

Part 1

**Title IX Training for
Coordinators & Investigators**



U.S. DEPARTMENT OF
EDUCATION
FEDERAL BUILDING 6

ANY QUESTIONS FROM THE ASSIGNED VIDEO



Title IX Investigations & Informal Resolutions

Thompson Coburn LLP
Title IX Training Series | July 2020

Higher Education Practice



Aaron D. Lacey
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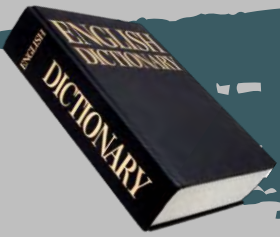


OVERVIEW

of the

Process





NEW TERMS & DEFINITIONS

Recipient: A postsecondary educational institution that receives Federal financial assistance.

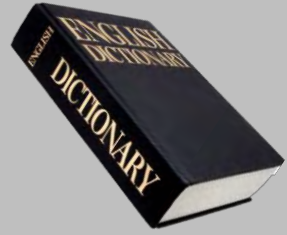
Decision-Maker: A member of the Administrative Hearing Panel or an Appeal Officer.

Complainant: A person who alleges that she/he has been the subject of behavior that violates the University Sexual Misconduct Policy and wishes to report the allegations to a Title IX Coordinator.

Respondent: A person who is alleged to have violated the University Sexual Misconduct policy.

Grievance Process: The process by which allegations of sexual misconduct are resolved.





Aggravating Factors: Facts and/or circumstances that increases the severity or culpability of a respondent when determining the sanction(s) for a violation of the Sexual Misconduct Policy.

Mitigating Factors: Facts and/or circumstances that do not excuse or tend to justify a violation of misconduct, but are taken into consideration when considering the sanction(s) for a violation of the Sexual Misconduct Policy and the culpability of the respondent.

Standard of Proof: The level of certainty and the degree of evidence necessary to establish that a violation of University policy has occurred.

Protected Status: includes Age, Disability, Gender, Genetic Information, Gender Identity or Expression, Nationality, Marital Status, Race or Ethnicity, Religion, Sexual Orientation, and Veteran or Military Status.



The New Process



- Notice to TIX C
- Strategy Development

- Jurisdiction?
- Policy violation?
- Non-formal, administrative, resolution?

- Notice
- Identification of witnesses
- Interview scheduling
- Evidence collection
- Evidence & Inv. Report Shared
- Inv. report finalized

- Determination
- Sanction(s)

- Standing?
- Deny?
- Uphold?
 - Vacate?
 - Remand?
 - Substitute?



TITLE IX STAFF

Andy Luptak
Title IX Coordinator

CUW Coordinators

Kimberly Masenthin (Assist. Coord. for Employees)

Marie Terlinden (Assist. Coordinator for Students)

Stacey Brunner Jones (Assoc. AD for Title IX Athletics)

Investigators (CUW)

Doug Borys

Leah Dvorak

Kate Liesener

Matt Mac Kelly

Eugene Pitchford

Sarah Gartman

CUAA Coordinators

TBD (Associate Coordinator)

John Rathje (Assistant Coordinator)

Cassidy Tirmenstein, Assist. AD for Title IX Athletics

Investigators (CUAA)

Sandra Harris

Theodore Hopkins

Alex Martin

Tori Negash

Earl Schumake

Christopher Stark



THE ADMINISTRATIVE HEARING PANEL (AHP)



The hearing will occur following an investigation by University sanctioned investigator(s). The hearing panel will consist of **three (3) Administrative Hearing Officers (AHO)**, one of which will be the Chair of the panel as outlined below.

<u>Respondent</u>	<u>Chair</u>	<u>CUW Member</u>	<u>CUAA Member</u>	<u>Appeal Officer</u>
Student	Steve Taylor	Bill Cario Liz Polzin	Ryan Peterson Cindy Fenske	Al Prochnow
Staff	Al Prochnow	Liz Polzin Steve Taylor	Ryan Peterson Cindy Fenske	Bill Cario
Faculty	Bill Cario	Al Prochnow Liz Polzin	Al Prochnow Cindy Fenske	Leah Dvorak

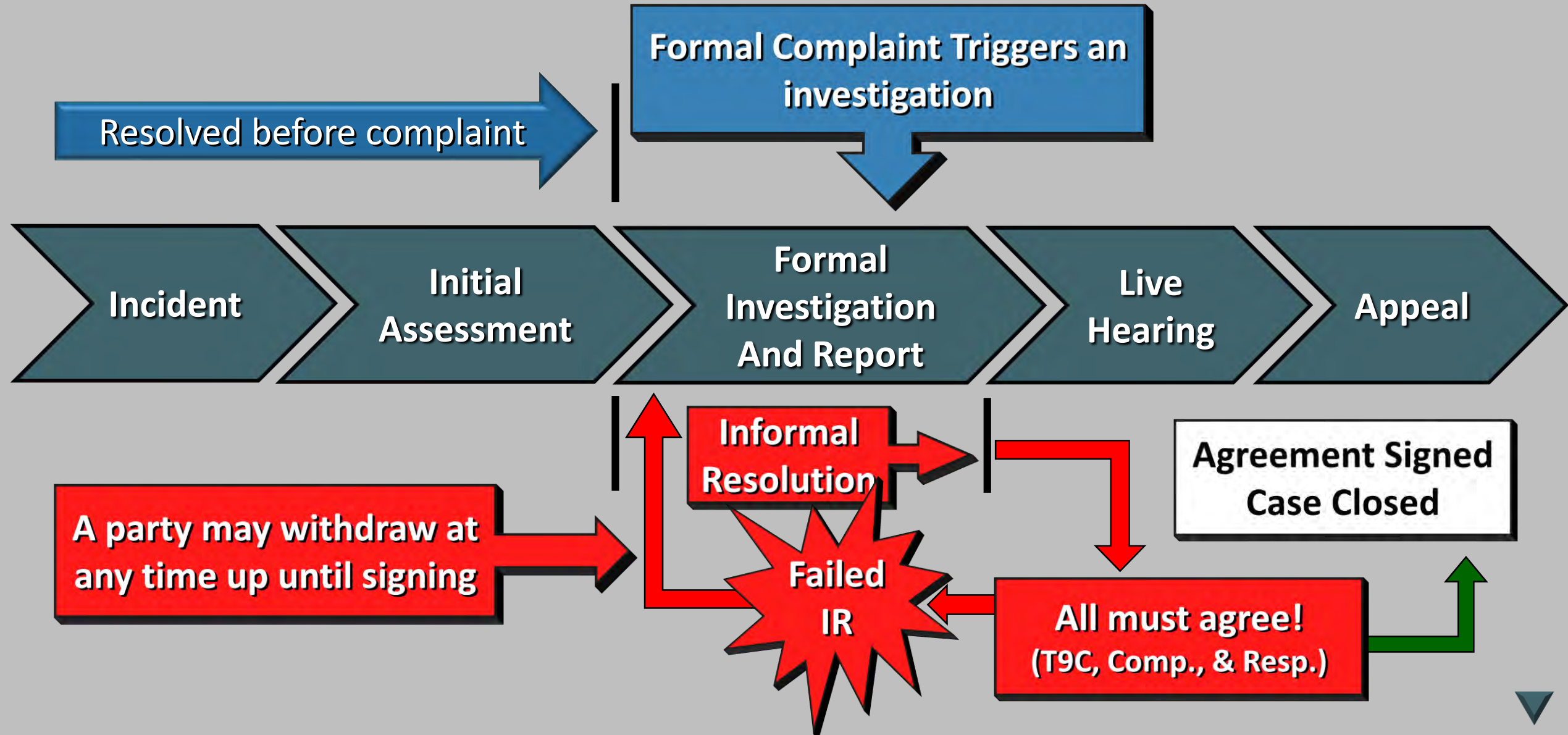


ABILITY TO OFFER AN INFORMAL RESOLUTION

*Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the **voluntary, written consent of both parties**; informal resolution is not permitted to resolve allegations that an employee sexually harassed a student. (p. 99)*



When can an Informal Resolution be Offered?



CONCORDIA UNIVERSITY'S NEW SEXUAL MISCONDUCT . . .

