

Three Rivers College Title IX Team Training

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What is Title IX?

“No person in the United States shall, on the basis of sex, be excluded from the 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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Where Does Title IX Apply?

In a school's education program or activity in US

In 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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Title IX Team

TITLE IX COORDINATOR

- Coordinates College's compliance efforts

INVESTIGATOR

- Investigates allegations in a formal complaint and creates investigative report

DECISIONMAKER

- Weighs the evidence and issues a written determination of responsibility

FACILITATOR

- Facilitates an informal resolution process, upon parties' consent, that does not involve a full investigation

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College Policies

SR 2120 Title IX for Students

PR 4840 Title IX for Employees

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College Policies

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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Title IX Co-Coordinators

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Recordkeeping for 7 years

- Records of investigations
- All training material
- Results of appeals
- Results of actions taken
- Results of informal resolutions
- Supportive Measures

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Record of Responses

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

1. The new definition of sexual harassment
2. Scope of the education program or activity
3. How to conduct an investigation and grievance process
4. How to serve impartially

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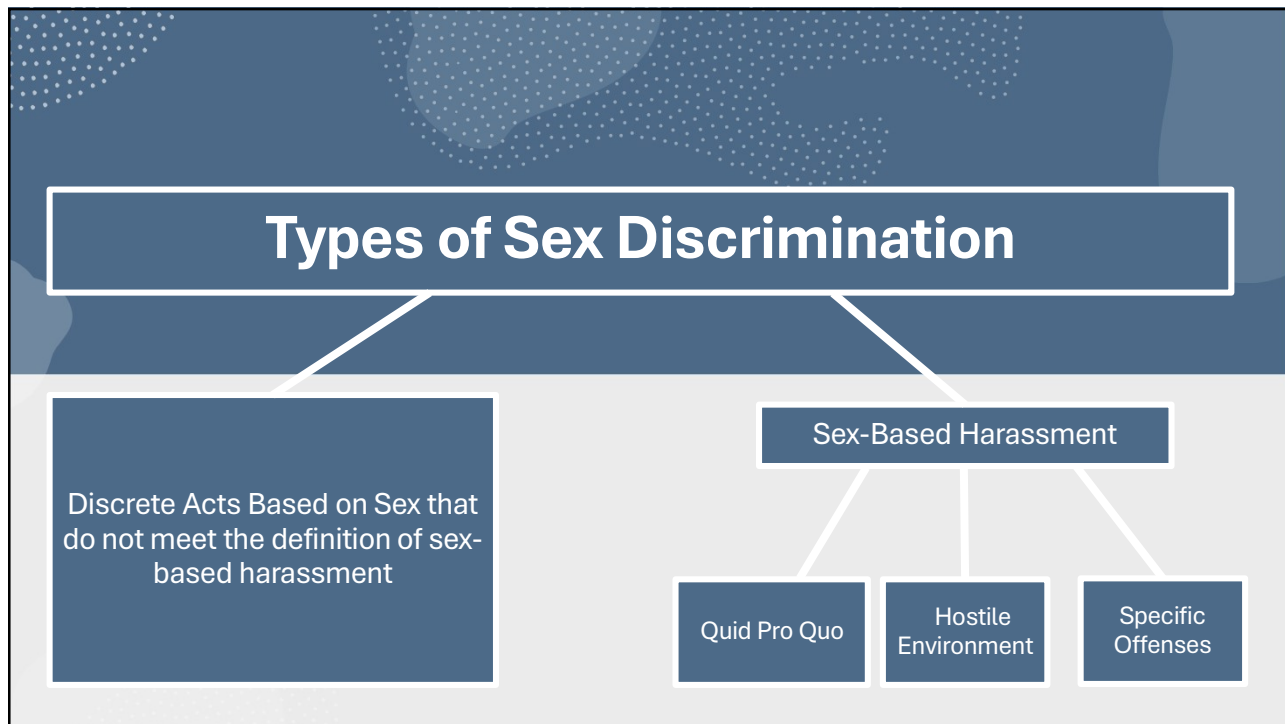
Training

- Training for all staff on how to identify and report sexual harassment
- Training for Title IX Coordinator, investigators, and decision-makers, decision-makers on appeal

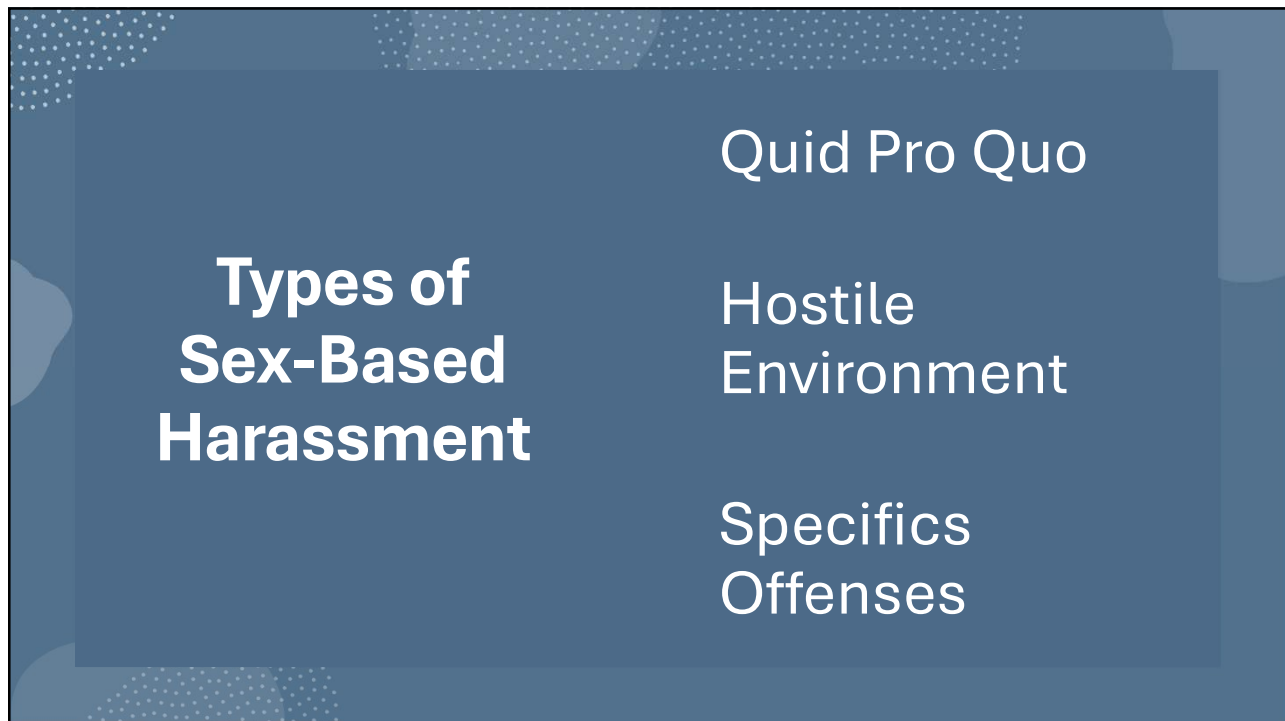
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Definitions

