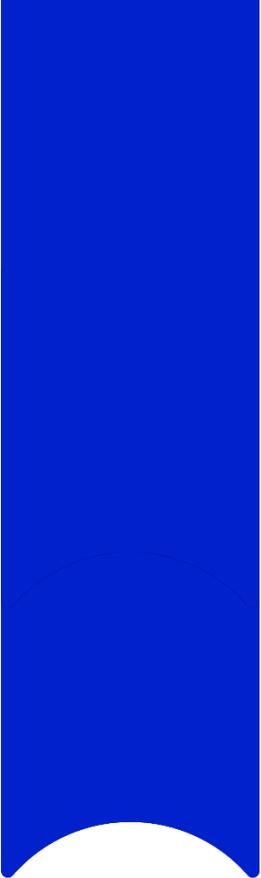


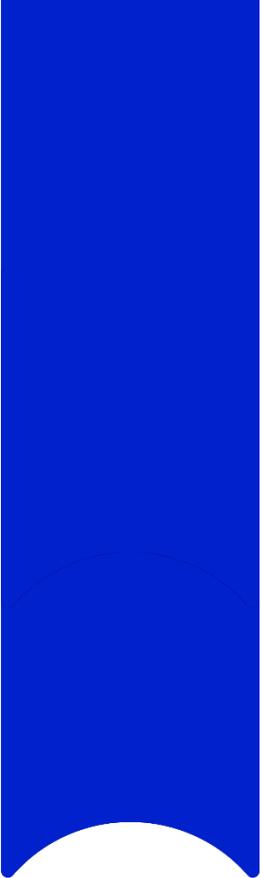


## ***Unpacking the Final Title IX Regulations, Part 2: More Q&A with Josh Richards***

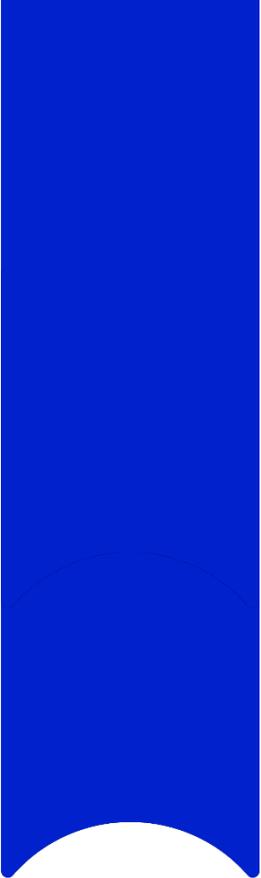
*Joshua W.B. Richards, Saul Ewing Arnstein & Lehr LLP*

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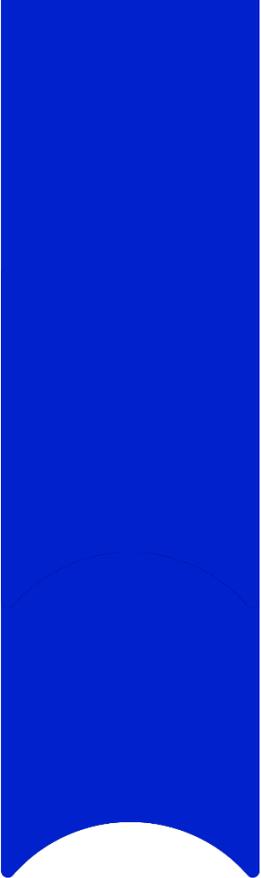
Several lawsuits have been filed challenging the new regulations, and at least one is seeking an injunction to stop them from going into effect August 14. How likely is it that an injunction will be granted?

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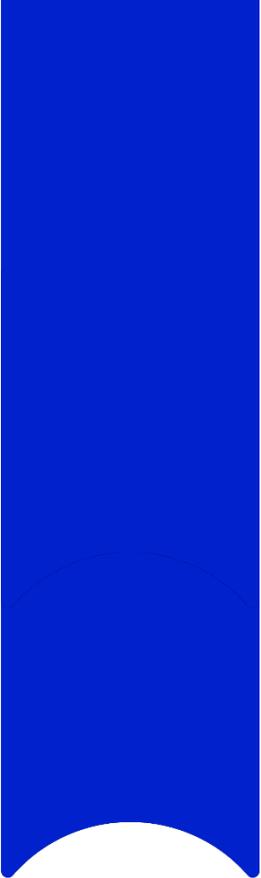
If a matter starts before August 14, do we have to change to the new procedures for that matter – or do they only apply for complaints made on or after August 14?

