

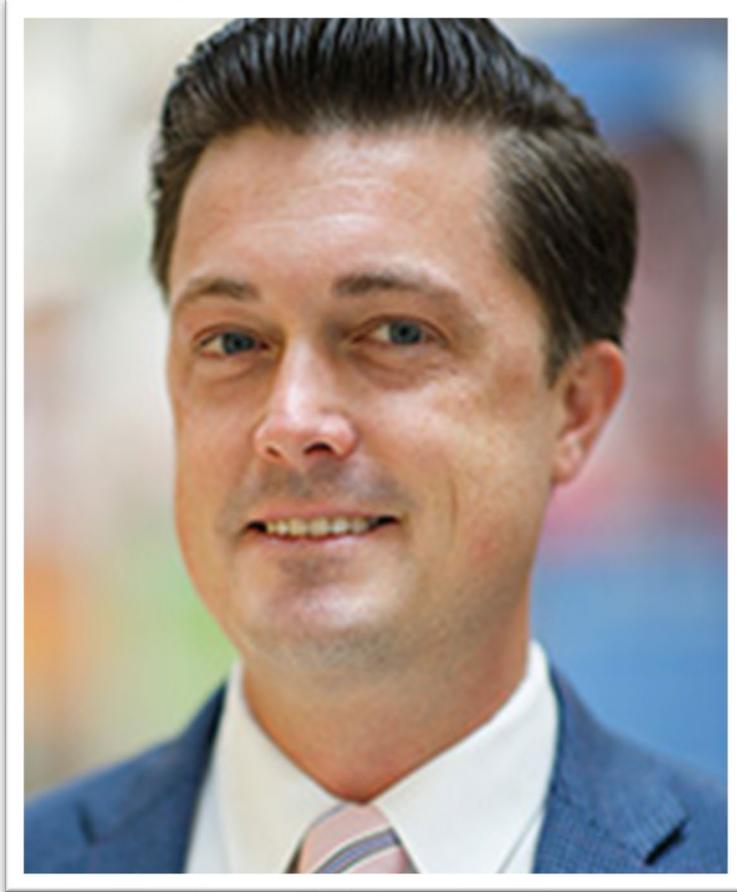


The State University
of **New York**

TITLE IX COORDINATOR TRAINING

Day 1

I N T R O S



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DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.



DAY 1 AGENDA

TITLE IX OVERVIEW

- Statutory language & implementing regulations
- Misc: Athletics, pregnancy, & parenting
- Title IX history

TITLE IX 2020 FINAL RULE

- Scope & jurisdiction
- Definitions
- Due process
- Other federal laws

NEW YORK STATE LAW

- 129-B Enough is Enough
- GENDA & SONDA



TITLE IX OVERVIEW & KEY CONCEPTS



TITLE IX: HISTORICAL CONTEXT

“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 of activity receiving Federal financial assistance ...”





TITLE IX: APPLICATION

RECIPIENT: Any entity which operates an education program or activity & receives federal funding

PROGRAM OR ACTIVITY: All operations of the college or university

“EDUCATION PROGRAM OR ACTIVITY” INCLUDES ...

ACCESS TO COMPORABLE CLASSES & FACILITIES

- Counseling & guidance
- Employment
- Discrimination in admissions & recruitment
- Provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner
- Health insurance
- Deny any person any such aid, benefits, or service



“EDUCATION PROGRAM OR ACTIVITY” also INCLUDES ...

Subject any person to separate or different rules of behavior, sanctions, or other treatment;

- Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service
- Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity



EXCEPTIONS TO TITLE IX APPLICATIONS (SEPARATION IS PERMITTED HERE)



- Social Fraternity & Sorority Admission (Sec. 106.14)
- Separate but comparable housing, toilet, locker room, & shower facilities by sex. (Sec. 106.32-106.33)
- Contact sports & ability grouping in physical education classes (106.34)
- Separate Athletics teams where selection is based on competitive skill, or the activity is a contact sport (106.41)
- Human Sexuality Classes (106.34)
- Choruses (106.34)



ATHLETICS

Non-Discrimination

Scholarship Opportunities

Equal Opportunity in Athletics

- Accommodate interests & abilities of both sexes;
- Equipment & supplies;
- Scheduling;
- Travel & per diem;
- Coaching & tutoring;
- Compensation of coaches;
- Locker rooms, practice, & competition facilities;
- Medical & training facilities;
- Housing & dining facilities;
- Publicity

MARITAL OR PARENTAL STATUS

- Admissions: pre-admission inquiries
- Equal Treatment: concerning parental, family, or marital status may treat students differently by sex.
- Discrimination: because of pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom
- Physician Certification
- Separate sections
- Leave
- Employment Actions
- Employee pregnancy





COMPLAINT PROCEDURES

- Adopt & publish a Notice of Non-Discrimination & grievance procedures for prompt & equitable resolution of student & employee complaints alleging any action prohibited by Title IX.



DESIGNATION OF RESPONSIBLE EMPLOYEE (TIXC)

- Designate at least one employee to coordinate its efforts to comply with & carry out its responsibilities under Title IX (TIXC)
- Includes investigation of any complaint alleging any actions which would be prohibited by Title IX.

TITLE IX COORDINATOR DUTIES:

- Disseminate & implement policies;
- Provide training;
- Receive & handle complaints;
- Oversee an investigation;
- Maintain records;
- Identify trends & areas for improvement;
- Advise on Title IX issues;
- Work with stakeholders across campus.



TITLE IX TIMELINE: 1970'S-1990'S

1972

Title IX Adopted-
focus on Athletics &
expanding
opportunity

1978

Alexander v. Yale

1999

Sexual
Harassment
Liability

- Davis v. Monroe
County
Board of
Education

1975

Rules implement
Title IX & schools
have until 1978 to
comply

1992

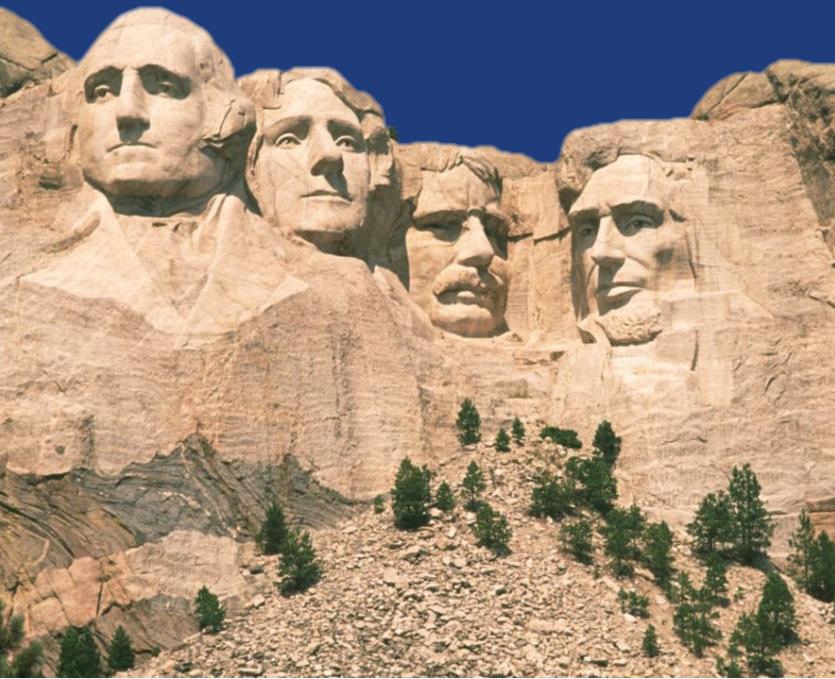
Sexual Harassment Liability

- Franklin v. Gwinnett
County Public Schools



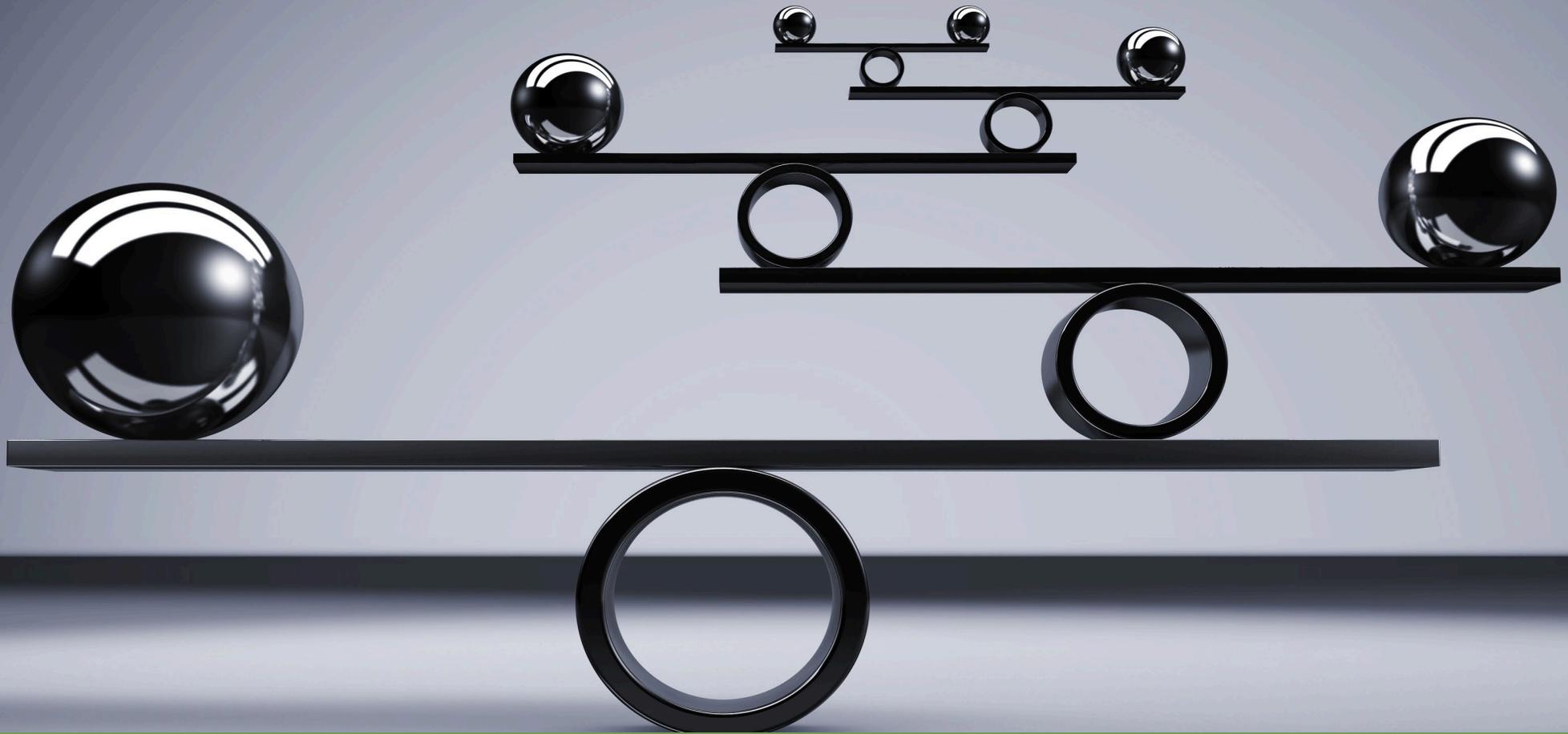
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TITLE IX: HISTORICAL CONTEXT



TITLE IX TIMELINE: 2011-PRESENT

- April 2011: Obama's Dear Colleague Letter
- May 2020: Title IX Final Rule
- 2016-2026: Shifting Policies Related to Transgender Students
- August 2024: Biden-era 2024 Final Rule Implemented
- January 2025: Biden-era 2024 Rule is Vacated- return to 2020



2020 FINAL RULE

Introduction to the Title IX Final Rule

SCOPE OF FINAL RULE

Sexual harassment in an education program or activity of the institution against a person in the United States.



SEXUAL HARASSMENT

Sex-based harassment prohibited by this part (Title IX) is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in the scope, that is:

1

**QUID PRO QUO
HARASSMENT**

2

**HOSTILE
ENVIRONMENT
HARASSMENT**

3

**SPECIFIC
OFFENSES**



QUID PRO QUO

“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”

QUID PRO QUO HARASSMENT

EMPLOYEES OF THE INSTITUTION

This categorization includes, but is not limited to:

- Faculty (full-time & adjunct),
- Administrators,
- Practitioners,
- Coaches,
- Members of institutional leadership (if considered to provide aid, benefit, or service)

ARE STUDENTS INCLUDED IN THE CATEGORY OF QUID PRO QUO HARASSMENT?

- Generally, no. Students are intended as the beneficiaries of the aid, benefits, or services of the institution's education program or activity.

HOSTILE ENVIRONMENT

SEVERE AND PERVASIVE

- A single serious incident may be severe but not pervasive, as required.
- Pervasive conduct may create a hostile environment, even if no single occurrence of conduct is severe.
 - Harassment in hallways
 - Graffiti in public areas
 - Harassment during extracurricular education programs or activities.

SUBJECTIVELY AND OBJECTIVELY OFFENSIVE

- Subjective offensiveness of sex-based harassment is necessary to determine hostile environment.
 - Must be supported by evidence
 - Cannot prove hostile environment on its own.
- Objective offensiveness is assessed through the perspective of a reasonable person in the complainant's position.

HOSTILE ENVIRONMENT HARASSMENT: TOTALITY OF THE CIRCUMSTANCES

When a standard is based on the “**totality of the circumstances,**” it means that a determination must be made in consideration of all the facts & all the available information.

Requires consideration of all relevant evidence & the five factors of the fact-specific inquiry.



***“EFFECTIVELY
DENIES”* HOSTILE
ENVIRONMENT
HARASSMENT**

Evidence required to support complainant’s claim that ability to participate in or benefit from education program or activity is “effectively denied” because of alleged conduct.

No specific type of harm required for a hostile environment to exist.

Whether alleged conduct effectively denies a person equal access to an institution’s education program or activity is fact-specific analysis & requires consideration of all relevant evidence.

FACT SPECIFIC INQUIRY: **CONSIDERATION FACTORS**

Whether a hostile environment has been created is a **fact-specific inquiry** that includes consideration of the following **five factors**:

FACTOR 1

The degree to which the conduct affected the complainant's ability to access the institution's education program or activity

FACTOR 2

The type, frequency, & duration of the conduct

FACTOR 3

The parties' ages, roles within the institution's education program or activity, previous interactions, & other factors about each party that may be relevant to evaluating the effects of the conduct

FACT SPECIFIC INQUIRY: **CONSIDERATION FACTORS, cont.**

FACTOR 4

The location of the conduct & the context in which the conduct occurred

FACTOR 5

Other sexual harassment in the institution's education program or activity



SPECIFIC OFFENSES

- 1. SEXUAL ASSAULT**
- 2. DATING VIOLENCE**
- 3. DOMESTIC VIOLENCE**
- 4. STALKING**

- The Department crafted definition of sex-based harassment & definitions of the four included specific offenses to align with the Clery Act.
- Do not need to be severe or pervasive or subjectively & objectively offensive to constitute sex-based harassment.
- Do not have to satisfy the element of unwelcomeness.
- A hostile environment may need to be addressed even if a specific offense occurs outside of an education program or activity.
- Other sex offenses as defined by State law may meet the definition of hostile environment harassment if they satisfy all elements of the definition.

1. SEXUAL ASSAULT

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation (FBI).” 20 U.S.C. 1092(f)(6)(A)(v)

Offenses included:

- Rape
- Criminal Sexual Contact
- Incest
- Statutory Rape

HOW DOES YOUR STATE DEFINE
CONSENT?

2. DATING VIOLENCE

VIOLENCE COMMITTED BY A PERSON:

- a. Who is or has been in a social relationship of romantic or intimate nature with the victim; **AND**
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; &
 - The frequency of interaction between the persons involved in the relationship.

3. DOMESTIC VIOLENCE

FELONY OR MISDEMEANOR CRIMES OF VIOLENCE COMMITTED BY

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

4. STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress.

CONSIDERATION FACTORS OF CONDUCT:

- Duration
- Frequency
- Intensity

TACTICS USED MAY INCLUDE BUT ARE NOT LIMITED TO:

- Watching
- Following
- Using a tracking device
- Monitoring online activity
- Unwanted contact
- Property invasion or damage
- Hacking accounts
- Threats
- Violence
- Sabotage
- Attacks



JURISDICTION



DEFINING EDUCATION PROGRAM AND/OR ACTIVITY

All operations of:

- A college, university or other postsecondary institution, or public system of higher education....

