

GRAND RIVER | SOLUTIONS

From One Title IX Coordinator to Another: A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Day 2

Chantelle Cleary Botticelli, JD
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Your Facilitator



Chantelle Cleary Botticelli is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 15 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.

Chantelle Cleary Botticelli, J.D.



Day 2 Agenda

01

Receipt of Reports

Actual Knowledge, Report Response, Initial Assessments, & Supportive Measures

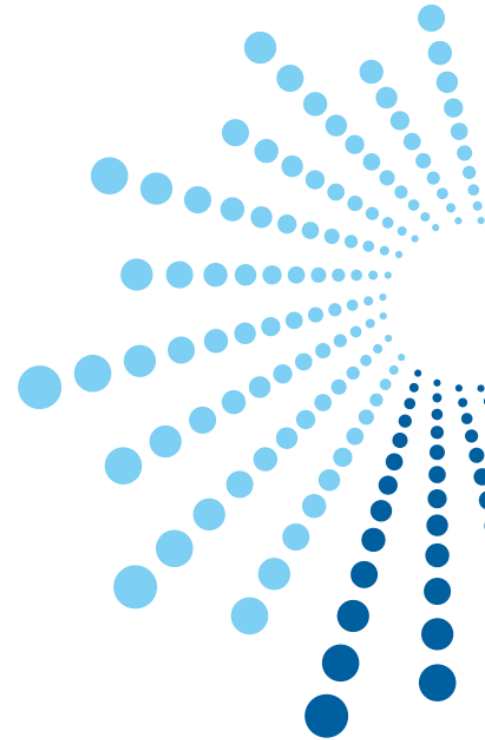
02

Complainant Intake & Supportive Measures

03

Report Resolution

Remedies Based, Informal, or Formal





Receipt of Reports

Actual Knowledge, Report Response,
Initial Assessments, and Supportive Measures

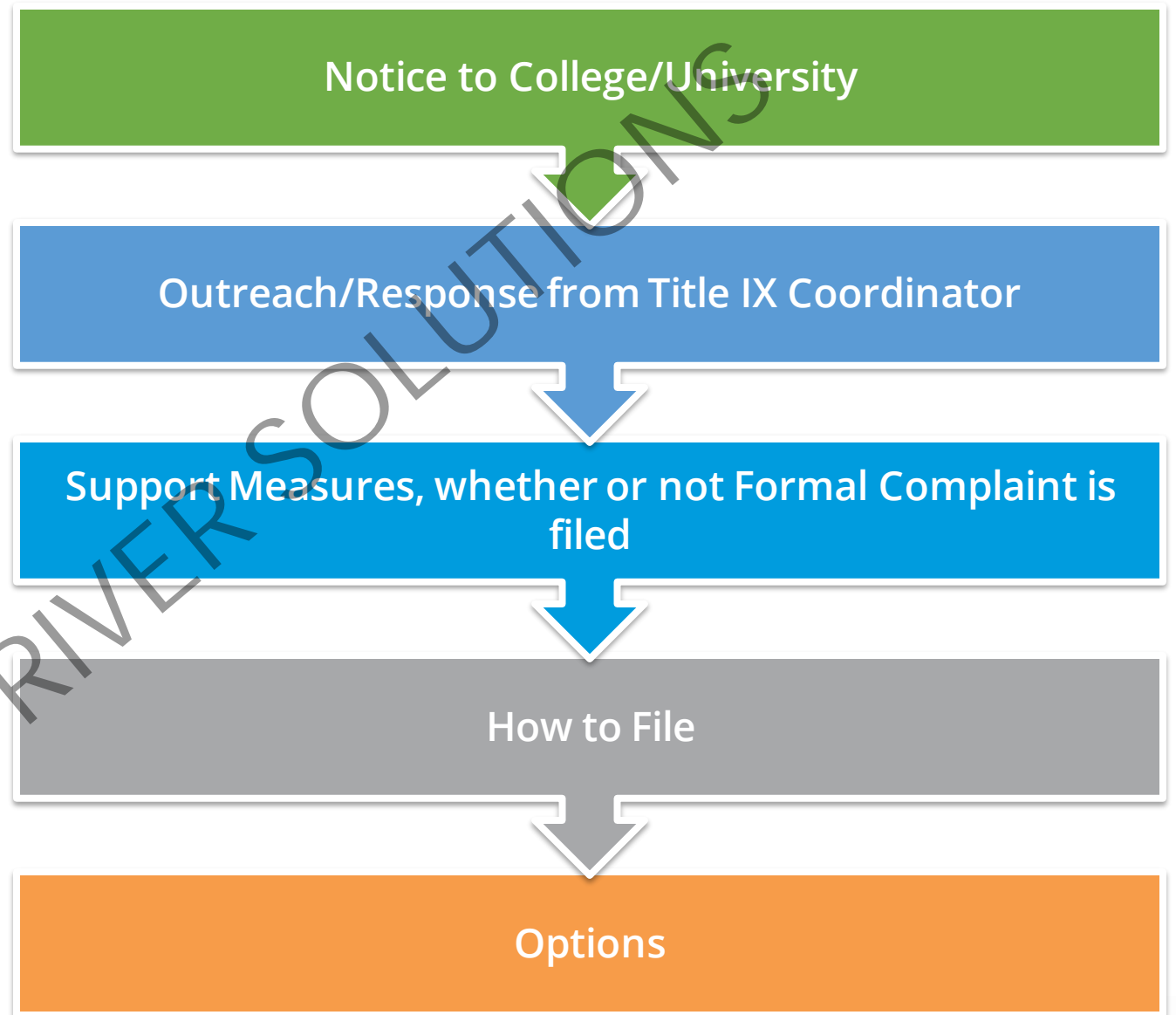
01

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Infrastructure for Reporting



