

UT SYSTEMWIDE TITLE IX ANNUAL TRAINING

A Practical Approach to
Navigating Beyond Compliance

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University of Texas, El Paso



MEET YOUR FACILITATORS



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ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

REMINDER

State laws and interpretations can differ.

This session is **not legal advice**, and attendees are advised to consult with institutional counsel

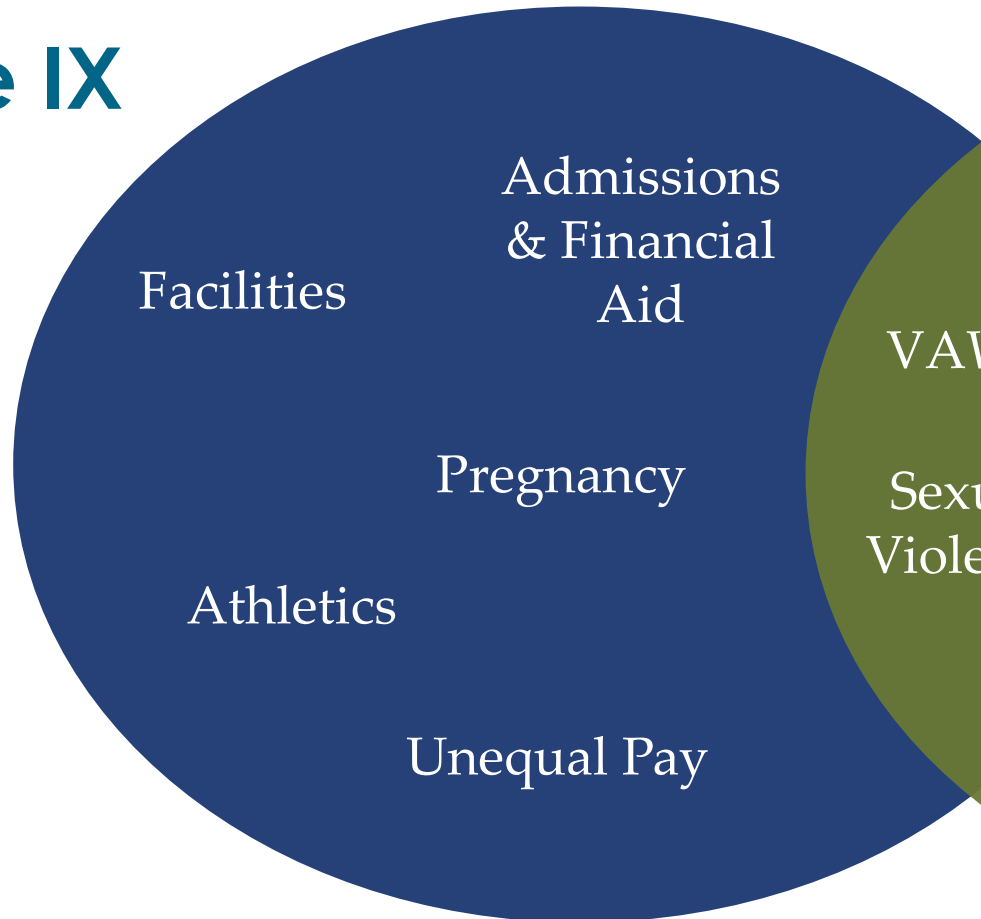
THE EVER-EVOLVING LANDSCAPE OF TITLE IX

01

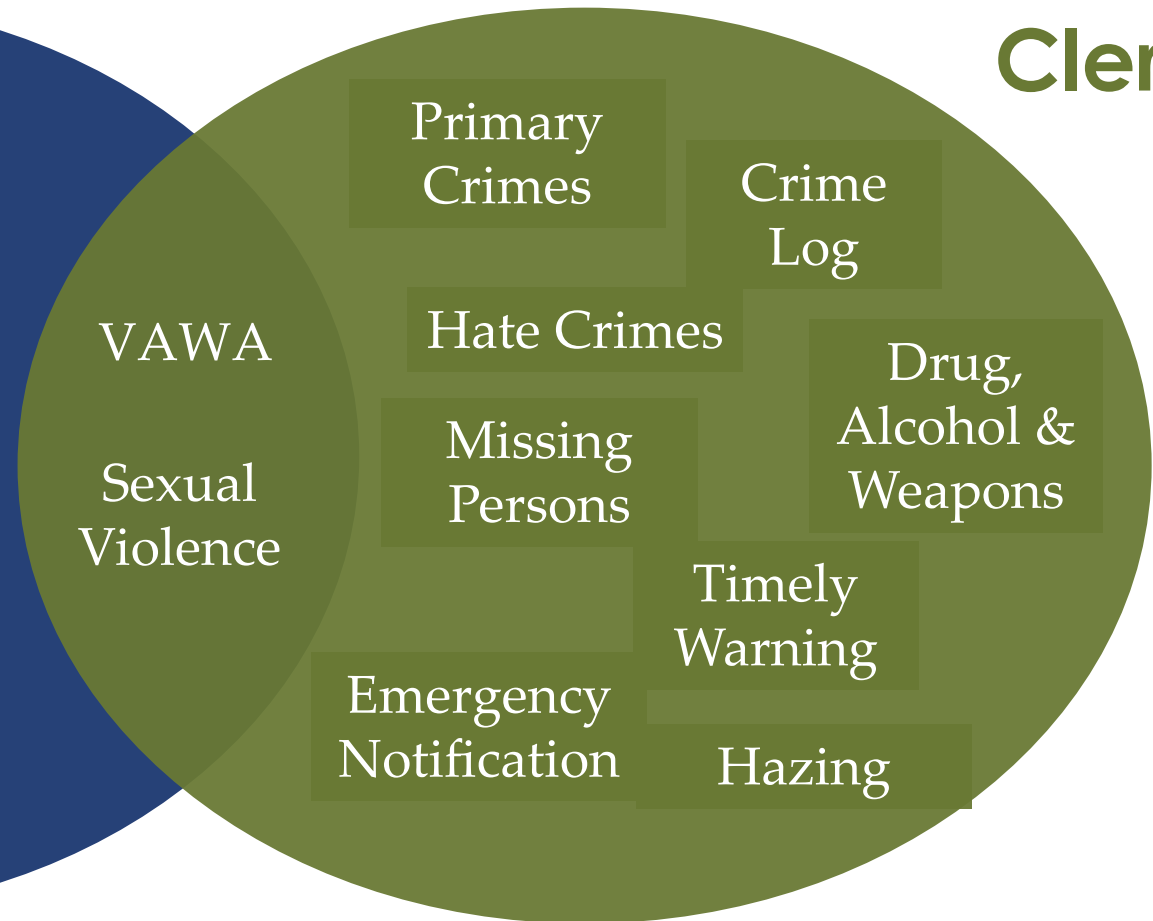
OVERLAPS

The Clery Act is not Title IX
2013 VAWA amended the Clery Act (they are not separate).

