

TITLE IX POLICY AND PRACTICE

COORDINATOR TRAINING

Jodie Ferise, JD

*Vice President and General Counsel,
Independent Colleges of Indiana*

And

Annie Sills, MSW MSHRM LCSW

*Assistant Director of Institutional Equity and
Title IX Coordinator,
University of Evansville*

December 1 and December 5, 2023

**Welcome
to...**



Rules of the Road

Questions are always welcome.

This not legal advice.

Introductory session available.

Materials will be provided as required.

Finding our “True North”: The Starting Point for All Title IX Processes

Every participant, every witness, is a member of your campus community, **inherently valuable** as a human being, and worthy of being respected and **believed**.

Sexual violence causes extreme **damage** to **individuals** and to the campus **culture** you are trying to develop and maintain.



Model College is committed to providing a community in which the learning and working environment reflect our Mission. This environment is free from all forms of gender-based discrimination or harassment because **such behavior violates an individual's fundamental rights and personal dignity.** Model College considers gender-based discrimination to be a **serious offense** and has **zero tolerance.**

Sample Policy Language

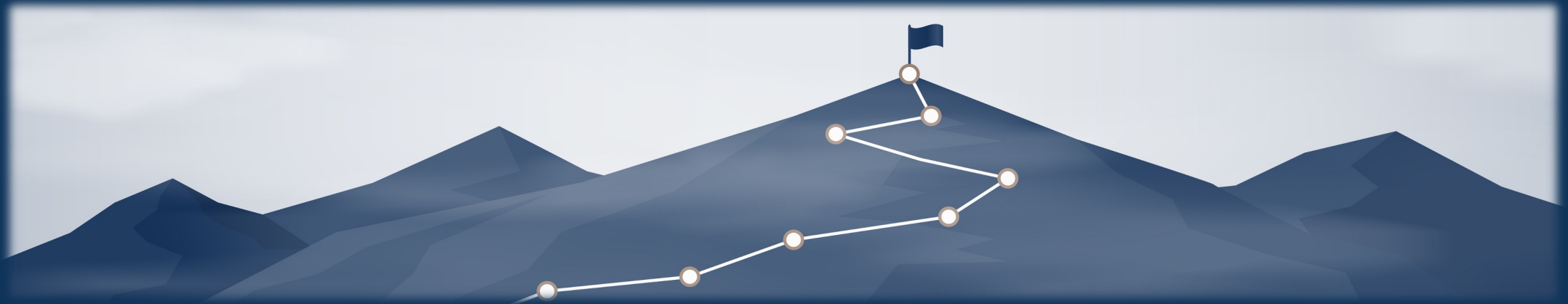


Sample University believes in the **intrinsic value of all human beings**. Moreover, it is committed to the full, peaceable participation of all of its members in the educational endeavor it fosters. Sample University is committed to maintaining a learning and living environment which is **fair and respectful** and **will not tolerate** any threats or acts or sexual harassment, sexual assault or sexual violence.

Sample Policy Language



Our plan for this session



No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This is Title IX

A bit of context...

Title IX

- Passed 1972, Regulations Updated May 2020 (and 2024?)
- Prohibits sex discrimination in schools receiving federal funds

Clery

- Requires timely reporting of crimes
- Includes requirement of policies and procedures regarding sexual assault

VAWA

- Expands Clery Act
- Includes dating violence, domestic violence, stalking

Title IX prohibits sex discrimination but... *what exactly does that include?*

- Sexual harassment
 - Education benefit premised upon participation in unwelcome conduct (quid pro quo); or
 - Unwelcome conduct that a reasonable person would determine is so **severe, pervasive, and objectively offensive** that it effectively denied a person equal access to the education program or activity.



Title IX prohibits sex discrimination but... *what exactly does that include?*

- Sexual harassment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- *Sexual exploitation*
- Pregnancy and childbirth discrimination
- Retaliation



Retaliation

An institution's **response** to a complainant or respondent in response to a Title IX complaint may, itself, constitute discrimination on the basis of sex in violation of Title IX.



Title IX Principles and Limitations



- The school must have **actual knowledge** of the discrimination
- The school must have **substantial control** over the Respondent, the context, and the building.
- Off campus buildings included only if owned or controlled by **official student organization**.
- Incident must have occurred **within the USA**.

