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Campus and Workplace Solutions

Investigator Training
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EHC
 Campus and Workplace Solutions

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Upfront Info: Today's Topic Will Cover Tough Subjects

- Terminology
- Examples and stories
- Self-care is encouraged!

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Agenda

1 Introduction Presenter, climate	4 Design & Action Questions & questioning
2 Attitude & skills Deal breakers and deal makers	5 Report Writing Information delivery
3 Setting it up Policy, process	6 Questions

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Overall learning outcomes

- 1 Developing tools to be a neutral, fair, and professional investigator
- 2 Developing and asking questions effectively
- 3 Managing interviews
- 4 Writing thorough and effective reports

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Caveats

- Each school has different policies and each school structures investigations differently. You should always follow the expectations of those responsible for Title IX on your campus.
- This training does not constitute not legal advice.

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Section 1
Introduction

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Introduction: Learning Outcomes

- 1 Value of a thorough and well-written report

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Key Takeaways

- 1 Treat all parties fairly, neutrally, and with professionalism
- 2 Manage bias
- 3 Have the courage to act, say, and do what is ethical, professional, and appropriate
- 4 Be prepared and thorough; know the elements of the applicable definitions
- 5 Develop relevant and probative questions
- 6 Gather detail and be patient
- 7 Write a clear, detailed, neutral report that allows the parties' experiences to be heard

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Why do we need fair and thorough investigations?

- Obtain as much relevant information as possible to assist with a determination of policy violation
- Ensure that all parties are fully heard from; shows parties that their experience is being treated with respect and taken seriously
- Gives confidence to community that the institution is addressing the matter
- Essential part of compliance and due process

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There is rarely a “smoking gun,” admission, or video.

- a) recordings and first hand witnesses are infrequent
- b) people are not going to admit it
- c) difference in memory
- d) it didn't happen

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What are We Doing? Filling Information Buckets

Example: Harassment (simple version)

- 1 Conduct of a sexual nature
- 2 Unwelome
- 3 Severe, persistent, or pervasive
- 4 Such that it denies an opportunity or benefit of the university

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Focusing on Facts


- Gives the investigation greater credibility
- Avoids bias and assumptions
- Results in greater detail and information



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Whom is the report for?

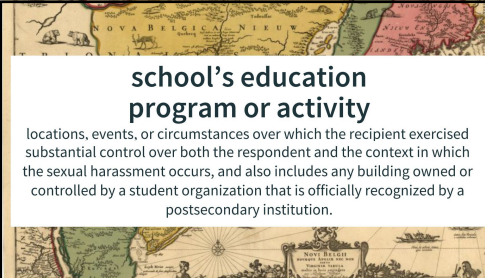


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Formal Complaint under New Title IX Regulations
document filed by a complainant or signed by the TIXC

- 1 alleging sexual harassment against a respondent,
- 2 about conduct within its educational program or activity,
- 3 requesting initiation of the school's grievance procedures, and
- 4 filed by a complainant at a time when they are participating or attempting to participate in the school's education program or activity.

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school's education program or activity

locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

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Title IX Says...

- "A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX." *106.45(a)*

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Section 2

Attitude & Skills



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Attitudes and Skills: Learning Outcomes

- 1 Identifying investigator skills and capabilities
- 2 Addressing impact of myths and bias
- 3 Understanding the relevance of skills, capabilities, myths, and bias impact in investigations

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Ultimate Investigator Skills

- Courageous; ethical
- Open-minded, non-judgmental
- Curious
- Fair, neutral, and impartial
- Focused on detail, accuracy, and precision
- Self-aware, composed
- Compliance-focused

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Respect for the Parties' Experience

- This is someone's experience and it matters.



