



HUSCH BLACKWELL

Title IX

Hearings Training

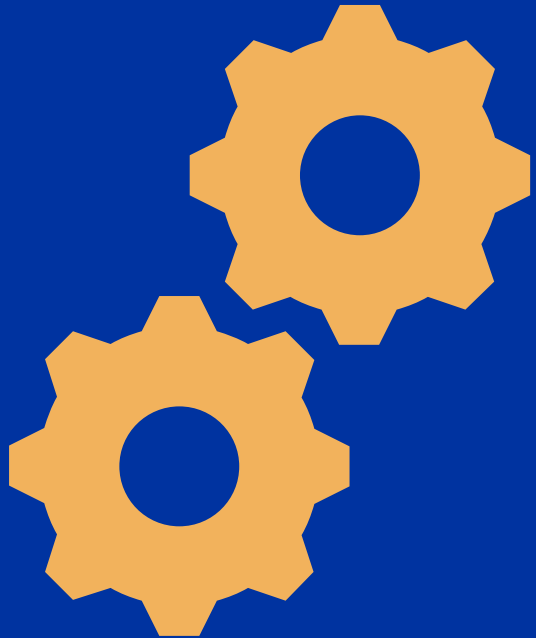
Indiana University Participants in Sexual Harassment Policy Process
– Hearing Panel Members & Adjudicators
Fall 2020: Day 1



Housekeeping

- **Recording is not permitted**
- Slides will be provided by email after the training concludes
- Change Zoom name to match registration
- Please list your institution (if desired)
- Raise hand or use chat function to ask questions
- Other breaks—take individually as needed

Group Scenarios



Breakout Groups

- Scenarios discussed in Breakout Groups
- Introduce yourselves and select a spokesperson
- Scenario and questions for each Group Scenario will be posted in the Chat Box
- Presenters will randomly call on Breakout Groups to provide your responses – be ready!
- Cameras on for breakouts



Goals

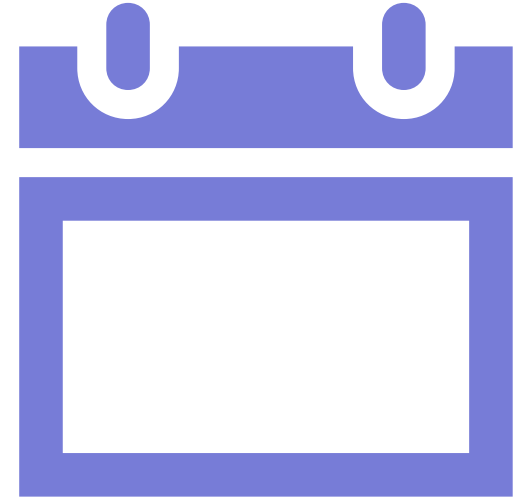
- Refresh on Title IX
- Understand how Title IX rules impact hearings
- Learn how to prepare for and conduct a hearing
- Provide effective cross-examination
- Identify and avoid common pitfalls and problems
- Apply mitigating and aggravating factors in sanctioning decision
- Understand method for making-decisions and preparing decision





Agenda

- Module 1: Key Legal Principles & Considerations
- Module 2: Applicable Policy Requirements
- Module 3: Complaints
- Module 4: Bias, Stereotypes & Conflicts of Interest
- Module 5: Trauma
- Module 6: Hearings, Cross Examination & Questioning
- Module 7: Decision-Making & Evidentiary Concepts
- Module 8: Sanctioning
- Module 9: Decision-Writing



Key Legal Principles & Considerations

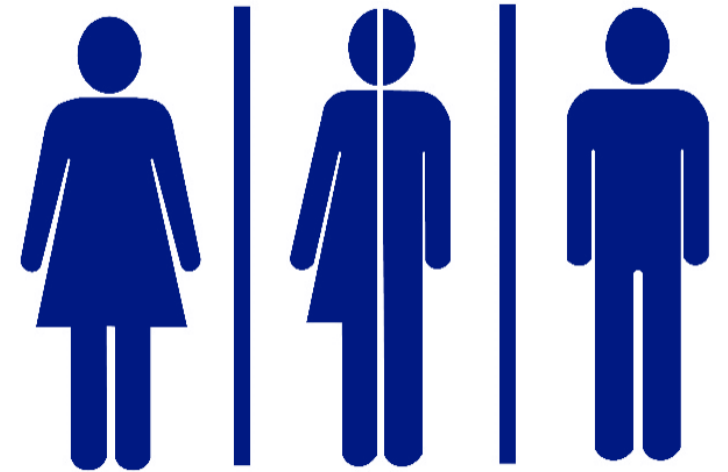
Module 1: Scope & jurisdiction



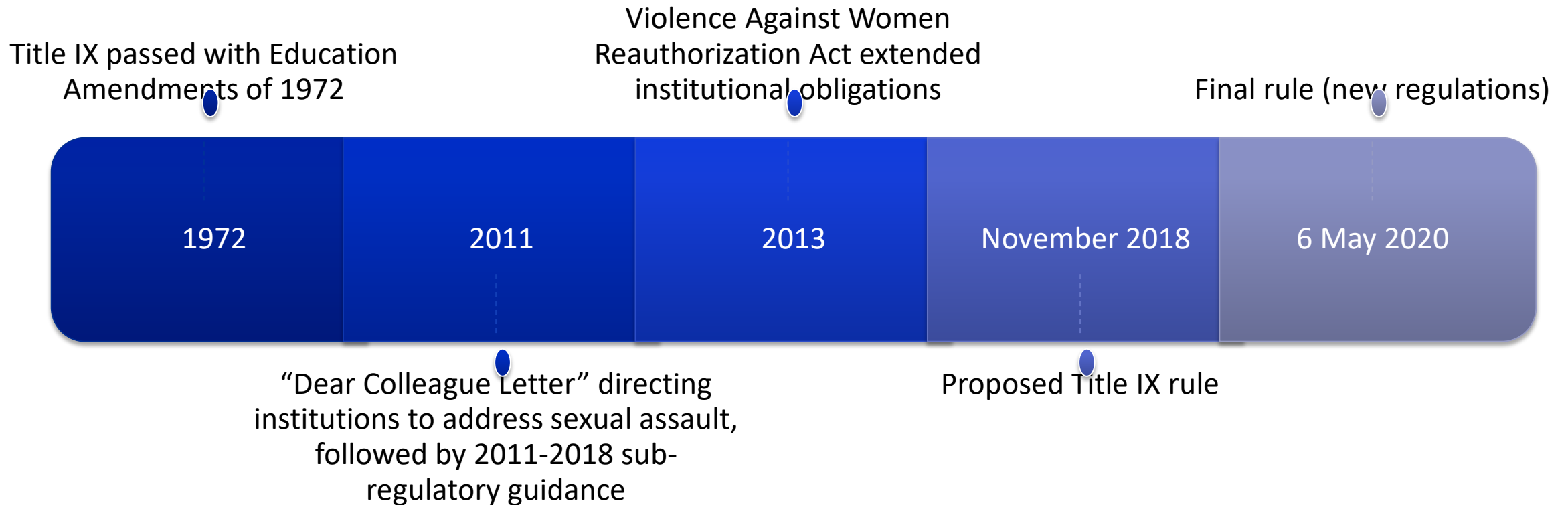
What is Title IX?

