







ANNUAL TRAINING FOR ADVANCED TITLE IX COORDINATORS AND DEPUTY COORDINATORS

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AGENDA


- Legal Overview
- Updating Sexual Misconduct Policy and Procedures
- Overseeing the Complaint Process
 - Pre-Investigation 
 - Investigation 
 - Adjudication 
 - Post-Adjudication 

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TERMINOLOGY


- DOE = Department of Education
- DCL = Dear Colleague Letter
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator 

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TRAINING REQUIREMENTS 

- Institutional officials conducting proceedings (including adjudicators and individuals deciding appeals) must be trained on:
 - Institution's policy and procedures
 - Applicable law, including regulations, guidance, and overlapping federal and state laws
 - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
 - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (annually)
 - Types of conduct that would constitute sexual violence (including same-sex sexual violence)
 - Standard of review

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TRAINING REQUIREMENTS 

- (cont.)
 - Consent and the role of alcohol or drugs can play in the ability to consent
 - Importance of accountability for individuals found to have committed sexual violence
 - Need for remedial actions for the perpetrator, complainant, and school community
 - How to determine credibility
 - How to evaluate evidence and weigh it in an impartial manner
 - Confidentiality
 - Effects of trauma, including neurobiological change
 - Cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds
- Training materials that apply sex stereotypes or generalizations should be avoided^{2017 Q & A}



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SESSION 1: LEGAL OVERVIEW




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SESSION OVERVIEW




- Sexual Violence Statistics
- Title IX and OCR Guidance
- Violence Against Women Act
- Other Laws
- Future of Title IX




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SEXUAL VIOLENCE STATISTICS




- United Educators' Study
 - 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
 - Types of sexual assault:
 - Incapacitation: 33%
 - Physical force: 29%
 - Failed consent: 16%
 - Sexual coercion: 13%
 - Drug-facilitated: 7%
 - 78% involved one or both parties consuming alcohol




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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 educational program or activity receiving Federal financial assistance.”




20 U.S.C. § 1681

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WHO MUST COMPLY WITH TITLE IX? 

- Institutions that receive federal funds
 - Students
 - Employees
 - Third Parties
 - Visitors
 - Vendors




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**DISCRIMINATION
"ON THE BASIS OF SEX"** 


- Includes:
 - Sexual harassment
 - Sexual violence
 - Differential treatment
 - Gender-based harassment



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TITLE IX RESPONSIBILITIES 

- If a school knows or reasonably should know about sexual harassment it must take prompt and appropriate action to:
 - Eliminate it,
 - Prevent its recurrence, and
 - Address its effects




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TITLE IX REQUIREMENTS




- All schools receiving federal funds must:
 - Publish Notice of Nondiscrimination
 - Designate a Title IX Coordinator
 - Disseminate policy prohibiting sex discrimination
 - Investigate complaints
 - Adopt and publish prompt and equitable grievance procedures
 - End the harassment, prevent recurrence, and remedy its effects



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OCR GUIDANCE




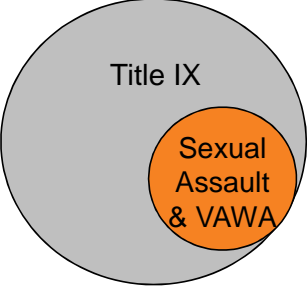
- January 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties
- January 25, 2006 Dear Colleague Letter on Sexual Harassment
- April 24, 2015 Guidance on Title IX Coordinators
 - Dear Colleague Letter on Title IX Coordinators
 - Letter to Title IX Coordinators
 - Title IX Coordinator Resource Guide
- September 22, 2017 Q & A on Campus Sexual Misconduct

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2017 Q & A GUIDANCE






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2017 Q & A GUIDANCE 

- “Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence”
- More flexibility
 - Standard of evidence (preponderance or clear and convincing)
 - “Should” use consistent standard of evidence for all student misconduct matters
 - Time frame
 - Informal resolution process
 - Appeals
- Interim measures “may not” favor one party
- No “gag orders” that restrict the ability of either party to discuss the investigation (“likely inequitable”)


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2017 Q & A GUIDANCE 

(cont.)

- Written notice to respondent: “should” provide sufficient details and with sufficient time to prepare a response before any initial interview
 - identities of parties involved
 - specific section of the code of conduct allegedly violated
 - precise conduct allegedly constituting the potential violation
 - date and location of the alleged incident
- Notice “should” be given to each party in advance
 - Sufficient time to prepare for meaningful participation


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2017 Q & A GUIDANCE 


(cont.)

- Investigation report “should” be created during the process
- “Must” provide timely and equal access to the information used in the decision-making process
 - No discussion of potential FERPA issues
- “Should” provide opportunity to respond to investigation report in writing or at a hearing


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TITLE IX COORDINATOR GUIDANCE 


- Key points:*
 - Independence and seniority of Title IX Coordinator
 - Notice of Nondiscrimination
 - Website and prominent link from homepage
 - Training
 - Annual climate surveys
 - Recordkeeping
 - Information collection and reporting
 - Responsibilities besides sexual harassment




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TITLE IX COORDINATOR GUIDANCE 


- Independence and seniority of Title IX Coordinator*
 - Independence and authority
 - Access to institution's relevant information and resources
 - Report directly to institution's senior leadership, such as the president
 - Full-time position recommended; if other roles, ensure sufficient time and training for Title IX



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TITLE IX COORDINATOR GUIDANCE 

- Areas of responsibility besides sexual harassment:*
 - Recruitment, admissions, and counseling
 - Financial assistance
 - Athletics
 - Student interests and abilities
 - Athletic benefits and opportunities
 - Athletic financial assistance
 - Pregnant and parenting students
 - Discipline
 - Employment




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CLERY ACT




- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection




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VAWA CHANGES TO CLERY




- Additional Clery crimes
 - Domestic violence
 - Dating violence
 - Stalking
- Additional policy statements
 - Procedures following a VAWA crime or sexual assault
 - Prevention and awareness programs
- Other changes
 - Hate crimes include “national origin” and “gender identity” motivated crimes



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CLERY FINES




- Fine for each Clery Act violation is \$57,317
- Between 2010 and 2017, DOE imposed 40 Clery fines on institutions totaling just over \$5 million
- The largest of the fines was a nearly \$2.4 million fine against Penn State
- University of Montana fined \$966,614 in 2018 for under reporting of crime statistics
- University of Saint Thomas fined \$172,000 in 2017 for failure to include required policy statements and under reporting of crime statistics among other violations
- There has been no significant reduction in the number of fines under the Trump administration
 - In the first 8 months of 2017, DOE imposed 5 fines against institutions for Clery violations

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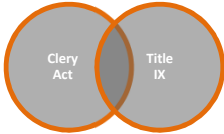
VAWA REGULATIONS


- Requires policy addressing:
 - Procedures alleged victims should follow
 - Disciplinary procedures
 - Confidentiality
 - Notifications to students, employees, and alleged victims
 - Right to advisor of choice (including attorney)
 - Right to have notice of meetings with parties
 - Right to have access to information used in formal/informal disciplinary meetings
 - Rationale must be included in Notice of Determination
 - Training for individuals with heightened responsibilities
 - Training for students and employees


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INTERACTION BETWEEN TITLE IX & CLERY


- Clery is about the reporting of crimes (broader than sexual misconduct), regardless of investigation
- Title IX is about the investigation of reports of sexual harassment, including sexual violence


