

# Title IX Advisor Training

## FOUNDATIONS

Fall 2020

NOVA SOUTHEASTERN  
UNIVERSITY

**NSU**  
Florida

# Training Goals

**This foundational training is designed to help you:**

- Understand revisions to the NSU Title IX/Sexual Misconduct Policy
- Gain an understanding the procedures to resolve Title IX complaints
- Learn about the role and function of the advisor

**Our goal is to provide information so you can decide if you are willing to be trained further to serve in this capacity to promote NSU's compliance with Title IX.**

# Training Agenda

- **Why are You Here?**
- **NSU Title IX/Sexual Misconduct Policy**
- **NSU Title IX Resolution Procedures**
- **The Roles of the Title IX Advisor**
  - During an Investigation
  - Cross Examination at a Hearing
- **Privacy Considerations**
- **Questions & Open Discussion**
- **Upcoming Training Opportunities**

AGENDA



## 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 educational program or activity receiving Federal financial assistance."*

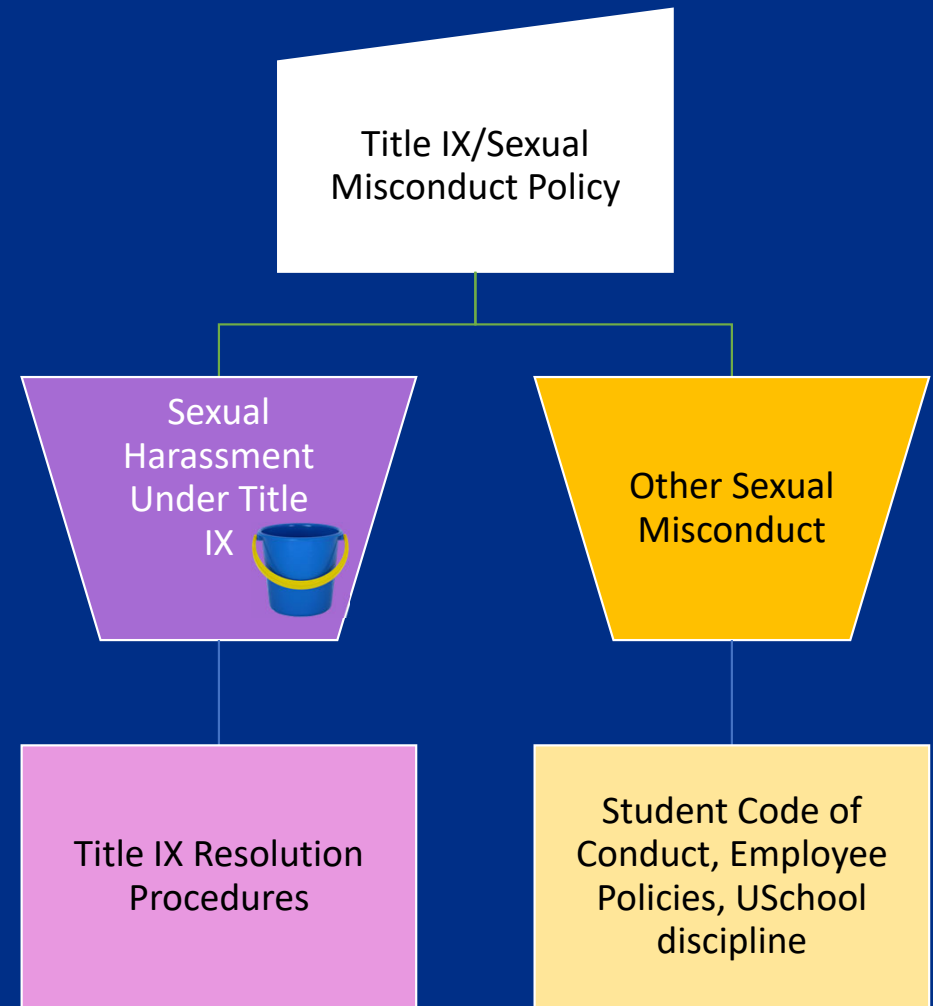
Title IX of the Education Amendments of 1972 (20 U.S.C. 1681)

# Recent Changes to Title IX Regulations

- **2,033 pages of rules/explanation effective August 14, 2020, to sexual misconduct reported to have occurred after that date**
- **Specifies what types of sexual misconduct constitute Sexual Harassment under Title IX**
- **Prescribes a specific process for behaviors which appear to constitute Sexual Harassment under Title IX**
  - Increased focus on transparency/sharing of all information
  - Specific timeframes imposed to review information/respond during an investigation and prior to a hearing
  - Specific reasons for dismissals and appeals

