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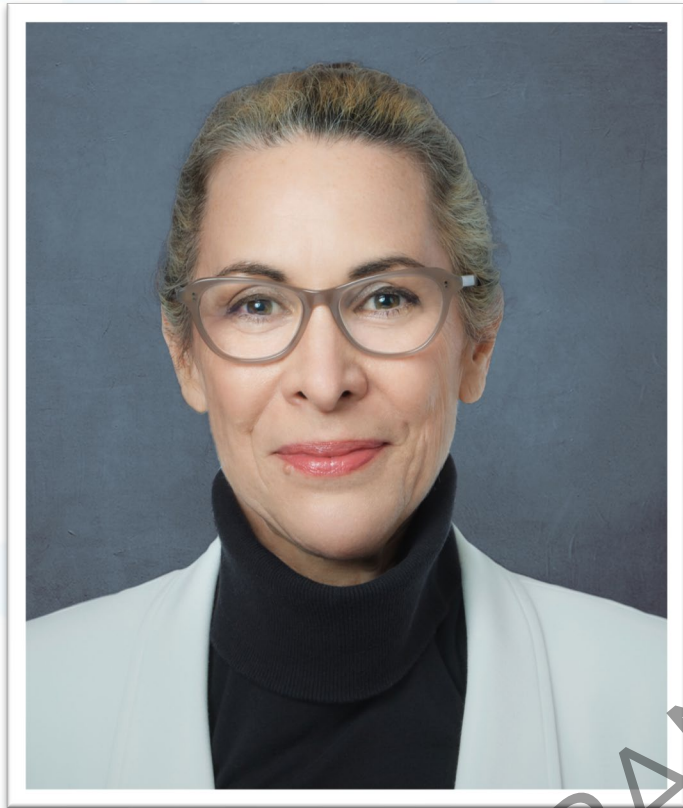
K-12 & Title IX: What You Need to Know About The New Regulations

J. Frank White Academy - Lincoln Memorial University
Part I

Jody Shipper

Co-Founder and Managing Director
January 2021

Meet Your Facilitator



Jody Shipper, J.D.

Co-Founder and Managing Director

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.



Vision

We exist to help create safe and equitable work and educational environments.



Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.



Core Values

- ❖ Responsive Partnership
- ❖ Innovation
- ❖ Accountability
- ❖ Transformation
- ❖ Integrity

Today's Overview

The role of the Title IX Coordinator;

Jurisdiction, scope, definitions and processes under the 2020 Final Title IX Rule;

A practical walk-through of the skills you will need to conduct sexual misconduct investigations;

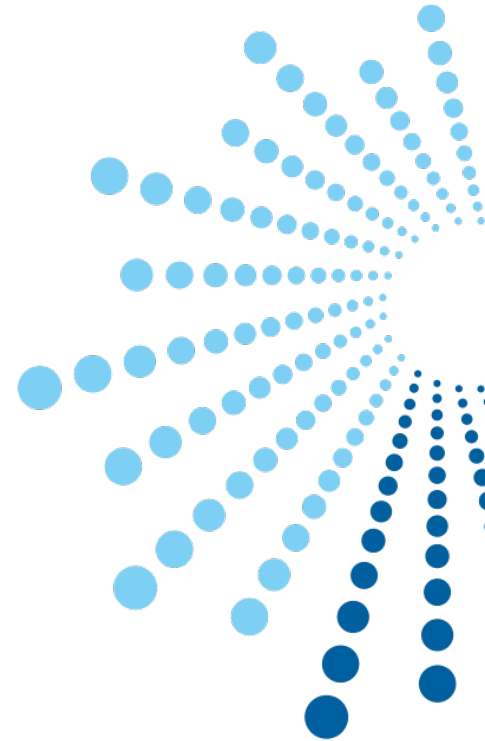
Building a foundation for a success through, collaborative partnerships, effective communications, and comprehensive policies and procedures;

Decision-makers, appeals officers, investigators; What are the duties, and who should fill those roles;

Documentation under the 2020 Final Title IX Rule: Reports, records, data, and posting training materials;

Education and prevention strategies;

