

LAWRENCE UNIVERSITY

Title IX Comprehensive Training

Presented By: Jennifer Smith

30
YEARS

FRANCZEK

Agenda

- What is Title IX Sexual Harassment?
- Responding to Allegations of Sexual Harassment
- Title IX Team Members
- Title IX Investigations
- Bias, Conflicts of Interest, and Prejudgment
- Record Keeping



Policy

POLICY

Title IX Statute

"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. 1681-1688.

Title IX Regulations

- Under the Title IX Regulations, harassment on the basis of sex is *prohibited*.

What Do The Title IX Regulations Require?

- Each educational institution must have a Title IX Policy and detailed Title IX Grievance Procedure.
- Each educational institution must designate a Title IX Coordinator.
- Each educational institution must follow the regulations when investigating allegations of Title IX Sexual Harassment.

A photograph of a large, white, domed building, likely a university hall, set against a vibrant sunset sky with orange and red hues. The building has several arched windows, some of which are illuminated from within. Dark silhouettes of trees and foliage are visible in the foreground and to the left. A blue horizontal bar is positioned at the top of the image, containing the text 'Lawrence University'.

Lawrence University

Policy Against Discrimination and Harassment

Lawrence University - Title IX Compliance

University community members, guests, and visitors have the right to be free from all forms of Harassment, Discrimination, and Retaliation on the basis of that person's actual or perceived Protected Characteristic(s).

Lawrence University– Protected Characteristics

<i>Age</i>	<i>Color</i>	<i>Disability (physical or mental)</i>	<i>Gender expression</i>	<i>Gender identity</i>
<i>Marital status</i>	<i>National origin</i>	<i>Predisposing genetic characteristics</i>	<i>Pregnancy or related conditions</i>	<i>Race</i>
<i>Religion</i>	<i>Sex</i>	<i>Sex Sexual Orientation</i>	<i>Shared Ancestry</i>	

Lawrence University- Title IX Coordinator

Robert Babcock

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What is Title IX Sexual Harassment?

Title IX Sexual Harassment

Hostile Environment

Quid Pro Quo

Specific Offenses:
Sexual Assault
Domestic Violence
Dating Violence
Stalking



Quid Pro Quo Sexual Harassment



Quid Pro Quo

Quid = Something

Pro = For

Quo = Something

Quid Pro Quo

- **Definition:** An employee of the educational institution conditioning an aid, service, or benefit of the educational institution on the individual's participation in unwelcome sexual conduct.
 - **Respondent:** Must be an employee (not a volunteer, another student, etc.).
 - **Severity and harm are presumed.**
-

Quid Pro Quo: Lawrence University

Quid pro quo harassment occurs when an Employee of the University conditions the provision of aid, benefit, or service of the University on the Complainant's participation in unwelcome sexual conduct.

$$F = G \frac{m_1 m_2}{d^2}$$

Specific Offenses

$$F - E + V = 2$$

$$i\hbar \frac{\partial}{\partial t} \psi = \hat{H} \psi$$

$$\phi(x) = \frac{1}{\sqrt{2\pi\sigma}} e^{-\frac{(x-\mu)^2}{2\sigma^2}}$$

$$E = mc^2$$

$$ds \geq 0$$

$$\frac{\partial^2 u}{\partial t^2} = c^2 \frac{\partial^2 u}{\partial x^2}$$

$$\frac{df}{dt} = \lim_{h \rightarrow 0} \frac{f(t+h) - f(t)}{h}$$

Specific Offenses

Sexual Assault

Domestic Violence

Dating Violence

Stalking

Sexual Assault

- **Definition:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system (UCR Program) of the Federal Bureau of Investigation (FBI).
- NIBRS' forcible and nonforcible sex offenses consist of: rape, sodomy, sexual assault with an object, and **criminal sexual contact (NEW)**.

Sexual Assault: Lawrence University

Sexual Assault is defined as a forcible or nonforcible sex act directed against another person, without the Consent of the other person, including instances where the individual is incapable of giving Consent due to age or temporary or permanent mental or physical incapacity. Sexual Assault is the umbrella term for actions that constitute the forcible offenses of Rape and Fondling, and the non-forcible offenses of Incest and Statutory Rape.

Sexual Assault: Rape: NIBRS Definition

Definition: 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, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

Sexual Assault: Incest

- **Definition:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Sexual Assault: Statutory Rape

- **Definition:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Consent: Lawrence University Policy

Consent is knowing, voluntary, and clear permission by words or actions to engage in mutually agreed upon sexual activity. Because individuals may experience the same interaction in different ways, each person is responsible for making certain that the other person has given Consent before engaging in the sexual activity. For Consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given when the withdrawal is clearly communicated.

Consent: Lawrence University Policy

If Consent is not clearly provided prior to engaging in the activity, Consent may be confirmed by words or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be Consent for other sexual activity (such as intercourse). A current or previous dating or social relationship is not sufficient to constitute Consent. The existence of Consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Consent: Lawrence University Policy

Sexual activity that occurs by Force is, by definition, non-consensual, but sexual activity without Consent is not necessarily forced. Silence or the absence of Force or resistance alone is not Consent. Consent is not demonstrated by the absence of Force or resistance. But while resistance is not required or necessary, such resistance is a clear demonstration of a lack of Consent.

