2020 Title IX Regulations: A Refresher

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United Educators
Education's Answer.

GRAND RIVER | SOLUTIONS

Meet Your Speakers

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What Falls Under the 2020 Regulations?

Some reminders

Is It Covered?

- Jurisdiction (location)
- Jurisdiction (parties)
- Jurisdiction (dates)
- Definitions

Location

- On campus or in a building owned or controlled the institution
- Off-campus incident that occurs as part of the institution's operations
- Part of a program or activity
- At an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

Jurisdiction Over Parties

Complainant

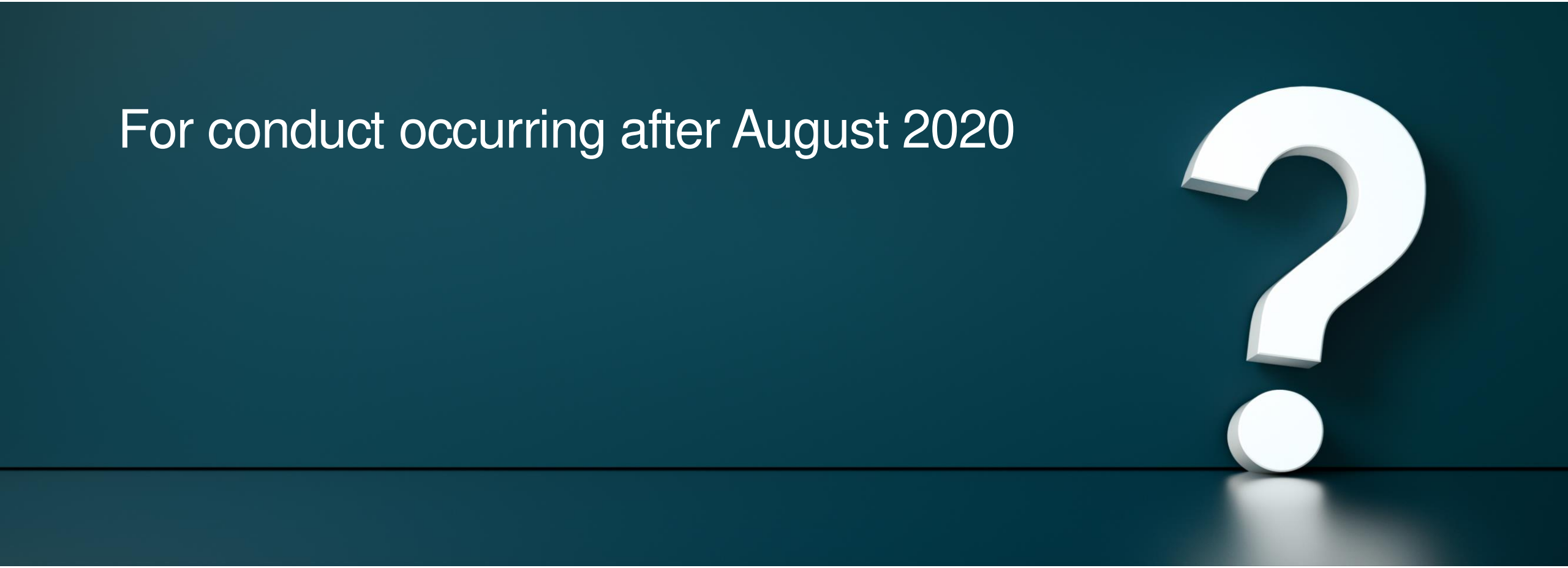
Participating at the time of filing of the formal complaint

Respondent

Can discipline or take action

When Did the Misconduct Occur?

For conduct occurring after August 2020



Title IX, or Title IX?

- If the conduct is defined by the 2020 regulations, and within the jurisdiction, you MUST use the process set forth in those regulations

- Otherwise, even if relating to sex (for example, discrimination or other harassment), you can use ANY process.

Misconduct Defined in the Regulations

conduct on the basis of sex

- (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

Misconduct Defined in the Regulations

"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).

