



TERMINOLOGY



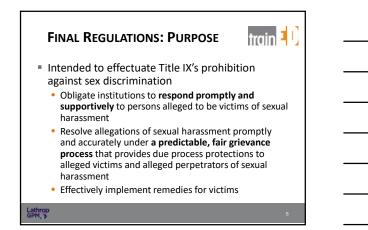
- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act

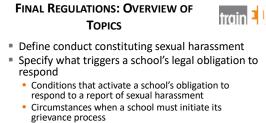
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- FERPA = Family Educational Rights and Privacy Act
- IDEA = Individuals with Disabilities Education Act
- ADA = Americans with Disabilities Act









Specify how a school must respond

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- Set forth mandatory steps that a recipient must take
- as part of every response to sexual harassment
- Establish required grievance process

COORDINATOR AND POLICY



- Must designate and authorize at least one Title IX Coordinator
 - Employee must be referred to as the Title IX Coordinator
 - Notify all applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions of name and contact information

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COORDINATOR AND POLICY from the set of the s

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic address, or by mail to the office address, listed for the Title IX Coordinator

COORDINATOR AND POLICY

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Publish notice of non-discrimination

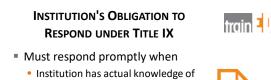
- Institution does not discriminate on the basis of sex in education program or activity, which includes employment and admissions
- Discrimination is prohibited under Title IX
- Inquiries can be made to Title IX Coordinator and Assistant Secretary (OCR)
- Include notice and contact information for Title IX Coordinator prominently on website, handbooks and catalogs

COORDINATOR AND POLICY

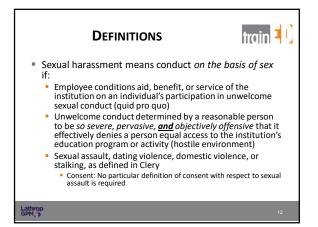


- Adopt and publish grievance procedures
 - "Prompt and equitable resolution of student and employee complaints" alleging conduct prohibited by regulations
 - Grievance process that complies with regulations for formal complaints
 - How to report or file complaint of sex discrimination
 How to report or file a formal complaint of sexual
 - harassmentHow the recipient will respond
 - Applies only to sex discrimination occurring against a person in the United States

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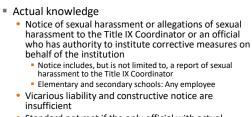


- Sexual harassment
- In an education program or activity of the institution
- · Against a person in the United States





DEFINITIONS

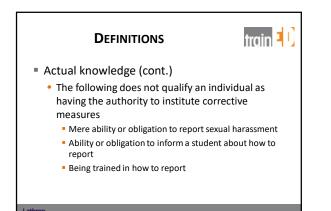


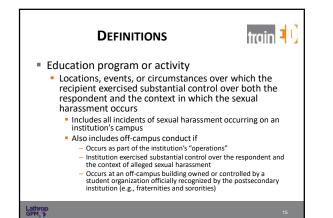
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Standard not met if the only official with actual knowledge is the respondent

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DEFINITIONS

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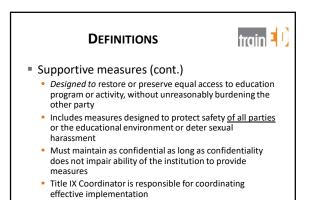
Deliberately indifferent

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 Response to sexual harassment is clearly unreasonable in light of the known circumstances

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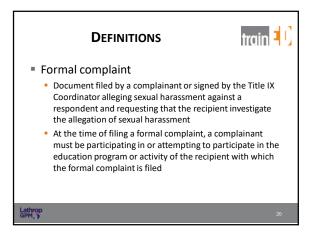
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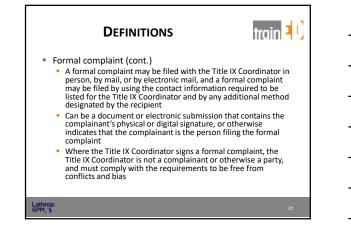
Complainant

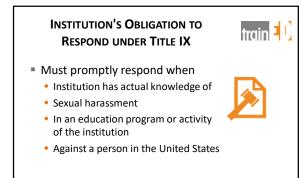
 Individual who is alleged to be the victim of conduct that could constitute sexual harassment

- Respondent
 - Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

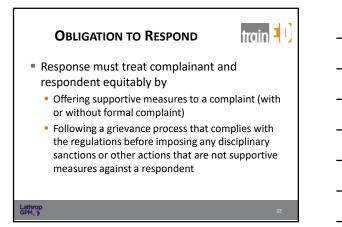
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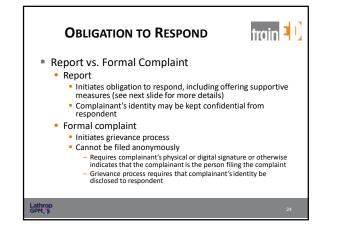












