



TITLE IX

PRESENTED ON:

September 9, 2025

PRESENTED BY:

Kimberly K. Schrader
Title IX Coordinator (retired)
Phone: 309-337-6536
Email: kkschrader@gmail.com

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**SEX
DISCRIMINATION
AND
SEXUAL
HARASSMENT
RESPONSE TRAINING**

Agreements



CONTACT US



Western

Joani Wilson,
Director & Title IX Coordinator
Email: jm-wilson3@wiu.edu
Office: 309-298-1977

Monmouth

Michelle Merritt,
Vice President and Dean for Student
Success and Title IX Coordinator
Email: mmerritt@monmouthcollege.edu
Office: 309-457-2115

Trainer

Kimberly K. Schrader
Email: kkschrader@gmail.com
Mobile: 309-337-6536

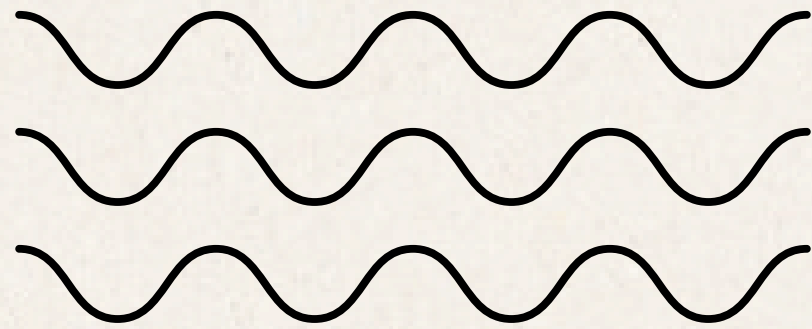
- We agree to a spirit of curiosity and grace, both for ourselves and each others.
- What's said in the room stays in the room, and what's learned in the room, leaves the room.
- No recordings are allowed.
- The contents of this presentation and the related discussion are for informational purposes only and do not constitute legal or regulatory advice. No party should act or refrain from acting on the basis of any statements made today without seeking individualized, professional counsel as appropriate.
- This training is based on Title IX regulation that originally became effective August 14, 2020. Title IX practitioners should review the regulation in detail, including all its parts. Past and future legal developments may affect these topics.
- The slides used in this presentation summarize key elements of the regulation necessary for a foundational training but are not exhaustive. They may not be reproduced or redistributed, in whole or in part, without the express written permission of Kimberly K. Schrader.
- Hypotheticals are fictitious; to ensure realism, some may use fact patterns and language that are graphic and challenging. Please take care of yourselves and each other.

Agenda

01	Introduction and Objectives
02	Legal Framework- Scope and Jurisdiction
03	Definitions and Prohibited Conduct
04	Retaliation
05	Roles and Responsibilities
06	Reporting and Response
07	Intake, Resources, and Supportive Measures
08	The Investigation
09	The Hearing
10	Informal Resolution and Other Processes
11	Prevention Education and Wrapping Up

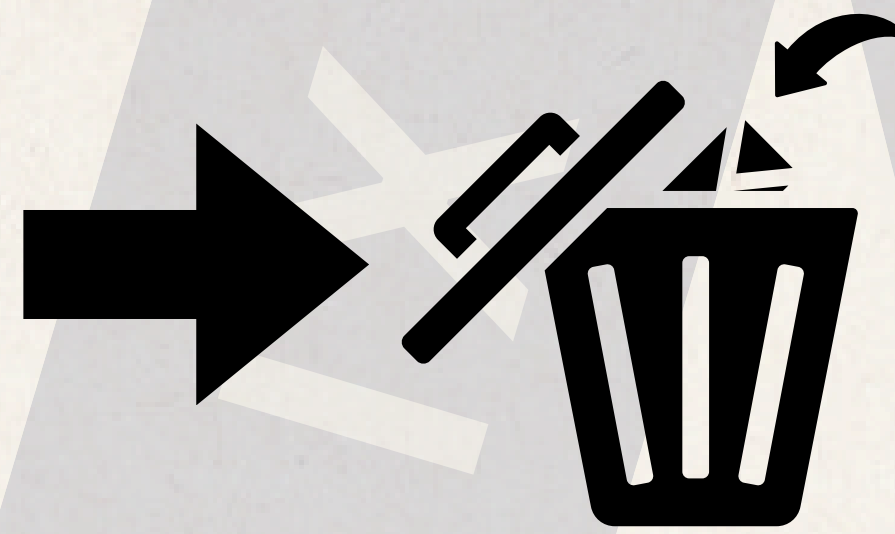
Legal Framework: Scope and Jurisdiction

Title IX Regulations



- Contained at 34 C.F.R. §, Part 106 (Department of Education)
- Regulations address a host of subjects, including general non-discrimination, scholarships, athletics, housing, employment, and sexual harassment response
- The “August 2020 regulations” refer to a series of amendments to Part 106 made by the first Trump Administration that addressed sexual harassment response and imposed significant due process requirements (including live hearings)

Biden-Era Rules



WIU's Discrimination, Harassment, and Sexual Misconduct Policy effective August 14, 2020, which uses the 2020 Title IX Regulations continues to be in effect at this time

https://www.wiu.edu/policies/docs/WIU-D_H_SM-Policy.pdf



- Nondiscrimination Policy
- Pregnancy Modifications Policy
- Policy on Sex Discrimination and Sexual Harassment

<https://www.monmouthcollege.edu/offices/harassment-nondiscrimination/policies/>

Illinois Preventing Sexual Violence in Higher Education Act (IPSVHEA)

- **Policy** - Develop a comprehensive policy that includes a procedure for resolving complaints, a definition of consent, and an amnesty provision
- **Training** - Offer annual training to students and campus employees on consent, retaliation, reporting, resources, bystander intervention, and risk reduction strategies
- **Confidential advisors** - Provide students with access to confidential advisors who can provide emergency and ongoing support
- **Task force** - Participate in a campus-wide or regional task force that includes representatives from law enforcement, campus administration, the advocacy community, and students
- **Reporting** - Annually report data to the Illinois Attorney General's Office on trainings, prevention programs, incidents, reports, and complaint resolution outcomes
- **Survivor Rights** - Provide survivors with a short and clear written explanation of their rights

