

Civil Rights Investigations and Decision-Making

Northwestern University

September 28 - 29, 2026

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Disclaimers

“We can’t help ourselves. We’re lawyers.”

- This training does not constitute legal advice.
- We are happy to answer questions seeking clarity or addressing hypotheticals, but we cannot give legal advice in this context.
- Please consult your excellent legal counsel for advice on any particular situation.

Introductions

- Your name and role at the University
- Which parts of the resolution process you touch — intake, investigation, hearing, appeal, etc.
- Your favorite pop culture investigator/detective/sleuth?

Presentation Rules

- Questions are encouraged — “for the sake of argument...”
- Be aware of your own responses and experiences
- Follow up with someone if a topic raises questions or concerns
- Take breaks as needed — and be mindful of secondary trauma

Why We Train

- You *have* to + You *want* to
 - Title IX, Clery, and the IL Preventing Sexual Violence in Higher Education Act require training for those who touch the resolution process
 - Well-trained investigators produce neutral, defensible records that protect the parties and the institution

Overview of the Two-Day Agenda (1 of 3)

Day 1 — Monday, Sept 28 (Full Day)

9:00 Welcome, Introductions, and Overview

9:15 NU Policy, Coordinated Response, and Applicable Law

10:30 Break

10:45 Common Issues: Consent, Incapacitation, Relevance

12:30 Lunch

Overview of the Two-Day Agenda (2 of 3)

Day 1 — Monday, Sept 28 (Full Day)

1:00 Effective Interviewing in Civil Rights Cases

- Trauma
- Neurodiversity
- Cultural Sensitivity
- Working with Advisors
- Who to Interview (and how to explain when you don't)

2:45 Drafting Reports & Weighing the Evidence

4:00 Practical Exercise: Findings of Fact

Overview of the Two-Day Agenda (3 of 3)

Day 2 — Tuesday, Sept 29 (Morning)

9:00 DOJ Guidance & Disparate Impact Update

9:30 Title VI Hostile Environment Harassment

10:30 Common Issues in Discrimination Cases

11:00 Practical Exercise: Hostile Environment

Who Must Be Trained — and On What

§106.45(b)(1)(iii) — Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators must be trained on:

- The definition of sexual harassment in §106.30;
- The scope of the education program or activity;
- How to conduct an investigation and grievance process; and
- How to serve impartially — avoiding prejudgment, conflicts of interest, and bias.

Clery and the Illinois PSVHE Act add annual, trauma-informed training obligations.

2020 Title IX Training Requirements - Investigators

Issues of relevance to create an investigative report that fairly summarizes relevant evidence



2020 Title IX Training Requirements – Decision-Makers

- Technology to be used at a live hearing
- Issues of relevance of questions and evidence
 - Including rape shield provisions in §106.45(b)(6)



IL PSVHEA Training Requirements (1 of 2)

110 ILCS 155/30(c) — annual survivor-centered, trauma-informed training is required for any employee involved in:

- i. receiving a student report of alleged sexual violence, domestic violence, dating violence, or stalking;
 - ii. the referral or provision of services to a survivor; or
 - iii. any campus complaint resolution procedure resulting from such an incident.
- Applies at minimum to the Title IX Coordinator, campus law enforcement, enrolled students, and contracted service providers.

IL PSVHEA Training Requirements (2 of 2)

110 ILCS 155/30(c) — training must build understanding of:

- i. the institution's comprehensive policy;
- ii. relevant federal and State law concerning survivors;
- iii. the roles of the institution, medical providers, law enforcement, and community agencies in a coordinated response;
- iv. the effects of trauma on a survivor;
- v. conduct constituting sexual violence, domestic violence, dating violence, and stalking, including same-sex violence; and
- vi. consent, and the role of drug and alcohol use in consent.

IL PSVHEA — Required Skills

Trainings must also build skills to:

- Respond with cultural sensitivity
- Provide services to a survivor, or assist in locating services
- Communicate sensitively and compassionately with a survivor of sexual violence, domestic violence, dating violence, or stalking

NU Policy, Coordinated Responses to Sexual Violence, and Applicable Law

Policy on Title IX Sexual Harassment, effective September 1, 2025

Covers behavior that falls within Title IX jurisdiction

- FAQs
 - Policy Questions
 - Reporting Questions
- Resource Guides

Title IX and Sexual Misconduct

Title IX Sexual Harassment is a type of misconduct defined by the Policy on Title IX Sexual Harassment. The policy applies to allegations which:

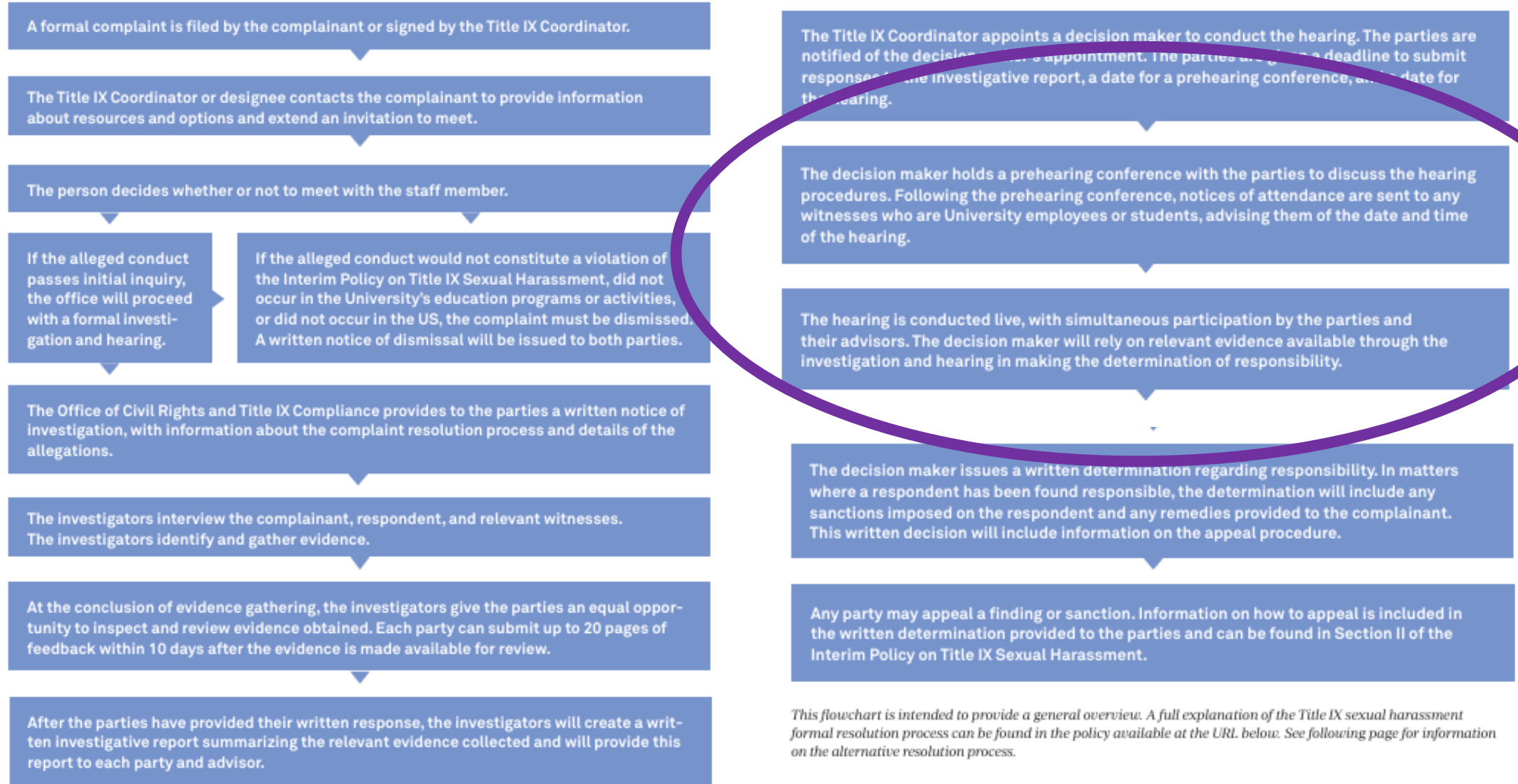
- occurred on or after August 14, 2020;
- occurred within in the University's education programs or activities and within the United States;
- included quid pro quo harassment by an employee; severe, pervasive, and objectively offensive unwelcome conduct of a sexual nature; and Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined under the Clery Act and VAWA; and
- was committed by any student, faculty member, staff member, or third-party affiliate who has a formal (including contractual) relationship with the University community (allegations committed by visitors or guests to the University are not included).