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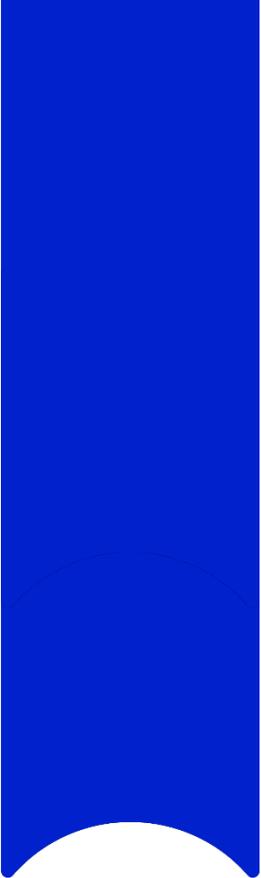
The preamble says that “sexual exploitation” is included in “sexual harassment.” Does the preamble have the same force of law as the regulations themselves?

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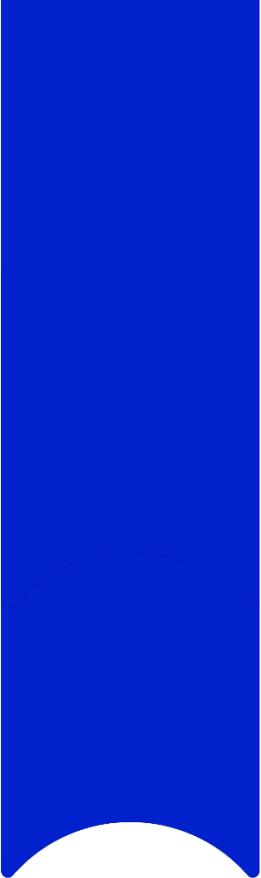
Can we give employee complainants the option of moving forward internally under either Title VII or Title IX – or do they have to use the Title IX process?

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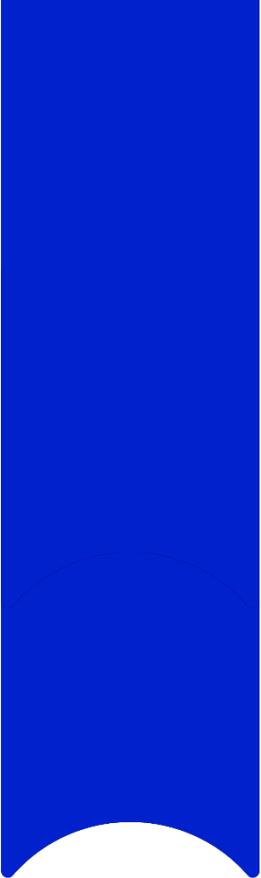
Under the regulations, can the process for employees – particularly tenured faculty – who are named as respondents by students be different from the process for student-on-student cases, as long as it includes a hearing with cross-examination?

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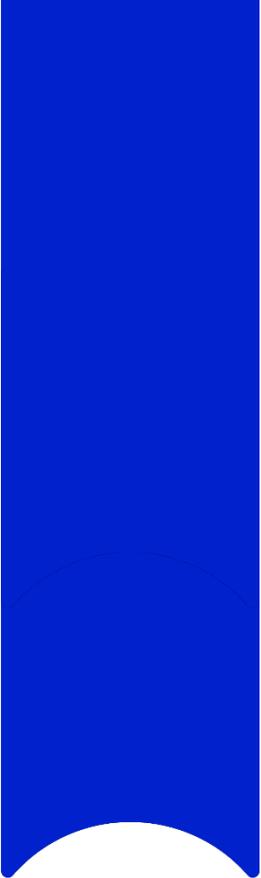
Does the same standard of evidence need to apply to all other code of conduct violations – or only to those alleged violations involving sexual misconduct?

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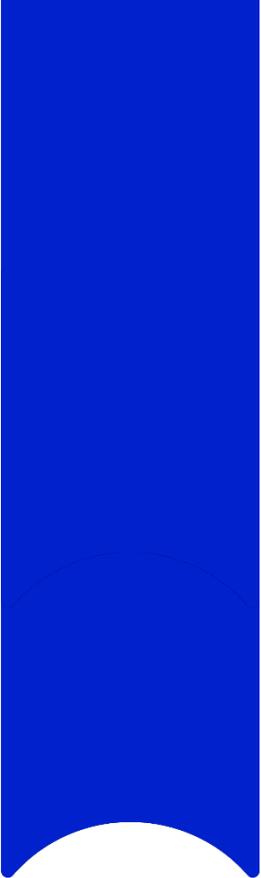
How do institutions balance conflicts between state laws and the regulations with respect to notice and the obligation to respond to allegations of sexual misconduct?