Title IX



Clery Act



VAWA

Sexual
Violence

Crime
Log

Primary
Crimes

Hate Crimes

Drug,
Alcohol &
Weapons

Missing
Persons

Timely
Warning

Emergency
Notification

Hazing

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:



TITLE IX

Title IX of the Education Amendments Act of 1972

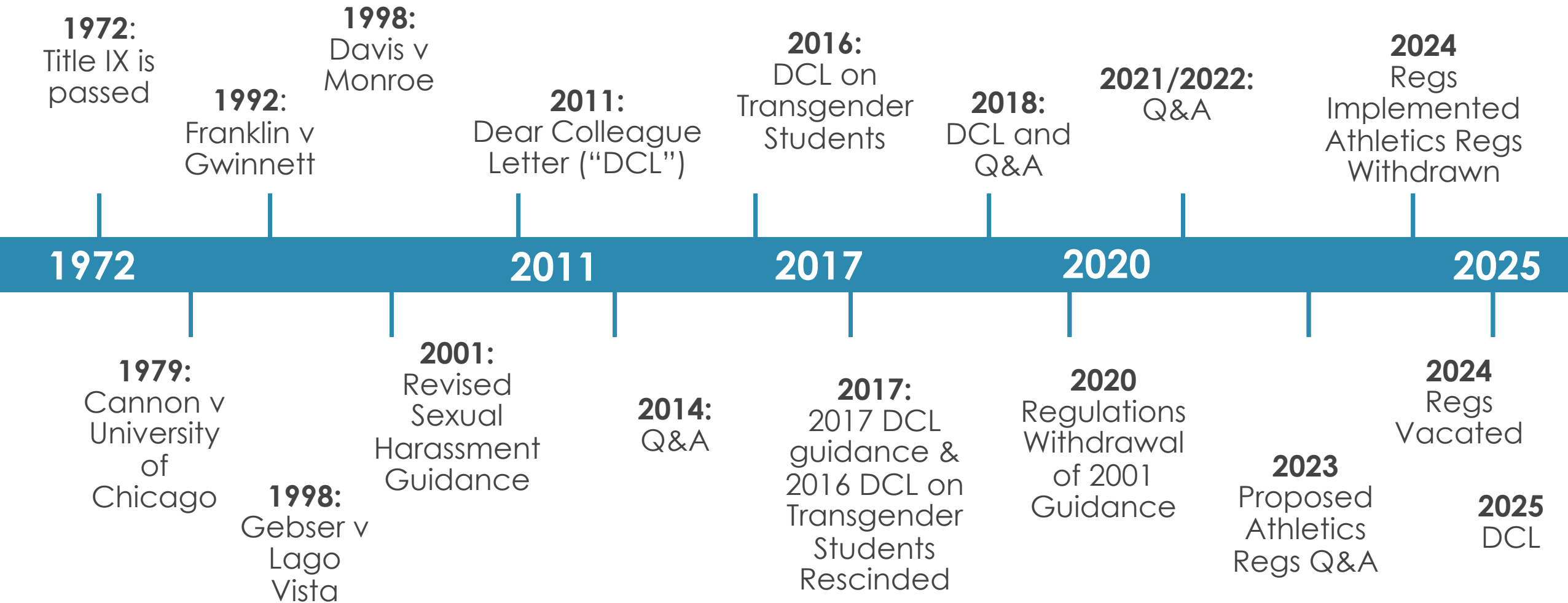
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



THE HISTORY OF TITLE IX

A TIMELINE



SINCE 1975...

Recipients have been required to . . .

- Notify students (defined to include persons who have gained admission) of their nondiscrimination policies and to resolve student complaints of sex discrimination.
- Maintain nondiscrimination notices and adopt and publish grievance procedures
- Prohibit discrimination based on pregnancy or related conditions
- Prohibit sex-based distinctions based on parental, family, or marital status
- Prohibit discrimination on the basis of sex in employment
- Balance equity with promptness

TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE TITLE IX REGULATIONS (2020)

SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

3

Narrows eligibility to file a complaint;

2

Narrows the scope of the institution's educational program or activity;

4

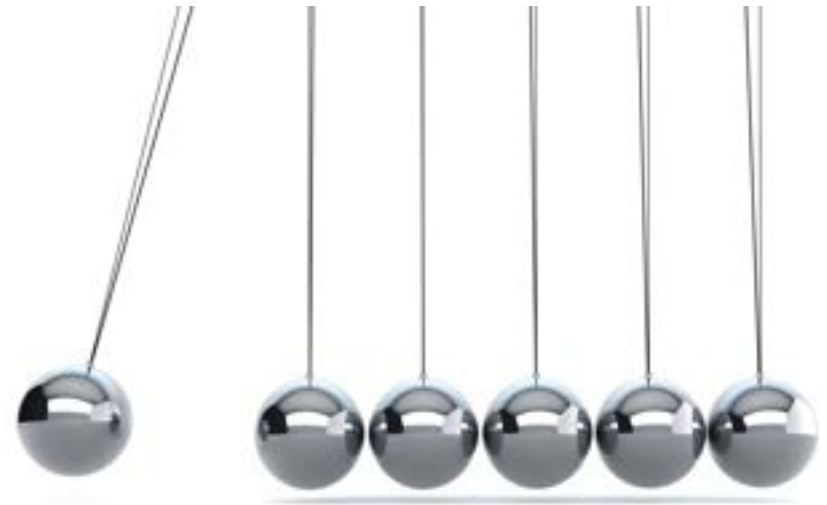
Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

ON THE NATIONAL FRONT: HISTORICALLY

We used to have one approach to addressing sexual and interpersonal violence and other harms and inequities on college campuses under law

ON THE NATIONAL FRONT: MORE RECENTLY

- Some might say that there have been some *slight* disagreements over political issues in the United States
- Unfortunately, higher ed is being impacted by the pendulum



FEDERAL LAW/REGULATIONS STATUS UPDATE

- 2024 Title IX Regulations: vacated nationally. 2020 Regulations are back in force nationally.
- Title IX Participation in Athletics Based on Gender Identity withdrawn
- Clery Act: Stop Campus Hazing Act: passed into law
- Take It Down Act: passed into law



THE ED DEPARTMENT

- Focus on Title VI
- Title IX focus on athletics and bathroom/locker room use



FEBRUARY 14 DCL AND JULY 29 DOJ LETTER

Nothing says “Valentine’s Day” like a letter beginning:

Discrimination on the basis of race, color, or national origin is illegal and morally reprehensible. Accordingly, I write to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the United States Department of Education (Department). This letter explains and reiterates existing legal requirements under Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the United States Constitution, and other relevant authorities.

