



Title IX & Sexual Harassment

Participants in Sexual Harassment Policy Process

Tanya Healy, M.A.
Title IX Coordinator
She, Her/s



Agenda – Day 1

- Title IX Scope and Jurisdiction
- PUC Sex Nondiscrimination and Sexual Harassment Policy
- Conflicts of Interest & Bias
- Reporting, Confidentiality, and Privacy Requirements
- Responding to Reports



Title IX Scope and Jurisdiction



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.

Title IX of the Education Amendments of 1972

Implementing Regulations at: 20 U.S.C. § 1681 & 34 C.F.R. Part 106



Title IX

Requires colleges and universities to “take immediate and effective steps to end sexual harassment and sexual violence.”

Civil Rights Law

Clery Act/VAWA Sec. 304.

Requires colleges and universities to track, provide processes to deal with, and education against sexual assault, dating and domestic violence), and stalking.

Consumer Rights Law

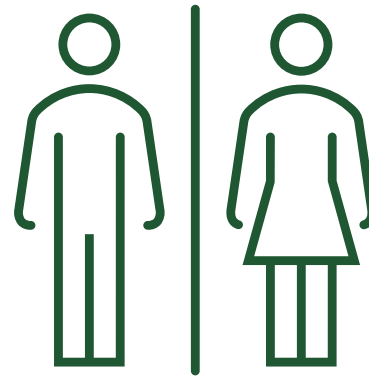


“on the basis of sex”

PUC policy prohibits sex/gender-based discrimination and sexual harassment.

PUC retains religious exemptions which permits discrimination in situations where needed to remain consistent with SDA religious tenets:

- Employment
- Housing
- Admissions
- Marriage
- Sports participation
- Facilities use





“education program or activity”

Title IX includes all operations of educational institutions.

Amenities On
Campus

Admissions

Hiring

Workplace

Academic
Instruction

Residence Life

Athletics

Work-study

Games, Concerts,
Lectures

Sponsored
Organization
Activities

Off-campus Trips,
Tours, Experiences

Anything
On-campus

Locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the discrimination or harassment occurs.



Policy Application Off-campus



When misconduct occurs in the context of an education program or activity



When misconduct occurs in a PUC owned or controlled property or property that is controlled or owned by an officially-recognized student organization.



When misconduct occurs at a private location and outside of PUC's education program or activity.

- DoE interprets TIX to only apply within the geographical boundaries of the United States.
- DoE does not prohibit us from addressing misconduct outside of Title IX scope and jurisdiction using other policies.

Let's Practice: Jurisdiction

1

The orchestra goes on a tour to Canada. On Saturday night, two members of the violin section sneak out of the hotel after hours and go to a club. When they return to the hotel, Max invites Jax back to her room to play cards. Jax says cool and they go to the hotel room. After playing cards for awhile, Max and Jax start kissing. After a while, Max asks Jax to stop. Instead of stopping, Jax pulls down Max's pants while say, "it's ok, I promise it will feel good" before performing digital sex. Max doesn't say anything but stops participating. After trying to arouse Max without success, Jax get's up angrily, storms out of the room muttering under their breath something about "a cold fish."



Let's Practice: Jurisdiction

2

Ally goes out with Joss who met on Tinder. Joss picks up Ally and they go to Pizzeria Tra Vigne. They have an amazing time at dinner and head back to campus. Ally suggests they park at the soccer pitch and continue talking for a while. Soon they start making out. Joss starts to fondle Ally's breasts. She removes the hand and states she doesn't mind kissing, but she doesn't want to hook up. They start kissing again, but Joss continues to fondle Ally's breasts with hand and sliding the other hand up her skirt. Ally shoves Joss's hands away, gets out of the car, and runs to her dorm.



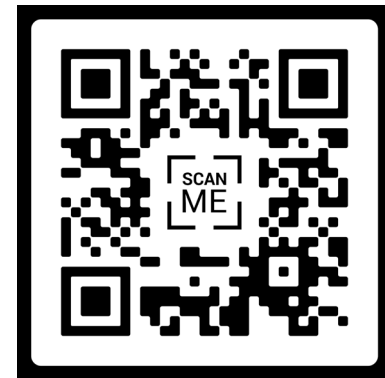


Sex Nondiscrimination
and
Sexual Harassment Policy



Sex Nondiscrimination and Sexual Harassment Policy

- Sex/Gender-based Discrimination (including pregnancy)
 - Hostile Environment
 - Sexual Exploitation





Sex Nondiscrimination and Sexual Harassment Policy

Discrimination: Actions that deprive, limit, or deny other members of the community of educational or employment access, benefits or opportunities because of their sex or gender. This covers all parts of life on campus including pregnancy, athletics, the classroom, work, etc.

Hostile Environment: An environment that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or physical conduct that is severe, and perverse, and objectively offensive.



Sex Nondiscrimination and Sexual Harassment Policy

Sexual Exploitation: A situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Discrimination, Discriminatory Harassment, or Sexual Harassment.



Sex Nondiscrimination and Sexual Harassment Policy

- Sex/Gender-based Discrimination (including pregnancy)
 - Hostile Environment
 - Sexual Exploitation
- Sexual Harassment
 - *Quid pro quo*
 - Sexual Assault (non-consent)
 - Dating Violence
 - Domestic Violence
 - Stalking





Sex Nondiscrimination and Sexual Harassment Policy

Sexual Harassment: unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive (SPOO), that it effectively denies a person equal access to the College's education program or activity.



