

**TIX**Edu

# TITLE IX COORDINATOR TRAINING

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**APRIL, 2022**

PROVIDED BY:  
TIX EDUCATION SPECIALISTS

WWW.TIXEDU.COM  
503-960-8261



# INSTRUCTOR: JACKIE SANDMEYER

Jackie Sandmeyer is the Founder and Principal of TIX Education Specialists. They received their Bachelor of Science from University of Idaho and Juris Doctor at Willamette University of Law. After creating the country's first statewide Title IX training and technical assistance program for colleges and universities, Jackie sought to fill the need for further capacity in training and consultation related to sexual harassment and interpersonal violence nationally. They have worked with colleges and universities, law enforcement,



state agencies, and community based service providers to identify and create some of the nation's leading models in Title IX and student services. From pioneering education based legislation that spread to other states to developing new and emerging school based investigation techniques, Jackie and their team bring this experience and more to TIX and its clients.

**Jackie Sandmeyer, JD**  
founder | principal

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# MOVING BEYOND COMPLIANCE. EMERGING BEST PRACTICES.



## TRAINING

Cutting edge training integrating up to date mandates as well as emerging best practices. Each curriculum tailored to meet your needs.

## CONSULTATION

Customized consultation in all forms including policy audits and review, case consultation, program review, climate surveys and more.

## INVESTIGATION

Let our team of highly trained and experienced investigators help you stay on top of challenging cases and expanding case loads.

# ABOUT: TIX EDUCATION SPECIALISTS

## About TIX Education Specialists

TIX Education Specialists sets itself apart from other training and consultation bodies in that it offers guidance and training on not only what is compliant, but what is known to be best practice and trauma-informed. We don't believe that one model fits all. Instead, TIX brings years of expert experience to identify solutions that serve you and your community best.

## Our Mission - Bridging Compliance & Best Practice

Successful responses by schools take not only compliant policies and strategies, but must also include techniques rooted in emerging best practice. While many firms solely provide schools with what the law requires, TIX Edu goes a step further by ensuring that schools understand what implementation looks like, and how mandates integrate with institutional missions. Schools are tasked with the safety of students as well as creating and fostering an environment for students to reach their fullest potential. Let TIX Edu assist with the hard work of identifying the path to get there.

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# TIX Education Specialists

*"Bridging compliance and best practice."*

## NEED ADDITIONAL HELP?

### WEBINARS

Keep up to date through short training episodes covering emerging topics with live and recorded webinars. Don't be left behind.

### RESOURCES & TOOLKITS

Stop recreating the wheel and take advantage of our templates, one-pagers, toolkits and other resources covering all areas.

### TRAININGS & COURSES

From topic specific certification to courses on larger Title IX and related fields we have curriculum offered both in person and online.

### MEMBERSHIP

Become a member of TIX Edu's network and receive email alerts, resources, networking opportunities, technical assistance and more.



# **DAY 1**



**APRIL 4, 2022**



## OVERVIEW OF Title IX: Understanding The Purpose

An overview of the tenants of Title IX including the purpose of Title IX, how to navigate guidance and resources provided by the USDOE and OCR. A look at how schools can bridge compliance with Title IX with best practices in serving students and staff and building better processes.

### Learning Objectives:

- Develop a clear understanding of requirements of Title IX
- Understand the scope and limitations of Title IX and how that intersects with best practices
- Identify where regulations begin and end and where institutional discretion can guide school's decisions

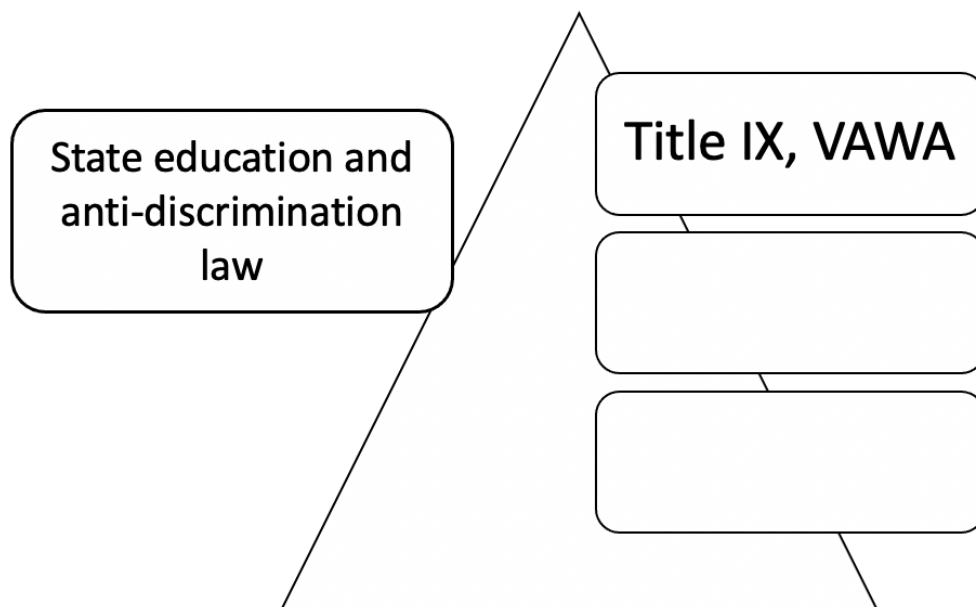


Title IX encompasses more than just sexual harassment.