Consent obtained while a person is Incapacitated may be a violation of this Policy.

Under Wisconsin law, it is illegal for a person 18 years of age or older to have sexual intercourse with someone younger than 18, even if the sexual intercourse is consensual. It also violates this Policy.

Consent: Knowing

Consent must demonstrate that all individuals are in a state of mind to understand, to be aware of, and to agree to the 'who' (same partners), 'what' (same acts), 'where' (same location), 'when' (same time), and 'how' (the same way and under the same conditions of sexual or intimate activity).

Consent: Active

Consent must be communicated in clearly understandable words or actions that reveal one's expectations and agreement to engage in specific sexual or intimate activity. This means that silence, passivity, submission, or the lack of verbal or physical resistance (including the lack of a 'no') should not – in and of itself – be understood as consent. Consent cannot be inferred by an individual's manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.

Consent: Voluntary

Consent must be freely given and cannot be the result of force (violence, physical restraint, or the presence of a weapon); threat or coercion (defined below); or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).

Consent: Present and Ongoing

Consent must exist at the time of the sexual or intimate activity. Consent to previous sexual or intimate activity does not imply consent to later sexual or intimate acts; similarly, consent to one type of sexual or intimate activity does not imply consent to other sexual or intimate acts. Consent may also be withdrawn at any time by the person making known, by articulated word or concrete action, his or her intention to withdraw it, and thereupon, the sexual or intimate activity should immediately cease.

Consent: Threat or Coercion

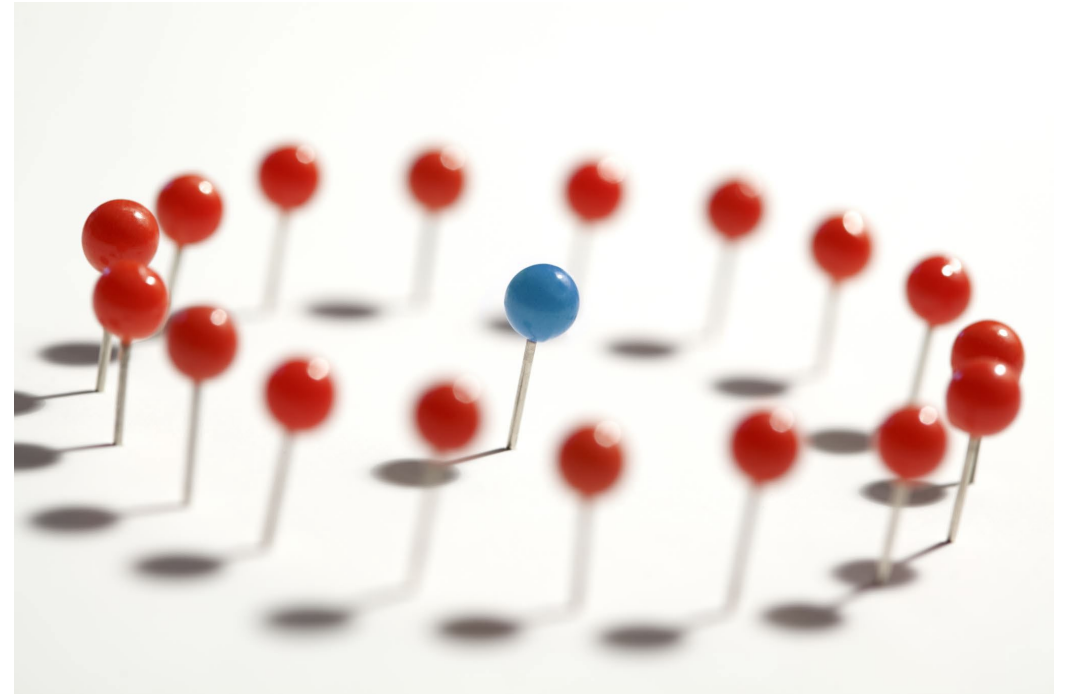
The direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person one would have to submit. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will or ability to choose whether or not to engage in sexual activity. When someone makes it clear that they do not want to engage in sexual activity, that they want it to stop, or they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be threatening or coercive.

Consent: Incapacitation

The inability to understand the nature of the activity or to give knowing consent. Incapacitation is also the inability to understand the "who, what, when, where, & how" of the intimate conduct that took place. When a person is sufficiently intoxicated, high, intellectually disabled, or the like such that the person is not capable of appreciating what is happening establishes incapacitation. The legal inability to give effective consent because of age or declared incompetent.

Title IX Hostile Environment Sexual Harassment

Definition: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person's equal access to the school's education program or activity.



Sexual Harassment: Lawrence University

Non-Title IX Sexual Harassment:

- Off-campus or online
 - Study abroad
 - Outside program or activity
 - Does not meet Title IX sexual harassment definition
 - Perpetrator is a student or employee
-

Sexual Harassment: Lawrence University

Title IX Sexual Harassment:

- Within program or activity
 - In US
 - By student or employee
-

Unwelcome Conduct

- Not Participation
- Not Silence
- Age Matters
- Intoxication Matters
- Ability Matters



Unwelcome Conduct

When determining whether conduct is unwelcome, look at whether a **subjective** and **reasonable person** would consider the conduct unwelcome.



