



GRAND RIVER | SOLUTIONS

Hearings in a Post Regulatory World

SWACC

Martha Compton | May 2022



Martha Compton

She/her

Director of Strategic Partnerships and
Client Relations

Meet Your Facilitator

Martha consults and trains nationally on Title IX and student conduct and has previously served as a technical trainer for Department of Justice VAWA campus grantees. Martha is a former President of the Association for Student Conduct Administration, has been a faculty member for ASCA's Gehring Academy, and was part of the core team that developed ASCA's Sexual Misconduct Institute. A student conduct professional for over 20 years, Martha is also a former dean of students and has extensive experience in residence life, behavior intervention, emergency services, orientation, leadership, and working with student organizations.

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

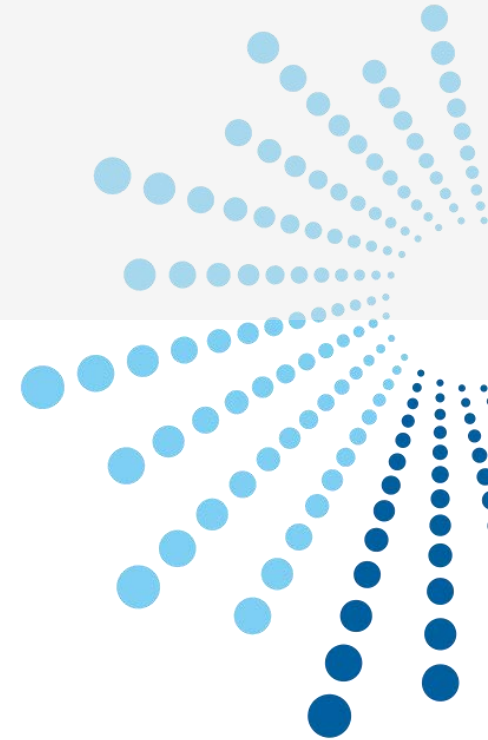
- 1** Title IX Requirements for Hearings
- 2** Process Participants
- 3** Pre-Hearing Tasks
- 4** The Hearing
- 5** After The Hearing
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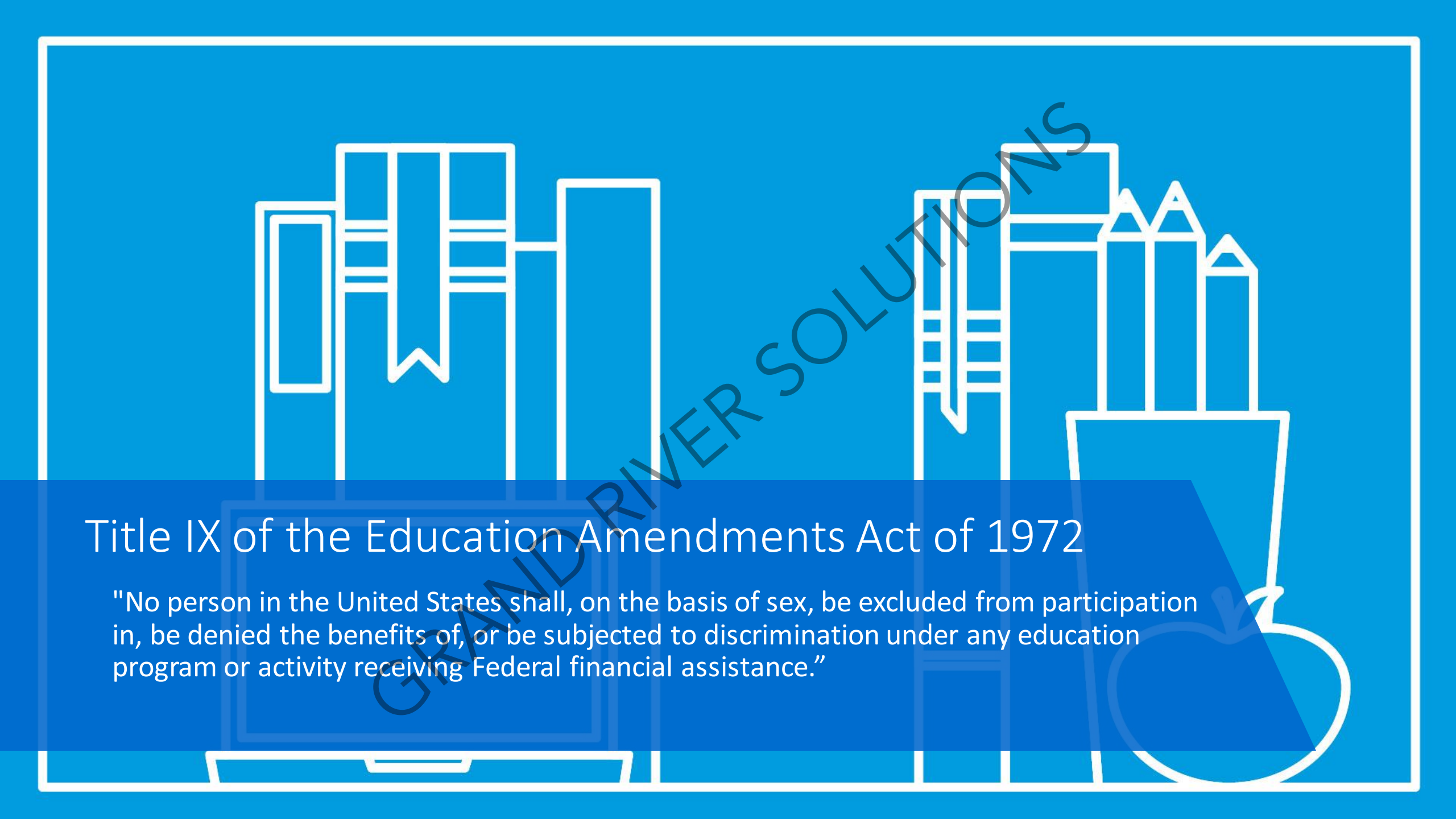


Title IX Requirements For Hearings

01

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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."

Section 106.30: Sexual Harassment

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).

AND... Only Covered, IF:

Place of Conduct

- On campus
- Campus Program, Activity, Building, and
- In the United States

Required Identity

- Complainant participating/attempting to participate in Program or Activity, AND
- Control over Respondent

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



The Requirement of Impartiality

The Requirement of Impartiality

“

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).

Section 106.45(b)(1)(iii)

The Title IX Coordinator, investigator, **decision maker**, or facilitator of informal resolution must receive training on how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias

This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.



Section 106.45(b)(1)(iii)

The Grievance Process requires that any individual designated as a Title IX Coordinator, Investigator, Decision-Maker, Appeal Officer, or Informal Resolution Facilitator not have a conflict of interest or bias:

For or against Complainants or Respondents generally, or

An individual Complainant or Respondent.

In Summary...

- 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

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 ALSO

“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”

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 the process, without labeling certain administrative relationships as per se involving conflicts of interest

Avoiding Conflicts of Interest and Bias

Ask these questions:

- Do I know any of these individuals?
 - If so, what is the nature of the relationship?
- Am I likely to have to work with or teach them in the future?
- Do I hold any bias against any of these individuals for any reason?
 - Could there be a reasonable perception that I do?
- Have I been adequately distanced from the investigation process?



Hearing Technology: Requirements and Considerations



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.



All hearings must be recorded.



Participants must be able to communicate during the hearing

The parties with the decision maker(s)
The parties with their advisors

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



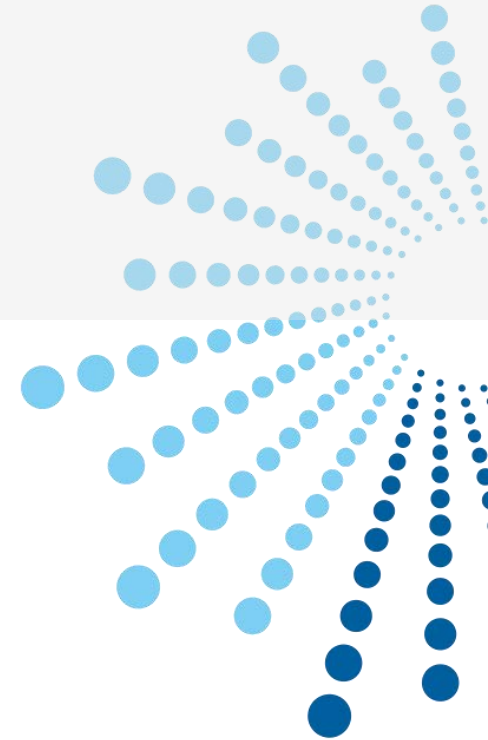
Approach to Clarification



02

Process Participants

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The Participants

The Parties

Complainant	Respondent
An individual who is alleged to be the victim of conduct that could constitute sexual harassment.	An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

The Participants

The Investigator

- Can present a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Can be present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



The Participants

The Investigator

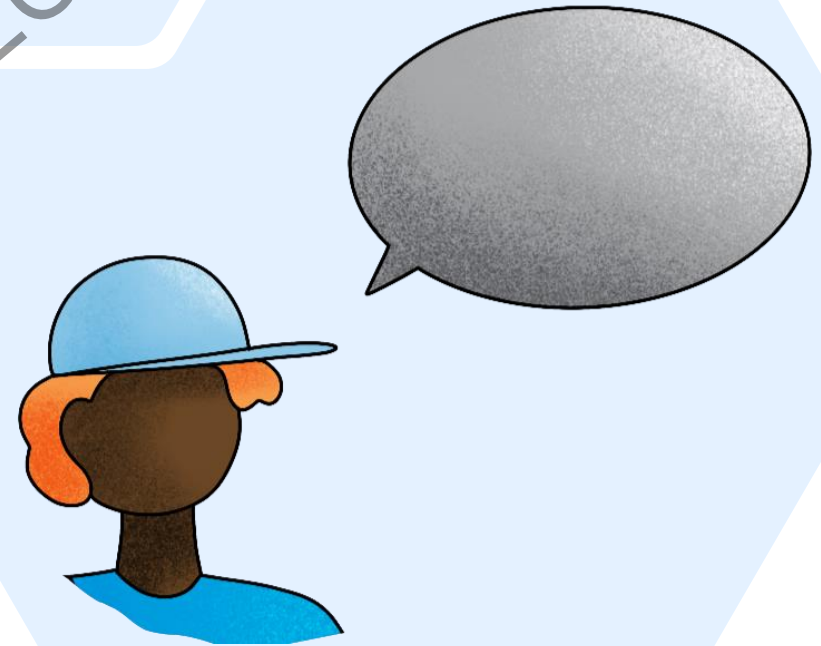
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- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institution appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor will conduct cross examination at the hearing.
- Advisors are expected to advise their advisees without disrupting proceedings

The Participants

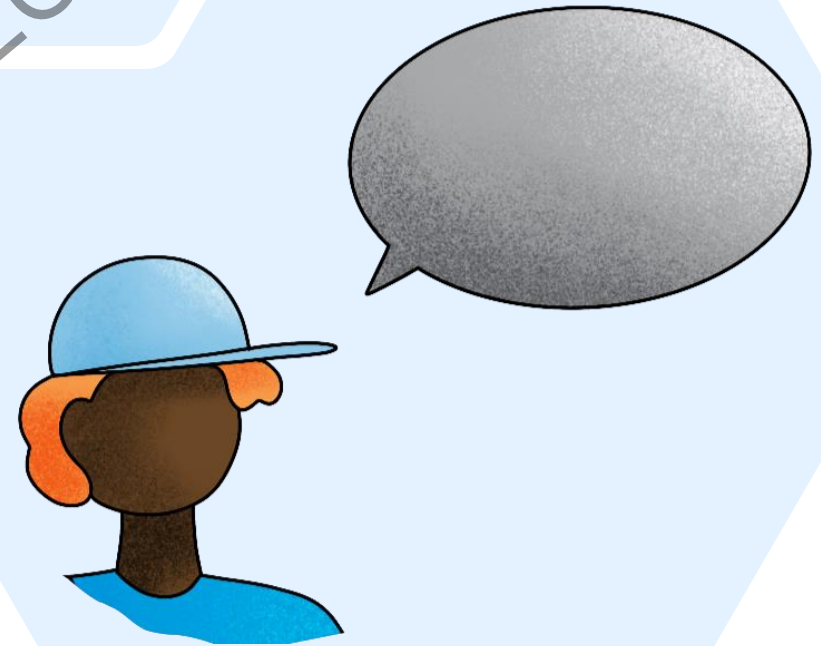
Advisors



The Participants

Advisors: Prohibited Behavior

An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



The Participants

The Hearing Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required



The Participants

The Decision-Maker

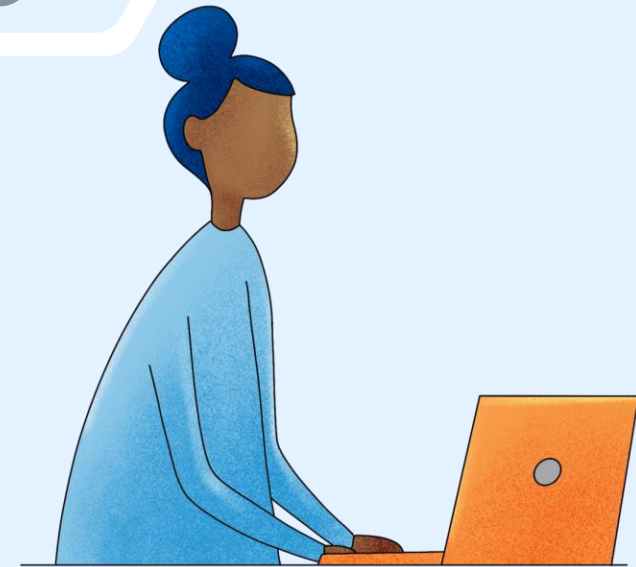
- Regulations permit one person or a panel
 - University uses a single decision maker
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate



The Participants

The Decision-Maker

- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- May assist in other tasks such as preparing the Notice of Outcome

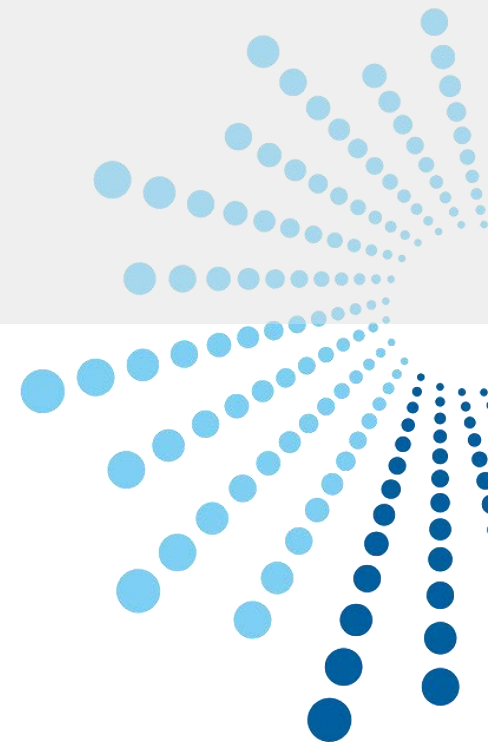




Decision Maker Pre-Hearing Tasks

What should be done in advance
of the hearing

03



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

Common Areas of Exploration



Credibility?