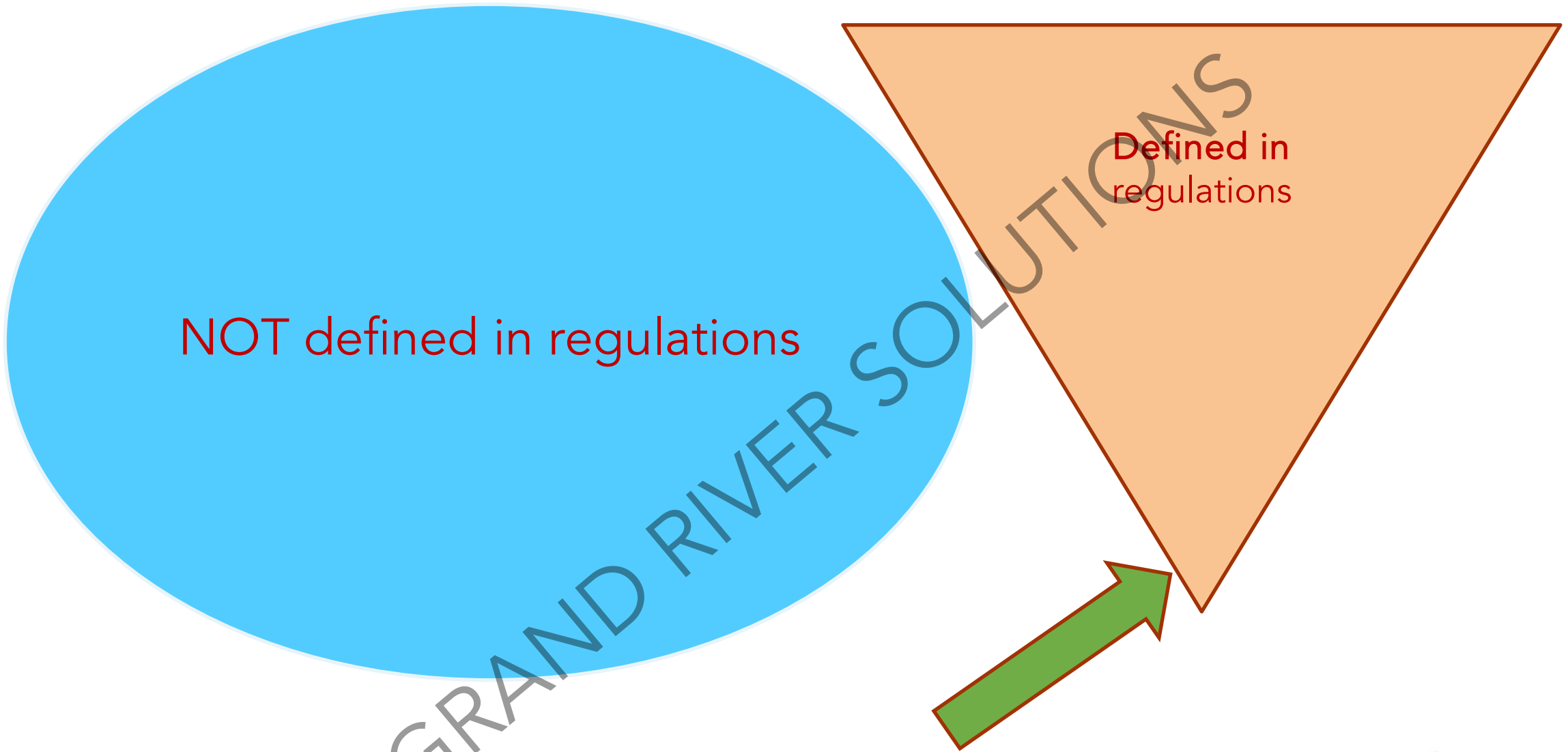
Developing an all-encompassing plan for compliance.



The May 2020 Title IX Regulations Cover A Narrow Scope of Title IX

- Sex Discrimination
- Achievement Awards
- Athletics
- Benefits
- Leaves of absence
- Opportunities to join groups
- Pay rates
- Recruitment
- Safety
- Screening Exams
- Student and Employee Benefits
- Vocational or College Counseling
- Letters of recommendation
- Entry into special programs

Conduct Constituting Sexual Harassment as Defined in Regulations



Only THESE get the new processes

Worksheet On Coverage of New Title IX Regulations

1. Definition:

Does this meet the definition?

If yes, continue. If no, not IX.

2. Location:

On campus, within the United States;

In building owned/controlled by a recognized student org., in the U.S.;

Part of a program or activity, and within the United States.

If yes to one of the above, continue. If no, not IX.

3. The institution has control over the respondent

If yes, continue. If no, not IX

4. Complainant is in the U.S.

If yes, your school has a duty to respond according to new Title IX Process.