FEBRUARY 14 DCL

- Sought to extend the reasoning of the Supreme Court *SFFA* decision beyond admissions
- Ostensibly about Title VI, race, color, national origin. But...
- Caution areas:
 - Training that could include stereotype content
 - Requiring participation in certain activities
 - Sponsoring programs that make some people ashamed or intrinsic guilt for things that others with their identities did
 - Creating essay prompts or other ways to get people to expose their race and using that as a proxy
- [DCL](#)
- [FAQ](#)
- [GRS Analysis Article](#)
- Currently enjoined.

JULY 29 DOJ LETTER

- Guidance document.
- Doesn't read like any other DOJ guidance document I have ever seen.
- Letter



Office of the Attorney General
Washington, D. C. 20530

July 29, 2025

MEMORANDUM FOR ALL FEDERAL AGENCIES

FROM:

THE ATTORNEY GENERAL 

SUBJECT:

GUIDANCE FOR RECIPIENTS OF FEDERAL FUNDING
REGARDING UNLAWFUL DISCRIMINATION

JULY 29 DOJ LETTER

- Builds on the concepts of the Dear Colleague Letter.
- Includes Title IX and sex discrimination
- “[T]his guidance identifies "Best Practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.



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JULY 29 DOJ LETTER

- Anything new here?
- Unlawful discrimination to include preferences
- Proxies for unlawful discrimination



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JULY 29 DOJ LETTER- SEPARATE SPACES



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- Push for sex-segregated athletic competitions and facilities such as bathrooms, showers, locker rooms, residence halls

JULY 29 DOJ LETTER

- Separate training sessions
- Separate facilities or resources (except bathrooms/showers)
- Program eligibility separation as “implicit segregation”



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JULY 29 DOJ LETTER

“Unlawful DEI training programs”

- Through their content, structure, or implementation-stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment.
- Excludes or penalizes individuals based on protected characteristics.
- Creates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.



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TITLE IX, CLERY, AND CHEVRON

02

LET'S TALK STATUTE/REGS/GUIDANCE

- The last 15 years have had quite a bit of regulatory and guidance changes, and sometimes even changes to statutes.
- But what is authoritative? Statutes? Regulations? Guidance?
- And what about *Chevron* deference?

IN THE COURTS

- *West Virginia et al. v. Environmental Protection Agency* (2022); *Biden v. Nebraska* (2023);
- *Loper Bright Enterprises v. Raimondo and Relentless v. Dept. of Commerce* (2024).
- *Loper Bright Enterprises v. Raimondo*



CHEVRON → LOPER BRIGHT

- Who *decides* now?
- **Expertise v. authority.**
- Factors:
 - Closer to statute;
 - Longer term of being interpreted;
 - Stability of interpretation; and
 - _____?_____
- What does this mean for the Department of Education?
 - Title IX/Title VI/ADA/504
 - Clery Act/VAWA/SCHA

STRENGTH OF SAFETY/EQUITY HIGHER ED REQUIREMENTS

Statutes

- Clery Act (part of Higher Education Act): 20 U.S.C. §1092(f)
- Title IX: 20 U.S.C. §1681
- Title VI: 42 U.S.C. §2000d

Regulations

- Clery Act: 34 C.F.R. § 668.46
- Title IX: 34 C.F.R. § 106
- Title VI: 34 C.F.R. § 100

Sub-Regulatory

- Guidance/Fact Sheets, Resolutions, Opinions, and Program Reviews

INTERSECTIONS WITH OTHER LAWS

03

SB 212 DEFINITION OF TERMS

- **Same as Title IX** (34 Code of Federal Regulations (CFR) 668.46)
 - Sexual Assault
 - Dating Violence
 - Stalking
- **Different from Title IX** (Texas Education Code, Sections 51.251 & 51.281)
 - "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:
 - in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

SB 212 EMPLOYEE REPORTING REQUIREMENTS

All employees* must promptly report to the institution's Title IX coordinator or deputy coordinator:

- Observations witnessed or information received while in the course and scope of their employment;
- That the employee reasonably believes constitutes an incident of sexual harassment, sexual assault, dating violence, or stalking;
- Committed by or against
 - A student who was enrolled at the institution at the time of the incident
 - An employee employed by the institution at the time of the incident

SB 212 – WHAT MUST BE REPORTED?

All information received by the employee, unless the report is made to an employee who is designated or licensed to maintain confidentiality.

- An employee must report:
 - All information relevant to the incident known to the employee
 - Regardless of when or where the incident occurred
 - For purposes of the institution's investigation
 - To redress the incident via interim measures or other forms of support
 - To convey an alleged victim's request for confidentiality

SB 212 EMPLOYEE REPORTING EXEMPTIONS

Four categories of employees are exempt from the reporting requirement:

1. Employees who are enrolled as students at the institution are not mandatory reporters under SB 212.
 - *Note:* Your policy may still define them as mandatory reporters.
2. Victims of sexual harassment, sexual assault, dating violence, or stalking are not mandatory reporters of/for their own incident.
3. Employees are not required to report information about an incident that is disclosed at a public awareness event on sexual harassment, sexual assault, dating violence, or stalking.

SB 212 EMPLOYEE REPORTING EXEMPTIONS

Four categories of employees are exempt from the reporting requirement:

4. Employees ***whose institution designates them*** as persons with whom students may speak confidentially may be limited in the information they must report.
 - IF the information they receive was conveyed under circumstances rendering the communication confidential or privileged under other law.
 - NOTE: Employees designated as confidential employees MUST fully report incidents observed or reported to them under circumstances outside the scope of a confidential communication without limitation.

SB 212 – CONFIDENTIALITY & PRIVILEGE

SB 212 ***does not*** authorize institutions to designate confidential employees for non-students who report sexual harassment, sexual assault, dating violence, or stalking.

However, employees ***whose duties authorize them*** to receive and maintain confidential or privileged information may do so for students and non-students, if received under circumstances rendering the communication confidential or privileged under other law.

- Licensed professional counselors
- Healthcare providers
- Clergy
- Legal counsel

SB 212 – WHAT MUST CONFIDENTIAL EMPLOYEES REPORT?

