



Title IX Training for Cabrillo College,  
Cuesta College, Hartnell College &  
Monterey Peninsula College

March 5-6, 2024  
Trainers: Liz DeChellis & Jen Doughty

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Training Agenda

DAY 1

Foundations of Title IX  
Intake Interviews  
Know Your Policies

DAY 2

Unconscious Bias in Title IX  
Investigations  
Overview of Trauma-Informed  
Interviewing  
Hearing Foundations

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Foundations of  
Title IX

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## 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.



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**No person shall...be deprived of life, liberty, or property, without due process of law...**

— *Fourteenth Amendment of the U.S Constitution*



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## Due Process for Students

- Supreme Court held that a public school had violated due process by suspending students without a hearing.
- A 10-day suspension was not a *de minimis* deprivation of property. Suspending students had the potential of seriously harming reputation and affecting future employment and education.

*Goss v. Lopez*, 419 U.S. 565 (1975)



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## What Process is Due? In Student Conduct Cases:

**Due Process—A Flexible Concept that Considers Three Factors:**

1

The student's interests that will be affected

2

The risk of an erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards

3

The educational institution's interests, including the burden that additional procedures would entail



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## Enforcing Title IX

### Department of Education, Office for Civil Rights

- Complaint investigations and compliance reviews resulting in voluntary resolution agreements
- Issues regulations and guidance
- Possible sanction—removal of federal funding

### Private Right of Action

- Court cases brought by complainants and respondents

*Cannon v. University of Chicago* (1979)



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## Different Types of OCR Guidance

### Non-Binding Guidance

Issued and withdrawn by OCR without a required formal process e.g. Dear Colleague Letters

### Binding Regulations

Requires formal rulemaking process, e.g. 2020 Regulations



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## Key Takeaways: Fundamental Due Process Requirements



### Notice

- The specific policy/rule at issue
- The who, what, where, when and how of the alleged incident
- The institution follows policy and procedures in resolving the complaint

### An Opportunity to be Heard

- Timely access to evidence
- Opportunity to tell their side of the story
- Opportunity to challenge witnesses and other evidence
- Opportunity to present evidence
- Absence of bias and conflicts of interest by the individuals investigating and adjudicating the complaint

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## Process Overview

- » Investigation begins after the Notice of Investigation has been sent
  - Involves collecting evidence and interviewing parties and witnesses
  - This builds the record of the case that is used in the hearing
- » Hearing is scheduled once the final Investigation Report is submitted
  - The Adjudicator makes credibility determinations, findings of fact, and findings of policy
- » Appeal Authority will look to both the Investigation Report and the Hearing Decision (among other important things) when making determinations

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## 2020 Regulations Current Application



Effective: August 14, 2020



Applicable to **conduct** occurring on/after August 14, 2020



Applicable to students, staff, and faculty

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## What was new?

- »» Mandatory hearings
- »» Advisor involvement
- »» Definition of Sexual Harassment
- »» School jurisdiction over conduct
- »» Direct questioning of the parties

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## What did not change?

- »» Duty to provide a fair process
- »» Duty to provide a safe environment
- »» School determines the definition of consent
- »» Impact on the involved parties

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## Key Changes Overview

- » "Sexual Harassment" definition
- » Jurisdiction
- » Grievance Process

### Intersection of Title IX and Code of Conduct

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## Grievance Process per the Current Regulations

- Presumption that Respondent is not responsible
- Standard of Evidence
- Evidence Review process
- Live Hearings required

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## Evidence Review Process

- Both parties must have an equal opportunity to inspect, review, and respond to any evidence gathered that is directly related to the allegations, even if there is no intent to rely on it in making a determination
- This must occur *prior* to the conclusion of an investigation
- Parties have an equal opportunity to refer to this evidence during the Hearing

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## Live Hearing Process

- Each party's advisor must be permitted to ask the other party and any witnesses relevant questions, including challenges to their credibility
- Questions must be conducted "directly, orally, and in real time"
- Adjudicator can determine questions are not relevant and cannot be asked, but must provide an explanation
- Parties may choose their advisor, but must have one; School must provide an advisor if needed

