



GRAND RIVER | SOLUTIONS

From One Title IX Coordinator to Another:

A Practical Approach to
Navigating Beyond Compliance
in a Post Regulatory World

*South Carolina Technical
College System*

Emma Hempel

July 2023



Emma Hempel

She/Her/Hers

Senior Solutions Specialist

Meet Your Facilitator

Emma Hempel is a Senior Solutions Specialist at Grand River Solutions. Emma serves as a Title IX Coordinator for campuses across the country. With over ten years of experience in the field of higher education, she previously served as the Title IX Coordinator at the State University of New York at New Paltz. In her previous role, she conducted all Title IX intakes for students and employees reporting sexual and interpersonal violence. She developed and implemented a variety of trainings and workshop on topics including sexual violence prevention, sexual harassment, bystander intervention, and diversity and inclusion.

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

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

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The Ever-Evolving Jurisprudence of Title IX

"If nothing else, Title IX Coordinators are experts at adapting."

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."

20 U.S.C. § 1681 (1972).



The Title IX Regulations

Sexual Harassment Only

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



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Sexual Harassment: *Section 106.30*

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

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

Covered Geography

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution



Not Covered

- Off campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.





Covered Individuals

Eligibility for Title IX's Protections

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

Applicant

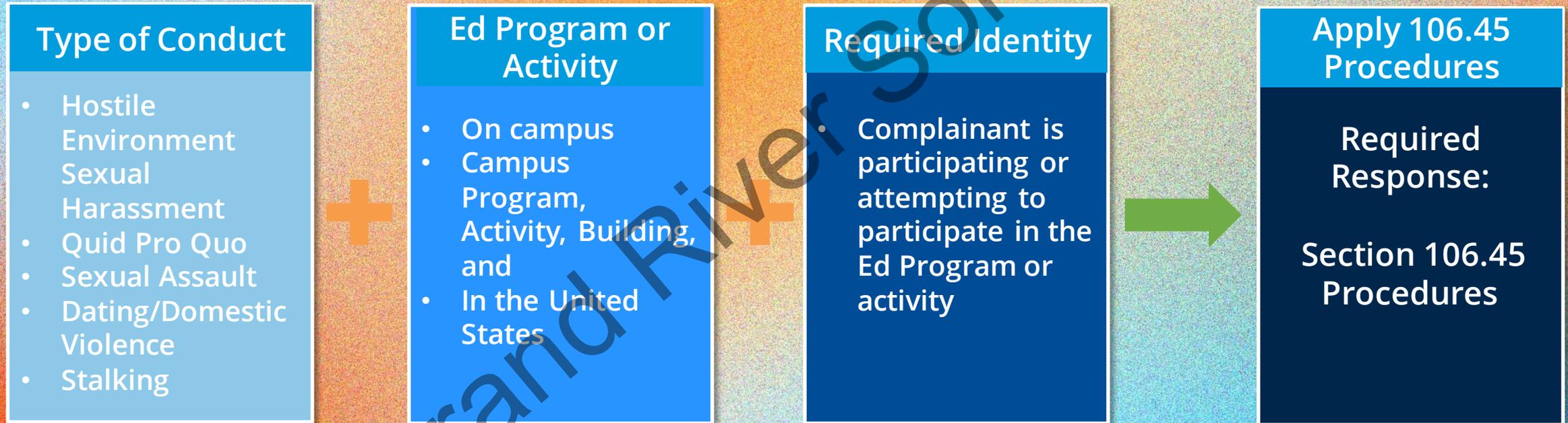
Accepted/Hired

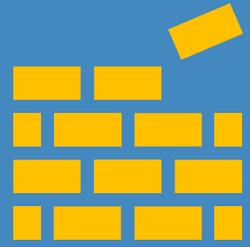
Enrolled/Employed

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Title IX Application Post May 2020 Regulations

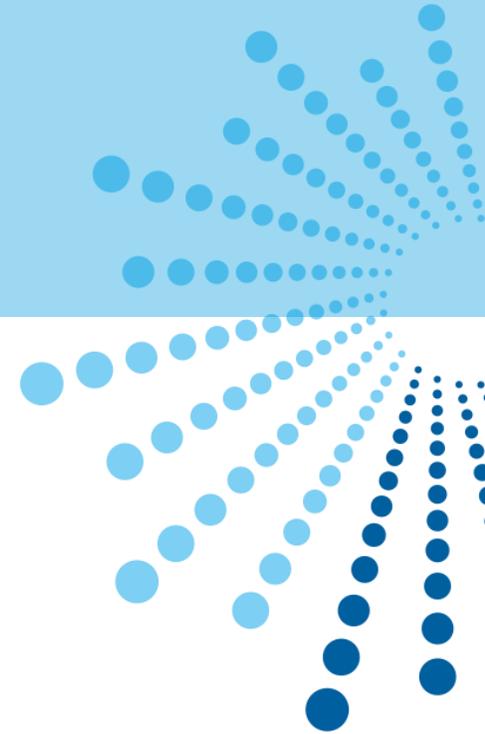




Proposed Regulations

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REMINDER

Continue to follow current policies and procedures consistent with the 2020 Final Rule and state law

Background

2020 Title IX Final Rule (effective now)

- Narrow geographic scope
- Narrow set of violations
- Narrow required reporting and formal process
- More significant process

30026 Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations

DEPARTMENT OF EDUCATION
34 CFR Part 106
[Docket ID ED-2018-OCR-0064]
RIN 1870-AA14

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.
ACTION: Final rule.

