



Annual

TITLE IX TRAINING

OCTOBER 2023



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JURISDICTION &
KEY TITLE IX DEFINITIONS**



**Part II:
CLAFLIN UNIVERSITY'S
TITLE IX POLICY**



**Part III:
SERVING IN TITLE IX ROLES
WITH IMPARTIALITY**



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PROPOSED CHANGES FOR 2023**

TRAINING AGENDA

Claflin University's Title IX Policy

PART TWO



TITLE IX COORDINATOR

The Title IX Coordinator is responsible for coordinating Claflin's efforts to comply with its responsibilities under Title IX of the Education Amendments Act of 1972 and federal regulations issued thereunder (collectively, "Title IX").

The Title IX Coordinator is designated and authorized by Claflin University to facilitate grievance procedures and grievance processes under Claflin's Title IX Policy.

Absent a conflict of interest, the Title IX Coordinator for Claflin University is:

Shirley Biggs

Phone: (803) 535-5268

E-Mail: confidential@claflin.edu

**Address: 400 Magnolia St.,
Orangeburg, SC 29115
Tingley Hall, Floor 1, Suite 4**

MECHANICS OF THE TITLE IX POLICY

Clafin's Title IX Policy prohibits all forms of sex discrimination, including sexual harassment, that occur against persons in the United States with respect to any of Clafin's education programs or activities.

Other University policies address sexual misconduct to the extent such conduct falls outside the scope of conduct prohibited by the Title IX Policy.

Clafin reserves the right to address under other policies any misconduct that is outside the scope of Title IX's concept of "sexual harassment."



FUNDAMENTAL PRINCIPLES

Claflin's Title IX Policy requires equal treatment for all parties.

Reliance on sex stereotypes is prohibited.

Due process must be respected and provided in all procedures and processes under the Title IX Policy.

Claflin will treat Complainants and Respondents equitably by offering to Complainants supportive measures, and by following a grievance process that complies with Section IV of the Title IX Policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

KEY DEFINITIONS: “ACTUAL KNOWLEDGE”

- The only persons who can receive “actual knowledge” of a report of sex discrimination, including sexual harassment, under Title IX are:
 - Individuals identified as Title IX Coordinator under Clafin’s Title IX Policy, and
 - Clafin’s President
- When other employees of Clafin University become aware of sex discrimination, including sexual harassment, they should report it to the appropriate Title IX Coordinator, but Clafin’s obligation to initiate grievance procedures are not triggered until “actual knowledge” occurs.



TITLE IX – TIMING CONSIDERATIONS

An individual can make a report of sexual harassment to the University at any time.

The “actual knowledge” (i.e., notice to Title IX Coordinator or University President) of sexual harassment triggers these response obligations:

- Promptly contact the complainant.
- Offer supportive measures.
- Consider the complainant’s wishes with respect to supportive measures.
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.
- Explain how to file a formal complaint.

TITLE IX POLICY: REPORTING PROCEDURES

- Any person can make a report of sex discrimination, including sexual harassment, under Claflin's Title IX Policy.
- When the University's Title IX Coordinator or President has actual knowledge of a sexual harassment allegation, the grievance procedures under the Title IX Policy are triggered.
- All other supervisory employees and faculty of the University must report sexual harassment to the Title IX Coordinator.
- A complainant does not have to file a formal complaint in any case where a report of sexual harassment is made.
- Without a formal complaint, no Title IX investigation will occur under the Title IX Policy, but supportive measures will be offered and Claflin may address the reported conduct under its other policies.



The standard of proof identifies the level of evidence needed to cause a hearing officer to conclude that the policy has been violated.

The standard of proof that applies to the Title IX Policy is the **PREPONDERANCE OF THE EVIDENCE** standard.

Under this standard, the evidence must be sufficient to cause the hearing officer to believe that it is “**MORE LIKELY THAN NOT**” that a violation of the Title IX Policy occurred.

TITLE IX POLICY: STANDARD OF PROOF

SUPPORTIVE MEASURES

Definition. The term “**supportive measures**” refers to non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Purpose. Supportive measures should be designed to restore or preserve equal access to Clafin University’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Clafin’s education environment, or deter sexual harassment.

SUPPORTIVE MEASURES

Confidentiality. The Title IX Coordinator and other Clafin employees must treat supportive measures confidentially.

