



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

**Kathryn Nash  
Emily Mawer**

Lathrop  
GPM

---

---

---


---



---

---

---

---

**AGENDA** 

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

Lathrop  
GPM

---

---

---


---

---


---

---

---

**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

---

---

---


---

---


---

---

---

**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)

Lathrop GPM,  4

---

---

---


---

---


---

---

---

**TRAINING REQUIREMENTS** 

- Train Title IX Coordinator, investigator, decision-maker, facilitator of informal resolution process, and individuals responsible for appeals on
  - Relevant evidence and how it should be used during a proceeding (annual)
  - Proper techniques for questioning witnesses (annual)
  - Basic procedural rules for conducting a proceeding (annual)
  - Avoiding actual and perceived conflicts of interest (annual)
  - Institution's policies and procedures

Lathrop GPM,  5

---

---

---


---

---


---

---

---

**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,  6

---

---

---


---

---

---

---

---

**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 7

---

---

---

---

---

---

---

---

**SESSION 1: LEGAL OVERVIEW** 



Lathrop GPM 8

---

---

---


---

---


---

---

---

**SESSION OVERVIEW** 

- Title IX and OCR Guidance
- Clery Act
- Violence Against Women Act
- Other Laws



Lathrop GPM 9

---

---

---


---

---

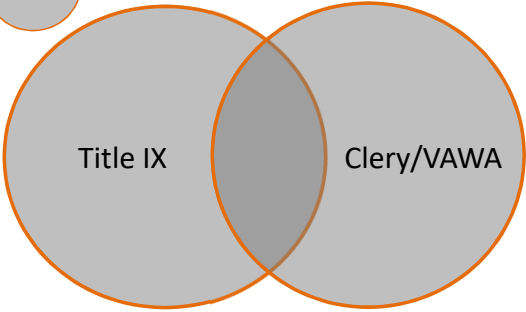
---

---

---


**LEGAL OBLIGATIONS** 

Other Conduct



Title IX

Clery/VAWA

Lathrop GPM  10

---

---

---


---

---


---

---


---

**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  11

---

---

---


---

---


---


---

---

**WHO MUST COMPLY WITH TITLE IX?** 

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



Lathrop GPM  12

---

---

---

---

---

---

---

---

**DISCRIMINATION  
"ON THE BASIS OF SEX"**



- Includes:
  - Sexual harassment
  - Differential treatment



Lathrop GPM, > 13

---

---

---

---


---

---


---

---

**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, > 14

---

---

---

---


---

---


---

---

**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
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities



Lathrop GPM, > 15

---

---

---


---

---


---

---

---

**OCR'S ENFORCEMENT AND GUIDANCE** 

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



Lathrop GPM, > 16

---

---

---


---

---

---


---

---

**TITLE IX COORDINATOR GUIDANCE** 

- Key points:\*

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



Lathrop GPM, > \*2015 DCL on Title IX Coordinators 17

---

---

---


---

---

---


---

---

**TITLE IX COORDINATOR GUIDANCE** 

- 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, > \*2015 Title IX Resource Guide 18

---

---

---


---

---


---

---

---

**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, > 19

---

---

---


---

---


---

---

---

**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, > 20

---

---

---


---

---

---

---

---

**CLERY FINES** 

- Fine for each Clery Act violation is \$58,328
- 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 fined \$172,000 in 2017 for failure to include required policy statements and under-reporting of crime statistics among other violations

Lathrop GPM, > 21

---

---

---


---

---

---


---


---

**train** 

### VAWA REGULATIONS

- Requires policy addressing:
  - Procedures alleged victims should follow
  - Disciplinary procedures
  - Confidentiality
  - Notifications to students, employees, and alleged victims
  - 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,  22

---

---

---


---

---

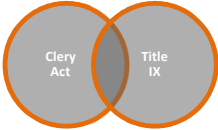
---

---


---

**train** 

### 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 VAWA crimes

Lathrop GPM,  23

---

---

---


---

---

---


---

---

**train** 

### 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,  24

---

---

---

---


---

---


---


---



**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  25

---

---

---


---

---


---

---

---

**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  26

---

---

---


---

---


---

---

---

**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  27

---

---

---


---

---

---

---

---

**TITLE IX—SEXUAL HARASSMENT** 

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

quid pro quo

hostile environment

VAWA crimes

Lathrop GPM, > 28

---

---

---


---

---

---

---

---

**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, > 29

---

---

---


---

---

---

---

---

**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, > 30

---

---

---


---

---


---

---

---

**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,  31

---

---

---


---

---


---


---

---

**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,  32

---

---

---


---

---


---


---

---

**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,  33

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

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



Lathrop  
GPM,  34

---

---

---


---

---


---

---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person without the consent of the victim
  - **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 incapacity

Lathrop  
GPM,  35

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes—Sexual Assault:**
  - **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
  - **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent



Lathrop  
GPM,  36

---

---

---


---




---

---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

- **VAWA Crimes:**
  - **Domestic Violence:** committed by current/former spouse, intimate partner, co-parent, cohabitant, or others protected under domestic or family violence law
  - **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  37

