

GRAND RIVER | SOLUTIONS

K-12 & Title IX: What You Need to Know

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Meet Your Facilitator



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Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.

About Us

Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have decades of direct, on-campus experience at both small and large, public and private institutions. This practical expertise derived from years of hands-on experience enables our team to offer customized solutions unique to your educational institution's needs. Grand River has a suite of creative, cost-effective and compliant solutions to help schools meet their needs in innovative ways.

Today's Overview

The role of the Title IX Coordinator;

Jurisdiction, scope, definitions and processes under the 2020 Final Title IX Rule;

A practical walk-through of the skills you will need to conduct sexual misconduct investigations;

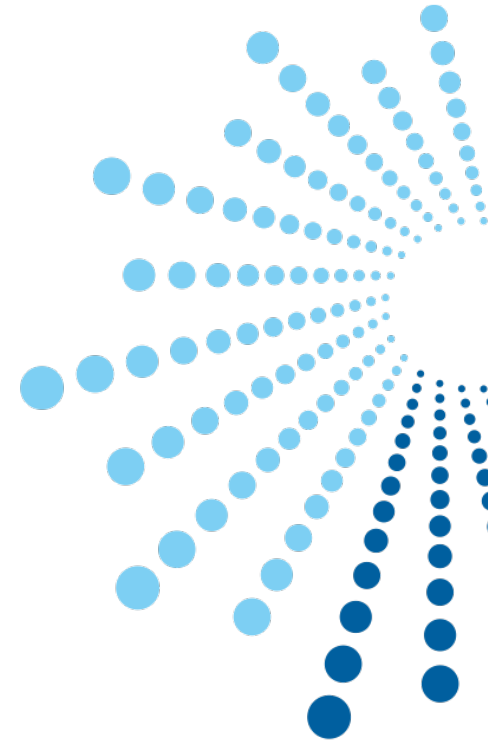
Building a foundation for a success through, collaborative partnerships, effective communications, and comprehensive policies and procedures;

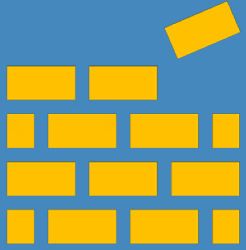
Decision-makers, appeals officers, investigators: What are the duties, and who should fill those roles;

Documentation under the 2020 Final Title IX Rule: Reports, records, data, and posting training materials;

Education and prevention strategies;

Developing an all-encompassing plan for compliance.





Building a Foundation of Success

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A Good Start: One Coordinator

Only One?

Can't someone else help out?

How big is that job?

What, exactly, am I supposed to be doing?

Can One Coordinator Do It All?



INVESTIGATOR



DECISION-MAKER



APPEALS OFFICER

WHY NOT?

Is the Title IX Coordinator an Advocate?