Programs or Activities

Field trip *in the United States*

Sports, theater, debate, academic competition

An away game for a sports team or the band

A close-up photograph of a giant panda sitting in a bamboo forest, holding a bamboo stalk in its mouth. The panda's black and white fur is clearly visible. The background is filled with green bamboo leaves and branches.

What is covered in the new regulations?

(And what can we do about bad conduct that falls outside of this coverage?)

Section 106.30: Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) 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;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

Definition of Sexual Harassment Quid Pro Quo

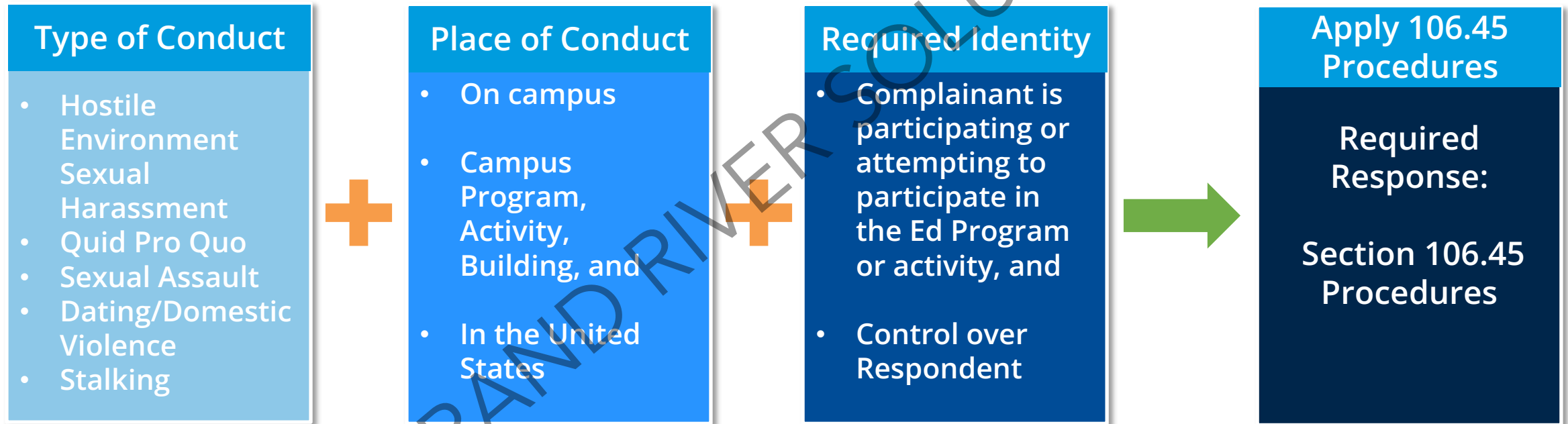
An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

Meaning: You do this for me, I'll do that for you. Quid Pro Quo

Not covered here: A student leader tells another student, "If you won't go out with me, I'll make sure you never get into the glee club."



Title IX Application Post May 2020 Regulations





Definition of Sexual Harassment Hostile Environment

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

Comments, emails, posters, actions, gestures, physical contact, images, anything that might create a hostile environment

Effectively Denies *Equal Access* to a Program or Activity

- It was harder to feel really comfortable there
- I found it really annoying
- Their mere presence upset me too much to study
- I no longer felt safe enough to go to class

Sexual Assault Definitions

20 U.S.C. 1092(f)(6)(A)(v) - Federal Definitions

- Sex Offenses Forcible and Non-Forcible
 - Forcible:
 - Rape, Sodomy, Sexual Assault with an Object, Non-Consensual Fondling
 - Non-Forcible: Incest, Statutory Rape

Interpersonal Violence, on the Basis of Sex

Dating Violence

Domestic Violence

Stalking

Domestic Violence, On the Basis of Sex

Includes 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.

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Who does the work?

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A Good Start: One Coordinator

Only One?

Can't someone else help out?

How big is that job?

What, exactly, am I supposed to be doing?

Is the Title IX Coordinator an Advocate?



For Process



Impartiality



Avoidance of Prejudgement



Avoidance of Conflicts of Interest



Avoidance of Bias

Impartiality

No pre-judgement

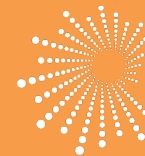
No actual conflict of interest

No demonstrated bias

Prejudging

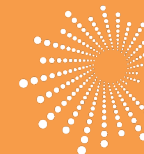
- “Believe all victims”?
- Is bringing forward a case a “judgment”?
- Avoiding any presumption of responsibility

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Bias? Conflict of Interest

- Being anti-rape
- The investigator once took a women's studies course
- The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least *something* wrong
- The Title IX Coordinator went to the same college as the Complainant's mother
- The Title IX Coordinator's daughter works for the Complainant's mother



Can One Coordinator Do It All?



