CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation

Tools & Resources to Support Your Process

- Decision Tree
- Case Rationale Map
INCIDENT REPORTED: BEST PRACTICES

CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED

Assess the situation
- Medical Response (SANE services, EMT, etc)
- Emotional Response (Counseling services, victim advocate)

Begin Case Rationale Map

Information Gathering
- Intake form (sample)
- Options/Decisions
- Preserving evidence

Supportive Measures Assessed
- Room Change, Conduct Hold, Restriction of Contact
- Title IX accommodations (Absence excuse, course change, etc)
- Title IX assessment of Risk to Campus Community

Incident Reports Generated
- Good Faith, Not Deliberately Indifferent
- Timely Warning Issued*

Key Players:
- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar
1. INCIDENT REPORTED

Health and Safety first
TIX campus training provide information on centralized reporting structures

Basic student conduct incident report writing- Res Life Training
- Documenting observations objectively (sample case) & Preserving evidence

Intake Forms (sample provided)

Key Players:
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- UPD
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INCIDENT REPORTED & PROCESS INITIATED:
RECAP OF LEGAL REQUIREMENTS
2001 Revised Sexual Harassment Guidance

"Responsible employee" framework:
- Duty to act based on report to individual with the express authority to act, or
- "an individual who a student could reasonably believe has this authority or responsibility."

Title IX Final Rule

"Actual notice" is only received when person brings notifies TIXC or "official with authority" to institute corrective measures.

Responsible employee framework not mandated, but allowed.

Institution may designate employees as confidential.

WHEN REQUIREMENTS KICK IN: THEN AND NOW

2001 Revised Sexual Harassment Guidance

"Actual notice" is only received when person brings notifies TIXC or "official with authority" to institute corrective measures.

Responsible employee framework not mandated, but allowed.

Institution may designate employees as confidential.

• Title IX Coordinator will offer parties supportive measures, even where no formal complaint is filed

• Examples of supportive measures (See, 85 Fed. Reg. 30026, 30401)
  - counseling
  - extensions of deadlines or other course-related adjustments
  - modifications of work or class schedules
  - campus escort services
  - restrictions on contact between the parties (no contact orders)
  - changes in work or housing locations
  - leaves of absence
  - increased security & monitoring of certain areas of campus

TITLE IX: INTAKE PROCESS AND SUPPORTIVE MEASURES
• **CAUTION**: Interim suspensions are prohibited for Title IX student-respondents
  • Department of Education considers them disciplinary sanctions

• Emergency Removal may be used where
  • Person poses threat of immediate **physical** harm
  • Threat arises from allegations of sexual harassment
  • Depends on individualized safety and risk assessment

• Must provide opportunity for “immediate” opportunity to challenge the removal (need not be a formal hearing)

**Title IX: Emergency Removals**

• Institutions **must** investigate all “formal complaints” filed with the Title IX Coordinator

• Who can file a formal complaint?
  • A person who is currently participating in the education programs or activities of the institution
  • A person who is **attempting** to participate in those programs or activities
  • The Title IX Coordinator

• Multiple complaints arising from same incidents can be consolidated

**Title IX: Formal Complaint**
The college will protect privacy to the extent possible under the law

The Coordinator has to balance confidentiality with:
• Communications necessary to fulfill legal duties
• The safety of other members of the college community.

### Available Confidentiality Code Word

**TWO: MOUSE**

### Timing
- Send to parties as soon as practicable after filing of formal complaint
- No investigative interviews until parties have sufficient time to review allegations

### Contents
- Allegations of sexual harassment
- Identities of parties, if known, including the complainant’s name
- Date, time, and location of the incident, if known
- Parties’ basic procedural rights
- Presumption of non-responsibility

### Advisor
- Notice must inform parties of right to advisor, who may be attorney
- School does not need to pay for attorney
- Reasonable restrictions ok...
- Unless they conflict with cross-examination role

TIX: Notice of Allegations & Right to Advisor

CODE WORD TWO: MOUSE
• Institutions **must** dismiss formal complaints that don’t fall within the statutory criteria for the Title IX grievance process
  - Institution may still investigate through a non-Title IX process

• Institutions **may** dismiss complaints that do meet the criteria if:
  - Complainant notifies TIXC in writing they would like to withdraw the formal complaint/any allegations in it;
  - Respondent is not enrolled/employed by the institution; or,
  - Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

• Any party may appeal a dismissal determination

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**INFORMAL RESOLUTIONS**

When Informal Resolutions are allowed under the Final Rule:
• After a formal complaint;
• When all parties and the TIXC coordinator consent;
• Any party can withdraw at any time

Examples: Administrative resolution, restorative justice, mediation

Not allowed in cases involving employee respondents
TIXC *can* run the process, but it is not recommended
2. STUDENT CONDUCT PROCESS INITIATED

TIX Investigator Process Initiated
- Charge Letter/ Notice of Allegations copied to both parties
- Supportive Measures formalized in writing sent to both parties
- Resolution options for Respondent (communication with RI)
- Meeting with Reporting Individual
  - Review students’ rights, advisor, timeline
- Meeting with Respondent
  - Review Due Process rights, advisor, timeline
- Conduct Hold (non-TIX)

Key Players:
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- UPD
- Hall Staff
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