



**GRAND RIVER** | SOLUTIONS

# Annual Compliance Training CCSNH Day 1

Kateeka Harris and Andrea Stagg  
2023

# Meet Your Facilitators



**Kateeka Harris**

*She/her/hers*

Senior Solutions Specialist



**Andrea Stagg**

*She/her/hers*

Director of Consulting Services

# About Us

## Vision

We exist to help create safe and equitable work and educational environments.

## Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

# Agenda Day 1

1

**Regulatory Overview**

2

**The Role of the Title IX  
Coordinator**

3

**Receipt of Reports**

4

**Report Resolution**

5

**Investigator Training**

# Agenda

1

**Regulatory Overview**

2

**The Role of the Title IX Coordinator**

3

**Receipt of Reports**

4

**Report Resolution**

5

**Investigator Training**

6

**Decision Maker Training**

7

**Sanctioning**

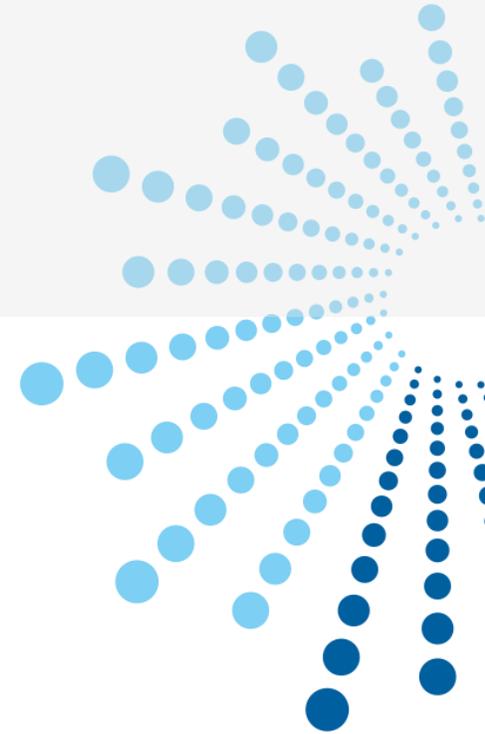
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**Appeals**



# Regulatory Overview

01



# Title IX of the Education Amendments Act of 1972

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

20 U.S.C. § 1681 (1972).



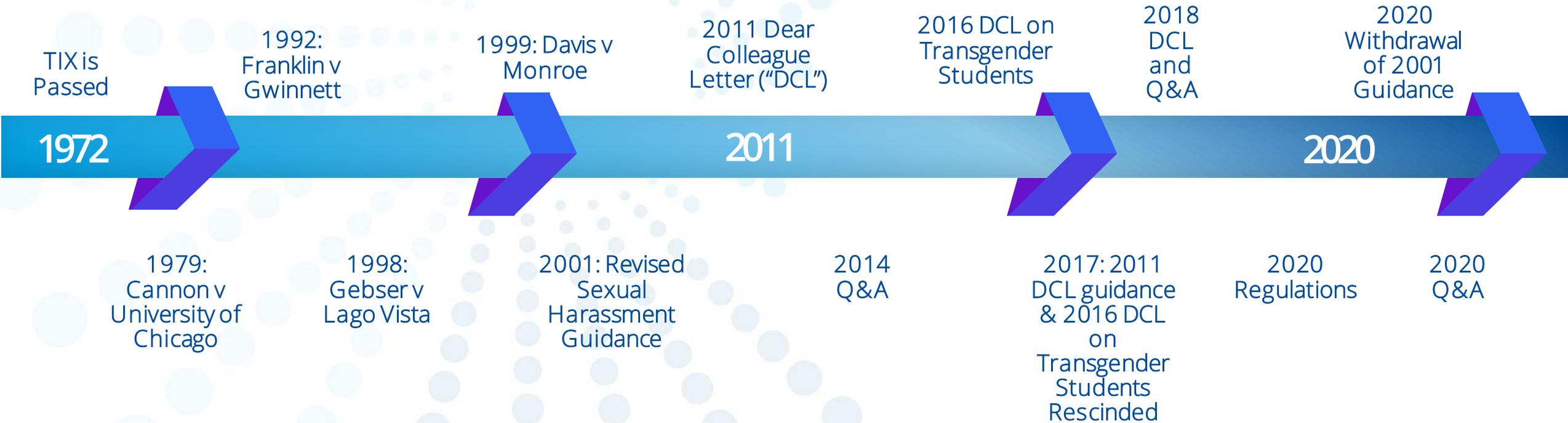
# Title IX Applies to All Forms of Sex Discrimination

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities



# The History of Title IX

A TIMELINE



# The Title IX Regulations

## Sexual Harassment Only



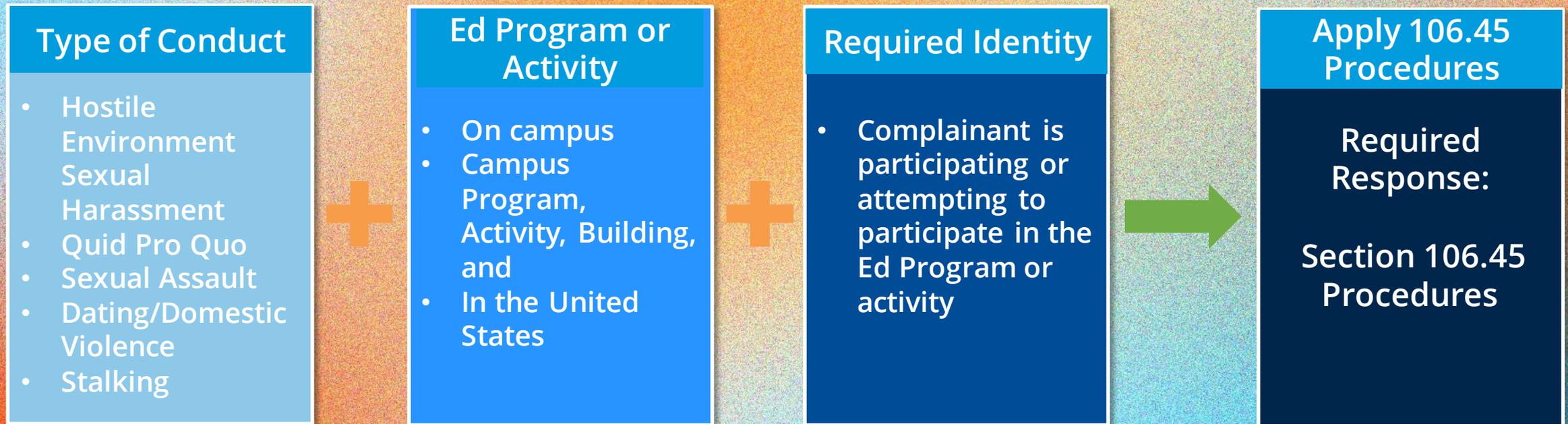
1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

# Sexual Harassment: *Section 106.30*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) 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;
- (2) 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
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

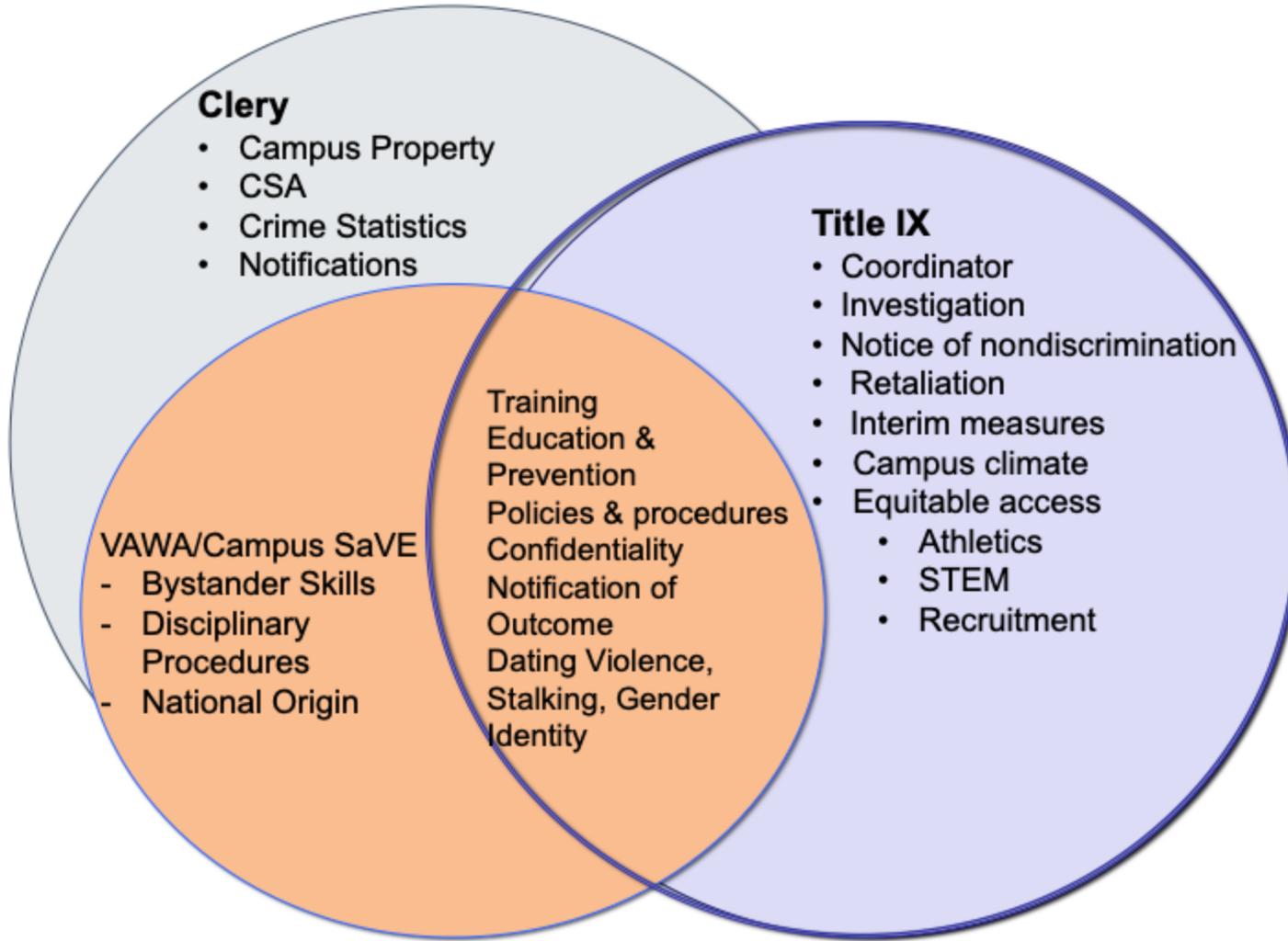
# Title IX Application Post May 2020 Regulations



# Conduct Falling Outside the Scope of Title IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws





# Actual Notice

## A Narrowed Scope of Institutional Responsibility

Institution must respond when it has:

**“Actual knowledge”**

When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator

**of “sexual harassment”  
(as newly defined)**

**that occurred within the school’s “education program or activity”**

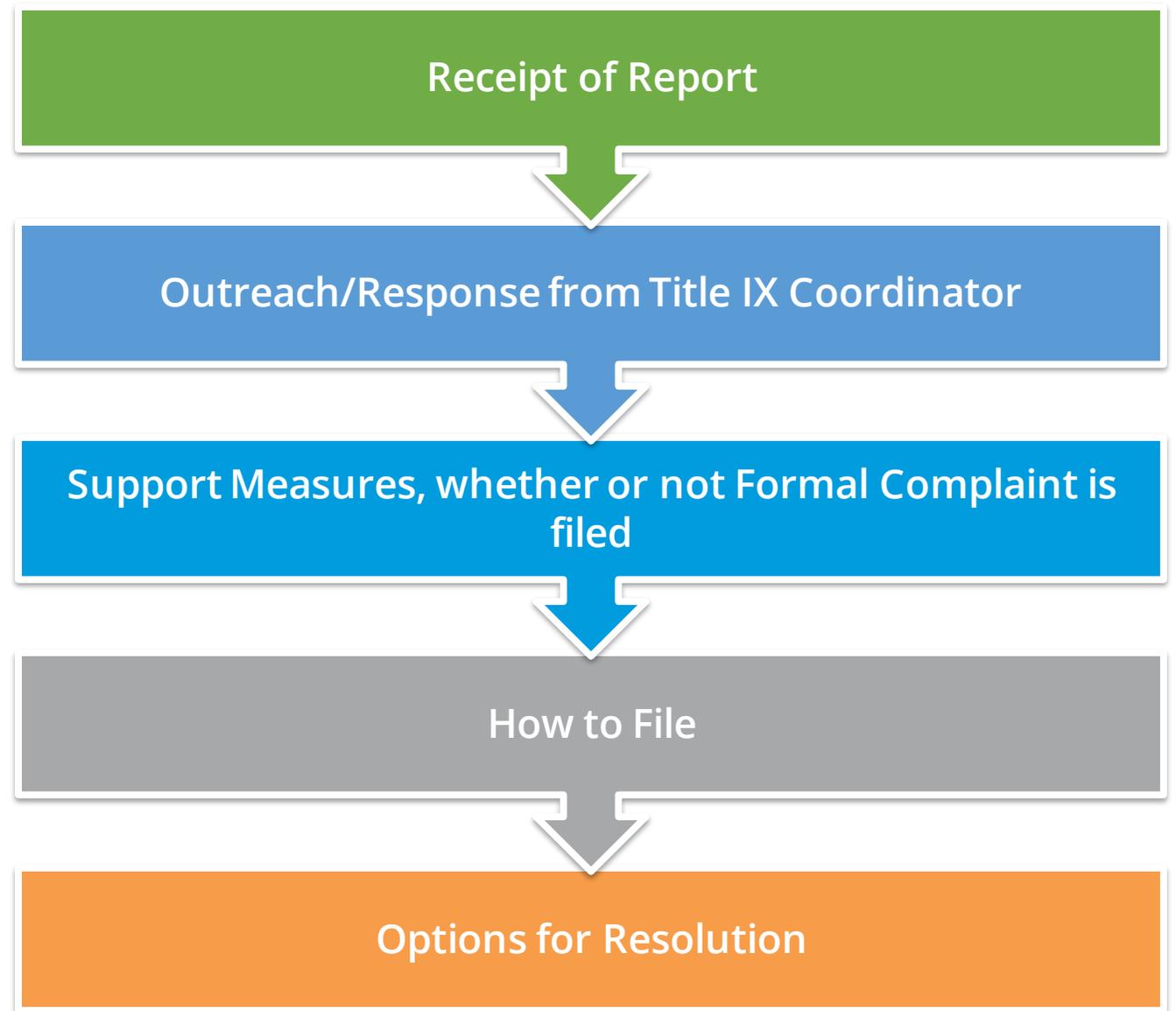
“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

**against a “person in the United States” (so, not in study abroad context)**



# Initial Response Requirements



# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

“

## Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

”



# Appeals: Mandatory Grounds

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(A) Procedural irregularity that affected the outcome of the matter;

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(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

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(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Other Requirements of the Regulations

Designation of  
a Title IX  
Coordinator

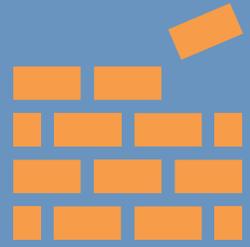
Dissemination  
of policy

Separation of  
Responsibilities

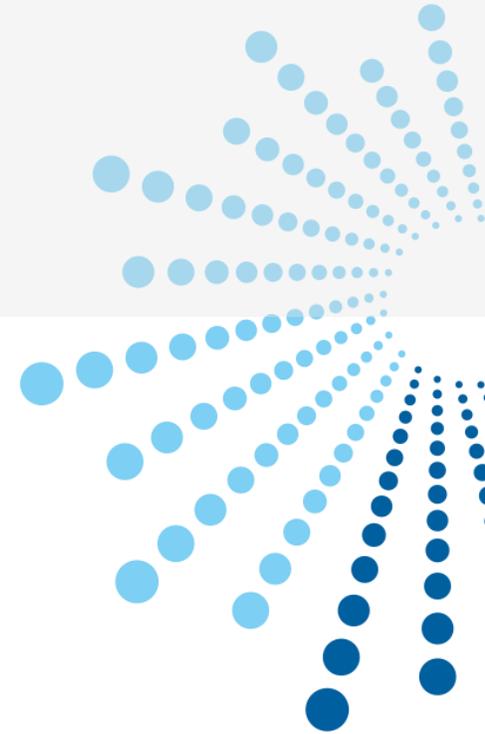
Training and  
posting of  
training

Impartiality

Record  
Keeping



# The Role of A Title IX Coordinator



02

# Final Rule, Section 106.8

Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures

“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”

Additionally:

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at anytime.



