

# WAICU Title IX Training

June 23, 2020  
Via Microsoft Teams

**WAICU Title IX Training Planning Committee:**

Andy Luptak, Concordia University Wisconsin

Shaniqua Crawford, Lawrence University

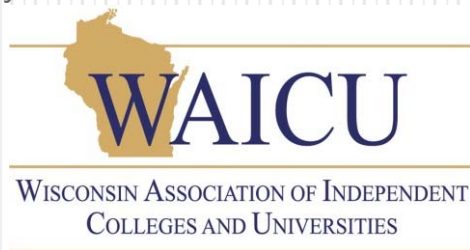
Cara Hardin, Marquette University

Kristen Kreple, Marquette University

Katie Kassulke, Medical College of Wisconsin

Michele Wittler, Ripon College

Lori Evans, St. Norbert College

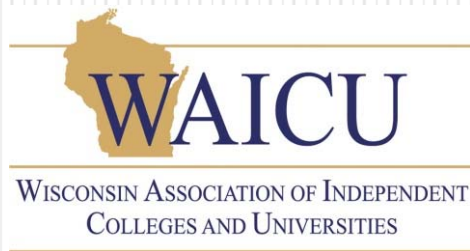


# Notice

The information provided in this training does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available during this training are for training purposes and general informational purposes only.

# Overview

Katie Kassulke  
Title IX Coordinator  
Medical College of Wisconsin  
KKassulk@mcw.edu



# Welcome and Agenda

- Top IX Duties for the Title IX Coordinator
- The role of the advisor
- Supportive measures
- Formal complaints
- Dismissals
- Conflicts of interest and biases
- Informal resolution
- Grievance process under 106.45
  - Investigation
  - Hearing process
  - Appeals
- Roadmap to compliance
- Q&A

# The Expanded Role of the Title IX Coordinator

Cara Hardin  
Title IX Deputy Coordinator  
Marquette University  
[cara.hardin@marquette.edu](mailto:cara.hardin@marquette.edu)



# Title IX Coordinator – Role and “IX” Duties

§ 106.8(a) of the final regulations requires schools to designate and authorize at least one employee to serve as Title IX Coordinator and coordinate the recipient’s efforts to comply with the final regulations.

TITLE IX

**I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§106.8):**

- The name and contact information of the Title IX Coordinator. § 106.8(a)
- That any person may report sex discrimination/harassment, to the Title IX Coordinator in person, by mail, email or by any other method at any time. § 106.8(a)

**I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§106.8):**

- That the school does not discriminate on the basis of sex within its programs and activities, including within admissions and employment, and that the school is required by Title IX not to discriminate in such a manner. § 106.8(b)
- That questions about the application of Title IX and the Final Regulations may be referred to the Title IX Coordinator, to the Assistant Secretary, or both. § 106.8(b)



**I. Notifying applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the school (§106.8):**

- Provide notice of the school's grievance procedures and grievance process, including (§ 106.8(c)):
  - How to report or file a complaint of sex discrimination,
  - How to report or file a formal complaint of sexual harassment, and
  - How the recipient will respond.

## **II. Ensure trainings provided to Title IX team are published on Title IX website.**

§ 106.45 (b)(10)(D)

Schools must publish training materials that are up to date and reflect the latest training provided to Title IX personnel (and keep for 7 years).

Title IX personnel include the Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution (such as mediation).

OCR:

<https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html>

### **III. Responding to reports and complaints of sexual harassment**

“Actual knowledge” of sexual harassment triggers the duty for the school (Title IX Coordinator) to respond.

§ 106.30(a)

### III. Responding to reports and complaints of sexual harassment

#### Definition of Sexual Harassment § 106.30

Conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo harassment. 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.
- Hostile environment harassment. "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 school's education program or activity."
- "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under the Clery Act and VAWA

### III. Responding to reports and complaints of sexual harassment

- Informing complainants of the availability of supportive measures and of the process for filing a formal complaint (and if formal complaint filed, follow grievance process in § 106.45). § 106.44(a), (b).
- Working with respondents to provide supportive measures as appropriate.
- Determining whether an emergency removal of a respondent is necessary and if so, allow the student respondent to challenge the decision. § 106.44(c)

## IV. Accepts or Files Formal Complaints

- Adheres to the complainant's wishes on whether to file a formal complaint when possible.
- Files a formal complaint when not "clearly unreasonable" despite complainant's wishes.
- Files supplemental or amended complaints
- Determines whether consolidation of formal complaints should occur

