



## ANNUAL TRAINING FOR ADVANCED TITLE IX COORDINATORS AND DEPUTY COORDINATORS

Kathryn Nash  
Emily Mawer

Lathrop GPM,  2023 CONFIDENTIAL LATHROP GPM. All Rights Reserved. All contents are confidential, proprietary and the property of trainED and Lathrop GPM. All information included may not be reproduced, in any form, by anyone without the expressed written consent of the author or presenter. The contents should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and readers are urged to consult with an attorney concerning their own situations and any specific legal questions they may have.

1

---

---

---

---

---

---

---


---

---

---

## AGENDA



- Legal Overview
- Updating Sexual Misconduct Policy and Procedures
- Overseeing the Complaint Process
  - Pre-Investigation 
  - Investigation 
  - Adjudication 
  - Post-Adjudication 

Lathrop GPM,  2

2

---

---

---

---

---

---


---

---


---

---

## TERMINOLOGY



- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator 

Lathrop GPM,  3

3

---

---

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Train Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, and individuals responsible for appeals on
  - Definition of sexual harassment
  - Scope of the institution's education program or activity
  - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias
  - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
  - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)
  - **Institution's policies and procedures**

Lathrop GPM  4

4

---

---

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Decision-makers must also receive training on
  - Technology to be used at a live hearing
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Lathrop GPM  5

5

---

---

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Investigators must also receive training on
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution's website

Lathrop GPM  6

6

---

---

---

---

---

---

---

---

---

---

trainED

## SESSION 1: LEGAL OVERVIEW



Lathrop GPM

7

---

---

---

---

---

---

---


---

7

## SESSION OVERVIEW

trainED

- Title IX and OCR Guidance
- Clery Act
- Violence Against Women Act
- Other Laws
- Updates to Title IX/VAWA Landscape



Lathrop GPM

8

---

---

---

---

---

---

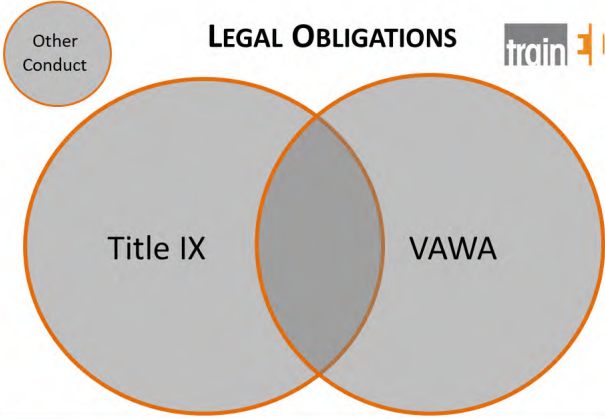
---

---

8

## LEGAL OBLIGATIONS

trainED



Other Conduct

Title IX

VAWA

Lathrop GPM

9

---

---

---

---

---


---

---


---

9


**TITLE IX**



“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 educational program or activity receiving Federal financial assistance.”



20 U.S.C. § 1681

Lathrop GPM,  10

---

---

---

---

---

---

---


---

---


---


10

**WHO MUST COMPLY WITH TITLE IX?**



- Institutions that receive federal funds
  - Students
  - Employees
  - Third Parties
    - Visitors
    - Vendors



Lathrop GPM,  11

---

---

---

---

---

---

---

---

---

---

11

**DISCRIMINATION  
“ON THE BASIS OF SEX”**



- Includes:
  - Sexual harassment
  - Differential treatment



Lathrop GPM,  12

---

---

---

---

---

---


---


---


---

---

12

**How INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations 

Lathrop GPM,  13

13

---

---

---


---

---


---


---

---

**TITLE IX REQUIREMENTS** 

- All schools receiving federal funds must:
  - Publish Notice of Nondiscrimination
  - Designate a Title IX Coordinator
  - Disseminate policy prohibiting sex discrimination
  - Adopt and publish prompt and equitable grievance procedures
  - Offer supportive measures to a complainant and respondent
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities



Lathrop GPM,  14

14

---

---

---


---

---


---


---

---

**OCR'S ENFORCEMENT AND GUIDANCE** 

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Resolution agreements



Lathrop GPM,  15

15

---

---

---


---

---


---


---

---

**TITLE IX COORDINATOR ROLE** 

- Independence and seniority of Title IX Coordinator
- Notice of Nondiscrimination
- Website and prominent link from homepage
- Training
- Climate surveys
- Recordkeeping
- Information collection and reporting
- Responsibilities besides sexual harassment



Lathrop GPM,  16

---

---

---

---

---

---

---

---

---

---

16

**TITLE IX COORDINATOR ROLE** 

- Areas of responsibility besides sexual harassment:
  - Recruitment, admissions, and counseling
  - Financial assistance
  - Athletics
    - Student interests and abilities
    - Athletic benefits and opportunities
    - Athletic financial assistance
  - Pregnant and parenting students
  - Discipline
  - Employment



Lathrop GPM,  17

---

---

---

---

---

---


---

---


---


---

17

**CLERY ACT** 

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection



Lathrop GPM,  18

---

---

---

---

---

---


---

---


---


---

18

**VAWA CHANGES TO CLERY** 

- Additional Clery crimes
  - Domestic violence
  - Dating violence
  - Stalking
- Additional policy statements
  - Procedures following a VAWA crime or sexual assault
  - Prevention and awareness programs
- Other changes
  - Hate crimes include “national origin” and “gender identity” motivated crimes
- Codified parts of 2011 Dear Colleague Letter



Lathrop GPM  19

19

---

---

---

---

---


---

---


---

---

---

**CLERY FINES** 

- Fine for each Clery Act violation is \$62,689
- In September 2020, the University of California, Berkeley announced it would pay \$2.35 million to DOE for misclassifying crimes (most of which were liquor, drug, and weapons violations)
- In June 2020, the University of North Carolina at Chapel Hill reached a \$1.5 million settlement with the DOE for Clery Act violations, including in the areas of reporting crime statistics, defining Clery geography, issuing warnings, and including required information in their annual security reports
- In 2019 the DOE issued a \$4.5 million fine – the largest in history – against Michigan State University
- University of Saint Thomas, Houston fined \$172,000 in 2017 for failure to include required policy statements and under-reporting of crime statistics among other violations

Lathrop GPM  20

20

---

---

---

---

---


---

---


---


---

---

**VAWA REGULATIONS** 

- Requires policy addressing:
  - Procedures complainants should follow
  - Disciplinary procedures
  - Confidentiality
  - Notifications to students, employees, and complainants
  - Right to advisor of choice (including attorney)
  - Right to have notice of meetings with parties
  - Right to have access to information used in formal/informal disciplinary meetings
  - Rationale must be included in Notice of Determination
  - Training for individuals with heightened responsibilities
  - Training for students and employees



Lathrop GPM  21

21

---

---

---

---

---


---


---

---


---

---

**INTERACTION BETWEEN TITLE IX & CLERY** 



- Clery is about the reporting of crimes (broader than sexual misconduct), regardless of investigation
- Title IX is about the investigation of reports of sexual harassment, including sexual assault and VAWA crimes

Lathrop GPM,  22

---

---

---

---


---

---


---

---

22

**INTERACTION BETWEEN TITLE IX & VAWA** 

- Title IX
  - Sexual harassment (as defined by regulations)
  - In an education program or activity
  - Against a person in the United States
- VAWA
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)

Lathrop GPM,  23

---

---

---

---


---

---


---


---

23

**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Institution has actual knowledge of
- Sexual harassment
- In an education program or activity of the institution
- Against a person in the United States



Lathrop GPM,  24

---

---

---

---

---

---

---


---

24



### TITLE IX—ACTUAL KNOWLEDGE

- Actual knowledge
  - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
    - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
    - Elementary and secondary schools: Any employee
  - Vicarious liability and constructive notice are insufficient
  - Standard not met if the only official with actual knowledge is the respondent

Lathrop GPM,  25

---

---

---

---

---

---


---

---

25

### TITLE IX—ACTUAL KNOWLEDGE

- Actual knowledge (cont.)
  - The following does not qualify an individual as having the authority to institute corrective measures
    - Mere ability or obligation to report sexual harassment
    - Ability or obligation to inform a student about how to report
    - Being trained in how to report

Lathrop GPM,  26

---

---

---

---

---

---

---

---

26


### TITLE IX—SEXUAL HARASSMENT

- Conduct *on the basis of sex* that satisfies one or more of the following:
  - Quid pro quo
  - Hostile environment
  - Sexual assault and VAWA crimes

quid pro quo

hostile environment

sexual assault & VAWA crimes

Lathrop GPM,  27

---

---

---

---


---

---


---

---


27

**TITLE IX—SEXUAL HARASSMENT** 

- Quid pro quo:
  - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
  - Examples
    - Supervisor conditioning promotion on participation in sexual advance
    - Professor conditioning grade on participation in sexual advance



quid pro quo

Lathrop GPM,  28

---

---

---

---

---

---


---

---


---

---


28

**TITLE IX—SEXUAL HARASSMENT** 

- Hostile Environment:
  - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity



hostile environment

Lathrop GPM,  29

---

---

---

---

---

---


---

---


---

---

29

**TITLE IX—SEXUAL HARASSMENT** 

- Hostile environment harassment
  - Reasonable person: perspective of a reasonable person in the shoes of the complainant
    - Consider ages, abilities, and relative positions of authority of the individuals involved
  - Effectively denies a person equal access
    - Equal access has been denied – not that a person's total or entire educational access has been denied
    - No specific type of reaction is necessary to conclude that severe, pervasive, objectively offensive sexual harassment has denied a complainant "equal access"
    - Analysis is whether a reasonable person in the complainant's position would be effectively denied *equal* access to education compared to a similarly situated person who is not suffering the alleged sexual harassment

Lathrop GPM,  30

---

---

---

---

---

---


---

---


---


---

30

**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome sexual flirtations, advances, or propositions
  - Requests for sexual favors
  - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
  - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
  - Visual conduct such as leering or making gestures
  - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual



Lathrop GPM  31

---

---

---

---

---

---


---

---


---


---

31

**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
  - Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
  - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
  - Videotaping or taking photographs of a sexual nature without consent



Lathrop GPM  32

---

---

---

---

---

---


---

---


---


---

32

**TITLE IX—SEXUAL HARASSMENT** 

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required



Lathrop GPM  33

---

---

---

---

---

---


---

---


---


---

33

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.



Lathrop GPM  34

34

---

---

---

---

---


---

---


---

---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Lathrop GPM  35

35

---

---

---

---

---


---

---




---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes:**
  - **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction **NEW 2022!**
  - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
  - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

Lathrop GPM  36

36

---

---

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- Male/Female
- Female/Male
- Female/Female
- Male/Male
  
- Gender Identity



Lathrop GPM,  37

---

---

---

---


---

---


---

---

37

**TITLE IX – EDUCATION PROGRAM OR ACTIVITY** 

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - Includes all incidents of sexual harassment occurring on an institution's campus
  - Also includes off-campus conduct if
    - Occurs as part of the institution's "operations"
    - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
    - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

Lathrop GPM,  38

---

---

---

---


---

---


---

---

38

**TITLE IX – EDUCATION PROGRAM OR ACTIVITY** 

- Education program or activity (cont.)
  - Consider whether recipient funded, promoted, or sponsored the event or circumstance
  - No single factor is determinative
  - Clery Act geography is not co-extensive with scope of education program or activity

Lathrop GPM,  39

---

---

---

---

---


---

---

---

39

### DETERMINING TITLE IX vs. NON-TITLE IX MATTERS



- Factors to consider
  - Type of alleged conduct – sexual harassment?
  - Location and context of alleged conduct
    - within education program or activity?
    - against a person in the United States?
  - Relationship between parties and institution

Lathrop GPM
40

---

---

---

---

---

---

---


---

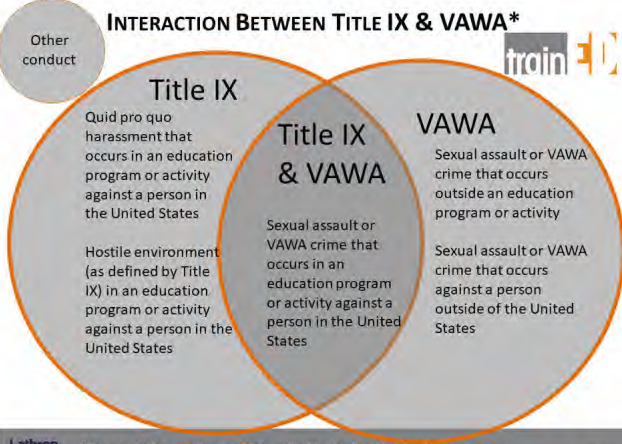
---

---

40

### INTERACTION BETWEEN TITLE IX & VAWA\*





Lathrop GPM
\*if one of the parties is affiliated with the institution in some way
41

---

---

---

---

---

---

---


---

---

---

41

### Other conduct



- Quid pro quo harassment by a student
- Hostile environment harassment that occurs outside a program or activity
- Hostile environment harassment that occurs against a person outside of the United States
- Sexual harassment that is not sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to education program or activity (caution!)