Standard of Proof

Preponderance of the
Evidence

OR

Clear and Convincing
Evidence



Informal Resolution



- Available as alternative
- Both parties must agree
- Cannot use when employee is party
- Can return to formal at any time until resolution is complete
- Enormous creativity available in possible resolutions

Informal Resolution: Partial List of Possible Agreed Outcomes



- Consent education
- Shared statements
- Mediated conversations
- Counseling
- Restitution/damages
- Agreements to get STI/STD testing
- Community service
- Staggered schedules
- Site transfers
- Probation, suspension, or withdrawal
- Agreement to opt out of shared activities
- Change in residence hall
- Agreement to not register for same classes
- Change to study abroad site

Understand your role



TIXC can (and should):

- Provide information about processes
- Coordinate supportive measures
- Coordinate Complainant's chosen process
- File a Formal Complaint on behalf of the University
- Assign investigators/adjudicators
- Provide parties with process updates
- Train campus community on Title IX

• TIXC cannot:

- Act as the Disciplinary Authority/Adjudicator/Mediator
- Make decisions on Responsibility
- Determine sanctions/remedies
- Provide advice or recommendations
- Force/coerce/require party participation
- Treat parties with inequity
- Act as a victim advocate

Preparing for a potential report

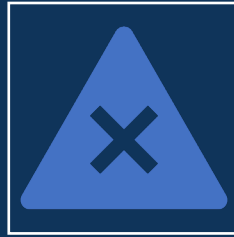


Set up an Appropriate Space

Soft seating and options

Warm, inviting, calm space

Safety considerations (for you and the student/employee)



Know your policy

What do you prohibit?

Who is governed by your policy?

What does your institution's process look like?

How can people report to your office?



Develop collaborators

What other departments on campus can assist you in:

- Understanding parties involved
- Implementing supportive measures
- Assisting in potential processes

So, you received a report....

Who did the
report come
from?

Are the parties
identified or
anonymous?

Do you have any
details about
the report?



Initial Complainant Outreach Email

Why you are reaching out.

I recently received a report from a Responsible Employee that you may have experienced a violation of the University's Title IX and other Sexual Harassment and Misconduct Policy.

Remind them what a Responsible Employee is.

As a reminder, a Responsible Employee is required to report any potential policy violations to my office.

Offer to meet with the Individual.

I am reaching out to see if you would be interested in meeting to go over your rights, resources, and options, as well as share your experience.

Offer the options.

Please note that it is entirely voluntary whether you meet with me or not, and that you may bring an individual to support you during our conversation. Regardless of the decision to meet with me, you are entitled to Supportive Measures. You may find a non-exhaustive list of Supportive Measures attached.

Waiting for the intake meeting...



Check with your
collaborators

Are the parties on
the radar of other
departments?

Check with
CARE/BIT



Create an IR/Case in
Maxient (if applicable)



