



Lake Forest College

Applying Lessons Learned from Title IX to Title VII, Protected Class Discrimination, and Organizational Conflict in Higher Education



Joseph C. Alfe, J.D., LL.M., CCEP

Current: Director of Title IX & Civil Rights Compliance,
Lake Forest College, Lake Forest, IL

Former: Informal Resolution Facilitator & Mediator,
Texas A&M University, College Station, TX

Participants will explore & understand:



Differences and similarities between Title VI, VII, & IX discrimination



Institutional risk, legal precedent, and approaches to discrimination claims



Best practices instituting dispute resolution to address organizational conflict & discrimination



Apply lessons learned from over 250 discrimination cases resolved through dispute resolution at TAMU & LFC



Differences and similarities between Title VI, VII, & IX discrimination

Title VI

TITLE VI

"No person 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."

Civil Rights Act, 1964

What is Title VI Harassment?

1

Harassment, based on actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity

2

Racial, ethnic, or ancestral slurs or stereotypes; how a student looks, including skin color, physical features, or ethnic dress.

3

A foreign accent; a foreign name or speaking a foreign language.



Title VI Harassment

A hostile environment exists where there is harassing conduct that is **sufficiently severe, pervasive, or^{*} persistent** so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by an institution.

U.S. Dept. of Ed, Dear Colleague Letter (2023)

^{*}It is unclear if the Davis v. Monroe County "and" standard is in effect after the 2025 Dear Colleague Letter

Free Speech vs. Hostile Environment



The First Amendment protects freedom of speech, but Title VI can address hostile environments created by speech that is discriminatory and interferes with equal access to educational programs.

The key is whether the speech, when combined with other conduct or circumstances, creates a hostile environment that effectively denies equal access to educational opportunities.

Hypo:

A student flutist who was told unwelcome remarks on 20+ occasions, including “Did you have fun with your flute last night?” and “Does it turn you on?”, and had her yearbook picture captioned with “one time at band camp”

Hostile Environment under Title VI?

Answer: No

Under current case law, speech that is not targeted does not meet the criteria for harassment even if a listener feels triggered or angered by the content. In addition, speech that is targeted toward an individual or defined group needs to be quite severe to be covered. In this case, the student had not demonstrated conduct severe enough to constitute harassment.

Title VII

TITLE VII

CIVIL RIGHTS ACT OF 1964

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on **race, color, sex, religion, national origin, age, disability or genetic information**.

Title VII of the Civil Rights Act of 1964 forbids an employer from retaliating against an employee because of the employee's opposition to "any practice made an unlawful practice" by Title VII, or the employee's participation in "an investigation, proceeding, or hearing under [Title VII]." 42 §U.S.C. 2000e-3(a).

What is Title VII Harassment?



Discrimination based on Race; Color; Religion; Sex;
or National origin.



Bars retaliation against a person who complains,
makes a report, or acts as a witness to workplace
discrimination

Employers cannot:

1

Retaliate against an employee who complains of, files a complaint, or is a witness to workplace discrimination

2

Harass an employee because of race, color, religion, sex, or national origin;

3

Refuse reasonable accommodations to workers to observe sincerely held religious beliefs

Title VII Hostile Environment Definition:

Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, **or** 2) the conduct is severe **or** pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Hypo:

Jeff works at a huge warehouse that allows employees to Blast sexually explicit and offensive rap songs over loudspeakers. Jeff and a few other Co-workers filed a complaint that they could not escape the music, and that it encouraged others to make sexist and crude comments and jokes. Does this conduct Make an employer liable for a hostile environment claim under Title VII?

Answer: Yes

A lower court dismissed on the premise that no employee was targeted, Or that one group was subjected, but others were not. The 9th Cir. However, disagreed and Held that repeated and prolonged exposure to offensive music in the workplace Did indeed constitute harassment. The Court also held that harassment need not be targeted at a specific person or protected group to constitute harassment.

Sharp v. S&S Activewear, L.L.C., 69 F.4th 974, 979 (9th Cir. 2023)

Title IX

The Legal Authority for Informal Resolution in Title IX Cases

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.”

— Title IX, Education
Amendments of 1972

What Will It Take For the Complainant to Feel Safe Enough to Participate in Their Educational Experience?





Title IX Compliance Commandments

WHAT YOUR INSTITUTION'S PROCESS MUST SHOW

Process

Thorough + Prompt + Impartial

Investigation

Prompt + Effective + Equitable

Goal

Stop + Prevent + Remedy

What is Title IX Sexual Harassment?

