



TITLE IX SEXUAL HARASSMENT TRAINING

SUNY ORANGE

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WHAT IS TITLE IX?

- “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.”

-Title IX of the Educational Amendments Act of 1972

* “On the basis of sex” -- Title IX's prohibition of discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance to include, among other things: (1) discrimination on the basis of sexual orientation and (2) discrimination based on gender identity.

-June 16, 2021 United States Department of Education Notice of Interpretation.
See also, March 26, 2021 United States Department of Justice Civil Rights Division Memorandum.

2020 REGULATIONS ARE STILL IN EFFECT

On April 19, 2024 the United States Department of Education released the 2024 regulations which are in effect beginning on August 1, 2024.

TITLE IX GRIEVANCE PROCEDURE

Title IX Coordinator Intake
(Supportive Measures,
Grievance Procedure, How to
file a formal complaint)

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graph TD; A["Title IX Coordinator Intake  
(Supportive Measures,  
Grievance Procedure, How to  
file a formal complaint)"] --> B["No Formal Complaint"]; A --> C["Formal Complaint"];
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No Formal
Complaint

Formal
Complaint

IMPORTANT PRESUMPTION

Presumption that respondent is not responsible for the alleged conduct and a determination regarding responsibility is not made until the end of the grievance process.

TITLE IX DEFINITIONS

Sexual Harassment

Sexual harassment occurs when conduct on the basis of sex rises to the level of at least one of the following:

- 1. An **employee** of a College conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo)
 - EXAMPLE: An untenured teacher receiving a positive performance review in exchange for a sexual favor.

TITLE IX DEFINITIONS

Sexual Harassment (continued)

- 2. Unwelcome conduct which a reasonable person would determine to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the College's education program or activity. (i.e. hostile environment)

Comparing the Definitions of Hostile Environment

Title IX Hostile Environment

- **So severe, pervasive, and objectively offensive**

New York Human Rights Law

- Subjects an individual to inferior terms, conditions, or privileges of employment. Harassment **need not be severe or pervasive** to be unlawful, and can be any harassing conduct that rises to above the level of what a reasonable victim of discrimination with the same protected characteristic(s) would consider petty slights or trivial inconveniences

Title VII Hostile Environment

- **Severe or pervasive** enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Severe or Pervasive

Factors a Court will consider:

- The nature of the conduct
- How often, and over what period of time, the conduct occurred
- The circumstances under which the conduct occurred
- Whether the conduct was physically threatening or humiliating
- The extent to which the conduct unreasonably interfered with an employee's work performance

Examples of Behavior that may be severe or pervasive

- Always wants to know where a student is and who the student is with, or stalks the student;
- Pressures a student to perform sexual acts
- Touches a student sexually against their will
- Forces a student to have sex
- Interferes with a student's birth control
- Verbally abuses a student, using anti-gay or sex based insults
- Sends a student repeated and unwanted texts, IMs, online messages, and/or phone calls that harass the student;
- Hits, punches, kicks, slaps or chokes a student;
- Verbally or physically threatens a student.

REMEMBER TITLE IX IS SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE

TITLE IX DEFINITIONS

Sexual Harassment (continued)

- 3. Sexual assault, dating violence, domestic violence, and stalking (on the basis of sex) as defined under federal law (i.e. Clery Act and Violence Against Women Act).

Definition: Sexual Assault

- **Sexual Assault**

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, a sex offense is "any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent."
- Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent.

TITLE IX DEFINITIONS

Sexual Harassment (continued)

Sexual Harassment can occur:

- *Student on Student
- *Employee on Employee
- *Employee on Student
- *Student on Employee

TITLE IX DEFINITIONS

Actual Knowledge

- Actual knowledge occurs when any employee:
 - (1) witnesses sexual harassment first hand,
 - (2) hears about an allegation of sexual harassment from any source; or
 - (3) receives a complaint about sexual harassment by any means (e.g. written, verbal, electronic)

Exception: The College is not considered to have actual knowledge of sexual harassment if the only employee aware of the harassment is the accused respondent.