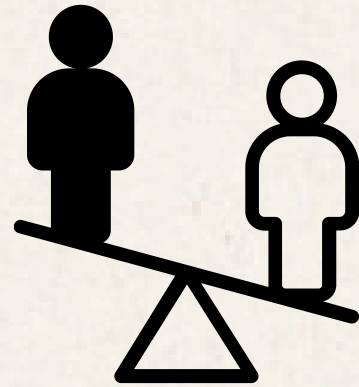


Jeanne Clery Act Annual Security Report (ASR)



- **Annual Security Report (ASR)** that includes campus crime statistics for the past 3 years, campus security policies, and information on how to report crimes and access support services
- **Crime Statistics** including criminal offenses, hate crimes, Violence Against Women (VAWA) offenses, arrests and referrals
- **Timely Warnings** about crimes that pose a serious or ongoing threat.
- **Emergency Notifications** for immediate notification during significant emergencies or dangerous situations
- **Daily Crime Log** updated within 2 business days of a report
- **Missing Student Notification** to law enforcement and designated contacts
- **Policy Disclosures** including Campus security authority (CSA) roles, policies for alcohol and drugs, sexual assault prevention and response, and fire safety

Other Applicable Laws



Title VI - Prohibits discrimination based on race, color, or national origin in federally funded programs | **Title VII** - Prohibits employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), and national origin and prohibits harassment (including sexual harassment) that creates a hostile work environment

Section 504, ADA - Requires equal access to programs and services, including reasonable accommodations and modifications, physical access), and prohibits retaliation against individuals asserting their rights



ILLINOIS



ACT

Illinois Human Rights Act - A comprehensive civil rights law, banning discrimination in employment, housing, public accommodations, credit, and education on a wide range of protected bases that also provides for harassment and retaliation protections, and requires accommodations for disability, religion, and pregnancy

WHAT IS 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

120 U.S.C. § 1681

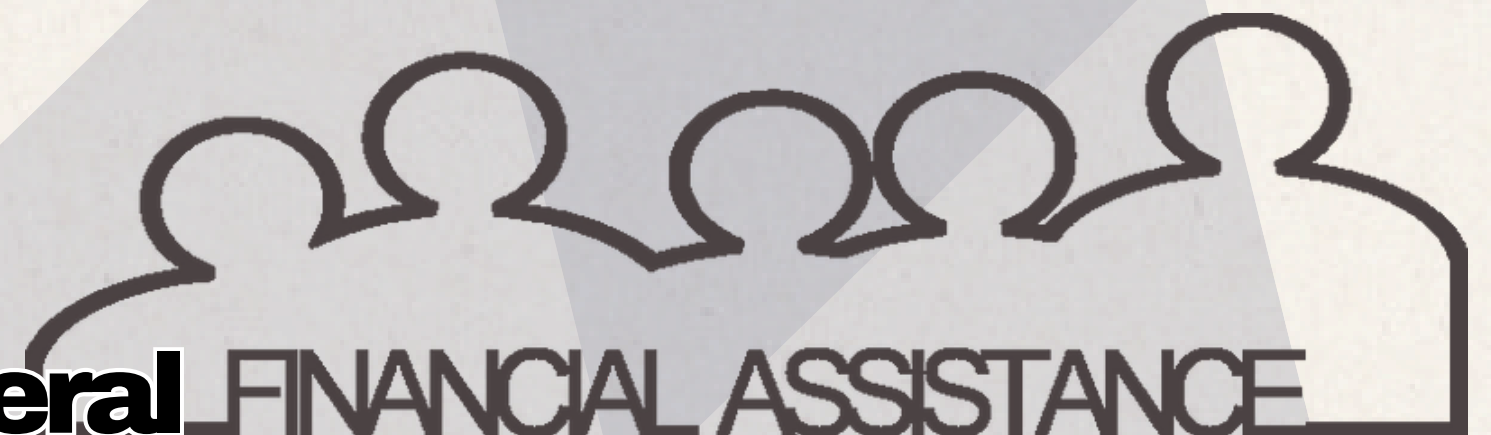
**Implemented by the
U.S. Department of Education**



**Sex
Discrimination**

**Education
Programs
and Activities
All U.S.
Operations**

Applies to entities that receive federal FINANCIAL ASSISTANCE

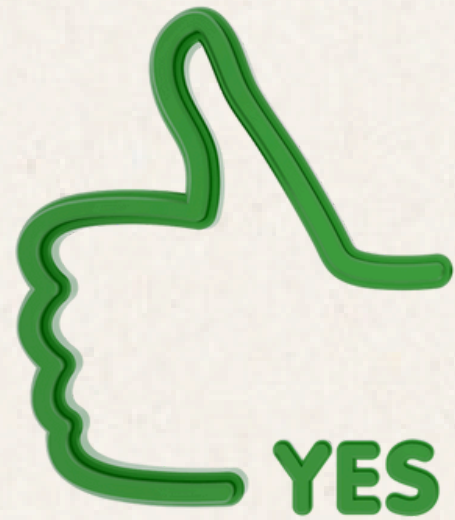


Examples of Programs and Activities

- Admission
- Financial Aid
- Athletics
- Housing
- Academics
- Employment
- Concerts
- Performances, and events on campus
- Internships or clinical rotations and placements
- Organized trips and volunteer outings
- Sponsored organization activities
- Online program
- Activities in property owned or controlled by the institution



Does Title IX apply to off-campus conduct?