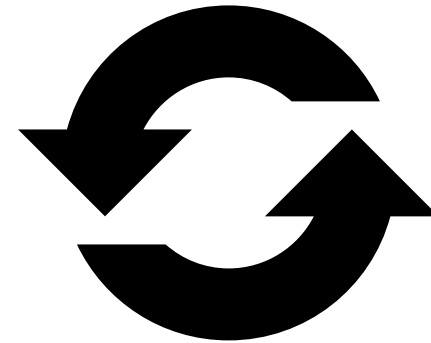
Severe Conduct



- Something more than juvenile behavior.
- Something more than antagonistic, non-consensual, and crass conduct.
- Simple acts of teasing and name calling are not enough to meet the severity standard, even when those comments are based on sex.
- It is not enough to show that a student has been teased or called offensive names.

Pervasive Conduct

- Systemic or widespread.
- Multiple instances of harassment.
- One incident is not enough, even if it is very severe.



Objectively Offensive Conduct



- Behavior that would be offensive to a reasonable person under the circumstances.
- Not just offensive to the victim, personally or subjectively.
- Consider the ages, numbers, relationships – the constellation of surrounding circumstances, expectations, and relationships.

Hostile Environment Factors

Context

Nature

Scope

Frequency

Duration

Location

Identity

Number

Ages

Relationships
of Individuals
Involved

Denial of Access



“it effectively denies a person equal access to the school's education program or activity”

The background of the slide is a photograph of a classroom. It shows several black plastic chairs with attached wooden desks, arranged on a light-colored wooden floor. The text is overlaid on the right side of the image.

Pop Quiz!

Is it Title IX Sexual Harassment?

Pop Quiz

Faculty member is alleged to engage in rape of third party off-campus that is reported to the University.

Is it Title IX Sexual Harassment?

Pop Quiz

Instructor kisses student on the back of the neck.

Is it Title IX Sexual Harassment?

Pop Quiz

In campus housing, student alleges non-consensual sex with another student.

Is it Title IX Sexual Harassment?

Pop Quiz

Following a break-up, student follows ex's current boyfriend to class to disclose ex's cheating.

Is it Title IX Sexual Harassment?

Pop Quiz

After engaging in consensual sex, graduate student forces another graduate student to text that she had a good time before leaving apartment.

Is it Title IX Sexual Harassment?

Pop Quiz

*Student blacks out and cannot recall incident,
but reports sex with another student to
University.*

Is it Title IX Sexual Harassment?

Pop Quiz

Graduate student dates faculty supervisor and seeks a letter of reference.

Is it Title IX Sexual Harassment?

Pop Quiz

Instructor observed giving student a ride on his motorcycle after class. Another student reports conduct as creepy.

Is it Title IX Sexual Harassment?

Pop Quiz

Graduate student touches butt of student when passing by the student in class.

Is it Title IX Sexual Harassment?



TAKE ACTION

**When Must A School Respond to Title IX
Sexual Harassment?**

When must a school respond?

A school with **actual knowledge** of Title IX Sexual Harassment in an education program or activity against a person in the United States must respond.

Actual Knowledge

- Sense
- Report



Actual Knowledge: Lawrence University

Actual Knowledge means notice of conduct that could constitute Prohibited Conduct to the Title IX Coordinator. Actual Knowledge relating to Sex Discrimination and Sexual Harassment occurs when the Title IX Coordinator or an Official with Authority witnesses Prohibited Conduct, learns about it from a Complainant or third party, receives a written or verbal complaint about it, or learns about it by any other means.

Official with Authority



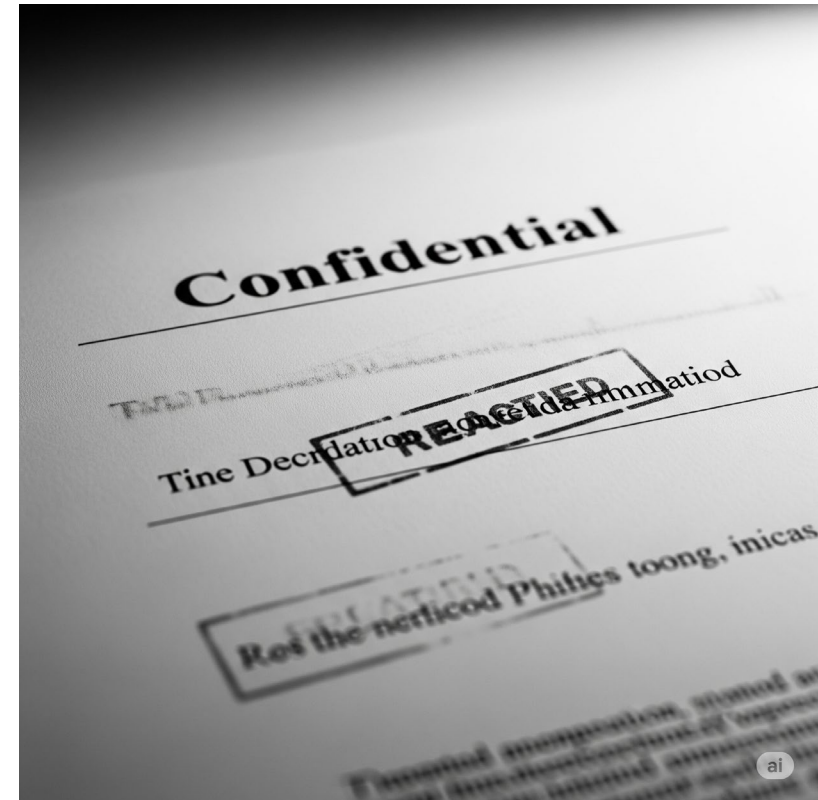
- Title IX Coordinator.
- Any other officials who have been given authority to institute corrective measures by the school district.