# V. Coordinates Informal Resolutions § 106.45(b)((9))



Mediation



Restorative Justice

## VI. Rules on Dismissals of Formal Complaints

- Mandatory causes for dismissal § 106.45(b)(3)(i)
- Discretionary causes for dismissal § 106.45(b)(3)(ii)



## VII. Oversees Grievance Process



Appoints investigator(s) and makes sure no bias or conflict of interest. § 106.45(b)(1)(iii)



Appoints decision-maker(s) and makes sure no bias or conflict of interest. § 106.45(b)(1)(iii)



Appoints advisors for the parties, if they don't have one. § 106.45(b)(6)(i)



Ensure parties are treated equitably under the grievance process. § 106.8

## VII. Oversees Grievance Process



Coordinates and monitors hearing process



Appoints appeal officer and coordinates appeals



If a finding of responsibility, coordinates the implementation of both supportive measures and remedies (to a complainant)

## VIII. Record Keeper



The school must maintain records for at least 7 years.

§ 106.45(b)(10)

- Determination regarding responsibility
- Audio or audiovisual recording or transcript of the grievance process.
- Disciplinary sanctions imposed on the respondent
- Remedies granted to the complainant
- Appeal and decision on appeal
- Any informal resolution and result thereof
- Supportive measures (or why not delivered)
- Documentation that response not deliberately indifferent and that school has taken measures to restore or preserve equal access to programs and activities.

## **IX. Ensures compliance with other related guidance on sex-based misconduct**

Creates and oversees policy relating to pregnant and parenting students (June 25, 2013 DCL)

Monitors equity within athletics (DCLs: Apr. 2010, Sept. 2008, Mar. 2008, June 2007, Mar. 2005, July 2003, July 1998, Jan. 1996, Dec. 19709, 1975.)

Ensure non-sex-discriminatory hiring practices

Consultant in the creation or continuation of female-only school programs (34 CFR 106.34, 34 CFR 106.3 and May 3, 2002 DCL)

# The Role of Advisor

Cara Hardin  
Title IX Deputy Coordinator  
Marquette University  
[cara.hardin@marquette.edu](mailto:cara.hardin@marquette.edu)



# Defining the Role of Advisor

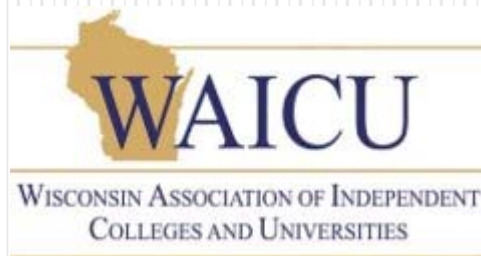
- Each party has a right to an advisor of their choosing, who may or may not be an attorney. § 106.45(b)(2)(B).
- School may not limit the choice or presence of an advisor for either party. § 106.45(b)(2)(B).
- Advisors need not be free of bias or conflict of interest.
- Restrictions may be established regarding extent of advisor's participation in the grievance process, as long as restrictions provided equally to both parties.

## Defining the Role of Advisor

- Advisor may inspect and review evidence provided to the party under § 106.45(b)(5)(vi). § 106.45(b)(2)(B).
- Advisor conducts cross-examination of other party and witnesses at the live hearing. § 106.45(b)(6)(i).
- “If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.”  
§ 106.45(b)(6)(i).

# Supportive Measures and Formal Complaint

Michele Wittler  
Ripon College  
Associate Dean of Faculty  
and Registrar  
wittlerm@ripon.edu





# Supportive Measures – an Element of the Mandatory Response Obligations

- Schools must offer supportive measures to the complainant; supportive measures may be offered to the respondent
- Title IX Coordinator must
  - contact the complainant regarding the availability of supportive measures
  - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
  - explain to the complainant the process for filing a formal complaint

## Supportive Measures

- Defined as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- Examples include referral to counseling services, no-contact arrangements, housing adjustment, class adjustments, etc.

# Formal Complaint

- A school must investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator.
- A complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is reasonable given the circumstances.

## Formal Complaint

- A “formal complaint” is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
- 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 school with which the formal complaint is filed.

## Formal Complaint

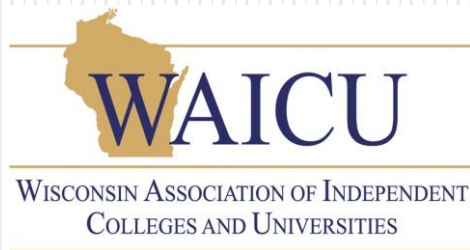
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or by any additional method designated by the school; it must contain the complainant's physical or digital signature or otherwise indicate the complainant is the person filing the formal complaint.
- Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personal regarding conflicts of interest.

