



# North Park University

Title IX Coordinator & Deputy Title  
IX Training

Jessica Nagle | November 15, 2022



## Meet Your Facilitator

**Jessica Nagle**

*She/Her/Hers*

Senior Solutions Specialist

# **Overview of 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



# Title IX Applies to All Forms of Sex Discrimination

Sexual Harassment  
Achievement Awards  
Athletics  
Benefits  
Financial Aid  
Leaves of absences/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

# Title IX Regulations (Sexual Harassment Only)

1. Narrows definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

# Geography Specific

- ✓ On campus or in a building owned or controlled
  - ✓ 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.
- ✓ 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

- 1) Off Campus Conduct
  - Even if it has an impact on the educational program or activity
- 2) Conduct that Occurs Outside the United States

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# 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 Accepted, Hired Enrolled or Employed

# Conduct Outside the Scope



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

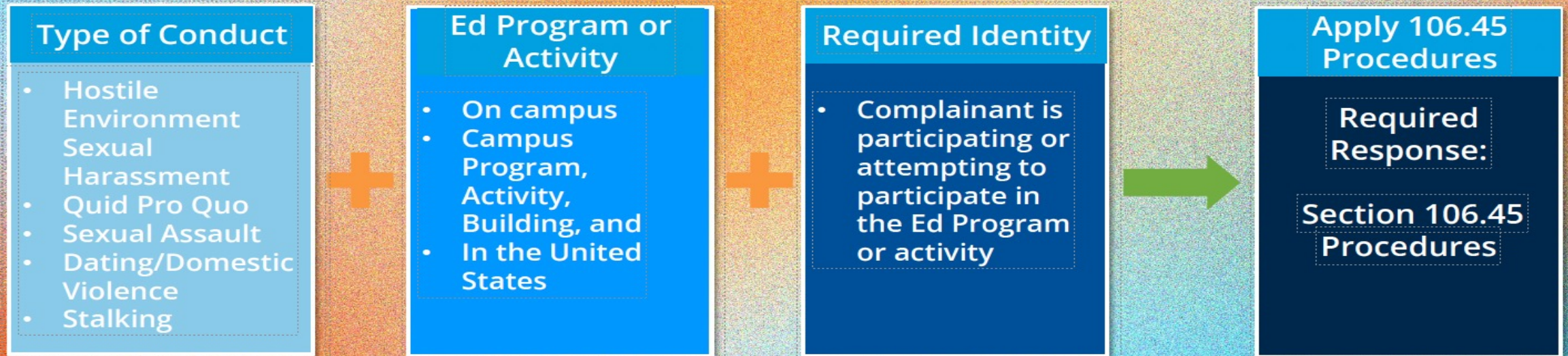
# Reportable Behavior

- Sexual Assault
  - Rape
- Fondling
- Sexual Harassment
- Dating Violence
- Domestic Violence
- Stalking

Consent is affirmative, indicated by words or actions, must be given freely, willingly



# Title IX Application Post May 2020 Regulations





# Actual Notice

## A Narrowed Scope of Institutional Responsibility

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”  
(as newly defined)

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 study abroad  
context)

# Initial Response Requirements

1

## **Receive Report**

Outreach/Response by  
Deputy or Coordinator

2

## **Supportive Measures**

Ongoing assessment (no  
need for complaint)

3

## **Meeting Request**

Template letter sent, with  
resources & support

4

## **Conduct Intake**

Review reporting options,  
effects and rights

5

## **Formal Resolution**

Investigation or informal  
resolution

6

## **Hearing**

Cross exam conducted by  
Advisor

# 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 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

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.”

# Appeals:

## ***Mandatory Grounds***

Procedural irregularity  
that affected the  
outcome of the matter

New evidence that was not  
reasonably available at the  
time the determination  
regarding responsibility or  
dismissal was made, that  
could affect the outcome of  
the matter; and/or

The Title IX Coordinator,  
investigator(s), or decision-  
maker(s) had a conflict of  
interest or bias for or against  
complainants or respondents  
generally or the individual  
complainant or respondent that  
affected the outcome of the  
matter.

# 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

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# **Building a Foundation of Success**

# **Final Rule, Section 106.8 (a)**

**1**

**Designation of Coordinator, Dissemination of Policy, and Adoption of Grievance Procedures**

**2**

**“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”**

**3**

**The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).**

**4**

**Any person may report in person, by mail/email, telephone using the contact information.**

**5**

**Reports can be made at anytime**



# **“Responsibilities Required Under Title IX and the Regulations”**

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.

