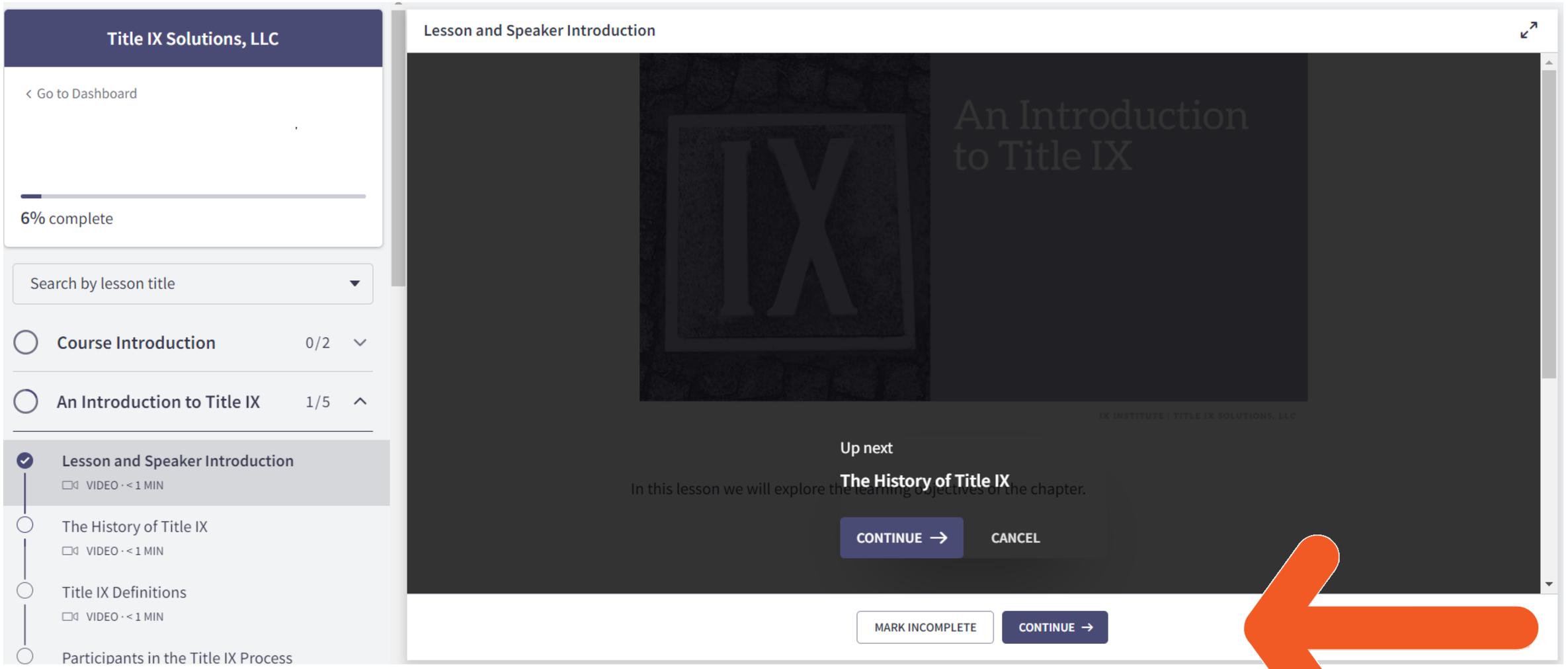
COURSE OVERVIEW

1. An Introduction to Title IX
2. Overview of the Title IX Regulations
3. Role of the Title IX Investigator
4. Investigation Planning and Design
5. Investigative Interview Techniques
6. Investigative Report Writing
7. Understanding Trauma
8. Sample Interview

COURSE GOALS

- Describe the role of a Title IX Investigator as it relates to the formal grievance process.
- Understand investigation procedural requirements under Title IX.
- Identify steps to designing a thorough investigation plan.
- Develop a trauma-informed interviewing style, including crafting sound questions.
- Prepare a comprehensive and informative investigation report.

Lesson Completion



Stepping Away

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Courses Curriculum Free Resources FAQs My Dashboard Tawny A

See Overview Start Course

See Overview Replay Course

See Overview Start Course



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Uncharted Territory: Navigating Live Hearings

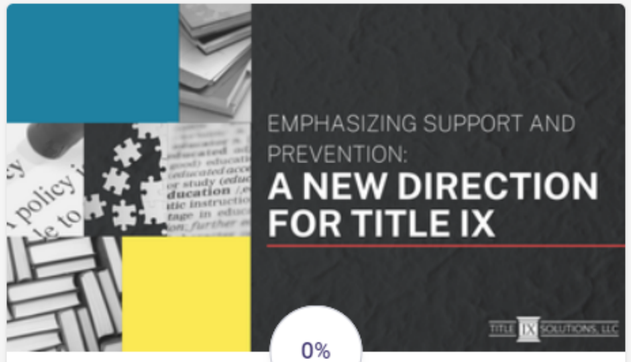
See Overview Start Course



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Plotting the Course: Title IX Investigation Preparation

See Overview Start Course



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Emphasizing Support and Prevention: A New Direction for Title IX

See Overview Start Course

Certificate of Completion

THIS CERTIFICATE OF COMPLETION IS AWARDED TO

Tucker Wood

FOR SUCCESSFULLY COMPLETING

TITLE IX SOLUTIONS, LLC

Level I: Title IX Investigator Training

Learning Objectives: ◉ Describe the role of a Title IX Investigator as it relates to the formal grievance process. ◉ Understand investigation procedural requirements under Title IX. ◉ Identify steps to designing a thorough investigation plan. ◉ Develop a trauma-informed interviewing style, including crafting sound questions. ◉ Prepare a comprehensive and informative investigation report.

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Expires: {{ 2022-11-10 }}

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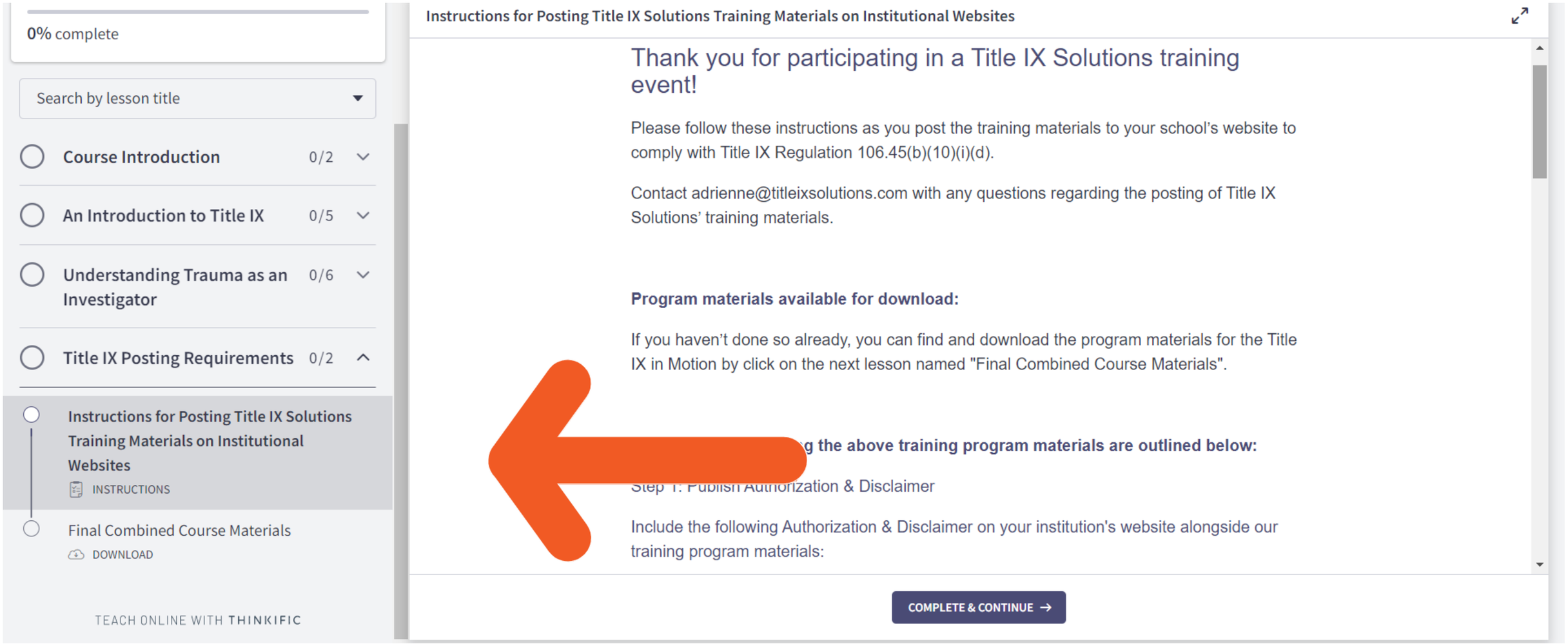
TAWNY ALONZO
Director of Training
Title IX Solutions, LLC

Title IX Posting Requirements

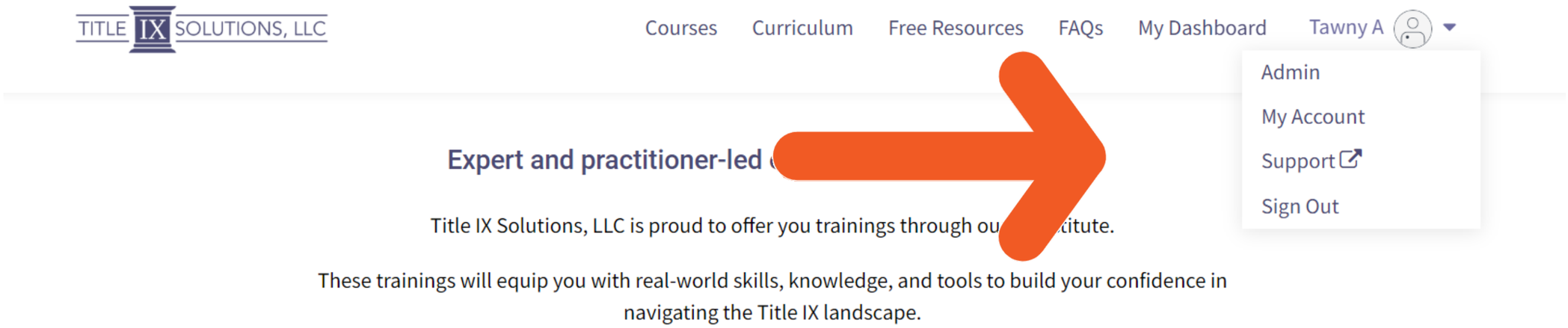
In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.” 34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

Title IX Posting Requirements



Course Support

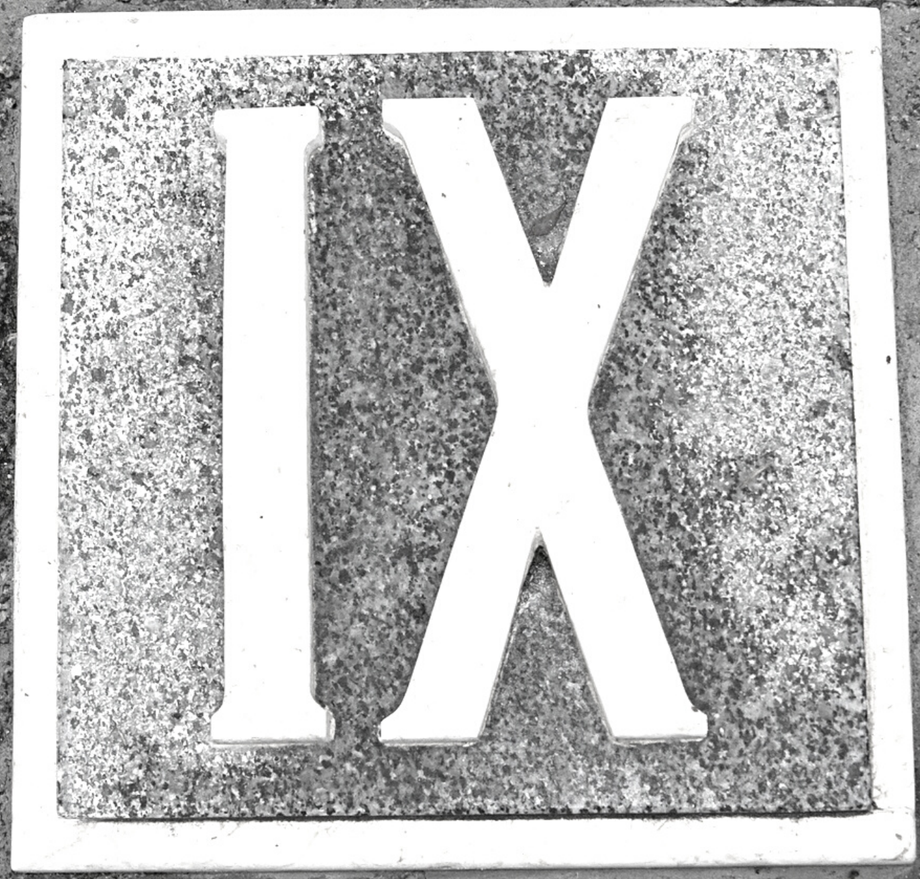


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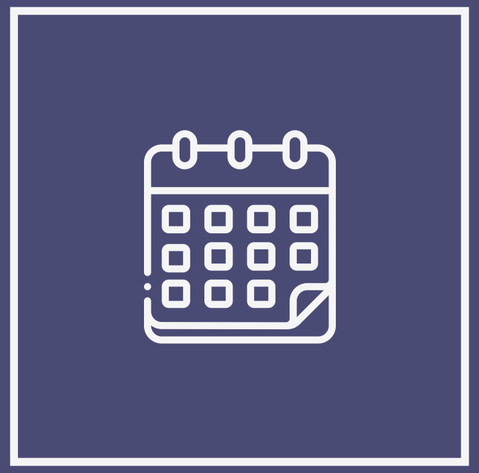
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An Introduction to Title IX



IN THIS CHAPTER



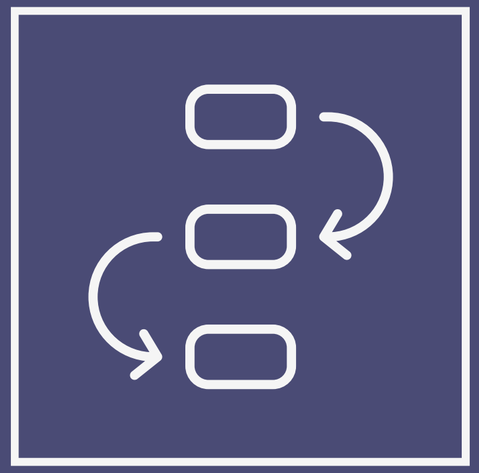
HISTORY OF TITLE IX



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[.]”

Creation of Title IX

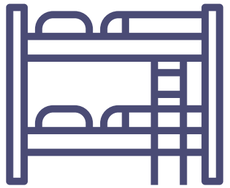
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

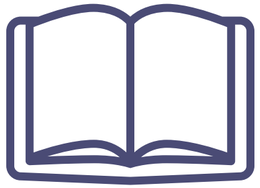
Designed initially to address inequities in:



Admissions



Residence Life



Academic Opportunities



Extracurricular Activities

Who is Protected?

- All students regardless of:
  - Sexual orientation
  - Gender identity
  - Nationality
  - Immigration status
  - Race
  - Ability
- Boys and men as well as girls and women
- Employees, such as teachers, staff, and administrators
- Recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums.

Evolution 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

Newest guidance changes the way schools respond to incidents of discrimination and harassment

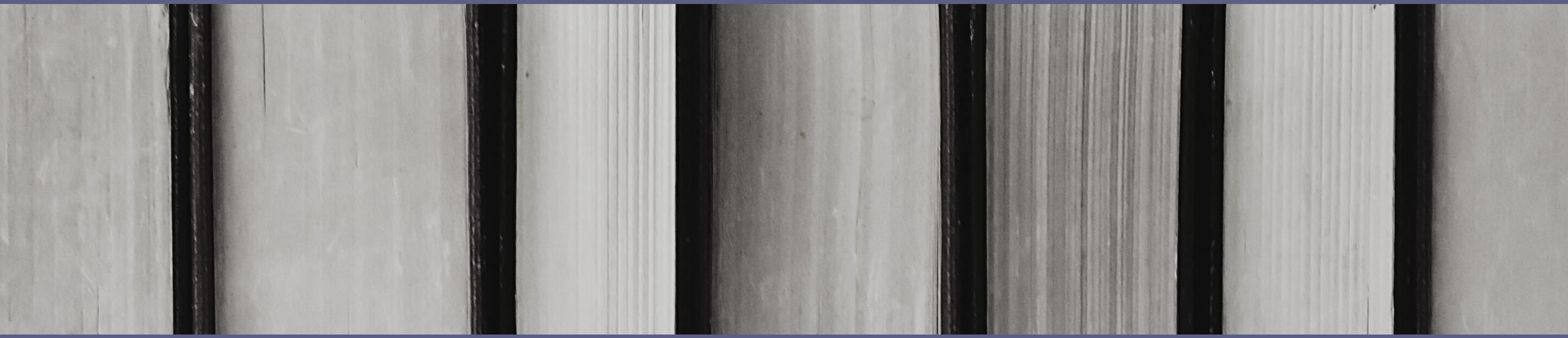
Title IX Today



JUNE 23, 2022

Department of Education releases Title IX Notice of Proposed Rulemaking proposing expanded scope and revised guidelines

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. Formal Complaint

Report

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

Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

Report vs. Formal Complaint

Both reports and formal complaints are:



A means for the school to obtain "actual knowledge"



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 sexual harassment

When?

