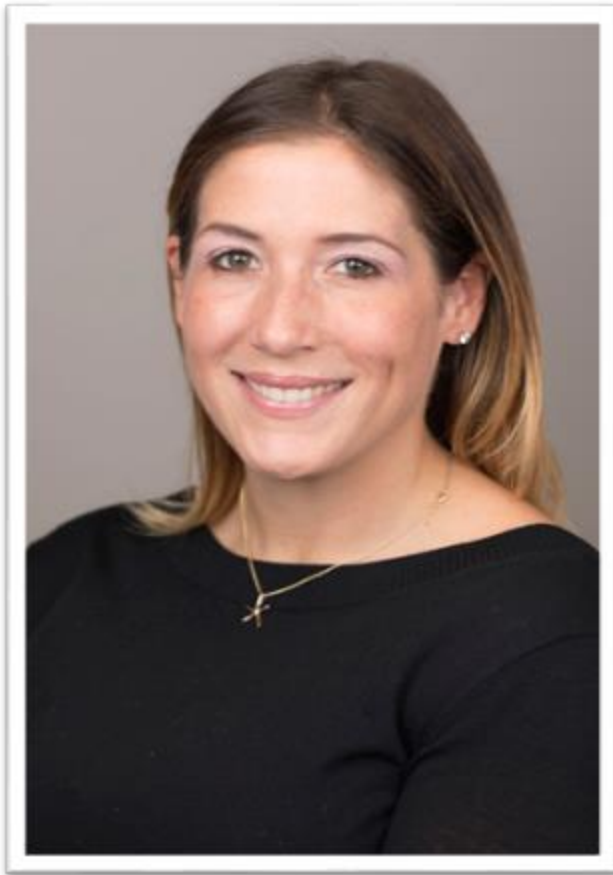


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# From One Title IX Coordinator to Another: A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Chantelle Cleary, JD  
Senior Consultant

## Meet Your Facilitators



**Chantelle Cleary, J.D.**  
Senior Consultant

Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 10 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.



# About Us

Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have decades of direct, on-campus experience at both small and large, public and private institutions. This practical expertise derived from years of hands-on experience enables our team to offer customized solutions unique to your educational institution's needs. Grand River has a suite of creative, cost-effective and compliant solutions to help schools meet their needs in innovative ways.



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

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# Day 1 Agenda

01

## The Ever-Evolving Jurisprudence of Title IX

"If nothing else, Title IX Coordinators are experts at adapting."

02

## Building a Foundation for Success

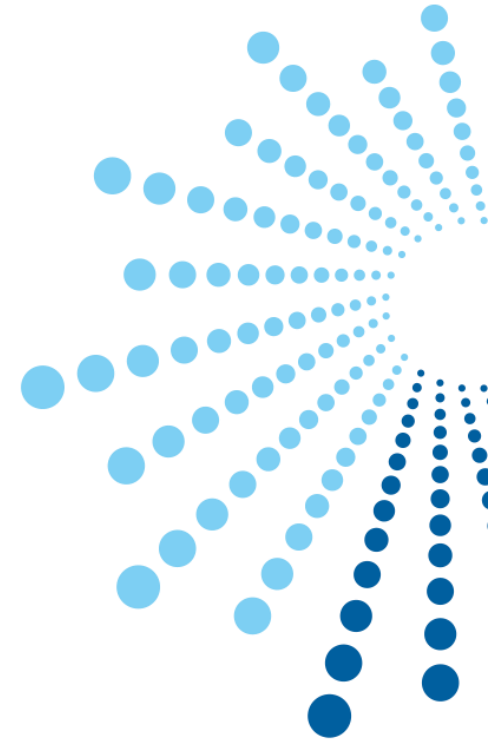
03

## Compliance

04

## Training & Education

Educating ourselves and our communities in a post regulatory world





# The Ever-Evolving Jurisprudence of Title IX

“If nothing else, Title IX Coordinators are experts at adapting”

01

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# 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



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# 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

- **Off campus conduct, even if it has an impact on the educational program or activity;**  
**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

Accepted/Hired

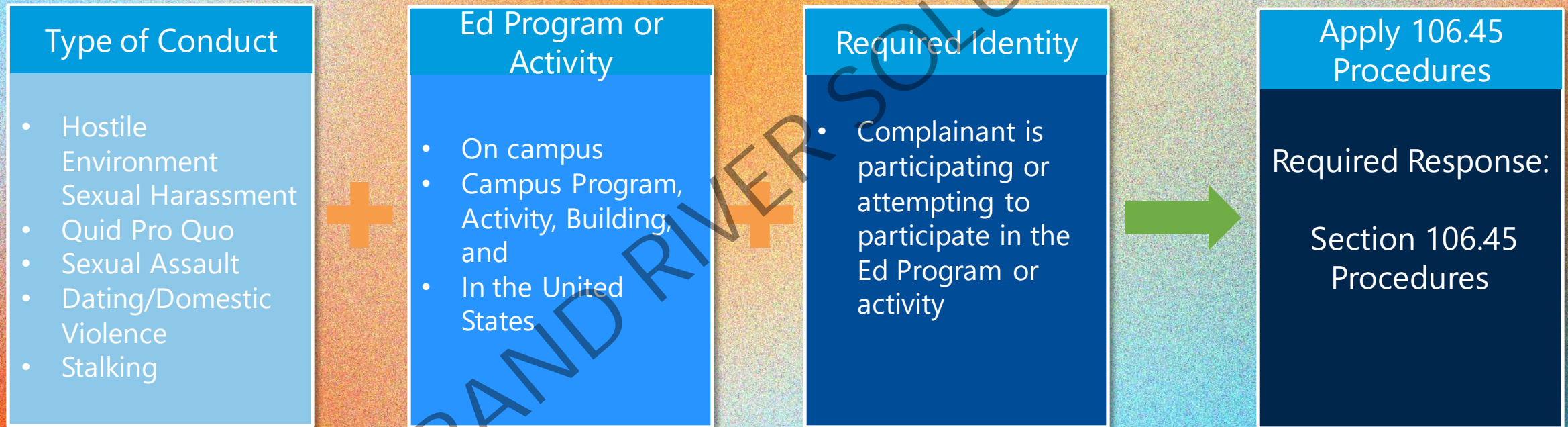
Enrolled/Employed



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# Title IX Application Post May 2020 Regulations





# Conduct Falling Outside the Scope of Title IX

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



# Actual Notice

## A Narrowed Scope of Institutional Responsibility

Institution **must** respond when it has:

