

TITLE IX TRAINING

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Agenda

- 9:30** Setting the Stage
Title IX Core Concepts
Title IX Regulation Definitions
- 10:30** Break
- 10:45** Bringing It All Together:
Title IX Policy and Grievance Process



An overhead view of four people sitting around a round white table in a meeting. The table is cluttered with various items: two laptops, several open books, stacks of papers, sticky notes in yellow and teal, and two smartphones. One person is pointing at a document, another is writing in a book, and a third is looking at a laptop. The fourth person is looking towards the center of the table. The background is a grey concrete floor.

SETTING THE STAGE

Setting the Stage

So much is happening right now

- Pandemic challenges
- OCR Targeted Enforcement Initiative
- Demands for due process through specific procedures
- Demands for remedies for those impacted by sexual misconduct
- Changing laws and regulations

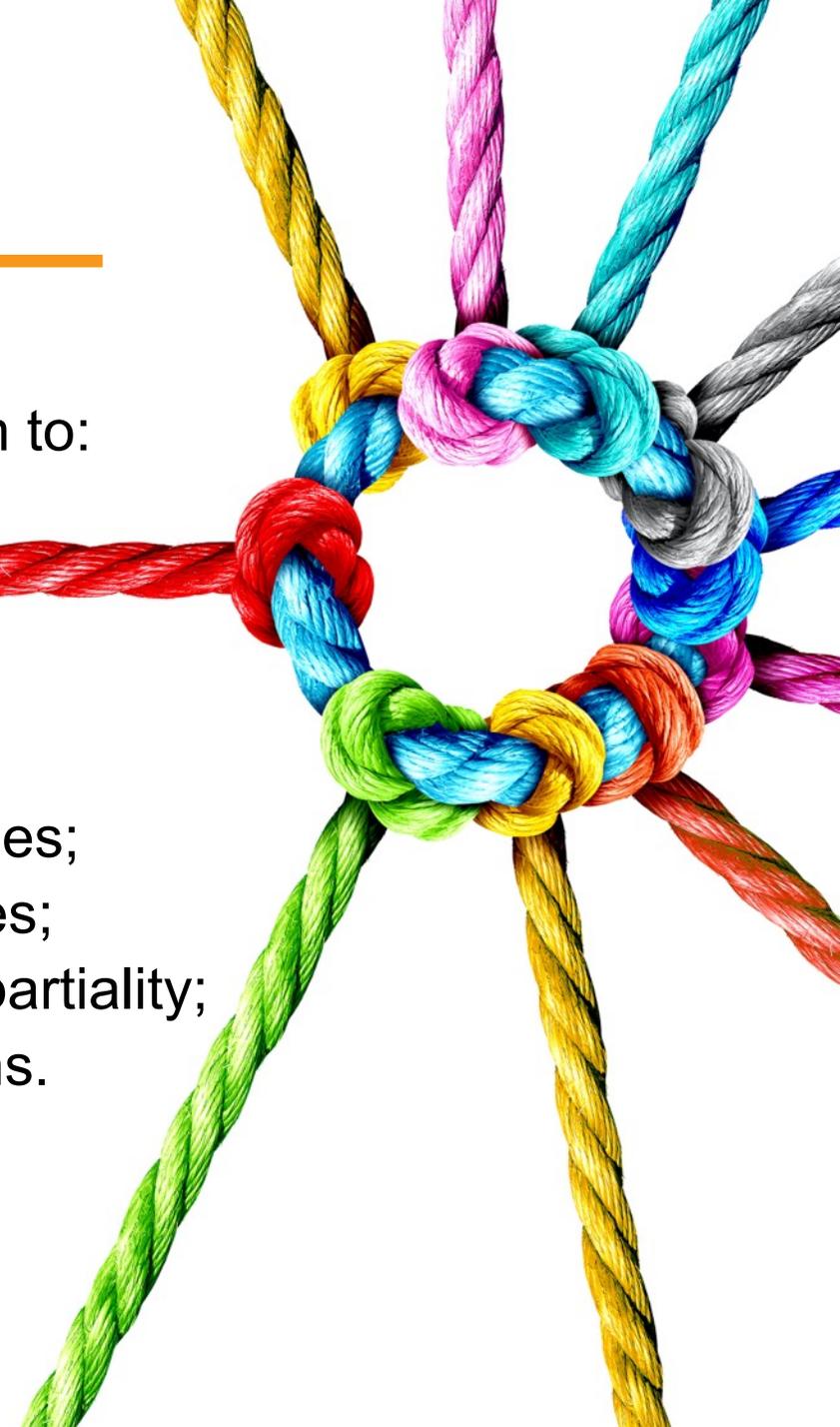
Because of new regulations, schools must focus on Title IX and balance it all.

