

2025 ICUT Title IX Training

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EDUCATION &
EMPLOYMENT
————— LAW

Session 1

Foundations and Investigative Process





What's At Stake?

- Human cost: 300+ survivors, many students; years of trauma, withdrawals from classes, ongoing mental-health treatment
- Institutional cost: \$500 million global settlement with survivors
- President, athletic director, and multiple trustees forced to resign





Why We're Here

- When a Title IX report is made, it marks a dark and difficult moment—for everyone involved.
- These are stories of harm, fear, and uncertainty. The stakes are personal. Often permanent.
- Our role is not just to follow the law—but to **meet this moment with care, clarity, and deep humanity.**
- How we respond can build trust... or deepen the wound.



And if we get it wrong...

- We may retraumatize someone who needed help.
- We may destroy a reputation without cause.
- We may allow someone to continue hurting people.

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The Legal Part

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Does the alleged conduct meet the definition of “sexual harassment”?

Under §106.30, sexual harassment includes:

- Quid pro quo harassment by an employee,
- Unwelcome conduct on the basis of sex that is so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the education program or activity, or
- Sexual assault, dating violence, domestic violence, or stalking as defined under the Clery Act/VAWA.

⚠ If the conduct does not meet this definition, the formal Title IX grievance process does not apply (but other institutional policies should).



Did the conduct occur in the school's “education program or activity”?

- Includes locations, events, or circumstances where the school exercises substantial control over both the respondent and the context.
- Also includes any building owned or controlled by a student organization officially recognized by a postsecondary institution (e.g., fraternities, sororities).
- But...



Did the conduct occur in the United States?

- The 2020 regulations exclude conduct that occurred outside the U.S. from the Title IX process (e.g., study abroad).
- ⚠ Even if not covered by Title IX, the school may/should address such conduct under a different policy.



Is the complainant participating in or attempting to participate in the education program or activity?

- The complainant must be a current or prospective participant (e.g., student, employee, applicant). This is critical for determining whether supportive measures and Title IX grievance procedures apply.
- But again ...



Has a formal complaint been filed by the complainant or signed by the Title IX Coordinator?

- A formal complaint is required to initiate the grievance process.
- The Title IX Coordinator may sign a complaint even if the complainant chooses not to, based on safety or institutional concerns.



Is the respondent under the school's disciplinary authority?

- If the respondent is not affiliated (e.g., no longer a student or employee), the grievance process may not be available, though supportive measures may still be provided.



Has the school received “actual knowledge”?

- An institution must respond when it has actual knowledge—defined as notice to the Title IX Coordinator or any official with authority to institute corrective measures.

A photograph of a dense forest with many tall, thin trees. The trees are mostly bare, suggesting a late autumn or winter setting. The ground is covered in fallen leaves and branches. In the lower center of the image, a person is standing, looking towards the camera. The text "DON'T MISS THE FOREST FOR THE TREES" is overlaid in white, bold, sans-serif capital letters.

**DON'T MISS
THE FOREST
FOR THE TREES**

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Initial Meetings

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The Impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement

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SAGE

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Summary

The May 2015 release of the report of the President's Task Force on 21st Century Policing highlighted a fundamental change in the issues dominating discussions about policing in America. That change has moved discussions away from a focus on what is legal or effective in crime control and toward a concern for how the actions of the police influence public trust and confidence in the police. This shift in discourse has been motivated by two factors—first, the recognition by public officials that increases in the professionalism of the police and dramatic declines in the rate of crime have not led to increases in police legitimacy, and second, greater awareness of the limits of the dominant coercive model of policing and of the benefits of an alternative and more consensual model based on public trust and confidence in the police and legal system. Psychological research has played an important role in legitimating this change in the way policymakers think about policing by demonstrating that perceived legitimacy shapes a set of law-related behaviors as well as or better than concerns about the risk of punishment. Those behaviors include compliance with the law and cooperation with legal authorities. These findings demonstrate that legal authorities gain by a focus on legitimacy. Psychological research has further contributed by articulating and demonstrating empirical support for a central role of procedural justice in shaping legitimacy, providing legal authorities with a clear road map of strategies for creating and maintaining public trust. Given evidence of the benefits of legitimacy and a set of guidelines concerning its antecedents, policymakers have increasingly focused on the question of public trust when considering issues in policing. The acceptance of a legitimacy-based consensual model of police authority building on theories and research studies originating within psychology illustrates how psychology can contribute to the development of evidence-based policies in the field of criminal law.