INVESTIGATOR



DECISION-MAKER



APPEALS OFFICER

WHY NOT?

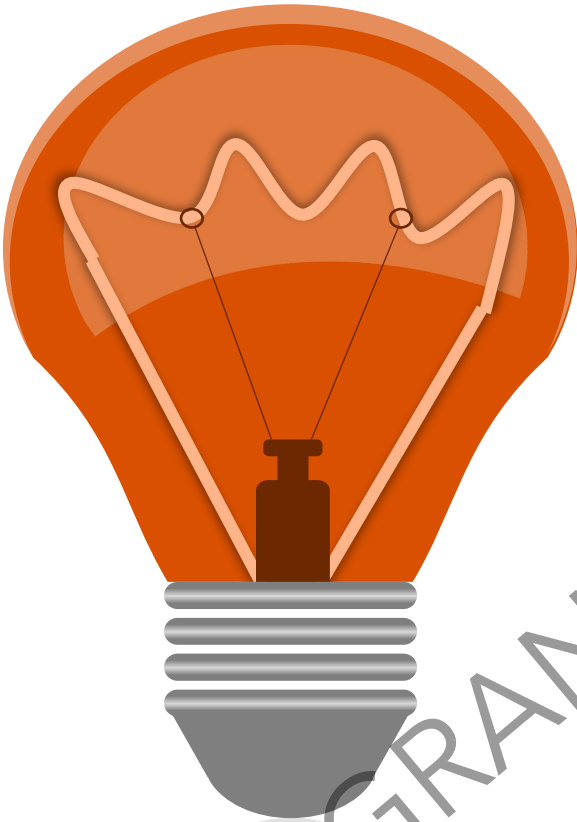
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Are You on Notice

- An employee knows, sees, hears
- Exception: confidential employees
 - Who are confidential employees?



The Essential Functions of Title IX Compliance



01

Response

02

Education & Prevention

03

Compliance

04

Messaging

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Once You Are on Notice

- Duty to Respond
- This is broader than duty to investigate
- Might respond to situations that are ultimately not under Title IX
- Mandatory duty to respond

Supportive Measures

Interim, not
forever

Interim also
includes “before
investigation”

Equitable \neq
Equal

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Not Punitive?



No default, always case-by-case

Right to challenge

Local education codes may apply



Options to Proceed

- Do nothing
- Support only
- Prevention-Based Resolution
- Informal Resolution
- Formal Resolution

Must Respond



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Information



Support



How to File

A Formal Complaint



- ❖ Filed by complainant, not a third party
- ❖ “Signed”
- ❖ States conduct that would violate Title IX policy
- ❖ Complainant is accessing or attempting to access programs/activities when filed

If No Formal Complaint, or if it is Deficient

Outreach (again?)

Write back to explain deficiencies in Formal Complaint, offer other process (or make referral)

In limited cases, Coordinator can sign Formal Complaint

If There is No
Formal
Complaint,
Are Your
Hands Tied?

Preventive measures

Training

Monitoring

Any non-disciplinary
steps

Informal Resolution



Request in writing



Title IX Coordinator may determine not appropriate



At any time before conclusion of hearing



Voluntary



Completes the process – cannot have a do-over

Informal Resolution

Can only be offered after formal complaint has been filed

May include arbitration, mediation, or restorative justice

Facilitators must be trained in informal resolution



Informal Resolution: WRITTEN NOTICE REQUIREMENTS

The allegations

The requirements of
the informal
resolution process

Circumstances
under which
precludes formal
complaint

Right to withdraw

Consequences,
including whether
records will be
maintained

Ideas for Informal Resolution

You are limited only by your creativity

No-contact directives

Apologies

Re-training

Agreements to stay away from certain classes or activities

Restorative Justice

You Have a Formal Complaint: Do You *START* the Investigation?

