

# **Leading and Strategizing as a New Title IX Coordinator Bootcamp**

**Sexual Harassment Grievance Process – Part I: Intake to the Formal Complaint and the Informal Resolution Process**

**Session Three – Wednesday, February 9, 2022**

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## **Disclaimer**

**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 and general informational purposes only.**

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**CHAT**

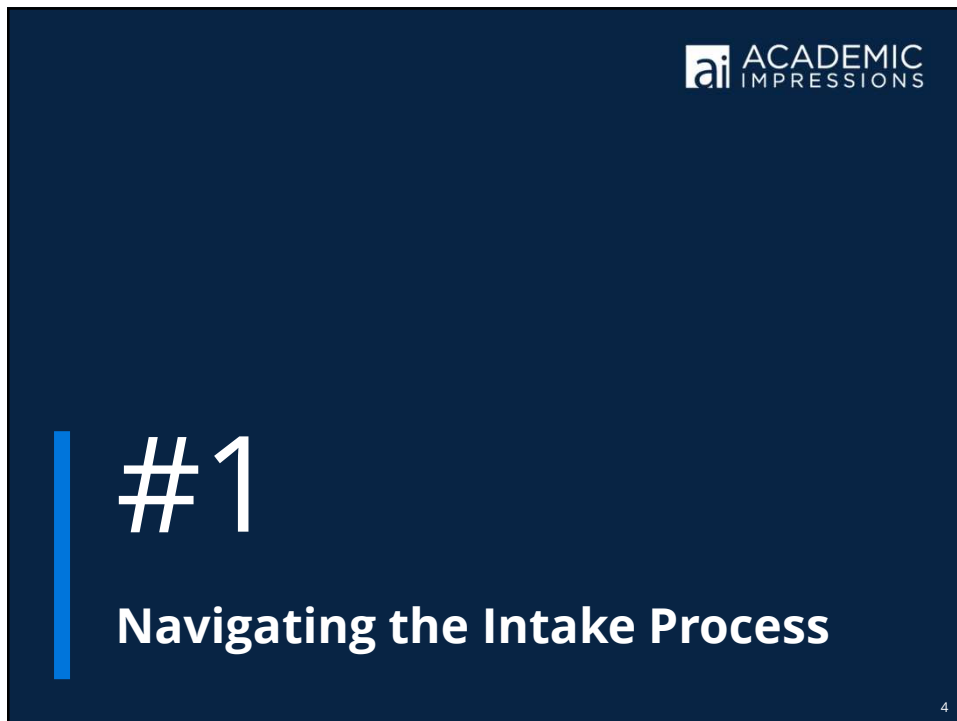
**Refresh & Reset**

Please use your “raise hand” emoji to be called upon or use the Chat to respond:

*What is one valuable lesson that most resonated with you from last week’s session or what is one thing you’re hoping to learn today?*

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**ai ACADEMIC IMPRESSIONS**


**#1**

**Navigating the Intake Process**

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# ACTIVITY



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# ACTIVITY

From: Smith, Taylor  
Subject: Fw: Makeup Request

Good morning Title IX Coordinator,

I just received this email from a student. I am not sure what to do. Please advise.

Dr. Smith

Forwarded Message -----  
From: Johnson, Jayden  
Subject: Makeup Assignment


Hey Dr. Smith,

I apologize for emailing you and not being in class lately, but is it possible to make up the exam from last week? I was assaulted in my dorm room the other day, had to go to emergency room, then I was at the police station multiple times. I haven't been able to go back to my dorm, so my parents are picking me up today and I don't know when I will feel comfortable coming back on campus.

Thanks for understanding!  
Jayden

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**Where do we start?**

**Things to do when you receive a report...**


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**What is a report?**

- Definition
- Notice
- Report vs. Complaint

NOTICE



ai ACADEMIC IMPRESSIONS

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## ■ First 5 Things...

1. Read the report (read it again)
2. Determine potential gaps (what's missing)
3. Determine all potential allegations
4. Determine potential jurisdiction analysis
5. Create/document report information

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## Report Assessment

### Safety Concerns

- Threat to campus
- Individual safety

### Reporting Obligations

- Clery
- State Law
- University Officials

### Report Review

- Reporter Information
- Pattern

### Additional Information

- Follow Up
- Other reporters?

