

Training for McHenry County College Title IX Personnel

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Background on Title IX Regulations



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Background on Title IX Regulations

- On May 6, 2020, the U.S. Department of Education released new Title IX regulations establishing how education programs that receive federal funding must respond to sexual harassment under Title IX.
- Among other changes, the new regulations prescribe a narrower definition of sexual harassment than in previous Title IX guidance, and they require higher education institutions to follow detailed procedures—to include a live hearing with cross-examination—when adjudicating formal Title IX sexual harassment complaints.
- The regulations went into effect on August 14, 2020.

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Recently Issued Guidance

- Since taking office, President Biden and his Administration have issued key guidance documents interpreting the 2020 regulations and taken action/steps signaling an intent to amend certain aspects of the regulations in the coming months.
 - March 2021 Executive Order
 - April 2021 Letter to Stakeholders
 - June 2021 Title IX Public Hearing
 - July 2021 Question & Answer Document
 - August 2021 Letter to Stakeholders

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Current Status

- So long as the Department of Education's review of the current Title IX regulations is ongoing and until any new regulations go into effect, institutions must continue to comply with the existing regulations.

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Impact on Higher Education Institutions

- The new Regulations require:
 - Revisions to institutional policies and procedures
 - Staffing determinations
 - Training for all personnel involved in an institution's investigation and grievance process, including:
 - Title IX Coordinator(s)
 - Investigator(s)
 - Decision-Maker(s)
 - Appellate Decision-Maker(s)
 - Informal Resolution Facilitator(s)
 - Publishing of information and training materials on the institution's website

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Overview of
Relevant Laws



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Relevant Laws

- The relevant requirements of the below laws have been incorporated into the College's policies prohibiting sex-based misconduct:
 - Title IX of the Education Amendments of 1972 ("Title IX")
 - Title VII of the Civil Rights Act of 1964 ("Title VII")
 - Preventing Sexual Violence in Higher Education Act ("PSVHEA")
 - Illinois Human Rights Act ("IHRA")
 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")
 - Violence Against Women Act ("VAWA")

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Relevant Laws

- **Title IX:** Prohibits sex-based discrimination, including sexual harassment, in educational programs and activities receiving federal financial assistance.
- **Title VII:** Prohibits discrimination, including discrimination based on sex, in employment.

Relevant Laws

- **Preventing Sexual Violence in Higher Education Act:** Requires Illinois higher education institutions to adopt comprehensive policies concerning sexual violence, domestic violence, dating violence and stalking.
- **Illinois Human Rights Act:**
 - Prohibits discrimination in Illinois, including in employment.
 - Also prohibits sexual harassment in elementary, secondary and higher education.



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Relevant Laws

- **Clery Act:** Requires institutions to maintain and disclose crime statistics and security information.
- **Violence Against Women Act:** Expands the rights afforded to campus survivors of sexual assault, domestic violence, dating violence, and stalking.

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Key Definitions



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Title IX Sexual Harassment

Sexual harassment includes:

1. Quid pro quo harassment by a college employee
2. Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
3. Any instance of sexual assault, dating violence, domestic violence or stalking (as defined in Clery Act/VAWA)

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Title IX Sexual Harassment: Quid Pro Quo

- When an employee of the college conditions aid, benefits, pay, a position or other opportunities for advancement on an individual's submission to unwelcome sexual conduct.
 - Example: Professor Jones promises his student, Jane, that he will give her an A on her midterm if she engages in sexual conduct in his office after class.

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Title IX Sexual Harassment: “Hostile Environment”

- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
 - Severe and pervasive and offensive
 - Denial of equal educational access

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Title IX Sexual Harassment: “Hostile Environment”

- Compare with Title VII definition for workplace hostile environment claims:
 - Unwelcome sexual advances and other conduct of a sexual nature having the purpose or effect of interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.



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Title IX Sexual
Harassment:
“Hostile
Environment”

- Compare with IHRA definition:
 - Any conduct of a sexual nature exhibited by an education representative toward a student, when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment.

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Title IX Sexual Harassment: Other Categories

- Title IX's definition of sexual harassment also includes:
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

As defined under Clery Act/VAWA

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Sexual Assault, Dating Violence, & Stalking

Sexual Assault:

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

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.

Stalking

- Engaging in 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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Domestic Violence

Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected.

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Preventing Sexual Violence in Higher Education Act: Sexual Violence

- Physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including without limitation:
 - Rape;
 - Sexual assault;
 - Sexual battery;
 - Sexual abuse; and
 - Sexual coercion.

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Preventing Sexual Violence in Higher Education Act: Sexual Violence and Consent

- The PSVHEA requires that institutions adopt a policy which includes a definition of consent consistent with the Act, 110 ILCS 155/10.
- **Consent:**
 - Must be freely given
 - May not be inferred from lack of verbal or physical resistance, from submission resulting from the use of threat or force, from a person's manner of dress, from a person's consent to past sexual activity, or from a person's consent to engage in sexual activity with another person
 - May be withdrawn at any time
 - Cannot be given by a person who is unable to understand the nature of the activity or give knowing consent due to circumstances (i.e. incapacitation due to alcohol or drugs, age, incapacitation due to mental disability)

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Key
Definitions:
Hypothetical

- You have been assigned to investigate a formal complaint alleging that a student was sexually harassed by a faculty member's research assistant.
- What types of evidence/information would be relevant to determining whether the alleged harassment was severe, pervasive and objectively offensive?

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Jurisdiction



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Jurisdiction Under Title IX

- Institutions must respond when sexual harassment occurs **“in the institution’s education program or activity, against a person in the United States.”**

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Title IX Jurisdiction: Scope of College's Education Program or Activity

- Includes:
 - Locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurred; and
 - Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

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Title IX Jurisdiction: Scope of College's Education Program or Activity

- MCC examples for discussion:
 - Hotel during overnight athletic competition?
 - Local business where students are participating in work-study employment?
 - Off-campus College-sponsored guest lecture?
 - Other examples?