# Resource

- Title IX Update webinar June 2, 2020 with Leslee Morris from ATIXA/TNG

# Dismissals

Shaniqua Crawford, J.D.  
Title IX Coordinator  
Lawrence University  
[shaniqua.l.crawford@lawrence.edu](mailto:shaniqua.l.crawford@lawrence.edu)



# What are the Grounds for Dismissal?

**Mandatory**

- §106.45(b)(3)(i)

**Discretionary**

- §106.45(b)(3)(ii)



## Mandatory Grounds: §106.45(b)(3)(i)

If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in §106.30 even if proved, did not occur...

- In the recipient's education program or activity OR
  - Did not occur against a person in the United States, THEN
  - The recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX
- 
- NOTE: a dismissal here does not prevent an institution from taking some action under another school conduct code/policy.

## Discretionary Grounds: §106.45(b)(3)(ii)

The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- **Written Request by Complainant** to the Title IX Coordinator **to withdraw** the Formal Complaint or allegations therein
- The **Respondent** is **no longer enrolled** or **employed** by the recipient OR
- **Specific circumstances prevent** the recipient from **gathering evidence sufficient** to reach a determination from the Formal Complaint or allegations therein

# Requirements

Must provide written notice

Must contain reasons

Simultaneous to the parties

# Preamble Dive for More Understanding

- No dismissal for frivolous or meritless claims
- **\*\*\*Recipient must offer both parties an appeal from dismissal of a formal complaint or any allegations therein**
- Regs only meant to prescribe particular grievance process for sexual harassment as defined in §106.30
  - Recipient may respond to more conduct not covered under regs.
    - **Allegations of misconduct that doesn't meet sexual harassment under title IX**
    - **Allegations outside of the recipients Programs or Activity**
    - **To provide support resources to complainants and address sexual misconduct against a person outside the U.S.**

# Additional Important Checklist Items for Equity and Fairness

- Conflict of Interest Screens
- Checking your Biases and understanding how they can be barriers
- Microaggressions

# Informal Resolution

Andy Luptak  
Title IX Coordinator  
Concordia University Wisconsin  
[andy.luptak@cuw.edu](mailto:andy.luptak@cuw.edu)



# Who Can Be an Informal Resolution Facilitator

The Facilitators must . . .

- be free from conflicts of interest and bias. (p. 1338)
  - [T]he Department leaves recipients discretion to decide how best to implement the prohibition on conflicts of interest and bias, including whether a recipient wishes to provide a process for parties to assert claims of conflict of interest of bias during the investigation. (p. 820)

## Who Can Be an Informal Resolution Facilitator

- must receive the same training as required for coordinators, investigators, and decision-makers and include . . .
  - the definition of sexual harassment
  - the scope of the recipient's education program or activity
  - how to conduct informal resolution processes; and
  - how to serve impartially (including avoiding prejudgment of the facts at issue, conflicts of interest, or bias). (p. 1383)
- conduct the process in reasonably prompt time frame. (p. 1338)



# Process Requirements

- The initial written notice of allegations sent to both parties must include information about any informal resolution processes the recipient has chosen to make available. (p. 1368)
- Regs expressly state that a recipient may not offer informal resolution unless a formal complaint is filed. (1370-71)
- Cannot force either party into an informal resolution. (p. 1373)
- The Department notes that nothing in § 106.45(b)(9) requires an informal resolution process to involve the parties confronting each other or even being present in the same room. (p. 1376)

- An informal resolution process, in which the parties voluntarily participate, may end in an agreement under which the respondent agrees to a disciplinary sanction or other adverse consequence, without the recipient completing a grievance process . . . (footnote p. 119)
- Any party may withdraw from informal resolution at any time prior to agreeing to a resolution, and resume the formal grievance process. (p. 1384)
- Recipient must inform both parties in writing of . . .
  - the allegations
  - the requirements of the informal resolution process
  - any consequences resulting from participating in the informal process. (p. 1373-74)

## Process Requirements

- Obtain both parties' voluntary and written consent to the informal resolution process. (p. 1373-74)
  - The final regulations do not specify the method of delivery for written notices and disclosures required under the final regulations, including the method by which the recipient must obtain parties' voluntary written consent to informal resolution. (p. 1389)
- An informal resolution may result in disciplinary or punitive measures. (p. 1370-71)
- Sanctions: nothing in the final regulations dictates the form of disciplinary sanction a recipient may or must impose on a respondent. (p. 1388)

