

Christian Brothers University



Title IX Coordinator & Deputy Training

Jessica Nagle | November 29, 2022



Jessica Nagle
She/Her/Hers

Meet Your Facilitator

Jessica has a background in civil rights, student conduct, employment law, special education, Title IX and EEO investigations, live Title IX and student conduct hearings, administrative and informal resolutions, and Behavioral Intervention Team protocols.

She has more than 15 years of experience working with faculty, staff, and students in public and private higher education institutions. Prior to joining Grand River Solutions, Jessica previously served as the Boston University's Title IX Coordinator where she managed university compliance, facilitated hearings, led campus-wide trainings on Title IX and equity topics, and chaired the University Behavioral Intervention Team. Before serving in this role, Jessica conducted Title IX investigations as well as investigations into allegations of discrimination, harassment, and retaliation involving students and employees. In addition to her work at Boston University, Jessica also has extensive experience serving as a conduct officer, mediator, visiting lecturer, and student affairs professional.

Before her work in higher education, Jessica conducted investigations for the Massachusetts Trial Court and mediated disputes of all kinds. She also served as a court-appointed Guardian ad Litem for the Massachusetts Trial Court, representing students in K-12 in special education and disability law.

Education: Juris Doctorate from Suffolk University Law School

Overview 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).

The History of Title IX

A TIMELINE



Title IX Applies to All Forms of Sex Discrimination

Sexual Harassment
Achievement Awards
Athletics
Benefits
Financial Aid
Leaves of absences/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

Title IX Regulations (Sexual Harassment Only)

1. Narrows definition of sexual harassment
2. Narrows the scope of the institution's educational program or activity
3. Narrows eligibility to file a complaint
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints

Geography Specific

- ✓ On campus or in a building owned or controlled
 - ✓ 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.
- ✓ 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

Not Covered

- ✓ Off Campus Conduct Even (if it has an impact on the educational program or activity)
- ✓ Conduct that Occurs Outside 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 Accepted, Hired Enrolled or Employed

Conduct Outside the Scope



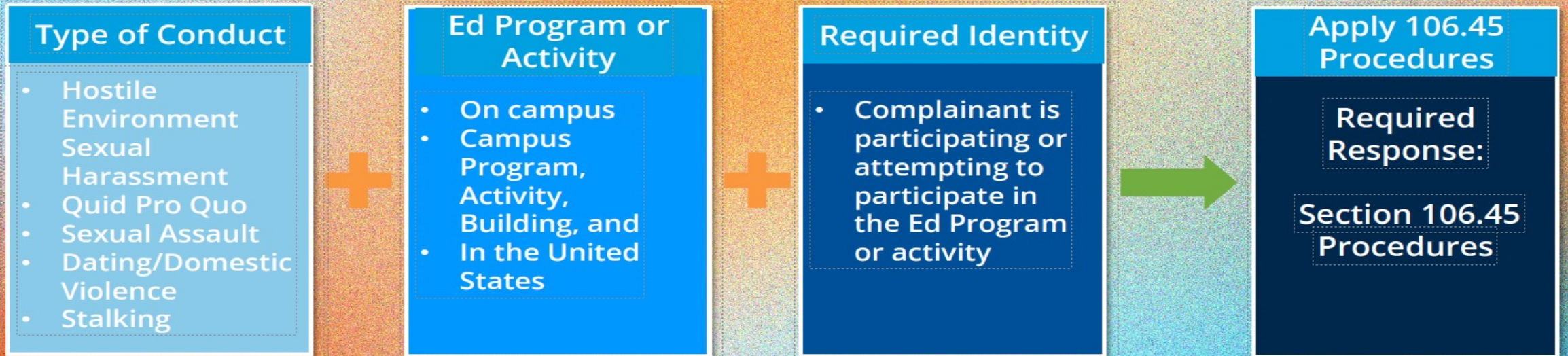
- Apply other institutional policies and procedures
- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws

Reportable Behavior

- Sexual Assault
 - Rape
- Fondling
- Sexual Harassment
- Dating Violence
- Domestic Violence
- Stalking

Consent is” affirmative, indicated by words or actions, must be given freely and willingly

Title IX Application Post May 2020 Regulations



Actual Notice

A Narrowed Scope of Institutional Responsibility

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”
(as newly defined)

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 study abroad context)

Initial Response Requirements

1

Receive Report

Outreach/Response by Deputy or Coordinator

2

Supportive Measures

Ongoing assessment (no need for complaint)

3

Meeting Request

Template letter sent, with resources & support

4

Conduct Intake

Review reporting options, effects and rights

5

Formal Resolution

Investigation or informal resolution

6

Hearing

Cross exam conducted by Advisor

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

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

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

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

Procedural irregularity that affected the outcome of the matter

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

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.