Lawrence University

All University Employees (including Student Employees when acting within their employment) are Mandatory Reporter Employees.

Confidential Resources: Lawrence University

Persons required to keep all information disclosed to them Confidential within the legal and ethical bounds of their professions. At the University, these individuals include Employees at the Wellness Center, and ordained clergy acting in their pastoral role. The University also grants Confidentiality to the University's victim advocate, who provide support and assistance to Complainants regardless of whether a Complainant chooses to report to law enforcement or pursue a Formal Complaint through the University's Resolution Processes. Additionally, other staff may be designated with this role and will be noted on the Lawrence University website.



Reporting Sexual Harassment

- Any person may report sexual harassment, regardless of whether the person is the alleged victim of the reported conduct.
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator.
- Reports can be made by any means that result in the Title IX Coordinator receiving the person's report.
- Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.



Reporting ≠ Filing a Complaint

Report

Analysis by Title
IX Coordinator

Formal
Complaint



Key Word: Allegation

Once a school has notice of an allegation that, **if true**, would constitute Title IX Sexual Harassment, **it must** respond.

"Well, we didn't believe there was enough evidence it happened," is not a valid excuse to avoid using your Title IX Sexual Harassment grievance process.

Education Program or Activity



- Title IX Sexual Harassment must be "in a program or activity."
- Any location, events, or circumstances over which the school exhibits substantial control both over the alleged harassment and the "context" in which the harassment occurs.

Education Program or Activity

Schools need only address Title IX Sexual Harassment occurring against a person in the United States under Title IX.



Education Program or Activity



ThePhoto by PhotoAuthor is licensed under CCYYSA.

- Locations, events, or circumstances in the United States over which Illinois Tech exercises substantial control over both the respondent and the context in which Title IX sex discrimination/sex-based harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Illinois Tech. Depending on the facts, such as whether it was an Illinois Tech sponsored event, this phrase may extent to off-campus reports occurring in the United States.

The background is a solid yellow color. Scattered across the surface are several magnifying glasses with black handles and silver-colored frames. The lenses are clear and reflect light. In the bottom left and bottom right corners, there are white rectangular shapes. A thin blue horizontal line runs across the middle of the image, passing behind the text.

Responding to Allegations to Title IX Sexual Harassment

Overview of Title IX Response



Initial
Response/Supportive
Measures



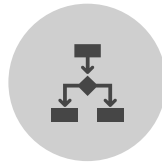
Emergency Removal



Dismissal



Informal Resolution
(Voluntary)



Investigation



Decision



Appeal

A photograph of two young men in an indoor setting. The man on the right, with curly brown hair and glasses, is wearing a white t-shirt and a watch. He has his arm around the shoulder of the man on the left, who has dark hair and is wearing a white patterned sweater and blue jeans. The man on the left has his eyes closed and a pained expression. The background is a plain wall with some plants visible on the right. The text "Initial Response/Supportive Measures" is overlaid in the center in a large, white, sans-serif font.

Initial Response/Supportive Measures

Initial Response/Supportive Measures

Title IX Coordinator or designee must promptly, even if no Formal Complaint is filed:

1. **Contact** the Title IX Complainant to discuss the availability of "supportive measures."
2. **Consider** the Title IX Complainant's wishes with respect to supportive measures.
3. **Inform** the Title IX Complainant of the availability of supportive measures with or without filing a Formal Complaint.
4. **Explain** the process for filing a Formal Complaint.

Formal Complaint



Document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school investigate the allegations of sexual harassment.

Supportive Measures

- Non-punitive, individualized services offered as appropriate and without charge to a Complainant or a Respondent before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- Should be designed to restore or preserve equal access to the education program or activity without "unreasonably" burdening the other party.
- Should be confidential.



Examples of Supportive Measures

"Supportive Measures may include but are not limited to:

- Counseling
- Extension of work assignment deadlines
- Modification of work schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work locations
- Leaves of absence
- Work and housing changes
- Other similar measures

A close-up, slightly blurred photograph of a red emergency light bar mounted on a vehicle. The light bar is illuminated, showing bright white and yellow light. The background is dark, suggesting a nighttime street scene with some out-of-focus lights in the distance. The text "Emergency Removal" is overlaid in the center of the image.

