



Title IX Boot Camp for Higher Education (With Updates)

Session 2: Addressing and Investigating Sexual Harassment Under Title IX

Presented by

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Response to Sexual Harassment Allegations



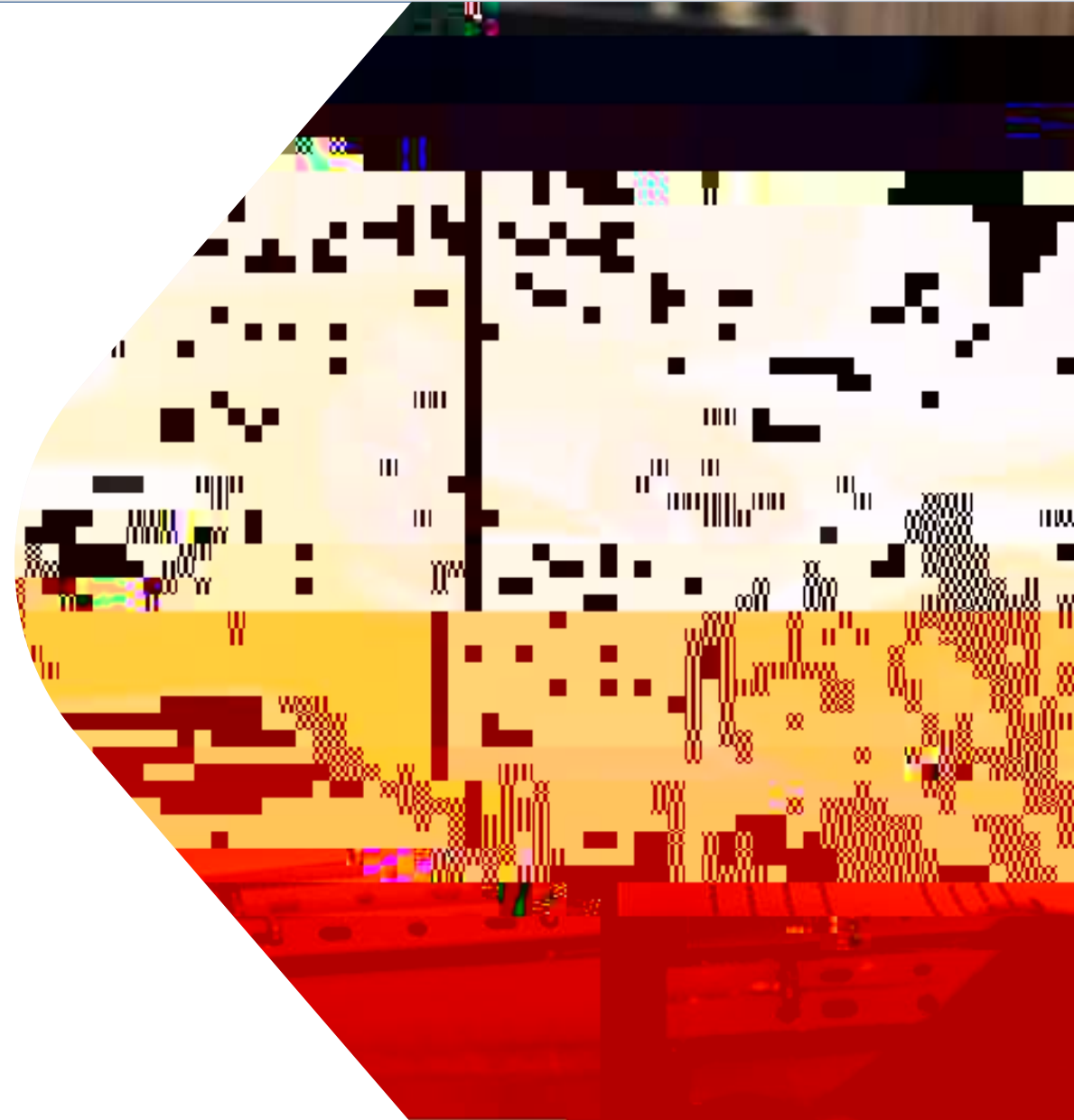
Title IX Coordinator must promptly:

Contact the complainant to discuss the availability of supportive measures,

respect to supportive measures,

Inform the complainant of the availability of support measures, **and**

Explain to the complainant the process for filing a formal complaint.



