



FROM ONE TITLE IX COORDINATOR TO ANOTHER:

A Practical Approach to
Navigating Beyond Compliance

Day 1

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July 2024

MEET YOUR FACILITATORS



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.



Jackie Moran

Jackie Moran is a Senior Solutions Specialist with more than 17 years of investigation and compliance experience with higher education and K-12 institutions. Jackie previously served as Title IX Coordinator at Rutgers University – New Brunswick, where she held the positions of Associate Dean of Students and Director of Student Affairs Compliance & Title IX. In these roles, Jackie was responsible for oversight of sexual misconduct investigations, live disciplinary hearings, and alternative resolution processes, including restorative justice.

ABOUT US

Vision

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

Mission

To 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

● Application for procedures
Conduct, Location, and Required
Identity

● Building a foundation for
SUCCESS

● Role of the Title IX Coordinator

● Compliance

● Training

● Pregnancy

● Intake, Outreach, and
Supportive Measures

● Report Resolution
Support-Based, Alternative,
and Formal

Let's Take a Moment.
Title IX Coordinator to Title IX Coordinator.



THE EVER-EVOLVING LANDSCAPE OF TITLE IX



01

Grand River

Title IX of the Education Amendments Act of 1972

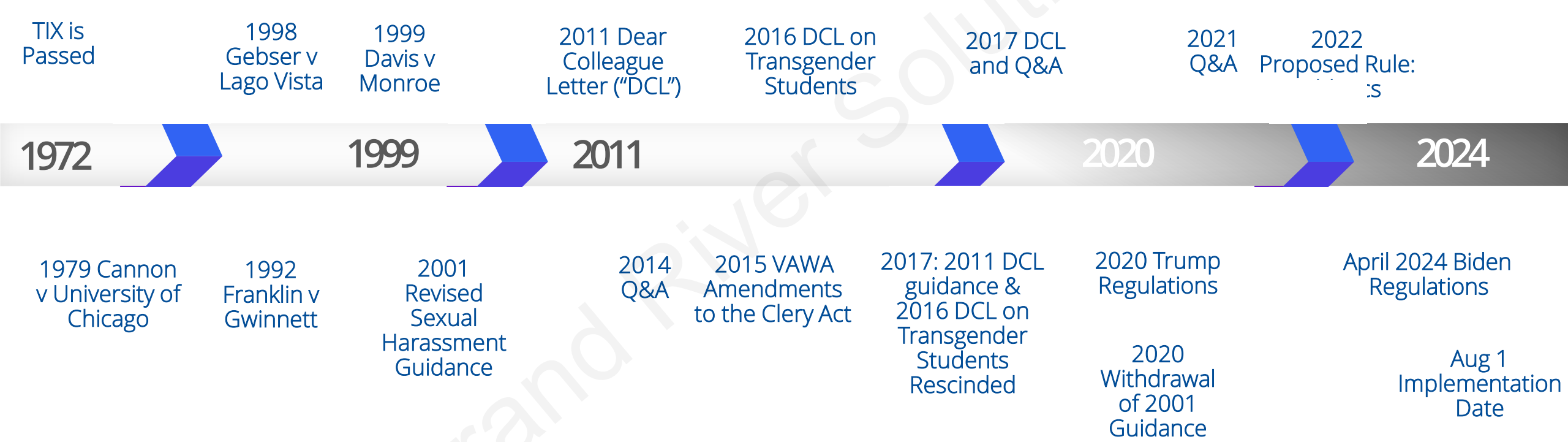
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



The History of Title IX

A Timeline



SINCE 1975...



Recipients have been required to . . .

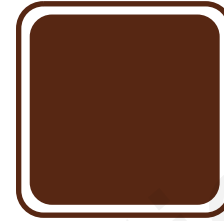
- Notify students (defined to include persons who have gained admission) of their nondiscrimination policies and to resolve student complaints of sex discrimination.
- Maintain nondiscrimination notices and adopt and publish grievance procedures
- Prohibit discrimination based on pregnancy or related 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

2024 REGS: 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."

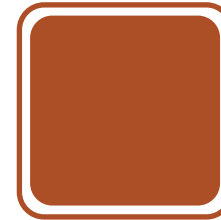
New Regs: Applicability Overview



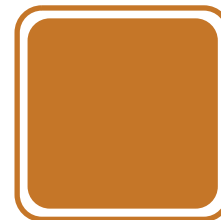
Type of Conduct



Scope

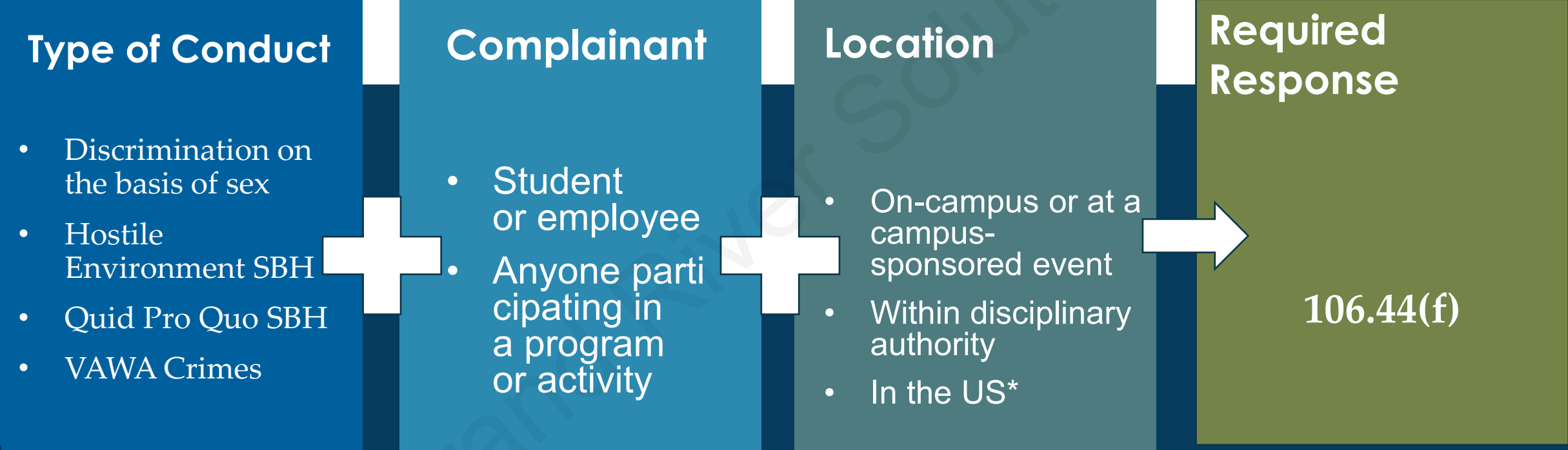


Geography



Complainant

TITLE IX APPLICATION FOR PROCEDURES (POST-AUGUST 2024)

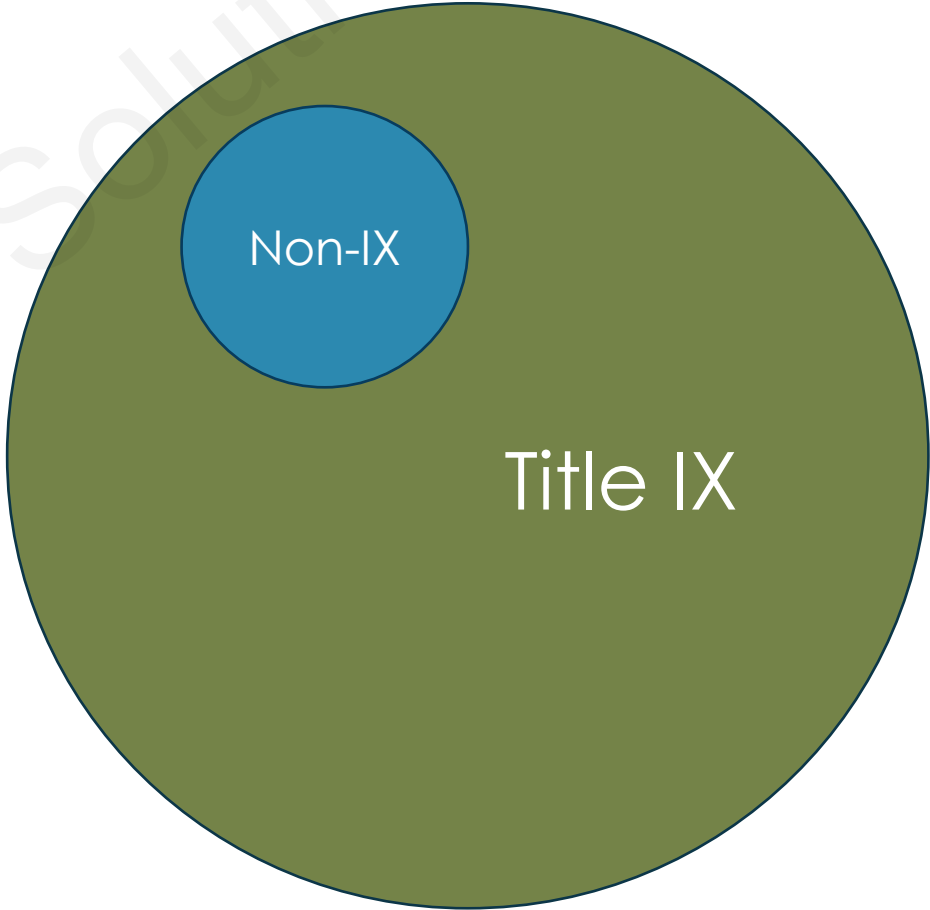


WHICH POLICY APPLIES?