Coordination and Implementation. Regardless of when supportive measures are made under the Title IX Policy, the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

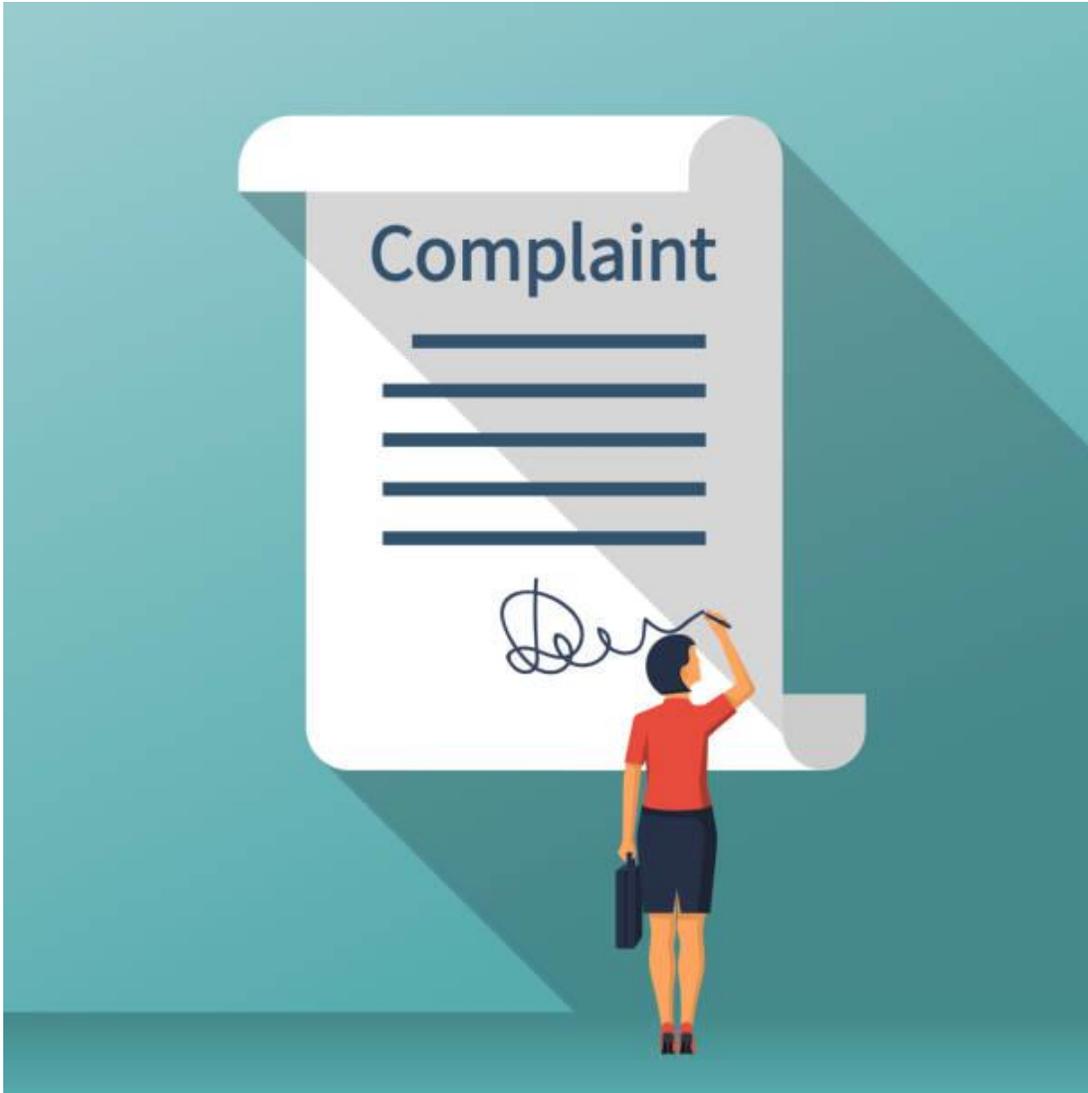
EXAMPLES OF SUPPORTIVE MEASURES

No-Contact Orders	Restricting contact between the parties by issuing a “No Contact” Order, or mutual restrictions on contact between the parties;
Time Extensions	Providing an extension of time or other course-related adjustments;
Schedule Modifications	Modifying work or class schedules;
Campus Escort	Providing campus escort services;
Location Changes	Changing work or housing locations;
Leave of Absence	Offering leaves of absence;
Increased Security	Increasing security and monitoring of certain areas of the campus;
Counseling	Providing counseling and/or medical services;
Academic Support	Providing academic support service, such as tutoring; and
Withdrawals/Re-takes	Arranging for complainant/respondent to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the academic record.

