

Annual Training for New Title IX Coordinators and Deputy Coordinators

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Agenda

1. The Legal Landscape
2. Providing Services to Victims/Survivors
3. Title IX Coordinator & Team
4. Responding to a Report
5. Grievance Process: Investigations & Adjudications
6. Creating a Culture of Understanding & Prevention

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Terminology


- ED = Department of Education
- Recipient = Institutions Covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decisionmaker
- Complainant/Reporting Party/Accuser/Victim/Survivor
- Respondent/Responding Party/Accused/Alleged Perpetrator

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Terminology

- Complainant
 - An individual who is alleged to have been subjected to conduct that could constitute sex discrimination
- Respondent
 - An individual who is alleged to have violated the institution's prohibition on sex discrimination



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Sexual Violence Statistics


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Sexual Violence Statistics

United Educators' Study

- 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
- Types of sexual assault:
 - Incapacitation: 33%
 - Physical force: 29%
 - Failed consent: 16%
 - Sexual coercion: 13%
 - Drug-facilitated: 7%




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Sexual Violence Statistics


- 78% of incidents involved one or both parties consuming alcohol
- 40% of complainants delayed reporting, waiting, on average, nearly a year after the incident
- 80% of complainants were freshmen or sophomores
- 90% of complainants knew the respondent



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Legal Overview





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Title IX

"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 educational program or activity receiving Federal financial assistance"

20 U.S.C. § 1681







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Who Must Comply With Title IX?

- Institutions that receive federal funds
 - Students
 - Employees
 - Third Parties
 - Visitors
 - Vendors








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When an Institution Must Respond

- Institution with knowledge of conduct that reasonably may constitute sex discrimination
- In its education program or activity
- In the United States






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Conduct Occurring in Education Program or Activity 


- Sex discrimination occurring under education program or activity in the United States
 - Occurs in education program/activity if :
 - Building owned/controlled by student organization
 - Under institution's disciplinary authority
 - In the United States
 - Title IX does not apply extraterritorially, but...
- Obligation to respond even when some conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the United States

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Sex Discrimination 


- Includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity
- Non-harassment sex discrimination
 - Differential treatment
 - Failure to provide reasonable modifications to student for pregnancy and related conditions
 - Retaliation
- Sex-based harassment
 - Quid pro quo harassment
 - Hostile environment harassment
 - Specific offenses (sexual assault, dating violence, domestic violence, stalking)


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How an Institution Must Respond 

- When notified of conduct that reasonably may constitute sex discrimination, Title IX Coordinator must take action to promptly and effectively:
 - End any sex discrimination in institution's program or activity,
 - Prevent its recurrence, and
 - Remedy its effects



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The Legal Landscape

- All schools receiving federal funds must:
 - Publish Notice of Nondiscrimination
 - Designate a Title IX Coordinator
 - Disseminate policy prohibiting sex discrimination
 - Adopt and publish fair and equitable grievance procedures
 - Offer supportive measures to a complainant and respondent
 - Follow a legally compliant grievance process
 - Train individuals with heightened responsibilities
 - Train students and employees







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OCR's Enforcement and Guidance

- OCR's Role:
 - Issue guidance
 - Compliance reviews
 - Resolution agreements




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Clery Act

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection

- Fine for each Clery Act violation is \$69,733






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Crime Reporting Under Clery

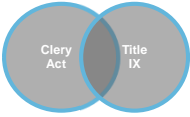
- Collect, classify, and count crime reports
 - Annual notification
 - Current and prospective students/employees
- Campus alerts
 - Emergency notifications
 - Ongoing threat to health or safety
 - Sufficient information for informed decisions
 - Timely notification of Clery crimes
 - Includes stalking, domestic violence, dating violence, sexual assault
 - Cannot identify complainant
- Daily crime logs
 - Updated every 2 days
 - Publicly available



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Interaction Between Title IX & Clery



- Clery is about the reporting of crimes (broader than sexual misconduct), regardless of investigation
- Title IX is about the investigation of reports of sex discrimination, including sexual assault and VAWA crimes

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Violence Against Women Reauthorization Act (VAWA)


- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual assault and VAWA crimes
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX

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VAWA Regulations

- Requires policy addressing:
 - Procedures complainants should follow
 - Disciplinary procedures
 - Confidentiality
 - Notifications to students, employees, and complainants
 - Right to advisor of choice (including attorney)
 - Right to have notice of meetings with parties
 - Right to have access to information used in formal/informal disciplinary meetings
 - Rationale must be included in Notice of Determination
 - Training for individuals with heightened responsibilities
 - Training for students and employees



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Interaction Between Title IX & VAWA

- Title IX
 - Sex discrimination (including sexual assault and VAWA crimes)
 - In an education program or activity
 - Against a person in the United States
- VAWA
 - Allegations of sexual assault, domestic violence, dating violence, or stalking
 - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)

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Relationship Between Parties and Institution

- Education program or activity
 - Includes conduct subject to the institution's disciplinary authority
- Complainant
 - Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or
 - Person other than student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the institution's education program or activity at the time of the alleged conduct
- Permissive dismissal
 - May dismiss if respondent is not participating in the institution's education program or activity and is not employed by the institution

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Relationship Between Parties and Institution

Complainant
Third Party

Respondent
Member of Community

- Title IX (if within scope of Title IX)
 - Provide supportive measures
 - Most likely required to comply with Title IX grievance process
- VAWA (if allegation of sexual assault or VAWA crime)
 - No requirement to provide written explanation of rights and options (but still recommended)
 - Disciplinary process that complies with VAWA

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Relationship Between Parties and Institution

Complainant
Member of Community

Respondent
Third Party

- Title IX (if within scope of Title IX)
 - Provide supportive measures
 - Generally not required to comply with Title IX grievance process
- VAWA (if allegation of sexual assault or VAWA crime)
 - Provide a written explanation of student or employee's rights and options
 - Could take action (no trespass) without disciplinary process
 - If engaging in a disciplinary process, comply with VAWA requirements

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Non-Title IX and Non-VAWA Cases

- Flexibility to determine whether and how to respond to alleged conduct
- Factors to consider
 - State law
 - Expectations of community
 - Due process considerations (public institutions)
- Given expanded scope, less cases will fall outside of Title IX

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Title IX Updates

- 2020 regulations effective August 14, 2020
- New regulations effective August 1, 2024
 - Injunctions in place in:
 - Statewide: Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming, and
 - Institution Specific : any institution attended by members of Young America's Foundation and Female Athletes United, and children of members of Moms for Liberty (impacts nearly 700 institutions)

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Title IX Updates

- When 2024 Title IX regulations go into effect:
 - For conduct that is alleged to have occurred *before* August 1, 2024 = apply 2020 regulations
 - For conduct that is alleged to have occurred *on or after* August 1, 2024 = apply 2024 regulations

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Title IX Updates

Which regulations apply?

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    graph TD
      A[Institution covered by injunction] --> B[Apply 2020 regulations]
      C[No injunction] --> D[Conduct alleged to have occurred before August 1, 2024]
      C --> E[Conduct alleged to have occurred on or after August 1, 2024]
      D --> F[Apply 2020 regulations]
      E --> G[Apply 2024 regulations]
  
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VAWA Reauthorized

- Reauthorized in March 2022 (effective October 1, 2022)
- Revised domestic violence definition (above)
- Online survey tool for campus safety
- Task Force on sexual violence in education
 - Includes assessing ED's ability to levy fines for Title IX noncompliance
- Special Grants for Prevention Programs

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Defining Sex Discrimination

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Title IX—Sex Discrimination

- Includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity

<p>Non-harassment sex discrimination</p> <ul style="list-style-type: none"> • Differential treatment • Failure to provide reasonable modifications to a student for pregnancy and related conditions • Retaliation 	<p>Sex-based harassment</p> <ul style="list-style-type: none"> • Quid pro quo harassment • Hostile environment harassment • Sexual assault • VAWA crimes
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Differential Treatment

- Conduct on the basis of sex that excludes an individual from participation, denies the individual the benefits of, treats the individual less favorably, or otherwise adversely affects a term or condition of an individual's employment, education, living environment, or participation in a program or activity
- Examples:
 - Giving prohibited consideration to an individual's sex in deciding whether to offer an applicant a job interview or an employee a promotion;
 - Requiring that members of a particular sex meet higher standards for advancement or promotion;
 - Denying a student the opportunity to participate in an educational activity because of his or her sex

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Permissible Sex Separation or Differentiation

- Schools can separate and differentiate based on sex for restrooms, locker rooms, access to classes and activities, and appearance codes
- But cannot prevent a person from participating consistent with the person's gender identity

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Permissible Sex Separation or Differentiation

- In the following contexts, schools can prevent a person from participating in a program or activity consistent with the person's gender identity:
 - Male and female athletic teams
 - Sex-separate living facilities
- Other exceptions: religious exemption, military and merchant marine educational institutions, fraternities and sororities, YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, voluntary youth service organizations

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Reasonable Modifications for Student's Pregnancy and Related Conditions

- Institution must make reasonable modifications to institution policies, practices, or procedures for a student's pregnancy or related condition as necessary to prevent Sex Discrimination and ensure equal access to the institution's education program or activity
 - Reasonable modifications are based on a student's individualized needs
 - Modifications that would fundamentally alter the nature of the education program or activity are not reasonable
- Failure to make reasonable modifications is a form of sex discrimination

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Retaliation

- Intimidation, threats, coercion, or discrimination against any person
- By institution, a student, or an employee or other person authorized by institution to provide aid, benefit, or service under education program or activity
- Covers only those actions taken for:
 - The purpose of interfering with Title IX rights, or
 - Because the person participated in the Title IX process

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Retaliation

- A school cannot discipline someone for false statements or consensual sexual conduct if based solely on determination whether sex discrimination occurred
- A school can continue to enforce its code of conduct unless it has a retaliatory motive
 - Schools are not required to adopt amnesty policies under federal law
- Cross-complaint is not retaliation as long as there is another reason for the cross-complaint that is not pretext for sex-based retaliation