Does it meet the elements? If not, DISMISS

Trying to do some pre-investigation to identify respondent

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Mandatory Investigation

Complaint filed,
SIGNED, requests
investigation

Coordinator files,
SIGNS, starts
investigation

Hypo #1

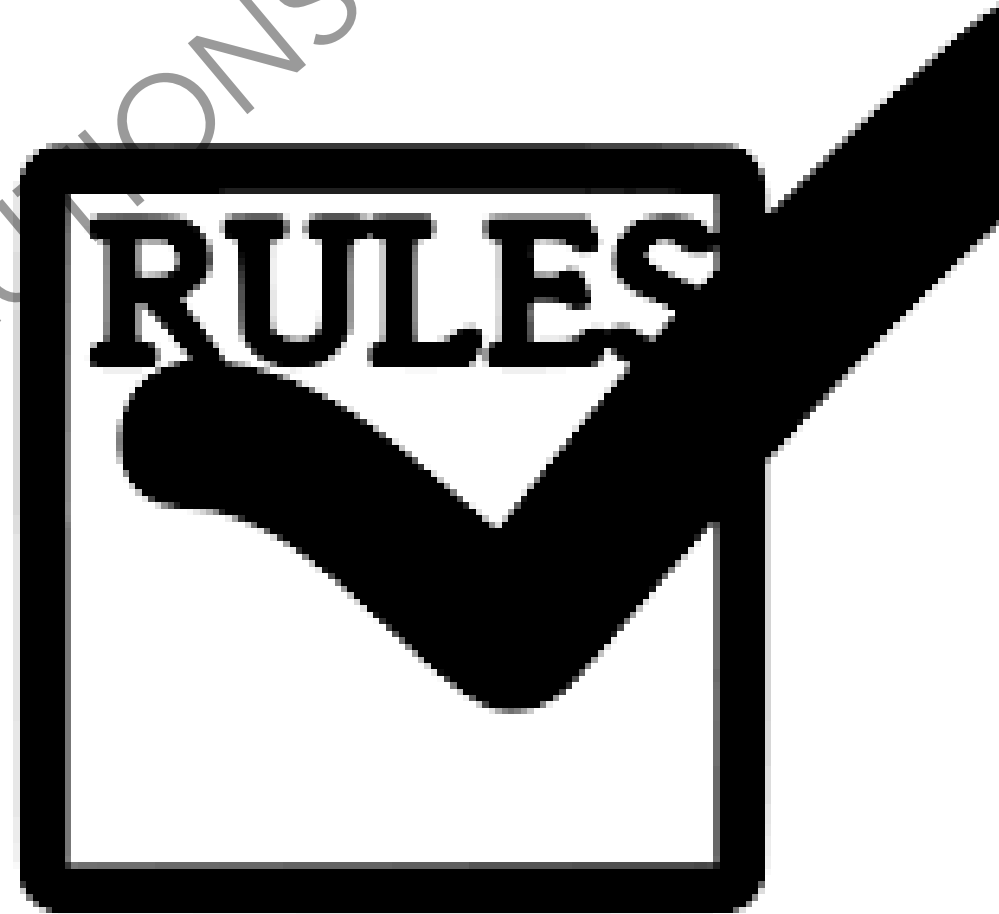
Sally went to a party at Tina's house a few weeks ago. While there, someone gave Sally a drink that made her really sleepy and "out of it." She agreed to go down into the basement with Tim to make out, and Tim sexually assaulted her once the two of them were down there alone. His friend was hiding down there and took pictures. Sally is so afraid of seeing Tim that she has stopped going to classes. Title IX?

Hypo #2

Mr. Goodteacher is a long-term beloved teacher who always goes out of his way to help students. Pat's mom called the principal early this morning to say that Mr. Goodteacher has come by the house a few times to bring Pat some textbooks and printed worksheets, which Pat's mom initially thought was very kind. Pat's mom was increasingly concerned, because it seems as if Mr. Goodteacher lingers too long and she is pretty sure she saw him getting close to Pat and rubbing Pat's shoulders and back. Then, last night, Pat's mom is 100% certain that Mr. Goodteacher hid out and peeped at Pat through the bedroom and bathroom windows, and so she went to look at the tape on their monitoring camera outside the house and spotted him.

Overview of Formal Resolution Process: Informal Counts, too

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Overview of Investigation



Trained investigator collects information

Investigator shares evidence “directly related” to allegations with parties

Parties have 10 days to respond

Investigator creates summary of “relevant” evidence and shares with parties

Parties have 10 days to respond

Overview of Adjudication

- K-12 schools have a choice!
Non-hearing v. Hearing
- Hearings and state education laws
- Equal appeal rights with mandatory and discretionary bases



Questions?



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