# **Responsibilities Often Delegated to the Title IX Coordinator**

**1**

**Ensuring that the institutional policies and procedures are compliant with Title IX, federal and state laws**

**2**

**Ensuring dissemination of the policy**

**3**

**Overseeing grievance process to make it is compliant**

**4**

**Staffing various roles & Ensuring training requirements are met**

**5**

**Record keeping (7 years)**

**6**

**Education & Prevention Requirements**



# The Three Essential Functions of Title IX Compliance

## Compliance

- Maintain old policies
- Document everything
- Keep records of all responses, actions taken
- Adhere to policies & procedures
- Implement training and maintain records of dates, times, attendees and training materials
- Create and use templates

## Response

- Caring
- Impartial
- Consistent process
- Consistent use of templates
- Consistent approach
- Equitable touchpoints

## Engage, Educate & Prevent

- Understands the needs of the community you serve
- Build awareness and trust
- Engage with campus partners

# **Impartiality Avoiding Prejudgment and Bias**

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.”  
85 Fed. Reg. 30254 (May 19, 2020).

# Impartiality

## *Avoiding Prejudgment and Bias*

Do not rely on cultural “rape myths”

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

# Impartiality

## *Avoiding Prejudgment and Bias*

Department rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

# Impartiality

## *Avoiding Prejudgment and Bias*

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding schools responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

# Impartiality

*Avoiding Prejudgment  
and Bias*

## Bottom Line:

- ✓ Follow facts of every individual case
- ✓ Investigate in manner that will not allow even a perception of prejudgment or bias for or against any party

