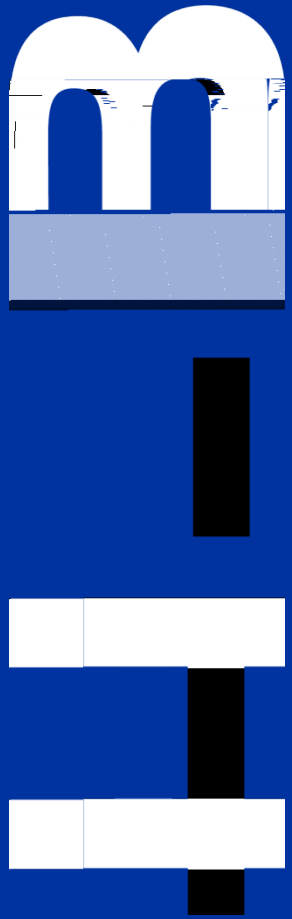

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Title IX Sexual Harassment Response

Participants in sexual harassment policy process

Spring 2023

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Group Scenario

Breakout Groups

- Scenarios discussed in Breakout Groups
- First group – time to introduce yourselves and select a spokesperson; this will be your group for today's training
- Scenario and questions for each Group Scenario will be posted in the Chat Box
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Important Disclaimers

- This training is based on current law – the operative sexual harassment regulations (August 2020)
- We highlight potential changes that may result from proposed regulations that are not yet effective
- The effective date and final language of proposed regulations have yet to be determined
- Litigation is likely to challenge proposed regulations

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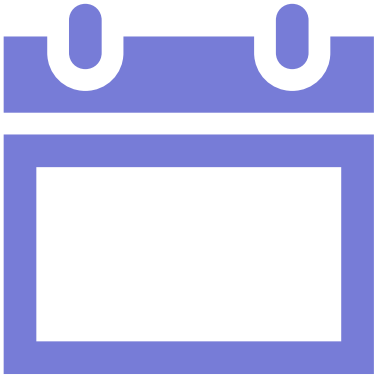
Agenda

- Title IX Scope & Jurisdiction
- Intake and Supportive Measures
- The Investigation
- The Hearing
- Informal Resolution and Other Processes



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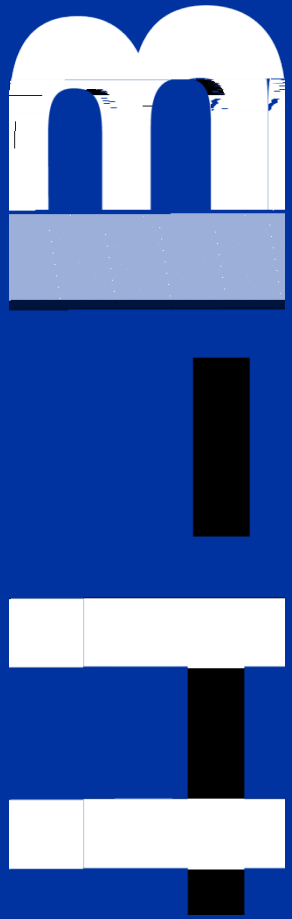

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Title IX Scope & Jurisdiction

What is Title IX?

"[N]o 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 (36 -0 0 3 -1.3) y Tw T* [(p9 (g)-3.cW

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Example of Adverse Treatment

Supervisor consistently gives male employees promotions while keeping female employees in their positions, despite all employees being similarly situated in terms of responsibility, experience, and performance.

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Example of Sexual Harassment

Student tells sexual jokes to peers, displays sexual imagery, propositions them, and frequently comments on whether peers' dress is "sexy."

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What is the key distinction between these two concepts?

- Adverse treatment involves adverse action that is motivated by the target's sex and that directly limits or excludes from participation in education program or activities
  - Usually by someone in a supervisory or authoritative position
- Sexual harassment involves unwelcome conduct that is either sexual in nature or sex based and meets the definition of the VAWA crimes
  - Quid pro quo; hostile environment; sexual assault; domestic violence, dating violence, stalking
  - Sexual harassment is subject to elaborate regulations governing investigation and determination

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Proposed Change

- Proposed regulation requires grievance procedures for all forms of sex discrimination
- Proposed regulation continues to require more rigorous procedures for "sex-based" harassment

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What is the scope of Title IX's reach?

- Title IX applies to sex discrimination in the "education

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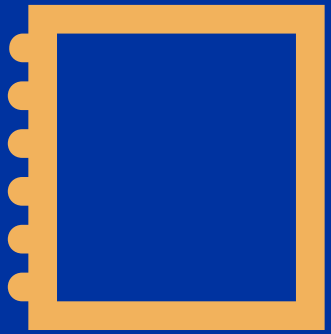
Example (included in EP&A)

One student sends vulgar chat messages and sexual imagery to another student in a class conducted via Zoom.



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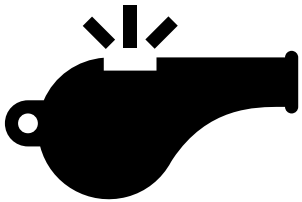

- Jurisdiction will extend to off-campus sex discrimination where:
  - Respondent represents the institution through their authority
  - Respondent is engaged in conduct under the institution's "disciplinary authority"
  - Off-campus conduct contributes to a hostile environment within programs and activities

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Example

An assistant coach meets with a softball player at a local batting

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Does Title IX apply to sexual harassment in other countries?

- No – the Department of Education interprets Title IX to apply only within the geographic boundaries of the United States
- **But** sexual harassment that occurs abroad could

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When must we dismiss a Title IX complaint?

- Alleged sexual harassment occurred outside education programs or activities
-

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When may a case be dismissed ?