OBLIGATION TO RESPOND



- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
 - Discuss availability of supportive measures
 - Consider complainant's wishes with respect to supportive measures
 - Inform complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain the process for filing a formal complaint
- DOE may not deem an institution to have satisfied the institution's duty to not be deliberately indifferent based on institution's restriction of rights protected by the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment

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Emergency Removal	train 🏼 🕻
 Institution may remove a respondent from program or activity on an emergency basis Undertakes an individualized safety and risk a 	if institution:
 Determines that an immediate threat to the safety of any student or other individual arisi allegations of sexual harassment justifies rem 	physical health or ng from the
 Provides the respondent with notice and an challenge the decision immediately following 	
 Non-student employees may be placed on leave during grievance process 	administrative
 Provision does not modify any rights under Section 504 of the Rehabilitation Act, or th 	



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FORMAL GRIEVANCE PROCESS: BASIC REQUIREMENTS



- Must treat complainants and respondents equitably by
 - Providing remedies to a complainant where a determination of responsibility for sexual harassment had been made
 - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
 - May include the same individualized services as "supportive measures"
 - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
 - Following grievance process that complies with regulations before imposing disciplinary sanctions or other actions that are not supportive measures

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FORMAL GRIEVANCE PROCESS: BASIC REQUIREMENTS



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- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process
 - For or against complainants or respondents generally
 - For or against an individual complainant or respondent

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FORMAL GRIEVANCE PROCESS: BASIC REQUIREMENTS Presumption of non-responsibility Reasonably prompt timeframes

- asonably prompt timeframes Including timeframes for filing and resolving appeals and informal
- resolution processes • Temporary delay or extension of timeframes for good cause, which may include
 - nclude Absence of parties, a party's advisor, or witnesses
 - Concurrent law enforcement activity
 - Need for language assistance or accommodations of disability
- Must provide written notice to parties of the delay or extension and the reason for it
- Some timeframes are set by the regulations
 Describe range of possible sanctions and remedies or list the possible sanctions and remedies

FORMAL GRIEVANCE PROCESS: BASIC REQUIREMENTS



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- Describe appeal bases and procedures
- Describe range of supportive measures available to both parties

FORMAL GRIEVANCE PROCESS: BASIC REQUIREMENTS

Privileged information

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- Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
 - Institution cannot access, consider, disclose, or otherwise use a
 party's records that are made or maintained by a physician,
 psychiatrist, psychologist, or other recognized professional or
 paraprofessional acting in the professional's or
 paraprofessional's capacity, or assisting in that capacity, and
 which are made and maintained in connection with the
 provision of treatment to the party, unless the school obtains
 that party's voluntary, written consent to do so.

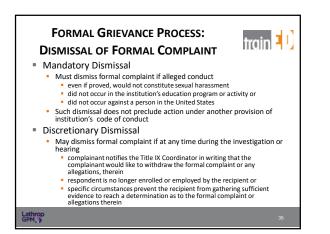
FORMAL GRIEVANCE PROCESS: TRAINING Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on Definition of sexual harassment Scope of the institution's education program or activity How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias Decision-makers must also receive training on Technology to be used at a live hearing Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

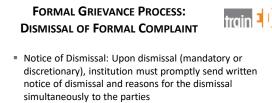
FORMAL GRIEVANCE PROCESS: TRAINING



- Investigators must also receive training on
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution's website

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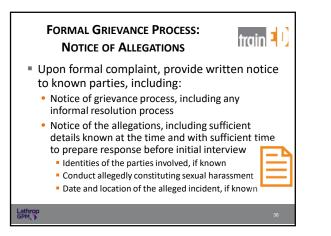
FORMAL GRIEVANCE PROCESS: CONSOLIDATION OF FORMAL COMPLAINTS



An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances

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FORMAL GRIEVANCE PROCESS: NOTICE OF ALLEGATIONS Upon formal complaint, provide written notice to both parties, including: • Statements that: • Respondent is presumed not responsible • Petermination of responsibility is made at conclusion of

- Determination of responsibility is made at conclusion of grievance process
- Right to advisor of choice who may be but is not required to be an attorney
- Parties may inspect and review evidence
- Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- Provide notice of *additional* allegations about the complainant or respondent that arise during process

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FORMAL GRIEVANCE PROCESS: DUAL ROLES



