

Align Your Title IX Policy and Procedures to the New Law

Welcome & Faculty Introductions



Rabia Khan Harvey, M.Ed., MSHR
Senior Program Manager
Academic Impressions
rabia@academicimpressions.com

September 29 – 30, 2020



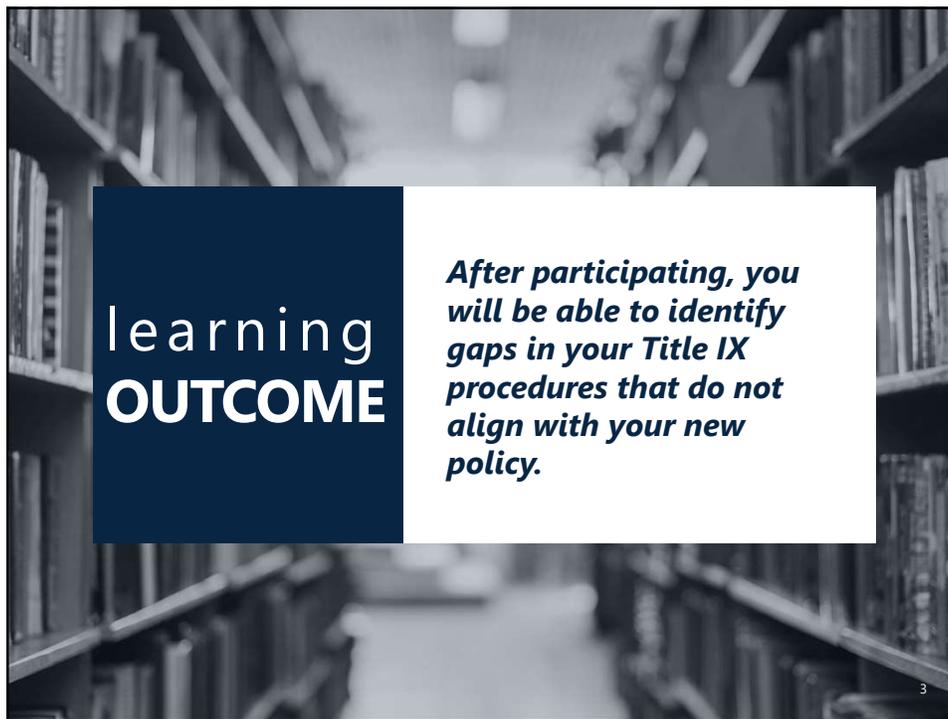
1

1

The Big Why!



2



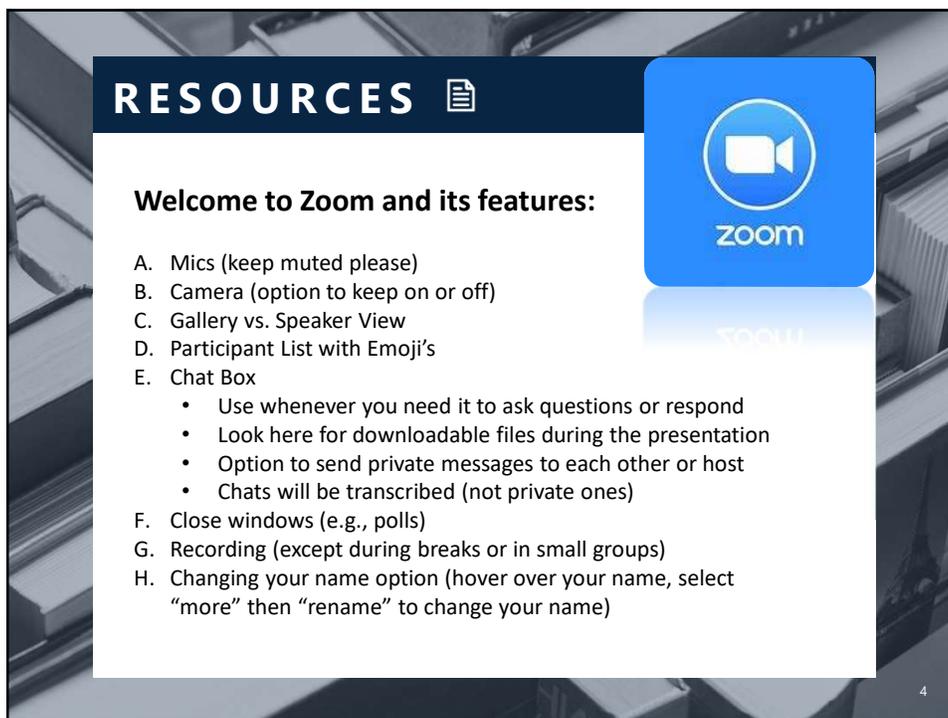
A slide with a background of a library aisle. On the left, a dark blue box contains the text "learning OUTCOME" in white. On the right, a white box contains the text "After participating, you will be able to identify gaps in your Title IX procedures that do not align with your new policy." in dark blue.

**learning
OUTCOME**

After participating, you will be able to identify gaps in your Title IX procedures that do not align with your new policy.

3

3



A slide with a background of a library aisle. At the top, a dark blue bar contains the text "RESOURCES" in white and a document icon. On the right, there is a blue square with a white video camera icon and the word "zoom" in white. Below this, a white box contains the text "Welcome to Zoom and its features:" followed by a list of items A through H.

RESOURCES 

Welcome to Zoom and its features:

- A. Mics (keep muted please)
- B. Camera (option to keep on or off)
- C. Gallery vs. Speaker View
- D. Participant List with Emoji's
- E. Chat Box
 - Use whenever you need it to ask questions or respond
 - Look here for downloadable files during the presentation
 - Option to send private messages to each other or host
 - Chats will be transcribed (not private ones)
- F. Close windows (e.g., polls)
- G. Recording (except during breaks or in small groups)
- H. Changing your name option (hover over your name, select "more" then "rename" to change your name)

4

4

Let's Meet You! Start in Alpha Order by First Name

- Name
- Title
- Institution
- What are you hoping to learn from this virtual conference?

5

Meet Your Expert Faculty



Cara Hardin, J.D.
Title IX Deputy Coordinator
Marquette University
cara.hardin@marquette.edu

6



7



AGENDA

September 29, 2020

1. Introduction of the Seven Stages and Fact Pattern
2. Stage 1: Actual Knowledge and the Institutional Response
3. Stage 2 & 3: The Formal Complaint and The Informal Resolution Process
4. Stage 4: The Investigative Process
5. Networking Reception

8

8



AGENDA

September 30, 2020

1. Working Groups:
Application of Stages 1-4
2. Stage 5: The Hearing
Process
3. Stages 6 & 7: The Appeal
Process and Implementing
Sanctions & Remedies
4. Working Groups:
Application of Stages 5-7
5. Final Q&A

9

9



ACTIVITY



Review the Sample
Report of Sexual
Harassment Email

****Please look in the Chat
Box for document.***

10

10



11



12

Stage 1: Actual Knowledge and the Institutional Response

- “Actual knowledge” = Notice to an institution of sexual harassment, or allegations thereof, occurring *within an education program or activity* and *against a person in the U.S.*
- "Actual knowledge" is attributed to an institution when the notice is received by the:
 - Title IX Coordinator, or
 - An official with authority to institute corrective measures on behalf of the institution.

§106.30(a)

13

Stage 1: Actual Knowledge and the Institutional Response

- “Actual Knowledge” occurs when the Title IX Coordinator or an Official with Authority (“OWA”):
 - Witnesses sexual harassment,
 - Learns about it from a complainant or third party,
 - Receives a written or verbal complaint about it, or
 - Learns about it by any other means.