# Sources of Compliance Obligations

Title IX Final  
Regulations

Violence Against  
Women Act

Other, Intersecting  
Federal Law and  
State Law

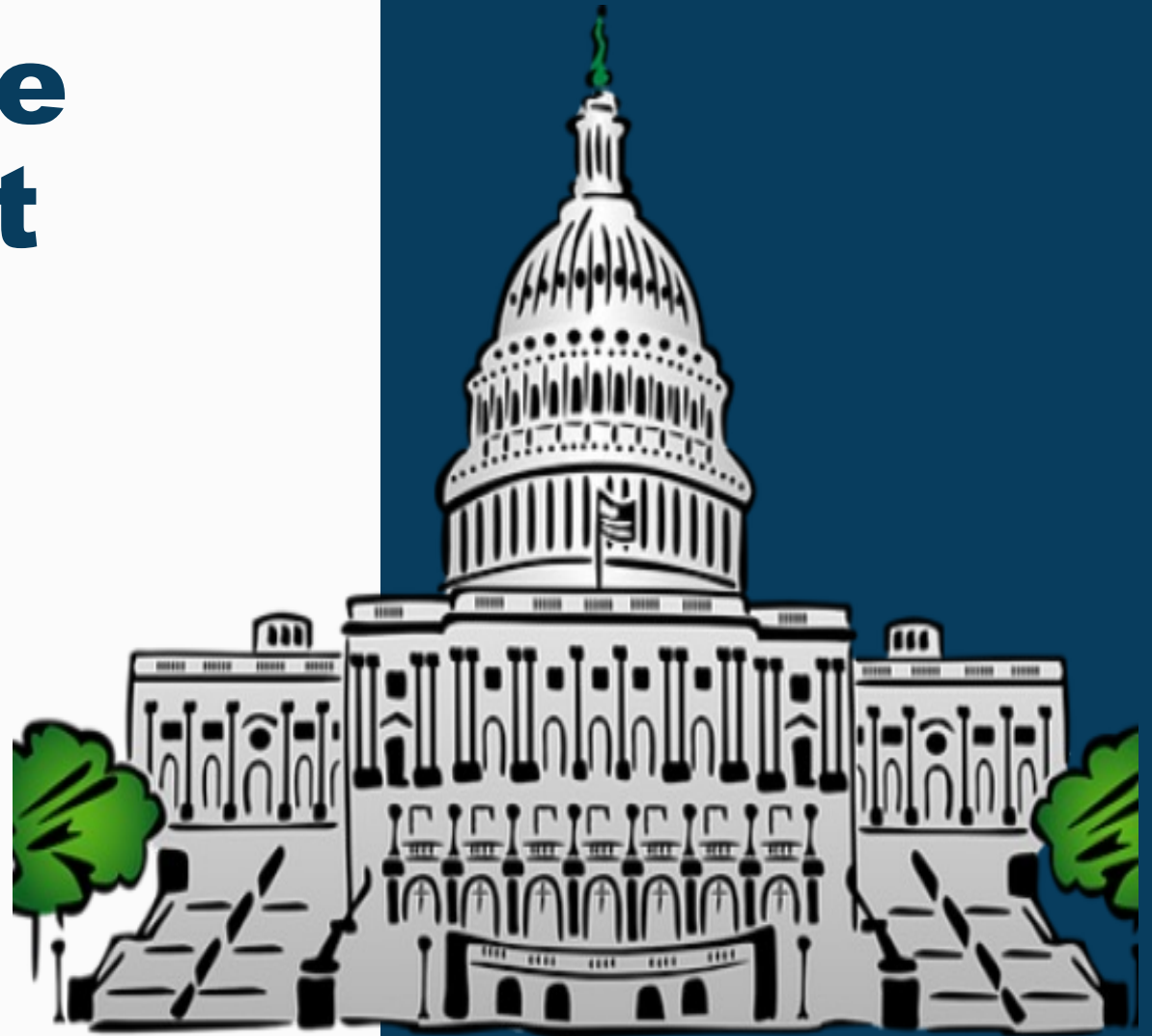
Institutional  
Policies

Legal Precedent

Resolution  
Agreements

# Prevention Education: Violence Against Women Act (VAWA)

- A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.
- Ongoing prevention and awareness campaigns.





# **Title IX Compliance Obligations**

- Designate Title IX Coordinator
- Disseminate Policy, Notifications and Publications
- Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
- Provide supportive measures in accordance with the requirements of section 160.3
- Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
- Maintain records response to sexual harassment in accordance with 160.45 (10)
- Comply with 160.71 prohibition against retaliation

# **A Really Important Moment. Listen Up. It's Okay...**

To not know the answer to every question  
thrown your way

“I don’t know”  
“I’d like to think about that”  
“I’ll get back to you”  
“Thank you for sharing your perspective”

To decline to answer a question

To recognize and assert your expertise

# Who Must Receive Training?

## Title IX Team

Coordinators  
Investigators  
Decision Makers (hearings and appeals)  
Facilitators of Informal Resolution  
“Those who are charged with ensuring a prompt, fair, and impartial investigation and result.”(VAWA)

## Students

New Students  
Existing Students  
Specialized populations  
Student staff

## Faculty

New faculty  
Existing faculty  
Adjunct faculty  
Supervising faculty

## Staff

Senior leadership  
Public Safety/campus law enforcement  
Health care workers

# Training for Title IX Staff

1

The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")

2

How to conduct the grievance process

3

How to serve impartially

4

The technology to be used at a live hearing

5

Rape shield protections

6

Issues of relevance of questions and evidence

Issues of relevance in creating an investigative report.

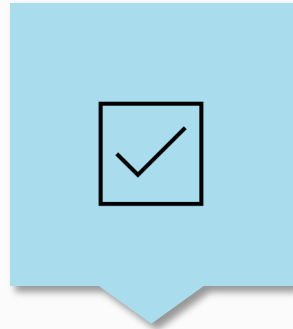
# Infrastructure for Reporting

How to Report	Response	Case Manager	Outreach	Documentation
<p>Develop Methods/ avenues for reporting</p> <ul style="list-style-type: none"><li>• Title IX Email</li><li>• In Person</li></ul>	<p>Communicate reporting methods and what folks should expect after submitting a report</p> <p>Title IX Team will respond during business hours</p>	<p>Develop a plan for receiving and reviewing the reports</p> <p>Reports should be shared with Jessica</p>	<p>Develop a protocol that ensures a prompt response to reports</p> <p>Title IX Team will aim to conduct outreach within 2 business days</p>	<p>Develop and adhere to a practices for documenting reports and responses</p> <p>Title IX Team will record and document reports and upload them to case files</p>

# Receiving Reports and Initiating the Response



**1. REVIEW THE  
REPORT**



**2. DETERMINE  
APPROPRIATE INITIAL  
RESPONSE**



**3. PROMPTLY INITIATE  
THAT  
RESPONSE**



**4. DOCUMENT/RECORD  
THE RECEIPT OF THE  
REPORT AND THE  
RESPONSE THERETO**

# Initial Outreach

Safety  
considerations

Email

(create templates & forms)