Keywords

procedural justice, legitimacy, sanctions, deterrence, policing

Introduction

The development of police research provides an example of how initially academic psychological theories and experimental laboratory-based research conducted by social psychologists can provide a powerful alternative to some of the traditional models that have dominated law and public policy. For this to happen, it is necessary for those models to speak to issues that are important to the actors in the legal system. In this case, leaders of the national policing community have adopted models drawn from psychological research on legitimacy because both the limits of traditional deterrence models

and the strengths of a legitimacy-based model have become clear.

This change also offers a striking example of how society can benefit from the importation of psychological models into public policy. After decades of seeking to motivate compliance primarily through the use of sanctions, legal authorities have recognized two consequences. The first is that they have not successfully addressed the issue of public trust in the police, the courts, and the law.

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MECHANISMS OF LEGAL EFFECT: PROCEDURAL JUSTICE THEORY

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A Methods Monograph for the Center for Public Health Law Research Temple University Beasley School of Law

OCTOBER 2023

When people believe a process is **fair, respectful, and transparent**, they are more likely to accept the outcome—even if it's unfavorable.



You're meeting with a student who looks visibly distressed. What's the first thing you say after introducing yourself?


6-23-2021

"I've Never Told Anyone": A Qualitative Analysis of Interviews With College Women Who Experienced Sexual Assault and Remained Silent

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Beginning with Care

1. Start with Empathy

- “Thank you for meeting with me. I understand this may not be easy.”
- Introduce yourself and your role.
- Outline what you can offer & what to expect—no surprises.

2. Build Safety & Control

- “You have the right to decide how much you share today.”
- Emphasize that supportive measures are available now.

Beginning with Care

3. Acknowledge Emotional Weight

- “We understand this can be overwhelming. You don’t have to navigate this alone.”
- Offer written materials, contact info, and time to reflect.
- Let them know there will be follow-up opportunities.

Beginning with Care

4. Empower Through Information

- Walk through their rights, options, and available resources (on and off campus).
- Speak in plain, compassionate language. Avoid legal or bureaucratic jargon.
- “You are in control of what comes next.”



What might a student accused of misconduct be feeling in their first meeting?

Your First Conversation with the Respondent

1. Lead with Fairness and Neutrality. “We’re here to ensure a fair, respectful process for everyone involved.”
2. Emphasize the presumption of non-responsibility. Approach without judgment or assumptions.
3. Normalize the Emotions Involved. “It’s completely natural to feel anxious or uncertain in this moment.”
 - Acknowledge stress without minimizing it.
 - Allow space for reactions, questions, and pauses.
 - “This can be an overwhelming time—I’m here to explain what to expect.”

Your First Conversation with the Respondent

4. Clarify Scope and Next Steps

- Outline the process – No decisions have been made— This is not a hearing.
- Reassure them of confidentiality and available supportive measures.
- Information overload can overwhelm respondents— especially students unfamiliar with legal frameworks. Use simple, structured explanations.

Your First Conversation with the Respondent

5. Set Ground Rules Compassionately. “You will have an advisor/support person. You’re not alone in this.”
 - Reinforce expectations around non-retaliation and mutual respect.
 - Encourage questions about process and role clarity.

Your First Conversation with the Respondent

6. Commit to Communication

- “We’ll keep you informed every step of the way.”
- Reiterate timelines, next points of contact, and options for follow-up.
- Provide written materials and remind them they can return with questions.