- Recipient's No-Nos: A recipient is prohibited from (p. 1368)
  - requiring students or employees to waive their right to a formal grievance process as a condition of enrollment or employment or enjoyment of any other right;
  - requiring the parties to participate in an informal resolution process;
  - offering informal resolution unless a formal complaint is filed (either party has the right to withdraw from informal resolution and resume a grievance process at any time before agreeing a resolution)
  - offering or facilitating an informal resolution process to resolve allegations that an employee sexually harassed a student. (p. 1368)

## Process Requirements

- With respect to informal resolution, facilitators potentially serving as witnesses in subsequent formal grievance processes, we leave this possibility open to recipients [DOE expects clear disclosure to the parties]. (p. 1367)

# Models of Informal Resolution

- Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. (1370)
- The Department expects informal resolution agreements to be treated as contracts; the parties remain free to negotiate the terms of the agreement and, once entered into, it may become binding according to its terms. (p. 1384)

- **Restorative Justice:** Nothing in [the regulations] prohibits recipients from using restorative justice as an informal resolution process to address sexual misconduct incidents. (p. 1387)
  - A recipient could use a restorative justice model *after* a determination of responsibility finds a respondent responsible; nothing in the final regulations dictates the form of disciplinary sanction a recipient may or must impose on a respondent. (p. 1388)
- **Mediation:** [W]here a recipient believes that parties may benefit from mediation or other informal resolution process as an alternative to the formal grievance process, the decision to attempt mediation or other form of informal resolution should remain with each party. (p. 273)

- **Negotiated Resolution** (Luptak's Term): An informal resolution may result in disciplinary or punitive measures. (p. 1370-71) The Department notes that nothing in **§106.45(b)(9)** requires an informal resolution process to involve the parties confronting each other or even being present in the same room. (p. 1376)



# Resources

## ***Mediation is Making an Impact on College Campuses***

by Jane Cutler Greenspan and Peter F. Lake, The Chronicle of Higher Education

## ***The Benefits of Using External Adjudicators for Campus Sexual Assault Proceedings***

by Jane Greenspan, The American Bar Association

## **JAMS (Judicial Arbitration and Mediation Services, Inc.)**

BREAK



WISCONSIN ASSOCIATION OF INDEPENDENT  
COLLEGES AND UNIVERSITIES

# Grievance Process for Formal Complaints - the Investigation

Lori Evans  
Director of Student Judicial Affairs  
St. Norbert College  
[Lori.evans@snc.edu](mailto:Lori.evans@snc.edu)



# Formal Report is made

- Complainant asks for an investigation, or Title IX Coordinator Chooses to initiate the Investigation.
- Title IX Coordinator assigns trained Investigator(s) to investigate.
- The burden of proof and the burden of gathering evidence rests on the school, not the Complainant or Respondent.  
**§106.45(b)(5)(i)**
- Notice of Allegations are sent out Simultaneously. You may choose to include No Contact Orders at this time.



## Notice of Allegation §106.45(b)(2)(i)(B)

- **Must be in writing and include:**
  - Notice of all allegations of Sexual Harassment including sufficient details known, including date and location if known
  - A statement that the respondent is presumed not responsible for the alleged conduct
  - Notice that each may have an advisor of their choice
  - Notice that each may inspect and review all evidence
  - Information regarding policy that prohibits knowingly making false statements or false information
- Sufficient time must be given to the Complainant and Respondent to prepare a response **before** any initial interview.

## Process Advisors §106.45(b)(5)(iv)

- It may be helpful to offer a process advisor (or support person) at the start of an investigation. Make sure you offer to both.
  - Students typically feel more supported throughout the process.
  - Advisors may assist student in preparing for their interviews and the hearing/appeal.
  - Advisors supplied by the institution are familiar with campus policies/procedures and resources.
- Support people and advisors can be split roles.

## Process Advisors

- The parties have a right to have an advisor present during interviews (who may or may not be an attorney).  
§106.45(b)(5)(iv)
- May establish restrictions regarding the extent to which the advisor may participate in the proceeding - Must be equal!



# Investigative Interviews

- Must provide written notice of date, time, location, participants, and purpose to an investigative interviews or meetings with sufficient time to prepare. §106.45(b)(5)(v)
- Investigators must provide equal opportunity for the parties to present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence.  
§106.45(b)(5)(ii)
- Investigator may decline to interview witnesses unlikely to provide relevant information. Investigator must decline interviewing character witnesses who have no relevant information regarding the allegation(s).



## Investigative Interviews

- Information protected by legal privilege may not be relied on by the investigator unless a waiver is obtained.