Setting our Objectives

To prepare you, as members of your school's Title IX, team to:

- remain true to your school's mission;
- effectively respond to sexual misconduct;
- ensure fair, equitable and non-discriminatory processes;
- develop shared language relating to Title IX processes;
- understand evidence, relevance, bias, conflicts & impartiality;
- comply with the federal and state laws and regulations.

These objectives are complementary, not competing





TITLE IX CORE CONCEPTS

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.”

20 USCA Sec. 1681(a), June 23, 1972

The New Title IX Regulations

New regulations– Effective August 14, 2020

- Includes a “Preamble” which provides explanations

Primarily focused on **one type** of sexual discrimination

- Sexual harassment by or involving all faculty, students, staff, and volunteers
- The regulations do not cover other types of sex or gender based discrimination
 - For example, a claim that a boy was excluded from Family and Consumer Sciences

Fun Fact

Title IX, and its regulations, apply equally to students, faculty and staff

Sex Discrimination is Prohibited

Title IX is broad and includes harassment, sexual violence, and any other sex discrimination:

- The new regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities

The Title IX regulations provide people who file complaints with strong protections from sexual harassment and set clear expectations for when and how a school must respond to restore or preserve equal educational access

Free Speech

The concept of free speech appears 291 times in the Preamble

How might Free Speech issues arise in a Title IX case?

- Teaching a class on religion, political science
- Military strategy case - debating if women should be in combat
- SnapChat cheerleader case – off campus speech as grounds for discipline



Fairness & Due Process

Under the new regulations and your school's Title IX Policy, the people working on your school's Title IX efforts must be educated on the concepts of fairness, bias and conflicts of interest and must be able to identify and avoid:

- Bias against individuals or types of people
- Pre-judgment based on gender, race, sex, religion, disability, etc.
- Pre-judgment based on status, such as being the person who brought a complaint, or the person responding to a complaint
- Conflicts of interest
- Profiling and predictive behaviors

What is Bias?

Bias is a predisposition to think about a specific group and its individual members in a preconceived way

- Explicit: fully and clearly expressed or demonstrated; leaving nothing merely implied; unequivocal
- Implicit: implied, rather than expressly stated; unconscious

Examples:

- All men/boys do X
- All women/girls do Y
- People from ___ are sexually ___

Avoiding Bias

Best practices to avoid bias:

- Learn about, be alert for, and avoid, stereotypes such as sex stereotypes
- Do not prejudge. Beware of making judgments or assumptions about the validity of the allegations even before you start your work or even mid-process
- Review and analyze all relevant evidence gathered
- When investigating, avoid leading questions
- Focus on what is needed to prove (or disprove) a policy violation
- Remember your middle school math teacher's words: you might not get credit for the right answer if you don't show your work (be prepared to justify your conclusions with the information you have gathered)

What is a Conflict of Interest (“COI”)?

A conflict between the private interests and the official responsibilities of a person in a position of trust (Merriam-Webster)

COI must be avoided to:

- Protect process participants
- Ensure fairness
- Maintain the trust, integrity, and credibility of the Title IX process
- Comply with Title IX
- Avoid litigation and minimize appeals

Avoiding COI

Examples of potential COI:

- The spouse of someone hearing the appeal of a case was a witness in the investigation
- In case involving theater teacher, investigator's daughter is auditioning for role in musical
- Title IX Coordinator publishes a blog that stereotypes based upon gender

POINTER: In assessing for COIs, consider where there may be influence unrelated to the evidence in the case, such as personal relationships, financial relationships, or power dynamics

Fairness & Due Process

In summary, the default mindset should be:

- Treat the parties equally, unless specifically permitted
- What is good for one party should be good for the other

Under your school's' Title IX Policy, designate a person to raise any concern involving bias, conflict of interest or misconduct by the Title IX Coordinator.