Sexual Assault

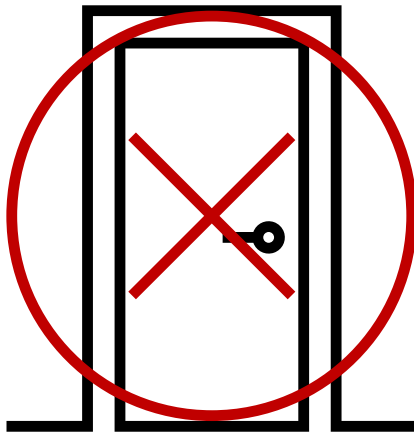
Dating Violence

Domestic
Violence

Stalking



Sex Nondiscrimination and Sexual Harassment Policy



Unwelcome is subjective standard and determined by the Complainant (except when the Complainant is below the age of consent).



Sex Nondiscrimination and Sexual Harassment Policy

Sexual Assault includes forcible and non-forcible sexual offenses.

Forcible sexual offenses
(non-consensual sexual act*):

Rape

Sodomy

Sexual Assault
with an Object

Fondling

Non-forcible sexual offenses:

Incest

Statutory Rape



*Includes stealthing.

Let's Practice: Definitions

1

Grace and Sydney walked from the Dining Commons back to Grace's dorm. Sydney gave Grace a hug before leaving the dorm to go to class. Grace reports that she didn't want to be hugged and even backed up slight from Sydney as she was trying to hug her. When Sydney was pulling back from the hug, she touched Grace's breasts. Grace believes that Sydney purposefully touched Grace's breasts.

2

Bobby frequently wears a shirt that says "I went down, to Stealth Town, and got myself a MILF." Alex is a victim of stealthing and asked Bobby to stop wearing the shirt. Bobby said that the 1st amendment gives him the right to "self-express" and continues to wear the shirt.



Let's Practice: Definitions

1

Two employees are married, but they have no children. They get into an argument in the Irwin Hall parking lot. Dixie slaps Dallas before storming off to the car and leaving Dallas crying and alone.

2

Bailey enjoys speaking to Bobby Lee, in fact they run over to Bobby Lee every chance they get. Recently, Bailey began giving Bobby Lee gifts, leaving him notes in his dorm mailbox, and even dedicated their recital to Bobby Lee. Bobby Lee is feeling really uncomfortable, and actively avoids Bailey.

3

Seneca reports that Augustus sexually harassed Seneca on two occasions. The first incident consisted of Augustus grabbing Seneca's butt in the Dining Commons line without permission. The second incident consisted of Augustus attempting to have sexual intercourse with Seneca a week later, when Seneca was heavily intoxicated at a party in St. Helena.



CONSENT IS

ACTIVE

enthusiastic permission to engage in activity.

CLEAR

direct communication, not ambiguous

KNOWING

fully conscious and not impaired by drugs or alcohol

VOLUNTARY

willing participants that of the legal age to consent (California = 18), agreement to engage in activity does not result from force, the threat of force, coercion, or intimidation

REQUIRED

not inferred from previous activity, clothing, or intoxication

ONGOING

confirmed at each level of activity and can be withdrawn at any time

YES = YES

lack of protest or resistance does not mean consent, silence does not mean consent



Force, Coercion, & Incapacity

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Let's Practice

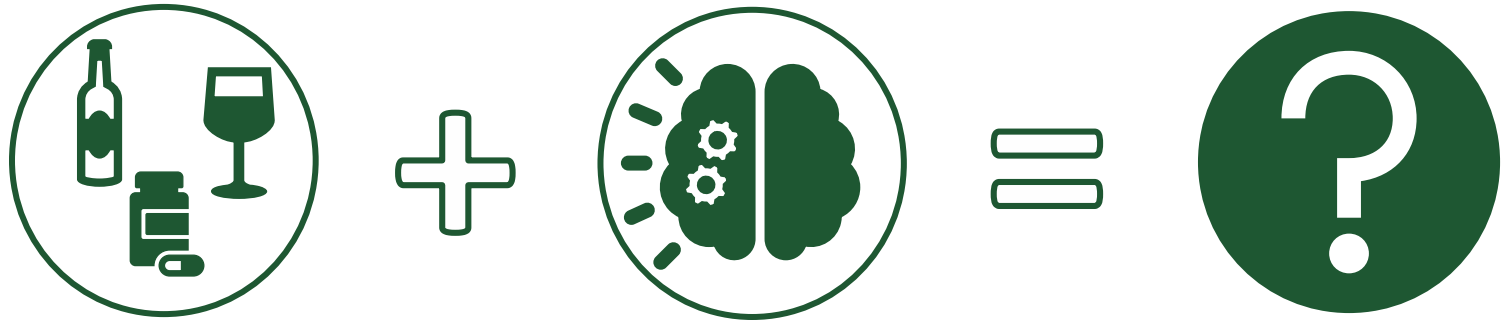
1

Abby and Bobby are in Chemistry together. They frequently study together and occasionally flirt during their study sessions. Yesterday, Abby invited Bobby over to her apartment to study for an upcoming exam. Since Bobby doesn't have a car, his roommate offered to give him a ride to Abby's apartment on his way to work. Abby agreed to give Bobby a ride back to his place when they were done.

When they were done studying, Abby ask Bobby if he wanted to hook up. He said no and started packing up his things. She reminded him that he had been flirting with her all semester and sending some pretty strong hook up vibes her way. He declined again and asked her to drive him home. Abby stated that she wouldn't drive him home unless they had sex.

Abby and Bobby had sex.





