



TRAINING ON TITLE IX REGULATIONS

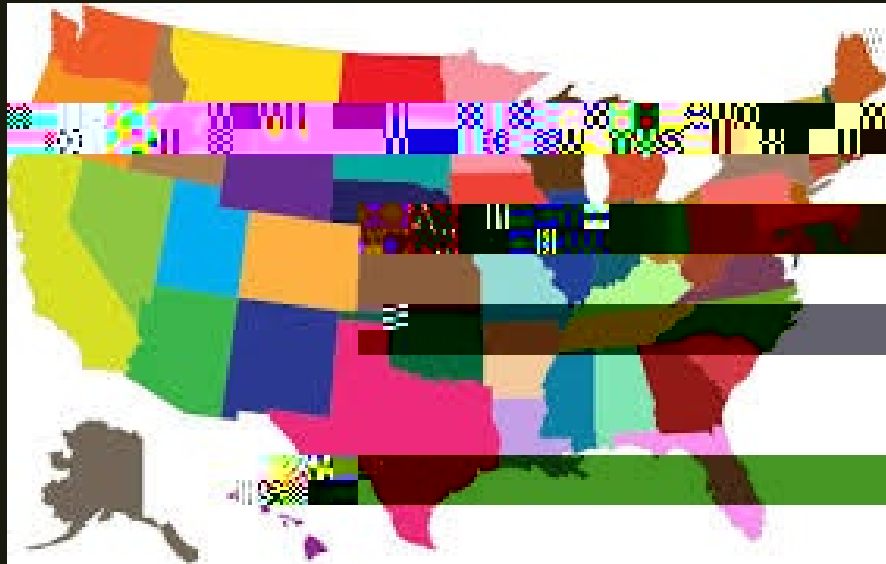


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Topics for today

- u Understanding the institution's mandatory response:
Scope, jurisdiction, and important definitions
- u Roles in the process, and how to serve impartially, without bias,
and without conflicts of interest
- u Informal resolution
- u How to conduct an investigation
- u Relevance and special categories of evidence
- u How to convene a hearing
- u How to handle appeals



SCOPE, JURISDICTION, AND IMPORTANT DEFINITIONS

Mandatory jurisdiction to respond

- Actual knowledge
- Sexual harassment
- Education program or activity
- Person in the United States



Respond promptly in a manner that is not deliberately indifferent

- u Promptly contact complainant to discuss availability of supportive measures regardless of whether complaint is filed and explain process for filing complaint
- u What are supportive measures?
- u Supportive measures for respondents

Mandatory jurisdiction to investigate Formal complaint filed by a complainant

- What is a formal complaint?
- How to file it/where is it?
- What does it need to say?



Mandatory jurisdiction to investigate Formal complaint filed by Title IX coordinator

When might a Title IX coordinator file a complaint?



Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 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).

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Definition of Sexual Harassment

(the offense formerly known as hostile environment sexual harassment)

- 1) Unwelcome conduct
- 2) Determined by a reasonable person to be so
 - a) Severe
AND
 - a) Pervasive
AND
 - a) Objectively offensive
- 3) Effectively denies a person equal access to the institution's education program or activity

