



LAWRENCE UNIVERSITY

APPLETON, WISCONSIN



Advisor Training

Last Updated: January 2021

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**LAWRENCE
UNIVERSITY**
APPLETON, WISCONSIN

Topics Covered

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Title IX Foundations

Title IX Foundations

- What is Title IX?
- LU Title IX Policy
 - Scope
 - Structure
 - Resources

“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. Code § 1681(a)

What is Title IX?

- Federal law that prohibits discrimination and based on sex in educational programs and activities receiving federal funding
- Also prohibits retaliation
- A part of the Education Amendments Act of 1972
- Published in 20 U.S.C. § 1681- §1688



What is Title IX? (cont.)

Requires sex-based equity in educational programs, including:

1. Recruitment
2. Admissions
3. Counseling
4. Financial Assistance
5. Athletics
6. Sex-based Harassment
7. Treatment of Pregnant and Parenting Students
8. Discipline
9. Single-sex Education
10. Employment

The New Regulations

Why are we here?

- New regulations governing response to sexual harassment reports and complaints became effective August 14, 2020 (34 C.F.R. Part 106).
- These new regulations require Lawrence to provide students with a **process advisor** if they do not have one.

The New Regulations

The new Title IX regulations specify how schools must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination” by:

- **defining “sexual harassment”**
- **establishing specific procedural requirements for adjudicating sexual harassment complaints, including requiring a live hearing.**
- **narrowing the scope of jurisdiction**
- **defining “notice” to the University**
- **Overall, setting the “floor” of protection under federal law (as opposed to the “ceiling”).**



Lawrence University's Interim Sexual Harassment Policy

- Published on the Title IX Website
- Applies to all sexual harassment cases, including employee related cases
- Addresses notice, reporting, supportive measures, complaints, formal process (sometimes referred to as “Process A”), information resolutions, etc...

Lawrence University's Interim Sexual Harassment Policy

Scope:

- This policy applies to the education program and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at Lawrence-sponsored events, or in buildings owned or controlled by Lawrence's recognized student organizations.
- The Respondent must be a member of Lawrence's community for its policies to apply.



Lawrence University's Interim Sexual Harassment Policy

Scope Beyond Campus Property:

- This policy can also apply to the effects of off-campus misconduct that effectively deprive someone of access to Lawrence's educational program.



Lawrence University's Interim Sexual Harassment Policy

Scope Beyond Campus Property

- Lawrence may also extend jurisdiction to off-Campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.



Lawrence University's Interim Sexual Harassment Policy

What is a substantial University interest?

- A substantial University interest includes:
 - Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
 - Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
 - Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
 - Any situation that is detrimental to the educational interests or mission of the University.



Defining Sexual Harassment

Sexual Harassment is an umbrella term, which includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking.

See 34 C.F.R. § 106.30



Defining Sexual Harassment

Sexual Harassment

- 1) **Quid Pro Quo:** 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) **Hostile Environment:** 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.

Defining Sexual Harassment

Sexual Assault

- 1) **Forcible SA:** Any sexual act directed at another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
- 2) **Non-Forcible SA:** Includes incest (the degrees to which it is illegal under Wisconsin law) and statutory rape.

Defining Sexual Harassment

Dating Violence

Violence or threat of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- the length of the relationship,
- the type of relationship, and
- the frequency of interaction between the persons involved in the relationship



Defining Sexual Harassment

Domestic Violence

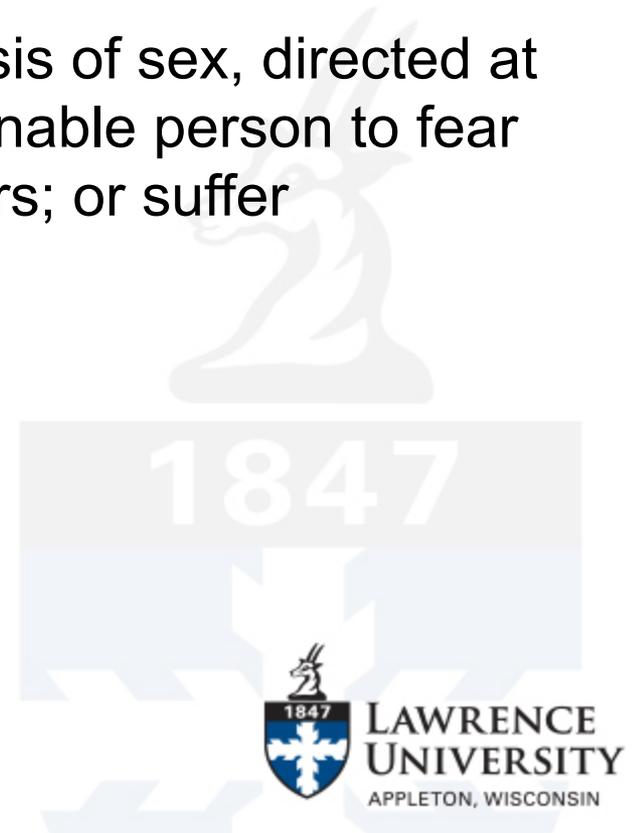
Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

- By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin; or
- By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin

Defining Sexual Harassment

Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.



