



Title IX Commitment: Compliance & Next Steps



THE UNIVERSITY OF
TENNESSEE
KNOXVILLE
BIG ORANGE. BIG IDEAS.®

History

- 1967 a Syracuse University junior was the first woman to officially participate in the Boston Marathon
- 1967 President Johnson signs Executive Order 11375 prohibits federal contractors from employment practices that discriminate on the basis of sex
- 1972, only 7% high school varsity athletes were women and fewer than 30,000 females competed in intercollegiate athletics
- 1972 President Nixon signs into law Title IX of the Education Amendment Act
- 1974 Pat Summit becomes coach at University of Tennessee – Women's Basketball was not an NCAA sanctioned sport
- 1978 University of Michigan has 10 varsity teams for women sports
- 1980 Department of Education established and given oversight of Title IX through the Office of Civil Rights (OCR)
- 1980 Alexander v. Yale an appeal court established that sexual harassment is illegal because it is a form of sex discrimination covered by Title IX
- 1984 US Women's Basketball team wins a gold medal at the Olympics

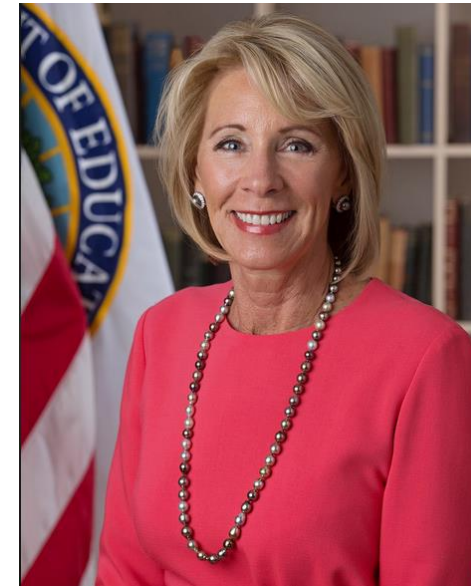


The June 26, 1978, cover of TIME Cover Credit: NEIL LEIFER

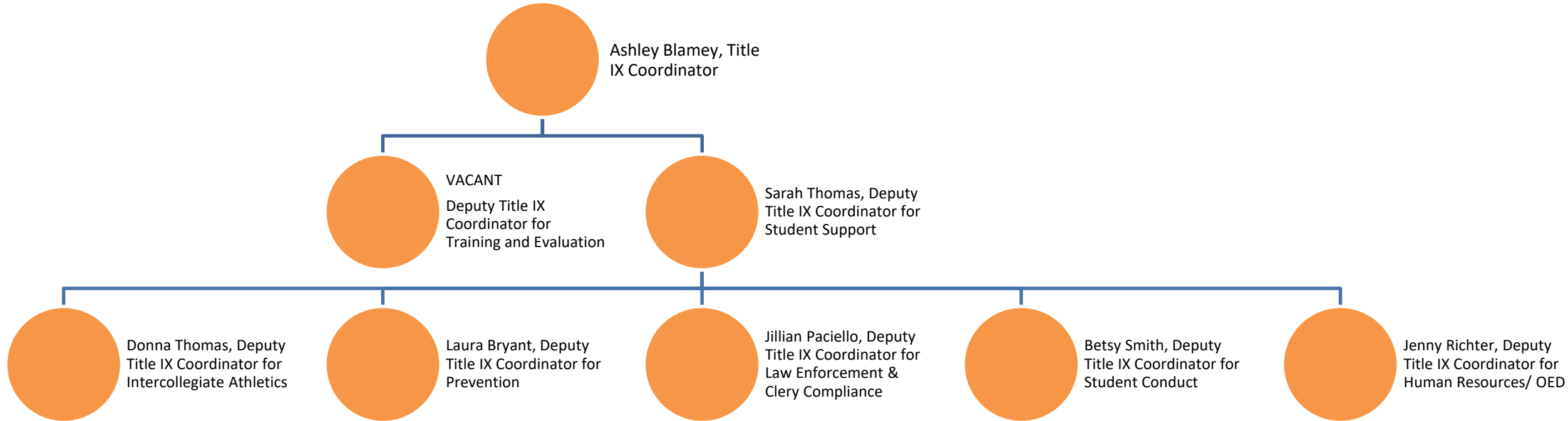


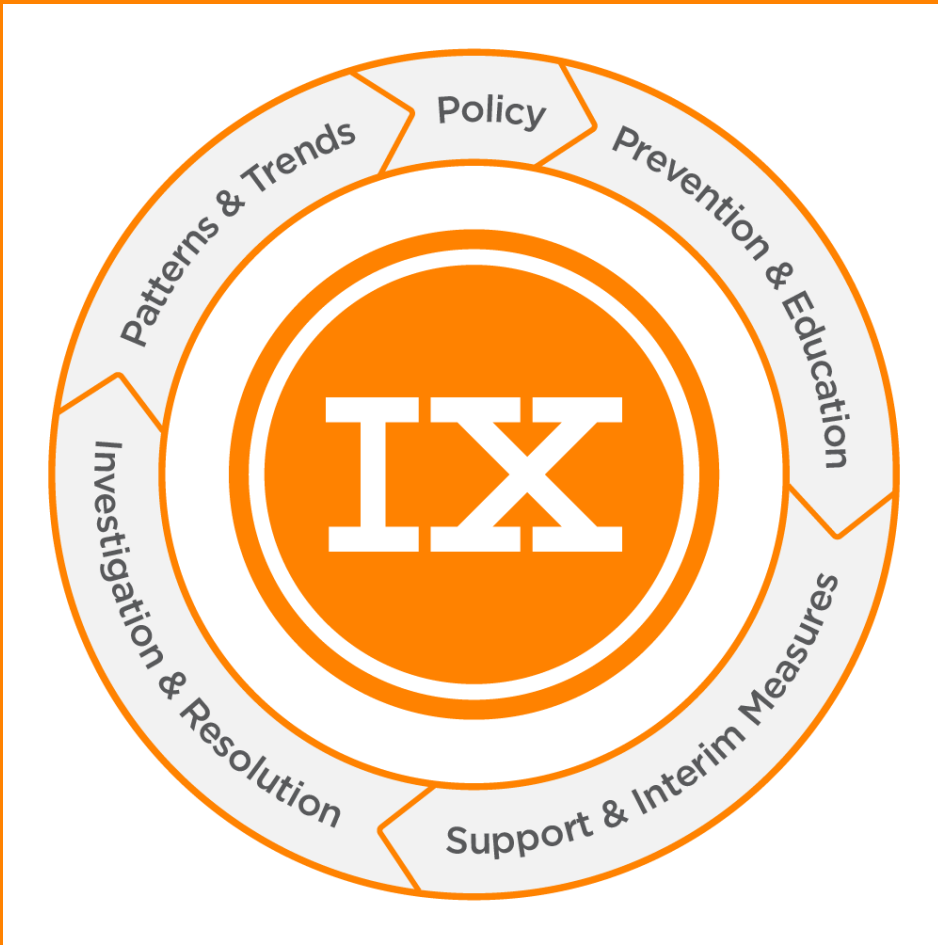
Recent History

- 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties
- 2011 Dear Colleague Letter
- 2013 VAWA Reauthorization: Campus SaVE Act
- 2014 Q & A
- 2017
 - Department of Education rescinds 2011 Dear Colleague Letter and 2014 Q&A
 - New Interim Guidance Provided and New Q&A
 - Notice of Proposed Rule Making (NPRM) was expected by the Department of Education in April, but the comment period has not been announced



Our Structure





Grounded in the Social Ecological Model, the University's Title IX commitment emphasizes five key areas:

1. **Policy**: Our foundation is in the policy and procedures we follow.
2. **Prevention & Education**: Our goal is to prevent sexual misconduct, relationship violence, stalking, and retaliation before they happen.
3. **Support & Interim Measures**: Our promise is to provide support and appropriate interim measures to individuals involved in the Title IX process.
4. **Investigation & Resolution**: Our commitments to due process, campus safety, and encouraging reporting guide how we investigate and resolve reports.
5. **Patterns & Trends**: Our responsibility is to use the best available research, evidencebased practice, and our own campus and institute trends in our prevention and response efforts.