The Importance of Supportive Measures

- Must be non-disciplinary, non-punitive, and designed to restore or **preserve equal access to education**
- Victims/survivors are more likely to report incidents when they perceive the institution will offer real, practical support, not just compliance jargon (Campbell, 2006; Holland & Cortina, 2017).
- Timely supportive measures—like no-contact orders and housing reassignments—decrease the likelihood of retaliatory contact and prevent emotionally charged confrontations that derail investigations (Edwards et al., 2011).

The Importance of Supportive Measures

- When institutions provide concrete, visible, and neutral support early in the process, both parties are more likely to view the process as fair—even when outcomes are adverse (Tyler, 2006; Murphy, 2017).
- Failure to provide supportive measures can lead to findings of deliberate indifference under Title IX.



U.S. | U.S. EDUCATION NEWS | THE SATURDAY ESSAY

College Students Are Using ‘No Contact Orders’ to Block Each Other in Real Life

Originally meant to protect victims of sexual harassment or assault on campus, NCOs have become the go-to solution for a generation uncomfortable with face-to-face conflict.



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Investigation

What Is “Bias”?

- Favoring or disfavoring a party based on status or identity (e.g., complainant, respondent, gender, role)
- Prejudging credibility (“Complainants always lie” or “Respondents are usually guilty”)
- Prior statements, conduct, or relationships suggesting predisposition

What Is A “Conflict of Interest”?

- A personal or professional relationship with a party or witness
- A role in the underlying incident (e.g., prior advisor, mentor, or supervisor)
- Financial or reputational interest in the outcome



**What does coordinator provide
investigator to initiate investigation?**

Something I've Learned from 25 Years of Doing This

Investigators who demonstrate mastery of the definitions are more likely to conduct focused and efficient interviews and avoid evidentiary drift.

How: Before you begin, review:

- The relevant Title IX policy
- Definitions of prohibited conduct at issue

Create a Structured Investigative Plan

1. List allegations mapped to specific policies.
2. Identify parties, witnesses, timelines, and likely evidence (e.g., text messages, keycards, medical records).
3. Consider the "who, what, when, where, how" of each allegation.
4. Decide the order of interviews strategically (often complainant, witnesses, then respondent).
5. Start building a timeline

Hypothetical

Complainant: Jordan, a sophomore

Respondent: Alex, a junior and member of a student organization

- Jordan alleges that after a party hosted by Alex's fraternity on September 16, 2024, Alex walked her back to her residence hall and sexually assaulted her in her room. Jordan reports that she was intoxicated and doesn't remember all the details clearly but recalls saying "no" and trying to push Alex away.
- A roommate entered the room partway through the night and may have seen something. Jordan reported the incident to the Title IX Office on September 20.
- There is no formal police report.

“You’re the Investigator” – A Live Case Simulation

CASE SCENARIO: "The Night After the Fraternity Party"

Complainant: Jordan (Sophomore)

Respondent: Alex (Junior, member of student organization)

Summary:

- On the night of September 16, 2024, Jordan attended a party at Alex’s fraternity.
- Alex walked Jordan home afterward.
- Jordan alleges Alex sexually assaulted her in her residence hall room.
- Jordan states she was intoxicated and remembers saying “no” and pushing Alex away.
- A roommate entered the room partway through the night and may have seen something.
- Jordan reported the incident to the Title IX Office on September 20.
- No police report has been filed.

The Méndez Principles at a glance

Principles on Effective Interviewing for Investigations and Information Gathering



Effective interviewing is instructed by science, law and ethics.



Effective interviewing is a comprehensive process for gathering accurate and reliable information while implementing associated legal safeguards.



Effective interviewing requires identifying and addressing the needs of interviewees in situations of vulnerability.



Effective interviewing is a professional undertaking that requires specific training.



Effective interviewing requires transparent and accountable institutions.



The implementation of effective interviewing requires robust national measures.

