



TITLE IX INVESTIGATOR TRAINING

Conducting Fair and
Thorough Trauma-
Informed Investigations

Part One

PART ONE AGENDA

Title IX Investigator Training

TITLE IX'S REQUIREMENTS



UNDERSTANDING THE POTENTIAL
IMPACT OF TRAUMA

PROPER APPLICATION OF TRAUMA
INFORMED PRACTICES

TITLE IX TIMELINE

1972: Title IX Education Amendments Act

2020 Title IX Regulations instated

1972

Present

2011 Dear Colleague letter

2024: 2020 Title IX Regulations reinstated

2020 regulations at a glance:

1. Narrowed definition of sex harassment
2. Narrowed scope of educational program or activity
3. Narrowed eligibility to file a complaint
4. Developed procedural requirements for investigations and adjudications

This training only covers the definitions of sexual harassment and sexual violence under the 2020 Title IX regulations.

2020 TITLE IX REGULATIONS: SEXUAL HARASSMENT

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

Quid pro quo

“This for that” harassment, where an employee conditions the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct.



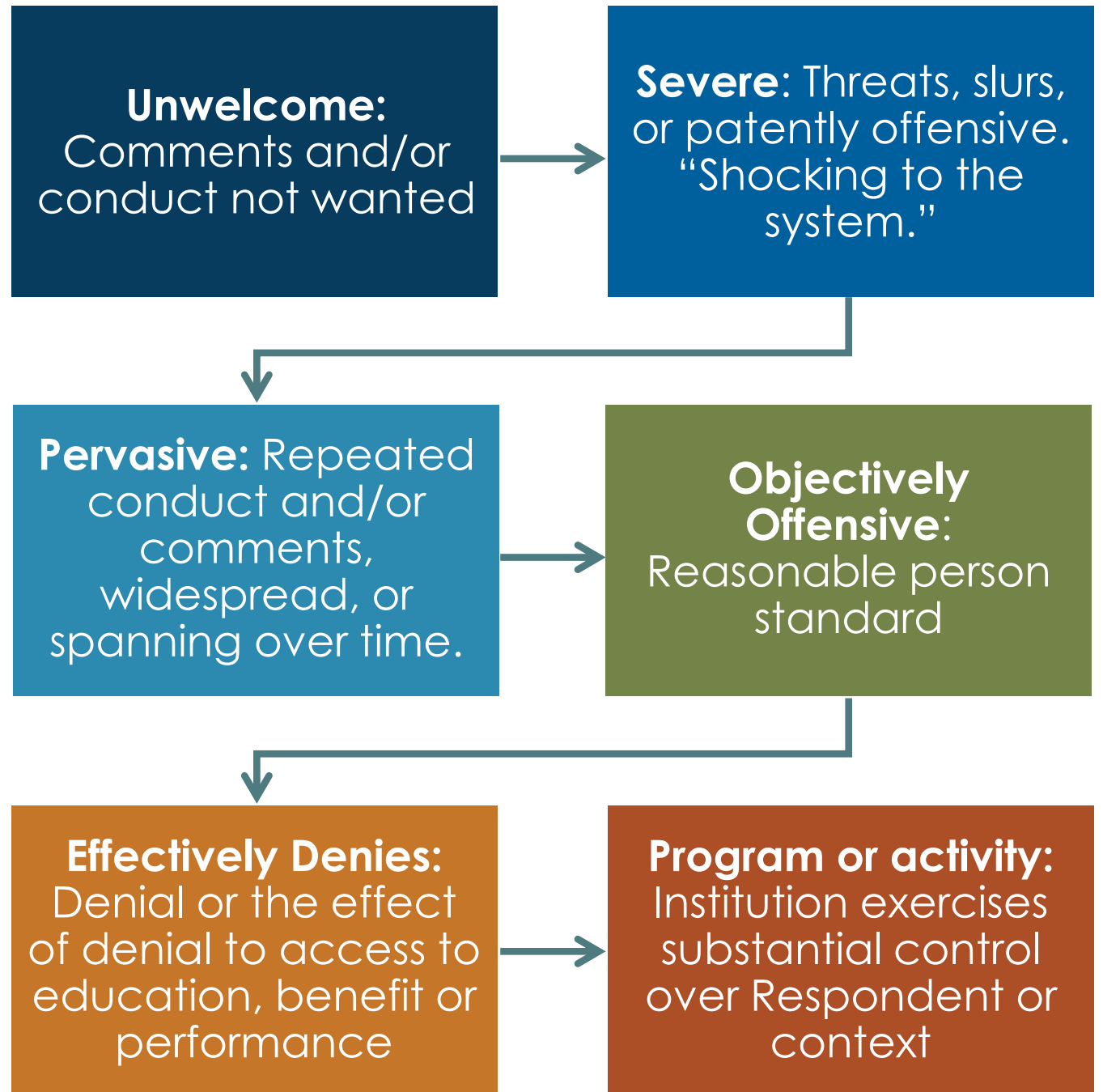
Hostile environment

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 institution’s education program or activity.