# What does this mean?

- *Narrows* the scope of what the Dept of Ed expects NSU to address under Title IX:
  - Type of behavior
  - Jurisdiction (when, where, who)
- Requires specific procedures for those incidents that fall under Title IX
- Gives NSU authority to address sexual misconduct outside of Title IX under other policies/procedures



## Why are you here?

- **Right to an advisor of choice has existed under the Violence Against Women Act and in student conduct practice**
  - For victims/those accused of sexual violence (sexual assault, dating/ domestic violence, stalking)
  - Advisor may be present in any meeting related to the investigation/ discipline process
  - University could place limitations on role of advisors as “potted plants”
- **New requirement under Title IX that allows advisors to cross-examine at a Title IX hearing**
  - *Requires* that NSU provide an advisor for a Title IX hearing if party does not have one

## Key Terminology

- **Complainant**
- **Formal Complaint**
- **Respondent**
- **Advisor**
- **Decision-Maker**
- **Standard of Evidence – “preponderance” or >50%**
- **Title IX Sexual Harassment**
- **Other Sexual Misconduct**



# **NSU Title IX/ Sexual Misconduct Policy**



**NSU has an  
“umbrella” Title IX/  
Sexual Misconduct  
Policy**

# Title IX Sexual Harassment

## Sexual Harassment under Title IX is defined as:

- Unwelcome “**quid pro quo**” sexual harassment by a school employee against a student;
- Sexual harassment that is “so severe, pervasive, and objectively offensive that it effectively **denies a person equal access**” to educational programs; or
- Acts that meet the VAWA definition of a **sex offense** of sexual assault, dating violence, domestic violence, or stalking.
- In addition, Title IX prohibits **retaliation** against any person for pursuing their rights under Title IX.



## Title IX Jurisdiction (i.e., where & when it applies)

- The complainant must be a student/person accessing NSU's educational programs **in the United States**, and
- NSU must have **substantial control over the alleged perpetrator and the context of harassment**, and
- A formal complaint must be made by an affected person who is **enrolled or trying to access** an NSU program/activity
  - Parents may file a complaint on behalf of an under 18-year-old student

# Title IX Sexual Harassment

- Quid Pro Quo by employee
- Sex offenses (stalking, DV/DV, sexual assault)
- Hostile environment
- Retaliation

Which occurred:

- In the U.S.
- Where NSU has control over context/respondent
- And complainant is enrolled/still accessing NSU programs



# Sexual Misconduct

- Sex crimes outside of Title IX jurisdiction
- Sexual harassment
- Gender-based harassment
- Sexual exploitation
- Harassment that doesn't deny access but may limit or adversely affect it



# What about non-Title IX Sexual Misconduct?

- Does *not* need to follow Title IX procedures
- Referred to Student Code of Conduct or other accountability process
- Sex offenses under VAWA but outside of Title IX must still provide procedural protections:
  - Be conducted by people with annual training on specific subjects
  - Right to an advisor
  - Right to know the outcome





