

#aiTIXCoordinator

BEST PRACTICES FOR LEADING SEXUAL HARASSMENT/MISCONDUCT INVESTIGATIONS



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CHANGES TO INVESTIGATIONS FROM NEW REGS

- Notice requirements and process for getting to formal investigation
- New Scope, Jurisdictions, and Definitions
- Application to Employees
- Distribution and Review of Evidence and Report
 - 10-Day Review Periods
 - Involvement of Advisors
- Training for Investigators
- Removal of Single Investigator Model
- Relevancy of Evidence and what must be included
- Witnesses including Character and Expert Witnesses



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WHAT ARE WE INVESTIGATING?



Jurisdiction

Location
Program/Activity
Control Over Involved Parties



Definitions of Prohibited
Conduct

VAWA Crimes
Quid Pro Quo
Severe, Pervasive, and Objectively Offensive



Title IX vs Title VII and application to Employees



What does your policy say?


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THINGS TO CONSIDER AS PART OF GATEKEEPING FUNCTION

- What is a formal complaint?
- Jurisdiction and scope
- Title IX Coordinator signing complaint
- Decision on type of resolution
- Informal vs. Formal
- Dismissal




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POLL

How is your institution managing complaints that fall outside the Title IX Coordinator's jurisdiction?




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OVERVIEW OF AN INVESTIGATION


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graph TD
    A[Formal Complaint/Notice to Title IX Coordinator] --> B["'I' investigation/Gate Keeping Function Simultaneous with Supportive Measures"]
    B --> C[Title IX Determination for Application and Formal/Informal]
    C --> D[Investigation]
    D --> E[Appointment of Investigators with Ability to Appeal Appointment]
    E --> F[Notice of Allegation]
    F --> G[10-Day Evidence Review Period]
    G --> H[10-Day Report Review Period]
    H --> I[Final Report and Transition for Live Hearing]
  
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ROLE OF THE TITLE IX COORDINATOR


 Gatekeeping Function

 Supportive Measures

 Emergency Removal


 Training Oversight


 Actual Notice


 Coordinates Individual Functions of Resolution Process


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ROLE OF THE INVESTIGATOR


 Gather all information regarding an allegation and determine relevancy

 Interview all parties and witnesses, including character and expert witnesses

 Fact gathering vs. fact finding

 Collect and organize evidence and distribute to parties for review and comment

 Weighing evidence Preponderance of the Evidence or Clear and Convincing

 Write a detailed investigative report

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WHO SHOULD/SHOULD NOT SERVE?

- Attorneys?
- Outside Investigator?
- General Counsel?
- Campus Safety/Security?
- Title IX Coordinator/Deputy Title IX Coordinator?
- Faculty?
- Students?
- Human Resources?
- Other members of Title IX or Conduct Team



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REQUIRED TRAINING

- Definition of Sexual Harassment
- Educational Program or Activity
- Conducting an Investigation and Relevancy of Evidence
- Bias Prevention
- Technology Use



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ADDITIONAL TRAINING CONSIDERATIONS

- Trauma informed investigations in light of new regulations?
- How to conduct remote investigations
- Working with advisors
- Impact of Alcohol and Drugs on Consent
- Allegations involving minors
- Terminology, language
- Social Media



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POLL

Which standard of proof does your campus use or plan on using for your Title IX cases?

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BUILDING YOUR INVESTIGATION TOOLKIT

Policy and Procedures

Planning Documents and Templates

- Prohibited Conduct Breakdown and Elements Worksheet
- Communication and Evidence Logs
- Evidence Analysis Chart and Relevancy Buckets
- Pre-investigation Checklist

Technology Plan

- Consistent plan for use of technology to support intake and investigation
- Method for evidence collection and distribution
- Confidentiality and record security

Other Considerations

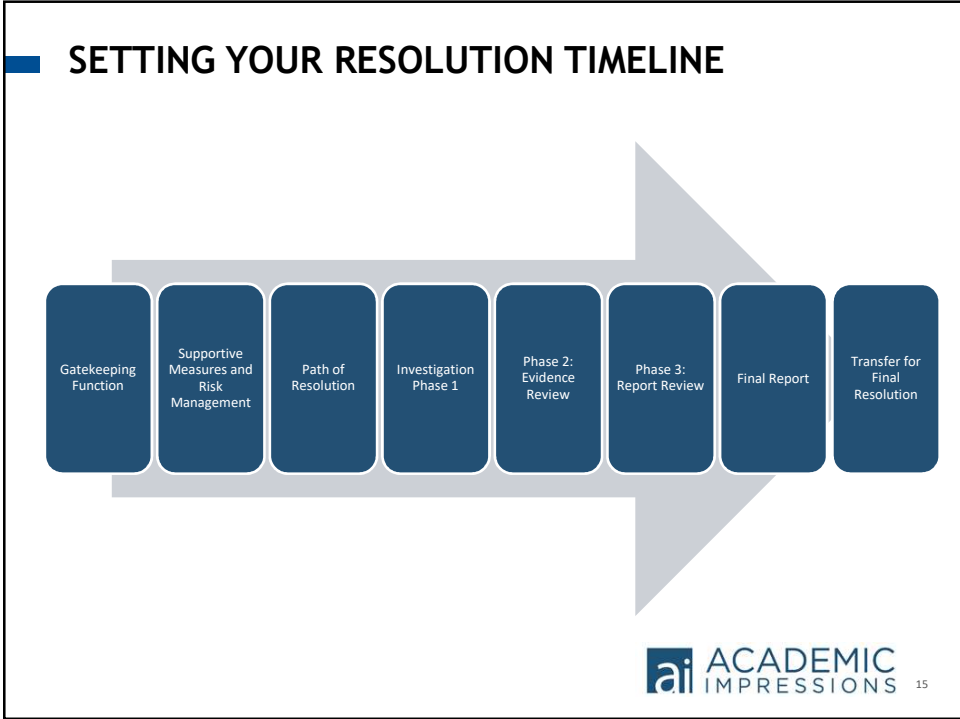
- Model and policy for working with advisors