2020



2024



TYPES OF CONDUCT



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)



TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

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

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:*
 - Hostile environment sexual harassment
 - Quid Pro Quo
 - Domestic violence, dating violence, sexual assault, and stalking

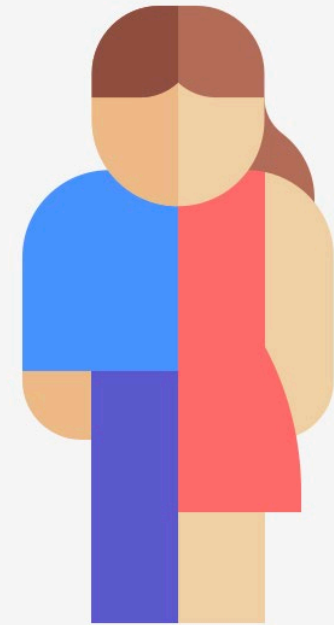


DEFINITIONS: SEX DISCRIMINATION – "SEX STEREOTYPING"

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

EXAMPLES-SEX STEREOTYPES

- After Susan, a woman, got married, her supervisor terminated her. The supervisor explained that Susan is probably going to get pregnant and quit the job anyway, so it's best to stop investing time in her development.
- 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



DEFINITIONS: SEX DISCRIMINATION – "SEX CHARACTERISTICS"?

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

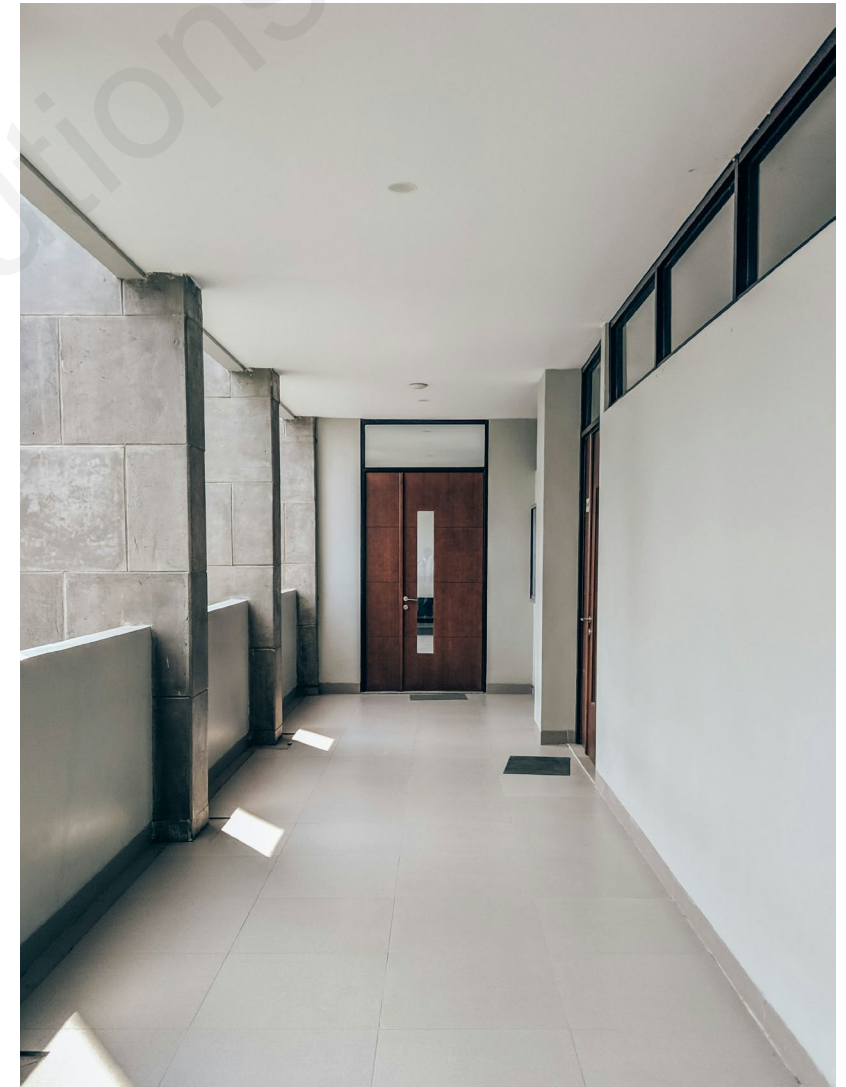
Sex discrimination based on a person's physiological sex characteristics may include discrimination based on a person's anatomy, hormones, and chromosomes associated with male or female bodies.

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?





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.”

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

DEFINITIONS – WHAT IS SEX-BASED HARASSMENT?

Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*

- Hostile environment sexual harassment
- Quid Pro Quo
- Domestic violence, dating violence, sexual assault, and stalking

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?

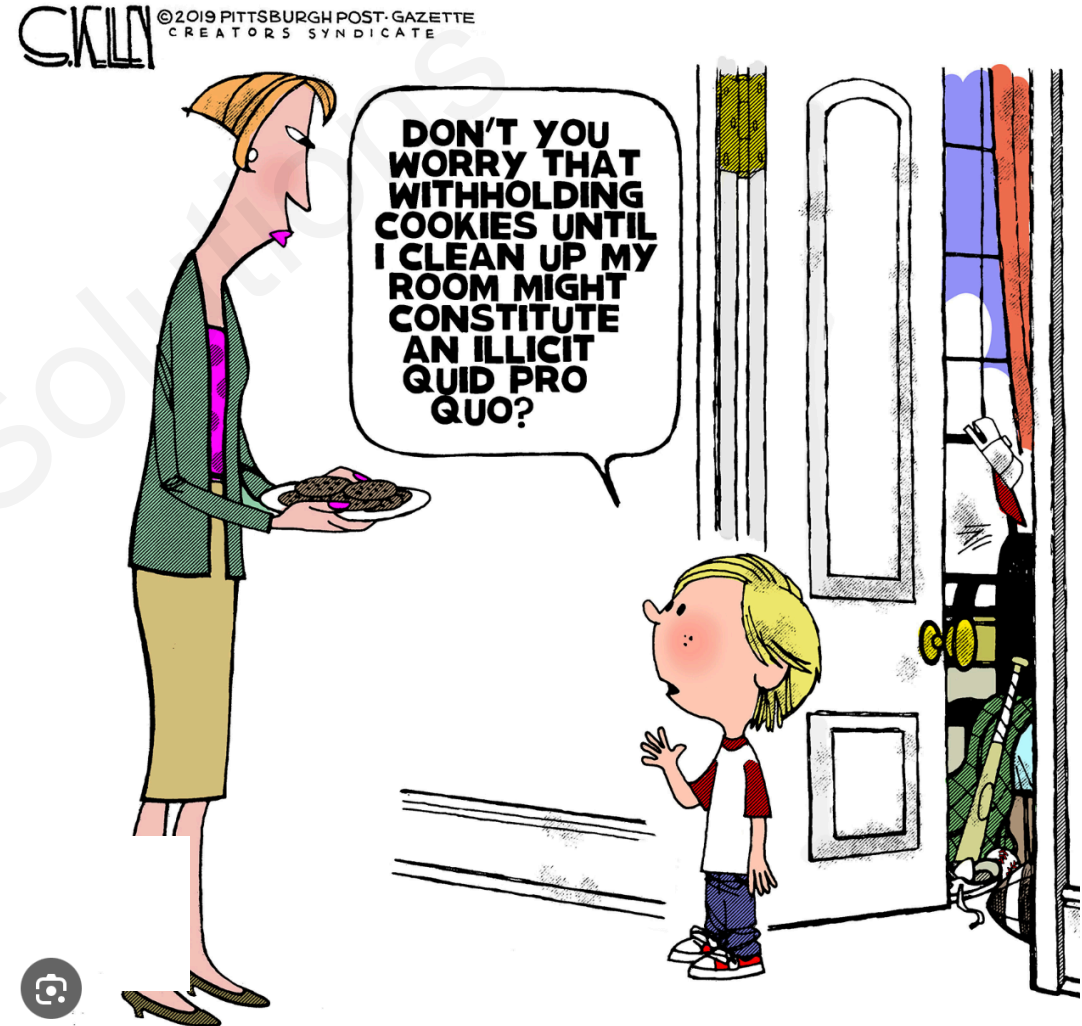
You receive a 3rd party report from a Coach who heard some rumors about a student on their team, Dani.