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## Important Roles

<p><b>Investigator</b></p> <ul style="list-style-type: none"> <li>• To gather evidence through:             <ul style="list-style-type: none"> <li>– Interviews</li> <li>– Document gathering and review</li> <li>– The Evidence Review Process</li> </ul> </li> <li>• To write an Investigation Report</li> </ul>	<p><b>Title IX Coordinator</b></p> <ul style="list-style-type: none"> <li>• Serve as the primary point of contact for their Institution's students</li> <li>• Oversee Policy implementation on their campus</li> <li>• Coordinate Supportive Measures</li> <li>• Oversee the Alternative Resolution Process</li> </ul>
<p><b>Adjudicator</b></p> <ul style="list-style-type: none"> <li>• To gather evidence through:             <ul style="list-style-type: none"> <li>– Reading the Investigation Report</li> <li>– Testimony at Hearing</li> </ul> </li> <li>• Conduct the Hearing</li> <li>• Make factual &amp; policy findings</li> <li>• Make a sanctioning recommendation</li> </ul>	<p><b>Title IX Administrator</b></p> <ul style="list-style-type: none"> <li>• Oversees the grievance process</li> <li>• Facilitates collaboration and communication between Coordinators</li> <li>• Drafts and transmits all Notice letters to the parties</li> <li>• Trains individuals involved in the Grievance Process</li> </ul>

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## Responsibilities of the Investigator

- » Define the scope of the investigation based on Complainant interview / policy
- » Gather evidence
- » Identify and interview witnesses
- » Document all steps taken
- » Coordinate Evidence Review Process with parties
- » Testify in Hearing (potentially)

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## Investigation Report Requirements

- ✓ Allegations
- ✓ Material facts
- ✓ Evidence presented and considered
- ✓ Additional relevant information received and gathered during the Evidence Review period
- ✓ Description of all material disputed and undisputed facts

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## Responsibilities of the Adjudicator

- » Adjudicator can rely on Investigation Report
- » Ensure the Hearing is conducted in accordance with school policy
- » Make credibility assessments
- » Make a determination regarding responsibility



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## Advisor's Role

### What do they do?

- Provide guidance to the student throughout the Grievance Process (including Alternative Resolution, if applicable)
- Attend all meetings with the student
- Question the other party and witnesses during the Hearing

### What can't they do?

- Speak on behalf of their student
- Disrupt meetings or the Hearing
- Make objections at the Hearing
- Otherwise communicate with the school on behalf of their student



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## Who can be an Advisor?

- Anyone who is not a party or witness in the matter
- An attorney
- A non-attorney



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## Hearing Decision Report Requirements

- ✓ Allegations
- ✓ Procedural steps
- ✓ Factual Findings
- ✓ Policy Findings
- ✓ Analysis for each
- ✓ Sanctions
- ✓ Appeal process

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## Sexual Harassment Definitions

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## Sexual Harassment per the New Regulations

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

- Quid pro quo (employee Respondents only);
- Unwelcome conduct (full definition follows); or
- Specific defined acts (full definition follows)

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## Sexual Harassment: Unwelcome Conduct

Conduct on the **basis of sex** that is determined by a **reasonable person** to be so:

- Severe;
- Pervasive; **and**
- Objectively offensive
- That it effectively denies a person equal access



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## Sexual Harassment: Specific Acts

Conduct on the **basis of sex** that constitutes one or more of the following:

- **Sexual Assault**, as defined by Clery Act;
- **Dating Violence**, as defined by VAWA;
- **Domestic Violence**, as defined by VAWA; or
- **Stalking**, as defined by VAWA



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## Sexual Assault (per the Clery Act)

**Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

**Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or permanent mental incapacity.

**Incest.** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape.** Sexual intercourse with a person who is under the statutory age of consent



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## Dating Violence (per VAWA)

Violence committed by a person:

- 1 Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and,
- 2 Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and,
  - The frequency of interactions between the persons involved in the relationship.

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## Domestic Violence (per VAWA)

Acts that include felony or misdemeanor crimes of violence committed by one of the following:

- » A current or former spouse or intimate partner of the Complainant;
- » A person with whom the Complainant shares a child in common;
- » A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
- » A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California; or,
- » Any other person whose acts on an adult or youth Complainant is protected from under the domestic or family violence laws of the state of California.