- Complainant withdraws allegations in writing
-

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Proposed Change

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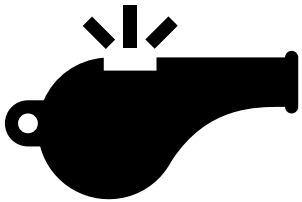

- “On the basis of sex” includes:
  - Assigned sex/biological sex
  - Sex stereotypes
  - Sex characteristics
  - Sexual orientation
  - Pregnancy and related conditions

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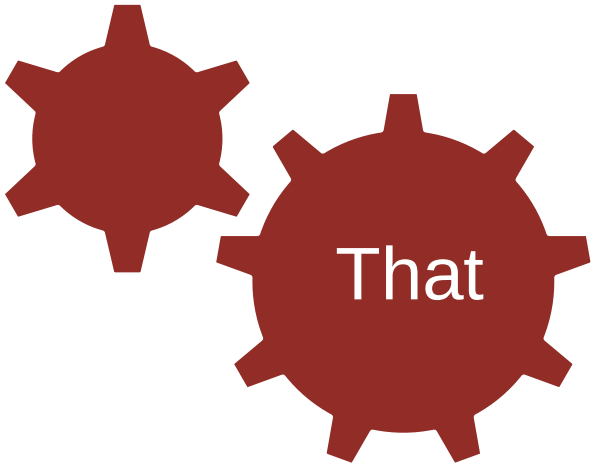
What is quid pro quo?

- An employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual conduct
  - Often arises in the employment context or where an employee holds a position of authority over a student



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Proposed Change

- “Quid pro quo” could also be committed by a person who is an “agent” or “other person authorized by the recipient to provide a (e)-2 (a)-o (

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What is hostile environment?

Unwelcome conduct
determined by a reasonable
person to be so sev6f 0.4 O*ET Q q 566.51cWq

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Example of hostile environment

Supervisor repeatedly mocks and jokes about transgender employee's manner of dress, hairstyle, tone of voice, and other means of gender expression. The mocking and joking occurs over weeks, in the physical presence of others, and via email.

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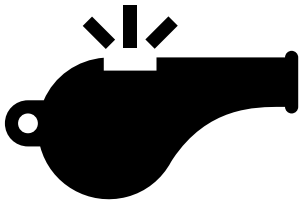

- Proposed regulation would alter to:
  - Severe or pervasive
  - Evaluated subjectively and objectively
  - Denies or limits a person's ability to participate in or benefit from programs and activities
  - Considering numerous facts and circumstances

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Potential example of hostile environment

A public university has recently experienced several physical attacks against gay student on campus. The attacks are widely known and have caused fear and anxiety for gay students. One day, a gay student who has not been the victim of a physical attack wakes up to find the phrase “all qu**rs must die” written on the white board outside the student’s door.

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What about the First Amendment?

- While sexual harassment can be verbal or written in nature, sexual harassment under Title IX does not include conduct that is protected by the First Amendment
- The subjective offensiveness of speech, alone, is not sufficient to create a hostile environment

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What is sexual assault?

Title IX regulations define “sexual assault” as

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What is rape?

Having carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted rape is included.

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What is consent?

- Words or actions that a reasonable person in the respondent's perspective would understand as agreement to engage in the sexual conduct at issue
- A person who is incapacitated is not capable of giving consent
- Consent cannot be procured by coercion
- Be aware of minimum age of consent

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What is incapacity?

Incapacity refers to a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

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What is statutory rape?

Sexual intercourse with a person who is under the statutory age of consent as defined by law.

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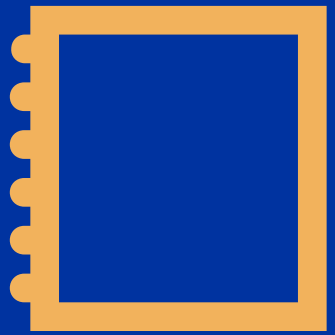
Example



State law sets a minimum age of consent at 17. A 16-year-old graduates from high school early and attends college the following fall. 16-year-old's boyfriend from high school, who is 18, also attends college, and the two have sex on campus in 18-year-old's dorm room. Neither student complains. The Title IX Coordinator learns of the incident from an anonymous report

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What is sodomy?

Oral or anal sexual intercourse with another person without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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What is sexual assault with an object?

Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the perpetrator other than the perpetrator’s genitalia.

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What is fondling?

Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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What is incest?

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

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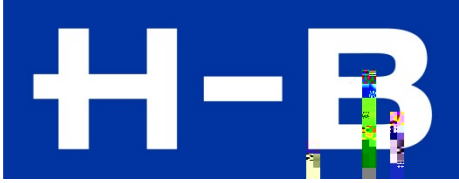
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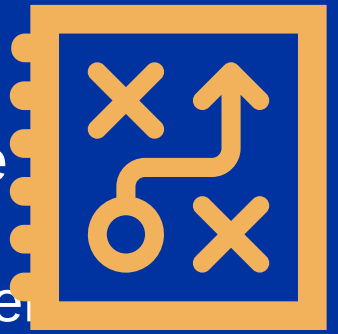
Example of domestic violence

Faculty member brings their underage child to campus. A custodian hears the faculty member berating their child in the faculty member's office, walks down the hallway, and observes the faculty member aggressively slap the child's face, causing the child to cry.



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What is dating violence?

“Dating Violence” is violence committed by a person:

- Who is or has been in a social relationship of a roman or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the person involved in the relationship.

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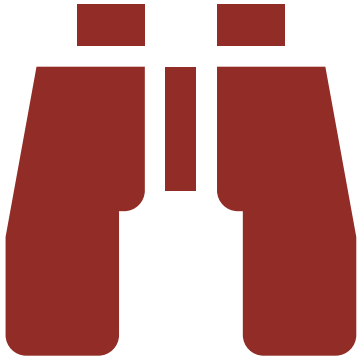
What is stalking?

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

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.



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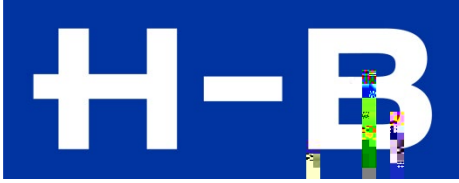
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Example of retaliation

A student is accused of sexual assault but refuses to participate in a Title IX interview. Angered that the student is not “accepting responsibility,” the Dean of Students files conduct charges against the student for “failing to cooperate with an institutional process.”

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Group Scenario

University has a “summer semester” language program in Spain. Participating undergraduate students receive graded credit. A

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Questions

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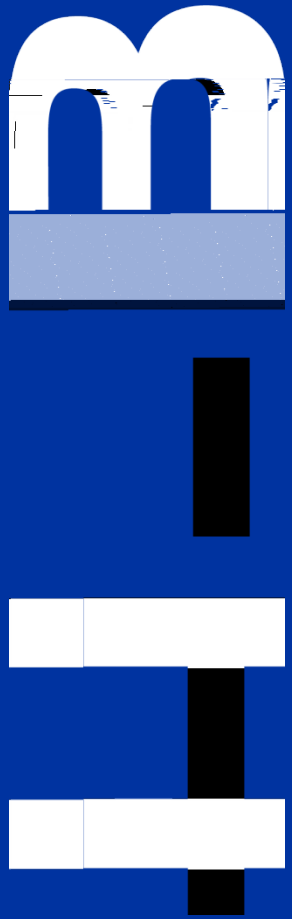

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What is “actual knowledge”?