IF

the conduct at issue occurs in the context of an **education program or activity**



IF

the conduct at issue occurs in a **location owned and/or controlled by the institution or an officially-recognized student organization**



IF

the conduct at issue occurs in a **private location** and is **not part of an institution's education program or activity**



IF

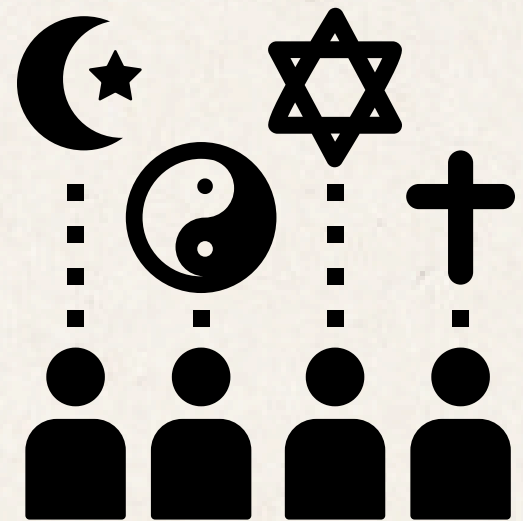
the conduct at issue occurs **outside the United States**

Limitations on Title IX

Built-In Exemption for Religious Institutions

“This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenants of such organization.”

34 C.F.R. § 106.12



If in conflict with First Amendment and other Constitutional rights Title IX Regulation does not apply in any way that would violate Constitutional rights

Does not regulate the selection of teaching materials because the First Amendment and academic freedom safeguard faculty’s right to present content with legitimate educational value

If in conflict with the federal Religious Freedom Restoration Act religious schools can use this to argue for broader protection of their religious practices



Definitions and Prohibited Conduct Under Title IX



**Sex Discrimination =
Adverse Treatment**

**Sexual Harassment =
Conduct on the Basis of Sex**



**THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION
PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF**

Sex Discrimination

Programmatic Sex Discrimination

- Discrimination occurs in a systematic way due to an institutional policy or practice
- It adversely affects persons as a group or by category, rather than by individualized decision
- Programmatic discrimination is usually not attributed to an individual perpetrator (e.g. “respondent”)

Individualized Sex Discrimination

- Conduct where a particular decision is made, or a particular action taken, that results in adverse treatment of a particular person, because of their sex
- Individualized discrimination usually has an identifiable “respondent” who makes the discriminatory decision

ADVERSE TREATMENT

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION’S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

Sexual Harassment

Quid Pro Quo

When an employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual conduct

Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive

Specific Offenses- VAWA Crimes

- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

CONDUCT ON THE BASIS OF SEX

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

Quid Pro Quo Sexual Harassment

- When an employee of the institution
- Conditions the provision of some aid, benefit, or service
- On another person's participation in unwelcome sexual conduct
- Commonly occurs in situations where an employee holds a position of authority over a student, or may occur with a supervisor and a subordinate



CONDUCT ON THE BASIS OF SEX

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

Hostile Environment Sexual Harassment

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

Factors to consider:

-  The degree to which the conduct affected the complainant's ability to access the institutions programs and activities
-  The type of conduct
-  The frequency of the conduct
-  The duration of the conduct
-  The ages of the parties
-  The roles of the involved parties and other factors about each party
-  If there are previous interactions involving these parties
-  The location of the conduct and its context
-  Other sex-based harassment policies your school may have in place

CONDUCT ON THE BASIS OF SEX

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

Sexual Assault: Rape, Statutory Rape, Fondling, Incest

Rape - is 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, or by a sex-related object

Statutory Rape - is non-forcible sexual intercourse with a person who is under the statutory age of consent

Fondling - is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim

Incest - is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

CONDUCT ON THE BASIS OF SEX

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

Domestic Violence

Felony or misdemeanor crimes 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, or by a person similarly situated to a spouse of the victim

Dating Violence

Violence that can occur between people in a romantic or intimate relationship, based on:

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

Stalking

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

CONDUCT ON THE BASIS OF SEX

THAT LIMITS OR EXCLUDES THE PERSON FROM PARTICIPATING IN THE INSTITUTION'S EDUCATION PROGRAM OR ACTIVITY OR DENIES OR LIMITS THE BENEFITS THEREOF

CONSENT! Words or actions that a reasonable person would understand as agreement to engage in the specific sexual conduct at issue



In fact

Determined by whether the relevant facts establish conduct that amounts to agreement to engage in sexual activity, as agreement is defined each of your schools (your institutional definition of consent)



The ability to consent

Determined by whether a person has capacity to consent or whether they have lost such capacity



Monmouth
COLLEGE

**Know YOUR
policy definition
on consent!**



**Western Illinois
University**

What is incapacity?

A state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep



How do we know if someone is incapacitated?

- Loss of ability to make a reasoned decision and communicate it
- Loss of appreciation of the nature and fact of sexual activity
- Loss of appreciation of the “who, what, when, where, and how”

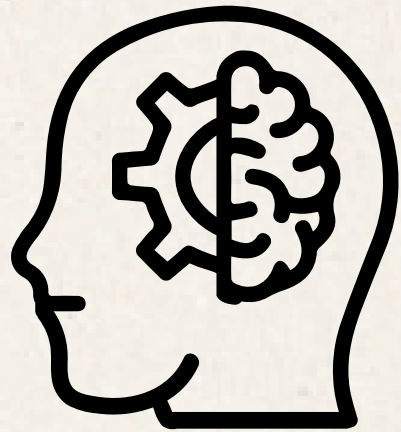
What factors help determine incapacity?

- Ability to speak coherently
- Ability to track conversation
- Ability to appreciate and weigh risks and benefits
- Ability to walk or stand
- Ability to engage in behaviors requiring presence of mind
- Time period of consumption
- Nature of alcohol or drugs
- Amount of alcohol or drugs
- Size of the person consuming

Retaliation



When someone takes an adverse action (intimidation, threats, coercion, exclusion from activities, or grade changes for a student, and firing, demotion, or discipline in an employment context....) against a person because they engaged in a protected activity under Title IX



Retaliation requires a state of mind of the respondent, or what may be called a “subjective state of mind” requirement, meaning generally that the respondent knew about the protected activity, and intended to take the adverse action because of that protected activity

There must be a causal connection between the protected activity and the adverse action

In practice, this often requires showing that the party who engaged in the alleged retaliation was motivated (at least in part) by retaliatory animus

Title IX Coordinator



The Title IX Team

Duties of the Title IX Coordinator:

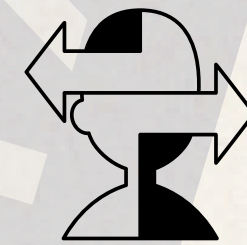
- Provide information about grievance procedures and informal resolution
- Initiate relevant processes, either through Title IX or by referral to other areas
- Screen for conflicts and bias
- Coordinate with disability services staff
- Evaluate the efficacy of reporting and identify and remedy barriers to reporting
- Ensure the legal retention of Title IX records
- Coordinate supportive measures

Members of the Team:

- Deputy Title IX coordinators
- Investigators
- Decision-makers
- Informal resolution facilitators
- Appellate officers
- Persons responsible for supportive measures

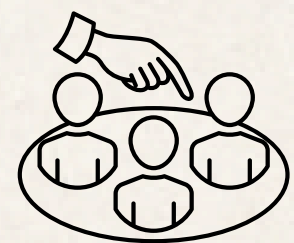
General Training Requirements

- Appropriately trained in their duties and relevant policy
- Competent
- Free of **conflicts of interest**
- Free of **bias** and not relying on **stereotypes**



Conflict of Interest: When an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial

Bias: a prejudice, predisposition, or inclination in favor of or against a thing or person



Stereotypes: a form of bias that operates as a preconceived, generalized, and sometimes inaccurate belief about a person based on their membership in a group or some other characteristic

Roles and Rules of the Team

Can the Title IX Coordinator be an Investigator?

No per se rule prohibits this, but the Title IX Coordinator must be especially attentive to actual or perceived conflicts of interest

Who can be a Decision-Maker?

Cannot be the Title IX Coordinator, the investigator, an informal resolution coordinator, or the appeal officer

Who can serve as an Informal Resolution Facilitator?

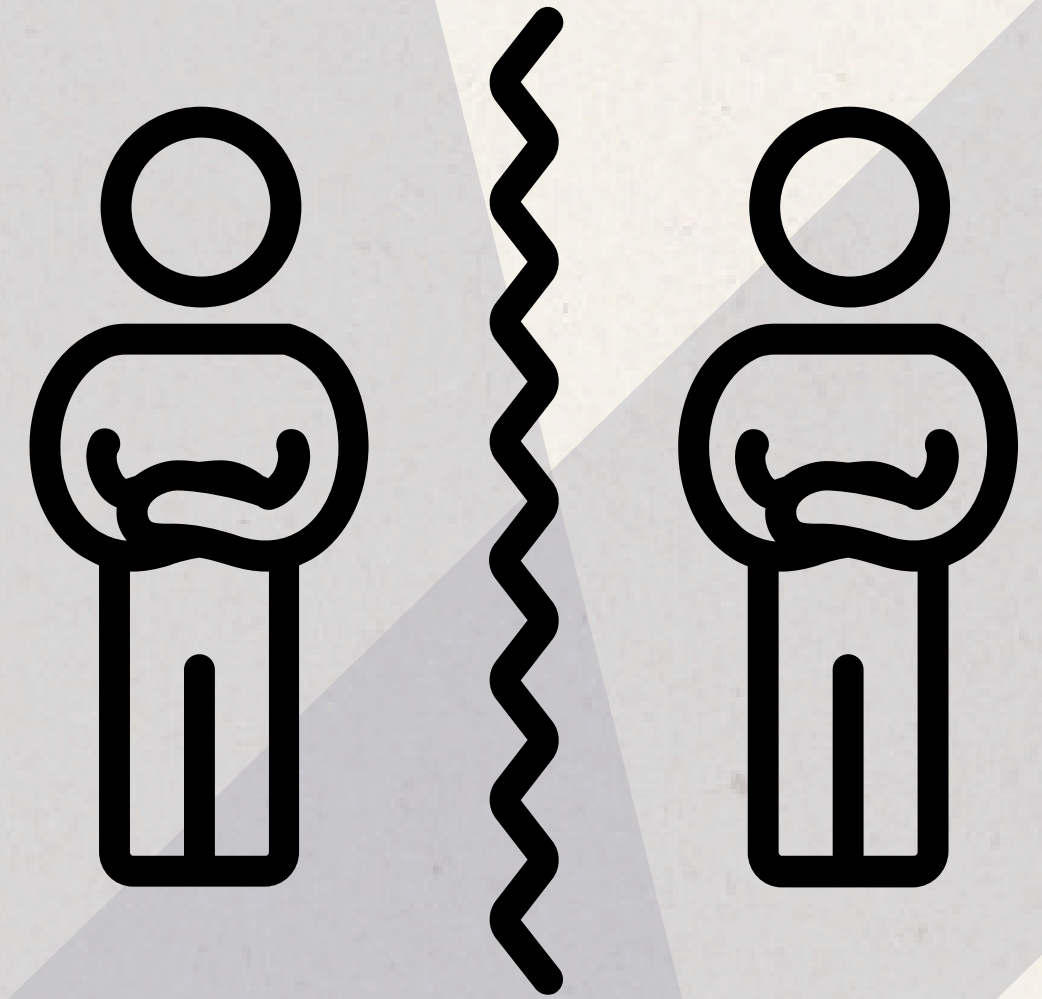
Cannot be the Investigator or the Decision-Maker in the same case

Who can serve as an Appeal Officer?

The Appeal Officer should be a different person(s) than the person whose decision is appealed, and cannot be Decision-Maker, a Determiner of Dismissal, or a Decider of Supportive Measures

Who administers Supportive Measures?