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Be Prepared

- Personal views stay home
- People will share experiences that are deeply personal, private, and sensitive
- You may hear something you did not expect

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Demeanor

Consistent for each party and witness

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Required under the new Title IX regs:
presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process

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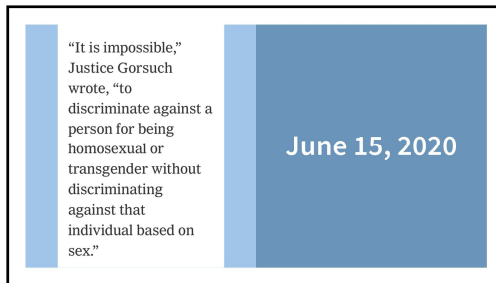
Myths and Biases- What are Some?

- Myths about sexual assault, dating violence, sexual harassment, discrimination, harassment....etc.
- Myths/biases about complainants and respondents
- Myths and expectations about human behavior
- Myths/biases about witnesses, advisors, lawyers, etc.
- Implicit Bias
- Affinity Bias
- Confirmation Bias
- Halo/Horns
- Myths and biases based on identity

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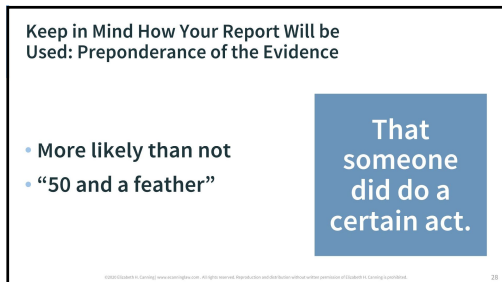
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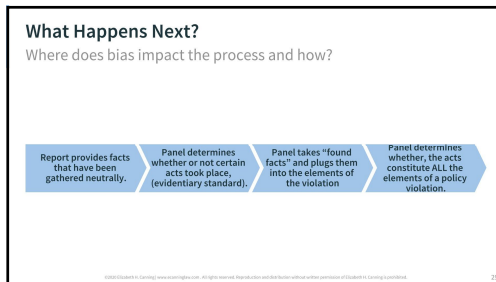
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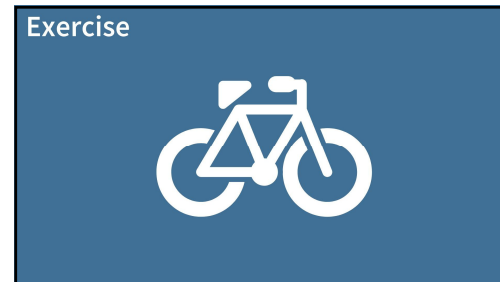
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Section 3
Setting it Up



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Setting it up: Learning Outcomes

- 1 Preparing for an investigation
- 2 Determining focus of investigation
- 3 Identifying people to interview
- 4 Creating questions
- 5 Understanding importance of logistics

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Before You Begin...Know Key Information

- Applicable policy
- Applicable definitions
- Steps in process
- Time frame



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Anatomy of an Investigation*

*Schools approach it differently as they are finding the approach that works best for their institution. Make sure you follow your school's process.

<ul style="list-style-type: none"> 1 Read existing information, applicable definitions 2 Develop questions 3 Interview complainant 4 Interview respondent 5 Interview witnesses 6 Meet with complainant and share any new information gathered- allow them opportunity to respond 	<ul style="list-style-type: none"> 7 Meet with respondent and share any new information gathered- allow them the opportunity to respond 8 Parties are provided evidence for review and comment (10 days) 9 Write report 10 Parties review and comment on the report (10 days) 11 Report edited if necessary
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Elements of a Violation



Part of a whole.

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EXAMPLE

- Sexual Assault and Sexual Violence are forms of Sexual or Gender-Based Harassment that involve having or attempting to have Sexual Contact with another individual without Consent.
- Having or attempting to have Sexual contact
- With another individual
- Without Consent.

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EXAMPLE: Consent Breakdown
We must be precise with this definition. Why?

- **Communication**
Agreed upon
- **of a decision:**
Affirmative
Conscious
Freely made
- **by each participant**
- **to engage in**
agreed upon forms of Sexual Contact.
- **Consent requires**
an outward demonstration, through understandable words or actions, that conveys a clear willingness to engage in Sexual Contact.