**“Actual knowledge”**

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

**of “sexual harassment” (as newly defined)**

**that occurred within the school’s “education program or activity”**

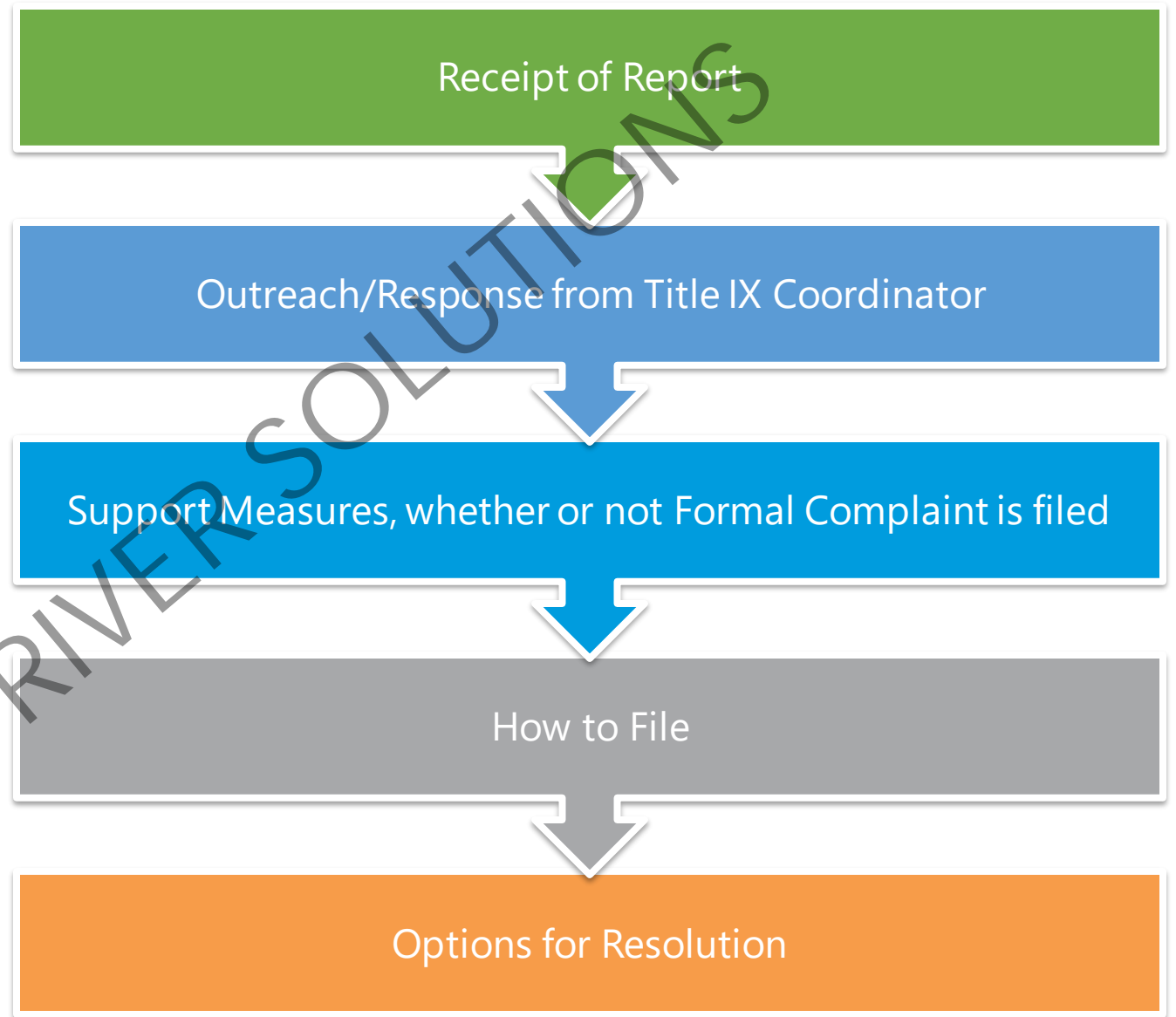
“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

**against a “person in the United States” (so, not in study abroad context)**



# Initial Response Requirements



# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

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

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

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

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

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

Exclusion of Evidence if no cross examination

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 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 section 160.45 are not required





# 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)**

[I]nstitutions 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.

”

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# 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

