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Queens University Title IX Training

Annual Appeal Officer Training
+ Advisors

October 2026

Stephen Vaughan



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Agenda

- Introduction and Training Goals
- Title IX/VAWA Overview and Application
- Definitions for Prohibited Conduct
- Roles and Responsibilities
- Advisors
- Appeals under the Policy
- Deciding Appeals

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Title IX & VAWA

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What is Title IX?

"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"

(20 U.S.C. § 1681)

AND

2020 Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (34 C.F.R. Part 106)

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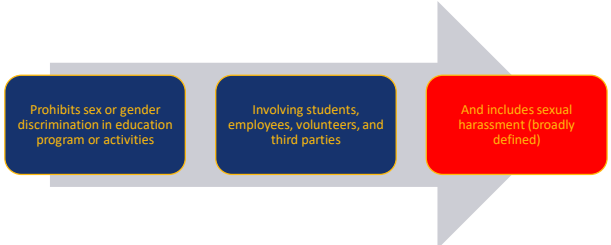
Violence Against Women Act ("VAWA")

- Amended Clery Act through the Campus Sexual Violence Act ("SaVE Act") provision, Section 304
- Added **domestic violence**, **dating violence**, and **stalking** to the Clery crimes (which already included **sexual assault**)
- Requires adoption of institutional policies, procedures, and programs to address and prevent campus sexual violence.
- Requires training of institutional personnel and students and prevention and awareness programs
- When such conduct occurs within Clery geography

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Title IX's Scope



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When Does Title IX Apply?

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Title IX Response:

- Actual Knowledge
- Sexual Harassment
- Education Program or Activity
- In the United States

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Legal Requirements: Fundamental Obligations

Under **Title IX**, an institution is obligated to respond when: it has "**actual knowledge**" of "**sexual harassment**" involving a person who is participating or attempting to participate in an "**education program or activity**" of the institution and when the sexual harassment is directed against a person **in the United States**

VAWA:

- Allegation of sexual assault, dating violence, domestic violence, or stalking
- Involving student or employee
- Regardless of location and participation in program/activity

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Legal Requirements: Actual Knowledge and Officials with Authority

"Means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the university who has the authority to institute corrective measures on behalf of the recipient"

- Notice need not be in the form of a Formal Complaint
- Constructive notice or vicarious liability "are insufficient to constitute actual knowledge"
- Mere ability or obligation (by policy) to report sexual harassment does not make you an official with authority
- Having been trained to report sexual harassment does not make you an official with authority

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Legal Requirements: Actual Knowledge and Officials with Authority (cont.)

- Having been trained to report sexual harassment does not make you an official with authority

BUT (separate from whether it's "Actual Knowledge"):

- Queens designates most employees as Responsible Employees with separate reporting obligations.

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Title IX Sexual Harassment (as defined by Queens Policy)

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo;**
- **Hostile environment;**
- **"sexual assault," "dating violence," "domestic violence,"** or **"stalking"**

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Legal Requirements: Education Program or Activity

- Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - On campus or
  - Off campus, when:
  - Part of the recipient's operations
  - Occurs at any building owned or controlled by an officially recognized student organization (e.g., fraternities and sororities)

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Legal Requirements: Education Program or Activity

Occurrences on-campus: including in the workplace, classroom, dorms, and Queens facilities

Hiring and Admissions

Sports teams, clubs, property of officially recognized Greek organizations, and Queens organizations

Off-campus: trips, events, or experiences organized, funded, promoted, or event sponsored by Queens?

Sporting events, games, performing arts, and speeches on campus

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Important Notes on Title IX Allegations

- Complainant/Reporting Party must be ***"participating or attempting to participate"*** in the institution's education program or activity at the time the Formal Complaint is filed
- If Respondent is not affiliated with the institution, then Queens has limited ability to take action under Title IX
  - But Queens can still take actions to ensure Complainant is able to participate in education programs and activities
- Assessments made by considering who was involved, how are they related to Queens, what was the nature of the conduct, and where did it occur

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Prohibited Conduct: Definitions for Title IX Sexual Harassment

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Title IX "Sexual Harassment," generally, is conduct on the basis of sex:

Title IX Quid Pro Quo

- An employee of Queens conditioning the provision of an aid, benefit, or service of Queens on an individual's participation in unwelcome sexual conduct

Title IX Hostile Environment

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, ***and*** objectively offensive that it effectively denies a person equal access to Queens's education program or activity.