I

- Quid Pro Quo
- (by Employee)

2

- VAWA Amendments to Clery
 - Sexual Assault
 - Dating/Domestic Violence
 - Stalking

3

- Severe, Pervasive, and Objectively Offensive Conduct
- QPQ/VAWA have no 'Severity' Analysis

2020 Final Rule Definition of Sexual Harassment:

Unwelcome conduct that a reasonable person would determine is “so severe, pervasive, and objectively offensive” that it effectively denies a person equal access to education.

Hypo:

Two students, Dan and Rob, had been engaged in a romantic relationship. The relationship ended badly. Dan filed a Title IX claim with the university, alleging that Rob had sexually assaulted him during the prior summer, and after the breakup, Rob's friends had been unfriendly to him. And in one instance, used a "slur" against him, causing him to feel hurt and unsafe.

Is this "severe, persistent, and pervasive conduct under Title IX?"

Answer: No

Doe alleges that Princeton ignored his request for a no-contact order with Student X's friends who had "harassed [him] on campus by yelling out a gay slur to him and calling him a liar." The students' alleged "harassment," however, was not "so severe, pervasive, and objectively offensive" to constitute sexual harassment under Title IX.

Doe's allegation that Student X's friends created a "hostile environment" is conclusory, and one instance of being called a slur, while offensive, is neither severe nor pervasive.



Institutional risk, legal precedent, and approaches to discrimination claims

Institutional Liability

“If you don’t deal with sexual violence, you’re going to get sued. If you deal with sexual violence, you’re going to be

sued.” – Peter Lake, director of Stetson University's Center for Excellence in Higher Education Law and Policy.



Average Settlement Costs

- Settling complaints from alleged victims in court costs colleges and universities an average of \$350,000. (Inside Higher Ed 2019)

Public

- Most public K-12 schools and public colleges and universities are subject to sunshine laws and their settlements routinely appear in the public domain

Jury Verdicts/Arb Awards

- Vargas v. So. Cal. Edison: Manager sexually harassed employee – Arbitration awarded \$1.5 million
- LaFoy v. County of San Diego: Secretary subjected to unwanted hugs and touching – Jury award \$60K
- Khan v. Hologram: Exec repeatedly harassed and sexually battered assistant – Jury award \$58 million



“In over 20 years of reviewing higher education law cases, I’ve never seen such a string of legal setbacks for universities, both public and private, in student conduct cases. Something is going seriously wrong. These precedents are **unprecedented.**” Gary Pavela-educational consultant and fellow for the National Association of College and University Attorneys (NACUA)

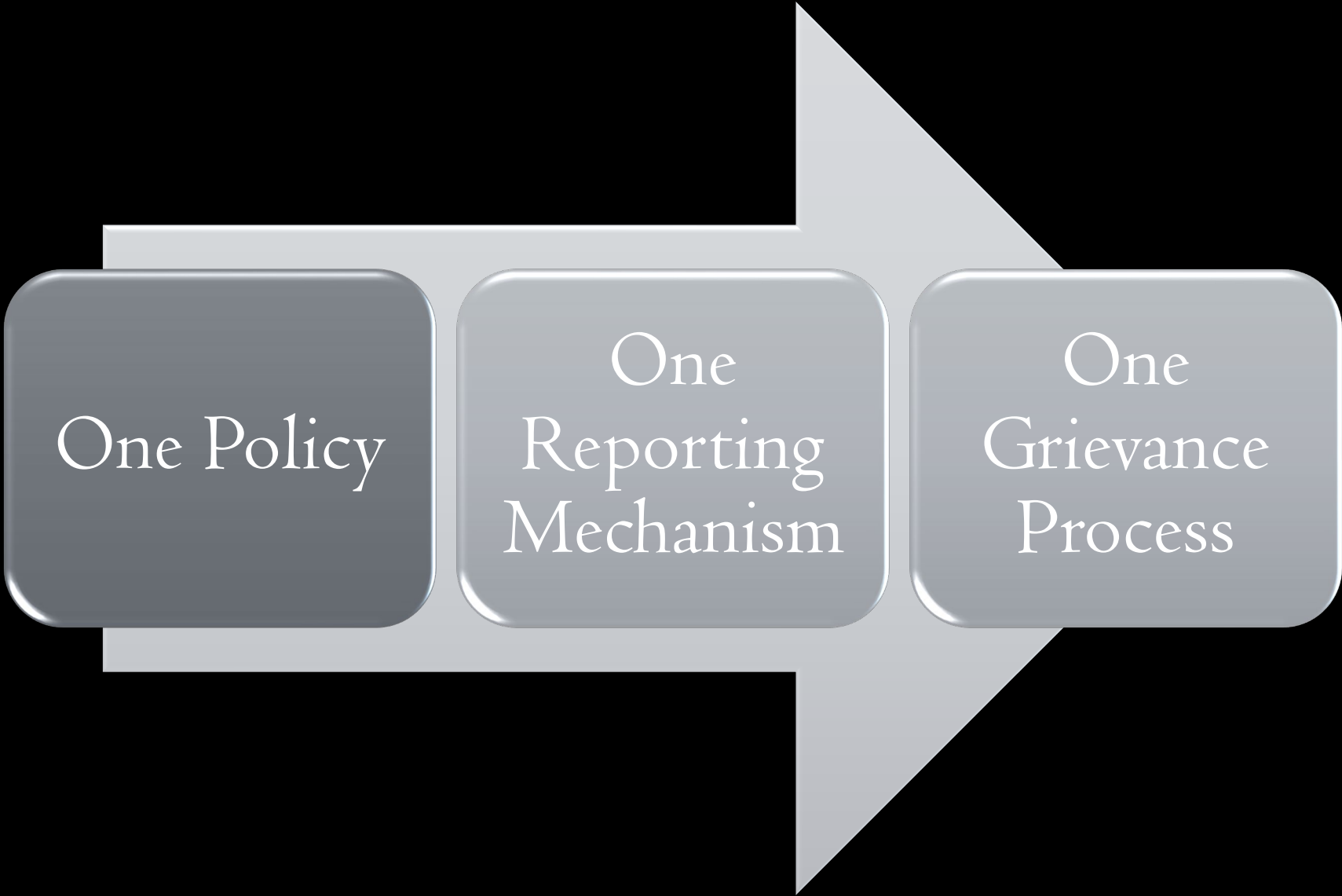
Schools are “losing case after case in federal court on what should be very basic due process protections. Never before have colleges been losing more cases than they are winning, but that is the trend as we write this.” NCHERM 2017

