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## **From One Title IX Coordinator to Another:**

**A Practical Approach to  
Navigating Beyond Compliance  
in a Post Regulatory World**

*South Carolina Technical  
College System*

Emma Hempel

July 2023



**Emma Hempel**

*She/Her/Hers*

Senior Solutions Specialist

## Meet Your Facilitator

Emma Hempel is a Senior Solutions Specialist at Grand River Solutions. Emma serves as a Title IX Coordinator for campuses across the country. With over ten years of experience in the field of higher education, she previously served as the Title IX Coordinator at the State University of New York at New Paltz. In her previous role, she conducted all Title IX intakes for students and employees reporting sexual and interpersonal violence. She developed and implemented a variety of trainings and workshop on topics including sexual violence prevention, sexual harassment, bystander intervention, and diversity and inclusion.

# About Us

## Vision

We exist to help create safe and equitable work and educational environments.

## Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity



Let's Take a  
Moment.  
Title IX  
Coordinator  
to Title IX  
Coordinator.

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# The Ever-Evolving Jurisprudence of Title IX

"If nothing else, Title IX Coordinators are experts at adapting."

01

# Title IX of the Education Amendments Act of 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 education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



# The Title IX Regulations

Sexual Harassment Only

1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.



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# Sexual Harassment: *Section 106.30*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).





# Covered Geography

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution



A dark gray map of the United States with white state boundaries. The text "Not Covered" is overlaid on the western half of the map.

# Not Covered

- Off campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.



# Covered Individuals

Eligibility for Title IX's Protections

**"At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed." 34 C.F.R. § 106.30**

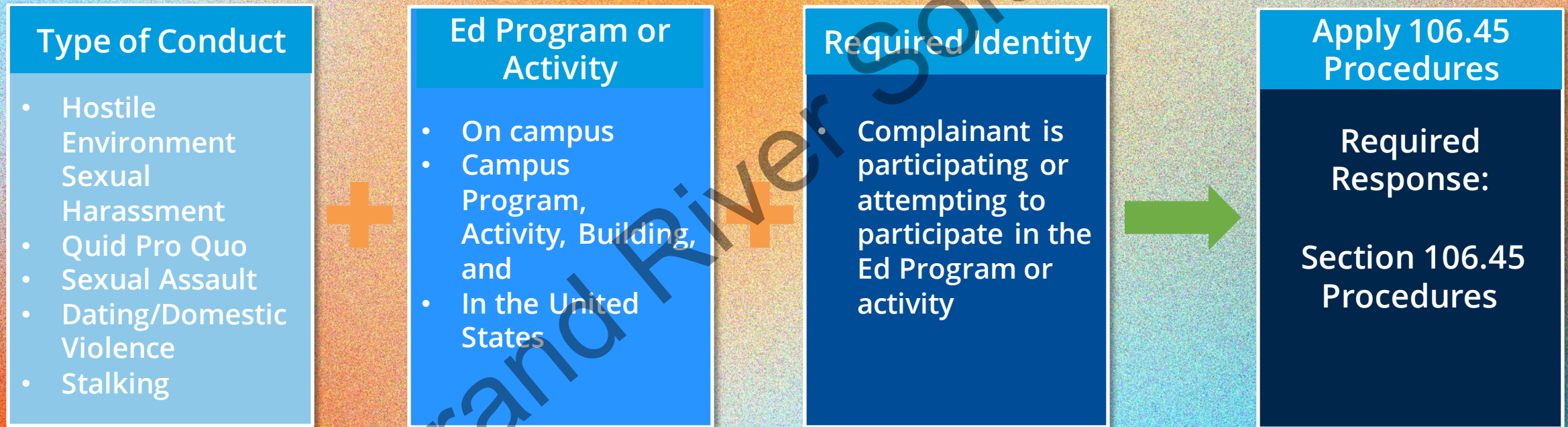
**Applicant**

**Accepted/Hired**

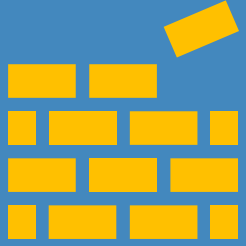
**Enrolled/Employed**



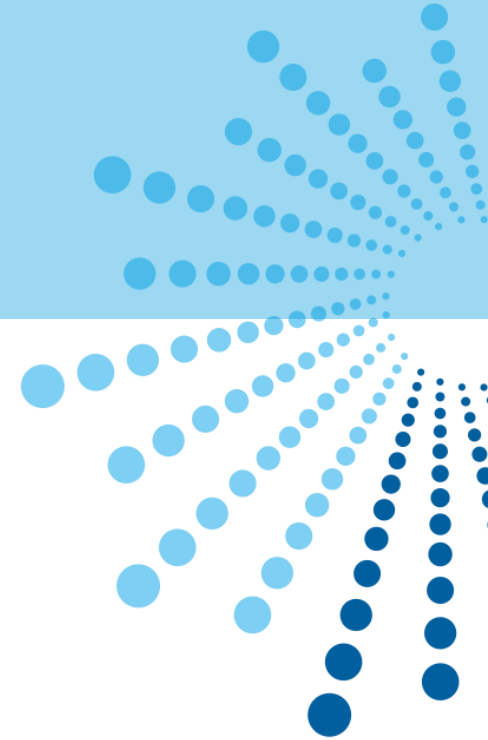
# Title IX Application Post May 2020 Regulations







# Proposed Regulations



02

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## REMINDER

Continue to follow  
current policies and  
procedures consistent  
with the 2020 Final Rule  
and state law

# Background

## 2020 Title IX Final Rule (effective now)

- Narrow geographic scope
- Narrow set of violations
- Narrow required reporting and formal process
- More significant process

