

December 4, 2024

Lawrence University Title IX Training

Jennifer Smith

FRANCZEK

Agenda



Overview of Recent Changes



Complaints & Investigations



Determinations



Hypotheticals

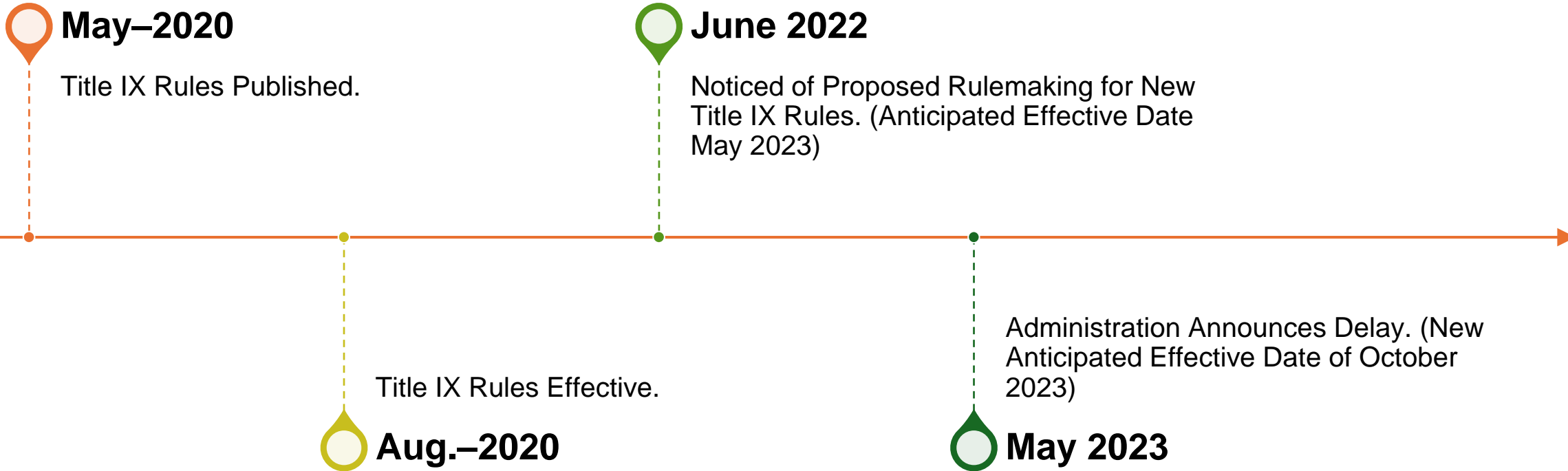


Q&A Wrap Up

Recent Changes

Legal and Policy Updates

A (Not So) Brief History



A (Not So) Brief History



Major Changes Under The 2024 Regulations

Protections cover sexual orientation, gender identity, sex stereotypes, sex characteristics, pregnancy related conditions, and parental, family, or marital status.

Changes to hostile environment sexual harassment definition.

Some protections for conduct outside of the United States and off-campus

Major Changes Under The 2024 Regulations

Annual Training

Supportive Measures

Expanded Protections
for Pregnant Students
and Employees

What Falls Under Title IX?

**Recruitment,
Admissions, and
Counseling**

**Financial
Assistance**

Athletics

**Sex-Based
Conduct
(Umbrella
Definition under
2024 Regs.)**

**Treatment of
Pregnant &
Parenting
Individuals**

Discipline

**Single-Sex
Education**

Employment

Retaliation

Comparing the 2020 and 2024 Regulations

2020 Regulations

A recipient with **actual knowledge** of [Title IX] sexual harassment in an education program or activity against a person in the U.S. must respond promptly and in a manner that is not deliberately indifferent.

2024 Regulations

A recipient with knowledge of conduct that **reasonably may constitute sex discrimination** in its education program or activity must respond **promptly and effectively**.

Comparing the 2020 and 2024 Regulations

2020 Regulations

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

2024 Regulations

Unwelcome **sex-based** conduct that, based on the totality of the circumstances is **subjectively and objectively offensive** and is so **severe or pervasive** that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.

Sex-Based Harassment

Quid Pro
Quo

VAWA/Clery
(The Big 4)

Hostile
Environment

Title IX Quid Pro Quo

Definition: An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

Severity and harm presumed.

Quid = Something

Pro = For

Quo = Something

VAWA “Big Four”

01

Sexual Assault
20 U.S.C.
1092(f)(6)(A)(v)

02

Domestic
Violence
34 U.S.C.
12291(a)(8)

03

Dating
Violence 34
U.S.C.
12291(a)(10)

04

Stalking 34
U.S.C.
12291(a)(30)

Title IX Hostile Environment

Unwelcome **sex-based** conduct that, based on the totality of the circumstances is **subjectively and objectively offensive** and is so **severe** or **pervasive** that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.

