

Title IX Investigator Training

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Disclaimer

- Change is constant in this field. Expect new guidance and case law to be issued regularly after this training.
- Check with legal counsel regarding specific situations.
- Yes, you have permission to post these materials on your website as required by 34 C.F.R. 106.45(b)(10)(i)(D).

Introductions

- Name
- Institution
- Role(s) on your Title IX team
- Primary job, if you're not full-time in Title IX
- Something you remember from childhood that your incoming class will not understand

Training Requirements – Title IX

- “A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training of sexual harassment in §106.30, the scope of the recipient’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution process, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”
§106.45(b)(1)(iii)

Training Requirements - Clery

- From the Clery regulations:
- Proceedings involving sexual assault, dating violence, domestic violence, and stalking must –
 - “Be conducted by officials who, at minimum, receive **annual** training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability”
- We will discuss safety for all parties – not just victims – and our community.

Where does Clery fit?

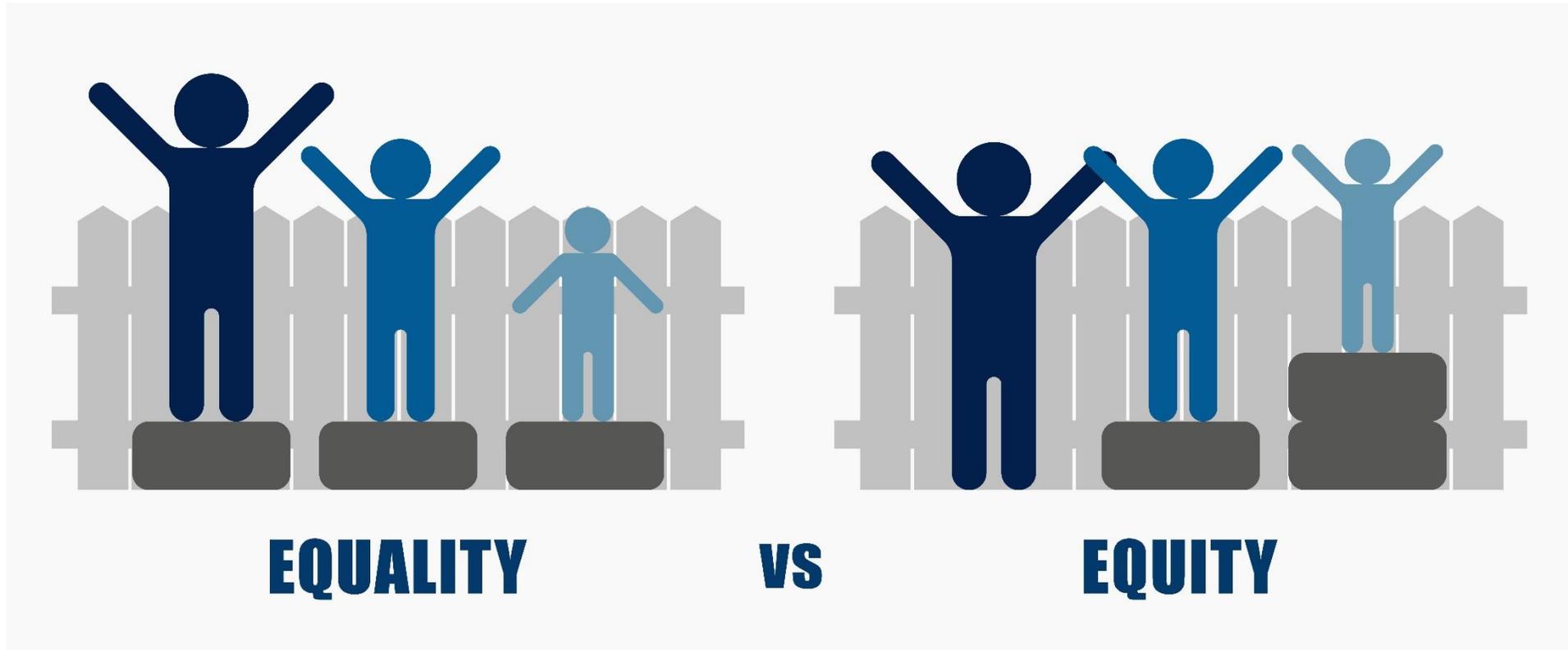
- Title IX policies handle sexual assault, dating violence, domestic violence, and stalking when:
 - The complainant is currently participating or attempting to participate in your education program or activity and
 - The conduct occurred in your education program or activity and
 - The conduct occurred against a person in the United States
- If any one of these things is not true, the case is subject to “mandatory dismissal” from the Title IX process (and likely into your Investigative Resolution Process) – but if the case is addressed through another policy, the Clery Act still applies.