Employees designated or licensed to maintain confidentiality must report ***only*** the type of incident reported to them.

- They may not report information that would violate a student's expectation of privacy, unless
 - The employee is required to report information under other law
 - The student consents to disclosure

NOTE: Only a single report stating the type of incident is required when multiple confidential employees receive information about the same incident.

TITLE IX AND TITLE VII

Title VII

- Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin. It applies to employer decisions about the terms, conditions, and privileges of employment, including hiring, firing, promotion, discipline, and benefits.
- Title VII protects employees and applicants for employment.
- The federal Equal Employment Opportunity Commission (EEOC) enforces Title VII compliance.

Title IX

- Title IX prohibits sex-based discrimination in education programs and activities that receive federal funds. In this context, sex-based discrimination includes sexual harassment and discrimination based on pregnancy or parenting status.
- Title IX protects all students and employees.
- The federal Office for Civil Rights (OCR) enforces Title IX compliance.

TITLE IX AND TITLE VII

- Both are about discrimination
 - Title IX focuses on the education context
 - Title VII focuses on the employment context
- Title VII may obligate the institution to move forward with certain reports of sex discrimination even if the alleged impacted party declines to file a formal complaint under Title IX
- Claims under Title VII typically requires that a party file with the EEOC prior to filing a lawsuit; Claims under Title IX do not require a complaint be filed with OCR prior to a lawsuit. Courts are mixed on if employees can seek relief under both.
- Remedies available vary under each law.

TITLE IX AND ADA/504



Important Takeaways

- Title IX process must allow for reasonable accommodations to allow full and equal participation.
- The interactive process should be used to determine the appropriate reasonable accommodations for the Title IX process.
- Confidentiality regarding a party's disability must be maintained.

TITLE IX AND FERPA

Important Takeaways

- FERPA protects student records and the Title IX regulations require privacy of the parties to be maintained.
- Title IX may "override" FERPA when it comes to gathering or sharing relevant information as required by the Title IX regulations.
- FERPA allows for release of some specific Title IX information, and the regulations provide for that appropriate release.



TITLE IX AND HIPAA



Important Takeaways

- Both Title IX and HIPAA protect privacy of records.
- Records should only be released with party's permission or as required under the law.
- Once a HIPAA record becomes part of a Title IX matter, it may be re-disclosed as permitted by Title IX and FERPA.

“SPECIFIC OFFENSES” (VAWA)

These are conformed to
VAWA Amendments to the Clery
Act**

** But...



DEFINITIONS: TITLE IX AND THE CLERY ACT

Some National Incident-Based Reporting System (NIBRS) changes. What they may and definitely (probably definitely) will not change.

Great time to talk to counsel...

DATING VIOLENCE

Definition:

- “Violence committed by a person
- Who is or has been in a social relationship of a romantic or intimate nature with the victim;
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence” committed by:

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

SEXUAL ASSAULT

Sexual Assault includes Rape, Sodomy, Sexual Assault With an Object, Fondling, Incest, and Statutory Rape.

These definitions come from the FBI.

SEX OFFENSES

A. Rape — The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. Sodomy — Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With an Object — The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SEX OFFENSES PT 2

D. 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 incapacity.

E. Incest — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

F. Statutory Rape — Nonforcible sexual intercourse with a person who is under the statutory age of consent.

STALKING

- The term stalking means “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A. fear for the person’s safety or the safety of others; or
 - B. suffer substantial emotional distress.



EXAMPLE: STALKING

- A student shares that another student is staring at them at the dining hall which is making them uncomfortable. Complainant says that they see the other student around campus a few times a week. There have been no communication attempts by Respondent.
- Will you address under Title IX? Why or why not? What other information do you need to know?



LOCATION AND GEOGRAPHY





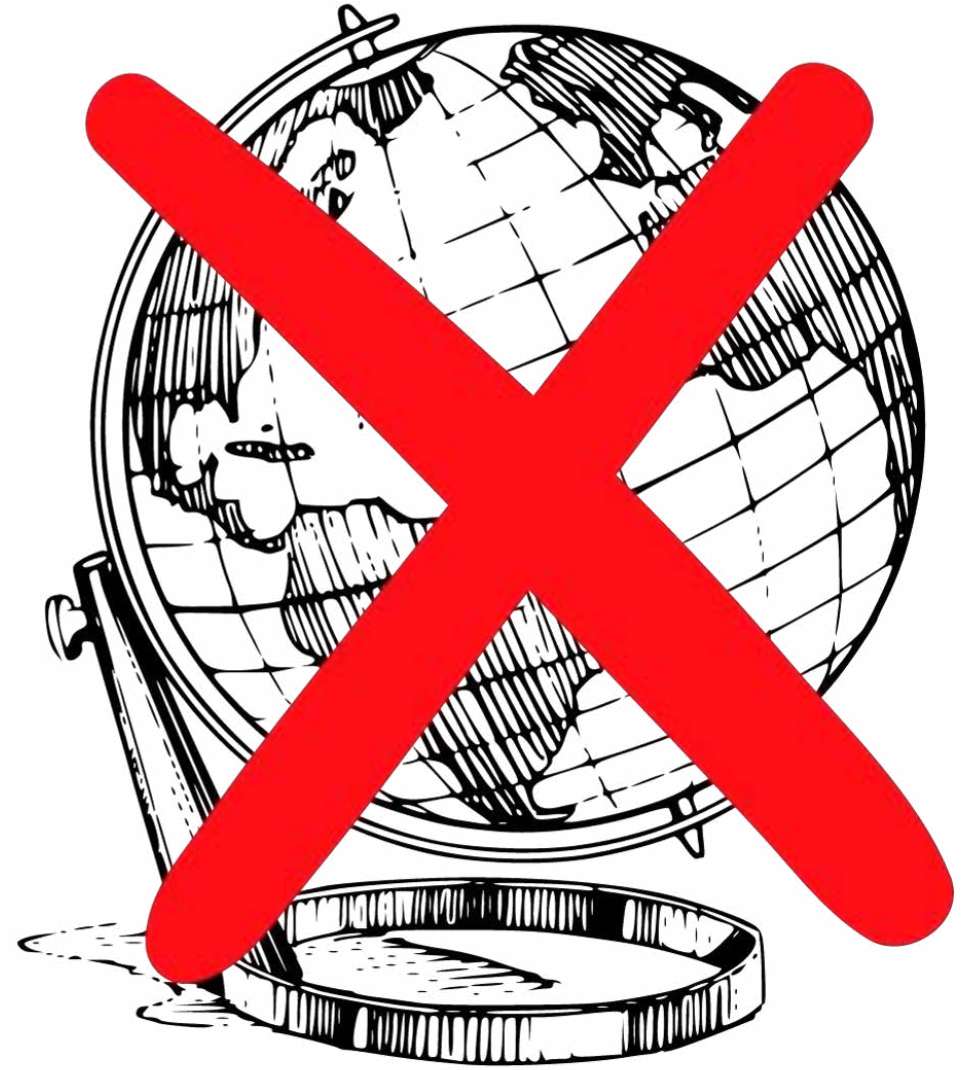
COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.