Scope – Sex-Based Conduct

**Under 2024
Regulations,
includes
discrimination
on the basis
of:**

- sex stereotypes,
- sex characteristics,
- pregnancy or related conditions,
- sexual orientation, and
- gender identity.

ACCESS DENIED

Hostile Environment Harassment

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

The type, frequency, and duration of the conduct;

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

The location of the conduct and the context in which the conduct occurred; and

Other sex based harassment in the recipient's education program or activity.

Title IX
Sexual
Harassment
Must Be “In
a Program or
Activity”



Program or Activity: 2024

Conduct that occurs in any building owned or controlled by a student organization that is officially recognized by a postsecondary institution; and

Conduct that is subject to the recipient's disciplinary authority.





“All sex discrimination occurring under a recipient’s education program or activity occurring in the United States.”

Title IX Policy Updates

- <https://www.lawrence.edu/ideas/equity-title-ix>

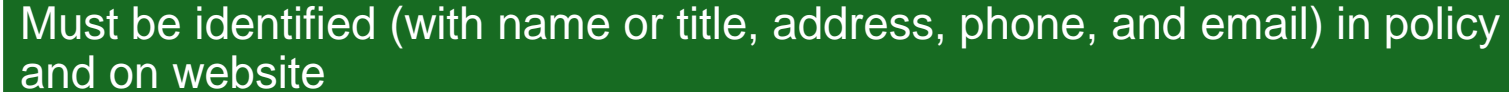
Grievance Team Roles

Title IX Coordinator Responsibilities

Must be called Title IX Coordinator



Must be identified (with name or title, address, phone, and email) in policy and on website



Based on requirements contained in the new Title IX regulations, it is very important that all staff know who the Title IX Coordinator is and their contact information



Ensure non-discrimination notice requirements are met



Title IX Coordinator Responsibilities



MONITORS ONGOING
COMPLIANCE WITH TITLE IX AND
ANY BARRIERS TO REPORTING



TAKE STEPS REASONABLY
CALCULATED TO ADDRESS
BARRIERS TO REPORTING

Title IX Coordinator Responsibilities

Treats complainant and respondent equitably

Offers and coordinates supportive measures

Informs Complainant or reporting party of grievance process

Notifies Respondent of grievance procedures and informal resolution process if a complaint is made

Initiate grievance procedure or informal resolution process

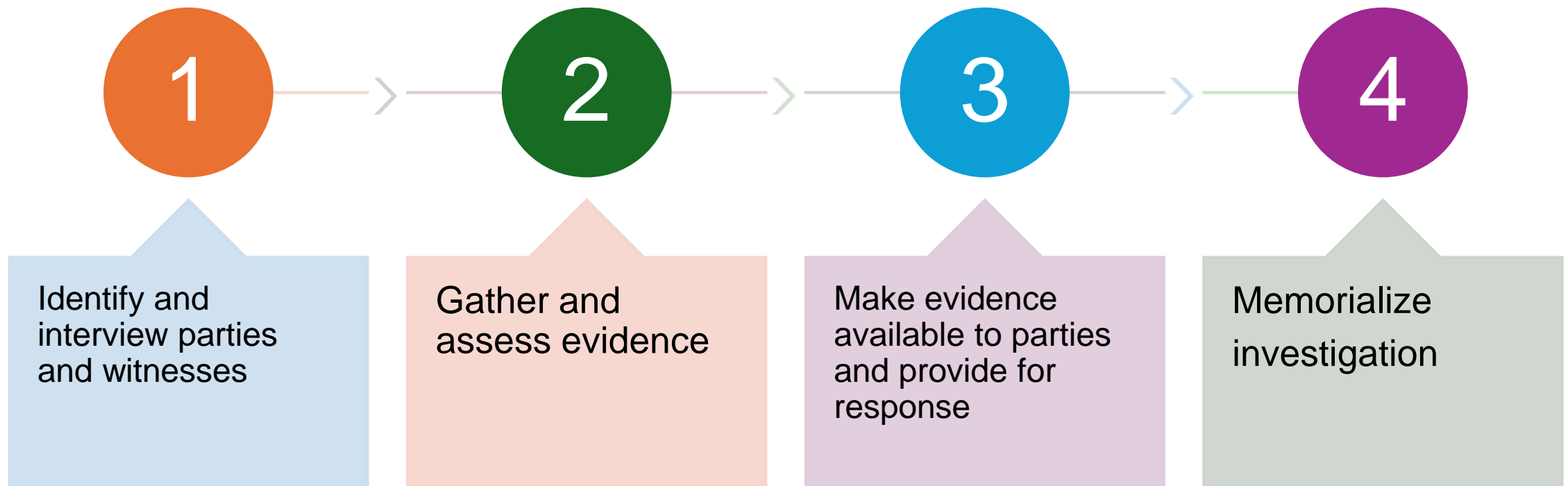
Decides whether to initiate a complaint when the Complainant doesn't want to file

Ensures effective implementation of remedies

Title IX Coordinator Responsibilities



Investigator Responsibilities





Confidential Resources

- Definition: An employee of a recipient whose communications are privileged or confidential under Federal or State law.
- Requirements:
 - Notify participants how to contact confidential employees
 - Notify Confidential Employees of their requirements.