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## Stalking (per VAWA)

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.

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## Also Prohibited: Retaliation

No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes Retaliation.



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## Alternative Resolution Process

- Entered into voluntarily by all parties
- Used in lieu of the Title IX Grievance Process
  - If school officials decide alternative resolution is not appropriate, the determination is **not** subject to appeal
- Can be mediation, restorative justice, or another option
- Will sometimes end up back in the Title IX Grievance Process
  - If due to a decision by school officials, the determination is **not** subject to appeal



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## Jurisdiction



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## When does the Title IX process apply?

- »» Locations, events, or circumstances;
- »» Over which the school exercised **substantial control** over both the Respondent and the context in which the Sexual Harassment occurs.

Includes: Any buildings owned or controlled by a student organization officially recognized by the school.



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## Grievance Process



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## Grievance Process

### Basic Requirements

- 01 Treat parties equitably
- 02 Objective evaluation of all evidence
- 03 No credibility determinations based solely on a person's status
- 04 No one involved in the process may have a conflict of interest or bias



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## Grievance Process

- »» Training required for all involved staff and outside contractors
- »» Decision-maker cannot be:
  - Title IX Coordinator
  - Investigator
- »» Live Hearings required

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## Grievance Process: Notice

Notice must include:

- ✓ Presumption that Respondent is not responsible
- ✓ Establish a reasonably prompt timeframe for resolution
- ✓ Range of possible disciplinary sanctions and remedies
- ✓ Standard of Evidence
- ✓ Appeal Procedures

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## Grievance Process: Hearings

### Live Hearings are Required

Can be conducted remotely or with parties in separate rooms

Parties must be able to see and hear anyone testifying

Advisors must be permitted

School must provide advisor for the hearing if student comes alone

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## Grievance Process: Hearings

Hearing Officer permitted to question

Advisors **must** be permitted to question the other party and all witnesses

- Questioning conducted directly, orally, and in real-time

*Must be relevant questions — Hearing Officer to decide*

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## Grievance Process: Hearings

Permitted to exclude parties misbehaving

Written decision must include:

- ✓ Allegations
- ✓ Procedural steps
- ✓ Factual Findings
- ✓ Policy Findings
- ✓ Analysis for each
- ✓ Sanctions
- ✓ Appeal process

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## Grievance Process: Appeals

Bases for appeal:

Procedural irregularity

New evidence not reasonably available at the time of determination

Bias or conflict of interest

**\*\*All bases include a requirement that the outcome was affected\*\***

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## 2021 Case Interpretations

Section 106.45(b)(6)(i)'s prohibition on all statements not subject to cross-examination is arbitrary and capricious. *Victim Rights Law Center et al. v. Cardona* (2021)

August 24, 2021 OCR issued Letter stating it will no longer enforce the section.



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## Intake Interviews

How do we get the information we need in a trauma-informed way?



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## What Information Do We Need?

- Who
- What
- When
- Where
- Impact
- Desired Outcomes
- Desired Next Steps



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## Evaluate What You Gathered



### Capture the basic facts:

Who is complainant?

Who is respondent?

What is alleged misconduct?

When? Where? Other information?

Consider both policy language and how the Complainant described what happened



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## Questions to Consider

- ❓ How do we maintain neutrality throughout the process?
- ❓ How can we be transparent about the process without coming across as discouraging from proceeding?
- ❓ Do we need to proceed if the Complainant declines to file a complaint?



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## Next Steps

Evaluate complaint

- ↳ Determine scope
  - ↳ Reach out to Respondent
    - ↳ Provide resources to both parties
      - ↳ Explore Alternative Resolution Options with both parties
        - ↳ Assign an Investigator
          - ↳ Send out Notices
            - ↳ Determine supportive measures



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**Exercise:  
Evaluate the Intake  
Interview**

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**Know Your Policies  
& the Investigative  
Process**