“SUBSTANTIAL CONTROL”

An institution is not responsible for the actions of parties over which it lacks substantial control and are only responsible for alleged discriminatory conduct over both the context and the respondent.



OUTSIDE THE COUNTRY

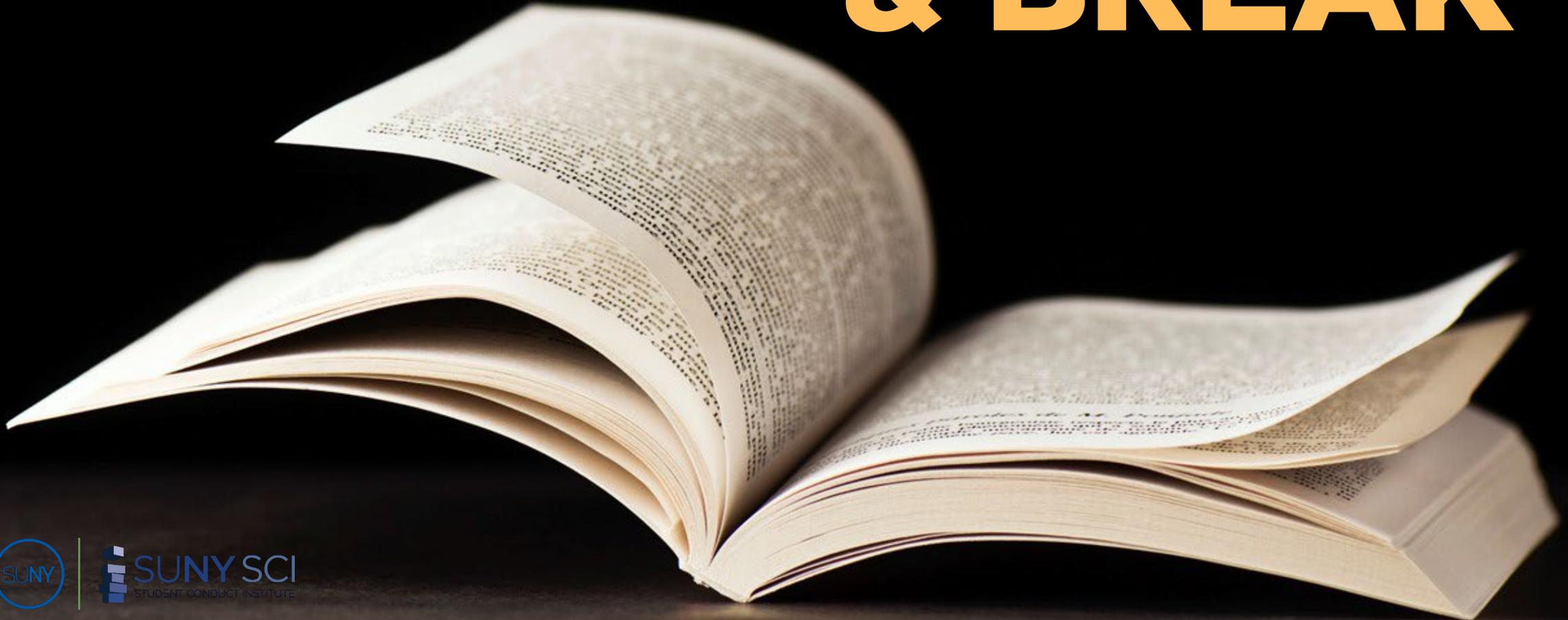
“NO PERSON *IN THE UNITED STATES* SHALL...”

- Title IX does **not** apply outside of the United States
- Plain language of the statute is clear that Congress did not intend for application outside of the U.S.
- Title IX does **not** apply to study abroad programs and institutions do not have an obligation to address sex discrimination outside of the U.S.

HOWEVER, the 2024 Final Rule further states:

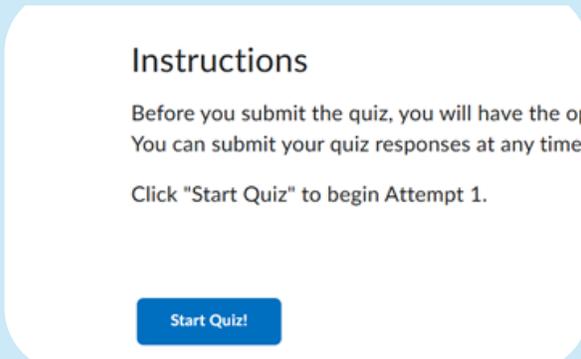
- Institutions *do* have a responsibility to address a hostile environment in its education program or activity in the U.S., even when some conduct alleged to be contributing to the hostile environment occurred outside of the institution’s program or activity or outside of the U.S. (including study abroad).
- Also, institutions may respond under their codes of conduct or other applicable policies pertaining to study abroad.

KNOWLEDGE CHECK & BREAK



How to Take the Attendance Quiz!

1. Click the link in the Zoom chat
2. Arrive at quiz page
3. Scroll down to Start Quiz



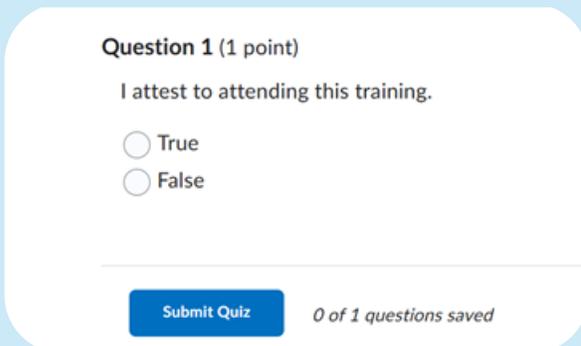
Instructions

Before you submit the quiz, you will have the opportunity to save your work. You can submit your quiz responses at any time.

Click "Start Quiz" to begin Attempt 1.

[Start Quiz!](#)

4. Take the quiz
5. Click Submit Quiz



Question 1 (1 point)

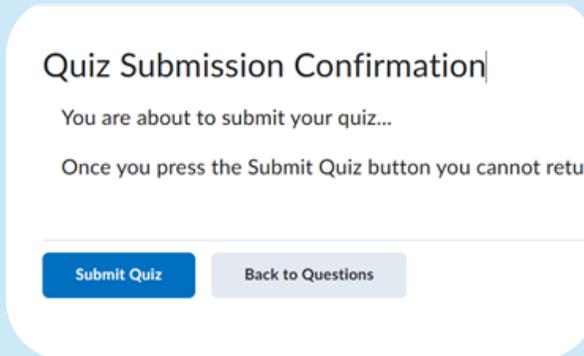
I attest to attending this training.

True

False

[Submit Quiz](#) 0 of 1 questions saved

6. Arrive at Submission Confirmation
7. Click Submit Quiz for the second time



Quiz Submission Confirmation

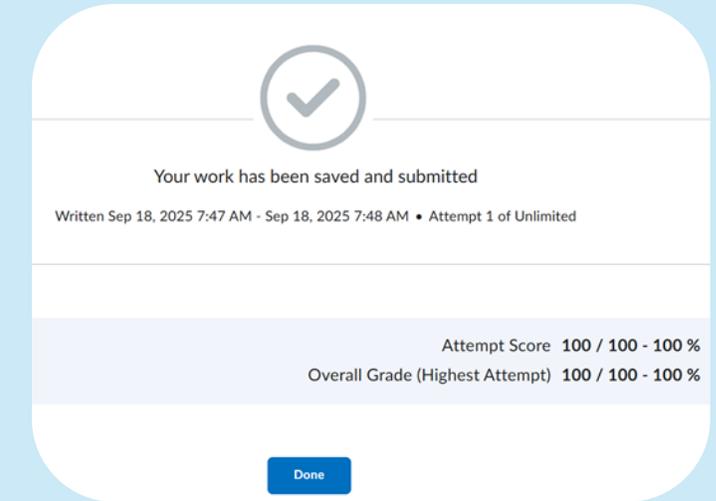
You are about to submit your quiz...

Once you press the Submit Quiz button you cannot return to the questions.

[Submit Quiz](#) [Back to Questions](#)

8. Arrive at page that says "Your work has been saved and submitted"

9. Click "Done"





Your work has been saved and submitted

Written Sep 18, 2025 7:47 AM - Sep 18, 2025 7:48 AM • Attempt 1 of Unlimited

Attempt Score 100 / 100 - 100 %

Overall Grade (Highest Attempt) 100 / 100 - 100 %

[Done](#)

10. Close out of window to return to the window with the Live@Distance training

Attendance Quiz appears during the training break for a limited time. Please do not delay in taking your quiz once it is made available to you.



DUE PROCESS

THE CONSTITUTION & DUE PROCESS

No state shall “deprive any person of life, liberty, or property, without due process of law.”

14th Amendment, Section 1, U.S. Constitution



THE CONSTITUTION: A FOUNDATION FOR DUE PROCESS

The U.S. Constitution sets the legal foundation for due process requirements. Statutes embodying Federal & State laws, rules, and regulations must build upon the due process foundation set by the Constitution.

THE U.S. CONSTITUTION

- Prohibits the deprivation of life, liberty, & property.
- Prohibits the denial to any person of the equal protection of law.

STATUTES

- Laws passed by Congress or a State Legislature.
- Must be followed by institutions receiving federal funding.

RULES & REGULATIONS

- Issued by government agencies to further interpret & explain the law.
- Do not have the force of law but provide insight for enforcement & best practices.

DUE PROCESS: YOUR POLICIES ARE YOUR CONSTITUTION



**ALWAYS START
WITH YOUR TITLE IX
POLICY & YOUR
STUDENT CODE OF
CONDUCT!**

DUE PROCESS: WHEN & HOW MUCH?



WARNING

EXPULSION

OTHER RELEVANT LAWS: CLERY

THE CLERY ACT

- Administrative law focused on ensuring that certain policies & procedures are in place that prevent and respond to instances of domestic violence, dating violence, sexual assault, or stalking (DVSAS).
- Federal consumer protection law that aims to provide transparency around campus crime policy & statistics by imposing certain recording and reporting requirements.
- Applies just to higher education institutions.
- Includes the reporting other crime offenses outside of DVSAS (hate crimes, arrests, referrals for disciplinary action).
- Jurisdiction based on geography.

TITLE IX

- Federal law that prohibits discrimination on the basis of sex in education programs and activities.
- Civil rights law designed to preserve one's civil rights & access to federally funded education free from discrimination on the basis of sex.
- Applies to K-12 & higher education institutions.
- Includes responding to complaints of sexual harassment (which may include DVSAS).
- Jurisdiction based on education program or activity and substantial control.

SIMILARITIES between *CLERY & TITLE IX*

TRAINING requirements

Address & share definitions for specific offenses

Domestic violence, dating violence, sexual assault, stalking

Provide support for victims

Clery = accommodations; Title IX = Supportive Measures

Require fair **and** equitable disciplinary processes

VIOLENCE AGAINST WOMEN ACT (VAWA) AMENDMENTS TO CLERY (2013)

Adds the definitions of specific offenses and includes them as reportable crimes (DVSAS)

- Domestic Violence
- Dating Violence
- Sexual Assault
- Stalking

Policy statement of the jurisdiction covered by campus security

Data regarding DVSAS incidents along with policy statements outlining campus response to these incidents, including rights & options for survivors

Implement programs to prevent DVSAS incidents while promoting a healthy & respectful campus environment

Published reports must respect survivor's confidential information (PII, accommodations, etc).

Report data on hate crimes – VAWA added crimes based on gender identity & national origin to the list of hate crimes that must be reported.

EMPLOYEES: TITLE IX & TITLE VII

TITLE IX

- Prohibits discrimination “on the basis of” sex.
- Applies to students, employees, & others participating in or attempting to participate in the education programs or activities.
- Hostile Environment: subjectively & objectively offensive & severe and pervasive
- Actual Notice
- Voluntary

TITLE VII

- Prohibits discrimination “because of...sex.”
- Also covers race, color, religion, or national origin.
- Applies to employees
- Hostile Environment: severe or pervasive to alter working conditions & create hostile environment
- Knew or should have known
- Compulsory?

You MUST use your Title IX Grievance Procedure for allegations against employees related to Title IX-covered sexual harassment.



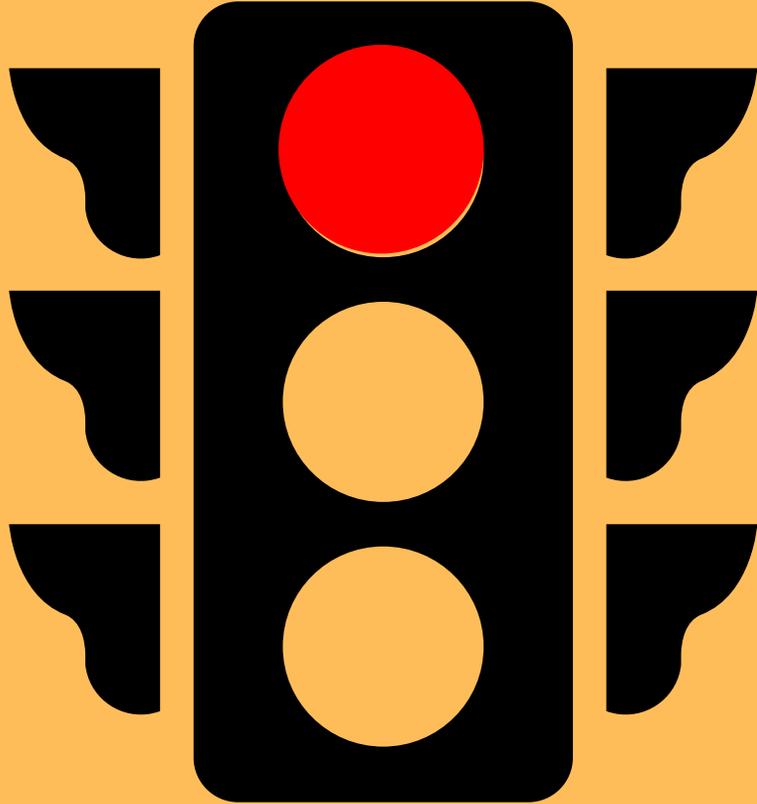
NEW YORK STATE LAW

129-B, SONDA, & GENDA

129-B OF THE NYS EDUCATION LAW

“ENOUGH IS ENOUGH”

- What conduct is covered?
- Who is covered?
- Mandated items?
 - Process
 - Training
 - Surveys & reporting
 - Misc policies: Amnesty, Bill of Rights, Affirmative Consent



- What conduct is covered?
 - Sexual assault, dating violence, domestic violence, & stalking
- Who is covered?
 - Only students
- Geography?
 - Broader than Title IX

129-B PROHIBITED CONDUCT

- Make report to local law enforcement
- Have disclosures taken seriously
- Make procedural decisions without institutional pressure
- Fair, impartial process with opportunity to be heard
- Treated with dignity & respect
- No victim blaming
- Describe incident to fewer people
- No retaliation
- Appeals
- Advisor of choice
- Civil rights



STUDENTS' BILL OF RIGHTS

AFFIRMATIVE CONSENT UNDER 129-B



- Supplements Title IX
- Mandated definition
- For all “sexual activity”
- Affirmative Consent DEFINITION
 - Expressed through words or deeds
 - Always required & may be withdrawn
 - Incapacitation & coercion
- Proving Affirmative Consent

MANDATORY RESPONSE TO REPORTS

- Advise of rights & resources
- Emergency access to TIXC or another trained official
- Options for confidential & private disclosure
- File reports with TIXC or HR
- Support for legal proceedings
- Right to withdraw complaints

**OTHER
MEASURES**

**NO-CONTACT
ORDER**



**ORDER OF
PROTECTION &
ARREST**

**PROTECTIONS &
ACCOMMODATIONS**

**OTHER
SECURITY OR
SAFETY
ASSISTANCE**

**INTERIM
SUSPENSION**

**ACADEMIC &
OTHER
ACCOMMODATIONS**

- Notice to Respondent
- Opportunity to offer & review evidence in impartial investigation
- Appeal
- Advisor of choice
- Prompt, impartial, timely, & thorough adjudication with opportunity to present evidence at hearing
- Concurrent with criminal investigation
- Exclude sexual & criminal history
- Privacy
- Transcript notations