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106.30 Definitions
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 on the basis of sex that is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity
- 3 Sexual assault, as defined in 20 USC 1092(f)(6)(A)(v), dating violence as defined in 34 USC 12291(a)(10), domestic violence as defined in 34 USC 12291(a)(8) or stalking as defined in 34 USC 12291(a)(3)

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Focusing In

- So severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
- "The objective nature of the inquiry simply means that evaluation is made by a reasonable person considering whether, standing in the shoes of the complainant, the conduct would be offensive."
- "The reasonable person standard appropriately takes into account whether a reasonable person, in the position of the particular complainant, would find the conduct offensive."

Quotations from DOE commentary in unofficial version p. 514

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Sexual Assault (UCR definition)

- The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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Domestic Violence

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

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Dating Violence

- Violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; AND
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.

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Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress

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Exercise



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Eye Out For: Other Types Prohibited Forms of Discrimination and Harassment

Check your policy and other applicable laws

- Race
- Religion
- National origin
- Age
- Disability
- Pregnancy and parenting

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Disparate Treatment vs. Disparate Impact

- Treating someone differently based on identity
- Having a policy or practice that causes members of a protected class to be treated differently
- *How do you know if someone has been treated differently than others?*

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Defenses... How do you address?

- Academic freedom
- Decision not made because of gender (made for other, non-discriminatory reason)
- Did not treat someone differently because they treat everyone that way
- First amendment
- Essential job function or technical requirement

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Relevance- Title IX

Investigators must create an investigative report that fairly summarizes relevant evidence.
Hearing officers must also focus on relevance.


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Relevant and Probative? Yes.

<p>Relevance</p> <p>the tendency of a given item of evidence to prove or disprove one of the elements of the case, or to have probative value to make one of the elements of the case likelier or not.</p>	<p>Probative</p> <p>"tending to prove." Probative evidence "seeks the truth." Tends to prove the proposition for which it is proffered.</p>
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What Witnesses Should be Interviewed?



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Title IX Quiz: relevant or permissible?

- Questions and evidence about complainant's sexual predisposition or prior sexual behavior
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege
- Expert witnesses


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Title IX Says...

- Provide equal opportunity to present witnesses, including fact and expert witnesses, and other in/exculpatory evidence
- Do not restrict either party to discuss the allegations or gather and present RELEVANT evidence
- Provide parties same opportunity to have others present (advisor of choice) and not limit their choice or presence of the advisor in any meeting or grievance proceeding, BUT schools may establish restrictions regarding the extent to which the advisor may participate in the proceedings

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Title IX also says...



- Provide parties who are invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time to prepare to participate.

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Write Initial Questions: Who, what, when, where, why, how, how many...

- What are the buckets that I need to fill with information?
- What are questions for severe? Pervasive?
- What are questions for unwelcome or consent?

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Avoid Questions with Defined Terms

- Why?

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Exercise



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In the Room

- Location of room
- Think about seating
- Phones
- Be organized
- Take and allow breaks as necessary
- Housekeeping speech up front and at end
- Professional attire and hygiene
- Communication throughout
- Notetaking

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Section 4

Design and Action



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Credibility Determinations

The EEOC recommends using the following information to assess credibility:

- **Plausibility.** Is the witness's version of the facts believable? Does it make sense?
- **Corroboration.** Are there documents or other witnesses that support the witness's version of events?
- **Demeanor.** Does the witness seem to be telling the truth?
- **Past record.** Does the alleged wrongdoer have a past record of inappropriate conduct? Use appropriately.
- **Motive.** Does the person have a reason to lie?