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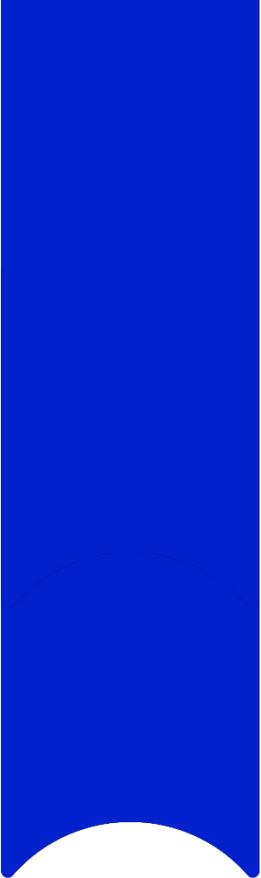
Do you recommend that we remove “responsible employee” language from our policies? Or may an institution still designate most employees as responsible employees and require that they report to the Title IX Coordinator?

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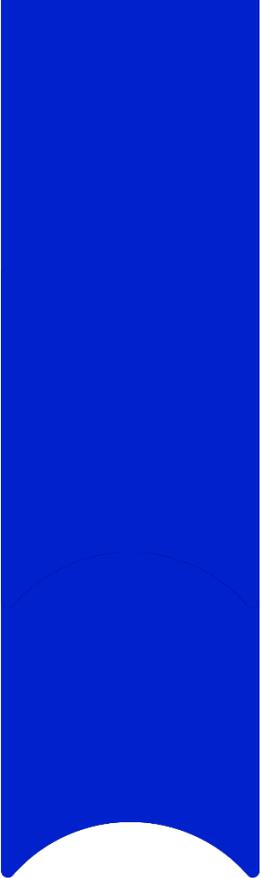
If a student tells a faculty member about a student-on-student sexual assault, and the faculty member tells a dean in passing that the student confided in the faculty member, does the university have actual notice since the dean could institute disciplinary action?

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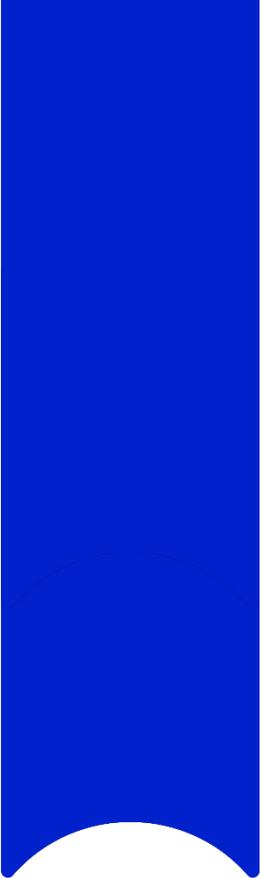
If a sexual assault occurs between two students at a party in an off-campus house neither owned nor controlled by our university, we are not allowed to respond under Title IX because there's no jurisdiction – but we can address the matter under our campus code of conduct, correct?

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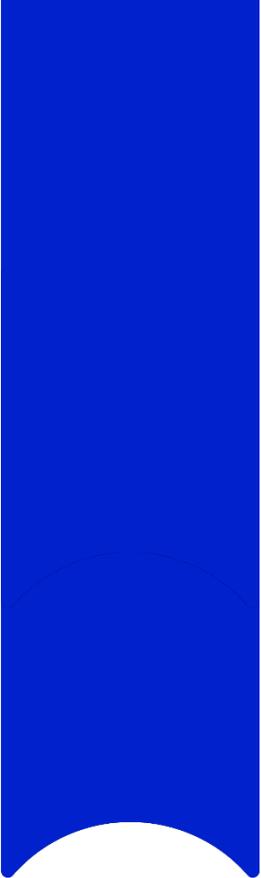
Would domestic violence or stalking that is not sex-based fall under Title IX? And if it occurs at a location that is not controlled by the institution, does that mean the school has no obligation to offer supportive measures?

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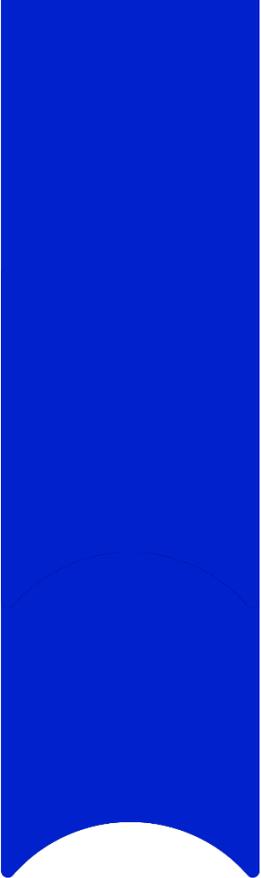
How do you see the regulations governing a situation where a respondent-student is a senior in the middle of the Title IX process at the time of graduation? We're prohibited from imposing sanctions until the matter is concluded – but after graduation the respondent is no longer under our jurisdiction. Do you think OCR would expect us to withhold the degree pending final resolution, drop the case and grant the degree, or something else?