14

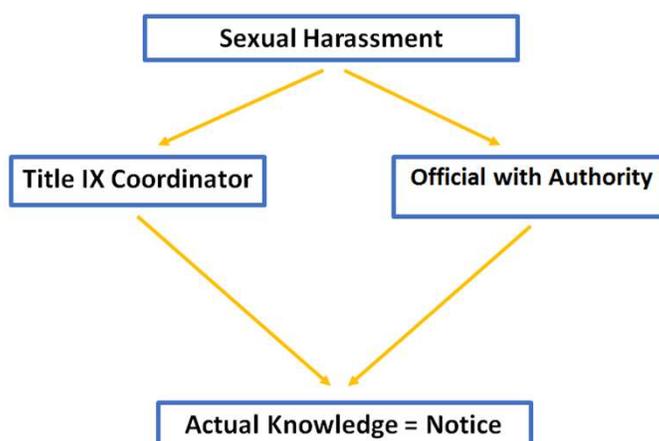
Stage 1: Actual Knowledge and the Institutional Response

- “Actual Knowledge” triggers the institution's duty to respond to sexual harassment in accordance with the Title IX Final Regulations.
 - The institution must respond promptly in a manner that is not *deliberately indifferent*.

§106.44(a)

15

Stage 1: Actual Knowledge and the Institutional Response



16

RESOURCE

Sample communication informing university leaders of their designation as an OWA

****Please look in the Chat Box for document.***

17

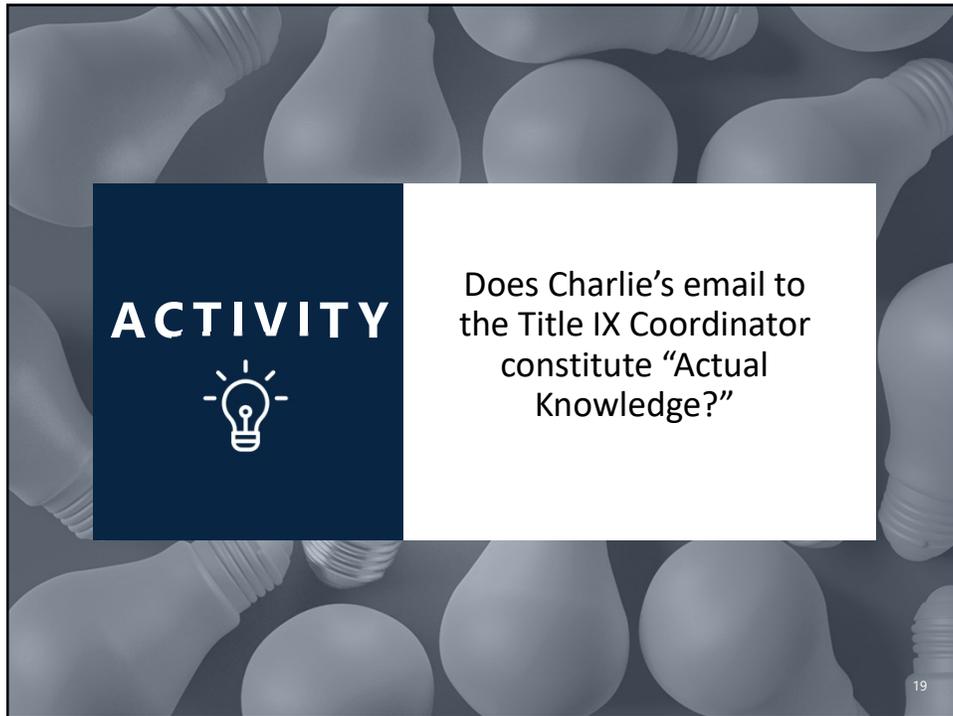
17

QUESTIONS?

ai ACADEMIC IMPRESSIONS

18

18

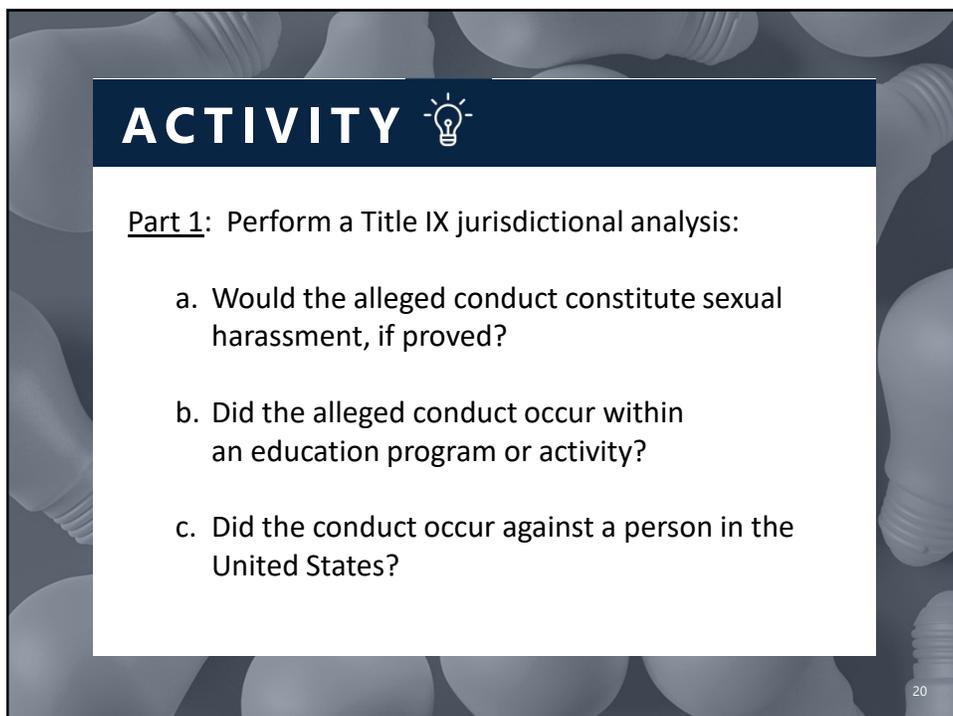


ACTIVITY 

Does Charlie's email to the Title IX Coordinator constitute "Actual Knowledge?"

19

19



ACTIVITY 

Part 1: Perform a Title IX jurisdictional analysis:

- a. Would the alleged conduct constitute sexual harassment, if proved?
- b. Did the alleged conduct occur within an education program or activity?
- c. Did the conduct occur against a person in the United States?

20

20

Hostile Environment Sexual Harassment §106.30(a)

1. Hostile environment sexual harassment is:

“Unwelcome conduct, based on sex, that is determined by a reasonable person in the complainant’s position to be so severe, pervasive, and objectively offensive that it effectively denies a complainant equal access to the institution’s education program or activity.”

21

Hostile Environment Sexual Harassment §106.30(a)

Formula for hostile environment sexual harassment:

- Unwelcome...
- Conduct “on the basis of sex” that is...
- Determined by a reasonable person in the complainant’s position to be...
- So severe, pervasive, and objectively offensive that it effectively denies a complainant equal access to the institution’s education program or activity.

22

Education Program or Activity §106.44(a)

2. Education program or activity:

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.