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Mandatory Participation


- Schools can require an employee or other person authorized to provide aid, benefit, or service under the program or activity to participate as a witness in, or assist with an investigation, proceeding, or hearing
- Employees may decline to make a complaint under Title IX and may not be penalized for that decision
 - But if Title IX Coordinator determines risk of additional acts occurring and initiates a complaint, the school may require the employee to testify as a witness

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Quid Pro Quo Harassment

- An employee, agent, or other person authorized by the institution to provide an aid, benefit, or service under the institution's education program or activity
 - "Other person" could include a student
- Explicitly or impliedly conditions the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct
 - Applies to all aspects of education program or activity, including extracurricular



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Hostile Environment Sex-Based Harassment

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

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Hostile Environment Sex-Based Harassment

- Factors for determining whether hostile environment
 - Effect on complainant's ability to access education program or activity
 - Type, frequency, and duration of the conduct
 - Parties' ages, roles, previous interactions, and other factors about each party relevant to evaluating effects of conduct
 - Location of conduct and context in which conduct occurred
 - Other sex-based harassment in education program or activity

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Hostile Environment Harassment


- Examples: The following conduct may constitute hostile environment sexual harassment
 - Unwelcome sexual flirtations, advances, or propositions
 - Requests for sexual favors
 - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
 - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
 - Visual conduct such as leering or making gestures
 - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual

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Hostile Environment Harassment

- Examples: The following conduct may constitute hostile environment sexual harassment
 - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
 - Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
 - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
 - Videotaping or taking photographs of a sexual nature without consent



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Sexual Assault

- **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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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, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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Consent


- No particular definition of consent with respect to sexual assault is required

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Domestic Violence

- A felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim under the domestic or family violence laws of the jurisdiction



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Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
 - Where the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of—
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the person involved in the relationship

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Dating Violence (cont.)


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

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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



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Stalking (cont.)

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

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Stalking (cont.)

- Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim
- Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

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Title IX—Sex-Based Harassment

- Male/Female
- Female/Male
- Female/Female
- Male/Male

- Gender Identity







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Case Studies

Spotting the Issues







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Case Study

- What policy definition is implicated by each of the below allegations?
 - A student alleges that his girlfriend hit him after an argument
 - An employee alleges they did not receive a promotion because of their sex
 - A student on the institution's swim team alleges that the captain of the swim team has been assigning her undesirable team duties since she reported an incident involving the captain's friend to the Title IX Coordinator

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Case Study

- What policy definition is implicated by each of the below allegations?
 - A student alleges that a classmate has been sending him frequent unwanted emails and social media messages and has started showing up outside of his classes to try to talk to him in person
 - A student alleges that another student grabbed her breast during a school dance

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Interaction with Other Laws


- FERPA: Family Educational Rights and Privacy Act
 - Limits disclosure of student education records
 - Several exceptions permit disclosure to both parties
 - All relevant and not otherwise impermissible evidence
 - Determination
 - Different level of detail depending on sex-based harassment or non sex-based harassment
 - Caution! If action or process that results in disclosure of student education records is not required by the law, Title IX's FERPA exception does not apply

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Interaction with Other Laws

- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
 - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
 - Must report if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department



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Interaction with Other Laws

- Title VII/State anti-discrimination laws
- State student safety laws



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Interaction with Other Laws


- Accommodations
 - Provide reasonable accommodations to an individual with a disability who requests an accommodation necessary to ensure an equal opportunity to participate in the complaint resolution process.

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Risks of Non-Compliance

- OCR enforcement
- Clery Act enforcement
- Lawsuits
 - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



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Q & A




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Providing Services to Victim/Survivors



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Aurora Center Services

- Our mission:
To serve all victims/survivors/concerned people of sexual assault, relationship violence, sexual harassment, and stalking at the University of Minnesota and Augsburg University.
- Program Areas:
 - Get help (advocacy & support services)
 - Get educated (prevention education workshops)
 - Get involved (volunteer opportunities)



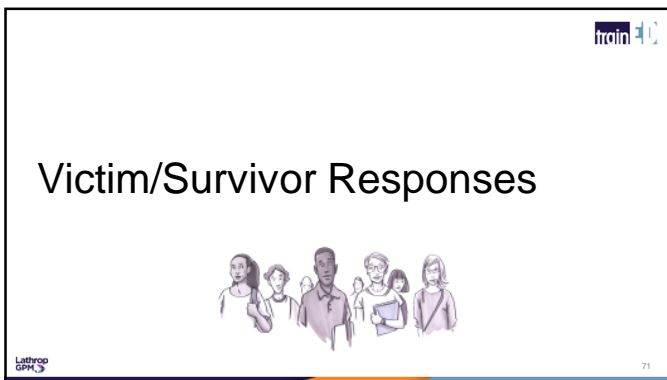
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- ### Responses
- Victim reactions vary widely
 - Flight, Fight, Freeze, Fawn
 - Many return to the “normal”
 - Continued contact with assailant is common
 - Layman et al., 1996: 32% of rape victims said they continued their relationship with the perp and 25% **continued to have sex** with them, particularly if they did not acknowledge experience as rape (even though it met legal definition)
 - Edwards et al., 2012: 75% of victim–perpetrator relationships continued following the sexual assault
 - Consistent with previous research (Katz et al., 2006)

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Feelings, Symptoms and Reactions

Physical symptoms Disbelief/denial Apparent calm & control or "hysterical" Grief & loss

Embarrassment Anger Remembering or repressing what happened Difficulty with decision-making

Fear & vulnerability Concern for the perpetrator Guilt, shame, & self-blame

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Dimensions of Trauma

Shock

Denial

Reactivation (life falls apart)

Anger

Integration

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Responding to Disclosures

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Negative Reactions

- Many victims received at least one negative reaction from an informal support person
- Strong predictor of poor psychological outcomes
- Dissuades victim from seeking support or reporting
- Can include:

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Supportive Reactions

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HOW DO I RESPOND TO DISCLOSURES?

The Aurora Center

- **ASK PERMISSION**
 - "May I ask you more about...?"
 - Get more info— "Tell me more about..."
- **LISTEN**
 - "Believe" and "Listen" have the same exact letters
 - Prior: Face=attentive, supportive nonverbal=No horror faces
- **UNDERSTAND**
 - What are they saying, feeling, wanting?
 - Be present. Believe. Be non-judgmental.
- **VALIDATE**
 - Reiterate what was said, what they've been through. Clarify if need be.
 - Validate feelings—"Your feelings/reactions are normal for an abnormal situation"
- **PROMOTE SAFETY**
 - "Are you in immediate danger?" If so, you can call the police to help.
- **LISTEN, CALM, CONNECT**
 - "You aren't alone." "It's not your fault."
 - "Help is available."
- **OFFER SUPPORT/RESOURCES**
 - "Do you have friends or family to talk to or to support you as well?"
 - Refer to The Aurora Center, UCCS or Boynton.
- **THANK YOUR SUPPORTER**
 - "Thank you for trusting me!"
 - "I believe you." "You can heal from this."

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Why Don't They Report?

- Serious enough to report?
- Was harm intended?
- Lack of proof
- Guilt, shame, self-blame, embarrassment
- Confidentiality
- Fears of:
 - Being blamed, not believed
 - Loss of friends/support
 - Parent response
 - Ruining perpetrator's life
 - Retaliation



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2019 UMN Twin Cities AAU Campus Climate Survey on Sexual Assault & Sexual Misconduct

Penetration or Sexual Touching Involving Physical Force or Inability to Consent or Stop What Was Happening

73.7%
Did not contact a program or resource after being victimized

Percent
(participants could select multiple options)

Top reasons for not contacting a program	Percent
I could handle it myself	56.5
I did not think it was serious enough to contact programs or resources	50
I felt embarrassed, ashamed, or that it would be too emotionally difficult	44.4
I did not want the person to get into trouble	22.5
I did not think anyone would believe me	16.5

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Victim Support Services



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STRESS vs **TRAUMA**

STRESS
 Response to a situation that causes bodily or mental tension
 Causes difficulty in concentrating
 Usually short-term

TRAUMA
 Direct exposure to actual or threatened harm; immediate safety or life is threatened
 An emotional response to a terrible event like an accident, rape or natural disaster
 Longer term effects can include PTSD, depression, anxiety, panic attacks, flashbacks, nightmares, strained relationships and even physical symptoms like headaches, nausea, GI issues

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Policies Help Encourage Reporting

- Training & education
- Written policy protocols
- Connect victims with community based advocacy resources
- Services & accommodations for victims
- Coordination between campus and community

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Prevention Program: Primary Prevention & Risk Reduction

How to practice consent & not perpetrate

How to be an active bystander

How to reduce risk


Violence is never the fault of the victim
 • Empowerment

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MOU & SMARTeams

- Formation of partnerships between the school and community
- Coordinated response among:
 - Medical
 - Legal
 - Advocacy
 - Law Enforcement
 - Prosecution
 - Psychological support




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Resources During Title IX Processes

- Advocate accompaniment throughout process
- Designated advisor with appropriate background
- Training for Decision-Makers
- Title IX vs sexual misconduct policy
- New Title IX regs:
 - On camera
 - Caution when submitting medical records
 - Employee vs student hearings
 - Sanctioning Guidelines



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How Your Title IX Office & Advocacy Can Work Together

- Title IX make referrals to confidential advocate
- Title IX consult advocacy office on policy & language
- Collaborate on helpful handouts & campus training
- Ongoing trainings on best practices and trauma-informed care
- Annual meetings to communicate trends & issues
- Discuss roles & communication styles
- Informal, non-disciplinary options:
 - Informal Resolution
 - Voluntary Agreement
 - Restorative Justice

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Q & A





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Title IX Coordinator & Team




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Session Overview

- Identifying the Title IX Coordinator & Team
- Making the Team known on Campus
- Title IX Coordinator Responsibilities
 - Policies
 - Training the team
 - Promptly respond to all reports
 - Oversee the grievance process
 - Identifying patterns or problems
 - Additional responsibilities



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Title IX Coordinator – Who?

