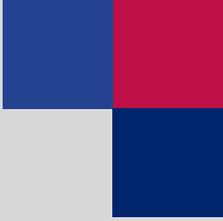




Association of
Title IX Administrators

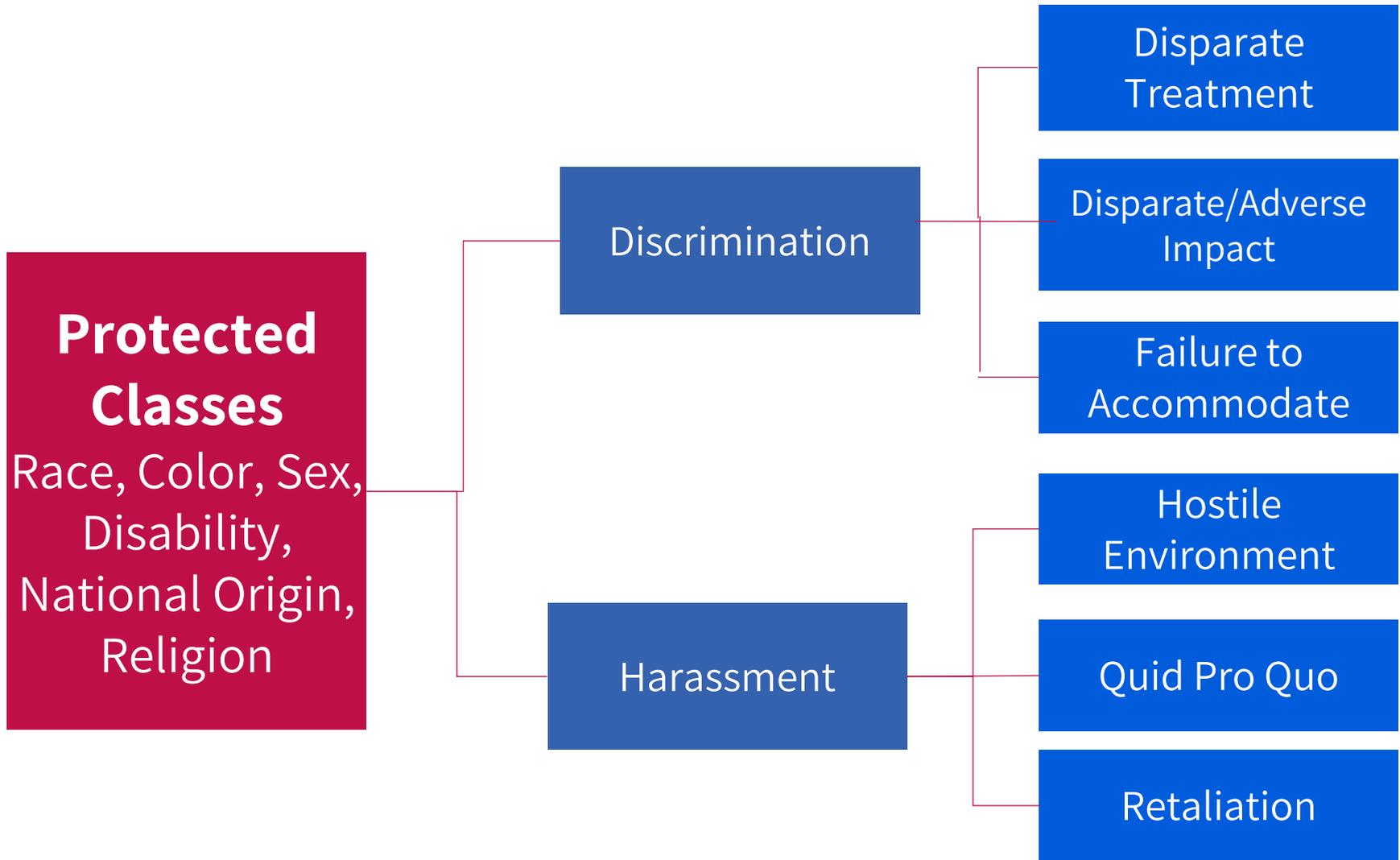
Civil Rights Law Overview Sanctioning Guidelines

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FEDERAL CIVIL RIGHTS LAWS

WHAT IS COVERED?