Download the Principles here: bit.ly/PrinciplesInterviewing

#EffectiveInterviewing #MendezPrinciples



UiO Norwegian Centre for Human Rights
University of Oslo



Méndez Principles on Effective Interviewing

Four Foundational Principles

1. Ground Interviewing in Science and Law
2. Presume Vulnerability, Promote Dignity
3. Build Rapport and Trust
4. Professionalize the Interview Process

1. Preparation

- Understand the case context and potential vulnerabilities of the interviewee.
- Prepare a non-leading, open-ended question plan.
- Choose a setting that prioritizes privacy, comfort, and safety.
- Anticipate and accommodate language or accessibility needs.

2. Rapport-Building

- Begin with neutral, friendly conversation to reduce anxiety.
- Clearly explain your role, the voluntary nature of the conversation, the process, and what will happen next.
- Reinforce that the interviewee has control over what they choose to share.

3. Free Narrative

- Ask: “Can you tell me everything you remember about...”
- Do not interrupt. Let the narrative unfold.
- Use nonverbal encouragement (nodding, eye contact, open body language).

4. Clarification and Expansion

- Once the free narrative ends, follow up with neutral clarifying questions, such as:
 - “You mentioned X—can you tell me more about that?”
 - “Do you remember what happened after that?”
 - Asking what the interviewee heard, smelled, or saw before/during/after the incident helps bridge trauma-gapped timelines without leading them
 - “Help me understand....”

5. Closure

- Offer the interviewee a chance to add anything.
- Explain next steps and timelines.
- Thank them sincerely.

What the Méndez Principles Reject

- Coercion, deception, or leading questions
- Accusatory or adversarial approaches
- Presumptions of guilt or dishonesty
- Interrogation-style pressure
- Ignoring trauma, stress, or power dynamics
- Punitive tone or emotional manipulation



Title IX Investigations: The Importance of Training Investigators in Evidence-Based Approaches to Interviewing[☆]

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Under Title IX, schools in the United States that receive federal financial assistance are legally required to provide a prompt and impartial process for investigating complaints of sex-based discrimination. These investigations critically rely upon information obtained in interviews. We provide an evaluation of interview training that is presently available to college and university Title IX investigators. Our review finds that while certain core interviewing skills align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices related to the retrieval of memory and the assessment of credibility are critically absent. We recommend a set of evidence-based practices for Title IX investigative interviews that are likely to (a) improve the development of rapport and cooperation with an interviewee, (b) elicit more accurate and relevant information from memory, and (c) enhance assessments of credibility when applying strategic questioning approaches.

General Audience Summary

Title IX investigations are conducted in the United States when schools receive complaints of sex-based discrimination. These civil procedures rely on the participation, recall, and evidence provided by complainants (individuals who report experiencing sexual misconduct), respondents (individuals who are alleged to have engaged in sexual misconduct), and witnesses. This renders critical the role of effective interviewing procedures in Title IX investigations. In the present article, we evaluate current training and practice based upon several trauma-informed interview courses that are prevalent in the U.S. higher education industry. We find that while certain core interviewing skills appear to align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices that are related to the retrieval of memories and the assessment of credibility within an interview are critically absent. We believe it is important that colleges and universities develop standards of best practice for Title IX interviews, and we recommend a set of evidence-based approaches that have been evaluated in relevant contexts. We also encourage university Title IX offices to initiate collaborations with scholars both to introduce evidence-based training and to initiate research programs that might further advance the science of interviewing in the context of Title IX investigations.

Keywords: Investigative interviewing, Credibility assessment, Eyewitness memory

Cognitive Interview Techniques in Practice

- 1. Rapport First**
Establish trust before diving into questioning.
- 2. Free Narrative**
Begin with a neutral prompt (“tell me everything you remember”), then pause and listen.
- 3. Context Reinstatement**
Encourage interviewees to mentally re-enter the scene of the event to trigger richer recall.
- 4. Detail-Focused Prompts**
Ask gentle open-ended questions about specifics without introducing bias.
- 5. Strategic Use of Evidence**
Present evidence later to test consistency, not to lead.

Memorializing Interview

- Decide in advance whether you will audio-record, video-record, or stenograph
- Schedule verification meetings: send transcript or summary to each witness for accuracy confirmation.