- “Actual knowledge” occurs when
  - An institutional official, with authority to take corrective action
  - Observes or receives a report
  - Of sexual harassment occurring in the institution’s education programs and activities

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Proposed Change

- Proposed regulation would create classes of mandatory reporters:
  - Employees with authority to implement corrective measures
  - Administrative leaders, teachers and advisors
  - Other employees either to report or to

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Proposed Change

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When do we reach out to the alleged victim?

- After institution has actual knowledge of alleged sexual harassment, Title IX Coordinator must contact alleged victim
- Provide information about supportive measures, explain the grievance process and how to file a formal complaint, and discuss the alleged victim's wishes

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What if we can’t identify the alleged victim from a report?

- Title IX Coordinator should oversee preliminary investigation to determine identity of alleged victim
- If identity of alleged victim cannot be discerned after reasonable inquiry, matter should be documented

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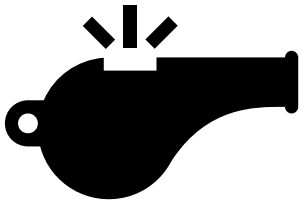
Proposed Change



- Proposed regulation would:
  - Specifically permit dismissal if the identity of the respondent cannot be determined after reasonable inquiry

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Do we need a formal

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What are supportive measures?

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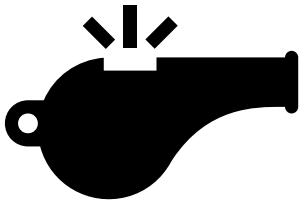

- Supportive measures that burden a respondent must be terminated at the conclusion of the grievance procedures
- May be no more restrictive of respondent than is necessary

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Examples of supportive measures

- Counseling
-

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Example of reasonable supportive measure

Undergraduate student who reports a sexual assault seeks one week off from class to attend an inpatient mental health care facility to address effects of trauma. Student is required to make up coursework within a reasonable amount of time after treatment is complete.

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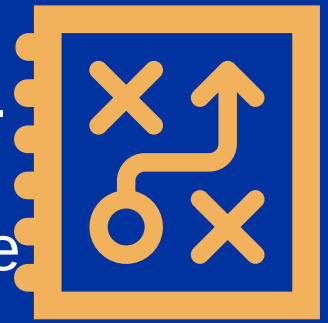
Example of reasonable supportive measure

Student worker whose shift ends at 11:00 pm is attacked and beaten by former domestic partner in a dimly lit parking lot. Student worker requests the institution have a security guard present outside the building when she leaves at 11:00 pm.



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Example of reasonable supportive measure???

Employee accuses a co-worker of repeatedly pursuing a romantic relationship despite employee's repeated refusals. Employee requests institution ban co-worker from being in the same building as employee.

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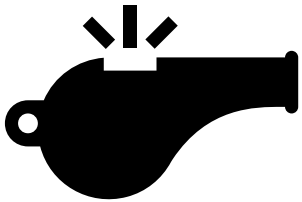

- Either party affected by a decision regarding supportive measures must be allowed to appeal to an impartial employee
- Respondent must be allowed to challenge supportive measures that burden respondent before they are enacted, except in an emergency

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Example

One student accuses another student of stalking and requests a no communication order as a supportive measure. After the order is imposed, the respondent begins lurking outside complainant's residence hall. Complainant then requests a proximity restriction.

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Proposed Change

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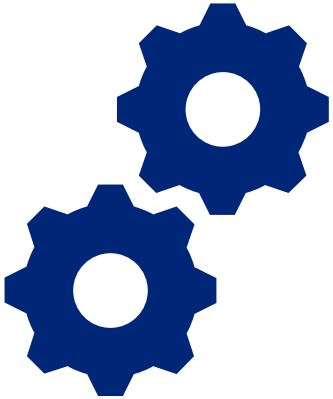
Do students and employees have other rights?



- Yes—other laws may trigger accommodations when a medical condition or disability is present
  - Americans with Disabilities Act
  - Family and Medical Leave Act
  - Section 504 of the Rehabilitation Act
  - Title IX pregnancy accommodation provisions

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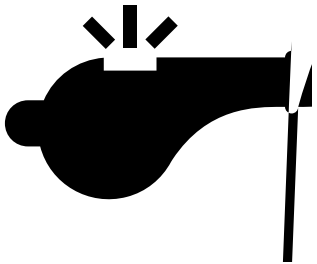

- Even if a complaint is dismissed, the institution must provide supportive measures to the complainant, as appropriate, and to the respondent if the respondent has been notified.

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Are supportive measures confidential?

- Generally, yes
- Only shared to the extent necessary to effectuate the purpose of the supportive measure
- Only shared with institutional employees who have a legitimate need to know

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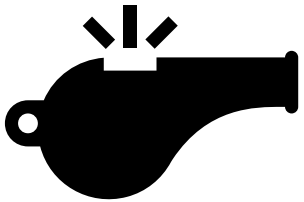

- Supportive measures may also be shared with another party "only if necessary to restore or preserve that party's access to the education program or activity."

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Example

Student A accuses Student B of dating violence. Institution requires Student B to meet with a counselor as part of a plan to allow Student B to remain on campus pending investigation. Institution informs Student A that Student B will be evaluated before a decision is made whether Student B may remain on campus.

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Who is responsible for supportive measures?

- Title IX Coordinator is responsible for “coordinating the effective implementation”
- May be delegated with appropriate oversight
- Typically, a collaborative effort involving more than one institutional office or department

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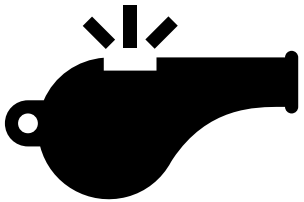

- Remember, proposed regulation allows an appeal to an impartial person of supportive measure decisions
- Important to consider what role Title IX Coordinator plays in decision-making process

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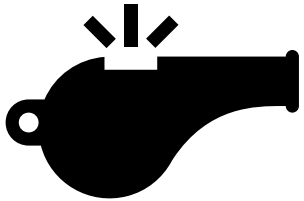

- Interim removals or suspensions can be utilized when there is an “immediate and serious threat to health or safety.”
- Requirement of “physical” threat is removed

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Example of immediate and serious threat to health or safety

Student A reports that Student B placed a secret video camera in a

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Can we utilize an already existing process for interim removals?