Clarification on timeline?



Thought process?



Inconsistencies?



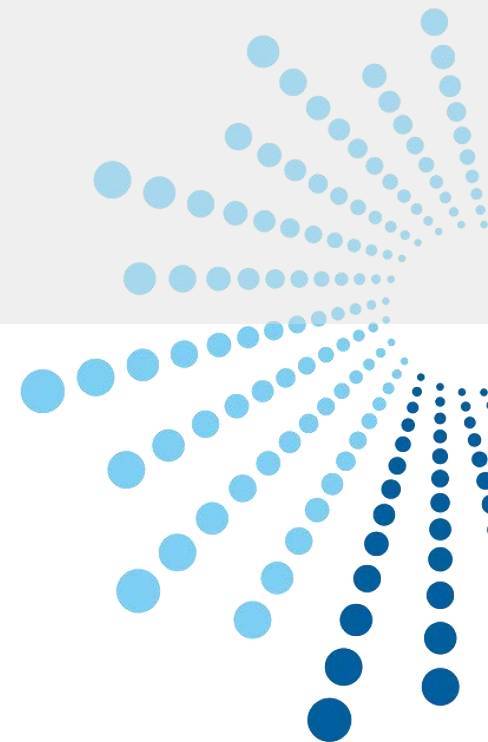
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The Hearing

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Order of the Proceedings

01

Introductions
and instructions
by the Decision
Maker; 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 College should have a script for this portion of the proceedings, and it should be used consistently.
- 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

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A man in a brown jacket is shouting into a megaphone. The image is overlaid with a semi-transparent teal background and a diagonal watermark that reads "GRAND RIVER SOLUTIONS".

Presentation of Information & Questioning of the Parties

01

The Decision Maker will question Complainant first

02

Cross examination of Complainant will occur next

03

Follow up by the Decision Maker

04

The Decision Maker will question Respondent second

05

Cross examination of Respondent will occur next

06

Follow up by the Decision Maker

Questioning of the Witnesses

01

The Decision Maker
will determine the
order of questioning
of witnesses

02

The Decision Maker
will question first

03

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

04

Follow up by the
Decision Maker

Closing Statements

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

- Prior to the conclusion of the hearing, each party may 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 a time to introduce new information or evidence.

General Questioning Guidelines

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Format of Questioning



The Hearing Panel or the advisor will remain seated during questioning



Questions will be posed orally



Questions must be relevant

What constitutes a relevant question?

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.”

When is evidence relevant?

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



Information
protected by an
un-waived legal
privilege

Medical treatment
and care

Unduly repetitious
or duplicative
questions

Information that
otherwise
irrelevant

Complainant's
prior sexual
history, with
limited exceptions.

**Irrelevant and
Impermissible
Questions**

When Questioning....



Be efficient.



Explore areas where additional information or clarity is needed.



Listen to the answers.



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



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

Foundational Questions to Consider

Were you interviewed?

Did you see the interview notes?

Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

Did you speak with any one about your testimony today prior to this hearing?

Common Areas of Where Clarity or Additional Information is Needed

Details about the
alleged
misconduct

Facts related to the
elements of the
alleged policy
violation

Relevancy of
Certain Items of
Evidence

Factual Basis for
Opinions

Credibility

Reliability

Timelines

Inconsistencies

Questioning to Assess Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

opportunity to view

ability to recall

motive to fabricate

plausibility

consistency

character, background, experience, and training

coaching

Credibility Versus Reliability

Reliability

- 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.



Opinion Evidence

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?

Asking Questions to Assess Authenticity

Investigating the Products of the Investigation



Never assume that an item of evidence is authentic.



Ask questions, request proof.



Request further investigation of the authenticity if necessary.

Is it authentic?



QUESTION THE
PERSON WHO
OFFERED THE
EVIDENCE



REQUEST
ORIGINALS



OBTAIN
ORIGINALS FROM
THE SOURCE



HAVE OTHERS
REVIEW AND
COMMENT ON
AUTHENTICITY



ARE THERE
OTHER RECORDS
THAT WOULD
CORROBORATE?

What are the “Hard” Questions

Details about the sexual contact

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

How to Ask the Hard Questions

Lay a foundation for the questions

- Explain why you are asking it
- Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions:

- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...

Special Considerations for Questioning the Investigator

- The Investigator's participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Special Considerations for Questioning the Investigator



Ask questions about how they conducted their investigation



Explore the investigator's decision making



Seek clarity about evidence collected

Where it came from
Authenticity of the evidence



Ask factual questions that will assist in evaluation of the evidence



If bias is not in issue at the hearing, the Chair should not permit irrelevant questions of the investigator that probe for bias.

Special Considerations for Panels

Must appoint a chair

If a panel, decide in advance who will take the lead on questioning

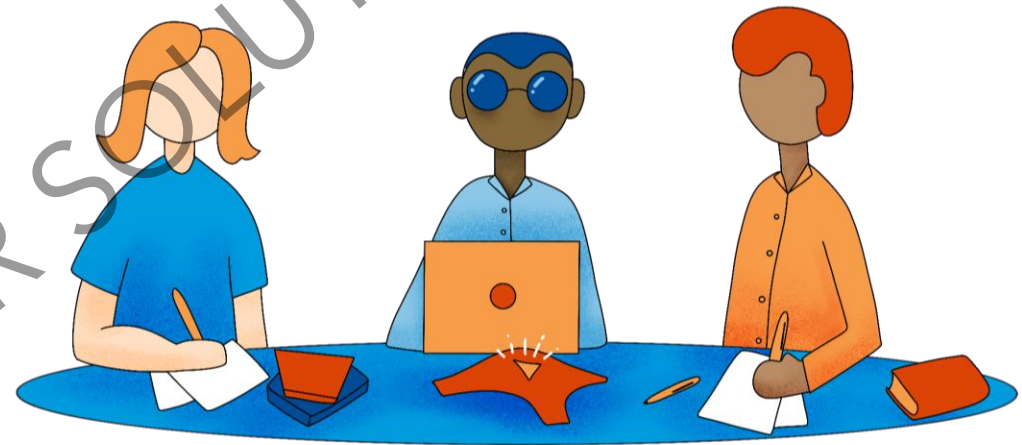
Go topic by topic

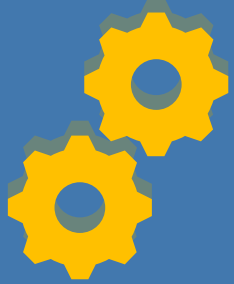
Ask other panelists if they have questions before moving on

Do not speak over each other

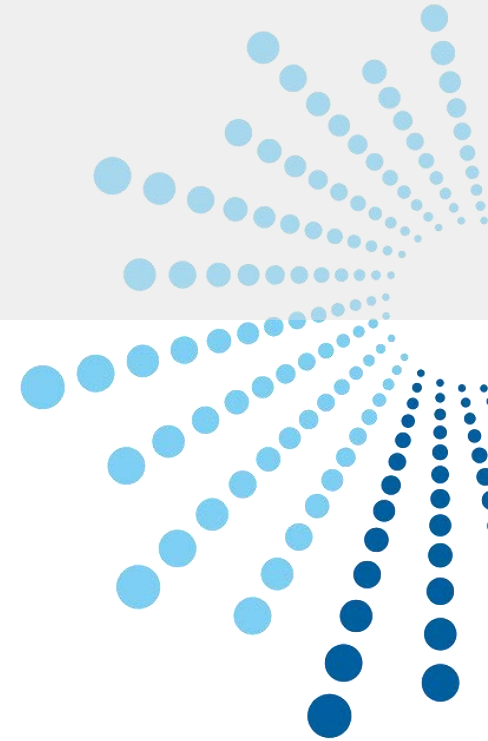
Pay attention to the questions of other panelists

Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel





The Decision Maker's Role in Advisor Questioning



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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

The Role of the Decision Maker During Questioning by the Advisors

After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.

Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.

When Assessing Relevance, the Decision Maker Can:

Ask the Advisor or why their question is relevant

Take a break

Ask their own questions of the party/witness

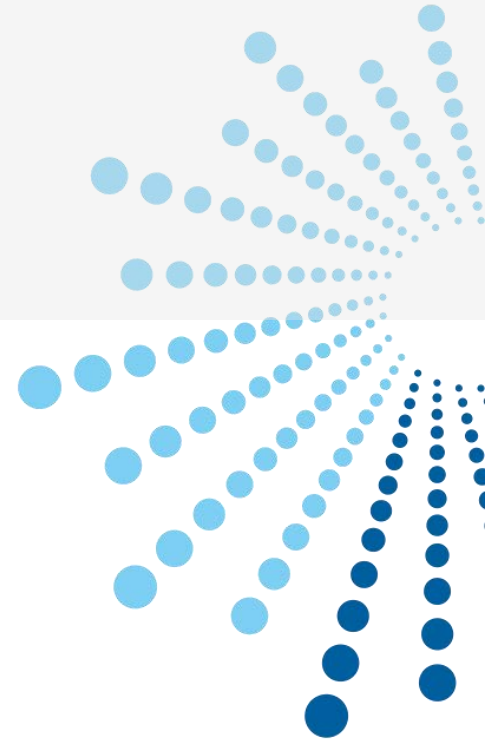
Review the hearing record



After The Hearing

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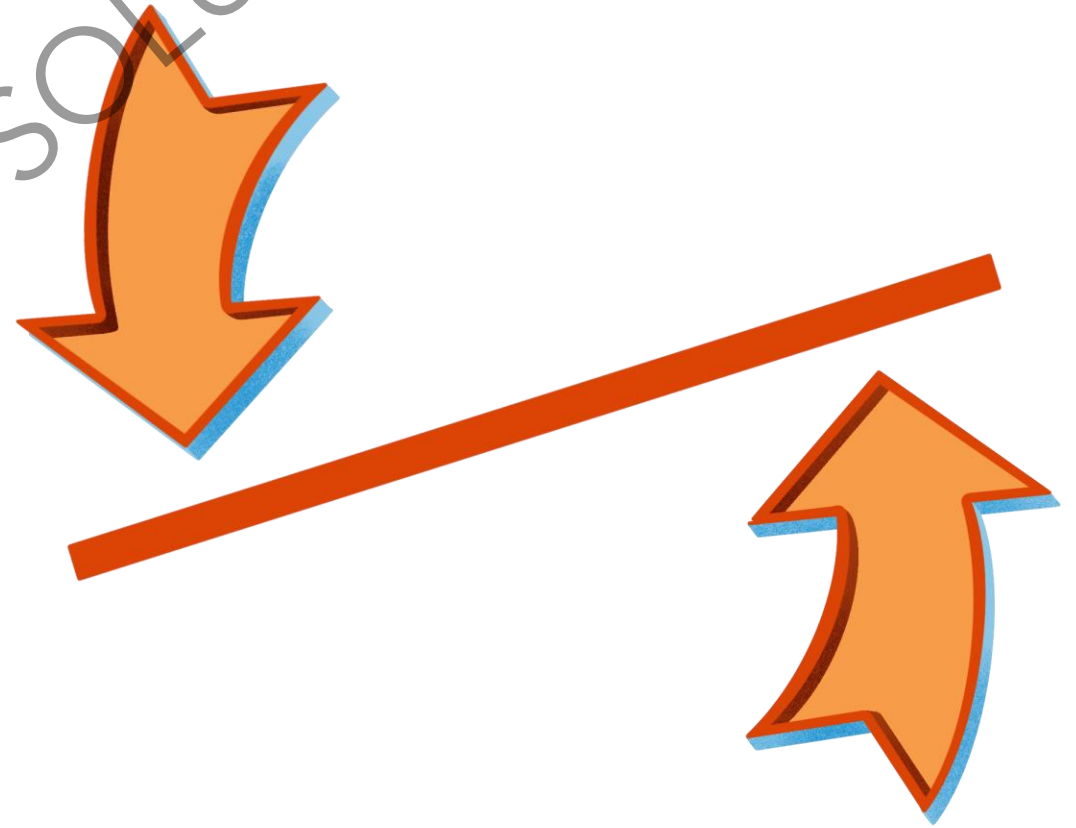
Deliberations

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.





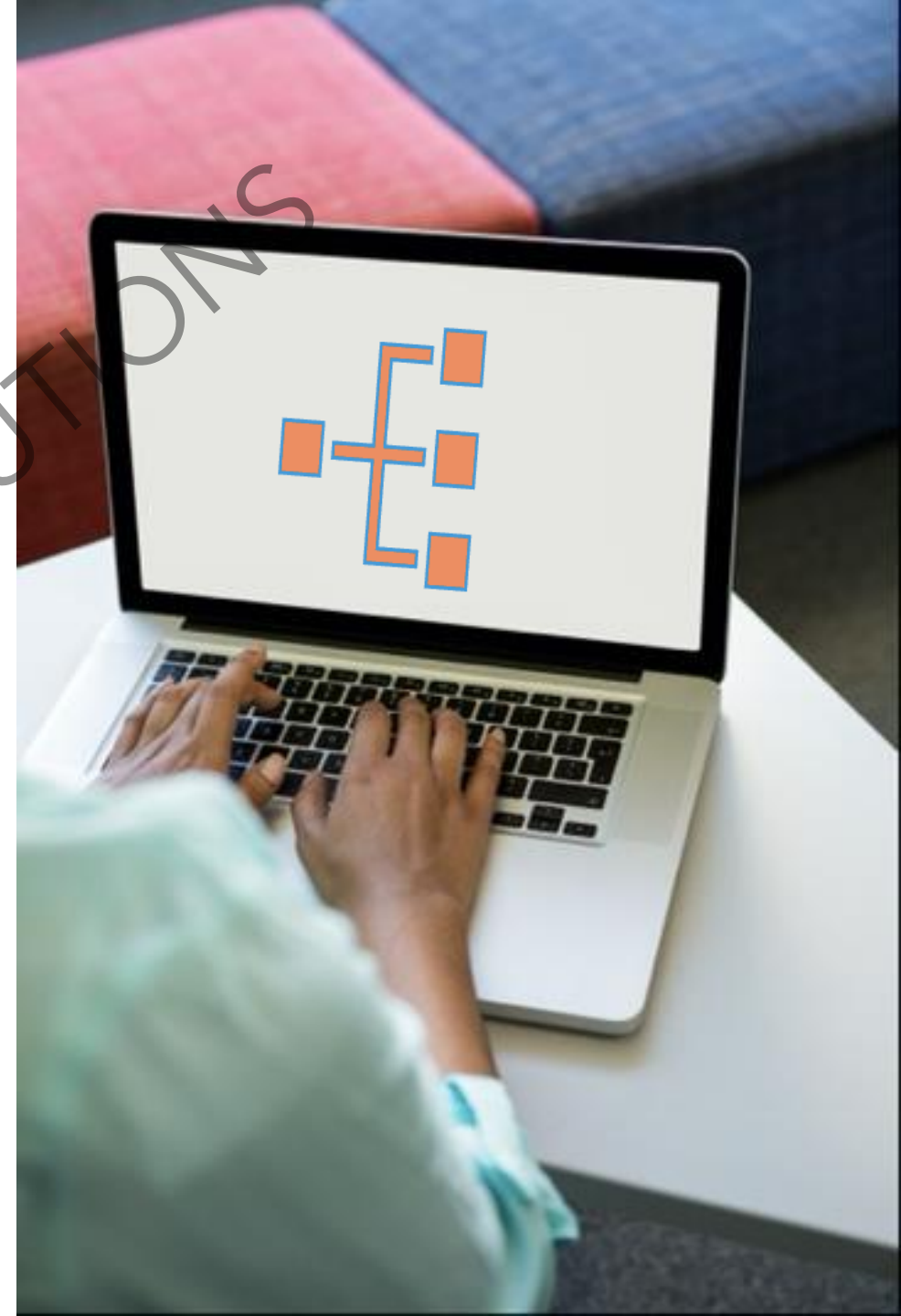
Findings of Fact

- **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

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Allegation: Fondling

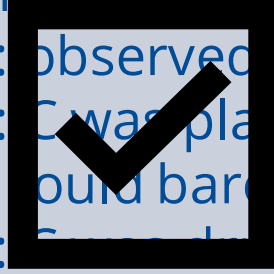
Fondling is the:

- ❑ touching of the private body parts of another person
- ❑ for the purpose of sexual gratification,
- ❑ Forcibly and/or without the consent of the Complainant,
 - ❑ including instances where the Complainant is incapable of giving consent because of their age or **because of their temporary or permanent mental or physical incapacity.**

Analysis Grid

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	Respondent acknowledges and admits this element in their statement with investigators. "We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."	Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

Apply Preponderance Standard to Each Element

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina. 	Respondent acknowledges and admits this element in their statement with investigators.  "We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."	Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating  Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C drank but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

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?