Common Sources of Evidence

1. Text Messages & iMessages
2. Social Media
3. Emails
4. Dating Apps & Messaging Platforms
5. Surveillance Footage
6. Photos
7. Keycard Swipes / Building Access Logs
8. Uber/Lyft Receipts or Ride History
9. Medical or Counseling Records (only with voluntary release)
10. Institutional Records

Text & Social Media Evidence

Common Issues:

- Incomplete screenshots
- Edited or cropped threads

Best Practice Tips:

- Ask for full conversation context (not just snippets)
- Review metadata if available (timestamp, sender)
- Cross-check with phone records if in doubt

Report Structure

1. Introduction & Scope
2. Allegations & Policy Provisions
3. Procedural History
4. Summary of Evidence
5. Applicable Law & Definitions
6. Disputed Issues of Material Fact
7. Exhibits & Appendices

Other Thoughts

- **Neutral Voice, No Spin** – Summarize *all* relevant evidence, even what you think is weak.
- **Sidebar Notes** – Flag any outstanding tasks (“Snapchat record request pending”).
- **No Findings, No Credibility Labels Delivery Checklist** (per 34 C.F.R. § 106.45(b)(5)(vi)):
 - Send electronically or hard copy to each party *and* advisor.
 - Include the entire evidence file, even exculpatory items you may not rely on.
 - Provide clear instructions: 10 calendar days to submit written response; how to label new exhibits.

Tough Investigative Scenarios: What Would You Do?

Witness changes their account mid-process

- How to document inconsistencies
- Ethical follow-up questioning

Advisor tries to control the interview

- Reaffirm advisor role under Title IX
- Set and enforce clear ground rules
- Maintain fairness and investigator control

Tough Investigative Scenarios: What Would You Do?

New screenshots or texts are submitted

- Authenticity checks (metadata, context)

Complainant disengages emotionally or stops responding

- Trauma-informed re-engagement strategies
- Respect for autonomy and procedural discretion
- When (and how) to pause or proceed

Title IX Hearings and Adjudication – —

Ensuring Fair Resolutions

The Worst Hearing Ever

- Describe the most chaotic hearing or adjudication process you've observed.
- What made it so bad?
- What could we have done differently?



Pre-Hearing Conference

- Clarify logistics, timing, and technology for the hearing
- Review witness lists and anticipated evidence
- Address accessibility accommodations or language needs
- Ensure parties understand rules of decorum and cross-examination procedures
- **Emphasize Purpose**

Best Practices

- Hold at least 3–5 days before hearing
- Include all parties, advisors, and hearing chair/decision-maker
- Provide written summary of agreements and rulings afterward
- Document objections raised and resolved

“A well-run pre-hearing conference is the scaffolding of a respectful and lawful adjudication process.”

Kicking Off the Hearing

Opening Remarks Should:

1. Reiterate the purpose of the hearing
2. Emphasize the institution's commitment to fairness, neutrality, and respect
3. Identify all participants (Complainant, Respondent, Advisors, Witnesses)
4. Outline the order of proceedings
5. Set Ground Rules: Address expectations for decorum and conduct
6. Explain how cross-examination will proceed
7. Remind parties about recording, confidentiality, and procedural boundaries
8. Reaffirm that retaliation is prohibited

“How the hearing starts often shapes how the hearing goes. Authority, clarity, and empathy matter.”

Cross-Examination

- “Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,” — 34 C.F.R. § 106.45(b)(6)(i)
- Exceptions: (1) To prove someone else was responsible (2) To show consent re: prior relationship with respondent

Relevance

- “The Department acknowledges that determining relevance in real time during a live hearing may be difficult.” — 85 Fed. Reg. 30026, 30331 (May 19, 2020)
- My personal rule: When in doubt about relevance, I generally allow the question. Why?
- Relevance Is a Low Bar: Most relevance determinations should be quick and deferential. If a question might reasonably help assess credibility, bias, or facts at issue, it should be allowed.