Lawrence University – Grievance Procedures

Lawrence University is committed to providing an equitable process for all involved. The Title IX and Equity office understands the potential impacts on parties involved and believes in transparent procedures. Although outlined in more detail in the policy, read below for a more digestible understanding of the procedures surrounding Title IX.

The procedure is limited by the involved parties' affiliation with Lawrence, meaning there are limitations to the process should the complainant(s) or the respondent(s) not be a part of the LU community. However, there is no limitation on timing, the Office of Equity & Title IX will continue through the process to the best of its abilities no matter when a reported occurrence took place.

10 Minute
Break



Complaints

Who Can Make a Complaint?

Under the 2024 regulations, a complaint may be filed by a:

- student,
- employee,
- parent/guardian/legal representative,
- Title IX coordinator, or
- person other than a student or employee who is participating in an educational program or activity.

Coordinator “Initiating a Complaint”

Consider:

- Complainant’s request not to proceed
- Safety concerns
- Risk of additional sex discrimination occurring
- Severity of alleged discrimination
- Age and relationship of parties
- Scope of sex discrimination
- Availability of evidence
- Whether discrimination can be ended/prevented without grievance procedures

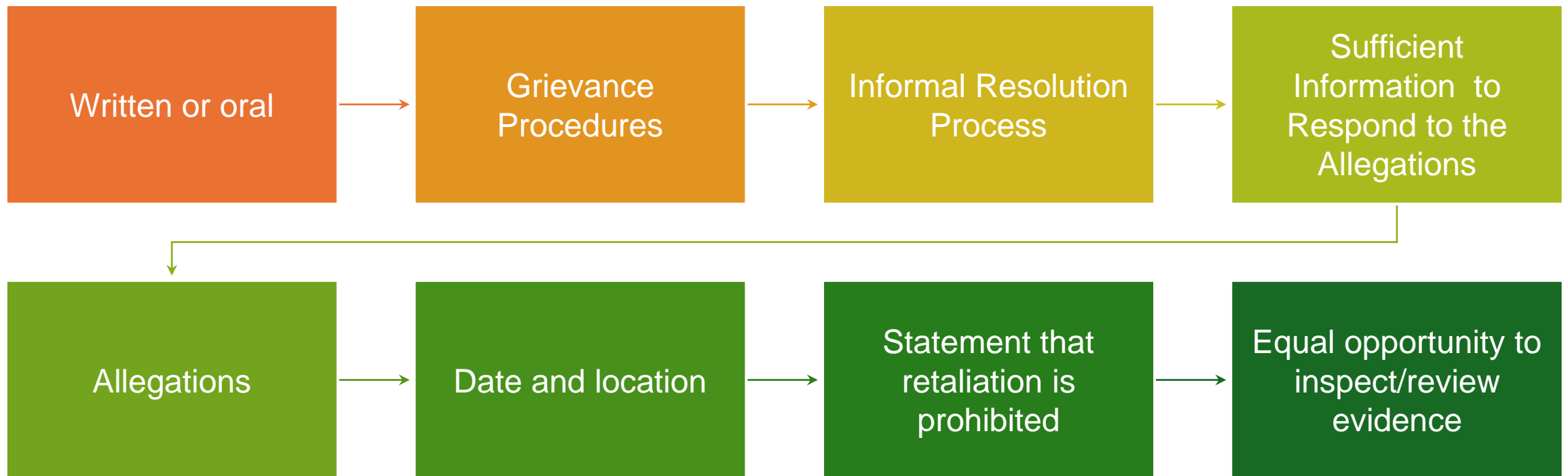
Step One:
Notice of
Allegations

By Title IX Coordinator or
Investigator

Promptly upon receipt of
a complaint

To all known parties

Notice of Allegations



Notice For Complaints

Under the Title IX regulations, postsecondary institutions must also provide the following information in a notice for complaints:

- Respondent is presumed not responsible until a determination is made
- The student may have an advisor of their choice, which may be an attorney
- The student is entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- That the code of conduct prohibits knowingly making false statements or submitting false information

Confidentiality

1

Not required to maintain anonymity of Complainant after complaint is filed

2

Both parties must be identified (if identity is known) in notice of allegations

3

Using party initials or withholding Complainant's identity is insufficient

Confidentiality - Prohibited Disclosures of PII

The regulations state that schools must not disclose PII obtained during a Title IX investigation unless:

1. that information is required to be disclosed as part of the investigation; or
2. consent is obtained

