


Leading and Strategizing as a New Title IX Coordinator Bootcamp

Establishing Yourself as the New Title IX Coordinator
Session One – Wednesday, January 26, 2022

■ Housekeeping Items

- For an optimal experience, please close all unnecessary applications and windows.
- Please remain muted unless you are talking.
- Questions and comments are encouraged – please use your mic where possible.
- We encourage you to be on camera during the bootcamp, but it's not required.
- The "Chat Box" is visible to all.
- If you cannot see the chat box, exit out of "Full Screen Mode" and choose either "Gallery" or "Speaker" mode.
- Breakouts are not recorded.
- Please update your name and pronouns (if desired) by selecting to view the "Participant" list. Hover over your name and select "Rename" to update.



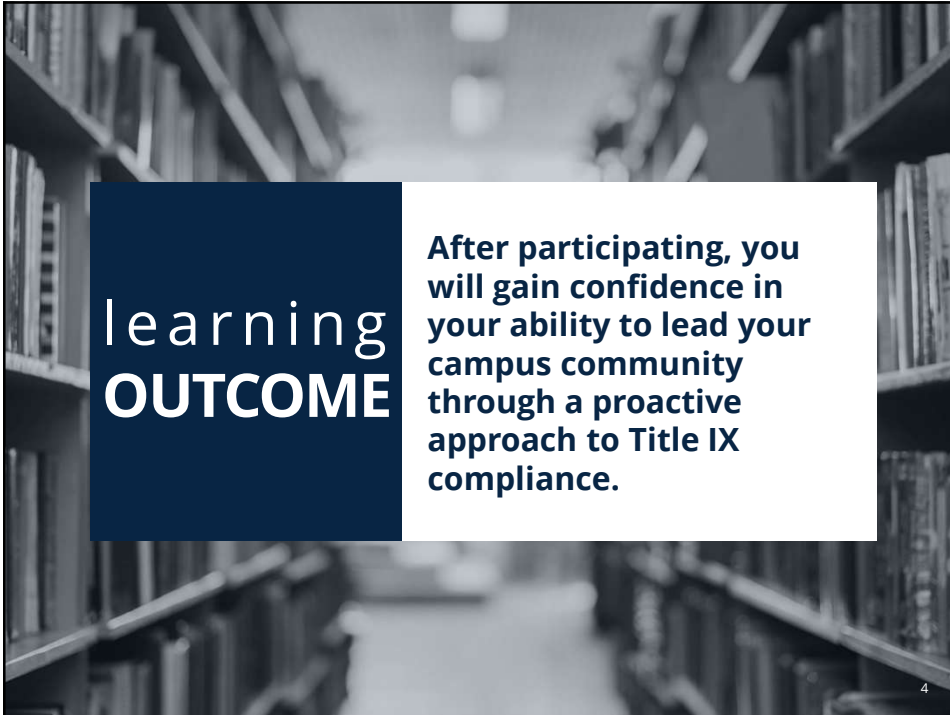
AGENDA

7 Meeting Dates
Time: Noon - 2pm EST

1. January 26th
2. February 2nd
3. February 9th
4. February 23rd
5. March 9th
6. March 16th
7. March 23rd

***please let Rabia know in advance if you must miss a session.**

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learning OUTCOME

After participating, you will gain confidence in your ability to lead your campus community through a proactive approach to Title IX compliance.

4

Meet Your Instructor Team



Rabia Khan Harvey, M.Ed., MSHR
Senior Learning & Development Manager
Academic Impressions
Rabia@academicimpressions.com



Jeanine Bias, MPA, CDT, CDP
Director, Office of Institutional Diversity and Inclusion/Title IX
Coordinator
Sam Houston State University
jbias@shsu.edu



Cara Hardin, J.D.
Title IX Deputy Coordinator
Marquette University
cara.hardin@marquette.edu

Now, let's meet you!

- Name
- Title
- Institution
- Fun Fact about You



Scope

The Title IX Coordinator is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate.

[April 24, 2015 Dear Colleague Letter issued by the Office for Civil Rights](#)

TITLE IX

Final Regs Give Title IX Coordinators Many "Hats" to Wear

- I. Notification Obligations
- II. Establishing the Title IX "Team"
- III. Training
- IV. Policy Development and Implementation
- V. Response to Reports
- VI. Accepts, Files, Consolidates, Dismisses Formal Complaints
- VII. Oversees Grievance Process
- VIII. Implements Sanctions/Remedies
- IX. Record Keeper



#1

Title IX Coordinator's Top IX Duties Under 2020 Final Regulations

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I. Notification Obligations (§106.8)

Current and potential members of campus community are entitled to the notification of:

- Designation and contact info of Title IX Coordinator.
- Notification of policy against sex-based discrimination.
- Where to report sexual harassment/discrimination.
- How the institution will respond to a report.
- Direct any questions regarding Title IX to Title IX Coordinator and/or OCR Asst. Secretary.
- Grievance procedures and grievance process

■ II. Establishing the Title IX "Team"

- Title IX Coordinator
- Investigators
- Decision-makers (hearing process and appeals)
- Informal resolution facilitators
- *Officials with Authority to institute corrective measures on behalf of the institution*
- Other: Intake specialist, hearing coordinator, victim/respondent advocates, etc.

■ III. Training (§106.45(b)(10)(D))

- Must ensure Title IX personnel are appropriately trained.
- Must publish materials from all Title IX-related training completed by Title IX personnel.

■ IV. Policy Development and Implementation §106.8(b)(2)(c)

- Scope of the policy (i.e., jurisdictional reach and actual knowledge)
- Contact info for Title IX Coordinator and personnel
- Definition of Offenses and Terminology
- Institutional response to allegations of sexual harassment
 - Reporting options, supportive measures, emergency removals, party rights, time frames, how to file a formal complaint, presumption of non-responsibility, etc.

- Description of grievance process for sexual harassment/grievance procedures for sex discrimination and retaliation.
- Standard of proof
- Possible or range of disciplinary sanctions/remedies
- False statements and submission of false information
- Record keeping

Implementation = Procedures

- Party "notice" procedures
- Investigative process procedures
- Hearing process rules and procedures
- Appeal process procedures

RESOURCES

OCR Sexual Harassment Definition

- **OCR Blog Entry 20201007:**
<https://www2.ed.gov/about/offices/list/ocr/blog/20201007.html>
- **Q&A on the Title IX Regulations (July 2021)**
<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

■ V. Response to Reports (§106.30(a))

Must respond to sexual harassment allegations when have notice and jurisdiction (“actual knowledge”)

- Response must be equitable to both parties:
 - Complainants: Inform complainants of the availability of supportive measures and the process for filing a formal complaint. § 106.44(a), (b).
 - Respondent: Follow 106.45 grievance process before imposition of disciplinary sanctions and provide supportive measures if they have knowledge of report.
- Determine whether emergency action is necessary.

Emergency Removals (§106.44(c))

- Issued when the Title IX Coordinator determines that emergency action against a respondent is necessary.
 - Emergency Removal (student respondent)
 - Administrative leave (employee respondent)
- An emergency removal can occur before the filing of a formal complaint or at any time during the grievance process.

Emergency Removals - Procedures

- **Step 1:** *Risk assessment:* For an emergency removal to occur, there must be an individualized safety and risk analysis assessment to determine whether there is an immediate threat to the physical health or safety of anyone within the community.
- **Step 2:** *Notice to the Respondent.* Prior to the emergency removal or as soon thereafter as reasonably possible, the Title IX Coordinator will provide to the respondent written notice of the emergency removal.
- **Step 3:** *Challenging an Emergency Removal.* Students must have an opportunity to challenge an emergency removal.

TAKEAWAYS

Establish a behavioral intervention-type team for emergency removals.

Possible team members:

- Title IX Coordinator
- Mental health/behavioral specialist
- Public safety/commissioned police representative
- Student affairs
- Etc.