Designate another person, likely the TIX-C to accept concerns of bias, conflict of interest or potential misconduct by any other Title IX Team Member

Title IX Coordinator (“TIX-C”) Duties

The TIX-C is responsible for:

- Disseminating broad notice to the community about sex discrimination
- Accepting reports of sexual harassment (several avenues)
- Offering and facilitating supportive measures (discussed later)
- Complying with Title IX and its regulations
- Effectuating of remedies and sanctions, if any
- Ensuring a compliant record retention system

This role is NOT:

- **a confidential resource**
- **responsible for determinations of policy violation**

The New “Title IX Team”

Under the new regulations, the focus is on multiple layers of responsibility and separation of duties. Your Title IX Team may include:

- Title IX Coordinator(s)
- Informal resolution facilitators
- Investigators
- Decision Makers (to be discussed later)
 - Hearing Decision-maker
 - Board of Trustees
 - Appeal Decision-maker

The Title IX Team can include internal and/or external professionals



TITLE IX REGULATION DEFINITIONS

Let's Start With The Easy Ones

Complainant: person alleged to be the victim of potential sexual harassment

- This may be a change from your past practice, where a third party could be a Complainant.

Respondent: person reported to have engaged in potential Title IX sexual harassment

Consent: not defined by the OCR

- Schools may define consent for themselves

Title IX Sexual Harassment

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

- An employee conditions a benefit, aid, or service on participation in unwanted sexual conduct (quid pro quo)
- Unwelcome sexual conduct that is so severe, pervasive, **and** objectively offensive that it denies equal access
 - This is **different** from the standard for employees under Title VII, which remains the law and applicable to employees
- Sexual assault, dating violence, domestic violence, and stalking as defined by specific federal statutes

Educational Program or Activity

The alleged sexual harassment must occur **in** the program and activity.

What is a school's Educational Program or Activity?

- **“all of the operations of”** the school
- situations where the school exercises substantial control over the Respondent **and** the context in which the sexual harassment occurred
- any building owned or controlled by a recognized student organization

Educational Program or Activity

Your Title IX Policy should cover on-line harassment where “on-line conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.” Otherwise, free speech protections govern.

Some common scenarios

- Athletics away game
- Academic conferences



Formal Complaint

A document filed by a Complainant or the Title IX Coordinator

- Alleging sexual harassment
- Seeking a formal investigation
- Where the Complainant is participating (or attempting to) in the educational program or activity

Title IX Coordinator can be the person to file when there is a danger to the community

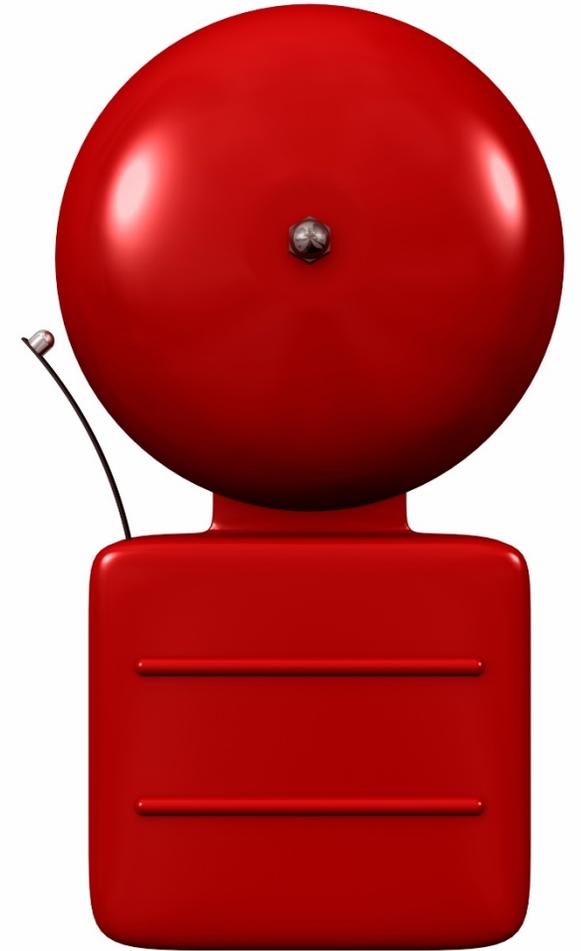
- The TIX-C does NOT become the Complainant
- There may be challenges to proceeding in this manner

Actual Notice

Under the new regulations, a school's duty to respond to sexual harassment arises where there is "Actual Notice" of alleged sexual harassment received by:

- **Any school employee**

As a result of the new regulation, it is recommended that your school enact a policy that expressly designates all employees as mandatory Title IX Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.