A Title IX Component ₁

A University Component ₂

2
Parts

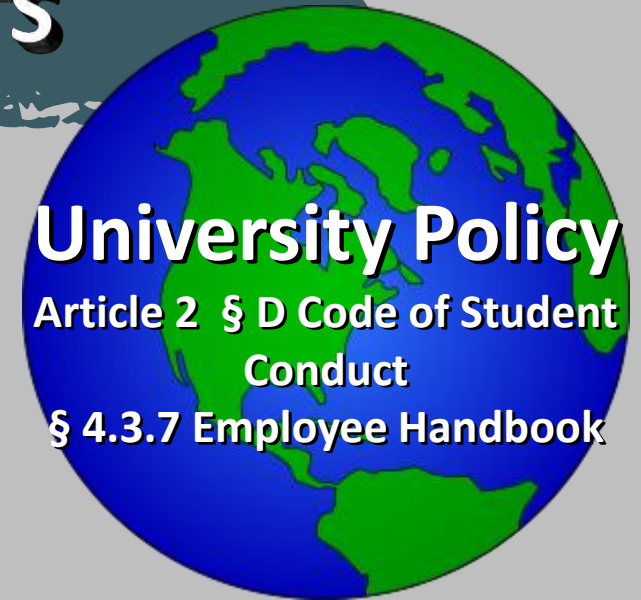
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ONE POLICY THAT HAS TWO (2) PARTS



*“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”*



*Section 106.45(b)(3). Similarly, **nothing in these final regulations prevents** a recipient from **addressing conduct that is outside the Department’s jurisdiction** due to the conduct constituting sexual harassment occurring outside the recipient’s education program or activity, or occurring against a person who is not located in the United States.*



Violation Terminology: **SAME DEFINITION** vs DIFFERENT DEFINITION

Title IX Offenses

- 1. **Sexual Harassment**
- 2. **Clery Sexual Assault Offenses**
 - 2a **Forcible Rape**
 - 2b **Forcible Sodomy**
 - 2c **Sexual Assault w/an object**
 - 2d **Incest**
 - 2e **Statutory Rape**
 - 2f **Fondling**
- 3. **Dating Violence**
- 4. **Domestic Violence**
- 5. **Stalking**
- 6. **Retaliation**

} **VAWA
Offenses**

University Offenses

- 7. **Sexual Harassment**
- 8. **Non-Consensual Sexual Intercourse**
- 9. **Non-Consensual Sexual Contact**
- 10. **Sexual Exploitation**
- 11. **Stalking**
- 12. **Dating Violence**
- 13. **Domestic Violence**
- 14. **Retaliation**
- 15. **Improper Restraint or Detention**
- 16. **Fraud and Lying**



CHARGING A STUDENT OR EMPLOYEE



Must charge with chapter and verse of the . . .

Article 2 § D of the Code of Student Conduct or

§ 4.3.7. of the Employee Handbook



EXAMPLES

Jane Roe or John Doe you are charged with violating the . . .

Title IX Offenses

1. **Sexual Harassment**
2. **Clery Sexual Assault Offenses**
 - 2a Forcible Rape
 - 2b Forcible Sodomy
 - 2c Sexual Assault w/an object
 - 2d Incest
 - 2e Statutory Rape
 - 2f Fondling
3. **Dating Violence**
4. **Domestic Violence**
5. **Stalking**
6. **Retaliation**

University Offenses

7. **Sexual Harassment**
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11. **Stalking**
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14. **Retaliation**
15. **Improper Restraint or Detention**
16. **Fraud and Lying**

*Code of Student Conduct, Article 2, § D **2a Forcible Rape** on or about (date) against (name of complainant) at (location). It is alleged that you . . .*

*Code of Student Conduct, Article 2, § D **9 Non-Consensual Sexual Contact** on or about (date) against (name of complainant) at (location). It is alleged that you . . .*

*Employee Handbook § **4.3.7.1a Quid Pro Quo Sexual Harassment** on or about (date) against (name of complainant) at (location). It is alleged that you . . .*



TERM DEFINITIONS

1 or 7 Sexual Harassment

- a) ***Quid Pro Quo Harassment:*** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

- b) ***Sexual Harassment:*** Unwelcome conduct determined by a reasonable person to be so severe and pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.



TERM DEFINITIONS

2 Sexual Assault

Sexual Assault is any sexual act directed against another person, without consent of the complainant, including instances where the complainant is incapable of giving consent. This violation includes attempting a sexual assault and/or one or more of the following types of sexual assault.



- a) *Forcible Rape*** is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person (male or female), without the consent of the complainant.
- b) *Forcible Sodomy*** is oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c) *Sexual Assault With An Object***: To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



- d) *Forcible Fondling:*** The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e) *Incest:*** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f) *Statutory Rape:*** Sexual intercourse with a person who is under the statutory age of consent [age in state where occurred].



UNIVERSITY DEFINITIONS

8. *Non-Consensual Sexual Intercourse* is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force.

- Note: “Sexual penetration” includes actual or attempted vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact (see Statement on Consent below).

9. *Non-Consensual Sexual Contact* is defined as any intentional sexual touching or attempts, however slight, with any object, by a person upon another person that is without consent and/or by force.

- Note: “Sexual touching” includes any actual or attempted bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner (see Statement on Consent below).



TERM DEFINITIONS

Now using the Clery-VAWA definitions for . . .

3 or 10 Dating Violence

4 or 11 Domestic Violence

5 or 9 Stalking



Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

- The existence of such a relationship shall be determined based on the Complainant'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.
 - Dating violence does not include acts covered under the definition of domestic violence.



Domestic Violence is defined as a felony or misdemeanor crime of violence committed:

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

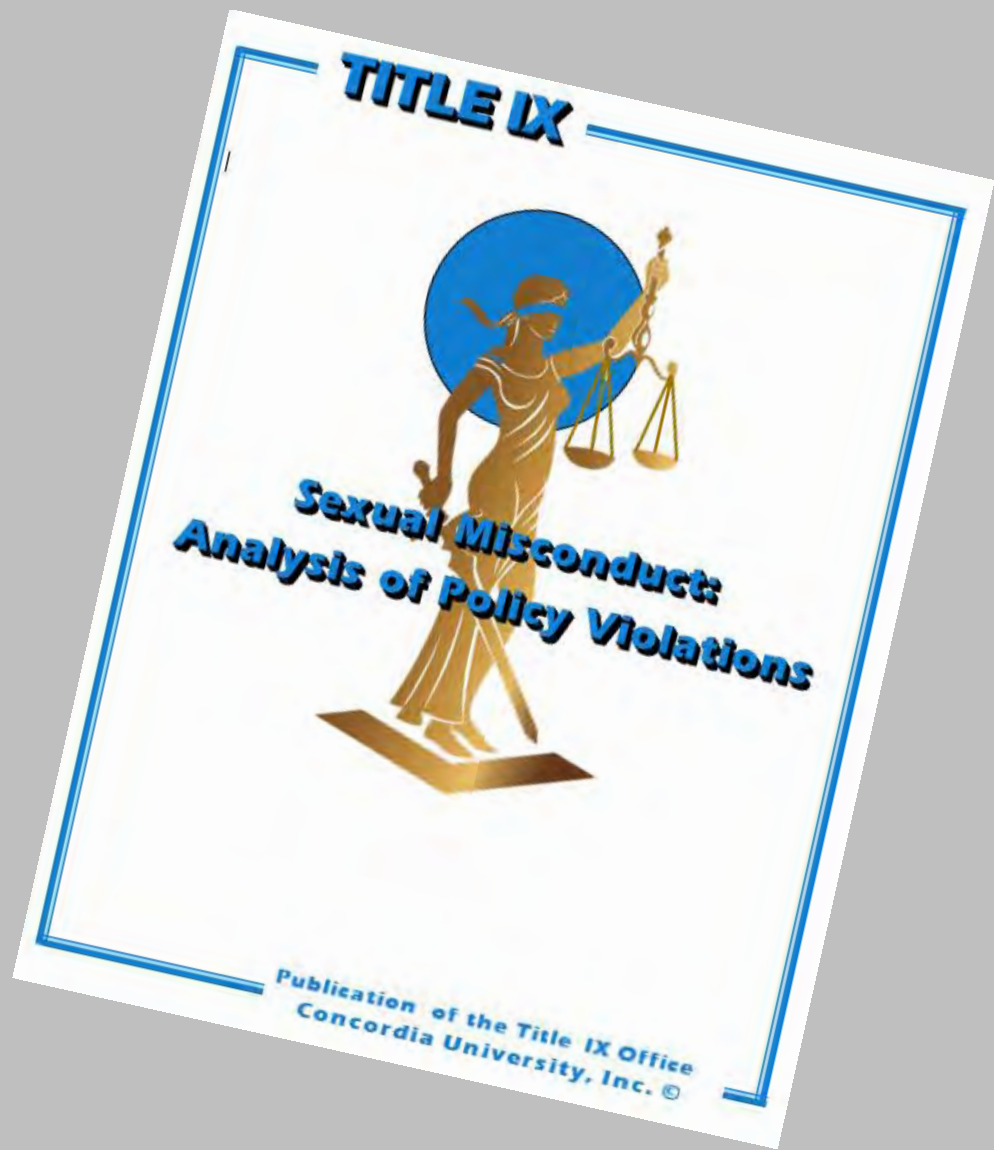


Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person . . .