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?

QUID PRO QUO

- "An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct"



“SPECIFIC OFFENSES” (VAWA)

These are 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

Sexual Assault includes Rape, Sodomy, Sexual Assault With an Object, Fondling, Incest, and Statutory Rape.

These definitions come from the FBI.

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.



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."

REQUIRED IDENTITY



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



LOCATION AND GEOGRAPHY



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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 FROM INSTITUTIONAL POLICIES

- "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."



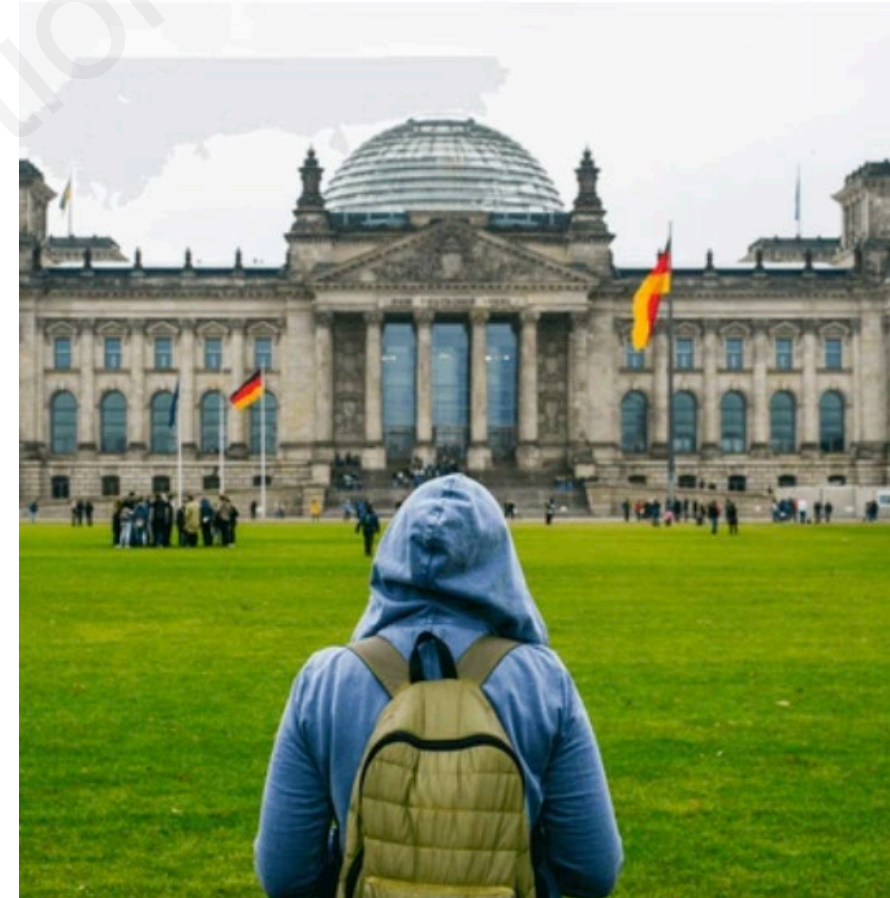
DISCIPLINARY AUTHORITY - EXAMPLES

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



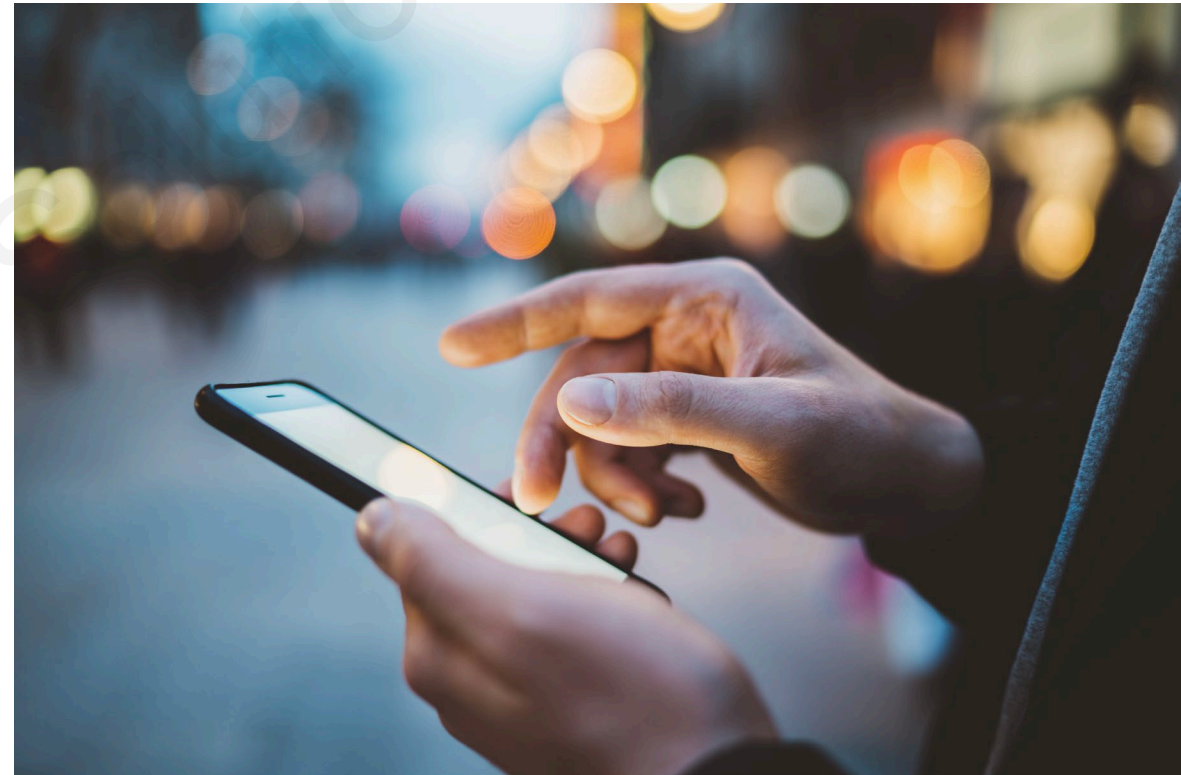
EXPANDED SCOPE: STUDY ABROAD? NOT EXACTLY

- 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

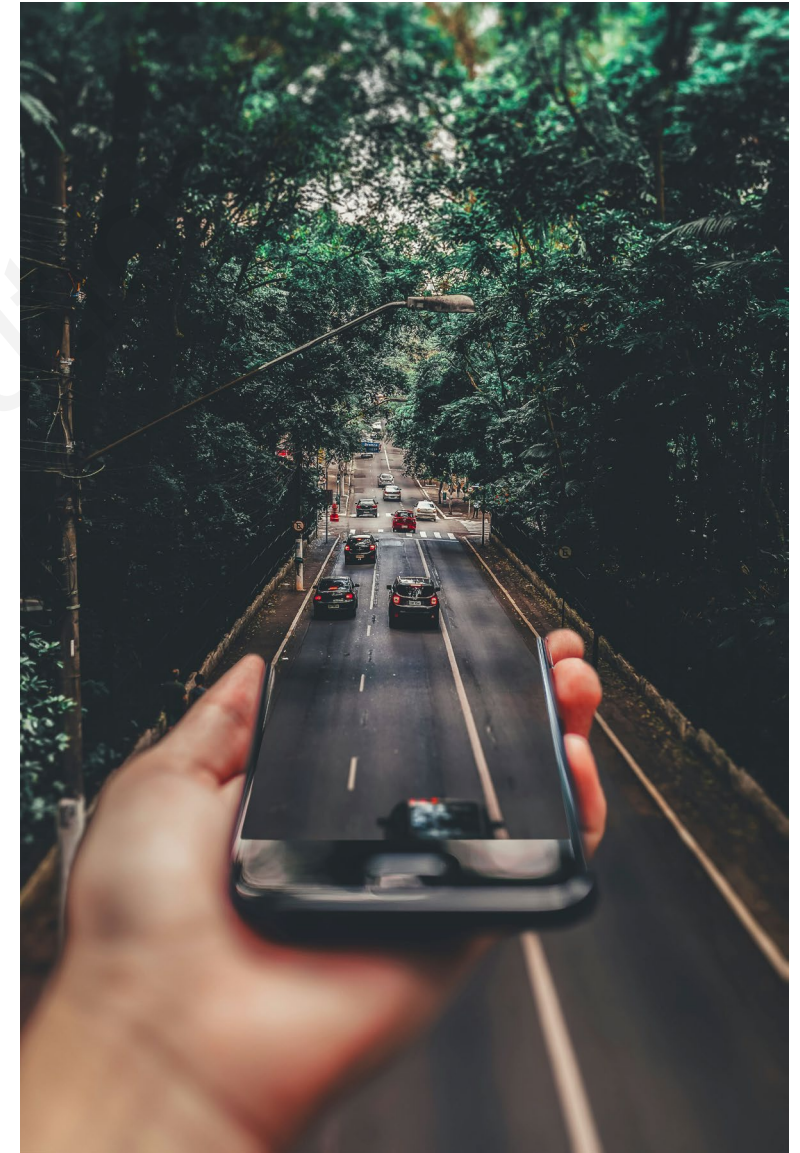
Town holds a *Take Back the Night* event, attended by institutional officials. Does information about sex-based harassment learned at this event need to be reported to the Title IX Coordinator?