TITLE IX DEFINITIONS

Education Program or Activity

- A College is required to respond, under Title IX, to those allegations of sexual harassment where:
 - A. The College exercises **substantial control over both the respondent** (i.e. the person accused of sexual harassment) **and the context** (e.g. school setting, or school sponsored event) in which the harassment occurred; and

TITLE IX DEFINITIONS

JURISDICTION-continued

- B. At the time of the alleged sexual harassment, the complainant (i.e. the alleged victim of sexual harassment) must be:
- (1) in the United States, and
 - (2) trying to access a College's education program or activity.

TITLE IX DEFINITIONS JURISDICTION-NOTE

If the alleged conduct meets the definition of Sexual Harassment, but does not meet the jurisdiction requirement, the College may not pursue the matter under Title IX.

The conduct may be addressed under other sections of the Code of Student Conduct or Employee Handbook or policies/procedures.

TITLE IX DEFINITIONS

DELIBERATE INDIFFERENCE

- To act in a way that **is not clearly unreasonable**.

How to Prove that you are not Deliberately Indifferent

- 1. Have the **Title IX Coordinator**:
 - Respond to a complaint in a manner equitable to both the complainant and the respondent;
 - Contact the complainant to discuss and implement supportive measures;
 - Inform the complainant of the College's grievance procedures;
 - Explain the process for filing a formal complaint.
- 2. If no formal complaint is filed, provide effective supportive measures.
- 3. If a formal complaint is filed, follow formal complaint process (grievance procedures).

- **DOCUMENT the above.**

TITLE IX DEFINITIONS

SUPPORTIVE MEASURES

- Supportive Measures:
 - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint.
 - Goal—Restore or preserve equal access to the education program or activity without unreasonably burdening the other party.
 - Should remain confidential to the extent practicable.

TITLE IX DEFINITIONS SUPPORTIVE MEASURES

- EXAMPLES:
 - Counseling
 - Extension of deadlines or other course-related adjustments
 - Modifications of work or class schedules
 - Mutual contact restrictions between the parties
 - Changes in location of classes or work location
 - Leaves of absence
 - Monitoring of certain areas for safety

NOTIFICATION REQUIREMENTS

1. Designate a Title IX Coordinator—to coordinate the College's efforts to comply with all responsibilities under Title IX.
2. Notify new registrants, applicants for employment, students, employees and all unions of the following:
 - ❖ Title IX Coordinator Name and Title,
 - ❖ Office address,
 - ❖ Email Address,
 - ❖ Telephone number

NOTIFICATION REQUIREMENTS

continued

3. Notify all individuals that the College does not discriminate on the basis of sex in the education program or activity (including admissions and employment) that it operates and that it is required pursuant to Title IX and its regulations to not discriminate on the basis of sex.

NOTIFICATION REQUIREMENTS

continued

4. Any inquiries can be made to the Title IX Coordinator(s) and/or the Assistant Secretary of the United States Department of Education.
5. The College must publish the **contact information for the Title IX Coordinator and the grievance procedures** prominently on its webpage and in each handbook or catalogue available to students, parents/guardians, applicants, employees, and unions.

KEY PLAYERS

- Title IX Coordinator
- Investigator (cannot be the same as Decision Maker or Appeal Decision Maker)
- Decision-Maker (cannot be the same individual as the Title IX Coordinator or the Investigator)
- Facilitator of Informal Resolution (not the Decision-maker or Investigator)
- Appeals Decision-Maker (cannot be the same individual as the Title IX Coordinator, Investigator, Decision-maker)
- Advisors

Each person (except Advisors) must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

*Reasonable person standard/not materially affect outcome

KEY PLAYERS

Title IX Coordinator

- Insure proper notifications, publications, and postings
- Review Title IX and related policies and procedures for clarity
- Coordinate Title IX team (investigator, decision-maker, facilitator of informal resolution, appeals decision maker)
- Insure training for all employees regarding actual knowledge
- Intake of allegations (review grievance procedure, how to file a formal complaint, and supportive measures)
- Maintain a Title IX Log and coordinate all documentation
- If a formal complaint is filed, provide appropriate notification to the parties (process, role of advisors, option for informal resolution, etc.)
- Frequently check in and review supportive measures
- If a finding of responsibility, coordinate any remedy.
- Create templates for notification letters
- Create template for intake form