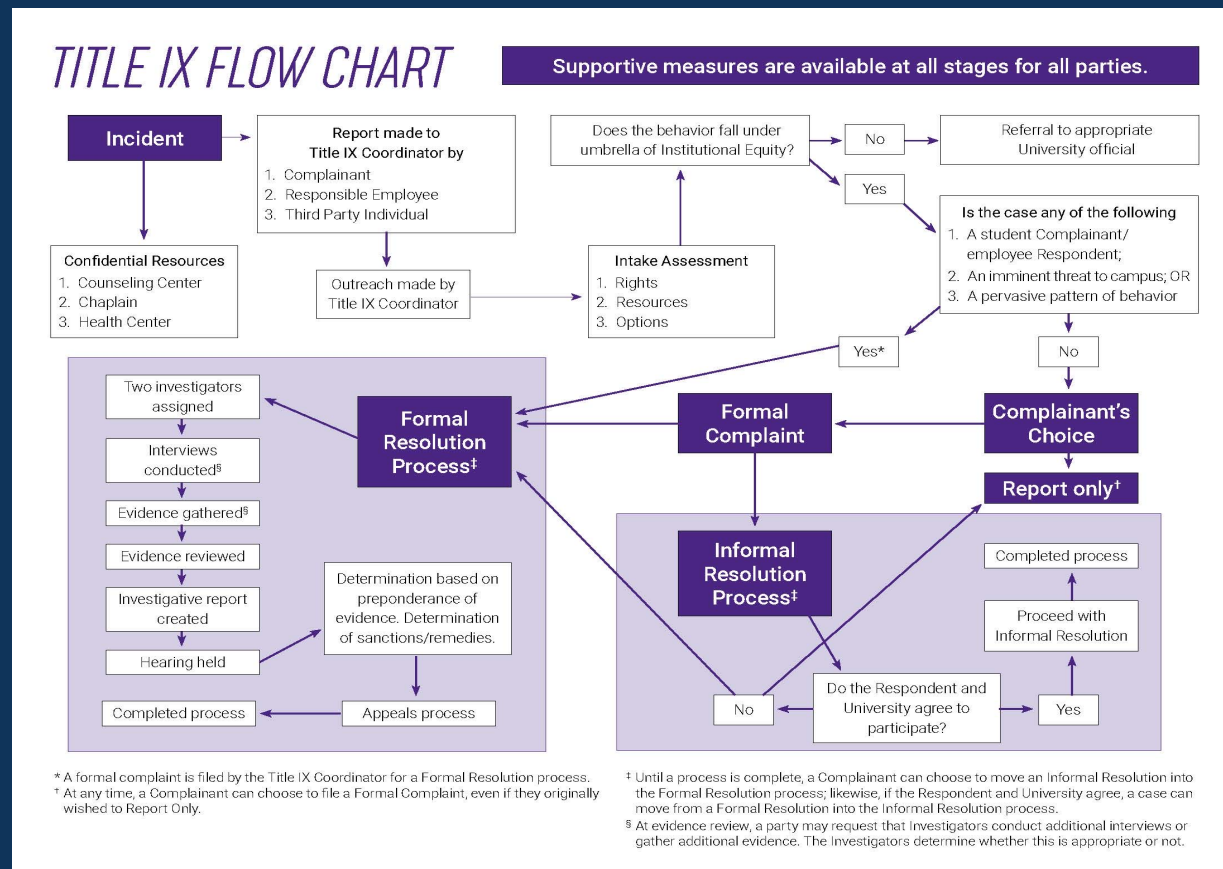
Prepare any information
or documents

Tips for a successful intake meeting

- Introduction
- Thank the individual for meeting with you.
- Provide a roadmap
 - What is the plan for the meeting.
 - *Typically, I will go over rights, resources, and options upfront and then you can decide if you would like to share anything. Is this okay with you?*
- Level set
 - Explain terms that you will be using (i.e. Complainant, Respondent, etc).
 - *In Title IX, we utilize value neutral terms for parties. The Complainant is the individual who is on the receiving end of a policy violation. The Respondent is the individual alleged to have violated the policy. You will see or hear these terms a lot, so I wanted to make sure you knew what they mean.*
- Ask permission for recording (if this is part of your process)



Tips for a successful intake meeting, continued.



- Utilize hand outs.
- Go over rights and options, including supportive measures.
- Discuss the options available to the Complainant.
- Allow the Complainant the space to share.
- Talk about what to expect in next steps.

Trauma Informed Intakes

- Signs of trauma include memory loss, lack of focus, lack of accurate detailed information, lack of linear memory, multiple versions of the same story.
- Understand individuals who experience a traumatic event may not have a chronological recollection of the trauma, and therefore may jump around or be inconsistent with account of what happened.
- Everyone reacts differently to trauma; the presence of the signs of trauma does not prove that the misconduct occurred nor does the lack of trauma provide a reason to believe it did not occur.

Trauma Informed Intakes (Continued)

- Acknowledge the difficulty of the situation.
- Have empathy / build rapport.
- Silence is okay – give chance to gather self / offer breaks / finish interview later.
- Allow them to begin where they want, “Where would you like to start?”.
- Allow an uninterrupted statement.
- Do not push about chronological questions as a chronological narrative may be difficult.
- Use follow-up questions – avoid asking about information already provided (but still must ask necessary questions) – start with open ended questions, “What do you remember happened?” “Tell me more about that.”
- Ask what are you able to tell me? – this relieves some pressure.
- Ask sensory questions – what do you see, hear, smell.
- Explain reasoning behind difficult questions.
- Address inconsistencies, “Help me understand . . .”.



