



TITLE IX

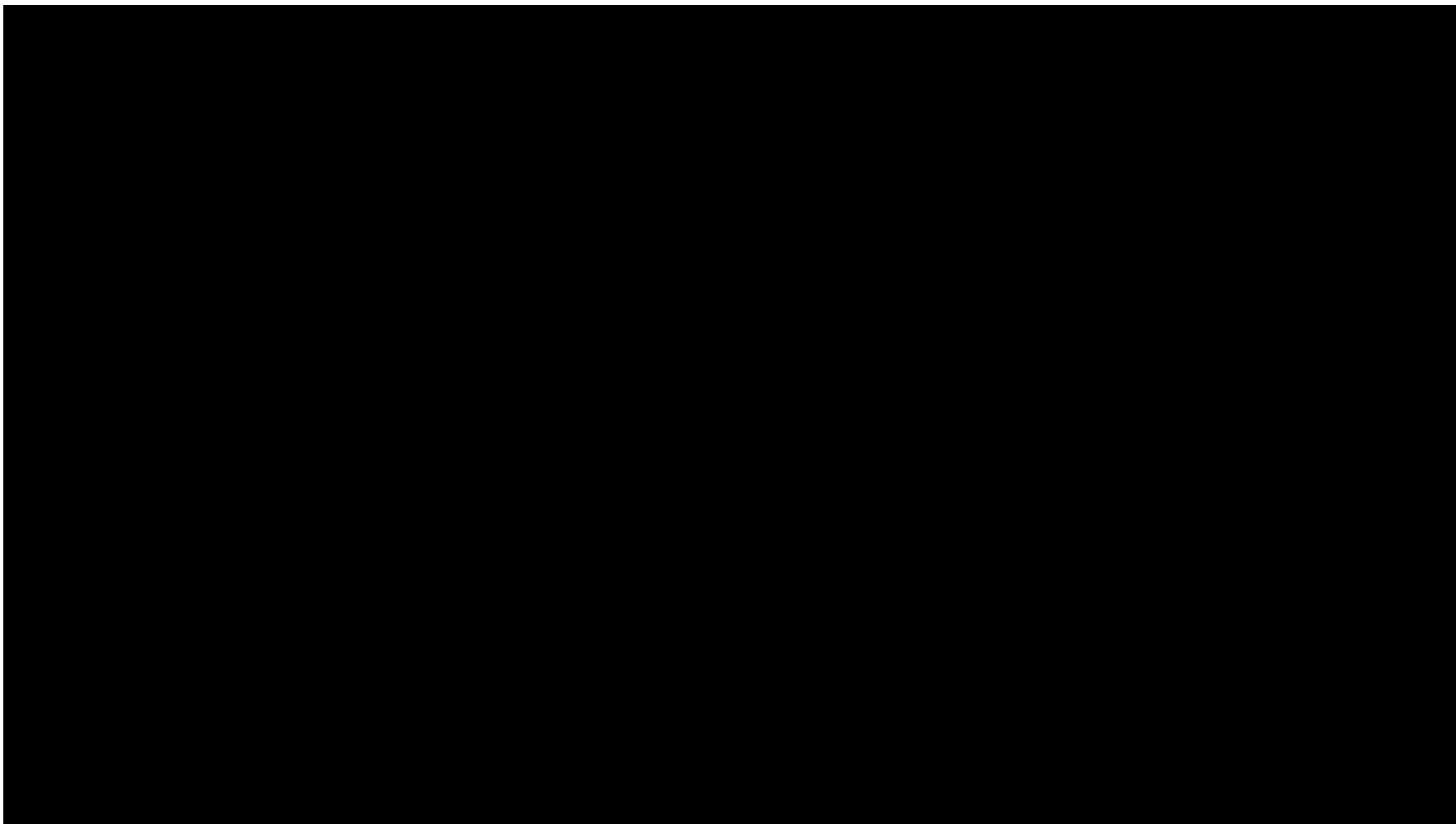
Session 5: Intakes & Supportive Measures – Filing a Formal Complaint

Presented by: Liz Lavoie

Agenda & Learning Outcomes

- Trauma Informed
- Understand the correct protocol for intakes and initiating supportive measures
- Understand campus, local, and state wide resources that are available
- Intersecting TEAM roles
- How to file a formal complaint
- When to dismiss a complaint

Trauma Informed Starts with You



Self Care

- Easier said than done!
- What do you do?
- Who can you talk to?



5 Minute Self-Care



Notice to the School

Information provided to you needs action.
If you are the Deputy – requires outreach.
If another team member gets notice refer
it to the Deputy on your campus or the
UMS Title IX Coordinator.