KEY PLAYERS

Investigator

- Conduct an extensive and thorough investigation.
- Avoid making inferences based upon an individual's status as a complainant, respondent, employee, student.
- **Treat the Respondent and Complainant equitably.**
- Provide adequate notice before interviews or the collection of data.
- Maintain detailed interview notes (how should you document interviews, etc.?)
- Make decisions regarding **credibility and relevancy** as you determine how to follow up on matters. Document all of your decisions.
- After the compiling of evidence and interviews are completed, provide the information to the party and his/her advisor informing them that they have 10 days to inspect and review the items and to submit a written document regarding the relevancy of each.
- Investigator has 10 days to prepare his/her final report, including the comments from the parties. The report does not reach a conclusion regarding responsibility.
- Provide the final report to the Title IX Coordinator and the parties, including advisors.

KEY PLAYERS

Decision Maker

- Process can begin no sooner than 10 days following the completion of the final investigation report.
- Utilize a live hearing with cross examination of the other party or witnesses by the Advisor of the party
- Hearing Officer makes relevancy decisions regarding questions and must provide a reason if a question is prohibited.
- The hearing should be recorded (audio or audiovisual) or transcript.
- Upon request of either party technology maybe used to provide a live hearing but avoid having the two parties in the same room.
- Present a detailed written determination to the parties simultaneously.

KEY PLAYERS

Appeals

- Provide both parties an equitable opportunity to appeal a withdrawal or the written determination on one of the following basis:
 - A procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, Investigator, Decision Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- Provide a detailed written determination.
- Present to the parties simultaneously

KEY PLAYERS

Informal Resolution Facilitator

- Insure that voluntary, written consent of both parties.
- Neutral individual to assist the parties in resolving the situation.
- May utilize restorative justice, mediation, or arbitration.
- If not successful the parties return to the investigation or determination phase of the formal complaint process.
- May not be used for Student against Employee matters.

KEY PLAYERS

Advisor

- If a formal complaint is filed, each party is able to have the advisor of his or her choice (faculty member, parent, attorney, etc.)
- The advisor may assist the party throughout the formal complaint process (present at interview of party, inspect and review investigation file and submit with the party a document regarding relevancy, and assist in drafting questions for the question and answer process).
- College may provide a reasonable Code of Decorum to be equitably applied to the parties.

STANDARD OF PROOF


The College has one standard of proof and uses it for all Title IX determination decisions (student and employee)

Preponderance of the Evidence

- the fact to be proven **is more probable than not** to have occurred.

GRIEVANCE PROCEDURE

Actual
Knowledge



Title IX Coordinator Intake

- *Supportive Measures
- *Grievance Procedures
- *Option of and how to file a formal complaint
- *Document, among other things, bullets 1-3 above

GRIEVANCE PROCEDURE: EMERGENCY REMOVAL

EMERGENCY REMOVAL

- Individualized safety and risk analysis
- Determination that the respondent is an immediate threat to the physical health or safety of any student or other individual from the allegation of sexual harassment
- Provide Respondent with notice and the opportunity to challenge the decision immediately following removal.

GRIEVANCE PROCEDURE

Title IX Coordinator Intake
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No Formal
Complaint