Emergency Removal

Emergency Removal

Immediate Emergency Removal (Student)

- Based on an individualized safety and risk analysis.
- Necessary to protect a student or other individual from immediate threat to physical health or safety.
- Notice and an opportunity to challenge must be provided "immediately."

Employee Administrative Leave

- Not prohibited.
- Must follow state law, Board Policies, Employee Handbooks, and Collective Bargaining Agreements.

A courtroom scene with a judge in black robes standing at a desk on the right, facing a group of people seated in the foreground. The judge is looking towards the group. In the background, a sign on a stand reads "DISMISSED". The room has wood-paneled walls, a large window on the right, and a camera operator is visible on the far right. The scene is lit with warm, golden light.

DISMISSED

Dismissals

Mandatory Dismissals



The Title IX Coordinator must dismiss a complaint if the conduct alleged:

- Is not Title IX Sexual Harassment.
- Did not occur in the school's program or activity.
- Did not occur in the United States.

****Remember, you can still address the alleged conduct under non-Title IX policies****

Permissive Dismissals

The Title IX Coordinator may dismiss a complaint if:

- The Complainant requests to withdraw in writing.
- The Respondent's enrollment or employment in/at the institution ends.
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination(e.g., passage of time, lack of cooperation).





Informal Resolution

Informal Resolution: Not Required

- An institution cannot condition enrollment, employment, or any right on a waiver of the right to an investigation and adjudication of Formal Complaints under the grievance procedure.
- Both parties must voluntarily consent in writing to participate in Informal Resolution.

Informal Resolution: Not Allowed for Employee – Student Allegations



Informal Resolution is not available to resolve allegations that an employee sexually harassed a student.

Informal Resolution: Timing

- An institution cannot offer Informal Resolution *until* the Formal Complaint is filed.
- Once the Formal Complaint is filed, the institution can offer Informal Resolution at any time prior to reaching a determination.
- Either party can request Informal Resolution.
- Either party can withdraw from Informal Resolution prior to reaching an agreement.



Informal Resolution: Facilitators



- Informal Resolution Facilitators must be trained.
- We do not recommend using the Title IX Coordinator or the Investigator or the Decision Maker as the Informal Resolution Facilitator.

A black and white photograph of a man in a dark suit and tie, sitting at a desk. He is holding a magnifying glass over a small piece of paper with dark, vertical streaks on it. The desk is cluttered with various papers and objects. The background is dark and out of focus, showing some office equipment. The word "Investigations" is written in white text on the right side of the image.

Investigations

Written Notice



- The Institution must provide written notice to all known parties "upon receipt of the written complaint."
- The Institution must provide sufficient time to allow the Respondent to prepare a response before any initial interview.
- The Institution must supplement the written notice if new allegations are opened for investigation or new parties are identified.

Written Notice

- The Written Notice must include:
 - Notice of the grievance process, including any Informal Resolution process.
 - Notice of the allegations, in sufficient detail to allow the Respondent to prepare a response.
 - Known parties
 - Conduct alleged
 - Date and location of conduct



Written Notice

- The Written Notice must include:
 - Statement that the Respondent is presumed not responsible and that responsibility will be determined at the conclusion of the grievance process.
 - Notice of the parties' rights to have an attorney or non-attorney advisor.
 - Notice of the parties' rights to inspect and review evidence.
 - Notice of any provision in the Code of Conduct that prohibits knowingly making false statements or providing false evidence during the grievance process.



Investigation Elements



Burden of proof is on the school, not the parties.



Certain treatment records cannot be obtained without voluntary, written consent.



No restriction of the rights of the parties to discuss allegations or gather and present evidence.



The parties must be provided the same opportunities for others to be present during interviews or related proceedings (e.g., attorney or non-attorney-advisor).

Investigation Elements



The Institution must provide written notice to the parties of the date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare.



All directly related evidence must be provided to the parties and their advisor with ten days to respond before the investigative report is issued.



The written investigative report must "fairly summarize the evidence," and be provided to the parties and their advisors at least ten days before the determination of responsibility.

Privileged Information



ATTORNEY CLIENT
PRIVILEGE



PRIVILEGE AGAINST SELF-
INCRIMINATION



CONFESSIONS TO CLERGY
OR RELIGIOUS FIGURE



SPOUSAL PRIVILEGE

Rape Shield

The Institution must exclude evidence of the Complainant's sexual behavior or predisposition (not applicable to Respondent).



There are two narrow exceptions:

To show that someone other than the Respondent committed the conduct; or

To show past conduct between the Complainant and the Respondent to show consent.

