

**Commonwealth of Massachusetts:  
The Community Colleges of  
Massachusetts**



**Title IX Coordinator “Train-the-Trainer”  
Presentation - Amendments to the *Policy on  
Affirmative Action, Equal Opportunity &  
Diversity (PAA)***

by Evan C. Bjorklund, *Associate General Counsel*

**November 30, 2020**



# Introduction



- **Background**
- **General Changes to new PAA via Regulations**
- **Roles for Title IX SH CP**
  - > **Title IX Coordinator/Investigator**
  - > **Decision Maker**
  - > **Advisor**
  - > **President**
- **Relevance**
- **Title IX Sexual Harassment Complaint Process**
- **Scenarios**
- **Updated Guidance**
- **Questions**
  
- **-don't make perfect enemy of the good; natural tensions (can't fully resolve rationale or position of DOE).**



# **Title IX Regulations – Obligations**



**“The final regulations specify how recipients of Federal financial assistance covered by Title IX...must respond to allegations of sexual harassment consistent with Title IX’s prohibition against sex discrimination.”**

**“ These regulations impose, for the first time, legally binding rules on recipients with respect to responding to sexual harassment, and the nature of the legal obligations imposed under these final regulations is similar in some ways, and different in some ways, to the way the Department approached this subject in its guidance documents.”**

**“As other commenters have pointed out, the final regulations place significant responsibilities on Title IX Coordinators.”**



# Complaint Procedures = 2 Processes



## Complaint Process:

- Informal resolution possible
- Follows single investigator process
- College has discretion to utilize when Title IX Formal Complaint requirements are not met.

## Title IX Sexual Harassment Complaint Process:

- Informal resolution possible
- Follows new process  
Investigative Report, Hearing,  
Written determination RE  
Responsibility, Appeal
- If requirements (next slide) met,  
this process must be used.



# Scope: Title IX vs. Title VII (et al.)



## **Title IX Sexual Harassment Complaint Process followed for all sexual misconduct if:**

- ❖ Formal Complaint:
  - a) Written complaint requesting action on behalf of College
  - b) Conduct occurred in College's education program or activity
  - c) In the United States
- ❖ Facts alleged plausibly meet definition of "Title IX Sexual Harassment" (*PAA pg. 16 - (C.) (6)*)
- ❖ May utilize "APPENDIX C" from the PAA

## **If neither exist, or other exclusions apply:**

- ❖ May be addressed under Complaint Process (no hearing)
- ❖ Would utilize definition of "sexual harassment" (*PAA pg. 14 - (C.) (5)*)
- ❖ May utilize "APPENDIX A" from the PAA



# Title-IX Sexual Harassment - Definition



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 (*Quid Pro Quo*);
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 (*AKA "Davis Standard"*); 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) (*AKA "VAWA Crimes"*)



# Title IX Sexual Harassment - Jurisdiction



By simultaneous written notice to the parties, the College ***must*** dismiss any Formal Complaint with regard to that conduct for purposes of Title IX Sexual Harassment, if the conduct alleged:

- Would not constitute Title IX Sexual Harassment as defined, even if proven;
- Did not occur in the College's education program or activity; or
- Did not occur against a person in the United States.

The College ***may*** dismiss any Formal Complaint for the purposes of Title IX Sexual Harassment if:

- A Complainant withdraws the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

*\*Any decision may be appealed consistent with the appeal procedure in Step 4 of the Title IX Sexual Harassment Complaint Process\**



# Title IX Sexual Harassment - Jurisdiction - SCENARIOS



A statement by a “student” is sent to the College’s general questions portal online. The Title IX Coordinator ultimately receives the statement that alleges “sexual harassment” on behalf of another student. The Complainant is not named, but the Respondent’s name is listed. Complainant asks for the College *“not to act on the information...but I just wanted to let someone at the College know.”* How would you proceed?

- Doesn’t constitute formal complaint (signed or otherwise; not asking College to take action)
- Obligation to investigate per PAA: *“the College shall take reasonable steps to investigate and respond to the complaint”*
- Reach out to Respondent for interview (“do you know anyone that would make these allegations”; draw from any context in Complainant’s statement – current student(s)?)
- If you are able to determine Complainant from Respondent, reach out to discuss PAA

What if Respondent is no longer a student? How would you proceed?