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OTHER LAWS





- FERPA: Family Educational Rights and Privacy Act
- State mandatory reporting laws
- Title VII/State anti-discrimination laws
- State student safety laws


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THE FUTURE OF TITLE IX



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THE FUTURE OF TITLE IX


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- OCR Actions:
 - Issued internal instructions for OCR investigators re: scope of complaints
 - Public Statements:
 - Trust institutions
 - Guidance should not be used for enforcement
 - Concerned about due process
 - Conducted listening sessions
 - Withdrew 2011 DCL and 2014 Q & A's
 - Issued 2017 Q & A Guidance
 - Proposed regulations released in November 2018
 - Notice and comment period ended in February 2019

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PROPOSED REGULATIONS


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- When institutions must respond to sexual harassment
 - Recipient with actual knowledge of
 - Sexual harassment
 - In an education program or activity of the recipient
 - Against a person in the United States
- How institutions must respond to sexual harassment
 - May not be deliberately indifferent
 - Recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances

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PROPOSED REGULATIONS



- New Procedural Requirements
 - Notice of allegations including:
 - Identities of the parties involved, if known, specific section of the recipient's policy allegedly violated, conduct allegedly constituting sexual harassment, date and location of the alleged incident, if known
 - Provide notice of additional allegations that arise during the process
 - Disclosure of evidence to the parties
 - Investigation report
 - Live hearing including cross-examination conducted by advisors
 - Schools must provide advisor to any party that does not have one at the hearing
 - No single investigator/adjudicator
 - Standard of evidence
 - Must be consistent with standard in other student conduct processes with same maximum sanction and with standard used for complaints against employees, including faculty

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PROPOSED REGULATIONS



- Religious Exemption
 - Schools that seek “assurance of the exemption” may either
 - Submit a statement in writing identifying which provisions in the regulations conflict with a tenet of the religious organization; or
 - After DOE begins an investigation, raise the exemption in writing, regardless of whether the school previously sought assurance of the exemption

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RECENT TRENDS IN OCR ENFORCEMENT



- Emphasis on clearing backlog—cases resolved at a faster pace
 - One complaint was resolved just 42 days after it was filed
- Narrowed scope of investigations
 - More focus on allegations in complaint
 - Less focus on systematic issues of discrimination
- More cases resolved through dismissal or due to insufficient evidence
- OCR is less likely to publicly disclose resolutions or information about resolutions

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NEW OCR CASE PROCESSING MANUAL




- Released March 5, 2018
- Takeaways
 - Stricter requirements for OCR complaint
 - No anonymous complaints
 - Cannot be based solely on statistical data, media reports, studies, or published articles
 - Expanded basis for dismissing complaints
 - More likely to be closed based solely on information in complaint, even before institution receives notice
 - More rights for institutions
 - Complaint provided to institution upon request
 - More input on timeframe for responding to data request and how interviews are conducted
 - Increased options for resolution, including expedited case processing and more time for negotiations
 - No appeal process

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LITIGATION UPDATE



- More cases brought by respondents
 - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- More cases surviving early dismissal and winning preliminary injunctions
- New grounds for claims
 - Right to a hearing (mostly public institutions)
 - Student's opportunity to share version of events must occur at "some kind of hearing"
 - Right to cross-examine (mostly public institutions)
 - May be required in more serious cases when credibility is at issue
 - Requirements for notice to respondent
 - Inconsistencies with other student misconduct processes
 - 2017 Q & A states that standard of evidence should be consistent
 - Complaint outside scope of institution's policy

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Q & A




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SESSION 2: UPDATING YOUR SEXUAL MISCONDUCT POLICY AND PROCEDURES



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SESSION OVERVIEW

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- Missing the Mark
- Engage Your Audience, Leadership, and Experts
- Comply with Legal Requirements and Guidance
- Procedural and Policy Updates For Consideration

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MISSING THE MARK

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- Common Concerns from Students:
 - Lack of clarity and transparency in policy and process
 - Lack of communication and coordination with parties
 - Lack of fairness and equity
 - Complainants discouraged from reporting
 - Retaliation/harassment and re-victimization
 - Inadequate support during and after process
 - Failure to accommodate documented disabilities
 - Dissatisfaction with outcome or sanctions
 - Inadequate training, education, and prevention programs



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CONSIDER AND ENGAGE YOUR AUDIENCE, LEADERSHIP, AND EXPERTS




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CONSIDER AND ENGAGE YOUR TARGET AUDIENCE


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- Students
- Student groups
- Faculty
- Administration/leadership
- Alumni
- Parents



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ENGAGE EXPERTS

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- Victim advocates
- Confidential resources
- Mental health professionals
- Legal counsel with expertise in Title IX/VAWA
- Law enforcement
- Core Title IX team

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**COMMUNICATE! COMMUNICATE!
COMMUNICATE!**



- Engage in a vetting period where key participants have multiple opportunities to provide feedback
- Create FAQs and other plain-English summaries of policy/process (i.e., flow chart)
- Make key personnel accessible and be clear about their roles
- Develop a trauma informed intake process
- Regularly communicate with the parties throughout the process

EDUCATE! EDUCATE! EDUCATE!



- Title IX/VAWA training for *all members of community* (annually)
- Specialized training for Title IX Coordinator, Deputy Coordinators, Investigators, Adjudicators, Appeal Panels (annually)
- Specialized training for Confidential Resources and First Responders


**COMPLY WITH LEGAL REQUIREMENTS:
TITLE IX/VAWA**




- Policy Content
 - Prohibited Conduct
 - Introduction
 - Scope
 - Definitions
 - Title IX Coordinator Role and Responsibilities
 - Resources and Interim Measures
 - Process for Reporting
 - Complaint Process
 - Investigation
 - Adjudication
 - Appeal (if any)



**COMPLY WITH LEGAL REQUIREMENTS:
TITLE IX/VAWA**


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- Different procedures for sexual assault/VAWA crimes and other forms of sexual harassment under Title IX
 - Right to advisor of choice
 - Notice of meetings
 - Content of notice of determination
 - Access to information used in decision-making
 - Mandatory under VAWA
 - “Must” under Title IX^{2017 Q & A}




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**COMPLY WITH LEGAL REQUIREMENTS:
TITLE IX/VAWA**


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- Timing
 - Designate reasonably prompt time frames for each phase of the process, including the appeal
 - Describe the process for the extension of time frames for good cause with written notice to the accuser and the accused of the delay and the reason for the delay
 - No fixed time frame^{2017 Q & A}
 - Must designate time frames
 - OCR will evaluate the good faith effort to complete process in a timely manner
 - Prior guidance was 60 calendar days




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**COMPLY WITH LEGAL REQUIREMENTS:
TITLE IX/VAWA**


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- Conflicts of Interest
 - State that proceedings will be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
 - Describe procedure for reporting conflicts and requesting removal of investigator/adjudicator



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**COMPLY WITH LEGAL REQUIREMENTS:
TITLE IX/VAWA**


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- Interview/hear from both parties
- Equal opportunity for parties
 - Identify/present fact witnesses and evidence
 - Access to evidence (if any)
 - Must for sexual assault/VAWA
 - "Must" if Title IX^{2017 Q&A} (?)
 - Right to an advisor/participation by a lawyer
 - Required by VAWA regulations for cases of sexual assault/VAWA crimes
 - May limit extent of participation (must apply equally)
 - Participate in pre-hearing meeting (if any)
 - Identify/present character witnesses (if any)
 - Written notice of outcome of complaint

