



# **TITLE IX COORDINATOR TRAINING**

**Day One | July 24, 2025**

# I N T R O S



**Andrew Stammel**  
Associate Counsel  
Student Affairs Practice Group  
SUNY Office of General Counsel



**Ryan Ribeiro, M.A.**  
Assistant Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



# DAY 1 AGENDA

## TITLE IX OVERVIEW

- Statutory language & implementing regulations
- Misc: Athletics, pregnancy, & parenting
- Title IX history

## TITLE IX 2020 FINAL RULE

- Scope & jurisdiction
- Definitions
- Due process
- Other federal laws

## NEW YORK STATE LAW

- 129-B Enough is Enough
- GENDA & SONDA





# **TITLE IX OVERVIEW & KEY CONCEPTS**







The State University  
of New York

# **TITLE IX: HISTORICAL CONTEXT**

“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 OVERVIEW

## APPLICATION

**Recipient:** any entity which operates an education program or activity and receives federal funding.

**Program or Activity:** all operations of the college or university



# EDUCATION PROGRAM OR ACTIVITY INCLUDES

## **ACCESS TO COMPARABLE CLASSES & FACILITIES**

- Counseling & guidance
  - Employment
- Discrimination in Admissions & Recruitment
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner
  - Health insurance
- Deny any person any such aid, benefit, or service

Subject any person to separate or different rules of behavior, sanctions, or other treatment;

- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

# EXCEPTIONS TO TITLE IX APPLICATIONS (SEPARATION IS PERMITTED HERE)



- Social Fraternity & Sorority Admission (Sec. 106.14)
- Separate but comparable housing, toilet, locker room, & shower facilities by sex. (Sec. 106.32-106.33)
- Contact sports & ability grouping in physical education classes (106.34)
- Separate Athletics teams where selection is based on competitive skill, or the activity is a contact sport (106.41)
- Human Sexuality Classes (106.34)
- Choruses (106.34)





# ATHLETICS

- Non-Discrimination
- Scholarship Opportunities
- Equal Opportunity in Athletics:
  - Accommodate interests & abilities of both sexes;
  - Equipment & supplies;
  - Scheduling;
  - Travel & per diem;
  - Coaching & tutoring;
  - Compensation of coaches;
  - Locker rooms, practice, & competition facilities;
  - Medical & training facilities;
  - Housing & dining facilities;
  - Publicity

# MARITAL OR PARENTAL STATUS

- Admissions: pre-admission inquiries
- Equal Treatment: concerning parental, family, or marital status may treat students differently by sex.
- Discrimination: because of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom
- Physician Certification
- Separate sections
- Leave
- Employment Actions
- Employee pregnancy





## COMPLAINT PROCEDURES

- Adopt & publish a Notice of Non-Discrimination & grievance procedures for prompt & equitable resolution of student & employee complaints alleging any action prohibited by Title IX.



## DESIGNATION OF RESPONSIBLE EMPLOYEE (TIXC)

- Designate at least one employee to coordinate its efforts to comply with & carry out its responsibilities under Title IX (TIXC)
- Includes investigation of any complaint alleging any actions which would be prohibited by Title IX.



# TITLE IX COORDINATOR DUTIES:

- Disseminate & implement policies;
- Provide training;
- Receive & handle complaints;
- Oversee an investigation;
- Maintain records;
- Identify trends & areas for improvement;
- Advise on Title IX issues;
- Work with stakeholders across campus.





# **TITLE IX: HISTORICAL CONTEXT**



# **TITLE IX TIMELINE: 1970'S-1990'S**

- **1972:** Title IX Adopted- focus on Athletics & expanding opportunity
- **1975:** Rules implement Title IX & schools have until 1978 to comply
- **1978:** Alexander v. Yale
- **1990's:** Sexual Harassment Liability
  - Franklin v. Gwinnett County Public Schools
  - Davis v. Monroe County Board of Education



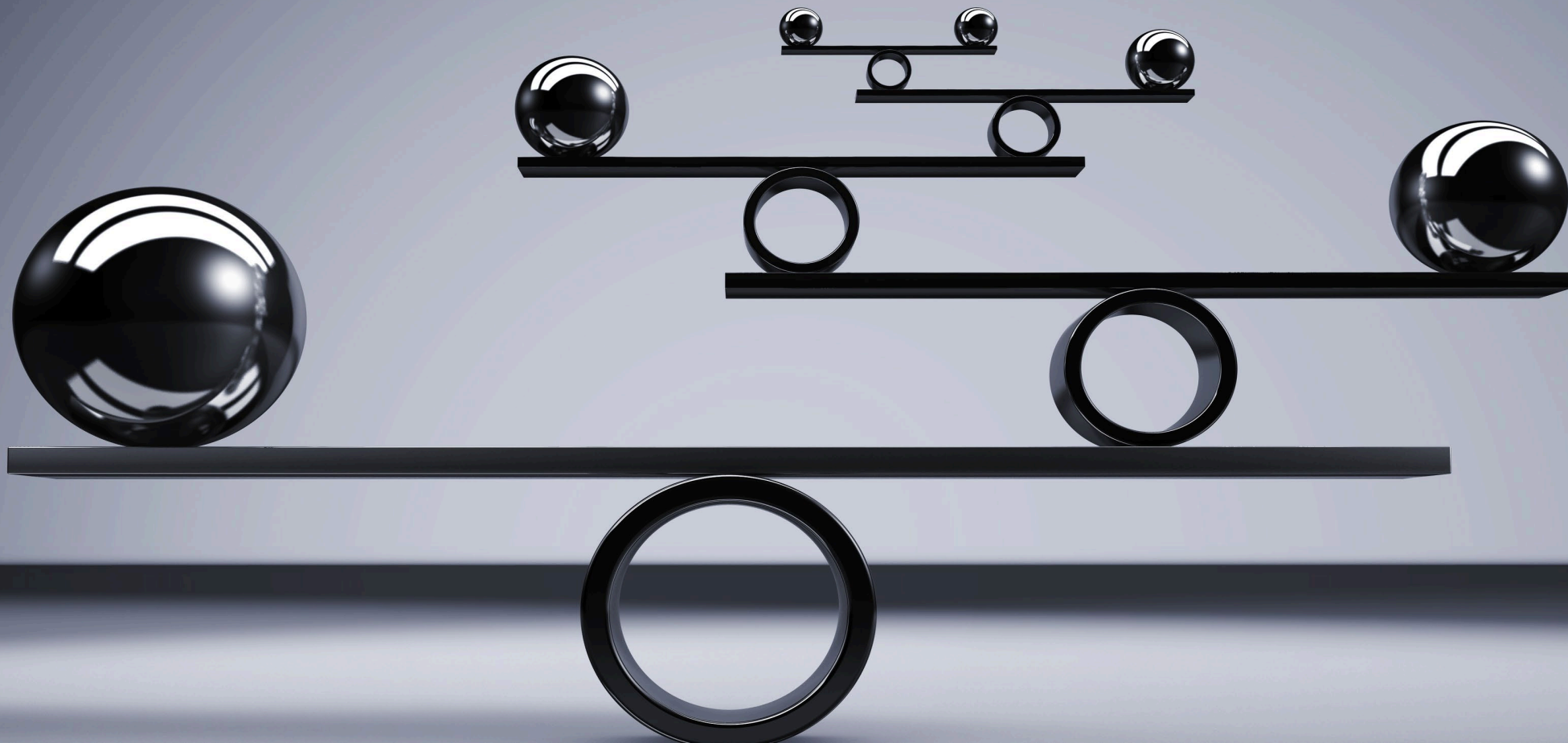


# **TITLE IX: HISTORICAL CONTEXT**



# **TITLE IX TIMELINE: 2011-PRESENT**

- **April 2011:** Obama's Dear Colleague Letter
- **May 2020:** Title IX Final Rule
- **2016-2026:** Shifting Policies Related to Transgender Students
- **August 2024:** Biden-era 2024 Final Rule Implemented
- **January 2025:** Biden-era 2024 Rule is Vacated-return to 2020

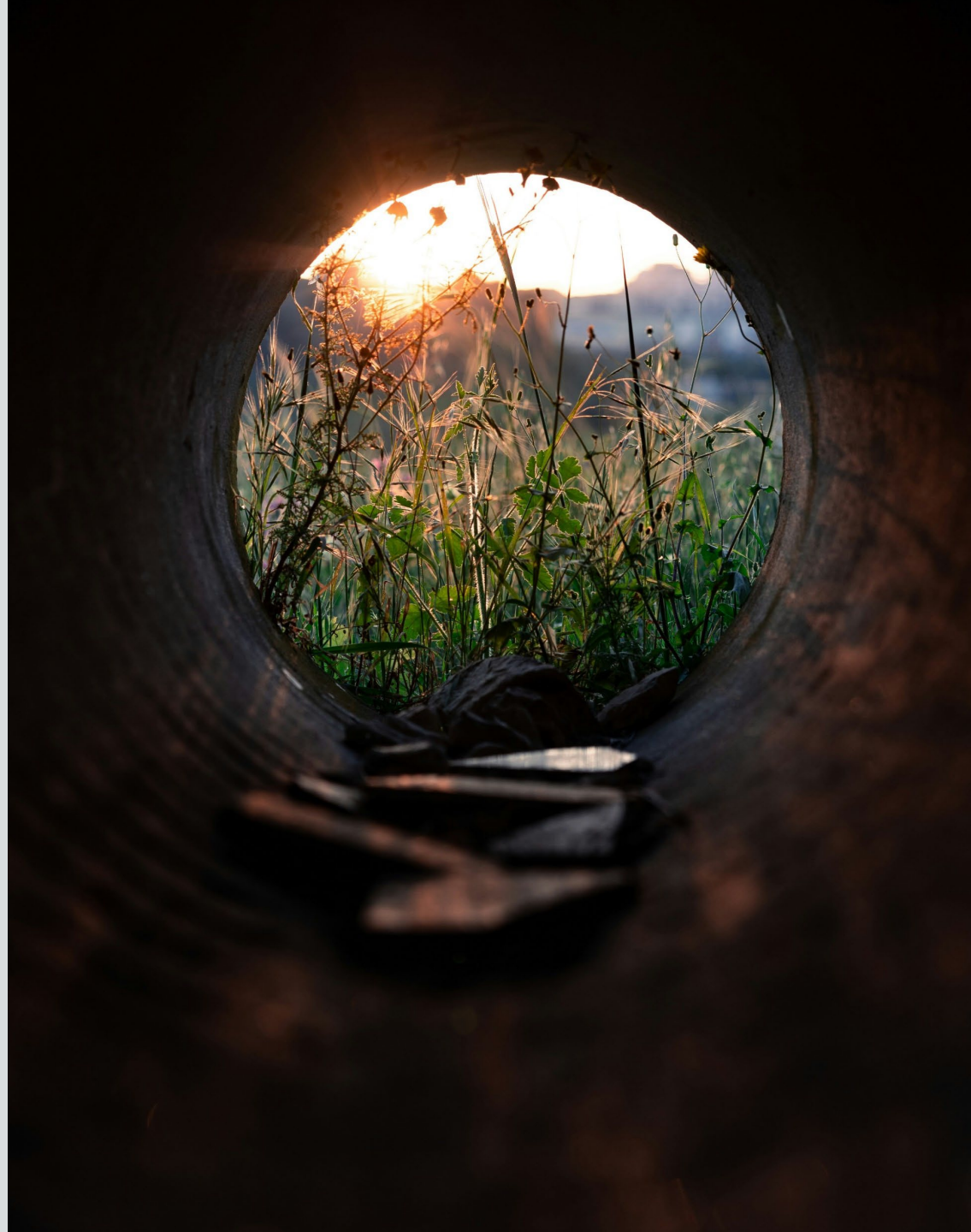


# 2020 FINAL RULE

*Introduction to the Title IX Final Rule*

# SCOPE OF FINAL RULE

Sexual harassment in an  
education program or  
activity of the  
institution against a  
person in the United  
States.



# SEXUAL HARASSMENT

Sex-based harassment prohibited by this part (Title IX) is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in the scope, that is:

1	2	3
<b>QUID PRO QUO HARASSMENT</b>	<b>HOSTILE ENVIRONMENT HARASSMENT</b>	<b>SPECIFIC OFFENSES</b>





# **QUID PRO QUO HARASSMENT**

“An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct”



# QUID PRO QUO HARASSMENT

## AN EMPLOYEE OF THE INSTITUTION

This categorization includes, but is not limited to:

- Faculty (full-time & adjunct),
- Administrators,
- Practitioners,
- Coaches,
- Members of institutional leadership (if considered to provide aid, benefit, or service)

## ARE STUDENTS INCLUDED IN THIS CATEGORY OF QUID PRO QUO HARASSMENT?

- Generally, no. Students are intended as the beneficiaries of the aid, benefits, or services of the institution's education program or activity.

# HOSTILE ENVIRONMENT HARASSMENT

## SEVERE AND PERVASIVE

- A single serious incident may be severe but not pervasive, as required.
- Pervasive conduct may create a hostile environment, even if no single occurrence of conduct is severe.
  - Harassment in hallways
  - Graffiti in public areas
  - Harassment during extracurricular education programs or activities.

## SUBJECTIVELY AND OBJECTIVELY OFFENSIVE

- Subjective offensiveness of sex-based harassment is necessary to determine hostile environment.
  - Must be supported by evidence
  - Cannot prove hostile environment on its own.
- Objective offensiveness is assessed through the perspective of a reasonable person in the complainant's position.