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Jurisdiction:
“... in the
United States”

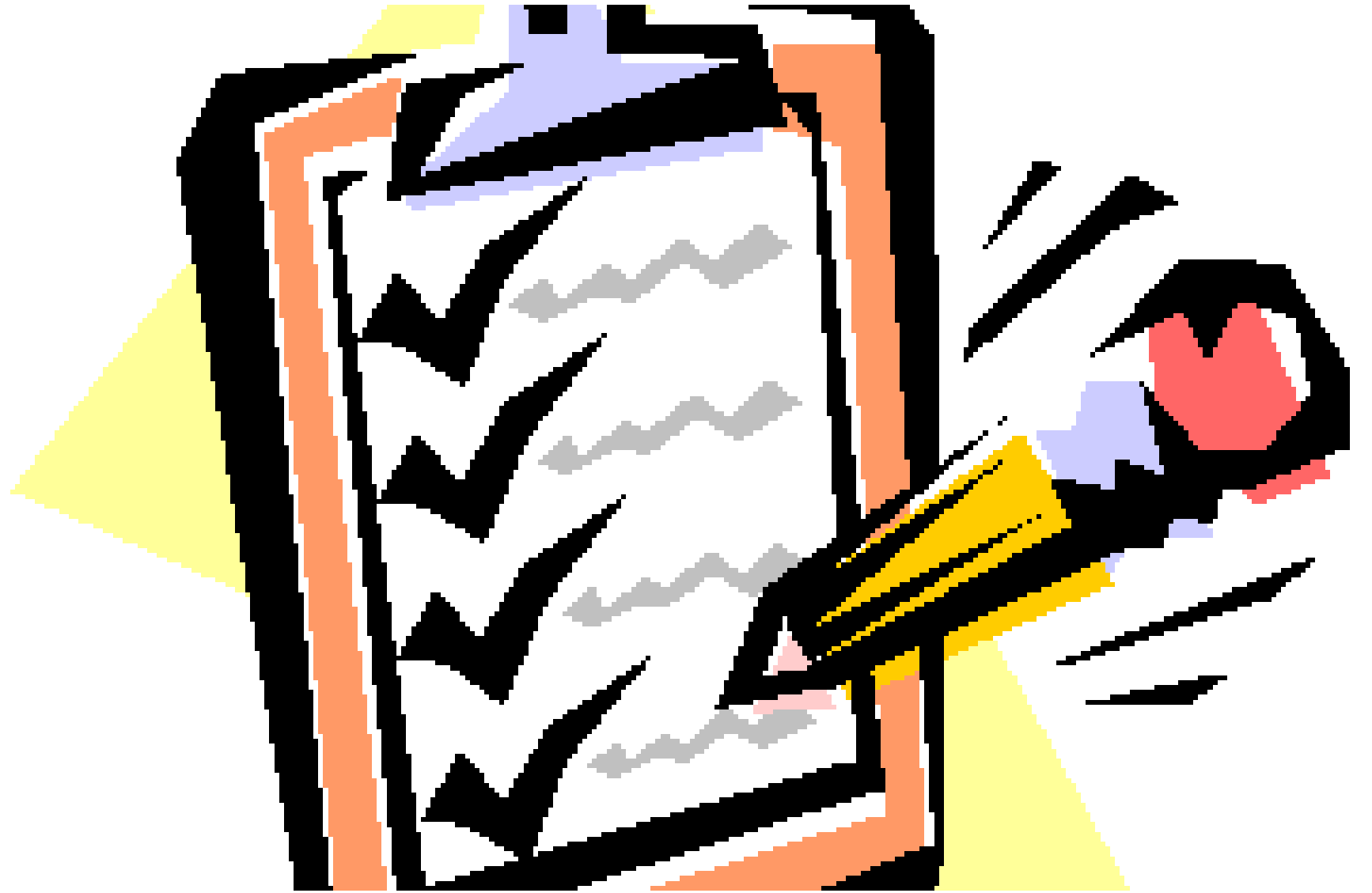
- To fall under Title IX, the alleged misconduct must have occurred in the United States.
- If not, look to other applicable laws (e.g., PSVHEA)
- Example: sexual assault that occurs during study abroad program?

Jurisdiction: Hypothetical

- Compare:
 - A student allegedly sexually assaults another student while off-campus at an academic conference
 - A student allegedly sexually assaults another student while at a faculty member's home for a birthday party (the two students and faculty member are old friends from high school)
- Which type of alleged misconduct falls under Title IX?
- What are MCC's response obligations with regard to each type of alleged misconduct?

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College Policies
Prohibiting Sex-
Based
Misconduct



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Policies Prohibiting Sex-Based Misconduct

- Board Policy 6.2.3, Discrimination, Harassment and/or Anti-Violence
- Board Policy 6.2.2, Sexual Harassment

Policies Prohibiting Sex-Based Misconduct

- Board Policies 6.2.2 and 6.2.3 prohibit all forms of sex-based misconduct, including but not limited to:
 - Sex discrimination
 - Sexual harassment
 - Sexual violence
 - Sexual exploitation
 - Domestic violence
 - Dating violence
 - Stalking

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Policies Prohibiting Sex-Based Misconduct