■ VI. Accepts, Files, Consolidates, Dismisses Formal Complaints

A formal complaint is a document filed by a...

- Complainant, or
- Signed by the Title IX Coordinator

...that alleges that a respondent engaged in sexual harassment and requests that the institution investigate the allegation(s). (106.30(a)).

***A complainant who files must be participating in or attempting to participate in an education program or activity at the time the complainant files a formal complaint*

Title IX Coordinator Formal Complaint

Before a Title IX Coordinator signs a formal complaint:

- Title IX Coordinator should honor the complainant's wishes on whether to file a formal complaint, when possible.
- File a formal complaint when not "clearly unreasonable" despite complainant's wishes.

**No requirement that complainant is participating or attempting to participate in education program or activity.*

Consolidation of Formal Complaints (§106.45(b)(4))

Consolidation of formal complaints may occur when the formal complaint is:

- Against more than one respondent,
- By more than one complainant against one or more respondents, or
- By one party against the other party,
- Where the allegations of sexual harassment arise out of the same facts or circumstances.

Formal Complaint Dismissals

Jurisdictional Gatekeeper:

- Mandatory causes for dismissal (§106.45(b)(3)(i))
- Discretionary causes for dismissal (§106.45(b)(3)(ii))

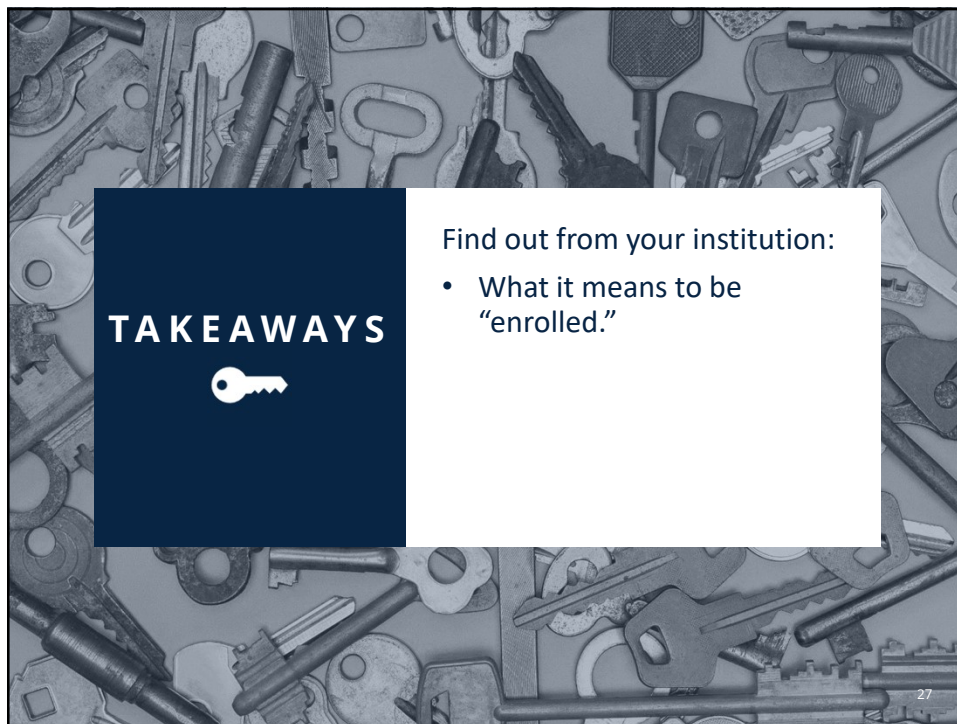
***All dismissals are subject to appeal.*

Mandatory Causes for Dismissal

- The allegations, if proven true, do not meet definition of sexual harassment.
- The misconduct occurred outside the university's programs or activities or outside the United States.
- The complainant is not participating or attempting to participate in the school's education program or activity at the time the formal complaint is filed. §106.30

Discretionary Causes for Dismissal

- A complainant requests dismissal at any time during the grievance process.
- When respondent no longer enrolled.
- If evidence can't be obtained to determine responsibility.




TAKEAWAYS

Find out from your institution:

- What it means to be “enrolled.”

VII. Oversees Grievance Process

- Ensure parties are treated equitably. §106.8
- Ensure an equitable process:
 - Investigative Process
 - Hearing Process
 - Appeal Process
 - Informal Resolution Process

 **ACADEMIC IMPRESSIONS**

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Fundamentals of Title IX



Equity



Impartiality



Fairness



Transparency



Confidentiality/Privacy

GROUP DISCUSSION

How does your institution employ the fundamentals of Title IX?

- Equity
- Impartiality
- Fairness
- Transparency
- Confidentiality

■ VIII. Implements Sanctions/Remedies

Following a responsibility finding after a formal complaint's resolution, the Title IX Coordinator is responsible for the effective implementation of:

- Disciplinary sanctions
- Remedies

■ IX. Record Keeper §106.45(b)(10)

Seven-year recording keeping requirement.

- Documents relating to sexual harassment investigations
- Determinations of responsibility
- Audio or audiovisual recordings or transcripts from grievance process.
- Disciplinary sanctions/remedies
- Appeal and decision on appeal
- Any informal resolution and result thereof
- Supportive measures (or why not delivered)
- Materials used to train Title IX personnel.

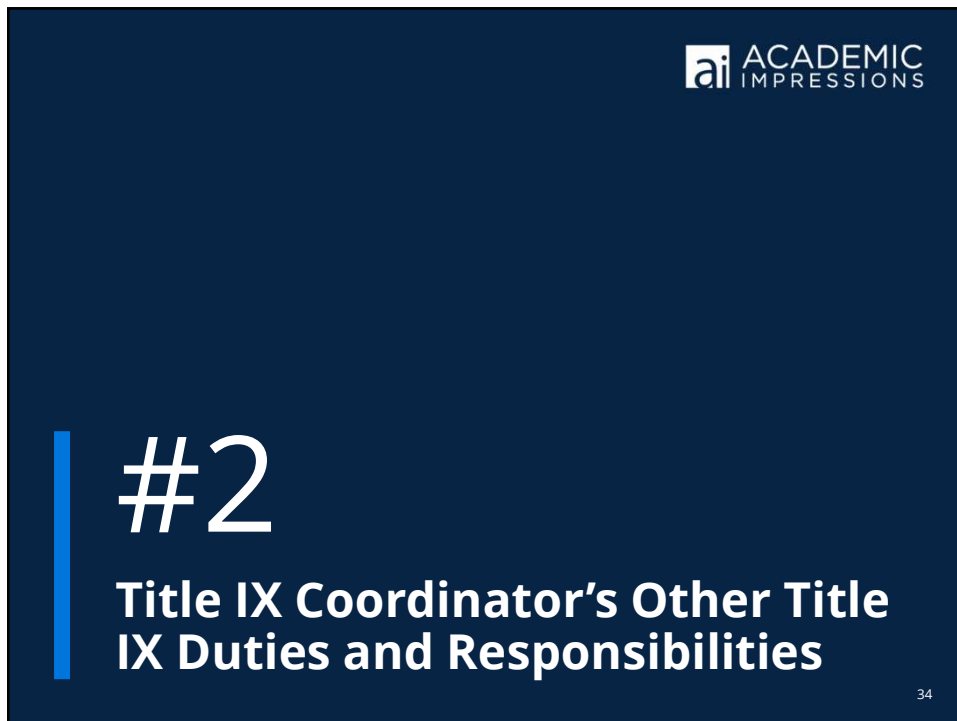


GROUP DISCUSSION

What questions do you have about the content discussed in Part 1?

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This slide features a dark blue background with a pattern of overlapping, light blue rectangular shapes. A white rectangular box is centered on the slide, containing the text 'What questions do you have about the content discussed in Part 1?'. To the left of this box is a dark blue vertical bar with the text 'GROUP DISCUSSION' and a white icon of two overlapping speech bubbles.