FORMAL COMPLAINTS

Clafin's Title IX Policy defines "formal complaint" as a document alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment where such document is:

- Filed by a complainant with the Title IX Coordinator, or
- Signed by the Title IX Coordinator



FORMAL COMPLAINTS FILED BY THE COMPLAINANT

Standards that must be satisfied when a complainant files a formal complaint:

- The complainant must be **participating, or attempting to participate in**, the education program or activity of the University.
- The formal complaint must be **filed with the Title IX Coordinator**. It can be filed:
 - in person,
 - by mail,
 - by electronic mail, or
 - by using the contact information for the Title IX Coordinator in the University's Title IX Policy.
- The formal complaint must be **signed physically or digitally by the complainant** or must otherwise indicate that the complainant is filing the formal complaint.
- The formal complaint must **include allegations that, if true, would constitute sexual harassment** as defined under Title IX.

FORMAL COMPLAINTS SIGNED BY THE TITLE IX COORDINATOR

In deciding whether to sign a formal complaint, the Title IX Coordinator will consider these factors:

- the severity and pervasiveness of the alleged sexual harassment;
- any pattern of alleged misconduct attributed to the Respondent (e.g., serial predation);
- the risk of serious harm to any student, employee or other individual associated with the University;
- whether the complainant's allegations involved violence, threats, use of weapons, or similar factors;
- whether the complainant's allegations have prompted the involvement of law enforcement and/or criminal proceedings; and/or
- any other factor, whose consideration is permitted by applicable law, that directly or indirectly implicates the University's interests in providing a safe and productive learning environment.

TITLE IX RESPONSE TO A FORMAL COMPLAINT

Upon the filing or signing of a formal complaint, the Title IX Coordinator takes the following actions:

- Perform a conflict-of-interest analysis.
- Perform a jurisdictional analysis.
- Provide notice of allegations to the respondent.
- Offer supportive measures to the respondent (note: such supportive measures should already have been offered to the complainant).
- Assign an investigator (who does not have a conflict of interest).
- Identify the appropriate decision-maker.
- Determine whether emergency removal or admin leave should occur.



A case should be investigated and adjudicated within 90 days of the date on which a formal complaint is filed by a complainant or signed by the Title IX Coordinator.

- The Title IX Coordinator can extend timelines for good cause.
- The Title IX Coordinator will provide written notice to the parties explaining the reason for any extension.

JURISDICTIONAL ANALYSIS

When analyzing jurisdiction, the Title IX Coordinator should do the following:

- Treat the allegations in the formal complaint as true (i.e., ask the question: *if true, would the alleged conduct constitute “sexual harassment”?*)
- Analyze the alleged behavior under each prong of the definition of “sexual harassment” to determine coverage:
 - Bargaining conduct constituting *quid pro quo* harassment;
 - Severe, pervasive and objectively offensive conduct; and
 - Certain criminal conduct: sexual assault, stalking, domestic violence, dating violence

REMEMBER: “on the basis of sex” must be satisfied under all prongs of the sexual harassment definition.

Confirm the location where the harassment allegedly occurred.

Mandatory Dismissal.

The Title IX Coordinator must dismiss a formal complaint insofar as it contains allegations that fit into any of the following categories:

- Conduct that would not constitute sexual harassment under Title IX
- Conduct that did not occur in the University's education program or activity
- Conduct that did not occur against a person in the United States

TITLE IX "MANDATORY DISMISSALS"

Permissive Dismissal.