Hypothetical Scenario

- Two students, Taylor (Complainant) and Jordan (Respondent), attended a late-night gathering in the campus commons.
- Both admit they drank alcohol.
- Taylor alleges that Jordan engaged in sexual activity without consent later that night in Jordan's dorm.
- Jordan claims the encounter was consensual.
- During the hearing, Taylor has testified about their memory of the evening, including what they drank, who they were with, and the moment they said "no."
- Jordan's advisor begins cross-examination.

Relevant Or Irrelevant?

- Question 1: “You said you had vodka, but isn’t it true you were also doing shots of Fireball before that?”
- Question 2: “Didn’t you tell your roommate earlier that week you were into Jordan?”
- Question 3: “Isn’t it true you kissed another person at the party before going upstairs with Jordan?”

Relevant Or Irrelevant?

- Question 4: “You’ve accused someone of sexual misconduct before, haven’t you?”
- Question 5: “You didn’t scream or fight back. Why not?”
- Question 6: “You and Jordan were flirting in your group chat earlier that day. Can you explain that?”

Disruptive Advisors

- Scenario: You're conducting a hearing. The respondent's advisor repeatedly objects mid-answer ("Objection! Hearsay!") and tries to coach responses.
- How do you respond in the moment? Do you stop the hearing? Do you warn them? What's your tone?

Disruptive Advisors

- Scenario: An advisor uses hostile tone and loaded questions during cross-examination (“Why are you lying about what happened?”).
- What’s the standard for intervention? How do you balance fairness with decorum?

What Can You Do?

- Remind them of ground rules at the outset
- Interrupt and redirect when needed
- Issue clear, progressive warnings
- Document disruptive behavior
- Remove an advisor only as a last resort

Report Writing Common Pitfalls

Failure to Adequately Explain Findings

- Courts consistently criticize reports that contain conclusory statements with no rationale.
- Common issue: Findings of responsibility or non-responsibility are stated without explaining why evidence was credited or discounted.
- Example: “The panel found the complainant not credible,” but provided no reasoning, leaving the court unable to assess whether the decision was arbitrary.— *Doe v. Univ. of Denver*, 952 F.3d 1182 (10th Cir. 2020)

Report Writing Common Pitfalls

Ignoring or Mischaracterizing Evidence

- Decision-makers sometimes omit key evidence or misstate what was said or submitted, raising concerns of bias or procedural irregularity.
- Common issue: Not addressing documentary or witness evidence that contradicts the conclusion.
- Example: In *Doe v. Purdue Univ.*, 928 F.3d 652 (7th Cir. 2019), the university expelled a student without considering his version of events or exculpatory evidence.

Report Writing Common Pitfalls

Insufficient Analysis of Credibility

- While credibility is often central, many reports fail to explain why a party or witness was or was not credible.
- Common issue: Boilerplate language such as “The panel found the respondent more credible,” without connecting it to specific facts.
- Courts expect: Acknowledgement of inconsistencies; evaluation of corroboration, motive, or plausibility; be careful about trauma-informed factors

Some Others

- Failure to Address Policy Elements
- Disorganized or Unclear Structure
- Language Suggesting Bias or Presumption
- Failure to Explain Sanctions and Remedies

A Moment On Sanctions

Purpose of Sanctions

- Restore or preserve equal access to the education program
- Address the harm caused and prevent recurrence
- Sanctions are not punishment for punishment's sake—they serve institutional equity

Considerations When Determining Sanctions

- Nature and severity of the misconduct
- Impact on the complainant and broader campus community
- Whether the respondent poses an ongoing risk
- Prior misconduct history (if any)

“Design the Ideal Hearing”

- Share creative or unusual ideas that worked for your institution

Challenges

- Retaliation
- Disabilities and Intersectionality
- Bias and Conflict of Interest
- Coordinating with Law Enforcement

Informal Resolution

The planet does not need more successful people. The planet desperately needs more peacemakers, healers, restorers, storytellers and lovers of all kinds.