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Harassment

- Between students, between employees, between students and employees
- Between different or same genders
- Involving third-party (visitor, vendor)
- Switch from welcomed to unwelcomed
- Welcomed by one person but not another

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Quid Pro Quo

- **An employee**
- Expressed or implied
- **Conditioning an aid, service, or benefit of the College**
- On an individual's participation in **unwelcome sexual conduct**

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Hostile Environment

- Unwelcomed conduct
- Reasonable person
- So severe, pervasive, ***and*** objectively offensive
- That it effectively denies a person's equal access to education program or activity (i.e., creates a hostile environment)

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Hostile Environment

So severe, pervasive, ***and*** objectively offensive:

- Frequency
- Severity
- Context
- Physically threatening or humiliating
- Impact on access to educational program or activity

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Sexual assault

Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, Statutory Rape

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
Existence of relationship determined based on consideration of the length, type, and frequency of interaction

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Domestic violence

Crimes committed by a person who:

- Is a **current or former spouse or intimate partner** of the victim, or similarly situated
- Shares a child with the victim
- Is or was **cohabitating** with the victim as a spouse or intimate partner;
- **Shares a child** in common with the victim;
- Commits acts against a **youth or adult victim** who is protected from those acts under the family or domestic violence laws of Missouri

Stalking

A course of conduct directed at a specific person that would cause a reasonable person to **fear for the person's safety** or the safety of others; or **suffer substantial emotional distress**

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Advisor

- Parties may have an advisor of their choice, who may be, but is not required to be, an attorney

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Retaliation

- Cannot intimidate, threaten, coerce, or discriminate against any individual
- For the purpose of interfering with a right under Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

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Retaliation

- Must remain confidential:
 - Individuals who made a report
 - Complainant
 - Respondent
 - Witnesses
- Exceptions: to conduct an investigation, hearing, or judicial proceeding

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Consent

- Knowing, voluntary, and clear permission by word or action to engage in sexual activity
- “To give permission”
- Consent can be revoked at any moment
- The absence of “no” does not mean “yes”

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Consent

- Consent is informed, actively given, and mutually understood and accepted
- Coercion, intimidation, and incapacity prevent consent
- Consent to one form of conduct does not imply consent to any other form of conduct
- Consent can be withdrawn

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Consent

Incapacitation:

- “A state where someone cannot make a rationale, reasonable decision because they lack the capacity to give knowing consent”
- Ex: to understand the “who, what, when, where, or how” of their sexual interaction

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Two Pathways

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2 Pathways

Actual Knowledge

Notice of sexual harassment or allegations of sexual harassment

Formal Complaint

Written and signed complaint alleging sexual harassment and requesting the College investigate

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2 Responses

Actual Knowledge

1. Prompt response
2. Supportive measures
3. Option for emergency removal
4. Option for administrative leave

Formal Complaint

1. Formal Complaint
2. Evaluation of Complaint
3. Investigation
4. Exchange of Questions
5. Determination
6. Appeal

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College's Response

- Must respond promptly and in a way that is not “deliberately indifferent”
- “Deliberately Indifferent” = clearly unreasonable in light of the known circumstances


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Actual Knowledge

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Mandatory Reporter

PR4840: any part-time or full-time employee of the College who receives notice a student or employee may have been the victim of a suspected Title IX incident


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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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Actual Knowledge

- “Actual knowledge” is notice of sexual harassment or allegations of sexual harassment to:
 - Title IX Coordinator, or
 - School official who has authority to institute corrective measures

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Response after Actual Knowledge

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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Supportive Measures

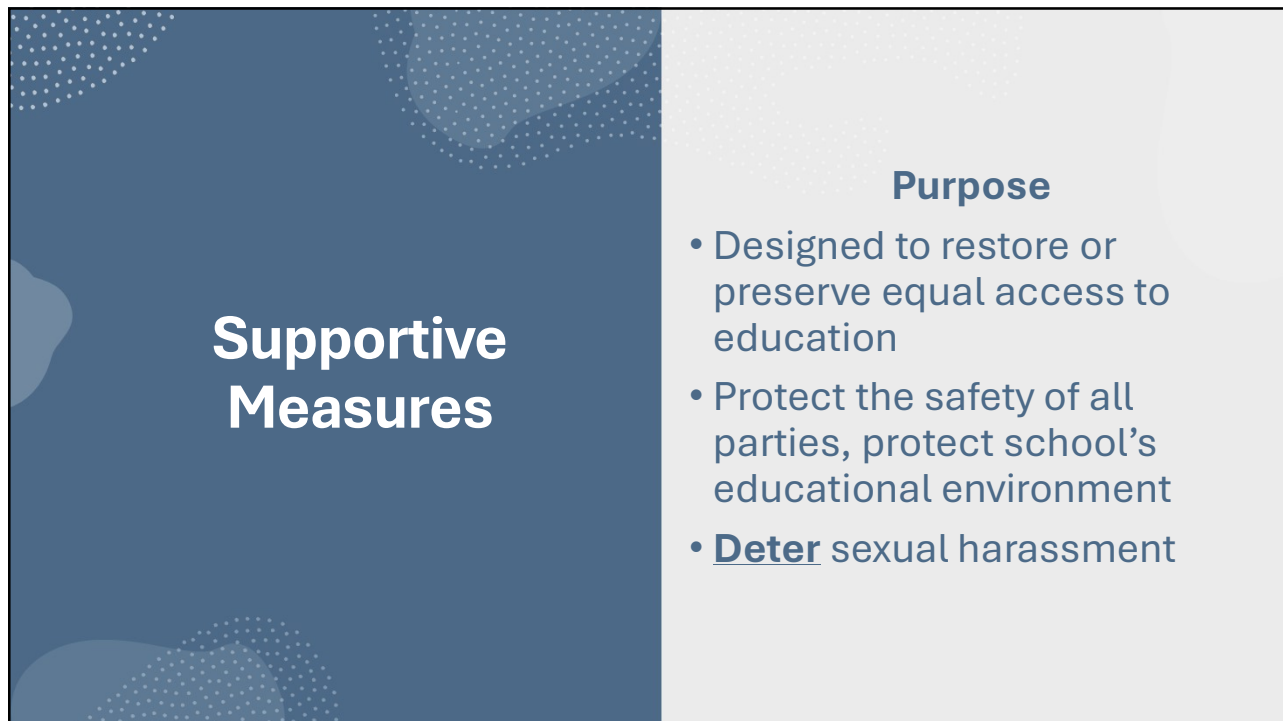
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Supportive Measures

