Title IX Coordinator Intensive

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Lesson 1

Introduction & Overview

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Introduction

Courtney Bullard

- Creator, Title IX U
- Education Law Attorney
- Founder, ICS

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Overview of the Course

Lesson 1: Introduction and Overview
Lesson 2: Title IX and The New Regulations
Lessons 3-5: The Role of the Title IX Coordinator
Lesson 6: The Title IX Process
Lesson 7: Case Studies and Hypos
Lesson 8: Wrap Up and Assessment of Knowledge

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Learning Objectives

- ✓ Understand the law and regulations
- ✓ Explain Title IX process and your role in it
- ✓ Recognize and Evaluate Sexual Harassment and Program or Activity
- ✓ Understand serving impartially in your role
- ✓ Explain the role of a Title IX Coordinator and coordinating the institution's response

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Disclaimers

- ✓ Not legal advice
- ✓ Cannot possibly cover everything
- ✓ Designed to provide you with options so that you can make the decisions that make the most sense for you/your institution
- ✓ Most decisions will be institution specific and the regulations allow for flexibility

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Lesson 2

Title IX and the New Regulations

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THE LAW

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 education program or activity receiving Federal financial assistance.

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MAY 6, 2020

The Day Everything Changed

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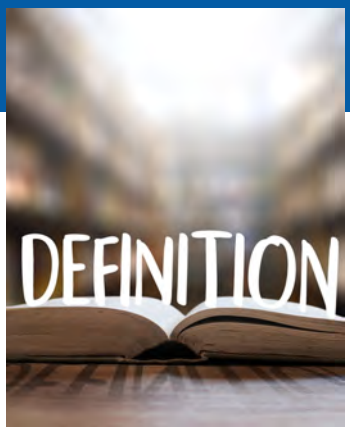

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DEFINITIONS OF SEXUAL HARASSMENT

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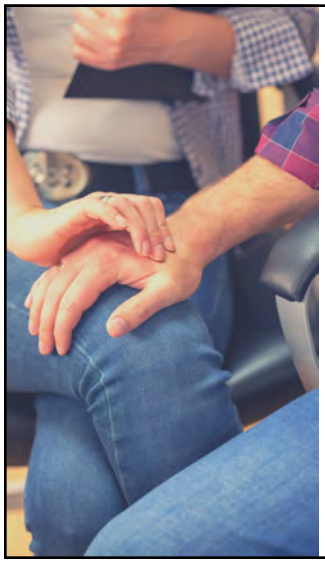

Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
  - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
  - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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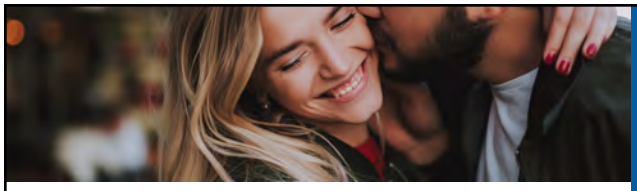

Consent

Consent:

- The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

What does this mean?

- Create/use a definition of consent that makes sense to you and your district. Make sure you can 1)explain it and 2) apply it.
- Make sure to include situations where consent cannot be obtained/given (ie. coercion, incapacitation) and clearly define those situations.

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Conduct + Education Program or Activity

IT'S MORE THAN THE BEHAVIOR...
MUST EVALUATE
LOCATION/ JURISDICTION AS WELL

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JURISDICTION

Education Program or Activity

- Locations, events, or circumstances (operations) over which the institution exercised substantial control over both the respondent AND the context in which the sexual harassment occurs

- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity
- Does not create or apply a geographic test, does not draw a line between "off campus property" and "on campus property," and does not create a distinction between sexual harassment occurring in person versus online.

