

# Session 1: Conduct, Scope and Jurisdiction

Training for Title IX Coordinators, Investigators, Hearing  
Coordinators, Appeals Managers and Student Conduct  
Administrators

Systemwide Title IX Compliance  
Office of the Chancellor  
The California State University

# CSU Policy Implementing the Regulations

## EO 1096/1097: Single Investigator Model

For allegations of sexual harassment, DHR and sexual misconduct that do not fall under Addendum A or Addendum B, including:

- Student accused of sexual misconduct/DV but credibility not at issue
- Allegations do not involve sex or gender

## Addendum “A”: State Mandated Hearing Model (*Allee/Boermeester*)

For allegations that a **student** has engaged in sexual misconduct or dating/domestic violence, credibility is an issue and a possible severe sanction (does **not** apply to employees)

Addendum “B”: Federal Mandated Hearing Model-For “formal complaints” of sexual harassment, sexual assault and other defined offenses (fondling, stalking) in an “education program or activity” (accused can be student **or employee**)

# Using Conduct Definitions

Determine the applicability of Addendum B (Mandatory Dismissals)



Define investigative objectives



Identify material disputed and undisputed facts



Hearing decision findings

# Prohibited Conduct

# Sexual Harassment

## 1096/1097 Addendum A

- Quid pro quo sexual harassment
- Hostile Environment sexual harassment

## Addendum B

- Quid pro quo sexual harassment
- Hostile environment sexual harassment
- Sexual assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Dating and Domestic Violence
- Stalking

# Addendum B Prohibited Conduct

- Sexual Harassment
  - Quid pro quo
  - Hostile environment
- Sexual Assault
  - Rape
  - Fondling
  - Statutory Rape
  - Incest
- Dating and Domestic Violence
- Stalking

## Elements of Addendum B Quid Pro Quo Sexual Harassment

1. Is the Respondent an **Employee** of the University?
2. Did the Respondent condition the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct?

# Elements of Addendum B Hostile Environment Sexual Harassment

- Did the Respondent engage in the alleged conduct?
- Was the alleged conduct unwelcome?
- If there was unwelcome conduct, would a reasonable person find the conduct to be so severe, **and** pervasive, **and** objectively offensive that it effectively denied Complainant equal access to an Education Program or Activity?



# Sexual Misconduct/Sexual Assault

## 1096/1097 Addendum A

- Sexual misconduct
  - Affirmative consent
    - Incapacitation

## Addendum B

- Sexual assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
    - Affirmative consent
    - Incapacitation

# Affirmative Consent for 1096/1097 and Addendum A and Addendum B

What is “Affirmative Consent”?

- Informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity
- Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration
- **Affirmative Consent can never be given by a person who is determined under CSU policy to be “Incapacitated”**

# The Elements of Rape (Theory 1)

1. Did Respondent penetrate, or attempt to penetrate, no matter how slight, the vagina or anus with any body part or object, or oral penetration by a sex organ of the Complainant? **And**
2. Did the Respondent have Complainant's affirmative consent for the penetration or attempted penetration of Complainant?

## The Elements of Rape (Theory 2)

1. Did Respondent attempt to penetrate, no matter how slight, the vagina or anus with any body part or object, or oral penetration by a sex organ of the Complainant? **And**
2. Did Respondent attempt to penetrate Complainant without affirmative consent? **And**
3. Did Respondent have the present ability and the intent to commit rape?

## Elements of Fondling

1. Did Respondent touch the private body parts of Complainant? **And**
2. Was the touching for the purpose of sexual gratification? **And**
3. Was the touching without the affirmative consent of Complainant?

# Elements of Statutory Rape

1. Did Respondent have sexual intercourse with Complainant? **And**
2. Was Complainant under the age of 18 years, when Respondent had sexual intercourse with Complainant?

## Elements of Incest

1. Was there sexual intercourse between Complainant and Respondent? **And**
2. Are Complainant and Respondent related to each other within the degrees wherein marriage is prohibited by law?

# Elements of Dating Violence

1. Did Respondent engage in physical violence or threat of physical violence against Complainant?  
**And**
2. Are Complainant and Respondent or have been in a social relationship of a romantic or intimate nature? The existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship.
  - The type of relationship.
  - The frequency of interaction between the persons involved in the relationship.

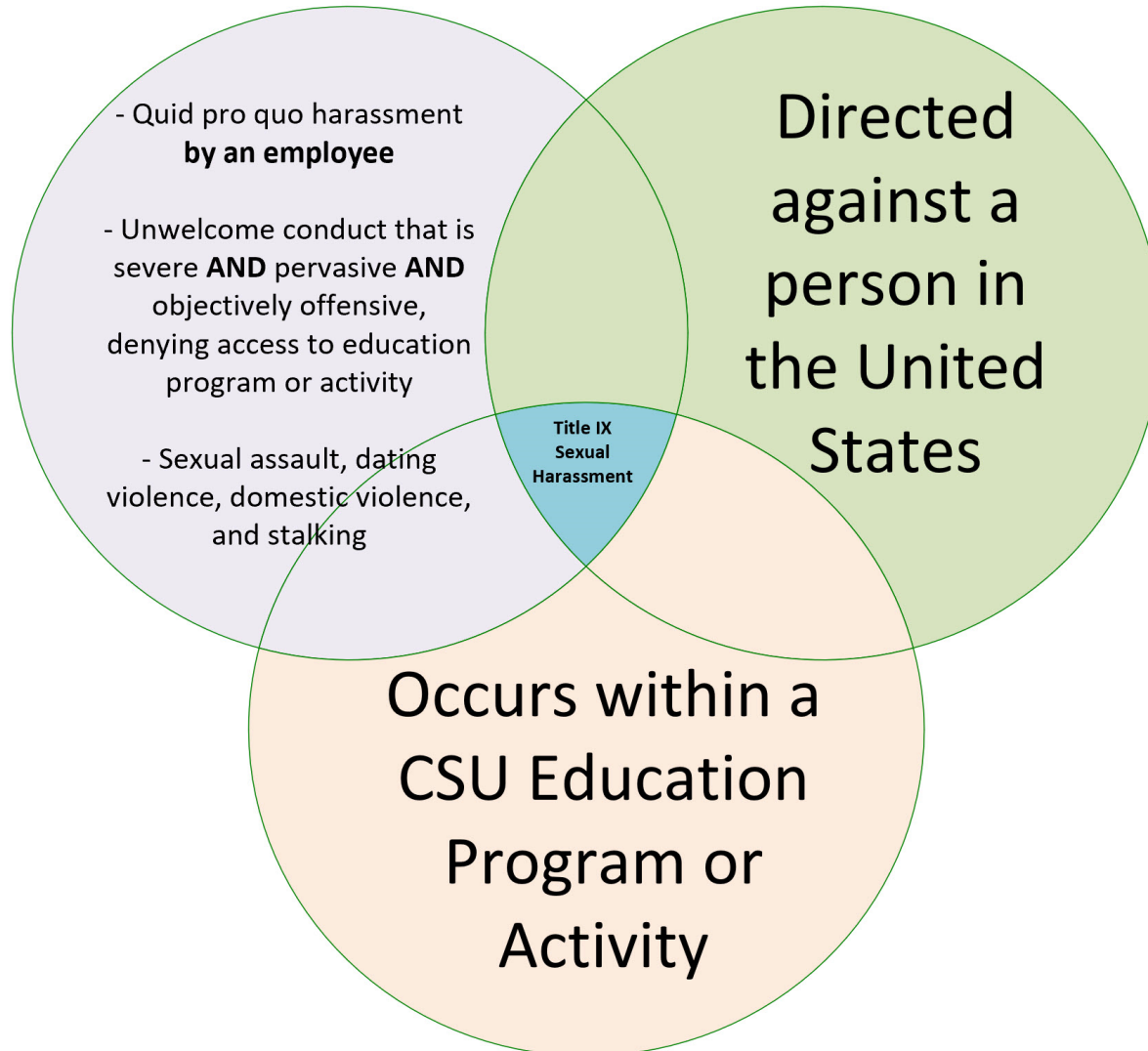


## Domestic Violence

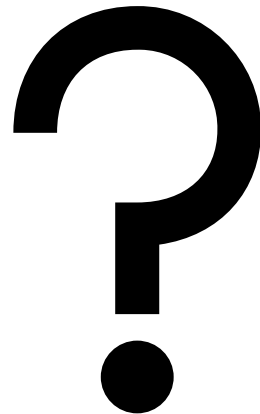
1. Did Respondent engage in physical violence or threat of physical violence against Complainant? **And**
2. Is Respondent a current or former spouse or intimate partner of the Complainant, or a person with whom the Complainant shares a child in common, or a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant?

# Stalking Elements

1. Did Respondent engage in a course of conduct directed at Complainant? **And**
2. Would Respondent's alleged course of conduct cause a reasonable person to fear for their safety or the safety of others; **or** suffer substantial emotional distress?



# LET'S PAUSE FOR QUESTIONS



# Scope and Jurisdiction

# When did the alleged conduct occur?

## On or after August 14, 2020?

“Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

OCR Blog – August 5, 2020

# Scope and Jurisdiction Issues

- Sexual harassment for Title IX purposes is defined as:
  - Quid pro quo harassment (where respondent is an employee);
  - Unwelcome conduct determined “by a reasonable person to be so severe **and** pervasive, **and** objectively offensive” as to deny a person equal access to the institution’s education program or activity”; or
  - Sexual assault, dating violence, domestic violence and stalking as defined in the Clery Act and the Violence Against Woman Act (VAWA).