The Title IX Coordinator has the responsibility for determining Supportive Measures and must “coordinate” these, although some types of Supportive Measures can be delegated with appropriate oversight



Reporting

An institution is put on notice of their responsibility to respond to potential sexual harassment when they have “**actual knowledge**”

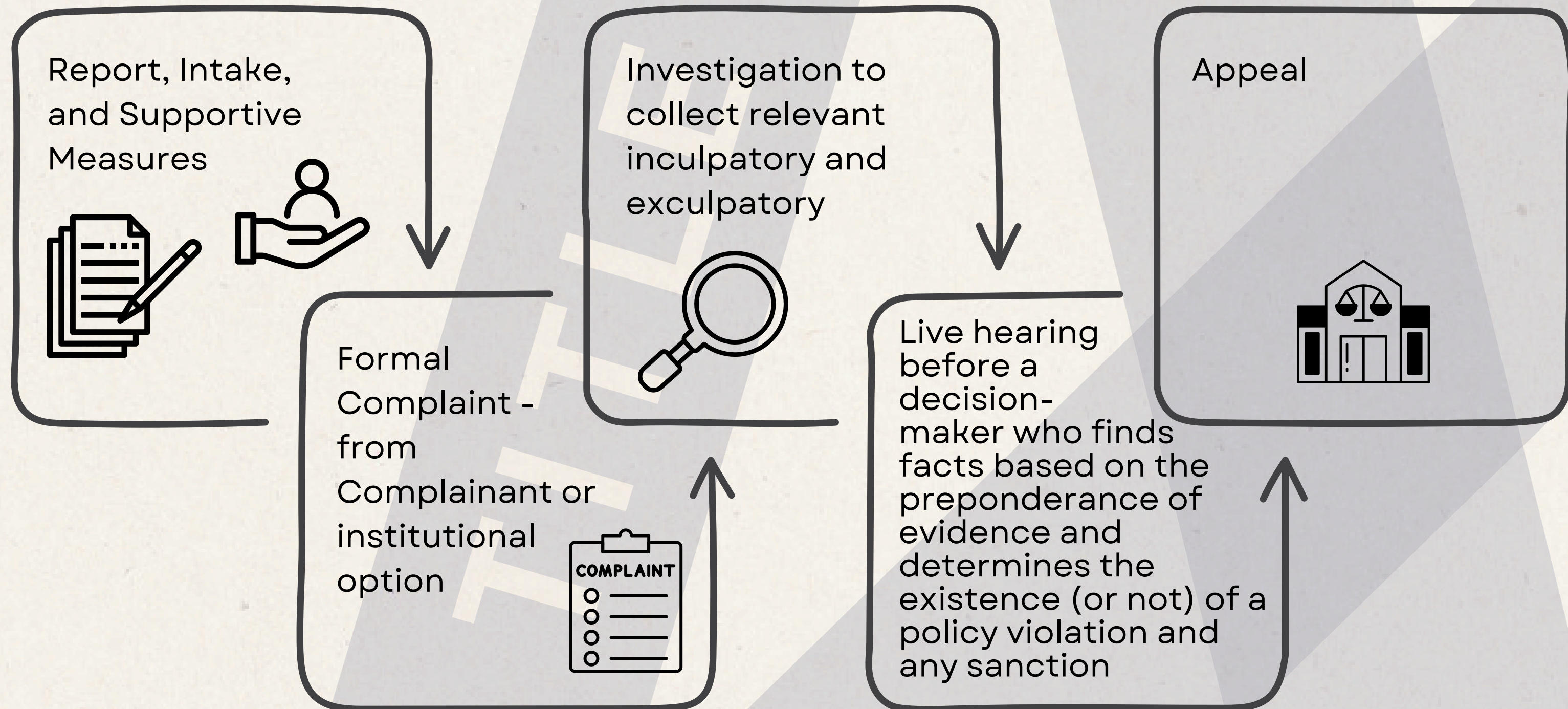


Actual Knowledge



- When an institutional official, with the authority to take corrective action
- Observes or receives a report
- Of sexual harassment occurring in the institution’s education programs and activities

The Title IX Sexual Harassment Grievance Process



Contacting the Alleged Victim



After the institution has actual knowledge, the Title IX coordinator MUST contact the alleged victim and provide information about supportive measures, explain the grievance process and how to file a formal complaint, and discuss the alleged victim's wishes



If we cannot identify the victim, the Title IX coordinator should oversee a preliminary investigation to determine the identity of alleged victim

If the identity of alleged victim cannot be discerned after reasonable inquiry, matter should be documented and consideration given as to whether other policies (such as student code of conduct) are utilized

