



Title IX: Protecting Students and School Employees from Sexual Harassment

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Overview

Enacted in 1972, **Title IX** is a Federal civil-rights law that protects everyone from being discriminated against on the basis of sex in educational programs and activities.

Although Title IX has improved educational access for millions of students, sexual harassment continues to be a widespread problem. In May of 2020, the U.S. Department of Education (DOE) updated its guidelines for how schools must respond to sexual-harassment claims. The guidelines, which took effect on August 14, 2020, apply to all types of sexual harassment, including:

- Student against student
- Student against school employee
- School employee against school employee
- School employee against student

One of the new guideline's most important changes is that all employees, without delay, must report possible acts of sexual harassment to a Title IX coordinator.



Objectives

This course will:

- Define sexual harassment;
- Explain schools' obligations with regard sexual-harassment claims under Title IX; and
- Outline Title IX's investigative procedures.

The chapters of this course are:

1. Sexual Harassment
2. School Obligations under Title IX
3. Title IX Grievance Process



1

Chapter

Sexual Harassment

Topics in this chapter include:

- Definitions
- "On the Basis of Sex" Standard
- Quid Pro Quo Harassment
- "Severe, Pervasive and Objectionably Offensive" Standard
- Offensive Behavior
- "Reasonable Person" Standard
- "Equal Access" Standard
- Sexual Offenses
- Speaking with Victims of Sexual Offenses

Definitions



Parties involved in Title IX proceedings include complainants and respondents:

- A **complainant** is an individual alleged to be the victim of conduct that could constitute sexual harassment.
- A **respondent** is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.

Complainants and respondents can be students or school employees.

Prohibited by Title IX, **sexual harassment** is a form of sex discrimination. It encompasses three prongs of misconduct on the basis of sex:

1. Quid pro quo harassment occurs when an authority figure conditions the provision of an aid, benefit or service on a subordinate's participation in unwelcome sexual conduct. (For example, a teacher may promise a student good grades, or a principal may promise an employee a promotion.)
2. Unwelcome conduct is behavior a reasonable person would find so "severe, pervasive and objectively offensive" that it effectively denies someone equal access to education.
3. Sexual offenses include assault, dating violence, domestic violence and stalking, as defined by the [Clery Act](#) and as amended by the [Violence Against Women's Act \(VAWA\)](#).

"On the Basis of Sex" Standard

Title IX prohibits discrimination "on the basis of sex." Though Title IX does **NOT** give a meaning for 'sex,' it does presuppose sex as a binary classification and acknowledges physiological differences between the male and female sexes.

Nevertheless, Title IX's regulations remain sex/gender neutral because the law focuses on **prohibited conduct**. Any behavior that's sexual in nature — and/or any behavior that references one sex or another — is enough to constitute conduct "on the basis of sex." Thus, anyone may experience sexual harassment, regardless of the person's gender identity or sexual orientation.



Quid Pro Quo Harassment

Quid pro quo harassment is intended to compel an individual (i.e., the complainant or victim) to engage in "unwelcome" conduct in order to gain or maintain some type of benefit or favor. It applies to any situation where a second individual (i.e., the respondent or perpetrator) holds authority and control over them.

The term "unwelcome" is subjective. Someone who does not reject sexual conduct may seem to consent to it. A lack of rejection doesn't necessarily mean they actually welcomed the conduct, however. The victim might not speak up because they want to:

- Avoid getting in trouble or making waves;
- Continue pleasing the authority figure;
- Earn good grades or protect their position in a school sport or activity (if the victim is a student and the perpetrator is a teacher or coach); and/or
- Earn a raise or protect their job (if the victim is an employee and the perpetrator is their supervisor).

Students are largely expected to follow the instructions and directions of an adult in charge. If a school employee inappropriately touches a child (for example, by giving them back rubs, by massaging their shoulders or by rubbing their thighs), the student might feel uncomfortable, but accept the attention. Regardless of whether a student pretends to welcome sexual conduct however, a student's claim that the conduct is unwelcome is enough to qualify the behavior as unwelcome, for legal purposes.