Lathrop GPM
42

---

---

---

---

---

---


---

---


---

---

42

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION** 

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Formal complaint
  - 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 recipient with which the formal complaint is filed
- Permissive dismissal
  - Discretionary dismissal of formal complaint if respondent is no longer enrolled or employed by the institution
  - Also have discretion if respondent was never enrolled or employed by institution

Lathrop GPM  43

43

---

---

---

---

---


---

---


---

---

---

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION** 

- Third party complainant and respondent who is a member of the campus community
  - Title IX (if within scope of Title IX)
    - Provide supportive measures
    - May not be required to comply with Title IX grievance process
  - VAWA (if allegation of sexual assault or VAWA crime)
    - No requirement to provide written explanation of rights and options (but still recommended)
    - Disciplinary process that complies with VAWA

Lathrop GPM  44

44

---

---

---

---

---


---

---


---

---

---

**RELATIONSHIP BETWEEN PARTIES AND INSTITUTION** 

- Complainant who is a member of the campus community and third party respondent
  - Title IX (if within scope of Title IX)
    - Provide supportive measures
    - Generally not required to comply with Title IX grievance process
  - VAWA (if allegation of sexual assault or VAWA crime)
    - Provide a written explanation of student or employee's rights and options
    - Could take action (no trespass) without disciplinary process
    - If engaging in a disciplinary process, comply with VAWA requirements

Lathrop GPM  45

45

---

---

---

---

---

---


---

---

---

---

**NON-TITLE IX AND  
NON-VAWA CASES**



- Flexibility to determine whether and how to respond to alleged conduct
- Factors to consider
  - State law
  - Expectations of community
  - Due process considerations (public institutions)

Lathrop GPM 46

46

---

---

---

---

---

---


---

---

---

---

**LESSONS LEARNED FROM LITIGATION**



- Two recent cases on the different roles in the Title IX team:
  - In October 2022, a court set aside the University of California’s decision finding a student responsible for sexual assault. The court determined that the third-party hearing officer used in the case was not allowed under the policy – the policy specified that hearing officers would be University faculty, students, or staff members.
  - In February 2023, in a case against Brandeis University, the court denied the University’s motion for summary judgment on a breach of contract claim due to the Title IX Coordinator’s involvement in consulting with the investigator and decision-maker, editing the investigation report, editing the written decision, and working “actively” with the Dean of Students to determine sanctions. The policy stated that the Coordinator’s role was to appoint the investigator and decision-maker but did not describe the consultation that occurred.
- Lessons learned: Ensure that policy provides flexibility for limited consultation with the Title IX Coordinator and in who serves in the different roles.

Lathrop GPM 47

47

---

---

---

---

---

---


---

---

---

---

**LESSONS LEARNED FROM LITIGATION**



- In March 2023, a court denied Canisius College’s motion to dismiss Title IX, retaliation, and breach of contract claims. The case was brought by five former complainants who had reported discriminatory conduct by a professor to the College. The court found that the plaintiffs adequately pled deliberate indifference under Title IX in part because the College allowed the professor to retire and did not complete the investigation.
- Lessons learned: Carefully consider a decision to dismiss a complaint prior to adjudication due to withdrawal or resignation.

Lathrop GPM 48

48

---

---

---

---

---

---


---

---


---


---



**INTERACTION WITH OTHER LAWS** 

- FERPA: Family Educational Rights and Privacy Act
- State mandatory reporting laws
- Title VII/State anti-discrimination laws
- State student safety laws



Lathrop GPM,  49

49

---

---

---


---

---

---

---

---

**INTERACTION WITH OTHER LAWS** 

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
      - Required by Title IX
      - Does not include what the remedies are
    - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including all sanctions

50

---

---

---


---

---


---

---

---

**INTERACTION WITH OTHER LAWS—  
ACCOMMODATIONS** 

- Provide reasonable accommodations to an individual with a disability who requests an accommodation necessary to ensure an equal opportunity to participate in the complaint resolution process.

Lathrop GPM,  51

51

---

---

---

---


---

---

---

---

**CHANGES TO TITLE IX**



- June 22-23, 2021: Public Notice & Dear Colleague Letter: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
  - Relying on *Bostock v. Clayton County*
  - July 15, 2022: Federal judge in E.D. Tennessee temporarily blocked enforcement of guidance in 20 states
- July 2021: Q & A
- August 24, 2021: DOE letter regarding regulation provision concerning statements of parties/witnesses who do not submit to cross-examination
- June 23, 2022: Proposed Title IX regulations
- April 6, 2023: Proposed Title IX regulation regarding athletics
- Final regulations expected October 2023

Lathrop GPM

---

---

---

---

---

---

---


---

---

---

52

**CHANGES TO TITLE IX—CHANGE TO CROSS-EXAMINATION RULE**



- If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process
  - Investigation report, text messages, police report, witness reports of statements, etc.
- Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
  - Still may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions
- Consider allowing parties to use closing argument to share questions advisor would have asked that party or witness and how the individual's testimony would have impacted the outcome
- Likely need to update written policy and procedures if institution has not yet done so

Lathrop GPM

---

---

---

---

---

---

---


---

---

---

53

**2022 PROPOSED TITLE IX REGULATIONS: EXPANDED SCOPE**



- Sex discrimination includes discrimination based on sex stereotypes, pregnancy, sexual orientation and gender identity
  - Includes differential treatment based on parental, family or marital status
- Sex-based harassment-hostile environment includes unwelcome sex-based conduct that is sufficiently severe **or** pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies **or limits** a person's ability to participate in or benefit from the recipient's education program or activity

Lathrop GPM

---

---

---

---

---

---


---

---


---

---

54

**2022 PROPOSED TITLE IX REGULATIONS: EXPANDED SCOPE** 

- Includes off-campus conduct that *creates or contributes* to a hostile environment in an institution’s education program or activity
- Includes conduct that occurs off-campus that is subject to the institution’s disciplinary authority

Lathrop GPM  55

---

---

---

---


---

---


---

---

55

**2022 PROPOSED TITLE IX REGULATIONS: NOTIFICATION REQUIREMENTS** 

- Required to take prompt and effective action to end sex discrimination that has occurred within education program or activity, prevent its recurrence and address its effects (does not require actual knowledge before obligation to act)
- Individual obligated to notify Title IX Coordinator if:
  - Has authority to institute corrective action
  - Has responsibility for administrative leadership, teaching, or advising in education program or activity
- All others (except confidential resources) must either notify Title IX Coordinator OR provide Title IX Coordinator’s contact info and info about reporting

Lathrop GPM  56

---

---

---

---


---

---


---

---

56

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Must offer supportive measures in response to any form of sex-discrimination, not just sexual harassment
  - Can include temporary measures that burden respondent imposed for non-punitive and non-disciplinary reasons that are designed to protect safety of complainant or education environment or deter respondent from engaging in harassment
  - Party affected by supportive measure has right to have decision modified or reversed, by someone other than individual who initially made decision

Lathrop GPM  57

---

---

---

---


---

---


---

---

57

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Certain procedural requirements for responding to allegations of *sex-based discrimination* (including access to summary of evidence, process for evaluating credibility)

Lathrop GPM  58

---

---

---

---

---

---


---

---


---

---

58

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Additional procedural requirements for responding to allegations of *sex-based harassment* involving *student complainant and/or respondent*
  - Largely track 2020 regulations
  - Access and opportunity to respond to relevant evidence or written report
    - But if party requests access to the evidence, must provide
  - Hearing not required, must have process for assessing credibility of parties and witnesses that includes the decision-makers asking live questions and for parties to have their questions asked
  - Cannot rely on a statement of a party that supports that party's position if the party does not respond to questions related to their credibility
  - Cannot draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions related to their credibility

Lathrop GPM  59

---

---

---

---

---

---


---

---


---

---

59

**2022 PROPOSED TITLE IX REGULATIONS: OTHER CHANGES** 

- Do not need a formal complaint to:
  - Investigate
  - Offer informal resolution
- Single investigator model is permissible
- Must use preponderance of evidence standard, unless institution uses clear and convincing for all similar types of matters

Lathrop GPM  60

---

---

---

---

---

---


---

---


---

---

60

**2022 PROPOSED TITLE IX REGULATIONS: GENDER IDENTITY** 

- Preventing someone from participating in school programs and activities consistent with their gender identity would cause harm in violation of Title IX

Lathrop GPM  61

---

---

---

---

---

---


---

---


---

---

61

**2022 PROPOSED TITLE IX REGULATIONS: PREGNANCY** 

- Strengthens requirements for schools to provide:
  - Reasonable modifications for pregnant students;
  - Reasonable break time for pregnant employees; and
  - Lactation space
- Treat same as other temporary disability or physical condition

Lathrop GPM  62

---

---

---

---

---

---


---

---


---

---

62

**CHANGES TO TITLE IX** 

- April 6, 2023: Notice of Proposed Rulemaking regarding Students' Eligibility for Athletic Teams
  - If a school adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, *for each sport, level of competition, and grade or education level*:
    - Be substantially related to the achievement of an important educational objective, and
    - Minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.
- Final rule expected October 2023

Lathrop GPM  63

---

---

---

---

---

---


---

---


---

---

63

**VAWA REAUTHORIZED** 

- Reauthorized in March 2022 (effective October 1, 2022)
- Revised domestic violence definition (above)
- Online survey tool for campus safety
- Task Force on sexual violence in education
  - Includes assessing DOE's ability to levy fines for Title IX noncompliance
- Special Grants for Prevention Programs

Lathrop GPM,  64

---

---

---

---

---

---

---

---

---

---

64



**Q & A**



Lathrop GPM,  65

---

---

---

---

---

---


---

---


---


---

65



**SESSION 2: UPDATING YOUR  
SEXUAL MISCONDUCT  
POLICY AND PROCEDURES**



Lathrop GPM,  66

---

---

---

---

---

---

---

---

---

---

66

**SESSION OVERVIEW** 

- Consider and Engage Your Audience, Leadership, and Experts
- Structuring the Complaint Resolution Process
- Policy Elements and Updates
- Other Recommended Updates

Lathrop GPM,  67

---

---

---

---

---

---

---

---

67

**CONSIDER AND ENGAGE YOUR COMMUNITY** 

- Consider your audience
- Engage experts
- Develop and execute a communication plan
- Educate your community



Lathrop GPM,  68

---

---

---

---


---


---


---

---

68

**STRUCTURING THE COMPLAINT RESOLUTION PROCESS** 



Lathrop GPM,  69

---

---

---

---


---

---

---

---

69

**STRUCTURING THE COMPLAINT RESOLUTION PROCESS** 

- Process options
  - One process: Use the same procedures for all sexual misconduct cases (including live hearings)
  - Hybrid: Use the same procedures for all Title IX and VAWA cases (including live hearings) and a separate process for non-Title IX/non-VAWA cases
  - Separate processes: Create separate procedures for Title IX, VAWA, and non-Title IX/non-VAWA cases

Lathrop GPM 70

70

---

---

---

---

---


---

---

---

---

---

**SAME PROCEDURES FOR TITLE IX AND VAWA** 

- Pros
  - Clarity on the process that applies to allegations of sexual misconduct
  - Less risk of due process litigation
- Cons
  - Chilling effect of live hearing in all cases
  - Cost of additional procedural requirements, including hearings
  - Cannot explain hearing process as legally required in all cases
  - Potential FERPA issues with information sharing in non-Title IX cases
  - Less flexibility

Lathrop GPM 71

71

---

---

---

---

---


---

---

---

---

---

**SEPARATE PROCEDURES FOR TITLE IX AND VAWA** 

- Pros
  - Fewer hearings (less chilling effect; less administrative burden/cost)
  - Clear FERPA exceptions for each process
  - Can rely on legal requirements for each process (not requiring additional process beyond legal obligations)
- Cons
  - More analysis needed to determine what process will apply
    - Complications when additional facts arise and in cases with multiple allegations
  - Confusing for parties
  - Risk of due process litigation seeking a hearing requirement

Lathrop GPM 72

72

---

---

---

---

---

---


---

---


---

---



**OTHER CONSIDERATIONS** 

- If using a non-hearing process for sexual misconduct cases that do not fall within Title IX, consider discontinuing the use of hearings in other student conduct matters that involve two parties

Lathrop GPM  73

---

---

---

---

---

---


---

---


---

---

73

**DETERMINING WHICH PROCESS APPLIES** 

- Analyze when report or complaint is received and throughout the process
- Who determines which process applies
  - Title IX Coordinator (with assistance from investigator)
  - Another individual?
- If separate Title IX and VAWA procedures, follow same investigation process regardless of Title IX or VAWA up until information sharing stage
  - Title IX: Hard copy or electronic format of directly related evidence
  - VAWA: Access to evidence that will be shared with the decision-maker
- When in doubt, err on side of following Title IX process

Lathrop GPM  74

---

---

---

---

---

---


---


---


---

---

74

**POLICY ELEMENTS AND UPDATES** 



Lathrop GPM  75

---

---

---

---

---

---


---

---


---


---

75

**POLICY ELEMENTS & UPDATES** 

- Policy Content
  - Introduction
  - Scope
  - Notice of Nondiscrimination
  - Definitions
    - Complainant
    - Respondent
    - Report
    - Formal Complaint
    - Program or Activity
    - Sexual Misconduct