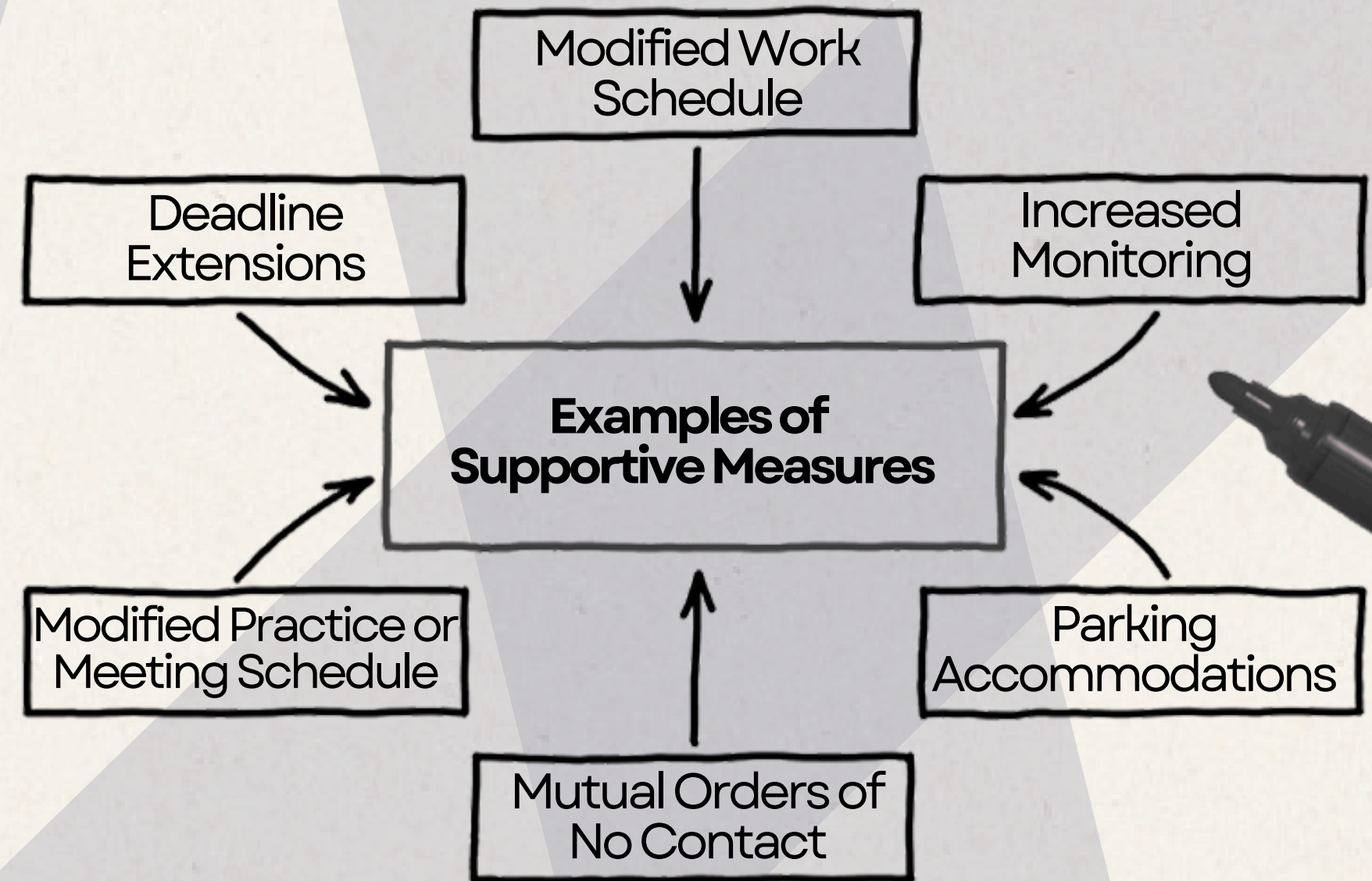
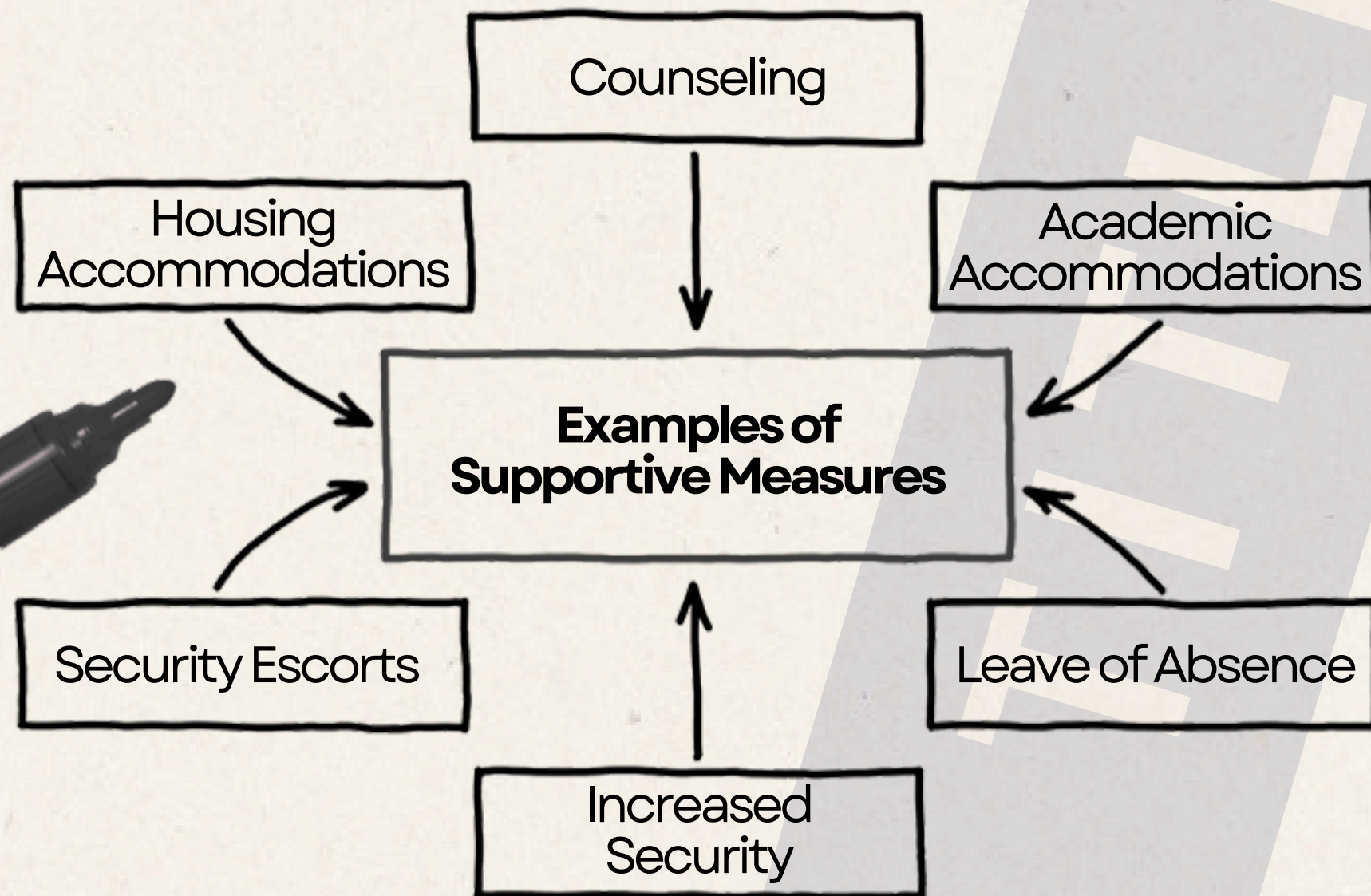


The formal complaint is a specific written document that is required to begin the investigation and hearing process

No formal complaint is needed to contact the alleged victim and begin supportive measures

Supportive Measures

Supportive measures are non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities and maintain the status quo without reasonably burdening the other party

