



# **TITLE IX COORDINATOR AND INVESTIGATOR**

The City University of New York

# MEET YOUR FACILITATORS

## Laura Harlow

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Senior Solutions Specialist

*She/Her/Hers*

Laura Harlow is a Senior Solutions Specialist at Grand River Solutions. Laura has a background in civil rights, student conduct, organizational misconduct, Title IX and EEO investigations, hearings, administrative and informal resolutions, and Behavioral Intervention Team protocols.

Laura has progressive experience in both non-profit and higher education systems. Prior to working at Grand River Solutions Laura was the Dean of Students and former Director of Institutional Equity and Inclusive Excellence at IU South Bend. Laura served as the campus Deputy Title IX Coordinator and ADA Coordinator contact. She was responsible for institutional investigations, prevention efforts, and alternative resolutions for concerns of discrimination, harassment and sexual violence. Laura oversaw the campus affirmative action/equal opportunity program to ensure compliance with federal and state statutes, and executed results-oriented search and screen programs designed to increase participation of minorities, women, veterans, and people with disabilities. While Dean of Students, she supervised areas of Housing and Residence Life, Student Life, Student Conduct and oversaw the development of the Center for Understanding, Belonging and Experiences.



Senior Solutions Specialist

*He/His/His*

## Bill Boerner

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Dr. Bill Boerner serves as a Title IX Coordinator and in EEO Director Services at Grand Rivers Solutions. He previously served as the Interim Vice President and Associate Vice President of Diversity, Equity, and Inclusion and Title IX Coordinator at Hobart and William Smith Colleges. In his previous role, Dr. Boerner oversaw the Diversity, Equity, and Inclusion division, leading inclusion goals and visioning for the Colleges. As the Title IX Coordinator, he led sexual violence prevention and response, and maintained compliance training for all students, faculty, and staff. Dr. Boerner has experience leading training and workshops related to identity, DEI, Title IX, bystander intervention, social justice, inclusion, LGBTQ+, understanding bias, and navigating transitions.

Additionally, Dr. Boerner served as the inaugural Chief Diversity Officer for the State University of New York at Fredonia, overseeing Diversity, Equity, and Inclusion, Affirmative Action, Title IX, and ADA compliance. Dr. Boerner has an extensive background in Student Affairs Administration and Social Justice education, is a trained investigator, and has experience leading Intergroup Dialogues as well as Restorative Justice Circles.



Let's Take a Moment.  
Title IX Coordinator to Title IX Coordinator.



# THE EVER-EVOLVING LANDSCAPE OF TITLE IX





## Title IX of the Education Amendments Act of 1972

"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."