“[N]o 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.”

32 C.F.R. § 106.31



Why are we talking about this now?





When are the new regs effective?



- August 14, 2020
- Do not apply to Sexual Harassment that allegedly occurred prior to effective date
 - Assessed according to guidance and regulations in place at time alleged conduct occurred

Examples of notable provisions

Revised definition of the types of sexual misconduct covered by ED's Title IX rules

Added emphasis on equal rights of parties

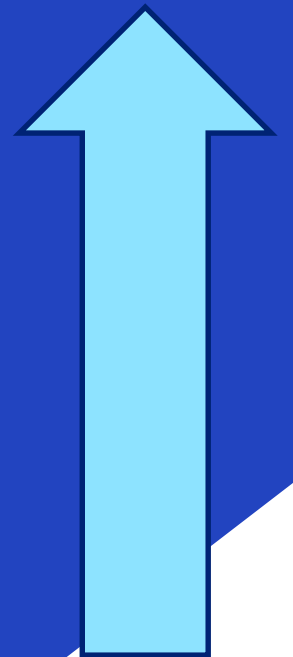
Presumption respondent did not violate policy unless and until a determination is made after hearing

Revised procedural parameters including

- Triggers for institutional responsibility
- Notice requirements
- Proceeding with investigations
- Appeals
- Informal resolution

Live hearing including

- Cross-examination by party advisors
- Relevance rulings by decision maker
- Allowable expert witnesses



Poll question #1

- Does Title IX apply only to traditional educational entities (schools, colleges, universities, graduate schools)?
 - Yes
 - No



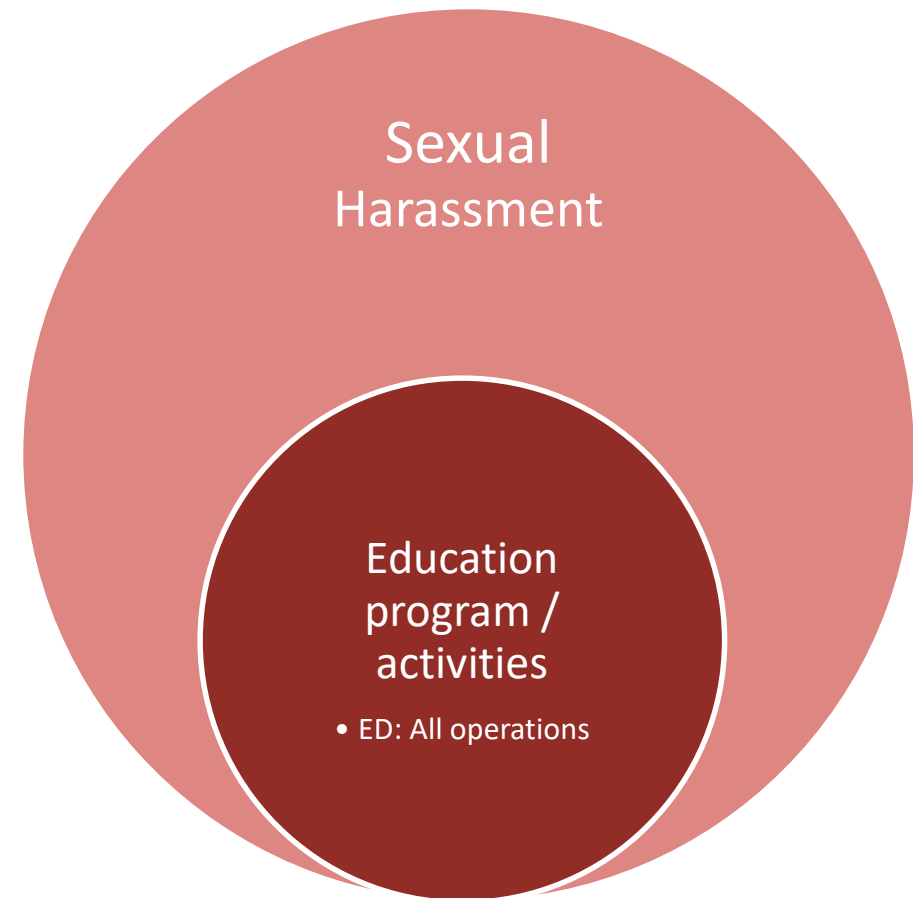
Who does Title IX apply to?

- Entities that receive federal financial assistance, including colleges and universities that participate in Title IV funding
 - Not individual persons
 - But institutions are required to adopt policies and procedures to implement Title IX that *do* apply to individual persons



What sexual harassment does Title IX apply to?

- Title IX applies to sexual harassment in the “education program or activity” of a federal funding recipient
 - Title IX defines “education program or activity” to include the “operations” of educational institutions
- Title IX does not apply to private conduct occurring in private location that is not part of education program/activity



What are examples of education programs and activities?

Admissions

Hiring

Workplace

Academic instruction

Residence life

Amenities on campus

Sports teams

Work-study

Games, concerts, and speeches on-campus

Off-campus trips or experiences organized by the institution

Sponsored organization activities

Anything else that happens on-campus

Does Title IX apply to off-campus sexual harassment?



Yes, if the conduct at issue occurs in the context of an education program or activity



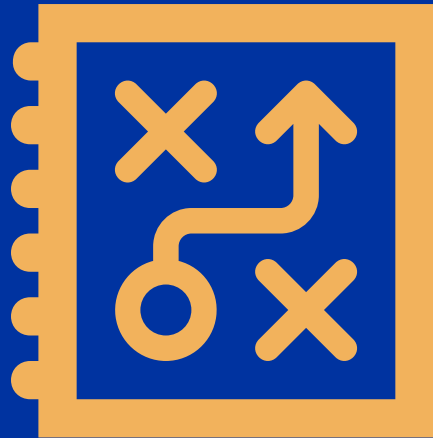
Yes, if the conduct at issue occurs in a house owned or controlled by an officially-recognized Greek organization or other student organization



No, if it occurs in a private location and is not part of an institution's education program or activity



Example #1 (included in EP&A)

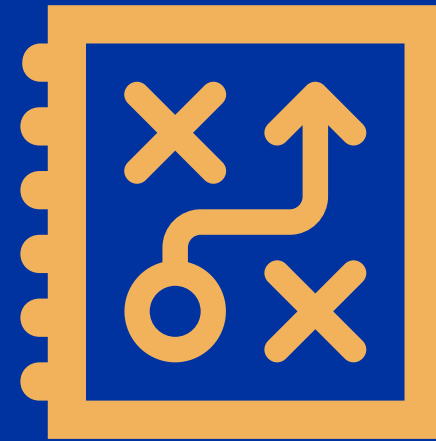


Student is sexually assaulted in a residence hall on-campus. The sexual assault occurs on a Saturday evening. The identity of the perpetrator is not immediately known.



Example #2 (included in EP&A)

—
The tennis team travels to a different school for a tournament and stays overnight at a hotel. At the hotel where the team is staying, the coach sexually harasses the team's manager.





Example (excluded from EP&A)



During spring break, two students travel to another state and stay at an all-inclusive resort owned by a prominent hotel chain. The students booked the trip on their own for leisure purposes. While staying at the resort, one student sexually assaults the other student.