## Scope and Jurisdiction Issues

- “Sexual harassment against a person in the United States”
- Education program or activity

Locations, events, or circumstances (operations) over which the institution exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

Includes any building owned or controlled by a student organization that is OFFICIALLY RECOGNIZED by the institution (for example, a fraternity or sorority house).



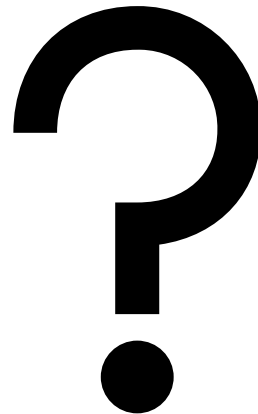
## Scope and Jurisdiction Issues

- The Complainant must be participating in or attempting to participate in an education program or activity at the time the complaint is filed.
  - A recent graduate?
  - A student on a leave of absence?
  - A former employee?
  - An applicant for admission?
  - A student who graduated four years ago but wishes to participate in alumni activities?

## What about cases that fall outside the scope of the Regulations?

- Supportive measures provided response to all reports.
- These matters will continue to be handled by campus Title IX Offices.
- Regulations: Codes of conduct may be used to address matters that fall outside the scope of the Regulations.
- In limited cases, we can continue to use our existing procedures under Executive Orders 1096 and 1097.

# LET'S PAUSE FOR QUESTIONS



## Example 1:

A CSU student reports to the Title IX Coordinator that they were sexually assaulted by another CSU student while on a study-abroad program in Spain.

**X** This matter does not fall under the scope of the Title IX Regulations because the alleged incident was not against a person inside the U.S.

- The Formal Complaint process under Addendum B is therefore unavailable.
- Depending on the specifics of the case, it could either be addressed under Addendum A or the single investigator process under EO 1097.
- **Regardless of which process is used, the student will be offered supportive measures and information regarding resources.**

## Example 2:

A CSU student reports to the Title IX Coordinator that their dating partner, who is also a CSU student, sometimes hits them. The student reports that this only ever happens in the off-campus apartment that they share.

**X** This matter does not fall under the scope of the Title IX Regulations because the alleged conduct did not occur in the context of a CSU education program or activity.

- The Formal Complaint process under Addendum B is therefore unavailable.
- The allegations could still be investigated under the single investigator process in EO 1097 OR Addendum A (depending on the circumstances).
- **Regardless of which process is used, the student complainant will be offered supportive measures and information regarding resources.**

## Poll Question:



A student reports that the president of the student government organization of which they are a member has offered to assist them in getting onto the board if they engage in sexual activity with the president.

Would this conduct fall under Addendum B?

- Yes
- No

## Poll Question:

A student reports that the president of the student government organization of which they are a member has offered to assist them in getting onto the board if they engage in sexual activity with the president.

- ✗ This matter does not fall under the scope of the Title IX Regulations because while this sounds like it could well be quid pro quo sexual harassment, it does not involve an employee respondent.
- The Formal Complaint process under Addendum B is therefore unavailable.
- The allegations could still be investigated under the single investigator process in EO 1097 (depending on the circumstances).
- **Regardless of which process is used, the student complainant will be offered supportive measures and information regarding resources.**

## Poll Question:



A CSU faculty member attends an off-campus conference hosted by their campus. They report that during the conference, another faculty member touches their intimate body parts under the table.

Would this alleged conduct fall within the scope of Addendum B?

- Yes
- No

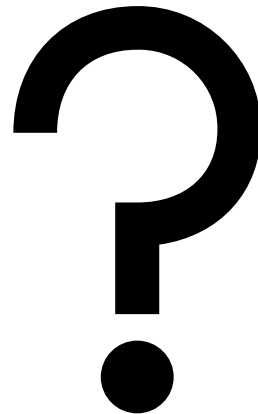


## Poll Question:

**A CSU faculty member attends an off-campus conference hosted by their campus. They report that during the conference, another faculty member touches their intimate body parts under the table.**

- ✓ From a jurisdiction perspective, while this occurred off-campus, it likely still falls within an education program or activity. Note this is always going to be fact-specific.

# ADDITIONAL QUESTIONS





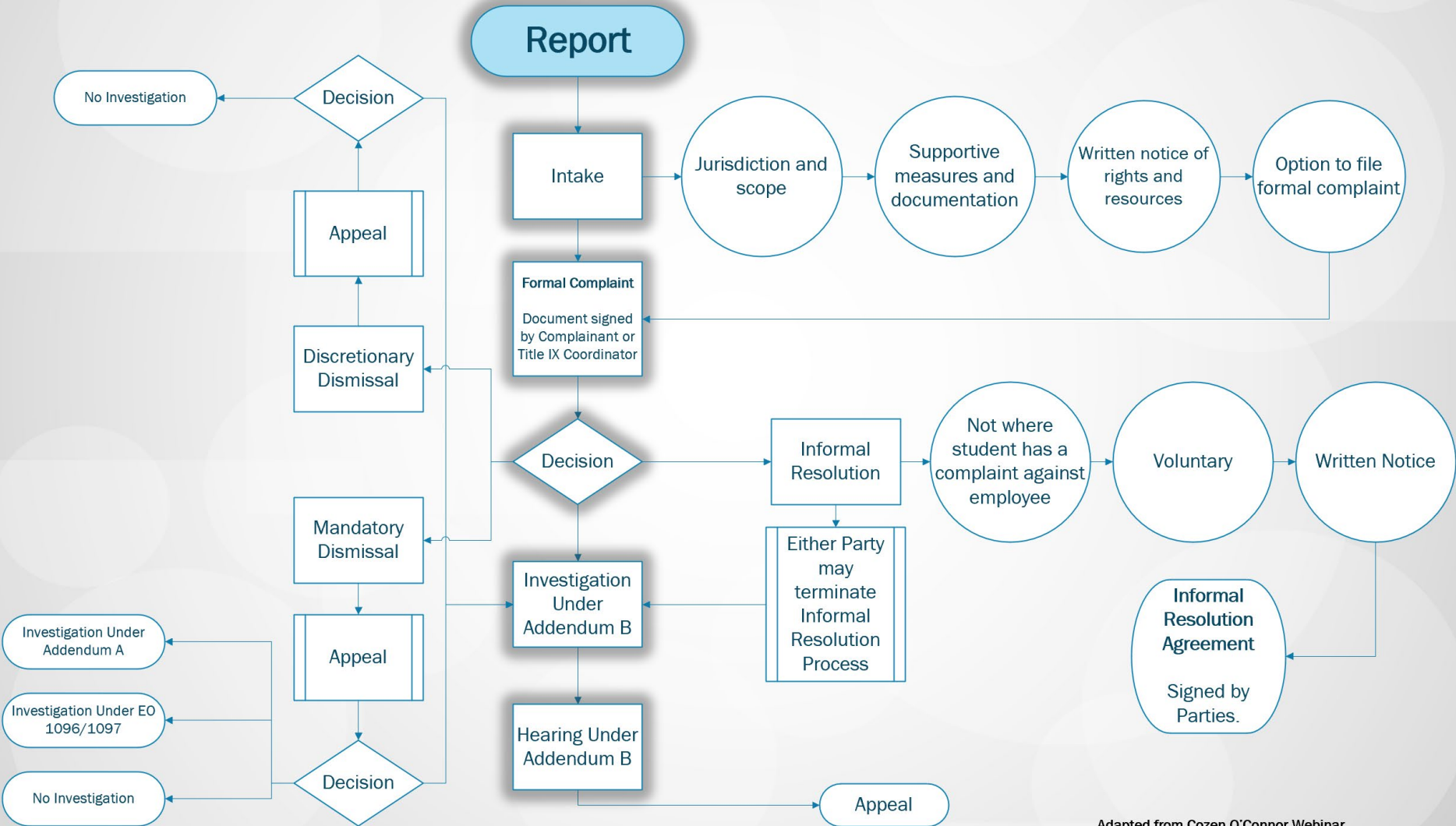
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# Session 2: Reporting and Intake

Training for Title IX Coordinators, Investigators, Hearing Coordinators, Appeals Managers and Student Conduct Administrators

Office of the Chancellor  
The California State University

# Addendum B Flowchart - Overview



Adapted from Cozen O'Connor Webinar Slide



## Reporting to the Title IX Coordinator

- Under the Title IX Regulations, institutions can maintain their responsible employee reporting requirements if they so choose.
- The CSU will maintain the responsible employee reporting requirement, which requires all employees to report if they have reason to know of allegations of sexual harassment, unless they are in an exempt category.
- The focus of the Regulations is on preventing discrimination by universities, which includes not being “deliberately indifferent” to allegations of sexual harassment, but does not change the Title IX Coordinator’s existing obligations under State law and under CSU policy.