- Yes, if that process complies with the Title IX standard
- Common institutional examples include:
  - Threat assessment policy
  - Critical Incident Response Team (“CIRT”)
  - Interim suspension provisions of Student Handbook

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Can we place employees on administrative leave?

- Yes – employee respondents may be placed on administrative leave without requisite showing of threat to physical health or safety
- Whether an opportunity to challenge administrative leave must be given depends on employee status and other policies (e.g., Faculty Handbook)

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Example of administrative leave

Employee works in the student recreation center and is an “at will” employee. Student reports that student caught employee stealing student’s underwear from student’s gym bag. Institution places employee on administrative leave pending investigation and determination.

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Group Scenario

Casey and Monique attend a party at a sorority house and consume alcohol. The two got 50 g 7got 50 (nd M)5.9 (o)1.8 (niqu)6.9 (’)69iqu

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Questions

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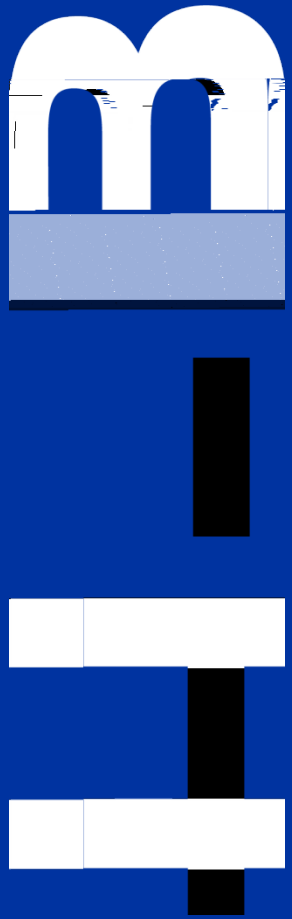

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The Investigation

What is the purpose of Title IX investigation?

- For the institution
- To collect relevant inculpatory and exculpatory evidence
- Sufficient to permit an impartial decision maker to determine through a live hearing
- Whether or not the reported sexual harassment occurred

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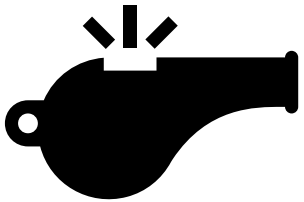
Proposed Change



- Proposed regulation would allow a combined investigation/decision making model
- But, with more robust rights of the parties to pose questions through the investigator

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What are the general principles of an investigation?

- Investigator has an independent duty to collect relevant inculpatory and exculpatory evidence
- Parties must have sufficient notice to prepare and meaningfully participate
- Parties have an equal opportunity to present their statements, evidence, and to identify witnesses
- Parties have equal opportunity to review and comment on evidence developed
- Investigation is evidence gathering; not fact finding

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What is a formal complaint?

- Signed writing
- From the alleged victim or the Title IX Coordinator;
- Alleging sexual harassment;
- Indicating desire to initiate the grievance process (i.e., investigation and hearing).

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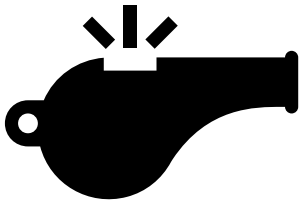

- Proposed regulation would eliminate the concept of a “formal” complaint
- New regulation recognizes only a “complaint” that can be verbal or written

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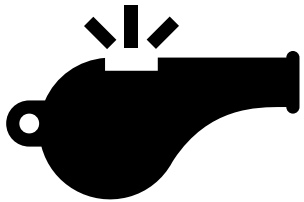
Proposed Change



- Proposed regulation would allow complaints from someone who was a participant in education programs and activities<u>at the time of the alleged misconduct</u>

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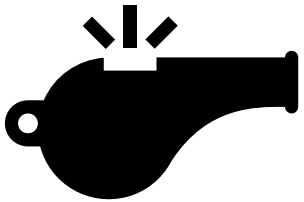

- A person who is legally authorized to act on behalf of a complainant may file a complaint
- E.g., parent, guardian

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How do we tell the parties about an investigation?

- Institution must provide the parties written notice of a formal complaint that includes sufficient details about the “who, what, when, where, and how” before investigating

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What else does the notice need to say?

- Written notice must also include:
  - Statement of presumption respondent is not responsible unless and until a determination is made at the end of the process
  - That parties have the right to an advisor of their choice
  - That parties have the right to inspect and review evidence
  - Any prohibition on providing knowingly false statements or information

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Can we gather any information prior to the written notice?

- Yes, but only to the extent necessary to determine how the case will proceed
- Typically, this “preliminary inquiry” would involve identifying the putative victim and understanding the scope of the allegations
- Information gathering that seeks to determine whether the allegations are *true* is investigatory and should await the written notice

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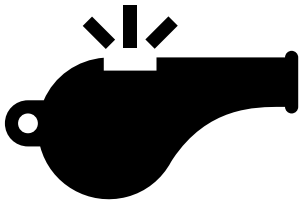

- Proposed regulation contemplates preliminary investigation
  - To determine identities of the parties
  - To clarify allegations prior to dismissing on the basis they could not constitute sex discrimination

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May we take steps to preserve information before sending the written notice?

- Yes, if the work isn't investigatory and there is a legitimate concern information will be lost
  - Placing a "hold" on an email account
  - Asking IT to capture server-level data
  - Having campus security suspend auto-delete of security footage

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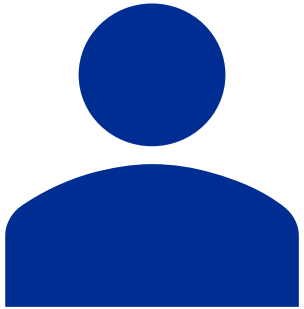
How do we collect evidence in an investigation?



Interviews of parties and witnesses

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How do I ask questions in the substantive phase?