Lathrop GPM,  76

76

---

---

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Notice of Nondiscrimination
  - Ensure institution uses uniform nondiscrimination statement in all handbooks, policies, communications, etc.
  - Can be combined with notices of nondiscrimination required under other laws
    - Include required contact information for coordinator(s)/contact person(s)
    - Still must include all element required under Title IX

Lathrop GPM,  77

77

---

---

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Definitions (cont.)
    - Sexual Harassment
      - Title IX Sexual Harassment
      - Non-Title IX Sexual Harassment
    - Dating Violence
    - Domestic Violence **NEW 2022!**
    - Stalking
    - Sexual Exploitation



Lathrop GPM,  78

78

---

---

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Definitions (cont.)
    - Sexual Assault
      - Consent
      - Incapacitation
      - Coercion
    - Retaliation and Interference with Process

 79

---

---

---

---

---

---


---

---


---


---

79

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Responsibilities of the Title IX Coordinator and Team
  - Training
  - Resources and Supportive/Interim Measures
    - Offered to both parties



 80

---

---

---

---

---

---

---

---

---

---

80

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Process for Reporting and Filing a Formal Complaint
    - Confidentiality
    - Anonymous Reports
    - Reporting to Law Enforcement
    - Employee Reporting Obligations
    - Mandatory Reporting Obligations for Minors

 81

---

---

---

---

---

---


---

---


---

---

81

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process
    - Title IX Process vs. VAWA Process vs. Process for Other Sexual Misconduct
    - Reasonably Prompt Timeframes
    - Officials Conducting Process
      - No Conflict of Interest/Bias (for/against complainants/respondents generally or individually)
      - Training
      - Dual Roles



Lathrop GPM, P 82

---

---

---

---

---

---


---

---


---

---

82

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Equal Rights of Parties
      - Presumption of Non-Responsibility
      - Advisors
      - Supportive/Interim Measures
      - Required Notices
      - Identify Witnesses/Evidence
        - » Remove restriction on character witnesses/evidence
      - Right to Appeal (Title IX)
      - Access to Evidence (Title IX/VAWA)
      - Review Report (Title IX)
      - Submit Responses (Title IX)



Lathrop GPM, P 83

---

---

---

---

---

---


---

---


---

---

83

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Initial Meeting with Complainant
    - Formal Complaint
      - Consolidation of Complaints
      - Dismissal of Complaints
    - Emergency Removal
    - Administrative Leave
    - No-Contact Orders/Harassment Restraining Orders/Protective Orders
    - Informal Resolution
      - Notice requirements
    - Notice of Allegations (to both parties; sufficient time & details)



Lathrop GPM, P 84

---

---

---

---

---

---


---

---


---

---

84

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Investigation
      - Notice of Meetings (participants, purpose, etc.)
      - No gag orders/prohibition of parallel investigations
      - Allow parties to suggest questions to be asked of the other party and witnesses
      - Advisors
      - Review of Directly Related Evidence and Response (Title IX only)
      - Investigation Report and Response

Lathrop GPM,  85

85

---

---

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Adjudication
      - Hearing required for Title IX
        - » Rules of procedure
        - » Availability of directly related evidence
        - » Witnesses
        - » Cross-examination
        - » Advisors (including school-appointed advisors)
        - » Recording/Transcript

Lathrop GPM,  86

86

---

---

---

---

---


---

---


---


---

---

**POLICY ELEMENTS & UPDATES** 

- Policy Content (cont.)
  - Complaint Process (cont.)
    - Adjudication (cont.)
      - Standard of evidence
      - Relevant Evidence
        - » Treatment Records
        - » Privileged Information
        - » Prior Sexual History
      - Notice of Determination
      - Sanctions
      - Remedies
    - Appeal (required under Title IX)
      - From Determination
      - From Dismissal
      - Bases for Appeal
      - Notice of Appeal and Opportunity to Respond
    - Recordkeeping



Lathrop GPM,  87

87

---

---

---

---

---

---


---

---


---

---

**ADDITIONAL RECOMMENDED UPDATES**



- Reasonable accommodations
- Expectation to act in good faith and be truthful
- Statute of limitations
- Amnesty
- Attempt
- Consensual relationships
- Flexibility
- Close of evidence
- Record interviews
- Non-punitive requirements even if no finding of responsibility
- Version of policy to apply

Lathrop GPM,  88

---

---

---

---

---


---

---


---

88

**ADDITIONAL RECOMMENDED UPDATES**



- Handling of related complaints
  - Violation of interim measure – no contact directive
  - Retaliation
  - Violation of sanction
  - Ineffective sanction
  - Violation of obligation to act in good faith and/or be truthful
  - Non-disclosure agreement

Lathrop GPM,  89

---

---

---

---

---


---

---


---

89

**ADDITIONAL RECOMMENDED UPDATES**



- Evidentiary Issues
  - Lie detector test results
  - Character evidence/witnesses
  - Medical evidence
  - Expert reports/witnesses

Lathrop GPM,  90

---

---

---

---


---

---

---

---

90

**ADDITIONAL RECOMMENDED UPDATES—TEMPLATES** 

- Create templates for notices and other documents used in the grievance process, including:
  - Notification of rights of complainant
  - Notice of allegations
  - Notice of informal resolution
  - Notice of delay
  - Notice of meetings
  - Notice of determination
  - Advisor agreement
  - Non-disclosure agreement
  - Hearing procedures

Lathrop GPM 91

91

---

---

---

---

---


---

---

---

---

---

**RECENT RECOMMENDED UPDATES** 

- Update regarding cross-examination rule:
  - Remove language prohibiting consideration of statements of party or witness who refuses to answer question(s)/appear at hearing
  - Keep language that decision-maker may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer question(s)
  - Add language that refusal to answer question(s) or appear at hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account

Lathrop GPM 92

92

---

---

---

---

---


---

---

---

---

---

**RECENT RECOMMENDED UPDATES** 

- List officials with authority to institute corrective measures in Policy
- Consent is not a defense to violence
- Don't require non-disclosure agreement for notice of outcome/determination
- Ensure policy allows Title IX Coordinator to consult with investigator and decision-maker as needed
- Include language requiring the appeal statement to articulate (1) on which ground(s) the appealing party is relying, and (2) how each particular ground for appeal is met

Lathrop GPM 93

93

---

---

---

---

---

---

---

---

---

---



## SESSION 3: OVERSEEING THE COMPLAINT PROCESS



Lathrop GPM 94

94

---

---

---


---

---

---


---

---



## SESSION OVERVIEW

- Role of Title IX Coordinator & Team
- Responding to a Report
- Informal Resolution
- Investigation
- Hearing
- Determination
- Appeals



Lathrop GPM 95

95

---

---

---


---

---

---

---

---



## ROLE OF TITLE IX COORDINATOR DURING COMPLAINT PROCESS

- Conduct intake meeting
- Assess report/complaint
- Determine which process applies (if multiple)
- Determine who will provide ongoing communication with the parties throughout the complaint process
  - Notify parties of delays and reason for delays
  - Notify parties of their own and other party's meetings
- Ensure that parties receive adequate notice of any new allegations
- Ensure advisor agreements are signed (if any)
- Ensure non-disclosure agreements are signed by parties and advisors (if any)
- Conduct informal resolution?

Lathrop GPM 96

96

---

---

---

---


---

---

---

---



**ROLE OF TITLE IX COORDINATOR DURING COMPLAINT PROCESS** 

- Oversee process to ensure compliance with policy and designated time frames
- Investigate?
  - Beware of conflicts when filling multiple roles
- Review investigation report, party responses, and rebuttals
  - Redact impermissible content
  - Evaluate whether further investigation is necessary
- Cannot adjudicate or decide appeal (Title IX)

Lathrop GPM 97

---

---

---

---

---

---


---

---

---

---

97

**DUAL ROLES** 

- Title IX requires independent decision-maker
  - Title IX Coordinator and decision-maker must be different individuals
  - Investigator and decision-maker must be different individuals
  - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

Lathrop GPM 98

---

---

---

---

---

---


---

---


---

---

98

**ROLE OF TITLE IX TEAM** 

- Serve impartially
  - Avoid prejudice of the facts
  - Presumption of non-responsibility
  - Avoid/disclose conflicts of interest/bias
    - For or against complainants or respondents individually or generally
  - Make determination of responsibility at the conclusion of the grievance process



Lathrop GPM 99

---

---

---

---

---

---

---

---

---

---

99

**EQUAL RIGHTS OF THE PARTIES** 

- Interview/hear from both parties
- Equal opportunity for parties
  - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
  - Access to evidence (if any) (Title IX and VAWA)
    - Must allow access for sexual assault/VAWA
    - Must send *hard copy or electronic format* for Title IX
  - Right to an advisor (may be attorney) (Title IX and VAWA)
    - May limit extent of participation (must apply equally)
    - If party has no advisor, school will provide for cross-examination
  - Participate in pre-hearing meeting (if any)
  - Identify/present character or expert witnesses (if any)
  - Written notice of
    - Meetings
    - Allegations
    - Informal Resolution Process
  - Written simultaneous notices of outcome



Lathrop GPM  100

100

---

---

---

---

---

---

---

---

---

---

---

---

**CASE STUDY—  
T.A. REPORT** 



Lathrop GPM  101

101

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—T.A. REPORT** 

- You receive a call from Cassidy. She tells you that she is a T.A. for a year-long freshman Western Cultures class. She said that there is a student in the class who had been doing quite well last semester, but this semester her grades really started slipping and lately she has been missing class. Cassidy says that she approached the student about the change, and the student broke down in tears and explained that she's been having problems with her best friend who has been pressuring her into a sexual relationship and has become really possessive of her.
- Cassidy tells you that the student asked her not to tell anyone about it, but Cassidy is worried about the student.
- How do you respond?

Lathrop GPM  102

102

---

---

---

---

---

---

---

---

---

---

---

---



103

---

---

---

---

---

---

---

---

---

---

**RESPONDING TO A REPORT** trainED

- Types of report recipients:
  - Title IX Coordinator and officials with authority to institute corrective measures on behalf of the institution
  - Confidential Resources
    - Professional and pastoral counselors
    - Others with state-law privilege
    - Not required to report any information\*
  - Other Employees: Institution may designate reporting obligation:
    - Designate semi-confidential resources?
    - Designate employees who are required to report
    - Designate employees who are not required to report?

*\*NOTE: These individuals may have other reporting requirements under Clery Act and/or state law*

Lathrop GPM 104

104

---

---

---

---

---

---

---

---

---

---

**DUTIES OF CONFIDENTIAL RESOURCES** trainED

- Discuss reporting options and rights - Title IX Coordinator, law enforcement, campus security
  - Offer to assist with reporting
  - Discuss school's prevention of and response to retaliation
- Discuss/offer support services and interim measures
- Disclose institution's limited ability to respond if request for confidentiality
- Discuss the importance of preserving evidence
- State law may require reporting of non-identifying information

Lathrop GPM 105

105

---

---

---

---

---

---


---

---


---


---

**DUTIES OF OTHER EMPLOYEES WHO ARE REQUIRED TO REPORT**



- If possible, before information revealed disclose:
  - Additional reporting requirement
  - Option to report to school and request confidentiality (school will consider but not guarantee)
  - Option for complainant to disclose to a confidential resource
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)



Lathrop GPM  106

---

---

---

---

---

---

---

---

---


---

---


---


106

**DUTIES OF EMPLOYEES WHO ARE NOT REQUIRED TO REPORT**



- Ask person reporting if they want the information shared with the Title IX Coordinator
- Only share information with individuals responsible for handling the institution's response (e.g., Title IX Coordinator, Deputy)



Lathrop GPM  107

---

---

---

---

---

---

---

---

---


---

---


---

107

**CASE STUDY—T.A. REPORT**



- Your policy does not require student employees to report sexual misconduct unless they are in a R.A. role. You ask Cassidy to provide the student with information about the University's Sexual Misconduct Policy and the option to report. You also provide a list of resources for Cassidy to provide the student. You further ask Cassidy to talk to the student and encourage her to come talk to you. You suggest that Cassidy offer to come with the student to introduce her to you. Cassidy agrees.

Lathrop GPM  108

---

---

---

---

---

---

---

---


---

---


---


---

108

**RESPONDING TO A REPORT** 

- Title IX: Must promptly respond when
  - Institution has actual knowledge of
  - Sexual harassment
  - In an education program or activity of the institution
  - Against a person in the United States
- VAWA:
  - Allegations of sexual assault, domestic violence, dating violence, or stalking
  - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)



Lathrop GPM  109

109

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—T.A. REPORT** 

- Cassidy calls to tell you that the student has agreed to come with Cassidy to talk with you. You arrange a meeting for later that afternoon.
- What will you need to cover in your meeting?