- Still obligation to investigate and possibly address with a Complaint under the Complaint Process.

Title IX Coordinator receives complaint alleging sexual assault. Complaint is hand written, lists Complainant’s name; asks the College to take action RE College program that took place abroad. What considerations exist?

- Does not matter that it isn’t on College’s Title IX SH Complaint form.
- Formal complaint? (is it plausible? Is not signed, but is submitted by complainant. Requests action inside program but outside of the U.S. – meet with Complainant)



# Title IX Coordinator/Investigator



## ❖ Serving as Title IX Coordinator and Investigator

### ❖ *Duties and Responsibilities:*

- Definition (*PAA pg. 19*)
- Maintain list of “*Confidential employees*” on Title IX webpage (*PAA pg. 10*)
- Designate Decision Maker (*PAA pg. 10*)
- Duties as described (*PAA pgs. 34-36*)
- Conduct Investigation - draft final investigative report (*PAA pgs. 36-36 and 50-51*)
  - ***Jump to - Model Memos/Letters***
- Consolidation of Complaints (*PAA pg. 50*)
  - ***Jump to - Model Final Investigative Report***
- “*The Title IX Coordinator (or designee) will be responsible for coordinating the hearing process...The duties of the Title IX Coordinator will include: scheduling the hearing; notifying the parties, advisors, and witnesses of the hearing; ensuring that the trained Decision Maker is provided with appropriate materials including a copy of the final investigative report and any exhibits; coordinating videoconferencing (if necessary); and securing a location for the hearing.*” (*PAA pg. 51*)
- Manage Interim Action and Emergency Removal claims ( *PAA pg. 45*) bias or conflict of interest claims at Step 2 (*PAA pg. 51*) and Jurisdiction related dismissals (*PAA pg. 51*)
  - ***Jump to - Model Memos/Letters***
- “*The Title IX Coordinator is responsible for effectuating any remedies including referral to appropriate College administrators as may be applicable.*” (*PAA pg. 53*)



# Title IX Coordinator/Investigator - SCENARIOS



If a claim of bias/conflict of interest is made against the Title IX Coordinator, must they appoint someone else?

- Not necessarily, must evaluate plausibility of claim.
- May serve as basis of appeal from Decision Maker's written decision (pg. 53)

If a claim of bias/conflict of interest is made by a party against the Coordinator's designation of Decision Maker, how do you proceed?

- Must evaluate plausibility of claim
- "If a Respondent or Complainant has a good faith belief that the individual selected as the Decision Maker has a specific bias or conflict of interest, they may file a request with the Title IX Coordinator ...for a replacement within two (2) calendar days of being noticed of the Decision Maker's identity. The Title IX Coordinator (or designee) shall review the request and make a decision in no more than three (3) calendar days..."

Should Title IX Coordinator serve as investigator? Decision Maker?

- Address DOE/OCR guidance
- Community college needs
- Gag orders?
- No-contact and retaliatory manner are the exceptions)



# Decision Maker



❖ Individual familiar with running a hearing (SCC Officer, SG Officer)

❖ *Duties and Responsibilities:*

- Definition (*PAA pg. 10*)
- Intake and review of final investigative report (*PAA pg. 51*)
- “*The Decision Maker shall be responsible for conducting the hearing.*” (*PAA pg. 51*)
- “*All procedural questions are subject to the final decision of the Decision Maker.*” (*PAA pg.51*)
- Conduct hearing consistent with “*In general, hearings will proceed as follows:* (*PAA pgs. 51-52*)

□ ***Jump to - Model Hearing Outline***

- “*The Decision Maker will make an official audio recording of the hearing.*” (*PAA pg. 52*)
- “*The Decision Maker controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Decision Maker's decisions in this regard are final.*” (*PAA pg. 52*)
- “*The Decision-Maker must issue a written determination regarding responsibility to all parties (and their Advisors) simultaneously, within ten (10) days of the hearing.*” (*PAA pg. 53*).