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

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Supportive Measures

Purpose

- Designed to restore or preserve equal access to education
- Protect the safety of all parties, protect school's educational environment
- **Deter** sexual harassment

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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 school's response, schools must specify why
- Offer to both Complainant and Respondent

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Prohibited Supportive Measures

- Unreasonably burden either party
- Be imposed for punitive or disciplinary reasons before completion of grievance procedure

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Examples of Supportive Measures

- 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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Emergency Removal

An immediate threat to the physical health or safety of an individual

- Must conduct an individualized safety and risk analysis
- Must provide Respondent with notice and an opportunity to challenge the decision

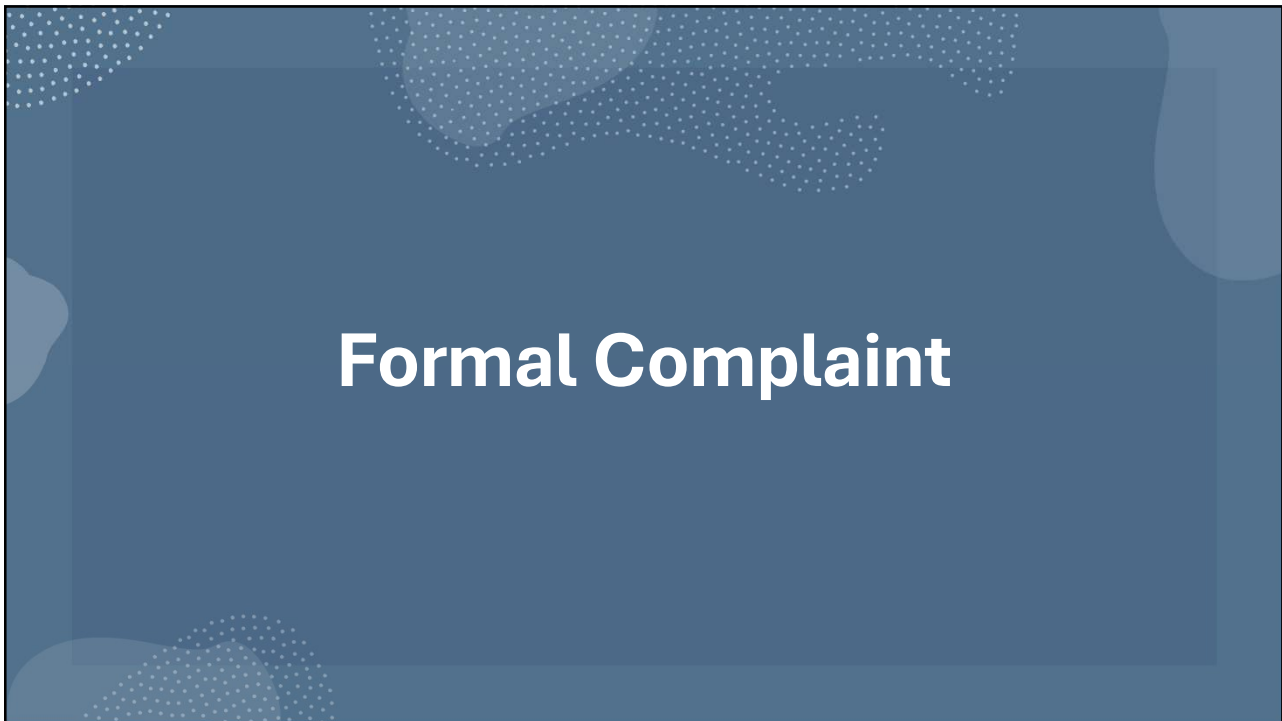
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Admin Leave

May place employee
Respondent on administrative
leave during grievance
procedure

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Formal Complaint


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Formal Complaint

- Written and signed formal Complaint requesting that the College investigate
 - Description of allegation (date, location, witnesses)
 - As practical, in Complainant's words

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Formal Complaint

- 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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Who Can Be Complainant


Who can file a Formal Complaint?

- Student or employee
- Parent or Guardian
- Title IX Coordinator
- For Sexual harassment or Retaliation only

Who will be the Complainant?

- Student or Employee
- Must be Student or Employee at time of Complaint

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Formal Complaint by Title IX 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

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Response to Formal Complaint

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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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Basics of Grievance Procedure



Any provisions must apply equally to all parties



Procedures must be in writing



No Conflicts of Interest



No Bias for or against Complainants or Respondents

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Basics of Grievance Procedure



Objective Evaluation of Evidence



Describe range of disciplinary sanctions, remedies, supportive measures



No Use of Privileged Information



Procedure for Appeals

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Basics of Grievance Procedure



Presumption of “not responsible” until a determination



Prompt time frames



Treat Complainant and Respondent Equitably

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Evaluation of Complaint

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Written Notice

1. Notice of the College's grievance process, including informal resolution process
2. Notice of the allegations of sexual harassment
3. Statement that Respondent is presumed not responsible
4. That they may have an advisor of their choice
5. That they may inspect and review evidence



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Written Notice

- Include provision in College's code of conduct that prohibits knowingly making false statements or submitting false information during grievance process
- A notice of additional allegations is required if added to investigation



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Written Notice

- Identities of the parties involved
- The conduct allegedly constituting sexual harassment
- Date and location of the alleged incident



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Mandatory Dismissals

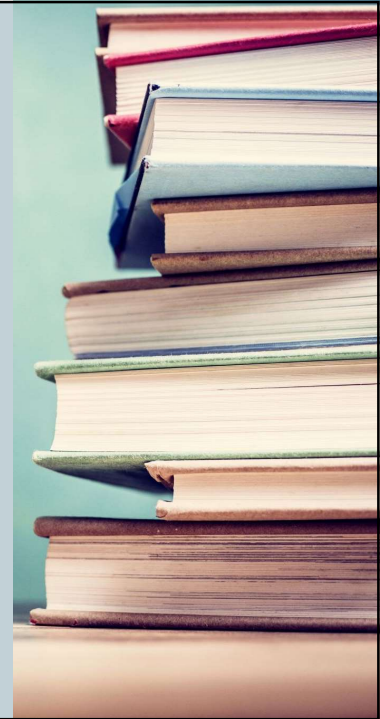
1. If the conduct alleged would not constitute sexual harassment even if proven
2. Did not occur in school's education program or activity
3. Did not occur against a person in the United States



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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



