



To Sign or Not to Sign the Formal Complaint: That is the Question for Title IX Coordinators

BETH DEVONSHIRE

D. STAFFORD & ASSOCIATES & NACCOP

PRESENTED MARCH 15, 2022



Today's webinar is being conducted by the National Association of Clergy Compliance Officers and Professionals (NACCOP).

Sponsored by



D. STAFFORD
& ASSOCIATES

NACCOP Partners



ASCA
Association for Student Conduct Administration

Copyright



Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020

These materials are copyright of D. Stafford & Associates, LLC © 2022 D. STAFFORD & ASSOCIATES. All rights reserved.

Any distribution or reproduction of part or all of the contents in any form is prohibited other than the following:

- *As required by 34 C.F.R. § 106.45(b)(1)(iii) and § 106.45(B)(10)(i)(D), this material in its entirety may be posted to the website of the institution in which you were associated with at the time in which you were enrolled in this training. D. Stafford & Associates gives permission for clients to convert the provided documents as necessary to be ADA-compliant.*
- *Public inspection upon request.*
- *You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.*

THE REGULATIONS



Notice



Report



Actual Notice



Formal complaint

Definition of Sexual Harassment-2020 Regs



Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*
- 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*

Formal Complaint



Formal complaints means a document filed by a complainant or signed by Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment

Formal Complaint



Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under Section 106.45, and must comply with the requirements of this part, including Section 106.45(b)(1)(iii)

Equity Considerations



The Department does not view a Title IX’s Coordinator decision to sign a formal complaint as being adverse to the respondent. A Title IX Coordinator’s decision to sign a formal complaint is made on behalf of the recipient (for instance, as part of the recipient’s obligation not to be deliberately indifferent to known allegations of sexual harassment), not in support of the complainant or in opposition to the respondent or as an indication of whether the allegations are credible, have merit, or whether there is evidence sufficient to determine responsibility.

Role of Parents/Guardians

Legal right to act on their behalf (minor, disability)

Do not become the complainant

SIGNING THE COMPLAINT



Making the Determination



Decision should be made thoughtfully and intentionally . . .

What constitutes a pattern

What constitutes a position of authority

Formal Complaints for Those Not Enrolled



- **Question 24: If a complainant has not filed a formal complaint and is not participating in or attempting to participate in the school's education program or activity, may the school's Title IX Coordinator file a formal complaint?**
- **Answer 24: Yes. A Title IX Coordinator may file a formal complaint even if the complainant is not associated with the school in any way. In some cases, a school may be in violation of Title IX if the Title IX Coordinator does not do so . . . has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority . . . the school has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.**

Code of Conduct



- **Question 25: If a complainant is not participating in or attempting to participate in the school’s education program or activity, may a school respond to reports of sexual harassment under its own code of conduct?**
- **Answer 25: Yes. As discussed in Question 7, a school has discretion to use its own student- conduct process to address alleged misconduct not covered by the 2020 amendments. This includes situations where a complainant is not participating in or attempting to participate in the school’s education program or activity . . .**

What Do You Sign?

Document

Alleging harassment

Requesting an investigation

Complainant's signature

NOTICE



Notice of Complaint



When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations in § 106.45(b)(2) requires the recipient to send both parties details about the allegations, including the identity of the parties if known, and thus, if the complainant's identity is known it must be disclosed in the written notice of allegations.

Notice Requirements



Grievance
process

Sufficient
details and
sufficient time
to prepare

Identities of the
parties, alleged
conduct

Date and
location of
incident

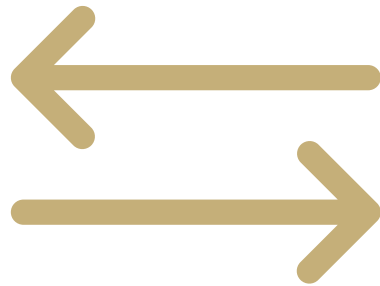
Presumed not
responsible

Advisor of
choice

False
statements

Additional
allegations

Notification



How do you let the Complainant know you are going to move forward?



What does it look like?