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**COMPLY WITH LEGAL REQUIREMENTS:
CLERY HANDBOOK UPDATE**


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- 2016 Clery Handbook replaces 2011 version
- Expanded requirements for policies, procedures, and programs for VAWA crimes
- Imposes substantive changes to practices and procedures required to be included in ASR




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**PROCEDURAL AND POLICY UPDATES
FOR CONSIDERATION**

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RECOMMENDED UPDATES 


- Policy scope
- Timeframe
- Informal resolution (to provide some flexibility)
- Supportive measures for all parties
- Notice of meetings (participants, purpose, etc.)
- No gag orders/prohibition of parallel investigations
- Allow parties to suggest questions to be asked of the other party and witnesses
- Training materials (avoid sex stereotypes)
- Recordkeeping

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RECOMMENDED UPDATES 


- Written notice to respondent
 - Sufficient details
 - Identities of the parties involved
 - Specific section of the code of conduct allegedly violated
 - "Precise conduct" allegedly constituting a potential violation
 - Date and location of the alleged incident
 - Sufficient time
 - Sufficient time for respondent to prepare a response before any initial interview and to prepare for meaningful participation in the process

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RECOMMENDED UPDATES 


- Handling of related complaints
 - Violation of interim measure – no contact directive
 - Retaliation
 - Violation of sanction
 - Ineffective sanction

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RECOMMENDED UPDATES 


- Definitions
 - Consent
 - Incapacitation
 - Coercion
 - Dating/relationship violence
- Conflicts of interest
- Reasonable accommodations
- Version of policy to apply
- Expectation to act in good faith
- Presumption of non-responsibility
- Party response statements
- Statute of limitations

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RECOMMENDED UPDATES 

- Evidentiary Issues
 - Lie detector test results
 - Character evidence
 - Witness statements obtained by others
 - Medical evidence
 - Expert reports
 - Prior policy violation by respondent
 - Allegations of similar misconduct

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RECOMMENDED UPDATES 

- Amnesty
- Consensual relationships
- Flexibility
- Close of evidence
- Record interviews
- Non-punitive requirements even if no finding of responsibility
- Appeals

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RECOMMENDED UPDATES

- Role of Title IX Coordinator or Deputy
 - Ongoing communication with the parties throughout the complaint process
 - Provide notice of meetings to party attending meeting, including participants and purpose of the meeting
 - Notice of meetings to the other party
 - Notify parties of delays and reason for delays
 - Oversee process to ensure compliance with policy and designated time frames
 - Review investigation report, party responses, and rebuttals
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
 - Intake, investigate, adjudicate, and/or oversee appeal?
 - Beware of conflicts when filling multiple roles

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UPDATES FOR REVIEW AND CONSIDERATION


- Standard of evidence
- Opportunity to review and respond to information shared with decision-maker (sexual harassment)*
- Investigation report

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*Consider FERPA 59

UPDATES FOR REVIEW AND CONSIDERATION

- Role of investigator
 - Determine credibility and/or make recommendations?
 - If weigh in on credibility, must objectively evaluate parties and witnesses^{2017 Q&A}
 - Quasi adjudicator
 - Must provide parties with access to information used during decision-making process
 - Mandatory for sexual assault/VAWA cases
 - Must if Title IX^{2017 Q&A} (?)
 - Caution: If adjudicator disagrees with investigator's recommendation, could be raised in a lawsuit
 - End use of single investigator/adjudicator

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WAIT FOR FINAL REGULATIONS 

- Live hearings (if not already doing so)
- Review and respond to evidence not relied upon by decision-makers
- Scope of reports institution responds to
- Copy of investigation report

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SESSION 3: OVERSEEING THE COMPLAINT PROCESS




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CASE STUDY 

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CASE STUDY




- A sophomore named Abby stops by the university's walk-in counseling center. Abby meets with an available counselor, Sadie. Abby tells Sadie that she was recently sexually assaulted by a friend and is not sure how to handle it. Abby tells Sadie that she is having a hard time handling her responsibilities at school while coping with the assault.
- Sadie responds that the school can provide interim measures to help Abby, but only if she brings a formal complaint and participates in an investigation.
- What do you think of Sadie's response?

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RESPONDING TO A REPORT




- Types of complaint recipients:
 - Confidential Resources
 - Professional and pastoral counselors
 - Others with state-law privilege
 - Not required to report any information*
 - Other designated confidential resources?
 - Final regulations will impact to what extent institutions may use semi-confidential resources

*NOTE: These individuals may have other reporting requirements under Clery Act and/or state law

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RESPONDING TO A REPORT


- Types of complaint recipients (cont.):
 - Responsible Employees
 - Employee with authority or duty to redress sexual violence or who a student could reasonably believe has authority or duty
 - Required to report all relevant details
 - Risk in trying to limit this group of individuals
 - Stay tuned for final regulations



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DUTIES OF CONFIDENTIAL RESOURCES


- Discuss reporting options and rights - Title IX Coordinator, law enforcement, campus security
 - Offer to assist with reporting
 - Discuss school's prevention of and response to retaliation
- Discuss/offer support services and interim measures
- Disclose institution's limited ability to respond if request for confidentiality
- Discuss the importance of preserving evidence
- State law may require reporting of non-identifying information



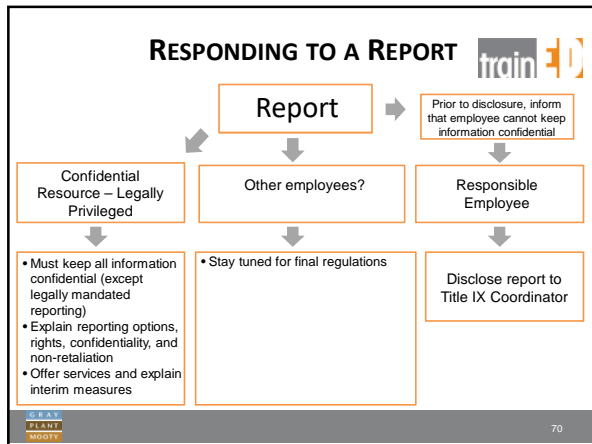
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DUTIES OF RESPONSIBLE EMPLOYEES

- If possible, before information revealed disclose:
 - Additional reporting requirement
 - Option to report to school and request confidentiality (school will consider but not guarantee)
 - Option for alleged victim to disclose to a confidential resource
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)



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CASE STUDY

- Abby tells Sadie that she will think about reporting to the Title IX Coordinator.

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TITLE IX COORDINATOR GUIDANCE

- Key points:*
 - Visibility of Title IX Coordinator
 - Notice of Nondiscrimination and contact information for the Title IX Coordinator
 - Website and prominent link from homepage

*2015 DCL on Title IX Coordinators

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CASE STUDY



- On October 9, Abby comes by your office. Abby tells you that she was sexually assaulted a few weeks ago. Abby says that she was at a party with another sophomore named Josh. Abby says that Josh gave her several tequila shots at the party. She tells you she went back to Josh's room after the party. Abby says that while they were kissing, Josh put his hand in Abby's pants and touched her vagina. Abby says that she said, "no, stop" and Josh stopped.