Other Requirements of the Regulations

Designation of a
Title IX
Coordinator

Dissemination of
policy

Separation of
Responsibilities

Training and
posting of
training

Impartiality

Record Keeping



Building a Foundation of Success

Final Rule, Section 106.8 (a)

1

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

2

“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.”

3

The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).

4

Any person may report in person, by mail/email, telephone using the contact information.

5

Reports can be made at anytime



“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

- 1** Ensuring that the institutional policies and procedures are compliant with Title IX, federal and state laws
- 2** Ensuring dissemination of the policy
- 3** Overseeing grievance process to make it is compliant
- 4** Staffing various roles & Ensuring training requirements are met
- 5** Record keeping (7 years)
- 6** Education & Prevention Requirements

The Three Essential Functions of Title IX Compliance

Compliance

- Maintain old policies
- Document everything
- Keep records of all responses, actions taken
- Adhere to policies & procedures
- Implement training and maintain records of dates, times, attendees and training materials
- Create and use templates

Response

- Caring
- Impartial
- Consistent process
- Consistent use of templates
- Consistent approach
- Equitable touchpoints

Engage, Educate & Prevent

- Understands the needs of the community you serve
- Build awareness and trust
- Engage with campus partners

Impartiality Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.”
85 Fed. Reg. 30254 (May 19, 2020).

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 investigation approaches that demonstrate a commitment to impartiality

Impartiality

Avoiding Prejudgment and Bias

Department rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

“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 Prejudgment and Bias

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding schools responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

Impartiality

*Avoiding Prejudgment
and Bias*

Bottom Line:

- ✓ Follow facts of every individual case
- ✓ Investigate in manner that will not allow even a perception of prejudgment or bias for or against any party