For Process



Impartiality



Avoidance of Prejudgement

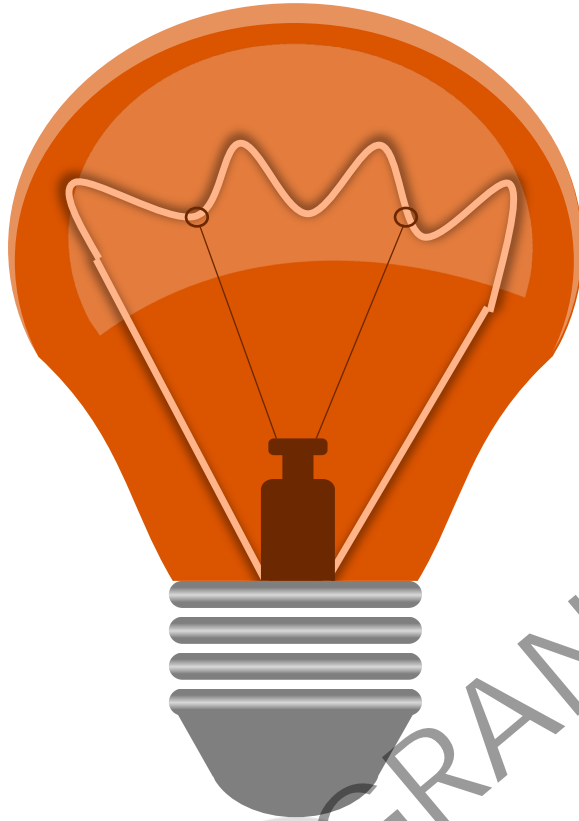


Avoidance of Conflicts of Interest



Avoidance of Bias

The Four Essential Functions of Title IX Compliance



01

Response

02

Education & Prevention

03

Compliance

04

Messaging

Getting the Word Out (Messaging)



Policy on website



Contact information on website



Name, Title, Address, Phone, Email



Handbooks and Catalogues



How to file, what response

A Successful Title IX Coordinator...

C

Understands the Importance of Consistency

A

Adheres to policies and procedures

R

Records or documents everything

E

Engages meaningfully with the community

S

Strategically plans for success



Strategic

- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area.
- Prioritize the implementation and execution of those plans.

Engage

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload

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Adhere

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed

Consistency



Creation of Forms
& Templates



Development of Annual
Plans for Compliance



Development of Annual
Plans for Training



Comprehensive
Policies &
Procedures

Record

Document, Document, Document!

1. Compliance
 1. Maintain old policies
 2. Keep records of all responses to reporting requirement
2. Training
 1. Dates, times, locations
 2. Attendees
 3. Training materials
 4. Reason for the training
3. Response
 1. EVERYTHING



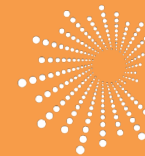
Impartiality

WHAT DOES THIS *REALLY* MEAN?



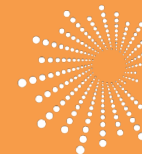
Prejudging

- “Believe all victims”?
- Is bringing forward a case a “judgment”?
- Avoiding any presumption of responsibility



Bias? Conflict of Interest

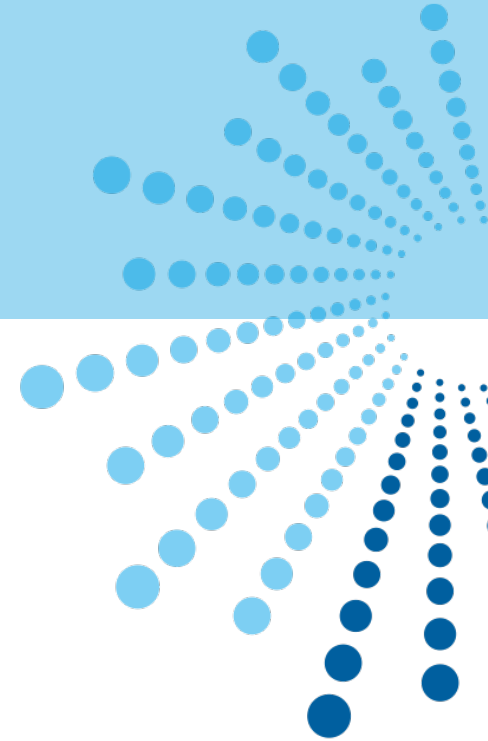
- Being anti-rape
- The investigator once took a women's studies course
- The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least *something* wrong
- The Title IX Coordinator went to the same college as the Complainant's mother
- The Title IX Coordinator's daughter works for the Complainant's mother





Regulatory Overview

Narrowed jurisdiction and expansive procedural requirements





Title IX of the Education Amendments Act of 1972

"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."

The May 2020 Title IX Regulations Cover A Narrow Scope of Title IX

- Sex discrimination
- Gender discrimination
- Athletics opportunities
- Retaliation
- Bullying
- Hazing
- School yard fights/arguments

Conduct
Constituting
Sexual
Harassment as
Defined in
§ 106.30

NOT defined in regulations

Defined in regulations

Only THESE get the new processes

What are the
§106.30
definitions?