Incapacitation: when someone is no longer able to make rational, reasonable decisions.

- A lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance);
- A lack of awareness of circumstances or surroundings (e.g., lack of awareness of where one is, how one got there, who one is with, or how or why one became engaged in a sexual interaction);
- An inability to effectively communicate for any reason (e.g., slurring speech, difficulty finding word).
- A person may appear to be giving consent without the capacity to do so, in which case, the apparent consent is not effective.



Let's Practice: Consent

1

Jeff and Ashley have both been drinking. Jeff asks Ashley to drive because he has had 6 beers and feels too drunk to drive, but Ashley has only had 2. Jeff and Ashley go back to Ashley's apartment and have sex.

2

Jeff and Ashley have both been drinking. Jeff cannot walk without support and struggles to remember his apartment number. Ashley assists Jeff back to his on-campus apartment. Jeff initiates sex with Ashley.





Retaliation

PUC Policy and Title IX both prohibit intimidation, threats, coercing, harassing, or any discriminatory act against an individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Protects: Title IX staff, complainant, respondent, witness, advisors

Title IX & Clery Act

Let's Practice: Retaliation

1

The parties in a case share the same friend group. The complainant has lunch with a mutual friend every Friday in the Dining Commons. After hearing about the case, the mutual friend has refused to meet up the complainant. Is this retaliation?

2

A student employee is asked to be a witness in an investigation and hearing regarding a sexual harassment allegations against their manager. The manager is found responsible for sexual harassment in the hearing. After the hearing the manager cuts the student employee's hours. Is this retaliation?



Amnesty Clause



Conflict of Interest & Bias



- Material connection to a dispute or the parties involved, such that a reasonable person would question the individual's ability to be impartial
- May be based on prior or existing relationships, professional interest, financial interest, prior involvement, and/or nature of position

Conflict of Interest





Bias

A disproportionate weight in favor of or against an idea, thing, or person. Biases can be conscious or implicit



- An implicit bias is any **unconsciously**-held set of associations;
- Implicit biases are the product of **learned associations** and **social conditioning**;



The 3 Biases

Affinity Bias



Halo/Horns Bias



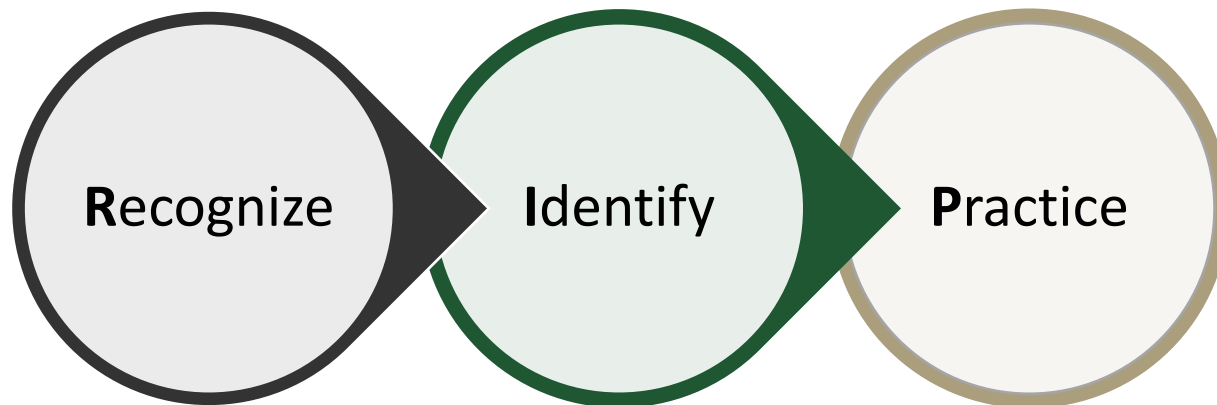
Confirmation Bias



How might this affect an advisor? investigator? hearing panelist?



Combatting Implicit Bias



It can affect decisions and actions.

It can be harmful.



What are
your biases?





Participant Recusal or Dismissal

- Title IX Coordinator must address known or reported conflicts of interest/bias
- Parties may raise concerns of conflicts of interest and bias of procedure participants
- Individuals should self-police conflicts of interest and self-identify bias and recuse oneself



Reporting, Confidentiality and Privacy



Reporting Requirements

Officials with Authority

- Administrators
- Title IX Office (you)
- Residence Life Deans
- Public Safety staff
- AD & all coaching staff
- Academic and service chairs and directors

Mandated Reporters

- Faculty
- Staff
- RAs

OWAs may process formal complaints.





Privacy

Confidentiality



Confidential Resources



Wellness Center

Counseling Services

(707) 965-7080

(707) 965-6789 *after hours

counseling@puc.edu

Therapists and Staff



Wellness Center

Health Services

(707) 965-6339

(707) 965-6789 *after hours

healthservices@puc.edu

Health Providers and Staff



Chaplain Kent Rufo

(707) 965-7190

krufo@puc.edu



Reporting Requirements

Online Reporting

puc.edu/ixreportform

Livesafe app

PUC Public Safety

(707) 965-7111 (24-hr)

Tanya Healy

Title IX Coordinator

(707) 965-6226 (24-hr)

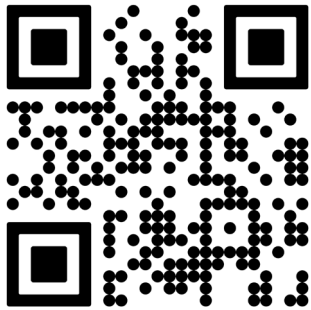
titleix@puc.edu

Chan Shun Hall 114

Mandated Reporters

Any Faculty, Staff, and RAs

Reporting does not constitute a formal complaint. But a formal complaint is not necessary for the provision of free supportive measures or resources.