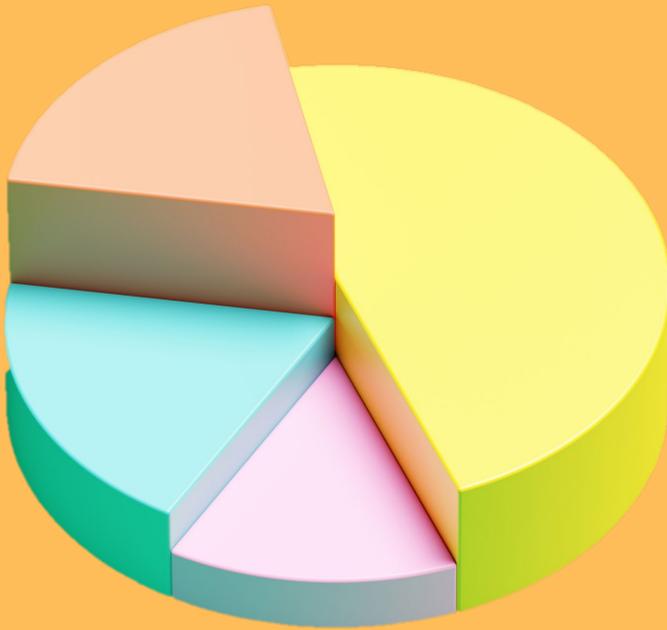


**DUE PROCESS
RIGHTS**

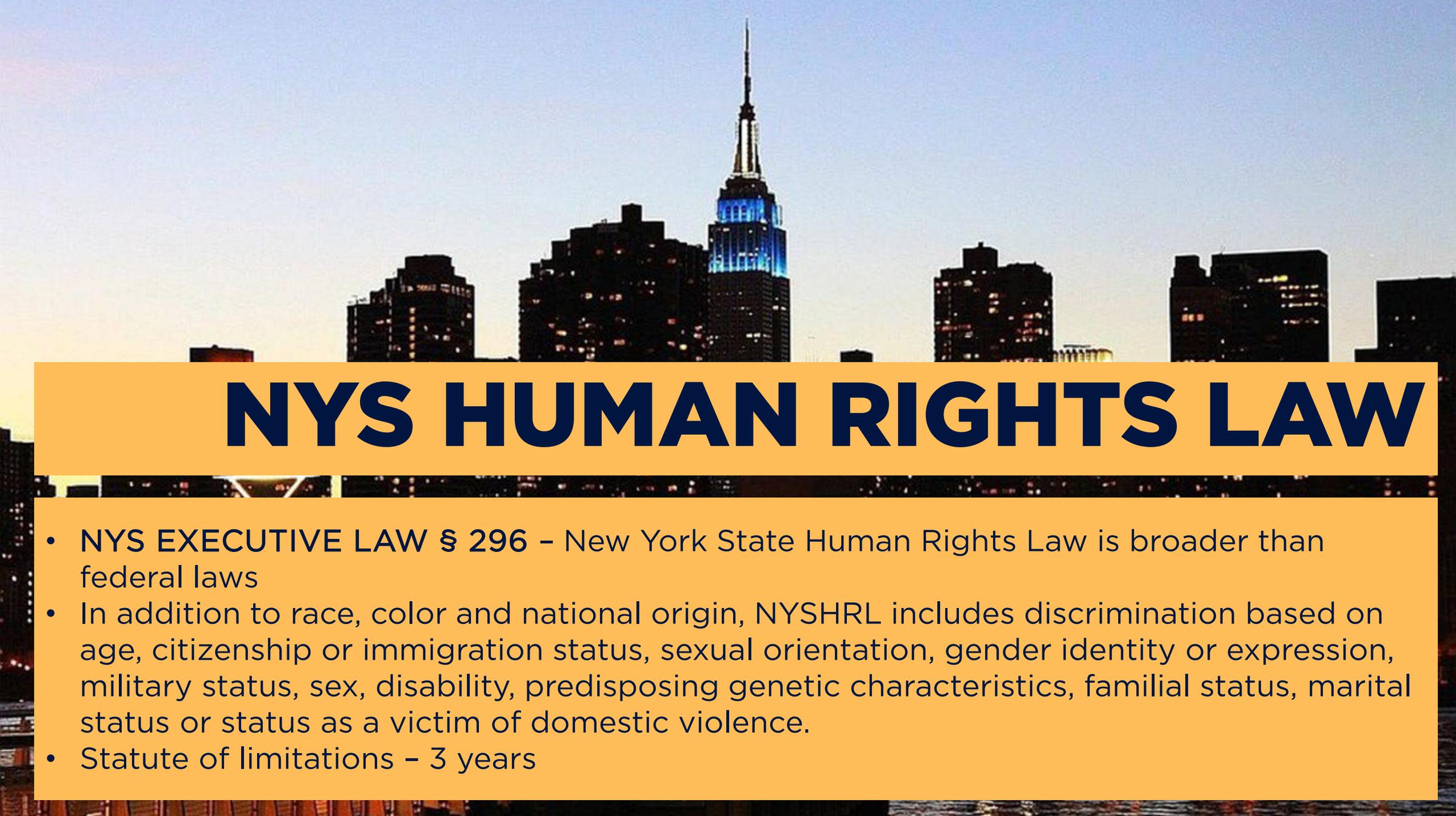
ALCOHOL AND/OR DRUG USE AMNESTY

“The health and safety of every student at the [Institution] is of utmost importance ... A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [Institution’s] officials or law enforcement will not be subject to [Institution’s] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.”

MISC 129-B: CLIMATE SURVEYS, REPORTING & TRAINING



- CAMPUS CLIMATE ASSESSMENTS
 - Every other year
 - Questions related to knowledge, experiences, & bystander attitudes
- REPORTING
 - 10 Years: File copies of rule
 - Annual 129-B certification
 - Annual Aggregate Data Report
 - Data about reports, cases, findings, & sanctions
- TRAINING
 - Specific topics: Definitions, role of TIXC, policies, risk reduction, bystander intervention
 - Targeted audiences: new students, student leaders, athletes



NYS HUMAN RIGHTS LAW

- **NYS EXECUTIVE LAW § 296** - New York State Human Rights Law is broader than federal laws
- In addition to race, color and national origin, NYSHRL includes discrimination based on age, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence.
- Statute of limitations - 3 years

- Sexual orientation discrimination prohibited
 - Employment
 - Housing
 - Public accommodations
 - Education, &
 - The exercise of civil rights
- Gender expression/identity discrimination prohibited
 - Employment
 - Housing
 - Public accommodations
 - And non-religious schools, etc.
- Different standards & requirements than Title IX

SONDA & GENDA

KNOWLEDGE CHECK!



QUESTIONS?

SUNY.EDU

system.suny.edu/sci/news

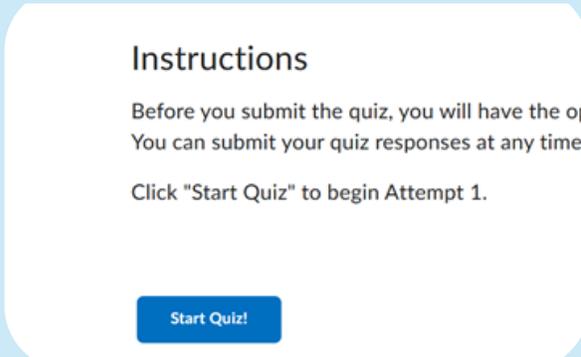
SYSTEM.SUNY.EDU/SCI/TIX2020

system.suny.edu/sci/titleix

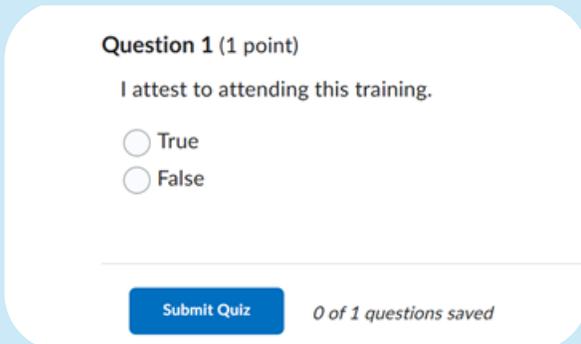


How to Take the Attendance Quiz! Again!

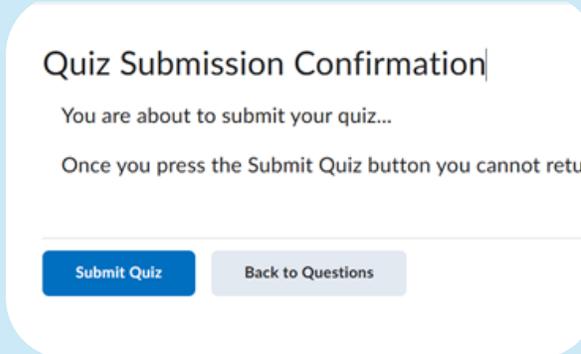
1. Click the link in the Zoom chat
2. Arrive at quiz page
3. Scroll down to Start Quiz



4. Take the quiz
5. Click Submit Quiz

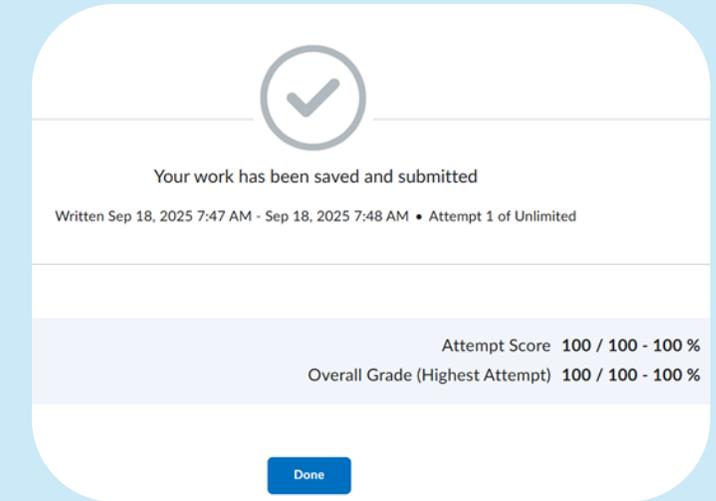


6. Arrive at Submission Confirmation
7. Click Submit Quiz for the second time



8. Arrive at page that says "Your work has been saved and submitted"

9. Click "Done"



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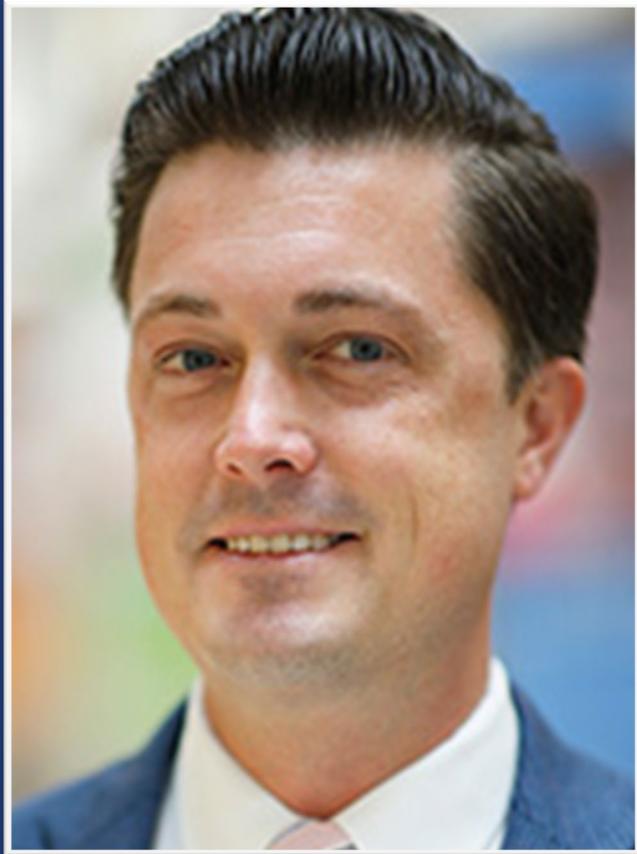


The State University
of **New York**

TITLE IX COORDINATOR TRAINING

Day 2

INTRODUCTIONS



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ALEXANDER WHEELER

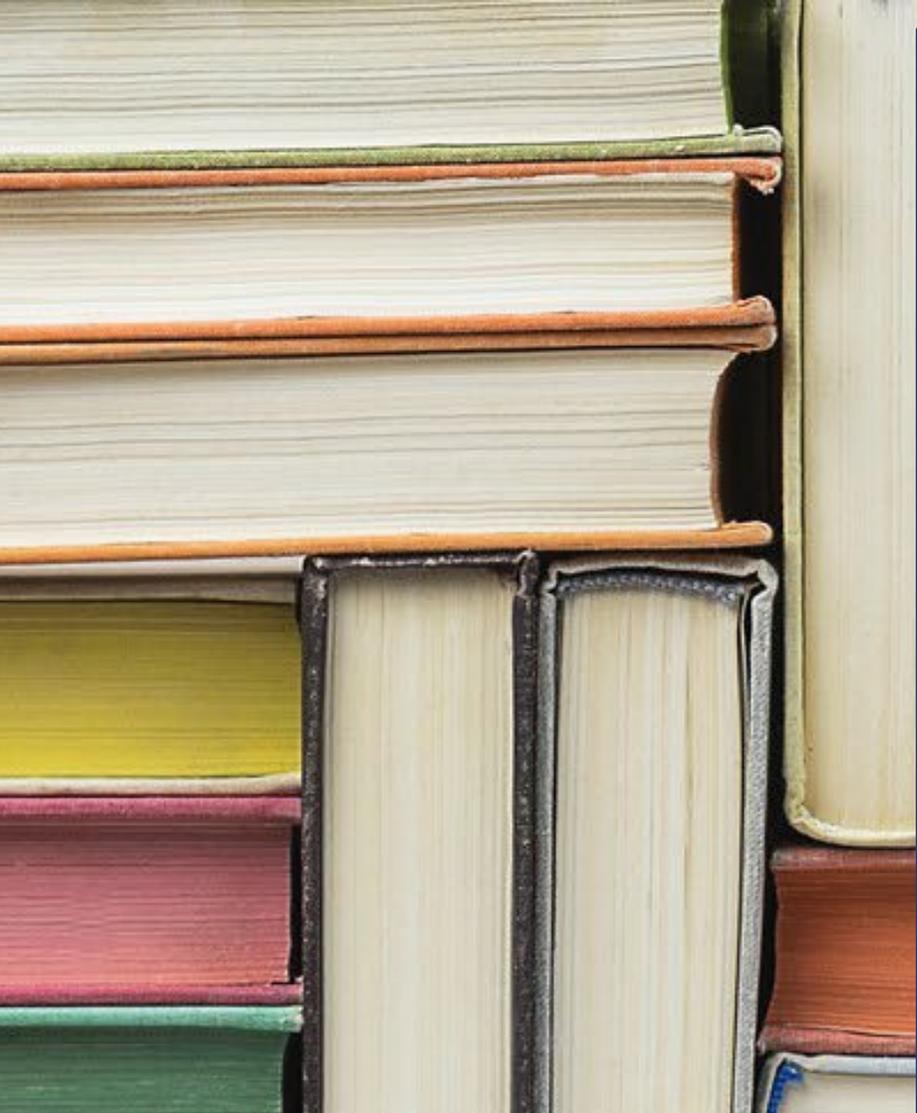
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“notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”

- Does not impose universal mandatory reporting obligations upon all postsecondary institution employees
 - Institutions retain ability to designate which employees must report disclosures, & others who are confidential

ACTUAL NOTICE or KNOWLEDGE

DELIBERATE INDIFFERENCE

- Requires institution with actual knowledge to respond “promptly in a manner that is not *deliberately indifferent*”
- Meaning “not clearly unreasonable in light of the known circumstances”

What makes a response deliberately indifferent?

- Inadequate
- Willfully indifferent, or clearly unreasonable
- Causes harm, or denies complainant educational benefits

Example: failure to conduct a proper investigation considering actual knowledge of misconduct, failed to provide appropriate support or remedies for the complainant

REQUIRED RESPONSE TO REPORTS

- Treat parties equally
- Promptly offer supportive measures
- Explain formal complaint filing
- Follow a compliant grievance process before sanctions
 - Objective evidence evaluation
 - TIX staff are trained & free of bias or conflict
 - Presumption of non-responsibility
 - Reasonably prompt resolution
 - Standard of evidence
 - Appeal
 - Legal privileges



REASONABLY PROMPT TIMEFRAMES



- Includes appeals & informal resolution
- Temporary delays with notice
 - 129-B: 10 day delay for law enforcement
- How long???
 - Not defined
 - Flexibility
 - 2001 Guidance
- Balance promptness with diligence
- Resource considerations



CONFIDENTIALITY & PRIVACY

- Privacy of reports is expected
- Responsible Employees
- Confidentiality of reports is rare
- 129-B limits sharing & re-disclosure

FERPA “RECORDS?”