 <b>30026</b> Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations		
<b>DEPARTMENT OF EDUCATION</b>	Room 4E308, Washington, DC 20202. Telephone: (202) 453-6639. Email: <i>Alejandro.Reyes@ed.gov</i> .	Elementary and Secondary Schools Formal Complaint Support for Formal Complaint Definition No Formal Complaint Required To Report Sexual Harassment Burden on Complainants To File a Formal Complaint Anonymous Reporting and Anonymous Filing of Formal Complaints Officials Other Than the Title IX Coordinator Filing a Formal Complaint Complexity of a Document Labeled "Formal Complaint"
<b>34 CFR Part 106</b>	If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1-800-877- 8339.	Parents' and Guardians' Rights To File a Formal Complaint Methods of Reporting and Methods of Filing a Formal Complaint Miscellaneous Concerns About the Formal Complaint Definition Postsecondary Institution Respondent Sexual Harassment Overall Support and Opposition for the § 106.30 Sexual Harassment Definition Prong (1) <i>Quid pro quo</i> Prong (2) <i>Davis</i> standard <i>Davis</i> Standard Generally So Severe And Pervasive Objectively Offensive Effectively Denies Equal Access Prong (3) Sexual Assault, Dating Violence, Domestic Violence, Stalking Gender-Based Harassment Supportive Measures Overall Support and Opposition No-Contact Orders
[Docket ID ED-2018-OCR-0064] RIN 1870-AA14		
<b>Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance</b>	<b>SUPPLEMENTARY INFORMATION:</b> <b>Table of Contents</b>	
<b>AGENCY:</b> Office for Civil Rights, Department of Education. <b>ACTION:</b> Final rule.	Effective Date Executive Summary Purpose of This Regulatory Action Summary of the Major Provisions of This Regulatory Action Timing, Comments, and Changes Adoption and Adaption of the Supreme Court's Framework To Address Sexual Harassment Differences Between Standards in Department Guidance and These Final Regulations Definition of Sexual Harassment Actual Knowledge Deliberate Indifference Role of Due Process in the Grievance Process Due Process Principles Summary of § 106.45 Similarities and Differences Between the § 106.45 Grievance Process and Department Guidance Public Comment Analysis of Comments and Changes Personal Stories	
<b>SUMMARY:</b> The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as "recipients" or "schools"), must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. These regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in		

# (Proposed) Expanded Scope

- Sex-Based Harassment (Proposed § 106.2) includes Discrimination on the Basis of Sex (Proposed § 106.10)

## SEX-BASED HARASSMENT

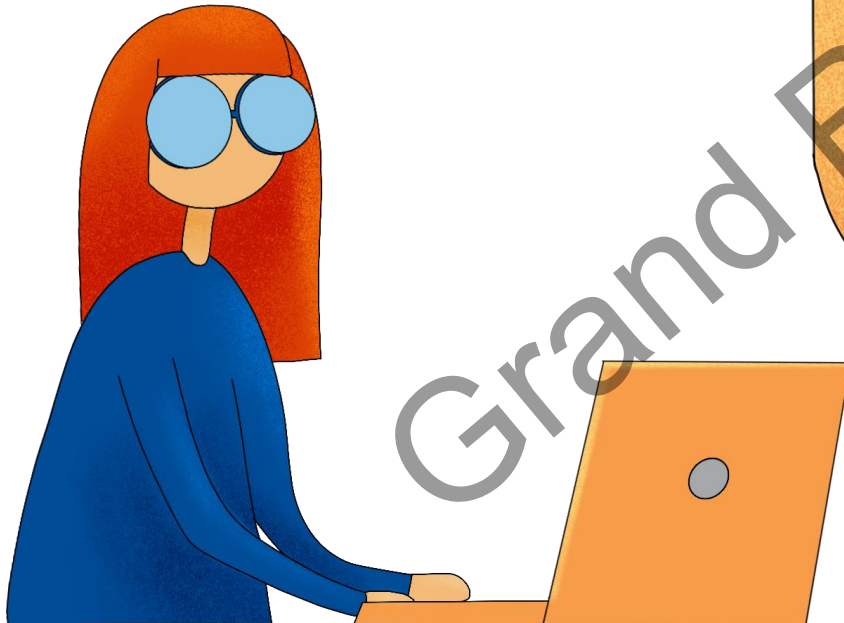
- Hostile environment: “Severe *or* pervasive”

## DISCRIMINATION ON THE BASIS OF SEX

- Discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

# Geography and Jurisdiction

- Expanded scope  
(Proposed § 106.11)
- ~~"in the United States"~~  
(Current § 106.44(a))



"It also requires a recipient to respond to a hostile environment based on sex within its education program or activity in the United States, **even if sex-based conduct contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.**" (Proposed § 106.11)

# Formal Resolution



Investigations,  
Hearings, and the  
Single-Investigator  
Model

Cross-  
examination?

Credibility analysis;  
"Process for  
evaluating  
allegations and  
assessing  
credibility" (Proposed  
§ 106.45(f)(1))

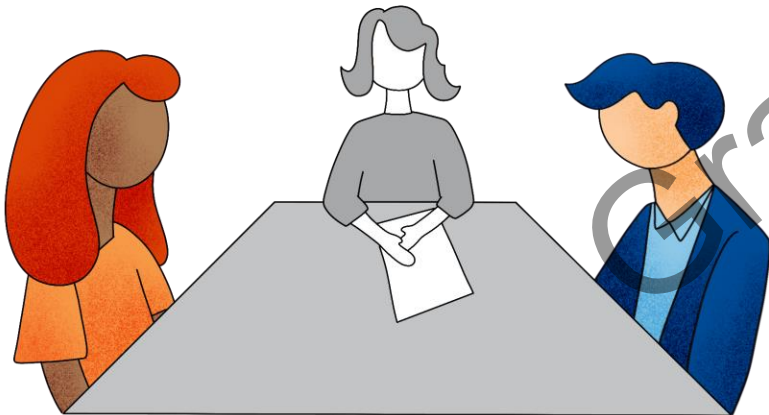
Standard of  
evidence; The  
preponderance of  
the evidence  
standard of proof,  
unless\* (Proposed §  
106.45(h)(1))

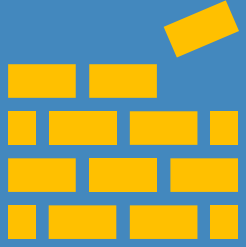


# Informal Resolution

When may  
informal  
resolution begin?

Other changes?

