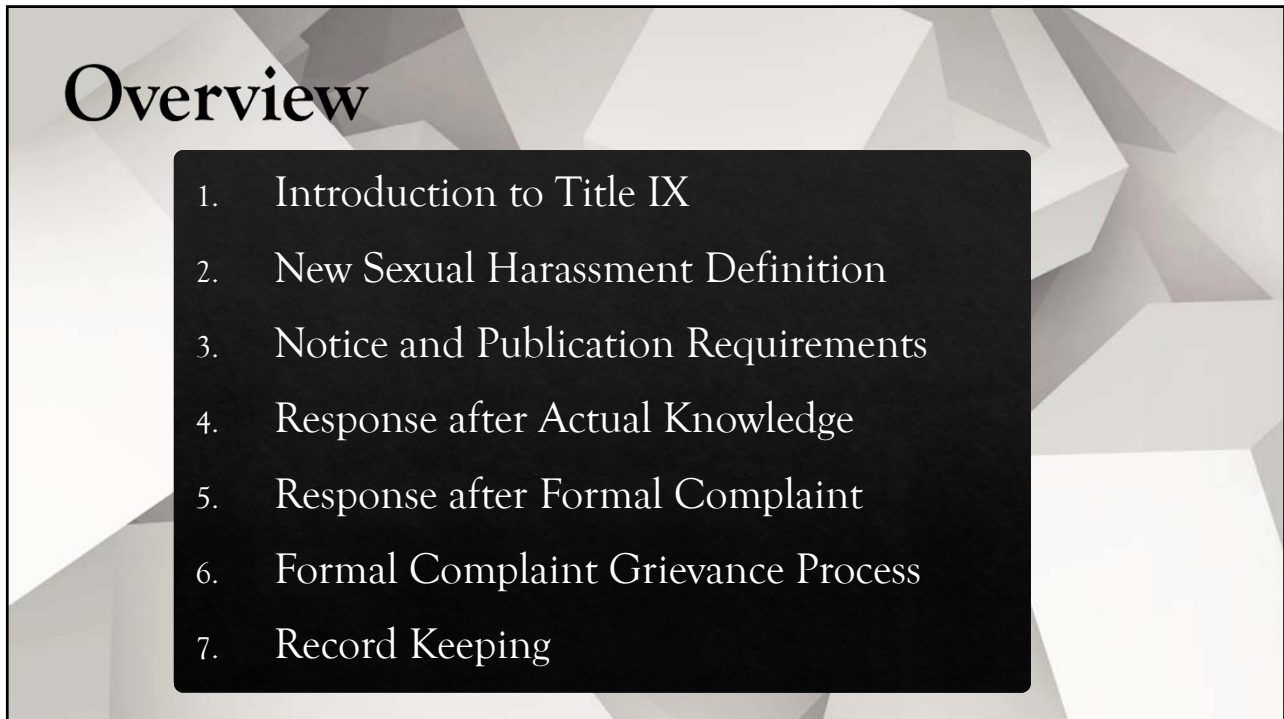




# New Title IX Regulations

Three Rivers College

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## Overview

1. Introduction to Title IX
2. New Sexual Harassment Definition
3. Notice and Publication Requirements
4. Response after Actual Knowledge
5. Response after Formal Complaint
6. Formal Complaint Grievance Process
7. Record Keeping

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## Title IX

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



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## Three Rivers College Policy

- ◆ Three Rivers College is committed to providing equal opportunity in all areas of education, recruiting, hiring, retention, promotion, and contracted service. The college further commits itself to the policy that there shall be no unlawful discrimination of race, color, religion, sexual orientation, disability, age, gender, or national origin



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# Three Rivers College Policy

- ◆ The College's equal opportunity policy extends to prohibitions against unlawful harassment of students or employees relating to the individual's race, color, religion, disability, age, sex, or national origin. This prohibition against harassment includes, but is not limited to, disparaging comments, written materials, physical assaults, sexual harassment, verbal threats, and offensive pranks.