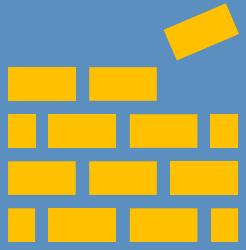
Dissemination  
of policy

Separation of  
Responsibilities

Training

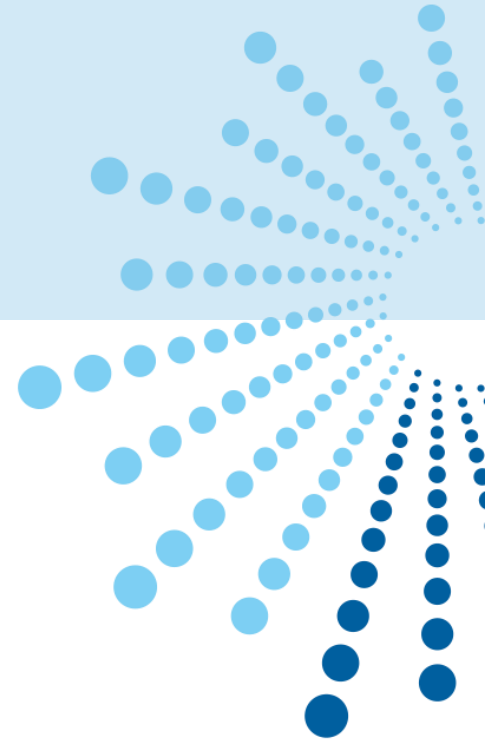
Impartiality

Record  
Keeping



# Building a Foundation of Success

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02

# 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 Coordinators

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

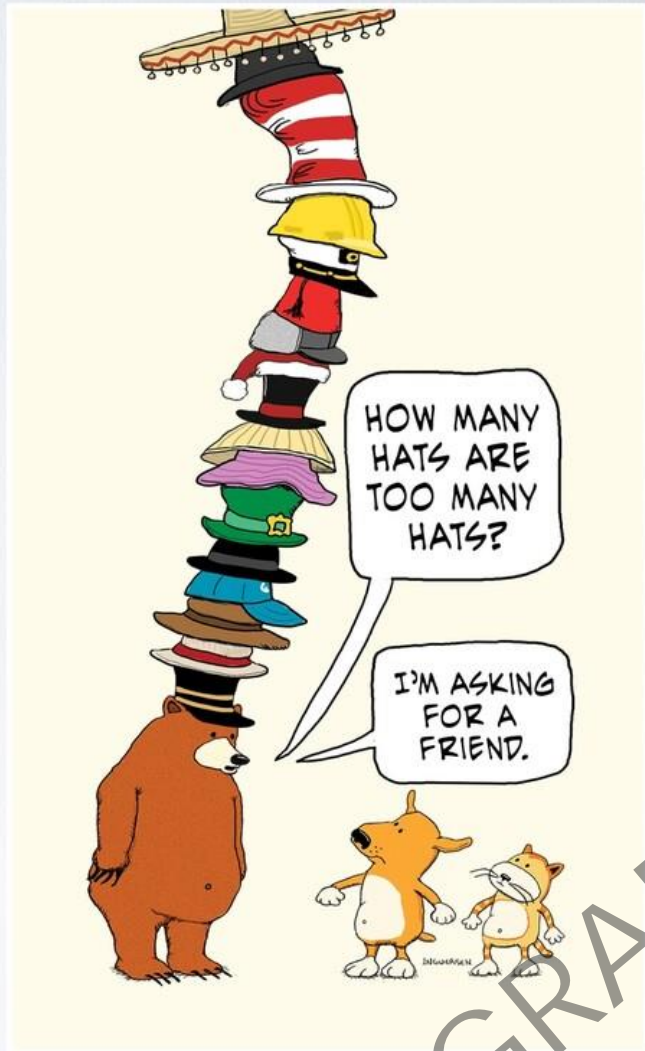
Response

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**





# Strategic

---

- 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

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# Adhere

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



# Consistency



**Creation of Forms  
& Templates**



**Development of Annual  
Plans for Compliance**



**Development of Annual  
Plans for Training**



**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

---



# Impartiality

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudice 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

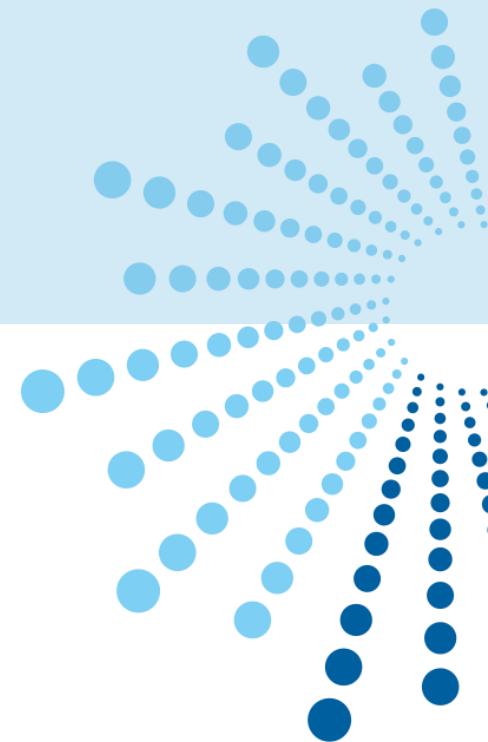
## Bottom line

- 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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03



# Sources of Compliance Obligations

Title IX Final  
Regulations

Violence  
Against  
Women Act

Other,  
Intersecting  
Federal Laws

State Law

Legal  
Precedent

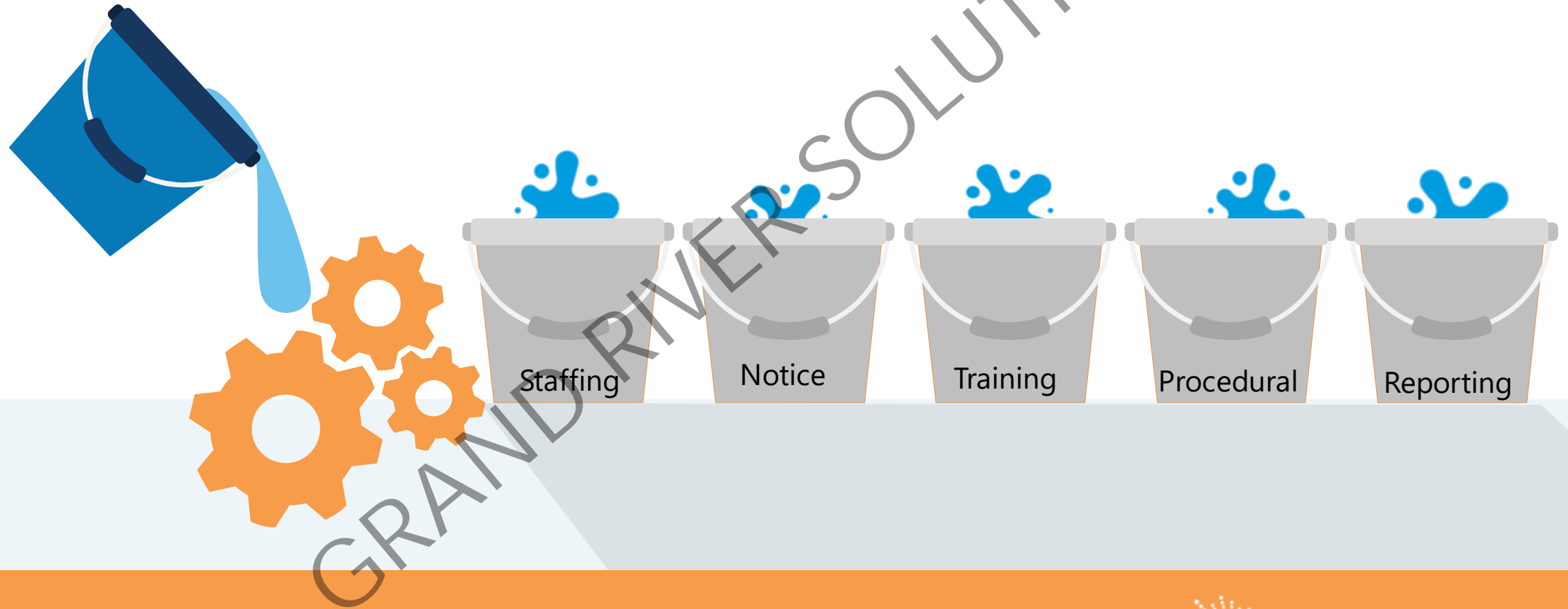
Institutional  
Policies

Resolution  
Agreements

# Title IX Compliance Obligations

|             |   |
|-------------|---|
| Designate   | Designate a Title IX Coordinator  |
| Disseminate | Disseminate Policy <ul style="list-style-type: none"><li>•Notification</li><li>•Publications</li></ul>  |
| Respond     | Promptly respond to instances of sex discrimination in a manner that is not deliberately indifferent.   |
| Respond     | Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent; |
| Provide     | Provide supportive measures in accordance with the requirements of section 160.30   |
| Utilize     | For reports of sexual harassment utilize grievance procedures that comply with section 160.45   |
| Require     | Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).   |
| Maintain    | Maintain records response to sexual harassment in accordance with 160.45 (10)   |
| Comply      | Comply with 160.71 prohibition against retaliation  |

