



Session 1: The Sexual and Gender-Based Misconduct Policy and Procedure overview

Kristi Clemens

Dartmouth College

Institutional Diversity and Equity

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Overview of our time today

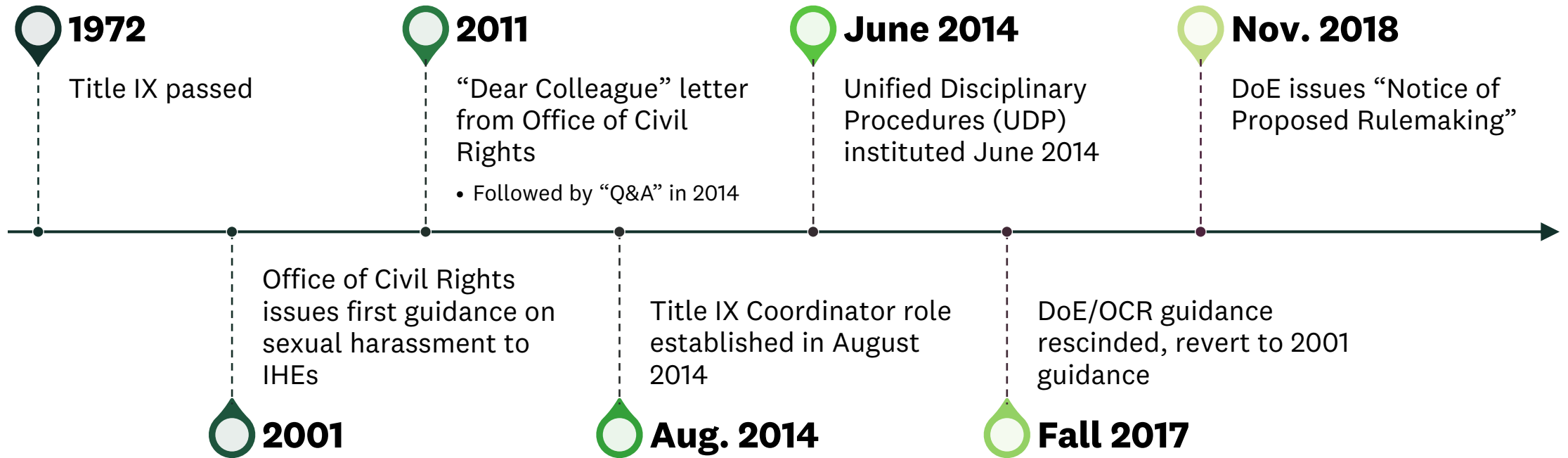
- Who we are and what we do
- The Title IX Context
- The Dartmouth Context
- The Sexual and Gender-Based Misconduct Policy
- Prohibited Conduct, defined
- Making a report of Prohibited Conduct
- Resolution Procedures

What is Title IX?