Supportive Measures

The regulations define Supportive Measures as measures that are:

- available to both Complainants and Respondents
- designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment
- the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

Supportive Measures

These are school-provided services that are:

- Available at any time after a report of sexual harassment
- Non-disciplinary
- Non-punitive
- Not “unreasonably burdensome” to the other party
- Individualized
- Provided at no cost

Supportive Measures

Supportive Measures include:

- Work or class schedule modifications
- Counseling
- Mutual no contact orders
- Changes in housing or work locations
- Leaves of absence
- Extensions of deadlines

Must be documented, and kept as confidential as possible

POINTER:

Removals from teams, clubs, etc., are considered punitive, and thus are not Supportive Measures. Use your emergency removal process for such removals (discussed later).

A young man with short brown hair, seen from behind, is wearing a teal denim shirt and brown pants. He has a dark grey backpack with a brown leather patch on the back. He is holding a white map or document in his hands. The background is a large, multi-story university building with many windows and arched doorways, set on a cobblestone path with green grass and trees. The scene is brightly lit, suggesting a sunny day.

TITLE IX POLICY AND PROCESS

Reports of Sexual Harassment

Under the new Policy, notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator
- 2) Report online. Reports may be made anonymously but may result in a need to investigate.

The TIX- C will conduct an initial assessment/inquiry.

Your school should respect requests from Complainants to dismiss complaints unless there is a compelling threat to health and/or safety, criminal activity, child abuse, and/or the Respondent is an employee.

The Required Response to Reports of Sexual Harassment

Where a school has: (1) had actual notice; (2) of sexual harassment; (3) in a program or activity; (4) in the U.S., a school must respond:

- Promptly (some schools' Policies sets 30-60 days as the target, including the appeal)
- Equitably, including explaining and providing supportive measures
- By adopting and following new procedures to include a “Formal complaint” process, prior to issuing any discipline
- By adopting a grievance process that includes a presumption that the Respondent is “not responsible for the alleged conduct” until a determination is made regarding responsibility at the end of the process

The Required Response to Reports of Sexual Harassment

In its Title IX Sexual Harassment process, a school must:

- Conduct an objective evaluation of all evidence
- Provide credibility determinations **not** based on status
- Ensure that the Title IX Team is free of conflicts of interest or bias
- Describe the range of possible disciplinary sanctions
- State the standard of evidence
- Describe appeal process and grounds

As we will discuss, your School's new policy and process should fulfill these requirements

Emergency Removals for Students

Some Reports will seem to be an emergency or will seek immediate action

Your school's Policy should permit emergency removal only after: (1) an individualized safety and risk analysis; and (2) a determination that an immediate threat to the physical health or safety of any person arising from the allegations of sexual harassment justifies removal

- Where this occurs, a school must provide the Respondent with notice and an opportunity to challenge the decision **immediately** following the removal



Formal Complaints under Your School's New Policy

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the allegation be investigated

- The Complainant must be participating in or attempting to participate in the “educational program or activity”
 - What happens if not? We will get to that
- Once a Formal Complaint is filed, your school **must** provide notice to the parties
- A Formal Complaint **must** be investigated

Notice of Formal Complaint

After the Formal Complaint, to ensure fairness and due process, your School must provide written notice to the parties to include:

1. The policy and grievance process
2. The allegations, with detail sufficient to prepare a response before any initial interview (names, dates, locations, conduct at issue); if new allegations arise later, this must be supplemented
3. The presumption that the Respondent is not responsible, unless and until a determination at the end of the process
4. The right to inspect and review evidence
5. Information on available resources, resolution options, supportive measures, and other processes that may potentially apply
6. The right to an advisor of choice, including an attorney

And Speaking of Advisors . . .