**Main areas of Title IX** *\*not an exhaustive list:*

- sexual harassment
- retaliation
- athletics
- single sex educational programs and activities
- gender identity and gender expression
- pregnant and parenting students

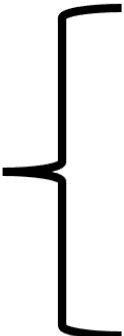
**Notes:**



Language and Title IX:

Notes:

Sex based  
discrimination

- 
1. Sexual harassment
  2. Sexual Assault
  3. Domestic Violence
  4. Dating Violence
  5. Stalking

Who does title IX apply to?

**Exemptions:**

**Office for Civil Rights:**

**Current Title IX regulations are NOT retroactive in their application.**

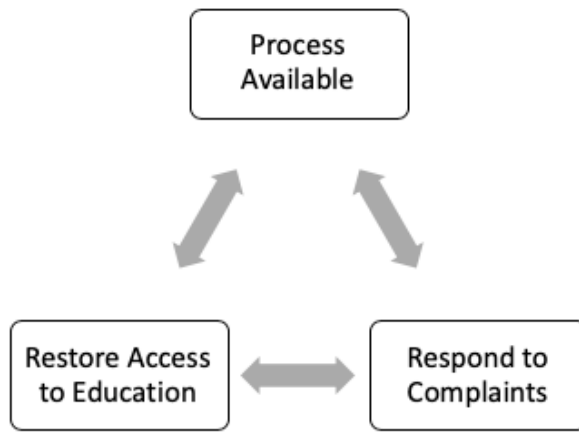
← Did conduct occur before  
or after August 14, 2020? →

**Notes:**



## Institutional discretion:





## Narrowing of Title IX:

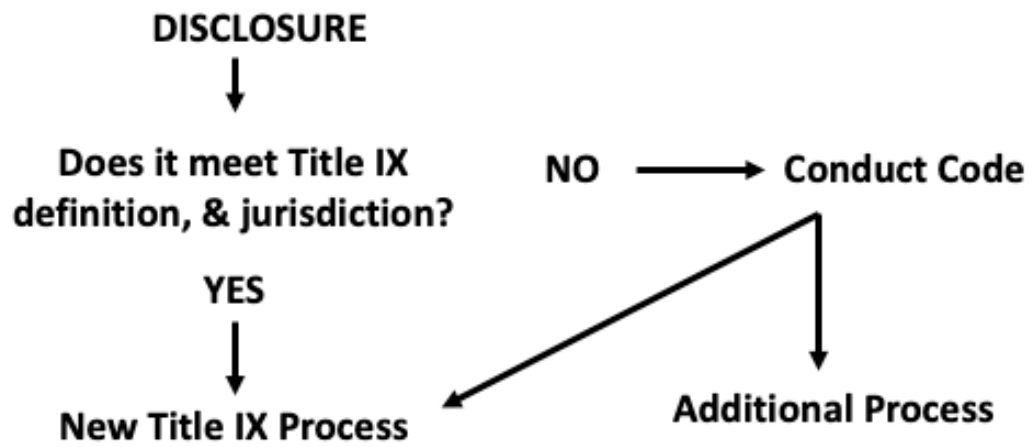
“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.”

“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.”

1. Does the school want to create policies to respond to “other” types of sexual harassment and sex discrimination?

2. If you capture “other” types of conduct, do you use one process provided by the federal regulations or do you use two?





Basic administrative requirements:

- 1.
- 2.
- 3.

TITLE IX COORDINATOR:

Training Considerations:

**NOTICE OF NON-DISCRIMINATION:**

“[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment...”

Notice of non-discrimination:

Grievance procedure:

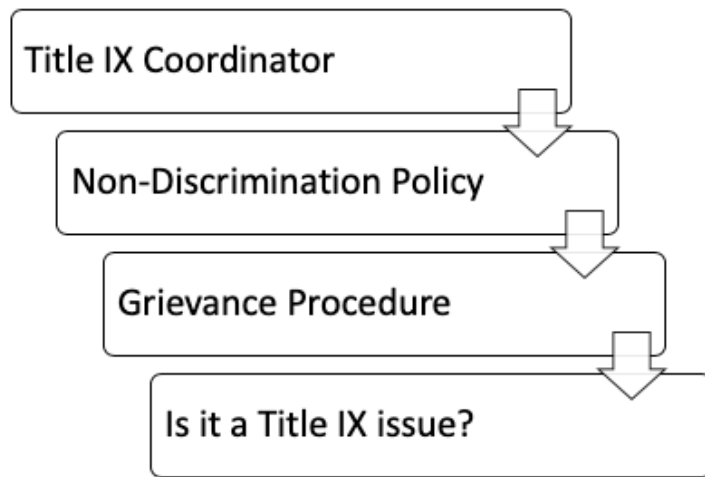
Grievance procedure: *\*not exhaustive list*

- Definitions
- How to file a complaint
- Contact information of Title IX Coordinator
- Process available
- Prohibition of retaliation
- Evidence standard used
- Scope of sanctions
- Appeals process
- Impartial investigations
- Support measures
- Party notice
- Whether informal process offered
- Presumption that respondent not responsible
- Reasonably prompt timeframes
- Range of remedies
- Whether sanctions for providing false information

All non-Title IX mandated policies must be applied equitably to all parties.