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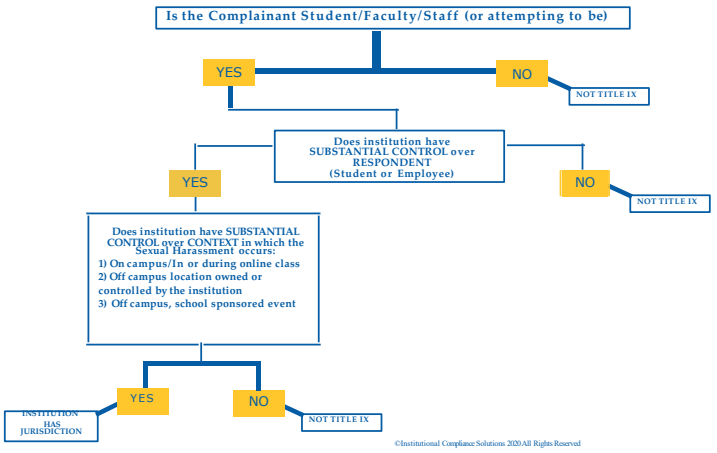
Jurisdiction/Education Program or Activity



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See you in Lesson 3!

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Lesson 3

Role of Title IX Coordinator, Part 1

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THE ROLE OF A TITLE IX COORDINATOR UNDER THE NEW TITLE IX REGULATIONS

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Title IX Coordinator

OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.
- 2015 DCL

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ROLE OF TITLE IX COORDINATOR

- Build a Title IX Team
- Coordinate training for Title IX Team and all employees
- Coordinate response to all complaints involving Sexual Harassment
- Provide and track Supportive Measures
- Monitor investigations, resolutions, outcomes, remedies and sanctions
- Monitor patterns and trends
- Avoid Conflicts of Interest and biases
- Update Policies and Procedures
- Recordkeeping

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The recipient of a report of sexual discrimination must inform the Title IX Coordinator regardless of who will conduct the investigation.

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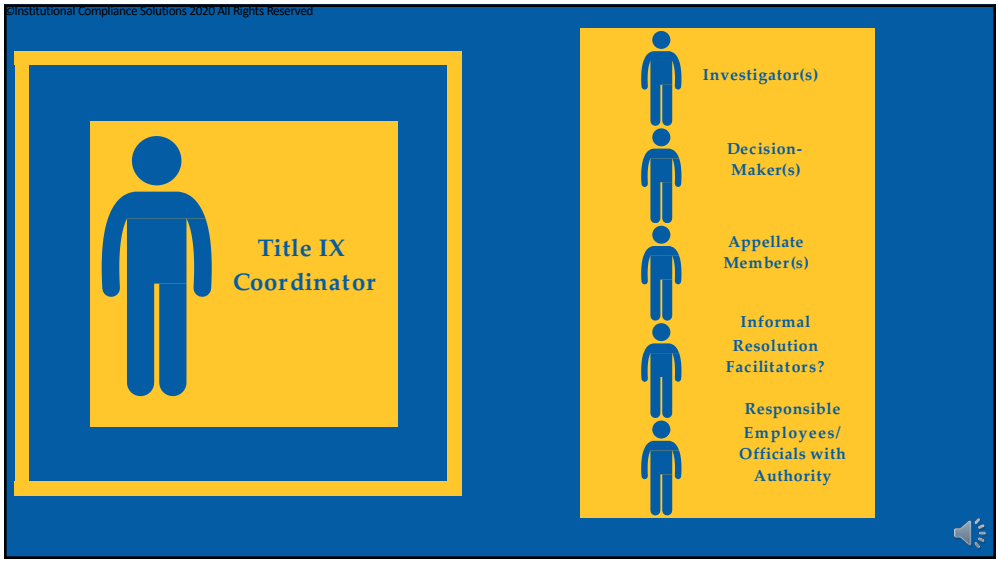

Your job is to:

1)Place good employees in the right positions
2)Make sure each team member understands their role
3) Ensure that the work is getting done
4) Track the process
5) Be Available

"Of all the things I've done, the most vital is coordinating those who work with me and aiming their efforts at a certain goal." - Walt Disney

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INVESTIGATOR

- Notice of Allegations
- Notice of Meetings with sufficient opportunity/time to prepare
- Investigation meetings
- Collects evidence/information (inculpatory and exculpatory)
- Provides information/evidence directly related to allegations to parties for review (10 days prior to report)
- Writes report summarizing relevant evidence
- Provides report to parties for review (10 Days)