Treatment Records



Can't access, consider, disclose, or use records



Made by a physician, psychologist, or other recognized professional



Which are made and maintained in connection with the provision of treatment,



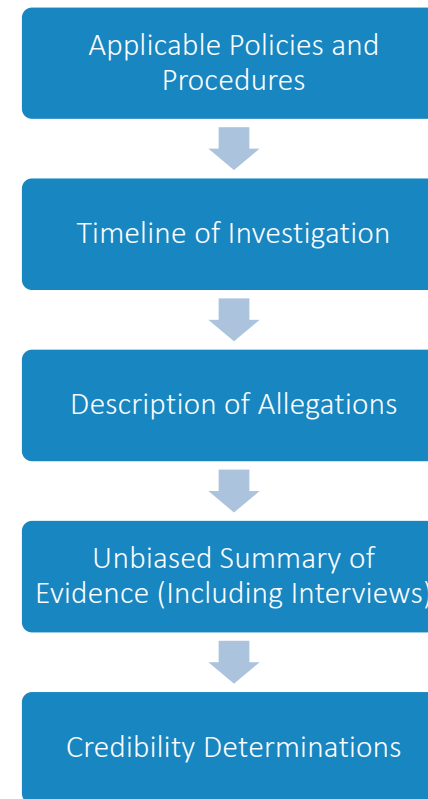
Unless the party gives voluntary, written consent

Opportunity to Review Evidence

- Before the investigative report is complete, all directly related evidence must be sent to each party and their advisor.
- This includes evidence that the school does not intend to rely upon (both exculpatory and inculpatory evidence must be shared).
- Parties have ten days to provide a written response to the directly related evidence.



Investigative Report



Investigative Report



The Investigative Report must fairly summarize all relevant evidence.



Provide the report to the parties and their advisors for review and written response at least ten days before a determination of responsibility.

Pop Quiz: Good or Bad Question?

- To Complainant: Do you typically have sex after drinking at parties?

Pop Quiz: Good or Bad Question?

- To Respondent: Do you typically have sex after drinking at parties?

Pop Quiz: Good or Bad Question?

- To either party: what date did you begin receiving treatment for depression?

Pop Quiz: Good or Bad Question?

- To Respondent: Did you the Complainant the next day to see if he was okay?

Pop Quiz: Good or Bad Question?

To Complainant: Did you have consensual sex with Respondent the week following the alleged sexual assault?

Pop Quiz: Good or Bad Question?

To Complainant: Did you tell your attorney that the only reason you made a complaint was because your mom told you to do so?

Pop Quiz: Good or Bad Question?

To Complainant: Did you tell your mom that the only reason you made a complaint was because your mom told you to do so?

Investigation Plan

➤ Party Interviews

- Complainant First
- Respondent Second or Last

➤ Document Review

- Ask participants to explain documents to you

➤ Witnesses Identified By Parties

- Ask party for relevance
- Exclude only with cause

➤ Experts

- IT
- Police

Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
- With sufficient time to prepare

Recommend same for witnesses (not required)

Concurrent Law Enforcement

- Only “temporary” or “limited” allowed
 - Not “more than briefly” beyond timeframes
 - Not required
- Reasons: Impact on police fact gathering; RP self incrimination privilege; police plan to release evidence that is material to investigation on a specific timeframe

Party Interview Tips

- Describe allegations
- Avoid discussing theories or assessment of evidence
- Obtain account of events in detail (within reason)

Prefaces for Witnesses

- Your Identity and Role as a Neutral
- Notes and Records
- Allegations (if necessary)
- Role of Advisor (if allowed)
- Confidentiality
- Retaliation
- Rapport Building

Questions

- Relationships
- Identities of Parties
- Details of Conduct Between the Parties
- Effect of Alleged Conduct on the Parties
- Outcry/Reports
- Other Responses of Parties
- Documentary and Other Evidence
- Identities of Witnesses

Avoid

- Discussing theories or assessment of the evidence
- Suggesting agreement or outcome
- Pressuring for more information on irrelevant incidents
- Body language or words suggesting judgement

Closing

- Anything else?
- Any questions?
- Advisor questions (if allowed)
- Encourage follow-up
- Process (again for parties)

Practical Tips – Trauma



Acknowledge pain/difficult situation

“It’s ok if you can’t remember every detail. We will just focus on what you can recall.” “I can tell this is difficult for you, I can give you a little time”



Do not demand starting at the beginning & providing every detail



Ask open ended questions

Emotions



Silence is ok



Sympathy is ok (within reason/neutral) – “I can tell this is hard” “I’m sorry this is difficult”



Allow breaks



Remember equality not equity is goal for processes

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

How did the conduct affect you?

What would you like to see as an outcome? (avoid making any promises)

Consider whether appropriate to ask for more incidents than offered

Perhaps instead, focus on repeating “Is there anything else you’d like to tell me or for me to look into?”

