

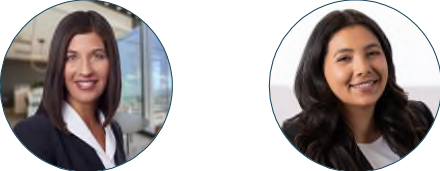
Exploring Alternative Non-Hearing Options for Resolving Complaints of Sex Discrimination

trainED March 4, 2026

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Kathryn Nash

Grace Quintana

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Agenda

- Overview of hearing requirements under Title IX
- Responding to reports that don't rise to a sexual misconduct policy violation
- Alternative paths to resolution of Title IX allegations

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Cases in Which a Hearing Is Required

- Allegations of conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the institution's education program or activity, and (2) against a person in the United States:
 - Title IX Quid Pro Quo Harassment: an employee of the institution conditioning an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
 - Title IX Hostile Environment Harassment: unwelcome conduct 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; or
 - Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking

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Cases in Which a Hearing Is Not Required

- Allegations involve conduct that is sexual in nature but the conduct:
 - Did not occur in an education program or activity;
 - Was not against a person in the United States; and/or
 - Does not meet "so severe, pervasive, and objectively offensive" standard
- Allegations do not involve sexual misconduct
 - Bullying
 - Race discrimination
 - Sex-based conduct that does not involve sexual misconduct (e.g., pregnancy discrimination, differential treatment)

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Are Hearings Required in Any of the Following Cases?

- Jessica, a student who is six months pregnant, alleges that her art history professor told her she could not attend the class's trip to the local art museum because the students will be on their feet all day and the professor doesn't think she can "keep up."
- Tim reports that his ex-girlfriend from home, who he broke up with before going to college, keeps texting him. He says that she also has sent him several letters and care packages to his off-campus apartment. Tim reports that when he was home visiting his parents, his ex-girlfriend parked outside of his parents' house for two hours.
- Stephanie reports that, during class, her classmate, Brad, told her she looked pretty. Stephanie reports that the next day, Brad asked her if she wanted to get coffee with him that weekend. Stephanie says that she is not interested in dating Brad and wants him to leave her alone.

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Responding to Reports of Conduct that Do Not Arise to a Sexual Misconduct Policy Violation

- Response to complainant will vary depending on facts and circumstances
- Be cautious that you aren't making yourself a decisionmaker
- Only if conduct is clearly not severe or pervasive (e.g., commenting that a peer looked pretty or asking a peer out on a date)
- The institution will still take responsive action but without formal process

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“Off-Ramps”: Alternatives to Hearings in Cases Within Scope of Title IX

- In cases involving allegations of sexual misconduct *and* other conduct, refer other conduct to another process (nondiscrimination policy, student conduct process, etc.)
- Termination or expulsion based on admission or irrefutable evidence of violation of another policy
- Dismissal
 - **Must** dismiss formal complaint if alleged conduct (1) even if proved, would not constitute sexual harassment; (2) did not occur in the institution's education program or activity; or (3) did not occur against a person in the United States
 - **May** dismiss formal complaint if (1) complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations therein; (2) respondent is no longer enrolled or employed by the institution; or (3) specific circumstances prevent the institution from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein
- Informal resolution when permissible

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Referral to Another Process

- An individual makes a complaint involving allegations of sexual misconduct *and* other forms of conduct
- Consider:
 - Is the complainant willing to participate in a Title IX process?
 - What is the severity of the allegations?
 - Is there evidence that supports the allegations?
 - What disciplinary action can be taken in response to sexual misconduct allegations vs allegations of other forms of conduct?
- Remember: If a complaint is referred to another process, the institution cannot sanction for conduct that falls under sexual misconduct policy

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Nadia-Tessa

Nadia comes to your office in tears and reports the following:

- Nadia does not get along with her roommate, Tessa. Nadia is a “night owl” and does most of her homework between 10pm and 2am. Tessa is on the swim team and has to get up early for morning practice, so she goes to bed early. Nadia says that Tessa yells at her because Nadia doing her homework late at night in their room prevents Tessa from falling asleep. Tessa also gets mad at her for listening to music in the dorm room (even when Tessa isn’t trying to go to sleep) and for being “messy.”
- Nadia says that Tessa now gives her the silent treatment and just stares at her when she comes into the room. Nadia says that Tessa stares at her while Nadia is changing, which makes her uncomfortable.

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Nadia-Tessa (continued)

- Nadia says that things escalated this past weekend because Nadia’s friend came over to Nadia and Tessa’s room to get ready for a party. Nadia says that Tessa wanted to go to bed early because she had a swim meet the next day. Nadia says that Tessa screamed at her and her friend that Tessa has more important things to do than “dress in slutty clothes” and “hook up with a bunch of guys.” Nadia says that Tessa called her a “whore.”
- Nadia says that when she got home from the party, someone, who she believes was Tessa, had put the clothes from Nadia’s laundry hamper and her headphones in the shower of the bathroom and left the water running. Nadia says that her headphones are ruined, and that the water flooded the bathroom and damaged the carpet in the hallway of the dorm.