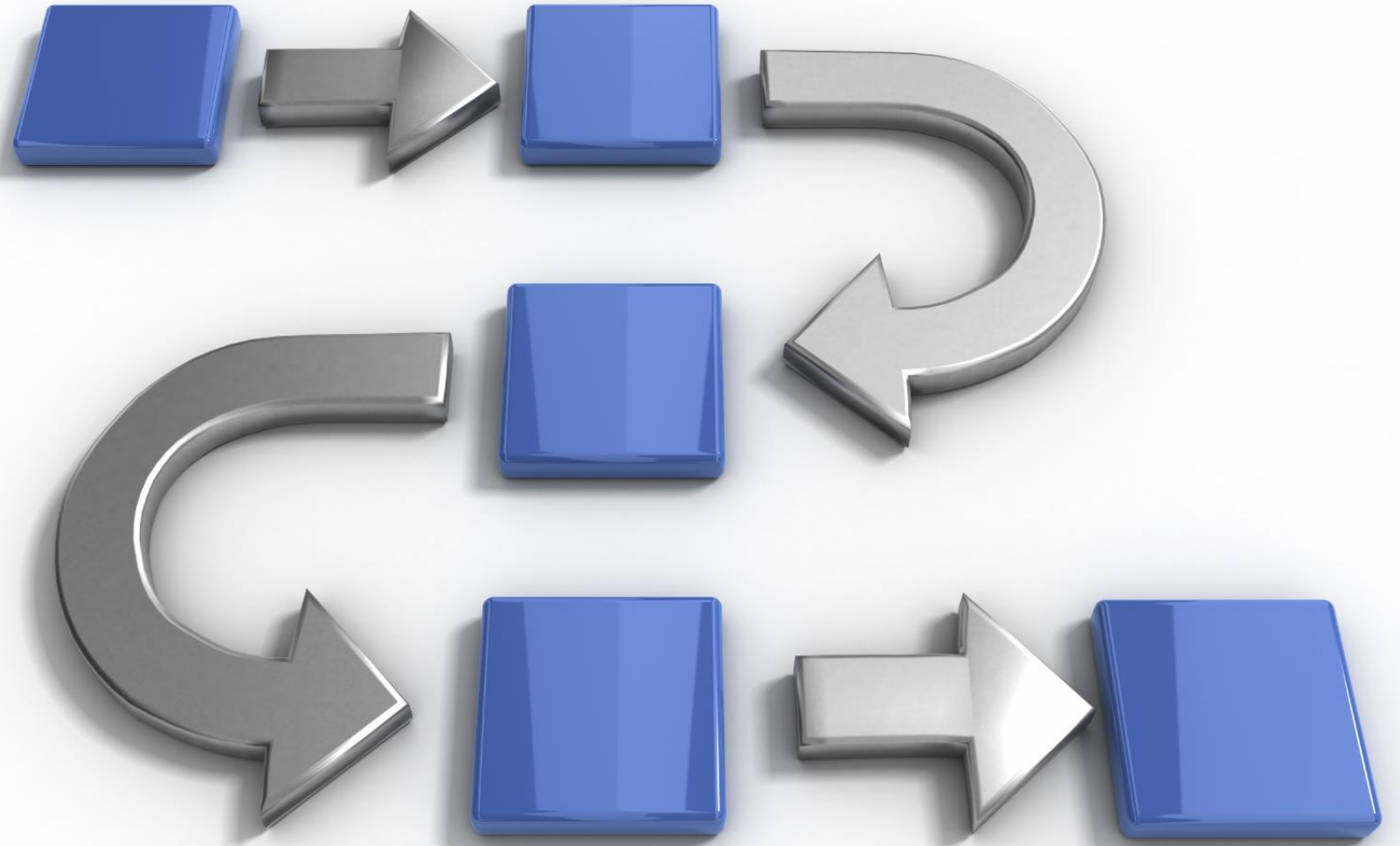
- Policies 6.2.2 and 6.2.3 apply to:
 - Students
 - Employees & independent contractors
 - Volunteers
 - Visitors
 - Board members

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Policies Prohibiting Sex-Based Misconduct

- Policy 6.2.2 prohibits retaliation against any person reporting alleged sex-based misconduct or participating in an investigation of alleged sex-based misconduct.

Procedure
Implementing
Policy: Equal
Opportunity,
Harassment, and
Nondiscrimination



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Purpose of Procedure

- Implement the College's policies prohibiting sex-based misconduct.
- Ensure a safe and healthy educational and employment environment.
- Meet relevant legal requirements.

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Jurisdiction

- Procedure applies to alleged sex-based misconduct whenever the alleged misconduct occurs:
 - On campus; or
 - In the context of MCC employment or educational program or activity and/or has continuing effects on campus; or
 - Off campus property if:
 - The conduct was in connection with a College or College-recognized program or activity; or
 - Alleged misconduct has continuing effects on campus or in an off campus sponsored program or activity ;or.
 - The conduct may have the effect of creating a hostile environment for a member of the College community; or
 - The conduct affects a substantial MCC interest.
- Broader than Title IX jurisdiction

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Jurisdiction

A substantial McHenry County College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder; and/or
- d. Any situation that substantially interferes with the educational interests or mission of McHenry County College.

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Role of Title IX Coordinator

- Coordinate MCC's compliance with Title IX and related laws.
- Oversee MCC's response to all reports of alleged sex-based misconduct.
- Analyze reports to determine appropriate method for processing and reviewing.
- Oversee grievance process for formal Title IX/PSVHEA complaints.
- Coordinate the provision of supportive measures and implementation of remedies.
- Ensure adherence to policies/procedures.
- Ensure appropriate training is provided to students, faculty and staff.