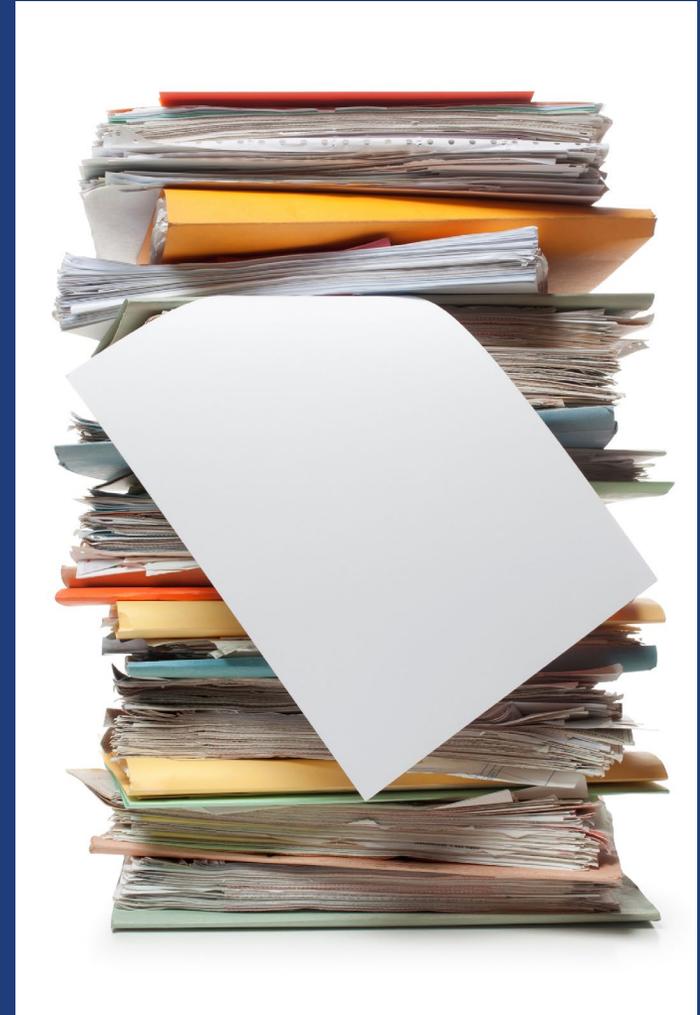


FERPA protects “education records,” which are generally defined as records that are directly related to a student & maintained by an educational agency or institution or by a party acting for the agency or institution.

- For a record to directly relate to a student, the student must be the focus of the record, not simply in the background or incidental to a report.
- The Supreme Court has described education records as “institutional records kept by a single central custodian, such as a registrar ...”
 - In other words, for FERPA to apply, the record in question **must be systematically maintained by the school.**

CONFLICTS BETWEEN FERPA & TITLE IX

- Interpret statutes in a manner to avoid any conflicts, if possible
- Section 106.6 (Effect of Other Requirements and Preservation of Rights) of the Final Rule states as follows:
 - Effect of Section 444 of General Education Provisions Act (GEPA/FERPA). The obligation to comply with Title IX & the Final Rule is not obviated or alleviated by FERPA.
- When conflict exists, institutions are required to comply with Title IX regulations - this FERPA override is known as “GEPA override”
 - Title IX includes federally protected due process rights - constitutional override
- May not use FERPA as a shield to avoid complying with Title IX



DISCLOSURE OF EVIDENCE



- The Final Rule requires the institution to share relevant evidence with the parties.
- Department has previously recognized that under FERPA, an eligible student:

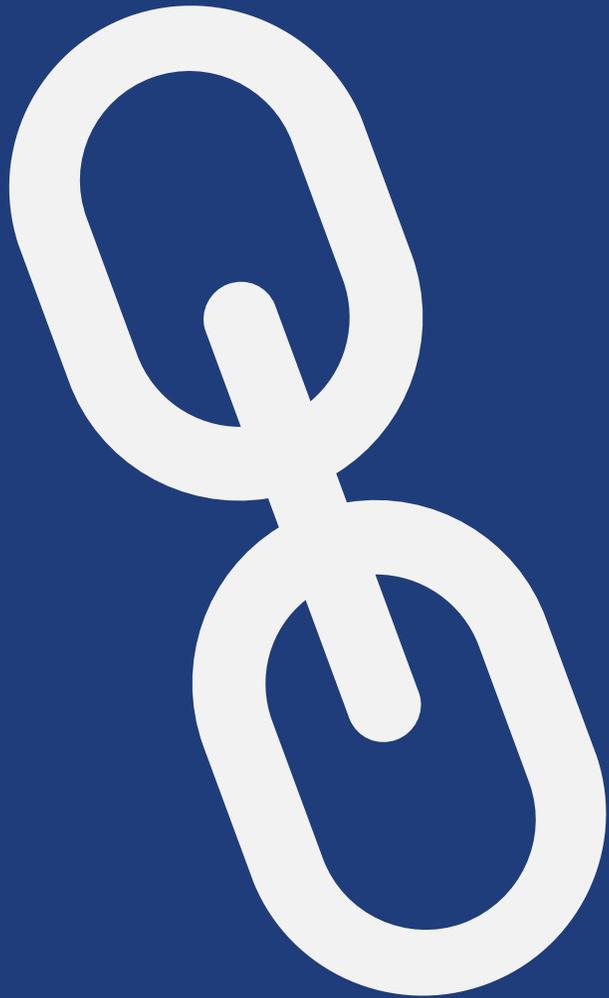
“has a right to inspect & review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to another student, if the information cannot be segregated & redacted without destroying its meaning.”

SUPPORTIVE ME

Under Section 106.44 of the Final Rule, there are certain non-disclosure protections related to supportive measures.

- FERPA does not prevent the institution from disclosing a supportive measure to school officials as necessary to provide the measure.
- Revised to protect the unnecessary disclosure of information related to these measures.
- Even if permitted by FERPA, institution may only inform one party of supportive measures provided to the other party if necessary to restore or preserve access to the party receiving measure.





- The Final Rule permits multiple reports with multiple parties to be consolidated into one, which raises potential privacy concerns.
- The Department stated that this section of the Final Rule must be interpreted consistent with FERPA.
- Regulations provide institutions with the *option* to consolidate but do not *require* it to do so.
- An institution may not choose to consolidate if that consolidation would give rise to FERPA violations.

CONSOLIDATION & FERPA

ADVISORS

The Department acknowledges that the presence of an advisor may violate FERPA.

- The right to an advisor is a due process right guaranteed by Title IX.
- Title IX will override the FERPA concerns here.
- GEPA override will allow the sharing of evidence with advisors.
- Institutions are not required to permit more than one advisor to accompany a party & the GEPA override will not apply there.



COMPLAINANT OUTREACH & INTAKE



DESIGNATING RESPONSIBLE &
CONFIDENTIAL EMPLOYEES

LIST OF RESPONSIBLE &
CONFIDENTIAL EMPLOYEES

DISCLOSURE OF STATUS TO
STUDENTS

TRAINING & FERPA CONSIDERATIONS

INCLUSION IN CAMPUS POLICY

THE MECHANICS OF INTAKE



INCIDENT INFORMATION

TYPE OF ALLEGED
HARASSMENT
CRITICAL INCIDENT RESPONSE

OFFICE VISIT FOLLOW-
UP/DELAYED REPORT

SUPPORTIVE MEASURES

STUDENT RIGHTS INFORMATION
REVIEW

TYPE

SUPPORTIVE MEASURE EXAMPLES

Safety

Reasonable accommodations

Health

Medical, Mental

Housing

Room lock change, designated emergency space

Restrictions

One-way or Mutual No Contact Order (NCO)

Academic

Course accommodations, course changes, Professor notifications, leave of absence, withdrawal assistance

Work

On/Off Campus employment

Facility based

Gym, library, dining, University events, etc. ...

Recreational

Student group, athletic team, internship program



Is This a Title IX Grievance Process Case?*

Report made to Title IX Coordinator

Is the complainant currently participating in or attempting to participate in your programs (i.e. an employee, student, applicant, etc.?)

Yes

No

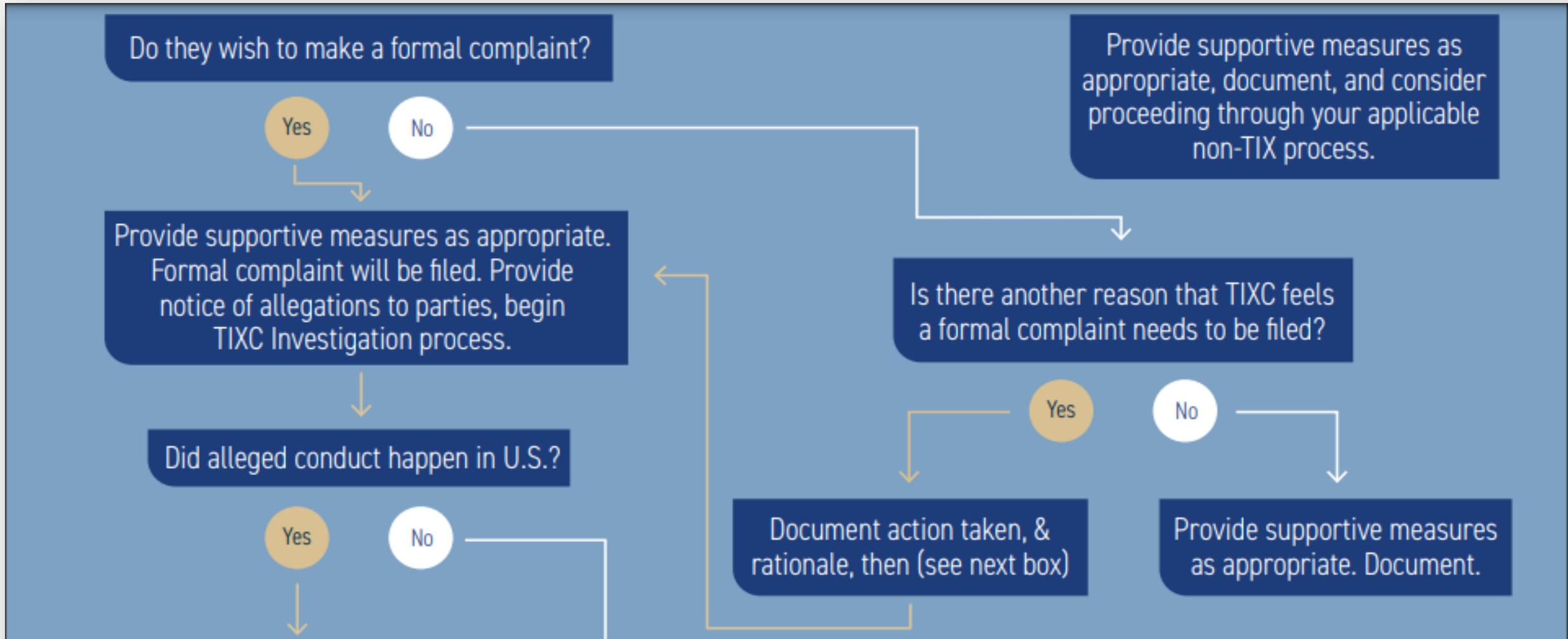
Do they wish to make a formal complaint?

Yes

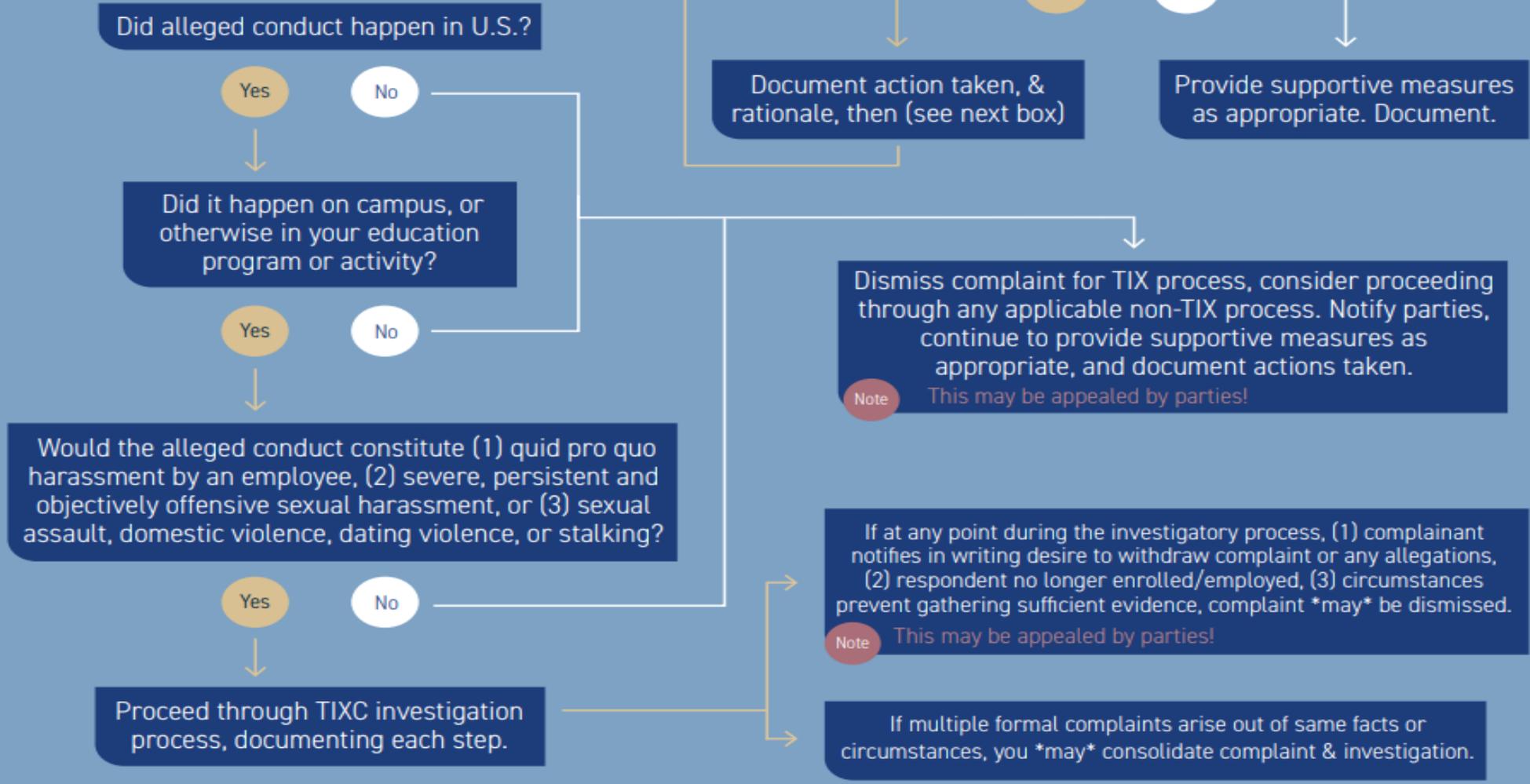
No

Provide supportive measures as appropriate, document, and consider proceeding through your applicable non-TIX process.

DECISION TREE, PT. 1



DECISION TREE, PT. 2



**This Decision Tree is intended to capture the most foreseeable routes that a matter may take, but it cannot cover every circumstance that may arise. Please consult with your campus counsel for specific circumstances and questions.*

DECISION TREE, PT. 3

TITLE IX SCOPE

Assess scope of report
Assess jurisdiction
Review complainant intentions

JURISDICTION ASSESSMENT

WHAT ABOUT COMPLAINANT AUTONOMY?

Utilize proper policy/process
Explore desired level of participation
Determine if TIXC-initiated complaint
needed

**Autonomy exists but does not allow
improper choice of law or due process!**

TITLE IX COORDINATOR INITIATED COMPLAINT

- Complainant's request not to proceed;
- Complainant's safety concerns about proceeding;
- Risk of additional discrimination;
- Age, relationship, and status (i.e. employee) of the parties;
- Scope of the prohibited conduct
 - is there a pattern? Multiple complaints?
- Severity of the allegations;
- Availability of evidence;
- Whether the school could end the discrimination & prevent its recurrence;
- Whether the conduct as alleged presents an imminent & serious threat to health or safety;
- Whether the conduct alleged prevents the institution from ensuring equal access.

REMEMBER: THE COMPLAINANT WILL STILL BE THE COMPLAINANT & IS ENTITLED TO THE SAME RIGHTS.