Training Themes

- “Follow your policies. Follow your process.”
- Monitor the emotional temperature of the case.
- Provide regular updates.
 - “If they don’t hear from you, they’ll assume that you’re doing nothing or actively working against them.”
- Maintain neutrality
 - Be mindful of any language that might suggest predetermination (e.g. use of terms like “perpetrator” or “victim”)

Title IX Themes and Statistics

Title IX is an Equity Statute



Overview of Themes



Access



Protection



Transparency



Evidence



Improvement



No Bias

Themes - Access

- What we do for one, we do for the other
- Title IX is meant to ensure ACCESS to your programs and activities, regardless of sex
- "What we do for one, we do for the other"
 - Or at least consider whether it is appropriate under the circumstances
- Why are you treating someone differently?
 - Can you put your rationale in writing
 - If you can't - reconsider
- Policy considerations related to ACCESS
 - Supportive Measures

Themes – Duty to Protect

- All members of your campus community
- Institutions have an obligation to protect their campus
- “They are all our students, Melissa.”
- Policy considerations related to Protection:
 - Supportive measures
 - Training & Education on Campus
- What about interim emergency measures?
 - Any action by a recipient that results in changes or removal of access to education for respondents will require an appeal process for respondents to respond

Themes - Transparency

- Help Others Trust the Process
 - **TRANSPARENCY** is key to trusting the process.
 - Know your grievance process
 - Help others understand your process
 - Policy considerations related to Transparency:
 - Access to training materials
 - Providing an evidence packet in a case

If participants don't know what is happening, they will assume nothing is happening.

Themes – Evidence Based Decisions

- Outcomes must be based on EVIDENCE.
- “Don’t weigh your gut.”
- Make reasonable inferences and credibility determinations, but be mindful of implicit bias, stereotypes, and using our own behavior as a yardstick.
- Policy considerations related to Evidence:
 - Providing an evidence packet
 - Allowing the parties to engage with the evidence and respond to let you know what’s missing, what’s wrong, etc.

Themes – Always Room for Improvement

- Always be working to IMPROVE:
 - Yourself as a neutral
 - Your campus as a healthy and fair place to be
 - Your policy to provide a better process informed by case law, regulations, guidance, and experience
 - Your resources for all involved
- Policy considerations related to Improvement:
 - Training & Education
 - Recognizing the processes that do and do not work for your community

Themes – Avoiding Conflicts of Interest and Bias

- Always be working to avoid actual or perceived:
 - Conflict of interest
 - Bias
- Institutional Duties and Interests vs. Personal interests
 - Take periodic self-inventories
 - Be mindful of your activities, involvements, social media, etc.
 - Check your biases constantly, and talk with others to gain perspective and ensure you remain neutral
- Policy considerations related to No Bias
 - Training & Education
 - Providing evidence packets

Sexual Assault

- “An offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation”
 - Your policy includes:
 - Rape (which is a combined definition for purposes of your policy)
 - Fondling
 - Incest
 - Statutory Rape

Sexual Assault: Rape – Your Policy

Forcible Rape:

- o Penetration,
- o no matter how slight,
- o of the vagina or anus with any body part or object, or
 - o oral penetration by a sex organ of another person,
- o without the consent of the Complainant.

Sexual Assault – Fondling: Your Policy

Forcible Fondling (**New as of July 2025**)

- The intentional touching
- of the clothed or unclothed body parts
- without consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

AND

- The forced touching by the victim
- of the actor's clothed or unclothed body parts,
- without consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Sexual Assault – Incest: Your Policy

- Incest: 1) Non-forcible sexual intercourse, 2) between persons who are related to each other, 3) within the degrees wherein marriage is prohibited by Wisconsin law.

Sexual Assault – Statutory Rape: Your Policy

- Statutory Rape: 1) Non-forcible sexual intercourse, 2) with a person who is under the statutory age of consent of 18.

Sexual Assault Data: Prevalence Data in Higher Ed

- More than 50 percent of college sexual assaults occur in August, September, October, or November, and students are at an increased risk during the first few months of their first and second semesters in college.
- For the 2014-2015 academic year, a large portion of incidents reported by females occurred in September or October, particularly for first year students.
- Statistic one: “Rape, Abuse & Incest National Network (RAINN), Campus Sexual Violence: Statistics.” RAINN Sourced from: “Campus Sexual Assault Study, 2007; Matthew Kimble, Andrada Neacsiu, et. Al, Risk of Unwanted Sex for College Women: Evidence for a Red Zone, Journal of American College Health (2008).”
- Statistic two: Campus Climate Survey Validation Study (CCSVS), 2015

Data and Statistics: Impact Data

(1 of 2)

- Approximately **70 percent** of rape or sexual assault victims experience moderate to severe distress, a larger percentage than for any other violent crime.
- U.S. Dep't of Justice, Bureau of Justice Statistics, *Special Report: Socio-emotional impact of violent crime (2014)*.

