



TITLE IX INVESTIGATIONS @ YESHIVA UNIVERSITY

A SEYFARTH AT WORK TRAINING



AGENDA

FORMAT

- Interactive lecture
- Exercises
- Role-plays
- Demonstrations
- Issue Spotting

Welcome and Introduction

Title IX Definitions

Complainant Options

Investigation Best Practices

Questions?

GOALS



1. What is Title IX?



2. What is sexual harassment under Title IX?



3. What are the options for investigations under Title IX?



4. What is the formal resolution process?



5. What is the informal resolution process?



6. Writing the report and timeframes

The Legal “Fine Print”

GROUND RULES FOR SAFE TRAINING

- Language May Be Offensive, Training Purposes Only
- Humor Does Not Minimize Seriousness
- Respect One Another in the Room

NO...

- Legal Advice
- Legal Conclusions
- Debating the Laws
- Debating the Policy
- Past, Current or Pending Situations
- Discriminatory Remarks
- Tape Recorders, Cell Phones, or Smart Phones

WHAT IS TITLE IX?



Chat your
response now

WHAT IS TITLE IX?



Prohibits
discrimination on
the basis of sex
for institutions
with federal
funding



Applies to
faculty/staff/
students



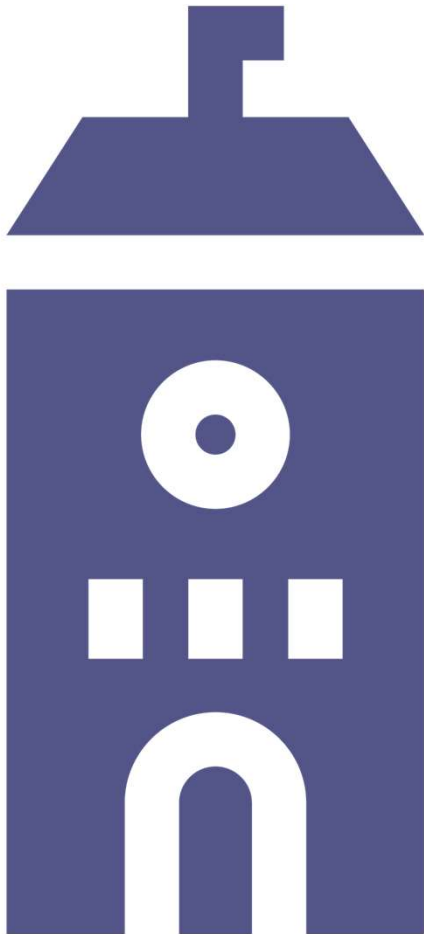
Applies to those
participating in
the University's
education
programs and
activities

**Chat your
response now**

WHAT POLICY/REGULATION IS IN QUESTION

TITLE IX *	TITLE VII	YESHIVA NON TITLE IX UNIVERSITY POLICIES	VIOLENCE AGAINST WOMEN ACT (VAWA) CLERY ACT	ENOUGH IS ENOUGH law (Article 129-B)
<ul style="list-style-type: none"> Prohibits discrimination on the basis of sex for institutions with federal funding. Applies to faculty/staff/students <p><i>*Includes: sexual assault, sexual abuse, sexual harassment, potentially includes dating violence, domestic violence and stalking</i></p>	<ul style="list-style-type: none"> Prohibits discrimination in employment on the basis of sex, race, color, religion, national origin Applies to faculty/staff 	<ul style="list-style-type: none"> Policies against Harassment, Discrimination Broader than Title IX and Title VII 	<ul style="list-style-type: none"> Outlines the obligations of the University upon receipt of certain reports of: <ul style="list-style-type: none"> Sexual assault Domestic Violence Stalking Dating Violence 	<p>Requires that all colleges and universities in New York adopt a set of comprehensive procedures and guidelines related to domestic violence, dating violence, stalking and sexual assault, to ensure the safety of all student</p>

ONLY FALLS UNDER TITLE IX IF....



1 - It happened in the United States;

2 -It happened in the University's education programs and activities^{**}; AND,

3a Title IX Hostile Environment harassment

Unwelcome sexual conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education programs or activities.

OR

3b Quid Pro Quo Sexual Harassment

Occurs when a University employee either explicitly or implicitly conditions the provision of an aid, benefit, or service of the university of an individual's participation in unwelcome sexual conduct.