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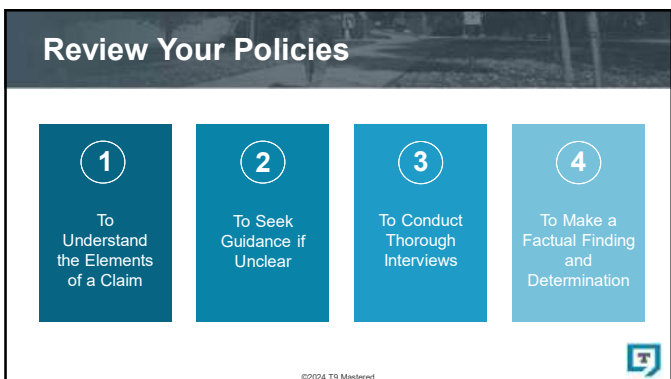
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**Review Your Policies**

- 1**  
To Understand the Elements of a Claim
- 2**  
To Seek Guidance if Unclear
- 3**  
To Conduct Thorough Interviews
- 4**  
To Make a Factual Finding and Determination

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**Common Categories in Sexual Misconduct Policies**

Sexual Violence	Relationship Violence
Sexual Harassment	Stalking
Sexual Privacy	Retaliation

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**Categories in Title IX Sexual Harassment Policies**

Sexual Harassment: Quid Pro Quo	Sexual Harassment: Hostile Environment
Sexual Assault: Rape, Fondling, Incest, Statutory Rape	Stalking
Dating Violence	Domestic Violence

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**Claim Examples**

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### What type of claim has Cynthia raised?

Cynthia complains that a fellow classmate, Marie, sits outside her Tuesday and Thursday biology courses and waits for her. Marie follows her to her car. Marie sits outside until Cynthia finishes her soccer practice, and then follows Cynthia to the locker room. At the cafeteria, Marie sits across from Cynthia and stares at her. Sometimes when Cynthia looks up, Marie makes a kissing gesture towards her. This has been going on after every class for several weeks, and Cynthia reports feeling fearful on campus.



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### Knowledge Check

What type of claim(s) has Cynthia raised? (Choose all that apply)

- Stalking
- Sexual Harassment: Hostile Environment
- Dating Violence
- Sexual Assault



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### What type of claim has Tammy raised?

Tammy alleges that Karl, who she studied with during the last quarter, started sending her sexually explicit texts after she told him she did not want to date him. He sent her twenty texts in the course of one night. The texts included statements that he wanted to spread her legs and touch her p—y, and that he had dreamed of having sex many times with her, as examples.



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## Knowledge Check

What type of claim(s) has Tammy raised? (Choose all that apply)

- Sexual Assault
- Dating Violence
- Stalking
- Sexual Harassment: Hostile Environment
- Retaliation



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## What type of claim has Kurt raised?

Kurt met Katie at a fraternity party. The two danced all night and “hooked up.” Later, Kurt told Katie he did not have enough time for her because of his studies. Katie sent Kurt 20 messages over the next week telling Kurt that she wanted to “be with him” and told him she thought he was “sexy.” Kurt reported Katie’s messages to the campus Title IX office. The next morning, Kurt discovered someone slashed the wheels of his car. Kurt believes it was Katie.



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## Knowledge Check

What type of claim(s) has Kurt raised? (Choose all that apply)

- Dating Violence
- Sexual Assault
- Sexual Harassment: Hostile Environment
- Stalking
- Retaliation



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**Key Takeaway**



Reviewing and understanding your policies helps campus officials identify the categories of prohibited conduct a claim may fall under.

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**Working with Campus Police or Other Law Enforcement Agencies**


Campus investigations may overlap with criminal

- Sexual Assault
- Battery
- Domestic violence
- Workplace violence, stalking
- Theft, fraud, bribery
- Narcotic sales

**Relevant Sources of Information**

- Police report
- Transcript or summary of pretext call
- Computer forensics of laptop, tablet, phone

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**Additional Considerations**