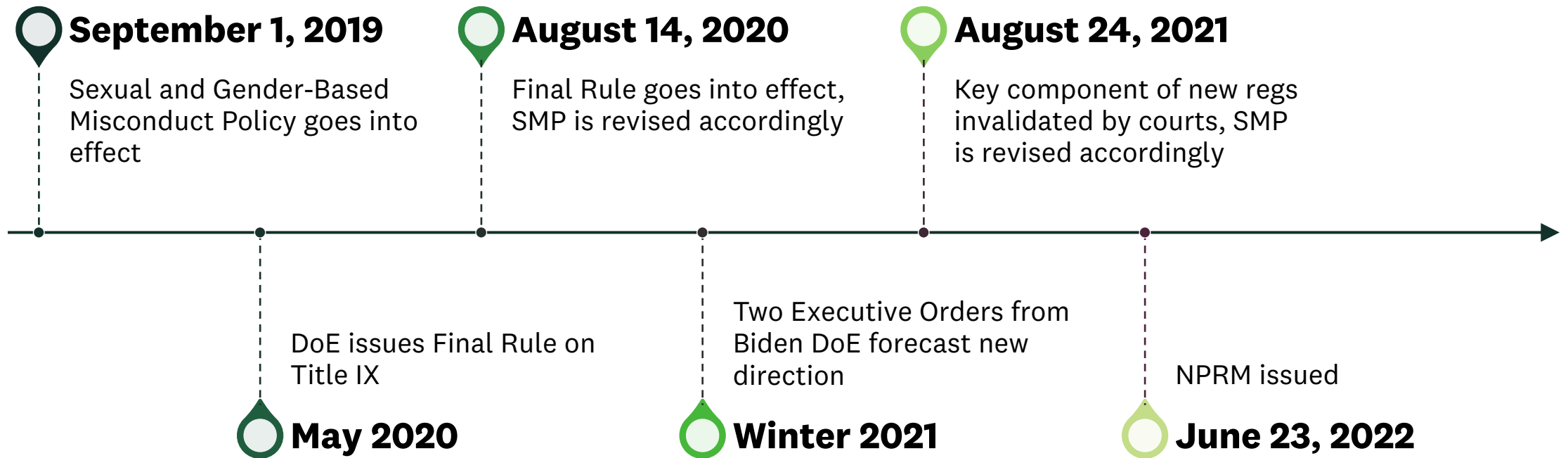
No person in the United States shall, on the basis of sex, be excluded from participation in, **be denied** the benefits of, or **be subjected to discrimination** under any education program or activity receiving federal financial assistance.

Title IX of the Education Amendments of 1972

A bit of history...



A bit of history continued...

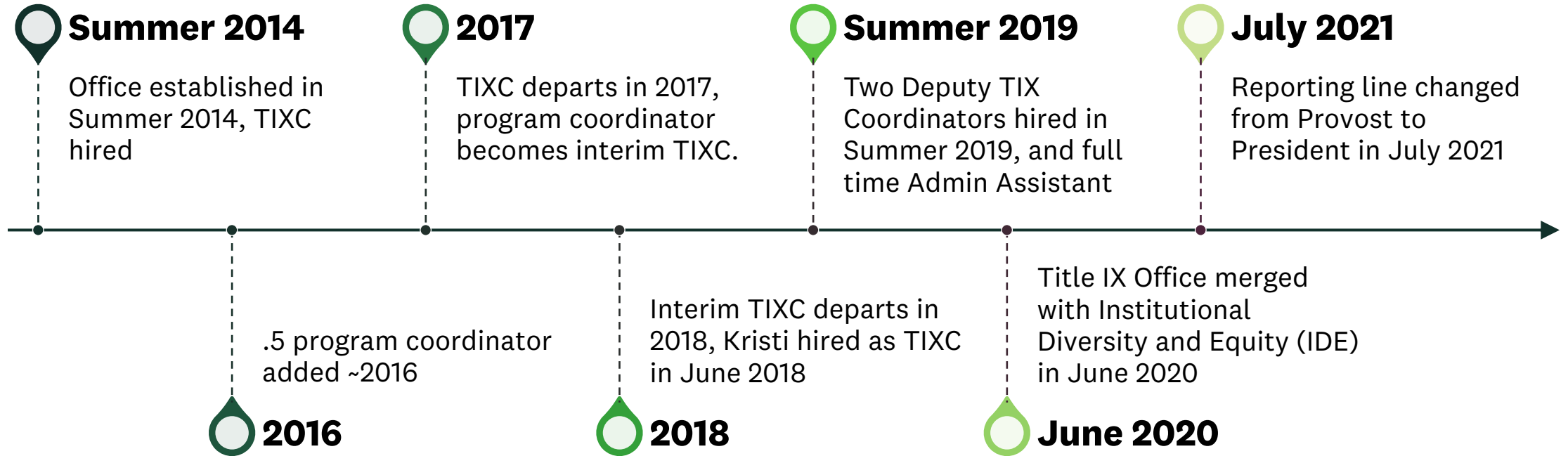


What does this all mean?

