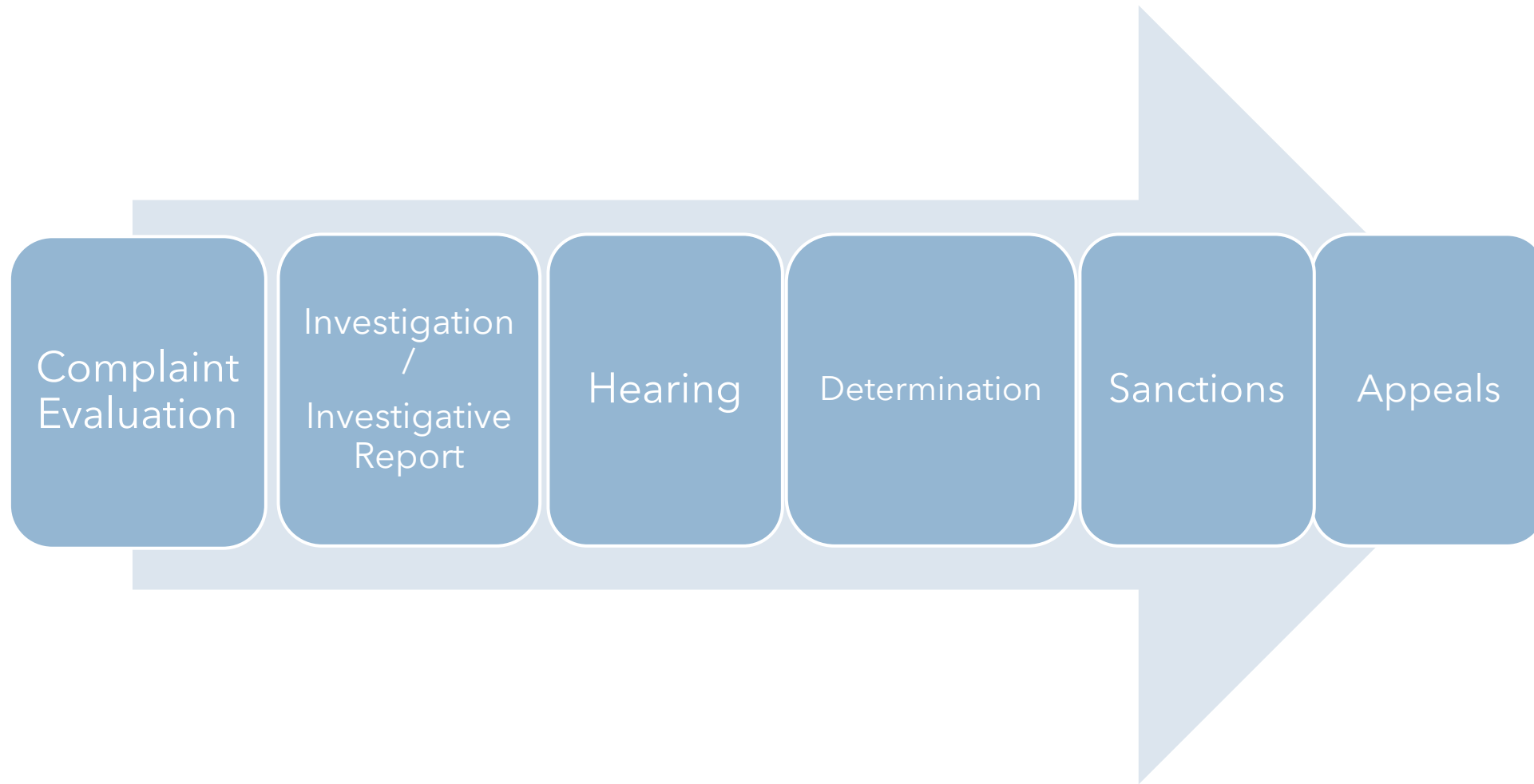
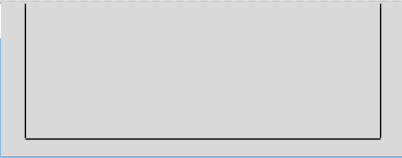