Considerations:

- Positions/roles of parties, ages, and abilities (and power dynamics)
- Frequency of conduct
- Location of conduct

Reasonable person standard

VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking (Sex-Based)

† As defined in Queens's Sexual Harassment Policy

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Sexual Assault

Sexual Assault is defined as any sexual act from the list below that is directed against a Complainant that is:

1. without their consent; or
2. instances in which the Complainant is incapable of giving consent.

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Sexual Assault

Sexual Act, as defined in this Policy, is specifically defined by federal regulations to include one or more of the following:

1. Penetration, regardless of how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
    1. without their consent,
    2. including instances where they are incapable of giving consent because of age (the statutory age of consent in North Carolina is 16) or because of temporary or permanent mental or physical incapacity.

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Sexual Assault

2. Oral or anal sexual contact with a Complainant,
    1. forcibly, and/or against their will (non-consensually), or
    2. not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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Sexual Assault

3. The use of an object or instrument to penetrate,
    1. however slightly,
    2. Of the genital or anal opening of the body of the Complainant,
    3. forcibly, and/or against their will (non-consensually), or
    4. not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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Sexual Assault: Non-Consensual Sexual Contact

4. Non-Consensual Sexual Contact (not involving penetration) is defined as:

1. The intentional touching of clothed or unclothed body parts of the Complainant (buttocks, genital area, groin, inner thigh, breasts),
2. for the purpose of sexual gratification, sexual degradation, or sexual humiliation,
3. forcibly, and/or
4. against their will (non-consensually), or
5. not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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Dating Violence

Dating Violence is defined as:

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
- The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition, Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

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Domestic Violence

Domestic Violence is defined as:

- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.
- To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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Sex-Based Stalking

Sex-Based Stalking is defined as engaging in a course of conduct,

1. on the basis of sex,
2. directed at the Complainant, that;
3. would cause a reasonable person to fear for the person's safety, or the safety of others; or
4. suffer substantial emotional distress.

Sex-Based Stalking can include, but is not limited to:

1. Repeated, unwanted, intrusive, or frightening communications by phone, mail, text, email, and/or social media or related applications;
2. Repeatedly leaving or sending unwanted items or gifts;
3. Following or lying in wait for a person at places such as the person's residence hall, school activities, work, or recreational places;
4. Making direct or indirect threats to harm a person or a person's relatives, friends, or pets;
5. Damaging or threatening to damage a person's property;
6. Excessive posting of information or spreading rumors about a person on the internet, in a public place, or by word of mouth; or
7. Unreasonably obtaining personal information about a person for no legitimate purposes.

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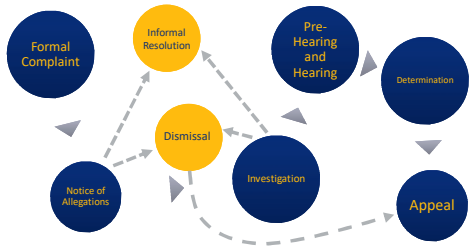
Sex-Based Stalking

- For the purposes of this definition, **course of conduct** means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Substantial emotional distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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Title IX Formal Grievance Process



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What if Title IX Does Not Apply?

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Prohibited Conduct: Definitions for Non-Title IX Sexual Harassment and other Prohibited Conduct

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Non-Title IX "Sexual Harassment," generally, is conduct on the basis of sex:

Quid Pro Quo

- An employee of Queens conditioning the provision of an aid, benefit, or service of Queens on an individual's participation in unwelcome sexual conduct
- Regardless of whether the person complies/participates

Hostile Environment

- Unwelcome conduct determined by a reasonable person to be so severe ***and*** pervasive, ***or*** objectively offensive that it effectively denies a person equal access to Queens's education program or activity.

Considerations:

- Positions/roles of parties, ages, and abilities (and power dynamics)
- Frequency of conduct
- Location of conduct
- Reasonable person standard

VAWA Crimes/Title IX Prohibited Conduct that does not meet Title IX requirements

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking (Sex-Based)

** As defined in Queens's Sexual Harassment Policy*

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"Non-Title IX Sexual Harassment," also includes:

Sexual Exploitation

- when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples include:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity or using AI or technology to simulate others' nudity or sexual activity without their consent;
- Altering the manner of consensual sexual activity without consent;
- Unauthorized sharing or distributi on of digital, video or audio recor ding of nudity or sexual activity;
- Engaging in voyeurism;
- Knowingly exposing someone to or transmitting an STI, STD, HIV, or other infectious disease/virus to another person through sexual activity;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals in non-consensual circumstances;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**As defined in Queens's Sexual Harassment Policy*

