



# FROM ONE TITLE IX COORDINATOR TO ANOTHER:

A Practical Approach to  
Navigating Beyond Compliance  
in a Post Regulatory World  
*Day 1- Oregon Alliance*

Emma Hempel

November 2023

# MEET YOUR FACILITATOR



Senior Solutions Specialist

*She/Her/Hers*

## Emma Hempel

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Emma Hempel is a Senior Solutions Specialist at Grand River Solutions. Emma serves as a Title IX Coordinator for campuses across the country. With over ten years of experience in the field of higher education, she previously served as the Title IX Coordinator at the State University of New York at New Paltz. In her previous role, she conducted all Title IX intakes for students and employees reporting sexual and interpersonal violence. She developed and implemented a variety of trainings and workshop on topics including sexual violence prevention, sexual harassment, bystander intervention, and diversity and inclusion.

# ABOUT US

## Vision

We exist to create safe and equitable work and educational environments.

## Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity



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





# THE EVER-EVOLVING JURISPRUDENCE OF TITLE IX



01

Grand River

## 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).



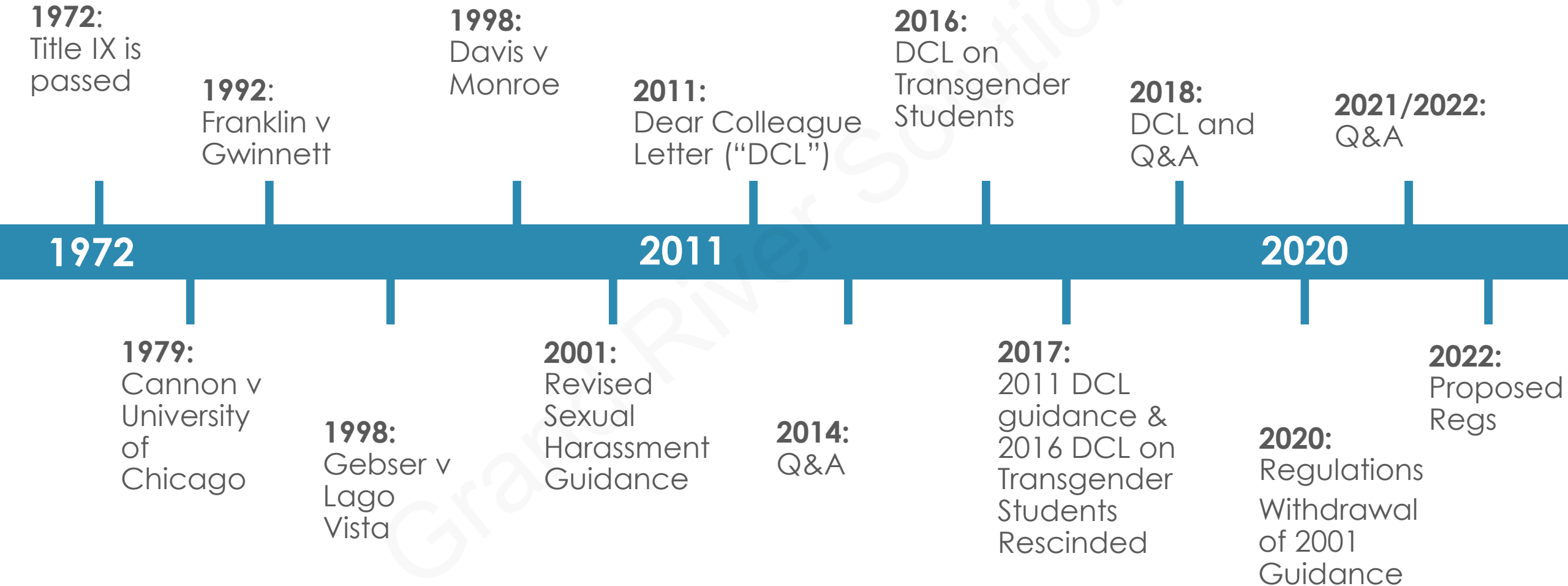
# TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

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



# THE HISTORY OF TITLE IX

## A TIMELINE



# THE TITLE IX REGULATIONS

## SEXUAL HARASSMENT ONLY

1

Narrows the 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, only.

# SEXUAL HARASSMENT: *DEFINED IN 1996, 2001, & 2011 GUIDANCE*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) Conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, OR objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) Sexual assault is a form of sexual harassment

\*Dating Violence, Domestic Violence, Stalking not included pre 2020 regulations.



# SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



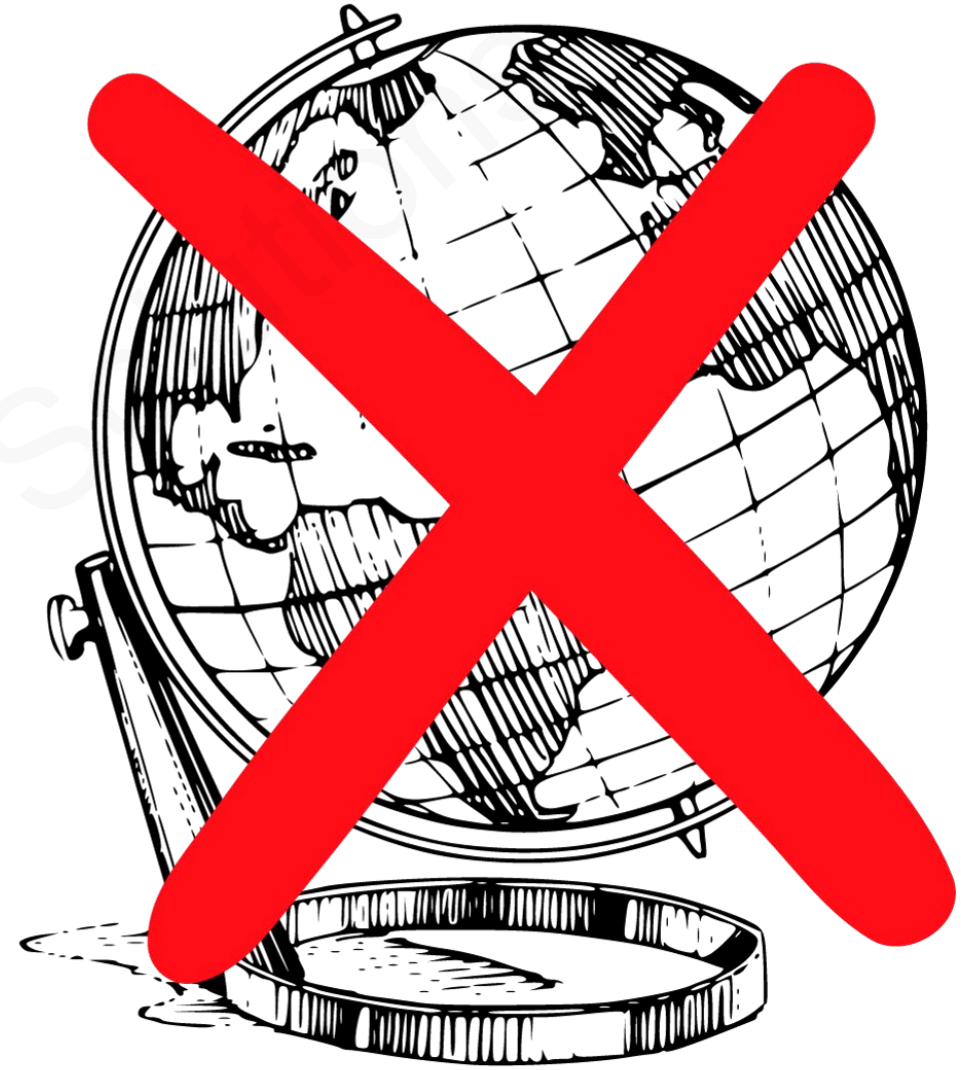
# COVERED GEOGRAPHY

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

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

# NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.





# COVERED INDIVIDUALS

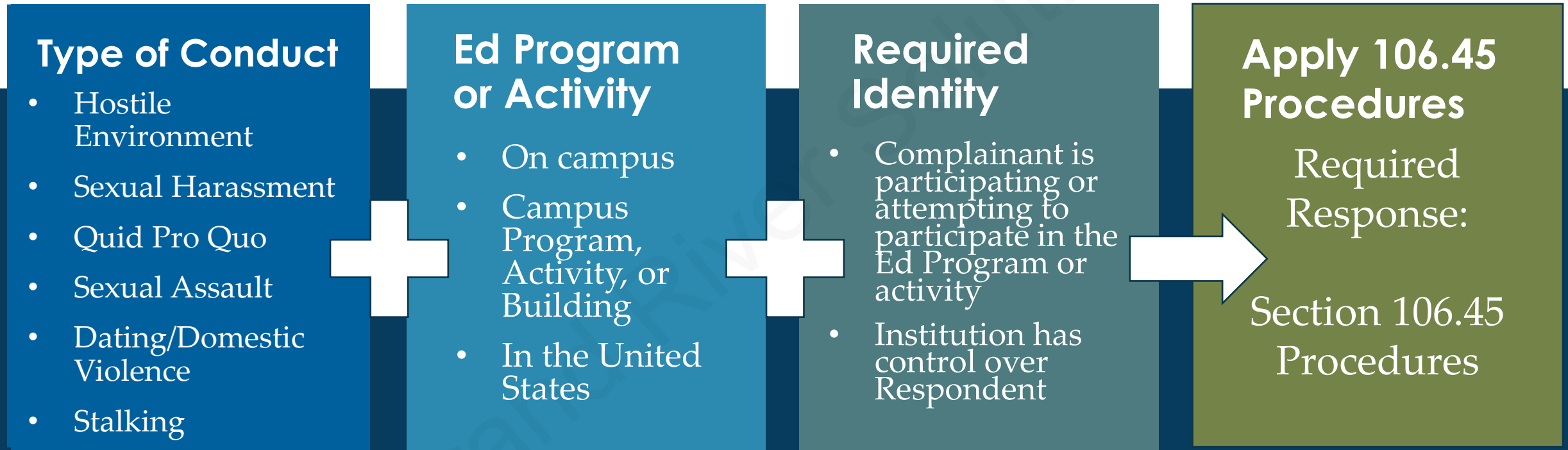
ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