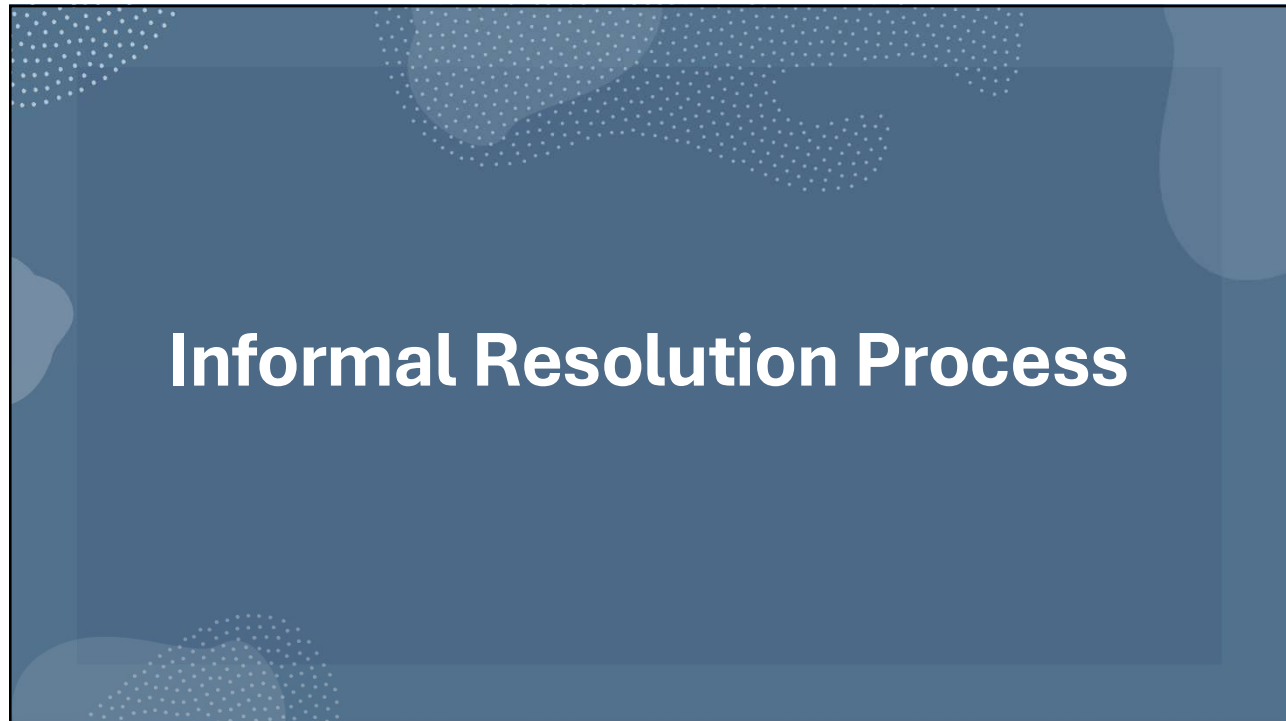
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Consolidation

1. Allegations against more than one Respondent, or
2. Allegations by more than one Complainant against one or more Respondents, or
3. By one party against the other party,
AND the allegations arise out of the “same fact or circumstances”



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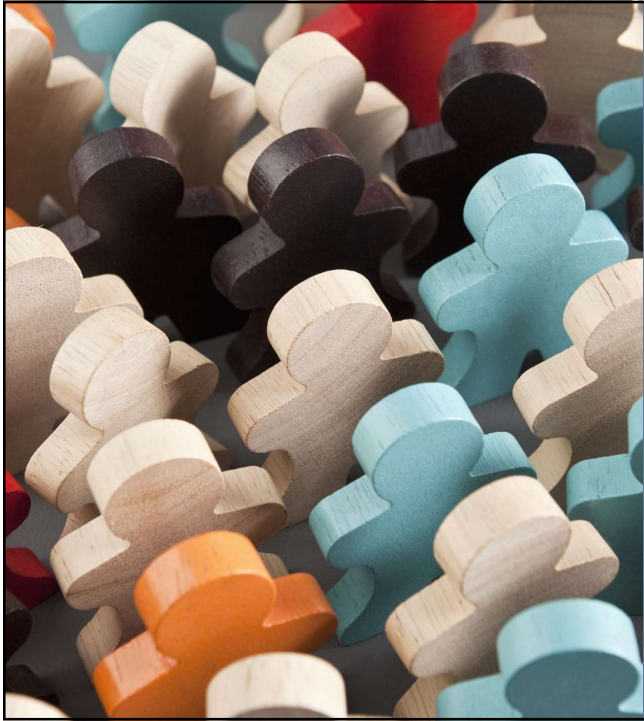
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Informal Resolution Process

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

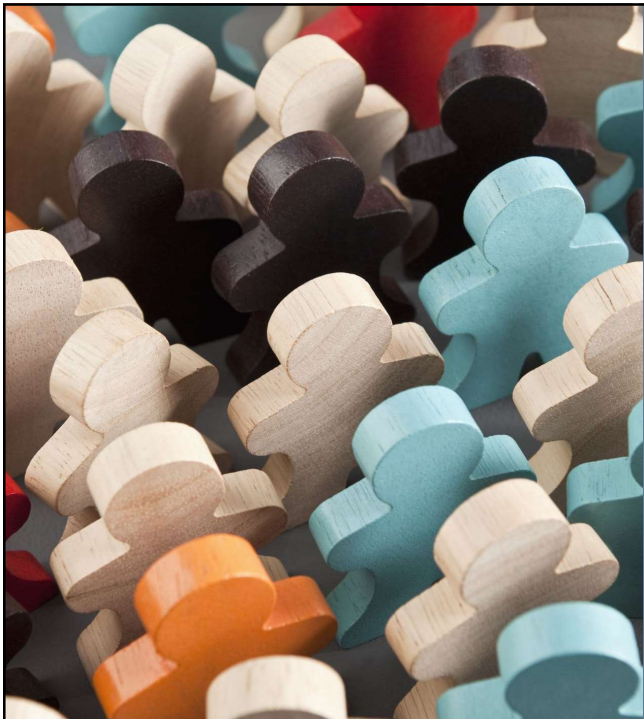
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Informal Resolution Process

- Informal Resolution is a voluntary process that the Parties can engage in after a formal complaint of sexual harassments has been filed
- Aim is to resolve the formal complaint without formal investigative process
- Informal Resolutions can occur within the College or with use of a 3rd party mediator, attorney, or other dispute resolution process

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Informal Resolution Process

- Need written, voluntary consent
 - Notice of allegations
 - Requirements of the process
 - Right to withdraw
- Document beginning of resolution process
- Document agreed-upon resolution

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Informal Resolution Process

- After filing of a formal complaint (not available outside of grievance process)
- Not available for complaints alleging an employee harassed a student
- Before Determination of Responsibility
- Participating in Informal Resolution process tolls the investigation