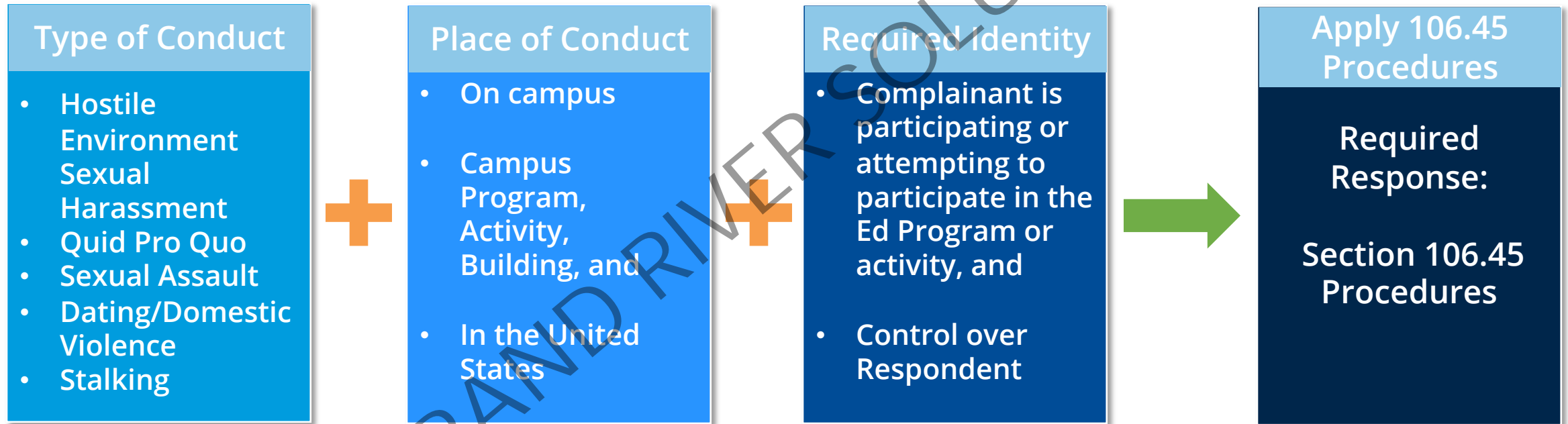


Section 106.30: Sexual Harassment

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).

Title IX Application Post May 2020 Regulations





Definition of Sexual Harassment

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 recipient's education program or activity

Comments, emails, posters, actions, gestures, physical contact, images, anything that might create a hostile environment

Severe, Pervasive, and Objectively Offensive

Severe and Pervasive

- Severe: How much does it take?
- Pervasive: How many times?

Objectively Offensive

- Sexual harassment has an objective, and a subjective, element
 - OBJECTIVELY, a reasonable person in a similar position would agree that it is offensive
 - OBJECTIVELY, a reasonable person in a similar position would agree that it is severe and pervasive
 - SUBJECTIVELY, the complainant found it to be unwelcome

Effectively Denies *Equal Access* to a Program or Activity

- It was harder to feel really comfortable there
- I found it really annoying
- Their mere presence upset me too much to study
- I no longer felt safe enough to go to class

Definition of Sexual Harassment Quid Pro Quo

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;

Meaning: You do this for me, I'll do that for you. Quid Pro Quo

Not covered here: A student leader tells another student, "If you won't go out with me, I'll make sure you never get into the glee club."



Sexual Assault Definitions

20 U.S.C. 1092(f)(6)(A)(v) – Federal Definitions

- Sex Offenses Forcible and Non-Forcible
 - Forcible:
 - Rape, Sodomy, Sexual Assault with an Object, Non-Consensual Fondling
 - Non-Forcible: Incest, Statutory Rape

Domestic Violence, On the Basis of Sex

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.

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, and (iii) The frequency of interaction between the persons involved in the relationship.

Stalking, On the Basis of Sex

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.

**What do we do
about misconduct
that does not fall
within this narrow
scope?**

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Worksheet on Coverage of May 2020 Title IX Regulations

I. Definition:

Does this meet the definition?