# HOSTILE ENVIRONMENT HARASSMENT: TOTALITY OF THE CIRCUMSTANCES

When a standard is based on the “**totality of the circumstances**,” it means that a determination must be made in consideration of all the facts & all the available information.

Requires consideration of all relevant evidence & the five factors of the fact-specific inquiry.





# ***“EFFECTIVELY DENIES”* HOSTILE ENVIRONMENT HARASSMENT**

Evidence required to support complainant’s claim that ability to participate in or benefit from education program or activity is “effectively denied” because of alleged conduct.

No specific type of harm required for a hostile environment to exist.

Whether alleged conduct effectively denies a person equal access to an institution’s education program or activity is fact-specific analysis & requires consideration of all relevant evidence.



# ***FACT SPECIFIC INQUIRY:*** **CONSIDERATION FACTORS**

Whether a hostile environment has been created is a **fact-specific inquiry** that includes consideration of the following **five** factors:

## **FACTOR 1**

The degree to which the conduct affected the complainant's ability to access the institution's education program or activity

## **FACTOR 2**

The type, frequency, & duration of the conduct

## **FACTOR 3**

The parties' ages, roles within the institution's education program or activity, previous interactions, & other factors about each party that may be relevant to evaluating the effects of the conduct



# ***FACT SPECIFIC INQUIRY:*** **CONSIDERATION FACTORS**

## **FACTOR 4**

The location of the conduct & the context in which the conduct occurred

## **FACTOR 5**

Other sexual harassment in the institution's education program or activity



- The Department crafted the definition of sex-based harassment & the definitions of the four included specific offenses to align with the Clery Act.
- Do not need to be severe or pervasive or subjectively & objectively offensive to constitute sex-based harassment.
- Do not have to satisfy the element of unwelcomeness.
- A hostile environment may need to be addressed even if a specific offense occurs outside of an education program or activity.
- Other sex offenses as defined by State law may meet the definition of hostile environment harassment if they satisfy all elements of the definition.

## **1. SEXUAL ASSAULT**

## **2. DATING VIOLENCE**

## **3. DOMESTIC VIOLENCE**

## **4. STALKING**

# **SPECIFIC OFFENSES**



# 1. SEXUAL ASSAULT

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation (FBI).”  
20 U.S.C. 1092(f)(6)(A)(v)

Offenses included:

- Rape
- Criminal Sexual Contact
- Incest
- Statutory Rape

HOW DOES YOUR STATE DEFINE CONSENT?



## 2. DATING VIOLENCE

### VIOLENCE COMMITTED BY A PERSON:

- a. Who is or has been in a social relationship of romantic or intimate nature with the victim; **AND**
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; &
  - The frequency of interaction between the persons involved in the relationship.

# 3. DOMESTIC VIOLENCE

## FELONY OR MISDEMEANOR CRIMES OF VIOLENCE COMMITTED BY

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.





# 4. STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

## CONSIDERATION FACTORS OF CONDUCT:

- Duration
- Frequency
- Intensity

TO:

- Watching
- Following
- Using a tracking device
- Monitoring online activity
- Unwanted contact
- Property invasion or damage
- Hacking accounts
- Threats
- Violence
- Sabotage
- Attacks

TACTICS USED MAY INCLUDE BUT ARE NOT LIMITED



JURISDICTION





# DEFINING EDUCATION PROGRAM AND/OR ACTIVITY

All operations of:

- A college, university or other postsecondary institution, or public system of higher education....



# “SUBSTANTIAL CONTROL”



An institution is **not** responsible for the actions of parties over which it lacks substantial control and are only responsible for alleged discriminatory conduct over both the context and the respondent.

# OUTSIDE THE COUNTRY

“NO PERSON *IN THE UNITED STATES* SHALL...”

- Title IX does **not** apply outside of the United States
- Plain language of the statute is clear that Congress did not intend for application outside of the U.S.
- Title IX does **not** apply to study abroad programs and institutions do not have an obligation to address sex discrimination outside of the U.S.

**HOWEVER, the 2024 Final Rule further states:**

- Institutions ***do*** have a responsibility to address a hostile environment in its education program or activity in the U.S., even when some conduct alleged to be contributing to the hostile environment occurred outside of the institution’s program or activity or outside of the U.S. (including study abroad).
- Also, institutions may respond under their codes of conduct or other applicable policies pertaining to study abroad.



# KNOWLEDGE CHECK & BREAK







**DUE PROCESS**

# THE CONSTITUTION & DUE PROCESS

No state shall “deprive any person  
of life, liberty, or property, without  
**due process** of law.”

14<sup>th</sup> Amendment, Section 1, U.S. Constitution





# THE CONSTITUTION: A FOUNDATION FOR DUE PROCESS

The U.S. Constitution sets the legal foundation for due process requirements. Statutes embodying Federal & State laws, rules, and regulations must build upon the due process foundation set by the Constitution.

## THE U.S. CONSTITUTION

- Prohibits the deprivation of life, liberty, & property.
- Prohibits the denial to any person of the equal protection of law.

## STATUTES

- Laws passed by Congress or a State Legislature.
- Must be followed by institutions receiving federal funding.

## RULES & REGULATIONS

- Issued by government agencies to further interpret & explain the law.
- Do not have the force of law but provide insight for enforcement & best practices.



# ***DUE PROCESS: YOUR POLICIES ARE YOUR CONSTITUTION***



**ALWAYS START  
WITH YOUR TITLE IX  
POLICY & YOUR  
STUDENT CODE OF  
CONDUCT!**

# **DUE PROCESS: WHEN & HOW MUCH?**

**LEAST DUE  
PROCESS**



**WARNING**

**MOST DUE  
PROCESS**

**EXPULSION**



# OTHER RELEVANT LAWS: CLERY

## THE CLERY ACT

- Administrative law focused on ensuring that certain policies & procedures are in place that prevent and respond to instances of domestic violence, dating violence, sexual assault, or stalking (DVSAS).
- Federal consumer protection law that aims to provide transparency around campus crime policy & statistics by imposing certain recording and reporting requirements.
- Applies just to higher education institutions.
- Includes the reporting other crime offenses outside of DVSAS (hate crimes, arrests, referrals for disciplinary action).
- Jurisdiction based on geography.

## TITLE IX

- Federal law that prohibits discrimination on the basis of sex in education programs and activities.
- Civil rights law designed to preserve one's civil rights & access to federally funded education free from discrimination on the basis of sex.
- Applies to K-12 & higher education institutions.
- Includes responding to complaints of sexual harassment (which may include DVSAS).
- Jurisdiction based on education program or activity and substantial control.



# **SIMILARITIES:** ***CLERY & TITLE IX***

**TRAINING** requirements

Address & share definitions for specific offenses

- Domestic violence, dating violence, sexual assault, stalking

Provide support for victims

- Clery = Accommodations; Title IX= Supportive Measures

Require fair **and** equitable disciplinary processes

# VIOLENCE AGAINST WOMEN ACT (VAWA) AMENDMENTS TO CLERY (2013)

Adds the definitions of specific offenses and includes them as reportable crimes (DVSAS)

- Domestic Violence
- Dating Violence
- Sexual Assault
- Stalking

Policy statement of the jurisdiction covered by campus security

Data regarding DVSAS incidents along with policy statements outlining campus response to these incidents, including rights & options for survivors

Implement programs to prevent DVSAS incidents while promoting a healthy & respectful campus environment

Published reports must respect survivor's confidential information (PII, accommodations, etc).

Report data on hate crimes – VAWA added crimes based on gender identity & national origin to the list of hate crimes that must be reported.

# EMPLOYEES: TITLE IX & TITLE VII

## TITLE IX

- Prohibits discrimination “on the basis of” sex.
- Applies to students, employees, & others participating in or attempting to participate in the education programs or activities.
- Hostile Environment: subjectively & objectively offensive & severe and pervasive
- Actual Notice
- Voluntary

## TITLE VII

- Prohibits discrimination “because of...sex.”
- Also covers race, color, religion, or national origin.
- Applies to employees
- Hostile Environment: severe or pervasive to alter working conditions & create hostile environment
- Knew or should have known
- Compulsory?

*You MUST use your Title IX Grievance Procedure for allegations against employees related to Title IX-*





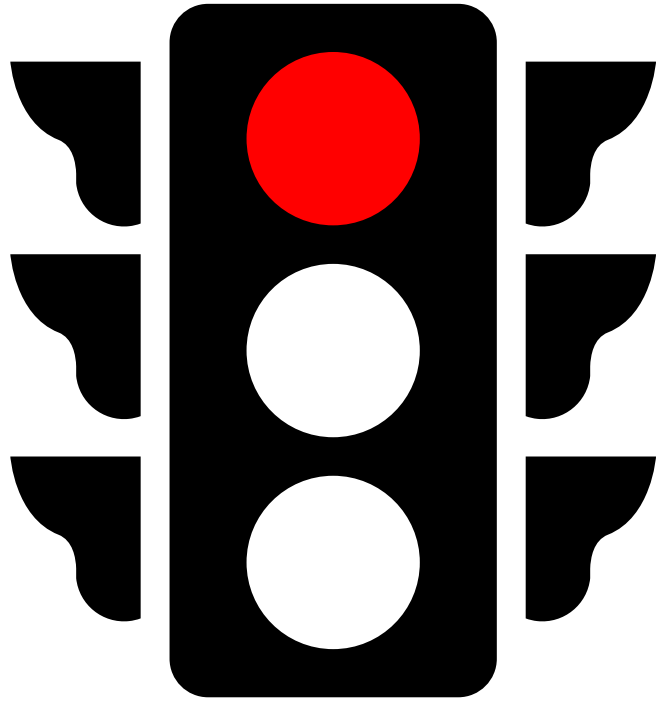
# **NEW YORK STATE LAW**

***129-B, SONDA, & GENDA***

# **129-B OF THE NYS EDUCATION LAW**

## ***“ENOUGH IS ENOUGH”***

- What conduct is covered?
- Who is covered?
- Mandated items?
  - Process
  - Training
  - Surveys & reporting
  - Misc policies: Amnesty, Bill of Rights, Affirmative Consent



- What conduct is covered?
  - Sexual assault, dating violence, domestic violence, & stalking
- Who is covered?
  - Only students
- Geography?
  - Broader than Title IX

# 129-B PROHIBITED CONDUCT



- Make report to local law enforcement
- Have disclosures taken seriously
- Make procedural decisions without institutional pressure
- Fair, impartial process with opportunity to be heard
- Treated with dignity & respect
- No victim blaming
- Describe incident to fewer people
- No retaliation
- Appeals
- Advisor of choice
- Civil rights

# **STUDENTS' BILL OF RIGHTS**

# AFFIRMATIVE CONSENT UNDER 129-B



- Supplements Title IX
- Mandated definition
- For all “sexual activity”
- Affirmative Consent DEFINITION
  - Expressed through words or deeds
  - Always required & may be withdrawn
  - Incapacitation & coercion
- Proving Affirmative Consent

# **MANDATORY RESPONSE TO REPORTS**

- Advise of rights & resources
- Emergency access to TIXC or another trained official
- Options for confidential & private disclosure
- File reports with TIXC or HR
- Support for legal proceedings
- Right to withdraw complaints



Other  
measures

No-Contact Order



## **PROTECTIONS & ACCOMMODATIONS**

Order of Protection & Arrest

Other security  
or safety  
assistance

Interim  
suspension

Academic & other  
accommodations

- Notice to Respondent
- Opportunity to offer & review evidence in impartial investigation
- Appeal
- Advisor of choice
- Prompt, impartial, timely, & thorough adjudication with opportunity to present evidence at hearing
- Concurrent with criminal investigation
- Exclude sexual & criminal history
- Privacy
- Transcript notations

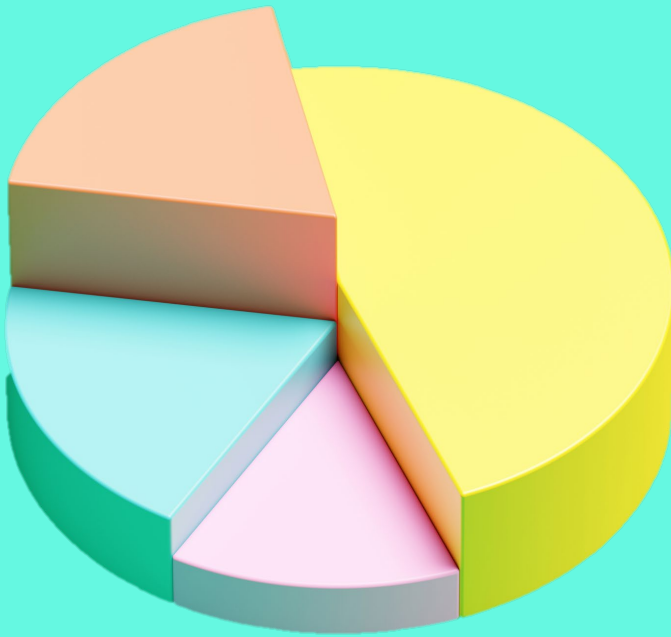


# ALCOHOL AND/OR DRUG USE AMNESTY

“The health and safety of every student at the [Institution] is of utmost importance ... A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [Institution’s] officials or law enforcement will not be subject to [Institution’s] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.”