What other information is needed?

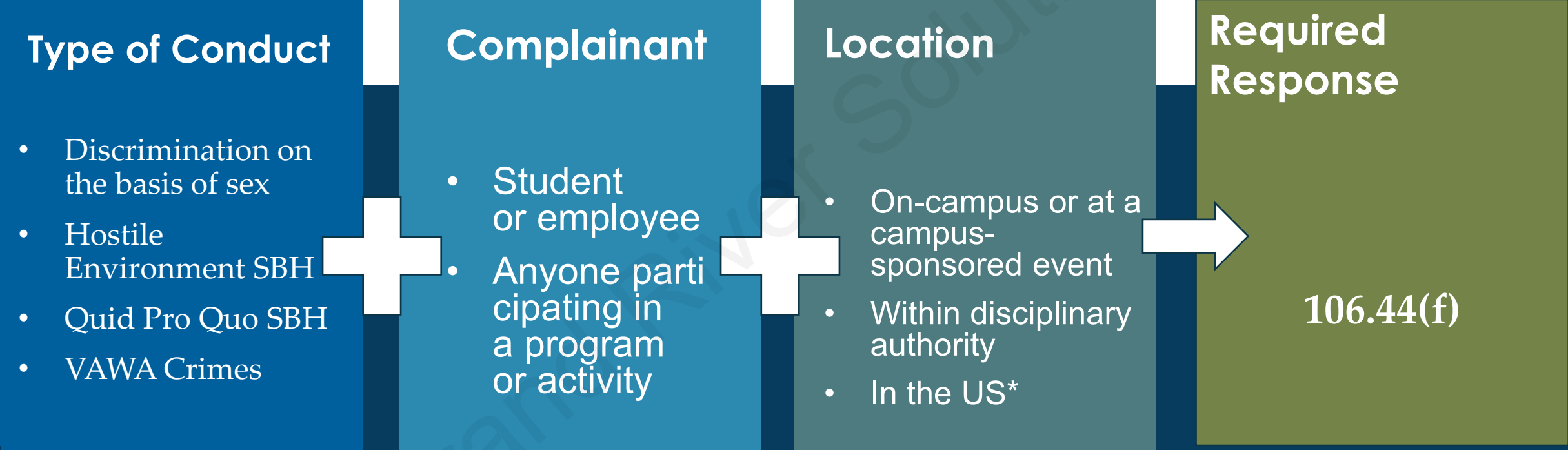


EXAMPLE: STALKING

- 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?



TITLE IX APPLICATION FOR PROCEDURES (POST-AUGUST 2024)



APPEALS: MANDATORY GROUNDS FOR 106.46

(A) Procedural irregularity that would change the outcome;

(B) New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made and/or

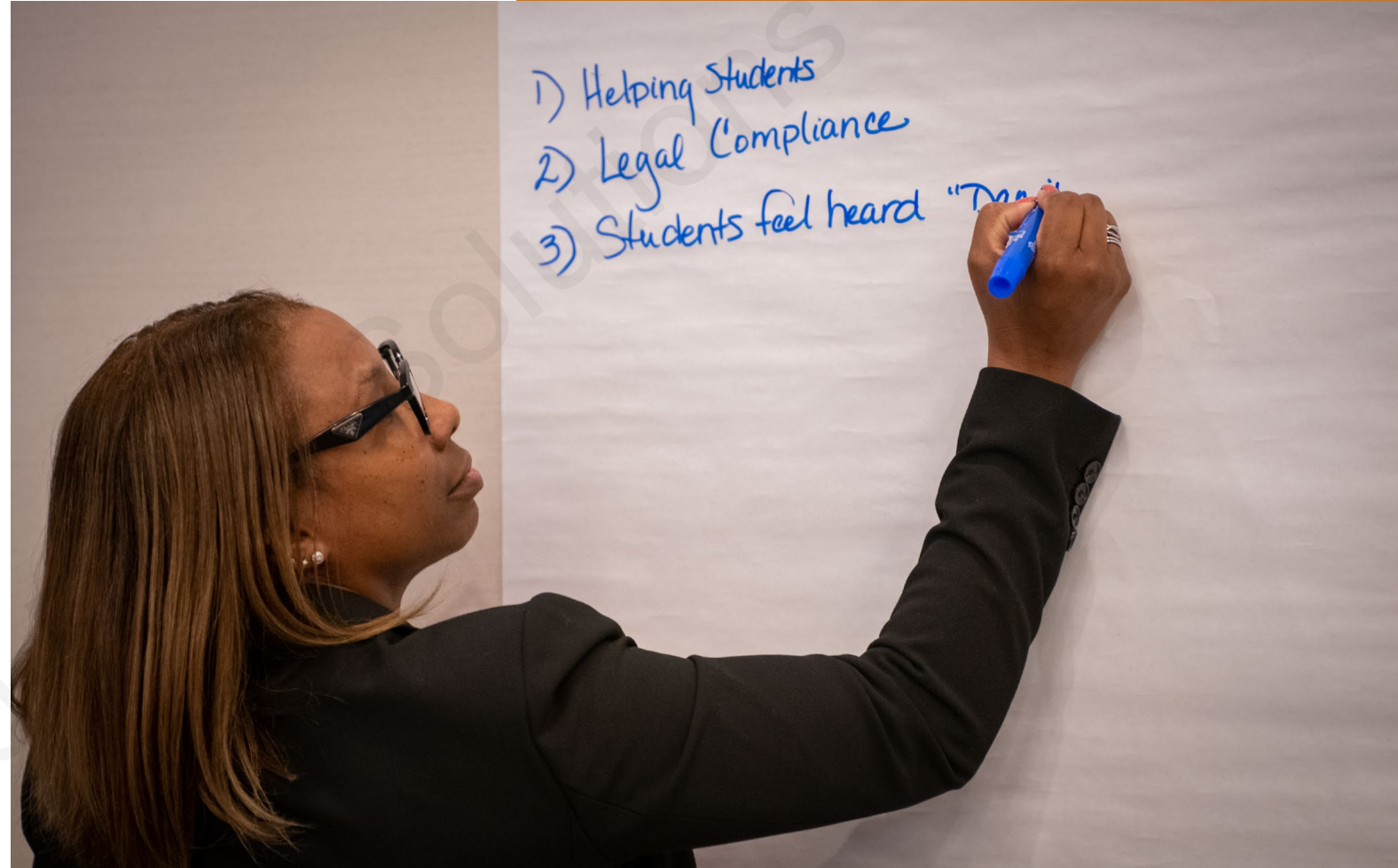
(C) The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

BUILDING A FOUNDATION FOR SUCCESS

02

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ROLE OF THE COORDINATOR



FINAL RULE, SECTION 106.8

"Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX"

Designation of Coordinator, nondiscrimination policy; grievance procedures; notice of nondiscrimination; training; students with disabilities; and recordkeeping.



