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Thursday, June 18, 2020

1:00 - 2:30 PM - Eastern

Our
Hopes...

Welcome & Introductions

What this workshop is:

1. Unpack legal requirements
2. Identify what needs to change in your policy
3. Networking/discussion with colleagues/expert faculty

What this workshop is not:

- 1.



A Formal Complaint is a:

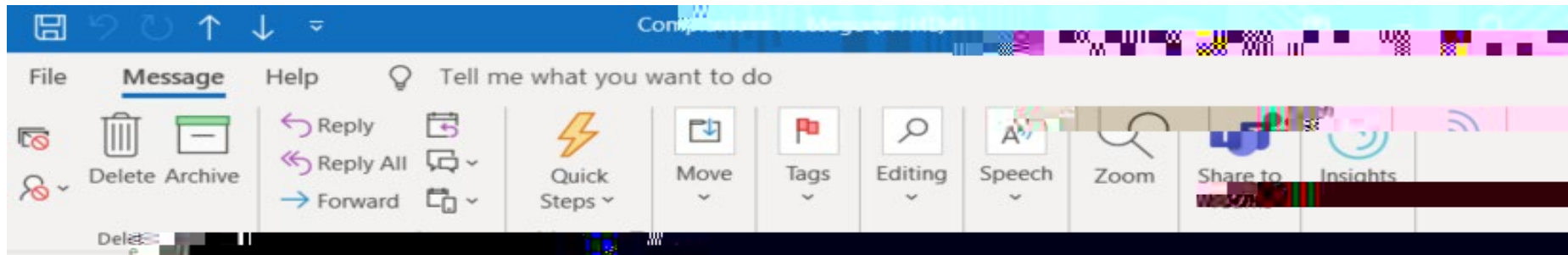
- A document filed by a complainant, or
- Signed by the Title IX Coordinator

Alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. § 106.30

- The filing of a formal complaint of sexual harassment triggers the grievance process set forth in § 106.45.
- The § 106.45 grievance process includes:
 - Investigation conducted by a neutral, objective investigator(s)
 - Live-hearing providing for cross-examination by the advisor for both parties
 - Informal resolution, if applicable



1. Does the document or electronic submission from a Complainant have to use the words “formal complaint” to trigger the grievance process under § 106.45.?
2. How much information must be in a Complainant’s complaint to constitute a formal complaint?



Complaint



Charlie Daniels <charlie.daniels@fictitiousstate.edu>

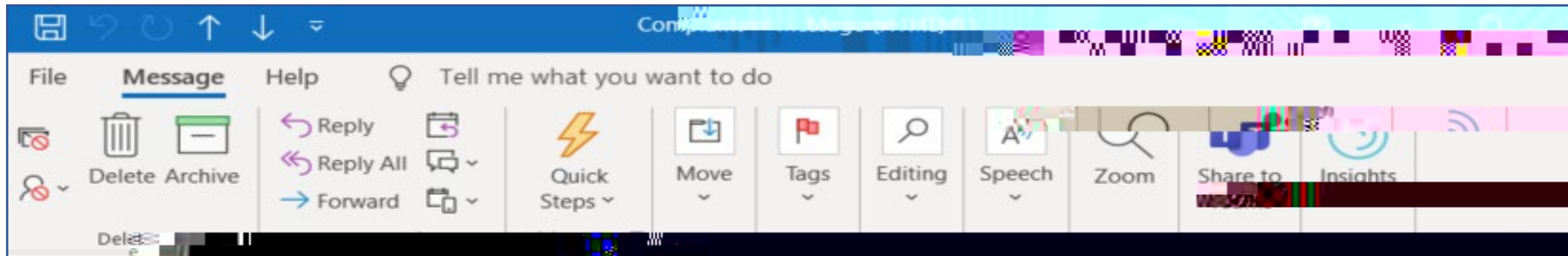
To TitleIX <TitleIX@fictitiousstate.edu>



Fri 6/12/2020 10:06 AM

Dear Title IX Coordinator,

I work in the library in an open space next to Bailey James. I have to walk by Bailey's desk every time I go to my desk. Over the past month, every time I've passed Bailey's, desk I can see that Bailey is watching pornographic videos on their iPad. This occurs



