



## ANNUAL TRAINING FOR ADVANCED TITLE IX COORDINATORS AND DEPUTY COORDINATORS

Kathryn Nash  
Emily Mawer  
Cicely Miltich

Lathrop GPM, 2022 CONFIDENTIAL LATHROP GPM. All Rights Reserved. All contents are confidential, proprietary and the property of trainED and Lathrop GPM. All information included may not be reproduced, in any form, by anyone without the expressed written consent of the author or presenter. The contents should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and readers are urged to consult with an attorney concerning their own situations and any specific legal questions they may have.

---

---

---

---


---

---


---

---

## AGENDA



- Legal Overview
- Updating Sexual Misconduct Policy and Procedures
- Overseeing the Complaint Process
  - Pre-Investigation
  - Investigation
  - Adjudication
  - Post-Adjudication



Lathrop GPM, 2

---

---

---

---


---

---


---

---

## TERMINOLOGY



- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator



Lathrop GPM, 3

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Train Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, and individuals responsible for appeals on
  - Definition of sexual harassment
  - Scope of the institution's education program or activity
  - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias
  - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
  - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)

Lathrop GPM,  4

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Train Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, and individuals responsible for appeals on
  - Relevant evidence and how it should be used during a proceeding (annual)
  - Proper techniques for questioning witnesses (annual)
  - Basic procedural rules for conducting a proceeding (annual)
  - Avoiding actual and perceived conflicts of interest (annual)
  - Institution's policies and procedures

Lathrop GPM,  5

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Decision-makers must also receive training on
  - Technology to be used at a live hearing
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Lathrop GPM,  6

---

---

---


---

---

---

---

---

**TRAINING REQUIREMENTS** 

- Investigators must also receive training on
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution’s website

Lathrop GPM, > 7

---

---

---

---

---

---

---

---



**SESSION 1: LEGAL OVERVIEW**



Lathrop GPM, > 8

---

---

---


---

---


---

---

---

**SESSION OVERVIEW** 

- Title IX and OCR Guidance
- Clery Act
- Violence Against Women Act
- Other Laws



Lathrop GPM, > 9

---

---

---

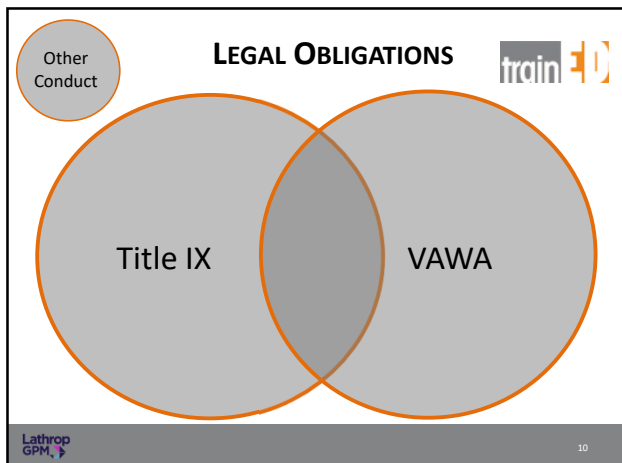
---

---

---

---

---




---

---

---


---

---


---

---


---

**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 educational program or activity receiving Federal financial assistance.”



20 U.S.C. § 1681

 11

---

---

---




---

---

---

---

---

- WHO MUST COMPLY WITH TITLE IX?** 
- Institutions that receive federal funds
    - Students
    - Employees
    - Third Parties
      - Visitors
      - Vendors
- 
-  12

---

---

---

---

---

---

---

---

**DISCRIMINATION**  
**"ON THE BASIS OF SEX"**

trainED

- Includes:
  - Sexual harassment
  - Differential treatment



Lathrop GPM, >

13

---

---

---

---

---

---


---

---

**HOW INSTITUTIONS MUST RESPOND UNDER TITLE IX**

trainED

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations



Lathrop GPM, >

14

---

---

---

---

---

---


---

---

**TITLE IX REQUIREMENTS**

trainED

- All schools receiving federal funds must:
  - Publish Notice of Nondiscrimination
  - Designate a Title IX Coordinator
  - Disseminate policy prohibiting sex discrimination
  - Adopt and publish prompt and equitable grievance procedures
  - Offer supportive measures to a complainant
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities



Lathrop GPM, >

15

---

---

---


---

---


---

---

---

**OCR'S ENFORCEMENT AND GUIDANCE** 

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Resolution agreements



Lathrop GPM, > 16

---

---

---


---

---


---

---

---

**TITLE IX COORDINATOR GUIDANCE** 

- Key points:\*
  - Independence and seniority of Title IX Coordinator
  - Notice of Nondiscrimination
  - Website and prominent link from homepage
  - Training
  - Annual climate surveys
  - Recordkeeping
  - Information collection and reporting
  - Responsibilities besides sexual harassment



Lathrop GPM, > \*2015 DCL on Title IX Coordinators 17

---

---

---


---

---


---

---

---

**TITLE IX COORDINATOR GUIDANCE** 

- Areas of responsibility besides sexual harassment:\*
  - Recruitment, admissions, and counseling
  - Financial assistance
  - Athletics
    - Student interests and abilities
    - Athletic benefits and opportunities
    - Athletic financial assistance
  - Pregnant and parenting students
  - Discipline
  - Employment



Lathrop GPM, > \*2015 Title IX Resource Guide 18

---

---

---

---


---

---


---


---

**CLERY ACT**



- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection



Lathrop GPM,  19

---

---

---

---


---

---


---


---

**VAWA CHANGES TO CLERY**



- Additional Clery crimes
  - Domestic violence
  - Dating violence
  - Stalking
- Additional policy statements
  - Procedures following a VAWA crime or sexual assault
  - Prevention and awareness programs
- Other changes
  - Hate crimes include “national origin” and “gender identity” motivated crimes
- Codified parts of 2011 Dear Colleague Letter



Lathrop GPM,  20

---

---

---

---


---

---


---

---

**CLERY FINES**



- Fine for each Clery Act violation is \$62,689
- In September 2020, the University of California, Berkeley announced it would pay \$2.35 million to DOE for misclassifying crimes (most of which were liquor, drug, and weapons violations)
- In June 2020, the University of North Carolina at Chapel Hill reached a \$1.5 million settlement with the DOE for Clery Act violations, including in the areas of reporting crime statistics, defining Clery geography, issuing warnings, and including required information in their annual security reports
- In 2019 the DOE issued a \$4.5 million fine – the largest in history – against Michigan State University
- University of Saint Thomas, Houston fined \$172,000 in 2017 for failure to include required policy statements and under-reporting of crime statistics among other violations

Lathrop GPM,  21

---

---

---

---

---


---


---

---

### VAWA REGULATIONS

- Requires policy addressing:
  - Procedures complainants should follow
  - Disciplinary procedures
  - Confidentiality
  - Notifications to students, employees, and complainants
  - Right to advisor of choice (including attorney)
  - Right to have notice of meetings with parties
  - Right to have access to information used in formal/informal disciplinary meetings
  - Rationale must be included in Notice of Determination
  - Training for individuals with heightened responsibilities
  - Training for students and employees



Lathrop GPM,  22

---

---

---

---

---

---

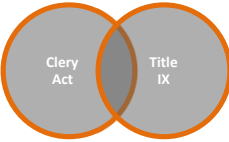
---

---


---

---

### INTERACTION BETWEEN TITLE IX & CLERY



- Clery is about the reporting of crimes (broader than sexual misconduct), regardless of investigation
- Title IX is about the investigation of reports of sexual harassment, including sexual assault and VAWA crimes

Lathrop GPM,  23

---

---

---

---

---

---

---


---

---

---

### INTERACTION BETWEEN TITLE IX & VAWA

- Title IX
  - Sexual harassment (as defined by regulations)
  - In an education program or activity
  - Against a person in the United States
- VAWA
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)

Lathrop GPM,  24

---

---

---

---

---

---


---

---


---


---



**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Institution has actual knowledge of
  - Sexual harassment
  - In an education program or activity of the institution
  - Against a person in the United States



Lathrop GPM,  25

---

---

---


---

---


---

---

---

**TITLE IX—ACTUAL KNOWLEDGE** 

- Actual knowledge
  - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
    - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
    - Elementary and secondary schools: Any employee
  - Vicarious liability and constructive notice are insufficient
  - Standard not met if the only official with actual knowledge is the respondent

Lathrop GPM,  26

---

---

---


---

---


---

---

---

**TITLE IX—ACTUAL KNOWLEDGE** 

- Actual knowledge (cont.)
  - The following does not qualify an individual as having the authority to institute corrective measures
    - Mere ability or obligation to report sexual harassment
    - Ability or obligation to inform a student about how to report
    - Being trained in how to report

Lathrop GPM,  27

---

---

---


---

---

---

---

---


**TITLE IX—SEXUAL HARASSMENT** 

- Conduct *on the basis of sex* that satisfies one or more of the following:
  - Quid pro quo
  - Hostile environment
  - Sexual assault and VAWA crimes

quid pro quo

hostile environment

sexual assault & VAWA crimes

Lathrop GPM,  28

---

---

---

---

---


---

---

---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Quid pro quo:
  - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
  - Examples
    - Supervisor conditioning promotion on participation in sexual advance
    - Professor conditioning grade on participation in sexual advance

quid pro quo

Lathrop GPM,  29

---

---

---

---

---


---

---

---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Hostile Environment:
  - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity

hostile environment

Lathrop GPM,  30

---

---

---

---

---


---

---


---

---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Hostile environment harassment
  - Reasonable person: perspective of a reasonable person in the shoes of the complainant
    - Consider ages, abilities, and relative positions of authority of the individuals involved
  - Effectively denies a person equal access
    - Equal access has been denied – not that a person’s total or entire educational access has been denied
    - No specific type of reaction is necessary to conclude that severe, pervasive, objectively offensive sexual harassment has denied a complainant “equal access”
    - Analysis is whether a reasonable person in the complainant’s position would be effectively denied *equal* access to education compared to a similarly situated person who is not suffering the alleged sexual harassment

Lathrop GPM,  31

---

---

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome sexual flirtations, advances, or propositions
  - Requests for sexual favors
  - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
  - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
  - Visual conduct such as leering or making gestures
  - Sexually suggestive comments about an individual’s body or body parts, or sexually degrading words to describe an individual



Lathrop GPM,  32

---

---

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another’s body
  - Unwelcome verbal or physical conduct against an individual related to the individual’s gender identity or the individual’s conformity or failure to conform to gender stereotypes
  - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
  - Videotaping or taking photographs of a sexual nature without consent



Lathrop GPM,  33

---

---

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required



Lathrop GPM,  34

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object:** To use 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.