Pro Tips:

Sexual assault does not include an analysis for "on the basis of sex"

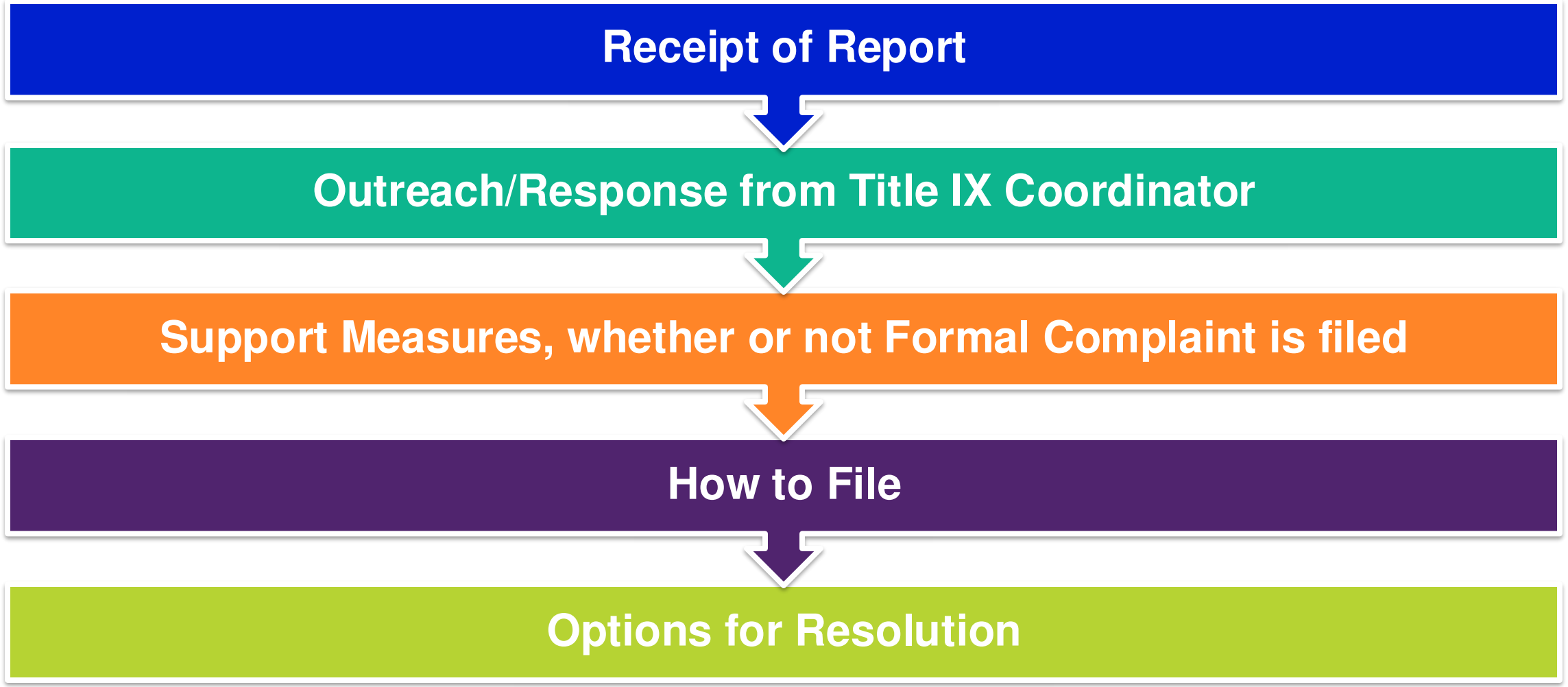
Whether or not on the basis of sex, stalking and domestic violence fall under VAWA.

Actual Notice

A Narrowed Scope of Institutional Responsibility

Institution must respond when it has:	**"Actual knowledge"**	When "an official of the recipient who has authority to institute corrective measures" has notice, e.g., Title IX Coordinator
	of "sexual harassment" (as narrowly defined)	
	that occurred within the school's "education program or activity"	"includes locations, events, or circumstances over which the recipient exercised substantial control" over the respondent and the context in which the sexual harassment occurred Fact specific inquiry focused on control, sponsorship, applicable rules, etc.
	against a "person in the United States" (so, not in study abroad context)	

Initial Response Requirements



Emergency Removal

From all programs or partial

High threshold – immediate threat of physical harm

Not a determination of responsibility

Whether or not grievance is underway

Individualized

Opportunity to challenge

Supportive Measures

May not reasonably burden other party

Non-disciplinary

Designed to restore or preserve equal access

Confidential

As appropriate and reasonably available

Both parties

Formal complaint must include

In writing

1. Physical signature or indicia that complainant "signed"
2. Prohibited conduct (where, what, when)
3. Identity of Respondent, if known
4. Request for investigation

Types of Resolution

Report only

No action taken

Agreement-based

Informal resolution, when appropriate

Support only

Report, supportive measures

Investigation + Hearing

Full process

Coordinator Can Sign Formal Complaint

- Not intended to be every complaint
- Does not stand in place of complainant
- Only complainant (or their parent/guardian in K-12) can sign
- If complainant does not sign one . . . Never do nothing

Dismissals

Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

Pro tip

When dismissing a case . . .