SUMMARY: The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as “recipients” or “schools”), must respond to allegations of sexual harassment consistent with Title IX’s prohibition against sex discrimination. These regulations are intended to effectuate Title IX’s prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in

Room 4E308, Washington, DC 20202. Telephone: (202) 453-6639. Email: Alejandro.Reyes@ed.gov. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Table of Contents

Effective Date	Elementary and Secondary Schools
Executive Summary	Formal Complaint
Purpose of This Regulatory Action	Support for Formal Complaint Definition
Summary of the Major Provisions of This Regulatory Action	No Formal Complaint Required To Report Sexual Harassment
Timing, Comments, and Changes	Burden on Complainants To File a Formal Complaint
Adoption and Adaptation of the Supreme Court’s Framework To Address Sexual Harassment	Anonymous Reporting and Anonymous Filing of Formal Complaints
Differences Between Standards in Department Guidance and These Final Regulations	Officials Other Than the Title IX Coordinator Filing a Formal Complaint
Definition of Sexual Harassment	Complexity of a Document Labeled “Formal Complaint”
Actual Knowledge	Parents’ and Guardians’ Rights To File a Formal Complaint
Deliberate Indifference	Methods of Reporting and Methods of Filing a Formal Complaint
Role of Due Process in the Grievance Process	Miscellaneous Concerns About the Formal Complaint Definition
Due Process Principles	Postsecondary Institution Respondent
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Similarities and Differences Between the § 106.45 Grievance Process and Department Guidance	Overall Support and Opposition for the § 106.30 Sexual Harassment Definition
Public Comment	Prong (1) <i>Quid pro quo</i>
Analysis of Comments and Changes	Prong (2) <i>Davis</i> standard
Personal Stories	<i>Davis</i> Standard Generally So Severe
	And Pervasive
	Objectively Offensive
	Effectively Denies Equal Access
	Prong (3) Sexual Assault, Dating Violence, Domestic Violence, Stalking
	Gender-Based Harassment
	Supportive Measures
	Overall Support and Opposition
	No-Contact Orders

(Proposed) Expanded Scope

- Sex-Based Harassment (Proposed § 106.2) includes Discrimination on the Basis of Sex (Proposed § 106.10)

SEX-BASED HARASSMENT

- Hostile environment: “Severe *or* pervasive”

DISCRIMINATION ON THE BASIS OF SEX

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

Geography and Jurisdiction

- Expanded scope
(Proposed § 106.11)
- ~~“in the United States”~~
(Current § 106.44(a))



“It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, **even if sex-based conduct contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.**” (Proposed § 106.11)

Formal Resolution



Investigations,
Hearings, and the
Single-Investigator
Model

Cross-
examination?

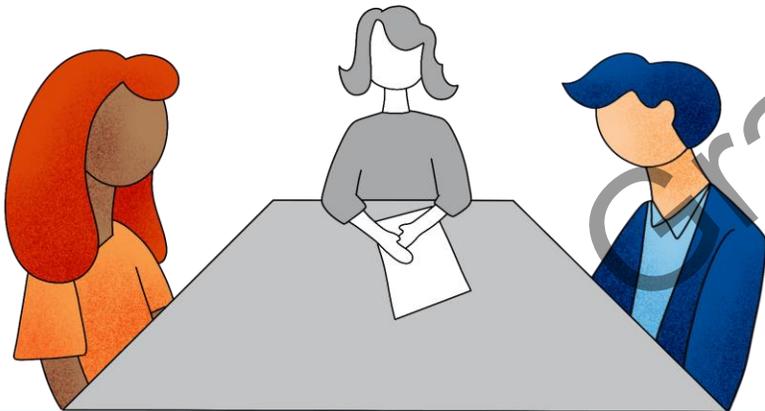
Credibility analysis;
“Process for
evaluating
allegations and
assessing
credibility” (Proposed §
106.45(f)(1))

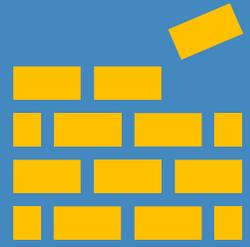
Standard of
evidence; The
preponderance of
the evidence
standard of proof,
unless* (Proposed §
106.45(h)(1))

Informal Resolution

When may
informal
resolution begin?

Other changes?