Resources

Title IX >

Get Help Now >

Resources >

Policy >

Definitions >

Right of the Parties >

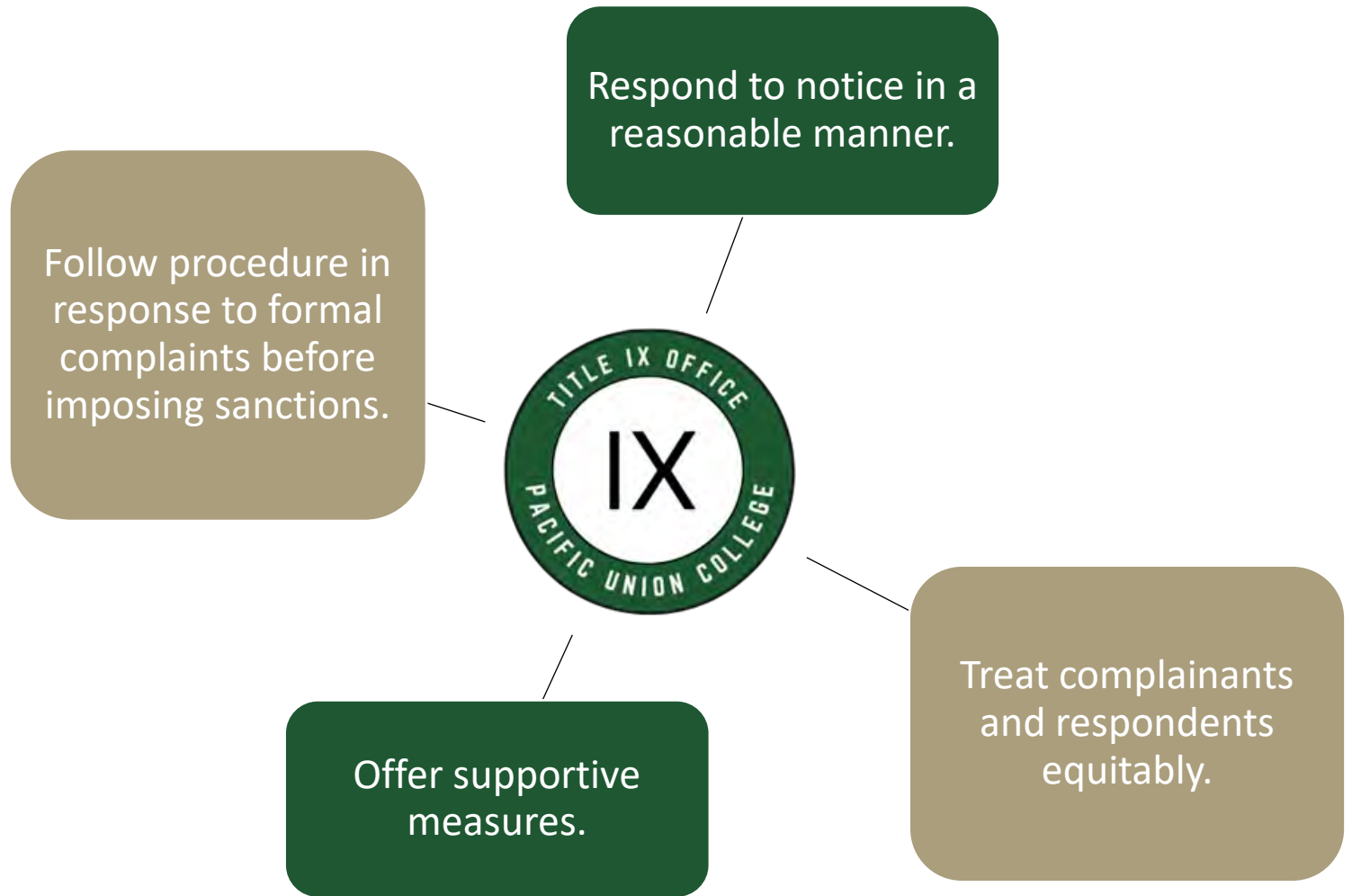
Family & Friends >

Frequently Asked Questions >

www.puc.edu/titleix



Responding to Reports



Institutional Response



Response Trigger

Title IX An OWA is informed of or notices an occurrence of discrimination, sexual harassment, or retaliation.

CA SB 493 (January 1, 2022): Any employee is informed of or notices an occurrence of sexual harassment.