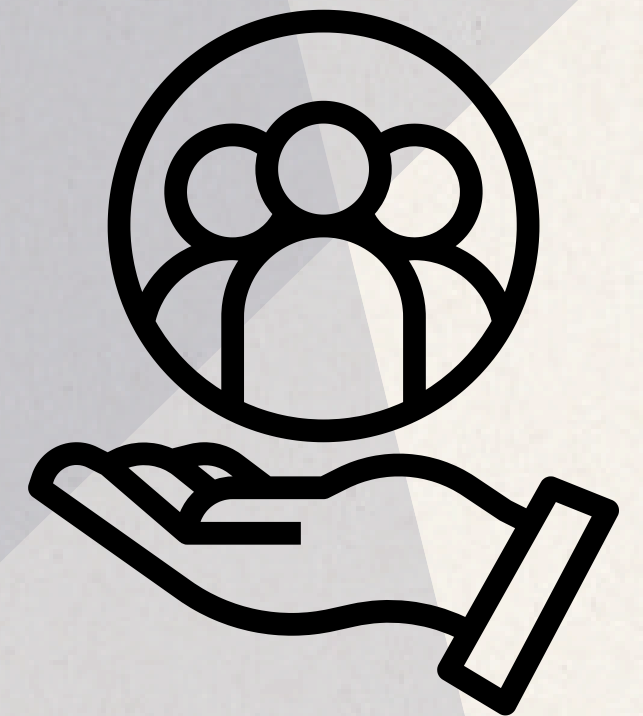


More About Supportive Measures

- Institutions may provide supportive measures for reported conduct that falls outside Title IX's scope
- Supportive measures are generally confidential and are only shared with institutional employees who have a legitimate need to know and/or in order to execute them
- The Title IX coordinator is responsible for “coordinating the effective implementation” of supportive measures

When is a no contact order appropriate as a supportive measure?

- When reasonably available
- When not an unreasonable burden
- When necessary to restore access or preserve safety
- Never for disciplinary or punitive reasons



Interim Removals

Students may be removed on an emergency basis if:

- Individualized safety and risk analysis
- Determines an immediate threat to physical health or safety of any student or other individual arising from the alleged sexual harassment justifies removal
- Student is given immediate notice and opportunity to contest the removal

Can we utilize an already existing process for interim removals?

- Yes, if the process complies with the Title IX standard

Common institutional examples include:

- Threat assessment policy
- Critical Incident Response Team (“CIRT”) Interim suspension provisions of Student Handbook

Can we place employees on administrative leave?

- Yes – and without requisite showing of threat to physical health or safety
- Whether an opportunity to challenge administrative leave must be given depends on employee status and other policies (e.g., Faculty Handbook)

The Investigation

The Purpose

- To collect relevant inculpatory and exculpatory evidence
- Sufficient to permit an impartial decision-maker to determine through a live hearing whether or not the reported sexual harassment occurred

The Principle(s)

- The Investigator has an independent duty to collect relevant inculpatory and exculpatory evidence
- The parties must have sufficient notice to prepare and meaningfully participate
- The Parties have an equal opportunity to present their statements, evidence, and to identify witnesses
- The parties must have an equal opportunity to review and comment on the evidence

Evidence
Gathering

NOT

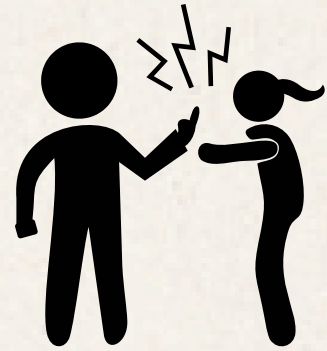
Fact Finding

but first...

Formal Written Complaint

Signature

Must be signed in writing



Alleging sexual harassment and the desire to initiate the grievance process



**From the Complainant
or the Title IX Coordinator**



**Can complaints
be dismissed?**

MUST Be Dismissed

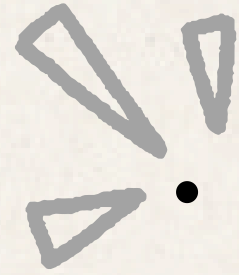
- The alleged sexual harassment occurred outside the institution's education programs or activities
- The alleged misconduct could not be sexual harassment even if found to be true
- The Complainant is not a current participant or was not a current participant in the institution's education programs and activities at time of complaint

MAY Be Dismissed

- If the Complainant withdraws their allegations in writing
- If the Respondent is no longer employed or is no longer a student
- If the specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

if not dismissed...

Let them know...

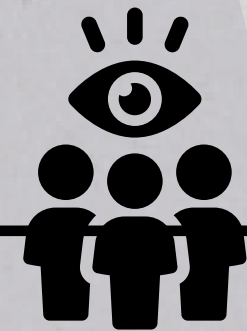


- Notice must be **in writing** and include **sufficient details**
- Must include a **statement of non-responsibility**
- The parties right to an **advisor**
- The parties right to **inspect and review evidence**
- Prohibition on providing **knowingly false statements**

Gather evidence...



- Interviews of **parties** and **witnesses**
- Collect **non-testimonial** evidence, inculpatory and exculpatory



Preferred witnesses are **fact** witnesses

There may also be **character** and **expert** witnesses

The Interview

Structure

- Rapport building and information providing phase
- Substantive testimony collection
- Closure and information providing phase

Gathering Information

The Substantive Phase

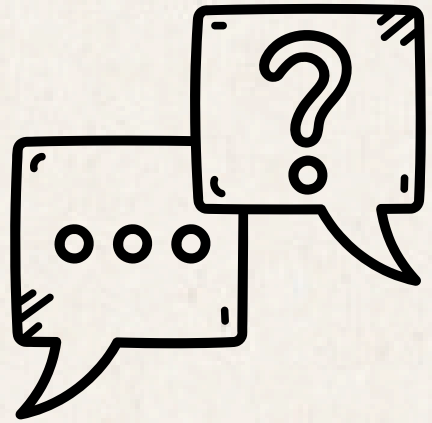
- Use open-ended questions and non-suggestive invitations
- Facilitator words
- Cued invitations
- Delay specific questions
- Avoid recognition prompts

Trauma-Informed

Other Considerations

- Promptly provide supportive measures
- Understand the neurobiology of trauma
- Adopt techniques that minimize the risk of exacerbating trauma while being fair and impartial
- Maintain balance

Collecting Evidence



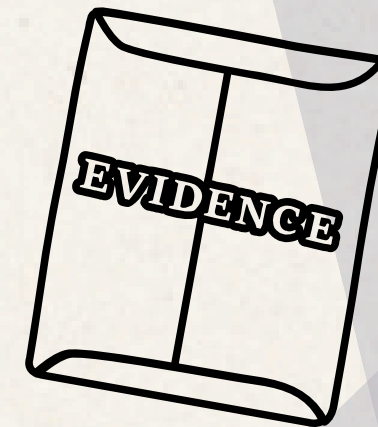
- Can interviews be recorded?
- What constitutes non-testimonial evidence?
- Can sexual history be questioned?
- What about privileged records?