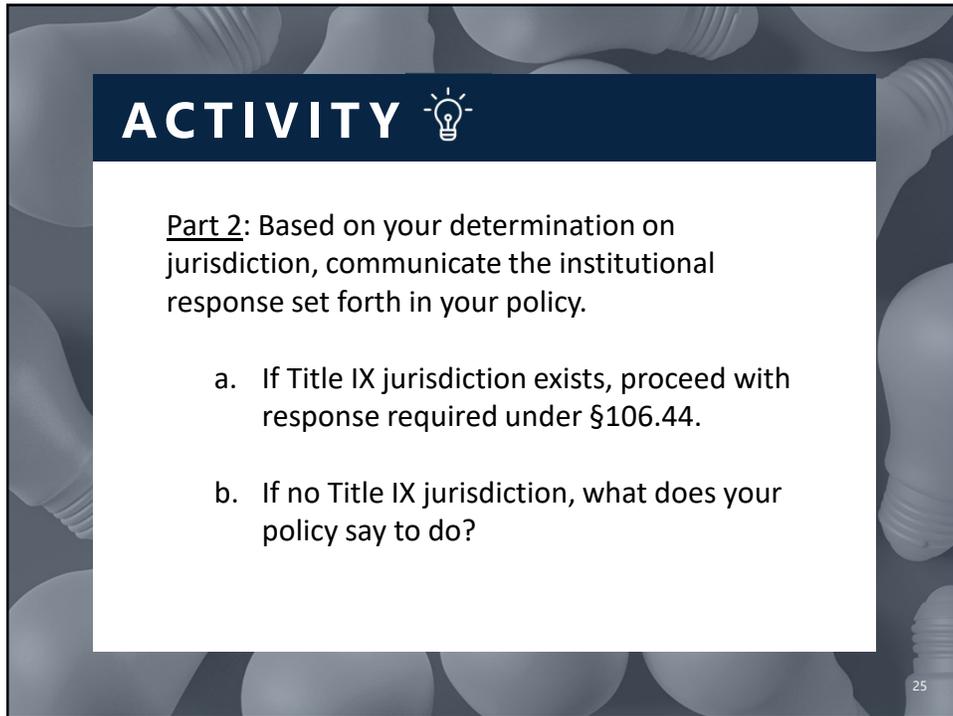
Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

23

Conduct against person in the U.S. §106.45(b)(3)

3. Was the complaint in the United States when they experienced the alleged conduct?

24

A slide titled "ACTIVITY" with a lightbulb icon. The background is a dark blue pattern of lightbulbs. The text is white on a dark blue background.

ACTIVITY

Part 2: Based on your determination on jurisdiction, communicate the institutional response set forth in your policy.

- a. If Title IX jurisdiction exists, proceed with response required under §106.44.
- b. If no Title IX jurisdiction, what does your policy say to do?

25

25

A slide titled "QUESTIONS?" with a question mark icon. The background is a light blue pattern of question marks. The text is white on a dark blue background.

QUESTIONS?



26

26

Stage 1: Actual Knowledge and the Institutional Response

If jurisdiction appears to exist, the Title IX Coordinator must promptly contact the complainant to discuss (§106.44(a)):

- The availability of supportive measures as defined in §106.30
 - Consider the complainant's wishes with respect to supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain the process for filing a formal complaint.

27



RESOURCE



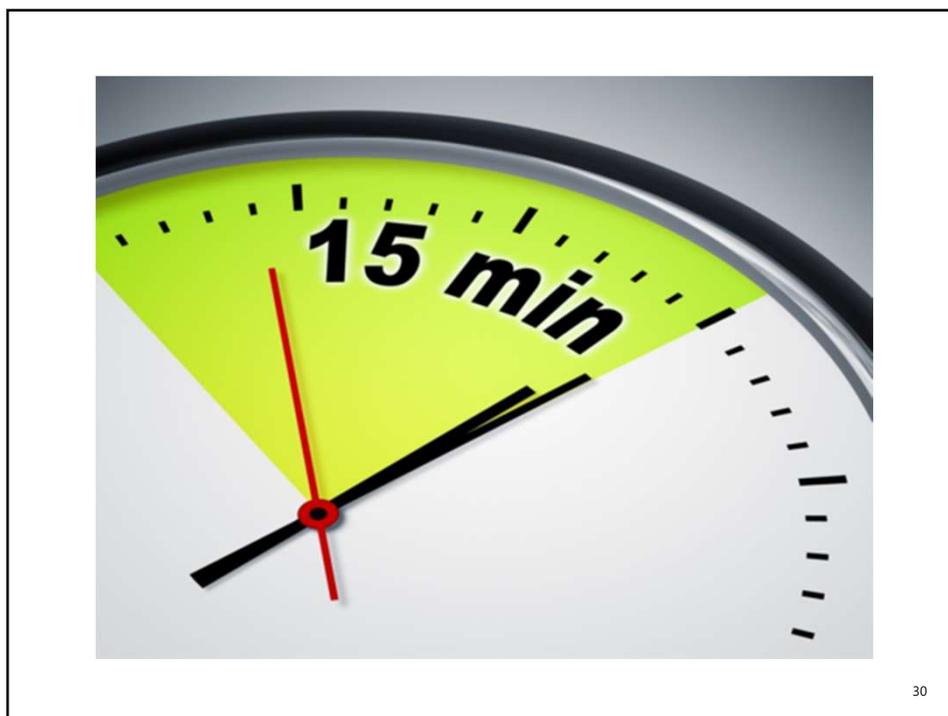
Sample email from a Title IX Coordinator to a complainant upon "Actual Knowledge."
****Please look in the Chat Box for document.***

28

28



29



30



#2

The Formal Complaint

31

31

Stage 2: The Formal Complaint

The procedures relating to a formal complaint are as follows:

1. The Filing of a Formal Complaint. A formal complaint is a document:
 1. Filed by a complainant, or
 2. Signed by the Title IX Coordinator...

Alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
§106.30



32

32

Stage 2: The Formal Complaint

- *“Filed by a complainant.”* A document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. §106.30.
- *“Signed by the Title IX Coordinator.”* Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. §106.30.
 - Title IX Coordinator files a formal complaint when not “clearly unreasonable.”

33

Stage 2: The Formal Complaint

2. Written Notice of Formal Complaint. Upon receipt of a formal complaint, the institution must provide written notice to BOTH parties. §106.45(b)(2).
 - “Notice of Allegations.” Provides notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time (i.e., time and location) to allow the respondent to prepare a response to the allegations before an initial interview. §106.45(b)(2)(B)

34

Stage 2: The Formal Complaint

3. Mandatory Dismissal of Formal Complaints. The University must dismiss formal complaints alleging Title IX sexual harassment in the following circumstances (§106.45(b)(3)(i)):
- The allegations raised in the formal complaint (or certain allegations within the formal complaint), even if proved, do not fall under the definition of sexual harassment,
 - The alleged sexual harassment did not take place in the United States,
 - The alleged sexual harassment did not take place within an education program or activity, or
 - The complainant was not participating or attempting to participate in an education program or activity at the time the formal complaint was filed (§106.30).

35

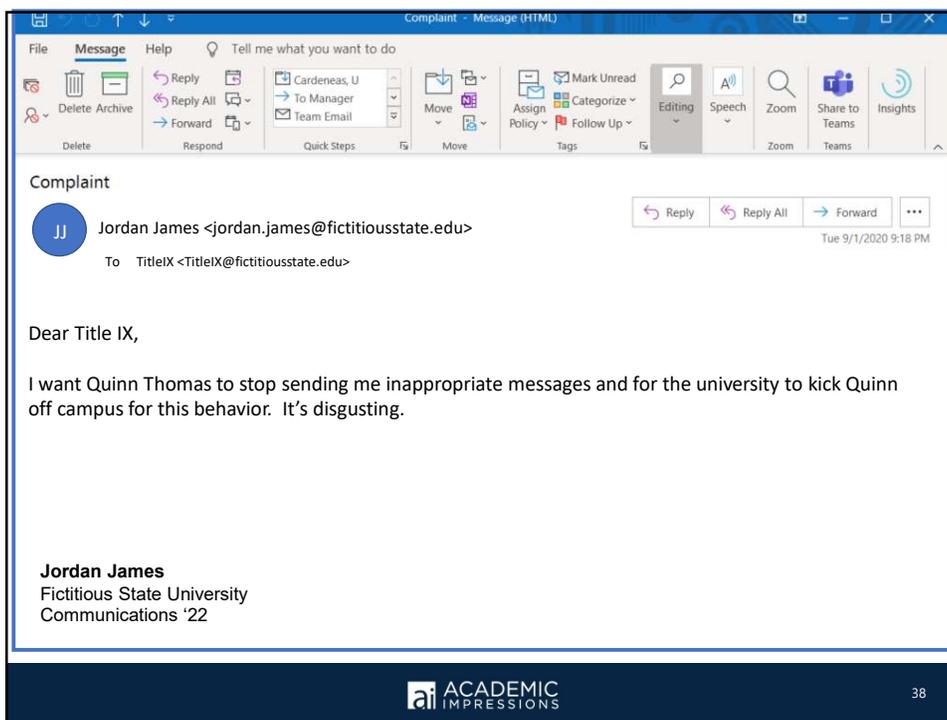
Stage 2: The Formal Complaint

- *Notice of Dismissal*. The Title IX Coordinator will promptly notify the parties in writing of a dismissal decision and the reasons for the dismissal.
- *Appeal of Dismissal*. Any Party may appeal a dismissal of part or all of a formal complaint. Appeals must be filed within [1-3] days of receiving the dismissal notice.