Victims of misconduct not defined by this policy should still report to the Office of Civil Rights and Title IX Compliance to receive support, resources, and information. These allegations may be addressed by other university policies.

Definitions of Title IX Prohibited Conduct

- Title IX Sexual Harassment
 - Quid Pro Quo Sexual Harassment
 - Hostile Environment Sexual Harassment
- Title IX Sexual Assault
 - Rape
 - Criminal Sexual Contact
 - Incest
 - Statutory Rape
- Title IX Dating Violence
- Title IX Domestic Violence
- Title IX Stalking
- Title IX Retaliation

Overview of the Title IX sexual harassment formal investigation process



Remember the Alternative Resolution Process

- Available under both Policies
- Parties must agree to participate (in writing)
- Not permitted in cases with allegations that an employee subjected a student to Title IX Sexual Harassment
- Parties develop the remedies to address harm
- Options
 - Facilitated Dialogue
 - Shuttle Negotiation
- Final agreements are not subject to appeal
- If no agreement – back to the formal process

Policy on Discrimination, Harassment, and Sexual Misconduct (“PDHSM”), effective September 1, 2025

Covers behavior that falls outside Title IX jurisdiction + Protected Class Discrimination and Harassment

- **FAQs**
 - Policy Questions
 - Reporting Questions
- **Resource Guides**

Policy on Discrimination, Harassment, and Sexual Misconduct

Any and all allegations of sexual misconduct should be addressed. The Policy on Discrimination, Harassment, and Sexual Misconduct concerns allegations that outside of the bounds of the Policy on Title IX Sexual Harassment. This broader policy applies to:

- allegations of discrimination and harassment on the basis of a protected status or protected characteristic including sex, such as sexual harassment, sexual assault, sexual exploitation, stalking, and dating or domestic violence;
- incidents, which occur in educational programs or activities Northwestern operates (whether on- or off-campus, including outside of the United States);
- allegations which concern members of our community — students, faculty, and staff, University vendors, contractors, visitors, guests, volunteers, interns, and third parties — at the time of the report; and
- incident, which occur in-person, or online/electronically.

Reports of violations of other University policies will be referred to the appropriate office, such as the Office of Human Resources, the Provost Office, or the Office of Community Standards.

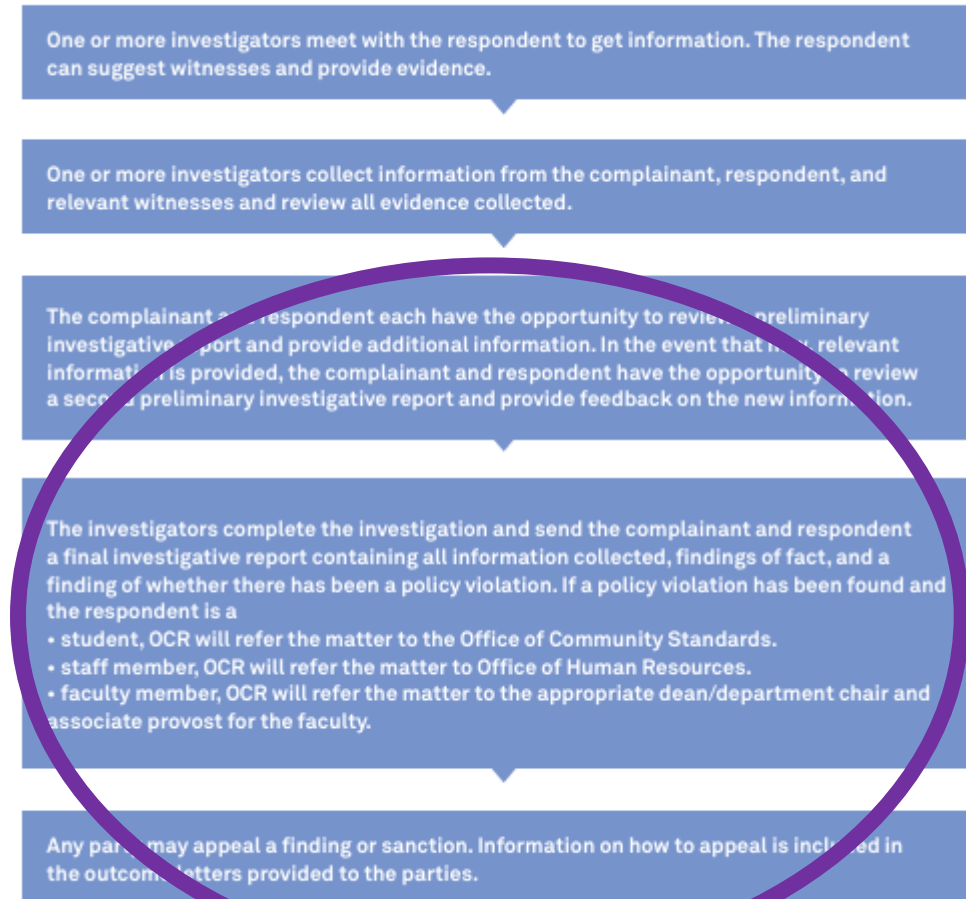
Definitions of PDHM Prohibited Conduct

- Discrimination
- Harassment
- Sexual Assault
 - Sexual Penetration without consent
 - Sexual Contact without consent
 - Statutory Rape
- Sexual Exploitation
- Dating/Domestic Violence
- Stalking
- Sexual Harassment
- Retaliation

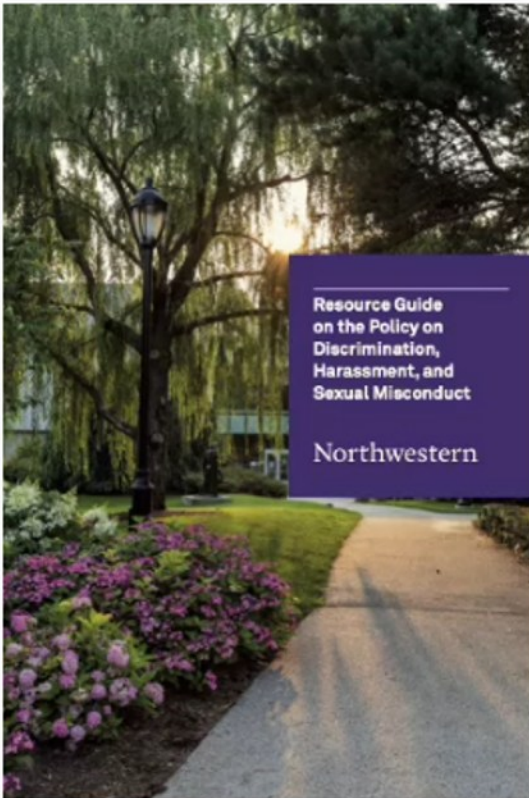
Overview of the Policy on Discrimination, Harassment, and Title IX Compliance formal resolution process*