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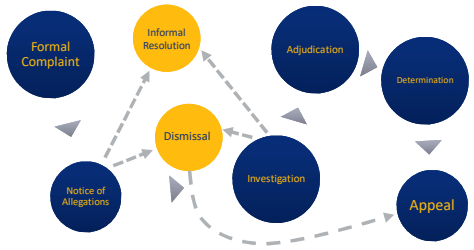
Retaliation is also Prohibited

Retaliation is any adverse action, or any action likely to deter a reasonable person from engaging in protected activity, taken against a person for making a good faith report of Prohibited Conduct, participating in any proceeding under this Policy, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy. Retaliation includes threatening, intimidating, harassing, coercing, or discriminating against an individual because the person made a report or complaint, assisted, participated in, or refused to participate in any manner in an investigation, proceeding, and/or hearing. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct, or the exercise of rights protected under this or other University Policy.

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Non-Title IX Formal Grievance Process



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Important Definitions (apply to both Title IX and Non-Title IX)

Consent is clear, knowing, and voluntary words or actions that give permission for specific sexual activity. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in sexual activity. There is no consent when force, coercion, intimidation, or threats are used. There also cannot be consent when an individual is incapacitated, or if one is below the legal age (16 years of age in North Carolina) to grant consent. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity, nor can previous relationships or previous consent imply consent to any future sexual acts. Consent can be withdrawn at any time. Consent is considered in context. Explicit and contemporaneous consent by all parties is required in advance for any behaviors that fall under bondage and discipline, dominance and submission, and sadism and masochism (BDSM). If consent is established for these behaviors, the evaluation of consent will be considered within the context of compliance with established boundaries or other mechanisms to revoke consent (i.e., safe words).

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Important Definitions (apply to both Title IX and Non-Title IX)

Coercion or Force includes conduct, intimidation, and expressed or implied threats of physical or emotional harm that would reasonably place an individual in fear of immediate or future harm and that are used in order to compel someone to engage in sexual contact.

Any sexual contact occurring after a person has engaged in coercion or force will be presumed non-consensual, even if the particular sexual contact that occurs is different from the form of sexual contact in which the individual was attempting to engage, and even if the other individual uses words or actions that would otherwise appear to convey consent.

Examples of coercion or force include causing the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personally sensitive information if the other party does not engage in the sexual contact.

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Important Definitions (apply to both Title IX and Non-Title IX)

Incapacitation is the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs.

Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the Respondent or a reasonable, sober person in the Respondent's position. Use of drugs or alcohol by the Respondent is not a defense to any violation of this Policy.

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Other Key Terms

- Complainant and Respondent
- Witness
- Reports and Third-Party Reports
- Formal Complaint
- Grievance Process
- Interim and Supportive Measures

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Other Authorities and Legal Obligations – Queens Policies

- Student Handbook
- Faculty and Employee Handbooks
- Other policies

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Other Applicable Laws

- **Title VII** (prohibiting discrimination in employment based on categories, including sex)
- **Americans with Disabilities Act** & **Section 504 of the Rehabilitation Act**
- Mandatory reporting laws requiring the reporting of child abuse and neglect
- State laws

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Privacy and Confidentiality

- **Family Educational Rights and Privacy Act (FERPA)**
  - Limits access to educational records
  - As a Queens employee, you must abide by the same requirements of Queens
  - Exceptions under Title IX and VAWA for files shared during the process that permit disclosure of materials the laws require to be shared
  - Remedies are not shared except as necessary to enforce them (Title IX exception is for sharing the fact remedies were provided but not the details)
- **Policy Requirements**
  - Confidentiality and privacy for the records and the process
  - Do not disclose information to any third party unless it is part of the process and is required by the process

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Policy Obligation to Provide Truthful Information

- All University community members are expected to provide truthful information in any proceeding under this policy. ***Submitting or providing deliberately false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of conduct prohibited by this policy is also prohibited and subject to disciplinary sanctions***.
- False information provided by students is a violation of the Code of Conduct and will be referred to the Office of Community Standards & Support. False information provided by employees will be forwarded to the Office of Human Resources and addressed via the Employee Handbook.
- This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report or complaint are determined to be erroneous or are not later substantiated by the determination.