- Open-ended and non-suggestive invitations
- Use facilitator words to keep the

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Examples of open invitations

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Examples of facilitators

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Examples of recognition prompts

“What did she say?” (directive)

“What day did that happen?” (directive)

“Did it hurt?” (option choosing)

“Was he slurring words?” (option choosing)

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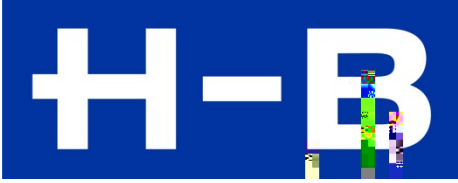

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How do we make a record of the interview?

- Trend towards audio recording
- Extensive note taking followed by preparation of a summary is permissible
- Video recording is disfavored

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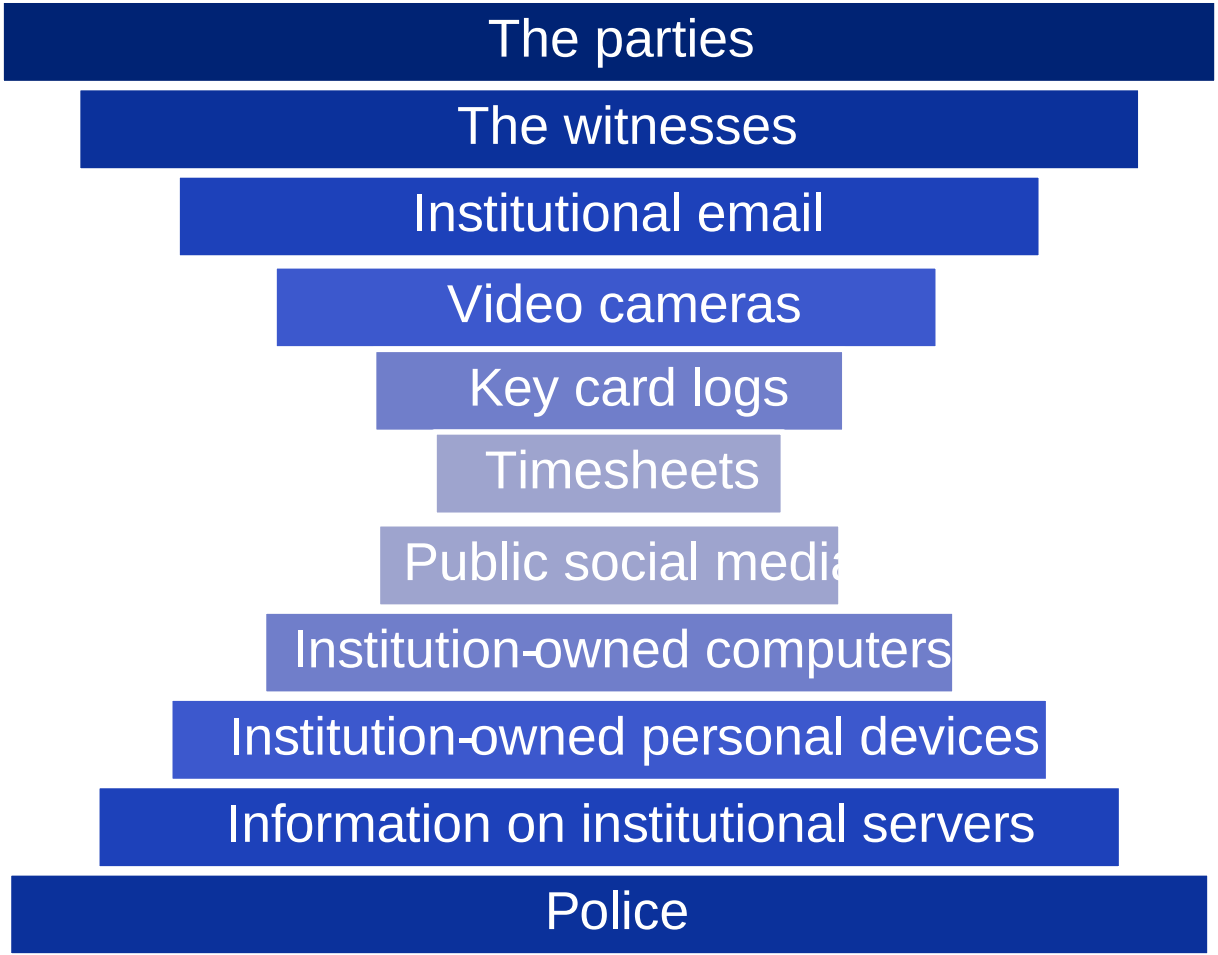
Example sources of non- testimonial evidence



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May an investigation collect evidence on sexual history?

- Generally, no – Evidence of a complainant's prior sexual behavior is relevant only if offered to prove that someone other than the respondent committed the conduct, or if evidence of specific incidents of the complainant's prior sexual behavior with the respondent are offered to prove consent

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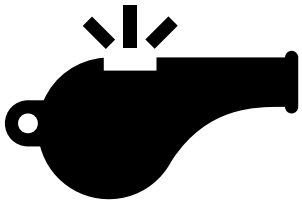

- Expanded to prohibit consideration of evidence that
  - “Relates to the complainant’s sexual interests or prior sexual conduct” unless
  - Showing someone other than respondent committed the act or
  - To prove consent with specific incidents between the complainant and respondent

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Example

Student A complains that Student B forced Student A to have oral sex. Student B says it was Student A's idea and Student A consented. Student A says they had never performed oral sex before and wouldn't ever do it because it's "gross." Student B has two witnesses who will say Student A performed oral sex on them.

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May an investigation collect and rely on privileged records?

- Only if a party waives the privilege
-

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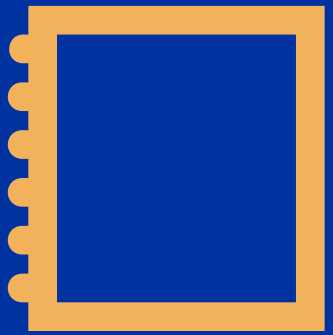
Example of permissible use

Student who makes report of sexual assault executes a written release allowing disclosure of SANE examination report indicating physical injuries consistent with the use of force.



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Example of permissible use??

During an interview, respondent voluntarily, and without being asked, discloses that he immediately called a criminal lawyer after the sexual encounter because he knew “I was in big trouble and could go to jail for what happened.”

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Do the parties have access to the evidence?