The Cause: Imperfect due process, Failure to respond promptly, and acting with deliberate indifference to complaints.

Approaches to Policy & Discrimination Claims

Separate Policy & Grievance Process

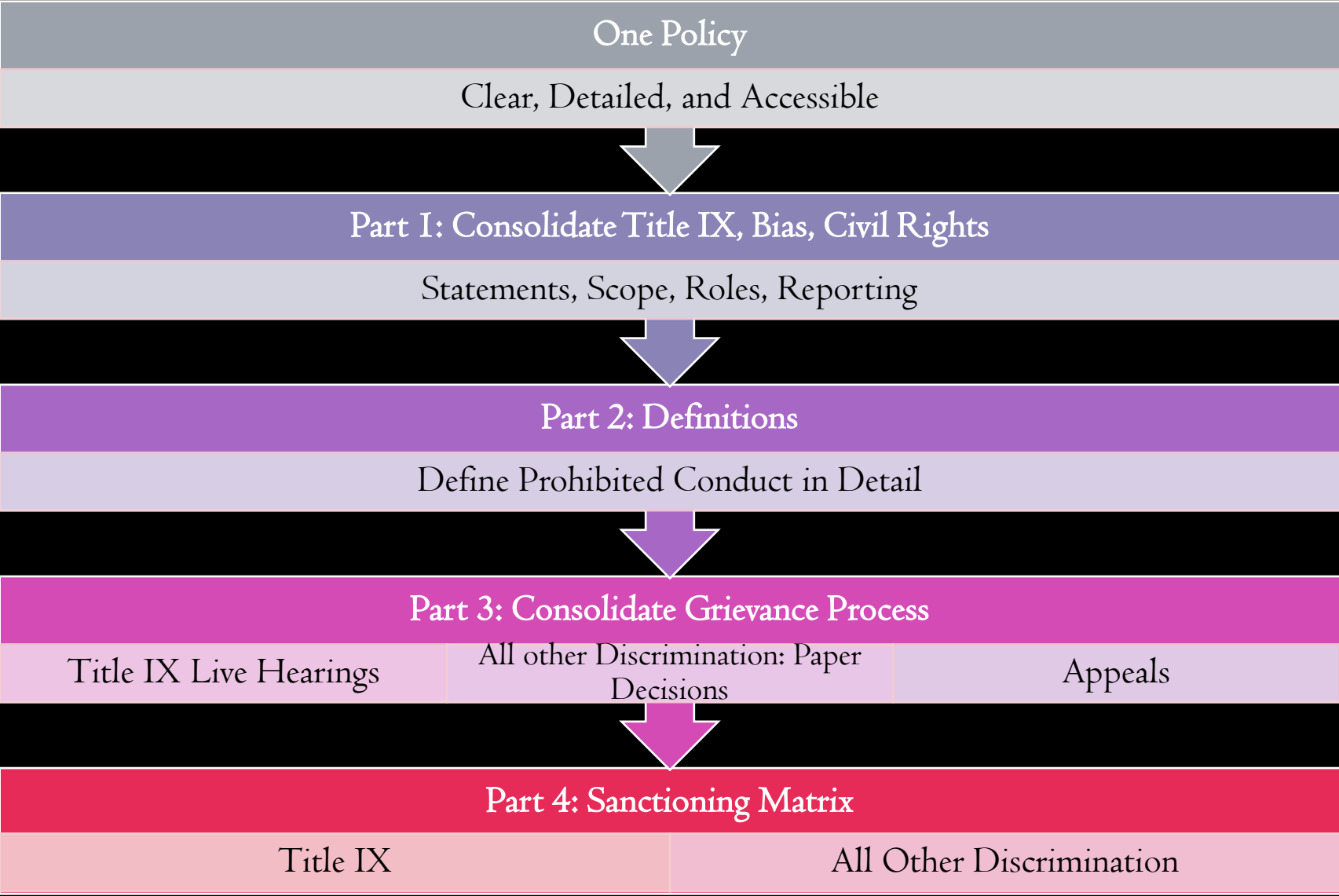
Consolidated Policy & Grievance Process



One Policy

One
Reporting
Mechanism

One
Grievance
Process



Pt. I: Statements, Scope, Roles, Reporting

Statements
Scope and Applicability
Legal Disclosures
Roles: TIXC, etc.
Accessibility & Locations
Free Speech & Academic Freedom



LAKE FOREST
COLLEGE

LF.01.01.00 Civil Rights & Title IX Compliance Policy Statements & Scope

Revised January 17, 2025 (DRAFT)
Next Scheduled Review: (date)
Revision History: edits from W.O. 4.18.25

Regulation Summary

I. Statement Against Discrimination on the Basis of Sex, Sexual Orientation, Gender, and Gender Identity.

Under this policy, Lake Forest College (LF) prohibits discrimination on the basis of sex, sexual orientation, gender, and/or gender identity in any College program or activity, consistent with Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, and other applicable state and federal laws. Sexual misconduct, including sexual harassment, non-consensual sexual penetration and/or contact, sexual exploitation, stalking, dating violence and domestic violence, are forms of sex discrimination that may deny or limit a LF community member's ability to participate in LF programs or activities.

Lake Forest College provides awareness and prevention education and training programs regarding sex, sexual orientation, gender, and gender identity-based discrimination, encourages the reporting of discriminatory behavior, provides timely services to those who have been affected by discrimination, and utilizes prompt and equitable methods of investigation and resolution to stop discrimination, remedy harm caused by discrimination, and prevent recurrence of discrimination. Violations of this Policy may result in the imposition of sanctions up to and including termination or dismissal from LF.