Sexual Assault

Stalking, Dating Violence, and Domestic Violence

^{**} *Education programs and activities means:* locations, events or circumstances where the University exercised substantial control over both the person accused of misconduct and the context in which the harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

TITLE IX -- SCENARIOS



a professor tells a student they can receive an A in exchange for going out on a date together

Title IX –
Quid Pro Quo



a student reports that the individual next to them watches porn everyday **in the classroom**

Title IX –
Sexual Harassment



a student reports unwelcome touching, in the cafeteria, from **a University Cafeteria worker**

Title IX –
Sexual Assault

Title IX
violation? Yes
or No Maybe?

NON TITLE IX SEXUAL HARRASSMENT EXAMPLES



a professor in teaching in another country tells a student they can receive an A in exchange for going out on a date together

**NON Title IX –
Quid Pro Quo**



a student reports that **a student at another local university** texted them pornographic images.

**NON Title IX –
Sexual Harassment**



a student reports unwelcome touching **from an external food delivery person delivering their take-out**

**NON Title IX –
Sexual Assault**

MEET AVIVA



- Aviva is a Junior at Yeshiva.
- This week, she claims she was sexually assaulted by a fellow junior at a university event.

AVIVA'S COMPLAINT



- Aviva tells her professor she needs an extension because of what happened to her, but asks the professor to “keep it confidential.”
- What should the professor do?

