

Wentworth
INSTITUTE OF TECHNOLOGY



Pre-Workshop Video

OCTOBER 13, 2020

PRESENTED BY CATLIN WELLS



Catlin Wells, M.Ed., J.D.
Executive Director of Equity and
Compliance/Title IX Coordinator

Pronouns: She/Her/Hers

Wentworth Institute of Technology
550 Huntington Avenue
Boston, MA 02115-5998

Roadmap

- Title IX Overview
- Policy Review
- Overview of Processes
- Record Keeping
- Intersection of Title IX Processes and Criminal Justice Processes



Law and Policies



Image of Wentworth Shield

Title IX Overview

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 applies to ANY participant who stands to benefit from a University program or activity

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

An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class that is based on sex (including pregnancy).

Disparate Impact-facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity

Disparate treatment- Treatment of an individual that is less favorable than treatment of others based on discriminatory reasons

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

- Sex assigned at birth
- Gender identity
- Gender expression
- Sexual Orientation
- Pregnancy Related Conditions
- *Title IX prohibits sexual misconduct, as defined by the Department of Education*

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

A program or activity is defined as “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the [alleged conduct] occurs.”

Conduct that falls outside the scope of this definition may be addressed through the code of conduct or the employee handbook

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 applies to ANY participant who stands to benefit from a University program or activity

Equity and Access

Title IX is an **equity** statute, which calls for institutions to provide proportionate opportunities for people of different genders.

Title IX is designed to preserve **access** to educational programs or activities for all participants, regardless of sex. This includes:

- an institutional obligation to address allegations of discrimination against community members in a manner that is prompt, thorough, and impartial
- provision of supportive measures to anyone impacted by a Title IX related matter and accommodations for pregnant or parenting students
- fair treatment of all parties in a Title IX process

Transparency

Transparency in Title IX processes allows participants to:

- Manage expectations
- Know what to expect from the process
- Meaningfully participate
- Trust the outcome of the process



Image of Wentworth Shield

Title IX Policies

Sexual Harassment

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

- An employee conditioning the provision of an aid, benefit, or service on the individual's participation in unwelcome conduct
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education
- Sexual assault, dating violence, domestic violence, or stalking, as defined by [University Policy].

Elements of Quid Pro Quo Sexual Harassment:

- Respondent was an employee of the institution
- Respondent made unwanted sexual advances
- Respondent conditioned provision of aid, benefit, or service on acquiescence to those advances

Elements of Hostile Environment Sexual Harassment:

- Respondent made unwanted sexual advances
- The alleged conduct was objectively severe and pervasive, such that a reasonable person would regard the environment as hostile
- The alleged conduct denied Complainant access to University programs or activities

Sexual Assault

Sexual Assault – Non-Consensual Sexual Penetration: The penetration, no matter how slight, of the vagina, anus, with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim. This includes any gender of victim or Respondent.

Sexual Assault – Non-Consensual Sexual Contact: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances in which the victim is incapable of giving consent because of their age or temporary or permanent mental incapacity.

Elements of Sexual Assault

- Respondent engaged in a sexual act
- Complainant did not consent to the sexual act (see: Understanding consent)

Understanding Consent

An understandable exchange of **affirmative words or actions, which indicate a willingness to participate in a mutually agreed upon sexual activity at a mutually agreed upon time**. Consent must be informed, freely and actively given.

It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.

Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. **An individual who is incapacitated cannot consent**. Consent to sexual activity may be withdrawn at any time through clear communication.

Sexual conduct in the presence of force, coercion, and/or incapacitation is not consensual.

Elements of Consent

- ❑ Consent requires the absence of force and coercion. If there is force, coercion, or threat of force, the sexual encounter is not consensual.
- ❑ Consent requires that all parties have the capacity to consent. If the Complainant was incapacitated and the Respondent knew or should have known that the Complainant was incapacitated, the sexual encounter is not consensual.
- ❑ Consent requires affirmative words or actions that communicate consent. Negative response is not consent. If there is no affirmative consent, the encounter is not consensual.