# Report vs. Formal Complaint

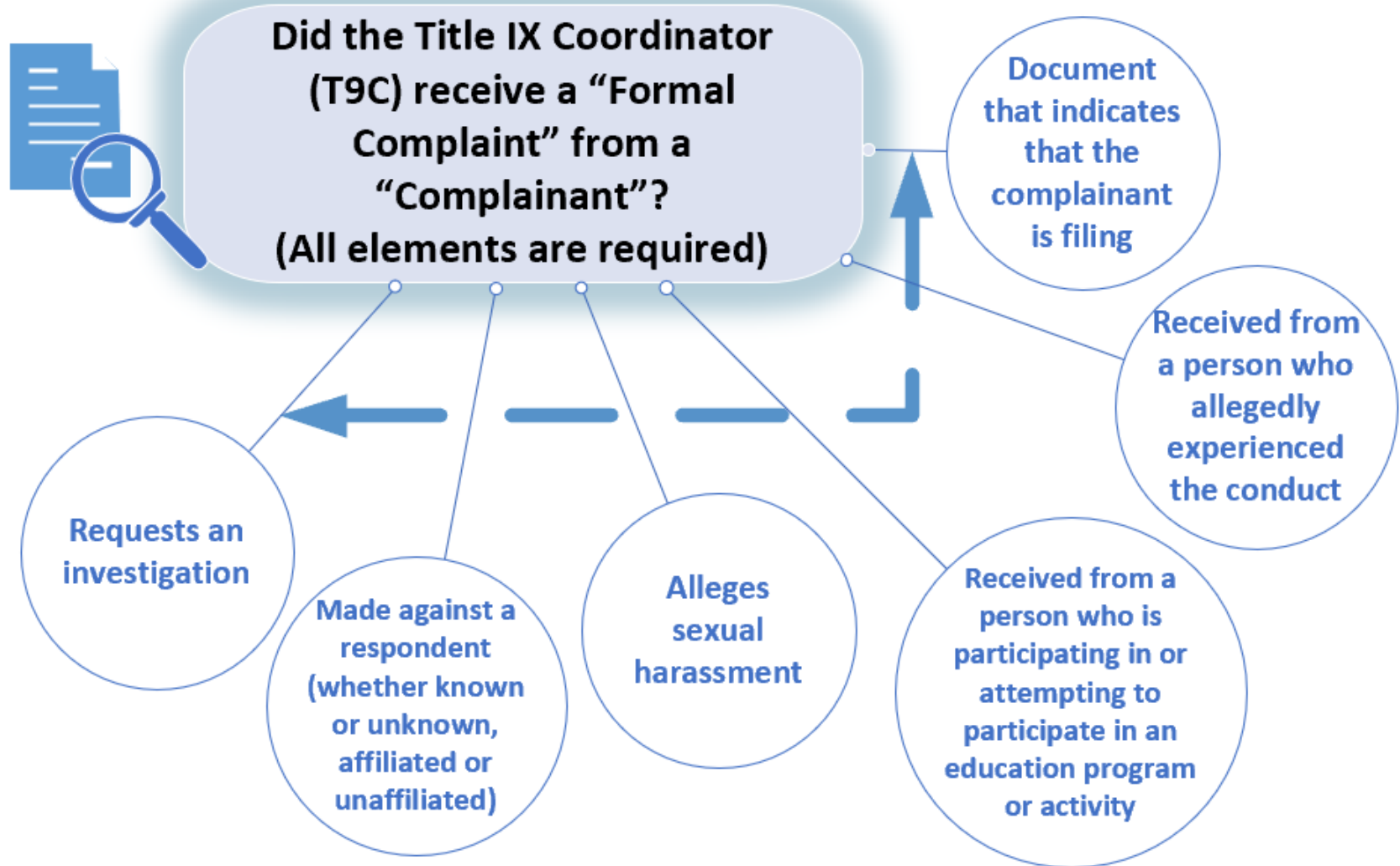
Report (either directly from Complainant or someone else)

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Supportive Measures (regardless of whether a Formal Complaint is filed)

Formal Complaint (document signed by Complainant or Title IX Coordinator)





# When did the alleged conduct occur?

## On or after August 14, 2020?

“Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

OCR Blog – August 5, 2020

# Formal Complaint

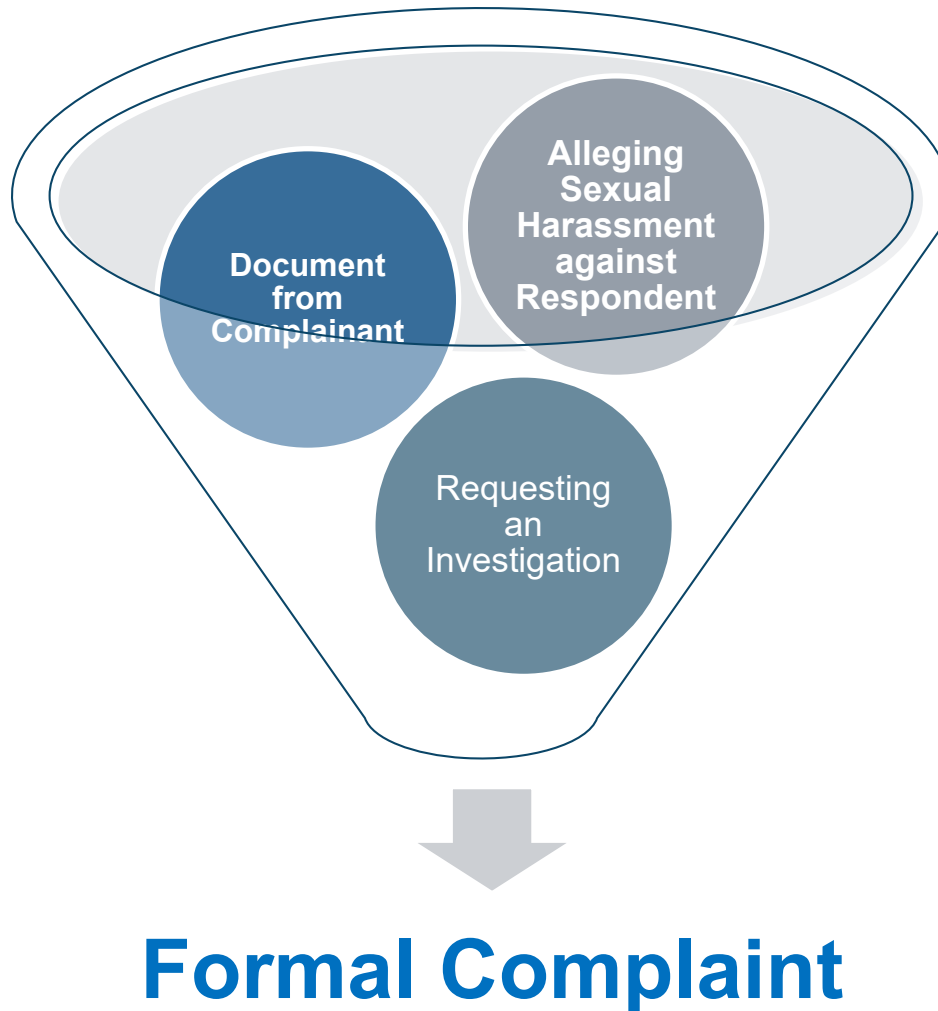
- a document or electronic submission filed by a Complainant that contains the Complainant's physical or digital signature (or document that "otherwise indicates that the complainant is the person filing the formal complaint." An e-mail from the complainant would appear to be sufficient); **OR**
- a document signed by the Title IX Coordinator
- There is no need for the formal complaint to contain a "detailed statement of facts."

**...alleging sexual harassment against a respondent and requesting an investigation** of the allegation of sexual harassment.

At the time that the Formal Complaint is filed, a complainant must be **participating in or attempting to participate** an Education Program or Activity of the CSU.

# Alleging Sexual Harassment: Addendum B Prohibited Conduct

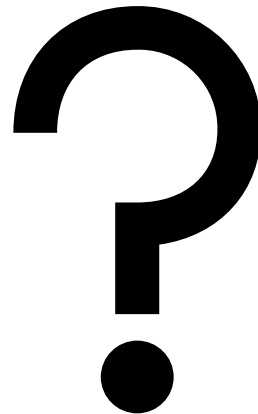




# When Should the Title IX Coordinator File a Formal Complaint?

- When the Title IX Coordinator determines that “a non-deliberately indifferent response to the allegations requires an investigation.”
- Decision should be reached “intentionally and thoughtfully by the Title IX Coordinator.”
- “Taking into account the circumstances of the situation including the reasons why the complainant wants or does not want the [university] to investigate.”
- Examples: “pursue a grievance process against a serial sexual perpetrator,” “pattern of alleged sexual harassment by a perpetrator in a position of authority.”
- Signing a Formal Complaint does not mean that the Title IX Coordinator becomes a party to the process.
- Must document reasons why response was not deliberately indifferent (i.e., not clearly unreasonable in light of known circumstances).

**LET'S PAUSE  
FOR QUESTIONS**



## Supportive Measures

Upon receipt of a report the Title IX Coordinator must:

- Promptly contact Complainant to discuss the availability of supportive measures;
- Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
- Consider the Complainant's wishes regarding supportive measures;
- Explain to the Complainant the process for filing a formal complaint.



# Supportive Measures



Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the complainant or respondent.



Before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.



Designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or the educational environment.

# Supportive Measures

May include:

- Counseling
- Accompaniment by a support person at a hearing
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules
- Campus escorts
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- increased security and monitoring of certain areas of the campus

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Confidentiality must be maintained regarding supportive measures to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.