# MISC 129-B: CLIMATE SURVEYS, REPORTING & TRAINING



- CAMPUS CLIMATE ASSESSMENTS
  - Every other year
  - Questions related to knowledge, experiences, & bystander attitudes
- REPORTING
  - 10 Years: File copies of rule
  - Annual 129-B certification
  - Annual Aggregate Data Report
    - Data about reports, cases, findings, & sanctions
- TRAINING
  - Specific topics: Definitions, role of TIXC, policies, risk reduction, bystander intervention
  - Targeted audiences: new students, student leaders, athletes



# NYS HUMAN RIGHTS LAW

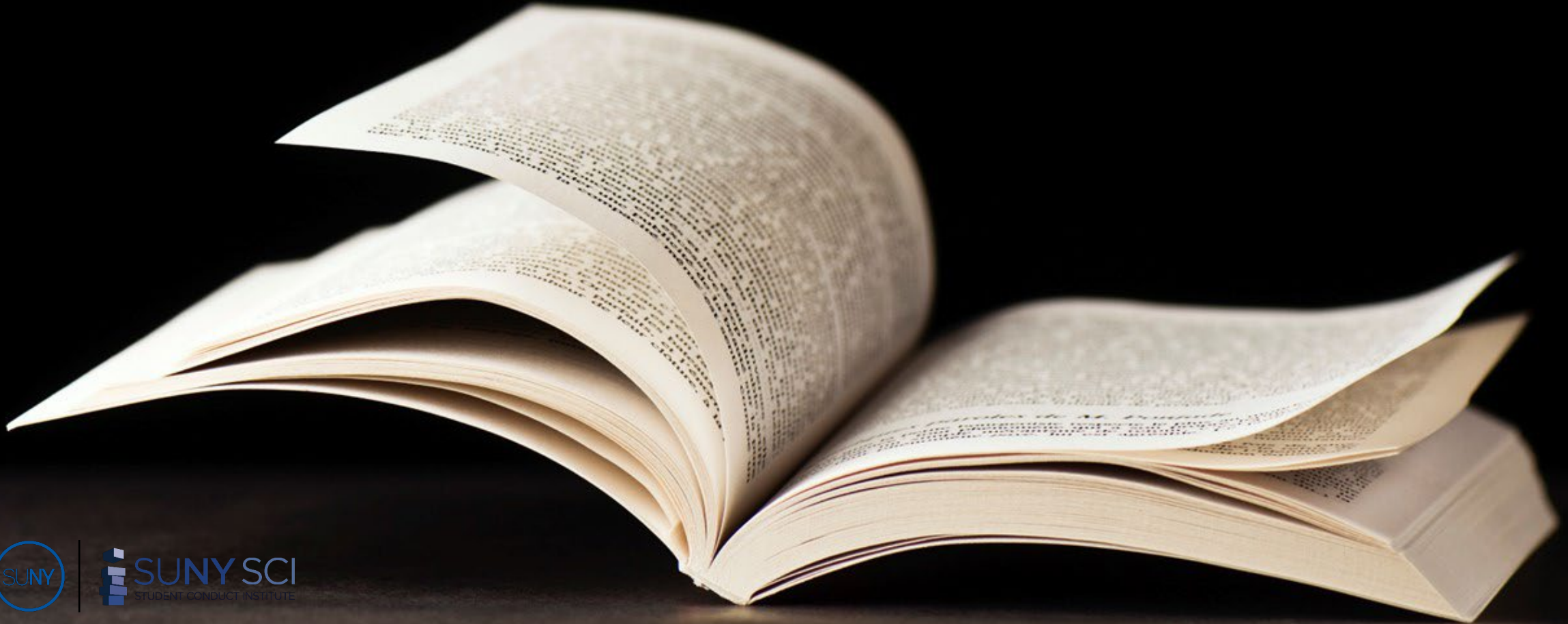
- **NYS EXECUTIVE LAW § 296** – New York State Human Rights Law is broader than federal laws
- In addition to race, color and national origin, NYSHRL includes discrimination based on age, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.
- Statute of limitations – 3 years

- Sexual orientation discrimination prohibited
  - Employment
  - Housing
  - Public accommodations
  - Education, &
  - The exercise of civil rights
- Gender expression/identity discrimination prohibited
  - Employment
  - Housing
  - Public accommodations
  - And non-religious schools, etc.
- Different standards & requirements than Title IX

## **SONDA & GENDA**



# KNOWLEDGE CHECK!



<b>Days 2 &amp; 3 of Title IX Coordinator Training</b>	<b>7/29 7/31</b>
Title IX Hearing Board (Decisionmaker) Trainings	8/4, 8/6, 8/8 9/9, 9/11, 9/16 12/2, 12/4, 12/9
Student Conduct Hearing Board (Decisionmaker) Trainings	8/12, 8/13, 8/14 9/18, 9/22, 9/25 11/5, 11/7, 11/12
Title IX Coordinator Training	8/28, 9/2, 9/4 12/11, 12/16, 12/18
Tech-Facilitated Sexual Violence	7/30
Title IX Investigator Training	8/21, 8/22
Advanced Title IX Workshop	8/26
Getting Your Clery Annual Report Ready to Publish	9/8
Identifying & Responding to Stalking	9/19
Investigating Stalking	10/16
Trauma-informed Interview Training	10/20, 10/21
The Neurobiology of Sexual Assault	10/7, 10/8
Coordinating Response to Stalking	11/14
The Cost of Caring – Understanding Your Vicarious Trauma	12/19

**THANK YOU SO MUCH FOR JOINING US! *WE ARE SO GRATEFUL TO ALL OF OUR MEMBERS JOINING US FOR OUR TRAININGS.***

**Our upcoming trainings are listed on this slide, but you can find all our Live@Distance offerings in our learning platform.**



# **TITLE IX COORDINATOR TRAINING**

**Day Two | September 2, 2025**



# INTRODUCTIONS



**ANDREW STAMMEL**

Associate Counsel  
Student Affairs Practice Group  
SUNY Office of General Counsel



**KERIANNE SILVER**

Director  
SUNY Student Conduct  
Institute



**ALEXANDER WHEELER**


Assistant Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.





“notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”

- Does not impose universal mandatory reporting obligations upon all postsecondary institution employees
  - Institutions retain ability to designate which employees must report disclosures, & others who are confidential

**ACTUAL NOTICE or  
KNOWLEDGE**



# DELIBERATE INDIFFERENCE

- Requires institution with actual knowledge to respond “promptly in a manner that is not *deliberately indifferent*”
- Meaning “not clearly unreasonable in light of the known circumstances”

## *What makes a response deliberately indifferent?*

- Inadequate
- Willfully indifferent, or clearly unreasonable
- Causes harm, or denies complainant educational benefits

**Example:** failure to conduct a proper investigation considering actual knowledge of misconduct, failed to provide appropriate support or remedies for the complainant

# REQUIRED RESPONSE TO REPORTS

- Treat parties equally
- Promptly offer supportive measures
- Explain formal complaint filing
- Follow a compliant grievance process before sanctions
  - Objective evidence evaluation
  - TIX staff are trained & free of bias or conflict
  - Presumption of non-responsibility
  - Reasonably prompt resolution
  - Standard of evidence
  - Appeal
  - Legal privileges



# REASONABLY PROMPT TIMEFRAMES



- Includes appeals & informal resolution
- Temporary delays with notice
  - 129-B: 10 day delay for law enforcement
- How long???
  - Not defined
  - Flexibility
  - 2001 Guidance
- Balance promptness with diligence
- Resource considerations





# **CONFIDENTIALITY & PRIVACY**

- Privacy of reports is expected
- Responsible Employees
- Confidentiality of reports is rare
- 129-B limits sharing & re-disclosure

# FERPA “RECORDS?”



FERPA protects “education records,” which are generally defined as records that are directly related to a student & maintained by an educational agency or institution or by a party acting for the agency or institution.

- For a record to directly relate to a student, the student must be the focus of the record, not simply in the background or incidental to a report.
- The Supreme Court has described education records as “institutional records kept by a single central custodian, such as a registrar ...”
  - In other words, for FERPA to apply, the record in question must be systematically maintained by the school.



# CONFLICTS BETWEEN FERPA & TITLE IX

- Interpret statutes in a manner to avoid any conflicts, if possible
- Section 106.6 (Effect of Other Requirements and Preservation of Rights) of the Final Rule states as follows:
  - Effect of Section 444 of General Education Provisions Act (GEPA/FERPA). The obligation to comply with Title IX & the Final Rule is not obviated or alleviated by FERPA.
- When conflict exists, institutions are required to comply with Title IX regulations - this FERPA override is known as “GEPA override”
  - Title IX includes federally protected due process rights - constitutional override
- May not use FERPA as a shield to avoid complying with Title IX





# DISCLOSURE OF EVIDENCE



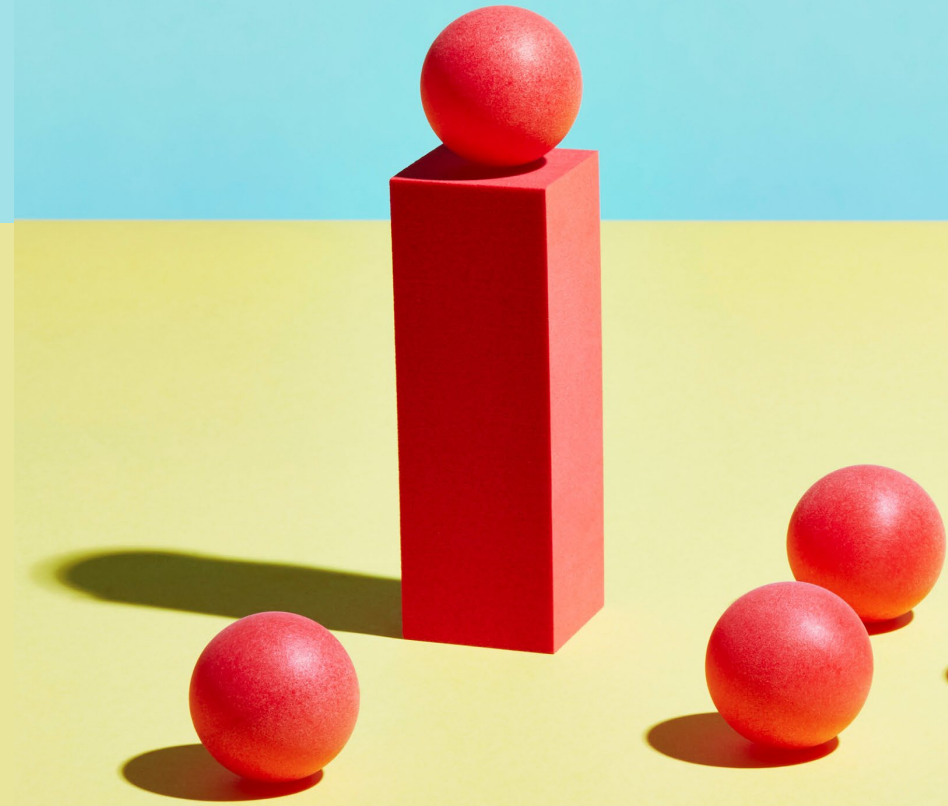
- The Final Rule requires the institution to share relevant evidence with the parties.
- Department has previously recognized that under FERPA, an eligible student:

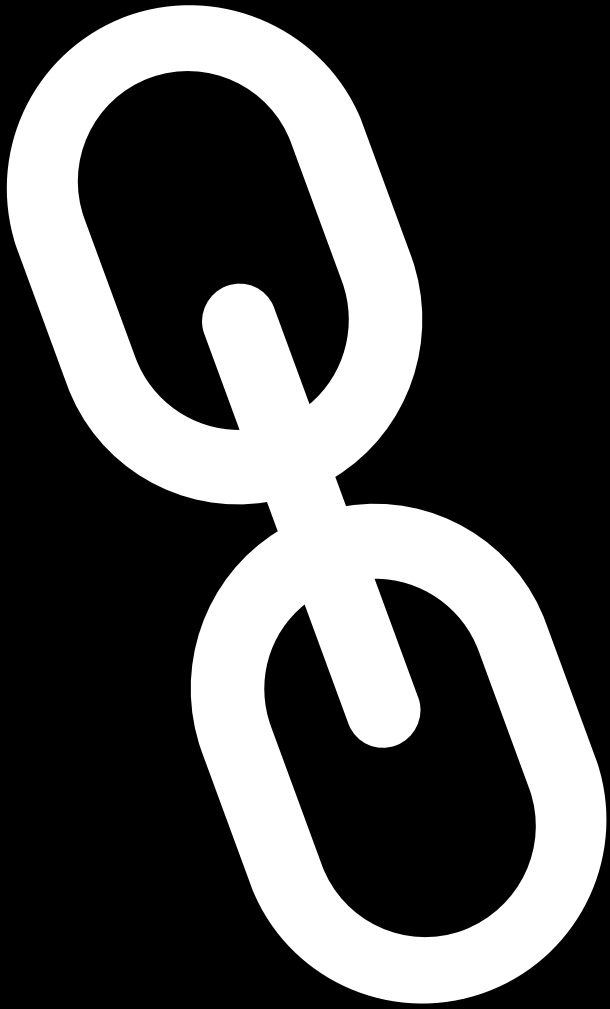
“has a right to inspect & review any **witness statement that is directly related to the student**, even if that statement contains information that is also directly related to another student, **if the information cannot be segregated & redacted without destroying its meaning.**”

# SUPPORTIVE MEASURES

Under Section 106.44 of the Final Rule, there are certain non-disclosure protections related to supportive measures.