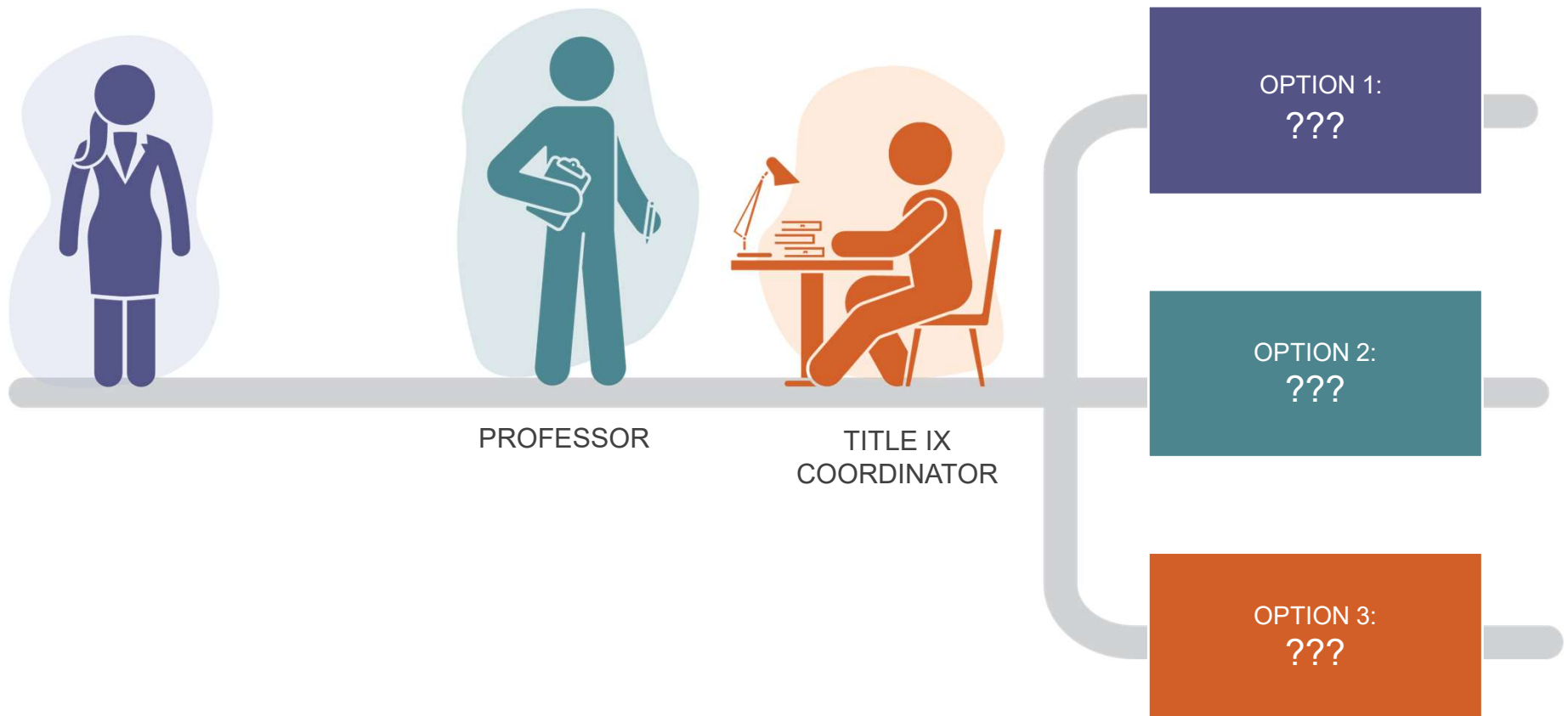
**Chat your
response**

Best practices for responding to disclosures

- Confirm your responsibilities, including to keep the disclosure private (but not confidential)
- Acknowledge that the student is sharing something sensitive
- Keep the conversation within appropriate boundaries
- End with a plan



MEET AVIVA



TITLE IX COORDINATOR

- Now that the Title IX Coordinator has been made aware, what is the Title IX Coordinator required to tell Aviva?
- What does the student need?

