



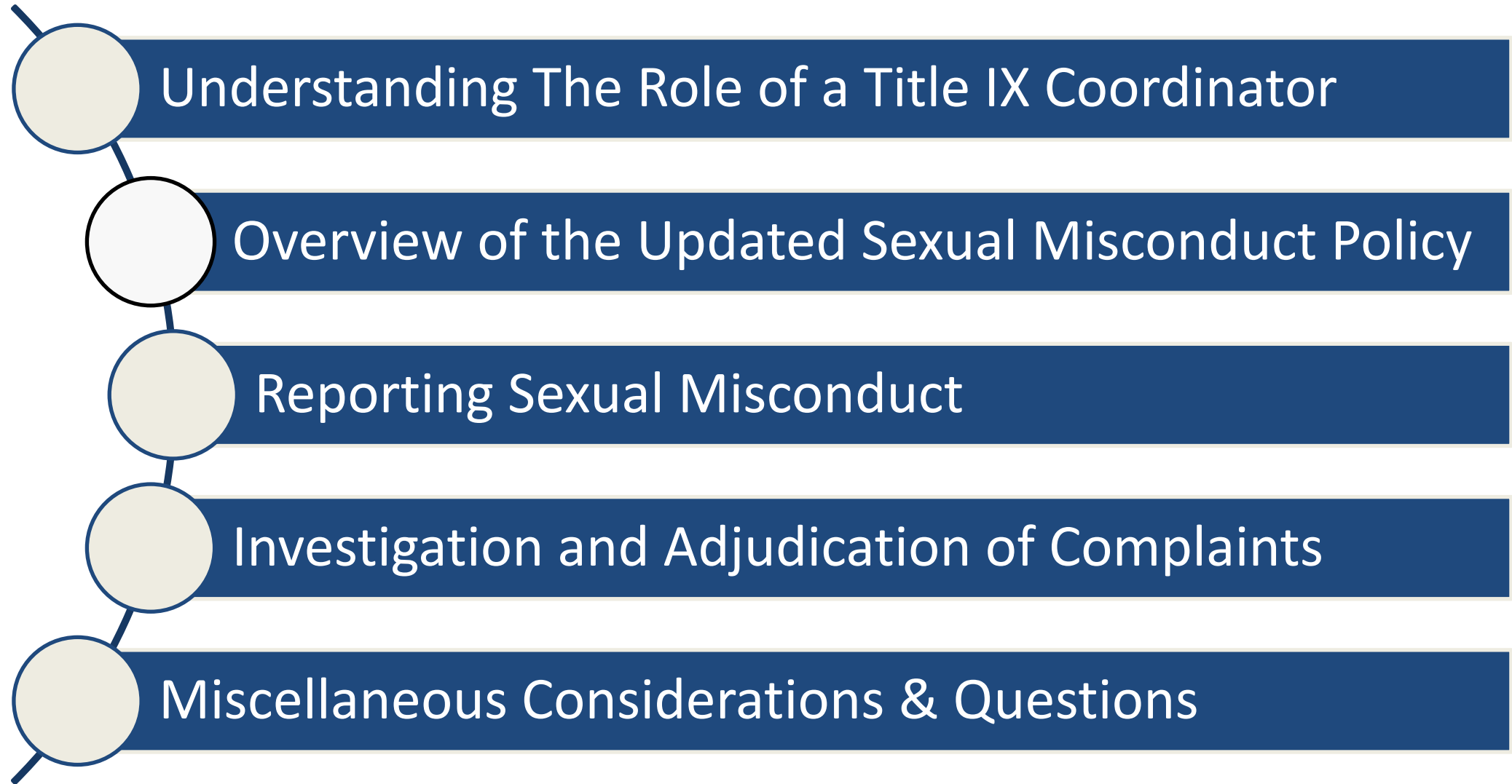
UNIVERSITY SYSTEM OF GEORGIA

Title IX Coordinator Training

Fall 2020

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What is Required under the Final Rule

A recipient with **actual knowledge** of **sexual harassment** in an **education program or activity of the recipient** against a person **in the United States**, must respond promptly in a manner that is not deliberately indifferent.



The Role of a Title IX Coordinator



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- Oversee and coordinate **all** Title IX responsibilities on your campus
 - Compliance
 - Prevention & Awareness
 - Training
 - Investigations
 - Data Collection & Reporting

The Role of a Title IX Coordinator

Serve as an impartial representative of the institution:

- Ensure involved parties are treated equitably throughout the process
- Avoid prejudging the facts of a matter prior to the conclusion of the process
- Avoid conflicts of interest and bias
 - Recuse yourself and others as necessary



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Overview of Updated Sexual Misconduct Policy

What Has Changed?