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Options for Assistance Following Incident of Sex-Based Misconduct

- Emergency Response
 - Anyone who experiences or observes an emergency situation should immediately contact local law enforcement by calling 911.
 - MCC encourages all individuals to report suspected criminal activity to law enforcement; however, victims have the right to decline involvement with the local police.
- Health care and mental health resources
 - The Care Center of McHenry County
24-hour Confidential Hotline: (888) 802-8890
Local phone number: 815-671-4004
4508 Prime Parkway
McHenry, IL 6005
 - McHenry Resource Directory
<https://www.mchenry.edu/pin/PINDirectory.pdf>
- Illinois Department of Human Rights sexual harassment and discrimination helpline

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Reporting Alleged Sex- Based Misconduct



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Reporting Generally

- Who can report?
 - Anyone – including students, employees and community members
 - Need not be the person who is alleged to be the victim of the misconduct
- To whom should reports be made?
 - Rachel Boldman, Director of Crisis Intervention and Prevention Services and Title IX Coordinator
 - Michelle Skinder, Vice President of Human Resources
 - Any responsible employee (students only)

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Student Reporting

- Reporting to Responsible Employees
 - All McHenry County College employees (faculty, staff, and administrators) are considered Responsible Employees.
 - REs must report all relevant details to the Title IX Coordinator, if known.

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Student Reporting

- Confidential Reporting
 - At least one “Confidential Advisor” required under the PSVHEA.
 - Confidential Advisors are not required to report any information about an alleged incident to the Title IX Coordinator without the student’s permission.

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Student Reporting

- Anonymous and/or Electronic Reporting
 - Students may report anonymously online.
 - Before the student enters information, the system will notify the student that entering personally identifiable information may serve as notice to the College for purposes of triggering an investigation.

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Employee Reporting

- Employees should report to:
 - Title IX Coordinator
 - Department of Human Resources

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Questions?



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College's
Response to
Reports of
Alleged Sex-
Based Misconduct



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“Deliberate
Indifference
Standard”
Under Title IX

- The College must respond to allegations of Title IX sexual harassment:
 - Promptly
 - In a manner that is not “clearly unreasonable in light of the known circumstances”

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College Response: Definitions

Complainant:

- Individual who is alleged to be the victim of alleged sex-based misconduct

Respondent:

- Individual who is reported to be the perpetrator of alleged sex-based misconduct

College Response Process

- Step 1: Analyze the Report.
 - Does Title IX apply?
 - Does the Preventing Sexual Violence in Higher Education Act apply?

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Title IX: Jurisdiction Analysis



If NO to any:

Proceed to PSVHEA analysis; check MCC Policy, other applicable laws

If YES to all:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

Preventing Sexual Violence in Higher Education Act: Jurisdiction Analysis

Alleged misconduct does not fall under Title IX sexual harassment rules



Was the alleged misconduct on MCC property, in MCC activities, or against a member of the MCC community?



Do the allegations meet the definition of sexual violence, domestic violence, dating violence, and/or stalking?

If NO to either:

Check MCC Policy, other applicable laws

If YES to both:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

College Response Process

- Step 2: Contact the complainant.
 - “Complainant” is defined as the individual who is alleged to be the victim of alleged sex-based misconduct



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College Response Process

- Step 3: Discuss and offer supportive measures.
 - Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party
 - Designed to ensure equal educational access, protect safety, or deter sexual harassment

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College Response Process

- Step 4: Explain to the complainant the process for filing a formal complaint.

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Grievance
Process for
Formal
Complaints



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Grievance Process for Formal Complaints

Formal complaint:

- Document filed by a complainant or signed by Title IX Coordinator alleging
 - (a) sexual harassment in violation of Title IX and/or
 - (b) sexual violence, domestic violence, dating violence or stalking in violation of the PSVHEA.
- At the time the complainant files a formal complaint, the complainant must be participating in or attempting to participate in the College's education programs or activities, (either as a student or an employee).

Formal Complaint Hypothetical

A student graduates in June. In mid-July, the former student contacts the Title IX Coordinator to report that he was sexually harassed by a professor the previous February. The former student indicates that she would like to file a formal complaint.

- Can the former student file a formal complaint?
- What if the former student is working as an assistant basketball coach for the summer?
- In the event the former student cannot file a formal complaint, what options does the College have?

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Grievance Process: Notice of Allegations

- Must be sent **simultaneously** to both parties after Title IX Coordinator's receipt of formal complaint.
- Informs the parties of:
 - The grievance process, including informal resolution options
 - The allegations
 - The presumption of non-responsibility on the part of the respondent
 - The parties' right to an advisor
 - The parties' right to inspect and review evidence
 - The Code of Conduct provisions prohibiting knowingly furnishing false information during the grievance process.

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Grievance Process: Emergency Removals and Administrative Leave

- Prior to initiating or completing the grievance process in response to a formal complaint, the College may remove a respondent from its education program or activity on an emergency basis.
 - Only permitted where College has determined, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment justifies removal.
- The College must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

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Grievance
Process:
Emergency
Removals and
Administrative
Leave

- The College may place an employee on administrative leave during the pendency of the grievance process in response to a formal complaint.

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Informal Resolution



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Informal Resolution

- Fully discretionary: Requires complainant and respondent's **voluntary, written consent**
- May occur at any time after the parties receive the initial notice of allegations and prior to a determination regarding responsibility being reached.
- May not be required as condition of:
 - Enrollment/continuing enrollment,
 - Employment or continuing employment,
 - Enjoyment of any right, or
 - Waiver of the right to a formal investigation/adjudication

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Informal Resolution

- Party may withdraw at any time prior to a resolution
 - Withdrawal triggers resumption of grievance process.
- Alternative resolution approaches include, but are not limited to:
 - Mediation
 - Restorative practices
 - Facilitated dialogue
- Not permitted in allegations of employee sexual misconduct toward a student

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Consolidation and Dismissal of Formal Complaints



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Consolidation of Formal Complaints

- Title IX Coordinator may consolidate formal complaints where the allegations of sex-based misconduct arise out of the same facts or circumstances.