□ ***Jump to - Model Written Determination Regarding Responsibility***



# Decision Maker - SCENARIOS



Complainant purports that they will, but ultimately does not show to the hearing. What can Decision Maker rely upon in their written determination regarding responsibility?

- Complaint
- Other non-testimony based documents
- DOE blog and FAQ guidance

Decision Maker disagrees with Title IX Coordinator as to relevance of certain evidence; what considerations exist?

- Decision Maker will review all evidence (T-IX report has non-relevance section)
- Decision Maker has to ultimately make the credibility-relevant determination; uses the hearing to assist.
- Must list reasoning in written determination.
- Further Check/balance is option to appeal to the president.

How does Decision Maker manage disruptive or non-cooperating participants?

- The Decision Maker controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Decision Maker's decisions in this regard are final.
- If concern of Advisor ouster, then have Advisor ready, or reschedule hearing.



# Advisor



- ❖ If appointed by College... 1) NUP; 2) limited scope to questions and cross examination.
- ❖ No responsibility to train or support advisor of parties choice
- ❖ May provide support, accompany party to meetings/interviews, receives all correspondence after appointment/service date
- ❖ Adversarial with respect to their role in the hearing and in conducting cross examination
- ❖ Any Rules must apply equally to both parties' advisors
- ❖ *Duties and Responsibilities:*
  - Definition (PAA pg. 10)
  - “All parties (and their Advisors) are strictly prohibited from disseminating any of the evidence subject to inspection and review, or from using such evidence for any purpose unrelated to the Title IX Sexual Harassment Complaint Process.” (PAA pg. 51)
  - “If a party does not have an advisor present at the live hearing, the College will choose a trained member of the community, to conduct cross examination on behalf of that party.” (PAA p. 52)
  - “All advisors are limited to active participation in the question and follow-up cross-examination part of the live hearing. Further, Advisors are the only parties allowed to present questions (cross-examination or otherwise) to the Decision Maker.” (PAA p. 52)



# Advisor - SCENARIOS



As an Advisor what should I be prepared to do in my role at the hearing?

- Your goal is to ensure that you understand information contained in the report
- Review investigative report/evidence/corroborating information
- Then prepare questions for witnesses or other party, as well as cross-examination.

What if one parties' advisor is a trained attorney and the other is not?

- No responsibility to ensure competent of party-selected advisor.
- College-selected Advisor does not have to match qualifications/skills of other party-selected Advisor (no convo. between parties' Advisors; DM controls hearing and pace).
- “need not mean more than relaying that party’s questions to the other parties and witnesses. [t]hat function could therefore equate to serving as a party’s proxy, or advocating for a party, or neutrally relaying the party’s desired questions.” Id. at 30299,30340.

Party demands College-appointed Advisor upon filing complaint; must the College provide one?

- College-appointed Advisor only required for Title IX Sexual Harassment Complaint Process.
- Further, Scope limited to question asking purposes at the hearing.

What if party-selected Advisor leaves or is kicked out during the hearing?

- “if a party does not have an advisor present at the living hearing...”
- Safe play: Have an advisor prepared to step in if needed or reschedule.



# President



- ❖ Should remain out of the process to the extent possible prior to service in designated roles
- ❖ Complaints involving President
- ❖ *Duties and Responsibilities:*
  - *“Title IX Coordinator’s decision to implement an emergency removal or dismiss a Formal Complaint; or, the Decision Maker’s written decision.” (PAA pg. 53)*
  - *Scope of appeal for Title IX SH Complaint Process: “procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel (including the Decision Maker) had a conflict of interest or bias, that affected the outcome of the matter.” (PAA pg.53)*
  - *Scope of appeal for Complaint Process: “Where practicable, within five (5) days of receiving the appeal, the President shall issue a written decision simultaneously to all parties, accepting, rejecting or modifying the decision, describing the result of the appeal and the rationale for the result. The President’s decision is final provided that any corrective action and/or discipline imposed are subject to applicable collective bargaining agreements. If the President is the Respondent, then the Chair of the College’s Board of Trustees shall consider the appeal and issue the written decision.” (PAA pg. 53)*



# President - SCENARIOS



Complaint from student CCs President and others; what considerations exist?