Dissemination:





**Notes:**

## INSTITUTIONAL ASSESSMENT: BRIDGING COMPLIANCE AND BEST PRACTICE

### WHAT IS YOUR INSTITUTION'S MISSION WHEN IT COMES TO TITLE IX?

*Students and staff often assume the purpose admission of Title IX on campus based on how the news frames Title IX, what friends and colleagues have said, as well as past experiences with institutional systems. Below write down what your institution's goal is for Title IX response and programs on campus. For example, is prevention an element of your mission? Creating better campus culture? Responding to incidences on campus? Intervening in behavior before it escalates or perpetuates into a pattern of behavior? Creating safe space for students to earn degrees?*

### WHAT INSTITUTIONAL VALUES DO YOU WANT TO SEE INCORPORATED INTO YOUR TITLE IX PROCESS?

*Every institution has a unique mission and set of values that guide the work that it does. These specific values are what draw students and staff to your campus, and can be reflected to those who visit campus or partake in your programs. For example, some campuses focus on small community, diversity and inclusion, religious tenants, experiential based learning, etc. What values does your campus focus on, and how can those be incorporated into your Title IX process? How are they already reflected in your Title IX process? Title IX may be federally mandated, but how we go about meeting those mandates should reflect the campus.*



### WHAT IS YOUR DESIRED OUTCOME FOR EVERY TITLE IX CASE/REPORT?

*How would we describe a case in which we would say that all the Title IX requirements were met AND we served our purpose on campus. What does an ideal outcome in a Title IX case look like? We often seen Title IX issues as a lose-lose situation, and disregard the question of what desired outcomes look like. Regardless of the incident that triggered the process, we have a wealth of control over how next steps and the path forward look for someone. What are ideal outcomes for a Title IX case for all parties involved, for the campus as a whole? What is an ideal experience through the Title IX process?*





# **DAY 2**



**APRIL 5, 2022**

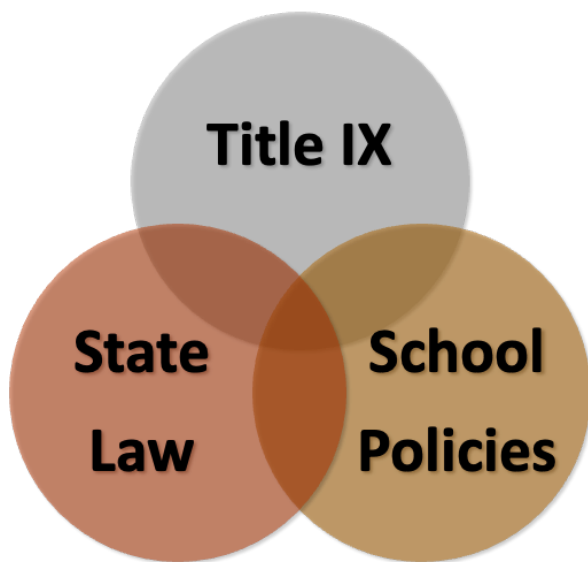


## Jurisdiction, Reports and Dismissals

An overview of what types of complaints fall under the scope of Title IX as well as other available types of jurisdiction such as mandated state law and institutional code of conduct policies.

### Learning Objectives:

- Define types of conduct that constitute sex discrimination under Title IX
- Identify jurisdictional requirements including defining "educational program or activity"
- Understand types of reports including a "formal complaint"
- Execute dismissals when necessary and appropriate



Jurisdiction:

*“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.”*

### **Title IX Jurisdiction Considerations:**

- 1.Type of conduct
- 2.Educational program or activity
- 3.Person in the United States

### **Non-Sexual Harassment:**

## Sexual Harassment

- 1.
- 2.
- 3.
- 4.
- 5.

Notes:



Sexual Harassment:

1. Sexual harassment
2. "Quid pro quo" harassment
3. Sexual assault

"Quid Pro Quo" Harassment:

*"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct." 34 CFR 106.30(a)(1)*



## Sexual Harassment:

*"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person's equal access to education." 34 CFR 106.30(a)(2)*

### Using a reasonable person standard:

1. severe;
2. pervasive;
3. objectively offensive; AND
4. effective denial

## Sexual Harassment:

*"Clery Act/VAWA offenses are NOT evaluated for severity, pervasiveness, offensiveness or denial of equal educational access ... because such conduct is sufficiently severe..."*