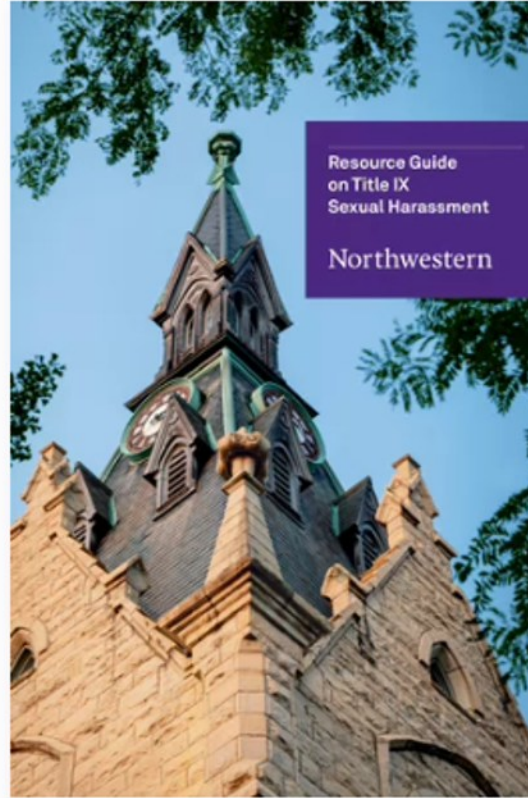
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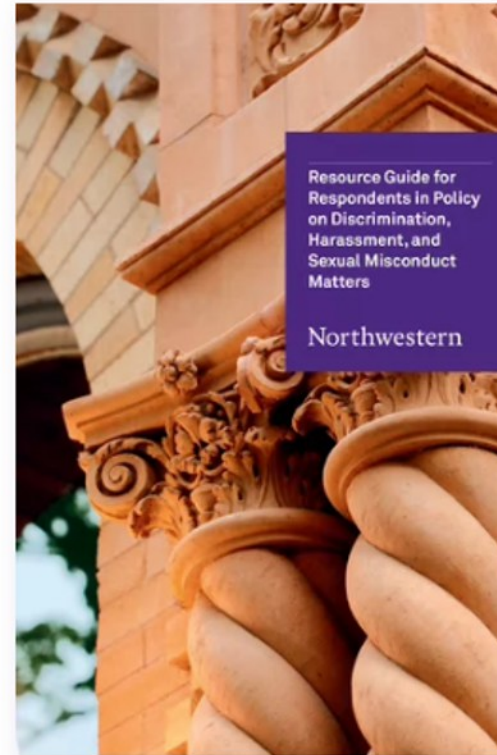
Resource Guides



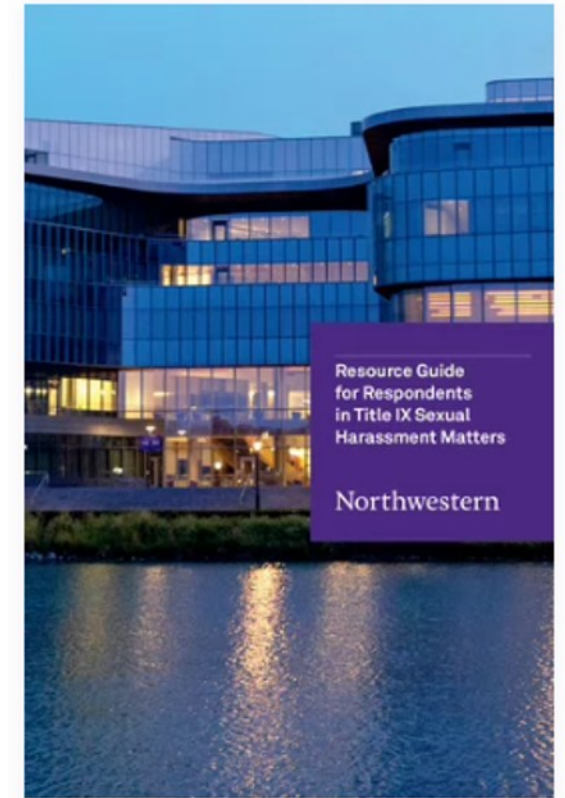
[Resource Guide on the Policy on Discrimination, Harassment, and Sexual Misconduct](#) 



[Resource Guide on Title IX Sexual Harassment](#) 



[Resource Guide for Respondents in Policy on Discrimination, Harassment, and Sexual Misconduct Matters](#) 



[Resource Guide for Respondents in Title IX Sexual Harassment Matters](#) 

Roles in Responding to Sexual Violence (1 of 2)

OCR

- Intake, Supportive Measures, Alternative Resolution Facilitation, Investigation, Adjudication of PDHM matters

Title IX Decision Maker (supervised by OCR)

- Real-time relevance determinations, Written Decision

Office of Community Standards

- Sanctions (if applicable) for student Respondents

Office of Human Resources

- Sanctions (if applicable) for staff Respondents

Academic Unit & Associate Provost for Faculty

- Sanctions (if applicable) for faculty Respondents

Roles in Responding to Sexual Violence (2 of 2)

Medical Providers

- Address health and safety; preserve forensic evidence

Law Enforcement

- Criminal process runs parallel; police is the survivor's call

Community Agencies

- Advocacy centers, hotlines, and confidential resources

Relevant State and Federal Law

Statute & Regulations

- Title IX — 20 U.S.C. 1681 et seq.; 34 C.F.R. Part 106
- Clery Act — 20 U.S.C. 1092(f); 34 C.F.R. 668.46 (Clery Handbook withdrawn, still useful)
- Illinois Preventing Sexual Violence in Higher Education Act
- Illinois Human Rights Act

Guidance & Case Law

- OCR guidance (Q&As, Dear Colleague Letters, Notices of Interpretation) — effective unless rescinded
- Supreme Court, circuit, and state decisions — binding or persuasive by jurisdiction

The Interplay of Title IX, Clery/VAWA & Illinois Law

Title IX — 2020 Regulations:

- defines Title IX Sexual Harassment, jurisdiction, and the grievance process

Clery Act / VAWA:

- sexual assault, dating & domestic violence, and stalking as defined for crime reporting (and incorporated into Title IX definitions)

Illinois law (PSVHEA):

- Sexual violence, domestic violence, dating violence, and stalking involving students at Illinois colleges and universities

Clery Act in Context

- April 5, 1986 – Jeanne Clery is raped and murdered at Lehigh University
- 1990 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act – tied to Higher Education Act funding
- 2013 – Violence Against Women Act amends the Clery Act with regard to sexual assault, dating violence, domestic violence, and stalking procedures
- July 1, 2015 – Current Clery regulations go into effect
- 2016 Handbook – Issued to give detailed guidance on compliance
- August 13, 2020 – New Title IX Regulations go into effect
- October 9, 2020 – 2016 Handbook is rescinded; new Appendix put in place; updated January 19, 2021

Where does Clery fit?