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Each Doing their Part

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Title IX Team and Coordinating the Process

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Title IX Teams and Roles

- Title IX Coordinator and deputies
- Advisor/Support Person
- Facilitator of Informal Resolution
- Investigator
- Hearing Officer/Adjudicator/Decision-Maker
  - Appeal Officer

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High Level Roles and Responsibilities

Title IX Coordinator

- ***Position of authority and autonomy***
- Implements legally compliant policy and procedures
- Oversees response to reports and formal complaints
- Supportive measures/Resources
- Oversees grievance process
- Role in sanctions and remedies
- Delineating roles and responsibilities
- Training and programming
- Climate surveys
- Recordkeeping
- Non-sexual harassment duties
- Impartial and bias free

Investigator

- Employees or external
- Conduct fair, prompt, and impartial investigations
- Identify fact issues
- Collect sufficient evidence
- Compile evidence, including interviews, data, and documents
- Draft investigative report
- Recommendations?
- Maintain records during investigation
- Work with Title IX Coordinator throughout the process
- Impartial and bias free
- Annual training

Hearing Officer

- Employees or external
- Review investigative report and responses
- Participate in live hearing (hearings are conducted virtually)
- Determine whether Policy has been violated using preponderance of the evidence standard
- Issue a notice of determination that includes rationale for the findings and any sanctions
- Make credibility determinations
- Impartial and bias free
- Annual training

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High Level Roles and Responsibilities

Appeal Officer

- Employees or external
- Review pertinent investigative and hearing/decision-making materials
- Determine whether Policy appeal grounds have been met by preponderance of the evidence standard
- Issue written decision that includes the rationale for the findings
- Impartial and bias free
- Annual training

Facilitator of Informal Resolution

- Employees or external
- May be the Title IX Coordinator
- Coordinate appropriate process with Title IX Coordinator in conjunction with Policy requirements
- Participate in creation of written agreement, as applicable
- Impartial and bias free
- Annual training

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Understanding Roles — Title IX Dividing Lines

- Title IX Coordinator can be an investigator but cannot be a decision-maker
  - Can make recommendations regarding findings
- Investigator cannot be a decision-maker (no single investigator model)
  - Can make recommendations regarding findings
- ***BUT*** decision-maker, regardless of recommendations, must ***independently and objectively evaluate the relevant evidence*** (no deferential treatment)

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More Process Duties for the Title IX Coordinator (or Designee)

- Intake/information meetings
- Evaluate report/complaint
- Safety and risk assessment
- Outreach
- Process determination
- Dismissals
- Notice of allegations and investigation
- Evaluating requests from parties, witnesses, and advisors
- Adherence to accommodations and coordination of supportive measures
- Communication strategy during investigation, determination, and appeals
  - Timelines, delays for good cause, supportive measures, accommodations

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More Process for the Title IX Coordinator (or Designee)

- Obtaining nondisclosure and advisor agreements
- Adherence to Policy and grievance process steps throughout the process
- Considering applicability of informal resolution
- Evaluating allegations of other violations or related complaints
- Impartiality: maintaining a process with participants who are free from bias and conflicts of interest
- Training community members
- Spreading the word

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Advisors

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Advisors

- Parties have the right to an ***advisor of choice*** in any meeting and throughout the process
  - Can be attorneys, advocates, family, friends, employees, and other students
  - Employees ***not*** required to accept
  - Not required to be trained and not required to be bias/conflict free (but you will be asked to disclose any concerns about bias/conflict prior to assignment)
- Abide by University parameters: advisors can be removed or disqualified based on conduct—guidelines/advisor agreements set parameters
- Not deciding what occurred
- Employees serving as advisors are **not** advocates (when acting in this role)

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Queens Policy on the Right to an Advisor

Under Queens's Policy, an advisor must agree to the following:

- The purpose of the advisor is to support a Party in the Resolution Process.
- Advisors may confer with their advisee, but they may not speak on behalf of their advisee, advocate for their advisee, or otherwise actively participate in the process.
- The advisor may accompany their advisee to all meetings relating to the process, including the Alternative Resolution Process but may not directly or indirectly communicate with the University. ["potted plant"]
- Advisors may not interrupt or otherwise unduly delay the process. If an advisor is not reasonably available to participate in the process, the university reserves the right to move forward with its process to ensure its prompt completion.
- Advisors' access to matter information is conditioned upon their agreement to maintain the confidentiality of these records, except when disclosure is legally authorized.
- Violations of confidentiality or other forms of interference with the process by the advisor may result in disqualification of an advisor, in addition to other available actions.
- The university reserves the right to disclose information about the identity of one party's advisor to the other party in the process.