- Do not respond back
- Likely does not rise to SCC issue
- Inform party confidentiality considerations

Does the President's Role differ in Complaint Process vs. Title IX Sexual Harassment Complaint Process; if so, how does it differ?

- Complaint process role remains the same. No new information in scope of review; no new grounds; and no appeal until the end of the process.
- T-IX SH CP includes additional appeal to emergency removal or to dismiss a formal complaint; scope of appeal limited to base(s): of procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel (including the Decision Maker) had a conflict of interest or bias, that affected the outcome of the matter.

An appeal in a Title IX Sexual Harassment matter is made to a President claiming that new evidence is discovered. However content/substance of appeal largely reiterates the appealing party's previous written responses. What should the president do?

- Issue letter confirming the findings and making any alterations to the recommendations.



# Informal Resolution



- ❖ “Where appropriate” (PAA pg. 47)
- ❖ Open or closed dialogue between the parties that allows for the airing of any misunderstandings or disputed issues
- ❖ The informal procedure shall not be used in an effort to resolve student allegations of any type of sexual harassment/violence asserted against an employee, or in cases involving sexual harassment/violence unless a Formal Complaint is filed
- ❖ If the parties accept the informal resolution, its terms shall be reduced to writing, signed by both parties, and the Affirmative Action Officer/Title IX Coordinator shall retain the document, with copies to the parties; thereafter, the matter shall be considered resolved between the parties.
- ❖ Mediation is one type of an informal resolution

## **Personnel File:**

*“In the case where the Respondent is an employee, prior to execution of a resolution, they will be notified that a copy of the informal resolution may be placed in their personnel file. The parties may request from the College that an informal resolution not be placed in the Respondent’s personnel file; however, the College retains the sole discretion to approve or to deny this request. In cases where such request is denied, each party reserves their right to withdraw from the informal resolution process and resume the Complaint process. All other documents related to the informal resolution of a Complaint shall be kept separate from the personnel file.” (PAA pg. 47)*



# Title IX Sexual Harassment Complaint Process



## **Step 1 – Investigation (PAA pgs. 50-51):**

- Discuss supportive measures with parties and notify them of the formal complaint (*5 days*). Respondent may respond (*5 days*).
- Conduct investigation by gathering evidence [relevant or not...exculpatory or inculpatory]; send to parties (*15 days*). Parties may respond (*10 days*).
- Draft Investigative Report that fairly summarizes the relevant evidence; send to parties (*10 days*). Parties may respond (*10 days*).
- Draft final investigative report that fairly summarizes the relevant evidence and responses [includes section on evidence deemed irrelevant by Title IX Coordinator]; send to parties and schedule hearing within 10 days (*10 days*).

## **Step 2 – Hearing (PAA pgs. 51-52):**

- Title IX Coordinator coordinates the hearing process. Decision Maker conducts the hearing.
- *“In general, hearings will proceed as follows:*
  - a. The Decision Maker shall summarize the Hearing Policy and allow the Title IX Coordinator the opportunity to briefly state the allegations and summarize the investigative report.*
  - b. Each party’s advisor will be given the opportunity to question the other party and any witnesses by presenting questions through the Decision Maker (including questions on credibility). If the Decision Maker determines a question is relevant, the other party will be asked to respond.*
  - c. The Decision Maker shall have a final opportunity to question the parties.*
  - d. The Decision Maker will conclude the hearing by informing the parties that they will issue a decision to the parties and their advisors within ten (10) days, and that it will be based upon a Preponderance of the Evidence standard (i.e.; more likely than not).”*



# Title IX Sexual Harassment Complaint Process (cont.)



## Step 3 – Review and Decision by the Decision Maker (PAA pg. 53):

- A written decision (10 days): *“The written determination must include — Identification of the allegations potentially constituting sexual harassment; A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; Findings of fact supporting the determination; Conclusions regarding the application of the College’s code of conduct to the facts; A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the Complainant; and The College’s procedures and permissible bases for the Complainant and Respondent to appeal. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.”*
- The Title IX Coordinator is responsible for effectuating any remedies and handling the referral to appropriate College administrators.