- Position may not be left vacant
- Employee must be referred to as the Title IX Coordinator
- Should be independent
- Should report to senior leadership (president?)
- Must have adequate training
- May not have a conflict of interest
 - Not an in-house attorney
 - Not a member of the disciplinary board
 - Not Director of Athletics
 - Not Dean of Students?
 - Others?

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The Team

- Title IX Coordinator
- Deputy Coordinator(s)
- Investigators
- Decisionmakers/hearing officers
- Appeal officers
- Campus Security
- Student Affairs
- Human Resources
- Counseling/support service providers
- Community partners
- Others

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Making Team Known on Campus

- Title IX Coordinator Contact Information (Name or title, phone number, office address, email address):
 - Provide to students, employees, applicants for admission and employment, and all unions
 - Put in trainings for students and employees, in communications to the campus, on social media (if used)
 - Must be prominently displayed on website, in handbooks, in catalogs



Lathrop GPM 93

93

Making Team Known on Campus

Notice of Nondiscrimination




- Must be widely distributed and easily accessible to: students, employees, applicants for admission and employment, sources of referral of applicants for admission and employment, unions or professional organizations
- Must be prominently displayed on website, in handbooks, catalogs, electronic and printed publications for general distribution, locations throughout the school, bulletins, announcements, application forms, recruitment materials
- If more than one Title IX Coordinator, Notice of Nondiscrimination and grievance procedures should designate one coordinator as having ultimate oversight responsibility and have titles reflect rank

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Making Team Known on Campus



- Ensure that employees know to report to you
- Key relationships with other offices/individuals on and off campus
- Be available to meet with students

95

Responsibilities

- Create and implement policies
- Ensure training requirements are met
- Monitor and address barriers to reporting
- Promptly respond to all reports
- Oversee the grievance process
- Identify and address any patterns or systemic problems
- Recordkeeping
- Additional responsibilities

96

Creating & Implementing Policies

- Create, implement, and disseminate policies and procedures for responding to, investigating, and adjudicating reports and complaints of sex discrimination
- Review school's procedures to ensure they comply with the prompt and equitable requirements of Title IX and VAWA
- Ensure that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers

Lathrop GPM 97

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Title IX Training Requirements

- Who
 - All employees
 - Investigators
 - Decisionmakers
 - Persons responsible for implementing grievance procedures
 - Persons with authority to modify or terminate supportive measures
 - Facilitators of informal resolution process
 - Title IX Coordinator and designees
- Requirements for all trainings
 - At hire or change of position, **annually** thereafter
 - Must not rely on sex stereotypes

Lathrop GPM 98

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Title IX Training—All Employees

- Required content for all employees:
 - Institution's obligation to address sex discrimination in education program/activity
 - Scope of conduct that constitutes sex discrimination under Title IX, including the definition of sex-based harassment
 - Employee notification requirements (discrimination and pregnancy)

Lathrop GPM 99

99

Title IX Training—Employees with Heightened Responsibility in Grievance Process

- Investigators, decisionmakers, persons responsible for implementing grievance procedures, persons with authority to modify or terminate supportive measures
- Required Content:
 - Institution's obligations to respond to sex discrimination
 - Institution's grievance procedures
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
 - Meaning and application of the term "relevant" and types of impermissible evidence

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100

Title IX Training—Facilitators of Informal Resolution Process

- Required content
 - Rules and practices associated with the institution's informal resolution process
 - How to serve impartially, including by avoiding conflicts of interest and bias

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101

Title IX Training—Title IX Coordinator and Designee

- Required content
 - Specific responsibilities to coordinate institution's compliance with Title IX
 - Rights and reasonable modifications applicable to pregnancy and related conditions
 - Responding to reports/complaints
 - Supportive measures
 - Recordkeeping
 - Any other trainings necessary to coordinate compliance with Title IX
- Must also receive all other trainings

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102

VAWA Training Requirements

- Persons with heightened responsibility in process (Title IX Coordinator, investigator, decisionmaker, etc.)
 - Annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability
- Incoming students and new employees
 - Primary prevention and awareness program on required topics
- Ongoing prevention and awareness campaigns available for all students and employees

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103

Barriers to Reporting

- Title IX Coordinator must monitor education program or activity for barriers to reporting
 - Includes barriers for students with disabilities, individuals with limited English proficiency, and other populations
 - Other barriers: inaccessible complaint reporting processes, confusing grievance procedures, difficult-to-reach Title IX Coordinators or staff, poorly managed grievance procedures
 - No particular mandated steps for monitoring
- Take steps reasonably calculated to address identified barriers

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Responding to Reports


- Contact complainant to set up initial meeting
- Offer and coordinate supportive measures
- Notify complainant of grievance procedures and informal resolution process (if available and appropriate)
- Notify complainant of right to report to law enforcement and offer help with report (VAWA)
- If complainant does not move forward with complaint, determine whether Title IX Coordinator will initiate a complaint
- More to come later in training

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105

Title IX Coordinator Role During Grievance Procedure 


- Determine which process applies
- Oversee process to ensure compliance with policy and designated time frames
- Ensure advisor agreements are signed (if any)
- Ongoing check-ins with the parties
 - Supportive measures
 - Notice of delays?
 - Notice of meetings?
- Stay in touch with investigator to discuss case
- Ensure parties receive adequate notice of any new allegations
- Ensure non-disclosure agreements are signed by parties and advisors (if any)

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Title IX Coordinator Role During Grievance Procedure (cont.) 


- Review working drafts of investigation report
- Review relevant and not otherwise impermissible evidence before it is provided to the parties
- Review party responses to evidence and report
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Review notice of determination before finalized
- Review appeal to determine whether permissible ground is stated?
- Review appeal decision before finalized
- More to come later in training

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Dual Roles within Team 


- Title IX Coordinator may act as investigator or decisionmaker
- May not decide appeal if involved in investigation or dismissal decision
- Recommendation: Keep Title IX Coordinator role separate from other roles in the process

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Serving Impartially

- Avoid prejudgment of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account




Lathrop GPM 109

109

Serving Impartially

- Set boundaries
 - Make neutral role clear up front
 - Not counseling or advocacy services
 - Know how to respond when coming close to line
 - Point to resources on campus
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members



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110

Identifying Patterns/Problems


- Oversee creation and implementation of culture and climate review
- Review data from surveys and make appropriate changes to policies, procedures, and practices
- Review recent complaints for issues with policies/practices and lessons learned
- Consider community-wide remedies in addition to responses to individual complaints


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111

Recordkeeping

- Title IX – for 7 years, must maintain:
 - Grievance procedure records
 - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process
 - Any actions taken (including supportive measures) in response to a report of sex discrimination




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Recordkeeping

- Make training materials available upon request
- No recordkeeping requirements related to pregnancy requirements
 - Unless information regarding sex discrimination


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113

Additional Responsibilities

Areas of responsibility beyond sexual harassment:



- Recruitment, admissions, and counseling
- Financial assistance
- Athletics
 - Student interests and abilities
 - Athletic benefits and opportunities
 - Athletic financial assistance
- Pregnant and parenting students
- Discipline
- Employment

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Pregnancy or Related Conditions

- Once Title IX Coordinator has notice of a student's pregnancy or related condition, Title IX Coordinator must:
 - Inform student of institution's obligations toward them and provide them notice of nondiscrimination
 - Make reasonable modifications for students to policies, practices, or procedures
 - Allow voluntary leave of absence or alternative program (if available)
 - Ensure student has access to lactation space
- Must treat same as other temporary medical conditions







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Pregnancy or Related Conditions

- Definition:
 - Pregnancy, childbirth, termination of pregnancy, or lactation;
 - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions








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Pregnancy or Related Conditions

- Reasonable modifications for student may include, but are not limited to:
 - Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions (eating, drinking, using restroom)
 - Intermittent absences to attend medical appointments
 - Access to online or homebound education
 - Changes in schedule or course sequence
 - Extensions of time for coursework and rescheduling of tests and examinations
 - Allowing a student to sit or stand, or carry or keep water nearby
 - Counseling
 - Changes in physical space or supplies (larger desk, footrest)
 - Elevator access
 - Other changes to policies, practices, or procedures






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Practical Tips for Providing Reasonable Modifications 


- Possible steps in the interactive process
 - Request from student (to Title IX Coordinator directly or through faculty)
 - Discuss with faculty
 - Back and forth with faculty, as needed
 - Gather needed information
 - Update student while checking on request
- Analysis of whether the modification would fundamentally alter the education program or activity
 - Looping in legal counsel
 - Getting higher levels of administration involved as needed
- If request denied, offer alternative

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Practical Tips for Providing Reasonable Modifications (cont.) 