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

- Applicant
- Enrolled or Employed
- Accepted or Hired

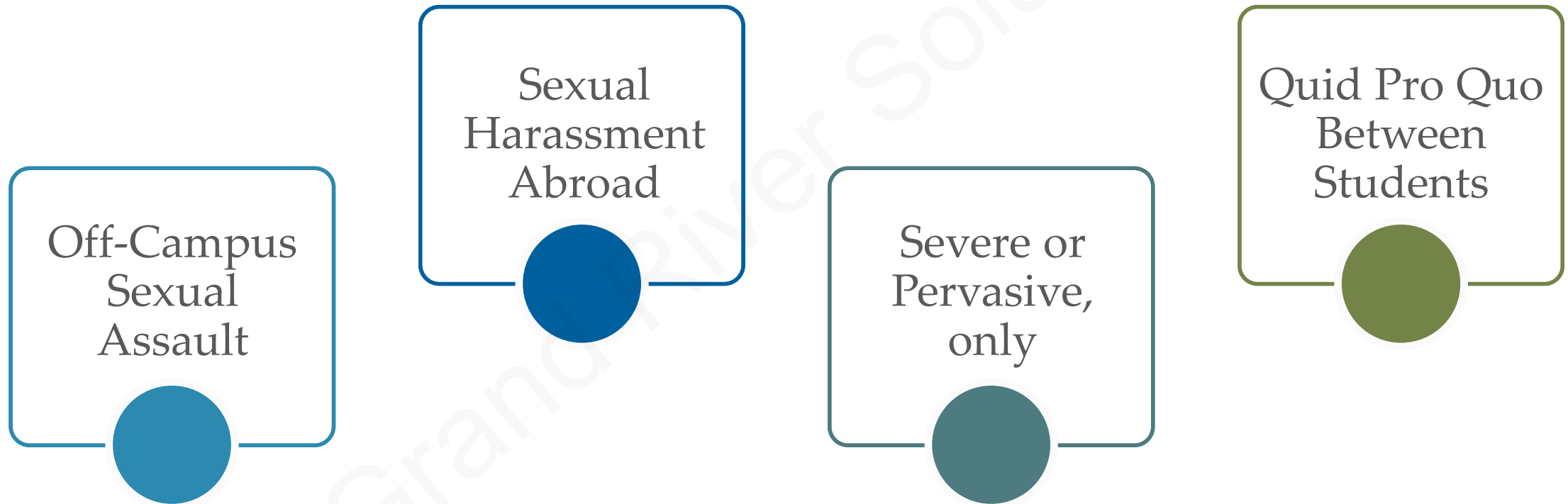


# TITLE IX APPLICATION REGULATIONS (POST-MAY 2020)



# CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

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





# ACTUAL NOTICE

Institution must respond when it has:

”Actual Knowledge...”