~ *Dalai Lama*



First Principles: Overarching Title IX Duty

Prevent/**Remedy** Sex Discrimination!

1. Supportive measures
2. Equitable treatment
3. Respond to known acts of sexual harassment in a manner that is not “clearly unreasonable”

Generic Hypo: Your president has asked you to explain to him why the university’s response to a report of sex harassment was not clearly unreasonable.

What facts would you want to be able to cite?



The Regulations In A Nutshell

1. An *optional* institutional alternative (should, when, how, & by whom)
2. Guidance paperwork (how does process work & consequences of participating in the process)
3. Voluntary *for both sides* (how to assess & demonstrate)

In The Courts

- Very few reported cases analyzing informal resolution practices
 - Why?
- Federal courts have been reluctant to allow deliberate indifference claims based on an institution's use of an informal resolution process in general
- Key issues: voluntariness, timeliness, and remedies/enforcement
- Communicate with parties about status (where are we)
- If the institution follows policies and procedures, courts appear to be reluctant to second-guess the decision or outcome.

Hypothetical: The Case of the Class Project Pairing

Jordan (they/them), a junior, alleges that Alex (he/him), a senior, made unwelcome sexual advances during a group meeting, including comments and touching. Jordan does not want a hearing but is open to informal resolution with conditions.

Alex denies the allegations but is open to “resolving it quietly.”

You’re the Title IX Coordinator. Should informal resolution be offered?

Would You Offer Informal Resolution?

Work in small groups or at your table. You'll have 10 minutes to review the case and decide:

- Is this matter eligible for informal resolution under your policy?
- Would you offer it?
- What would you want to see in the terms?
- What concerns might lead you to say no?

Group Discussion Prompts

- Is the allegation (unwanted touching, suggestive comments) eligible under your policy?
- Are both parties truly engaging voluntarily?
- Would informal resolution preserve educational access and safety?
- What safeguards or terms would make you more comfortable proceeding?
- What are the risks—either of proceeding or declining?

Threshold Question: Should Informal Resolution Even Be An Option?

- The Easy “No”: allegations that an employee sexually harassed a student
- The Complicated: **Are there situations where informal resolution would be not appropriate (or “clearly unreasonable”)?**
- One potential guidepost: if allegations are true, would it be appropriate for accused to remain on campus (on-going threat to campus community → gravity of the alleged offense, repeat offender, risk of repeating, weapons, minor victim, etc.)

Three Suggested Best Practices

1. Clear policy language is important -- Make sure the policy reflects (a) **who** needs to consent to an informal resolution and (b) **what factors** university officials will consider
2. Show your work -- document your analysis (sorry)
3. Monitor for consistent application and implicit bias (*i.e.*, similar fact patterns should be handled consistently)

You Say Yes! Now to Complainant

- Discuss options with Complainant
 - Explain the IR process in writing
 - Form document that satisfies regulatory requirements ? Have a non-lawyer human being read this for clarity
 - If Complainant says “no,” that’s a wrap
1. What do you say about IR?
 2. What are pros & cons to mention?
 3. What should you avoid?
 4. Timing?
 5. What are some of the questions you may get from the Complainant?

Complainant Say Yes! Now to Respondent

- Discuss options with Respondent
 - Explain the IR process in writing
 - Form document that satisfies regulatory requirements ☐ Have a non-lawyer human being read this for clarity
 - If Respondent says “no,” that’s a wrap
1. What do you say about IR?
 2. What are pros & cons to mention?
 3. What should you avoid?
 4. Timing?
 5. What are some of the questions you may get from the Respondent?
 6. *** can this be used against me in a subsequent proceeding?
Sent to subsequent schools?
Part of education record?

How Do We Ensure Voluntary Participation?

1. Clear communications (can't stress this enough)
 2. Be timely, but don't rush
 3. Require parties to sign a clear Participation Agreement
 4. Periodic check-ins and monitoring (Who? How?)
 5. Reiterate where appropriate that either party can stop the process
- What would be a red flag about a party's voluntary participation?
 - **Rule** 7 when in reasonable doubt, put concern on table/stop the process
 - Show your work (again – sorry)
 - What if...once you're done, a party objects that they didn't, in fact, voluntarily participate?

