

Annual Training for Advanced Title IX Coordinators and Deputy Coordinators



July 29, 2026 | trainedsolutions.com



2026 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.

1



Kathryn Nash



Pamela Kovacs



Graciela Quintana



2

Agenda

1. Legal Overview

2. Defining Sexual Misconduct

3. Role of the Title IX Coordinator

4. Responding to a Report

5. Informal Resolution

6. Formal Resolution Process

7. Case Studies





3

trainED

Terminology

- ED = 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
- DOJ = Department of Justice
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decisionmaker
- Complainant/Reporting Party/Accuser/Victim/Survivor
- Respondent/Responding Party/Accused/Alleged Perpetrator

Lathrop GPM

4

trainED

Legal Overview



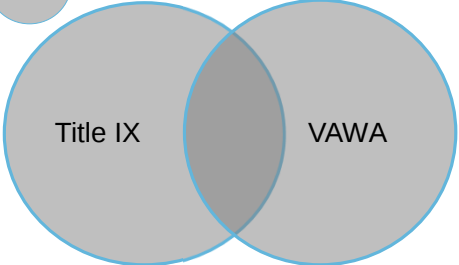
Lathrop GPM

5

trainED

Other Conduct

Legal Obligations



Lathrop GPM

6

train

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

Lathrop GPM

7

7

train

Who Must Comply With Title IX?

- Institutions that receive federal funds
 - Students
 - Employees
 - Third Parties
 - Visitors
 - Vendors



Lathrop GPM

8

8

train

Discrimination “on the Basis of Sex”

- Includes:
 - Sexual harassment
 - Differential treatment

Lathrop GPM

9

9

When an Institution Must Respond

- 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 3

10

When an Institution Must Respond

- 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
 - Vicarious liability and constructive notice are insufficient
 - Standard not met if the only official with actual knowledge is the respondent

Lathrop GPM 3

11

When an Institution Must Respond

- 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 3

12

When an Institution Must Respond

- 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)




13

13

When an Institution Must Respond

- 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




14

14

How an Institution Must Respond

- 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






15

15

The Legal Landscape

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




16

16

Enforcement and Guidance

- OCR's Role:
 - Issue guidance
 - Compliance reviews
 - Investigations (with DOJ)
 - Agency enforcement (Resolution agreements)
- DOJ's Role:
 - Investigations (with OCR)
 - Judicial enforcement (lawsuits)






17

17

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

• Fine for each Clery Act violation is \$71,545

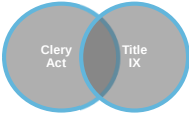





18

18

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

19

19

Violence Against Women Reauthorization Act (VAWA)

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual assault and VAWA crimes
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX

20

20

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

21

21

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 or activity; in or out of the U.S.)

Lathrop GPM 22

22

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 23

23

Relationship Between Parties and Institution

Complainant
Third Party

Respondent
Member of Community

- Title IX (if within scope of Title IX)
 - Provide supportive measures
 - May not be required to initiate a 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 24

24

Relationship Between Parties and Institution

Complainant
Member of Community

Respondent
Third Party

- Title IX (if within scope of Title IX)
 - Provide supportive measures
 - Could take action (no trespass, NCD) without a grievance process
 - Consider whether to engage in process
 - If engaging in process, follow Title IX grievance process
- VAWA (if allegation of sexual assault or VAWA crime)
 - Provide a written explanation of student's or employee's rights and options
 - Could take action (no trespass, NCD) without disciplinary process
 - If engaging in a disciplinary process, comply with VAWA requirements

Lathrop GPM 25

25

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
 - Due process considerations (public institutions)

Lathrop GPM 26

26

Title IX Regulatory Update

- *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government Executive Order*
 - Each Federal agency must apply statutes, regulations, and guidance using the following definitions:
 - "Sex" shall refer to an individual's immutable biological classification as either male or female. "Sex" is not a synonym for and does not include the concept of "gender identity."
- ED has stated in its regulatory agenda that it will amend the Title IX regulations to more closely align with the *Defending Women* Executive Order

Lathrop GPM 27

27

Title IX Regulatory Update

• *Keeping Men Out of Women's Sports* Executive Order

- Establishes a policy to rescind all funds from education programs that "deprive women and girls of fair athletic opportunities"
- Orders ED to prioritize enforcement actions against educational institutions allowing transgender women to compete in women's sports
- Orders ED to update regulations and policy guidance by clearly specifying and clarifying that women's sports are reserved for women



Lathrop GPM

28

28

Supreme Court Transgender Athlete Decision

- Upheld state laws in Idaho and West Virginia restricting transgender athletes from participating in women's sports
 - State interest in safety and competitive fairness
- Concluded laws do not violate Title IX or the equal protection clause
- Effectively approved 27 state laws that ban transgender athletes from participating on sports teams consistent with their gender identity
- Does not address whether, under Title IX, schools/states may *permit* transgender athletes to participate on female sports teams
- Does not address or limit participation by biological females on male or co-ed sports teams

Lathrop GPM

29

29

Upcoming Supreme Court Employee Case

Crowther v. Board of Regents of the University System of Georgia

- Question for the Supreme Court:
 - Can employees of federally funded educational institutions use Title IX as a vehicle for workplace claims of sex discrimination or harassment or must those claims be brought only under Title VII?
- Unlikely to impact institution's process or administrative enforcement

Lathrop GPM

30

30

VAWA Reauthorized

- Reauthorized in March 2022 (effective October 1, 2022)
- Revised domestic violence definition (above)
- Online survey tool for campus safety
 - Institutions must administer within one year of availability
 - Still not available
- Task Force on sexual violence in education
 - Includes assessing ED's ability to levy fines for Title IX noncompliance
- Special grants for prevention programs

Lathrop GPM trainED 31

31

Defining Sexual Misconduct

Lathrop GPM trainED 32

32

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 trainED 33

33

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



Lathrop GPM

34

34

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



Lathrop GPM

35

35

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

36

36

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

37

37

Title IX—Sexual Harassment

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment (cont.)
 - 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