- Dartmouth (still!) has a duty to respond to reports of sexual or gender-based harassment and discrimination, inclusive of sexual assault, dating/domestic violence, and stalking.
 - Prompt and Reasonably
 - Provide Supportive Measures to all parties
 - Establish processes to investigate or otherwise address reports of Prohibited Conduct

Frequent change to the policy and procedures is the new norm, but the commitments remain the same.

Title IX @ Dartmouth





Equity and Compliance Team

Kristi Clemens

- Assistant VP, Title IX Coordinator

Gary Sund

- Deputy Title IX Coordinator

John Grandi

- Case and Training Coordinator

Barbara Briggs

- Administrative Assistant

Linda Sullivan

- ADA/504 Coordinator

Paul Harwell

- Associate Director, ADA/504

TBD

- Director of Equal Opportunity

The Dartmouth Context

- Winter 2018: Presidential Steering Committee convened
- Fall 2018-Winter 2019: SMP drafted and brought to committees and councils
- Spring 2019: SMP approved
- Fall 2019: SMP in effect
- Summer 2020: SMP revised

The Sexual and Gender-Based Misconduct Policy (SMP)

- Dartmouth is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. To that end, Dartmouth prohibits the following types of conduct, collectively, "Prohibited Conduct":
 - Sex and gender-based discrimination, sexual harassment (including sex/gender-based harassment), sexual assault, sexual exploitation, dating violence, domestic violence, provision of alcohol and/or other drugs for purposes of prohibited conduct, and stalking;
 - retaliation against an individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report of Prohibited Conduct, filed a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, hearing or resolution of an alleged violation of this policy; and
 - the exertion of power, supervision, or authority by one individual over another in relationships of a sexual or intimate nature.

The Impact of the 2020 “Final Rule” on Policy

- To be Prohibited Conduct under Title IX, the reported conduct **must fulfill all three** of the following conditions:
 - It must occur within the institution’s program or activity (including any buildings owned or controlled by a recognized student organization)
 - It must be directed at a person in the United States who was participating in the institution’s program or activity
 - It must be one of the following offenses:
 - Sexual assault, dating violence, domestic violence, or stalking (as defined in the Clery Act)
 - Quid pro quo harassment by an employee
 - Unwelcome, objectively offensive, severe and pervasive conduct that effectively denies access to the program or activity

The Impact of the 2020 “Final Rule” on Policy

- IHEs can include broader definitions of Prohibited Conduct that align more closely with reports from their community.
- SMP contains definitions of “Title IX Prohibited Conduct” as well as “Other Prohibited Conduct”.

TIX Prohibited Conduct	Other Prohibited Conduct
Conduct as described on previous slide	Can include conduct outside of the US and in unrecognized spaces
Requires certain procedures for resolution	Similar resolution procedures but no live cross-examination permitted
More narrow definitions	Broader definitions

Education Program or Activity

- The term Education Program or Activity includes all of Dartmouth's operations, including locations, events, or circumstances over which Dartmouth exercised substantial control over both the Respondent and the context in which the conduct occurs; and any building owned or controlled by a student organization that is officially recognized by Dartmouth.
- The Title IX regulations, which direct Dartmouth's response, do not draw a line between on campus, off campus, or online, provided the conduct occurred in an Education Program or Activity in the United States.

Education Program or Activity, continued

- In keeping with Dartmouth's educational mission and commitment to foster a learning, living, and working environment free from discrimination and harassment, this policy also pertains to acts of Prohibited Conduct that may fall outside of the jurisdiction set forth in the May 2020 Title IX regulations, including additional forms of sexual and gender-based harassment, as well as conduct that occurs outside the United States, but still in an Education Program or Activity.
- Conduct outside of the United States, may include, for example, Dartmouth-sponsored, Dartmouth-funded or otherwise Dartmouth-supported study abroad.
- Under limited circumstances, this policy may also pertain to instances in which the conduct occurred outside of the Education Program or Activity.

Questions?

Break!



