



## INFORMAL RESOLUTION TRAINING

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## AGENDA



- Legal Landscape
- Informal Resolution Legal Requirements
- Structuring an Informal Resolution Process
- Case Study



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## LEGAL LANDSCAPE




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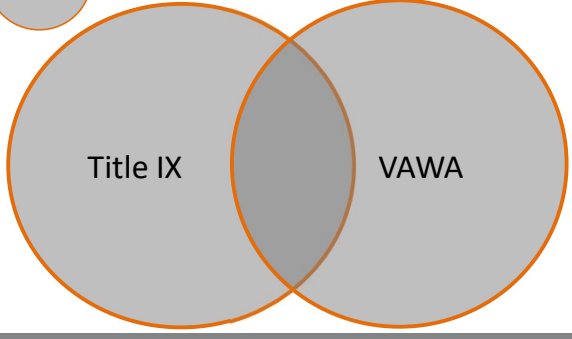
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**LEGAL OBLIGATIONS** 

Other Conduct



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**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

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**DISCRIMINATION**  
**“ON THE BASIS OF SEX”** 

- Includes:
  - Sexual harassment
  - Differential treatment



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
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**How INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- 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



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
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**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

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
**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

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**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
- 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

quid pro quo

hostile environment

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**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

sexual assault & VAWA crimes

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- 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)

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### 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

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### RESPONDING TO A REPORT

- Report vs. Formal Complaint
  - Report
    - Initiates obligation to respond, including offering supportive measures
    - 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

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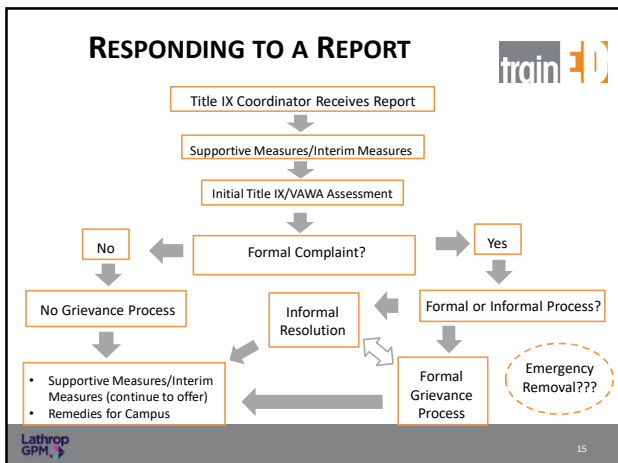
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**INFORMAL RESOLUTION LEGAL REQUIREMENTS** 



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**INFORMAL RESOLUTION** 

- Legal requirements
  - VAWA: No specific requirement
  - Title IX:
    - Any time prior to determination, may facilitate informal resolution process, such as mediation, if certain requirements are met

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**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - Prior to informal resolution, provide parties with written notice of the allegations
    - 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

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**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - Prior to informal resolution, provide parties with written notice of the allegations (cont.)
    - Notice must include 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

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
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**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - Prior to informal resolution, provide parties with written notice of
    - 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

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**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - 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

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**INFORMAL RESOLUTION** 

- Other legal requirements to consider
  - Notice of meetings
    - Title IX: Written notice to the party whose participation is invited or expected of the date, time, location, participants and purpose
    - VAWA: Timely notice to the other party of meetings that are part of the disciplinary process



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**INFORMAL RESOLUTION** 

- Other legal requirements to consider
  - Notice of delay
    - Policy should include reasonably prompt timeframe for the informal resolution process
    - Temporary delay or extension of timeframes for good cause
      - Absence of a party or a party's advisor
      - Concurrent law enforcement activity
      - Need for language assistance or accommodation of disability
    - Must provide written notice to parties of the delay or extension and the reason for it



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**INFORMAL RESOLUTION** 

- Other legal requirements to consider
  - Advisors
    - VAWA: Must provide both parties the opportunity to be accompanied to any related meeting by the advisor of their choice
    - Title IX: Must allow advisor of choice, who may be but is not required to be an attorney
    - May establish equal restrictions on advisors' participation

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
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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 



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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- Who facilitates an informal resolution process?
  - Title IX Coordinator? Deputy Title IX Coordinator?
  - Another member of the Title IX team?
- If someone other than Title IX Coordinator, consider limited role for Title IX Coordinator to ensure consistency across different cases
- Legal requirements
  - Appropriately trained
  - Free from conflict of interest and bias
  - Impartial

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**TRAINING REQUIREMENTS** 

- Train facilitator of informal resolution process on
  - Definition of sexual harassment
  - Scope of the institution's education program or activity
  - How to conduct informal resolution process
  - How to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias
  - Institution's policies and procedures

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**TRAINING REQUIREMENTS** 

- Training materials must not rely on sex stereotypes and must promote impartial process
- Training materials must be publicly available on institution’s website

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
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**CONFLICTS OF INTEREST** 