38

38

Title IX—Sexual Harassment

- Sexual Assault
- VAWA Crimes
 - Dating violence
 - Domestic violence
 - Stalking
- As defined in Clery

Lathrop GPM

39

39

Title IX—Sexual Harassment

• Sexual Assault:

- **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object without the consent of the victim, including instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

Lathrop GPM

40

40

Title IX—Sexual Harassment

• Sexual Assault:

- **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

41

41

Title IX—Sexual Harassment

• 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.
- **Criminal Sexual Contact:**
 - The intentional touching of the clothed or unclothed body parts or the forced touching by the victim of the actor's clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, including instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

Lathrop GPM

42

42

Consent

- No particular definition of consent with respect to sexual assault is required by Title IX or VAWA

Lathrop GPM

43

43

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
- **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

44

44

Title IX—Sexual Harassment

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

Lathrop GPM

45

45

trainED

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

46

46

trainED

Interaction Between Title IX & VAWA*

Other conduct

Title IX
Quid pro quo harassment that occurs in an education program or activity against a person in the United States
Hostile environment (as defined by Title IX) in an education program or activity against a person in the United States

Title IX & VAWA
Sexual assault or VAWA crime that occurs in an education program or activity against a person in the United States

VAWA
Sexual assault or VAWA crime that occurs outside an education program or activity
Sexual assault or VAWA crime that occurs against a person outside of the United States

Lathrop GPM

*If one of the parties is affiliated with the institution in some way

47

47

trainED

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

48

48

Legal Obligations—Minnesota Schools Only

Other Conduct

MN

Title IX

VAWA

Lathrop GPM

• See [Minnesota Campus Sexual Misconduct Law Training](#) for trainED's training on Minnesota law.

49

49

Legal Obligations—Minnesota Schools Only

Applicable Law	Alleged Conduct	Respondent	Additional Conditions
MN Law only	- Intimate Partner Violence that does not include Dating/Domestic Violence - Non-Title IX Sexual Harassment	Student	Occurs within education program or activity
MN Law + Title IX + VAWA	- Sexual Assault - Dating Violence - Domestic Violence - Stalking	Student	- Occurs within education program or activity - Against a person in the U.S.
MN Law + Title IX	Title IX Sexual Harassment	Student	- Occurs within education program or activity - Against a person in the U.S.
MN Law + VAWA	- Sexual Assault - Dating Violence - Domestic Violence - Stalking	Student	- Occurs within education program or activity - Against a person outside the U.S.
Title IX + VAWA	- Sexual Assault - Dating Violence - Domestic Violence - Stalking	Employee / Community Member / Third Party	- Occurs within education program or activity - Against a person in the U.S.

VAWA — Sexual Assault, Dating Violence, Domestic Violence, or Stalking that occurs **outside** an education program or activity, or against a person outside of the U.S.

U.S.

50

50

Interaction with Other Laws

- FERPA: Family Educational Rights and Privacy Act
 - Limits disclosure of student education records
 - Several exceptions permit disclosure to both parties
 - 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

51

51

train

Interaction with Other Laws

- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
 - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
 - Must report if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department



Lathrop
GPM

52

52

train

Interaction with Other Laws

- Title VII/State anti-discrimination laws
- State campus sexual assault laws
- State hazing laws



Lathrop
GPM

53

53

train

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

54

54

trainED

Risks of Non-Compliance

- OCR/DOJ enforcement
- Clery Act enforcement
- Lawsuits
 - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



Lathrop GPM

55

55

trainED

Lesson Learned From Litigation

- In April 2026, a court denied Virginia Tech's motion for summary judgment regarding the plaintiff's Title IX claim. The male plaintiff had been found responsible for violations of the University's Sexual Harassment policy through the University's complaint resolution process.
- Court found plaintiff's claim of gender bias raised a genuine issue of material fact where University (1) imposed a sanction for the male respondent to read "Man Enough: Redefining My Masculinity"; (2) hearing officers had made social media posts about holding men accountable and men not understanding consent; and (3) hearing officer provided deposition testimony regarding counteracting implicit male bias, men struggling with concept of consent, and a patriarchal society.
- Lesson Learned: Investigators, hearing officers, Title IX Coordinators, appeal officers, and any others involved in the complaint resolution process need to ensure that they are remaining neutral and avoid sex-based comments both in complaint resolution processes and in the public sphere.

Lathrop GPM

56

56

trainED

Lesson Learned From Litigation

- In May 2026, a court denied Vanderbilt's motion for summary judgment regarding a plaintiff's negligence claim. A male plaintiff had been found guilty of the disciplinary charges against him under the University's Student Handbook and subsequently attempted suicide.
- Court found a reasonable jury could conclude that Vanderbilt breached their duty of care to the plaintiff, causing him damages where the plaintiff's mother clearly communicated concerns about plaintiff "tak[ing] his life" to the University, the University denied the plaintiff's mother's request to move the outcome call one week, and the University proceeded with the outcome call after learning that the plaintiff's mother was not there to support him.
- Lesson Learned: Title IX Coordinators need to offer supportive measures when they learn of possible endangerment to a person involved in the complaint resolution process

Lathrop GPM

57

57

Lesson Learned From Litigation

- In May 2026, a court denied Villanova University's motion to dismiss regarding the plaintiff's negligence claim. A female plaintiff was sexually assaulted on the University campus after becoming intoxicated at off-campus housing.
- Court found the plaintiff's claims plausible when the University has a duty to provide safe education on campus and the University has constructive knowledge of a foreseeable risk of harm during a known high-risk period at the beginning of the academic year and at the off-campus location.
- Lesson Learned: When aware of time periods or locations that carry a high-risk of sexual misconduct, colleges and universities should ensure safety and supportive measures are in place and are clearly communicated to the student body.