ACADEMIC IMPRESSIONS

#2

Title IX Coordinator's Other Title IX Duties and Responsibilities

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This slide has a dark blue background. In the top right corner, the 'ACADEMIC IMPRESSIONS' logo is displayed in white. On the left side, a vertical blue bar is positioned next to a large white '#2'. Below the '#2', the text 'Title IX Coordinator's Other Title IX Duties and Responsibilities' is written in white.

Title IX Coordinator Duties Outside the Final Regulations §106.8

Sex Discrimination

- Program equity, including athletics
- Recruitment, Admissions, & Access
- Pregnant & Parenting
- Employment, Recruitment, & Hiring
- Extra-Curricular Activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding
- Sex, Sexual Orientation, & Gender Identity
- Female-only programs

Retaliation

Title IX Coordinator Duties Outside the Final Regulations (con't)

VAWA mandates (will talk about next week)

State mandates

Campus climate

Campus & Community Liaison

■ Additional Title IX Coordinator Duties and Responsibilities Cont.

- Case Management
- Collaborator
- Relationship Builder
- Navigating Competing or Supplemental Policies
- Internal & External Communications
- Subject Matter Expert

■ Case Management Basics

- Receipt of Report
- Report Assessment
 - Safety Concerns
 - Other Reporting Obligations
- Communicating with Complainant
 - Rights, Policy, Resources
 - Intake
 - Follow Up
- Supportive Measures Offered/Provided

Case Management Basics

- Resolution/ Investigation
- Communicating with Respondent/ Other Parties
- Case Oversight
 - Jurisdiction Determination
 - Timeline
 - Advisors
 - Investigative Report Review
 - Facilitate Hearing Process
- Case Completion

POLL



What case management software is your institution using to maintain its Title IX-related records?



■ Advice for success as a Title IX Coordinator

- Ask more questions than you have answers to
- Seek continuous knowledge & information
- Get to know the campus and vice versa
- Expect the unexpected
- Transparency
- Branding
- Self-care is critical
- Establish partnerships

■ Establish Relationships with Critical Campus Partners

Who?

- President/ Senior Leadership
- Community Leaders
- Student Leaders
- Law Enforcement
- Clergy Officials
- Legal Counsel
- Others

What?

- Resources
- Collaborations
- Transparency

How?

- Face to Face Meetings
- Joint Initiatives
- Social Media

CHAT

What communication strategies have worked effectively for you when establishing relationships with critical campus partners and stakeholders who can support your job functions?

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TAKE A DEEP BREATH!



- You are not alone
- Ask for help
- Ask for resources
- Know the regs
- Know your policy
- Know your campus
- Establish a consistent process
- Proactive vs. Reactive

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GROUP DISCUSSION

What barriers currently exist in your role?

How is your campus handling Title IX Sexual Harassment vs. Non - Title IX Sexual Harassment complaints?

What campus policies exist for sexual misconduct, sex discrimination, other discriminations?

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QUESTIONS?

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TAKEAWAYS




Next Bootcamp Meeting:
Wednesday, February 2nd
at 12:00 – 2:00p.m. EST

Remember to bookmark
the course site to review
the syllabus and
upcoming assignments.

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**Leading and Strategizing as a New
Title IX Coordinator Bootcamp**

**Foundational Federal Legal Requirements
Session Two – Wednesday, February 2, 2022**

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Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available during this training are for training and general informational purposes only.

CHAT



Refresh & Reset

Please use your “raise hand” emoji to be called upon, if you’re able and interested or use the Chat to respond:

What is one valuable lesson that most resonated with you from last week’s session or what is one thing you’re hoping to learn today?

TAKE A DEEP BREATH!



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- Know your policy
- Know your campus
- Establish a consistent process
- Proactive vs. Reactive

#1

Title IX and the VAWA Amendments to the Clery Act

Title IX

“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.”

— Title IX, Education Amendments of 1972

Sexual Harassment
 Quid Pro Quo
 Hostile Environment
 Sexual Assault
 Dating Violence
 Domestic Violence
 Stalking

Sex Discrimination

Retaliation

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The Clery Act



Stephanie Esposito
 REGISTERED ON A UNIVERSITY CAMPUS April 1999

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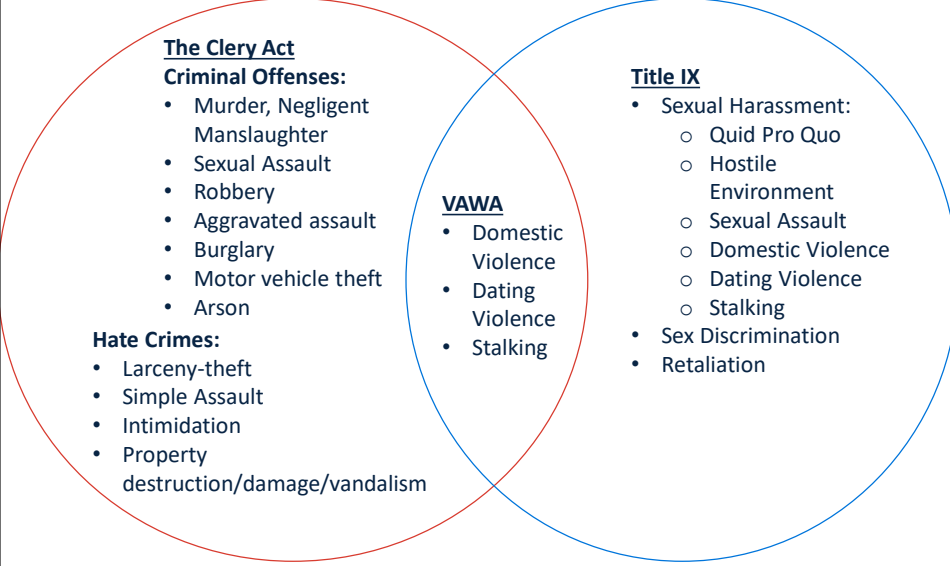
CLERY ACT & CRIME REPORTING

Requires higher education institutions to:

- Maintain and disclose crime statistics on and near campus
- Provide support to victims of campus crime.
Issue timely warnings that pose a serious or ongoing threat to students/employees.
- Adhere to VAWA standards in disciplinary proceedings for sexual assault domestic/dating violence, and stalking cases.
- Offer sexual violence primary prevention and awareness programs to students/employees

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Intersection of Offenses



The Clery Act Criminal Offenses:

- Murder, Negligent Manslaughter
- Sexual Assault
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson

Hate Crimes:

- Larceny-theft
- Simple Assault
- Intimidation
- Property destruction/damage/vandalism

VAWA

- Domestic Violence
- Dating Violence
- Stalking

Title IX

- Sexual Harassment:
 - Quid Pro Quo
 - Hostile Environment
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking
- Sex Discrimination
- Retaliation

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■ Similar Disciplinary Proceeding Requirements

34 CFR 106.45
34 CFR 668.46(k)

- Anticipated and reasonable timelines
- Decision-making process
- How to file a complaint
- Standard of evidence
- List of possible sanctions
- Describes range of protective [supportive] measures for complainants (even if don't file complaint)
- Prompt, fair, and impartial process by trained individuals
- Confidentiality
- Advisors can accompany party (role can be restricted)
- Parties entitled to info to be considered during disciplinary proceeding
- Timely notice of meetings
- Simultaneous notification to both Parties of result of disciplinary proceeding and opportunity to appeal
- When result becomes final
- No retaliation

■ Comparable Record Keeping Requirement

An institution must maintain:

- Title IX reports and related records for 7 years.
- Complete and publish data about reported crimes on and adjacent to campus over a 3-year period.

■ Analogous Outreach Responsibilities

Following reported alleged offense:

- Title IX: The Title IX Coordinator must promptly contact the complainant. §106.44(a)
- VAWA: Requires the institution to furnish specific information to all victims of sexual assault, dating/domestic violence, and stalking. VAWA § 304

■ Distinctions

Jurisdiction

- **Title IX**: Institution has control over the respondent and the context of the alleged sexual harassment (i.e., alleged misconduct occurred within an education program or activity)
- **Clery Act**: Campus and all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus (“Clery Geography”).