- Don't accept "no" from faculty on face value
- Beware of paternalistic responses from faculty/institution
- Have the right people involved
- Stay flexible
- Sometimes the answer is "no"

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Changes to Documentation Requirements 

- Institution cannot require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the institution's class, program, or extracurricular activity unless:
 - The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
 - The institution requires such certification of **all** students participating in the class, program, or extracurricular activity; **and**
 - The information obtained is not used as a basis for discrimination

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120

Changes to Documentation Requirements


- Institution may not require supporting documentation unless it is necessary and reasonable
- **Not** necessary and reasonable if:
 - Obvious
 - Need for bigger uniform; carry or keep water nearby and drink; use a bigger desk; sit or stand; or take breaks to eat, drink, or use the restroom
 - Student previously provided sufficient documentation
 - Modification is due to lactation needs
 - Modification is available to students for reasons other than pregnancy or related conditions without documentation

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121

Pregnancy or Related Conditions

- Employee notification requirement
 - When student informs **any employee** about the student's pregnancy or related conditions, employee must
 - Provide them with Title IX Coordinator's contact information; and
 - Inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure equal access
 - Exception: If employee reasonably believes Title IX Coordinator has been notified



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Pregnant Employees & Related Conditions


- Title IX requirements for employees regarding pregnancy or related condition:
 - Nondiscrimination
 - Lactation time and space
 - Comparable treatment to other temporary medical conditions
 - Voluntary leave of absence
- Other legal requirements
 - Pregnant Workers Fairness Act (reasonable accommodations)
 - PUMP Act (lactation time and space)
 - State employment laws
- Determine which offices will be involved and how
 - Title IX, HR, disability services

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Title IX Team

- Title IX Coordinator can delegate duties to others, but:
 - Avoid conflicts
 - Make roles and responsibilities clear



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Q & A



Lathrop GPM 3 trainED 125

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Responding to a Report




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Session Overview

- Responding to a Report
- Employee Reporting Obligations
- Confidential Employee Obligations
- Public Awareness Events
- Duties of Confidential Resources & Employees
- Supportive Measures
- Emergency Removal and Administrative Leave
- Written Notification of Rights
- Report vs. Complaint
- Responding to Requests for Confidentiality/No Action
- Case Studies



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When an Institution Must Respond


- Institution with knowledge of conduct that reasonably may constitute sex discrimination
- In its education program or activity
- In the United States



