

Title IX Investigator Training

February 7, 2025



Today's Agenda

- Title IX News
 - Scope of Title IX
 - Overview of Carroll University Policy & Process
 - Steps of Investigation & Report Writing
- *We will break midway through*

Before we get started...

- Have a question? Ask! Others probably are wondering as well
- Aware of your own experiences and thoughts
- Take breaks whenever needed & take care of yourself

Title IX Team

Coordinator & Deputies

Alex Smith

Amanda Stevens (Employees)

Elizabeth Brzeski (Students)

Lindsay Schultz (Athletics)

Appeals Officer

Nate Dehne

Decision Maker

Hired Out



Investigators &

Informal Resolution Facilitators:

Charleen Schueller

Barbra Beck

Jeffrey McNamara

Megan Harris

Jacob Eisch

Jenn Dobby

Steve Stabb

Title IX Updates

- The U.S. Department of Education issued new Title IX regulations to go into effect starting August 1, 2024.
- Carroll University, along with hundreds of other institutions, has been under an injunction since July 2024.
- Carroll has maintained policies and procedures that comply with the 2020 Title IX Regulations.
- **UPDATE** – As of January 9, 2025, the 2024 regulations are no longer in effect for any K-12 or higher education institution in the United States.

Scope of Title IX

Scope of Title IX – Sexual Harassment

- Sexual Harassment – conduct on the basis of sex that satisfies one or more of the following
 - Quid pro quo – An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - Unwelcome conduct – 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 University's education program or activity; or
 - Clery crimes – Sexual assault, dating violence, domestic violence, or stalking

Scope of Title IX - Sexual Assault

- Sexual Assault (Defined in Carroll's Sexual Misconduct Policy)
 - Rape – non-consensual penile/vaginal penetration
 - Sodomy – non-consensual oral/anal penetration
 - Sexual Assault with an Object (non-consensual penetration with object/instrument of genital or anal opening)
 - Fondling – Must be done "for the purpose of sexual gratification"
 - Sex Offenses
 - Incest – non-consensual sexual intercourse between persons who are related
 - Statutory rape – non-forcible sexual intercourse with a person who is under the statutory age of consent of 18

Sexual Harassment – Dating & Domestic Violence

- Dating Violence – violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - Existence of relationship determined based on
 - length of the relationship
 - type of relationship
 - frequency of interaction between the persons involved in the relationship.
 - Includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Domestic Violence - violence, on the basis of sex, committed by
 - a current or former spouse or intimate partner
 - by a person with whom the Complainant shares a child
 - by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner
 - by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin
 - 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.

Sexual Harassment - 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

NOTE – Must be sex-based stalking to qualify under Title IX. If not sex-based, would be dismissed to a different policy/process (Student Conduct, HR)

Sexual Harassment – Stalking Under VAWA Regulations

Course of Conduct

means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable Person

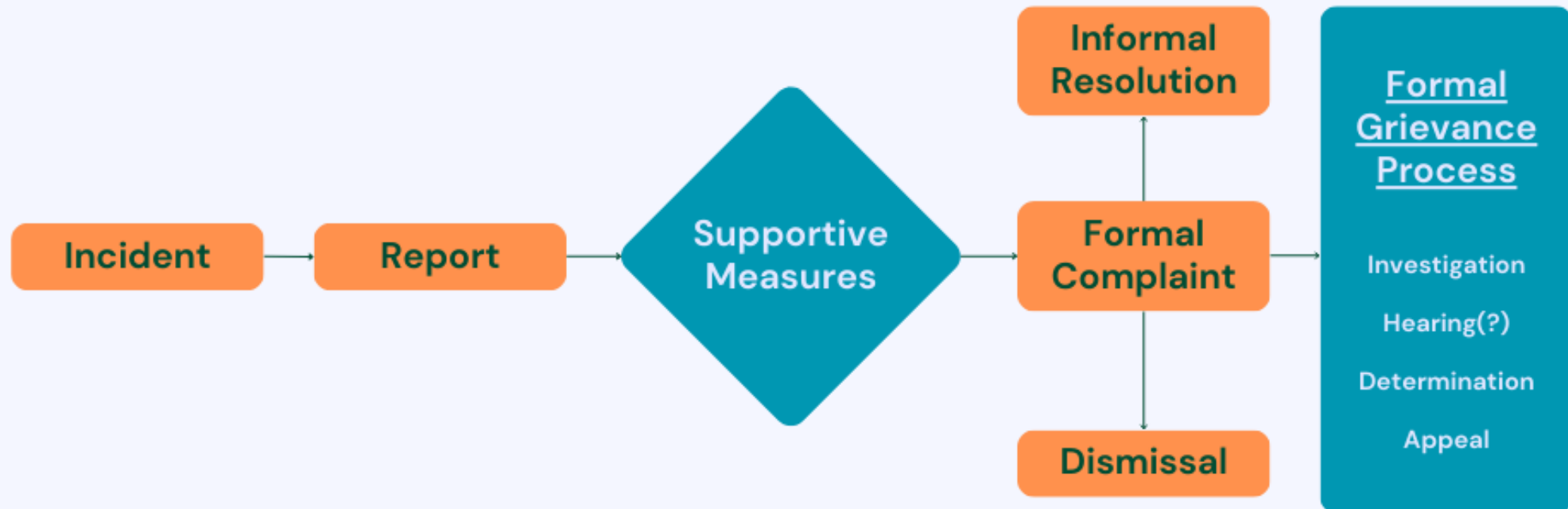
means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress

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

Title IX Policy & Process

Title IX Process



Formal Complaint Process

- A formal complaint is different than a report of sexual misconduct
- Filed by complainant OR signed by Title IX Coordinator
- Alleges prohibited conduct against a respondent and requests the University to investigate
- Once a formal complaint is filed, the following could occur
 - Informal Resolution
 - Formal Grievance Process (Investigation w/ Hearing)
 - Dismissal
 - Formal Complaint Withdrawn

Formal Grievance Process - Reminders

- We must follow our process as outlined in our policy
- We must treat complainant and respondent equitably
 - For example, both have access to supportive measures
- No disciplinary sanctions against the respondent can occur unless the grievance process has been completed and a determination made (presumption that respondent is not responsible)

Formal Grievance Process – Notice of Allegations

- First step to start the investigation process
 - At this point we typically have named our two investigators
- Notice is provided to both complainant and respondent simultaneously
- Notice of Allegations Outlines:
 - Grievance Process and Informal Resolution Process
 - Allegations
 - Typically includes the formal complaint
 - Right to have an advisor
 - Sanctions if founded

Investigation Process

Responsibilities of Investigators

Gather & Organize all relevant evidence

- Follow the formal grievance process
 - Title IX Coordinator provides guidance on process and resources
- Interview complainant and respondent
 - This can happen multiple times
 - Equal opportunity to collect names of witnesses and provide evidence
- Notetaking and creation of interview reports
- Creation of investigation report to be reviewed by both parties and utilized by decision maker
- Attend hearing held by decision-maker to answer any questions regarding the report and investigation

First Step – Review & Strategize

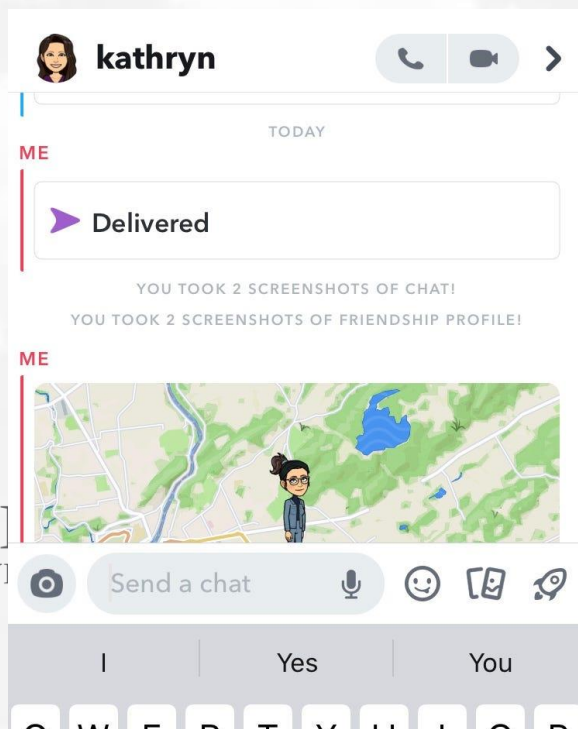
- Any notes and information from Title IX Coordinator
- Notice of Allegations
- Title IX Policy
- Scope of Investigation
 - What happened? What is agreed upon or disputed?
- Evidence List
 - Some may have been provided by complainant, or you may create a list of possible evidence you want to inquire about
- Witness List
 - Who and Why

Collecting Evidence

Examples of Evidence:

Electronic communications, security info, pictures, videos, police reports, prior complaints

- Written permission is needed to obtain/include privileged and medical information
- Evidence related to complainant's sexual predisposition or prior sexual behavior is not relevant
 - Unless offered to prove that someone else committed the alleged conduct or to prove consent
- **This does not apply to the respondent**



Witness List & Planning Ahead

- Create list of questions in advance of meeting with complainant, respondent, or witnesses
- Consider what information the individual may have and why they may have it
- Role of each investigator
 - Note taker vs Asking Questions
 - Combination?
- Prepare for Interview:
 - Know the allegations
 - Start a log to track investigation
 - List of questions
 - Evidence you may need to reference or show
 - Title IX Policy
 - Non Academic Release Form if not already on file
 - Mode of recording and transcription
 - Work with TIX Coordinator

Notetaking Tips

- Use symbols in margins for important info such as follow up questions (?), *(evidence), W (witness)
- Use initials or C, R, W1, W2, W3
- Record important quotes or the time they were said
- If only recording audio, is there specific actions you want the individual to describe out loud
- Remember – it is being recorded! You do not need to write down everything
- Tips from past investigations?