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

...of “**sexual harassment that occurred within the school’s “education program or activity...**

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

...**against a “person in the United States”**

So, not in the study abroad context

## A Narrowed Scope of Institutional Responsibility





# INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

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

4. How to File

5. Options for Resolution

# PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

# PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

# K-12: HEARINGS OPTIONAL

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





# K-12: THREE REQUIREMENTS

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

## **FINAL RULE § 106.45(B)(8)**

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”



# APPEALS: MANDATORY GROUNDS

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

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

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

# 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



02

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# FINAL RULE, SECTION 106.8

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

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

## Additionally:

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



# FINAL RULE, SECTION 106.8 (a)

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

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

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



# “RESPONSIBILITIES REQUIRED UNDER TITLE IX AND THE REGULATIONS”

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



# RESPONSIBILITIES OFTEN DELEGATED TO THE TITLE IX COORDINATOR

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

# THE THREE ESSENTIAL FUNCTIONS OF TITLE IX COMPLIANCE

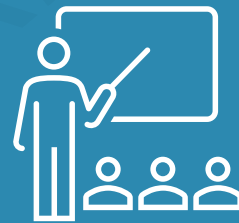
01

Response



02

Education &  
Prevention



03

Compliance



**ANOTHER  
MOMENT, PLEASE...**



# A SUCCESSFUL TITLE IX COORDINATOR...

C

Understands the Importance of Consistency

A

Adheres to policies and procedures

R

Records or documents everything

E

Engages meaningfully with the community

S

Strategically plans for success

# STRATEGIZE

- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans





# ENGAGE

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload



# ADHERE

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed



# CONSISTENCY

- Creation of Forms and Templates
- Development of Annual Plans for Training
- Development of Annual Plans for Compliance
- Comprehensive Policies & Procedures





# RECORD

Document, Document, Document!

## 1. Compliance

1. Maintain old policies
2. Keep records of all responses to reporting requirement

## 2. Training

1. Dates, times, locations
2. Attendees
3. Training materials
4. Reason for the training

## 3. Response

1. EVERYTHING



# SUCCESSFUL COORDINATORS APPROACH ALL ASPECTS OF THE WORK...

**Impartially**



**Utilizing  
Best  
Practices**



**With  
Empathy**





# 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 Bias*

- Department also 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 Conflicts of Interest

- 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 school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

# IMPARTIALITY

Avoiding Prejudgment, Bias, and Conflicts of Interest

## 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



# COMPLIANCE

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# SOURCES OF COMPLIANCE OBLIGATION



Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Laws

State Law

Legal Precedent

Institutional Policies

Resolution Agreements

# TITLE IX COMPLIANCE OBLIGATIONS

Designate a Title IX Coordinator

For reports of sexual harassment utilize grievance procedures that comply with section 160.45

Disseminate Policy

*Notification, Publication*

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).