---

---

---


---

---


---


---

---

**TITLE IX—SEXUAL HARASSMENT** 

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



Lathrop GPM  38

---

---

---


---

---


---

---

---

**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  39

---

---

---


---

---

---

---

---

**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, ▶ 40

---

---

---


---

---

---

---

---

**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, ▶ 41

---

---

---


---

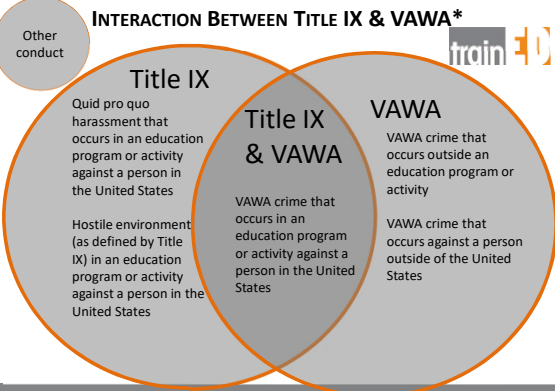
---

---

---

---

**INTERACTION BETWEEN TITLE IX & VAWA\*** 



Lathrop GPM, ▶ \*If one of the parties is affiliated with the institution in some way 42

---

---

---

---

---

---

---

---


**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, >

43

---

---

---

---


---

---

---

---

**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, >

44

---

---

---

---


---

---

---

---

**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 VAWA crime)
    - No requirement to provide written explanation of rights and options (but still recommended)
    - Disciplinary process that complies with VAWA

Lathrop GPM, >

45

---

---

---


---

---

---

---

---

**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 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, ▶ 46

---

---

---

---

---


---

---

---

---

---

**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

Lathrop GPM, ▶ 47

---

---

---

---

---



---

---

---

---

---

**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, ▶ 48

---

---

---

---

---

---


---

---


---

---



**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
      - Everything is given to parties and their advisors
    - 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



Lathrop  
GPM, ▶ 49

---

---

---


---

---

---

---

---

**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, ▶ 50

---

---

---

---

---

---

---

---



**Q & A**



Lathrop  
GPM, ▶

---

---

---


---

---


---

---

---



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



Lathrop  
GPM, > 52

---

---

---


---

---

---

---

---



**SESSION OVERVIEW**

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

Lathrop  
GPM, > 53

---

---

---

---

---

---

---

---



**CONSIDER AND ENGAGE YOUR  
COMMUNITY**

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



Lathrop  
GPM, > 54

---

---

---


---

---


---


---

---

**train** 

## STRUCTURING THE COMPLAINT RESOLUTION PROCESS



Lathrop  
GPM,  55

---

---

---

---


---

---


---

---

## STRUCTURING THE COMPLAINT RESOLUTION PROCESS

**train** 

- 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,  56

---

---

---

---


---

---


---

---

## SAME PROCEDURES FOR TITLE IX AND VAWA

**train** 

- 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

Lathrop  
GPM,  57

---

---

---


---

---


---

---

---

**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,  58

---

---

---


---

---


---

---

---

**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,  59

---

---

---


---

---


---

---

---

**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: Copy 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,  60

---

---

---


---

---


---


---

---

**train** 

## POLICY ELEMENTS AND UPDATES



Lathrop  
GPM,  61

---

---

---


---

---

---


---


---

**train** 

## POLICY ELEMENTS & UPDATES

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



Lathrop  
GPM,  62

---

---

---


---

---

---


---


---

**train** 

## POLICY ELEMENTS & UPDATES

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



Lathrop  
GPM,  63

---

---

---


---

---

---

---

---

**POLICY ELEMENTS & UPDATES** 

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

Lathrop GPM, ▶ 64

---

---

---


---

---


---

---

---

**POLICY ELEMENTS & UPDATES** 

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



Lathrop GPM, ▶ 65

---

---

---


---

---

---

---

---

**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

Lathrop GPM, ▶ 66

---

---

---


---

---


---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 67

---

---

---


---

---


---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 68

---

---

---

---

---

---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 69

---

---

---


---

---

---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 70

---

---

---


---

---

---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 71

---

---

---


---

---


---

---

---

**COMPLY WITH LEGAL REQUIREMENTS:  
TITLE IX/VAWA** 

- 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 72

---

---

---

---

---


---

---


---



**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
- Prohibition of knowingly making false statements or knowingly submitting false information during the grievance process
- **Version of policy to apply**

Lathrop GPM,  73

---

---

---

---


---

---


---

---

**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,  74

---

---

---

---


---

---


---

---

**ADDITIONAL RECOMMENDED UPDATES**



- Evidentiary Issues
  - **Lie detector test results**
  - **Character evidence/witnesses**
  - **Witness statements obtained by others**
  - **Medical evidence**
  - **Expert reports/witnesses**
  - **Prior policy violation by respondent**
  - **Allegations of similar misconduct**

Lathrop GPM,  75

---

---

---


---

---

---

---

---

**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, ▶ 76

---

---

---

---

---

---

---

---

**SESSION 3: OVERSEEING THE COMPLAINT PROCESS** 



Lathrop GPM, ▶ 77

---

---

---


---

---


---

---

---

**SESSION OVERVIEW** 

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



Lathrop GPM, ▶ 78

---

---

---


---

---

---

---

---

**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
- Conduct informal resolution?

Lathrop GPM, ▶ 79

---

---

---


---

---

---

---

---

**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, ▶ 80

---

---

---


---

---

---

---

---

**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, ▶ 81

---

---

---


---

---


---

---

---

**ROLE OF TITLE IX TEAM** 

- Serve impartially
  - Avoid prejudgment 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 82

---

---

---

---

---

---

---

---

**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 provide copy 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 Complaint Process
  - Written simultaneous notices of outcome



Lathrop GPM 83

---

---

---

---

---

---

---

---

**CASE STUDY** 



Lathrop GPM 84

---

---

---


---

---

---

---

---

**CASE STUDY** 

- On Monday September 14, 2020, a junior named Ashley stops by the office of Dean Hill, who is in charge of overseeing the Student Government Association (SGA) at the University. Ashley tells Dean Hill that she has an issue with another member of SGA, another junior named Nick. Ashley tells Dean Hill that she and Nick had been dating over the summer but broke up after Nick forced her to do things she didn't want to do when she was drunk. Ashley tells Dean Hill that she doesn't want to get Nick kicked out of school or anything like that, but she can't be in SGA with him. Ashley says that she doesn't want to give up her position on student government, so she is wondering if there is anything Dean Hill can do to help her.