TITLE VI OF THE CIVIL RIGHTS ACT

- 42 U.S.C. § 2000e-2(a)

“No person in the United States shall, on the ground of **race, color, or national origin**, be **excluded from participation in, be denied the benefits of, or be subjected to discrimination** under any **program or activity receiving Federal financial assistance.**”

TITLE VII OF THE CIVIL RIGHTS ACT

- 42 U.S.C. § 2000e-2(a)

“It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to **discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of** such individual’s **race, color, religion, sex, or national origin**; or (2) to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual’s race, color, religion, sex, or national origin.”

TITLE IX

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

“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 educational program or activity receiving federal financial assistance.”



TO WHOM DOES TITLE IX APPLY?

- Federal Law enacted in 1972
- Intended to end sex discrimination in all areas of education, including in employment
- Made non-discrimination based on sex/gender a condition of participation in all federally funded education programs for both public and private institutions
- It applies to educational program equity, such as in athletics, and also to sexual harassment and sexual misconduct and violence as well as employment
- Compliance with the law is overseen by the U.S. Dept. of Education, Office of Civil Rights

SEX BASED DISCRIMINATION

Applies to Sex, Gender, Gender Identity, Gender Expression

- Program Equity
- Recruitment, Admissions and Access
- Pregnancy
- Athletics
- Employment, Recruitment and Hiring
- Extra-curricular activities
- Housing
- Access to Course Offerings
- Salaries and Benefits
- Financial Assistance
- Facilities
- Funding

SEXUAL HARASSMENT

- Hostile Environment
- Stalking
- Domestic Violence
- Dating Violence
- Sexual Assault
- Sexual Violence
- Sexual Exploitation
- Sexual Intimidation
- Sexual Misconduct
- Retaliation

DISABILITY LAWS

Section 504 of the
Rehabilitation Act

Fair Housing Act

Americans with
Disabilities Act

State Laws

UNDERSTANDING DIFFERENT LAWS

- Laws apply differently to housing than to the campus in general, including classrooms and dining facilities
- Laws apply different definitions and standards related to service vs. assistance/emotional support animals (ESAs)
- Laws may impose different standards or response protocols

SECTION 504

“No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Section 704(a) Promulgation of nondiscriminatory rules and regulations

SECTION 504 OF THE REHABILITATION ACT (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education, Office for Civil Rights
- Codified at 29 U.S.C. § 701

TITLE I, TITLE II & TITLE III OF THE ADA (1990)

Title I

Prohibits
discrimination on
the basis of
disability in
employment

Enforced by the EEOC.

Title II

Prohibits
discrimination on the
basis of disability by
**public entities,
including state
colleges and
universities,**
regardless of whether
they receive federal
financial assistance

Enforced by DOJ and OCR.

Title III

Prohibits
discrimination on the
basis of disability in
**private education
facilities and in the
activities of places
of public
accommodation**

The language of the ADA tracks Section 504 and explains that the remedies, procedures, and rights under the ADA are the same as under the Rehabilitation Act.

HOW IS SEC. 504 DIFFERENT FROM THE ADA?

Section 504 and the ADA are both civil rights laws; however:

- Section 504 was created to protect individuals with disabilities from discrimination for reasons related to their disabilities
- The ADA Titles I, II, & III add to the strength of Section 504 by requiring accommodations for individuals with qualified disabilities
- Between the two laws, all government-funded programs are covered

ACCOMMODATION GUIDELINES

- Once a disability has been verified, the Disability Services staff will engage in the interactive process to work with the student or employee to identify the functional limitations of the educational or work environment and determine the necessary auxiliary aids, services, academic adjustments, and educational assistance classes to provide an equal opportunity to be successful
- The faculty member or supervisor is required to implement the designated accommodation unless it would fall under one of the exceptions.

THE ACCOMMODATION PROCESS EXCEPTIONS

- An accommodation or modification is **not required when it would:**
 - **Result in a fundamental alteration** of the nature of the program, service, or job function
(28 C.F.R. § 35.130(b)(7))
 - **Create an undue financial or administrative burden**
 - Whether a particular accommodation will be an undue financial or administrative burden will depend on the facts and circumstances of the individual situation

HOW MAY A STUDENT OR EMPLOYEE TAKE EXTERNAL ACTION?

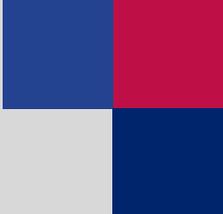
Lawsuit

- File in federal court.
- Monetary damages, injunction.
- Requires:
 - Actual notice.
 - Employee with authority to take action.
 - Deliberate Indifference.