Formal
Complaint

GRIEVANCE PROCEDURE

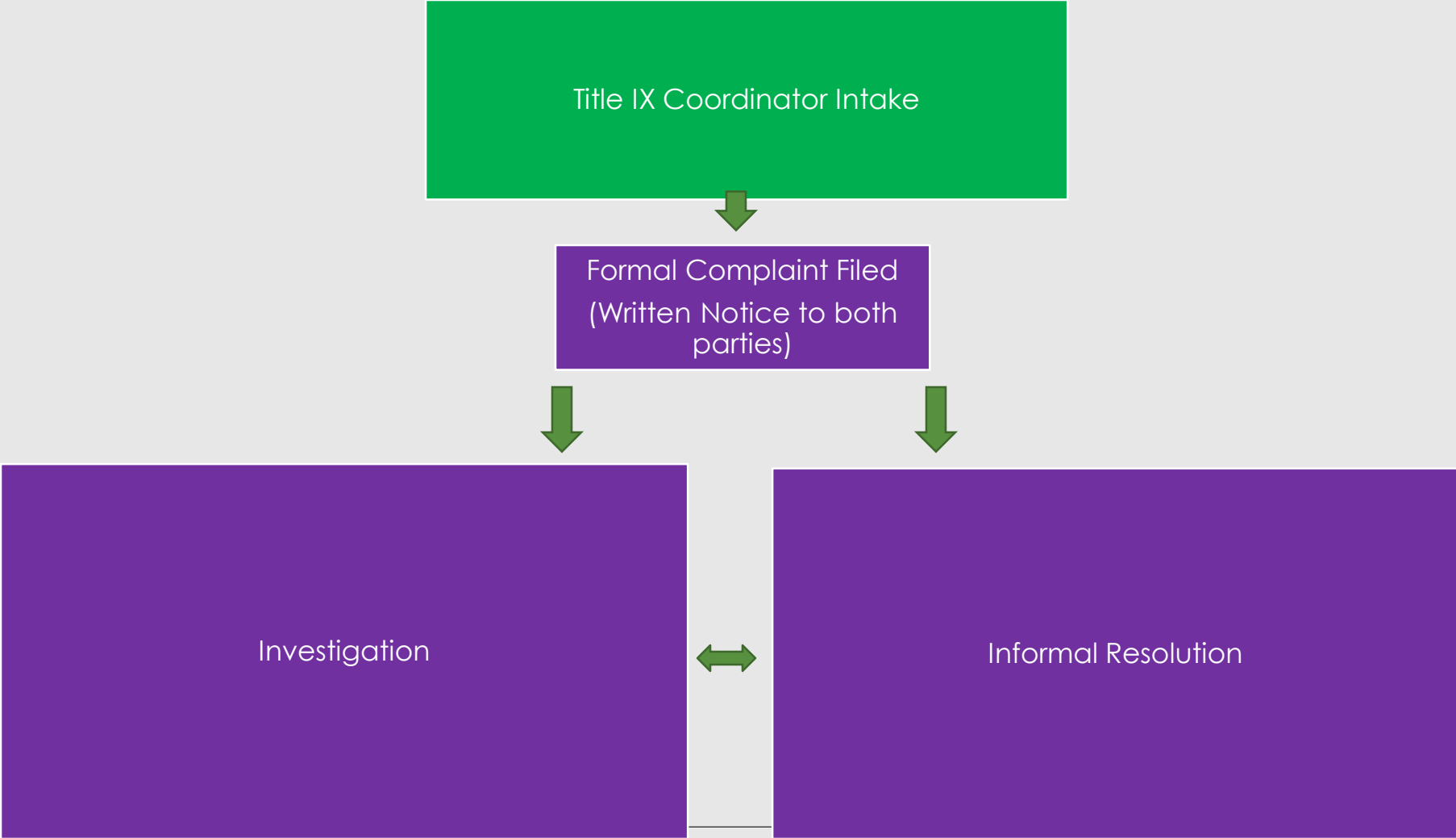
Title IX Coordinator
Intake

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graph TD; A[Title IX Coordinator Intake] --> B[No Formal Complaint]; B --> C[Title IX Coordinator may forward allegation of the conduct to the appropriate Office on Campus to be addressed under the Code of Student Conduct or Employee and/or Faculty Handbook or other College policy/procedure];
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No Formal
Complaint

Title IX Coordinator may forward allegation of the conduct to the appropriate Office on Campus to be addressed under the Code of Student Conduct or Employee and/or Faculty Handbook or other College policy/procedure

GRIEVANCE PROCEDURE



FORMAL COMPLAINT FILED

- The College's "treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX."

34 CFR 106.45 (a)

FORMAL COMPLAINT FILED

- Prompt and equitable process
- Written notice of formal complaint including the allegation(s) with time and place of incident; investigation process; informal resolution requirements; and potential outcomes.
 - Both parties informed of the right to have an advisor throughout the process (could be attorney or parent). If one party has an advisor at the determination phase, the College is required to provide an advisor to the other party.

GRIEVANCE PROCEDURE

Investigation

(Burden is on the College to gather evidence sufficient to make a determination of responsibility in the determination phase)

1. Written notice before an interview or request for evidence from a party or witness.
2. Provide same opportunities for both parties to produce evidence and to provide witnesses.
3. Investigator is obligated to gather evidence directly related to the allegations, including exculpatory and inculpatory evidence.
4. Investigator may make decisions of relevancy and credibility.
5. All evidence produced and interview notes are then assembled and presented to both parties and their advisors.