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Investigation of Complaint

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Investigator

- Determined by Title IX Coordinator
- Investigator must be unbiased and without conflict of interest to both Complainant and Respondent
- Consider outside investigator if conflict of interest (e.g., if complaint against Title IX Coordinator)



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Investigations

1. Collect Evidence
2. Conduct Interviews
3. Allow Parties to Review Evidence
4. Investigative Report



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Investigations

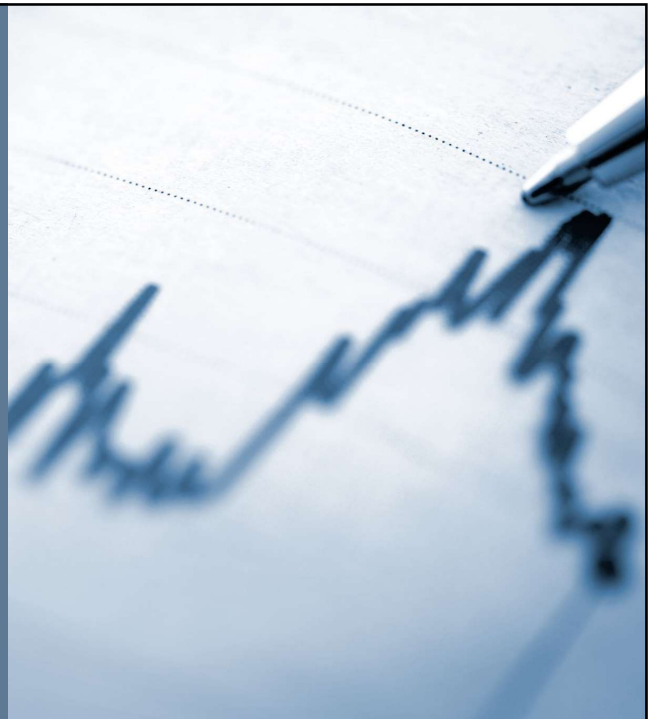
- Ensure that the burden of proof and the burden of gathering evidence rest on the school and not on the parties, except certain records
- Provide an equal opportunity for parties to present witnesses and evidence
- Do not restrict the ability of either party to discuss the allegations or gather and present evidence



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Investigations

- Investigate efficiently and effectively
- Take allegations seriously
- Do not refuse investigation because of delayed timing of complaint



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Investigations

- Provide the parties with the same opportunity to have others present during the proceeding
- Provide written notice to a party who is invited or expected to participate
- Provide the parties an equal opportunity to inspect and review any evidence



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Investigations

- Parties are not restricted in discussing allegations with others
- Parties have the right to gather evidence favorable to their position
- No party can intimidate, harass, retaliate
- Monitor situation during investigation



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Interviews

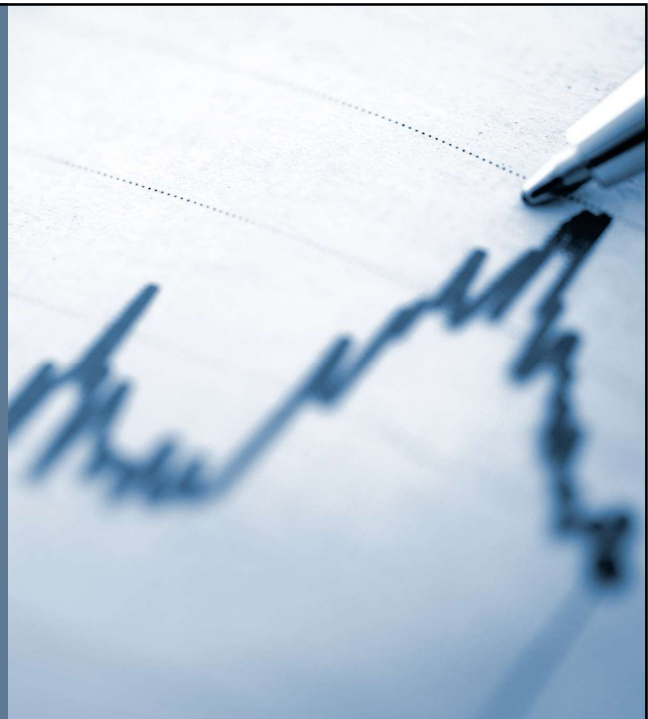
- Face-to-face
- Relaxed and respectful
- Brief introduction of purpose
- Obtain signed and dated written statement
- Open-ended questions
- Identify specifics
- Thorough notes
- Do not promise confidentiality
- Do not offer your opinion



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Interviews

- Review policies and timelines
- Review allegations
- Review evidence
- Purpose: discover information, corroborate facts, determine credibility



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Interviews

- Listen
- Try to accept confusing emotions
- Recognize possibility of secondary trauma
- Avoid judgment
- Get specifics
- Focus on inculpatory and exculpatory



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Possible Evidence

- Interviews: Complainant, Respondent, Witnesses
- Personnel or student file
- Emails, social media, videos
- Law enforcement files



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Relevant Evidence

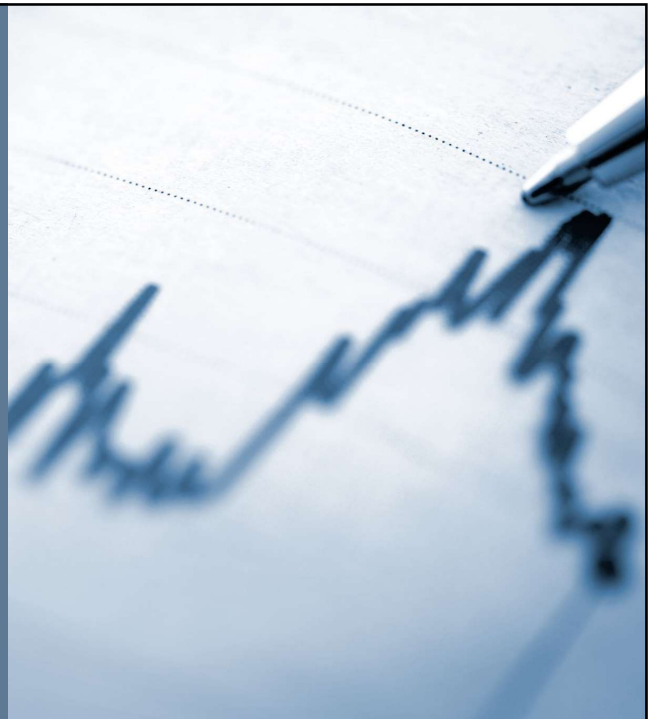
- It has a tendency to make a fact more or less probable than it would be without the evidence
- Fact is of consequence in determining the action or conduct
- Relevant evidence goes towards proving whether a fact of consequence to the actual allegations are more or less likely to be true