20 U.S.C. § 1681 (1972).

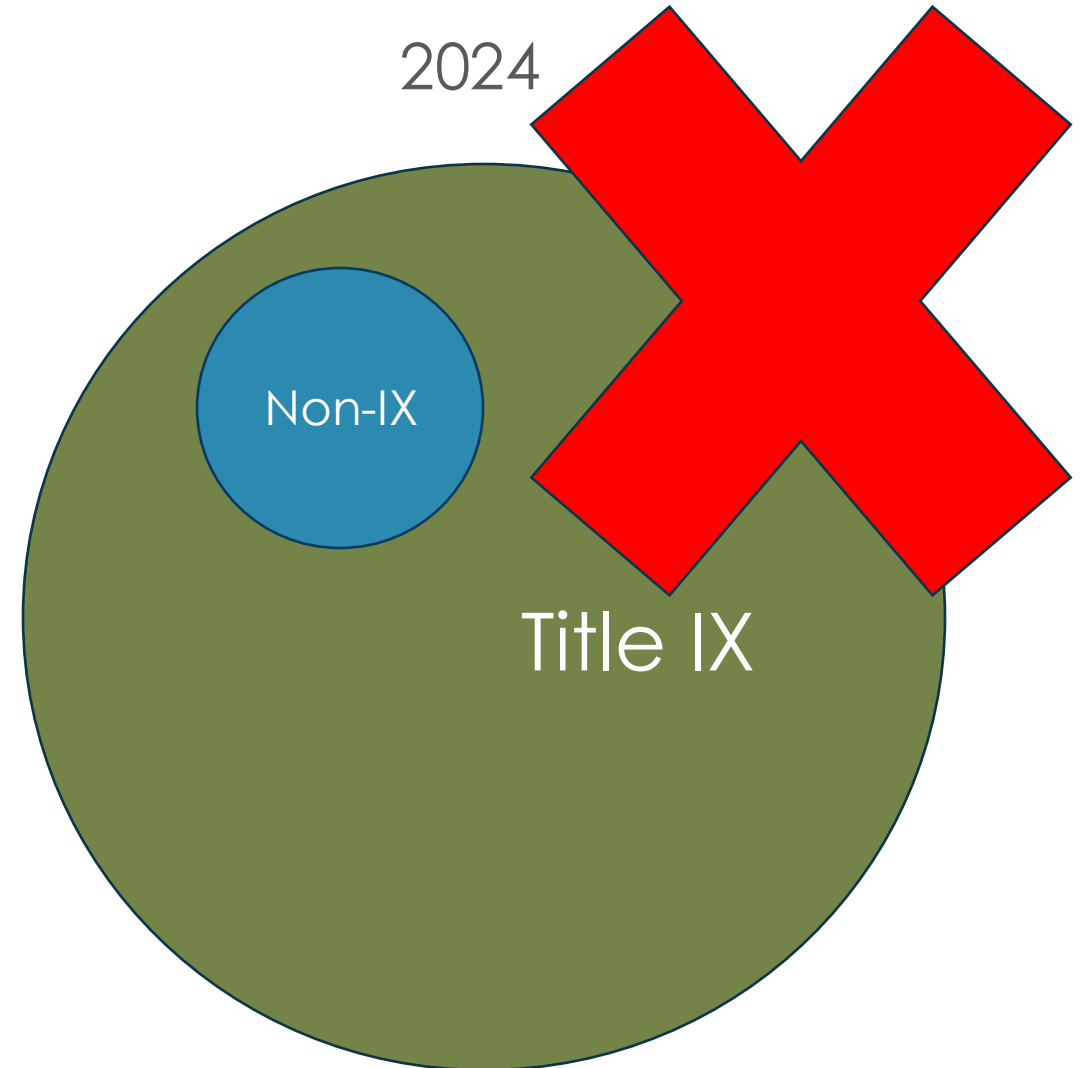


# WHICH POLICY APPLIES?

2020



2024



# TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities



# SEXUAL HARASSMENT: SECTION 106.30

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).

# CUNY DEFINITIONS (SECTION III)

- Example g.
- **Title IX Sexual Harassment** is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following:
  - (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY 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 CUNY's education program or activity; or
  - (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.



# COVERED VS. NOT COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution
- ✗ Off campus conduct, even if it has an impact on the educational program or activity;
- ✗ Conduct that occurs outside of the United States.



# COVERED INDIVIDUALS

ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

**“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30**

- Applicant
- Enrolled or Employed
- Accepted or Hired



# BUILDING A FOUNDATION FOR SUCCESS



# FINAL RULE, SECTION 106.8

Designation of Coordinator,  
Dissemination of Policy, and  
Adoption of Grievance Procedures

**“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”**

## **Additionally:**

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at anytime.



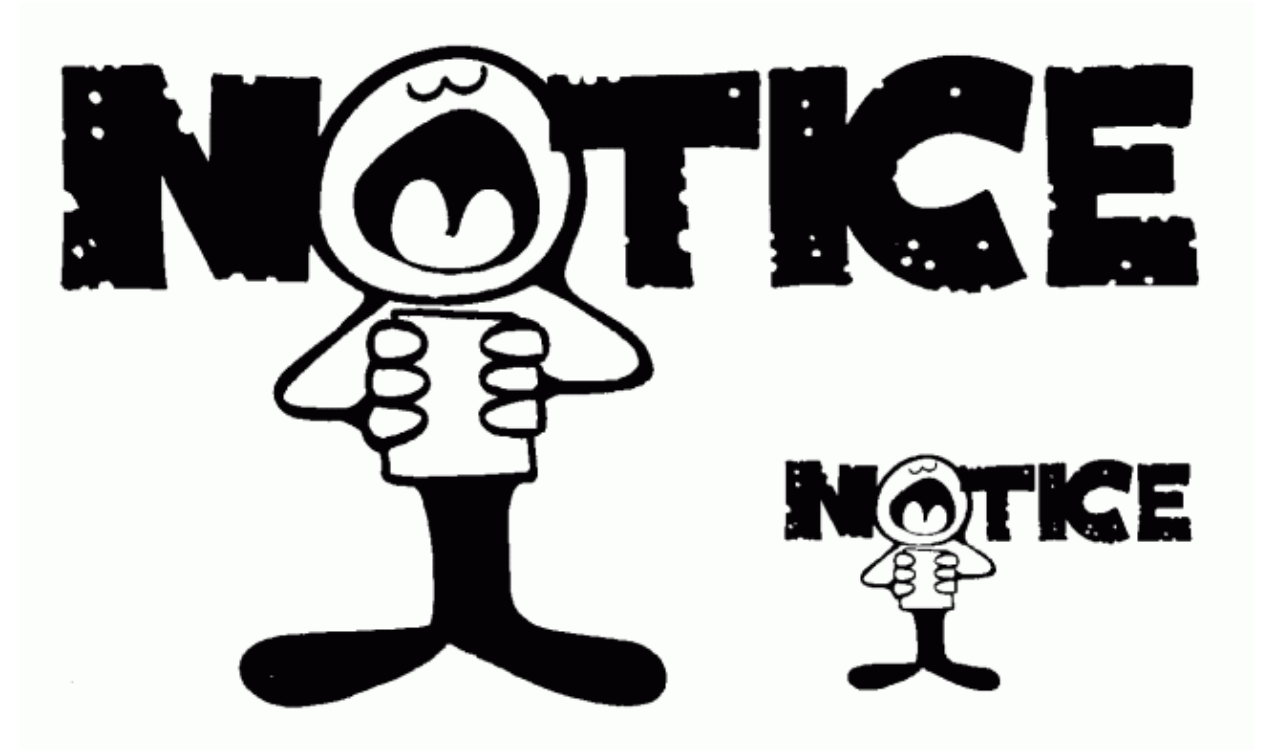


# FINAL RULE, SECTION 106.8 (a)

The institution must notify applicants and all members of the community of the Title IX Coordinator's:

1. **Name or Title**
2. **Office address**
3. **Email address**
4. **Phone number**

Any person may report , at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed



# “RESPONSIBILITIES REQUIRED UNDER TITLE IX AND THE REGULATIONS”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

# RESPONSIBILITIES OFTEN DELEGATED TO THE TITLE IX COORDINATOR

- Ensuring that the institutional policies and procedures are compliant with Title IX
- Ensuring dissemination of the policy
- Overseeing the grievance process to ensure it is compliant
- Coordinating a compliant grievance process
- Staffing various roles
- Ensuring training requirements are met
- Record keeping
- Compliance with intersecting federal and state laws
- Education and prevention efforts



# THE THREE ESSENTIAL FUNCTIONS OF TITLE IX COMPLIANCE

01

Response



02

Education &  
Prevention



03

Compliance



# A SUCCESSFUL TITLE IX COORDINATOR...

C

Understands the Importance  
of Consistency

A

Adheres to policies and  
procedures

R

Records or documents  
everything

E

Engages meaningfully  
with the community

S

Strategically plans for  
success

# IMPARTIALITY: AVOIDING PREJUDGMENT AND BIAS

Do not rely on cultural  
“rape myths”

Do not rely on cultural  
stereotypes about how  
men or women  
purportedly behave

Do not rely on gender-  
specific research data or  
theories to decide or make  
inferences of relevance or  
credibility in particular  
cases

Recognize that anyone,  
regardless of sex, gender,  
gender identity or sexual  
orientation, can be a victim  
or perpetrator of sexual  
assault or other violence

Avoid any perception of  
bias in favor of or against  
complainants or  
respondents generally

Employ interview and  
intake approaches that  
demonstrate a  
commitment to  
impartiality



# IMPARTIALITY

## *Avoiding Bias*

- “Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased” WHILE
- “exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents”

# IMPARTIALITY

## Avoiding Conflicts of Interest

- Simply having an affiliation with an institution in itself is NOT a conflict of interest:
  - “ Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest.”

# COMPLIANCE



# SOURCES OF COMPLIANCE OBLIGATION

Title IX Final Regulations

Violence Against  
Women Act

Other, Intersecting  
Federal Laws

State Law

Institutional Policies

Resolution Agreements



# TITLE IX COMPLIANCE OBLIGATIONS

- Designate a Title IX Coordinator
- Disseminate Policy  
*Notification, Publication*
- Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
- Provide supportive measures in accordance with the requirements of section 160.30
- For reports of sexual harassment utilize grievance procedures that comply with section 160.45
- Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
- Maintain records response to sexual harassment in accordance with 160.45 (10)
- Comply with 160.71 prohibition against retaliation

# 129 AGGREGATE REPORTING TO NYSED

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Numbers:

- Incidents of VAWA crimes reported to TIXC
- RI's who sought to use institutional disciplinary process
- Cases processed
- Accused individuals found responsible
- Accused individuals found not responsible
- Final sanctions description for each found responsible
- Cases closed because of withdrawal pending hearing
- Cases closed because complaint withdrawn
- SED rulemaking
- Excel Tool

# IMPLEMENTING THE STRATEGY FOR COMPLIANCE

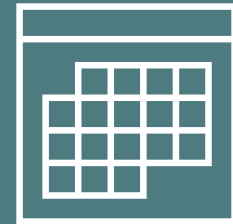
**Partnerships**



**Record  
Keeping  
Databases**



**Calendar**



# TRAINING & EDUCATION

Educating ourselves and our communities

# SOURCES OF TRAINING REQUIREMENTS



Title IX Final Regulations



Violence Against Women Act



State Law



Resolution Agreements



# TRAINING AND EDUCATION: TWO AREAS OF FOCUS

01



Institutional Response to Sex Discrimination

02



Prevention Education

# INSTITUTIONAL RESPONSE TRAINING

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



# I29B ONBOARDING/TRAINING - 6447

## Student Onboarding and Ongoing Education

- Comprehensive student onboarding and ongoing education
- About SIPV
- Consistent with federal laws like Clery, but more
- Primary and ongoing prevention and awareness
- No particular method is prescribed or endorsed – good faith efforts to be effective

# WHO MUST RECEIVE TRAINING?

## Title IX Staff\*

- Coordinators
- Investigators
- Decision Makers (hearings and appeals)
- Facilitators of Informal Resolution

## Faculty

- New faculty
- Existing faculty
- Adjunct Faculty
- Supervising faculty

## Students

- New Students
- Existing Students
- Specialized populations
- Student staff

## Staff

- New/existing staff
- Senior leadership
- Public Safety/campus law enforcement
- Health care workers

\*“Those who are charged with ensuring a prompt, fair, and impartial investigation and result.” (VAWA)

# TRAINING FOR TITLE IX STAFF



The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")

How to conduct the grievance process

How to serve impartially

The technology to be used at a live hearing \*

Issues of relevance of questions and evidence \*

Rape shield protections; and, \*

Issues of relevance in creating an investigation report. \*



# COMMUNITY PARTNERS?

Boards of Trustees

Law Enforcement

Advocacy Groups

Health Care Providers

Attorneys

Media

A photograph of three women in an office setting. In the foreground, a woman with red hair, wearing a blue and white striped shirt, is smiling broadly at the camera while sitting at a dark table with a laptop. Behind her, two other women are also smiling; one is pointing at the laptop screen. On the table, there are two red mugs and a glass of water. The background is a bright, modern office with a large window and a grey wall panel.