Sources of Compliance Obligations

Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Law and State Law

Institutional Policies

Legal Precedent

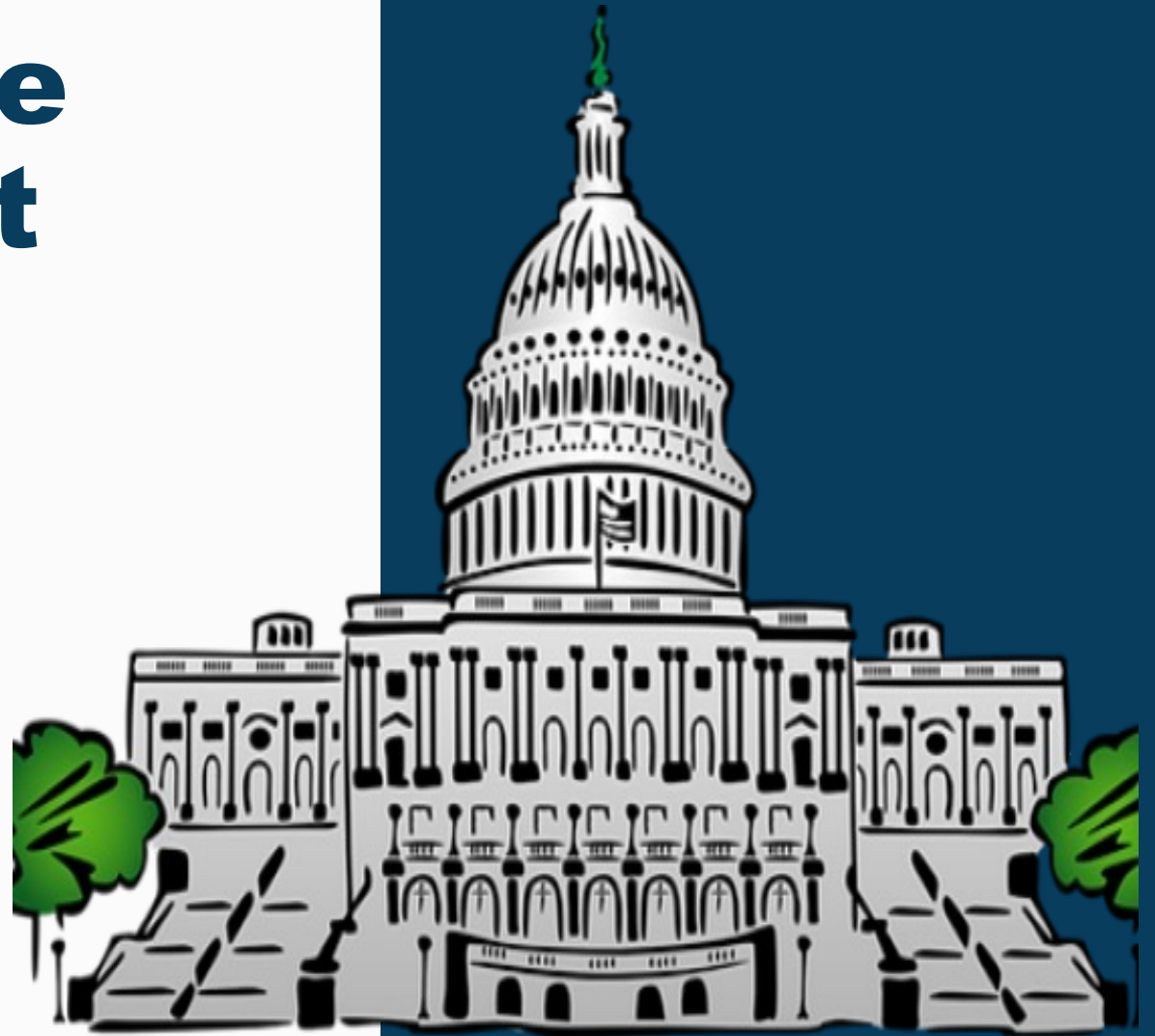
Resolution Agreements

Title IX Compliance Obligations

- Designate Title IX Coordinator
- Disseminate Policy, Notifications and Publications
- 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 160.3
- 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

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.



Who Must Receive Training?

Title IX Team

Coordinators
Investigators
Decision Makers (hearings and appeals)
Facilitators of Informal Resolution
“Those who are charged with ensuring a prompt, fair, and impartial investigation and result.”(VAWA)

Students

New Students
Existing Students
Specialized populations
Student staff

Faculty

New faculty
Existing faculty
Adjunct Faculty
Supervising faculty

Staff

Senior leadership
Public Safety/campus law enforcement
Health care workers

Training for Title IX Staff

1

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

2

How to conduct the grievance process

3

How to serve impartially

4

The technology to be used at a live hearing

5

Rape shield protections

6

Issues of relevance of questions and evidence

Issues of relevance in creating an investigative report.

A Really Important Moment. Listen Up. It's Okay...

To not know the answer to every question
thrown your way

“I don't know”
“I'd like to think about that”
“I'll get back to you”
“Thank you for sharing your perspective”

To decline to answer a question

To recognize and assert your expertise

Reporting



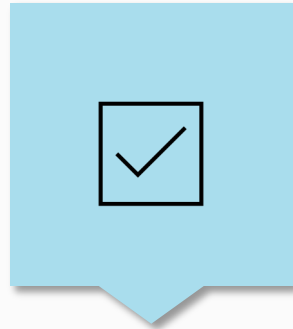
Infrastructure for Reporting

How to Report	Response	Case Manager	Outreach	Documentation
<p data-bbox="129 629 422 714">Incident Report Form</p> <p data-bbox="129 818 430 902">In person, by email, by phone</p>	<p data-bbox="629 629 922 939">Communicate reporting methods and what folks should expect after submitting a report</p> <p data-bbox="629 1046 930 1219">Title IX Team will respond during business hours</p>	<p data-bbox="1098 629 1391 802">Develop a plan for receiving and reviewing the reports</p> <p data-bbox="1098 909 1391 1036">Reports should be shared with Jessica</p>	<p data-bbox="1541 629 1875 851">Develop a protocol that ensures a prompt response to reports</p> <p data-bbox="1541 958 1862 1130">Title IX Team will aim to conduct outreach within 2 business days</p>	<p data-bbox="2040 629 2288 865">Develop and adhere to a practices for documenting reports and responses</p> <p data-bbox="2040 958 2328 1193">Title IX Team will record and document reports and upload them to case files</p>

Receiving Reports and Initiating the Response



**1. REVIEW THE
REPORT**



**2. DETERMINE
APPROPRIATE INITIAL
RESPONSE**



**3. PROMPTLY INITIATE
THAT
RESPONSE**



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

Initial Outreach

Safety
considerations

Email (create
templates &
forms)