Parties are entitled to an advisor of choice throughout the process

- May be an attorney, a parent, witness, or anyone else
- Their role is generally to provide advice and guidance
- Advisors are permitted to review all evidence “directly related to the allegations” that is not privileged
- Your school should have (or develop) Guidelines for Advisors
 - Must you provide advisor training? No
 - Must you provide a lawyer as an advisor? No

The Standard, and Burden, of Proof

The **standard of proof** is the **amount of proof needed** to find that a Respondent is responsible for a Title IX Policy violation.

- The standard under your school's Policy is likely "Preponderance of the Evidence"
- This means that it is more likely than not, or a greater than 50% chance, that there was a violation of the Title IX Policy

The **burden of proof** is the "who" as opposed to the "how much." Under the new Title IX regulations, the school bears the burden of proof.

- Investigators are required to gather the relevant evidence
- Parties and witnesses are requested to provide evidence

Presumed Not Responsible

Under your school's Policy, and consistent with the regulations, the Respondent must be "presumed not responsible" throughout the Title IX process, and no disciplinary measures can be imposed, unless and until a policy violation is found.

The Preamble to the regulations explains that this presumption was included to establish impartiality, **not** to create a prejudgment.

When **MUST** a School Dismiss a Formal Complaint?

A Formal Complaint **must** be dismissed if the conduct:

- Would not be sexual harassment even if true;
- Did not occur in a program or activity; and/or
- Did not occur in the United States

Where there is a required dismissal, a school's TIX-C can refer the matter to other processes, such as those found in the student handbook or applicable employee handbook.

When **MAY** a school Dismiss a Formal Complaint?

A Formal Complaint **may** be dismissed where:

- At any time the TIX-C receives a written request from the Complainant seeking dismissal;
- The Respondent is no longer enrolled or employed by the school; and/or
- Specific circumstances prevent the gathering of sufficient evidence to reach a conclusion

Whenever there is a dismissal, whether mandatory or permissive, under a school's Policy written notice of the reason and right to appeal must be sent to all parties

Informal Resolutions

Schools can offer an informal resolution (“IR”) process. It is voluntary, conducted by the TIX-C, and can occur at any time. Schools:

- may not offer IR unless a Formal Complaint is filed
- may not require a waiver of a right to an investigation and adjudication of formal complaints to participate in IR
- may not offer or facilitate an IR process to resolve allegations that an employee sexually harassed a student
- must provide written notice of the IR process
- must obtain the parties’ voluntary, written consent to the IR process
- must only reach a resolution when all parties agree

The Formal Process and Investigations

Once the TIX-C decides to begin a formal investigation, an Investigator will be vetted and appointed promptly.

During the investigation:

- The school bears the burden of proof, not the parties, and must gather the evidence
- The school must avoid bias and COI through the vetting process
- The parties must be afforded **equal opportunity to present** evidence and witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- How does the investigator conduct the investigation and process the evidence gathered? Let's discuss . . .

Conducting the Investigation

Investigation best practices include:

- Gathering all relevant evidence
- Conducting the activity in a prompt, thorough and impartial manner
- Interviewing all (non-redundant) witnesses
- Providing meaningful notice and opportunity to be heard

This group has various levels of investigation experience. In-depth, nuts and bolts investigator training for those interested can be offered in another session.



What Is Evidence and What Do We Do With It?

Broadly construed, evidence is anything that relates to an assertion in a complaint

It comes in many forms: digital, documentary, physical, oral, images, photos, videos, records, physical objects, clothes, etc.

- Can be direct or circumstantial (post-event attendance records)
- Includes inculpatory or exculpatory evidence
- A gut feeling or personal view is not evidence

Title IX Team members must objectively evaluate all evidence, be impartial and unbiased



