



Title IX Investigator Training

K12 School Districts
March 13, 2025

2020 Title IX Regulations

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Title IX Regulation Changes

Tennessee v. Cardona



- Decision issued on January 9, 2025.
- Final decision, following injunctive action issued in July.
- The 2024 Title IX Final Rule and its corresponding regulations exceeded the Department's authority and violated the Constitution.
- The court granted plaintiffs' motion for summary judgment and denied the Department's motion for summary judgment, ultimately barring the Final Rule from being enforced nationwide.
- ***Vacatur*** is "a rule or order that sets aside a judgment or annuls a proceeding."

Trump's Recent Executive Orders



- “[I]t is the policy of the United States to recognize two sexes, male and female” on official documents.
- "These sexes are not changeable and are grounded in fundamental and incontrovertible reality..."

DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT



Implemented 2024 Regulations

- Revert to 2020 regulations for all investigations
- Review investigations from 8/1/24-1/9/25 to determine if investigation must be reviewed, revised, and/or re-investigated

Never Implemented 2024 Regulations

- Continue using 2020 regulations, assuming policy and procedure match requirements of 2020 regulations



Title IX Law and Regulation

Title IX Guidance



- Federal Law
- Regulations
- Other sources of mandatory and recommended guidance
 - State law
 - Case law
 - Advocacy
 - Best Practices

Title IX

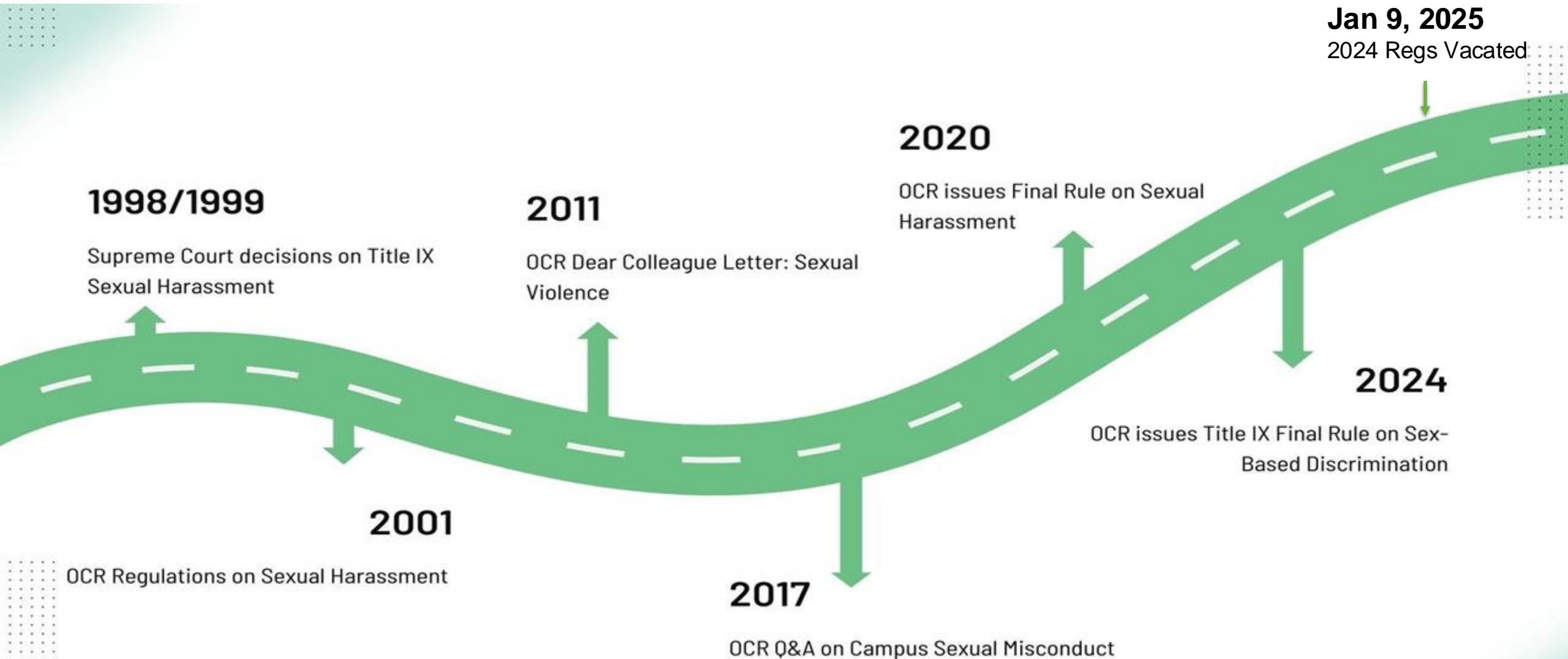
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