You've
done an
intake.
Now
what?

DOCUMENT. DOCUMENT. DOCUMENT	What you said What they said Supportive Measures offered or not offered and reasoning
------------------------------------	---

Implement supportive measures	This may require engaging with your collaborators.
-------------------------------------	--

Memory marker emails	Summarize meeting. Ask individual to note if the summarization accurately reflects their report. Remind individual of supportive measures offered. Determine Complainant's choice of next steps.
-------------------------	---

Engage your BIT/CARE team if appropriate	
--	--

Emergency Removal




Individualized safety and risk
assessment

Immediate threat to
physical health or safety

Notice and opportunity to
challenge

*Remember that you may need to issue timely warning to the
campus if circumstances dictate.*



So, the Complainant wants to file a Formal Complaint.

- Must be written (do you have a form they can fill out?).
- What process do they want to follow?
 - Formal – identify the Investigators, send Notice of Investigation
 - Informal – identify process (or mediator), send Notice of Formal Complaint
- Do you need to dismiss?

Dismissal of a Complaint

Mandatory

- Even if factual allegations were true, they:
 - Would not constitute a Title IX violation; or
 - Occurred outside of Title IX jurisdiction.

Discretionary

- Complainant notifies Title IX coordinator in writing they would like to withdraw complaint; or
- Respondent is no longer enrolled in, employed at, or otherwise associated with the University; or
- Specific circumstances prevent information gathering or completion of process.

What to include in a Notice

- Identify the Complainant(s) and Respondent(s)
 - *You have been named as the Respondent and Student Y is the named Complainant.*
- State the allegation
 - Include when the incident is alleged to occur, when it was reported, and the behavior.
 - *On X date the Complainant reported the following:*
 - *On or around X date the Respondent engaged in sexual harassment when they (briefly describe behavior)*
- State the Policy definition at play
 - *If true, this would be a violation of the University's Title IX Policy's prohibition of sexual harassment. Sexual harassment is (definition from policy).*

What to include in a Notice (Cont.)

- Note that the Respondent is presumed not responsible
 - *As a named Respondent you are presumed not responsible for the alleged conduct unless and until a determination is made that there is sufficient evidence, by [Standard], to support a finding of responsibility at the conclusion of the Formal Resolution process.*
- For Notice of Investigation, include the assigned investigators, and the process for objecting to their assignment.
- Include any Supportive Measures that the Respondent needs to know are in place; offer Respondent supportive measures, let Respondent know of right to an Advisor.
- Remind Respondent that retaliation is prohibited.
- Offer to meet with the Respondent to discuss rights, resources, and processes.

What to do during a process

Formal Process

- Continue to provide supportive measures.
- Offer support and guidance to investigators.
- Keep parties updated.
- Coordinate evidence review.
- Provide Notice of Hearing.
- Provide Notice of Outcome.
- Facilitate appeals process.
- Coordinate the implementation of sanctions.
- DOCUMENT.

Informal Process

- Ensure all parties sign agreement to participate in informal resolution process .
- Continue to provide supportive measures.
- Keep parties updated.
- Coordinate implementation of outcomes .
- DOCUMENT.

The process is complete... now what?



Simultaneously provide parties with the Notice of Outcome Report.



Provide parties in the Formal process with the appeals process.

An explanation of the Appeals process and timing should be included in your Notice of Outcome Report



Coordinate the implementation of outcomes/sanctions.

This may require coordination with other campus constituents

Ensure that you are communicating in ways that still maintains students' privacies.

Building campus trust



- Engage the entire campus community through training.
 - In-person
 - On-line
 - Group-specific trainings (athletics, Greek Life, Responsible Employee)
- Be involved in the campus community.
- Make yourself accessible to students.
- Be there for the hypotheticals.



What is required to be posted on our website to be in compliance with regulations?



Under what circumstances should the TIX Coordinator pursue a formal complaint and investigation when doing so is against the wishes of a would-be Complainant?



How do we interface with campus or local police when the reported incident is or may be a crime?



Who takes the lead when an incident involves sexual misconduct but has overlapping elements, such as with DEI or HR concerns?



What if a party wants to have their parent as advisor? Do we treat them as parent or as advisor?

Thank You

Questions? Please feel
free to reach out!

jferise@icindiana.org

317-690-1149