



May 21, 2021 & June 9, 2021

**ODHE
Advanced Title IX Coordinator
Writing Workshop**







34 C.F.R. §106.45(b)(10)(i)(D)

Yes!

Your Title IX Coordinator is required by 34 C.F.R. §106.45(b)(10)(i)(D) to post materials to train Title IX personnel on its website

We know this and will make this packet available to your institution electronically to post



34 C.F.R. §106.45(b)(10)

Develop a process for required recordkeeping, including:

Maintaining all investigatory, informal resolution, and appeal records for a period of **seven** years



Document all aspects

The offer of supportive measures (have a list that you use with everyone)

Discussion of specific f1 s. 906 B that you use with everyone)



What we do for one, we do for the other

Exit Ramps

Who

What

Where

When

Why

Consider using **IRAC** style Issue, Rule, Application, Conclusion



Dismissal of a formal complaint— §106.45(b)(3)(i)

The recipient **must** investigate the allegations in a formal complaint

(BUT) If the conduct alleged in the formal complaint

would not constitute sexual harassment as defined in §106.30 even if proved,

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 or this part; **such a dismissal does not preclude action under another provision of the recipient's code of conduct.**



36 CFR 106.45(b)(ii)

May dismiss if:

- (1) Complainant asks in writing to withdraw the Formal Complaint
- (2) Respondent is no longer enrolled or employed by the recipient
- (3)



Explain the reasons for dismissal/referral in a readable and understandable way

Explain the issue, the rules that apply for purposes of dismissal, your analysis applying the facts to the rules, and draw your conclusion

IRAC

“Show Your Work”

Application of Policy to Allegations

IRAC or CRAC

- Issue/Conclusion
- Rule
- Application
- Conclusion

requirements

Conclusion = the result of your analysis for each allegation

IRAC Example #1



Student A reported that her ex-girlfriend of three years called her disparaging names during the relationship and tried to control her interactions with others.

Issue:

Does the conduct reported constitute Title IX Sexual Harassment under your Policy?

Rule:



IRAC Example #2

Complainant reported that Respondent, a fellow student who had asked her out on several occasions despite her explanation that she is not interested romantically, inappropriately touched her arm while the two were talking at an off-campus party last weekend. More specifically, Complainant reported that Respondent asked her to find a quiet spot where they could be alone, then put his hand on her shoulder and gradually moved it down the length of her arm in a way that “gave [her] the creeps.”

Issue:



Investigation reports

- But remember no conclusions as to the allegations

Title IX Hearing Decisions

Appeal Decisions

Informal Resolution Documentation

- Ex: Rationale for terminating an Informal Resolution

Remember, you may have been separated from a writing project for a reason

- -maker, appeals officer, or informal resolution officer
-
-
- Make sure the process was followed and documented

Does the report make sense?

Does the report include enough detail for someone unfamiliar with your campus or the case to understand what is being said?

Does the report comply with your Policy and with the Regs?

- Ex: Was the evidence shared with the parties before the final report?
- Ex: Were all the parties given an equal opportunity to present fact and expert witnesses, and other inculpatory and exculpatory evidence?



Does the report accurately describe **the information gathered** and the **process**

the

Does the decision make sense?

Does the decision include enough detail for someone unfamiliar with your campus or the case to understand what is being said?

Does the report comply with your Policy and with the Regs?

- 34 C.F.R. 106.45(b)(7)(ii)



Does the decision accurately describe the process leading up to the hearing?

Did the Decision-



34 C.F.R. 106.45(b)(7)(ii)(A)-(E)

Allegations

Does the appeal decision make sense?

Does the appeal decision include enough detail for someone unfamiliar with your campus or the case to understand what is being said?

Does the report comply with your Policy and with the Regs?

- Remember the bases for appeal included in the Regs
- Are there others in your Policy?

Does the appeal decision accurately describe the process leading up to the hearing?

Is the appeal decision neutral in tone?

Are the agreed-upon terms of the Informal Resolution in a written agreement?

Important if there are disputes later

Important if OCR reviews the matter

Does the agreement make sense? Are the terms realistic?

Does the agreement (or other documentation) describe the process that the parties to the resolution?

Specifically, does it explain that the Informal Resolution process was used instead of a formal process after the parties gave voluntary written consent to the process?



... and possibly your Investigators in the near future

Each case includes at least TWO stories, maybe more

Set the scene visually

The Underlying Case

Each case includes at least TWO stories in one:

(1) The facts of the underlying case

- On August 25, 2020, Complainant and Respondent attended a party together at Thompson Point Residence Hall
- Complainant reports A, B, and C
- Respondent reports X, Y, and Z

The Investigation of the Underlying Case

Each case includes at least TWO stories in one:

(2) The process of the underlying case

- On August 30, 2020, Complainant filed a formal complaint
- On September 5, 2020, Complainant spoke with Investigator
- On December 10, 2020, Complainant shared the Investigation Report with Witnesses 1, 2, and 3

Structural Considerations

Template

Typical practice for your institution

Remember the required components

Common structural tools

- Chronology

- Subject Matter

- IRAC or CRAC



Structuring Your Investigation Reports and Decisions

Introduction

Should preview both stories

How did the underlying story get to the Title IX Office?