Lathrop GPM, > 83

---

---

---

---

---

---

---

---

**RESPONDING TO A REPORT** 

Report



```

graph TD
    Report[Report] --> Confidential[Confidential Resource - Legally Privileged]
    Report --> Other[Other Employees]
    Report --> TitleIX[Title IX Coordinator & Officials with Authority]
    Other -.->|?| TitleIX
  
```

Lathrop GPM, > 85

---

---

---


---

---

---

---

---

**RESPONDING TO A REPORT** 

- 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, > 87

---

---

---


---


---

---

---

---

**DUTIES OF CONFIDENTIAL RESOURCES** 

- 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, > 88

---

---

---


---


---

---

---

---

**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 alleged victim 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, > 89

---

---

---


---


---

---

---

---

**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, > 90

---

---

---

---


---

---

---

---

**CASE STUDY**



- If Dean Hill was at your institution, how would you recommend she respond?

Lathrop  
GPM, >

91

---

---

---

---


---

---

---

---

**CASE STUDY**



- Dean Hill tells Ashley that she is required by the University to report what Ashley told her to the Title IX Coordinator. Dean Hill explains that the Title IX Coordinator is the one who will be able to help Ashley, so she encourages her to talk with the Title IX Coordinator directly.

Lathrop  
GPM, >

92

---

---

---

---


---

---

---

---

**CASE STUDY**



- On Tuesday, September 15, 2020, Ashley comes to your office to speak to you. Ashley tells you that over the summer she was dating another student named Nick. Ashley says that she and Nick had consensual sex many times during their relationship, but on the night before they broke up “things were different.” Ashley tells you that she was “super drunk” and remembers saying “no” to Nick many times, but he “just wouldn’t take ‘no’ for an answer.” Ashley says that Nick also showed topless pictures of her to some of his friends earlier in the night. Ashley says she “doesn’t want to get Nick in trouble;” she just wants him to be off student government so that she doesn’t have to see him so much. She’s wondering what her options are. She says she doesn’t want a “whole big investigation;” she just wants to “work it out quietly with as little drama as possible.”

Lathrop  
GPM, >

93

---

---

---


---

---


---

---

---

**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, > 94

---

---

---


---

---

---

---

---

**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, > 95

---

---

---

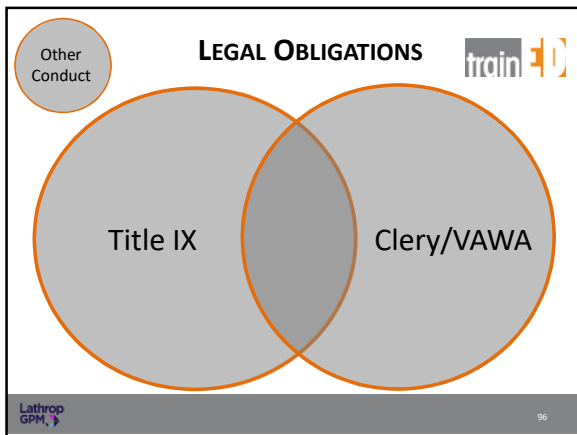
---

---

---

---

---




---

---

---

---

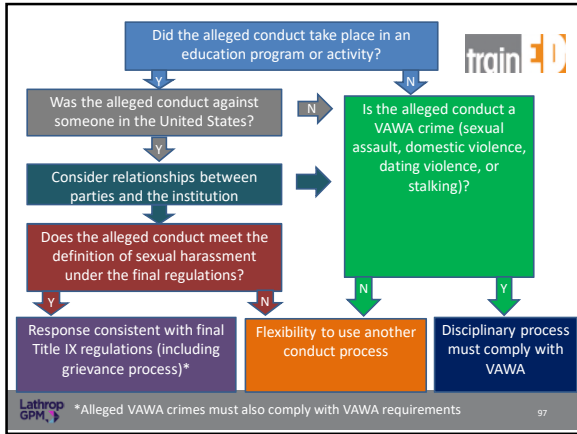
---

---

---

---






---

---

---

---

---

---

---

---

---

---

### CASE STUDY

- You ask Ashley where the conduct at issue took place. She tells you that they had sex at her apartment in the student housing off campus (which is owned by the University). She tells you that they were at Nick's apartment when he showed the pictures to his friends. When asked, Ashley tells you that Nick lives in the Terrace Apartments off campus (which is not owned by the University).
- The University has separate processes for Title IX and non-Title IX complaints. Which process applies?

Lathrop GPM, 98

---

---

---

---

---

---

---

---

---

---

### CASE STUDY

- What if the locations for the two allegations were switched and the harassment occurred in University-owned housing and the assault occurred at an off-campus apartment unaffiliated with the University?