- Title IX of the Education Amendments of 1972

Enforced by the Office for Civil Rights (OCR)



Title IX Regulations Timeline



Title IX Regulatory Guidance - Report to OCR



- In the past, following a report of sexual harassment to the Office for Civil Rights (OCR), OCR selected matters that they sought to investigate further.
- Since the new administration has taken office, OCR has engaged in “directed” investigations, that do not have formal complaints from the students and/or parents.
- OCR may seek an informal resolution.
- Negotiated agreement is set forth in a resolution agreement.
- OCR may impose fines and penalties against a school if resolution not reached



- Title IX protects against student sexual harassment set forth in Supreme Court decisions
 - Gebser v. Lago Vista Independent School District (1998)
 - Davis v. Monroe County Board of Education (1999)
- Litigation has clarified some of OCR's guidance and in some instances, overturned guidance
- State law addressing specific, and, in some instances, controversial topics related to Title IX enforcement
 - Hearings
 - Claims that cannot be resolved with informal resolution
 - Transgender rights



Title IX Obligations for K12 School Districts

Title IX Covers



Title IX protects BOTH students and employees of K12 Schools

Sex discrimination

Sexual Harassment

Sexual Assault

Athletics

Pregnant Students

Recruitment/Admissions Programs

Legal Obligation

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



Actual Knowledge of Sexual Harassment



- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district:
 - All employees **MUST** report to the **TITLE IX COORDINATOR**
- Failure to report could lead to an inadequate response
 - Proof of deliberate indifference
 - Legal responsibility for sexual harassment

Scope of the Education Program or Activity



For Title IX to apply, the behavior must occur in the school’s “education program or activity,” further defined as:

locations, events, or circumstances over which the school 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.

Off-campus activities covered if one (1) of three (3) requirements are met:

1. the off-campus incident occurs as part of the school’s operations;
2. the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.



- A licensed mental health professional at the school can maintain confidentiality.
- All other employees are required to report the matter to the Title IX Coordinator.
- In instances of potential sexual harassment, investigators (and other employees) cannot offer to keep the matter confidential.
- A Title IX investigation is completely transparent to both parties:
 - Parties get to know the names of all the people involved, including witnesses.
 - Parties get access to all of the information gathered during the investigation.
 - Parties get the opportunity to request additional investigation and to challenge the investigator prior to the final decision.

Title IX Enforcement and Federal Constitutional Protections



Under Title IX, schools may not restrict the rights afforded under:

- First Amendment (Free Speech)
- Fifth Amendment (Protection against Self-Incrimination)
- Fourteenth Amendment (Due Process)

Title IX Prohibits Retaliation



- Prohibition against retaliation for any participant in the Title IX reporting & investigation process
- Requires some level of school action