SESSION 3: INVESTIGATION AND ADJUDICATION

Steps in the Process





COMPLAINT EVALUATION

Complaint Evaluation

- **REPORT RECEIVED**

- **Report Information**

- Dean of College received a call from Joan Atwood (JA), mother of third-year student Megan Atwood (MA), on May 6, 2020. JA reported that MA had been sexually harassment on February 4, 2020 by Archie Miller (AM), also a third-year student. JA stated AM and MA met for the first time on the evening of February 2, 2020 at a sorority party house that is off campus and that the two made out but decided not to take things further. JA states that MA woke up to AM in her bed later in the evening and that MA was patting her hair and JA did not have any clothes on.
- MA sought medical treatment following the incident and filed a police report. The police investigation has concluded with no arrest. JA stated that MA was unsure about if a report to the police would lead anywhere and is now unsure if reporting to the University will change anything.

- **Addendum**

- On May 25, 2020, Title IX Coordinator received an email from Megan Atwood (MA) describing incident that occurred at Siesta Siesta, an off-campus restaurant downtown, wherein Samuel Parris (SP), a third-year student, confronted her and called her a derogatory name. SP is friends with Archie Miller (AM) and MA states that he accosted her because she filed a complaint against his friend. MA describes in her email that SP shouted at her: “Quit your bullshit. Why would you file a school complaint when we all know you’re a slut.”

Complaint Evaluation – for discussion



Is this a complaint that triggers an obligation to respond?

1. Under the final Title IX regulations?
2. Under Illinois state law?
3. If not a complaint, what elements are missing under the final Title IX regulations?
4. What should the College do in response to the report?
5. How should College respond if the report is anonymous?

Complaint Evaluation

- Is it a complaint?
- Getting preliminary information – how much is enough to go forward to investigation?
- What are the allegations?
 - Is this a Title IX Matter?
 - Does the complaint state a violation of University policy?
- How to handle confidentiality requests?
- How to handle anonymous reporting issues?



Deciding Whether to Investigate

- Under new regulations, must dismiss formal complaint under Title IX if:
 - If conduct alleged would not constitute “sexual harassment” as defined in new regs even if proved,
 - Did not occur in the school’s education program or activity, or
 - Did not occur against a person in the United States
- But, does not preclude action under another provision of the code of conduct
- Under new regulations, the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

**Supportive
Measures
34 C.F.R. §§
106.30(a)
106.44(a),
106.45(b)(1)
(ix), and
106.45(b)(1)
0(ii)**

"Supportive measures" defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

A school's response to sexual harassment must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

A school's grievance process must describe the range of supportive measures available to complainants and respondents.

A school must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the school must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school's education program or activity. If a school does not provide a complainant with supportive measures, then the school must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the school in the future from providing additional explanations or detailing additional measures taken.

NEW TITLE IX REGULATIONS – SUPPORTIVE MEASURES

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Confidentiality Requests

Assess!



- Risk to the student and broader community
- Provide a safe and non-discriminatory environment for all students

Factors:

- Seriousness of the alleged actions
- Age of the complainant
- Other complaints against same person
- Rights of the accused to receive information

Formal Complaint 34 C.F.R. §§ 106.30, 106.44(b)(1), and 106.45(b)(9)	<p>“Formal complaint” defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.</p> <p>A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the school. The phrase “document filed by a complainant” means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).</p> <p>In response to a formal complaint, a school must follow a grievance process that complies with § 106.45. With or without a formal complaint, a school must comply with § 106.44(a).</p>
Consolidation of Formal Complaints 34 C.F.R. § 106.45(b)(4)	<p>A school may consolidate formal complaints for allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.</p>
Dismissal of a Formal Complaint 34 C.F.R. § 106.45(b)(3)	<p>If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the school’s education program or activity, or did not occur against a person in the United States, then the school must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the school’s code of conduct.</p> <p>The school may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the school; or specific circumstances prevent the school from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.</p> <p>Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the school must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.</p>

NEW TITLE IX REGULATIONS – FORMAL COMPLAINT

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**Notice of
Allegations
34 C.F.R. §
106.45(b)(2)**

Upon receipt of a formal complaint of sexual harassment, a school must provide the following written notice to the parties who are known:

Notice of the school's grievance process that complies with this section, including any informal resolution process.

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

If, in the course of an investigation, the school decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the school must provide notice of the additional allegations to the parties whose identities are known.