Preparing the Report



- Must fairly summarize the evidence collected
- Must be provided to the parties at least 10 days before the hearing
- Does not make a finding

Sharing Evidence



- Parties must be equally given timely access to the evidence
- Is the evidence confidential?
- Can the parties respond to the evidence?

Considerations for the Hearing

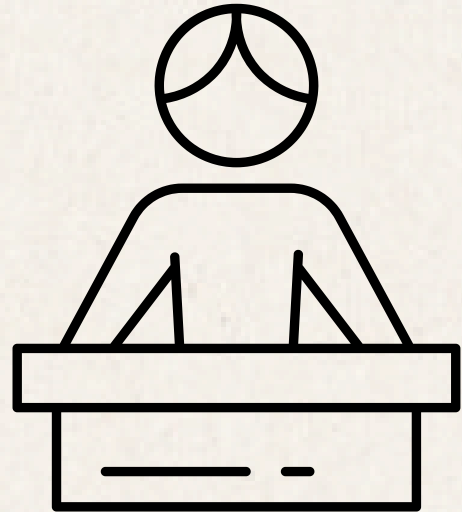
The Purpose

- To hear testimony and receive non-testimonial evidence
- So the decision-maker can determine facts under the preponderance of evidence standard
- And then apply those facts to the policy
- To make a finding and issue a written determination resolving the formal complaint and imposing discipline/remedial measures as necessary

The Checklist

- Parties and advisors are provided with the investigation report
- Decision-maker(s) are identified and assessed for conflict and bias
- Hearing is scheduled
- Witnesses are notified
- Pre-hearing conference(s) are held

Conducting the Hearing



- Key elements
- Exclusionary rule
- Sequence
- Relevance
- Decorum
- Objections

Assessing Credibility

- Plausibility
- Specificity
- Motive to falsify
- Corroboration
- Consistency
- Contradictory

The Written **DECISION**

- Identifies the allegations
- Describes the procedural steps taken
- States findings of facts supporting the determination
- Reaches conclusions regarding application of relevant policy definitions to the facts
- Includes a rationale for each finding for each allegation
- States the disciplinary sanctions and remedies, if implicated by the determination made
- Explains the procedures and grounds for appeal

Informal Resolution

A **voluntary** process to resolve formal complaints of sexual harassment through a mechanism other than the default investigation and hearing



Formal complaint must be filed and written notice given

Parties must be apprised in writing of how the informal resolution process will work and the consequences of participation

The parties must voluntarily agree to participate in writing

The parties must be allowed to withdraw up until the process is final

Informal resolution is not allowed in allegations of sexual harassment where an employee is accused of harassing a student

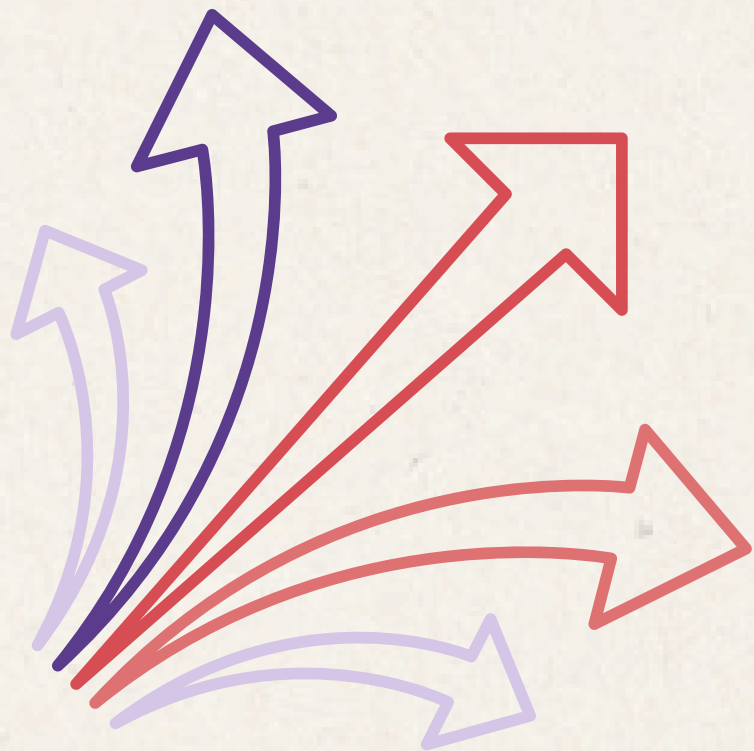
The institution cannot require parties to participate in an informal resolution

Prevention Education

Creates a culture of respect, equips students to look out for one another, and lays the groundwork for long-term reductions in sexual and interpersonal violence

It Matters!

- Builds awareness and understanding
- Helps shift campus culture
- Promotes active bystander intervention
- Encourages reporting and support-seeking
- Meets legal and institutional responsibilities





thank you
for making a huge
difference

Questions?

CONTACT US



Western Illinois University

Joani Wilson, Director & Title IX Coordinator

Email: jm-wilson3@wiu.edu

Office: 309-298-1977

Monmouth College

Michelle Merritt, Vice President and Dean for Student Success and Title IX Coordinator

Email: mmerritt@monmouthcollege.edu

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Kimberly K. Schrader

Email: kkschrader@gmail.com

Mobile: 309-337-6536

*Thank
you*