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Queens Employees as Advisors

- Could be asked to serve as an advisor at any point during the process, including at an intake meeting before an investigation begins or even only at the hearing on short notice
- May be asked to serve for a complainant or respondent
- Responsible for being familiar with Queens's policies and procedures, providing support to the party during the process and in preparation for the process steps, and reading cross-examination questions during the hearing
- Will be asked to be available to fully participate in the process
- Be thoughtful about your self-care

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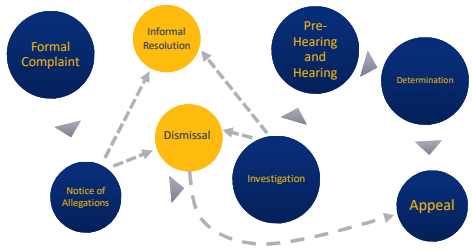
Queens Employees as Advisors & Role Expectations

- Advisors are not legal representatives and do not speak for or act on behalf of the party (with the narrow exception of cross-examination at the hearing)
- Be informed about and familiar with Queens's policies and processes (and its supportive measures)
- Help shepherd the party each step in the process
- Support the party's participation but do not create the impression that you will make decisions for them
- Maintain a respectful and non-adversarial decorum in all settings, including meetings with the party and university officials, investigators, hearing officers, and any other party or witness
- Maintain the privacy and confidentiality of the information received throughout the process (and understand that university is not permitted to issue "gag orders" to parties)
- Avoid serving as an advisor in situations where there may be a bias or conflict of interest with your role at the University

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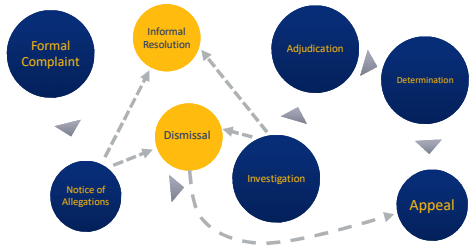
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Title IX Formal Grievance Process Steps



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Non-Title IX Formal Grievance Process



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Queens Employees Serving as Advisors

Common Steps after selection:

- Initial/introductory meeting with party
- Investigation interview (and any pre-meeting with party)
- Assist with review of directly-related evidence and response
- Assist with review of final investigative report and response
- Prehearing meeting
- Assist party with hearing preparation
- Attend hearing and ask cross-examination questions
- Assist with review of determination
- Assist with appeal or appeal response
- *Any other meetings with the Title IX Office, including those related to supportive measures*

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Preparation

- Review policy and be familiar with grievance process steps, including key procedural requirements for hearing
- Review case file, including notices sent
- Confirm whether advisee has or needs accommodations to participate in the process or hearing (language access support, technology assistance, or others)
- Email advisee to schedule initial meeting
- Work with advisee throughout the process by offering to have pre-meetings before and post-meetings after case events

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Helpful, Scripted Introduction and Core Functions

Script expectations and provide role clarity:

- Available to help them to understand the process and deadlines, organize materials, and prepare for participation throughout the process
- Not providing legal advice, cannot speak for advisee, no guaranteed outcomes
- Not making factual decisions for advisee
- All participants obliged to provide truthful info
- Reminders about confidentiality, privacy, FERPA, retaliation, and supportive measures (including, generally, the resources available)
- Policy does not authorize recording of any process meetings (including yours)

Core Functions

- Help advisee be prepared for the experience of participating each step in the grievance process
- Review files and help identify key issues, disputed facts, relevant evidence, witnesses, policy elements
- Review materials shared and drafted by advisee for clarity and ***relevance*** (evidence, responses to investigation materials/report, and cross-examination questions)

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Relevancy

Relevant evidence:

- "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
- "Focus investigations and adjudications on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true (i.e., on what is relevant)."

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Relevancy

Cannot categorically exclude evidence but can decide what weight to afford it:

- Character evidence
- Lie detectors
- Rape kits (with party's written consent)
- "Hearsay"
- Evidence where the probative value is outweighed by the danger of unfair prejudice

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Mandated Evidentiary Exclusions

Specific Title IX exclusions (evidence that is "not relevant"):

- Prior ***sexual predisposition*** or ***sexual behavior*** of the *Complainant*, unless:
  - The questions (or evidence) are related to prior sexual contact with the respondent and are offered to prove consent, or
  - Respondent alleges someone else committed the conduct
- Legally privileged records (state law)
  - Medical, psychological, or similar treatment records
  - Attorney-client
  - Clergy
  - Spousal
- Privilege can be waived through "voluntary, written consent"

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Jane's Pain

Your assigned advisee, Jane, is the complainant in an investigation alleging that Jack engaged in sexual exploitation by recording their sexual activity and sharing the recording with others. Your introductory meeting with Jane lasted almost two hours, mostly with you listening to Jane talk about how devastated she is by what happened. She asked to get together again the day before her interview. You are thirty minutes in but have not discussed the substance of the interview at all because Jane is so upset. You tell Jane that you are really sorry this happened to her and ask if it would help to have one of her parents join your meeting.