■ Training Programs

- **Title IX:**
 - Required training for personnel with specific duties related to Title IX.
- **Clery Act:**
 - Primary prevention and awareness training for all incoming students and new employees.
 - Ongoing prevention and awareness campaigns for students and employees.

QUESTIONS?

#2

The Title IX Coordinator's Role Specific to the Clery Act

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■ Clery Act: Campus Security Authority 34 CFR § 668.46(a)

Individual at the institution who, because of their function for the institution, have an obligation under the Clery Act to notify the institution of alleged Clery Act Crimes that are reported to them.

■ CSAs generally include:

1. A member of a campus police/security department.
2. Individuals having responsibility for campus security in some capacity but are not members of a campus police/security department.
3. People or offices that are not members of a campus police/security department, but where policy directs individuals to report criminal offenses to them or their office.
4. Officials having significant responsibility for student and campus activities, including but not limited to, student housing, student discipline and campus judicial proceedings.

 The background of the slide is a light gray color with a pattern of faint, overlapping question marks. A dark blue rectangular box is centered on the slide, containing the word "QUESTIONS?" in white, bold, uppercase letters.

QUESTIONS?

#3

Developing a Relationship with the Clery Officer

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CHAT



What department within the institution houses Clery compliance?

What is your current relationship with your institution's Clery Officer?

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■ Getting to Know Your Clery Officer

- Who?
 - Law Enforcement
 - Compliance
 - Other
- Frequency of meetings
- Timeline of Reporting
- Support
- CSA Training

■ Reporting Information to Your Clery Officer

- Policy Changes
- CSA Reporting
- Monthly Reporting
 - CSA Reports Submitted
 - Program Reporting
- Contributions to Annual Report



#4

Best Practices for Training & Programming

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CHAT



What are the current programs and training listed in your 2021 Annual Security Report?

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■ Training & Programming under Title IX, VAWA, and other training mandates



- Compliance Requirements
- Training Plan
- Program Plan
- Ongoing Awareness Campaign

■ Who needs training under Title IX, VAWA, and other training mandates?

- Training for Title IX Coordinators, Deputy Coordinators, Investigators, Decision Makers, Informal Resolution Facilitators, and Appellate Authority
- Training for Responsible Employees
- NCAA Sexual Violence Prevention Training for Athletics
- Primary Prevention Training
- Ongoing prevention programming
- State Law requirements?
- Other considerations?



■ Training Your Title IX Team

- Auditing your team's knowledge and skill level
- Identifying training gaps
- Internal training resources
- External training resources
- Cross training your team
- Your role as facilitator
- Self-guided resources and training



■ Critical Training Topics for Your Title IX Team

- Sexual Harassment Definitions
- Scope of education programs and activities
- Grievance Process
- Bias and impartiality
- Stereotypes
- Conflicts of Interest
- Relevance
- Credibility
- Technology



■ VAWA Requirements

Each institution must develop and implement a comprehensive prevention and outreach program on sexual misconduct including but not limited, to sexual harassment, sexual assault, dating violence, and stalking. The comprehensive prevention and outreach program must address a range of strategies to prevent sexual misconduct, including sexual harassment, sexual assault, dating violence, and stalking. The program should include a public awareness campaign, primary prevention, bystander intervention, and risk reduction strategies.

-Violence Against Women's Act



CHAT

Who is responsible for primary and ongoing prevention training/education on your campus?

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Primary Prevention Training

| | |
|--|--|
| <p>Delivery</p> <ul style="list-style-type: none"> - Online - In-person - Alternatives | <p>Audience</p> <p>Incoming students</p> <ul style="list-style-type: none"> - Freshmen - Transfer - Graduate students <p>Employees</p> |
| <p>Content</p> <ul style="list-style-type: none"> - Length - Definitions - Policy - Resources | <p>Completion Requirement</p> <ul style="list-style-type: none"> - Deadline - Penalty |

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Ongoing Prevention Programming Considerations

| | |
|--|---|
| <p>Delivery</p> <p>Who? When? How? Frequency?</p> | <p>Collaborations</p> <p>Victim Advocacy Centers Health Center Counseling Center Academic Departments</p> |
| <p>Special Populations</p> <p>Greek Life Residence Life Athletics Others?</p> | <p>Topics</p> <p>Consent Bystander Intervention Victim Empowerment Risk Reduction Measures Others?</p> |

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■ Title IX & NCAA Compliance

- Partnership with Athletics
- Timeframe
- Content



■ PROGRAM PLANNING ACTION PLAN

- Create Comprehensive Program Goals
- Content Development
- Delivery
- Campus-Wide Programming vs. Custom Programming
- Budget





CHAT

What are your most successful training programs to date?

What are your programming challenges or limitations?

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#5

Integration into Current Policies

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ACTIVITY

Using your completed policy checklist, we will break up into small groups and discuss the following questions:

1. What gaps did you identify in your policy? What topics or provisions are missing?
2. What additional provisions exist in your policy that are not on this checklist?
3. How do you integrate your policies into campus culture? Share best practices.

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QUESTIONS?

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TAKEAWAYS



Next Bootcamp Meeting:
 Wednesday, February 9th
 at 12:00 – 2:00p.m. EST

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Leading and Strategizing as a New Title IX Coordinator Bootcamp

Sexual Harassment Grievance Process – Part I: Intake to the Formal Complaint and the Informal Resolution Process

Session Three – Wednesday, February 9, 2022

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CHAT



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#1


Navigating the Intake Process

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ACTIVITY



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CHAT

Where do we start?


Things to do when you receive a report...

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What is a report?

- Definition
- Notice
- Report vs. Complaint

NOTICE



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■ First 5 Things...

1. Read the report (read it again)
2. Determine potential gaps (what's missing)
3. Determine all potential allegations
4. Determine potential jurisdiction analysis
5. Create/document report information

Report Assessment

Safety Concerns

- Threat to campus
- Individual safety

Reporting Obligations

- Clery
- State Law
- University Officials

Report Review

- Reporter Information
- Pattern

Additional Information

- Follow Up
- Other reporters?

Communicating with Parties

Initial Contact with Complainant

- Methods of Outreach

Communication Protocol

- Purpose of communication
- Rights
- Resources
- Policy
- Request to meet

Complainant response

- Positive response
- Negative response
- No response



Communicating with the Parties

Pre - Meeting

- Location and set up
- Technology

Initial Meeting

- Introduction
- Rapport Building
- Address Immediate Needs
 - Safety
 - Support/ Referrals
 - Academics
- Intake Checklist
- Gather additional information (if appropriate)

Post - Meeting





ACTIVITY



Role Play

Jayden arrives to the Title IX Office for an Initial Intake Meeting.