II. Nondiscrimination Statement

Lake Forest College's non-discrimination statement pertaining to sex, sexual orientation, gender, gender identity and all other protected classes is located at: www.lakeforest.edu/about/working/non-discrimination-policy/. LF does not discriminate on the basis of race, color, religion, national origin, sex, pregnancy, sexual orientation, gender, gender identity, gender expression, parental status, marital status, age, disability, citizenship status, veteran status, genetic information, or any other classification protected by law in matters of admissions, employment, housing, or services or in the educational programs or activities it operates.

Lake Forest College complies with federal and state laws that prohibit discrimination based on the protected categories listed above, including Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex (including sexual misconduct) in the LF's educational programs and activities.

LF provides reasonable accommodations to qualified applicants, students, and employees with disabilities and to individuals who are pregnant.

Pt. 2: Definitions & Process

Clearly Define Prohibited Conduct

Responsibilities of the Institution
(Policy, Reporting mechanism, Coordinators)

Responsibilities of Employees/Students
(handbooks, mandatory reporting, etc.)
Define Informal/Formal Process

(Title IX, Civil Rights)



LAKE FOREST
COLLEGE

LFC.01.01.02 Civil Rights & Title IX Compliance Regulation

Revised January 17, 2025 (DRAFT)

Next Scheduled Review: (date)

Revision History:

4.17.25 Review W.O.

Regulation Summary

Lake Forest College (LFC) shall provide equal opportunity to all employees, students, applicants for employment and admission, and the public. This regulation provides direction and guidance to each member in complying with local, state, and federal civil rights laws and regulations (laws) and related system policy.