Phone

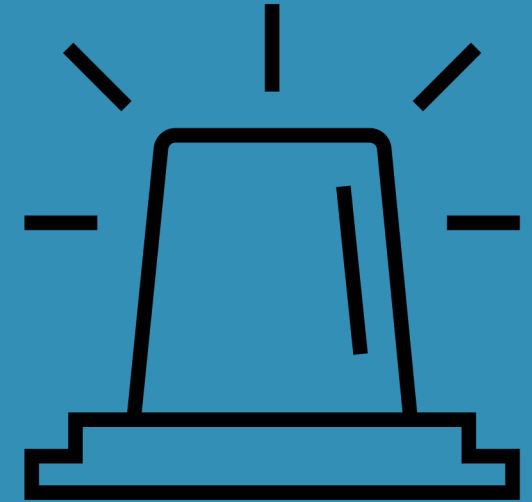
In Person

(RAs/Campus Safety)

Follow-Up  
Emails

# Emergency Removal - Student

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





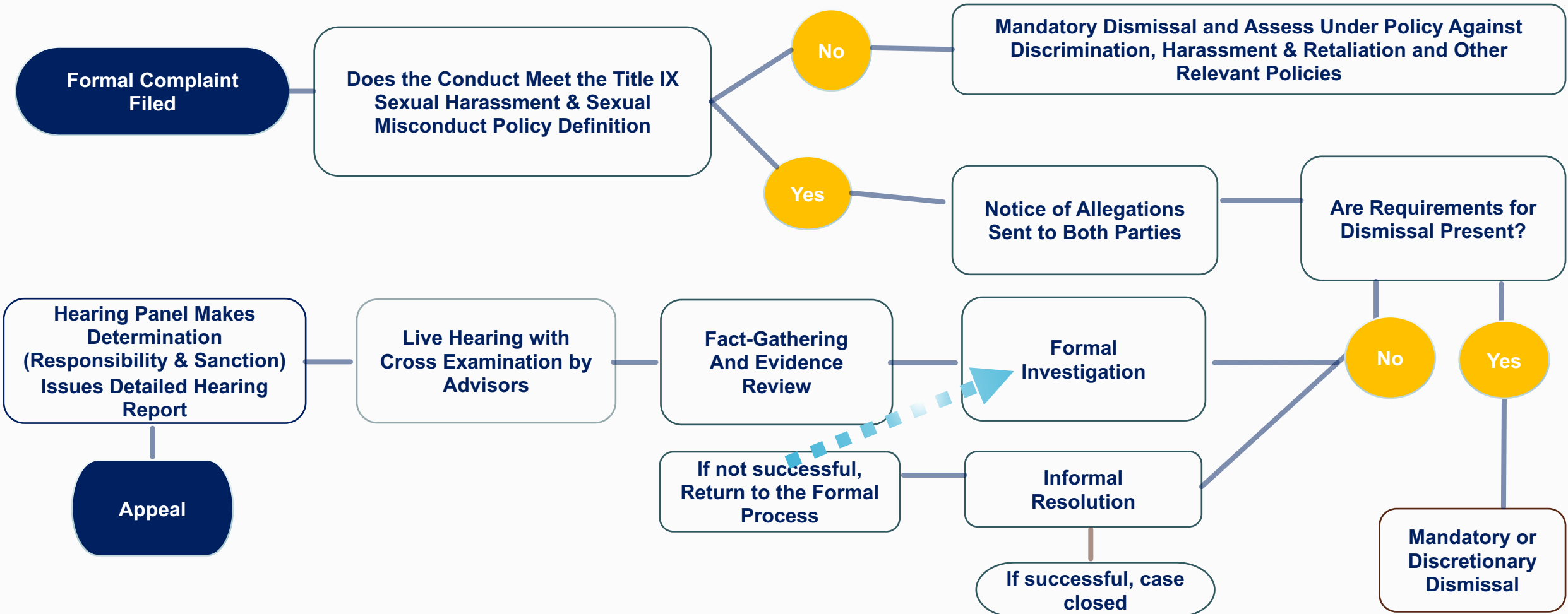
# **Receipt of Reports**

Actual Knowledge, Report Response,  
Initial Assessments, and Supportive  
Measures