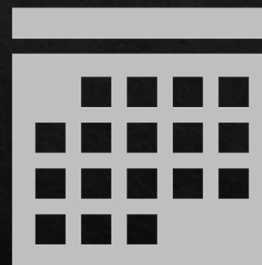
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# Final Rule Went into Effect On:

*AUGUST 14, 2020*



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## New Sexual Harassment Definition

“Sexual Harassment” is conduct on the basis of sex that satisfies one of the following:

1. Quid Pro Quo Harassment, or
2. Hostile Environment, or
3. Harassment Under the Violence Against Women Act

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# 1. Quid pro quo harassment

- ◇ An employee conditioning an aid, service, or benefit of the college on an individual's participation in unwelcome sexual conduct
- ◇ Does not need to be evaluated for "severity, pervasiveness, and objective offensiveness"
- ◇ Expressed or implied

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# 2. Hostile environment

- a) Unwelcome conduct
- b) Reasonable person
- c) So severe, pervasive, and objectively offensive
- d) Effectively denies a person's equal access to education program or activity

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### 3. Harassment Under Violence Against Women Act

- ◇ Sexual Assault
  - ◇ Rape
  - ◇ Sodomy
  - ◇ Sexual assault with an object
  - ◇ Fondling
- ◇ Dating Violence
- ◇ Domestic Violence
- ◇ Stalking

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#### **In an Educational Program or Activity –**

locations, events, or circumstances over which the college exercised substantial control over both the Respondent and the context in which the sexual harassment occurs

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## “Education Programs and Activities”

- ◆ College Instruction
- ◆ Athletics
- ◆ Admissions
- ◆ College’s Sponsored Organizations and Activities
- ◆ Student On Campus Residence
- ◆ On-campus Events
- ◆ Residential Life
- ◆ On or off campus house owned/controlled by Greek organization or student organization officially recognized by the institution

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**Title IX only Applies to Persons in  
United States  
and  
Does Not Apply  
to Sexual Harassment Outside of  
United States**

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**COMPLAINANT**

An individual who is alleged to be the victim of conduct that could constitute sexual harassment

**RESPONDENT**

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

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**RECIPIENT**

Recipients of Federal financial assistance covered by Title IX, hereinafter referred to as "institutions"

**TITLE IX COORDINATOR**

Coordinates college's compliance efforts

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|  |  |
|--|--|
| <p><b>INVESTIGATOR</b></p>   | <p><b>ADVISOR</b></p>  |
| <p>Investigates allegations in a formal complaint and creates investigative report</p>                               | <p>Parties may have an advisor of their choice, who may be, but is not required to be, an attorney</p> |
| <p><b>FACILITATOR</b></p>  |  |
| <p>Facilitates an informal resolution process, upon parties' consent, that does not involve a full investigation</p> |  |
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|   |  |
|---|--|
| <p><b>HEARING OFFICER(S)/<br/>DECISION-MAKER(S)</b></p>                         | <p><b>DECISION-MAKER(S)<br/>ON APPEAL</b></p>  |
| <p>Weighs the evidence and issues a written determination of responsibility</p> | <p>Issues a written decision describing the result of the appeal and the rationale for the result.<br/><br/>The decision-maker in appeals has to be different than the initial decision-maker.</p> |
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## Notice of Non-Discrimination

### Title IX Coordinator's:

- ◆ Name or Title
- ◆ Office Address
- ◆ Email Address
- ◆ Telephone Number

### Must include:

- ◆ Grievance Procedures
- ◆ Grievance Process:
  - ◆ How to report or file a formal complaint

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# Dissemination of Notice

*Must publish to*

- ◆ **Students** | Of the college
- ◆ **Applicants** | For admission and employment
- ◆ **Unions** | Or professional organizations
- ◆ **Publications** | Policy and training materials must be posted



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An abstract background composed of various shades of gray and white geometric shapes, including triangles and polygons, creating a complex, layered effect.

# College's Response



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# Two Paths to Respond

Actual  
Knowledge

Formal  
Complaint



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Path One  
[Actual Knowledge]



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## Actual Knowledge

- ◇ Any person may report sexual discrimination (alleged victim themselves or any third party)
- ◇ May report to Title IX Coordinator in person, by mail, phone, or email
- ◇ May be made during non-business hours

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## Response After Actual Knowledge

“Actual knowledge” is notice of sexual harassment or allegations of sexual harassment to:

1. Title IX Coordinator, or
2. Institution official who has authority to institute corrective measures, or
3. Any employee of an elementary and secondary school

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## Response After Actual Knowledge

Must promptly contact Complainant to:

1. Discuss availability of supportive measures
2. Consider their wishes for supportive measures
3. Inform them of the availability of supportive measures with or without the filing of a formal complaint
4. Explain the process for filing a formal complaint

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## General Response Time

Must respond:

1. Promptly
2. In a way that is not  
“deliberately indifferent”

*“Deliberately Indifferent” = clearly unreasonable in light of the known circumstances*