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8. MUST BE IN YOUR DETERMINATION OF RESPONSIBILITY (NOTICE OF OUTCOME)
(Section 106.45)

- Identification of the allegations potentially constituting sexual harassment as defined in 106.30
- Description of the procedural steps taken from receipt of the complaint through determination, including any **notifications** to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- Findings of fact used to support the determination
- Conclusions regarding the application of the code of conduct to the facts
- Statement of, and rationale for:
 - the result as to each allegation, including a determination regarding responsibility,
 - any sanctions the recipient imposes on the respondent, and
 - any remedies provided by the recipient to the complainant designed to restore or preserve access to the program or activity.

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Information Gathering for Title IX Compliance

- 1 Complaint
- 2 Notice of Investigation
- 3 Investigation Report
- 4 Notice of Outcome

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The Report includes

- 1 Fact cover sheet
- 2 Material steps
- 3 Introduction
- 4 Background
- 5 Narrative
- 6 Consistency
- 7 Conclusion/Determination

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Introductory Questions

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Narrative Questions: Be Patient and Follow a System

Broad	Open-ended, get the story Allowing party to be fully heard
Specific	Utilize focusing questions to get more information
Directed	Go right to heart of issue if it hasn't been covered already Confirm dates and facts

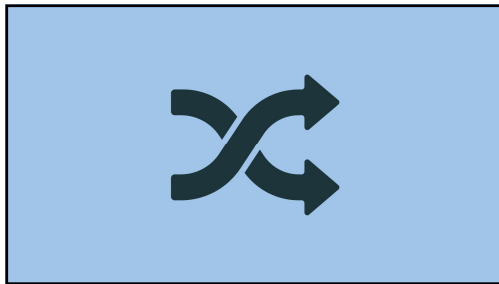
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How do you ask for information without leading?

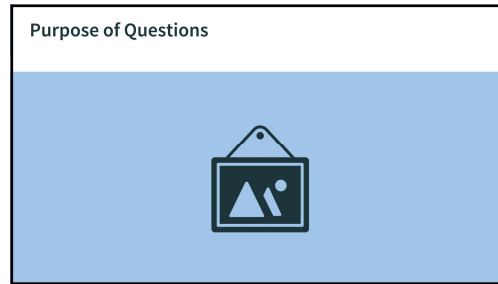
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Keep Your Eye out for Cross-Complaints or Other Important Indicia of Concerns

- Why does this matter?



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Ongoing notice requirement under new Title IX regs: if the school decides to investigate allegations not included in the original notice, it must provide notice of the additional allegations.

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Ask for and Gather All Documentation

- Texts, emails, videos from parties
- Videos from campus police
- Card swipes
- Evidence that shows someone was at their desk (alibi)
- Receipts, phone calls, attendance records
- *In-culpatory AND Ex-culpatory*

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Working with Advisors




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Steps in the Process- Title IX

- 1 Interviews
- 2 Information gathering
- 3 Sharing evidence with parties and advisors for review and comment
- 4 Any next steps necessitated by review and comment
- 5 Write report
- 6 Share report with parties and advisors for review and comment
- 7 Finalize report
- 8 Hearing

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Section 5 Report Writing



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Learning Outcomes

- 1 Purpose of a report
- 2 Organization of a report
- 3 Language and tone

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Writing a *Good Report is Hard Work*

The better you understand definitions, obtain detail, and organize your information, the easier it will be.

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Purpose of a Report

- To provide gathered facts in a neutral, clear, and digestible format
- So that the reader of the report can understand the the incident in detail from all relevant perspectives with all relevant evidence- according to necessary ELEMENTS
- So that the reader of the report can easily identify relevant information necessary to make a determination of existence of ELEMENTS necessary to satisfy burden of proof

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The Report Includes

- Fact cover sheet
- Material steps
- Introduction (what happened prior to report)
- Background (who are the parties and connection to the school, how the complaint meets Title IX requirements)
- Narrative
- Consistency
- Conclusion/Determination

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Write clearly

- Short sentences.
- Well-organized paragraphs
- Consistency of language and structure
- *If you have not gathered information evenly or with detail, it will show in the report*
- Use of quotations

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Exercise



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Questions?

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