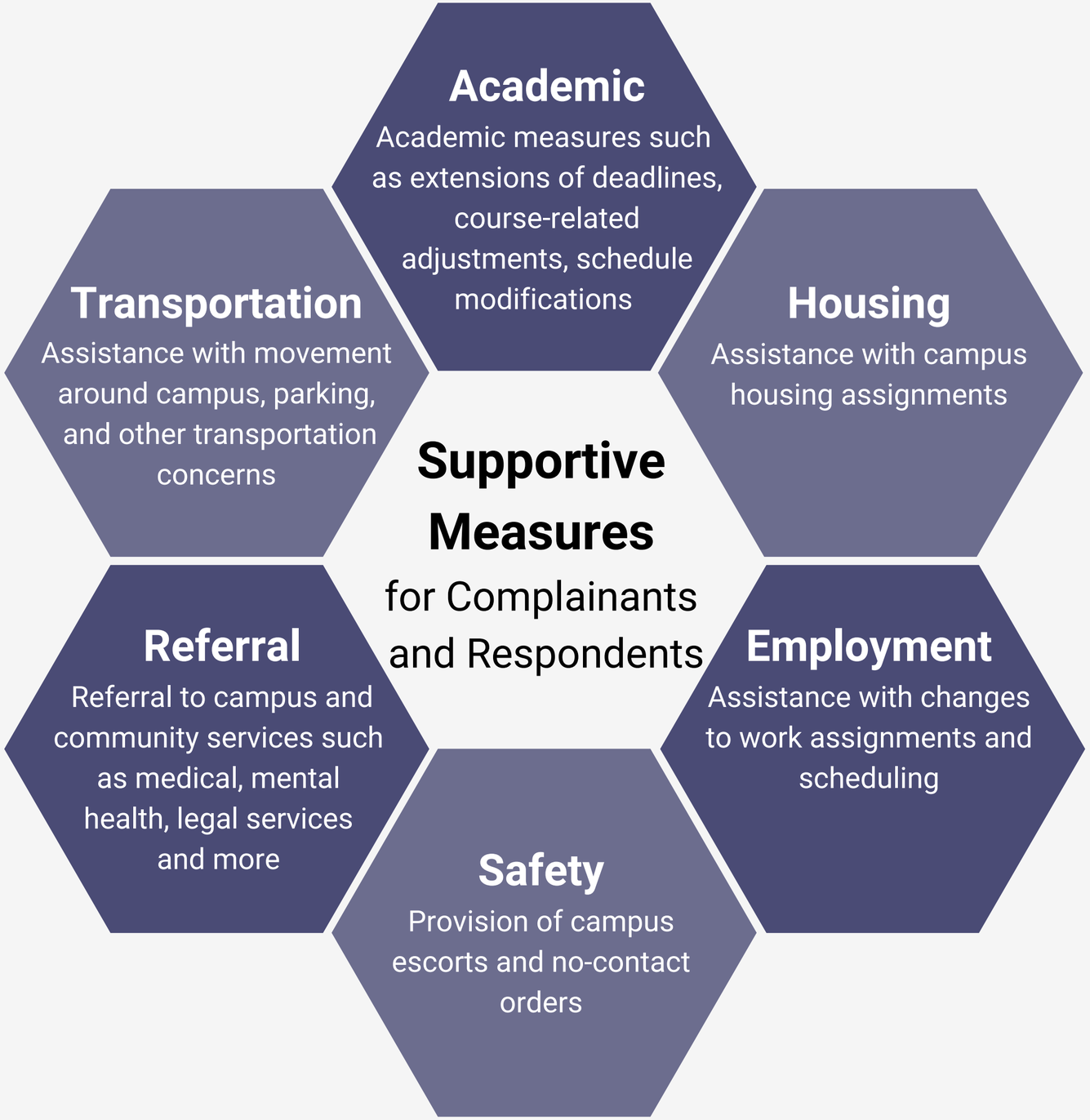
- Available before or after filing a formal complaint or where no formal complaint has been filed

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


Academic
Academic measures such as extensions of deadlines, course-related adjustments, schedule modifications
Housing
Assistance with campus housing assignments
Employment
Assistance with changes to work assignments and scheduling
Safety
Provision of campus escorts and no-contact orders
Referral
Referral to campus and community services such as medical, mental health, legal services and more
Transportation
Assistance with movement around campus, parking, and other transportation concerns
Supportive Measures
for Complainants and Respondents

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

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

Retaliation

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

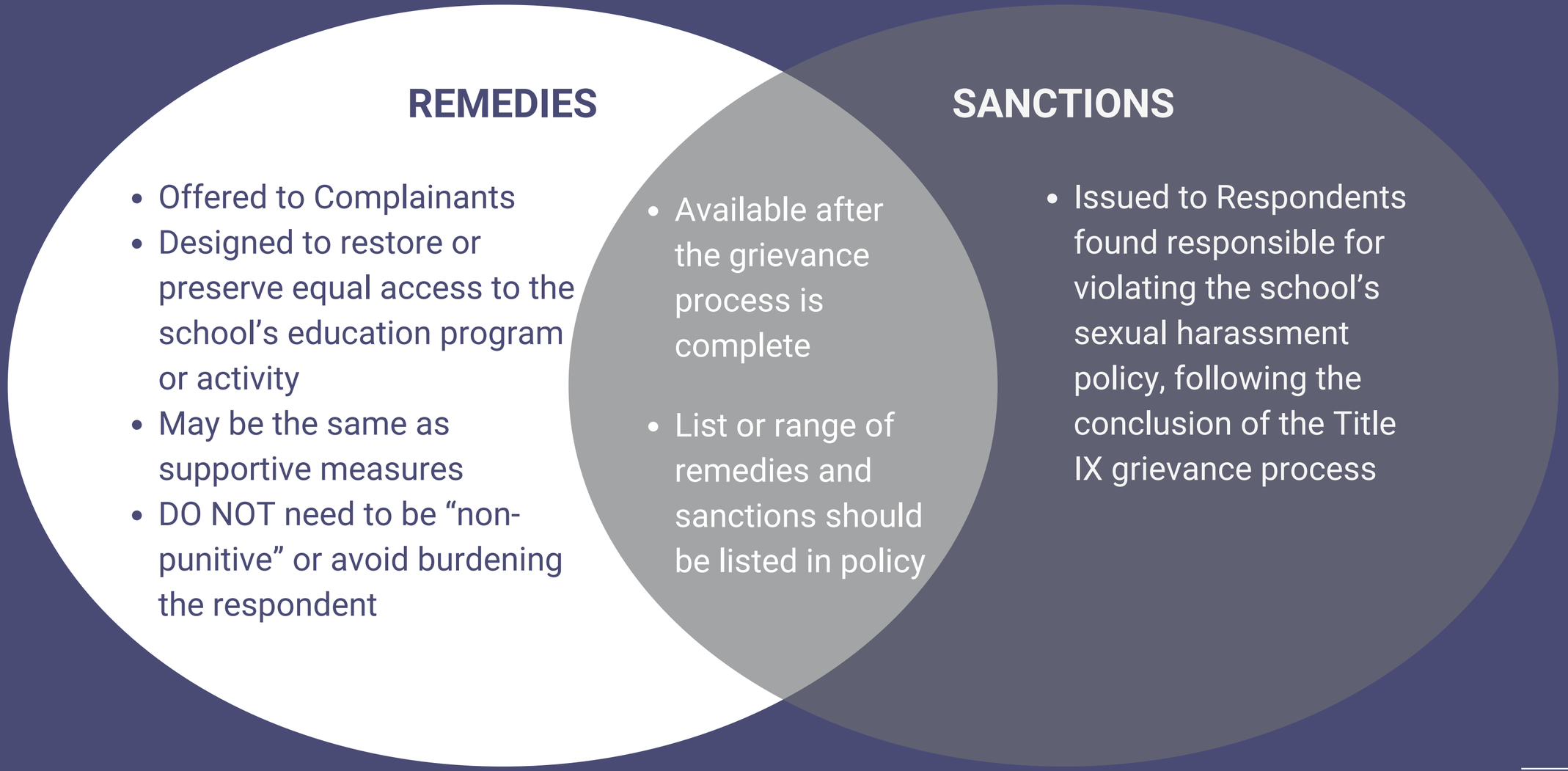


Example One:
Friends of the Complainant intimidating the Respondent, or vice versa.



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

Remedies and Sanctions



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 Evidence

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

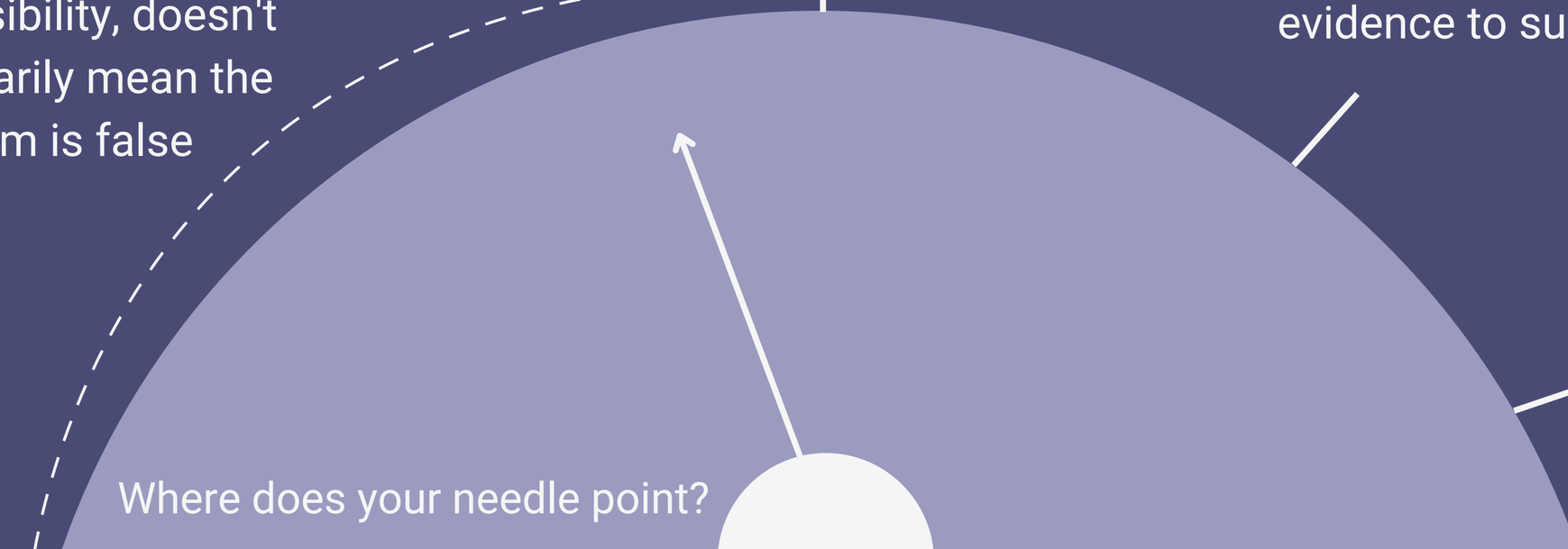
Standard of Evidence

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

<u>Preponderance of the Evidence</u>
Anything that tips the scale to more than 50/50

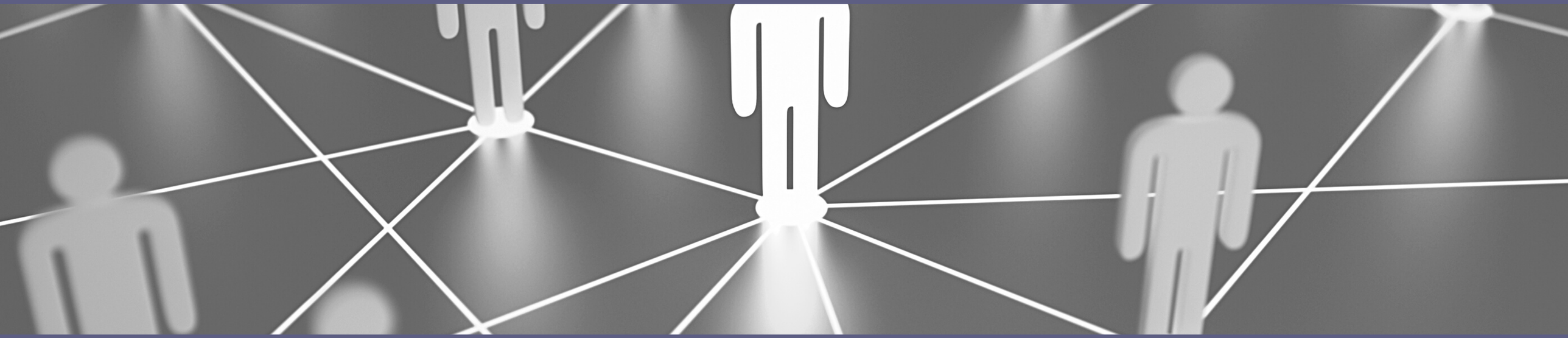
<u>Clear and Convincing</u>
More likely to be true than untrue, substantial evidence to support

<u>Beyond a Reasonable Doubt</u>
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 (from the campus community) or external (local attorneys, consultants, etc.)



Title IX Coordinator



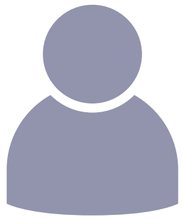
Deputy Coordinators



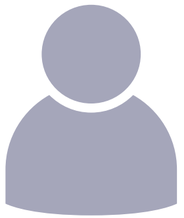
Title IX Investigator



Decision-Maker



Informal Resolution Facilitator



Advisor



Appellate Decision-Maker

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Title IX Coordinator

Every school must have a 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

Responsibilities:

- Ensures compliance with federal, state, and local law, as well as other school policies
- Receives reports of sexual harassment
- Creates, reviews, and implements policy and procedures
- Facilitates and oversees grievance process including hearings, informal resolution processes, and appeals
- Creates/monitors training of Title IX staff and campus community

Title IX Investigator

May be 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, Advisor, and Decision-Maker

Decision-Maker

May be a single Decision-Maker or a hearing panel, school employees or independent contractors

May NOT be the Title IX Coordinator or Title IX Investigator

Responsibilities:

- Oversees and facilitates the Title IX hearing
- Supervises the conduct of the involved parties and their Advisors
- Determines the relevance of evidence and questions presented during the hearing
- Drafts and issues the written determination regarding responsibility
- May issue sanctions

Decision-Maker

May be a single Appellate Decision-Maker or Appellate Panel, school employees or independent contractors

May NOT be the Title IX Coordinator, Investigator, or Decision-Maker

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 the Title IX Coordinator, school employees or independent contractors.

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 select one
- 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

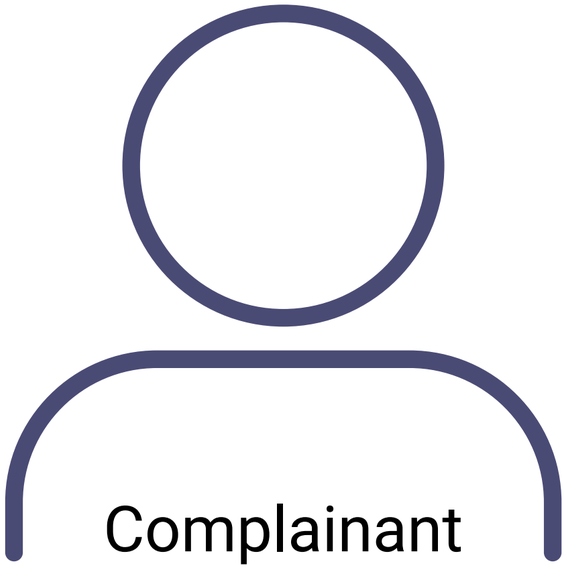
Advisor

Responsibilities:

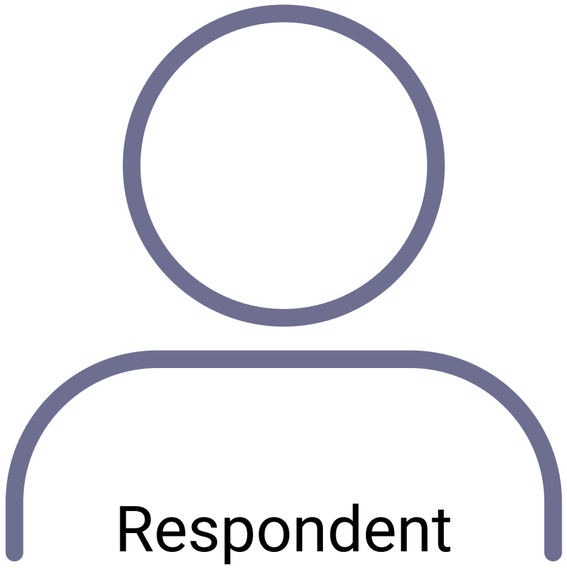
- Supports their party by accompanying them during interviews, meetings, and the hearing
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

Parties in the Process

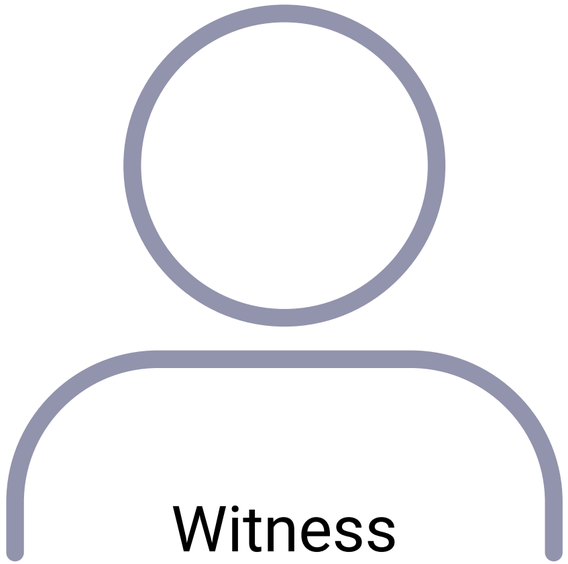
Aside from the Title IX personnel who take part in the facilitation of the grievance process, we will also see these individuals involved:



Complainant



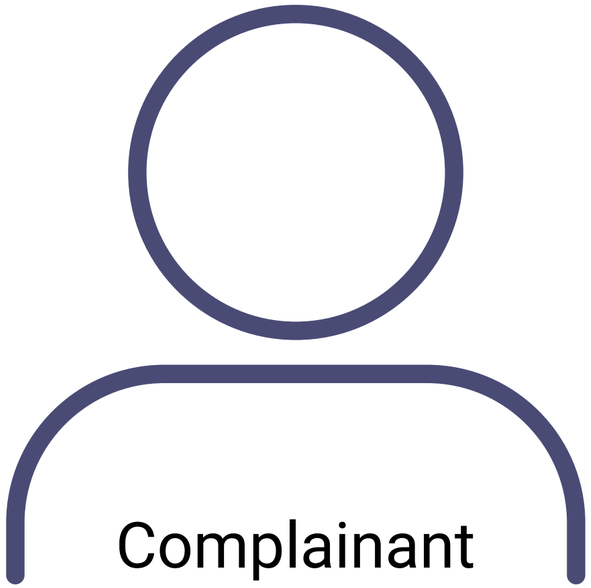
Respondent



Witness

Complainant

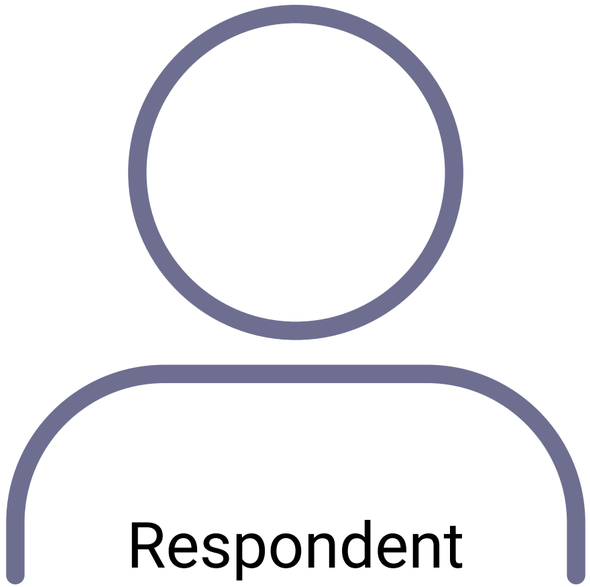
Alleged to be the victim of conduct that could constitute sexual harassment



- 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 formal complaint is filed
- There may be more than one Complainant in a case

Respondent

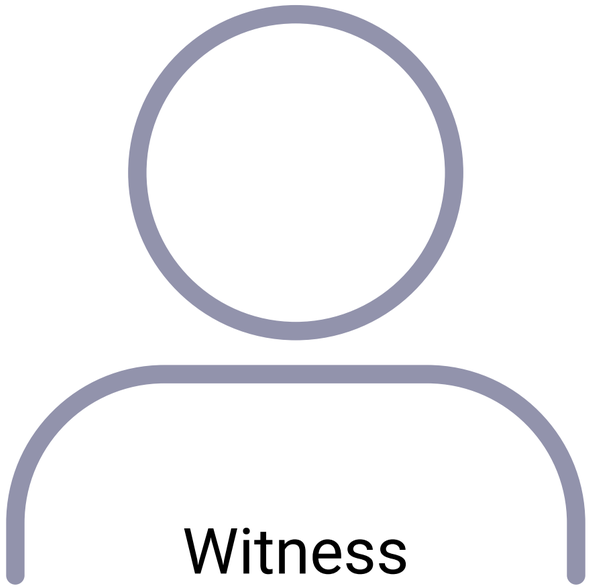
Reported to be the alleged perpetrator of conduct that could constitute sexual harassment



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

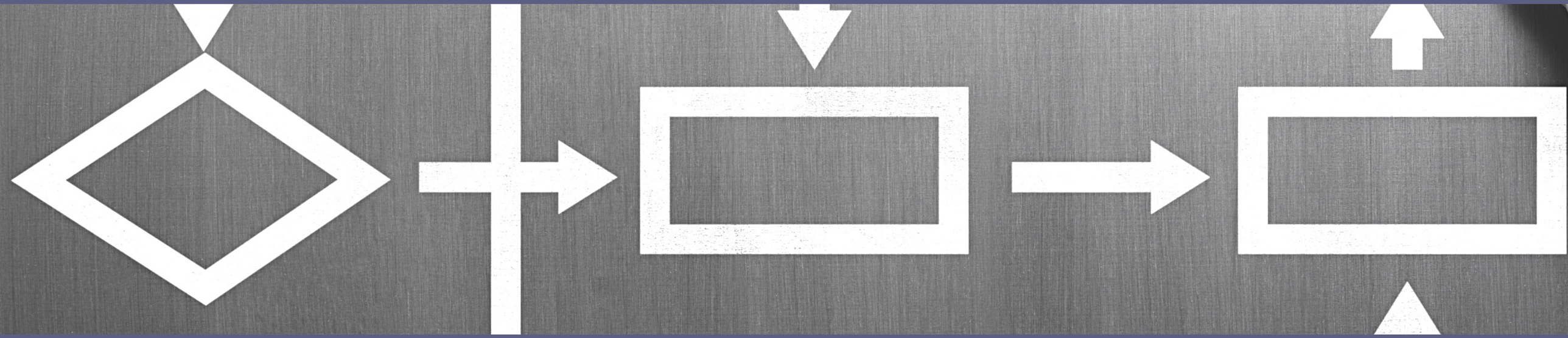
Witness

Individuals that are identified in the grievance process as having information that may support or refute allegations of sexual harassment



- 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:

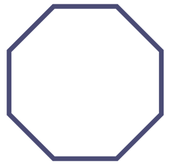
- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible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

During the Title IX Grievance Process a School Must:

- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of evidence
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege

Title IX Requirements

Ultimately, the goal is to:



Stop the harassment or discrimination



Prevent further recurrence of harssment or discrimination



Remedy the effects of harassment or discrimination

Leading up to the Title IX Process

1. **The report is submitted to the Title IX Coordinator**
   - Any person may report sexual harassment
   - Responsible employees and mandatory reporting

2. **Upon receipt of a report, the Title IX Coordinator must**
   - Respond in a manner that is not deliberately indifferent
   - Contact and attempt to meet with the Complainant (if known)
   - Discuss the availability of supportive measures and consider the Complainant's wishes with respect to them and explain the process for a formal complaint

They may also:

- Conduct a safety and risk analysis
- Assess information from the report and conversation with the Complainant to determine if the alleged incident would be considered sexual harassment under Title IX

Leading up to the Title IX Process

3 **If the alleged incident is preliminarily determined to violate Title IX:**

- Complainant or Title IX Coordinator may file a formal complaint
- If a Complainant does not wish to file a formal complaint, but a risk assessment determined the potential for more harm to the Complainant or greater campus community, the Title IX Coordinator may choose to file
- If the alleged incident does not potentially violate Title IX on it's face, it may be adjudicated under a different institutional policy

4 **After a formal complaint is filed, the Title IX grievance process begins.**

Title IX Grievance Process

INTAKE/ REVIEW

NOTICE OF ALLEGATIONS SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN DETERMINATION

APPEAL PROCESS

INFORMAL RESOLUTION

(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

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Title IX Grievance Process

INTAKE/ REVIEW

- Title IX Coordinator provides a gatekeeping function
  - Conducts a jurisdictional review to decide whether a report falls under Title IX or another policy
- Conversations with Reporting Party and/or Complainant
- Information-giving stage
- Supportive measures may be implemented

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Title IX Grievance Process

NOTICE OF ALLEGATIONS SENT TO PARTIES

- Title IX Coordinator notifies parties of allegations that may constitute Title IX sexual harassment
  - Informs parties of rights and options under the grievance process
  - Presumes the Respondent is not responsible
- Preparation for the investigation stage

Title IX Grievance Process

INVESTIGATION

- Title IX Investigator's primary function
- Information-gathering stage which includes:
  - Interviewing of witnesses and parties
  - Gathering evidence
  - Inspecting and reviewing evidence
  - Drafting investigation report
- Could potentially be the longest timeframe

TITLE IX SOLUTIONS, LLC

Title IX Grievance Process



- Informal process of resolving a complaint, that must be agreed upon by both parties
- Could include:
  - Mediation
  - Restorative Justice
  - Education
  - Acceptance of Responsibility
- Cannot be used for employee on student complaints

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Title IX Grievance Process

HEARING

- The decision-making stage of the grievance process
- Facilitated by either a single Decision-Maker or panel
- Includes:
  - Pre-hearing meeting
  - Live hearing or written decision-making process with cross-examination by the parties Advisor
- Must be provided in postsecondary, may be provided in elementary and secondary, but not required

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Title IX Grievance Process

WRITTEN DETERMINATION

- Prepared by the Decision-Maker(s)
- Determination of a Title IX sexual harassment policy violation using the standard of evidence outlines
  - Responsible or not responsible
  - May address multiple allegations
  - Could include sanctions

Title IX Grievance Process

APPEAL PROCESS

- Allowed under the Title IX Regulations for the following reasons:
  - Procedural irregularity
  - New evidence not available during the investigation
  - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker(s)

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

Introduction to the Title IX Regulations



Title IX Coverage

Postsecondary Institutions

Includes:

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

Elementary and Secondary Schools

Includes:

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

What is a Recipient?

34 CFR § 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."

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

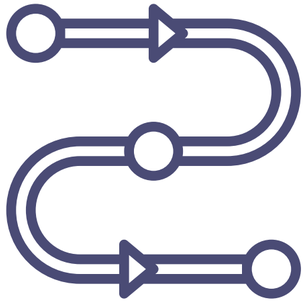
- Provide details regarding policies or procedures which are not addressed in the regulations

Compliance with the Regulations

Recipients must:



Have “prompt and equitable” grievance procedures for complaints of sex discrimination



Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment

When is Sexual Harassment Actionable?



When it denies a person equal access to education

Title IX's Application

Regulations apply equally to all persons, regardless of:



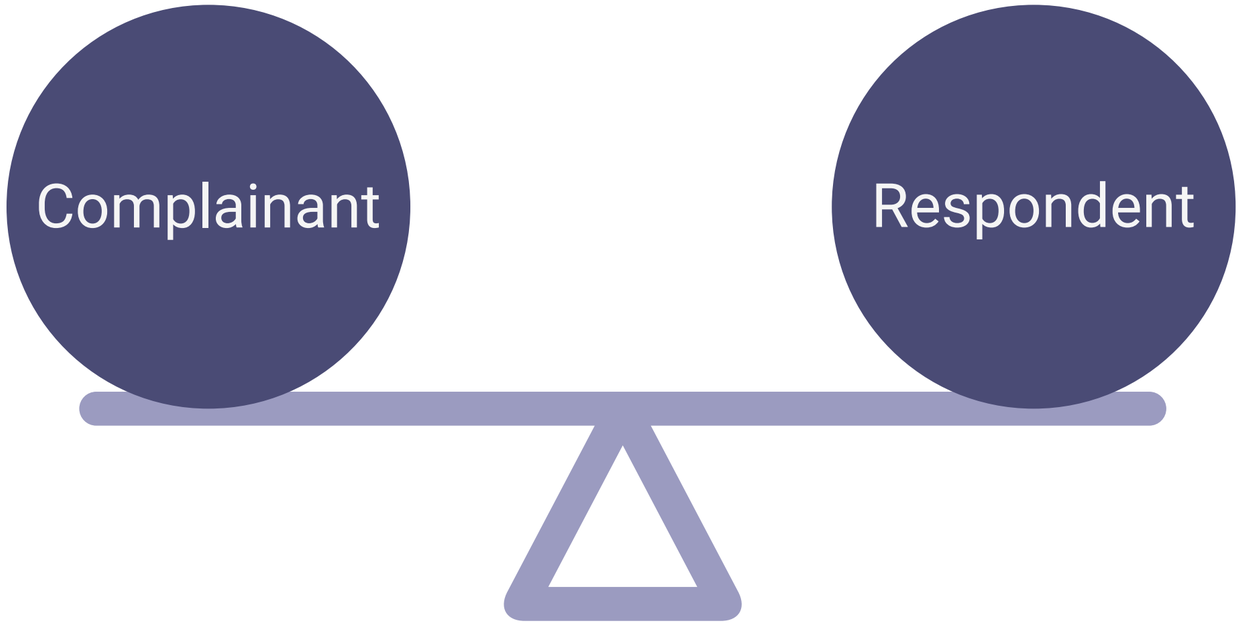
Gender identity or expression



Sexual orientation

Treatment of the Parties

A school must treat both parties equitably and equally throughout the process including 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



Definitions of Sexual Harassment

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

1

QUID PRO QUO HARASSMENT

2

UNWELCOME CONDUCT THAT IS SO "SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE" THAT IT EFFECTIVELY DENIES A PERSON EQUAL ACCESS TO EDUCATION

3

SEXUAL ASSAULT

DATING VIOLENCE

DOMESTIC VIOLENCE

STALKING

1

QUID PRO QUO HARASSMENT

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

2

“SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE”

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.

3

SEXUAL ASSAULT

DATING VIOLENCE

DOMESTIC VIOLENCE

STALKING

Specific offenses defined under the FBI's Uniform Crime Reporting (U.C.R) program.

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

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:

- Fear for his or her safety or the safety of others; or
- 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

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

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

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

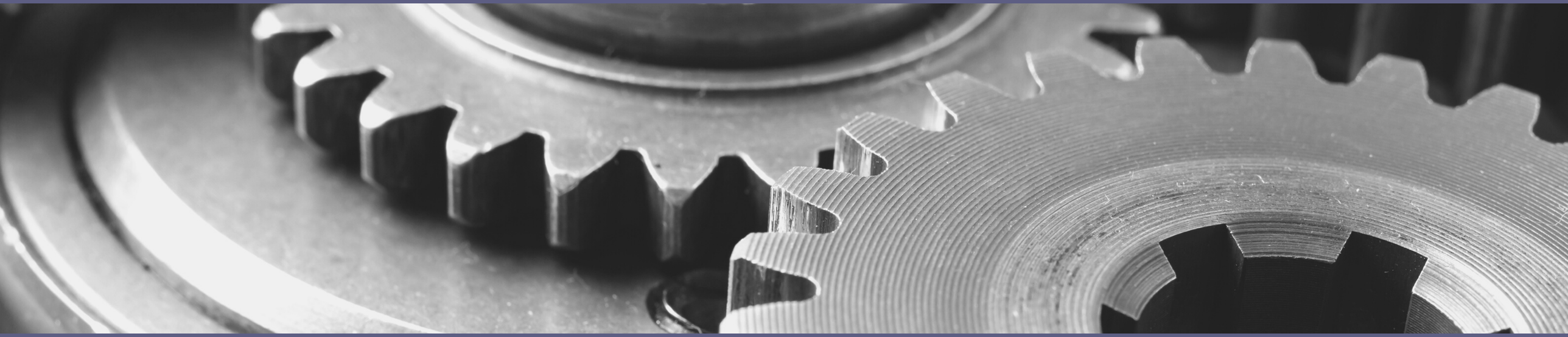
Recipient's Response

Administrative Leave

- Applies to non-student employees



Title IX Grievance Process for Formal Complaints



Formal Complaint Defined

§ 106.30 Definitions.

"Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment"

- May be filed by parent or guardian who has a legal right to act on behalf of an individual
- At the time of filing, complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- May be filed in person, by mail, or by electronic mail
  - Can use the contact information required to be listed for the Title IX Coordinator or any additional method designated by the school
- Must contain the Complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
- If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party

Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

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



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

Dismissal of a Formal Complaint

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

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



A complaint will not be dismissed because a Complainant remains at or leaves the school.

Consolidation of Formal Complaints

Schools may consolidate formal complaints:

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

Grievance Process

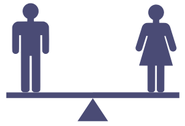
A recipients grievance process MUST:



Treat Complainants and Respondents equally



Require objective evaluation of relevant evidence



Require Title IX personnel not have bias and conflict of interest



Include a presumption that Respondent is not responsible until a determination is made



Include reasonably prompt time frames



Describe range of possible disciplinary sanctions and remedies



State the standard of evidence



Include the permissible bases for appeal



Describe the range of supportive measures available



Not require or rely on privileged information, unless waived

Grievance Process

Notice of Allegations must contain:

- Notice of the school's grievance process
- Sufficient details of the allegations, including:
  - Identities of the parties involved;
  - The conduct allegedly constituting sexual harassment;
  - The date and location of the alleged incident(s)
- Sufficient time period for the parties to prepare a response before interview
- Presumption of not responsible
- Determination of responsibility at the conclusion of the grievance process
- Allowance of an Advisor
- Right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements

Grievance Process

A recipient must investigate a formal complaint.