- Title IX policies handle sexual assault, dating violence, domestic violence, and stalking when:
 - The complainant is currently participating or attempting to participate in your education program or activity and
 - The conduct occurred in your education program or activity and
 - The conduct occurred against a person in the United States
- If any one of these things is not true, the case is subject to “mandatory dismissal” from the Title IX process – but if the case is addressed through another policy, the Clery Act still applies.

The Interplay of Law — Practical Takeaways

- The subject matter of these laws overlap
- Identify which framework governs the work you're doing
 - Data reporting? Adjudication?
 - If addressing allegations that fall under more than one process, consider following the process that provides the greatest procedural protections
 - Always consult with general counsel on these issues
- Apply the definitions in effect at the time of the conduct
 - Imagine the parties checking the Policy before they go out at night
 - Don't penalize them for a definition that would not appear

Conflicts: Gender Identity

- **Federal executive action** has declared gender identity not implicated in Title IX’s “on the basis of sex” language — litigation is ongoing
 - In *U.S. v. Skrametti* (2025), the Court declined to extend *Bostock* to gender-affirming care (applied rational-basis review)
 - No violation of the EP clause to ban gender-affirming care for minors
- **The IL Human Rights Act** prohibits discrimination and harassment on the basis of perceived or actual gender identity in:
 - Employment
 - Housing
 - Educational Institutions, including non-religious undergraduate and postgraduate schools

IDHR Guidance after *West Virginia v. BPJ*

- *West Virginia v. BPJ* decision issued on June 30, 2026
 - States can legally exclude transgender women and girls from scholastic sports teams
- IL Department of Human Rights (“IDHR”) issued a press release the same day:

Today’s decision by the U.S. Supreme Court addresses the application of federal law in specific cases involving participation in school athletics. It currently does not change Illinois law or weaken the protections that exist for transgender, nonbinary, and gender-expansive individuals in our state.

Source: [Illinois Human Rights Protections Remain Unchanged Following Today’s U.S. Supreme Court Decision](#)

Conflicts: Gender Identity

— Questions to Work Through

- How does the institution meet its Title VII duty to protect employees from gender-identity discrimination?
- If a protection is no longer required under Title IX, will NU provide it through other policies?
 - Remember IL law
 - Remember the values of your institution
 - Remember the demands of your community

Common Issues in Sexual Misconduct Cases: Consent, Incapacitation, and Relevance

Consent and Incapacitation

Consent — Start from Policy

- Apply **NU's** definition of Consent
- Apply it consistently and equally to both parties in every matter
 - If you have a Respondent who reports non-consensual conduct, evaluate for potential cross-complaint
 - If additional non-consensual conduct is reported later in the case, and it passes initial inquiry, make sure to amend the Notice of Investigation

Consent Definition

- The “individual **initiating** sexual contact or **initiating a new type of sexual activity**” must ensure consent is present and ongoing
- Aspects of Consent
 - **Knowing** – the who, what, where, when, and how of the sexual activity
 - **Active** – clearly understandable words or actions
 - Silence ≠ Consent
 - Passivity ≠ Consent
 - Submission ≠ Consent
 - Lack of verbal or physical resistance ≠ Consent
 - **Voluntary** – freely given (no extortion, menacing behavior, bullying, coercion, force, threats, or fraud)

Consent Definition (cont).

- **Present and Ongoing** – must exist at the time of the activity
 - Consent to previous sexual activity does not imply consent to later sexual acts
 - Consent to one type of sexual activity does not imply consent to other sexual acts
 - Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person

Consent — Guard Against Bias

- “It’s not plausible because I wouldn’t have done that” is not analysis
- Do not substitute yourself, or a rape myth, for the evidence
- Being in love, or in a relationship, does not establish consent
- Be careful looking at post-incident conduct for evidence of consent
 - Not reacting the way you might expect
 - Post-incident sexual activity
 - Post-incident dating

Common Concerns

- Always be cautious of questions that appear to blame the party for what happened or they will shut down and stop engaging.
- Better options:
 - Explain why you need information on alcohol/drug use, what the party was wearing, etc. before you ask the questions.
 - Explain the concept of consent to the parties so that they can understand why you need detailed information on the sexual encounter.
 - Check your tone constantly to encourage continued sharing of information.

Consent — What To Ask

Explicit Consent

“They gave consent” → “What did you say...to them?”

Any conversation about the sexual activity?

Did they say anything suggesting consent?

Who initiated it?

Implicit Consent

Who removed whose clothing?

Who provided protection?

Did you touch them? Where?

Did they touch you?

Sounds, helping position, moving your hands?

Consent — Questions for the Respondent

Ask the respondent to describe what they perceived as consent, concretely:

- “What signaled to you that the Complainant agreed to _____”
- “What did the other person say to you to show consent?”
- “What actions did the other person take to show consent?”
- “Were they making any sounds during the encounter?”
- “Did they help position their body, or move your hands, during the encounter?”

Seek specific words and actions — not conclusions like “they seemed into it.”

Incapacitation Discussion

- What's the most valuable evidence in an incapacitation case?

Intoxication Is Not Incapacitation — Assess Capacity

- Evaluate capacity to understand the who, what, when, where, why
- “They were drunk” → what did “drunk” look like? Slurring, stumbling, vomiting, unable to walk unaided?
- Were they oriented to person, place, time, and circumstance?
- Build a timeline: drinks, drugs, food — and the source of each

Incapacitation — The Respondent's Awareness

Was the respondent present when signs of incapacitation appeared?

Did the respondent supply alcohol or drugs?

Did the respondent comment on, or plan around, the other person's intoxication?

Corroborate with texts, video, card swipes, and security footage

Remember amnesty provisions when asking about drug or alcohol use

Walking Black Out Scenario

- Possible a complainant might not remember what happened, but also appeared capable of giving consent
- Lack of memory is a sign of incapacitation, but not the entire analysis
- Were they debating Russian literature?
- How do they hold their alcohol?

Incapacitation Questions — What “Drunk” Looked Like

- How much alcohol? Any drugs, or medications that interact with alcohol?
- “They were drunk” → slurring? clumsy? uncoordinated?
- Able to walk on their own, or needing assistance to navigate or complete tasks?
- Vomiting? Able to carry on a conversation? Oriented to who/what/where/when/why?
- “Was it a cup or a CUP?” How many “fingers” of alcohol — and what type?

Building the Incapacitation Timeline

Assemble a picture from multiple sources of evidence:

- Drinks, drugs, and food — what, how much, and when
- The complainant's own recall of the evening
- Behavioral observations from other witnesses
- Electronic information — texts, videos, audio files
- Security footage and card swipes

Groundwork for Sensitive Questions

Frame incapacitation questions neutrally (and remember amnesty):

- “I want to understand the role that drugs or alcohol may have played in this situation.”
- “I want to understand whether you were capable of giving consent, or whether you were incapacitated.”
- “I want to understand whether the other person was sober enough to understand and consent.”
- “I’m trying to get a sense of how intoxicated the person may have been when you saw them.”

Consent/Incapacitation Hypo #1

- Complainant performed oral sex on Respondent. She has accused him of sexual assault because she was incapacitated at the time.
- What additional information do you want to evaluate this?

Consent/Incapacitation Hypo #2

- Complainant has consumed multiple shots of alcohol over the course of 2 hours in full view of everyone at the party. When she finished taking the shots, she walks over to a man at the party and states, “Bob, I really like you and want to have sex with you tonight.” Complainant is actually speaking to Bob’s friend, Bill. Bill is sober and knew that Complainant did not understand who she was talking to. Bill has sex with Complainant.
- What additional information do you want to evaluate this?