Data and Statistics: Reporting Data

- About **65 percent** of surveyed rape victims reported the incident to a friend, a family member, or roommate but only **ten percent** reported to police or campus officials.
- U.S. Dep't of Justice, Office of Justice Programs, Office for Victims of Crime, *2017 National Crime Victims' Rights Week Resource Guide: Crime and Victimization Fact Sheets* (2017).

Sexual Assault: Common Concerns

- Be cautious of questions that appear to blame the party for what happened, or they will shut down and stop engaging.
- Better options:
 - Explain why you need information on alcohol/drug use, what the party was wearing, etc. before you ask the questions.
 - Explain the concept of consent to the parties so that they can understand why you need detailed information on the sexual encounter.
 - Check your tone constantly so as to encourage continued sharing of information.

Dating Violence

- **“Dating Violence”** means **violence** committed **on the basis of sex** by a person who **is or has been in a romantic or intimate relationship with the complainant**. The existence of such a romantic or intimate relationship is determined by the length of the relationship, the type of relationship, and the frequency of interactions between the individuals involved in the relationship.

Domestic Violence

- Domestic Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin or
 - g. 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 Wisconsin.

Common Concerns in IPV Situations

- Supportive measures are important to ensure the parties can be separate and feel safe
- Retaliation is often a critical concern – parties may still have a relationship
- Consider whether parties need contingency plans as part of their supportive measures if safety concerns arise
- Balancing third-party reports of violence and safety concerns with complainant's refusal to participate in the process
- No contact order violations as continued evidence of underlying policy violation allegation
- It is not uncommon for both parties to be complainants and respondents. Watch for this scenario and ensure you provide appropriate intake for both.

IPV: Questions

- What is the relationship between the parties? Do they agree?
- What is the act of violence described?
- Under what circumstances did the act of violence occur?
- If the situation involved mutual combat:
 - Was one person the initiator and the other acting in self defense?
 - Should an investigation be opened against the complainant as well, if there was violence alleged to have been completed by the complainant?

Stalking

- “Stalking” is engaging in a course of conduct directed at a specific person on the basis of sex that would cause a reasonable person with similar characteristics under similar circumstances to:
 - Fear for the person’s safety or the safety of others; or
 - Suffer substantial emotional distress.
- To qualify under Title IX, it must be sex-based stalking. (30172 fn. 772)

Stalking: Course of Conduct

- Under VAWA regulations: means two or more acts, including, but not limited to, acts in which the stalker 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.

Stalking: Reasonable Person

- Under VAWA regulations, for purposes of the stalking definition: means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking: Substantial Emotional Distress

- Under VAWA regulations means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking: Common Concerns

- Clearly defined no-contact orders can be helpful to keep the parties apart and help calm the situation.
- Complainants are often concerned that the respondent may not respect no-contact orders, especially if they have already asked the respondent to stand down. Think of ways to help address this concern through supportive measures.
- Stalking after a no contact order may constitute additional instances of the underlying alleged policy violation, which may mean you need to run it through your Title IX process.

Stalking: Considerations

- Outline a timeline of the “course of conduct” aspect of the allegations
- Cases are often documentation-heavy
- May have multiple contacts and multiple witnesses that must be considered
- Have you asked questions of parties and witnesses regarding the potential impact of the conduct on the complainant?

Trauma Informed Approaches

Role Reminders

- If your friend tells you something terrible happened to them, it's not your job to interrogate them or figure out what happened.
 - In this situation, be supportive and listen.
- If you are in your role as a Title IX team member and someone tells you something terrible happened to them, it might *actually be your job* to ask detailed questions and make a determination regarding a policy violation.
 - The institution still provides support to people during the process.
 - That being said, you may still be required to ask tough questions and make tough decisions.

Goal: Don't Make This Any Harder

- The process is difficult.
- Telling your story is difficult. Telling your story multiple times is difficult.
- Reliving trauma is difficult.
- Being accused of something is difficult.
- Everyone brings their own burdens into the process. They also bring their own history into the process—including past trauma that may be triggered.
- Our goal is to get the best evidence on the table for consideration when a decision is made. How can we do that when everyone we talk to may be traumatized?

First: Make No Assumptions

- Treat everyone as though they may be traumatized, so you aren't picking and choosing who you think may be responding to trauma—and then subconsciously holding them to different standards.
- Different people who undergo trauma may present and behave differently. Some may cry, or be angry, or be calm. This makes demeanor a poor indicator as whether someone is traumatized, particularly because people can display all of these traits for other reasons.
- Title IX Coordinators - don't assume only those who are crying or angry need supportive measures!

Second: They Are Not You

- There is no “right way” to behave.
- If you think there is a “right way” to behave, you are imposing your own values and judgments—informed by your background—on others, when you should be neutral.
- A value judgment is different than evaluating the plausibility of behavior. Compare:
 - Complainant cried during the sexual encounter. (plausible)
 - Complainant said nothing during the sexual encounter. (plausible)
 - Complainant had a Facetime conversation with a third party during the sexual encounter, but that person had no indication that Complainant was engaged in sexual activity. (Huh? We have questions.)