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Preparing for Conducting Cross-Examination

Prepare for cross-examination:

- Explain how cross-examination works: question read, pause, wait for decision on relevance, potential need to explain relevance, and finality of hearing officer decisions about questions
- Read final questions prepared by advisee
- Questions should focus on relevant facts, policy elements, credibility, timelines, source of knowledge, and material inconsistencies or omissions
- Submitted in advance of hearing?
- Reminder of evidentiary exclusions
- Avoiding repetitive, argumentative, harassing, intimidating, irrelevant, or other inappropriate questions
- Professional tone and demeanor throughout

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Preparing for Participating in Cross-Examination

Support Advisee's readiness for cross-examination:

- Encourage the advisee to review prior statements, interview summaries, written submissions, relevant communications, and any documents they may be asked about.
- Remind the advisee to listen to each question fully before answering and to pause briefly to ensure they understand the hearing officer's ruling and what is being asked.
- Remind the advisee to answer truthfully, directly, and concisely, and to state when they do not know, do not remember, or need clarification.
- Remind the advisee to avoid guessing, speculating, exaggerating, minimizing, or filling gaps in memory.
- Remind the advisee to remain composed, respectful, and focused, even when questions are difficult, repetitive, or uncomfortable.
- Remind the advisee that they may request a break, as permitted.

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Common Challenges For Advisees (Complainants and Respondents)

- Emotional experience
  - Anxiety, fear, lack of control
  - Be cautious about your words and use neutral, non-judgmental language
  - Language like "why" and "why didn't you" can feel blaming and judgmental
  - Self-blaming
- Confusion about the allegations, policy, process, retaliation, and confidentiality
- Disengagement/lack of communication
- Feeling of being retaliated against by individuals and groups
- Focusing on issues that may not be relevant to the allegation or decision
  - Parties often have social and relationship challenges related to the allegations and participation in the process that affect what they deem important

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Advising Lucy

You and Lucy set up a Teams meeting to prepare for the upcoming hearing. When Lucy enters the meeting, you notice that Lucy appears to be talking with someone off-camera. She then turns to you and asks if you two could start by discussing the questions she has for, Ricky, one of the witnesses.

She said Ricky has been spreading rumors and then you hear someone in the background say that "he's such a jerk" and they couldn't believe that he kept so much information from the investigator.

Now what?

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Strike Three for Brie?

Your assigned advisee, Brie, is a freshman softball player. You receive the notice of investigation that states Brie is accused of sexually assaulting Sam. As soon as you and Brie start your initial meeting, Brie begins to cry and tell you that her life has been ruined by the allegations. She tells you that Sam went to the team captain, lied about the alleged sexual assault, and asked the captain to remove Brie from the team. Brie said the captain made her wait in the hallway during a team meeting where they voted to kick her off the team. She said the team informed the assistant coach that she was no longer on the team because she broke team rules. Brie said Sam is lying about the allegations to get back at Brie for her dalliances during their relationship.

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Strike Three for Brie?

Should you:

- Offer to call the softball coach to sort this out for Brie?
- Inform Brie that the softball team has violated Title IX?
- Immediately email the Title IX Coordinator?
- Be concerned?

- Well then what should you do?

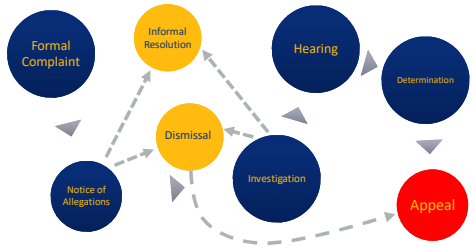
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Appeals

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Formal Grievance Process



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The Fundamentals

- Follow the Process and Procedures in the Policy
- Review the appeal and any response and determine whether the appealing party has demonstrated that it is more likely than not that one or more of the **three** Queens appeal grounds have been satisfied (preponderance of the evidence standard)
- Make the decision through a written determination
- Understand the limited scope of the Appeal Board's role

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Title IX Requirements

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Available appeal grounds must include procedural irregularity, new evidence, and bias and conflict of interest
- Decision-maker for appeal cannot be:
  - Decision-maker on the determination of responsibility or dismissal
  - Investigator who investigated
  - Title IX Coordinator
- Comply with prohibitions on bias and conflict of interest
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale
- Provide the written decision simultaneously to the parties