Sanctioning

- Primary Goals:
 - End the harassment
 - Prevent its recurrence
 - Remedy the harm
- What steps would be reasonably calculated to end harassment and prevent recurrence?



Sanctioning Considerations



State law



System policy



Learning
environment



Measures
available

The sanctioning officer ***must*** assume the finding is correct.

No lesser sanction if you disagree with findings

REMINDER

The sanction does not “undo” the finding.

Determining Sanctions

- Precedent/Consistency
- Past conduct
- Foreseeability of repeated conduct
- Availability of measures
- Does bias creep in?
- Remorse?
- Victim impact or request?



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?

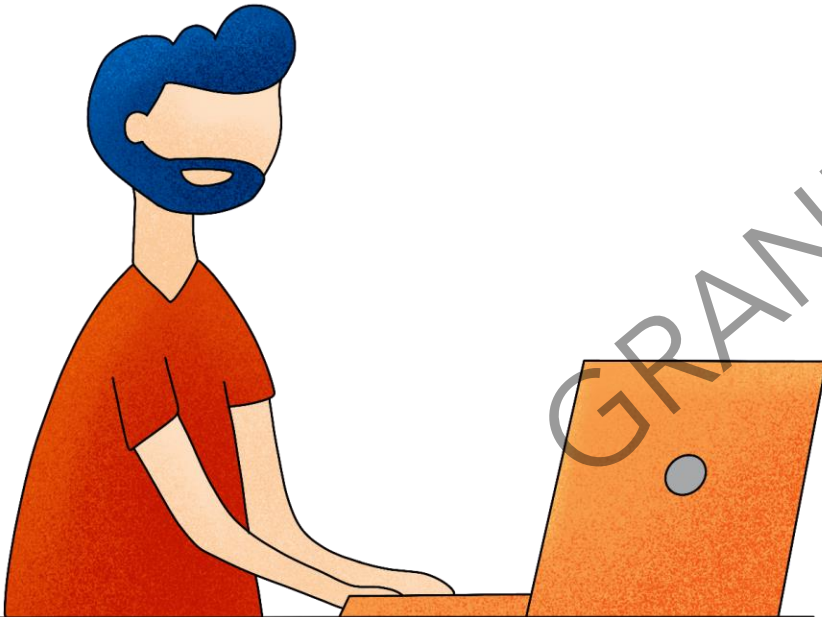
Effort to conceal or hide the incident?

Refusal to attend past trainings

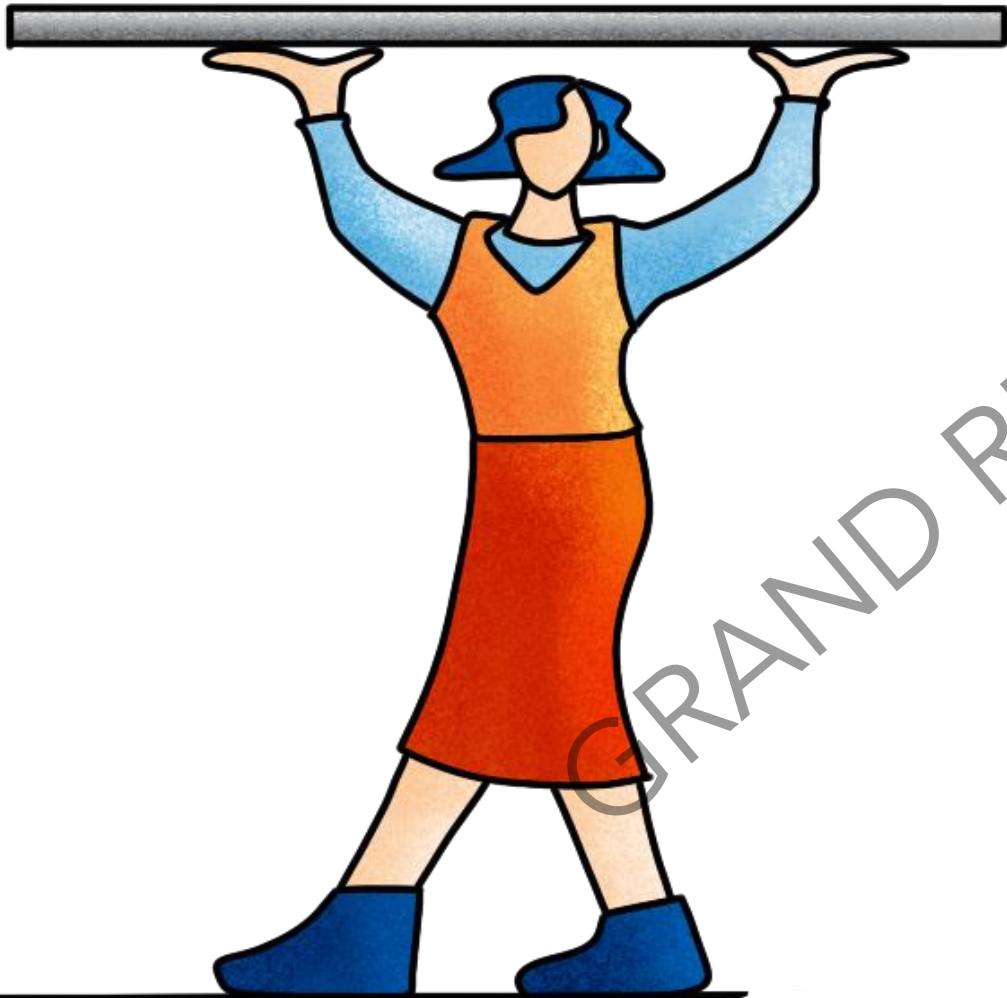
Past failures to comply with directives

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

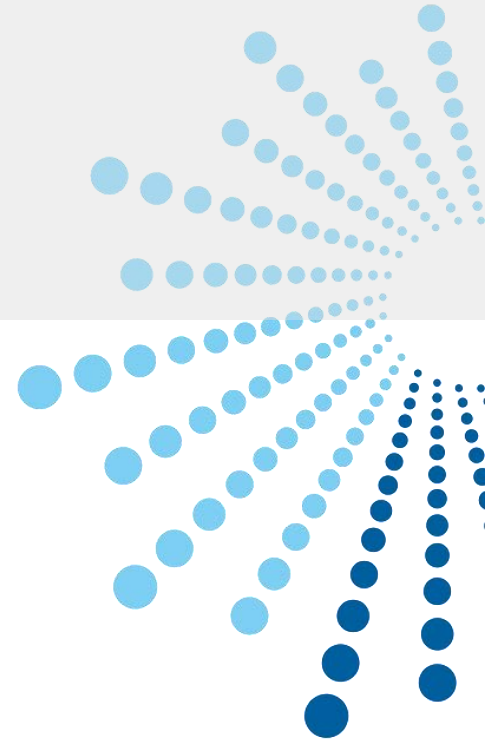
Draw Attention to Significant Evidence and Issues



Practical Application

06

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Scenario 1

Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

- **Can the HP hear from Witness 7 at the hearing?**



Scenario 2A

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- **The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?**



Scenario 2B

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

- **Must the Hearing Panel find Respondent not responsible because of the findings in the report?**

Case Study

“

The Formal Complaint charges Respondent with sexual assault for engaging in sexual contact with Complainant when she was incapacitated by alcohol. Specifically, Complainant alleges that she was at a party with friends when they met Respondent. Complainant reported that prior to the party she pre-gamed with Witness 1 and they split a bottle of prosecco. Complainant stated that while at the party, Respondent and Witness 2 approached her and her friend, Witness 3, and asked if they would be their partners in a round of beer pong. Complainant reported that she paired up with Respondent and they played several rounds. She further alleged that that Respondent was the one who filled their cups. Complainant stated that she “got drunk fast” and her last memory was of Respondent handing her a celebratory shot because they had won the tournament. Her next memory was waking up on a couch in a bedroom that was unfamiliar to her, naked from the waist down. Respondent was on the floor next to her, asleep. He was under a blanket but was also naked.

”

Witness 1

Witness 1 was interviewed by the investigator and reported that she and Complainant are roommates, but they are not close. Witness 1 is an athlete and tends to hang out with her teammates. She stated that for this reason, they rarely hang-out, but that the night of the alleged incident they did because they were planning on going to the same party. Witness 1 stated that they split a bottle of prosecco, but that Complainant drank most of it because Witness 1 had an early practice the next morning and didn't want to get "too messed up." Witness 1 said that they went to the party together, but then went their separate ways. Witness 1 stated that towards the end of the night, she saw Complainant and described her as "a disaster." She also reported that Respondent was "practically carrying her" and she approached them and offered to take Complainant home. According to Witness 1, Complainant said she was fine, but her words were slurred, and she could barely stand. Witness 1 told Respondent to take care of her and he said, "I'm just going to put her to bed." She didn't see either party again that night.

At the hearing, Witness 1 gave testimony that was substantially the same as what she told the investigator.

Witness 2

Witness 2 told the investigators that he is Respondent's best friend and teammate. Witness 2 stated that when looking for partners for the beer pong tournament, Respondent saw Complainant and Witness 3 and suggested that they approach them because Complainant "was hot" and Witness 3 "looked drunk enough to be a good time." Witness 2 said that Complainant was fine and didn't appear to be that drunk. He also stated that she made most of the winning shots after several rounds of the game so she couldn't have been too messed up. When asked who was filling the cups, he said that he wasn't sure who did it each round, but he definitely saw Complainant fill them on two occasions. After the tournament was over, he helped Witness 3 get home and so didn't see Complainant and Respondent again that night. He also mentioned that he and Witness 3 are now dating.

At the hearing, Witness 2 testified that Complainant was fine. He also stated that Respondent never filled Complainant's cup and that Complainant was all over Respondent the entire night.

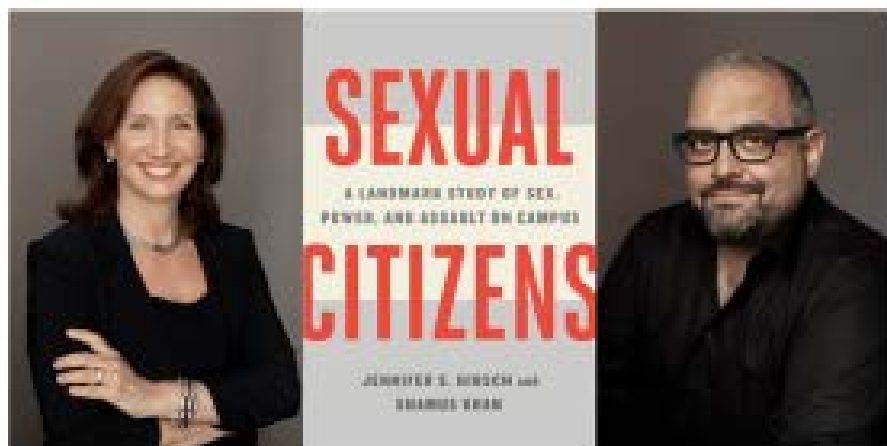
Witness 3

Witness 3 was Complainant's best friend at the time of the incident. They are no longer close and Witness 3 is now dating Witness 2.

Immediately following the alleged incident, Witness 3 told the investigators that Complainant was already drunk when she got to the party. She stated that Respondent and Witness 2 asked them to play beer pong and they agreed. She stated that the parties seemed to hit it off immediately. She stated that they won the tournament and so played at least five rounds and that by the end of the game Complainant was the "drunkest she had ever seen her." Witness 3 stated that Complainant was slurring her words, couldn't stand on her own, and was really loud, which is not like her. Witness 3 stated that that she was pretty drunk too, but not as bad as Complainant. Witness 3 stated that she left the party with Witness 2.

At the hearing, Witness 3 stated that she may have exaggerated her description of Complainant when she spoke to the investigators. She told the decision makers that although Complainant drank a lot, she wasn't that out of it, because she had a high tolerance and drank a lot all the time.

Save the Date!



Sexual Citizens SPACE Toolkit: A Discussion with the Authors

Hosted by Grand River

May 31, 2022, 2 PM Eastern

Register here!



Upcoming Trainings

Clery Act Training: Higher Education Act Campus Safety Obligations

May 10, 12, 17 & 19, 2022, noon eastern

June 8 & 9, 2022, noon eastern

From One Title IX Coordinator to Another

September 6 & 7, 2022, noon Eastern

Decision Makers: Conducting Fair, Equitable, and Compliant Title IX Hearings

October 25 & 26, 2022, noon Eastern

Title IX Investigative Report Writing Workshop

Classes in April, August, and November

Conducting Fair, Thorough, and Trauma-Informed Sexual Violence Investigations

Classes in August and October

Driving Down the 493: A Deep Dive into a California Law and Its Overlap with Title IX

June 24, 2022 noon Pacific

Questions?

Email Us

info@grandriversolutions.com

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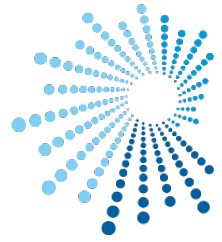
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Title IX Hearings

SWACC: Day 2

Jessica Brown & Martha Compton | May 2022

Meet Your Facilitators



Martha Compton

She/Her/Hers

Director of Strategic Partnerships
and Client Relations



Jessica Brown

She/Her/Hers

Senior Solutions Specialist



Outstanding Questions from Day One

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Overview of Day Two

- ☐ Community College Context

Let's Practice!

- ☐ Pre-Hearing Preparation
- ☐ Testimony and Cross Examination

Community College Context

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Pre-Hearing

The investigation is complete!

It is time to schedule the hearing...