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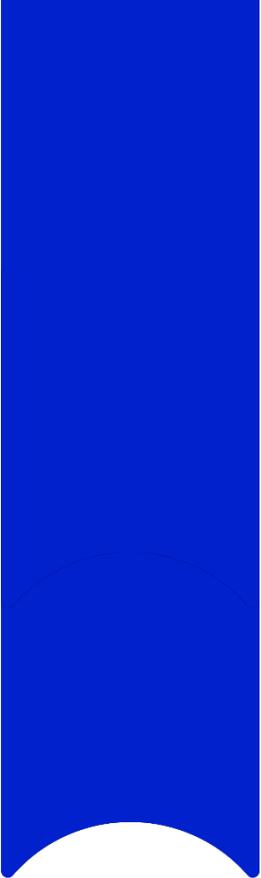
Since the regulations stipulate we can only move forward with the Title IX process if we receive a formal complaint, does that mean we're no longer able to investigate an alleged serial perpetrator, if all the alleged victims are reluctant to bring formal complaints?

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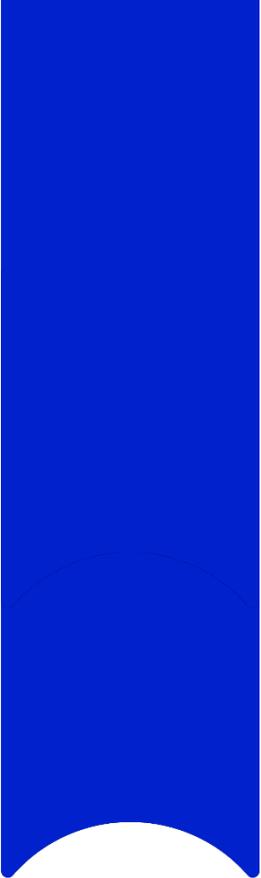
What about complaints making multiple allegations, only some of which involve Title IX, that all arise from the same action – for example, an employee claims wrongful termination, severe and pervasive sexual harassment, and wage and hour violations. Which parts of this could we consolidate to avoid running two parallel processes arising from the same set of facts?

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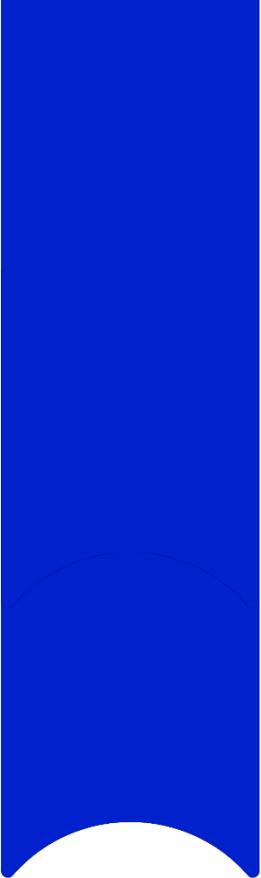
Is there a deadline under the regulations for the reporting party to file a formal complaint?

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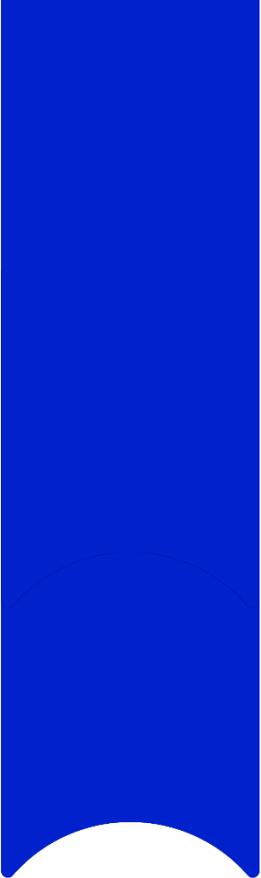
Does the Title IX Coordinator need to meet with every complainant who files a report - even if doing so will not result in a formal investigation?