New Complainants or Respondents




Different Versions of Title IX Policy



Cross-Complaints




Criminal Charges – *Lybarger Admonition*



Storing Physical Evidence

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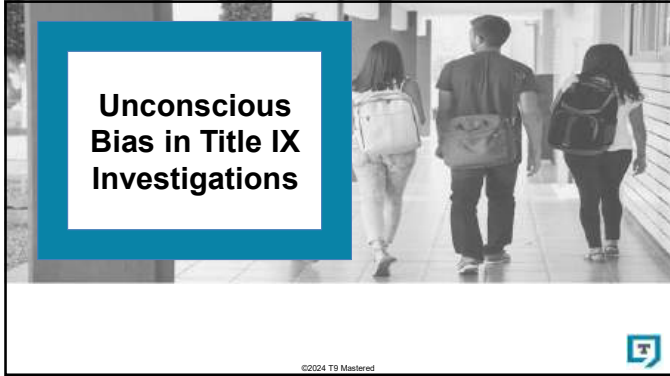
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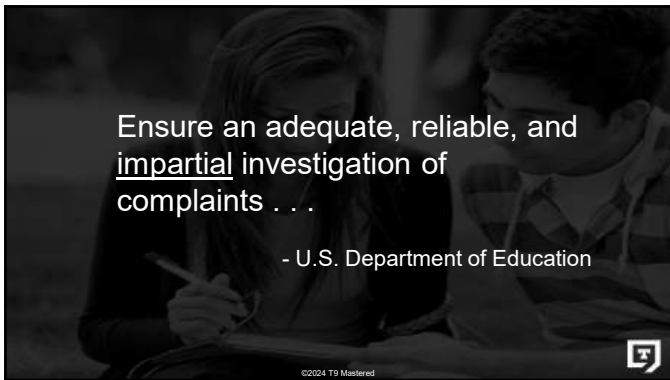
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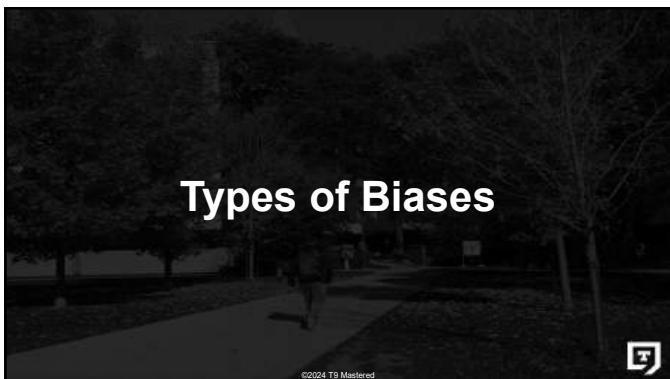
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## Types of Bias: Examples

### Traditional Biases

- Race
- Gender
- Sexual orientation
- Religion
- Age
- Class, etc.

### Investigator-Specific Biases

- Bias towards your campus
- Bias against delivering bad news
- Bias against repeat complainants
- Bias towards likable students
- Bias towards people with power/status
- Bias towards anything that makes our job easier

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## Implicit Bias

**Implicit Bias:** Unconscious and automatic bias towards or against certain groups of people

**Example:** You are having an issue with your work cell phone so you ask for help from the young intern, rather than your older colleague.

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## Priming Bias

An unconscious process where one stimulus can influence future responses or reactions to subsequent stimulus.

"Oh, this is a really egregious case."  
"This one doesn't sound too serious."  
"This is their third complaint this year."  
"We have had complaints about this faculty before."  
"There are just a few witnesses. This should not take too long."

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## Confirmation Bias

People tend to seek out information that:

- Confirms their existing opinions, and
- Overlooks or ignores information that refutes their beliefs

*"What we see depends mainly on what we look for."*

*John Lubbock, British anthropologist, 1834-1913*



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## Bias in Investigations

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## Bias in Investigations

### Bias impacts investigators and witnesses

- » Can result in discriminatory thinking and feeling patterns
- » Can undermine judgment, analysis, and decision-making

*Based on what we know our biases to be, are we the right person to do the investigation?*

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**Title IX Specific Bias**

**Bias based on perceptions or experiences with:**

- Student athletes
- Fraternities and sororities
- College-age children
- Prior involvement with Title IX

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**Title IX Specific Bias**


**Impact on People's lives**

- High stakes, even when not making findings.

**Fear of *The Feather***

- Preponderance of the evidence
- "50 percent plus a feather."

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**Title IX Specific Issues**

**Knowledge and Comfort with Different Sex & Relationship Practices:**

- Oral sex
- Anal sex
- Multiple sex partners
- Polyamory
- BDSM
- Pornography
- Etc.