Does Title IX apply to sexual harassment in other countries?

- No – the Department of Education interprets Title IX to apply only within the geographic boundaries of the United States
- Other countries may have laws that govern sexual harassment





Additional Legal Considerations



The Clery Act

- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. section 1092(f)), a federal law that requires institutions such as Indiana University to collect and publish statistics for certain crimes reported to have occurred on the university’s “Clery Geography” (i.e., occurring on campus, on public property within or immediately adjacent to campus, and on other non-campus university property), for the purpose of informing current and prospective students, faculty or staff.



Additional Legal Considerations: Violence Against Women Reauthorization Act of 2013

- Codification of Title IX principles
- Sexual misconduct policy
- Statements of rights and options
- Support persons
- Training

Applicable disabilities statutes



- The Americans With Disabilities Act
- Section 504 of the Rehabilitation Act



Section 504 of the Rehabilitation Act

- The first statute to require disability accommodation (1973)
- Makes it illegal for the federal government, federal contractors, and any entity receiving federal assistance to discriminate on the basis of disability
- “No otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity”



ADA—Title II

- Title II: Prohibits disability discrimination by public entities
- “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by such entity”
- A public entity’s programs, activities, and services, viewed in their entirety, must be readily accessible to, and usable by, persons with disabilities



ADA—Title III

- Title III: Prohibits “places of public accommodation” from discriminating “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation”
- Colleges and universities are places of public accommodation
- Must make reasonable accommodations in policies, practices, and procedures



FERPA

- Sexual harassment cases should be treated as confidential by the institution, with information only shared as necessary to effectuate the policy
- Records containing identifying information on students are subject to FERPA analysis
- The Title IX regulation contains an express preemption, permitting FERPA-protected material to be used as required by Title IX itself



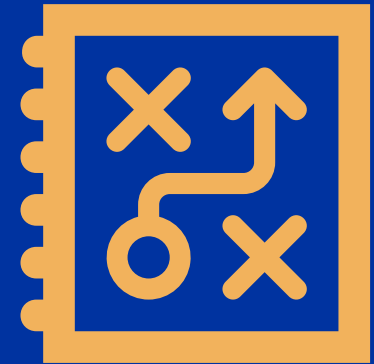


Are parties allowed to talk about a case?

- Title IX regulation prohibits an institution from restricting the ability of a party to discuss the allegations under investigation or to gather or present evidence
- First Amendment additionally limits public institutions' ability to restrict speech about a case
- Witness manipulation and intimidation can still be addressed by institution

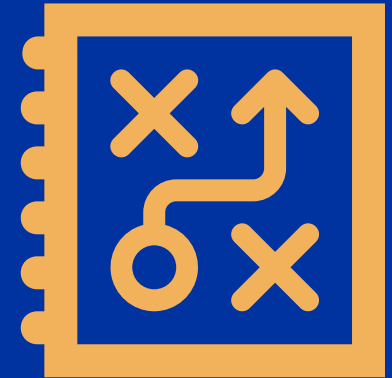
Example (permitted communication)

Respondent in sexual harassment case affirmatively calls several other students who know complainant. Respondent tells such persons he has been accused of sexual harassment and is attempting to determine whether the complainant discussed the effect of respondent's actions with any of them.



Example (institution may restrict)

Complainant contacts witness who complainant knows will testify to witness' belief, based on observation, that complainant was not incapacitated and desired to have sex with respondent. Complainant tells witness to ignore investigator's request for an interview, to lie if witness is asked what witness observed, and not to show up at a hearing under any circumstances.

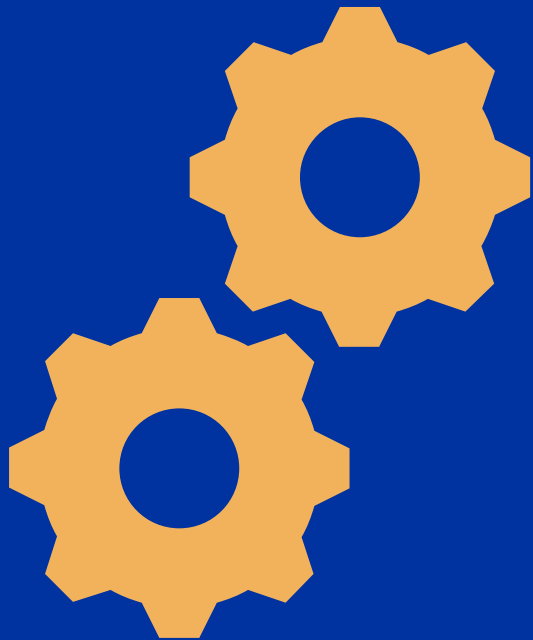




Are interviews and hearings confidential?

- Institution should restrict access to investigations and hearings to those persons whose attendance is required to effectuate policy
- Parties may be accompanied by advisors of choice and potentially others if justified by the need for a reasonable accommodation
- Media should not be granted access to interviews and hearings

Group Scenario #1



Student A is being investigated for sexually assaulting Student B. Student A contacts various individuals who were present at a party immediately before the sexual assault and asks the individuals to sign a declaration attesting that Student B was sober and fondling Student A in front of others. One such individual is a friend of Student B's and complains to the Title IX Coordinator. Later, when Student A is given access to the investigation evidence before the conclusion of the investigation, Student A posts the entire evidentiary record online.

Questions



Applicable Policy Requirements

Module 2: Including key terms, definitions & retaliation



Standard of Evidence



Legal Standard

Preponderance of the evidence

=

“more likely than not”



Purposes of Policy

- Indiana University prohibits discrimination and harassment on the basis of age, color, disability, ethnicity, sex, gender identity, gender expression, genetic information, marital status, national origin, race, religion, sexual orientation, or veteran status (“protected classes”) in matters of admission, employment, housing, services, and in its educational programs and activities.
- It is the policy of the university to comply with all applicable federal and state laws regarding unlawful discrimination and harassment against protected classes.



Scope of Policy

- This policy applies to any reported discrimination, harassment and/or or sexual misconduct that is alleged to have occurred on campus, in the context of any university program or activity, or involving current members of the university community whether on or off campus. This policy also applies to reported discrimination, harassment and/or sexual misconduct that has a continuing adverse effect or creates a hostile environment for one or more individuals.



Reach of Policy

- This policy applies to all members of the IU community, including:
 - all students
 - all academic appointees, staff and temporary (hourly) employees
 - all others while on IU property, including employees of third-party vendors and contractors, volunteers, and visitors, and others while involved in an off-campus IU program or activity.

IU Policy on Non-Title IX Sexual Harassment and Misconduct:

- Non-Title IX Sexual Harassment processed under “University Complaint Resolution Procedures”
 - Non-consensual sexual penetration
 - Non-consensual sexual contact
 - Sexual exploitation
 - Sex/Gender-based harassment
 - Sexual harassment

What is sexual harassment?