If yes, continue. If no, not IX

2. Location:

On campus, within the United States;

In building owned/controlled by a recognized student org., in the U.S.;

Part of a program or activity, and within the United States.

If yes to one of the above, continue. If no, not IX

3. The institution has control over the respondent

If yes, continue. If no, not IX

4. Complainant is in the U.S.

If yes, institution has a duty to respond according to new Title IX Process

Hypo #1

Sally went to a party at Tina's house a few weeks ago. While there, someone gave Sally a drink that made her really sleepy and "out of it." She agreed to go down into the basement with Tim to make out, and Tim sexually assaulted her once the two of them were down there alone. His friend was hiding down there and took pictures. Sally is so afraid of seeing Tim that she has stopped going to classes. Title IX?

Hypo #2

Mr. Goodteacher is a long-term beloved teacher who always goes out of his way to help students. Pat's mom called the principal early this morning to say that Mr. Goodteacher has come by the house a few times to bring Pat some textbooks and printed worksheets, which Pat's mom initially thought was very kind. Pat's mom was increasingly concerned, because it seems as if Mr. Goodteacher lingers too long and she is pretty sure she saw him getting close to Pat and rubbing Pat's shoulders and back. Then, last night, Pat's mom is 100% certain that Mr. Goodteacher hid out and peaked at Pat through the bedroom and bathroom windows, and so she went to look at the tape on their monitoring camera outside the house and spotted him.



Receiving Reports

If You Don't Publicize, You Cannot Receive Reports

- Nondiscrimination statement
- Title IX coordinator contact information
- Information regarding how to file complaints and grievance procedures



MUST Respond to Reports



X To Title IX Coordinator

X To Leadership

X To ANY Employee

X Made by a student, the parent/guardian, or other party

Hypo #3

One day Mr. Flay, who supervises the cafeteria, sees that Jordan doesn't look like himself, that he appears to be avoiding his friends and seems to be losing a lot of weight. Mr. Flay asks Jordan if he is ok, and Jordan starts to cry. Mr. Flay leads Jordan to a quiet area off to the side to talk to him, and Jordan says that he doesn't know what to do because 3 weeks ago, one of the older boys shoved Jordan up against the wall in the school bathroom and put his hands down Jordan's pants. Jordan then turns red and begs Mr. Flay to "forget it," and that he is sorry he told Mr. Flay anything. Jordan begs Mr. Flay to say nothing, and promises Mr. Flay he will talk to his parents about it. Mr. Flay does check in on Jordan a few days later, and Jordan assures Mr. Flay that he told his parents, and "everything is ok now."

Must Respond



Information



Support



How to File

Someone made a report...

We go through the worksheet and our duty to respond is triggered.

Now what?

EASY: Don't Be Deliberately Indifferent

Outreach

Rights, resources, options

Discuss support measures

Can have support without filing formal complaint

Options for resolution and how to File

What the process will look like (*optional step*)

Supportive Measures

Interim, not
forever

Interim also
includes “before
investigation”

Equitable ≠
Equal

Not Punitive?



No default, always case-by-case

Right to challenge

Local education codes may apply

Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



Interim Support for a Complainant

To restore or preserve EQUAL access

Confidential to extent possible

Upon filing of report (notice)

No fee

Non-disciplinary/not punitive

Individualized



Interim Support for a Respondent

After complaint is filed...