Complaint



Charlie Daniels <charlie.daniels@fictitiousstate.edu>

To TitleIX <TitleIX@fictitiousstate.edu>



Fri 6/12/2020 10:06 AM

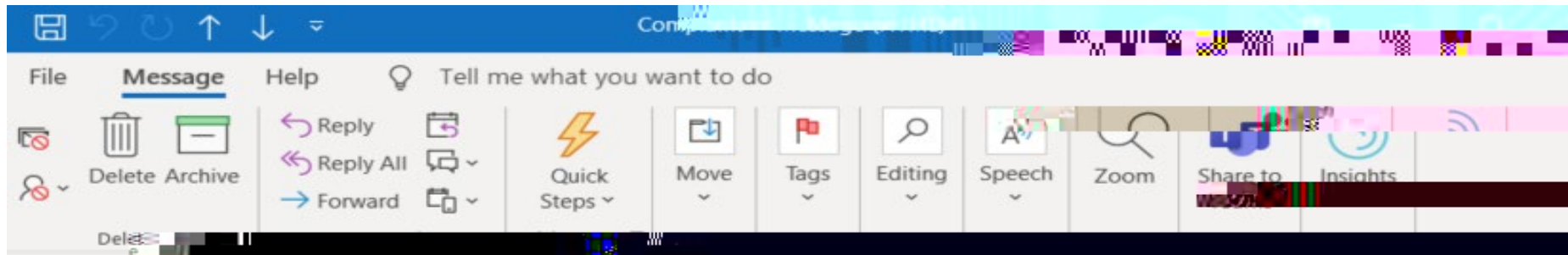
Bailey James raped me on Saturday night. I want to file a complaint. Bailey deserves to be expelled. I've heard Bailey has done this before.

Charlie Daniels

Senior

Economics major, Sociology minor

Fictitious State University '21

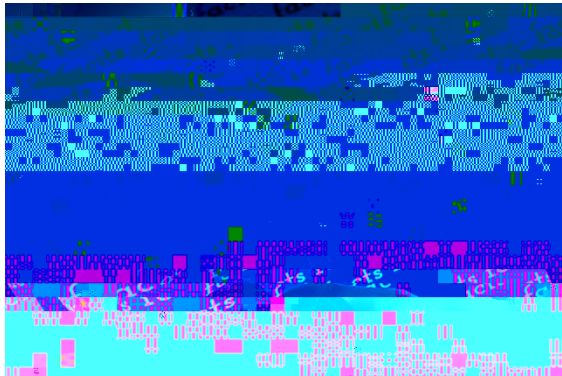


Complaint


Charlie Daniels <charlie.daniels@fictitiousstate.edu>


To TitleX







1. Formal complaint filed
2. Title IX Coordinator assigns a trained neutral/unbiased investigator to investigate the allegations.
3. Notice of Allegations § 106.45(b)(2)
4. Burden of proof and burden of g

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5. Investigator will conduct a thorough and objective search for relevant facts and evidence pertaining to the formal complaint.
 6. Investigator will request and conduct interviews with the Complainant, Respondent and witnesses.
 7. Written notice to be provided to each party including the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare and participate.
§ 106.45(b)(5)(v).

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8. The parties have a right to have an advisor present during the interview(s), who may or may not be an attorney.
 - Explain the Advisor's role within the investigative process.
 9. The parties have equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, or not to participate.
 10. The investigator may independently identify and interview witnesses and obtain evidence other than offered by the parties.





11. Investigator may decline to interview witnesses unlikely to



14. The investigator will seek, but not require, a waiver of legal privilege if information protected under a legally recognized privilege is provided by or sought. § 106.45(b)(i)(5)

- Information protected by legal privilege may not be relied upon by the investigator or decision-makers unless the privilege is waived. § 106.45(b)(x)

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16. Once the investigator finishes gathering the available evidence, the investigator will compile all the information directly related to the allegations raised in the formal complaint, including the evidence upon which the school does not intend to rely on in reaching a determination.
- This information is compiled into the “investigative file.” § 106.45(b)(5)(vi)



17. The investigator shall send the parties and their advisor the “investigative file” (redacted), so that each can meaningfully respond to the evidence prior to the conclusion of the investigation. § 106.45(b)(5)(vi).

- Hard copy
- Electronically

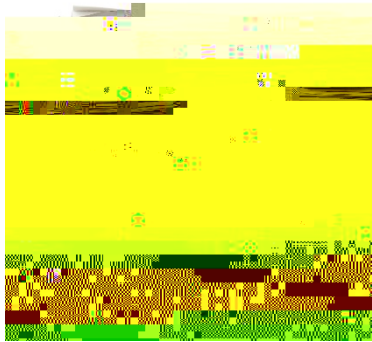
18. Respondent maintains a presumption of innocence throughout the investigative process.