THE INVESTIGATION



Investigation and Evidence Gathering



Burden of proof on recipient

Equal opportunity to present witness and facts

No restrictions on discussing allegations

Right to inspect evidence and respond

Right to final investigative report

Dismissal of Formal Complaints



Must Dismiss

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity or not in the US



May Dismiss

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

Reports and Response



Report



Written Response

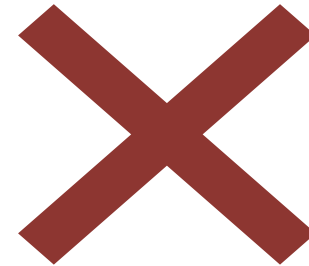
THE HEARING



Hearings



Live hearing



Cross-examination

Determination Regarding Responsibility



Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

The End.

THE
APPEAL

Appeals



Notification of appeal

Equal opportunity to respond

Written outcome - rationale



Case Study: On Your Radar

You are the Title IX Coordinator. After a student presentation, Betty Parker approaches you and asks to talk. She tells you that Sam Sampson “pushed things too far that other night” and that Betty wanted to make sure that Sam was “on your radar.” Betty states that she does not want to provide further details about the incident, and that she just wants Sam to move. When you go back to your office, you see that there are no other reports about Sam.

- What do you do?
- What must you consider?
- Is this a “Title IX” case?
 - If so, what challenges exist?
 - If not, where will it go at your institution?



Case Study: Now What???

A few days later, a Carrie Carr files a report about Sam Sampson. The report states that Sam Sampson is a rapist and needs to be removed from the school. When you meet with Carrie, she tells you that Sam is “well known” amongst her peer group to be a “predator” and that she was assaulted by Sam last weekend in the elevator in Flynn Hall. She says that she does not want to file a formal complaint because she believes the school “should take care of it” and doesn’t want to be involved.

- What do you do?
- What must you consider?



Case Study: Video Evidence???

After she leaves, you call Public Safety and ask them if they have any cameras in Flynn Hall. They do. When looking at the footage, you see Sam Sampson repeatedly touching Carr's breasts and buttocks and Carr pushing him away.

- What do you do?
- What must you consider?
- If you sign a formal complaint, who are the complainants?
- How are they involved in the process?
 - Notice
 - Investigation
 - Hearing
 - Appeal



Case Study: Third Time is a Charm?

You are the Title IX Coordinator and receive an anonymous report about Professor Sally Smith. The report states that Professor Smith repeatedly makes anti-male jokes and “everyone knows” that she gives the women in her classes As and the men Bs. The report indicates that there are students in her Math 101 class who are willing to talk. This is the third report that you have gotten about differential treatment concerning Professor Smith, but no one has been willing to participate in an investigation.

- What do you do?
- What do you consider?
- Does it fall under Title IX? If not, what happens?



Case Study: Keep Me Out of It!

You have decided to move forward and sign the formal complaint. During the investigation, the students from Math 101 do not respond to repeated requests for outreach.

- What do you do?
- What do you consider?



Case Study: I'll Talk, But . . .

You are sitting in your office when a student enters. They tell you that they are willing to talk to you about Professor Smith, but they don't want Smith to be fired. They just want Smith to learn that she cannot say those things and have a note in her file.

- What do you do?
- What do you consider?

Thanks to our
sponsor!



D. STAFFORD
& ASSOCIATES

For more information:
dstaffordandassociates.com

Upcoming D. Stafford Classes

- **Title IX Coordinator IN PERSON**
 - May 23-26, 2022
Wentworth Institute of Technology in Boston, MA
- **Title IX Coordinator Training-VIRTUAL**

Class (Virtual) to be held:

October 10-14, 2022

Thanks to our
sponsor!



D. STAFFORD
& ASSOCIATES

For more information:
dstaffordandassociates.com

Upcoming D. Stafford Classes

Investigation of Sexual Misconduct/DVDVS-VIRTUAL

April 25-29, 2022

Advanced Investigation in Sexual Misconduct Training-IN PERSON

June 13-17, 2022

Prince George's Community College in
Largo, MD (*Outside Washington, D.C.*)