- Parties must be given access to all inculpatory and exculpatory evidence directly related to the allegations (regardless of whether the institution intends to rely on it) at least 10 days before the investigation report is finalized
- Evidence must be provided to a party and their advisor in physical copy or electronically
- Any earlier access to the evidence must be provided equally

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What exactly has to be shared?

- Anything that has “evidentiary” value
- That is, the information is potentially inculpatory or exculpatoryin light o1tatorrin7(y)--0.7 (m)1.27(a)9.1 7 (mn-
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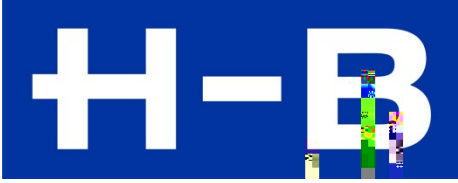

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Example (permissible)

After completing all interviews, investigator uploads interview

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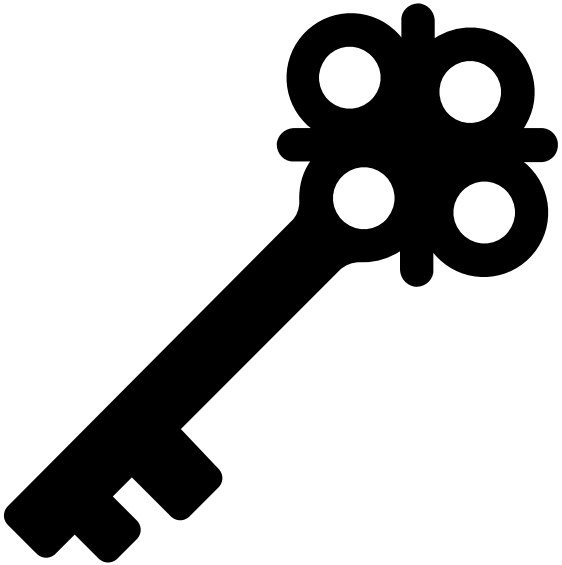
Is the evidence “confidential?”

- Institution may require parties and advisors to agree not to disclose investigation evidence to third-parties
- But cannot prohibit parties from speaking about the allegations themselves



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- Institution “must” take reasonable steps to prevent and address “unauthorized disclosure of information and evidence obtained solely through . . . grievance procedures.”

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How is the investigation concluded?

- Issuance of a written investigation report
- Must fairly summarize the evidence collected, including both inculpatory and exculpatory evidence
- Must be provided to each party and their advisor at least 10 days prior to any hearing

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Proposed Change

- Investigation report becomes optional
- But minimally parties must have ac

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Does the investigation report make findings?

- No – the investigation report fairly summarizes the relevant inculpatory and exculpatory evidence collected during the investigation
- Under the current Title IX regulations, factual findings and determinations of policy violations are made by a decision-maker at a subsequent hearing

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May parties have an advisor during the investigation?

- Yes – parties may be accompanied to any investigative interviews and meetings by an advisor of their choice
- Advisor may be an attorney, but does not have to be
- Institution may confine advisor to a passive role during the investigation phase
- Institution is not required to provide an advisor during the investigation phase

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Example

The institution sends a written notice of investigation to respondent requesting an interview. The advisor, an attorney, demands answers to various procedural questions before he will “allow” his client to be interviewed. Institution’s policy states that advisors play a passive role during the investigation phase and may not obstruct communication with the institution’s students.

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Group Scenario

Students Monica and Alphonso are engaged and have been chaste with each other. Monica becomes pregnant. When Alphonso learns, he ends the relationship and repeatedly makes comments to his friends in the residence hal that Monica is a promiscuous “sinner” and “got herself pregnant with some other guy.” Monica files a sexual harassment complaint against Alphonso, alleging that his comments have resulted in a hostile environment for her. Alphonso identifies an attorney as his advisor. The attorney sends a letter contending the investigation itself violates Alphonso’s rights under the First Amendment and the state’s religious freedom restoration act, which prohibits all state agencies from burdening the exercise of religious rights unless there is compellinginterest

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Questions

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H-B

What is the purpose of the hearing?

- To hear testimony and receive non-testimonial evidence so that
-

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Who is the “decision-maker”?

- A single hearing officer; or
- A hearing panel led by a chair

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What standard of evidence can be used?

- Either
  - Preponderance of the evidence or
  - Clear and convincing evidence
- Institution must select a standard and apply it uniformly in all cases, regardless of the identity of the respondent

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- Clear and convincing standard may

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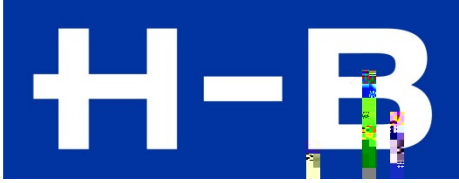
H-B

What is a conflict of interest?

- A material connection to a dispute, the parties involved, or a witness, such that a reasonable person would question the individual's ability to be impartial
- May be based on prior relationship; professional interest; financial interest; prior involvement in a matter; or nature of position

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Example

The University identifies a member of the hearing panel whose child previously dated the complainant for two years.

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How do we schedule a hearing?

- Set aside sufficient time considering the nature and complexity of the case
- Consider class and work schedules of parties and key witnesses to avoid conflicts
- Consider pre-scheduling a backup or “spill over” date in the event the hearing runs long or must be continued
- Provide letters excusing parties and witnesses from other obligations, as necessary

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How do we notify parties and witnesses?

- Institution must provide written notice to the parties of time and place of hearing
- Institution should provide written notice to witnesses requesting their presence
- Notice may be issued by the decision-maker or another institutional official in coordination with decision-maker

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What is a pre -hearing conference?

- A meeting with the parties, decision-maker, and other necessary officials to:
  - Address logistical issues and concerns
  - Discuss the sequence of the hearing and rules of decorum
  - Hear and resolve objections or concerns that can be addressed in advance
  - Take up other issues that will ensure hearing time is focused on testimony

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What are other considerations?

- The pre-hearing conference can be two separate meetings—one with each party and advisor; but follow up notification may be required
- The pre-hearing conference can be conducted virtually
- Advisors should be allowed to attend although their role can still be passive if the institution desires
- The pre-hearing conference is not required but is a best practice that facilitates a smooth hearing

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How does the hearing actually work?