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## Supportive Measures

- ◇ Available before or after a formal complaint or when no complaint has been filed
- ◇ Can be offered to Complainant or Respondent, or both
- ◇ Non-disciplinary, non-punitive, individualized services
- ◇ Free, individualized services

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## Supportive Measures

- ◇ Title IX Coordinators are responsible for implementation
- ◇ Must record any supportive measures taken
- ◇ If supportive measures are not part of institution's response, institutions must specify why

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## Supportive Measures

Examples:

- ◆ Counseling
- ◆ Extensions of deadlines
- ◆ Modifications of work or class schedules
- ◆ Mutual restrictions on contact between parties
- ◆ Changes in work or housing locations
- ◆ Building escort services
- ◆ Leaves of absence
- ◆ Increased security and monitoring of certain areas of the building

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## Equitable Treatment of Parties

- ◆ Must offer supportive measures to the Complainant
- ◆ May offer supportive measures to the Respondent
- ◆ Grievance process required before any disciplinary or punitive measures
- ◆ Supportive measures must not “unreasonably burden the other party”

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## Emergency Removal

Must conduct an individualized safety and risk analysis

Determine an immediate threat to the physical health or safety of any individual

Provide Respondent with:

1. notice and
2. an opportunity to challenge the decision

Remove Respondent on an “emergency basis”

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## Administrative Leave

- ◇ Institution can place an employee Respondent on administrative leave during the pendency of the grievance process

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## Path Two [Formal Complaint]

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## Formal Complaint

A document filed by the Complainant or signed by the Title IX Coordinator that alleges sexual harassment against a Respondent requesting that the institution investigate the allegation of sexual harassment

The logo consists of the letter 'M' above a horizontal line, with the letter 'O' below the line.

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## Formal Complaint: *By Complainant*

- ◆ May be filed with the Title IX Coordinator in person, by email, by mail, or their listed contact information
- ◆ Complainant must be participating in the education program or activity at time of filing

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## Formal Complaint: *By Coordinator*

- ◆ Title IX Coordinator may sign a Formal Complaint to initiate a grievance process to investigate and adjudicate allegations
- ◆ May happen over the alleged victim's objections because "Recipients are under an obligation. . . To respond promptly in a way that is not clearly unreasonable in light of the known circumstances."


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# Formal Complaint Grievance Process



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## Initial Response after Formal Complaint

- ◇ Similar to response after Actual Knowledge:
  1. Must promptly respond
  2. Availability of supportive measures
  3. Equitable treatment of parties
  4. Option for emergency removal
  5. Option for administrative leave
- ◇ Different: must follow a formal grievance process




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## Basic elements of Grievance Process

1. Must Treat Parties Equally
2. Objective Evaluation of Evidence
3. No conflict of interest or bias
4. Presumption of Not Responsible
5. Prompt Time Frames

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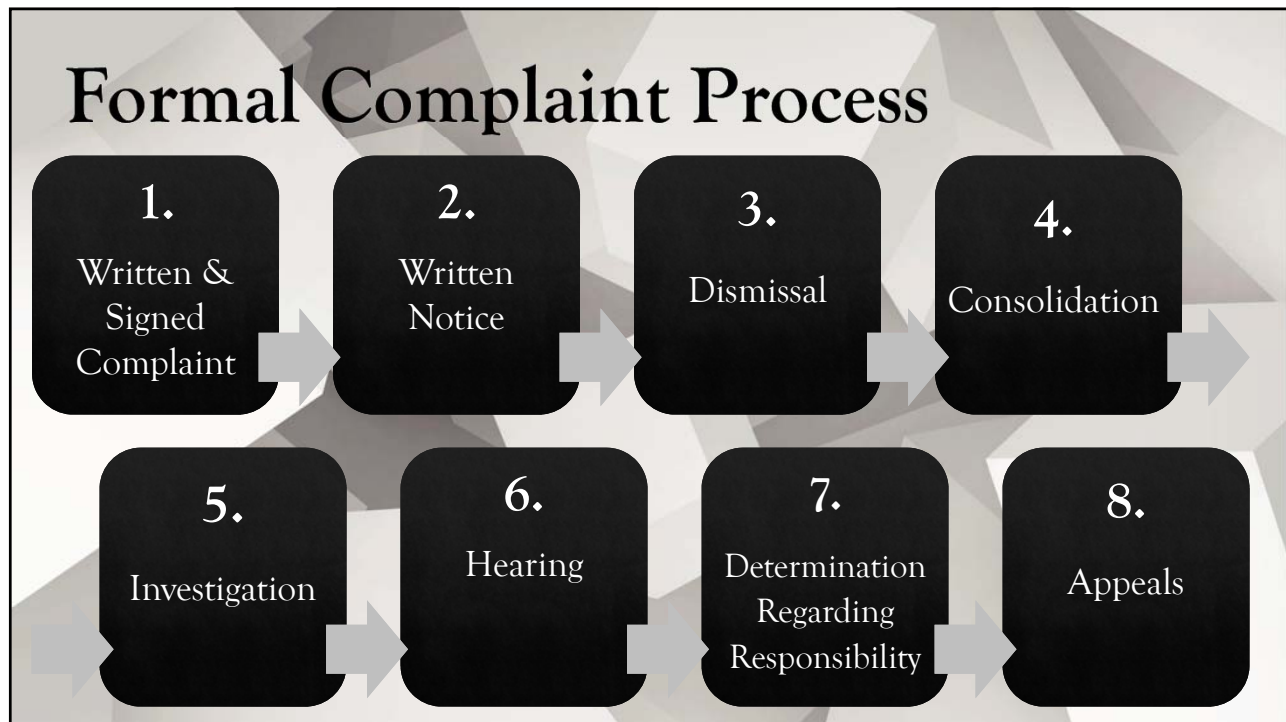
## Basic elements of Grievance Process