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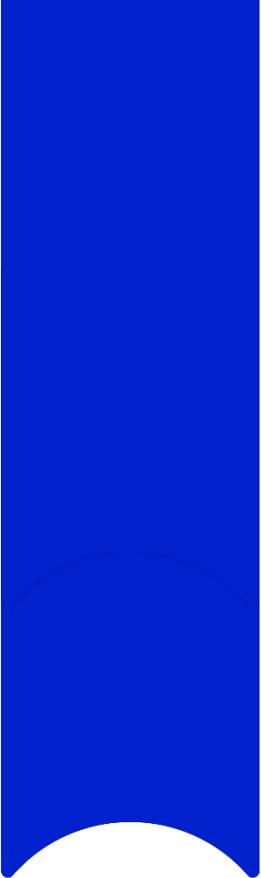
Should a copy of the complaint be provided to the respondent?

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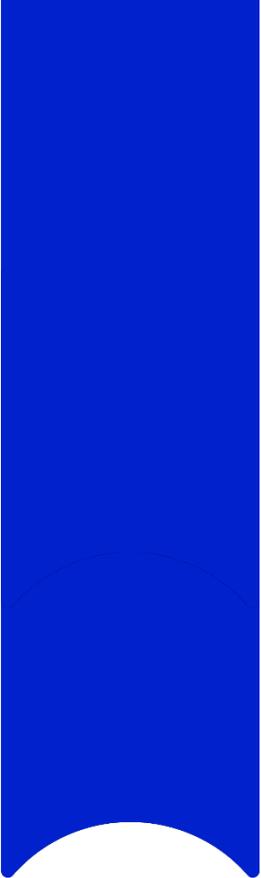
The obligation upon receiving a report includes the duty to contact the complainant, even if the complainant did not actually make the report. What if the complainant does not want to be contacted and refuses efforts to provide supportive measures?

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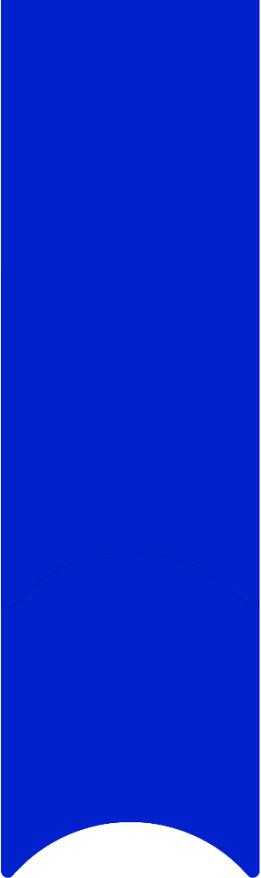
Could you please describe what is meant by the “single investigator” model?

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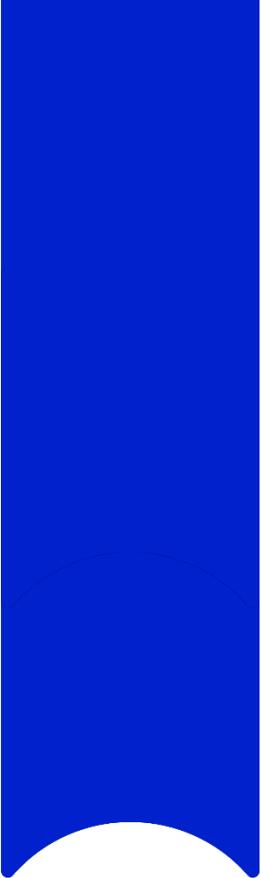
Would using as an investigator a co-worker from the same office as the hearing officer be considered a conflict of interest or bias?

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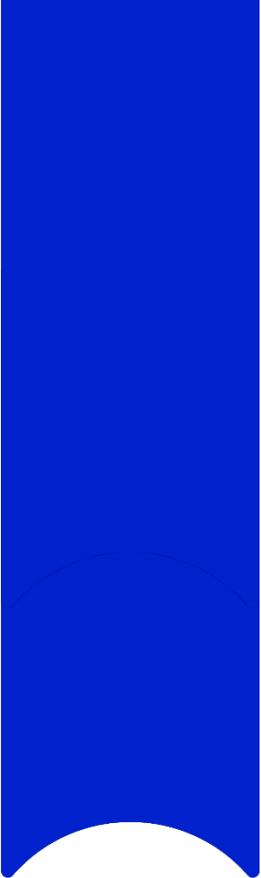
Are investigators subject to cross-examination at hearings?

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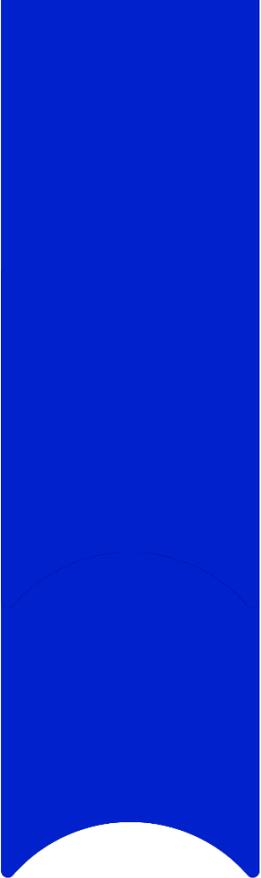
Do you have suggestions for investigators who may testify at hearings regarding how to document credibility of each party during their investigation in a way that does not demonstrate bias or a leaning for either party?