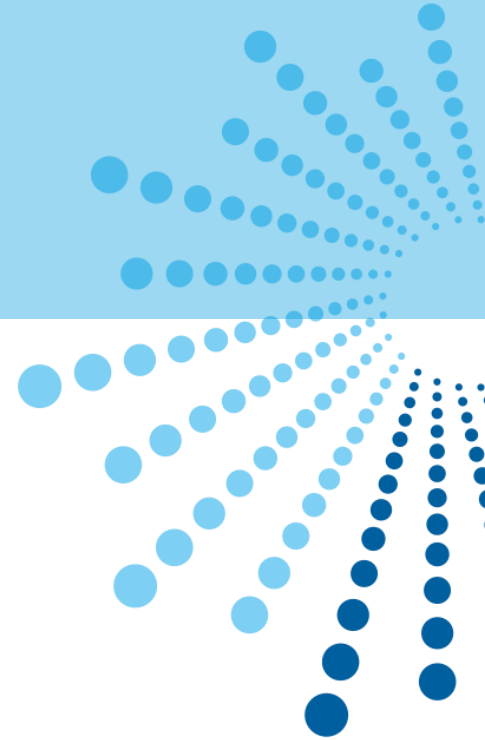




# Building a Foundation of Success

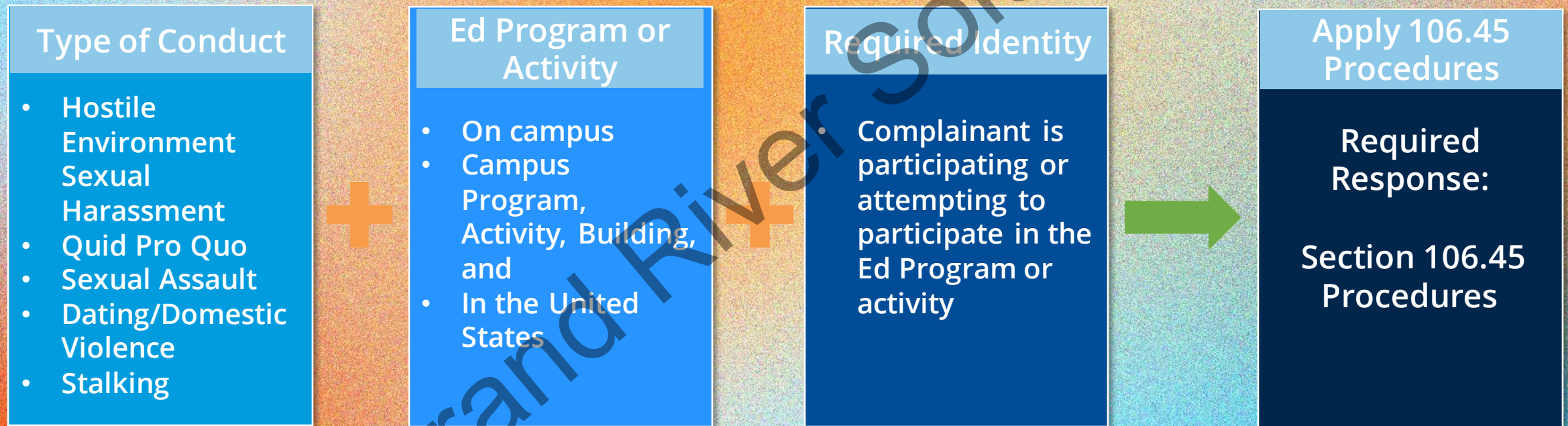
03

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# Title IX Application Post May 2020 Regulations





# Final Rule, Section 106.8

## Designation of Coordinator

“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”

Additionally:

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at anytime.



# Final Rule, Section 106.8(a)

The institution must notify applicants and all members of the community of the Title IX Coordinators

1. Name or Title
2. Office address
3. Email address
4. Phone number

Any person may report , at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed



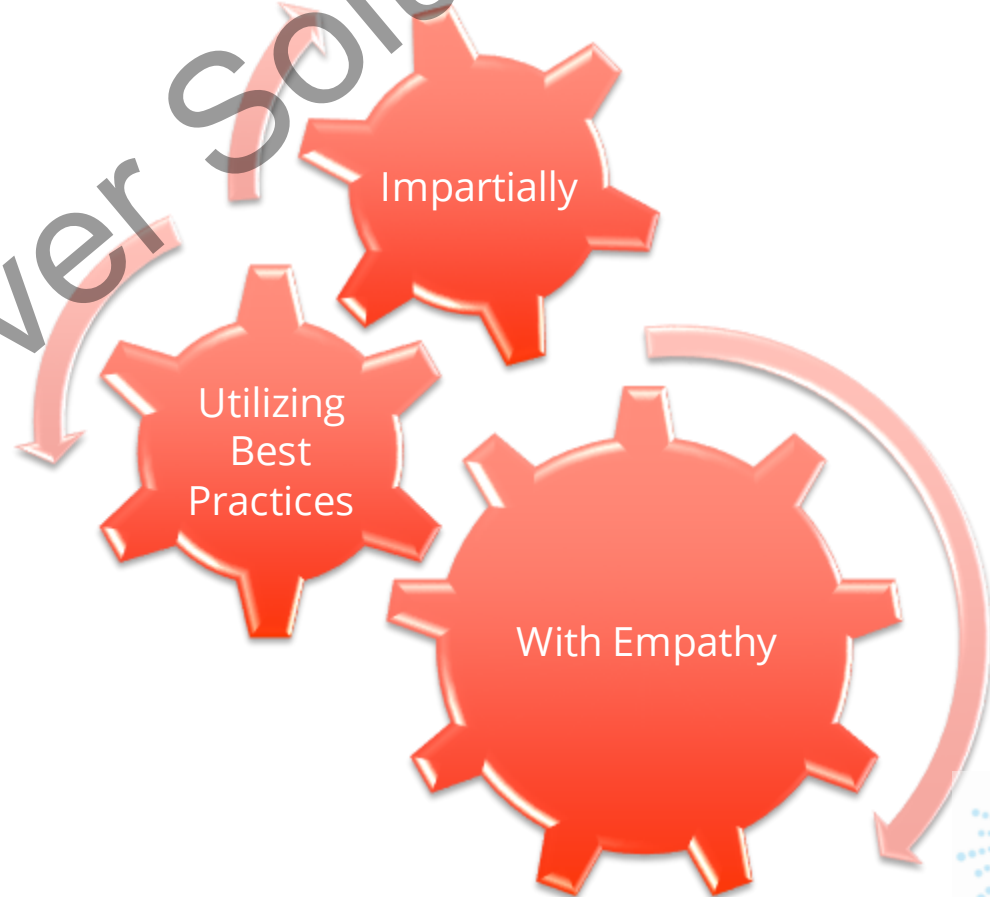
# “Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports
- Upon receipt of a report, promptly contact the complainant to discuss the availability of support and resolution options
- Coordinate supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker



# Successful Coordinators Approach all Aspects of the Work

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# Impartiality

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

# Impartiality

Avoiding Prejudgment and Bias

Do not rely on cultural “rape myths”

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

# Impartiality

## Avoiding Bias

Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] 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" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, 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"



# Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

## Bottom line

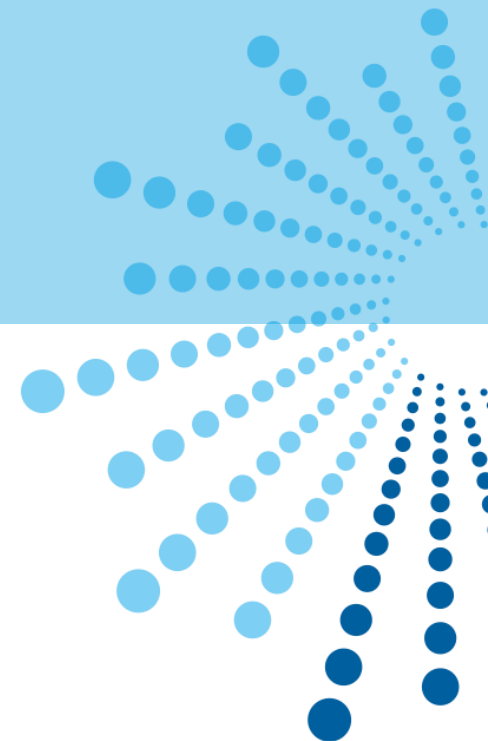
- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudice or bias for or against any party



# Compliance

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# Sources of Compliance Obligations

Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Laws

State Law

Legal Precedent

Institutional Policies

Resolution Agreements

# Developing a Strategy for Compliance

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IDENTIFY COMPLIANCE  
OBLIGATIONS



HOW WILL YOU PROVE  
THAT YOU ARE COMPLIANT



RECORD KEEPING



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# Implementing the Strategy for Compliance



Partnerships



Record Keeping Databases

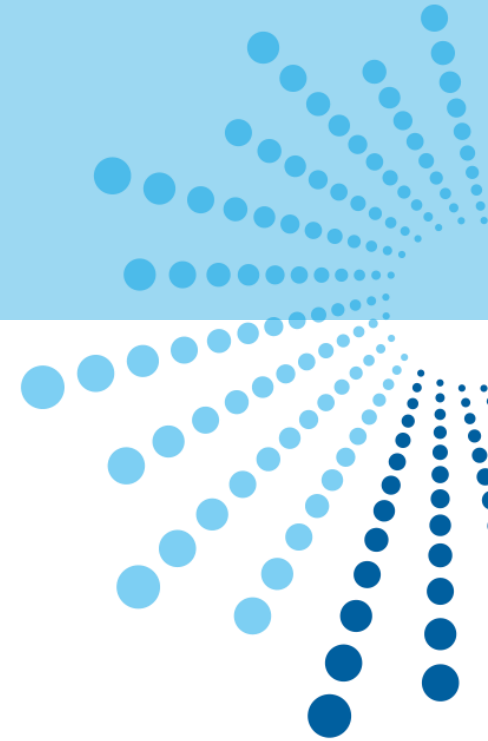


Calendar



# Training & Education

Educating ourselves and our communities in a post-regulatory world



05

# Sources of Training Requirements



Title IX Final  
Regulations

**VAWA**

Violence  
Against  
Women Act



State Law



Resolution  
Agreements



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# Training and Education

## Two Areas of Focus

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1

Institutional  
Response to Sex  
Discrimination

2

Prevention  
Education





# Institutional Response Training

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



# Elements of Annual Training Strategy

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Identify population to be trained

---

Determine topic

---

Schedule the training

---

How will you deliver the training

---

Partnerships

---

Communications

---

Community input/feedback

---

Assessment

---



# A Really Important Moment. Listen Up. It's Okay...



To not know the answer to every question thrown your way



To say,

"I don't know"

"I'd like to think about that"

"I'll get back to you"

"Thank you for sharing your perspective"



To decline to answer a question



To recognize and assert your expertise



# Receipt of Reports

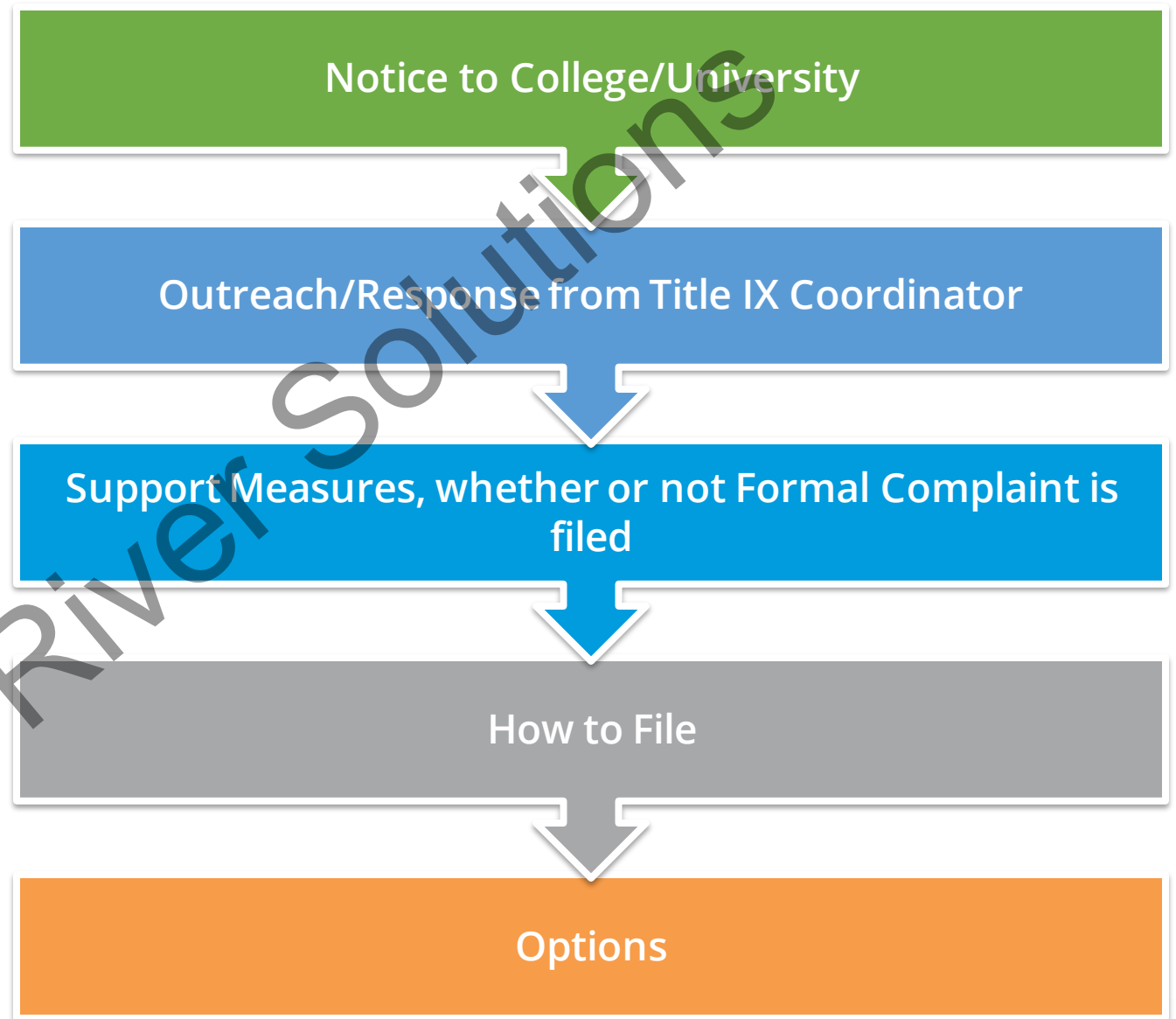
Actual Knowledge, Report Response,  
Initial Assessments, and Supportive Measures