NEW TITLE IX REGULATIONS – NOTICE

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Illinois State Law - Notice of Rights and Options

Must provide complainants with concise written notice “in plain language” of their rights and options, including:

1. The right to report or not report the incident to the school, law enforcement or both, including information about the right to privacy and which reporting methods are confidential;
2. Contact information for the Title IX coordinator(s), confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement;
3. The right to request and receive assistance from campus authorities in notifying law enforcement;
4. The ability to request interim protective measures and accommodations for survivors, including without limitation changes to academic, living, dining, working, and transportation situations, obtaining and enforcing a campus-issued order of protection or no contact order, if such protective measures and accommodations are reasonably available, and an order of protection or no contact order in State court;
5. The school’s ability to provide assistance, upon request, in accessing and navigating campus and local health and mental health services, counseling, and advocacy services;
6. A summary of the school’s complaint resolution procedures, if the complainant reports a violation of the comprehensive policy.

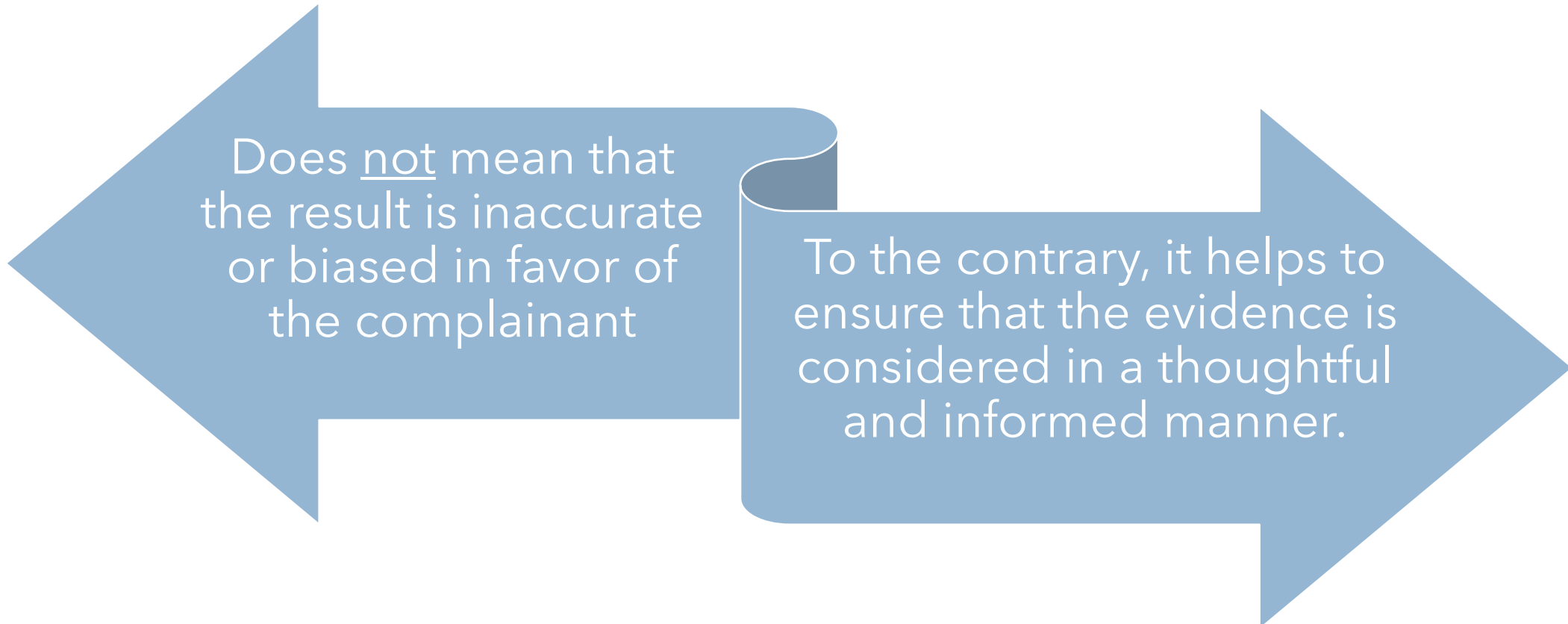
Conducting a Trauma-Informed Investigation

Possible impact
on memory and
memory recall

Inconsistent or
incomplete
descriptions of
facts

Counterintuitive
behaviors

Conducting a Trauma-Informed Investigation



Does not mean that
the result is inaccurate
or biased in favor of
the complainant

To the contrary, it helps to
ensure that the evidence is
considered in a thoughtful
and informed manner.