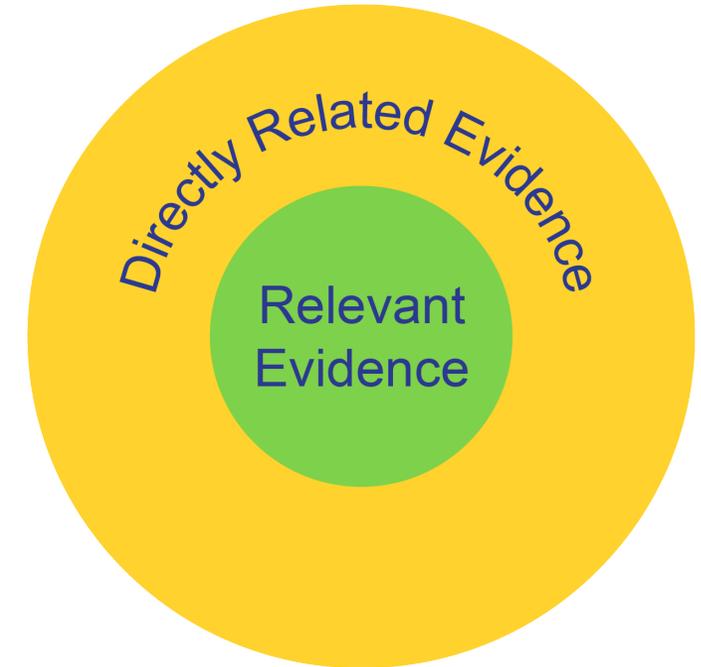
Relevant Evidence

Only **relevant** evidence can impact a finding of a policy violation. “Relevance” should be interpreted according to plain and ordinary meaning, such as:

- Having a significant and demonstrable bearing on the matter at hand
- Tending to prove or disprove the matter at hand
- You are not bound by formal rules of evidence

Parties may provide evidence that is not relevant but is directly related to the complaint (“directly related” is broader than “relevant”)

Example: Both parties are Pirates fans and watched the game the night before the alleged misconduct.



Relevance and Issues of Privilege

Certain evidence, even if relevant, is legally “privileged” and disclosure cannot be compelled

Privileges include:

- The Attorney-Client privilege
- Medical provider/records privilege
- Spousal privilege

You may not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legal privilege, unless the person holding the privilege has waived it in writing.



Relevance and the Rape Shield Bar

What is the Rape Shield Bar?

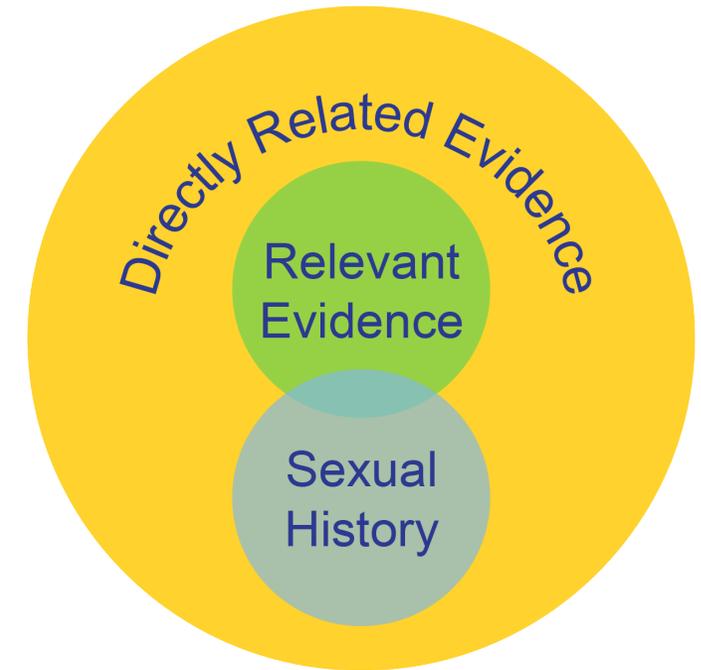
- A rule that bars the consideration of evidence, offered as substantive evidence or for impeachment, of past sexual history or predisposition

What is the purpose?

- To safeguard against the invasion of privacy, embarrassment, and sexual stereotyping
- To encourage victims to come forward

Who does it cover?