# RESPONSIBLE EMPLOYEES

# PREVENTION EDUCATION: TITLE IX REGULATIONS



"And while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information."

85 Fed. Reg. 30063 (May 19, 2020).

# PREVENTION EDUCATION: VIOLENCE AGAINST WOMEN ACT (VAWA)

A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

Ongoing prevention and awareness campaigns.



# ELEMENTS OF ANNUAL TRAINING STRATEGY

- Identify population to be trained
- Determine topic
- Schedule the training
- How will you deliver the training
- Partnerships
- Communications
- Community input/feedback
- Engagement as passive education





# ONGOING ASSESSMENT OF TRAININGS



Pre and Post  
Surveys



Observation



Opportunities for  
Feedback and  
Suggestions



Engage and Listen

# OPEN COMMUNICATION



Annual Report



On Your Website



When training



In conversations

# RECEIPT OF REPORTS

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

# INFRASTRUCTURE FOR REPORTING



# REGULATORY REQUIREMENTS

Notice to College/University

Outreach/Response from Title IX Coordinator

Support Measures, whether or not Formal  
Complaint is filed

How to File

Options

# INITIAL OUTREACH

- First: Safety
- Email: Create Forms
- Phone
- In person: Use RA, Campus Safety
- Follow Up Emails





# SCENARIO: EMERGENCY REMOVAL OF STUDENT

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



# CUNY STATEMENT IN 2020 POLICY

“In exceptional circumstances, where a respondent presents an immediate threat to the physical health or safety of any student or other individual arising from a report of Sexual Misconduct, the college may effectuate an emergency removal of a student or take similar emergency measures against an employee, consistent with applicable CUNY Bylaws and policies.

Prior to emergency removal under this Section, the President or their designee will, in cooperation with the appropriate campus officials, conduct an individualized safety and risk analysis to determine whether a respondent presents an immediate threat to the physical health or safety of any person arising from a report of Sexual Misconduct. The college will give the student respondent notice and an opportunity to challenge the decision immediately following the removal (see Section VIII-D, below). Both parties will be notified at the same time and in the same manner of the emergency removal and if or when the emergency removal is lifted.”

# COMPLAINANT INTAKE & SUPPORTIVE MEASURES



# 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

Non-Disciplinary

May not  
unreasonably  
burden the other  
party

Designed to restore  
or preserve equal  
access

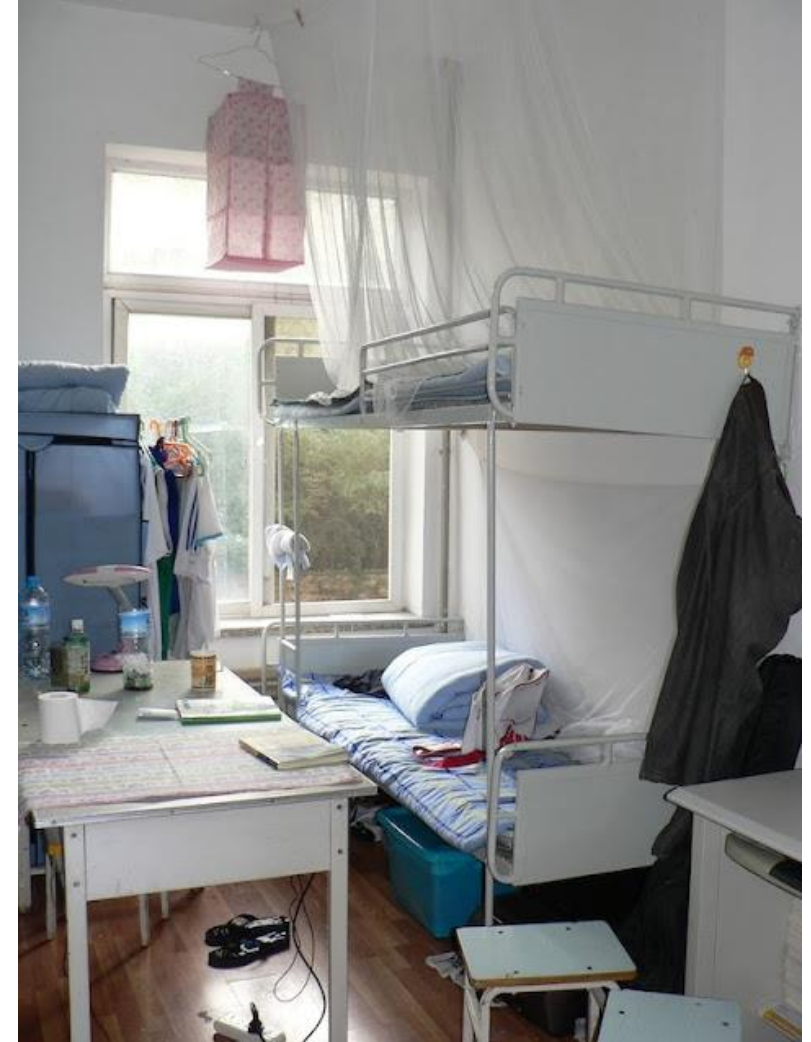
Non-punitive

As appropriate and  
reasonably  
available

Confidential

# EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic modifications and supportive measures;
- 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