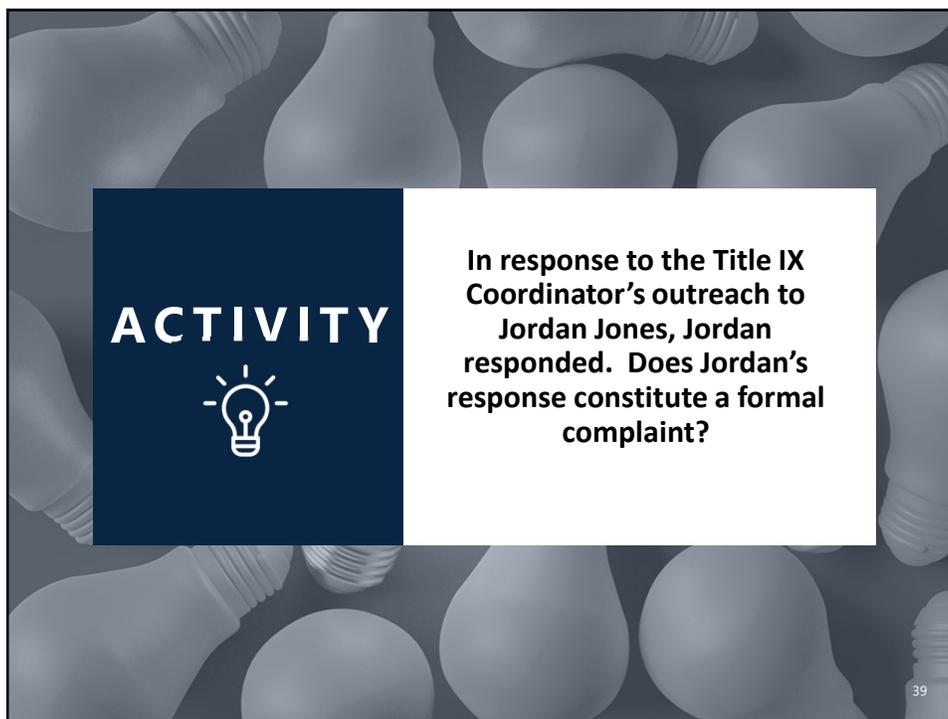
36



37



38



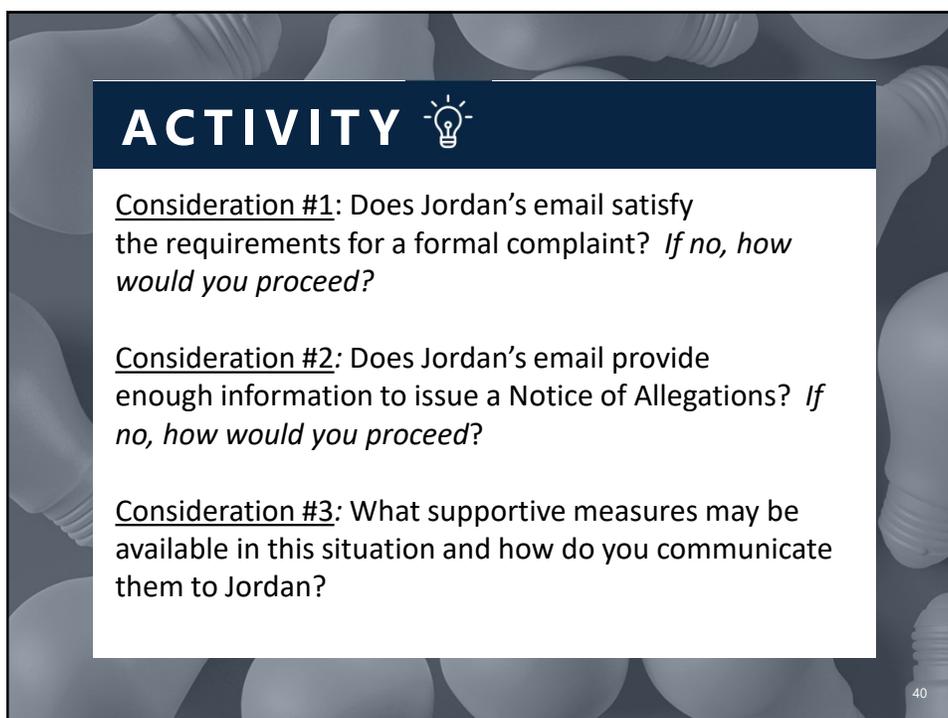
ACTIVITY



In response to the Title IX Coordinator's outreach to Jordan Jones, Jordan responded. Does Jordan's response constitute a formal complaint?

39

39



ACTIVITY



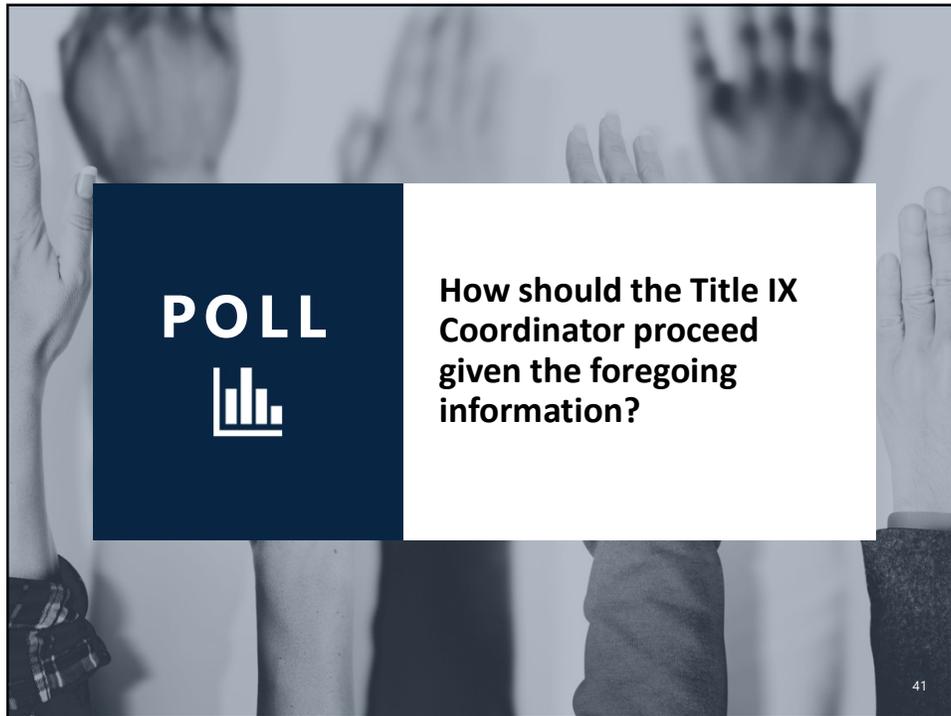
Consideration #1: Does Jordan's email satisfy the requirements for a formal complaint? *If no, how would you proceed?*

Consideration #2: Does Jordan's email provide enough information to issue a Notice of Allegations? *If no, how would you proceed?*

Consideration #3: What supportive measures may be available in this situation and how do you communicate them to Jordan?