06





# Regulatory Requirements



# Infrastructure for Reporting



# Receiving Reports and Initiating the Response

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1. REVIEW THE  
REPORT



2. DETERMINE THE  
APPROPRIATE INITIAL  
RESPONSE



3. PROMPTLY  
INITIATE THAT  
RESPONSE



4. DOCUMENT/RECORD  
THE RECEIPT OF THE  
REPORT AND THE  
RESPONSE THERETO



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# Initial Outreach

## FIRST — SAFETY

### Email

- Create forms

### Phone

### In person

- Use RA
- Campus safety

### Follow up emails





# Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



## The Title IX Office receives the following anonymous report via your institution's online reporting form:

---

Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley's partner are friend and so the RA doesn't do anything about it. It's getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley's partner too.

# The Title IX Office receives the following email from a responsible employee:

---

My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don't want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?



# Complainant Intake & Supportive Measures

07

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# Initial Meeting with the Complainant

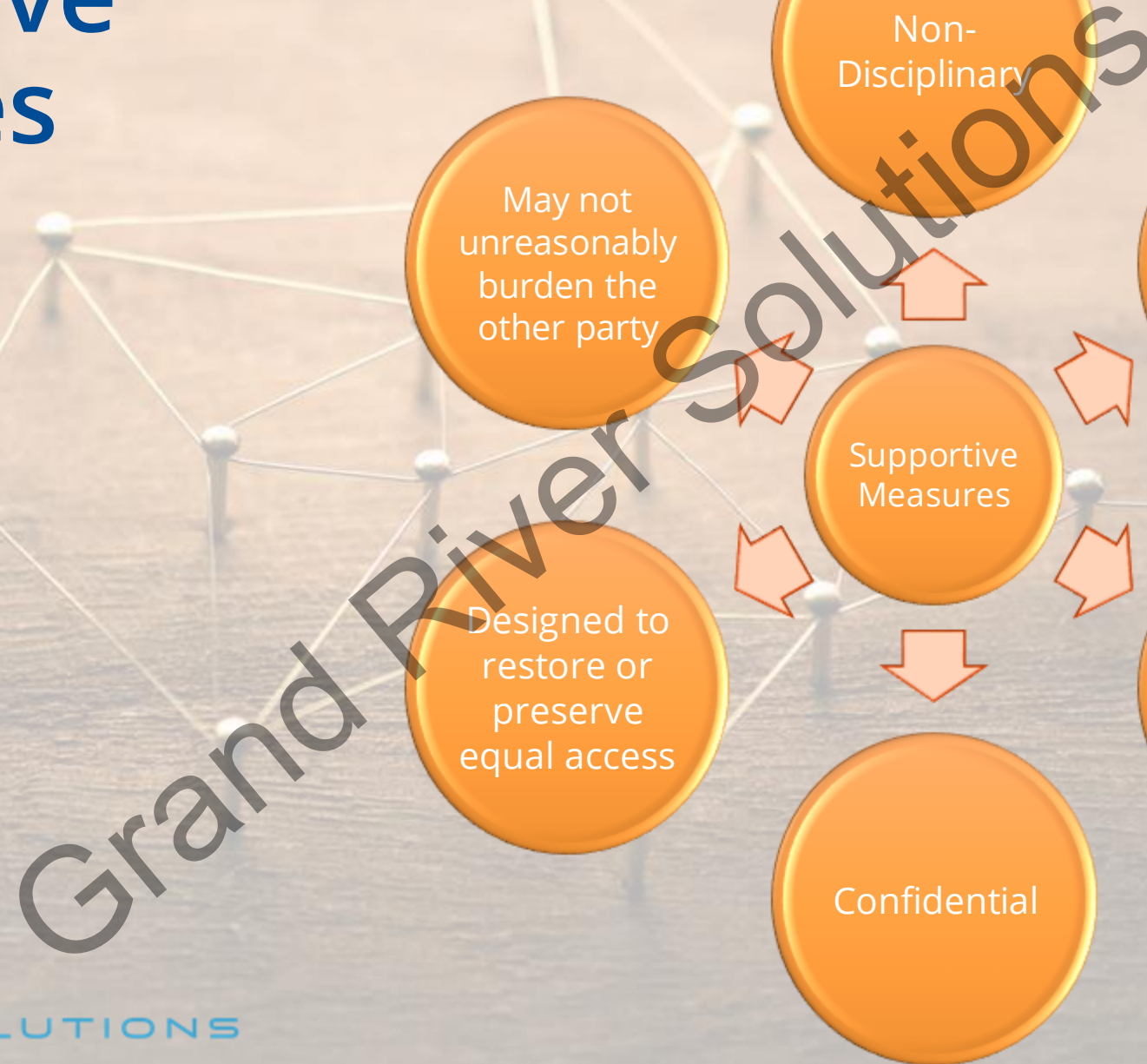
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- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps





# Supportive Measures



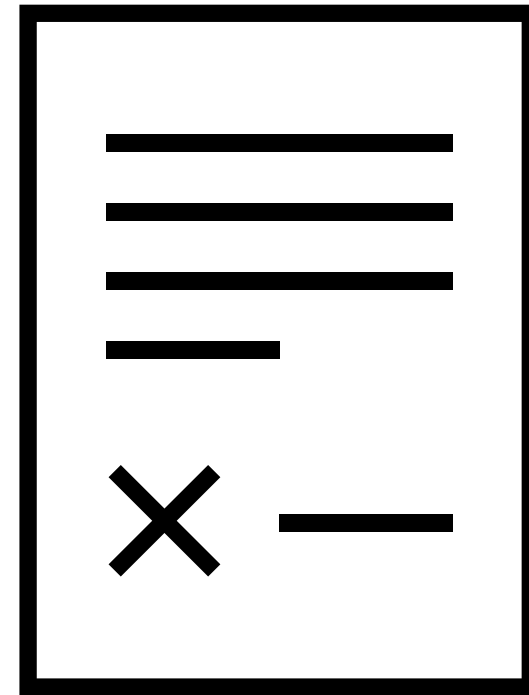
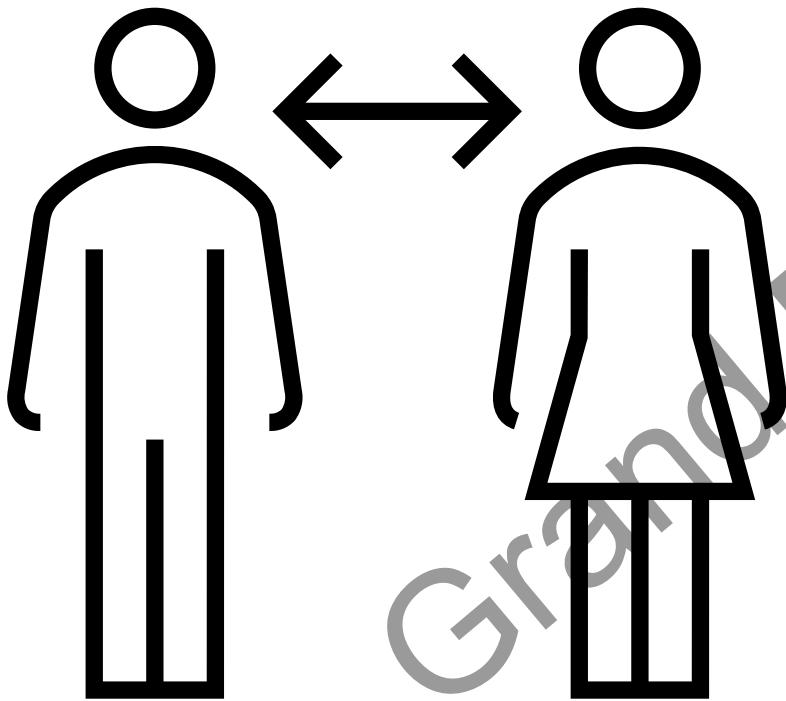
# Examples of Supportive Measures

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties ("No-contact" orders).



# "Mutual Restrictions On Contact Between the Parties"

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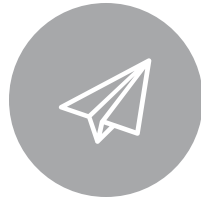


# Post Meeting Tasks

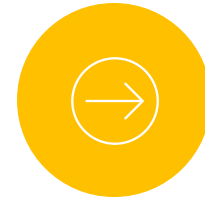
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Document the meeting



Send a summary email with resources, options, next steps



Follow up



Make connections



Provide the supportive measures



Document supportive measures requested, provided, and not provided. Where not provided, indicate why.





# Report Resolution

Remedies Based, Informal, or Formal

08



# Formal Complaint vs Reports

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- What is the difference?
- How can we explain this to parties?
- How can we explain this to responsible employees?

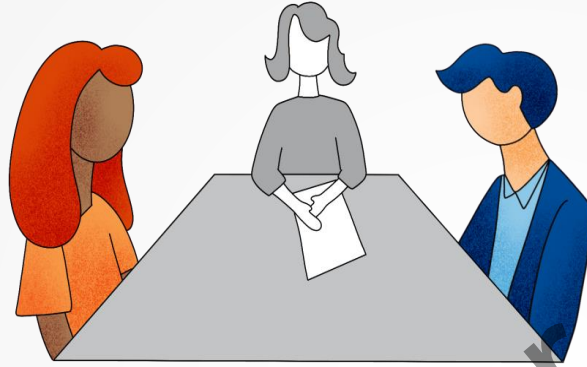


# How to Proceed?



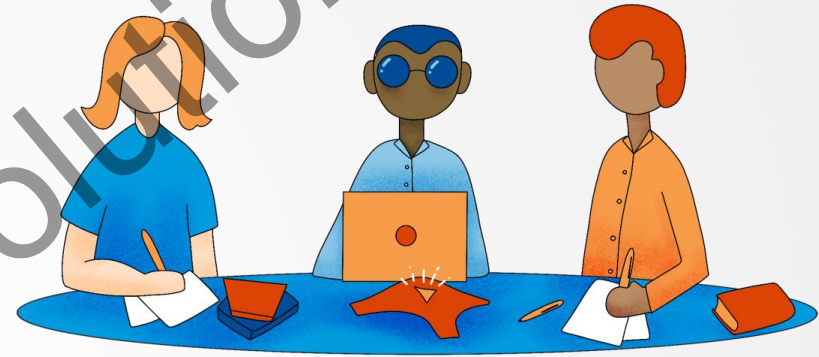
## Remedies-based

No formal process



## Alternative/Informal

Signed agreement;  
Voluntary;  
What records?