Dismissal of Formal Complaints

Mandatory dismissal:

- Title IX Coordinator or designated investigator determines that conduct alleged in the formal complaint does not meet
 - (a) Title IX's definition of sexual harassment and/or
 - (b) Title IX's jurisdictional requirements.
- *Dismissal does not preclude action altogether – just for purposes of Title IX.*

Dismissal of Formal Complaints

Discretionary dismissal if:

- Complainant gives written notification of desire to withdraw formal complaint or certain allegations;
 - Respondent is no longer enrolled in or employed by MCC; or
 - Specific circumstances prevent MCC from gathering evidence sufficient to reach a determination.
- A party may appeal a decision to dismiss a formal complaint or allegations therein.

Conflicts of Interest & Bias



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Conflicts of Interest

- The Title IX Regulations provide that any individual designated by an institution to serve as the Title IX Coordinator, Investigator, Decision-Maker or Appellate Decision-Maker must not have a conflict of interest.
 - Key question: Does the Individual's prior or existing relationship with or knowledge of a party prevent them from serving impartially?
- Keep in mind: One of the permissible grounds for appeal is that there was a conflict of interest that affected the outcome.
 - Identifying and addressing any claims of a conflict at the outset of the process may help prevent a later appeal.

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Conflicts of Interest



- Where you self-identify a conflict of interest, notify the Title IX Coordinator that you will need to recuse yourself.
- Where a party believes that you have a prohibited conflict of interest, the party must contact the Title IX Coordinator to request a substitution.
 - The Title IX Coordinator may request information from you to help him/her evaluate the claim.

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Conflict of Interest & Bias

Bias:

- “Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.”
- The Title IX regulations’ prohibition on improper bias applies to both bias against an individual complainant or respondent and bias against complainants or respondents generally.

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How to Address Implicit Bias

- More deliberate or conscious thinking
 - Sometimes called “Staring” (as opposed to “Blinking”)
 - This involves allowing yourself time to fully think through a scenario before coming to a decision/conclusion

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How to Address Bias: Create a Checklist

- Create a checklist beforehand
 - Example: A pre-made checklist of allegations to be proven/disproven
- Decision-making checklists can encourage less biased decisions; they provide an objective framework to assess your thinking¹
- Can be effective in overcoming stereotypes²
- Helps reduce the attention given to biased characteristics that may influence decision-making³

1. Arkes. Hal R. Arkes & Victoria A. Shaffer, Should We Use Decision Aids or Gut Feelings? in G. GIGERENZER & C. ENGEL, EDS., HEURISTICS AND THE LAW (2004).

2. Isaac. Carol Isaac, Barbara Lee & Molly Carnes, Interventions That Affect Gender Bias in Hiring: A Systematic Review, 84 Academic Medicine 1440 (2009).

3. Uhlmann. Eric Luis Uhlmann & Geoffrey L. Cohen, Constructed Criteria: Redefining Merit to Justify Discrimination, 16 PSYCHOL. SCI. 474 (2005).

All materials compiled by the ABA Implicit Bias Toolkit, which can be found here: <https://www.americanbar.org/groups/diversity/resources/implicit-bias/>

Conflicts of Interest Hypothetical

- You serve on the College's Behavioral Intervention Team. At a BIT meeting several months ago, you took part in a decision to remove a respondent from the College's educational program on an emergency basis. The College subsequently conducted a Title IX investigation with respect to that respondent, and you have just been appointed to serve as the Hearing Officer for the case.
 - Do you have a conflict of interest?

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Investigation of Formal Complaints



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Investigations: Written Notice

- Required written notices
 - Notice of allegations (upon receipt of a formal complaint)
 - Notice of investigative interview, meeting, or hearing
 - Notice of (mandatory or discretionary) dismissal

Investigations: Evidence

- Equal opportunity for parties to provide:
 - Fact and expert witnesses
 - Inculpatory and exculpatory evidence
- No gag orders

Investigations: Advisors

- Both parties may select an advisor of their choosing
 - May, but need not be, an attorney
- Advisor's role is to provide support, guidance, advice
- May not speak on behalf of the party



Investigation: Access to Evidence

- Both parties must have equal access to inspect and review all evidence that is directly related to the complaint allegations.
 - Be mindful of FERPA and student privacy considerations.
 - Consider whether redactions are necessary
 - Notify parties of parameters/limitations on re-disclosure of records and evidence.

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Investigation: Access to Evidence

- At the conclusion of the investigation and prior to the completion of the investigator's report, the investigator must send both parties a copy of all relevant evidence.
- The parties will have 10 business days to submit a written response to the evidence, which the investigator must consider prior to completion of his/her investigative report.

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Investigation: Preparation of Investigation Report

- After receiving/reviewing the parties written responses, the investigator must create an investigative report that fairly summarizes the relevant evidence, which the investigator will forward to the Title IX Coordinator.
- Upon receipt of the investigator's report, the Title IX Coordinator will schedule a hearing.



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Investigation: Preparation of Investigation Report

- At least 10 business days prior to the hearing, the Title IX Coordinator will:
 - Provide both parties with written notice of the hearing date, time, location, participants and purpose of the hearing; and
 - Send to each party (and advisors) the investigative report.
 - Allow parties 10 school days to submit a written response to the report.

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Live Hearings



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Live Hearings: Process

- Conducted by designated Hearing Officer
 - Assigned by Title IX Coordinator
- A party may submit an objection to the appointed Hearing Officer on the basis of demonstrated bias or conflict of interest.
 - Must be submitted to Title IX Coordinator at least 2 business days prior to the hearing.