All complaints, appeals, or reports of discrimination received by LFC shall be appropriately reviewed and addressed under this regulation.

This regulation establishes standards for LFC's receipt and processing of reports, complaints, investigations, adjudication, appeals, and use of informal resolution in cases involving allegations of discrimination, harassment, and/or related retaliation based on a protected class (discrimination), including complaints made by employees, students, and/or third parties.

LFC also shall respond, as appropriate, to any inappropriate employee or student conduct that does not constitute discrimination under this regulation. See LFC employee handbook for the policy on the discipline and dismissal of employees; see LFC faculty handbook for policy on the discipline and dismissal of tenured and non-tenured faculty. For student misconduct, see the member's code of student conduct.

Definitions

In this regulation, the term "shall" is used in an imperative sense (mandatory). The term "may" is used in a discretionary sense (optional). The terms "will" and "must" are used in an expected sense, subject to unique factors and situations. The term "should" is used as optional but encouraged.

Advisor – an individual selected by each complainant and respondent to provide guidance during the investigation and resolution process and to conduct cross-examination when a complaint is referred to a formal hearing. An advisor may be an attorney. LFC may appoint an advisor of LFC's choice for a complainant or respondent for a hearing if either party does not have an advisor present. Advisors may not otherwise represent or speak for the party they are advising. Each party is allowed one advisor, although members may establish circumstances under which a second advisor would be permitted (e.g., accommodating a party with a disability). See Section 4.2.5. **Appellate authority** – an individual or panel responsible for rendering appeal decisions as specified in member rules. The role of the appellate authority is to review the process by which an original decision was reached and render an appellate decision, consistent with the grounds for appeal. Title IX Coordinators may not serve as an appellate authority in any case involving an allegation of discrimination or harassment based on sex. 08.01.01 Civil Rights Compliance Page 1 of 29

Coercion – the act, process, or power of compelling a person to take an action, make a choice, or allow an act to happen that they would otherwise not choose or give consent to.

Part 3: Sanctioning Matrix

APPENDIX A: TITLE IX/SEX-BASED MISCONDUCT CUMULATIVE SANCTION MATRIX

Revised November 17, 2020

Texas A&M Title IX/Sex-based Misconduct Student Sanction Matrix¹

SANCTION RANGE

Stage 1: Reprimand/Restrictions/Review	Stage 2: Probation	Stage 3: Suspension	Stage 4: Expulsion
--	--------------------	---------------------	--------------------

Sexual Harassment Examples

SEVERE, PERSISTENT AND OBJECTIVELY OFFENSIVE	1	2	3	4
Sexual innuendos, jokes, remarks, questions	■	■	■	
Sexual gestures and/or gifts of a sexual nature	■	■	■	
Display of sexually explicit visual material	■	■	■	
Unwelcome kissing or non-fondling sexual touching	■	■	■	
Offering to trade an educational benefit for a date or sexual favor		■	■	■

Stalking Examples

BEHAVIOR	1	2	3	4
Repeated, unsolicited phone calls, emails, texts, and/or gifts to another person and/or their family/household	■	■	■	■
Repeatedly following another person or conducting surveillance of another person and/or their family/household	■	■	■	■
Repeated, unsolicited visits to another person's home, business, and/or class, and/or that of their family/household		■	■	■
Repeated, unsolicited contact or attempts to contact via social media		■	■	■
Assuming another's identity in order to make contact with complainant		■	■	■

Sex-based Misconduct

SEVERE, PERSISTENT OR PERVERSIVE	1	2	3	4
Sexual innuendos, jokes, remarks, questions		■	■	■
Sexual gestures and/or gifts of a sexual nature		■	■	■
Display of sexually explicit visual material		■	■	■
Unwelcome kissing or non-fondling sexual touching		■	■	■
Allegations of sexual harassment, sexual assault, dating violence, domestic violence and/or stalking based on sex that are dismissed from the Title IX process under 08.01.01, Section 4.2.10 (d) and (e)		■	■	■
Offering to trade an educational benefit for a date or sexual favor		■	■	■

Retaliation Examples

BEHAVIOR	1	2	3	4
Threats in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking		■	■	■
Intimidation or physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking			■	

¹ Conduct identified in the matrix is not intended to represent an exhaustive listing of prohibited behaviors.