Prohibited Conduct within the SMP

- Sex or Gender-Based Discrimination
- Sexual or Gender-Based Harassment
- Sexual Assault
- Sexual Exploitation
- Dating and Domestic Violence
- Stalking
- Provision of Alcohol and/or Other Drugs for Purposes of Prohibited Conduct
- Retaliation
- Prohibited Interactions, Sexual or Intimate Relationships Between Individuals in Unequal Positions

Sex or Gender-Based Discrimination

- Sex/gender-based discrimination is subjecting an individual to **adverse action**—including unfavorable or unfair treatment—based on or because of their sex, sexual orientation, gender (including gender identity and gender expression), or the individual's perceived sex, sexual orientation, or gender (including gender identity and gender expression). Sex/gender-based discrimination can occur in either an employment or an educational context.

Sexual or Gender-Based Harassment

- Sexual Harassment includes two distinct, but overlapping definitions.
 1. The Title IX regulations define Sexual Harassment as **conduct on the basis of sex** that must satisfy one or more of the following:
 - a) A Dartmouth employee conditions the provision of an aid, benefit, or service of Dartmouth on an individual's participating in unwelcome sexual conduct; or
 - b) Unwelcome conduct determined by a reasonable person to be so ***severe, pervasive, and objectively offensive*** that it effectively denies a person equal access to Dartmouth's education program or activity;
 - c) Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation.

Sexual or Gender-Based Harassment

2. In addition, consistent with Title VII of the Civil Rights Act of 1964 and the recognition that Sexual Harassment may also occur in a wider variety of contexts, Dartmouth **also** defines Sexual Harassment to include (1) any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, electronic, or otherwise (sexual harassment); and (2) unwelcome conduct, whether verbal, nonverbal, graphic, physical, or otherwise, based on sex or gender, sexual orientation, gender identity, or gender expression, **even if the acts do not involve conduct of a sexual nature** (sex/gender-based harassment) when one or more of the following conditions are present:

a) Submission to or rejection of such conduct is either an explicit or implicit term or condition of, or is used as the basis for decisions affecting, an individual's employment or advancement in employment, evaluation of academic work or advancement in an academic program, or basis for participation in any aspect of a Dartmouth program or activity (*quid pro quo*); or

b) The conduct is sufficiently severe, pervasive, and/or persistent so as to unreasonably interfere with, limit, or alter the conditions of education, employment, or participation in a Dartmouth program or activity (i.e., Dartmouth's learning, working, or living programs), or by creating an environment that a **reasonable person in similar circumstances would find intimidating, hostile, abusive, or offensive** (hostile environment).

Hostile Environment

In evaluating whether a hostile environment exists, Dartmouth will evaluate the totality of known circumstances, including, but not limited to:

- a) the frequency, nature and severity of the conduct;
- b) whether the conduct was physically threatening;
- c) the effect of the conduct on the Complainant's mental or emotional state;
- d) whether the conduct was directed at more than one person;
- e) whether the conduct arose in the context of other discriminatory conduct;
- f) whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or Dartmouth programs or activities;
- g) whether the conduct implicates academic freedom or protected speech; and,
- h) other relevant factors that may arise from consideration of the reported facts and circumstances.

Sexual Assault

Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity.

Sexual contact includes:

1. Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (*e.g.*, penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or
2. Sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.
3. Attempts to commit sexual assault.

Sexual Exploitation

Sexual Exploitation is intentionally taking sexual advantage of another person without consent. It may involve use of one's own or another individual's nudity or sexuality. Examples of Sexual Exploitation include, but are not limited to:

1. voyeurism (such as watching or taking pictures, videos, or audio recordings of another person in a state of undress without their consent or of another person engaging in a sexual act without the consent of all parties);
2. disseminating, streaming, or posting images, pictures or video of another in a state of undress or of a sexual nature without the person's consent;
3. knowingly exposing one's genitals to another person without consent;
4. prostituting another individual; or
5. knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge and consent.