Students with Disabilities

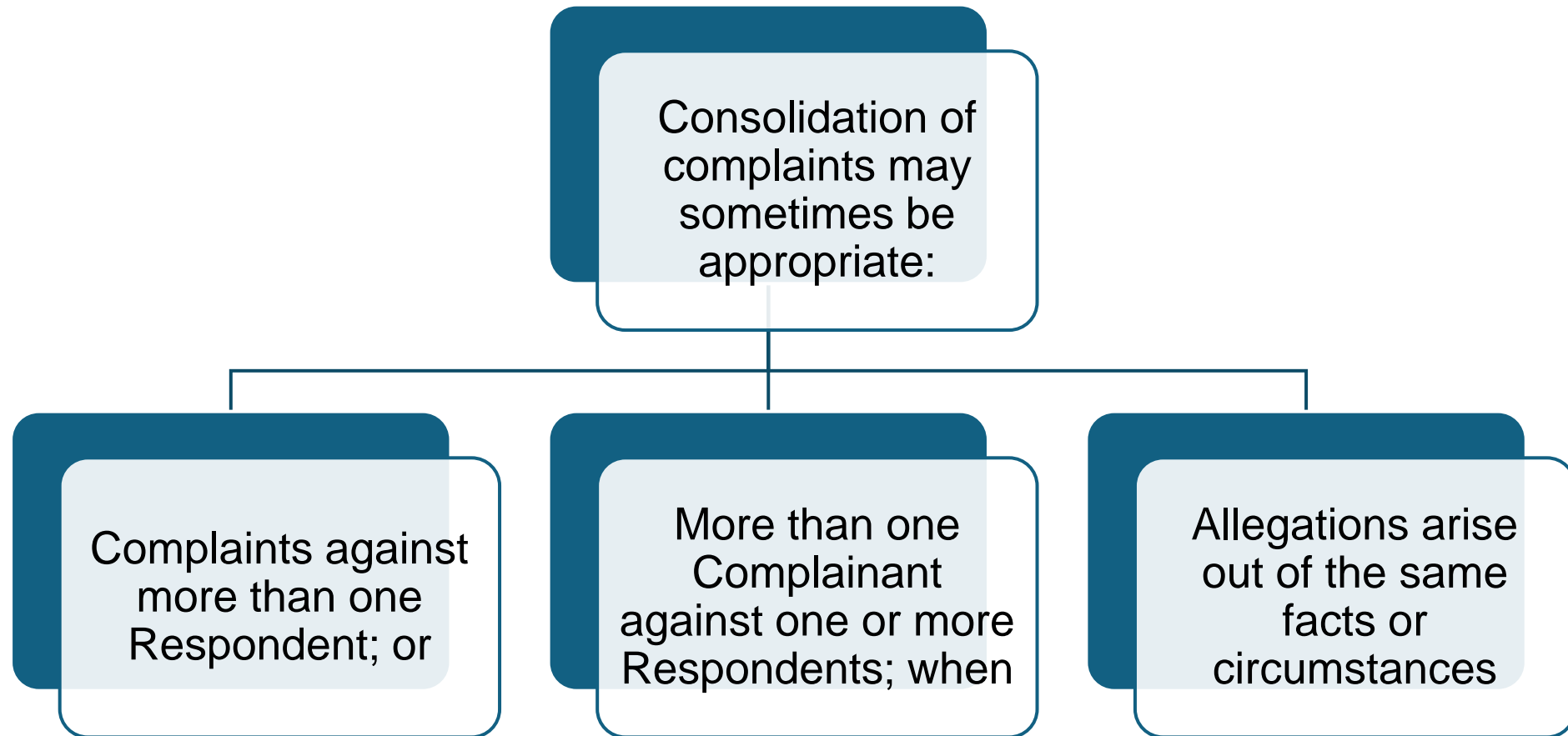


Higher Ed.: Title IX Coordinator **may** consult and coordinate with Section 504 office throughout grievance process.

Emergency Removal & Administrative Leave

Student Emergency Removal	Employee Administrative Leave
<ul style="list-style-type: none">• Based on an individualized safety and risk analysis• An imminent and serious threat to the health or safety of the complainant or anyone else may justify the removal• Notice and an opportunity to challenge the removal must be provided "immediately" following the removal• Consider other laws (e.g., SB 100, IDEA, Section 504)	<ul style="list-style-type: none">• Not prohibited• Consider state laws, Board Policies, Employee Handbooks, Collective Bargaining Agreements

Consolidation of Complaints



EVALUATING COMPLAINTS & DISMISSALS

- Respondent unable to be identified
- Respondent is not participating in recipient's education program or activity, or is not employed by the recipient
- Complainant withdraws complaint
 - Complainant withdraws allegations in the complaint and, without withdrawn allegations, the remaining conduct would not constitute sex discrimination under Title IX
- Even if true, conduct would not constitute sex discrimination under Title IX (reasonable efforts to clarify required)



Investigations: General Requirements

General Requirements



Must be equitable and unbiased.



Investigation must be “adequate, reliable, and impartial.”



