



# Title IX- Training for Title IX (Pre-Workshop)

Title IX, August 7, 2020 and August 10, 2020

**Quinnipiac**  
UNIVERSITY



# Title IX Coordinator



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# Roadmap

- Title IX Overview
- Policy Review
- Overview of Processes
- Record Keeping
- Intersection of Title IX  
Processes and Criminal Justice  
Processes



# Explanation of the Law

# 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 applies to ANY participant who stands to benefit from a University program or activity



# 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
- Discrimination occurs when conduct or speech denies an individual participation in or the benefits of a University program or activity, or adversely affects an individual in the terms, conditions, or privileges of the individual's employment, because of other characteristic protected by law.
- Discrimination may involve disparate treatment OR conduct that has a disparate impact on the Complainant



# What is Title IX?

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- **Sex assigned at birth**
- **Gender identity**
- **Gender expression**
- **Sexual Orientation**
- **Pregnancy Related Conditions**
- *Title IX prohibits sexual misconduct, as defined by the Department of Education*



# 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
- A program or activity is defined as “locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the [alleged conduct] occurs.”
- Conduct that falls outside the scope of this definition may be addressed through the code of conduct or the employee handbook





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# Equity and Access

- Title IX is an **equity** statute, which calls for institutions to provide proportionate opportunities for people of different genders.
- Title IX is designed to preserve **access** to educational programs or activities for all participants, regardless of sex. This includes:
  - an institutional obligation to address allegations of discrimination against community members in a manner that is prompt, thorough, and impartial
  - provision of supportive measures to anyone impacted by a Title IX related matter and accommodations for pregnant or parenting students
  - fair treatment of all parties in a Title IX process



# Transparency

- Transparency in Title IX processes allows participants to:
  - Manage expectations
  - Know what to expect from the process
  - Meaningfully participate
  - Trust the outcome of the process





# University Policies and Procedures

# Sexual Harassment

## **Conduct on the basis of sex that satisfies one or more of the following:**

- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).



# Elements of Quid Pro Quo Sexual Harassment:

- Respondent was an employee of the institution
- Respondent made unwanted sexual advances
- Respondent conditioned provision of aid, benefit, or service on acquiescence to those advances



# Elements of Hostile Environment Sexual Harassment:

- Respondent made unwanted sexual advances
- The alleged conduct was objectively severe and pervasive, such that a reasonable person would regard the environment as hostile
- The alleged conduct denied Complainant access to University programs or activities



# Sexual Assault

Any sexual act directed against another person, **without the consent** of [that person] including instances where [that person] is incapable of giving consent. Sexual assault includes forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest and statutory rape .



# Elements of Sexual Assault



- Respondent engaged in a sexual act
- Complainant did not consent to the sexual act (see: Understanding consent)

# Consent

Active, knowing and voluntary exchange of affirmative words and/or actions, which indicate a willingness to participate in a particular sexual activity.

Consent must be freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.

The lack of a negative response is not consent.

A person who is incapacitated by alcohol and/or drugs, whether voluntarily or involuntarily consumed, may not give consent. Neither consent to one form of sexual activity nor past relationships imply consent to future sexual activity.



# Understanding Consent:

- Consent requires the absence of force and coercion. If there is force, coercion, or threat of force, the sexual encounter is not consensual.
- Consent requires that all parties have the capacity to consent. If the Complainant was incapacitated and the Respondent knew or should have known that the Complainant was incapacitated, the sexual encounter is not consensual.
- Consent requires affirmative words or actions that communicate consent. Negative response is not consent. If there is no affirmative consent, the encounter is not consensual.



# Dating and Domestic Violence

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.



# Elements of Dating Violence:



- Romantic or intimate relationship between parties
- Presence of violence, including threat of violence, in that relationship

# Elements of Domestic Violence

- The parties:
  - Are married or were married
  - Are in an intimate relationship or were in an intimate relationship
  - Share a child in common
  - Are cohabitating or have cohabitated as intimate partners
  - Are or have lived together as spouses
- The respondent engaged in conduct that constituted a misdemeanor or felony crime related to violence



# Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

# Elements of Stalking

- Course of conduct (more than one incident)
- Directed at a specific person
- Conduct would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.



# Retaliation



Neither the University nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing



# Elements of Retaliation

- The Complainant participated in a Title IX related proceeding
- The Respondent engaged in conduct that intimidated, threatened, coerced, or discriminated against Complainant
- Respondent's conduct was related to Complainant's participation in the Title IX process



The left side of the slide features a dark blue background with several geometric shapes: a light blue triangle at the top left, a yellow triangle at the bottom left, and a grey square with a white cross-hatch pattern in the center. A faint, stylized logo resembling a 'Q' or a globe is also visible on the left.