Rapid Fire #1

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 quiet 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

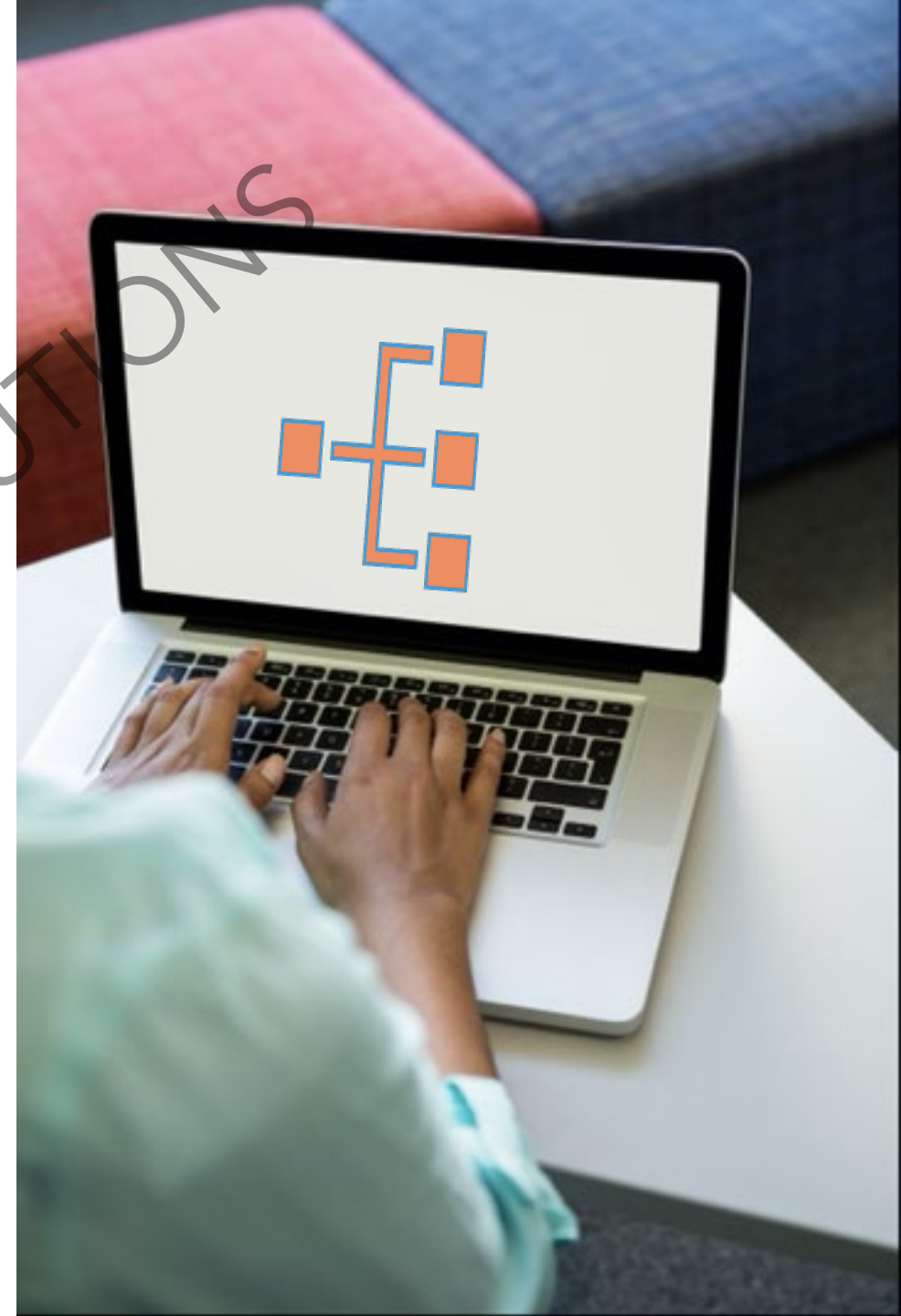
- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

Rapic Fire #4

Policy Analysis

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

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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, 2, 3: Questions for Complainant and Witnesses Emma and Charlie
- Group 4, 5, 6: Questions for Respondent and Witnesses Professor McPhee and Tom

Report Out

- Group 1, 2, 3: Questions for Complainant and Witnesses
Emma and Charlie
Group 4, 5, 6: Questions for Respondent and Witnesses
Professor McPhee and Tom

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 again



Select a member of your group to take notes and to report out to the whole group



Discuss the list of proposed questions for:

Groups 1 and 2:
Questions for
Respondent and
Witnesses
Tom/Emma (F





Report Out

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Questions submitted by Complainant's Advisor

Questions for Respondent (Groups 1 and 2)

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 (Groups 1 and 2)

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

Questions for Charlie (Groups 3 and 4)

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 (Groups 3 and 4)

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

Questions for Complainant (Groups 3 and 4)

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

Questions for Tom (Groups 5 and 6)

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 (Groups 5 and 6)

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 (Groups 5 and 6)

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?



Scenario 1

Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

- **Can the HP hear from Witness 7 at the hearing?**



Scenario 2

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

- **Must the Hearing Panel find Respondent not responsible because of the findings in the report?**



Scenario 3

During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

- **If you are the Hearing Chair, how do you respond?**

Thank you!

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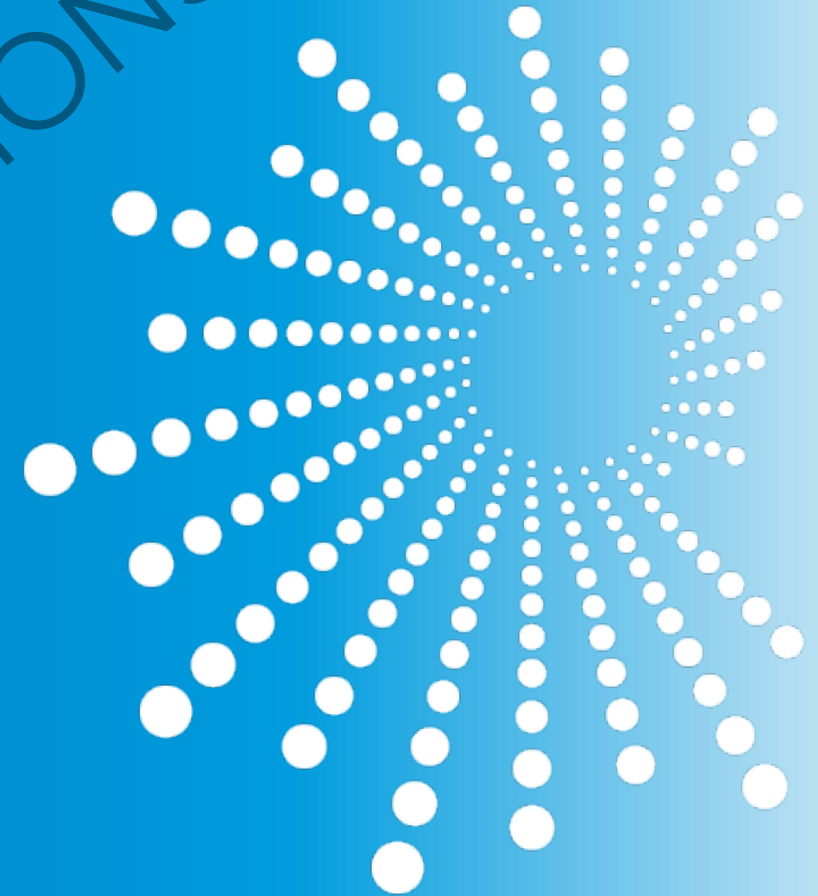


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NEW RULES



**2024
TITLE
IX**

2024 Final Title IX Regulations

June 14, 2024

Emma Hempel

Andrea Stagg

MEET YOUR FACILITATORS



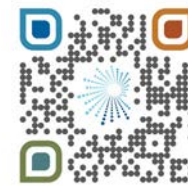
Andrea Stagg

Director of Consulting Services, Andrea Stagg has extensive experience consulting, writing and training on Title IX, Equity & safety. Andrea was Deputy General Counsel and Director of Government Relations & Compliance at Barnard College and was counsel to three colleges within the SUNY system. She has worked with federal and state legislators to develop state laws and follow best practices in campus safety and sexual harassment prevention.



Emma Hempel

Emma Hempel is a Title IX Coordinator and facilitates Title IX and Equity training for Grand River Solutions. Emma serves as a Title IX Coordinator for both large and small public and private institutions across the country. Emma also specializes in and leads seminars on the Intersection of Sexual Violence and the LGBTQ Community, and Sex, Gender, Identity and Practice.



GETTING TO KNOW YOU



1. Name
2. Pronouns
3. Where you live
4. How long have you been doing Title IX work?

Submit your responses in one message using the chat feature!

AGENDA

2024

Department of Education

Title IX Regulations

Big Picture + Overview

Scope and Geography

Coordinator Obligations

Procedural Changes

Employee Reporting Obligations

Training Requirements

Intersection with Other Applicable Laws

ACTION PLAN

Review your policy landscape

Update/adopt compliant policies

Retrain your implementation staff

Prepare to train **all** employees

Refresh community-facing materials

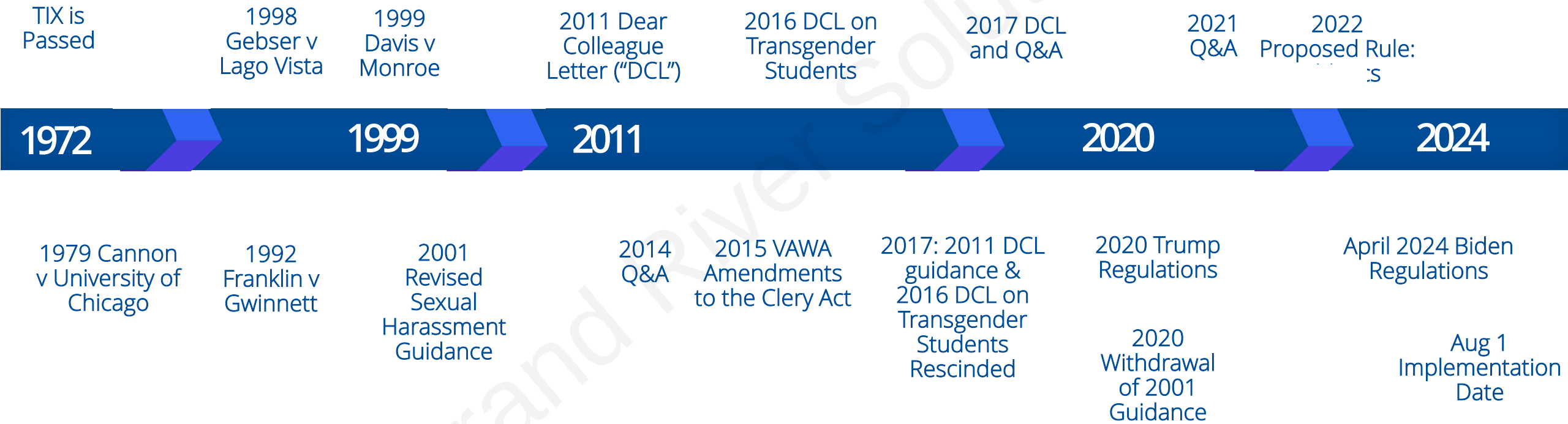
A wide-angle, high-angle photograph of a massive waterfall cascading down a steep, craggy cliff face. The water is white and frothy as it falls. A small figure of a person stands on a rocky outcrop in the foreground, looking up at the waterfall, emphasizing the scale of the scene. The background shows more of the rugged cliff face and some greenery on the right side.

BIG PICTURE & OVERVIEW

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The History of Title IX

A Timeline



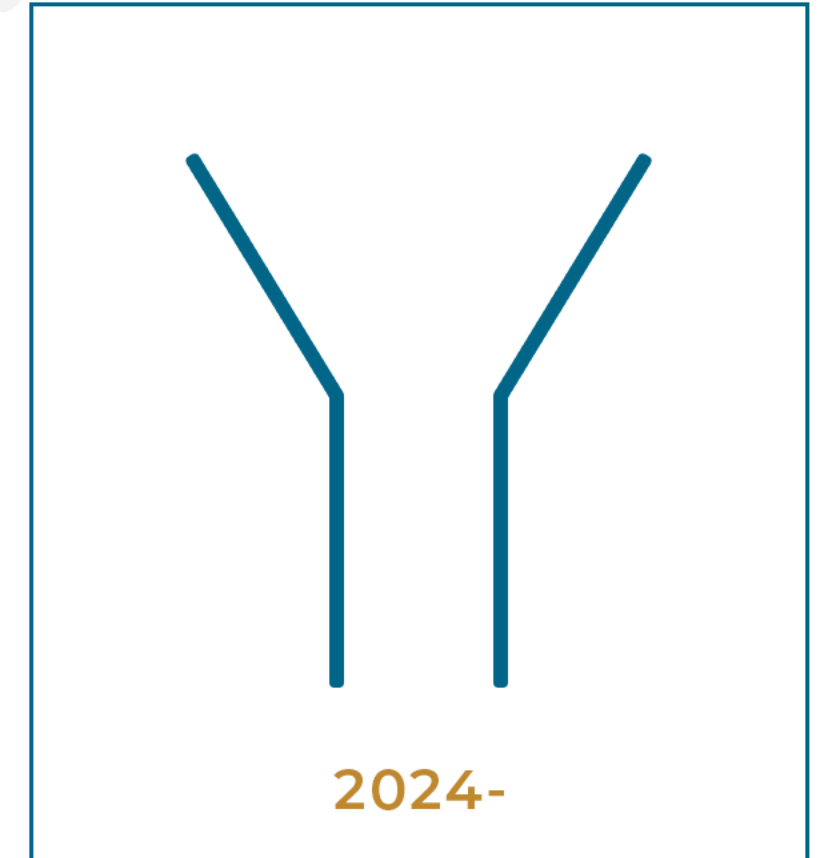
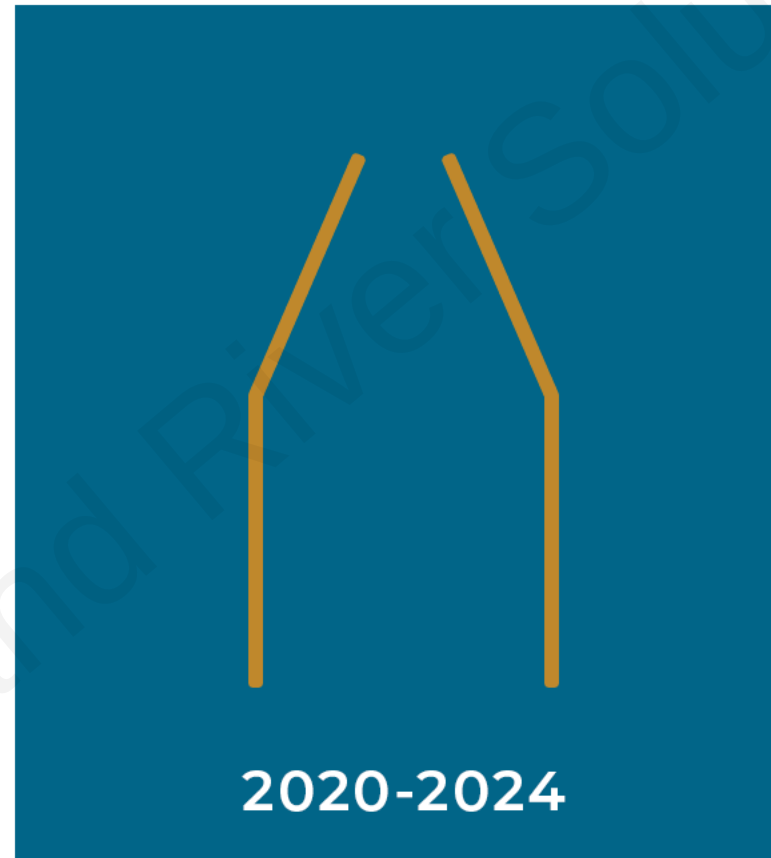
WHAT DOES THE FUTURE HOLD?