- Definitions of Prohibited Conduct
- Title IX Jurisdiction
- Provisions on Retaliation, Amnesty, False Statements
- Role of Advisors
- Adjudication Process
- Timeframe for Completion
- More...



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What Has Remained the Same?

- Scope of Sexual Misconduct
- Jurisdictional reach of Sexual Misconduct
- Responsible/Confidential/Privileged Employee designations
- Definition of consent and incapacitation
- Standard of evidence
- System Office oversight
- Support services, Interim measures

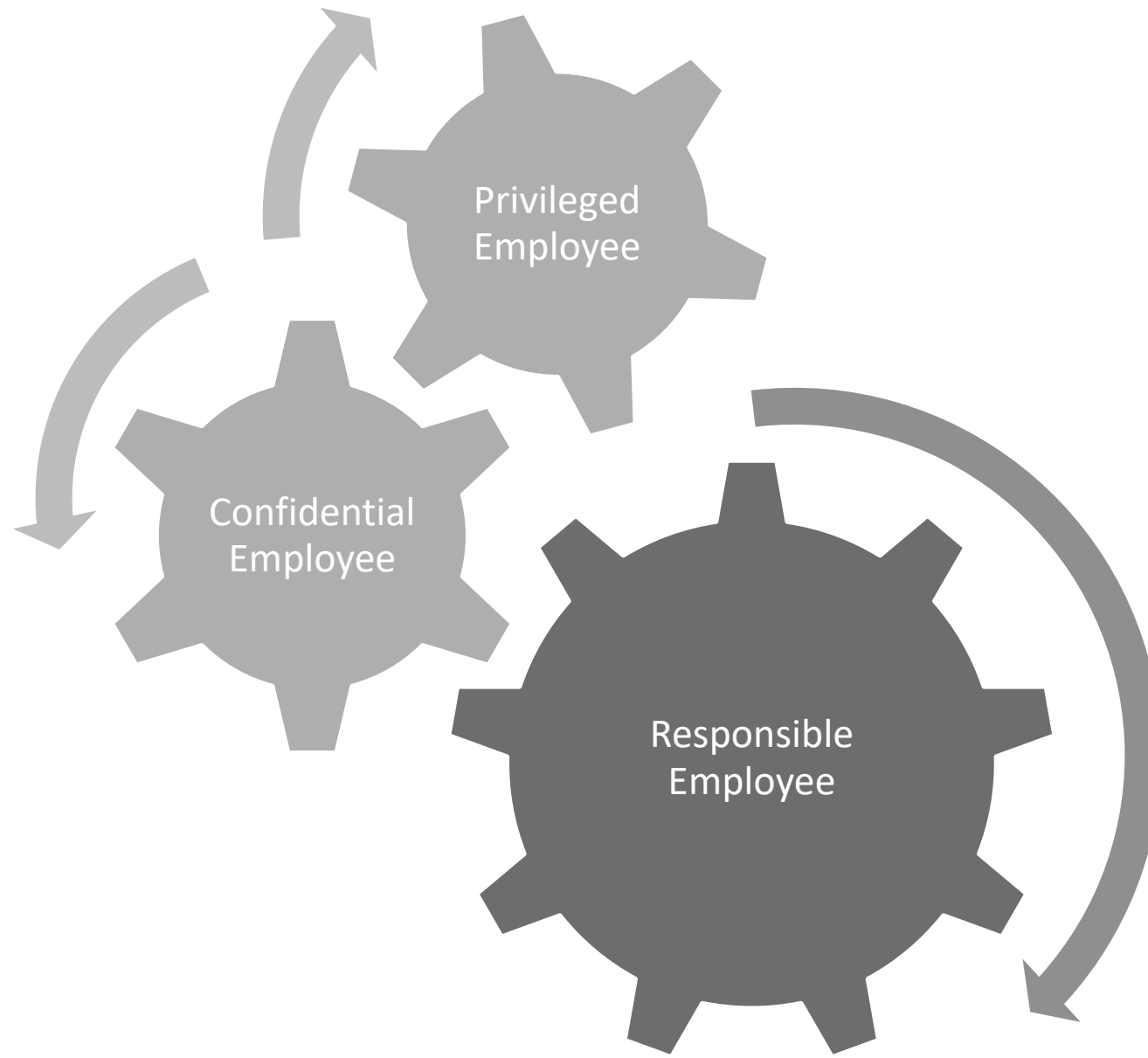


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Reporting Prohibited Conduct