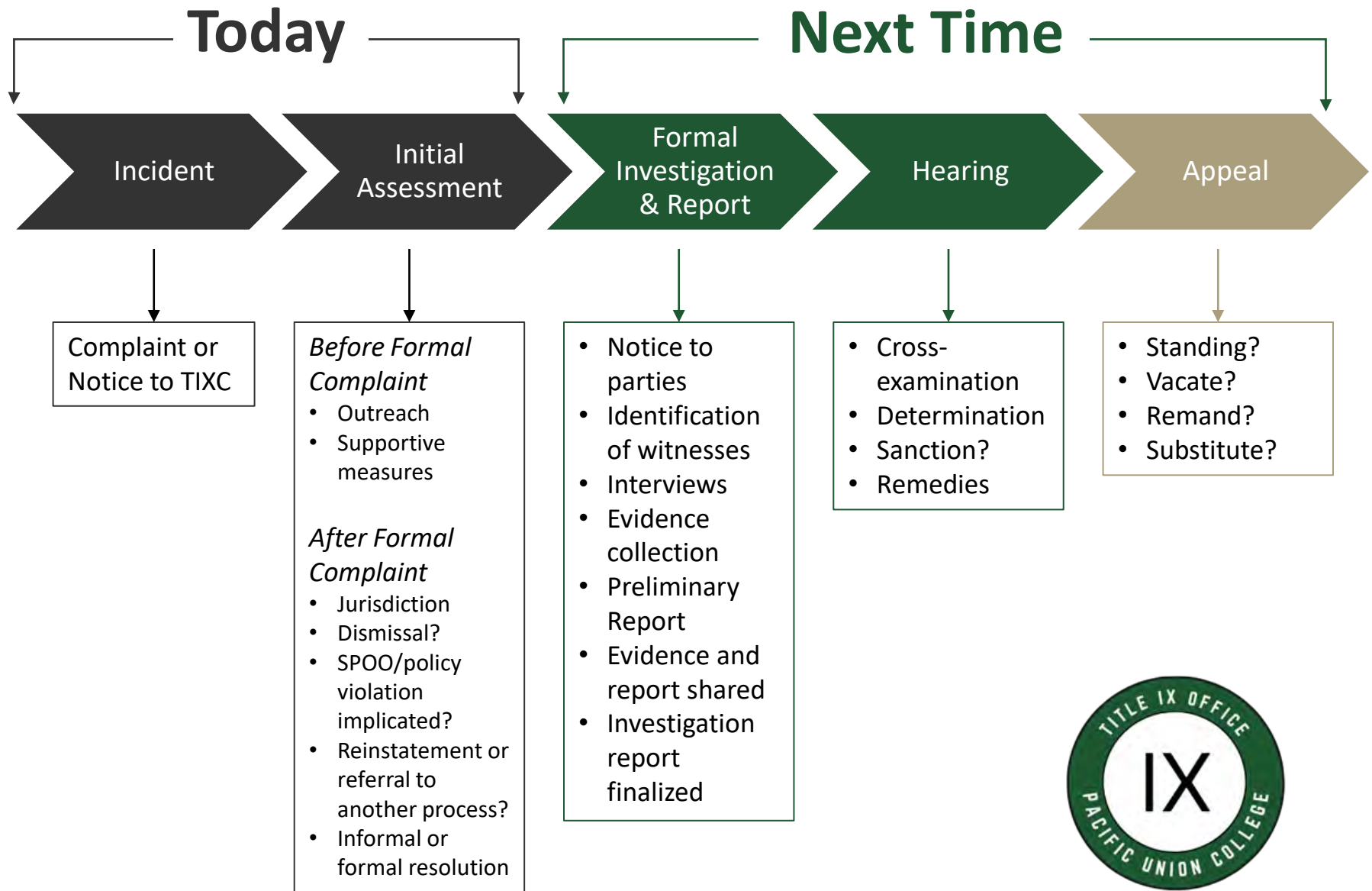


Key Party Definitions

Reporter: A third party reporting information. A reporter does not have informational rights.

Complainant: The alleged victim. An individual is designated a complainant even if they did not report the alleged misconduct themselves.

Respondent: The alleged perpetrator of the misconduct.



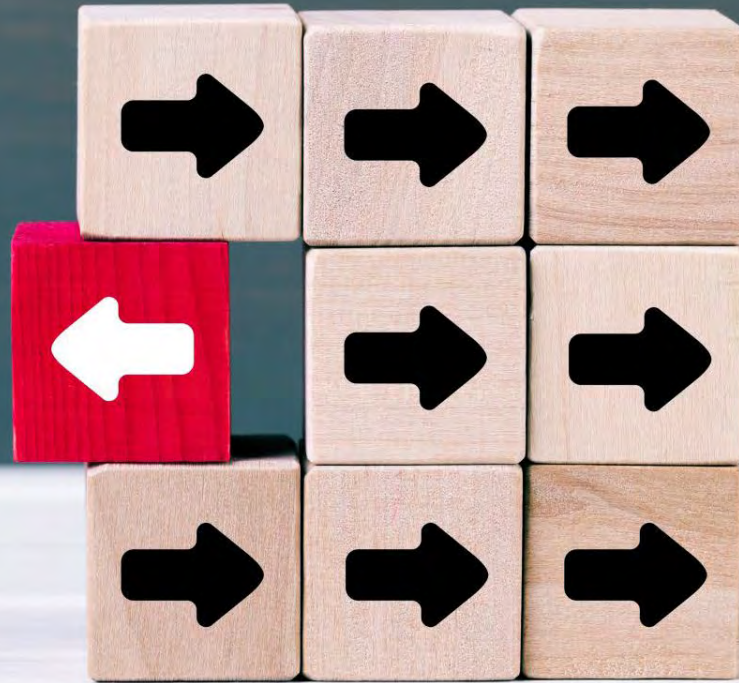


Report

- Information to TIX Office
- Supportive measures

Formal Complaint

- Document alleging sexual harassment (intake report)
- Requesting an investigation/resolution
- Signed by complainant who is P/APE
- Submission may be physical or electronic



Initial Assessment

1-5 business days to complete



- Perform Outreach
- Assess allegations for possible SPOO and policy violations (if allegations are proven) and jurisdiction

Not an Investigation



Outreach

Upon notice, the Title IX Coordinator must contact the complainant in order to:

- Provide information regarding supportive measures
- Discuss rights (ex. Advisor, assistance with law enforcement)
- Explain the grievance process and how to file a formal complaint
- Discuss the complainant's options
 1. Supportive/remedial response
 2. Informal resolution
 3. Grievance process



- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party



**ASK US ABOUT
SUPPORTIVE
MEASURES**



Supportive Measures

- Change in housing and/or food delivery
- Safety planning
- Academic accommodations and support
- No contact directives or campus ban
- Alternate work scheduling
- Transportation accommodations
- Campus escorts
- Other accommodations as may be necessary

See Section I.F.2 of the policy for more examples, neither example is an exhaustive list.



