

Overview of Title IX Regulations

JEFF GRAVES

UNIVERSITY COMPLIANCE SERVICES

Agenda

1. Obligation to Respond
2. Definitions
3. Supportive Measures
4. Retaliation

Obligation to Respond

A School's Obligation to Respond to Sex Discrimination & Sexual Harassment

Reports of Sexual Harassment & “Actual Knowledge”:

- **Reports** of sex discrimination and sexual harassment may be submitted by any person (e.g. complainants, third-parties, bystanders, employees) to the institution.
- The institution has “**actual knowledge**” when the notice of sexual harassment, specifically, is submitted to the institution’s Title IX Coordinator (TIXC) (or any official at the institution who has authority to institute corrective measures).
- “**Complainant**” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- “**Respondent**” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

A School's Obligation to Respond to Sex Discrimination & Sexual Harassment

Receipt of **Reports** & “**Actual Knowledge**” (TIXC or other authority):

- A school must **reasonably respond** in light of known circumstances.
- Treat parties equitably by offering **supportive measures** to complainants & respondents, when applicable.
- TIXC must promptly contact the **complainant** to discuss the availability of supportive measures (regardless formal complaint), consider the wishes of the complainant, and explain the process for filing a formal complaint.
- For formal complaints: Follow a **grievance process** that complies with the regulations before imposing any disciplinary sanctions against a respondent.
- Applies to **students & employees**.

A School's
Obligation to
Respond to
Sex
Discrimination
& Sexual
Harassment

Definitional & Jurisdictional Framework under Title IX:

- Conduct alleged constitutes “**sexual harassment**” under the regulations;
- Conduct alleged occurs in the institution’s “**education program or activity**”;
- Conduct alleged occurs against a person “**in the United States**”; and
- Complainant is **participating in** or **attempting to participate** in the “education program or activity” of the institution.

A School's Obligation to Respond to Sex Discrimination & Sexual Harassment

“Education program or activity” under Title IX:

- Includes locations, events, or circumstances over which the institution exercises **substantial control** over both the respondent and the context in which the alleged sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution
- Example of a “**building owned or controlled by a student organization**”: Fraternity or sorority house that is occupied by students of the organization, and the student organization is a recognized organization with the institution.

Definitions

Definition of “Sexual Harassment” under Title IX

Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct (Quid Pro Quo);
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 institution’s education program or activity; or
3. “Sexual assault,” “dating violence,” “domestic violence,” or “stalking” as defined under Clery/VAWA.

Definition of “Sexual Assault” under Clery/VAWA

An offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape:

Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Definition of “Dating Violence” under Clery/VAWA

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of Domestic Violence.

Definition of “Domestic Violence” under Clery/VAWA

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Definition of “Stalking” under Clery/VAWA

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

For the purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Supportive Measures

Supportive Measures under Title IX

- **Non-disciplinary individualized services** offered as appropriate, as reasonably available, and without fee or charge to the parties.
- Designed to **restore or preserve equal access** to the institution's education program or activity without unreasonably burdening the other party:
 - To protect the safety of all parties or the institution's educational environment; or
 - To deter sexual harassment.

Note: Title IX Coordinator (TIXC) must promptly contact the **complainant** to discuss the availability of supportive measures (with or without a formal complaint), consider the wishes of the complainant, and explain the process for filing a formal complaint.

Supportive Measures under Title IX

- **Supportive measures** may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- **Confidentiality** must be maintained to the parties, to the extent it would not impair the ability of the institution to provide such measures. This means that the party must give consent if a supportive measure requires disclosure or a form of coordination that may limit confidentiality in any capacity.