Dating Violence

Any act of violence or threatened violence against a person who is, or has been in, a social relationship of a romantic or intimate nature with that person. The existence of such a relationship shall be determined based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.

Elements of Dating Violence

- ❑ There is/was a romantic or intimate relationship between parties
- ❑ There is/was presence of violence, including threat of violence, in that relationship

Domestic Violence

Any felony or misdemeanor crime of violence committed by those who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by...marriage;
- have a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive dating or engagement relationship

Elements of Dating Violence

- ❑ There is/was a qualifying relationship between the parties (marriage, cohabitation, dating, etc.)
- ❑ Respondent engaged in conduct that constituted a violent felony or misdemeanor (assault, battery, etc.)

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.

Elements of Stalking

- ❑ Course of conduct (more than one incident)
- ❑ Directed at a specific person
- ❑ Conduct would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Retaliation:

Any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy.

Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation.

Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their University responsibilities.

Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Elements of Retaliation:

- ❑ The Complainant participated in a Title IX related proceeding
- ❑ The Respondent engaged in conduct that constituted retribution (intimidation, harassment, etc)
- ❑ Respondent's conduct was related to Complainant's participation in the Title IX process
- ❑ Respondent's conduct had a materially adverse effect on the working, academic or University-controlled living environment of Complainant OR hindered/prevented the Complainant from effectively carrying out their University responsibilities.

Other Policies Related to Sexual Misconduct

- Gender based discriminatory harassment
- Sexual exploitation

Gender Based Discriminatory Harassment:

- Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal, electronic or physical conduct of a sexual nature when such conduct that is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard.
- Gender based discriminatory harassment may include unwanted sexual behaviors such as pressuring a person for dates, unwanted touching including hugging and kissing.
- Such conduct does not need to be directed at or to a specific individual in order to constitute discriminatory harassment, but may consist of generalized unwelcome and inappropriate behaviors or communications based on sex, gender identity, actual or perceived sexual orientation, or gender stereotypes.
- Gender based discriminatory harassment may be regarded as a lesser included offense of Title IX Sexual Harassment.

Sexual Exploitation

Any nonconsensual act or acts committed through exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or for the purpose of causing harm to another's reputation.



Overview of Processes

How to Make a Report

Reports may be made:

- By phone
- By email
- Through the US postal service
- Through in person meetings, including walk in meetings
- Through the online reporting form
- Through disclosure to a responsible employee

Mandated Reporters

- Mandated reporters must report all relevant details of the incident including the name of the Complainant and Respondent, if known, dates, times, locations, and the names of witnesses.
 - Dean of Students Office (617-989-4702)
 - Athletics (617-98-4655)
 - Housing and Residential Life – including Resident Assistants (RAs) (617-989- 4160)
 - Center for Student Engagement (617-989-4080)
 - Schumann Fitness Center (617-989-4098)
 - Center for COOPS+CAREERS (617-989-4101)

Formal Complaints

Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the recipient investigate the allegation of sexual harassment

In response to a formal complaint, a recipient must follow a grievance process (set by 106.45)

Title IX Coordinator must offer complainant supportive measures regardless of whether Complainant files formal complaint

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party

Supportive Measures

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.

Emergency Removal

The university may, in emergency circumstances, limit or prohibit a respondent from accessing campus during the Title IX investigative process.

Prior to issuing an interim removal of a respondent, the Title IX coordinator or designee must:

- undertake an individualized safety and risk analysis, which determines whether the presence of respondent poses an immediate threat to the physical health or safety of any individual within the Wentworth community;
- provide respondent with notice of alleged conduct; and
- provide respondent with notice of removal and information about how to challenge the removal

Regulatory Guidelines for Grievance Processes

Any provisions, rules, or practices, other than those in the regulations, must apply equally to both parties.