Title IX, Non-TIX, Informal Resolution

# CUNY SPECIFIC POLICY

## The City University of New York Policy on Sexual Misconduct

### Section XI. Title IX Sexual Harassment Matters

- TIXC makes determination if qualifies for TIX
- Notice to Parties
- Informal Resolution options
- Dismissal Options (mandatory and discretionary, process)
- Formal Resolution: Investigation and live hearing for finding

### Section XII. Non-Title IX Sexual Misconduct Matters

- Investigation Notice to Parties and 120 days
- Informal Resolution options
- Dismissal Options (mandatory and discretionary, process)
- Formal Resolution: Investigation with fact finding of investigator, appeal to committee and president makes disciplinary referral to SAO, determination or panel

X. Rights and Procedures that Apply to all Sexual Misconduct Matters

# HOW TO PROCEED?

## Support- Based Only

No formal  
process



## Alternative/ Informal

Signed  
agreement;  
Voluntary;  
What records?

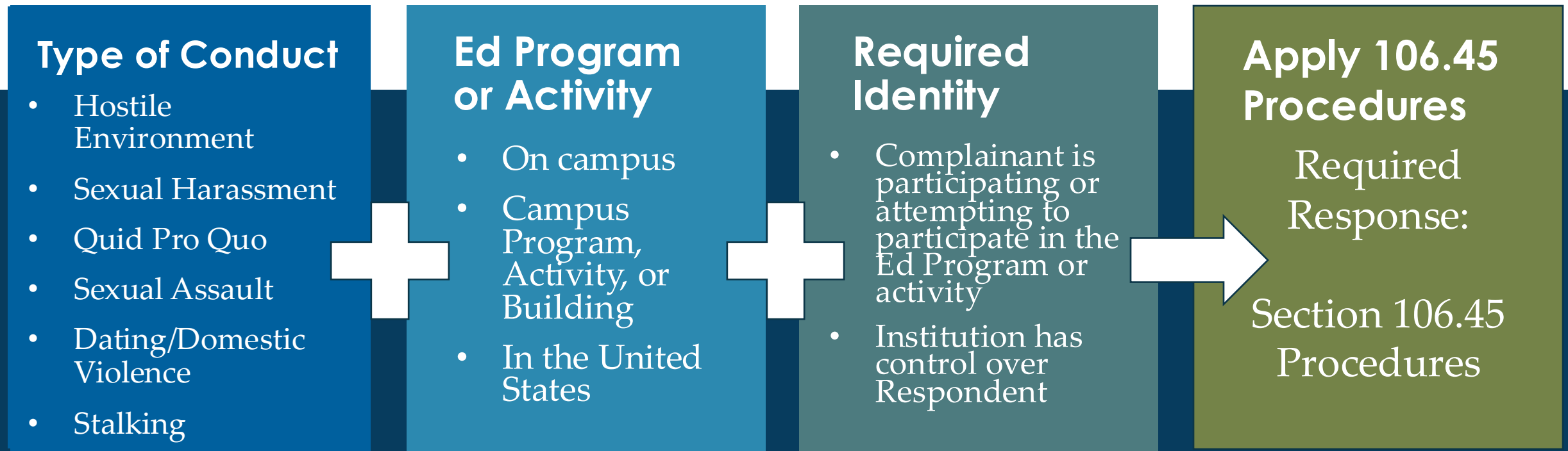


## Formal/ Investigation/ Hearing

All  
requirements of  
106.45



# TITLE IX APPLICATION (POST-MAY 2020)





# ACTUAL NOTICE

Institution must respond when it has:

"Actual Knowledge..."

When "an official of the recipient who has authority to institute corrective measures" has notice, e.g., Title IX Coordinator

...of **"sexual harassment that occurred within the school's "education program or activity..."**

- "includes locations, events, or circumstances over which the recipient exercised substantial control" over the respondent and the context in which the sexual harassment occurred
- Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

...against a **"person in the United States"**

So, not in the study abroad context

A Narrowed Scope of Institutional Responsibility



# INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

3. Support Measures, whether or not Formal Complaint is filed

4. How to File

5. Options for Resolution

# 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 directly related 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

# PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

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

Written decision must be issued that includes finding and sanction

# K-12: HEARINGS OPTIONAL

- Schools have the flexibility to allow for no hearings or for hearings in limited circumstances that they may define by policy.
- Whatever policy requires, rules adopted must apply equally to all parties
- If hearings are permitted, the procedures set forth in the Regulations are not required; use a hearing process that is age/school appropriate.





# K-12: THREE REQUIREMENTS

1. Before any determination of responsibility is made, the decision-maker(s) must afford each party “the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.”
2. Questions about the Complainant's prior sexual history predisposition or behavior are not permitted except under certain circumstances.
3. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



## **FINAL RULE § 106.45(B)(8) •**

“Institutions 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.”