Dating and Domestic Violence

Dating and Domestic Violence includes any act of violence against a Complainant who is or has been involved in a sexual, dating, domestic, or other intimate relationship with the Respondent, or against a person with whom the Respondent has sought to have such a relationship, as follows:

- i. Domestic Violence: includes any act of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under New Hampshire state law, or by any other person against an adult or minor Complainant who is protected from that person's acts under New Hampshire state law;
- ii. Dating Violence: includes any act of violence committed by a person:
 - a) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
 - b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i) The length of the relationship;
 - ii) The type of relationship; and
 - iii) The frequency of interaction between the persons involved in the relationship.

Stalking

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their own safety or the safety of others or suffer substantial emotional distress.

Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Provision of Alcohol and/or Other Drugs for Purposes of Prohibited Conduct

The provision of alcohol and/or other drugs to an individual for the purpose of committing or facilitating Prohibited Conduct under this policy is also in and of itself a form of Prohibited Conduct. Such behavior may include provision of a drink or food which contains alcohol and/or other drugs without the knowledge of the individual to whom it is being provided or other actions taken with the intention of impairing the senses, judgment, and/or physical and mental ability of another person in order to engage in other forms of Prohibited Conduct. An individual does not have to engage in sexual activity with another person to be found responsible for the prohibited provision of alcohol and/or other drugs.

Retaliation

Retaliation means any adverse action, intimidation, threat, coercion or discrimination against an individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or Formal Complaint of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under this policy. Retaliation includes such conduct through associates or agents of a Complainant, Respondent, Reporting Party, or participant in any investigation or proceeding related to this policy.

Prohibited Interactions, Sexual or Intimate Relationships Between Individuals in Unequal Positions

- (i) No Faculty, Staff or non-Student Employee shall propose, request, or accept sexual favors from or engage in a romantic, sexual or intimate relationship with any Dartmouth undergraduate student.
- (ii) No Faculty; graduate, professional school or medical student; medical resident or fellow; postdoctoral fellow, scholar, or research associate; research scientist, distinguished fellow; teaching or research assistant or fellow; or proctor, mentor, or undergraduate teaching assistant shall propose, request, or accept sexual favors from or engage in a romantic, sexual or intimate relationship with any undergraduate, graduate, professional school or medical student who is enrolled in a course or section taught by that individual or otherwise subject to that individual's academic supervision.
- (iii) No Faculty, Staff or Employee shall propose, request, or accept sexual favors from or engage in a romantic, sexual or intimate relationship with any Faculty, Staff or Employee subject to that individual's supervision.

Questions?

Break!



Making a Report

Any member of the community can make a report of Prohibited Conduct to our office.

Reporting for the record

- Informal report
- Kept internal
- No action requested by Complainant

Reporting for assistance

- Informal report
- Supportive measures
- Kept internal unless external needed

Reporting to take action

- Formal Complaint filed
- Leads to Formal or Informal Resolution

Initial Assessment of Reports

- Upon receipt of a report, Dartmouth will provide outreach to a Complainant, offer Supportive Measures and conduct an Initial Assessment of the reported information.
- The goal of the Initial Assessment is to provide a consistent, integrated and coordinated response to all reports and to ensure that all Dartmouth community members have access to information about Dartmouth resources, policies and procedural options for resolving the report.
- The Initial Assessment seeks to gather information only to determine whether this policy applies to the report and, if so, what form of resolution is reasonably available and appropriate.
- The Initial Assessment in no way represents a finding of fact or responsibility.
- The Initial Assessment will also include a determination whether a timely warning pursuant to the Clery Act is necessary to protect the safety of the Complainant, any other individuals, or the campus community.

Initial Assessment, continued

The Title IX Coordinator or Deputy Title IX Coordinator will evaluate reasonably available information to make the following determinations:

1. Did the reported conduct occur within Dartmouth's Education Program or Activity; this question considers:
 - a. Does Dartmouth have substantial control over the Respondent; and
 - b. Does Dartmouth have substantial control over the context in which the conduct is reported to have occurred; or
 - c. Did the conduct occur in a building owned or controlled by a student organization that is officially recognized by Dartmouth;
2. Did the reported conduct occur in the United States; and,
3. Would the facts set forth by the report, if substantiated, constitute a violation of sexual harassment as defined by the Title IX regulations.