Regulatory Requirements



Receiving Reports and Initiating the Response



1. REVIEW THE
REPORT



2. DETERMINE THE
APPROPRIATE INITIAL
RESPONSE



3. PROMPTLY
INITIATE THAT
RESPONSE



4. DOCUMENT/RECORD
THE RECEIPT OF THE
REPORT AND THE
RESPONSE THERETO



Initial Outreach

FIRST — SAFETY

Email

- Create forms

Phone

In person

- Use RA
- Campus safety

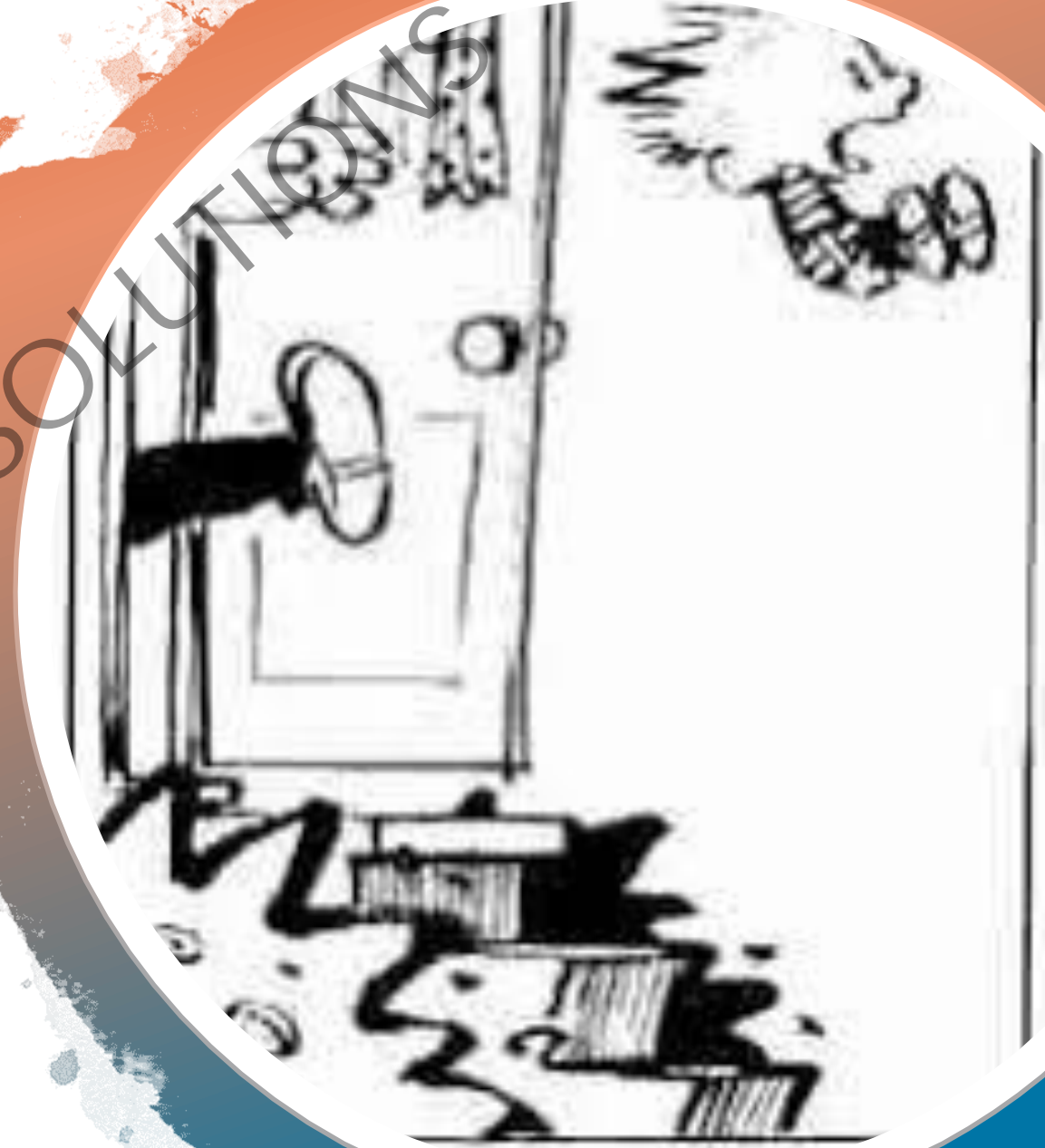
Follow up emails

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Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



The Title IX Office receives the following anonymous report via your institution's online reporting form:

Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley's partner are friends and so the RA doesn't do anything about it. It's getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley's partner too.

The Title IX Office is contact by a professor who forwards the following email from a student to you:

I really don't want to bother you but I'm in a really hard situation.

I and my boyfriend had a row for these days. And he beated me yesterday and this morning that I attached some pictures before XXXX final starts this afternoon because I found out I couldn't hold pencil because of trembling and I couldn't even think in the first thirty minutes. These pictures shows my arms after he twisting them, which doesn't look violent but feel hurt. One hour before lab final started, I told him I'm going to call police after he beated