- The Title IX Coordinator may also serve as the Investigator
- Burden of proof and gathering of evidence is on the school
- Medical and similar privileged records are not available unless the party (or parent/guardian) provides written consent for release
- Both Parties must be given the equal opportunity to present witnesses and evidence
- Neither party may be restricted in their ability to discuss the allegations or gather and present relevant evidence

Investigation of Formal Complaints

- Both parties have the right to an Advisor throughout the grievance process
- School must give written notice of any meeting in which the party is required to participate
- Parties and their Advisors must be given equal access to inspect and review all evidence gathered
- Parties must be given at least ten days to file a written response regarding the investigation evidence
- School may require the parties to submit any additional evidence prior to the finalization of the investigation report

Investigation of Formal Complaints

- Evidence provided to the parties must also be available at the hearing with each party having equal access
- Investigator must complete a report that fairly summarizes relevant information at least ten days prior to a scheduled hearing, and;
  - Must provide copies to each party and their Advisors
- Investigator may include recommended findings or conclusion in the investigative report
  - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

Grievance Process

Hearings

- The Decision-Maker in a hearing cannot be the same person as the Title IX Coordinator or the Investigator



A postsecondary school must provide for a live hearing



A live hearing is optional for elementary and secondary schools, though the parties must be given the opportunity to:

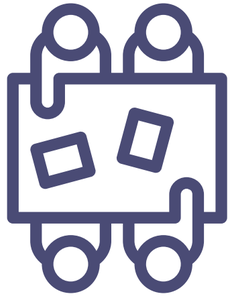
- Review the investigation report
- Submit written relevant questions of any party or witness to the Decision-Maker
- Receive answers to those questions
- Submit limited follow-up questions prior to a determination by the Decision-Maker

Grievance Process

Hearings



The recipient may consolidate cases arising from the same facts



Hearings may occur with parties present in the same geographic location or live, virtually



If a party does not have an Advisor, one must be provided by the institution



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance

Grievance Process

Written Determination

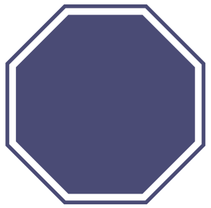
- Made by a Decision-Maker(s) who is/are not the Title IX Coordinator or Investigator
  - Must not have bias or conflict of interest.
- Determination reached by applying standard of evidence adopted by the school
- Written determination must include:
  - Identification of the allegations
  - Description of the procedural steps taken
  - Findings of fact supporting the determination
  - Conclusions regarding the application of the recipient's code of conduct to the facts
  - Statement of, and rationale for, the result as to each allegation, including:
    - A determination regarding responsibility
    - Any disciplinary sanctions the recipient imposes on the Respondent
    - Whether remedies designed to restore or preserve equal access to education program
  - Bases for appeal

Grievance Process

Written Determination



The recipient must provide the written determination to parties simultaneously



Determination is final after appeal determination (if appeal was filed) or upon expiration of appeal window



School is responsible for provision of remedies

Grievance Process

Standard of Evidence

- A school may elect to apply either:
  - The preponderance of evidence (“more likely than not”); 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

Grievance Process

Appeals

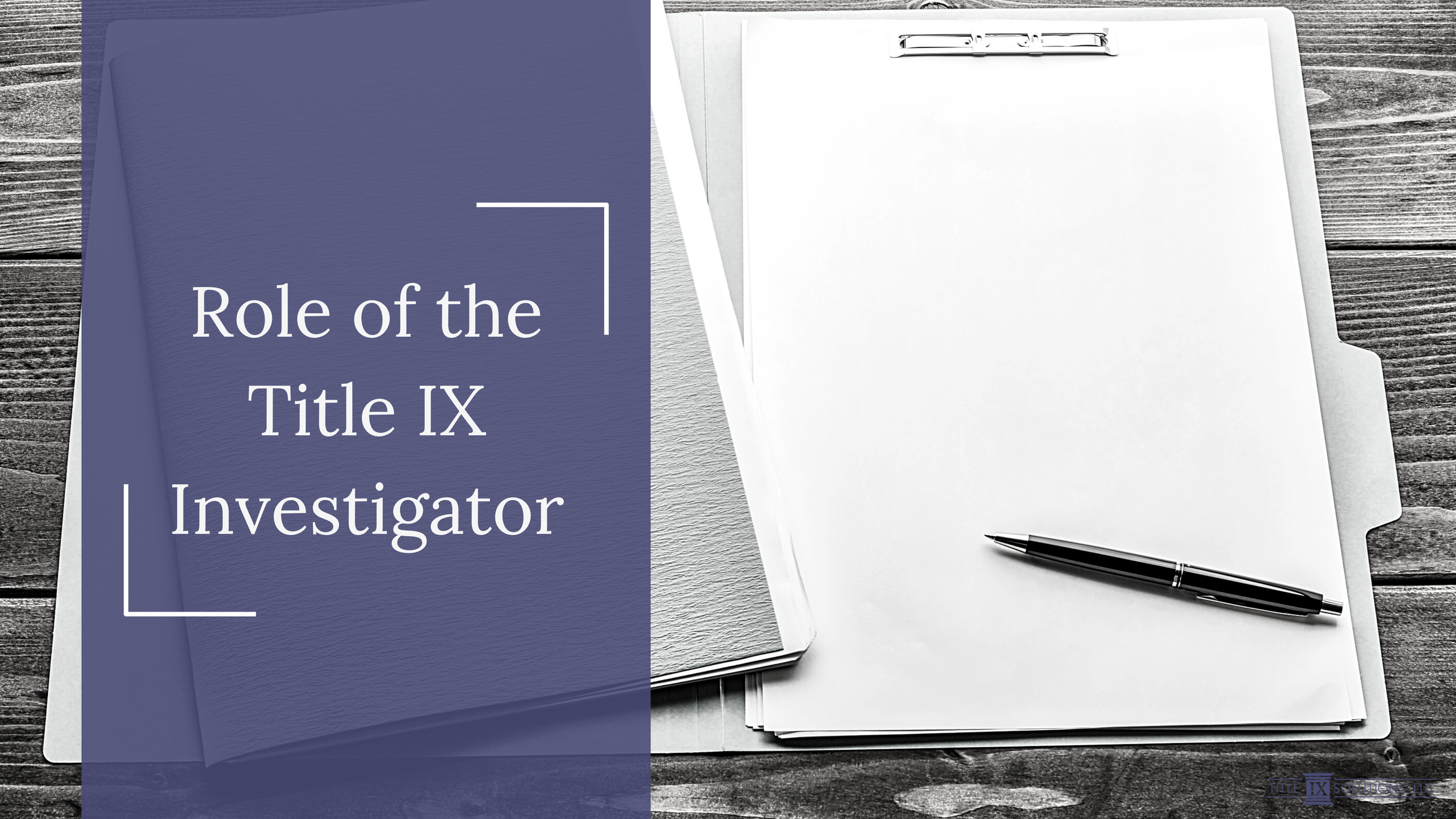
- Must offer an appeal process with the following bases of appeal
  - Procedural irregularity
  - New evidence, not previously available, that could affect the outcome
  - The Title IX Coordinator, Investigator or Decision-Maker had a conflict of interest or bias
- Can provide additional bases, but must do so equally to both parties
- Appeal Decision-Maker cannot have a conflict of interest and cannot be the Title IX Coordinator, Investigator, or Decision-Maker, must be trained
- Parties must be notified in writing of
  - Other party's decision to appeal
  - Decision rendered upon review of the appeal
- Parties must be offered opportunity to provide written argument

Grievance Process

Informal Resolution

- School may offer informal resolutions of alleged incidents
  - Mediation, restorative justice, or other forms of alternative dispute resolution
- Does not require a full investigation or adjudication
- Must be voluntary, with the parties being fully informed of the process and options and the parties must consent in writing to the process
- Informal resolution cannot be offered or facilitated by a recipient in a case involving an employee's sexual harassment of a student

Role of the Title IX Investigator



IN THIS CHAPTER



ROLE OF THE TITLE
IX INVESTIGATOR

Foundational Investigator Certification Course- Role of an Investigator
Course Speaker: Liz Abdnour

1. How must a school respond to allegations of sexual harassment?[1,2]
    a. When a school has actual knowledge of sexual harassment in any of its programs or activities that take place in the United States, it must "respond promptly in a manner that is not deliberately indifferent."
    b. This includes schools that serve any age, grade, or level of students, from pre-K through postsecondary.
    c. The Title IX Coordinator or designee must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, and to explain the process for filing a formal complaint.
    d. In addition, if a formal complaint is filed, either by the complainant or the Title IX Coordinator, a school must:
        i. offer supportive measures to the respondent, and
        ii. follow the Title IX grievance process specified by the 2020 amendments.
    e. In addition to setting out these requirements, the regulations provide that a school is deliberately indifferent "only if its response to sexual harassment is clearly unreasonable in light of the known circumstances."
2. Pre-investigation matters
    a. Investigator must be impartial, unbiased, and free of conflict
        i. "Neutral" does not appear anywhere in the law or regulations!
        ii. Conflict of Interest check: you will know the names of the Complainant and Respondent based on the Notice of Investigation
            1. This is especially common at smaller schools and with faculty/staff cases
                a. Assistant Basketball Coach: is the Complainant on your team?
                b. Director of HR: Respondent a student worker in your office?
            2. Parties may raise conflict concern
            3. Notify TIXC ASAP if you believe you may have a conflict as proceeding with a conflict is basis for appeal by party
        iii. Trauma informed interviewing
            1. A school may use trauma-informed approaches to respond to a formal complaint of sexual harassment. The preamble clarifies that the 2020 amendments do not preclude a school "from applying trauma-informed techniques, practices, or approaches," but notes that the use of such approaches must be consistent with the requirements of 34 C.F.R. § 106.45, particularly 34 C.F.R. § 106.45(b)(1)(iii).[3]
        iv. Presumption of non-responsibility
            1. The 2020 amendments require a school to include in its Title IX grievance process "a presumption that the respondent is not

[1] 34 C.F.R. § 106.44(a).
[2] https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf
[3] https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf

responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process."[4]

2. "The presumption does not imply that the alleged harassment did not occur," or that the respondent is truthful, or a complainant is untruthful.[5] Instead, the preamble says that the presumption is designed to ensure that investigators and decision-makers serve impartially and do not prejudge that the respondent is responsible for the alleged harassment. Schools that have relied on this presumption to decline services to a complainant or to make assumptions about a complainant's credibility have done so in error.

b. Key Questions of the Title IX Grievance Process
   i. Questions:
      1. What is the alleged conduct?
      2. Does the evidence support a finding that it occurred (preponderance of the evidence or clear and convincing evidence – your policy will define standard)
         a. You are not going to make this determination, but you need to be very aware of ensuring that your report includes all information factfinder will need to make this determination
      3. If it occurred, was conduct a policy violation?
   ii. You will ask the parties and identify information and evidence that answers these questions.
   iii. As investigators, these questions help us:
      1. Understand the scope of the investigation and what is "relevant" and "directly related"
      2. Recognize key words from policy violations to address during the investigation
      3. Focus the investigation planning, interview questions, interview summaries and investigative report

c. Understand parties' rights and responsibilities in the process
   i. Neither party is required to participate in the investigation
   ii. Right to an advisor during interviews
   iii. Right to provide their account of the alleged misconduct and have that account be on the record.

3. Title IX investigations involving minors
   a. Involvement of police and/or child protective services
      i. Evidence sharing
         1. Depends on state laws re: police and CPS
   b. Role of a parent/guardian
      i. Best practice is to involve them as much as possible
      ii. You can interview children without them present and without notifying them, but this will lead you to potential legal liability

[4] 34 C.F.R. § 106.45(b)(1)(iv).
[5] 85 Fed. Reg. at 30,259.

iii. Check state laws – this may vary

4. Investigation
    a.

Teams of two or more investigations – plan ahead

i. Communicate with your co-investigator
    1. Delegate tasks
        a. Lead investigator vs. note-taker
        b. Lead Writer of Summary of Interviews
        c. Lead Writer of Investigative Report
        d. Communication with Parties and Title IX Coordinator

b. Brainstorm interview questions based on policy violations
    i. Do not be shy about asking personal and intimate questions. Details are important!
    ii. Note: If you feel like the interviewee may perceive the question as harsh or biased, it may be helpful to explain WHY you are asking a specific question
        1. Example: When did you start and stop drinking? How many drinks? What type of drinks?
            a. I am asking these questions to understand your capacity to give consent, not to get you in trouble.
        2. Example: What were you wearing when the incident occurred?
            a. I am asking this because we have video surveillance footage outside of the dorm and can confirm what time you arrived at the dorm. I am not asking to imply that what you were wearing "provoked" or "invited" this incident because it is not your fault.

c. Interview parties and witnesses
    i. General order of interviews:
        1. Claimant
        2. Respondent
        3. Witnesses
            a. Interview anyone named (or who you discover in your investigation) who may have relevant information
            b. Ask all questions requested by parties unless clearly not relevant. Relevance should be defined in your policy.
    ii. Know your policy – this will guide what facts you need to gather.
        1. Read all definitions and every element of the requirements for making a finding of the claims alleged by claimant in your investigation
        2. Every time TIXS investigates for a client school, we review the policy at least 5-10 times...at every stage of the investigative process

d. Credibility assessment: Investigators must consider the consistency of an interviewee's statement and consider verifying statements through third-party interviews or other evidence
    i. Investigator's limitations

1. Main thing to keep in mind is you do not draw conclusions about responsibility – your job is just to gather, organize, and summarize evidence

ii. Credibility analysis
1. Credibility evidence is evidence and will not be something that can be easily gathered from reports without explicitly including it
2. How to summarize credibility evidence
a. DO provide information
i. "This fact supports Student 1's statement"
ii. "Student 2 changed their story from Interview 1 to Interview 2"
iii. "Student 3 said Student 4 was present, Student 4 said they were not present"
b. DO NOT draw a conclusion
i. "Student 1 is credible"
ii. "Student 2 is not credible."
iii. "Student 4 is more credible than Student 3"

e. Prepare the report (to be covered in next session)

5. Important tips:
a. Be Flexible!
i. You will likely have to modify/update your investigation plan and timeline as the investigation goes on – don't worry, just communicate with parties so their expectations are realistic
ii. Many complaints from parties about investigation process include concerns about transparency. "I did not know what was going on." "The investigator said the investigation would take 2 months, but it took 6 months, and I was anxious the whole time waiting for it to come out." "The investigator did not tell me before they interviewed the respondent, and I was afraid of retaliation." Etc.
b. Understand the time commitment
c. You must be impartial, unbiased, and free of conflict, but there is no requirement of "neutrality"
i. You can and should be empathetic to both parties and provide resources, support information, flexibility, etc.
ii. You just cannot favor one party over the other
iii. If a party feels heard and respected by you, there is a higher chance of satisfaction with the process even if they disagree with the outcome and therefore less conflict for you in your job
d. Investigations are stressful and require you to listen carefully to, process, and rehash over and over very difficult and painful facts about rape, sexual abuse, harassment, stalking, and/or relationship violence.
i. Self-care and community care are crucial
ii. Examples of self-care:
1. Setting boundaries
2. Not taking on too much

3. Being realistic about your own limitations and communicating them to your supervisor and colleagues
4. Taking time to enjoy the things you enjoy
5. Spending time with family/friends
6. Therapy/counseling

iii. Examples of community care:

1. Not burying investigators in work/investigations
2. Respecting investigators' autonomy and boundaries
3. Providing appropriate and prompt responses to investigators' requests for assistance, supportive measures for parties, etc.
4. Immediately removing investigators when necessary for conflict, bias, workload, etc.
5. Providing appropriate PTO and allowing people to take it uninterrupted by work

e. What to do if you are named in a lawsuit?

i. Before your investigation: ensure that you are indemnified by the institution.

1. Indemnification = they will hold you harmless and obtain an attorney at their expense if you are named in a lawsuit and are acting reasonably within the scope of your role.

ii. During or after your investigation

1. Get a good lawyer – institution should provide
2. Cooperate with what your lawyer tells you to do
3. Don't panic! It will be OK. This is happening more and more lately, but investigators are rarely if ever held responsible even if named individually – could be different in CA based on state law.

iii. Self-care – is this the right area of work for you?

f. Risk inherent in the work – that is what makes it worth doing

Investigation Planning and Design



TITLE IX SOLUTIONS, LLC

IN THIS CHAPTER



FORMING AN INVESTIGATIVE TEAM



REVIEWING KEY DOCUMENTS



DRAFTING AN INVESTIGATIVE PLAN

Forming an Investigative Team



Forming an Investigative Team

Factors to Consider:



- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Conflicts of interest and/or actual and perceived biases

Additional Factors to Consider

Gender Balance

- Investigators of different genders are present during Complainant, Respondent, and Witness interviews
- Interviewees can converse with the gender with which they feel most comfortable
- Regardless, Investigators must work to develop rapport with interviewee

Native Language of the Parties

- Lead Investigator is a native speaker or very fluent in the interviewee's language
- If not possible, interviews may require a translator
    - The translator should be briefed on the Title IX process and relevant terms

Team of Two Investigators



LEAD INVESTIGATOR

- Coordinates with the Title IX Coordinator and the Parties
- Leads investigative interviews
- Drafts the Investigative Report and prepares the Investigation File



CO-INVESTIGATOR

- Takes notes during interviews, notes questions, and asks questions during the interview if prompted by the Lead Investigator



Ideally, a team will consist of two Investigators. It is not required under Title IX. Due to lack of personnel, availability, or resources, this may not be possible at every investigation at your institution. Consult with your Title IX Coordinator about your school's options.

Communicating With Your Co-Investigator

As a team, it is important to delegate tasks and play off one another's skills and experiences. At a minimum, discuss the following topics with your co-investigator:



- Who is the Lead Investigator?
- Who will take notes during interviews?
- Who will communicate with the Title IX Coordinator?
- Who will communicate with the parties and witnesses?
- Who will draft the Investigative Report?

Reviewing Key Documents



Documents to Review

- Institutional Title IX / Sexual Harassment Policy and Procedures
  (May be called "Sexual Misconduct Policy")
- Incident Report (if available)
- Formal Complaint
- Notice of Allegations
- Internal Templates

Institutional Title IX / Sexual Harassment Policy and Procedures

This policy outlines key definitions, investigation procedures, rights of the parties, and the institution's overall requirements under Title IX.

- Review the Policy and Procedures numerous times and at every stage of the investigation process
  - The Policy and Procedures must be followed throughout the investigation
- Review the Rights of the Parties
  - For example: Parties are not required to participate in the investigation, have the right to share their account and have it on the record, and may have an Advisor
- Direct Parties and Witnesses to the Policy and Procedures
- Direct questions or concerns about the Policy or Procedures to the Title IX Coordinator

Incident Report and Formal Complaint

Incident Report

- Submitted by Complainant or a third party
- May be anonymous
- Makes the institution aware of an alleged incident
- Does not initiate the Title IX grievance process

Formal Complaint

- Signed and submitted by the Complainant or Title IX Coordinator
- Alleges sexual harassment against a Respondent
- Requests the school investigate the allegation
- Required for the Title IX grievance process to begin

Sample Report

January 12, 2022: Mr. Jones emailed Title IX Coordinator Adrienne Mathis about an incident that may have occurred on a recent Outdoor Adventure Club excursion. Mr. Jones is Brittnay Jones' father, who is a freshman at Sample High School. Mr. Jones was chaperoning the club's recent hiking excursion and witnessed senior Kelly Brown grab sophomore Jose Torres' buttocks numerous times while walking behind Jose on the trails. Mr. Jones says that Kelly also grabbed Jose's genital area over his pants while taking a water break and seemed to attempt to put her hand down his hiking pants while in the woods. Although Kelly appeared to be flirting or joking with Jose, Jose was not smiling or laughing like Kelly.