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## Communicating with Parties

### Initial Contact with Complainant

- Methods of Outreach

### Communication Protocol

- Purpose of communication
- Rights
- Resources
- Policy
- Request to meet

### Complainant response

- Positive response
- Negative response
- No response



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## Communicating with the Parties

### Pre - Meeting

- Location and set up
- Technology

### Initial Meeting

- Introduction
- Rapport Building
- Address Immediate Needs
  - Safety
  - Support/ Referrals
  - Academics
- Intake Checklist
- Gather additional information (if appropriate)

### Post - Meeting

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**ACTIVITY**



**Role Play**

Jayden arrives to the Title IX Office for an Initial Intake Meeting.

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**BREAK OUTS**



Based on the information Jayden provides at the Intake meeting, determine potential allegations and jurisdiction.

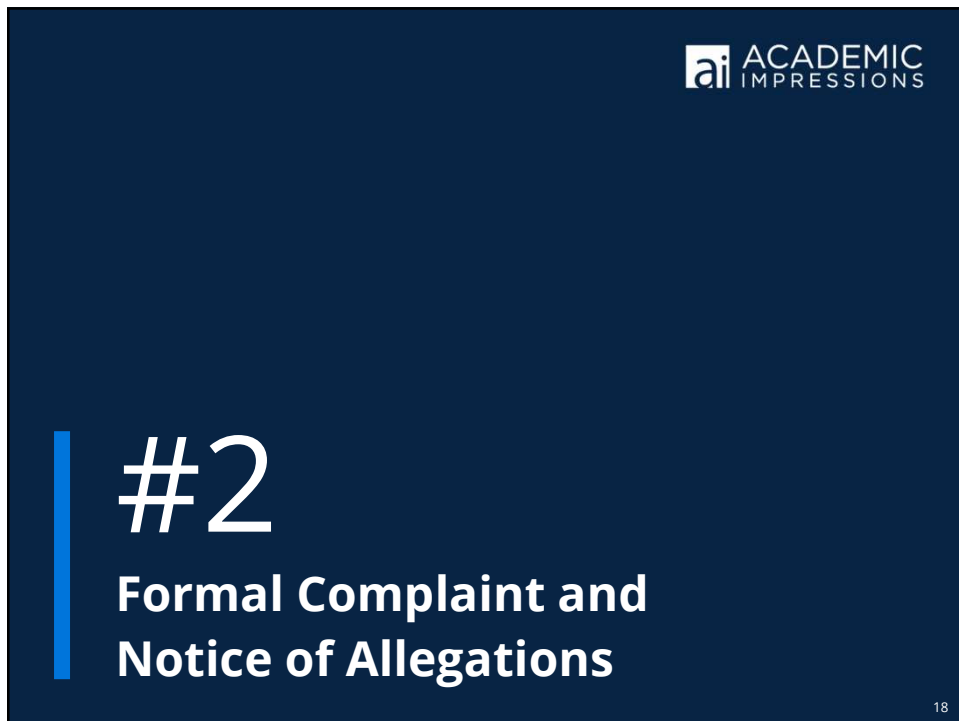
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## ■ Elements of a Formal Complaint

A formal complaint is a document filed by a...

- Complainant, or
- Signed by the Title IX Coordinator

...that alleges that a respondent engaged in sexual harassment and requests that the institution investigate the allegation(s). (106.30(a)).

## ■ “Notice of Allegations”

Provides notice of:

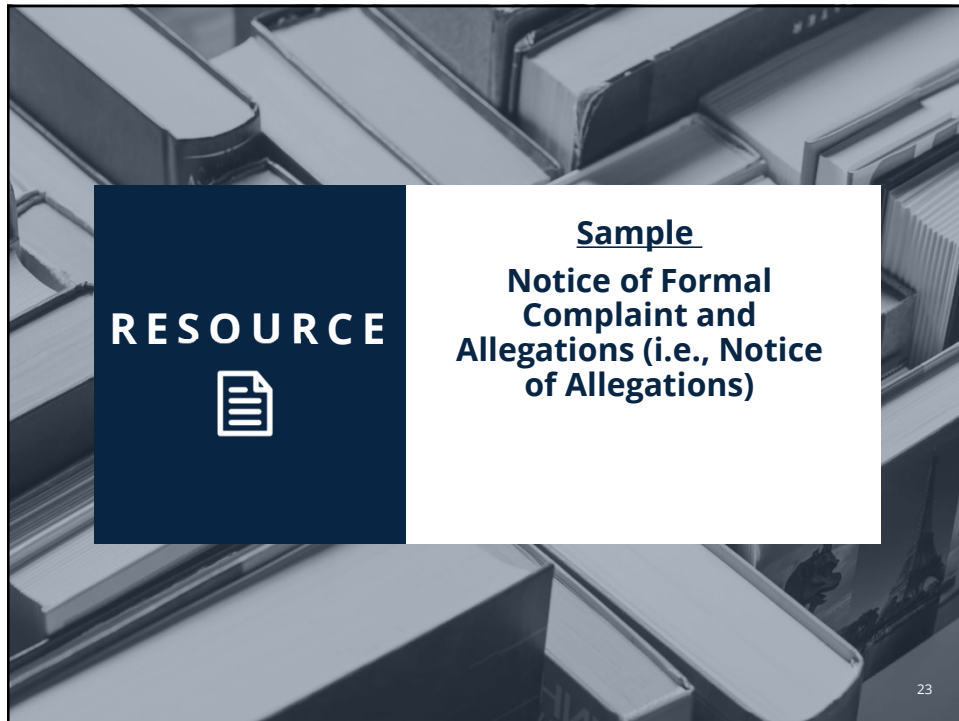
- The allegations potentially constituting sexual harassment as defined in §106.30, including sufficient details known at the time, with sufficient time to prepare a response before an initial interview.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

- Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- Parties may inspect and review evidence.
- Inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- Title IX Coordinator may amend the Notice of Allegations as more information becomes available.

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# #3

## Informal Resolution

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### ■ Informal Resolution §106.45(b)(9)

Informal resolution is permissible in lieu of the investigatory and/or hearing process.

- After a formal complaint is filed.
- When the Title IX Coordinator deems informal resolution appropriate.
- When the parties give voluntary, informed, written consent to attempt informal resolution.

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## ■ Limitations within Informal Resolution

- Institutions cannot offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student.
- Institutions cannot require or pressure the parties into an informal resolution process.
- The informal resolution process cannot be indefinite and must have reasonably prompt timeframes.

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## ■ Written Notice

Institution MUST provide written notice to the parties disclosing the:

- Allegations. §106.45(b)(9)(i)
- A discussion about the availability of informal resolution. §106.45(b)(A)
- Requirements of the informal resolution process. §106.45(b)(2)(i)
- Consequences from participation in informal process.
- The types of informal resolution processes available under the policy. §106.45(b)(2)(i).

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## ■ Informal Resolution Requirements

- Voluntary participation; without coercion. §106.45(b)(2)(ii)
- The circumstances that preclude the parties from resuming a formal complaint. §106.45(b)(9)(i)
- Facilitation by neutral, objective and trained facilitator. §106.45(b)(1)(iii)

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## ■ Participation Consequences

- If a resolution is reached, the Formal Complaint concludes, and parties agree to abide by terms of resolution.
- If a resolution is not reached, the Formal Complaint returns to the formal Grievance Process.
- The records that will be maintained or that could be or could not be shared. §106.45(b)(10).
  - Records relating to informal resolutions and the result thereof must be maintained for at least seven (7) years. §106.45(b)(10)

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## ■ Types of Informal Resolution Methods

Informal resolution may encompass a broad range of conflict resolution strategies, including but not limited to:

- Remedies-based resolution
- Respondent accepts responsibility
- Mediation
- Restorative justice
- Arbitration

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## ■ When is Informal Resolution Appropriate?



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## Cases Generally Conducive to Informal Resolution

- Hostile environment sexual harassment cases between employees or between students where no power differential.
- Non-sexual harassment cases:
  - Retaliation
  - Sex discrimination (including pregnant and parenting discrimination)

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- Lower-level sexual assault cases.\*
- Sexual assault cases resulting from miscommunication.\*
- Dating/domestic violence cases where mutual harm is alleged.\*
- Stalking potentially connected to a mental health or personality disorder.


 \*

*Sexual/dating/domestic violence cases are the most challenging to informally resolve due to the nature and intimacy of the harm and the power imbalances often associated with these offenses. Accordingly, proceed with caution.*

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## Cases Generally Not Conducive to Informal Resolution

### Cases involving:

- Physical or threatened violence
- Predation
- Intimidation
- A dangerous pattern of conduct
- Where the power differential between the parties, under the circumstances could exacerbate the harm.

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## RESOURCE

### 2020 Title IX Amendments 34 C.F.R. 106

#### Preamble and Regulations

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

- Preamble section on informal resolution at p. 1363
- Regulations at p. 2008
- Regulations section on informal resolution at p. 2028

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