Consent/Incapacitation Hypo #3

- After a party, Complainant reported that he “came to” with Respondent over him performing oral sex on him. Complainant reported that he was on his back with Respondent over him, and then he “passed out again” and didn’t remember anything before or after the encounter.
- What additional information do you want to evaluate this?

Consent/Incapacitation Hypo #4

- Complainant reported that he did not remember having sexual intercourse with Respondent, but learned about it the next day when he woke up in Respondent's bed and Respondent admitted they had sexual intercourse. Respondent and witnesses reported that Complainant seemed to be talking normally and walking independently prior to going into Respondent's bedroom.
- What information do you want to evaluate this?

Relevance

Relevance Under the 2020 Title IX Regulations

What Is Relevant?

- Relevant evidence makes an allegation more or less likely
- Evaluate inculpatory and exculpatory evidence
- Parties may challenge relevance

Impermissible — Do Not Consider

- Privileged or treatment records
- Prior sexual behavior — the “rape shield”
- Demeanor as proof of what occurred

No Rules of Evidence — But Limits Remain

The final regulations do not allow a recipient to impose rules of evidence that result in the exclusion of relevant evidence; the decision-maker must consider relevant evidence and must not consider irrelevant evidence.

— 2020 Title IX Regulations, Preamble pp. 30336–37

Relevance Hypo (Investigation) #1

Complainant tells the investigator that she would not have consented to sex with Respondent because she has only ever had one sexual partner and it was someone she dated for four years.

- What additional information do we want?

Relevance Hypo (Investigation) #2

In written feedback to the preliminary investigation report, Respondent's advisor directs the investigator to ask Complainant to provide a copy of SANE exam records because she talked about the SANE exam during her investigative interview.

- What additional information do we want?

Relevance Hypo (Investigation) #3

Complainant objects to the inclusion of Respondent's voluntarily disclosed psychological records on the grounds that the impact he's experienced as a result of the investigation is not relevant.

- What additional information do we want?

Relevance Hypo (Investigation) #4

Complainant asks the investigator to interview four other people who told her Respondent made them feel uncomfortable when he hugged them.

- What additional information do we want?

Effective Interviewing in Civil Rights Cases

Trauma-Informed Investigations

Disclaimer regarding Trauma

- We are not mental health professionals
- We are speaking from what we've learned from mental health professionals and experts, AND from what we've seen in our work
- Generally, investigators and adjudicators – also not mental health professionals
 - Do not diagnose
 - Do not treat
 - Do not hold yourself out as an expert

Neurobiology of Trauma

Neurobiology of Trauma: Two Video Clips — freely available, stream during session · cleared for training use

Clip 1 — Dr. Jim Hopper

“Sexual Assault & the Brain 1: Introduction” — Expert version, narrated by Dr. Hopper

Runtime: 2:33

Focus: Why survivors often don’t fight or yell, and why memories are fragmentary — grounding for interview technique.

Watch: Sexual Assault & the Brain, Survivor Version: Defense Circuitry

Full expert playlist: [3-video “Expert” set](#)

Use rights: Author states videos “can be viewed and shared.”

Clip 2 — Dr. Rebecca Campbell

Interview 1 of 3: “Trauma versus lying — how can you tell the difference?”

Runtime: 4:21 (play in full, 0:00–4:21)

Focus: How trauma responses can look like deception — cautions decision-makers against reading inconsistency or flat affect as fabrication.

Watch (playlist, video 1 of 3): NIJ interview series

Source page: nij.ojp.gov/media/video/24056

Use rights: NIJ posted reuse policy (federally produced).

Presenter note: Stream both clips from their original hosted pages (do not download or re-host). Key takeaway to reinforce: trauma symptoms neither prove nor disprove that an incident occurred.

Discussion and Takeaways

- Reactions?
- Takeaways?

Our Takeaways

- Reasoning part of the brain becomes significantly impaired
 - Tend to fall back on habits and reflexes
 - Socialization (“How to politely say no without saying no.”)
 - “My personality was erased”
- Memory and Sequence
- “Investigate the case” – don’t make assumptions

Let's Talk about Questions from Investigators

- Does bad questioning “create” inconsistencies?

Trauma

- How people mentally process what happened to them affects the way the brain encodes and decodes memories of what occurred – this can impact their abilities to record the events, sort the chronology of those events, and remember events over time
- Also need to recognize that a party should not be “unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.” (Preamble, p. 30323)

Trauma - An evolving understanding

- Peer-reviewed medical journal articles and studies have supported that trauma impacts the chemicals and wiring of the brain and impacts different people differently (e.g. <https://pmc.ncbi.nlm.nih.gov/articles/PMC3181836/>)
 - E.g., one person who experienced the same traumatic event as another may be “high functioning” despite the trauma and outwardly appear fine while another has to take a leave from school
 - A more specific example of the different impact on different people witnessing the same trauma can be found in studies and articles on the range of impact by those present at the Boston Marathon bombing (<https://www.ojp.gov/ncjrs/virtual-library/abstracts/lessons-learned-boston-marathon-bombing-victim-services-program>)
- As discussed further below in the discussion on credibility, changes and memory, lack of pieces of memory, and/or chronological order mistakes alone do not equate with untruthfulness or deception

Things That Aren't Trauma-Informed

Even well-intentioned practices can undermine a trauma-informed process:

- Unnecessary multiple meetings to gather information — getting what you need in one meeting is best
- Shock, judgment, or skepticism (“Why are you just now reporting this?”)
- Avoiding hard questions — it feels trauma-informed but can create the need for more interviews, hearings, and litigation

Being trauma-informed means using awareness of how trauma affects the brain to minimize re-traumatization — not avoiding the work.

Application to Investigations

- Assume all parties and witnesses may be dealing with trauma – from this or other incidents
- Meet them where they are
- Help them tell their story as part of the process
- Signs of trauma ≠ policy violation
- No signs of trauma ≠ no policy violation



Neurodiversity

What is “Neurodiversity”?

Neurodiversity recognizes that people experience and interact with the world differently – some in ways that are culturally or societally expected or common and some in ways that may not be – but there is no “right” way



Neurodiverse People

- Recognized neurodiversity (these are referred to by National Institute of Health and other health systems as “disorders” or “syndromes” or “diagnoses”):
 - Autism spectrum disorder
 - Attention-deficit hyperactivity disorder (ADHD)
 - DiGeorge syndrome
 - Down syndrome
 - Dyscalculia (difficulty with math)
 - Dysgraphia (difficulty with writing)
 - Dyslexia (difficulty with reading)
 - Dyspraxia (difficulty with coordination)
 - Intellectual disabilities
 - Certain mental health conditions
 - Prader-Willi syndrome
 - Sensory processing disorders
 - Social anxiety
 - Tourette syndrome
 - Willimas Syndrome



People Are Different And React Differently

- Many of the human reactions and processing relied upon traditionally by police and in investigations can be contrary to being inclusive of neurodiverse individuals
- For example, consider:
 - Eye contact
 - Fidgeting
 - Difficulty sitting still
 - Taking time to answer a question directly
 - Not seeming the appropriate level of upset/sad, having a flat affect, or seeming happy or laughing
- Do any of the above actually make it more or less likely to be telling the truth?

If someone's reaction gives you pause...

- What do you do?

Cultural Sensitivity

Culture Can Affect Response

- I won't report it if it doesn't feel wrong.
- I'll admit it because I don't understand it's prohibited.
- I won't report it if I would be a snitch.
- It's impolite to look you in the eye, so I'll look down the whole time.
- I deserved it. It's normal.
- Reporting this would result in serious consequences at home.