Interim Removals

Student respondent temporary removal must include a Violence Risk Assessment (VRA) which is performed by the CARE team.

VRA is an individualized safety and risk analysis which determines that an immediate threat to the physical health or safety of ANY student or other individual justifies removal. Student is given immediate notice.

Appealable by respondent upon request, which should be completed within 5 business days of removal.



Interim Removals

Employee respondent may be placed on administrative leave without a VRA.

Interim action is to be more inline with existing provisions such as Human Resources protocols.

Title IX Coordinator has sole discretion to implement or stay emergency removals and to determine the conditions and duration, but may consult appropriate campus authorities.



TIX Coordinator Complaint

Compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

- Evidence of patterns of misconduct
- Predatory conduct
- Threats
- Abuse of minors
- Use of weapons
- Violence

Employee misconduct that must be remedied.

If the Complainant chooses not to participate, the Advisor may be appointed to act as proxy throughout the process.



Formal Complaint Dismissal

OCR Mandatory TIX Dismissal Standards

- At the time of filing, the Complainant is not A/APE
- Allegations do not constitute sexual harassment as defined by OCR, even if proved
- Alleged conduct did not occur within College jurisdiction
- Alleged conduct did not occur in the US



Formal Complaint Dismissal

OCR Discretionary TIX Dismissal Standards

- Complainant requests in writing to withdraw the formal complaint and/or any allegations within (Complainant may later reinstate or refile request)
- The Respondent is no longer enrolled in or employed by the College
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination

Decision to dismiss is appealable by both parties.