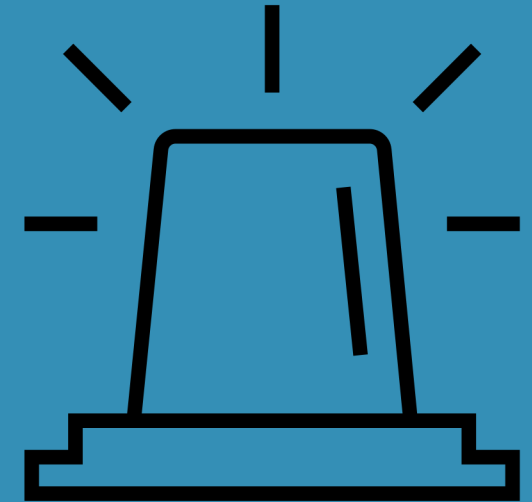
Phone

In Person
(RAs/Campus
Safety)

Follow-Up
Emails

Emergency Removal - Student

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



Receipt of Reports

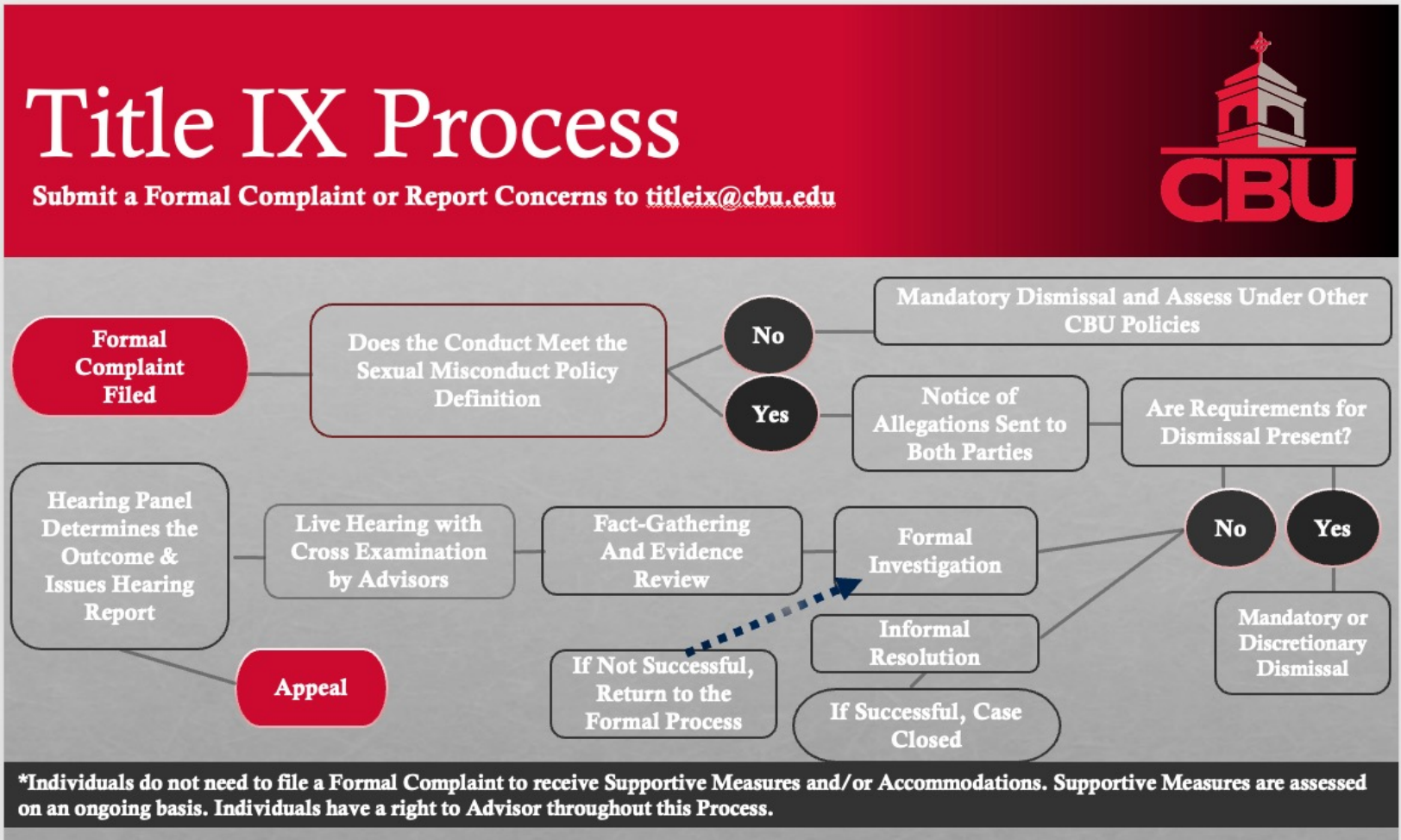
Actual Knowledge, Report Response,
Initial Assessments, and Supportive
Measures