Lathrop GPM, 99

---

---

---

---

---


---

---


---

---

---

**RESPONDING TO A REPORT** 

- Response must treat complainant and respondent equitably by
  - Offering supportive measures to a complaint (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  100

---

---

---


---

---


---


---

---

**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 alleged victim of right to report to law enforcement and offer help with report (VAWA)
  - Provide complainant with written notification of rights (VAWA)



Lathrop GPM  101

---

---

---


---

---


---

---

---

**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  102

---

---

---

---



---

---

---

---

**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, >

103

---

---

---

---



---

---

---

---

**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, >

104

---

---

---

---

---

---

---

---

**RESPONDING TO A REPORT**




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

Lathrop  
GPM, >

105

---

---

---


---

---


---


---

---

**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 alleged victim
    - Whether school has other means to obtain evidence (security footage, eye witness 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



Lathrop GPM,  106

---

---

---


---

---


---


---

---

**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,  107

---

---

---


---

---


---


---

---

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

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



Lathrop GPM,  108

---

---

---

---

---


---

---

---

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

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



Lathrop GPM, > 109

---

---

---


---

---


---

---

---

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

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



Lathrop GPM, > 110

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You explain Ashley’s rights and options. Ashley says that she doesn’t want to file a formal complaint, she wants a no-contact directive put in place so that Nick is not able to attend SGA meetings and events

Lathrop GPM, > 111

---

---

---

---


---

---


---

---

**CASE STUDY**



- You explain to Ashley how a mutual no-contact directive works and that you are not able to prohibit Nick from attending SGA at this point in the process. You explain that there would need to be an investigation and a finding of responsibility or Nick would need to voluntarily agree to it as part of an informal resolution. Ashley tells you that she wants to see if Nick will participate in an informal resolution process.

Lathrop GPM,  112

---

---

---

---


---

---


---

---

**INFORMAL RESOLUTION**



- VAWA: No specific requirement
- Title IX:
  - Any time prior to determination, may facilitate informal resolution process, such as mediation, if
    - Provide parties with written notice disclosing
    - Allegations
    - 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,  113

---

---

---

---


---

---


---

---

**INFORMAL RESOLUTION**



- 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,  114

---

---

---

---

---

---

---

---

### INFORMAL RESOLUTION

- 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

Lathrop GPM 115

---

---

---

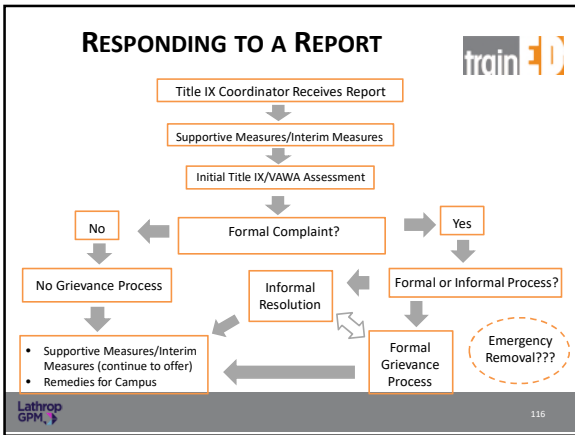
---

---

---

---

---




---

---

---

---

---

---

---

---

### CASE STUDY

- You tell Ashley that in order to pursue informal resolution under the University's policy, she must file a formal complaint. Ashley tells you that she wants to file a formal complaint about the topless pictures and the assault and pursue informal resolution.
- At your institution, you as the Title IX Coordinator are the individual who facilitates the informal resolution process.

Lathrop GPM 117

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You talk with Ashley a bit more about her and Nick’s roles in student government in order to be able to structure a mutual no-contact directive. You find out that Ashley is the junior class president and Nick is on the student senate. Ashley tells you that there are optional meetings and mandatory meetings. She tells you that there are a few meetings that are mandatory for both of them, but that most of her mandatory meetings are optional for Nick and most of his mandatory meetings are optional for her.
- Is there anything you need to provide Ashley at this time?

Lathrop GPM, > 118

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You provide Ashley with the written notification of rights, and the written notice of the informal resolution process.
- How would you structure a mutual no-contact directive?

Lathrop GPM, > 119

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You draft a mutual no-contact directive for Ashley and Nick. As to the issues of SGA, it states that Ashley and Nick may only attend student government meetings for which their attendance is mandated. If there is a meeting that is mandatory for both of them, they must stay at least 10 feet from the other person and not address the other person directly unless required by the meeting. The directive states that to the extent issues arise regarding the terms of the directive, the University will reevaluate the parameters of the no-contact directive as necessary in order to best preserve equal access to the educational environment.

Lathrop GPM, > 120

---

---

---

---

---


---

---


---



**CASE STUDY**



- Ashley files the following formal complaint, dated September 15, 2020:
  - On July 24, 2020, Nick Newman sexually harassed and sexually assaulted me. At the time, Nick and I were in a dating relationship. On the night of July 24, I walked into Nick's apartment and saw him showing several of his friends topless pictures of me without my consent. Later in the night, after getting really drunk, Nick and I went back to my apartment. At my apartment, Nick touched my breasts and had sex with me without my consent. Even though I said "no" several times, Nick continued to touch me and eventually had sex with me. I was too drunk to consent to anything that happened.

Lathrop GPM,  121

---

---

---

---


---

---


---

---

**CASE STUDY**



- You have received Ashley's written formal complaint.
- Now what do you do?

Lathrop GPM,  122

---

---

---

---


---

---


---


---

**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,  123

---

---

---


---

---

---

---

---

**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, ▶ 124

---

---

---


---

---


---

---

---

**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, ▶ 125

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You send Nick a notice of a meeting the next day and the reason for the meeting. You attach a mutual no-contact directive and a notice of his rights.
- You send Ashley the mutual no-contact directive.
- You meet with Nick the next day to provide him with a written notice of allegations and to discuss the no-contact directive and the notice of rights.