Consider Explaining Burden of Proof

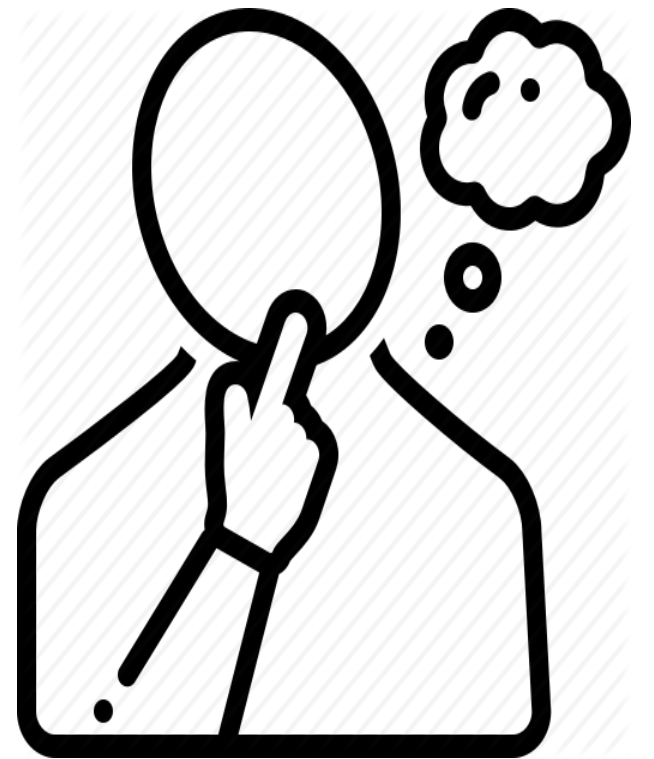
If party states—I know you don't believe me...

After Interviews

- Follow up in writing to summarize any points that might need confirmation
- Clean up notes
- Document less formal interactions
- Send links/copies to policies if relevant
- REASSESS allegations, investigation plan, and supportive measures

Scope of the Investigation

Must be “thorough,” but not required to review all potential sources of evidence parties or witnesses identify



TITLE IX DECISION

**Decision
(Determination of Responsibility)**

CASE NUMBER: N24011
IUCLE03, 2014-12-22

ABERRRY Cecaled DALCELYN
Rusting; INUN HA TR: (202)

While IX thecating, Ruling, compinentiar a Snpey of decision
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the diligent author
and a Dag
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Standard of Proof

Preponderance of the Evidence

- A fact is more likely than not to be true.



Remedies

Can be
punitive/disciplinary

Can be supportive
measures or similar
actions as well

Can address
individuals or larger
community

Appeals

LEGAL APPEAL

COURT OF APPEAL

STATEMENT OF GROUNDS FOR APPEAL

United States Court of Appeals for the _____ Circuit

Case No. _____

Filed _____

Page _____

Appeals

Appeals must be available to both parties.

Parties may appeal a dismissal or a determination.

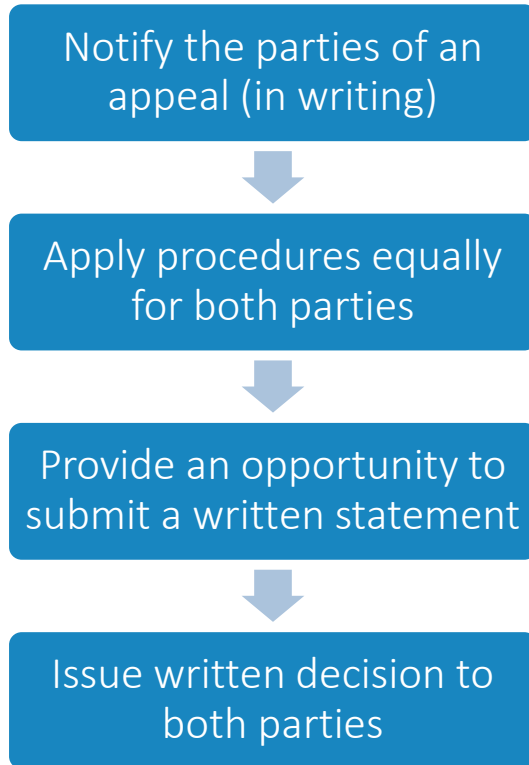
Bases for Appeal

Procedural issue that impacted the outcome

New evidence that would have impacted the outcome

Bias/conflict of interest

Appeal Process



A professional business team in a meeting. In the foreground, a young woman with dark hair and blue eyes looks directly at the camera. To her left, an older man with grey hair and glasses smiles. To her right, another woman is looking down. They are all wearing business attire. The background is bright and out of focus.

Title IX Team Members Roles & Responsibilities

Title IX Team Members

Title IX
Coordinator

Title IX
Investigator

Title IX Informal
Resolution
Facilitator

Title IX Decision
Maker

Title IX
Appellate
Decision Maker

Title IX Coordinator Responsibilities

- Must be identified as the Title IX Coordinator in Board Policy, District website, and in handbooks.
- Must meet with alleged victims of Title IX Sexual Harassment.
- Inform Complainant of availability of supportive measures with or without a Formal Complaint.
- Decides whether to "sign" a Formal Complaint when the Complainant does not wish to file a Formal Complaint.

Title IX Coordinator Responsibilities

- Coordinates the implementation of supportive measures.
- Ensures effective implementation of remedies.
- Monitors the District's ongoing compliance with Title IX.

Title IX Informal Resolution Facilitator Responsibilities

- Act as an intermediary between the parties, make suggestions, and help draft an agreement.
- The agreement itself is between the parties; the institution is not a party.