Non-disciplinary

Non-punitive

Individualized

Overview of Formal Resolution Process: Informal Counts, too

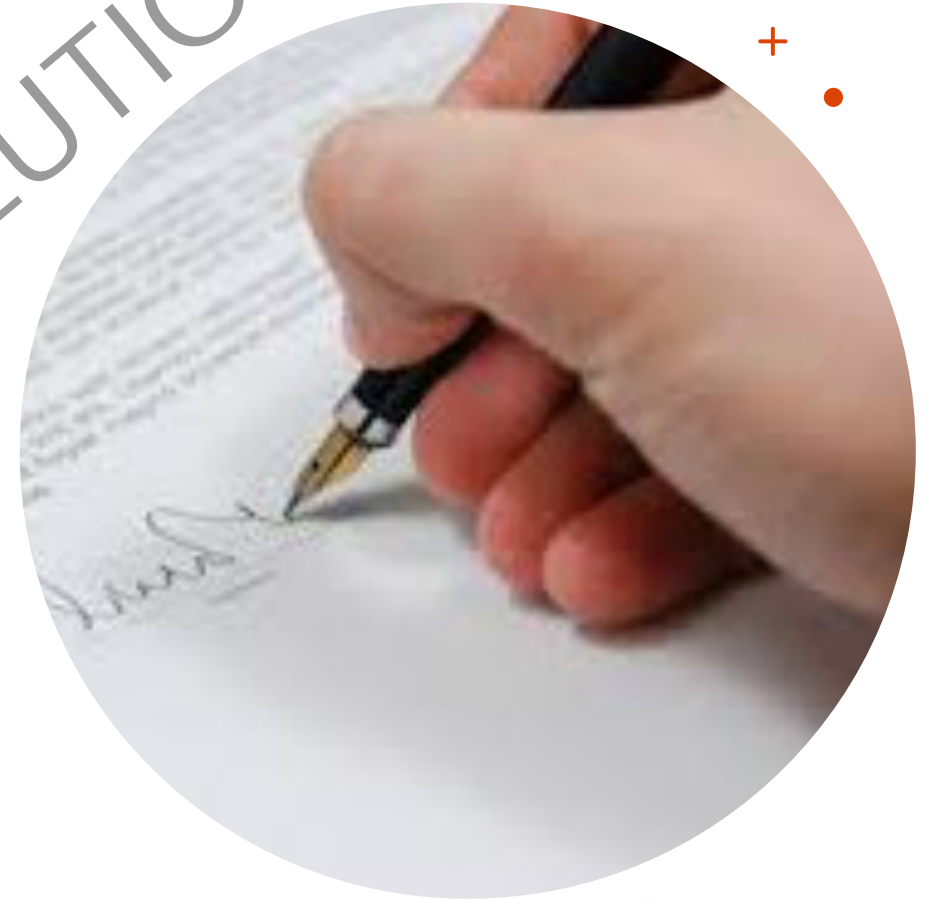


Formal Complaint Is (Required) First Step

How to file it/where is it?

What does it need to say?

Who can file?



Formal Complaint Requires

- ❖ Alleges sexual harassment
 - Campus
 - Program or activity
 - In United States
- ❖ Against a respondent
- ❖ Requesting that the recipient investigate
- ❖ At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed



Sexual Harassment

What If Someone Does Not
File a Formal Complaint?

*When might a
Title IX
Coordinator file
a complaint?*

Informal Resolution

Can only be offered after formal complaint has been filed

May include arbitration, mediation, or restorative justice

Facilitators must be trained in informal resolution



Informal Resolution



Request in writing



Title IX Coordinator may determine not appropriate



At any time before conclusion of hearing



Voluntary



Completes the process – cannot have a do-over

Informal Resolution: NOTICE

The allegations

The requirements of
the informal
resolution process

Circumstances
under which
precludes formal
complaint

Right to withdraw

Consequences,
including whether
records will be
maintained

+

•

- A formal complaint is filed . . . what now?

NOTICE

- ❖ Grievance process
- ❖ Allegations, including sufficient details
- ❖ Statement of presumption of non-responsibility
- ❖ Right to an advisor/attorney
- ❖ Any provision in code that prohibits making false statements during process

Overview 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



Basic Interviewing Principles & Writing Interview Summaries

Interviewing Tips

Clear expectations and communication about process

Kind interviewing

Watch your language

Asking sensitive and difficult questions

Request documentary evidence (and confirm if necessary)

Last question is a catch-all



Issues Particular to Interviewing Children



Who should ask the questions and where should the interview take place?