# Final Rule, Section 106.8(a)

The institution must notify applicants and all members of the community of the Title IX Coordinators

1. Name or Title
2. Office address
3. Email address
4. Phone number

Any person may report , at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed

# “Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

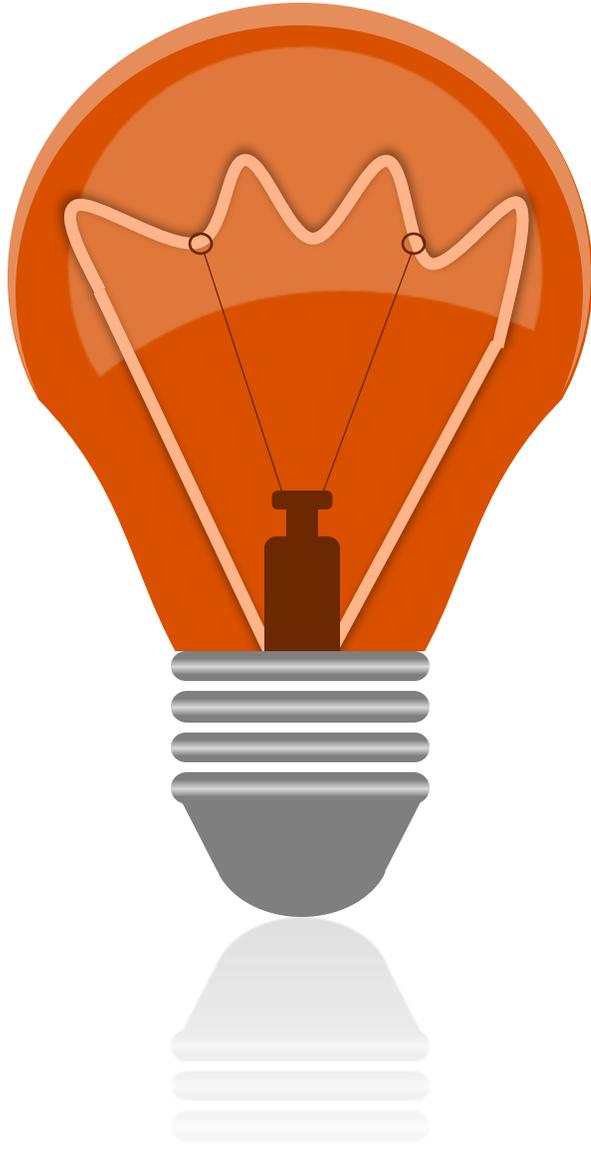


# Responsibilities Often Delegated to the Title IX Coordinator

- Ensuring that the institutional policies and procedures are compliant with Title IX
- Ensuring dissemination of the policy
- Overseeing the grievance process to ensure it is compliant
- Coordinating a compliant grievance process
- Staffing various roles
- Ensuring training requirements are met
- Record keeping
- Compliance with intersecting federal and state laws
- Education and prevention efforts



# The Three Essential Functions of Title IX Compliance



01

Response

02

Education & Prevention

03

Compliance

# A Successful Title IX Coordinator...

**C**

Understands the Importance of Consistency

**A**

Adheres to policies and procedures

**R**

Records or documents everything

**E**

Engages meaningfully with the community

**S**

Strategically plans for success



# Strategic

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- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans

# Engage

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload



# Consistency



Creation of Forms  
& Templates



Development of Annual  
Plans for Compliance



Development of Annual  
Plans for Training



Comprehensive  
Policies &  
Procedures

# Record

*Document, Document, Document!*

1. Compliance
  1. Maintain old policies
  2. Keep records of all responses to reporting requirement
2. Training
  1. Dates, times, locations
  2. Attendees
  3. Training materials
  4. Reason for the training
3. Response
  1. EVERYTHING





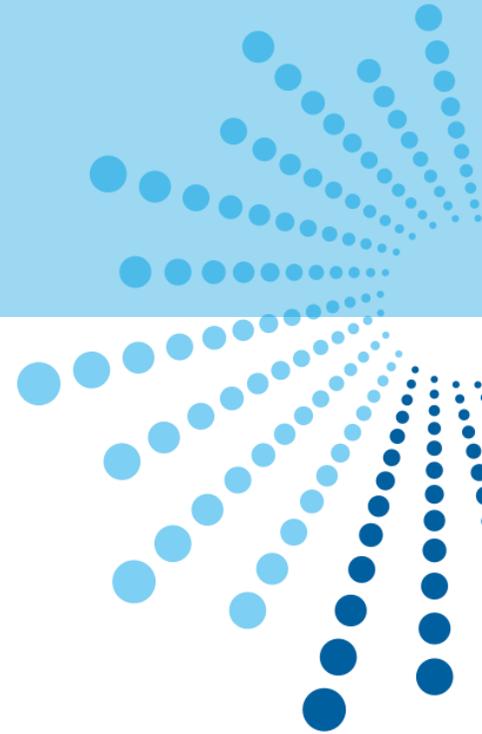
# Successful Coordinators Approach all Aspects of the Work

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# Training, Education & Compliance Obligations



# Sources of Compliance Obligations

Title IX Final  
Regulations

Violence  
Against  
Women Act

Other,  
Intersecting  
Federal Laws

State Law

Legal  
Precedent

Institutional  
Policies

Resolution  
Agreements

# Sources of Training Requirements



Title IX Final  
Regulations

**VAWA**

Violence  
Against  
Women Act



State Law



Resolution  
Agreements



# Training and Education

## Two Areas of Focus

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1

Institutional  
Response to Sex  
Discrimination

2

Prevention  
Education



# VAWA Compliant Programs Must Include:

- Prohibition Statement
- Definitions of Offenses
- Definition of Consent
- Safe and positive
- bystander intervention options
- Signs of abusive
- behavior and
- risk reduction
- Ongoing
- Prevention & Awareness campaigns for employees and students

# Responsible Employees



# “Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.



# Responsible Employee Training: Additional Areas of Focus

- Take time to explain the reason for and importance of Responsible Employee reporting
- Provide advice on how to receive a report
- Provide suggestions on how to share their obligation to report with the reporting individual
- Instruct on their options for reporting to the Title IX Coordinator
- Fully explain what happens after they report a disclosure

# Special Considerations for Training & Education in the Post Regulatory Landscape



Explaining the narrowed scope of Title IX



Explaining the institutional decision for two processes/procedures



Responsible Employee challenges



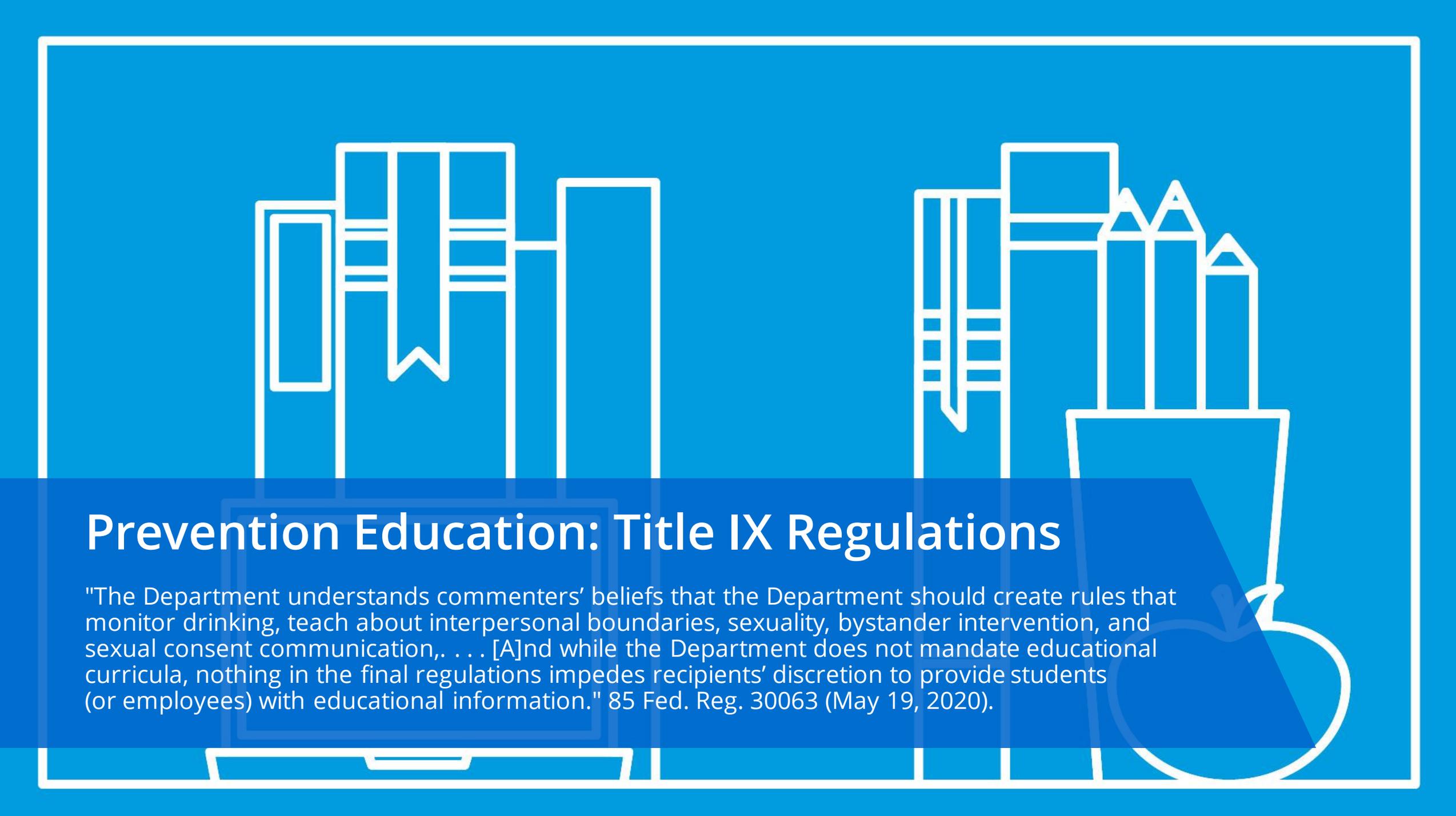
Burden of proof challenges



Length of Training



Time for questions/community processing



# Prevention Education: Title IX Regulations

"The Department understands commenters' beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication, . . . [A]nd while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information." 85 Fed. Reg. 30063 (May 19, 2020).

# Prevention Education: Violence Against Women Act (VAWA)



A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

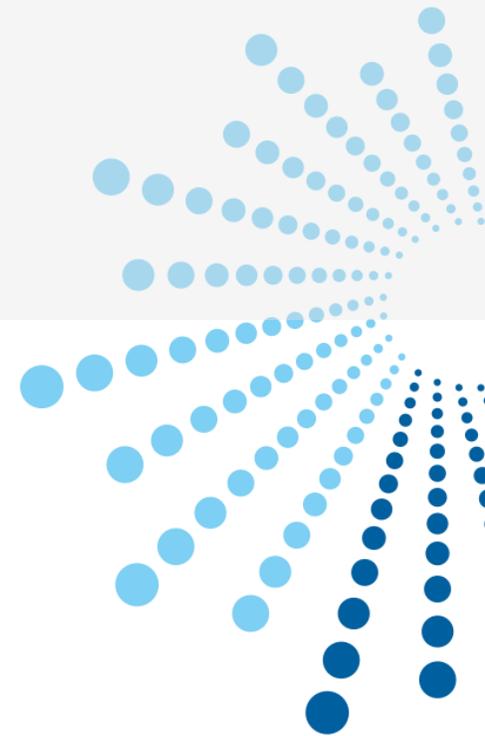
Ongoing prevention and awareness campaigns.