Third: Neurobiology of Trauma Is A Thing

- Individuals who experience a traumatic event may have difficulty processing the event as it is happening and after it is happening.
- Trauma may make it difficult to sequence events in a chronological order.
- People can have these same issues for many other reasons not related to trauma.
- Signs of trauma \neq policy violation
- No signs of trauma \neq no policy violation
- Being aware of the effects of trauma gives us a broader definition of what behavior might be plausible in a particular situation.

So... What Does This Mean, Practically?

- Make interviewees comfortable and offer to take breaks when needed.
- Give everyone the space to tell their own narrative in their own way.
 - “What happened? And then what happened? What happened next?”
 - “Tell me more about...”
- Once the person has completed their monologue, ask follow-up questions for clarification.
- If details are still unclear, ask specific yes/no questions. (Write down the question and the answer.)
- When someone has trouble giving details, sensory cues are sometimes helpful.

Emotions During Interviews

- Individuals may experience a range of emotions being interviewed, including sadness, frustration, and anger (maybe at you!). It's normal.
- The goal is to keep the emotional temperature turned down to the point that the interviewee feels able to engage and provide information.
- Recognize that certain topics may trigger negative responses (e.g. what someone was wearing, alcohol/drug use). Introduce these topics by explaining why the information is needed in the context of your investigation.
- If an individual's emotions become a barrier, consider taking a break, explaining why you are asking what you are asking, and restarting.
- Main goal: keep people talking and sharing their stories.

First Interview vs. Second Interview

- The first interview is space to tell a person's story. Get all the details. Be curious.
- Often, a second interview may be necessary where other information significantly contradicts that person's story—which can be hard for that person to hear. Again, get all the details and be curious.
- Always walk into an interview assuming there are logical explanations for everything. This keeps you asking questions, and it keeps people answering them (because you don't maintain an accusatory tone!).
- Above all – keep your interviewees talking. The more information they give, the more helpful it will be to your decision maker.

Trauma and Decision Making

- Focus on corroboration, consistency, and plausibility.
 - Is there anything else in the file that backs up this assertion?
 - Has the person been consistent over time (recognizing that it is hard to say exactly the same words when telling the story multiple times)?
 - Is the person's story plausible?
- Avoid making decisions based on demeanor, as there are too many reasons—including cultural norms—that may affect how some people behave and how you perceive it.
- These are good practices regardless of whether anyone may be traumatized.



Credibility, Incapacitation, Consent

- Gather facts to assist decision-maker
- Ask questions to test memory
- Identify where the witness may corroborate or contradict their testimony, or other witnesses, and physical evidence
- Be sensitive to potential trauma experienced by both parties and all witnesses (related to the case, or not)

Consent: Definition

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

When Consent is at Issue

- Consider the wording and tone of your questions
- Utilize “freeze frame” strategy
- Ask questions about what happened to determine whether there was unspoken consent
- Ask questions to identify whether alcohol/drugs may have played a role regarding consent

Evidence of Consent?

- What words or actions did complainant use to convey consent/non-consent?
 - Must examine sexual contacts, acts in detail
- Was complainant capable of consenting? (Asleep? Passed out? Not understanding what was happening?)

More Evidence of Consent?

- Who took off what clothes?
- Who provided a condom, dental dam, etc.?
- Who initiated physical contact?
- Who touched who where?
- “They gave consent” = What did you say to them, and what did they say to you?

Incapacitation: Definition

- Incapacitation:
- A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs.
- It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated.
- “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
- Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

Physical Effects

- Some policies list physical effects that are not solely indicative of, but may indicate incapacitation:
 - Conscious or unconscious?
 - Vomiting?
 - Slurred speech?
 - Difficulty walking?
 - Difficulty holding a coherent conversation?

Incapacitation: Key Issues

- Timeline:
 - What did complainant ingest and when?
 - What did respondent know about what complainant ingested?
 - Who saw complainant and when, and what symptoms of incapacitation did complainant show at the time?
 - What did respondent have the opportunity to witness regarding symptoms of incapacitation shown by complainant?

Productive Questioning on Gauging Intoxication

- Difficult to gauge:
 - How trashed were you?
 - On a scale of 1-10, how drunk were you? [DO NOT USE]
 - Why did you get that drunk?
- Preferable approach:
 - Explain why you need the information
 - Don't place blame
 - "They were drunk." → "What did drunk look like?"
 - "Were you having any difficulties _____?"

Any Drugs?