§106.45(b)(x)

- Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence offer to prove:
  - That someone other than the respondent committed the alleged conduct, or
  - If the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the respondent that offer to prove consent.

§106.45(b)(6)(i)

## Investigative Interviews

- After the Investigator interviews the Complainant, Respondent, and witnesses, it is good practice to provide a transcript or summary of the interview for review and approval.
- Investigators may NOT restrict the ability of either party to discuss the allegations or gather and present relevant evidence. §106.45(b)(5)(iii)



# Investigatory Report

- Investigator must compile all interview summaries/transcripts and evidence into an evidentiary file, draft the investigatory report and share the file and report with each party in electronic format or hard copy.
- The Complainant and Respondent must be given at least 10 days to review and submit a written response.

§106.45(b)(5)(vi)

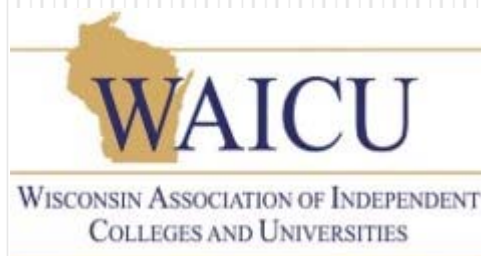
## Investigatory Report

- After both parties have reviewed and responded in writing to the draft report, Investigator writes a final investigative report that fairly summarizes relevant evidence and submits the report to Judicial Affairs/Title IX Coordinator for approval. §106.45(b)(5)(vii)



# Grievance Process for Formal Complaints – the Hearing

Kristen Kreple  
Marquette University  
Title IX Coordinator  
[kristen.kreple@marquette.edu](mailto:kristen.kreple@marquette.edu)



# Pre-Hearing Preparation

Title IX Coordinator will:

- Appoint decisionmaker(s) – one hearing officer or a panel
- Provide written notice of hearing to the parties – date, time, location, participants, purpose § 106.45(b)(5)(v)
  - Notice must be provided at least 10 days in advance § 106.45(b)(5)(vi)
  - Allow both parties ~ 24 hours to object in writing regarding decisionmaker(s) on grounds of perceived bias or conflict of interest
  - Decide whether to replace decisionmaker(s) (be sure you have alternates!)

## Pre-Hearing Preparation

Hearing Officer or Hearing Panel will:

- Read the Investigative Report and review all evidence
- Determine which witnesses named in the Investigative Report they want to question

Hearing Coordinator will:

- Ask the parties which witnesses named in the Investigative Report they want to be questioned
- Arrange for all named witnesses to be available for the hearing

# Basic Hearing Logistics

- Use a quiet conference room with a table at which the decisionmaker(s) can sit across from the party or witness (avoid centrally-located rooms in with windows)
- Have another space prepared for each party to participate virtually.
- I recommend preparing hearing binders for the parties and decisionmaker(s) that include the hearing rules, the Investigative Report, and the evidence.
- If the parties will both participate in person, I recommend that a staff member ensure that they don't cross paths.



## Basic Hearing Logistics

- You must provide technology that will allow the parties to see and hear what's happening in the hearing room  
§ 106.45(b)(6)(i)
- You must record the hearing and provide the recording or transcript to the parties to review § 106.45(b)(6)(i)
- Train the decisionmakers and hearing coordinators on the technology you use and be sure to test it out before the hearing!



# Hearing Process

- Decisionmaker or Hearing Coordinator provides an overview of the process and expectations for participants' conduct.
- Complainant appears first, accompanied by advisor, to answer the decisionmaker(s)' questions. Respondent, accompanied by advisor, observes from another location.
- Respondent's advisor cross-examines Complainant (decisionmaker(s) must first determine whether each question is relevant before the Complainant answers). § 106.45(b)(6)(i)

## Hearing Process

- Respondent appears second, accompanied by advisor, to answer the decisionmaker(s)' questions. Complainant, accompanied by advisor, observes from another location.
- Complainant's advisor cross-examines Respondent (decisionmaker(s) must first determine whether each question is relevant before the Complainant answers). § 106.45(b)(6)(i)
- Witnesses appear, one-by-one, to answer questions from the decisionmaker(s), the Complainant's advisor, and the Respondent's advisor.

## Hearing Process

- Decisionmaker(s) may recall participants for further questioning.
- You can permit parties to provide closing statements and opt to limit their length.
- Decisionmaker or Hearing Coordinator provides the parties a timeframe for the outcome and adjourns the hearing.



## Cross-Examination § 106.45(b)(5)(vi)

You must allow the parties' advisors to ask the other party and all witnesses all relevant questions and follow-up questions.