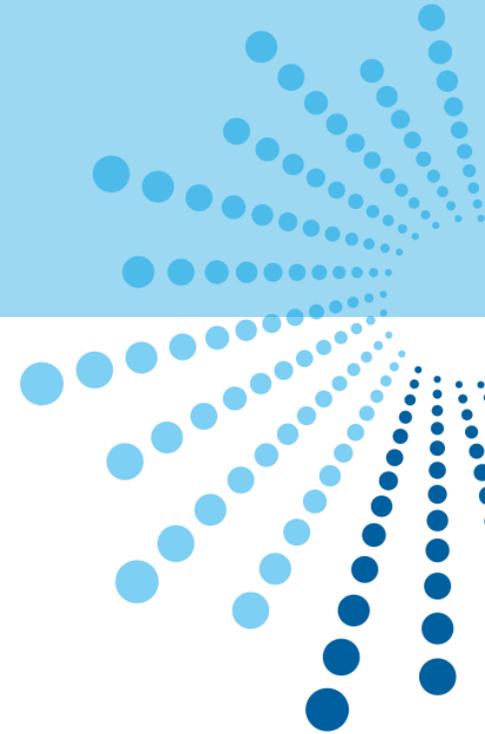




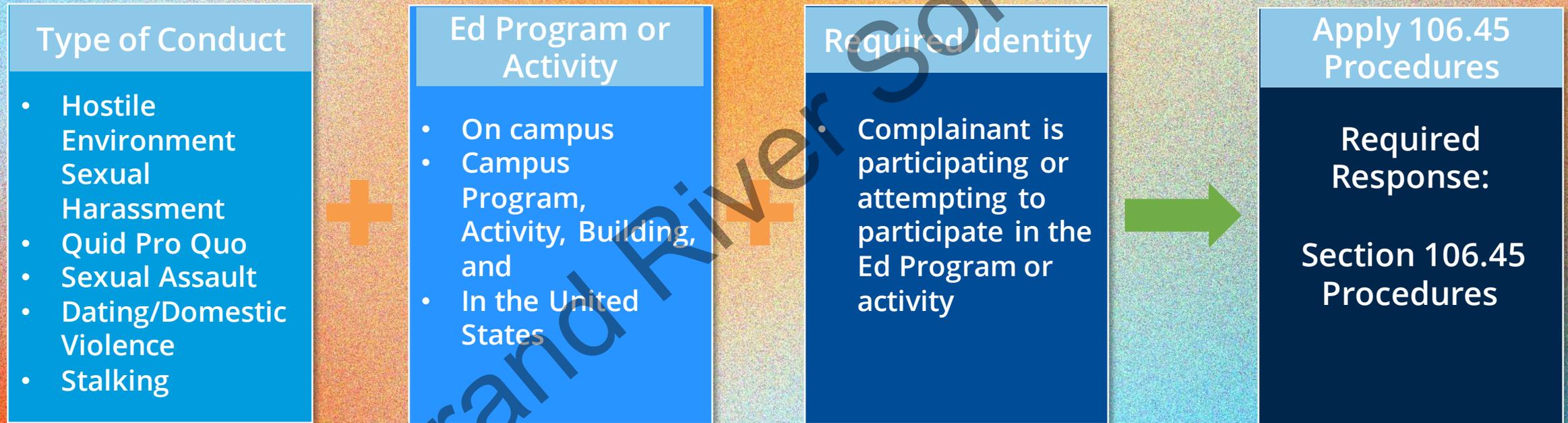
Building a Foundation of Success

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Title IX Application Post May 2020 Regulations



Final Rule, Section 106.8

Designation of Coordinator

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

Additionally:

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



Final Rule, Section 106.8(a)

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

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

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

“Responsibilities Required Under Title IX and the Regulations”

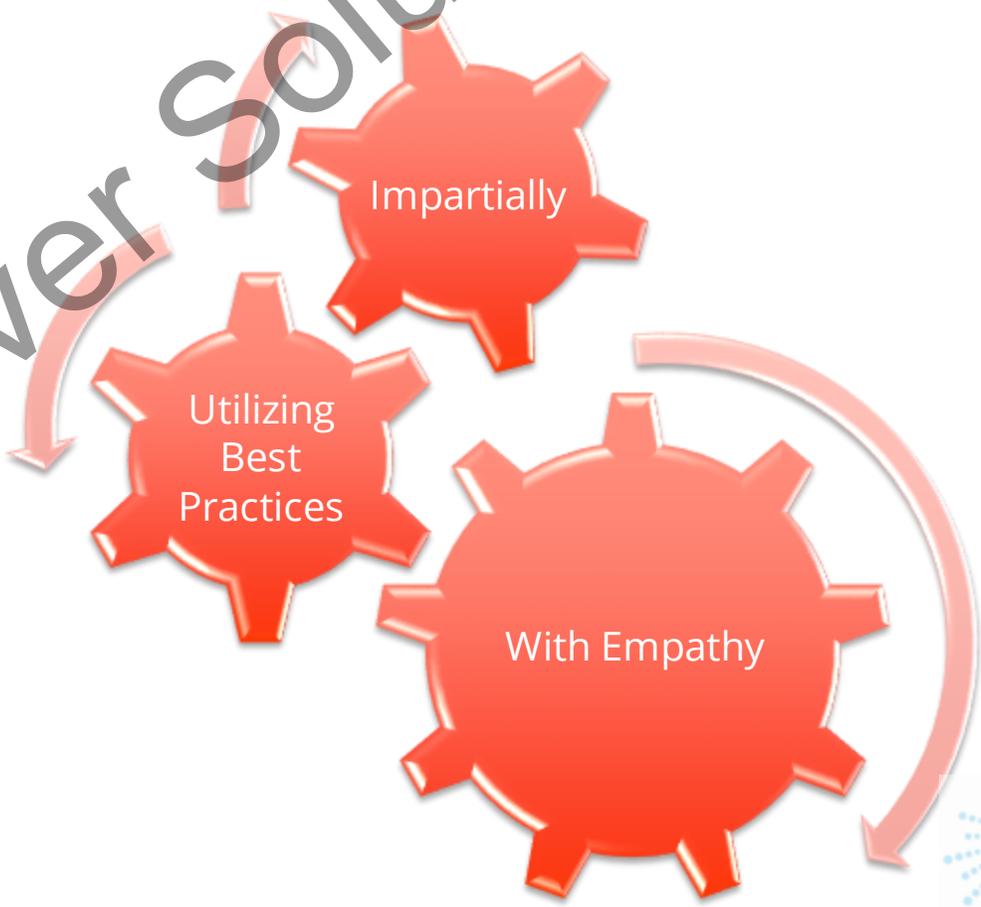
- Serve as the primary pathway for receipt of reports
- Upon receipt of a report, promptly contact the complainant to discuss the availability of support and resolution options
- Coordinate supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker





Successful Coordinators Approach all Aspects of the Work

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Impartiality

Avoiding Prejudgment and Bias

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

Impartiality

Avoiding Prejudgment and Bias

Do not rely on cultural “rape myths”

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

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

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

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

Employ interview and investigation approaches that demonstrate a commitment to impartiality

Impartiality

Avoiding Bias

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

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

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

Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

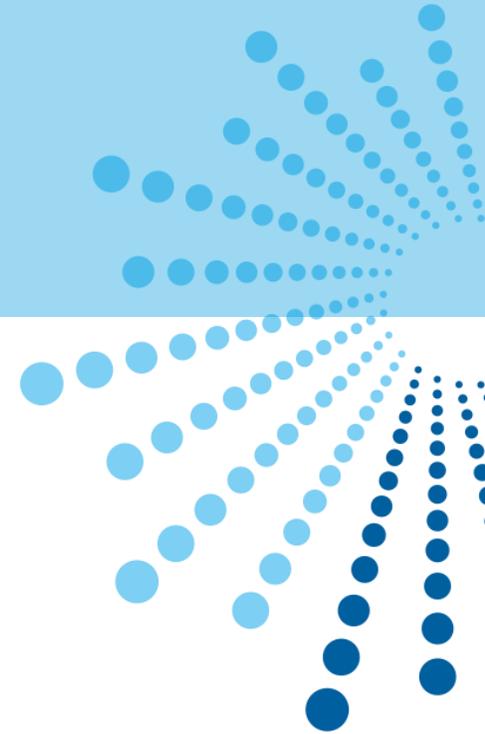
Bottom line

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



Compliance

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Sources of Compliance Obligations

Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Laws

State Law

Legal Precedent

Institutional Policies

Resolution Agreements

Developing a Strategy for Compliance



IDENTIFY COMPLIANCE
OBLIGATIONS



HOW WILL YOU PROVE
THAT YOU ARE COMPLIANT



RECORD KEEPING



Implementing the Strategy for Compliance



Partnerships



Record Keeping Databases



Calendar

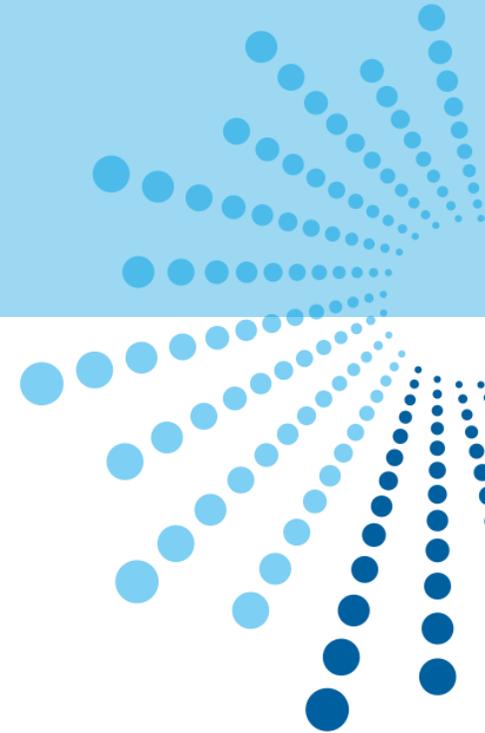


Training & Education

Educating ourselves and our communities in a post-regulatory world

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Sources of Training Requirements



Title IX Final
Regulations

VAWA

Violence
Against
Women Act



State Law



Resolution
Agreements



Training and Education

Two Areas of Focus

1

Institutional
Response to Sex
Discrimination

2

Prevention
Education



Institutional Response Training

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



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

Assessment



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

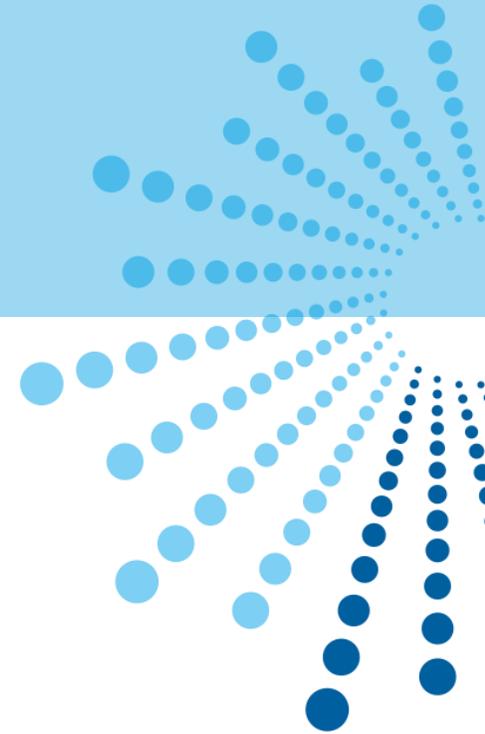


Receipt of Reports

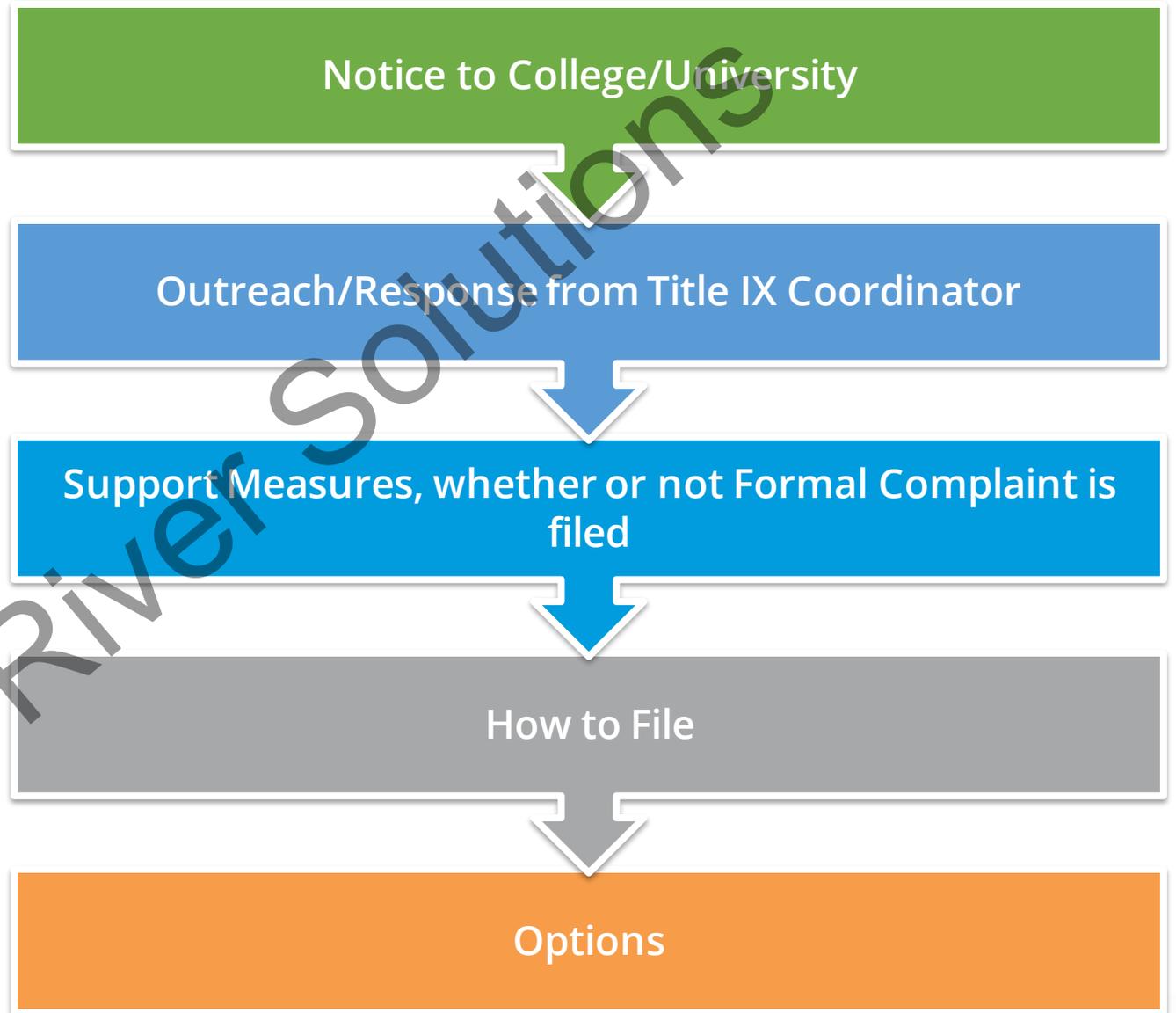
Actual Knowledge, Report Response,
Initial Assessments, and Supportive Measures