WOULD THIS FALL UNDER TITLE IX?

Taylor, a 2nd year student, comes into the Title IX Office on Monday morning requesting a meeting, sharing that "Alex raped me at a party on Saturday at the 'A Capella House'."

Some members of the A Capella club rent a house off-campus and they frequently throw parties..

Taylor is alleging "Alex raped me when I was drunk at the A Capella House."

- Would this fall under Title IX?
- Why or why not?
- What other information would you need to find out to make this determination?



REQUIRED IDENTITY



COVERED INDIVIDUALS

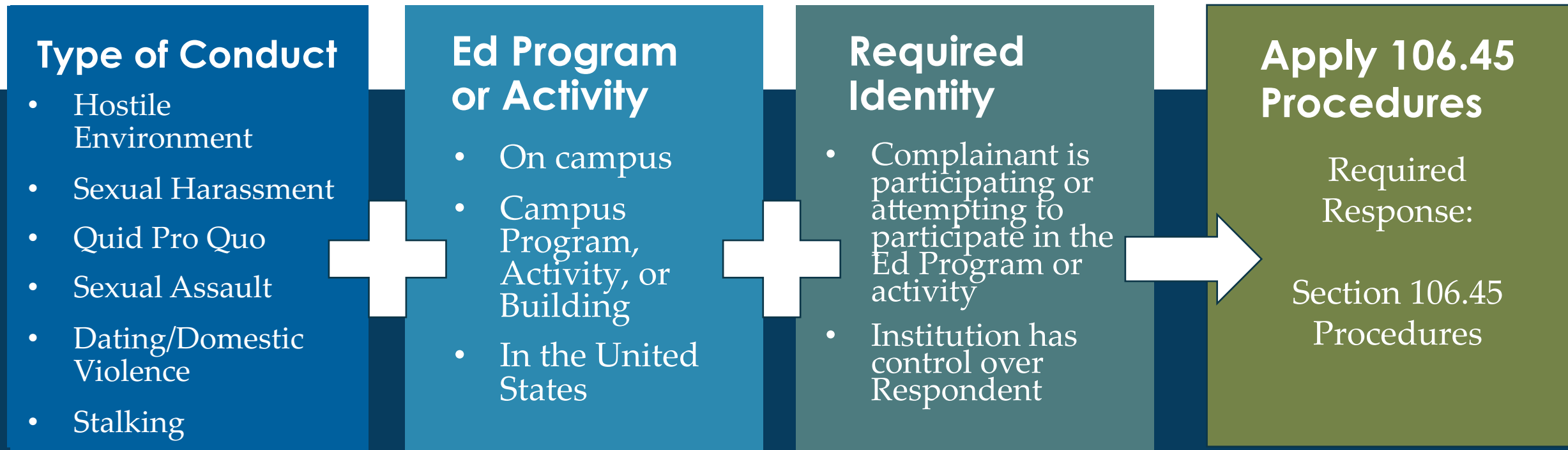
ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

“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.” 34 C.F.R. § 106.30

- Applicant
- Enrolled or Employed
- Accepted or Hired

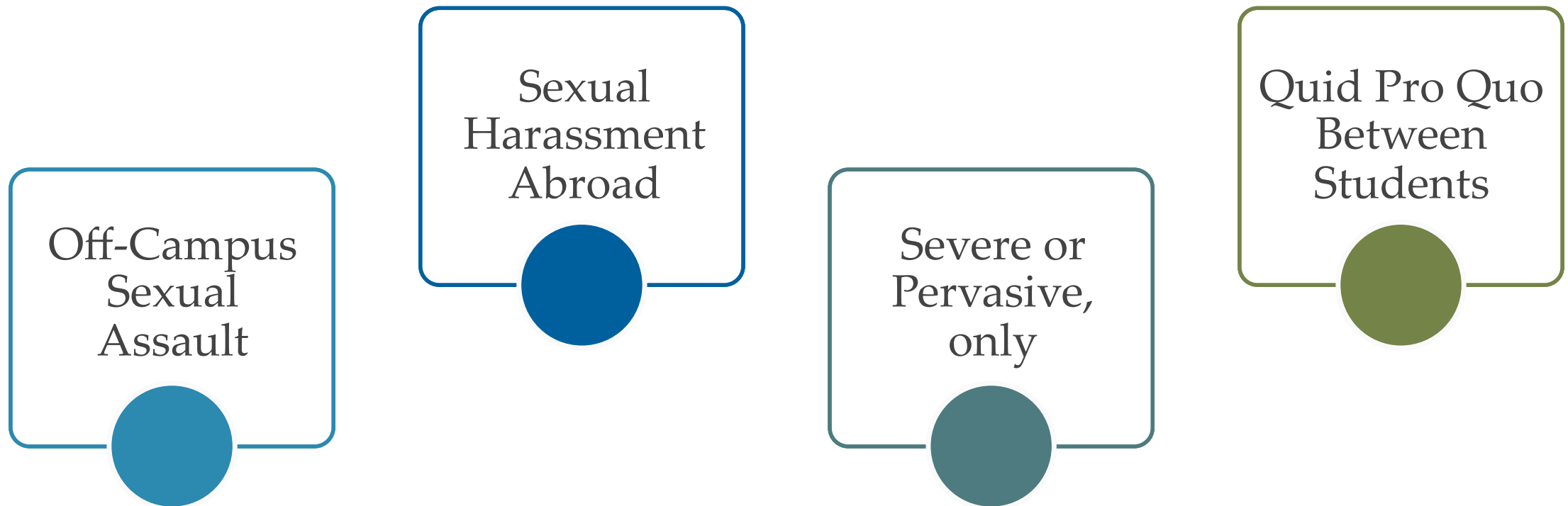


TITLE IX APPLICATION (POST-MAY 2020)



CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures comply with VAWA/Clery, other intersecting federal and state laws



DON'T SLEEP ON VAWA

stalking, as required by paragraph (k) of this section; and

(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

(12) A statement advising the campus community where law enforcement

IS THIS TITLE IX SEXUAL HARASSMENT?