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128

Responding to a Report



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graph TD
    Report[Report] --> Confidential[Confidential Employee - Legally Privileged or Designated Confidential]
    Report --> Other[Other Employees]
    Report --> TitleIX[Title IX Coordinator]
    Other -.->|?| TitleIX
  
```

Lathrop GPM

129

Responding to a Report

- Types of report recipients:
 - Title IX Coordinator
 - Confidential Employees = Not required to report any information*
 - Professional and pastoral counselors
 - Others with state-law privilege
 - Employees designated as confidential, if any (semi-confidential employees)
 - Other Employees

*NOTE: These individuals may have other reporting requirements under Clery Act and/or state law

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Employee Reporting Obligations

- Category 1:
 - Any employee who has authority to institute corrective measures on behalf of the institution (excluding confidential employees)
 - Any employee who has responsibility for administrative leadership, teaching, or advising (excluding confidential employees)
- Category 2:
 - All other employees (excluding confidential employees)

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Employee Reporting Obligations

- When an employee has information about conduct that may reasonably constitute sex discrimination
 - Category 1 employees must notify Title IX Coordinator
 - Category 2 employees must either:
 - Notify Title IX Coordinator (*recommended approach*); or
 - Provide contact information of Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provided information
- Employees may move between category 1 and 2 if job duties change

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Employee Reporting Obligations

- Student-employees
 - Institution must determine and specify whether and under what circumstances a student-employee has reporting obligations
 - Factors to consider:
 - Whether primary relationship with institution is as student or employee
 - Context for how reportable information was learned
 - Other relevant factors

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133

Employee Reporting Obligations

- Obligation triggered by employee:
 - Witnessing conduct
 - Receiving a report of conduct
 - Receiving information from another source (applications, interviews, personal statements, academic paper, other)
- Knowledge of non-confidential employee is imputed to institution
- Employee reporting obligations do not apply if employee is personally subjected to sex discrimination

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Duties of Other Employees Who Are Required to Report


- If possible, before information revealed disclose:
 - Additional reporting requirement
 - Option to report to school and request confidentiality (school will consider but not guarantee)
 - Option for complainant to disclose to a confidential employee or other confidential resource
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)

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Definition of Confidential Employee

- An employee whose communications are privileged or confidential under federal or state law; and
- An employee designated by institution as confidential for the purposes of providing services to persons related to sex discrimination
 - Caution! Only confidential as to the institution
 - May be required to disclose in the event of a legal process later



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Confidential Employees

- Institution must notify all participants in program or activity how to contact confidential employees, if any
- Confidential employee must provide specific information to any person who informs employee of conduct that reasonably may constitute sex discrimination

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Confidential Employee Obligations

- Confidential employee must explain
 - Employee's status as confidential, including circumstances when employee is not required to notify Title IX Coordinator
 - How to contact Title IX Coordinator
 - How to make a complaint of sex discrimination
 - Title IX Coordinator may be able to offer and coordinate supportive measures
 - Title IX Coordinator may be able to initiate informal resolution process or an investigation under the grievance procedures
- Institution may require confidential employees to self attest that they provided the required info upon being informed of sex discrimination

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Public Awareness Events

- Public event to raise awareness about sex-based harassment held on campus or through an online platform sponsored by institution
 - May be organized by student or community group
 - May offer opportunity for individuals to share their experiences with sex-based harassment
 - E.g. Take Back the Night, Speak Out
- Reporting Obligations (Caution!)
 - Employees must report sex-based harassment disclosed at event to Title IX Coordinator
 - Employees must report other sex discrimination disclosed at event to Title IX Coordinator
 - Employees are not required to attend

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Public Awareness Events

- Title IX Coordinator Response Requirements
 - Sex-based harassment disclosed
 - Generally, not obligated to act in response to information shared at public awareness event
 - Must respond if information indicates an imminent and serious threat to the health of safety of a complainant, any students, employees, or other persons (same standard as emergency removal – should effectuate emergency removal if exception is met)
 - Must use information to inform efforts to prevent sex-based harassment
 - Must respond if required by Title VII or other legal obligations

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Public Awareness Events

- Title IX Coordinator Response Requirements
 - Other non-sex-based harassment disclosed (e.g. differential treatment, failure to provide accommodations for pregnant student, retaliation, race discrimination)
 - Must respond to sex discrimination disclosed at event
 - Must respond if required by Title VII or other legal obligations

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How an Institution Must Respond to Report

- Treat complainant and respondent equitably
- Offer and coordinate supportive measures
- Notify complainant of grievance procedures and informal resolution process (if available and appropriate)
- Notify complainant of right to report to law enforcement and offer help with report (VAWA)
- If complainant does not move forward with complaint, determine whether Title IX Coordinator will initiate a complaint

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Supportive Measures

- Must not unreasonably burden either party
- Must be designed to protect the safety of the parties or the educational environment or to provide support during grievance procedures
- May not be imposed for punitive or disciplinary reasons
 - Action is not punitive just because same action could be taken after finding of responsibility
- Available to complainant upon report; available to respondent when made aware (informal process or grievance procedure)

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Supportive Measures

- May modify or terminate supportive measures at the conclusion of the grievance procedures or informal resolution as appropriate
- Should not be coordinated by confidential employee
- Must keep confidential; only share to extent necessary

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Supportive Measures

- Examples
 - Mutual restrictions on contact between the parties
 - Change academic or extracurricular activities, living, transportation, dining, and working situations
 - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible

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Supportive Measures

- Parties have a right to request modification or reversal of decisions regarding supportive measures applicable to them
- An impartial employee not involved in underlying decision considers request; must have authority to modify or reverse the decision
- Applicable question: Was the decision regarding the supportive measure inconsistent with the definition of supportive measure?
- Must provide opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially

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Emergency Removal



- May remove a respondent from the education program or activity on an emergency basis if
 - Undertake individualized safety and risk analysis
 - Determine that an imminent and serious threat to health or safety justifies removal
 - Provide notice to respondent and immediate opportunity to challenge the decision after removal
- Partial removal permitted

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Administrative Leave

- Nothing precludes an institution from placing an employee respondent, including student-employees, on administrative leave from employment responsibilities during grievance process
- Administrative leave for student-employee would extend only to employment responsibilities; cannot impose sanctions before conclusion of process







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Responding to a Report

- Other obligations:
 - Notify campus security, if necessary
 - Clery report, if necessary








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Responding to a Report – Written Notification of Rights

- Written notification to complainants about—
 - Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations, if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement






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Responding to a Report – Written Notification of Rights

- Written notification to complainants about (cont.)—
 - Possible sanctions and protective measures
 - Procedures individual should follow
 - Disciplinary procedures
 - Confidentiality
 - Existing resources for counseling, etc.
 - Supportive/interim measures



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Responding to a Report – Written Notification of Rights

- Inform complainants that school officials will take steps to prevent all forms of retaliation and take strong responsive action if it occurs



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Responding to a Report



- Report vs. Complaint
 - Report
 - Initiates obligation to respond, including offering supportive measures
 - Complainant's identity may be kept confidential from respondent
 - Complaint
 - Initiates grievance process
 - Cannot be filed anonymously
 - Grievance process requires that complainant's identity be disclosed to respondent, if known

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Definition of “Complaint”

- An *oral or written request* to the institution that *objectively* can be understood as a request for the institution to investigate and make a determination about alleged discrimination

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Who Can Make A Complaint

Sex Discrimination
differential treatment, failure to modify/accommodate & retaliation



- Complainant
- Parent, guardian, or authorized legal representative with legal right to act on behalf of complainant
- Title IX Coordinator (limited circumstances)

Sex-Based Harassment

- Complainant
- Parent, guardian, or authorized legal representative with legal right to act on behalf of complainant
- Title IX Coordinator (limited circumstances)

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- Any student or employee
- Any person who was participating or attempting to participate in education program or activity at the time of the alleged discrimination



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Responding to a Report – Requests for Confidentiality or No Action


Recommended Approach:

- If a complainant asks that his/her name not be disclosed to alleged perpetrator or that no investigation or disciplinary action be pursued:
 - Inform the complainant that honoring the request may limit the school’s ability to respond fully to the incident, including pursuing disciplinary action against the respondent
 - Explain that Title IX includes protections against retaliation and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs





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Determining Whether Title IX Coordinator Will Initiate Complaint 


- Fact specific determination that must consider at least the following
 - Complainant's request not to proceed with initiation of a complaint
 - Complainant's reasonable safety concerns regarding initiation of a complaint
 - Risk that additional acts of sex discrimination would occur if a complaint is not initiated
 - Severity of alleged sex discrimination, including whether finding of responsible would require removal of respondent
 - Age and relationship of the parties, including whether the respondent is an employee

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Determining Whether Title IX Coordinator Will Initiate Complaint 


- Fact specific determination that must consider at least the following (cont.)
 - Scope of alleged sex discrimination
 - Availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred
 - Whether institution could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures

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Determining Whether Title IX Coordinator Will Initiate Complaint 


- Ultimate questions:
 - Does the conduct as alleged present an imminent and serious threat to the health or safety of complainant or other person?
 - If yes, may effectuate emergency removal and initiate grievance process
 - Does the conduct as alleged prevent the institution from ensuring equal access on the basis of sex to its education program or activity?
 - If yes, may initiate grievance process

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Determining Whether Title IX Coordinator Will Initiate Complaint 


- Should only initiate without complainant in very limited circumstances
- If initiating complaint, notify complainant prior to doing so and address reasonable safety concerns
 - May inform respondent that complainant did not want to move forward with grievance procedure, but that the institution determined it had an obligation to do so
- With or without complaint, take other appropriate prompt and effective steps to ensure sex discrimination does not continue or recur

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How an Institution Must Respond to Complaint 


- Notify respondent of grievance procedures and informal resolution process (if available and appropriate)
- Take steps discussed in prior section regarding responding to a report (if not yet taken)
 - Treat complainant and respondent equitably
 - Offer and coordinate supportive measures
 - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
 - Provide written notice of rights (VAWA)
 - Notify campus security, if necessary
 - Clery report, if necessary
- Initiate grievance procedures or informal resolution process


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Case Studies 

Spotting the Issues



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Case Study

A student, Melissa, complains to the Associate Provost that one of her instructors is "hitting on her." Melissa states that her instructor asked her to meet him at 9:00 at night on multiple occasions. Does the Associate Provost have an obligation to report this information?

- Title IX obligations?
- VAWA obligations?
- Clery obligations?
- Other policy obligations?

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Case Study

Nick's friend, David, is visiting for the weekend and staying in Nick's dorm room. After a night of heavy drinking, Nick wakes up suspecting that they may have had sex. When Nick confronts David, David says that Nick was coming on to him and that at first David resisted but that Nick was quite persistent. After basketball practice that afternoon, Nick's coach notices that something is wrong and asks him about it. Nick confides in his coach and expresses frustration with himself for having put himself in that position. Nick tells his coach that he doesn't want anything done about this; he just wanted him to know why he was distracted. Does the coach have an obligation to report?

- Title IX obligations?
- VAWA obligation?
- Clery obligations?

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Case Study


Anna, a sophomore at your institution who is on the volleyball team, alleges that during the last away volleyball game, Luke, a junior at your institution was making lewd, harassing comments to her during her game. Anna stated that last semester, she reported that another student, Johnny, was stalking her. Anna says that Luke is Johnny's former roommate and that Luke has really hostile toward her since she made her report.

- Title IX obligations?
- VAWA obligations?
- Clery obligations?

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Case Study