Lathrop GPM  110

110

---

---

---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT** 

- Response must treat complainant and respondent equitably by
  - Offering supportive measures to a complainant (with or without formal complaint)
  - Following a grievance process that complies with the regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent

Lathrop GPM  111

111

---

---

---

---

---


---

---

---


---

---

**RESPONDING TO A REPORT** 

- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
  - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
  - Consider complainant's wishes with respect to supportive/interim measures
  - Explain the process for filing a formal complaint
  - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
  - Provide complainant with written notification of rights (VAWA)



Lathrop GPM  112

112

---

---

---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT** 

- Report vs. Formal Complaint
  - Report
    - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
    - Complainant's identity may be kept confidential from respondent
  - Formal complaint
    - Initiates grievance process
    - Cannot be filed anonymously
      - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
      - Title IX Coordinator can sign a complaint
      - Grievance process requires that complainant's identity be disclosed to respondent, if known

Lathrop GPM  113

113

---

---

---

---

---


---

---

---

---

---

**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES** 

- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures



Lathrop GPM  114

114

---

---

---

---

---

---


---

---


---

---

**RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES**



- Mutual restrictions on contact between the parties
- Change academic or extracurricular activities, living, transportation, dining, and working situations
- Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible



Lathrop GPM 115

---

---

---

---

---

---

---

---

---


---

---


---

115

**RESPONDING TO A REPORT**



- Other obligations:
  - Notify campus security, if necessary
  - Clery report, if necessary
  - Consider emergency removal



Lathrop GPM 116

---

---

---

---

---

---

---

---

---


---

---


---

116

**RESPONDING TO A REPORT – WRITTEN NOTIFICATION OF RIGHTS**



- Written notification to complainants about—
  - Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations, if so requested by the complainant and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement



Lathrop GPM 117

---

---

---

---

---

---

---

---


---

---


---


---

117

**RESPONDING TO A REPORT – WRITTEN NOTIFICATION OF RIGHTS** 

- Written notification to complainants about (cont.)—
  - Possible sanctions and protective measures
  - Procedures individual should follow
  - Disciplinary procedures
  - Confidentiality
  - Existing resources for counseling, etc.
  - Supportive/interim measures



Lathrop GPM  118

118

---

---

---

---

---

---

---

---


---

---

**RESPONDING TO A REPORT – WRITTEN NOTIFICATION OF RIGHTS** 

- Inform complainants that school officials will take steps to prevent all forms of retaliation and take strong responsive action if it occurs



Lathrop GPM  119

119

---

---

---

---

---


---

---


---

---

---

**CASE STUDY— BETH/JACKIE (T.A. REPORT)** 

- That afternoon, Cassidy introduces you to Beth and then, after a bit, leaves to allow you and Beth to talk.
- Beth tells you that she has been best friends with Jackie, who lives on her floor, since freshman orientation. Beth says that over time, Jackie became more and more physically affectionate, holding Beth’s hand, kissing her cheek, slapping her butt. Beth says that Jackie was also more and more possessive of Beth and of her time. Beth says that Jackie would get jealous when she hung out with other friends and would continually call Beth to see where she was. Beth says that a few weeks ago Jackie came out to her as bisexual and told Beth that she wanted to be more than best friends. Beth says she told Jackie that she did not feel that way about her.

Lathrop GPM  120

120

---

---

---

---

---

---

---


---

---

---



**CASE STUDY—  
BETH/JACKIE (T.A. REPORT)**



- Beth says that Jackie kept pressuring her to just try some things and see how she felt. Beth says that she eventually stopped responding to Jackie’s messages. Beth says Jackie called and texted her repeatedly, waited outside her classes and dorm room, and tried to get their mutual friends to talk to her. Beth says that the day before she decided to block Jackie’s calls and texts, but then Jackie sent a Snapchat saying, “I swear I will slit your throat and my wrists if you don’t just talk to me about this.” Beth says that she stayed with a friend in another dorm the previous night and skipped classes that day because she is afraid of running into Jackie. Beth provides you with a screenshot of the Snapchat message.
- How do you respond?

Lathrop GPM 121

121

---

---

---

---

---

---


---

---

---

---

**RESPONDING TO FORMAL  
COMPLAINT—EMERGENCY REMOVAL**



- Institution may remove a respondent from the education program or activity on an emergency basis if institution:
  - 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
- Non-student employees may be placed on administrative leave during grievance process
- Provision does not modify any rights under the IDEA, Section 504 of the Rehabilitation Act, or the ADA

Lathrop GPM 122

122

---

---

---

---

---

---

---

---

---

---

**SUPPORTIVE MEASURES —  
STUDENT EMPLOYEE LEAVE**



- Requirements:
  - Must be paid/include no monetary loss
  - Must be non-disciplinary, non-punitive
  - Must not be unreasonably burdensome on respondent
  - Must be designed to restore or preserve equal access to recipient’s education program or activity, including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
  - (Consider impact on educational benefits and opportunities)
- Alternatives:
  - Reassignment
  - Monitoring/supervising student employee
  - Emergency Removal (after risk analysis, can terminate)

Lathrop GPM 123

123

---

---

---

---

---

---


---

---


---

---

**CASE STUDY—  
BETH/JACKIE (T.A. REPORT)**



- You explain Beth’s rights, options, and resources. She tells you that she doesn’t want to hurt Jackie and isn’t sure that she can make a formal complaint against her.
- How do you respond?

Lathrop GPM  124

124

---

---

---

---

---

---


---

---

---


---


**RESPONDING TO A REPORT—REQUESTS  
FOR CONFIDENTIALITY OR NO ACTION**



▪ Recommended Approach:

- Factors to consider
  - Seriousness of the alleged harassment
  - Increased risk of additional violence by the alleged perpetrator
    - Other complaints about the same alleged perpetrator
    - History of violence from arrests/records from prior school
    - Alleged perpetrator threatened further violence
  - Increased risk of additional violence under similar circumstances
    - Pattern of perpetration at a given location or with a certain group
  - Whether sexual violence was perpetrated with a weapon
  - Age of the complainant



Lathrop GPM  125

125

---

---

---

---

---

---


---

---

---


---


**RESPONDING TO A REPORT—REQUESTS  
FOR CONFIDENTIALITY OR NO ACTION**



▪ Recommended Approach:

- Factors to consider (cont.)
  - Whether school has other means to obtain evidence (security footage, eyewitness or physical evidence)
    - Notice will still need to identify parties involved
  - Rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result
  - Whether the report alleges sexual harassment by an employee against a student
  - Whether the accused individual is in a position of authority



Lathrop GPM  126

126

---

---

---

---

---


---

---


---


---

---

**RESPONDING TO A REPORT—REQUESTS FOR CONFIDENTIALITY OR NO ACTION** 

- Recommended Approach:
  - If the school determines it *can* honor the request for confidentiality/no action
    - Continue to offer supportive measures
  - If the school determines it *cannot* honor the request for confidentiality/no action
    - Inform the complainant prior to proceeding
    - Continue to offer supportive measures
    - Title IX Coordinator signs formal complaint and begins process



Lathrop GPM  127

---

---

---

---

---

---


---

---


---

---

127

**CASE STUDY— BETH/JACKIE (T.A. REPORT)** 

- You discuss that the University may determine that you need to sign a formal complaint. You tell Beth that if you do so, you will tell her and if she would like, you can inform Jackie that Beth did not want to initiate a complaint process, but that the University determined it had an obligation to do so.
- Beth asks for some time to think about next steps. You inform Beth that in light of the information she shared, the University may need to take immediate action, but that you will keep her up to date on next steps.

Lathrop GPM  128

---

---

---

---

---

---


---

---


---

---

128

**CASE STUDY— BETH/JACKIE (T.A. REPORT)** 

- You assemble your threat assessment team, including the director of public safety, dean of students, and you.
- The team considers the information Beth reported regarding the threat (including the screenshot of the Snapchat message) and also speaks to:
  - Kelly, the friend that Beth has been staying with. Kelly states that Beth came to her last night in a "panic" and asked if she could stay with her. Kelly stated that Beth said that Jackie had threatened to kill Beth and Beth was "terrified."
  - Jackie's R.A. Jackie's R.A. reached out to the University's R.D. last night after being concerned about Jackie. Jackie's R.A. states that Jackie has lost her temper several times lately. Jackie's R.A. stated that yesterday, she responded to a noise complaint about Jackie's room and found Jackie alone in her room trying to call someone and screaming "answer the phone" repeatedly. Jackie's R.A. stated that she calmed Jackie down and went to get her a water bottle. Jackie's R.A. stated that when she returned to Jackie's room, Jackie had a webpage pulled up on her computer with "multiple large knives."

Lathrop GPM  129

---

---

---

---

---

---

---


---

---


---

129

**CASE STUDY—  
BETH/JACKIE (T.A. REPORT)**



- After considering the information available, the threat assessment team determines that emergency removal of Jackie is appropriate.
- You communicate that decision to Jackie and inform her of her appeal rights. You also ensure that Jackie has a contact in Student Life who will be working with her on moving off campus and ensure she has mental health support.
- You also update Beth and ask to meet with her again to discuss next steps.

Lathrop GPM  130

---

---

---

---

---


---

---


---

130

**CASE STUDY—  
BETH/JACKIE (T.A. REPORT)**



- Jackie emails you and requests to continue her studies remotely.
- How do you respond?

Lathrop GPM  131

---

---

---

---

---


---

---


---

131

**CASE STUDY—  
BETH/JACKIE (T.A. REPORT)**



- Beth still does not want to file a formal complaint, but she agrees to participate in a complaint process if you sign the formal complaint as the Title IX Coordinator.
- What policy violations are implicated by Beth's report?

Lathrop GPM  132

---

---

---

---


---

---


---

---

132



**CASE STUDY—**  
**ALLISON/NATALIE/HENRY**



Lathrop GPM, P.A. 133

133

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—**  
**ALLISON/NATALIE/HENRY**



- On April 14, 2023, two female students, Allison and Natalie, come to your office to tell you that they would like to file a report against the same male student, Henry. They tell you that Henry sexually assaulted both of them and has also assaulted other women.
- How do you proceed?

Lathrop GPM, P.A. 134

134

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—**  
**ALLISON/NATALIE/HENRY**



- You explain Allison’s and Natalie’s rights, options, and resources.
- Allison and Natalie both say they want to move forward with formal complaints against Henry.
- Do you consolidate the complaints?

Lathrop GPM, P.A. 135

135

---

---

---

---

---

---


---

---

---

---

**CONSOLIDATION OF FORMAL COMPLAINTS**



- Title IX: An institution may consolidate formal complaints as to 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*
- VAWA: No specific guidance

Lathrop GPM 136

136

---

---

---

---

---

---


---

---

---

---

**CASE STUDY— ALLISON/NATALIE/HENRY**



- You learn that Allison and Natalie are alleging that Henry sexually assaulted each of them on separate occasions. The only related fact in their allegations is that they are made against the same respondent.
- You inform Allison and Natalie that the complaints will be processed separately with separate investigations and adjudications.

Lathrop GPM 137

137

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—ALLISON/HENRY**



COMPLAINANT NAME: Allison Allen  
 ADDRESS: 1234 Off-Campus Drive  
 DATE OF ALLEGED POLICY VIOLATION: January 21, 2023  
 DATE OF REPORT: April 14, 2023  
 RESPONDENT NAME: Henry Henderson  
 ADDRESS: 999 Dorm Room Lane

**ALLEGATIONS:**  
 I met Henry Henderson in the fall because he is on the basketball team, and I am an athletic trainer for the team this year. We started hanging out and flirting on team trips and at parties, and then we hooked up a few times. But one night I told him I didn't want to have sex, but Henry invited himself over and was putting a lot of pressure on me. We ended up fooling around and he just kept going and I didn't know what to do. I felt so helpless and used. I did not consent to having sex with him that night. I found out later that I was just one of many women he has treated like this, just using us until he gets what he wants and moves on. I don't want him to ever do this to someone ever again.

I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.

X Allison Allen

Lathrop GPM 138

138

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Based on Allison’s complaint, what potential policy violations have been alleged?

Lathrop GPM,  139

---

---

---

---


---

---


---

---

139

**CASE STUDY—ALLISON/HENRY** 

- Your institution has different processes for handling complaints of sexual misconduct depending on whether the complaint falls within Title IX.
- Does the sexual assault allegation fall under Title IX?