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What recommendations do you have to mitigate potential large-volume challenges based on alleged bias?

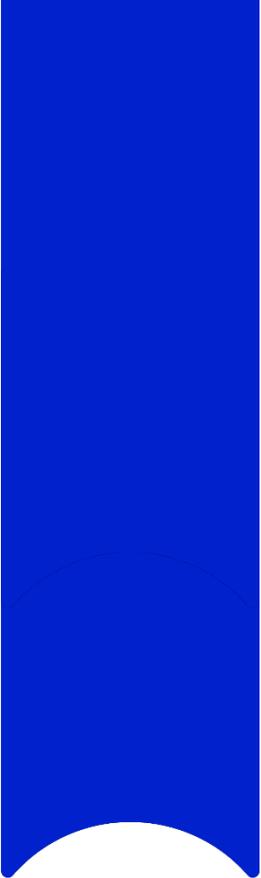
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Is it equitable for an institution to invite just anyone to serve as advisor to party who doesn't have one? As a practical matter, it seems this person needs to be an attorney, especially if the other party has a seasoned litigator as their advisor.

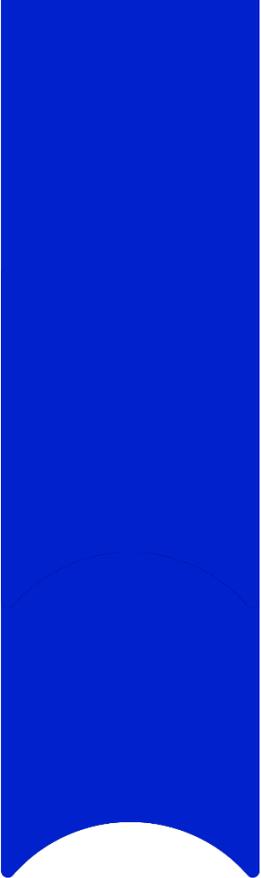
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Under the regulations, if neither party has an advisor, does the school have to provide one for each of them?

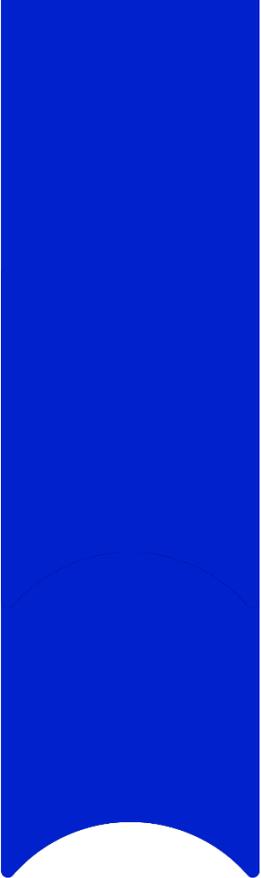
What if a student refuses an advisor?

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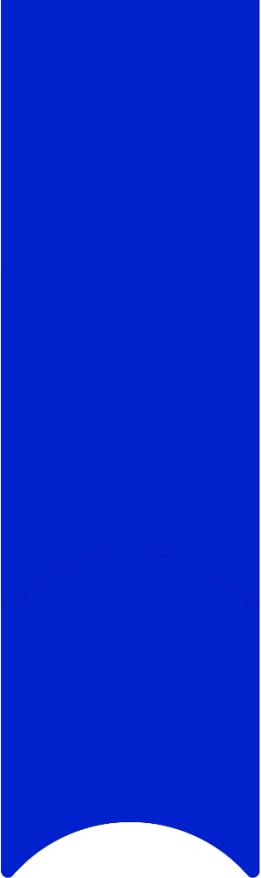
Does the advisor have to come up with questions, or just read the questions the party wants? If one party doesn't appear at the hearing but their institution-provided advisor must still cross-examine the other party, does the advisor have to come up with those questions?

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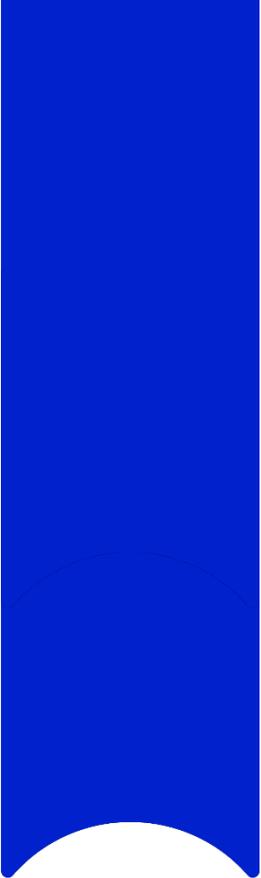
Are the hearing officer and the decision-maker the same person?