POLICY

Our foundation is in the policy and procedures we follow.

**Policy on
Sexual Misconduct,
Relationship Violence,
Stalking, and
Retaliation**

titleix.utk.edu

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Policy Foundations – Law and Guidance

- **Statutes and Case Law**

- Title IX and Title VII – statute and regulations – discrimination based on sex
- Clery Act (VAWA) – statute and regulations – sexual assault, dating violence, domestic violence, stalking
- State law
 - Uniform Administrative Procedures Act
 - Student Due Process Protection Act – House Bill 789 (2018)
- Constitution – First Amendment, Due Process

- **Guidance**

- OCR 2017 *“Dear Colleague” Letter Withdrawing 2011 and 2014 Guidance*
- OCR 2001 *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*

Policy

- **The Who, What, When, How, Where, and Why – EVERY TIME**
 - What you do
 - Who does it
 - When they do it
 - How they do it
 - Why they do it
- **Follow it**
 - Does everyone on your team understand it?
 - Don't rely on your memory
 - Document reasons for not following it
- **Publish it and Educate on it**
 - Old versions
 - Exercise: search your website for “Title IX,” “Title IX Coordinator” “sexual assault”, and “rape”

Policy

- **Prohibited conduct**
 - Do you understand the definitions?
 - Can you teach it?
 - Can your investigators and hearing boards/officers apply it? Consistently?
- **Documentation** – will you be able to prove that you followed your policy?
 - Forms
 - Retention
- **Consider maintaining a master timeline of enhancements and changes to your policies, procedures, and staffing**
- **Summer project**
 - Audit a case file
 - VAWA regulations checklist & Annual Security Report

PREVENTION & EDUCATION

Our goal is to prevent sexual misconduct, relationship violence, stalking, and retaliation before they happen.



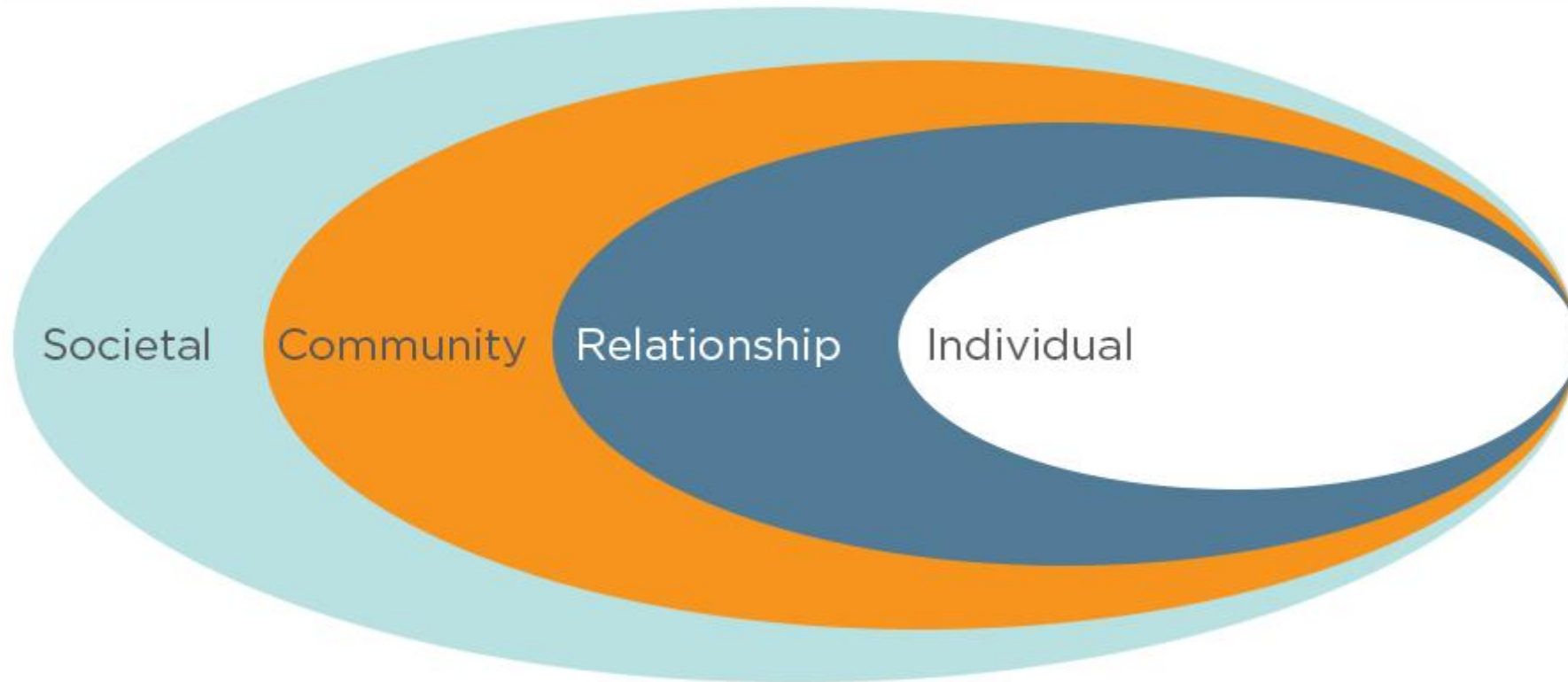
Your Campus is Your Home Town

University of Tennessee, Knoxville

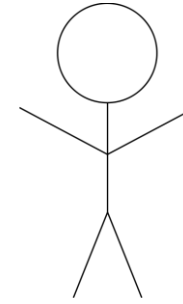
- Population: 28,052 Students/9,813 faculty & staff
- Campus size: 910 acres, 285 buildings, 12 residence halls



Where are your opportunities?