- to fear for the person's safety or the safety of others; or
- suffer substantial emotional distress.
- For the purpose of this definition . . .
 - course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

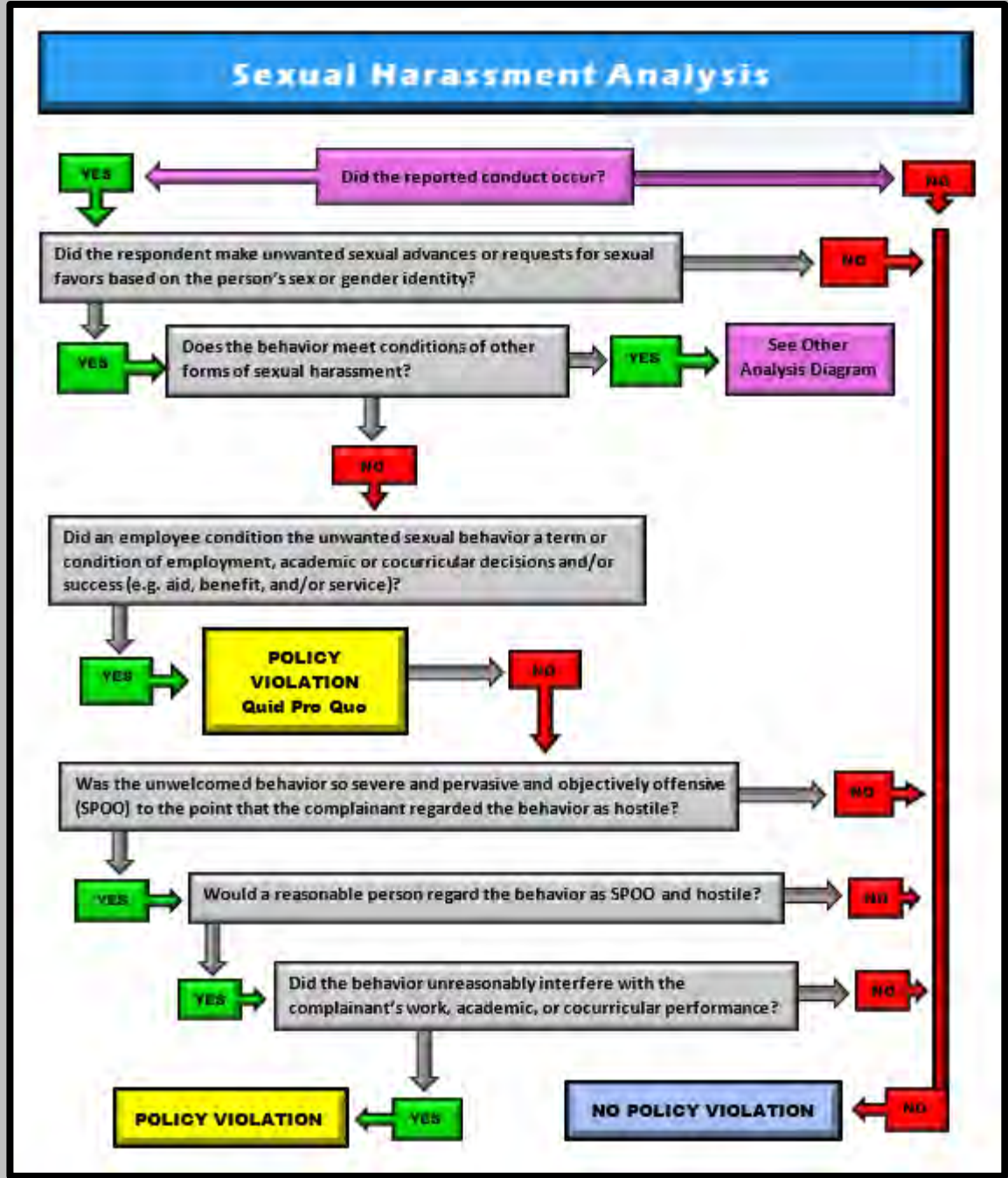


ANALYSIS OF POLICY VIOLATION



Entire Sexual
Misconduct Policy



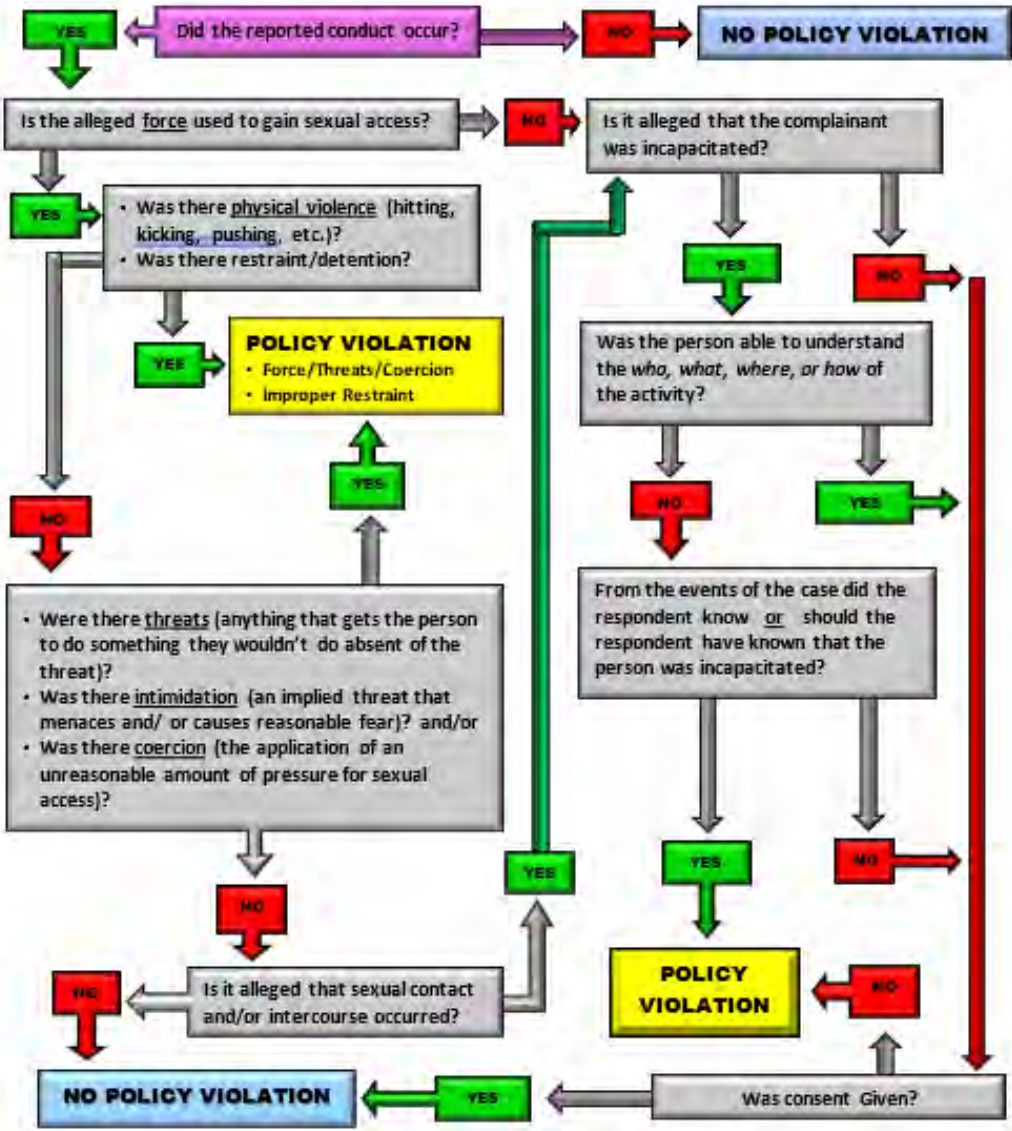


Dr. John Doe,

The purpose of this email is to notify you that you have been charged with violating the Employee Handbook § 4.3.7.1a Quid Pro Quo Sexual Harassment on or about November 16, 2020 against Ms. Jane Roe in your classroom, Andrews Hall 101. It is alleged that you offered Ms. Roe an A in the Class if she would have sex with you.