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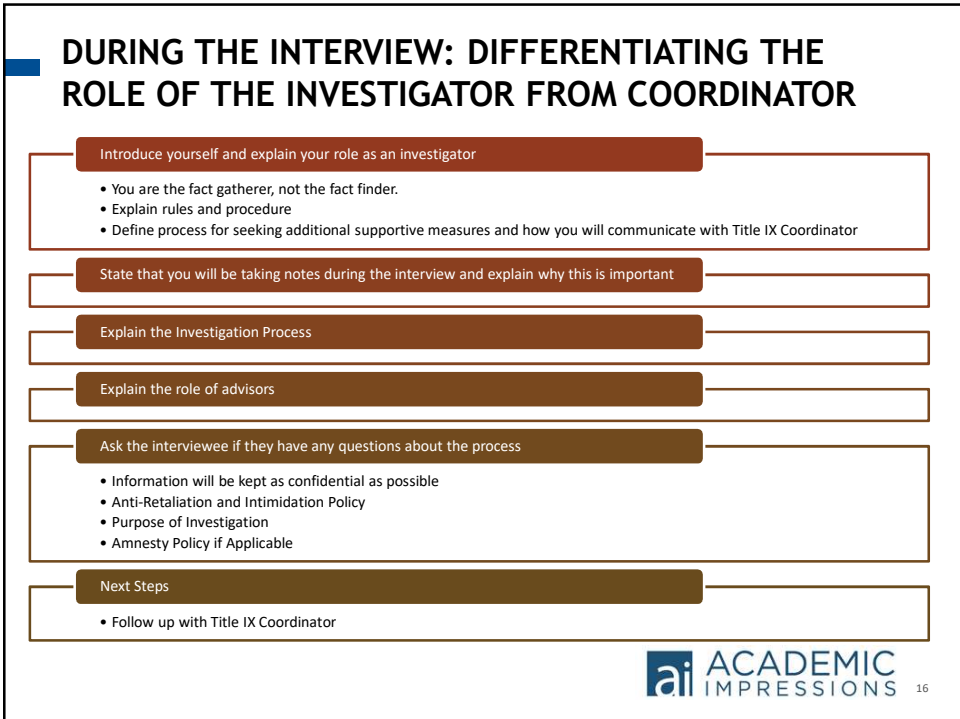
CONSIDERATIONS FOR THE TITLE IX COORDINATOR'S INVOLVEMENT DURING AN INVESTIGATION

- What role does the Title IX Coordinator play in the review process during investigation and before finalizing the report?
- Coordination amongst Title IX Coordinator and Investigator related to ongoing provision of supportive measures?
- Elevation of safety risk factors that may trigger need for emergency removal considerations?
- Assistance with enforcement of policy deviations or violations?
- Need for amended notification for violations?

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COLLECTING EVIDENCE



How are you storing physical evidence?

Often depends on whether your University has sworn law enforcement



Who is providing the evidence?



Potential Sources of evidence:

Text messages, social media, phone records, etc.
Diaries, journals, timelines, etc.
Law Enforcement
Campus Records
Medical Evidence

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CREDIBILITY ASSESSMENTS, FACT ANALYSIS, AND RECOMMENDATIONS: WHAT GOES IN THE REPORT?



Credibility Observations Without Findings of Fact or Determination



Using Evidence to Support Fact Finding Through Report Organization



Recommendations?

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ORGANIZING YOUR DIGITAL CASE FILE



UNDERSTANDING OF SYSTEM
FOR COLLECTION AND
DISTRIBUTION



SORTING AND DISTRIBUTING
EVIDENCE AND REPORT
APPROPRIATELY



FINALIZING THE OFFICIAL
RECORD OF THE
INSTITUTION'S RESOLUTION

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QUESTIONS AND KEY CONSIDERATIONS WHEN IMPLEMENTING THE NEW REGS

- Determining Scope and Application of Policies and what you investigating
- Challenges with remote or digital investigations
- Working with Advisors
- Tandem Law Enforcement Investigations
- Application to Employees
 - Faculty Unions and Contract
- Respecting Confidentiality while not prohibiting communication
- Working with Witnesses
- Investigator role in the Hearing Process
- Enhanced record protection when distributing reports including storage, redaction, and FERPA considerations

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CHAT

SHARE OUT & DISCUSSION!

What have been some of your procedural challenges related to facilitating your investigation process? What have you recently adjusted considering the proposed regs, if any?

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QUESTIONS

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