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DECISION-MAKER(S)

- ✓ Live Hearing
- ✓ Cross-Examination by Advisors
- ✓ Relevancy Determinations
- ✓ Written Determinations

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Appellate Decision Maker(s)

- *Understand Institution Specific Process Review Appeals*
- *Make Timely Decisions and*
- *Simultaneous Notifications*

**Cannot be the Title IX Coordinator*

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INFORMAL RESOLUTION FACILITATORS

- Meet with students, staff, faculty, advisors and facilitate resolutions after Formal Complaint and before determination regarding responsibility
- Informal Resolutions are not required but if using them, facilitators must be trained

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ADVISORS

- ✓ Of choice
- ✓ Can be an attorney, doesn't have to be
- ✓ Your policy defines how they can be involved in your process up to the live hearing
- ✓ Must be provided in the live hearing at no cost
- ✓ Afforded opportunity to conduct "cross" of other party and witnesses

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Training, Training, Training

REQUIRED

- Title IX Coordinator (robust), Investigators, Decision-Makers, Informal Resolution Facilitators, Appellate Decision-Makers
- Decision-Makers- training on technology issues
- All Employee Training (Highly Recommended)

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Lesson 4

The Role of the Title IX Coordinator, Part 2

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COORDINATING RESPONSE

- Complainant/ Respondent
- Who is Investigating
- Timelines
- Appropriate Notices to Students, Parents, Advisors
- Supportive Measures
- Resolution Process and Outcome
- Appeals

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Supportive Measures

What

- defined term and intentional deviation from "interim measures"

individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education

- Non-disciplinary
- non punitive
- individualized services
- interactive process

Offered

- to complainant and respondent (can be refused)
- as appropriate
- as reasonably available
- without fee or charge

When

- promptly
- before or after the filing of formal complaint **OR**
- where no formal complaint has been filed

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SUPPORTIVE MEASURES CONTINUED

Purpose:

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

Burden: remains on the institution not the parties

Not: punitive or disciplinary

Confidential: as much as possible

Document: when provided, when not provided and why

Title IX Coordinator: ultimately responsible for effective implementation, but others can also implement

Examples: in section 106.3

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TRACKING SUPPORTIVE MEASURES

- When was the event reported
- When were measures offered to parties
- What measures were offered
- Were they accepted
- When were they re-evaluated/updated

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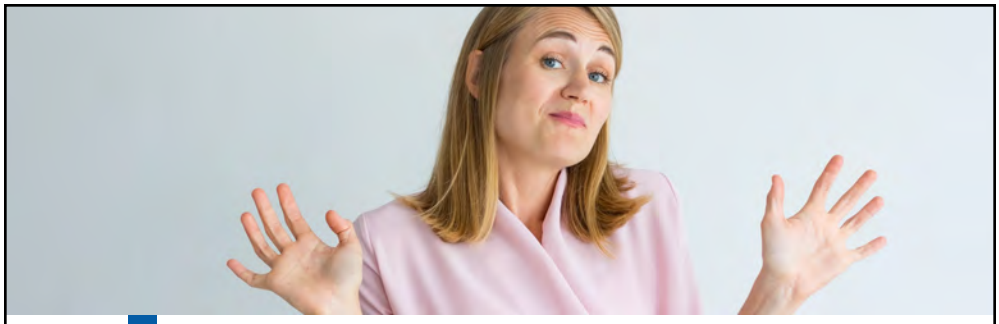

Deliberate Indifference

"Clearly unreasonable in light of the circumstances"

- **Must promptly offer supportive measures**
- **Cannot impose discipline without a formal process**
- **Must investigate allegations in a formal complaint**

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MONITOR OPEN CASES/BE AVAILABLE FOR YOUR TEAM

- Schedule meetings with investigators (virtual or in person) to discuss status of cases
- Bring team together regularly to make sure processes are working consistently
- Monitor outcomes, sanctions and remedies
- Remain focused on equity
- Correct in the moment, mistakes will happen
- Remain as transparent as possible
- Use a data tracking system if possible
- If something isn't working, change it

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Tracking patterns and trends related to sexual violence is one of the most important (and often overlooked) roles of a Title IX Coordinator. Adequate trend tracking enables an institution to institute timely and relevant prevention initiatives and provide clear, consistent, and compliant response.