Sexual Assault Analysis
 Including Rape/Sodomy, Assault w/Object Incest,
 Statutory Rape, Fondling or
 Non-Consensual Intercourse, Non-Consensual Contact



Ms. Jane Roe,

The purpose of this email is to notify you that you have been charged with violating the Code of Student Conduct, Article 2, § D 9 Non-Consensual Sexual Contact on or about September 12, 2020 against Ms. Kate Doe at Ms. Doe's off-campus apartment. It is alleged that you fondled her genitals while Ms. Doe was in the shower.

2f If on campus



THE INVESTIGATION & ADJUDICATION PROCESS

Title IX Process

Same as the University Process



Same as the Title IX Process

University Process



CONFLICTS OF INTEREST, BIAS, & PREJUDICE

*[T]he Department adds to § 106.45(b)(1)(iii), prohibiting Title IX **Coordinators, investigators, and decision-makers, and persons who facilitate informal resolution processes** from having conflicts of interest or bias against complainants or respondents generally, or against an individual complainant or respondent, training that also includes “how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.” (p. 214 - 15)*



BIAS & PREJUDICE: BASIC PRINCIPLES

1. *“Hear the case before you decide it”*

Alfred P. Murrah , Chief Judge, U.S. Court of Appeals - 10th Circuit

✓ **“Investigate the case before you write the final report (a decision)”**

2. Treat complainants and respondents equitably.

3. **Presume the non-responsibility of respondents until conclusion of the grievance process. (p. 97, 285, 720, 845, 846, 847, 861, 871, 1821)**

4. The University has the burden of proof and the burden of gathering the evidence – this is not the complainants case.



- **Everyone holds biases; many are unconscious.**
- **Unconscious bias is a person's preferences for objects and people at a subconscious level that unintentionally influence their behavior and decision making.**
- **As humans, we make decisions based on what we know and have experienced.**
- **Knowledge and experiences comes from those we meet, the books we read, our upbringing, our education, family/friend influences, etc.**
- **While bias is inevitable, it does not necessarily undermine the fairness or appropriateness of a decision-maker's decisions.**



- **Do not let any biases influence your conduct in the workplace or as you coordinate or investigate an assigned case. Examples are:**
 - ✓ **Partisan approach by hearing board members in questioning, findings, or sanction.**
 - ✓ **Intervention by senior-level institutional officials.**
 - ✓ **Improper application of institutional procedures and/or policies.**
 - ✓ **Your attitude, for or against, a specific sport or athletes in that sport.**
- **The key is recognizing the bias and ensuring it does not impact one's decisions.**
- **Investigations and adjudications must be based on evidence, not on personal beliefs about a complaint, respondent, or witness.**



Examples of Gender Bias

- ✓ Women should not be awarded chair or dean positions until their children are grown.
- ✓ Assuming the student who reported being a victim of relationship violence is female.
- ✓ Unequal pay among the sexes.
- ✓ Phrases indicating gender bias:
 - *“Don’t be such a drama queen.”*
 - *“You need to man up.”*
 - *“In this office, it’s every man for himself.”*





Another Win for an Accused Student

The court opinion notes that the same month, the university's department for supporting victims of sexual violence, the Center for Advocacy, Response and Education, posted a *Washington Post* article on Facebook with the headline "Alcohol isn't the cause of campus sexual assault. Men are."



CONFLICT OF INTEREST

What if I realize that I can't be unbiased (**for or against**) on a given case?

Examples:

- You know one of the involved parties
- You are, will, or have supervised one of the parties
- You have the student in class
- You have socialized with one of the parties
- Others?????



Title IX Staff Member (Coordinator or Investigator) believes that he/she has a conflict of interest or is biased.

The Staff member . . .

- **is obligated to recuse him/her self to the Title IX Coordinator.**
- **will be replaced by the Title IX Coordinator.**

✓ No questions asked!!!



TITLE IX STAFF

TITLE IX STAFF

The purpose of Concordia University's (CU) Title IX Compliance Program is to foster an environment in mind, body and spirit so that all campus stakeholders can enjoy the University's educational programs and activities free from all forms of sexual harassment as outlined in the Sexual Misconduct policy. The Title IX staff are therefore instrumental agents charged with upholding this purpose statement.

Meet the Title IX Staff: The Title IX Staff include trained individuals who are Coordinators, Investigators, and Administrative Hearing Panel members/Appeal Officers. Their contact information is listed below.

Title IX Administrative Staff



Title IX Investigators

Wisconsin Staff (CUW)			
Name	Office	Phone	Email
Dr. Douglas Borys	PH 237	(262) 243-2787	douglas.borys@cuw.edu
Dr. Leah Dvorak	Lu 128	(262) 243-4522	leah.dvorak@cuw.edu
Ms. Sarah Gartman	S 103E	(262) 243-4581	sarah.gartman@cuw.edu
Dr. Katherine Liesener	H 002B	(262) 243-4338	katherine.liesener@cuw.edu
Mr. Matt Mac Kelly	RP 323	(262) 243-4287	matthew.mackelly@cuw.edu
Mr. Eugene Pitchford	Lu 204	(262) 243-2604	eugene.pitchford@cuw.edu

Ann Arbor Staff (CUAA)			
Name	Office	Phone	Email
Dr. Sandra Harris	K 128	(734) 995-7309	sandra.harris@cuaa.edu
Rev. Dr. Theodore Hopkins	K 110	(734) 995-7480	ttheodore.hopkins@cuaa.edu
Dr. Alex Martin	SB 114	(734) 995-7517	alex.martin@cuaa.edu
Dr. Tori Negash	Library	(734) 995-7582	tori.negash@cuaa.edu
Mr. Earl Schumake	Athletics	(734) 995-7325	earl.schumake@cuaa.edu
Dr. Christopher Stark	Sci 113	(734) 995-7417	christopher.stark@cuaa.edu

Bias and Conflict of Interest

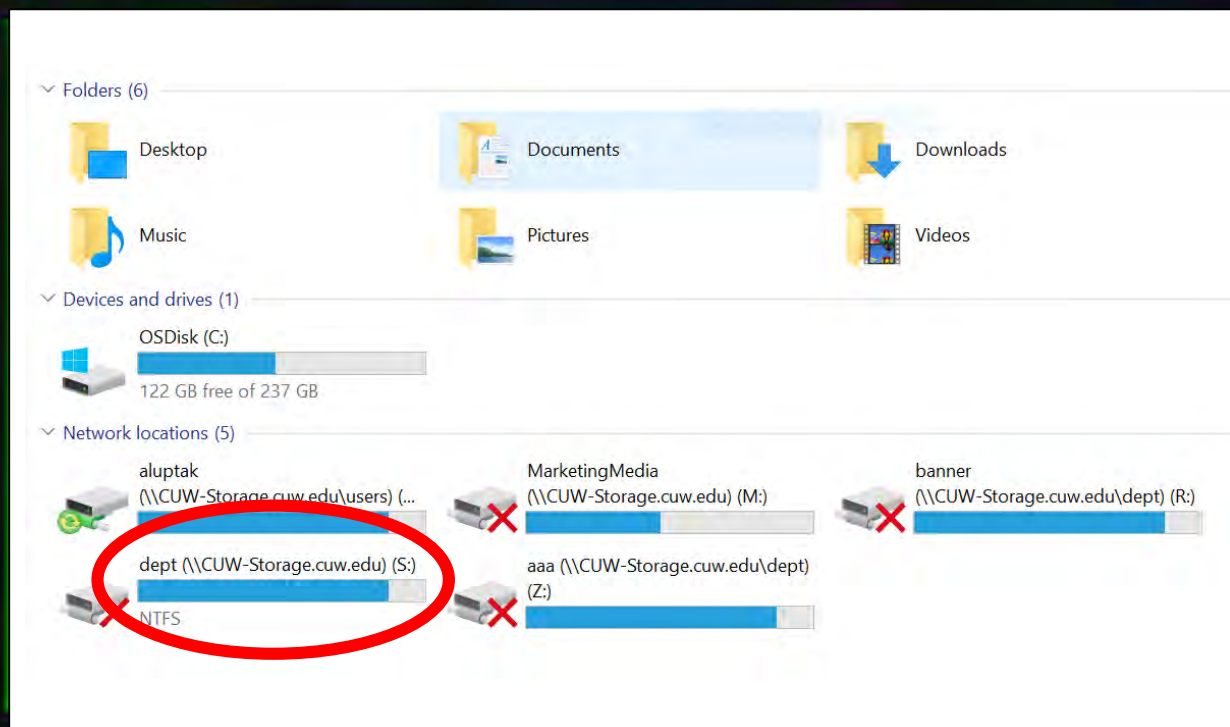
If a complainant or respondent believes that an Assistant/Associate Coordinator, Investigator, Hearing Panel Member, or Appeal Officer assigned to his/her case cannot conduct a fair/unbiased investigation or adjudication of the case, the party may petition the Title IX Coordinator to replace that individual. However, if the allegation is that The Title IX Coordinator cannot serve in an unbiased manner, the party may petition the Administrative Hearing Panel Chair to replace the Title IX Coordinator. This must be done in writing (email) within 3 business days of being notified of the assigned member and must include supporting evidence.