## Sexual Assault:

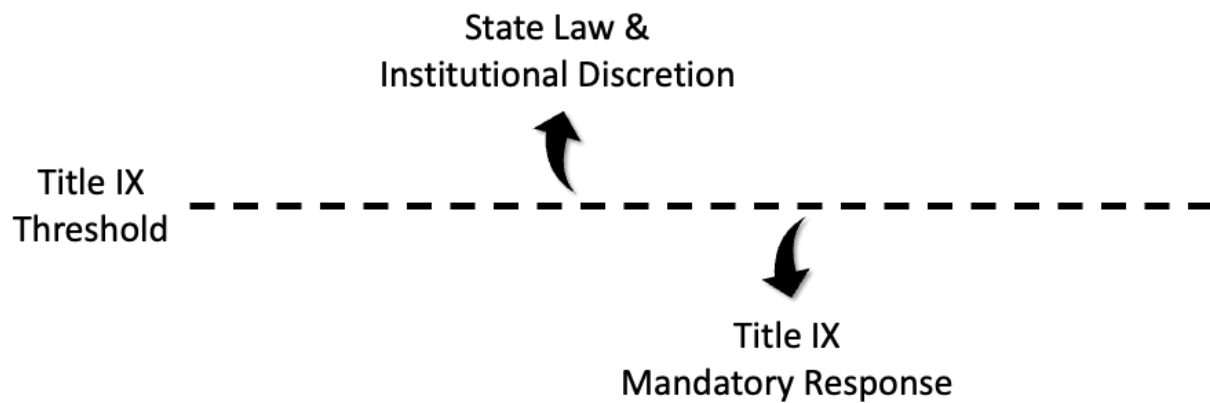
“[M]eans an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the [FBI]”

- |                                  |                   |
|----------------------------------|-------------------|
| 1. Rape                          | 4. Fondling       |
| 2. Sodomy                        | 5. Incest         |
| 3. Sexual assault with an object | 6. Statutory rape |

*“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.*

## Federally required minimum:

*“OCR does not enforce school codes of conduct but may investigate complaints that a school’s code of conduct treated students differently based on sex, including sexual orientation or gender identity.”*



**Notes:**

"Person in the United States"

*"A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent." 34 CFR 106.44(a)*

"Education program or activity"

1. School exercised substantial control over...

AND

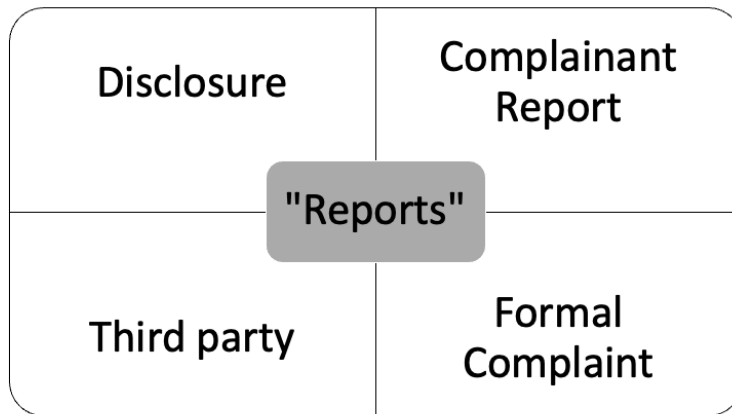
2. School exercised substantial control over....

What if the complaint doesn't fall under Title IX?

*“Any person may be a complainant or a respondent, regardless of whether the person is a student, employee, or otherwise affiliated with the [school].”*

Notes:

Language matters:



## Reports:

### Formal Complaint:

*"[A] document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment." 34 CFR 106.30(a)*

**Responding to formal complaints:**

**Dismissals:**

**Appropriate bases for dismissal:**



## **Dismissal procedure:**

### **Available bases for appeal:**

1. procedural irregularity
2. new evidence
3. conflict of interest or bias

## **"Deliberate indifference"**

## SEXUAL HARASSMENT:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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
3. "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).

## SEXUAL ASSAULT:

"[M]eans an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting [UCR] system of the Federal Bureau of Investigation [FBI]." 20 U.S.C. § 1092(f)(6)(A)(v)

**\*\*NOTE:** FBI switch from SRS to NIBRS January, 2021

## **FBI SEX OFFENSES (NIBRS)**

**Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

## **FBI SEX OFFENSES (NIBRS) Continued**

**Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

## **VAWA OFFENSES:**

**Dating violence** 34 U.S.C. § 12291(a)(10)

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship (2) The type of relationship (3) The frequency of interaction between the persons involved in the relationship.

## VAWA OFFENSES Continued

### Domestic Violence 34 U.S.C. § 12291(a)(8)

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

### Stalking 34 U.S.C. § 12291(a)(30)

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



# **DAY 3**



**APRIL 6, 2022**



# Recordkeeping and Documentation

An overview of types of appeals that may occur during the Title IX process, and how to appropriately resolve them utilizing the institution's Title IX grievance procedure.

## Learning Objectives:

- Identify available bases for a party to appeal and which types of determinations may be appealed.
- Understand how to execute appropriate procedure for resolving appeals.

**What types of records do we create throughout a grievance process?**

**General Rule:**

"A recipient must maintain for a period of seven years records..."

34 CFR 106.45(b)(10)(i)

**What types of records must be maintained?**

**Action and inaction:**

"[A]ny actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment."

34 CFR 106.45(b)(10)(ii)



"The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken."