# Receipt of Reports

Actual Knowledge, Report Response,  
Initial Assessments, and Supportive Measures

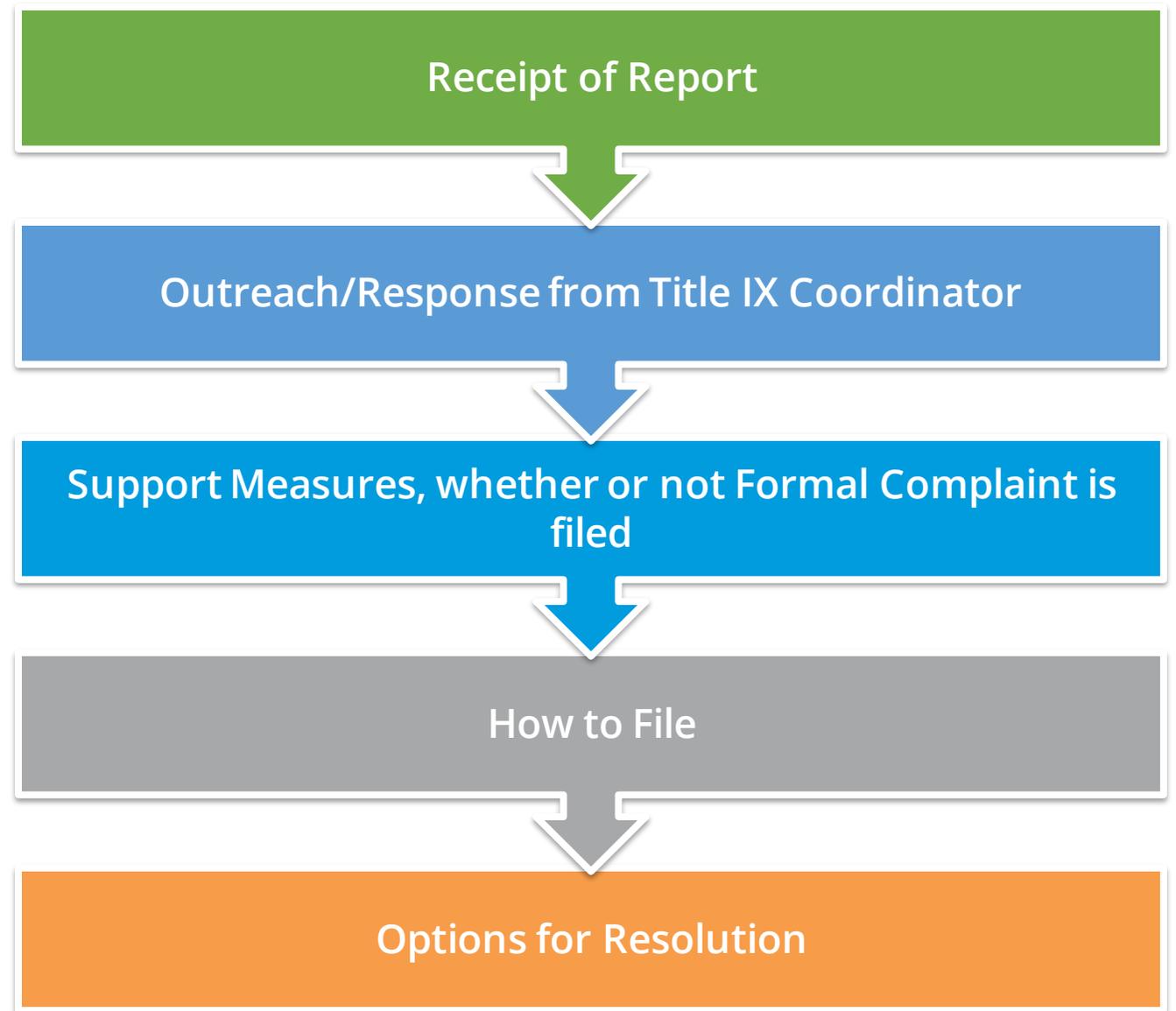
03



# Infrastructure for Reporting



# Initial Response Requirements



# Receiving Reports and Initiating the Response

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1. REVIEW THE  
REPORT



2. DETERMINE THE  
APPROPRIATE INITIAL  
RESPONSE



3. PROMPTLY  
INITIATE THAT  
RESPONSE



4. DOCUMENT/RECORD  
THE RECEIPT OF THE  
REPORT AND THE  
RESPONSE THERETO



# Initial Outreach

## FIRST — SAFETY

### Email

- Create forms

### Phone

### In person

- Use RA
- Campus safety

### Follow up emails



# Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge

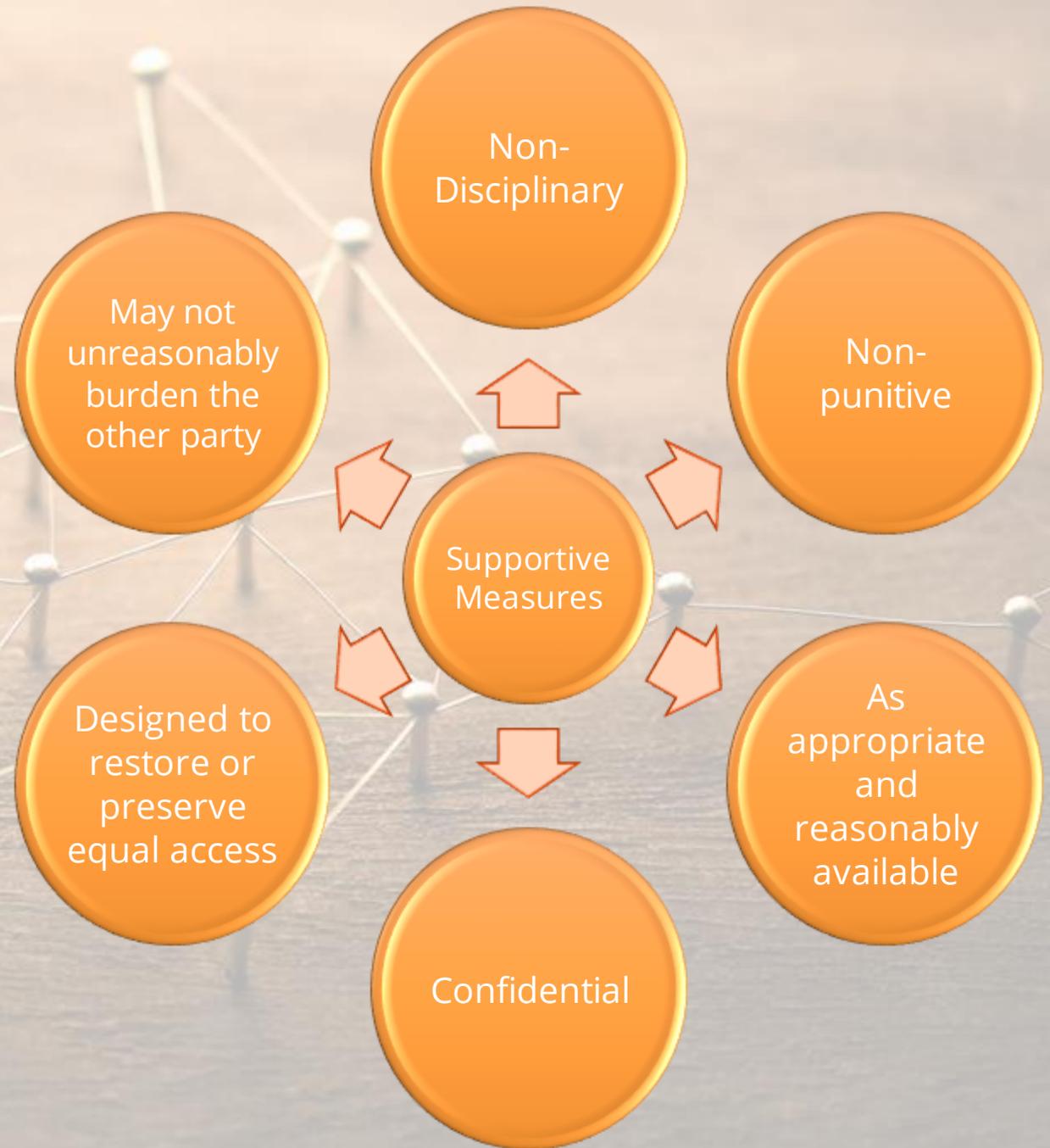
# Initial Meeting with the Complainant

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- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



# Supportive Measures



# Examples of Supportive Measures

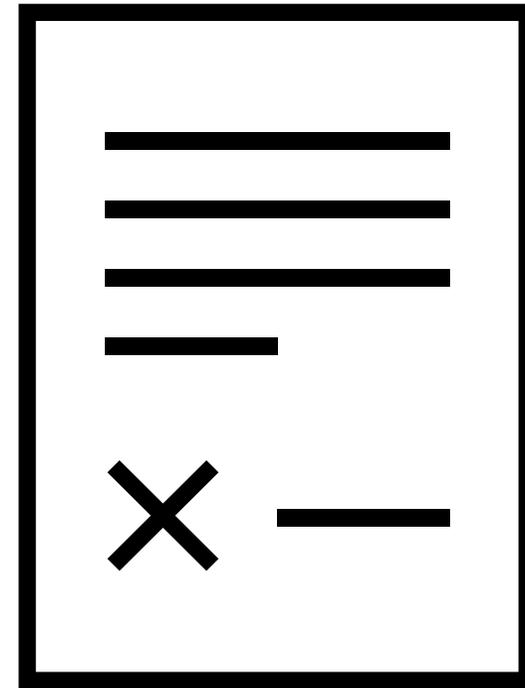
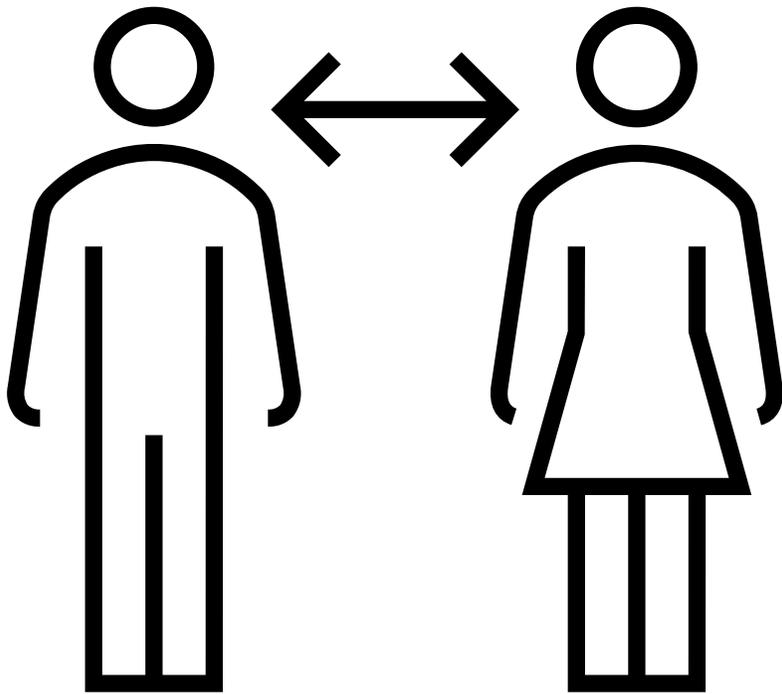
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- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



# “Mutual Restrictions On Contact Between the Parties”

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# Post Meeting Tasks

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Document the meeting



Send a summary email with resources, options, next steps



Follow up



Make connections



Provide the supportive measures



Document supportive measures requested, provided, and not provided. Where not provided, indicate why.



# Section 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision maker, or facilitator of informal resolution not to have a conflict of interest or bias

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

# Impartiality

Avoiding Prejudgment and Bias

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“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

# Impartiality

## Avoiding Prejudgment and Bias

Do not rely on cultural “rape myths”

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

# Impartiality

## Avoiding Bias

Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

# Impartiality

## Avoiding Conflicts of Interest

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

# Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

## Bottom line

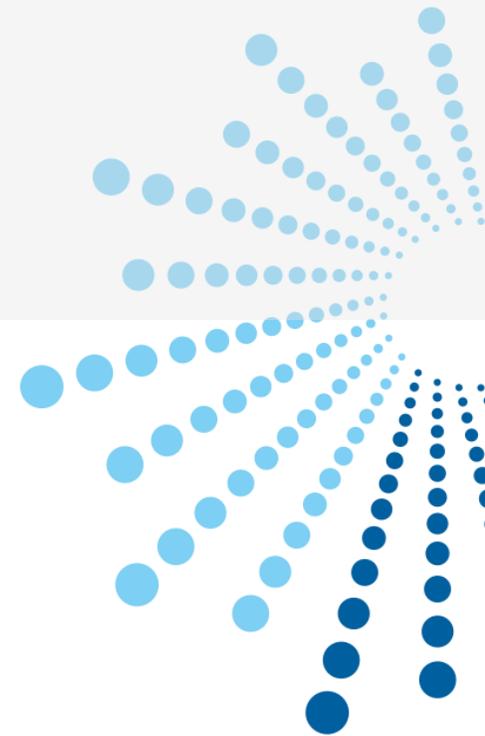
- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudice or bias for or against any party



# Report Resolution

Remedies Based, Informal, or Formal

04

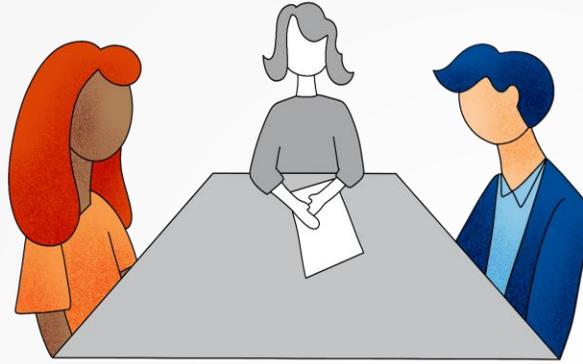


# How to Proceed?



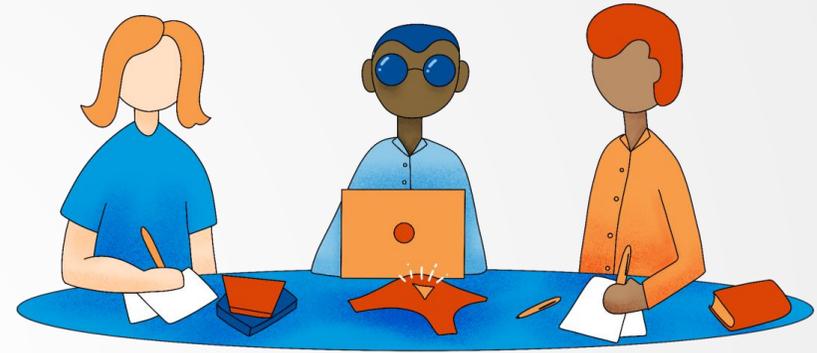
## Remedies-based

No formal process



## Alternative/Informal

Signed agreement;  
Voluntary;  
What records?



## Formal/ Investigation/ Hearing

All requirements of 106.45





# Remedies Based Resolution

04(a)



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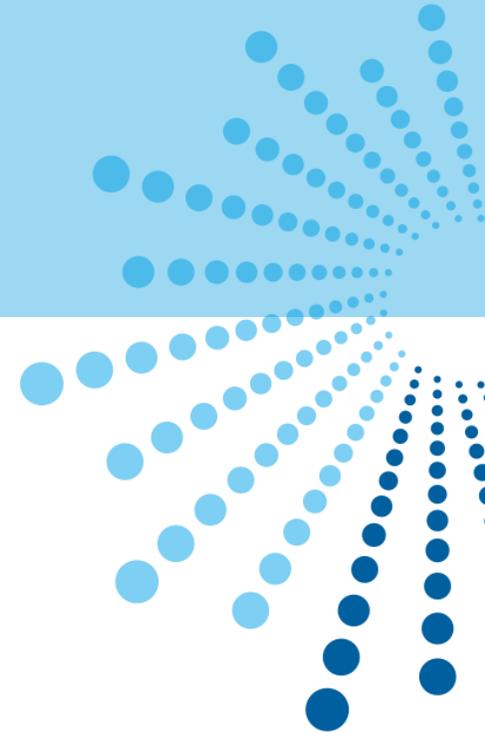
# Remedies Based Resolutions

- Supportive Measures
- Educational Conversations
- Targeted Education



# Formal Complaint & Notice Requirements

04(b)