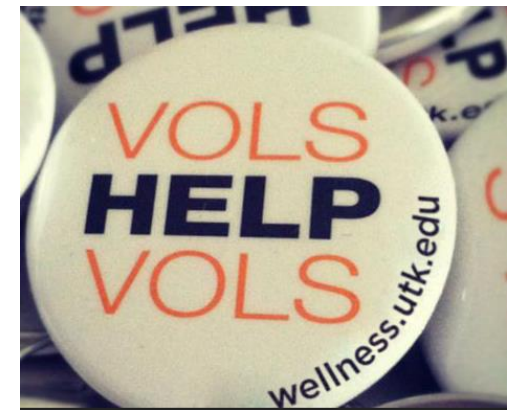
The Life Cycle of a Student



Engage the Family



Annual Events



Culture of Care

Online and Media Campaigns



Engage the Family



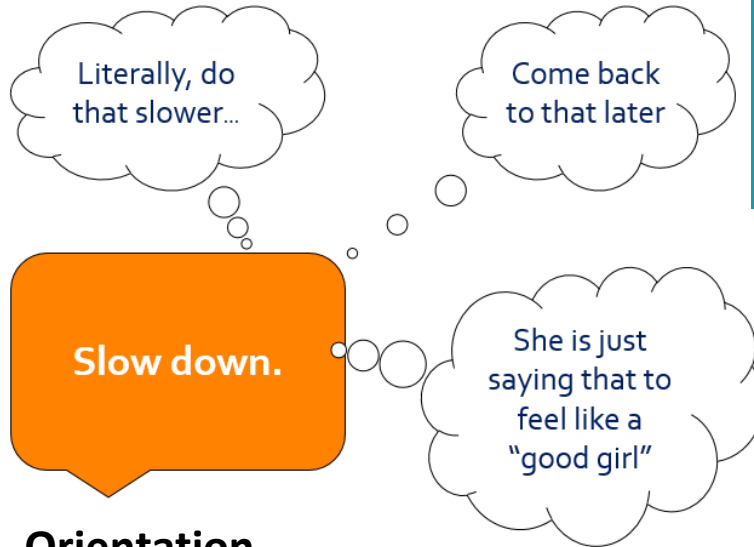
Come back to that later

Literally, do that slower...

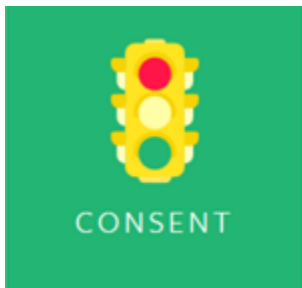
She is just saying that to feel like a "good girl"

Slow down.

Orientation



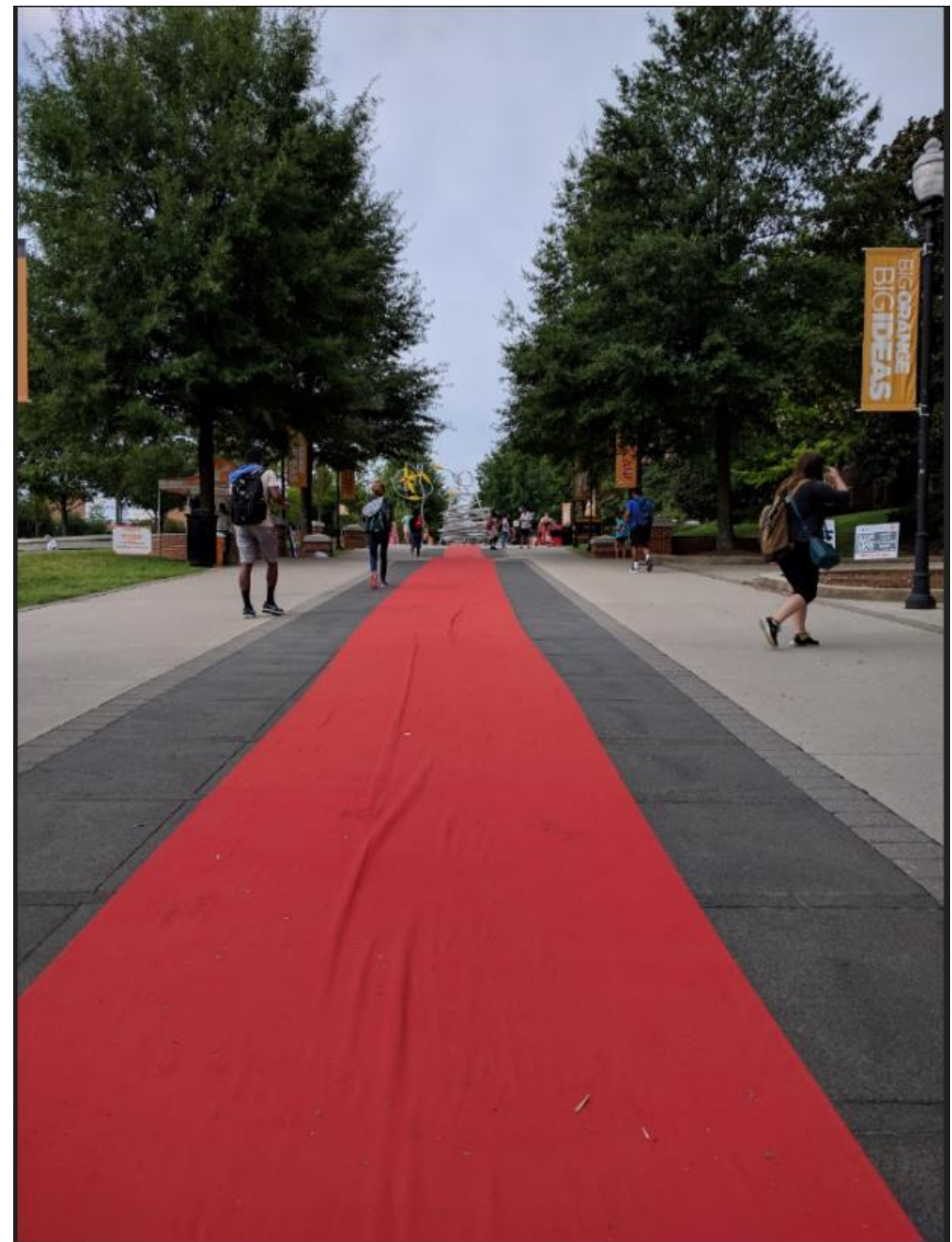
Pre-matriculation module



High Risk Times

What are high risk times for your campus community?

Are there traditions or annual activities that are predictable in the lifecycle of your population?



Legal Perspective on Prevention/Education

- **Documentation** of prevention efforts can be critical
 - Who attended
 - What was presented
- Does your prevention/education **match your policy**?
- Do your referral sources have a firm understanding of your policy? (confidential resources; police; sexual assault center) – consider ways to assess
- What is the basis for your prevention/education?

Legal Perspective on Prevention/Education

- Prevention efforts should be (1) informed and evolved (by research, assessment, or trends on campus), (2) ongoing, and (3) multifaceted

VAWA:

- ***Primary prevention programs*** means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.
- ***Ongoing prevention and awareness campaigns*** means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in paragraph (j)(1)(i)(A) through (F) of this section.