What's My Role? Investigator, Adjudicator, Employee

- To make an *impartial* determination as to whether a University policy or procedure was violated
- Temptation to be an advocate
 - For Complainant
 - For Respondent
 - Don't give into it!



Role of Investigator

- Conduct comprehensive and appropriate interview(s) of the complainant and respondent
- Identify witnesses, and then conduct appropriate interviews with relevant witnesses
- Gather any available physical or documentary evidence
- Prepare summary of evidence collected
- Receive, review and potentially conduct additional investigation into feedback received from the parties on a draft investigation report



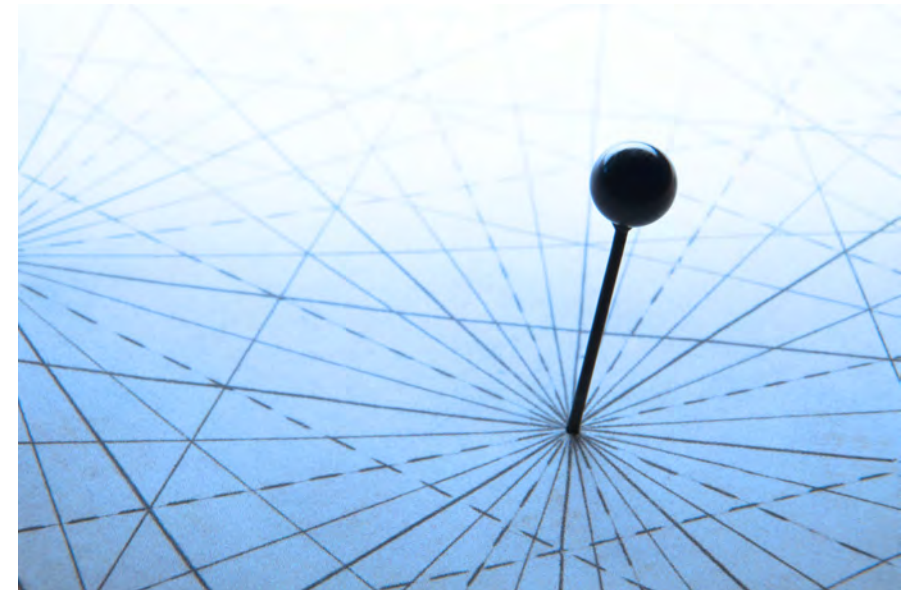
Investigation Plan and Strategy

- Gathering Sufficient Relevant Information
- Have a roadmap!
- Identify requirements for violation of policy
 - Prohibited conduct
 - Consent
 - Incapacitation
- Identify Evidence
 - Documents and testimony
- What are you looking for?
 - Timelines work
 - Who, what, where, how, and when



Investigation Plan and Strategy

- Who should be interviewed?
- Conducting effective interviews
 - Interviewing in pairs
 - Recording interviews
 - Asking “good questions”
 - Allowing review and “correction” of interview statements
- Obtaining relevant physical evidence – types?
- Documenting the investigation
 - Obtaining signed statements
 - Evidence identification and records
 - Allowing review and input on investigative report



Interviews and Documentation – for discussion



1. What information should be included in the introduction to the interview?
2. Was the format of the questions appropriate?
3. Was it appropriate to ask about the Complainant's prior sexual history?

Administrative Leave 34 C.F.R. § 106.44(d)	Nothing in this subpart of the Title IX regulations precludes a school from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.
Emergency Removal 34 C.F.R. § 106.44(c)	Nothing in this subpart of the Title IX regulations precludes a school from removing a respondent from the school's education program or activity on an emergency basis, provided that the school undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
Timeframes 34 C.F.R. § 106.8(b)(1)(v)	Grievance processes for formal complaints must include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the school offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
Good Cause 34 C.F.R. § 106.45 (b)(1)(v)	"Good cause" is not specifically defined in the new Title IX regulations, but Section 106.45(b)(1)(v) states that, with respect to the extension of timeframes for good cause, good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