Lathrop GPM,  140

---

---

---

---


---

---


---

---

140

**DETERMINING TITLE IX VS. NON-TITLE IX MATTERS** 

- Factors to consider
  - Type of alleged conduct – sexual harassment?
  - Location and context of alleged conduct
    - within education program or activity?
    - against a person in the United States?
  - Relationship between parties and institution

Lathrop GPM,  141

---

---

---

---

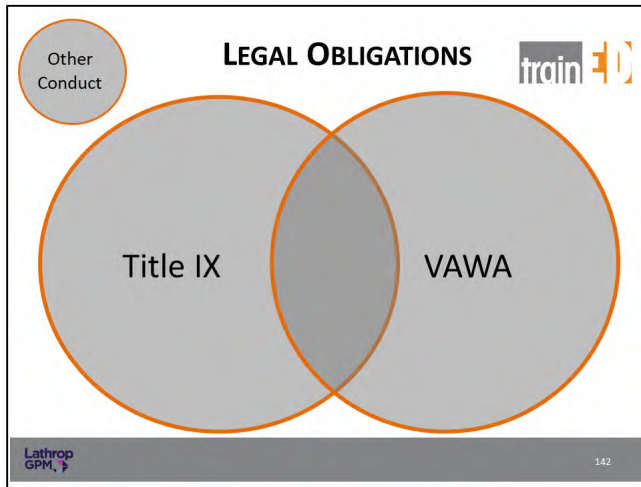
---

---

---

---

141



142

---

---

---

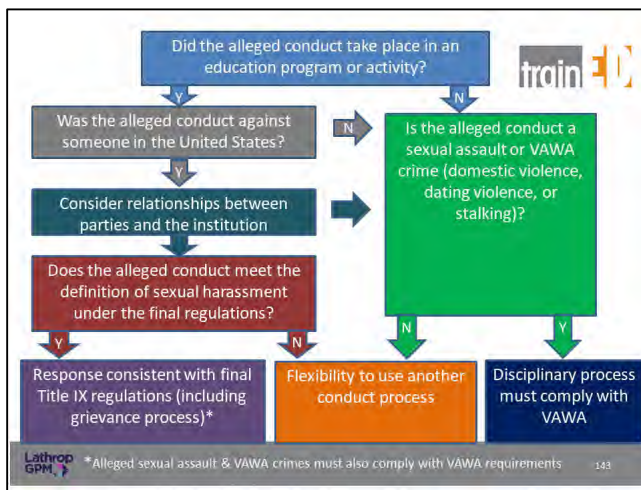
---

---

---

---

---



143

---

---

---

---

---

---

---

---

**CASE STUDY—ALLISON/HENRY**

- After determining the alleged policy violation and the process that likely applies, what is your next step in Allison and Henry’s case?

trainED

Lathrop GPM

144

144

---

---

---

---


---

---


---


---



**NOTICE OF ALLEGATIONS** 

- Upon formal complaint, provide written notice to known parties, including:
  - Notice of grievance process, including any informal resolution process
  - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
    - Identities of the parties involved, if known
    - Conduct allegedly constituting sexual harassment
    - Date and location of the alleged incident, if known



Lathrop GPM  145

---

---

---

---


---

---


---

---

145

**NOTICE OF ALLEGATIONS** 

- Upon formal complaint, provide written notice to both parties, including:
  - Statements that:
    - Respondent is presumed not responsible
    - Determination of responsibility is made at conclusion of grievance process
    - Right to advisor of choice who may be but is not required to be an attorney
    - Parties may inspect and review evidence *as permitted in sexual misconduct policy*
    - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
  - Provide notice of *additional* allegations about the complainant or respondent that arise during process

Lathrop GPM  146

---

---

---

---


---

---


---

---

146


**NOTICE OF MEETINGS** 

- Title IX: Written notice to the party whose participation is invited or expected of the
  - Date
  - Time
  - Location
  - Participants
  - Purpose



of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate

- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

Lathrop GPM  147

---

---

---

---


---

---

---

---

147

**CASE STUDY—ALLISON/HENRY** 

- You provide the notice of allegations and a mutual no-contact directive to Allison.
- You provide a notice of meeting to Henry, along with the mutual no-contact directive and notice of rights.
- At your initial meeting with Henry, you provide him with the notice of allegations and discuss the process.

Lathrop GPM 148

148

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

**Excerpt of Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry sexually assaulted her by engaging in non-consensual sexual penetration.

Lathrop GPM 149

149

---

---

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You receive three unrelated new reports. For which of these matters would you consider informal resolution?
  - Rick reports that his physics professor has made several comments about his appearance that have made Rick uncomfortable.
  - Sarah reports that her ex-boyfriend keeps texting her and stopping by her dorm even after she told him to leave her alone.
  - Ashley reports that Nick sexually assaulted her last month. You have previously received a report of sexual assault against Nick, but the complainant in that matter did not file a formal complaint.

Lathrop GPM 150

150

---

---

---

---

---


---

---

---

---

---

**INFORMAL RESOLUTION** 

- When should an institution offer an informal resolution process?
  - Factors to consider
    - Nature of alleged incident
    - Other allegations against same respondent
    - What sanctions would be necessary if the allegation is true
    - Whether complainant is willing to fully participate in a formal process
    - Whether institution could proceed with a formal process without complainant
  - Reminder: Cannot offer if complainant is a student and respondent is an employee
  - Institution is never required to offer informal resolution

Lathrop GPM 151

151

---

---

---

---

---

---

---

---

---

---

**CASE STUDY— SARAH/JASON**  

Lathrop GPM 152

152

---

---

---

---

---


---

---

---

---

---

**CASE STUDY— SARAH/JASON** 

- You meet with Sarah regarding her report about her ex-boyfriend, Jason. Sarah reports that Jason will not leave her alone (including continuing to text her and stopping by her dorm). Sarah says Jason has not said anything threatening, but he is pressuring her to get back together, and Sarah is upset and stressed by the continued contact.

Lathrop GPM 153

153

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—SARAH/JASON** 

- You discuss Sarah’s rights and options, including the formal complaint resolution process and supportive measures.
- Sarah said she does not want to participate in an investigation, she just wants Jason to leave her alone and for him to get some help.
- After discussing the options, Sarah tells you she would like to try an informal resolution process.

Lathrop GPM  154

154

---

---

---


---

---


---

---

---

**CASE STUDY—SARAH/JASON** 

- What steps are needed before an informal resolution process?

Lathrop GPM  155

155

---

---

---

---

---

---

---

---

**INFORMAL RESOLUTION LEGAL REQUIREMENTS** 



Lathrop GPM  156

156

---

---

---


---

---


---

---

---

**INFORMAL RESOLUTION** 

- Legal requirements
  - VAWA: No specific requirement
  - Title IX:
    - Any time prior to determination, may facilitate informal resolution process, such as mediation, if certain requirements are met

Lathrop GPM,  157

---

---

---

---

---

---


---

---


---

---

157

**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - Prior to informal resolution, provide parties with written notice of the allegations

Lathrop GPM,  158

---

---

---

---

---

---


---

---


---

---

158

**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - Prior to informal resolution, provide parties with written notice of
    - Requirements of the informal resolution process including circumstances when it precludes the parties from resuming a formal complaint for the same allegations
      - Provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
    - Consequences resulting from participating in the informal resolution process, including records that are maintained and could be shared
  - Obtain parties' voluntary written consent to informal process

Lathrop GPM,  159

---

---

---

---

---

---


---

---


---

---

159

**INFORMAL RESOLUTION** 

- Title IX legal requirements
  - May not offer informal resolution unless a formal complaint is filed
  - May never require the parties to participate in an informal resolution process
  - May not condition enrollment/continuing enrollment, employment/continuing employment, or enjoyment of any other right on waiver of the right to an investigation and adjudication of formal complaint
  - May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student

Lathrop GPM  160

---

---

---

---


---

---


---

---

160

**CASE STUDY—SARAH/JASON** 

- You inform Sarah that she will need to bring a formal complaint in order to pursue an informal resolution process.
- Sarah asks what will happen if she signs a formal complaint and Jason does not agree to an informal resolution.
- How should you respond?

Lathrop GPM  161

---

---

---

---


---

---


---

---

161

**CASE STUDY—SARAH/JASON** 

- After giving it some thought, Sarah decides to file a formal complaint alleging that Jason engaged in stalking.
- You send a notice of allegations to both parties, along with a mutual no contact directive.
- You meet with Jason, and he agrees to pursue an informal resolution process.
- Both parties receive the appropriate notice and consent in writing to the informal resolution process.
- What is the next step?

Lathrop GPM  162

---

---

---

---

---



---

---

---

162

**STRUCTURING AN INFORMAL RESOLUTION PROCESS**

Lathrop GPM

163

---

---

---

---

---


---

---

---

163

**STRUCTURING AN INFORMAL RESOLUTION PROCESS**



- Who facilitates an informal resolution process?
  - Title IX Coordinator? Deputy Title IX Coordinator?
  - Another member of the Title IX team?
- If someone other than Title IX Coordinator, consider limited role for Title IX Coordinator to ensure consistency across different cases
- Legal requirements
  - Appropriately trained
  - Free from conflict of interest and bias
  - Impartial

Lathrop GPM

164

---

---

---

---

---


---

---

---

164

**STRUCTURING AN INFORMAL RESOLUTION PROCESS**



- What is an informal resolution process?
  - No particular process required under Title IX
  - Recommended practice
    - Facilitator meets with each party to determine what they are looking for and what they will agree to as part of an informal resolution
    - Communicate options between the parties
    - Institution should have a role in determining whether particular matter is appropriate for informal resolution and what the appropriate resolution will be

Lathrop GPM

165

---

---

---

---


---

---


---

---

165

**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- Factors to consider when using informal resolution process
  - Is there an admission from the respondent?
  - Will this be a final resolution?
  - What information will be shared during the informal process?
  - Can the resolution be used in future discipline decisions?
  - What records will be maintained and could be shared?
  - What action is necessary to stop the harassment, prevent its recurrence, and address its effects?

Lathrop GPM  166

---

---

---

---


---

---


---

---

166

**CASE STUDY—SARAH/JASON** 

- You meet with Sarah to discuss what she is looking for in a resolution. Sarah wants Jason to leave her alone, and she wants Jason to get some help.
- What options might address Sarah’s concerns?

Lathrop GPM  167

---

---

---

---


---

---


---

---

167

**STRUCTURING AN INFORMAL RESOLUTION PROCESS** 

- What does the outcome of the informal resolution process look like?
  - Possible terms
    - No contact directive (mutual or one-sided)
    - Required training/education
    - Required counseling
    - Probation
    - Temporary prohibition on leadership positions/awards
    - Leave of absence from institution
    - Apology letter?
    - Other

Lathrop GPM  168

---

---

---

---

---


---

---


---

168



**CASE STUDY—SARAH/JASON** 

- You discuss a potential resolution with Sarah, including a no contact directive and mandatory education for Jason on boundaries and appropriate interactions in the community.
- Sarah responds that she does not want Jason to be able to enter the library and dining center. Sarah also tells you that she does not want to have the same classes or live in the same residence hall as Jason during the rest of her time at the University (about two years). Sarah also does not want Jason to enter any residence hall in which she lives.
- How should you respond?

Lathrop GPM  169

169

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—SARAH/JASON** 

- Sarah also asks that Jason complete a domestic violence intervention program through a local community service provider. The course is one year, and Sarah says that Jason should submit a letter to her at the conclusion of the course explaining what he has learned and how he will avoid ever doing this to someone else in the future.
- How should you respond?

Lathrop GPM  170

170

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—SARAH/JASON** 

- After a discussion with you, Sarah decides that priority class registration and dorm selection, a mutual no contact directive (that prohibits Jason from entering Sarah’s residence hall but does not include restricted access to the library and dining center) and required training on boundaries for Jason will address her concerns.
- From the institution’s perspective, are there other terms that you should consider?

Lathrop GPM  171

171

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—SARAH/JASON** 

- After determining potential proposed terms for the agreement, you meet with Jason to see what he is willing to agree to.
- Jason is comfortable with the priority registration and dorm selection, the no contact directive, the required training, and a prohibition on leadership positions for one year.

Lathrop GPM  172

---

---

---

---

---

---


---

---


---

---

172

**CASE STUDY—SARAH/JASON** 

- Jason asks the following questions:
  - Can Sarah bring another complaint against him in the future?
  - If he applies to grad school, will prospective grad schools find out about this informal resolution?
  - If Jason applies for employment at the institution in the future, will the informal resolution impact his chances?
- How should you respond?

Lathrop GPM  173

---

---

---

---

---

---


---

---


---

---

173

**CASE STUDY—SARAH/JASON** 

- Sarah and Jason agree on informal resolution terms, and you approve those terms. You draft the informal resolution agreement, and both parties sign it.
- Any other steps for you to take?

Lathrop GPM  174

---

---

---

---

---

---

---


---

---

---

174

### CASE STUDY—SARAH/JASON



- What if Sarah and Jason were unable to reach a resolution?

Lathrop GPM 175

---

---

---

---

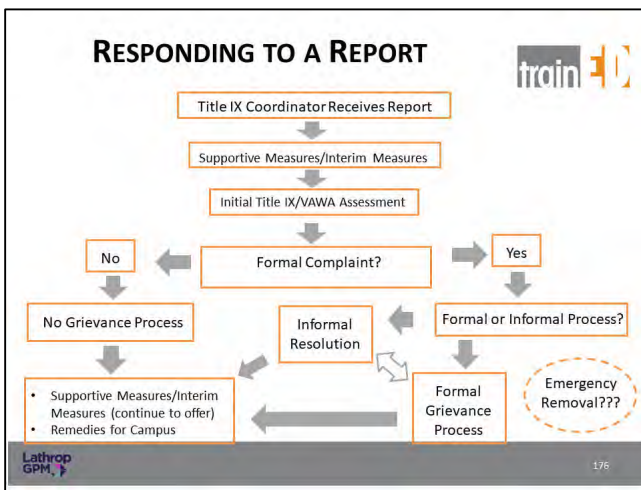
---

---

---

---

175



---

---

---

---

---



---

---

---

176

### CASE STUDY— RICK/PROFESSOR CURIE



Lathrop GPM 177

---

---

---

---

---


---

---

---

177

**CASE STUDY—  
RICK/PROFESSOR CURIE**



- Following the report that Rick made about his physics professor, Professor Curie, making comments about his appearance that made him uncomfortable, Rick met with you to discuss the allegations. In your conversation with Rick, you learned that the alleged comments were quite sexual in nature, have been occurring for several months, and have caused Rick to stop attending his classes with the professor.
- After discussing Rick's options, rights, and resources with him, Rick decides to file a formal complaint against Professor Curie.
- What policy violations are likely to be implicated by Rick's complaint?
- What supportive measures should be put in place?