Based on the answers to these questions, the Title IX Coordinator will make a determination about scope and process. This is a threshold determination regarding scope and jurisdiction, which will determine appropriate next steps as follows:

Where the answer to these three questions is yes, and a Formal Complaint is filed, Dartmouth will follow the formal resolution process required by the Title IX regulations (Title IX Hearing Process).

Where the answer to any of these three questions is no, Dartmouth will dismiss the allegations in the Formal Complaint related to sexual harassment as defined in the Title IX regulations, but if there are additional allegations of Prohibited Conduct in the Formal Complaint, Dartmouth will proceed with a formal resolution process for any other allegations that may be Other Prohibited Conduct.

Resolution Procedures

- Dartmouth has three different resolution procedures- Faculty, Staff, and Student
 - Dependent on primary role of Respondent
- Processes are identical, until the hearing
- Opportunity for Informal Resolution
 - Based in restorative practices
 - Not available when a staff/faculty member sexually harasses a student

Formal Resolution Milestones

- Receipt of Formal Complaint
- Identify Investigator
- Notice of Investigation
- Informational Meeting
- Interviews
- Review of Evidentiary Record
- Investigative Report
- Hearing
- Outcome
- Appeal





Formal Complaint

- Must include essential information
 - Who, what, when, where
- Must be signed by Complainant
- Constitutes notice to the institution





Identify Investigator

- Must be trained by both Dartmouth and other training
- Selection is based on who is available
- Conflict check is run



Notice of Investigation

Must include

- (1) notice of the process for formal and informal resolution;
- (2) Sufficient details regarding:
 - a) the identities of the Complainant and the Respondent, if known;
 - b) the date, time (if known), location, and nature of the reported conduct;
- (3) the reported policy violation(s);
- (4) the name of the investigator;
- (5) information about the parties' respective rights and responsibilities;
- (6) the prohibition against retaliation;
- (7) the importance of preserving any potentially relevant evidence in any format;
- (8) how to challenge participation by the investigator on the basis of a conflict of interest or bias;
- (9) 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 formal resolution process;
- (10) that the parties are entitled to an advisor of their choice, including an attorney advisor, and the advisor is permitted to review the evidence gathered in the investigation;
- (11) any provision of the applicable student code of conduct stating that Dartmouth prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
- and
- (12) a copy of the policy and this process.





Informational Meeting

- Occurs after NOI has been sent.
- Provides parties with information on resources, supportive measures, and process.
- Separate and distinct from fact-gathering!