Basic requirements:

- Treat complainants and respondents equitably
- Provide notice to both parties
- Follow grievance process
- Only impose any disciplinary sanctions against a respondent after grievance process followed

Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*

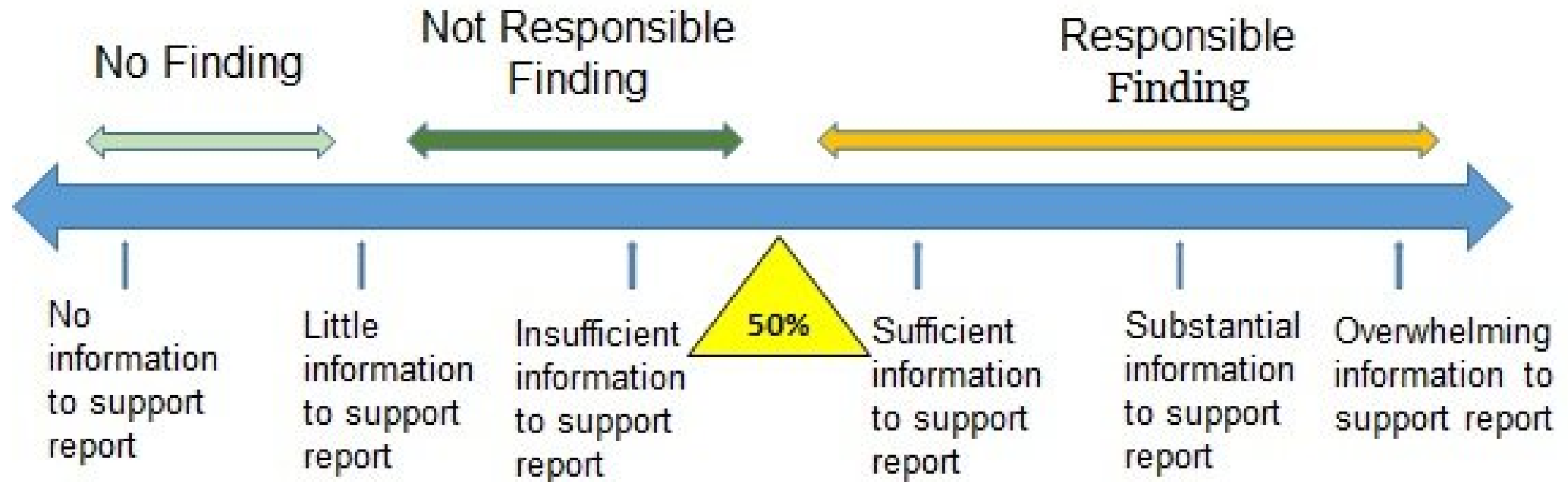
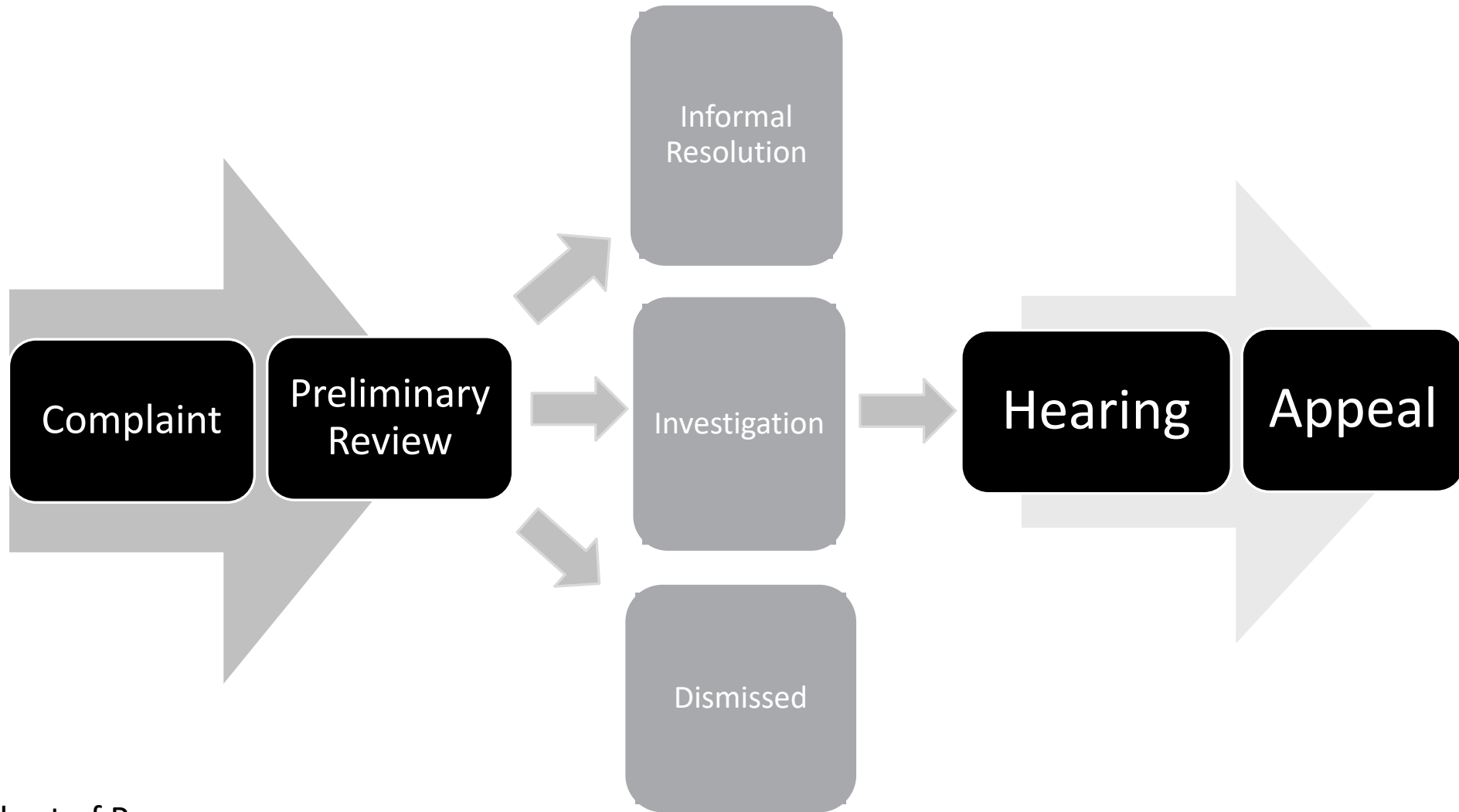