Lathrop GPM, ▶ 126

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You tell Nick that Ashley would like to pursue informal resolution and you explain the informal resolution process and provide him with the proper written notice of the informal resolution process. You ask Nick if he would like to pursue informal resolution. He tells you he needs to think about it. You tell him that you will check in with him in a few days if you have not heard from him.
- Is there anything you need to provide to Ashley?

Lathrop GPM,  127

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You provide Ashley with the notice of allegations and inform her that Nick is considering whether to agree to participate in the informal resolution process.

Lathrop GPM,  128

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You receive a call from the head of campus security. He tells you that he received a report of stalking. The complainant alleges that her former roommate who is a current student has been stalking her. The head of campus security says that the complainant seems really scared and has mentioned that she is considering getting a restraining order and filing a police report. The complainant asked the head of security if there is anything he can do to get her former roommate off campus.
- What should you do?

Lathrop GPM,  129

---

---

---


---

---

---

---

---

**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, ▶ 130

---

---

---


---

---

---

---

---

**CASE STUDY** 

- Nick calls the next day to tell you that he would like to participate in the informal resolution process, but he asks if you can delay the process for a few weeks. He says he is a T.A. and has a lot of mid-terms to grade while also keeping up with his own classes.
- Do you grant the delay?
- How can you help Nick?

Lathrop GPM, ▶ 131

---

---

---


---

---


---

---

---

**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
  - Some timeframes are set by the regulations (Title IX)



Lathrop GPM, ▶ 132

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You grant a brief delay and provide the proper notice.
- Does Nick’s request raise any other issues?

Lathrop  
GPM,  133

---

---

---


---

---


---

---

---

**CASE STUDY** 

- Assuming you conclude Nick is not an employee, you can proceed with the informal resolution process.
- Is there anything else you need to do before continuing with the informal resolution process?

Lathrop  
GPM,  134

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You obtain the parties’ voluntary written consent to the informal resolution and prepare for an initial meeting with Ashley to discuss what she is looking for in a resolution.
- What should you think about in preparation for the meeting?

Lathrop  
GPM,  135

---

---

---


---

---


---

---

---

**INFORMAL RESOLUTION** 

- Issues 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,  136

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You meet with Ashley to discuss what she is looking for in a resolution. Ashley says that she does not want Nick to get in trouble; she just wants him to understand that what he did was wrong, apologize to her, and quit the Student Government Association. Ashley also tells you that she doesn't want to have to talk to or see Nick anymore.
- You explain to Ashley that you will be meeting with Nick and will then be back in touch with her. You remind Ashley that informal resolution continues to be voluntary and that she can change her mind about whether she wants to continue the process.
- What options might address Ashley's concerns?

Lathrop GPM,  137

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You meet with Nick to discuss what he will agree to in a resolution. You explain Ashley's wishes to Nick. Nick says that he wants to stay in school and avoid an investigation. He says he is fine agreeing to not have any contact with Ashley going forward. Nick agrees to read an impact statement from Ashley to understand how she perceived the situation. Nick says he's not sure if he is willing to make an apology. He is concerned about admitting to wrongdoing. He wants to know if that type of admission would go on his record; he is planning to apply to grad school and doesn't want anything on his record. Nick says that he will have to think about whether he is willing to resign from student government.
- What do you tell Nick about what will go on his record?

Lathrop GPM,  138

---

---

---

---


---

---

---

---

**CASE STUDY**



- Nick calls you to tell you that he is willing to apologize for the pictures, but not for anything else. He tells you that he did not sexually assault Ashley. Nick also says that student government is too important to his education and future career. He is a political science major and hopes to work in politics. He says that quitting at the beginning of his junior year would raise red flags for grad schools and future employers; it would look like he wasn't serious about politics or wasn't able to work well with other people. He says that if Ashley won't drop the student government issue, he won't agree to a resolution.

Lathrop  
GPM, >

139

---

---

---

---


---

---

---

---

**CASE STUDY**



- You meet with Ashley and relay your conversation with Nick. Ashley tells you that if they are both in the Student Government Association they will see each other all the time and a no-contact directive won't solve the problem.
- Ashley tells you that she wants to pursue the formal grievance process.

Lathrop  
GPM, >

140

---

---

---

---


---

---

---

---

**CASE STUDY**



- You meet with Nick and tell him that because he and Ashley were unable to agree on an informal resolution, she would like to proceed with the formal grievance process.
- He tells you that he has hired a lawyer who will represent him in this matter. He tells you that all future communication must go through his lawyer.
- How do you respond?

Lathrop  
GPM, >

141

---

---

---

---


---

---


---

---

**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, > 142

---

---

---

---


---

---

---

---

**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, > 143

---

---

---

---


---

---

---

---

**CASE STUDY**



- You notify the parties that the University has appointed Bill Bowers as the investigator for this matter. The notification states that, according to the Policy, if either party has an objection to the appointed investigator, they can submit a request for reassignment to you.

Lathrop GPM, > 144

---

---

---

---


---

---

---

---



**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
- Have a process for requesting disqualification of Title IX Coordinator, investigator, adjudicator, informal resolution process facilitator, or individual responsible for appeals

Lathrop  
GPM, ▶

---

---

---


---

---

---

---

---

**CASE STUDY** 

- The investigator is beginning to schedule interviews. Now what should you do?

Lathrop  
GPM, ▶ 186

---

---

---


---

---

---

---

---

**CASE STUDY** 

- The investigator calls to tell you that during her initial interview, Ashley alleges that she felt that Nick pressured her into having sex. Ashley told the investigator that she said no several times to Nick touching her breasts but “he wouldn’t take no for an answer.” Ashley also stated that at one point in the night Nick threatened to break up with her when she was feeling insecure about her body. Ashley stated that she felt like she had to have sex with him or he would dump her.
- The investigator wants to know whether the complaint should be amended to allege coercion.