“Reasonably prompt” timeframes.



“Reasonable steps” to protect privacy of parties and investigation but cannot submit parties to gag order.



Questions to parties and witnesses must be relevant and not impermissible.

Respondents



Must provide written notice of the interview to any party whose participation is invited or expected, including the date, time, location, participants, and purpose of the meeting



Must provide the parties the same opportunities to be accompanied by the advisor of their choice



Must provide the same opportunities (if any) to have persons other than the advisor present



The school has discretion to determine whether expert witnesses are permitted, so long as that is applied equally to all parties



Must provide each party and their advisor equal opportunity to access relevant and not otherwise impermissible evidence

General Requirements

Burden is on school to gather evidence.

Equal opportunity to access evidence by both parties.

Equal opportunity to present fact witnesses and other evidence.

Reasonable opportunity to respond to evidence.

Scope of the Investigation



Must be “thorough”



But not required to review all potential
sources of evidence parties or witnesses
identify

Concurrent Law Enforcement

- Only “temporary” or “limited” allowed
 - Not “more than briefly” beyond timeframes
 - Not required
- Reasons: Impact on police fact gathering; Respondent self incrimination privilege; police plan to release evidence that is material to investigation on a specific timeframe

Fairness Considerations

What Might be Bias, Conflict, Prejudgment?

Using sex-
stereotypes

Placing the burden of
proof on one party

Unauthorized interim
suspensions or other
penalties before
conclusion of
grievance process

What Likely Is Not...



DECIDING AN ALLEGATION
WARRANTS AN
INVESTIGATION



BEING AN EMPLOYEE (AND
EVEN ATTORNEY)



FINDING IN FAVOR OF ONE
PARTY OVER ANOTHER

Bias

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And they not prejudge any matter before them.

Conflict of Interest

Flexibility to choose employees or outsource adjudication functions

```
graph TD; A[Flexibility to choose employees or outsource adjudication functions] --> B[No per se prohibited conflicts of interest when using school employees or individuals with histories of working in field of sexual violence as decisionmaker]; B --> C[Caution against using generalizations to identify conflict of interest];
```

No *per se* prohibited conflicts of interest when using school employees or individuals with histories of working in field of sexual violence as decisionmaker

Caution against using generalizations to identify conflict of interest

Pre-Judgment



Tips for avoiding pre-judgment of facts:



Each case is fact-specific



Keep an open mind



Listen to facts presented

Sex Stereotypes

Must not rely on sex stereotypes such as:

Women are “asking for it”
based on actions or clothing

Men cannot be sexually
assaulted

Women only decide they were
assaulted after the fact due to
regret or embarrassment

Men are more likely to be
sexual aggressors



Consider intersection of sex stereotypes with race, ability,
sexuality, and gender identity

Investigation Techniques & Best Practices



Order of Interviews

Party Interview Tips

01

Describe
allegations

02

Avoid discussing
theories or
assessment of
evidence

03

Obtain account of
events in detail
(within reason)

Prefaces for Witnesses

Your Identity
and Role as a
Neutral

Notes and
Records

Allegations (if
necessary)

Role of
Advisor (if
allowed)