CHANGED FOR THE BETTER;
BUT WILL THEY BE
CHANGED...FOR GOOD?



BIG PICTURE: SHIFTING THE TIX FUNNEL SHAPE

Top of Funnel: Access to TIX Policy
Bottom of Funnel: Process Due



MAIN CHANGES FOR 2024

Creates framework to respond to sex discrimination other than sexual harassment

Updated training required for all employees

Not strictly limited by geography; impact matters

Expands employee reporting obligations

Requires prompt and effective action to end sex discrimination and prevent its recurrence

TIMING



- Implementation date is August 1, 2024.
- No retroactivity
- "The final regulations apply only to sex discrimination that allegedly occurred on or after August 1, 2024."
- "With respect to sex discrimination that allegedly occurred prior to August 1, 2024, regardless of when the alleged sex discrimination was reported, the Department will evaluate the recipient's compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred."

SINCE 1975...



Recipients have been required to . . .

- Notify students (defined to include persons who have gained admission) of their nondiscrimination policies and to resolve student complaints of sex discrimination.
- Maintain nondiscrimination notices and adopt and publish grievance procedures
- Prohibit discrimination based on pregnancy or related conditions
- Prohibit sex-based distinctions based on parental, family, or marital status
- Prohibit discrimination on the basis of sex in employment
- Balance equity with promptness

SCOPE AND APPLICABILITY

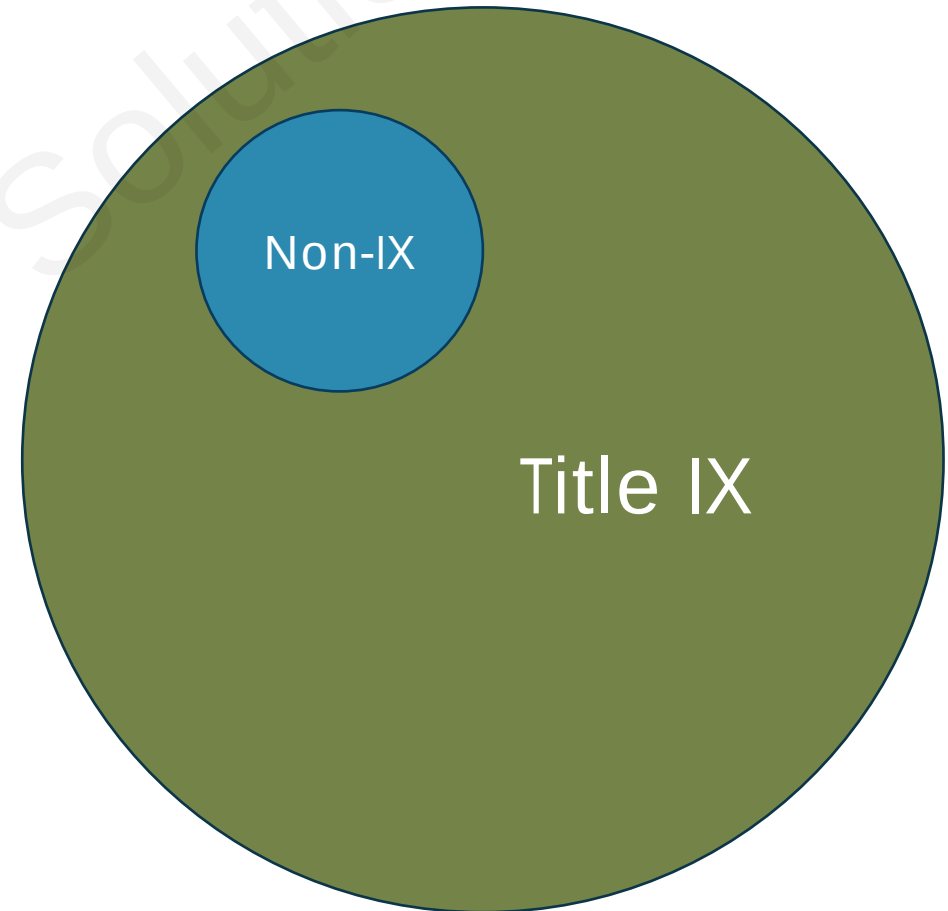


WHICH POLICY APPLIES?

2020



2024



WHAT IS COVERED BY 2024 TITLE IX?

- All sex discrimination – this is an umbrella term
- Not only sexual harassment (2020 amendments only addressed sexual harassment)



DEFINITIONS – WHAT IS SEX DISCRIMINATION?

- **Discrimination on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
 - o Hostile environment sexual harassment
 - o Quid Pro Quo
 - o Domestic violence, dating violence, sexual assault, and stalking



LGBTQIA+

Preamble:

Price Waterhouse/Oncale/Bostock and Title VII → Title IX Regulations

Sex stereotypes → to treat differently on basis of sexual orientation/gender identity is to discriminate on the basis of sex

“Indeed, Bostock’s reasoning dictates that, even assuming that ‘sex’ refers to ‘biological distinctions between male and female,’ discrimination against a person because they are gay or transgender is, in part, discrimination on the basis of sex.”

§106.10: “Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”



DEFINITIONS – WHAT ARE "SEX CHARACTERISTICS"?

The Preamble defines "sex characteristics" as "physiological sex-based characteristics."

Sex discrimination based on a person's physiological sex characteristics may include discrimination based on a person's anatomy, hormones, and chromosomes associated with male or female bodies.

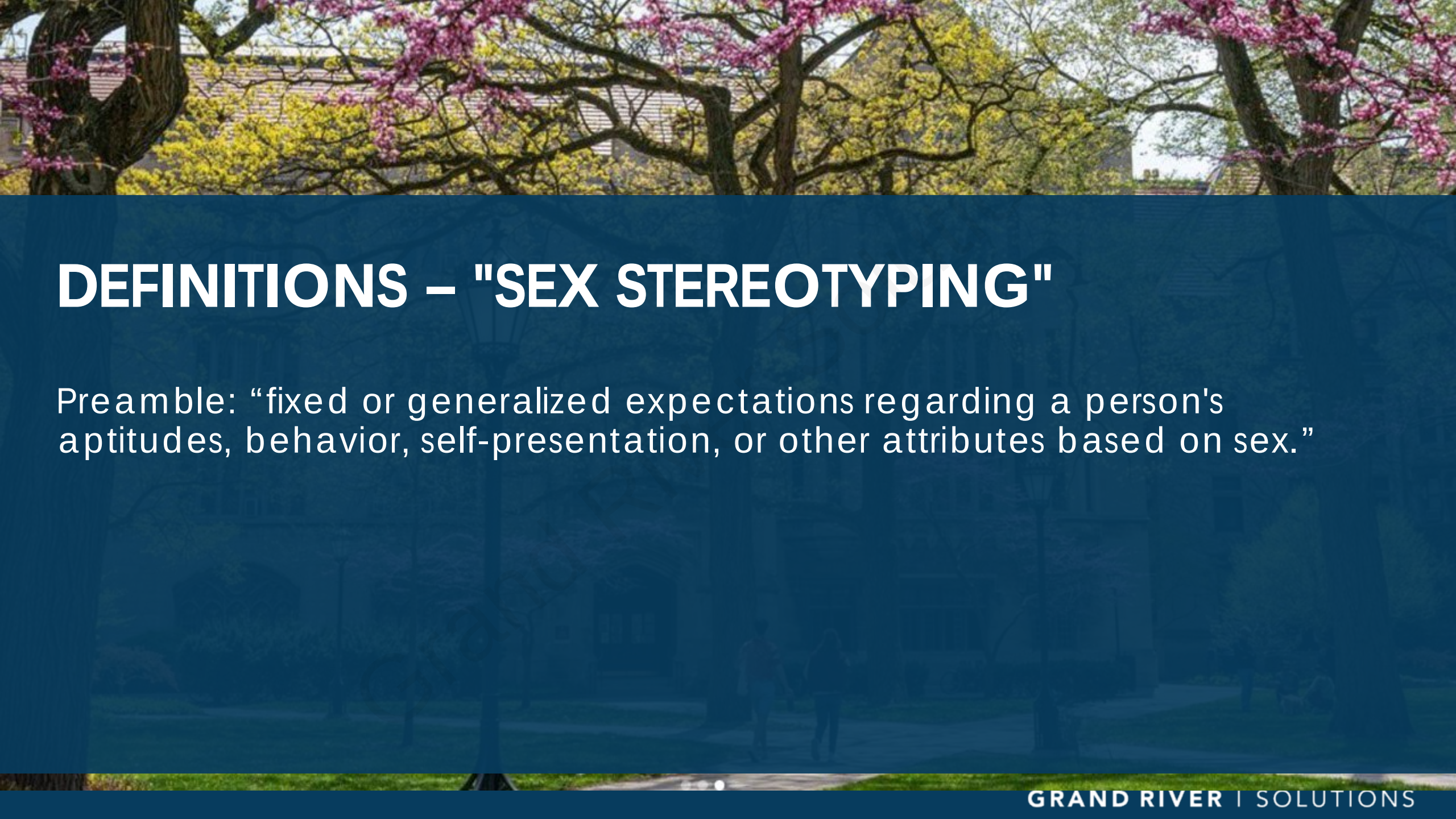
ED states Title IX also covers discrimination based on (undefined) "intersex" traits [It adopts this term instead of "differences of sex development"].

ED identifies that "inappropriate disclosure of medical information about a student's intersex traits could constitute prohibited discrimination based on sex characteristics."

EXAMPLES--WHAT ARE "SEX CHARACTERISTICS"?

- A faculty member requests a fan for their office because they are going through menopause and having hot flashes. Is this a Title IX issue?
- A faculty member responds to student emails and requests to meet within two days. They have an "open-door" policy. However, the faculty member refuses to respond to or meet with a transgender student in their class. Is this a Title IX issue?



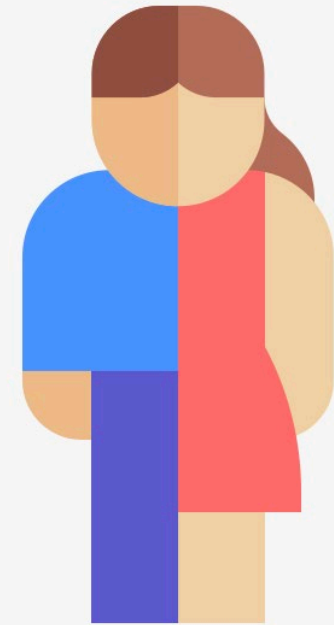


DEFINITIONS – "SEX STEREOTYPING"

Preamble: "fixed or generalized expectations regarding a person's aptitudes, behavior, self-presentation, or other attributes based on sex."

EXAMPLES-SEX STEREOTYPES

- A senior academic advisor discourages a student, who is a man, from applying to a new math fellowship available because the advisor thinks the opportunity should prioritize women in STEM. Is this a sex stereotype?
- After a student who is a woman gets a buzz cut, a peer begins referring to her as "man" as much as possible, saying, "Hey man" or "how are you, man," indicating that her haircut makes her appear as a man. Is this a sex stereotype?



Freepik

DE MINIMIS TEST



De Minimis test for sex-separated programs/activities:

- Otherwise permissible sex separation is consistent with Title IX as long as it is carried out in a manner that does not impose more than de minimis harm.
- Examples: locker and bathrooms; appearance codes
- Denying a transgender student "access to a sex-separate facility or activity consistent with that student's gender identity" would be more than a de minimis harm

HOSTILE ENVIRONMENT SEX-BASED HARASSMENT HAS 5 COMPONENTS

- The conduct is
- (1) unwelcome,
- (2) sex-based,
- (3) subjectively and objectively offensive, and
- (4) so severe or pervasive
- (5) that it results in a limitation of or denial of a person's ability to participate in or benefit from the education program or activity.



Must have all 5 above!

HOSTILE ENVIRONMENT SEX-BASED HARASSMENT FACTORS TO CONSIDER IN DECISION-MAKING

- (1) the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- (2) the type, frequency and duration of the conduct;
- (3) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) the location of the conduct and the context in which the conduct occurred; and
- (5) other sex-based harassment in the recipient's education program or activity.

IS THIS HOSTILE ENVIRONMENT SEX-BASED HARASSMENT?

You receive a 3rd party report from a Coach who heard some rumors about a student on their team, Dani.

Dani is constantly receiving sexually explicit photos via Snapchat from another teammate. Dani has asked them to stop numerous times. When they are at practice together, this individual often approaches Dani to make jokes of a sexual nature. This has happened about 3 times so far this week. Dani usually laughs it off and continues on with practice.

Why? Why not? What other information would you need to know?

DEFINITION OF A COMPLAINANT? STUDENT?

- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination
- Student is broad - "Admitted"
- or
- A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX **and** who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.



§ 106.2

DEFINITION OF A COMPLAINANT?

- A person does not need to continue to be participating or attempting to participate in the program or activity at the time they make a complaint.
- This is a change from the current regulations as amended in 2020.



§ 106.2

WOULD THIS FALL UNDER TITLE IX?

- A recently admitted individual emails the Title IX Office sharing they were sexually assaulted last week by one of your students. They want the campus to take action.
- A nonaffiliate attends a football game on your campus and is taunted based on their gender identity by a student. The nonaffiliate does not plan to attend any future campus programs or events.



FIRST AMENDMENT BALANCING

- "One stray remark" is not "pervasive"
- A statement "of one's point of view on an issue of debate and with which another person disagrees, even strongly so, is not the kind or degree of conduct that implicates the regulations."
- But "sex-based conduct that occurs on multiple occasions and is so persistent that, for example, it limits another student's ability to complete assigned coursework at the student's typical level of performance" might meet the standard.
- ED encourages consultation with "settled components of Title VII sexual harassment law" for guidance on the meaning of "severe or pervasive"

FIRST AMENDMENT BALANCING: LOOKING TO TITLE VII

- "whether conduct constitutes unlawful harassment depends on all the circumstances and is only unlawful under federal EEO law if it creates a hostile work environment."
- "conduct is not necessarily unlawful merely because it is based on a protected characteristic and that conduct also must alter a term, condition, or privilege of employment, typically by creating a hostile work environment."
- "conduct that occurs outside the workplace, including on social media accounts, and that does not target the employer or its employees and is not brought into the workplace generally will not have an impact on the workplace and therefore will not contribute to a hostile work environment."

QUID PRO QUO

- Not just employees, also agents or other persons authorized by the recipient to provide an aid, benefit, or service under the program or activity



QUID PRO QUO EXAMPLE (OR NOT)

- Your institution hires a vendor to run your dining services. Charlie swipes the student's ID's to allow them in to use their meal plan. Charlie is employed by the vendor. Charlie strikes up a friendship with Jackie and offers that if Jackie engages in sexual activity with Charlie, Charlie will wave Jackie through the entrance without a swipe. This will allow Jackie to get through the semester without running out of meals.
- Jackie thinks this is a great deal, and has always thought Charlie was cute.