# Other Policies Related to Sex or Gender Discrimination and Misconduct

# Discriminatory Harassment

Conduct or speech that is:

1. based on race, color, religion, **gender**, age, marital status, national origin, ancestry, alienage, physical or mental disability, **sexual orientation, gender identity or expression**, genetic information or any other characteristic protected by law; and
2. **sufficiently serious** that it unreasonably interferes with an individual's work performance, terms or conditions of employment, or participation or ability to benefit from a University program, or creates an intimidating, hostile, or offensive environment for study, work, or social living.

To qualify as harassment under this policy, the speech or conduct must be considered to be harassment by the listener/observer(s) and be ***objectively severe or pervasive*** enough ***that a reasonable person would agree that the speech or conduct constitutes harassment.***

In determining whether reported speech or conduct qualifies as harassment under this policy, the University will consider all circumstances surrounding the reported incident(s), including, without limitation, the frequency, location, severity, context, and nature of the speech or conduct, including whether the speech or conduct is physically threatening or humiliating, rather than a merely offensive remark. The University may also consider the intent of the alleged party/parties.



# Elements of Discriminatory Harassment

- The respondent engaged in conduct or speech
- The alleged conduct was objectively severe or pervasive, such that a reasonable person would regard the environment as hostile
- The alleged conduct unreasonably interfered with Complainant's work performance, terms or conditions of employment, or participation or ability to benefit from a University program, or creates an intimidating, hostile, or offensive environment for study, work, or social living.



# Sexual Exploitation

- Nonconsensual act or acts committed through exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or for the purpose of causing harm to another's reputation. Sexual exploitation includes but is not limited to:
  - invasion of sexual privacy and voyeurism (in-person or through audio or video recording);
  - knowingly transmitting a sexually transmitted infection;
  - exposing of a person's body or genitals;
  - involvement in the trafficking of another person for sexual purposes

# Elements of Sexual Exploitation



- Complainant did not consent to Respondent's conduct
- Respondent committed these acts through exploitation of Complainant's sexuality
- Respondent engaged in such conduct for the purpose of sexual gratification, financial gain, personal benefit or advantage, or for the purpose of causing harm to another's reputation.



# Process Overview



# Making a Report to The Title IX Office

- Reports may be made:
  - By phone
  - By email
  - Through the US postal service
  - Through in person meetings, including walk in meetings
  - Through the online reporting form
  - Through disclosure to a responsible employee



# Responsible Employees



- Responsible employees are required to promptly report any incidents of sex discrimination or sexual misconduct they may witness or become aware of.



# Formal Complaints

- Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the recipient investigate the allegation of sexual harassment
- In response to a formal complaint, a recipient must follow a grievance process (set by 106.45)
- Title IX Coordinator must offer complainant supportive measures regardless of whether Complainant files formal complaint



# Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party



# Supportive Measures

- Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.





# Emergency Removal of Students

- The university may, in emergency circumstances, limit or prohibit a respondent from accessing campus during the Title IX investigative process.
- Prior to issuing an interim removal of a respondent, the Title IX coordinator or designee must:
  - undertake an individualized safety and risk analysis, which determines whether the presence of respondent poses an immediate threat to the physical health or safety of any individual within the Quinnipiac community;
  - provide respondent with notice of alleged conduct; and
  - provide respondent with notice of removal and information about how to challenge the removal



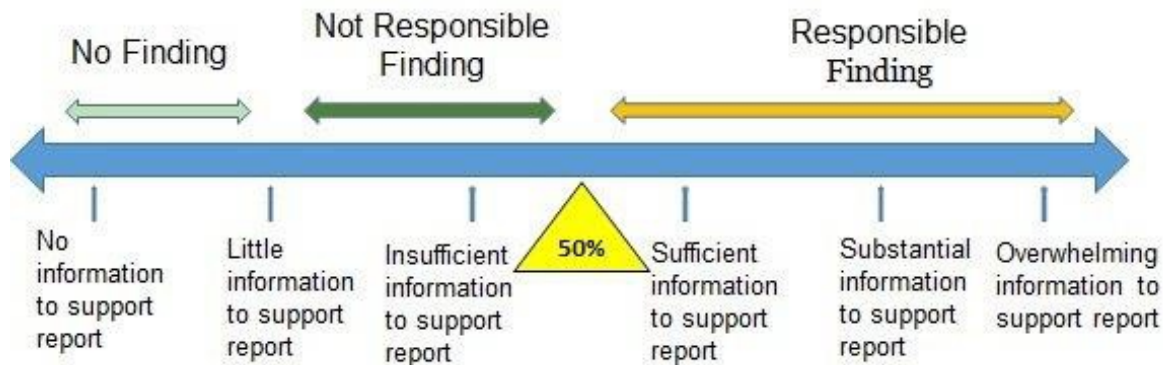
# Regulatory Guidelines for Grievance Processes