## Formal/ Investigation/ Hearing

All requirements of 106.45

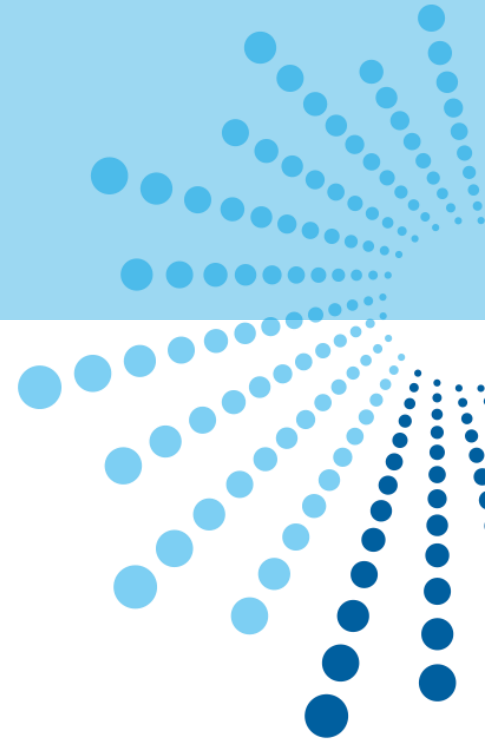




# Remedies Based Resolution

8(a)

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# Remedies Based Resolutions

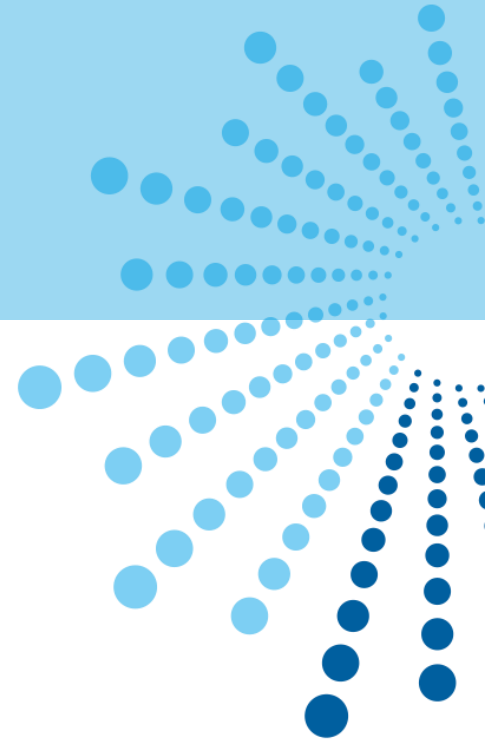
- Supportive Measures
- Educational Conversations
- Targeted Education



# Formal Complaint & Notice Requirements

8(b)

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# Formal Complaint Filed

By  
Complainant

By the Title IX  
Coordinator



# Factors to Consider When Determining Whether to File a Formal Complaint

Allegations  
of Violence

Threats

Use of  
weapons

Serial  
predation



# Formal Complaint

A Formal Complaint must include:



The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include:

- Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

*Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.*

# Dismissing Complaints

## MANDATORY

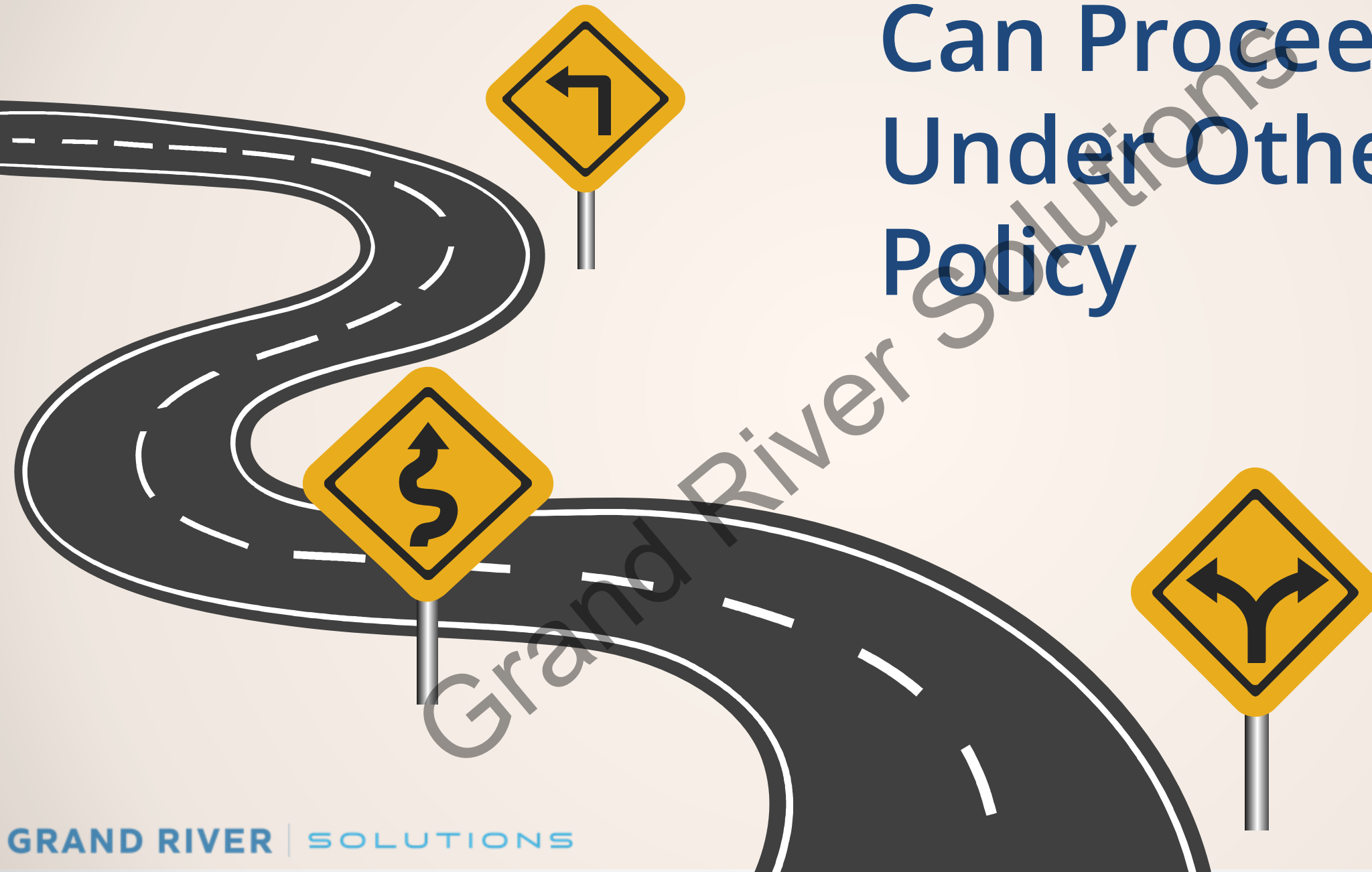
- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

## DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info



# Can Proceed Under Other Policy





# Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - the identities of the parties involved in the incident, if known,
  - the conduct allegedly constituting sexual harassment under § 106.30,
  - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

# Notifying the Respondent



FIRST—SAFETY

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Make sure support available

Written Notification Meetings and Sufficient Time to Prepare

# Advisor of Choice

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The advisor can be anyone, including an attorney;

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Institutions cannot place restrictions on who can serve

---

No training required

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Institution must provide advisor for the purposes of cross examination, only.