Lathrop GPM

58

58

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)
 - Institution's policies and procedures

Lathrop GPM

59

59

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

60

60

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 3

61

61

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 3

62

62

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

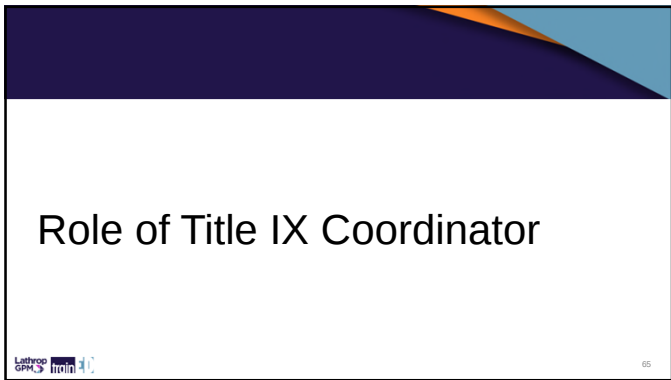
Lathrop GPM 3

63

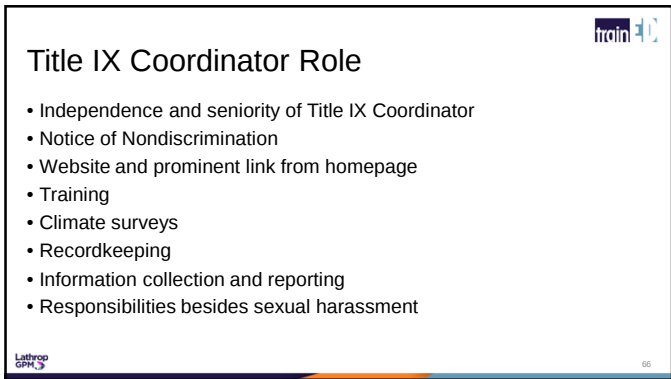
63



64



65



66

Additional Responsibilities—Pregnancy and Related Conditions

- Possible steps in the interactive process for providing reasonable modifications
 - Request from student (to Title IX Coordinator directly or through faculty)
 - Discuss with faculty
 - Back and forth with faculty, as needed
 - Gather needed information
 - Update student while checking on request
 - Analysis of whether the modification would fundamentally alter the education program or activity
 - Looping in legal counsel
 - Getting higher levels of administration involved as needed
 - If request denied, offer alternative



70

Additional Responsibilities—Pregnancy and Related Conditions

- Possible steps in the interactive process for providing reasonable modifications (cont.)
 - Don't accept "no" from faculty on face value
 - Beware of paternalistic responses from faculty/institution
 - Have the right people involved
 - Stay flexible
 - Sometimes the answer is "no"



71

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



72

Serving Impartially

- Set boundaries
 - Make neutral role clear up front
 - Not counseling or advocacy services
 - Know how to respond when coming close to line
 - Point to resources on campus
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members



Lathrop GPM 73

73

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 - **caution!**
- Title IX Coordinator may act as investigator – **caution!**

Lathrop GPM 74

74

Q & A



Lathrop GPM 75

75

Responding to a Report

Lathrop

GPM

train

ED

76

76

When an Institution Must Respond

- 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

train

ED

77

77

Responding to a Report

Report

Confidential Resource – Legally Privileged

Other Employees

?

Title IX Coordinator & Officials with Authority

Lathrop

GPM

train

ED

78

78

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 79

79

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 80

80

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 81

81

- 

82

[illegible]

- Lathrop
GPM

83

- 

84

[illegible]

Case Study: AD Report

- When you ask the athletic director for the students' names, the athletic director says, "Oh, I told them I wouldn't share any names until they were ready."
- How do you respond?

Lathrop GPM

85

85

Case Study: AD Report—Coach Jackie

- The athletic director says the names of the students are Francesca Flynn and Georgia Gibson, and that the name of the coach is Jackie Johnson.
- What is your next step?

Lathrop GPM

86

86

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

Lathrop GPM

87

87

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 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)



Lathrop GPM

88

88

Case Study: Coach Jackie

- You meet with Francesca and Georgia. They tell you that Coach Jackie acts like she is "one of the girls" and says things like, "look how good your butt looks in that spandex," and "the boys are probably head over heels for you," to the players on the team. Francesca says that on the bus to a game, Coach Jackie told Francesca and another player about a recent date she went on during which her date "felt her up" in the Uber to the restaurant. Francesca says that Coach Jackie also showed them a picture of her date with his shirt off. Francesca tells you that she felt really uncomfortable during the conversation. Georgia says that during practice the other day, when they were working on passing form, Coach Jackie came up behind her and wrapped her arms around her torso. Georgia says that though Coach Jackie was supposedly helping fix her form, she thought it was unnecessary for Coach Jackie to touch her. Georgia says that Coach Jackie also put her hands around the waist of another player when telling the player she needed to get lower on her digs, which Georgia thought was weird. Francesca says that she saw Coach Jackie touch Georgia and the other player and thought it was super inappropriate at the time.

Lathrop GPM

89

89

Case Study: Coach Jackie

- Francesca and Georgia are each hesitant to submit a formal complaint. They say that they love playing volleyball and are worried that Coach Jackie will treat them differently and that it will affect team dynamics. They ask if there is any way they can submit their complaints anonymously, so Coach Jackie doesn't know who reported her.
- How do you respond?