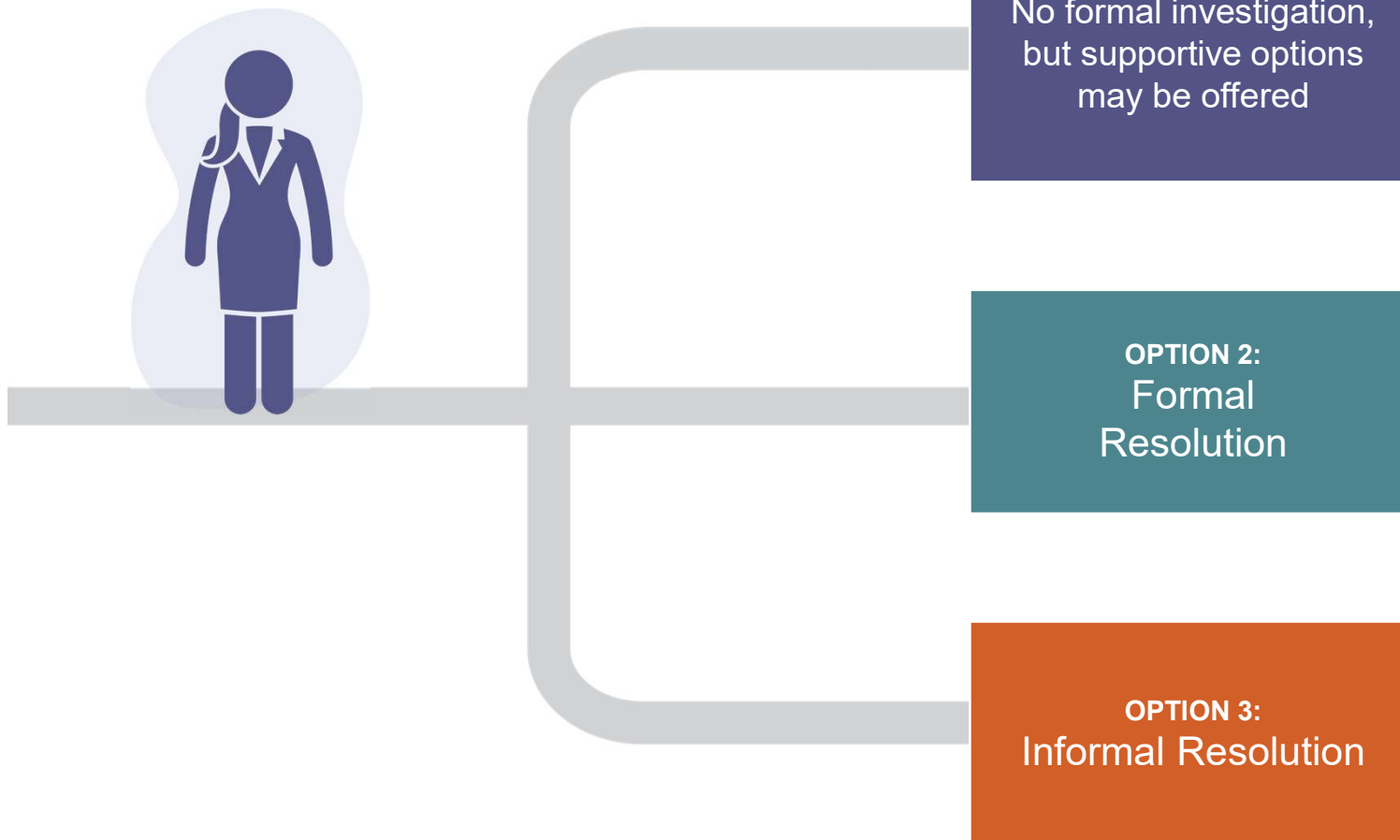
Confidential Resources

(will NOT trigger an investigation):

- University Counseling Centers
- Community Resources



AVIVA'S DECISIONS:



TITLE IX COORDINATOR

- Now that the Title IX Coordinator has been made aware, what are Aviva's options?



OPTION 1:
Do nothing /
Take external
action



OPTION 2:
Formal
Resolution



OPTION 3:
Informal
Resolution

Student can access support services with each option



AVIVA'S OPTIONS



OPTION 1:
Do nothing /
Take external
action

- Aviva can pursue external routes (i.e. local police)
- Aviva can access confidential services
- If Aviva chooses to do nothing – the University reserves the right to investigate for the safety of the community



AVIVA'S OPTIONS



OPTION 2: Formal Resolution

Step 1: Fact Finding

CONDUCTED BY INVESTIGATOR

- Investigator will conduct fact finding
- Investigator will write report summarizing the facts
- Investigator does not reach a determination

Step 2: Hearing

LIVE HEARING

- Complainant and Respondent are represented by an advisor
- Only individuals who appear at the hearing will have their statements credited

Step 3: Appeal

CONDUCTED BY APPEALS PANEL

- Three grounds for appeal
- Decision by the appeals panel is final



WHO HAS AN INTEREST IN OUR INVESTIGATION?

AND...WHAT DO THEY

WANT

FEAR

- Complainant
- Respondent
- Witness(es)
- Support Person
- Investigator
- Organization
- Does anybody else have an interest?

**Chat your
response now**



HOW NOT TO RESPOND

Inaction: Ignoring the complaint.

Delay: Failing to investigate promptly.

Faulty Record-Keeping: Creating inadequate or sloppy records.

Poor Investigative Techniques: Failing to investigate effectively and thoroughly.

Showing Bias or Favoritism.

Retaliation: Failing to prevent adverse personnel actions against employees or students who make complaints.

Ignoring The Evidence: Ratifying misconduct by doing nothing about it or coming to an incorrect conclusion.

Lack Of Privacy: Failing to keep the investigation private (to the extent possible).

Failing To Diffuse A Crisis: Letting problems grow due to a failure to initiate appropriate remedial measures.

Lack Of Follow Up: Failing to ensure closure with complaining parties, witnesses, and decision-makers.

Simply Separating The Parties: and declaring: “Case Closed”.



HOW TO RESPOND



**Commence
investigation**

Provide written notice to both parties that includes:

1. A copy of the procedures
2. Notice of the alleged conduct
3. A statement that the individual accused of misconduct (the respondent) is presumed not responsible
4. Right to an advisor
5. Equal opportunities to inspect and review evidence in the grievance process
6. Warning about false statements
7. Information about the prohibition against retaliation



OUR 10 POINT STRATEGY CHECKLIST:

1. Who can/should do the investigation?

- ☐ Dean of Students
- ☐ Investigator
- ☐ Title IX Coordinator
- ☐ Deputy Title IX Coordinator

2. What conduct is being investigated?

- ☐ Hostile Work Environment Harassment
- ☐ Quid Pro Quo Harassment
- ☐ Sexual Assault
- ☐ Dating Violence
- ☐ Domestic Violence
- ☐ Stalking
- ☐ Non-Title IX policy violation
(follow non-Title IX Harassment investigation procedures)



OUR 10 POINT STRATEGY CHECKLIST:

3. What physical or written evidence can I review before interviewing the parties?

- ☐ Discussion with first point of contact (i.e. professor)
- ☐ YU ID information
- ☐ Voicemails / Emails
- ☐ Social media records
- ☐ Voice/Audio Recordings / video footage
- ☐ Text messages
- ☐ Other: _____



