



Idaho State
University

Equal Rights Process Support Team

Investigations

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DEFINITIONS

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (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; or
- (3) "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\(a\)\(30\)](#).



DEFINITIONS

- ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- ***Recipient***=ISU



10 STEPS OF AN INVESTIGATION

- Receive Notice/Complaint?
- Initial assessment/Jurisdiction
- Basis for the investigation (Incident, Pattern, and/or Culture/Climate)
- Notice of Investigation and Allegations
- Investigation Strategy
- Formal Investigation
 - Interviews
 - Evidence gathering



10 STEPS OF AN INVESTIGATION

- Draft report
- Internal draft review
- Provide draft to parties for comment/response (10 days)
- Final report given to parties along with evidence (10 days)



WHEN TITLE IX RECEIVES A REPORT . . .

- Outreach
- Explain Options
- Tailor an approach that is complainant centered and will best remedy the situation



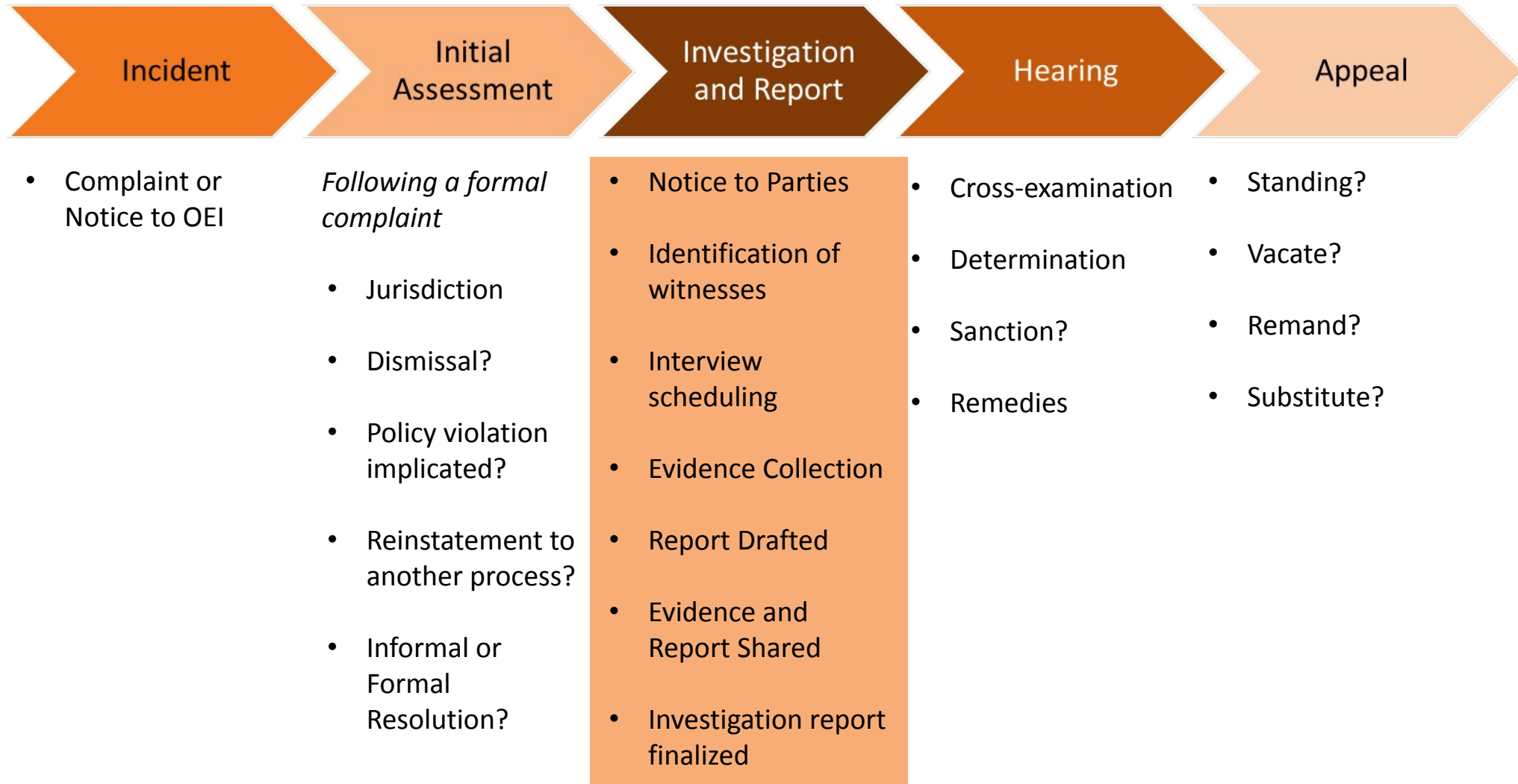
GRIEVANCE PROCESS

Process A

- Violations of federal Title IX regulations
- Most strict interpretation
- Hearing, Cross-Examination

Process B

- Conduct that falls under policy violations
- Doesn't rise to the level of Title IX
- No Hearing





WHEN TO INVESTIGATE?

- Upon receipt of a formal complaint
 - Informal resolution offered at the intake and must be agreed upon.
 - Many different forms
- When the Case manager has completed an evaluation that an investigation is warranted and supported by policy or law.



NOTICE:

- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including 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.



INVESTIGATION: SCOPE

- Case manager and Investigators will develop the scope of the investigation.
- What are the standards?
- What are the elements?
- What are the defenses?
 - But For...
 - Mixed Motive...



INVESTIGATION: SCOPE Cont.

But For...

- The test asks, "but for the existence of X, would Y have occurred?"
- In discrimination cases, the test asks: Would the adverse action have happened if the person did not belong to the protected group?
- If the answer is "no" (meaning that the action wouldn't have happened without the protected characteristic being a factor), then discrimination may be established under the "but for" test. This test is common in employment law and other civil rights cases to show that discriminatory motives were the decisive factor.



INVESTIGATION: SCOPE Cont.

Mixed Motive...

- "If the **plaintiff** shows that the **defendant** did something that hurt them, and the action was motivated by an impermissible reason, there is a **presumption** that the **defendant's** conduct was wrong. The **defendant** may rebut this presumption by showing that they would have taken the action regardless of its impermissible **motive**."