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Live Hearings: Process

- Upon request, parties can be separated – requires appropriate technology
 - Must be requested at least **5 business days prior to hearing**
 - Must allow parties to simultaneously see and hear each other



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Live Hearings: Technology

- Technology considerations:
 - Parties must be able to hear and see each other.
 - Parties and Hearing Officer must be able to view evidence being presented.
 - Consider screen-sharing and/or sending documents electronically in advance.
 - Parties should have ability to communicate with their respective advisors in private.
 - Consider “breakout rooms.”

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Live Hearings: Advisors

- College advisor appointed if none available
 - Advance notice to Title IX Coordinator required.

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Issues for Hearing

- Hearing Officer's role is to determine:
 - Whether facts presented establish that the alleged conduct occurred;
 - Whether that conduct constitutes Title IX sexual harassment, sexual violence, domestic violence, dating violence or stalking; and
 - If the answers to the above are "yes," which sanctions (if any) and remedies are appropriate.
- The evidence presented must be **relevant** to one or more of the issues above.

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Considering Evidence

- Relevant documents may include, but are not limited to:
 - The formal complaint
 - The initial written notice of the allegations
 - Written statement(s) and responses by the parties and/or witnesses
 - The investigation report
 - Police reports, photographs and/or video footage (if any)
 - Prior discipline records
 - Only relevant to issue of appropriate sanction



Preponderance of the Evidence Standard

- “More likely than not”
- Whether the facts supporting the allegations have greater weight/strength than the facts presented in denial of the allegations
- If 50/50, no violation.

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Live Hearings: Cross- Examination

- Advisors are permitted to ask opposing party and witnesses all **relevant** questions and follow-up questions.
 - Relevance determined by Hearing Officer.

Live Hearings: Rape Shield Protections

- Questions about the complainant's sexual pre-disposition or prior sexual behavior are not permitted unless:
 - Offered to prove that someone other than the respondent committed the alleged conduct; or
 - 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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Live Hearings:
**Witnesses Who
Do Not Submit
to Cross-
Examination**

- Note: Pursuant to the August 2021 Letter to Stakeholders, a decision-maker *may* rely upon statements by an individual who does not submit to cross-examination in reaching a determination.

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Post-Hearing Procedure



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Written Determination

- Issued to both parties simultaneously within 7 business days of decision being reached.

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Written Determination

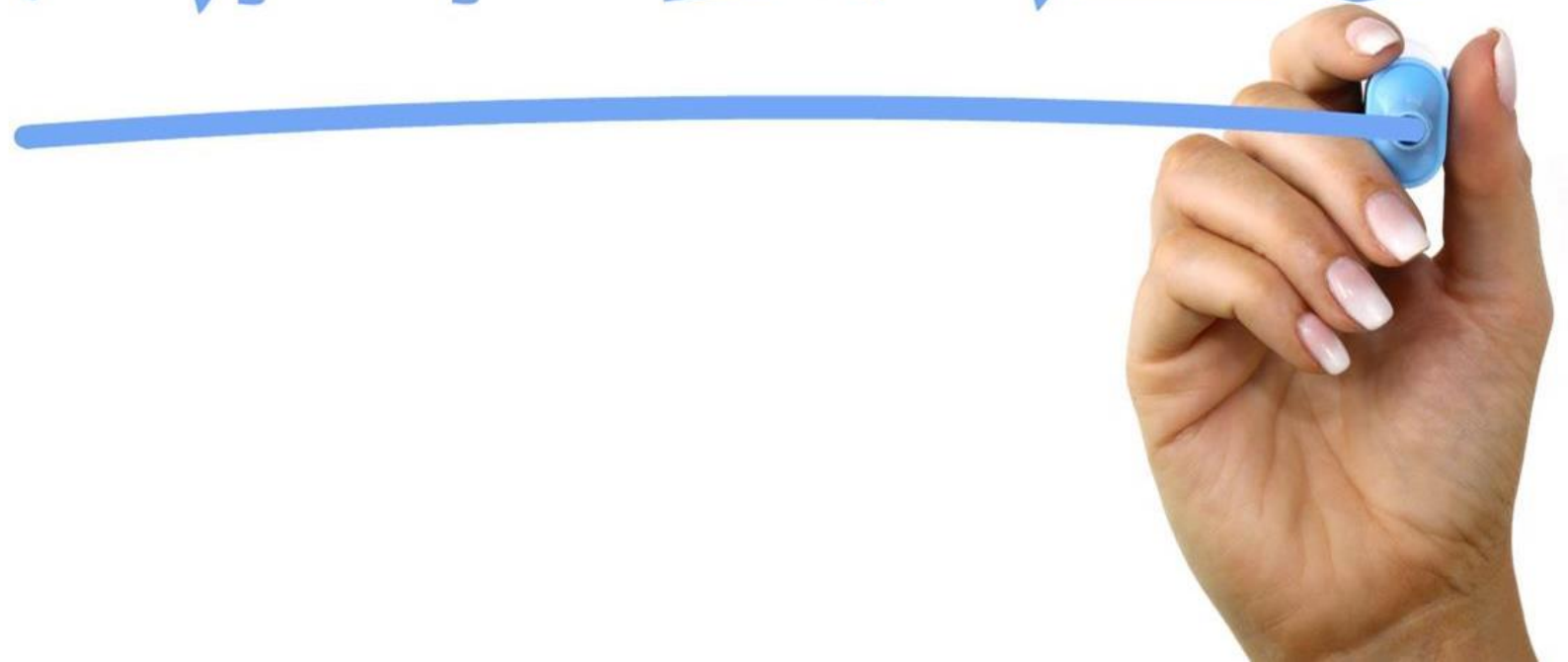
Must include:

- Identification of allegations
- Description of procedural steps taken
- Findings of fact supporting determination
- Conclusions regarding application of conduct standards
- Statement & rationale for result of each allegation, including:
 - Determination of responsibility
 - Disciplinary sanctions being imposed
 - Whether any remedies will be provided to the complainant
- Procedures and permissible bases for complainant and respondent to appeal

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Appeals

APPEALS



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Appeals

- Both parties have right to appeal:
 - Any determination regarding responsibility
 - Any dismissal of a formal complaint or allegations therein
- Party must submit written appeal request to Title IX Coordinator
 - Within 3 business days of receipt of written determination or dismissal
- Title IX Coordinator must forward request to designated individual assigned to review appeal.