me, then he dragged me from bed to the floor and threatened to kill me if I call police. It was horrible and hard to reminisce. I knew he tends to use violence before and I forgave him some times when he just pinched my chin and dragged my arm. But this time it is too bad. So he took my phone away and restrain me in my room, not letting me go because I told him I would tell my TA about this whole thing after the final. So he just let me go to final after I promised I won't tell school and police.

When I go to two finals today (XXXX and XXXX, especially the latter), I really couldn't think and even hold pen (and I grabbed my bag but almost nothing in it) for the first thirty minutes. Now everything is done, he promised not to show up in my life nor my room, which is good because I don't want to take penalty on anyone. But I couldn't predict what my final shows out. It won't match my work for the whole semester. I don't expect any makeup chance. I just want to let you know since I barely know any American women here, am I doing wrong? Is there anything I can do to fix anything from academics or life?

Sorry for bothering.

The Title IX Office receives the following email from a responsible employee:

My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don't want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?

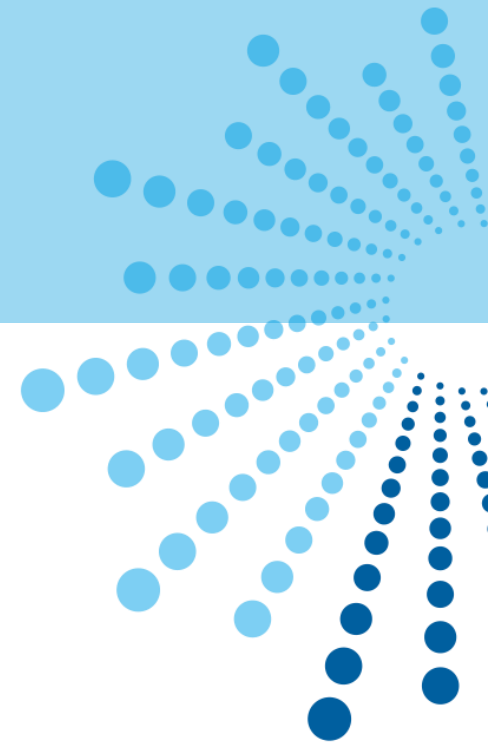
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Complainant Intake & Supportive Measures