Lathrop GPM,  35

---

---

---


---

---


---

---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Fondling:** The 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Lathrop GPM,  36

---

---

---


---




---

---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes:**
  - **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction **NEW 2022!**
  - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
  - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

Lathrop GPM,  37

---

---

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity



Lathrop GPM,  38

---

---

---

---

---


---

---


---

---

---

**TITLE IX – EDUCATION PROGRAM OR ACTIVITY** 

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
    - Includes all incidents of sexual harassment occurring on an institution's campus
    - Also includes off-campus conduct if
      - Occurs as part of the institution's "operations"
      - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
      - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

Lathrop GPM,  39

---

---

---

---

---


---

---

---

---

---

**TITLE IX – EDUCATION PROGRAM OR ACTIVITY** 

- Education program or activity (cont.)
  - Consider whether recipient funded, promoted, or sponsored the event or circumstance
  - No single factor is determinative
  - Clery Act geography is not co-extensive with scope of education program or activity

Lathrop GPM, ▶ 40

---

---

---


---

---

---

---

---

**DETERMINING TITLE IX VS. NON-TITLE IX MATTERS** 

- Factors to consider
  - Type of alleged conduct – sexual harassment?
  - Location and context of alleged conduct
    - within education program or activity?
    - against a person in the United States?
  - Relationship between parties and institution

Lathrop GPM, ▶ 41

---

---

---


---

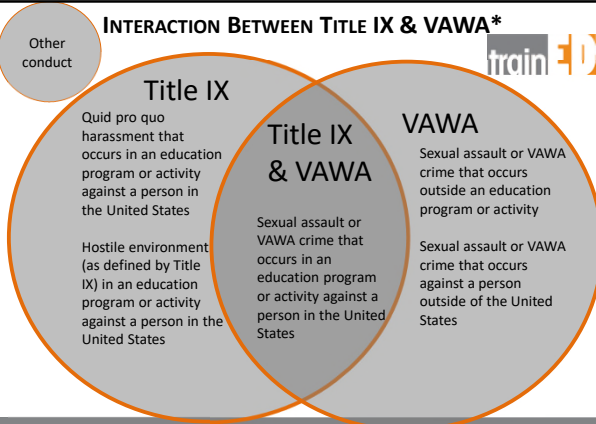
---

---

---

---

**INTERACTION BETWEEN TITLE IX & VAWA\*** 



Lathrop GPM, ▶ \*If one of the parties is affiliated with the institution in some way 42

---

---

---

---


---

---

---

---

**Other conduct**




Quid pro quo harassment by a student

Hostile environment harassment that occurs outside a program or activity

Hostile environment harassment that occurs against a person outside of the United States

Sexual harassment that is not sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to education program or activity (caution!)

Lathrop GPM,  43

---

---

---

---

---

---


---

---


---

---

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION**



- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Formal complaint
  - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- Permissive dismissal
  - Discretionary dismissal of formal complaint if respondent is no longer enrolled or employed by the institution
  - Also have discretion if respondent was never enrolled or employed by institution

Lathrop GPM,  44

---

---

---

---

---

---


---

---


---

---

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION**



- Third party complainant and respondent who is a member of the campus community
  - Title IX (if within scope of Title IX)
    - Provide supportive measures
    - May not be required to comply with Title IX grievance process
  - VAWA (if allegation of sexual assault or VAWA crime)
    - No requirement to provide written explanation of rights and options (but still recommended)
    - Disciplinary process that complies with VAWA

Lathrop GPM,  45

---

---

---

---

---


---

---


---

---

---

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION** 

- Complainant who is a member of the campus community and third party respondent
  - Title IX (if within scope of Title IX)
    - Provide supportive measures
    - Generally not required to comply with Title IX grievance process
  - VAWA (if allegation of sexual assault or VAWA crime)
    - Provide a written explanation of student or employee's rights and options
    - Could take action (no trespass) without disciplinary process
    - If engaging in a disciplinary process, comply with VAWA requirements

Lathrop GPM,  46

---

---

---


---

---


---

---

---

**NON-TITLE IX AND NON-VAWA CASES** 

- Flexibility to determine whether and how to respond to alleged conduct
- Factors to consider
  - State law
  - Expectations of community

Lathrop GPM,  47

---

---

---


---

---


---

---

---

**LESSONS LEARNED FROM LITIGATION** 

- In January 2022, the Third Circuit held that institutions may face liability under Title IX for deliberate indifference to known sexual harassment committed by third parties
  - The case involved the murder of a Millersville University student in her dorm room by her boyfriend, who was not a student or employee of the institution
  - A prior incident of dating violence had occurred in the student's dorm room, but the Deputy Title IX Coordinator did not report it to the Title IX Coordinator and the institution did not respond to the incident
- Lesson: Respond to incidents involving third parties (response may differ from matters with student/employee respondent)

Lathrop GPM,  48

---

---

---

---


---

---


---

---



**LESSONS LEARNED FROM LITIGATION** 

- In March 2022, the Third Circuit reversed the dismissal of a Title IX claim brought by a male respondent/cross-complainant (Doe) against Princeton University.
  - Doe and female student were in dating relationship, which included physical violence by both. After break-up, female student told people Doe was physically abusive.
  - Doe complained of harassment (including spreading rumors) by female student to Director of Student Life. Director didn't tell Doe to file complaint, told him to seek mental health services.
  - Female student then reported physical abuse to Title IX official who encouraged her to file complaint.

Lathrop GPM,  49

---

---

---

---

---


---

---


---

---

---

**LESSONS LEARNED FROM LITIGATION** 

- Princeton University case cont'd.
  - During investigation, Doe mentioned interest in filing counterclaim to investigation/adjudication panel, but Princeton offered no guidance. Later when Doe formally asked panel to consider his counterclaims (of physical abuse), the panel expanded its investigation.
  - Doe also alleged female student violated no-contact order, Princeton just told her to not to do it again.
  - Court found Doe plausibly alleged that sex was a motivating factor, pointing to two incidents: (1) female student's report of misconduct was treated with greater urgency and seriousness than Doe's, and (2) violation of the no-contact order produced only a mild University response.
- Lessons:
  - Be consistent in treatment of parties and response to potential allegations. Train members of Title IX team and other employees in this regard.
  - Even if report doesn't fall under Title IX or your Policy, institution may still need to respond.

Lathrop GPM,  50

---

---

---

---

---


---

---


---


---

---

**INTERACTION WITH OTHER LAWS** 

- FERPA: Family Educational Rights and Privacy Act
- State mandatory reporting laws
- Title VII/State anti-discrimination laws
- State student safety laws



Lathrop GPM,  51

---

---

---

---

---


---

---


---


---

---

**INTERACTION WITH OTHER LAWS** 

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
      - Required by Title IX
      - Does not include what the remedies are
    - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including all sanctions



Lathrop GPM,  52

---

---

---

---

---


---

---


---

---

---

**INTERACTION WITH OTHER LAWS—  
ACCOMMODATIONS** 

- Provide reasonable accommodations to an individual with a disability who requests an accommodation necessary to ensure an equal opportunity to participate in the complaint resolution process.

Lathrop GPM,  53

---

---

---

---

---


---

---


---

---

---

**CHANGES TO TITLE IX** 

- June 22-23, 2021: Public Notice & Dear Colleague Letter: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
  - Relying on *Bostock v. Clayton County*
  - July 15, 2022: Federal judge in E.D. Tennessee temporarily blocked enforcement of guidance in 20 states
- July 2021 Q & A
- August 24, 2021: DOE letter regarding regulation provision concerning statements of parties/witnesses who do not submit to cross-examination
- June 23, 2022: Proposed Title IX regulations
  - Open for public comment for 60 days from date of publication in the Federal Register (due 9/12)

Lathrop GPM,  54

---

---

---

---

---

---

---

---

---

---

### CHANGES TO TITLE IX—CHANGE TO CROSS-EXAMINATION RULE



- If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process
  - Investigation report, text messages, police report, witness reports of statements, etc.
- Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
  - Still may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions
- Consider allowing parties to use closing argument to share questions advisor would have asked that party or witness and how the individual's testimony would have impacted the outcome
- Likely need to update written policy and procedures

---

---

---

---

---

---

---

---

### 2022 PROPOSED TITLE IX REGULATIONS: EXPANDED SCOPE



- Sex discrimination includes discrimination based on sex stereotypes, pregnancy, sexual orientation and gender identity
  - Includes differential treatment based on parental, family or marital status
- Sex-based harassment-hostile environment includes unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity

---

---

---

---

---

---

---

---

### 2022 PROPOSED TITLE IX REGULATIONS: EXPANDED SCOPE



- Includes off-campus conduct that *creates or contributes* to a hostile environment in an institution's education program or activity
- Includes conduct that occurs off-campus that is subject to the institution's disciplinary authority

---

---

---


---

---

---

---

---

**2022 PROPOSED TITLE IX REGULATIONS:** 

**NOTIFICATION REQUIREMENTS**

- Required to take prompt and effective action to end sex discrimination that has occurred within education program or activity, prevent its recurrence and address its effects (does not require actual knowledge before obligation to act)
- Individual obligated to notify Title IX Coordinator if:
  - Has authority to institute corrective action
  - Has responsibility for administrative leadership, teaching, or advising in education program or activity
- All others (except confidential resources) must either notify Title IX Coordinator OR provide Title IX Coordinator's contact info and info about reporting

Lathrop GPM, > 58

---

---

---


---

---

---

---

---

**2022 PROPOSED TITLE IX REGULATIONS:** 

**OTHER CHANGES**

- Must offer supportive measures in response to any form of sex-discrimination, not just sexual harassment
  - Can include temporary measures that burden respondent imposed for non-punitive and non-disciplinary reasons that are designed to protect safety of complainant or education environment or deter respondent from engaging in harassment
  - Party affected by supportive measure has right to have decision modified or reversed, by someone other than individual who initially made decision

Lathrop GPM, > 59

---

---

---


---

---

---

---

---

**2022 PROPOSED TITLE IX REGULATIONS:** 

**OTHER CHANGES**

- Certain procedural requirements for responding to allegations of *sex-based discrimination* (including access to summary of evidence, process for evaluating credibility)

Lathrop GPM, > 60

---

---

---


---

---


---

---

---

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Additional procedural requirements for responding to allegations of *sex-based harassment* involving *student complainant and/or respondent*
  - Largely track 2020 regulations
  - Access and opportunity to respond to relevant evidence or written report
    - But if party requests access to the evidence, must provide
  - Hearing not required, must have process for assessing credibility of parties and witnesses that includes the decision-makers asking live questions and for parties to have their questions asked
  - Cannot rely on a statement of a party that supports that party's position if the party does not respond to questions related to their credibility
  - Cannot draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions related to their credibility

Lathrop GPM,  61

---

---

---

---

---

---

---


---

---


---

---

---

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Do not need a formal complaint to:
  - Investigate
  - Offer informal resolution
- Single investigator model is permissible
- Must use preponderance of evidence standard, unless institution uses clear and convincing for all similar types of matters

Lathrop GPM,  62

---

---

---

---

---

---

---


---

---


---

---

---

**2022 PROPOSED TITLE IX REGULATIONS: GENDER IDENTITY** 

- Preventing someone from participating in school programs and activities consistent with their gender identity would cause harm in violation of Title IX
  - DOE will issue separate notice of proposed rulemaking to address whether and how to amend regs to address students' eligibility to participate on a particular male or female athletics team

Lathrop GPM,  63

---

---

---

---

---

---

---


---

---

---

---

---

**2022 PROPOSED TITLE IX REGULATIONS: PREGNANCY** 

- Strengthens requirements for schools to provide:
  - Reasonable modifications for pregnant students;
  - Reasonable break time for pregnant employees; and
  - Lactation space
- Treat same as other temporary disability or physical condition

Lathrop GPM, > 64

---

---

---


---

---

---

---

---

**VAWA REAUTHORIZED** 

- Reauthorized in March 2022 (effective October 1, 2022)
- Revised domestic violence definition (above)
- Online survey tool for campus safety
- Task Force on sexual violence in education
  - Includes assessing DOE’s ability to levy fines for Title IX noncompliance
- Special Grants for Prevention Programs