Lathrop GPM

90

90

Responding to a Report—Requests for Confidentiality or No Action



• Recommended Approach:

- Factors to consider
 - Seriousness of the alleged harassment
 - Increased risk of additional misconduct by the alleged perpetrator
 - Other complaints about the same alleged perpetrator
 - History of violence from arrests/records from prior school
 - Alleged perpetrator threatened further misconduct
 - Increased risk of additional misconduct 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

Lathrop GPM

91

91

Responding to a Report—Requests for Confidentiality or No Action



• Recommended Approach:

- Factors to consider (cont.)
 - Whether school has other means to obtain evidence (security footage, eyewitness or physical evidence)
 - Notice will still need to identify parties involved
 - Rights of the respondent to receive information about the complainant and the allegations if a formal proceeding with sanctions may result
 - Whether the report alleges sexual harassment by an employee against a student
 - Whether the respondent is in a position of authority

Lathrop GPM

92

92

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

93

93

Case Study: Haddie/Damian

- On Wednesday morning, May 6, you receive an email from Haddie Haderson asking if she can meet with you to report a sexual assault.
- You set up a meeting in your office for later that day. Haddie tells you that over the weekend she had two sexual encounters with another student, Damian, whom she's been on a few dates with. Haddie says that in one of the incidents Damian pressured her into "doing stuff." Haddie says that the next night they went to a party together and she got really drunk. Haddie says they ended up having sex, but she doesn't remember much of what happened and thinks she was too drunk to consent. Haddie says she cut off contact with Damian but doesn't want him to do this to anyone else.
- What should you do next?

Lathrop GPM

94

94

Case Study: Haddie/Damian

- During your meeting with Haddie, she says the alleged conduct at issue took place in the on-campus residence hall where both she and Damian live.
- What should you do with this information?

Lathrop GPM

95

95

Supportive 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

96

96

trainED

Supportive Measures

- Examples:
 - 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

97

97

trainED

Responding to a Report

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

Lathrop GPM

98



98

trainED

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

99



99

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

100

100

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

101

101

Criminal Process

- Institution's complaint process is separate from criminal investigation
- Institution may not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- Institution may temporarily delay for initial police investigation
 - Prior guidance said police evidence-gathering stage typically takes 7-10 days
 - Must resume when notified that police are done gathering evidence
- Institution may not delay for criminal prosecution

Lathrop GPM

102

102

Case Study: Coach Jackie

- Francesca and Georgia are considering whether they want to file a formal complaint.
- Francesca emails you to ask whether Coach Jackie would continue as their coach during the complaint resolution process if they brought formal complaints.
- How do you respond?

Lathrop GPM

103

103

Emergency Removal and Administrative Leave

- 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

Lathrop GPM

104

104

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

105

105

Case Study: Student Athlete Transfer

- In July, the athletic director calls you and says that he just learned that a student-athlete who is transferring to your institution was disciplined in a Title IX proceeding at the student-athlete's former institution. The athletic director tells you that the student-athlete is supposed to arrive on campus for cross country pre-season in mid-August. The athletic director says that he told the cross-country coach at your institution about the information he received, and the coach assured him that the student-athlete is a "good kid." The athletic director asks what he should do next.

Lathrop GPM

106

106

Case Study: Student Athlete Transfer

- **NCAA Requirements**
 - Institutions must share relevant discipline information and incomplete Title IX proceedings as a result of transfer with other member institutions when a student-athlete attempts to enroll in a new college or university.
 - Institutions must take reasonable steps to confirm whether incoming, continuing, and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.

Lathrop GPM

107

107

Case Study: Student Athlete Transfer

- **NCAA Requirements (cont.)**
 - Institutions that recruit student-athletes or accept transfer student-athletes must have a written procedure about gathering information from former institutions related to incomplete Title IX proceedings, discipline through Title IX proceedings, or criminal convictions for sexual, interpersonal or other acts of violence
 - Institutions must require incoming, continuing, and transfer student-athletes to complete an annual disclosure about conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence. Transfer students must disclose whether a Title IX proceeding was incomplete at the time of transfer.

Lathrop GPM

108

108

Case Study: Student Athlete Transfer

- What are your next steps?
 - Will need the transfer student to sign a release of information to allow the institution to gather additional information
 - Gather and review additional information (e.g., information about the institution's process, type of allegations, sanctions, whether the sanctions have been completed, when the Title IX complaint resolution process took place)

Lathrop GPM

109

109

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

Lathrop GPM

110

110

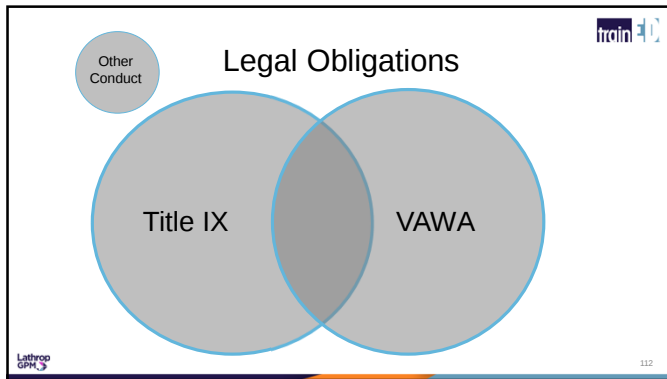
Determining Title IX vs. Non-Title IX Matters

- 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

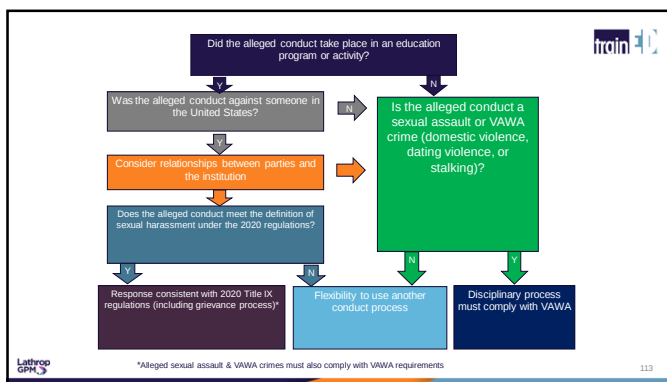
Lathrop GPM

111

111



112



113

Case Study

- What legal obligations apply to the following matters?
 - A student alleges that a professor brushed his hand against the student's buttocks while the student was at the professor's off-campus home babysitting his kids.
 - A student alleges that during her internship at a local marketing agency, her supervisor made repeated sexual advances toward her in text messages outside the student's scheduled hours, brought her gifts, and twice insisted on walking her to her car.
 - An employee alleges that during a recent work trip, a coworker showed him sexually explicit photos and made sexual jokes about their supervisor.
 - An admitted student who has been recruited to join the hockey team alleges that after attending the hockey team's away game in his hometown, a member of the team sexually assaulted him in the locker room.