- FERPA does not prevent the institution from disclosing a supportive measure to school officials as necessary to provide the measure.
- Revised to protect the unnecessary disclosure of information related to these measures.
- Even if permitted by FERPA, institution may only inform one party of supportive measures provided to the other party if necessary to restore or preserve access to the party receiving measure.





- The Final Rule permits multiple reports with multiple parties to be consolidated into one, which raises potential privacy concerns.
- The Department stated that this section of the Final Rule must be interpreted consistent with FERPA.
- Regulations provide institutions with the *option* to consolidate but do not *require* it to do so.
- An institution may not choose to consolidate if that consolidation would give rise to FERPA violations.

# CONSOLIDATION & FERPA



# ADVISORS

The Department acknowledges that the presence of an advisor may violate FERPA.

- The right to an advisor is a due process right guaranteed by Title IX.
- Title IX will override the FERPA concerns here.
- GEPA override will allow the sharing of evidence with advisors.
- Institutions are not required to permit more than one advisor to accompany a party & the GEPA override will not apply there.



## ADVISOR

## STATS

TNC	89
SPD	95
PWR	92
CRT	99



# COMPLAINANT OUTREACH & INTAKE



DESIGNATING RESPONSIBLE & CONFIDENTIAL  
EMPLOYEES

LIST OF RESPONSIBLE & CONFIDENTIAL  
EMPLOYEES

DISCLOSURE OF STATUS TO STUDENTS

TRAINING & FERPA CONSIDERATIONS

INCLUSION IN CAMPUS POLICY

# THE MECHANICS OF INTAKE



INCIDENT INFORMATION

TYPE OF ALLEGED HARASSMENT

CRITICAL INCIDENT RESPONSE

OFFICE VISIT FOLLOW-UP/DELAYED REPORT

SUPPORTIVE MEASURES

STUDENT RIGHTS INFORMATION REVIEW



# SUPPORTIVE MEASURES

TYPE	CONSIDERATIONS
SAFETY	Reasonable accommodations
HEALTH	Medical, Mental
HOUSING	Room lock change, designated emergency space
RESTRICTIONS	One-way or Mutual No Contact Order (NCO)
ACADEMIC	Course accommodations, course changes, Professor notifications, leave of absence, withdrawal assistance
WORK	On/Off Campus employment
FACILITY BASED	Gym, library, dining, University events, etc. ...
RECREATIONAL	Student group, athletic team, internship program



# Is This a Title IX Grievance Process Case?\*

Report made to Title IX Coordinator



Is the complainant currently participating in or attempting to participate in your programs (i.e. an employee, student, applicant, etc.?)

Yes

No



Do they wish to make a formal complaint?

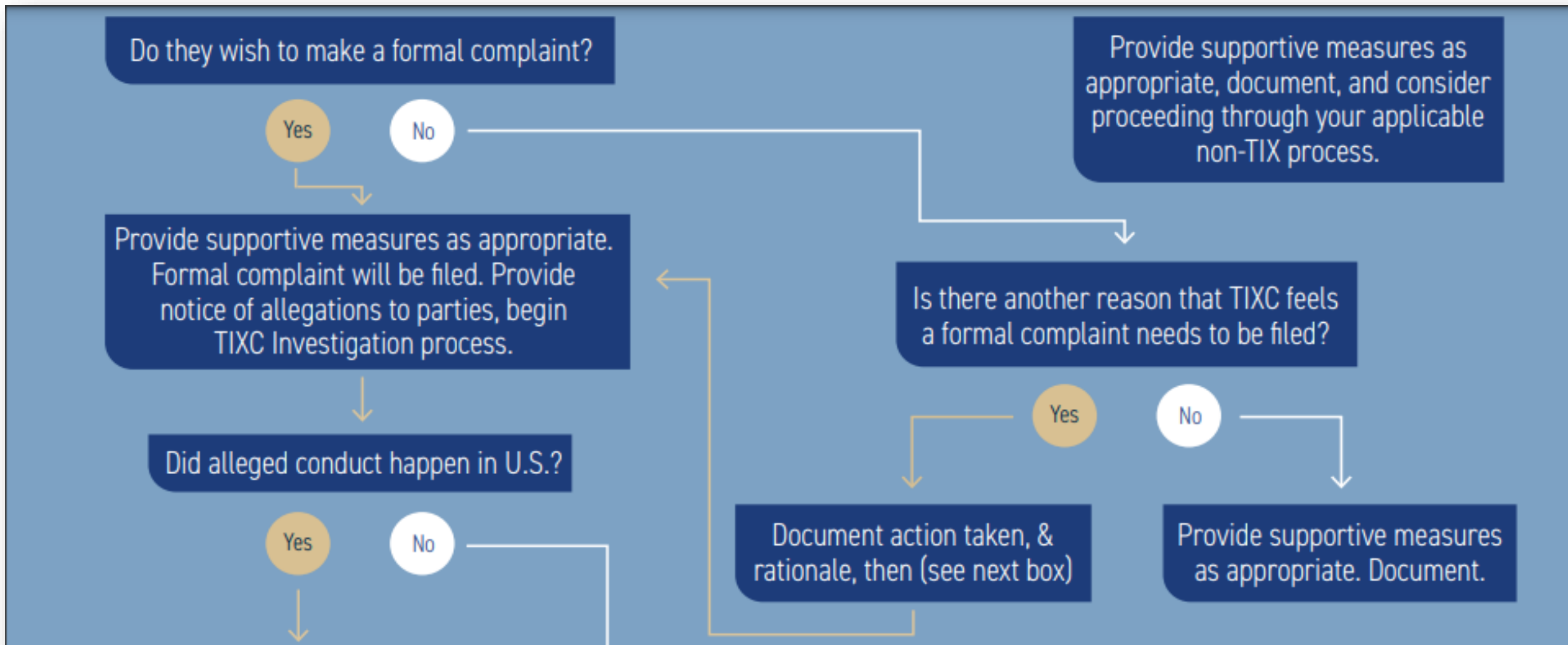
Yes

No



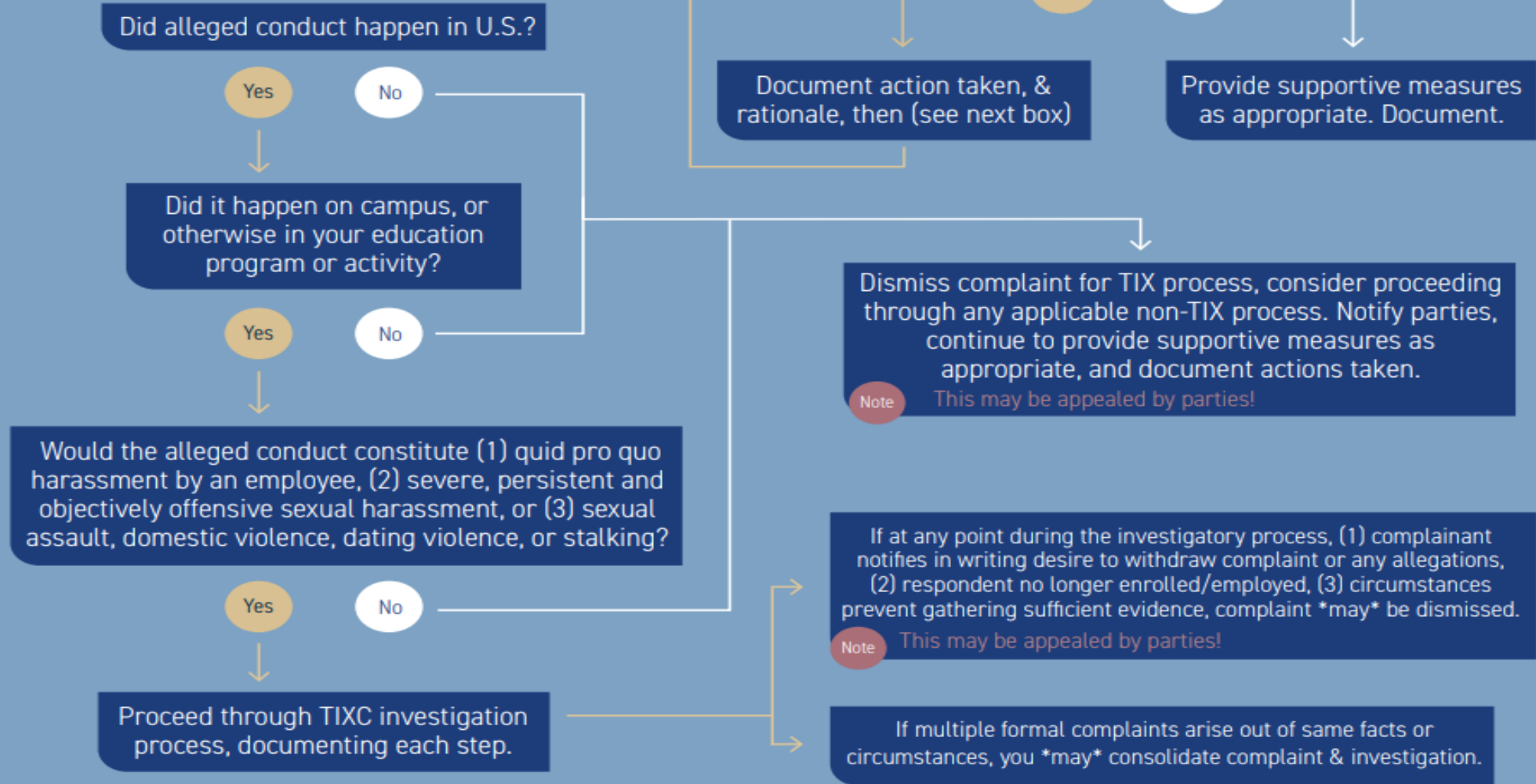
Provide supportive measures as appropriate, document, and consider proceeding through your applicable non-TIX process.

# DECISION TREE, PT. 1



# DECISION TREE, PT. 2





*\*This Decision Tree is intended to capture the most foreseeable routes that a matter may take, but it cannot cover every circumstance that may arise. Please consult with your campus counsel for specific circumstances and questions.*

# DECISION TREE, PT. 3

# **TITLE IX SCOPE**

Assess scope of report  
Assess jurisdiction  
Review complainant intentions

## **JURISDICTION ASSESSMENT**

# What About Complainant Autonomy?

Utilize proper policy/process

Explore desired level of participation

Determine if TIXC-initiated complaint needed

**Autonomy exists but does not allow  
improper choice of law or due process!**



# TITLE IX COORDINATOR INITIATED COMPLAINT

- Complainant's request not to proceed;
- Complainant's safety concerns about proceeding;
- Risk of additional discrimination;
- Severity of the allegations;
- Age, relationship, and status (i.e. employee) of the parties;
- Scope of the prohibited conduct
  - is there a pattern? Multiple complaints?
- Availability of evidence;
- Whether the school could end the discrimination & prevent its recurrence;
- Whether the conduct as alleged presents an imminent & serious threat to health or safety;
- Whether the conduct alleged prevents the institution from ensuring equal access.

**REMEMBER: THE COMPLAINANT WILL STILL BE THE COMPLAINANT & IS ENTITLED TO THE SAME RIGHTS.**

# INCORPORATING DISABILITY LAW

- Obligation to provide reasonable accommodations
- Good cause delays & extensions
- Mental health considerations
- Overlap with Supportive Measures
- Evidence accessible
- Support persons
- Equitable treatment
- Accused person with disabilities
  - Severe, pervasive, & objectively offensive
  - Sanctioning considerations

Institutions **must** investigate all “formal complaints” filed with the Title IX Coordinator

## WHO CAN FILE A FORMAL COMPLAINT?

- Person currently participating in the educational programs or activities of the institution
- Person **attempting** to participate in those programs or activities
- The Title IX Coordinator

Multiple complaints arising from same incidents can be consolidated

## ACTION ITEMS

### PREPARATION

- Challenges of virtual work
- Varied familiarity of the process
- Delayed report
- Non-responsive

### IF NON-RESPONSIVE

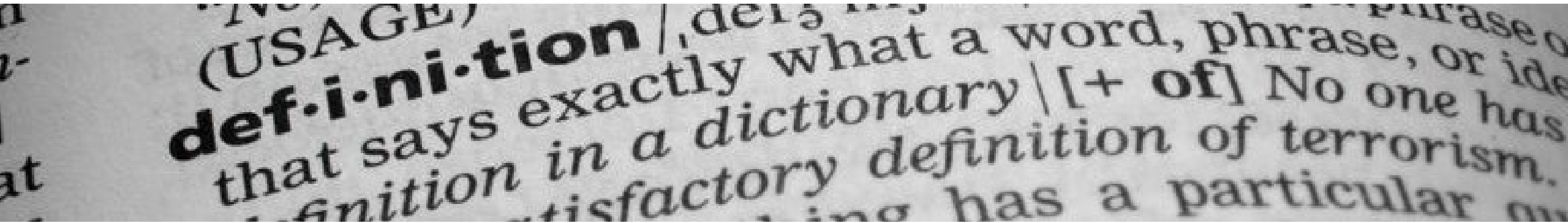
- Determination on next steps



# THE FORMAL COMPLAINT



# DEFINITION OF FORMAL COMPLAINT




## A DOCUMENT:

- filed by a complainant or signed by the Title IX Coordinator
  - alleging sexual harassment against a respondent &
  - requesting that the recipient investigate the allegation of sexual harassment.
- alleged victim currently participating or attempting to participate in program or activity of institution

## DOCUMENT:

- document or electronic submission containing complainant's signature

## COMPLAINANT:

- 
- Burden of proof on institution
  - Confidential treatment records
  - Present witnesses & evidence
  - Freedom to discuss allegations
  - Advisor of choice
  - Notices
  - Inspect & Review Evidence
  - Review investigative report

# INVESTIGATION REQUIREMENTS

If you may have a bias or a conflict, ACKNOWLEDGE IT

Remember this is a case made up of individuals

Challenge your own perceptions by examining evidence

Be open & transparent, leave no stone unturned

Ensure everyone has opportunity to be heard, take your time

Base decisions on evidence, facts, & established criteria

# HOW TO SERVE IMPARTIALLY





# CONFLICTS & BIAS

## **FOR OR AGAINST COMPLAINANTS OR RESPONDENTS, GENERALLY**

EXAMPLE: “All respondents tend to be responsible,” or “complainants are always credible”

## **FOR OR AGAINST SPECIFIC PARTIES IN THE CASE**

EXAMPLE: Heard a case with the respondent in another unrelated case

## **OVERLAPPING INVESTIGATOR, DECISIONMAKER, OR APPEALS ROLES**

EXAMPLE: Administrator who found respondent responsible hears the appeal for the same case





*“In the intimate setting of a college or university, prior contact between the participants is likely and does not per se indicate bias or partiality.”*

Gorman v. Univ. of Rhode Island,  
837 F.2d 7, 15 (1st Cir. 1988).