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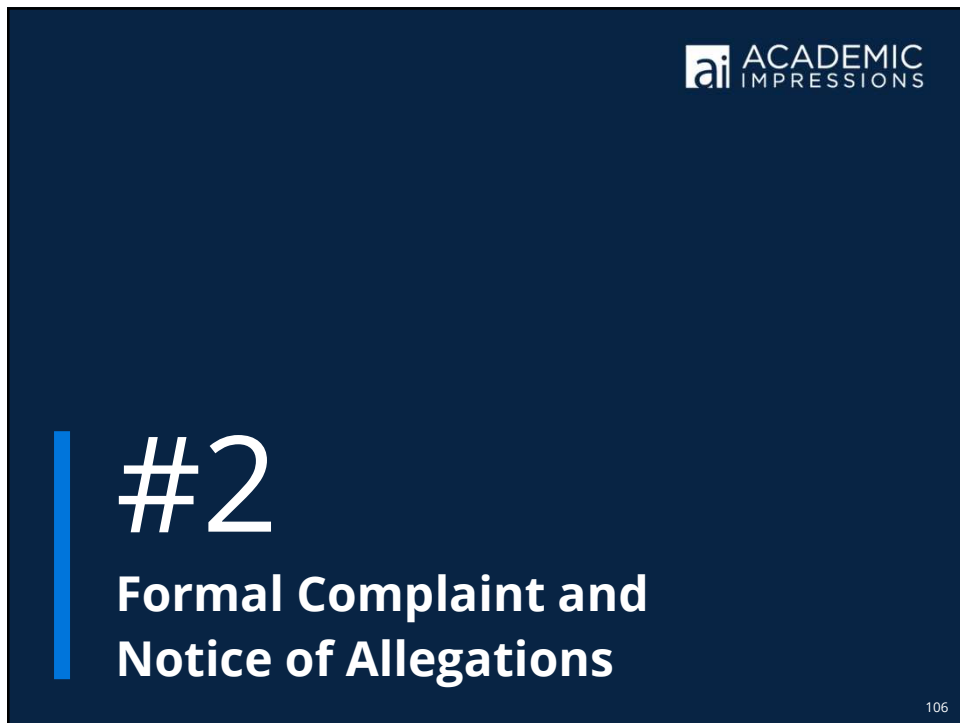


BREAK OUTS



Based on the information Jayden provides at the Intake meeting, determine potential allegations and jurisdiction.

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■ Elements of a Formal Complaint

A formal complaint is a document filed by a...

- Complainant, or
- Signed by the Title IX Coordinator

...that alleges that a respondent engaged in sexual harassment and requests that the institution investigate the allegation(s). (106.30(a)).

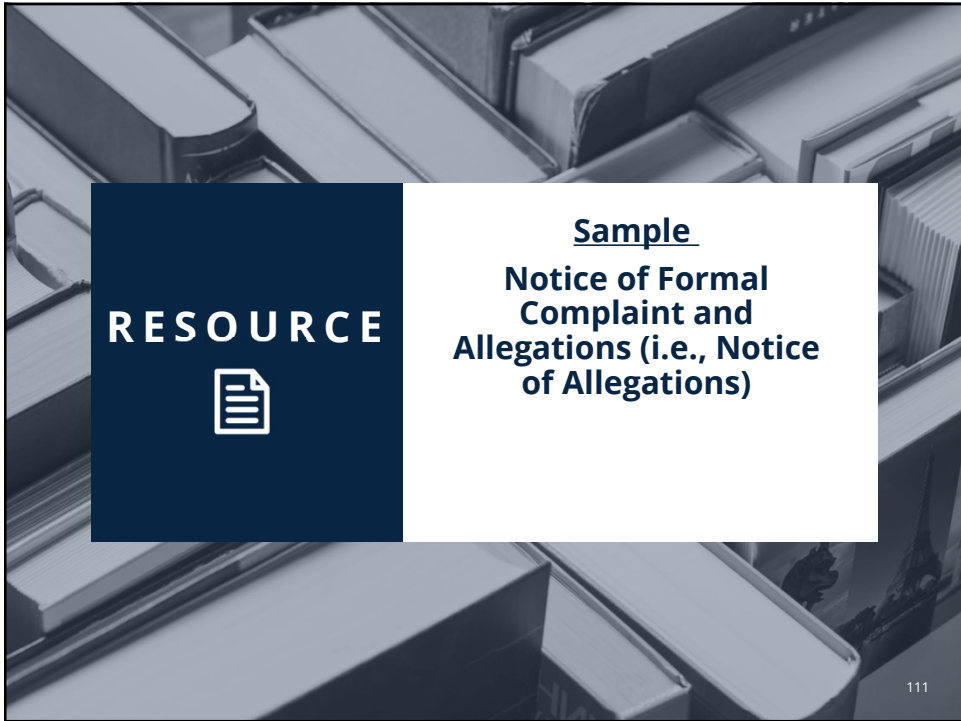
■ “Notice of Allegations”

Provides notice of:


- The allegations potentially constituting sexual harassment as defined in §106.30, including sufficient details known at the time, with sufficient time to prepare a response before an initial interview.
- 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.

- Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- Parties may inspect and review evidence.
- 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.
- Title IX Coordinator may amend the Notice of Allegations as more information becomes available.





RESOURCE



**Sample
Notice of Formal
Complaint and
Allegations (i.e., Notice
of Allegations)**

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QUESTIONS?



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#3

Informal Resolution

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■ Informal Resolution §106.45(b)(9)

Informal resolution is permissible in lieu of the investigatory and/or hearing process.

- After a formal complaint is filed.
- When the Title IX Coordinator deems informal resolution appropriate.
- When the parties give voluntary, informed, written consent to attempt informal resolution.

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■ Limitations within Informal Resolution

- Institutions cannot offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student.
- Institutions cannot require or pressure the parties into an informal resolution process.
- The informal resolution process cannot be indefinite and must have reasonably prompt timeframes.

■ Written Notice

Institution **MUST** provide *written notice* to the parties disclosing the:

- Allegations. §106.45(b)(9)(i)
- A discussion about the availability of informal resolution. §106.45(b)(A)
- Requirements of the informal resolution process. §106.45(b)(2)(i)
- Consequences from participation in informal process.
- The types of informal resolution processes available under the policy. §106.45(b)(2)(i).

■ Informal Resolution Requirements

- Voluntary participation; without coercion. §106.45(b)(2)(ii)
- The circumstances that preclude the parties from resuming a formal complaint. §106.45(b)(9)(i)
- Facilitation by neutral, objective and trained facilitator. §106.45(b)(1)(iii)

■ Participation Consequences

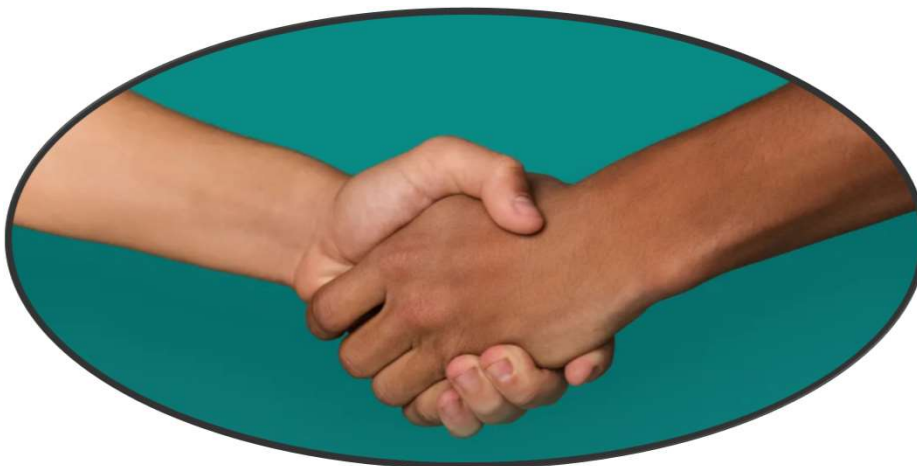
- If a resolution is reached, the Formal Complaint concludes, and parties agree to abide by terms of resolution.
- If a resolution is not reached, the Formal Complaint returns to the formal Grievance Process.
- The records that will be maintained or that could be or could not be shared. §106.45(b)(10).
 - Records relating to informal resolutions and the result thereof must be maintained for at least seven (7) years. §106.45(b)(10)

■ Types of Informal Resolution Methods

Informal resolution may encompass a broad range of conflict resolution strategies, including but not limited to:

- Remedies-based resolution
- Respondent accepts responsibility
- Mediation
- Restorative justice
- Arbitration

■ When is Informal Resolution Appropriate?



Cases Generally Conducive to Informal Resolution

- Hostile environment sexual harassment cases between employees or between students where no power differential.
- Non-sexual harassment cases:
 - Retaliation
 - Sex discrimination (including pregnant and parenting discrimination)

- Lower-level sexual assault cases.*
- Sexual assault cases resulting from miscommunication.*
- Dating/domestic violence cases where mutual harm is alleged.*
- Stalking potentially connected to a mental health or personality disorder.