Roles

Roles

- Title IX Coordinator
- Investigator
- Hearing Officer
- Process Advisors

*“Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a **conflict of interest or bias** for or against complainants or respondents generally or an individual complainant or respondent.”*

34 C.F.R. § 106.45(b)(1)(iii)

Title IX Coordinator



Natasha K. Aguilera Wiebusch
Interim Director of Equity & Title IX
Coordinator

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*Due to COVID-19, the Title IX Coordinator is currently remote.

Title IX Coordinator



Natasha K. Aguilera Wiebusch
Interim Director of Equity & Title IX
Coordinator

The Title IX Coordinator addresses issues related to sexual harassment, sexual assault, dating violence, domestic violence, stalking, sex- and gender-based discrimination or harassment, and gender equity.

The Title IX Coordinator also works with all parties involved in the reporting process to ensure a fair, equitable, and timely response.

Title IX Coordinator



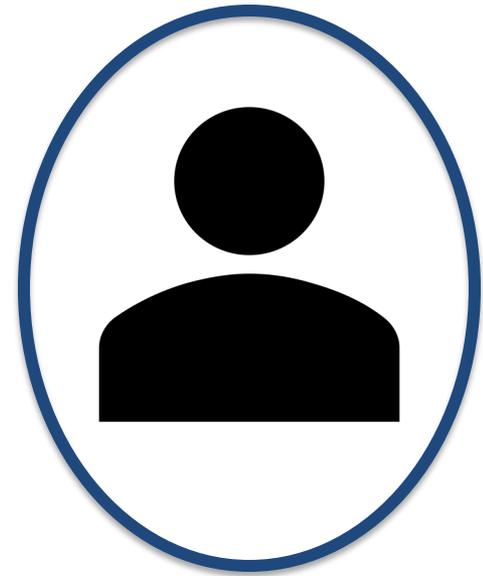
Natasha K. Aguilera Wiebusch
Interim Director of Equity & Title IX
Coordinator

The Title IX Coordinator **DOES NOT**

- Investigate;
- make determinations as to responsibility;
or
- act as advocate or advisor for any parties.

Title IX Investigator

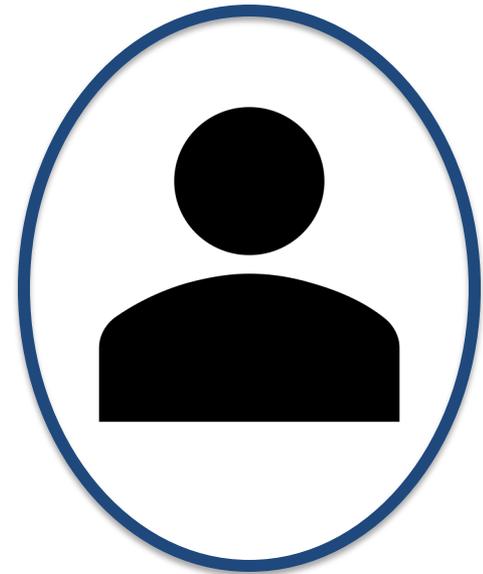
- Lawrence University contracts an outside investigator to minimize the chances of a conflict of interest and eliminate bias.
- If a conflict of interest exists between the investigator and one of the parties, Lawrence must replace them.



Outside Investigator

Title IX Investigator

- The investigator must comply with our Sexual Harassment Policy and the federal regulations. (See § 15 of the interim resolution process)
- See 34 C.F.R. § 106.45(b)(5):
Investigation of a formal complaint.
 - (b)(5)(vii): “Create an investigative report that fairly summarizes relevant evidence...”
- The investigator is considered a witness in the hearing and therefore will not serve in any other role.