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BENEFITS OF TRACKING PATTERNS AND TRENDS

- Prevention
- Consistency
- Sustainability planning
- Requesting and advocating for additional funds

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Lesson 5

Your Role, Part 3

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Avoiding Conflicts of Interest/Bias

- Generally toward Complainants/Respondents
- In a specific case
- Legal Definition of conflict of interest
  - a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
  - a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

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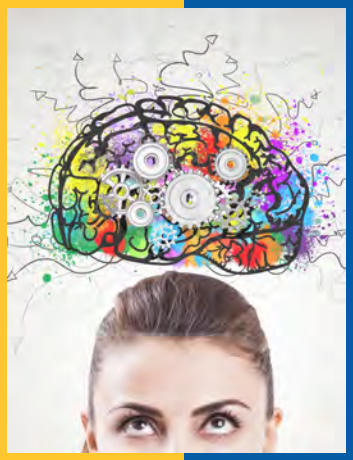
Explicit Bias

- "Explicit bias" refers to the attitudes and beliefs we have about a person or group on a conscious level.
  - Expressed directly
  - Aware of bias
  - Operates consciously
- Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."



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Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
  - Expressed indirectly
  - Unaware of bias
  - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.

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UPDATE, DISSEMINATE, AND PUBLISH POLICIES

Policies must be:

- Compliant
- Clearly displayed and distributed

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Title IX Coordinator
Notification, Dissemination, and Publication Checklist
Section 106.8

☐ **1. Prepare the following information related to Title IX Coordinator:**
- Name OR Title
- Office Address
- E-mail Address
- Telephone Number

☐ **2. Prepare the following notifications:**
- The school does not discriminate on the basis of sex
- The school is required by Title IX not to discriminate on the basis of sex
- The requirement not to discriminate based on sex extends to admission and employment
- Inquiries should be referred to Title IX Coordinator

☐ **3. Prepare the following:**
- School's grievance procedures and process
- How to report or file a complaint of sex discrimination
- How to file a Formal Complaint of Sexual Harassment
- How school will respond to reports

☐ **4. Notify the following of the information in boxes 1-3:**
- Applicants for admission and employment
- Students and employees
- Unions or professional organizations with collective bargaining or professional agreements

☐ **5. Publish/promptly display the information in boxes 1-3:**
- On website
- In all handbooks/catalogs and make them available to those identified in box 4

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RECORDKEEPING

Institutions must maintain the following records for seven years:

- Records and action taken in response to a report or Formal Complaint, including:
  - Supportive measures,
  - The basis for institution's conclusion that its response was not deliberately indifferent,
  - Measures taken to restore and preserve equal access to institution's Education Program or Activity,
  - Reasons why institution's response was not clearly unreasonable in light of the known circumstances if institution does not provide a Complainant with supportive measures.
- Each Sexual Harassment investigation including:
  - Any determination regarding responsibility and all audio or audiovisual recording or transcript,
  - Disciplinary sanctions imposed on the Respondent, and
  - Any remedies provided to the Complainant
  - Any appeal and result of appeal.
- Any informal resolution and result therefrom.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.

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Coordination of Efforts

- Team effort!
- You cannot do it all on your own
- Coordination is critical
- No islands or silos

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Lesson 6

Title IX Process

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TITLE IX PROCESS: FROM REPORT TO HEARING AND APPEALS

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1. Report of Sexual Harassment to Employee

- **Is Complainant a Participant in Education Program or Activity?**
- **Does the report meet the definition of Sexual Harassment?**
  - Based on Sex
    - Quid pro quo
    - Severe, pervasive, and objectively
    - offensive Sexual Assault, Domestic Violence, Dating Violence, Stalking
- **Education Program or Activity/ Jurisdiction?**
  - Does institution have substantial control over the Respondent AND does the institution have substantial control over the context in which the conduct occurred (on school property or during sponsored event)