Sexual/dating/domestic violence cases are the most challenging to informally resolve due to the nature and intimacy of the harm and the power imbalances often associated with these offenses. Accordingly, proceed with caution.

■ Cases Generally Not Conducive to Informal Resolution

Cases involving:

- Physical or threatened violence
- Predation
- Intimidation
- A dangerous pattern of conduct
- Where the power differential between the parties, under the circumstances could exacerbate the harm.

RESOURCE

2020 Title IX Amendments 34 C.F.R. 106

Preamble and Regulations

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

- Preamble section on informal resolution at p. 1363
- Regulations at p. 2008
- Regulations section on informal resolution at p. 2028



QUESTIONS?

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TAKEAWAYS



Next Bootcamp Meeting:
Wednesday, February 23rd
at 12:00 – 2:00p.m. EST
**no session on Feb. 16th*

Remember to visit the course site to review the syllabus and upcoming assignments.

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Leading and Strategizing as a New Title IX Coordinator Bootcamp

Sexual Harassment Grievance Process – Part II: From Investigation to Appeals

Session Four – Wednesday, February 23, 2022

Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available during this training are for training and general informational purposes only.



CHAT

Refresh & Reset

Please use your “raise hand” emoji to be called upon or use the Chat to respond:

What is one valuable lesson that most resonated with you from our last session or what is one thing you’re hoping to learn today?

129



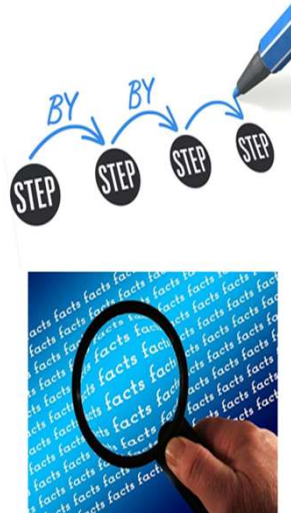
#1

The Investigative Process

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10-Step Investigative Process §106.45(b)(5)



1. Title IX Coordinator assigns an investigator to investigate the allegations.
2. Notice of Allegations sent to Parties. §106.45(b)(2)
3. Investigation begins

CHAT



What does it mean
to "investigate?"



- Investigator requests and conducts interviews with the complainant, respondent, and witnesses.
 - Interviews may be conducted virtually!
- Investigator requests and obtains physical evidence.
- The parties have equal opportunity to present witnesses and evidence.
 - The investigator may independently identify and interview witnesses and obtain evidence other than offered by the parties.

7. The investigator creates the "Investigative File," which contains the information "directly related to" the allegations raised in the formal complaint. §106.45(b)(5)(vi)
8. "Investigative File" sent to parties and their advisor for review and response (provide at least 10 days).
 - Party written responses are attached to the Investigative File and shared with other party and their advisor.

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9. Investigator drafts an "Investigative Report" that fairly summarizes the relevant evidence and sends it to the parties and their advisors for review and response (provide at least 10 days).
 - Parties may submit a written response to the Investigative Report, which will be shared with the other party and their advisor and attached to the Investigative Report. §106.45(b)(5)(vii).
10. Investigator returns the case to the Title IX Coordinator for next steps.

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■ Ongoing Assessment Considerations

- Jurisdiction
 - Dismissal (Mandatory or Permissive)
- Emergency Removal
- Informal Resolution
- Support Measures
- Case Updates

■ Investigator Testimony

Investigator likely presents and/or testifies at the Hearing.







■ The Live-Hearing §106.45(b)(6)

The Final Regulations require a live-hearing that provides...

- The decision-maker(s) the opportunity to ask questions of the parties and witnesses, and
- An opportunity for each party's advisor to cross-examine the other party and witnesses...

...before a finding of responsibility or non-responsibility is made, and any disciplinary sanctions issued by the institution. §106.45(b)(6), (7)

■ 10-Step Hearing Process

1. Assignment of hearing facilitator.
2. Appointment of decision-maker(s).



Hearing Panel



Single Hearing Officer

3. Notice of Hearing. At least 10 days before the hearing, the parties will receive a Notice of Hearing that includes:
 - a. The date, time, and location of the hearing
 - b. Purpose of the hearing
 - c. Requirement of an advisor to conduct cross-examination.
 - d. The participants (including the witnesses who will be made available to testify) in the hearing.
 - e. The names of the members of the Hearing Panel.
 - f. The Hearing Rules and Procedures,
 - g. Inform/remind about the availability of informal resolution (if applicable and available)
 - h. Potential or range of disciplinary sanctions/remedies that could result from a determination of responsibility





4. Advisors required. Each party must have an advisor, who may or may not be an attorney, at the hearing to conduct cross-examination on behalf of the party. §106.45(b)(2)(B).

- School may not limit the choice or presence of an advisor for either party. §106.45(b)(2)(B).
- If a party does not choose an advisor, the institution must provide an advisor for the party, free of charge, throughout the hearing process, who may or may not be an attorney.
- May impose restrictions on advisor role.

5. Decision-Maker(s) Preparation. The decision-maker(s) will review the Investigative File and Investigative Report before the hearing.
6. Witness Notice to Testify. Witnesses should receive a written invitation to testify hearing and provide a date/time for their testimony.

7. Hearing Logistics.

- *Live Hearing*. The hearing must be live. Live hearings can occur with parties in same room, separate rooms or separate physical or geographic locations. §106.45(b)(6)(i)
- *Technology*. Technology used must enable the parties and decisionmaker(s) to simultaneously see and hear one another and any testifying witnesses. §106.45(b)(6)(i)
- *Audio Recording*. Must record the hearing and provide the recording or transcript to the parties to review. §106.45(b)(6)(i)

8. The Live-Hearing. The decision-maker(s) facilitate the live-hearing in accordance with the institution's Hearing Rules & Procedures (that comply with the 2020 Final Regulations and institution's policy), such as:
- Cross-examination conducted directly, orally, and in real time by Advisors and never a party.
 - Ensuring Rape Shield protections and other legally recognized privileges (unless waived)
 - Adherence to *Victims' Rights Law Center, et al v. Cardona* and OCR's August 24, 2021, DCL instead of §106.45(b)(6)(i).

9. After the Hearing. Following the close of the decision-maker(s) determines responsibility using applicable standard of proof.
- The decision-maker(s) draft a written decision supporting responsibility determination.
 - If a finding of responsibility, the decision-maker(s) may issue disciplinary sanctions (respondent) and remedies (complainant).
 - Notice of Outcome contemporaneously delivered to the parties.

10. Notice of Outcome:

- a. Identification of the allegations potentially constituting sexual harassment under §106.30.
- b. A description of the procedural steps taken from the receipt of the formal complaint through the responsibility determination.
- c. Findings of fact supporting the determination.
- d. Conclusions regarding the application of the policy to the facts.
- e. A statement of, and rationale for, the result as to each allegation.
- f. Disciplinary sanctions/remedies (if applicable).
- g. The procedures and permissible bases for appeal.

§106.45(b)(7)(ii)(A)-(F)

QUESTIONS?





■ Appeals §106.45(b)(8), (9)

An institution must offer both parties an appeal from:

- A determination regarding responsibility.
- A dismissal of part or all of a formal complaint.

■ Grounds for Appeal

- a. Procedural irregularity that affected the outcome;
- b. New evidence that was not reasonably available at the time the dismissal or determination regarding responsibility was made and that could affect the outcome; and/or
- c. The Title IX Coordinator, investigator(s), and/or hearing panelists had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome.

■ 5-Step Appeal Process

1. Written Notice of Appeal. An institution must notify the parties in writing when an appeal is filed.
2. Implement appeal procedures equally for both parties.
3. Ensure that the decision-maker(s) for the appeal is trained per §106.45(b)(1)(iii) and impartial (i.e., no prior involvement with the case).

4. Provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the responsibility determination or dismissal;
5. Issue a written decision with the rationale for the decision and simultaneously deliver it to the parties.





■ **Post – Determination** §106.45(b)(7)(iv)

- Title IX Coordinator is responsible for effective implementation of any remedies. §106.45(b)(7)(iv).
- Title IX Coordinator coordinates the implementation of a disciplinary sanction (if applicable).
- Title IX Coordinator implements on-going (non-punitive) supportive measures, as necessary.

 A graphic with a background of overlapping papers and folders. On the left, a dark blue square contains the text 'GROUP DISCUSSION' and a white speech bubble icon. To the right, a white rectangle contains the text 'Best Practices in Implementation of Sanctions and Remedies'.

GROUP DISCUSSION

**Best Practices in
Implementation
of Sanctions and
Remedies**



QUESTIONS?

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TAKEAWAYS



Next Bootcamp Meeting:
Wednesday, March 9th at
12:00 – 2:00p.m. EST
**no session on March 2nd*

Remember to visit the
course site to review the
syllabus and upcoming
assignments.

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Leading and Strategizing as a New Title IX Coordinator Bootcamp

Building the Capacity of Your Campus Stakeholders
Session Five – Wednesday, March 9, 2022

Disclaimer

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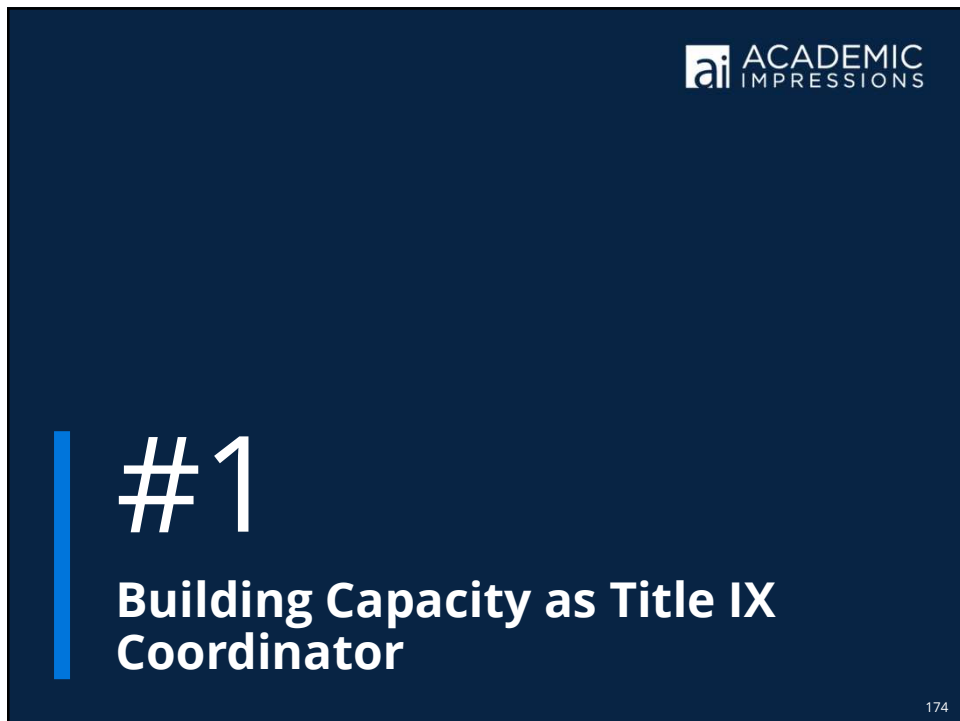
CHAT

Refresh & Reset

What is one valuable lesson that most resonated with you from our last session or one thing you're hoping to learn today?

Which of your questions went unanswered in Session 4?

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#1

Building Capacity as Title IX Coordinator

174



Refer to your homework:

Who are your **current** and **desired** campus stakeholders when it comes to you leading Title IX efforts for your entire community?

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■ Building your Brand

Establishing yourself as Title IX Coordinator

- Notice
- Proactive Engagement
- Buy-in
- Trust

Title IX Coordinator as a Resource

Critical Relationship Building

Proactive Strategies

- Marketing
- Partnerships

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■ Building your “Team”

- Who are the stakeholders you **must** engage with to operate a successful Title IX Office?
- Who are the stakeholders you **should** engage with to operate a successful Title IX Office?

■ Maintaining and cultivating relationships

- Consistency
- Receiving Feedback
- Self Awareness
- Leadership Development
- Creditability
- Validating Others
- Open to Change
- Humility
- Accessibility
- Life-Long Learner



■ Relationship Considerations

President

- Reporting Structure
- Meeting Frequency
- Information to share

General Counsel

- Obligations and Alignment
- Information to share

Human Resources

- Title VII Considerations
- Partnerships/ Collaboration Opportunities

■ Student Affairs/ Dean of Students

- Potential Title IX Team Assistance
- Programming Collaborations
- Training Considerations
 - Residence Life
 - Greek Life

Counseling/ Health Center

- Confidential Employees
- Advocacy

Police Department (on-campus & off campus)

Compliance Office

- Clery/VAWA Reporting Liaison

Athletics

- Part of Title IX Team?
- NCAA Compliance
 - Attestation Form

Faculty/ Staff

- Primary
- Ongoing Training Suggestions
- Frequency

Students

- Student Organizations Leadership
- Social Media
- Passive Programming
- "Cancel Culture"

Other

- Outside Community
- Legislators
- Parents/ Family

Other Considerations to maintain capacity building

- Campus Climate
- Managing Change
 - Staffing
 - Legal landscape (federal, state, and competing laws)
- Proactive vs. Reactive
- Negative PR
- Your personality/demeanor



CHAT



What challenges have you faced when attempting to build relationships/capacity?

■ Facing Challenges



CHAT

Refer to your homework:

What kind of training topics and formats do you facilitate for your **current** campus stakeholders (e.g., investigators, hearing officers, appellate officers, students, officials with authority, mandatory reporters, etc.) ?

How often do they get trained?

How do you assess their learning?

#2

Required Training

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Required Training for your Title IX Team Members

- §106.45(b)(1)(iii) imposes extensive and ongoing training requirements for Title IX Coordinators, investigators, decision-makers and facilitators of informal resolutions.
- §106.45(b)(1)(iii) requires that all materials used to train Title IX personnel:
 - Must not rely on sex stereotypes.
 - Must promote impartial investigations and adjudications of sexual harassment formal complaints.

■ Training Topics §106.45(b)(1)(iii)

- “Sexual harassment” definition in §106.30.
- The scope of the school’s education program or activity.
- How to conduct sexual harassment investigations, hearings, appeals, and informal resolutions.
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
- Rape Shield (§106.45(b)(6)(i)) and other privacy protections.
- “Relevance.”
- Process-related technology.

■ Recommended Training Topics for Title IX Team Members

- Trauma-informed approaches and practices
- Building and establishing rapport
- Evidence collection and evaluation, including how to weigh types of relevant evidence
- Evaluating credibility
- Individualized safety and risk analysis
- QPR training
- Accommodating individuals with disabilities

■ What About Training For Advisors?

The Final Regulations do not require training for advisors...

“The Department declines to require training for assigned advisors because the goal of this provision is not to make parties ‘feel adequately represented’ but rather to ensure that the parties have the opportunity for their own view of the case to be probed in front of the decision-maker [through cross-examination].” Preamble, p. 1186 (Federal Register version)

■ Training for Appointed Advisors

Training topics should include:

- How to effectively serve in the advisor role.
- Institution’s Hearing Rules and Procedures, including any limitations on advisor role and rules of decorum.
- “Relevance.”
- How to perform cross-examination in an effective, yet respectful and non-abusive manner.
- How to utilize cross-examination as a “truth-seeking” tool.
- How to identify and probe prior inconsistent statements.
- Rape Shield (§106.45(b)(6)(i)) and other legal protections.



CHAT

What is your greatest challenge in coordinating training efforts for your Title IX Team?