Lathrop GPM 178

178

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—  
RICK/PROFESSOR CURIE**



- You issue a Notice of Allegations to Rick and Professor Curie, which includes the name of the investigator for the matter.
- You receive an email from Rick stating that because Professor Curie is a long-time beloved professor at the University who has brought the University a lot of recognition and donor support, any internal investigator is going to be biased toward Professor Curie. He requests that the University hire a neutral third-party to investigate.
- How do you respond?

Lathrop GPM 179

179

---

---

---

---

---

---


---

---

---

---

**CONFLICTS OF INTEREST**



- VAWA: a prompt, fair, and impartial proceeding is conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- Title IX: no conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, or individual responsible for appeals
  - For or against complainants or respondents generally
  - For or against an individual complainant or respondent
- Disclose and manage conflicts of interest
- Consider appearance of bias based on public profile (articles, social media, past professional roles, etc.)
- Have a process for requesting disqualification of Title IX Coordinator, investigator, adjudicator, informal resolution process facilitator, or individual responsible for appeals

Lathrop GPM 180

180

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Meanwhile, the investigator in the matter involving Allison and Henry has completed the initial interview with Allison. The investigator sends you an email stating that Allison told the investigator that prior to the alleged assault, Henry removed Allison’s underwear without her consent.
- How do you respond?

Lathrop GPM,  181

---

---

---

---

---

---


---

---


---

---

181

**CASE STUDY—ALLISON/HENRY** 

- You schedule a meeting with Allison for tomorrow to discuss the potential additional allegation. You provide a written notice of meeting to Allison that includes the reason for the meeting.
- You meet with Allison, and she informs you that she would like to add the non-consensual removal of her underwear to the allegations.
- What do you do next?

Lathrop GPM,  182

---

---

---

---

---

---


---

---


---

---

182

**NOTICE OF ALLEGATIONS** 

- Provide notice of *additional* allegations about the complainant or respondent that arise during process
  - Including sufficient details known at the time:
    - Identities of the parties involved, if known
    - Conduct allegedly constituting sexual harassment
    - Date and location of the alleged incident, if known
  - With sufficient time to prepare response before initial interview

Lathrop GPM,  183

---

---

---

---

---

---


---

---


---

---

183

**CASE STUDY—ALLISON/HENRY** 

- You issue an amended Notice of Allegations to Allison and Henry.

Lathrop GPM,  184

184

---

---

---

---

---


---

---

---


---

---

**CASE STUDY—ALLISON/HENRY** 

**Excerpt from Amended Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry engaged in sexual assault in the form of non-consensual sexual penetration **and sexual exploitation in the form of removing Allison’s clothing without her consent.**

Lathrop GPM,  185

185

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- A few days later, you receive a forwarded email from the investigator. Henry has asked the investigator to send him the interview questions prior to his initial interview.
- How do you instruct the investigator?

Lathrop GPM,  186

186

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Following the initial interview with Henry, the investigator sends you an email stating that during his initial interview, Henry said that a week after the alleged assault, Allison came up to him at a party and started touching him and kissing him. Henry told the investigator that it made him “really uncomfortable.”
- How do you respond?

Lathrop GPM  187

---

---

---

---

---

---


---

---


---

---

187

**CASE STUDY—ALLISON/HENRY** 

- You review the portion of Henry’s interview transcript describing the potential allegations against Allison.
- In the interview Henry stated that about a week after the alleged assault, Allison came up to him at a party and started touching and kissing him. Henry stated that Allison touched him on his waist, lower back, and chest. Henry stated that Allison kissed him on his cheek a few times and tried to kiss him on his lips but he turned his head so she kissed his jaw area instead. Henry stated that it made him really uncomfortable. Henry also stated that Allison said, “Let’s go to my place.” Henry stated that he took Allison’s hands from around his waist and tried to lighten the mood by saying that she maybe had too much to drink. Henry stated that Allison then got mad and left.
- You meet with Henry to explain his options, rights, and resources. Henry tells you that he wants to file a formal complaint against Allison.

Lathrop GPM  188

---

---

---

---

---

---


---

---

---

---

188


**CASE STUDY—ALLISON/HENRY** 

COMPLAINANT NAME: Henry Henderson \_\_\_\_\_  
 ADDRESS: 999 Dorm Room Lane \_\_\_\_\_  
 DATE OF ALLEGED POLICY VIOLATION: January 28, 2023 \_\_\_\_\_  
 DATE OF REPORT: May 1, 2023 \_\_\_\_\_  
 RESPONDENT NAME: Allison Allen \_\_\_\_\_  
 ADDRESS: 1234 Off-Campus Drive \_\_\_\_\_

**ALLEGATIONS:**  
 Allison came up to me at a party at my buddy’s apartment and started touching me and kissing me. I think she’d had too much to drink, because she was all over me. She also made a comment about going back to her place. It made me really uncomfortable and I was embarrassed because a couple of my friends were there with me. I literally had to remove her hands from around my waist. I told her I thought she’d had too much to drink. Then she stormed off.

**I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.**

X *Henry Henderson* \_\_\_\_\_

Lathrop GPM  189

---

---

---

---

---

---


---

---


---

---

189

**CASE STUDY—ALLISON/HENRY** 

- Based on Henry’s account, what potential policy violations have been alleged?

Lathrop GPM  190

---

---

---

---


---

---


---

---

190

**CASE STUDY—ALLISON/HENRY** 

- Your institution has two definitions of Sexual Harassment— Title IX Sexual Harassment and Non-Title IX Sexual Harassment. Which has been alleged by Henry?
- Do you need more information?

Lathrop GPM  191

---

---

---

---


---

---


---

---

191

**CASE STUDY—ALLISON/HENRY** 

- You learn that the party took place in an off-campus apartment owned by the University, but you determine that even if true, the allegations do not allege conduct that is so severe, pervasive, and objectively offensive that it denied Henry equal access to the University’s education program or activity.
- However, you determine that the new allegations, if true, potentially constitute an allegation of Non-Title IX Sexual Harassment.
- What is your next step?

Lathrop GPM  192

---

---

---

---

---


---

---


---

192



**CASE STUDY—ALLISON/HENRY** 

- You issue a Second Amended Notice of Allegations to Henry and Allison.

Lathrop GPM  193

---

---

---

---

---

---


---

---

---

---

193


**CASE STUDY—ALLISON/HENRY** 

**Excerpt from Second Amended Notice of Allegations**

On April 14, 2023, a formal complaint of alleged sexual misconduct was submitted by Allison Allen to the Title IX Coordinator alleging conduct by Henry Henderson. In the formal complaint, Allison alleged that in the early morning hours of January 21, 2023, in her on-campus dorm room, Henry engaged in sexual assault in the form of non-consensual sexual penetration and sexual exploitation in the form of removing Allison’s clothing without her consent.

On May 1, 2023, a formal complaint of alleged sexual misconduct was submitted by Henry to the Title IX Coordinator alleging conduct by Allison. In the formal complaint, Henry alleged that on January 28, 2023, at an off-campus apartment owned by the University, Allison engaged in unwelcome conduct on the basis of sex in the form of unwelcome kissing, unwelcome touching of a sexual nature, and unwelcome sexual comments toward Henry.

Because Allison’s and Henry’s formal complaints arise out of the same facts or circumstances, the University has consolidated the complaints into one complaint resolution process.

Lathrop GPM  194

---

---

---

---

---

---


---

---


---

---

194

**CASE STUDY—ALLISON/HENRY** 

- After you issue the Second Amended Notice of Allegations, you receive an email from an attorney, informing you that she represents Allison. The attorney states that she wants the University to copy her and Allison’s parents on all communications going forward and that she and one or both of Allison’s parents will come with Allison to all future meetings regarding this matter.
- How do you respond?

Lathrop GPM  195

---

---

---

---

---

---

---


---

---


---


195

**ADVISORS**



- VAWA requires:
  - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting** or proceeding by the advisor of their choice”
- Title IX requires:
  - Allow advisor of choice, who may be but is not required to be an attorney
    - May establish equal restrictions on advisors’ participation



Lathrop GPM  196

196

---

---

---

---

---

---


---

---


---

---

**ADVISORS**



- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
  - Inform parties about restrictions on advisors in advance
    - “Potted plant”
    - No direct communication (orally or in writing) with Title IX Coordinator, Deputy Coordinator(s), Investigator(s) Adjudicator(s), Appeal Officer(s)
    - Must keep information confidential
    - Rules at the hearing
  - Signed advisor agreements – acknowledge role and restrictions
  - Be prepared to enforce the agreement parameters
  - Hold the party responsible for the advisor’s actions
  - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
  - Institutions may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation
  - Be consistent

Lathrop GPM  197

197

---

---

---

---

---

---


---

---


---

---

**CASE STUDY—ALLISON/HENRY**



- You send an email to Allison reminding her that all communications with the University must come directly from her. You attach an advisor agreement for Allison’s advisor to sign. You inform Allison that she may only have one advisor accompany her to meetings, not her advisor and a parent(s). You inform Allison that the University will copy her advisor on all communications to her once her advisor has signed and returned the advisor agreement.
- Allison’s advisor signs and returns the agreement.
- You notify Henry that Allison has an attorney advisor.

Lathrop GPM  198

198

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- A few days later Henry responds to your email about Allison having hired an attorney as her advisor. Henry says that he cannot afford an attorney, so the University should provide him with one now that Allison is represented by an attorney.
- How do you respond?

Lathrop GPM,  199

---

---

---

---

---

---


---

---


---

---

199

**CASE STUDY—ALLISON/HENRY** 

- Soon after, you receive an email from Allison stating that Henry's complaint against her constitutes retaliation. She tells you that she would like to add an allegation of retaliation to her complaint.
- How do you respond?

Lathrop GPM,  200

---

---

---

---

---

---


---

---


---

---

200

**CASE STUDY—NATALIE/HENRY** 

- Meanwhile, Natalie's (the other complainant) complaint against Henry is being investigated by a separate investigator. That investigator calls you and says that Natalie told her that the morning after Henry assaulted her, she went to the hospital and had a sexual assault exam.
- The investigator asks you whether she can ask Natalie for the results of the exam.
- How do you respond?

Lathrop GPM,  201

---

---

---

---

---

---


---

---


---

---

201

**TREATMENT RECORDS** 

- Institution 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 institution obtains that party’s voluntary, written consent to do so.

Lathrop GPM  202

---

---

---

---


---

---


---

---

202

**CASE STUDY—ALLISON/HENRY** 

- Returning to the matter involving Allison and Henry, the investigator also tells you that Allison stated during her initial interview that the week after she reported the alleged assault, she went to see her counselor and told her about the assault. Allison requested that the investigator interview her counselor as a witness.
- What should you tell the investigator to do?

Lathrop GPM  203

---

---

---

---


---

---


---

---

203

**CASE STUDY—ALLISON/HENRY** 

- You tell the investigator to get written consent from Allison to interview her counselor. During the interview, you receive a call from the investigator. She tells you that during the interview, she asked the counselor if Allison told her anything about the night of January 20/morning of January 21. The counselor said yes, but did not elaborate. The investigator asked the counselor what Allison told her. The counselor said that she needed more details about the information the investigator was seeking to confirm that she only reveals the confidential information that Allison has authorized her to disclose. The investigator tells you that she then asked the counselor if she could tell the investigator what Allison has told her about a sexual encounter that she had that night. The investigator tells you that the counselor told the investigator that she would need to be more specific.
- The investigator tells you that she did not want to give any more information without checking with you first, so she has paused the interview. The investigator asks you how to proceed.
- How do you respond?

Lathrop GPM  204

---

---

---

---


---

---


---

---

204

**CASE STUDY—ALLISON/HENRY** 

- The investigator also sent you an email saying that during Henry's initial interview, he told the investigator that he has proof that Allison wanted a sexual relationship with him. Henry said that right before they hooked up the second time, Allison sent Henry text messages that included nude photos of herself along with explicit comments about sexual things she wanted to do with him. The investigator says that Henry just sent the investigator an email attaching the screen shots.
- The investigator asks you what to do with the explicit content?

Lathrop GPM  205

---

---

---

---

---

---


---

---


---

---

205

**CASE STUDY—ALLISON/HENRY** 

- After consulting with legal counsel, you tell the investigator to ask Henry to resubmit the screenshots with the explicit content redacted. You also tell the investigator to ask Allison about the screenshots and, if she agrees she sent the photos and still has them, ask her to submit redacted versions. The investigator will then confirm with the parties that they agree on the content that has been redacted.
- You also tell the investigator that if Allison does not dispute the content of the screenshots, it may be enough to include a description of the screenshots in the investigation report (if relevant).