Culture Can Affect Perceptions and Views

Consider how different perspectives on the following could affect reporting and what is reported:

- Age of consent
- Dating vs. arranged marriages
- Attitudes towards homosexuality
- Attitudes towards intimate partner violence
- Cooperating with investigations
- Sharing personal information
- Reactions toward authority figures
- Reactions toward male vs. female



Process YOUR Response

- Is your assessment based on your culture, or theirs, or both? (It shouldn't be.)
- Is your assessment based on stereotypes you hold based on sex? Race? Culture? Yours or theirs? (It shouldn't be.)
- Is your assessment based on their role (Complainant or Respondent)? (It shouldn't be.)
- Is your assessment based on a person you like or someone you identify with? (It shouldn't be.)
- Would you have done things differently?
- If so, SO WHAT?

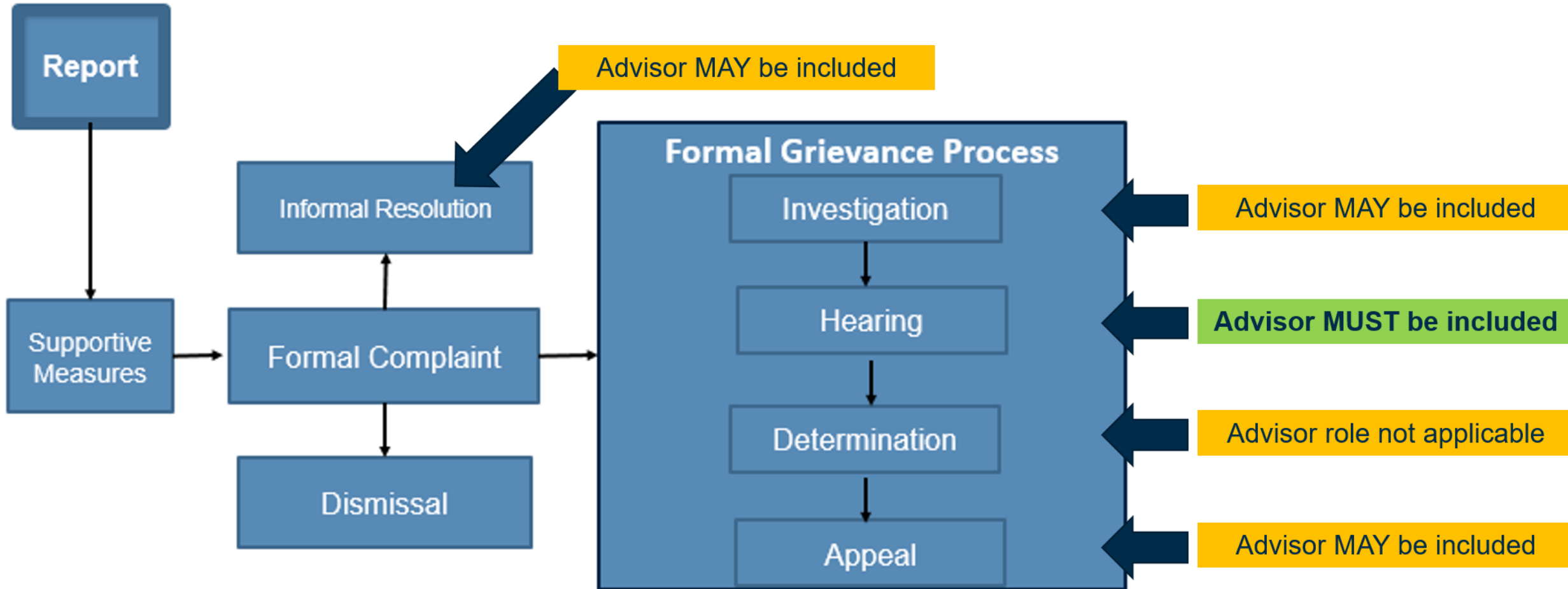


Working with Advisors

Key Points about the Advisor Role

- Under the Title IX Regulations, there are NO training requirements for advisors
 - However – given the importance of their role at Hearings, training advisors is generally a good idea
- Bias on the part of advisors is REQUIRED
- May play a role in intake, investigations, and appeals, but
- MUST play a role in Title IX Hearings
 - Cross-examination of parties and witnesses on behalf of the parties they advise
- Remember – rules of evidence don't apply
- Remember – decorum rules can and will be enforced

Overview of the Process



Key Points about Advisors During Investigations

- Role can be limited by the institution
 - No right to ask/answer questions
 - No right to make objections

****From the View of an Advisor (1 of 3)**

- Outside attorney skills and job duties are very different from Title IX advising work.
 - Title IX advising is different from litigation or criminal work, so advisors may expect things to be more formal
 - Advisors need to know YOUR process; Advisors need the education even if it's not required under the Regs.

****From the View of an Advisor (2 of 3)**

- Advisors are not intentionally adversarial; sometimes, they have to say or do things to preserve arguments for the future
 - If they do or say something that is obviously not something that's allowed or something that doesn't make sense, it may have a purpose beyond this particular process.

****From the View of an Advisor (3 of 3)**

- Advisors are required to be biased for their advisees, which might not make your job easier.
 - An advisors may tell a respondent to not interview until the first 10-day review.
 - An advisors may tell a respondent not to speak at all if the off-campus implications are worse than their potential on-campus sanctions.

Handling Tricky Advisor Situations

- Assume every advisor may appear again, so build a long-term relationship
- Much of the friction with advisors comes from them not understanding the process and wanting to help their clients
- Start with an assumption of good faith until proven otherwise
- Transparency goes a long way in laying a good foundation
- Make sure you have FERPA forms from students to copy their advisors
- Witnesses can be advisors under Title IX, but consider explaining to parties the potential implications of that choice
- Can an advisor speak for a party?

Who to Interview (and how to explain when you don't)

Reminder

A witness statement is evidence

- Inculpatory and exculpatory evidence are relevant
- Should not exclude solely because the evidence is character evidence, duplicative, or hearsay (second- or third-hand information) – these can all be used to test credibility at the least

Always ask – what evidence is this witness expected to provide and how is it relevant to the matter under investigation?

(Acceptable) Reasons for Excluding a Witness

- Witness did not observe the incident as it occurred; and
- Witness was not present during the incident; and
- Witness did not have any communication with a party after the incident about the incident; and
- Witness did not observe either party after the incident or impact on either party after the incident; and/or
- Inclusion of witness/evidence is harassing and no evidence could outweigh inclusion (e.g., Respondent requested the investigator interview the Dean about a comment she made on Twitter that Respondent thinks shows bias in the NU administration)

(Acceptable) Reasons for Excluding a Witness– Example

- “Hermione was identified as one of three of [Complainant]’s roommates and named by [Complainant] as a witness. Hermione was not present during the incident because she was in England, she did not speak with [Complainant] about the incident, and she has been in England since the incident without any contact with [Complainant]. [Complainant] has not identified any relevant information Hermione may be able to provide. Because Hermione did not have any direct or indirect knowledge of the incident or post-incident observations of [Complainant], the investigator declined to contact Hermione.”

Pattern Evidence

- First, look to your Policy
- Many institutions use a “similar” or “substantially similar” standard
- Avoid broad inferences based on other “bad” conduct
 - Because Respondent made two other students uncomfortable by putting his arm around them, it is more likely he sexually assaulted Complainant in the manner described.
- The “smell” test
- Consider whether the parties will feel heard in the process
- We tend to go broad for investigation, but narrow when assigning weight

Witnesses Hypo #1

A witness reported that he saw everything Respondent did to Complainant. The witness claims he was not drunk or intoxicated at the time he witnessed the incident because he has never consumed alcohol or taken drugs.