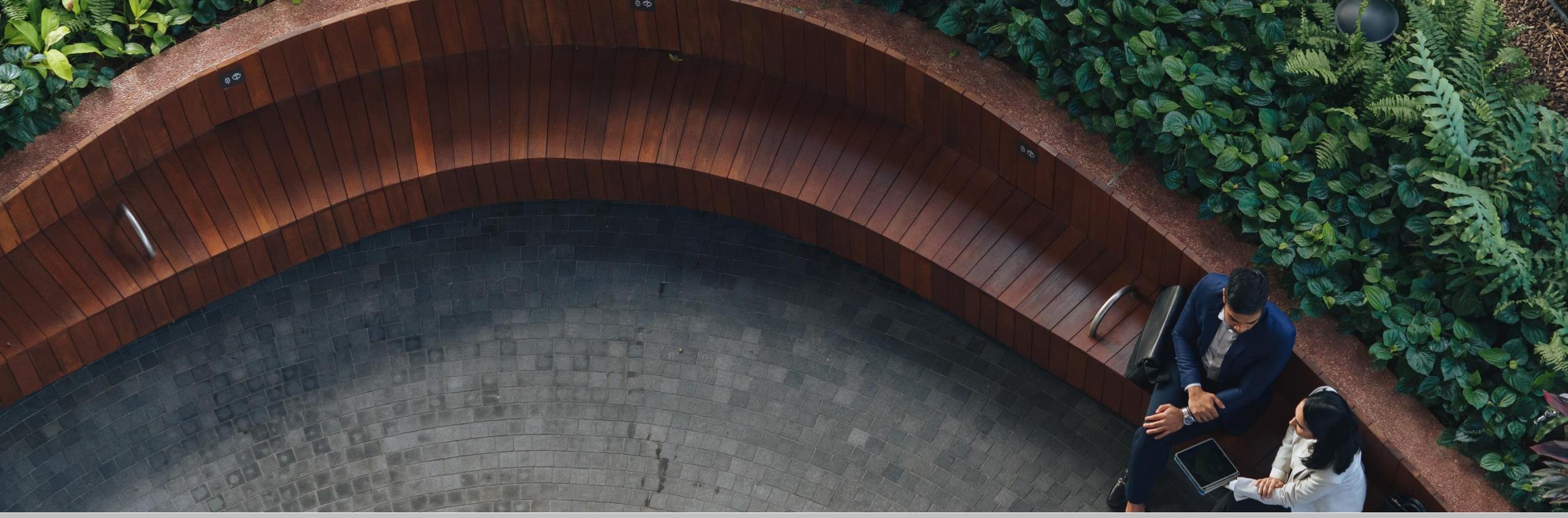
- Did they take any medications that might have interacted with alcohol or otherwise affected their level of intoxication?
- Did they take any drugs that may have altered their ability to stay awake, understand what was happening, etc.?
- What, how much, and when?
- Remember: amnesty

Memory Loss ≠ Incapacitation

- Alcohol can interfere with the ability to form memories
- May be a complete lack of memory or fragmentary blackouts
- Listen carefully to the way they describe what they remember.
- Does it fit with what you know about intoxication and recall?