20. Investigator creates an “investigative report” that fairly summarizes relevant




Evidence “directly related” to the allegations



Relevant evidence




Other evidence



21. Upon reviewing the “investigative report” and any written responses thereto, the Title IX Coordinator will determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint.

- If dismissal is warranted, the Title IX Coordinator will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.



22. If the Title IX Coordinator determines that the matter should not be dismissed, the Title IX Coordinator will send a Notice of Hearing contemporaneously to the parties. § 106.45(b)(3)

23. Final “investigative report,” and attachments thereto (i.e., relevant evidence relied upon within the



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- Policy must include reasonably prompt timeframes for the conclusion of the grievance process, including for filing and resolving appeals and informal resolution(if applicable).
- Note when the “clock” starts ticking (e.g., “after the University has notice of the allegation of a policy violation” or “after the filing of a “formal complaint”).
- Institution has discretion on how to calculate “days,” (i.e., business days, calendar days, school days, etc.)

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- Allow for temporary delay of the grievance process or limited extensions of time frames for good cause.
- Good cause for delay, *includes but is not limited to*:
 - Absence of a party, a party's advisor, or witness;
 - Concurrent law enforcement activity; or
 - The need for language assistance or accommodation of disabilities.





other

Case study:

Two days before the scheduled §106.45 live-hearing, Respondent informs the Title IX Coordinator that they are leaving school immediately to travel home to be with their mother who is near the end of life due to Stage IV metastatic breast cancer. The Re*1 (R)35brv

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Other possible reasons for delay:

- The complexity of the case
- The number of parties or witnesses involved
- University closure or academic breaks
- Any other extenuating circumstances articulated by the TIXC or investigator.



- Each party has a right to an advisor of their choosing, who may or may not be an attorney. § 106.45(b)(2) of the Rules of Professional Conduct

or party .


- Advisor may inspect and review evidence provided to the party under § 106.45(b)(5)(vi). § 106.45(b)(2)(B).
- Advisor conducts cross-examination of other party and witnesses at the live hearing. § 106.45(b)(6)(i).
- “If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.” § 106.45(b)(6)(i).





1. What reasonable restrictions will you place on role of advisors within the investigatory, hearing, and appeal processes?
2. Who will be your university-appointed advisors? How will you ensure equity in the appointment of advisors?
3. Will you allow the parties to change advisors throughout the process?
4. Will your advisors differ from “support persons?”



- Final Regulations state only that an investigative report “must fairly summarize relevant evidence.”
- “Relevant evidence” may differ from “evidence directly related to the allegations.”
- It is the investigator’s role to determine what is “relevant evidence” after parties have reviewed all evidence collected.

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- Explanation of alleged misconduct
 - Applicable offenses
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- Identify undisputed facts, corroborated facts and contested/disputed facts, and/or
 - Analysis of the relevant evidence, including a credibility analysis, and/or
 - Recommended findings or conclusions.





“The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative process.”

Final Regulations, preamble p. 1031 (unofficial version).



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- The right to receive a written Notice of Allegations that provides sufficient detail about the allegations and the applicable Policy provisions for the Respondent to be able to respond and for both parties to understand the scope of the investigation.
 - The right to be treated equitably throughout the investigative process.
 - The right to offer evidence to be considered and provide witnesses to be interviewed (fact and expert witnesses).

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- The right to review and provide a written response to the “investigative report” (must allow at least 10 days).
 - The right not to be restricted from discussing the allegations under investigation.
 - The right not to have legally privileged information disclosed or relied upon without a voluntary waiver of the privilege.
 - The right to decline to give a statement about the allegations.

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- The complainant has a right to “rape shield” protections.
 - The Respondent has the right to the presumption of innocence until proven otherwise after the conclusion of the grievance process under § 106.45.
 - The right to have the burden of proof and burden of gathering evidence rest on University; not parties.





6-week Online Bootcamp for Investigators with >3 years experience

**not included in membership*

3-day Virtual Conference for Investigators with <3 years experience

**free for members*

2-day Virtual Conference for Hearing Panels working on Student Cases

**free for members*



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- [Title IX Regulations Addressing Sexual Harassment](#) (unofficial copy)
 - [Title IX Regulations Addressing Sexual Harassment](#) (Federal Register)
 - [Title IX: Fact Sheet: Final Title IX Regulations](#)
 - [Title IX: U.S. Department of Education Title IX Final Rule Overview](#)
 - [Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
 - [OCR Blog](#)



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