Illinois Tech: Informal Resolution Facilitator

An individual designated by the Title IX Coordinator to seek an informal resolution of a Formal Title IX Complaint in accordance with this Title IX sex discrimination/sex-based harassment process. The Title IX Informal Resolution Facilitator cannot be the Title IX Coordinator, Title IX Investigator, Title IX Decision Maker or Title IX Appellate Decision Maker assigned to the same Formal Title IX Complaint, must be free from conflicts of interest or bias against complainants and respondents generally and against an individual complainant or respondent, and must be trained to properly implement Illinois Tech's Title IX grievance procedures and to serve impartially.

Title IX Investigator Responsibilities

- Identify and interview parties and witnesses.
- Gather and assess evidence.
- Share evidence with the parties and provide an opportunity for written response.
- Write and share investigative report.

Illinois Tech: Investigator

An individual designated by the Title IX Coordinator to investigate a Formal Title IX Complaint according to this Title IX sex discrimination/sex-based harassment process. The Title IX Investigator cannot be the Title IX Decision maker, Title IX Informal Resolution Facilitator, or the Title IX Appellate Decision Maker assigned to the same Formal Title IX Complaint, must be free from conflicts of interest or bias against complainants and respondents generally and against an individual complainant or respondent, and must be trained to properly implement Illinois Tech's Title IX grievance procedures and to serve impartially

Title IX Advisor Responsibilities

- Parties have a right to an Advisor of their choice for Title IX sexual harassment allegations unless removed, then University selects advisor.
- Accompany to meetings
- Ask questions during live hearings

Title IX Advisor Responsibilities

- Advisor cannot respond to questions to a party from the Hearing Panel or Hearing Officer
- Advisor may consult with Party when a question is not pending

Title IX Advisor Responsibilities: Advisor Decorum



The essential function is not to embarrass, blame, humiliate, or emotionally berate.



Essential function is to give the Hearing Panel/Officer the fullest view possible of the relevant evidence.

Title IX Appellate Decision Maker Responsibilities

- Review Decision-Maker's written determination.
- Review appeal documents.
- Grant parties the opportunity to respond to the appeal.
- Review party responses.
- Make independent judgment on appeal.

A courtroom scene with a judge, lawyers, and witnesses. The judge is seated at the front, and several people are standing and sitting in the courtroom. The text "The Title IX Hearing" is overlaid on the image.

The Title IX Hearing

Lawrence University: Hearing

- A live hearing will be provided as part of the sex harassment process.
- Purpose is to facilitate opportunity for cross examination.

Elements of a Live Hearing

- Notice
- Process
- Cross-Examination
- Relevance Decision
- Role of the Advisor
- Technology

Live Hearing Tips

- Consider a pre-hearing conference to set expectations
- Maintain decorum throughout the hearing and consider Advisor Expectations
- Allow breaks as needed

A magnifying glass with a black handle and a silver rim is positioned in the lower-left foreground, focusing on a group of four people. The group consists of a Black woman with an afro, a white woman with glasses, a white man, and a Black woman. They are all looking directly at the camera. The background is a blurred crowd of diverse people. The text "Bias, Conflict of Interest, and Prejudgment" is overlaid in white, bold, sans-serif font across the center of the image.

Bias, Conflict of Interest, and Prejudgment

Bias/Conflict of Interest/Prejudgment

- The Title IX Coordinator, Investigator, Decision Maker, and Informal Resolution Facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent.
- These individuals must also not prejudge any matter before them.

Bias/Conflict of Interest/Prejudgment

- Consider perception, not just reality:
 - Institutional bias.
 - Your friendship or other relationship with the accused.
 - Your personal characteristics.
 - Your personal conflicts (even if just perceived).
 - Personality conflicts.

Conflict of Interest

- Consider training multiple staff members to allow for the flexibility to assign roles for each specific complaint.
- Consider when outsourcing adjudication functions may be appropriate.
- There are no *per se* conflicts of interest when using school employees or individuals with histories of working in the field of sexual violence as decision makers.
- Caution against using generalizations to identify conflicts of interest.

Pre-Judgment

- Tips for Avoiding Pre-Judgment
 - Each case is fact specific.
 - Keep an open mind.
 - Actively listen to the facts presented.

Sex Stereotypes

- Title IX team members must not rely on sex stereotypes.
- Examples of Sex Stereotypes:
 - Women are "asking for it" based on actions or clothing.
 - Men cannot be sexually assaulted.
 - Women only decide they were assaulted after the fact due to regret and embarrassment.
 - Men are more likely to be sexual aggressors.
- Consider the intersection of sex stereotypes with race, ability, sexuality, and gender identity.



Recordkeeping

Written Notice Required

Notice of Allegations

Informal Resolution

Dismissal

Interview

Investigator Report

Irrelevant or Excluded Questions

Written Determination & Right to Appeal

Written Notice Recommended

Supportive Measures

Provision of Directly Related Evidence

Cross-Examination

Records Must Be Maintained for Seven Years

- Responses to Formal Complaints and informal allegations of Title IX Sexual Harassment.
- All actions taken in response.
- The basis for the school's conclusion that its response was not deliberately indifferent.
- Documentation that the school has taken measures designed to restore or preserve equal access to the education program or activity.
- Supportive measures or the reasons why supportive measures were clearly unreasonable in light of known circumstances.