What about the underlying story was reported?

What are the **allegations**?

- Remember to use the names of violations as they existed when the conduct is reported to have occurred
- Same policy for definitions and procedure? Or a split?

Remember – Suggestions Only

Use the structure that works for your institution

Use the structure that works for the particular case

Your structure may change depending on the case

Think about the following:

Chronology

When does synthesizing facts help the reader?

When does separating facts help the reader?

Where does hearing testimony fit?



Logically combine related facts to tell a story

Pre-Gaming at Apartment B

Complainant and Witnesses A, B, and C, reported that they each took 3 shots of vodka when they arrived at Apartment B. Report, pp. 3, 6-7. This was largely consistent with their hearing testimony, except for Witness C who said they misspoke during their Title IX interview. Hearing Transcript, p. 4. At the hearing, Witness C testified that they only took one shot of vodka at the party. Hearing Transcript, p. 4.

Can you apply these takeaways in your cases?

Several things worth noting in this example:

The information is presented under a topic heading
"Pre-Gaming at Apartment B"

Information comes from different people and is blended together
Parties and witnesses

Information comes from different documents and is blended together
The Investigation Report and the Hearing Transcript

More takeaways

Several things worth noting in this example:

Discrepancies between the investigation and hearing testimony are noted

Witness C

Transitions to demonstrate shifts in time or topic

"Later in the evening, approximately two hours after Complainant and Witnesses A, B, and C arrived and took vodka shots, Respondent arrived at Apartment B with Witness D."

Can you apply these takeaways in your cases?

Report that Respondent choked Complainant

As previously mentioned, Complainant reported four separate acts that might rise to the level of a policy violation. First, Complainant reported that Respondent choked her during their argument on September 1, 2020. Report, p. 1. When Complainant described this incident to the Title IX investigator, she said that Respondent used his hand to encircle her throat and then squeeze, preventing her from breathing or talking. Report, p. 4. Under cross-examination at the hearing, Complainant stated that Respondent used his left hand only, but that his hand was large enough to

photographs of her neck during the Title IX investigation, which were included in the investigation report on pages 10 and 11. Two witnesses, Witness A and Witness B, reported to the Title IX

the morning of September 2, 2020. Report, p. 6. Both witnesses provided testimony at the hearing that was consistent with their prior statements to investigators. Hearing Transcript, p. 12.

Respondent has consistently denied that he choked Complainant. In his statement to the Title IX

Can you apply these takeaways in your cases?

Several things worth noting in this example:

- The information is presented under a topic heading

- Information comes from different people and is blended together

 - Parties and witnesses

- Information comes from different documents and is blended together

 - The Investigation Report and the Hearing Transcript

More takeaways

Several things worth noting in this example:

Discrepancies between the investigation and hearing testimony are noted

Transitions to demonstrate shift from individual factual allegation to the response to that allegation

New paragraph to discuss response from Respondent





Failing to include sources of information (discussed earlier)

If explaining this in every sentence weighs down your writing, use footnotes to add clarity. (

Citing the source of your information helps the reader and underscores your neutrality

Confusing Quotation Marks

Is the quoted language from the interviewee or the interviewer?

Did someone else put the language in quotation marks?

- Footnote 4: The quoted language was attributed to Respondent on page 6 of the Investigation report. Did so



Topic sentences and transitions

Provide a roadmap in your introduction and under new headings

Sentences should flow from one-to-another

Remember telling two or more stories to someone unfamiliar with the case



Typos

They happen to everyone, but

Typos in every sentence undermine the integrity of a decision

Run-on sentences/Sentence fragments

Make sure each sentence has a subject and a verb

If combining multiple independent clauses, consider whether to separate sentences



Respondent engaged in sexual intercourse with Complainant from behind.

Issues:

- No source of the information
- From behind what? Complainant?
- Word choice

Fix:

According to Complainant, Respondent and Complainant were both standing near the pool table at the time that Respondent began to sexually penetrate Complainant. Complainant was facing away from Respondent at the time, towards the table, and that



Complainant couldn't explain why she was sitting on the couch by herself.

Issues:

Pronouns are not clear

Fix:

At the hearing, Complainant testified that she observed Witness A sitting on the couch by herself. Complainant said that she could not explain why Witness A was sitting alone.



Respondent stated that he was uncomfortable cuddling with women that he was not close with during his freshman year.

Issues:

Confusing



There was no evidence to support Complainant's assertion that the activity occurred without her consent.

Issues:

that clear

-examination, make

Fix:

At the hearing, Complainant declined to answer questions posed by

this decision. See Section 4.B. of the Title IX Policy.



There was no evidence to support Complainant's assertion that the activity occurred without her consent.

Issues:



Clear and consistent writing is important at every stage in the process

Remember your role

- Author?
- Reviewer?

Make sure that the documents generated by the Title IX Office comply with your policy and the Title IX regs

All written documents may be read by others at some point

Questions?