Respondent wants the investigator to pull the witnesses' drug tests because the witness is a student-athlete and Respondent thinks the witness is lying and that the witness was too drunk to recall things correctly.

- Is this relevant? Should the investigator try to find out if the witness has ever failed a drug test? Should the investigator try to obtain the drug tests?
- If the decision is made not to pursue this information requested by the Respondent, what should the investigator put in the investigation report?

Witnesses Hypo #2

Complainant alleged that he was incapacitated from alcohol he consumed at a house party, fell asleep there, and no one else but Respondent remained in the house. Through Complainant and witnesses, the investigator can identify 30 people who attended the party and may have witnessed Complainant's alcohol consumption, impact of the alcohol on Complainant, and who left the party and when. Should the investigator contact all 30 witnesses identified?

- Can you say that witnesses were not interviewed because their statements were repetitive?
- What are the risks of not contacting all 30?

Witnesses Hypo #3

Respondent identified his parents as witnesses and requested the investigator follow up with them. Specifically, Respondent reported that his parents can speak to his character and the impact of Complainant's allegations on him.

- Should the investigator interview Respondent's parents? If not, what reason would be provided in the investigation report for not interviewing them?
- Would the answer change if they had been present during one of the incidents at issue?

Witnesses Hypo #4

Complainant asked the investigator to interview Respondent's three ex-girlfriends. Complainant reported that she believes they will report that Respondent cheated on them, lied about things, and was emotionally abusive towards them.

- Should the investigator interview these witnesses? Is this type of information relevant?
- If the investigator does not reach out to these witnesses, what explanation in the investigation report should be provided?

Drafting Neutral, Accurate, and Readable Investigation Reports

Key Concepts for Writing

- Proper grammar, punctuation, spelling, and pronouns (when used)
- Neutral tone
- Clear statement of origin for all information gathered
- Capture voices and perspectives without being judgmental
- Teach the file to the parties and the hearing officer
 - Disputed and undisputed facts?
- Teach the campus and the context to someone who has never been to your institution or worked with your community
 - Maps, drawings, and photographs
 - Explanations of slang

Choosing Your Headings

- The headings should help you teach the case to others
- If you knew nothing about the case, would the headings help you understand the timeline?
- Procedural Headings:
 - Background
 - Timeline?
 - Impact?
- Chronological Headings
- Thematic Headings
- The headings you choose will be helpful in structuring later summaries and your report!

Background

- What is the role of the party/witness at the institution?
 - Students: Year, major, residence hall (if relevant)
 - Employees: Year of employment, position(s) held, supervisor(s), job function
- What is the relationship of this person to each party?
 - Immediately before the incident?
 - As of the date of the interview?
- When and how did the parties meet?

Timeline

- For timeline-heavy cases, consider whether you should outline a timeline of the person's perspective
- Each entry in the timeline will become a heading
- The complainant's timeline will give you a list of topics to discuss with the respondent and other witnesses, although they may have other appropriate timeline entries as well!

How a Timeline Becomes a Structure

Complainant	Respondent	Witness	Final Report
Prior to the Bar	Prior to the Bar	(wasn't with either party)	Prior to the Bar
At the Bar	At the Bar	At the Bar	At the Bar
Walk to Dorm	Walk to Dorm	(wasn't with either party)	Walk to Dorm
In the Room	In the Room	(wasn't with either party)	In the Room
(wasn't in the hallway)	Respondent to Bathroom	Respondent to Bathroom	Hallway to Bathroom
After Respondent Returned	After Respondent Returned	(wasn't with either party)	After Respondent Returned
Complainant's Departure	Complainant's Departure	(wasn't with either party)	Complainant's Departure
Texts between Complainant and Witness	(wasn't involved)	Texts between Complainant and Witness	Texts between Complainant and Witness
Impact on Complainant	(no further contact)	Impact on Complainant	Impact on Complainant

Impact on Complainant

- Impact on Complainant can be an element of the policy that must be considered by the hearing officer, and it can also affect credibility
- Complainant may have a narrative here
- Other witnesses may have information to share about what they observed

Can you include a section on impact to **Respondent**? Yes, as long as you know why you're doing it (often to make sure their full story is captured because they have volunteered the information, even if it is not directly relevant to the allegations).

What to Include?

- Include everything obtained in their monologue
- When the investigator asks follow-up questions, document the questions as well as the answers:
 - When asked if Joan told Bob whether Jimmy was drunk, Bob stated that Joan told Bob that Jimmy was “completely loaded” and Bob took that to mean that Jimmy was “very drunk.”
- Include the “clean up” questions and the responses at the end
- Include names of any witnesses they suggest and why
- Include a list of evidence they are planning to provide, or evidence they suggest you obtain
- “End spiel” – any reminders you give them at the end

A Note on Demeanor

- Demeanor can mean different things to different people – culturally and contextually.
- Examples of demeanor:
 - Pauses
 - Eye contact or lack thereof
 - Fidgeting
 - Crying
 - Emotions that are not articulated by the person being interviewed
 - Compare: Bob was angry (reflects judgment of the investigator) vs. Bob said, “These allegations make me angry.” (provides Bob’s perspective)
- Is there a purpose in including it? If so, is the purpose appropriate given your role?

Verbs

- Consider:
 - Bob stated...
 - Bob said...
 - Bob alleged...
 - Bob admitted...
 - Bob clarified...
 - Bob recalled...
 - Bob remembered...

Clear Verbs

- Start every sentence with “So-and-so stated” or “So-and-so said”
 - Clarity
 - Consistency
 - Neutrality
- Write everything in past tense – because it occurred in the past!
 - Bob isn’t saying things now. He said them in an interview.
 - This helps ensure consistency

Terminology

- People
- Places
- Slang

Referring to People

- How are you referring to the parties and witnesses in your report?
 - First names?
 - Last names?
 - Complainant, Respondent?
 - Witness Jones?
 - Witness 1, 2, 3 etc.?
- Do you want to use that system in your interview summaries?

Pronouns

- If using pronouns, use the proper pronouns
- Avoid using pronouns for any human for clarity reasons:
 - Compare:
 - Bob stated that Joan told him that he was drunk.
 - This looks like Bob is drunk.
 - Bob stated that Joan told Bob that he was drunk.
 - This looks like Bob is drunk.
 - Bob stated that Joan told him that Jimmy was drunk.
 - Oh, wait...
 - Bob stated that Joan told Bob that Jimmy was drunk.
 - Now we've got it!

Places

All of these might refer to the same place...

- Bob's Room
- Room 408
- Room 408A
- Smith 408
- Smith Hall 408
- Respondent's Room
- Joe's Room

How can we be clearest?

Slang

Yes, Urban Dictionary is your friend, but the best definition is the one that the person who used the word understands it to mean!

Slang may also refer to people or places. The person who picks up this report will need that context, so include this as well!

Adjectives and Adverbs

- Did the party/witness use that term?
 - If so, use quotes or consider whether this is clear from the context
- Did the investigator use that term?
 - If so, why?