Violence Against Women Act Crimes: Sexual assault, dating and domestic violence, and stalking.

SEXUAL HARASSMENT:

Hostile
environment
considerations



PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence



An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

NOTICE REQUIREMENTS

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

ADVISOR OF CHOICE DURING THE INVESTIGATION

The advisor can be anyone, including an attorney or a witness.

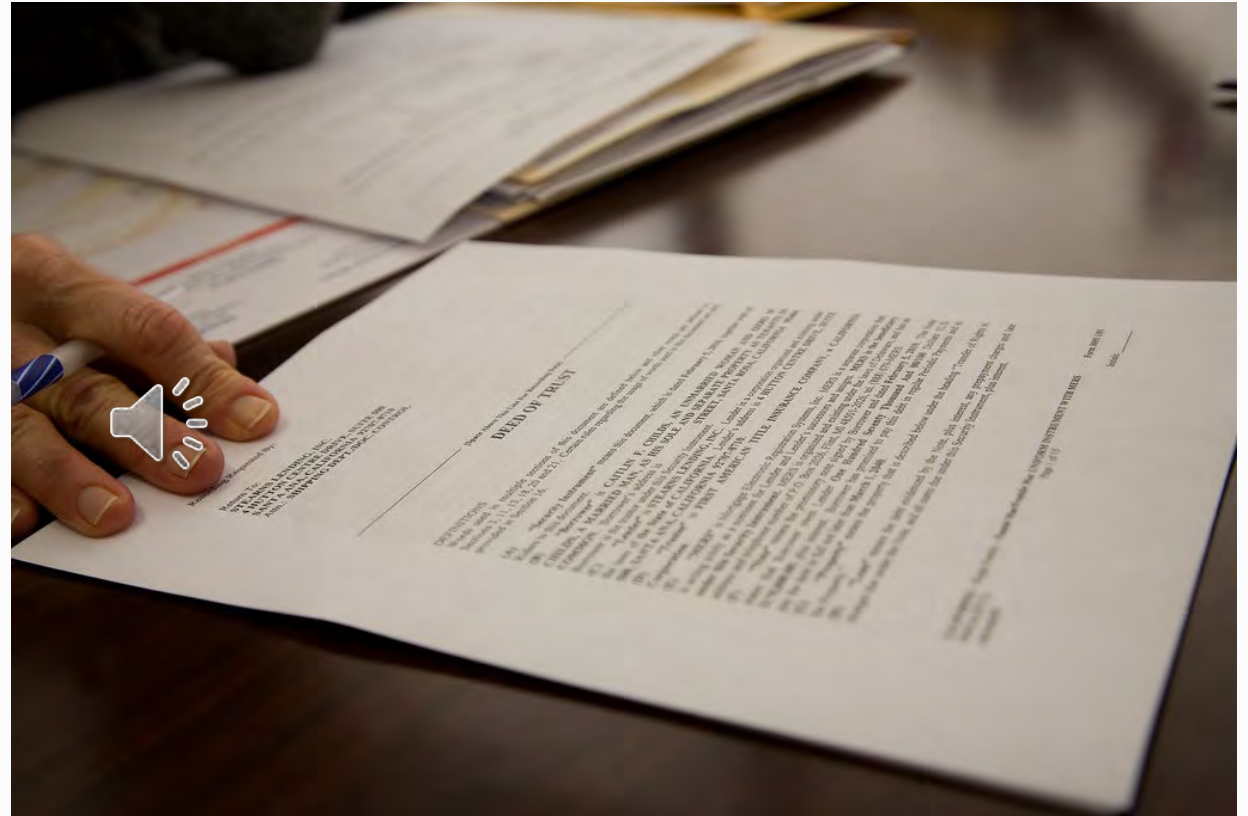
Institutions cannot place restrictions on who can serve.