- Title IX regulation is largely silent on specific elements
- Required elements in the regulation include:

Decision-maker(s) must independently evaluate questions for relevance and resolve relevancy objections	Parties' advisors must be allowed to conduct live questioning of other parties and witnesses
EXCLUSIONARY RULES	

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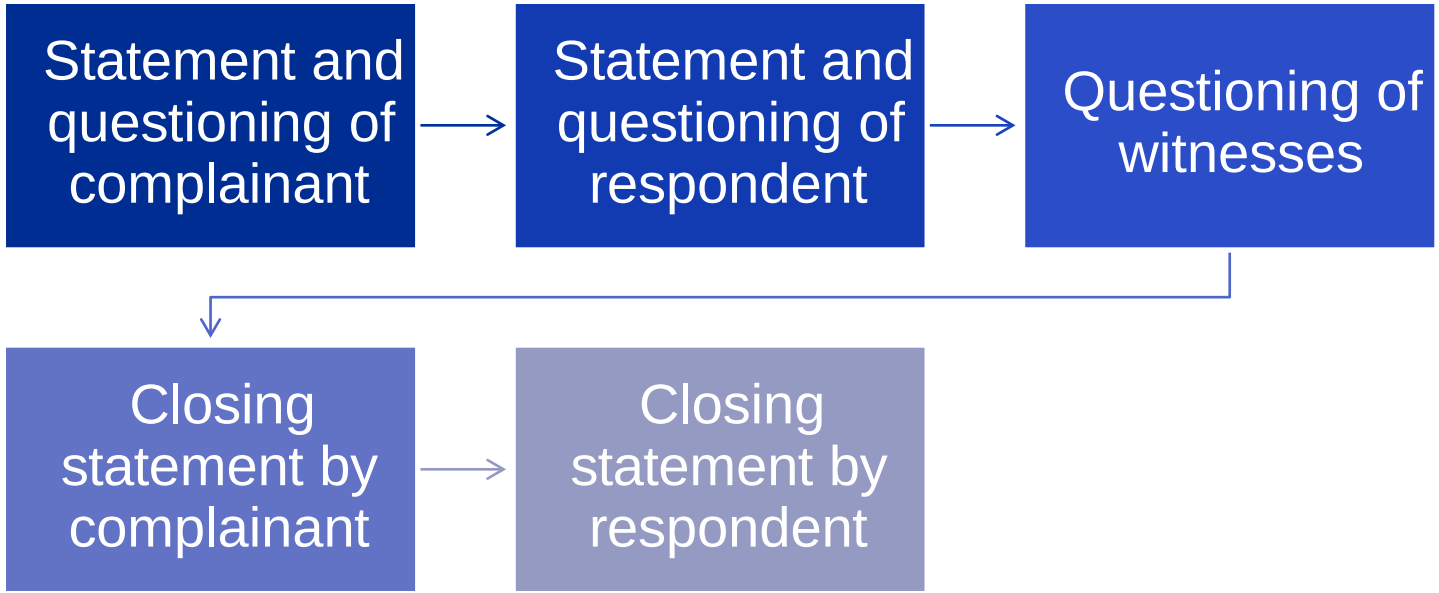
What is a potential sequence?



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Is an advisor allowed to question their own party?

- Not unless the institution chooses to allow it
- The Title IX regulation requires crossexamination, but not “direct” examination

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Who determines relevance?

- Decision-maker(s) must screen questions for relevance and resolve relevance objections
- Decision-maker(s) must explain any decision to exclude a question as not relevant

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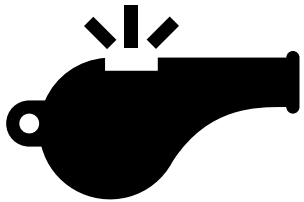

- Proposed regulation would define relevant evidence as that which:
  - “May aid a decisionmaker in determining whether the alleged sex discrimination occurred”

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Example (relevant???)

Female student accuses a male student of creating a hostile environment by repeatedly telling jokes about beating women. Female student testifies about her awareness of multiple female victims of dating violence in her residence hall.

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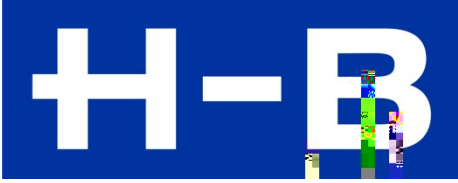

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Does any testimony get excluded?

- Evidence excluded if not relevant
- Evidence excluded if impermissible sexual history or confidential/privileged
- Testimony is no longer excluded under the exclusionary rule

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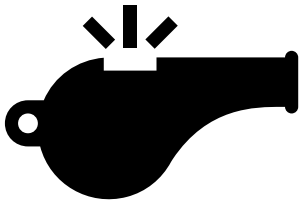

- Proposed regulation would reinstitute a partial exclusionary rule:
- "If a party does not respond to questions related to their credibility, the decision-maker must not rely on any statement of that party that supports that party's position."

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Is an advisor required to ask questions a party wants asked?

- Advisors should consult with their party and consider their preferences for what questions to ask
- But an advisor must exercise their own reasonable judgment and is never required to ask questions that the advisor knows are improper (e.g., invade sexual history)
- An advisor may consult the decision

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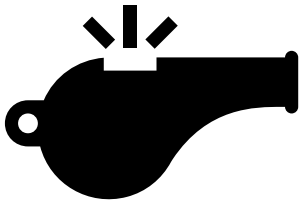

- Proposed regulation makes clear that an institution-provided advisor does <u>not</u> have to be an attorney.

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Can we have standards of decorum for hearings?

- Yes, strongly recommended
- But standards must be applied equally/equitable to both parties

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Example (permissible)

Institution’s hearing procedures require all participants to leave their cell phones and other electronic

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Example (permissible)

Institution’s policy requires all parties and advisors to remain seated and only approach a

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Are there “objections” at hearings?

- Minimally, the institution must allow a party to raise an objection that evidence is not relevant or should be specifically excluded (e.g., sexual history; confidential privilege)
- Institution may permit other objections to be raised
- Institution may limit the right of objection to a *party*

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Can we delay or “continue” a hearing once it starts?

- Yes, but only if a delay is not clearly unreasonable
- Consider prescheduling an alternative date
- Inconvenience alone should not be the determinative factor; every date will inconvenience someone

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How do(es) the decision -maker(s) issue a decision?