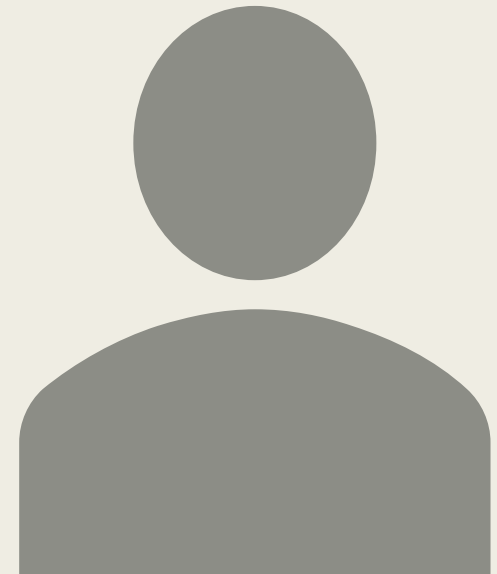




ROLES IN THE PROCESS, AND HOW TO SERVE IMPARTIAL
WITHOUT BIAS, AND WITHOUT CONFLICTS OF INTEREST

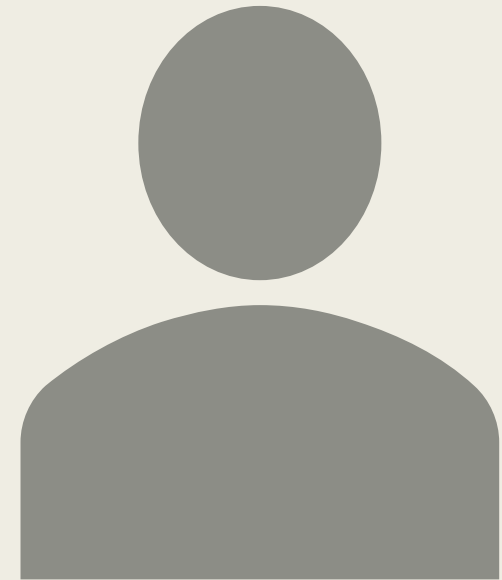
- Title IX Coordinator
- Investigator
- Decisionmaker
- Appeals officer
- Facilitator of informal resolution
- Party advisor

Title IX Roles



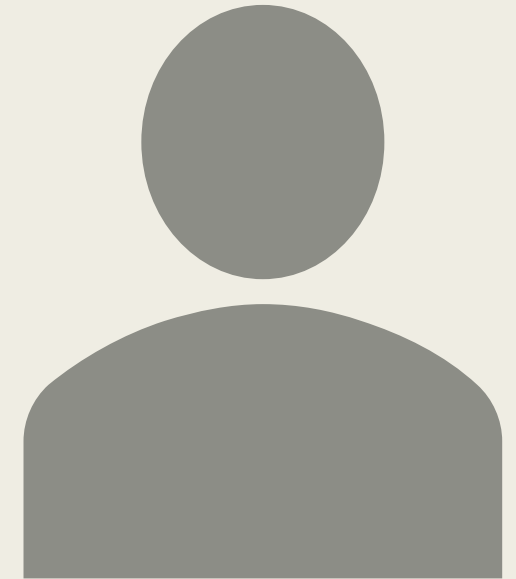
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Title IX Roles



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Title IX Roles





COMMENCEMENT OF FORMAL RESOLUTION PROCESS

Formal complaint is filed . . . what now?

- Grievance process
- Allegations, including sufficient details
- Statement of presumption of non responsibility
- Right to an advisor/attorney
- Right to inspect evidence
-

Dismissing complaints

MANDATORY

- c Not sexual harassment
- c Did not occur in program or activity
- c Not against person in the U.S.

DISCRETIONARY

- c Complainant withdraws complaint
- c Respondent no longer enrolled/employed
- c School unable to collect sufficient info

Bad behavior that must be dismissed pursuant to regulations

- u Why might we want to address this conduct?
- u Are we prohibited from addressing it?
- u If not prohibited, how can we address it?



Informal resolution

- u Can only be offered after formal complaint has been filed
- u May include arbitration, mediation, or restorative justice
- u Facilitators must be trained in informal resolution



HOW TO CONDUCT INVESTIGATIONS

Steps of investigation

Trained investigator collects information

Investigator shares evidence “directly related” to allegations with parties

Parties have 10 days to respond

Investigator creates summary of “relevant” evidence and shares with parties

Parties have 10 days to respond

Evidence “directly related” to the allegations

- Sensitive information
 - Consider restrictions on use and non-disclosure agreements
- Truly irrelevant information
 - Consider redactions and privilege log

Creating investigative report summarizing “relevant evidence”

- Use logic and common sense
- Toss out old rules/practices regarding categories of information permitted (except for three situations)



Pre-hearing work

- Confirm advisors for each party; appoint if necessary; consider having backups available
- Figure out who will be requested to attend
- Explain to the parties what to expect
- Establish ground rules and structure of hearing
- Consider convening a prehearing conference
- Make logistical and technology decisions (and give them a trial run)



HOW TO CONVENE A HEARING



“Submitting to cross examination”

- What this means
- What does NOT submitting to cross examination look like?
- Consequences of NOT submitting to cross examination

Managing the questioning process

- Order of questioning
- Making thoughtful rulings on relevance
- Brainstorm and prepare for hearing scenarios



Remember special categories of evidence that are off-limits

- u IRRELEVANT: Complainant's prior sexual predisposition or prior sexual history (with two exceptions)
- u IRRELEVANT: Information protected under a legally recognized privilege
- u CAN'T USE: Medical, psychological and similar records without written consent of party

Required elements in written determination

- u Description of procedural steps from complaint through determination
- u Findings of fact
- u Conclusions regarding application of policy to facts
- u R



Grounds for appeals

- u Procedural irregularity that affected the outcome of the matter
- u 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
- u Title IX coordinator, investigator, or decisionmaker

QUESTIONS?

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