- Complainants only



Relevance and the Rape Shield Bar

There are two exceptions to this bar, where the evidence is offered to prove:

1. Someone other than the Respondent committed the conduct alleged by the Complainant
2. Consent, if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent

POINTER: When faced with an unclear Rape Shield issue, pause, take a break, and call your counsel

Credibility and Assessment

If there are conflicting versions of relevant events, decision-makers will have to weigh each party's credibility

Credibility assessments can be critical in determining whether the alleged policy violation in fact occurred

The duty is not to “believe one story over the other” but to assess each piece of evidence, independently, and as part of the bigger picture, to determine whether the preponderance of the evidence supports a finding of responsible or not responsible for a policy violation

Credibility and Assessment

Credibility assessment factors to consider include:

- **Inherent plausibility:** Is the information believable on its face? Does it make sense?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation, video, entry logs) that corroborates the party's testimony?
- **Past record:** Did the Respondent have a history of past similar behavior?
- **Demeanor:** Did the person seem to be telling the truth or lying? Use caution here as you likely do not know the process participants.

Credibility and Assessment

None of the above factors are determinative as to credibility. For example, the fact that there are no eye-witnesses to the alleged harassment by no means necessarily defeats the Complainant's credibility, since harassment often occurs behind closed doors. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again.

Quoted from the EEOC's *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* dated June 18, 1999:

Credibility and Assessment

Show your work

- Explain your determination with well-reasoned conclusions supported by evidence
- Articulate **why** one party or statement was more or less credible than the other
- Do not state a conclusion about credibility without explaining how you got there

PRACTICE POINTER:

Write your report as if a stranger to the complaint will be reading it

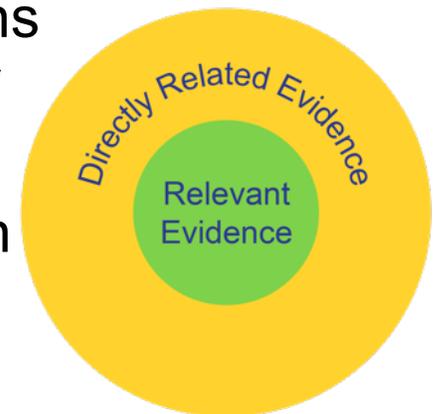
Investigations - Sharing the Evidence

Once the evidence is gathered, the investigator must provide both parties an **equal opportunity to inspect and review any evidence** obtained as part of the investigation that is **directly related to the allegations** raised in a formal complaint so that each can meaningfully respond to the evidence **prior to conclusion of the investigation**

Purpose: parties can identify evidence either overlooked by the investigator or erroneously deemed relevant or irrelevant

The investigator must send evidence directly related to the allegations to each party and their advisor in an electronic format or a hard copy

Then the parties must have at least **10 days to submit a written response, which the investigator will consider** prior to completion the investigative report



Determining Relevance In an Investigation

To make relevance determinations:

- Review the allegations
- Compare evidence to the elements of the alleged policy violation to see if evidence impacts the elements
- Assess whether the evidence makes the allegations more or less likely
- Investigators, as well as hearing and appeal decision-makers, should heed this advice

POINTER:

Carefully consider the parties' responses to the evidence when you are determining relevance

Drafting a Fair Investigation Report

After receiving the parties' responses to the evidence, Investigators are required to "fairly" summarize the "relevant evidence" in a report

There is no requirement to summarize the broader universe of "all evidence directly related to the allegations"

Drafting a Fair Report

Map out the key elements of proof

Summarize the evidence in a factual, objective manner

Show your work/logic

Rely on facts, not gut, opinions, or conclusions

- Avoid generalizations or prejudice
- Avoid characterizations and conclusions

The advice on drafting a fair investigation report is equally helpful to decision-makers

POINTER:

Make the report useful to the decision-makers (for example, include procedural steps taken)

Drafting a Fair Report

Once the report is ready, the investigator must send to each party and each party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response, **at least 10 days prior** to the hearing.

This allows the parties to “effectively provide context to the evidence included in the report” and to “advance their own interests for consideration by the decision-maker” at the hearing.

The Decision/Hearing

After the Investigation Report is final, the TIX-C refers matter to qualified Hearing Examiner (Decision-Maker) chosen by the BOT. At the hearing, there is an **independent obligation** to objectively evaluate relevant evidence.

Not all case require a hearing. In cases involving suspension or dismissal, consistent with Pennsylvania law, there must be a hearing.

- The Hearing Examiner cannot be the Investigator or TIX-C
- Video or audio recorded
- Can be remote
- If uncertain whether a hearing is required, call your attorney.