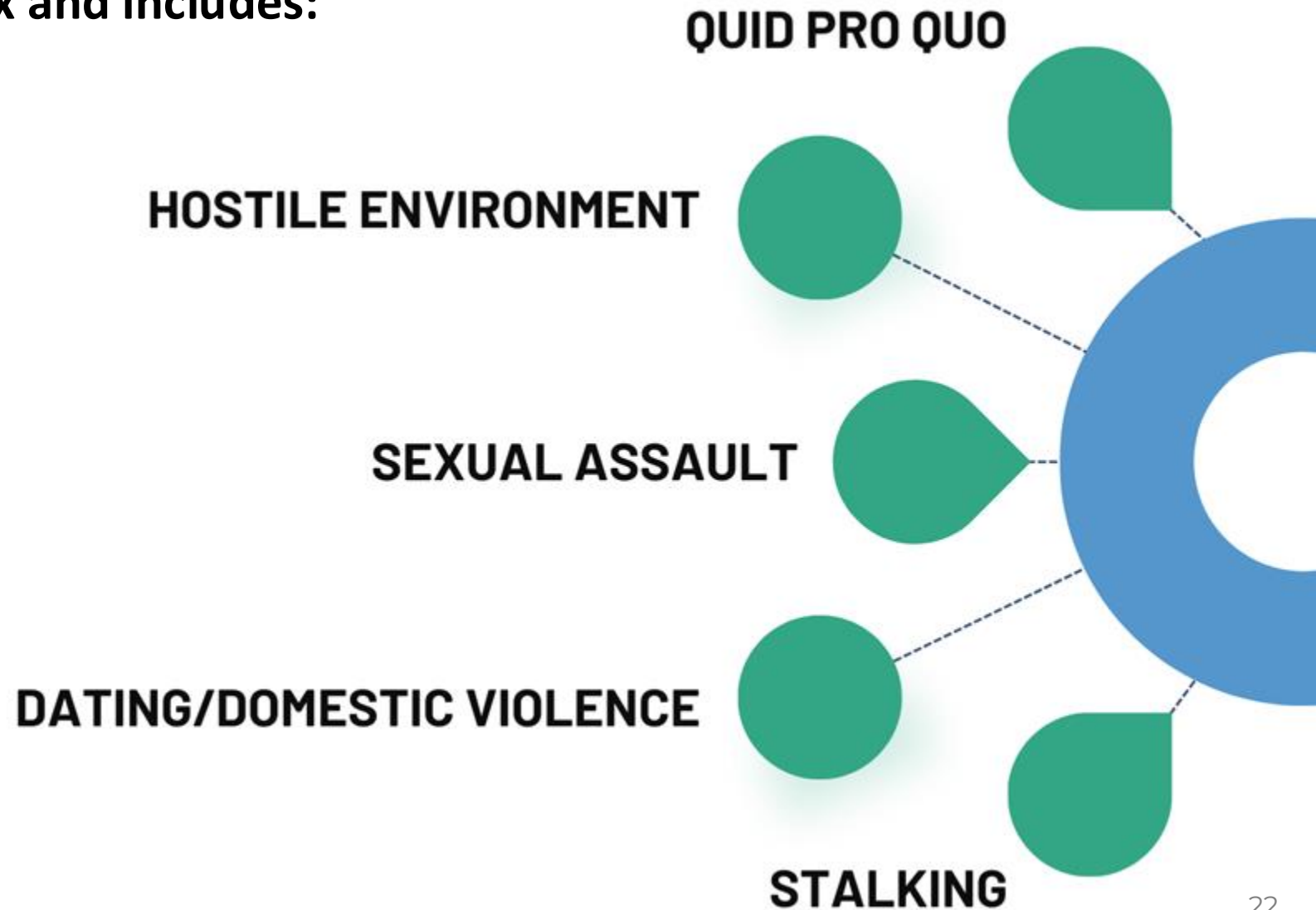


Title IX Sexual Harassment Definitions

Title IX (TIX) Definition of Sexual Harassment



Defined conduct on the basis of sex and includes:



TIX Definition of Sexual Harassment



Defines conduct “on the basis of sex” and includes:

- Quid pro quo - An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.
- Hostile environment - 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 school’s education program or activity.



The definition includes:

- **Sexual Assault** means any sexual act directed against a Complainant without consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.
- **Dating violence** means 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.