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Nadia-Tessa (continued)

- What, if any, are Nadia’s allegations of sexual misconduct?
 - Do these allegations arise to a policy violation under your sexual misconduct policy?
 - If allegations are true, what disciplinary action would the institution take?
- What, if any, are Nadia’s allegations of other forms of conduct?
 - Do these allegations arise to a violation of your student conduct code/other policies?
 - If allegations are true, what disciplinary action would the institution take?

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Admission or Evidence of Conduct that Is Grounds for Termination/Expulsion

- An admission or irrefutable evidence of violation of another policy that is grounds for termination/expulsion (e.g., admitted to sexual relationship with student when such relationships are prohibited)
- Respondent is terminated or expelled → Title IX complaint can be dismissed
- Key considerations:
 - What policies do you have about employee/student conduct?
 - What is your practice/policy for violations of employee/student conduct policies?
 - How far along are you in the complaint resolution process?

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Julian - Iris

Julian comes to your office and reports that he has been in a romantic relationship with his supervisor, Iris, for a few months. Julian says that he ended the relationship because he was worried that the relationship was impacting his job, which he loves. Julian says that after he and Iris broke up, Iris came by his office and reassured him that she had “no hard feelings.” Julian tells you that it was a positive conversation so at the end, when Iris asked if she could give him a hug, he said yes. Julian says that when Iris hugged him, she placed her hand on his genitals and whispered in his ear, “I’ll always care about you.” Julian says that since that conversation, Iris has been texting and calling him late at night, despite him asking her to stop.

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Julian – Iris (continued)

- Julian files a formal complaint against Iris; you issue a notice of allegations; and the investigator meets with both parties.
- During her initial interview, Iris tells the investigator that she and Julian were in a romantic relationship for about two months but denies that there was any physical contact after they broke up.
- The institution prohibits supervisors from engaging in a sexual or romantic relationship with any employees for whom the supervisor has a supervisory responsibility.

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Julian – Iris: Resolution

- Institution consistently enforces its policy regarding supervisor-employee relationships
- Institution decides to terminate Iris's employment
- Julian's complaint can be dismissed because Iris is no longer employed by the institution

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Informal Resolution

- Institutions are never required to offer informal resolution
- VAWA: No specific requirements
- Title IX: Any time prior to determination, an institution may facilitate informal resolution process if certain requirements are met

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Informal Resolution: Title IX Legal Requirements

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

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Prior to Informal Resolution

- Provide parties with:
 - Written notice of the allegations;
 - Written notice of requirements of the informal resolution process; and
 - Written notice of consequences resulting from participating in the informal resolution process, including records that are maintained and could be shared
- Obtain parties' voluntary written consent to informal process

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When should an institution offer an informal resolution process?

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

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Lexi - Nico

Lexi tells you that Nico, a fellow junior, had sex with her while she was passed out from drinking. Lexi says that initially, she wasn't going to say anything, but she has been having a really difficult time since the incident, particularly because she and Nico are in the same friend group and she sees him frequently. Lexi tells you that all she wants is for Nico not to return to campus until after she graduates.

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Lexi – Nico (continued)

- Lexi says that she does not want to sign a formal complaint but that she would participate in the formal complaint resolution process.
- You meet with Nico about the notice of allegations. He tells you that he was planning to take a leave of absence next semester because his grandmother is ill and he hasn't been able to focus on school since she got sick.

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Stephanie - Brad

Stephanie returns to your office and tells you that she is still having issues with Brad. Stephanie says that she brushed off his initial invitation to get coffee, but he asked her again the following week and later asked her if she wanted to go on a walk. Stephanie says that she finally told Brad that she wasn't interested in dating him. Stephanie says that he got mad and told her that she had led him on. Stephanie says that since then, Brad has commented on her social media posts, saying things like, "Such a tease" and "I can't believe I actually thought you were cute."

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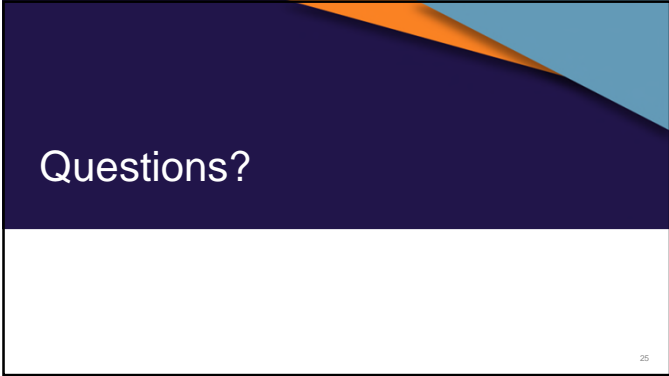
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Stephanie – Brad (continued)

- You discuss options with Stephanie and she tells you that she thinks a mutual no contact directive is the best next step. You issue a mutual no contact directive to Stephanie and Brad.
- A week later, Stephanie returns to your office. She tells you that on Saturday, she was hanging out with friends at a party when Brad arrived. Stephanie says that Brad was very drunk and came up to her. Stephanie says that Brad asked her, "Why did you have to go report me to the school?" Stephanie tells you that Brad then turned to his friends and said, "This is the girl I told you about who can't take a joke." Stephanie says that she decided to leave, even though Brad arrived after she did.

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