Administrative Action*

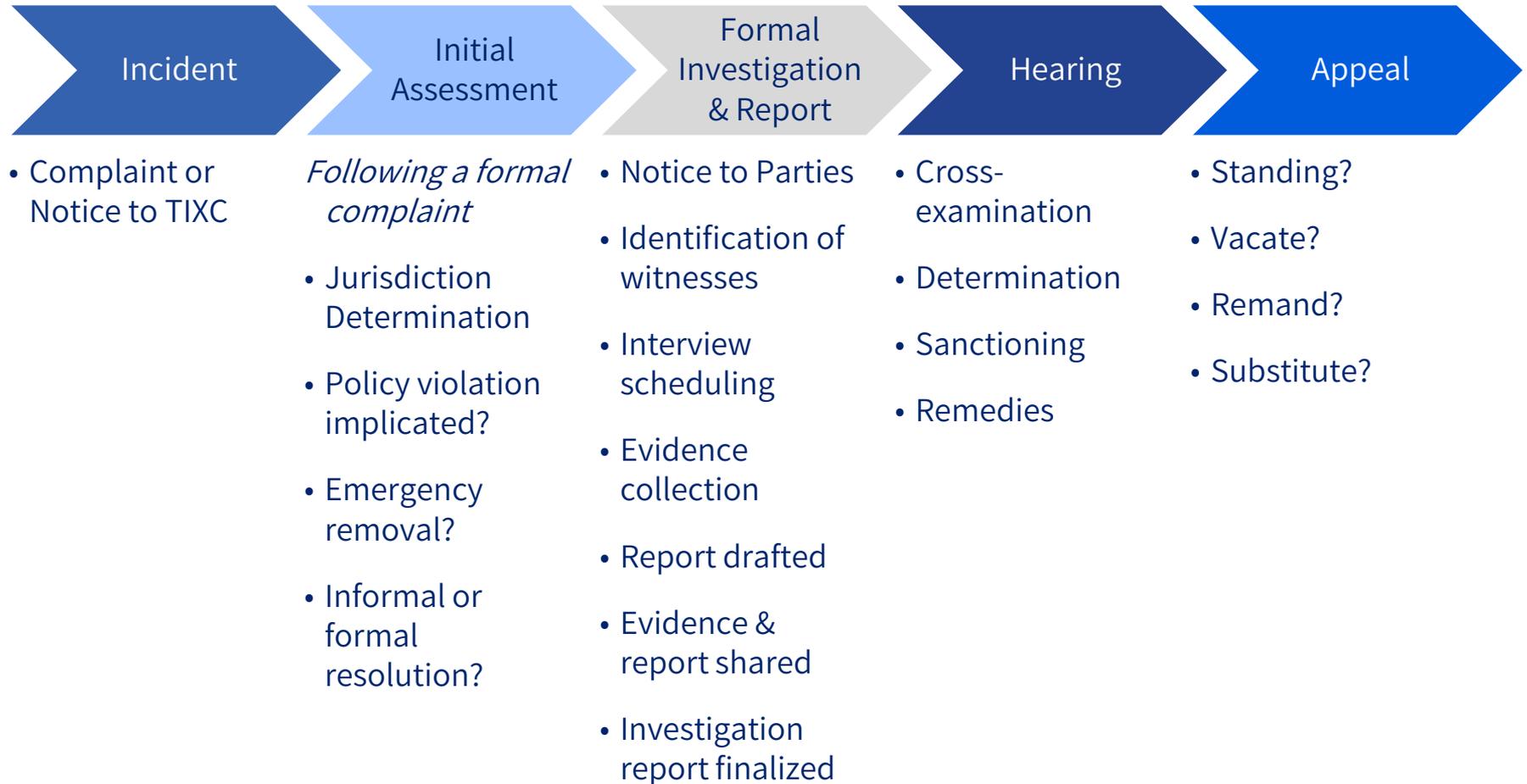
- Initiated through OCR or DOJ
- Agency seeks voluntary compliance or renders findings.
- Requires:
 - Actual OR constructive notice (“knew or should have known”).
 - Investigate.
 - End harassment.
 - Remedy impact.
 - Prevent recurrence.

*Based on the Proposed Regs, these standards will likely align much more moving forward.