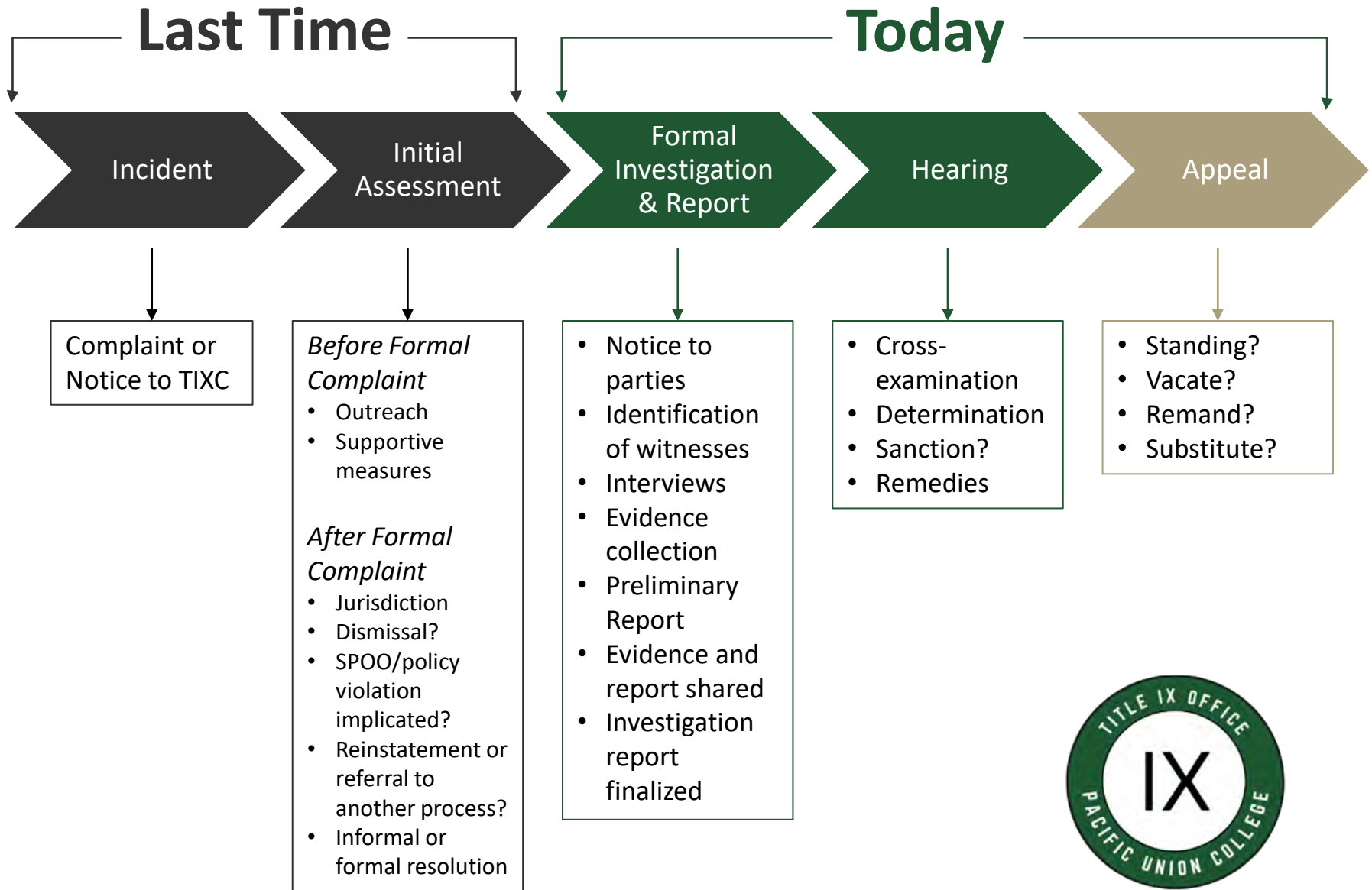


Agenda – Day 2

- Grievance Process

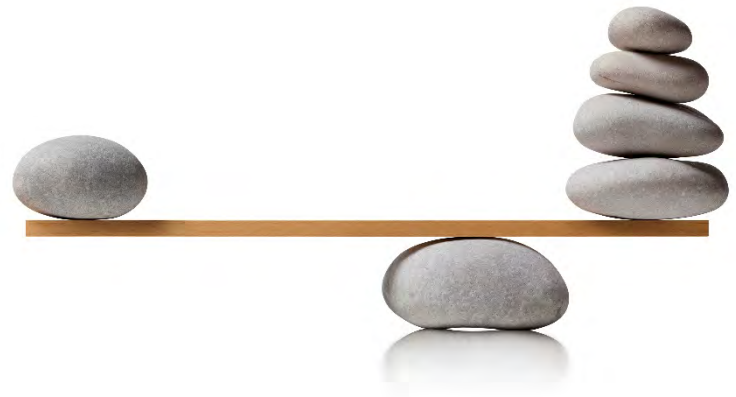


Grievance Process



- Equitable treatment of the parties.
- Presumption that the Respondent **did not** violate policy unless and until a determination has been made after the hearing.
- Institutional Participants must be free of conflict of interest and bias.
- Stereotypes based on a party's status as a complaint or respondent.

Grievance Process Requirements



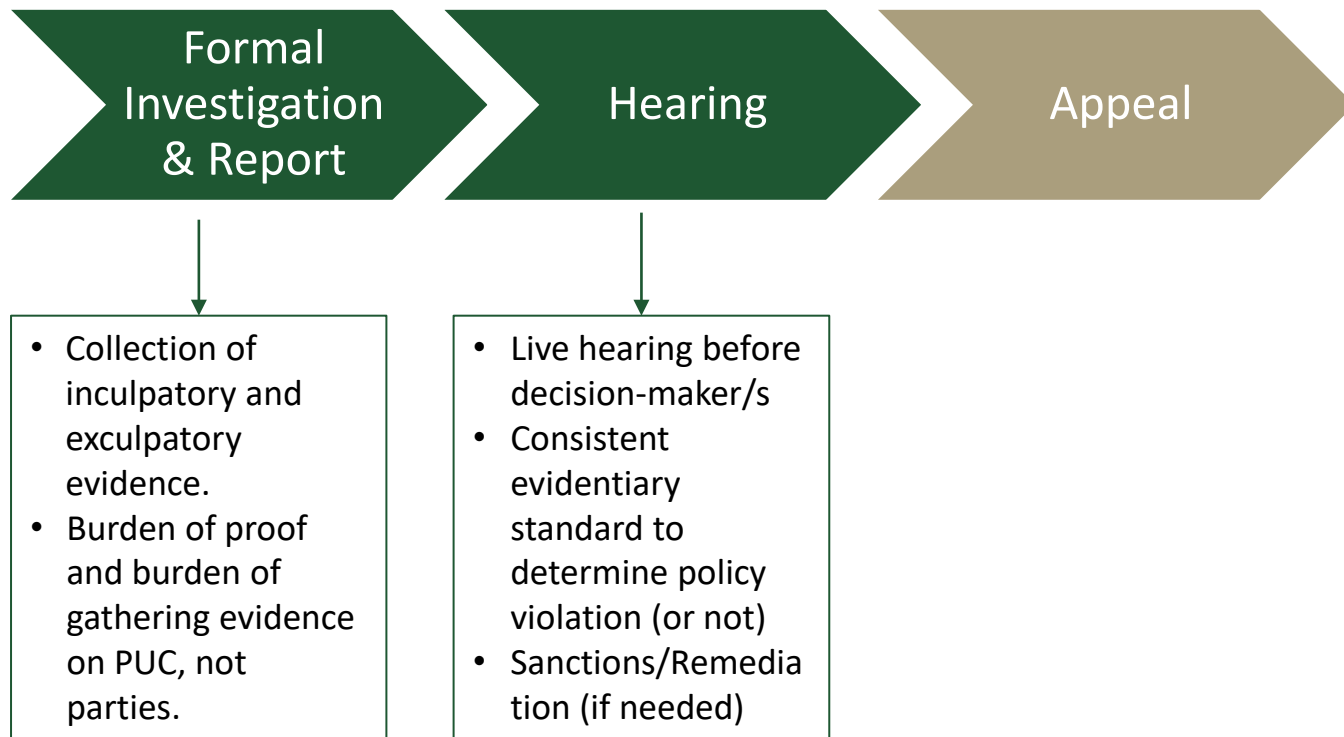
Examples: Impermissible Stereotypes

- 1 Spousal rape isn't a thing.
- 2 Athletic teammates can't be trusted as witnesses because they will rally around their teammate and lie for each other.
- 3 RA's receive comprehensive training and vetting, there is no way one of them could sexually assault someone else.
- 4 People who sneak into their boyfriend/girlfriend's dorm room want to have sex.