“SPECIFIC OFFENSES” (VAWA)

Now (actually) conformed to
VAWA Amendments to the Clery
Act...



DATING VIOLENCE

The term dating violence means “violence committed by a person—

- A. who is or has been in a social relationship of a romantic or intimate nature with the victim;
- B. the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
 - I. The length of the relationship;
 - II. The type of relationship; and
 - III. The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence committed

- A. by a current or former spouse of the victim,
- B. by a person with whom the victim shares a child in common,
- C. by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- D. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred, or
- E. by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

SEXUAL ASSAULT

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”



SEX OFFENSES

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”

SEX OFFENSES

A. Rape — The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. Sodomy — Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With an Object — The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SEX OFFENSES

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

E. Incest — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

F. Statutory Rape — Nonforcible sexual intercourse with a person who is under the statutory age of consent.

STALKING

- The term stalking means “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A. fear for the person’s safety or the safety of others; or
 - B. suffer substantial emotional distress.



PARENTAL, FAMILY, OR MARITAL STATUS

Regs address the treatment of applicants, students:

- Cannot adopt a policy, practice, or procedure, or take any employment action "concerning the current, potential, or past parental, family, or marital status of a student [or employee] or applicant that treats persons differently on the basis of sex" or "is based upon whether an employee or applicant is the head of household or principal wage earner" in their family unit



PARENTAL, FAMILY, OR MARITAL STATUS

- Can an institution offer married men financial aid, but as a practice decline to offer financial aid to women who are married?
- May a department exercise a preference to only hire women who do not have kids?



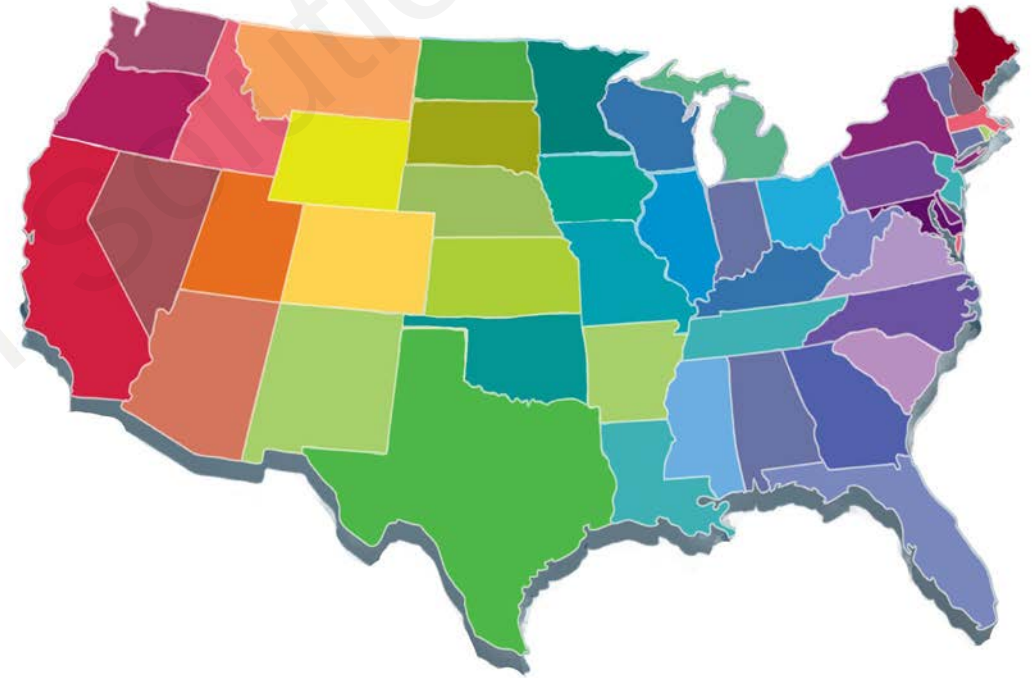
PREGNANCY



NOT NECESSARILY NEW, BUT CLARIFIED

§ 106.40

- Depending on state law, not necessarily new, but clarified
- More people will find new for students
- Reasonable Modifications
- Voluntary leaves or separate but comparable programs
- Lactation spaces
- Comparable treatment to other medical conditions



PREGNANCY AND RELATED CONDITIONS

- Since 1975, "pregnancy **and** related conditions" includes "pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom[.]”
- Section 106.2 (2024), "pregnancy **or** related conditions" includes:
 - (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
 - (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
 - (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

NOTICE AND REQUIRED RESPONSE

§106.40

When a student* informs any employee of the student's pregnancy or related conditions...the employee promptly:

- (1) provides the Title IX Coordinator's contact information and
- (2) informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access....



PREGNANCY ACCOMMODATIONS

- if a recipient provides an applicant who is recovering from back surgery an extension of time for a medically necessary period to submit a required application essay, it must do the same for a student who is recovering from childbirth



TERMINATION OF PREGNANCY

- Consistent with the definition included in 1975 regulations: the end of pregnancy in any manner, including, miscarriage, stillbirth, or abortion

Examples of potential discrimination from Preamble:

- a high school may not exclude a student from participating in the student council solely because the student has had an abortion
- a college may not deny a professor a raise just because it learned she planned to have an abortion

NOW WHAT?

- A student in a science program asks a faculty member if they can be excluded from a series of lab sessions involving chemicals that may be harmful for pregnant people. The instructor is insistent that they must complete these labs in order to not fail the class:
 - o As Title IX Coordinator, what are your next steps?
 - o Who else are you bringing into the conversation?
 - o How can we be creative to ensure equal access for this student?



PERCEIVED CHARACTERISTICS

- "Perceived" characteristics are also covered under Title IX
- Making discriminatory decisions based on assumptions about someone's sexual orientation or pregnancy status is prohibited

Example:

- If a professor refuses to allow a student to participate in a clinical course based on the mistaken belief that the student is pregnant, that professor may be discriminating against a student based on sex and denying the student access to the recipient's education program or activity based on the stereotype that a pregnant student is not physically capable of participating in the course or will not be as dedicated due to the demands of pregnancy.

GEOGRAPHY



DOES LOCATION MATTER?

- What is the geographic scope of your disciplinary authority?
 - o For students?
 - o For employees?
- Hostile Environment Sex-Based Harassment:
 - o Less about *where* (some of the) conduct occurred
 - o More about the impact in the program or activity
 - o OK if includes considering conduct that occurred elsewhere, outside P&A, online, even outside the US



GEOGRAPHY

2020

Inside U.S.

On-campus

Off-campus if part of P&A

May include online conduct

Building owned or controlled by institution

Building owned or controlled by recognized organization

Places where we have substantial control over respondent and context

2024

Inside U.S.

On-campus

Off-campus if part of P&A

May include online conduct

Buildings? Substantial control?

Flexibility to focus on disciplinary authority

Conduct outside of Title IX jurisdiction may contribute to hostile environment

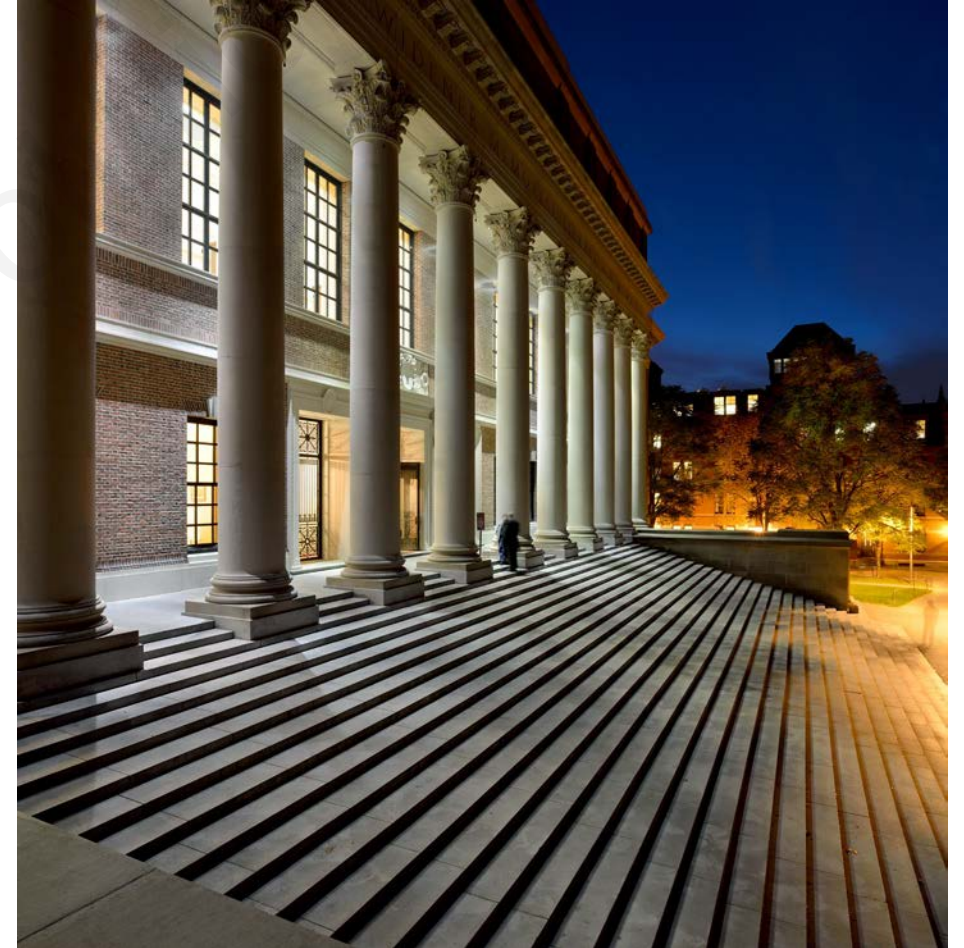
EXPANDED SCOPE – OFF CAMPUS CONDUCT?

- Generally, not required to respond to alleged sex discrimination off-campus unless it is "within the program or activity"
- BUT "within the program and activity" includes "conduct that is subject to the recipient's disciplinary authority"
- How clear is your scope of disciplinary authority?



DISCIPLINARY AUTHORITY - EXAMPLES

- "The University may address off-campus behaviors when the Dean of Students determines that the off-campus conduct affects a University interest. University interests include but are not limited to health and safety, protection of rights or property of others and promoting the University's mission."



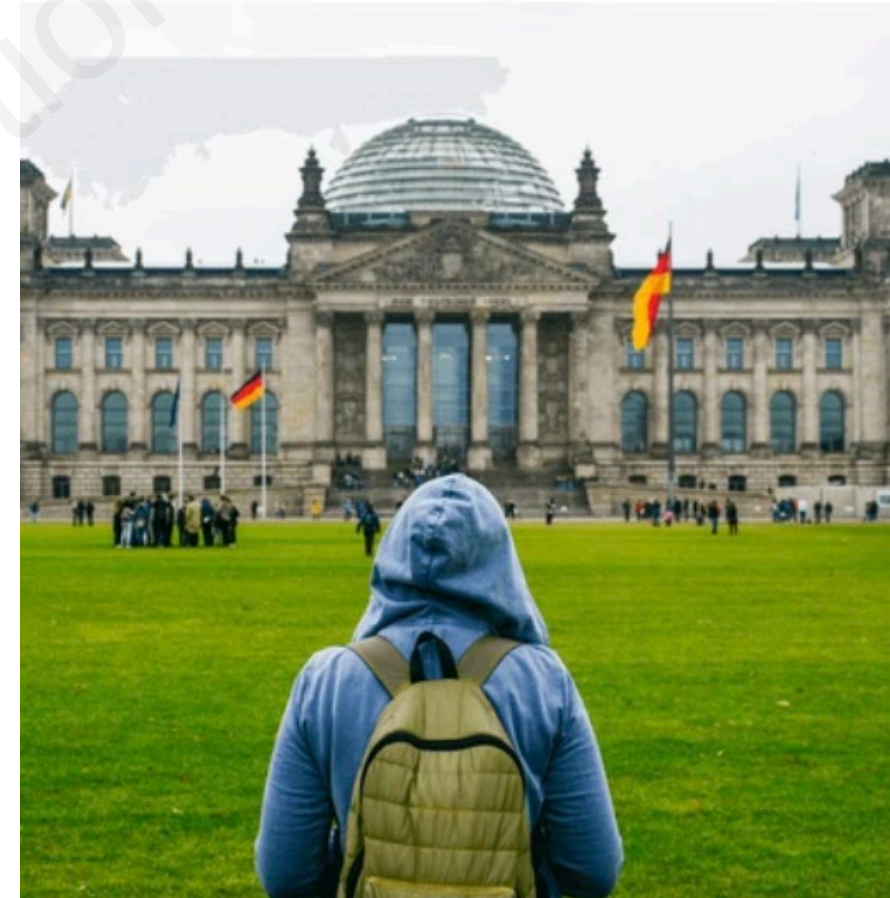
DISCIPLINARY AUTHORITY - EXAMPLES

- "Under limited circumstances, this policy may also apply in instances where the conduct occurred outside of the education program or activity."



EXPANDED SCOPE: STUDY ABROAD? NOT EXACTLY

- No obligation under Title IX to address sex discrimination occurring outside of the United States.
- Permitted to respond as appropriate under the code of conduct or other policies pertaining to study abroad programs.
- If conduct that occurred on study abroad program contributes to a hostile environment in the US, that conduct may be relevant and considered by the campus so that it can address the sex discrimination occurring within its program in the US.



CONSIDER ONLINE HARASSMENT

- ED does **not** expect institutions "to monitor the online activity of students or faculty"
- U.S. Supreme Court recently recognized a public K-12 institution's authority over off-campus online speech (*Mahanoy*)
- ED expects a response when an employee learns:
 - about conduct among students that took place on social media or other platforms and
 - that reasonably may have created a sex-based hostile environment in the recipient's education program or activity
- **Remember:** It's about impact and disciplinary authority, not where misconduct happens



**Will you address
under Title IX?**



EXAMPLE: CONDUCT ON STUDY ABROAD

- Student A reports that she was sexually assaulted by Student B while studying abroad, that Student B has been taunting her with sexually suggestive comments since their return to campus and that, as a result, Student A is unable to concentrate or participate fully in her classes and activities.
- Will you address under Title IX? Why or why not?



EXAMPLE: ONLINE CONDUCT

- Off-campus, a student shares intimate images online of another student, without consent, through private messaging apps.
- Off-campus, students post highly offensive messages on Instagram visible to many students.
- Will you address under Title IX? Why or why not?