# Formal Complaint Filed

By  
Complainant

By the Title IX  
Coordinator



# Factors to Consider When Determining Whether to File a Formal Complaint

Allegations  
of Violence

Threats

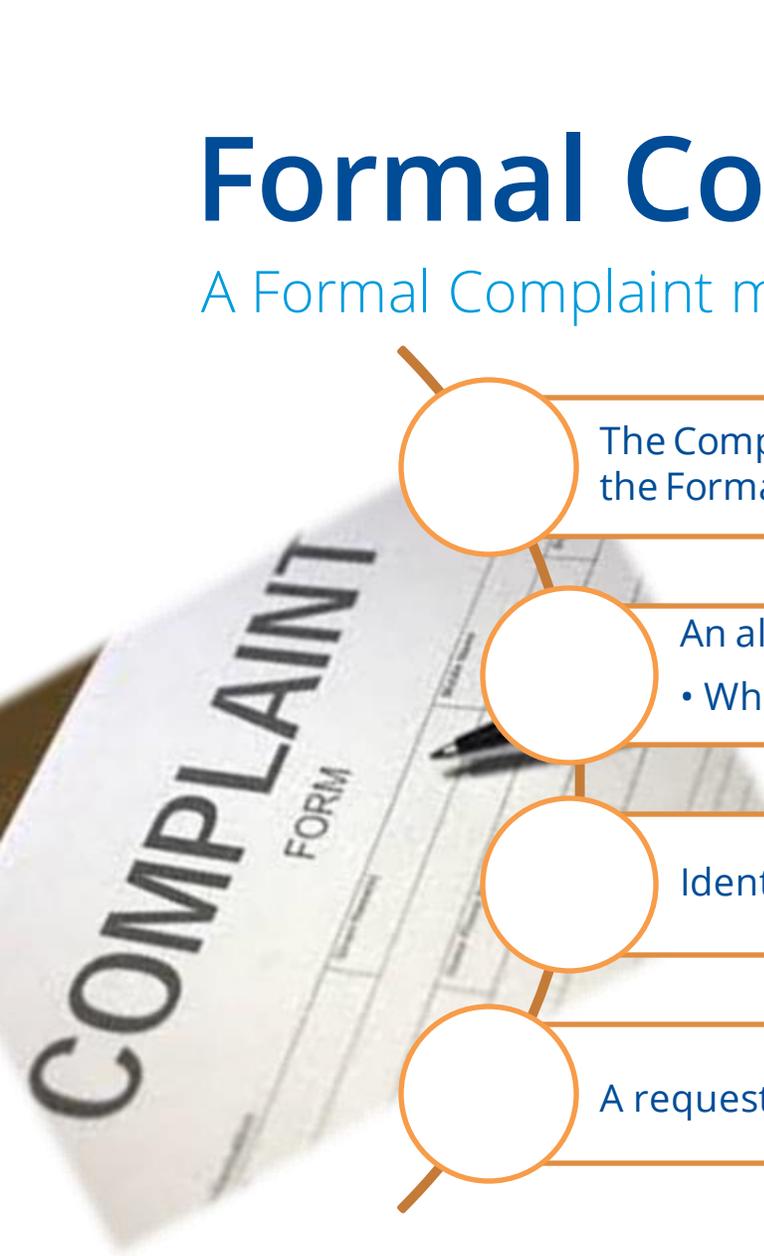
Use of  
weapons

Serial  
predation



# Formal Complaint

A Formal Complaint must include:



The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include:

- Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

*Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.*

# Dismissing Complaints

## MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

## DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info



# Can Proceed Under Other Policy



# Notifying the Respondent



FIRST—SAFETY

Written Notification Meetings and Sufficient Time to Prepare

Make sure support available

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

# Notice Requirements

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Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

the identities of the parties involved in the incident, if known,

the conduct allegedly constituting sexual harassment under § 106.30,

and the date and location of the alleged incident, if known.

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The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

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The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.

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The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process



# Advisor of Choice

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The advisor can be anyone, including an attorney;

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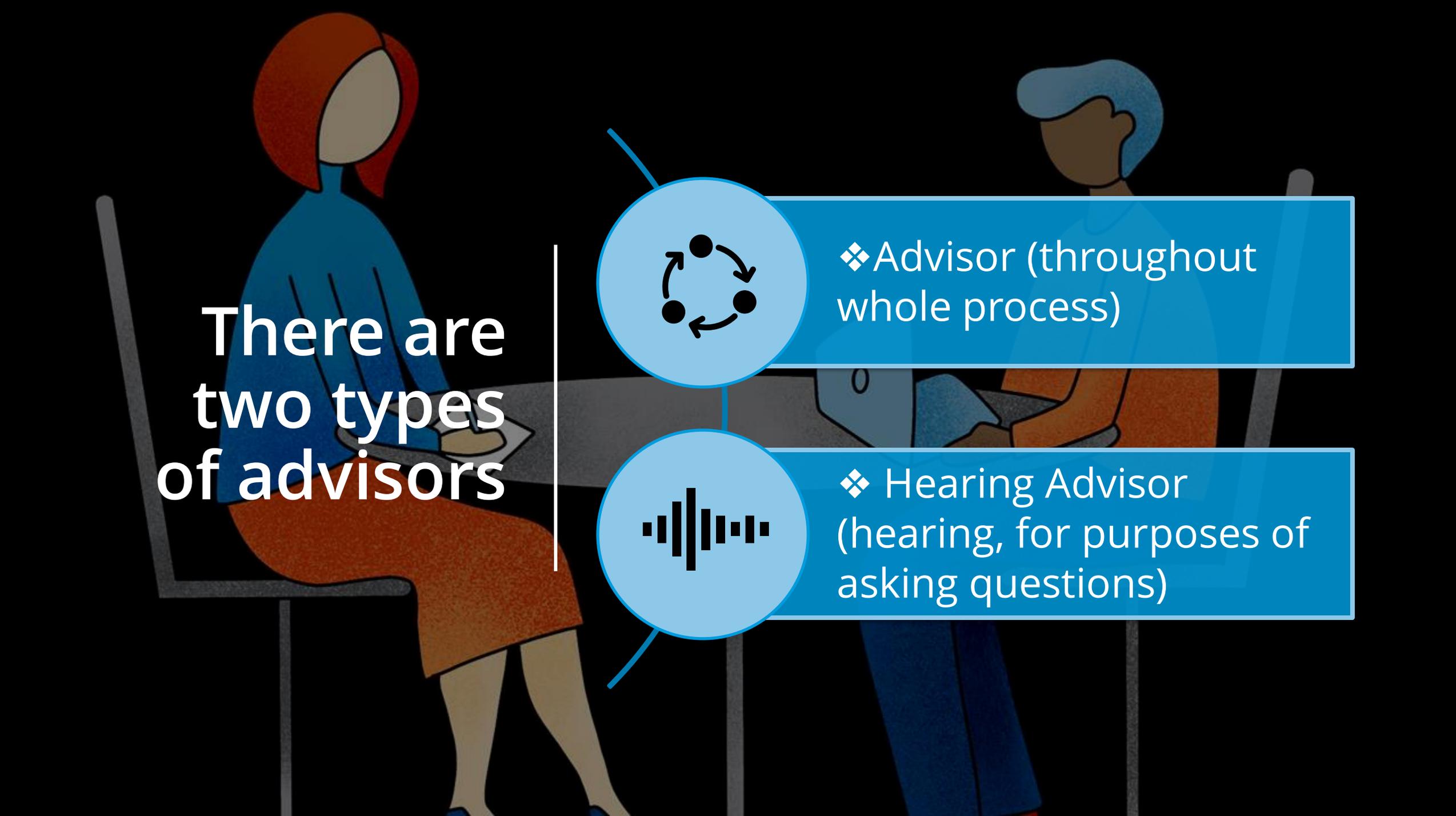
Institutions cannot place restrictions on who can serve

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No training required

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Institution must provide advisor for the purposes of cross examination, only.



# There are two types of advisors



❖ Advisor (throughout whole process)



❖ Hearing Advisor (hearing, for purposes of asking questions)

“

## Hearing Advisor

“Such advisors need not be provided with specialized training or be attorneys because the essential function of such an advisor provided by the recipient is not to “represent” a party but rather to relay the party’s cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.” 85 Fed. Reg. 30562 (May 19, 2020).

”

# Initial Meeting with Respondent



- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps

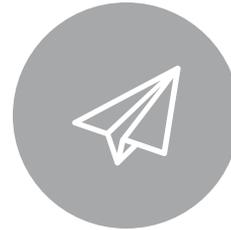


# Post Meeting Tasks

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Document the meeting



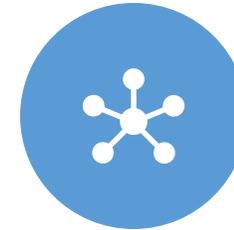
Send a summary email with resources, options, next steps



Follow up



Provide the supportive measures



Make connections



# Formal Complaint Resolution

## Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

## Formal Resolution

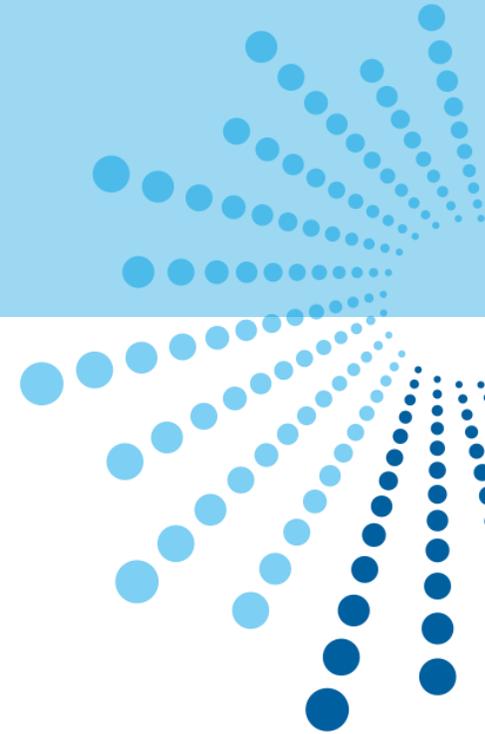
- Investigation and Adjudication process in compliance with Section 106.45





# Informal Resolution

04(c)



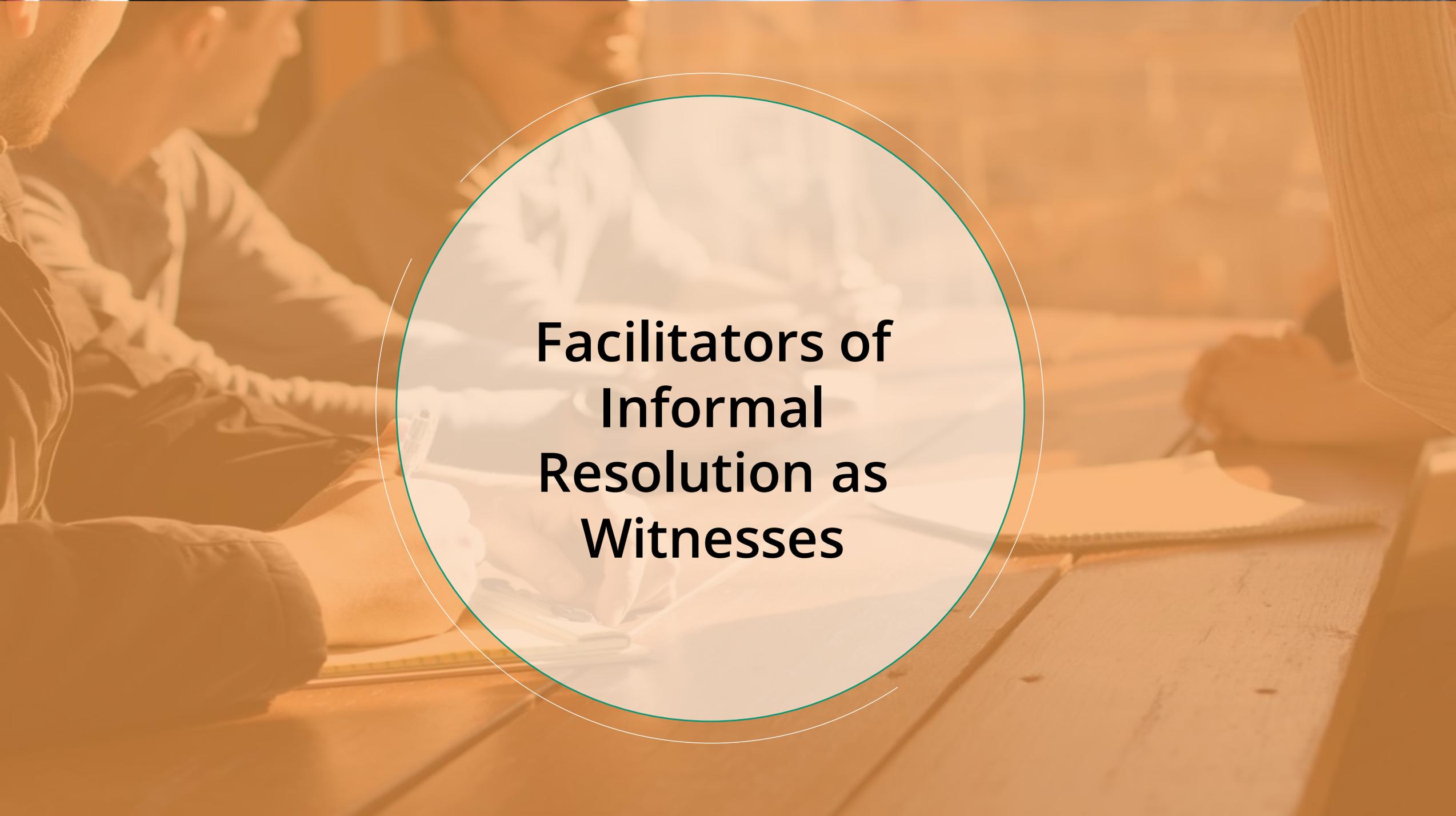


# Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

# Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

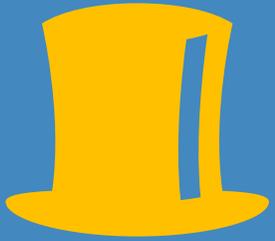
A group of people are seated around a table in a meeting or workshop setting. The scene is overlaid with a semi-transparent orange filter. A large, light-colored circle with a thin teal border is centered on the image, containing the text. The background shows people looking at documents and talking.