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Prohibited Evidence

- No evidence of Complainant's prior sexual history or behavior unless:
 - Offered to prove that someone other than the Respondent committed the conduct
 - If the evidence of specific incidents of prior sexual conduct between the Respondent and Complainant is offered to prove consent
- No seeking privileged information or records unless privilege is waived by the party



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Evidence

- Must share inculpatory and exculpatory evidence
- Evidence that is favorable to the Complaint and shows the Respondent is responsible v. evidence that is favorable or exonerates the Respondent



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Investigative Report

Before the investigative report is complete, schools must:

- Send each party 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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Investigative Report

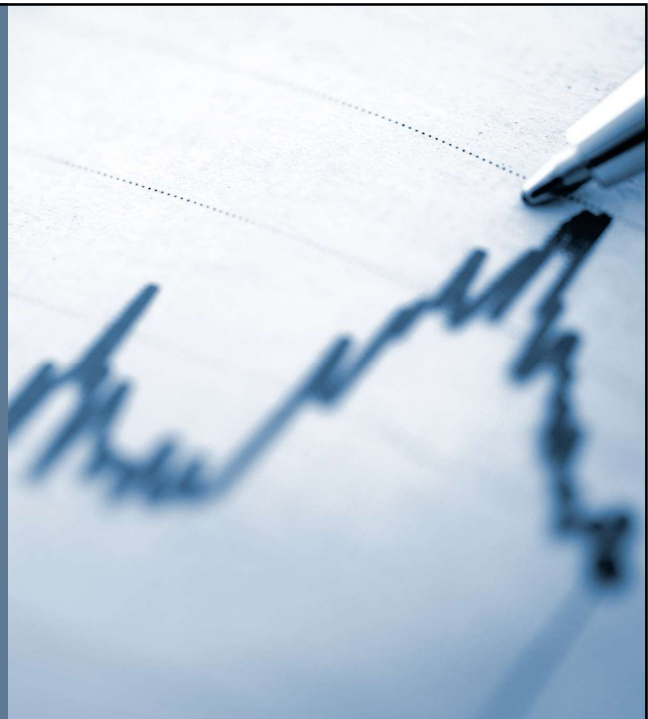
- Colleges must create an investigative report that “fairly summarizes relevant evidence”
- Send to each party the investigative report 10 days prior to a hearing
- Allow parties to review and respond to investigative report



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Advisors

- Has access to the list of evidence, shared evidence of the parties, as well as the investigative report
- Can attend the interview



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Advisors

- Parties may have an advisor present during interviews
- Advisor receives notices and reports
- Advisor may be an attorney
- Advisor does not engage in argument/interrogation during interviews
- College required to provide advisor at hearing



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Advisors

- The parties have an equal opportunity to review and respond to the investigator's investigative report
- Allows the parties to advocate to the decision-maker regarding the relevance of evidence and omission of relevant evidence
- Parties can provide input and make arguments about the relevance of evidence, evidence they believe was overlooked in the investigative report, and how a decision-maker should weigh the evidence



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Live Hearing

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Live Hearing

- The decision-maker cannot be Title IX Coordinator or investigator
- Each party's advisor can ask other party and any other witnesses all relevant questions and follow-up questions



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Logistics

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



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Advisors

- Scope and order of relevant questions
- Opportunity to probe credibility and reliability of witnesses or parties
- Decisionmaker rules on relevancy



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Advisors

- Colleges may establish restrictions regarding the extent to which the advisor may participate in the proceeding, as long as the restrictions apply to both parties
- Can limit advisor participation, but not advisor “choice” or “presence” in meeting



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Advisors

- No prohibition of conflict of interest or bias for advisors
- Do not need to be unbiased because advisor’s role is to cross-examine on behalf of one party



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Advisors

- Cross-examination must be done by an advisor, not the parties themselves
- Colleges must provide a party with an advisor if the party appears at the hearing without one free of charge
- Advisor may be an attorney
- Colleges do not need to provide advisors for an informal resolution process



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Witnesses

- Colleges can work with witnesses regarding scheduling of a hearing and the ability to permit witnesses to testify remotely
- Colleges cannot retaliate against a party or witness for participating or not participating
- Witnesses cannot be compelled to appear at a hearing
- Parties must have an equal opportunity to present witnesses
- Both parties face the same limitations inherent in a lack of subpoena power



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Rules of Decorum

- A College may adopt rules of order or decorum to forbid badgering a witness
- May deem repetition of the same question to be irrelevant
- Can determine the time and length of breaks



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Cross Examination

- Must be conducted directly, orally, and in real time by the parties' advisors
- Can never be done by a party personally
- Only relevant questions may be asked



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Cross Examination

- At the request of a party, the College must allow the live hearing to occur with the parties located in separate rooms via technology
- The decision maker and parties must be able to simultaneously see and hear the party or witness answering questions
- College has discretion to allow all participants to appear at the live hearing virtually



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Recording or Transcript

- Colleges must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and view



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Decisionmaker

- Determine relevancy of evidence presented during hearing
- Determine relevancy of questions immediately before a party or witness answers



101

Relevancy

- It has a tendency to make a fact more or less probable than it would be without the evidence
- Fact is of consequence in determining the action or conduct
- Relevant evidence goes towards proving whether a fact of consequence to the actual allegations are more or less likely to be true



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Relevancy

- Advisors permitted to ask all relevant questions and follow-up questions
- Decisionmaker determines relevancy
- Decisionmaker provides explanation for excluding non-relevant questions



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Prohibited Questions

No questions or evidence on Complainant's prior sexual history or behavior unless:

- Offered to prove that someone other than the Respondent committed the conduct
- If the evidence of specific incidents of prior sexual conduct between the Respondent and Complainant is offered to prove consent



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Prohibited Evidence

- Privileged information or treatment records, without the party's prior written consent
- Information protected by legally recognized privilege: attorney-client, clergy-communicant, marital confidences, and therapist-patient



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Discretion

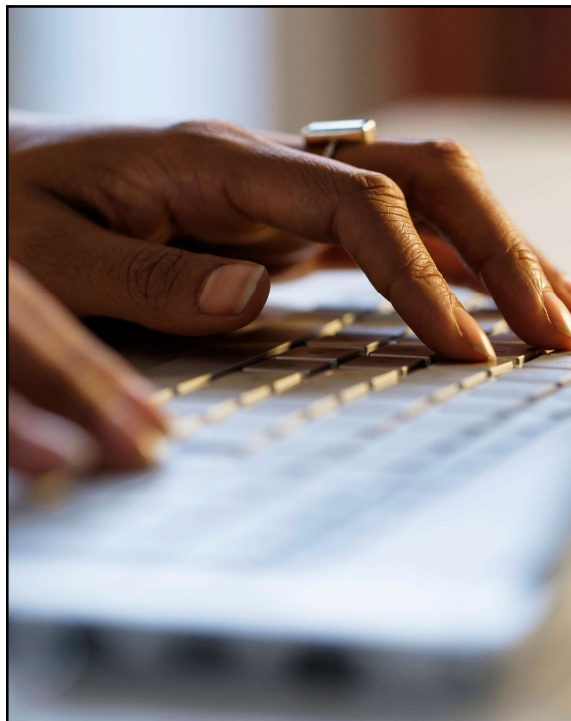
- A College cannot adopt rules excluding certain types of relevant evidence (e.g., lie detector test or rape kits)
- A College cannot adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence



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Determination

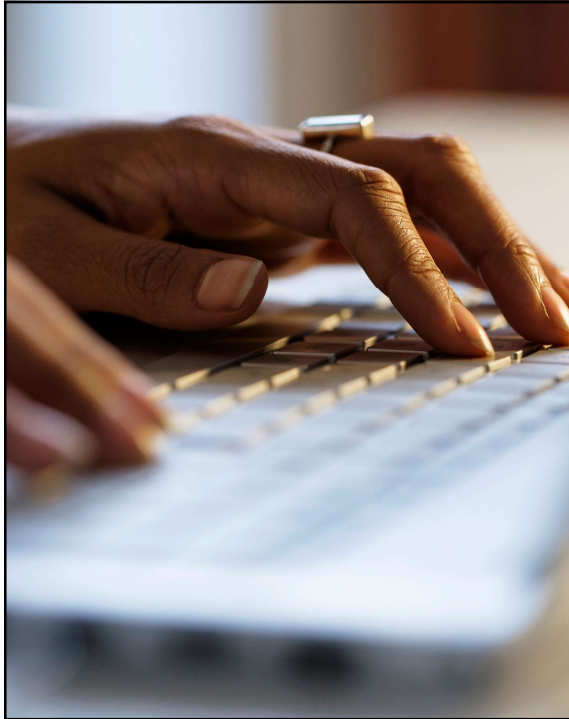
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Reliance on Statements

- The decision-maker cannot rely on the statements of a party or witness who does not submit to cross-examination
- “Submit to Cross-Examination” means answering those questions that are relevant
- If a party or witness was not called by a party’s advisor to be cross-examined, or was not asked a particular question about a particular statement in the investigative report, the decision-maker is not precluded from relying on a statement by a party or witness who was not given the opportunity to be cross-examined

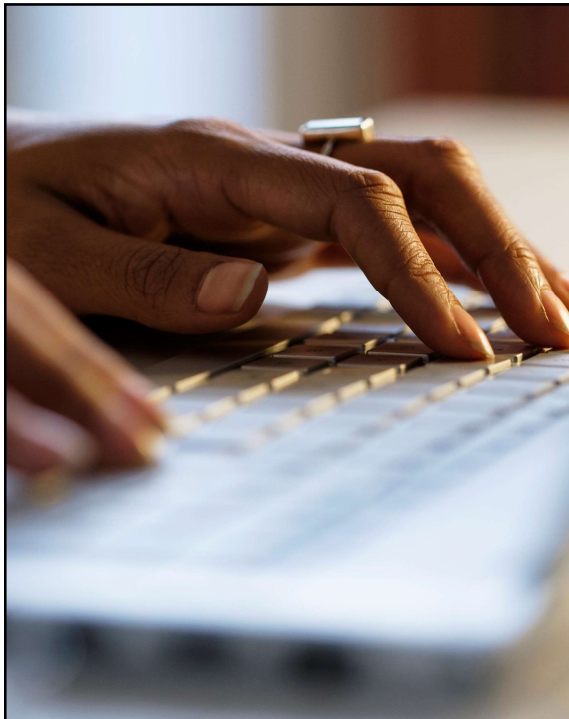
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Inferences

- Decision-maker cannot draw an inference regarding responsibility based solely on a party or witness's absence from formal resolution process or a refusal to answer a question during an exchange of questions

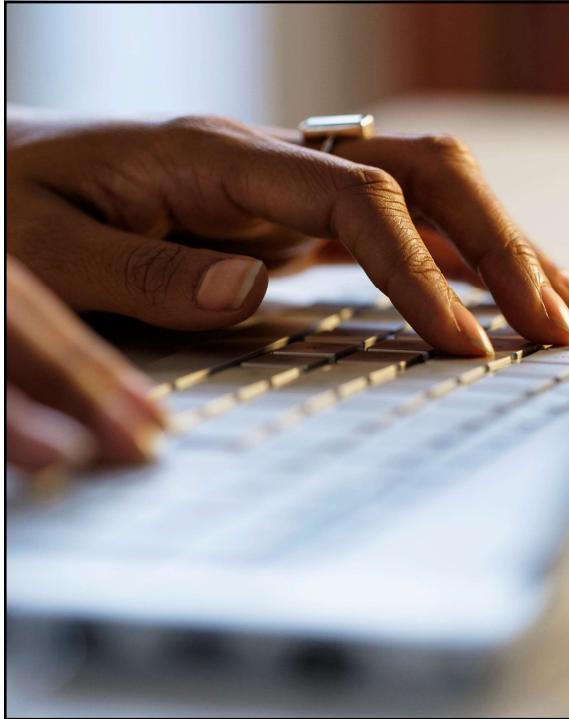
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Reliance on Evidence

- The prohibition on reliance of statements does not include evidence (such as videos) that do not constitute a person's intent to make factual assertions or do not contain a person's statements

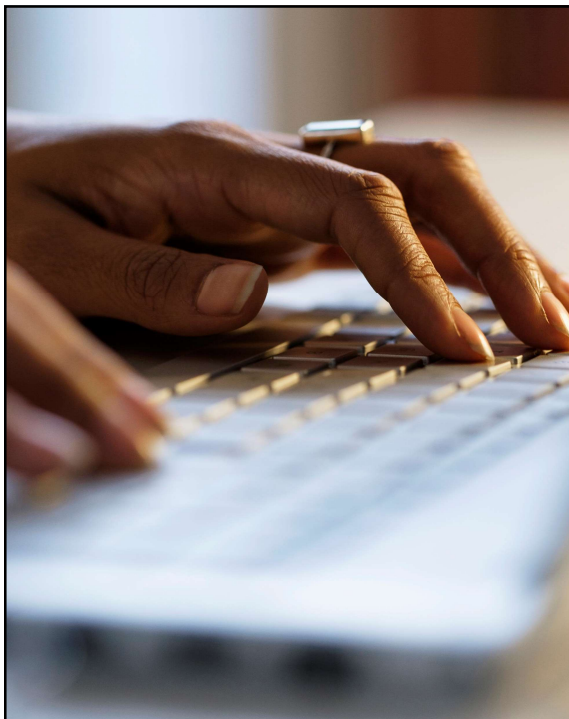
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Reliance on Evidence