Retaliation

Retaliation Prohibited under Title IX

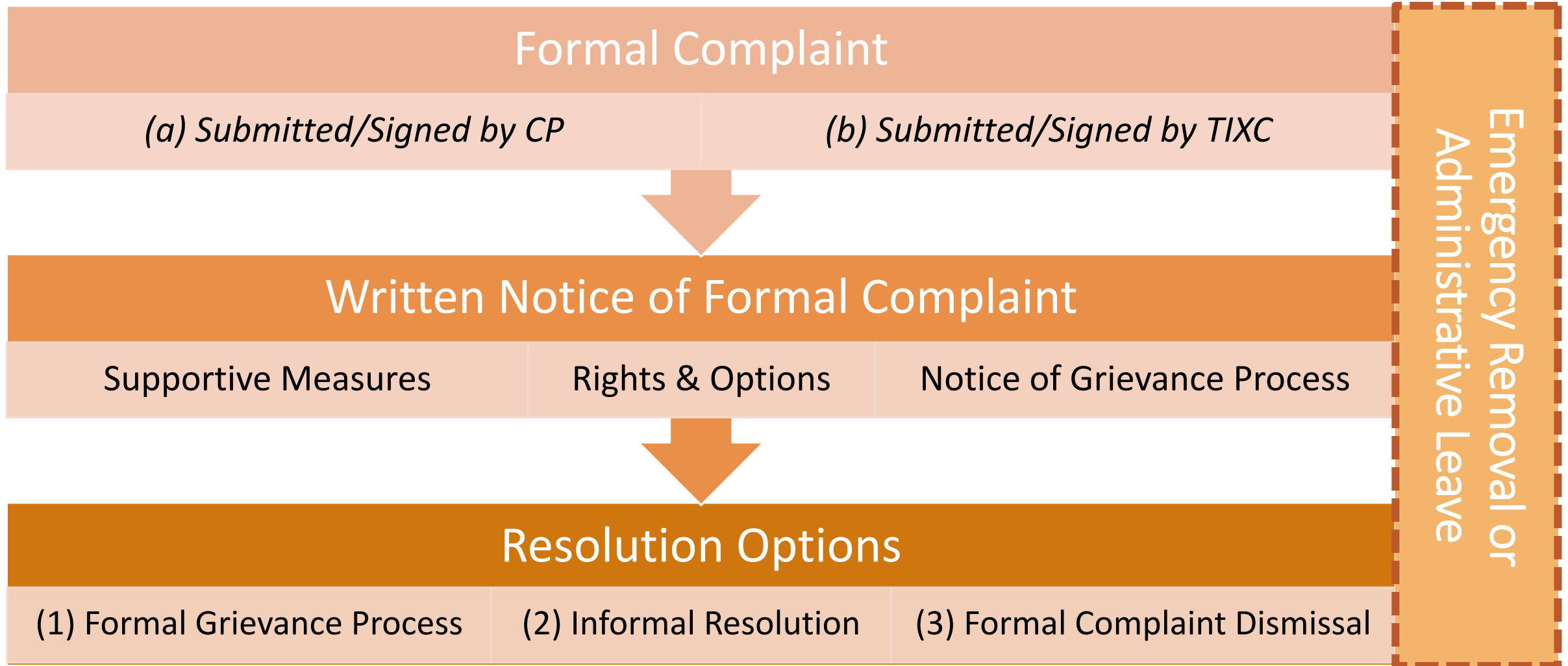
No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Grievance Process

Grievance Process under Title IX

- 1. Formal Complaints**
 - Filed & signed by the **complainant** submitted to the **TIXC**; or
 - Filed & signed by the **TIXC** (when there is a reluctant complainant & compelling reason to investigate further).
- 2. Must immediately initiate a Grievance Process once a Formal Complaint is filed**
 - **Written notice** of the formal complaint to both parties
 - **Investigation** initiated
 - Comply with **Dismissals & Emergency Removal** provisions
 - **Informal resolution option**, if available
 - Investigation concludes (if the process continues)
 - **Live Hearing** (determination regarding responsibility is made)
 - **Appeal** option (for **Dismissals & Determinations**)

Title IX Resolution Flowchart



Emergency Removals under Title IX

1. **Individualized safety & risk analysis:**
Determines that immediate threat to the physical health & safety of any student or other individual arising from the allegations justifies the respondent's removal from the education program or activity.
 - Notice & opportunity to challenge the decision immediately following the removal.
 - Rights under **ADA & Section 504** still apply.
2. Doesn't preclude an institution from placing non-student employee respondents on **administrative leave** during the pendency of the grievance process.