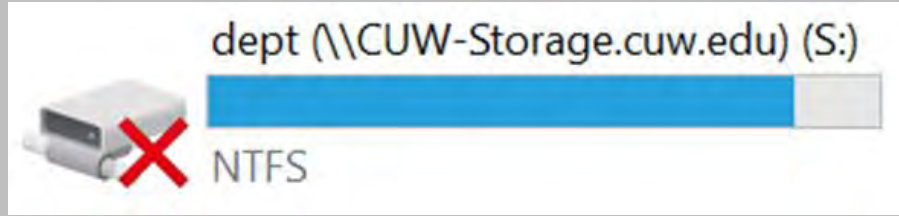
*Let's see how the
new regs apply to
coordinators and **me!***



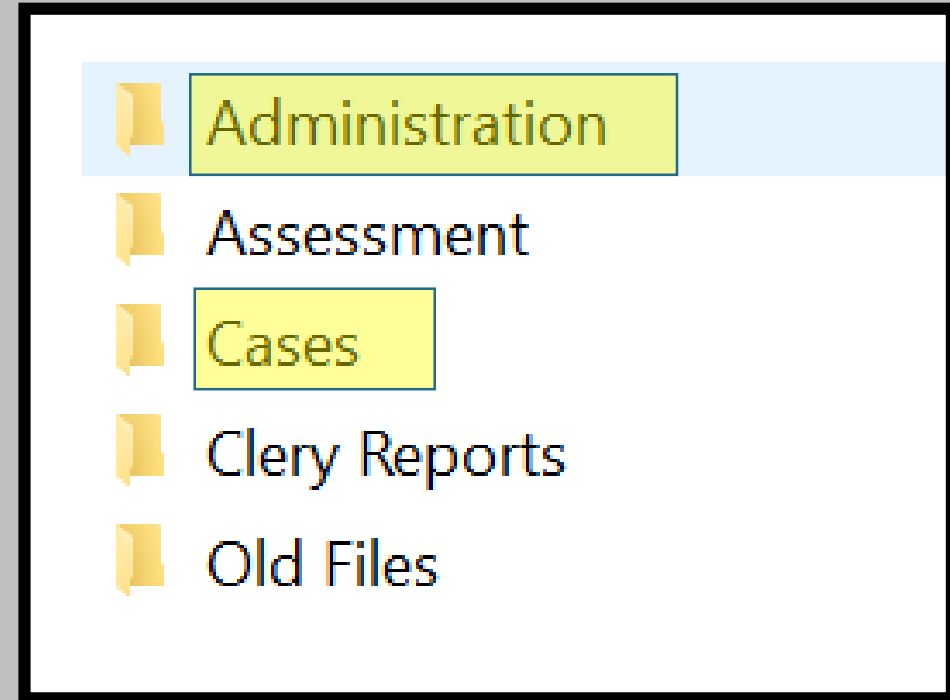
THE "S" DRIVE



1. Click on the

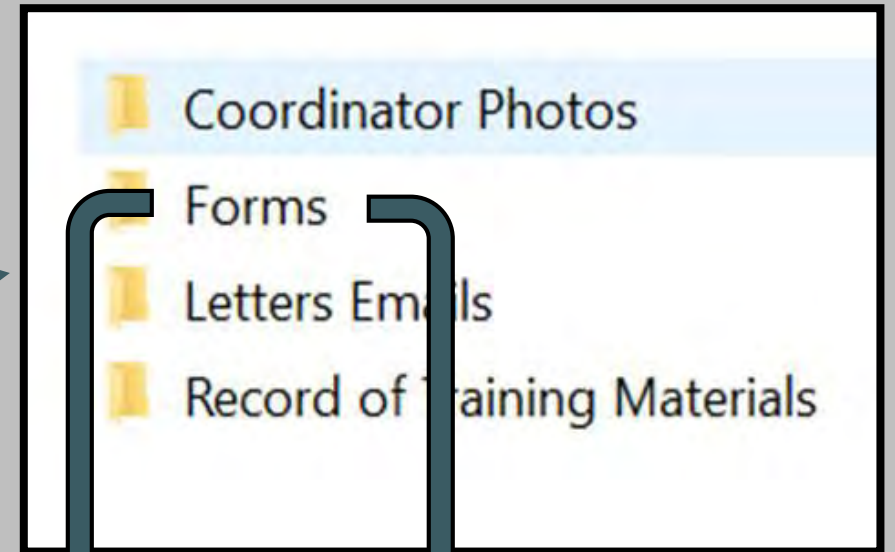
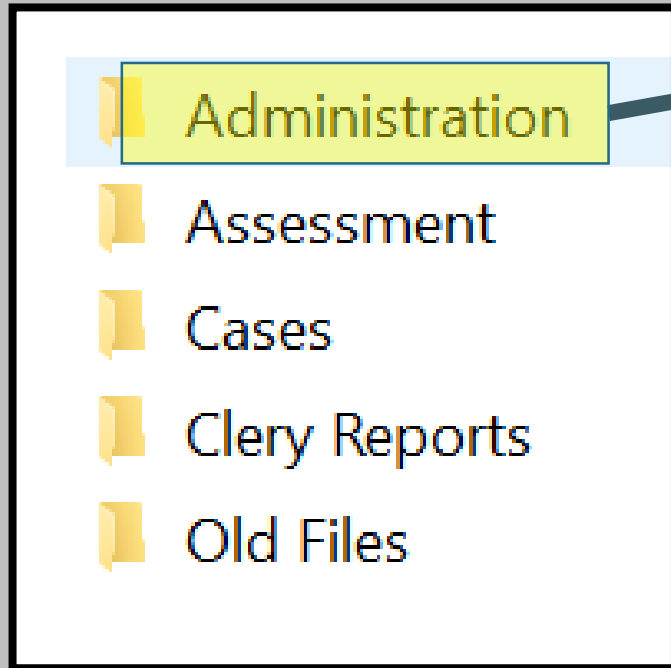


- RapidEye
- Registrar
- Rlife
- SASS
- School of Business
- SHP
- SLP
- Social Work
- Student Health Center
- Student Life Admin
- Student Life Programming
- Study Abroad
- Telecom
- Theology
- Title IX
- Univeristy Affairs
- Veteran Services
- Web



2. Scroll Down and Select "Title IX"

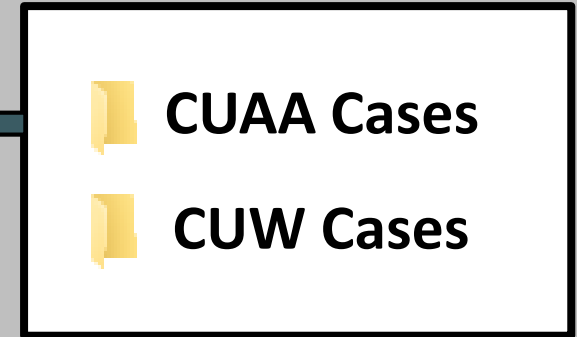
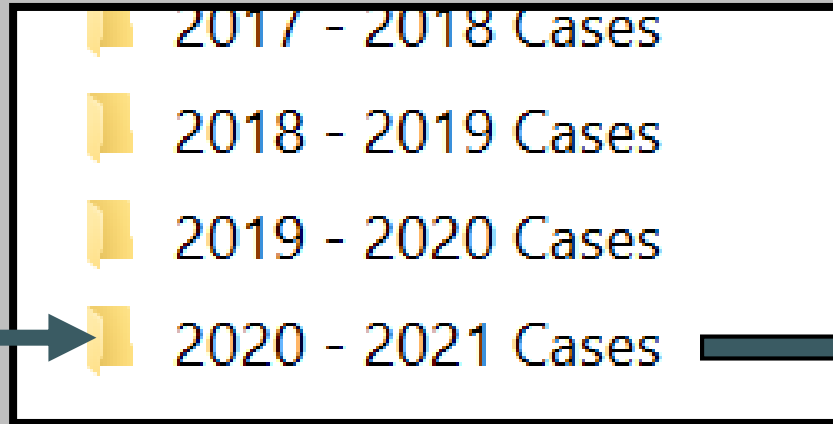
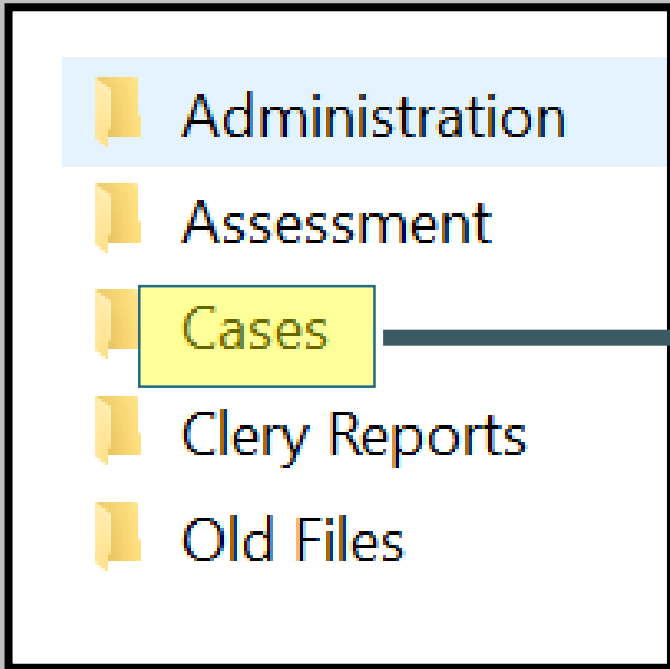