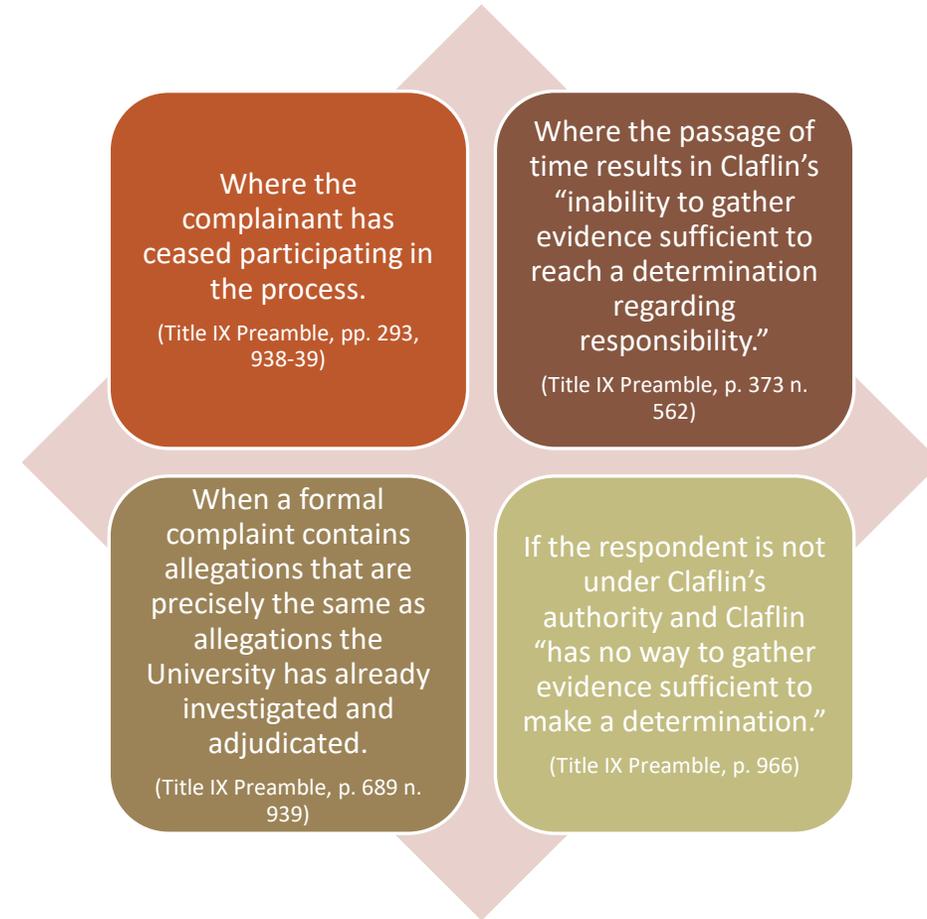
The University has discretion to dismiss a formal complaint (or any part thereof) at any time (during an investigation or hearing) for the following reasons:

- The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
- The respondent is no longer enrolled or employed by the University.
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

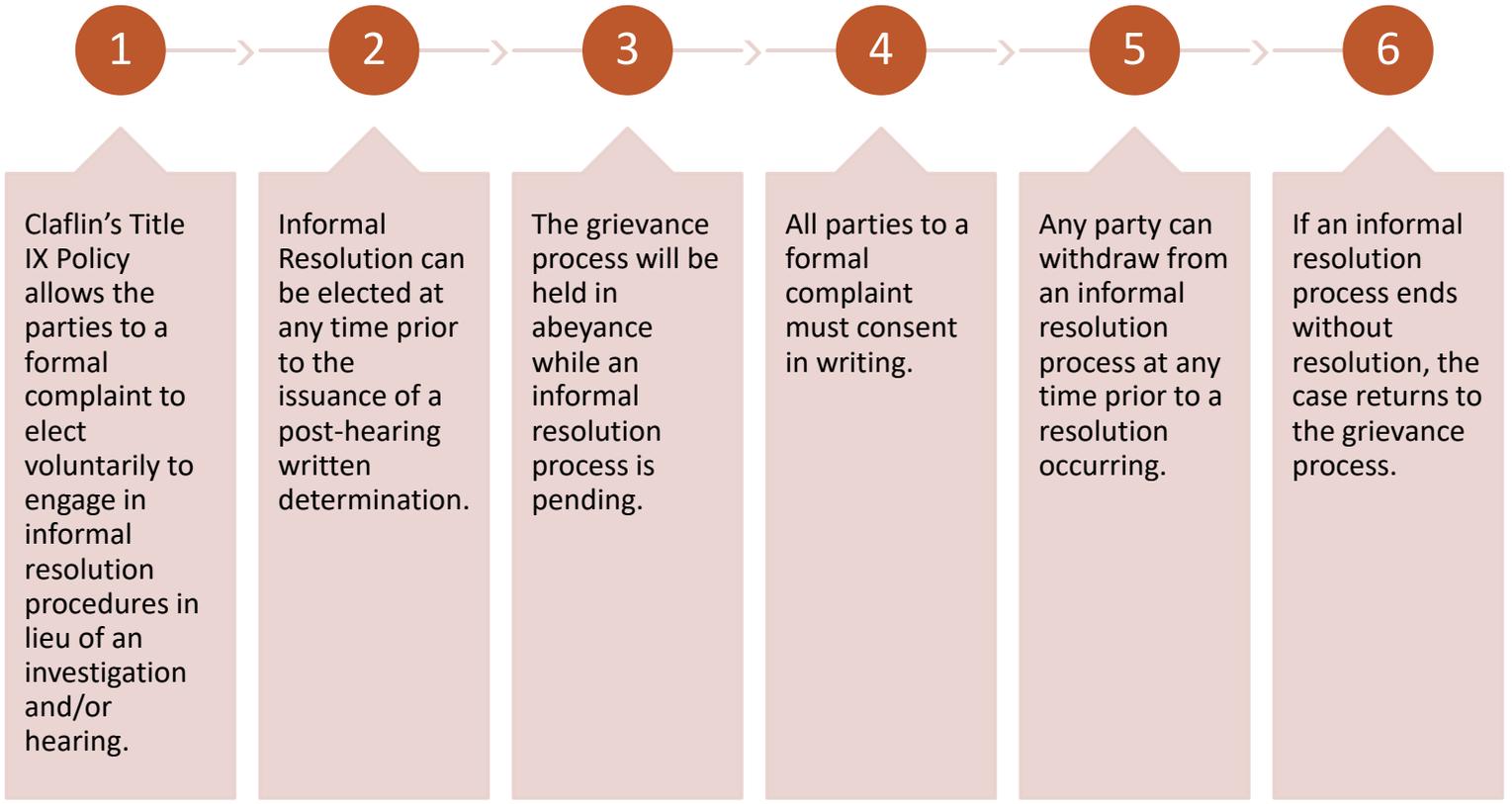
Case Transfer.