Conduct on the basis of sex that is:

Quid pro quo
harassment

Hostile environment
harassment

Sexual
assault

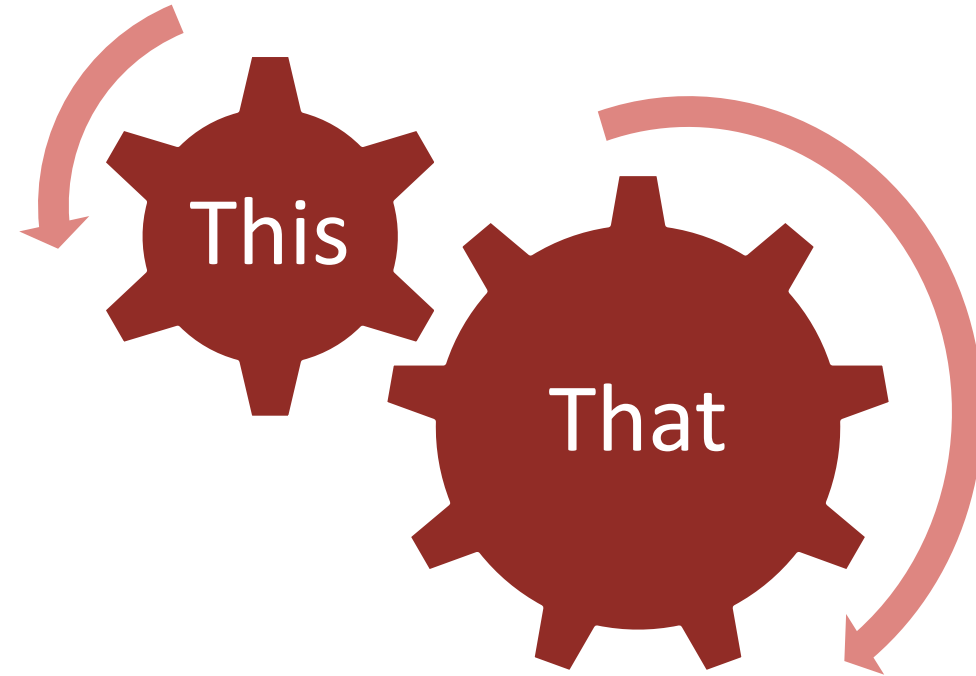
Relationship
violence

Stalking



What is quid pro quo?

- ***Title IX-Designated***
- An employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual conduct
 - Often arises in the employment context or where an employee holds a position of authority over a student





Example of quid pro quo

Manager tells subordinate employee that subordinate will not get a raise this year unless subordinate performs sexual favors for manager.

Subordinate is in a relationship with another individual and has no interest in performing sexual favors for manager.





Another example of quid pro quo



A faculty member tells a student that the student can increase the student's grade if the student wears revealing clothing that is "more pleasing" to the faculty member's eye.

Poll question #2

- When considering whether a hostile environment exists, whose perspective do we consider?
 - The complainant's
 - A reasonable person's
 - Both



What is hostile environment?

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.





How do we determine if a hostile environment exists?

- Consider all the facts and circumstances, such as:
 - The type of misconduct
 - The frequency of the misconduct
 - Where the misconduct occurs
 - Whether a power differential exists, etc.
- From the perspective of a reasonable person



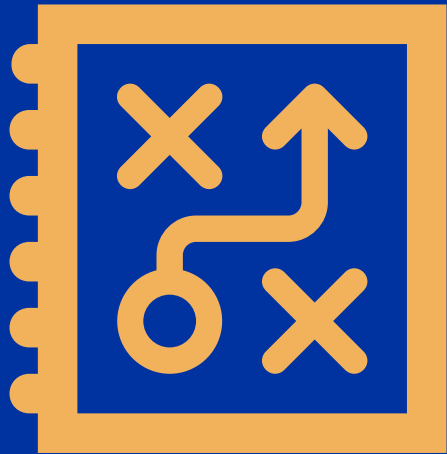
Example of hostile environment

—
Bookworm student repeatedly gropes Social Butterfly student's buttocks when the two are in the elevator of their shared dormitory. Butterfly has no romantic interest in Bookworm and has told Bookworm to stop. But Bookworm persists, causing Butterfly to use the stairs instead of the elevator and to avoid Bookworm in other areas of the dormitory.





Another example of hostile environment

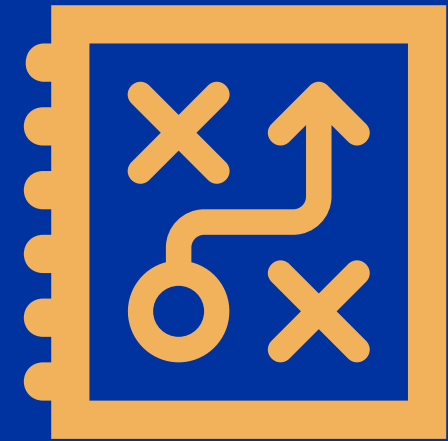


Resident Assistant asks Student to go on a date, and Student says “no.” RA then repeatedly sends Student text messages using various vulgar terms that suggest Student is promiscuous. When RA and Student attend a shared biology class, RA mutters these vulgar terms toward Student, loud enough for others to hear. Student blocks RA’s phone number and drops the biology class to avoid RA.



And another example of hostile environment

Senior obtains a nude picture of Soccer Player from Player's former romantic partner. Senior threatens to post the nude picture on social media unless Player poses nude for Senior in Senior's residence hall. Player poses for Senior to avoid the nude picture being circulated. Senior is not an employee.





Does the First Amendment matter?



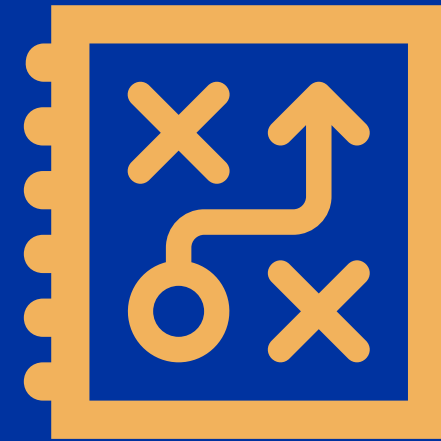
- While sexual harassment can be verbal or written in nature, sexual harassment under Title IX does not include conduct that is protected by the First Amendment
- The subjective offensiveness of speech, alone, is not sufficient to create a hostile environment



Example (not-hostile environment)

—

Vocal student actively supports a prominent political candidate who has been accused of sexually harassing campaign staffers. Offended student files a complaint that Vocal student's political support of the candidate has caused a sexually hostile environment on campus.





What is sexual assault?

Title IX regulations define “sexual assault” as incorporating the following classes of conduct:

Rape

Sodomy

Sexual assault
with an object

Fondling

Incest



What is rape?

Having carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted rape is included.



What is consent?

- Policy definition – read it carefully
- Words or actions that a reasonable person in the respondent’s perspective would understand as agreement to engage in the sexual conduct at issue
- A person who is incapacitated is not capable of giving consent
- Consent cannot be procured by coercion
- Be aware of minimum age of consent



What is incapacity?

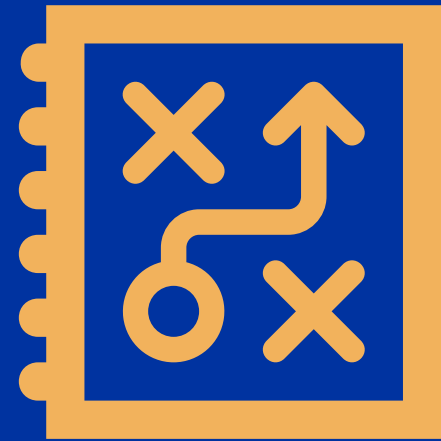
Incapacity refers to a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.