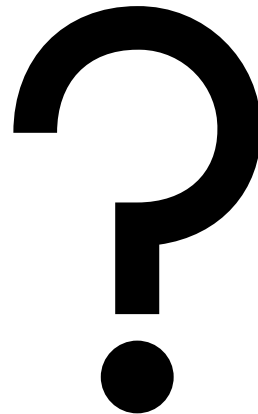
## Supportive Measures

- The Title IX Coordinator should document all supportive measures and the facts or circumstances that render certain supportive measures appropriate or inappropriate.
- If supportive measures are not provided, should document why this decision was not clearly unreasonable in light of the known circumstances.
- Maintain record relating to supportive measures for seven years.
- Discretion as to whether to continue supportive measures after a determination of non-responsibility.

## Example: Supportive Measures

- **A student Complainant tells the Title IX Coordinator that another student seems to be waiting for them outside their classes and they are afraid for their safety. They request that as a supportive measure, they be provided with a campus police officer as a round- the-clock safety escort.**
- The Title IX Coordinator may determine that the requested supportive measure is not reasonable with consideration to all the known circumstances of the case.
- The Title IX Coordinator should document the Complainant's request, note why the refusal to grant this supportive measure was not clearly unreasonable in light of the known circumstances, and explain the alternative supportive measures that were discussed with the Complainant as being available, and which were ultimately implemented.

**LET'S PAUSE  
FOR QUESTIONS**



## Poll Question – Charlie and Cameron

1. A student complainant, Charlie, calls the Title IX Office and tells you that they are being stalked by another student, Cameron. **Has Charlie filed a Formal Complaint?**

Answer 1: Yes

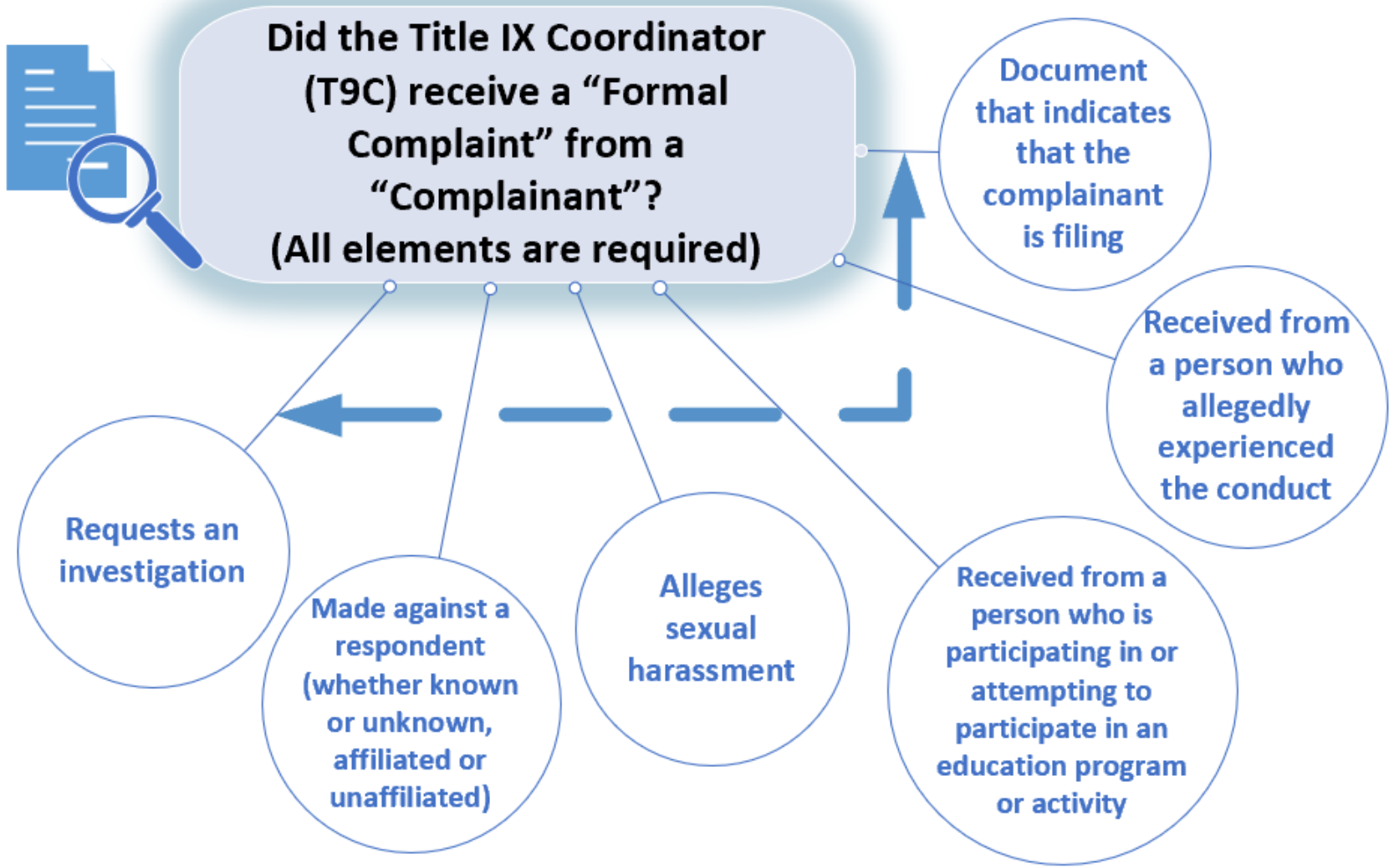
Answer 2: No

2. **What is your next step?**

Answer 1: Explain that supportive measures are available and arrange to meet with Charlie for an intake interview to discuss supportive measures and the Formal Complaint process further.

Answer 2: Send Cameron a Notice of Allegations.

Answer 3: Tell Charlie you need more information before you can do an intake.



## Poll Question – Charlie and Cameron

3. You conduct an intake interview. Charlie explains that Cameron has been following them to their car and sending unwanted texts. Charlie does not want an investigation, but they would like a mutual no contact order between them and Cameron. **Next steps?**

**Answer 1:** You as the Title IX Coordinator file a Formal Complaint.

**Answer 2:** Inform Charlie that they must file a Formal Complaint in order for you to provide their requested supportive measures.

**Answer 3:** You arrange for Charlie's requested supportive measures, with consideration as to whether there is an unreasonable burden to Cameron and document this information in the file.



## **Poll Question – Charlie and Cameron**

4. You must keep Charlie's requested supportive measures confidential and do not disclose their concerns or the supportive measures to Cameron.

**Answer 1: True**

**Answer 2: False**

## Poll Question – Quinn and Jude

1. Faculty member, Quinn, sends an e-mail to you as the Title IX Coordinator stating that they are being sexually harassed by another employee, Jude, who emailed Quinn a picture of their pet hamster. Quinn says they want an investigation. **Formal Complaint?**

Answer 1: Yes

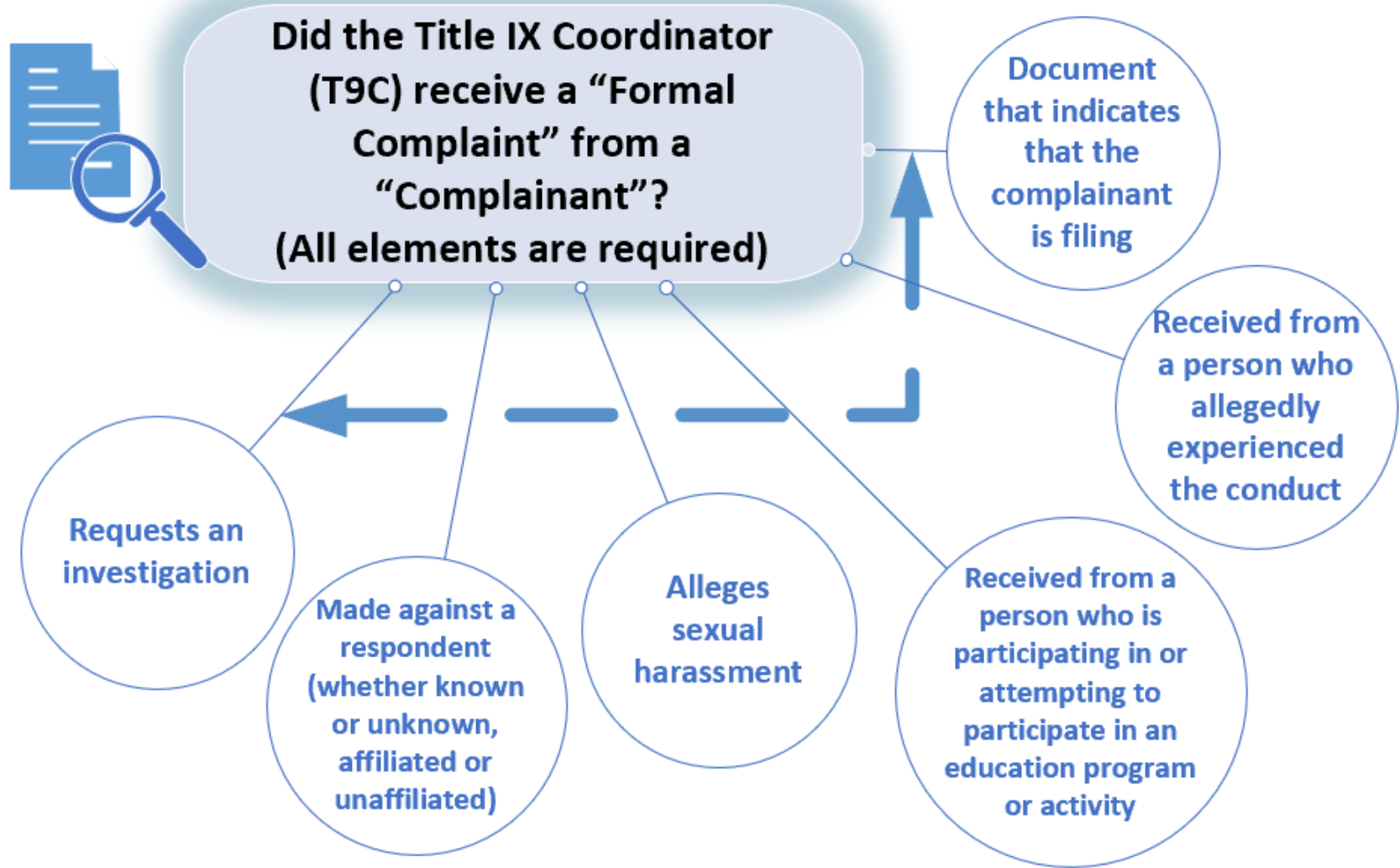
Answer 2: No

2. **What is your next step?**

Answer 1: You refer Quinn to Employee Relations – this is clearly not sexual harassment.