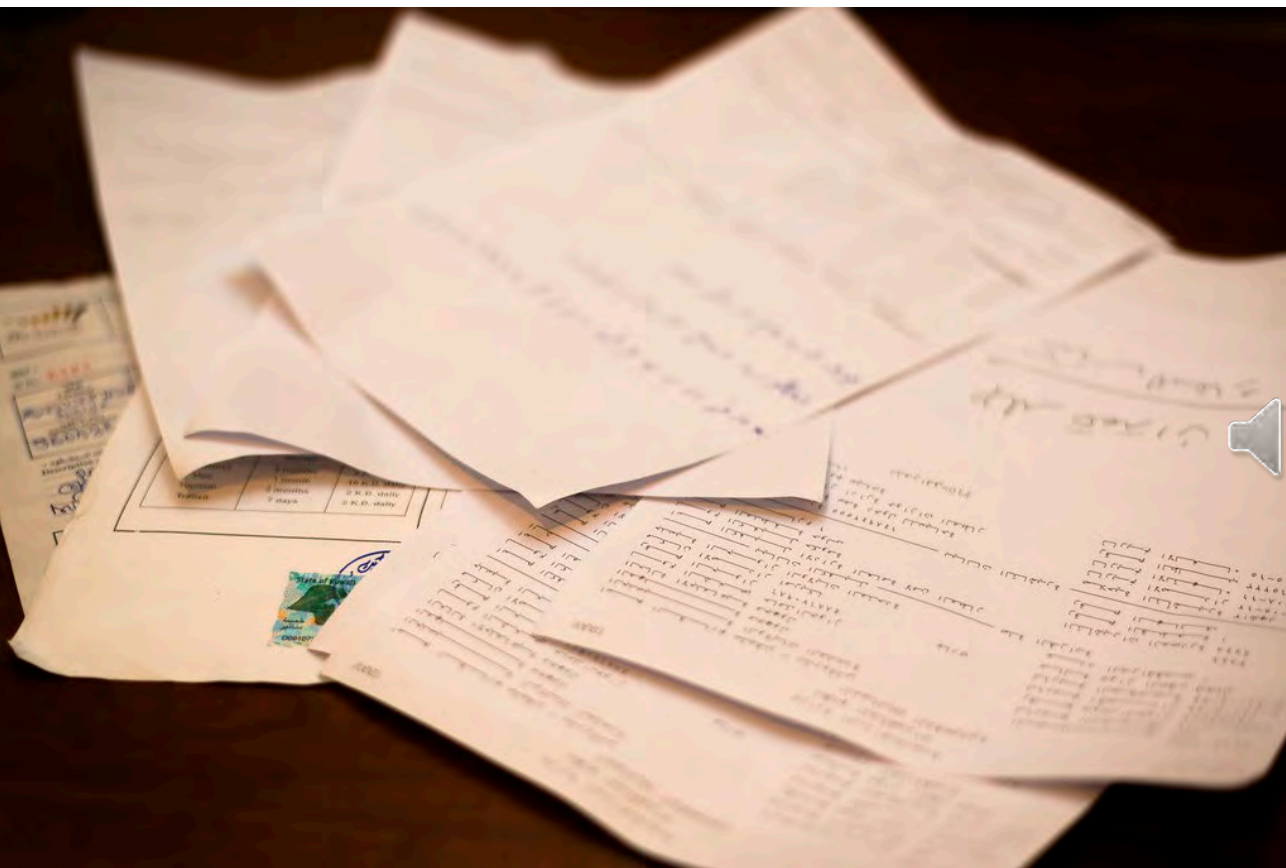
Institutions can create rules and guidelines for participation in the investigation.

No specific training is required.



WRITTEN NOTIFICATION OF MEETINGS AND SUFFICIENT TIME TO PREPARE





EQUAL OPPORTUNITY TO PRESENT EVIDENCE

EVIDENCE REVIEW

Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.



Parties have 10 days to provide a written response.

FINAL INVESTIGATION REPORT AND REVIEW



After reviewing and considering the comments on the evidence, the investigator will generate a report that summarizes the relevant evidence.



That report will be shared with the parties and the parties will have another opportunity to respond in writing.



The report must be shared at least 10 days prior to the scheduled hearing.”

**“RELEVANT”
AND
“DIRECTLY RELATED”**



“RELEVANT” AND “DIRECTLY RELATED”

The Department of Education declines to define what “relevant” or “Directly Related” means.

Relevant evidence

Federal Rule of Evidence 401 Test:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.



Directly Related Evidence

Evidence upon which the school does not intend to rely in reaching a determination regarding responsibility.

Terms should be interpreted using the plain and ordinary meanings.

EVIDENCE THAT IS IMPERMISSIBLE

1. “Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,
 - unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.” 
2. “Require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

WHO DECIDES?

Preliminary Assessment:

The Department repeatedly emphasizes in the preamble that investigators have discretion to determine relevance at the investigation stage of the process. 

- Subject to parties' right to argue that certain information not included in the report is relevant and should be given more weight.

Final determination:

The final assessment and ultimate determination on relevancy and responsibility can only be made by an independent decision-maker after a live hearing.

THE REQUIREMENT OF IMPARTIALITY



AN IMPARTIAL INVESTIGATION IS...