Dismiss and transfer.

Informal Resolution

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

Notice of Allegations

Required for Investigation/Hearing, OR for Agreement-Based Resolution

Must contain:

- sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - the identities of the parties involved in the incident, if known,
  - the conduct allegedly constituting sexual harassment under § 106.30,
  - and the date and location of the alleged incident, if known.
- 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.
- must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- must 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

Investigation

Formal notice

Must consider all relevant evidence

Equal opportunity to present evidence, witnesses

Challenge for bias

Evidence review (directly related)

Advisor of choice

Final report – no findings

Procedural Requirements for Hearings

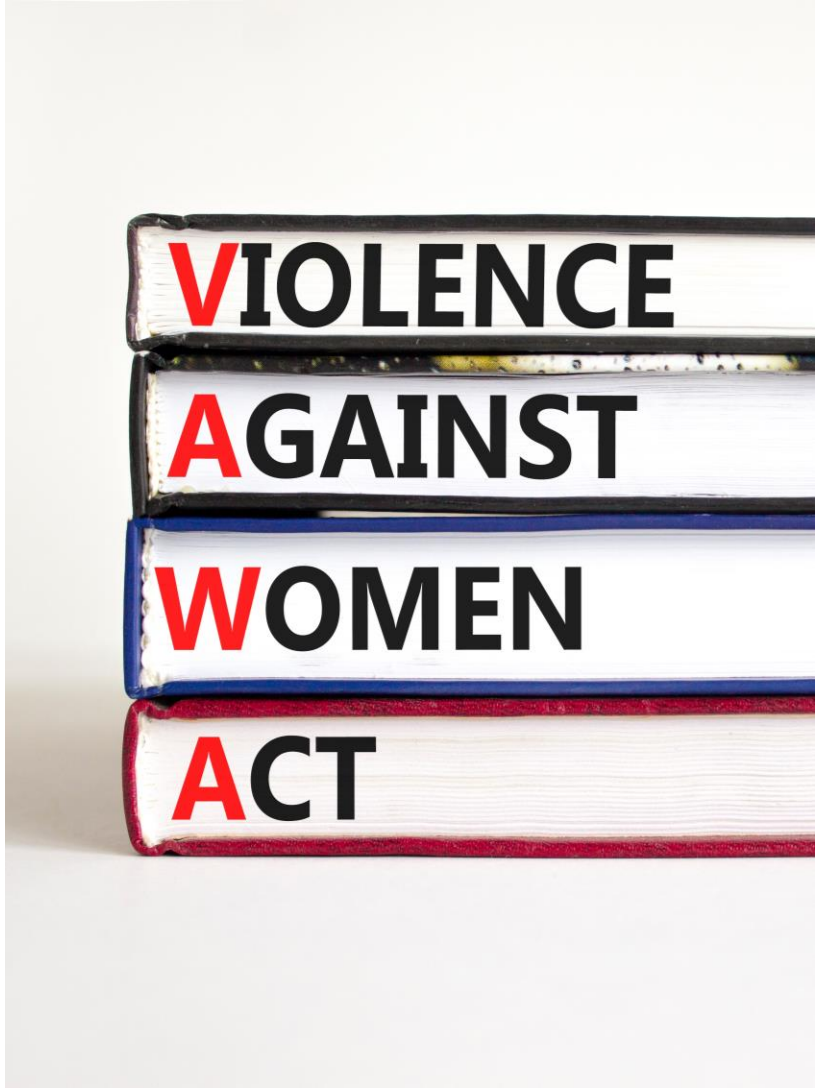
- Must be live, but can be conducted remotely
- No compelling participation
- Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters
- Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution
- Decision maker determines relevancy of questions and evidence offered
- No exclusionary rule
- Written decision must be issued that includes finding and sanction

Final Report Must Include

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and Remedies
- Procedure for appeal

Don't Forget VAWA

- Prompt, fair, impartial
- Reasonably prompt timeframes with extensions for good cause with written notice to parties with the reason
- Timely notice of meetings at which the parties may be present
- Timely notice of information to be used during disciplinary meanings and hearings
- Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused
- Right to an advisor of choice
- Written decisions
- Written notice of outcome – **every outcome**



Appeals: Mandatory Grounds Under Title IX

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Other Requirements of the Regulations

Designation of a Title IX Coordinator

Dissemination of policy

Separation of Responsibilities

Training and posting of training

Impartiality

Record Keeping

Questions?

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