# Categories of Compliance Requirements



# Developing a Strategy for Compliance

---



IDENTIFY COMPLIANCE  
OBLIGATIONS



HOW WILL YOU PROVE  
THAT YOU ARE COMPLIANT



RECORD KEEPING



# Implementing the Strategy for Compliance



Partnerships



Record Keeping Databases



Calendar



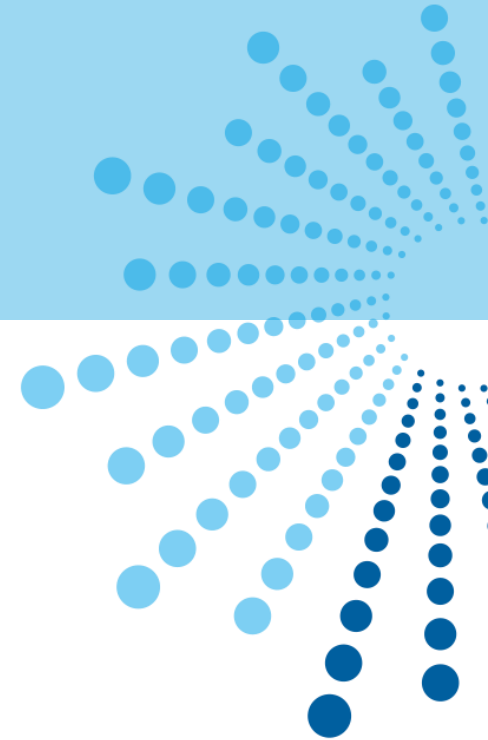


# Training & Education

Educating ourselves and our communities in a post regulatory world

04

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# Sources of Training Requirements



Title IX Final  
Regulations

**VAWA**

Violence  
Against  
Women Act



State Law



Resolution  
Agreements



# Training and Education

## Two Areas of Focus

---

1

Institutional Response  
to Sex Discrimination

2

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



## Title IX Staff

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



## Students

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



# Who Must Receive Training?

## Faculty

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



## Staff

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



# Community Partners?

Boards of  
Trustees

Law  
Enforcement

Advocacy  
Groups

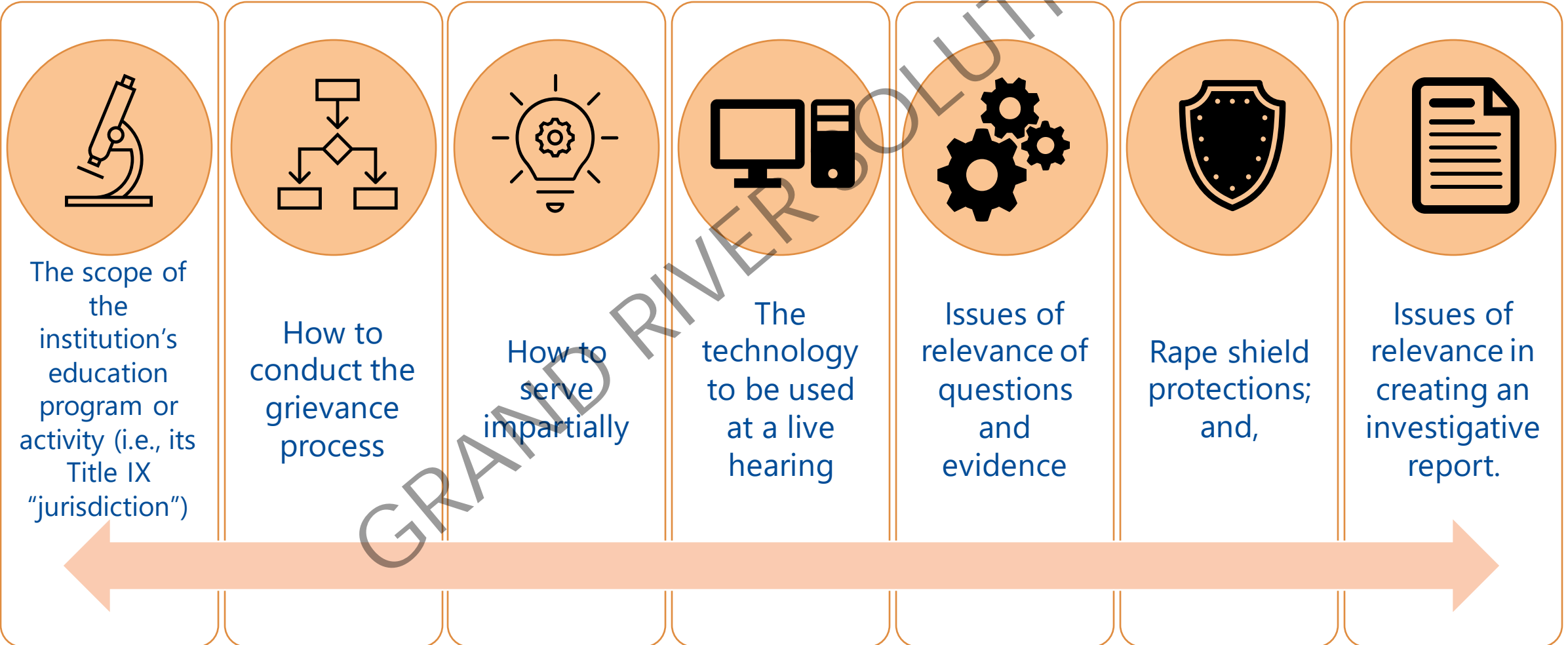
Health Care  
Providers

Attorneys

Media



# Training for Title IX Staff



# Responsible Employees



# Responsible Employee Training: Additional Areas of Focus

---

Take time to explain the reason for and importance of Responsible Employee reporting

---

Provide advice on how to receive a report

---

Provide suggestions on how to share their obligation to report with the reporting individual

---

Instruct on their options for reporting to the Title IX Coordinator

---

Fully explain what happens after they report a disclosure

---





# 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, . . . [A]nd 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 &  
SUGGESTIONS



ENGAGE AND  
LISTEN





# Communicate Training Successes

---



**Annual Report**



**On your  
website**



**When training**



**In conversations**

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# See you tomorrow!