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Regulatory Requirements



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

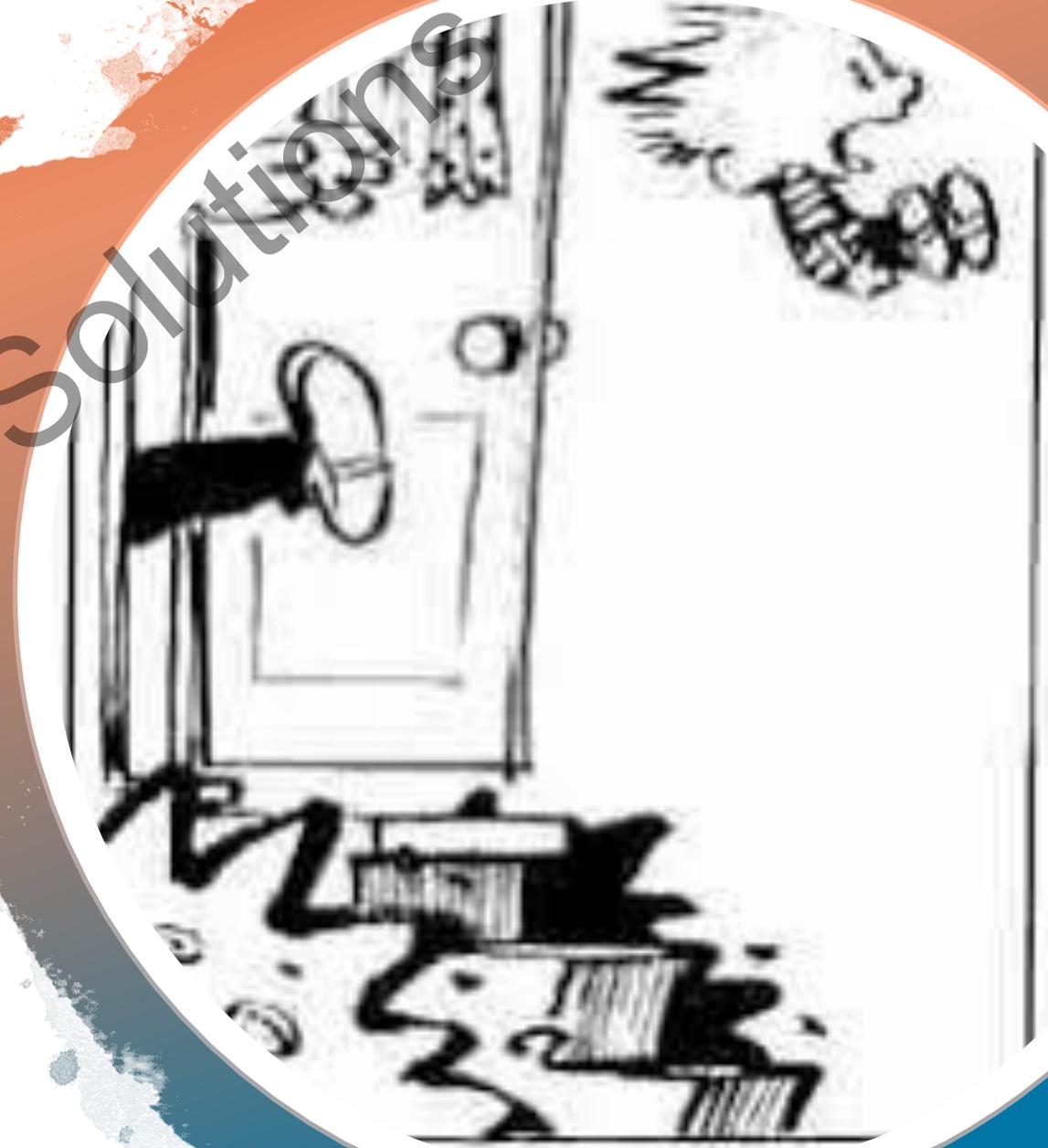
- Use RA
- Campus safety

Follow up emails



Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (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 friend and 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 responsible employee:

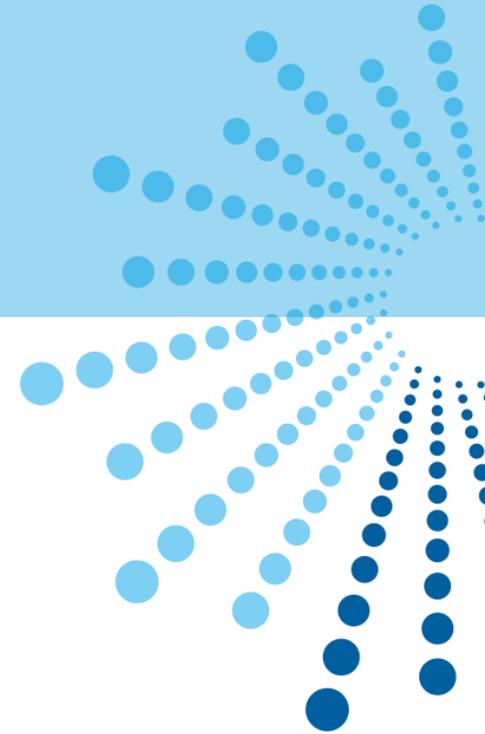
My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don't want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure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



Complainant Intake & Supportive Measures

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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