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2. Initial Meeting with Complainant- Supportive Measures

- **Without Fee or Charge**
- **Regardless of whether the Complainant wants to file Formal Complaint**
- **Designed to restore or preserve access to Education Program or Activity**
- **Without unduly burdening the Respondent**
- **Including but not limited to:**
  - Counseling
  - Extensions of deadlines or other course-related adjustments
  - Modifications of work or class schedules
  - Escort services
  - Mutual no contact directives/restrictions
  - Changes in work locations
  - Leaves of absence
  - Increased security and monitoring of certain areas

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3. Formal Complaint

- In writing
  - Hard copy
  - Electronic
  - Online submission
- Signed by:
  - Complainant
  - Title IX Coordinator
- Alleging Sexual Harassment
- Requesting an investigation

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4. Dismissal of Formal Complaint

- Required Dismissal
  - Would not constitute Sexual Harassment as defined in Title IX regulations
  - Did not occur in education program or activity
  - Did not occur against a person in the U.S.
- Permissive Dismissal
  - Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations
  - Respondent is no longer enrolled or employed by institution
  - Specific circumstances prevent the school from gathering evidence sufficient to reach a determination
- If Dismissed:
  - Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties
  - May proceed with disciplinary process outside of Title IX

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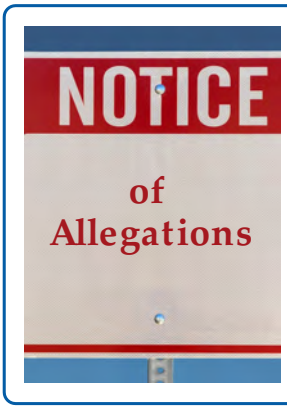

5. Notice of Allegations

- Notice of grievance process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
  - Identities of the parties
  - Conduct constituting Sexual Harassment
  - Date of incident
  - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after grievance process
- Right to Advisor of choice
- Code of Conduct provision(s) prohibiting false statements or false information in process

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Notice of Allegations Checklist

- ☐ Notice of Grievance Process; Including Informal
- ☐ Allegations Potentially Constituting Sexual Harassment
  - Identities of the Parties
  - Conduct Constituting Sexual Harassment
  - Date of Incident
  - Location of Incident
- ☐ Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- ☐ Right to Advisor of Choice
- ☐ Code of Conduct Provision Prohibiting False Statements or False Information in Process

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6. Investigation

- Interviews with parties and witnesses
  - Including notice with sufficient time to prepare for the meeting/interview
  - Document date of meeting and date notice provided
- Collect evidence and information
  - Document when and how evidence/information was collected
- Allow parties and advisors to review "evidence directly related to the allegations" (10 days)
- Write investigation report that "fairly summarizes relevant evidence"
- Provide opportunity for parties and advisors to review the report (10 days)

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7. Live Hearing

- MUST have a live hearing – can be virtual
- Parties are entitled to an Advisor, free of charge, during the live hearing for the purpose of "cross-examination"
- Decision-Maker will be responsible for making relevancy determinations re: questions
- Written Determination and opportunity to appeal

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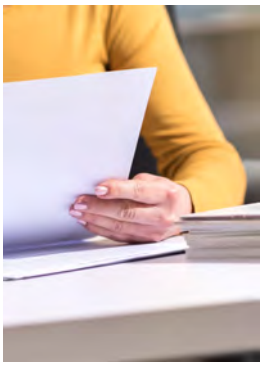

8. Determination Regarding Responsibility

- Written Determination
- Applying appropriate standard of evidence (preponderance vs. clear and convincing)
- Identifying the allegations
- Description of procedural steps taken from the receipt of the Formal Complaint through the determination regarding responsibility
- Findings of fact supporting the determination
- Conclusions regarding application of code of conduct/definitions to the facts
- Statement of, and rationale for, the result as to each allegation including determination regarding responsibility, any disciplinary sanctions and remedies
- Procedures and permissible bases for Complainant and Respondent to appeal
- Provide to parties simultaneously