When deciding to dismiss a formal complaint, the Title IX Coordinator should transfer the dismissed allegations to the University's Student Conduct office or Human Resources if such allegations may implicate policies administered by either of those departments.

TITLE IX "PERMISSIVE DISMISSALS"



EXAMPLES OF "SPECIAL CIRCUMSTANCE" DISMISSALS



INFORMAL RESOLUTION OPTION

TITLE IX – INVESTIGATION STAGE



A conflict-free investigator will be assigned to a case by the Title IX Coordinator.

The investigator is responsible for collecting and considering all available, relevant evidence. The investigator must perform an **objective evaluation** of all relevant evidence.

The investigator must give each party equal opportunities to present and inspect evidence collected.

All persons involved with an investigation must treat the investigator (and all other Title IX team members) with dignity and respect.

All persons involved with an investigation must maintain professional decorum throughout the investigation.

No threats of violence or other harm should be tolerated at any time during an investigation.

TITLE IX – INVESTIGATION REPORT



- ❑ Before an investigation report is completed, the investigator must allow the parties (and their advisors, if any) to inspect all of the evidence collected in the investigation with **at least 10 calendar days** to submit a written response to such evidence.
- ❑ Following that inspection stage, the investigator will prepare an investigation report fairly summarizing all relevant evidence collected in the investigation.
- ❑ The investigator must send the investigation report to the parties and their advisors at least 10 calendar days prior to any hearing on a formal complaint for their review and written response (if they choose to submit one).
- ❑ The investigator must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- ❑ Any party whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.

ROLE OF ADVISOR

Throughout the Title IX grievance process, a Complainant or Respondent may have an Advisor present at any meeting or proceeding related to the investigation or grievance process.

The Advisor may be provided by the University or may be an advisor of the Party's choosing.

- A Party may decide not to use an advisor, except for the hearing.
- The Advisor may be an attorney (but is not required to be).
- University-provided Advisors are trained on the grievance process.
- The Advisor may not be a fact witness or otherwise have any conflicting role in the process.

SERVING AS AN ADVISOR

Advisors may participate in the Title IX process in an advisory capacity, but they may not take part directly in the investigation, hearing, or appeal, with the exception of conducting cross-examination during a hearing:

- Advisors may engage in cross examination of the other Party and Witnesses, but may only ask relevant questions.

If a Party wishes to speak privately with their Advisor during the investigation or hearing, they may request a brief recess from the meeting or proceeding.

The University has the right to determine what constitutes appropriate behavior on the part of an Advisor.