**Facilitators of  
Informal  
Resolution as  
Witnesses**

**Informal  
Resolution is  
prohibited to  
resolve  
allegations that  
an employee  
sexually harassed  
a student.**

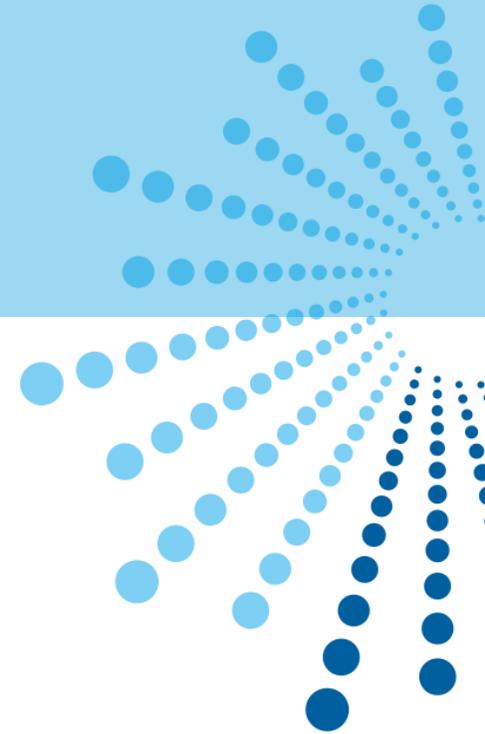
**STOP**





# Formal Resolution

04(d)



# Procedural Requirements for Investigations



Notice TO BOTH PARTIES



Equal opportunity to present evidence



An advisor of choice



Written notification of meetings, etc., and sufficient time to prepare



Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report



Report summarizing relevant evidence and 10 day review of report prior to hearing





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# Title IX Coordinator's Role

## In the Investigation

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- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

# Title IX Coordinator's Role

## In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed





“

## Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

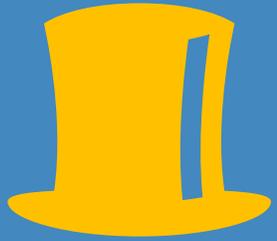
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# Title IX Coordinator's Role

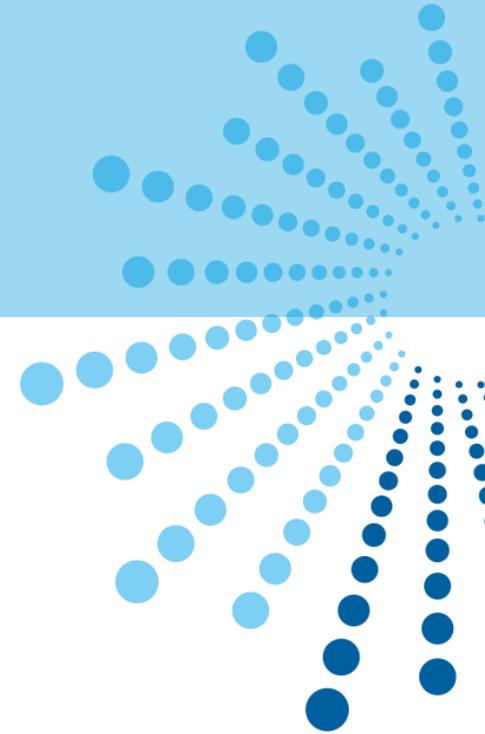
## In the Appeal

- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed



# The Role of The Advisor

04(e)



# The Role of The Advisor



Review the policy



Review the materials provided, if  
any



Reach out to your advisee



Schedule a meeting

# After you are assigned a case...



Review the policy



Review the materials provided, if any

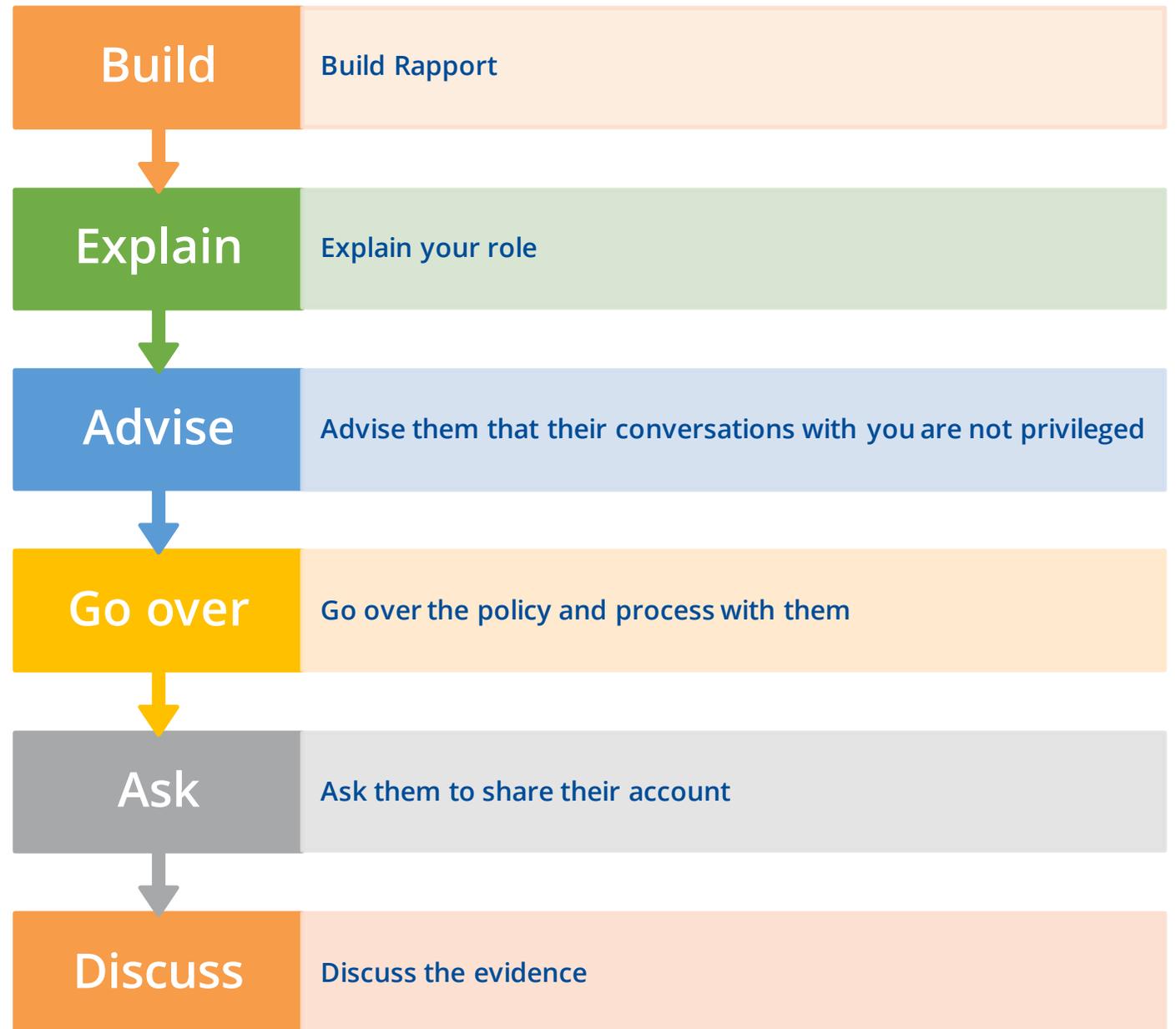


Reach out to your advisee



Schedule a meeting

# Meeting with your advisee





# Make the Party Aware that ...

You are under no obligation to keep the information confidential

- There is no attorney client relationship nor any other recognized privilege between you and the party
- You are not under an obligation to keep what the party tells you confidential

Were this matter go to a court of law, and you were asked to testify, you would have to do so, truthfully

Do this at the outset

# During the Investigation

- Assist in the identification of witnesses
- Assist in the identification of evidence
- Assist in providing the investigator with information
- Assist in preparation for investigative interviews
- Accompany advisee to investigative interviews
- Advise during the interview
- Assist with document/evidence review and response
- Assist with review of the report and development of the response



# During the Hearing



# Advise your advisee



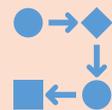
Communicating during the hearing



On matters of evidence



Policy



Process

# Cross Examination

Who does it?

Must be conducted by the advisor

If party does not appear or does not participate, advisor can appear and cross

If party does not have an advisor, institution must provide one

# Cross Examination Permissible Questions

When a post-secondary institution holds a live hearing, is the questioning limited to certain subjects?

“The Rule requires that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask all relevant questions (including follow-up questions), and only relevant questions.”\*



# Cross Examination

## Relevant Questions

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

*See, e.g.,* Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

# Cross Examination Impermissible Questions

Questions that seek to illicit irrelevant information

- Complainant's prior sexual history
- Information protected by an un-waived legal privilege
- Medical treatment and care

Duplicative questions

Information that is not relevant

# Preparing For Cross



Review and evaluate the evidence



Identify your narrative, or the version of events that you want to illustrate



Identify the facts at issue and the findings of fact that you want the decision maker to make



Plan to highlight the evidence that support the narrative and the findings of fact that you want the decision maker to make



Prepare an outline of topics to explore

# After the Hearing



**DEBRIEF?**

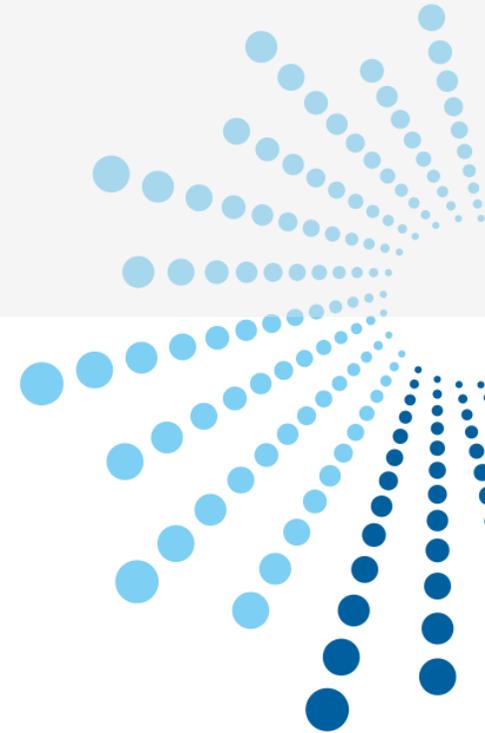


**THE APPEAL**



# The Investigation

05



# An Impartial Investigation is...

Not influenced by bias or conflict of interest.

Committed to decisions based on an objective view of the facts and evidence as you know them and as they evolve.

Truth seeking, not "your truth" confirming.

# Trauma Informed Practices

In the preamble, the Department permits the use of trauma informed practices and recognizes that trauma informed practices can be used in an impartial and non-biased manner.

Trauma informed practices must be applied equally to all genders.

# Essential steps of an investigation



Notice of formal investigation



Initial Interviews



Evidence Collection



Report writing

# Understand the Scope of the Investigation



Review the Notice of Allegations  
and the Formal Complaint



Ask questions if unsure

# Identify the Claims and What Needs to be Proven

- What will the decision maker be asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

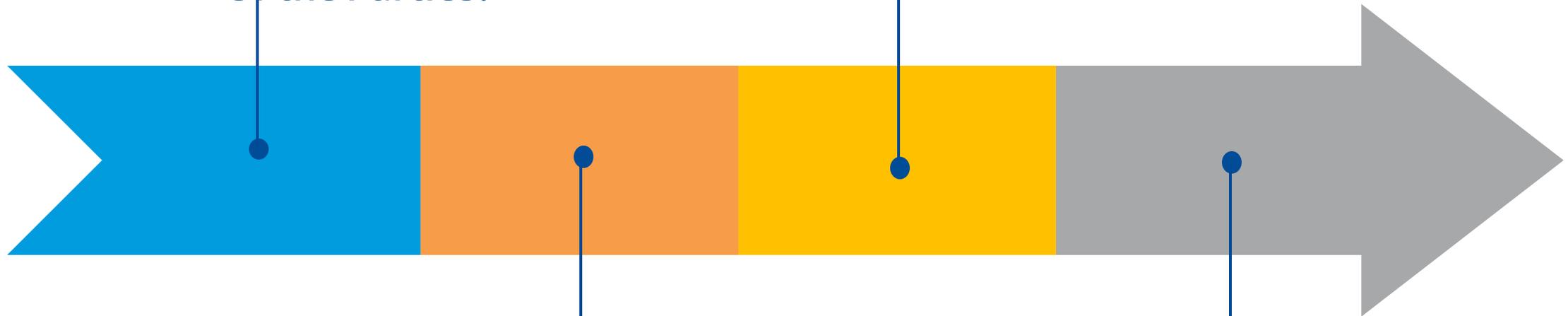
# Investigation Timeline

## Prior History

- Between the Parties?
- Of the Parties?

## Incident

- Consent?
- Type of Contact?
- Injuries?



## Pre-Incident

- Communications?
- Interactions?
- Conduct?

## Post Incident

- Behaviors?
- Communications?

# The Process

## Developing an Investigative Strategy



# Interview Objectives



## Connect

Build rapport  
Build trust  
Empower



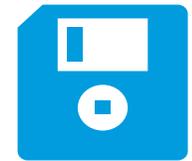
## Listen

Allow interviewee to  
share their experience



## Clarify

Understand what you  
have heard  
Seek additional  
information



## Evidence Preservation

Text Messages  
Photographs  
Names and contact info  
for witnesses



# Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



If interviewing a party, inform them of their right to have an advisor present.



Prepare for the meeting

Areas of focus?

Other evidence?

Go back review what you have



Provide Written Notice of the Meeting

Advise the parties/witnesses that you will be collecting evidence

# Set Expectations

## What they should expect of you

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the “shift”

## What you expect of them

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks

# Investigative Interviews





—

“Directly  
Related” and  
“Relevant  
Evidence”

---

# Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

Preamble states it should be interpreted using its plain and ordinary meaning.

Term is broader than:

- “all relevant evidence” as otherwise used in Title IX regulations, and
- “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

# “Relevant” Evidence

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401  
Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



# Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition.

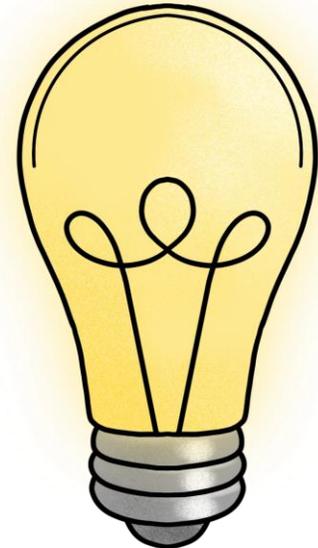
# Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance at this stage of the process.

- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight.

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each party's right to argue their case, and
- Fact that decisions regarding responsibility will be made at hearing, not investigation stage.



At the conclusion of the investigation, we must create an investigative report that fairly summarizes relevant evidence.



# The Purpose of the Report

**To allow for advance Review**

**To allow for advance Preparation**

- By the Decision Maker
- By the Parties

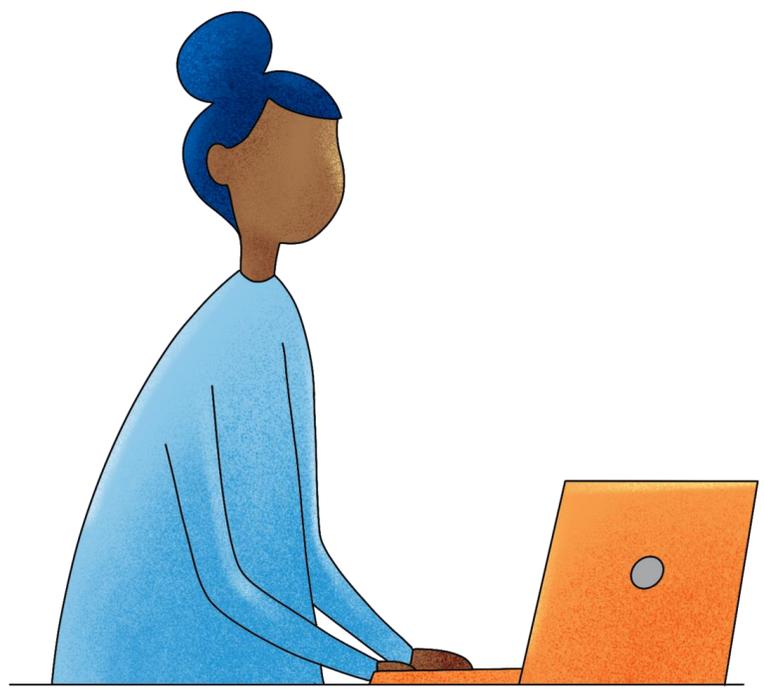
**Reduce likelihood of bias in final outcome**

# Investigative Report: Form

- Develop or adopt a template and use it consistently
- Written Summary
- Appendices



# Structure of the Report

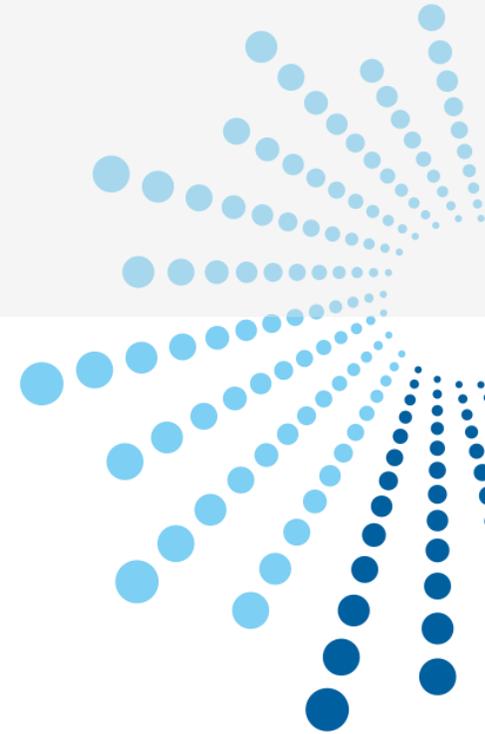


- Overview of the Investigation
- Statement of Jurisdiction
- Identity of Investigators
- Objective of the Investigation and the Investigation Report
- Prohibited Conduct Alleged
- Witnesses
- Evidence Collected
- Summary of Evidence
- Conclusion



# Decision Maker Training

06



# Purpose of the Hearing

1

Review and  
Assess  
Evidence

2

Make Findings  
of Fact

3

Determine  
Responsibility/  
Findings of  
Responsibility

4

Determine  
Sanction and  
Remedy

# Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible?