**NOT *NECESSARILY*  
CONFLICTS & BIAS**

**ACTUAL BIAS IS A HIGH **LEGAL** STANDARD,  
BUT **PERCEPTION** OF BIAS IS IN THE EYES OF  
THE PARTIES TO THE PROCESS & SHOULD BE  
AVOIDED.**

***ACTUAL vs PERCEPTION  
OF BIAS***

**THINGS TO AVOID:**

- Truly lop-sided investigations & adjudications, or
- Statements of investigator or panelist showing presumption of responsibility based on stereotypes, or
- Misapplying trauma-informed practice to explain away all inconsistencies in statements



# COMPLAINTS **MUST** BE DISMISSED IF:

1. If allegations do not constitute sexual harassment as defined under the Final Rule § 106.30 (even if proven)
2. Did not occur in the recipient's education program or activity, or
3. Did not occur against a person in the U.S.



# COMPLAINTS **MAY** BE DISMISSED IF:

1. Complainant withdraws formal complaint or allegations in writing
2. Respondent is no longer enrolled or employed by the recipient, or
3. Specific circumstances prevent recipient from gathering evidence sufficient to reach a determination



MANDATORY notifications of dismissals (required & permitted) & rationale for the dismissal to all parties simultaneously


## **CONSIDERATIONS FOR DISMISSALS**

Decisions to dismiss complaints may be appealed by either party

# EMERGENCY REMOVAL

- Individualized safety & risk analysis
- Immediate threat to physical health or safety
- Notice & opportunity to challenge decision





Not defined  
More flexible, but not indefinite  
Lodging & compensation  
Policies set by campuses  
Collective bargaining implications  
Student employees

# ADMINISTRATIVE LEAVE





- Clery Act requires institutions supply timely warnings to students, faculty, & staff
- Anytime a crime occurs, or is occurring that poses a serious or ongoing threat to the rest of the campus, there must be a **TIMELY WARNING** sent that is likely to reach every member of the campus community
  - Email announcements, text messages, etc.
- Issued on a case-by-case basis considering all the facts surrounding a crime

# TIMELY WARNING

WHO WRITES & SENDS THESE?  
typically, safety personnel



# BREAK!



# **NOA'S ANATOMY**

**BEFORE INVESTIGATIONS ON**



## MUST INCLUDE:

## NY129B REQ

Date/Time of Formal Complaint & Who Filed the Complaint



References to Policies & Procedures



Conduct Alleged (Including Possible Sanctions if Found Responsible)



Date/Location of the Alleged Conduct



Upcoming Meeting Date/Time/Location



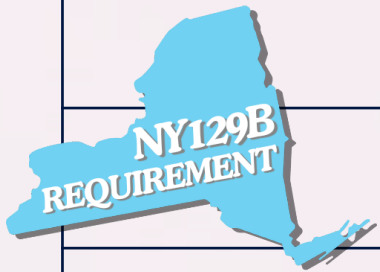
Notice of Advisor of Choice



Presumed NOT RESPONSIBLE Until Determination is Made



Copy Sent to Complainant







# FORMAL RESOLUTIONS

## WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint
- When all parties & TIXC Coordinator's consent
- Any party can withdraw at any time

**NOT ALLOWED** IN CASES INVOLVING  
EMPLOYEE RESPONDENTS

**TIXC** CAN RUN THE PROCESS,  
BUT IT IS **NOT** RECOMMENDED

### EXAMPLES:

- Administrative resolution
- Restorative justice
- Mediation

# GRIEVANCE PROCESS - KEY PLAYERS

Report Receiver	Intake/Receipt of complaint
UPD/Campus Safety/Police	Safety measures
Title IX Coordinator	Oversight & assistance
Investigator	Investigation
Informal Resolution Facilitator	Facilitation of resolution
Student Conduct Staff	Oversight & assistance
Advisor	Party advisement (Complainant/Respondent)
Hearing/Appeal	Chair, Deliberations, Determinations
Resources Offices/Units	Supportive measures



**TITLE IX  
COORDINATOR**

STATS	
INT	94
SPD	85
PWR	92
CRT	100

# RULES FOR INVESTIGATIONS

## WHO CAN INVESTIGATE



Free from conflicts of interest & bias

Can be the TIXC, but another administrator is preferred, if possible

Can use trauma-informed interviewing practices

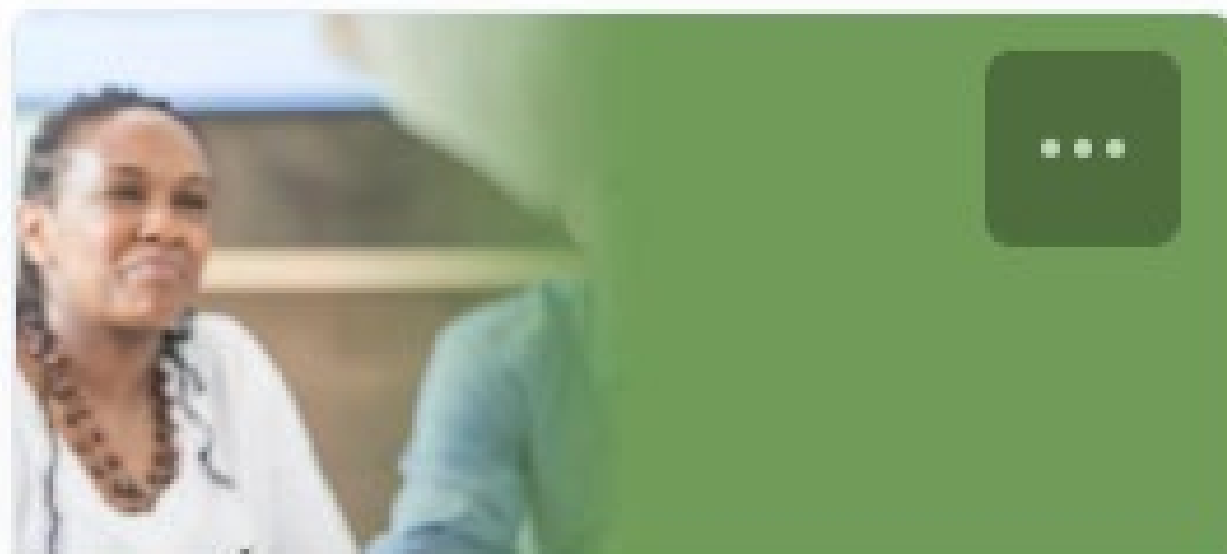
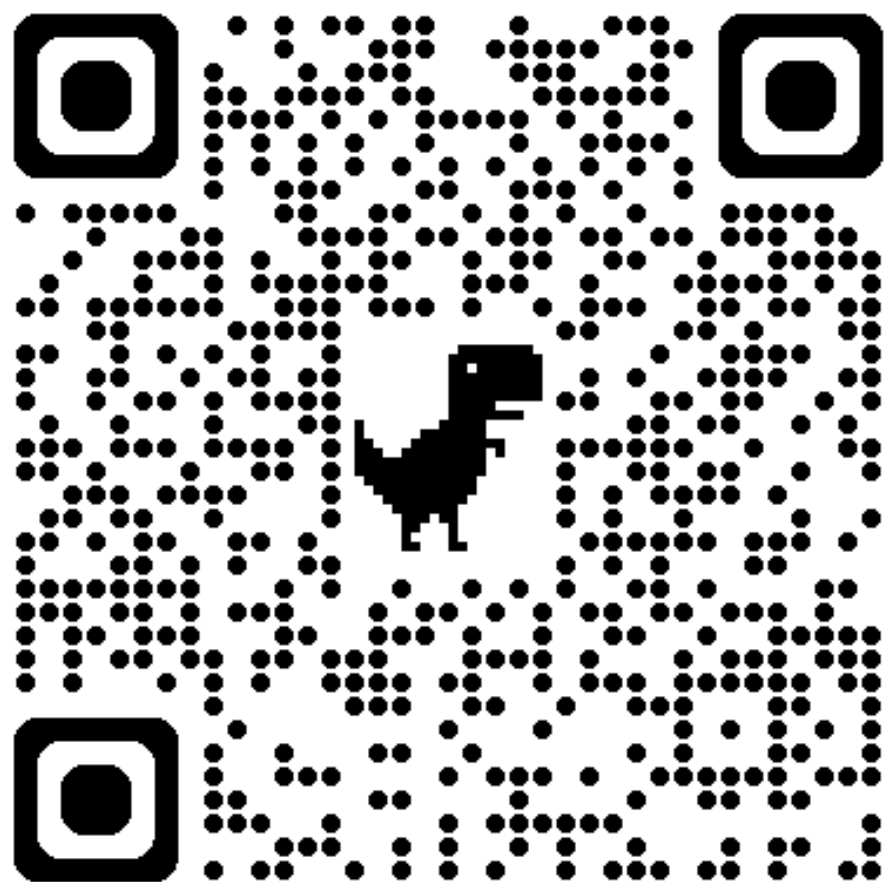
Should be aware of cultural differences & how it can impact person's testimony or experience

# INVESTIGATION PLANNING

- Investigators are naturally curious, absent of conflicts of interest or bias, & diligent
  - Healthy skepticism is valuable & patience a virtue
  - Trained per the Final Rule
- Prepare natural lines of questioning for all parties & witnesses
- Prepare documents & forms (NDAs, Non-retaliation agreement, etc.)
- Identify areas of disputed facts from reviewing formal complaint & initial response from respondent
- All testimony & evidence should be relevant to facts at issue
- Recording strategies, tech, review of transcript







[8/21/2025, 8/22/2025](#)

[Title IX Investigator  
Training](#)

2025-2026 Live@Distance

Ends June 30, 2026 at 11:59 PM

# **WHAT IS THE TITLE IX COORDINATOR'S ROLE DURING AN INVESTIGATION?**

- Checking in, following up with investigators
- Help collect & organize evidence
- Review issues that arise (possible conflicts of interest or bias, scheduling, lines of questioning, etc.)
- Project management
- Track deadlines, facilitate involvement & participation, communicate with stakeholders
- Facilitate end of investigations & responses from parties

# EVIDENCE

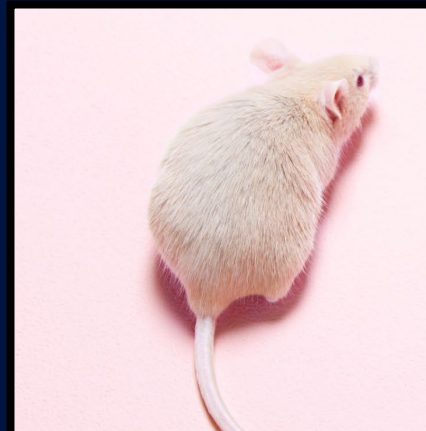


**DIRECT**

**CORROBORATING**



**CIRCUMSTANTIAL**



# ... EVIDENCE THAT **MUST** BE INCLUDED ...

## **EXCULPATORY & INCULPATORY**

Exculpatory evidence  
increases the likelihood of  
finding of **non-responsibility**  
or **non-liability**

Inculpatory evidence  
increases the probability of  
a finding of **responsibility**  
or **liability**.

**PLEASE NOTE:** investigations & findings of **INNOCENCE** and **GUILT** are not applicable to Title IX or student conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



# RELEVANCE, DIRECTLY RELATED TO, & ADMISSIBLE EVIDENCE



- Relevant evidence makes a material fact **MORE OR LESS LIKELY TO BE TRUE**
- Relevant evidence will make a **DIRECT CONNECTION** to the charge(s)
- Irrelevant evidence can be **INCLUDED IN THE APPENDIX**
- Authenticity of evidence?