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**Title IX Specific Issues**


**Views about:**

- Alcohol use
- Drug use
- Personal responsibility

*“This would never happen to me because I \_\_\_\_\_.”*

*“This happened to me, but it was my fault because I \_\_\_\_\_.”*

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**Title IX Confirmation Bias Example**

Your first interview with Dylan, the reporting party, was *very* tough.

- He told a searing account of being violently sexually assaulted by his former boyfriend, James.
- He broke down in tears and the interview had to halted more than once.
- You believe him.

*How might Confirmation Bias affect your investigation?*

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**Managing Unconscious Bias**

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## Techniques for Eliminating Managing Unconscious Bias

- Seek to understand different perspectives
- Attend DEI trainings
- Be aware of your biases
- Have compassion and understanding for yourself

*There is no perfect investigation and no perfect investigator*

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## Bias Reflection

- ? How might your biases impact your work as an \_\_\_\_\_ [your role]?
- ? What could you do to mitigate bias throughout the Title IX process?

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## Overview of Trauma-Informed Interviewing Techniques

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## Trauma-Informed Interviews



### Strong interview skills:

- » Increase the amount of detail collected
- » Reduce the risk of re-traumatizing
- » Result in a better understanding of the events

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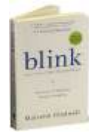
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## First Impressions

"There can be as much value in the blink of an eye as in months of rational analysis."

– Malcolm Gladwell

*Do not underestimate the first 90 seconds*



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## First Impressions



Professional  
Organized  
Attentive  
Transparent  
Warm

Dismissive  
Overly empathetic  
Robotic  
Unprepared  
Too casual

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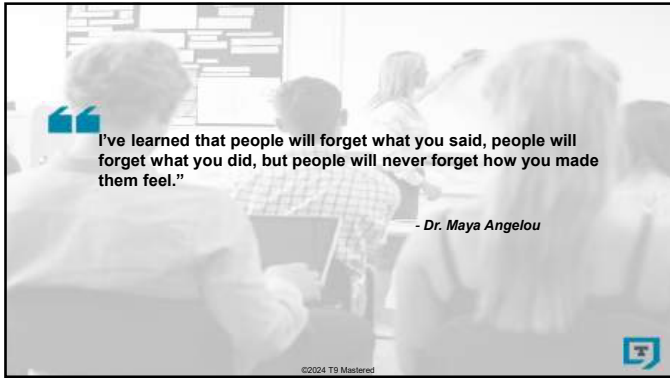
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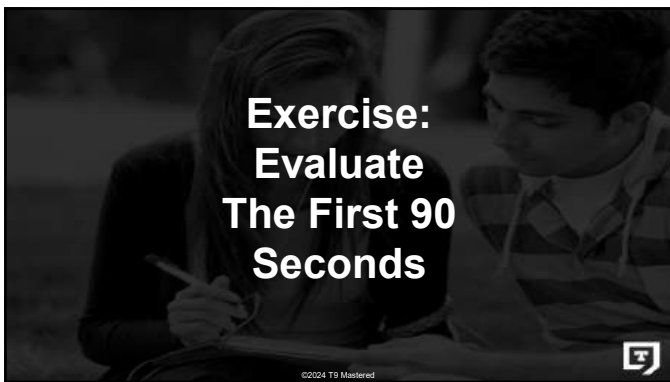
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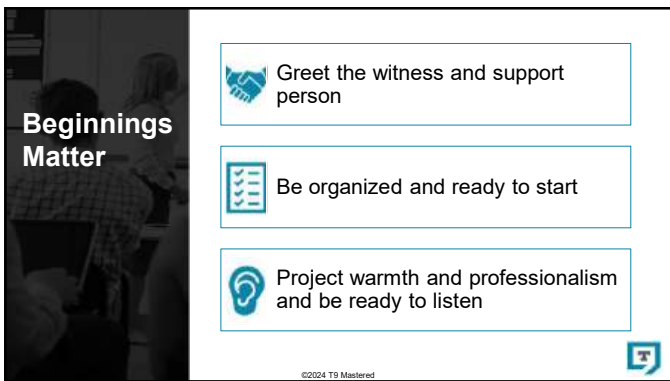
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## Trauma-Informed Approach: Interview Logistics