- Facilitator may not have conflicts of interest or bias
  - 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 informal resolution process facilitator

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
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**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
- Do not rely on sex stereotypes
- Use sensitive and informed tone and content, both to the parties and among team members

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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- What is an informal resolution process?
  - No particular process required under Title IX
  - Recommended practice
    - Facilitator meets with each party to determine what they are looking for and what they will agree to as part of an informal resolution
    - Communicate options between the parties
    - Institution should have a role in determining whether particular matter is appropriate for informal resolution and what the appropriate resolution will be

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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- When should an institution offer an informal resolution process?
  - 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
  - Reminder: Cannot offer if complainant is a student and respondent is an employee
  - Institution is never required to offer informal resolution

Lathrop GPM,  32

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**CASE STUDY** 

- For which of these matters would you consider informal resolution?
  - Rick reports that his physics professor has made several comments about his appearance that have made Rick uncomfortable.
  - Sarah reports that her ex-boyfriend keeps texting her and stopping by her dorm even after she told him to leave her alone.
  - Ashley reports that Nick sexually assaulted her last month. Ashley stated that she told Nick no several times and he had sex with her anyway.

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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- Factors 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?

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**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- What does the outcome of the informal resolution process look like?
  - Possible terms
    - No contact directive (mutual or one-sided)
    - Required training/education
    - Required counseling
    - Probation
    - Temporary prohibition on leadership positions/awards
    - Leave of absence from institution
    - Apology letter
    - Other

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**CASE STUDY** 

- The Title IX Coordinator meets with Sarah regarding her report about her ex-boyfriend, Jason. Sarah reports that Jason will not leave her alone (including continuing to text her and stopping by her dorm). Sarah says Jason has not said anything threatening, but he is pressuring her to get back together and Sarah is upset and stressed by the continued contact.

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**CASE STUDY** 

- The Title IX Coordinator discusses Sarah’s rights and options, including the formal complaint resolution process and supportive measures.
- Sarah said she does not want to participate in an investigation, she just wants Jason to leave her alone and for him to get some help.
- After discussing the options, Sarah tells the Title IX Coordinator she would like to try an informal resolution process.

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**CASE STUDY** 

- What steps are needed before an informal resolution process?

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**CASE STUDY** 

- The Title IX Coordinator informs Sarah that she will need to bring a formal complaint in order to pursue an informal resolution process.
- Sarah responds that she is not comfortable with signing a formal complaint.
- Is there another option?

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**CASE STUDY** 

- The Title IX Coordinator offers to sign the formal complaint and inform Jason that Sarah did not want to initiate a complaint process, but that the University determined it had an obligation to do so.
- Sarah asks what will happen if Jason does not agree to an informal resolution.
- How should the Title IX Coordinator respond?

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**CASE STUDY** 

- After giving it some thought, Sarah decides to file a formal complaint alleging that Jason engaged in stalking.
- The Title IX Coordinator sends a notice of allegations to both parties, along with a mutual no contact directive.
- The Title IX Coordinator meets with Jason, and he agrees to pursue an informal resolution process.
- Both parties receive the appropriate notice and consent in writing to the informal resolution process.
- What is the next step?

Lathrop GPM, > 41

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**CASE STUDY** 

- The Title IX Coordinator meets with Sarah to discuss what she is looking for in a resolution. Sarah wants Jason to leave her alone, and she wants Jason to get some help.
- What options might address Sarah’s concerns?

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**CASE STUDY** 

- The Title IX Coordinator discusses a potential resolution with Sarah, including a no contact directive and mandatory education for Jason on boundaries and appropriate interactions in the community.
- Sarah responds that she thinks Jason needs significant counseling to address his issues. She asks if the institution can require Jason to attend regular counseling for two years.
- How should the Title IX Coordinator respond?

Lathrop GPM, ▶ 43

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**CASE STUDY** 

- After discussion with the Title IX Coordinator, Sarah decides that a mutual no contact directive and required training on boundaries for Jason will address her concerns.
- From the institution’s perspective, are there other terms that the Title IX Coordinator should consider?

Lathrop GPM, ▶ 44

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**CASE STUDY** 

- After determining potential proposed terms for the agreement, the Title IX Coordinator meets with Jason to see what he is willing to agree to.
- Jason is comfortable with the no contact directive, the required training, and a prohibition on leadership positions for one year.

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**CASE STUDY** 

- Jason asks the following questions:
  - Can Sarah bring another complaint against him in the future?
  - If he applies to grad school, will prospective grad schools find out about this informal resolution?
  - If Jason applies for employment at the institution in the future, will the informal resolution impact his chances?
- How should the Title IX Coordinator respond?

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**CASE STUDY** 

- Sarah and Jason agree on informal resolution terms and the Title IX Coordinator approves those terms. The Title IX Coordinator drafts the informal resolution agreement, and both parties sign it.
- Any other steps for the Title IX Coordinator to take?

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**Q & A** 



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