Interviews/Fact Gathering

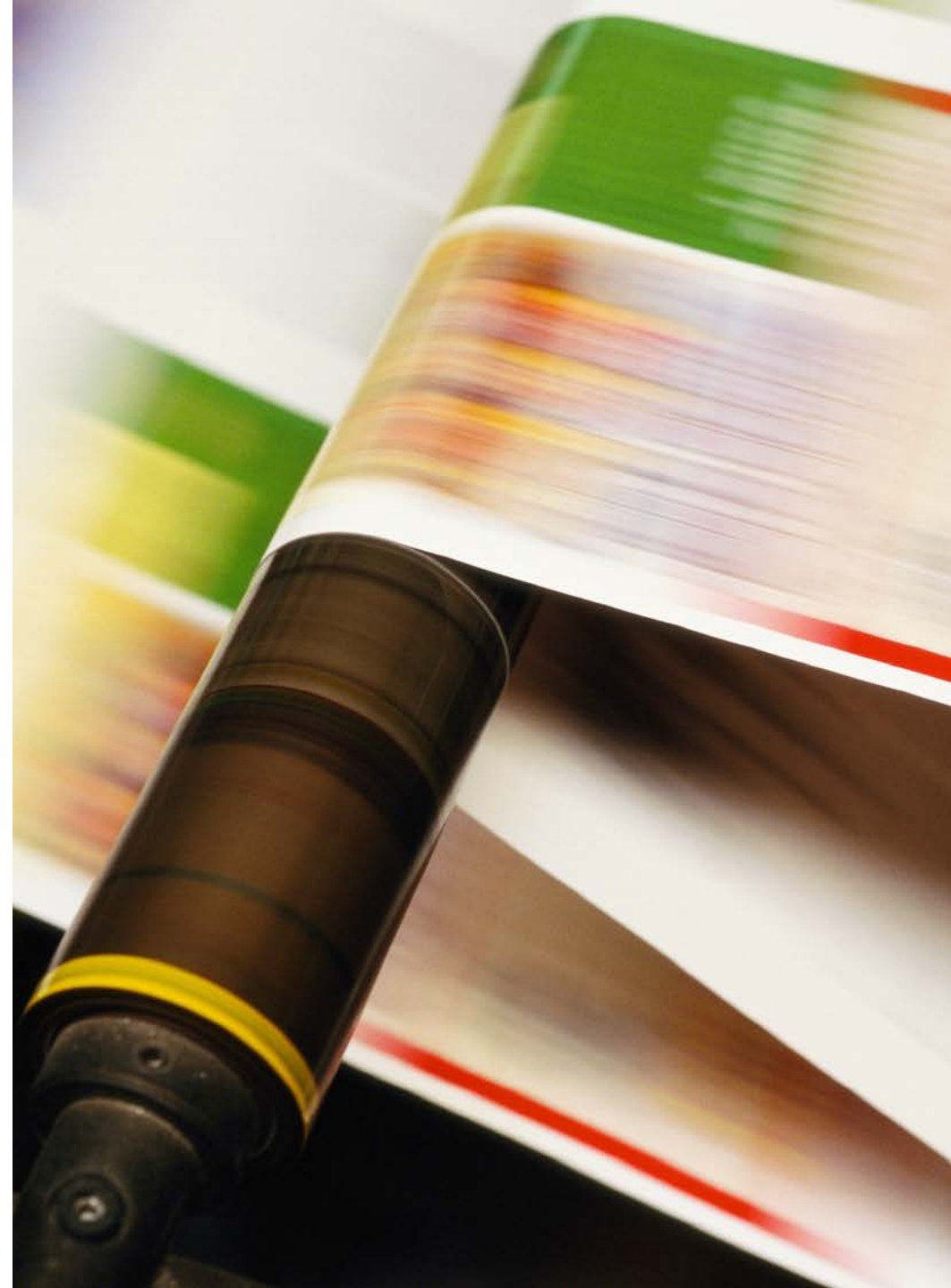
- Investigator meets with parties and witnesses to gather information and evidence.
 - Interviews are still occurring on Zoom.
- Parties may have one advisor with them at all meetings.
- All interviews are recorded and transcribed.





Review of Evidentiary Record

- All evidence collected is compiled into a singular record, and shared with the parties electronically.
- Parties have 10 business days to review and respond to the investigator.
 - For Faculty Respondents, the Hearing Panel (AHHC) also gets to review and respond to the Evidentiary Record.
- The investigator may do more fact gathering after the parties respond.