# Overview of NSU Title IX Resolution Procedures

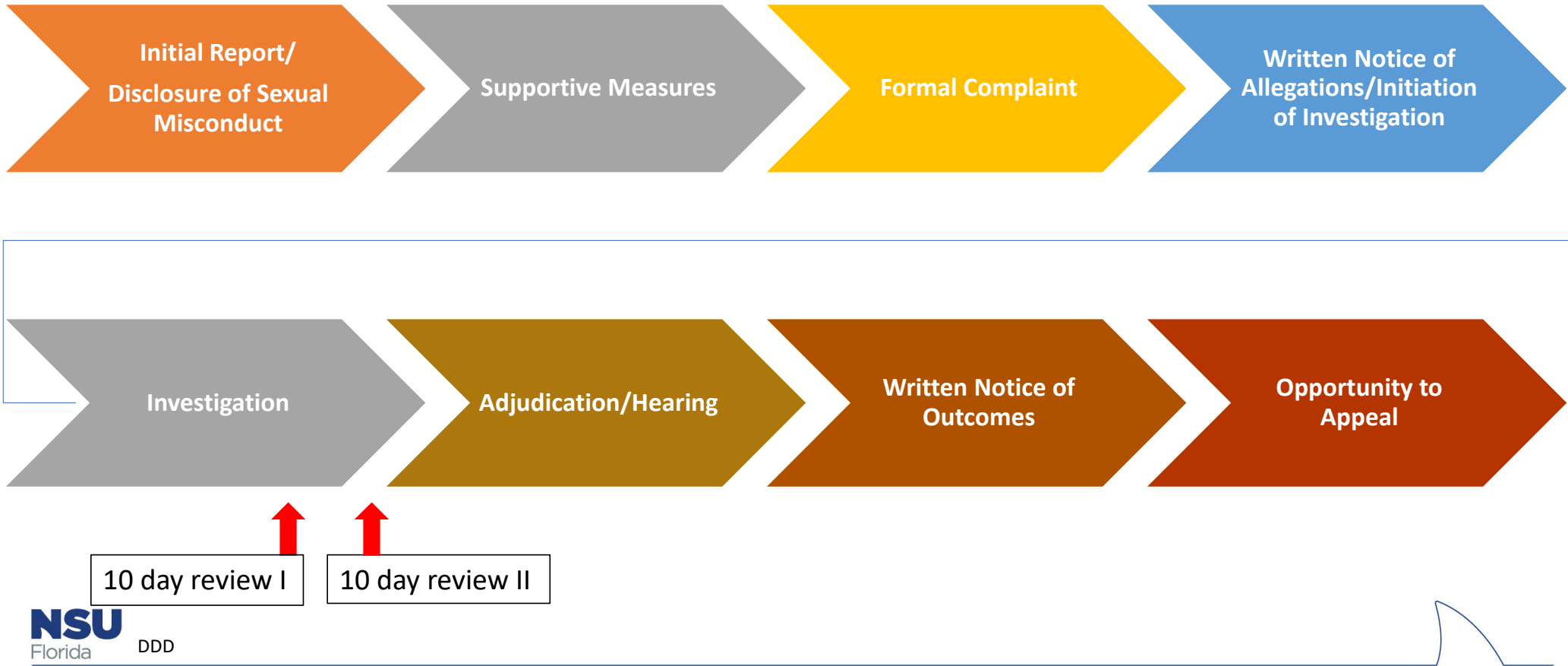




# Title IX Process Procedural Timeline



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# Initial Report/Disclosure of Sexual Misconduct



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- **Reports to the Title IX Coordinator may have multiple sources:**
  - Self-report
  - Student report of another student's experience
  - Anonymous report
  - Employee report of a student disclosure
- **May or may not serve as a “formal complaint”**





# Supportive Measures

**Supportive measures may not be “punitive or disciplinary, but may burden a respondent as long as the burden is not unreasonable”**

- Referral to medical treatment, forensic exam, or community agency
- Referrals to Student Counseling or EAP
- Academic course schedule changes or accommodations
- Relocation or other residential accommodations
- Campus mutual no-contact orders
- Assistance reporting to law enforcement
- Alternate or supervised practice or extracurricular participation

# Formal Complaint



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**A “document” filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that NSU investigate.**

- Serves as basis for investigation
- Needs to have enough information for Title IX Coordinator to assess whether Title IX applies
- Document may be viewed by Respondent and advisor

# Title IX Emergency Removal



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**A person may be removed from an education program or activity on an emergency basis, only if the following are met:**

- An individualized safety and risk analysis
- Determination that an immediate threat to the physical health or safety of any individual arising from the allegations that justifies removal
- Notice and an opportunity to challenge immediately following the removal

*NSU may still place a non-student employee on administrative leave.*

# Notice of Allegations and Investigation



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## Simultaneous written notice to the parties of:

- The Title IX Sexual Harassment Resolution processes
- Sufficient details about the allegations known at the time including:
  - The parties involved
  - The date and location of the reported incident
- Which aspect(s) of Title IX Sexual Harassment policy relate to the report
- A statement that the respondent is presumed not responsible at the onset of the investigation
- Outlines parties' rights: right to an advisor of choice, right to identify witnesses, provide evidence, right to review evidence, ask questions of witnesses through cross examination, etc.

# Investigation



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## During the investigation, parties have the opportunities to:

- Participate in multiple (usually two) interviews
- Provide their perspective about the reported incident(s)
- Present information to support/corroborate their perspective
- Identify potential witnesses and offer questions for witnesses
- Request that the investigator ask questions of others during the investigation
- Review all evidentiary materials, including witness statements and documentary evidence\*



# Dismissal of Complaints

Complaints **MUST** be dismissed under Title IX by NSU when:

- Even if true, does not meet Title IX definition of sexual harassment, or
- Did not occur towards person accessing NSU programs or activities in the U.S.