NEW TITLE IX REGULATIONS ISSUED – LEAVE AND TIMEFRAMES

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**Investigation of
a Formal
Complaint
34 C.F.R. §
106.45(b)(5)**

New section states that when investigating a formal complaint and throughout the grievance process, a school must–

- (i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school and not on the parties except as specifically noted;
- (ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the school may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- (vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the school must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The school must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- (vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

NEW TITLE IX REGULATIONS ISSUED – INVESTIGATION

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Collecting Evidence



Collecting Evidence - Testimonial Evidence

- Interview all relevant witnesses
- To extent practicable, all witnesses identified by the parties
- Tiers of witnesses
 - Parties and all other individuals with “first-hand” knowledge
 - Individuals with “second-hand” knowledge
 - All other witnesses identified by parties

Collecting Evidence - Physical Evidence

- Closely review complaint or report from complainant
- Obtain relevant physical evidence
 - Medical evidence
 - Swipe cards
 - Emails
 - Phone records (text/voice-mail messages, photos videos)
 - Snapchat, Instagram, Facebook, and other forms of social media
 - Videos from security cameras or residence hall cameras
 - Security or police reports, if any
- Preserve physical evidence

Interview Questions

Basic Interview Questions

- Who committed the alleged act?
- Was anyone else involved?
- What exactly occurred?
- What was said and by whom?
- When did the act occur?
- Where did the act occur?
- How did you react? How did the incident affect you?
- Are there other individuals who may have relevant information?
- Did you talk to anyone of the incident?
- Ask for available evidence (e.g., social media)
- What else do you want to tell me about what happened?

Interview Techniques – Do's and Don'ts

	Do	Don't
General Principles	<ul style="list-style-type: none"> • Be empathetic • Ask open ended questions • Ask questions that address the five senses (sight, hearing, taste, touch, smell) • Listen • Give interviewee plenty of time to answer question • Clarify conflicting information 	<ul style="list-style-type: none"> • Ask leading questions • Ask negative questions • Ask questions that imply judgment • Ask multiple choice questions
Sample Question Formats	<ul style="list-style-type: none"> • Tell me about ... 	
Examples	<ul style="list-style-type: none"> • Tell me about your thought process when ... • Tell me what you were feeling when ... • Would you be willing to say more about ... • What did you mean when you said ... • What do you remember about ... 	<ul style="list-style-type: none"> • Why didn't you ...

Documentation

Maintain Detailed Records

- Explanations for any delays in the investigation or witnesses not identified
- Circumstances of file documentation (include names and dates)
- Names of complainant, accused student, and witnesses
- Names of individuals involved in handling complaint
- Date of complaint and how filed
- Statements or other evidence submitted or collected
- Interview notes
- Student communications: text messages, social media (Instagram, Snapchat)
- Other evidence: videos

ASSESSING CREDIBILITY

Assessing Credibility – for discussion



Did the interviewees seem credible? Why or why not?

How to determine if a person is credible?

EEOC says
to consider:



- Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- Demeanor: Did the person seem to be telling the truth or lying?
- Motive to falsify: Did the person have a reason to lie?
- Corroboration: Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- Past record: Did the alleged harasser have a history of similar behavior in the past?

Biases and Other Things to Keep in Mind

Re: Credibility Assessments



- Confirmation bias: the tendency to interpret new evidence as confirmation of one's existing beliefs or theories
- Stereotypes and assumptions related to:
 - Sexual orientation
 - Race
 - International students/cultural issues
- What does it mean to be "trauma-informed?"
- Be mindful of cultural competency and subjectivity regarding:
 - Plausibility and reasonableness of account
 - Own common sense
- Remember our goal: Fair, balanced and impartial decisions

Evaluating Consent in Matters Involving Incapacitation

**YES
MEANS
YES**



- What evidence is there that the complainant or respondent was incapacitated? (Know your policy's definition of incapacitation.)
- If one party was incapacitated, did the other party know or should they have known about the incapacitation?
- What evidence would you rely upon to evaluate your determinations regarding incapacitation?
- Signs of possible incapacitation



INVESTIGATION/ INVESTIGATION REPORT

Investigative Report – for discussion



- a. Does the report fairly summarize the evidence?
- b. List the inculpatory evidence for the Complainant.
- c. List the inculpatory evidence for the Respondent.
- d. List the exculpatory evidence for the Complainant.
- e. List the exculpatory evidence for the Respondent.
- f. Rank the evidence in terms of reliability (from most reliable to least reliable).