Confidentiality

Retaliation

Rapport
Building

Questions

Relationships

Identities of
Parties

Details of
Conduct Between
the Parties

Effect of Alleged
Conduct on the
Parties

Outcry/Reports

Other Responses
of Parties

Documentary and
Other Evidence

Identities of
Witnesses

Avoid



DISCUSSING
THEORIES OR
ASSESSMENT OF THE
EVIDENCE



SUGGESTING
AGREEMENT OR
OUTCOME



PRESSURING FOR
MORE INFORMATION
ON IRRELEVANT
INCIDENTS



BODY LANGUAGE OR
WORDS SUGGESTING
JUDGEMENT

Avoid Legally Privileged Information



ATTORNEY CLIENT
PRIVILEGE



PRIVILEGE
AGAINST SELF-
INCRIMINATION



CONFESSIONS TO
CLERGY OR
RELIGIOUS FIGURE



SPOUSAL
PRIVILEGE

Avoid Treatment Records



Can't access, consider, disclose, or use records



Made by a physician, psychologist, or other recognized professional

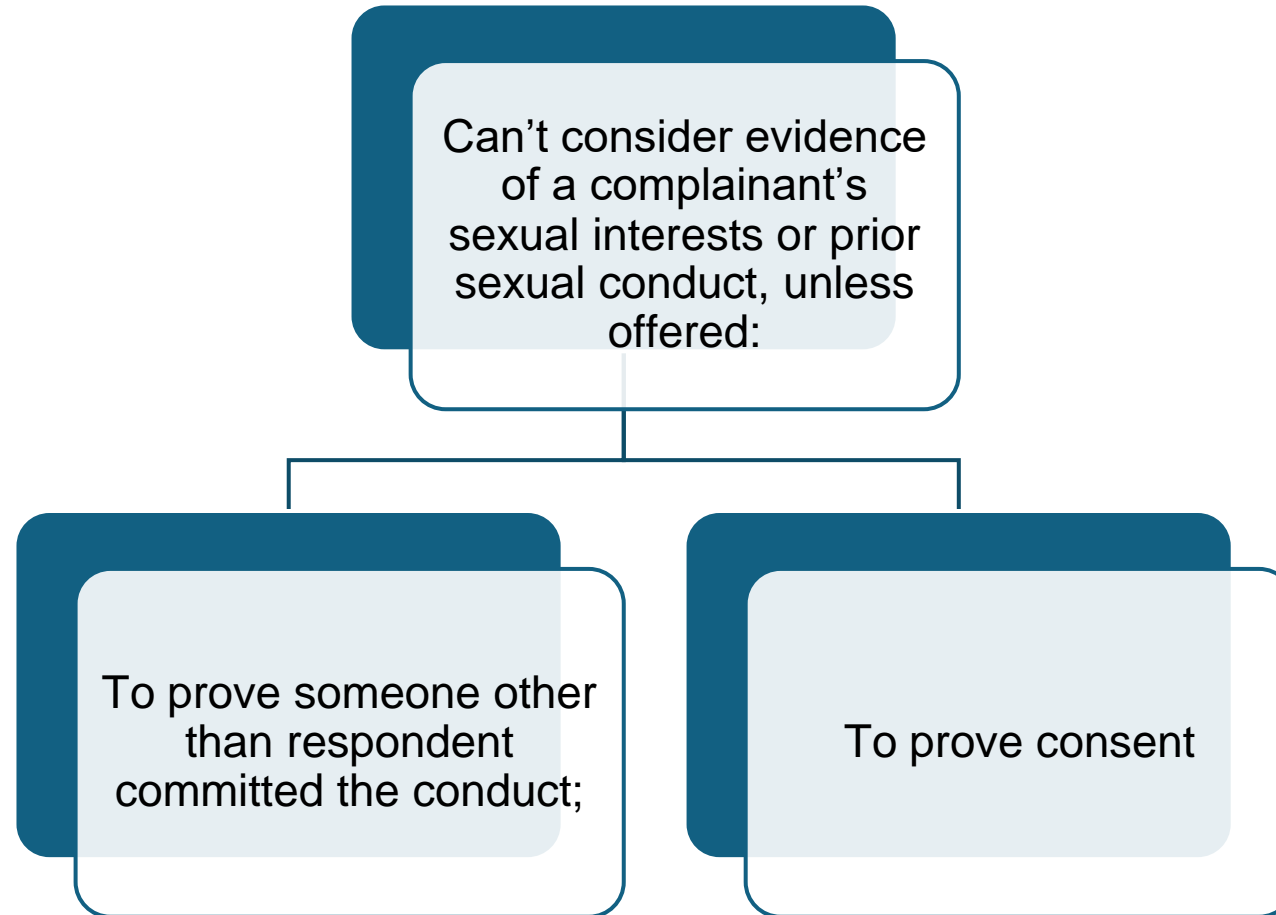


Which are made and maintained in connection with the provision of treatment,



Unless the party gives voluntary, written consent

Avoid Sexual Interests or Prior Conduct



Closing

Anything else?