APPENDIX A: TITLE IX/SEX-BASED MISCONDUCT CUMULATIVE SANCTION MATRIX

Revised November 17, 2020

Violation: Sexual Harassment or Sex-based Misconduct

SANCTION RANGE

Stage 1: Reprimand/Restrictions/Review	Stage 2: Probation	Stage 3: Suspension	Stage 4: Expulsion
--	--------------------	---------------------	--------------------

DEFINITION FROM SYSTEM REGULATION 08.01.01

SEXUAL HARASSMENT: a form of sex discrimination. Unwelcome conduct on the basis of sex (of a sexual nature or otherwise): (1) by an employee of the member who conditions the provision of an aid, benefit, or service of the member on an individual's participation in that unwelcome sexual conduct; (2) determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the member's education program or activity; or (3) sexual assault or dating violence, domestic violence, or stalking based on sex.

SEX-BASED MISCONDUCT: unwelcome conduct on the basis of sex that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating, abusive, or offensive. May also include allegations of sexual harassment, sexual assault, dating violence, domestic violence and/or stalking based on sex that are dismissed from the Title IX processes.

FACTORS TO CONSIDER WHEN DETERMINING SANCTION

Mitigating Factors: *

- The behavior was committed in error, by mistake, or was unintentional.
- Prior instances where respondent's similar advances were welcome.
- Complainant impact statement and reduced sanction request.

Aggravating Factors: *

- The harm caused by the deprivation of access/ benefits/ opportunities was lengthy, extensive or irreparable.
- The totality of the behavior was exceptionally severe, persistent, and objectively offensive.
- The harassment was threatening, intimidating, or aggressive.
- The behavior continued despite a mutual no-contact restriction between the parties.
- A request for enhanced sanctions from the complainant.