34 CFR 106.45(b)(10)(ii)

**Updating or correcting records:**

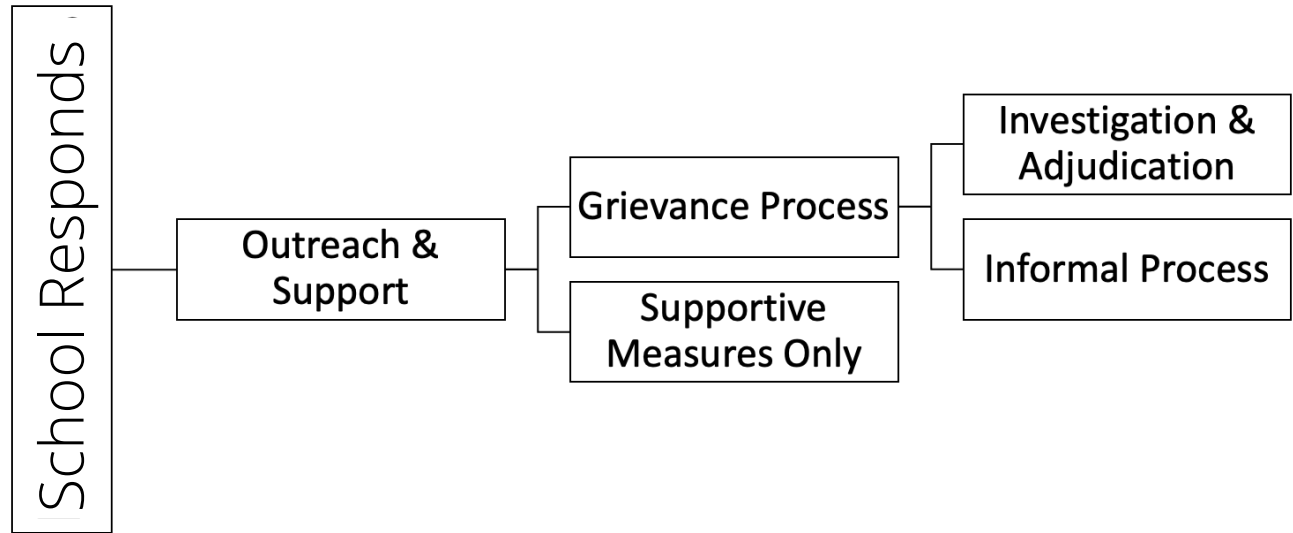


## INITIATING THE TITLE IX RESPONSE PROCESS

A look at the larger Title IX response process starting with determining when a school is considered on "notice," as well as initial response responsibilities that may be triggered.

### Learning Objectives:

- Understand and define "actual knowledge"
- Identify guiding frameworks for the grievance process provided by Title IX
- Outline initial steps that a Title IX Coordinator may be required to take
- Review reporting options and formal complaints



**Notes:**

**General guiding principles:**

- "written grievance procedure"
- "deliberate indifference"
- Equitable treatment

## Respondent considerations:

- no sanctions or punitive actions (exception: emergency removals)
- presumption of not responsible

“presumption does not imply that the alleged harassment did not occur.” “or that the respondent is truthful or a complainant is untruthful.”

## Simultaneous investigation by law enforcement:

## "Reasonably prompt"

"Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence."  
34 CFR 106.45(b)(5)(iii)



Roles and phases of the process:

“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.” 34 CFR 106.30(a)

**Actual knowledge:**

**Title IX Coordinator or "official with authority"**

“[S]chool has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.”

**Notes:**

## **Initial Response:**

“The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.”

34 CFR 106.44(a)

## **Supportive Measures:**

## **Process counseling:**

### **Documenting supportive measures:**

- 1. Action taken (or inaction)**
- 2. Basis for conclusion of appropriateness**
- 3. Measures designed to restore/preserve equal access**

### **Complainant wishes & Title IX Coordinator duty:**

“A Title IX Coordinator may file a formal complaint even if the complainant is not associated with the school in any way.”



**Formal complaint:** "A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment." 34 CFR 106.30(a)

**Formal Complaint:**

**Notice of Allegation:**

## **Informal Resolution Process:**

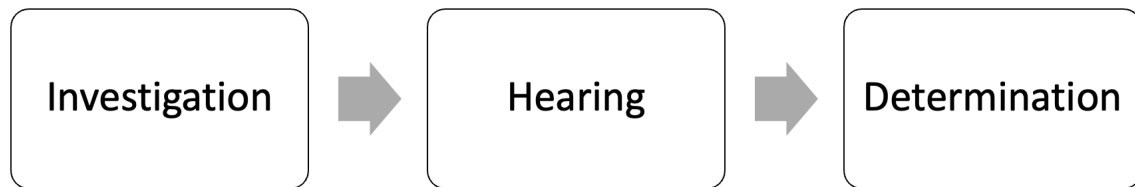
“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.”

## **Dismissals:**

Must dismiss:

May dismiss:

## Dismissal procedure:





## Title IX Investigation Process

A look at the Title IX investigation process including the steps necessary as well as the rights and options of parties to the complaint.