Effective Date

- According to the Department of Education the Final Rule is proactive from August 14, 2020, and will be enforced as such
- Board Policy effective August 11, 2020
 - Allegations reported and occurring before: Previous policy
 - Allegations reported and occurring after: Current policy



Title IX Sexual Harassment §106.30

- Conduct on the basis of sex that satisfies one or more of the following:
 - (i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
 - (ii) **Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity; or**
 - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA

Key Categories of Prohibited Conduct

Sexual Misconduct

Dating Violence

Domestic Violence

Sexual Exploitation

Sexual Harassment [Under Title IX & Title VII]

Stalking

Nonconsensual Sexual Contact

Nonconsensual Sexual Penetration

Sexual Harassment (Student on Student)

Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), **determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity**

Sexual Harassment (Other)

Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes) that may be any of the following:

- Implicitly or explicitly a **term or condition of** employment status in a course program or activity
- **A basis for** employment or education decisions; OR
- Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an **intimidating, hostile, or offensive** work environment
- Note: Behavior may rise to the level of a Title IX violation

Nonconsensual Sexual Contact

Any **physical contact** with another person of a **sexual nature without the person's consent**.

Includes:

- Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts

Nonconsensual Sexual Penetration

Any **penetration** of another's body parts without the person's consent.

Includes:

- Penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part
- Contact between the mouth of one person and the genitals or anus of another person

Jurisdiction

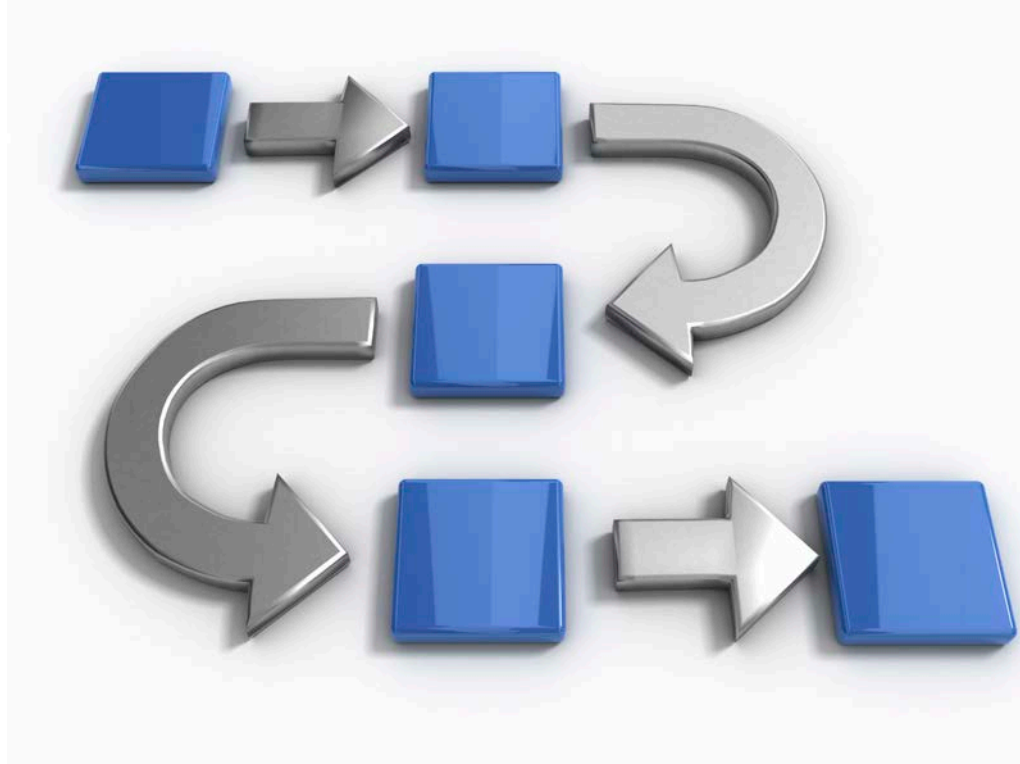
Title IX

- Institution's program or activity the United States
 - Institution property
 - Institution sponsored or affiliated events [substantial control is key]
 - Buildings owned or controlled by officially recognized student organizations

Sexual Misconduct

- Institution property
- Institution-sponsored or affiliated events
- Off campus as defined by the institution policies
- Domestic or abroad

Required Response to a Report §106.44(a)



Title IX Coordinator must promptly contact the Complainant to discuss:

- Availability and consideration of supportive measures
- Process for filing a complaint