Complaints **MAY** be dismissed under Title IX by NSU when:

- Complaint provides written notice of withdrawing the complaint, or
- Respondent is no longer enrolled or employed by NSU, or
- Circumstances prevent NSU from gathering enough information to reach a determination.

*Dismissal under Title IX does not preclude NSU from addressing the behavior under a different policy and/or procedure.*





# Adjudication/Hearing

**Unless the case is dismissed or resolved informally, a “live” (i.e. virtual) hearing\* is required to resolve the case.**

- During a live hearing, a decision-maker will have the chance to ask questions of the parties and any witnesses.
- Each party’s advisor has the opportunity to ask the other party(s) and any witnesses any **relevant** questions (cross-examination).
- If a party does not have an advisor of choice present at the hearing, NSU will provide an advisor (without charge) to the party to conduct cross-examination on behalf of that party.



# Cross Examination

**Advisor serves in this role so parties don't directly cross-examine each other:**

- Once a question is asked, the decision-maker will determine whether or not it is relevant before it can be answered.
  - Rape shield laws apply, prohibiting irrelevant questions about sexual history of complainant
- “If a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination about responsibility.”
- Inference cannot be drawn based solely on a party refusing to participate.

\*Does not apply to U-School, similar opportunity is provided through a paper-based adjudication process.

# Notice of Outcome



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## **Simultaneous written notice is provided to the parties of:**

- Determination regarding responsibility
- Rationale for the result as it relates to each specific allegation
- Identifying sections of the policy alleged to have been violated, if any
- Sanctions imposed on the Respondent, if any
- Remedies provided to the Complainant, if any
- Procedures and bases for any appeal

# Appeals



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A party (complainant or respondent) may appeal a determination of responsibility and/or the dismissal of all or part of a complainant of Title IX Sexual Harassment based on any of the following:

1. **Procedural irregularity** that affected the outcome
  2. **New evidence** that was not reasonably available at the time the decision was made that could affect the outcome, or
  3. 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.
- Appeal must be in writing.
  - Appeals are a paper-review process and the written decisions of the appellate officer is the final determination.

# The Roles of the Title IX Advisor



## Quick Query ...

**What do you believe are some of the needs of those who are party to Title IX investigations and/or proceedings?**



# Advisor Role

- **Focus is on assisting parties to be able to participate “at their best” in the investigation and resolution process in the most effective ways possible.**
  - ✓ Helping to understand the policy and procedure
  - ✓ Reminding of campus/community resources
  - ✓ Encouraging critical thinking and analysis of information
  - ✓ Reminding to stay focused on scope of investigation and policy in question
  - ✓ Asking questions of them to help them think of witnesses or information to offer
  - ✓ Raising concerns if you feel there is a conflict of interest
- **During a hearing, additional focus is on conducting cross examination “on their behalf”**

## For Example....

Advisors should....	Advisors should NOT.....
Provide information about policy and procedures	Promise a specific outcome or finding
Assist the party in focusing on the allegations and relevant information	Judge or try to make a finding of responsibility
Encourage asking questions to the Title IX Coordinator (or ask yourself if needed)	Answer questions without knowing the answer
Remind of supportive resources available	Try to serve as a mental health counselor
Maintain privacy of information under FERPA	Promise complete confidentiality
Attend meetings with the party if party desires	Try to testify on behalf of a party
Raise questions or concerns if they arise during a proceeding	Feel torn between helping an advisee and being an NSU employee



# Key Responsibilities: Initial Meeting of Advisee

- **Review of Notice of Allegations**
  - ✓ Review policy and procedures (see Title IX website)
  - ✓ Assist party in understanding policy and procedure
  - ✓ See if party has any questions
  - ✓ Encourage contacting Title IX Coordinator with any questions
  - ✓ Reiterate importance of any no-contact orders or supportive measures
- **Check-in regarding support**
  - ✓ Remind of confidential resources (Student Counseling, EAP, etc.)
  - ✓ Ask if classes are going okay, no contact order(s) are being respected, etc.
  - ✓ Inquire if the party feels any further supportive measures may be needed

# Key Responsibilities: Start of an Investigation

- **Preparing for interviews**
  - ✓ Encourage them to summarize their own account, may be in writing
  - ✓ Encourage preparing a list of potential witnesses and information
  - ✓ Encourage considering questions to be posed to parties and witnesses
  - ✓ Help the party understand what to expect – okay to ask for breaks, likely recorded, etc.
- **First Interview: (usually 2 hours)**
  - ✓ Party shares full version of what happened
  - ✓ May be asked follow up questions
  - ✓ Party should provide names of witnesses/what they can offer, any evidence (screenshots, documents, videos, etc.), etc.