Lathrop GPM, > 65

---

---

---

---

---

---

---

---



**Q & A**



Lathrop GPM, >

---

---

---


---

---


---


---

---

**train** 

## SESSION 2: UPDATING YOUR SEXUAL MISCONDUCT POLICY AND PROCEDURES



Lathrop  
GPM,  67

---

---

---

---


---

---


---

---

### SESSION OVERVIEW

**train** 

- Consider and Engage Your Audience, Leadership, and Experts
- Structuring the Complaint Resolution Process
- Policy Elements and Updates
- Other Recommended Updates

Lathrop  
GPM,  68

---

---

---

---

---

---

---

---

### CONSIDER AND ENGAGE YOUR COMMUNITY

**train** 

- Consider your audience
- Engage experts
- Develop and execute a communication plan
- Educate your community



Lathrop  
GPM,  69

---

---

---


---

---


---


---

---

**train** 

## STRUCTURING THE COMPLAINT RESOLUTION PROCESS



Lathrop GPM,  70

---

---

---

---


---

---


---

---

## STRUCTURING THE COMPLAINT RESOLUTION PROCESS

**train** 

- Process options
  - One process: Use the same procedures for all sexual misconduct cases (including live hearings)
  - Hybrid: Use the same procedures for all Title IX and VAWA cases (including live hearings) and a separate process for non-Title IX/non-VAWA cases
  - Separate processes: Create separate procedures for Title IX, VAWA, and non-Title IX/non-VAWA cases

Lathrop GPM,  71

---

---

---

---


---

---


---

---

## SAME PROCEDURES FOR TITLE IX AND VAWA

**train** 

- Pros
  - Clarity on the process that applies to allegations of sexual misconduct
  - Less risk of due process litigation
- Cons
  - Chilling effect of live hearing in all cases
  - Cost of additional procedural requirements, including hearings
  - Cannot explain hearing process as legally required in all cases
  - Potential FERPA issues with information sharing in non-Title IX cases
  - Less flexibility

Lathrop GPM,  72

---

---

---

---

---


---

---


---



**SEPARATE PROCEDURES FOR  
TITLE IX AND VAWA**



- Pros
  - Fewer hearings (less chilling effect; less administrative burden/cost)
  - Clear FERPA exceptions for each process
  - Can rely on legal requirements for each process (not requiring additional process beyond legal obligations)
- Cons
  - More analysis needed to determine what process will apply
    - Complications when additional facts arise and in cases with multiple allegations
  - Confusing for parties
  - Risk of due process litigation seeking a hearing requirement

Lathrop GPM,  73

---

---

---

---


---

---


---

---

**OTHER CONSIDERATIONS**



- If using a non-hearing process for sexual misconduct cases that do not fall within Title IX, consider discontinuing the use of hearings in other student conduct matters that involve two parties

Lathrop GPM,  74

---

---

---

---


---

---


---

---

**DETERMINING WHICH  
PROCESS APPLIES**



- Analyze when report or complaint is received and throughout the process
- Who determines which process applies
  - Title IX Coordinator (with assistance from investigator)
  - Another individual?
- If separate Title IX and VAWA procedures, follow same investigation process regardless of Title IX or VAWA up until information sharing stage
  - Title IX: Hard copy or electronic format of directly related evidence
  - VAWA: Access to evidence that will be shared with the decision-maker
- When in doubt, err on side of following Title IX process

Lathrop GPM,  75

---

---

---


---

---


---


---

---

**train** 

## POLICY ELEMENTS AND UPDATES



Lathrop GPM,  76

---

---

---


---

---

---


---


---

**train** 

## POLICY ELEMENTS & UPDATES

- Policy Content
  - Introduction
  - Scope
  - Notice of Non-Discrimination
  - Definitions
    - Complainant
    - Respondent
    - Report
    - Formal Complaint
    - Program or Activity
    - Sexual Misconduct



Lathrop GPM,  77

---

---

---


---

---

---


---


---

**train** 

## POLICY ELEMENTS & UPDATES

- Policy Content (cont.)
  - Definitions (cont.)
    - Sexual Harassment
      - Title IX Sexual Harassment
      - Non-Title IX Sexual Harassment
    - Dating Violence
    - Domestic Violence **NEW 2022!**
    - Stalking
    - Sexual Exploitation



Lathrop GPM,  78

---

---

---


---

---

---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Definitions (cont.)
    - Sexual Assault
      - Consent
      - Incapacitation
      - Coercion
    - Retaliation and Interference with Process

Lathrop GPM, > 79

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Responsibilities of the Title IX Coordinator and Team
  - Training
  - Resources and Supportive/Interim Measures
    - Offered to both parties



Lathrop GPM, > 80

---

---

---

---

---

---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Process for Reporting and Filing a Formal Complaint
    - Confidentiality
    - Anonymous Reports
    - Reporting to Law Enforcement
    - Employee Reporting Obligations
    - Mandatory Reporting Obligations for Minors

Lathrop GPM, > 81

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process
    - Title IX Process vs. VAWA Process vs. Process for Other Sexual Misconduct
    - Reasonably Prompt Timeframes
    - Officials Conducting Process
      - No Conflict of Interest/Bias (for/against complainants/respondents generally or individually)
      - Training
      - Dual Roles



Lathrop GPM,  82

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Equal Rights of Parties
      - Presumption of Non-Responsibility
      - Advisors
      - Supportive/Interim Measures
      - Required Notices
      - Identify Witnesses/Evidence
        - » Remove restriction on character witnesses/evidence
      - Right to Appeal (Title IX)
      - Access to Evidence (Title IX/VAWA)
      - Review Report (Title IX)
      - Submit Responses (Title IX)



Lathrop GPM,  83

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Initial Meeting with Complainant
    - Formal Complaint
      - Consolidation of Complaints
      - Dismissal of Complaints
    - Emergency Removal
    - Administrative Leave
    - No-Contact Orders/Harassment Restraining Orders/Protective Orders
    - Informal Resolution
      - Notice requirements
    - Notice of Allegations (to both parties; sufficient time & details)



Lathrop GPM,  84

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Investigation
      - Notice of Meetings (participants, purpose, etc.)
      - No gag orders/prohibition of parallel investigations
      - Allow parties to suggest questions to be asked of the other party and witnesses
      - Advisors
      - Review of Directly Related Evidence and Response (Title IX only)
      - Investigation Report and Response

Lathrop GPM,  85

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Adjudication
      - Hearing required for Title IX
        - » Rules of procedure
        - » Availability of directly related evidence
        - » Witnesses
        - » Cross-examination
        - » Advisors (including school-appointed advisors)
        - » Recording/Transcript

Lathrop GPM,  86

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Adjudication (cont.)
      - Standard of evidence
        - » Relevant Evidence
          - » Treatment Records
          - » Privileged Information
          - » Prior Sexual History
      - Notice of Determination
      - Sanctions
      - Remedies
    - Appeal (required under Title IX)
      - From Determination
      - From Dismissal
      - Bases for Appeal
      - Notice of Appeal and Opportunity to Respond
    - Recordkeeping



Lathrop GPM,  87

---

---

---


---

---

---

---

---

**ADDITIONAL RECOMMENDED UPDATES** 

- Reasonable accommodations
- Expectation to act in good faith and be truthful
- Statute of limitations
- Amnesty
- Attempt
- Consensual relationships
- Flexibility
- Close of evidence
- Record interviews
- Non-punitive requirements even if no finding of responsibility
- **Version of policy to apply**

Lathrop GPM, > 88

---

---

---


---

---

---

---

---

**ADDITIONAL RECOMMENDED UPDATES** 

- Handling of related complaints
  - Violation of interim measure – no contact directive
  - Retaliation
  - Violation of sanction
  - Ineffective sanction
  - Violation of obligation to act in good faith and/or be truthful
  - **Non-disclosure agreement**

Lathrop GPM, > 89

---

---

---


---

---

---

---

---

**ADDITIONAL RECOMMENDED UPDATES** 

- Evidentiary Issues
  - **Lie detector test results**
  - **Character evidence/witnesses**
  - **Medical evidence**
  - **Expert reports/witnesses**

Lathrop GPM, > 90

---

---

---


---

---


---

---

---

**ADDITIONAL RECOMMENDED UPDATES—TEMPLATES** 

- Create templates for notices and other documents used in the grievance process, including:
  - Notification of rights of complainant
  - Notice of allegations
  - Notice of informal resolution
  - Notice of delay
  - Notice of meetings
  - Notice of determination
  - Advisor agreement
  - Non-disclosure agreement
  - Hearing procedures

Lathrop GPM,  91

---

---

---

---

---


---

---


---

---

---

**2022 RECOMMENDED UPDATES** 

- Update regarding cross-examination rule:
  - Remove language prohibiting consideration of statements of party or witness who refuses to answer question(s)/appear at hearing
  - Keep language that decision-maker may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer question(s)
  - Add language that refusal to answer question(s) or appear at hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
- List officials with authority to institute corrective measures in Policy
- Consent is not a defense to violence
- Don't require non-disclosure agreement for notice of outcome/determination

Lathrop GPM,  92

---

---

---

---

---

---

---

---

---

---

**SESSION 3: OVERSEEING THE COMPLAINT PROCESS** 



Lathrop GPM,  93

---

---

---

---

---

---


---

---


---

---

**SESSION OVERVIEW**



- Role of Title IX Coordinator & Team
- Responding to a Report
- Informal Resolution
- Investigation
- Hearing
- Determination
- Appeals



Lathrop GPM, > 94

---

---

---

---


---

---

---

---

**ROLE OF TITLE IX COORDINATOR DURING COMPLAINT PROCESS**



- Conduct intake meeting
- Assess report/complaint
- Determine which process applies (if multiple)
- Determine who will provide ongoing communication with the parties throughout the complaint process
  - Notify parties of delays and reason for delays
  - Notify parties of their own and other party's meetings
- Ensure that parties receive adequate notice of any new allegations
- Ensure advisor agreements are signed (if any)
- Ensure non-disclosure agreements are signed by parties and advisors (if any)
- Conduct informal resolution?