Investigative Report

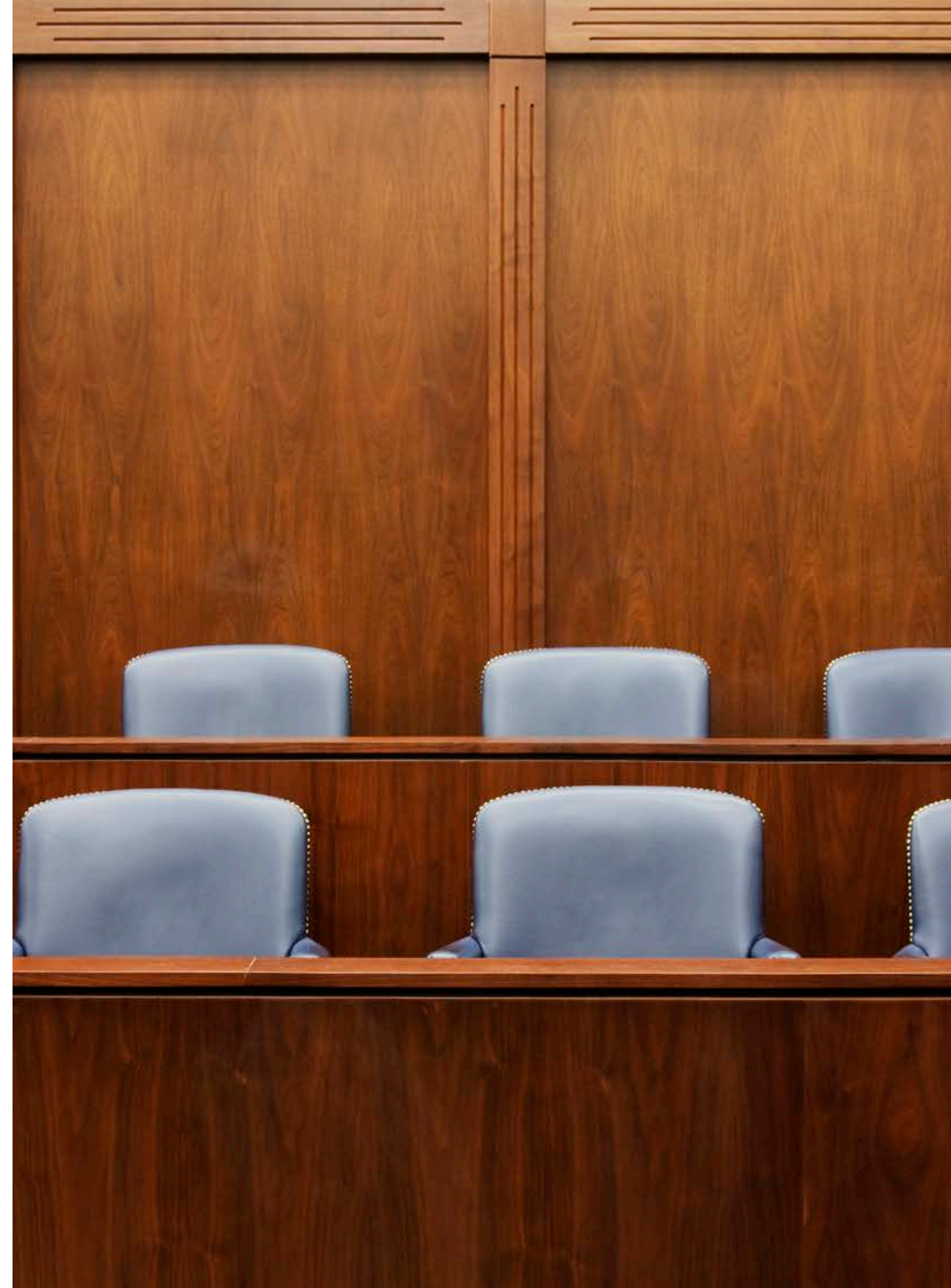
- The investigator produces a written report that fairly summarizes the relevant information and facts gathered.
- The report shall include a determination of whether the conduct alleged falls within the scope of the SMP, and whether it is Title IX Prohibited Conduct or Other Prohibited Conduct.
- The investigator does not make a determination of responsibility or assess credibility.





Hearing

- Hearing Panels are charged with conducting an objective evaluation of all relevant evidence.
- Must be trained (thank you for being here!)
- Makes determination of responsibility and decides (or recommends) sanctions.



Outcome and Appeal

- Hearing chair will deliver a written outcome within 10 business days.
- All parties are entitled to appeal on the following limited grounds:
 - Procedural irregularity that affected the outcome or sanction
 - New evidence not reasonably available at the time of the hearing
 - The TIXC, Investigator, or member of the Panel had a conflict of interest or bias that affected the outcome or sanction

Questions?

Thank you!