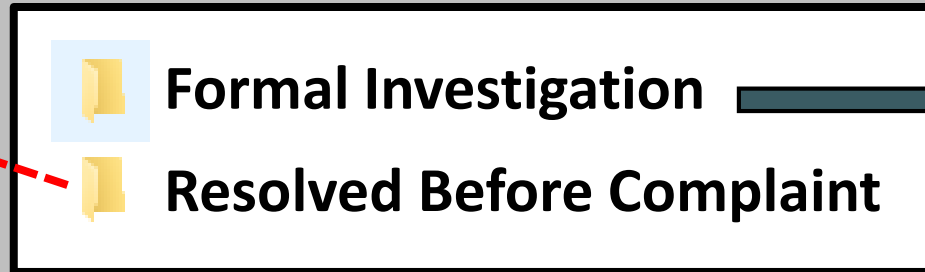
Intake Form (Revised)

Investigator's Final Report Form (Revised)





New Term



Everything Goes In That File

- ✓ Intake Forms
- ✓ All Investigator Interviews
- ✓ All communication to parties
- ✓ Text Messages
- ✓ Videos
- ✓ Investigator's Final Report
- ✓ Etc., Etc., Etc.



File Management

CUW Folder

- Title IX Coordinator or
- Designee

CUAA Folder

- Associate Title IX Coordinator or
- Designee



FILE NAME NOMENCLATURE FOR INTERVIEWS & EVIDENCE

A = Title IX (Administrator) Coordinator

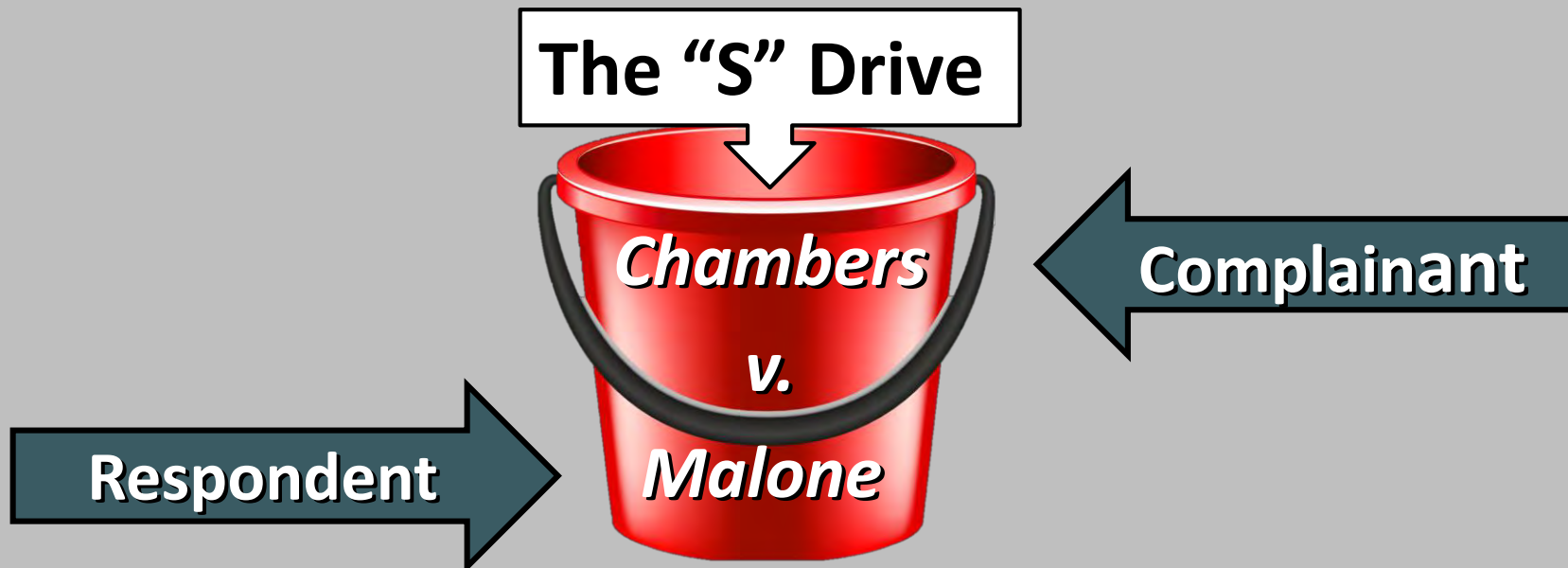
I = Title IX Investigator

C = Complainant

R = Respondent

W = Witness

- “Investigator’s Final Report”
- Interviews: Identify the File by Letters, Number, Last Name



Case Examples

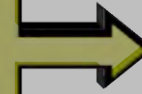
File Name

Intake Interview of Complainant Diane Chambers



AC 1 Chambers

1st Interview of Complainant Diane Chambers



IC 1 Chambers

2nd Interview of Respondent Sam Malone



IR 2 Malone

3rd Interview of Witness Norm Peterson



IW 3 Peterson

Text Messages – Carla Tortelli to Diane Chambers



Text 1 Tortelli – Chambers

2nd Email from Witness Cliff Clavin



Email 2 Clavin



PARTIES INSPECTION OF EVIDENCE

In the written notice of allegations required under § 106.45(b)(2), a recipient will notify the parties of the grievance process under § 106.45, including the requirement that both parties be able to review and inspect evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. (p. 1500 – 01)



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How will this be accomplished?



STEPS TO BE COMPLIANT



This can be . . .
Complainant
Respondent
Expert witness
Etc.



STEPS TO BE COMPLIANT

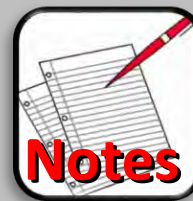
1. Witness meets w/Investigators



STEPS TO BE COMPLIANT

1. Witness meets w/Investigators

2. Investigators produce typed notes



STEPS TO BE COMPLIANT

1. Witness meets w/Investigators



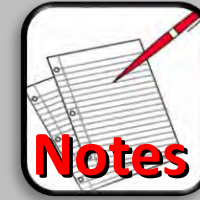
2. Investigators produce typed notes

3. Notes sent to Witness for approval/changes



STEPS TO BE COMPLIANT

1. Witness meets w/Investigators



2. Investigators produce typed notes

3. Notes sent to Witness for approval/changes
- **Witness responds (w/ or w/o changes)**



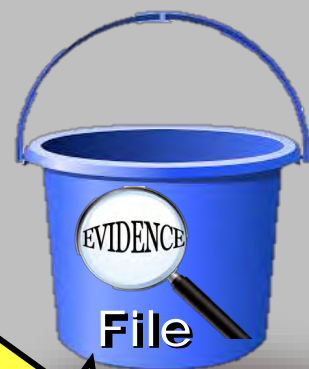
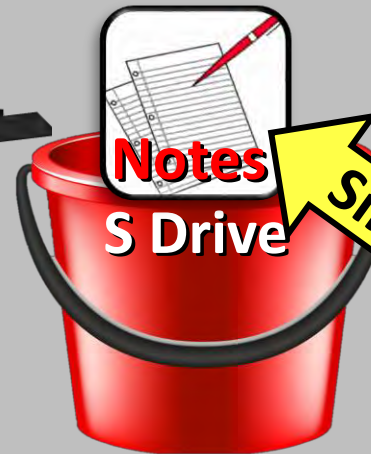
STEPS TO BE COMPLIANT