Formal Complaint Dismissals under Title IX

1. **Mandatory Dismissals** are required when the **definitional** or any element of the **jurisdictional** framework under Title IX is not met:
 - Conduct alleged constitutes “**sexual harassment**” under the regulations;
 - Conduct alleged occurs in the institution’s “**education program or activity**”;
 - Conduct alleged occurs against a person “**in the United States**”; or
 - Complainant is **participating in** or **attempting to participate** in the “education program or activity” of the institution.

Formal Complaint Dismissals under Title IX

2. **Discretionary Dismissals** when:
 - Complainant withdraws the formal complaint or allegations;
 - Respondent is no longer enrolled or employed at the institution; or
 - Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

3. Dismissing a Formal Complaint under Title IX doesn't preclude an institution from addressing conduct prohibited under an institution's policy through a fair and equitable grievance process.

Informal Resolutions under Title IX

1. **It's an alternative resolution option** once a formal complaint is filed.
 - Available as an option at any time prior to reaching a determination regarding responsibility.
 - Doesn't involve a full investigation & adjudication.
 - May be facilitated through **mediation** (as an example).
 - Informal Resolution Process must include: (a) Written notice of allegations, (b) Requirements of the informal process, & (c) Any consequences resulting from participating in an informal process (e.g. record keeping).
2. Not permitted as a resolution option when an **employee respondent** is alleged of sexual harassment by a **student complainant**.

Advisors under Title IX

Each party may have an **advisor of choice** to be present at any meeting or grievance proceeding; the advisor of choice may be but is not required to be an attorney.

- Each party's advisor must be permitted to **ask the other party and any witnesses all relevant questions** and follow-up questions during a live hearing.
 - Institutions may restrict the extent to which advisors may participate in the grievance process, except for asking relevant questions of the other party & witnesses at the live hearing.
- **If a party does not have an advisor present at the live hearing:** The institution must provide one without fee or charge to that party, an advisor of the institution's choice, who may be, but is not required to be an attorney, to conduct the questioning on behalf of that party.

Live Hearings under Title IX

1. **Required under Title IX**; *unless resolved through an informal resolution agreement or a formal complaint dismissal.*
2. Both parties must have **access to evidence obtained** during the investigation, and equal opportunity to refer to such evidence during the hearing.
3. **Each party's advisor** must be permitted to ask relevant questions of the other party and any witnesses, including questions that challenge credibility:
 - Conducted orally, directly, and in real time by the party's advisor
 - Never permitted by a party personally

Live Hearings under Title IX

4. May be conducted with all of the parties **physically present** in the same geographic location; or
5. Any of the parties, witnesses, & other participants may appear **virtually**, with technology enabling participants simultaneously to **see & hear each other** (at the institution's discretion).
6. Must create an audio or audiovisual recording, or transcript of any live hearing, & make available to the parties for inspection & review.

Questioning at Live Hearings



1. **Only relevant questions** may be asked of a party or witness:
 - Before a complainant, respondent, or witness answers a question that was asked by an advisor, the decision-maker must first determine whether the question is relevant & explain any decision to exclude a question as not relevant.

Questioning at Live Hearings



2. Questions about the complainant's **sexual predisposition** or **prior sexual behavior**:
Not relevant unless:
 - a. The questions are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - b. The questions are offered to prove consent regarding specific incidents of the complainant's prior sexual behavior with respect to the respondent.

3. **If a party or witness doesn't submit to questioning at the live hearing**: the decision-maker **must not rely** on any statement of the party or witness in reaching a determination regarding responsibility.

Appeals under Title IX

- The institution must offer both parties an appeal from:
 - a. A determination regarding responsibility; and
 - b. An institution's dismissal of a formal complaint or any allegations therein
- An appeal must be offered on the following bases:
 - Procedural irregularity that affected the outcome of the matter;
 - 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; or
 - 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 specifically in this matter) that affected the outcome of the matter.

Reporting Requirements for Employees

Definition of “Failure to Report” for Responsible Employees

Under state law, if an Employee fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

Title IX Coordinator Outreach

Once a Responsible Employee submits a report to the Title IX Coordinator (TIXC), the TIXC must:

- Contact the complainant
- Offer supportive measures
- Provide rights & options under law

Note: *An Employee's report to the TIXC doesn't automatically initiate the grievance process.*

The complainant has the right to file a formal complaint and initiate the grievance process at any time.

Q&A