Formal Complaints



Formal complaint

A document filed by the complainant or signed by the Title IX Coordinator (1) alleging sexual harassment against a respondent and (2) requesting the institution investigate the allegation of sexual harassment

A document filed by complainant means a document or electronic submission that contains

otherwise indicates that the complainant is the person filing the formal complaint.

Formal Complaints



Grievance Process



Grievance process components

Basic requirements

Notice of allegations

Dismissal of formal complaint

Consolidation

Informal resolution

Investigation

Hearing

Determination regarding responsibility

Appeals

Recordkeeping

Grievance Process– Basic Requirements



Includes a presumption that the respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process



Includes reasonably prompt time frames for conclusion of the grievance process

Must include process that allows for temporary delay for good cause with written notice to complainant and respondent of the delay and the reasons for action

Good cause may include considerations such as absence of a

activity; or the need for language assistance or accommodation of disabilities.

Grievance Process– Basic Requirements

» Describe the range of (or list) possible disciplinary sanctions and remedies that the institution may implement following determination of responsibility.

» State whether the standard of evidence to be used to determine responsibility is preponderance of the evidence or clear and convincing evidence.

Must apply same standard for formal complaints against students as for formal complaints against employees

Must apply same standard to all formal complaints of sexual harassment



Grievance Process– Basic Requirements

- » Include the procedures and permissible bases for the complainant and the respondent to appeal.
- » Describe the range of supportive measures available to complainants and respondents, and
- » Do not require, allow, rely upon, or otherwise use questions or evidence that constitute information protected under a legally recognized privilege, unless person has waived privilege.

Grievance Process– Dismissal



Dismissal of complaint

If conduct, if proved, would not constitute sexual harassment
If conduct did not occur in the education program or activity
If conduct did not occur against a person in the U.S.

Institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part.

Such a dismissal does not preclude action under another provision of the



Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.

Grievance Process– Dismissal

»» Dismissal of complaint

The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

The respondent is no longer enrolled or employed by the institution;

or

Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

»» **Upon dismissal, the institution must promptly send written notice of the dismissal and reasons for dismissal.**

Grievance Process - Informal Resolution

- At any time, prior to reaching a determination regarding responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
- Informal resolution requires an institution to follow certain requirements, including (1) providing the parties a written notice disclosing certain information (described below); (2) obtaining the parties voluntary, written consent to the informal resolution process; and (3) ensuring that it does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Grievance Process– Informal Resolution



The written notice to the parties must disclose: (1) the allegations; (2) 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 (3) any consequences resulting from participating in the informal resolution process, including records that will be maintained and could be shared.



Grievance Process– Consolidation

- » An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or 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.

Grievance Process– Investigations



Grievance Process– Investigations



Grievance Process– Investigations

- Written notice must be provided with sufficient time to prepare a response before any initial interview.
- If other allegations are investigated later, notice must be provided of the additional allegations to the parties whose identities are known.

Grievance Process– Investigations



An institution must:

Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

Not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence; **and**

Provide parties with the same opportunities to have others present during any grievance proceeding, including an advisor of their choice, but may establish reasonable restrictions regarding participation.

Grievance Process– Investigations



Investigation objectives

Conduct a prompt, impartial, and thorough investigation to determine what happened. Steps may vary depending on the allegations. Identify appropriate witnesses and order of questioning.

Consider types of questions and manner of interviews.

- Who was involved or present?

- What happened? Times, dates, places

- What happened before or after?

Request to see documentary evidence.

Refrain from making conclusions or promising results.

Grievance Process– Investigations






Investigation objectives

Carefully document all steps in the investigation.
Consider credibility of witnesses, including inconsistent statements, body language, and reasons for statements.
Warn individuals to be honest and forthcoming and that failure to do so may result in discipline.
Written statements may be necessary for certain individuals.

Conclusion

Conclusion



-  Need to change policies to include a formal complaint
-  Need to include a grievance process in your policies
-  Need to identify different individuals to serve as investigator and follow process

Contact Us



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