Meet with Complainant - Intake

- ✓ **Informational, Rights & Options Meeting•**
- ✓ **Prepare for the meeting**
 - **Select appropriate space**
 - **Build trust and rapport; empower**
 - **Explain your role, confidential v. private**
 - **Discuss available support on and off campus**
- ✓ **Explain rights to law enforcement or court protective orders, evidence preservation**
- ✓ **Discuss Available Supportive Measures**
- ✓ **Review newly create flowcharts & materials**
- ✓ **Answer questions**
- ✓ **Conclude with a discussion of next steps**

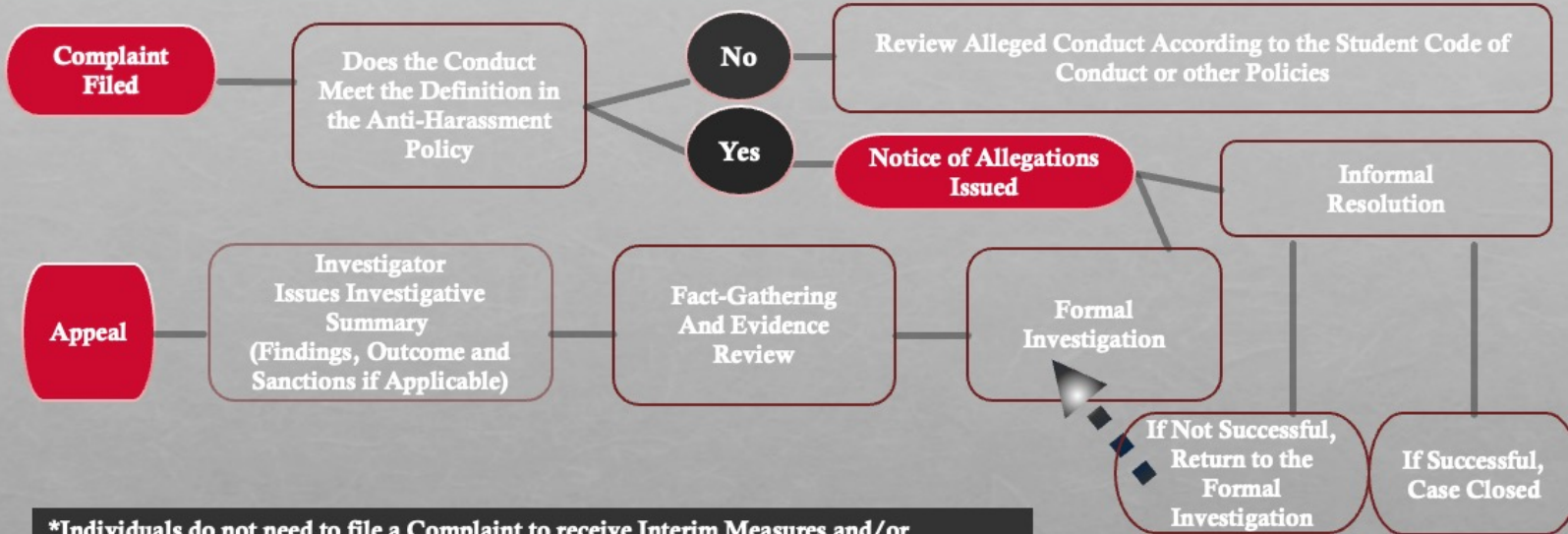


Sexual Misconduct Policy



Non-Title IX Process

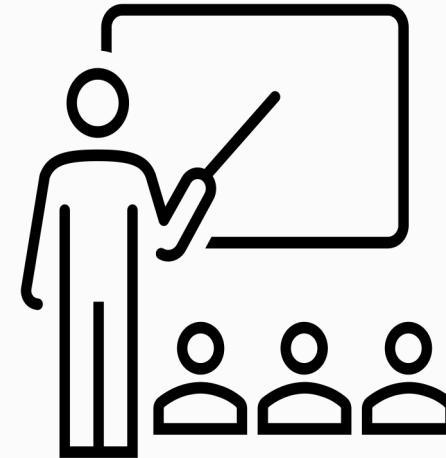
Submit a Report or Report Concerns to titleix@cbu.edu