CASE STUDY




- Abby says that she has been having a really hard time in school since the party and has been missing classes.
- How do you respond to Abby?

RESPONSE OF TITLE IX COORDINATOR





- Immediate response
 - Protect the alleged victim
 - Notify alleged victim of his/her rights, including available interim measures and services
 - Notify alleged victim of right to report to law enforcement and offer to help with report
 - Follow-up with written notification of rights
 - Notify campus security, if necessary
 - Clery report, if necessary

**RESPONSE OF TITLE IX COORDINATOR:
INTERIM MEASURES**




- Interim measures
 - Change academic or extracurricular activities, living, transportation, dining, and working situations
 - Provide access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, and student financial aid
 - If school does not offer these services, enter into MOU with local victim services provider, if possible
 - Available regardless of whether investigation follows






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**RESPONSE OF TITLE IX COORDINATOR:
INTERIM MEASURES DURING INVESTIGATION**




- Interim measures available during an investigation
 - Periodically update complainant on status of investigation
 - Issue no-contact orders
 - Available to both parties^{2017 Q & A}
 - should not favor one party over the other
 - should make every effort to avoid depriving any student of his or her education
 - All others mentioned in previous slide






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WRITTEN NOTIFICATION TO ALLEGED VICTIMS—INTERIM MEASURES




- Written notification to alleged *victims* about—
 - Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations, if so requested by the alleged victim and if such accommodations are reasonably available, regardless of whether the alleged victim chooses to report the crime to campus police or local law enforcement


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WRITTEN NOTIFICATION TO ALLEGED VICTIMS FOLLOWING A REPORT 


- Written notification to alleged victims about (cont.)—
 - Possible sanctions and protective measures
 - Procedures individual should follow
 - Disciplinary procedures
 - Confidentiality
 - Existing resources for counseling, etc.
 - Interim measures




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WRITTEN NOTIFICATION TO ALLEGED VICTIMS FOLLOWING A REPORT 

- Inform alleged victims that school officials will take steps to prevent all forms of retaliation and take strong responsive action if it occurs
- When a school knows or reasonably should know of possible retaliation by other students, employees or third parties, it must take immediate steps to investigate and take appropriate action
- Title IX requires the school to protect the complainant and ensure his/her safety



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CASE STUDY 

- You tell Abby about the available academic assistance. You also discuss Abby’s other rights and options. Abby responds that she has a paper due next week in her English literature class, but has missed a few classes and is not sure she’ll finish in time. She asks if you could help with that. She also says that she’ll think about her options and get back to you.
- What do you do next?

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CASE STUDY



- You call Abby's English professor, Professor Simmons. You ask Professor Simmons if Abby would be able to have an extra week to finish her paper. Professor Simmons responds that she has a strict policy regarding deadlines and needs more information to determine if Abby's circumstances qualify her for an extension.
- Any concerns about how you handled this request?
- How do you respond to Professor Simmons?

FERPA



- Caution – **FERPA** may be implicated at various points during a sexual misconduct proceeding
- Whose education record?
 - Complainant's
 - Respondent's
 - Witnesses'



CASE STUDY



- You tell Professor Simmons that you are not able to provide more information and request that she please give Abby some flexibility on the deadline. Professor Simmons agrees to provide an extension for Abby on her paper.
- You follow-up with Abby to let her know about the extension.

CASE STUDY



- A few days later, you reach out to Abby to check in with her and answer any questions she may have about her options. Abby agrees to come to your office the next day.

CASE STUDY




- In your meeting the next day, Abby thanks you for your help with her English paper deadline. She then says that she does not want to pursue the complaint resolution process, but just wants Josh to know what he did was wrong.
- How do you respond to Abby?

REQUESTS FOR CONFIDENTIALITY OR NO ACTION




- OCR Guidance
 - 2001 Revised Guidance: Some guidance on request for no action (referred to as confidentiality)
 - 2017 Q & A: No confidentiality (must provide identities of parties involved in respondent's notice)
- Request to remain confidential and proceed with complaint resolution process
 - Now prohibited by 2017 Q & A
- Request for no action
 - "Whether or not a student files a complaint . . . or asks the school to take action" if the school "knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately." 2017 Q & A
 - Recommend following 2001 Revised Guidance and 2014 Q & A process

REQUESTS FOR CONFIDENTIALITY OR NO ACTION




- If an alleged victim asks that his/her name not be disclosed to alleged perpetrator or that no investigation or disciplinary action be pursued:
 - Inform the student that honoring the request may limit the school's ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator***
 - Explain that Title IX includes protections against retaliation and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs***




GRAY PLANT MOOTY ***2001 Revised Guidance, 2011 DCL, 2014 Q & A 88

REQUESTS FOR CONFIDENTIALITY OR NO ACTION




- If alleged victim still requests confidentiality/no action:
 - Determine whether the school can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence***




GRAY PLANT MOOTY ***2001 Revised Guidance, 2011 DCL, 2014 Q & A 89

REQUESTS FOR CONFIDENTIALITY OR NO ACTION





- Factors to consider
 - Seriousness of the alleged harassment***
 - Increased risk of additional violence by the alleged perpetrator
 - Other complaints about the same alleged perpetrator***
 - History of violence from arrests/records from prior school
 - Alleged perpetrator threatened further violence
 - Increased risk of additional violence under similar circumstances
 - Pattern of perpetration at a given location or with a certain group
 - Whether sexual violence was perpetrated with a weapon
 - Age of the alleged victim***
 - Whether school has other means to obtain evidence (security cameras/personnel or physical evidence)
 - Notice will still need to identify parties involved^{2017 Q & A}
 - Rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result***



GRAY PLANT MOOTY ***2001 Revised Guidance, 2011 DCL, 2014 Q & A 90

REQUESTS FOR CONFIDENTIALITY OR NO ACTION






- If school determines it can respect the request
 - Take all reasonable steps to respond to the complaint consistent with the request***
 - Limit effects of the conduct and prevent recurrence, consider whether to:***
 - Provide increased monitoring, supervision, or security at location/activities where misconduct occurred
 - Provide training/education materials to community
 - Change and publicize school's policies and procedures
 - Conduct climate surveys
 - Offer support services and interim measures for alleged victim
 - Counsel perpetrator if behavior affects many students

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***2001 Revised Guidance, 2011 DCL, 2014 Q & A

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REQUESTS FOR CONFIDENTIALITY OR NO ACTION



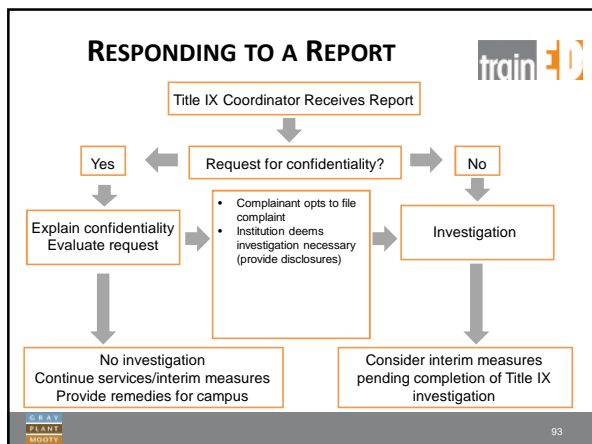
- If the school determines it cannot honor the request for confidentiality/no action
 - Inform the alleged victim prior to making the disclosure to the alleged perpetrator
 - Take whatever interim measures are necessary to protect the alleged victim
 - Honor any request from the alleged victim that the alleged perpetrator be informed that the alleged victim asked the school not to investigate or seek discipline
 - Commence investigation***



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*** 2001 Revised Guidance, 2011 DCL, 2014 Q & A

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CASE STUDY



- You explain to Abby that you will strive to accommodate her request to not proceed with a complaint resolution process, but that the school may not be able to honor her request.
- You also explain the informal resolution process.
- What factors might support the use of informal resolution here?

