



Title IX Investigator Refresher Training Fall 2020

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Role of the Investigator

- A neutral institutional fact finder and gatherer
 - Fair and unbiased review of matter
- Follow the Policy
 - Standard of proof
 - Avoid burden shifting
- Make a preliminary determination regarding the charge(s) and recommendations for the parties to consider





Overview of Title IX

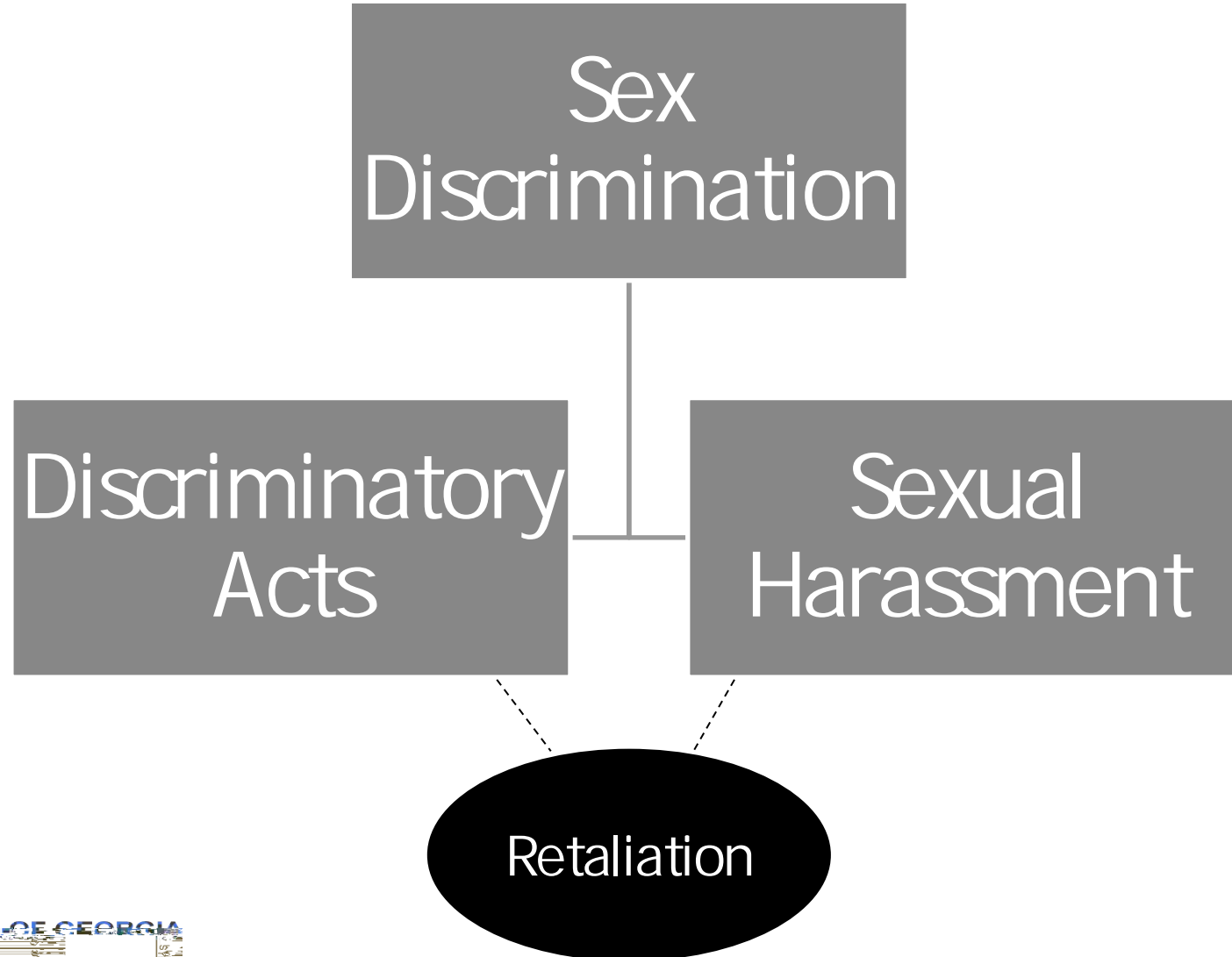
Title IX

The law states that:

"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..."

—United States Code

What is Sex Discrimination?



Title IX Sexual Harassment §106.30

- Conduct on the basis of sex that satisfies one or more of the following:
 - (i) An



Updated Sexual Misconduct Policy

Sexual Misconduct Policy

Title IX

Other Sexually
Based Behavior

What Has Changed?