- **Domestic violence** includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim
 - It includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior,
 - By a person who— (A) is a current or former spouse or intimate partner of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - fear for his or her safety or the safety of others; or
 - suffer substantial emotional distress.

State Laws Prohibiting Sexual Harassment



- Aside from obligations under Title IX, K12 schools must also enforce state laws prohibiting sexual harassment
- Definitions of sexual harassment may be different
- In most instances, an incident will be analyzed under both Title IX and state law



Title IX Grievance Process

Title IX – Parties and Administrators



Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)

Other Participants

- Fact Witnesses
- Expert Witnesses

Administration of Claims

- Title IX Coordinator
- **Title IX Investigator**
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer

Overview of Title IX Grievance Process (TIXGP)



- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
 - Emergency removal
- Offer of formal process (upon signing of Formal Complaint)
 - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process



Title IX Investigator Role and Responsibilities

Investigator Responsibility



- Serve objectively, impartially, without bias
 - Conflicts
 - Stereotypes
- Gather all information related to a claim
- Analyze
 - Relevancy
 - Authenticity
 - Credibility
- Connect to parties and witnesses
- Assist in maintaining legitimacy of the process
- Policy should define the INVESTIGATOR role



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions

Conflicts of Interest



- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived

Stereotypes



- “A fixed, over generalized belief about a particular group or class of people.”
(Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent



- Conscious/Explicit
 - Discriminatory intent
 - Stated preferences
- Unconscious/Implicit
- For the most part, most people are unaware of these drivers
- Developed over a period time and can influence many factors in hearing
- Short cuts developed by the brain and often play a role in:
 - Immediate response to conflict
 - Often mimics fear responses