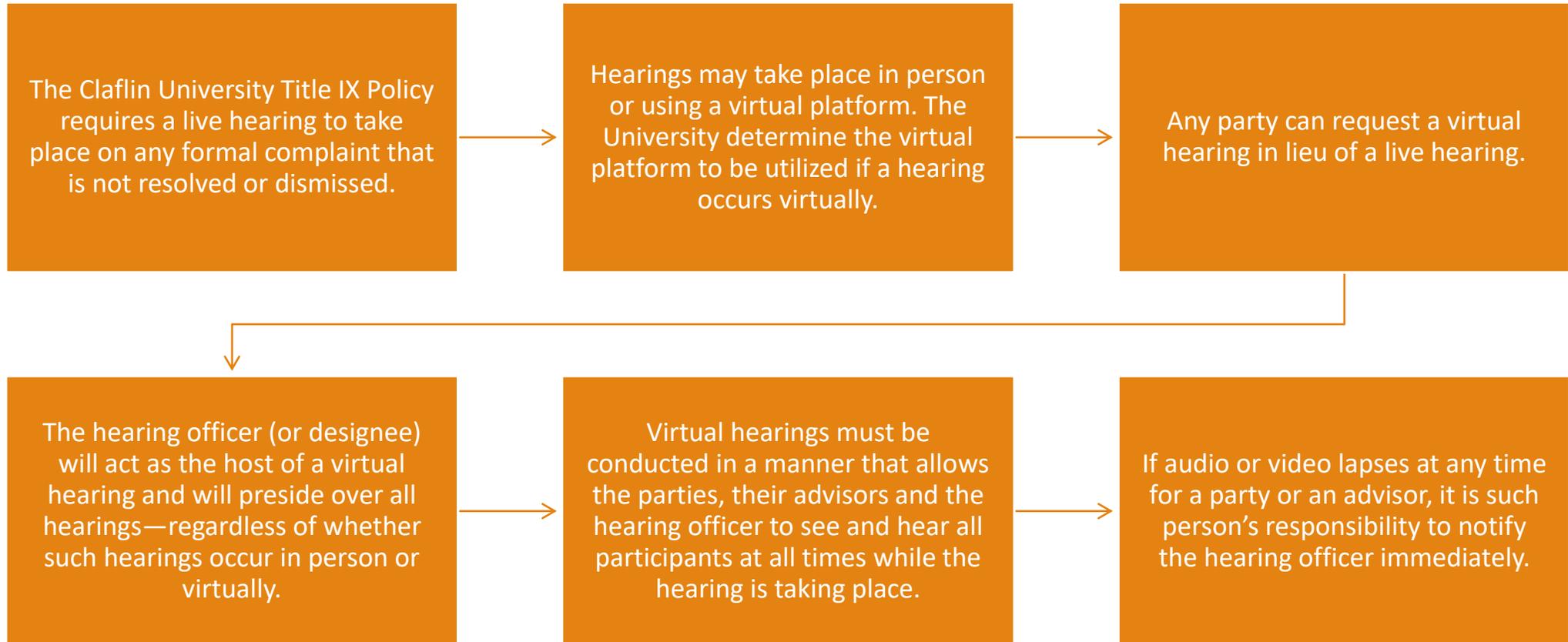
ROLE OF HEARING OFFICER

The hearing officer is the decision-maker for all Title IX cases.