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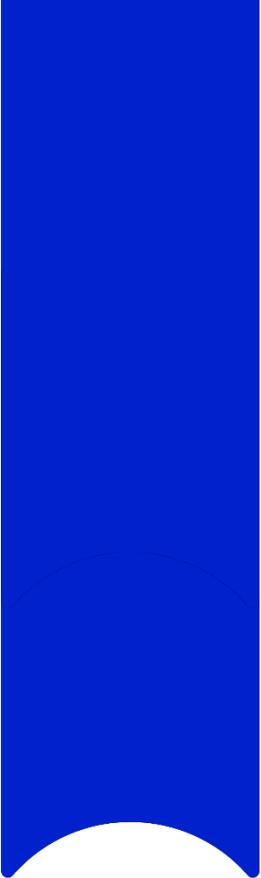
Has the DOE confirmed that an institution may break up the hearing outcome process – that is, outsource the hearing officer/decision-maker to determine responsibility, and then have someone in-house at the institution determine remedies or sanctions?

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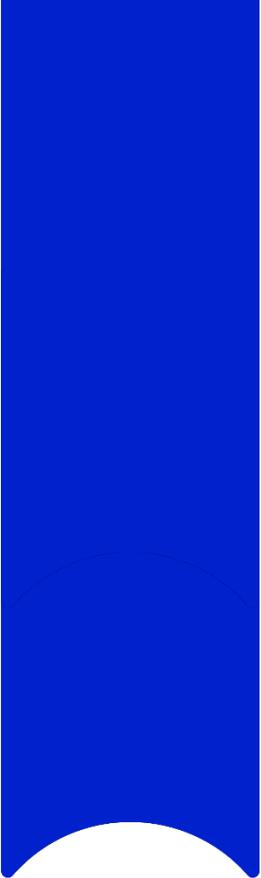
Do you recommend that students serve on hearing panels?

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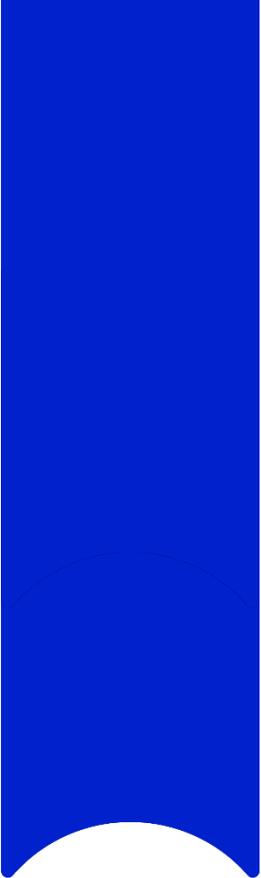
In a Title IX matter involving a faculty-respondent, can the hearing outcome be a “recommendation” for discipline that is then sent to a separate process (such as a faculty grievance process) – or must the Title IX hearing process replace the faculty grievance process?

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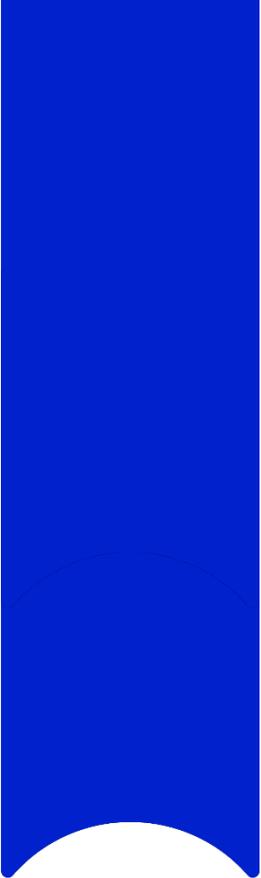
Do the regulations prevent allowing each party to have two people present at the hearing – one to act in the advisor capacity and ask cross-examination questions, and the other to act only in a support role?