- Any provisions, rules, or practices, other than those in the regulations, must apply equally to both parties.
- Basic requirements:
  - Treat complainants and respondents equitably
  - Provide notice to both parties
  - Follow grievance process
  - Only impose any disciplinary sanctions against a respondent after grievance process followed



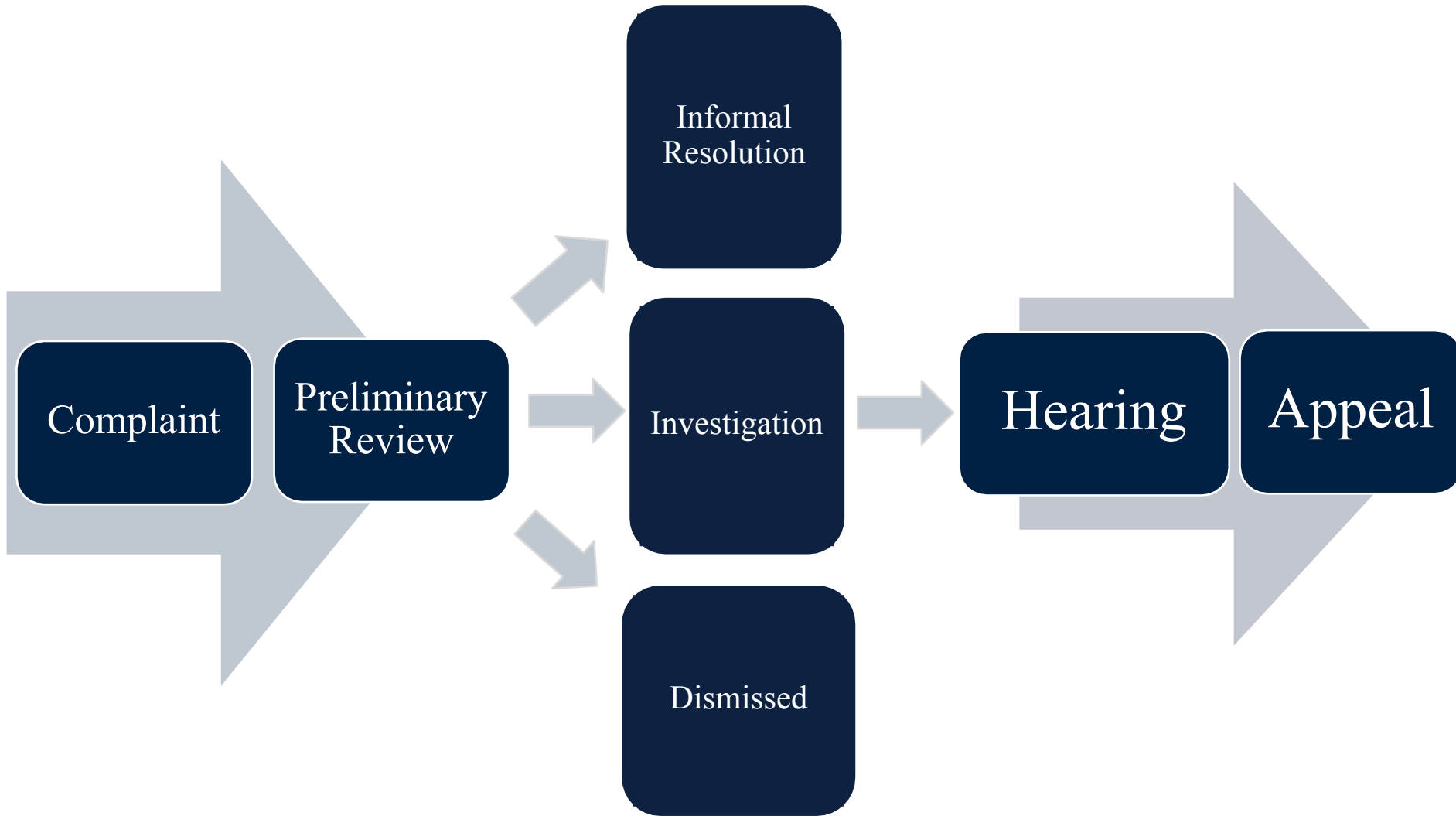
# Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



- The university has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility
- In determining whether or not a policy was violated, the University uses the “Preponderance Standard”
- Preponderance= “More likely than not”





# Informal Resolution

- At any time prior to reaching a determination regarding responsibility, the university may suggest to the parties the possibility of facilitating an informal resolution process.
- Informal resolutions may include mediation or educational conversations with parties
- facilitator of an informal resolution process must be free of conflict of interest or bias.