***Individuals do not need to file a Complaint to receive Interim Measures and/or Accommodations. Individuals have a right to Advisor throughout this Process.**

Supportive Measures

- Designed to restore or preserve equal access to the University's living, learning and working environment.
- Ongoing assessment upon notice
- May not unreasonably burden the other party
- Non-Disciplinary
- Non-punitive
- As appropriate and reasonably available
- Confidential



Examples of Supportive Measure

1

Assistance obtaining access to counseling, advocacy, or medical services;

2

Assistance obtaining access to academic support and requesting academic accommodations;

3

Changes in class schedules

4

Assistance requesting changes in work schedules, job assignments, or other work accommodations;

5

Changes in campus housing;

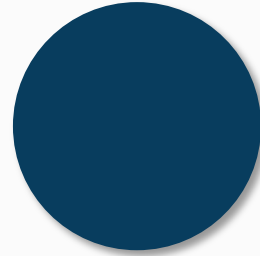
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Safety escorts; Leaves of absence; Mutual restrictions on contact between the Parties (“No-contact” orders).

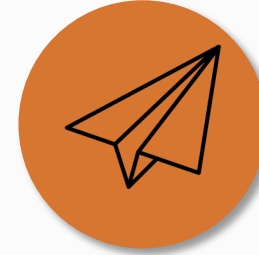
Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow-Up



Make connection



Provide the supportive measure



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

Report Resolution

Remedies Based, Informal, or
Formal

How to Proceed?

Remedies-based

- No formal process
- Supportive Measures
- Educational Conversations
- Targeted Education

Alternative/Informal

- Signed agreement
- Voluntary
- What records?

Formal/ Investigation/ Hearing

All requirements of
106.45

Formal Complaint Filed

By Complainant

By the Title IX
Coordinator

(factors to consider: allegations of violence, threats, use of weapons, serial predation, an employee respondent?)

Formal Complaint

A Formal Complaint must include:

1

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

2

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

3

Identity of Respondent, if known;

4

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.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info
- Can proceed under Process B

Notifying the Respondent



- No Friday emails
- Don't send at 5pm
- Consider the impact of the notification on the Respondent
- Make sure support is available
- Written notification
Meetings and sufficient time to prepare

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

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

Initial Meeting with Respondent

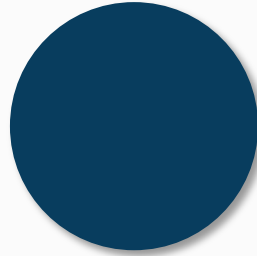


- ✓ **Informational, Rights & Options Meeting**
- ✓ **Prepare for the meeting**
- ✓ **Select appropriate space**
- ✓ **Build trust and rapport; empower**
- ✓ **Explain your role, confidential v. private**
- ✓ **Discuss available support on and off campus**
- ✓ **Explain rights to law enforcement or court protective orders, evidence preservation**
- ✓ **Discuss Available Supportive Measures**
- ✓ **Supportive measures provided to the Complainant**
- ✓ **Review newly create flowcharts & materials**
- ✓ **Answer questions**
- ✓ **Conclude with a discussion of next steps**

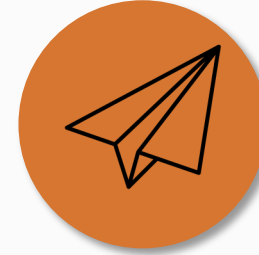
Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow-Up



Make connections



Provide the supportive measure



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

Informal Resolution

- Formal Complaint Required
- Parties must agree in writing
- Must occur prior to resolution via a formal process
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal
- Facilitator must be trained

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

Informal Resolution Notice Requirements

- 1) The allegations
- 2) 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,
- 3) At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process; and
- 4) 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.

Informal resolution is prohibited if the allegations are that an employee sexually harassed a student

STOPS

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

<p>Must be live</p> <p>Can be conducted remotely</p>	<p>No Compelling participation</p>	<p>Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters</p>	<p>Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution</p>	<p>Decision maker determines relevancy of questions and evidence offered</p>	<p>Written decision must be issued that includes finding and sanction</p>

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

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 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

Any questions?