Lathrop GPM, > 95

---

---

---

---


---

---

---

---

**ROLE OF TITLE IX COORDINATOR DURING COMPLAINT PROCESS**



- Oversee process to ensure compliance with policy and designated time frames
- Investigate?
  - Beware of conflicts when filling multiple roles
- Review investigation report, party responses, and rebuttals
  - Redact impermissible content
  - Evaluate whether further investigation is necessary
- Cannot adjudicate or decide appeal (Title IX)

Lathrop GPM, > 96

---

---

---

---

---


---

---


---



**DUAL ROLES**



- Title IX requires independent decision-maker
  - Title IX Coordinator and decision-maker must be different individuals
  - Investigator and decision-maker must be different individuals
  - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

Lathrop GPM,  97

---

---

---

---


---

---


---


---

**ROLE OF TITLE IX TEAM**



- Serve impartially
  - Avoid prejudgment of the facts
  - Presumption of non-responsibility
  - Avoid/disclose conflicts of interest/bias
    - For or against complainants or respondents individually or generally
  - Make determination of responsibility at the conclusion of the grievance process



Lathrop GPM,  98

---

---

---

---

---

---

---

---

**EQUAL RIGHTS OF THE PARTIES**



- Interview/hear from both parties
- Equal opportunity for parties
  - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
  - Access to evidence (if any) (Title IX and VAWA)
    - Must allow access for sexual assault/VAWA
    - Must send *hard copy or electronic format* for Title IX
  - Right to an advisor (may be attorney) (Title IX and VAWA)
    - May limit extent of participation (must apply equally)
    - If party has no advisor, school will provide for cross-examination
  - Participate in pre-hearing meeting (if any)
  - Identify/present character or expert witnesses (if any)
  - Written notice of
    - Meetings
    - Allegations
    - Informal Complaint Process
  - Written simultaneous notices of outcome



Lathrop GPM,  99

---

---

---

---

---

---

---

---




## CASE STUDY— ATHLETIC TRAINER REPORT

Lathrop GPM, > 100

---

---

---


---

---

---

---

---



## CASE STUDY— ATHLETIC TRAINER REPORT

- You receive a call from one of the institution’s athletic trainers. She said that she noticed concerning bruising on a female student athlete while treating her and asked the student about the marks. The trainer tells you that the student became emotional and told her that her boyfriend “became violent” with her while he was drunk one night. The trainer tells you that the student said nothing like that had ever happened and that her boyfriend was really sorry and promised never to do it again. The trainer said that the student asked her not to say anything. The trainer tells you that she would like to provide information and resources to the student, but feels like she can’t disclose the student’s name because she is a patient.
- How do you respond to the athletic trainer?

Lathrop GPM, > 101

---

---

---


---

---

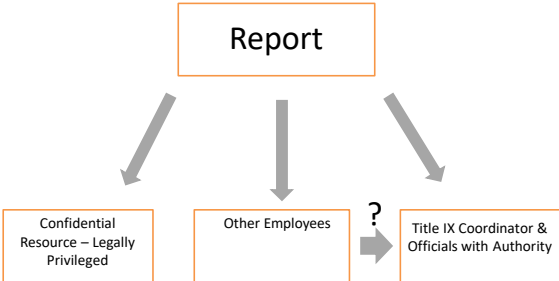
---

---

---



## RESPONDING TO A REPORT



```

graph TD
    Report[Report] --> CR[Confidential Resource – Legally Privileged]
    Report --> OE[Other Employees]
    Report --> TIX[Title IX Coordinator & Officials with Authority]
    OE -.-> Q[?]
    Q -.-> TIX
  
```

Lathrop GPM, > 102

---

---

---


---

---

---


---

---

**RESPONDING TO A REPORT** 

- Types of report recipients:
  - Title IX Coordinator and officials with authority to institute corrective measures on behalf of the institution
  - Confidential Resources
    - Professional and pastoral counselors
    - Others with state-law privilege
    - Not required to report any information\*
  - Other Employees: Institution may designate reporting obligation:
    - Designate semi-confidential resources?
    - Designate employees who are required to report
    - Designate employees who are not required to report?

\*NOTE: These individuals may have other reporting requirements under Clery Act and/or state law

Lathrop GPM,  103

---

---

---

---

---


---


---


---

---

---

**DUTIES OF CONFIDENTIAL RESOURCES** 

- Discuss reporting options and rights - Title IX Coordinator, law enforcement, campus security
  - Offer to assist with reporting
  - Discuss school's prevention of and response to retaliation
- Discuss/offer support services and interim measures
- Disclose institution's limited ability to respond if request for confidentiality
- Discuss the importance of preserving evidence 
- State law may require reporting of non-identifying information

Lathrop GPM,  104

---

---

---

---

---


---


---


---

---

---

**DUTIES OF OTHER EMPLOYEES WHO ARE REQUIRED TO REPORT** 

- If possible, before information revealed disclose:
  - Additional reporting requirement
  - Option to report to school and request confidentiality (school will consider but not guarantee)
  - Option for complainant to disclose to a confidential resource
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy) 

Lathrop GPM,  105

---

---

---

---

---

---

---

---

---

---

### DUTIES OF EMPLOYEES WHO ARE NOT REQUIRED TO REPORT



- Ask person reporting if they want the information shared with the Title IX Coordinator
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)




---

---

---

---

---

---

---

---

### CASE STUDY— ATHLETIC TRAINER REPORT



- You inform the athletic trainer that her interactions with the student athlete in the course of treatment are protected by state law privilege. Therefore, she is a confidential resource and does not need to report. You ask the athletic trainer to provide the student athlete with information about the institution's Sexual Misconduct Policy and the option to report. You also provide a list of resources for the athletic trainer to provide the student athlete.

---

---

---

---

---

---

---

---

### RESPONDING TO A REPORT



- Title IX: Must promptly respond when
  - Institution has actual knowledge of
  - Sexual harassment
  - In an education program or activity of the institution
  - Against a person in the United States
- VAWA:
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)




---

---

---

---

---

---

---

---

### CASE STUDY-ATHLETIC TRAINER REPORT



- You get another call from the athletic trainer. She says that the student athlete who reported abuse by her boyfriend disclosed that the abuse has actually been going on for a while. The trainer tells you that the student has agreed to the trainer sharing her name.
- How do you respond?

---

---

---

---

---

---

---

---

### RESPONDING TO A REPORT



- Response must treat complainant and respondent equitably by
  - Offering supportive measures to a complainant (with or without formal complaint)
  - Following a grievance process that complies with the regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent

---

---

---

---

---

---

---

---

### RESPONDING TO A REPORT



- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
  - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
  - Consider complainant's wishes with respect to supportive/interim measures
  - Explain the process for filing a formal complaint
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide complainant with written notification of rights (VAWA)




---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT** 

- Report vs. Formal Complaint
  - Report
    - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
    - Complainant’s identity may be kept confidential from respondent
  - Formal complaint
    - Initiates grievance process
    - Cannot be filed anonymously
      - Requires complainant’s physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
      - Title IX Coordinator can sign a complaint
      - Grievance process requires that complainant’s identity be disclosed to respondent, if known

Lathrop GPM,  112

---

---

---

---

---


---

---


---


---

---

**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES** 

- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient’s education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures



Lathrop GPM,  113

---

---

---

---

---


---

---


---


---

---

**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES** 

- Mutual restrictions on contact between the parties
- Change academic or extracurricular activities, living, transportation, dining, and working situations
- Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible



Lathrop GPM,  114

---

---

---

---

---


---

---

---

---

---

**RESPONDING TO A REPORT** 

- Other obligations:
  - Notify campus security, if necessary
  - Clery report, if necessary
  - Consider emergency removal



Lathrop GPM, > 115

---

---

---


---

---

---

---

---

**CASE STUDY—  
ATHLETIC TRAINER REPORT** 

- The trainer calls the student to ask if they are open to meeting with you, and the student agrees. The trainer brings the student to the meeting and asks if they should leave once the student has met you or if they should stay through the meeting.
- How do you respond?

Lathrop GPM, > 116

---

---

---


---

---

---

---

---

**CASE STUDY—CASSY/WILL** 

- You meet with the student athlete, Cassy, who is accompanied by the athletic trainer. At the beginning of your meeting, Cassy tells you that before she says anything, you need to promise that you won't tell her ex-boyfriend or do anything else unless she agrees to it.
- How do you respond?

Lathrop GPM, > 117

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- Cassy agrees to continue your conversation. She tells you that for the last year, she has been dating another student, Will. Cassy tells you that on several occasions during the last year, Will has gotten drunk and become violent. Cassy says that after it happened a few days ago, she got up the courage to break up with him. Cassy says Will was really angry, and she is now scared to see him—especially if she sees him while he is drunk. Cassy says that she doesn't want to do a whole big case. She just wants to be safe from him. Cassy asks for your help.
- How do you respond?

---

---

---

---

---

---

---

---

### RESPONDING TO FORMAL COMPLAINT—EMERGENCY REMOVAL



- Institution may remove a respondent from the education program or activity on an emergency basis if institution:
  - Undertakes an individualized safety and risk analysis;
  - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
  - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal
- Non-student employees may be placed on administrative leave during grievance process
- Provision does not modify any rights under the IDEA, Section 504 of the Rehabilitation Act, or the ADA

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- You explain Cassy's rights, options, and resources. She tells you that she does not want to proceed with a formal complaint.
- How do you proceed?

---

---

---

---


---

---


---


---



**RESPONDING TO A REPORT—REQUESTS FOR CONFIDENTIALITY OR NO ACTION** 

- Recommended Approach:
  - Factors to consider
    - Seriousness of the alleged harassment
    - Increased risk of additional violence by the respondent
      - Other complaints about the same respondent
      - History of violence from arrests/records from prior school
      - Respondent threatened further violence
    - Increased risk of additional violence under similar circumstances
      - Pattern of perpetration at a given location or with a certain group
    - Whether sexual violence was perpetrated with a weapon
    - Age of the complainant
    - Whether school has other means to obtain evidence (security footage, eye witness or physical evidence)
      - Notice will still need to identify parties involved
    - Rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result



Lathrop GPM,  121

---

---

---

---

---


---

---


---


---

---

**RESPONDING TO A REPORT—REQUESTS FOR CONFIDENTIALITY OR NO ACTION** 

- Recommended Approach:
  - If the school determines it *can* honor the request for confidentiality/no action
    - Continue to offer supportive measures
  - If the school determines it *cannot* honor the request for confidentiality/no action
    - Inform the complainant prior to proceeding
    - Continue to offer supportive measures
    - Title IX Coordinator signs formal complaint and begins process



Lathrop GPM,  122

---

---

---

---

---


---

---


---


---

---

**RESPONDING TO A REPORT — WRITTEN NOTIFICATION OF RIGHTS** 

- Written notification to complainants about—
  - Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations, if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement



Lathrop GPM,  123

---

---

---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT – WRITTEN NOTIFICATION OF RIGHTS** 

- Written notification to complainants about (cont.)—
  - Possible sanctions and protective measures
  - Procedures individual should follow
  - Disciplinary procedures
  - Confidentiality
  - Existing resources for counseling, etc.
  - Supportive/interim measures



Lathrop GPM, > 124

---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT – WRITTEN NOTIFICATION OF RIGHTS** 

- Inform complainants that school officials will take steps to prevent all forms of retaliation and take strong responsive action if it occurs



Lathrop GPM, > 125

---

---

---

---

---

---

---

---

**CASE STUDY— HAILEY/JEFF** 



Lathrop GPM, > 126

---

---

---


---

---


---

---

---

**CASE STUDY—HAILEY/JEFF** 

- On March 21, 2022, Hailey Hanson comes to your office to report sexual misconduct by Jeff Jeffries. After explaining Hailey’s rights, options, and resources, Hailey says she wants to move forward with a formal complaint.

Lathrop GPM,  127

---

---

---


---

---

---

---

---


**CASE STUDY—HAILEY/JEFF** 

COMPLAINANT NAME: Hailey Hanson  
 ADDRESS: 1234 Off-Campus Drive  
 DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 19, 2022  
 RESPONDENT NAME: Jeff Jeffries  
 ADDRESS: 999 Dorm Room Lane

**ALLEGATIONS:** I met Jeff Jeffries in the fall through the Nordic Skiing Club. We were friends and hung out a few times in January and February. We kissed once or twice before and everything was fine. But on February 19, Jeff took things too far. We were watching a show in my dorm room and we started kissing. A little while later, Jeff put his hand up my shirt and touched my boob without asking. I was not okay with him touching me there. After that night, I tried to avoid Jeff, but he wouldn't leave me alone. He kept trying to see me and snap me. He even started showing up places that he knew I would be. He came to my friend's party and my poetry reading. He's stalking me on social media. He even left a creepy note on my car. I'm really scared and I need him to leave me alone.