Data for your Timeline

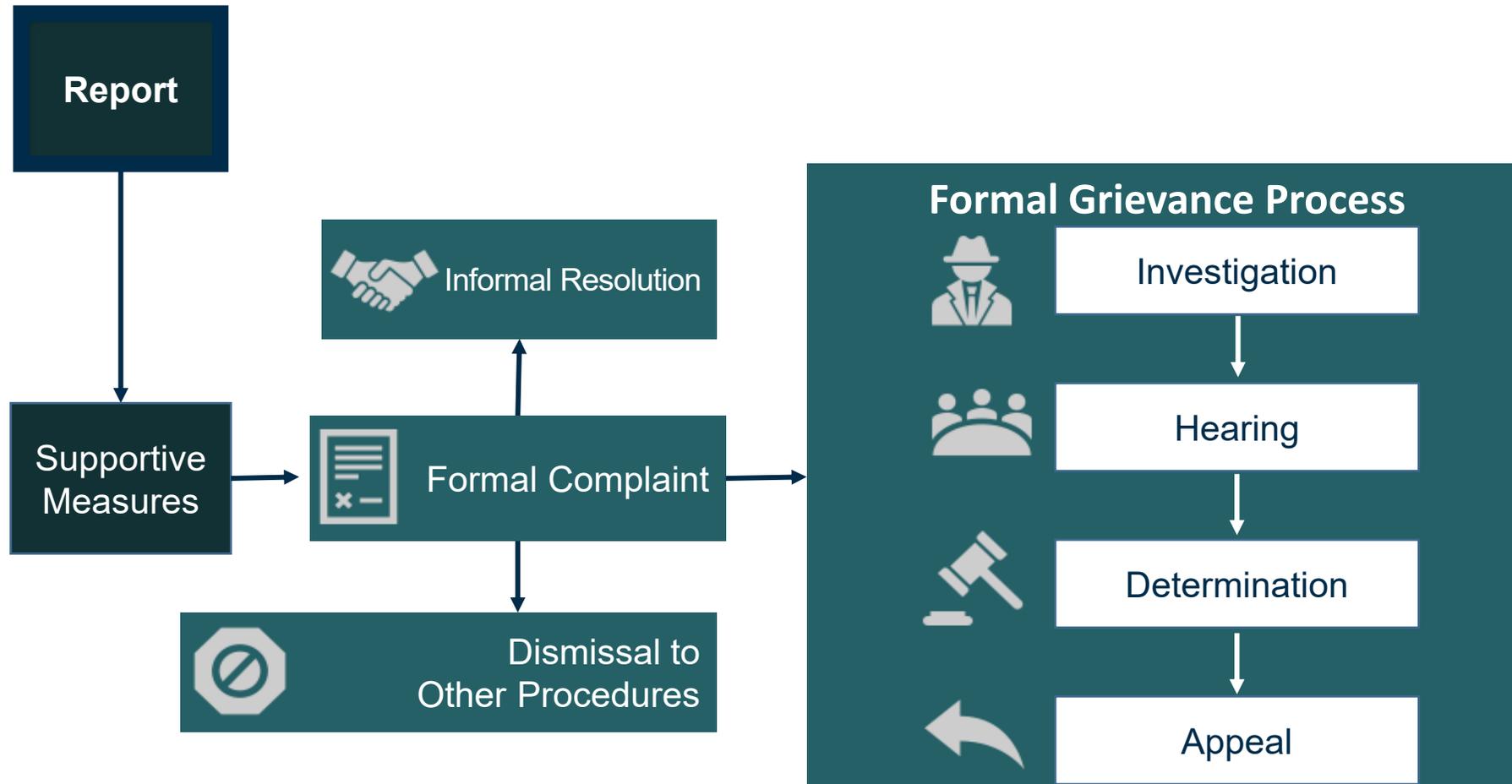
- Text messages unrelated to the incident itself, but that give time stamps and other valuable information
- Videos/pictures of parties with time stamps
- Card swipes for the parties and anyone with the parties on the evening of the incident
- Security footage