Example (incapacitated)

Short student has had ten cocktails over the course of two hours. Sober student takes Short student to Sober's apartment. Short student cannot walk without support, forgets Sober's name, and passes into a stupor when Sober places Short student on Sober's bed. Sober then engages in sexual activity with Short student.





Example (not-incapacitated)



Tall student has had four beers over the course of two hours with dinner. Tall student calls Friend to see if Friend is home. Tall student then drives from campus to Friend's off-campus apartment. Upon arriving, Tall student initiates sexual contact with Friend, and then insists that Friend uses contraception before the two have intercourse. Tall student is an active participant in the intercourse.



What is sodomy?

Oral or anal sexual intercourse with another person without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



What is sexual assault with an object?

Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the perpetrator other than the perpetrator’s genitalia.



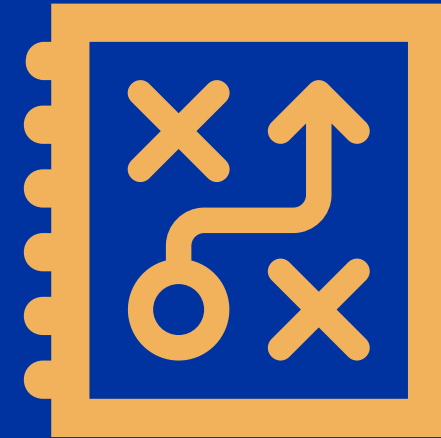
What is fondling?

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 age or because of temporary or permanent mental or physical incapacity.



Example of fondling

Clumsy student and Dance student attend a dance held in the student union. While on the dance floor, Clumsy gropes Dancer's groin without permission. Dancer does not welcome the groping and views it as unwelcome.





What is incest?

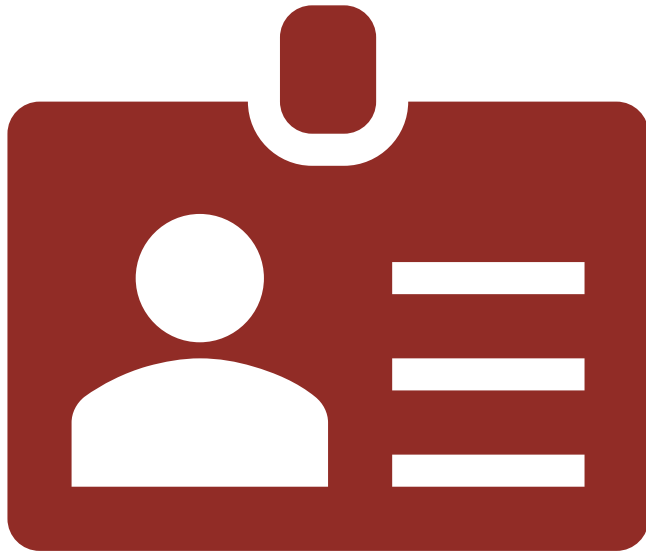
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Poll question #3

- What is the age under which no one is considered able to consent to sexual activity in your state?



What is statutory rape?



Sexual intercourse with a person who is under the statutory age of consent as defined by law.



What is 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state, 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 state.



What is dating violence?

“Dating Violence” is :

- Actual, attempted or threatened violence by one individual against another individual with whom they are, or have been, in a social relationship of a romantic or intimate nature; or
- Conduct that would constitute a felony or misdemeanor crime of violence by an individual against:
 - A current or former spouse or intimately partner
 - An individual with whom they share a child
 - An individual similarly situated to a spouse under Indiana state domestic or family violence laws
 - Any adult or youth who is protected from the individual’s acts under the Indiana state domestic or family violence laws



Example of dating violence

President's Chief of Staff and Statistics Department Chair are engaged to be married but live separately and have no children in common. Chief of Staff and Department Chair get into an argument over sex in Chief of Staff's car in the institution's parking lot. During the argument, Chief of Staff slaps Department Chair's face and tells chair to "shut your mouth."

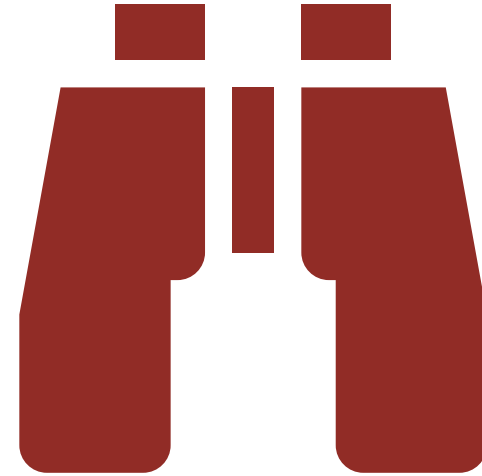




What is stalking?

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
- Suffer substantial emotional distress.



Example of stalking



Freshman is infatuated with Sophomore who has rebuffed Freshman's romantic advances. Thereafter, Freshman dresses in black and sneaks up to the window of Sophomore's house (owned by sponsored Student Organization) at night in an attempt to see Sophomore. Freshman does this twice before being caught in the act during Freshman's third attempt.

The logo for Husch Blackwell, consisting of a stylized white 'H' and 'B' stacked vertically on a blue background.

HUSCH BLACKWELL

Retaliation



Does Title IX also prohibit retaliation?

Yes – “No recipient 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 this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing” under the institution’s policy (34 C.F.R. § 106.71)



Protections at IU

- Retaliation against anyone who has reported an incident of discrimination, harassment and/or sexual misconduct, provided information, or participated in procedures or an investigation into a report of discrimination, harassment and/or sexual misconduct, is prohibited by the university and may be considered and addressed as a potential violation of this policy or other applicable university policies



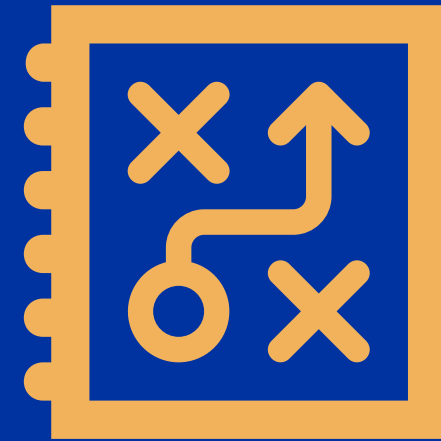
University Response

- The university will take steps to prevent retaliation and will impose sanctions on anyone or any group who is found to have engaged in retaliation in violation of this policy. Concerns about potential retaliation in connection with a report of sexual misconduct should be reported to the designated officials under this policy.