Types of Informal Resolution

1. Administrative adjudication
2. Facilitated conversations
3. Restorative justice
4. Mediation

Mediation



What Makes A Good Mediator?

- Reasonable participants
- Ability to establish rapport
- **Listening** for Understanding/Establishing trust (what can I share?)
- Soliciting what parties want & setting expectations
- Creativity

EFFECTS OF ACTIVE LISTENING, REFORMULATION AND IMITATION ON MEDIATOR SUCCESS: PRELIMINARY RESULTS

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Abstract

An experiment with 212 students (100 men, 112 women; M age = 18.3 yr, SD = 0.9) was carried out to compare the effect of four techniques used by mediators on the number of agreements contracted by negotiators. Under experimental conditions, mediators were asked either to rephrase (reformulate) negotiators' words or to imitate them or to show active listening behavior, or finally, to use a free technique. More agreements were reached in the active listening condition than in both free and rephrase conditions. Furthermore, mediators in the active listening condition were perceived, by the negotiators, as more efficient than mediators using other techniques, although there was no significant difference observed between the active listening and imitation conditions.

Four Items For Preparation Of Mediator

1. Reasonable summary of report and status
2. Background information on parties and advisors
3. Information for assessment of potential conflicts
4. Summary of concerns raised (if any) in screening process

My Personal Preference for Process Steps

1. Send an introductory communication where I discuss process and begin scheduling meetings
2. Meet with complainant (listen primarily & get a sense of remedies sought)
3. Meet with respondent (listen primarily & get a sense of willingness to address harm)
4. Assess and plot next steps

Other Considerations

- Some mediations begin with both sides in the room together sharing account – I'm generally not a fan
- Is in person preferable for party meetings?
- Can advisors be helpful or harmful? How to engage?

Some General Question Possibilities

- “I’ve read the materials in this matter and am familiar with the report, is there anything else you think is important to share with me?”
- “Can you walk me through what you would like to achieve through this process?”
- “Are there things you are willing to do remedy the harm Complainant has expressed?”

How Long Should Process Take?

- From regulations: “reasonably prompt” with extensions for “good cause” with written notice to parties
- Practical 1: comply with institutional policy
- Practical 2: I worry when I’m past 21 days from receiving file
 - Is there a reasonable basis for resolution?
 - Is it worth setting a firm deadline for a response?
 - Ensure parties and IX Coordinator are apprised of where things stand

Some Outcome Examples

- Administrative accommodations such as adjusting class schedules, changing sections, etc.
- Apologies
- Voluntary educational, mentoring, or coaching sessions
- Relocation or removal from a residence hall or other on-campus housing
- Verbal cautions/warnings
- Training
- Collaborative agreements on behavioral or institutional changes
- No on-going contact
- Voluntary withdrawal from university ***

Example Confidentiality Language in Agreements

- “I agree that to the extent permitted by law, I will not use information obtained and utilized during informal resolution in any other institutional process (including investigative resolution under the Policy if informal resolution does not result in an agreement) or legal proceeding, though information documented and/or shared during informal resolution could be subpoenaed by law enforcement if a criminal investigation or civil suit is initiated.”

Post-Conference: Monitoring

- This is mission critical!
- Clarity on who is responsible
- Hypo: Respondent becomes non-responsive and does not participate in agreed-to educational activities.
- How do we enforce?

Guideposts (One More Time)

1. Respond to known acts of sexual harassment in a manner that is not “clearly unreasonable”
2. Complainant: Continue in educational program
3. Respondent: Continue in educational program so long as there is no harm to campus community
4. The perspective is peacemaking, supportive, and educational – it’s not confrontational, punishment-oriented, or overly legalistic
5. Keep the parties posted
6. Be honest with the parties but stress they control outcome (this is voluntary!)
7. Be timely