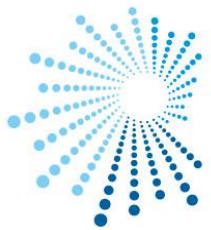
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[info@grandriversolutions.com](mailto:info@grandriversolutions.com)





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# From One Title IX Coordinator to Another: A Practical Approach to Navigating Beyond Compliance in a Post Regulatory World

Day 2

Chantelle Cleary, JD  
Senior Consultant

# Day 2 Agenda

01

## Receipt of Reports

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

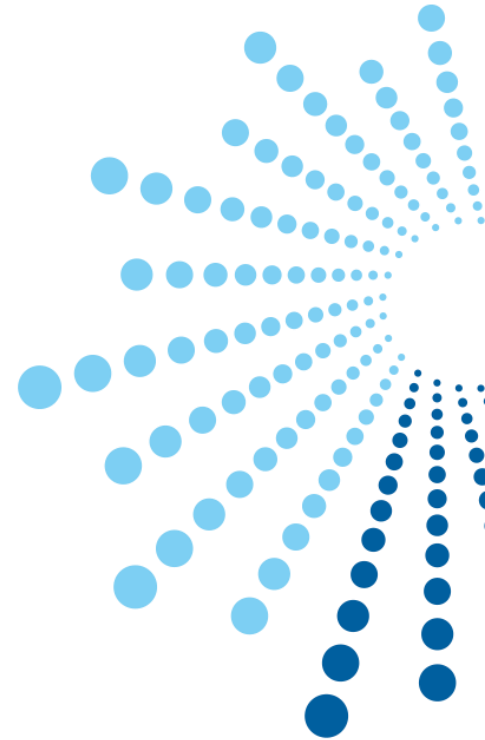
02

## 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

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# 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



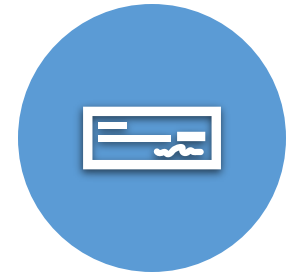
1. REVIEW THE  
REPORT



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

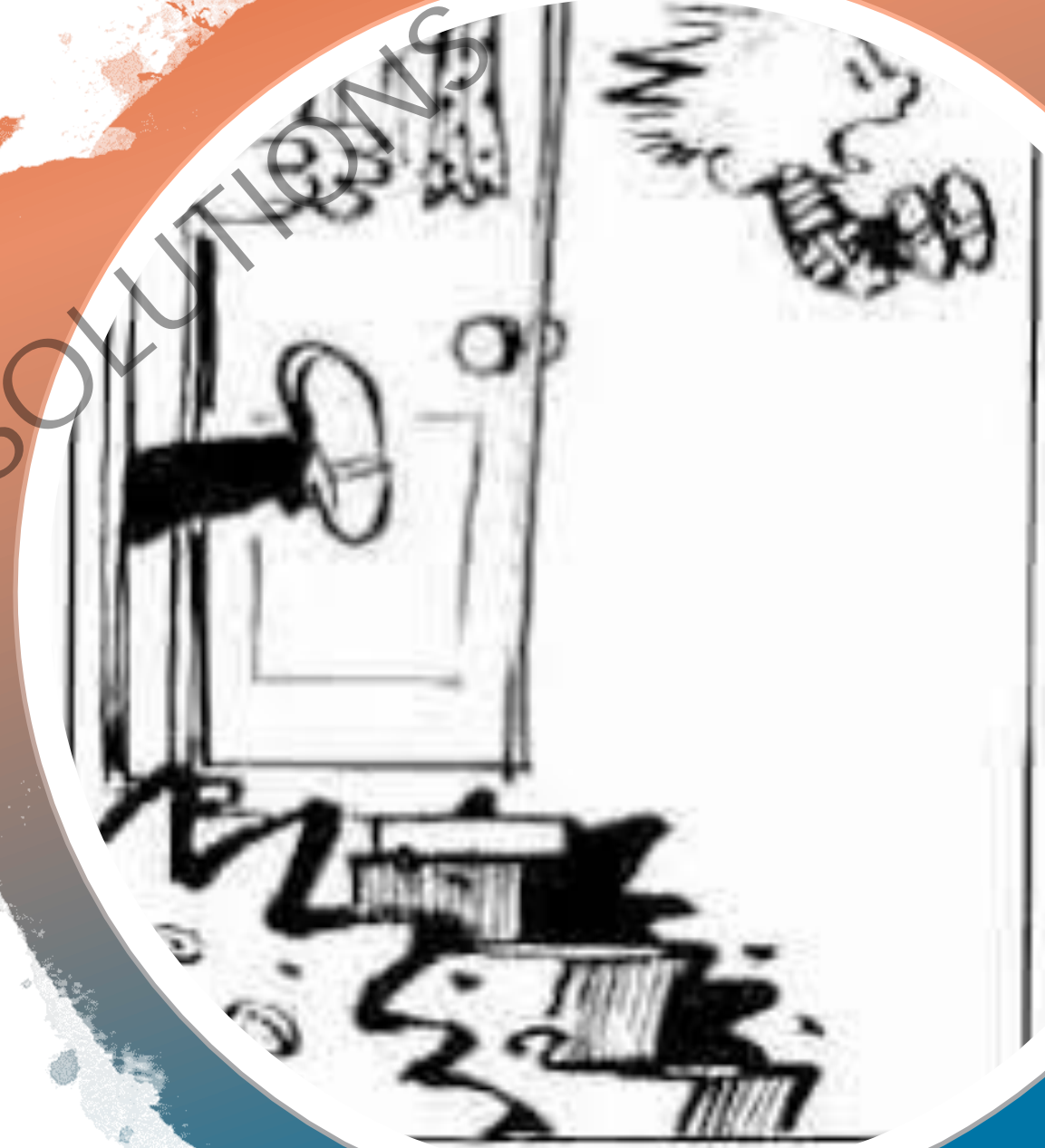
### Follow up emails

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# 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 contact 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 grabbe d 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?