02

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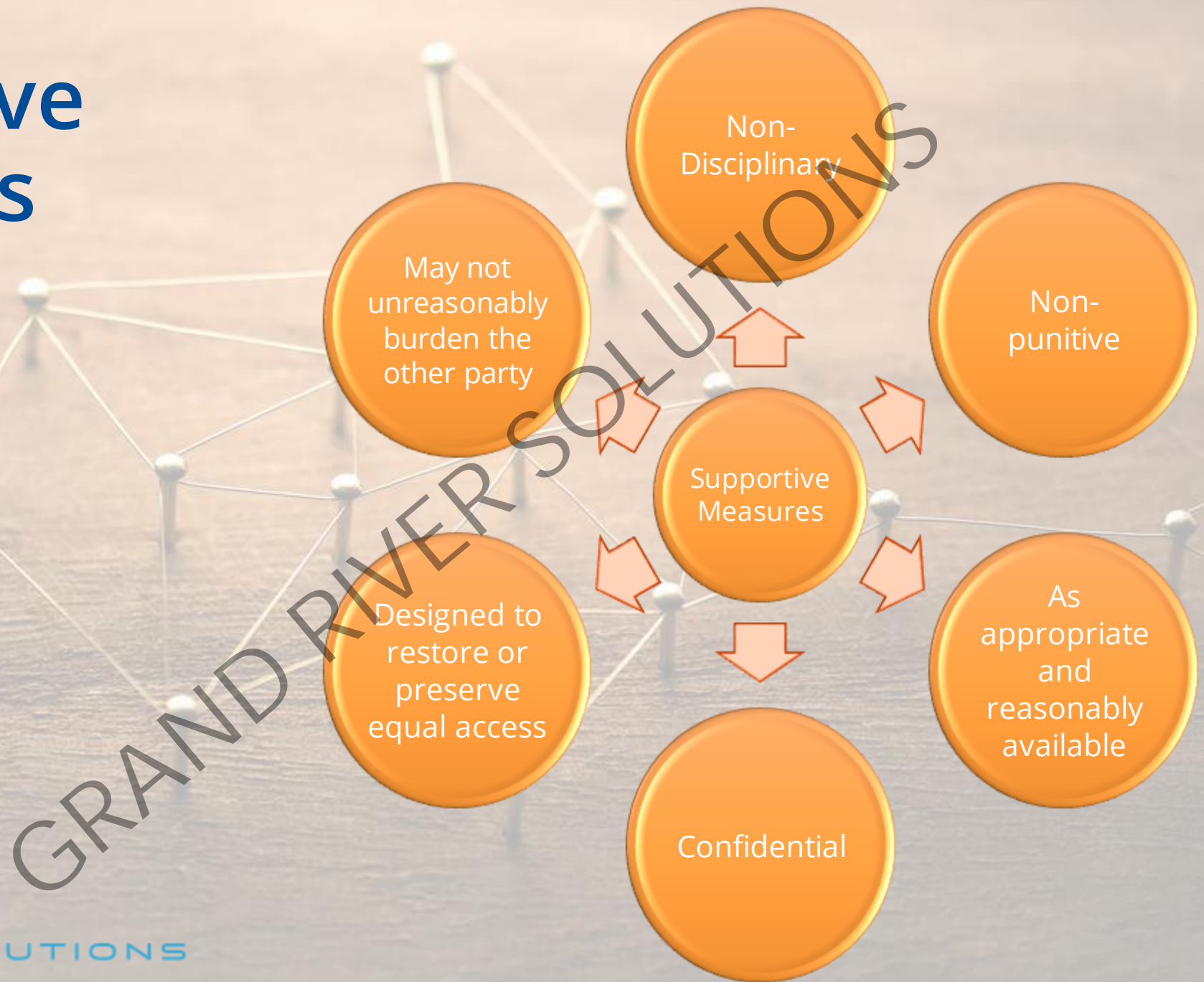