1
2
3

**File Name:
W1 Peterson**

tes
(changes)



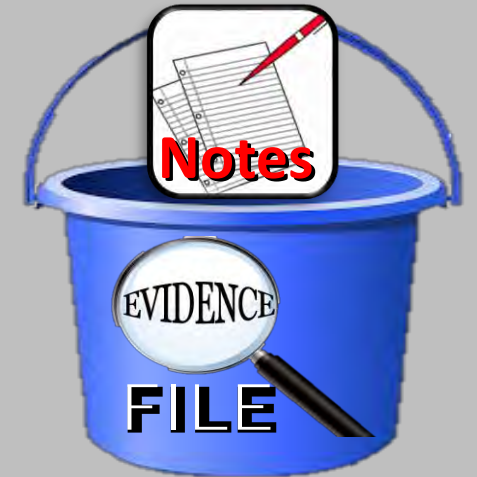
- 4. Investigator copies notes to S drive
- 5. Investigators notify Coordinator via email



STEPS TO BE COMPLIANT

1. Witness meets w/Investigators
2. Investigators produce typed notes
3. Notes sent to Witness for approval/changes
 - Witness responds (w/ or w/o changes)
4. Investigators copies notes to S drive
5. Investigators notify Coordinator via email

6. Coordinator copies notes in "Evidence File"

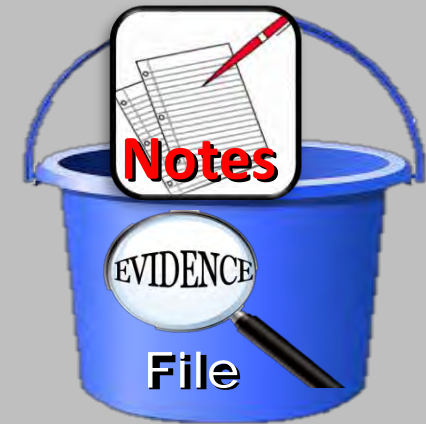


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7. Coordinator notifies parties & their advisor



WHY DO WE DO IT THIS WAY?

The parties should have an equal opportunity to review and inspect evidence that directly relate to the allegations raised in a formal complaint as these allegations necessarily relate to both parties. (p. 1484)

*These final regulations provide that the parties **must have at least ten days to submit a written response** after review and inspection of the evidence directly related to the allegations raised in a formal complaint. (p. 1029)*



WHAT GOES INTO THE BLUE BUCKET?

[E]vidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint . . .

1. Interview of Norm: Tells how Diane was depressed the next day?

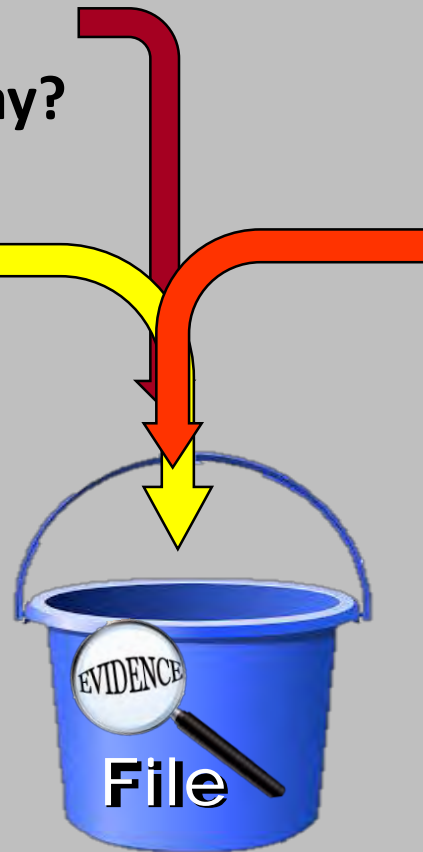
2. (R) Email: Wants Woody Boyd interviewed?

3. Diane's roommate to investigator: Sam is on FB Team; team has a rep of abusing women?

4. Interview of Frasier Crane (X of Diane, tells of past sexual activity w/her

5. Text: Sam to Diane; *I'm sorry for last night?*

6. Facebook post sent anonymously: *Sam Malone is a male slut!?*





Setting Access to the Bucket

- ✓ Title IX Coordinator (T9C) or Associate T9C (AT9C) notifies IT to set up an evidence file including the file name
 - File Name is Case 1, or Case 2, etc. (if more than one case is active)
 - T9C/AT9C sends IT an authorization list of the following individuals. No names - only email addresses:
 - T9C and AT9C (Ann Arbor cases)
 - Case Investigators
 - Complainant and Advisor
 - Respondent and Advisor
 - Administrative Hearing Panel
- } Set up file at the time the investigation begins
- } Notify IT later: At least 10 days prior to the hearing





Gaining Access to the Bucket

- ✓ Upon authorization made by IT, the authorized individuals will receive an email link to the site.
 - The site will ask for . . .
 - Individual's email address
 - Login information
 - Site access granted



Section 106.45 requires Universities to investigate formal complaints in a manner that:

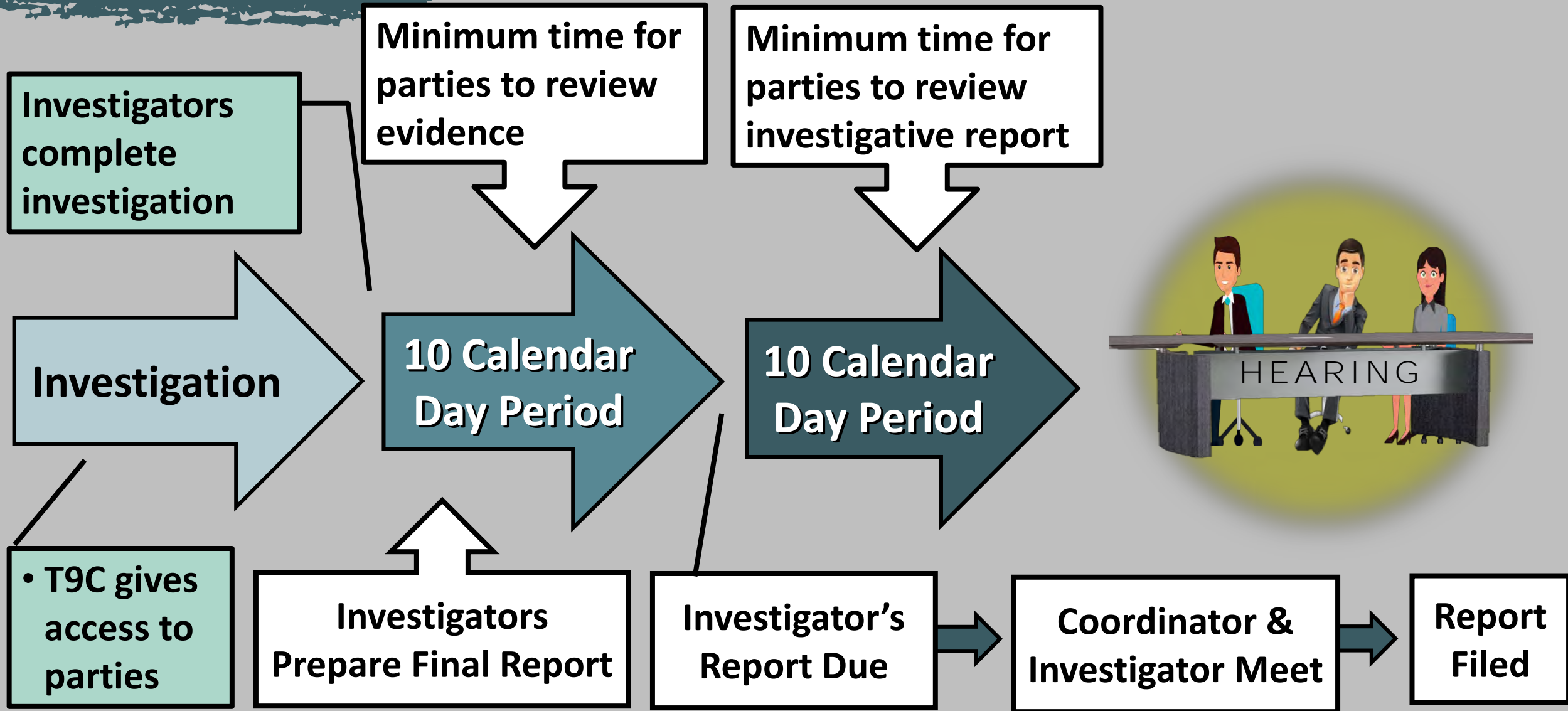
- keeps the burden of proof and burden of gathering evidence on the [university] while protecting every party's right to consent to the use of the party's own medical, psychological, and similar treatment records;**
- provides the parties equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence;**
- require that both parties receive copies of evidence gathered during the investigation that is "directly related to the allegations" in the formal complaint,**
- does not restrict the parties from discussing the allegations or gathering evidence;**