INCORPORATING DISABILITY LAW

- Obligation to provide reasonable accommodations
- Good cause delays & extensions
- Mental health considerations
- Overlap with Supportive Measures
- Evidence accessible
- Support persons
- Equitable treatment
- Accused person with disabilities
 - Severe, pervasive, & objectively offensive
 - Sanctioning considerations

Institutions must investigate all “formal complaints” filed with the Title IX Coordinator

WHO CAN FILE A FORMAL COMPLAINT?

- Person currently participating in the educational programs or activities of the institution
- Person **attempting** to participate in those programs or activities
- The Title IX Coordinator

Multiple complaints arising from same incidents CAN BE consolidated

STUDENT RIGHTS INFORMATION REVIEW

THE FORMAL COMPLAINT

ACTION ITEMS

PREPARATION

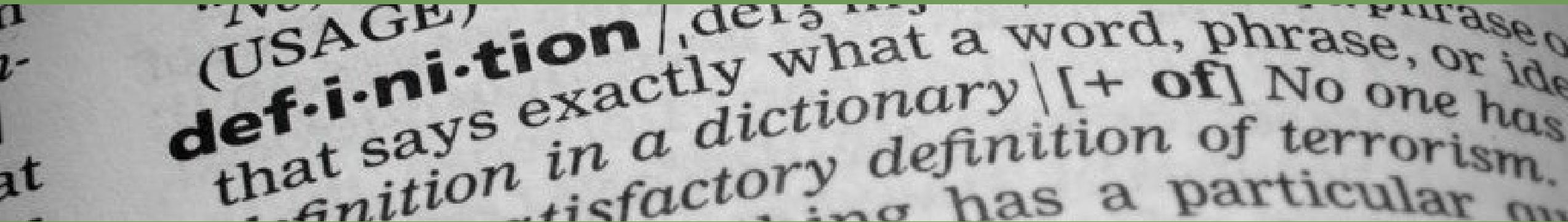
- Challenges of virtual work
- Varied familiarity of the process
- Delayed report
- Non-responsive

IF NON-RESPONSIVE

- Determination on next steps



DEFINITION OF FORMAL COMPLAINT



A DOCUMENT:

- filed by a complainant or signed by the Title IX Coordinator
- alleging sexual harassment against a respondent &
- requesting that the recipient investigate the allegation of sexual harassment.

COMPLAINANT:

- alleged victim currently participating or attempting to participate in program or activity of institution

DOCUMENT:

- document or electronic submission containing complainant's signature

- 
- Burden of proof on institution
 - Confidential treatment records
 - Present witnesses & evidence
 - Freedom to discuss allegations
 - Advisor of choice
 - Notices
 - Inspect & Review Evidence
 - Review investigative report

INVESTIGATION REQUIREMENTS

If you may have a bias or a conflict, **ACKNOWLEDGE IT**

Remember this is a case made up of individuals

Challenge your own perceptions by examining evidence

Be open & transparent, leave no stone unturned

Ensure everyone has opportunity to be heard, take your time

Base decisions on evidence, facts, & established criteria

HOW TO SERVE IMPARTIALLY



CONFLICTS & BIAS

FOR OR AGAINST COMPLAINANTS OR RESPONDENTS, GENERALLY

Example: “All respondents tend to be responsible,” or
“complainants are always credible”

FOR OR AGAINST SPECIFIC PARTIES IN THE CASE

Example: Decisionmaker heard a case involving the respondent
prior to this one

OVERLAPPING INVESTIGATOR, DECISIONMAKER, OR APPEALS ROLES

Example: Decisionmaker who found respondent responsible
continues to hear the appeal for the same case





“In the intimate setting of a college or university, prior contact between the participants is likely and does not per se indicate bias or partiality.”

Gorman v. Univ. of Rhode Island,
837 F.2d 7, 15 (1st Cir. 1988).

**NOT NECESSARILY
CONFLICTS & BIAS**

**ACTUAL BIAS IS A HIGH LEGAL STANDARD,
BUT PERCEPTION OF BIAS IS IN THE EYES OF
THE PARTIES TO THE PROCESS & SHOULD BE
AVOIDED.**

THINGS TO AVOID

- Truly lop-sided investigations & adjudications, or
- Statements of investigator or panelist showing presumption of responsibility based on stereotypes, or
- Misapplying trauma-informed practice to explain away all inconsistencies in statements



COMPLAINTS MUST BE DISMISSED IF:

1. If allegations do not constitute sexual harassment as defined under the Final Rule § 106.30 (even if proven)
2. Did not occur in the recipient's education program or activity, or
3. Did not occur against a person in the U.S.

COMPLAINTS MAY BE DISMISSED IF:

1. Complainant withdraws formal complaint or allegations in writing
2. Respondent is no longer enrolled or employed by the recipient, or
3. Specific circumstances prevent recipient from gathering evidence sufficient to reach a determination

MANDATORY notifications of dismissals (required & permitted) & rationale for the dismissal to all parties simultaneously

CONSIDERATIONS FOR DISMISSALS

Decisions to dismiss complaints may be appealed by either party

EMERGENCY REMOVAL

- Individualized safety & risk analysis
- Immediate threat to physical health or safety
- Notice & opportunity to challenge decision





Not defined
More flexible, but not indefinite
Lodging & compensation
Policies set by campuses
Collective bargaining implications
Student employees

ADMINISTRATIVE LEAVE



- Clery Act requires institutions supply timely warnings to students, faculty, & staff
- Anytime a crime occurs, or is occurring that poses a serious or ongoing threat to the rest of the campus, there must be a **TIMELY WARNING** sent that is likely to reach every member of the campus community
 - Email announcements, text messages, etc.
- Issued on a case-by-case basis considering all the facts surrounding a crime

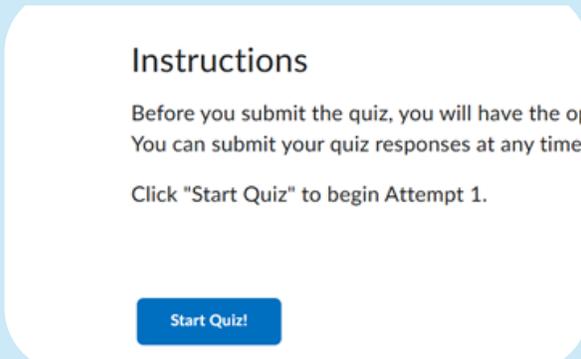
TIMELY WARNING

WHO WRITES & SENDS THESE?
typically, safety personnel

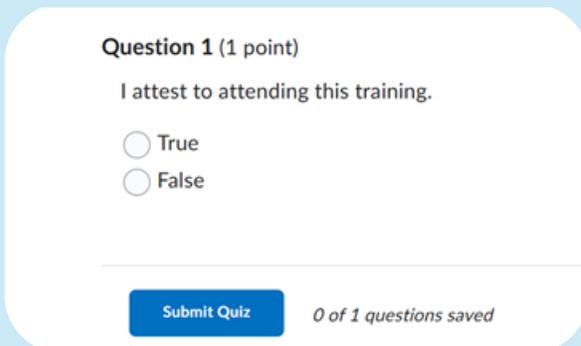


How to Take the Attendance Quiz!

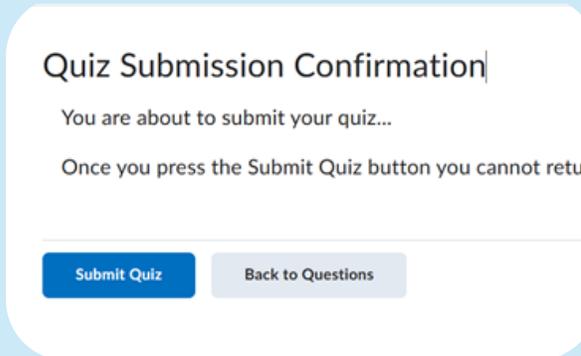
1. Click the link in the Zoom chat
2. Arrive at quiz page
3. Scroll down to Start Quiz



4. Take the quiz
5. Click Submit Quiz

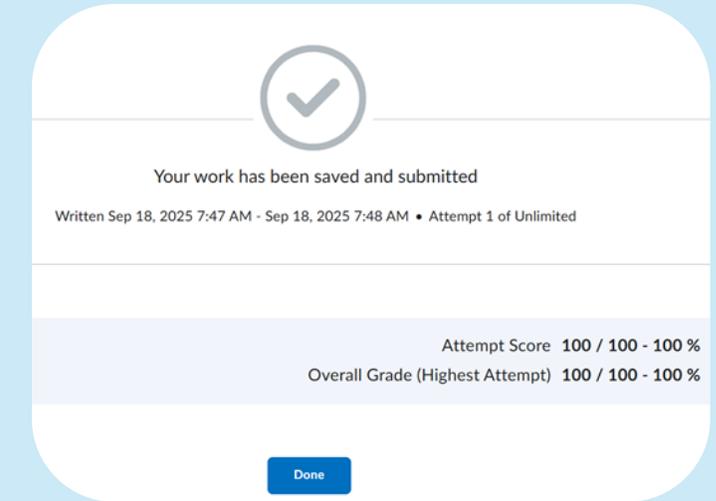


6. Arrive at Submission Confirmation
7. Click Submit Quiz for the second time



8. Arrive at page that says "Your work has been saved and submitted"

9. Click "Done"



10. Close out of window to return to the window with the Live@Distance training

Attendance Quiz appears during the training break for a limited time. Please do not delay in taking your quiz once it is made available to you.

MUST INCLUDE:

NY129B REQ

Date/Time of Formal Complaint & Who Filed the Complaint



References to Policies & Procedures



Conduct Alleged (Including Possible Sanctions if Found Responsible)



Date/Location of the Alleged Conduct



Upcoming Meeting Date/Time/Location



Notice of Advisor of Choice



Presumed NOT RESPONSIBLE Until Determination is Made



Copy Sent to Complainant





INFORMAL RESOLUTIONS

WHEN INFORMAL RESOLUTIONS ARE ALLOWED UNDER THE FINAL RULE:

- After a formal complaint is filed
- When all parties & TIX Coordinator consent
- *Any party can withdraw at any time*

INFORMAL RESOLUTIONS ARE NOT PERMITTED IN CASES INVOLVING EMPLOYEE RESPONDENTS

TIXC CAN RUN THE PROCESS, BUT THIS IS NOT RECOMMENDED

Examples of informal resolution:

- Administrative resolution
- Restorative justice
- Mediation

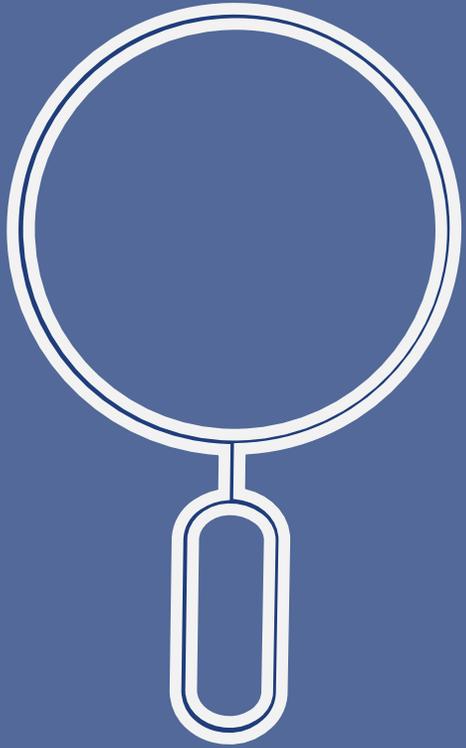
GRIEVANCE PROCESS - KEY PLAYERS

Report Receiver	Intake/Receipt of complaint
UPD/Campus Safety/Police	Safety measures
Title IX Coordinator	Oversight & assistance
Investigator	Investigation
Informal Resolution Facilitator	Facilitation of resolution
Student Conduct Staff	Oversight & assistance
Advisor	Party advisement (Complainant/Respondent)
Hearing/Appeal	Chair, Deliberations, Determinations
Resources Offices/Units	Supportive measures



TIXC

WHO CAN INVESTIGATE?



- Free from conflicts of interest & bias
- Can be the TIXC, but another administrator is preferred, if possible
- Can use trauma-informed interviewing practices
- Should be aware of cultural differences & how it can impact person's testimony or experience



INVESTIGATION PLANNING

- Investigators are naturally curious, absent of conflicts of interest or bias, & diligent
 - Healthy skepticism is valuable & patience a virtue
 - Trained per the Final Rule
- Prepare lines of questioning for all parties, including witnesses
- Prepare documents & forms (NDAs, Non-retaliation agreement, etc.)
- Identify areas of disputed facts from reviewing formal complaint & initial response from respondent
- All testimony & evidence relevant to facts
- Recording strategies, tech, review of transcript

WHAT IS THE TITLE IX COORDINATOR'S ROLE DURING AN INVESTIGATION?

- Checking in, following up with investigators
- Help collect & organize evidence
- Review issues that arise (possible conflicts of interest or bias, scheduling, lines of questioning, etc.)
- Project management
- Track deadlines, facilitate involvement & participation, communicate with stakeholders
- Facilitate end of investigations & responses from parties

EVIDENCE



DIRECT

CORROBORATING



CIRCUMSTANTIAL



... EVIDENCE THAT MUST BE INCLUDED ...

EXCULPATORY & INCULPATORY

Exculpatory evidence
increases the likelihood of
finding of **non-responsibility**
or **non-liability**

Inculpatory evidence
increases the probability of
a finding of **responsibility**
or **liability**.

PLEASE NOTE: investigations & findings of **INNOCENCE** and **GUILT** are not applicable to Title IX or student conduct grievances. These processes are administrative processes & are not civil or criminal in nature.



RELEVANCE, DIRECTLY RELATED TO, & ADMISSIBLE EVIDENCE



- Relevant evidence makes a material fact **MORE OR LESS LIKELY TO BE TRUE**
- Relevant evidence will make a **DIRECT CONNECTION** to the charge(s)
- Irrelevant evidence can be **INCLUDED IN THE APPENDIX**
- Authenticity of evidence?