Initial Meeting with the Complainant

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



Supportive Measures

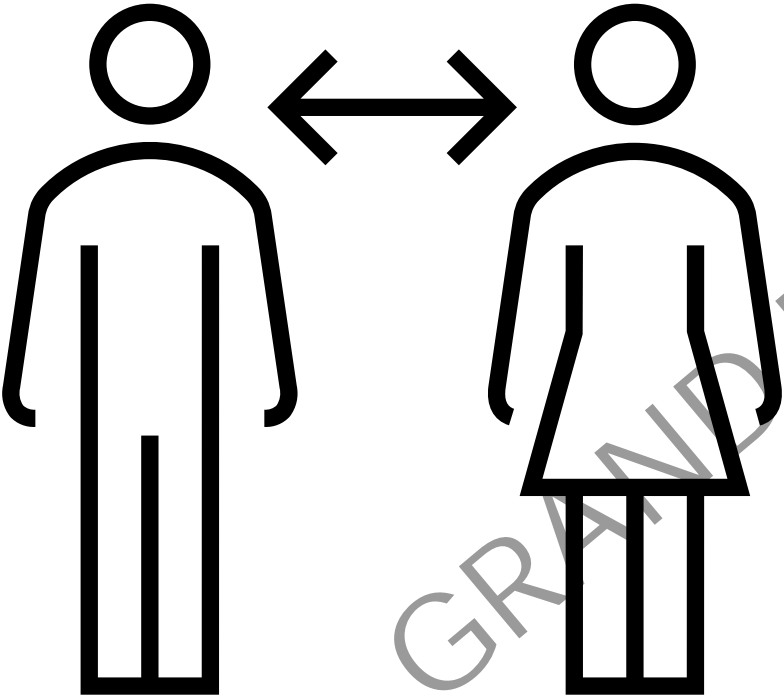


Examples of Supportive Measures

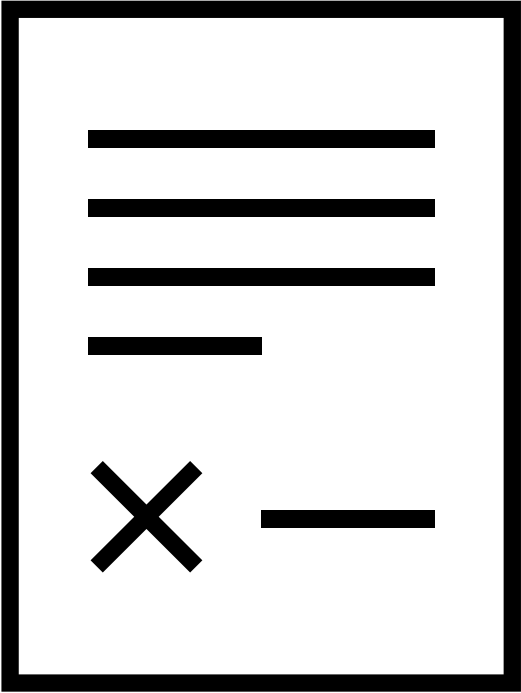
- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



“Mutual Restrictions On Contact Between the Parties”



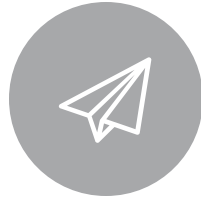
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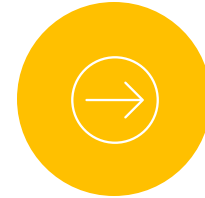
Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow up



Make connections



Provide the supportive measures



Document supportive measures requested, provided, and not provided. Where not provided, indicate why.





Report Resolution

Remedies Based, Informal, or Formal

03

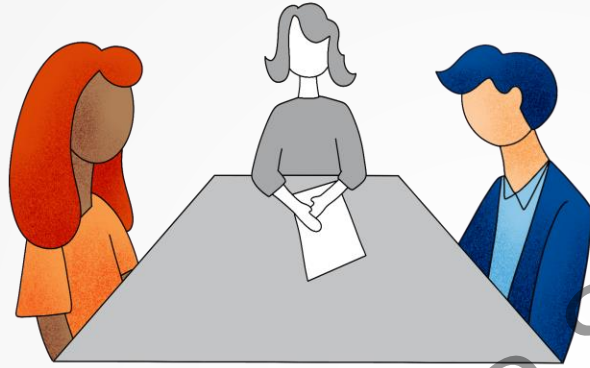
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How to Proceed?