(Strive for the ceiling)

(Basement)

Notice to a Title IX Coordinator, or to an
Official with Authority to institute
corrective measures on the institutions
behalf, trigger an institution to respond.

- We are not lifting the Mandatory Reporting obligation to the Title IX Coordinator for cases of:
 - Gender Discrimination
 - Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

Intake Protocol

- Must respond promptly to the information, in a manner that is not deliberately indifferent.
- The Title IX Coordinator* must promptly contact the complainant confidentially to discuss:
 - Supportive Measures (even if they don't want to file a formal complaint)
 - Explain the process of filing a formal complaint:
 - Does it meet the Title IX Jurisdiction?
 - Informal Resolution?
 - Other Process

*The Title IX Coordinator can designate others to fulfill this duty. At the campus level it will likely default to the Deputy Title IX Coordinator or the Equal Opportunity Officer

Supportive Measures

- Are non-disciplinary, non-punative individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to UMS's education program or activity, including measures designed to protect the safety of all parties or UMS's educational environment, and/or deter discriminatory harassment, discrimination, and/or retaliation.



Supportive Measures Cont'd

- Referral to counseling, medical, and/or other healthcare services
- Cigna Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related
- Adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) Orders, Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator, Deputy Title IX Coordinator or Equal Opportunity Officer

Campus, Local, State Supports - Resources

- Let's take a moment and discuss who they are by campus:
 - UMFK
 - UMPI
 - UM
 - UMM
 - UMF
 - UMA
 - USM
 - MSL

Who is Who on Your Campus

- How do you reach out to faculty for accommodations?
- What hospital do you work with or who would you refer someone to if they needed a SANE kit?
- What about Counseling services on campus
- Counseling Services off campus
- Hotlines You Provide? Drop in hours?
- Who does your Clery?
- Other things?

UMS Title IX Team

- Title IX Coordinator
- Deputy Title IX Coordinator (SA/HR)
- Investigators
- Advisors
- Decision-Maker(s)
- Responsible Administrator Decision Makers (HR)
- Appeal Committees (SCC)
- Presidential/Designee Appeal Committees (SCC)

Intersecting Team Roles & Formal Reports

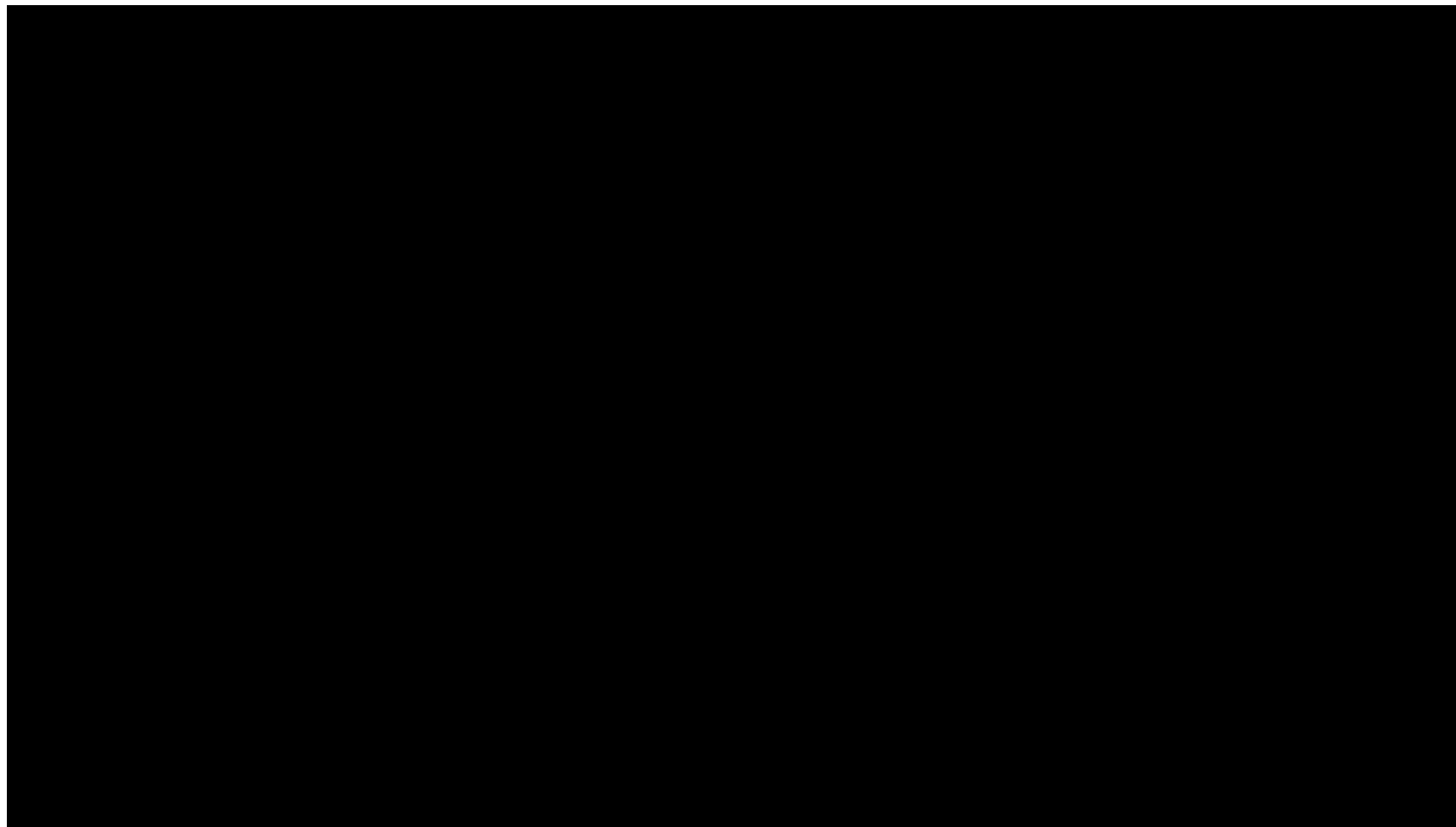
- Think outside the box
- Look at the resources if we look at this from TEAM perspective:
 - Deputy Title IX Coordinators (9)
 - Investigators (13)
 - Advisors (20)
 - Decision Maker (26)
 - Appeals (26)
 - Presidential/Designee Appeal (26)