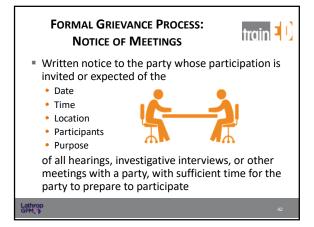
- Independent decision-maker
 - Title IX Coordinator and decision-maker must be different individuals
 - Investigator and decision-maker must be different individuals
 - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

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FORMAL GRIEVANCE PROCESS: OTHER REQUIREMENTS Burden of proof and gathering evidence is on the institution, not on the parties Equal opportunity to present fact and expert witnesses and other insultator, and expert witnesses

- and other inculpatory and exculpatory evidence

 May not restrict ability of either party to discuss the
- allegations or to gather and present relevant evidence Allow advisor of choice, who may be but is not
- required to be an attorney
 - May establish equal restrictions on advisors' participation





FORMAL GRIEVANCE PROCESS: OPPORTUNITY TO REVIEW AND RESPOND



- Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations
 - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
 - Must send to party and party's advisor in hard copy or electronic format
 - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

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FORMAL GRIEVANCE PROCESS: INVESTIGATION REPORT



- Fairly summarizes relevant evidence
- Send the report to the parties and the parties' advisors in an electronic format or hard copy
- Must send at least 10 days prior to a hearing
- Allow parties to respond to report in writing

FORMAL GRIEVANCE PROCESS: STANDARD OF EVIDENCE



- Preponderance of the evidence or clear and convincing
- Apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty
- Apply the same standard of evidence to all formal complaints of sexual harassment

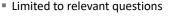
FORMAL GRIEVANCE PROCESS: LIVE HEARINGS - POST-SECONDARY ONLY



- Must provide live hearing
 - May establish rules that apply equally to both parties
 Permit each party's advisor to ask the other party and to be a set to
 - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions"
 Includes questions challenging credibility
 - Must be conducted "directly, orally and in real time"
 - Questions asked by party's advisor and never by a party
 - personally
- Must provide, without fee or charge to that party, a party without an advisor at the hearing "an advisor of the recipient's choice who may but is not required to be an attorney to conduct cross-examination on behalf of that party"

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FORMAL GRIEVANCE PROCESS: LIVE HEARINGS - POST-SECONDARY ONLY



- Only relevant cross-examination and other questions may be asked of a party or witness
- Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant
- If a question is excluded as not relevant, decisionmaker must explain the decision to exclude the question

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FORMAL GRIEVANCE PROCESS: LIVE HEARINGS - POST-SECONDARY ONLY



Complainant's sexual behavior or predisposition are not relevant unless:

- Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
- The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

FORMAL GRIEVANCE PROCESS: LIVE HEARINGS - POST-SECONDARY ONLY



If a party or witness does not submit to crossexamination at the live hearing, decisionmaker must not rely on any statement of that party or witness in making a determination on responsibility; decision-maker cannot draw any inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions

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FORMAL GRIEVANCE PROCESS: LIVE HEARINGS - POST-SECONDARY ONLY



- At request of either party, institution must provide for live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions
- Hearing may be conducted with all parties physically present in the same geographic location, or at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other
- Must create audio or audiovisual recording or transcript of any live hearing held and make it available to the parties for inspection and review

FORMAL GRIEVANCE PROCESS: SPECIAL CONSIDERATION K-12



 May include hearing, but do not need to follow hearing process outlined in regulations

Must:

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- Provide investigation report to parties before determination
 Provide opportunity for parties to submit written, relevant guestions that a party wants asked of the any party or witness
- questions that a party wants asked of the any party or witnessProvide each party with answers and allow additional, limited follow-up questions
- Restrict questions/evidence about complainant's sexual predisposition or prior sexual behavior (see slide 48)
- Must explain decision to exclude question(s) as not relevant

FORMAL GRIEVANCE PROCESS: WRITTEN DETERMINATION



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- Identification of the allegations potentially constituting sexual harassment
 Procedural steps since complaint
- Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
 Determination of responsibility
 - Any disciplinary sanctions imposed on respondent
 Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties
- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely

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FORMAL GRIEVANCE PROCESS: APPEALS Must be offered to both parties From a determination regarding responsibility

- From a recipient's dismissal of a formal complaint or any allegations therein
- Required bases:
 - Procedural irregularity that affected the outcome of the matter;
 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;
 - The Title IX Coordinator, investigator, or decision-maker 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;
 - · May offer an appeal equally to both parties on additional bases

FORMAL GRIEVANCE PROCESS: APPEALS Requirements Notify other party in writing when an appeal is filed Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing No conflict of interest or bias Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome Written decision describing result of appeal and rationale Simultaneous delivery of result to parties