# APPEALS: MANDATORY GROUNDS

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# SUPPORT BASED-BASED RESOLUTION



# SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



# FORMAL COMPLAINT & NOTICE REQUIREMENTS



# 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

# 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;

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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;

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Identity of Respondent, if known;

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A request for a resolution or investigation.

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# DISMISSING COMPLAINTS

## Mandatory

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

## Discretionary

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

# **CAN PROCEED UNDER OTHER POLICY: CUNY SECTION XII**



# NOTICE OF ALLEGATION REQUIREMENTS (1)

- 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.

# NOTICE OF ALLEGATION REQUIREMENTS (2)

- 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

# NOTIFYING THE RESPONDENT

FIRST- SAFETY

Make sure Support Available

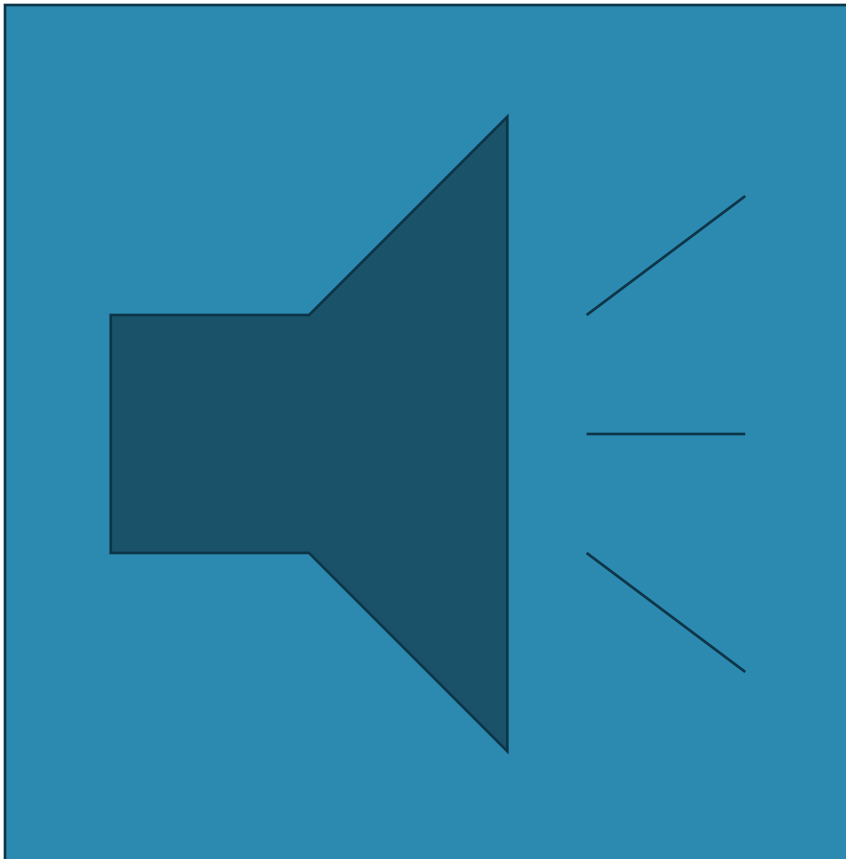
Written Notification Meetings and Sufficient Time to Prepare

Don't Send on a Friday

Don't send at 5pm

How will you notify?

Consider impact of notification on Respondent





# 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  
questioning 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 were 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

Make connections

Provide the supportive  
measures

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

# 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

# ALTERNATIVE/INFORMAL RESOLUTION



# INFORMAL RESOLUTION REQUIREMENTS CUNY X.B.

- Formal Complaint must be filed
- Participation in an alternative 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 alternative resolution must be obtained
- Facilitators of alternative resolution must be trained



# INFORMAL RESOLUTION TRAINING W/GRS

January 29, 2025

12-2pm

Virtual



# FORMAL RESOLUTION



# 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  
directly related 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