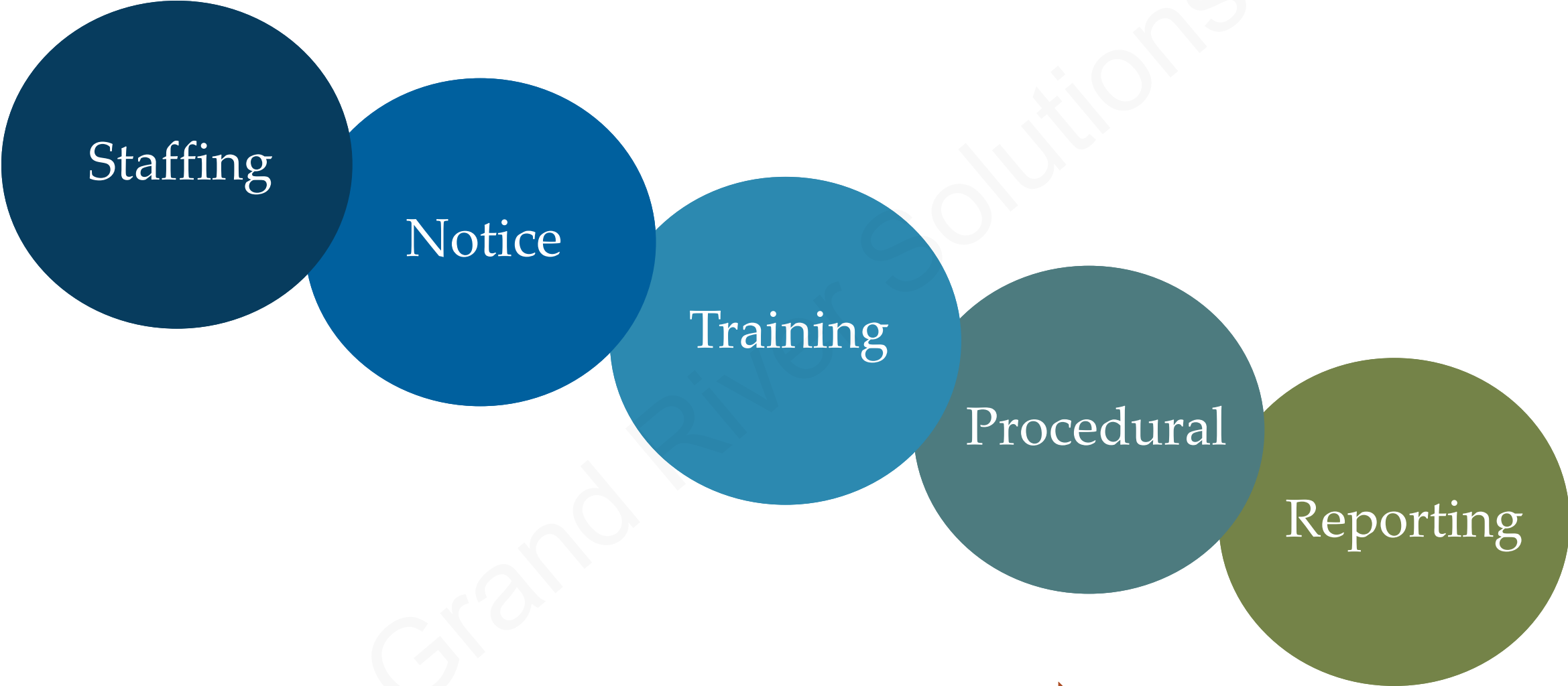
Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;

Maintain records response to sexual harassment in accordance with 160.45 (10)

Provide supportive measures in accordance with the requirements of section 160.30

Comply with 160.71 prohibition against retaliation

# Categories of Compliance Requirements



# DEVELOPING A STRATEGY FOR COMPLIANCE

1

Identify Compliance Obligations

2

How you will prove that you are compliant

3

Record Keeping



# IMPLEMENTING THE STRATEGY FOR COMPLIANCE

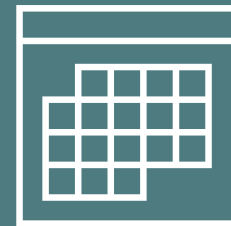
Partnerships



Record Keeping Databases



Calendar



# TRAINING & EDUCATION

Educating ourselves and our communities in a post-regulatory world



04

# SOURCES OF TRAINING REQUIREMENTS



Title IX Final Regulations



Violence Against Women Act



State Law



Resolution Agreements

# TRAINING AND EDUCATION: TWO AREAS OF FOCUS

01



Institutional Response to Sex Discrimination

02



Prevention Education

# INSTITUTIONAL RESPONSE TRAINING

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





**A REALLY  
IMPORTANT MOMENT.  
LISTEN UP.  
IT'S OKAY...**



To not know the answer to every question thrown your way



To say, "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

# WHO MUST RECEIVE TRAINING?

## Title IX Staff\*

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

## Faculty

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

## Students

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

## Staff

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

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

# COMMUNITY PARTNERS?

Boards of Trustees

Law Enforcement

Advocacy Groups

Health Care Providers

Attorneys

Media

# TRAINING FOR TITLE IX STAFF



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

How to conduct the grievance process

How to serve impartially

The technology to be used at a live hearing

Issues of relevance of questions and evidence

Rape shield protections; and,

Issues of relevance in creating an investigative report.



# RESPONSIBLE EMPLOYEES



# SPECIAL CONSIDERATIONS FOR TRAINING & EDUCATION IN THE POST REGULATORY LANDSCAPE

Explaining the narrowed scope of Title IX

Explaining the institutional decision for two processes/procedures

Responsible Employee challenges

Burden of proof challenges

Length of Training

Time for questions/community processing

# PREVENTION EDUCATION: TITLE IX REGULATIONS

"The Department understands commenters' beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication, . . . . And while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information."