- Definitions of Prohibited Conduct
- Title IX Jurisdiction
- Provisions on Retaliation, Amnesty, False Statements
- Role of Advisors
- Adjudication Process
- Timeframe for Completion
- More...



This Photo



Prohibited Conduct: Definitions & Jurisdiction

Dating Violence

Violence is a physical, sexual, or psychological harm or threat of harm inflicted by a current or former intimate partner or dating partner in a social relationship of a romantic or intimate nature. It includes, but is not limited to, the following:

- Physical violence, including but not limited to: hitting, slapping, pushing, kicking, or any other physical act that causes physical injury or death.
- Sexual violence, including but not limited to: rape, sexual assault, sexual harassment, or any other sexual act that causes physical or psychological harm.
- Psychological violence, including but not limited to: threats, intimidation, stalking, harassment, or any other act that causes emotional or psychological harm.

Domestic Violence

Violence *Wa a]hYX Vm'*

- U'WffYbhis *pousežZcfa Yf'gdci gY'cf* intimate partner
- U'dYfgcb 'k \ca 'shares a child
- U'dYfgcb 'k \c]g'coh *abiting'k]h\ 'cf 'w\ UV]hUhYX' k]h\ h\ Y'U`Y[YXj]Ma ''*

Stalking

9b[U[]b[']b 'U'course of conduct X]fYwX 'Uh'U'gdYwZ]W

Nonconsensual Sexual Contact

5bmp physical contact k]h\ 'Ubch\ Yf'dYfgcb 'cZU'sexual nature without the person's consent"

=bWl XYg :

- Hci Wl]b['cZU'Ubch\ Yf'g]bh]a UhY'dUfhg'f[Yb]hU]Už[fc]bž'VfYUghž'Vi h'cW_gk
- Hci Wl]b['U'dYfgcb 'k]h\ 'cbYg'ck b]bh]a UhY'dUfhg/'cf'
- : cfWl]b['U'dYfgcb 'hc 'hci Wl '\]g'cf '\ Yf'ck b 'cf 'Ubch\ Yf'dYfgcb'g]bh]a UhY'dUfhg'

Nonconsensual Sexual Penetration

5b) penetration cZ'Ubch\ Yf'VcXmidUfhgk]h\ ci hi\ Y'dYfgcb'W'cbgYbh''

=bW XYg'

- DYbYhfUh]cb'cZ'h\ Y'j U[]bUž'Ubi gž'cf'a ci h\ 'Vm'U'dYb]gž'cV^YVž'hcb[i Yž' Z]b[Yfž'cf'ch\ Yf'VcXmidUfh'
- 7cbhUM'VYhk YYb'h\ Y'a ci h\ 'cZ'cbY'dYfgcb'UbX'h\ Y'[Yb]hU'g'cf'Ubi g'cZ' Ubch\ Yf'dYfgcb'

Sexual Harassment (Student on Student)

It is determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational institution's educational programs and activities.

Sexual Harassment (Other)

Unwelcome verbal, nonverbal, or physical conduct that is based on sex and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment or interfering with an individual's work performance.

- A term or condition of employment that is based on sex and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment or interfering with an individual's work performance.
- A basis for a personnel action that is based on sex and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment or interfering with an individual's work performance.
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Comparing Jurisdiction

Title IX

- Institution's program or activity the United States
 - Institution property
 - Institution sponsored or affiliated events [**substantial control** is key]
 - Buildings owned or controlled by officially recognized student organizations

Sexual Misconduct

- Institution property
- Institution-sponsored or affiliated events
- Off campus as defined by the institution policies
- Domestic or abroad