HEARING

Hearing – for discussion

You are the hearing officer and have just received this investigation report. The hearing is in three days.



1. What are the **relevant** questions to be answered at the hearing?
 - To the Investigator?
 - To the Complainant?
 - To the Respondent?
 - To each of the Witnesses?
2. Is there any information missing from the report?
3. Is the tone of the report appropriate?
4. Is the report clearly organized?

Access to Evidence Section § 106.45(b)(5)(vi)	When investigating a formal complaint and throughout the grievance process, a school must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the school must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The school must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
Burden of Proof and Burden of Gathering Evidence 34 C.F.R. § 106.45(b)(5)(i)	Grievance procedures for formal complaints must ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school and not on the parties provided that the school cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the school must obtain the voluntary, written consent of a "parent," as defined in 34 CFR § 99.3).
Privilege 34 C.F.R. § 106.45(b)(1)(x)	Grievance processes for formal complaints must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
Presumption for Respondent 34 C.F.R. § 106.45(b)(1)(iv)	Grievance processes for formal complaints must include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
Standard of Evidence 34 C.F.R. § 106.45(b)(1)(vii)	Grievance processes for formal complaints must state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.

Illinois State law: Requires use of the preponderance of the evidence standard to determine whether student violated sexual misconduct policy.

NEW TITLE IX REGULATIONS ISSUED - EVIDENTIARY CONCEPTS

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Preponderance of the Evidence