## Step 4 – Appeal to the President (PAA pg. 53):

- *“A party who is not satisfied with the Title IX Coordinator’s decision to implement an emergency removal or dismiss a Formal Complaint; or, the Decision Maker’s written decision may file an appeal with the President within five (5) days of receiving said decision, respectively on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel (including the Decision Maker) had a conflict of interest or bias, that affected the outcome of the matter. Where practicable, within five (5) days of receiving the appeal, the President shall issue a written decision simultaneously to all parties, accepting, rejecting or modifying the decision, describing the result of the appeal and the rationale for the result. The President’s decision is final provided that any corrective action and/or discipline imposed are subject to applicable collective bargaining agreements. If the President is the Respondent, then the Chair of the College’s Board of Trustees shall consider the appeal and issue the written decision.”*



# Relevance



## Relevance Explained:

- ❖ Logical connection between the evidence (Direct/Circumstantial) and facts at issue
- ❖ Assists in coming to the conclusion – it is “of consequence”
- ❖ Tends to make a fact more or less probable than it would be without that evidence
- ❖ Both inculpatory and exculpatory

## Questions/Exceptions:

- ❖ Relevance requirement = for all questions asked by Advisors
- ❖ Questions that are *not relevant* consist of...
  - I. Duplicative questions (questions already addressed previously during the investigation or earlier in the hearing)
  - II. Questions that attempt to elicit information about
    - a) Rape Shield--Complainant’s prior sexual history (exceptions)
    - b) Attorney- Client Privilege
    - c) Medical and/or Psychological Records



# Relevance - SCENARIOS



Decision Maker receives Advisor question at hearing RE Respondent's previous course evaluations. What should the Decision Maker consider?

- Do these facts have the potential to describe or explain an event or incident being investigated?
- Framework: inspect evidence>review complaint>disproves or proves an incident/allegation>make determination

A student files a Title IX Sexual Harassment Formal Complaint claiming that they were stalked by the Respondent, also a student, during the week of Thanksgiving, 2020. The Respondent denies all allegations and in their reply to the Formal Complaint, they provide receipts of flights and ubers and screenshots of them out of state during the week of Thanksgiving 2020. Are the receipts and photos relevant to the investigation being conducted on this matter?

- Upon inspection of evidence (receipts and pictures), and the allegations in the complaint and the Respondent's response (stalking elements), the evidence may be used to establish that the stalking alleged (in person) did not take place.
- Yes, stalking may be done through a third party or mode, but this is not alleged.



# Cross Examination



## Cross Examination at Hearings:

- **Discussion:** Purpose of cross examination

## Decision Maker's Role in the Process:

- Decision Maker determines relevance (“gatekeeper”) at hearing
- Decision Maker explanation only required where question not permitted
- **Discussion:** Decision Maker/Title IX Coordinator relevance not aligned? Advisor objections to Decision Maker's relevance determination?

## Impact of not Appearing/Submitting to Cross Examination:

- Exclusion of statements that make a factual assertion
- **Discussion:** If party appears but only answers certain questions?



# Cross Examination (cont.)



- ❖ *If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. **§106.45(b)(6)(i)***
- ❖ ***§106.45(b)(6)(i)** does not apply to evidence that does not constitute a person's intent to make a factual assertion: The prohibition on reliance on "statements" applies not only to statements made during the hearing, but also to any statement of the party or witness who does not submit to cross-examination. "Statements" has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person's intent to make factual assertions, or to the extent that such evidence does not contain a person's statements. **Page 1181 of the Preamble to the Rule***
- ❖ *For example, where a complainant alleges that the respondent said to the complainant: "If you go on a date with me, I'll give you a higher grade in my class," and at the postsecondary institution's live hearing, the respondent does not submit to cross-examination, then § 106.45(b)(6)(i) does *not* preclude the decision-maker from relying on *the complainant's testimony* that the respondent said those words to the complainant. The words described by the complainant, allegedly attributed to the respondent, are themselves the misconduct that constitutes sexual harassment under § 106.30 (i.e., a recipient's employee conditioning an educational benefit on participation in unwelcome sexual conduct, often referred to as *quid pro quo* harassment) and are not the respondent's "statement" (i.e., the respondent's intent to make a factual assertion). **Office for Civil Rights Blog – 20200522 (5/22/20)***
- ❖ ***Discussion:** Witness statements.*



# Cross Examination - SCENARIOS



As Advisor for the Respondent Professor Moe, what would you ask of the Complainant and Witnesses 1 and 2 as questions?