It's Time for a Comfort Break!



Trauma Informed Care (ACE's)



A Tool to Help

- Please utilize the ATIXA jurisdiction tool on the R³ website to help you determine what process you need to explain to the complaining party.



Case Study: Trinell

New Case: Trinell reports to their RA/CA that they have had a rough start to the semester. Trinell reports that they were at a virtual event for new students. They met someone there and exchanged Snaps.

A few days later Trinell got a DM that contained a nude full frontal picture of the other person. The other person then asked Trinell to send one in return. Trinell didn't feel comfortable sending one so they ignored the request and asked the person if they wanted to watch Netflix and hangout.

The other person agreed and came over. During the movie Trinell reported that they fell asleep and woke up to the other person's hand down their pants touching them. Trinell tried to pretend to move in their sleep in hopes this would make the other person stop. As Trinell moved, the other person stopped. Trinell thought that it was over because they felt the other person get up from the bed.

Case Study: Trinell Cont'd

However, Trinell heard them unzip their pants and get back in bed. Trinell reports that the other person then forced intercourse from behind. Trinell pretended to wake up when the other person was “finished”. Trinell reports that no words were said, they just left.

This comes in via Maxient and is routed to one of the Deputy's who happens to be on a luxury, at home-staycation. Thinking through our Team, how can we pursue this issue?

Case Study: Trinell Cont'd

- Trinell would like to pursue a formal investigation
- The other person is a second semester, transfer student named Bostwick
- Trinell lives on campus and is majoring in Psychology
- Bostwick lives off campus and is majoring in Music Theater with a minor in Dance
- They do not share any classes this semester
- They do not have any mutual friends
- Trinell has received three DM's from Bostwick since the alleged incident happened a month ago

Which Process do we Follow?

- Title IX Sexual Harassment
- Student Conduct Code
- Equal Opportunity Complaint Procedures



Sexual Harassment Occurring in a School's Education Program or Activity

- Applies to persons in the United States engaged in education programs or activities of institutions receiving federal funds
- Schools must respond to sexual harassment when it occurs in the United States and in the school's education program or activity
- Education program or activity includes all of the operations of the University, as well as, locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred. Includes any building owned or controlled by an officially recognized student organization (ex: Greek Life)
- If these criteria are not met – then we follow our traditional SCC and EOCP

Definition of Sexual Harassment for Title IX Purposes

- The final rule defines three types of sexual harassment misconduct on the basis of sex:
 1. Any instance of *quid pro quo* harassment by a school employee*
 2. Any instance of sexual assault (defined by Clery), dating violence, domestic violence, or stalking (defined by VAWA statute). These statutory definitions are somewhat different from the current definitions in UMS Policies and the Conduct Code, which are from the Clery regulations.*
 3. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access (*Davis* Definition)

*The final rule notes that incidents of *quid pro quo* harassment and the Clery/VAWA offense ***do not*** have to be evaluated for severity, pervasiveness, offensiveness, or denial of equal education access, because such misconduct sufficiently deprives a person of equal access.

ATIXA

- <https://atixa.org/products-and-services/atixa-jurisdictional-rubric/>

It's Time for a Comfort Break!