I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.

X Hailey Hanson

Lathrop GPM,  128

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- Based on Hailey’s complaint, what potential policy violations have been alleged?

Lathrop GPM,  129

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- Your institution has different processes for handling complaints of sexual misconduct depending on whether the complaint falls within Title IX.
- Does the stalking allegation fall under Title IX?
- What if many of the events in the course of conduct had occurred off campus?

---

---

---

---

---

---

---

---

### DETERMINING TITLE IX VS. NON-TITLE IX MATTERS



- Factors to consider
  - Type of alleged conduct – sexual harassment?
  - Location and context of alleged conduct
    - within education program or activity?
    - against a person in the United States?
  - Relationship between parties and institution

---

---

---

---

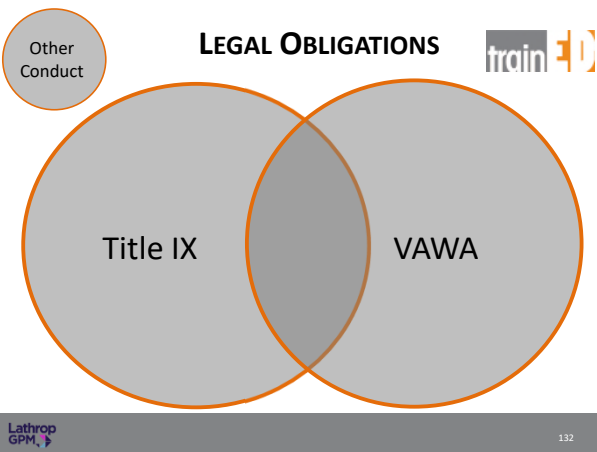
---

---

---

---

### LEGAL OBLIGATIONS




---

---

---

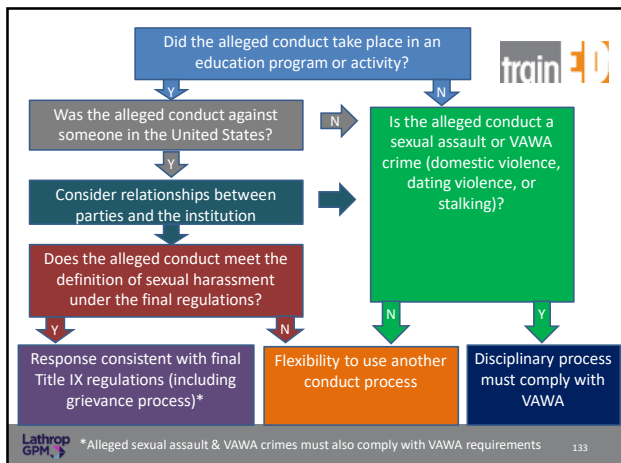
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF

- After determining the alleged policy violations and the process that likely applies, what is your next step in Hailey and Jeff’s case?

Lathrop GPM, 134

---

---

---

---

---

---

---

---

---

---

### NOTICE OF ALLEGATIONS

- Upon formal complaint, provide written notice to known parties, including:
  - Notice of grievance process, including any informal resolution process
  - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
    - Identities of the parties involved, if known
    - Conduct allegedly constituting sexual harassment
    - Date and location of the alleged incident, if known

Lathrop GPM, 135

---

---

---

---

---


---

---

---

---

---

**NOTICE OF ALLEGATIONS** 

- Upon formal complaint, provide written notice to both parties, including:
  - Statements that:
    - Respondent is presumed not responsible
    - Determination of responsibility is made at conclusion of grievance process
    - Right to advisor of choice who may be but is not required to be an attorney
    - Parties may inspect and review evidence *as permitted in sexual misconduct policy*
    - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- Provide notice of *additional* allegations about the complainant or respondent that arise during process

Lathrop GPM, ▶ 136

---

---

---

---

---


---

---


---

---

---

**NOTICE OF MEETINGS** 

- Title IX: Written notice to the party whose participation is invited or expected of the
  - Date
  - Time
  - Location
  - Participants
  - Purpose



of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate

- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

Lathrop GPM, ▶ 137

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- You provide a notice of meeting to Jeff, along with a mutual no-contact directive and notice of rights.
- At your initial meeting with Jeff, you provide him with the notice of allegations and discuss the process.
- You also provide the notice of allegations and mutual no-contact directive to Hailey.

Lathrop GPM, ▶ 138

---

---

---

---

---


---

---

---

---


---

**CASE STUDY—HAILEY/JEFF** 

**Excerpt of Notice of Allegations**

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
  - Between February 20, 2022 and March 12, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
  - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
  - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
  - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
  - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

 139

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—HAILEY/JEFF** 

- A few days after you issue the Notice of Allegations, you receive a call from Jeff. He tells you that he is an RA, but he just received notice this morning that he was being terminated from his RA position. He asks you why you didn't tell him that would happen during your initial meeting.
- How do you respond?

 140

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—HAILEY/JEFF** 

- You tell Jeff that you will speak with the Director of Residential Life and get back to him.
- You call the Director of Residential Life to discuss Jeff's position. The Director tells you that Hailey met with her and said that Jeff sexually assaulted her. The Director of Residential Life says that students are ineligible to serve as an RA if they violate University policy, so they removed Jeff from his position.
- You inform the Director that Jeff cannot be terminated from his position prior to a finding of responsibility. You ask her to please involve you in decisions relating to sexual misconduct allegations in the future.
- The Director asks you if she can at least suspend Jeff. How do you respond? What factors should you consider?

 141

---

---

---

---

---

---

---

---

---

---

---

---

**SUPPORTIVE MEASURES — STUDENT EMPLOYEE LEAVE** 

- Requirements:
  - Must be paid/include no monetary loss
  - Must be non-disciplinary, non-punitive
  - Must not be unreasonably burdensome on respondent
  - Must be designed to restore or preserve equal access to recipient’s education program or activity, including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
  - (Consider impact on educational benefits and opportunities)
- Alternatives:
  - Reassignment
  - Monitoring/supervising student employee
  - Emergency Removal (after risk analysis, can terminate)

Lathrop GPM, > 142

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- What do you do as to Jeff’s RA position?
- What factors should you consider in this case?

Lathrop GPM, > 143

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- You inform Jeff that you have spoken to the Director of Residential Life, and instead of being terminated, he will be put on paid leave until reassignment to another suitable job can be arranged. You inform Jeff that he also will continue to receive his housing free of charge, but that he will need to move to a different dorm room because a temporary replacement will need to live in his current RA room. You ask Jeff to turn in his RA keys to the Director of Residential Life by the end of the day. You tell him that someone will reach out today with information about moving.
- Jeff is upset about the change but is glad that he will not lose his pay and benefits.
- Jeff also asks if you are available to meet with him again. He says that he knows that if he can just give you his perspective, you will see that Hailey’s claims have no merit.
- How do you respond?

Lathrop GPM, > 144

---

---

---

---

---

---

---

---

---

---



### CASE STUDY—CASSY/WILL



- You get a call from Cassy, the student athlete who reported abuse by her ex-boyfriend. Cassy says that she can't handle seeing Will on campus and is so afraid to go anywhere he might be—especially parties where he might be drinking. Cassy says that she is ready to participate in a formal process if the school can protect her. She wants to know what protection would be available.
- How should you respond?

---

---

---

---

---

---

---

---

### CASE STUDY— STUDENT BODY VP




---

---

---

---

---

---

---

---

### CASE STUDY-STUDENT BODY VP



- In an unrelated matter, you receive a formal complaint from Nate, alleging that another student, Simon “pantsed” him in front of a large group of people at a party at a fraternity house, fully exposing his genitals and buttocks.
- What should be alleged in the notice of allegations?

---

---

---

---

---

---

---

---

### CASE STUDY- STUDENT BODY VP



- You notify Respondent and take the other initial steps to start a process and the investigation begins. A few days later you receive a call from the Respondent, Simon, who happens to be the Student Body Vice President at your institution. He tells you that the school paper has run an opinion piece calling for his removal from his leadership position. He tells you that an emergency Student Government meeting has been called for tonight to discuss his removal. He says that he is being presumed guilty.
- Simon also says that he has an informal study group for his physics class that meets once a week and then usually grabs dinner together. Simon says his study group asked him to stop coming to their meetings.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY- STUDENT BODY VP



- During Nate’s initial meeting with the investigator, Nate tells the investigator that after “pants-ing” him, Simon made several comments to people at the party about his body, including his genitals. The investigator updates you with this information after the interview.
- What do you do next?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY- STUDENT BODY VP



- During the investigation, Nate tells you that he is interested in informal resolution.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY- STUDENT BODY VP



- You reach out to Simon, telling him about Nate’s interest in pursuing an informal resolution. Simon agrees to participate in an informal resolution process.
- How do you proceed?

---

---

---

---

---

---

---

---

### INFORMAL RESOLUTION



- VAWA: No specific requirement
- Title IX:
  - Any time prior to determination, may facilitate informal resolution process, such as mediation, if
    - Provide parties with written notice disclosing
      - Allegations
      - Requirements of the informal resolution process including circumstances when it precludes the parties from resuming a formal complaint for the same allegations
        - › Provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
      - Consequences resulting from participating in the informal resolution process, including records that are maintained and could be shared
  - Obtain parties’ voluntary written consent to informal process

---

---

---

---

---

---

---

---

### INFORMAL RESOLUTION



- May not offer informal resolution unless a formal complaint is filed
- May never require the parties to participate in an informal resolution process
- May not condition enrollment/continuing enrollment, employment/continuing employment, or enjoyment of any other right on waiver of the right to an investigation and adjudication of formal complaint
- May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student

---

---

---


---

---

---

---

---

**INFORMAL RESOLUTION** 

- Factors to consider
  - Nature of alleged incident
  - Other allegations against same respondent
  - What sanctions would be necessary if the allegation is true
  - Whether complainant is willing to fully participate in a formal process
  - Whether institution could proceed with a formal process without complainant

Lathrop GPM, ▶ 154

---

---

---


---

---

---

---

---

**CASE STUDY-STUDENT BODY VP** 

- You provide Nate and Simon with the notice regarding the informal resolution process and obtain the parties' voluntary written consent to the informal resolution process.
- You schedule a meeting with Nate, followed by a meeting with Simon the next day. What should you think about in preparation for the meetings?

Lathrop GPM, ▶ 155

---

---

---


---

---

---

---

---

**INFORMAL RESOLUTION** 

- Issues to consider when using informal resolution process
  - Is there an admission from the respondent?
  - Will this be a final resolution?
  - What information will be shared during the informal process?
  - Can the resolution be used in future discipline decisions?
  - What records will be maintained and could be shared?
  - What action is necessary to stop the harassment, prevent its recurrence, and address its effects?

Lathrop GPM, ▶ 156

---

---

---

---

---

---

---

---

### CASE STUDY-STUDENT BODY VP



- Nate and Simon are close to reaching a resolution. Nate wants a one-sided no-contact directive prohibiting Simon from contacting him, an apology from Simon, and for Simon to go to counseling for two years, after which Nate wants a meeting to ensure that Simon has made appropriate changes based on the counseling.
- How do you respond?