Lathrop  
GPM, ▶ 187

---

---

---

---


---

---

---

---

**CASE STUDY**



- The investigator calls to tell you that during his initial interview, Nick stated that during the night in question Ashley performed oral sex on him. The investigator tells you that when asked if either of them said anything before Ashley started performing oral sex on him, Nick stated, "No, neither of us said anything; she just started doing it. I don't know, I didn't really consent to that, did I"?
- How do you respond?

Lathrop GPM, > 148

---

---

---

---


---

---

---

---

**CASE STUDY**



- Nick files a formal complaint alleging that Ashley engaged in non-consensual sexual penetration.
- Do you consolidate the formal complaints?

Lathrop GPM, > 149

---

---

---

---


---

---

---

---

**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, > 150

---

---

---

---


---

---

---

---

**CASE STUDY**



- What else do you have to do?

Lathrop GPM, > 151

---

---

---

---


---

---

---

---

**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, > 152

---

---

---

---


---

---

---

---

**CASE STUDY**



- You issue an amended notice of allegations to the parties.

Lathrop GPM, > 153

---

---

---


---

---

---

---

---

**CASE STUDY** 

- The investigator also tells you that during his initial interview Nick suggested the investigator interview his current girlfriend because she will be able to “vouch that he would never sexually assault someone.”
- You learn from the investigator that the parties each suggested that Nick’s roommates, Tyler and Jason, and another student named Drew be interviewed, that Ashley suggested that her friends, Lauren and Amanda, be interviewed, and that Nick suggested that his girlfriend be interviewed.
- The investigator asks you if he should interview Nick’s girlfriend.
- How do you respond?

Lathrop GPM, ▶ 154

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You tell the investigator to interview Nick’s girlfriend.

Lathrop GPM, ▶ 155

---

---

---


---

---

---

---

---

**CASE STUDY** 

- The investigator also tells you that according to both parties’ accounts, there were three male students who looked at the topless pictures of Ashley. Both parties agree that the students were laughing and whistling/woo-hoo-ing. According to Ashley, one of them also made derogatory comments about her while looking at the pictures. The investigator is wondering whether these students may have engaged in sexual harassment of Ashley.
- How do you respond?

Lathrop GPM, ▶ 156

---

---

---

---


---

---

---

---

**CASE STUDY**



- Investigator Bowers calls to tell you that he has completed all of his interviews and has a draft of the investigation report. What should you do next?

Lathrop  
GPM, >

157

---

---

---

---


---

---

---

---

**CASE STUDY**



- The investigator notifies the parties of the close of evidence date.
- The investigator would like your help determining how to produce the “directly related” evidence.
  - Should he provide copies of interview recordings? Transcripts?
  - How will the parties’ information be protected?

Lathrop  
GPM, >

158

---

---

---

---


---

---

---

---

**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
  - 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

159

---

---

---


---

---

---

---

---

**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 160

---

---

---


---

---

---

---

---

**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 161

---

---

---


---

---

---

---

---

**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 162

---

---

---


---

---

---

---

---

**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 163

---

---

---


---

---

---

---

---

**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 164

---

---

---


---

---

---

---

---

**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 165

---

---

---

---


---

---

---

---

**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 166

---

---

---

---


---

---

---

---

**CASE STUDY**



- The investigator is wondering whether to include the following in “directly related” evidence:
  - Nick’s roommate Jason stated that the same group of people that were hanging out with Nick and Ashley on the night in question had gotten together the weekend before to “hang out and drink.” Jason told the investigator about some of the “stupid” things that their other roommate Tyler did that night.

Lathrop GPM, ▶ 167

---

---

---

---


---

---

---

---

**CASE STUDY**



- The investigator is wondering whether to include the following in “directly related” evidence (cont.):
  - Nick told the investigator that he heard that Ashley has been struggling academically this semester and is at risk of falling under the 3.0 GPA requirement to be in the Student Government Association. Nick stated that that was the real reason that she is so upset and that she brought up this complaint just so she would have an excuse for her poor grades and get a “free pass.”
  - Ashley’s friend Lauren stated that Nick was known on campus for sleeping around a lot and she even heard that he cheated on Ashley during their relationship.

Lathrop GPM, ▶ 168

---

---

---

---


---

---


---

---



**CASE STUDY** 

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

Lathrop GPM,  169

---

---

---


---

---


---

---

---

**CASE STUDY** 

- Nick submits a response to the directly related evidence. He objects to the investigator’s failure to include any information from his current girlfriend, whom the investigator interviewed.
- You ask the investigator about his interview with Nick’s current girlfriend, and the investigator tells you that the interview was very short. He says that Nick has only known his current girlfriend for a few weeks and she was not acquainted with either of the parties at the time of the alleged conduct. The investigator tells you that Nick’s girlfriend said he is “a really great guy” and that she “can’t imagine him doing something like this.”
- How do you respond? Is the information “directly related?”

Lathrop GPM,  170

---

---

---


---

---


---

---

---

**CASE STUDY** 

- During the response period, Ashley calls you to tell you that she heard a rumor that Nick was reading some of the interview transcripts to his roommates.
- What should you have done when you provided the evidence to the parties?
- Assuming you put protective measures and rules in place, what do you do now?