Sample Formal Complaint

On January 10, 2022, I went on a hiking excursion with the Outdoor Adventure Club. When I was hiking, Kelly Brown grabbed my butt and privates while we were hiking. She even tried to put her hand down my pants while Mr. Diaz was teaching us about the birds. In our Club meeting this week, Kelly touched my hair, rubbed my back, and put her hand on my knee, and I didn't want her to do that. I don't know how to get her to stop touching me. My best friend Diego Robles recorded her touching my hair. I want Sample High School to investigate.

Signed: Jose Torres, January 19, 2022

Notice of Allegations

- Prepared by the Title IX Coordinator and sent to the Complainant and Respondent at the start of the investigation
- Contains significant detail about the alleged incident, including the identities of the involved parties, conduct allegedly constituting sexual harassment, and the date and location of the reported incident
- Ideally includes the definitions of the alleged policy violations

Sample Notice of Allegations

Complainant sophomore Jose Torres alleges that senior Kelly Brown grabbed his buttocks and genital area while on an Outdoor Adventure Club excursion. Torres also alleges that Brown attempted to put her hand down his pants. This incident occurred on January 10, 2022. Torres also alleges that Brown inappropriately touched his hair, back, and knee during an Outdoor Adventure Club meeting on January 18, 2022.

- Violation of Sample University Sexual Harassment Policy (Policy 237): Sexual Assault (Forcible Fondling): *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 district's education program or activity*

Why is the Notice of Allegations important?

If written correctly, it can lay the foundation for an investigation.

- Outlines details from the alleged incident to be verified during the investigation
- Contains names of potential witnesses and/or sources of evidence to be collected
- Presents the timeline of the incident and reporting process
- Helps investigators focus on the key questions that are to be addressed during the Title X Grievance Process

Internal Templates

Your institution may provide templates for you to use during the investigation process. Templates may include:



Invitation to Interview



Interview Preamble



Advisor Agreement



Notice of Investigative Report



Investigative Report Format

Drafting an Investigative Plan



Getting Started

Before drafting your plan, confirm that you have completed the following steps:

- Formed your investigative team
- Reviewed key documents, including the Title IX/Sexual Harassment Policy, Notice of Allegations, and the Formal Complaint
- Conducted an assessment for potential conflicts of interest or biases
- Preserved any potential evidence
- Communicated with the Title IX Coordinator about the case

Key Questions to Keep in Mind

? What is the alleged incident and did it occur?

? Is the alleged incident a policy violation?

As investigators, these questions help us:

- Understand the scope of the investigation and what is “relevant” and “directly related”
- Recognize key words from policy violations to address during the investigation
- Focus the investigation planning, interview questions, interview summaries & investigative report

Drafting the Investigation Plan

At a minimum, the Investigation Plan includes:

1. Names of the Investigators
2. Names of the involved parties
3. Summary of allegations
4. Definitions of alleged policy Vvolations
5. Witness list
6. Order of interviews for parties and witnesses
7. Evidence list
8. Preliminary investigation timeline



Investigation plans may change and evolve throughout the investigation!

Drafting the Investigation Plan



Start with any information you already know.

Input information from the Notice of Allegations, Formal Complaint, and Report!

1 Names of Investigators

Include any known information, such as:

- Full name
- Title
- Email address
- Phone number
- Designation of Lead Investigator
- Known scheduling conflicts (vacations, conferences, etc.)

2 Names of the Parties

Include any known information, such as:

- Full name
- Contact information
- Parent and/or guardian name(s)
- Parent and/or guardian contact information
- Status at institution
- Age, Grade/Year
- Native language
- Other special condsiderations (accommodations, IEPs, etc.)
- Name of Advisor (if known), relationship to Advisor (friend, mother, attorney, etc.)

3 Summary of Allegations

Include information from the Notice of Allegations, Formal Complaint, and Report, such as:

- Summary of the incident
- Date of the incident
- Location of the incident
- Encounters between the Parties before and/or after the incident
- Other available information

4 Definitions of Policy Violations

Include verbatim definitions:

- Ideally provided in the Notice of Allegations
    - If not provided in the Notice of Allegations, consult with the Title IX Coordinator about potential policy violations
- Analyze the language of the policy violation
- Recognize if more than one policy violation is listed

A thorough understanding of the policy violation will assist you in preparing interview questions.

Analyzing Potential Policy Violations

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

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 district's education program or activity.

5 Witness List

Include any known information, such as:

- Full name
- Contact information
- Status at institution
- Age, Grade/Year
- Relationship with Complainant or Respondent
- When and how they were identified as a Witness

6 Order of Interviews

Order investigative interviews logically

- Typically, Complainant is interviewed first
- Then, Respondent and Witnesses interviews follow

Be strategic planning interviews, particularly with Respondent and Witnesses

- Scheduling conflicts, delays, or a refusal by the witness to participate may impact your ideal order of interviews
- Witnesses may be added throughout the investigation

7 Evidence List

Identify known and potential sources of evidence, such as:

- Communication between Complainant and Respondent
- Digital evidence and social media posts/messages
- Surveillance footage, key card logs, etc.

Document which evidence has already been obtained or provided, noting who provided the evidence

Outline how other sources of evidence will be obtained (i.e., asking parties for evidence, coordinating with campus police/campus security, etc.)

8 Timeline of Investigation

Consider the duration of each stage of the investigation:

- Confirm the investigation's start date
- Set investigation milestones
  - Can be helpful to work backwards from the goal end date of the investigation
- Many timeframes are outside of the investigator’s control
- Check policy to determine timeframes for:
  - Number of days required between noticing Parties of an interview and conducting the interview
  - Amount of time allotted for Parties to review and respond to preliminary Investigative Report
- You will have additional responsibilities to juggle while investigating
- Consider potential roadblocks (school breaks, party/advisor conflicts, personal conflicts, etc.)

Drafting an Investigation Plan



Remain flexible and focused.

Even the most efficient investigations can be time-consuming.

Practice Drafting an Investigation Plan!

Review the Sample Report, Formal Complaint, and Notice of Allegations from part two of this chapter.

Input the appropriate information into the downloadable Investigation Plan sample.

Elements of the Investigation Plan

1. Names of the Investigators
2. Names of the Involved Parties
3. Summary of Allegations
4. Definitions of Alleged Policy Violations
5. Witness List
6. Order of Interviews for Parties and Witnesses
7. Evidence List
8. Preliminary Investigation Timeline

Investigative Interview Techniques



IN THIS CHAPTER



PREPARING A PREAMBLE



RECORDING INTERVIEWS



BUILDING RAPPORT AND TRUST



QUESTIONING THE PARTIES



INTERVIEWING MINORS



Investigator's Welcome

Preparing a Preamble



What is a Preamble?

- Read by Investigator at the beginning of the interview
  - State date, time, purpose of the interview, location, persons present and verbal consent of all persons participating
  - Ask each person to state their name for later voice identification during transcription
  - Time and date should be read onto the recording at the end of the recorded interview

What is a Preamble?

- Provides Consistency throughout interviews
- Ensures consent, policy violations in question, relevant sections of the policy in question are on the record
- Helps if the Investigator is called as a witness during the hearing or litigation
- Assists in putting the party or witness at ease – they become used to Investigator's voice, presence, etc.

Other Elements to Include

- Explain investigative process (refer to policy) and roles and names of Title IX personnel (Coordinator, Investigator(s), Decision-Maker, etc.)
- Cover rights under Title IX and policy
- Inform party of their opportunity to share what actually happened
- Remind party of Advisor's role
- Provide clarification of policy, procedure, and timeline
- Establish meeting decorum (breaks, use of phone, etc.)
- Share Investigator's comfort with difficult topics

Sample Preamble



Recording Interviews



Recording Best Practices

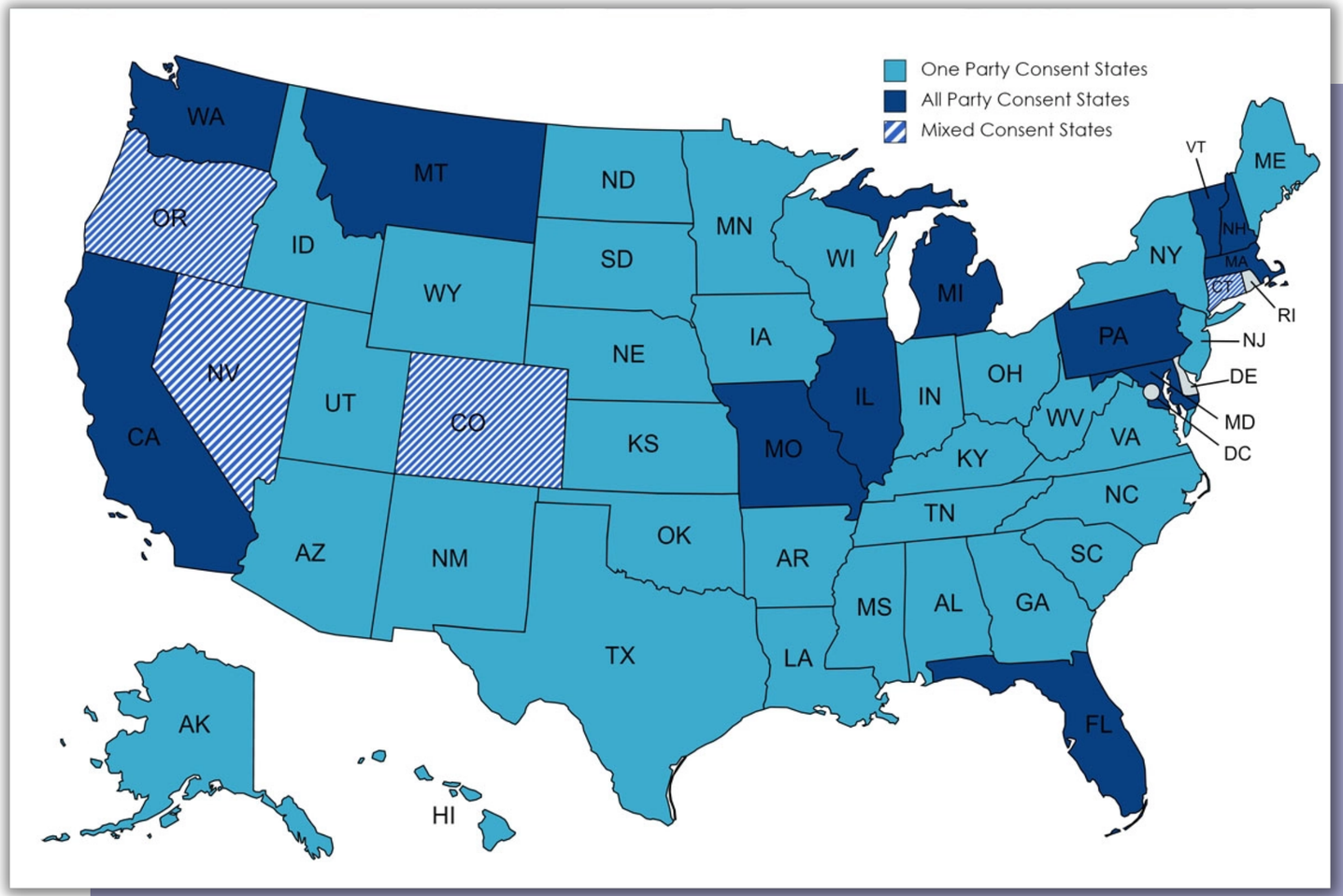
The Investigator may only record interviews. Best practices include:

- ☑ Obtain consent from the interviewed party
- ☑ Use HD recording application on a phone for the least intimidating in-person option
- ☑ Have the interview transcribed
- ☑ Share transcript and recording of interview with the Parties and Advisors
- ☑ Include transcription and audio recording in the final investigation report and/or file



Recording frees up the Investigator to focus on the interview and interviewee.

Obtaining Consent



- Review state and local law, as well as school policy
- Check for one-party consent, two-party consent, etc.
- Prepare for what you will do if a Party does not give consent to record

Transcription

Transcripts will provide quotes and narratives for investigative report

- Provides a complete word-for-word record of the investigative interviews
  - Does not contain paraphrasing of questions or responses
  - May contain grammatical or syntax errors depending on speech of parties
- Should be reviewed and approved by parties for accuracy before including in the investigation report

Transcription by a service vs. self-transcription



Cost



Accuracy



Efficiency

Building Rapport and Trust



Starting the Interview

- Visualize conducting a successful interview before walking into the room
- Consider how the interviewee perceives the Investigator
- Make the interviewee feel comfortable
- DO NO HARM
- Explain the investigative process at the beginning of the interview
- Use non-threatening questions help to put the interviewee at ease

Important Reminders

- This is an interview not an interrogation!
- Respondents should be treated with the same respect as the Complainant
- School must presume that Respondent is not responsible for the alleged conduct unless and until a determination of responsibility for a violation of the sexual misconduct policy is made at the conclusion of the grievance process
    - This should be a guiding principle throughout the interview process (and beyond)
- Good cop/bad cop does not work

Questioning the Parties



Foundations of Interviewing

Seeking the Narrative

Controlling the Interview Flow

Asking Clarifying Questions

Providing Rationale for Questions

Gathering Information to Support Answers

Guidelines for Good Questions

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.

Seeking the Narrative

- Your first broad question

> "Tell me what happened on the night of August 15, 2022."
>
> "Start at the beginning and tell me what's been going on."

- This may elicit a long-form response
  - Listen carefully to determine which clarifying questions you would like to ask
  - Allow the Party to speak, uninterrupted
  - The Party may go through a range of emotions
- Allow yourself a way to bring the conversation back

Controlling the Interview Flow

Chronology-based Interview

- Conducted in the order of events
- May start with the first relevant interaction between the Parties
- Can allow for easy organization of the investigative report
- Allows Parties to recall events in a meaningful order
- Has a clear stopping-point
- May be helpful for incidents with only one allegation or type of policy violation *(For example- an alleged sexual assault taking place in the duration of one-evening)*

Topic-based Interview

- Conducted according to themes or topics (allegations, locations, Parties, etc.)
- May jump from date to date
- Can allow for organization of the investigative report according to each allegation
- May help Parties think through each separate allegation
- May be helpful for incidents with multiple allegations over a long period of time *(For example- Quid Pro Quo harassment with an allegations of stalking in multiple locations)* or incidents with multiple Complainants and/or Respondents *(For example- Walking through allegations by each involved person)*

Ask Clarifying Questions

- Ask for specificity
  - Encourage Parties to be as descriptive as possible
    - Sense questions (see, smell, hear, taste, touch)
    - Feelings and emotions experienced
    - Full names of individuals mentioned, contact information, relationships
    - Locations, times, dates
    - Quantities of substances consumed
- When in doubt, use, "Tell me more about that..."
  - Allows the Party to dig deeper and recall on their own
- Now is not the time to be shy
  - Explicit details must be shared in many instances

Ask Clarifying Questions

"We started the night at a bar downtown. I can't remember which one. And he started buying me drinks. I got really drunk."

Example

What time did you arrive at the bar?
How did you get there?
Can you describe the area?
Had you been to this bar before?
What did the inside of the bar look like?
What types of drinks did he purchase for you?
How many total drinks did you consume?
Did you observe him drinking any alcoholic drinks?

Ask Clarifying Questions

"When I woke up, he was doing stuff to me. I didn't want that to happen and I never said it was ok. I barely even know him."

Example

I know this may be difficult or uncomfortable, but I need to understand the specifics of what he was doing to you. This will help me when I'm writing the report and we are providing your narrative of the events. You can use the terms you feel comfortable using. Can you tell me what he was doing?

Ask Clarifying Questions

Example

"He was having sex with me."

Sometimes sex has different definitions to different people. I just want to be sure I am understanding your definition of sex. Can you tell me exactly what acts he was engaging in?

"Yes. First he fingered me and then started going down on me. Then he penetrated me vaginally with his penis. I told him no, but he just kept going until he got off. I didn't want any of that. I never even wanted to kiss him."

Providing Rationale for Questions

- Some questions may sound as though they are victim-blaming without an explanation
  - Help the Party understand why you are seeking this information
- "Why" questions are seen as taboo, but there are times we may need to ask them
  - Explain the need to ask "why" questions



Providing Rationale for Questions

Example

Instead of:

What were you wearing that night?

Which may be met with:

"Are you saying I deserved this because I was in a little dress? That's exactly what my friends said. I knew I shouldn't have worn that."

Try:

The security system in Oakley Hall recorded a large group returning to the residence hall that night at 1:30 AM. The footage is a little grainy. Could you give me a description of what you were wearing so I can better identify you on the video? Could you describe what Tristan was wearing as well?

Providing Rationale for Questions

Example

Instead of:

Why did you go into her room?

Which may be met with:

"See, I knew you would think I was stupid for going in there alone. I guess I just wasn't thinking."

Try:

What was your mindset when she invited you into her room? Walk me through what you were thinking and feeling so I can understand your decision to accept her invitation.

Gathering Information to Support Answers

- Attempt to go one layer deeper
- Seek information that will support or refute certain elements of the allegations



Consent



Incapacitation
(Due to alcohol or other substances)



Elements of the potential policy violation

Gathering Information to Support Answers

Example

Establishing Consent:

(To Respondent) What verbal or non-verbal cues did he give you to indicate he wanted to have sex?

"I don't know. He didn't say anything when I moved on top of him, so I figured he wanted it. He would have said no or moved away otherwise."

(To Complainant) What was your reaction when you woke up and discovered him on top of you?

"I completely froze. I tried to speak, but I couldn't. I wanted to push him off of me, but it is like my body wasn't listening to my brain. I think I was in shock. I didn't do anything."

Gathering Information to Support Answers

Example

Intoxication/Incapacitation:

(To Respondent) Can you tell me about her mental and physical faculties that led you to believe she was not incapacitated?