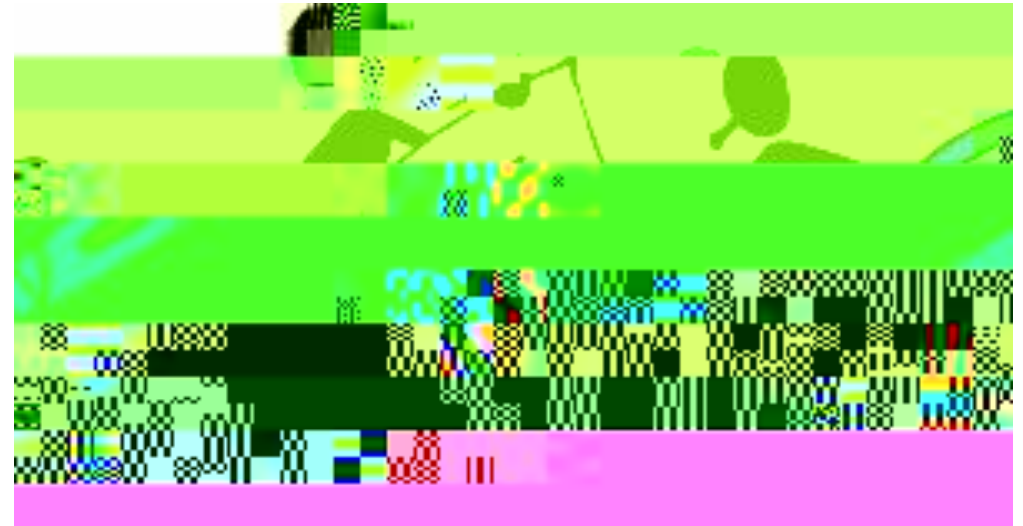
The Complaint Process

Formal Complaint §106.30

- A document filed by a Complainant OR signed by the Title IX Coordinator
- Alleges Sexual Harassment (Title IX)
- Requests an investigation
- **Note:** must be filed while the Complainant is participating in or

Title IX Coordinator Initiated Complaints

- TIXC does NOT become the Complainant
- When to sign? (Permissible)
 - Multiple reports against the same Respondent
 - Violent behavior or use of a weapon
- **Caution:** Be mindful of bias and conflicts of interest claims



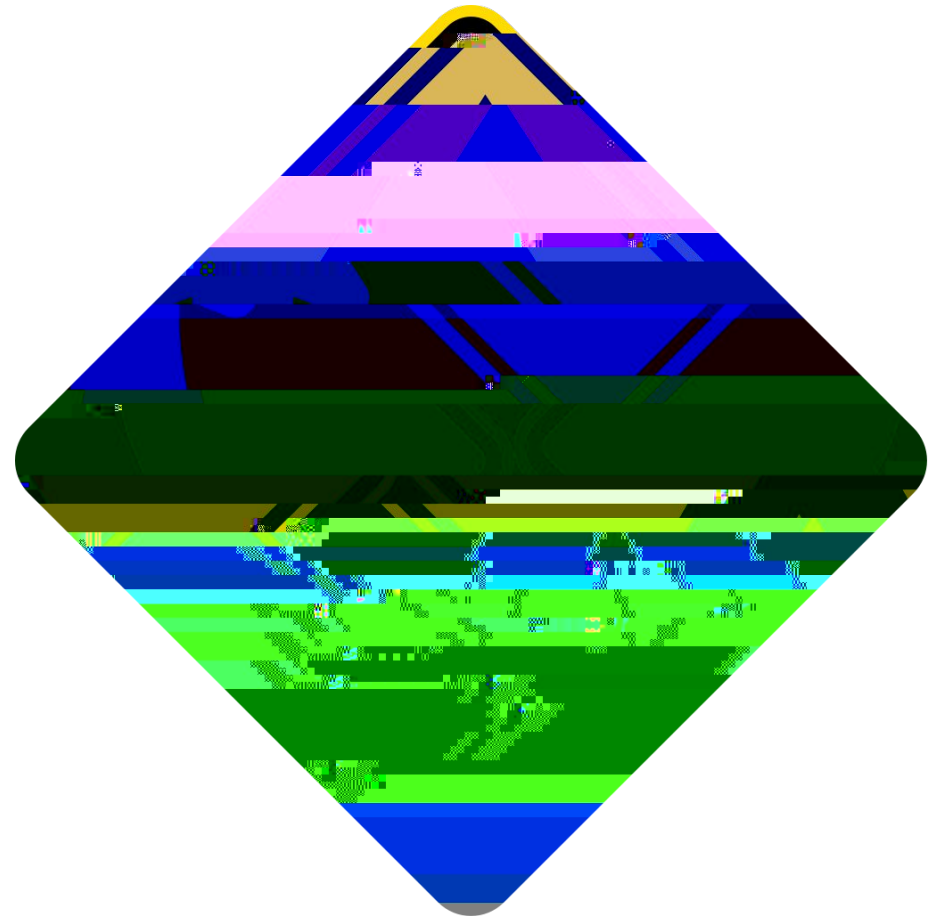
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Complaint Process

- If not a Formal Complaint under Title IX may be a complaint under Sexual Misconduct
- **Recommended:** Confirm with the Complainant (in writing) that they wish to investigate their claims
- Once a complaint is filed the timeframe for completion begins

Complaint Consolidation

- Permissible consolidation when allegations arise out of the same facts or circumstances:
 - Against more than one Respondent
 - By more than one Complainant against one or more Respondents
 - Cross complaints
- Parties must have the opportunity to object; institution makes final determination