Lathrop GPM  206

---

---

---

---

---

---


---

---


---

---

206

**CASE STUDY—  
ALLISON/NATALIE/HENRY** 

- You receive a phone call from the local police. The officer tells you that they are investigating criminal charges against Henry by Allison and Natalie. He instructs you to suspend your investigations until further notice from him.
- What do you do?

Lathrop GPM  207

---

---

---

---

---

---

---


---

---


---

207

**NOTICE OF DELAY**



- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
  - Temporary delay or extension of timeframes for good cause, which may include
    - Absence of parties, a party's advisor, or witnesses
    - Concurrent law enforcement activity
    - Need for language assistance or accommodations of disability
  - Must provide written notice to parties of the delay or extension and the reason for it
    - DOE guidance: also include anticipated length of delay
  - Some timeframes are set by the regulations (Title IX)



Lathrop GPM 208

208

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—  
ALLISON/NATALIE/HENRY**



- The police investigator also asks you to send all records of the University's investigations to the police.
- How do you respond?

Lathrop GPM 209

209

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—ALLISON/HENRY**



- After about a week, you receive word from the police saying that they have completed their evidence gathering and the University can resume its investigations.
- The investigator in the matter involving Allison and Henry calls you and says that Chris, a member of the basketball team, was mentioned as a possible witness to the conduct underlying Henry's harassment allegation. The investigator says that she reached out to Chris to arrange an interview, but he responded that he will only meet with the investigator if she does not use his name. He says that he isn't willing to take "backlash" from the team.
- The investigator asks you how to respond to Chris.
- What do you say?

Lathrop GPM 210

210

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- The investigator calls you and says she is in the middle of Allison’s follow-up interview. The investigator says that Allison is accompanied by her attorney. She tells you that when she began asking Allison questions about a sexual encounter between Allison and Henry prior to the January 21 alleged assault, Allison’s attorney “objected” to the question and told the investigator that under Title IX she was not allowed to ask questions about the complainant’s prior sexual history. The investigator asks you how she should proceed.
- How do you respond?

Lathrop GPM  211

211

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Following the criminal charges, Henry also retained an attorney advisor, who signed an advisor agreement. Henry emails the investigator saying that his attorney advisor will be attending his follow-up interview. He also says that he’ll be bringing his assistant basketball coach as a support person.
- The investigator forwards you the email and asks how to respond.

Lathrop GPM  212

212

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Henry emails the investigator the next day to say that bringing a support person is necessary as an accommodation for his anxiety. Henry said this matter has caused him a lot of stress.

Lathrop GPM  213

213

---

---

---

---

---


---

---


---

---

---

**INTERACTION WITH OTHER LAWS—  
ACCOMMODATIONS** 

- Provide reasonable accommodations to an individual with a disability who requests an accommodation necessary to ensure an equal opportunity to participate in the complaint resolution process.

Lathrop GPM,  214

---

---

---

---

---

---


---

---


---

---

214

**CASE STUDY—ALLISON/HENRY** 

- Henry attends his follow-up interview with both his attorney advisor and his support person. During Henry's follow-up interview, the investigator calls you saying that Henry's attorney advisor has accompanied Henry to the interview and has advised Henry not to answer certain questions because of the impact it could have on the concurrent criminal investigation. The investigator asks you how to proceed.
- How do you respond?

Lathrop GPM,  215

---

---

---

---

---

---


---

---


---

---

215

**CASE STUDY—ALLISON/HENRY** 

- A few weeks later, the investigator informs you that she has completed her interviews and a rough draft of an investigation report.
- What is your next step?

Lathrop GPM,  216

---

---

---

---

---

---

---


---

---


---

216



**CASE STUDY—ALLISON/HENRY** 

- The investigator notifies the parties of the close of evidence date.
- A few days later, before the close of evidence, the investigator forwards you an email from Allison stating that the police informed her that they have completed their investigation in the concurrent criminal matter and that the matter has been referred to the prosecutor’s office. Allison tells the investigator that she just has requested a copy of the police report. She asks that the investigator delay the close of evidence until she receives a response from the police/prosecutor regarding her request. The investigator asks you whether she should delay the close of evidence date.
- How do you respond?

Lathrop GPM  217

217

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- You instruct the investigator to extend the close of evidence date by one week to give time for Allison to receive a response about her request for the police report. The investigator issues a notice of delay/extension to the parties. On the close of evidence date, the investigator calls you to tell you that Allison has just asked the investigator to extend for one more week to give her more time to get the report. The investigator asks you what she should do.
- How do you respond?

Lathrop GPM  218

218

---

---

---

---

---


---

---


---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
  - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
  - Must send to party and party’s advisor in hard copy or electronic format
    - May use a file sharing platform that restricts downloading or copying
    - May prohibit photographing/copying
    - May require signing a non-disclosure agreement
    - May not limit time for review (besides the 10 days)
    - May not require supervision
  - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

Lathrop GPM  \*Title IX Only 219

219

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- Types of evidence that must be provided to parties:
  - Documents collected from the parties
    - Text messages
    - Emails
    - Social media posts and messages
    - Photos and videos
  - Other evidence
    - Police reports
    - Security footage
    - Wifi access point records
  - Party and witness interviews

Lathrop GPM,  \*Title IX Only 220

220

---

---

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- Sexual history = include if directly related
  - Protections related to complainant's prior sexual history do not apply at this stage
  - Still analyze whether such evidence is "directly related to the allegations"
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

Lathrop GPM,  \*Title IX Only 221

221

---

---

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution 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.

Lathrop GPM,  \*Title IX Only 222

222

---

---

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- May not categorically prohibit certain types of evidence if directly related (and later if relevant):
  - Lie detector test results
  - Character evidence/witnesses
  - Expert reports/witnesses
  - Prior bad acts (e.g., prior policy violation by respondent)
  - Allegations of similar misconduct
- But can have policy for how much weight and credibility decision-makers will give these types of evidence

Lathrop GPM  \*Title IX Only 223

223

---

---

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- May permit or require the investigator to redact information that is not directly related to the allegations (or that is otherwise barred from use under the final regulations)
  - Redactions are limited to information not directly related or that is otherwise specifically barred
  - May not redact other information, such as confidential, sensitive, or prejudicial information, if it is directly related to the allegations

Lathrop GPM  \*Title IX Only 224

224

---

---

---

---

---

---

---

---


---

---


---

---

**PROVIDE "DIRECTLY RELATED" EVIDENCE TO PARTIES \***



- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM  \*Title IX Only 225

225

---

---

---

---

---

---

---


---

---


---

---

---

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Ensuring privacy
  - May require parties and advisors to:
    - Use the evidence (and investigation report) only for purposes of the grievance process and
    - Require them not to further disseminate or disclose these materials
  - May use a non-disclosure agreement
  - May use digital encryption or other practices to address privacy concerns

Lathrop GPM  \*Title IX Only 226

226

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- While the investigator is finalizing the directly related evidence for the parties’ review, she asks you whether she should include the following as part of the directly related evidence:
  - The following statement from Callie: “I’d heard [Henry] was bad news, but I didn’t feel like it was my place to say anything to Allison. We aren’t like that close.”
  - The following statement from Luke: “Girls really throw themselves at Henry. And he’s not the type to settle down. So let’s just say Allison’s not the first girl to get all crazy after getting her heart broken by him.”

Lathrop GPM  227

227

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- While the investigator is finalizing the directly related evidence for the parties’ review, she asks you whether she should include the following as part of the directly related evidence (cont.):
  - Allison’s statement that she was not sure she would file a report because she was too afraid of the backlash, especially since Henry is so popular and is on the basketball team. But when she found out that he had done this to others and another girl was even going to file a complaint against him, it gave her courage to speak out.
  - Henry’s statement that this “whole thing” came about because Natalie (who also filed a complaint against Henry) convinced Allison to file a complaint. Henry says Natalie planted the idea of rape in Allison’s mind.
  - Redacted screenshots of explicit images sent by Allison to Henry.

Lathrop GPM  228

228

---

---

---

---

---


---

---

---

---

---

**PRIOR SEXUAL HISTORY** 

- Complainant’s sexual behavior or predisposition are not relevant unless:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent

Lathrop GPM, P 229

229

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

- The investigator provides the directly related evidence to the parties and their advisors and gives them 10 days to submit a written response.

Lathrop GPM, P 230

230

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Two days into the review of the directly related evidence, Allison emails you and says:
  - The transcript from the interview from my counselor is included in this document. My understanding is that Henry got the same document, meaning he is now looking at the confidential information related to my mental health. That was for the decision-makers to see in confidence.
- How do you respond?

Lathrop GPM, P 231

231

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Both Allison and Henry submit timely responses to the directly related evidence.

Lathrop GPM  232

---

---

---

---

---

---


---

---


---

---

232

**CASE STUDY—ALLISON/HENRY** 

- In Henry’s response to the directly related evidence, he stated:
  - Allison told the investigator that she has needed counseling because of what happened between us, but Allison’s friend, Sasha, told me that Allison has been in counseling all year because she gets so stressed out over school. I want the investigator to get Allison’s records from the counseling center to see when she started seeing a counselor.
- What do you do with this information?

Lathrop GPM  233

---

---

---

---

---

---


---

---


---

---

233

**PROVIDE “DIRECTLY RELATED” EVIDENCE TO PARTIES \*** 

- Steps following parties’ review
  - Review parties’ responses
  - Consult with investigator to decide whether any additional action is needed
  - Investigator should consider parties’ viewpoints about whether the evidence directly related to the allegations is relevant and therefore whether to include it in the investigation report
  - May provide a copy of each party’s written response to the other party, but that is not required

Lathrop GPM  \*Title IX Only 234

---

---

---

---

---

---

---


---

---

---

234

**INVESTIGATION REPORT**



- Must create investigative report that fairly summarizes **relevant** evidence
- Complainant’s sexual behavior or predisposition are **not relevant unless**:
  - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
  - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent
- Investigator should not include any information about the complainant’s sexual history in the investigation report, unless it falls under one of these exceptions.

Lathrop GPM

235

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—ALLISON/HENRY**



- During the investigation, the investigator asked Allison about the redacted explicit images that Henry submitted. Allison agreed that she had sent the images and said that they were sent when things were going well with Henry and she thought they were moving toward a relationship.
- Both parties submitted redacted versions of the photos. The investigator is wondering whether to include the redacted screenshots of the explicit images in the investigation report. How do you respond?

Lathrop GPM

236

---

---

---

---

---

---


---

---

---

---

**CASE STUDY—ALLISON/HENRY**



- The investigator sends you her final investigation report.
- What is your next step?

Lathrop GPM

237

---

---

---

---

---


---

---

---

---

---

**INVESTIGATION REPORT** 

- Parties must be provided:
  - VAWA: information used in the decision-making process – access required
  - Title IX:
    - Investigation report:
      - Must send hard copy or electronic format to parties and advisors
        - » May use a file sharing platform that restricts downloading or copying
        - » May prohibit photographing/copying
        - » May require signing a non-disclosure agreement
        - » May not limit time for review
        - » May not require supervision
      - Must be provided at least 10 days prior to live hearing
    - Opportunity to submit written response

238

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

- You send a link to the investigation report and attachments to the parties and their advisors. Your policy provides the parties with ten days to submit written responses to the report. You send the report on a Monday with responses due the following Thursday.
- Over the weekend, you receive an email from Allison stating that she just received access to the police report in the concurrent criminal matter. She says that Henry’s account to the police differs from what he said in his interviews with you.
- Allison asks you to reopen the investigation or at least accept the police report into evidence and revise the report to include it.
- How do you respond?

239

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

- You and the investigator review the police report and determine that it contains relevant information. You notify the parties that the new evidence will be considered. You issue a notice of delay to the parties and pause the investigation report review period.
- In reviewing the police report, the investigator does not note any major inconsistencies in Henry’s account to the police, only that his account does not include the same level of detail that he gave in his account to the investigator.
- The investigator issues a supplemental investigation report stating that both parties gave accounts to the police of the January 21, 2023 encounter, as documented in the police report, which is included as an attachment to the supplemental report.
- You send a link to the supplemental investigation report and attachments to the parties and their advisors and provide 10 days for their review and response.
- Allison and Henry both submit timely responses to the investigation report and supplemental report.

240

---

---

---

---

---

---

---


---

---


---



**CASE STUDY—  
RICK/PROFESSOR CURIE**



- Meanwhile, the investigation is wrapping up in the matter involving Rick’s allegations of Title IX Sexual Harassment against Professor Curie. After reviewing the directly related evidence, Professor Curie’s attorney advisor reaches out to the University to propose a separation agreement for Professor Curie. Professor Curie’s attorney states that Professor Curie will agree to retire if the University dismisses the complaint against her, agrees not to mention the matter to any future employer of Professor Curie, and provides Professor Curie with severance pay equal to one year of her salary.
- What do you have to consider in responding to this proposal?