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

# PREVENTION EDUCATION: VIOLENCE AGAINST WOMEN ACT (VAWA)

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

Ongoing prevention and awareness campaigns.



# ELEMENTS OF ANNUAL TRAINING STRATEGY

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



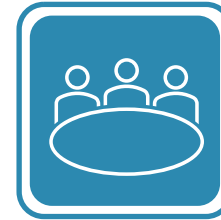
# ONGOING ASSESSMENT OF TRAININGS



Pre and Post  
Surveys



Observation



Opportunities for  
Feedback and  
Suggestions



Engage and Listen



# COMMUNICATE TRAINING SUCCESSSES



Annual Report



On Your Website



When training



In conversations



# FROM ONE TITLE IX COORDINATOR TO ANOTHER:

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Navigating Beyond Compliance  
in a Post Regulatory World  
*Day 2*

Emma Hempel  
November 2023

# DAY 2 AGENDA

01

## **Receipt of Reports**

*Actual Knowledge, Report Response, Initial Assessments, & Supportive Measures*

02

## **Complainant Intake & Supportive Measures**

03

## **Report Resolution**

*Remedies Based, Informal, or Formal*

# RECEIPT OF REPORTS

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

01

# INFRASTRUCTURE FOR REPORTING





# REGULATORY REQUIREMENTS

Notice to College/University

Outreach/Response from Title IX Coordinator

Support Measures, whether or not Formal  
Complaint is filed

How to File

Options

# RECEIVING REPORTS AND INITIATING THE RESPONSE



1. Review the report



2. Determine the appropriate initial response



3. Promptly initiate that response



4. Document/record the receipt of the report and the response thereto

# INITIAL OUTREACH

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



# SCENARIO: EMERGENCY REMOVAL OF STUDENT

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



## THE TITLE IX OFFICE RECEIVES THE FOLLOWING ANONYMOUS REPORT VIA YOUR INSTITUTION'S ONLINE REPORTING FORM:

“Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley’s partner are friend and so the RA doesn’t do anything about it. It’s getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley’s partner too.”

## THE TITLE IX OFFICE IS CONTACTED BY A PROFESSOR WHO FORWARDS THE FOLLOWING EMAIL FROM A STUDENT TO YOU:

“I really don't want to bother you but I'm in a really hard situation.

I and my boyfriend had a row for these days. And he beated me yesterday and this morning that I attached some pictures before XXXX final starts this afternoon because I found out I couldn't hold pencil because of trembling and I couldn't even think in the first thirty minutes. These pictures shows my arms after he twisting them, which doesn't look violent but feel hurt. One hour before lab final started, I told him I'm going to call police after he beated me, then he dragged me from bed to the floor and threatened to kill me if I call police. It was horrible and hard to reminisce. I knew he tends to use violence before and I forgave him some times when he just pinched my chin and dragged my arm. But this time it is too bad. So he took my phone away and restrain me in my room, not letting me go because I told him I would tell my TA about this whole thing after the final. So he just let me go to final after I promised I won't tell school and police.

When I go to two finals today (XXXX and XXXX, especially the latter), I really couldn't think and even hold pen (and I grabbed my bag but almost nothing in it) for the first thirty minutes. Now everything is done, he promised not to show up in my life nor my room, which is good because I don't want to take penalty on anyone. But I couldn't predict what my final shows out. It won't match my work for the whole semester. I don't expect any makeup chance. I just want to let you know since I barely know any American women here, am I doing wrong? Is there anything I can do to fix anything from academics or life? Sorry for bothering. ”



## THE TITLE IX OFFICE RECEIVES THE FOLLOWING EMAIL FROM A RESPONSIBLE EMPLOYEE:

“My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don’t want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?”

# COMPLAINANT INTAKE & SUPPORTIVE MEASURES



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# INITIAL MEETING WITH THE COMPLAINANT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