Diagram of Preponderance Standard



Flow Chart of Processes



Informal Resolutions


Informal Resolution

- At any time prior to reaching a determination regarding responsibility, the university may suggest to the parties the possibility of facilitating an informal resolution process.
- Upon request and written agreement by the Parties and the Title IX Coordinator that the IRP is appropriate, the Title IX Coordinator will provide to the parties a written notice disclosing the allegations, and the requirements of the IRP, including when the Parties are precluded from resuming a Formal Resolution Process and any consequences resulting from participating in the IRP. Parties may withdraw from the IRP at any time prior to agreeing to a resolution an
- Participation in this process does not constitute a finding of responsibility for a policy violation, but will be included as part of the student's conduct file and an employee's personnel file
- All agreements reached during the IRP, which outline the requirements of the Complainant and Respondent, must be approved by the Title IX Coordinator and signed by the Respondent and Complainant.
- Failure to reach an agreement may result in the case being referred to a formal resolution process;
- Failure to fulfill the requirements of the signed agreement may result in subsequent policy violations or the case being referred to formal resolution;
- Successful completion of requirements contained in the signed agreement will preclude the parties from resuming any formal complaint arising from the same allegations;
- If either party withdraws from the IRP process and requests resolution through a formal process, the information obtained during this process will not be available without signed written consent of both parties;

Informal Resolution Options

Informal Resolution options are designed to address the harm that has been caused, and what is needed to repair the harm and restore trust

- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation, Restorative Justice, or other informal communication between the Complainant and Respondent;
- Messaging to the campus community;
- Events and/or trainings offered to the campus community or particular departments;
- Referral and/or collaboration with another University department in order to address the allegations and eliminate any potential Prohibited Conduct.