# Initial Meeting with Respondent



- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



# Post Meeting Tasks

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Document the meeting



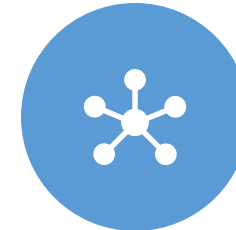
Send a summary email with resources, options, next steps



Follow up



Provide the supportive measures



Make connections



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# Informal Resolution

8(c)

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# Formal Complaint Resolution

## Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

## Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45





# Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

# Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

Informal  
Resolution is  
prohibited to  
resolve  
allegations that  
an employee  
sexually harassed  
a student.

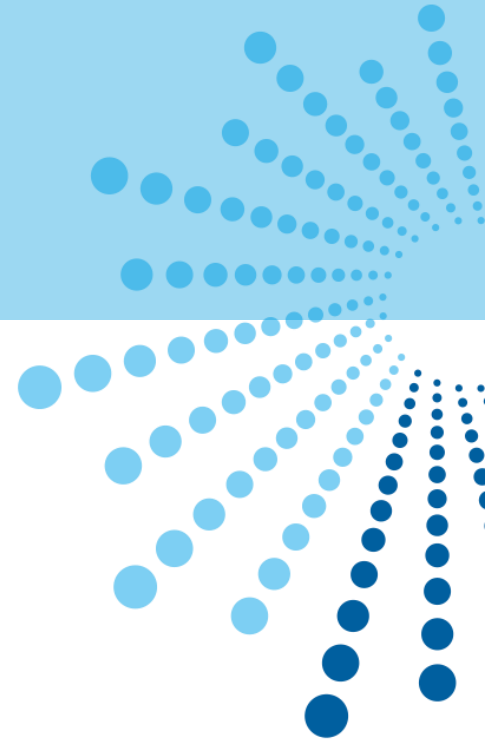
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8(d)

# Formal Resolution

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# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to  
present evidence

An advisor of choice

Written notification of  
meetings, etc., and  
sufficient time to prepare

Opportunity to review all  
evidence, and 10 days to  
submit a written response  
to the evidence prior to  
completion of the report

Report summarizing  
relevant evidence and 10  
day review of report prior  
to hearing





## Title IX Coordinator's Role

### In the Investigation

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- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

# Title IX Coordinator's Role

## In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed





“

## Final Rule § 106.45(b)(8)

[I]nstitutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein.

”

# Grounds for Appeal

- 1. A procedural irregularity affecting the outcome;
- 2. New evidence not available at the time of the determination that could affect the outcome; or
- 3. Conflict of interest or bias on the part of the Title IX coordinator, investigator(s), or decision-maker which affected the outcome.







# Title IX Coordinator's Role

## In the Appeal

- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed



Putting it all together...





# A Successful Title IX Coordinator...

**C**

Understands the Importance of Consistency

**A**

Adheres to policies and procedures

**R**

Records or documents everything

**E**

Engages meaningfully with the community

**S**

Strategically plans for success



# Consistency



Creation of Forms  
& Templates



Development of Annual  
Plans for Compliance



Development of Annual  
Plans for Training



Comprehensive  
Policies &  
Procedures

# Adhere

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed



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# Record

*Document, Document, Document!*

1. Compliance
  1. Maintain old policies
  2. Keep records of all responses to reporting requirement
2. Training
  1. Dates, times, locations
  2. Attendees
  3. Training materials
  4. Reason for the training
3. Response
  1. EVERYTHING



# Engage

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload

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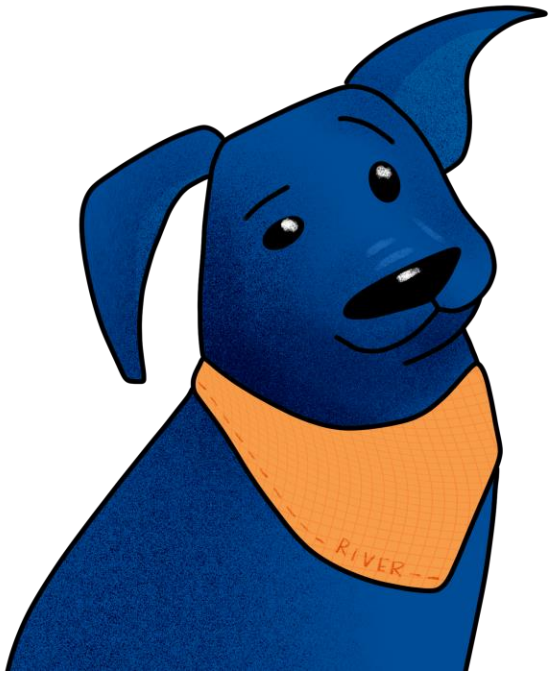


# Strategic

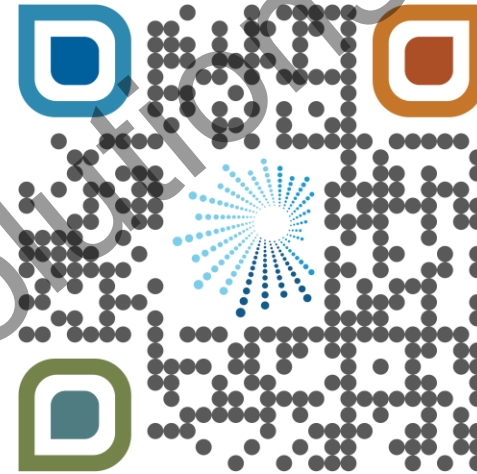
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- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans

# Questions?



Leave Us Feedback:



Email Us:

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