6. Describe the range or list the possible disciplinary sanctions or remedies
7. State the Standard of Evidence
8. Must Have Procedure for Appeals
9. Do Not Use Legally Privileged Information
10. Describe the Range of Supportive Measures

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## 1. Written & Signed Complaint

- ◇ Description of allegation (date, location, witnesses, etc)
- ◇ As practical, in Complainant's words

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## 2. Written Notice

- ◇ Must Provide to Parties:
  - ◇ Notice of the college's grievance process, including informal resolution process
  - ◇ Notice of the allegations of sexual harassment
  - ◇ Statement that Respondent is presumed not responsible

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## 2. Written Notice

- ◇ Must Inform Parties:
  - ◇ That they may have an advisor of their choice- can be a lawyer, but is not required to be
  - ◇ That they may inspect and review evidence

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## 2. Written Notice

- ◇ Must Inform Parties:
  - ◇ Of any provision in college's code of conduct that prohibits knowingly making false statements or submitting false information during grievance process

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## 2. Written Notice

- ◇ Must Inform Parties:
  - ◇ A notice of additional allegations is required to known parties if the college decides to investigate allegations that are not included in the original notice

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## 2. Written Notice

- ◇ Must include sufficient details:
  - ◇ Identities of the parties involved
  - ◇ The conduct allegedly constituting sexual harassment
  - ◇ Date and location of the alleged incident

## 3. Dismissal

- ◇ Mandatory Dismissals
  1. If the conduct alleged would not constitute sexual harassment even if proved
  2. Did not occur in institution's education program or activity
  3. Did not occur against a person in the United States

## 3. Dismissal

### ◇ Discretionary Dismissals

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
2. The Respondent is no longer enrolled or employed
3. The specific circumstances prevent the college from gathering evidence

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## 4. Consolidation

Can consolidate formal complaints when:

- ◇ Allegations against more than one Respondent, or
- ◇ Allegations by more than one Complainant against one or more Respondents, or
- ◇ By one party against the other party,

AND the allegations arise out of the “same fact or circumstances”

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## 5. Investigation

Institution must:

1. Ensure that the burden of proof and the burden of gathering evidence rest on the institution and not on the parties, except certain records
2. Provide an equal opportunity for parties to present witnesses, including fact and expert witnesses, and other **inculpatory and exculpatory evidence**

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## 5. Investigation

Institution must:

3. Not restrict the ability of either party to discuss the allegations or gather and present evidence
4. Provide the parties with the same opportunity to have others present during the proceeding
5. Provide written notice to a party who is invited or expected to participate

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## 5. Investigation

Institution must:

6. Provide the parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is **directly related** to the allegations raised in a formal complaint.

This includes the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and **inculpatory or exculpatory evidence** whether obtained from a party or other source.