---

---

---

---

---

---

---

---

### CASE STUDY-STUDENT BODY VP



- During the investigation, before the informal process began, Simon admitted that he pantsed Nate and said that he meant it as a joke. Simon admitted that many people at the party saw him engage in the conduct. As a result, you feel that the institution cannot agree to a resolution in which Simon is allowed to keep his leadership position. You also think that required training should be part of the resolution. Finally, you do not think the institution can agree to enforce a counseling requirement for two years and a follow-up meeting between the parties.
- How do you express this to the parties?

---

---

---

---

---

---

---

---

### CASE STUDY-STUDENT BODY VP



- You meet with Simon to discuss the terms of the proposed resolution. You tell Simon about Nate's requested terms (other than the counseling and the follow-up meeting) and also inform him that in order to resolve this informally, the University is adding a term requiring him to step down from his leadership position for the remainder of the academic year and requiring him to undergo a brief sexual harassment training.
- Simon takes a few days to think it over and then meets with you again. Simon says that he is no longer interested in pursuing an informal resolution. He says if he is going to lose his leadership position anyway, then he wants his "day in court."
- How do you proceed?

---

---

---

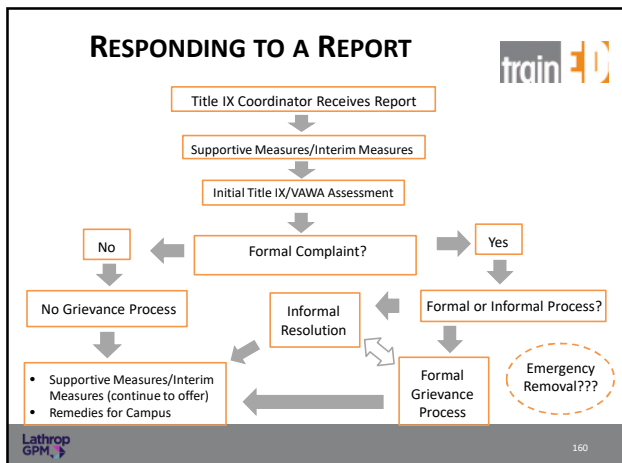
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

---

---

### CASE STUDY- LILY/HEATHER

- In another process involving Lily and Heather, both students at the University, the investigator completes the investigation. The allegations involve unwelcome kissing and sexual assault at an off-campus party. Your institution's Policy includes different processes, depending on whether the alleged offense(s) falls under Title IX, VAWA only, or neither. The allegations against Heather fall under VAWA, but not Title IX.
- You notify the parties of the next steps in the process—a review of the investigation report, an opportunity for response and rebuttal statements, and a decision by an adjudication panel.
- Heather objects to this process, telling you that she is entitled to a hearing. She argues that any other process doesn't afford her due process under the law.
- How do you respond?

**train** logo in top right corner.

Lathrop GPM logo and page number 162 in bottom left corner.

---

---

---

---

---

---

---

---

---

---

---

---

### CASE STUDY- STUDENT BODY VP



- Turning back to Nate and Simon, you notify Nate and Simon that you have appointed a three-member hearing panel. Your notice states that, according to the Policy, if either party has an objection to the appointed adjudicators, they can submit a request for removal of the adjudicator to you.
- Nate responds, objecting to one of the adjudicators. Nate says that the adjudicator is a political science professor and Simon is a political science major. Nate says that the adjudicator has a conflict of interest and will be biased in favor of Simon.
- You check with the records department and learn that Simon took one 100-person lecture course from the professor last year. How do you respond?

---

---

---

---

---

---

---

---

---

---

### CONFLICTS OF INTEREST



- VAWA: a prompt, fair, and impartial proceeding is conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- Title IX: no conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, or individual responsible for appeals
  - For or against complainants or respondents generally
  - For or against an individual complainant or respondent
- Disclose and manage conflicts of interest
- Consider appearance of bias based on public profile (articles, social media, past professional roles, etc.)
- Have a process for requesting disqualification of Title IX Coordinator, investigator, adjudicator, informal resolution process facilitator, or individual responsible for appeals

---

---

---

---

---

---

---

---

---

---

### CASE STUDY— STUDENT/PROFESSOR




---

---

---

---

---

---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR**



- During the spring semester, you receive a complaint alleging that a professor engaged in sexual harassment by making inappropriate comments in a discussion session of a seminar course.
- You provide a notice of meeting to the respondent professor, along with a mutual no-contact directive and notice of rights.
- During your initial meeting with the professor, she asserts that because she is a tenure-track professor, any investigation or adjudication of this matter should be handled by the faculty senate, not by you.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR**



- You inform the respondent professor that the faculty manual states that the procedures under the Sexual Misconduct Policy apply. You proceed with an investigation.

---

---

---

---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR**



- You receive an email from the professor, demanding that the institution preserve and provide the following evidence:
  - Recordings of all courses taught by the professor;
  - Records of all complaints made by students against the professor;
  - Records of all complaints made by the same students against other professors;
  - Student evaluations for the professor from the last two years.
- How do you respond?

---

---

---

---

---

---

---

---



**CASE STUDY—STUDENT/PROFESSOR**



- A week or two pass, and the investigator has met with the complainant student and the respondent professor. The investigator reached out to several witnesses who are all students in the same discussion session. Several of the witnesses have not responded to the investigator; one responded to say they are not comfortable participating.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR**



- You schedule a meeting with several witnesses. Each one expresses that they are not comfortable participating if they are still in the respondent professor’s course, unless they can be anonymous.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR**



- The investigator is finally able to meet with a few of the witnesses. One witness confirmed some of the allegations made by the complainant but also brought up other inappropriate comments and conduct.
- The investigator asks you how to proceed. How do you respond?

---

---

---


---

---

---

---

---

**CONSOLIDATION OF FORMAL COMPLAINTS** 

- Title IX: An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- VAWA: No specific guidance

Lathrop GPM, ▶ 172

---

---

---


---

---

---

---

---

**CASE STUDY—STUDENT/PROFESSOR** 

- After more student witnesses become willing to participate in the investigation, the investigator continues to contact you about new allegations that have arisen during interviews—allegations concerning the original complainant as well as other students.
- You have now amended the Notice of Allegations four times, and you just received an email from the investigator with two more new potential allegations.
- What do you do?

Lathrop GPM, ▶ 173

---

---

---


---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- Meanwhile, the investigator in the matter involving Hailey and Jeff has completed the initial interview with Hailey. The investigator sends you an email stating that Hailey described two more incidents with Jeff:
  - Hailey told the investigator that after the incident involving Hailey’s sexual assault allegation on February 19, Jeff sent one of their teammates to “check on” Hailey. Hailey told the investigator that this made her really uncomfortable.
  - Hailey also told the investigator that on March 15—after she had asked Jeff to stop messaging her and had removed Jeff as a follower on Instagram—Jeff “liked” an Instagram post on the Fine Arts Center’s account that was about a poetry reading in which Hailey participated. Hailey told the investigator that the post included multiple pictures of her.
- How do you respond?

Lathrop GPM, ▶ 174

---

---

---


---

---


---

---

---

**CASE STUDY- HAILEY/JEFF** 

- You schedule a meeting with Hailey for tomorrow to discuss the potential additional allegations. You provide a written notice of meeting to Hailey that includes the reason for the meeting.
- You meet with Hailey, and she informs you that she would like to add the incidents to the allegations.
- What do you do next?

Lathrop GPM,  175

---

---

---


---

---


---

---

---

**NOTICE OF ALLEGATIONS** 

- Provide notice of *additional* allegations about the complainant or respondent that arise during process
  - Including sufficient details known at the time:
    - Identities of the parties involved, if known
    - Conduct allegedly constituting sexual harassment
    - Date and location of the alleged incident, if known
  - With sufficient time to prepare response before initial interview

Lathrop GPM,  176

---

---

---


---

---


---

---

---

**CASE STUDY- HAILEY/JEFF** 

- You issue an amended Notice of Allegations to Hailey and Jeff.

Lathrop GPM,  177

---

---

---


---

---

---

---

---




## CASE STUDY- HAILEY/JEFF

**Excerpt of Notice of Allegations**

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
  - Between February 20, 2022 and March 12, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
  - On February 24, 2022, at an unknown outdoor location on campus, Jeff communicated to Hailey via a third party.
  - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
  - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
  - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
  - On March 15, 2022, Jeff communicated about Hailey via electronic communication.
  - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

 178

---

---

---

---

---

---

---


---

---


---


---

---



## CASE STUDY— DAY CAMP



 179

---

---

---

---

---

---

---


---

---

---


---

---



## CASE STUDY—DAY CAMP

- You see a flyer on campus for a “Girls STEM Day Camp” put on by the University over the summer for middle-school-aged girls.
- Do you have any concerns about that camp?

 180

---

---

---

---

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- Turning back to the Hailey/Jeff matter, you get a call from Hailey. She says that now that the weather is warming up, the Nordic Skiing Club is going to start having optional roller-skiing three times per week. Hailey says that she wants to attend but is scared that Jeff will be there as well.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- You meet with Hailey and Jeff to discuss the amended mutual no-contact directive which requires them to switch off attending the roller-skiing sessions. Jeff is quiet during your meeting. The next morning, you have an email from Jeff’s mom stating:
  - “I cannot believe that you are not allowing my son to attend his team practices based on lies. He joined the team a year before this girl, so he should be the one who is allowed to stay. He has done nothing wrong and for you to punish him based on a false allegation is wrong and violates his rights. I expect to hear from you today.”
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- A few days later, you receive an email from an attorney who informs you that he is Jeff’s advisor. He tells you that Jeff has been wrongly accused and mistreated by the institution. He demands that Hailey be investigated for lying. He tells you that “these false allegations have significantly impacted Jeff’s life and his family.” He also demands that Jeff’s initial interview be redone since he wasn’t present for it.
- How do you respond?

---

---

---

---


---

---


---

---

**ADVISORS**



- VAWA requires:
  - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting** or proceeding by the advisor of their choice”
- Title IX requires:
  - Allow advisor of choice, who may be but is not required to be an attorney
    - May establish equal restrictions on advisors’ participation



Lathrop GPM, 184

---

---

---

---


---

---

---

---

**ADVISORS**



- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
  - Inform parties about restrictions on advisors in advance
    - “Potted plant”
    - No direct communication (orally or in writing) with Title IX Coordinator, Deputy Coordinator(s), Investigator(s) Adjudicator(s), Appeal Officer(s)
    - Must keep information confidential
    - Rules at the hearing
  - Signed advisor agreements – acknowledge role and restrictions
  - Be prepared to enforce the agreement parameters
  - Hold the party responsible for the advisor’s actions
  - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
  - Institutions may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation
  - Be consistent

Lathrop GPM, 185

---

---

---

---


---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- A few weeks later, the investigator informs you that she has completed her interviews and a rough draft of an investigation report.
- What is your next step?