# Meet with Complainant - Intake

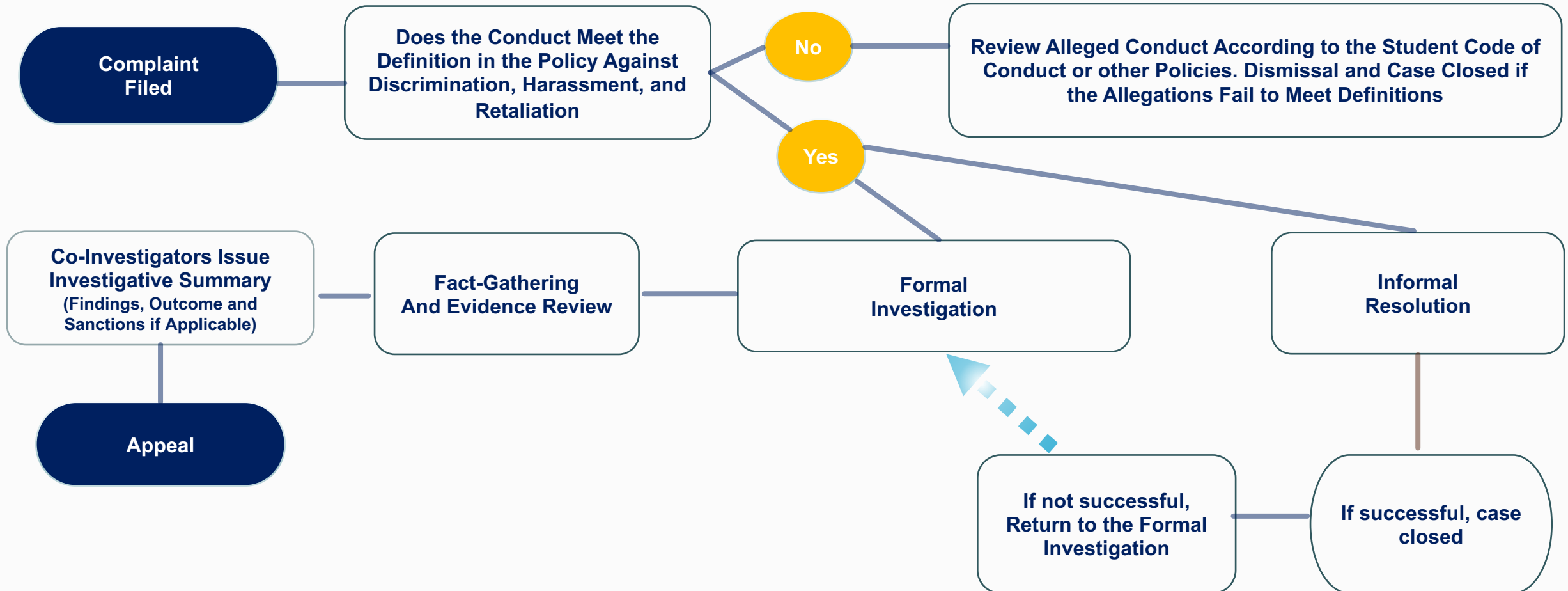
- ✓ **Informational, Rights & Options Meeting•**
- ✓ **Prepare for the meeting**
  - ✓ • **Select appropriate space**
  - ✓ • **Build trust and rapport; empower**
  - ✓ • **Explain your role, confidential v. private**
  - ✓ • **Discuss available support on and off campus**
- ✓ **Explain rights to law enforcement or court protective orders, evidence preservation**
- ✓ **Discuss Available Supportive Measures**
- ✓ **Review newly create flowcharts & materials**
- ✓ **Answer questions**
- ✓ **Conclude with a discussion of next steps**





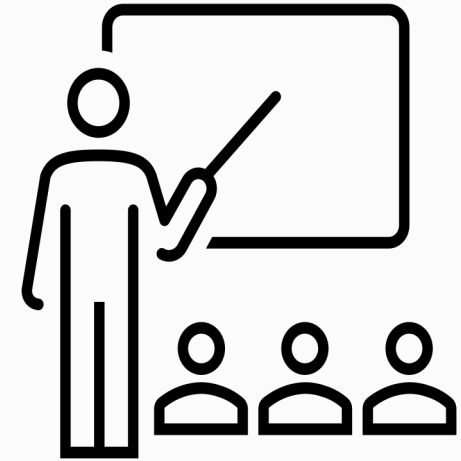
# Non-Title IX Process

Report Concerns to [titleix@northpark.edu](mailto:titleix@northpark.edu)



# Supportive Measures

- Designed to restore or preserve equal access to the University's living, learning and working environment.
- Ongoing assessment upon notice
- May not unreasonably burden the other party
- Non-Disciplinary
- Non-punitive
- As appropriate and reasonably available
- Confidential



# Examples of Supportive Measure

1

Assistance obtaining access to counseling, advocacy, or medical services;

2

Assistance obtaining access to academic support and requesting academic accommodations;

3

Changes in class schedules

4

Assistance requesting changes in work schedules, job assignments, or other work accommodations;

5

Changes in campus housing;

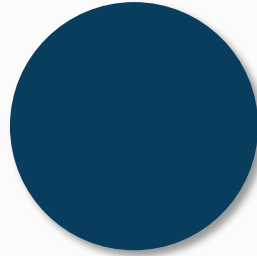
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Safety escorts; Leaves of absence; Mutual restrictions on contact between the Parties (“No-contact” orders).