Answer 2: You arrange an intake interview with Quinn to discuss supportive measures and to learn more about their allegations.

Answer 3: You send Quinn a Notice of Dismissal.



## Poll Question – Quinn and Jude

3. You meet with Quinn who confirms that their only allegation is that Jude sent them a picture of the pet hamster after they recently had a conversation about their pets. **What is your next step?**

**Answer 1:** You begin consideration of whether you must dismiss Quinn's complaint, notifying Jude of the allegations against them regardless of whether you dismiss the complaint.

**Answer 2:** You close Quinn's complaint because it does not fall under any definition of sexual harassment.

**Answer 3:** You implement a no contact directive between Quinn and Jude as a supportive measure.

## Poll Question – Andy and Davey

1. Andy, a Residential Life staff member e-mails the Title IX Office stating that a student, Davey, told Andy they were recently sexually assaulted by another student. Andy is concerned and asks that you immediately begin an investigation. **Formal Complaint?**

Answer 1: Yes

Answer 2: No

# Grievances and Formal Complaints

- The Federal Regulations specify that universities’ “contractual arrangements with employees must conform to Federal law, as a condition of receipt of Federal funds.”
- While the CFA Collective Bargaining Agreement indicates that faculty should file a grievance under Article 16, if a faculty member files a Formal Complaint but declines to file a grievance, the Addendum B process should proceed in the normal way.
- The faculty member should be notified that in order to receive all the rights to which they are entitled under the CBA, they should file a grievance.
- Template – EO 1096/Grievance – confirm in writing.

# Grievances and Formal Complaints

- **Question: What if a faculty member files a Formal Complaint, it gets dismissed, the appeal window passes and the dismissal stands, and they still decline to file a grievance?**
- If the dismissal has resulted in the case being referred into the single investigator model under EO 1096 (or, rarely, Addendum A), you would proceed with this process, again reminding the faculty member in writing that in order to receive all processes to which they are entitled under the CBA, they should file a grievance.
- Note that they should consult Faculty Affairs/their union representative regarding the grievance time frame.
- Template – EO 1096/Grievance – confirm in writing.

## To discuss with complainants:

- If a complainant files a Formal Complaint, you will need to send a Notice of Allegations to the respondent.
- Provision of supportive measures alone does not require that the respondent be notified of the allegations, with some exceptions.
- It is possible that their Formal Complaint made be dismissed if it does not fall under the scope of Addendum B – this does not necessarily mean their complaint will not be addressed; it may instead be handled under the EO 1096/1097 single investigator model or Addendum A.
- Both complainant and respondent will have the opportunity to appeal any dismissal decision.



# Emergency Removal

- A Respondent may be removed from an education program or activity on an emergency basis before an investigation concludes or where no investigation or hearing is pending.
- Individualized safety and risk analysis prior to removal.
- The president or vice president designee, in consultation with the Title IX Coordinator, will determine whether there is an immediate threat to the **physical** health or safety of any student or other individual **arising from the allegations of sexual harassment**.
- Includes threat to self.
- An assessment that the Respondent poses a threat of obstructing the Sexual Harassment investigation or destroying relevant evidence does not justify Emergency Removal.
- Respondent will be provided with notice of removal and given an opportunity to challenge the decision immediately following the removal.
- CSU Executive Order 1098, Article VI- right to a hearing within 10 Working Days of a request by the Respondent for such a hearing.

# Emergency Removal

- **“Arising from the allegations of sexual harassment”**
  - Could include situations where a Respondent threatens physical violence against a Complainant in response to the Complainant’s allegations.
  - Or where a Respondent reacts to being accused of sexual harassment by threatening physical self-harm.
  - Do not need to meet the requirements for Emergency Removal to address emergency situations that do NOT arise from sexual harassment allegations under Title IX and should instead use EO 1098 interim suspension process.
    - Example provided by OCR is where a student has brought a weapon to school unrelated to any sexual harassment allegations.

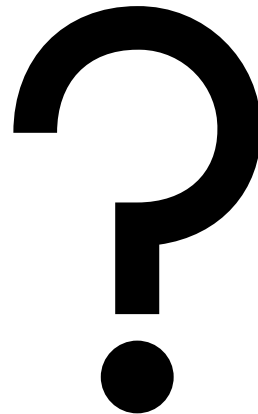
## Emergency Removal Continued

- An emergency removal does not require a full hearing or impose any additional due process requirements.
- Emergency removal can, under the Regulations, be used for students, employees and student-employees → we will use emergency removal for **students** and **student-employees**.
- Employee concerns should be addressed through Administrative Leave.

## Administrative Leave

- Addendum B: Campus may place **non-student employees** on administrative leave while the Formal Complaint process is pending.
- It is not required that there be “an immediate threat to the physical health or safety of any student or other individual” for administrative leave.
- Do not have to perform an individualized safety and risk analysis prior to removal.

# ADDITIONAL QUESTIONS





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# Session 3: Assessment of Mandatory and Discretionary Dismissals

## Training for Title IX Coordinators and Investigators

The U.S. Department of Education's New Title IX Rules  
Office of the Chancellor  
The California State University

## **Steps in the Complaint Assessment Process**

1. Is there a Report or a Formal Complaint?
2. If there is a Formal Complaint, must the Formal Complaint be dismissed from the Addendum B process?
3. If there is a mandatory dismissal from Addendum B, should the complaint be processed under 1096/1097 (investigator model) or Addendum A (student respondents)? Is discretionary dismissal appropriate?
4. If the complaint will not be processed under a different procedure, is any other follow up necessary e.g. support services, education?



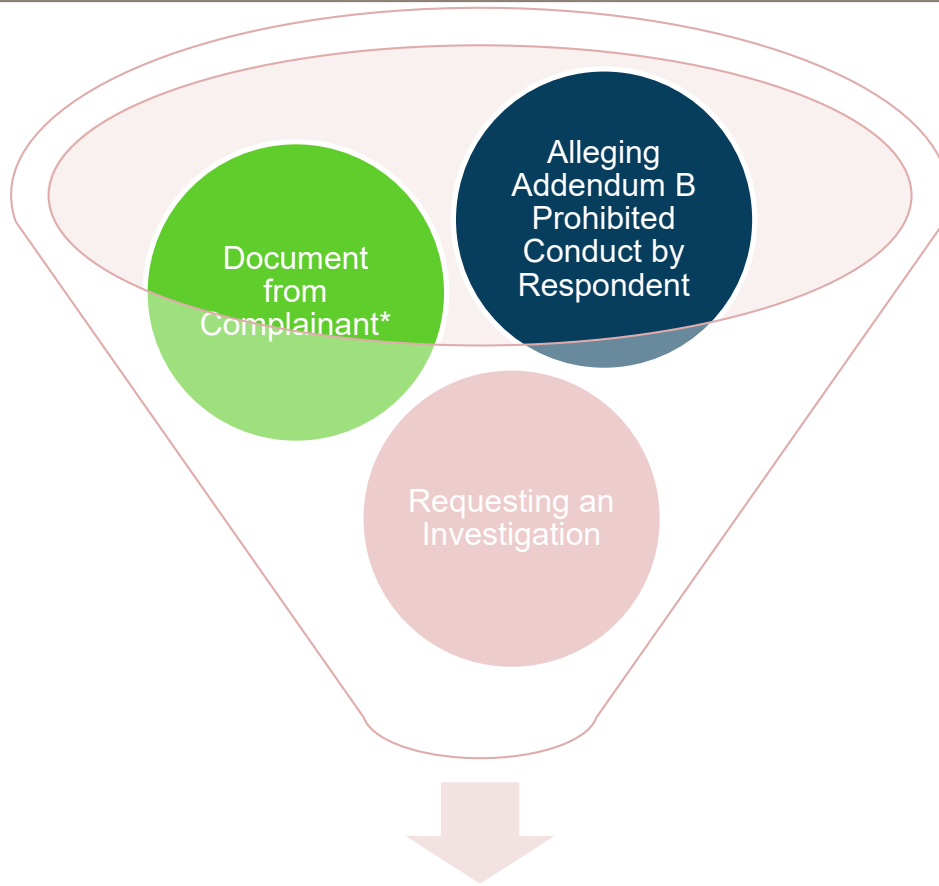
# Report vs. Formal Complaint

Report (either directly from Complainant or someone else)