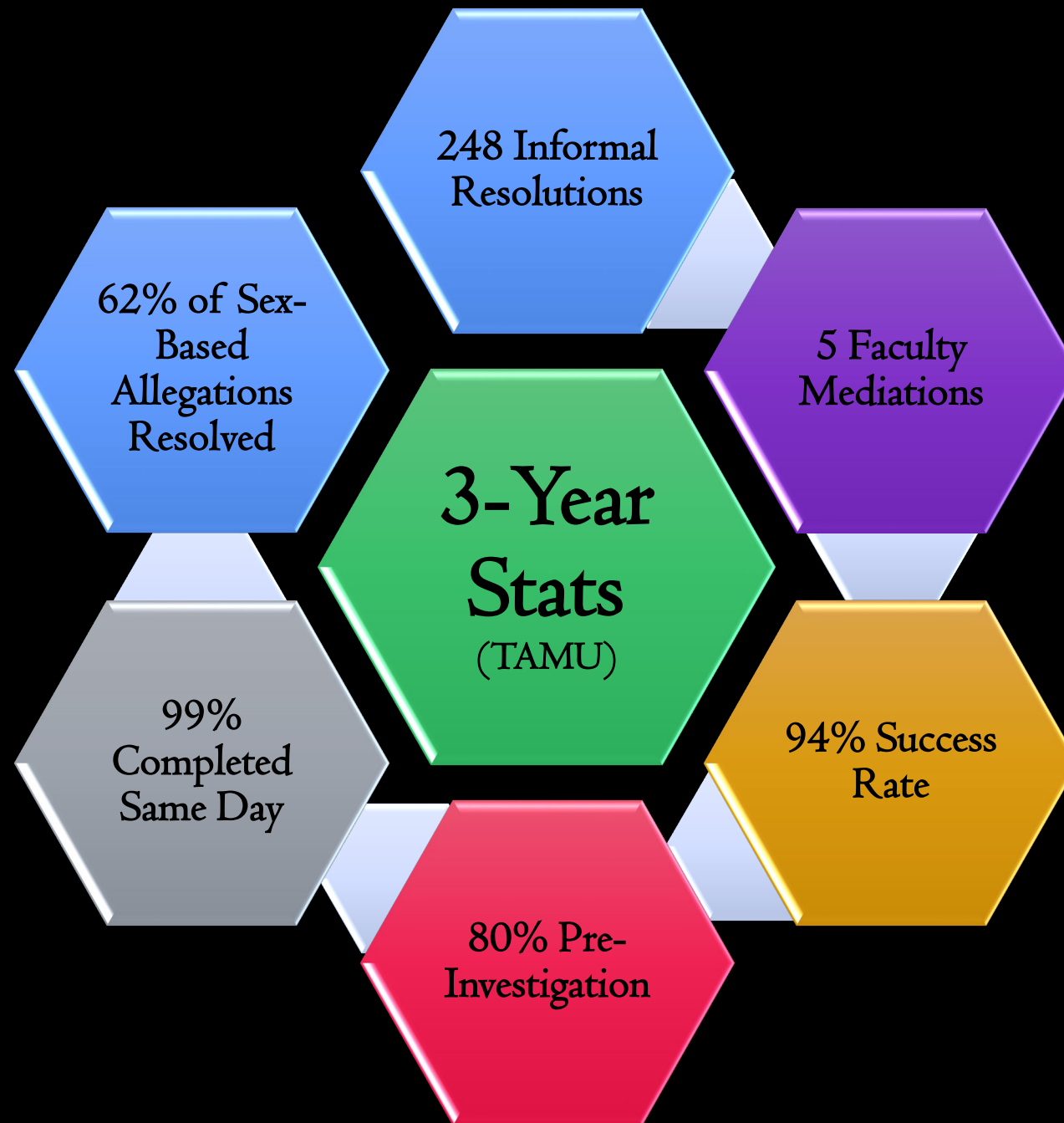
Compounding Factors: **

- Prior history of misconduct (i.e., found in violation of University policy through formal process).
- Cumulative violations.

* Sources: Adapted from The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

** ATIXA's Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

Best Practices for Instituting Dispute Resolution to Address Organizational Conflict & Discrimination



Comparison of Informal/Formal Grievance Process

Step One: Have a Clear Policy!

Formal Process

- Looks to Past to Prove Facts
- Internal to the Institution
- Looks to Determine Policy Violations
- Can Impose Sanctions
- Can Terminate Employment
- Full Due Process
- Coercive/No Say in Outcome
- Can be Traumatic
- Takes Time

Informal Process

- Looks to Future/Resolution
- Focuses on the Mandate
- Voluntary
- Parties Empowered
- Can Result in a Finding
- Can Result in Sanctions
- Negotiated Outcome
- Enforceable Agreement
- Saves Time/Trauma Conscious

ADR Pathways:

Mediation

When To Use: All Situations

The Mediator DOES NOT Decide an Outcome

Empowerment: The Parties Are Guided To Their Own Resolution

Is Usually Informal and Non-Adversarial

Places Emphasis on Perspective Taking and Mutual Betterment

Confidential

Parties Are More Satisfied With Mutually Agreed Outcomes

No Guarantee of Success



ADR Pathways:

Facilitation

When To Use: All Situations

Facilitator is an Active Participant takes an Evaluative Approach

Facilitator Suggests Possible Courses of Action For Discussion

Facilitator Helps Parties Think Through Options

Helps Level Power Imbalances

Assists with Negotiation Strategy

Does Not Advocate Or Take Sides

Multi-Partial



ADR Pathways:

Restorative Practices

When To Use: Non-Sex Based Allegations, Respondent Accepts Responsibility for Harm