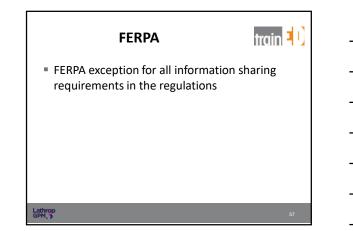
INFORMAL RESOLUTION



- May not offer informal resolution unless a formal complaint is filed
- May never require the parties to participate in an informal resolution process
- May not condition enrollment/continuing enrollment, employment/continuing employment, or enjoyment of any other right on waiver of the right to an investigation and adjudication of formal complaint
- May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student

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INFORMAL RESOLUTION	
 Any time prior to determination, may facilitate informal resolution process, such as mediation, if Provide parties with written notice disclosing 	
 Allegations 	
 Requirements of the informal resolution process including circumstances when it precludes the parties from resuming a formal complaint for the same allegations 	
 Provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint 	
 Consequences resulting from participating in the informal resolution process, including records that are maintained and could be shared 	
 Obtain parties' voluntary written consent to informal process 	
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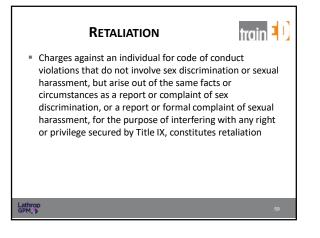


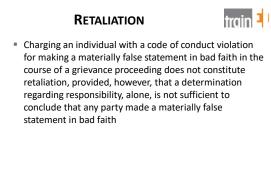
RETALIATION



- Retaliation prohibited against any individual for exercising Title IX rights:
 - No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

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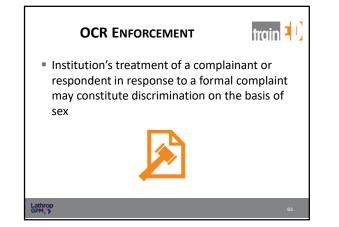
RETALIATION

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- The exercise of rights protected under the First Amendment does not constitute retaliation
- The recipient must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a grievance process
- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination (different than the sexual harassment grievance process)

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OCR ENFORCEMENT	train 💶
 If OCR finds that a recipient has discriagainst persons on the basis of sex in education program or activity under to therwise violated this part, such rectake such remedial action as OCR deenecessary to remedy the violation OCR will not use outcome of process of deliberate indifference, or otherwis of discrimination, solely because OCR reached a different conclusion in an inweighing of the evidence 	an this part, or ipient must ems as evidence ise evidence & would have



RELIGIOUS EXEMPTION

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- Institution that seeks "assurance of the exemption" may either
 - Submit a statement in writing identifying which provisions in the regulations conflict with a tenet of the religious organization; or
 - After DOE begins an investigation, raise the exemption in writing, regardless of whether the institution previously sought assurance of the exemption

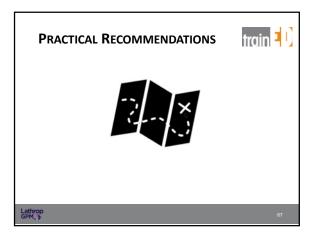


RECORDKEEPING

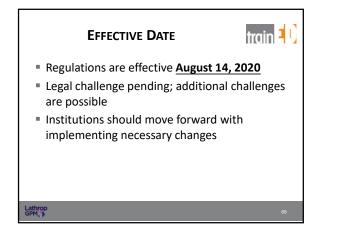


For 7 years, must maintain (cont.):

- Any actions taken (including supportive measures) in response to a report of sexual harassment
 - Basis for conclusion that response was not deliberately indifferent
 Measures were designed to restore or preserve equal access to
- educational programs and activities
 If supportive measures were not provided, document the reasons why such a response was not clearly unreasonable in light of known circumstances
- Recordkeeping does not prevent inclusion of additional details or explanations later











RECOMMENDATIONS frain

- Investigator
- Facilitator for informal resolutions
- Hearing panel officer/decision-maker(s)
- Appeal officer

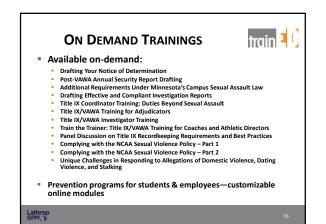








- Compliance Update: New VAWA Guidance Senior Leadership Training Transgender Students and Employees Training
 - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements Confidential Resources Training
- Attorneys Serving as Advisors
- Panel Discussion on Interviewing Survivors of Sexual Assault
- Fundamentals of FERPA



THANK YOU Irrain III Image: State of the s