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Others' Pertinent Title IX Obligations

Investigator/Coordinator

- Preside over the process and notices to parties
- Collect all relevant evidence that is reasonably available
- Make investigation file available to parties
- Provide for review and response to evidence and final report
- Bias and conflict free

(Bias and conflict free) Decision-Maker

- Written Determination:
  - Identification/statement of each allegation
  - Description of procedural steps (notices to parties, interviews, site visits, methods for gathering evidence, and hearing)
  - Key elements of potential policy violation
  - Result for each alleged act, rationale for the result, determination regarding responsibility
  - Sanctions, with rationale, as applicable
  - Bases for appeal

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Appeals Process Steps—Queens Policy

- Complete online form
- Within five (5) business days of outcome
- ***Initial assessment by Title IX Coordinator (or designee) and can be denied***
- Other party with five (5) days to respond
- As applicable, both parties may appeal
- Appeal decided by Appeal Board (through written decision to the parties within thirty (30) business days)

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Queens Appeal Grounds: Procedural Irregularity

If it is believed there was an irregularity in the Formal Resolution Procedures (outlined above) that **substantially impacted** the outcome (e.g., material deviation from established procedures that substantially affected the outcome of the hearing, etc.), the appeal request must outline the following:

- Citation of specific procedural errors with appropriate reference;
- Reason(s) why procedural error was not mentioned in the original investigation; and
- How the procedural irregularity would substantially affect the outcome.

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Queens Appeal Grounds: Procedural Irregularity

- Was a material procedure not followed?
- Did the decision-maker not consider material evidence, including inculpatory and exculpatory evidence?
- Was **relevant** evidence excluded?
  - "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
  - "Focus investigations and adjudications on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true (i.e., on what is relevant)."
  - Some evidence must be excluded (prior sexual behavior, or without consent: medical records and privileged communications)
- Did the decision-maker omit rationale for any of the determinations made?

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Queens Appeal Grounds: New Evidence

Discovery of new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that substantially affected the outcome.

Withholding or not identifying relevant information or declining to participate in the original investigation is not grounds for an appeal based on the discovery of new evidence.

If the appeal is based on new evidence the request must outline the following:

- Source of new information and complete explanation of that information;
- Name(s) of who can present this information;
- ***Reason(s) why this information was not presented at the original investigation,*** and;
- How this new evidence would substantially affect the outcome.

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Queens Appeal Grounds: New Evidence

- Was new evidence presented for the first time on appeal?
- Was the evidence not available at the time of the determination?
- What is the explanation for why it was not?
- Would that evidence impact the outcome?

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Appeal

Jaxon states on appeal that the notice of determination portrayed him as a liar. He said he has evidence demonstrating that he is not a liar and attached a statement from his therapist attesting that he is a truthful person and that he would not lie about something as serious as sexual assault. Jaxon explained that he did not submit the statement previously because he had no reason to believe the hearing officer would accuse him of being a liar, especially since the investigator believed him and told him during the interview that his statements "made a lot of sense."

Do you overturn the decision of responsibility?

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Queens Appeal Grounds: Conflict of Interest or Bias

If there was an actual conflict of interest or bias exhibited by the Investigator, Title IX Coordinator, or Hearing Officer/Decision Maker for or against Complainants or Respondents generally, or the individual Complainant or Respondent that substantially affected the outcome. The appeal request must outline the following:

- Citation of facts demonstrating the bias or actual conflict of interest exhibited by the Investigator, Title IX Coordinator, or Hearing Officer;
- Reason(s) why the bias or conflict of interest was not mentioned in the original investigation; and
- How the bias or actual conflict of interest substantially affected the original finding or outcome

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Queens Appeal Grounds: Conflict of Interest or Bias

- Has the appealing party specifically referenced evidence or factual support for the alleged conflict or bias?
- Is the evidence material?
- Is the conclusion reasonable?
- Has the appealing party explained how it impacted the outcome?

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What is: Conflict of Interest or Bias?