Appeals: Grounds to Appeal

- a) Procedural irregularity occurred
- b) New evidence or information exists that could affect outcome
- c) Conflict of interest or bias on part of Title IX Coordinator, Investigator or Hearing Officer which affected outcome
- d) Sanction disproportionate to violation (PSVHEA)

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Appeals: Process

- Designee will afford both parties the opportunity to submit a statement
- Written decision issued to both parties simultaneously within 7 business days of conclusion of the review
 - Describes outcome and rationale
- Includes statement that **decision is final**

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Questions?



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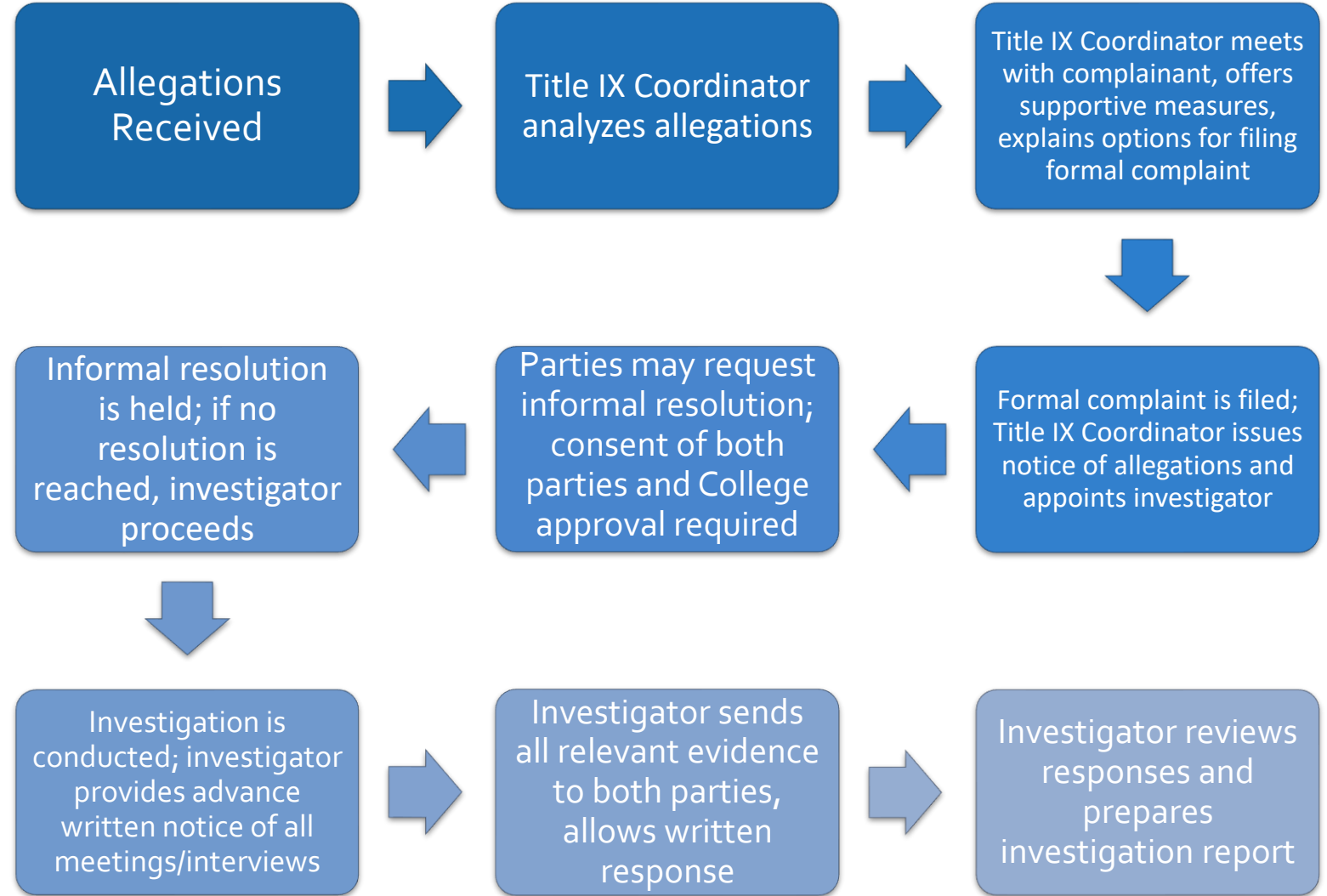
Final Review
and
Hypothetical