Is it convincing?



Is it reliable?

Can you trust it or rely on it?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

Trauma-informed practices provide tools/techniques for engaging with the Complainant, Respondent, and Witnesses.



Format/Structure of the Hearing



Format of Questions

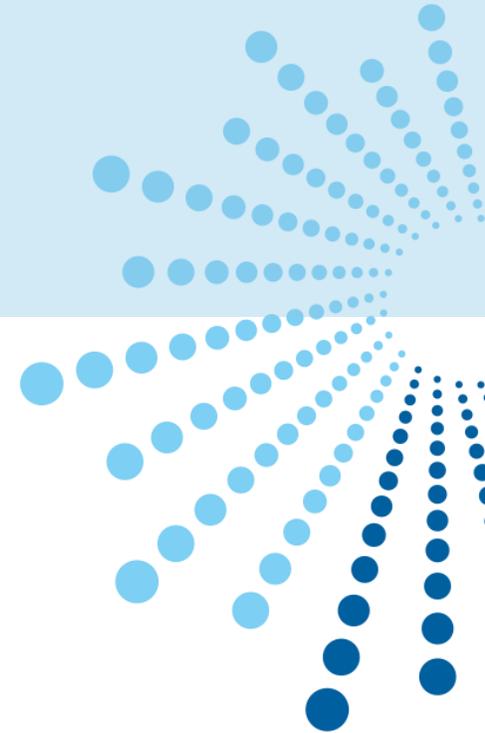


Approach to Clarification



# Pre-Hearing Tasks

06(a)



# Pre-Hearing Meetings

Review the Logistics for the Hearing

Set expectations

- Format
- Roles of the parties
- Participation
- Decorum
- Impact of not following rules

Cross Examination/Questioning Format & Expectations

# Decision Maker



Review evidence and report



Review applicable policy and procedures



Preliminary analysis of the evidence



Determine areas for further exploration



Develop questions of your own



Anticipate the party's questions



May convene a pre-hearing meeting



Anticipate challenges or issues

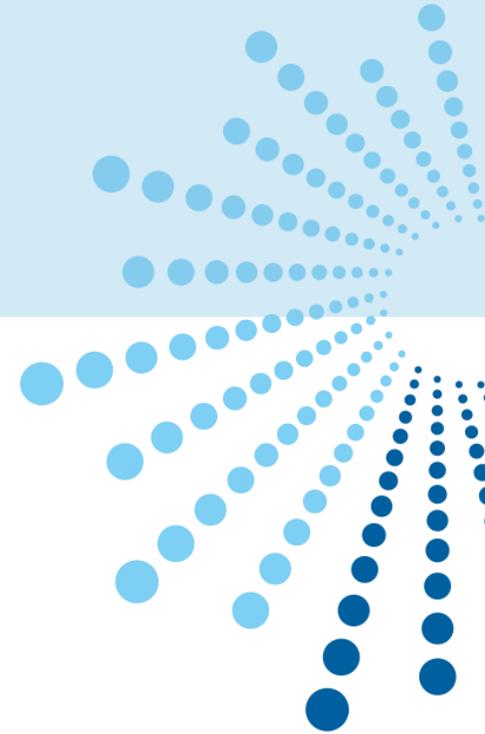


Prepare the script



# The Hearing

06(b)



# The Essential Elements of All Hearings

---

Clear Procedures

---

Due/Fair Process

---

Fair, Equitable, and Neutral

---

Consistency

---

Trauma Informed

---

Well Trained Personnel



# Hearing Participants

Complainant	the person bringing the complaint
Respondent	the person against whom the complaint has been filed
Advisor	will conduct cross examination; role varies depending on school
Adjudicator(s) or Panelist(s)	role varies depending on when in the process the hearing occurs and responsibility of the officer
Investigator	summarizes the investigation, answers questions
Witnesses	present in the room only when answering questions
Hearing Coordinator/Officer	coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants
Decision-Maker	makes decision as to whether policy was violated
Administrative Staff	assists with the logistical coordination of the people, the space, technology, etc.

# Order of the Proceedings

01

Introductions  
and instructions  
by the Chair;  
Opening  
Statements

02

Presentation by  
Investigator

03

Presentation of  
information and  
questioning of  
the parties and  
witnesses

04

Closing  
Statements

05

Deliberation &  
Determination

# Opening Introductions and Instructions by the Chair



The University has a script for this portion of the proceedings, and it should be used.  
Introduction of the participants.  
Overview of the procedures.  
Overall goal: manage expectations.  
Be prepared to answer questions.



# Opening Statements

*Optional: Not required by the regulations; institution may choose to allow.*

- Prior to questioning beginning during the hearing, each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the complainant goes first.

# Presentation of Information & Questioning of the Parties

01

The Hearing Panel will question Complainant first

02

Cross examination of Complainant will occur next

03

Follow up by the Hearing Panel

04

The Hearing Panel will question Respondent second

05

Cross examination of Respondent will occur next

06

Follow up by the Hearing Panel

# Questioning of the Witnesses

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Advisor cross-examination will occur next (suggested: Complainant's advisor followed by Respondent's advisor)

04

Follow up by the Hearing Panel

# Cross Examination

Who does it?

- Must be conducted by the advisor
- If party does not appear or does not participate, advisor can appear and cross
- If party does not have an advisor, institution must provide one

# Cross Examination

## Permissible Questions

- Questions must be relevant
- Not relevant
  - Duplicative questions
  - Questions that attempt to elicit information about
    - Complainants prior sexual history
    - Privileged information
    - Mental health

# Cross Examination

## Role of the Decision Maker

- Rulings by Decision Maker required
  - Explanation only required where question not permitted

# Closing Statements

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker .
- Not time to introduce new information or evidence.

# Common Challenges

- Non-appearance by a party or witness
- Non-appearance by an advisor
- Party or witness appears but declines to answer some (or all) questions
- Disruptions
- Maintaining Decorum

# Tips for Increasing Efficiency

01

Be prepared

02

Have an  
experienced chair

03

Have back up plans  
for technology  
issues

04

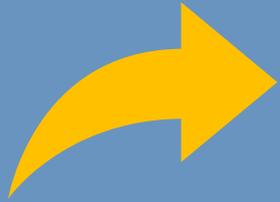
Require pre-  
hearing written  
submissions

- of opening statements
- of questions in advance

# Other Decisions

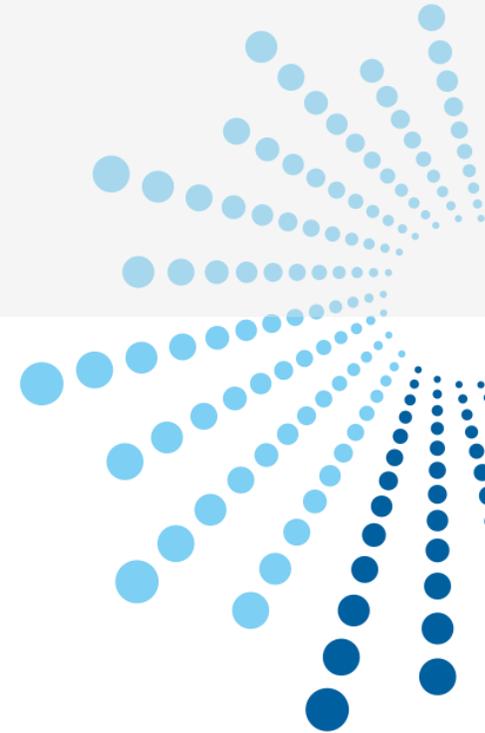
- Will you include Opening, Closing, or Impact Statements? NOT required, but you need to decide.
- How will questioning take place? Direct cross examination, indirect?
- How will questions be submitted?
- Will there be any restrictions on questions that can be asked, such as due to relevancy, already asked and answered, unduly harassing?
- If done remotely, how will the technology be set up?
- If in person, room set-up and who is in the room?

# Deliberations



# After the Hearing

06(c)





# Deliberations

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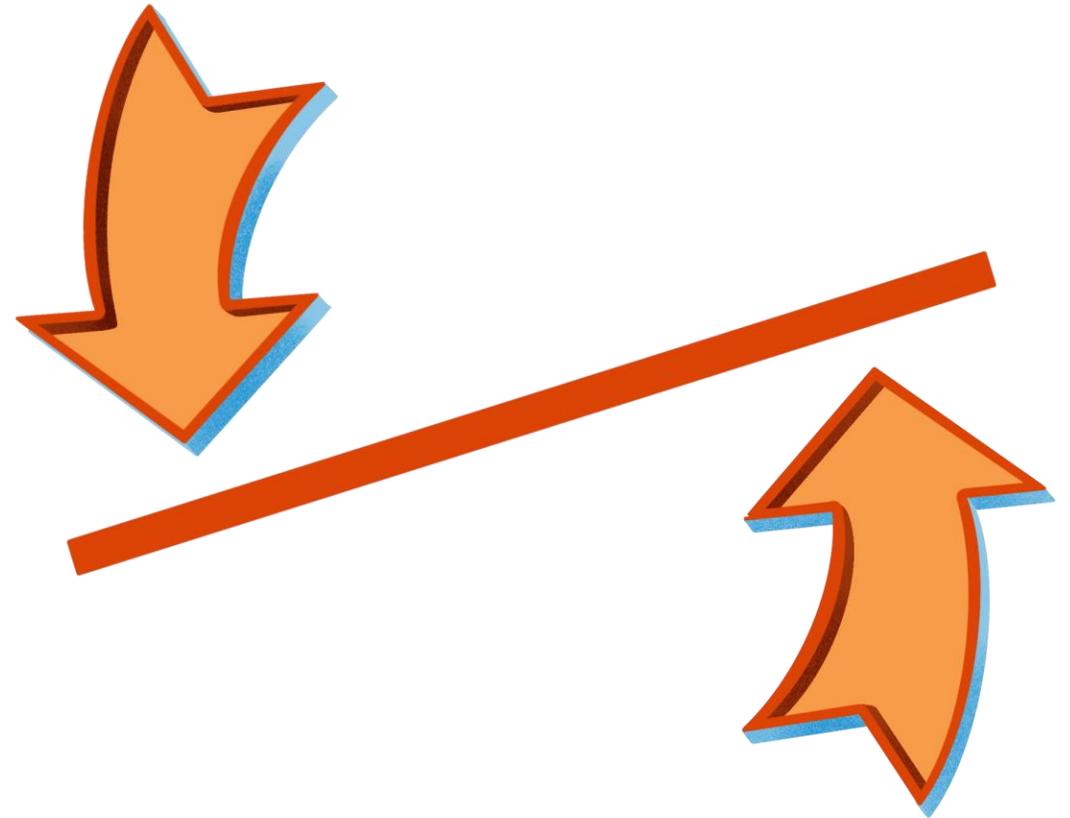


# Preponderance of the Evidence

- Standard of proof by which determinations of responsibility are made
- "More likely than not"
- It does not mean that an allegation must be found to be 100% true or accurate
- A finding of responsibility = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- A finding of not responsible = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

# Weighing the Evidence & Making a Determination

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



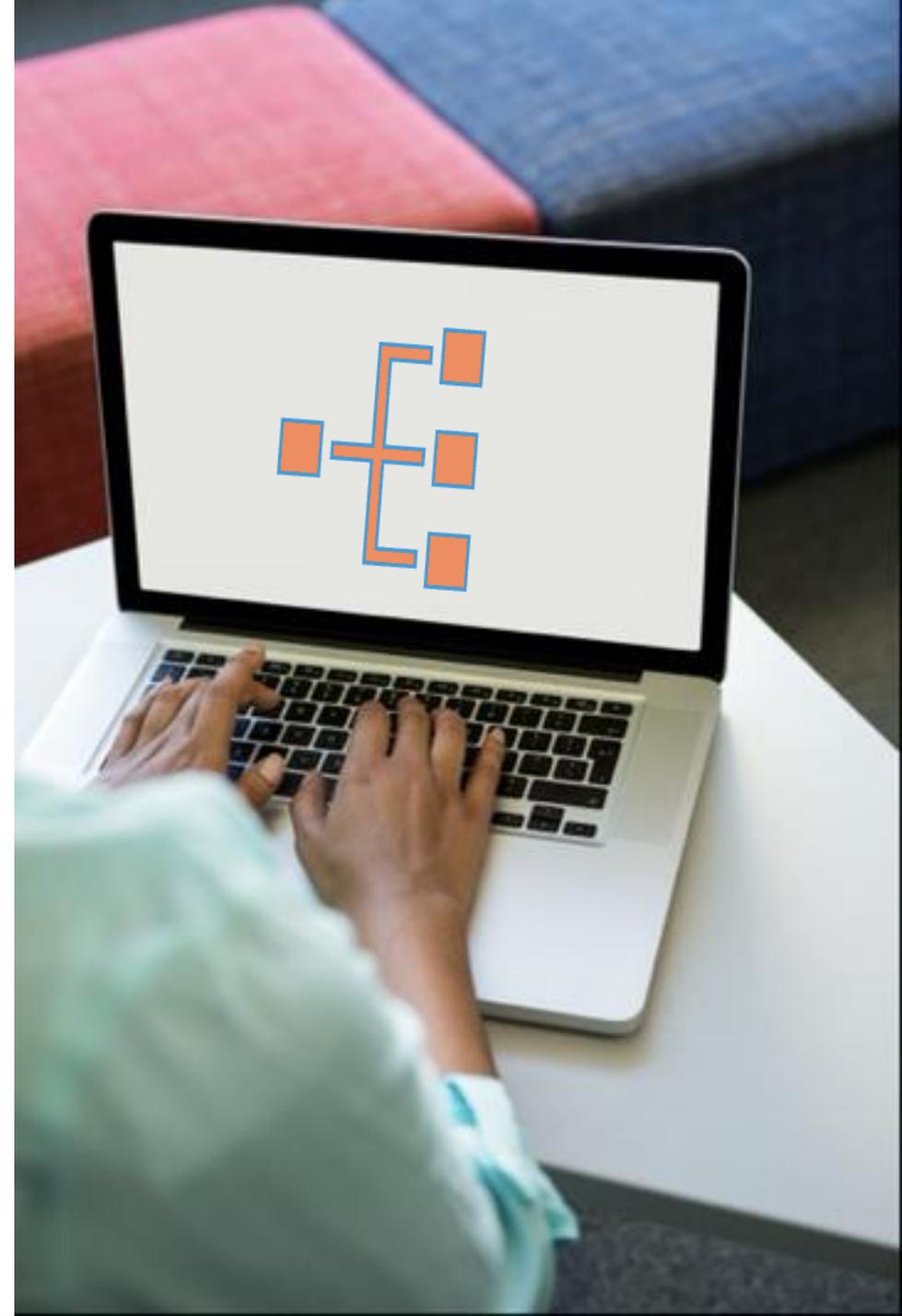


# Findings of Fact

- **A "finding of fact"**
  - The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
  - Based on available evidence and information
  - Determined by a preponderance of evidence standard
  - Determined by the fact finder(s)
- **For example...**
  - Complainant reports that they and Respondent ate ice cream prior to the incident
  - Respondent says that they did not eat ice cream
  - Witness 1 produces a timestamped photo of Respondent eating ice cream
- **Next steps?**

# Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate



# Did You Also Analyze...?

*(if required by policy)*

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

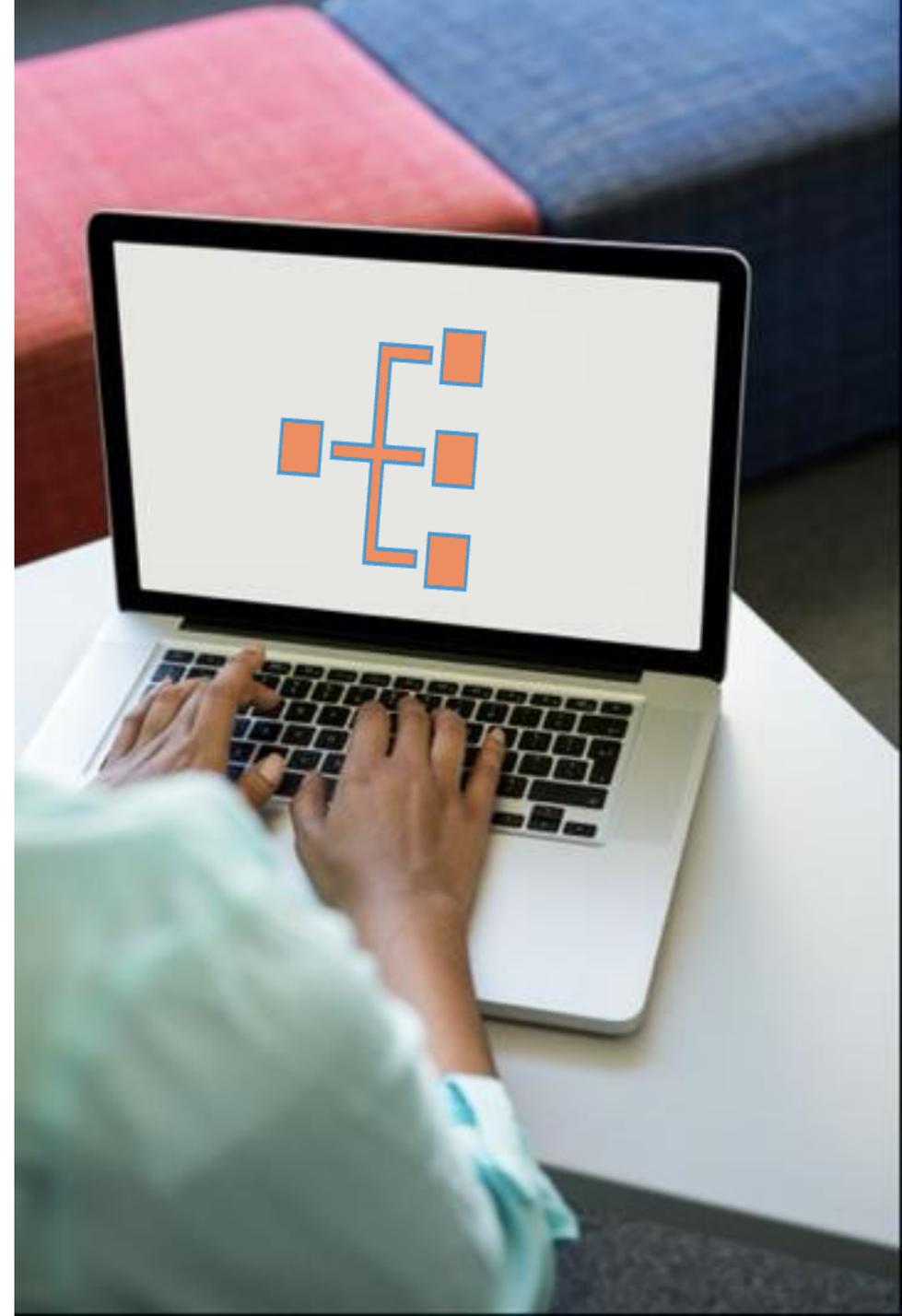


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# Did You Also Analyze...?

*(if required by policy)*

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

# Credibility Versus Reliability

## Reliable evidence:

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

## Credibility:

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

# Being Convinced

It Is True, or Biased Conclusion?

*A credible witness may give unreliable testimony.*

# I Just KNOW They Are Not Telling the Truth

- Bias
- Can you really spot a liar?
- Understanding clues that are cultural different from your own

HOW TO  
SPOT A  
LIAR



# Preponderance of the Evidence

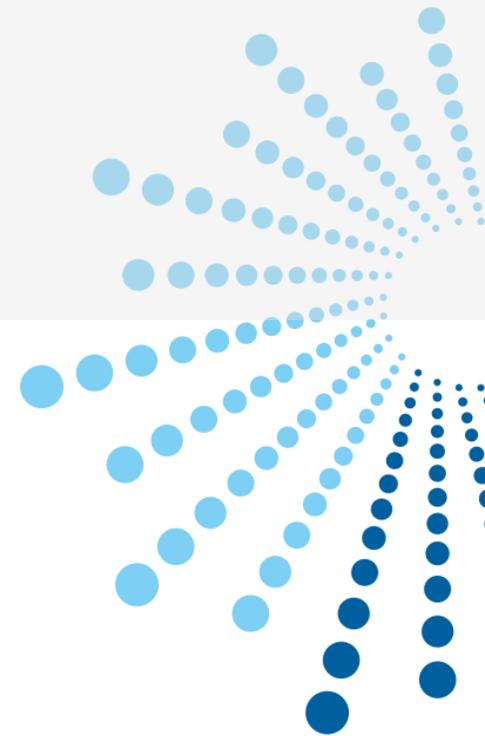
- More likely than not
- Does not mean 100% true or accurate
- A finding = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated





# Sanctions

07



# Goals of Sanctions/Discipline

---

End the harassment, prevent its recurrence, remedy the harm

---

What steps would be reasonably calculated to end harassment and prevent recurrence?



# Sanctioning



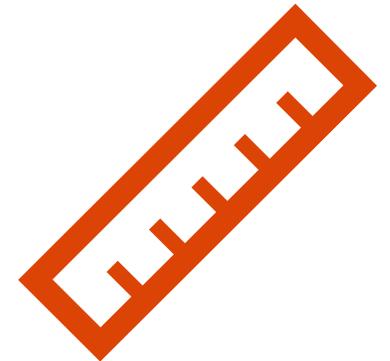
State law



System policy



Learning environment



Measures available

# The Sanction Does Not Undo the Finding

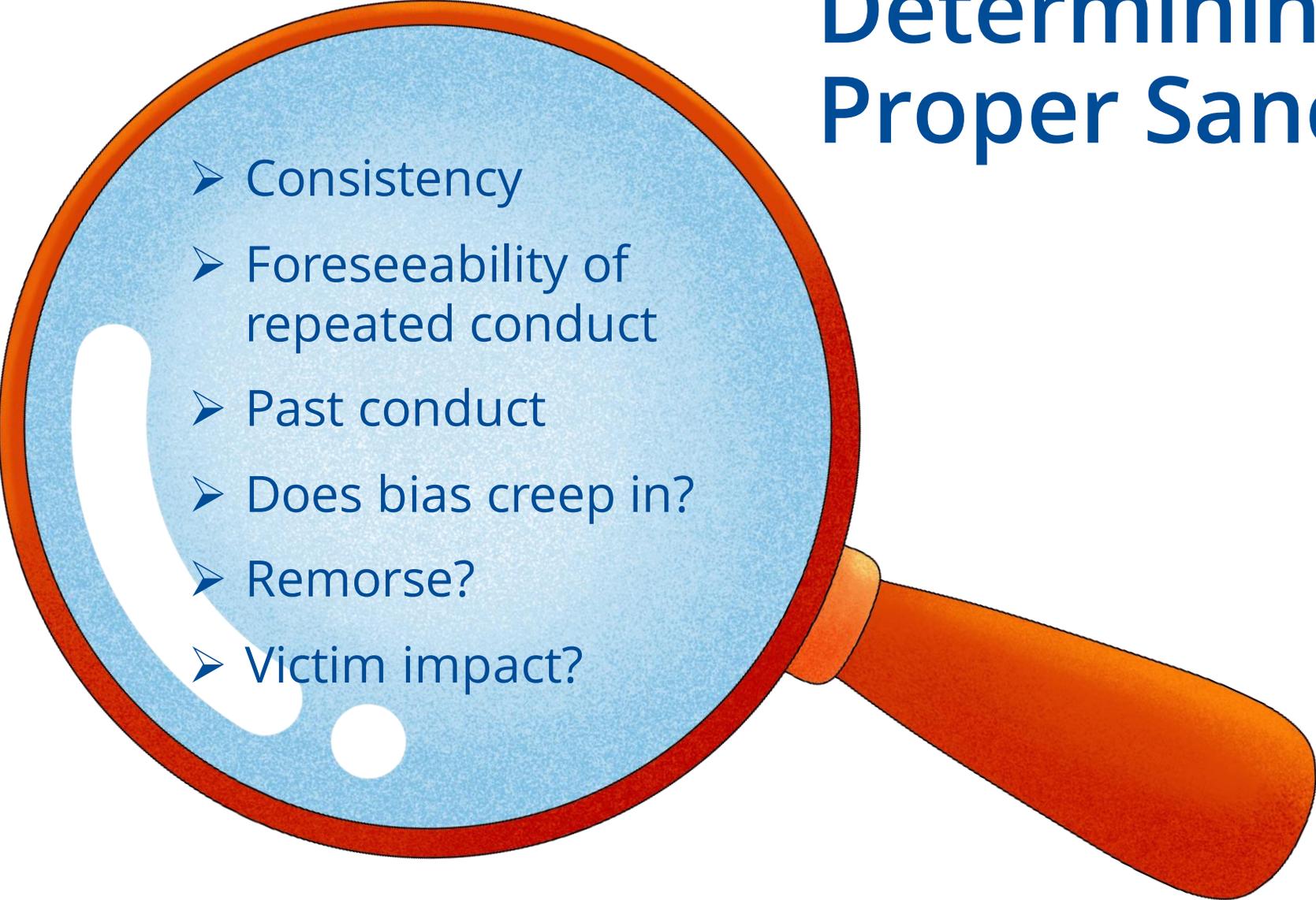


No lesser sanction if  
you disagree with  
findings



Sanctioning officer  
must assume findings  
are correct

# Determining the Proper Sanction

- 
- Consistency
  - Foreseeability of repeated conduct
  - Past conduct
  - Does bias creep in?
  - Remorse?
  - Victim impact?

# Aggravating Circumstances

Premeditation

Predation

Physical violence

Repeated violation

Multiple policy violations in one incident

Harm to others, impact on complainant and/or community

Did the behavior continue after intervention?

Effort to conceal or hide the incident?

Refusal to attend past trainings

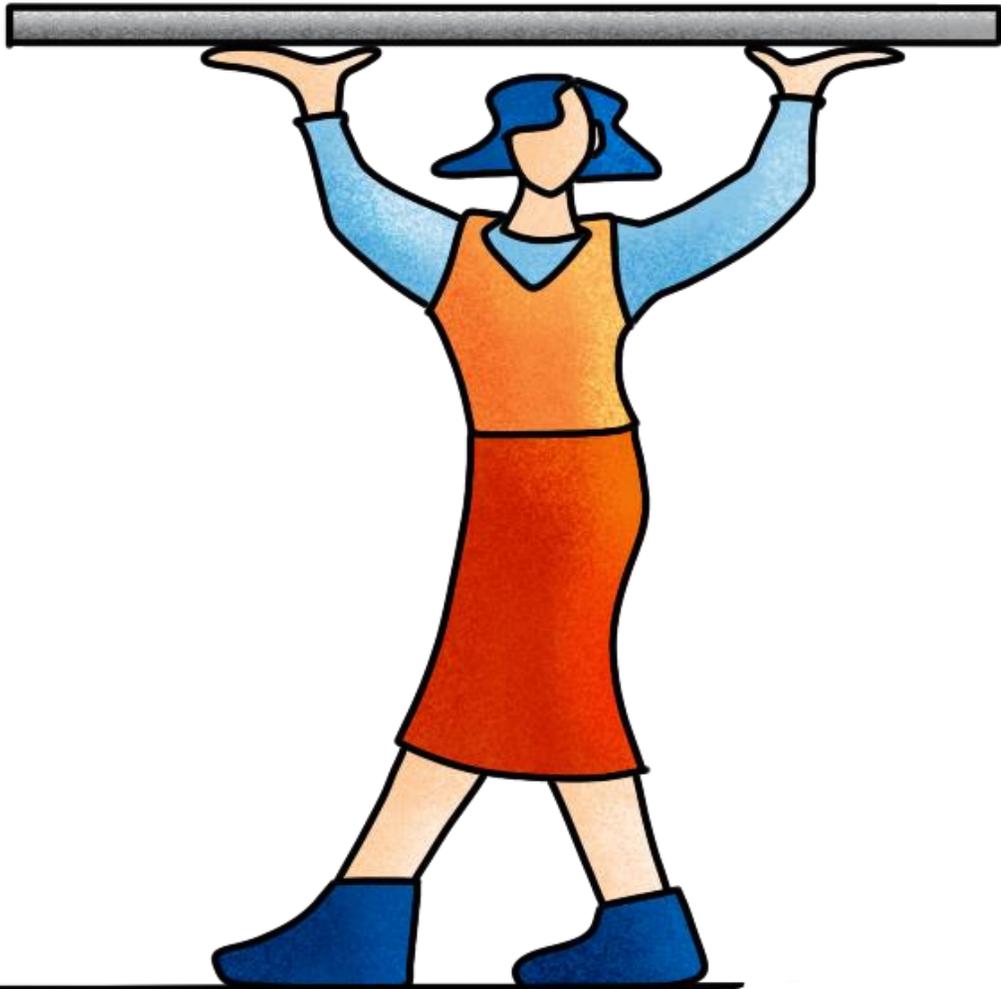
Past failures to comply with directives

# Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal



# The Final Determination Should **STAND** On Its Own

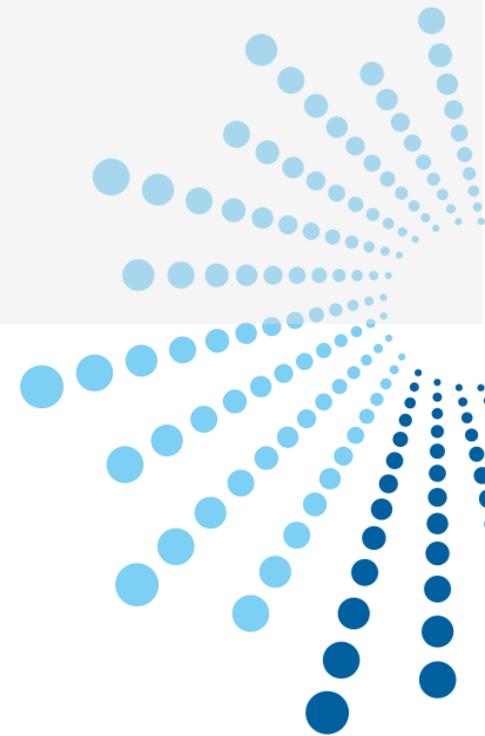


- S** Simple and Easy to Comprehend
- T** Transparent/Clear
- A** Accurate
- N** Neutral/Unbiased
- D** Draw Attention to Significant Evidence and Issues