Quid Pro Quo Harassment, continued

Because of the power imbalance that exists in a school employee-student relationship, a single instance of quid pro quo harassment is a violation of Title IX.

Sexual conduct between a teacher and student that is consensual and welcomed by the student might not meet the Title IX quid pro quo harassment standard. However, underage students cannot legally consent to sexual activity with an adult; therefore, such conduct may meet Title IX's sexual-assault standard, which covers statutory rape.



"Severe, Pervasive and Objectionably Offensive" Standard

When a school is considering whether conduct is "severe, pervasive and objectionably offensive," how does it know that the conduct is also unwelcome? It's not always clear. As such, the school may look to other factors when making that determination, including the involved parties' ages, disability statuses, sex, etc.

That said, a school cannot consider the intent of the accused or the complainant's response. It's not up to a complainant to prove the severity of the unwelcome conduct; a complainant need only describe what occurred. From there, the school must consider whether the conduct was severe from the perspective of a reasonable person.



Offensive Behavior

As younger students develop social skills and learn to interact with others, they are likely to act in ways unacceptable to adults. Similarly, as older students engage in the robust exchange of ideas, opinions and beliefs, they test boundaries and fail to consider how their conduct is perceived.

These types of offensive behaviors do not automatically qualify as actionable under Title IX. In fact, a school's Title IX enforcement should never interfere with free speech or academic freedom. However, a school should respond to verbal conduct if and when it's so serious that it loses First Amendment protection because it denies a student equal access to educational benefits.



Just because an offensive, crude, insulting or demeaning remark doesn't legally qualify as sexual harassment doesn't mean the school should ignore it. The behavior may very well violate the district's code of conduct.

"Reasonable Person" Standard

A **reasonable person standard** is used to determine if unwelcome conduct is so severe, pervasive and objectively offensive that it effectively denies a person equal access to education. To evaluate an incident from the perspective of a "reasonable person," you must consider the ages, abilities and relative positions of authority of the individuals involved.



"Equal Access" Standard

Equal access is determined by considering whether a reasonable person in the complainant's position would be effectively denied equal access to education, when compared to a similarly situated person who was not subject to the conduct.

No specific type of reaction is necessary to conclude that a person has been denied "equal access." That said, common indicators of unequal educational access due to sexual harassment include, but are not limited to:

- A complainant skipping class or skipping school to avoid a respondent
- A complainant's declining grade point average (GPA)
- A complainant having difficulty concentrating in class



Under Title VII, workplace sexual harassment need only be severe or pervasive to be actionable. As previously explained in this course, Title IX's definition of sexual harassment is more restrictive. Should an incident at your school qualify as sexual harassment under both Title VII and Title IX, your employer must meet the obligations established by both laws.

Sexual Offenses

The third prong of sexual harassment includes acts of forcible and nonforcible sex offenses. These acts comprise:

- Sexual assault, which encompasses:
 - **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 victim.
 - **Fondling** — The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim. This includes instances where the victim is incapable of giving consent because of her/his age or because of temporary or permanent mental incapacity. It's important to distinguish fondling from unwanted touching that has no sexualized intent or purpose. For example, inadvertent contact with a person's buttocks in a crowd does not qualify as sexual harassment under Title IX.
 - **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.

Whether an act is considered sexual assault often hinges upon consent. Under Title IX, a school must determine what qualifies as "consent." However, generally speaking, consent is defined as the voluntary agreement to engage in a specific sexual activity.



Sexual Offenses, continued



- **Dating violence** — Violence perpetrated by someone who has been in a romantic or intimate relationship with the victim.
- **Domestic violence** — A felony or misdemeanor crime of violence committed by the victim's current or former spouse, the victim's current or former cohabitant, a person similarly situated under domestic or family violence law, or anyone else protected under domestic- or family-violence law.
- **Stalking** — Behavior in which a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear for her/his safety or for the safety of others, or that creates substantial emotional distress. Stalking need not always be "on the basis of sex." For example, a student may stalk an athlete due to her/his popularity, rather than because of her/his sex.