# Investigation

- Title IX Coordinator appoints an investigator
- Investigator provides parties with sufficiently detailed written notice of alleged conduct
- Investigator conducts a prompt, thorough and impartial investigation and provides an equal opportunity for the parties to present witnesses and provide evidence
- Investigator must provide parties whose participation is invited or expected with written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- Investigator completes the investigation in a reasonably timely manner, and documents and communicates to parties the source of any reasonable delays
- Investigator compiles a comprehensive summary of evidence, including both inculpatory and exculpatory evidence and provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation
- Investigator maintains communication with complainant and respondent on the status of the investigation and overall process.



# Investigation Continued

- Upon completing a draft investigative report, the investigator shall provide a copy to complainant, respondent, and each party's respective advisers. Copies of the report must be delivered simultaneously. Complainant and respondent may review the report for a period of up to 10 days and may provide the investigator with additional documentation, including but not limited to, a written response to the contents of the report.
- At the end of the review period or upon receipt of confirmation that parties are prepared to move forward, the investigator must incorporate any provided information into a final report.
- Upon completing the final investigative report, the investigator must simultaneously provide copies to the complainant, respondent, and each party's respective advisers.
- Following the delivery of the reports, the Title IX coordinator or designee must schedule an administrative hearing for no less than 10 days after the date of delivery. Additional information, including responses to the report's content, may be presented at any time prior to the commencement of an administrative hearing or at designated times during the hearing.



# Hearing

- The hearing officer will conduct the hearing in accordance with the hearing script.
- Parties have an opportunity to give opening statements, that the hearing officer has the opportunity to ask questions of all parties and witnesses, and that both parties have an opportunity to ask relevant questions through cross examination.
- After the hearing officer has made a decision, they will announce their conclusion.
- If respondent is found responsible for the alleged conduct, the hearing officer will issue sanctions.
- The hearing officer has two business day from the close of the hearing to produce a written decision letter to both parties. Once completed, the decision letter is delivered to the Title IX coordinator for simultaneous delivery to both parties.



# Advisers

- Advisers serve as a moral and emotional support for students during the grievance procedures and can assist with meeting preparation.
- Advisers are not permitted to advocate for a student or speak on their behalf during a hearing, except for the purpose of conducting a cross examination on relevant evidence.
- Parties who intend to conduct a cross examination of the opposite party or any witnesses must bring an advisor to the hearing.
- If a party does not have an adviser, the university will, upon request, provide a trained adviser to conduct any cross examinations.
- **Parties have a right to an adviser of their choice throughout the entire process.**



# Grounds for Appeal

- new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- procedural irregularity that affected the outcome of the matter;
- the Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.; or
- the sanction(s) assigned by the hearing officer did not adhere to the sanction guidelines stated in this policy.



# Record Keeping

- The Department of Education requires that the University retain any records relating to Title IX matters for a period of 7 years.

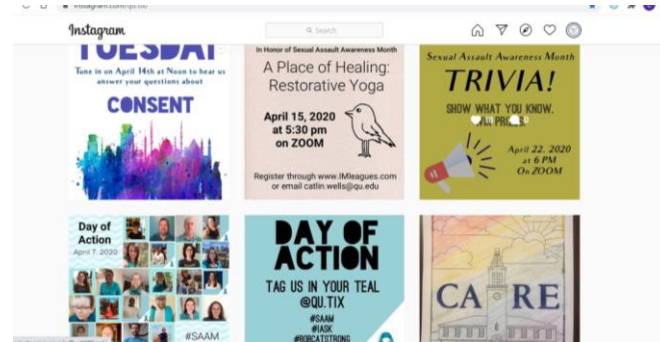
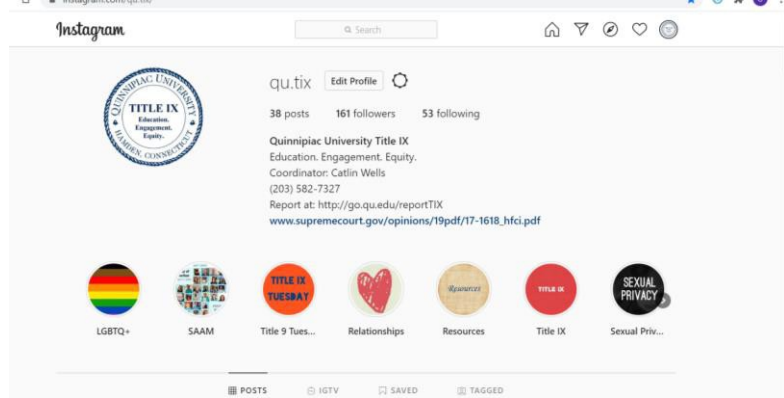




# Intersection of Title IX Processes and Criminal Justice Processes

- Some conduct that falls under Title IX may also implicate criminal laws
- Parties have a right to file a police report, and are informed of such when they make a complaint to the Title IX Office
- Criminal investigations are separate from the Title IX process
- Documents created pursuant to the criminal investigation may be included in the Title IX report





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Thank You