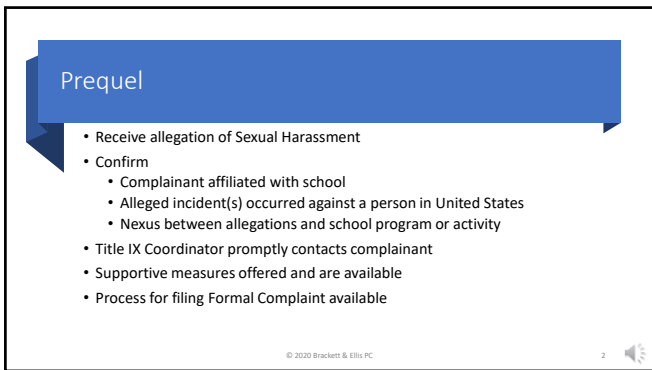




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Supportive Measures: Examples

- Counseling
- Course-related adjustments (deadline extensions)
- Modifications of work or class schedules
- Campus escort services
- Increase in security and monitoring of certain areas of campus
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence (for employees)
- Other similar measures.

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Emergency Removal

- Generally not an appropriate supportive measure
- To remove student prior to determining responsibility
 - Conduct individualized safety and risk analysis
 - Determine emergency removal necessary to protect a student or other individual from immediate threat to physical health or safety; and,
 - Provide respondent notice and opportunity to challenge.
- No restraint on administrative leave for employee respondent

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Grievance Process

- Starts with Formal Complaint
- Process published on website
- Specific characterizations
- Specific steps

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Characteristics of Grievance Process
Part 1 of 2

- Treat complainants and respondents equitably; apply all rights equally
- Objective evaluation of all relevant evidence
- Credibility determinations not based on person's role/status
- No conflict of interest or bias against parties generally or specifically
- Training of Title IX Coordinator, Investigators, Decision-makers
- Presumption respondent not responsible until decision-maker determination

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Characteristics of Grievance Process
Part 2 of 2

- Reasonably prompt time frames for conclusion of process
- Describe range of possible disciplinary sanctions and remedies
- Adopt standard of evidence
- Appeal procedures
- Range of supportive measures available
- Privileged information protected

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Standard of Evidence

Preponderance of the evidence =
 >50% chance allegations are true

Clear and convincing evidence =
 Firm belief allegations are true

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**Step One:
Formal
Complaint**

- Can be filed by complainant or Title IX Coordinator
 - with Title IX Coordinator
 - In person, by mail or by electronic mail
 - School can provide additional methods (must provide for signature)
- At time filed, complainant must be affiliated with school
- There is no time limit or statute of limitations

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**Step Two:
Notice**

- Written to all known parties
- Content
 - Information on grievance process
 - Summary of allegations
 - Statement Respondent presumed not responsible
 - Right to have advisor
 - Right to inspect and review evidence
 - Code of Conduct regarding False statement/information
- Supplement

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Dismissal

- Mandatory
 - Not sexual harassment
 - Did not occur in school's program or activity
 - Not against a person in the US
- Permissive
 - Complainant withdraws complaint/allegations
 - Respondent's enrollment or employment ends
 - School cannot complete investigation
- Written notice of dismissal
- Code of conduct violation

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**Step Three:
Investigation**

- Parties treated equitable
- Burden to gather evidence on school
- Equal opportunities to gather and present information/witnesses
- Freely discuss allegations
- Advisor present
- Written notice of investigation events

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**Step Four:
Evidence Review**

- Send all evidence to each party
- Electronic format or hard copy
- 10 days to prepare written response

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**Step Five:
Investigation Report**

- In writing
- Fairly summarizes relevant evidence
- Sent simultaneously to parties
- 10 days to prepare written response

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**Step Six:
Hearing/Questions
from Parties**

- Parties submit
- Asked of other party or witnesses
- Responses shared with both parties
- Opportunity for limited follow-up questions
- Must be relevant

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Relevance of Questions

- Complainant's sexual behavior/history and predisposition NOT relevant
- Unless offered to prove:
 - Someone else responsible
 - Consensual conduct
- If question excluded, send notice and explanation

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**Step Seven:
Determination
of
Responsibility**

- Made by decision-maker
 - Can't be investigator
 - Can't be Title IX Coordinator
- Reviews all relevant evidence (investigation report) and all relevant questions/responses
- Applies standard of evidence
- Issues written determination
- Determination provided to parties simultaneously
- Title IX Coordinator responsible for implementing remedies

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Remedies & Disciplinary Measures

- Title IX Coordinator responsible for implementing
- Remedies
 - Can be same as supportive measures
 - Can be disciplinary and/or punitive
 - Designed to restore or preserve equal access
 - Only assigned or implemented after determination of responsibility
- Disciplinary Measures
 - Consistent with Code of Conduct
 - Consistent with grievance procedures

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Appeal

- Must offer to both parties
- Required Grounds
 - Procedural irregularity
 - New evidence
 - Conflict of interest or bias
- School may offer additional grounds
- If appeal filed, must provide written notice to all parties
- Equal opportunity to submit written statement
- Appeal decision-maker must be new to grievance process

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Informal Resolution

- At any point in grievance process
 - After formal complaint filed
- Notice
 - Allegations
 - Requirements
 - Consequence of participating
- Participation must be voluntary
- May withdraw any time and return to grievance process
- Not available if allegation employee sexual harassed or assaulted student

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Record Keeping

- Minimum seven years (Recommend until complainant is 48 in Texas)
- Sexual harassment investigation
- Report of sexual harassment
- May be supplemented

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Training

- Promote impartial investigations and adjudication
- Materials published and made available to parties
- All school participating school personnel
- Types
 - Definition of Sexual Harassment
 - Scope of school's education program or activity
 - How to conduct an investigation and grievance process
 - How to serve impartially

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Retaliation

- **Prohibited**
- Retaliation includes: intimidation, threats, coercion, or discrimination
- Because individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
- Grievance procedures

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Questions???

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