Jake contacts you and alleges that Molly sexually assaulted him during a spring break trip to Florida. Jake tells you that he and Molly were on the trip with other members of your institution's Student Government Association. When you ask Jake about the trip, he tells you that it wasn't an official SGA trip, but one of the members had the idea to take a trip together, and he passed around a sign-up sheet during one of the meetings. What are the institution's obligations?

- Title IX obligations?
- VAWA obligations?
- Clery obligations?






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Case Study




Kelly comes into the health center on Saturday morning and tells Becky, a nurse at the health center, that she was at a frat party the night before and was talking with Ben, a student at another school. She liked Ben, so she accepted his invitation to go to another party with him. Instead, Ben took her to his apartment, where no one else was. Kelly became uncomfortable and said she was going to call a cab. Ben wouldn't let her leave and aggressively came on to her. Knowing Ben was much stronger than her, Kelly gave in and slept with him.






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Case Study





- What responsibilities does Becky, the nurse, have?
- Imagine you are the Title IX Coordinator and you get a call from Becky. She tells you that she talked to a student about an incident of sexual violence. She says she remembers something about how to handle these situations from her orientation, but she can't remember exactly what she is supposed to do. What should you tell Becky?

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Case Study

Maria, a freshman, comes to talk to her RA, Amanda, with whom she has become good friends. Maria tells Amanda she just saw her ex-girlfriend, Andrea. Maria explains that Andrea has gone crazy since they broke up. Andrea constantly texts her about getting back together. Andrea's friends badger Maria about it during class. Maria has even found Andrea waiting for her at her door when she returns to her dorm.



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Case Study

Maria tells Amanda she just needs someone to talk to.

- What are Amanda's responsibilities?
- What if Maria tells Amanda that she doesn't want anyone to know about their conversation—especially Andrea?

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Q & A






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Complaint/Grievance Process




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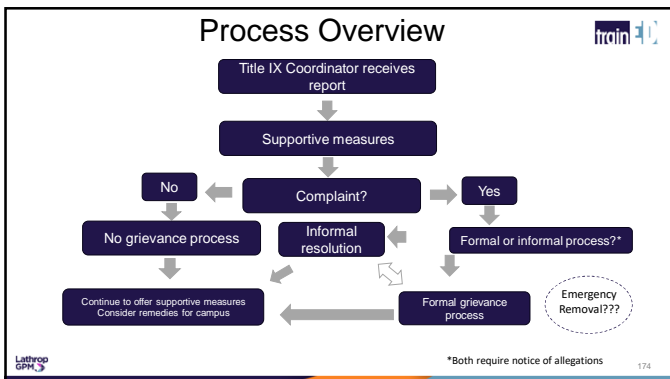
Session Overview

- General Requirements of Complaint Process
- Stages of Complaint Process
 - Pre-Investigation
 - Investigation
 - Post-Investigation Process
 - Sanctions & Remedies
 - Notice of Determination
 - Appeal
- Case Studies




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General Requirements of Complaint/Grievance Process




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Grievance Procedure

- The process the school uses to resolve sex discrimination complaints. This includes the fact-gathering investigation and the hearing or decision-making process the school uses to determine:
 - Whether or not the conduct occurred using
 - Preponderance of the evidence standard ("more likely than not") or
 - Clear and convincing evidence standard ("highly probable"); and
 - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
 - Imposing sanctions on the respondent;
 - Providing remedies for the complainant; and
 - Addressing the campus community

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Overview of Process

Investigation


➔

Parties receive access to relevant evidence and investigation report

➔

Decision-making process

- *Exact process will depend on type of allegation and institution's policy*

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All Grievance Procedures

- Must be in writing
- If use different procedures for some types of cases, must state how institution decides which procedures to use
- Reasonably prompt timeframes for major stages (evaluation of whether to dismiss or investigate; investigation; determination; appeal—if any)
 - Process that allows for reasonable extensions on case-by-case basis for good cause
 - Must provide notice that includes the reason for the delay

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All Grievance Procedures

- Title IX Coordinator or investigator can also serve as decisionmaker (single investigator model)
- Treat complainants and respondents equitably
- Include presumption that respondent is not responsible for sex discrimination until a determination is made at the conclusion of the grievance procedures
- Credibility determinations cannot be based on person's status as complainant, respondent or witness
- Standard of Proof
 - Preponderance of the evidence, unless clear and convincing is used in all other comparable proceedings

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All Grievance Procedures

- Take steps to protect privacy of the parties and witnesses during grievance procedures
 - Cannot restrict ability of parties to:
 - Obtain and present evidence, including speaking to witnesses
 - Consult with their family members, confidential resources or advisors
 - Prepare for or participate in grievance procedures
 - Can restrict parties in a complaint resolution process from making widespread disclosures via social media or other media regarding the allegations or the process while the process is pending

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All Grievance Procedures

- Objective evaluation of all relevant evidence and not otherwise impermissible
 - Including inculpatory and exculpatory evidence
 - Impermissible evidence and (questions seeking evidence)
 - Cannot be considered, disclosed or used (unless exception met)
 - Regardless of whether relevant

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All Grievance Procedures

- Categories of impermissible evidence
 - Legal privilege or confidential employee
 - Unless person who holds the privilege voluntarily waives privilege or confidentiality
 - Party or witness's records made by physician, psychologist or other recognized professional or paraprofessional in connection with provision of treatment
 - Unless written consent for use in grievance procedure

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All Grievance Procedures

- Categories of impermissible evidence (cont.)
 - Evidence that relates to complainant's sexual interest or prior sexual conduct
 - Unless:
 - Offered to prove that someone other than respondent committed alleged conduct
 - Evidence about specific incidents of complainant's sexual conduct with respondent and offered to prove consent to sex-based harassment
 - Prior consensual sexual conduct between parties does not itself demonstrate or imply consent to alleged sex-based harassment or preclude finding that it occurred

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All Grievance Procedures: Conflicts of Interest

- VAWA: a prompt, fair, and impartial proceeding is conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- Title IX: no conflicts of interest or bias as Title IX Coordinator, investigator, decisionmaker, facilitator of informal resolution process, or individual responsible for appeals
 - For or against complainants or respondents generally
 - For or against an individual complainant or respondent
- Disclose and manage conflicts of interest
- Consider appearance of bias based on public profile (articles, social media, past professional roles, etc.)
- Have a process for requesting disqualification of Title IX Coordinator, investigator, adjudicator, informal resolution process facilitator, or individual responsible for appeals

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Grievance Procedures: Which Process Applies?

Section 106.45 General Grievance Procedures (Postsecondary and K-12 institutions) <i>Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</i>	Section 106.46 Heightened Grievance Procedures (Postsecondary institutions only) <i>Apply to complaints of sex-based harassment involving a student party</i>
<ul style="list-style-type: none"> • Differential treatment • Failure to provide reasonable modifications for pregnancy and related conditions • Retaliation 	Sex-based harassment at post-secondary institution where at least one party is a student*
Sex-based harassment between employees*	
Sex-based harassment in K-12	

*VAWA may impose additional requirements in post-secondary environment if sexual assault, dating violence, domestic violence, or stalking

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Student Employees: Which Process Applies?

- If individual is both student and employee, fact-specific inquiry considering:
 - Whether party's primary relationship with institution is to receive an education
 - Whether the alleged sex-based harassment occurred while the party was performing employment-related work

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Case Study

- Which grievance procedure applies to the following matters?
 - An employee alleges a supervisor denied his request for vacation after he was a witness in a grievance procedure
 - A student alleges that a TA refused to write her a letter of recommendation for grad school because she is a woman
 - A student alleges that her ex-boyfriend has been constantly texting and calling her trying to convince her to get back together; complainant says it has been really freaking her out
 - An employee reports that his colleague has been engaging in inappropriate physical contact with him that is making him uncomfortable
 - A student worker alleges that she was sexually assaulted by another student at a party

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Criminal Process

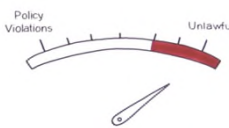
- Institution's grievance procedure is separate from criminal process
- Institution may not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- May temporarily delay for initial police investigation
 - Prior guidance said police evidence-gathering stage typically takes 7-10 days
 - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution

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Criminal Process

- Differences between processes
 - Different standards of proof
 - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
 - Different investigation "powers"
 - Subpoena powers vs. disciplinary actions
 - Timing of processes
 - Cooperating with law enforcement
 - Memorandum of Understanding
 - Use of police report




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Pre-Investigation



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Meeting with Respondent

- Prior to meeting
 - Notice of meeting
 - Notice of rights
 - No-contact directive
- At the meeting
 - Notice of allegations
 - Notice of informal resolution process?
 - Preservation of evidence
 - Supportive measures
 - Retaliation

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All Grievance Procedures: Notice of Allegations

- Upon initiation of grievance procedures
- Provide to all known parties
- Required before informal resolution

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Written	Optional	✓
Grievance Procedures	✓	✓
Informal Resolution (if applicable)	✓	✓
Sufficient information available at the time to allow party to respond: <ul style="list-style-type: none"> Identities of parties Conduct alleged to constitute sex discrimination/sex-based harassment Date(s) and location(s) of alleged incident(s) 	✓	✓
Statement Retaliation is prohibited	✓	✓

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Statement that parties entitled to equal opportunity to access relevant and not otherwise impermissible evidence or <u>accurate description of evidence</u>	✓	
Statement that parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an <u>investigative report</u> that accurately summarizes this evidence		✓
Statement that if school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Must notify of additional allegations	✓	✓

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Notice of Allegations	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Statement that respondent is presumed not responsible until a determination is made at the conclusion of the grievance procedures		✓
Statement that prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker		✓
Statement that parties may have an advisor of choice and that advisor may be, but is not required to be, an attorney		✓
If applicable, code of conduct prohibits knowingly making false statements or knowingly submitting false information during grievance process		✓

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Notice of Allegations: Recommendations

- One Notice of Allegations form for both General and Heightened Grievance Procedures
- Consider whether different language is needed to address:
 - Access to evidence
 - Advisors
 - Opportunity to present evidence to decisionmaker

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Heightened Grievance Procedures: Notice of Meetings

- Must provide to a party whose participation is invited or expected, written notice of all meetings or proceedings with sufficient time for the party to prepare to participate
- Notice must include:
 - Date
 - Time
 - Location
 - Participants
 - Purpose

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Notice of Meetings: Title IX & VAWA

- General Grievance Procedure: no notice of meetings requirement
- Heightened Grievance Procedure: notice of meetings for parties' own meetings
- VAWA: notice of meetings of the other party's meetings

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Notice of Meetings: Title IX and VAWA		Notice of own meetings (Title IX)	Notice of other party's meetings (VAWA)
Non-harassment sex discrimination			
Hostile environment or quid pro quo harassment with employee parties			
Hostile environment or quid pro quo harassment with at least one student party	✓		
Sexual assault or VAWA crime with employee parties			✓
Sexual assault or VAWA crime with at least one student party	✓		✓

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Retaliation

- Inform parties that school officials will take steps to prevent all forms of retaliation and take strong responsive action if it occurs
- When a school knows or reasonably should know of possible retaliation by other students, employees or third parties, it must take immediate steps to investigate and take appropriate action
- Title IX requires the school to protect the parties and ensure their safety

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Heightened Grievance Procedures & VAWA: Advisors

- Must provide parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
- Must not limit the choice or presence of the advisor in any meeting or proceeding
- May establish restrictions regarding extent of advisor participation, as long as apply equally
- Cannot prohibit party from selecting an advisor who may be a witness in the process

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Heightened Grievance Procedures & VAWA: Advisors

- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
 - Signed advisor agreements
 - Be prepared to enforce the agreement parameters
 - Set the ground rules at the outset (e.g., "potted plant")
 - Don't engage with the advisor; only address the party (even in response to the advisor's statements)
 - Hold the party responsible for the advisor's actions
 - Don't be afraid to consider pausing the process if the advisor continues to be disruptive
 - Be consistent

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Advisors: Title IX and VAWA	Must allow advisors
Non-harassment sex discrimination	
Hostile environment or quid pro quo harassment with employee parties	
Hostile environment or quid pro quo harassment with at least one student party	✓
Sexual assault or VAWA crime with employee parties	✓
Sexual assault or VAWA crime with at least one student party	✓

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Heightened Grievance Procedures: Additional Person Present

- Provide the parties with the same opportunities, if any, to have persons other than the advisor of the parties' choice present during any meeting or proceeding
- May not allow additional person if doing so would violate FERPA
 - Does not violate FERPA if person is required by law
 - Does not violate FERPA if all impacted individuals (parties and witnesses as applicable) provide written consent
- Need for language interpreter or disability accommodation may result in only one party having additional person present

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Informal Resolution

- May offer anytime prior to determination
 - Unless complaint includes allegations that an employee engaged in sex-based harassment of a K-12 student
 - Unless offer or process would conflict with federal, state, or local law
- May offer without complaint (but need notice of allegations)
- If providing informal resolution, must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur
- Institution may decline to offer informal resolution despite one or more parties' wishes
- Must be voluntary for parties
- Facilitator cannot be investigator or decisionmaker

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Informal Resolution

- Before initiating informal process, must provide to the parties notice that explains