---

Testimony

---

Text Messages

---

Social Media Posts

---

Medical Records

---

Public Safety / Police Records

---

Videos / Surveillance Footage

---

Pictures

---

ID Card Data / Network Usage Location Data

---

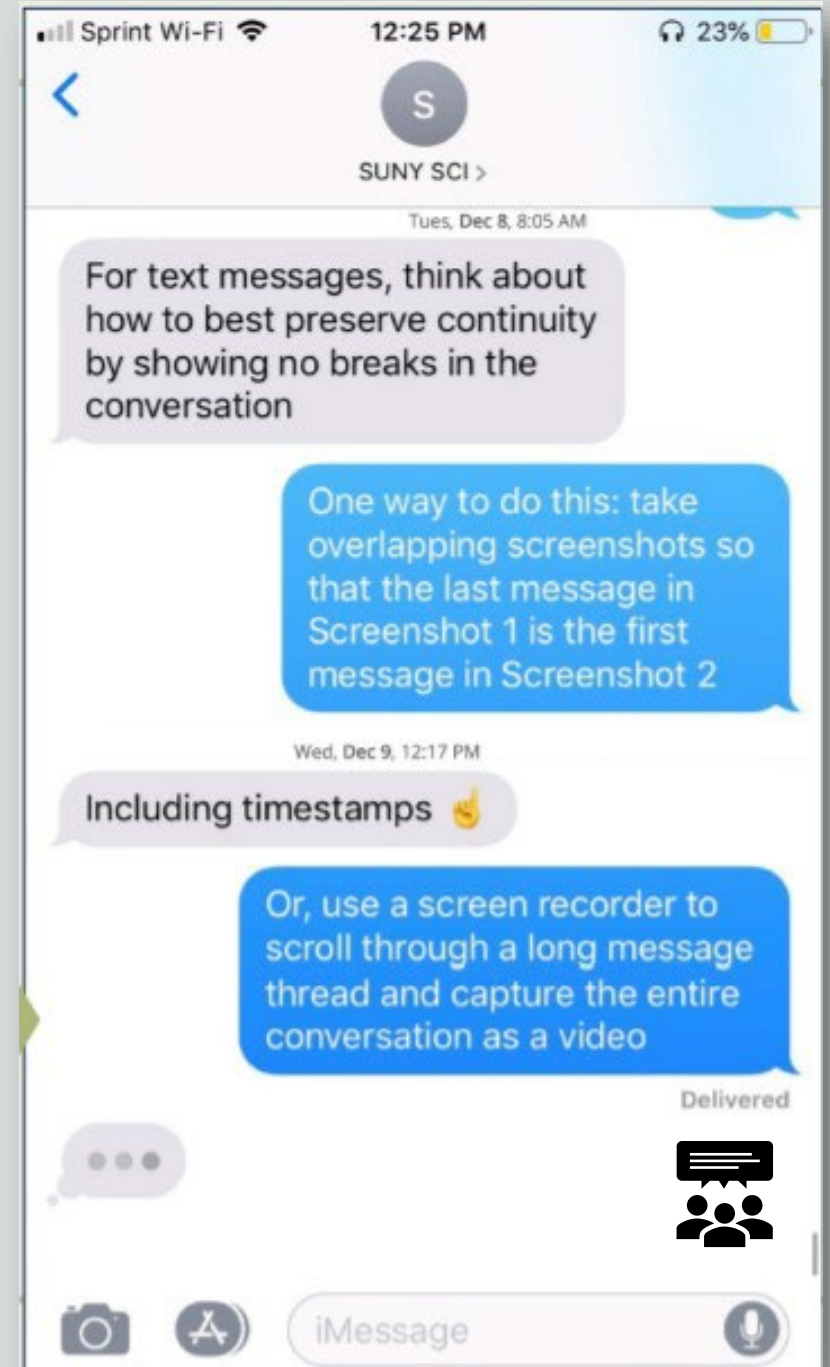
Email

---

Voice notes

---

# POSSIBLE EVIDENCE



# AUTHENTICITY

**TESTIMONY  
CUSTODY  
ELECTRONIC  
AUTHENTICATION  
ANALYSIS**



# CREDIBILITY

**SPECIFICITY**  
**CONSISTENCY**  
**CONTRADICTION**  
**MOTIVE TO DECEIVE**  
**DEMEANOR &**  
**EVASION**

Credibility judgments may feel subjective - decisionmakers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar and stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth.

The areas on the left can help decisionmakers determine credibility.







Detail your intake of the incident (who, where, when)

Include observable facts & behaviors



Cite any significant quotes from parties involved

Detail incident from reporting individual's perspective



Resolution – detail next steps taken

# INCIDENT REPORT STRUCTURE


# INVESTIGATIVE REPORT




- Creation & sharing of investigative report summarizing evidence collected (*fairly*)
  - Shared with both parties at least 10 days before hearing
- Include procedural steps taken
- Redact or remove evidence deemed “irrelevant” which includes such evidence that’s exempted
- Parties may correct errors, contest inclusion of certain evidence, or address issues of conflicts of interest or bias
- Use of appendix may be used for evidence institution may not wish to rely on for the case
- Should not include determinations of responsibility (*unless a single-investigator model*)

# INVESTIGATIVE REPORT TEMPLATE

- Overview of the investigation
  - Includes parties, applicable policies, allegations of misconduct, brief description of alleged misconduct
- Jurisdiction of educational institution
- Identify investigators
- Objective of the investigation & report
- Allegations, verbatim
- Identification of witnesses
- Description of evidence collected
- Summary of the relevant evidence
- Procedural next steps





**TITLE IX TOOLKIT**



Investigative Report Template  
For Investigations of Title IX Sexual Harassment  
July 1, 2020

Chantelle Cleary, Esq.  
*Senior Consultant, Grand River Solutions, Inc.*



### What is the purpose of the Investigative Report Template?

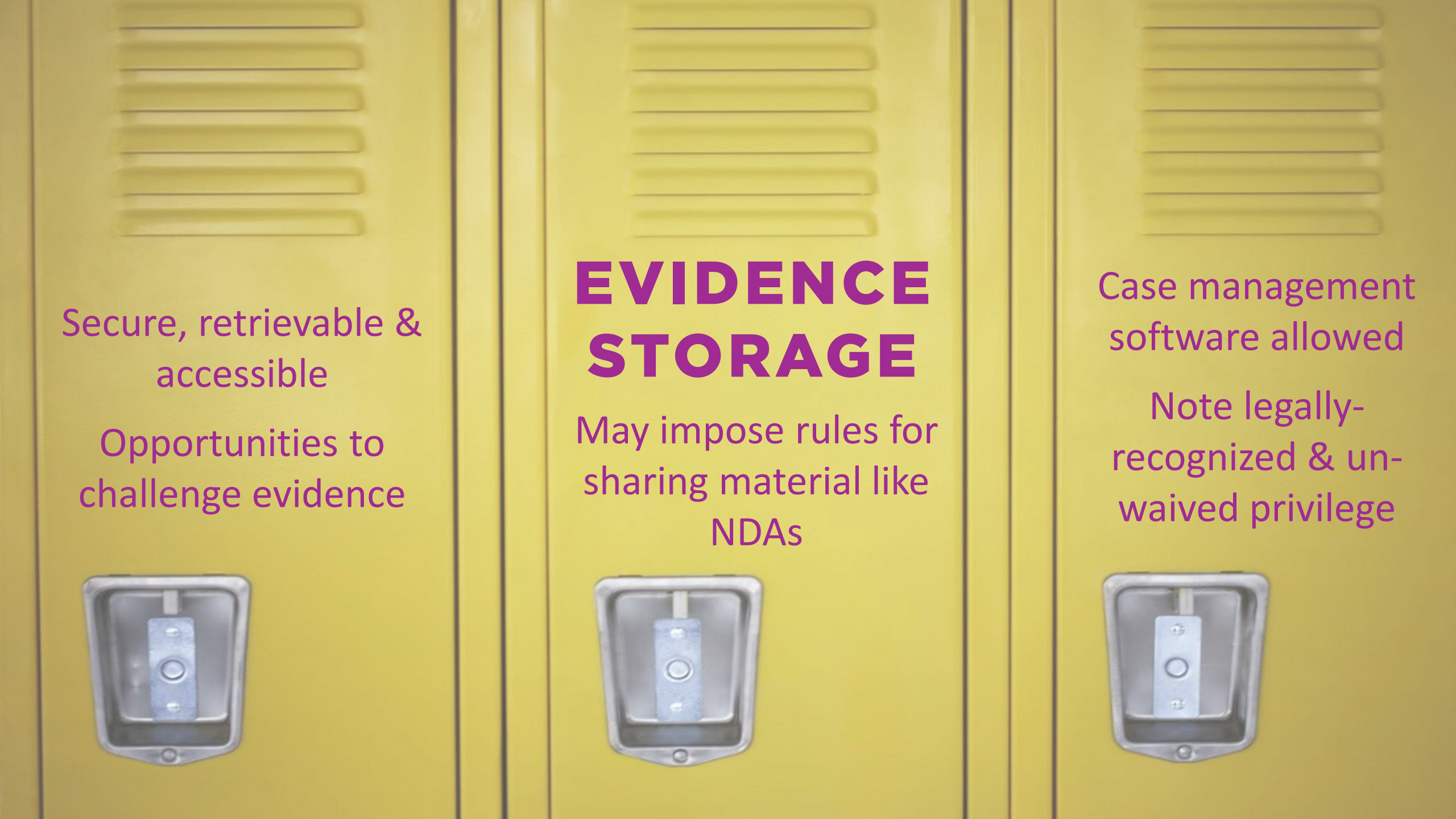
The [Title IX Final Rules](#), issued May 19, 2020, mandate that all Title IX recipients follow a specific procedure for investigating formal complaints of sexual harassment covered under Title IX, including sexual violence. The Title IX Grievance Process is developed and enforced according to the Institution's obligations under the U.S. Department of Education's Final Title IX Rule of May 19, 2020 (you may view the Final Rule at <http://bit.ly/TitleIXReg>). This investigative process must include an opportunity for the parties to present and review relevant evidence, and requires that recipients create an investigative report that the parties may review before the hearing. While many institutions already perform many of the steps described here and provide investigative reports, the Final Rules impose specific requirements that may need to be built into your current process.

### How is the Template organized?

This Template provides a step-by-step analysis of the procedures that must be followed when investigating Title IX-covered sexual harassment. It also outlines sample language that institutions may use when drafting the investigative report.

©2020 State University of New York





Secure, retrievable &  
accessible

Opportunities to  
challenge evidence



# EVIDENCE STORAGE

May impose rules for  
sharing material like  
NDAs



Case management  
software allowed

Note legally-  
recognized & un-  
waived privilege



# EVIDENCE INSPECTION

- Both parties have equal opportunity to review & respond to evidence gathered prior to investigative report
  - Ten days to review “any” relevant information & evidence
  - Parties submit written response, which investigator reviews
  - Includes chance to determine evidence as “irrelevant” or “not directly related” to allegation
- ED recommends a “privilege log”



Consider impact of trauma:

- Fragmented memory & non-linear event order
- Specific details about sensory events

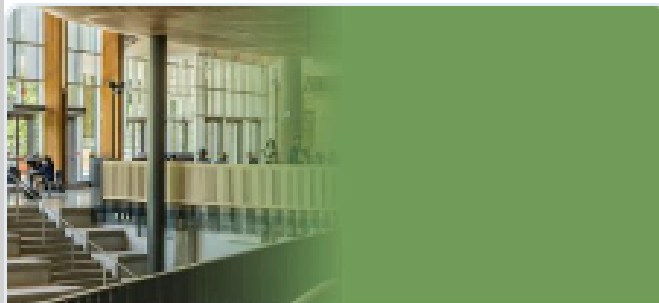
Trauma-informed approach doesn't substitute for missing info, justification for not doing a full investigation, or cause a biased belief in a party's accuracy

Questioning & word usage

- “Help me understand ...” “What are you able to tell me about what you experienced?”
  - Describing another individual's experience
  - Framing your questions, avoiding why questions



# **TRAUMA- INFORMED INTERVIEWING**



10/20/2025,  
10/21/2025 Trauma  
Informed Interview  
Training

2025-2026 Live@Distance  
Ends June 30, 2026 at 11:59  
PM



10/7/2025,  
10/8/2025 The  
Neurobiology of  
Sexual Assault

2025-2026 Live@Distance  
Ends June 30, 2026 at 11:59  
PM

# TRAUMA-INFORMED INTERVIEWING



# CULTURAL AWARENESS



# STUDENT-CENTERED PROCESS

Individuals on hearing boards should be mindful that the participants may come from different backgrounds & cultures than their own

- Race
- Ethnicity
- Gender
- Religion
- Ability/disability
- Language (limited English proficiency)
- Immigration status
- Socioeconomic status
- Sexual orientation,
- Gender identity or expression
- Age



# CULTURALLY HUMILITY

## BIAS & KNOWLEDGE



- ENHANCE CULTURAL COMPETENCY
- ADAPT TO DIVERSE COMMUNICATION STYLES
- ADDRESS CULTURAL PERCEPTIONS OF AUTHORITY
- IMPLEMENT EQUITABLE PRACTICES

# HOW CULTURE CAN IMPACT TITLE IX ADJUDICATION

## **ADJUST COMMUNICATION STYLES**

- Encourage open dialogue
- Ensure students are comfortable sharing perspectives without constraints