TESTIMONY

TEXT / EMAIL MESSAGES

SOCIAL MEDIA POSTS

MEDICAL RECORDS

PUBLIC SAFETY / POLICE RECORDS

VIDEOS / SURVEILLANCE FOOTAGE

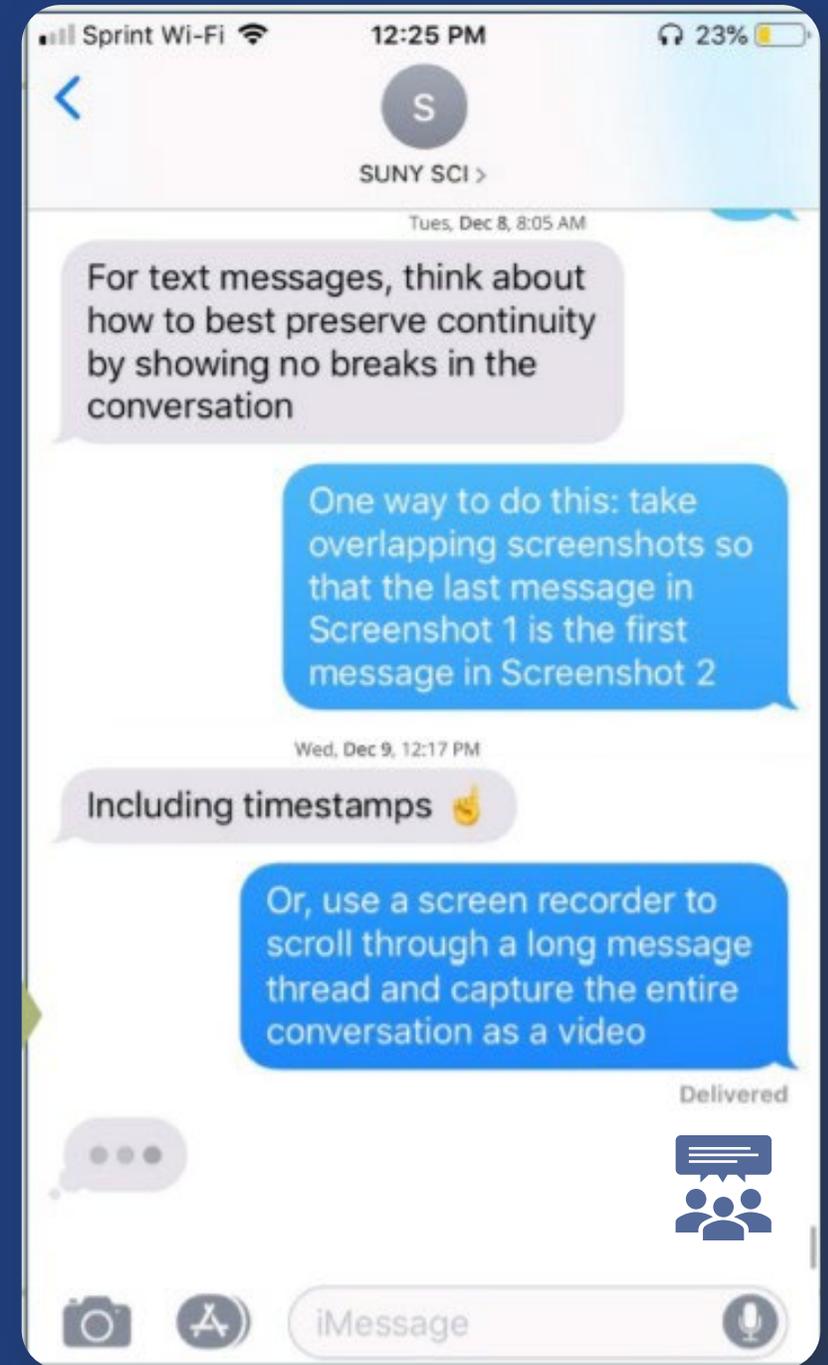
PICTURES

ID CARD DATA / NETWORK USAGE LOGS

LOCATION DATA

VOICE NOTES

POSSIBLE EVIDENCE



AUTHENTICITY

**TESTIMONY
CUSTODY
ELECTRONIC
AUTHENTICATION
ANALYSIS**

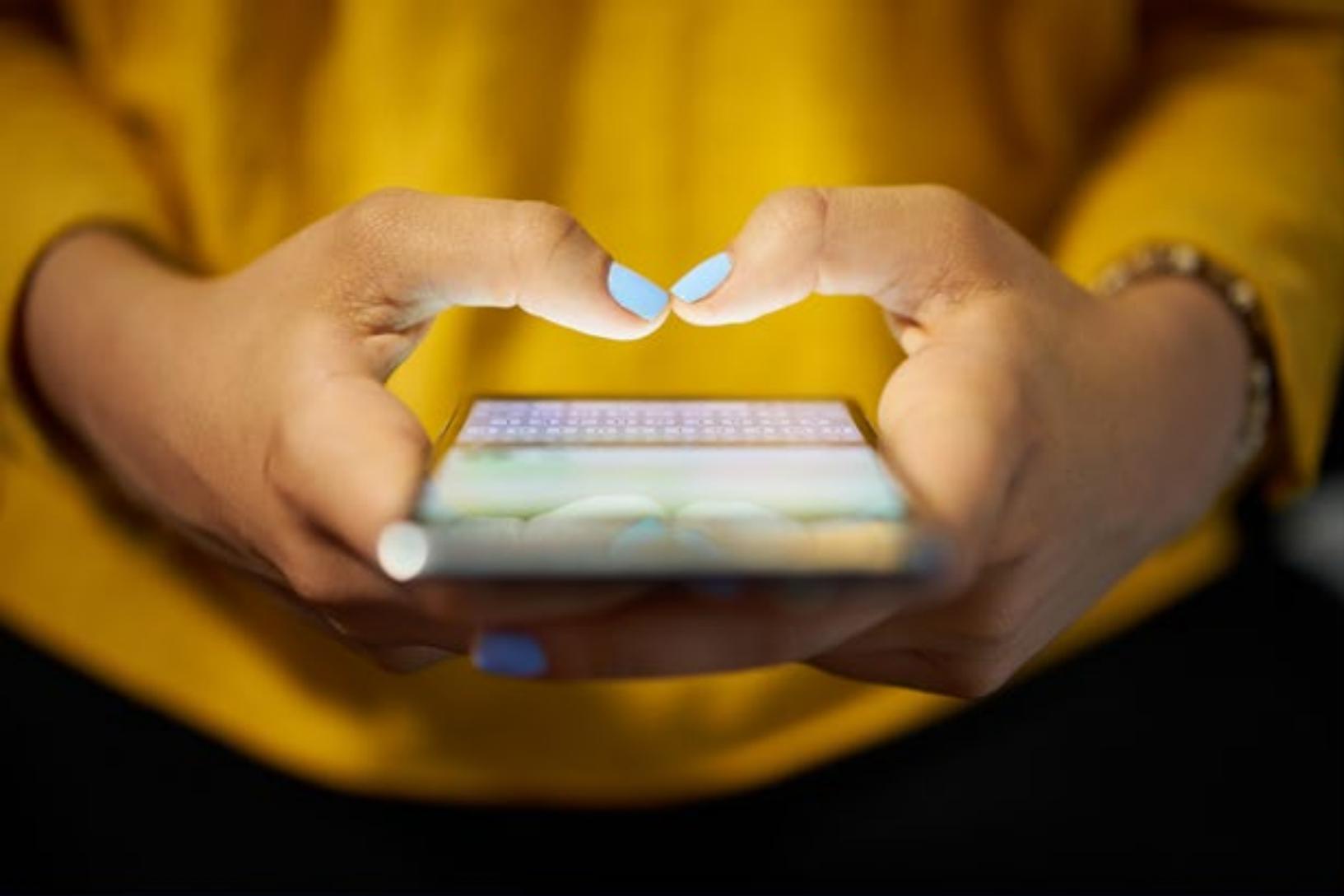


CREDIBILITY

SPECIFICITY
CONSISTENCY
CONTRADICTION
MOTIVE TO DECEIVE
DEMEANOR &
EVASION

Credibility judgments may feel subjective - decisionmakers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar and stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth. The areas on the left can help decisionmakers determine credibility.





Detail your intake of the incident (who, where, when)

Include observable facts & behaviors



Cite any significant quotes from parties involved

Detail incident from reporting individual's perspective



Resolution - detail next steps taken

INCIDENT REPORT STRUCTURE

INVESTIGATIVE REPORT



- Creation & sharing of investigative report summarizing evidence collected (*fairly*)
 - Shared with both parties at least 10 days before hearing
- Include procedural steps taken
- Redact or remove evidence deemed “irrelevant” including exempted evidence
- Parties may correct errors, contest inclusion of certain evidence, address issues of conflicts of interest or bias
- Use of appendix may be used for evidence institution may not wish to rely on for the case
- Should not include responsibility determination (*unless single-investigator model*)

INVESTIGATIVE REPORT TEMPLATE

- Overview of the investigation
 - Includes parties, applicable policies, allegations of misconduct, brief description of alleged misconduct
- Jurisdiction of educational institution
- Identify investigators
- Objective of the investigation & report
- Allegations, verbatim
- Identification of witnesses
- Description of evidence collected
- Summary of the relevant evidence
- Procedural next steps



EVIDENCE STORAGE

Secure, retrievable & accessible

May impose rules for sharing material like NDAs

Case management software allowed

Note legally-recognized & un-waived privilege

Opportunities to challenge evidence



EVIDENCE INSPECTION

- Both parties have equal opportunity to review & respond to evidence gathered prior to investigative report
 - Ten days to review “any” relevant information & evidence
 - Parties submit written response, which investigator reviews
 - Includes chance to determine evidence as “irrelevant” or “not directly related” to allegation
- ED recommends a “privilege log”



Consider impact of trauma:

- Fragmented memory & non-linear event order
- Specific details about sensory events

Trauma-informed approach doesn't substitute for missing info, justification for not doing a full investigation, or cause a biased belief in a party's accuracy

Questioning & word usage

- “Help me understand ...” “What are you able to tell me about what you experienced?”
 - Describing another individual's experience
 - Framing your questions, avoiding why questions



TRAUMA- INFORMED INTERVIEWING

CULTURAL AWARENESS

STUDENT-CENTERED PROCESS

Individuals on hearing boards should be mindful that the participants may come from different backgrounds & cultures than their own

- Race
- Ethnicity
- Gender
- Religion
- Ability/disability
- Language (limited English proficiency)
- Immigration status
- Socioeconomic status
- Sexual orientation,
- Gender identity or expression
- Age



A vertical stack of three books is shown on the left side of the image. The top book has a light blue cover, the middle one has a red cover, and the bottom one has a dark blue cover. The pages are visible and appear aged. The background is a soft, light blue gradient.

BIAS & KNOWLEDGE

- ENHANCE CULTURAL COMPETENCY
- ADAPT TO DIVERSE COMMUNICATION STYLES
- ADDRESS CULTURAL PERCEPTIONS OF AUTHORITY
- IMPLEMENT EQUITABLE PRACTICES

HOW CULTURE CAN IMPACT TITLE IX ADJUDICATION

ADJUST COMMUNICATION STYLES

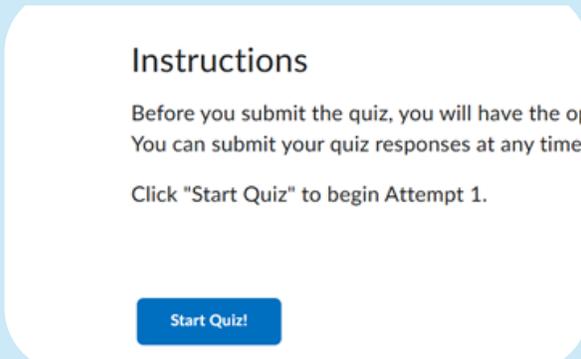
- Encourage open dialogue
- Ensure students are comfortable sharing perspectives without constraints

AVOID OVERINTERPRETING BEHAVIOR

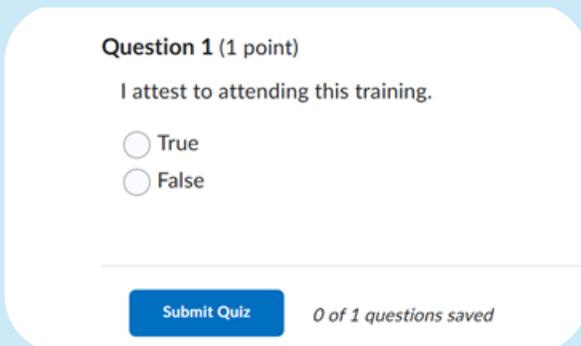
- Limited eye contact or formality could be indicative of many influences
- Avoid letting cultural differences influence decision-making processes

How to Take the Attendance Quiz, AGAIN!

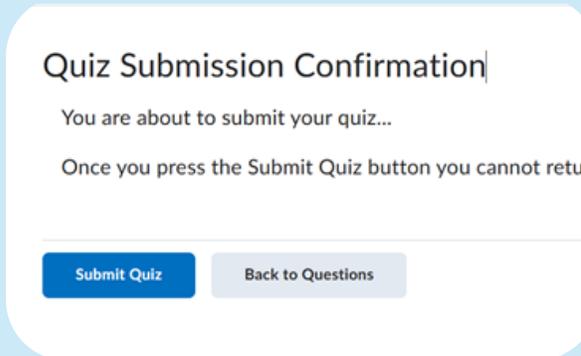
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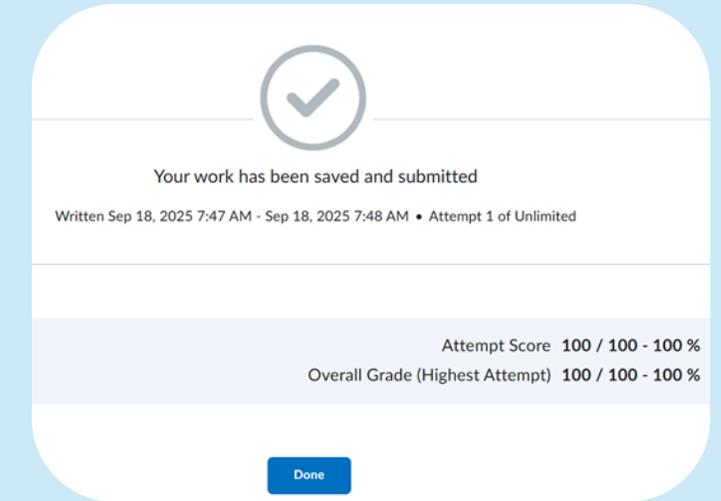


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TITLE IX COORDINATOR TRAINING

Day 3

INTRODUCTIONS



RYAN RIBEIRO
Assistant Director
SUNY Student Conduct Institute



ALEXANDER WHEELER
Assistant Director
SUNY Student Conduct Institute

DISCLAIMER

This presentation shall not constitute legal advice, nor create an attorney-client relationship. This presentation is for informational purposes only.

If you have any specific legal questions or require legal advice for specific situations, please contact or refer to your institutional, general, or outside counsel.





PRE-HEARING CONFERENCES

- Meet with all parties (& advisors) to discuss next steps, *particularly the resolution/grievance process*
 - Final review of investigative report
 - Re-review of resolution options (informal resolution or live hearing)
 - Confirm date & time of hearing
- Review rules of decorum for live hearing
- **CROSS-EXAMINATION**
- Walk through the hearing from start to finish
- Address any questions as needed

PRE-HEARING CONSIDERATIONS PHYSICAL SPACE & TECHNOLOGY

- Accessibility needs
- Reliable internet access
- Physical space for parties & advisors, hearing board members
- Access to appropriate equipment
- Technology settings
 - All parties must be able to see & hear each other (cameras must be on)
 - **decisionmakers must be comfortable with any tech used***
- Are you recording?

- Double check provided links & access to documents
- Back up plan & back up tech person
- Witness invites
- All party & advisor confirmations
- Confidentiality & privacy of communications

ABOUT DECORUM

Colleges & universities “**are in a better position than the Department to craft rules of decorum best suited to their educational environment**” & build a hearing process that will reassure the parties that the institution “**is not throwing a party to the proverbial wolves.**”

- See, 85 Fed. Reg. 30026, 30319



ADVISORS WHO VIOLATE THE RULES OF DECORUM MAY BE REMOVED

QUESTIONS SHOULD BE ASKED IN A NEUTRAL TONE

No accusatory questions

No “duty of zealous advocacy” inferred or enforced, even for attorney-advisors

No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission

No use of profanity or personal attacks

Repetitive questions are not allowed



DECORUM



- Introductions
- Purpose of hearing, review of allegations
- Privacy & decorum expectations
- Due process rights
- Notice of allegations & claims
- Opening statements
- Presentation of investigative information
- Cross-examination & relevancy determinations
- Witnesses & cross-examination
- Closing statements
- End of hearing, move to deliberation



GENERAL HEARING PROCESS



A script helps make sure the institution complies with:

- Due process requirements
- Notice obligations
- Equal treatment of both parties



It provides a clear record that all mandated steps were followed.

THE SCRIPT

PURPOSE OF A HEARING



- Determine responsibility of respondent for a violation of institution's Title IX policy
- Facilitate an equitable, fair process
 - *May not be perfect*
-
- Obligation of participants (including institution) of truthfulness & transparency
- Not a criminal proceeding

THE ROLE OF THE ADVISOR

Advisor of the **party's choice** (including attorneys)

Advisors serve **TWO essential** functions in the Title IX grievance space:

1. Support their advisee through the process, &
2. Ask questions through cross-examination



ADVISOR

ADVISOR RESOURCE GUIDE

INTRODUCTION: SERVING AS AN ADVISOR IN TITLE IX PROCEEDINGS

THE ROLE OF THE ADVISOR

PRE-HEARING PREPARATIONS

HEARINGS

CROSS-EXAMINATION & RELEVANCE

AFTER THE HEARING

CHECKLISTS & OTHER RESOURCES

Advisor Resource Guide for Title IX Investigations and Hearings

SEPTEMBER 2021

shorturl.at/iBjcZ

Abbey Marr, Esq.
Jessica Morak, Esq.
Gemma Rinefierd, Ed.D.
Adam J. Wolkoff, J.D./Ph.D.



CROSS-EXAMINATION



- Questions by a party's advisor to the other party (& witnesses)
 - Respondent advisor to complainant, and *vice versa*
- Before answering, decision-maker determines question relevant or not
- Decorum rules must be followed when questions are asked
 - Failure to abide by decorum rules may warrant removal

QUESTIONING

- Decision-makers determine relevance of questions prior to answering
- Relevant questions ask **whether facts material to allegations under investigation are more or less likely to be true**
- Decisions about relevancy are made question-by-question
- Bias rules insist determinations cannot be made based on:
 - Who asked the question,
 - Their possible (or clearly stated) motives,
 - Who the question is directed to, or
 - The tone or style used to ask about the fact.