The advisors must ask these questions directly, orally, and in real time during the hearing.

The parties themselves may never ask the questions.

## Cross-Examination

How this works: Advisor asks a party or witness a question, but the party or witness does not answer until the decisionmaker determines that the question is relevant. If it's relevant, decisionmaker allows party or witness to answer. If it's not relevant, decisionmaker denies the questions and explains reasoning (this must happen in real time).

Relevance: basically, related to the matter at hand (regulations don't define relevance)

## Cross-Examination

- Advisor acts as party's proxy during hearing (Preamble p.1180); is not representing party (Preamble p.1187)
- “the requirement for a party's advisor to conduct cross-examination need not be more extensive than simply relaying the party's desired questions...” (Preamble p.1028)
- Questions about Complainant's sexual history or behavior are barred, unless asked to prove that someone other than Respondent committed the conduct, or to prove consent  
§ 106.45(b)(6)(i)

## Cross-Examination

- If an advisor refuses to cross-examine, you must provide another to do so (Preamble p.1186)
- “submit to cross-examination” means to answer all relevant questions; (Preamble p.1213) parties may not “waive” questions (Preamble p.1215)
- Develop rules and practices that apply equally to both parties to ensure cross-examination is relevant, respectful, and non-abusive. (Preamble p.1090)



## Cross-Examination

Decisionmaker(s) must not rely on the statement of a party or witness who does not submit to cross-examination.

- “Statement” includes *any* statement made by a party or witness throughout the investigation. This includes police reports, SANE reports, and medical reports, unless the creator submits to cross-examination. (Preamble p.1213)

Decisionmaker(s) must not draw any inferences based on a party’s failure to appear or submit to cross-examination.

§ 106.45(b)(6)(i)

### Examples of the requirement to exclude statements:

- Text conversation evidence can only be relied upon if the individuals participating in it submit to cross-examination. If one party submits while others do not, only the text messages written by that party may be considered by decisionmaker(s).
- If a party makes a statement in video evidence but does not submit to cross examination, that party's statement may not be considered by the decisionmaker(s). (Preamble p.1201)
  - This is true even if the statement is an admission!

# Decisionmaker(s) Determination

- Decisionmaker(s) can deliberate right after the hearing, or at another date soon after the hearing.
- Although it's easier to use one hearing officer, I recommend using a panel so they can deliberate together.
- Decisionmaker(s) must provide their determination in writing to the Title IX Coordinator, who will then send it to the parties simultaneously.



## Decisionmaker(s) Determination

The written determination must include § 106.45(b)(6)(i):

- The allegations of sexual harassment
- A description of the procedural steps taken from receipt of the formal complaint through determination (notifications to parties, interviews with parties and witnesses, etc.)
  - This procedural information should be in the investigative report

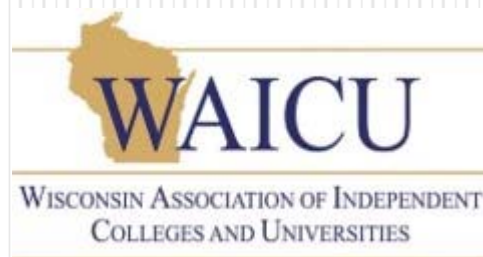
## Decisionmaker(s) Determination

The written determination must include § 106.45(b)(6)(i):

- Findings of fact (what happened?)
- Conclusions of law (apply your policy to the facts)
- The result of each allegation, and rationale for it (Respondent's responsibility, the sanction, and remedies for the Complainant)
- Process and grounds for appeal

# Appeals

Shaniqua Crawford, J.D.  
Title IX Coordinator  
Lawrence University  
[shaniqua.l.crawford@Lawrence.edu](mailto:shaniqua.l.crawford@Lawrence.edu)



## Mandatory Appeals: §106.45(b)(8)

- A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein

# Grounds for Appeal

A. PROCEDURAL IRREGULARITY that affected the outcome of the matter

B. NEW EVIDENCE that was not reasonably available at the time that could affect the outcome of the matter AND

C. A CONFLICT OF INTEREST OR BIAS: The Title IX Coordinator, investigators, or decision-maker ...



# Requirements for the Appeals Process

Written Notice



Separate person to serve as decision-maker for the appeal



Ensure Appeal Decision-maker complies with standard of (b)(1)(iii)