- **gives the parties equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney);**
- **requires written notice when a party's participation is invited or expected for an interview, meeting, or hearing;**
- **provides both parties equal opportunity to review and respond to the evidence gathered during the investigation;**
- **sends both parties the recipient's investigative report summarizing the relevant evidence, prior to reaching a determination regarding responsibility.**
- **[university] may not restrict the ability of parties to gather evidence.**



TIME-LINE



TIME-LINE

Calendar						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Panel Chair needs to notify the complainant, respondent, and Title IX Coordinator of the date time and location of the hearing (not less than 10 days before the hearing).
Coordinator notifies witnesses

Investigation

10 Days

10 Days



Coordinator &
Investigator meeting



PURPOSE: COORDINATOR & INVESTIGATOR MEETING

Purpose: Reviewing the Investigator's final report (prior to filing) and preparation for the hearing.

1. Review evidence (blue bucket)

- **Select relevant evidence**
- **Review credibility of evidence**

2. Determine what evidence will be presented

3. Determine what witnesses will testify



4. Consider Non-testimony evidence

- Text messages
- Videos
- Photos
- Recordings and etc.

5. Finalize the investigator's report

6. Develop a witness list **(see next slide)**

- Must notify each of hearing

6. Determine who will present the case (one or both investigators)





AHP (Decision-Makers) Cannot Consider Testimony That Cannot Be Cross-Examined

. . . mandates that if a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. (p. 697)

The final regulations add language to § 106.45(b)(6)(i) stating that if a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility . . . (p. 1085)



CONCORDIA UNIVERSITY
WISCONSIN & ANN ARBOR

TITLE IX OFFICE
INVESTIGATOR'S FINAL REPORT

Fields are pull-down, date picker, or type-in

Case Information

Date Report Submitted: 10/6/2020

Case Coordinator: Andrew Luptak

Case Investigators: Sarah Gartman

Date of Incident: 9/19/2020

Report made to: RD Quinn Roekle

Date Assigned to Investigators: 9/23/2020

Complainant's Advisor: Lilith Sternin

Case Coordinator: Marie Terlinden

Eugene Pitchford

Date Reported: 9/21/2020

Date Completed: 10/5/2020

Respondent's Advisor: Coach Ernie Pantusso



Involved Parties

Complainant's Name	Status	University ID#
Diane Chambers	Student	F0012345
		F00
		F00
		F00
Respondent's Name	Status	University ID#
Sam Malone	Student	F0067890
		F00
		F00
		F00
Witness' Name	Status	University ID#
Norm Peterson	Student	F0034567
Cliff Clavin	Student	F0033445
Carla Tortelli	Student	F0076543
Frasier Crane	Student	F0013579
		F00
		F00
		F00
		F00



Listed below are the specific alleged violation(s) of the University Sexual Misconduct Policy.

Alleged Violation of the Code of Student Conduct Article 2 § D 8. Non-Consensual Sexual Intercourse

Alleged Violation of the Code of Student Conduct Article 2 § D Choose an item.

Alleged Violation of the Code of Student Conduct Article 2 § D Choose an item.

Alleged Violation of the Employee Handbook § 4.3.7. Choose an item.

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Summary of interview notes with complainant(s):

Summary of interview notes with respondent(s):

Pull-Down Menu



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Summary of interview notes with complainant(s):

Summary of interview notes with respondent(s):

Pull-Down Menu



Summary of interview notes with witnesses:

Facts of the case that both complainant(s) and respondent(s) agree (include any corroboration by witnesses):

Facts of the case that both complainant(s) and respondent(s) disagree (include any corroboration by witnesses):

Other Case Related Facts and Evidence (e.g. videos, emails between individuals, text messages)

Credibility Assessment:

Signed

Date [Click here to enter a date.](#)

Signed

Date [Click here to enter a date.](#)



THE HEARING

Investigator appearance may be . . .

- ✓ In person or
- ✓ Through virtual means



The Investigator & Coordinator's Role



PREPONDERANCE OF THE EVIDENCE STANDARD

Making the decision of what evidence we should present to the case (ABA suggested analysis)

- ✓ *The decision-makers should first evaluate the quality of the evidence.*
 - *The decision-makers should consider all of the [admissible] evidence regardless of who provided it.*
 - *Any evidence the decision-makers find to be of high quality should be given more weight than any evidence the decision-makers find to be of low quality.*
- ✓ *Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility.*
- ✓ *The testimony of a single party or witness may be sufficient to establish a fact.*





ABA's Definition: Preponderance of the Evidence

- ✓ *After assessing the quality of the evidence, the decision-makers should only find the respondent responsible for alleged misconduct if . . .*
 - *. . . the evidence convinces a [majority] of the decision-makers to reasonably conclude that a finding of responsibility is justified.*
 - *. . . [t]hat is, the decision-makers should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that the respondent engaged in the alleged misconduct,*
 - *and that the evidence supporting a finding of responsibility outweighs any evidence that the respondent is not responsible for the alleged misconduct.*



OUTLINE OF THE HEARING

1. Call to Order (Title IX Coordinator)

- **Introductions of all attending**

2. Opening Remarks (T9C)

- **Hearing protocols: e.g. procedures, disruptive behavior, confidentiality, advisor responsibilities, false statements, hearing recorded**

3. Witnesses Are Dismissed

4. Presentation of Formal Allegations (Title IX Coordinator)

- **Allegations read into the record**
- **Coordinator turns hearing over to AHP Chair**



Rules on Questioning - All questions must be first directed to the AHP Chair so that the Chair may determine if the question is relevant to the issues at hand.

5. Presentation of Investigative Facts by Investigator(s)

- a. Questions by Complainant
- b. Questions by Respondent
- c. Questions by AHP
- d. Questions by AHP of Complainant
- e. Questions by AHP of Respondent
- f. Follow-Up Questions by any of the above



6. Witnesses

a. Questions by AHP

b. Questions by Complainant

c. Questions by Respondent

d. Follow-Up Questions by any of the above

7. Questioning by the Parties

a. Questions by Complainant

b. Questions by Respondent

c. Questions by AHP

d. Follow-Up Questions by any of the above



8. Final Statements (limit of 5 minutes per party)

a. Complainant

b. Respondent

9. AHP Moves Into Executive Session

a. Statement on Deliberations

b. All persons dismissed from the hearing

10. Deliberations by AHP



APPEALS

3 Grounds for an Appeal

Ground 1: A procedural error or omission occurred that significantly impacted the outcome of the process (e.g. material deviation from established procedures).



Ground 2: To consider new evidence, unavailable during the original investigation or adjudication, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

- NOTE: When a party fails to provide a statement/evidence (e.g. under advice of counsel/advisor) during an investigation, and subsequent to the interview/hearing decides to provide the statement/evidence, it will not be considered “new evidence” for the purposes of this ground. Additionally, subsequent findings of a criminal or civil court (e.g. dismissals, plea bargains, settlements) alone do not constitute sufficient grounds for appeal, but may be considered if new evidence was the grounds for said finding.**



Ground 3: A conflict of interest or bias by an investigator, coordinator, or AHP member that substantially impacted the outcome of the investigation or adjudication.

- **NOTE: Parties have the ability to address an investigator's, coordinator's, or AHP member's potential conflict of interest or bias for or against a given party at the time of notification of the individual's involvement in the case. Therefore, in the appeal, the party must explain why the party did not exercise this opportunity at the time the investigator, coordinator, or AHP member's name was disclosed.**



Does anyone
have questions
for me?



PART 2: DATE - TBD

- ✓ **Before Part 2 Training: View Thompson & Coburn's Module 4 – Hearings Video (1:18)**
- ✓ **Admissibility of Evidence**
- ✓ **Review of the Investigator Final Report**
- ✓ **The Structure and Format of the Administrative Panel Hearing**
 - **Presenting Evidence from the Final Report to AHP**