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# Part One

*Title IX Harassment –  
Where We Have Come From*

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# Brief History: Prior OCR Guidance

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During the Obama Administration, the 2011 Dear Colleague Letter and 2014 Q&As establishedq 0.24 3 (m 3 3brim -4 4 3 (t) 4(es) 5 3fo (r) -4 3lrrm -4pedliac(r) (e,(r)) 3 3c(r) 4 (l) 3u(r) -4(e

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# The Title IX Regulations

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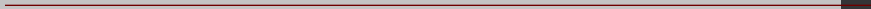
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## The Title IX Regulations -

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# Whe e Doe Title IX Appl : Ed ca ion P og am and Ac i i ie

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## How is Title IX Sexual Harassment Defined:

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### Sexual Assault

#### ! Forcible Sex Offenses

- 1) Forcible rape (except statutory rape): The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly

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## Definitions: Domestic Violence

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- ! Domestic violence assault
- ! Domestic violence criminal threatening
- ! Domestic violence threatening
- ! Domestic violence stalking
- ! Domestic violence reckless conduct

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## Definition: Stalking

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- ! Unwanted, intrusive, and frightening communications by phone, mail, and/or email
- ! Repeatedly leaving or sending unwanted items such as gifts
- ! Following or waiting for a person at places such as home, school, or work

## Definition: Retaliation

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## Other Important Definitions: Consent

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*Words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective Consent cannot be gained by Force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the Respondent knows or reasonably should have know of such Incapacitation. The use of alcohol or other drugs will never function to excuse behavior that violates this Policy. Effective Consent is also absent when the activity in question exceeds the scope of Effective Consent previously given, including where consent was given to certain sexual activity under certain conditions (for example, with the use of a barrier method of birth control) and the activity in question violates any such conditions. In addition, certain states have designated a minimum age under which a person cannot give Effective Consent.*

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## Other Important Definitions: Incapacitation

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- *The physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, Incapacitation is determined by how the alcohol [or other drug] consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments.*

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## Other Important Definitions: Force and Coercion

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- *Physical force, violence, threat, intimidation or coercion.*

- *The improper use of pressure to compel another to engage in or continue sexual activity against their will, including duress, cajoling, manipulation, and blackmail. Coercion occurs when a Respondent keeps pressuring the Complainant to acquiesce to sexual activity even after the Complainant has made clear that the pressure is unwelcome.*

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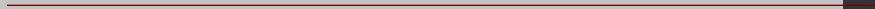
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## To Summarize: What Conduct is Prohibited

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## Formal Complaint,

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## Alternative Resolution

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- Title IX regulations permit an Informal/Alternative Resolution Process if:
  - ! Formal complaint is filed.
  - ! Agreed to in writing by both parties, and the Title IX Coordinator believes the circumstances are appropriate.
- Exception: Cases alleging sexual harassment by an employee against a student may not be resolved by Alternative Resolution.
- Bowdoin Policy:
  - ! Facilitated process.
  - ! Detailed notice of allegations, process and potential outcomes, rights to withdraw; and identification of "presiding officer."
  - ! The parties will never appear simultaneously or in person together. The Title IX Coordinator will request proposed measures to resolve the matter from both parties and share them with the other for consideration. Measures must relate to Bowdoin College's Education Program or Activity, including but not limited to: accommodations to living, academic, or employment situation; and limitations of contact between the parties. The presiding officer will review any measures the parties agree to for suitability.

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## Alternative Resolution,

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## In a Nutshell, What Does the Bowdoin Formal Complaint Procedure Look Like?

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- - ! Dean of Students (student cases).
  - ! Vice President/Dean of Academic Affairs in consultation with Vice President Human Resources (faculty cases); or
  - ! Appropriate Senior Officer in consultation with Vice President Human Resources (staff cases).
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# Investigation of Formal Complaints

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## Next – The Live Hearing

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## Live Hearing,

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- Parties must have an advisor at the live hearing; an Advisor may be an attorney. If a party does not have an Advisor for the live hearing, the Title IX Coordinator will appoint an advisor for the party (at no cost).
- Advisors will not be permitted to make opening or closing statements, but parties may, if they wish. Such statements will be directed to the Hearing Officer, and not an opposing party.
- The Title IX regulations specify that a party's advisor (and not the party) may cross-examine the other party and the witnesses.
- All evidence gathered in the investigation that is directly related to the allegations raised in the formal complaint, and which the investigator provided to the parties prior to the hearing, will be available at the hearing for purposes of reference and cross-examination.

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# Cross-Examination

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- The Department of Education/OCR view the cross-examination requirement as a critical factor in providing due process to parties.
- Cross-examination is often adversarial, particularly where the

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## Other Considerations

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# The Decision and Outcome Letter

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- Following objective consideration of all the relevant evidence (including cross-

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# Appeals

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- - ! Title IX Coordinator's decision to dismiss a Formal Complaint; and
  - ! Decision Makers' decision.
- - ! Procedural irregularity that affected the outcome of the matter;
  - ! New evidence that was not reasonably available at the time of the decision that could affect the outcome of the matter; or
  - ! The Title IX Coordinator, investigator or a decision maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individually Complainant or Respondent that affected the outcome of the matter.
  - ! An appeal must be submitted in writing within five (5) calendar days of receiving the determination, stating the grounds for the appeal and including any relevant supporting documentation.

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# Appeals,

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Appeals must be submitted to:

Dean of Students for dismissal of formal complaint in cases involving Student Respondents.

To the Student Appeals Committee, via its chair, the Dean for Student Affairs, for cases

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## Conflict of Interest & Bias

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## What is a Conflict of Interest or Bias?

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# Conflict of Interest/Bias,

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