Not influenced by
bias or conflict of
interest.



Committed to
decisions based on
an objective view of
the evidence.



Truth seeking.

SECTION 106.45(B)(1)(III)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision maker, or facilitator of informal resolution not to have a conflict of interest or bias.

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

WHAT IS BIAS AND CONFLICT OF INTEREST?

Bias



Making a decision, determination, or finding that is based on something other than the evidence and specific facts of the case.



Conflict of Interest



The existence of a relationship that influences the decision-making process.

ASSESSING BIAS AND CONFLICT OF INTEREST

How to determine whether bias or conflict of interest exists:

Bias

The Department of Education states, “whether bias exists requires an examination of the specific facts and circumstances of the matter at issue.”



Conflict of Interest

The Department of Education instructs institutions to determine whether a conflict exists, consider specific facts using a reasonable person standard.

An evaluation of both bias and conflict must be based on the specific facts of the matter at hand.

TRAUMA-INFORMED INVESTIGATIONS



TRAUMA INFORMED PRACTICES

The Department permits the use of trauma-informed practices and recognizes that they can be applied in an impartial, non-biased manner.



Trauma-informed practices must be applied equally to all genders.

TRAUMA

An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.

EXAMPLES OF EVENTS THAT MIGHT TRIGGER A TRAUMATIC RESPONSE

Sexual Assault

Physical Assault by a Stranger

Physical Assault by an Intimate Partner

A Car Accident

Accident that causes serious injury or death

Robbery

Significant medical event

WHEN TRAUMA OCCURS

When trauma occurs, there are very real changes in brain function that may affect a person's ability to make memory and to recount their experience.

COMMON CHARACTERISTICS OF DISCLOSURES BY A TRAUMA BRAIN

Inconsistent

Non-linear



Fragmented

Lacking in detail

New information
added

Affect is
unexpected

HISTORICAL CONCLUSION



**Traumatic
response**

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information

**Not
credible**

False Report
Regretted Sex
Not Provable

**Matter
closed**

Failure to address
potential harm

TRAUMA INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough
and complete
investigations

Assist with
recollection



Assist with
recounting

Reduce potential for
false information

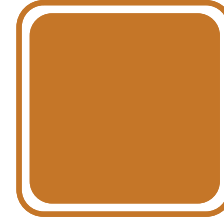
Minimize unnecessary
re-traumatization

Reduce bias

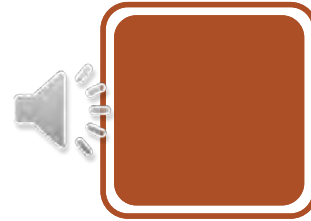
PROPER APPLICATION OF TRAUMA- INFORMED PRACTICES



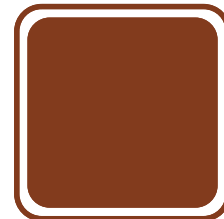
TRAUMA INFORMED
PRACTICES
PROVIDE TOOLS &
TECHNIQUES FOR
INTERVIEWING AND
ENGAGING WITH
THE COMPLAINANT,
RESPONDENT, AND
WITNESSES.



Interview structure



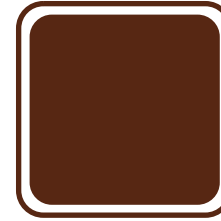
Question format



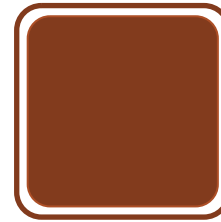
Clarification approach

MISAPPLICATION OF TRAUMA INFORMED PRACTICES

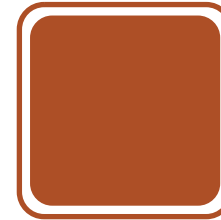
It is a misapplication of trauma informed principles to allow potential evidence of trauma to:



Influence the interpretation of a specific item of evidence;



Substitute for missing evidence;

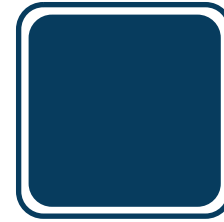


To serve as a justification for not doing a full and thorough investigation;

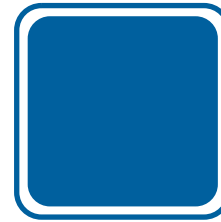


Cause a biased belief in the veracity of one or more parties.

**WHEN AN
INVESTIGATOR USES
“TRAUMA-
INFORMED” TOOLS,
THEY ARE LESS
LIKELY TO:**



Conclude, without
a thorough
investigation



Act on basis of bias



Retraumatize



Jeopardize future
reporting

THE FUTURE



An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent behaviors.

This is essential to a fair and thorough investigation.



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