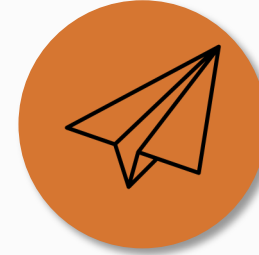
# Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow-Up



Make connection



Provide the supportive measure



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

# **Report Resolution**

Remedies Based, Informal, or  
Formal



# How to Proceed?

## Remedies-based

- No formal process
- Supportive Measures
- Educational Conversations
- Targeted Education

## Alternative/Informal

Signed agreement;  
Voluntary;

## Formal/ Investigation/ Hearing

All requirements of  
106.45

# Formal Complaint Filed

By Complainant

By the Title IX  
Coordinator

(factors to consider: allegations of violence, threats, use of weapons, serial predation, an employee respondent?)

# Formal Complaint

***A Formal Complaint must include:***

1

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

2

An allegation of Prohibited Conduct as defined under this Policy. This may include;

3

Identity of Respondent, if known; and

4

A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person

# 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 Process B

# Notifying the Respondent



- Don't send on a Friday
- Don't send at 5pm
- Consider the impact of the notification on the Respondent
- Make sure support is available
- Written notification  
Meetings and sufficient time to prepare

# 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 cross examination, only.

# Notice of Allegation Requirements

- ✓ 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. 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

# Initial Meeting with Respondent



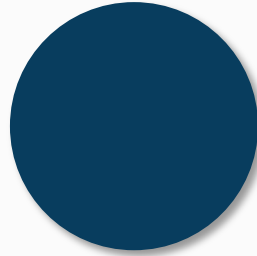
- ✓ **Informational, Rights & Options Meeting**
- ✓ **Prepare for the meeting**
- ✓ **Select appropriate space**
- ✓ **Build trust and rapport; empower**
- ✓ **Explain your role, confidential v. private**
- ✓ **Discuss available support on and off campus**
- ✓ **Explain rights to law enforcement or court protective orders, evidence preservation**
- ✓ **Discuss Available Supportive Measures**
- ✓ **Supportive measures provided to the Complainant**
- ✓ **Review newly create flowcharts & materials**
- ✓ **Answer questions**
- ✓ **Conclude with a discussion of next steps**



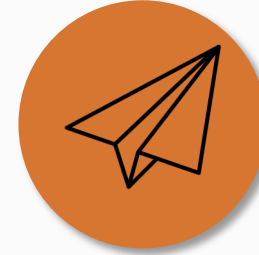
# Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow-Up



Make connections



Provide the supportive measure



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

# Informal Resolution

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- Formal Complaint Required
- Parties must agree in writing
- Must occur prior to resolution via a formal process
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal
- Facilitator must be trained

# Formal Resolution

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- Investigation and Adjudication process in compliance with Section 106.45

# Informal Resolution Notice Requirements

- The allegations
- the requirements of the 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 informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

**Informal resolution is prohibited if the allegations are that an employee sexually harassed a student**

**STOP**

# 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 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

# **Title IX Coordinator's Role**

## ***In the Investigation***

- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties

# 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

# Title IX Coordinator's Role

## *In the Adjudication*

Title IX Coordinator may not serve as the decision maker

May serve to support the decision maker(s)

May participate in the hearing to provide logistical support to decision makers

Responsible for effective implementation of remedies imposed



# **Final Rule § 106.45(b)(8)**

- Institutions must offer both parties an appeal from a determination responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein

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# **Title IX Coordinator 's Role *In the Appeal***

- 
- ✓ Title IX Coordinator may not serve as an appellate reviewer
  - ✓ May serve to support the appellate reviewer/panel
  - ✓ May provide logistical support
  - ✓ May coordinate implementation of appellate findings, where appropriate.
  - ✓ Responsible for effective implementation of remedies imposed

**Any questions?**