### In-Person Interviews

- ✓ Comfortable room
- ✓ Allow Complainant/Respondent to choose where to sit
- ✓ Offer water
- ✓ Have tissues and fidget objects nearby
- ✓ Do your best to put them at ease

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## Trauma-Informed Approach: Interview Logistics

### Remote Interviews

- ✓ Optimize remote environment, including lighting and background
- ✓ Address how you'll handle technical problems
- ✓ Have documents you plan to screen share queued up
- ✓ Discuss a plan if either of you are interrupted or need a break
- ✓ Do your best to put them at ease

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## Trauma-Informed Approach: Initial Discussion

### For Every Interview

- ✓ Prepare some introductory comments about who you are, your neutral role, and the process
- ✓ Be transparent
- ✓ Address issues of retaliation, privacy, recording, notetaking, amnesty for drinking/drugs, etc.
- ✓ Allow time for questions from witness or advisor

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## The Title IX Interview

### Different from Other Interviews

College-Aged Witnesses	May Have Experienced Trauma
Parent, Attorney or Advisor May Be Present	Covering Intimate and Sensitive Topics

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## College-Aged Witnesses

- »» Age, gender and power dynamic
  - Investigator may be much older than witness
  - Male investigator interviewing female witness, or vice versa
  - Established professional vs. college student
- »» Unfamiliar expressions or jargon that lead to miscommunications
- »» Lack of sophistication: understanding *process* is important

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## Complainant May Not Be Forthcoming

Fearful of Process	Traumatized
Embarrassed	Fractured Memories
Shy or Cautious	Angry
Complainant Has Not Been Truthful	

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## Reluctant Complainant



### Listen for why they are reluctant

- Respond to the issues if you can
- Check if supportive measures were made available



### Acknowledge the difficulty of the process

- Offer to take breaks as needed
- Check in with the support person

*If needed, suggest rescheduling the interview*



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## Reluctant Witnesses



Explain the Process and Policy



Be Transparent



Explain the Importance of the Witness' Role

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## Respondent Interview



Treat the Respondent the same as you do the Complainant



Manage the Respondent's stress



Respondent's chance to understand the allegations and respond



The Respondent may bring forth new evidence

*Useful statement: "Before you leave here today, you'll fully understand the allegations."*

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## Trauma-Informed Tone

Empathy	Compassion	Dignity
<p>"I know this might be difficult to talk about."</p>	<ul style="list-style-type: none"> <li>Give parties time and space</li> <li>Watch for stress or fatigue and offer a break</li> </ul>	<p>Show an appropriate level of seriousness</p>

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## Neutral Role in Trauma-Informed Interview

Non-Neutral Statements	Alternative Statements
<p>"I am so sorry this happened to you."</p> <p>"What they did to you was wrong."</p>	<p>"I can see it's hard for you to talk about this."</p> <p>"It sounds like this was a very difficult experience."</p> <p>"I know this process is hard."</p>

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## Parent or Other Non-Legal Advisor

Be prepared for:

- Parent, sibling, or other close relative as an advisor
- Some advisors are disruptive; some never speak.

Know the school's policies and plan how you will respond if parent/advisor interrupts.

**Practice tip:** *At the outset, give the advisor an opportunity to ask you questions.*

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## Trauma-Informed Questions



### Possible Questions:

- Start where you feel comfortable.
- What else do you remember?
- What was the most difficult part of the experience?
- Questions about sensory details

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## Attorney Advisor

Attorneys have the same role as the non-legal advisor: **To offer support**

Know the policy and what attorneys are told about their role in interviews.