INFORMAL RESOLUTION



- Does not involve a full investigation and adjudication
- Both parties must voluntarily agree after receiving a full disclosure of the allegations and their options for formal resolution^{2017 Q & A}
- School must determine that the particular Title IX complaint is appropriate for such a process

INFORMAL RESOLUTION



- Factors to consider
 - Nature of alleged incident
 - Other allegations against same respondent
 - What sanctions would be necessary if the allegation is true
 - Whether complainant is willing to participate in a formal process
 - Whether institution could proceed with a formal process without complainant

CASE STUDY



- You talk to Abby about the informal resolution process and Abby says that she would like to try informal resolution.
- Anything else that you should discuss with Abby?

CASE STUDY




- After Abby leaves your office, you email Josh to set up a meeting the next day. You also draft a mutual no contact directive and send it to Abby. You let her know that you will be presenting the no contact directive to Josh the next day.

CASE STUDY



- When Josh comes to your office the next day, you tell him that an allegation has been made against him by Abby and that Abby would like to pursue informal resolution. Josh agrees to participate in the informal resolution process.
- You let Josh know that you will be in touch throughout the process. You also present Josh with the mutual no contact directive.
- Anything else you should discuss with Josh?


CASE STUDY



- A few days later, you receive an email from Josh. Josh says that he does not know what he is being accused of and wants a notice of Abby's allegations.
- How do you respond to Josh?

GRAY PLANT MOOTY 100


NOTICE TO RESPONDENT



- 2017 Q & A: Should provide written notice to the responding party, including
 - Sufficient details and with sufficient time to prepare a response before any initial interview
 - Identities of the parties involved
 - Specific section of the code of conduct allegedly violated
 - Precise conduct allegedly constituting the potential violation
 - Date of the alleged incident
 - Location of the alleged incident
 - Each party should receive written notice in advance of any interview with sufficient time to prepare for meaningful participation

GRAY PLANT MOOTY 101

CASE STUDY



- You give Josh notice of Abby's allegation, including the date and location of the alleged conduct and a reference to the provision of your policy prohibiting sexual assault. You also explain the formal process under your policy. You tell Josh that you will check in with him in a few days to discuss whether he is comfortable proceeding with the informal resolution.
- When you check in with Josh, he says that he will participate in the informal resolution.

GRAY PLANT MOOTY 102

CASE STUDY



- You prepare for an initial meeting with Abby to discuss what she is looking for in a resolution.
- What should you think about in preparation for the meeting?

INFORMAL RESOLUTION



- Issues to consider when using informal resolution process
 - Is there an admission from the respondent?
 - Will this be a final resolution?
 - Can the resolution be used in future discipline decisions?
 - What action is necessary to stop the harassment, prevent its recurrence, and address its effects?

CASE STUDY



- You meet with Abby to discuss what she is looking for in a resolution. Abby says that she does not want Josh to get in trouble, she just wants Josh to know how his actions affected her so that he does not hurt anyone else. Abby also says that she wants Josh to apologize. Finally, Abby says that she does not want to talk to or spend time with Josh anymore.
- You explain to Abby that you will be meeting with Josh and will then be back in touch with her. You remind Abby that informal resolution continues to be voluntary and that she can change her mind about whether she wants to continue the process.
- What options might address Abby's concerns?

CASE STUDY



- You meet with Josh to discuss what he will agree to in a resolution. Josh says that he wants to stay in school and also to avoid an investigation. Josh says he knows how these things go when male students are accused. He says he is fine agreeing to not have any contact with Abby going forward.
- You let Josh know you will be in touch. You remind Josh that informal resolution continues to be voluntary and that he can change his mind at any time.
- What do you think of your approach with Josh?
- What might an informal resolution look like?

CASE STUDY




- You meet with Abby again. Abby tells you that Josh is in her major and that it is common for them to be in the same classes. Abby says that she does not want to be in the same classes as Josh going forward. Abby also says that they have mutual friends who are all planning to live in Smith Hall next year. Abby says that she wants to pick her residence hall and not be in the same residence hall as Josh.
- What options might address Abby's concerns?

CASE STUDY



- You meet with Josh again. You tell Josh that Abby does not want to be in the same classes as Josh and that she would like to live in her choice of residence hall. You ask if Josh would be willing to give Abby preference on classes and next year's residence hall. Josh responds that if that is what it will take to make this go away, he will agree to that.
- What else should be included as part of the informal resolution?

CASE STUDY




- You draft an informal resolution as follows:
 - A No-Contact Directive will be put in place prohibiting Josh from having any contact with Abby. Josh agrees that he will select his residence hall for next year after Abby has selected her residence hall and will not be able to select the same residence hall as Abby. Abby will also register for classes first and Josh will not be able to register for any classes that Abby is registered for.
 - Abby will submit a written impact statement that Josh will read. Josh will then submit a written apology to Abby.
 - Josh will participate in a one-hour training regarding consent.
 - This is the final resolution of Abby's complaint against Josh.
- Any concerns with this resolution?

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CASE STUDY




- Josh and Abby both sign the agreement.

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CASE STUDY



- A few weeks later, a junior named Luke stops by your office. Luke tells you that he went to see Professor Meyer during her office hours a few days earlier. He says that Professor Meyer asked Luke to come to her side of her desk to look at something on her computer. Luke says that Professor Meyer got uncomfortably close to him while they looked at her computer. Luke tells you that as he was leaving, Professor Meyer told Luke that she was attracted to him and asked if Luke would want to come over to her house sometime. Luke says that Professor Meyer said they could open a bottle of wine and "see what happens."
- How do you respond?

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ALLEGATIONS AGAINST FACULTY



- Applicable policies
 - Sexual misconduct policy
 - Consensual relationship policy
 - Faculty handbook
 - Other
- Applicable provisions
 - Notice required to faculty member
 - Standard of evidence
 - Faculty grievance procedure
 - Potential sanctions

ALLEGATIONS AGAINST FACULTY



- Issues to consider
 - What will the faculty member's status be during the investigation?
 - Who will investigate?
 - Who will adjudicate?
 - Who will oversee the complaint process?
 - What supportive measures will you offer to the alleged victim?
 - If the faculty member is found responsible, what sanction will you impose?

CASE STUDY



- Over winter break, your institution runs a youth basketball camp. Coach Bart, an assistant basketball coach, calls you one afternoon during the camp. Coach Bart says that he is concerned that one of the campers is possibly being sexually abused by the camper's club basketball coach. Coach Bart says that the club coach frequently puts his arm around the camper and finds other ways to have physical contact with the camper. Coach Bart also says that he has noticed that the camper often tries to move away when the club coach gets close to him. He also tells you that the camper's parents could not pick him up yesterday and that the camper seemed desperate to avoid accepting a ride home from the club coach.
- How do you respond?