Lathrop GPM,  171

---

---

---

---


---

---

---

---

**CASE STUDY**



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

Lathrop GPM, > 172

---

---

---

---



---

---

---

---

**INVESTIGATION REPORT**

- Must create investigative report that fairly summarizes **relevant** evidence
- Parties must be provided:
  - VAWA: information used in the decision-making process – access required
  - Title IX:
    - Any evidence obtained that is **directly related** to the allegations – copy for parties and advisors required
    - Investigation report – copy to parties and advisors required
    - Opportunity to submit written response to each

Lathrop GPM, > 173

---

---

---

---


---

---

---

---

**INVESTIGATION REPORT**



- 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 redact any information about the complainant’s sexual history from the investigation report

Lathrop GPM, > 174

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You provide copies of the investigation report and attachments to the parties. Your policy provides the parties with 5 days to submit written responses to the report.

Lathrop GPM,  175

---

---

---


---

---


---

---

---

**CASE STUDY** 

- You receive a call from Dean Hill. She tells you that as the overseer of the Student Government Association, she received a request from Nick for a letter of recommendation for an internship. As the one who received the initial report from Ashley, she knows that an investigation is pending. She tells you that she checked the University's policy regarding letters of recommendation but it says nothing about providing a letter of recommendation during pending disciplinary matters. She asks you what she should do.
- How do you respond?

Lathrop GPM,  176

---

---

---


---

---


---

---

---

**CASE STUDY** 

- The first semester is now winding down. You receive a call from Nick. He wants to know whether the complaint against him would be dropped and whether his record would be "clean" if he transferred schools after the first semester.
- How do you respond?

Lathrop GPM,  177

---

---

---


---

---

---

---

---

**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, ▶ 178

---

---

---

---

---


---

---

---

---

---

**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, ▶ 179

---

---

---

---

---


---

---

---

---

---

**CASE STUDY** 

- Nick calls to tell you that he has decided not to transfer.

Lathrop GPM, ▶ 180

---

---

---

---

---


---

---


---

---

---

**CASE STUDY** 

- It's now Tuesday of finals week and yesterday an adjudication panel rendered a decision in a different case. The complainant and respondent are two seniors who are set to graduate at the end of the week, and the adjudication panel has found the respondent responsible for sexual assault that happened on campus. The sanction is immediate suspension and a deferral of the degree for one semester. The complainant has contacted you and wants assurance that the respondent will not be allowed to attend the graduation ceremony on Saturday. The University only holds one ceremony for its December graduates.
- How do you respond to the complainant?
- What will happen if the decision becomes final after the respondent graduates? Will he be able to keep the degree?

Lathrop GPM,  181

---

---

---


---

---


---

---

---

**CASE STUDY** 

- Nick submits a response to the investigation report. He again objects to the investigator's failure to include any information from his current girlfriend.
- How do you respond?

Lathrop GPM,  182

---

---

---


---

---


---

---

---

**CASE STUDY** 

- Ashley also submitted a response to the report.
- Do you allow the parties to review one another's responses?
- Do you allow the parties to submit a rebuttal to one another's responses?

Lathrop GPM,  183

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You set a date for the hearing, appoint a hearing panel, and provide notice of the hearing to the parties, including the rules of procedure for the hearing. You give the parties an opportunity to object to the members of the panel.
- Ashley asks for information about the members of the hearing panel. She wants to know how many sexual misconduct cases they have decided, in how many they found the respondent responsible, and in how many they found the respondent not responsible.
- How do you respond?

Lathrop  
GPM, ▶ 184

---

---

---


---

---

---

---

---

**CASE STUDY** 

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

Lathrop  
GPM, ▶ 185

---

---

---


---

---


---

---

---

**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, ▶ 186

---

---

---


---

---


---

---

---

**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,  187

---

---

---


---

---


---

---

---

**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,  188

---

---

---


---

---


---

---

---

**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 which witnesses they anticipate needing to rely on to make their determination
  - Request that these witnesses make themselves available for cross-examination at the hearing
- Parties identify additional witnesses
  - Request that these witnesses make themselves available for cross-examination at the hearing

Lathrop GPM,  189

---

---

---


---

---

---

---

---

**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, ▶ 190

---

---

---


---

---

---

---

---

**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, ▶ 191

---

---

---


---

---

---

---

---

**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, ▶ 192

---

---

---

---


---

---

---

---



**HEARING: CROSS-EXAMINATION** 

- Party or witness who does not appear at the hearing
  - Cannot rely on any statements from a party or witness who does not submit to cross-examination
    - Failure to answer one question constitutes a failure to submit to cross-examination (unless question came from decision-maker)
    - Still applies even if disability or death is the reason the person did not submit to cross-examination
  - Statements that cannot be considered include statements in investigation report or any other source (police report, medical exam, text messages, witness accounts, etc.)

Lathrop  
GPM, ▶ 193

---

---

---


---

---

---

---

---

**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, ▶ 194

---

---

---


---

---

---

---

---

**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, ▶ 195

---

---

---


---

---

---

---

---

**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, ▶ 196

---

---

---


---

---

---

---

---

**CASE STUDY** 

- After the hearing panel reviews the adjudication file, you meet with the panel to decide which witnesses are important to their decision.
- Besides the witnesses requested by the panel, how many additional witnesses will the parties be allowed to call at the hearing?

Lathrop GPM, ▶ 197

---

---

---


---

---

---

---

---

**CASE STUDY** 

- You notify the parties of the list of witnesses the hearing panel has requested be available. You inform the parties that they have 3 days to provide you with the names of up to two additional witnesses each.

Lathrop GPM, ▶ 198

---

---

---

---


---

---

---

---

**CASE STUDY**



- Ashley informs you that her friend from high school that she texted the day she and Nick broke up is willing to testify at the hearing. She would like to call her as a witness. Ashley never suggested this friend as a witness during the investigation.
- How do you respond?