## **AVOID OVERINTERPRETING BEHAVIOR**

- Limited eye contact or formality could be indicative of many influences

Avoid letting cultural differences influence decision-making processes



## Day 3 of TIX Coordinator Training

9/4

Title IX Hearing Board (Decisionmaker) Trainings

9/9, 9/11, 9/16  
12/2, 12/4, 12/9

Student Conduct Hearing Board (Decisionmaker) Trainings

9/18, 9/22, 9/25  
11/5, 11/7, 11/12

Title IX Coordinator Training

12/11, 12/16, 12/18

Getting Your Clery Annual Report Ready to Publish

9/8

Identifying & Responding to Stalking

9/19

Investigating Stalking

10/16

Trauma-informed Interview Training

10/20, 10/21

The Neurobiology of Sexual Assault

10/7, 10/8

Coordinating Response to Stalking

11/14

The Cost of Caring – Understanding Your Vicarious Trauma

12/19

**THANK YOU SO MUCH FOR JOINING US! *WE ARE SO GRATEFUL TO ALL OF OUR MEMBERS JOINING US FOR OUR TRAININGS.***

**Our upcoming trainings are listed on this slide, but you can find all our Live@Distance offerings in our learning platform.**



# **TITLE IX COORDINATOR TRAINING**

**Day Three | September 4, 2025**

# I N T R O S



**KERIANNE SILVER, M.S.ED.**  
Director  
SUNY Student Conduct Institute



**ALEXANDER WHEELER, M.S.ED.**  
Assistant Director  
SUNY Student Conduct Institute

# DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.







# PRE-HEARING CONFERENCES

- Meet with all parties (& advisors) to discuss next steps, *particularly the resolution/grievance process*
  - Final review of investigative report
  - Re-review of resolution options (informal resolution or live hearing)
  - Confirm date & time of hearing
- Review rules of decorum for live hearing
- **CROSS-EXAMINATION**
- Walk through the hearing from start to finish
- Address any questions as needed

- Accessibility needs
- Reliable internet access
- Physical space for parties & advisors, hearing board members
- Access to appropriate equipment (*don't make assumptions*)
- Technology settings
  - All parties must be able to see & hear each other (cameras must be on)
  - **Hearing panelists must be comfortable with any tech used\***
- Recording ability (*double check storage & voice pick-up*)
- Double check provided links & access to documents
- Back up plan & back up tech person
- Witness & investigator invites
- All party & advisor confirmations
  - *back up advisors?*
- Confidentiality & privacy of communications
  - *tip pan the room*

# ***PRE-HEARING CONSIDERATIONS PHYSICAL SPACE & TECHNOLOGY***





# DECORUM

Colleges & universities “**are in a better position than the Department to craft rules of decorum best suited to their educational environment**” & build a hearing process that will reassure the parties that the institution “**is not throwing a party to the proverbial wolves.**”

- See, 85 Fed. Reg. 30026, 30319



**ADVISORS WHO VIOLATE THE RULES OF DECORUM MAY BE REMOVED**

# QUESTIONS SHOULD BE ASKED IN A NEUTRAL TONE.

No accusatory questions

No “duty of zealous advocacy” inferred or enforced, even for attorney-advisors

No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission

No use of profanity or personal attacks

Repetitive questions are not allowed

 **DECORUM** 



- Introductions
- **Purpose of hearing, review of allegations**
- Privacy & decorum expectations
- **Due process rights**
- Notice of allegations & claims
- **Opening statements**
- Presentation of investigative information
- **Cross-examination & relevancy determinations**
- Witnesses & cross-examination
- **Closing statements**
- End of hearing, move to deliberation

# GENERAL HEARING PROCESS



A script helps make sure the institution complies with:

- Due process requirements
- Notice obligations
- Equal treatment of both parties



It provides a clear record that all mandated steps were followed.

**THE SCRIPT**

# PURPOSE OF A HEARING

- Determine responsibility of respondent for a violation of institution's Title IX policy
  - Facilitate an equitable, fair process
    - *May not be perfect*
- 
- Obligation of participants (including institution) of truthfulness & transparency
  - **Not a criminal proceeding**

# THE ROLE OF THE ADVISOR

Advisor of the **party's choice** (including attorneys)

Advisors serve TWO **essential** functions in the Title IX grievance space:

1. Support their advisee through the process, &
2. Ask questions through cross-examination



**ADVISOR**

## STATS

INT	92
SPD	81
PWR	96
CRT	75



# THE ROLE OF THE ADVISOR

INTRODUCTION: SERVING AS AN ADVISOR IN TITLE IX PROCEEDINGS

THE ROLE OF THE ADVISOR

PRE-HEARING PREPARATIONS

HEARING

CROSS EXAMINATION & RELEVANCE

AFTER THE HEARING

CHECKLIST

## Advisor Resource Guide for Title IX Investigations and Hearings

SEPTEMBER 2021

[shorturl.at/iBjcZ](https://shorturl.at/iBjcZ)

Abbey Marr, Esq.  
Jessica Morak, Esq.  
Gemma Rinefierd, Ed.D.  
Adam J. Wolkoff, J.D./Ph.D.



# CROSS- EXAMINATION

- Questions by a party's advisor to the other party (& witnesses)
  - Respondent advisor to complainant, and *vice versa*
- Before answering, decision-maker determines question relevant or not
- Decorum rules must be followed when questions are asked
  - Failure to abide by decorum rules may warrant removal

- Decision-makers determine relevance of questions prior to answering
- Relevant questions ask **whether facts material to allegations under investigation are more or less likely to be true**
- Decisions about relevancy are made question-by-question
- Bias rules insist determinations cannot be made based on:
  - Who asked the question,
  - Their possible (or clearly stated) motives,
  - Who the question is directed to, or
  - The tone or style used to ask about the fact.



# QUESTIONING

# WHAT MAKES A QUESTION IRRELEVANT?



Three **clear** exceptions to relevance:

1. Questions about privileged information,
2. Questions about complainant's prior sexual behavior, or sexual predisposition, and
3. Questions previously asked & answered.

**Questions that pertain to these matters must be excluded & dismissed.**





### DECISION-MAKER

#### STATS

INT	95
SPD	88
PWR	100
CRT	85

If decision-maker is a **single individual**, they are responsible for the decision.

If the decision-maker is a **panel**, the **panel chair** will be responsible for relevancy determinations.

*The 2020 Final Rule “does not require a decision-maker to give a length or complicated explanation.”*

# HOW DO DECISION-MAKERS MAKE RELEVANCY DETERMINATIONS?

# QUESTIONS ABOUT PRIVILEGED INFORMATION

- **IRRELEVANT** because they call for information shielded by a Medical or otherwise ***LEGALLY-RECOGNIZED PRIVILEGE***
  - Physician, dentist, podiatrist, chiropractor, nurse, psychologist, psychiatrist
  - Clergy, rape crisis counselors, social workers
  - Each state may have specific rules pertaining to privilege



# QUESTIONS ABOUT PRIVILEGED INFORMATION

“This question is irrelevant because it calls for information shielded by a legally-recognized privilege - Questions about privileged information: **[identify the privilege here]**.”

“The question is relevant because, although it calls for information shielded by a legally recognized privilege - Questions about privileged information **[identify the privilege here]**, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or. Less likely to be true.



# COMPLAINANT'S PRIOR SEXUAL BEHAVIOR, OR SEXUAL PREDISPOSITION

Information about the complainant's sexual habits or predisposition, OR prior sexual behavior are **not relevant** unless they meet one of two exceptions:

1. Questions & evidence of this kind are offered to prove that **someone other than the respondent** committed the violation, or
2. If the information concerns **specific incidents** of the complainant's prior sexual behavior with respect to the respondent & is offered **to prove consent was obtained.**





# COMPLAINANT'S PRIOR SEXUAL BEHAVIOR, OR SEXUAL PREDISPOSITION

“This question is irrelevant because it calls for information about the complainant’s prior sexual behavior **without meeting one of the two exceptions.**”

“This question is relevant because although it calls for information about the complainant’s prior sexual behavior, it meets one of the two exceptions to the **rape shield protections** defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true:

**EXCEPTION 1:** the question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.

**EXCEPTION 2:** the question concerns specific incidents of complainant’s prior sexual behavior with respect to the respondent and is asked to prove consent.”



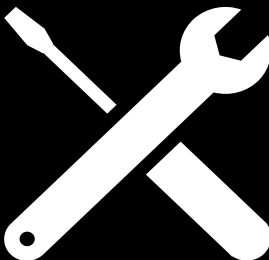
# GENERAL FACT FINDING QUESTIONS

**REPETITIVE QUESTIONS**, or questions that do not address the allegations in any meaningful way, may be **DETERMINED IRRELEVANT**.

“This question is relevant because it asks whether a fact material to the allegation is more or less likely to be true.”

“This question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.”

“This question has been asked and answered. **[CITE]**”



# DETERMINING RESPONSIBILITY

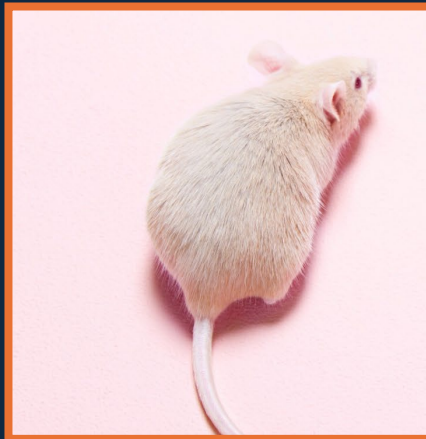
- ❑ Identify the **allegations** potentially constituting sexual harassment
- ❑ Describe the **procedural steps** taken
- ❑ Identify **findings of fact** supporting the determination
- ❑ Identify which **section of the grievance policy** respondent has or has not violated
- ❑ For **each allegation**, provide a statement of and rationale for:
  - ❑ The result, including a determination regarding responsibility;
  - ❑ Any disciplinary sanctions imposed on the respondent; &
  - ❑ Whether remedies designed to restore or preserve equal access to recipient's education program or activity will be provided to the complainant; &
- ❑ Describe the recipient's **appeal procedures**

# KINDS OF EVIDENCE



**DIRECT**

**CORROBORATING**



**CIRCUMSTANTIAL**





## **DIRECT**

First-hand observations & evidence of incident or surrounding circumstances

CONSIDERABLE WEIGHT (e.g. witness testimony of first-hand account of incident).

## **CORROBORATING**

Statements or tangible materials that confirm direct evidence regarding incident

SOME WEIGHT (e.g. video evidence, text message threads, security footage, swipe card records, business records, medical records).

## **CIRCUMSTANTIAL**

Statements or tangible materials that rely on inference to connect to a conclusion of fact

LEAST WEIGHT (e.g. photo of location of alleged sexual assault showing several empty vodka bottles & solo cups).

# **ASSESSING WEIGHT**

**GENERALLY SEEN AS  
MORE OBJECTIVE**

CONSISTENCY &  
SPECIFICITY OF  
TESTIMONY

CORROBORATION  
OF TESTIMONY

CONTRADICTORY TESTIMONY  
OF EVIDENCE BY OTHERS

DEMEANOR & BODY  
LANGUAGE

INHERENT PLAUSIBILITY  
(IT JUST MAKES SENSE)

RECALL

EVASIVENESS

**MORE SUBJECTIVE,  
SO **USE CAUTION:****

# WEIGHING TESTIMONY & EVIDENCE

# CREDIBILITY DETERMINATIONS: OBJECTIVITY

- Cannot be based on the party's status
- Cannot apply **“predictive behaviors”**
- But decision-makers may consider:
  - The party/witness' stake in the outcome
  - The potential conflict of interest where an advisor is also a witness
  - Possible motive to fabricate testimony
  - The possibility of coaching



# CREDIBILITY

**SPECIFICITY**  
**CONSISTENCY**  
**CONTRADICTION**  
**MOTIVE TO DECEIVE**  
**DEMEANOR &**  
**EVASION**

Credibility judgments may feel subjective – decision-makers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar & stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth. The areas on the left can help decision-makers determine credibility.



# DELIBERATION



Establish roles, assess board member strengths



Review allegations, claims, evidence, hearing notes



Utilize tools for success, sanctioning guidelines, bias chart, etc.



Scheduling, flexibility



Seek consensus, or lack thereof

# DETERMINATION & REMEDIES



Not Responsible/Not In Violation – revisiting restrictions



Responsible/In Violation – sanction guidelines, prior history, readmission



Considerations, resources, consistency, non-discrimination

# SANCTIONS AND/OR REMEDIES

- **Appropriate Sanctions:** If the student is found responsible, outline the sanctions. If it's an employee, sanctions will likely be issued later.
- **Appropriate Remedies:** If remedies are being provided to the complainant, outline them here
- **Rationale for Sanctions/Remedies:** Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct history, & educational outcomes or institutional obligations to the complainant

# BREAK!





# DETERMINING SANCTIONS

**CLOSING STATEMENTS**  
**IMPACT OF SANCTIONS**  
**PROPORTIONALITY**  
**CONSISTENCY**  
**PRIOR DISCIPLINARY**  
**HISTORY**  
**EDUCATIONAL MISSION**



# **BOTH PARTIES CAN SUBMIT IMPACT STATEMENTS**

- Provide context for their behavior
- Suggest possible options for the board to consider
- Describe the impact the process has had on them, the other party, or their community
- Suggest sanctioning or request leniency



# IMPACT OF SANCTIONS

***SANCTIONS SHOULD ADDRESS ANY AGGRAVATING AND/OR MITIGATING FACTORS OF A CASE***

Aggravating factors INCREASE severity of a violation

- EX: Lack of remorse or understanding, presence of weapons, premeditation

Mitigating factors DECREASE severity of a violation

- EX: Non-violent offense, demonstrated capacity or willingness to change behavior

Restorative measures rather than purely punitive sanctions

Disproportionate effect on student unrelated to the circumstances

# PROPORTIONALITY

## *SANCTIONS **PROPORTIONAL** TO OFFENSE*

Is sanctioning consistent with the kind of violation considered before the hearing panel?