Allow for Reasonable Opportunity to provide a written statement



Issue Written decision that describes the results of the appeal and rationale



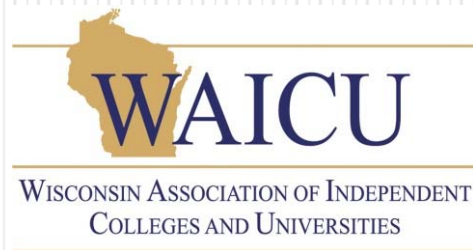
Provide the written decision parties simultaneously

# Preamble Additional Information

- Procedural Irregularity: pg. 837-838
- Erroneous Relevancy Determinations: pg. 1191

# Final Thoughts and Wrap Up

Katie Kassulke  
Title IX Coordinator  
Medical College of Wisconsin  
KKassulk@mcw.edu



# Roadmap to Compliance

New OCR Title IX Regulations Released May 6, 2020				
<u>New Regulation</u>	Current Process	Changes to implement	<b>IMPACT</b> <b>1-Severe</b> <b>2 – Moderate</b> <b>3- None</b>	Other Comments/Next Steps
		<b>General Changes</b>		
<p><b>Expanded Role of the TIX Coordinator.</b> The TIX Coordinator facilitates the process, is a gatekeeper, provides supportive measures, due process, oversees grievance and appeal process, appoints investigators, decision makers, advisors, and ensures no bias or conflict of interest and full compliance with regulations. Ensures policies are present relating to pregnant and parenting students, monitors equity within athletics, ensures non-sex discriminatory hiring practices and consultant with matters of female-only school programs. § 106.8(a)</p>				

# Roadmap to Compliance

- Review the regulations.
- Think about what must change and what changes you will determine to be in compliance. (Roadmap)
- Create a document to share with an internal team of advisors with recommendations. (Executive Summary)
- Communicate the plan to internal school leadership to gain agreement.
- Budget for necessary items such as training, use of external resources, etc.
- Have a list of external resources to use.

# Decisions

- Creation of one policy or two?
- Standard of evidence
- Live Hearing Model
- Actual Knowledge
- Advisors
- What external resources to use?
- Training plan for TIX Coordinator, Advisors, Hearing Officer/Panel, Officials with authority, your Board, the entire community

# Wrap Up



# Resources

- <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>
- Title IX Regulations Addressing Sexual Harassment (Unofficial Copy) [PDF](#) (6M)
- Title IX: U.S. Department of Education Title IX Final Rule Overview [PDF](#) (553K)
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule [PDF](#) (675K)
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule and Comparison to the NPRM [PDF](#) (706K)
- [OCR Webinar](#): Title IX Regulations Addressing Sexual Harassment (Length: 01:11:29) 05/06/2020



# Resources

- Roadmap to Compliance
- Document on biases and microaggressions
- ATIXA's Preponderance of Evidence v. Clear and Convincing white paper: <https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2020/05/27162422/ATIXA-Position-Statement-on-Adopting-the-Preponderance-of-the-Evidence-Standard-of-Proof-Final.pdf>.

*The New York Times*

## ***Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules***

The court said the language of the Civil Rights Act of 1964, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity.



- On June 15, 2020, the U.S. Supreme Court ruled that Title VII protects gay and transgender workers from workplace discrimination on the basis of sexual orientation and gender identity.
- Likely Title IX implications to this ruling. Title VII often informs the interpretation of Title IX within civil litigation.

CHECKING YOUR BLINDSPOTS TO ENSURE A FAIR AND EQUITABLE PROCESS:  
A REVIEW OF BIAS AND MICROAGGRESSIONS  
PRESENTED BY: SHANIQUA CRAWFORD: LAWRENCE UNIVERSITY

**Overview:**

Now more than ever it is important to ensure that we do everything to ensure that our grievance procedures/processes are equitable and fair. Checking your blind spots for bias and microaggressions is key in this process. Understanding bias and microaggressions will help individuals to spot and eliminate them so as not to taint the various stages of the grievance process/procedures.

**Common Types of Bias and Definitions:**

**Bias:** The attribution of negative traits on the basis of race or other group characteristics.

*\*\*\*\*Implicit Bias: are based in implicit attitudes and stereotypes, hidden from one's own awareness. Ex. Many individuals have implicit bias against members of disadvantaged groups.*

**Explicit Bias:** Biases that are directly expressed or publicly stated or demonstrated

**Confirmation Bias:** the tendency to focus on a possible explanation by looking for evidence that supports that hypothesis and minimizing evidence that is contradictory to explanation proposed.

**Memory Bias:** confusing things that happened to oneself with things that happened to someone and not being able to distinguish the accurate memory from some other information.