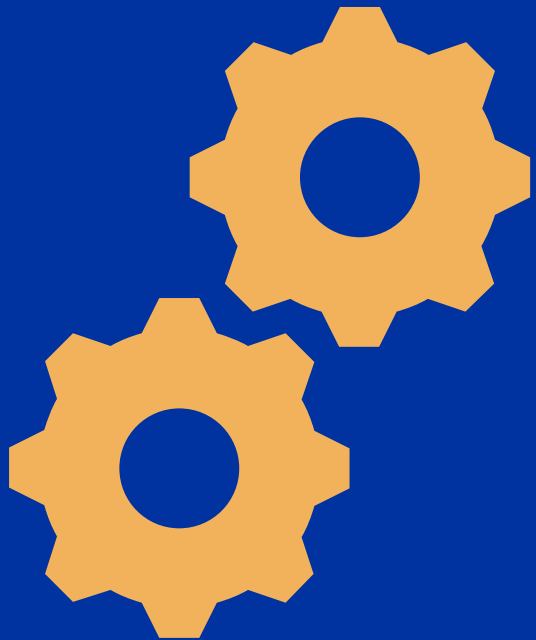


Example of retaliation

—
Groundskeeper testifies at hearing in support of Office Worker's complaint of sexual harassment against Manager. After institution finds that Manager sexually harassed Office Worker, Manager demotes Groundskeeper to punish Groundskeeper for testifying against Manager.



Group Scenario #2



Student A reports that Student B sexually harassed Student A on two occasions. The first incident consisted of Student B groping Student A's genitals without permission while the two were dancing during a formal hosted by a Greek organization at a local party venue the Greek organization rented. The second incident consisted of Student B attempting to have sexual intercourse with Student A a week later, when Student A was heavily intoxicated at a tailgate party held in the parking lot of a rival institution's football stadium.

Any
Questions





Institutional Response to Sexual Harassment

What are the institution's overall duties?

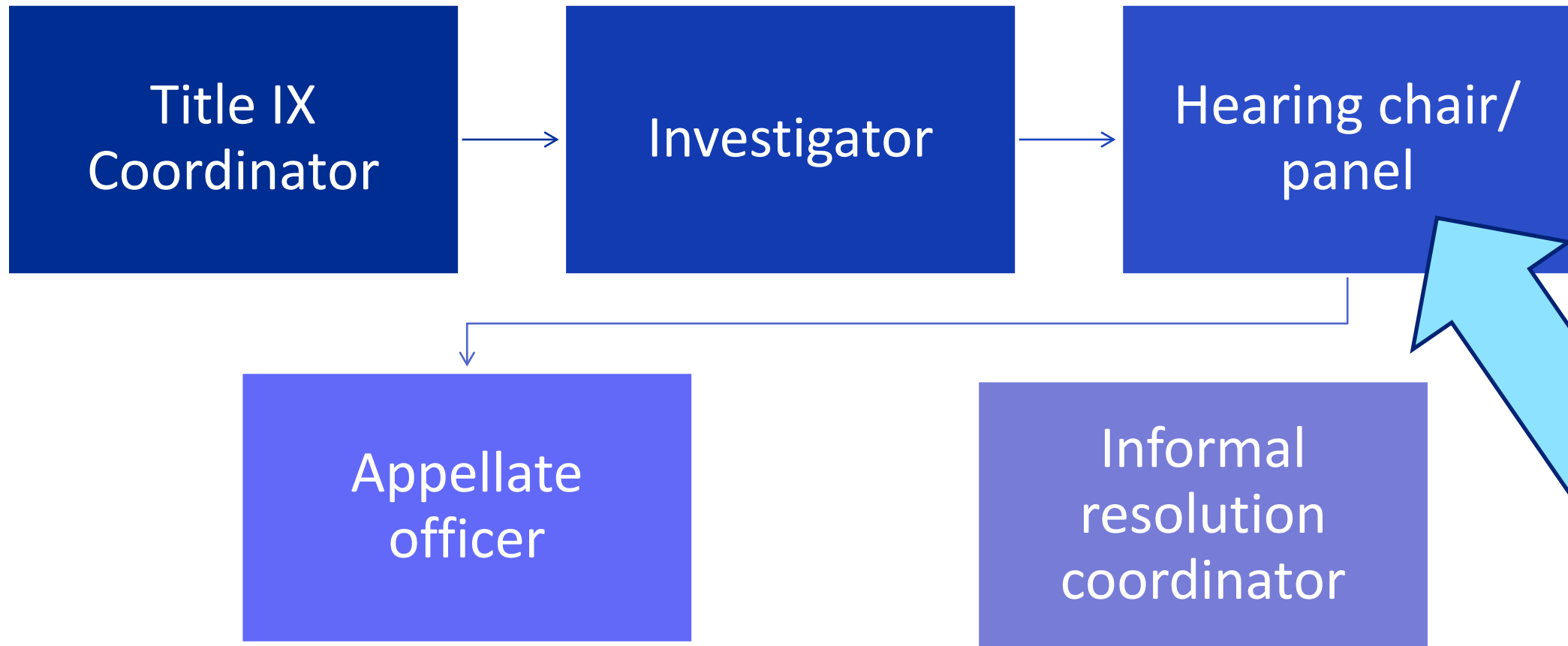
Respond to known acts of sexual harassment in a manner that is not clearly unreasonable

Treat complainants and respondents equitably

Utilize a grievance procedure in response to formal complaints and before imposing discipline

Offer supportive measures

Who are the key institutional actors in the grievance process?





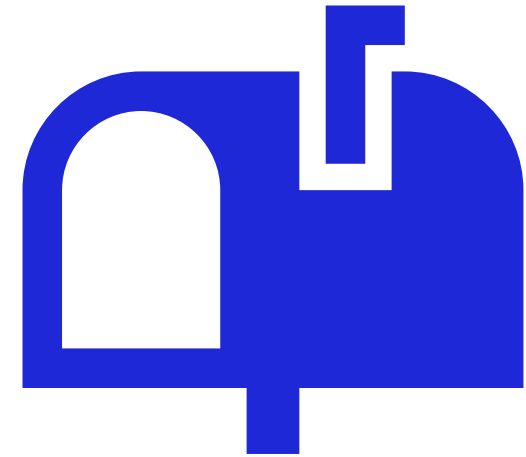
Defining what is adequate, reliable, and impartial process

- 34 CFR 106.8(b) requires recipients to “adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints” of sex discrimination under Title IX.
- “Prompt and equitable grievance procedures” in the regulation means investigations of sexual harassment allegations that provide for **“Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.”**



How does an institution get notice of sexual harassment?

Sexual harassment response is triggered when institution has “actual knowledge” of potential sexual harassment.





What is “actual knowledge”?

- “Actual knowledge” occurs when
 - An institutional official, with authority to take corrective action
 - Observes or receives a report
 - Of sexual harassment occurring in the institution’s education programs and activities

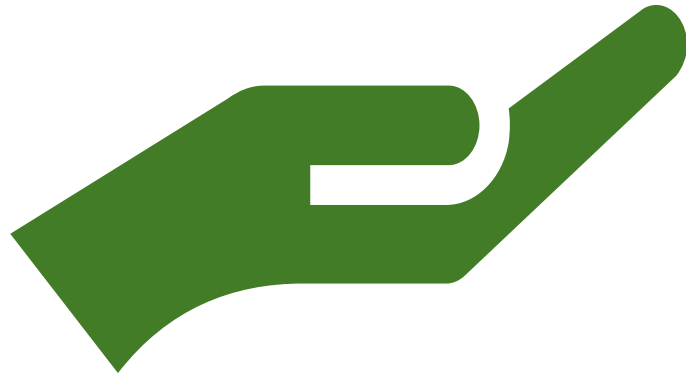


When do we reach out to the alleged victim?