Presumptions

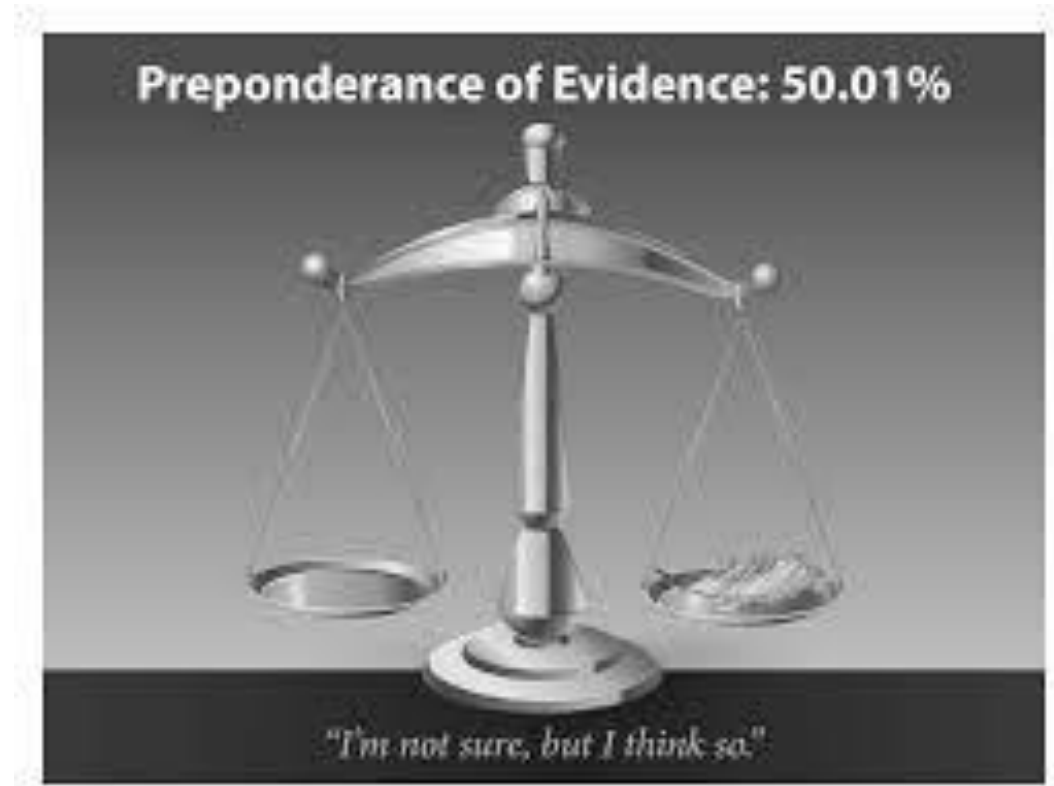


- Not responsible until proven to be responsible
- Stereotypes and bias

Burden of Proof



- Preponderance of the evidence
- Clear and convincing





Conducting Investigations

Basics

Information Gathering



- Types of information
- Background
- Request information from parties
- Proactively seek information
- Requests and refusals
- Information sharing



- Formal complaint
- Notice to both parties
- Supportive measures
- Timelines
- Parties (and parents) understand the process
- Other complaints?
 - Criminal matters
 - Similar complaints – consolidation
- Concurrent or parallel investigations
- Record-keeping requirements
- **Documentation at every step!!**

Preliminary Information Gathering



- Documents shared with the parties
- Other records



What Is Next?

Organizing the Investigation

Gathering Documents and Other Evidence



- Emails, texts, photos, video
- Legal implications
- Support or contradict testimony
- Character evidence



- Parties must be advised that they can have an advisor present for the entire investigation process including the interview.
- Parties select an “advisor of choice.”
- Advisor may be, but need not be, an attorney.
- Advisor provides advice and counsel to the party during the process.
- Advisor has a more active role in cross-examination if a hearing takes place.
 - K12s are not required to hold hearings.

Conducting Interviews



- Introduction
- Questioning – time, space, and effect of silence
- Open-ended versus leading questions
- Direct versus indirect evidence
- Sensory recollection
- Note-taking versus audio/video-recording
- Advisors' role
- Investigator should maintain control during the interview
 - Decorum
 - Responses
 - Concluding the interviews
 - “Anything else”

Interview Tips and Questions



- 1) Prepare in advance by making a thorough outline. You can then fill in the outline itself as you conduct the interview
- 2) Be aware of stereotypes and bias
- 3) Presumption of non-responsibility in relation to Respondent
- 4) Treating all parties with respect
- 5) Some ways to ask difficult questions – if you explain why you are asking, it helps the party understand
- 6) The role of the Advisor
- 7) What if the party/witness won't answer your questions?
- 8) What if the party can't answer your questions – memory problems?
- 9) Relevance
- 10) Rape Shield Rules
- 11) How will you receive feedback on your interview summaries?
- 12) How will you provide documentation received to the parties for review?

Weighing and Challenging Evidence



- Authentication
- Relevance
- Credibility



- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black's Law Dictionary)
- NOT permitted:
 - Sexual history of Complainant (see Rape Shield exception)
 - Privileged communications
 - Medical documentation
- Not repetitive



- In Title IX investigations, the decision-maker has ultimate responsibility for credibility determinations and may explore credibility issues with parties after your investigation report is complete
- However, in the course of an investigation, investigators are gathering important information that may impact credibility determinations, including:
 - Corroboration
 - Feasibility
 - Motivation for truthfulness/untruthfulness
 - Consistency
 - Reviewed/coached testimony



- 2020 Title IX regulations do not require a trauma-informed approach
- Many Title IX causes of action involve trauma
- Investigators and decision-makers must understand the impact of trauma on:
 - Reaction to trauma
 - Ability to capture memories
 - Recollection of memories
- Expectations around trauma victim

Keep in Mind: At the conclusion of an investigation



- After the investigation is complete but prior to issuing a draft report, the parties are given access to the full investigation file
- Parties are invited to provide comments about the extent of the investigation file
- Investigation file should include information upon which the Investigator will rely
- 10 days to inspect and submit comments
- Investigator reviews and prepares a draft report