WHAT MAKES A QUESTION IRRELEVANT?



Three clear exceptions to relevance:

1. Questions about privileged information,
2. Questions about complainant's prior sexual behavior, or sexual predisposition, and
3. Questions previously asked & answered.

Questions that pertain to these matters must be excluded & dismissed.



DECISION-MAKER

If decision-maker is a single individual, they are responsible for the decision.

If the decision-maker is a panel, the panel chair will be responsible for relevancy determinations.

The 2020 Final Rule “does not require a decision-maker to give a length or complicated explanation.”

HOW DO DECISION-MAKERS MAKE RELEVANCY DETERMINATIONS?

QUESTIONS ABOUT PRIVILEGED INFORMATION

- IRRELEVANT because they call for information shielded by a Medical or otherwise *LEGALLY-RECOGNIZED PRIVILEGE*
 - Physician, dentist, podiatrist, chiropractor, nurse, psychologist, psychiatrist
 - Clergy, rape crisis counselors, social workers
 - Each state may have specific rules pertaining to privilege



HOW TO DOCUMENT DECISIONS ABOUT PRIVILEGED INFORMATION

”This question is irrelevant because it calls for information shielded by a legally-recognized privilege - Questions about privileged information: [identify the privilege here].”

“The question is relevant because, although it calls for information shielded by a legally recognized privilege - Questions about privileged information [identify the privilege here], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or. Less likely to be true.



COMPLAINANT'S PRIOR SEXUAL BEHAVIOR, OR SEXUAL PREDISPOSITION

Information about the complainant's sexual habits or predisposition, OR prior sexual behavior are not relevant unless they meet one of two exceptions:

1. Questions & evidence of this kind are offered to prove that someone other than the respondent committed the violation, or
2. If the information concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent & is offered to prove consent was obtained.



RELEVANCY DETERMINATION RATIONALE - PRIOR SEXUAL BEHAVIOR OF THE COMPLAINANT

“This question is irrelevant because it calls for information about the complainant’s prior sexual behavior without meeting one of the two exceptions.”

“This question is relevant because although it calls for information about the complainant’s prior sexual behavior, it meets one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true:

EXCEPTION 1: the question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.

EXCEPTION 2: the question concerns specific incidents of complainant’s prior sexual behavior with respect to the respondent and is asked to prove consent.”



GENERAL FACT FINDING QUESTIONS

REPETITIVE QUESTIONS, or questions that do not address the allegations in any meaningful way, may be DETERMINED IRRELEVANT.

“This question is relevant because it asks whether a fact material to the allegation is more or less likely to be true.”

“This question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.”

”This question has been asked and answered. [CITE]”



DETERMINING RESPONSIBILITY

- ❑ Identify the allegations potentially constituting sexual harassment
- ❑ Describe the procedural steps taken
- ❑ Identify findings of fact supporting the determination
- ❑ Identify which section of the grievance policy respondent has or has not violated
- ❑ For each allegation, provide a statement of and rationale for:
 - ❑ The result, including a determination regarding responsibility;
 - ❑ Any disciplinary sanctions imposed on the respondent; &
 - ❑ Whether remedies designed to restore or preserve equal access to recipient's education program or activity will be provided to the complainant; &
- ❑ Describe the recipient's appeal procedures

EVIDENCE

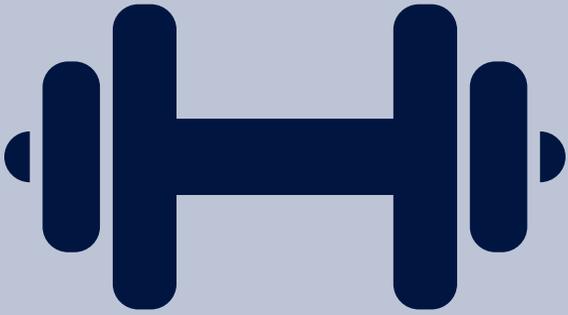


DIRECT

CORROBORATING



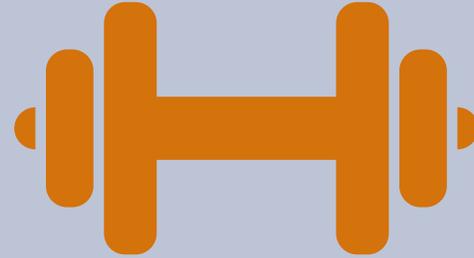
CIRCUMSTANTIAL



DIRECT

First-hand observations & evidence of incident or surrounding circumstances

CONSIDERABLE WEIGHT
(witness testimony of first-hand account of incident)



CORROBORATING

Statements or tangible materials that confirm direct evidence regarding incident

SOME WEIGHT
(video evidence, text message threads, security footage, etc.)



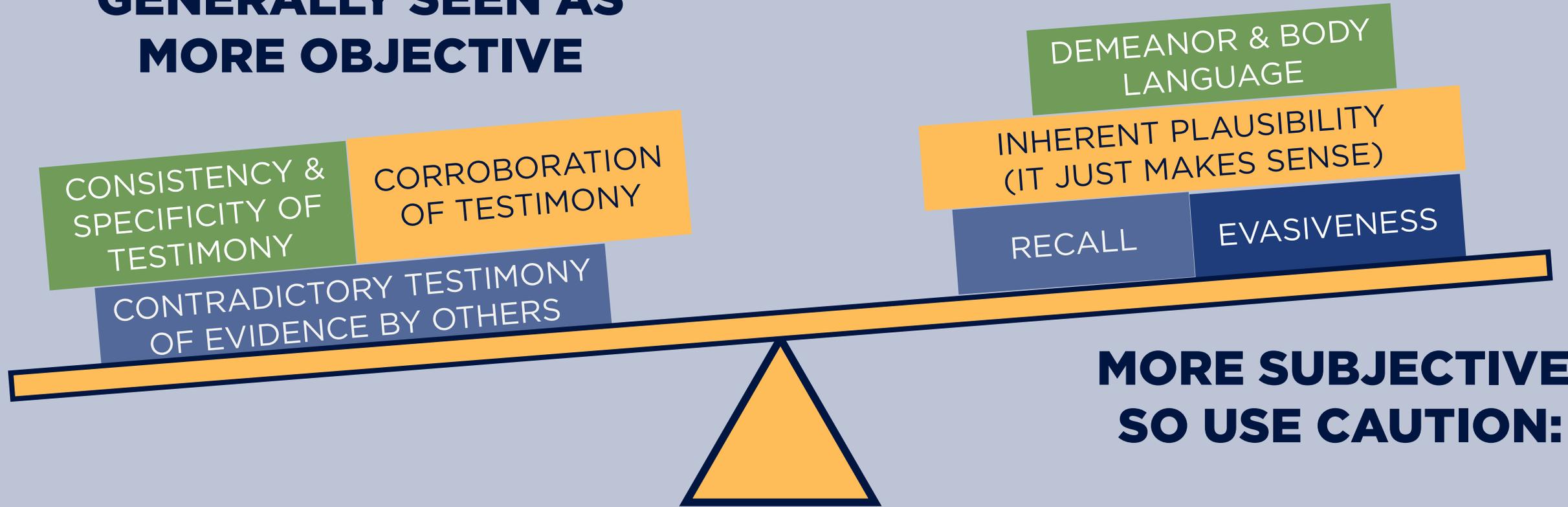
CIRCUMSTANTIAL

Statements or tangible materials that rely on inference

LEAST WEIGHT
(photo of location of alleged sexual assault showing several empty vodka bottles)

ASSESSING WEIGHT

**GENERALLY SEEN AS
MORE OBJECTIVE**



**MORE SUBJECTIVE,
SO USE CAUTION:**

WEIGHING TESTIMONY & EVIDENCE

CREDIBILITY DETERMINATIONS: OBJECTIVITY

- Cannot be based on the party's status
- Cannot apply “predictive behaviors”
- But decision-makers may consider:
 - The party/witness' stake in the outcome
 - The potential conflict of interest where an advisor is also a witness
 - Possible motive to fabricate testimony
 - The possibility of coaching



CREDIBILITY

SPECIFICITY
CONSISTENCY
CONTRADICTION
MOTIVE TO DECEIVE
DEMEANOR &
EVASION

Credibility judgments may feel subjective – decision-makers are asked to evaluate whether a person *they don't know* is being honest in an unfamiliar & stressful situation.

Many traditional approaches to assess credibility may **REINFORCE BIASES** rather than promote an effort to get at the truth. The areas on the left can help decision-makers determine credibility.

DELIBERATION



Establish roles, assess board member strengths



Review allegations, claims, evidence, hearing notes



Utilize tools for success, sanctioning guidelines, bias chart, etc.



Scheduling, flexibility



Seek consensus, or lack thereof

DETERMINATION & REMEDIES



Not Responsible/Not In Violation
revisiting restrictions



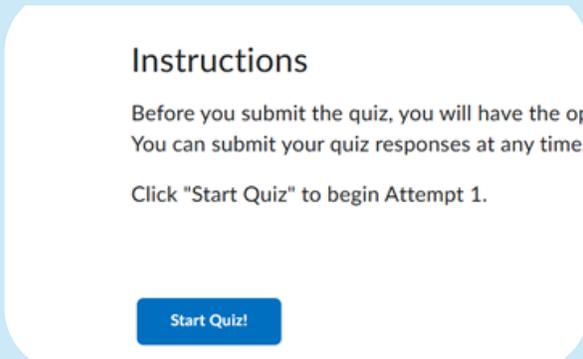
Responsible/In Violation
sanction guidelines, prior history, readmission



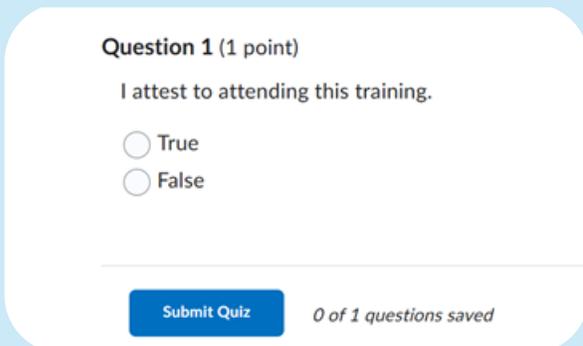
Considerations, resources, consistency, non-discrimination

How to Take the Attendance Quiz!

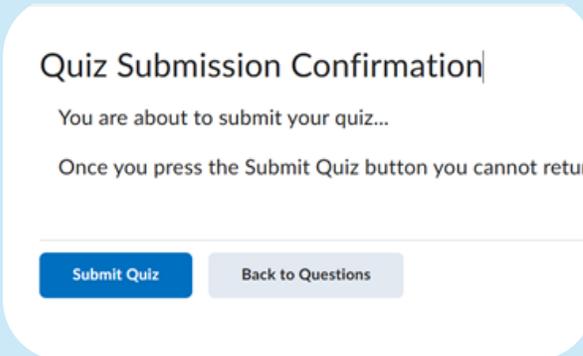
1. Click the link in the Zoom chat
2. Arrive at quiz page
3. Scroll down to Start Quiz



4. Take the quiz
5. Click Submit Quiz

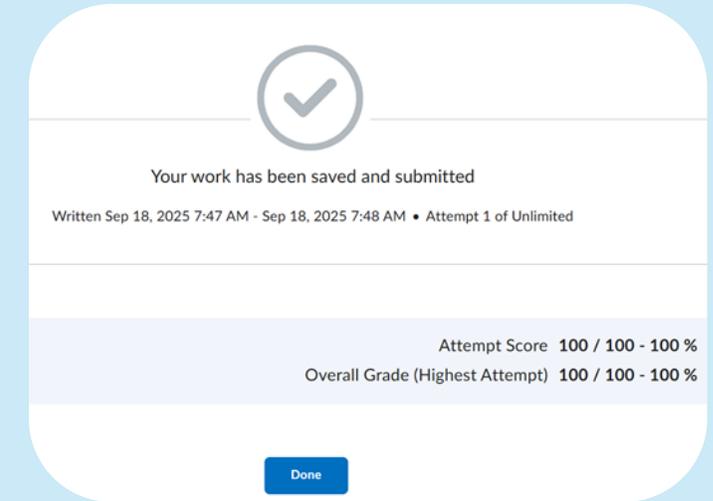


6. Arrive at Submission Confirmation
7. Click Submit Quiz for the second time



8. Arrive at page that says "Your work has been saved and submitted"

9. Click "Done"



10. Close out of window to return to the window with the Live@Distance training

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SANCTIONS AND/OR REMEDIES

APPROPRIATE SANCTIONS

If the student is found responsible, outline the sanctions. IF IT'S AN EMPLOYEE, SANCTIONS WILL LIKELY BE ISSUED LATER

APPROPRIATE REMEDIES

If remedies are being provided to the complainant, they would be outlined here

RATIONALE FOR SANCTIONS OR REMEDIES

Explain why the chosen sanctions/remedies are appropriate, considering factors such as the severity of the offense, past conduct history, & educational outcomes or institutional obligations to the complainant

DETERMINING SANCTIONS

CLOSING STATEMENTS
IMPACT OF SANCTIONS
PROPORTIONALITY
CONSISTENCY
PRIOR DISCIPLINARY
HISTORY
EDUCATIONAL MISSION



BOTH PARTIES CAN SUBMIT IMPACT STATEMENTS

- 
- Provide context for their behavior
 - Suggest possible options for the board to consider
 - Describe the impact the process has had on them, the other party, or their community
 - Suggest sanctioning or request leniency

SANCTION SEVERITY

SANCTIONS SHOULD ADDRESS ANY AGGRAVATING AND/OR MITIGATING FACTORS OF A CASE

AGGRAVATING FACTORS INCREASE SEVERITY
OF A VIOLATION

EX: Lack of remorse or understanding, presence of
weapons, premeditation

MITIGATING FACTORS DECREASE SEVERITY OF
A VIOLATION

EX: Non-violent offense, demonstrated capacity or
willingness to change behavior

CONSIDER!

Restorative measures rather than
purely punitive sanctions

Disproportionate effect on student
unrelated to the circumstances

PROPORTIONALITY

SANCTIONS PROPORTIONAL TO OFFENSE

Is sanctioning consistent with the kind of violation considered before the hearing panel?

Mitigating/Aggravating Factors

Rationale needed when deviating

**OPEN
CONTAINER OF
ALCOHOL**

Warning

**VIOLENT
OFFENCE
INVOLVING
ALCOHOL**

??

CONSISTENCY

DEVIATION FROM INTERNAL CONSISTENCY CAN BE SEEN AS ARBITRARY & CAPRICIOUS

Individual treatment of cases an imperative

Many cases may have similar circumstances & outcomes

- Colleges must have record keeping protocol

History & guidance can assist in sanction development

Disregarding consistent sanctioning response must be rationalized

STUDENT 1	STUDENT 2
Responsible for Stalking	Responsible for Stalking
Removal from Housing	Warning & Reprimand
Rationale	???

PRIOR DISCIPLINARY HISTORY

REMEMBER: PRIOR MISCONDUCT IS NOT EVIDENCE OF RESPONSIBILITY FOR NEW MISCONDUCT

Hearing panels can use prior findings of responsibility to assist in determining sanctions for new responsible findings

Prior similar violations with similar circumstances may indicate a need for more impactful sanctioning

- Frequency of violation, also

More punitive motivation than other considerations

SAMPLE STUDENT

Responsible for Stalking

Responsible for Stalking

January 2025

December 2025

Probation
Counseling
Educational
Sanctions

???

INSTITUTIONAL MISSION

***WHAT DOES YOUR INSTITUTIONAL MISSION
HAVE TO SAY ABOUT STUDENT MISCONDUCT?***



Institutional philosophy may influence your office & practice

Scheduling systems for sanction, predetermined outcomes for responsible findings

Collaborative approaches with other offices, or with responsible students

Performance plans or behavioral agreements

COMMON SANCTIONS

SANCTION TYPE	DESCRIPTION & EXAMPLES
WARNINGS OR REPRIMANDS	Both written and/or verbal
CREATIVE OR EDUCATIONAL	Reflection papers, presentations, letters to future-selves, pre-made programs designed for specific circumstances
PUNITIVE MEASURES	Probation, suspension, or permanent separation from the institution
RESTORATIVE MEASURES	Intentional dialogues with community members, service dedicated to repairing harm or restoring relationships
ENGAGEMENT WITH RESOURCES OR SERVICE	Counseling, or wellness-related services, partnerships with on-campus offices to engage students with community & campus

RATIONALE, IN PRACTICE

- DESCRIPTION OF EVIDENCE REVIEWED (i.e. written statements, report filed through TIX Investigator, screen shots of various message threads, & witness testimony)
- Description of relevant CODE OF CONDUCT / TITLE IX GRIEVANCE PROCESS section
- Description of STANDARD OF EVIDENCE
- RE-STATEMENT OF FINDING (not responsible/responsible)
- RATIONALE supporting finding, including evidence was relied on & what the substance of that evidence was, & if applicable, evidence that was not relied on
- Any DISCIPLINARY SANCTIONS imposed upon respondent
- Any REMEDIES DESIGNED TO RESTORE OR PRESERVE EQUAL ACCESS to the education program or activity will be provided to the complainant

STANDARD OF EVIDENCE DESCRIPTION

For each charge, state the standard of evidence being used

- Preponderance of the Evidence, *or*
- Clear & Convincing

“By a preponderance of the evidence the hearing board has found the respondent is more likely than not...”