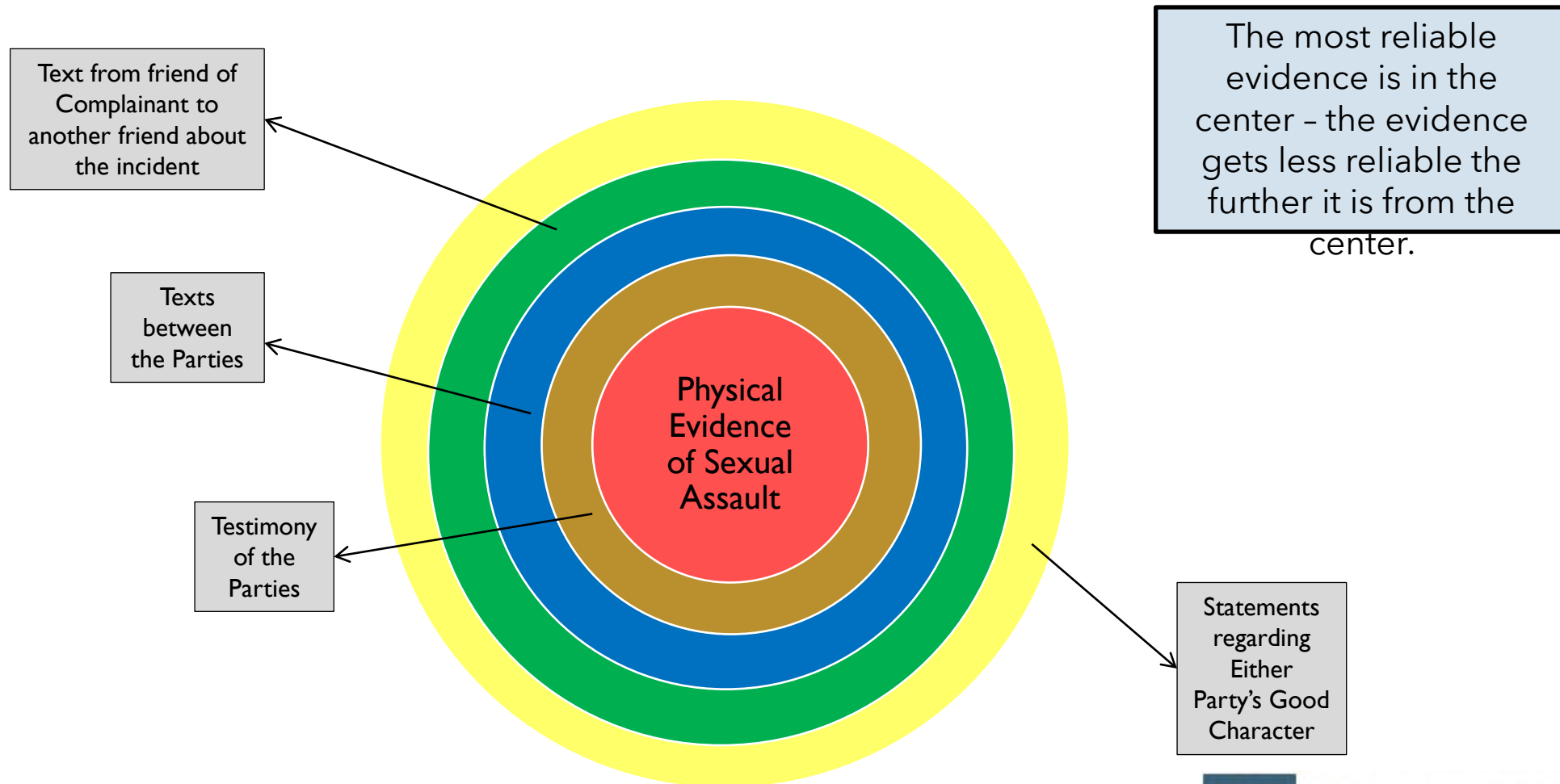
DETERMINATION

Determination – for discussion



Write the analysis and conclusion, including a conclusion as to whether the preponderance of the evidence supports that the Respondent violated the University policy.

Evaluating the Evidence - Bulls Eye



Evaluating the Evidence



Which has the greater weight?
"More likely than not"?

Elements of the Written Determination



1. Date of report, names of parties, investigator
2. Procedural history: From complaint receipt through determination, including notifications to parties, interviews, site visits, supportive measures, methods used to gather evidence, and hearing held
3. Allegation(s)
4. Applicable policies and procedures
5. Information considered during investigation (witnesses questioned, documents and other evidence)

Elements of the Investigative Report

6. Information considered during investigation (witnesses questioned, documents and other evidence)
7. Interim Measures
8. Findings of fact
9. If required by policy, analysis and conclusion – whether the alleged conduct violated the policy and evidentiary standard -- preponderance of the evidence
10. Responses by complainant and respondent

SANCTIONS

**Sanctions and
Remedies**
34 C.F.R. §
106.45(b)(1)(vi)

Grievance procedures for formal complaints must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the school may implement following any determination of responsibility.

From the Preamble

- *The Department does not wish to dictate to schools the sanctions that should be imposed when a respondent is found responsible for sexual harassment.*
- *The final regulations do not impose a standard of proportionality on disciplinary sanctions.*
- *A respondent's lack of comprehension that conduct constituting sexual harassment violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may (in a school's discretion) factor into the sanction decision.*
- *Nothing in the final regulations precludes a school from adopting a zero- tolerance policy.*

NEW TITLE IX REGULATIONS – SANCTIONS

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APPEALS

**Appeals
34 C.F.R. §§
106.45(b)(1)(viii)
and 106.45(b)(8)**

A school's grievance process for formal complaints must include the procedures and permissible bases for the complainant and respondent to appeal.

A school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter;
- B. 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; and
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A school may offer an appeal equally to both parties on additional bases.

As to all appeals, the school must:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- C. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;
- D. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- E. Issue a written decision describing the result of the appeal and the rationale for the result; and
- F. Provide the written decision simultaneously to both parties.

Illinois law: The [parties] shall have the right to timely appeal findings or imposed sanctions if the party alleges (i) a procedural error occurred, (ii) new information exists that would substantially change the outcome of the finding, or (iii) the sanction is disproportionate with the violation... The [parties] shall receive the appeal decision in writing within 7 days after the conclusion of the review of findings or sanctions or sooner if required by federal or State law.

NEW TITLE IX REGULATIONS ISSUED – APPEALS

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Decision-maker(s)
34 C.F.R. §§
106.45(b)(7)(i) and
(b)(8)(ii)(B)

Decision-maker(s) for the appeal must not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

Illinois law: Required to have a sufficient number of individuals trained to resolve complaints so that an individual or individuals with no prior involvement in the initial determination or finding hear any appeal brought by a party.

NEW TITLE IX REGULATIONS ISSUED - APPEALS

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