OUR 10 POINT STRATEGY CHECKLIST:

4. Who should I interview and in what order?

- ☐ The Complainant
- ☐ The Respondent
- ☐ Witnesses/Those Identified By Complainant
- ☐ Witnesses/Those Identified By Respondent
- ☐ Others Who May Have Been Subject To Similar Conduct By The Respondent
- ☐ Any Other Persons/ Witnesses With Relevant Information
- ☐ Other: _____

5. Where should I conduct the interviews?

- ☐ My Office
- ☐ Off-Premises
- ☐ Conference Room
- ☐ Remotely
- ☐ Other: _____



OUR 10 POINT STRATEGY CHECKLIST:

6. How can/should I prepare for the interview?

- ☐ Draft Interview Introduction
- ☐ Practice Introduction/Questions
- ☐ Determine Format For Recording Answers
- ☐ Outline Key Interview/Follow-Up
- ☐ Highlight Relevant/Helpful Policy Points
- ☐ Other: _____



OUR 10 POINT STRATEGY CHECKLIST:

7. How can/should I open, conduct and close the interviews?

- ☐ Review Allegations (where appropriate)
- ☐ Discuss Privacy*
- ☐ Discuss Retaliation
- ☐ Listen to Responses
- ☐ Other: _____

8. What about my interviews do I document and how?

- ☐ Questions
- ☐ Answers
- ☐ Location/Date/Time
- ☐ Take Post-Interview Notes
- ☐ Take Contemporaneous Notes
- ☐ Other: _____



OUR 10 POINT STRATEGY CHECKLIST:

9. What additional investigation work is necessary before I can prepare a report?

- ☐ Provide evidence to parties
- ☐ Additional investigation (if necessary)
- ☐ Summarize Evidence
- ☐ Organize Investigation File
- ☐ Other: _____

10. How should I document my findings?

- ☐ Cite Policy Provisions
- ☐ Describe Nature of Violation/Conduct
- ☐ Describe Original Charge/Complaint
- ☐ Describe Analysis
- ☐ Summarize Relevant evidence in factual findings – do not reach a determination of responsibility or policy violation.



WORK SCRIPT FOR OPENING THE INTERVIEW



When interviewing the Accused...

1. "Thank you for coming in."
2. "The purpose of this meeting is to ask you about allegations of misconduct made against you."
3. "We will not decide what actually happened until all the information has been collected."
4. "This is your chance to tell your side of the story."
5. "Retaliation is prohibited."



GOOD QUESTIONING PRACTICES



GOOD PRACTICE:

- ▶ **Who, What, Where, When, & Why?**

Example: “Where did the conversation take place?”

- ▶ **Other Open-Ended Questions**

Example: “How did the conduct affect you?”

- ▶ **Follow-up Questions**

Example: “I understand that you are saying that she grabbed you. Where, specifically, did she grab you?”
Or: “I understand that you are saying she showed you confidential documents. What documents, specifically, did she show you?”

- ▶ **Always end by asking: “Anything else?”**

Example: “Do you have anything to add?”



GOOD QUESTIONING PRACTICES



BAD PRACTICE:

► Questions that imply a bias

Example: “I know this sounds far-fetched, but, did you see any inappropriate conduct in the lunchroom?”

Example: “I’ve heard through the grapevine that you have a bad reputation – why is that?”



sexual predisposition
or prior sexual behavior
are almost never relevant

► Leading Questions

Example: “Isn’t it true that Ethel has been wearing revealing clothes/taking from the till/falsifying expense reports/making national origin jokes for years?”



TO ASK OR NOT TO ASK

QUESTIONS FOR THE PERSON BRINGING THE COMPLAINT

1. “What were you wearing at the time of the incident?”
2. “Do you really think Uri meant to offend you?”
3. “Where were you when the statements were made?”

GOOD
PRACTICE



BAD
PRACTICE





TO ASK OR NOT TO ASK

QUESTIONS FOR WITNESSES/THIRD PARTIES

1. “Can you believe that I actually have to investigate this ridiculous charge?”
2. “What did Aviva (the person bringing the complaint) tell you?”
3. “Do you know of any e-mails or other evidence regarding the incident?”