- In a written document, provided contemporaneously to the parties that:
  - Identifies the allegations of sexual harassment
  - Describes the various procedural steps taken from the time the formal complaint was made
  - States findings of facts supporting the determination
  - Reaches conclusions regarding application of relevant policy definitions to the facts
  - Includes a rationale for each finding for each allegation
  - States the disciplinary sanctions and remedies, if implicated by the determination made, and
  - Explains the procedures and grounds for appeal

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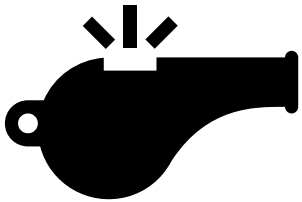

- Proposed regulation only requires “information about the policies and procedures” used, instead of a listing of all procedural steps.

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Who determines discipline and remediation?

- Some institutions will have the decision maker(s) also impose discipline
- Others may refer a disciplinary authority with jurisdiction over the respondent (i.e., Dean of Students, Provost, Director of Human Resources, etc.)
- If referred to someone else, that must occur before the written determination is issued

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Proposed Change

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Questions

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H-B

What is informal resolution?

A voluntary process to resolve formal complaints of sexual harassment through a mechanism othe than the default investigation and hearing.

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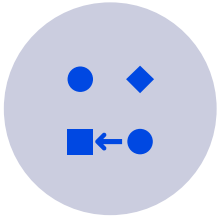
What are the key concepts of informal resolution?

A formal complaint must first have been filed and written notice given to the parties



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What are the limitations?

- Informal resolution cannot be used where an employee is accused of sexually harassing a student
- Informal resolution cannot be used in the absence of a formal complaint
- Institution cannot require persons to consent to informal resolution as a condition of employment or enrollment

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Example (impermissible)

Undergraduate student files a written sexual harassment complaint against a

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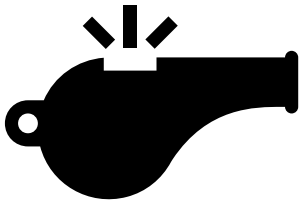

- Formal “written” complaint is no longer required
- Not allowed in any case where an employee is accused of discriminating against or sexually harassing a student

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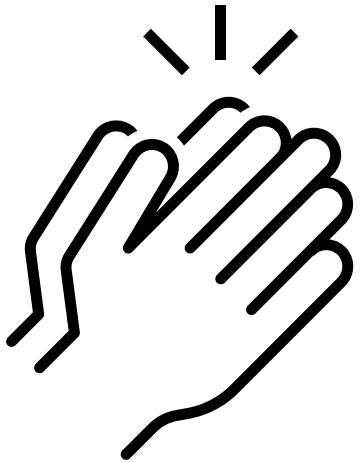
Must an institution allow informal resolution?

- Current regulations permit but do not require informal resolution
- Proposed regulations indicate institutional approval is discretionary



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Example

Institution adopts a policy that informal resolution will be allowed, subject to Title IX Coordinator's approval of specific terms, in all cases except employeeon-student sexual harassment and cases involving sexual assault.

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Example

Student A accuses Student B of secretly recording Student A naked and selling the videos to other students in the same residence hall. The complaint is reported in the news. Student A wants Student B to withdraw, and Student B will do so if the institution approves the agreement.

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Example

Student A accuses Student B of sexual assault resulting from a sexual encounter where both Student A and Student B were drinking heavily; no witnesses were involved. Student A wants Student B to complete coursework online, and Student B will agree if the institution approves.

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What factors should be considered in approval?

- Severity and nature of the conduct
- Whether respondent is repeat offender
- Presence of other conduct violations
- Public perception
- Confidence in parties' ability to uphold agreement
- Sufficiency of the terms
- Others?

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What issues need to be addressed in informal resolution?

- The substantive terms
- How compliance will be verified
- The punishment for non-compliance
- The effect on the pending formal complaint
- The effect on collateral conduct charges/policy violations
- Others?

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Example

Student A and Student B enter into an informal resolution requiring Student B to receive counseling and to follow the treatment plan of Student B's psychologist. How would this agreement be verified?

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Example

Student A and Student B enter an informal resolution requiring Student B to apologize. How will this requirement be satisfied and verified?

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Example

Employee A and Employee B agree to informal resolution for Employee B to receive anti-harassment training and 10 hours of community service. Employee B receives the training but performs only 5 hours of community service. How will noncompliance be addressed?

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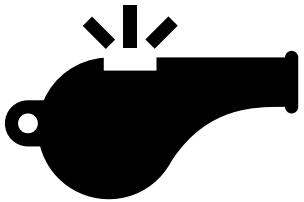

- If informal resolution fails and the grievance process resumes, the institution may not use evidence obtained solely through informal resolution in the grievance process.

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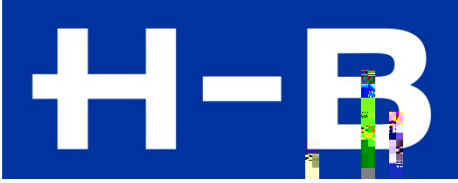

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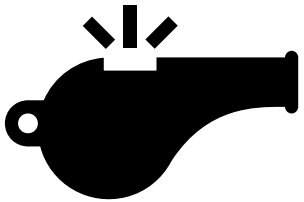

- Even if a particular case is resolved through informal resolution, Title IX Coordinator must take steps to prevent continuing and recurrence of sex discrimination.

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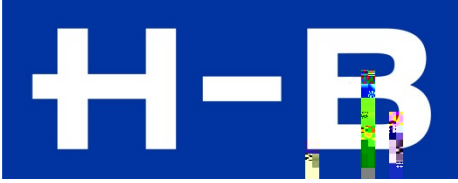

What other policies/processes may apply?

- Title VII policy
- Consensual relationships policy
- Professionalism policies
- Student code of conduct
- Threat assessment
- Employee handbook provisions
- Faculty handbook provisions
- Contractual provisions

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Example

Student performing in a musical makes a verbal report that guest catcalled student during

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Example

Employee A and Employee B attend a reception on campus that involves alcohol. Employee B gets drunk and sexually propositions Employee A. The next day, Employee A files a sexual harassment complaint.

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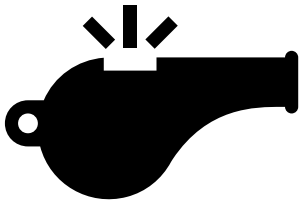
Proposed Change



- New definition of retaliation will make clear that conduct charges cannot be used to retaliate against a student for exercising Title IX rights or refusing to participate in Title IX grievance process.

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Questions

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