EXAMPLE: PUBLIC AWARENESS EVENTS

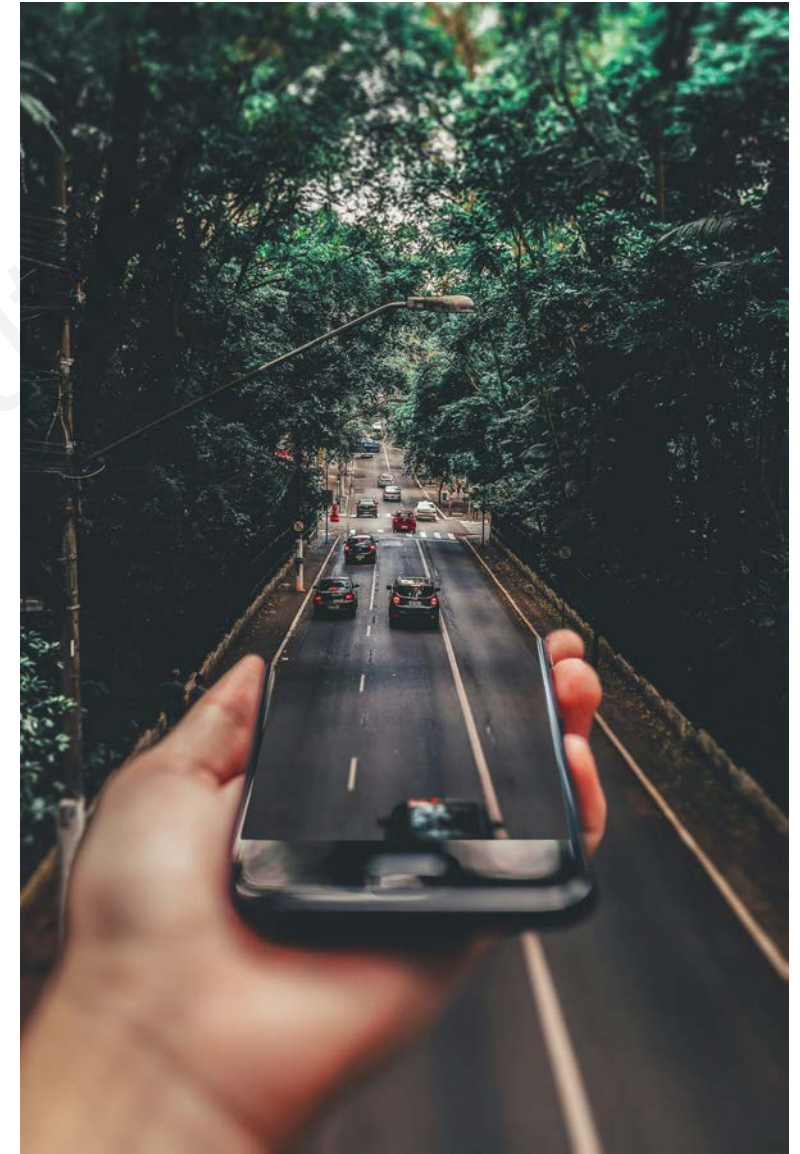
Town holds a *Take Back the Night* event, attended by institutional officials. Does information about sex-based harassment learned at this event need to be reported to the Title IX Coordinator?

What other information is needed?

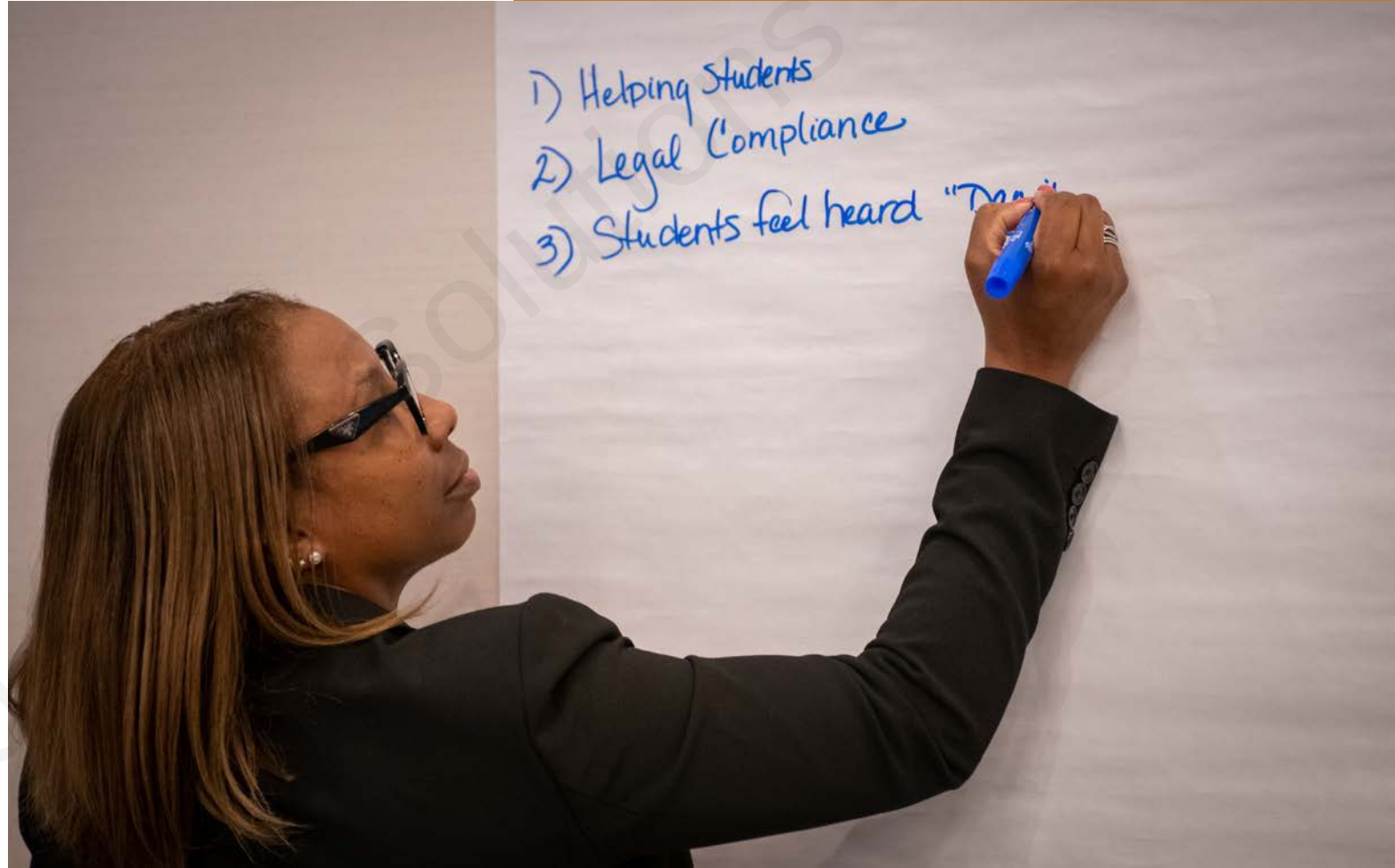


EXAMPLE: STALKING

- A student sends frequent disturbing text messages to another student and puts an AirTag on their car, which lets them monitor their travel.
- Will you address under Title IX? Why or why not?



ROLE OF THE COORDINATOR



ABOUT THE COORDINATOR

- One person must be designated as coordinator, with "ultimate oversight" over the Title IX responsibilities
- Can have deputies
- Can delegate to other designees

This is a basic compliance construct.



CONNECTING PREVENTION & RESPONSE

- To promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.
- Non-discrimination notice must be posted widely.
- Addressing disclosures and reports.



TITLE IX COORDINATOR REQUIREMENTS

- Treat the parties equitably
- Offer and coordinate supportive measures
- Notify complainant about resolution options (alternative and grievance procedures)
- Decide whether to initiate an investigation if a Complainant doesn't want to



WHO'S WHO?

- DM can be TIXC or Investigator
- TIXC can be the Investigator and/or DM
- TIXC can be the Informal Resolution Facilitator, but then can no longer be DM or Investigator (if parties exit IR)
- TIXC can only serve in multiple roles if they can do so without conflict of interest or bias.



SUPPORTIVE MEASURES

Additionally, under § 106.44(g)(4), a school must provide the parties a timely opportunity to seek a modification or reversal of a decision to provide, deny, modify, or terminate supportive measures applicable to them.



INFORMAL RESOLUTION CHANGE

2020 regulations:

1. Do not offer to resolve allegations via IR without a formal complaint; and,
2. Never resolve an allegation that an employee sexually harassed a student via IR.

Final 2024 regulations:

1. No complaint required before starting IR; and,
2. Do not offer IR if the complaint includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student or such a process would conflict with Federal, State or local law.

STUDENTS WITH DISABILITIES

- 106.8(e)
- K-12 versus higher education
- K-12: Mandatory: Must work with one or more members of the IEP team; likely involvement of parent or guardian
- Higher education: Permissive: Coordinator may consult, as appropriate, with office that serves students with disabilities to determine how to comply with Rehab Act Section 504
- Consider whether "equitable" treatment will require modifications of grievance procedure (and if those options will be "articulated" in policy as required)



RESOLUTION UPDATES –GRIEVANCE PROCEDURES

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GRIEVANCE PROCEDURES



DEFINITION OF A COMPLAINT

2020

Signed Formal Complaint Required



2024

- No "magic words"
- Oral or written
- "Objectively understood" by a reasonable person as a request to investigate
- But, informal process can begin before a complaint (after a disclosure)

§ 106.2

STANDARD PRACTICES

- Conduct an intake meeting
- Listen and take notes on what is shared.
- Review supportive measures and options for resolution.

If Complainant indicates verbally they want to move forward, then the Coordinator ***in writing:***

- Summarize allegations as it relates to your policy AND
- Confirm their request for an investigation.



COORDINATOR INITIATED COMPLAINT (RARE)

1. The complainant's request not to proceed with initiation of a complaint;
2. The complainant's reasonable safety concerns regarding initiation of a complaint;
3. The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the respondent is an employee of the recipient;
6. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
7. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
8. Whether the recipient could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under § 106.45, and if applicable § 106.46.

NOTICE, DISMISSAL, CONSOLIDATION

- Familiar notice requirements
- New "permissive" dismissal options, including when it's determined the conduct alleged, if proven, would not be sex discrimination or harassment
- Consolidation allowed for conduct arising from "same facts or circumstances," including cross-complaints



106.45 (CHILL)

VS.

106.46 (LESS CHILL)

REQUIRED PROCEDURAL ELEMENTS

- 106.46 is the process for adjudicating any sex-based harassment complaint in which a **postsecondary** student is either a complainant or a respondent
- 106.45 is for everything else (under Title IX)
- Why do different procedures apply?
 - o Type of violation
 - o Status of party
 - o Potential sanction

"ADEQUATE, RELIABLE, AND IMPARTIAL" INVESTIGATIONS

- Opportunity to present evidence
- Opportunity to suggest witnesses
- Evidence review
- Notice of meetings and proceedings



"equal opportunity" to "access" relevant and not impermissible evidence

RELEVANCE

- "Relevant" means "related to" the allegations of discrimination.
- **Questions** are relevant "when they seek evidence that may aid in showing" if the alleged discrimination occurred.
- **Evidence** is relevant "when it may aid a decisionmaker in determining" if the alleged discrimination occurred.
- "Not relevant" evidence from 2020 is now called "impermissible."
- "Sexual interests" of Complainant added to familiar 2020 exclusions.



CREDIBILITY ASSESSMENT

- DM must be able to question parties and witnesses to assess their credibility "to the extent" credibility is disputed and relevant to an allegation of sex discrimination.
- No definition, but example from ED: Credibility cases are those when the determination relies on testimonial evidence, and must choose to between competing narratives to resolve a case.
- DM may place less or no weight on statements based on refusal to answer relevant question.*

SEX-BASED HARASSMENT: POSTSECONDARY STUDENTS

Option 1:

- Investigator or DM holds "individual meetings" with parties and witnesses, and must ask relevant questions posed by parties.
- Parties must be provided with recording or transcription of that meeting and given enough time to prepare questions for follow-up interviews, if needed.

Option 2:

- Recorded live hearing, where DM can ask questions proposed by parties.

Option 3:

- Recorded live hearing, where Parties' advisors can question any party or witness.
- Parties cannot do the questioning, and advisor of institution's choice must be provided if needed.

OPTION 1

- Individual recorded meetings with parties and witnesses.
- Parties get transcripts or recordings of meetings and can suggest follow up questions to be asked in follow up meetings (which must also be recorded....).
- No limits described in the regulations about the number of follow ups permitted or required.

OPTION 2

- Live hearing with trauma-informed questioning; only through the hearing officer.
- Decisionmaker determines whether the question is relevant and not otherwise impermissible before asking the question.
- Maintain records of questions asked, modified, and not asked.

OPTION 3

- Live hearing; parties are present the whole time, witnesses only present during their testimony.
- The advisor of choice for each party (not the party), asks all direct, follow up, and or cross-examination questions of parties and witnesses.
- Decision maker determines relevance and not otherwise excluded in real time after each question. May require changes to question (but all parties have heard the question as asked).

***The process you
have been running
since August 2020!***

APPEALS

Must offer:

- Appeal of a dismissal
- Appeal for the outcome of sex-based harassment involving a student
- For other sex discrimination: offer an appeal if consistent with what is offered for "comparable proceedings."

EMPLOYEE REPORTING OBLIGATIONS



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WHERE WE WERE THEN, ARE NOW, AND ARE GOING

- 2011: responsible employees
 - o Broad
 - o Limited confidentiality
- 2020: officials with authority
 - o Narrow
- 2024: NEW

NPRM, IT WAS THIS:

• IS THE EMPLOYEE CONFIDENTIAL?

YES, no reporting is required.

IF NO, does the employee have the authority to institute corrective measures?

IF YES, report to TIXC.

IF NO, does the employee have responsibility for administrative leadership, teaching, or advising?

IF YES, is the information about a student being subjected to conduct that may constitute sex discrimination under TIX?

IF YES, report to TIXC.

IF NO, TWO OPTIONS:
1. Report to TIX, or
2. Provide the TIXC's contact information and information about how to report sex discrimination to any person who provides the 'ee with the information about conduct that may constitute sex discrimination under TIX.

IF NO, is the information about an employee being subjected to conduct that may constitute sex discrimination under TIX?

IF YES, TWO OPTIONS:
• Report to TIX, or
• Provide TIXC contact information and information about how to report sex discrimination to any person who provides the employee with the information

NOW IT IS THIS: NOTIFICATION REQUIREMENTS UNDER 106.44(C)(2)

DOES AN EMPLOYEE HAVE TO TAKE ANY ACTION BECAUSE OF WHAT THEY LEARNED ABOUT CONDUCT THAT MAY CONSTITUTE SEX DISCRIMINATION UNDER TIX TO THE TIXC?
(FOR POSTSECONDARY)

IS THE EMPLOYEE CONFIDENTIAL? EITHER BECAUSE OF THEIR JOB DUTIES, OR...

YES, no reporting is required.

IF NO, does the employee have either (1) the authority to institute corrective measures, or (2) responsibility for administrative leadership, teaching, or advising? [Category 1]

IF YES, report to TIXC.

IF NO, TWO OPTIONS ARE PERMITTED:

1. Report to TIXC, or
2. Provide the TIXC's contact information and information about how to report sex discrimination to any person who provides the 'ee with the information about conduct that may constitute sex discrimination under TIX. [Category 2]

RESPONDING AND NOTIFICATION

There are three types of confidential employees:

1. Employees whose communications are privileged or confidential under Federal or State law and
2. Employees who are designated as "confidential" by the institution for the purpose of providing services to persons related to sex discrimination.

[and one more . . .]

CONFIDENTIALITY FOR RESEARCHERS

3. New additional definition of confidential employees:

- o Research covered by IRB on sex discrimination (institution's or another IRB)
- o Confidential with respect to that study (perhaps not in other roles)
- o They do not have to share the information that other confidential resources do



RESPONDING AND NOTIFICATION

- **Confidential employees** must share the following:
 - o That they are confidential, including when they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
 - o How to contact the recipient's Title IX Coordinator and how to make a complaint of sex discrimination; and
 - o That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

CONFIDENTIAL EMPLOYEES

While not in the Regulations, beware the dangers of designating anyone who is not privileged as being a "confidential employee."