The Formal Complaint

- Deputy receives document (paper or electronic) with physical or digital signature that indicates complainant would like a formal complaint
- Deputy reaches out to the UMS Coordinator to see who is available to Investigate
- UMS Coordinator will have master sheet of cases to see who might be available
- UMS Coordinator or the Deputy will reach out to Investigator to see if they have capacity to investigate
- Once Investigator is assigned, UMS Coordinator, Deputy Coordinator, or Equal Opportunity Officer will issue Notice of Investigation

Notice of Investigation

- Upon receipt of a formal complaint, must provide the written notice to the parties who are known
- Notice is sent by the Title IX Coordinator, Deputy Title IX Coordinator, or the Equal Opportunity Officer

Notice of Investigation Cont'd

- Notice of the recipient's grievance process that complies with this section, including any informal resolution process. (aka policy)
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.

Notice of Investigation Cont'd

- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- Side note - (ii) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

Intersecting Team Roles

- We have identified the Deputy Title IX Coordinator
- Who can we now identify as the Advisor(s)
- Who can we identify as the Investigator



Investigation Completed

- The Investigation has been completed and the documents have been shared
- We are ready to proceed to a hearing
- Who could be the Decision-maker(s)
 - One person?
 - Three people?
- Who can be our hearing host?



After the Hearing

- Proceed as usual
- Appeal or no appeal to the SCCC
- Appeal Hearing
- Presidential/Designee Appeal
- Finalized

What if the Circumstances were Different?



Case Study: Trinell

New Case: Trinell reports to their RA/CA that they have had a rough start to the semester. Trinell reports that they were at a virtual event for new students. They met someone there and exchanged Snaps.

A few days later Trinell got a DM that contained a nude full frontal picture of the other person. The other person then asked Trinell to send one in return. Trinell didn't feel comfortable sending one so they ignored the request and asked the person if they wanted to watch Netflix and hangout.

The other person agrees but says they don't have a way to get to campus. The other person asks Trinell to come over. During the movie Trinell reported that they fell asleep and woke up to the other person's hand down their pants touching them. Trinell tried to pretend to move in their sleep in hopes this would make the other person stop. As Trinell moved, the other person stopped. Trinell thought that it was over because they felt the other person get up from the bed.

Case Study: Trinell Cont'd

However, Trinell heard them unzip their pants and get back in bed. Trinell reports that the other person then forced intercourse from behind. Trinell pretended to wake up when the other person was “finished”. Trinell reports that they made an excuse about having to be at an early meeting the next day and quickly leaves.

This just comes in via Maxient and is routed to one of the Deputy's who happens to be on a luxury, at home-staycation. Thinking through our Team, how can we pursue this issue?

Case Study: Trinell Cont'd

- Trinell would like to pursue a formal investigation
- The other person was a friend of a student who attended the virtual event
- Trinell lives on campus and is majoring in Psychology
- Bostwick lives off campus and is not affiliated with the institution however Bostwick is local and has many friends on campus
- Trinell has received three DM's from Bostwick since the alleged incident happened a month ago

Case Study: Trinell Cont'd

- Trinell would like to pursue a formal investigation
- The other person is a second semester, transfer student named Bostwick
- Trinell lives on campus and is majoring in Psychology
- Bostwick lives off campus and is majoring in Music Theater with a minor in Dance
- They do not share any classes this semester
- They do not have any mutual friends
- Trinell has received three DM's from Bostwick since the alleged incident happened a month ago

Which Process do we Follow?

- Title IX Sexual Harassment
- Student Conduct Code
- Equal Opportunity Complaint Procedures



When to Dismiss a Case

- When a formal complaint does not meet the new Title IX regulations
- When the complainant does not wish to continue an investigation
- When the complaint does meet the formal Title IX regulations but there is a request (and agreement by all parties) to pursue an informal resolution

Dismissing a Formal Complaint for not Meeting the Criteria for Title IX Sexual Harassment

- Coordinator, Deputy, or EO Officer analyzes the case to see if it meets the criteria of Title IX Sexual Harassment
- If it does not, the Coordinator, Deputy, EO Officer **must dismiss** the case via document notification that gets sent to both parties (document template coming soon)
- The case can then be referred for Investigation under Process “B” – SCC or EOCP
 - This is the same process that we currently use
- If moving forward contact the Coordinator or EO Office to determine who to assign to Investigate

Dismissing a Case Cont'd

- The recipient must investigate the allegations in a formal complaint.
- If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.
- The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a 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 recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissing a Case Cont'd

- Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.



What If....

- What if Bostwick was a Teaching Assistant, an Adjunct Faculty Member, or a Tenured Professor?