- For example, where an **employer** fired an **employee** in part because the employee was Black, and in part because the employee **fraudulently** overstated their job qualifications, the employer probably would not be **liable** for illegal racial discrimination, because fraudulently overstating your job qualifications is grounds for firing regardless of race. If, however, the employer fired the employee because of the employee's race and because the employee did not like the Yankees, the employer would probably be liable, because not liking the Yankees is generally insufficient grounds to fire someone.

https://www.law.cornell.edu/wex/mixed-motive_instruction



INVESTIGATION: STRATEGY

The investigation team, in consultation with the Case Manager strategizes the entire investigation. Begin with:

- What are the undisputed facts? Which ones are significant to the investigation?
- What are the facts in dispute? Which ones are significant to the investigation?
- Who needs to be interviewed?
- What should be the order of the interviews?
- What evidence needs to be gathered?
- Timeline (What is expected to be gained in each phase)



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INVESTIGATION: STRATEGY

- Phases? Brief overview

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INVESTIGATION: STRATEGY

What else do we need to discuss at this stage?

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INVESTIGATION: NOTES

- Burden of proof and gathering evidence rests on the recipient
- There is a presumption of “not responsible”
- Title IX investigations don’t have a side, just a process
- Reasonably prompt ISUPP 3100 60-90 for completion
 - Delays require notice.
 - Must have good cause (absence, law enforcement, etc.)



INVESTIGATION: NOTES

Dismissals stop the investigation (Title IX).

MUST dismiss the complaint at any time during the investigation or hearing:

1. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Title IX regulations even if proved, and/or
2. If the conduct did not occur in the Recipient's education program or activity, or
3. If the conduct did not occur against a person in the United States, or
4. If at the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Recipient's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the Recipient



INVESTIGATION: NOTES

Dismissals stop the investigation (Title IX).

MAY dismiss the complaint at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.



INVESTIGATION: NOTES

- Informal resolution pauses the process
- Be prepared to stand by your investigation at the hearing
 - The Chair may rely on you to recount the investigation in part or in whole. They may ask follow-up questions throughout the hearing.



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Questions

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