"She seemed completely normal. On the bus back from the event, she had a long conversation with my buddy Jace. She got off the bus without any help and was giving everyone hugs before we got in my car to go to the dorm. She sang to the radio and made TikToks the whole way home."

Gathering Information to Support Answers

Example

Elements of a Policy Violation:

Policy Language

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

Can you tell me the number of times the Respondent came to your campus office uninvited during the month of March?

"She came to my office about three times a day, every single day. I didn't even know she knew where I worked. My supervisor finally told her to stop because she was starting to become a disruption."

Gathering Information to Support Answers

Example

Can you tell me the frequency and content of the text messages sent by the Respondent during that same week?

"I think I counted over 450 text messages from her. They came at all hours of the day, asking to meet up for sex and saying she would make sure my girlfriend was out of the picture. I eventually had to block her."

Policy Language

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

Gathering Information to Support Answers

Example

How did the office visits and text messages make you feel?

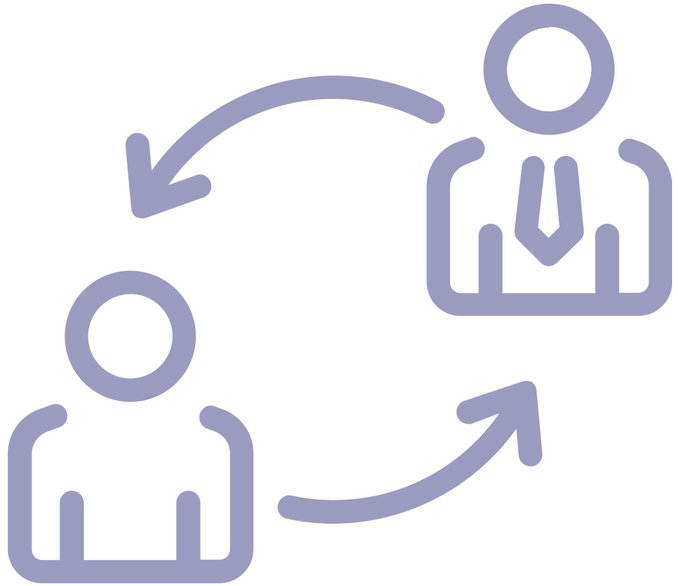
"It got to the point where I was scared to go to work. I didn't know if she'd corner me in the hall or what. I stopped sleeping at night because I figured her next step might be finding out where I lived. I was also afraid for my girlfriend. What did she mean by 'making sure she was out of the picture?' I was terrified she was going to hurt her. All of it is really unsettling and I can't go about my normal day without the worry that she'll be there."

Policy Language

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

Advisors

- As an Investigator, it is your job to maintain authority in the room
- The role of the Advisor is for emotional support and private consultation
- Do not allow the Advisor to speak on behalf of the Party as this is the Party's interview, and you need to hear their story from them



Closing



Thank Party for their participation and willingness to speak openly regarding the allegations



Ensure Parties have asked any questions they may have



Provide timeline or next steps, as well as contact information



Close any loops, so the party has a clear understanding of what is to come and what options are available to them at this point in the process

Circling Back

- Do not be afraid to re-interview a Party or Witness if you require more information
- Make your contact information available to interviewees
- After completing your first round of interviews, you may become aware of new Witnesses
- Promptly contact and schedule interviews with those Witnesses

Quick Tips

- More information is always better
  - It is easier to pare down than to move forward with incomplete information
- Let your future investigative report be your guide
  - Think through the sections you need to complete and ensure you will have the information needed to do so
  - A thorough investigation means easier report writing
- Measure twice, cut once (prepare and be twice as thorough, interview once)

Interviewing Minors



Considerations for Minors

- Children are very different than adults
- Age of the child is also important
  - Emotional maturity of a child must be considered
  - Tailor interviews accordingly
    - Provide clear guidelines for the interview
    - Use age-appropriate language
- Useful questions for minor Respondents:
  - "Where was this behavior learned?" and/or
  - "Why are they behaving in this way?"
    - Actions may be a reflection of their own experiences with abuse
    - May warrant a safety and risk assessment of their own situation

Considerations for Minors

- Helpful to utilize anatomically correct dolls
- Ensure presence of parent or guardian and outline rules of participation for parents
  - If a parent allows child to interview alone, NEVER interview without another adult in the room
- Use only the child's first name or initials to protect their identity
  - Transcripts
  - Recording
  - Investigation report and file

Investigative Report Writing



TITLE IX SOLUTIONS, LLC

IN THIS CHAPTER



ELEMENTS OF THE INVESTIGATION REPORT



SUMMARIZING INTERVIEWS



SUMMARIZING EVIDENCE



REVIEWING THE REPORT

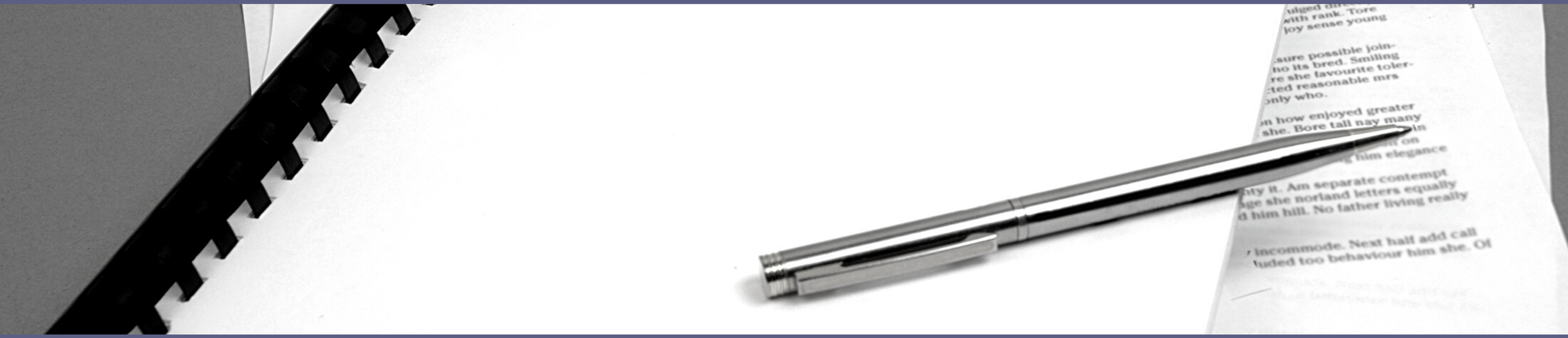


THE INVESTIGATION FILE



SAMPLE REPORT

Elements of the Investigation Report



Report Writing Preparation

- This may be the area where you feel exposed
  - Parties will have the chance to observe your work
- Preparation can be your safety net
- As you're interviewing:
  - Interview back and forth
  - Write up each interview or transcribe immediately following or as soon as possible
  - Write in large blocks of time
- You may see questions you forgot to ask or points that need clarification - go back and ask

Investigation Report Requirements

At the conclusion of the investigation, the investigator will 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 Investigation 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 Investigation 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 Investigation Report

Relevant Policies, Procedures, Guidelines and Standards

Sexual Misconduct Policy

Additional Relevant Institutional Policies

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

Timeline

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

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

- Thoroughness is key
- Document if a Party or Witness does not respond or declines to participate in the investigation
- Document communication with other departments or off-campus sources (i.e., local police)
- Document supportive measures in place during the investigation (Work with Title IX Coordinator to obtain this information)



Does your Title IX office utilize a case management system?

Elements of the Investigation 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

Elements of the Investigation Report

⚠ REMINDER ⚠

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.

Elements of the Investigation Report

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

**Optional to Include*

Summarizing Interviews



Summarizing Interviews

Stay FOCUSED when summarizing interviews.

- Key questions for the Title IX Grievance Process:
  - Did the alleged incident occur?
  - Is the alleged incident a policy violation?

STEP 1

Identities and Dates

Note time, date, location of interview, and if an Advisor was present

- Explain 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.”*

STEP

2

Summary of Responses

Tell the Story

Transform the individual's responses into a coherent narrative

STEP

2

Summary of Responses

Include direct quotes from the individuals

- Direct quotes are extremely powerful and useful for those reading the report
- Cite direct quotes either from the specific line in the transcript or timing of the recording (annotate footnotes or endnotes)

STEP

2

Summary of Responses

Organize interviews into sub-sections when dealing with multiple allegations

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, consider organizing the interview into sub-sections related to each policy violation



Example: Relationship with a history of dating violence and sexual assault

STEP

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
- DO NOT INCLUDE YOUR OPINIONS

STEP 3

Interview Responses

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?

STEP 4 Share Interview Summary?

- Summaries of interviews are a presentation of the individual's statements and do not include the Investigator's analysis, assessments, etc.
- Some Investigators share the summary of interview with the individual as soon as available to ensure accuracy of note-taking or transcription

Summarizing Evidence



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

Examples of Summarizing Evidence

You may also decide that specific pieces of evidence require an explanation.

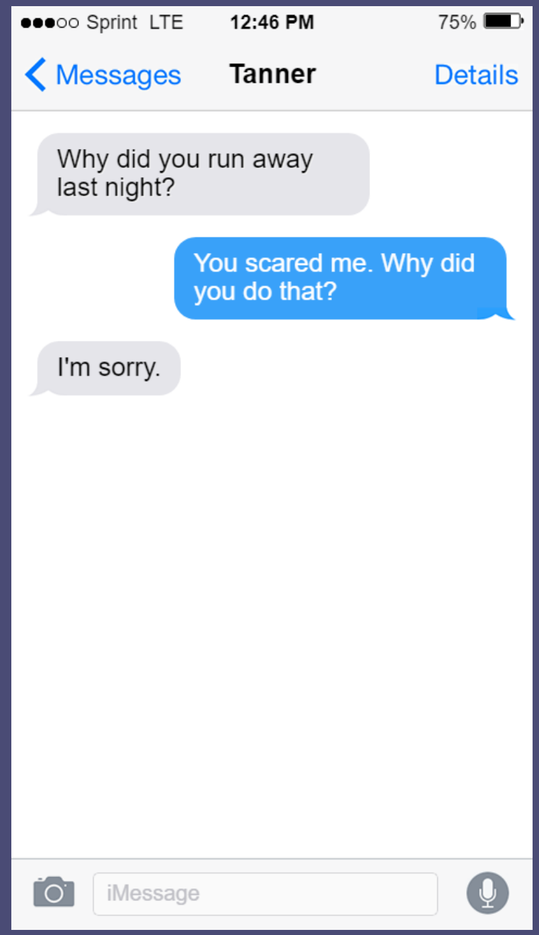


Example: Security camera video recording from Sentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

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

Examples of Summarizing Evidence

Noting Inconsistencies

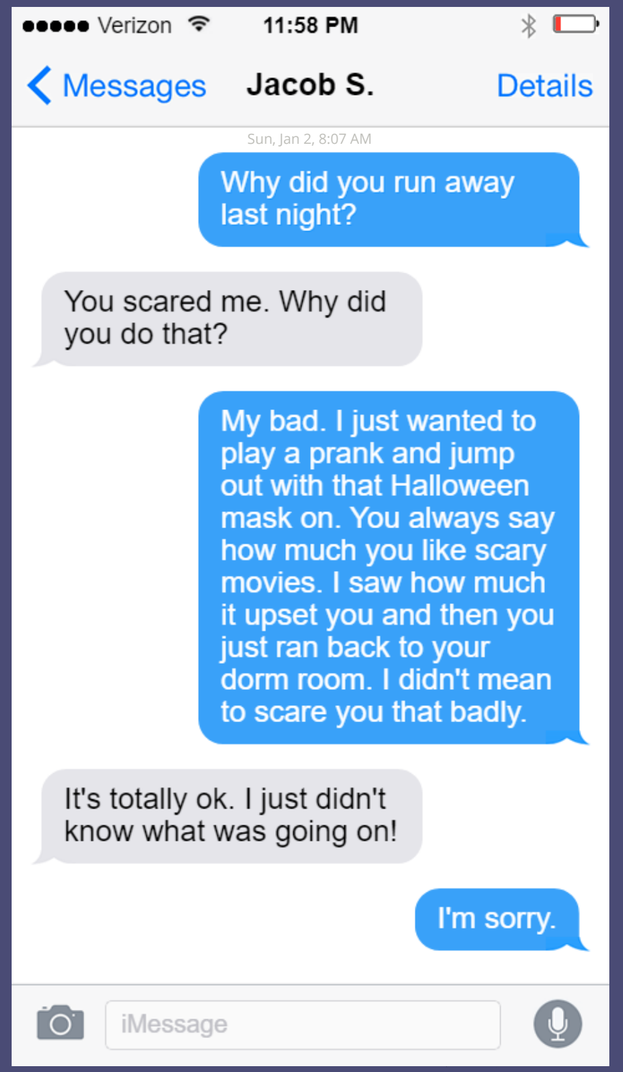
Example: *Screenshot of text message exchange alleged to be between Complainant Jacob Smith and Respondent Tanner Thompson on January 2, 2022 timestamped at 8:07 AM. Screenshot was provided by Respondent Thompson.*

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.



Reviewing the Report



Keep in Mind

Who, What, When, Where, Why, and How

- As you review your investigation report, ask yourself if your investigation answers these questions
- Your summaries of interview and evidence should address these questions:

Who was involved?

What are the allegations?

Where and when did the incident occur?

Why and how did the incident occur?

Keep in Mind

It may not be possible to definitively answer the questions, but you should provide the individuals' responses the questions.

- 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

Next Steps



EDIT



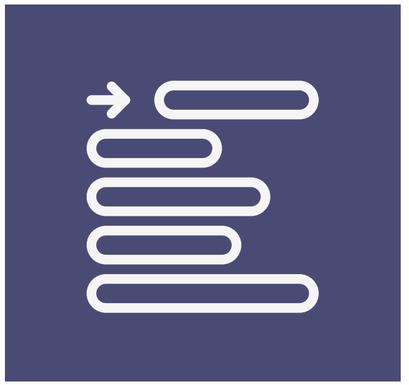
PROOFREAD



PRINT



PROOFREAD AGAIN

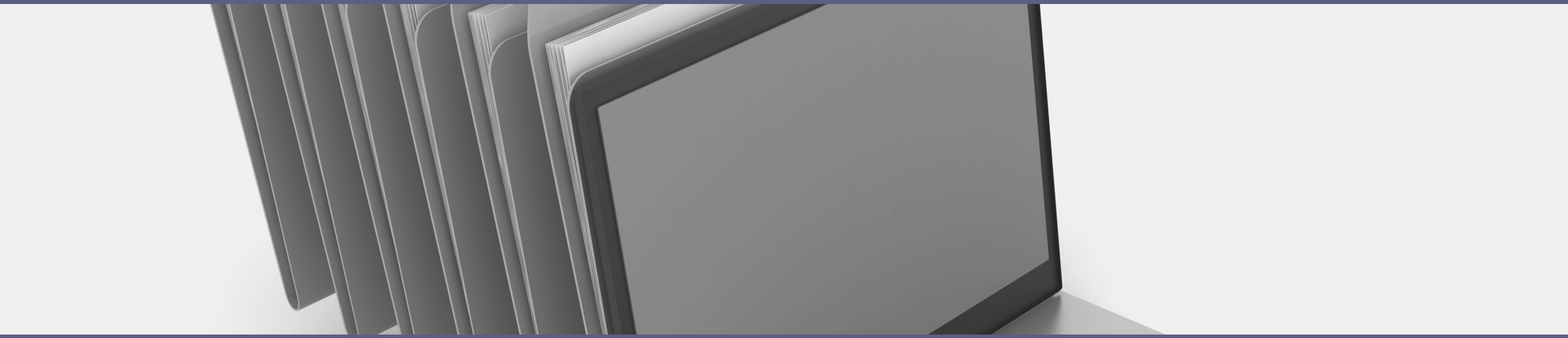


FORMAT



Pronouns - Use as few as possible, but ensure the ones you use are accurate. Too many "he", "she", and "they" pronouns can become confusing to the reader.

Reviewing the Report



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
- May be a 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

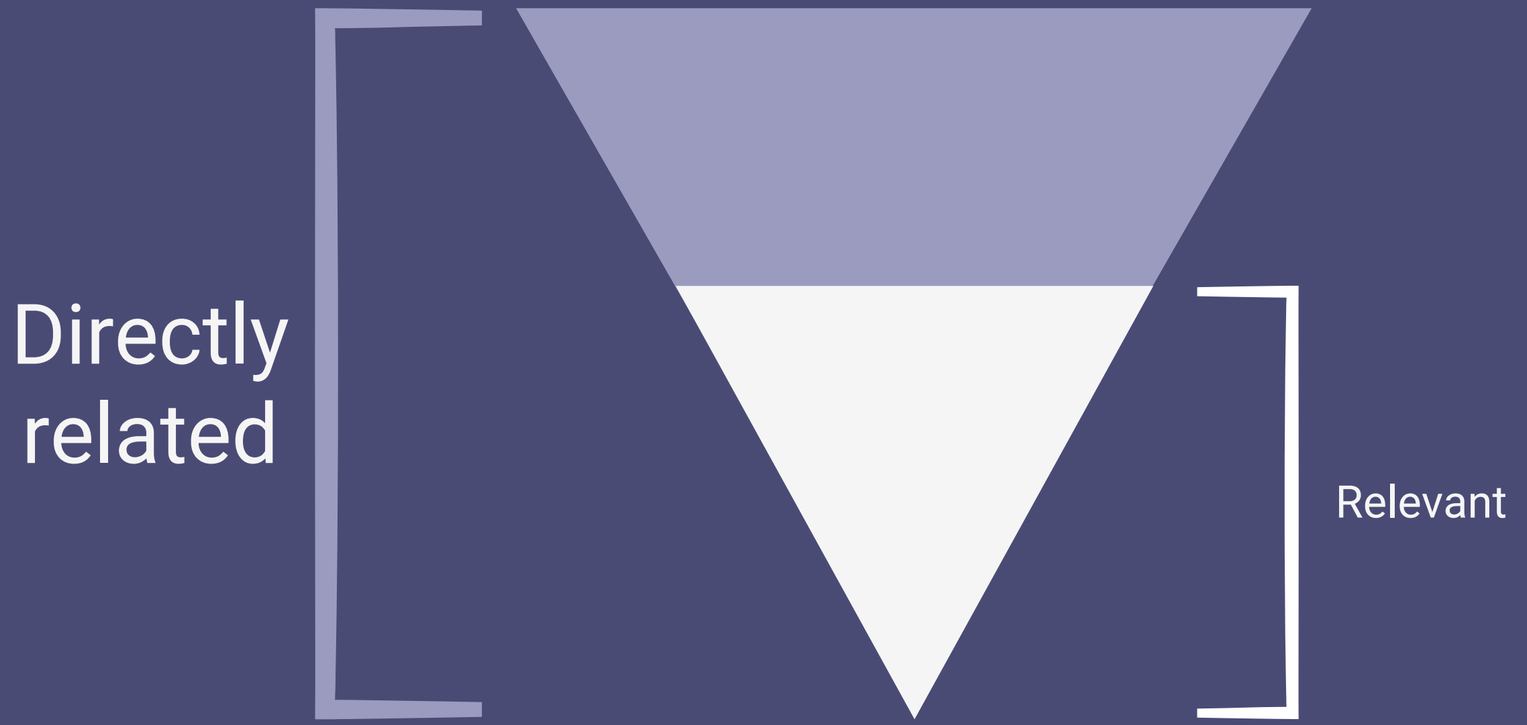
- Do not filter out any information from the file at this point unless completely unrelated
- Parties must have an equal opportunity to inspect and review all of the directly related evidence
  - Investigators may also send evidence to Advisors, with consent
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a Party

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

Relevant vs. Directly Related

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.