 - Consistent content with 2020 regulations
 - Allegations, requirements of informal process, that party may withdraw prior to agreeing to informal resolution and initiate or resume grievance process, what information institution will maintain and whether and how the institution could disclose such information for use in grievance process
 - New required content
 - Parties' agreement to a resolution would preclude the parties from initiating or resuming grievance process arising from same allegations
 - Potential terms that may be requested or offered in informal resolution agreement
 - Informal resolution agreement is binding only on the parties

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Structuring an Informal Resolution Process

- Who facilitates an informal resolution process?
 - Title IX Coordinator? Deputy Title IX Coordinator?
 - Another member of the Title IX team?
- If someone other than Title IX Coordinator, consider limited role for Title IX Coordinator to ensure consistency across different cases
- Legal requirements
 - Appropriately trained
 - Free from conflict of interest and bias
 - Impartial

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Structuring an Informal Resolution Process

- What is an informal resolution process?
 - No particular process required under Title IX
 - Recommended practice
 - Facilitator meets with each party to determine what they are looking for and what they will agree to as part of an informal resolution
 - Communicate options between the parties
 - Institution should have a role in determining whether particular matter is appropriate for informal resolution and what the appropriate resolution will be

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Structuring an Informal Resolution Process

- Factors to consider when using informal resolution process
 - Is there an admission from the respondent?
 - Will this be a final resolution?
 - What information will be shared during the informal process?
 - Can the resolution be used in future discipline decisions?
 - What records will be maintained and could be shared?
 - What action is necessary to stop the harassment, prevent its recurrence, and address its effects?

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Structuring an Informal Resolution Process

- What does the outcome of the informal resolution process look like?
 - Possible terms
 - No contact directive (mutual or one-sided)
 - Required training/education
 - Required counseling
 - Probation
 - Temporary prohibition on leadership positions/awards
 - Leave of absence from institution
 - Agreement not to seek re-enrollment or future employment
 - Apology letter?
 - Other

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**All Grievance Procedures:
Consolidation of Complaints**

- May consolidate complaints with more than one complainant or respondent, or by one party against another
- When the allegations arise out of the same facts or circumstances
- If some allegations involve post-secondary sex-based harassment involving at least one student, then must use those heightened procedures for all allegations
- Caution – no FERPA exception

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**Consolidation of Complaints & FERPA:
Options**

- Obtain written consent from parties or redact evidence not relevant to applicable complaint
- If obtaining written consent:
 - Framing of consent is important; there will be a lot of information sharing regardless of written consent
 - Consider whether witness consent is necessary
- If redacting not relevant evidence:
 - Separate investigation reports or single investigation report with redactions
 - Separate notices of determination
- Note: There is no private right of action under FERPA

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**Consolidation of Complaints & FERPA:
Recommendations**

- Provide notice of consolidation
 - Offer parties choice between consent to additional information sharing or redactions
 - Regardless of whether there is consent, consistent with regulatory requirements, parties will have right to access all relevant evidence
- Prior to providing access to evidence, consider whether witness consent or redaction is necessary

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All Grievance Procedures: Dismissal of Complaint

- Institution *may* dismiss if:
 - Unable to identify respondent after taking reasonable steps to do so
 - Respondent is not participating in school's education program or activity and is not employed
 - Complainant voluntarily withdraws any or all allegations in complaint and
 - Title IX Coordinator declines to initiate complaint
 - School determines, remaining allegations (if any), would not constitute sex discrimination
 - Conduct alleged in complaint, even if proven, would not constitute sex discrimination
 - Must make reasonable efforts to clarify the allegations with complainant before dismissal

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Dismissal of Complaint	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Obtain complainant's withdrawal in writing if dismissing a complaint based on complainant's voluntary withdrawal		✓
Offer supportive measures to complainant and respondent (if applicable)	✓	✓
Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur	✓	✓

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Notice of Dismissal	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Promptly notify the complainant of the basis for dismissal	✓ (Oral or Written)	✓ (Written)
If dismissal occurs after respondent has been notified, notify respondent of the basis for the dismissal promptly following notification to complainant or simultaneously if in writing	✓ (Oral or Written)	✓ (Written)
Notify complainant (and respondent if applicable) that dismissal may be appealed and provide opportunity to appeal on the following grounds: <ul style="list-style-type: none"> Procedural irregularity New evidence that wasn't reasonably available Conflict of interest Other? 	✓ (Oral or Written)	✓ (Written)

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Appeal of Dismissal	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters; all K-12 matters, and all complaints of non-assessment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of ass-based harassment involving a student party</small>
Notify the parties if appeal filed, provide Notice of Allegations to Respondent (if not previously provided)	✓ (Oral or Written)	✓ (Written)
Provide parties reasonable and equal opportunity to make a statement in support of or challenging outcome	✓ (Oral or Written)	✓ (Written)
Notify the parties of result of appeal and rationale	✓ (Oral or Written)	✓ (Written)

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Dismissal of Complaint: Additional Considerations

- "Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein" is no longer a permitted ground for dismissal
- Dismissal is never required

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Investigation

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All Grievance Procedures: Investigation

- Must be adequate, reliable and impartial
- Burden on school to conduct investigation and gather sufficient evidence to make a determination
- Equal opportunity for parties to present witnesses
- Not required to allow expert witnesses
- Only include relevant and not impermissible evidence
- Regulations permit character evidence, but still must be relevant

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Post-Investigation Process

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Process Requirements

- Parties have right to access and respond to all relevant and not impermissible evidence
- If credibility is at issue:
 - Under General Grievance Procedures, decisionmaker must question parties and witnesses
 - Under Heightened Grievance Procedures, parties have right to propose questions to be asked at individual meetings or at a live hearing

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Access to Evidence	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Provide parties with equal opportunity to access relevant and not otherwise impermissible evidence or <u>accurate description of evidence</u> (oral or written)	✓	
Provide each party with equal opportunity to access the relevant and not otherwise impermissible evidence or a <u>written investigative report</u> that accurately summarizes this evidence		✓
If school provides description of evidence/investigative report, parties are entitled to request access to relevant and not otherwise impermissible evidence	✓	✓
Reasonable opportunity to respond	✓	✓

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Access to Evidence	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through grievance procedures	✓	✓
Reasonable steps to prevent and address the advisors' unauthorized disclosure of information and evidence obtained solely through grievance procedures		✓

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All Grievance Procedures: Providing Access to Evidence

- Must state in policy when school will provide access to description/investigation report vs. all relevant and not impermissible evidence
- Do not have to provide physical or electronic copy of evidence
- Do not have to provide continuous access
- Options: electronic file sharing site; institution's copy for on-site review; other
- Reasonable timeframe for review may vary based on nature and volume of evidence

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Access to Evidence: Recommendations for All Grievance Procedures

- Affirmatively provide access to all relevant and not impermissible evidence
- Draft investigation report (even though not required)
- Provide access to investigation report
- When providing access to all relevant and not impermissible evidence and investigation report:
 - Require nondisclosure agreements for parties and advisors
 - Use the evidence (and investigation report) only for purposes of the grievance process and
 - Require them not to further disseminate or disclose these materials
 - Provide temporary electronic access that prohibits downloads and printing
 - Use watermarks

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Access to Evidence: All Grievance Procedures

- Relevant evidence that must be provided (either affirmatively or upon request):
 - Party and witness interviews
 - Documents collected from the parties
 - Text messages
 - Emails
 - Social media posts and messages
 - Photos and videos
 - Other evidence
 - Police reports
 - Security footage
 - Wifi access point records

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Access to Evidence: All Grievance Procedures


- Complainant's sexual interests or prior sexual conduct = only if exception applies
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

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Access to Evidence: All Grievance Procedures 


- Redact information that is not relevant or is otherwise impermissible
- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is relevant

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Access to Evidence: All Grievance Procedures 


- Review written response received from parties following review period
- Analyze whether any additional investigation is needed
 - Recommend consulting with Title IX Coordinator

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When Credibility Is in Dispute 

- Determination relies on testimonial evidence, including when decisionmaker has to choose between competing narratives to resolve case
- Credibility is not in dispute if
 - Respondent admits to facts at issue
 - Evidence other than complainant's statements leads to outcome (e.g., security footage)

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When Credibility Is in Dispute

- General grievance procedure: Decisionmaker meets with parties and relevant witnesses individually
 - Must ask questions to adequately assess credibility
- Heightened grievance procedure*: Parties propose questions and follow-up questions for any party/witness to be asked by the investigator or decisionmaker during individual meetings or at a live hearing

**If public institution, may have additional requirements (live hearing, requirements around cross-examination)*

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General Grievance Procedures: Separate investigator and decisionmaker

- Investigator interviews parties and witnesses
- Investigator drafts investigation report and shares with decisionmaker
- Decisionmaker reviews report to determine:
 - Whether credibility is at issue
 - What questions to ask parties and relevant witnesses
- If credibility is at issue, decisionmaker meets with parties and relevant witnesses
 - Recording strongly recommended
- Investigator/Title IX Coordinator provides parties with access to all relevant and not impermissible evidence and investigation report, including evidence obtained during decisionmaker meetings
- Parties have opportunity to respond to evidence and investigation report
- Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, investigator/Title IX Coordinator provides access to amended investigation report and additional relevant and not impermissible evidence
- Decisionmaker makes determination

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General Grievance Procedures: Single investigator model

- Investigator interviews parties and witnesses
 - Include questions to assess credibility as needed
- Investigator drafts investigation report
- Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
- Parties have opportunity to respond to evidence and investigation report
- Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provides access to amended investigation report and additional relevant and not impermissible evidence
- Investigator makes a determination

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**Heightened Procedures:
Individual Meetings vs. Live Hearing**

- If using individual meetings:
 - Must provide each party with a recording or transcript of interviews/meetings with enough time for reasonable opportunity to propose follow-up questions
 - Will require multiple rounds of providing access to transcripts, requesting lists of questions, and reinterviewing

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**Heightened Grievance Procedures:
No Live Hearing**

- Single investigator model
 1. Investigator interviews parties and witnesses
 - Include questions to assess credibility as needed
 2. Investigator/Title IX Coordinator provides transcripts or audio to parties
 3. Parties propose questions for parties and witnesses
 4. Investigator reviews questions for relevancy
 5. Investigator explains decision to reject any party questions
 6. Investigator interviews parties and witnesses
 - Include relevant party questions
 - Include questions to assess credibility as needed
 7. Repeat steps 2 – 6 as needed

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**Heightened Grievance Procedures:
No Live Hearing**

- Single investigator model (cont.)
 8. Investigator drafts investigation report
 9. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
 10. Parties have opportunity to respond to evidence and investigation report
 11. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence
 12. Investigator makes a determination

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Heightened Procedures: Individual Meetings vs. Live Hearing

- If using live hearing:
 - Must allow each party to propose questions for parties and witnesses
 - Relevant questions asked by decisionmaker or advisors
 - Questioning may not be conducted by a party personally
 - If advisor-conducted questioning and a party does not have advisor, institution must provide an advisor for the purpose of advisor-conducted questioning

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Heightened Grievance Procedures: Live Hearing*

- Separate investigator and decisionmaker
 1. Investigator interviews parties and witnesses
 2. Investigator conducts follow-up interviews with parties
 3. Investigator drafts investigation report
 4. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
 5. Parties have opportunity to respond to evidence and investigation report
 6. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence

*Requires separate training on conducting hearings

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Heightened Grievance Procedures: Live Hearing


- Separate investigator and decisionmaker (cont.)
 7. Decisionmaker reviews investigation report and attachments in preparation for live hearing
 8. Decisionmaker conducts live hearing
 - Relevant questions from parties asked by decisionmaker (recommended) or advisor
 9. Decisionmaker makes a determination

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Determination—Sanctions and Remedies

- Consider who will decide the sanctions and how
 - Consider limited role of Title IX Coordinator
- Any information provided to individual(s) who determine sanctions must also be provided to the parties
- Policy must list *all* possible sanctions and describe the range of remedies (VAWA)



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Determination—Sanctions and Remedies