You receive a 3rd party report from a Coach who heard some rumors about a student on their team, Dani.

Dani is constantly receiving sexually explicit photos via Snapchat from another teammate. Dani has asked them to stop numerous times. When they are at practice together, this individual often approaches Dani to make jokes of a sexual nature. This has happened about 3 times so far this week. Dani usually laughs it off. Dani emailed me saying they needed to miss practice today because they are "sick".

Why? Why not? What other information would you need to know?

ADDITIONAL REGULATORY REQUIREMENTS



ACTUAL NOTICE

Institution must respond when it has:

“Actual Knowledge...”

- When “an official of the recipient who has authority to institute corrective measures” has notice
- e.g., Title IX Coordinator

...of “sexual harassment that occurred within the school’s “education program or activity...”

- “Includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred
- Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

...against a “person in the United States”

- So, not in the study abroad context

A Narrowed Scope of Institutional Responsibility



OTHER REQUIREMENTS OF THE REGULATIONS

Designation of a Title IX Coordinator

Dissemination of policy

Separation of Responsibilities

Training and posting of training

Impartiality

Record Keeping

PREGNANCY & RELATED CONDITIONS

03

TODAY'S STUDENT

A greater number of college students weight class schedules with family and parenting responsibilities



The birth rate for women aged 20–24 was 63.0 births per 1,000 women in 2020, down 5% from 2019 (66.6)



The rate for women aged 25–29 was 90.2 births per 1,000 women, down 4% from 2019 (93.7)



In 2020, the mean age of mothers at first birth was 27.1 years, an increase from 27.0 in 2019

MORE ABOUT TODAY'S STUDENT...

- Globally and Socially Aware
- Digitally Connected and Plugged In
- Racially and Culturally Diverse
- First Gen (46%)
- Older (38% over age 25)
- Busier (25% raising children/64% working)
- Financially Strained (35% food and 9% home insecure)
- Too Many Stressors and Too Little Support



But first . . . why?

"Pregnancy is consistently the most common family-related reason given by female students" for why they dropped out of school, according to the US Department of Education.

Data from the CDC and National Education Statistics shows that about a quarter of girls who drop out of high school cite pregnancy or parenting as the reason.

"PREGNANCY AND RELATED CONDITIONS"

Includes "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"



NONDISCRIMINATION IS BROAD

Extends to those experiencing pregnancy and related conditions, and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



TITLE IX OBLIGATIONS

Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability.
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began.
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



ADJUSTMENTS UNDER TITLE IX

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for medical appointments

WHAT ABOUT "PARENTS" AND "PARENTING?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

These are from 1975!



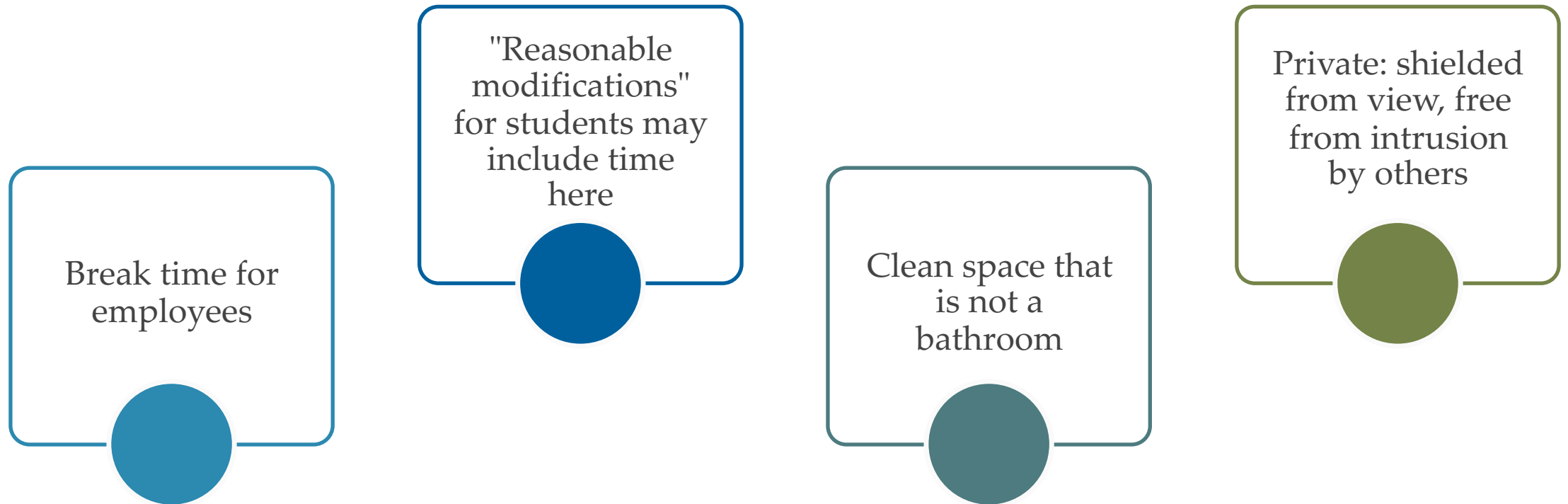
SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) 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 recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

PROVIDE SPACE (& TIME)

For expressing breastmilk or breastfeeding as needed



PRIVACY CONSIDERATIONS

If there is a determination that information is needed that would substantiate the disability/condition, some considerations regarding privacy may include:

- Follow your privacy policies (including FERPA).
- Be mindful of what documents are requested and collected.
- How are you storing and securing files?
- Educating faculty members about how (not) to request medical information from the student
- Educating student on their rights to access and privacy.



DOCUMENTATION? SHOULD YOU ASK FOR IT?

NO, when:

- Needs are obvious (like a bigger uniform)
- Student previously provided sufficient documentation
- Reasonable modification is sitting or standing, keeping water nearby, taking breaks for basic needs
- **Action is available to students for reasons other than P or RC without submitting such documentation**



DO YOU HAVE A
STUDENT LEAVE
POLICY? DOES
THIS STUDENT
QUALIFY?

Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student's doctor.

"TEMPORARY DISABILITY?"

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability...but:



SECTION 504

It may be considered a temporary disability in certain circumstances.

ADA

It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post partum depression or gestational diabetes that becomes Type II)

WHAT'S THE DIFFERENCE?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited for the period of the documented “medical necessity”



Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter



Accommodations require the presence of a “qualified” disability and/or condition

POLICY TO PRACTICE

Policies account not only for regulation but provide for a process that is understandable and –

- Identify a single point of first entry (a proactive practice)
- Provide consistent information using the correct terms and definitions
- Support the student into the correct lane or lanes to begin
- Identify appropriate services supports

PRACTICES THAT ACTUALIZE...