Outside Investigator

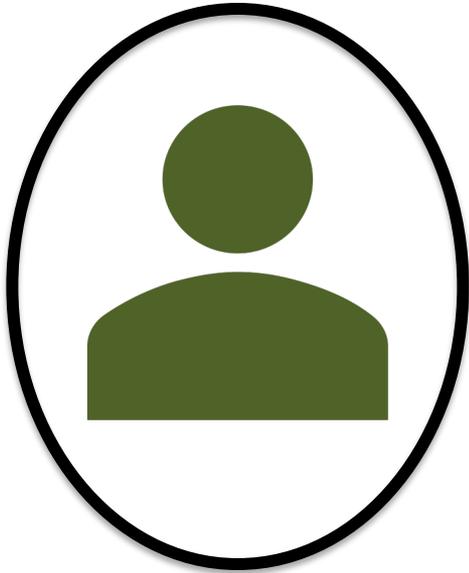
Title IX Hearing Officer



Outside Hearing Officer

- Lawrence uses a single decision-maker model. The decision-maker/hearing officer serves as the chair of the hearing panel.
- Lawrence University contracts an outside hearing officer to minimize the chances of a conflict of interest and eliminate bias.
- If a conflict of interest exists between the hearing officer and one of the parties, Lawrence must replace them.

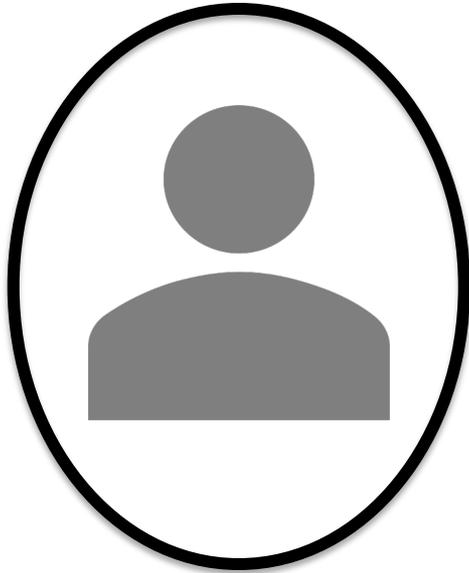
Title IX Hearing Officer



Outside Hearing Officer

- The hearing officer must comply with our Sexual Harassment Policy and the federal regulations. (See § 19 of the interim grievance process)
- The hearing officer presides over the hearing. They carry out the following duties:
 - Decide who will participate in the hearing (i.e. witnesses)
 - Sustain/overrule objections
 - Convene in pre-hearing meetings if necessary
 - Make the final determination and prepare the written decision.

Title IX Advisors



Outside Advisor



Appointed Advisor/You

Title IX Advisors

- Parties have the right to choose their own advisor.
- This advisor can be a friend, family member, attorney, or anyone else.
- If a party cannot find an advisor, the University is required to provide one for them.
- Choosing an advisor who is a witness may create a conflict of interest.

Title IX Advisors

DUTIES: In General

- Accompany the advisee to meetings and interviews.
- Help their advisee prepare for each meeting.
 - Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings.
- Accompany the advisee to the hearing.
- Advise ethically, with integrity, and in good faith.

Title IX Advisors

DUTIES: Hearing

- Conduct any questioning of the other party (cross examination) and witnesses on behalf of the advisee.
 - Under the federal regulations, parties cannot question each other.
- If the Advisor will not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself.

Title IX Advisors

Privacy

- Advisors are expected to maintain the privacy of the records shared with them.
- Parties may share documents and evidence directly with their Advisor or other individuals if they wish.
- Parties must either complete and submit LU's Release of Information (ROI) form to the Title IX Coordinator or provide similar documentation demonstrating consent to a ROI to the Advisor before Lawrence is able to share records with an Advisor.

Title IX Advisors

Expectations

- Advisor should adjust their schedule to allow them to attend University meetings when planned.
- Meetings can be rescheduled to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.
- Advisor who cannot attend a meeting in person can attend by telephone, video conferencing, or other similar technologies as may be convenient and available.

Title IX Advisors

Expectations

- A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.
- The parties are expected to inform the Investigator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators
- The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time.
- Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

Reporting & Complaint

Initiating Formal Process

- Reporting
- Mandatory Dismissal
- Discretionary Dismissal
- Formal Complaint

*“**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment..”*

34 C.F.R. § 106.30

Reporting Sexual Harassment

Confidential Reporting

- Confidential reports do not have to be communicated to the Title IX Coordinator.
- Professional responsibilities still apply
- Confidential resources include counselors, health professionals, campus advocates, clergy...