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May not unreasonably burden the other party

Non-Disciplinary

Non-punitive

Supportive Measures

Designed to restore or preserve equal access

As appropriate and reasonably available

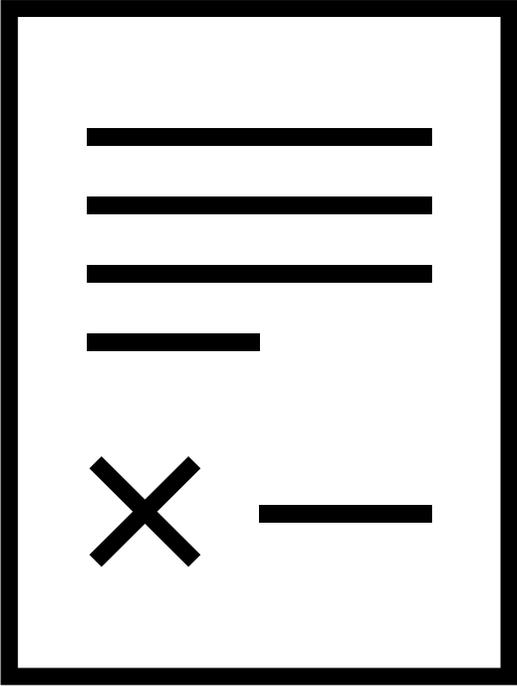
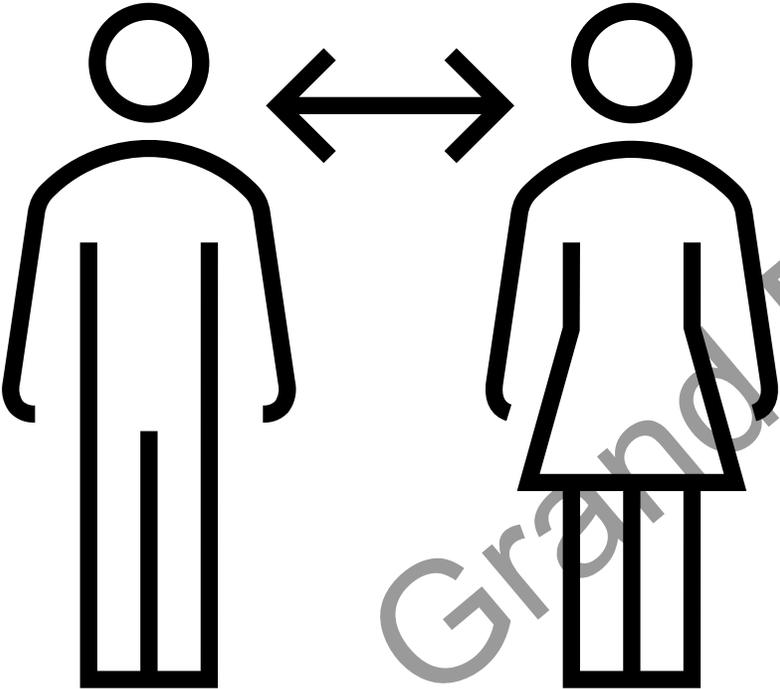
Confidential

Examples of Supportive Measures

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



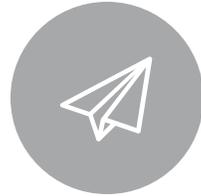
“Mutual Restrictions On Contact Between the Parties”



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

Remedies Based, Informal, or Formal

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Formal Complaint vs Reports

- What is the difference?
- How can we explain this to parties?
- How can we explain this to responsible employees?

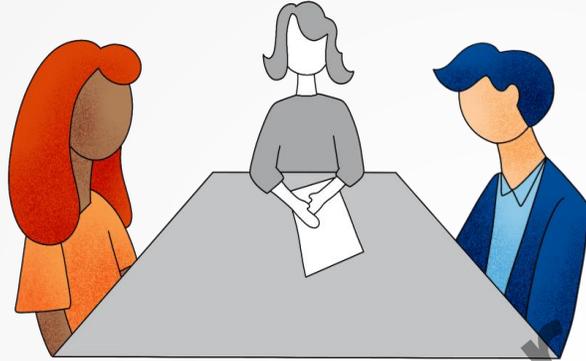


How to Proceed?



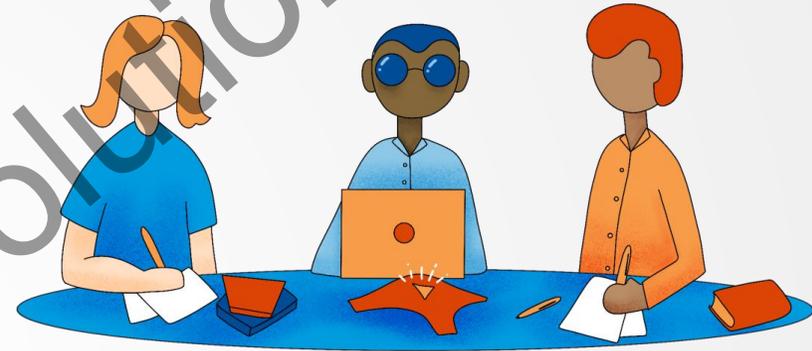
Remedies-based

No formal process



Alternative/Informal

Signed agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All requirements of 106.45

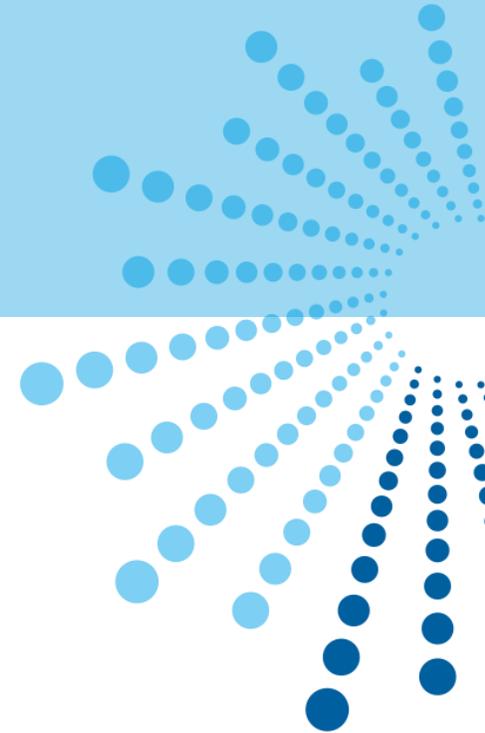




Remedies Based Resolution

8(a)