Parent/witness present in the room

Use of non-leading questions

Specific to Witnesses



Advise witnesses of neutrality, lack of confidentiality and retaliation

Ask about relationship to parties/conversations about interview

Give the witness very little specific information about the allegations

Last question is a catch-all

Interview Structure & Summarizing Interview

Chronology of conversation
v. order of summary

Notes re: demeanor and
physical observations

Use of direct quotes and
interviewee's own language



Other Evidence

- Texts/emails/voicemails
- Social media posts
- Police reports
- Photos
- Medical records
- Phone records



Understanding Relevance & Understanding Special Categories of Evidence



Logical connection between the evidence and facts at issue

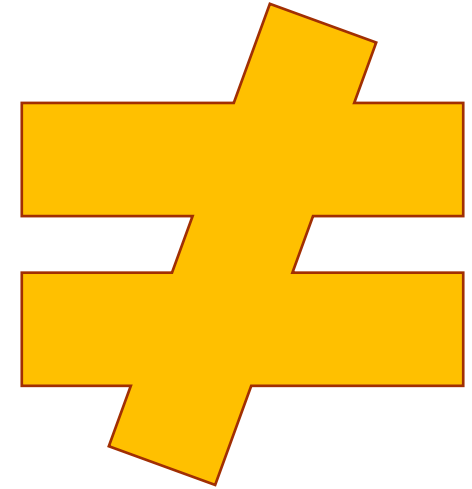
Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



Relevance is Not...

- Strength of the evidence
- Believability of the evidence
- Based on type of evidence: circumstantial, direct
- Based on complicated rules of court



Is This Relevant?

1. Transcript
2. Letter from aunt that the complainant or respondent has always been nice kid
3. Polygraph exam
4. Photos of respondent making crude gestures
5. Photos of complainant drinking alcohol at a party



General Rules About Evidence in Title IX Investigations

1) Rule about a categories of evidence ?

2) Past conduct of respondent?

3) Past conduct of complainant?

“Rape Shield” Rules



1. Purpose
2. When is past conduct is considered?
3. Impact

Medical Records, Therapy Records, School Records

1. Release of records
2. Relevance?
3. Sharing with other party

Draft Report – What is in it?

Report contains only facts gathered, **OR**

Report contains recommended factual findings

EITHER WAY, report then goes to the Decision-Maker

Someone Needs to Decide:

- Factual findings (what happened?)
- If those facts then show the policy was violated
- Sanction

Now What?





Weighing Evidence and Making a Determination

Weighing the Evidence and Making a Determination

1) Evaluate the evidence collected to determine what factually is more likely to have occurred, and then

2) Analyze whether the conduct that happened constitutes a violation of the school's policies

How to determine if a person is credible?

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:**
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?
- **Logic**
- **Bias**

Reliable or Credible?



You can
trust it



It is convincing

Credibility versus Reliability

Reliable evidence:

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

Credibility:

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

I Just *KNOW* They Are Not Telling the Truth

- Bias
- Can you really spot a liar?
- Understanding clues that are culturally different from your own