# Appeals

08



# Appeals: Mandatory Grounds

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Appeals: Mandatory Grounds

---

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---

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“

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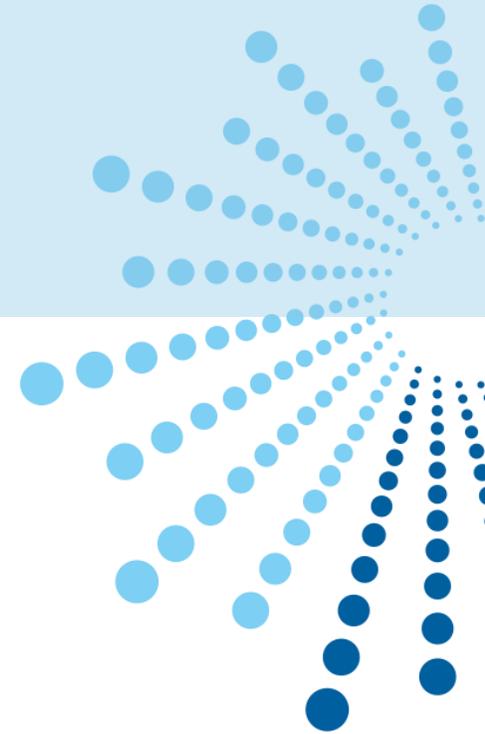


Appealing  
sanctions?

Other grounds for  
appeal? Your  
discretion



# Advisors



“

## Hearing Advisor

“Such advisors need not be provided with specialized training or be attorneys because the essential function of such an advisor provided by the recipient is not to “represent” a party but rather to relay the party’s cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.” 85 Fed. Reg. 30562 (May 19, 2020).

”

# During the Hearing



# Advise your advisee



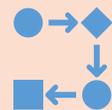
Communicating during the hearing



On matters of evidence



Policy



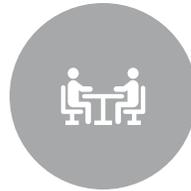
Process

# Conducting Cross

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Be efficient.



Do not rehash everything the witness has already said.



Highlight the portions of their testimony that support your narrative.



Listen.



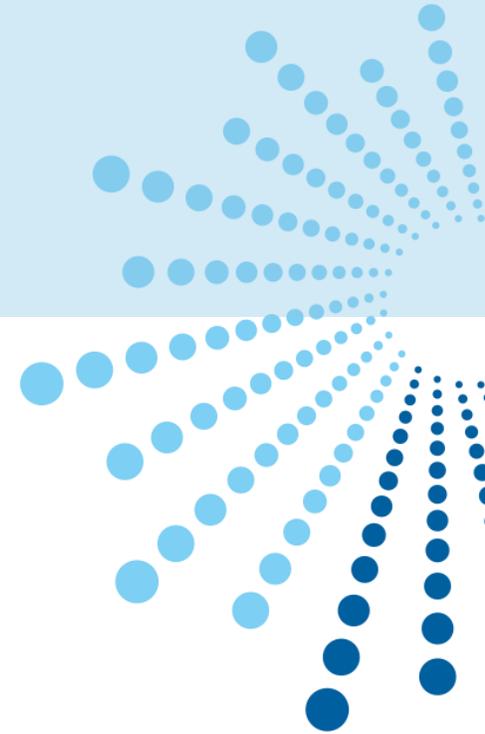
Be prepared to go down a road that you hadn't considered or anticipated exploring.

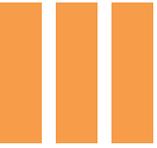


Take your time. Be thoughtful. Ask for breaks if you need it.



# Practice Time





# Outstanding Questions from Day One

# Overview of Day Two

- Community College Content

## ***Let's Practice!***

- Pre-Hearing Preparation
- Testimony and Cross Examination

# Community College Context

# Pre-Hearing

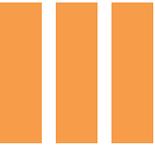
The investigation is complete!

## Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:

**share your "To Do" List for coordinating the hearing.**



# Rapid Fire Recap

Arranging for space

Arranging technology

Scheduling pre-hearing meetings with parties & advisors

Scheduling prehearing meetings of the panel

Providing report and record to panel and parties

Scheduling the hearing

Accommodations

Call for written submissions

Conflict checks

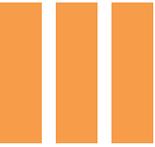
Other considerations?

You and your team did a great job scheduling the hearing and arranging all the logistics!

## ||| Rapid Fire #2

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

***Use the chat box to share what you plan to discuss/think about during the prehearing meeting.***



# Rapid Fire Recap

Development of introductory comments

Initial discussion of the evidence

Areas for further exploration

List of questions for the parties and the witnesses

Anticipation of potential issues

Logistics

Review of any written submissions by the parties

Other considerations?

# Rapid Fire #3

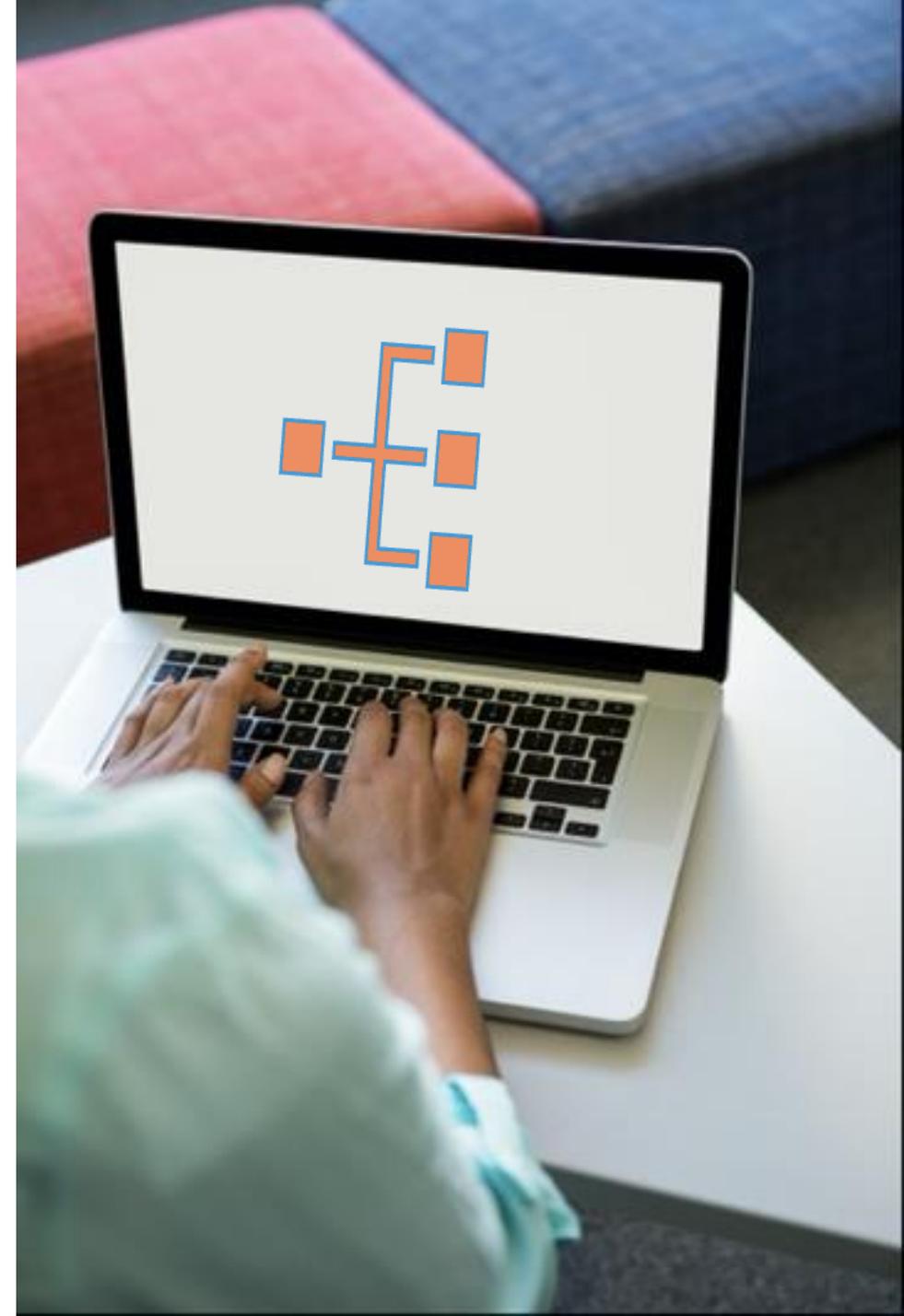
## Let's Analyze the Case Packet

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

# Rapid Fire #4

## Policy Analysis

- Break down the policy into elements
- Policy is on page 5 of the packet



# Allegation: Stalking

## Stalking is:

- a course of conduct;
- directed at a specific person;
- that would cause a reasonable person to:
  - fear for his or her safety;
  - the safety of others; or
  - suffer substantial emotional distress;
- Conduct can occur
  - in person; or
  - online
- Must involve an education program or activity of the College

# Break Out!

## #1

Say hi!

Pick a scribe

Discuss

- All groups: Areas or topics that you would like to explore further in the hearing
- Group 1: Questions for Complainant
- Group 2: Questions for Respondent
- Group 3: Questions for witnesses Tom and Emma
- Group 4: Questions for witnesses Charlie and Professor

# Report Out

- Group 1: Questions for Complainant
- Group 2: Questions for Respondent
- Group 3: Questions for witnesses Tom and Emma
- Group 4: Questions for witnesses Charlie and Professor

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



# The Hearing

# Break Out!

## #2

Say hi!

Pick a scribe

Discuss

- **All groups:** Areas or topics that you would like to explore further in the hearing
- **Group 1:**
  - Questions from Complainant's Advisor for Respondent
  - Questions from Complainant's Advisor for Witness Tom
- **Group 2:**
  - Questions from Complainant's Advisor for Witness Emma
  - Questions from Complainant's Advisor for Witness Charlie
  - Questions from Complainant's Advisor for Witness Professor McPhee
- **Group 3:**
  - Questions from Respondent's Advisor for Complainant
- **Group 4:**
  - Questions from Respondent's Advisor for Witness Tom
  - Questions from Respondent's Advisor for Witness Emma
  - Questions from Respondent's Advisor for Witness Charlie
  - Questions from Respondent's Advisor for Witness Professor McPhee





# Report Out

## Questions submitted by Complainant's Advisor

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### Questions for Respondent

1. How often do you stalk girls?
2. Isn't it true that you do this all the time
3. Do you keep stalking me because you're OCD?
4. Have you ever been removed from another group project because you could not get along with others?
5. Do you enjoy scaring women?
6. How often do you imagine that women like you?
7. When you first talked to me about your girlfriend breaking up with you, who was your girlfriend or did you make that up just so you could talk to me?
8. Why did you keep offering to work with Emma in person instead of by Zoom?
9. Did you have a thing for Emma?
10. Did you and Emma ever end up hooking up?

### Questions for Tom (Groups 1 and 2)

1. Can you think of any reason for Oliver to be hanging out in the garage with flowers, other than to frighten Samantha?
2. Oliver was pretty creepy, wasn't he?
3. Did you see him throw an object at Samantha?
4. Do you believe he was acting in self defense when he threw the object?
5. Do you think there was any good reason for him to throw anything at her?
6. You said Samantha is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?

Questions for Emma

1. Did Oliver seem fixated on Samantha when you were all part of the class project?
2. Did Oliver insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?
5. Why did you lie to Emma and tell her that Samantha was "really troubled" and "having personal issues"?
6. What did you mean by that?
7. Do you often tell lies?

## Questions submitted by Complainant's Advisor

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### Questions for Charlie

1. So are you the one you suggested he stalk her social media to find a food or drink she liked?
2. Is that your M.O. with girls?
3. Why do you think Samantha and Oliver had a plan to get together one night and talk?
4. Do you know for sure there was a confirmed plan?
5. What proof did Oliver give you to prove there was a *real* plan, and not an imaginary one?
6. You said Samantha was "rude" because you could not do a lot of work on the group project. What did you mean by that?
7. How long have you known Oliver?
8. Isn't it true you just don't like Samantha?
9. Have you ever been accused of sexual harassment or stalking?
10. Isn't it true that you would say anything to support a guy who has been accused?

### Questions for Professor McPhee

1. Why didn't you tell him to stop stalking me?
2. Weren't you supposed to forward my Title IX Complaint to the Coordinator and don't you think that if you had done so, I would have been spared his stalking?

## Questions submitted by Respondent's Advisor

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### Questions for Complainant

1. Isn't it true you found me attractive after we first met?
2. You wanted to hook up with me, didn't you?
3. You made this complaint only because you wanted your boyfriend's attention, isn't that true?
4. You couldn't complete your end of the project without me, right?
5. You kept calling me and asking me for help, isn't that true?
6. You told the investigator you imagined seeing me everywhere. Where do you think you saw me?
7. Why were you always thinking of me?
8. And how often do you hallucinate?
9. Do you have any imaginary friends?
10. How often do you imagine seeing people who are not there?
11. How often has this happened in the past?
12. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet me there?
13. You said you were frightened by seeing Oliver in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.

#### Questions submitted by Respondent's Advisor

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##### Questions for Tom

1. When you saw Oliver in the parking garage, were you frightened?
2. What, specifically, did Oliver do that was frightening?
3. Does Samantha always over-react?
4. Does Samantha over-react when she is trying to get attention from you?
5. What, specifically, did Oliver throw at her?

##### Questions for Emma

1. Were you frustrated when working on the group project?
2. Why?
3. Why did you think Oliver was more frustrated than others?
4. Why did you think he was "taking it out" on Samantha if he was frustrated with the whole group?
5. Are you and Samantha friends?
6. Did Samantha tell you what to say in the investigation?
7. Are you one of those "Believe all victims" people?

#### Questions submitted by Respondent's Advisor

---

##### Questions for Charlie

No questions

##### Questions for Professor McPhee

1. Isn't it true that Samantha was doing poorly in class?
2. What grade did she have up to the project and what grade did she get on the project?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Oliver to paint him in a bad light?
5. Isn't it true that, before she told you this lie, you had no reason to think poorly of Oliver?

# Questions?

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