MANDATORY REPORTER LAWS



- All states have statutes identifying who is required to report suspected child abuse to an appropriate government agency
- Who is considered a mandatory reporter depends on state law, but generally includes
 - Social workers
 - Teachers, principals, and other school personnel
 - Doctors, nurses, and other healthcare professionals
 - Counselors, therapists, and other mental health professionals
 - Child care providers, such as employees at a daycare facility
 - Medical examiners or coroners
 - Law enforcement
- Higher education employees are included in some states

WHEN MUST YOU REPORT?



- Varies from state to state
- Generally when reporter, in his or her official capacity, suspects or has reason to believe that a child has been abused or neglected
 - Includes when reporter has knowledge of or observes a child being subjected to conditions that would reasonably result in harm to a child
 - Does not require reporter to witness abuse
- Reports are typically required “immediately” – often within 24 hours

CHILD ABUSE AND NEGLECT



- Generally includes physical abuse, sexual abuse, emotional abuse, and neglect
- May require a report about an alleged victim that is currently an adult
 - Required report when disclosure is necessary to protect another child
 - Required report when alleged abuser holds a position of trust or authority related to children
- Required report if a child has been neglected or abused within the preceding three years

WHERE AND WHAT TO REPORT



- To a government authority (CPS; local law enforcement; statewide hotline; state website)
- Some states require a written report following an oral report
- Report the facts and circumstances that lead you to suspect a child had been abused or neglected
 - Do not need to prove that the abuse or neglect occurred

IMMUNITY



- All states provide some form of immunity for individuals who report suspected incidents of abuse and neglect in good faith

CASE STUDY



- Coach Bart calls you again two days later. He says that he overheard the same camper talking to one of the camper's friends. Coach Bart tells you that the camper told his friend that his club coach sometimes watches him shower after games.
- How do you respond?

CASE STUDY



- On March 13, a senior named Chloe comes to your office. Chloe reports that her friend Madison was sexually assaulted by Josh last month. Chloe says that Josh took Madison back to his place after a party and then raped her. Chloe tells you that Josh needs to be removed from campus immediately.
- How do you respond to Chloe?

CASE STUDY



- You reach out to Madison and ask her to come to your office the next day. Madison tells you that she was at a party with Josh on a Saturday in February. Madison says that Josh pressured her to drink and that they later left the party together. Madison says that Josh raped her when she was too drunk to consent.
- You provide Madison with information about her rights and options. Madison says that she wants to file a complaint against Josh and would consider an informal process.
- How do you respond?


CASE STUDY



- You meet with Josh the next day to inform him of Madison's complaint. You give Josh written notice of Madison's allegations.


Madison alleges that you engaged in sexual assault in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On February 9, 2019, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

CASE STUDY 


- Josh says that he would like to pursue an informal resolution.
- Do you proceed with an informal resolution process?

GRAY PLANT MOOTY 124

CASE STUDY 

- You email Josh and Madison separately and let them know that you have determined that informal resolution is not appropriate in this case. Josh responds and asks why he was able to do informal resolution last time, but not this time.
- How do you respond?


GRAY PLANT MOOTY 125

CASE STUDY 

- You tell Josh that because this is the second allegation against him and because of the seriousness of the allegation, informal resolution is not an option in this matter. You inform Josh that Madison's complaint will proceed through a formal resolution process.

GRAY PLANT MOOTY 126

CASE STUDY



- The next day, you receive an email from Josh with the subject line “Conflict of Interest” Josh’s email says:


Dear Coordinator,

The Policy states that no one with a conflict of interest or bias will take part in the complaint resolution process. You are aware of the allegations previously brought against me and are accordingly biased against me in this process. I am requesting that you be removed from this process.


Sincerely,
Josh
- How do you respond?

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CONFLICTS OF INTEREST




- VAWA regulations state that a prompt, fair, and impartial proceeding includes a proceeding that is conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- Disclose and manage conflicts of interest
- Have a process for requesting disqualification of Title IX Coordinator, investigator, or adjudicator



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CASE STUDY



- Your policy states that the Dean of Students will resolve requests to remove the Title IX Coordinator and accordingly you forward Josh’s email to the Dean of Students. The Dean of Students responds to Josh that because of your limited role in the process, your knowledge of Abby’s allegation against Josh is not a conflict of interest and you will not be removed from the process.

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MOOTY
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CASE STUDY



- The investigation begins the week of March 25. You notify the school's investigator that he can proceed with the investigation. You reach out to Madison and Josh and schedule interviews for March 27 and March 29 respectively. You confirm with the investigator that the interviews have been scheduled.
- What do you do next?

NOTICE OF MEETINGS



- A prompt, fair, and impartial proceeding includes a proceeding that is—
 - Conducted in a manner that—
 - Includes timely notice of meetings at which the accuser or accused, or both, may be present



ADVISORS



- Advisors of Choice
 - Institutions are prohibited from limiting the choice of advisor, or an advisor's presence for either the accuser or the accused, in any meeting or institutional disciplinary proceeding
 - Sexual assault/VAWA cases (required)
 - May limit role
 - No interference
 - No direct communication (orally or in writing) with Title IX Coordinator, Deputy Coordinator(s), Investigator(s) Adjudicator(s), Appeal Officer(s)
 - Must keep information confidential
 - Require advisor to sign document acknowledging role in process and restrictions on conduct

ADVISORS



- Institutions may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation
- With respect to restrictions on advisor participation, must inform parties of limitations in advance

CASE STUDY




- On March 28, the investigator calls you to let you know that he interviewed Madison the previous day and is planning to interview Josh the next day.
- What should you discuss with the investigator?

NOTICE TO RESPONDENT



- 2017 Q & A: Should provide written notice to the responding party, including
 - Sufficient details and with sufficient time to prepare a response before any initial interview
 - Identities of the parties involved
 - Specific section of the code of conduct allegedly violated
 - Precise conduct allegedly constituting the potential violation
 - Date of the alleged incident
 - Location of the alleged incident
 - Each party should receive written notice in advance of any interview with sufficient time to prepare for meaningful participation


CASE STUDY



- You ask the investigator if there is anything additional that should be included in the notice of allegations to Josh. The investigator responds that Madison told him that a few weeks before the alleged assault, she was hanging out with Josh. Madison said that on that occasion, Josh tried to put his hand in her pants, but she stopped him.

GRAY PLANT MOOTY 136


CASE STUDY



- Do you add the attempt to the notice of allegations?

GRAY PLANT MOOTY 137

CASE STUDY



- You provide Josh with an updated notice of allegations.
 Madison alleges that you engaged in sexual assault in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:
 - On January 25, 2019, in Madison’s dorm room, you attempted to engage in sexual contact with Madison without her consent.
 - On February 9, 2019, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

GRAY PLANT MOOTY 138

CASE STUDY



- Also on March 28, you receive an email from Josh. Josh informs you that he is autistic and is requesting several accommodations during the complaint resolution process. Josh first says that he will need to bring two advisors to his interview: an attorney and also an Autism Spectrum Disorder Specialist.
- How do you respond?

ACCOMMODATIONS



- Provide reasonable accommodations to an individual with a disability who requests an accommodation necessary to ensure an equal opportunity to participate in the complaint resolution process.

CASE STUDY



- What if Josh asked to bring a friend and an attorney?
- What if he asked to bring two attorneys?

