

**Balanced Attention to Respondents:
Understanding Procedural Due Process Considerations and Approaches to Respondent Resources**

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Tips for School Administrators

1. **Consider *how* your campus provides notice.** You may wish to deliver written Notices of Allegations in person or via videoconference, where you have the opportunity to answer questions, gauge well-being, and make immediate referrals to resources. If you choose to deliver notices in a meeting, make clear that it is not an interview and is solely to provide information, including about resources and supportive measures. Notify the respondent that they may bring an advisor if they wish.
2. **Consider *when* your campus provides notice.** Whenever possible, refrain from issuing notices or other key communications at times when supports are likely to be unavailable (e.g., Friday afternoons, weekends, and on breaks). Consider sending a “next day notice” or an anticipated release date for critical stages in the process such as the release of the evidence file, the issuance of the investigation report, or the issuance of the written determination. “Next day notice” allows the party to secure the presence of their advisor or a support person, family member, or friend who can be with them as they review the material.
3. **Consider *what* your campus includes in its notice.** In Title IX cases, the notice of allegations *must* contain:
 - the parties’ identities, if known;
 - the conduct allegedly constituting sexual harassment;
 - the date and location of the alleged harassment, if known;
 - a statement that the respondent is presumed not responsible and that a determination regarding responsibility will be made when the grievance process concludes;
 - a statement that the parties are entitled to an advisor of their choice, who may be, but is not required to be, an attorney;
 - a statement that the parties are entitled to inspect and review evidence that is directly related to the allegations; and
 - notice of any provision of the school’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.¹

¹ 34 CFR § 106.45(b)(2)(i).

In addition to the above requirements, many schools choose to include the following in their notices of allegations:

- information about supportive measures and on- and off-campus resources;
- information about the importance of preserving information such as text messages, photographs, or social media posts;
- the standard of evidence that will be used in the formal grievance process;
- the identity and contact information for the investigator; and
- information about the availability of disability-related accommodations during the grievance process.

We recommend reviewing your notice template with an eye toward clarity and brevity. Consider moving non-required information to an attached “resource guide” or webpage with FAQs and information specifically tailored to complainants or respondents. We also recommend omitting information about procedural steps that have or will be taken (e.g., a temporary “hold” on a respondent’s degree, imposition of an emergency removal or administrative leave, or information about a party taking a leave of absence). These procedural steps are better communicated separately, not as part of the notice of allegations.

4. **Gather and evaluate resource materials for respondents. Identify gaps and fill them as needed.** Many schools have robust informational resources targeted toward complainants, including websites, posters, fliers, and wallet cards about reporting options, medical care, law enforcement, supportive measures, community resources, and advocacy. Despite the significant need, there are comparatively fewer resources targeted toward respondents. Below, we have included some examples of respondent-focused resource materials from the University of Wisconsin,² The College of New Jersey,³ and the University of Tennessee.⁴ For your campus, we recommend gathering and evaluating all written resource materials targeted toward respondents, identifying gaps or unfilled needs, and then working to fill those gaps by developing new web or print resources. We also recommend reviewing and considering providing links to the national organizations, such as the following:

- Families Advocating for Campus Equality (FACE).⁵ According to their website, FACE strives to ensure fair, unbiased, gender-neutral campus Title IX sexual misconduct disciplinary processes for ALL students, whether they are female, male, LGBTQ, or other gender identities and gender orientations.
- Foundation for Individual Rights in Expression (FIRE).⁶ FIRE’s mission is to defend and sustain the individual rights of all Americans to free speech and free thought. FIRE’s website contains resources about due process, free expression, and the rights of students, faculty, and staff.

² University of Wisconsin, Milwaukee, Respondent Information, <https://uwm.edu/titleix/employee-information/respondent-information/> (last visited October 16, 2023)

³ The College of New Jersey, Respondent (Accused) FAQs, <https://titleix.tcnj.edu/faqs/respondents-faqs/> (last visited October 16, 2023)

⁴ University of Tennessee, Knoxville, Respondent Guide, 2022-2023, <https://titleix.utk.edu/wp-content/uploads/sites/96/2022/08/79539715-Title-IX-Respondent-Guide-2022-23-accessible.pdf> (last visited October 16, 2023)

⁵ Families Advocating for Campus Equality (FACE), www.facecampusequality.org (last visited October 16, 2023)

⁶ Foundation for Individual Rights and Expression (FIRE), www.thefire.org (last visited October 16, 2023)

5. **Build a robust alternative resolution option** that accounts for concerns that respondents would be likely to have. Consider an FAQ website or guide that answers questions, including:
- Are respondents required to admit fault as part of the alternative resolution process?
 - If the parties try alternative resolution, are not able to reach an agreement, and the matter is sent back to the investigative process, are the parties' statements during the alternative resolution process able to be considered in the investigative process?
 - Is an alternative resolution agreement final, or can a party ask that the matter be investigated later?
 - Are the parties allowed to have advisors throughout the alternative resolution process? What is the role of the advisor in the alternative process?
 - If a respondent transfers to another school, applies for graduate school, is asked to make disclosures related to their status as a student-athlete, or is otherwise asked about any allegations/processes related to sexual harassment, how should the respondent answer if the matter was resolved through an alternative resolution agreement?