Lathrop GPM, 186

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
  - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
  - Must send to party and party’s advisor in hard copy or electronic format
    - May use a file sharing platform that restricts downloading or copying
    - May prohibit photographing/copying
    - May require signing a non-disclosure agreement
    - May not limit time for review (besides the 10 days)
    - May not require supervision
  - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

Lathrop GPM, ▶ \*Title IX Only 187

---

---

---

---

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Types of evidence that must be provided to parties:
  - Documents collected from the parties
    - Text messages
    - Emails
    - Social media posts and messages
    - Photos and videos
  - Other evidence
    - Police reports
    - Security footage
    - Wifi access point records
  - Party and witness interviews

Lathrop GPM, ▶ \*Title IX Only 188

---

---

---

---

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Sexual history = include if directly related
  - Protections related to complainant’s prior sexual history do not apply at this stage
  - Still analyze whether such evidence is “directly related to the allegations”
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

Lathrop GPM, ▶ \*Title IX Only 189

---

---

---

---

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party’s voluntary, written consent to do so.

Lathrop GPM, ▶ \*Title IX Only 190

---

---

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- May not categorically prohibit certain types of evidence if directly related (and later if relevant):
  - Lie detector test results
  - Character evidence/witnesses
  - Expert reports/witnesses
  - Prior bad acts (e.g., prior policy violation by respondent)
  - Allegations of similar misconduct
- But can have policy for how much weight and credibility decision-makers will give these types of evidence

\*Title IX Only

Lathrop GPM, ▶ 191

---

---

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- May permit or require the investigator to redact information that is not directly related to the allegations (or that is otherwise barred from use under the final regulations)
  - Redactions are limited to information not directly related or that is otherwise specifically barred
  - May not redact other information, such as confidential, sensitive, or prejudicial information, if it is directly related to the allegations

\*Title IX Only

Lathrop GPM, ▶ 192

---

---

---

---

---

---


---

---

---

---



**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM, ▶ \*Title IX Only 193

---

---

---


---

---

---

---

---

**CASE STUDY—HAILEY/JEFF** 

- In preparation for the directly related evidence stage, you send the parties and Jeff’s advisor non-disclosure agreements. Jeff sends you an email in response stating that he and his advisor don’t want to sign the NDA and that the institution is violating his rights by requiring it.
- How do you respond?

Lathrop GPM, ▶ 194

---

---

---


---

---

---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Ensuring privacy
  - May require parties and advisors to:
    - Use the evidence (and investigation report) only for purposes of the grievance process and
    - Require them not to further disseminate or disclose these materials
  - May use a non-disclosure agreement
  - May use digital encryption or other practices to address privacy concerns

Lathrop GPM, ▶ \*Title IX Only 195

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- While the investigator is finalizing the directly related evidence for the parties’ review, she sends you an email asking whether she should include the following as part of the directly related evidence:
  - Testimony from a witness stating that Hailey had been put on academic probation before the spring semester even started and had been going to counseling for her anxiety.
  - Testimony from a witness who said that Jeff had dated another one of her friends and had pressured her into having sex.
  - Jeff’s statement that all of the ski team members believe him over Hailey regarding the allegations.

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- While the investigator is finalizing the directly related evidence for the parties’ review, she sends you an email asking whether she should include the following as part of the directly related evidence (cont.):
  - Copies of Hailey’s text messages with her friend, which include discussion of the alleged sexual assault as well as discussion of an assault that the friend experienced a few years ago
  - Jeff’s statement that he knew that Hailey had had sex the previous year with a guy she wasn’t even dating, so he thought that she’d be open to taking things to the next level.

---

---

---

---

---

---

---

---

### PRIOR SEXUAL HISTORY



- Complainant’s sexual behavior or predisposition are not relevant unless:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- You provide the directly related evidence to the parties. A few hours later you receive a response from Hailey telling you that with finals starting in one week, she wants you to pause the process until after the semester is over. She tells you that the assault and stalking has really affected her academic performance, as has the grievance process. She tells you that if she can't focus on her finals, she will fail some of her classes.
- How do you respond?

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- You agree to delay the process until after finals. What do you need to do now?

---

---

---

---

---

---

---

---

### NOTICE OF DELAY



- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
  - Temporary delay or extension of timeframes for good cause, which may include
    - Absence of parties, a party's advisor, or witnesses
    - Concurrent law enforcement activity
    - Need for language assistance or accommodations of disability
  - Must provide written notice to parties of the delay or extension and the reason for it
    - DOE guidance: also include anticipated length of delay
  - Some timeframes are set by the regulations (Title IX)




---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- Finals are over and the complaint process has resumed. Jeff and his advisor returned an NDA. You have given the parties ten days to review the evidence and submit a written response. Both parties submit a response.
- Jeff’s response says, “Why weren’t more members of the ski team interviewed? They all witnessed our interactions and were present when the alleged conduct supposedly occurred. Plus, they can speak to both of our characters. There are only ten of us total, so I don’t think it is too much to ask to have the investigator interview everyone.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*



- Steps following parties’ review
  - Review parties’ responses
  - Consult with investigator to decide whether any additional action is needed
  - Investigator should consider parties’ viewpoints about whether the evidence directly related to the allegations is relevant and therefore whether to include it in the investigation report
  - May provide a copy of each party’s written response to the other party, but that is not required

---

---

---

---

---

---

---

---

---

---

### INVESTIGATION REPORT



- Must create investigative report that fairly summarizes **relevant** evidence
- Complainant’s sexual behavior or predisposition are **not relevant unless**:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent
- Investigator should not include any information about the complainant’s sexual history in the investigation report, unless it falls under one of these exceptions.

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- The investigator is working on the final investigation report. She calls to ask you about whether to include the following evidence in the investigation report:
  - Testimony from a witness stating that Hailey had been put on academic probation before the spring semester even started and had been going to counseling for her anxiety. The witness said that she thought Hailey had made up the allegations against Jeff because she was scared to get into a relationship while she was in such a bad place and because she was looking for someone to blame for her problems.
  - Jeff’s statement that all of the ski team members believe him over Hailey regarding the allegations.
  - Jeff’s statement that he knew that Hailey had had sex the previous year with a guy she wasn’t even dating, so he thought that she’d be open to taking things to the next level.

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- The investigator sends you her final investigation report.
- What is your next step?

---

---

---

---

---

---

---

---

---

---

### INVESTIGATION REPORT



- Parties must be provided:
  - VAWA: information used in the decision-making process – access required
  - Title IX:
    - Investigation report:
      - Must send hard copy or electronic format to parties and advisors
        - » May use a file sharing platform that restricts downloading or copying
        - » May prohibit photographing/copying
        - » May require signing a non-disclosure agreement
        - » May not limit time for review
        - » May not require supervision
      - Must be provided at least 10 days prior to live hearing
    - Opportunity to submit written response

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- You send a link to the investigation report and attachments to the parties and Jeff’s advisor. Your policy provides the parties with five days to submit written responses to the report. You send the report on a Monday, with a Saturday deadline.
- On Wednesday, Jeff sends you an email stating that he just started a new internship and doesn’t have enough time to review the report and work on his response. He asks you if you can extend the deadline to the following Monday, so that he can have the whole weekend to work on the review and response.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- You provide a short extension and issue a notice of delay to the parties. You receive responses to the investigation report from both parties.
- Jeff’s response states the following:
  - I told the investigator that she should talk to people at the poetry reading, but the report says that she didn’t because Hailey asked her not to. Anyone at the reading could tell the investigator that Hailey was fine, that she wasn’t “visibly shaking” like she claims. Their testimony would prove that she is just making things up to blow this all out of proportion. And it’s not right for her to be able to eliminate witnesses. If a witness saw what happened, the investigator needs to talk to that witness.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- Turning back to the case involving the student athlete, Cassy, who reported physical abuse by her now ex-boyfriend, Will, the case has proceeded to the directly related evidence stage, and you email the parties to schedule a hearing. [schedule hearing around this time to work around schedules]
- Cassy responds stating that she read that new regulations came out making hearings optional. She tells you that she does not want to go through a hearing and would like the case decided without one.
- How do you respond?

---

---

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- Cassy responds telling you that she would like to “drop the charges” against Will and end the process. She says that she just can’t go through with it.
- How do you respond?

---

---

---

---

---

---

---

---

### DISMISSAL OF FORMAL COMPLAINT



- **Mandatory Dismissal under Title IX**
  - Must dismiss formal complaint if alleged conduct
    - even if proved, would not constitute sexual harassment
    - did not occur in the institution’s education program or activity or
    - did not occur against a person in the United States
  - Such dismissal does not preclude action under another provision of institution’s code of conduct
- **Discretionary Dismissal under Title IX**
  - May dismiss formal complaint if at any time during the investigation or hearing
    - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
    - respondent is no longer enrolled or employed by the recipient or
    - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

---

---

---

---

---

---

---

---

### DISMISSAL OF FORMAL COMPLAINT



- **Notice of Dismissal:** Upon dismissal (mandatory or discretionary), institution must promptly send written notice of dismissal and reasons for the dismissal simultaneously to the parties

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- A few weeks later, you hold the hearing for Cassy and Will. Cassy does not show up. At the beginning of the hearing, Will asks that the charges be dropped against him. He says that since Cassy didn't show up for the hearing, the hearing panel cannot consider any of the statements Cassy has made—including her complaint.
- How do you respond?

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- Turning back to the case involving Hailey and Jeff, you have been having difficulty finding a date for a hearing. Jeff says that he is extremely busy at his internship and won't be available for a few weeks. He says that if he takes a day off, he is worried that he will lose his job.
- What do you do?

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- You set a date for the hearing and communicate the date to the parties. Jeff emails the next day to inform you that his advisor is unable to attend that day due to a scheduled trial. You reschedule the hearing for several days later in light of Jeff's advisor's schedule.
- Jeff calls you a few days later to say that his advisor needs to reschedule again, this time for a necessary medical appointment.
- What do you do?

---

---

---

---

---

---

---

---



### CASE STUDY—HAILEY/JEFF



- You are preparing the adjudication file for the hearing panel. You plan to include the investigation report and attachments.
- Should you include the directly related evidence?
- Should you include the parties' responses to the directly related evidence?
- Should you include the parties' responses to the investigation report?
- If you include the parties' responses to the investigation report, what else do you need to do?