Grievance Process





Evidence

Inculpatory Evidence

Evidence which tends to support the idea that the respondent committed the alleged misconduct.

Exculpatory Evidence

Evidence which tends to support the idea that the respondent did not commit the alleged the misconduct.





Evidentiary Standard

PUC uses Preponderance of the Evidence evidentiary standard.



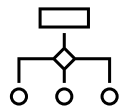
Title IX: Must use either “Preponderance of the Evidence” or “Clear and Convincing” standard consistently across campus.

CA SB 967: Must use “Preponderance of the Evidence.”

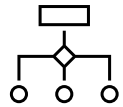


Preponderance of the Evidence

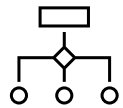
Complaints may be consolidated if they arise out of the same facts and circumstances



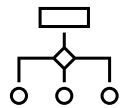
Multiple respondents



Multiple complainants



Multiple allegations against a single respondent

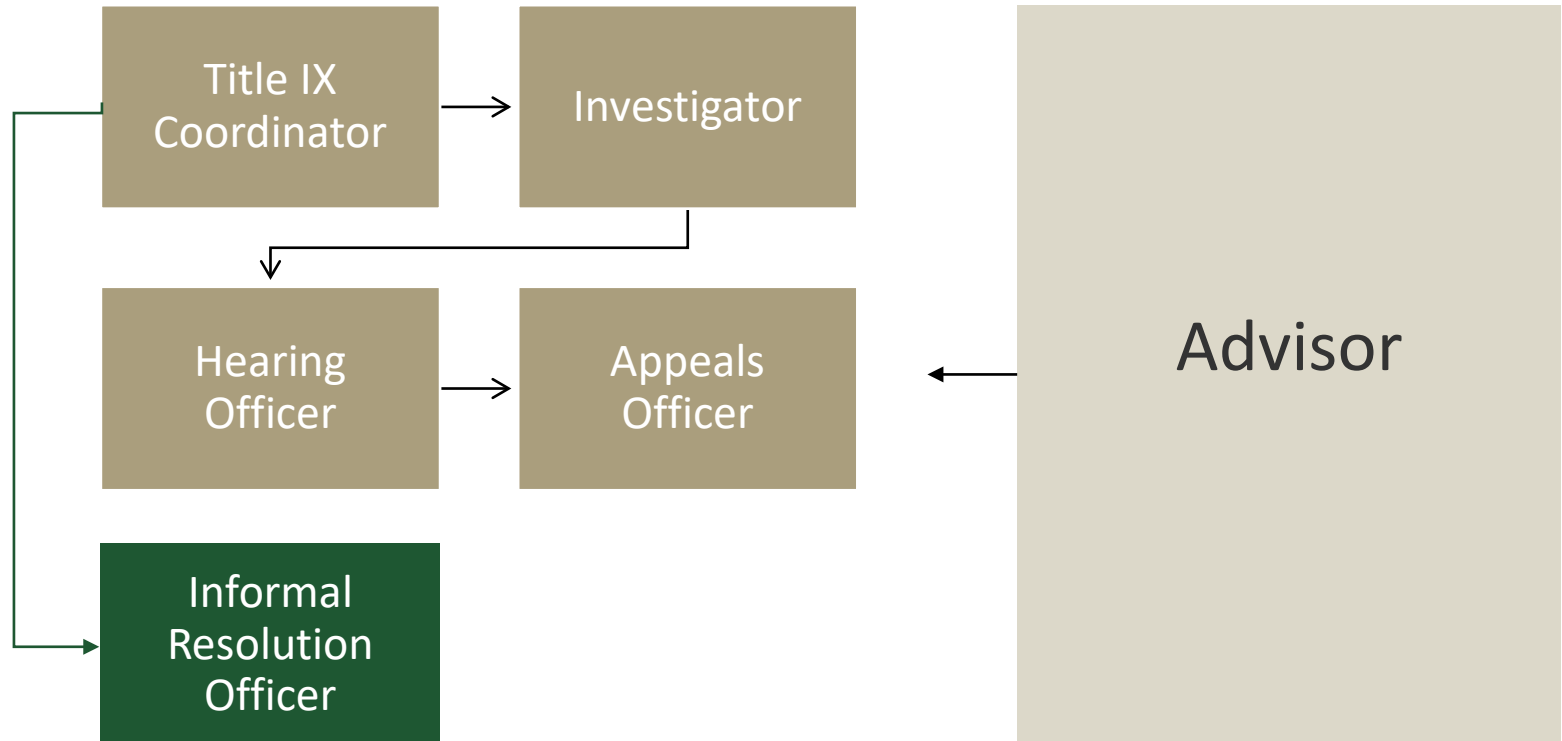


Multiple allegations from a single complainant





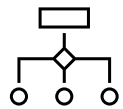
Key Personnel



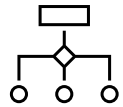


Complaint Consolidation

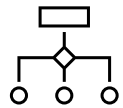
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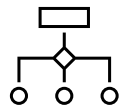
Multiple respondents



Multiple complainants



Multiple allegations against a single respondent



Multiple allegations from a single complainant





Respondent Withdrawal or Resignation

Student respondents who withdraw or leave while the process is pending:

- Not eligible for return to the College – Admissions hold
- May be barred from College property and/or events

Employee respondents who resign while the process is pending:

- Not eligible for rehire with the College (recorded in HR and TIX Office)
- Responses to future employment inquiries will state that former employee resigned during a pending disciplinary matter



Any questions?