- After institution has actual knowledge of alleged sexual harassment, Title IX Coordinator must contact alleged victim
- Provide information about supportive measures, explain the grievance process and how to file a formal complaint, and discuss the alleged victim's wishes




What are supportive measures?




- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party


Examples of supportive measures

 Counseling


 Academic accommodations


 Housing accommodations

 Security escorts

 Leave of absence

 Increased security or monitoring

 Modified work schedules

 Mutual no-contact order where implicated by facts



Examples of Supportive Measures under IU's Policy

IU Updated Policy

- Supportive measures may vary with the Complainant's campus, needs, and circumstances.
- Supportive measure may include:
 - assistance in changing academic, living, transportation or work situations
 - Counseling services
 - Advocacy and advising services
 - Assistance in obtaining protective orders

Complaints

—
Module 3

What is a formal complaint?

What

- Document
- Alleging sexual harassment
- Requesting an investigation / resolution under grievance procedures

Who

- Signed by
 - Alleged victim or
 - The Title IX Coordinator
- If filed by alleged victim, alleged victim must be current or attempted participant in education programs and activities
- Third-parties may not file formal complaints on behalf of an alleged victim

How

- Either physical or electronic submission



When may the Title IX Coordinator file a formal complaint?

- Typically when there is an important institutional interest in adjudicating a report irrespective of the alleged victim's wishes
- Typically involves serious misconduct, repeated misconduct, or misconduct by employees
- If alleged victim does not wish to file a formal complaint, Title IX Coordinator's decision to do so must not be clearly unreasonable



Example of T9 Coordinator formal complaint

Two student members of separate Greek organizations (GGG and PPP) each separately report they were sexually assaulted by a member of Tau Tau Tau. GGG and PPP each suspect they were drugged by TTT. Neither GGG nor PPP wishes to file a formal complaint, but each has indicated they will cooperate with an investigation if the Title IX Coordinator files a formal complaint.



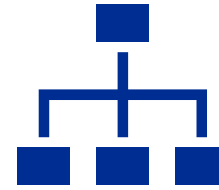


Initial Assessment

- If the report raises allegations that on their face do not rise to the level of a policy violation, but does indicate a matter of concern, the Investigator shall work... to address the concern through other appropriate avenues.
- If a complaint raises allegations that are outside the scope of the policy but may violate other university policy(ies)... [IU] will refer the complaint to the appropriate University office.

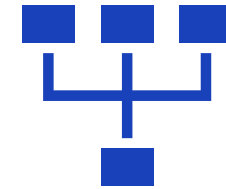
Can we consolidate the complaints?

Yes – complaints can be consolidated if they arise out of the same facts and circumstances.

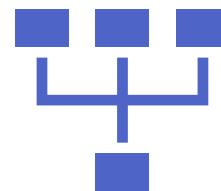


Multiple respondents

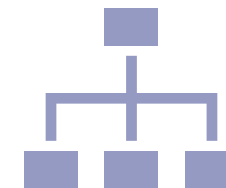
Multiple complainants



Multiple allegations against a single respondent



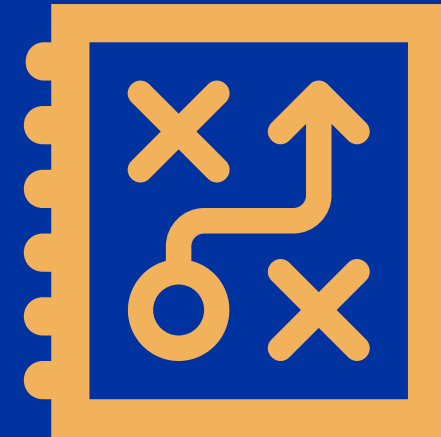
Multiple allegations from a single complainant



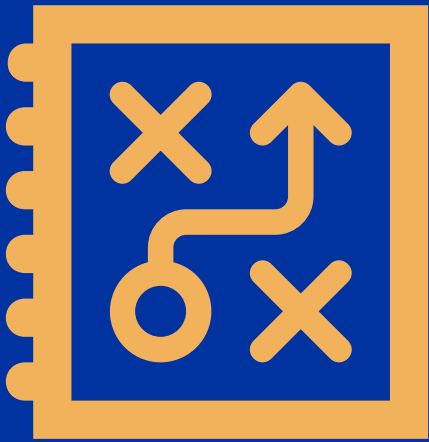


Example of permissible consolidation

Students A and Student B, who are roommates, allege that Student C barged into their dormitory room drunk and propositioned them for sex. Student A and Student B each file their own formal complaint of sexual harassment from the same incident.