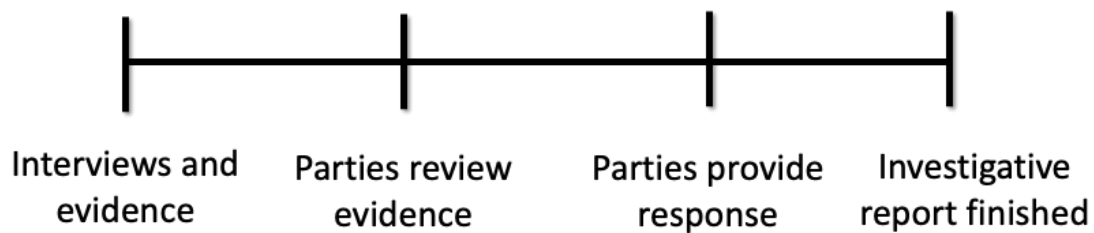
### Learning Objectives:

- Develop an understanding of the investigation process as a whole.
- Understand mandated timelines and steps within the investigation process.
- Identify rights and options of parties to the investigation.

## Investigation models:

“[P]rohibit Title IX systems in K-12 and colleges and universities from using a ‘single-investigator’ or ‘investigator-only model.’”

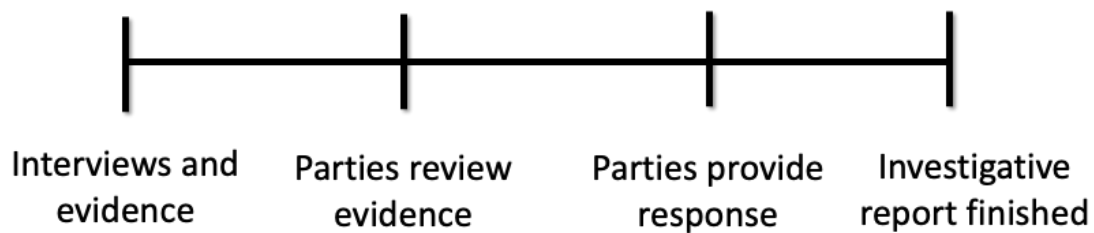
## Overview of the investigation:



## Considerations for assigning an Investigator:

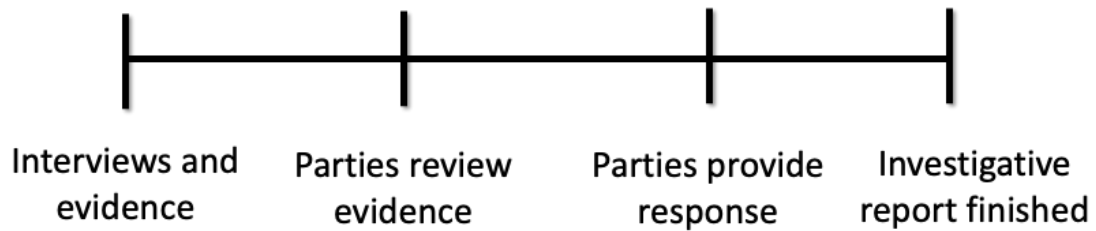
“[P]rohibit Title IX systems in K-12 and colleges and universities from using a ‘single-investigator’ or ‘investigator-only model.’”

## Overview of the investigation:



**Notice of investigation:**

**Advisor of choice:**



**Evidence:**

## **False Information:**

"The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process."

34 CFR 106.45(b)(2)(i)(B)

## **Investigative interviews:**

## **Party review of evidence:**



**Investigative Report:**

**Preparing for next steps:**



# **DAY 4**



**APRIL 7, 2022**



## TITLE IX HEARINGS

The role of a Title IX Coordinator in hearings as well as requirements for schools in conducting hearings including cross-examination and determining relevance and reaching determinations, remedies and sanctions.

### Learning Objectives:

- determining relevance in cross-examination
- understand rights and options related to hearing
- identify roles and responsibilities

Role of decision-maker:

“The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s)....”

-34 CFR 106.45(b)(7)(i)

decision-maker considerations:

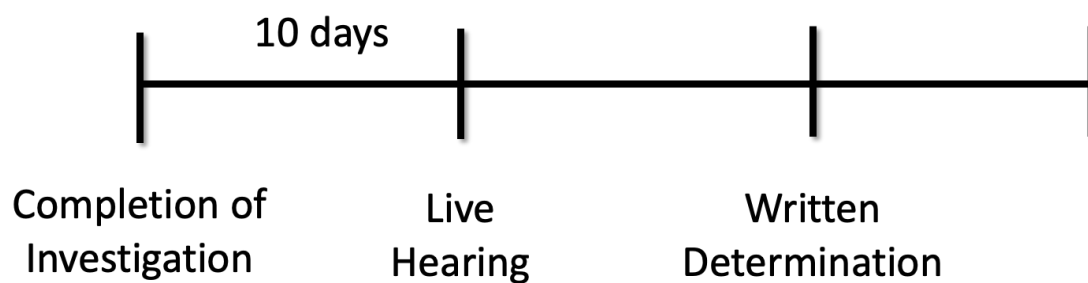
Conflict of Interest:

## **"LIVE" HEARINGS**

## **SEPERATION OF PARTIES:**

## **CREATING A RECORDING:**

- VIDEO
- AUDIOVISUAL
- TRANSCRIPT



**TIMELINE:**

**WRITTEN NOTICE:**

**ADIVISOR OF CHOICE:**

If party doesn't have advisor at hearing:

- Institution must provide free of charge
- advisor of institution's choice
- May be but does NOT need to be attorney
- Party can NOT waive having an advisor

Decorum considerations:

“Department purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker(s) from questioning witnesses in an abusive, intimidating, or disrespectful manner.”