FINAL RULE, SECTION 106.8 (c)

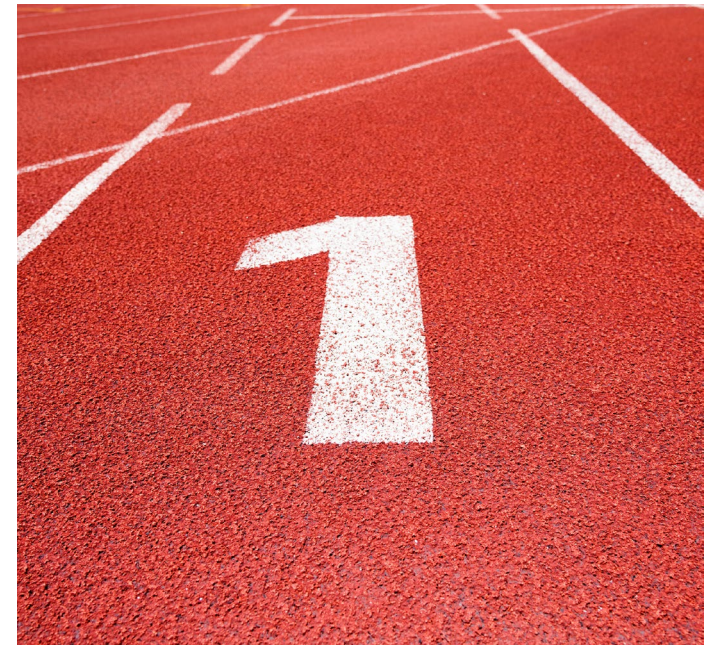
Include in the nondiscrimination notice:

1. **Coordinator's information;**
2. **That sex discrimination is prohibited;**
3. **How to inquire to the Coordinator or OCR about Title IX;**
4. **How to locate the policy and grievance procedures.**



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.

“RESPONSIBILITIES REQUIRED UNDER TITLE IX AND THE REGULATIONS”

- Serve as the primary pathway for receipt of reports of sex discrimination including sex-based harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the available resolution options, including informal resolution and the grievance procedures
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a complainant does not request the initiation of an investigation, determine whether to initiate an investigation;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

Under § 106.44(f): when TIXC knows of conduct that may reasonably constitute sex discrimination:

- Treat the complainant and respondent equitably;
- Offer and coordinate supportive measures;
- Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the available resolution options, including informal resolution, and grievance procedures under § 106.45, and if applicable § 106.46,
- If a complaint is made, notify respondent, if applicable, of the informal resolution and applicable grievance procedures;
- Initiate the grievance procedures if requested or if determined to move forward despite complainant's wishes. Consider the required factors first
- Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the recipient's education program or activity

RESPONSIBILITIES OFTEN DELEGATED TO THE TITLE IX COORDINATOR

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

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



THE THREE ESSENTIAL FUNCTIONS OF TITLE IX COMPLIANCE

01

Response



02

Education &
Prevention



03

Compliance



**ANOTHER
MOMENT, PLEASE...**



A SUCCESSFUL TITLE IX COORDINATOR...

C

Understands the Importance of Consistency

A

Adheres to policies and procedures

R

Records or documents everything

E

Engages meaningfully with the community

S

Strategically plans for success

CONSISTENCY

- Creation of Forms and Templates
- Development of Annual Plans for Training
- Development of Annual Plans for Compliance
- Comprehensive Policies & Procedures



ADHERE

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed



RECORD

Document, Document, Document!

1. Compliance

1. Maintain old policies
2. Keep records of all responses to reporting requirement

2. Training

1. Dates, times, locations
2. Attendees
3. Training materials
4. Reason for the training

3. Response

1. EVERYTHING*



ENGAGE

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



STRATEGIZE

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



SUCCESSFUL COORDINATORS APPROACH ALL ASPECTS OF THE WORK...

Impartially



Utilizing
Best
Practices



With
Empathy



WHAT CONSTITUTES BIAS?

Conduct a fact-specific, objective inquiry based in common sense to determine bias.

This Includes:

- Decision-making that is grounded in stereotypes
- Different treatment based on a person's sex or other protected characteristic
- A decision based on something other than the facts

IMPERMISSIBLE BIAS

Making a decision, determination, or finding that is based on something other than the evidence and specific facts of the case.

CONFLICT OF INTEREST



AVOIDING PREJUDGMENT OF THE FACTS

Requires that the Title IX professional refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

AN IMPARTIAL INVESTIGATION IS...



Not influenced by bias or conflict of interest.



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



Truth seeking, not "your truth" confirming.

COMPLIANCE

03

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SOURCES OF COMPLIANCE OBLIGATION

Title IX Final Regulations

Violence Against
Women Act

Other, Intersecting
Federal Laws

State Law

Institutional Policies

Resolution Agreements

TITLE IX COMPLIANCE OBLIGATIONS

Designate a Title IX Coordinator

For reports of sexual harassment utilize grievance procedures that comply with section 160.45

Disseminate Policy

Notification, Publication

Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).

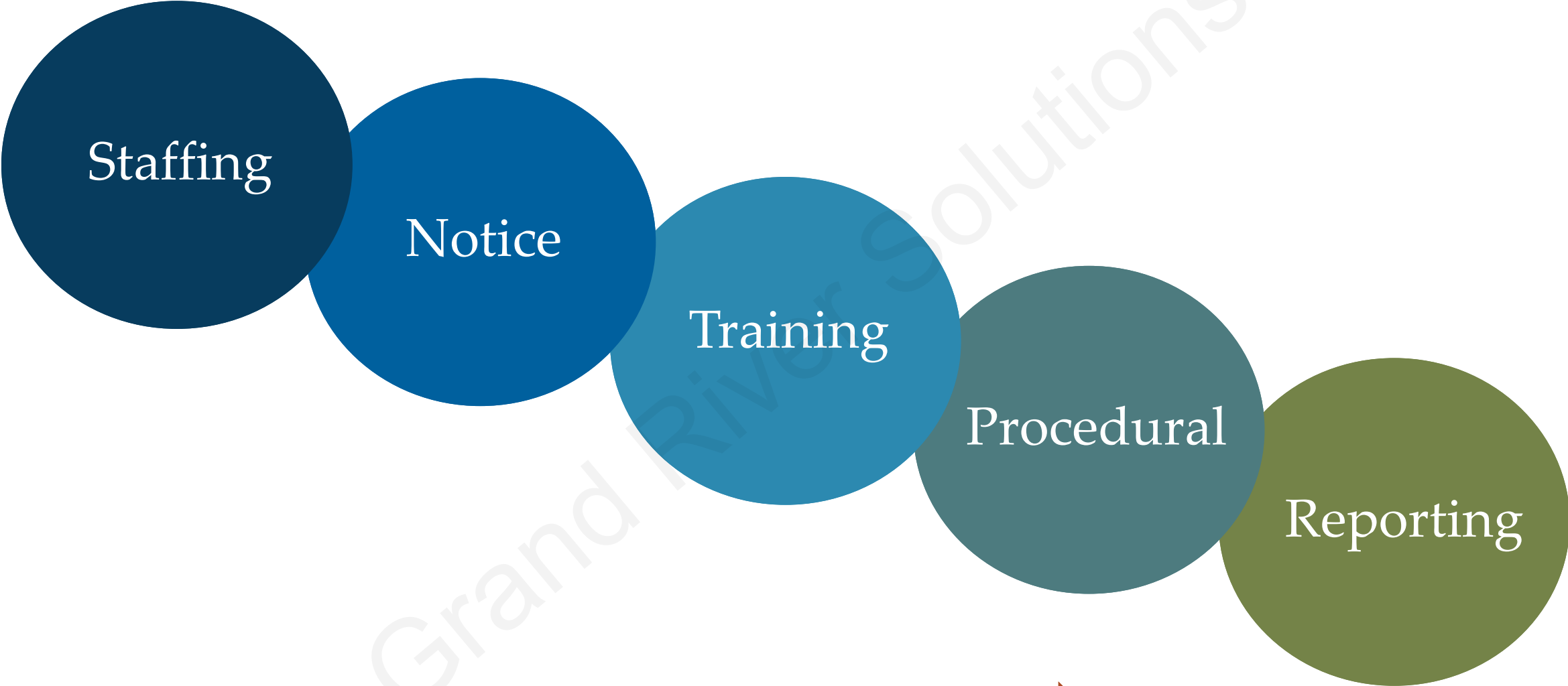
Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;

Maintain records response to sexual harassment in accordance with 160.45 (10)

Provide supportive measures in accordance with the requirements of section 160.30

Comply with 160.71 prohibition against retaliation

Categories of Compliance Requirements



DEVELOPING A STRATEGY FOR COMPLIANCE

1

Identify Compliance Obligations

2

How you will prove that you are compliant

3

Record Keeping

IMPLEMENTING THE STRATEGY FOR COMPLIANCE

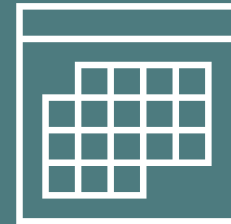
Partnerships



Record Keeping Databases



Calendar



EMPLOYEE REPORTING OBLIGATIONS

3(a)

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WHERE WE WERE THEN, ARE NOW, AND ARE GOING

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



Scene from *The Way We Were* with Robert Redford and Barbara Streisand

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:

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



RESPONDING AND NOTIFICATION

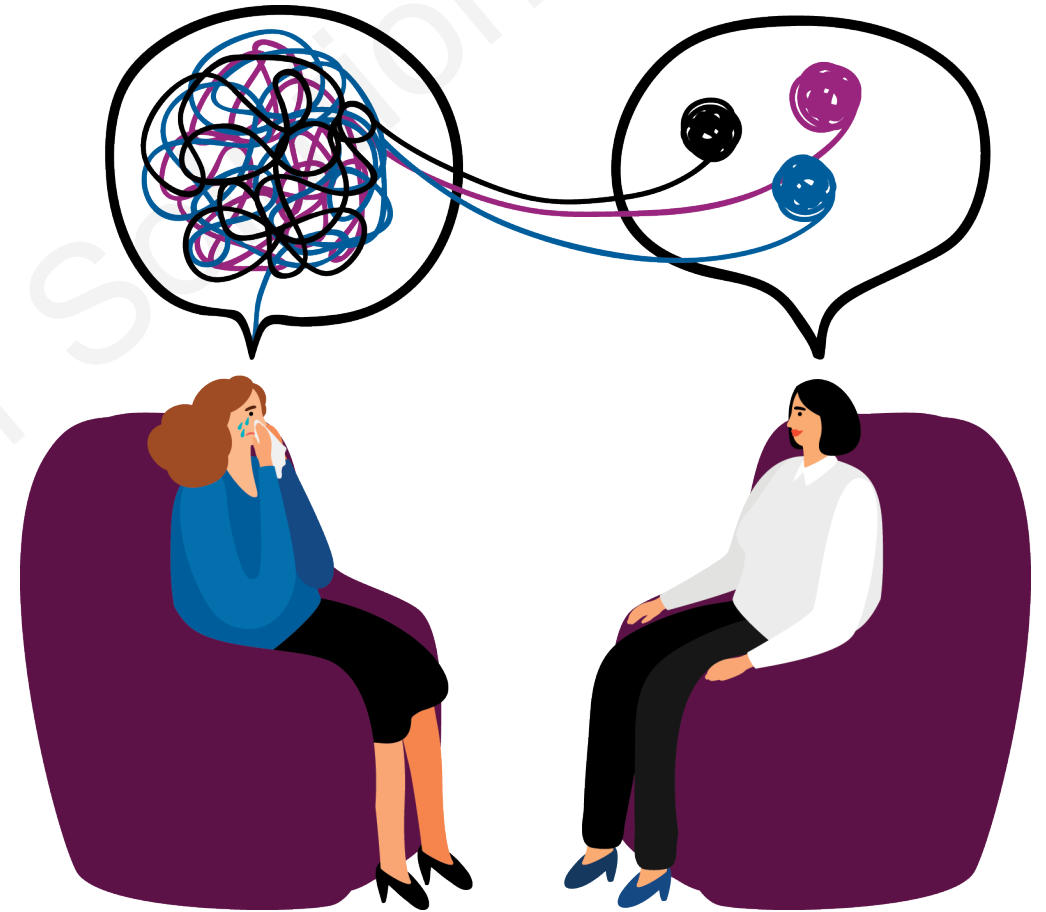
- **Confidential employees** must share the following:
 - That they are confidential, including when they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
 - How to contact the recipient's Title IX Coordinator and how to make a complaint of sex discrimination; and
 - 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 for these Category 2 employees.

- **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.

TRAINING & EDUCATION

Educating ourselves and our communities



04

Grand River

SOURCES OF TRAINING REQUIREMENTS

Title IX Final Regulations

Violence Against Women Act

State Law

Resolution Agreements

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

MAKE AVAILABLE VS 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



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!



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 DOES YOUR CURRENT TRAINING LANDSCAPE LOOK LIKE?

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



TRAINING AND EDUCATION: TWO AREAS OF FOCUS

01



Institutional Response to Sex Discrimination

02



Prevention Education

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 needs training to understand their response obligations**
 - Reporting to the coordinator
 - Giving information to disclosing parties if they are confidential or exempt from internal reporting
 - They need to know how to respond to a student who directly informs them of pregnancy or related conditions
 - They need to know what sex discrimination is in order to recognize it!

INSTITUTIONAL RESPONSE TRAINING

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. Employee Reporting Requirements
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



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 experiencing pregnancy or related conditions

**A REALLY
IMPORTANT MOMENT.
LISTEN UP.
IT'S OKAY...**



To not know the answer to every question thrown your way



To say, "I don't know," "I'd like to think about that," "I'll get back to you," "Thank you for sharing your perspective."



To decline to answer a question



To recognize and assert your expertise

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)

TRAINING FOR TITLE IX STAFF



The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")

How to conduct the grievance process

How to serve impartially

The technology to be used at a live hearing *

Issues of relevance of questions and evidence *

Rape shield protections; and, *

Issues of relevance in creating an investigation report. *

ELEMENTS OF ANNUAL TRAINING STRATEGY

- Identify population to be trained
- Determine topic
- Schedule the training
- How will you deliver the training
- Partnerships
- Communications
- Community input/feedback
- Engagement as passive education



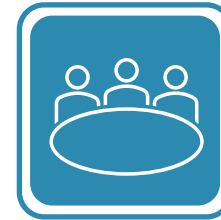
ONGOING ASSESSMENT OF TRAININGS



Pre and Post
Surveys



Observation



Opportunities for
Feedback and
Suggestions



Engage and Listen

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



See Ya Goodbye GIF By The Rodgers &
Hammerstein Organization

PREGNANCY OR RELATED CONDITIONS



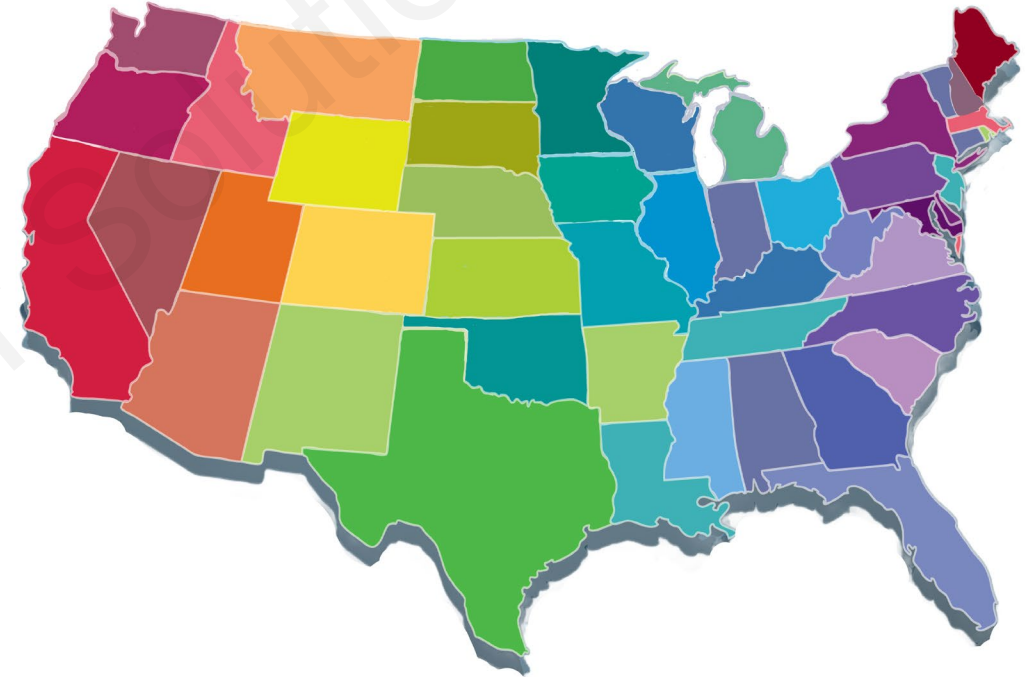
05

Grand River

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 OR RELATED CONDITIONS

- Since 1975, "pregnancy **or** 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