Sexual offenses inherently create the kind of serious, sex-based impediment to equal access to education that Title IX is designed to prohibit. In fact, a **single sexual offense is actionable under Title IX**. The "severity, pervasiveness and objective offensiveness" standard and the "denial of equal access" standard do not apply.

Speaking with Victims of Sexual Offenses

A sexual offense can leave a victim feeling powerless. Without a safe, confidential place to go, they may not report the incident. Often, a victim must feel like they are supported before they are willing to file a formal complaint and cooperate throughout an investigation.

The first person to whom a victim talks plays a critical role. This person should understand the dynamics of sexual violence and harassment.

Trauma-sensitive practices emphasize the physical and emotional safety survivors need to reestablish a sense of control and to heal. New research has found that the trauma associated with sexual assault can interfere with parts of the brain that control memory. As a result, a victim may have impaired verbal skills, short-term memory loss, memory fragmentation and delayed recall. This can make it challenging for a victim to explain what occurred.



The National Center on Safe and Supportive Learning Environments has developed [trauma-informed care training materials](#). Although these materials were developed for healthcare staff, school employees can also benefit from them.

Speaking with Victims of Sexual Offenses, continued



If a student discloses a sexual offense to you, listen attentively. Ask fact-based, open-ended questions about the situation. Let the student know you believe her/him and that the abuse is not her/his fault. Your goals should be to:

1. Support the student; and
2. Gather as much information as the student is willing to share so that you can report the incident.

Victims of sexual offenses should be told their confidentiality is protected, by law. Such protection is critical for creating a climate where victims feel safe coming forward.

However, this does not mean that victims' confidentiality can be guaranteed. School employees should inform victims up front that, depending on the allegations, their information could be shared with the Title IX coordinator, with Child Protective Services (in cases of abuse) and/or with law enforcement.

2 Chapter

School Obligations under Title IX

Topics in this chapter include:

- Notice
- Mandated Reporting
- Educational Programs and Activities
- Mandatory Response
- Supportive Measures

Notice

A school is legally obligated to respond to any possible sexual harassment about which a school employee has notice. **Notice** can come from anyone, by any means, at any time. For example:

- An employee might personally observe sexual harassment.
- An employee might hear about a sexual-harassment incident from the victim, a student, a parent, a bystander or an anonymous source.
- An employee might receive a formal, written complaint.

Any employee who has received notice of alleged sexual harassment must report the incident to the school's Title IX coordinator. Even if you have doubts about the alleged incident's validity, you should report it; always err on the side of caution.

A Title IX coordinator will then investigate the situation and dismiss any allegations that don't qualify as sexual harassment under Title IX. Reports can be made to a Title IX Coordinator in person, by mail, by telephone, by e-mail or by any other means. Reports can be made at any time, including outside of school hours.