- But police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination

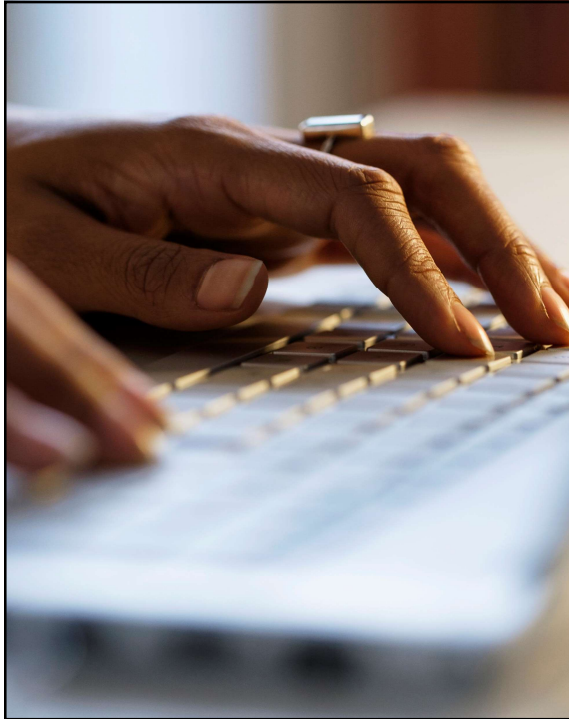
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Weighing the Evidence

- Colleges may decide how relevant evidence must be evaluated for weight or credibility by a recipient's decision-maker, and Colleges have discretion to adopt and apply rules in that regard
- The rules must apply equally to both parties
- This is not the same as determining admissibility, Colleges cannot adopt their own rules on admissibility
- Any rules adopted must be publicly available in College's training material

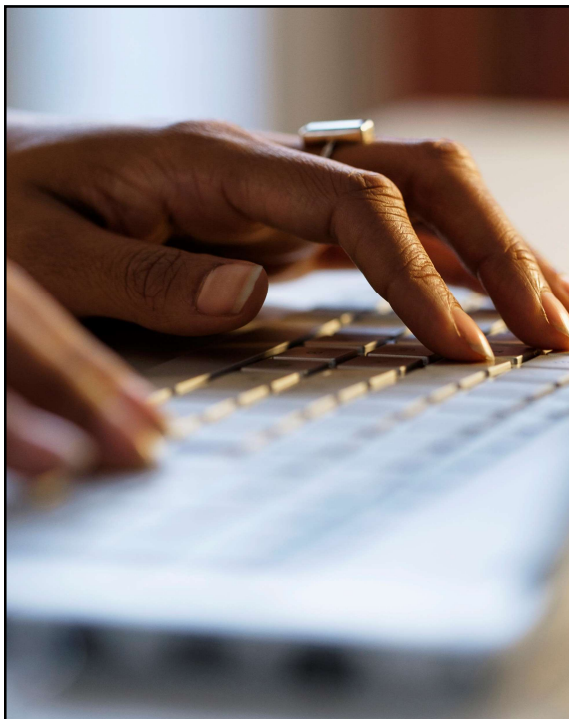
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Determination

- For the College, the decision-maker will follow the “Preponderance of Evidence” Standard
- The burden of proof is met when a reasonable person would accept as “more likely than not” that a fact is true or an incident occurred
- Decision-maker must issue a written determination regarding responsibility
- Single investigator model is prohibited

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Written Determination

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact supporting the determination
- Conclusions regarding the application of the school’s Code of Conduct to the facts

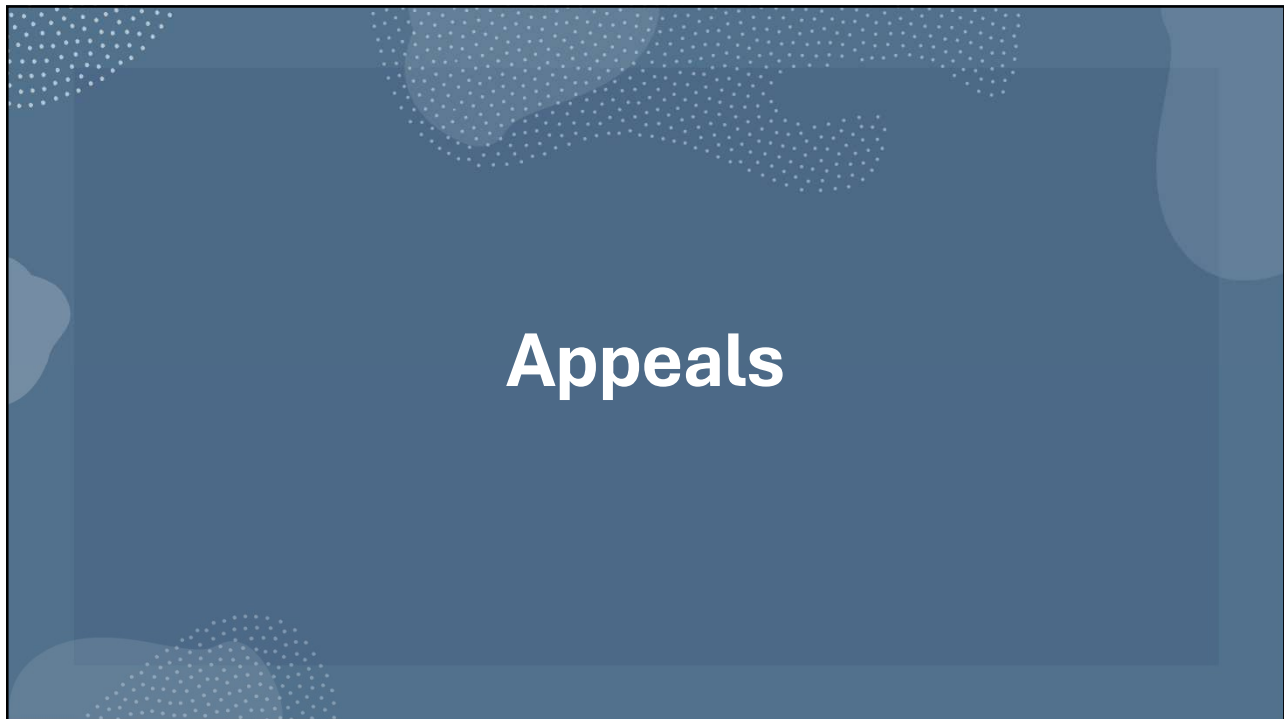
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Written Determination

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

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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
 2. New evidence
 3. Conflict of Interest or Bias



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Appeals

- Notify the other party in writing when an appeal is filed
- New decision-maker on appeal
- 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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