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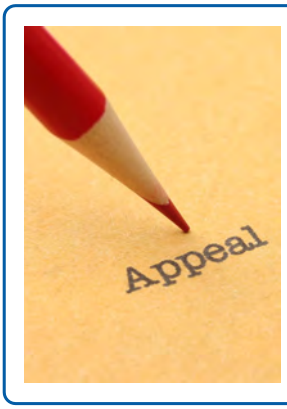
Decision-Maker
Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site Visits
  - Methods Used to Gather Other Evidence
  - Hearings Held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- ☐ Procedures and Permissible Bases for Appeal

9. Appeals



- Offered to both parties
- Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- On the following bases:
  - Procedural irregularity that affected the outcome of the matter
  - New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
  - Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
  - Additional bases if offered equally to both parties
- Notify the other party in writing when an appeal is filed
- Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome
- Written decision describing the result and rationale for the result
- Provide written decision simultaneously to both parties

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Appeals Checklist

- ☐ Provide Equal Opportunity to Appeal
  - Determination of Responsibility
  - Dismissal of Formal Complaint
- ☐ Based Upon Proper Grounds
  - Procedural Irregularity that Affected Outcome
  - New Evidence that Was Not Reasonably Available at the Time of the Determination that Could Affect Outcome
  - Conflict or Bias by Title IX Coordinator, Investigator, or Decision-Maker
- ☐ Notify the Other Party in Writing
- ☐ Decision-Maker NOT Same as Prior Decision Makers, Investigators, or Title IX Coordinator
- ☐ Provide Equal Opportunity to Submit Written Statement
- ☐ Issue Written Decision and Rationale
- ☐ Provide the Written Decision Simultaneously

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10. Informal Resolution

- Cannot be offered as a condition of enrollment or continued employment
- Cannot be offered to resolve employee on student allegations
- After a Formal Complaint is filed
- Prior to decision regarding responsibility
- Parties cannot be required to participate
- Institution must:
  - Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations
  - Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint
  - Provide consequences resulting from informal resolution process including records maintained or shared
  - Obtain both party's voluntary, written consent to the informal resolution process

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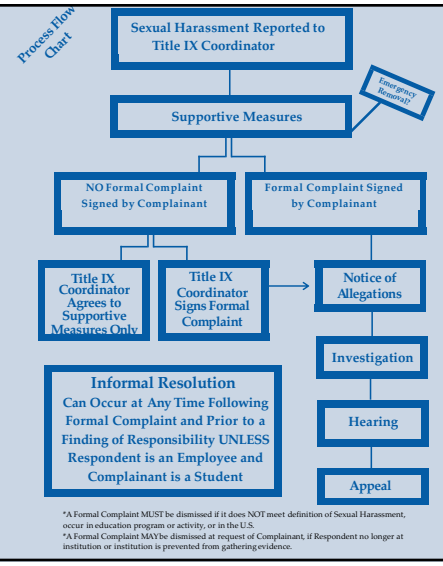
General Process Flow Chart



*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.
*A Formal Complaint MAYbe dismissed at request of Complainant, if Respondent no longer at institution or institution is prevented from gathering evidence.