GOOD
PRACTICE



BAD
PRACTICE





TO ASK OR NOT TO ASK

QUESTIONS FOR THE RESPONDENT

Individual question here:

1. “Is there any reason Aviva (the person bringing the complaint) would have for lying?”
2. “What can you tell us about the behavior of Aviva (the person bringing the complaint) at the time of the incident?”
3. “We know that you didn’t do it — we just need your help in proving it.”

GOOD
PRACTICE



BAD
PRACTICE





Prying the Door Open

INTERVIEWING THE PERSON BRINGING THE COMPLAINT (COMPLAINANT):

Directions: Please indicate your reply to each answer in the chat window.

YOU ASK/SAY:	THEY ANSWER:
1. What did she do?	She threatened me.
2. Did anyone hear the conversation?	Sam and Yoni did, for sure.
3. We take all allegations of workplace misconduct seriously.	I don't want to waste my time unless you tell me what kind of punishment he can get for doing this to me.
4. What kind of a relationship did you have? Was it ever romantic or sexual?	It was in-between.
6. How did the conduct affect you and your ability to study?	It was very bad for me. I'm afraid of retaliation. Everyone should be afraid!

**Chat your
follow-up now**



Prying the Door Open

INTERVIEWING THE WITNESS:

Directions: Please indicate your reply to each answer in the chat window.

YOU ASK/SAY:	THEY ANSWER:
1. Tell me what happened?	I heard a sexually inappropriate comment.
2. What did you see?	I'll tell you, if you promise total confidentiality.
3. Where did he touch her?	He grabbed her _____. Isn't that sexual harassment?
4. Did you see them walk into her office together?	Why do you need to know that from me?

**Chat your
follow-up now**



Prying the Door Open

INTERVIEWING THE RESPONDENT:

Directions: Please indicate your reply to each answer in the chat window.

YOU ASK/SAY:	THEY ANSWER:
1. Describe your relationship with him.	We didn't have one.
2. Was your relationship ever romantic or sexual?	We were very close, o.k.?
3. Did you initiate or participate in any sexual discussions or jokes?	You know, nothing out of the ordinary...We're all friends here.
4. What is your response to the allegations?	I didn't do it. And she liked it.
5. Thank you for coming in. I know how busy you are, as a tenured professor. Let's get started.	Don't you need written permission from me to do this?

**Chat your
follow-up now**



THE INVESTIGATIVE REPORT

- The investigative report will **summarize the relevant evidence** gathered during the investigation – but it **will not reach a determination of responsibility**.
- The Investigator will provide the final investigative report to the parties and their advisors (if applicable) simultaneously and at least 10 business days prior to the scheduled hearing.
- The parties **may submit a written response to the investigative report** – any response will be shared with the other party.





Our Model For Documenting the Investigation Interview

THE REPORT: CREATING TIDY NOTES

TESTIMONY.

Focus on the facts. Keep it neutral.

Good Practice – “Aviva stated that Uri made the following comment to her ‘_____.’”

Bad Practice – “Aviva is complaining about Uri, again. This time she has some problem with how he is looking at her.”





Our Model For Documenting the Investigation Interview

THE REPORT: CREATING TIDY NOTES

I SSUES RAISED.

- **Contradictions? New witnesses or evidence brought to light?**

Good Practice – “Yosef said that the interaction with Naomi took place at 6:00 pm in the company parking lot. – In my earlier interview with Yosef, he stated that he was home by 6:00 pm.”

Bad Practice – “Note to file: Yosef must be lying because I spoke to Naomi and I know that Naomi hates to miss the 6:00 pm news at home.”





Our Model For Documenting the Investigation Interview

THE REPORT: CREATING TIDY NOTES

Demeanor of Interviewee.

- Willingness to answer questions. Eye contact. Body language.

Good Practice – “I asked Deborah the following question twice: ‘Where were you at the time of the incident?’ – Both times she looked away and did not answer.”

Bad Practice – “Deborah couldn’t play poker worth a dime. I could tell just by looking at her that she is covering something up.”



Our Model For Documenting the Investigation Interview

THE REPORT: CREATING TIDY NOTES

Y OUR NEXT STEP.

- Is there any follow-up that might need to happen?