Legal Perspective on Prevention/Education

- **Title IX “deliberate indifference”**
 - Standard for liability for money damages for student-on-student harassment/assault
 - Whether school acted with “deliberate indifference to known acts of harassment in programs and activities”
 - **Whether response to harassment was “clearly unreasonable in light of the known circumstances”**
 - Failed to prevent/made a student vulnerable to an assault
 - Failed to respond appropriately to a report
- **Clery Act/VAWA**
 - Training you must offer to students and employees – including applicants
 - Training your investigators and adjudicators must have

Legal Perspective on Prevention/Education

- Training for investigators/adjudicators (VAWA)
 - “on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability” 34 C.F.R. § 668.46(k)(2)(ii)
 - Trauma-informed approaches to interviewing
 - on the other requirements of 34 C.F.R. § 668.46(k)

Legal Perspective on Prevention/Education

- Training for investigators/adjudicators (OCR)
 - 2017 Q&A: “Training materials or investigative techniques and approaches that apply **sex stereotypes or generalizations** may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.”
 - Training should **remove biases not introduce them**
 - While some people on campus need to be trained to be supportive of the complainant, adjudicators in particular need to be trained to be **neutral**

Legal Perspective on Prevention/Education

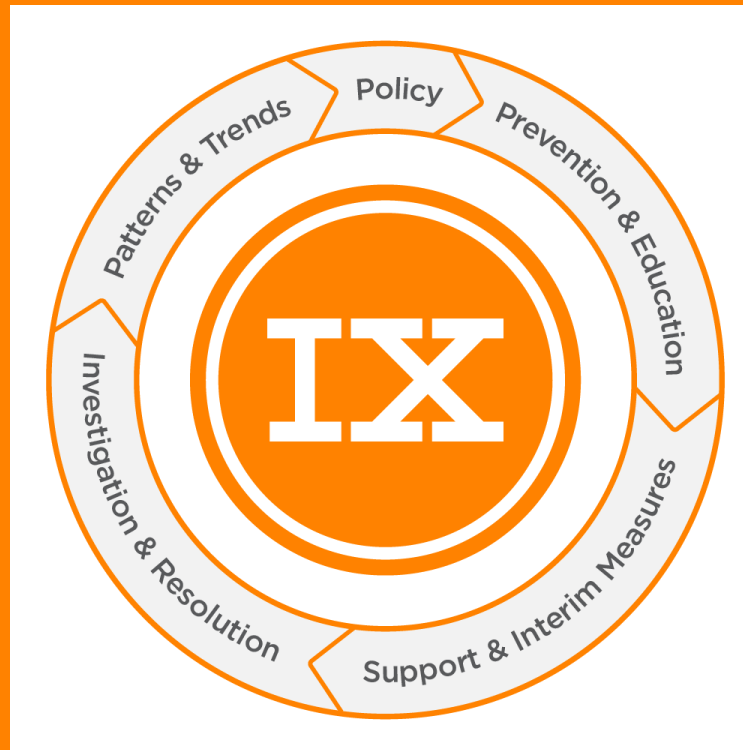
- For public institutions, consider including information on **due process** in training for investigators and adjudicators
- **Who** should be training your investigators and adjudicators?
 - You?
 - Legal counsel?
 - Consultant?
 - Off the shelf product?

HOW TO USE TRAINING INFORMATION

- This information has been provided to you to ensure that preconceived notions that you may have do not distort the process or unfairly advantage or disadvantage a party
- How **NOT** to use information
 - Do **NOT** use it as a basis for a decision (e.g., just because a certain % of males report that they have sexually assaulted someone does not mean that the respondent in your case committed a sexual assault)
 - Do **NOT** go into a hearing assuming that most females file false reports of sexual assault and therefore this female did
 - Do **NOT** go into a hearing assuming that most males commit sexual assaults and therefore this male did
 - **Cases must be heard before they are decided - you must evaluate each case on its facts and analyze the preponderance of the evidence**
 - Your responsibility is **NOT** to side with the university's position if the facts and/or policy don't justify that position

SUPPORT & INTERIM MEASURES

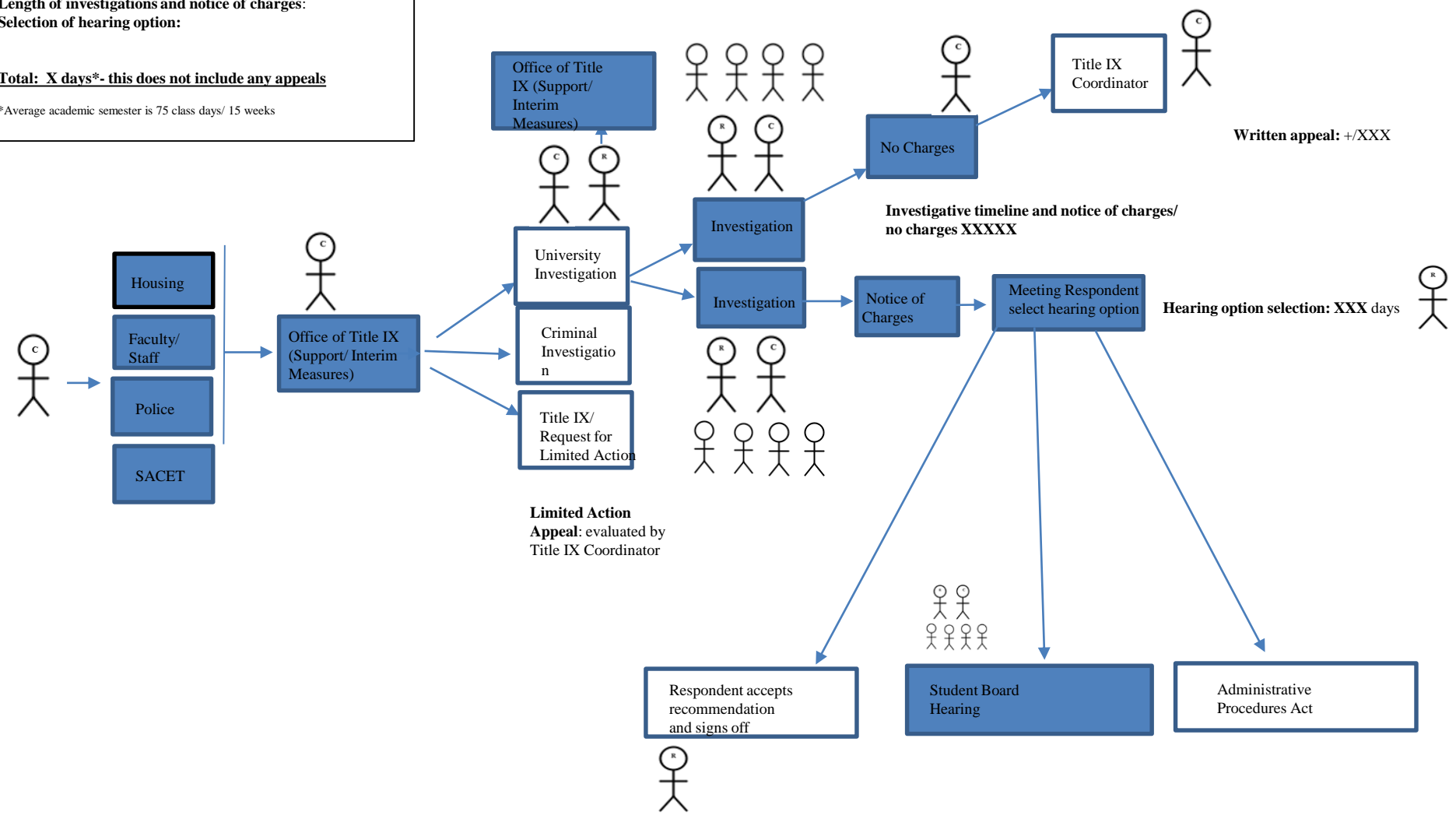
Our promise is to provide support and appropriate interim measures to individuals involved in the Title IX process.