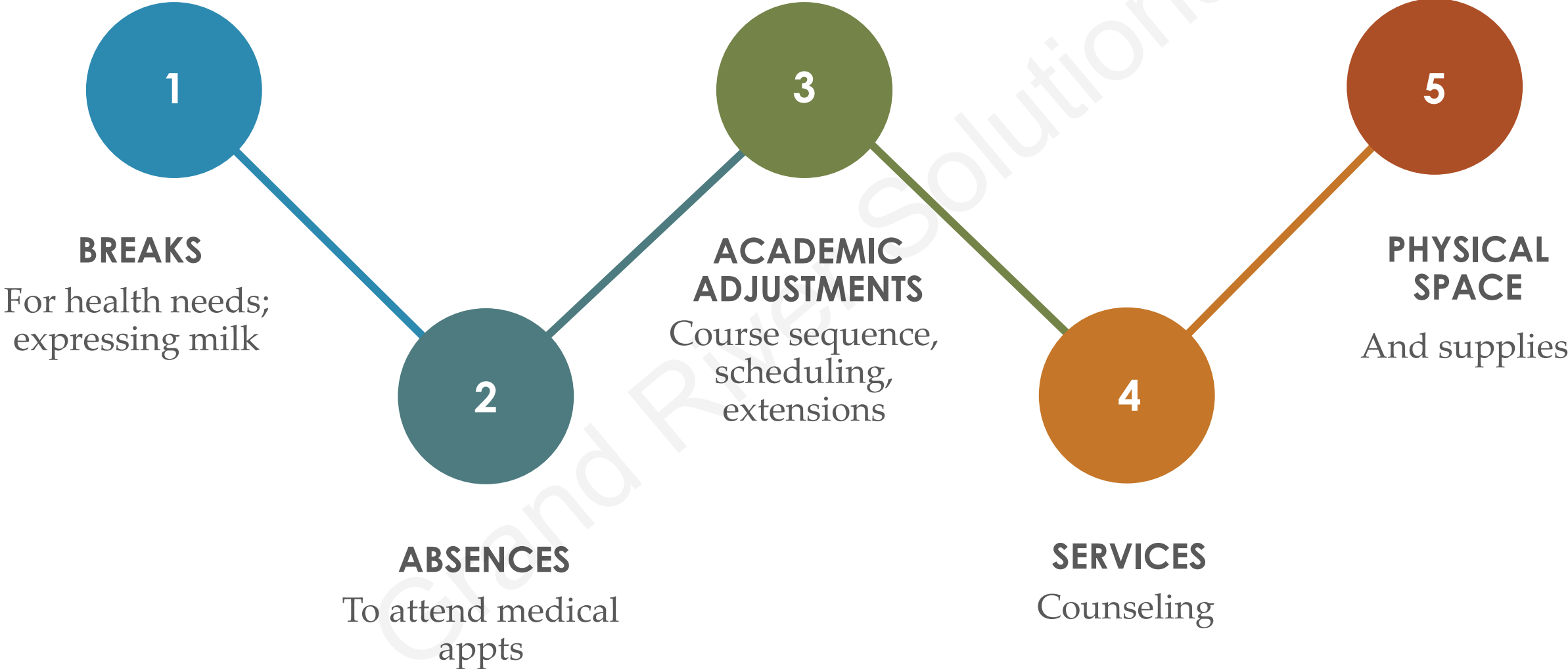
When a student* informs any employee of the student's pregnancy or related conditions...the employee promptly:

- (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....



ALLOW MODIFICATIONS

Non-Exhaustive



PREGNANCY SUPPORT

- 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 in 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?

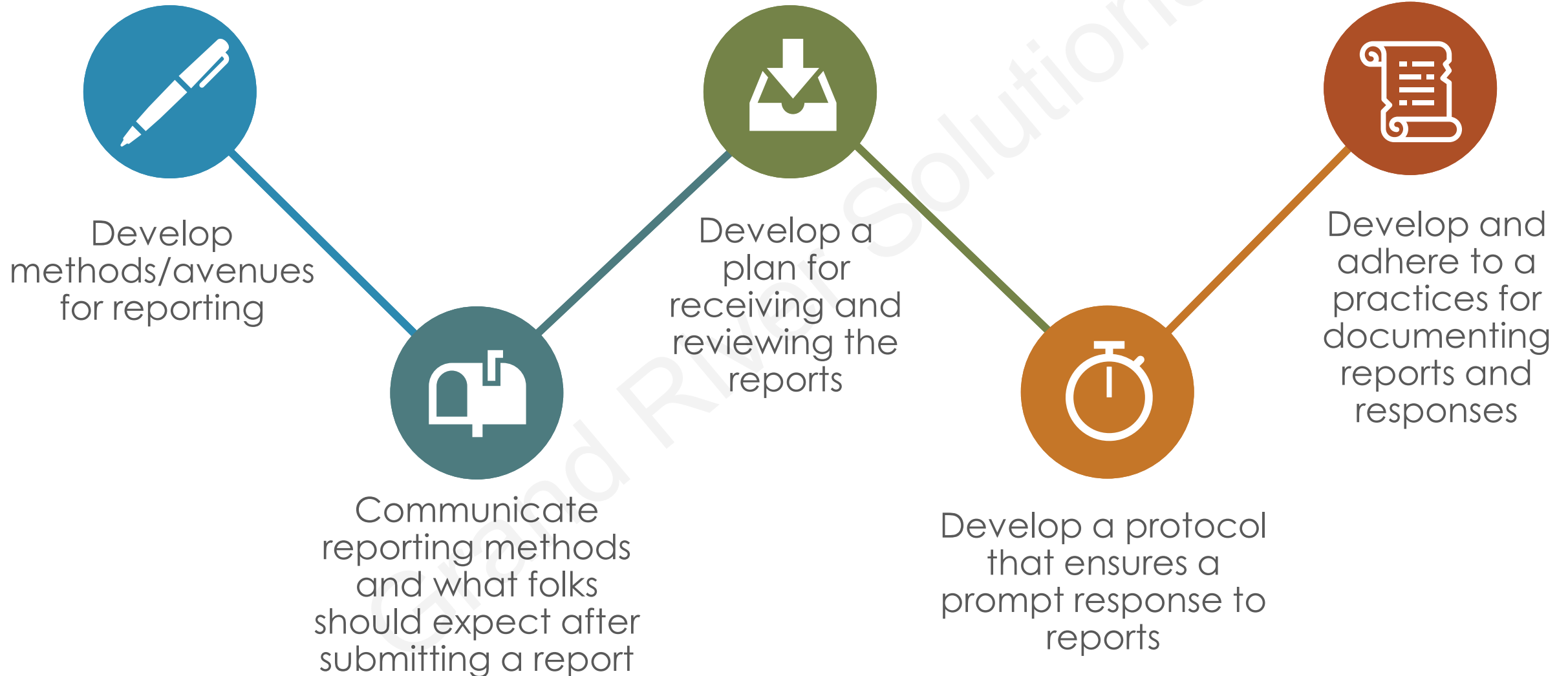


RECEIPT OF REPORTS

Receiving Information, Report Response, Initial Assessments, and Supportive Measures

06

INFRASTRUCTURE FOR REPORTING



RECEIVING REPORTS AND INITIATING THE RESPONSE



1. Review the report



2. Determine the appropriate initial response



3. Promptly initiate that response



4. Document/record the receipt of the report and the response thereto

INITIAL OUTREACH

- First: Safety
- Email: Create Forms
- Phone
- In person: Use RA, Campus Safety
- Follow Up Emails



SCENARIO: EMERGENCY REMOVAL OF STUDENT

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



THE TITLE IX OFFICE RECEIVES THE FOLLOWING ANONYMOUS REPORT VIA YOUR INSTITUTION'S ONLINE REPORTING FORM:

“Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley’s partner are friends so the RA doesn’t do anything about it. It’s getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley’s partner too.”

THE TITLE IX OFFICE RECEIVES THE FOLLOWING EMAIL FROM A NON-CONFIDENTIAL EMPLOYEE:

“My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don’t want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?”