# SUPPORTIVE MEASURES

Non-Disciplinary

May not  
unreasonably  
burden the other  
party

Designed to restore  
or preserve equal  
access

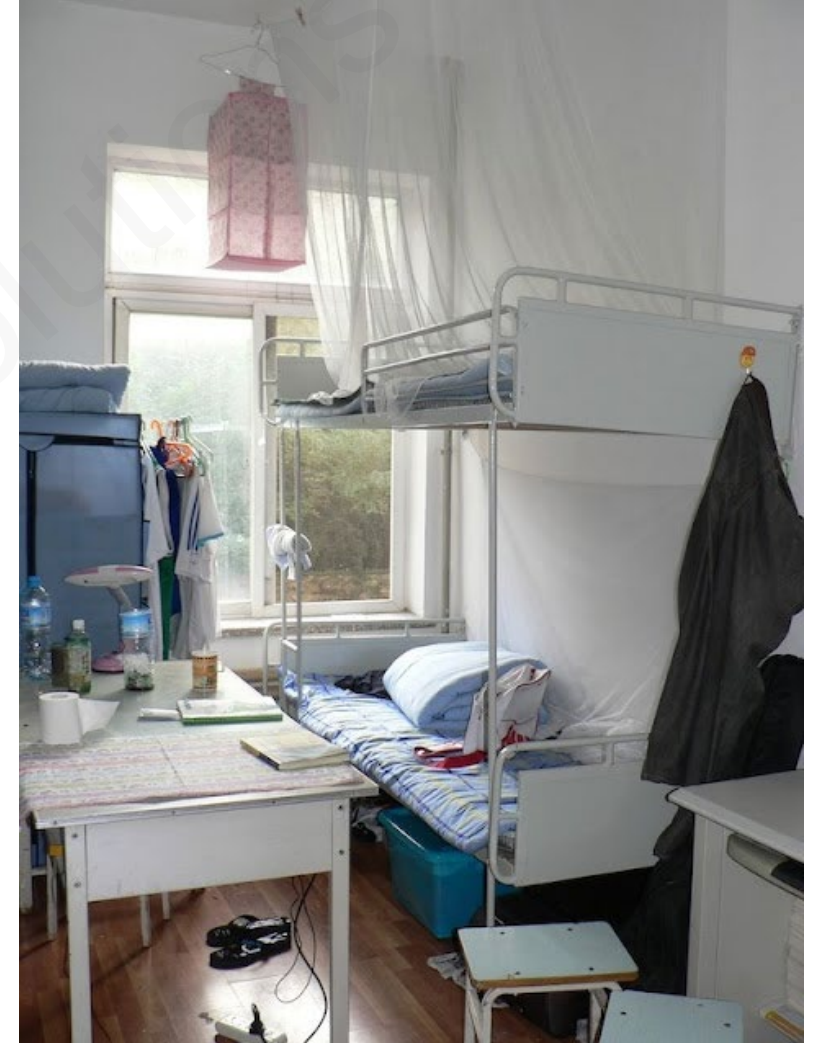
Non-punitive

As appropriate and  
reasonably  
available

Confidential

# EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



**“MUTUAL  
RESTRICTIONS  
ON CONTACT  
BETWEEN THE  
PARTIES”**





# POST MEETING TASKS

Document the meeting

Send a summary email  
with resources, options,  
next steps

Follow up

Make connections

Provide the supportive  
measures

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

# REPORT RESOLUTION

Remedies Based, Informal, or Formal

03

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# HOW TO PROCEED?

## Remedies- Based

No formal  
process



## Alternative/ Informal

Signed  
agreement;  
Voluntary;  
What records?



## Formal/ Investigation/ Hearing

All  
requirements of  
106.45



# REMEDIES-BASED RESOLUTION

3(a)

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# REMEDIES BASED RESOLUTIONS

- Supportive Measures
- Educational Conversations
- Targeted Education



# FORMAL COMPLAINT & NOTICE REQUIREMENTS

03(b)

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# FORMAL COMPLAINT FILED

**By Complainant**

**By the Title IX  
Coordinator**

# FACTORS TO CONSIDER WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT



Allegations of  
Violence



Threats

Use of  
Weapons



Serial  
predation



# A FORMAL COMPLAINT MUST INCLUDE

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

An allegation of Prohibited Conduct as defined under this Policy. This may include: Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

# DISMISSING COMPLAINTS

## Mandatory

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

## Discretionary

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

**CAN PROCEED  
UNDER OTHER  
POLICY**



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# NOTICE OF ALLEGATION REQUIREMENTS (1)