Logos for "trainED" and "Lathrop GPM" are visible in the top right and bottom left corners, respectively. The number "114" is in the bottom right corner.

114

Case Study: Coach Jackie

- After thinking it over, Francesca and Georgia decide to each submit formal complaints.
- Should you consolidate Francesca's and Georgia's formal complaints?

Lathrop GPM

115

115

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

116

116

Case Study: Alumna Report

- You receive an email from an alumna of the institution. She says that she graduated 20 years ago, but she would like to open up about her experience at the institution. She says that she was sexually harassed and assaulted by one of her professors. She tells you that she's ready to tell her account and make sure the professor is held accountable.
- How do you respond?

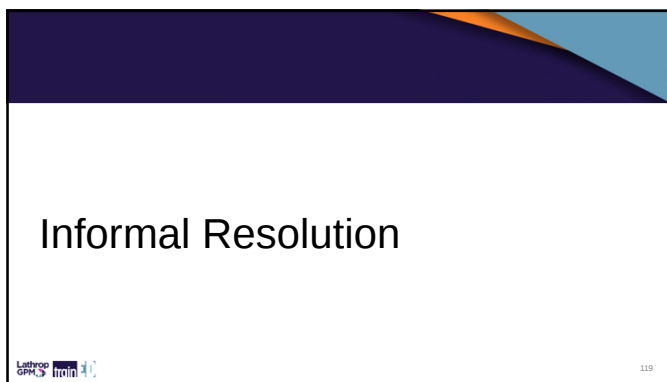
Lathrop GPM

117

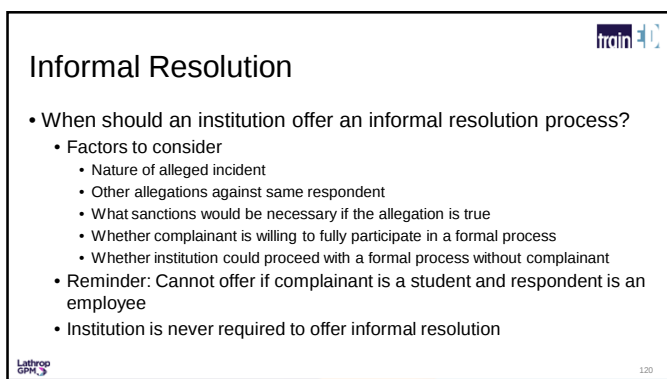
117



118



119



120

trainED

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

Lathrop GPM

121

121

trainED

Informal Resolution

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

Lathrop GPM

122

122

trainED

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

Lathrop GPM

123

123

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

Lathrop GPM

124

124

Case Study

- Which of the following cases we have discussed might be appropriate for informal resolution, if requested by a party?
 - Haddie and Damian (allegations of sexual assault)
 - Coach Jackie (student athletes alleging sexual harassment by volleyball coach)
 - Sexual harassment case between co-workers
 - Stalking case between two students

Lathrop GPM

125

125

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

Lathrop GPM

126

126

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

Lathrop GPM 3 127

127

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?

Lathrop GPM 3 128

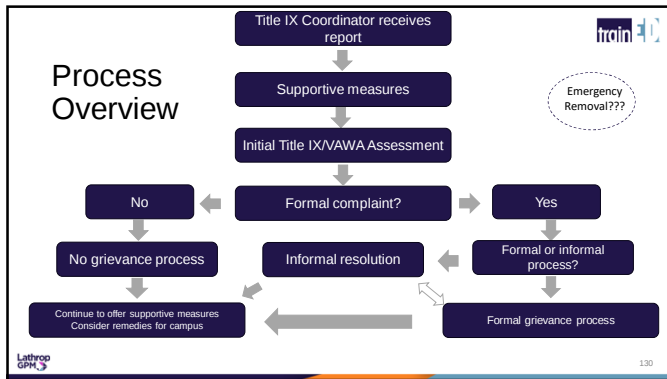
128

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

Lathrop GPM 3 129

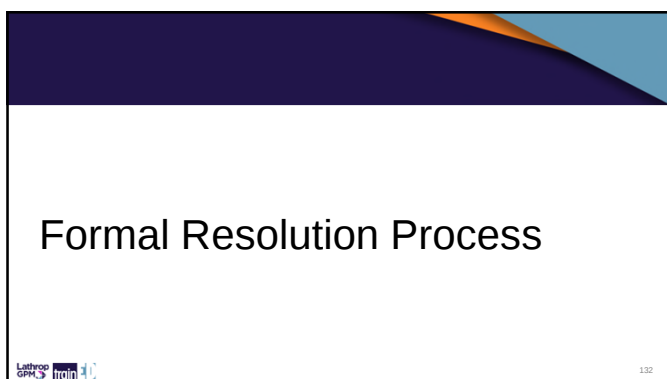
129



130



131



132

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

Lathrop GPM 133

133

Structuring the Complaint Resolution Process

- Process options
 - One process: Use the same procedures for all sexual misconduct cases (including live hearings)
 - Hybrid 1: 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
 - Hybrid 2: Use separate procedures for Title IX cases including live hearings and the same procedures for VAWA and non-Title IX/non-VAWA cases
 - Separate processes: Create separate procedures for Title IX, VAWA, and non-Title IX/non-VAWA cases

Lathrop GPM 134

134

Same Procedures for All Cases

- 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/Non-VAWA cases
 - Less flexibility

Lathrop GPM 135

135

Separate Procedures for Title IX, VAWA, and Other Cases



- 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

136

136

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

137

137

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

138

138

Case Study: Haddie/Damian

- Haddie signed a formal complaint against Damian, stating:
 - I went on a few dates with Damian Daniels earlier this semester. We were getting along well, but then he started to pressure me physically and ultimately took advantage of me when I was drunk. On Friday, May 1, I went to his dorm to watch a show and when he tried to put his hand up my shirt, I told him I didn't want to do that type of thing yet. But he wouldn't take no for an answer. Then the next night we were at a party together and I got super drunk. He brought me back to my dorm and the next thing I knew we were both naked and he was having sex with me. The night is a total blur. I was way too drunk to consent.
- What policy violations are triggered?
- What is your next step?