COMPLAINANT INTAKE & SUPPORTIVE MEASURES



07

Grand River

INITIAL MEETING WITH THE COMPLAINANT

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



SUPPORTIVE MEASURES

Non-Disciplinary

May not
unreasonably
burden the other
party

Designed to restore
or preserve equal
access

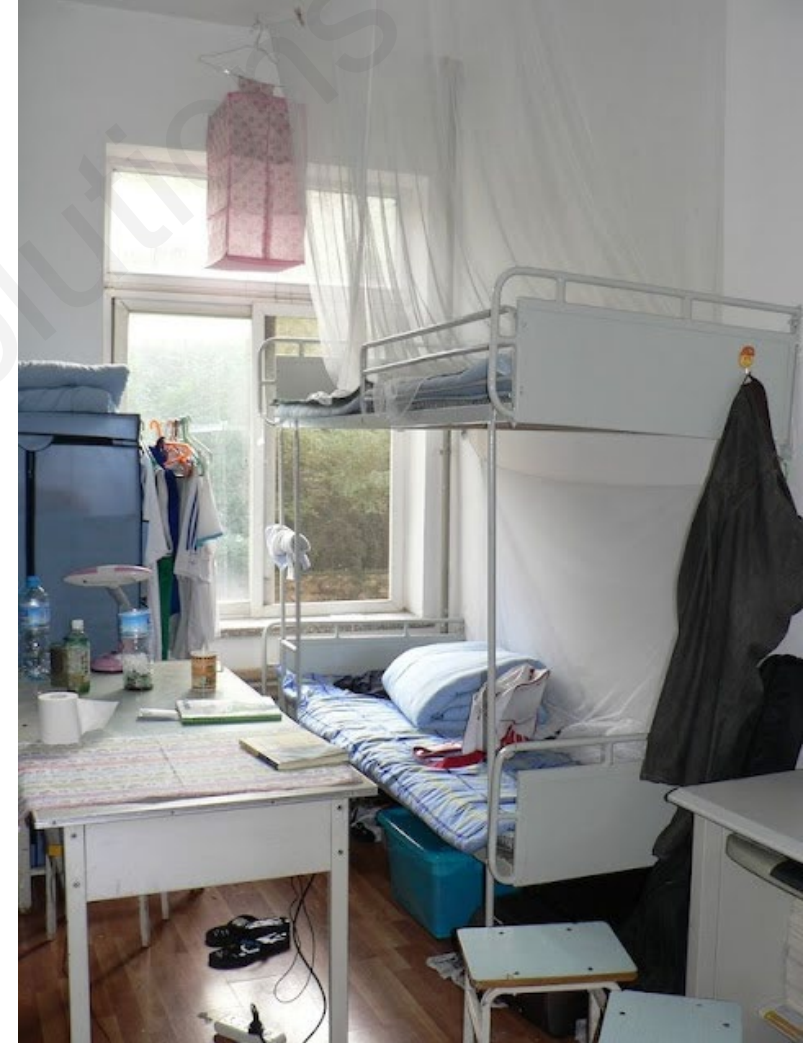
Non-punitive

As appropriate and
reasonably
available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

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



NO CONTACT ORDER CLARIFICATION

Supportive measures may include...

- Current 2020 regs: references **mutual** restrictions on contact between the parties
- Proposed 2022: references restrictions on contact **between** the parties
- Final 2024: references restrictions on contact **applied to one or more** parties

Preamble

NO CONTACT ORDER CLARIFICATIONS

- "The Department has changed "restrictions on contact between the parties" to "restrictions on contact applied to one or more parties."
- "In considering whether to provide a no-contact order, a recipient must also ensure that a no-contact order is not imposed for punitive or disciplinary reasons and does not unreasonably burden a complainant or a respondent. "



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.



POST MEETING TASKS

Document the meeting

Send a summary email
with resources, options,
next steps

Follow up

Make connections

Provide the supportive
measures

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

REPORT RESOLUTION

Support-Based Only,
Informal/Alternative, or Formal

08

HOW TO PROCEED?

Support- Based Only

No formal
process



Informal or Agreement- Based

Signed
agreement;
Voluntary;
What records?



Grievance Procedures/ Investigation

All
requirements of
106.45 or 106.46



SUPPORT BASED RESOLUTION

08(a)

Grand River



SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



ALTERNATIVE RESOLUTION

08(b)

Grand River

COMPLAINT RESOLUTION

Informal Resolution

- Parties must agree
- Coordinator must approve
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Grievance Procedures

- Investigation and Adjudication process in compliance with Section 106.45 and 106.46

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.

NOTICE REQUIREMENTS

- Send to all parties
- Specific allegations and conduct
- Consequences in resulting from this process; how information will be used in an investigation if this process doesn't lead to resolution
- Binding and not subject to appeal (or other process for same conduct)
- Right to withdraw
- No assumption of responsibility
- Advisor availability, if any
- Supportive measures availability
- Potential terms
- And: Date and time of initial meeting with facilitator, if available



FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

**INFORMAL/ALTERNATIVE
RESOLUTION IS NOW PERMITTED
TO RESOLVE ALLEGATIONS THAT
AN EMPLOYEE SEXUALLY
HARASSED A STUDENT.**



GRIEVANCE PROCEDURES: COMPLAINT & NOTICE REQUIREMENTS

08(c)

Grand River

INVESTIGATION INITIATED

By Complainant

**By the Title IX
Coordinator**

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 should ***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

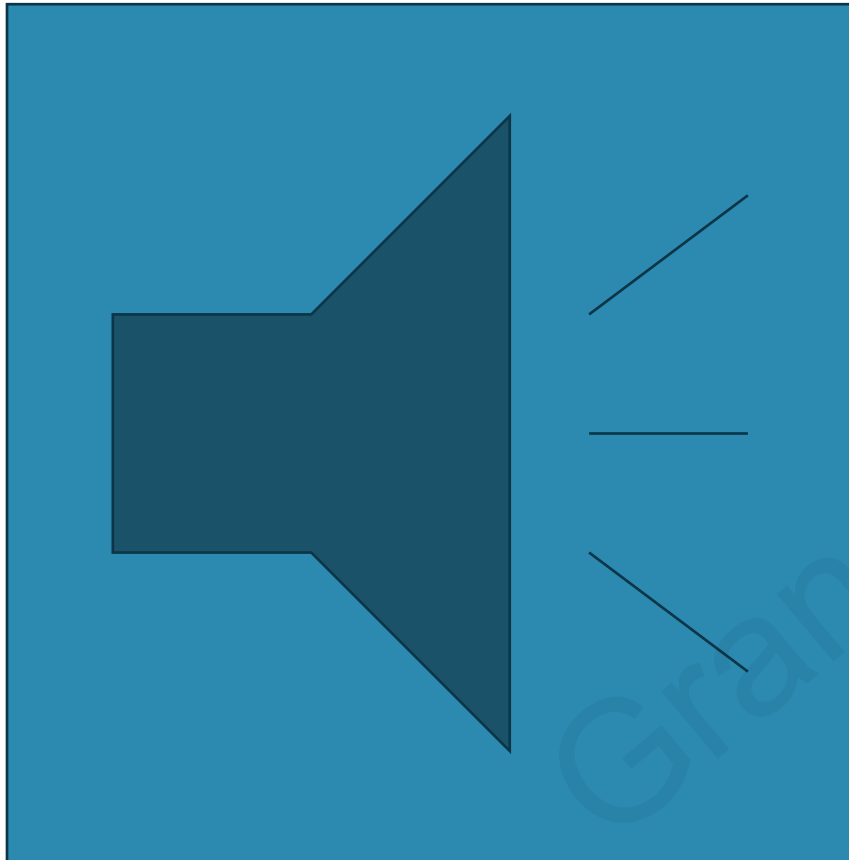
- Familiar notice requirements
- New "permissive" dismissal options, including when it's determined the conduct alleged, if proven, would not be sex discrimination or harassment
- Consolidation allowed for conduct arising from "same facts or circumstances," including cross-complaints



NOTICE OF ALLEGATIONS REQUIREMENTS

1. Investigation procedures, including the applicable determination procedure that will be used in this investigation and resolution, and a link to the relevant policies;
2. Information about the agreement-based resolution process, with a link to the full procedures.
3. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
4. A statement that retaliation is prohibited;
5. Whether the investigator or another individual shall serve as the Decisionmaker.
6. Expected length of the major stages of the resolution process, as well as any applicable deadlines.
7. Statement that the investigator will establish and communicate, in writing, all investigation deadlines, including the final deadlines for submitting names of witnesses, evidence, and relevant questions to ask a party or witness. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s).
8. The process for raising a challenge to the appointed resolution officer or Title IX Coordinator, and the deadline for doing so.
9. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
10. A statement that the parties may have an advisor of their choice who may be a friend, parent, therapist, colleague, or attorney; The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately summarizes this evidence.]; and
11. Statement regarding providing false information
12. The date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

NOTIFYING THE RESPONDENT



FIRST- SAFETY

Make sure support is available

Written notification of meetings and sufficient time to prepare

Don't send on a Friday

Don't send at 5pm

How will you notify?

Consider impact of notification on Respondent

INITIAL MEETING WITH RESPONDENT

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



POST MEETING TASKS

Document the meeting

Send a summary email with resources, options, next steps

Follow up

Make connections

Provide the supportive measures

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

INVESTIGATION & DECISION MAKING

08(d)

Grand River

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?
 - Type of violation
 - Status of party
 - 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 between competing narratives to resolve a case.
- DM may place less or no weight on statements based on refusal to answer relevant question.*

106.46 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.
- Can look a lot like single investigator, if interviews are recorded.



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."



106.45

- Available for everything but sex-based harassment involving a postsecondary student party
- Very similar, but no hearing or recorded meetings are required (still permitted)
- Slightly different notice of investigation requirements
- Still requires adequate, reliable, impartial investigations:
 - Opportunity to present evidence
 - Opportunity to suggest witnesses
 - Evidence review (or summary of evidence, with evidence available...)
 - Notice of meetings and proceedings



Putting it all together

COMPLIMENTARY SUBSCRIPTION

A top-down photograph of a desk with a blue notebook, a white pen, a pair of glasses, a cup of coffee, and a glass of water.

 **THE RIVER**
CONNECT

A place to
communicate
share
educate
learn

for HIGHER EDUCATION
PROFESSIONALS working in
Title IX, Equity & Clery

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