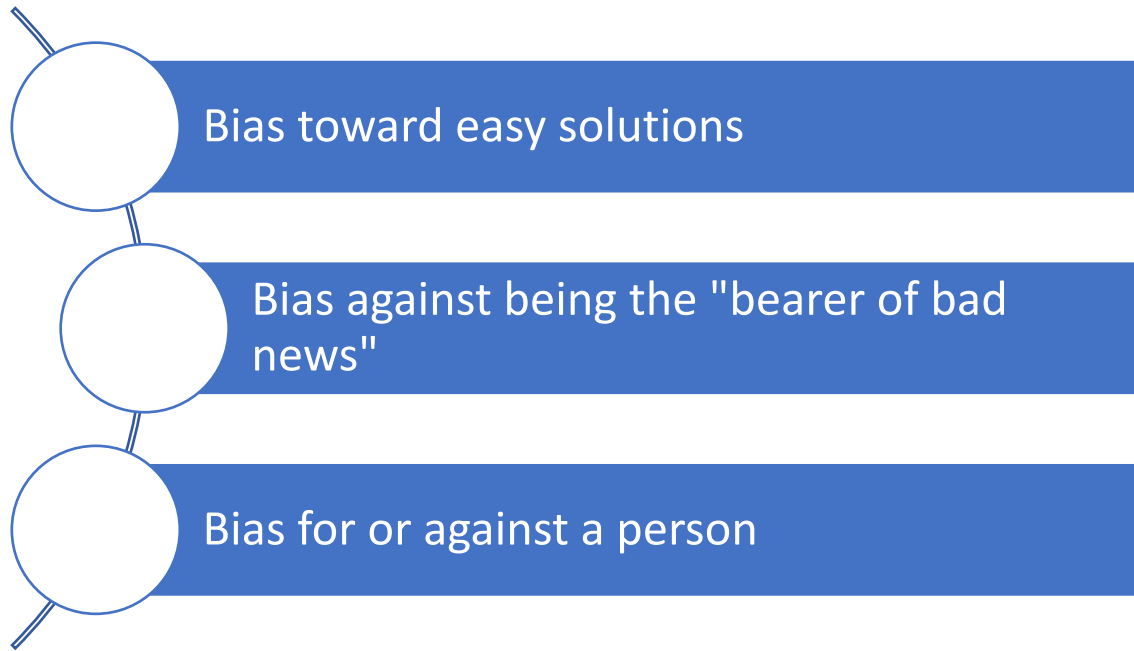
**Anchoring Effects:** relying primarily on the first piece of information presented in a chain of information to make a subsequent decision.

**Understanding Microaggressions:**

Let's see who actually took the time to read this information. Please take the time to find an informative book, article, or video on microaggressions and reflect on how to eliminate them in your work! While you are not required to, I welcome the opportunity for anyone to share ideas with me. [Shaniqua.l.crawford@lawrence.edu](mailto:Shaniqua.l.crawford@lawrence.edu)

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Examples of Biases Investigators may possess:



How Bias Can Hinder Equity and Fairness:



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## Reducing Bias:

Recognize and  
Correct

Actively Engage  
Diverse  
Individuals

Become  
Culturally  
Competent

Establish Criteria  
before Decision  
Making

Work with a  
Partner

## **ADDITIONAL RESOURCES:**

- *The American Bar Association*
- *The Psychology of Bias: Understanding and Eliminating Bias in Investigations: Amy Oppenheimer*
- *Implicit Social Cognition and Law, 3 Ann. Rev. L. Soc. Sci. 427, 431 (2007): Kristin A. Lane*
- *Blink, Malcolm, Gladwell; Little, Brown and Company, 2005.*
- **Understanding race:**  
<http://sparqtools.org/raceworks-videos/>
- [https://www.pbs.org/race/000\\_General/000\\_00-Home.htm](https://www.pbs.org/race/000_General/000_00-Home.htm)

### **Interview with experts:**

<https://www.cbsnews.com/video/authors-robin-diangelo-and-ibram-x-kendi-on-how-to-become-aware-of-privilege/#x>

- **Greater Good Science Center antiracism resources:**  
[https://greatergood.berkeley.edu/article/item/antiracist\\_resources\\_from\\_greater\\_good](https://greatergood.berkeley.edu/article/item/antiracist_resources_from_greater_good)  
(This resource has many good, accessible articles that reference research directly.)
- **Southern Poverty Law Center (SPLC) resources:**  
<https://www.splcenter.org/20150125/speak-responding-everyday-bigotry>
- [\*Blindspot: Hidden Biases of Good People\*](#)
- [\*Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do\*](#)