If your campus is so inclined, consider Restorative Justice training and integrating restorative practices into your alternative resolution model. The [University of San Diego Center for Restorative Justice](#) provides academic and professional programs and training to facilitators.

6. **Encourage respondents to identify an advisor as early in the process as possible.** Reinforce the utility of telling a family member or other trusted adult what is happening so that the respondent can get guidance and support. Give guidance on how to find an attorney. As examples, consider developing a list of attorney-advisors who have served previously, are familiar with the policy, and know the campus's process, or consider engaging the local bar association and/or training a pool of attorneys who would serve at a low cost or on a sliding scale. Provide a list of resources, and—if the list is lacking—consider developing additional resources through training (e.g., law students, grad students, an exchange program with another school, or a pool of trained volunteer Respondent Resource Coordinators). Finally, no matter the size of your pool of existing resources, develop written informational materials to provide to those serving as advisors and formal or informal support persons, including information about the policy, the process, timeframes for major stages in the process, the advisors' roles, the availability of supportive measures to both parties, the presumption of non-responsibility, and the applicable standard of evidence. Even with a robust pool of university-appointed advisors, some parties will select non-university-appointed attorneys or may have other adults outside the university who have questions about the process.
7. **Develop a thorough understanding of the disability accommodations process on your campus.** Learn about possible disability-related accommodations, how to request them, and how information about accommodations is (and is not) shared among campus partners. Consider adding a few sentences to your notice of allegations clarifying whether your office is automatically notified if a party has disability accommodations in place and, if not, how a person may request disability-related accommodations as part of your process.
8. **Review your template communications, website, and informational materials through the lens of a potential respondent.** As an exercise, re-read your notice of allegations templates as if you were a respondent, an attorney for a respondent, or a parent of a respondent. Consider whether the notice template contains any unnecessarily incendiary language. For example, instead of "You are accused of..." consider identifying the parties by name with parentheticals

as to who is the complainant and respondent and then write, “The complainant reported that, on or about X date, the respondent subjected her to sexual intercourse in the absence of her consent.” As another example, rather than characterizing the report as “a report of sexual assault,” consider describing the reported facts and using the name or section number of the policy to which it corresponds. After reviewing all template communications, consider gathering a group of equity readers (student, faculty, and staff volunteers) to review brochures, web materials, posters, and other written resources through the lenses of potential complainants and respondents. Look for areas where you can present the same information more neutrally without losing clarity. Remember your function within the system of neutral adjudication as opposed to the system of advocacy. While others may use terms like, “Survivor Advocate,” your resources should never use terms like “victim,” “survivor,” “offender” or “perpetrator,” as those reflect a value judgement that indicates bias or a prejudgment of the facts.

9. **Evaluate tools that exist outside the process.** Conduct a roundtable exercise with key campus partners to talk through what steps, if any, your campus might take if faced with any of the following scenarios:

- A student/faculty member/staff member chooses not to report to the university but tells peers that the respondent (by name) has engaged in ____ (alleged conduct);
- A student and their friends succeed in getting the respondent banned from the respondent’s social group/club/team;
- A complainant is dissatisfied with the results of a formal resolution and posts on social media, including naming the respondent and describing the conduct;
- A student/faculty member/staff member reports that they are being bullied and harassed by peers because of false allegations being shared by a complainant

In each of these scenarios, think about **who** should be consulted about next steps; **what**, if anything, the university can do to address the potential complainant; **when** the conduct might cross over into a potential policy violation, if at all; **where** the respondent should go for support and to learn about potential resolution options; and **how** the university can better prepare for these circumstances in advance. Many campuses have found that cross-campus partnerships including student life, Title IX, counseling, wellness, and others are best suited to address concerns like those in the bulleted list above.

10. **Review prevention, education, and training materials through the lens of respondents** and reframe the core values of procedural fairness, equity, and care as critically important for all parties. Below are some examples of ways in which training may be enhanced to better respond to the unique needs of respondents.

- When training faculty and staff on their responsible employee reporting obligations, build in a module about supportive measures and clarify that they are non-disciplinary, non-punitive, and cannot unreasonably burden the other party. Some faculty and staff may still be operating under an outdated model of interim actions that could be seen as disciplinary (e.g., unilateral no-contact directives, restrictions on respondent’s schedule or ability to engage in education programs, interim suspension, and the like).
- When training investigators, ensure that they are offering—and re-offering—the opportunity the party to have an advisor present for their interview. To the extent possible, interviews should take place with an advisor or support person present, even if that person will not serve as the advisor at the hearing. Additionally, as noted above,

consider assigning an advisor from the start of the process to ensure that party interviews are always conducted with an advisor present.

- When developing prevention, education, and training programs, consider ways to engage the campus in dialogue about the complex range of human behavior, active bystander and upstander options, the difference between intent and impact, protected speech and free expression, informed advocacy and allyship, and effective models for interpersonal conflict resolution. Deeper dialogues allow for an exploration of the vast spectrum of conduct on the college campus while refocusing efforts on a shared responsibility for creating healthy communities as opposed to a discipline-focused approach to addressing behavior.