Details

- The smallest of details may become the thing that helps determine credibility, so include all details
- Use quotation marks appropriately

Referring to Evidence

- If there is a key piece of evidence that was discussed, embed it in the report itself
- If that's not practical:
 - Quote the evidence as relevant
 - Provide citations to the evidence as it was referred to in the discussion

Sentences

- Each sentence needs a subject and a verb

Subject	Verb
Bob	stated

- Avoid run-on (“toddler story”) sentences that should be separate sentences
- If a sentence is more than five lines, consider whether it should be two or more sentences

Paragraph Structure

Heading

Bob said he needed a **topic sentence**. Bob said he had **more information about this topic**. Bob said more things about this topic.

Bob said things about a **new topic** that was still related to the same heading. When asked if Bob wanted to talk about anything else, Bob said, “No,” and said he had **more information** to share about this topic.

Remember Your Role

- Don't sound judgmental (even in your findings)
- Words to stay away from (unless the person used them):
 - Clearly/Obviously
 - Innocent/Guilty
 - Victim/Perpetrator/Survivor
- Try to capture their perspective, in their voice, as best as possible
- Be thorough, detailed, and neutral in your approach

Will They Feel Heard?

- Will the interviewee feel like you heard them? (good)
- Will the tone inflame the interviewee? (not good – suggests judgment)
- Will the interviewee feel vilified or blamed? (stay neutral)
- Will the interviewee feel like you believe them? (again, stay neutral)

Connect the Dots

Think of the process like an electric current:

- The Notice sets out the potential allegations and policy violations.
- The investigation gathers and summarizes the relevant evidence.
- The report fairly presents that evidence to the decision-maker.
- The decision is limited to the allegations and policy violations in the Notice.

The current can't grow between stages — but it can flow: Notice → Investigation → Report → Decision.

Weighing the Evidence in Civil Rights Cases

What Goes Into Credibility?

- 2001 Revised Sexual Harassment Guidance (withdrawn) – page 9
 - Level of detail and consistency
 - Corroborative evidence is lacking where it should logically exist
 - Evidence that the respondent has been found to have harassed others
 - Evidence that the complainant has been found to have made false allegations against other individuals
 - Reaction after the incident
 - Complainant took steps to report the conduct soon after
 - Complainant writes down the conduct soon after it occurred
 - Complainant tells others about the conduct soon after it occurred

Boiling It Down

- **Plausibility** – Is the story possible, accounting for potential effects of trauma?
- **Consistency** – Is the story consistent over multiple retellings?
- **Corroboration** – Can the story be corroborated by other evidence?
- **Reliability** – Was the person in a good position to witness what they are sharing, and to remember it accurately?

Credibility is a determination that can be made statement by statement.
It is not necessary to call someone a liar to make a credibility determination.

Plausibility

- This is foundational. If it's not plausible, it can't be credible.
- Think: laws of physics.
- Consider:
 - Body positions, relative height/weight
 - Distribution of body weight
 - Transition from one position to the other
 - Who was in control of the rhythm and movement
- Does it make sense, accounting for potential trauma? If not, is there anything that would make it make sense?

Plausibility – Bias Check

- “It’s not plausible because I wouldn’t have done that in this situation.”
 - You are using your own self as a standard by which you are measuring the evidence. Is this because you are the reasonable person, or is this an effect of bias? Is this even fair?
- Be careful of substituting rape myths for plausibility analysis.
 - E.g. “They were in love, so it couldn’t be rape. That wouldn’t be plausible.”

Consistency - Considerations

- To whom is the telling?
 - Friend
 - Parent
 - Police
 - School authority
- What is the purpose of the telling?
 - To receive sympathy and support
 - To make a formal report
- In what mode is the listener?
 - Supportive
 - Investigating

Consistency - Concerns

- Is the telling getting more specific and detailed over time, and if so, why might that be?
- Are details that are inconsistent across retellings important, or are they minor in nature?
- Is the person leaving out information that would be reasonable to include in their retelling?

Consistency and Outcry Witness(es)

- Who is the first person that the party told?
- Under what circumstances?
 - Do those circumstances affect credibility? (Motive)
- More witnesses mean more chances to show consistency – or inconsistency.
 - In other words, these witnesses don't tell us whether the allegations are true. They tell us whether the party is credible in their retelling due to consistency.

Considering Consistency

- Look at the retellings in the order of earliest to latest.
- Is there a reasonable explanation for any differences?
- Does the story evolve over time into something else?
- 2020 Regulations Preamble: “Because decision-makers must be trained to serve impartially without prejudging the facts at issue, the final regulations protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to **trauma**, the effects of **drugs or alcohol**, or **simple fallibility of human memory**.” 85 FR 30026, 30323 (May 19, 2020)

Corroboration

- Is there any objective evidence in this case? If so, what does it tell us?
- Are there any eyewitnesses to corroborate an assertion by a party?
- Be careful with outcry witnesses

Reliability

- How much time has passed?
 - Is there any reason this particular occasion might have “stuck out” to someone?
- Was the person intoxicated or high?
- Was the person in a position to observe the conduct?
- Has the person’s story been influenced by another party/witness, or by social situations?
- Does the person have a motive to lie?
- Does the person have special training such that their information might be given more weight on a particular point?

Reliability – Bias Check

- Are we assigning a reliability value based on the identity of the party?
 - Complainant vs. respondent
 - Status as a police officer or school administrator
- Are we assigning a reliability value based on a person's:
 - Alcohol/drug problems
 - Mental health issues
 - Cognitive/intellectual disabilities
 - Age
 - And if so – is that supportable under the circumstances?

Check for Other Bias

- Switch the race, sex, or other protected characteristic of the parties. Would your decision come out the same? If so, is that appropriate?
 - This is particularly important when allegations go against the “stereotypical norms” for a situation. We know that complainants and respondents can be of any sex, gender, sexual orientation, etc.
- Are you making any assumptions that are not based on the evidence, and if so, are those fair under the circumstances?
 - Compare “They are carrying a wet umbrella so it’s probably raining” with “They look sad today so it’s probably raining”

Weighing the Evidence

- What is the most important? What are the rocks upon which you can build a solid foundation?
- What is less important? What can be reasonably explained?

Each fact is found using the standard of evidence your institution has chosen (e.g. preponderance of the evidence).

Each element of a policy violation is analyzed using that same standard.

Things Not To Consider

- Impermissible evidence (e.g., medical records without consent)
- Irrelevant evidence
- But what about:
 - Demeanor?
 - Pattern evidence?
 - Character evidence?

Let It Go

- You don't have to resolve every factual dispute.
- Consider whether it is important for credibility purposes or necessary to your findings. If not, do we need to go there?
- If you aren't considering something, particularly if the parties thought it was important, explain why.

Reminders (2 of 2)

- Show your work. Get credit for your good work.
- You cannot base a determination of responsibility solely on whether someone declined to participate in the process.
- Do not consider the impact of your determination on the parties when determining whether a policy was violated.
- Do not use sex stereotypes to resolve a case. Base your decision only on the evidence before you.
- “Gut feelings” are a sign you need to ask more questions, not something you put on the scale.

Title IX Decision Requirements (May be helpful) (1 of 2)

- Allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the recipient's code of conduct to the facts

Title IX Decision Requirements (May be helpful) (2 of 2)

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant
- Recipient's procedures and permissible bases for the parties to appeal

Note: This is provided to both parties simultaneously.

Sanctions

- Check policy for factors, but here are some to consider:
 - Prior disciplinary history of respondent
 - How the institution has sanctioned similar incidents in the past
 - Nature and violence of the conduct at issue
 - Impact of the conduct on the complainant
 - Impact of the conduct on the community
 - Whether respondent accepted responsibility for their actions
 - Any other mitigating or aggravating circumstances

Practical Exercise: Recognizing Disputed & Undisputed Facts to Draft Findings of Fact