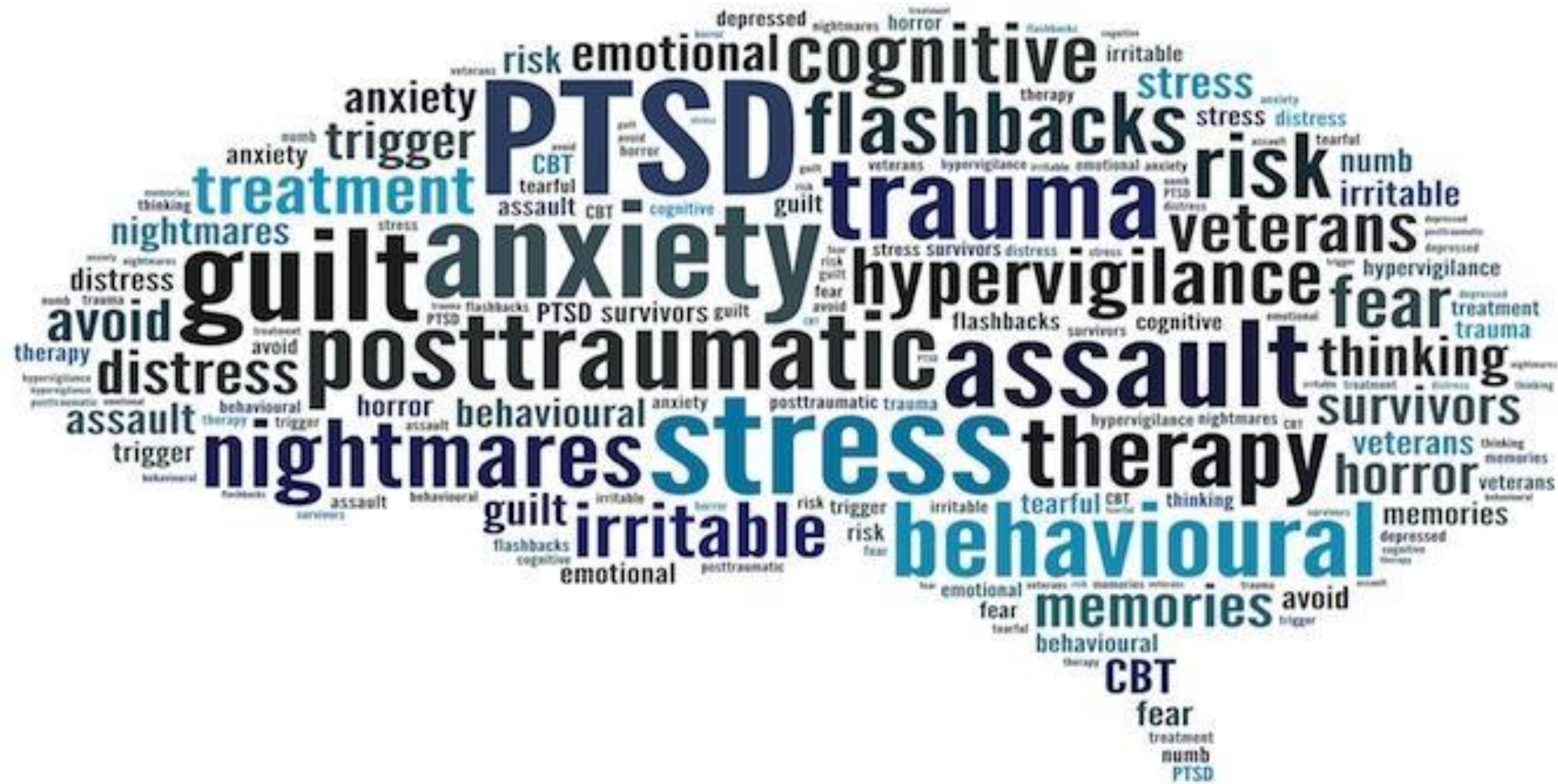
Any questions?

Advisor questions (if allowed)

Encourage follow-up

Process (again for parties)

Potential Trauma for CP and RP



Practical Tips – Trauma



Acknowledge pain/difficult situation

“It’s ok if you can’t remember every detail. We will just focus on what you can recall.” “I can tell this is difficult for you, I can give you a little time”



Do not demand starting at the beginning & providing every detail



Ask open ended questions

AVOID

- Victim blaming
- Accusing
- Judging



Emotions



SILENCE IS OK



SYMPATHY IS OK (WITHIN
REASON/NEUTRAL) – “I CAN
TELL THIS IS HARD” “I’M SORRY
THIS IS DIFFICULT”



ALLOW BREAKS



REMEMBER EQUALITY NOT
EQUITY IS GOAL FOR
PROCESSES

Cardinal Sins of Interviewing

Questions that are evaluative



Long, confusing questions



Sticking blindly to a script



Using undefined terms (witness can define)



Interrupting and rushing

Guiding Questions

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

Guiding Questions

How did the conduct affect you?

What would you like to see as an outcome? (avoid making any promises)

Guiding Questions/Considerations

Consider whether appropriate to ask for more incidents than offered

Perhaps instead, focus on repeating “Is there anything else you’d like to tell me or for me to look into?”

Retaliation

IN EVERY INTERVIEW, warn about retaliation and explain that a complaint can be filed if someone retaliates

Watch for different treatment

Actions by staff in avoiding complainant

Harassment by the Respondent or their friends

Retaliation

The 2024 Regulations now specifically define retaliation:

"[I]ntimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person by the recipient to provide an aid, benefit or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including an informal resolution process...in grievance procedures...and in any other actions taken by a recipient..."

After Interview



Follow up in writing to summarize any points that might need confirmation



Clean up notes



Document less formal interactions



Send links/copies to policies if relevant



REASSESS allegations, investigation plan, and supportive measures

Determinations

Decision Maker:

The 2024 Rules allow for a single Investigator-Decision Maker. In other words, the same person can now serve as the Investigator and the Decision-Maker.

Relevance



CONSIDER ALL
RELEVANT
EVIDENCE



PROVIDE
REASONING FOR
IRRELEVANCE



EXCEPTIONS

Standard: Preponderance of the Evidence

Using the preponderance of the evidence standard, the Decision-Maker must determine whether or not sex discrimination occurred.

Written Decision – Student Complainant or Respondent

Description of the alleged sex-based harassment

Information about the policies and procedures the school used to evaluate the allegations

Decisionmaker's evaluation of the relevant and not otherwise impermissible evidence

Determination whether sex-based harassment occurred

If sex-based harassment occurred, any disciplinary sanctions the school will impose and/or whether remedies other than sanctions will be provided

Written Notice

The Decision-Maker must be able to question parties and witnesses.