Interview Process

- Title IX Coordinator will work with you to schedule initial complainant and respondent interviews
- Investigators schedule interviews moving forward and communicate with parties and witnesses
- Title IX Coordinator will assist with individuals who do not respond and provide guidance for wording

Interview Flow

- Set the stage
 - Introduction, why they are here, ability to take breaks, any questions, and review retaliation policy
 - Time set aside for interview
 - FERPA Release & Advisors
- Start big picture or broadly
 - Review the incident
 - Walk us through your day leading up to the incident
 - In your own words, what happened?
- Follow your list of questions... or don't!
 - Skip around as comfortable to what makes sense or revisit questions that need further clarification
 - This is where note taking is important
 - Freeze!
 - Freeze on a moment and describe details
 - Think of your 5 senses
 - Describe the set up of the room
 - How close were you to the other person
 - Tone and body language observed

Reminder About Advisors

- Parties are entitled to an advisor of their choice, who may be an attorney
 - Encourage parties to consult with their advisor, and to use them to draft statements, etc., if they find it helpful
- Advisors can review documents in the same manner that the parties do
- Advisors should not be answering questions regarding the alleged conduct in interviews
- Encourage advisors to help with if breaks are needed or questions are unclear
- Must have signed FERPA release!

Note on Credibility

- You are gathering facts for the decision-maker
- Ask questions to test memory or if the response changes
- Are witnesses corroborating or contradicting themselves, other witnesses, or the evidence provided?

REMEMBER – Memory errors alone do not necessarily diminish witness credibility. We must be sensitive to potential trauma and how that impacts individuals.

Consent in Question

Consent Construct:

1. Was **force** used by the Respondent to obtain sexual or intimate access?
 - Coercion included
2. Was the Complainant **incapacitated**?
3. What **clear words or actions** by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

If you can answer **YES** to any of these three questions, there was not consent.

Before ending the interview

- Any final questions
- Request any potential evidence they have access to
- Review confidentiality and retaliation
- Review next steps and contact information

Post Interview Checklist

- Update investigation log
- Review your notes and make corrections or discuss with fellow investigator for clarification
- Update witness and/or evidence list
- Write down questions you thought of to ask others
- Complete interview summary and share with individual interviewed (10 days to review)

Interview Summary

- After each interview, investigators should review notes and recording to create an interview summary
- Use quotes when possible
- Include main topics or questions asked and answered
- Interview summaries many of times become the bulk of your report, use them in your favor!
- Your work now will save you time when drafting the investigation report

Investigation Report

- Can be written once investigation has concluded
- Interview summaries are incredibly helpful for this!
- Utilize template
- Summarize **facts**
- **Parties will receive a DRAFT report and then a FINAL report after feedback is provided**

Review Investigation Template

Hearings

- Must provide a live, cross examination hearing
- Parties **MUST** have an advisor and University must provide advisor if the party does not have one
- Only advisors ask relevant cross- examination
 - Complainant and Respondent to not ask each other questions directly
- It can be virtual as long as recorded and transcribed
- Hearing Officer will oversee the process

Hearings & Decision-Making

- Make a finding
 - Decision-maker determines what occurred based on the standard of evidence
- Making a Final Determination
 - Decision-maker determines whether what occurred is a policy violation applying the standard of evidence
 - Consider each allegation individually for each Respondent
- Standard of Evidence
 - Carroll uses preponderance of the evidence standard

Standard of Proof - Preponderance

50% and a feather

More likely than not

Are you persuaded by all the relevant evidence that a violation occurred and the Respondent is responsible for the violation?



Standard of proof does not increase with the severity of the incident/charges

Written Determination

- Decision Maker will make a written determination that includes:
 - Procedures
 - Findings of fact
 - Conclusions
 - Statement of and rationale for each result of each allegation, including determination of responsibility
- Procedures and basis for appeal by both parties
- Written determination is sent to both parties simultaneously

Appeals

- Appeal option must be offered to both parties
- Bases of Appeal:
 - Procedural irregularity that affected outcome
 - New evidence not available earlier
 - Conflict of interest or bias by Coordinator, investigator, and/or decision-maker that affected the outcome
- Decision-maker from hearing cannot be the decision-maker for appeal
- Provide equal opportunity to submit statement in support of or challenging determination made
- Must issue a written decision with result of appeal and rationale

Questions?