Role of investigator:

“[A]ll relevant questions and follow-up questions, including those challenging credibility.”

- Question asked of parties and witnesses
- Directly, orally and in real time
- By party’s advisor of choice – NEVER by party
- “relevant, respectful and non-abusive”

### **CROSS-EXAMINATION:**

Framework for questions and evidence:

- relevancy
- redundancy
- inculpatory and exculpatory
- privileged information
- complainant's sexual predisposition and sexual behavior



**RELEVANCE:**

**REDUNDANCY:**

"Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege." - 34 CFR 106.45(b)(1)(x)

**Privileged information:**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are offered to prove that:

- someone other than the respondent committed the conduct alleged (OR)
- complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

### **"Rape Shield"**

### **Party lack of participation:**

“[A] decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process.”

## Reaching a determination:

"The decision-maker(s).... must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described..."

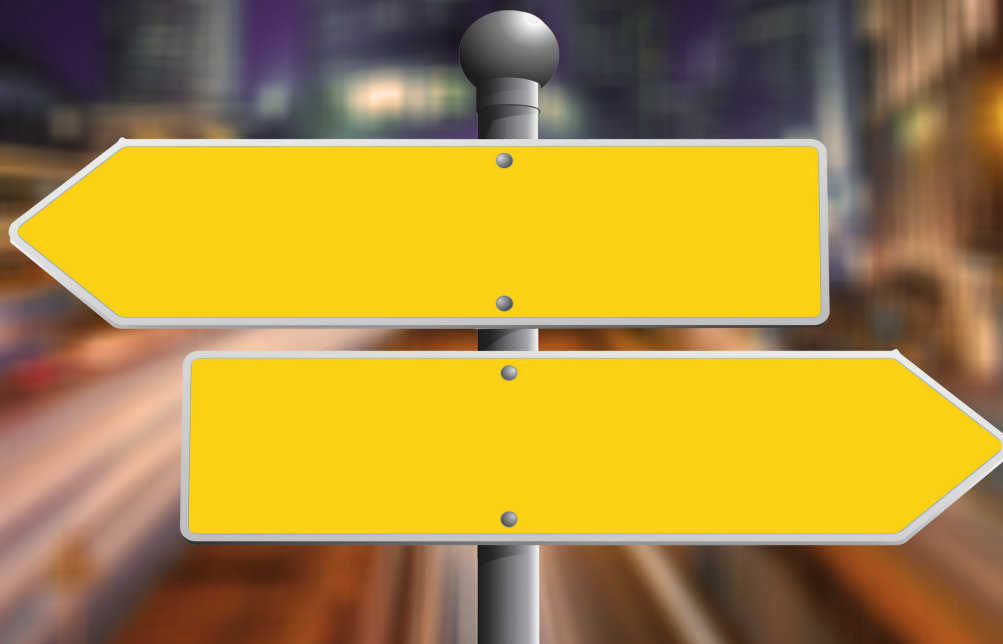
- 34 CFR 106.45(b)(7)(i)

## Written determination:

- Allegations of potential sexual harassment
- Description of procedural steps taken
- Findings of fact that support determination
- Application of policy to facts
- Determination of responsibility for each allegation and rationale
- If finding of responsible - remedies for complainant
- Options and process to appeal

## Determination of responsibility:

“Decision-maker(s) to explain in writing the reasons for determinations regarding responsibility; if a decision-maker(s) inappropriately applies pre-existing assumptions that amount to bias in the process of evaluating credibility, such bias may provide for a party to appeal.”



# Title IX Appeals

An overview of types of appeals that may occur during the Title IX process, and how to appropriately resolve them utilizing the institution's Title IX grievance procedure.

## Learning Objectives:

- Identify available bases for a party to appeal and which types of determinations may be appealed.
- Understand how to execute appropriate procedure for resolving appeals.

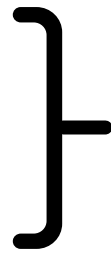
## What can be appealed?

1. dismissal of formal complaint or allegation within
2. determination of responsibility

### Dismissals:

### Available bases for appeal:

1. procedural irregularity
2. new evidence
3. conflict of interest or bias



Required bases for appeal  
to be included in policy.

### Additional (optional) bases for appeal:

*"A recipient may offer an appeal equally to both parties on additional bases." 34 CFR 106.45(b)(8)(ii)*

### Procedural Irregularity:

*"Procedural irregularity that affected the outcome of the matter."*

*34 CFR 106.45(b)(8)(i)(A)*

### New Evidence:

*"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."*

*34 CFR 106.45(b)(8)(i)(B)*



What is the process for parties to file an appeal?

How must appeals be resolved?

*34 CFR 106.45(b)(8)(iii)*



"Reasonably prompt time frames:"

Written notification of appeal:



### Decision-Maker:

- ☒ Did not make the initial decision that is being appealed.
- ☒ Is not the Title IX Coordinator.
- ☒ Is not the Investigator.
- ☒ No conflict of interest or bias.
- ☒ Received training.