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This slide features a dark blue square on the left containing the word "CHAT" in white, bold, uppercase letters, with a white speech bubble icon below it. To the right, a white rectangular box contains the question "What is your greatest challenge in coordinating training efforts for your Title IX Team?" in dark blue, bold text. The background is a light gray pattern of overlapping paper-like shapes.



QUESTIONS?

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This slide features a dark blue rectangular box in the center containing the word "QUESTIONS?" in white, bold, uppercase letters. The background is a light gray pattern of overlapping paper-like shapes with faint question marks scattered throughout. In the bottom right corner, there is a logo for "ACADEMIC IMPRESSIONS" and the number "194".

#3

Other Training Considerations

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■ How much training is required and how often?

- The Final Regulations do not impose an annual or other frequency condition on the mandatory training required in § 106.45(b)(1)(iii).
- OCR estimates 8 hours of training for each team member with additional training each subsequent year. See *Preamble*, p. 2010 (Federal Register version).

■ Who should conduct the training?

- OCR does not weigh-in on the individuals or entities that provide Title IX-related training to institutions.
- OCR recommends using training sources who rely on qualified, experienced professionals likely to result in best practices for effective and impartial grievance procedures and processes.
- Whether or not an institution has complied with §106.45(b)(1)(iii) is not determined by the source of the trainers or training materials utilized.

CHAT

Refer to your homework:

What approach or strategy are you thinking about implementing to secure relationships with your **desired** stakeholders (e.g., department chairs, President's Cabinet, students, staff, etc.)?

What training needs do they have and how do you plan on delivering topics to them?



QUESTIONS?

 ACADEMIC IMPRESSIONS

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TAKEAWAYS



Next Bootcamp Meeting:
Wednesday, March 16th at
12:00 - 2:00p.m. EST

Remember to visit the
course site to review the
syllabus and upcoming
assignments.

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Leading and Strategizing as a New Title IX Coordinator Bootcamp

Leading with Integrity and an Equitable Mindset
Session Six - Wednesday, March 16, 2022

Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available during this training are for training and general informational purposes only.

CHAT

Refresh & Reset
What resonated with you after watching the "Mitigating Bias" webcast?

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#1

Mitigating Bias Review

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■ How to Outsmart Your Own Unconscious Bias

“The human brain is a remarkable achievement in evolution. Unfortunately, the brain activity that kept the human species alive for millions of years is the same brain activity that keeps us from achieving equality today. Author, speaker and CEO, Valerie Alexander, explains how the human brain instinctively reacts when encountering the unexpected, like saber-toothed tigers or female tech execs, and proposes that if we have the courage to examine our own behavior when faced with the unfamiliar, we can take control of our expectations, and by doing so, change the world.”

- Valerie Alexander

https://www.ted.com/talks/valerie_alexander_how_to_outsmart_your_own_unconscious_bias

Responding to Bias Under in Specific Roles

Bias of Investigator

Bias of the Interviewee

Bias during a Live Hearing

Bias of the Title IX Coordinator/ Process



GROUP DISCUSSION

How are you currently identifying potential bias in your Title IX Process for each role?

If possible, how are you mitigating that potential bias?

207

Best Practices in Mitigating Bias

-  Separating intake from investigation
-  Pre-investigation checklist
-  Investigation Meetings with Title IX Coordinator/other staff
-  Evaluation of Title IX Team
-  Evaluation of Title IX Process

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#2

Conflicts of Interest

209

What is a conflict of interest?

- Conflicts of interest can affect impartiality and objectivity.
- How to avoid conflict of interest challenges:
 - Transparency.
 - Allow for a challenge of any role for conflict of interest at each stage of the process.
 - Thoroughness



*"I'm afraid I can't treat you, Mr. Fisk.
I have a conflict of interest."*



GROUP DISCUSSION

Bias/Conflict of Interest Scenarios

211

This slide features a dark blue background with a pattern of overlapping, slightly offset rectangular shapes in various shades of gray. A central white rectangular box is divided into two sections. The left section is dark blue with the text "GROUP DISCUSSION" and a white icon of two overlapping speech bubbles. The right section is white with the text "Bias/Conflict of Interest Scenarios". The number "211" is located in the bottom right corner of the slide.



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#3

Integrity as the Title IX Coordinator

212

This slide has a solid dark blue background. In the top right corner, the "ai ACADEMIC IMPRESSIONS" logo is displayed in white. On the left side, a vertical blue bar is positioned to the left of the large white text "#3". Below "#3", the text "Integrity as the Title IX Coordinator" is written in white. The number "212" is in the bottom right corner.





GROUP DISCUSSION

Tweet
How do you reconcile privacy obligation with brand?

213

How to maintain integrity

-  Mitigating Bias; when possible
-  Avoid Conflict of Interest
-  Transparency in Process
-  Equitable Procedures

 **ACADEMIC IMPRESSIONS**

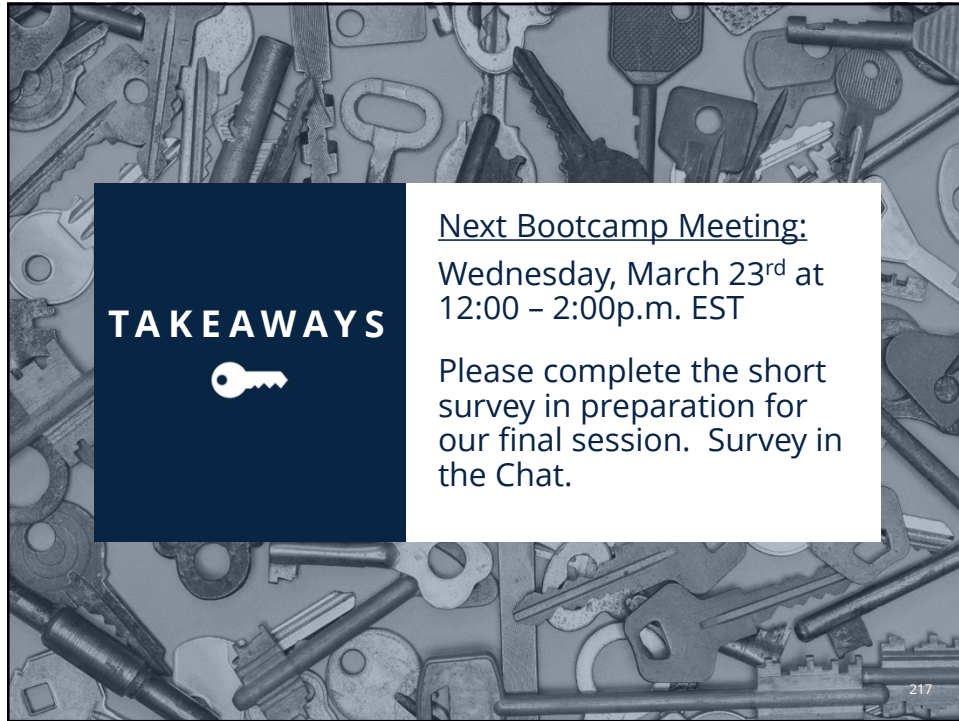
214

■ Pitfalls of being the Title IX Coordinator


- Self-Doubt
- Doubt of Others
- Loss of Credibility
- Getting through tough times
- Re-establishing confidence



QUESTIONS?



TAKEAWAYS



Next Bootcamp Meeting:
 Wednesday, March 23rd at
 12:00 – 2:00p.m. EST

Please complete the short
 survey in preparation for
 our final session. Survey in
 the Chat.

Leading and Strategizing as a New Title IX Coordinator Bootcamp

Finalizing Your Campus's Title IX Leadership Strategy
 Session Seven – Wednesday, March 23, 2022



GROUP DISCUSSION



How do you recruit folks to support the functions of your office?

What structures already exist to recruit folks?

219



ACTIVITY



Please complete the final bootcamp session reflection workbook.

We will ask you to share out some responses.

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