Lathrop GPM 3

139

139

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 3

140

140

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 3

141

141

Case Study: Haddie/Damian

Excerpt of Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On May 2, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie.

Lathrop GPM

142

142

Case Study: Haddie/Damian

- The investigator in the matter involving Haddie and Damian calls you. She says that during Haddie's initial interview some new information came out that might impact the allegations.
- What should you do?

Lathrop GPM

143

143

Case Study: Haddie/Damian

- You reviewed the transcripts, and they contain the following new factual allegations:
 - The conduct initially alleged to have occurred on May 2 actually occurred during the early morning hours of May 3.
 - During the May 3 incident, Damian removed Haddie's dress, bra, and underwear.
 - In addition to alleging that Damian touched her breasts on May 1, Haddie told the investigator that Damian touched her inner thigh and vaginal area.
- Would any of this require amendment of the notice of allegations?

Lathrop GPM

144

144

Case Study: Haddie/Damian

Excerpt of Amended Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy. Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On **May 3, 2026**, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie **and took nonconsensual or abusive sexual advantage of Haddie in the form of removing Haddie's clothing without consent.**

Lathrop GPM

145

145

Case Study: Haddie/Damian

- Haddie stops by your office and says she's having difficulty at work. She tells you that she works in a coffee shop on campus that is located near the Engineering Department. She said that since Damian is an Engineering major, she sees Damian and his friends at and near the coffee shop. She says Damian never comes near her, but she says she can't concentrate and she's continually on edge, worrying that she will see him or that he could be watching her. She says that last week she had a panic attack when she was getting ready for work because she was dreading it so much.
- Haddie also says that she is having trouble juggling work and her studies with the complaint process going on.
- How can you help Haddie?

Lathrop GPM

146

146

Case Study: Haddie/Damian

- The investigator calls you to tell you that Damian's initial interview is scheduled for later in the week. She asks you what information she should include in her notice to Haddie about the interview.
- What do you tell the investigator?

Lathrop GPM

147

147

trainED

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

148

148

trainED

Case Study: Haddie/Damian

- The investigator calls you after Damian's initial interview. She says that Damian said that when he and Haddie were at the off-campus party on May 2, Haddie was "grinding up on" him, "like pushing her hip region into mine."
- The investigator is wondering whether the notice of allegations needs to be amended to add another form of sexual contact since Haddie may not have had capacity to consent.

Lathrop GPM

149

149

trainED

Case Study: Haddie/Damian

- The investigator in the matter calls to tell you that she is having trouble scheduling interviews with some of the witnesses due to their finals schedules. She is wondering what she should do.
- How do you respond?

Lathrop GPM

150

150

trainED

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
 - ED guidance: also include anticipated length of delay
- Some timeframes are set by the regulations (Title IX)

Lathrop GPM

151

151

trainED

Case Study: Coach Jackie

- Francesca in the case involving the volleyball coach emails to tell you that she has chosen an advisor. You realize that the individual is already serving as the advisor for Georgia in the same case.
- How do you respond?

Lathrop GPM

152

152

trainED

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

153



153

52



Case Study: Coach Jackie

- After reviewing the transcripts, you decide to reach out to Iris to set up an intake meeting. Iris agrees to meet with you.
- Iris says she's heard about the investigation into Coach Jackie. Iris tells you that she is uncomfortable with some of the comments Coach Jackie makes. As an example, she shares that after a recent game, a teammate said she was going to get ice cream with her boyfriend and Coach Jackie responded, "Yeah, I'm sure getting ice cream is the only thing you're going to do" and winked. Iris says that after the player left, Coach Jackie said something like, "I saw him at the game tonight. If I were her, I would climb him like a tree," referring to the player's boyfriend. Iris says that she's also never had a coach that touches their players as much as Coach Jackie does. Iris says that Coach Jackie touches her arms and waist when correcting her form and that she does it to her teammates as well.
- How do you respond to what Iris has shared?


157

157



Case Study: Coach Jackie

- Iris tells you she would like to file a formal complaint.
- Should Iris's complaint be consolidated with Francesca's and Georgia's complaint?


158

158



Case Study: Haddie/Damian

- The investigator in the matter involving Haddie and Damian is nearing completion of her interviews.
- What is the next step?


159

159

Case Study: Haddie/Damian

- The investigator tells you that she has been using ChatGPT to draft the investigation report, and she feels like it is helping. She says she doesn't even have to review the interview transcripts; ChatGPT can just create a summary for her and she revises it as needed.
- Should you be concerned?

Lathrop GPM

160

160

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

161

161

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

162

162

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

163

163

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

164

164

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

Lathrop GPM

*Title IX Only

165

165

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

Lathrop GPM

*Title IX Only

166

166

Case Study: Haddie/Damian



- While the investigator is finalizing the directly related evidence for the parties' review, she asks you whether she should include the following as part of the directly related evidence:
 - Haddie stated that she told Damian that she “usually want[s] to be in a more serious, long-term relationship before things get physical.” Haddie stated, “I had told him in an earlier conversation that I’d only been with a few guys and only when we were exclusively dating for a while.”
 - Haddie stated that Damian said something like, “I don’t get it. You told me that you’ve done more than this with other guys and we’ve known each other a while. What more are you waiting for?”