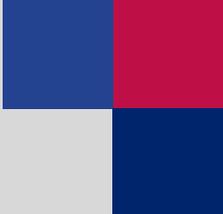
THE “PROCESS”: WHAT HAPPENED BEFORE (AND AFTER) IT GOT TO THE SANCTION?

THE PROCESS



WEIGHTING EVIDENCE

- Investigator, the Decision-maker and the body or individual that determines the sanction may consider and assign weight to different types of evidence



EVIDENCE DELIBERATIONS SANCTIONING

Documentary Evidence

e.g., supportive writings or documents

Electronic Evidence

e.g., photos, text messages, and videos

Real Evidence

i.e., physical objects

Direct or Testimonial Evidence

e.g., personal observation or experience

Circumstantial Evidence

i.e., not eyewitness, but compelling

Hearsay Evidence

e.g., statement made outside the hearing but presented as important information

Character Evidence

subject to relevance determination; often not probative of the underlying allegation

DELIBERATIONS

- Separate the “Finding” from the “Sanction”
 - Do not use impact-based rationales for findings (e.g., intent, impact on the Complainant, impact on the Respondent, etc.)
 - Use impact-based rationales for sanctions only
- Impact statement(s) should be considered if and after the Respondent is found in violation
- Whether Respondent violated policy should be distinct from factors that aggravate or mitigate the severity of the violation
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose
- Be careful – do not heighten the evidentiary standard because the sanctions may be more severe

SANCTIONING IN SEXUAL MISCONDUCT CASES

Title IX and case law require:

- Must provide detailed, written the rationale for and evidence supporting the finding and the sanction
- This may create a clash if the sanctions only focus on educational and developmental aspects
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose
- The sanctioning panel should also recommend additional measures to the Title IX Coordinator to remedy the effects of the sexual misconduct on the Complainant
- The Panel may also recommend additional measures to the Title IX Coordinator that are designed to prevent the recurrence of the sexual misconduct

SANCTIONING CONSIDERATIONS

- The specific misconduct at issue
- Specifics if consent was an issue in the case
- Mitigating, aggravating, and compounding Factors
- Severity and egregiousness of conduct
- Prior discipline history
- Patterns of behavior
- Complainant's request for greater/lesser sanctions
- Respondent's attitude and state of mind (bias, reckless, negligent)
- Conditions for return
- Precedent
- Safety issues of the community
- Policy minimum requirements

COMMON STUDENT SANCTIONS

- Warning
- Suspended Conduct Probation
- Conduct Probation
- Loss of privileges
- Suspension from the College
- Dismissal from the College
- Continuation of No Contact Orders
- Residence hall relocation, suspension, or expulsion
- Service hours
- Online education programs
- Restitution
- Parental notification
- Alcohol and drug assessment, and counseling

COMMON EMPLOYEE SANCTIONS

- Oral or Written Reprimand
- Probation
- Performance Improvement/Management Process
- Required Training
- Transfer to a different work area or other work restrictions
- Demotion
- Reduction in pay
- Loss of supervisory or oversight responsibilities
- Paid or Unpaid Leave
- Suspension
- Termination

WHAT SANCTIONS?

- A male faculty member is found responsible for sexual intercourse involving a student; the panel determined the Complainant was incapacitated and the faculty member should have known of this incapacity.
 - The panel felt that part of the problem was the students' inexperience with sexual matters and poor communication
 - The Respondent is an outstanding instructor and is well liked by the campus community
 - The Respondent will be up for promotion next year
 - The Complainant indicates that she does not want him to be fired

WHAT SANCTIONS?

- A female graduate assistant is accused of non-consensual sexual intercourse (based on intimidation) involving a male undergraduate student who is not in any of the G.A.'s classes.
 - The investigator determines that both parties were drinking heavily
 - The G.A. is well respected in her department and being considered for a teaching position next year
 - The student and the G.A. engaged in consensual sex five times after the non-consensual incident
 - The student brought the allegation shortly after the G.A. began sleeping with the student's friend

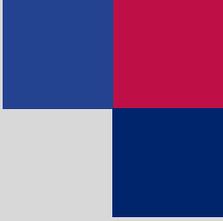
WHAT SANCTIONS?

- A female staff member continues to make overt and tacit sexual advances towards a female colleague, even though the recipient of the behavior has repeatedly told the staff member that the advances are unwelcome
 - The advances are verbal as well as in emails, text messages
 - Some of the more subtle advances have been in the company of others
 - The victim complained because it is starting to impact her ability to focus at work



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Questions?



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