The hearing process:

- Must satisfy PA due process requirements
- Separate rooms must be available upon request
- Technology allowing the parties to see and hear in real time

Hearings - Questioning by Advisors

During any hearing, the Parties' advisors (including lawyers, but never the Parties) have the right to ask questions:

- of the other Party and the witnesses
- directly, orally, and in real time
- only relevant questions may be asked

If a Party or witness does not answer questions, the Decision-Maker must not rely on their statements

However, there can be no **inference** about responsibility solely from the failure of a person to answer questions



Tips On Handling Questioning of Witnesses

Decision-Makers must make real-time evidentiary rulings

- **Before** any witness answers
- Where a question is not allowed, the Decision-Maker must explain why

Examples of the required level of detail in the explanation:

- “The question will not be answered as it violates the rape shield rule and does not fit into one of the exceptions”
- “The question is not relevant as it is redundant”

POINTER: Take it slow - you can call for a break to confer with counsel

The Proposed Adjudication

Within two (2) business days after the final meeting with the parties, or the last evidence is exchanged, the Decision-Maker must draft a written proposed adjudication and provide to the TIX-C.

Using the proposed adjudication, the decision maker, with assistance from the TIX-C will prepare a Notice of Outcomes letter.

The Notice of Outcomes letter, including the proposed adjudication, rationale, and any applicable sanction(s) is then sent to the Board of Trustees who will take action on the Notice of Outcomes after the hearing.

The Title IX Coordinator will then share the final Board-approved Notice of Outcomes simultaneously with the parties and their Advisors within seven (7) business days of receiving the final Board approval.

The Notice of Outcome

The written Notice of Outcome will include:

- Identification of the allegations
- Description of all procedural steps taken
- Findings of fact
- Conclusions and a determination regarding responsibility
- A rationale for all conclusions
- Determination/description of disciplinary sanctions, if any
- Indication of whether there are remedial measures to Complainant
- Appeal process and grounds

Sanctions and Withdrawal

Sanctions:

- The Policy lists a broad range of factors to be considered when determining sanctions.
- It also lists a broad range of sanctions that may result from a finding of harassment or retaliation, which go into effect **after** any appeals.

Withdrawal

- If a student decides to withdraw, the Title IX formal process will cease. However, a school may continue to address and remedy issues.
- If an employee resigns under investigation, they are ineligible for rehire, records will be retained, mandatory reporting will be satisfied and requests for references will indicate that the employee resigned during a pending disciplinary matter.

Appeals

Parties have the right to appeal from a determination, or a dismissal of a Formal Complaint or any part thereof, in writing within 7 days of delivery of the Notice of Outcome, on three specified grounds:

1. **Procedural irregularity** that affected the outcome of the matter
2. **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
3. The TIX-C, 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

Appeals

- Party/advisors must be permitted to make written submissions to the Appeal Decision-Maker (which is one individual)
- The Appeal Decision-Maker must not have previously been involved in the case and must be trained and unbiased
- There is no right to another hearing before an Appeal Decision-Maker
- The Appeal Decision-Maker must come to a final written appeal decision (which must include the determination, remedies, discipline, and rationale)
- Generally, within seven (7) business days, the Appeal Decision Maker will issue a written, simultaneous notice of appeal outcome, including the decision and rationale, any specific instructions
- The Outcome will be provided simultaneously to the parties

Retaliation

*No recipient or 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 this part, 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 under this part.*

The exercise of rights protected under the First Amendment does not constitute retaliation, but threatening to publish to deter reporting could be

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation

Amnesty

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to seek assistance).

Schools must maintain a policy of amnesty for students who offer help to others in need.

In determining whether to offer amnesty, the Title IX Coordinator will consider factors such as: the nature and severity of the policy violation; the age of the individual; the impact on the health and safety of the individual and the school community; and the best interests of the school community.

Documentation and Recordkeeping

A school's Title IX Policy must require the retention of all documents, evidence and recordings for seven years from reports, Formal Complaints, hearings, informal resolutions and appeals

This includes records of informal resolutions, disciplinary sanctions and remedies.

Schools must keep, and make publicly available, all Title IX Team training materials (like these slides!)

Schools must retain records of supportive measures offered to students

QUESTIONS



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