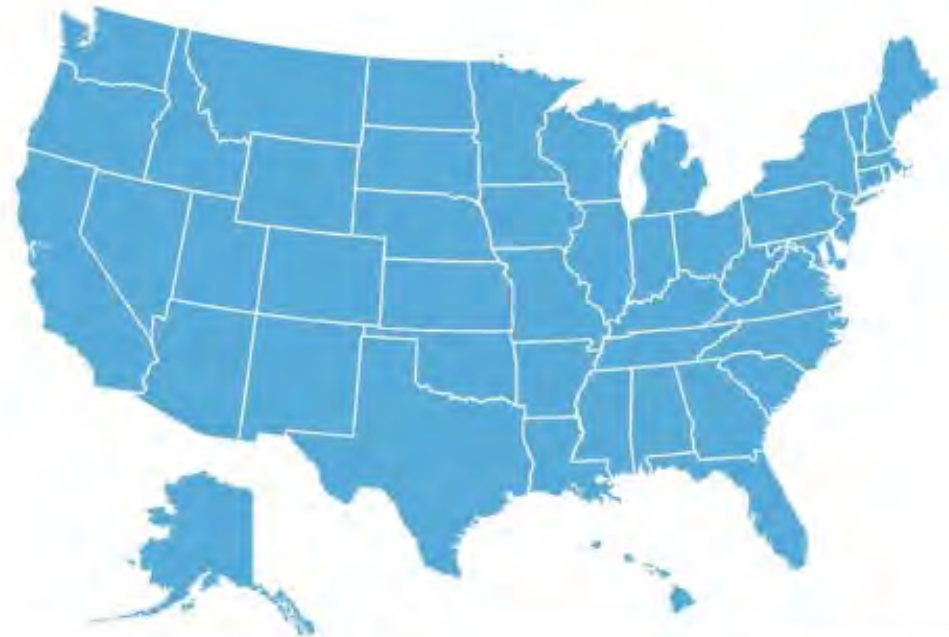


Mandated Reporting

In addition to violating Title IX, acts of sexual harassment committed by adults against children may also violate criminal law.

All 50 states have mandatory-reporting laws that require school employees to report suspected child abuse to Child Protective Services and/or to a law-enforcement agency. In fact, in many states, mandatory reporters are subject to criminal charges if they fail to report suspected child abuse.

[View your state's mandated-reporting requirements.](#)



Mandatory reporters do not meet their mandatory-reporting obligation by filing a Title IX report with the school.

Educational Programs and Activities



! Title IX applies to all persons located in the United States, regardless of their citizenship status or legal residency. However, the law does not apply to school-sponsored study-abroad programs outside U.S. borders.

Schools must respond to possible acts of sexual harassment that occur during any academic, educational or extra-curricular program or activity. This holds true regardless of whether the school-sponsored activity or program occurs in a school building, on school grounds, on a school bus or off-site.

Furthermore, Title IX regulations do not distinguish between sexual harassment that occurs in-person and sexual harassment that occurs online. "Program or activity" encompass all school operations, including computer and internet networks, digital platforms, and computer hardware or software owned or operated by the school. Sexual harassment can also be perpetrated by a student using a personal device during class time or during an activity where the school exercises substantial control.

Sexual misconduct perpetrated by a school employee on private property may likewise qualify as harassment. Consider a scenario in which a teacher visits a student's home on the premise of giving a student a book, but the teacher instigates sexual activity. Even though the incident occurs away from school, because the sexual misconduct undermines the basic purpose of the educational system, the teacher's actions may constitute sexual harassment.

Mandatory Response

For every sexual-harassment allegation, there are mandatory steps schools must take, regardless of whether the conduct was intentional or unintentional, and regardless of whether the school has enough facts to determine whether the harassment definitively occurred.

Upon receiving a report of sexual harassment, the school's Title IX Coordinator must promptly contact the complainant to discuss:

- What supportive measures are available for the victim;
- The complainant's wishes with respect to the available supportive measures; and
- The process for filing a formal complaint.



A school must treat an alleged victim as a complainant, even if someone else actually reported the alleged harassment.

Supportive Measures

A school must offer supportive measures to every complainant — even the harassment is only alleged and an investigation does not occur.

Supportive measures are individualized services designed to restore or preserve equal access to education, protect student and employee safety, and deter sexual harassment. Supportive measures should be offered that are age-appropriate, that reflect common sense, and that consider the specific and unique needs of the complainant. The measures must also be non-disciplinary, non-punitive and tailored to fit the situation.



Title IX proceedings are often inherently adversarial. An adversarial process can take an emotional toll on both the complainant and the respondent. A school may opt to offer supportive measures to the respondent as well, but it's not required to do so.

Supportive Measures, continued

Examples of supportive measures include, but are not limited to:

- Offering the complainant a different seating assignment
- Allowing the complainant to take a leave of absence
- Allowing the complainant excused absences so that they can heal from trauma
- Allowing the complainant to retake an examination
- Providing the complainant post-traumatic stress-disorder (PTSD) counseling
- Allowing the complainant to withdraw from a class without consequence
- Allowing the complainant to retake a class
- Extending assignment deadlines for the complainant
- Modifying the complainant's class or work schedules
- Restricting contact between the respondent and the complainant
- Improved monitoring of the situation

To summarize:

- Schools must offer supportive measures to every complainant.
- A complainant does not have to file a formal complaint to receive supportive measures.
- A complainant can decline the supportive measures that are offered.