- Complainant-
- Witness 1-
- Witness 2-

As Advisor for the Complainant student, what would you ask of the Complainant and Witness 1 and 2 on cross examination?

- Complainant-
- Witness 1-
- Witness 2-

Respondent Professor Moe does not submit to cross examination during the hearing. May the Decision maker use any of the following as a basis for their decision:

- Hotel room receipt? Yes.
- Previous student evaluations of Professor Moe? No.



# SCENARIO #1



Student completes T-IX SH Complaint Form, alleges dating violence and asks for “*closed*” *informal resolution*.” At the bottom of the complaint form, the Complainant student states “*I do not want the college to take any action or for me to be identified.*” Neither Complainant student nor Respondent student are responding to communications. How should the Title IX Coordinator/Investigator proceed?

- Can proceed with informal resolution (student on student); “where appropriate.”
- Request not to investigate, but T-IX SH Complaint Form used; hence, ask from student is contradictory (you must seek the clarity).
- Used complaint to direct investigation. Might lead to jurisdiction dismissal

TWIST- What if we do hear back from both parties?

- Still must resolve complainant inconsistencies.
- May proceed under T-IX SH Complaint Process, OR possibly under Complaint Process.



## SCENARIO #2



Employee files a complaint listing all protected categories (sex, race, age, disability, etc.) against their supervisor. Later that week, other employees that report to the Respondent meet with you and seek to file similar complaints against the same the same Respondent. How should the Title IX Coordinator/Investigator proceed?

- Determine which Process to use of the Complaint Procedures
- Discretion to deny complaint's that do not provide actual knowledge; plausible facts; formal complaint, or other jurisdiction factors
- Ability to consolidate the cases
- Direction to other polices (here CBA or NUP...for students...student grievance process of student code of conduct referral

TWIST – Employees contact President/Board members RE their dissatisfaction. How should the Title IX Coordinator/Investigator proceed?

- Reroute to Title-IX Coordinator and Investigator (no special promises; integrity of process; preserve president's role



## SCENARIO #3



A student files a complaint using the PAA's Affirmative Action Discrimination Complaint Form (Appendix A) alleging sexual assault against a staff member. Upon meeting with them, they describe facts alleging severe and pervasive and objectively offensive sexual conduct against their former professor and advisor, and took place the prior semester (off campus). Upon meeting with the student you realize that no recent interactions exist between the parties, but the Complainant is uncomfortable passing the Respondent in hallway. Further the Respondent recently received an anonymous letter stating *"If you report me, I will make your life worse."* How should the Title IX Coordinator/Investigator proceed?

- Used complaint process form, but this is effectively a formal complaint (ask who, what, when, where, how re assault)
- No time limit on conduct for t-9 sh purposes; possibly for Complaint Process
- Seems outside a program, but should consider advisor connection.
- Seems over now but plausibly continuing



## SCENARIO #4



Student on student allegations of domestic violence come to you from a faculty member who took a detailed intake from the student. The Complainant is a current student, the other left last semester only, 20 days ago. The faculty member would like to be involved in the investigation as they promised the student they would help ensure the matter is resolved. How should the Title IX Coordinator/Investigator proceed?

- Conversation with faculty member re funneling complaint to coordinator for intake (don't over promise)
- Meet with student, determine filing of complaint? If not, PAA still requires investigation
- Elements for domestic violence present?
- Determine which process per the Complaint procedures
- No longer student so Title IX SH Complaint Process may be compromised; within 30 days for Complaint Process

Assuming hearing takes place, may Complainant's advisor be faculty member?

- Yes, no obligation for a bias free Advisor if student chooses them.
- No obligation for College to train student-chosen Advisor.



**Thank You!**



## QUESTIONS?

For additional information, please contact the Massachusetts Community Colleges' General Counsel's Office at 781-275-9400 or please visit the U.S. Department of Education's website at:

<https://sites.ed.gov/titleix/policy/>