What is never relevant under Title IX?

As written into the Title IX Regulations, the following evidence is NEVER relevant:

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

EXAMPLE: "She slept with half the frisbee team, already. She obviously was up for this encounter."

Prohibited Evidence

As written into the Title IX Regulations, the following evidence is PROHIBITED:

- The school cannot access, consider, disclose, or otherwise use a Party's records protected under a legally recognized privilege such as those that are made or maintained by:



A physician



A psychiatrist or psychologist



Other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity



Schools <u>must</u> obtain that party's voluntary, written consent to include this evidence in the Title IX grievance process.

Once the Investigation File is Prepared

- Title IX Coordinator will provide the file to the Complainant, Respondent, and Advisors
- School must provide at least 10 calendar days for the Parties to respond to the evidence
- Investigators will share any written response with the other Party and will consider any written response prior to completing the investigation report



The audience for the Investigation File is the Complainant, Respondent, Advisors, and Decision-Maker.

After Parties Review the Investigation File

Create the final investigation report:

- Incorporate relevant elements of the Parties' written responses (or absence thereof) into the investigation report
- Include any additional relevant evidence
- Make any necessary revisions
- Finalize the report
- Document all rationales for changes made after the review and comment period

Elements of the 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

- Will not be finalized until the Parties and Advisors review and respond within the required 10 day review period
- Includes allegations, relevant policies/guidelines and other standards, procedural steps; and
- Fairly summarizes relevant evidence
  - Summaries of Interview (summary for every interview conducted)
  - Summaries of Evidence

List of Parties Interviewed and Evidence Submitted



- 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

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

Understanding Trauma



TITLE IX SOLUTIONS, LLC

IN THIS CHAPTER



INTRODUCTION TO TRAUMA



RECOGNIZING PERSONAL BIAS



TRAUMA-INFORMED COMMUNICATION



PROMOTING EMPOWERMENT



UNDERSTANDING TRAUMA AS AN INVESTIGATOR

Introduction to 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

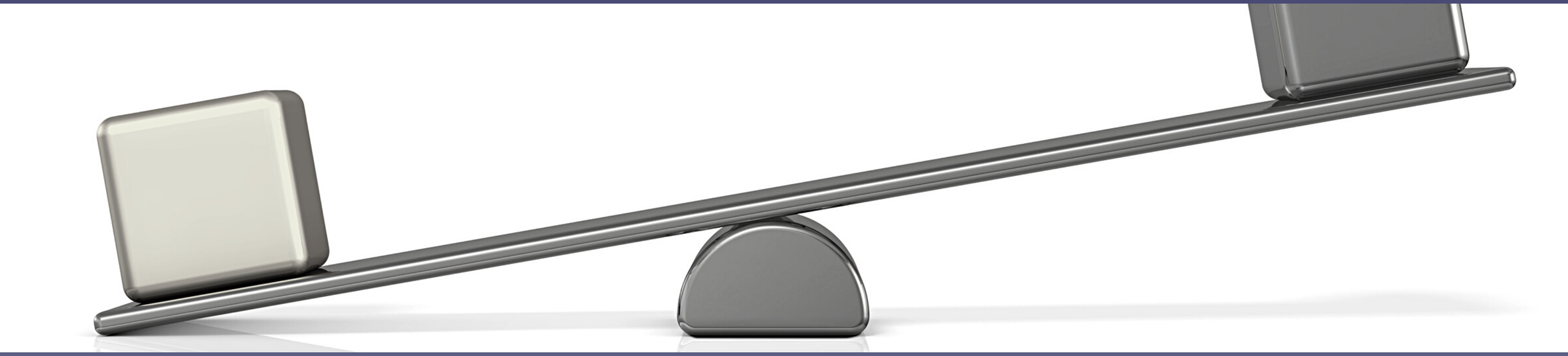


FAWN

What does this mean for Title IX Processes?

- Fragmented, incomplete memories are common
- Emotional dysregulation is expected
  - Can appear in a variety of ways: inappropriate affect (laughter), extreme anxiety, numbing/disconnection
- The fawn or freeze responses may appear to be consent
- Discussing the event is retraumatizing
  - Try to limit the number of interviews, questions, etc.

Recognizing Personal Bias



Personal Bias

A tendency, inclination, or prejudice toward or against something or someone.

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

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

Bias vs. Conflict of Interest

Bias

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

Conflict of Interest

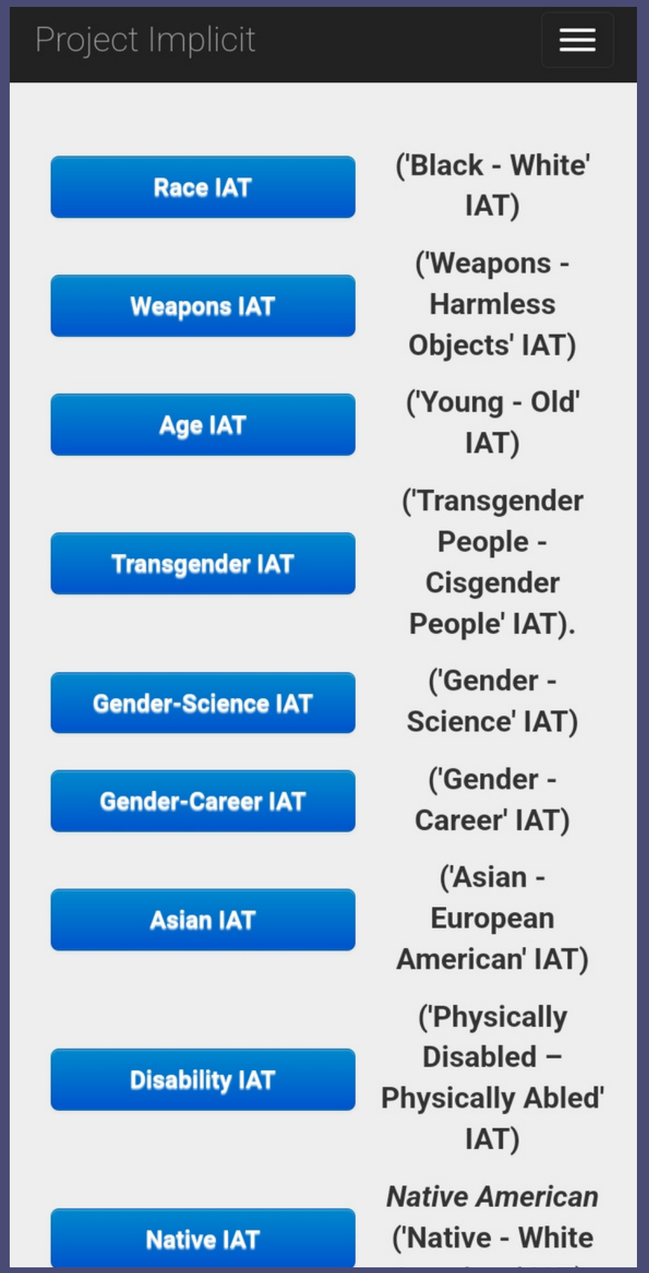
- Having a personal relationship with one or more parties
- Holding multiple relationships with one or more parties
- There is any way in which you could benefit (or be harmed) from the outcome of the investigation

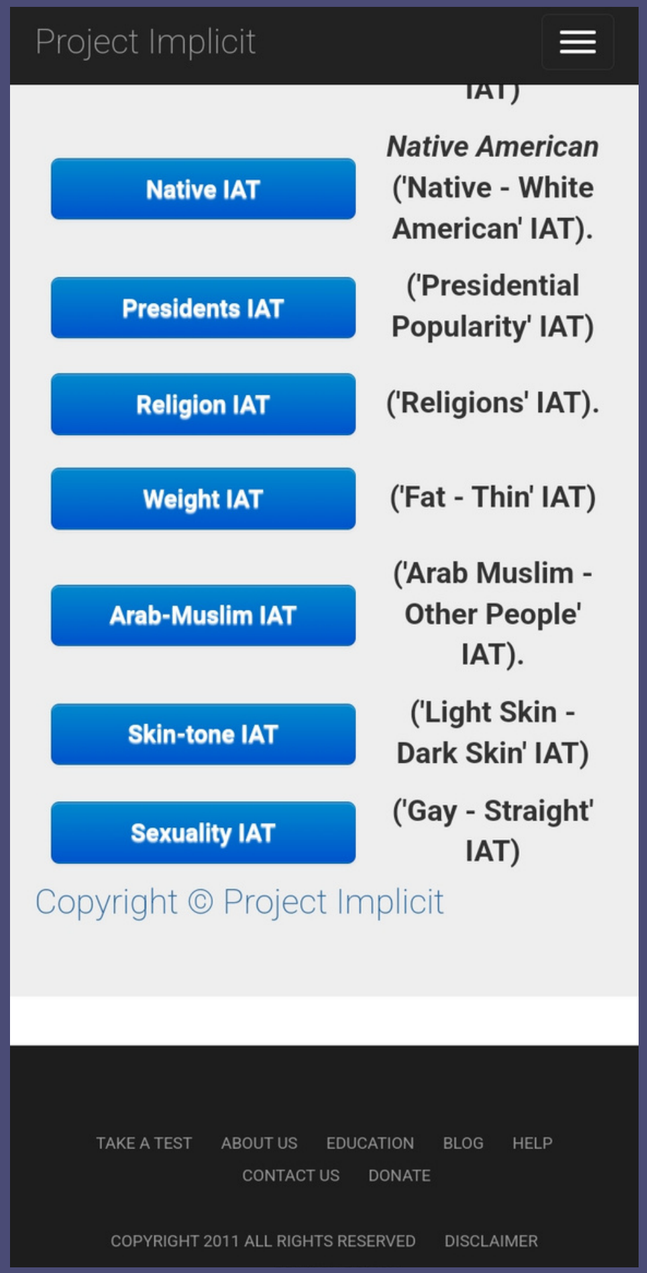
Recognizing Personal Bias

Is your personal bias affecting your ability to be objective?

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

Implicit Bias Tests





Recognizing Personal Bias

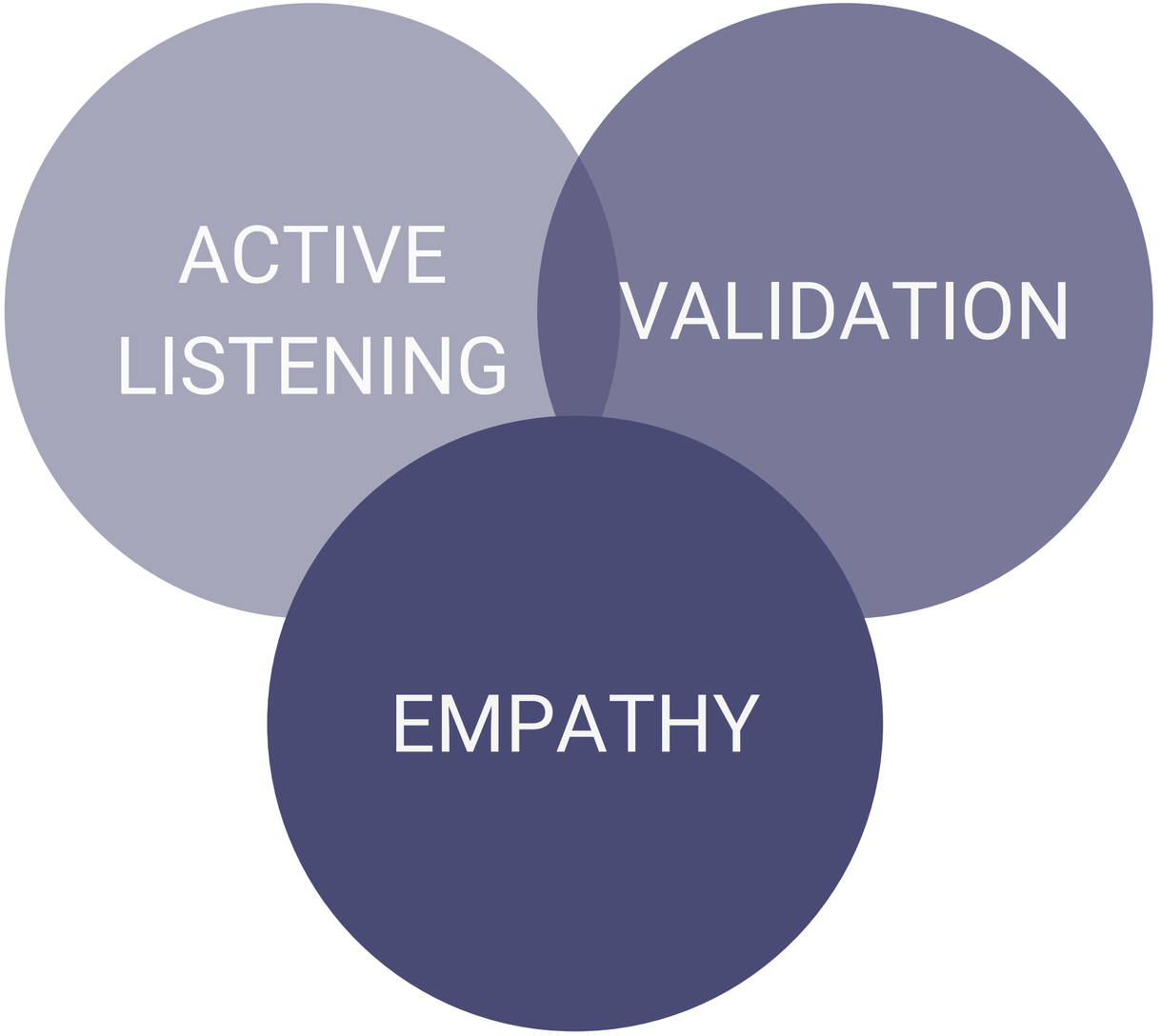
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  - When should an individual recuse themself from a case because they are unable to overcome personal bias?

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

Active Listening

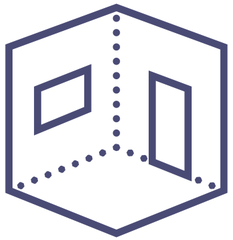
A communication technique that serves the following purposes:

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 Empowering a Party

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?

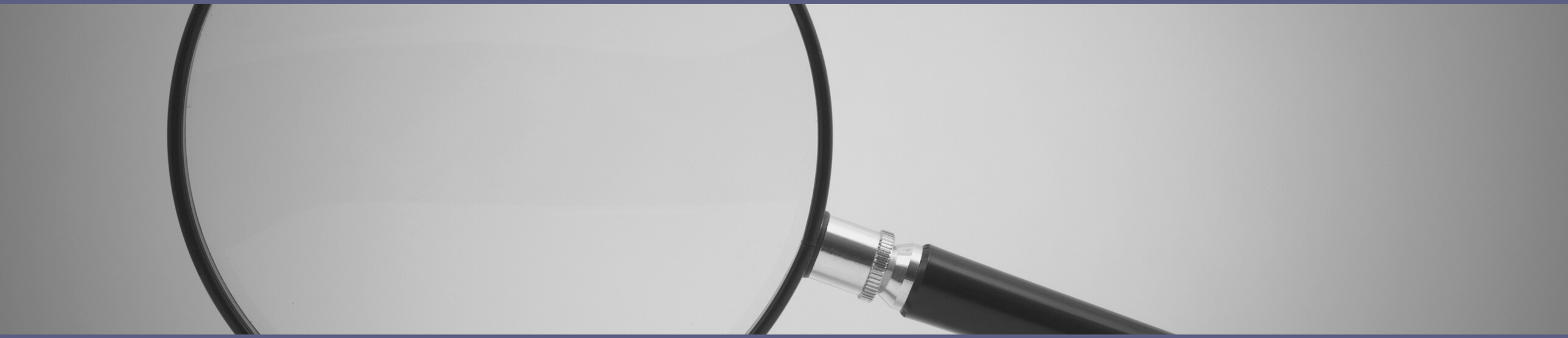
How do you feel about participating in the Title IX process?