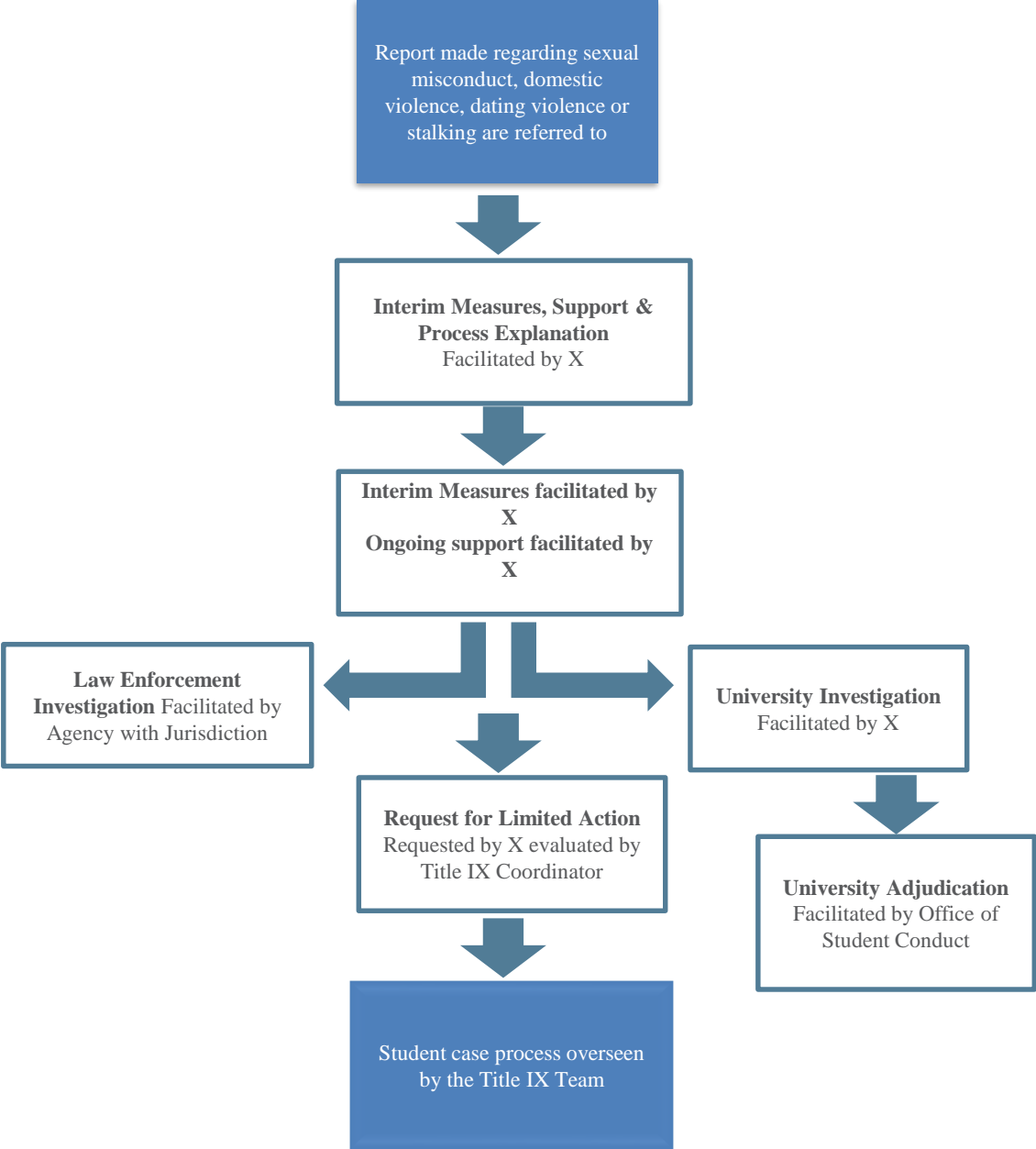
Length of investigations and notice of charges:
Selection of hearing option:

Total: X days*- this does not include any appeals

*Average academic semester is 75 class days/ 15 weeks



**Title IX Team
Case Flow**



*The above graph is to serve only as a guide, not all incidents will follow the above procedure

Interim Measures

Examples include:

- Facilitating medical and/or counseling services
- Issuing No-Contact Directives
- Assisting communications with faculty
- Exploring academic needs, living arrangements, transportation, dining, extracurricular and work arrangements/needs

Legal Perspective on Interim Measures

- **Document – if it isn't in writing, it didn't occur**
- **Clery/VAWA**
 - Written notification to victims of rights and options (34 C.F.R. 668.46(b)(11)(ii)-(vi))
 - Includes written notification to victims of “options for and available assistance in, changing academic, living, transportation, and working situations or protective measures”
 - The institution **must** make such accommodations or provide such protective measures **if the victim requests them and if they are reasonably available**, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
 - “Description of possible sanctions or protective measures the University may impose”