40

40



POLL

How should the Title IX Coordinator proceed given the foregoing information?

41

41

Stage 2: The Formal Complaint

The Title IX Coordinator has the authority to:

- File supplemental or amend formal complaints.
- Consolidate formal complaints. §106.45(b)(4)
 - Consolidation may occur when the formal complaint is:
 - Against more than one respondent,
 - By more than one complainant against one or more respondents, or
 - By one party against the other party,
 - Where the allegations of sexual harassment arise out of the same facts or circumstances.

42

CHAT

Are the allegations raised by the complainants amenable for consolidation?

43

43

Stage 2: The Formal Complaint

Procedure for consolidation:

- Three formal complaints = three separate Notices of Allegations.
- The Title IX Coordinator informs the parties, in writing, that all three Notice of Allegations are hereby consolidated pursuant to the policy.
 - *Sample language: "Based on the similarity of the allegations raised against you by each complainant, all three formal complaints are hereby consolidated. Accordingly, the three formal complaints will be investigated and adjudicated contemporaneously."*

44



45

Stage 2: The Formal Complaint

Emergency removals (§106.44(c)):

- In every case, and throughout each case, the Title IX Coordinator must determine whether an emergency removal of a respondent from any program or activity is necessary.
- An emergency removal can occur before the filing of a formal complaint or at anytime during the grievance process.

46

Stage 2: The Formal Complaint

- *Risk assessment.* For an emergency removal to occur, there must be an individualized safety and risk analysis assessment to determine whether there is an immediate threat to the physical health or safety of anyone within the community.
- *Notice to the Respondent.* Prior to the emergency removal or as soon thereafter as reasonably possible, the Title IX Coordinator will provide to the respondent written notice of the emergency removal.
- *Challenging an Emergency Removal.* Students must have an opportunity to challenge an emergency removal.

47

Stage 2: The Formal Complaint

- A challenge of the emergency removal is not a hearing on the merits of the allegation(s) but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.
- The opportunity for a respondent to challenge an emergency removal does not prescribe cross-examination as a necessary procedure within the challenge.
- There is no appeal process for emergency removal decisions.

48

A presentation slide with a background of overlapping grey paper-like shapes. On the left, a dark blue rectangle contains the word "CHAT" in white, bold, sans-serif font, with a white speech bubble icon below it. To the right, a white rectangle contains the text "Do the facts of the case warrant exploration of an emergency removal? Why, or why not?" in a dark grey, sans-serif font. A small number "49" is visible in the bottom right corner of the slide.

CHAT

Do the facts of the case warrant exploration of an emergency removal?
Why, or why not?

49

49

A presentation slide with a background of overlapping grey paper-like shapes, many of which feature a question mark. In the center, a dark blue rectangle contains the word "QUESTIONS?" in white, bold, sans-serif font. At the bottom center, there is a logo for "ACADEMIC IMPRESSIONS" consisting of a stylized 'ai' icon and the text "ACADEMIC IMPRESSIONS". A small number "50" is visible in the bottom right corner of the slide.

QUESTIONS?

ai ACADEMIC IMPRESSIONS

50

50



#3

The Informal Resolution Process

51

51

Stage 3: The Informal Resolution Process

The Final Regulations provide for informal resolution in lieu of the investigatory and/or hearing process after a formal complaint is filed. §106.45(b)(9).

- Informal resolution is a voluntary option that allows parties to resolve disputes in a forum that is separate and distinct from the institution's live-hearing process.
- Discretionary whether to offer informal resolution at all or only in certain cases.
- Both parties must voluntarily agree in writing to participate in an informal resolution process.

52



53

Stage 3: The Informal Resolution Process

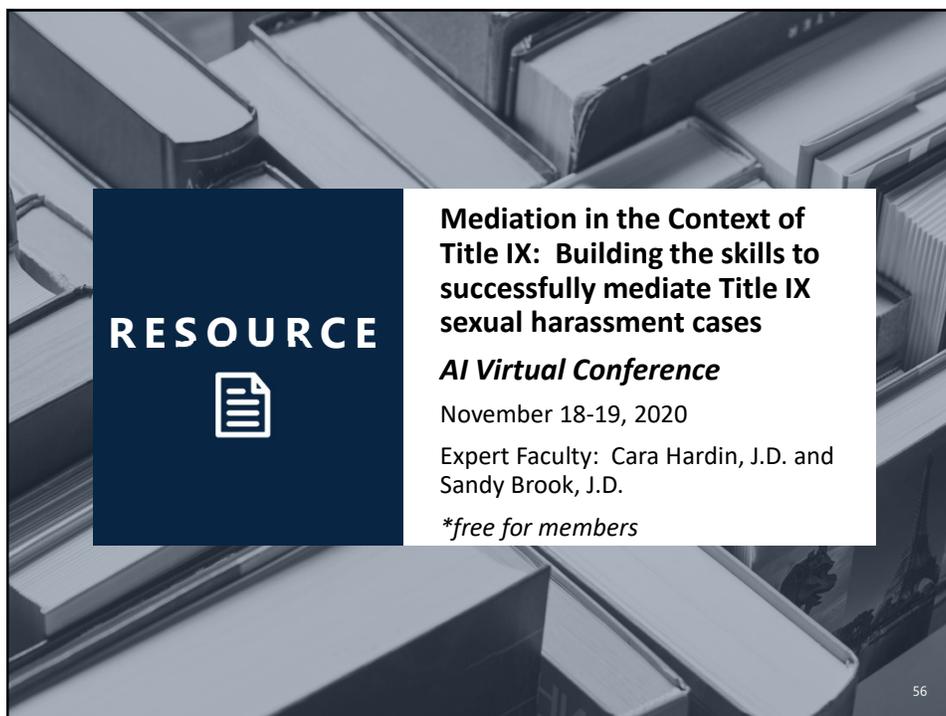
- Parties can withdraw from the informal resolution process and resume the §106.45 grievance (investigation and/or hearing) process at any time.
- Informal resolution can be facilitated any time prior to reaching a determination regarding responsibility.
- Informal resolution processes are not permitted to resolve allegations that an employee sexually harassed a student.
- Informal resolution is facilitated by a neutral and objective individual (can't be the investigator or decision-maker).

54

Stage 3: The Informal Resolution Process

- Facilitators of information resolution must be free of bias and conflict of interest and trained in how to conduct an informal resolution process.
- Types of informal resolution processes include, but are not limited to:
 - Remedies-based resolution
 - Respondent accepts responsibility
 - Alternative dispute resolution: mediation or restorative justice

55



RESOURCE



Mediation in the Context of Title IX: Building the skills to successfully mediate Title IX sexual harassment cases

AI Virtual Conference

November 18-19, 2020

Expert Faculty: Cara Hardin, J.D. and Sandy Brook, J.D.

**free for members*

56

Stage 3: The Informal Resolution Process

- The desired end to an informal resolution is to have the parties agree to a resolution, which may or may not include a respondent's admission of harm or responsibility, that concludes the grievance process without a hearing.
 - Terms of the resolution are negotiable, including non-disparagement and non-disclosure of the case by either party, educational outcomes, etc.
 - Outcome should be enforceable by the institution.
 - Party-imposed sanctions can be agreed upon, but no university-imposed disciplinary sanctions.
 - Any outcome arising from the informal resolution cannot be appealed.

57

TAKEAWAYS

How you describe and proceed in your informal resolution process will be specific to your policy.