The Decision-Maker must notify the parties in writing of the determination of whether sex discrimination occurred and the rationale for such determination.

The notice must include the permissible bases for appeal.

If the Decision-Maker determines that sex discrimination occurred, the Title IX Coordinator must coordinate the provision and implementation of remedies, sanctions, and other prompt and effective steps to ensure that sex discrimination does not continue.

Appeals

Appeals of determinations or dismissals

Appeals

Notify

Notify the parties of any appeal, including notice of the allegations if notice was not previously provided to the respondent

Ensure

Ensure that the appellate decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint

Provide

Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome

Notify

Notify the parties of the result of the appeal and the rationale for the result

Bases for Appeals



Procedural irregularity that would change the outcome



New evidence that would change the outcome and was not reasonably available when the determination or dismissal was made



Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias



Additional bases determined by the school, so long as they are equally available to all parties

Dismissal Appeal Outcome

Offer supportive measures to the Complainant as appropriate;

For dismissals in which the Respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and

Title IX Coordinator must take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

Appeal Process

- Available to both parties
- Same process as in all other comparable proceedings

Informal Resolution

May occur at any time prior to a determination. A complaint need not be initiated first.

Informal Resolution

- Informal Resolution is no longer required, but a Complaint is also not required before Informal Resolution is offered.
- School may offer to a Complainant and Respondent an informal resolution process, unless:
 - (1) the complaint includes allegations that an employee engaged in sex-based harassment of a K-12 student, or
 - (2) such a process would conflict with federal, state, or local law

Informal Resolution – Notice Requirements

Allegations

Requirements of informal resolution process

Any party has right to withdraw from process prior to agreeing to resolution

Agreement to a resolution precludes initiating the grievance procedures

Potential terms that may be requested or offered in an informal resolution agreement

Information that will be maintained by the school and how that it could be disclosed in a grievance procedure

Informal Resolution Facilitator

Informal resolution facilitator must not:

The informal resolution facilitator must know and be trained on the rules and practices of the school's informal resolution process.

Be the same person as the investigator or the decisionmaker in the school's grievance procedures.

Have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Informal Resolution, Title IX Coordinator, & Ongoing Obligations

If a school offers informal resolution, the Title IX Coordinator must take other prompt and effective steps to ensure that sex discrimination does not continue.

The school may decline to offer informal resolution if it determines the conduct would present a future risk of harm to others.

Informal Resolution Process - General

01

The school has discretion to determine whether it is appropriate to offer informal resolution

02

The school may decline to offer informal resolution when it determines that the alleged conduct would present a future risk of harm to others

03

Voluntary consent from both parties is required for informal resolution

Rules and Practices of Lawrences Informal Resolution Process

Informal Resolution Flexible Process

NOTE: Pregnant and Parenting
Students

Notice Requirements - Employees

When a student (or any person acting on their behalf) informs **any employee** of their pregnancy or pregnancy related condition, the employee must promptly provide that person with the Title IX Coordinator's contact information and that the Title IX Coordinator can take specific actions to prevent sex discrimination and ensure equal access.

The school must make reasonable modifications for pregnancy and pregnancy related conditions.

Notice Requirements - Title IX Coordinators

- If the student (or any person acting on their behalf) notifies the Title IX Coordinator, of their pregnancy, the Title IX Coordinator must:
 - Provide specific information about the student's rights under Title IX and provide a notice of non-discrimination;
 - Coordinate reasonable modifications for the student's pregnancy or pregnancy-related condition to ensure equal access;
 - Examples may include: breaks during class to express breast milk, breastfeed or attend to health needs associated with pregnancy or pregnancy related conditions, including eating, drinking, or using the restroom; intermittent absences to attend to medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and exams; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies; elevator access; or other changes to policies, practices or procedures.
 - Coordinate a voluntary leave of absence as deemed necessary by a medical provider (if necessary).

Applied - Hypotheticals

Is this Title IX Sexual Harassment?



A staff member makes ongoing jokes about a coworker's sexual orientation



A supervisor asks a staff member out on a date once



A female administrator repeatedly tells a male subordinate how good he looks after losing weight



A parent repeatedly sends emails with dirty jokes to a staff member

Is this Title IX Sexual Harassment?

Students photographed themselves outside the student center holding a sign that read “We Love Lawrence Sluts.”



Is this Title IX Sexual Harassment?

A report is circulated among clubs ranking first year students by how drunk you would have to be to hook up with them.



Is this Title IX Sexual Harassment?

Students held a “march” chanting “No means yes; yes means anal.”



Is this Title IX Sexual Harassment?

A group of students incessantly taunts another student, calling her a slur used for lesbians and mocking her “boy” hair.



Questions?