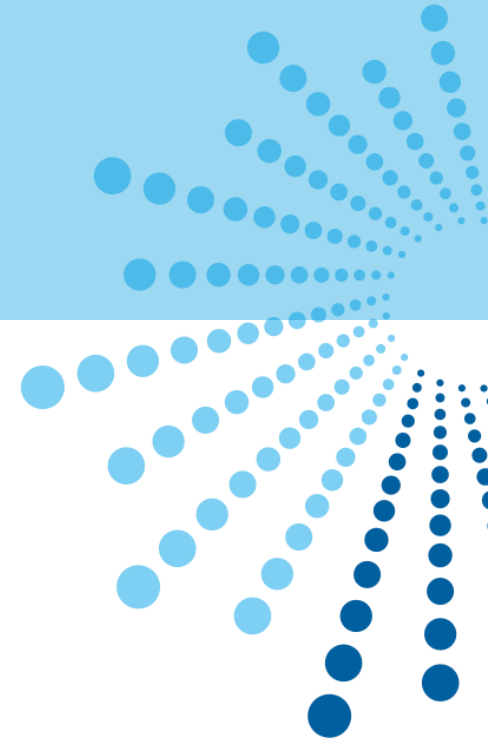
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# Complainant Intake and Supportive Measures

02

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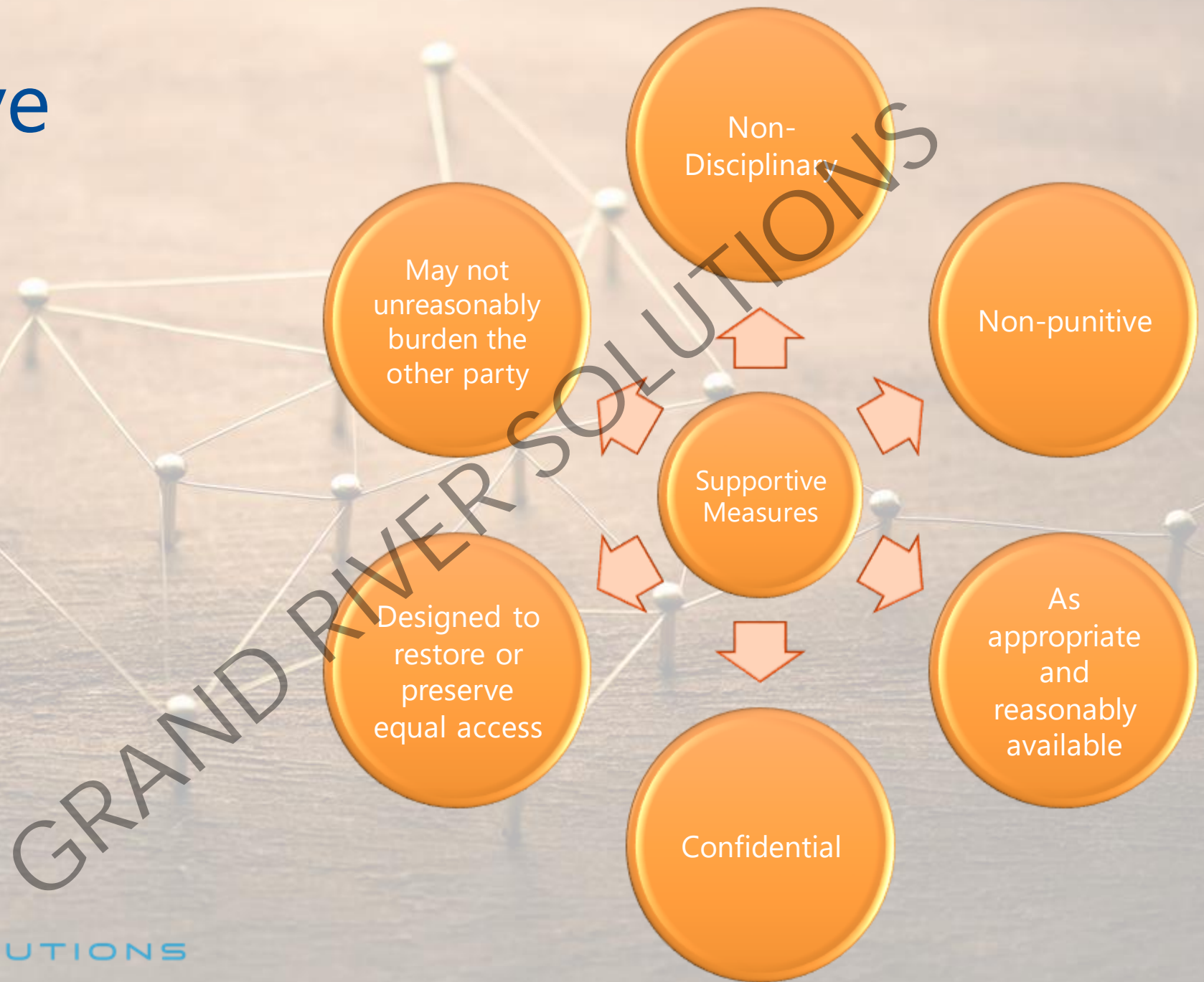
# Initial Meeting with the Complainant

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- 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