Acknowledge/discuss informal resolution option in:

- Policy
- Notice of Allegations
- Notice of Hearing
- Diagrams explaining the grievance process

58



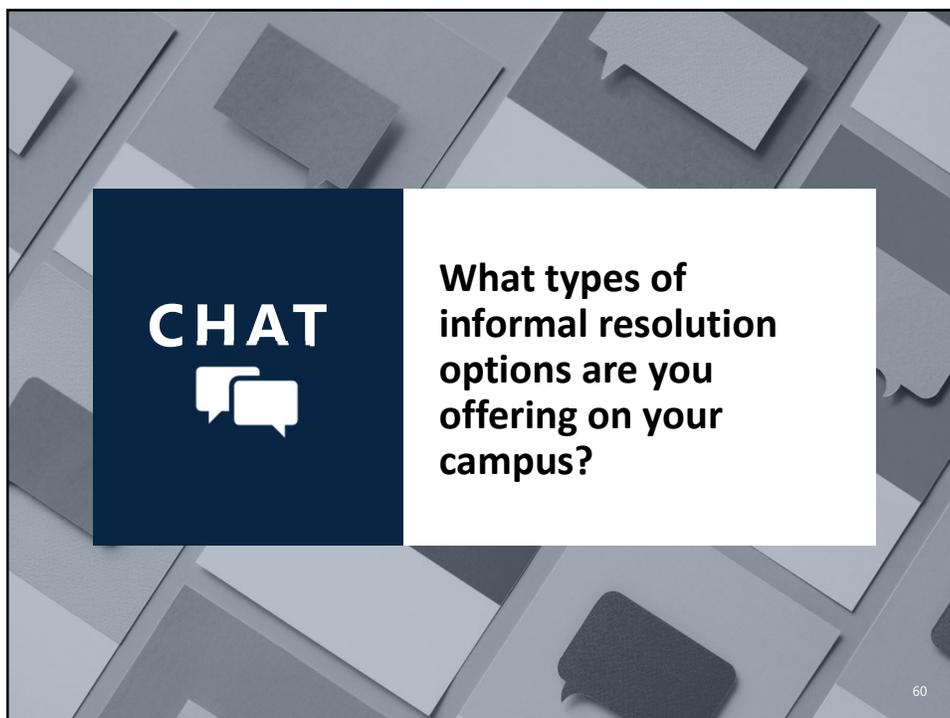
TAKEAWAYS



How you describe and facilitate your informal resolution process will be specific to your policy.

59

59



CHAT



What types of informal resolution options are you offering on your campus?

60

60



61



62



#4

The Investigative Process

63

63

Stage 4: The Investigative Process

After a formal complaint is filed, we move into the "notice" and investigative process.

Coordination of the notice and investigative process will proceed as follows:

1. Assignment of Investigator. The Title IX Coordinator will assign an investigator from within or outside of the institution to investigate the allegations in the formal complaint.
 - a. *Challenging Investigator for Perceived Bias or Conflict of Interest.*
 - b. *Title IX Coordinator can be the Investigator.*



64

64

Stage 4: The Investigative Process

2. Notice of Allegations. The Title IX Coordinator will provide written notice of the allegations to the parties that provides:
- Sufficient detail about the allegations and the applicable policy provisions to allow the parties to prepare before an interview, and
 - An explanation about the scope of and their rights within the grievance process.

§ 106.45(b)(2)

65



RESOURCE



**Sample Letters:
Notice of Allegations and
Rights of the Parties**

**Please also download these
documents from the Chat Box.*

66

66



67

A slide with a dark blue background featuring a pattern of light blue lightbulbs. At the top, a dark blue rectangular box contains the word "ACTIVITY" in white, bold, uppercase letters, followed by a white lightbulb icon. Below this, a white rectangular box contains the following text:

Investigator Challenge by Respondent
Twenty-four hours after receiving the Notice of Allegations, that included the identity of the assigned investigator, the respondent sends an email to the Title IX Coordinator challenging the investigator's appointment.

1. In small groups, discuss how you proceed under your policy and/or the Title IX Final Regulations.

****Please look in the Chat Box for the respondent's email challenging the appointment of investigator.***

A small number "68" is located in the bottom right corner of the slide.

68

Stage 4: The Investigative Process

4. Interviews. The investigator will attempt to interview the complainant, the respondent, and witnesses.
 - *Written Notice of Interviews*. The investigator will provide advance written notice to the parties prior to investigative interviews.
 - The written notice will include the date, time, location, participants in, and purpose of the investigative interview or other meeting. 106.45(b)(5)(vi).

Stage 4: The Investigative Process

- *Interview may be virtual*. Interviews may be conducted virtually.
- *Audio Recording of interviews*. The investigator will audio record all interviews and will prepare an interview transcript or summary.
- *Advisors welcome*. The complainant and the respondent may have their advisor present during their interview(s).

RESOURCE

**Sample:
Notice of Interview**

**Please also download this document from the Chat Box.*

71

71

QUESTIONS?

ai ACADEMIC IMPRESSIONS

72

72

Stage 4: The Investigative Process

5. The Investigative File. When the Investigator finishes gathering the available evidence, the investigator will compile in the investigative file all the evidence *directly related* to the allegations raised in the formal complaint.
6. Investigative File Review and Response Period. Provide the parties and their advisors at least 10 [business] days to inspect the investigative file and to provide a written response.
 - *Written responses*. Each party's written response will be provided to the other party and appended to the investigative file.

73

Stage 4: The Investigative Process

7. The Investigative Report. After the investigator closes the evidence-gathering phase of the investigation, the investigator will draft an investigative report summarizing the relevant evidence.
 - The relevant evidence summarized in the investigative report is the evidence intended to be relied upon in reaching a determination on responsibility.

74

Reminder: Investigator will essentially have three piles of information at the conclusion of the investigation



Evidence "directly related" to the allegations



Relevant evidence



Other evidence

75

Stage 4: The Investigative Process

- Contents of the investigative report will generally include:
 - i. A jurisdictional statement relating to the applicability of the Policy,
 - ii. An explanation of the alleged conduct,
 - iii. The applicable offenses,
 - iv. A description of procedural steps taken during the investigative process,
 - v. The evidence obtained by the investigator and the witnesses interviewed,
 - vi. Whether supportive measures were provided, and
 - vii. A summary of the relevant evidence.

76

Stage 4: The Investigative Process

8. Investigative Report Review and Response Period. Provide the parties and their advisors at least 10 [business] days prior to the hearing to review the investigative report and to provide a written response.
- *Written responses.* Each party's written response will be provided to the other party and appended to the investigative report.

Stage 4: The Investigative Process

9. Title IX Coordinator Review of Investigative Report. After the parties have reviewed and responded to the investigative report, the Title IX Coordinator will review the investigative report and written responses and determine next steps.
- Following the investigative process, formal complaints of sexual harassment may:
 - Be dismissed (§106.45(b)(3)(i, ii)),
 - Be resolved through the informal resolution process, or
 - Proceed to the hearing process.



79



80



1



2



#5

The Hearing Process

3

3

Stage 5: The Hearing Process

The Final Regulations require a live-hearing that provides:

- The decision-maker(s) the opportunity to ask questions of the parties and witnesses, and
- An opportunity for each party’s advisor to cross-examine the other party and witnesses...