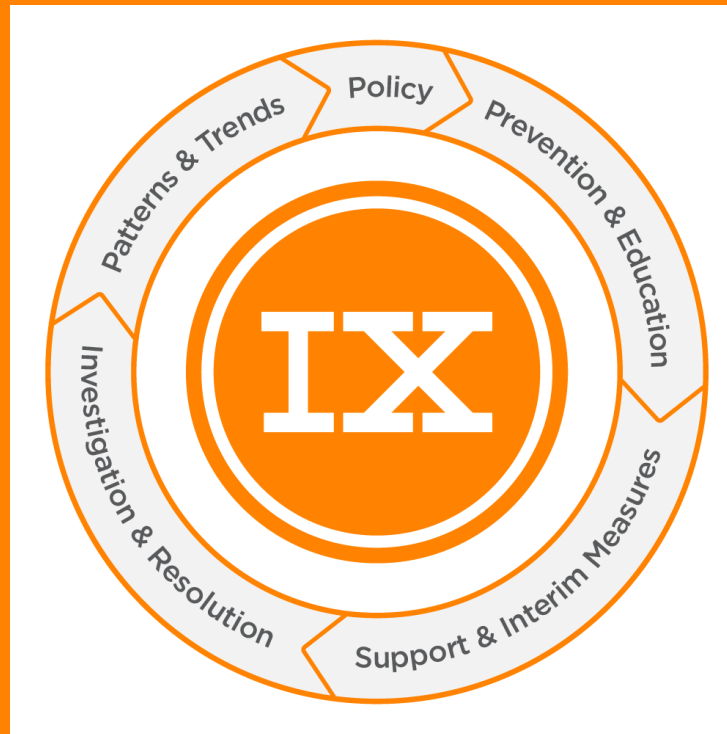
Legal Perspective on Interim Measures

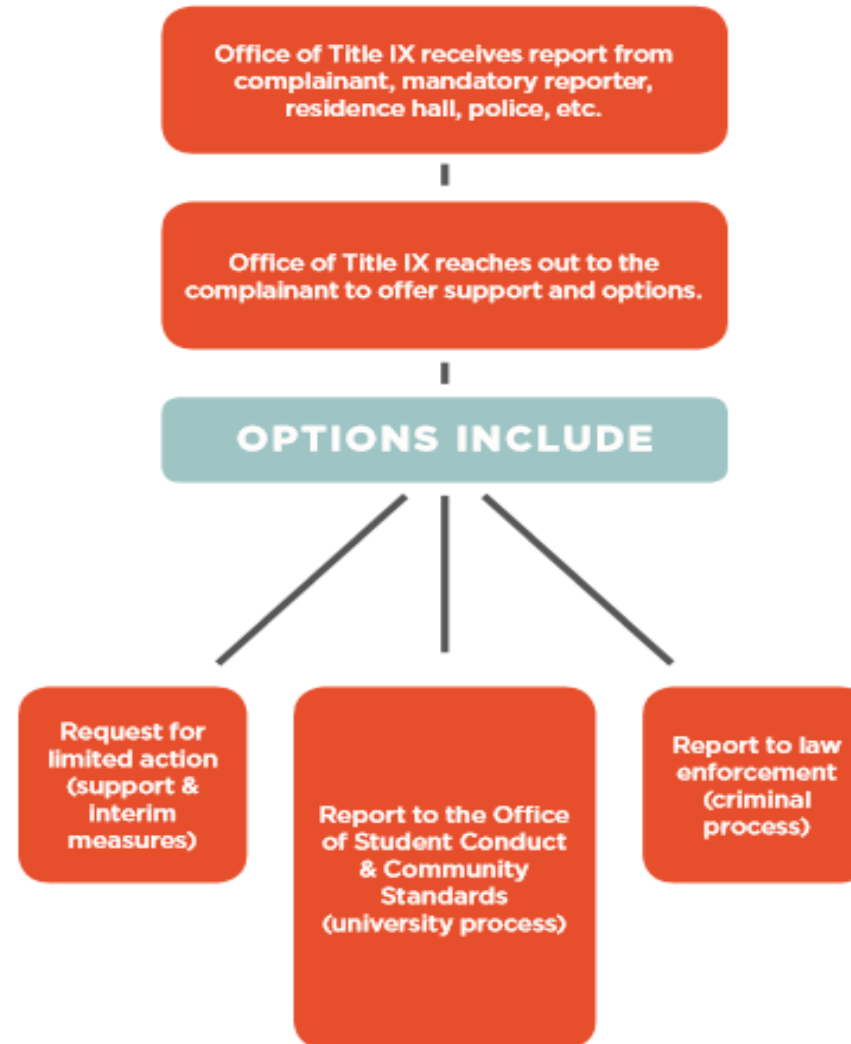
- 2017 Q&A

- Individualized services provided to either or both the reporting & responding parties prior to an investigation or while an investigation is pending
- **Must not** “rely on fixed rules or operating assumptions that favor one party over another”
- **Must not** “make such measures available only to one party”
- Should be “**individualized and appropriate** based on the information gathered by the Title IX Coordinator, **making every effort to avoid depriving any student of her or his education**”
- May change over time
- Thee Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are **necessary and effective** based on the students’ evolving needs

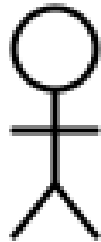
INVESTIGATION & RESOLUTION

Our commitments to due process, campus safety, and encouraging reporting guide how we investigate and resolve reports.





Limited Action



Request the reported conduct or contact with Title IX Office not be disclosed

Decline to Identify the Respondent

Decline to respond to the Office of Title IX

Request the University not investigate, stop an investigation or stop disciplinary action against the respondent

Conduct Process

When a student faces an alleged (nonacademic) violation, the below process is followed.

INITIAL STAGES/ INVESTIGATION

WRITTEN NOTICE OF EDUCATIONAL CONFERENCE
WRITTEN NOTICE IS PROVIDED BY SCCS AND WILL INCLUDE:

1. Notice that SCCS has begun/will begin Investigation
2. Brief description of conduct and the Standard(s) of Conduct at issue
3. Notice of right to an advisor
4. Date/time/location of the Educational Conference
5. Consequences of failing to comply and notice of hold
6. Link to the Student Code of Conduct/Policy/Fundamental Rights

EDUCATIONAL CONFERENCE
AN EDUCATIONAL CONFERENCE IS A MEETING BETWEEN SCCS AND THE RESPONDENT WHERE THE FOLLOWING OCCURS:

1. SCCS orally informs the Respondent of allegations and fundamental rights.
2. The Respondent has an opportunity to respond to allegations, present information, and identify witnesses.
3. Both SCCS and the Respondent may ask questions and seek clarifying information.
4. SCCS may issue a no-action determination, continue investigation or the Respondent may sign a Resolution Agreement.

INVESTIGATION

Sufficient evidence to support allegations of misconduct:
NOTICE OF ALLEGATIONS & SANCTION RECOMMENDATIONS
Resolution Options Include

Not sufficient evidence to support allegations of misconduct:
NO-ACTION DETERMINATION
Process ends

RESOLUTION AGREEMENT
(may occur at any time in process)

STUDENT LIFE HEARING OFFICER

ADMINISTRATIVE PROCEDURES ACT (UAPA) HEARING*

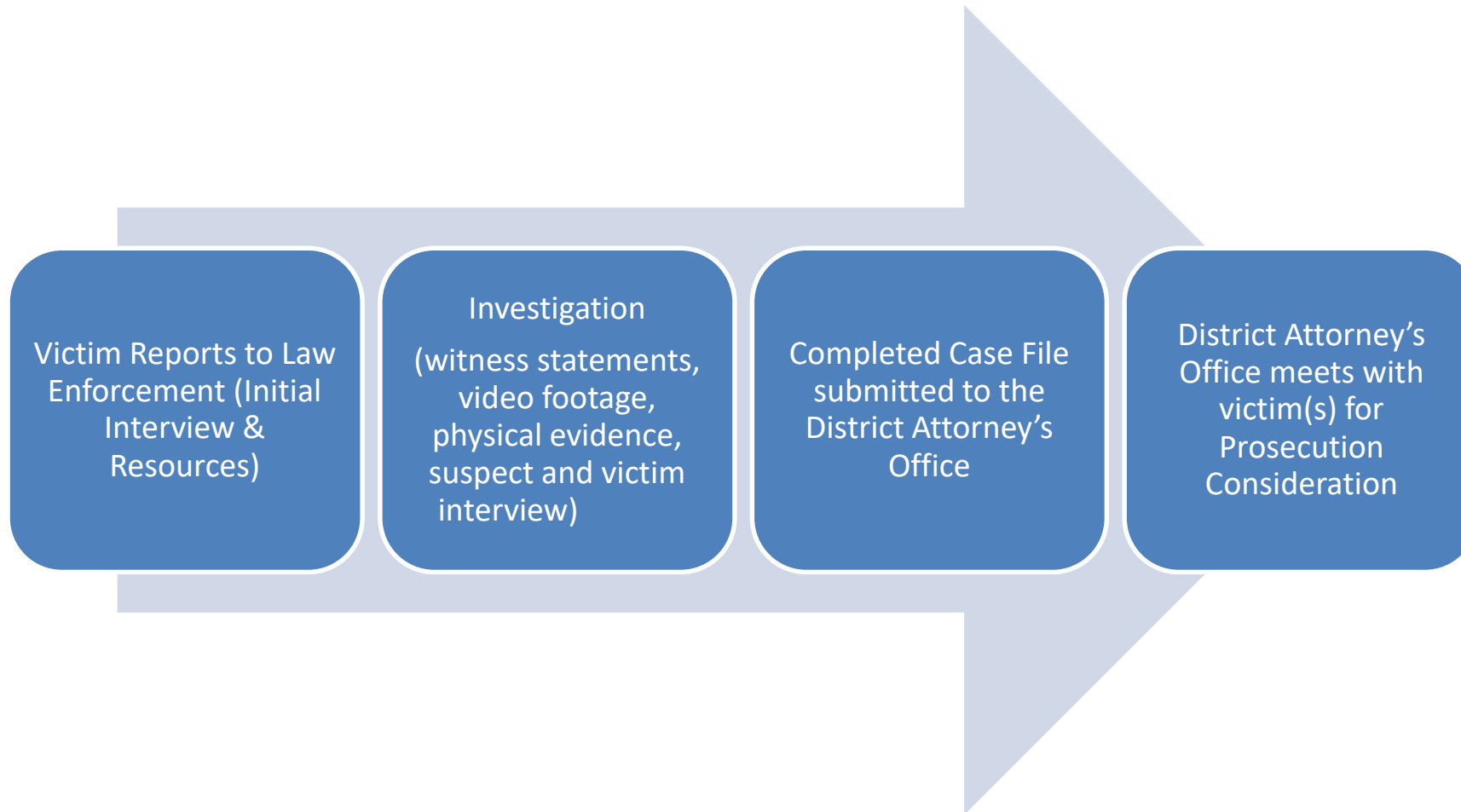
ALTERNATIVE RESOLUTION
(e.g., mediation; may occur at any time in process)