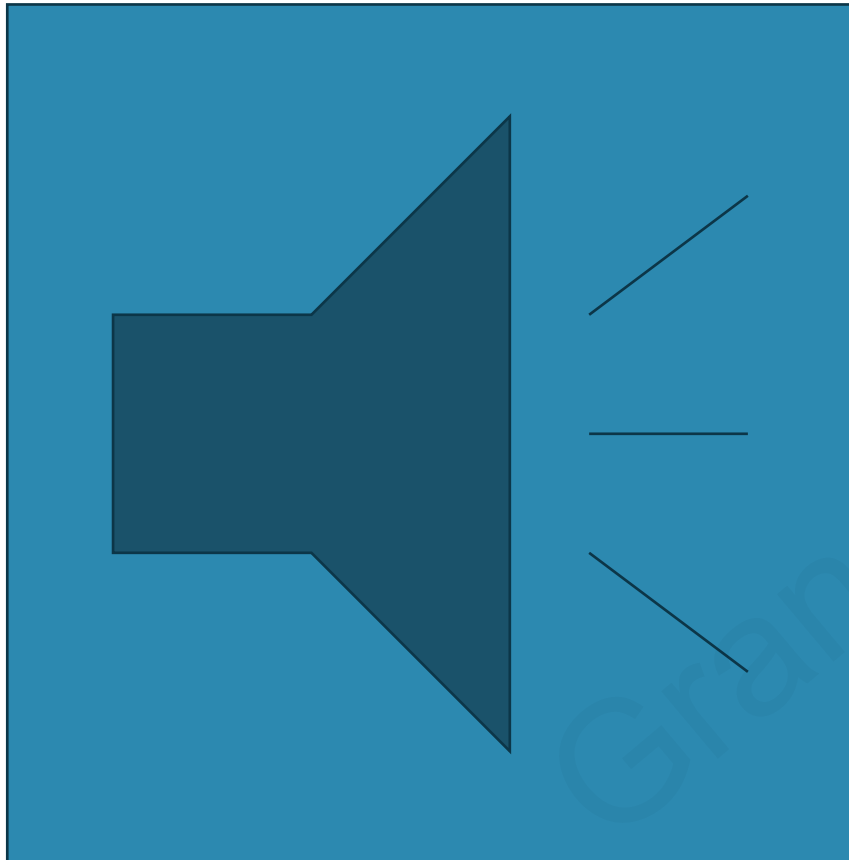
- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - the identities of the parties involved in the incident, if known,
  - the conduct allegedly constituting sexual harassment under § 106.30,
  - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.



# NOTICE OF ALLEGATION REQUIREMENTS (2)

- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

# NOTIFYING THE RESPONDENT



FIRST- SAFETY

Make sure Support Available

Written Notification Meetings and Sufficient Time to Prepare

Don't Send on a Friday

Don't send at 5pm

How will you notify?

Consider impact of notification on Respondent

# ADVISOR OF CHOICE

The advisor can be anyone, including an attorney

Institutions cannot place restrictions on who can serve

No training required

Institution must provide advisor for the purposes of cross examination, only.

# INITIAL MEETING WITH RESPONDENT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that were provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



# POST MEETING TASKS

Document the meeting

Send a summary email with resources, options, next steps

Follow up

Make connections

Provide the supportive measures

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

# FORMAL COMPLAINT RESOLUTION

## Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

## Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45



# INFORMAL RESOLUTION

03(c)

Grand River



# INFORMAL RESOLUTION REQUIREMENTS

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained



# INFORMAL RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- 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, however, 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 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;







# FACILITATORS OF INFORMAL RESOLUTION AS WITNESSES



**INFORMAL RESOLUTION IS  
PROHIBITED TO RESOLVE  
ALLEGATIONS THAT AN  
EMPLOYEE SEXUALLY HARASSED  
A STUDENT.**



# FORMAL RESOLUTION

03(d)

Grand River





# PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

# TITLE IX COORDINATOR'S ROLE

## In the Investigation

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



# PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

# TITLE IX COORDINATOR'S ROLE

## In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed

## **FINAL RULE § 106.45(B)(8)**

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”

# TITLE IX COORDINATOR'S ROLE

## In the Appeal



- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed





Putting it all together

# COMPLIMENTARY SUBSCRIPTION

A top-down photograph of a desk. On the desk is a blue notebook with a white pen resting on it. To the right of the notebook is a pair of brown-rimmed glasses, a white cup of coffee on a saucer, and a clear glass of water. The background is a light-colored surface.

 **THE RIVER**  
CONNECT

A place to

*communicate*  
*share*  
*educate*  
*learn*

for HIGHER EDUCATION  
PROFESSIONALS working in  
**Title IX, Equity & Clery**

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