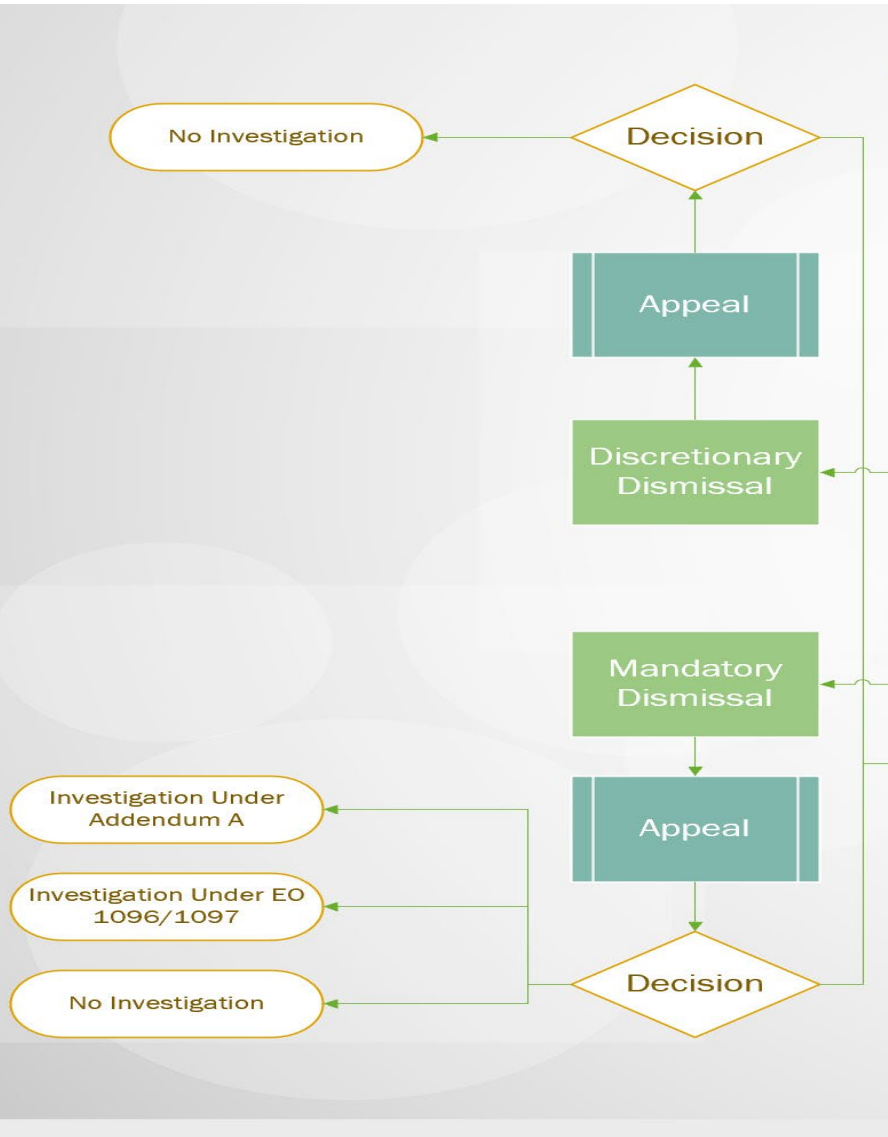
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Supportive Measures (regardless of whether a Formal Complaint is filed)

Formal Complaint (document signed by Complainant or Title IX Coordinator)



**Formal Complaint**



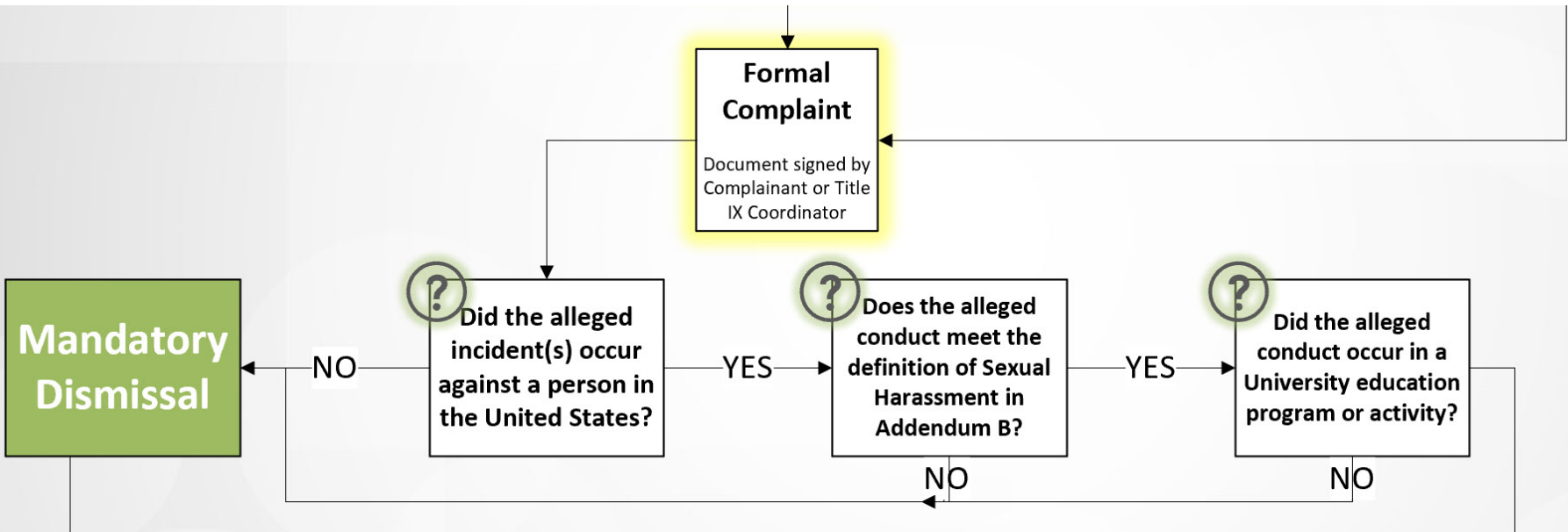
## The Assessment

- Does the Formal Complaint continue with the Addendum B process?
  - If not, is it a mandatory dismissal or discretionary dismissal?
  - If a mandatory dismissal, what is the next step?

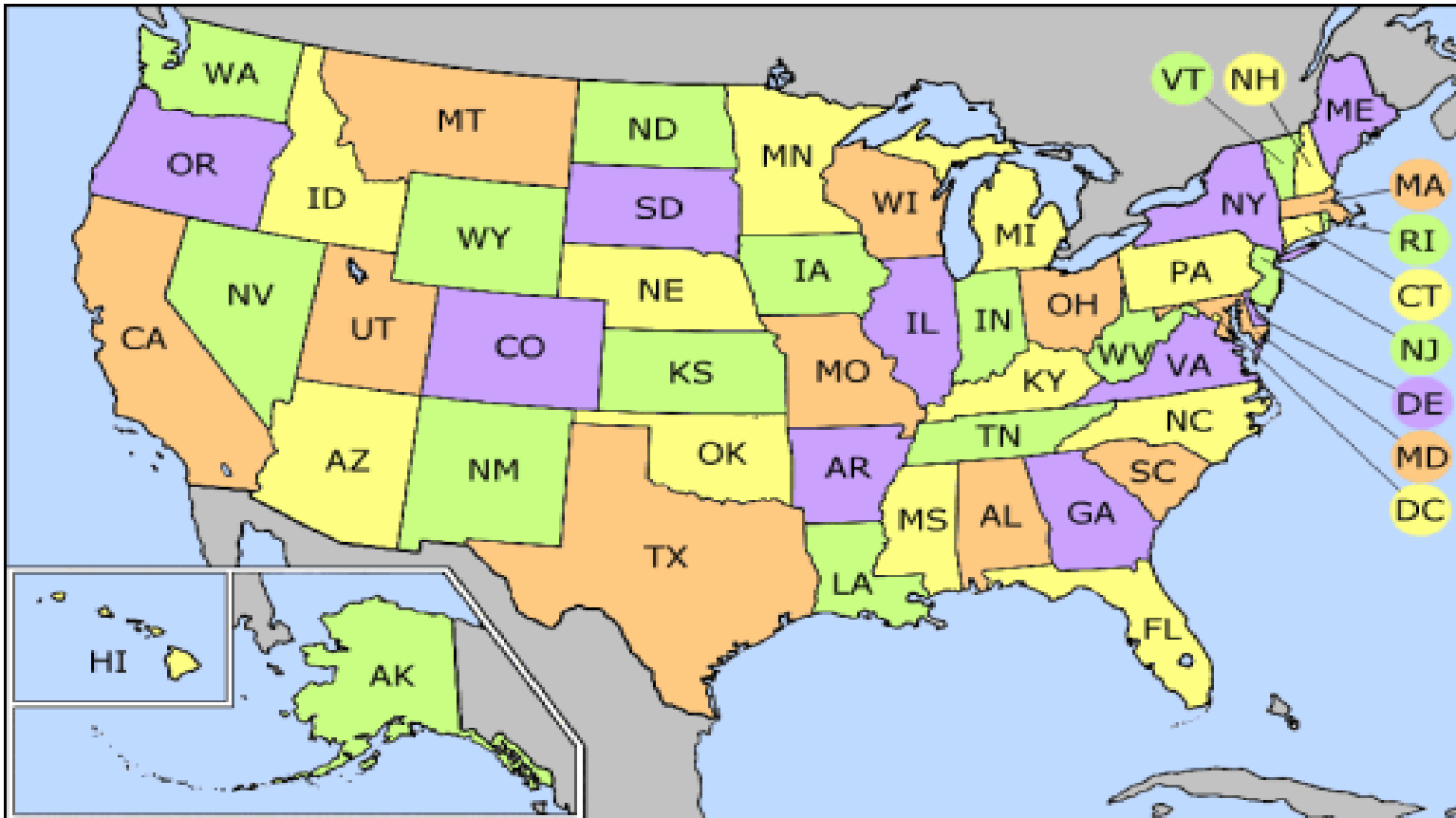
# Mandatory Dismissal

# Mandatory Dismissal

- If conduct alleged in a Formal Complaint would not constitute Addendum B Prohibited Conduct even if proved, did not occur in an Education Program or Activity, or did not occur in the United States, it **must** be dismissed “**with regard to that conduct**” per the Title IX Rules.
- The Title IX Coordinator will make this determination.
- Respondent must be notified of allegations.
- The parties may appeal this decision.
- The complaint may be referred under the processes detailed in EO 1096 or 1097, including Addendum A.
- **A mandatory dismissal under Addendum B is not necessarily a dismissal from all processes.**