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Remedies Based Resolutions

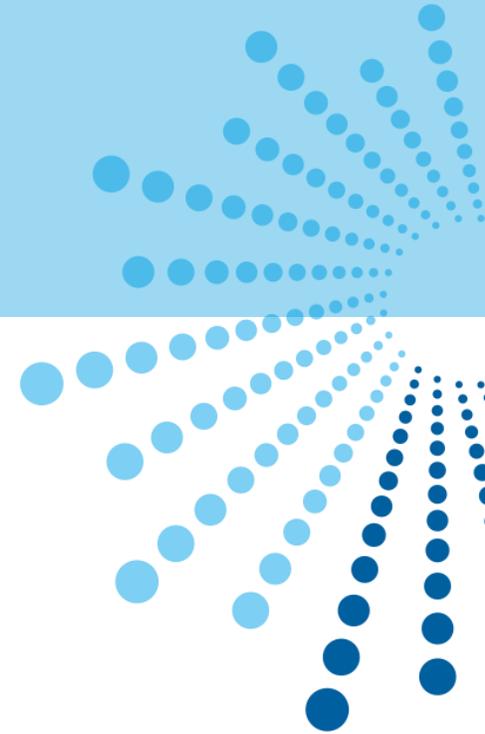
- Supportive Measures
- Educational Conversations
- Targeted Education



Formal Complaint & Notice Requirements

8(b)

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Formal Complaint Filed

By
Complainant

By the Title IX
Coordinator

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Factors to Consider When Determining Whether to File a Formal Complaint

Allegations
of Violence

Threats

Use of
weapons

Serial
predation



Formal Complaint

A Formal Complaint must include:

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

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

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

Identity of Respondent, if known;

A request for a resolution.

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

Dismissing Complaints

MANDATORY

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

DISCRETIONARY

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



Can Proceed Under Other Policy



Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Notifying the Respondent



FIRST—SAFETY

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Make sure support available

Written Notification Meetings and Sufficient Time to Prepare

Advisor of Choice

The advisor can be anyone, including an attorney;

Institutions cannot place restrictions on who can serve

No training required

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

Initial Meeting with Respondent



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



Post Meeting Tasks



Document the meeting



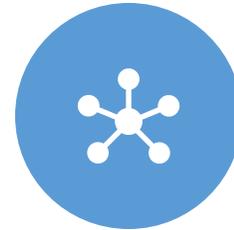
Send a summary email with resources, options, next steps



Follow up



Provide the supportive measures



Make connections

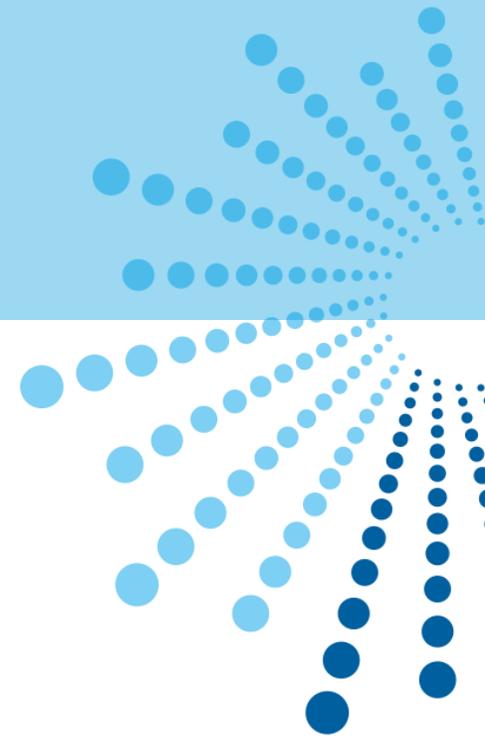




Informal Resolution

8(c)

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Formal Complaint Resolution

Informal Resolution

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

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45





Informal Resolution Requirements

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

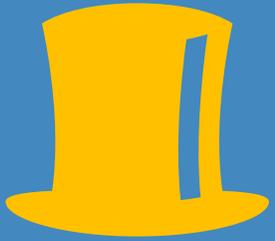
Informal Resolution Notice Requirements

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

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

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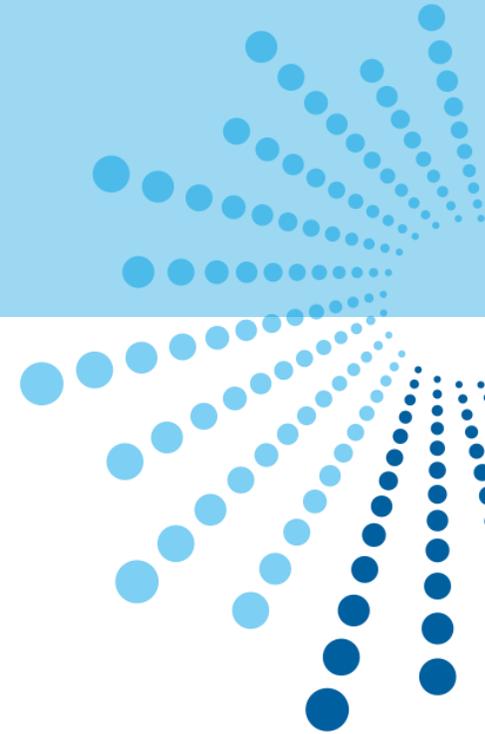
STIS



Formal Resolution

8(d)

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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



Title IX Coordinator's Role

In the Investigation

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

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

Title IX Coordinator's Role

In the Adjudication

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



“

Final Rule § 106.45(b)(8)

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

”

Grounds for Appeal

- 1. A procedural irregularity affecting the outcome;
- 2. New evidence not available at the time of the determination that could affect the outcome; or
- 3. Conflict of interest or bias on the part of the Title IX coordinator, investigator(s), or decision-maker which affected the outcome.