# Examples of Supportive Measures

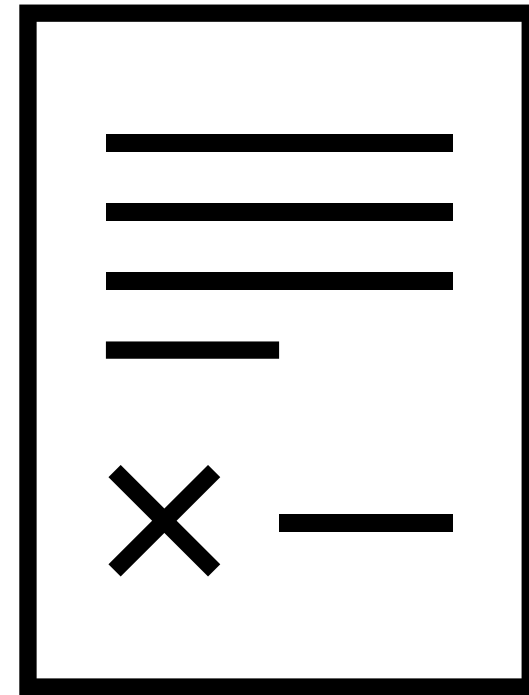
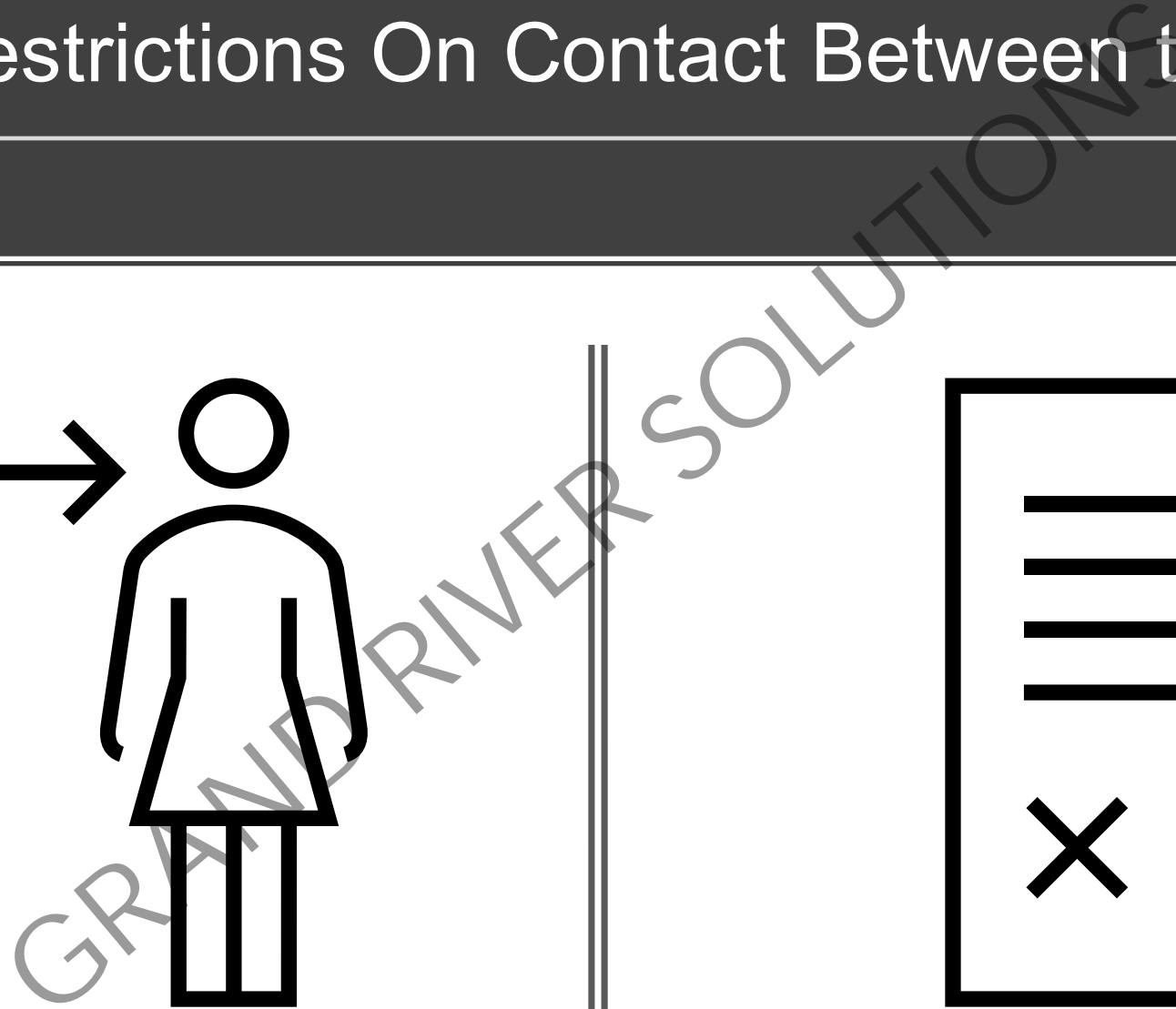
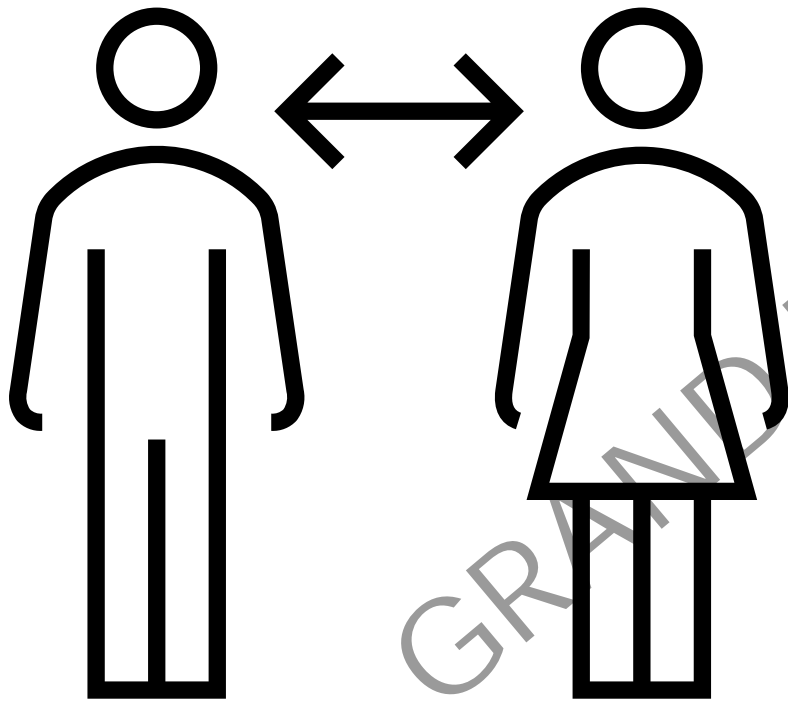
- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes 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”

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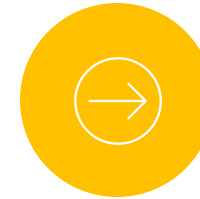
# Post Meeting Tasks



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

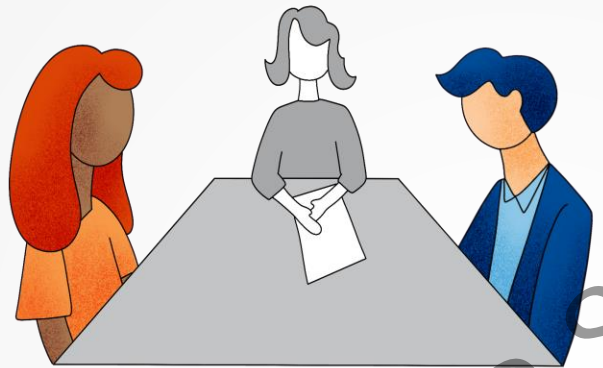
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GRAND RIVER SOLUTIONS

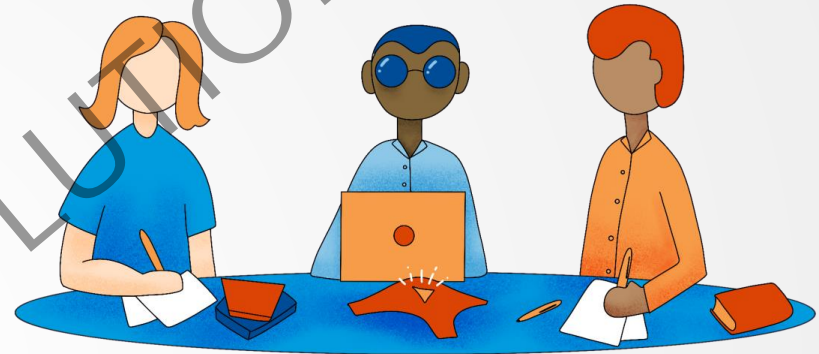
# How to Proceed?