GRIEVANCE PROCEDURE

Investigation (continued)

6. Each party and their advisor have 10 days to inspect and review the investigation documents. Each party may produce a written document to comment on the relevancy of the evidence or interviews.
7. Investigator has produce an investigation report. Documented in the report should be the relevance each party gives to the various evidence/interviews.
8. Investigation report does not reach a conclusion/determination of responsibility.
9. The Investigation report is presented to each party and his or her advisor. The report must be provided at least 10 days prior to a determination regarding responsibility.

Conducting Investigations

- Sample investigation questions for complainant:
 - Please describe what happened.
 - When did this conduct occur? Where?
 - Has similar conduct ever happened before, or to anyone else?
 - Were there any witnesses to the conduct? If so, ask complainant to provide the identities of witnesses.
 - How did the behavior make you feel?
 - Did you ask the person to stop the conduct?
 - Have you reported this or similar complaints to anyone else?
 - Have you had problems with this person in the past?
 - Is there any other information (emails, documents, text messages, social media posts, pictures, written information voicemails, etc.) that may help substantiate the allegations?
- When interviewing complainant, ask open-ended questions. Avoid asking leading questions (i.e. questions that suggest to the witness how the question is to be answered).

Conducting Investigations

- Sample questions for witnesses:
 - Where were you when you witnessed the conduct?
 - What, specifically, did you witness? (get the witness to describe the facts of the situation, without characterizing it any way)
 - Don't use words like bullying/discrimination/harassment to characterize conduct
 - Have you ever had any problems with this person? If so, please explain.
 - IF you have not had any problems, did any other students that you are aware of?
 - What did complainant tell you?
 - Could you describe the accused's behavior toward the complainant and towards others?
 - Do you have any documentation such as text messages, social media postings (Facebook, Snap Chat), pictures, videos, written material, regarding the conduct?

Remember who, what, where, when, why, and how

Remember the five senses: Sight, sound, smell, taste, and touch

Conducting Investigations

Confidentiality:

Do not promise complainants or witnesses that everything they say or their identity will remain completely confidential, as sometimes it is not possible. Under Title IX the investigative report is shared with both parties.

Final Investigative report may be accessible under FOIL and FERPA, although certain parts may need to be redacted.

Conducting Investigations

- After meeting with all the witnesses, meet with the accused.
 - Make sure another person is present during this meeting (e.g., another administrator or a confidential position to take notes).
 - Present the accusation to the accused, including the factual details without any characterization or finding.
 - Give the accused an opportunity to present his/her side.
 - Audio or video tape recording is discouraged.

Conducting Investigations

- Sample questions for the accused:
 - Did you (engage in the conduct described)?
 - Do you believe the conduct was appropriate? Why?
 - Are there any other persons with relevant information regarding the incident?
 - Are there any emails, texts, social media posts or communications regarding the incident?

GRIEVANCE PROCEDURE

INFORMAL RESOLUTION

*College must provide:

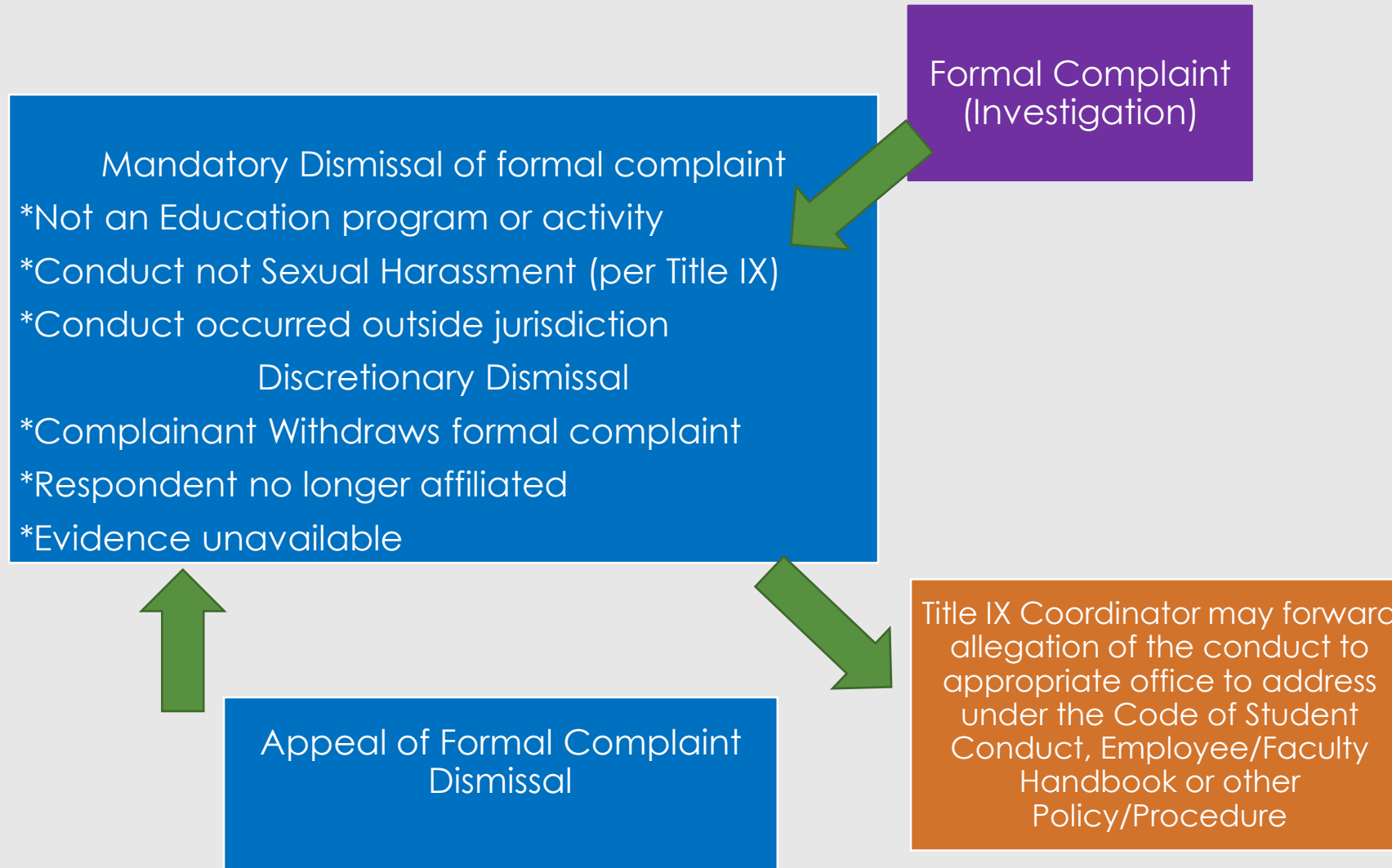
- (1) Written notice of the allegations
- (2) The requirements of the informal resolution process, including that:
 - (a) once an agreement is made the parties may not resume the formal complaint process, and
 - (b) anytime prior to an agreement either party may withdraw from the informal process and resume the formal process.
- (3) Any consequences resulting from participating in the informal resolution process, including records that will be maintained or could be shared.

*Each party must provide voluntary, written consent to participate in the informal resolution process.

*May occur any time prior to reaching a determination of responsibility.

*May not be used for complaints of Employee wrongdoing towards a student under Title IX.

GRIEVANCE PROCEDURE



GRIEVANCE PROCEDURE MANDATORY DISMISSAL

If the College determines that the allegations are not governed by Title IX for one of the following reasons:

- *Not an education program or activity
- *Conduct does not fall under the Title IX definition of sexual harassment
- *Conduct occurred outside the jurisdiction of Title IX

Then the College must dismiss the formal complaint

GRIEVANCE PROCEDURE DISCRETIONARY DISMISSAL

The College may dismiss if:

- *Complainant withdraws
- *Respondent is no longer affiliated with the College
- *Evidence is unavailable

GRIEVANCE PROCEDURE MANDATORY DISMISSAL APPEAL

The College's decision to dismiss the formal complaint may be appealed by the complainant for the following reasons:

- *Procedural irregularity that affected the outcome
- *New evidence that affected the outcome
- *Conflict of interest that affected the outcome

GRIEVANCE PROCEDURE DETERMINATION PHASE

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graph TD; A[INVESTIGATION] --> B[DETERMINATION OF RESPONSIBILITY (Live Hearing)];
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INVESTIGATION

DETERMINATION OF
RESPONSIBILITY
(Live Hearing)

GRIEVANCE PROCEDURE DETERMINATION PHASE HEARING

- *Live Hearing.
- *Recorded via audio/audio-video/transcript.
- *Either party may request to not be in the same room. The College shall utilize technology to still have all visible to each other in real time.
- *Advisor provides cross-examination of the other party or any witness.

GRIEVANCE PROCEDURE DETERMINATION PHASE

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the respondent committed the alleged conduct or if offered to prove past consent with respondent.
- The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

HOW DO YOU DETERMINE IF EVIDENCE OR A QUESTION IS RELEVANT?

Evidence/Question is relevant if:

- (a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and

- (b)** the fact is of consequence in determining whether the action occurred.

HOW DO YOU DETERMINE IF EVIDENCE OR A QUESTION IS RELEVANT? (continued)

A decision maker cannot decide relevance without knowing the relation it has or does not have to the matter to be proven.

- Evidence/Questions that are deemed immaterial or not relating to the matter at issue is irrelevant evidence.
- Such evidence/questions are impertinent to a fact or argument and is not material to a decision in the case.

GRIEVANCE PROCEDURE DETERMINATION OF RESPONSIBILITY

1. Decision maker must issue a written determination of responsibility applying the preponderance of the evidence standard.

GRIEVANCE PROCEDURE

DETERMINATION OF RESPONSIBILITY

2. Written determination must include:
 - a. Allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from receipt of the formal complaint through determinations (including notifications, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearing/question and answer process used);
 - c. Findings of fact supporting the determination;

GRIEVANCE PROCEDURE

DETERMINATION OF RESPONSIBILITY

- d. Conclusions regarding the application of the College's Code of Student Conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanction imposed on the respondent, and whether any remedies designed to restore or preserve equal access to the College's educational program or activity will be provided to the complainant.
- f. The procedures and permissible basis for the complainant or respondent to appeal.

3. Provide the written determination simultaneously to the parties.
4. The Title IX Coordinator is responsible for the effective implementation of any remedies.

GRIEVANCE PROCEDURE



GRIEVANCE PROCEDURE PENALTY PHASE

- The decision-maker will make a determination on responsibility. If found guilty of violating Title IX, the decision maker shall recommend sanctions against the respondent and any necessary remedies for the complainant.
- The penalty phase will be addressed within the due process rights provided to students or staff under the law or Code of Student Conduct or Faculty/Employee Handbooks.

GRIEVANCE PROCEDURE APPEAL

[Applies to determination of responsibility and/or the College dismissing the formal complaint]

Basis for an appeal:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

GRIEVANCE PROCEDURE APPEAL

Appeal Process:

1. Notify the other party in writing that an appeal has been filed and implement appeal procedures equally for both parties;
2. Ensure decision-maker for appeal is not the same as the decision-maker for responsibility or dismissal; Title IX Coordinator; and Investigator.
3. Ensure the decision –maker does not have a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome;
5. Issue a decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

Retaliation Prohibited

- No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights or privilege secured by Title IX.
- No one may intimidate, threaten, coerce or discriminate against another for reporting a complaint, testifying, assisting with an investigation, participating or refusing to participate in any manner in the grievance procedure.

Additional responsibilities

- Records retention—at least 7 years..

Title IX Log

- Have the Title IX Coordinator maintain an extensive Title IX LOG, including:
 - Any actual knowledge of sexual harassment
 - Title IX Coordinator Intake (supportive measure; explain Formal Complaint option and grievance process)
 - Supportive measures (provided; denied; not requested; declined)
 - Formal Complaint filed or not;
 - Does it fit the definition of sexual harassment;
 - Does the College have jurisdiction over the allegation;
 - Notification Letters (Title IX, Investigation interviews, Determination process, Appeal) and process;
 - Determination of responsibility (any discipline or remedies issued)
 - Appeal filed → result.

THOUGHTS