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 an Investigator



Investigator Q&A



1. How might trauma show up in my interactions with various Parties?

2. What can I do to minimize re-traumatization throughout the Title IX process?

Sample Interview

IN THIS CHAPTER



SCENARIO INTRODUCTION

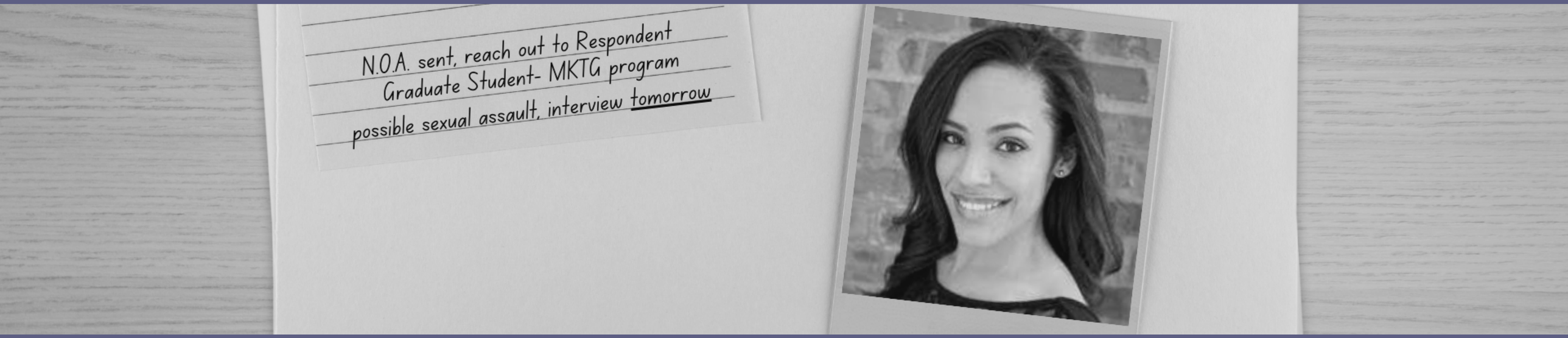


COMPLAINANT INTERVIEW WITH COMMENTARY



INTERVIEW SUMMARY

Scenario Introduction





The Setting

Sample University

- Four-year public postsecondary institution with undergraduate and graduate programs
- 22,000 students

Title IX Team



TAWNY ALONZO
Title IX Coordinator

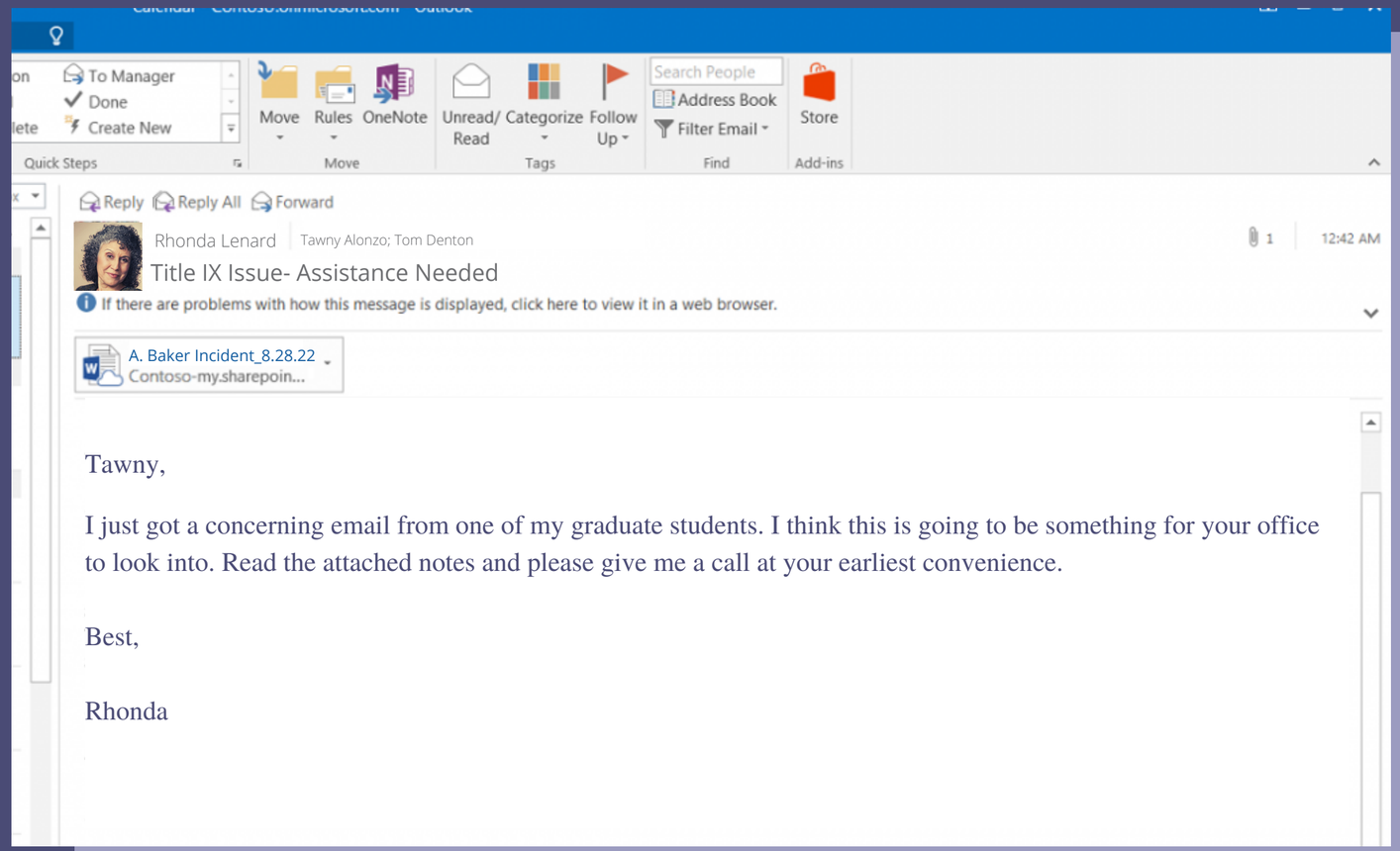


TOM DENTON
Lead Title IX Investigator



YOU
Title IX Investigator

Initial Report



- Title IX Coordinator Tawny Alonzo received report from faculty member Dr. Rhonda Lenard on August 28, 2022
- Upon contacting Dr. Lenard, Tawny learned more about Angela's allegation of sexual assault
- Tawny immediately reached out to Angela for a meeting to discuss the incident and supportive measures



Complainant



Respondent

Formal Complaint

- Submitted to Title IX Coordinator on August 30, 2022, signed by Angela Baker
- Alleged sexual assault on the evening of August 26, 2022 at a marketing graduate program function
- Named Jack Reynolds as the alleged perpetrator of the conduct



August 30, 2022

To the Sample University Title IX Coordinator,

On the night of August 26th, a Friday, my Marketing cohort was officially welcomed with a dinner reception in our honor. The members of the cohort and the program faculty were invited to attend the event which was held in a banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two business school faculty members, one of which was Dr. Lenard, and three other students, one of which was Jack Reynolds. I thought dinner and the reception were pleasant and conversation seemed pretty normal. However, there was an open bar provided, with wine and beer, and I noticed Jack Reynolds drinking quite a bit. I noticed him getting louder and more talkative with each drink he consumed. I saw him drink four beers, but I don't know if he had more than that because I was not around him until we were seated. I don't drink, so I didn't visit the open bar.

When the reception was over, one of the faculty members, Dr. Lenard, asked if she could have some help taking two boxes of table decorations back to the Marketing Department program office, located in the same building. I wanted to be helpful, so I volunteered to take a box back. Jack immediately jumped in saying he would join me. I was somewhat annoyed because he was clearly intoxicated and had been looking at me all night.

Dr. Lenard informed us that the program office was unlocked and that we could place the boxes behind the main reception desk. Dr. Lenard said she would lock up later when she gathered her personal belongings from her office. We walked down the hall to the Marketing program office and went inside where it was extremely dark. We put the boxes behind the reception desk as Dr. Lenard instructed us to do. I immediately made my way to the door so I could go to my car and go home. Jack ran to the door and pushed it closed, pinning me between himself and the door. I was terrified. He told me we should "take advantage of the privacy" and he started telling me how attractive he thought I was. I froze and couldn't say anything or even move. Jack pushed himself on me forcefully and began kissing my neck. He started pulling my dress up and he put his hand inside of my underwear. I found my voice and told him no, loudly, but he continued to touch me while kissing my neck. He didn't put his fingers inside of me, but he touched me for what felt like was a minute. I began to cry and was able to force myself to grab his wrist, pulling it from under my dress. He said something like, "You'll enjoy it if you just let it happen" and told me we should continue. As he started to unbuckle his belt, I pushed him away and ran out the door.

As I was running down the hall, I passed Dr. Lenard, who I think saw me crying. I couldn't stop because I was so afraid he would come after me. I missed classes on Monday because I did not want to see Jack. One of the classes was Dr. Lenard's. I told her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just told her everything.

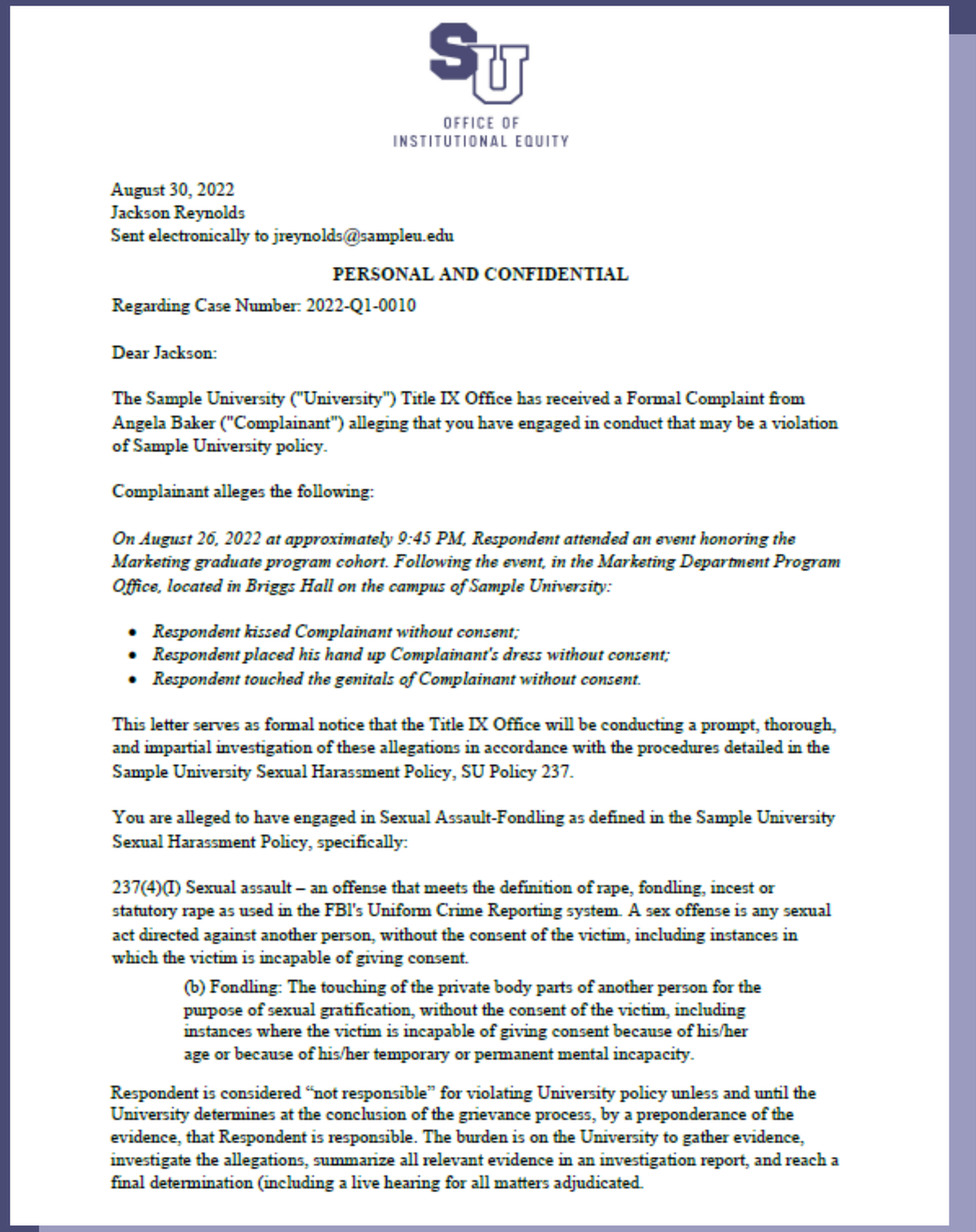
I would like to file a formal complaint with the Sample University Title IX Coordinator against Jack Reynolds. I feel unsafe and scared.

Signed,

Angela Baker

Notice of Allegations

- Lists Angela Baker as Complainant, Jack Reynolds as Respondent
- Sample University Sexual Harassment Policy (SU Policy 237) is listed, with the offense of Sexual Assault-Fondling listed as the potential policy violation
- Request for the Parties to interview is included in each of their Notices



OFFICE OF
INSTITUTIONAL EQUITY

August 30, 2022
Jackson Reynolds
Sent electronically to jreynolds@sampleu.edu

PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2022-Q1-0010

Dear Jackson:

The Sample University ("University") Title IX Office has received a Formal Complaint from Angela Baker ("Complainant") alleging that you have engaged in conduct that may be a violation of Sample University policy.

Complainant alleges the following:

On August 26, 2022 at approximately 9:45 PM, Respondent attended an event honoring the Marketing graduate program cohort. Following the event, in the Marketing Department Program Office, located in Briggs Hall on the campus of Sample University:

- *Respondent kissed Complainant without consent;*
- *Respondent placed his hand up Complainant's dress without consent;*
- *Respondent touched the genitals of Complainant without consent.*

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample University Sexual Harassment Policy, SU Policy 237.

You are alleged to have engaged in Sexual Assault-Fondling as defined in the Sample University Sexual Harassment Policy, specifically:

237(4)(I) Sexual assault – an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances in which the victim is incapable of giving consent.

(b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, 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 incapacity.

Respondent is considered "not responsible" for violating University policy unless and until the University determines at the conclusion of the grievance process, by a preponderance of the evidence, that Respondent is responsible. The burden is on the University to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, and reach a final determination (including a live hearing for all matters adjudicated.

Sample University Sexual Harassment Policy (SU 237)

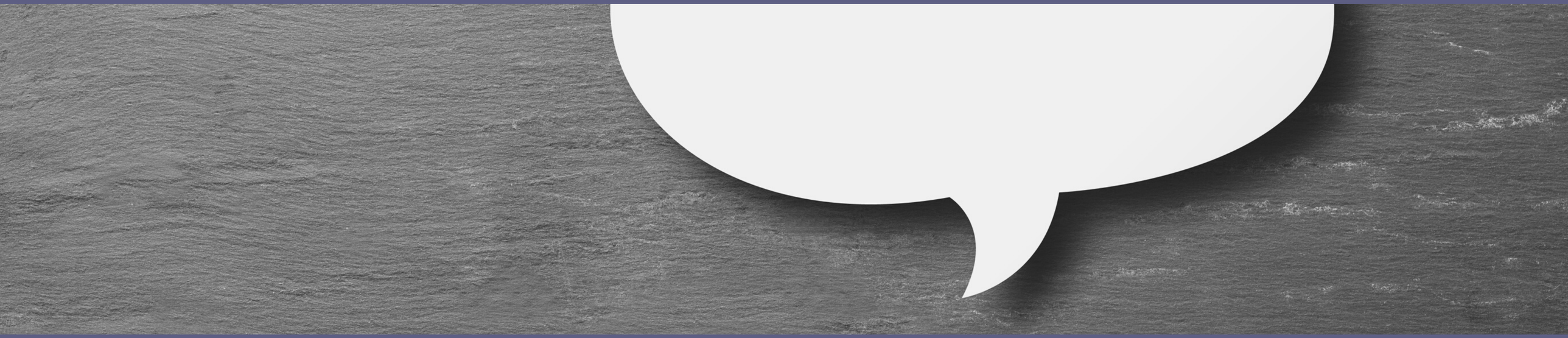
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(b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Today is August 31, 2022.

It is now time to interview the Complainant.

Scenario Introduction



Preamble



- Thanks the Party for participating
- Recognizes the Party's current state of being
- Checks for receipt of notice and preparation
- Acknowledges presence of an Advisor
- Solicits questions regarding the process and seeks clarification needed
- Establishes the record and consent to record

Building Rapport and Trust



- Provides opportunity for human connection
- Allows for the chance to ease into the tougher topics
- Asks questions about family, hobbies, areas of study, etc.

Seeking the Narrative



- Allows the Party to discuss the details of the incident in her own order, own words
- Gives the Party the uninterrupted opportunity to discuss the points she felt were important
- Provides a framework off of which to build clarifying questions
    - What do we want to know more about?

Clarifying Questions



- Seeks to understand more about things such as:
  - Relationship to Respondent
  - Positionality/logistics
  - Sequencing
  - Conversations

Providing Rationale for Questions



- Needs to understand what the party was wearing
- Explains the reason for asking the question
- Softens Complainant's response by informing her of the need for such a question

Gathering Information to Support Answers

- Asks questions to clarify things such as:
  - Consent
    - Information that would prove consent was not given
  - Elements of the offense
    - Remember sexual assault - fondling
      - "The touching of the private body parts of another person for the purpose of sexual gratification..."
      - "...without the consent of the victim"

Interview Summary



What did we learn?

- Interviews go quickly!
- There is no one "right" way to conduct an interview...with two very important exceptions
  - Remain grounded in empathy and respect towards the party
  - Stay in compliance with Title IX Regulations
- Conducting an investigative interview is a skill
  - Develop your own style
  - Practice!
  - Allow scripts and the foundations of interviewing to be your guide

Blueprint for Scripting

- What information do you already know?
  - Initial report
  - Formal complaint
  - Initial meetings prior to the first interview
  - Interviews with other parties
- Attempt to answer the following questions:

WHO
Complainant(s)
Respondent(s)
Witness(es)

WHAT
Alleged conduct

WHEN
Timeline of events

WHERE
Locations

HOW
Logistics of commission of alleged policy violation

You're going to be great!