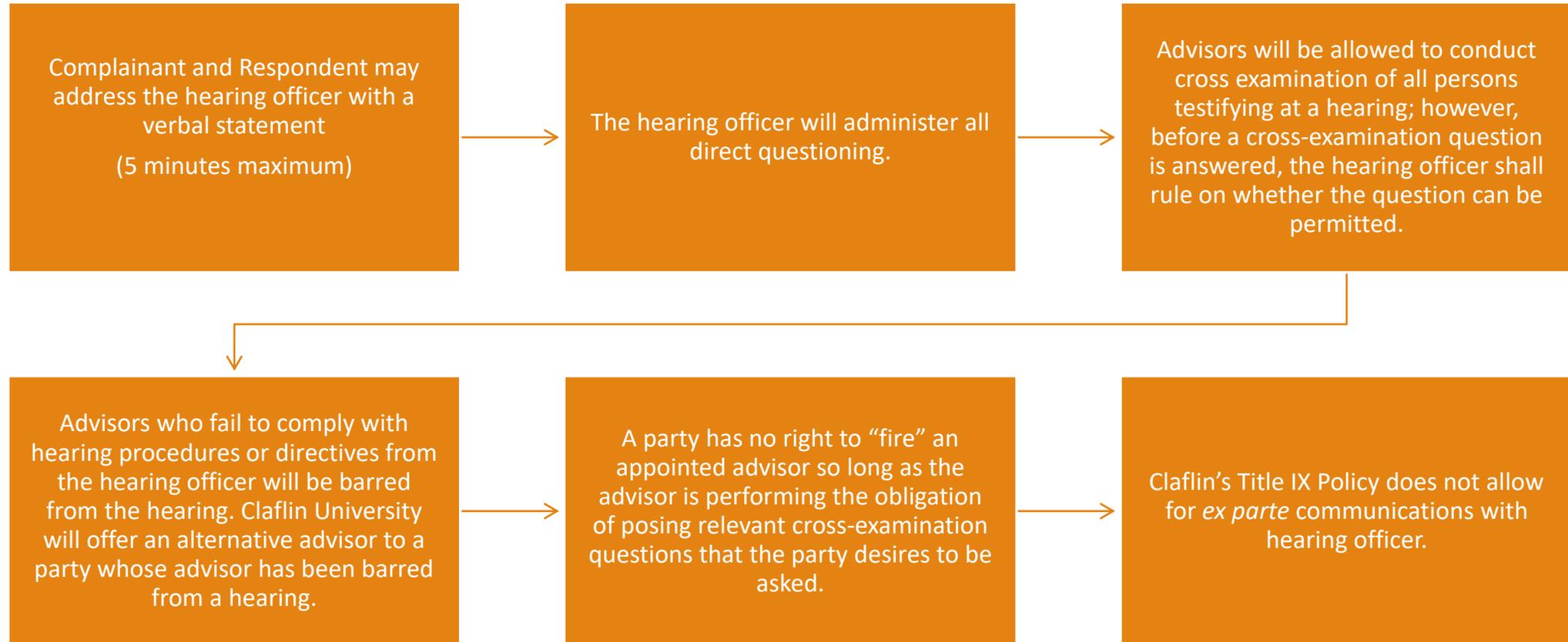
In preparation of a hearing, the hearing officer should complete the following steps:

- Analyze and disclose any conflict of interest
- Review the hearing packet (which the Title IX Coordinator will provide) prior to the hearing:
 - ✓ Investigation Report
 - ✓ Statements
 - ✓ Incident Report(s)
 - ✓ Letters
 - ✓ Guidelines for Hearing
- Give both parties (and their advisors) an equal opportunity to attend a pre-hearing conference to discuss hearing procedures and expectations.

TITLE IX – HEARING STAGE



TITLE IX – HEARING PROCEDURES



RELEVANT EVIDENCE



Evidence that is inadmissible under the Federal Rules of Evidence (FRE) is admissible in a Title IX hearing so long as it is relevant (except categories specifically excluded by the regulations).

Although FREs are persuasive authority, evidence that would not be admissible under the Federal Rules of Evidence should be given little weight by the Hearing Officer.

Strict adherence to the Federal Rules of Evidence is not required.

Common objections:

- hearsay
- unfair prejudice
- settlement negotiations
- character evidence
- prior bad acts
- lay witness opinion
- argumentative

RULING ON CROSS-EXAM QUESTIONS

The hearing office will permit all questions seeking “relevant” evidence, EXCEPT:

- 1) Questions seeking legally privileged information will not be permitted;
- 2) Questions about a complainant’s sexual predisposition will not be permitted, and
- 3) Questions about a complainant’s prior sexual behavior will not be permitted unless such questions are:
 - a) offered to prove that someone other than the respondent committed the alleged sexual harassment, or
 - b) focused on sexual behavior between the complainant and the respondent and offered to prove consent.



RULING ON CROSS-EXAM QUESTIONS

- Hearing Officer will provide a brief explanation for each ruling on whether a question will be permitted.
- Title IX regulations do not require Hearing Officer to give a lengthy or complicated explanation of a ruling on whether a question will be allowed.
- Instead, it is sufficient, for example, to explain that:
 - ❑ *A question is irrelevant because the question calls for prior sexual behavior information without satisfying one of the two applicable exceptions; or*
 - ❑ *Because the question asks about a detail that is not probative of any material fact concerning the allegations, it is irrelevant.* Title IX Preamble, p. 1161



If a Party or Witness does not submit to cross-examination at the live hearing, the Hearing Officer may rely on any statement made by that Party or Witness in reaching a determination regarding responsibility.