CASE STUDY



- Josh also requests that his advisors be allowed to speak on his behalf during the interview. Josh explains that he sometimes misunderstands what people are saying to him and sometimes has trouble communicating his thoughts.
- How do you respond?

CASE STUDY



- You respond to Josh that you will allow him to bring two advisors. You also inform him that you are not prepared to grant his request to allow his advisors to speak on his behalf at this time, but that you would like to work with him to find an accommodation that is closer to the school's complaint resolution process. You suggest that Josh's advisors would be able to interject during the interview if Josh misunderstood a question or if a question needs to be rephrased. You also remind Josh that he may take breaks at any time during his interview.

CASE STUDY



- Josh agrees that allowing his advisors to interject is a reasonable accommodation, but says that he is concerned about his ability to answer questions on the spot. Josh says that it is very stressful for him and that he would like the questions in advance so that he can respond in writing.
- How do you respond?

CASE STUDY



- You respond that you are not prepared to grant his request for the questions in advance at this time, but that you would like to continue working with him to find an accommodation. You suggest that Josh could submit his initial account of the alleged incidents in writing and that the investigators would read that and then ask only follow-up questions in the interview.

CASE STUDY



- Josh agrees to submit his initial account in writing and to respond to follow-up questions orally. Because of the time that it took to determine the accommodations, you have rescheduled Josh's interview for April 4. This causes a delay in the timeline provided by your policy. You email Madison to let her know of the new date of the investigator's meeting with Josh.
- Anything else you should do?

NOTICE OF DELAY



- A prompt, fair, and impartial proceeding includes a proceeding that is—
 - Completed within reasonably prompt time frames designated by an institution's policy, including a process that allows for the extension of time frames for good cause with written notice to the accuser and the accused of the delay and the reason for the delay



CASE STUDY



- During the initial interview with Josh, you receive a call from the investigator. The investigator tells you that the interview has been going on for 25 minutes and Josh has requested three breaks already. The investigator tells you that each time, he had asked Josh a question and Josh responded that he needed a minute to speak with his advisors. The investigator tells you that he has been providing these breaks, waiting in the hall until Josh alerts him that he is finished speaking with his advisors.
- How do you respond?

CASE STUDY



- The next day, the investigator stops by to discuss his interview with Josh. The investigator tells you that Josh provided an account of Madison performing oral sex on him, but that Madison did not include that in her account. The investigator tells you that Josh said that he and Madison had been kissing and that Madison then undid his pants button and pulled his pants and underwear down. Josh said that Madison then began performing oral sex on him.
- What do you do next?

CASE STUDY



- The investigator provides you a list of witnesses that he would like to interview. One of the witnesses, Jen, was identified by Madison. Madison told the investigator that she saw Jen at the party just before leaving with Josh. You email Jen asking to schedule an interview with the investigator.
- Jen responds: "I don't have any information that would be helpful."
- How do you respond?

CASE STUDY



- You receive a call from a local police officer. The officer informs you that Madison has filed a report with the police accusing Josh of criminal sexual assault. The officer requests that you send the records from Josh's and Madison's interviews with the investigator.
- How do you respond?

FERPA



- Disclose without consent
 - Disclosure is to comply with a judicial order or lawfully issued subpoena
 - Must make reasonable effort to notify the student of the order or subpoena in advance of compliance, so that the student may seek protective action
 - Exception: Do not need to notify student for certain types of subpoenas related to law enforcement purposes (generally if court has ordered that existence or contents of the subpoena not be disclosed)

CASE STUDY



- You respond that you will need a subpoena to release the records. The officer then informs you that the police will be gathering evidence and asks that the school pause its process so as not to interfere with the criminal investigation.
- What do you do next?

CASE STUDY



- When the police complete their investigation, Madison sends you and the investigator a copy of the police report. You and the investigator review the report. The parties' statements to the police are not entirely consistent with what the parties told the investigator.
 - Madison says that she drank more in her interview with the police than she told the investigator.
 - Josh does not describe the oral sex in his interview with the police.
- What do you do next?

CASE STUDY



- Chloe (the student that originally reported to you) posts on a student forum about Josh's alleged sexual assault of Madison. Chloe says that she knows of another victim who is not willing to be named. Chloe calls on the school to get "this rapist" off campus. Chloe also says "I know there are other victims out there. Please, come forward and report what happened to you. We will support you."
- What do you do next?

CASE STUDY



- You meet with Chloe the next day. Chloe asks you to please keep her informed of the progress of the investigation. Chloe says that she has a personal interest as the one who reported Josh and also that she has received multiple requests from people on campus for her to let them know the outcome of the investigation.
- How do you respond to Chloe?

CASE STUDY



- You tell Chloe that FERPA prevents you from sharing the status of the investigation. You also ask Chloe if she can share the name of the other alleged victim. Chloe says that she cannot tell you that person's name.
- After she leaves your office, Chloe updates her post online to discuss the school's lack of transparency and its willingness to "protect rapists."
- What do you do next?

CASE STUDY



- Josh emails you a few days later. He is in an acapella group on campus, but was recently suspended by the group's president. Josh says that Chloe's online post is causing a lot of problems.
- How do you respond to Josh?

CASE STUDY



- Josh also asks to be moved to a different residence hall. Josh lives in a suite with three other students. Josh says that his roommates are not supportive of him in this investigation and that he cannot live in the hostile atmosphere.
- How do you respond to Josh?

CASE STUDY



- That same day, one of Josh's roommates, Austin, stops by your office. Austin explains that he is very uncomfortable living with Josh. He does not want to live in the same suite as Josh and also does not want any contact with Josh going forward. Austin asks what the school is doing to protect the campus from Josh.
- How do you respond to Austin?

CASE STUDY



- The investigator calls you after his follow-up interview with Josh. The investigator tells you that Josh told him that Madison was hanging out in the lounge right outside his room for several hours last week. Josh also said that he was at the gym the next day and that Madison came and used the machine right next to him. Josh said that Madison saw that it was him, but just kept working out. Josh said that he was uncomfortable and so he packed up and left the gym. Finally, Josh said that a mutual friend, Kayla, saw him after class a few days ago. Josh said that Kayla was having a party the next night at her apartment. Josh said that Kayla told him "Madison wanted me to tell you that you can't come to the party because she is going." The investigator says that Josh alleged that Madison's actions were retaliation for his participation in the investigation and violations of the no-contact directive.
- What do you do next?

CASE STUDY



- The investigator also tells you that Josh gave him a screenshot of some text messages between Josh and Madison that discuss their sexual contact on February 9. The investigator says that when he asked about these messages, Madison told him that there are more relevant messages after the last one in the screenshot, but that she got a new phone last month and does not have the messages anymore. The investigator tells you that Josh says that his phone auto-deletes after 30 days, so he does not have any additional messages either. The investigator asks whether he should include the screenshot in his investigation report.
- How do you respond?

CASE STUDY



- The investigator sends you a final report. The report has several attachments, including the police report, security footage from campus showing Josh and Madison walking to Josh's room on February 9, the screenshots of text messages provided by Josh, and one of Madison's journal entries provided by Madison. After you review the investigation file, you email Madison and Josh to set up times for them to review it.

CASE STUDY



- Both parties submit a written response to the report. In Madison's response, Madison states: "I know for a fact this is not the first time Josh has done this. Last fall, he got Abby drunk at a party and sexually assaulted her. Please get this predator off our campus before he does this to someone else."
- What do you do next?