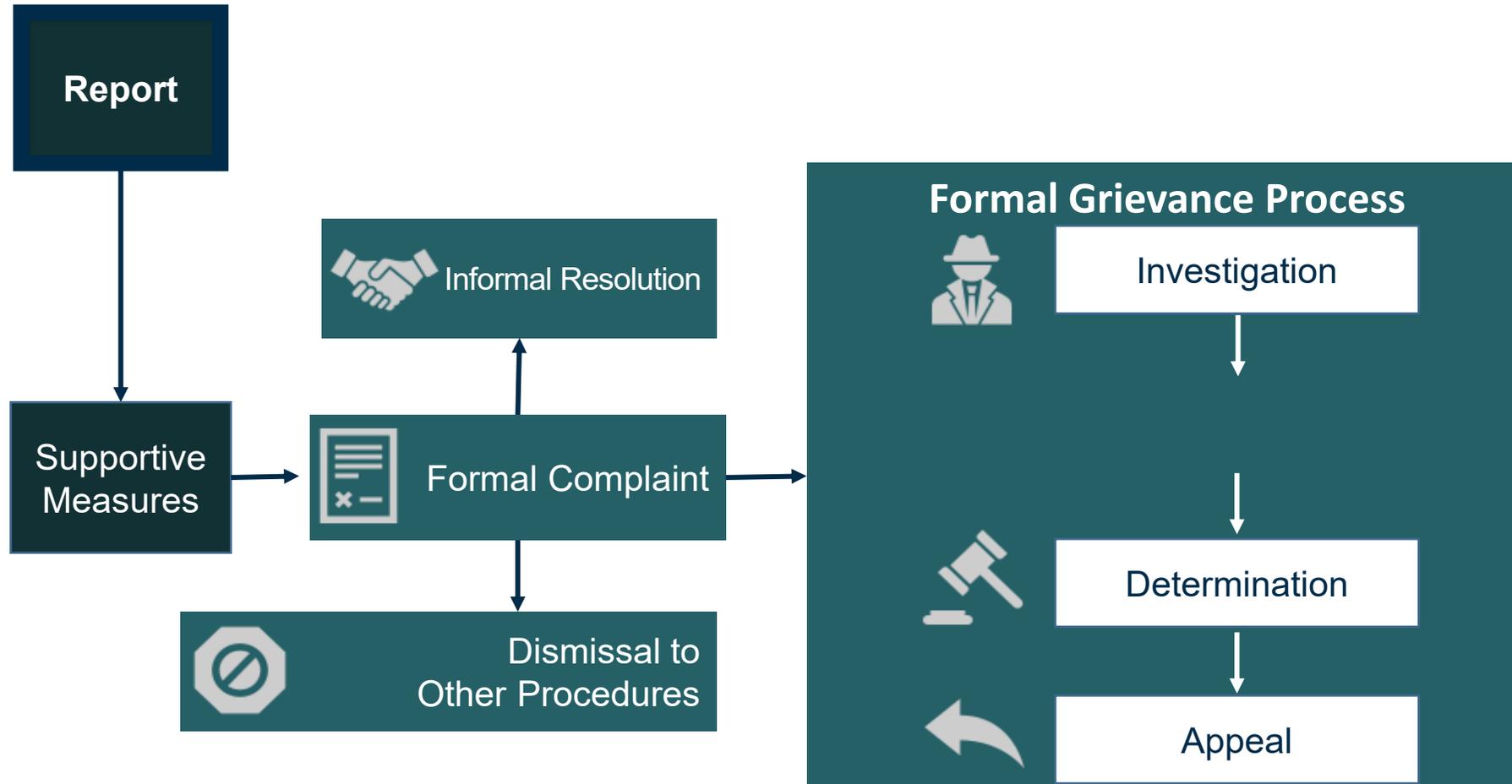
Hypothetical Packet: Consent

Overview of the Grievance Process

Overview of the Process – Title IX



Overview of the Process – NOT Title IX



A Report versus a Formal Complaint

- Report – Any information received regarding potential policy violation
 - Result of report: Coordinator sends an email to the potential reporting party, inviting further discussion
 - Supportive measures are offered
- Formal complaint – A written document that:
 - Is filed by the reporting party or signed by the Title IX Coordinator
 - Alleges sexual harassment against a responding party
 - Requests that University investigate the allegation of sexual harassment

Role: Coordinator

- Conducts intake regarding new reports
- May determine it is necessary to proceed with a process even if complainant does not wish to sign the formal complaint
- Ensures both parties have access to supportive measures
- Monitors process to regarding policy compliance
- Assists with questions and concerns about potential bias or conflict of interest
- Maintains a neutral status throughout the procedures

Role: Investigator

- Offers the opportunity to parties and witnesses to sit for an interview, submit written statements
- Allows parties to submit witness lists and questions for particular parties or witnesses
- Collects evidence from parties, witnesses, and other sources (e.g. security footage, police records)
- Prepares evidence file for review and response by the parties
- Reviews the responses from the parties and conducts follow-up investigation as necessary
- Prepares final investigation report
- Ensures that if new allegations arise, the parties are notified as the scope of the investigation expands
- Maintains a neutral status throughout the process
- [Makes decision if NOT Title IX]

Role: Decision-Maker

- Review the evidence file, final investigation report, and responses of the parties
- Consider what is missing, what is unclear, and what elements are disputed
- Ask relevant questions at hearing, adjusting as other questions are asked
- Maintain neutrality (tone, body language, and word choice)

Decision-Maker: Your Goal

- Have enough information on every element of every charge so that you can render a decision by a preponderance of the evidence.
- Have enough information to make decisions regarding the credibility of the parties and witnesses.
- Make relevancy determinations after every question asked by the advisors.
- Maintain decorum at all times, by all participants.

Role: Advisor

- Reviews the evidence file, final investigation report, and responses of the parties.
- Assists their party with preparation of relevant questions for hearing.
 - Goals is to assist the Decision-Makers with understanding the case from their party's perspective.
- Asks relevant questions at hearing, adjusting as other questions are asked.
- Is not neutral, as the role is inherently biased towards their party, but still maintains decorum standards at all times.

Role: Appeals Officer

- Reviews the evidence file, final investigation report, responses of the parties, and evidence at hearing
- Reviews appeal documents
- Uses the bases for appeal in the policy to determine whether the standard has been met
- Prepares a written decision explaining the outcome
- Maintains neutrality and is careful not to predetermine the case

Role: Informal Resolution Facilitator

- May or may not review the file (it may not be available yet)
- Usually meets separately with each party and their advisor
- Helps the parties reach a mutually acceptable agreed outcome that is also acceptable to the University for enforcement
 - If no agreement is reached, that's OK too. The investigation would continue at that point.
- Helps to document agreement and obtain signatures of the parties

Overview of the Hearing Process

Good Practices for Hearing

- Pre-hearing conferences
 - Identify witnesses to be called
 - Determine whether there are any evidentiary concerns
- Tech-check upon signing onto hearing
- Script for hearing
 - Rights and Responsibilities
 - Expectations
 - Schedule and Logistics
 - Relevancy Reminder

A Note on Relevancy Determinations

- After every single question asked by an advisor, the Decision-Maker must make a relevancy determination before a party or witness (including the Investigator) can answer the question
- Generally, questions are relevant if they help the Decision-Maker understand if a violation was more or less likely to have occurred

Impermissible Questions

Questions that tend to come up that are NOT relevant by definition:

- Prior sexual history (sexual predisposition or prior sexual behavior) of the Complainant is NOT relevant unless:
 1. It is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 2. It is offered to provide evidence of prior sexual history between the Complainant & Respondent to prove consent.
- Privileged information (attorney-client, counselor or spiritual leader communications)
- Medical records of a party without the party's written waiver

Remember: Credibility Factors

- Credibility is determined based on a “totality of the circumstances.” Factors to consider:
 - Witness statements
 - Detail and consistency of accounts
 - Corroborating evidence or the lack thereof, if it should logically exist
 - Information about how the reporting person acted following the incident, both immediately and over time
 - Information about whether the complainant told others about the incident soon after it occurred
 - Other contemporaneous evidence of accounts
 - Credible reports of similar incidents by the respondent (careful here!)
 - Whether the reporting person has been shown to make false reports (again, careful here!)