Title IX Coordinator's Role

In the Appeal

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

Putting it all together...



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 & Templates



Development of Annual Plans for Compliance



Development of Annual Plans for Training



Comprehensive Policies & Procedures

Adhere

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



Record

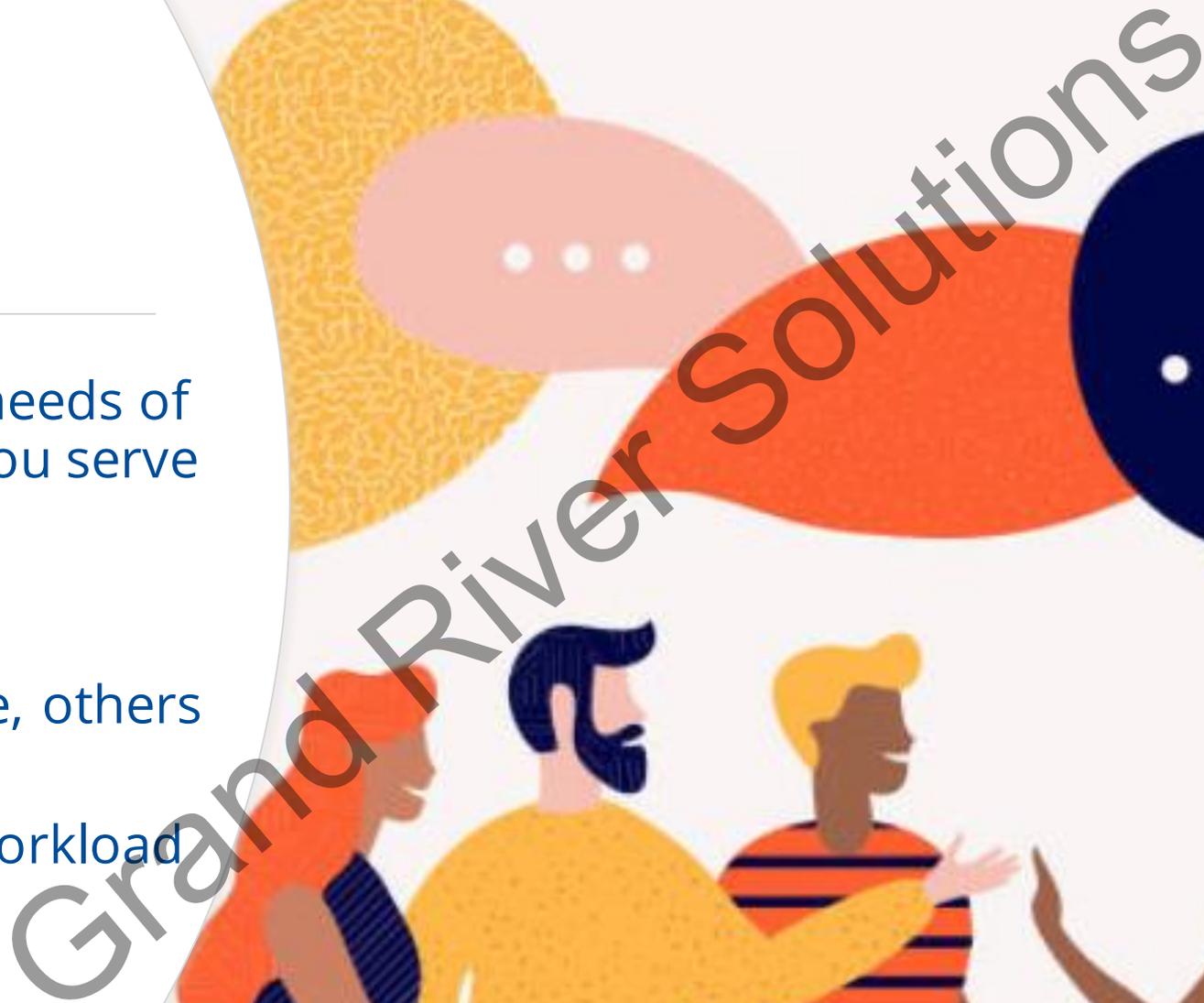
Document, Document, Document!

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

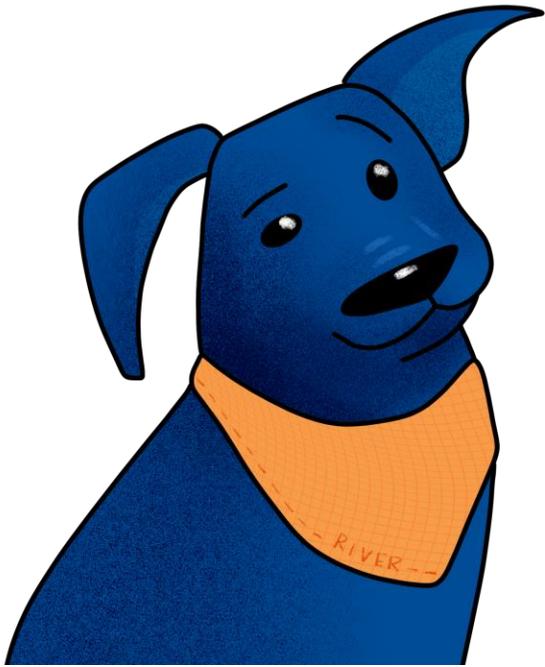




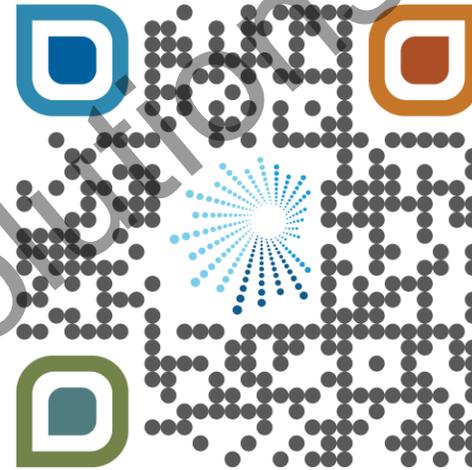
Strategic

- 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

Questions?



Leave Us Feedback:



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