3 Chapter

Title IX Grievance Process

Topics in this chapter include:

- Formal Complaints
- Dismissal of Formal Complaints
- Informal Resolutions
- Investigations
- Due Process
- Presumption of Non-Responsibility
- Advisor of Choice
- Title IX Personnel
- Evidence
- Inadmissible Evidence
- Evidentiary Standard
- Live Hearings
- Remedies and Sanctions
- The Right to Appeal
- Retaliation

Formal Complaints

A school must begin to investigate a sexual-harassment allegation as soon as a complainant files a **formal complaint**. Signed by the complainant or the Title IX coordinator, a formal complaint is a document requesting that the school investigate the allegation.

Should a complainant choose not to sign a formal complaint, the respondent has the right to refuse to participate in the grievance process. Complainants must never be coerced or threatened into signing, but they must still be offered supportive measures.

The only person who can file a formal complaint other than a complainant is a Title IX coordinator. There may be situations in which a complainant chooses not to file a formal complaint, but safety concerns may lead the Title IX coordinator to file one anyway. For example, a Title IX coordinator may choose to file a complaint if another person has alleged harassment against the same respondent.

Once a formal complaint has been filed, the school must send both the complainant and the respondent written notice. This notice must describe the allegations and explain the grievance process that will be used to investigate and adjudicate the complaint.



Other school administrators may report alleged sexual harassment to the Title IX coordinator and request that an investigation take place. However, the final decision to initiate the grievance process is left to the Title IX coordinator.

Dismissal of Formal Complaints

There are two ways in which a formal complaint might be dismissed. A **mandatory dismissal** occurs if:

- A formal complaint doesn't describe conduct that meets Title IX's definition of sexual harassment;
- A formal complaint alleges sexual harassment that did not occur as part of a school's educational program or activity; or
- A formal complaint describes sexual conduct that did not occur against a person in the United States.

A **discretionary dismissal** may occur if:

- The complainant notifies the Title IX coordinator, in writing, that they wish to withdraw the formal complaint;
- The complainant refuses to participate in the grievance process, but hasn't sent written notice stating their desire to withdraw the formal complaint;
- Specific circumstances prevent the Title IX coordinator from gathering enough evidence to determine responsibility; or
- The respondent is not under the authority of the school. For example:
 - The respondent could be a non-student or a non-employee who sexually harassed a complainant at a school event open to the public.
 - The respondent could no longer be enrolled in the school or employed by the school.

A dismissal of a formal complaint is for Title IX purposes only. A school may still address sexual-harassment allegations under its own code of conduct.



Informal Resolutions

Schools may choose to offer an informal-resolution process — e.g., mediation, arbitration or restorative justice — as an alternative to investigating and adjudicating a formal complaint. Informal-resolution processes may only be offered as an option after a formal complaint has been filed. (Schools are not required to offer informal-resolution processes of any kind.)

Schools are prohibited from:

- Requiring parties to participate in an informal-resolution process;
- Instructing parties to work things out amongst themselves as a strategy; and/or
- Requiring parties to confront each other or be together in the same room.

Due to an imbalance of power, informal-resolution strategies cannot be offered in formal complaints between school employees and students. However, an informal-resolution process can potentially be used to resolve harassment allegations between two employees.

Prior to a resolution being reached, either party may — at any time — withdraw from the informal-resolution process and resume the official grievance process.



All schools must implement a written, consistent, transparent grievance process.

Investigations



If someone is found responsible for sexual harassment, the consequences are serious, regardless of whether the respondent is an employee or a student.

An employee respondent might lose her/his job. And a student respondent might miss out on educational opportunities that could impact her/his future.