STUDENT CONDUCT BOARD HEARING*

RESOLUTION

*Only an option if recommended sanction of deferred suspension or greater

Law Enforcement Process



Legal Perspective – 2017 Q&A

- Increased flexibility in how institutions investigate and resolve complaints
 - Still must follow your policy
 - VAWA continues to impose more specific requirements
- 2001 guidance returns to prominence
- Guidelines align more closely with the way many courts treat these issues

Legal Perspective – Investigations – 2017 Q&A

- Title IX regulations require publication of grievance procedures that provide for a “**prompt and equitable** resolution of complaints of sex discrimination”
- Question 5: What time frame constitutes a “prompt” investigation?
 - no fixed time frame (60 day “requirement” is gone)
 - evaluation of good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution
 - VAWA: complete disciplinary proceedings “**within reasonably prompt timeframes designated by an institution’s policy**, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay & the reason for the delay”

Legal Perspective – Investigations – 2017 Q&A

- Question 6: What constitutes an “**equitable**” investigation?
 - **Burden is on the school**—not on the parties—to gather sufficient evidence to reach a fair, impartial determination
 - Investigators and adjudicators – must be **free of actual or reasonably perceived conflicts of interest and biases** for or against any party
 - Institutional interests must not interfere with impartiality of investigation
 - Trained investigator must analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case
 - Rights afforded to the parties should be made available “**on equal terms**”

Legal Perspective – Investigations – 2017 Q&A

- Question 6: What constitutes an “**equitable**” investigation?
 - Notice of investigation
 - Once it **decides to open an investigation** that may lead to disciplinary action against the responding party, a school should provide **written notice** to the responding party of the allegations constituting a potential violation of the school’s sexual misconduct policy, **including sufficient details and with sufficient time to prepare a response before any initial interview.**
 - Do you know when in your process is the “opening” of an investigation?
 - **Sufficient details** include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident.
 - Each party should receive written notice in advance of any interview or hearing with **sufficient time to prepare for meaningful participation.**
 - Should write a report summarizing the exculpatory and inculpatory evidence

Legal Perspective – Investigations – Other Tips

- Preservation of evidence - video of what happened is better than a witness's or lawyer's rendition
- Investigative report
 - Reasons for delay – consider timeline for investigation
 - Why witnesses were not interviewed
 - Why evidence was not gathered

Legal Perspective – Resolutions – 2017 Q&A

- More flexibility in using **informal resolution, including mediation**
- Decision maker can be **investigator or separate decision maker** (beware of how some courts view the investigator model)
- Must make **findings of fact and conclusions** as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy
- If the complaint presented more than a single allegation of misconduct, a decision should be reached **separately as to each allegation of misconduct.**

Legal Perspective – Resolutions – 2017 Q&A

- If no formal hearing (investigator model): the parties should have the opportunity to **respond to the report in writing in advance of the decision of responsibility**
- Standard of proof: may use either preponderance of the evidence or clear and convincing evidence – BUT, whatever standard is used, that standard must be used for all other types of student conduct cases

Legal Perspective – Resolutions - Sanctions

- **2017 Q&A**

- May use a different decision maker for sanctioning
- Disciplinary sanction decisions must be made for the purpose of deciding **how best to enforce the school's code of student conduct while considering the impact of separating a student from her or his education.**
- Any disciplinary decision must be made as a **proportionate response to the violation.**

- **VAWA**

- In annual security report - must list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking
- Notice of the result must include **“the rationale for any sanctions imposed”**

Legal Perspective – Resolutions – 2017 Q&A

- Appeals are not required
- Do not have to provide parties with the same rights to appeal
- If you provide both parties with the right to appeal, then the appeal procedures must be equally available to both parties

Legal Perspective – Resolutions – VAWA

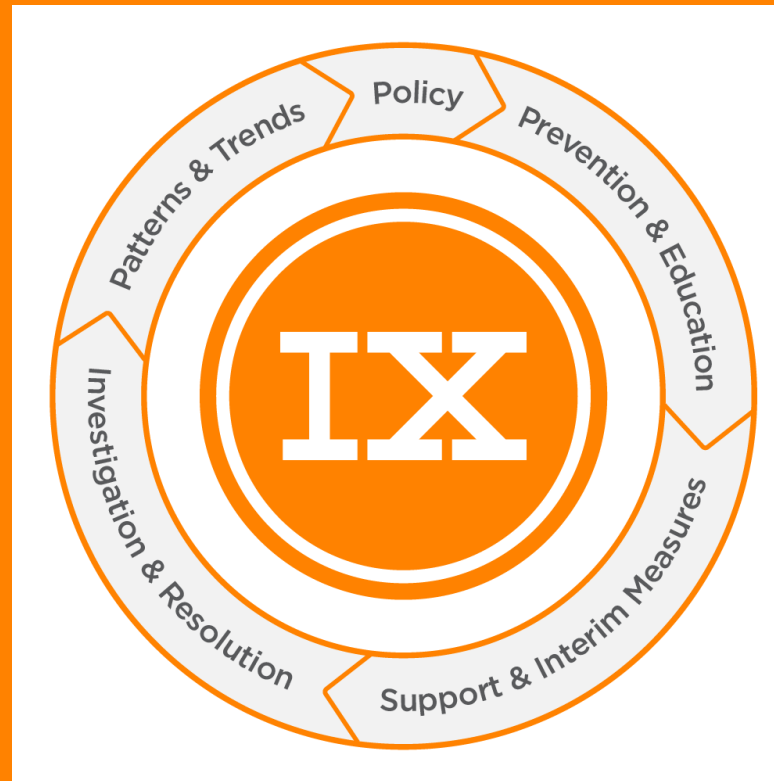
- Proceedings shall be:
 - **Prompt, fair and impartial** investigation and resolution; and
 - Be conducted by officials who receive annual training on the issues AND training on conducting investigations and hearing processes that protect the safety of victims and promotes accountability
- Accuser and accused have the **same opportunities** to be accompanied to the disciplinary hearing and related meetings by an **advisor** of their choice
- Both the accuser and accused shall be **simultaneously informed in writing of** outcomes of disciplinary proceedings, appeal procedures