CASE STUDY



- In Josh's written response, he says that additional entries from Madison's journal should have been included in the report. Josh says that Madison says in the report that she journals every day. Josh says that he wants to see the journal entries from February 10 and March 7 (the day Madison found out Josh had sex with someone else).
- How do you respond?

CASE STUDY



- You ask the investigator to reach out to Madison regarding the additional journal entries. In her call with the investigator, Madison says that she does not want to share anything additional from her journal. Madison explains that her journal is very private and she is not comfortable with additional entries being included in the investigation. After the call, Madison sends an email to the investigator that states "I looked at those entries and there was nothing related to this investigation."
- What do you do next?

CASE STUDY



- The investigator submits an amended investigation report with the information related to Madison's journal entries.
- What do you do next?

CASE STUDY



- You provide the parties an opportunity to review the amended report.
- Josh submits a written response to the amended report.

CASE STUDY



- After Josh submits his response to the amended report, he asks when the hearing will be scheduled. You explain that your process does not include a hearing and point Josh to the relevant portions of your policy.
- Josh responds and demands that you schedule a hearing with an opportunity to cross-examine. Josh quotes the proposed regulations in his email.
- How do you respond?

CASE STUDY



- As the adjudicators are considering the investigation file, you receive multiple emails from different students with the subject line "Unacceptable"
- Each email states:
Dear Coordinator,
There is a rapist on our campus. Madison courageously reported this monster to you and yet he still remains on our campus. He lives in our residence hall, he goes to our gym, he eats in our cafeteria. We cannot accept this. We demand that you remove Josh from campus immediately.
- What do you do next?

CASE STUDY



- Abby stops by your office the next day. Abby says that she has had time to process what happened to her and now, seeing that it happened to someone else, she feels she needs to do something. Abby says she would like to pursue an investigation so that Josh can be removed from campus. Abby also says that Josh clearly has an alcohol problem and that was not addressed in the informal resolution.
- How do you respond to Abby?

CASE STUDY



- The adjudicators conclude that there is sufficient evidence to determine that it is more likely than not that Josh violated the policy.
- The adjudicators call you to discuss what sanction is appropriate for Josh. They ask if there is any disciplinary history that they should consider.
- How do you respond?

CASE STUDY

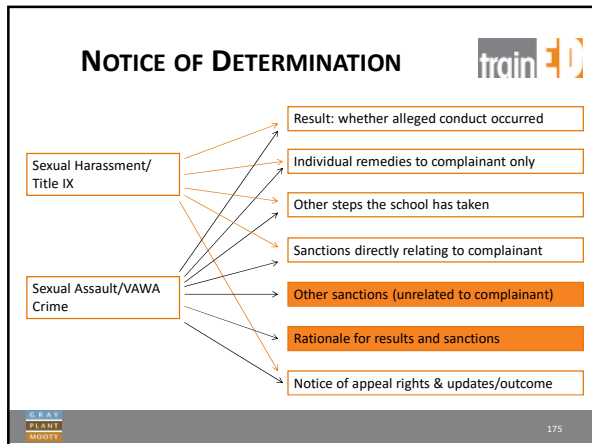


- The adjudicators decide to suspend Josh. They provide you with their notice of determination.

NOTICE OF DETERMINATION



- Must provide simultaneous written notice to the parties of:
 - The result of the complaint
 - Sanctions related to complainant (to both parties)
 - In case of sexual harassment, include sanctions unrelated to complainant only in respondent's notice
 - In case of sexual assault or VAWA crime, provide all sanctions to both parties
 - Individual remedies offered or provided to the complainant (in complainant's notice only)
 - Notice of the *rationale* for the result and sanctions (sexual assault and VAWA crimes only)
 - Other steps the school has taken to eliminate the hostile environment and prevent recurrence
 - Any appeal rights and procedures, as well as updates following appeal



NOTICE OF DETERMINATION: DELIVERY

- Must be in writing**
- Must be delivered simultaneously**
 - Email
 - In-person meetings to deliver hard copies of written notice
- Best practice: Let parties know ahead of time when decision will be delivered

* Mandatory for SA/VAWA
** Mandatory for both


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APPEALS


- Not required, but adds layer of due process
- When available must:
 - Be prompt and equitable (timelines for each stage)
 - Follow grounds for appeal as outlined in policy
 - Typical grounds include:
 - New evidence
 - Unfair investigation/hearing
 - Failure to follow policy
 - Sanctions too severe/lenient
- Individuals responsible for appeal must receive specialized training
- May limit right to only respondent^{2017 Q & A}

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APPEALS




- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
 - Right to advisor*
 - Notice of meetings*
 - Access to information used by appeals panel/individual*
 - “Must” provide access if Title IX 2017 Q & A
 - Simultaneous notice of outcome**




* Mandatory for SA/VAWA
** Mandatory for both

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ADDITIONAL REQUIRED POST-DETERMINATION NOTICES




- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
 - Any change to the results that occurs prior to the time that such results become final*
 - When such results become final*
- For Title IX, your institution must provide concurrent written notice of—
 - The outcome of any appeal**



* Mandatory for SA/VAWA
** Mandatory for both

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CASE STUDY



- A few months after you email the notice of determination to the parties, the final regulations are published. They require a live hearing with cross examination in all sexual harassment cases.
- The next day, Josh emails you and demands that a hearing be set. Josh says that his case was decided without the due process required by the law and the suspension he received is invalid without a hearing and an opportunity to cross-examine Madison.
- How do you respond?

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Q & A

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UPCOMING TRAININGS

trainED

- **Trainings for individuals with heightened responsibility:**
 - **8/7/19: Annual Title IX/VAWA Investigator and Adjudicator Training**
 - **8/29/19: Title IX/VAWA Hearing Panel Training**

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ON DEMAND TRAININGS

trainED

- **Available on-demand:**
 - Annual Trauma Informed Training for Investigators and Adjudicators
 - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
 - Annual Training for ADVANCED Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Hearing Panel Training
 - Trauma Informed Training for First Responders, Confidential Resources, and Campus Security
 - Making Your Sexual Misconduct Policy a 10
 - Title IX/VAWA Training for Chief Academic Officers
 - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
 - Compliance Update: New VAWA Guidance
 - Senior Leadership Training
 - Transgender Students and Employees Training
 - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements
 - Confidential Resources Training
 - Attorneys Serving as Advisors
 - Panel Discussion on Interviewing Survivors of Sexual Assault
 - Fundamentals of FERPA

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ON DEMAND TRAININGS



▪ Available on-demand:

- Drafting Your Notice of Determination
- Post-VAWA Annual Security Report Drafting
- Additional Requirements Under Minnesota's Campus Sexual Assault Law
- Drafting Effective and Compliant Investigation Reports
- Title IX Coordinator Training: Duties Beyond Sexual Assault
- Title IX/VAWA Training for Adjudicators
- Title IX/VAWA Investigator Training
- Train the Trainer: Title IX/VAWA Training for Coaches and Athletic Directors
- Panel Discussion on Title IX Recordkeeping Requirements and Best Practices
- Complying with the NCAA Sexual Violence Policy – Part 1
- Complying with the NCAA Sexual Violence Policy – Part 2
- Unique Challenges in Responding to Allegations of Domestic Violence, Dating Violence, and Stalking

▪ Prevention programs for students & employees—customizable online modules