Because of the high stakes involved, Title IX personnel must carefully, thoughtfully and reasonably investigate and evaluate each formal complaint. The investigative process involves the following steps:

1. An investigator gathers evidence directly related to the allegations.
2. Both parties present inculpatory and exculpatory facts, evidence and expert witnesses.
3. The investigator summarizes all relevant evidence in an investigative report.
4. Both parties are given equal opportunity to review the investigative report.
5. Both parties are provided the opportunity to submit a written response about the report to the decision-maker.
6. The decision-maker issues a determination of responsibility.

Many of the procedural protections and rights afforded to complainants and respondents are described in the remainder of this course.

Due Process

The Title IX sexual-harassment grievance process contains procedural requirements, rights and protections consistent with constitutional due process.

In public schools, due process is a practical matter that requires — at minimum — both parties being afforded equal opportunity to share their views about the allegation. Employees and students receive the same benefits and due-process protections.

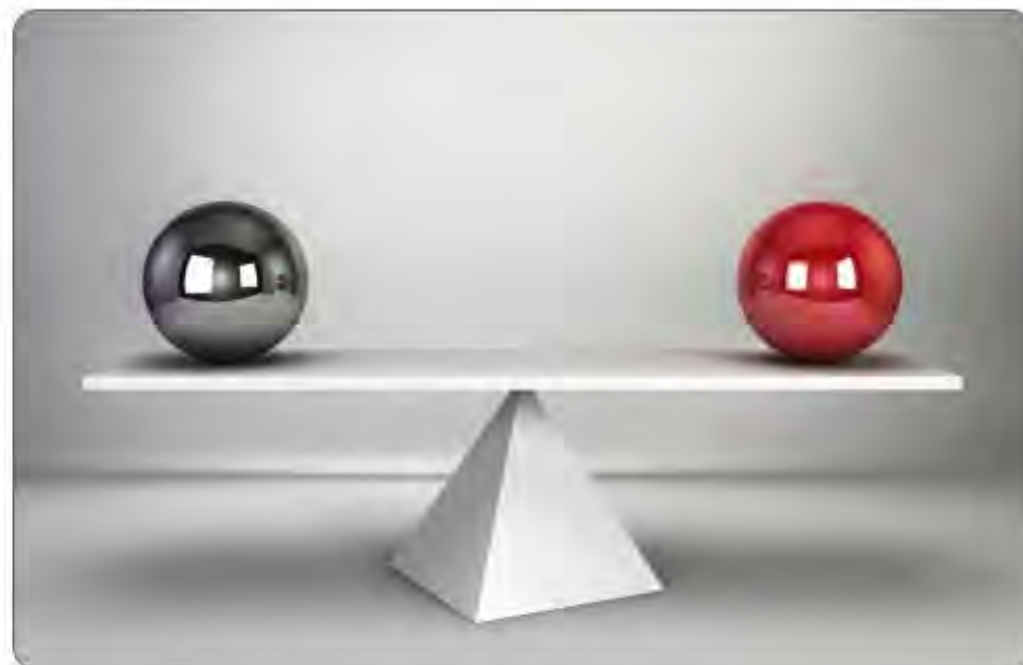


Presumption of Non-Responsibility

Respondents are presumed not to be responsible for any alleged conduct throughout the grievance process. Responsibility for the alleged conduct is only determined after the grievance process has concluded.

Rooted in the same principle that underlies the constitutional presumption of innocence, the presumption of non-responsibility means that:

- Schools should not view complaints with skepticism.
- Schools should not assume respondents are truthful and credible.
- Schools must treat respondents fairly.
- Schools cannot discipline respondents until the grievance process has concluded.



Although a respondent is presumed to be non-responsible for any alleged conduct, emergency measures can be taken to remove a complainant from school if an immediate safety threat exists.

Advisor of Choice

Each party can choose her/his own advisor. An advisor:

- Provides support, advice and assistance throughout the grievance process.
- Can be anyone the party trusts — e.g., a parent, a guardian, a family member, a friend, a teacher, an advocacy-organization volunteer, an attorney, etc.

An advisor does not need to have specialized training because the grievance process doesn't require detailed legal knowledge.