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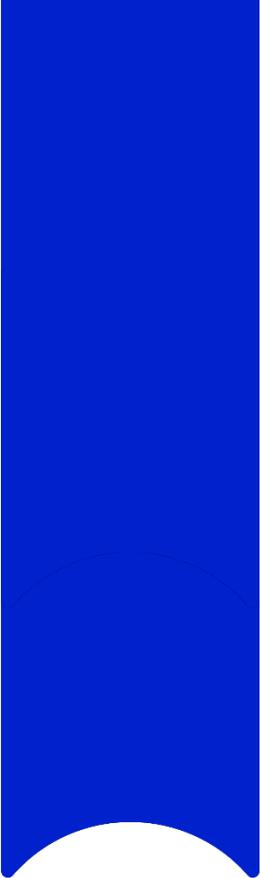
If a respondent does not come to the hearing, how does the hearing officer or panel consider the cross-examination in their deliberations?

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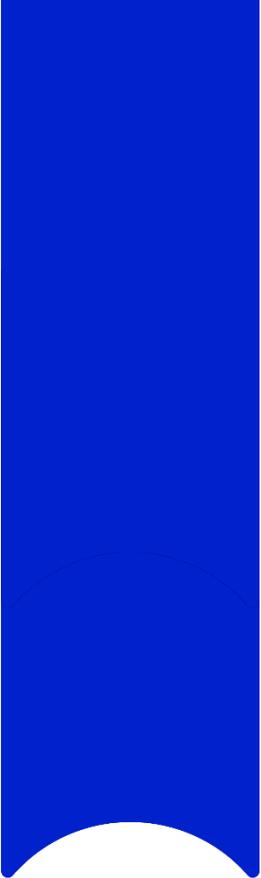
Can the decision-maker ask questions during the hearing, or are only the parties' advisors able to do so?

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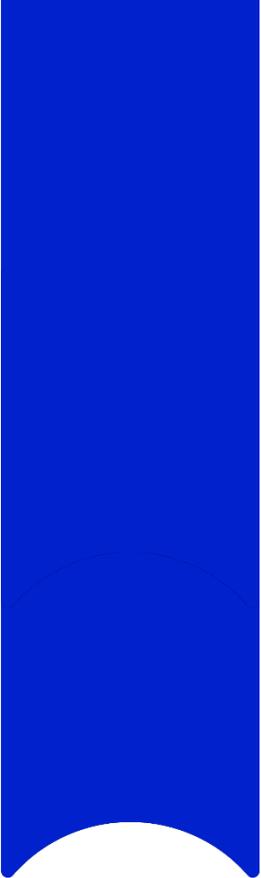
If a complainant had a forensic exam, are we required to produce the examiner for cross-examination at the hearing? If we cannot, must we then disallow the examiner's information, even if it's in a written report? Alternatively, if the complainant does not appear at the hearing, does that mean the forensic exam can't be considered?

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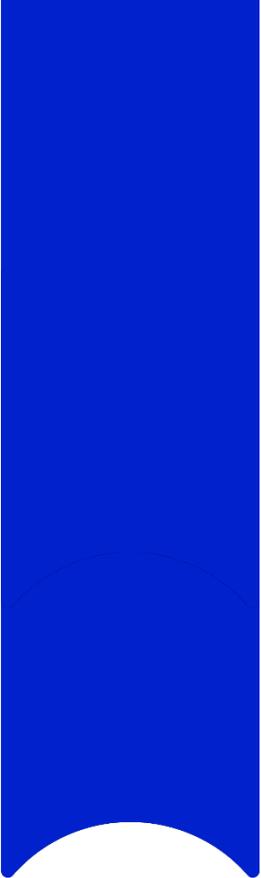
Under our existing process, if a student-respondent admits to the conduct alleged in the complaint, the matter would not go to a hearing and a single adjudicator would finalize a determination of responsibility and issue a sanction. Would this still be allowed under the regulations?

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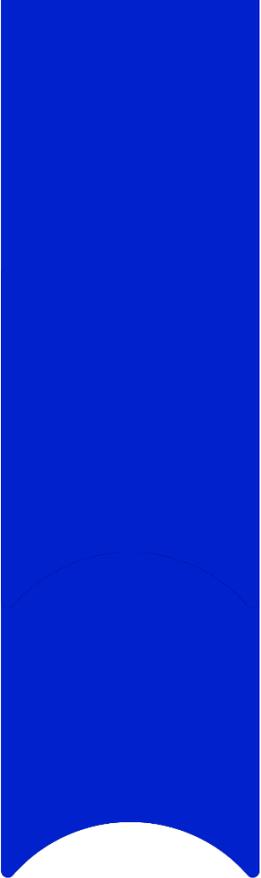
Are parties entitled to advisors under informal resolution processes?

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Under an informal resolution process agreed to by the parties, can we offer a “watered-down” hearing? And may we sanction the respondent under this informal process?

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Can institutions maintain supportive measures, such as a no-contact directive, in the sanctioning process?

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Do the appeals processes from complaint dismissals and from hearing outcomes have to be the same?

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