Lathrop GPM

167

167

Case Study: Haddie/Damian



- While the investigator is finalizing the directly related evidence for the parties' review, she asks you whether she should include the following as part of the directly related evidence (cont.):
 - Elise stated, “I’ve always been a little creeped out by Damian. Every time I would see him, he would look me up and down, even though he was basically dating my roommate.”
 - Damian stated, “I’ve started to see a counselor because of the toll this process has taken.”
 - Damian stating, “I don’t really trust this process. My friend was falsely accused by a girl last year, and his whole college career was ruined.”

Lathrop GPM

168

168

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

169

169

Case Study: Haddie/Damian



- You send non-disclosure agreements to the parties prior to the review of the directly related evidence. Damian returns the signed NDA. A few days go by and Haddie emails you asking how signing the NDA could impact her ability to bring a criminal case against Damian. She says that she talked to an attorney friend of her parents and he said that she would need to be able to disclose the information about the case in a criminal process.
- How do you respond?

Lathrop GPM

170

170

Case Study: Haddie/Damian



- Haddie returns a signed NDA the day before you issue the directly related evidence.

Lathrop GPM

171

171

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

172

172

Case Study: Haddie/Damian



- You issue the directly related evidence to the parties through a secure file-sharing platform that restricts copying, downloading, and printing. The next day, Damain asks you if you can send him a version that he can download. He says it is difficult to read that much information in the online format.
- How do you respond?

Lathrop GPM

173

173

Case Study: Haddie/Damian



- What if Damian tells you that he has Dyslexia and he needs to be able to have a PDF or word version of the directly related evidence that he can put into software that he uses to make text easier for him to read. He asks if he can receive a downloadable version as an accommodation.
- How do you respond?

Lathrop GPM

174

174

Case Study: Haddie/Damian

- Haddie includes the following statement in her response to the directly related evidence:
 - "Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn't that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus."
- Does this warrant any further investigation or other action?

Lathrop GPM

175

175

Case Study: Haddie/Damian

- Damian includes the following statement in his response to the directly related evidence:
 - "Why wasn't my roommate Chris interviewed? He came home while Haddie and I were making out at my place on the first night. I told the investigator to talk to him."
- How do you respond?

Lathrop GPM

176

176

Case Study: Haddie/Damian

- Damian's response to the directly related evidence also includes the following:
 - "Haddie makes it seem like it was my idea to go into her place after the party. But she's the one who invited me to come over and even said her roommate was going to be out of town. I have the texts to prove it."
- Damian pastes texts messages into his response that were not provided during the investigation.
- What do you do with this response?

Lathrop GPM

177

177

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/electronic format of each party's written response to the other party, but that is not required

Lathrop GPM

*Title IX Only

178

178

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.

Lathrop GPM

179

179

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

Lathrop GPM

180

180

Case Study: Haddie/Damian

- The investigator sends you the draft report. You notice the following statements. Should they be included in the report?
 - Haddie stated that she told Damian that she "usually want[s] to be in a more serious, long-term relationship before things get physical." Haddie stated, "I had told him in an earlier conversation that I'd only been with a few guys and only when we were exclusively dating for a while."
 - Haddie stated that Damian said something like, "I don't get it. You told me that you've done more than this with other guys and we've known each other a while. What more are you waiting for?"

Lathrop GPM

181

181

Case Study: Haddie/Damian

- In reviewing the draft report, you also notice the following statements. Should they be included in the report?
 - Elise stated, "I've always been a little creeped out by Damian. Every time I would see him, he would look me up and down, even though he was basically dating my roommate."
 - Damian stated, "I've started to see a counselor because of the toll this process has taken."
 - Damian stating, "I don't really trust this process. My friend was falsely accused by a girl last year, and his whole college career was ruined."

Lathrop GPM

182

182

Case Study: Haddie/Damian

- You issue the investigation report to the parties and provide them 10 days to review and respond.

Lathrop GPM

183

183



Case Study: Haddie/Damian

- Damian did not submit a response to the investigation report.
- Haddie includes the following statement in her response to the investigation report and supplemental directly related evidence:
 - "The texts Damian provided mean nothing. I sent those before I was super drunk. And just because I invited him over doesn't mean I consented to having sex with him. He took advantage of me when I was vulnerable."
- What should you do with this response?


184

184



Case Study: Haddie/Damian

- Haddie's response also includes the following statement:
 - "The investigator did not fully explain how I told Damian that I'd only been with a few guys and only after being in a long-term relationship. That was important information because that was part of how I communicated to Damian that I wasn't ready to get so physical. Plus, Damian then used that against me when he pressured me. I just think my full statement should have been included in the report."
- What should you do with this response?


185

185



Case Study:

- In the case involving the volleyball coach, you decided to consolidate Iris's complaint with Francesca's and Georgia's complaints.
- The investigator has conducted interviews with the parties and witnesses and issued close of evidence for the upcoming Friday, September 18. You receive a call from Kelly in Human Resources. Kelly tells you that Coach Jackie has resigned, effective on December 15, the end of the fall semester. Kelly says that given Coach Jackie's resignation, Kelly assumes the complaint resolution process won't need to continue.
- How do you respond?


186

186



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


187

187



Dismissal of Formal Complaint

- **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


188

188



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


189

189

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
- Minnesota Schools Only
 - Hearing required in certain cases under state law
 - See [Minnesota Campus Sexual Misconduct Law Training](#) for trainED's training on Minnesota law

Lathrop GPM

190

190

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

Lathrop GPM

191

191

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

192

192

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
- Parties identify witnesses
 - Request that these witnesses make themselves available for the hearing
- Decision-maker(s) determine whether any additional information is needed to make the decision
 - Identify additional witnesses to request if additional information is needed or if credibility is at issue
- **CAUTION:** Don't base credibility on demeanor

Lathrop GPM 3

193

193

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 3

194

194

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

Lathrop GPM 3

195

195

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

Lathrop GPM

196

196

Case Study: Coach Jackie

- You are getting ready for the hearing in the matter involving the volleyball coach. The day of the hearing, Coach Jackie's attorney advisor shows up to the hearing but says that Coach Jackie will not be participating.
- How do you proceed?