---

---

---

---

---

---

---

---

### LIVE HEARING



- General requirements under Title IX
  - Must provide live hearing
  - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions"
  - If party does not have advisor, institution must provide one for cross-examination
  - ~~If a party or witness does not submit to cross-examination at hearing, their statements cannot be considered by decision-maker(s)~~




---

---

---

---

---

---

---

---

### DECISION-MAKER(S)



- May have single decision-maker or a panel of decision-makers
- If a panel of decision-makers, may appoint one decision-maker to make relevancy determinations at the hearing
- May appoint Title IX Coordinator or another individual who is not a decision-maker to enforce procedural rules at the hearing
  - Decision-maker(s) must still determine relevancy issues

---

---

---

---

---


---

---

---

**PREPARATION FOR HEARING** 

- Determine hearing format and arrange technology
  - May conduct with all parties physically present in the same location
    - At the request of either party, institution must provide for live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions
    - Witness cannot demand to be in a separate room, unless that witness alleges they are also a victim of respondent (institution can permit witness to be in a separate room upon request)
  - May conduct virtually (for all parties, witnesses, and other participants), with technology enabling participants simultaneously to see and hear each other
    - Video is required; phone is insufficient

Lathrop GPM,  220

---

---

---

---

---


---

---


---

---

---

**PREPARATION FOR HEARING** 

- Decision-maker(s) should review adjudication file
- Decision-maker(s) identify ultimate questions that will need to be decided
  - Consider questions or topics that may come up and any anticipated relevancy issues
- Decision-maker(s) determine whether any additional information is needed to make the decision
  - Identify witnesses to request if additional information is needed or if credibility is at issue
  - **CAUTION:** Don't base credibility on demeanor
- Parties identify additional witnesses
  - Request that these witnesses make themselves available for the hearing

Lathrop GPM,  221

---

---

---

---

---


---

---


---

---

---

**ATTENDANCE AT HEARING** 

- Parties may be accompanied only by their advisors and other persons for reasons "required by law"
  - Institution must keep confidential the complainant, respondent, and any witness except as may be permitted by FERPA, as required by law, or to carry out the grievance process
    - Limits institution's ability to authorize the parties to be accompanied to the hearing by individuals other than their advisors
  - A person assisting a party with a disability, or a language interpreter, may attend because presence is required by law and/or necessary to conduct the hearing

Lathrop GPM,  222

---

---

---

---

---

---

---

---

---

---

### HEARING: SCHOOL-APPOINTED ADVISORS



- Can request that the parties inform school in advance whether they have an advisor
  - If party does not have an advisor at the hearing, still required to provide an advisor even if party stated that they would have one
  - May want to have an advisor for each party on standby so that delaying the hearing is not necessary
- School-appointed advisor
  - Role is limited to relaying a party's questions
  - No particular skills, qualifications, or training is required
  - Does not need to be neutral or avoid conflicts of interest
  - If a party refuses to work with an assigned advisor – the party forfeits his or her right to cross-examination

---

---

---

---

---

---

---

---

### HEARING: RELEVANCY DETERMINATIONS



- Decision-maker may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

---

---

---

---

---

---

---

---

### HEARING—CROSS-EXAMINATION



- Party or witness who does not appear at the hearing or refuses to answer questions at the hearing
  - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions **NEW!**
    - Consider weight to be given to statements (put in policy)
    - Consider allowing party or advisor to share questions they would have asked a party or witness who is absent or will not submit to cross-examination
  - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

---

---

---

---

---

---

---

---

### HEARING: CROSS-EXAMINATION



- Party or witness who does not appear at the hearing
  - Advisor may conduct cross-examination on behalf of party even if party is not present
  - If one party does something to wrongfully procure absence of a party or witness, that is likely retaliation and the school must remedy
  - School also cannot coerce unwilling participant
    - Be careful with any requirement that a student or employee cooperate with grievance process
    - Discipline for not attending hearing may constitute retaliation

---

---

---

---

---

---

---

---

### HEARING: OTHER PROCEDURAL RULES



- May establish additional rules that apply equally to both parties
  - Cross-examination must be respectful, non-abusive, not intimidating
  - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
  - Whether investigator may be called as a witness
  - Process for making objections to the relevance of questions and evidence
  - Other procedures at the hearing
    - Opening statements by parties or advisors
    - Closing statements by parties or advisors
  - Reasonable time limitations on hearings

---

---

---

---

---

---

---

---

### HEARING: OTHER PROCEDURAL RULES



- Some procedural rules are prohibited
  - Cannot prohibit a party from conferring with his or her advisor during the hearing
    - Likely can prohibit conferring when a question is pending
    - Could also discourage from conferring when a question is pending by warning that such conduct will be considered when weighing the party's credibility
  - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
    - Decision-maker may determine how much weight to give such evidence

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- After the hearing panel reviews the adjudication file, you meet with the panel to decide which witnesses are important to their decision.
- Besides the witnesses requested by the panel, how many additional witnesses will the parties be allowed to call at the hearing?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- You notify the parties of the list of witnesses the hearing panel has requested be available. You inform the parties that they have two days to provide you with the names of up to two additional witnesses each.

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- One of the witnesses whom the panel has called is going on a family camping trip for the next two weeks. She says that she won't have internet access and therefore cannot attend the hearing.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- Jeff wants to call Hailey’s ex-boyfriend as a witness. He had suggested the ex-boyfriend as a witness during the investigation, but the investigator did not interview him. When you inform the parties of the other party’s witness choices, Hailey responds, telling you that her ex-boyfriend should not be allowed to testify. She says that their relationship has nothing to do with this situation.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- Hailey informs you that she has chosen an advisor to accompany her to the hearing. She also says that her counselor will be present as a support person.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- On the morning of the hearing Jeff calls you to tell you that his advisor had a work emergency and cannot attend the hearing.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- Previously, you had rescheduled the hearing two times based on Jeff’s advisor’s schedule. As a result, you tell Jeff that the hearing must proceed, and you appoint an advisor for Jeff. Jeff says they he is not comfortable with the advisor you appoint. He says that the advisor is not an attorney. He asks you about the advisor’s training.
- How do you respond?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- During the hearing, Hailey says that Jeff violated the no-contact directive by sitting at the table next to her in the cafeteria one day. This incident was not mentioned in the complaint or during the investigation.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- At the hearing, Jeff says he would like to share screenshots of a string of text messages between Hailey and one of their teammates in the ski club. The screenshots were not provided to the investigator. Hailey objects, saying that the messages were not included in the directly related evidence.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- In addition to limiting the number of witnesses each party was permitted to call, you limited the time each party could use at the hearing. Hailey has almost reached her time limit, and there are several witnesses remaining.
- What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—HAILEY/JEFF**



- After the hearing, the hearing panel asks you whether a poetry reading event that was at issue in the case was recorded, and, if so, whether they could view the recording?
- You find out that there is such a recording. What do you do?

---

---

---

---

---

---

---

---

**CASE STUDY—CASSY/WILL**



- Turning back to the case involving Cassy and Will, a hearing is also held in that matter, and the hearing panel finds that Will is responsible for Domestic Violence under your Policy.
- The panel sends you their sanctions determination. They have determined that Will should be suspended for the fall semester and permitted to reenroll in the spring.
- How do you respond?

---

---

---

---


---

---


---


---



**SANCTIONS AND REMEDIES** 

- Consider who will decide the sanctions and how
  - Consider limited role of Title IX Coordinator
- Policy must list *all* possible sanctions
  - The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement
- Policy must describe the range of remedies
  - Title IX Coordinator is responsible for effective implementation of any remedies
  - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
  - May include the same individualized services as "supportive measures"
  - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
  - Consider remedies for broader student population



Lathrop GPM,  241

---

---

---


---

---


---

---

---

**NOTICE OF DETERMINATION** 

- Identification of the allegations potentially constituting sexual harassment
- Procedural steps since complaint
  - Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
  - Determination of responsibility
  - Any disciplinary sanctions imposed on respondent
  - Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties

Lathrop GPM,  242

---

---

---


---

---


---

---

---

**NOTICE OF DETERMINATION** 

- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely
- Sanctions may not be imposed until determination is final

Lathrop GPM,  243

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- In the matter involving Hailey and Jeff, the hearing panel has found that Jeff is not responsible for a Policy violation. After the determination is final, Jeff sends you an email with the following question: “Now that I’ve been found not responsible, what will happen during the upcoming ski season? I don’t feel comfortable being on the same team as Hailey. She falsely accused me of sexual assault. I was on the team for a year before she joined. I don’t think she should be allowed to be on the team this year.”
- How do you respond?

---

---

---

---

---

---

---

---

### CASE STUDY—HAILEY/JEFF



- Jeff reaches out to you about six weeks after the notice of determination was sent to the parties. Jeff says that Hailey has told the ski team that he is a rapist and that he is being pressured to quit the team.
- How do you respond?

---

---

---

---

---

---

---

---

### CASE STUDY—CASSY/WILL



- At your institution, you provide a list of employees at the institution who are willing to serve as party-chosen advisors during a complaint process. You provide a brief training to these employees on your complaint process.
- In the Cassy/Will matter, Will had chosen an advisor from this list and that person served as his advisor throughout the process, including at the live hearing.
- After the notice of determination is sent to the parties (with a finding that Will engaged in Domestic Violence), Will files a timely appeal, arguing that his advisor was incompetent and inadequately trained. He also argues that the advisor was biased against men, because he was told by one of his friends that the advisor had attended an event on campus for Sexual Assault Awareness Month.
- How do you respond?

---

---

---


---


---

---

---

---

**APPEALS UNDER TITLE IX** 



- Must be offered to both parties
  - From a determination regarding responsibility
  - From a recipient's dismissal of a formal complaint or any allegations therein
- Required bases:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
- May offer an appeal equally to both parties on additional bases.

Lathrop GPM, ▶ 247

---

---

---


---

---

---

---

---

**APPEALS UNDER TITLE IX** 

- Requirements
  - Notify other party in writing when an appeal is filed
  - Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing
  - No conflict of interest or bias
  - Individuals responsible for appeal must receive training
  - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
  - Written decision describing result of appeal and rationale
  - Simultaneous delivery of result to parties

Lathrop GPM, ▶ 248

---

---

---


---


---

---

---

---

**APPEALS UNDER VAWA** 



- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
  - Right to advisor
  - Notice of meetings
  - Access to information used by appeals panel/individual
  - Simultaneous notice of outcome

Lathrop GPM, ▶ 249

---

---

---


---

---


---


---

---

**ADDITIONAL REQUIRED POST-DETERMINATION NOTICES** 

- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
  - Any change to the results that occurs prior to the time that such results become final
  - When such results become final
- For Title IX, your institution must provide concurrent written notice of—
  - The outcome of any appeal



Lathrop GPM,  250

---

---

---


---

---


---

---

---

**RECORDKEEPING** 

- For 7 years, must maintain:
  - Investigation and adjudication
    - Any determination regarding responsibility
    - Any audio or audiovisual recording or transcript of the hearing
    - Any disciplinary sanctions imposed
    - Any remedies provided to complainant
    - Any appeal and result
    - Any informal resolution and the result
  - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process

Lathrop GPM,  251

---

---

---


---

---


---

---

---

**RECORDKEEPING** 

- For 7 years, must maintain (cont.):
  - Any actions taken (including supportive measures) in response to a report of sexual harassment
    - Basis for conclusion that response was not deliberately indifferent
    - Measures were designed to restore or preserve equal access to educational programs and activities
    - If supportive measures were not provided, document the reasons why such a response was not clearly unreasonable in light of known circumstances
  - Recordkeeping does not prevent inclusion of additional details or explanations later

Lathrop GPM,  252

---

---

---

---

---

---

---

---




---

---

---

---

---

---

---

---

### UPCOMING TRAININGS trainED

- **Trainings for individuals with heightened responsibility:**
  - 7/26/22: Annual Title IX/VAWA Investigator Training
  - 8/1/22: Annual Training for New Title IX Coordinators and Deputy Coordinators
  - 8/2/22: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
  - 8/3/22: Annual Title IX/VAWA Investigator Training
  - 10/12/22: Annual Training for Title IX Hearing Panels

Lathrop GPM 254

---

---

---

---

---

---

---

---

### ON DEMAND TRAININGS trainED

- **Available on-demand:**
  - Annual Training for New Title IX Coordinators and Deputy Coordinators
  - Title IX/VAWA Investigator Training
  - Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
  - Title IX/VAWA Hearing Panel Training
  - Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
  - Title IX/VAWA Appeal Officer Training
  - VAWA Adjudicator Training
  - Conducting a Grievance Process Under the New Title IX Regulations
  - Title IX Update: Final Regulations

Lathrop GPM 255

---

---

---

---

---

---

---

---