Before a finding of responsibility or non-responsibility is made and any disciplinary sanctions issued by the institution.
§106.45(b)(6), (7)



4

4

Stage 5: The Hearing Process

Coordination of the live-hearing process will proceed as follows:

1. Assignment of hearing facilitator. A hearing facilitator, who may be the Title IX Coordinator, may appoint the hearing officer/panel, schedule the hearing, obtain the necessary technology, facilitate the hearing by scheduling witnesses, meet with the parties to discuss format of hearing, etc.
2. Assignment of Hearing Panel (or Hearing Officer). The Title IX Coordinator will appoint a Hearing Panel to hear the case and determine the outcome.
 - a. *Challenging Hearing Panelists for Perceived Bias or Conflict of Interest.*

5

Stage 5: The Hearing Process

3. Notice of Hearing. At least 10 days before the hearing, the parties will receive a Notice of Hearing that will inform them of:
 - a. The date, time, and location of the hearing
 - b. Requirement to have an advisor to conduct cross-examination
 - c. The participants (including the witnesses who will be made available to testify) in the hearing
 - d. The names of the members of the Hearing Panel,
 - e. Provide the Hearing Rules and Procedures (if applicable)
 - f. Inform/remind about the availability of informal resolution (if applicable)

6

Stage 5: The Hearing Process

- a. Describe the potential, or range of disciplinary sanctions and remedies that could result from a determination of responsibility. §106.45(b)(1)
- g. The purpose of the hearing (to determine responsibility based on the chosen standard of proof, and if the respondent is found responsible, to issue an appropriate disciplinary sanction(s) for the respondent and remedies for the complainant.)

7

Stage 5: The Hearing Process

- 4. Advisors required. Each party must have an advisor, who may or may not be an attorney, at the hearing to conduct cross-examination on behalf of the party. §106.45(b)(2)(B).
 - a. School may not limit the choice or presence of an advisor for either party. §106.45(b)(2)(B).
 - b. If a party does not choose an advisor, the institution must provide an advisor for the party, free of charge, throughout the hearing process, who may or may not be an attorney.
 - c. May impose restrictions on advisor role, except for performing cross-examination.

8

Stage 5: The Hearing Process

5. Hearing Panel to Review Investigative Report and Relevant Evidence. The Hearing Panel will review the investigative report and the relevant evidence relied upon in the investigative report before the hearing.
 - The hearing panel will review evidence determined not relevant by the investigator only if the parties wish to challenge that determination at the hearing or pre-hearing conference.

Stage 5: The Hearing Process

6. Witness Notice to Testify. Because the hearing panel will call all relevant witnesses to testify, the hearing facilitator will notify each witness in writing of the request to participate in the hearing and provide a date/time for their testimony.
 - Title IX Coordinator or Hearing Panelists do not have subpoena power, therefore cannot require witnesses (or parties) to attend and testify, but can make alternative arrangements for them to appear, if necessary.



11

Stage 5: The Hearing Process

7. Hearing Logistics.

- a. *Live Hearing.* The hearing must be live. Live hearings can occur with parties in same room, separate rooms or separate physical or geographic locations. §106.45(b)(6)(i)
- b. *Technology.* Technology used must enable the parties and decisionmaker(s) to simultaneously see and hear one another and any testifying witnesses. Decision-makers to be trained on technology. §106.45(b)(6)(i)
- c. *Audio Recording.* Must record the hearing and provide the recording or transcript to the parties to review. §106.45(b)(6)(i)

12

Stage 5: The Hearing Process

7. The Hearing.

- a. The Hearing Chair will provide to the parties and their advisors a brief overview of the hearing process and the expectations for participants' conduct.
 - The parties and their advisors must agree (on the record) to abide by those expectations or risk removal from the hearing (institution will appoint new advisor).

13

Stage 5: The Hearing Process

- b. The Hearing Officer/Chair will discuss their procedural and substantive roles:
 - Ask questions of the parties and witnesses, directly
 - Allow advisors to cross-examine the other party and witnesses
 - Exclude non-relevant questions and testimony
 - Observe recognized legal privileges
 - Take reasonable steps to maintain order and decorum
 - Otherwise administer the hearing

14

Stage 5: The Hearing Process

- c. Discretionary whether to offer opportunity for opening/closing statements.
- d. The questioning procedure (generally):
 - i. The hearing panel will first question the complainant.
 - ii. Respondent's advisor may then question the complainant.
 - iii. The hearing panel will question each witness.
 - iv. After the hearing panel questions a witness, the complainant's advisor, then the respondent's advisor, may question that witness.
 - v. The hearing panel will next question the respondent.
 - vi. The complainant's advisor may then question the respondent.

15

Stage 5: The Hearing Process

- e. Advisors must ask questions in the following manner:
 - i. Advisors will pose each question verbally to the Hearing Chair, who will determine whether the question is relevant.
 - ii. If the Hearing Chair deems the question relevant, the Hearing Chair will instruct the party or witness to answer the question.
 - iii. If the Hearing Chair deems the question not relevant, the Hearing Chair will explain the rationale for the determination and instruct the party or witness not to answer.

§106.45(b)(6)(i)

16

Stage 5: The Hearing Process

- iv. *Example of a way to limit role of advisor:* The Hearing Chair may ask Advisors to frame why, from the advisor's perspective, a question is or is not relevant, but the Hearing Chair will not entertain argument from the advisors on relevance once the Hearing Chair has ruled on a question.
- v. The Hearing Chair's decision on whether a question is relevant is final.

17

A large graphic with a dark blue background and a pattern of light blue question marks. In the center, a dark blue rectangular box contains the word 'QUESTIONS?' in white, bold, uppercase letters.

QUESTIONS?

18



ACTIVITY



As a member of the hearing panel, review this scenario and in small groups, determine how you would proceed.

**Please refer to the Chat Box for this document.*

19

19

Stage 5: The Hearing Process

8. Delays for Good Cause. If the complainant, the respondent, or witnesses fail to appear and/or participate, the hearing will continue as scheduled unless the hearing panel determines there is “good cause” to suspend the hearing for a reasonable time.
- Must allow for the temporary delay of the grievance process or the limited extension of time frames for good cause. §106.45(b)(1)(v)
 - “Good cause” can include the unavailability of parties, witnesses, or advisors due to extenuating circumstances.
 - Written notice of a delay or extension and the reason therefor shall be sent to the parties in writing.

20

Stage 5: The Hearing Process

9. After the Hearing. Following the close of the hearing, the hearing panel will deliberate to determine responsibility.
 - a. The Hearing Chair will draft a written determination supporting the determination on responsibility (based on a majority or unanimous vote).
 - b. Upon a finding of responsibility, the hearing panel will issue disciplinary sanctions (respondent) and remedies (complainant).
 - c. The Hearing Chair or Title IX Coordinator will contemporaneously inform the parties of the determination of responsibility and any disciplinary sanctions/remedies in the Notice of Outcome.

21

Stage 5: The Hearing Process

10. Notice of Outcome. The written Notice of Outcome will include:
 - Identification of the allegations
 - A description of the procedural steps taken from the receipt of the formal complaint through the determination of responsibility
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the policy to the facts
 - A statement of, and rationale for, the result as to each allegation
 - *How the hearing panel resolved questions of credibility**
 - The procedures and permissible bases for appeal

§ 106.45(b)(7)

22

Stage 5: The Hearing Process

11. Finality of Outcome. The hearing panel's determination regarding responsibility becomes final either:

- a. On the date the parties receive the Appeal Decision, if an appeal was filed, or
- b. On the date on which an appeal would no longer be considered timely.

§106.45(b)(7)(iii)

23



QUESTIONS?

24



25

A dark blue rectangular slide. In the top right corner, there is a logo with the letters 'ai' in a white square followed by the text 'ACADEMIC IMPRESSIONS' in white. On the left side, there is a vertical orange bar. To the right of this bar, the text '#6' is written in a large white font, and below it, 'The Appeal Process' is written in a smaller white font. In the bottom right corner of the slide, the number '26' is written in a small white font.

26

Stage 6: The Appeal Process

An appeal process following a live hearing and Notice of Outcome is mandatory pursuant to the Final Regulations. §106.45(b)(8).

Coordination of the appeal process is as follows:

1. Resolutions May Be Appealed. Any party may appeal:
 - A determination regarding responsibility
 - A dismissal of part or all of a formal complaint

27

Stage 6: The Appeal Process

2. Grounds for Appeal. A party may appeal on one or more of the following grounds:

- a. Procedural irregularity that affected the outcome;
- b. New evidence that was not reasonably available at the time the dismissal or determination regarding responsibility was made and that could affect the outcome; and/or
- c. The Title IX Coordinator, investigator(s), and/or hearing panelists had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome;
- d. Any other grounds articulated under your policy.