DESCRIPTION OF EVIDENCE UTILIZED

Provide a BRIEF SUMMARY of the evidence used in making the decision

- Witness testimony - “Verbal testimony given by the complainant that observed ... “
- Witness testimony - “Verbal testimony given by witness #1 that stated ... corroborated ... ”
- Text messages - “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 ...”
- Email Communications - “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 ...”

DESCRIPTION OF EVIDENCE NOT USED

Provide a BRIEF SUMMARY of the evidence NOT USED in making the decision

- Witness testimony - “Verbal testimony given by the complainant that was not relevant because ... “
- Text messages - “Text messages sent between the respondent and complainant during the days of 09/23/25 and 10/10/25 that did not provide additional context...”
- Email Communications - “Screenshots of emails sent to the complainant between the days of 09/23/25 and 10/10/25 that were not related to the charges...”

APPEALS PROCESS

3 MANDATED GROUNDS

PROCEDURAL IRREGULARITY

Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures)

NEW EVIDENCE

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter

CONFLICTS OF INTEREST, OR BIAS

The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter

“An opportunity for a student to bring forward specific concerns that may have impacted the result of the original hearing (as defined in your institution’s code of conduct)”

(Kalagher, S.S. & Curran, R. D., 2020)



**WHAT IS AN
APPEAL?**

A man with dark hair, wearing a grey suit jacket over a striped shirt, stands against a solid orange background. He is holding a large white rectangular sign with both hands. The sign has the text 'WHEN CAN A PARTY APPEAL?' written in bold, dark blue, sans-serif capital letters. The word 'WHEN' is underlined.

**WHEN CAN
A PARTY
APPEAL?**

**APPEALS CAN TAKE PLACE ANY
TIME A DECISION IS MADE.**

This includes, but may not be limited to:

- Supportive measures (any kind)
- Emergency removals
- Relevance determinations
- Evidence or question exclusions
- Adjustments made throughout the process
- Decisions/determinations
- Dismissals of complaint

**YOUR INSTITUTION REQUIRES A
MECHANISM TO HEAR
CHALLENGES.**

Appeals are not mulligans or do-overs

No second-guessing or micro-management of hearings

Cannot deviate from procedures

All parties must be notified of appeals

All new panel to hear appeals

Conflicts of interest and/or bias prohibited

Additional grounds for appeal may be considered, but only if
publicly available & applicable to all

APPEAL CONSIDERATIONS

Appeal decisions must be **in writing**.

Parties notified simultaneously through official communication.

The decision must include, at minimum:

- The grounds for appeal, or grounds considered;
- The rationale for granting or denying the appeal;
- If the appeal is granted, what are the next steps for remedy & why?

What is a remedy?

- Example: increase or decrease the severity of sanction for the respondent



APPEAL DECISION

- Finding of Responsibility
- Policy Jurisdiction
- Formal Complaint Summary
- Investigatory Procedures
- Inspection & Review of Evidence
- Review of Investigative Report
- Delays & Adjournments
- Live Hearing Procedures Summary
- Appeal Rights
- Findings & Rationale
- Sanctions & Remedies



DETERMINATION NOTICE



AREA	CONSIDERATIONS
PERSON CENTERED	Summary Letter
CAPACITY	Board Member Schedules, Timeframes, Deadlines
SKILLSETS	Board Members assigned to specific tasks
STYLE	Findings section may vary depending on the type of case; Create an outline with your analysis mapped-out before drafting
TECHNOLOGY & PRIVACY	What are some considerations here? How is information shared and kept private?
TRAINING	Senior board members may be better equipped to write rationales

DETERMINATION NOTICE

NOTIFICATION OF DETERMINATION

Supportive
measures or interim
restrictions remain
in place through
appeal

Either party can
appeal (same
timeline)

Preparation for any
reactions during this
time-period

Reactions v. Responses

Reflective Responses:
Restate, Reflect, Validate

Choices

Consistent Communication &
Offerings for Parties

FERPA Considerations



REACTIONS & CONSISTENT COMMUNICATION

WHAT IS RETALIATION?

- Intimidation,
- Threats,
- Coercion,
- Discrimination, and/or
- Charges for a code of conduct violation

WITH THE PURPOSE OF INTERFERING WITH
ANY RIGHT OR PRIVILEGE SECURED BY TITLE

IX



ZERO TOLERANCE!



TITLE IX **PROHIBITS RETALIATION**
AGAINST PEOPLE WHO SEEK TO
ASSERT THEIR TITLE IX RIGHTS, for
example:

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

WHICH ROLES NEED TRAINING?

**TITLE IX
COORDINATORS**

**DECISION-
MAKERS**

INVESTIGATORS

**INFORMAL
RESOLUTION
FACILITATORS**

REQUIRED TIXC TRAINING

- Definition of sexual harassment (106.30)
- Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- How to investigate
- How to conduct grievance processes (including hearings, appeals, informal resolutions if using)
- Technology used at live hearings
- Issues of relevance of questions & evidence
- Rape shield protection
- Issues of relevance in creating an investigative report
- How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

DECISION-MAKERS

- ❑ Definition of sexual harassment (106.30)
- ❑ Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- ❑ How to conduct grievance processes (including hearings, appeals, informal resolutions)
- ❑ Technology used at live hearings
- ❑ Issues of relevance of questions & evidence
- ❑ Rape shield protection
- ❑ How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- ❑ Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

INVESTIGATORS

- ❑ Definition of sexual harassment (106.30)
- ❑ Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- ❑ How to investigate
- ❑ Issues of relevance of questions & evidence
- ❑ Rape shield protection
- ❑ Issues of relevance in creating an investigative report
- ❑ How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- ❑ Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment

INFORMAL RESOLUTION FACILITATORS

- ❑ Definition of sexual harassment (106.30)
- ❑ Scope of institution's education programs or activities (i.e. its Title IX "jurisdiction")
- ❑ Issues of relevance of questions & evidence
- ❑ Rape shield protection
- ❑ How to serve impartially (avoiding prejudgment of facts at issue, conflicts of interest, & bias)
- ❑ Facilitation of informal resolution processes (including administrative review, mediation, and/or restorative justice)
- ❑ Trainings may not rely on sex stereotypes & must promote informal investigations & adjudications of formal complaints of sexual harassment



NY-129 B REQUIREMENT

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;



MORE NY-129 B REQUIREMENTS

- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

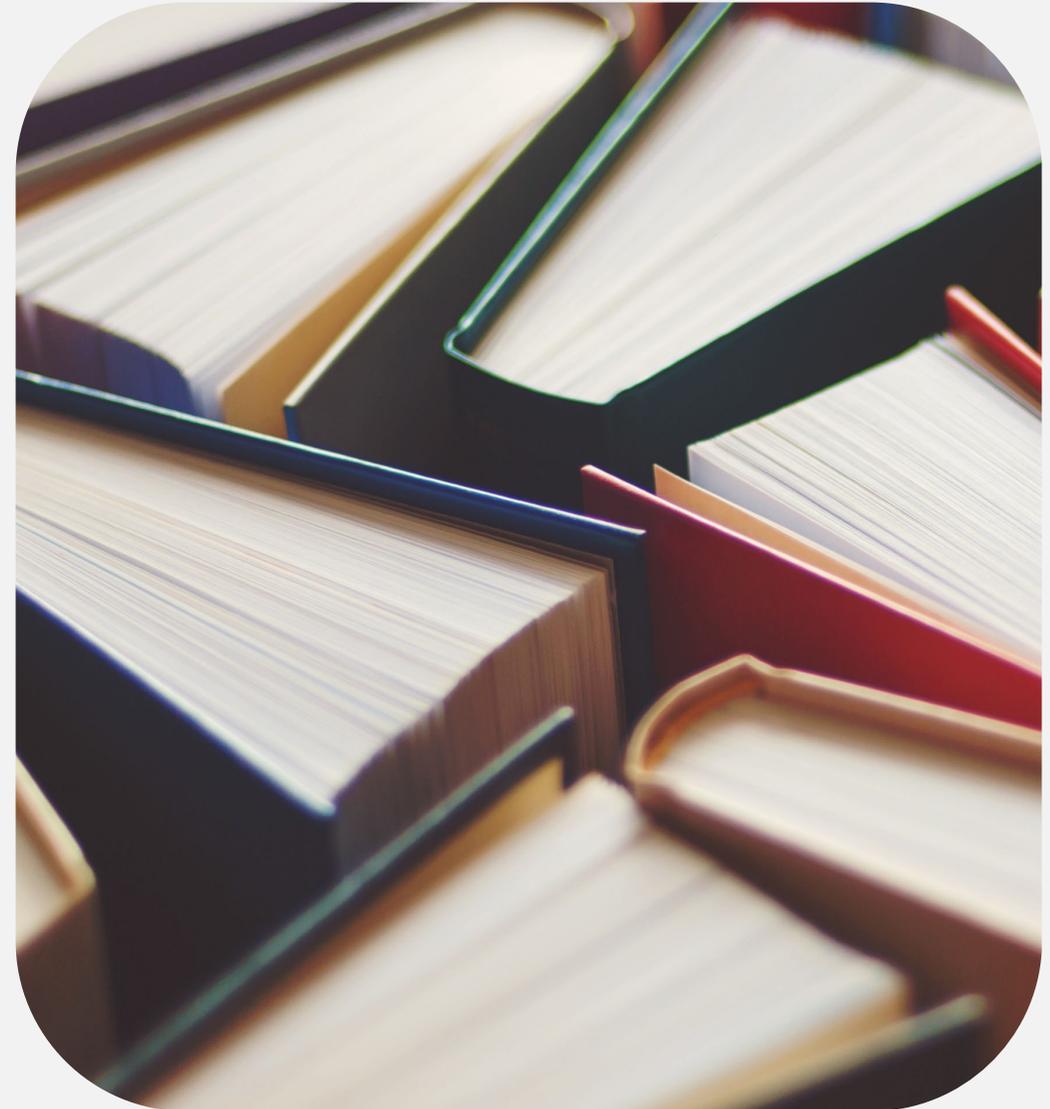
CONSENT





NYS DEFINITION

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent.”



NY-129 B REQUIREMENT



F.R.I.E.S.



 Planned Parenthood

**FREELY GIVEN
REVERSIBLE
INFORMED
ENTHUSIASTIC
SPECIFIC**

NYS SCHOOLS MUST REFLECT CERTAIN PRINCIPLES IN GUIDANCE:

- Consent to any act or prior act between any party does not imply or constitute consent to another act
- Required regardless if person initiating is under the influence of drugs/alcohol
- Consent may be withdrawn as well as given
- Incapacitated individuals cannot give consent
- Consent cannot be coerced
- When consent is withdrawn or cannot be given, sexual activity must stop



RECORDKEEPING

INSTITUTIONS MUST KEEP, FOR AT LEAST SEVEN YEARS, RECORDS OF:

- Each sexual harassment investigation, including
 - Determination regarding responsibility,
 - Any audio or audiovisual recording or transcript,
 - Any disciplinary sanctions imposed on respondent,
 - Any remedies provided to complainant designed to restore or preserve equal access to institution's educational programs or activities
- Any appeal & results of said appeal
- Any informal resolution & results of said resolution
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
 - Basis for conclusion, & that institution was not deliberately indifferent
 - If no actions taken, the rationale for why response was appropriate & not deliberately indifferent
- All training materials for TIX Coordinators, investigators, decisionmakers, & any informal resolution facilitator
 - Training materials must be publicly available on its website, or make them available upon request for inspection by members of the public

This document is designed to help Title IX Coordinators map the decision-making process for:

- all reports & formal complaints of Title IX sexual harassment, including reports that do not result in an investigation or adjudication.

This work may be completed by several different offices & individuals on campus, (e.g. Student Conduct, Human Resources, Office of Disability Services) but it is the Title IX Coordinator's responsibility to track these items.

We created this document to help our members track every aspect of response in every case, in real time, reducing the need to re-create responses & information long after the conclusion of a case.



 TITLE IX TOOLKIT 

Student Conduct Institute
Case Rationale Map for Title IX Coordinators
July 1, 2020 (Updated May 27, 2021)

What is the purpose of the Case Rationale Map?

Title IX Final Rule, section 106.45(b)(10), requires institutions to maintain, for seven years, records of: (A) any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant; (B) Any appeal and its result; (C) Any informal resolution and its results; and (D) All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment.

The institution must also create and maintain for a period of seven years a record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, as well as document the bases for its conclusions and that it has taken measures designed to preserve access to the institution's educational program or activity.



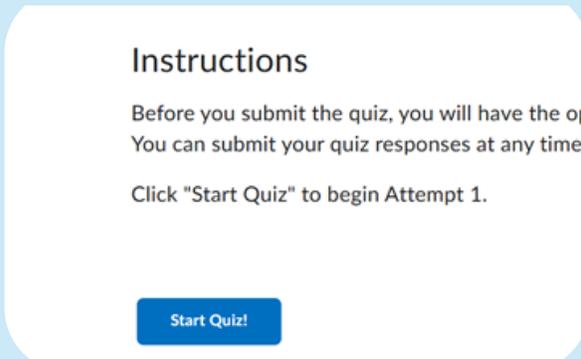
CASE RATIONALE MAP

KNOWLEDGE CHECK!

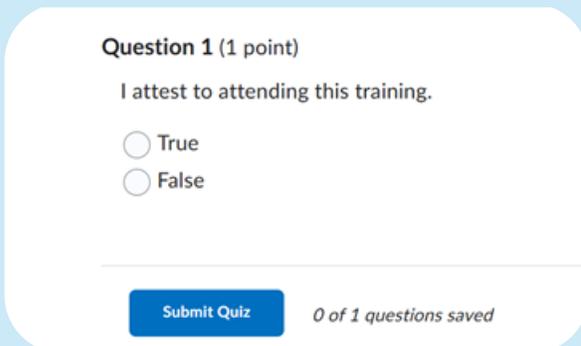


How to Take the Attendance Quiz, AGAIN!

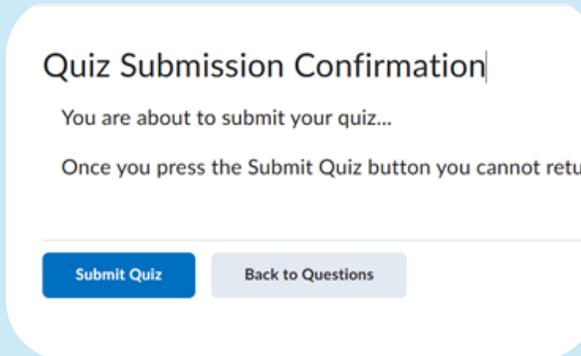
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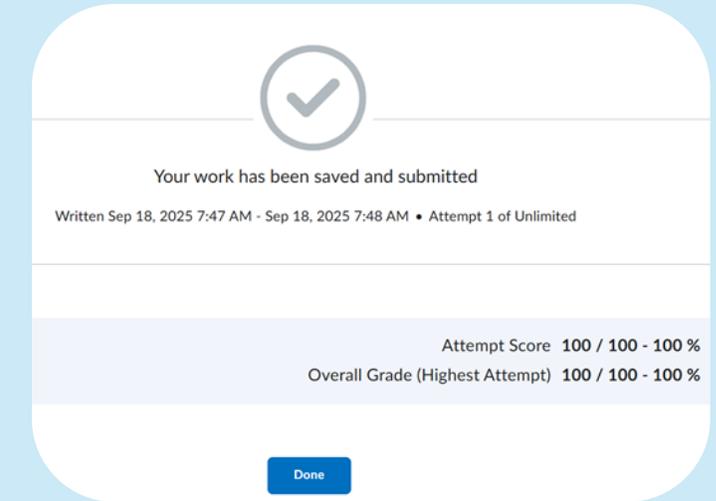


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