Tennessee Law

- Uniform Administrative Procedures Act
 - “contested case hearing” – trial type administrative hearing with full discovery, right to active participation of counsel, etc.
- Student Due Process Protection Act – House Bill 789
 - Makes statements made in certain student conduct hearings inadmissible in criminal court
 - Conflicts of interest by decision makers
 - Imposes certain notice requirements in Title IX/VAWA cases
 - Notice of whether a student has the right to an attorney
 - Notice of hearing – time, place, date, witness names, right to request copies of evidence the institution may use

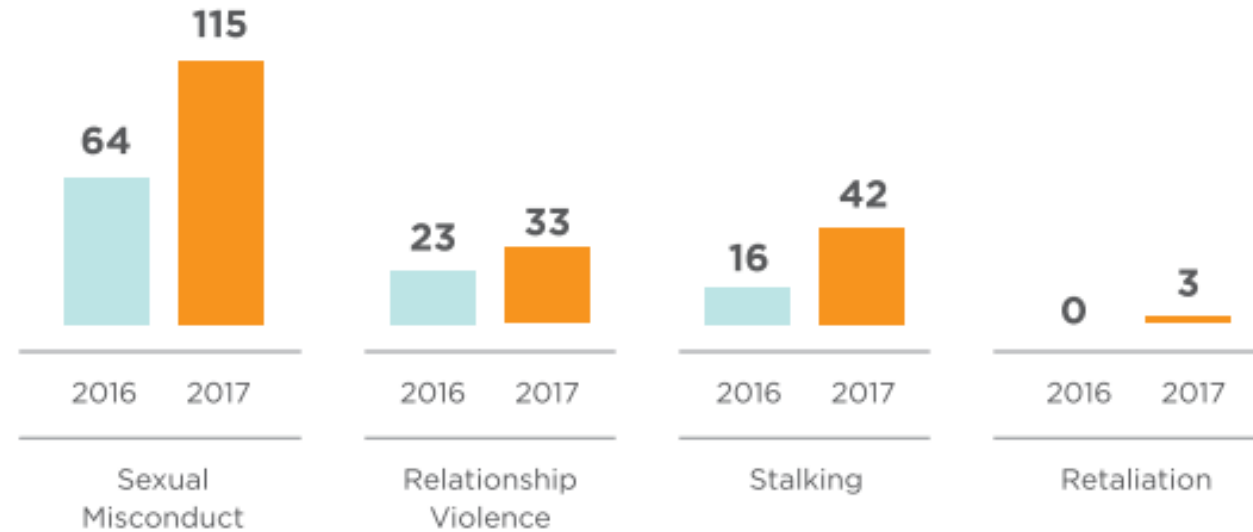
PATTERNS & TRENDS

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UTK 2017 Report

Total Reports in 2017 (N=193) Compared to 2016 (N=103)

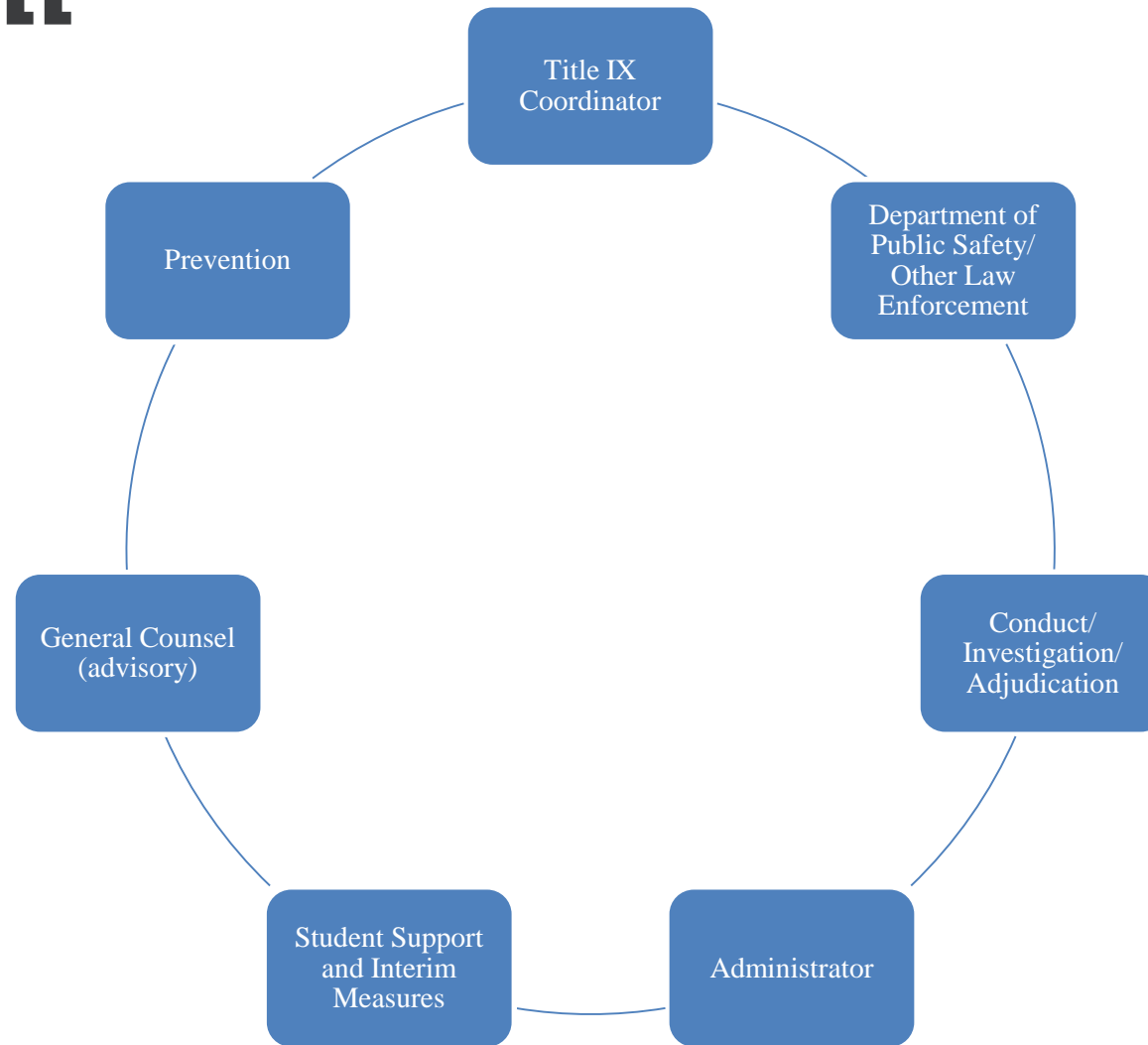


Looking for the trend...

- Is there a bar that is listed as a location or a starting point in more than one incident report?
- Has there been more than one incident in a specific residence hall? Are there any similarities to the incidents?
- Are there any themes in the reports? (groups, locations, type/manner of alcohol consumption, etc.)
- Are there specific events or traditions that result in increased reporting?

What does that functionally look like at your campus?

Your Team



Never stop asking the questions.

- Is our current process working?
- Do you have everyone you need at the table?
- If you had the situation/case/issue to do over, what would you do differently?
- What can I do this summer to improve the work?
- Who can help me to avoid reinventing the wheel?

**Our power is in our
prevention and response.**

THANK YOU & QUESTIONS