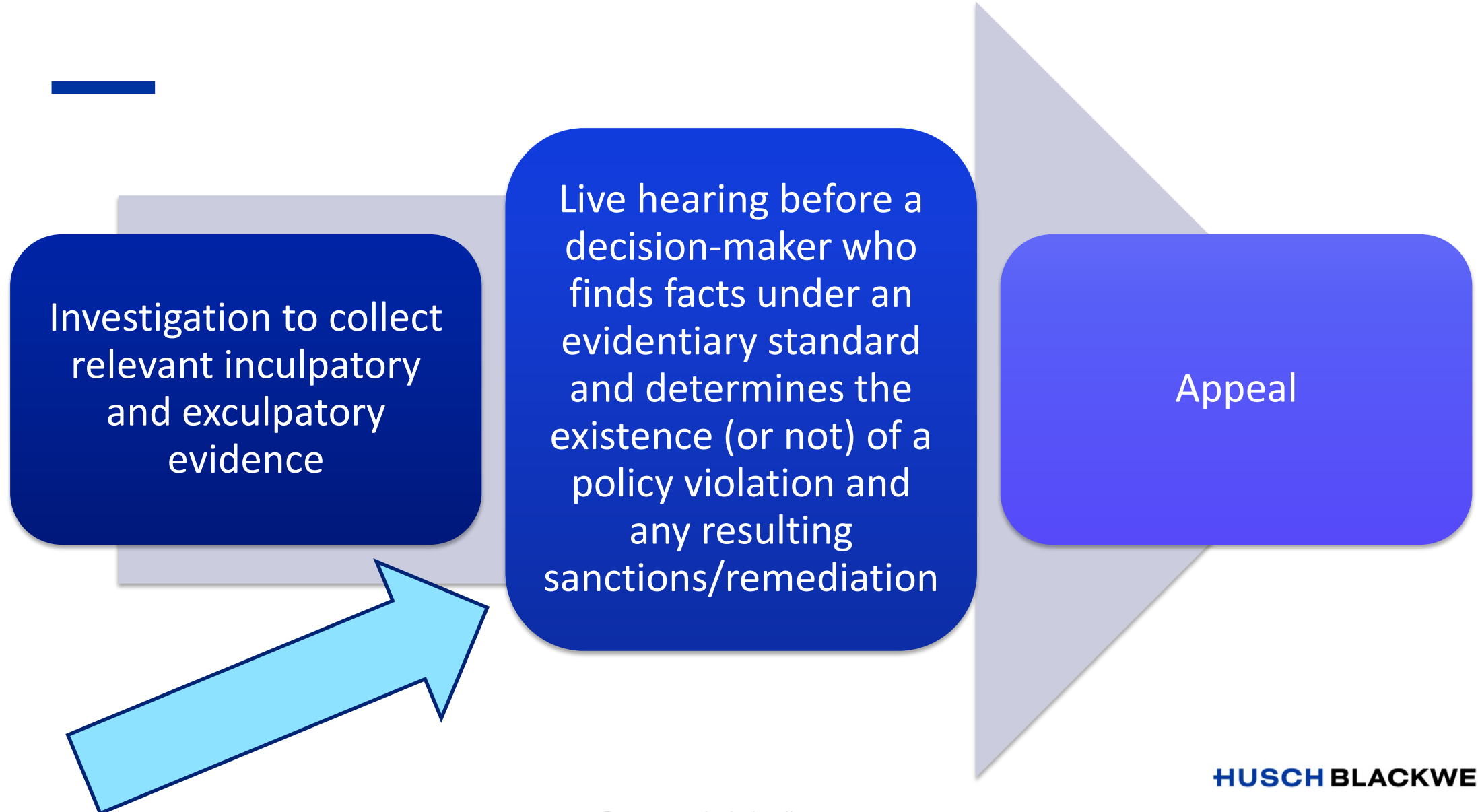


Example of impermissible consolidation



Medical Resident files a formal complaint that Research Fellow sexually assaulted Resident two years ago when Resident was incapacitated by drugs taken to treat a back injury. Undergraduate, Fellow's present romantic partner, files a formal complaint that Fellow committed dating violence by slapping Undergraduate during an argument a month ago.

What is the grievance process?





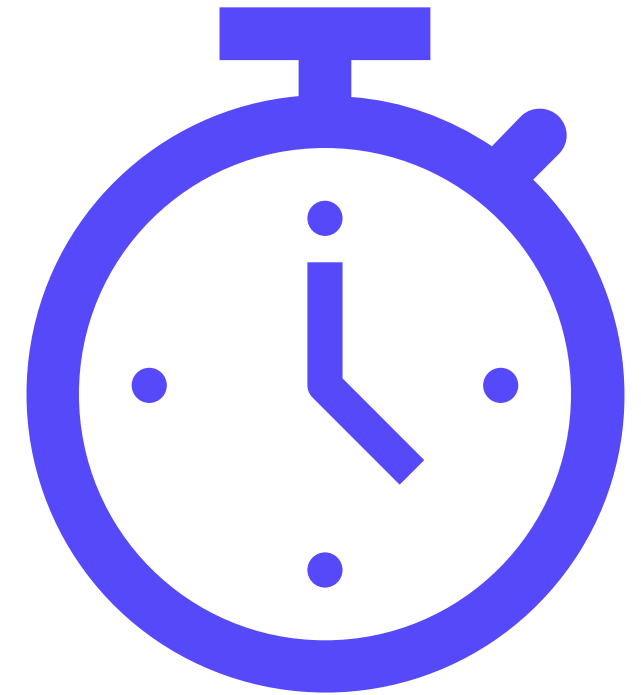
What general principles govern the grievance process?

- Equitable treatment of complainants and respondents
- No stereotypes based on a party's status as complainant or respondent
- Presumption respondent did not violate policy unless and until a determination is made after hearing
- Conflict and bias-free institutional participants



How long does a grievance process take?

- There is no firm deadline, and the length of the grievance process varies depending on a variety of factors
- Institution must be reasonably prompt, advise parties of timelines for particular phases of the process, and notify parties of extensions of timelines and the reasons for the same





What do we do if we find sexual harassment occurred?

- If grievance process results in a finding of sexual harassment:
 - Discipline for the respondent as determined by those with authority over the respondent
 - For complainant, grant remedies reasonably necessary to restore or preserve access to education programs and activities

Bias, Stereotypes and Conflicts

Module 4



Who is responsible for identifying conflicts of interest and bias?

- Title IX Coordinator or designee oversees grievance process and must address known or reported conflicts of interest/bias
- Institution must also permit parties to raise concerns of conflicts of interest and bias
- *Individual institutional actors should self-police conflicts of interest and self-identify bias

Examples of impermissible stereotypes

“Anyone who would go into another’s bedroom drunk must have wanted to have sex.”

“Students can’t be trusted because they will just lie for each other.”

“People who are dating can’t commit sexual assault against each other.”

“There are no false reports of rape. Therefore, every complainant must be believed.”



What is a conflict of interest?

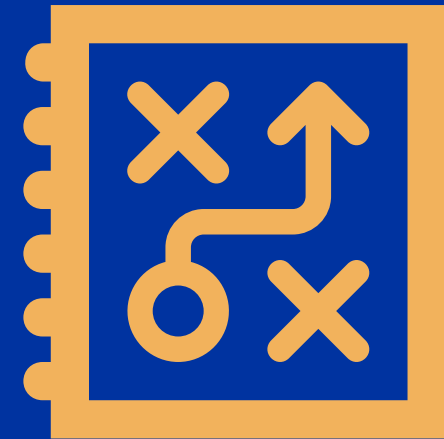
- When an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial
- May be based on prior or existing relationships, professional interest, financial interest, prior involvement, and/or nature of position



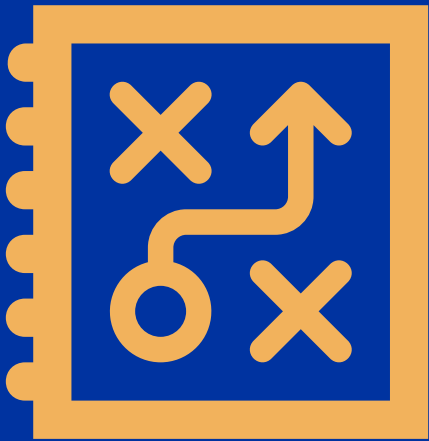
Example #1 - conflict of interest

—

Student Soccer Goalie files a formal complaint of sexual harassment against a student Lacrosse Midfielder. One of the hearing panel members selected is Midfielder's faculty advisor who has previously written letters of recommendation for Midfielder's application to law school in which faculty advisor wrote that Midfielder is "honest to a fault."



Example #2 - conflict of interest



An administrator accuses an employee of an office supply vendor of sexual harassment; matter is investigated. Institution assigns a hearing panel member whose spouse is employed as a manager for the office supply vendor and who directly supervises the accused employee.



Example #1 of bias

—
An employee in the gender studies department who is chosen to serve on a hearing panel also chairs the board of a local non-profit dedicated to sexual assault advocacy. During a speech at the non-profit's annual gala, the employee states: "The presumption of innocence is wrong in cases of sexual assault. I firmly believe a person accused of sexual assault must prove their innocence."



Example #2 of bias



Investigator assigned to investigate a formal complaint of sexual assault has repeatedly told colleagues that the investigator believes most complainants just “regret that they got drunk.” Investigator tells a co-investigator: “I just don’t think it’s ever fair to hold anyone responsible when both parties are drinking.”

Poll question #4

- Who is responsible for identifying conflicts of interest?
 - Title IX Coordinator
 - Parties
 - Those acting on behalf of the institution in the Title IX process
 - All of the above

Resource for consideration: Harvard implicit bias test

<https://implicit.harvard.edu/implicit/takeatest.html>



HUSCH BLACKWELL