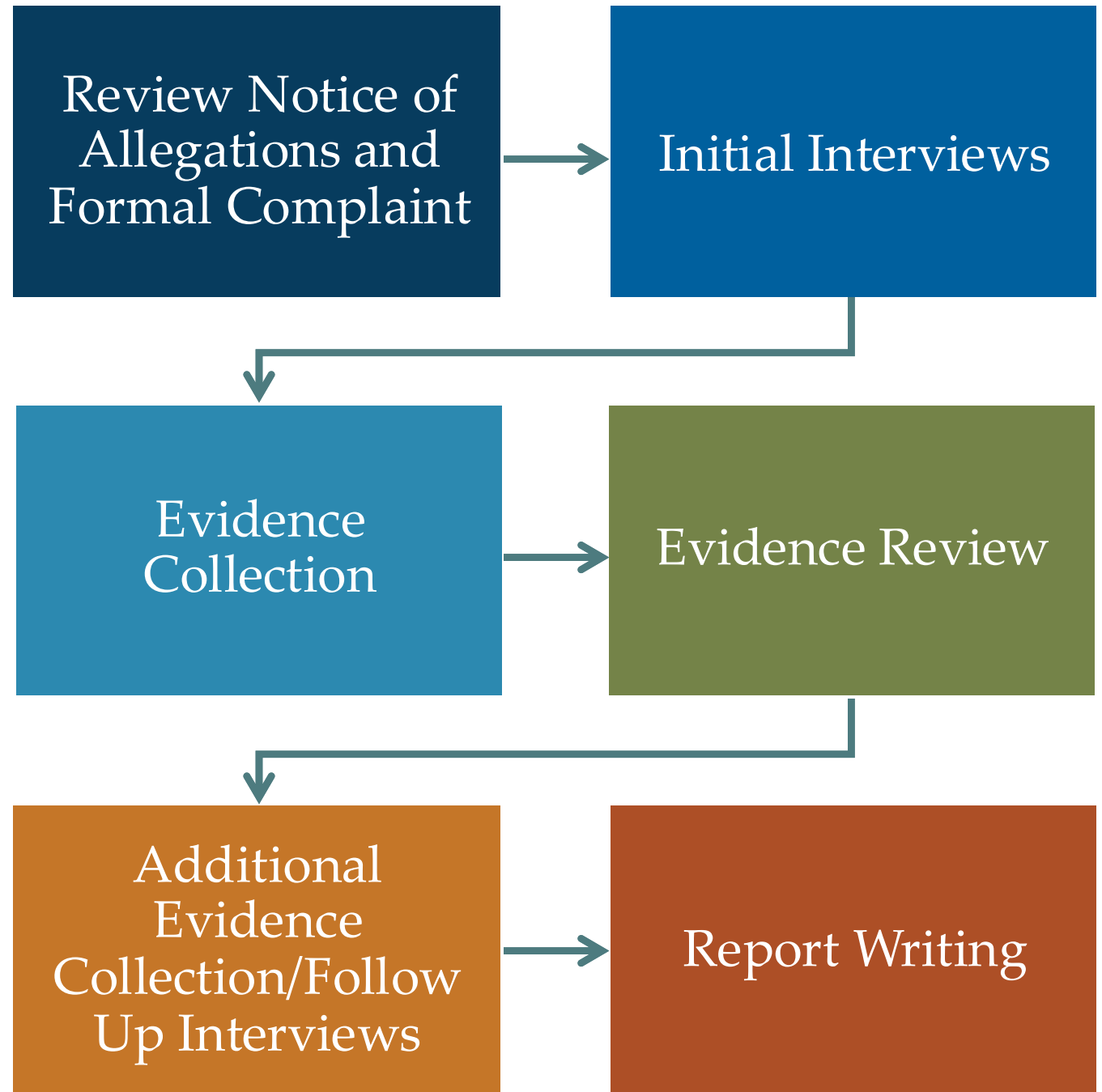
- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to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



# CUNY XI. E.B.ii Investigation Reports

- Investigative Report Upon completion of the investigation, the Title IX Coordinator must prepare an investigative report, which will fairly summarize all relevant evidence gathered during the investigation. The investigative report must include:
  1. *Procedural history of the case;*
  2. *Alleged Policy violations;*
  3. *A list of individuals interviewed;*
  4. *A list of exhibits;*
  5. *A list of additional documents and materials (not included as an exhibit) obtained as part of the investigation and directly related to the allegations, including inculpatory or exculpatory evidence; and*
  6. *A summary of party and witness statements and other relevant evidence, including a summary of relevant evidence pertaining to each allegation.*

# ESSENTIAL STEPS OF AN INVESTIGATION



# "ADEQUATE, RELIABLE, AND IMPARTIAL" INVESTIGATIONS

- Opportunity to present evidence
- Opportunity to suggest witnesses
- Evidence review
- Notice of meetings and proceedings



"equal opportunity" to "access" relevant and not impermissible evidence

# EXPECTATIONS

What they should expect of you:

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the “shift”

What you expect of them:

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks



# RELEVANCE

- "Relevant" means "related to" the allegations of discrimination.
- **Questions** are relevant "when they seek evidence that may aid in showing" if the alleged discrimination occurred.
- **Evidence** is relevant "when it may aid a decisionmaker in determining" if the alleged discrimination occurred.
- "Not relevant" evidence=impermissible
- "Sexual interests" of Complainant are excluded unless directly related to assessment of allegation