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## 5. Investigation

Before the investigative report is complete, institution must:

- ◇ Send each party, and their advisor, the evidence subject to inspection and review
- ◇ Allow the parties 10 days to submit a written response
- ◇ Consider the parties' response prior to completion

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## 5. Investigation

Institutions must create an investigative report that “fairly summarizes relevant evidence”

- ◇ Send to each party, and their advisor, the investigative report 10 days prior to a hearing
- ◇ Allow parties to review and respond to investigative report

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## 6. Live Hearing

- ◇ After the investigation, a hearing in the presence of the decision-maker(s) will take place
- ◇ The decision-maker(s) cannot be the Title IX Coordinator or the investigator
- ◇ Each party's advisor can ask the other party and any other witnesses all relevant questions and follow-up questions

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## 6. Live Hearing

- ◇ Can be done simultaneously via technology with parties in separate rooms
- ◇ Decision-maker(s) and parties must be able to see and hear the party or witness answering questions

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## 6. Live Hearing

### Cross-examination:

- ◇ Directly, orally, and in real time
- ◇ Questions must be done by the party's advisor
- ◇ Parties cannot ask questions themselves
- ◇ Must ensure parties have an advisor

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## 6. Live Hearing

### Relevancy:

- ◆ Before the party or witness answers, the decision-maker(s) must determine whether the question is relevant
- ◆ Decision-maker(s) must explain any decision to exclude a question as not relevant

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## 6. Live Hearing

### Relevancy of Questions about Sexual Predisposition/History:

- ◆ 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

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## 7. Determination

- ◇ After the hearing, decision-maker(s) must issue a written determination regarding responsibility
- ◇ For Three Rivers College, the decision-maker(s) will follow the “Preponderance of Evidence” Standard
- ◇ Single investigator model is prohibited

## 7. Determination

Written Determination Must Include:

1. Identification of the allegations
2. Description of the procedural steps taken
3. Findings of fact supporting the determination
4. Conclusions regarding the application of the institution's Code of Conduct to the facts



## 7. Determination

Written Determination Must Include:

5. Statement and rationale for result of each allegation
  - ◇ Determination regarding responsibility
  - ◇ Any disciplinary sanctions
  - ◇ Future remedies
6. The procedures and bases for the Complainant and Respondent to appeal

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## 8. Appeals

- ◇ Must offer both parties an appeal from a determination or a dismissal of a formal complaint or an allegation therein based on:
  1. Procedural irregularity that affected the outcome of the matter
  2. New evidence that was not reasonably available at the time the determination was made that could affect the outcome of the matter
  3. Conflict of Interest or Bias that affected the outcome of the matter

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## 8. Appeals

- ◇ For appeals, the institution must:
  - ◇ Notify the other party in writing when an appeal is filed
  - ◇ Decision-maker(s) for the appeal cannot be the same person as the original decision-maker, the investigator, or the Title IX Coordinator

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## 8. Appeals

- ◇ For appeals, the institution must:
  - ◇ Give both parties an opportunity to submit a statement supporting or challenging the outcome
  - ◇ Issue a written decision simultaneously to both parties

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# Informal Resolutions

- ◇ Only available when a formal complaint is filed
- ◇ Written notice to the parties:
  - ◇ The allegations
  - ◇ The requirements of the process
  - ◇ The right to withdraw

# Informal Resolutions

- ◇ Need written, voluntary consent
- ◇ Not available for complaints alleging an employee harassed a student



# Retaliation

- ◇ Must remain confidential:
  - ◇ Individuals who made a report
  - ◇ Complainant
  - ◇ Respondent
  - ◇ Witnesses
- ◇ Confidentiality exceptions:
  - ◇ To conduct an investigation, hearing, or judicial proceeding

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# Retaliation

- ◇ College or other person may not intimidate, coerce, or discriminate:
  1. For the purpose of interfering with any right under Title IX, or
  2. Because the individual participated or refused to participate
- ◇ Retaliation complaints are addressed under the Title IX grievance process

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## Record Keeping: *Response*

- ◆ Record of college's response must include:
  1. Actions taken in response to a report or formal complaint
  2. Why their response was not "deliberately indifferent"
  3. Measures to restore or preserve equal access to education



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## Training



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# Training

- ◇ Must Receive Training On:
  - ◇ The new definition of sexual harassment
  - ◇ Scope of the education program or activity
  - ◇ How to conduct an investigation and grievance process
  - ◇ How to serve impartially

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# Training

- ◇ Training for **all staff** on how to identify and report sexual harassment
- ◇ Training for Title IX Coordinator, investigators, and decision-maker(s), including those in charge of decisions and appeals
- ◇ Maintaining records for 7 years and posting the materials on the college's website

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