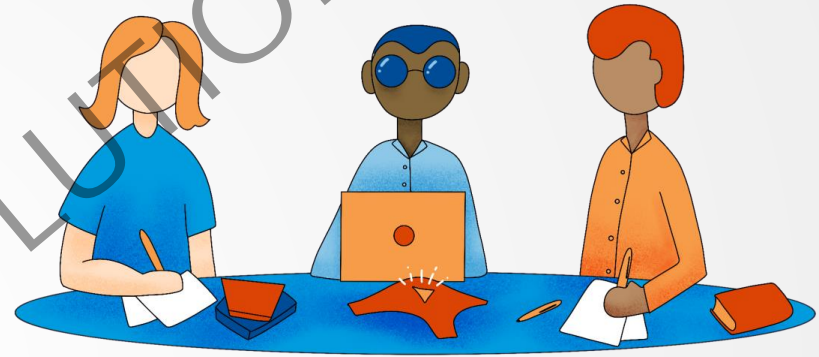
Remedies-based

No formal process



Alternative/Informal

Signed agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All requirements of 106.45



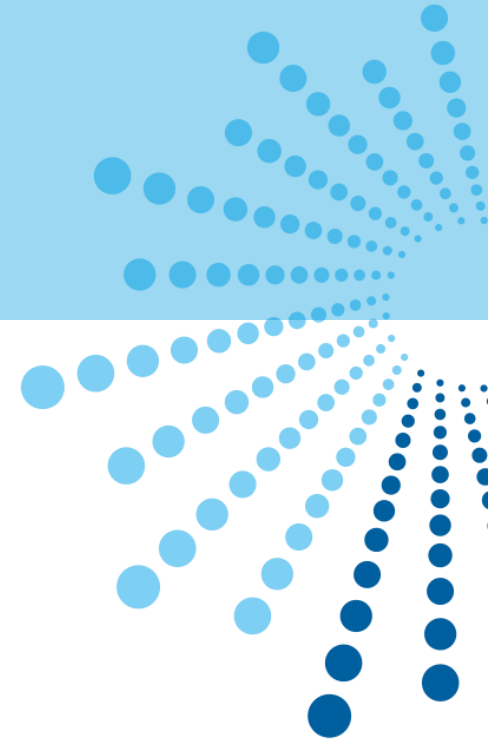
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Remedies Based Resolution

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Remedies Based Resolutions

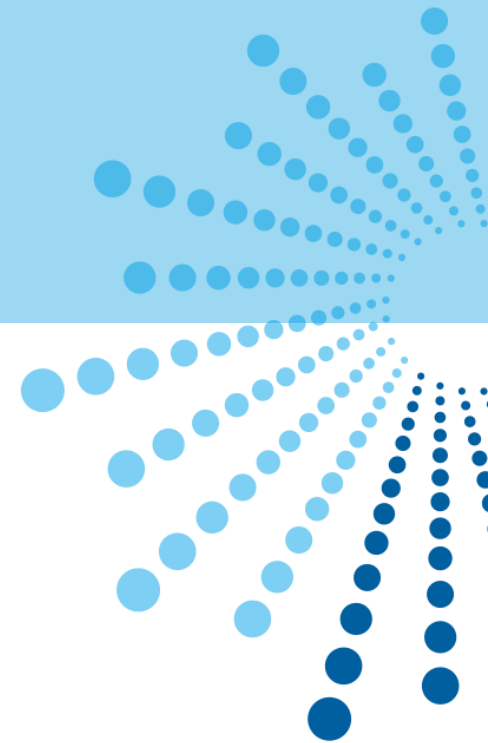
- Supportive Measures
- Educational Conversations
- Targeted Education



Formal Complaint & Notice Requirements

3(b)

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Formal Complaint Filed

By
Complainant

By the Title IX
Coordinator



Factors to Consider When Determining Whether to File a Formal Complaint

Allegations
of Violence

Threats

Use of
weapons

Serial
predation



Formal Complaint

A Formal Complaint must include:

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include:

- Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.

Dismissing Complaints

MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Click to add text

DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info



Can Proceed Under Other Policy



Notifying the Respondent



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FIRST—SAFETY

Written Notification Meetings and Sufficient Time to Prepare

Make sure support available

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Advisor of Choice

The advisor can be anyone, including an attorney;

Institutions cannot place restrictions on who can serve

No training required

Institution must provide advisor for the purposes of cross examination, only.