Writing the Draft and Final Report



- Convey relevant information about the allegations to the parties and their advisors
- The Department of Education takes no position on the elements required in the report beyond what is required by final regulations
- The investigative report must fairly summarize relevant evidence

Final Outcome Letter Requirements



KEEP IN MIND: Decision-Maker must issue a written determination regarding responsibility that has to include:

- Findings of fact
- Conclusions as to all allegations
- Rationale for reaching the decision
- Sanctions, if the respondent is found responsible for policy violations, must be included in the written determination

Organizing the Report



- Covering required categories
- Providing the relevant information
- Including applicable policy provisions
- Staying within the parameters of the investigation report (as set forth in policy)
- 20-20 Hindsight



Date of Report: [DATE]

Investigator: [NAME]

Re [CASE NUMBER or Names of Complainant and Respondent]

Introduction – [see TIXC Report Form]

I. The Formal Complaint alleges: ALLEGATIONS

Jurisdiction

II. Procedural Background/Investigation Timeline

The investigation was initiated on [DATE] and completed on [DATE]. The investigation contained the following components:

List of dates, events



III. Summary of Investigation Interviews

- A. Interview with Complainant - [PROVIDE DETAILED SUMMARY OF WITNESS TESTIMONY]
- B. Interview with Respondent - [SAME FORMAT AS FOR COMPLAINANT]
- C. Interviews with Witnesses
- D. Witnesses Who Declined to be Interviewed

IV. Summary of Documentary Evidence

The investigator reviewed the following evidence presented by the parties or witnesses or collected as part of the investigation:

- A. Evidence Offered by Complainant
- B. Evidence Offered by Respondent
- C. Evidence Offered by Witnesses



V. Fact Finding/Recommended Finding (Policy will determine if this section is appropriate)

Using a preponderance of the evidence, I find (recommend the decision-maker find) the following:

- [IN BULLET POINT, ADD FACTUAL FINDINGS ON EACH ALLEGATION]

Signed - Title IX Investigator
[NAME and DATE]

Title IX Investigator Required Information Sharing



Before investigation report issued, all evidence shared



Opportunity to question and provide feedback



Draft investigation report issued and shared



Opportunity to question and provide feedback on
investigation report



Final investigation report issued

TIx Investigator: Sharing of Investigation Information TIMING



- Both parties are given the FULL investigation file to review
- Documents shared or document inspection
 - 10 days for parties to respond to the information
- Investigator prepares a draft investigation report and shares it with both parties
 - 10 days for the parties to respond to the investigation report
- Investigator prepares final investigation report and shares it with both parties and the Decision-Maker



- Decision-Maker provides the parties with the opportunity to send questions or comments
 - 10 days to respond
- Decision-Maker must determine:
 - Policy violation
 - Discipline (if found in-violation of policy)
- Decision-Maker issues an outcome letter to the parties
- In K-12, discipline decisions against students with disabilities may require a manifestation determination
 - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement.

Case Example: Allegation of Sexual Harassment – Title IX and State Law Analysis (CA Example)



Sexual Harassment under Title IX includes Sexual Assault-Fondling •

- Fondling is the touching of another person's private body parts for sexual gratification
- Fondling can be forcible or non-forcible
- Fondling can occur when the victim is unable to give consent due to age or mental incapacity

Under CA Education Code, Sexual Battery is defined as: Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. *See, California Penal Code § 243.4(a).*

CA Education Code - Hostile environment sexual harassment

- [U]nwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the educational setting, under any of the following conditions:
 - ...
 - 3. The conduct has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment.



Other Considerations

Appeal and Informal Resolution



Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.

TIXGP: Informal Resolution



- **Trained facilitators**
- Offered after formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted
- **Never** available when complainant is student and respondent is employee



Final Points

1. Your certificate of completion will be sent to you this week, along with all the other resources shared during the program.
2. Keep and post a copy of slides from the training on your website.
3. Reach out with any follow-up questions:
office@titleixconsult.com



Thank You!

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