If attorneys provide answers to questions, they might need to be cited as a witness

### If problems develop:

- Be pleasant and patient, but firm and persistent
- Discuss the consequences of refusing to answer
- Be prepared to shut down the interview

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## Anonymous Witnesses

- Be prepared for this and know campus policies.
- Find out why the witness wants to be anonymous.
- Discuss fear of retaliation or other reasons for anonymity
- Explain that weight of evidence is weakened if the parties don't know who made the statement

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## Collect Policy-Based Information



### Areas that you need information on:

- Jurisdiction—Where did events take place?
- Affirmative consent and factors that would invalidate consent
  - Incapacitation from sleep/alcohol, force and/or coercion
- Other allegations that violate policy
  - Sexual images, stalking, retaliation
- Specific impacts of the incident



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## Potential Minefields

- ✗ Leading questions
  - “You do not know her password, do you?”
- ✗ Asking about information you don’t really need
  - Not every detail is necessary
- ✗ Questions that suggest you have made a judgment
- ✗ Large reactions to witness statement



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## Interviewing Strategies



- The funnel method
  - Start broad and keep narrowing
- Ask witness to quantify: “Sometimes” or “lots.”
- **No need to fill the silences.** Let witness answer.
- Be careful to clarify speculation vs. facts

***Be prepared for witnesses with secondary trauma***



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## Interviewing Strategies



### Dealing with answers that are unexpected

- Guard your reactions, remain neutral
- Ask follow-up questions to clarify
- Consider possible reasons for why the witness said this
- Provide more transparency and reframe the question, if that approach makes sense
- Circle back later and rephrase the question

### Other challenges

- Witness gives one or two-word answers
- Witness dodges the question
- Witness is defensive, mistrusting of the process
- Response is jumbled, ill-logical, or off-topic

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## Closing the Interview



- Collect any final information and documentary evidence
- Find out best method of contact for follow-up and availability
- Set expectations for next steps in process

### Examples:

*Are there any relevant witnesses you think I should talk to?*

*Are there documents or other relevant evidence?*

*Is there anything else I should know?*

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## Hearing Foundations

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## When to Have a Hearing



Nationally	California
When a case meets the criteria under the DOE Title IX regulations	Anytime a student accused of sexual misconduct is facing severe disciplinary actions and credibility is central

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## Who Makes the Final Decision?



- Neutral Panel
- Neutral Adjudicator

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## Hearing Process

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## Adjudicator's Role in the Hearing

- »» Sets hearing scope and witness list
- »» Makes all procedural determinations
  - Requests to admit new evidence
  - Order of witness testimony
- »» Manages questioning
  - Generates their own questions
  - Oversees advisor questioning
- »» Ensures the hearing is conducted in a fair and respectful manner

**Makes final factual and policy findings**



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## Investigator's Role in the Hearing

- »» Explains investigative process
- »» Presents information related to the following:
  - Both parties were given the chance to present evidence and witnesses; and
  - Both parties were given the opportunity to respond to allegations and evidence gathered.

**IN SHORT:** Demonstrates that a thorough, fair and impartial investigation was conducted.



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## During Testimony

### Explain

Review the investigation evidence and report to refresh your memory.

### Defend

Describe the thoughtful steps taken throughout the process.

### Maintain Composure

Do not take it personally.



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## Hearings Differ From Investigations

Witnessed by the other party	Have the Report or at least some information gathered	Areas in dispute may be narrowed
Timing: Less opportunity for narratives	Report more difficult to build	Questioning by the other person's advisor live and in real-time

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## Challenges That Arise

- Proposed document list from the parties
- Proposed witness list from the parties and securing participation
- Late requests for additional document and witness consideration
- Challenges to the process and the appointment of the Hearing Officer
- Accommodation requests
- Managing technology difficulties

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## Setting the Hearing Up for Success

- Clearly outline the investigation scope
- Bullet **material** undisputed facts
- Bullet **material** disputed facts
- Write witness summaries in chronological order of the events, not in order of investigative interviews
- Clearly articulate why you did not gather suggested evidence

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## Appeal Process

### Both parties have an opportunity to submit a written appeal

- An Appeal Authority is assigned to review the appeal and any response submitted by the other party
- The Appeal Authority issues a written decision
- The Appeal Decision is final and the process concludes

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## Appeal Grounds

A party may appeal based on one or more of the following grounds:

### Procedural Error

Procedural error(s) materially affected the outcome of the matter

### New Evidence

New evidence which was not available or known (and could not have reasonably been known) at the time of the final determination which materially affected the outcome of the process

### Conflict of Interest/Bias

The Title IX Coordinator, Investigator, and/or Adjudicator had a conflict of interest or bias that materially affected the outcome

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## QUESTIONS?

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