# EVIDENCE: WEIGHING, ANALYZING

Avoiding Common Errors

# EVIDENCE

Testimony

Text Messages

Social Media Posts  
and Messages

Emails

Surveillance

Videos

Photographs

Police Body  
Camera Footage

Swipe Records

Medical Records

Phone  
Records

Audio  
Recordings

# SHE TEXTED ME “ALL THE TIME”

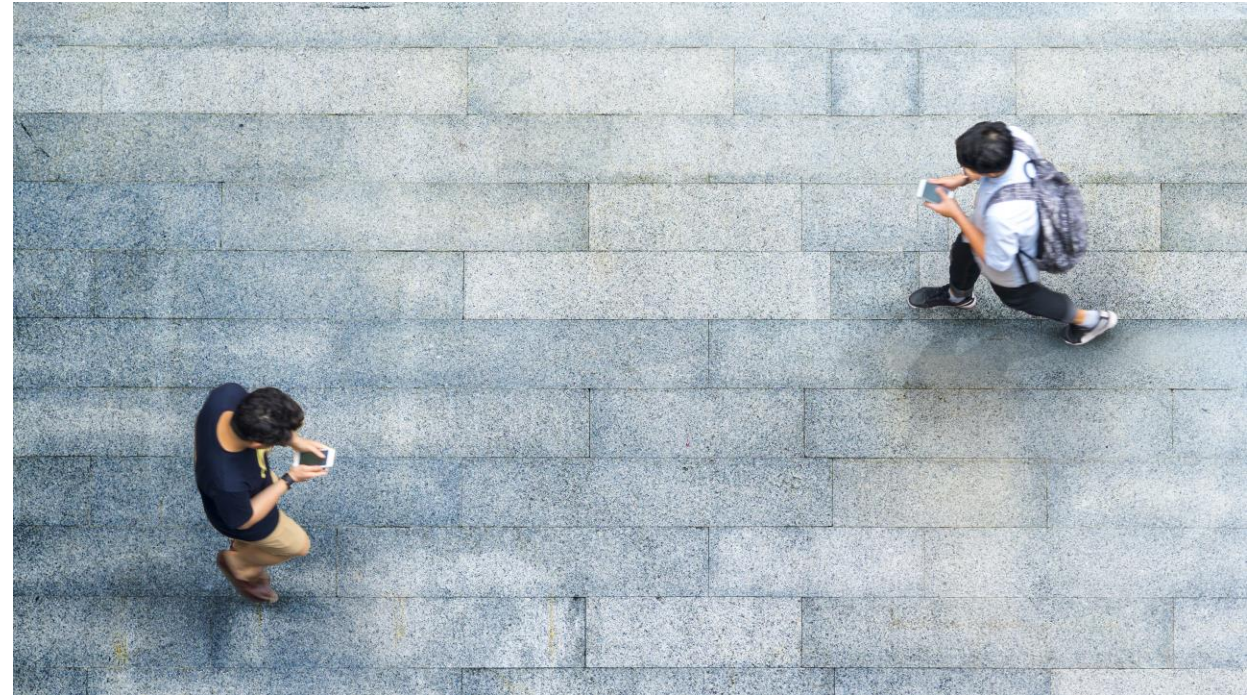
Do you have those texts?

May I have those texts?

Oh, they weren't 'texts,' they were DMs?

Who else might have seen them?

Was anyone else copied?



# THE “HARD” QUESTIONS: YOU CANNOT WEIGH IT IF NO ONE ASKED IT

Details About  
The Sexual  
Contact

Seemingly  
Inconsistent  
Behaviors

Inconsistent  
Evidence/  
Information

What They  
Were Wearing

Alcohol Or Drug  
Consumption

Probing Into  
Reports Of  
Lack Of Memory

# YOU CANNOT WEIGH IT IF NO ONE ASKED

## LAY A FOUNDATION FOR THE QUESTIONS

- Explain why you are asking it
- Share the evidence that you are asking about, or that you are seeking a response to

## BE DELIBERATE AND MINDFUL IN YOUR QUESTIONS:

- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...



# WEIGHING EVIDENCE





# TYPES OF EVIDENCE

## Direct Evidence

Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

## Circumstantial Evidence

Evidence based on inference and not on personal knowledge or observation.

## Corroborating Evidence

Evidence that differs from but strengthens or confirms what other evidence shows

# EVALUATING THE EVIDENCE

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

Is the evidence worthy of belief?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

# IS IT AUTHENTIC?

Question The Person Who Offered The Evidence

Request Originals

Obtain Originals From The Source

Have Others Review And Comment On Authenticity

Are There Other Records That Would Corroborate?

# CREDIBILITY AND RELIABILITY

What is it and how to make an assessment

CREDIBILITY: IT IS  
CONVINCING

RELIABILITY: YOU  
CAN TRUST IT

# CREDIBILITY? OR RELIABILITY?

- **Reliable evidence:**

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

- **Credibility:**

- I trust their account based on their tone, and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

# **A CREDIBLE WITNESS MAY GIVE UNRELIABLE TESTIMONY**

**DID THE WITNESS CORRECTLY OBSERVE, PROCESS,  
INTERPRET AND RECALL THE INFORMATION? IS THERE  
CORROBORATION?**

**VS. CREDIBILITY: BIAS, COLLUSION, MOTIVE IN OUTCOME,  
OUTRIGHT (PROVEN) LYING, JUDGING THE PERSON**





# FACTORS WE WERE TAUGHT TO USE: ARE THESE STILL THE RIGHT ONES?

- Corroborating evidence
- Inconsistencies
- Sufficient or insufficient explanation of inconsistencies
- Logic, plausibility
- Pattern or history
- Past record
- Motive to falsify
- Bias for/against a party
- Material omission
- Ability to recollect events

# ASSESSING CREDIBILITY AND RELIABILITY

NO FORMULA EXISTS, BUT CONSIDER THE FOLLOWING:

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency

Character, background, experience, &  
training

Coaching

Bias

# CREDIBILITY/RELIABILITY ANALYSIS

## STEP BY STEP

1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
  - Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
  - Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
  - State clearly which facts are accepted, and which are rejected, and state the reasons why.
- “While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”

# REMEMBER – CREDIBILITY IS NOT FIRST

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

Is the evidence worthy of belief?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

# PROCEDURAL REQUIREMENTS FOR HEARINGS

## CUNY SECTION XI E.c.

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

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)**

“Institutions 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.”



# 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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