**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

3(b)

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# Formal Compliant Filed

By complainant

By the Title IX  
Coordinator

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# Factors to Consider When Determining Whether to File a Formal Complaint

Allegations  
of Violence

Threats

Use of  
weapons

Serial  
predation



# Formal Complaint

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.

*Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.*

# Dismissing Complaints

## MANDATORY

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

## DISCRETIONARY

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



# Can Proceed Under Other Policy





# Notifying the Respondent



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FIRST-SAFETY

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Make sure support available

Written Notification Meetings and Sufficient Time to Prepare

# Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - the identities of the parties involved in the incident, if known,
  - the conduct allegedly constituting sexual harassment under § 106.30,
  - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

# Advisor of Choice

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The advisor can be anyone, including an attorney;

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Institutions cannot place restrictions on who can serve

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No training required

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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 provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



# Post Meeting Tasks

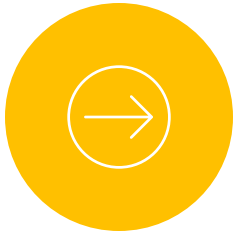
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Document the meeting



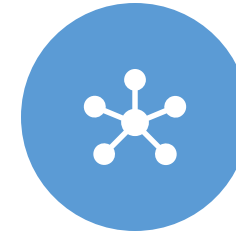
Send a summary email with resources, options, next steps



Follow up



Provide the supportive measures



Make connections

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# 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

3(c)

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# 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;

The background of the slide is a warm, orange-toned photograph of several people sitting around a table in a meeting. They appear to be engaged in a discussion, with some looking at documents. A large, semi-transparent white circle is centered over the image. Inside this circle, the text 'Facilitators of Informal Resolution as Witnesses' is written in a dark, sans-serif font. A diagonal watermark reading 'GRAND RIVER SOLUTIONS' is visible across the circle and the background.

Facilitators of  
Informal Resolution  
as Witnesses

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**Informal  
Resolution is  
prohibited to  
resolve allegations  
that an employee  
sexually harassed  
a student.**

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STIS



# Formal Resolution

3(d)

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# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

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

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

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





## **Title IX Coordinator's Role**

### **In the Investigation**

---

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



# Procedural Requirements for Hearings

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

Exclusion of Evidence if no cross examination

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)**

[I]nstitutions 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.

”

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# 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...

OLD RIVER SOLUTIONS

# Panel of Experts

Moderated by Chantelle

**Mary Simeoli**



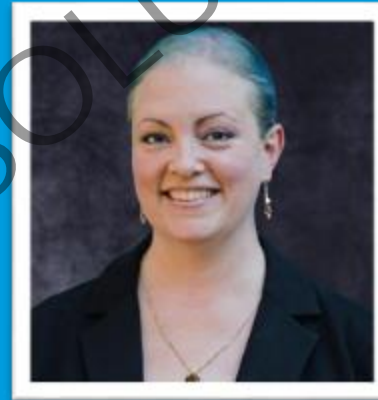
Title IX Coordinator &  
Interim Director of  
Equal Opportunity  
Union College

**Kareem Peat**



Title IX Coordinator  
Fordham University

**Darci Heroy**



Director of Strategic  
Partnerships & Sr.  
Consultant  
Grand River Solutions

**Kelly Gallagher**



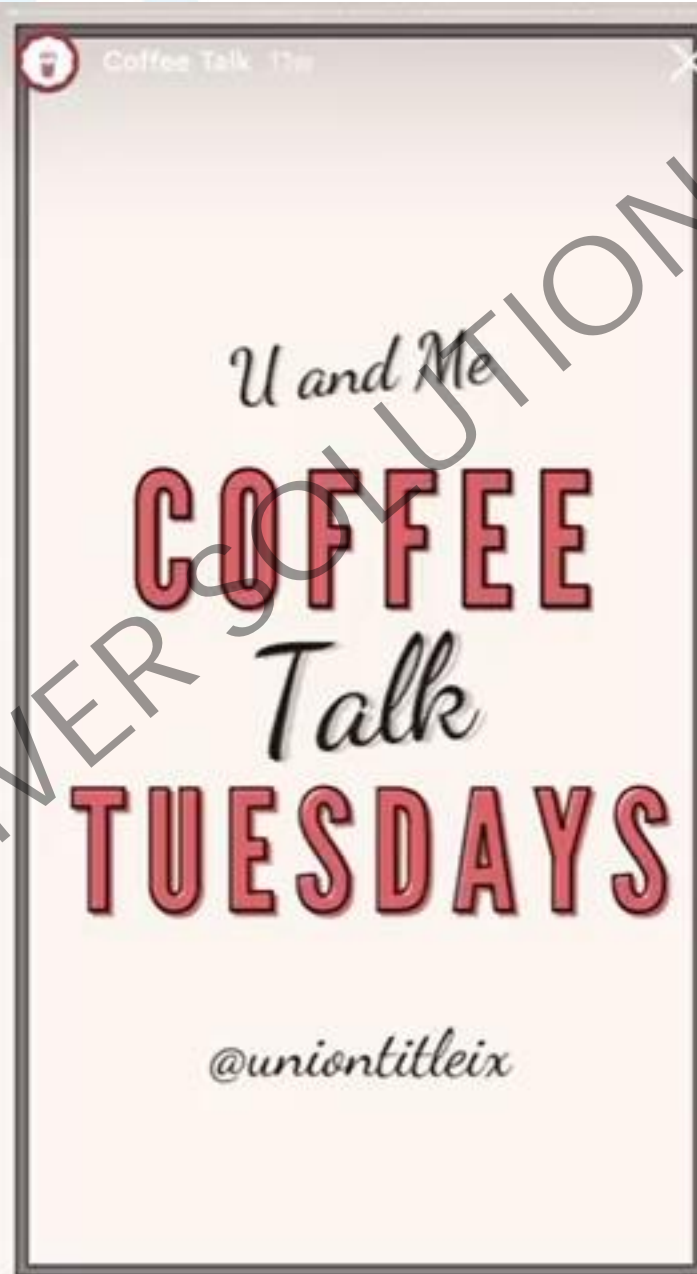
Senior Consultant  
Grand River Solutions

Mary Simeoli



Title IX Coordinator &  
Interim Director of  
Equal Opportunity

Union College



@UnionTitleIX



# Questions?

For More Information:

[info@grandriversolutions.com](mailto:info@grandriversolutions.com)

 @GrandRiverSols

  Grand River Solutions



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