

**TRAINING ON  
TITLE IX  
REGULATIONS**

Rebecca Leitman Veidlinger  
July 27, 2020

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**Topics for today**

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

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SCOPE,  
JURISDICTION,  
AND  
IMPORTANT  
DEFINITIONS

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Mandatory jurisdiction to respond

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



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Respond promptly in a manner that is not deliberately indifferent

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

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**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?



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**Mandatory jurisdiction to investigate**  
**Formal complaint filed by Title IX coordinator**

When might a Title IX coordinator file a complaint?



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**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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### *(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



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

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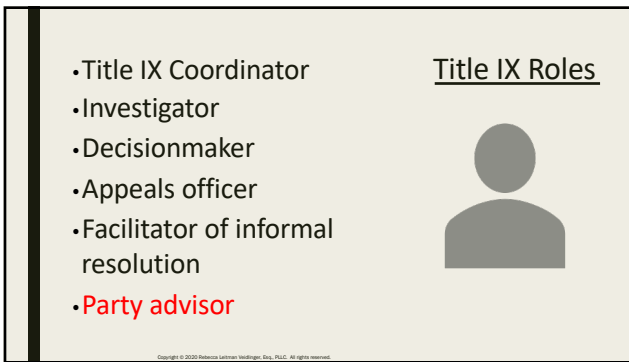
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- Title IX Coordinator
- Investigator
- Decisionmaker
- Appeals officer
- Facilitator of informal resolution
- Party advisor

Title IX Roles

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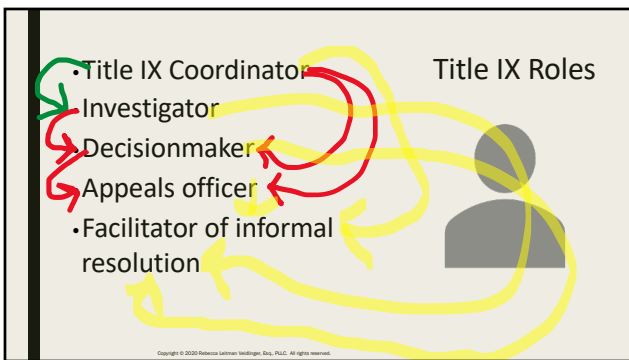
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Title IX Roles

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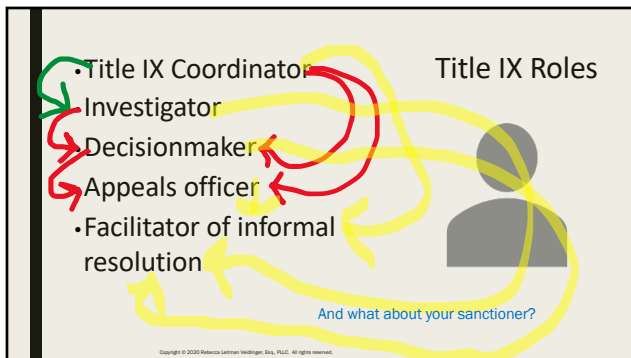
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**How to serve impartially**

- Avoid pre-judgment of the facts
- Bias
- Conflict of interest

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**COMMENCEMENT OF FORMAL RESOLUTION PROCESS**

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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
- Any provision in code that prohibits making false statements during process



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Dismissing complaints

<p><u>MANDATORY</u></p> <ul style="list-style-type: none"> <li>• Not sexual harassment</li> <li>• Did not occur in program or activity</li> <li>• Not against person in the U.S.</li> </ul>	<p><u>DISCRETIONARY</u></p> <ul style="list-style-type: none"> <li>• Complainant withdraws complaint</li> <li>• Respondent no longer enrolled/employed</li> <li>• School unable to collect sufficient info</li> </ul>
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Bad behavior that must be dismissed pursuant to regulations

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



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**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

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**HOW TO CONDUCT INVESTIGATIONS**

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**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

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**Evidence “directly related” to the allegations**

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

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**Party review of evidence and written response**

- Review
  - *Develop document-sharing protocol*
- Tips for keeping timeframes “prompt”

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**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)

- Irrelevant
- Irrelevant
- Relevant
- Irrelevant
- Irrelevant

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**Relevance IS**

- Logical connection between the evidence and facts at issue
- Tends to make a material fact more or less probable than it would be without that evidence
- Assists in coming to the conclusion – it is “of consequence”



**Relevance IS NOT**

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



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**Special categories of evidence that are off-limits**

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

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**Pre-hearing work**

- Confirm advisors for each party; appoint if necessary; consider having back-ups 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 pre-hearing conference
- Make logistical and technology decisions (and give them a trial run)

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**HOW TO CONVENE A HEARING**

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**“Submitting to cross examination”**

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



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**Managing the questioning process**

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

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**Remember** special categories of evidence that are off-limits

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**Decision and written determination**

- Use disciplined, unbiased evaluation of relevant evidence
- Understanding weight of evidence v. relevance of evidence
- Include specific elements required by regulations

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**Required elements in written determination**

- Description of procedural steps from complaint through determination
- Findings of fact
- Conclusions regarding application of policy to facts
- Rationale for each result of each allegations
- Sanctions/remedies
- Appeal options (must permit appeal)

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**Grounds for appeals**

- Procedural irregularity that affected the outcome of the matter
- 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
- Title IX coordinator, investigator, or decisionmaker 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
- Any other grounds, as long as offered equally to both parties

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**QUESTIONS?**

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