# Key Responsibilities: During the Investigation

- **Second/Follow Up Interview(s)**
  - ✓ Remind that the investigator will ask questions related to conflicting information
  - ✓ Encourage timely response to investigator
  - ✓ Encourage sharing of any other relevant information
- **Continue to “check-in”**
  - ✓ Supportive measures and opportunity for informal resolution
- **Evidence Review**
  - ✓ Receive a link to evidence during a 10-day period prior to report being finalized
  - ✓ Remind party that if evidence is shared with others, the party loses control over that information
  - ✓ Offer to review/discuss with the party
  - ✓ Encourage the party to respond (in writing) by the deadline if desired

# Key Responsibilities: Preparing for a Hearing

- **Review Investigation Summary Report**
- **Review hearing procedures with the party**
- **Strategize about the hearing process**
  - ✓ What the party may want to share with the decision-maker in opening/closing statement(s)
  - ✓ Questions to ask other party and witnesses
  - ✓ Discuss desired outcome(s) including sanctions (if applicable)
- **Attend pre-hearing meeting(s) if applicable**
- **Encourage party to communicate any hearing logistical needs** (scheduling, interpreter, ADA accommodation, etc.)
- **Inquire about any perceived conflicts of interest or bias in the decision-maker**



# Key Responsibilities: During the Hearing

- **Support for basic participation needs**
  - ✓ Advocate for breaks when needed to ensure party's emotional and physical needs are met
- **In-the-moment support**
  - ✓ Strategize and collaborate to prepare questions
- **Elevate any concerns related to bias, conflict of interest, or process**
- **Conduct cross-examination**
  - ✓ Pose relevant questions to witnesses and other parties
  - ✓ Be respectful of chair/decision-maker (who determines relevancy of each question prior to it being answered)
  - ✓ Assist party in identifying or citing relevant evidence or information

# Key Responsibilities: Notice of Outcome/Dismissal<sup>39</sup>

- **Review the Notice of Outcome or Dismissal**
  - ✓ Review findings, rationale, appeal process
  - ✓ Facilitate follow-up conversations with TIXC, if desired
  - ✓ Remind of prohibition on retaliation
- **Remind of/connect to confidential resources to “process” outcome**
- **Inquire if any other supportive measures may be helpful**
- **Review appeal process**
  - ✓ Review grounds for appeal
  - ✓ Review expectations for format and deadline
  - ✓ Remind party how to access hearing transcripts and/or investigation materials



# Privacy

## FERPA & Other Laws

# Privacy

- **Unfiltered Access**
  - ✓ As an advisor, you will have complete access to party/witness statements and evidentiary materials related to the investigation
- **Your Responsibilities under FERPA**
  - ✓ Outside of communication with the Title IX Coordinator, Title IX Advisors should not discuss the matter with other NSU employees unless there is a “legitimate educational need to know”. Do not discuss the matter external to NSU.
- **Employee Cases:** Additional laws may apply
- **Guiding the Party**
  - ✓ While the university cannot prohibit parties from disclosing investigative materials (documents, images, files, etc.), remind the party that disseminating or posting investigatory material can have greater consequences than they imagine.



# Final Considerations

# Key Takeaways

- **Be prepared**
  - ✓ Be knowledgeable about NSU's Title IX policies and procedures
  - ✓ Speak/meet with your advisee and encourage preparation before interviews/proceedings
- **Set and maintain boundaries**
  - ✓ Refer to campus resources when appropriate
  - ✓ You are not a counselor
  - ✓ You are not on call
- **Stick to your responsibilities – you are not there to “win” a case**
  - ✓ Provide support and assistance within scope of role
  - ✓ Review correspondence and documentary material
  - ✓ Do not speak on behalf of the advisee
  - ✓ Do not disrupt meetings or proceedings

# Questions & Discussion

NOVA SOUTHEASTERN  
UNIVERSITY

The logo for Nova Southeastern University Florida, featuring the letters "NSU" in a bold, blue, sans-serif font, with the word "Florida" in a smaller, blue, sans-serif font directly below it. A vertical line is positioned to the left of the "NSU" text.

**NSU**  
Florida

# Additional Training for Title IX Advisors

## Resources:

- **Reading: ATIXA Advisor Guide & PPT**

## Future Training Topics:

- **Investigations**
- **Hearings**

**BE ON THE LOOKOUT!**

# CONTACT Us

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