Lathrop GPM

197

197

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
 - 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

Lathrop GPM

198

198

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

Lathrop GPM 3

199

199

Case Study: Coach Jackie

- During the hearing, the advisor asks for breaks to consult with the party and provide her with updates.
- How do you respond?

Lathrop GPM 3

200

200

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

Lathrop GPM 3

201

201

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

Lathrop GPM 3

202

202

Case Study—Haddie/Damian

- During the hearing in the matter involving Haddie and Damian, the hearing officer keeps rephrasing statements that the parties and witnesses are making and asking them if that is what they are saying. You feel the summaries are often different from what the individual is saying.
- What do you do?

Lathrop GPM 3

203

203

Sanctions

- Consider who will decide the sanctions and how
 - Consider limited role of Title IX Coordinator
- Sanctions are designed to stop the harassment, prevent its recurrence, and remedy its effects
- Any information provided to individual(s) who determine sanctions must also be provided to the parties
- Institution's policy must include a list of 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

Lathrop GPM 3

204

204

Sanctions

- Possible Sanctions
 - No contact order
 - Suspension or Expulsion
 - Transcript notations?
 - Disclosure to other institutions?
 - Separate disciplinary file?
 - Change in class schedule/living arrangements
 - Mandatory training/counseling
 - Limitations on access to campus facilities
 - Limitations on campus activities
 - Community service
 - Delay of degree conferral
 - Temporary or permanent revocation of degree

  205

205

Sanctions

- Sanctions when student not suspended or expelled
 - Make inquiries to determine whether restrictions need to be made to:
 - living arrangements
 - class schedules
 - use of facilities
 - co-curricular activities
 - campus events
 - Allow for Title IX Coordinator to modify or clarify
 - General no-contact directive → limit use of facilities to specific time or location
 - Address ability to appeal

  206

206

Case Study: Haddie/Damian

- Damian is found responsible for sexual assault. The Hearing Panel has decided on a sanction of a semester-long suspension.
- Do you find the sanction appropriate?

  207

207

Case Study: Haddie/Damian

- You tell the panel that the institution usually imposes a longer suspension for sexual penetration cases, often tied to the complainant's graduation.
- The panel agrees that the institution should follow its usual approach. They explain that they did not know what was typical in cases like this.
- Do you think you should suggest other sanctions for the panel to consider?

Lathrop GPM 3

208

208

Remedies

- Title IX goals:
 - End the sexual violence/hostile environment
 - Prevent its recurrence
 - Address its effects



Lathrop GPM 3

209

209

Remedies

- Consider who will decide the remedies and how
 - Consider role of Title IX Coordinator
- Remedies for complainant
 - Changing living arrangements
 - Escorts
 - Separation from respondent
 - Counseling services
 - Medical services
 - Academic support services/accommodations
 - Allowing course withdrawal without penalty
 - Reviewing disciplinary actions against complainant to determine if harassment contributed
 - Reviewing academic issues to determine if harassment contributed
 - Financial aid and/or immigration assistance

Lathrop GPM 3

210

210

Remedies

- VAWA and Title IX only require policy to describe range of remedies available
- 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
- Remedies for broader student population in some cases
 - Take proactive measures to prevent sexual harassment and violence, such as trainings
 - Develop effective written materials to educate students on policy and resources
 - Encourage students to report
 - Periodic "climate checks" and review of issues (e.g., related to a particular department, athletic team, student group, or event?)

Lathrop GPM

211

211

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

212

212

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

213

213

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

214

214

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

215

215

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

216

216

Case Study: Coach Jackie

- Coach Jackie is found responsible for Title IX Sexual Harassment. She submits a timely appeal, making the following statements:
 - It was a procedural error for the University to consolidate the cases brought by these three players. Consolidation resulted in collusion between the complainants and unduly prejudiced me in the process.
 - It was a procedural error for the hearing panel to fail to consider the context of the athletic environment. The decision did not mention anything about a coach's need to at times engage in physical contact with a player to provide instruction. I provided extensive evidence to support this point, and the panel's decision completely ignored it.
- Has Coach Jackie stated a ground for appeal under Title IX?

Lathrop GPM

217

217

Case Study: Coach Jackie

- You have determined that Coach Jackie has stated a ground for appeal based on the alleged procedural errors.
- What are your next steps?

Lathrop GPM

218

218

Case Study: Coach Jackie

- The appeal officer determines that the Title IX Coordinator did not commit a procedural error in consolidating the cases.
- The appeal officer determines that while the hearing panel did not address the evidence regarding physical contact in athletic instruction, it was not a procedural error because the decision solely relied on comments and on touching that occurred outside of athletic instruction. Not only was it not a procedural error, but it also wouldn't have impacted the outcome because the outcome was not based on any instances of touching in the context of athletic instruction.
- What happens next?

Lathrop GPM

219

219

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

220

220

Title IX Coordinator Role During Complaint Process



- Determine which process applies
- Oversee process to ensure compliance with policy and designated time frames
- Ensure advisor agreements are signed (if any)
- Ongoing check-ins with the parties
 - Supportive measures
 - Notice of delays?
 - Notice of meetings?
- Stay in touch with investigator to discuss case
- Ensure parties receive adequate notice of any new allegations
- Ensure non-disclosure agreements are signed by parties and advisors (if any)

Lathrop GPM

221

221

Title IX Coordinator Role During Complaint Process (cont.)



- Review directly related evidence before it is provided to the parties (Title IX)
- Review working drafts of investigation report
- Review party responses to DRE and report (and any rebuttals)
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Review notice of determination before finalized
- Review appeal to determine whether permissible ground is stated?
- Review appeal decision before finalized

Lathrop GPM

222

222

[illegible][illegible][illegible]