### Parties' opportunity to respond:

Written outcome:

$\left[ \begin{array}{c} \text{Bases for} \\ \text{Appeal} \end{array} \right] + \left[ \begin{array}{c} \text{Appeal} \\ \text{Decision} \end{array} \right] + \left[ \begin{array}{c} \text{Rationale} \end{array} \right]$

"Deliberate indifference"

**APPEALS:** 34 CFR 106.45(b)(8)

(i) A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and

(C) 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.

(ii) A recipient may offer an appeal equally to both parties on additional bases.

(iii) As to all appeals, the recipient must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

**APPEALS CONT'D: 34 CFR 106.45(b)(8)**

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.



# DAY 5



**APRIL 8, 2022**



## Title IX Informal Process

An overview of types of appeals that may occur during a Title IX investigation, and how to appropriately resolve them utilizing the institution's Title IX grievance procedure.

### Learning Objectives:

- Identify available bases for a party to appeal and which types of determinations may be appealed.
- Understand how to execute appropriate procedure for resolving appeals.

**NOTE:**

*Informal processes, in addition to a grievance procedure that provides for an investigation, are one option that schools can make available to resolve complaints but is not mandated.*

**Language:**

"A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process...."

34 CFR 106.45(b)(9)

**Consent to participate:**

**Confidentiality:**

**Appropriateness:**

“Recipients may not offer informal resolution unless a formal complaint has been filed.”

**Informal v. Formal:**



### **Training and qualification considerations:**

“Nothing in §106.45(b)(9) requires an informal resolution process to involve the parties confronting each other or even being present in the same room.”

### **Conflict considerations:**

### **Outcomes:**

## Recordkeeping:



## NON-SEXUAL HARASSMENT TOPICS OF TITLE IX

A look at other forms of sex-discrimination outside sexual harassment including athletics, pregnant and parenting students, gender identity and single sex education programs and activities.

### Learning Objectives:

- Understand scope of reports that may constitute sex discrimination under Title IX
- Identify the tests and facial reviews applied to determining whether a report may constitute sex discrimination
- Overview of appropriate actions and preventative measures a school can take

## Areas of Title IX: \*Not an exhaustive List

- Sexual harassment
- Retaliation
- Athletics
- Single sex education program or activity
- Gender identity and gender expression
- Pregnant and parenting students

Application of new regulations:

“While the proposed regulations mainly address sex discrimination in the form of sexual harassment, the Department will also continue to enforce Title IX in non-sexual harassment contexts including athletics and equal access to areas of study such as STEM Fields.”

Response to Non-Sexual Harassment

## Discrimination based on sex:

- Different treatment
- Disparate impact
- Sexual Harassment

### Different Treatment:

## Circumstantial Evidence:

- Did the school representative treat a student differently from a similarly situated student of the opposite sex?
- Did the different treatment occur in the course of the school representative's authorized or assigned duties or responsibilities?
- Can the school articulate a legitimate, non-discriminatory reason for the different treatment?
- If they can articulate such a reason, is it pretext for discrimination?

## **Disparate Impact:**

### **Disparate Impact:**

- Facially neutral policy that has disproportionate impact on class of sex
- Whether substantially legitimate justification - “necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission.”
- Whether there are any "equally effective alternative practices" that would result in less adverse impact

## **"Non-Sexual" Sexual Harassment:**

### **Understanding Language:**

- gender expression
- gender identity
- sex
- sexual orientation

### **Protections that have always existed:**

### **Gender expression & sex-stereotyping:**

### **Bostock v. Clayton County:**

- Discrimination based on sexual orientation and/or gender identity inherently involve treating individuals differently because of their sex.
- Discriminate against person for “traits or actions it would not have questions in members of a different sex.”

## **Current OCR interpretation:**

“Title IX prohibits discrimination based on sexual orientation and gender identity.”

### **Pregnant and Parenting Students:**

“[S]chool requires a doctor’s note from all students who have a physical or emotional condition requiring treatment by a doctor.”

### **Athletics:**

1. Accommodation of student interests and abilities
2. Equivalence in athletic benefits and opportunities



“An institution must effectively accommodate the athletic interests and abilities of students of both sexes to the extent necessary to provide equal athletic opportunity” - OCR's 1979 Policy Guidance

#### **Accommodation of student ability and interest:**

#### **Three compliance options:**

1. Whether participation opportunities for male and female students are proportionate to enrollment.
2. Members of one sex have been and are underrepresented BUT institution can show a history of continuing practice of program expansion.
3. Members of one sex underrepresented and institution can NOT show a history of program expansion BUT can demonstrate that interests and abilities fully and effectively accommodated.

#### **Interest and abilities:**

## **Equivalence in athletic benefits and opportunities**

## **Single Sex Programs and Activities:**

### **General Rule:**

A recipient (of federal funds) shall not provide or otherwise carry out any of its education programs or activities separately on the basis of sex or require or refuse participation therein by any of its students on the basis of sex.

**Financial Assistance:**

**Clubs, groups and organizations:**

**Facilities and property:**