Questions?

Understanding the Elements and Definitions

What Are the Elements of the Prohibited Conduct?

- **Start with the text of the definition.**
 - Are there defined terms in the definition that exist in the Policy? (For example, the definition of Coercion or Incapacitated?)
 - Look for “or” and “and” – Do you need every element? Some?
- **Identify each element and nested elements.**
- **Review: What information do I need to gather?**
Act: Create a list of questions and seek information.
- **Ask: Do I have information relevant to each element?**
Act: Seek information from .

Let's test this out (1 of 5).

- Title VII definition of sexual harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (a) submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, or (b) unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Let's test this out (2 of 5).

- Title VII definition of sexual harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (a) submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, or (b) unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Let's test this out (3 of 5).

- Title VII definition of sexual harassment:

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Let's test this out (4 of 5).

- Title VII definition of sexual harassment:

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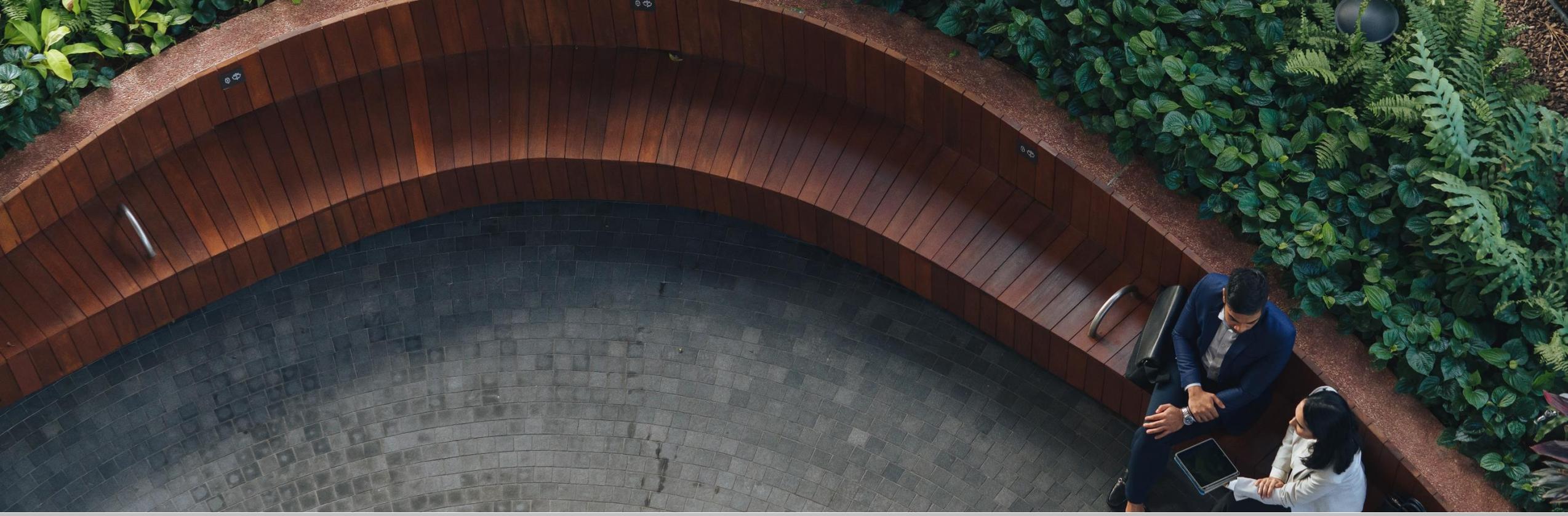
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Impact Matters

- Collect information on the impact the behavior has had on the reporting party, particularly with regard to how they are able to interface with your educational program or activity
- This impact on the reporting party goes directly to the elements of certain types of sexual harassment and is a necessary part of your analysis
- Don't forget to ask about impact!
- The impact on a responding party is not an element of any policy violation and typically is not relevant for purposes of our analysis.



Hypothetical Packet: Chuck and Mary Sue

- Review the HYPO and ANALYZE: (1) Under Definition of Title VII Sexual Harassment; and under (2) Definition of Title IX Unwelcome Conduct

Thank You

Bricker 
Graydon