HOW TO
SPOT A
LIAR

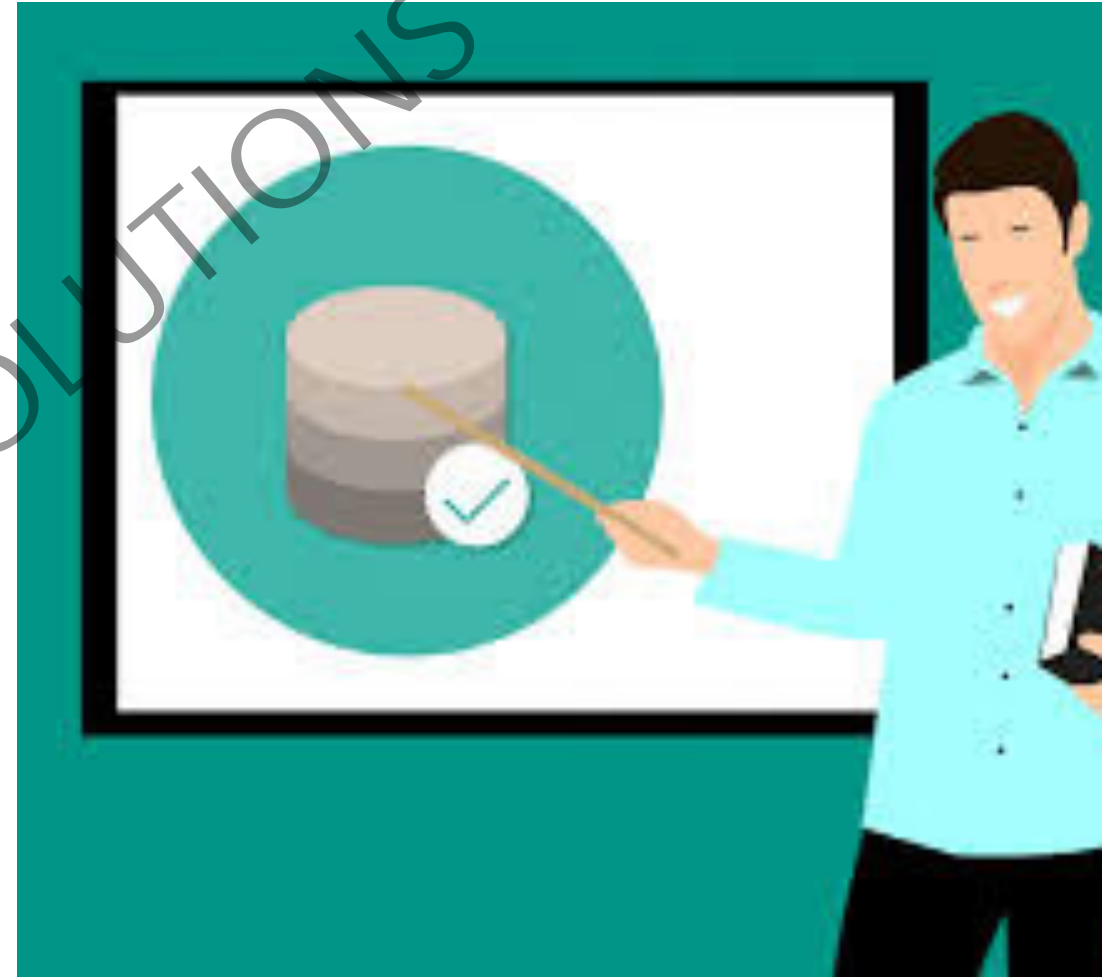


Evaluating Inconsistencies & Unanswered Questions



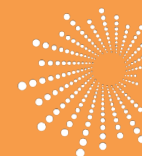
Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate



Definition of Sexual Harassment

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.



Elements of this Definition of Sexual Harassment

1. Unwelcome conduct (subjective and objective)
2. Severe
3. Pervasive
4. Objectively offensive
5. Effective denial of equal access to school's education program or activity



Writing Investigation Reports/Hearing outcomes

Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and Remedies
- Procedure for appeal



Dismissing Complaints

MANDATORY

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

DISCRETIONARY

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

Goals of Sanctions/Discipline

End the harassment, prevent its recurrence, remedy the harm

What steps would be reasonably calculated to end harassment and prevent recurrence?



Sanctioning in K-12



State law



Learning
environment



What other
measures can be
put in place?

The Sanction Does Not Undo the Finding



No lesser sanction if
you disagree with
findings



Sanctioning officer
must assume findings
are correct

Determining the Proper Sanction

- 
- Consistency
 - Foreseeability of repeated conduct
 - Past conduct
 - Does bias creep in?
 - Remorse?
 - Victim impact?

Aggravating Circumstances

Premeditation

Predation

Physical violence

Repeated violation

Multiple policy
violations in one
incident

Harm to others,
impact on
complainant
and/or community

Did the behavior
continue after
intervention?

Effort to conceal or
hide the incident?

Refusal to attend
past trainings

Past failures to
comply with
directives

Overview of Adjudication

- K-12 schools have a choice!
Non-hearing v. Hearing
- Hearings and state education laws
- Equal appeal rights with mandatory and discretionary bases





Appeals: Mandatory Grounds

(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/or

(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.

Questions?



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