Don't do it.

Seriously.

RESPONDING AND NOTIFICATION

- **Category 1:** must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX or the regulations.
- **Category 2:** must either (1) notify the Title IX Coordinator, or (2) provide the contact information about the Title IX coordinator **and** state that the Title IX Coordinator will provide information about the grievance procedures, supportive measures, and how to make a complaint of sex discrimination.

RESPONDING AND NOTIFICATION

The institution can decide not to offer discretion, and instead to simplify by picking (1) or (2) as the rule for their institution.

- **Category 2:** must either
- (1) notify the Title IX Coordinator, or
- (2) provide the contact information about the Title IX coordinator **and** state that the Title IX Coordinator will provide information about the grievance procedures, supportive measures, and how to make a complaint of sex discrimination.

RESPONDING AND NOTIFICATION

You can say:

Every employee must report sex discrimination they observe or learn about to the Title IX coordinator.

If you are exempt from this requirement, we will tell you specifically, and you will be someone who is privileged/confidential by law, or someone who we designated as a private resource to provide services to people who experienced sex discrimination.

WHAT SHOULD HAPPEN NEXT?

A student tells their academic advisor, "My professor makes all of these jokes belittling people who are queer. I don't even think they know I am queer, but I don't want to go to class anymore."

- Should the academic advisor notify the Title IX Coordinator? Why or why not?
- Would this constitute hostile environment sex-based harassment? What else would you need to know before making this determination?



TRAINING REQUIREMENTS



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WHAT DOES YOUR CURRENT TRAINING LANDSCAPE LOOK LIKE?

- In person?
- Online?
- Hybrid?
- Through a third-party vendor?



TRAINING

2020

- One time
- Coordinators, investigators, decisionmaker, informal resolutions
- Core TIX Response
- Offer training?

2024

- Annual
- Coordinators, investigators, decisionmaker, informal resolutions, appeals, second look
- All employees (but different)
- Complete training!
- (more) consistent with VAWA

UPDATED TRAINING REQUIREMENTS

- When employees change roles
- Additional topics for those implementing grievance procedures, specific to their roles.
- No required training for students (who aren't also employees); but VAWA!



CORE RESPONSE TRAINING

1. Title IX Coordinators
2. Title IX Investigators
3. Title IX Decisionmakers
4. Title IX Appeals Officers
5. Title IX Informal Resolution Officers
6. Title IX Second Look Personnel

- Obligation to address sex discrimination in P&A (1, 2, 3, 4, 5, 6)
- Scope of Violative Conduct (1, 2, 3, 4, 5, 6)
- How to conduct Informal (1, 5)
- How to serve impartially (1, 2, 3, 4, 5, 6)
- Specific Position Responsibilities (1, 2, 3, 4, 6)
- Recordkeeping (1)
- Any other training necessary (1)
- Notification and information requirements (1, 2, 3, 4, 6)
- 106.45 and 106.46 procedures (1, 2, 3, 4, 6)
- Relevant meaning (1, 2, 3, 4, 6)

MAKE AVAILABLE V ACTUALLY TRAINED

- All employees – not merely offered.

“The Department appreciates the opportunity to clarify that § 106.8(d) requires a recipient to train all employees, as opposed to just making training available. While the Department recognizes that some commenters may find this burdensome, the requirement to train all employees serves the important purpose of ensuring that all employees understand their role in the recipient’s compliance with its Title IX obligations and understand their responsibilities when they obtain information about conduct that may reasonably constitute sex discrimination under Title IX.” 33550



DON'T SLEEP ON VAWA TRAINING: RESPONSE



- Annual training for all officials who conduct any part of a prompt, fair, and impartial response from the initial investigation to the final result. At minimum, this includes investigators, hearing officers, and appeal officers (likely intake):
 - Issues related to dating violence, domestic violence, sexual assault, and stalking
 - How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability

STUDENT FACING TRAINING?

- What do the new Title IX Regulations require that we train students on?



BUT...DON'T SLEEP ON VAWA TRAINING: PREVENTION

Education programs shall include “primary prevention and awareness programs for all incoming students and new employees,” which shall include:

- statement prohibiting domestic violence, dating violence, sexual assault, & stalking;
- definition of domestic violence, dating violence, sexual assault, & stalking in the applicable jurisdiction;
- definition of consent, in reference to sexual activity, in the applicable jurisdiction;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene in cases of a risk of domestic violence, dating violence, sexual assault, or stalking;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- ongoing prevention and awareness campaigns for students and faculty on all of the above (subject to regulations and ED guidance).

WHAT IS THE TRAINING CONTENT?

- **Start with the practical, what makes logical sense.**
- **People implementing these grievance procedures need training on how to perform the role**
- **Everyone else also need training to understand their response obligations**
 - o Reporting to the coordinator
 - o Giving information to disclosing parties if they are confidential or exempt from internal reporting
 - o They need to know how to respond to a student who directly informs them of pregnancy or related conditions
 - o They need to know what sex discrimination is in order to recognize it!

TRAINING FOR ALL EMPLOYEES MUST ANSWER THESE QUESTIONS

- What is the institution's obligation to address sex discrimination in its education programs and activities?
- What is sex discrimination? Including discrimination on the basis of sex, and sex-based harassment
- What do employees need to do?
 - When they know about sex discrimination
 - When a student informs them that they are pregnant

SO LONG, FAREWELL, AUF WIEDERSEHEN

- No more requirement to post training to your website
 - Still must make it publicly available for inspection upon request
 - Does not mean you have to provide a copy
 - Nothing prohibits posting



INTERSECTION WITH OTHER LAWS

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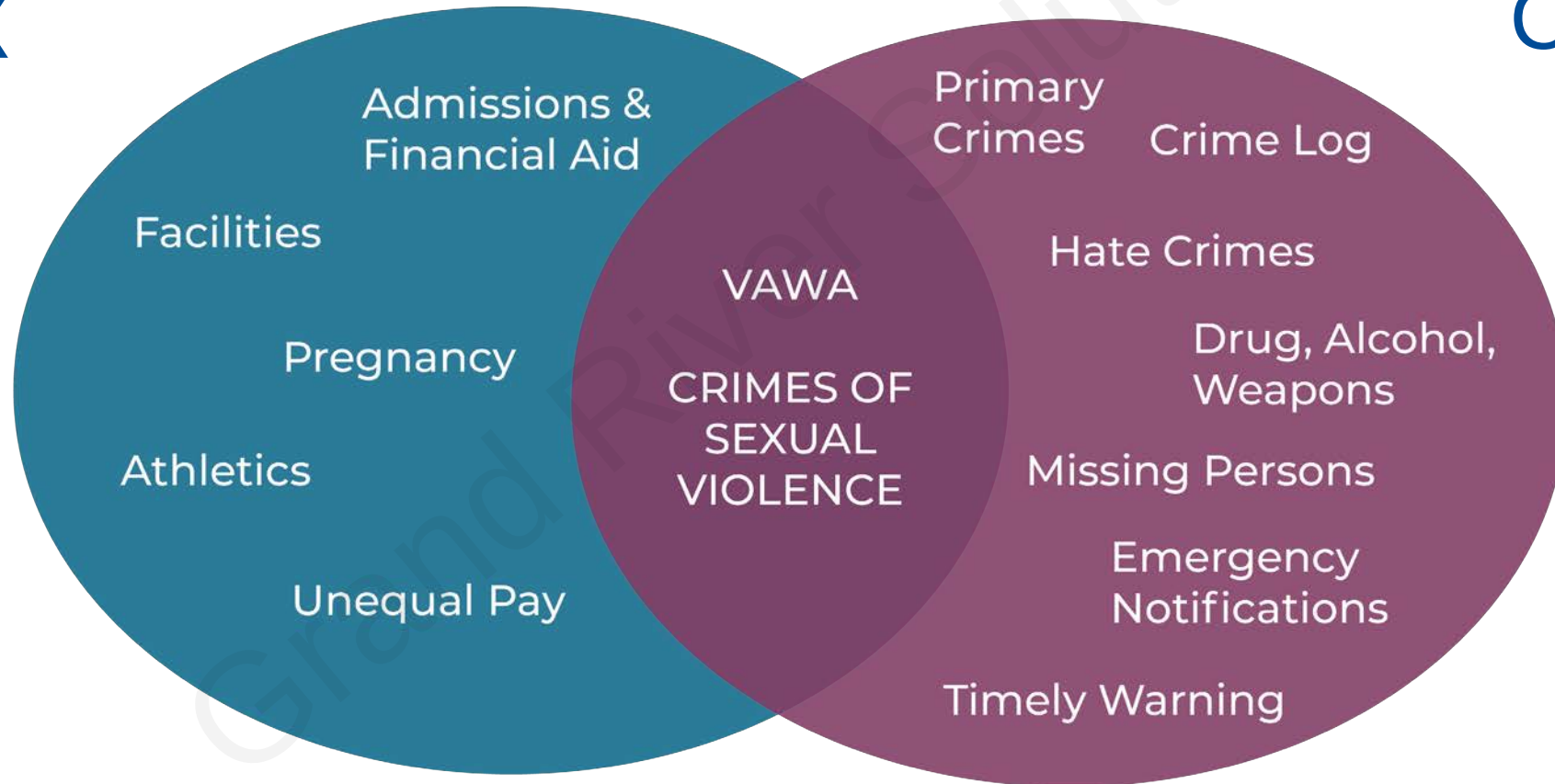


OVERLAPS

The Clery Act is not Title IX
2013 VAWA amended the Clery Act (they are not separate).

Title IX

Clery Act



VAWA AND CLERY RESPONSE

stalking, as required by paragraph (k) of this section; and

(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

(12) A statement advising the campus community where law enforcement

- Title IX (historically) and VAWA response are not based on geography, they are based on identity (usually).
- Title IX (current) response and Clery counting are based on geography

VAWA AND INVESTIGATION/DETERMINATION PROCEDURES

- Fair disciplinary procedures (institutional response)
- Fair, prompt, impartial investigation and resolution
- Procedures must be conducted by “officials” who receive “annual training.”
- Advisors of choice
- Must publish the standard of evidence (whatever it may be)
- List **all** sanctions for VAWA crimes

REQUIRES PUBLICATION OF ALL AVAILABLE SANCTIONS

- *Not a range* (ignore prior OCR statements, since withdrawn, that institutions can use a range).
- Must specifically list all available sanctions for:
 - Domestic violence; Dating violence; Sexual assault; Stalking
 - **For suspension, list ALL possible suspension lengths.**
- **These standards apply to student discipline and faculty/staff discipline.**

PROVIDING WRITTEN NOTICE

Must notify victim in writing about:

Sanctions, protective measures;

Evidence preservation;

How to report the offense, on and off campus, and assistance with reporting;

Availability of orders of protection, no contact orders, etc.;

Interim remedies, including options for and assistance with changing academic, living, transportation, and working situations, if requested and reasonably available;

Procedures for institutional disciplinary proceedings.

PROVIDING WRITTEN NOTICE

- Written policy provided to all students and employees about awareness programs, confidentiality, support and resources, and disciplinary procedures
- Simultaneous written notice of outcome



VIOLENCE AGAINST WOMEN ACT

In short:

- Training, training, training...
- Awareness programs
- Bystander intervention training
- Ongoing prevention and awareness campaigns
- Primary prevention programs
- Risk reduction training (this is the one I often see not included)



VAWA CRIMES, TITLE IX VIOLATIONS, AND STATE LAW

- Thinking about overlaps: some state laws and Title IX adopt Clery definitions (sort of); some use very different definitions (especially for sexual harassment)
- Multiple obligations may stem from a specific report; whose role to address each element of the federal and state obligations?
- Note also overlap with Clery Act hate crime definitions
- Who does it apply to? Only between employees? Only involving employees?
- Importance of record-keeping, information-sharing, and getting on same page

FMLA, PUMP ACT, PWFA, SIMILAR STATE LAWS

- Intersection with Title IX and pregnancy or related conditions, including lactation, leaves of absence related.
- For student-employees, consider all applicable laws.



LITIGATION PENDING

- Ongoing injunction on ED "NOI" implementing Bostock
- Several new lawsuits challenging 2024 Title IX regulations brought by at least 15 states

Issues:

- Whether *Bostock* applies in Title IX context
- Whether ED had authority to issue these Title IX regulations
- Whether ED can preempt state laws concerning LGBTQIA+ rights

HELPFUL LINKS

The Federal Register notes that the Final Rule is scheduled to be officially published on 4/29/2024.

- <https://www.federalregister.gov/public-inspection/2024-07915/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

Example Messages

- <https://www.k-state.edu/today/announcement/?id=96607>
- <https://www.uc.edu/about/equity-inclusion/Regulations-2024.html>
- <https://oie.jhu.edu/oie-announcements/release-of-final-title-ix-regulations-april-19-2024/>
- <https://msu.edu/issues-statements/2024-04-19-university-statement-on-federal-title-ix-regulations>

The Department has not provided a firm update on the date that the separate TIX Athletics Regulations will be released, but media have reported that this Regulation may not come out until after the next federal election (this may or may not be accurate).

- <https://www.washingtonpost.com/education/2024/03/28/title-ix-trans-athletes-biden/>

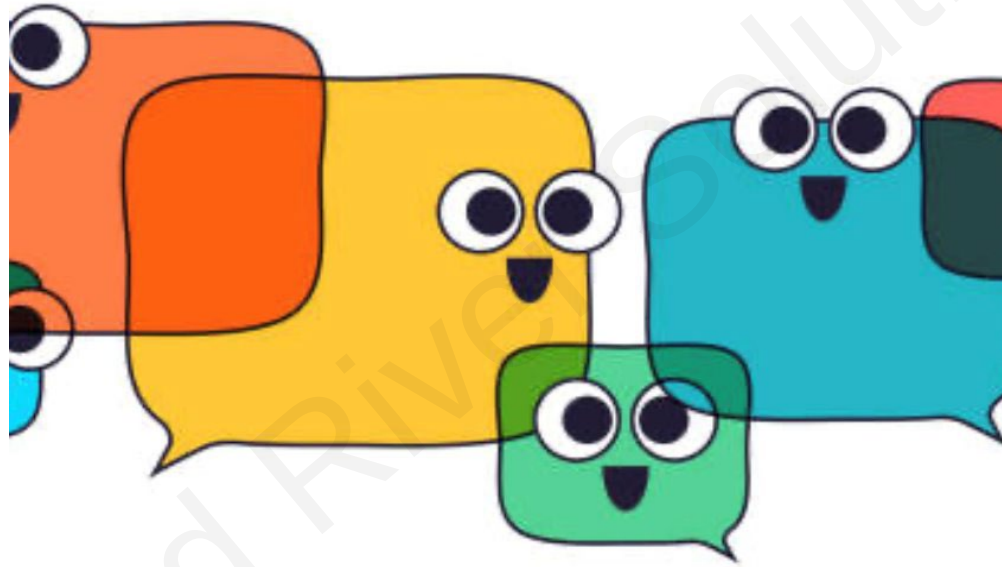
River Connect article on the Violence Prevention (mostly student facing) elements of VAWA

- <https://riverconnect.app/news/623643>

WHAT'S NEXT?



LET'S DISCUSS



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