- A one-stop type of service and support consistent information and centralized reporting
- Timely consultation/communication between involved offices
- Effective case management team approach (multiple offices)
- Regular communication between involved offices and the individual student
- Documentation at each stage of service
- Education, education, education to the campus community

RECENT ED RESOLUTIONS & GUIDANCE



JUNE 2022

Salt Lake Community College
Resolution Agreement



October 2022

Pregnancy and Parenting
Resource



January 2023

Troy University Resolution Agreement

LESSONS LEARNED

Make reasonable responsive adjustments

Provide accessible information for pregnant students

Designate a central contact to centralize response

Respond promptly to pregnancy discrimination complaints

Engage in the interactive process

Consider whether there is a temporary disability

Train employees on your rules and process

INTAKE & RESPONSE

02

INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

3. Support Measures, whether or not Formal Complaint is filed

4. How to File

5. Options for Resolution

INFRASTRUCTURE FOR REPORTING



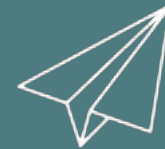
RECEIVING REPORTS AND INITIATING THE RESPONSE



1. Review the report



2. Determine the appropriate initial response



3. Promptly initiate that response



4. Document/record the receipt of the report and the response thereto

INITIAL OUTREACH

- First: Safety
- Email: Create Forms/Templates
- Phone
- In person: Use RA, Campus Safety
- Follow Up Emails



INITIAL MEETING WITH THE COMPLAINANT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



SCENARIO: EMERGENCY REMOVAL OF STUDENT

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



SUPPORTIVE MEASURES

Non-Disciplinary

May not
unreasonably
burden the other
party

Designed to restore
or preserve equal
access

Non-punitive

As appropriate and
reasonably
available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic modifications and supportive measures;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



“MUTUAL RESTRICTIONS ON CONTACT BETWEEN THE PARTIES”



POST MEETING TASKS

Document the meeting

Send a summary email
with resources, options,
next steps

Follow up

Make connections

Provide the supportive
measures

Document supportive
measures requested,
provided, and not
provided. Where not
provided, indicate why.

HOW TO PROCEED?

Support- Based Only

No formal
process



Alternative/ Informal

Signed
agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All
requirements of
106.45



SUPPORT-BASED RESOLUTION

3(a)

SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations C



FORMAL COMPLAINT & NOTICE REQUIREMENTS

03(b)

FORMAL COMPLAINT FILED

By Complainant

**By the Title IX
Coordinator**

FACTORS TO CONSIDER WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT



Allegations of
Violence

Threats

Use of
Weapons

Serial
predation

A FORMAL COMPLAINT MUST INCLUDE

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include: Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution or investigation.

DISMISSING COMPLAINTS

Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

**CAN PROCEED
UNDER OTHER
POLICY**



NOTICE OF ALLEGATION REQUIREMENTS (1)

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

NOTICE OF ALLEGATION REQUIREMENTS (2)

- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

NOTIFYING THE RESPONDENT

FIRST- SAFETY

Make sure Support Available

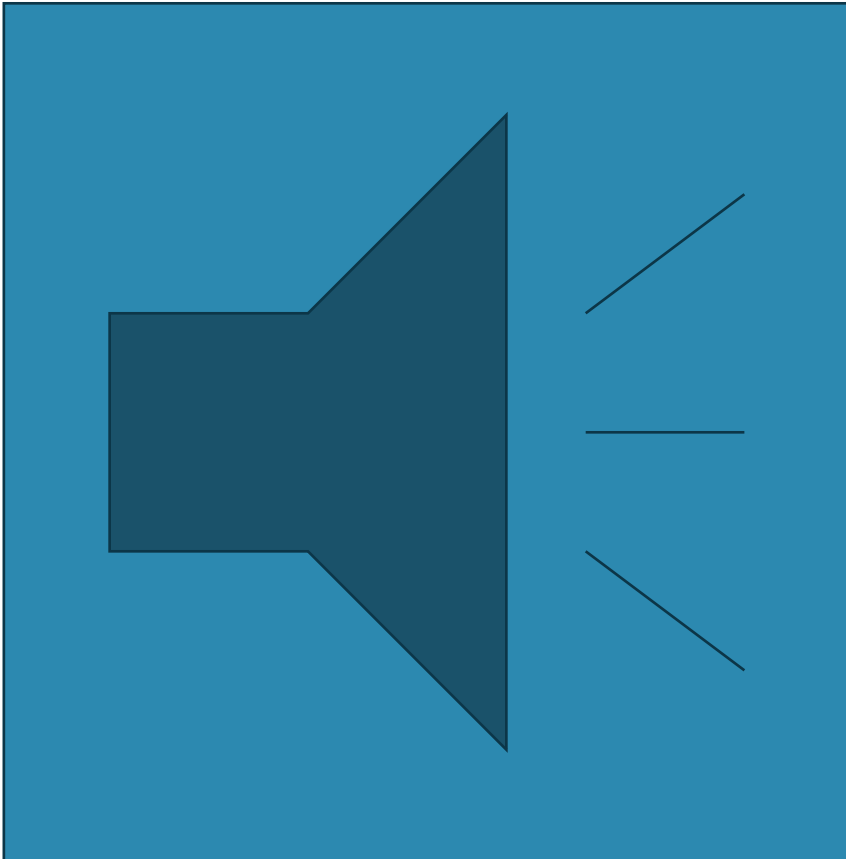
Written Notification Meetings and Sufficient Time to Prepare

Don't Send on a Friday

Don't send at 5pm

How will you notify?

Consider impact of notification on Respondent



ADVISOR OF CHOICE

The advisor
can be
anyone,
including an
attorney

Institutions
cannot place
restrictions on
who can
serve

No training
required

Institution must
provide advisor
for the purposes
of
questioning only.

INITIAL MEETING WITH RESPONDENT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that were provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



POST MEETING TASKS

Document the meeting

Send a summary email with
resources, options, next
steps

Follow up

Make connections

Provide the supportive
measures

Document supportive
measures requested,
provided, and not provided.
Where not provided,
indicate why.