- Remedies means measures provided, as appropriate, to a complainant or any other person identified as having had their equal access to the education program or activity limited or denied by sex discrimination
 - Designed to restore or preserve access to education program or activity after determination that sex discrimination occurred
- Consider remedies for broader student population

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Written Determination	General Grievance Procedures <small>(Postsecondary part K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non-harassment discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Description of the alleged sex-based harassment		✓
Information about policies and procedures institution used to evaluate the allegations		✓
Evaluation of the relevant and not otherwise impermissible evidence		✓
Determination of whether sex discrimination occurred	✓	✓
Rationale for determination	✓	✓

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Written Determination	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non- harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Any disciplinary sanctions	✓ must notify complainant	✓
Whether remedies will be provided		✓
Procedures and permissible bases for complainant and respondent to appeal (if applicable)	✓ (if applicable)	✓
Simultaneous delivery	✓	✓

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All Grievance Procedures: Effective Date of Determination of Responsibility

- Determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of any appeal or if no party appeals, date on which appeal would no longer be timely


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Additional Required Post-Determination Notices

- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
 - Any change to the results that occurs prior to the time that such results become final
 - When such results become final



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Appeal of Determination	General Grievance Procedures <small>(Postsecondary and K-12 institutions) Apply to all employee-only matters, all K-12 matters, and all complaints of non- harassment/discrimination</small>	Heightened Grievance Procedures <small>(Postsecondary institutions only) Apply to complaints of sex-based harassment involving a student party</small>
Appeal that is at a minimum the same as offered in comparable proceedings (if any)	✓	✓
Three set appeal bases must be offered <ul style="list-style-type: none"> • Procedural irregularity • New evidence that wasn't reasonably available • Conflict of interest • Other? 		✓

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Appeals Under Title IX

- Requirements
 - Notify other party in writing when an appeal is filed
 - Appeal officer is different than Title IX Coordinator, investigator, and decisionmaker
 - Give both parties reasonable, equal opportunity to make a statement in support of, or challenging, the outcome
 - Notify parties of the result of appeal and rationale
 - Must be in writing if heightened grievance procedure
 - Must be simultaneous delivery if heightened grievance procedure

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Case Study

- A case involving a differential treatment allegation includes alleged conduct from July 2024 and September 2024. How does that impact the process that applies?

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Key Differences Between 2020 and 2024 Grievance Procedures

2020 Regulations: Non-Harassment Sex Discrimination	2024 Regulations: Non-Harassment Sex Discrimination
Regulations do not address non-harassment sex discrimination	General grievance procedures required for allegations of non-harassment sex discrimination

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Case Study

- A case involving a sexual assault allegation with student parties includes alleged conduct from July 2024 and September 2024. How does that impact the process that applies?

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Key Differences Between 2020 and 2024 Grievance Procedures

2020 Regulations: Title IX Sexual Harassment	2024 Regulations: Sex-Based Harassment
Access to directly-related evidence and an opportunity to respond	Access to relevant and not otherwise impermissible evidence and an opportunity to respond
Access to investigation report and an opportunity to respond	No requirement to draft investigation report (but recommend drafting report and providing an opportunity to respond at same time as evidence)
Live hearing for all cases that fall within scope of Title IX (including cases involving employees)	Q & A process through individual meetings or live hearing, when credibility is in dispute; no Q & A or hearing if neither party is a student
During live hearing, questioning conducted by advisors	If live hearing, questioning conducted by decisionmaker or advisors

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Case Study

- After final exams, a group of students, including Matt and Jane, go out to celebrate. A great deal of drinking takes place.
- The next semester, Jane is having trouble in one of her classes. Her instructor asks what's bothering her, and she tells her instructor that one of her classmates raped her a few months ago.
- The institution requires all employees who are not confidential employees to report allegations of sexual misconduct.
- The instructor alerts the Title IX Coordinator.

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Case Study

- Jane agrees to meet with the Title IX Coordinator and states that she has decided she wants to file a complaint against Matt. She states that Matt walked her home after the finals celebration. When they got to her apartment, she invited him into her apartment for another drink as friends. In the apartment, he forced himself on her and raped her.
- An hour later, the local police call the Title IX Coordinator and state that they are conducting a criminal investigation. They ask your institution to suspend its investigation.
- How do you respond?

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Case Study

- After the police complete evidence gathering, the institution starts the investigation. Matt admits that he and Jane had sex, but claims it was consensual. The other students who saw Matt and Jane at the celebration stated that they had both been drinking and flirting.

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Case Study

- The decision-maker ultimately concludes that there's not enough evidence to demonstrate that it is more likely than not that Matt violated the policy.
- Jane appeals. She claims that after she received a notice of outcome another student approached her and asked what had happened. The student told Jane that Matt had done the same thing to her a year ago.
- Is this a permissible appeal?

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Case Study

- Jane claims that friends of Matt are harassing her as a result of the complaint she raised. She claims they post mean Instagram messages and have called her a slut to common friends off campus.
- How do you respond?

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Q & A



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Creating a Culture of Understanding & Prevention



Lathrop GPM 259

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Missing the Mark

- Common Concerns from Students:
 - Lack of clarity and transparency in policy and process
 - Lack of communication and coordination with parties
 - Lack of fairness and equity
 - Complainants discouraged from reporting
 - Retaliation/harassment and re-victimization
 - Inadequate support during and after process
 - Failure to accommodate documented disabilities
 - Dissatisfaction with outcome or sanctions
 - Inadequate training, education, and prevention programs

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Creating a Culture of Understanding

- Confidentiality – Revisited
 - Importance of Confidential Employees
 - Make confidential employees and other confidential resources available and publicize their availability
 - Train employees to notify complainants of their right to talk to a confidential employee or other confidential resource
 - Many complainants will end up reporting after talking to a confidential employee or other confidential resource
 - Even if confidentiality is not requested, always respect the parties' privacy
 - These practices will create trust on your campus and encourage reporting

Confidentiality

➔

Trust

➔

Reporting

➔

Responding and Preventing

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Training

Who?

- Title IX Coordinators
- Investigators
- Individuals on hearing panels or who have responsibility for student discipline decisions
- Student Affairs/HR
- Residence Life staff
- Security
- Counseling staff
- Other employees likely to witness or receive reports – faculty, certain staff, coaches, and athletic department members
- Student leaders
- New students and employees
- Existing students and employees

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Prevention & Awareness Programs

Primary prevention and awareness programs and the ongoing campaigns that include:

- Statement that the institution prohibits VAWA crimes and sexual assault
- Definition of VAWA crimes and sexual assault in the jurisdiction
- Definition of consent in the jurisdiction
- Safe and positive options for bystander intervention where there is a risk of VAWA crimes and sexual assault
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks
- Procedures to be followed after a report of a VAWA crime or sexual assault (see above)

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Prevention & Awareness Programs

Programs to prevent sexual assault and VAWA crimes:


- Include both primary prevention and awareness programs and ongoing prevention and awareness campaigns
- Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end sexual assault and VAWA crimes that—
 - Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome
 - Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels

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Prevention & Awareness Programs

- Training for employees who are not confidential resources and who are expected to report should also include discussion of:
 - Inability to promise confidentiality
 - May direct to confidential employee or resource
 - Need to report to Title IX Coordinator




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Ongoing Prevention and Awareness Campaigns

Examples

- Bystander intervention
- Drug and alcohol awareness
- Coach-based prevention
- It's on Us campaign



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How Not to Be a Perpetrator

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Title IX Coordinator: Continually Review Policies/Procedures

- Are your policies and procedures effective?
 - Is your complaint process so cumbersome that it is deterring reports?
 - If a student searches "rape" or "sexual assault" on your student website, will resources come up?
 - What changes should be made based on past processes?
 - You may be caught off-guard the first time a new issue arises, but you should be prepared the second time

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Title IX Coordinator: Continually Review Policies/Procedures

- After a complaint of sex discrimination, review:
 - Anything with your facilities or practices that needs changing?
 - Are there patterns that should be addressed?
 - Times of the year (e.g., start of school)
 - Events (e.g., annual concert in the quad)
 - Groups
 - Location

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Climate Surveys


- New requirement under VAWA (once available)
 - Not required under Title IX
 - May be required under state law
- A climate survey examines both
 - The amount of sexual assault, sexual harassment, dating violence, domestic violence, or stalking occurring (prevalence or incidence) and
 - Perceptions of campus climate
- May provide more accurate data on number and type of incidents
 - Conducting regularly can show changes over time
- Assist in tailoring prevention and response efforts
- Demonstrate the institution's commitment to addressing sex discrimination

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Climate Surveys

- What are the legal risks involved with conducting climate surveys?
 - Must be prepared to respond to data
 - Changes to policies/procedures
 - Remedies for particular incidents reported
 - Information will be available to OCR and in litigation



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Q & A




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Upcoming Trainings



- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators Under the 2020 Title IX Regulations on July 31, 2024
- Title IX/VAWA Investigator Training Under the 2020 Title IX Regulations on August 1, 2024
- Confidential Resources, First Responder, and Campus Safety Training on August 7, 2024
- Conducting an Informal Resolution Under Title IX/VAWA on August 28, 2024
- Non-Hearing Adjudicator Training Under Title IX/VAWA on September 9, 2024
- Conducting a Live Hearing Under Title IX/VAWA on September 23, 2024
- Supplemental Decisionmaker Training on Live Hearings on September 24, 2024
- Title IX/VAWA Appeal Officer Training on October 10, 2024


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**Annual Training for New Title IX Coordinators and Deputy Coordinators
Under the 2024 Title IX Regulations**
Tuesday, July 30, 2024

General Grievance Procedures: Separate Investigator and Decisionmaker

- Investigator interviews parties and witnesses
- Investigator drafts investigation report and shares with decisionmaker
- Decisionmaker reviews report to determine:
 - Whether credibility is at issue
 - What questions to ask parties and relevant witnesses
- If credibility is at issue, decisionmaker meets with parties and relevant witnesses
 - Recording strongly recommended
- Investigator/Title IX Coordinator provides parties with access to all relevant and not impermissible evidence and investigation report, including evidence obtained during decisionmaker meetings
- Parties have opportunity to respond to evidence and investigation report
- Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, investigator/Title IX Coordinator provides access to amended investigation report and additional relevant and not impermissible evidence
- Decisionmaker makes determination

**Annual Training for New Title IX Coordinators and Deputy Coordinators
Under the 2024 Title IX Regulations**
Tuesday, July 30, 2024

General Grievance Procedures: Single Investigator Model

- Investigator interviews parties and witnesses
 - Include questions to assess credibility as needed
- Investigator drafts investigation report
- Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
- Parties have opportunity to respond to evidence and investigation report
- Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provides access to amended investigation report and additional relevant and not impermissible evidence
- Investigator makes a determination

**Annual Training for New Title IX Coordinators and Deputy Coordinators
Under the 2024 Title IX Regulations**
Tuesday, July 30, 2024

Heightened Grievance Procedures: No Live Hearing

- Single investigator model
 1. Investigator interviews parties and witnesses
 - Include questions to assess credibility as needed
 2. Investigator/Title IX Coordinator provides transcripts or audio to parties
 3. Parties propose questions for parties and witnesses
 4. Investigator reviews questions for relevancy
 5. Investigator explains decision to reject any party questions
 6. Investigator interviews parties and witnesses
 - Include relevant party questions
 - Include questions to assess credibility as needed
 7. Repeat steps 2 – 6 as needed
 8. Investigator drafts investigation report
 9. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
 10. Parties have opportunity to respond to evidence and investigation report
 11. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence
 12. Investigator makes a determination

**Annual Training for New Title IX Coordinators and Deputy Coordinators
Under the 2024 Title IX Regulations**
Tuesday, July 30, 2024

Heightened Grievance Procedures: Live Hearing*

- Separate investigator and decisionmaker
 1. Investigator interviews parties and witnesses
 2. Investigator conducts follow-up interviews with parties
 3. Investigator drafts investigation report
 4. Investigator/Title IX Coordinator provides access to all relevant and not impermissible evidence and investigation report
 5. Parties have opportunity to respond to evidence and investigation report
 6. Investigator/Title IX Coordinator assesses whether any additional investigation is necessary
 - If necessary, provide access to amended investigation report and additional relevant and not impermissible evidence
 7. Decisionmaker reviews investigation report and attachments in preparation for live hearing
 8. Decisionmaker conducts live hearing
 - Relevant questions from parties asked by decisionmaker (recommended) or advisor
 9. Decisionmaker makes a determination

**Requires separate training for decisionmaker*