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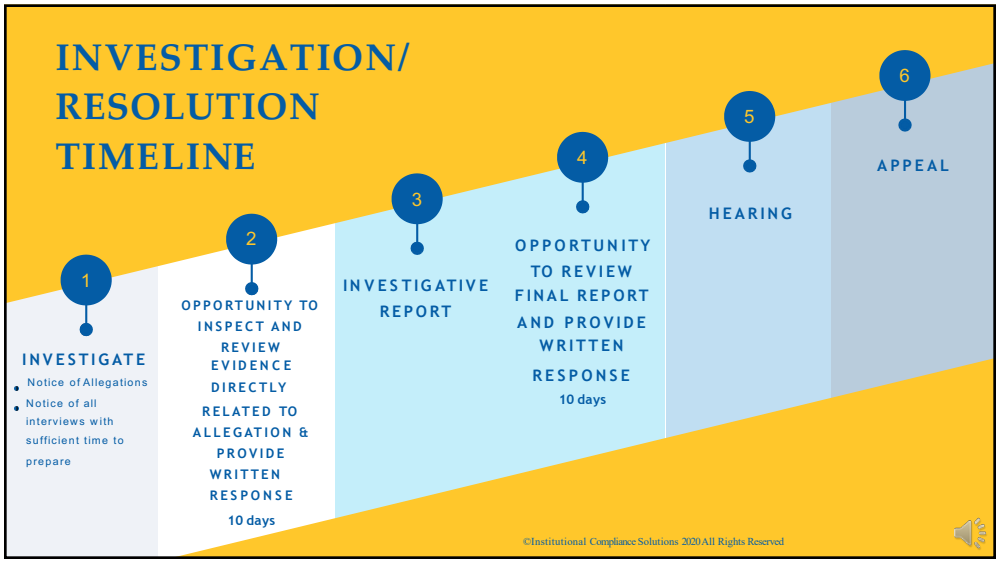
INVESTIGATION/ RESOLUTION TIMELINE
1
INVESTIGATE
Notice of Allegations
Notice of all interviews with sufficient time to prepare
2
OPPORTUNITY TO INSPECT AND REVIEW EVIDENCE DIRECTLY RELATED TO ALLEGATION & PROVIDE WRITTEN RESPONSE
10 days
3
INVESTIGATIVE REPORT
4
OPPORTUNITY TO REVIEW FINAL REPORT AND PROVIDE WRITTEN RESPONSE
10 days
5
HEARING
6
APPEAL
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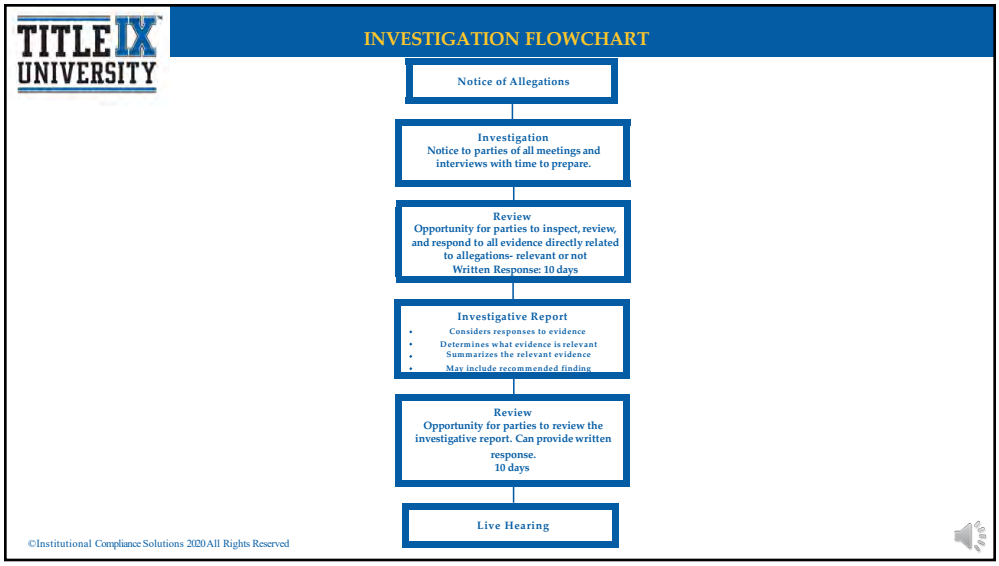
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INVESTIGATION FLOWCHART
Notice of Allegations
Investigation
Notice to parties of all meetings and interviews with time to prepare.
Review
Opportunity for parties to inspect, review, and respond to all evidence directly related to allegations- relevant or not
Written Response: 10 days
Investigative Report
Considers responses to evidence
Determines what evidence is relevant
Summarizes the relevant evidence
May include recommended finding
Review
Opportunity for parties to review the investigative report. Can provide written response.
10 days
Live Hearing
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See you in Lesson 7!