Support Services & Interim Measures §106.30

- Non-disciplinary, non-punitive individualized services must be offered to the Complainant
 - USG policy requires offering support services to Respondents as well
- Offered upon receiving a report [no Formal Complaint is required]
- Ex: counseling, modifications to work or class schedules, mutual no contact directives

Emergency Removal § 106.44(c)&(d)

Interim Suspension

- Individualized safety and risk analysis that determines an immediate threat to physical health or safety to students
- Notice required pre and post removal with opportunity to respond or challenge
- Requires approval from the System Director

Administrative Leave

- Individualized safety and risk analysis
- Notice required post removal with opportunity to challenge
- System Office notice and consult permissible



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Complaints of Sexual Misconduct

Formal Complaint § 106.30

- A document filed by a Complainant OR signed by the Title IX Coordinator
- Alleges Sexual Harassment (Title IX)
- Requests an investigation
- **Note:** must be filed while the Complainant is participating in or attempting to participate in an education program or activity

Title IX Coordinator Initiated Complaints

- TIXC does NOT become the Complainant
- When to sign? (Permissible)
 - Multiple reports against the same Respondent
 - Violent behavior or use of a weapon
- **Caution:** Be mindful of bias and conflicts of interest claims



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Complaint Process

- If not a Formal Complaint under Title IX determine whether it is a complaint under Sexual Misconduct or other conduct provisions
- Confirm with the Complainant (in writing) that they wish to investigate their claims
- Once a complaint is filed the timeframe for completion begins

Complaint Consolidation

- Permissible consolidation when allegations arise out of the same facts or circumstances:
 - Against more than one Respondent
 - By more than one Complainant against one or more Respondents
 - Cross complaints
- Parties must have the opportunity to object; institution makes final determination



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Notice of Complaint §106.45(b)(2)

- In writing to parties' institution email*
- Must include:
 - Alleged conduct constituting Sexual Misconduct
 - Identities of the parties involved (if known)
 - Date and location of incident (if known)
 - Presumption that the Respondent is not responsible
 - Final determinations of responsibility are made at the conclusion of the grievance process
 - Notice of the right to an advisor

Notice of Complaint §106.45(b)(2)

Must include:

- Notice of right to inspect and review evidence
- Prohibition against false statements
- Prohibition against retaliation
- Copy or link to Sexual Misconduct Policy and accompanying procedures

Notice must be supplemented as necessary

Retaliation §106.71

- **Who is protected:** Reporters, Complainants, Witnesses, Respondents, even those who choose to not participate
- **What is protected:** Intimidation, threats, coercion, discrimination
 - Ex. Charging individuals for code of conduct violations that arise out of the same facts or circumstances
 - Ex. Not keeping the identity of the Complainant, Respondent, or any witnesses confidential

Additional Noteworthy Provisions

False Statements

Updated standard to cover false statements knowingly made to an institution official

Amnesty

Updated to explicitly only apply to information regarding student consumption of drugs or alcohol

Formal Complaint Dismissal § 106.45(b)(3)

Required

- Conduct alleged would not constitute Sexual Harassment as defined, even if proved
- Outside the institution's education program or activity
- Outside of the United States

Permissive

- Complainant notifies in writing desire to withdraw the complaint
- The Respondent is no longer enrolled or employed at the institution
- Specific circumstances prevent the gathering evidence sufficient to reach a determination

USG Complaint Dismissal

- Any Sexual Misconduct complaint may be dismissed if:
 - The alleged conduct, even if proved, would not constitute Sexual Misconduct
 - The Complainant requests in writing to withdraw
 - The Respondent is no longer enrolled or employed
 - There are circumstances that prevent the gathering of sufficient evidence to reach a determination
- Must provide written notice to both parties with opportunity to appeal



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The Investigation Process

Expectations of Coordinators

- Assign neutral investigators
- Periodic status updates to stay abreast of the investigation status
- Ensure adherence to current policy provisions
 - Procedural rights
 - Ensure objective evaluation of relevant evidence
 - Timelines
- Notify System Director as needed

Advisors

Title IX Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- Provided a copy of the investigation report and directly related information
- All communication will be between the institution and the party

Sexual Misconduct Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- All communication will be between the institution and the party

Evidentiary Considerations § 106.45(b)(5)

- The burden of proof AND burden of gathering evidence is on the institution
- Information protected by legal privilege, may not be accessed, disclosed or relied upon unless a waiver is obtained
- Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, UNLESS used to prove:
 - Someone other than the Respondent committed the conduct OR
 - Offered to prove consent between the parties

Access to Information § 106.45(b)(5)(vi)