§106.45(b)(8)

28

Stage 6: The Appeal Process

3. Filing an Appeal. An appeal must be in writing to the Title IX Coordinator and articulate the specific ground(s) for the appeal.
 - Provide the parties with a reasonable and equal opportunity to submit a written statement in support of or challenging the dismissal or the determination regarding responsibility.

Stage 6: The Appeal Process

4. Appeal Timeliness. An appeal will be considered timely in the following circumstances:
 - a. *Appeal of Notice of Dismissal.* A notice of appeal submitted to the Title IX Coordinator is timely if it is filed with the Title IX Coordinator within [two] [business] days of the delivery of Notice of Dismissal.
 - b. *Appeal of Responsibility.* A notice of appeal submitted to the Title IX Coordinator is timely if it is filed with the Title IX Coordinator within [five] [business] days of the delivery of the Notice of Outcome.

Stage 6: The Appeal Process

5. Advisors During Appeal. The parties may continue to use their advisor or select a different advisor for the Appeal Process.
6. Notice of Appeal. Upon receipt of an appeal, the Title IX Coordinator will simultaneously issue a Notice of Appeal to both parties. The Notice of Appeal will:
 - a. Inform the party that an appeal has been filed by the complainant and/or the respondent;
 - b. Indicate whether the appeal is timely;
 - c. If the appeal is timely, contain a copy of the appeal appended to the Notice of Appeal and disclose the name of the Appeal Officer assigned by the Title IX Coordinator.

31

Stage 6: The Appeal Process

7. Appeal Officer Appointment. The Appeal Officer must be independent of the previous processes, including independent from any appeal of a dismissal that may have been heard earlier in the process.
 - a. *Challenging Appeal Officer for Perceived Bias or Conflict of Interest.*
 - b. When the selection of the Appeal Officer is final, the Title IX Coordinator will provide the materials for the appeal to the Appeal Officer.

32

Stage 6: The Appeal Process

- c. Non-Appealing Party's Response to Appeal.* The non-appealing party will have [two] [business] days to submit to the Appeal Officer a written response to the appeal, which response will be provided to the appealing party.
- d. Other Responses to Appeal.* The Appeal Officer may invite the investigator or Hearing Chair to submit a response to the appeal, which written responses will be provided to the parties.

33



ACTIVITY



Consider the following scenario. How does your policy advise the Appeal Officer to proceed?

**Please refer to the Chat Box for the scenario.*

34

Stage 6: The Appeal Process

8. Supportive Measures During Appeal Process. Supportive measures may be continued or modified during the Appeal Process, as appropriate.
9. Postponing of Sanctions During Appeal Process. If an appeal was timely filed, any sanctions that had been imposed on respondent are postponed during the Appeal Process.
10. Written Decision. The Appeal Officer will generally render to the Title IX Coordinator a written decision on the appeal (“Appeal Decision”) as to each ground raised and provide the rationale for the decision.

35

Stage 6: The Appeal Process

- a. *Timing of Appeal Decision.* Absent exigent circumstances, the Appeal Decision will be released within [seven] [business] days from when the Appeal Officer received the written responses from the parties or from the investigator or Hearing Panel.
- b. *Delivery of Appeal Decision to Parties.* The Appeal Officer’s written decision will be sent to the parties simultaneously.
- c. *No Further Appeal.* The Appeals Officer’s decision is final and there are no further appeal options.

36

Stage 6: The Appeal Process

Generally, the Appeal Officer takes one of three possible actions on appeal:

- i. Dismiss the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.
- ii. Remand to the original investigator or hearing panel with specific instructions on the remanded issue(s).
- iii. Modify the outcome and/or sanction with a rationale supporting the modification.

37

 A dark blue rectangular box with the word "QUESTIONS?" in white, bold, sans-serif capital letters. The background of the slide is a light gray with a pattern of faint, overlapping question marks and geometric shapes.

QUESTIONS?

38



#7

Implementing Sanctions & Remedies

39

39

Stage 7: Implementing Sanctions and Remedies

1. Sanctions and Remedies Post-Appeal. If a disciplinary sanction imposed in the original determination of responsibility remains, or a modified sanction is imposed by the Appeal Officer, the Title IX Coordinator will:
 - Coordinate the implementation of the sanction, and
 - Coordinate and implement the remedies owed to the complainant and implement any other long-term supportive measures, as necessary.



40

40

Stage 7: Implementing Sanctions and Remedies

2. Privacy of Sanctions and Remedies. The university must maintain privacy of sanctions, remedies, and long-term supportive measures, provided that maintaining privacy does not impair the institution's ability to institute the sanctions, remedies, and supportive measures.

41



CHAT

If a sanction calls for suspension or expulsion, what is your institution's procedure to put the separation into effect?

42



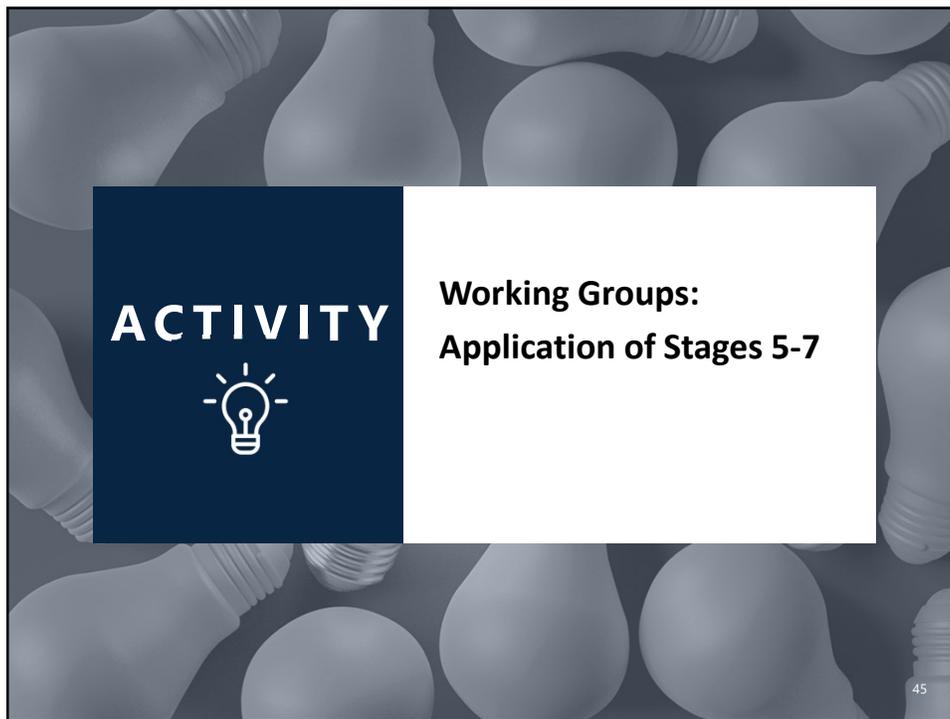
43

BONUS STAGE: Recordkeeping

An institution must maintain records for at least seven (7) years.
Records to be maintained include the following. §106.45(b)(10)

- Determination regarding responsibility
- Audio or audiovisual recording or transcript of the grievance process.
- Disciplinary sanctions imposed on the respondent
- Remedies granted to the complainant
- Appeal and decision on appeal
- Any informal resolution and result thereof
- Supportive measures (or why not delivered)
- Documentation that response not deliberately indifferent and that school has taken measures to restore or preserve equal access to programs and activities.

44



45



46

Thank you!

Please remember to complete the *event evaluation*.
Your comments will help us continually improve the
quality of our programs.

Please look in Chat for evaluation link and it will be emailed to you.