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Support Services & Interim Measures §106.30

- Non-disciplinary, non-punitive individualized services must be offered to the Complainant
 - USG policy requires offering support services to Respondents as well
- Offered upon receiving a report [no Formal Complaint is required]
- Ex: counseling, modifications to work or class schedules, mutual no contact directives



The Investigation Process

Evidentiary Considerations §106.45(b)(5)

- The burden of proof AND burden of gathering evidence is on the institution
- Information protected by legal privilege, may not be accessed, disclosed or relied upon unless a waiver is obtained
- Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, UNLESS used to prove:
 - Someone other than the Respondent committed the conduct OR
 - Offered to prove consent between the parties

Standard of Evidence

Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence



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Advisors

Title IX Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- Provided a copy of the investigation report and directly related information
- All communication will be between the institution and the party

Sexual Misconduct Complaints

- Parties have a right to an advisor of their choice
- Advisor may accompany party to all meetings and hearings
- All communication will be between the institution and the party

False Statements

Retaliation §106.71

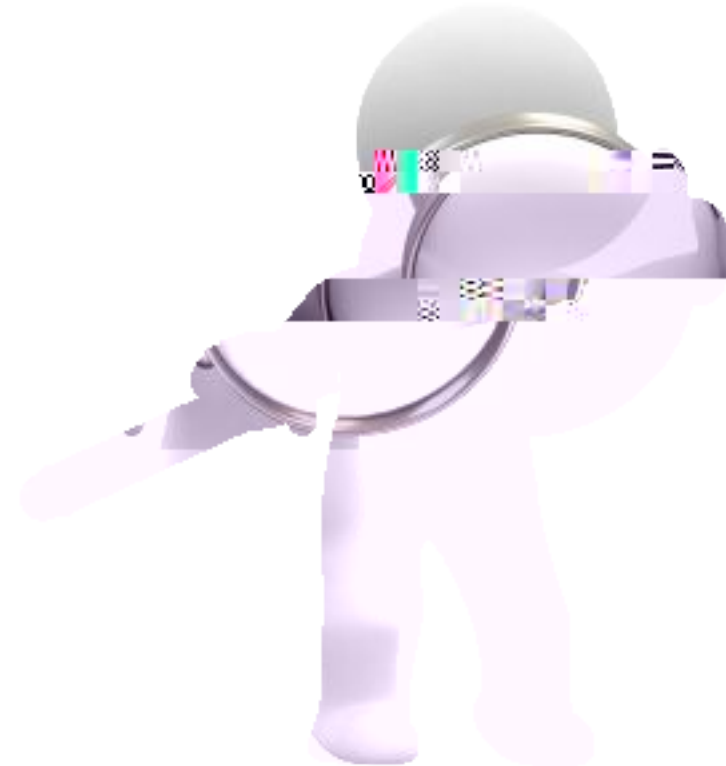
- **Who is protected:** Reporters, Complainants, Witnesses, Respondents, even those who choose to not participate
- **What is protected:** Intimidation, threats, coercion, discrimination
 - Ex. Charging individuals for code of conduct violations that arise out of the same facts or circumstances
 - Ex. Not keeping the identity of the Complainant, Respondent, or any witnesses confidential

The Investigation Report §106.45(5)(vii)

- Must fairly summarize relevant evidence
- An objective evaluation of the information [inculpatory and exculpatory]
 - Credibility assessments cannot be based on a person's status
- Sample report sections still apply
- Final report provided to the parties at least 10 days calendar days prior to the hearing

Access to Information §106.45(b)(5)(vi)

- Parties have a right to review the investigation report prior to its finalization
- Parties have a right to receive a copy of all directly related information
- Procedurally can occur simultaneously or at different times
- 10 calendar days to review



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Informal Resolution

Considerations

- The institution is a party to the informal resolution
 - Informal resolution is appropriate
 - The terms of the informal resolution are appropriate
- Parties must engage in the process voluntary
- Parties may end the informal resolution process any time prior to reaching the terms



Formal Adjudication



The Written Decision §106.45(b)(7)

- Provided to both parties simultaneously must include:
 - The allegations
 - The procedural steps from the complaint through determination
 - Findings of fact supporting the determination
 - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
 - Information on the appeals process

Appeals

- Parties will continue to have both institutional level and Board level appeal opportunities
- Grounds for an appeal:
 - New information
 - Procedural Error
 - Ex. Bias or conflict of interest of Title IX personnel
 - Finding inconsistent with the weight of the information



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