- Parties have a right to review the investigation report prior to its finalization
- Parties have a right to receive a copy of all directly related information
- Procedurally can occur simultaneously or at different times
- 10 calendar days to review



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The Investigation Report §106.45(5)(vii)

- Must fairly summarize relevant evidence
- An objective evaluation of the information [inculpatory and exculpatory]
 - Credibility assessments cannot be based on a person's status
- Sample report sections still apply
- Final report provided to the parties at least 10 days calendar days prior to the hearing



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Informal Resolution

Considerations

- The institution is a party to the informal resolution
 - Informal resolution is appropriate
 - The terms of the informal resolution are appropriate
- Parties must engage in the process voluntary
- Parties may end the informal resolution process any time prior to reaching the terms

Informal Resolution under Title IX §106.45(b)(9)

- Not permissible for student allegations against employees
- A Formal Complaint must be filed
- The parties have received notice and explanation of the process and consequences of informal resolution
- The parties have voluntarily agreed to engage in the process



Additional Considerations

- What methods of informal resolution are available at your institution?
- Title IX Coordinators may continue facilitating the informal resolution process
- **Note:** Anyone who facilitates informal resolution must receive appropriate training



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Formal Adjudication

Live Hearing § 106.45(b)(6)

- The Final Rule mandates a bifurcated process
- Final determinations of responsibility and sanctions are made by decision-makers
 - CANNOT be the Title IX Coordinator or assigned investigator
- New due process considerations
 - Cross examination
 - Relevancy determinations
 - Impact of party or witness refusal to submit to cross-examination

Adjudication Processes

Students

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

Employees

- Title IX matters not informally resolved will be heard by a designated decision-maker
 - Single decision-maker OR panel
- Sexual Misconduct matters not informally resolved will be resolved according to previously established procedures
 - Institutions may choose to offer a hearing

Hearing Officer

- Considered a decision-maker
- Responsible for facilitating the hearing process
 - Scheduling
 - Selection of panel members
 - Any pre-meetings with parties
 - Conducts the hearing
- Responsible for determining issues of relevancy



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Hearing Panel or Single-Decision Maker

- Serves as a neutral decision-maker
- Makes a final determination of responsibility
- Makes a final determination regarding sanctions and other administrative action that may be appropriate
- Must articulate determinations in a written decision

Advisors § 106.45(b)(6)

Title IX

- Provide advice, counsel, and support to a party
- Perform cross examination of other party and other witnesses

***Note:** Institution required to provide if party does not have their own

Sexual Misconduct

- Provide advice, counsel, and support to a party
- May not actively participate in the hearing process
- May provide written questions to the Hearing Panel to read aloud

Notice of Hearing

- At least 10 days prior to the hearing parties must receive:
 - The finalized investigation report
 - Notice of the hearing date, time, and modality
 - Notice of decision-maker(s)
- **Recommended:** Engage institutional advisor



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Hearing Logistics

- At the request of either party, the parties must be permitted to be in separate rooms
- Hearings may be conducted in-person or via videoconferencing
 - Ensure decision- makers receive training on how to use technology
- Have available all directly related information
- Institutions permitted to establish rules of decorum
- All hearings must be recorded

Standard of Evidence

Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence



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The Written Decision §106.45(b)(7)

- Provided to both parties simultaneously must include:
 - The allegations
 - The procedural steps from the complaint through determination
 - Findings of fact supporting the determination
 - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
 - Information on the appeals process

Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Grounds for an appeal:
 - New information
 - Procedural Error
 - Ex. Bias or conflict of interest of Title IX personnel
 - Finding inconsistent with the weight of the information



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Additional Provisions

Record Keeping § 106.45(b)(10)

- 7-year records retention mandate:
 - Reports [supportive measures, why not deliberately indifferent and what measures taken to restore or preserve equal access]
 - Investigations [determinations, recording of hearing, sanctions and remedies implemented]
 - Appeals
 - Informal resolutions [results]
 - Training materials



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Training Considerations

- **§106.45(b)(10)D** All materials used to train Title IX Coordinators, investigators, decision-makers, and anyone who facilitates an informal resolution process must be publicly available on your website
- Ensure materials do not include or rely on sex stereotypes
- Promote neutrality and fairness throughout the administrative process

Website Considerations

- **§106.8(b)** Mandates notification and dissemination of applicable policies and procedures
 - Title IX Coordinator contact information
 - Reporting options
 - Notice of updated policies and procedures
 - Title IX Coordinator and/or Assistant Secretary can field questions
 - Reporting and resolving other alleged Title IX violations