Non-Confidential Reporting

- Non-confidential reports will always be communicated to the Title IX Coordinator.
- Reports are NOT complaints; the report will trigger the Title IX Coordinator to contact the reported complainant to inform them of:
 - Their rights
 - Supportive measures
 - Next Steps

Reporting Sexual Harassment

Non-Confidential Reports

- Report can be made:
 - directly to the Title IX Coordinator, in person, phone, or email. Due to COVID-19 remote working, we do not recommend sending reports in via mail
 - online via the online form
 - to a responsible employee

Note on Violence Risk Assessments (VRAs)

- VRAs are conducted to determine whether there exists a **compelling risk or threat to health and/or safety** that requires the University to pursue formal action to protect the community.
- This risk analysis is performed by the Title IX Coordinator in conjunction with any other appropriate office using its standard objective violence risk assessment procedures.

Note on Violence Risk Assessments (VRAs)

They help determine:

1. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
2. **Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;**
3. Whether to put the investigation on the footing of incident and/or pattern and/or climate;
4. To help identify potential predatory conduct;
5. To help assess/identify grooming behaviors;

Note on Violence Risk Assessments (VRAs)

6. Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
7. Whether to permit a voluntary withdrawal by the Respondent;
8. Whether to impose transcript notation or communicate with a transfer University about a Respondent;
9. Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
10. Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed.

Formal Complaint

Complaint (formal) means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.

Mandatory Dismissal

If the conduct alleged in the formal complaint

- would not constitute sexual harassment as defined in § 106.30 even if proved,
- did not occur in the recipient's education program or activity, or
- did not occur against a person in the United States,

then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

(Included in LU Interim Policy: If at the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.)



Discretionary Dismissal

The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Any dismissal is appealable.

TIX Grievance Process

Formal Grievance Process

- Investigation
- Hearings
- Appeals

34 C.F.R. § 106.45 governs the grievance process.



Investigation

- Title IX Coordinator will provide both parties with notice of investigation and allegations (NOIA). (See § 8 of Interim Grievance Process)
- Investigator is appointed within 2 business days of determining that an investigation should proceed.
- Title IX Coordinator will direct the investigation to address:
 - An incident, and/or
 - A pattern of alleged misconduct, and/or
 - A culture/climate concern, based on the nature of the complaint.

Investigation

- Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.
- All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.
- For steps the investigator typically takes, see § 14 of the Interim Grievance Process.

Hearings

- Title IX Coordinator will send notice of hearing at least 10 business days before hearing. (See § 21).
- Hearings are live and recorded.
- The parties need not be in the same room; technology may be used.
- Decision-maker will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Hearings: Objections & Comments

- A party may object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least three (3) business days prior to the hearing.
- Parties may object to evidence first offered at the hearing.
- Parties may make an impact statement.
- All witnesses scheduled to make an appearance must be interviewed by the investigator first, unless the Decision-maker and parties' consent.
- Parties may make comments on the final investigation report and evidence during the 10 days prior to hearing.
- Decision-maker may call for pre-hearing meeting.

Hearings: Evidence Considerations

- Any evidence that the Decision-maker determines is relevant and credible may be considered.
- The hearing does not consider:
 - 1) incidents not directly related to the possible violation, unless they evidence a pattern;
 - 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Hearings: Evidence Considerations

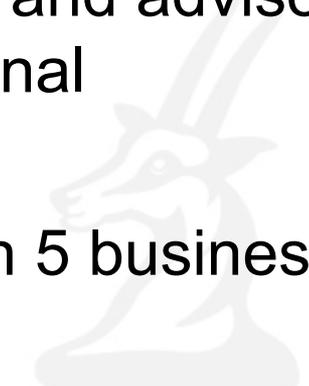
- Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.
- The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

Hearings: Procedure

- The Decision-maker makes determinations, answer all questions of procedure, allow statements and excuse witnesses.
- The investigator will present Final Investigation Report.
- Decision-maker will initiate statements/questions...
 - If the party wishes to ask questions, they MUST have an advisor.
 - The decision-maker MUST determine relevance of each questions before it is answered.
 - The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

Final Determination

- The Decision-maker must complete Final Determination within 5 business days of the hearing.
- Title IX Coordinator must notify the parties and advisors within 7 business days of receiving the Final Determination.
- Parties may appeal; they must do so within 5 business days of receiving the Final Determination.



Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.



No Unauthorized Recording

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

Due Process & Advisors

Due Process

- Advisor's role
- Conflicts
- Good faith

Violations of Policy



Due Process & Advisors

- Do advisors have to serve impartially as a judge does?
 - *No, however:* an Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.
- Advisors are expected to advise ethically, with integrity, and in good faith.

Violations of LU Policy

- All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

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Violations of LU Policy

- The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process.
- Advisor generally may not speak on behalf of their advisee, but may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview.
- For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Violations of LU Policy

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

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Thank You!



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