Initial Meeting with Respondent



- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



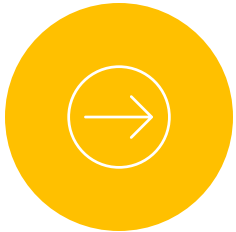
Post Meeting Tasks



Document the meeting



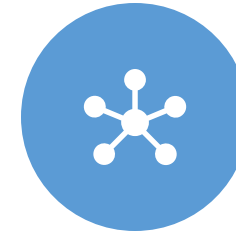
Send a summary email with resources, options, next steps



Follow up



Provide the supportive measures



Make connections

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Formal Complaint Resolution

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

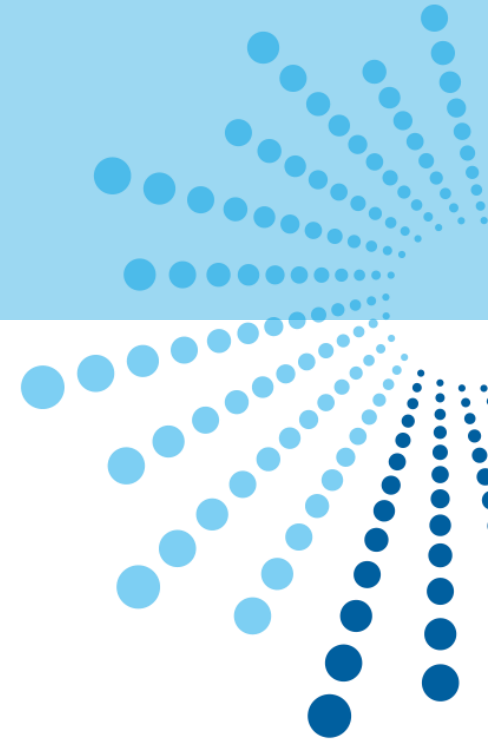




Informal Resolution

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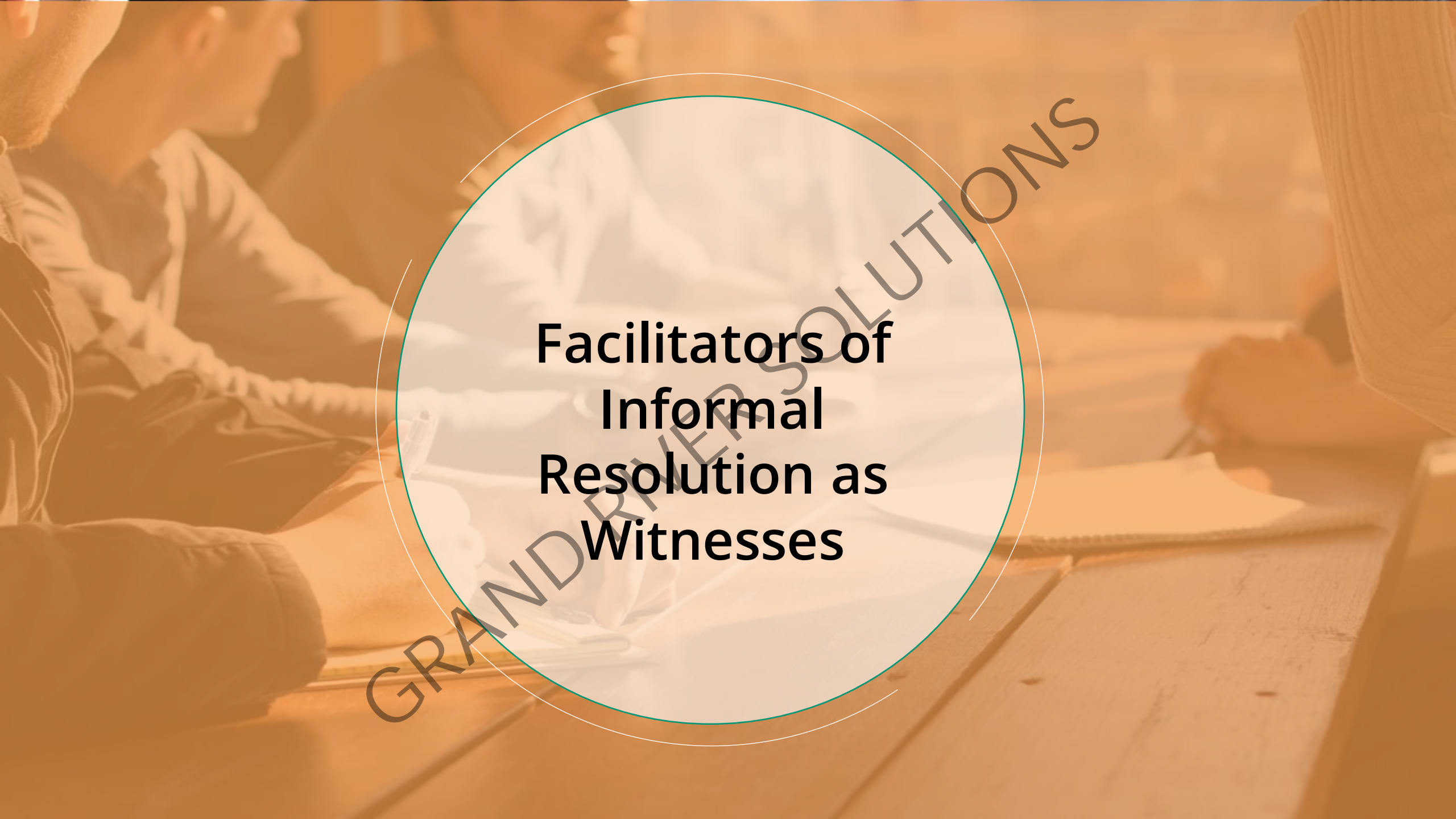


Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

A group of people are seated around a table in a meeting, looking at documents. A large, semi-transparent circular graphic is centered over the image, containing the title text. The background is a warm, orange-toned photograph of a meeting.

**Facilitators of
Informal
Resolution as
Witnesses**

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Informal Resolution is prohibited to resolve allegations that an employee sexually harassed a student.

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Formal Resolution

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Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing



Title IX Coordinator's Role

In the Investigation

- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

Title IX Coordinator's Role

In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed



“

Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

”

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Title IX Coordinator's Role

In the Appeal

- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed

Putting it all together...

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Panel of Experts

Moderated by Chantelle

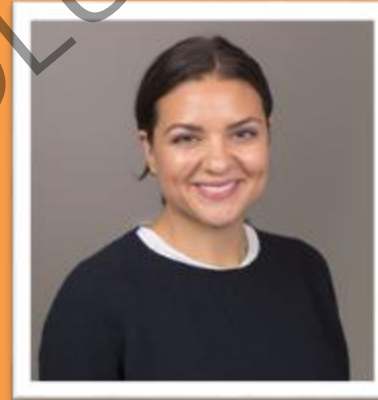
Michael Dunn



Assistant Vice
President of Equity
and Inclusion

St. Mary's College of
Maryland

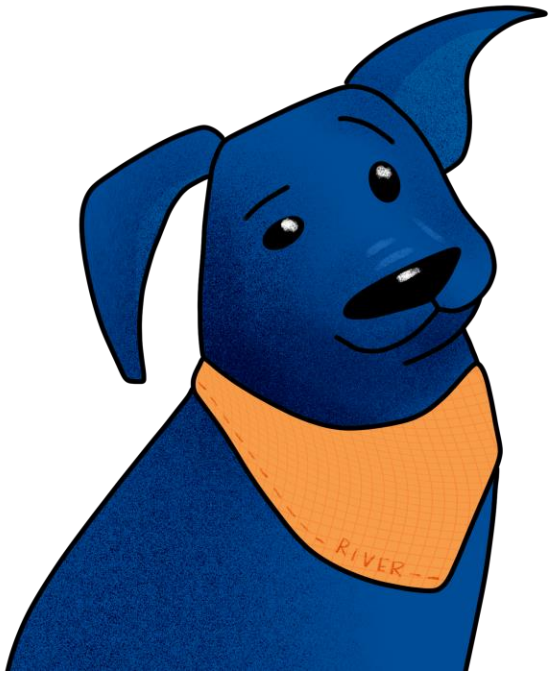
Lauren Branchini



Title IX
Coordinator

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Questions?



Leave Us Feedback:



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