Lathrop  
GPM, ▶ 199

---

---

---

---


---

---

---

---

**CASE STUDY**



- Nick informs you that he would like to call his current girlfriend.
- Do you allow this?

Lathrop  
GPM, ▶ 200

---

---

---

---


---

---

---

---

**CASE STUDY**



- One of the witnesses identified by the parties is Drew, a sophomore at the University. When you contact Drew about appearing at the hearing, he tells you that he is not willing to testify at the hearing.
- What do you do?

Lathrop  
GPM, ▶ 201

---

---

---

---


---

---

---

---

**CASE STUDY**



- Drew tells you that Nick is the T.A. for one of his political science courses. Drew tells you that it is a year-long course. The second semester has just started and Drew tells you that during the first semester, he did really well on all the quizzes that are graded by the T.A. except the last two. Drew says that he strongly suspects that those last two quizzes were graded after Nick found out what Drew told the investigator. Drew says that he thinks the investigation is impacting Nick's assessment of his work and that it will only get worse if he testifies at the hearing. Drew tells you that he is not willing to sacrifice his grade for this hearing. Is there anything you can do to help Drew?
- Is this retaliation by Nick?
- How do you respond?

Lathrop  
GPM, ▶ 202

---

---

---

---

---

---


---

---

---

---

**CASE STUDY**



- You review Drew's statements in the investigation report. You note that he is the only person who witnessed the alleged harassment who wasn't a close friend of one of the parties. Nick's two friends made statements favorable to him and Ashley's two friends made statements favorably to her. Drew's statements are more favorable to Ashley.
- If Drew still refuses to testify at the hearing how do you keep the decision-makers from relying on his statements, which they already read in the investigation report?

Lathrop  
GPM, ▶ 203

---

---

---

---

---

---


---

---

---

---

**CASE STUDY**



- A few days after the hearing, the hearing panel comes back with a determination finding Nick responsible for non-consensual sexual contact but not responsible for sexual harassment or non-consensual sexual penetration. The panel finds Ashley not responsible for non-consensual sexual penetration. The sanction is that Nick is suspended from school for the rest of the semester and is suspended from the Student Government Association through the end of the Spring 2022 semester.

Lathrop  
GPM, ▶ 204

---

---

---

---

---

---

---

---

---

---

**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, > 205

---

---

---


---

---

---

---

---

**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
- 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

Lathrop GPM, > 206

---

---

---


---

---


---

---

---

**NOTICE OF DETERMINATION:  
DELIVERY** 

- Must be in writing
- Must be delivered simultaneously
  - Email
  - In-person meetings to deliver hard copies of written notice
- Best practice: Let parties know ahead of time when decision will be delivered



Lathrop GPM, > 207

---

---

---

---


---

---


---

---

**CASE STUDY**



- The appeal period has run and neither party has filed an appeal.
- What do you do next?

Lathrop GPM,  208

---

---

---

---



---

---


---

---

**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,  209

---

---

---

---


---

---


---

---

**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,  210

---

---

---


---

---


---

---

---

**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, > 211

---

---

---


---

---


---

---

---

**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, > 212

---

---

---


---

---

---

---

---

**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, > 213

---

---

---


---

---

---

---

---

**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, ▶ 214

---

---

---

---

---

---

---

---

  
**Q & A**



Lathrop GPM, ▶ 215

---

---

---


---

---

---

---

---

**UPCOMING TRAININGS** 

- **Trainings for individuals with heightened responsibility:**
  - **7/28/20:** Title IX/VAWA Investigator Training
  - **8/3/20:** Annual Training for New Title IX Coordinators and Deputy Coordinators
  - **8/4/20:** Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
  - **8/5/20:** Title IX/VAWA Investigator Training
  - **8/11/20:** Title IX/VAWA Hearing Panel Training

Lathrop GPM, ▶ 216

---

---

---

---


---

---


---

---



**ON DEMAND TRAININGS** 

- **Available on-demand:**
  - Annual Trauma Informed Training for Investigators and Adjudicators
  - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
  - 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
  - Making Your Sexual Misconduct Policy a 10
  - Title IX/VAWA Training for Chief Academic Officers
  - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
  - Compliance Update: New VAWA Guidance
  - Senior Leadership Training
  - Transgender Students and Employees Training
  - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements
  - Confidential Resources Training
  - Attorneys Serving as Advisors
  - Panel Discussion on Interviewing Survivors of Sexual Assault
  - Fundamentals of FERPA

Lathrop GPM  217

---

---

---


---

---


---

---

---

**ON DEMAND TRAININGS** 

- **Available on-demand:**
  - Drafting Your Notice of Determination
  - Post-VAWA Annual Security Report Drafting
  - Additional Requirements Under Minnesota's Campus Sexual Assault Law
  - Drafting Effective and Compliant Investigation Reports
  - Title IX Coordinator Training: Duties Beyond Sexual Assault
  - Title IX/VAWA Training for Adjudicators
  - Title IX/VAWA Investigator Training
  - Train the Trainer: Title IX/VAWA Training for Coaches and Athletic Directors
  - Panel Discussion on Title IX Recordkeeping Requirements and Best Practices
  - Complying with the NCAA Sexual Violence Policy – Part 1
  - Complying with the NCAA Sexual Violence Policy – Part 2
  - Unique Challenges in Responding to Allegations of Domestic Violence, Dating Violence, and Stalking
  - Title IX Update: Proposed Regulations
  - Conducting a Grievance Process Under the New Title IX Regulations
  - Title IX Update: Final Regulations
- Prevention programs for students & employees—customizable online modules

Lathrop GPM  218

---

---

---

---

---

---

---

---