Lathrop GPM  241

241

---

---

---

---

---

---


---

---


---

---

**DISMISSAL OF FORMAL COMPLAINT**



- **Mandatory Dismissal under Title IX**
  - Must dismiss formal complaint if alleged conduct
    - even if proved, would not constitute sexual harassment
    - did not occur in the institution’s education program or activity or
    - did not occur against a person in the United States
  - Such dismissal does not preclude action under another provision of institution’s code of conduct
- **Discretionary Dismissal under Title IX**
  - May dismiss formal complaint if at any time during the investigation or hearing
    - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein
    - respondent is no longer enrolled or employed by the recipient or
    - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

Lathrop GPM  242

242

---

---

---

---

---

---


---

---


---

---

**DISMISSAL OF FORMAL COMPLAINT**



- **Notice of Dismissal:** Upon dismissal (mandatory or discretionary), institution must promptly send written notice of dismissal and reasons for the dismissal simultaneously to the parties

Lathrop GPM  243

243

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Turning back to the case involving Allison and Henry, you have set a date for the hearing, but Henry emails you asking for the hearing to be delayed until after the determination in the matter involving Natalie, which already has an earlier hearing date set.
- How do you respond?

Lathrop GPM,  244

244

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- You are preparing the adjudication file for the hearing panel. You plan to include the investigation report and attachments.
- Should you include the directly related evidence?
- Should you include the parties' responses to the directly related evidence?
- Should you include the parties' responses to the investigation report?
- If you include the parties' responses to the investigation report, what else do you need to do?

Lathrop GPM,  245

245

---

---

---

---

---

---

---

---

---

---

**LIVE HEARING** 

- General requirements under Title IX
  - Must provide live hearing
  - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions"
  - If party does not have advisor, institution must provide one for cross-examination
  - ~~If a party or witness does not submit to cross-examination at hearing, their statements cannot be considered by decision-maker(s)~~

Lathrop GPM,  246

246

---

---

---

---

---


---

---


---

---

---

**DECISION-MAKER(S)** 

- May have single decision-maker or a panel of decision-makers
- If a panel of decision-makers, may appoint one decision-maker to make relevancy determinations at the hearing
- May appoint Title IX Coordinator or another individual who is not a decision-maker to enforce procedural rules at the hearing
  - Decision-maker(s) must still determine relevancy issues

Lathrop GPM  247

247

---

---

---

---

---

---

---

---

---

---

**PREPARATION FOR HEARING** 

- Determine hearing format and arrange technology
  - May conduct with all parties physically present in the same location
    - At the request of either party, institution must provide for live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions
    - Witness cannot demand to be in a separate room, unless that witness alleges they are also a victim of respondent (institution can permit witness to be in a separate room upon request)
  - May conduct virtually (for all parties, witnesses, and other participants), with technology enabling participants simultaneously to see and hear each other
    - Video is required; phone is insufficient

Lathrop GPM  248

248

---

---

---

---

---


---

---


---

---

---

**PREPARATION FOR HEARING** 

- Decision-maker(s) should review adjudication file
- Decision-maker(s) identify ultimate questions that will need to be decided
  - Consider questions or topics that may come up and any anticipated relevancy issues
- Decision-maker(s) determine whether any additional information is needed to make the decision
  - Identify witnesses to request if additional information is needed or if credibility is at issue
  - **CAUTION:** Don't base credibility on demeanor
- Parties identify additional witnesses
  - Request that these witnesses make themselves available for the hearing

Lathrop GPM  249

249

---

---

---

---

---


---

---


---

---

---

**ATTENDANCE AT HEARING** 

- Parties may be accompanied only by their advisors and other persons for reasons “required by law”
  - Institution must keep confidential the complainant, respondent, and any witness except as may be permitted by FERPA, as required by law, or to carry out the grievance process
    - Limits institution’s ability to authorize the parties to be accompanied to the hearing by individuals other than their advisors
  - A person assisting a party with a disability, or a language interpreter, may attend because presence is required by law and/or necessary to conduct the hearing

Lathrop GPM  250

250

---

---

---

---

---


---

---


---

---

---

**HEARING: SCHOOL-APPOINTED ADVISORS** 

- Can request that the parties inform school in advance whether they have an advisor
  - If party does not have an advisor at the hearing, still required to provide an advisor even if party stated that they would have one
  - May want to have an advisor for each party on standby so that delaying the hearing is not necessary
- School-appointed advisor
  - Role is limited to relaying a party’s questions
  - No particular skills, qualifications, or training is required
  - Does not need to be neutral or avoid conflicts of interest
  - If a party refuses to work with an assigned advisor – the party forfeits his or her right to cross-examination

Lathrop GPM  251

251

---

---

---

---

---


---

---


---

---

---

**HEARING: RELEVANCY DETERMINATIONS** 

- Decision-maker may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

Lathrop GPM  252

252

---

---

---

---

---


---

---


---

---

---

**HEARING—CROSS-EXAMINATION** 

- Party or witness who does not appear at the hearing or refuses to answer questions at the hearing
  - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
    - Consider weight to be given to statements (put in policy)
    - Consider allowing party or advisor to share questions they would have asked a party or witness who is absent or will not submit to cross-examination
  - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

Lathrop GPM  253

253

---

---

---

---

---

---

---


---

---


---

---

---

**HEARING: CROSS-EXAMINATION** 

- Party or witness who does not appear at the hearing
  - Advisor may conduct cross-examination on behalf of party even if party is not present
  - If one party does something to wrongfully procure absence of a party or witness, that is likely retaliation and the school must remedy
  - School also cannot coerce unwilling participant
    - Be careful with any requirement that a student or employee cooperate with grievance process
    - Discipline for not attending hearing may constitute retaliation

Lathrop GPM  254

254

---

---

---

---

---

---

---


---

---


---

---

---

**HEARING: OTHER PROCEDURAL RULES** 

- May establish additional rules that apply equally to both parties
  - Cross-examination must be respectful, non-abusive, not intimidating
  - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
  - Whether investigator may be called as a witness
  - Process for making objections to the relevance of questions and evidence
  - Other procedures at the hearing
    - Opening statements by parties or advisors
    - Closing statements by parties or advisors
  - Reasonable time limitations on hearings

Lathrop GPM  255

255

---

---

---

---

---

---

---


---

---

---

---

---

**HEARING: OTHER PROCEDURAL RULES** 

- Some procedural rules are prohibited
  - Cannot prohibit a party from conferring with his or her advisor during the hearing
    - Likely can prohibit conferring when a question is pending
    - Could also discourage from conferring when a question is pending by warning that such conduct will be considered when weighing the party’s credibility
  - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
    - Decision-maker may determine how much weight to give such evidence

Lathrop GPM 256

256

---

---

---

---

---


---

---

---

---

---

**CASE STUDY—ALLISON/HENRY** 

- The hearing in the matter involving Natalie and Henry has already taken place, and the panel found Henry responsible for sexual assault. The panel has suggested a sanction of suspension.
- The timeframe for issuing the Notice of Determination in the Natalie/Henry matter will extend beyond the hearing in the Allison/Henry matter.
- Will the decision in the Natalie/Henry matter affect the hearing or decision in the Allison/Henry matter?

Lathrop GPM 257

257

---

---

---

---

---

---

---

---

---

---

**SANCTIONS AND REMEDIES** 

- Consider who will decide the sanctions and how
  - Consider limited role of Title IX Coordinator
- Policy must list *all* possible sanctions
  - The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement
- Policy must describe the range of remedies
  - Title IX Coordinator is responsible for effective implementation of any remedies
  - Remedies must be designed to restore or preserve equal access to the institution’s education program or activity
  - May include the same individualized services as “supportive measures”
  - Do not need to be “non-disciplinary” or “non-punitive” and do not need to avoid burdening the respondent
  - Consider remedies for broader student population

Lathrop GPM 258

258

---

---

---

---

---


---

---


---

---

---

**NOTICE OF DETERMINATION** 

- Identification of the allegations potentially constituting sexual harassment
- Procedural steps since complaint
  - Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
  - Determination of responsibility
  - Any disciplinary sanctions imposed on respondent
  - Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties

Lathrop GPM,  259

259

---

---

---

---

---

---

---


---

---


---

---

---

**NOTICE OF DETERMINATION** 

- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely
- Sanctions may not be imposed until determination is final

Lathrop GPM,  260

260

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- The hearing panel has found that Henry is not responsible for Sexual Assault or Sexual Exploitation and that Allison is not responsible for Non-Title IX Sexual Harassment.
- However, because Henry is found responsible for Sexual Assault toward Natalie, he is suspended for two years or until Natalie graduates, whichever is longer.
- Do you inform Allison of the results of the case involving Natalie?

Lathrop GPM,  261

261

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—ALLISON/HENRY** 

- Several months have passed, and Allison stops by your office one day. She says that she is once again working with the men’s basketball team as a trainer. She says that the guys on the team will not speak to her and even avoid being treated by her. She says they go to the athletic training room before practice to find a different trainer to tape ankles, etc. She says they haven’t said anything to her, but she knows it is because they see her as a reason Henry was suspended, even though he was found not responsible in her case. She says that she asked her supervising professor if she could be assigned to a different team, but he said that it was not possible. Allison says she doesn’t know what to do.
- How should you respond?

Lathrop GPM  262

262

---

---

---

---

---

---

---


---

---


---

---

---

**CASE STUDY—  
RICK/PROFESSOR CURIE** 

- The University did not reach a separation agreement with Professor Curie, and the matter proceeded to a hearing. The hearing panel found Professor Curie responsible for Title IX Sexual Harassment and imposed a sanction of termination.
- Professor Curie files an appeal arguing that the University is biased against women because a male professor accused of sexual harassment last year was found not responsible and allowed to keep his job.
- How do you respond?

Lathrop GPM  263

263

---

---

---

---

---

---

---


---

---


---

---

---

**APPEALS UNDER TITLE IX** 

- Must be offered to both parties
  - From a determination regarding responsibility
  - From a recipient’s dismissal of a formal complaint or any allegations therein
- Required bases:
  - Procedural irregularity that affected the outcome of the matter;
  - 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;
  - The Title IX Coordinator, investigator, or decision-maker 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;
- May offer an appeal equally to both parties on additional bases.

Lathrop GPM  264

264

---

---

---

---

---

---

---

---


---

---

---

---



**APPEALS UNDER TITLE IX** 

- Requirements
  - Notify other party in writing when an appeal is filed
  - Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing
  - No conflict of interest or bias
  - Individuals responsible for appeal must receive training
  - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
  - Written decision describing result of appeal and rationale
  - Simultaneous delivery of result to parties

Lathrop GPM 265

---

---

---

---

---

---


---

---


---

---

265

**APPEALS UNDER VAWA** 

- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
  - Right to advisor
  - Notice of meetings
  - Access to information used by appeals panel/individual
  - Simultaneous notice of outcome



Lathrop GPM 266

---

---

---

---

---

---


---

---


---

---

266

**ADDITIONAL REQUIRED POST-DETERMINATION NOTICES** 

- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
  - Any change to the results that occurs prior to the time that such results become final
  - When such results become final
- For Title IX, your institution must provide concurrent written notice of—
  - The outcome of any appeal



Lathrop GPM 267

---

---

---

---

---

---

---


---

---

---

267

**RECORDKEEPING**



- For 7 years, must maintain:
  - Investigation and adjudication
    - Any determination regarding responsibility
    - Any audio or audiovisual recording or transcript of the hearing
    - Any disciplinary sanctions imposed
    - Any remedies provided to complainant
    - Any appeal and result
    - Any informal resolution and the result
  - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process

Lathrop GPM

268

---

---

---

---

---

---


---

---

---

---

**RECORDKEEPING**



- For 7 years, must maintain (cont.):
  - Any actions taken (including supportive measures) in response to a report of sexual harassment
    - Basis for conclusion that response was not deliberately indifferent
    - Measures were designed to restore or preserve equal access to educational programs and activities
    - If supportive measures were not provided, document the reasons why such a response was not clearly unreasonable in light of known circumstances
  - Recordkeeping does not prevent inclusion of additional details or explanations later

Lathrop GPM

269

---

---

---

---

---

---

---

---

---

---



Q & A



Lathrop GPM

270

---

---

---

---

---

---


---

---

---

---

**UPCOMING TRAININGS**



▪ **Trainings for individuals with heightened responsibility:**

- **8/2/23:** Annual Title IX/VAWA Investigator Training
- Annual Training for Title IX Hearing Panels
- Title IX/VAWA Appeal Officer Training
- **TBD:** Trainings regarding new Title IX regulations (following release of regulations)

Lathrop GPM, P.A. 271

271

---

---

---

---

---

---


---

---

---

---

**ON DEMAND TRAININGS**



▪ **Available on-demand:**

- Annual Training for New Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Investigator Training
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Hearing Panel Training
- Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
- Title IX/VAWA Appeal Officer Training
- VAWA Adjudicator Training
- Conducting a Grievance Process Under the New Title IX Regulations
- Title IX Update: Final Regulations

Lathrop GPM, P.A. 272

272

---

---

---

---

---

---

---

---

---

---