# Did the conduct occur in the United States?



## Example 1:

**A CSU student reports to the Title IX Coordinator that they were sexually assaulted by another CSU student while on a study-abroad program in Spain.**

**X** This matter does not fall under the scope of the Title IX Rules because the alleged incident was not against a person inside the U.S.

- The formal complaint process under Addendum B is therefore unavailable as this must be dismissed.
- Depending on the specifics of the case, it could either be addressed under Addendum A or the single investigator process under EO 1097.
- Regardless of which process is used, the student will be offered supportive measures and information regarding resources.



## Does the conduct as alleged meet the definition of Addendum B Prohibited Conduct (Sexual Harassment)?

- Quid pro quo harassment;
- Unwelcome conduct determined “by a reasonable person to be so severe, pervasive, **and** objectively offensive” as to deny a person equal access to the institution’s education program or activity; or

## Does the conduct as alleged meet the definition? (cont.)

- Sexual Assault
  - Rape
  - Fondling
  - Statutory Rape
  - Incest
- Dating and Domestic Violence
- Stalking

## Example 2:

A CSU faculty member reports to the Title IX Coordinator that they have experienced sexual harassment from a CSU staff member. Following an intake interview, the Title IX Coordinator determines that the conduct as described, even if proven, was not severe and pervasive, and objectively offensive.




This matter does not fall under the scope of the Title IX Rules because the alleged conduct, even if proven, would not meet the definition of Sexual Harassment under the Title IX Rules.

- The formal complaint process under Addendum B is therefore unavailable and the matter must be dismissed.
- The allegations could still be investigated under the single investigator process in EO 1096.
- Regardless of which process is used, the faculty member will be offered supportive measures and information regarding resources.

## Example 3:

A female-identifying CSU staff member reports to the Title IX Coordinator that their supervisor regularly asks them questions that they feel constitute sex-stereotyping and that they were recently passed over for a promotion, which was instead given to a male-identifying employee. The female employee believes that this decision constituted gender-based discrimination.

 This matter does not fall under the scope of the Title IX Rules because the alleged conduct, even if proven, would not meet the definition of Sexual Harassment under the Title IX Rules.

- The formal complaint process under Addendum B is therefore unavailable and must be dismissed.
- The allegations could still be investigated under the single investigator process in EO 1096.
- Regardless of which process is used, the faculty member will be offered supportive measures and information regarding resources.

# Scope and Jurisdiction Issues

## ➤ Education program or activity

Locations, events, or circumstances (operations) over which the institution exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

Includes any building owned or controlled by student organization that is OFFICIALLY RECOGNIZED by the institution.

## Example 4:

A CSU graduate student reports to the Title IX Coordinator that their spouse, who is also a CSU student, returned from a night out, was clearly intoxicated and hit them. The two students live in a private off-campus apartment. The reporting student tells the Title IX Coordinator that their spouse is only violent toward them when they are at home in the apartment.



This matter does not fall under the scope of the Title IX Rules because the alleged conduct is occurring off-campus, outside a CSU education program or activity.

- The formal complaint process under Addendum B is therefore unavailable.
- Depending on the specifics of the case, it could either be addressed under Addendum A or the single investigator process under EO 1097.
- Regardless of which process is used, the student will be offered supportive measures and information regarding resources.

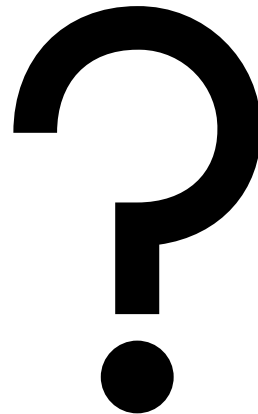
## Scenario #1

Complainant (CP) files a Formal Complaint:

**Allegation #1** - One year ago, while studying abroad, the Respondent (RP) engaged in sexual activity with CP while the CP was incapacitated. The two were on a date but did not associate after the incident.

**Allegation #2** – On August 15, 2020, CP was at a party. The event occurred off campus at a fraternity house. RP is a member of the fraternity. While CP was at the party, the RP grabbed an intimate body part of the CP. RP winked at CP and said, “hey baby, so nice to feel you.”

**LET'S PAUSE  
FOR QUESTIONS**





# Discretionary Dismissal

## Discretionary Dismissal

- It is within the discretion of the Title IX Coordinator, after careful consideration of all the relevant factors, to dismiss matters where:
  - a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - the respondent is no longer enrolled or employed; or
  - if specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- Respondent must be notified of allegations.
- The parties may appeal this decision.

## Complainant requests withdrawal

- Must be in writing
- Factors to be considered

# Respondent is no longer enrolled or employed

- Factors to be considered
- When a Student withdraws while investigation is pending
- When employee leaves

## Insufficient Evidence

- Factors to be considered
  - Is it truly insufficient?
  - What are the specific circumstances that prevent you from gathering sufficient evidence?

# Informing Parties of the Allegations/Dismissal

## Written Notice of Dismissal

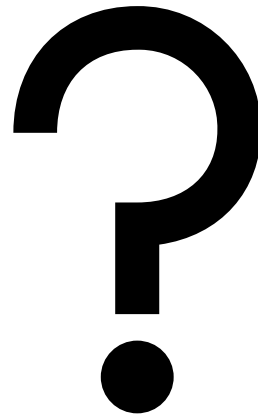
- Can be combined with Notice of Allegation\*.
- Must be sent **promptly** and **simultaneously** to the parties
- Must include reasons for dismissal
  - Please be descriptive
- Must contain information regarding:
  - appeal right,
  - whether the matter will be referred to another process, and
  - the process for submitting an appeal.

# Written Notice of Allegations

- Notice of Allegations must be provided, when a Formal Complaint is received, whether or not the Formal Complaint will be dismissed.
- Preamble, pg. 913: “Concurrent law enforcement activity is not good cause to delay sending the written notice itself.”
- Can be good cause for temporary delay of the Formal Complaint process itself or limited extension of timeframes.
- **Written notice of meetings, interviews and hearings:** If the Notice of Allegations also serves as notice of a Respondent’s expected attendance at an interview, it should include details of the date, time, location, participants, and purpose of that interview.
- “With sufficient time to prepare” - The Notice of Allegations must be provided to a Respondent at least **5 Working Days** prior to the interview. Can waive.
- If new allegations are raised during the investigation that were not included in the Notice of Allegations, a revised Notice of Allegations will be issued simultaneously to the Parties.



# LET'S PAUSE FOR QUESTIONS



# Appeal

## Appeal from Dismissal

- Either party may appeal a dismissal for the for following bases:
  - Procedural irregularity
  - New evidence not reasonably available at the time of the dismissal determination
  - Conflict of interest or bias of the Title IX Coordinator
- Appeal Outcome determines the next steps and the investigation process should be paused pending the appeal outcome.

## What is Bias?

- Requires examination of the particular facts of a situation
- Should 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,
- Not examples of bias:
  - Assuming that all self professed feminists, or self-described survivors, are biased against men,
  - Assuming that a male is incapable of being sensitive to women,
  - Assuming that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents. **(30252)**

## What is Conflict of Interest?

- Although the decision-maker must be different from any individual serving as a Title IX Coordinator or investigator, pursuant to § 106.45(b)(7)(i), the final regulations do not preclude a Title IX Coordinator from also serving as the investigator, and the final regulations do not prescribe any particular administrative “chain of reporting” restrictions or declare any such administrative arrangements to be *per se* conflicts of interest prohibited under § 106.45(b)(1)(iii).

# QUESTIONS ?



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# Session 4: Investigations and Informal Resolution

Training for Title IX Coordinators, Investigators, Hearing  
Coordinators, Appeals Managers and Student Conduct  
Administrators

Systemwide Title IX Compliance  
Office of the Chancellor  
The California State University



# The Purpose of the Investigation (Broadly Stated)

1

Gather evidence for the University to determine if Respondent violated the policy.

2

Identify disputed and undisputed facts.

3

Provide an opportunity for the Parties to respond to evidence gathered and prepare for the hearing and/or Informal Resolution.