CHECKLIST FOR PREPARING A COMPLETE AND ACCURATE RECORD/INVESTIGATOR'S REPORT

INCLUDE THE FOLLOWING DESCRIPTIONS:

- ☐ Chronology of events since you were put “on notice” and all steps you have taken.
- ☐ All persons you contacted regarding the case and all persons you interviewed.
- ☐ All documents you reviewed, all written statements you obtained and all other evidence you collected.
- ☐ Summary of allegations and rebuttals.
(Identify the source for each allegation and rebuttal; include your specific observations of demeanor, conduct and behavior.)
- ☐ Summary of information learned (supporting, refuting information)





THE LIVE HEARING





THE LIVE HEARING

- Yeshiva **must** provide for a live hearing with cross-examination in cases involving allegations of Title IX sexual harassment or sexual misconduct.
- At the request of either party, Yeshiva **must** provide for the entire hearing to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- If a party does not have an advisor present at the live hearing, Yeshiva **must** provide one (without fee).
- If a party or witness does not submit to cross-examination, the decision-maker **cannot** rely on any statement of that party or witness in reaching a determination regarding responsibility.
- Yeshiva **must** create an audio or audiovisual recording, or transcript, or any live hearing.





THE LIVE HEARING –WHAT HAPPENS?

1. Identify the decision-maker
2. Notify parties of decision-maker's identify at least 48 hours prior to hearing
3. Hearing is in real time, although parties may request to be in separate rooms
4. Decision-maker sets the agenda
5. Each party must have an advisor with them
6. Advisors may question any party or witness
7. Only statements made by those who participate in the hearing will be relied on





RELEVANCE

- **RELEVANT QUESTIONS:** At the Live Hearing, the decision-maker must allow each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions.
- **NOTE: Prior Sexual Behavior:** Questions and evidence about a complainant's prior sexual behavior are irrelevant unless (1) offered to prove that someone other than the respondent committed the alleged misconduct; or (2) offered to prove consent.





THE LIVE HEARING

Issuing the decision –

- render a decision based on a preponderance of the evidence (i.e., that it is more likely than not that the Title IX Sexual Harassment occurred).





AFTER THE HEARING

Written determination -- based on a preponderance of the evidence.

- (i) identify the allegations
 - (ii) describe steps taken
 - (iii) identify findings of fact
 - (iv) make conclusions regarding the application of the Policy to the facts
 - (v) include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and any disciplinary sanctions the University imposes on the respondent
 - (vi) provide information about whether remedies designed to restore or preserve access to the University's education programs or activities will be provided, and
 - (vii) provide information about the procedures for sanctioning (if applicable) and bases for appeal.
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.





THE APPEAL PROCESS

- Both parties have a right to appeal within 5 days of the final determination letter
- Other party has 5 days to respond



Three possible grounds for appeal:

1. An alleged material violation of the established procedures in the Policy (including conflict of interest or bias on the part of the Title IX Coordinator, the Investigator, or the decision-maker);
2. Evidence that could affect the outcome is now available that could not have been obtained at the time of the determination/initial hearing; or
3. The sanction is excessive, inconsistent with or insufficient for the nature of the offense.



TITLE IX COORDINATOR

- Now that the Title IX Coordinator has been made aware, what are Aviva's options?



OPTION 1:
Do nothing /
Take external
action



OPTION 2:
Formal
Resolution



OPTION 3:
Informal
Resolution

Student can access support services with each option



AVIVA'S OPTIONS



OPTION 3: Informal Resolution

Informal Resolution is **NOT AVAILABLE** to resolve allegations of:

- sexual assault
- stalking
- domestic violence or dating violence,
- allegations that an employee sexually harassed a student

Informal Resolution **COULD INCLUDE:**

- Informal discussion between complainant and respondent in the presence of Title IX Coordinator, Deputy Title IX Coordinator or a Unlawful Harassment Panel Member(s);
- Education for the area or department where the complaint originated; or
- Mediation

AVIVA'S OPTIONS



OPTION 3: Informal Resolution

- **Provide the parties with:**
 - written notice disclosing the allegations
 - the requirements of the informal resolution process (including under what circumstances it precludes parties from resuming a formal complaint on the same allegations)
 - the fact that, at any time prior to agreeing to a resolution, any party can withdraw from informal resolution and resume the process as a formal complaint)
 - any consequences resulting from participating in an informal resolution process, including that records will be maintained or could be shared.

Note: cannot require parties to participate in an informal resolution process.



QUESTIONS?