COMPLAINT RESOLUTION

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

ALTERNATIVE RESOLUTION

03(c)

ALTERNATIVE RESOLUTION REQUIREMENTS

- Formal Complaint must be filed
- Participation in an alternative resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the alternative resolution must be obtained
- Facilitators of alternative resolution must be trained



ALTERNATIVE RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- The requirements of the alternative/informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process
- And resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared;





FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

**INFORMAL/ALTERNATIVE
RESOLUTION IS PROHIBITED TO
RESOLVE ALLEGATIONS THAT AN
EMPLOYEE SEXUALLY HARASSED
A STUDENT.**



FORMAL RESOLUTION

03(d)

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to
Present Evidence

An advisor of choice

Written notification of
meetings, etc., and
sufficient time to prepare

Opportunity to review all
directly related evidence,
and 10 days to submit a
written response to the
evidence prior to
completion of the report

Report summarizing
relevant evidence and 10-
day review of report prior
to hearing

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

FINAL RULE § 106.45(B)(8)

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”

CONSENT AND INCAPACITATION

01

CONSENT (SYSTEM MODEL POLICY)

A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

INCAPACITATION (SYSTEM MODEL POLICY)

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.

INCAPACITATION CONTINUED (SYSTEM MODEL POLICY)

After establishing that a person is in fact incapacitated, the University asks two questions:

- Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.

A Respondent will be found to have violated policy only if the Respondent knew or should have known that the person was incapacitated.

OTHER APPLICABLE DEFINITIONS (SYSTEM MODEL POLICY)

Coercion – The use of unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats,

Intimidation – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



THE “HARD” QUESTIONS

Details about the sexual
conduct

Seemingly inconsistent
behaviors

Inconsistent
evidence/information

What they were wearing

Alcohol or drug
consumption

Probing into reports of lack
of memory

HOW TO ASK THE HARD QUESTIONS

- **Lay a foundation for the questions**
 - Explain why you are asking it
 - Share the evidence that you are asking about, or that you are seeking a response to
- **Be deliberate and mindful in your questions**
 - “Can you tell me what you were thinking when...”
 - “Help me understand what you were feeling when...”
 - “Are you able to tell me more about...”



EVALUATING EVIDENCE

01

Is it relevant?

Is the evidence important, or of consequence, to the fact-finding process?

02

Is it authentic?

Is the item what it purports to be?

03

Is it credible/reliable?

Is the evidence worthy of belief and can the decision maker rely on it?

04

What weight, if any, should it be given?

How important is the evidence to the fact-finding process?

“RELEVANT” EVIDENCE

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

EVIDENCE THAT IS NOT “RELEVANT”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if 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.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

- Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition

ASSESSING RELEVANCE

Why Does it Matter?

- Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.
- Character Evidence
- Polygraph Evidence
- Opinion Evidence

OPINION EVIDENCE

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?



OPINION EVIDENCE: TRY IT!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”

ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never
assume that
an item of
evidence is
authentic.

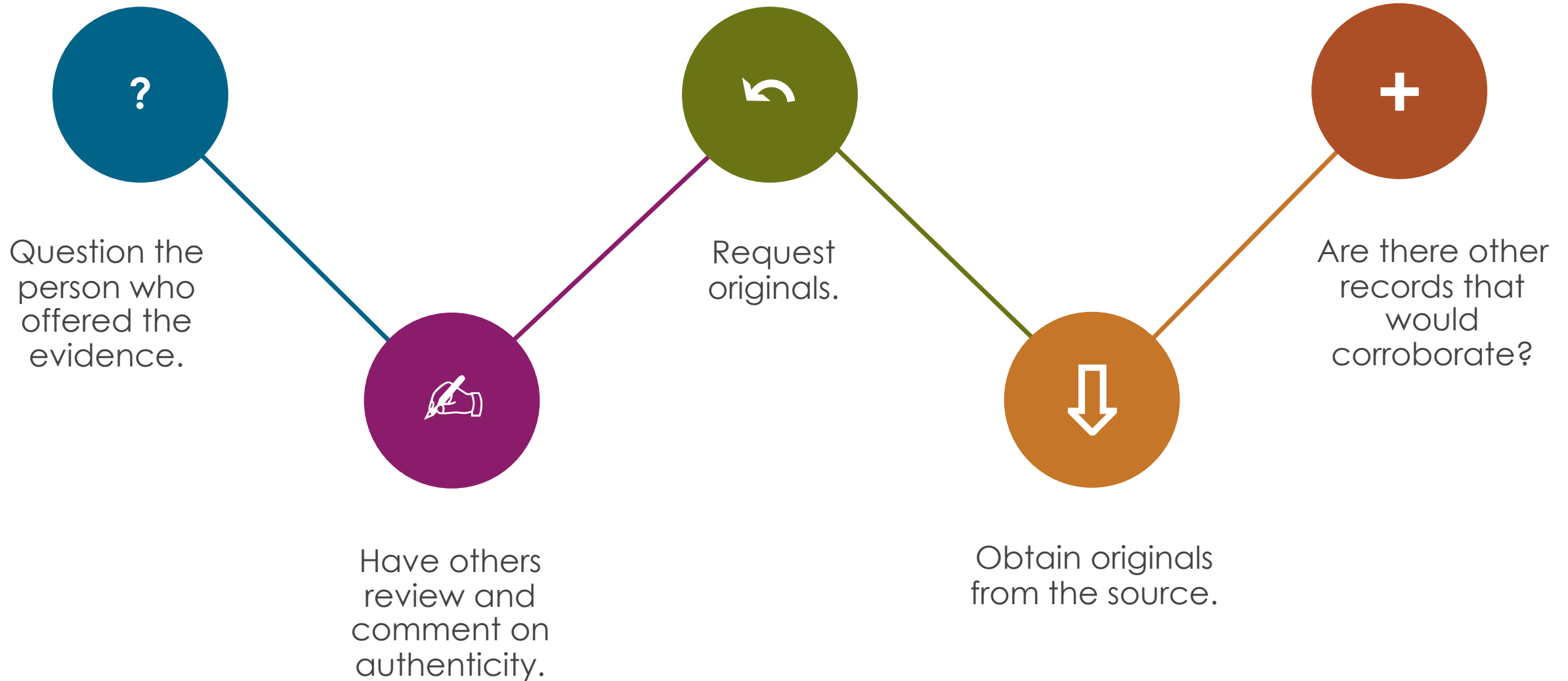


Ask
questions,
request
proof.



Investigate
the
authenticity
if necessary.

IS IT AUTHENTIC?



ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but
consider the following:

Sufficiency of
detail and
specificity

Ability to recollect
events

Material
Omission

Internal
Consistency

Inherent
Plausibility

Motive to
falsify

Corroboration

BARRIERS TO EVIDENCE COLLECTION



Non-participating parties

Uncooperative witnesses

Uncooperative advisors

Identity of party or witness unknown

Refusal to share materials

Materials lost or no longer accessible

Difficult topics

QUESTIONS?