# Additional Addendum B Investigation Procedural Requirements

- Provide written notice at least 3 working days prior to every meeting (5 working days if initial Respondent meeting), and interview with the Parties. It will include **details of the date, time, location, participants and purpose of the interview.**
- University will not restrict the ability of either Party to discuss the allegation or to gather or present relevant evidence.
- Review of evidence (Preliminary Investigation Report) – copies sent to advisor unless Party opts out.
- Explicit requirement that burden rests on the University to gather evidence.
- Role of the *Support Advisor* during investigation and evidence review stage is similar to role in EO 1096/1097/Addendum A.

# Gathering Evidence

- Take reasonable steps to gather all **Relevant** evidence from the Parties, other witnesses or other sources.
- Document the steps taken to gather evidence, even when those efforts are not successful.
- Must include with the Preliminary Investigation Report all evidence **Directly Related** to the complaint, even that which it is anticipated will not be relied upon by the Hearing Officer.
- Inform Parties that any evidence that they provide during the investigation will be provided to the other Party and the Hearing Officer.
- **Impartiality** and **equity** → During interviews and when gathering evidence.

# Types of Evidence



Relevant Evidence



Directly Related [Not required to be Relevant]



Evidence not directly related or relevant

# Directly Related and Relevant Evidence

## Addendum B:

**Directly Related** means anything that is not incidental to a matter at issue.

**Relevant** defined as having significant and demonstrable bearing on the matter at hand.

## Requests to Gather Evidence

- Parties can request that the Investigator obtain evidence. The Investigator should make reasonable attempts to do so, with the following exceptions:
  - Illegally obtained evidence (e.g., conversations recorded without the consent of the participants);
  - Evidence not Directly Related to the complaint;
  - Information protected by a legally recognized privilege;
  - The Complainant’s sexual history (with exceptions); and
  - A Party’s treatment records if the Party has not given voluntary, written consent to the disclosure of those records.
- Investigator should document when attempts to gather evidence are not made and why.

## **Scenario #1: Devin and Jules (Students)**

- Devin is accused of sexually assaulting Jules. Jules says they were incapacitated when Devin had sex with them in Devin's room. Jules says they had five vodka shots earlier in the evening. Stewart, a neighbor, says he saw Jules vomiting only minutes before Jules entered Devin's room. Devin asks the investigator to find out how much food Jules ate in the hours before Jules entered Devin's room and whether Jules and Stewart are friends. Devin also wants to know Jules' academic major.

## Devin and Jules

- Question 1: Is evidence relating to what Jules ate "relevant"? And if it's collected, would it be considered "directly related" to the investigation?
  - ☞ A: Relevant and directly related
  - ☞ B: Relevant but not directly related
  - ☞ C: Directly related but not relevant
  - ☞ D: Neither



## Devin and Jules (continued)

- Question 2: Is evidence relating to whether Stewart, the witness, is friends with Jules "relevant"?
  - A: Yes
  - B: Maybe – we need more information
  - C: No, it's not relevant
  - D: Why did I agree to attend this training?

## Devin and Jules (continued)

- Question 3: Is Jules' academic major relevant? And if not, would it nevertheless be considered "directly related" to the investigation?
  - ☞A: Yes, it's relevant
  - ☞B: We need more information to determine if it's relevant, but it is "directly related"
  - ☞C: Neither
  - ☞D: Help!

## **Scenario #2: Hadley and Blake (Employees)**

- Hadley is accused of making inappropriate sexual comments to a co-worker, Blake, several times a week. Hadley says they would never do such a thing. Hadley heard rumors that Blake's father is in prison for drug offenses and wants the investigator to collect evidence about the conviction ("like father, like child," Hadley says). Blake in turn wants the investigator to confirm that Hadley has been accused of sexually harassing other employees in the department.

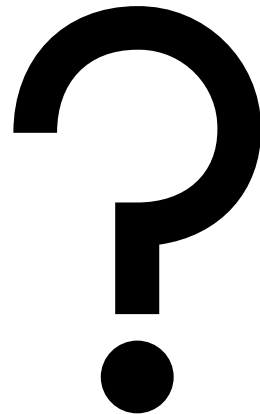
## Hadley and Blake

- Question 1: Is evidence relating to Blake's father being convicted of a crime relevant?
  - ☞ A: Yes
  - ☞ B: Maybe – we need more information
  - ☞ C: No
  - ☞ D: Calgon, take me away!

## Hadley and Blake (continued)

- Question 2: Would evidence relating to whether Hadley sexually harassed other employees be relevant?
  - ☞ A: Yes
  - ☞ B: Maybe – we need more information
  - ☞ C: No

**LET'S PAUSE  
FOR QUESTIONS**



# Evidence Review

# Evidence Review – Preliminary Investigation Report

Provide ALL evidence obtained as part of the investigation that is Directly Related to the allegations raised in the Formal Complaint, including inculpatory or exculpatory evidence whether obtained from a Party or other source.

Material Disputed and Undisputed Facts

Must send to Party AND Support Advisor (if any).

Discretion as to method of sending (electronic or hard copy – file sharing platform with limitations on download acceptable).

10 Working Days for review.



# Types of Evidence

## Directly Related and Relevant

- Include in Preliminary Investigation Report.
- Include in Final Investigation Report.

## Directly Related

- Include in Preliminary Investigation Report.

## Not Directly Related

- Do **not** include in Preliminary Investigation Report or Final Investigation Report.

## Privileged Materials

- Do **not** include in Preliminary Investigation Report or Final Investigation Report.

## Excluded Evidence

- Illegally obtained evidence (e.g., conversations recorded without the consent of the participants).
- Evidence not Directly Related to the complaint.
- Information protected by a legally recognized privilege.
- The Complainant's sexual history (with exceptions).
- A Party's treatment records if the Party has not given voluntary, written consent to the disclosure of those records.

## Treatment Records

- Party's treatment records require voluntary, written consent.
- Records include those that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party.

# Final Investigation Report

Fairly summarize  
**Relevant**  
evidence  
(inculpatory and  
exculpatory).

Must send to  
Party AND  
Support  
Advisor (if  
any).

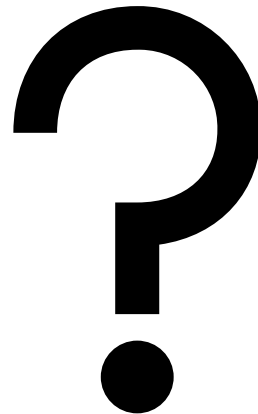
10 Working  
Days prior to  
hearing.

Party may  
provide  
written  
response.

## Timeframes

- Absent a determination of good cause made by the Investigator or Title IX Coordinator (of which the Parties will receive written notice):
  - (i) the investigation should be concluded within **100 Working Days** from the date that the Notice of Allegations is provided to the Parties; and
  - (ii) the Final Investigation Report should be completed and provided to the Parties within **10 Working Days** after the Review of Evidence has concluded.

**LET'S PAUSE  
FOR QUESTIONS**



# Informal Resolution

# Preliminary Assessment

- As part of an Informal Resolution, **at the request of both Parties**, Campuses will provide a written preliminary assessment of the evidence.
- The assessment will be provided by the Title IX Coordinator.
- Neither the fact nor the substance of the assessment will be shared with the Hearing Officer or considered Relevant at the Hearing.
- The written response will be attached to the Final Investigation Report and provided to the Hearing Officer, if appropriate, and the Parties.
- Inform Parties not to include any reference to the preliminary assessment in response to Final Investigation Report and that any such references will be redacted.



# Informal Resolution Procedural Requirements

- ✓ Cannot be required.
- ✓ Only available after a Formal Complaint has been filed and any time prior to reaching a determination regarding responsibility.
- ✓ Requires the Parties' voluntary, written consent to engage in the Informal Resolution process.
- ✓ Facilitated by the Title IX Coordinator or a Deputy Coordinator.
- ✓ Unavailable in student Complainant and employee Respondent cases.
- ✓ No later than 60 Working Days after both Parties provide voluntary, written consent to participate in the Informal Resolution process.

## Informal Resolution – Written Notice

- The allegations of Sexual Harassment, as defined by Addendum B;
- The requirements of the Informal Resolution process including that once the Informal Resolution process is finalized neither Party is permitted to file another Formal Complaint arising from the same allegations;
- An explanation that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and resume the Formal Complaint process;
- An explanation of any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared; and
- The Parties' right to consult with a Support Advisor, if any.

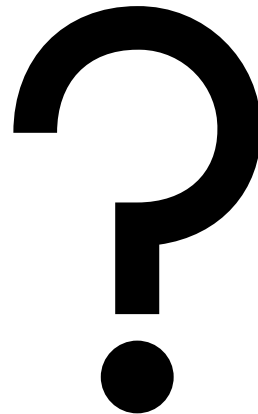
# Informal Resolution Procedural Requirements

- Parties must be notified that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process.
- Parties must be notified of **any consequences** resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

# Informal Resolution Terms

- Can include sanctions including expulsion.
- Informal resolution agreements are to be treated as contracts; the parties remain free to negotiate the terms and once entered into, it becomes binding according to its terms.
- Not appealable by either party.
- Parties and Title IX Coordinator must sign the agreement.
- Prior to signing the Informal Resolution, the Title IX Coordinator will consult with the Student Conduct Administrator and/or other appropriate University Administrator responsible for the implementation of the terms.

# ADDITIONAL QUESTIONS





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