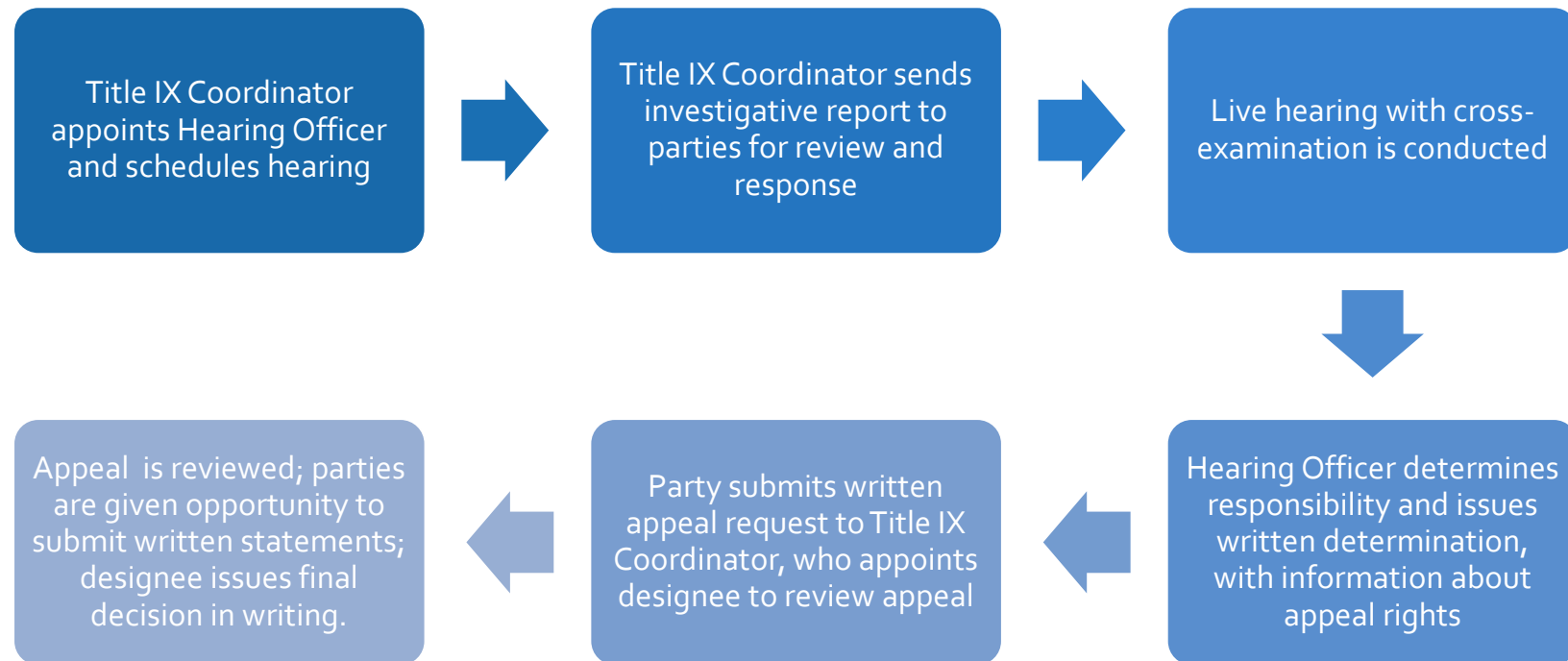
Prepare for
Success

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Final Review of Grievance Process (Pre-Hearing)



Final Review of Grievance Process (Hearing + Appeals)



Hypothetical

- Alex, a student, reports to her College advisor that a classmate, Aaron, has been making inappropriate sexual jokes and innuendos.
 - They both attended the same virtual summer school course.
 - They were assigned to work on a project together, much of which was to be done on their own time, over Zoom, and required the exchange of personal contact information.
 - After the project was complete, Aaron allegedly called Alex and asked her out. Alex said yes.
 - Alex states that they went on a few off-campus dates, but Alex decided not to pursue the relationship any further.

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Hypothetical

- Alex alleges that Aaron began telling all of their mutual friends that Alex “sleeps around”, and he allegedly began making false statements that she sent him sexually explicit photos.
- Alex alleges that Aaron’s comments took place over the course of the summer, at various off-campus class gatherings where the instructor and other students were present.
- Most recently, they both attended the same party at a house owned by the College’s Peer Mentoring Club, of which Alex is a member.
- At the party, Aaron (who is 21) was drinking. He tried to pressure Alex (who is 19) into drinking as well. Alex reports that Aaron stated, “Rumor has it, you’re more fun when you’re drunk.”
- Alex reports that she told Aaron he was not funny, and to leave her alone.

Robbins Schwartz

Hypothetical

- Aaron reportedly became drunk, and one of Alex's friends witnessed Aaron showing other party-goers a sexually explicit photo of a female and telling them it was Alex.
 - The photo did not show a face, so others at the party did not know if the photo was of Alex or not. Some male classmates seemed to believe Aaron.
- Alex is distraught. Aaron is enrolled in two of the same classes as Alex for the fall 2021 semester. Alex is considering dropping the classes so she will not have to interact with Aaron.
- The College advisor documents her discussion with Alex. What should the College advisor do with these allegations? Discuss.

Robbins Schwartz

Hypothetical

- Based on these facts, analyze the jurisdiction under Title IX.
 - Did Aaron's conduct occur in the College's education program or activity?
- Do Aaron's actions constitute Title IX sexual harassment?
- Reminder: Three types of sexual harassment:
 - **Quid pro quo** harassment by a college employee
 - Unwelcome conduct that a reasonable person would find **so severe, pervasive and objectively offensive** that it **denies a person equal educational access**
 - Any instance of **sexual assault, dating violence, domestic violence or stalking**

Robbins Schwartz

Hypothetical

- Alex files a formal complaint. The parties proceed to a live hearing.
 - Can Aaron's advisor ask Alex if she has ever had a sexual relationship with Aaron?
- After a full grievance process, the College's appointed Hearing Officer (who is close friends with the College advisor to whom Alex made her initial report) finds that Aaron is responsible for engaging in Title IX sexual harassment.
 - After receiving the Hearing Officer's determination, Aaron feels that the Hearing Officer had a conflict of interest that affected the outcome of the grievance process. He submits an appeal request to the Title IX Coordinator.
- What steps does the Title IX Coordinator need to take with respect to the appeal?

Robbins Schwartz

Questions?



Robbins Schwartz