Formal Grievance Procedures

- Title IX Coordinator appoints an investigator
- Investigator provides parties with sufficiently detailed written notice of alleged conduct
- Investigator conducts a prompt, thorough and impartial investigation and provides an equal opportunity for the parties to present witnesses and provide evidence
- Investigator must provide parties whose participation is invited or expected with written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- Investigator completes the investigation in a reasonably timely manner, and documents and communicates to parties the source of any reasonable delays
- Investigator compiles a comprehensive summary of evidence, including both inculpatory and exculpatory evidence and provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation
- Investigator maintains communication with complainant and respondent on the status of the investigation and overall process.

Formal Grievance Process- Investigation

- Upon completing a draft investigative report, the investigator shall provide a copy to complainant, respondent, and each party's respective Advisors.
- Copies of the report must be delivered simultaneously. Complainant and respondent may review the report for a period of up to 10 days and may provide the investigator with additional documentation, including but not limited to, a written response to the contents of the report.
- At the end of the review period or upon receipt of confirmation that parties are prepared to move forward, the investigator must incorporate any provided information into a final report.
- Upon completing the final investigative report, the investigator must simultaneously provide copies to the complainant, respondent, and each party's respective Advisors.
- Following the delivery of the reports, the Title IX coordinator or designee must schedule an administrative hearing for no less than 10 days after the date of delivery. Additional information, including responses to the report's content, may be presented at any time prior to the commencement of an administrative hearing or at designated times during the hearing.
- Parties will be provided the names of the Decision-maker(s) and will be allowed five (5) business days to request the removal and replacement of a Decision-maker(s) based on bias or conflict of interest.

Formal Grievance Process- Investigation

- At least five (5) business days prior to the hearing, the Parties must submit names of witnesses they would like to appear at the hearing and any relevant questions to be asked of the witnesses and the other party
- The hearing chair will conduct the hearing in accordance with the hearing script. The decision maker (s) have the opportunity to ask questions of all parties and witnesses, and that both parties have an opportunity to ask relevant questions through cross examination.
- After the decision maker(s) have made a decision, they will announce their conclusion.
- If respondent is found responsible for the alleged conduct, the decision maker(s) will issue sanctions.
- The decision maker(s) have 5 business days from the close of the hearing to produce a written decision letter to both parties. Once completed, the decision letter is delivered to the Title IX coordinator for simultaneous delivery to both parties.

Formal Grievance Process- Hearing

Title IX Grievance Process vs. Institutionally Established Grievance Process

For allegations of discrimination that **DO NOT implicate a Title IX Policy** *or which are alleged to have occurred outside the Department of Education's definition of "Programs or Activities,"* the University will conduct a hearing, pursuant to established grievance procedures.

- ❑ There are no procedural differences between a Title IX investigation and an investigation for non-Title IX cases.
- ❑ Title IX hearings are recorded. Hearings for non-Title IX cases are not recorded.
- ❑ Students have a right to cross examine parties and witnesses through an Advisor in Title IX hearings. Students may submit questions to the hearing officer but are not permitted to conduct a cross examination in a non-Title IX process.

Advisors

Advisors serve as a moral and emotional support for students during the grievance procedures and can assist with meeting preparation.

Advisors are not permitted to advocate for a student or speak on their behalf during a hearing, except for the purpose of conducting a cross examination on relevant evidence.

Parties who intend to conduct a cross examination of the opposite party or any witnesses must bring an advisor to the hearing.

If a party does not have an Advisor, the university will, upon request, provide a trained Advisor to conduct any cross examinations.

Parties have a right to an Advisor of their choice throughout the entire process.

Record Keeping

The Department of Education requires that the University retain any records relating to Title IX matters for a period of 7 years.

Intersection of Criminal Law and Title IX

- ❑ Some conduct that falls under Title IX may also implicate criminal laws
- ❑ Parties have a right to file a police report, and are informed of such when they make a complaint to the Title IX Office
- ❑ Criminal investigations are separate from the Title IX process
- ❑ Documents created pursuant to the criminal investigation may be included in the Title IX report



Questions?