Mitigating/Aggravating Factors

Rationale needed when deviating

<b>Open Container of Alcohol</b>	<b>Violent Offense Under the Influence of Alcohol</b>
Warning	??



# CONSISTENCY

***DEVIATION FROM INTERNAL CONSISTENCY CAN BE  
SEEN AS **ARBITRARY & CAPRICIOUS*****

Individual treatment of cases an imperative

Many cases may have similar circumstances  
& outcomes

- Colleges must have record keeping  
protocol

History & guidance can assist in sanction  
development

Disregarding consistent sanctioning  
response must be rationalized

Student 1	Student 2
Responsible for Stalking	Responsible for Stalking
Removal from Housing	Warning & Reprimand
Rationale	???

# PRIOR DISCIPLINARY HISTORY

**REMEMBER: PRIOR MISCONDUCT IS *NOT EVIDENCE OF RESPONSIBILITY* FOR NEW MISCONDUCT**

Hearing panels can use prior findings of responsibility to assist in determining sanctions for new responsible findings

Prior similar violations with similar circumstances may indicate a need for more impactful sanctioning

- Frequency of violation, also

More punitive motivation than other considerations

SAMPLE STUDENT	
Responsible for Stalking	Responsible for Stalking
January 2025	December 2025
Probation, Counseling, Educational Sanctioning	???

# INSTITUTIONAL MISSION

***WHAT DOES YOUR INSTITUTIONAL MISSION  
HAVE TO SAY ABOUT **STUDENT MISCONDUCT**?***



Institutional philosophy may influence your office & practice

Scheduling systems for sanction, predetermined outcomes for responsible findings

Collaborative approaches with other offices, or with responsible students

Performance plans or behavioral agreements

# COMMON SANCTIONS

<b>WARNINGS OR REPRIMANDS</b>	Both written and/or verbal
<b>CREATIVE OR EDUCATIONAL</b>	Reflection papers, presentations, letters to future-selves, pre-made programs designed for specific circumstances
<b>PUNITIVE MEASURES</b>	Probation, suspension, or permanent separation from the institution
<b>RESTORATIVE MEASURES</b>	Intentional dialogues with community members, service dedicated to repairing harm or restoring relationships
<b>ENGAGEMENT WITH RESOURCES OR SERVICE</b>	Counseling, or wellness-related services, partnerships with on-campus offices to engage students with community & campus



# RATIONALE, IN PRACTICE

- DESCRIPTION OF EVIDENCE REVIEWED (i.e. written statements, report filed through TIX Investigator, screen shots of various message threads, & witness testimony)
- Description of relevant CODE OF CONDUCT / TITLE IX GRIEVANCE PROCESS section
- Description of STANDARD OF EVIDENCE
- RE-STATEMENT OF FINDING (not responsible/responsible)
- RATIONALE supporting finding, including evidence was relied on & what the substance of that evidence was, & if applicable, evidence that was not relied on
- Any DISCIPLINARY SANCTIONS imposed upon respondent
- Any REMEDIES DESIGNED TO RESTORE OR PRESERVE EQUAL ACCESS to the education program or activity will be provided to the complainant

# STANDARD OF EVIDENCE DESCRIPTION

For each charge, state the standard of evidence being used

- Preponderance of the Evidence, *or*
- Clear & Convincing

*“By a **preponderance of the evidence** the hearing board has found the respondent is more likely than not...”*

# DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence used in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that observed ... “
- **Witness testimony** – “Verbal testimony given by witness #1 that stated ... corroborated ... ”
- **Text messages** – “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 ...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 ...”

# DESCRIPTION OF EVIDENCE REVIEWED

Provide a **BRIEF SUMMARY** of the evidence **NOT USED** in making the decision

- **Witness testimony** – “Verbal testimony given by the complainant that was not relevant because ... “
- **Text messages** – “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 that did not provide additional context...”
- **Email Communications** – “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 that were not related to the charges...”



# APPEALS PROCESS

## 3 MANDATED GROUNDS

1

**PROCEDURAL IRREGULARITY** that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);

2

**NEW EVIDENCE** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

3

The Title IX Coordinator, investigator(s), or decision-maker(s) had a **CONFLICT OF INTEREST OR BIAS** for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter

*“An opportunity for a student to bring forward specific concerns that may have impacted the result of the original hearing (as defined in your institution’s code of conduct)”*

(Kalagher, S.S. & Curran, R. D., 2020)



## **WHAT IS AN APPEAL?**

A man with dark hair, wearing a grey suit jacket over a striped shirt, is holding a large white rectangular sign. The sign has the text "WHEN CAN A PARTY APPEAL?" written on it in bold, black, and orange letters. The background is a solid dark blue.

# **WHEN CAN A PARTY APPEAL?**

**APPEALS CAN TAKE PLACE ANY  
TIME A DECISION IS MADE.**

This includes, but may not be limited to:

- Supportive measures (any kind)
- Emergency removals
- Relevance determinations
- Evidence or question exclusions
- Adjustments made throughout the process
- Decisions/determinations
- Dismissals of complaint

**YOUR INSTITUTION **REQUIRES** A  
MECHANISM TO HEAR  
CHALLENGES.**

Appeals are not mulligans or do-overs  
No second-guessing or micro-management of hearings  
Cannot deviate from procedures  
All parties must be notified of appeals  
All new panel to hear appeals  
Conflicts of interest and/or bias prohibited  
Additional grounds for appeal may be considered, but only if  
publicly available & applicable to all

# **APPEAL CONSIDERATIONS**



Appeal decisions must be **in writing**.

Parties notified simultaneously through official communication.

The decision must include, at minimum:

- The grounds for appeal, or grounds considered;
- The rationale for granting or denying the appeal; &
- If the appeal is granted, what are the next steps for remedy & why?

### **What is a remedy?**

- Example: increase or decrease the severity of sanction for the respondent



# APPEAL DECISION

- Finding of Responsibility
- Policy Jurisdiction
- Formal Complaint Summary
- Investigatory Procedures
- Inspection & Review of Evidence
- Review of Investigative Report
- Delays & Adjournments
- Live Hearing Procedures Summary
- Appeal Rights
- Findings & Rationale
- Sanctions & Remedies



# DETERMINATION NOTICE

AREA	CONSIDERATIONS
PERSON CENTERED	Summary Letter
CAPACITY	Board Member Schedules, Timeframes, Deadlines
SKILLSETS	Board Members assigned to specific tasks
STYLE	Findings section may vary depending on the type of case; Create an outline with your analysis mapped-out before drafting
TECHNOLOGY & PRIVACY	What are some considerations here? How is information shared and kept private?
TRAINING	Senior board members may be better equipped to write rationales

# DETERMINATION NOTICE



## **NOTIFICATION OF DETERMINATION**

Supportive  
measures or interim  
restrictions remain  
in place through  
appeal

Either party can  
appeal (same  
timeline)

Preparation for any  
reactions during this  
time-period



Reactions v. Responses

Reflective Responses:  
**Restate, Reflect, Validate**

Choices

Consistent Communication &  
Offerings for Parties

FERPA Considerations



# REACTIONS & CONSISTENT COMMUNICATION

# WHAT IS RETALIATION?

- Intimidation,
- Threats,
- Coercion,
- Discrimination, and/or
- Charges for a code of conduct violation

WITH THE PURPOSE OF INTERFERING WITH  
ANY RIGHT OR PRIVILEGE SECURED BY TITLE

IX



# ZERO TOLERANCE!



TITLE IX **PROHIBITS RETALIATION**  
AGAINST PEOPLE WHO SEEK TO  
ASSERT THEIR TITLE IX RIGHTS, for  
example:

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

# WHICH ROLES NEED TRAINING?

**TITLE IX  
COORDINATORS**

**DECISION-  
MAKERS**

**INVESTIGATORS**

**INFORMAL  
RESOLUTION  
FACILITATORS**



# TITLE IX COORDINATOR TRAINING

- ❑ Definition of sexual harassment (106.30)
- ❑ Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- ❑ How to investigate
- ❑ How to conduct grievance processes (including hearings, appeals, informal resolutions if using)
- ❑ Technology used at live hearings
- ❑ Issues of relevance of questions & evidence
- ❑ Rape shield protection
- ❑ Issues of relevance in creating an investigative report
- ❑ How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- ❑ Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

# DECISION-MAKERS

- ❑ Definition of sexual harassment (106.30)
- ❑ Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- ❑ How to conduct grievance processes (including hearings, appeals, informal resolutions)
- ❑ Technology used at live hearings
- ❑ Issues of relevance of questions & evidence
- ❑ Rape shield protection
- ❑ How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- ❑ Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

# INVESTIGATORS

Definition of sexual harassment (106.30)

Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")

How to investigate

Issues of relevance of questions & evidence

Rape shield protection

Issues of relevance in creating an investigative report

How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)

Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

# INFORMAL RESOLUTION FACILITATORS

Definition of sexual harassment (106.30)

Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")

Issues of relevance of questions & evidence

Rape shield protection

How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)

Facilitation of informal resolution processes (including administrative review, mediation, and/or restorative justice)

Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

# NY-129 B REQUIREMENT

NYS requires the use of a specific definition of *consent*  
--abroad misconduct—

Provide supportive measures whether or not a complainant declines to pursue grievance process

Complainant has the right to report to law enforcement, the institution, & protected by the institution from retaliation





# CONSENT



# NYS DEFINITION

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.”



# NY-129 B REQUIREMENT



**F.R.I.E.S.**



 Planned Parenthood

**FREELY GIVEN**  
**REVERSIBLE**  
**INFORMED**  
**ENTHUSIASTIC**  
**SPECIFIC**

## **NYS SCHOOLS MUST REFLECT CERTAIN PRINCIPLES IN GUIDANCE:**

- Consent to any act or prior act between any party does not imply or constitute consent to another act
- Required regardless if person initiating is under the influence of drugs/alcohol
- Consent may be withdrawn as well as given
- Incapacitated individuals cannot give consent
- Consent cannot be coerced
- When consent is withdrawn or cannot be given, sexual activity must stop





# RECORDKEEPING

## INSTITUTIONS MUST KEEP, FOR AT LEAST SEVEN YEARS, RECORDS OF:

### Each sexual harassment investigation, including

- Determination regarding responsibility,
- Any audio or audiovisual recording or transcript,
- Any disciplinary sanctions imposed on respondent,
- Any remedies provided to complainant designed to restore or preserve equal access to institution's educational programs or activities

### Any appeal & results of said appeal

### Any informal resolution & results of said resolution

### Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment

- Basis for conclusion, & that institution was not deliberately indifferent
- If no actions taken, the rationale for why response was appropriate & not deliberately indifferent

### All training materials for TIX Coordinators, investigators, decisionmakers, & any informal resolution facilitator

- Training materials must be publicly available on its website, or make them available upon request for inspection by members of the public

This document is designed to help Title IX Coordinators map the decision-making process for:

- all reports & formal complaints of Title IX sexual harassment, including reports that do not result in an investigation or adjudication.

This work may be completed by several different offices & individuals on campus, (e.g. Student Conduct, Human Resources, Office of Disability Services) but it is the Title IX Coordinator's responsibility to track these items.

We created this document to help our members track every aspect of response in every case, in real time, reducing the need to re-create responses & information long after the conclusion of a case.



TITLE IX TOOLKIT



Student Conduct Institute  
Case Rationale Map for Title IX Coordinators  
July 1, 2020 (Updated May 27, 2021)

**What is the purpose of the Case Rationale Map?**

Title IX Final Rule, section 106.45(b)(10), requires institutions to maintain, for seven years, records of: (A) any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant; (B) Any appeal and its result; (C) Any informal resolution and its results; and (D) All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment.

The institution must also create and maintain for a period of seven years a record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, as well as document the bases for its conclusions and that it has taken measures designed to preserve access to the institution's educational program or activity.



# CASE RATIONALE MAP



<b>Title IX Coordinator Training</b>	<b>COMPLETE</b>
Title IX Hearing Board (Decisionmaker) Trainings	9/9, 9/11, 9/16 12/2, 12/4, 12/9
Student Conduct Hearing Board (Decisionmaker) Trainings	9/18, 9/22, 9/25 11/5, 11/7, 11/12
Title IX Coordinator Training	12/11, 12/16, 12/18
Getting Your Clery Annual Report Ready to Publish	9/8
Identifying & Responding to Stalking	9/19
Investigating Stalking	10/16
Trauma-informed Interview Training	10/20, 10/21
The Neurobiology of Sexual Assault	10/7, 10/8
Coordinating Response to Stalking	11/14
The Cost of Caring – Understanding Your Vicarious Trauma	12/19

**THANK YOU SO MUCH FOR JOINING US! *WE ARE SO GRATEFUL TO ALL OF OUR MEMBERS JOINING US FOR OUR TRAININGS.***

**Our upcoming trainings are listed on this slide, but you can find all our Live@Distance offerings in our learning platform.**