Title IX requires Appeal Officers (as well as other officials in the grievance process) must:

- Be free from conflict of interest and bias; and
- Be trained to serve impartially and avoid prejudgment of the facts at issue

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Bias and Conflict of Interest

- Case-by-case examination of the "particular facts"
- Recipients are encouraged to "apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased."
- If someone has a material connection to a dispute, or the parties involved, and a reasonable person would question that person's ability to be impartial
- ***Could be*** based on a number of factors or connections, including prior or existing relationships, past advocacy (survivor or respondent groups), prior interactions or involvement, professional experience and activities, areas of study, the decision-maker's position on campus, or financial and reputational interests of employee that aligns with the institution
  - "assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents" is unreasonable
- Cannot act based on characteristics of the parties—must be based on the facts of the case

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Bias and Conflict of Interest

- Implicit and explicit
- Stereotypes or stereotypical conclusions
- Common biases (often protected categories):
  - Gender, Gender Identity, Gender Expression
  - Sexual orientation
  - Race
  - Ethnicity
  - National origin
  - Culture
  - Religion
  - Age
  - Disability
  - Pregnancy
  - Marital or relationship status
  - Veteran status

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Appealable?

The appealing party argued a procedural irregularity because her friend told her that the decision-maker, a faculty member who teaches Anthropology, said during class that women of certain cultures are notorious for being untruthful about their relationship experiences and are not trustworthy. She stated that she is a member of the culture he specifically referenced. She stated she just found out about the statement, and it explains why the decision-maker concluded, without corroboration, that some of her statements were "not credible."

How would you address this?

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Being Trauma Informed

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Trauma Informed Understanding

- **Don't prejudge or make assumptions!**
- Neurobiological changes for trauma victims may result in flat affect or perceived "strange" emotions, including excitability
- Neurobiological changes **may** impact memory consolidation and recall
  - Slowed recall
  - Disorganized and fragmented
  - Memory piecemeal
  - If alcohol was involved the memory may not be retrievable

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Trauma Informed Understanding

- Sexual assault on campus often involves people who know each other
- Complainants frequently blame themselves
- Complainants commonly delay in reporting or do not report
- Cases often involve friendship groups
- Different people respond to trauma differently
- Alcohol is frequently involved
- Appearing to display symptoms of trauma does **not** mean that trauma was suffered
- The purpose of understanding the potential effects of trauma is to **avoid forming conclusions based on anything other than the relevant information**

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Deciding Appeals

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Potential Outcomes under Policy

The Appeal Board has the authority to:

- Uphold the original decision;
- Uphold the original decision but change the sanction to be more or less severe based upon a finding that an appealable issue had a substantial impact on the sanction;
- Remand the case to the original or another Hearing Officer [with instruction]; or
- Remand the case to the investigative team.

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Case Study

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Preparation for Appeal Decision

- Review pertinent policy and procedures
- Review the appeal and any response filed:
- Understand the appealing party's position (and the responding party's position, as applicable)
- Review pertinent policy and procedures ***(not a typo!)***
- Review Notice of Determination to understand each decision reached and the underlying basis for it and, as applicable, the hearing or transcript, investigative report, and evidence
- Impartially and without prejudgment, determine whether appeal grounds, one by one, are met and explain the decision in a written outcome

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Written Appeal Decision

The Appeal Board will simultaneously issue to both parties a written decision describing the result of the appeal and the rationale for the result within thirty (30) business days after receipt of the appeal files. The decision of the Appeal Board is final.

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Written Appeal Decision

- Background information:
  - who filed the appeal, dates and timelines for appeal filings and determination being appealed
- Summary of the underlying allegations and determination made
- Summary of appeal grounds
- Identify appeal decision officer(s) and the scope of the role (which is not to rehear or re-decide the case)
- Summary of the decision

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Written Appeal Decision

- Findings, analyzing each alleged appeal ground, by category
  - Walk the parties through your decision
  - Explain the factors that support or did not support the appeal
  - Use the preponderance of the evidence standard (more likely than not)
  - Finding on whether the appeal ground is satisfied ***and***, if so,
  - Finding on whether it substantially affected the outcome
  - ***Be sure to address all arguments and stay within the scope***
  - ***Resist temptation to go beyond the scope***
- Conclusion:
  - Are the appeal grounds satisfied?
  - If so: what is the outcome?

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Written Appeal Decision

- **Having trouble?**
- These can be difficult decisions
- Consult with legal counsel on legal questions
- Use the Title IX Coordinator as a resource for procedural questions, especially in those situations where the appeal is going to be granted
- Self-care

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Recordkeeping — Title IX

Must maintain certain records for seven years, including:

- For each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by the Regulations, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity
- ***Any appeal and the result***
- Informal resolution
- Supportive measures
- Training materials for Title IX Coordinators, Investigators, Decision-makers (including **Appeal Officers**), and those who facilitate informal resolution (and post on website)
- Actions taken in response to a report or formal complaint sufficient to document why the response was not deliberately indifferent

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