When Preservation of Community Relationships is the Goal

Respondent Accepts Responsibility

Facilitator Helps Parties See Perspectives

Respondent Acknowledges Harm

All Parties Must have Good Faith

Accountability is Key

May or may Not Also Include Sanctions or Restitution



ADR Pathways: **Micro-Mediation/Educational Conversations**

**When To Use: Non-Policy Violation allegations, Micro-Aggressions,
Offensive Speech**

Ad Hoc, Informal Facilitated Dialogue

Shared Perspectives

Creates Awareness -- Elicits Understanding and Inclusion

"Finger Wag" Conversation

No Violation is Considered

Micro-Mediation is Non-Binding, Voluntary, Bilateral

Educational Conversation: Non-Binding, Involuntary, Unilateral

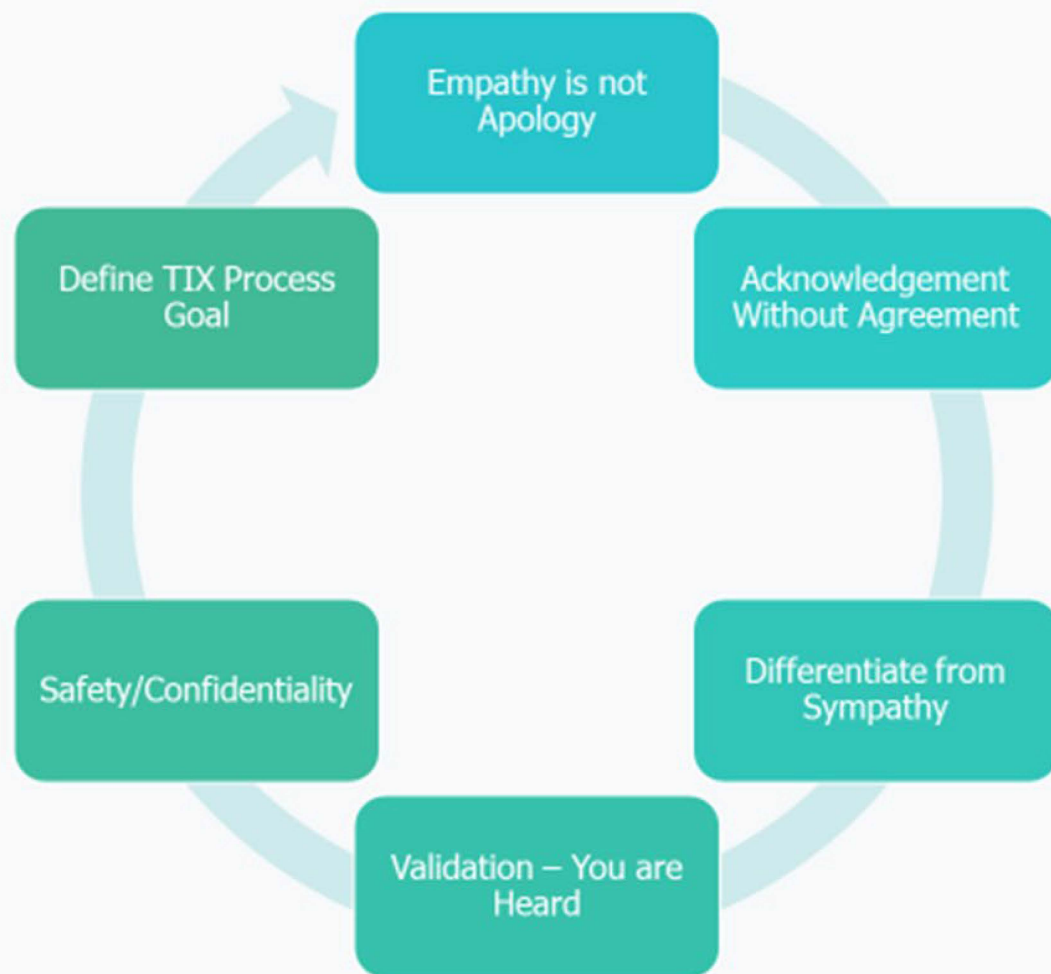




Practical Advice for Implementing an Informal Resolution Program at Your Institution

A Word On Empathy

Empathy Creates Safety, Safety
Creates Trust,
Trust Allows Communication –
Communication
Makes Resolution Possible





Facilitator Options

TIX Deputy

Investigators

Deans/Faculty/Law School

HR Staff/Faculty Affairs/Ombuds

Internal Full-Time Facilitator (TAMU)

Outsourced Facilitator

Single Investigator Model

Things to Consider When Choosing a Facilitator



Cost

Employee Facilitator

Contract Facilitator



Contemplate

Training

Policy Knowledge

Control & Accountability

Staff Conflict

Availability

Offering The Informal Resolution Option

Offer

Offer the Option Early (Case Managers/Intake) and throughout the resolution process

Add

Add Information about IR to All Documents (Complaint/NOA/Website)

Differentiate

Explain Formal vs. Informal Process

Explain

Explain Right to Withdraw/Change Process and Explain Concept of Empowerment/Control

Choose Your Format

Live or Remote?

- Safety For All Parties/Staff
- Facilitation: Control of Process/Emotional Response
- Trauma Conscious Concerns
- More Efficient Communication
- Improved Interaction With Advisors – Lessens Adversarial Stance

Shuttle or Face-to-Face?

Two Approaches to Conflict Resolution



Mediate the
Dispute



Mediate the
Resolution



Mediate the Dispute

Looks backward to
discover facts

Chance to tell your
story ... but is
there a benefit?

Can be re-
traumatizing since
you must focus on
the harmful event

May get stuck in
the weeds

This is the “light”
version of the
formal hearing
process ...

but you get all the
sanctions and none
of the due process

Mediate the Resolution

Looks forward to
move forward

Trauma conscious

Parties are fully
empowered to craft
a solution that
works for them

Allegation vs. Facts
– take things at face
value

Enhanced
cooperation

Focused on mutual
benefit

High satisfaction
rate

Gives parties a path
forward



Finalizing The Agreement



Ensure

Complainant is Empowered
and Satisfied



Check

Complainant Feels Safe to
Access Educational Benefits



Discuss

Agreement
Language/Advisor



Review

Enforcement of
Agreement/NCD



Remind

Case Will Be Closed – No
Appeals

On To The Next One!