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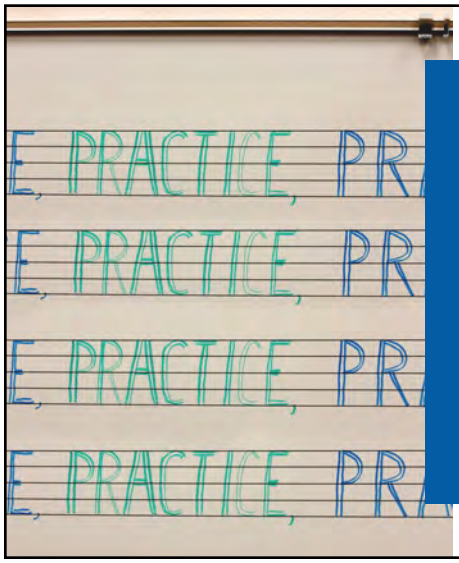

LESSON 7: FROM POLICY AND PROCESS TO PRACTICE: CASE STUDIES AND HYPOS

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PROCEDURAL HYPOS

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Formal Complaint does not rise to Title IX Sexual Harassment and/or Program or Activity

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Allegations do rise to Title IX Sexual Harassment and Program/Activity, but Complainant does not want to proceed with a Formal Complaint

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During investigation of a Formal Complaint, Complainant no longer wishes to go forward.

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SUBSTANTIVE HYPOS

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Randy is a Junior at ICS University. Randy alleges that Adam brushed him across his butt when he was in his room (in an on-campus residence hall). Randy states that is all that happened, but that he wishes to file a Formal Complaint.

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Hailey reports that she was sexually assaulted by Erik at a fraternity house party. She alleges that she was "tipsy" but remembers the night in detail. Erik was "creepy" all night, trying to dance with her. She repeatedly told him to get lost. When she went to find a restroom, Erik cornered her, pushing her into one of the rooms on the bed. From there he forced himself on her. She says she tried to fight him off. He pulled down her pants and raped her by inserting himself inside her. After, he said, "thanks for the ride" and left. Hailey reported what happened to a friend, Ali, who took her to the hospital where she got a SANE exam late that night.

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Ralph complains that he is being called names by his baseball teammates. Ralph says they call him names like "pussy" and "faggot" because they think he is gay. They also tell him he has "man boobs" and make humping gestures towards him saying he likes to "do it" with boys. The Title IX Coordinator talks to Ralph who says this is happening about once a week during practices, but mainly in the locker room. Ralph files a Formal Complaint through the on-line reporting system your school decided to put in place.

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Using the previous hypo, assume that the name calling, and gestures occurred at the "baseball" house off-campus (that is not owned/controlled by institution and that the conduct alleged also includes the boys physically humping Ralph, but the behavior has never happened on campus.

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Campbell reports to the Title IX Coordinator that her boyfriend, Ben, is threatening to kill her through text messages if she breaks up with him. She says that he has been abusive to her before by slapping her and locking her in his car until she agreed to stay with him one time when they went to dinner at Olive Garden. Campbell does not want to file a Formal Complaint but wants you to change him out of the English class that they are in together. She wants Ben kicked out of school but does not want him to know that it was because of her allegations.

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See you in lesson 8!

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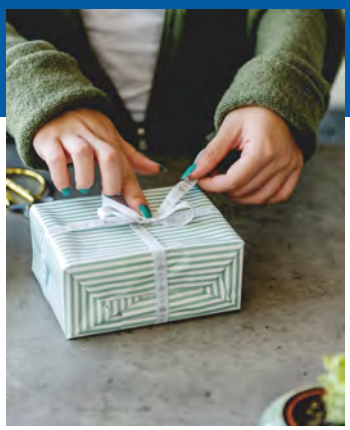

Lesson 8: Wrap Up & Assessment

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Learning Objectives

- ✓ Understand the law and regulations
- ✓ Explain Title IX process and your role in it
- ✓ Recognize and Evaluate Sexual Harassment and Program or Activity
- ✓ Understand serving impartially in your role
- ✓ Explain the role of a Title IX Coordinator and coordinating the institution's response

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Questions???

We are here for you!
(info@titleixu.com)

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ASSESSMENT OF KNOWLEDGE

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