However, the Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness' absence from the live hearing or refusal to answer cross-examination or other questions.

REFUSAL TO SUBMIT TO CROSS-EXAM

TITLE IX POST-HEARING WRITTEN DETERMINATION

The hearing officer will consider the evidence presented at the hearing (including testimony submitted by a party who refuses to submit to cross-examination) and will issue a written determination on each issue presented by the formal complaint.



The written determination will contain all of the information required in Section IV(D)(4)(h) of the Title IX Policy.



The Title IX Coordinator is responsible for sending the written determination to the parties and should do so within one business day of receiving it from the hearing officer.



The Claflin University Title IX Policy does not permit motions or requests for reconsideration. Instead, a party who wishes to challenge any aspect of a written determination must use the appeal procedures to do so.

Hearing Officer must issue a written determination of whether a Title IX Policy violation has occurred in each case.

Hearing Officer must send the written determination to all parties simultaneously.

The written determination must include:

- The allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions regarding the application of Claflin's code of conduct to the facts;
- The result and rationale for each allegation, including a determination regarding responsibility;
- Any disciplinary sanctions Claflin imposes on the respondent;
- Any remedies to be provided to the complainant; and
- The procedures and permissible bases for an appeal.

WRITTEN DETERMINATION

Title IX regulations grant broad discretion to Clafin to determine the appropriate **sanctions** when Clafin's grievance process results in a finding that the Title IX policy has been violated.

Relevant considerations:

- Precedent in similar circumstances, if any;
- The severity of the conduct and its impact on the Complainant; and
- Whether the Respondent can be rehabilitated.

IDENTIFYING APPROPRIATE SANCTIONS

Title IX regulations grant broad discretion to Claflin to determine the appropriate **remedies** when Claflin's grievance process results in a finding that the Title IX Policy has been violated.

Relevant considerations:

- What, if any, equal access to Claflin's education program(s) or activity/activities has been lost or diminished by the violation of the Title IX Policy?
- What, if anything, could be done to restore the Complainant's equal access to education programs and activities of Claflin?

IDENTIFYING APPROPRIATE REMEDIES

ROLE OF APPEAL OFFICER

Absent a conflict of interest, Claflin's President, Dr. Warmack (or an assigned appeal representative) will serve as the appeal officer for all Title IX appeals.

The appeal officer must do the following:

- Analyze and disclose any conflict of interest.
- Review all appeal materials relating to the case, including (without limitation) the notice(s) of appeal and briefing submitted by each party.
- Decide whether to affirm or overturn the challenged decision based on a review of each issue on appeal and upon considering only issues that have been properly appealed under Claflin's Title IX Policy.
- Issue a written decision.

The appeal officer's decision shall be considered final.

When an appeal is filed the Title IX Coordinator must give written notice of the appeal to the other party.

The non-appealing party must be given a chance to respond.

Each party is allowed to appeal any decision of the hearing, in whole or in part.

The Title IX Coordinator must provide appeal procedures equally to all parties.

GROUND FOR AN APPEAL:

- Procedural irregularity that affected the outcome.
- New evidence not reasonably available that could affect the outcome.
- Conflict of interest by institutional participants that affected the outcome.

If an appeal is filed on a basis other than one of the above-mentioned grounds, it will be dismissed.

TITLE IX APPEALS

TITLE IX APPELLATE BRIEFING SCHEDULE

Each party may submit to the Title IX Coordinator an appellate brief within 10 calendar days following the date on which the Title IX Coordinator has provided notice of the appeal to the parties.

Each party should submit their appellate brief electronically (in MS Word format) to the Title IX Coordinator, using the email address for such person provided in Clafin's Title IX Policy.

The Appeal Officer may grant an extension of time to submit such briefing.



Bearing in mind the timeline for Title IX grievance processes under Claflin's Title IX Policy, the appeal officer shall issue a written decision after the briefing period has ended.



The written decision shall describe the result reached and the rationale(s) for that result.



The Title IX Coordinator shall simultaneously provide that written decision to the parties.

TITLE IX APPEAL DECISIONS

TITLE IX APPEAL FINALITY



FINAL

A determination regarding responsibility becomes final either:

- on the date that the University provides the parties with the written determination of the result of the appeal (if an appeal is filed)

OR

- on the eleventh (11th) calendar day following Clafin's provision of the hearing officer's written determination to the parties (if no appeal is filed by either party during the 10-day period for filing an appeal)