Title IX Personnel



The grievance process requires the collaboration of multiple Title IX personnel:

- A **Title IX coordinator** reports sexual misconduct; contacts the complainant to discuss supportive measures and explain the grievance process; and coordinates the delivery of supportive measures and remedies to the complainant.
- An **investigator** collects evidence related to the allegations; interviews both parties and any witnesses; and summarizes gathered the information in an investigative report. (A Title IX coordinator can serve as the investigator.)
- A **decision-maker** evaluates relevant evidence; issues a written determination stating whether the respondent is responsible for the alleged sexual harassment and explaining the rationale behind that decision; and assigns any necessary remedies and sanctions.

Title IX Personnel, continued

A school may choose to have a single decision-maker, or it may choose to have multiple decision-makers. Although the Title IX coordinator and the investigator cannot serve as a decision-maker, they are allowed to make recommendations regarding responsibility.

Despite their differing roles and responsibilities, all Title IX personnel must:

- Interact with the complainant and respondent impartially and without bias;
- Have no conflicts-of-interest with either party;
- Refrain from making assumptions about either party's credibility or truthfulness; and
- Never pass judgment about the facts of an incident until the grievance process concludes.



Evidence

A fair grievance process requires that both parties have every opportunity to participate equally, fully and meaningfully in the investigation. Both parties may:

- Gather and present inculpatory and exculpatory evidence;
- Present facts and expert witnesses;
- Submit questions to other parties and witnesses;
- Review the evidence gathered; and
- Respond to the investigative report.

The burden of proof — and the burden of collecting impartial evidence sufficient to reach a determination regarding responsibility — rests on the school. Schools cannot shift that burden to a complainant or a respondent.

In addition, schools cannot restrict either party from discussing the allegations being investigated. (In other words, there can be no gag orders imposed.) To do so would restrict a party's ability to gather evidence.



Inadmissible Evidence



Questions and evidence about a complainant's prior sexual behavior are deemed irrelevant, unless:

- The evidence is offered to prove that someone other than the respondent committed the alleged misconduct; or
- The evidence is offered to prove consent. (This mirrors rape-shield protections.)

In addition, a school cannot access, consider, disclose or otherwise use a party's medical- or psychological-treatment records, unless the school obtains voluntary, written consent to do so. This holds true regardless of whether the school already possesses the treatment records, and regardless of whether the records are relevant.

Title IX regulations do not specifically address the admissibility of hearsay, prior bad acts or character evidence.

Evidentiary Standard

A school must notify students and employees in advance about which evidentiary standard will be used during its sexual-harassment grievance process. A school can select either:

- A clear and convincing evidence standard; or
- A preponderance of evidence standard.

Once a standard is chosen, a school must use it for every Title IX sexual-harassment complaint, regardless of whether a respondent is a student or an employee.

A **clear and convincing evidence standard** is a conclusion that a fact is substantially more likely than not to be true. The standard requires sufficient evidence to conclude that the truth of an allegation is highly probable.

A **preponderance of evidence standard** is a conclusion that a fact is more likely than not to be true. The standard is often described as 51% of the evidence favoring a finding of fault.

When applied in a fair manner, either evidentiary standard will help a school reach a reliable outcome.



Live Hearings

A postsecondary institution is required to hold a live hearing that allows for cross-examinations. A K-12 school does not need to hold a live hearing, but each party must be allowed to submit written questions for the other party and witnesses to answer.



Remedies and Sanctions



The grievance process must describe the possible remedies and disciplinary sanctions a school may assign if a respondent is found responsible for sexual harassment:

- **Remedies** — A school may provide the complainant remedies designed to restore or preserve her/his equal access to education.
- **Sanctions** — A school may assign the respondent punitive measures, behavior-modification measures, or some combination thereof. Sanctions assigned to students may be different than those assigned to employees.

Although a school cannot assign sanctions prior to the conclusion of the grievance process, a school can address inappropriate behavior before then. Non-punitive actions designed to intervene quickly and correct inappropriate behavior are not considered sanctions.

Examples of non-punitive actions include, but are not limited to: speaking with a student about her/his inappropriate behavior, referring a student to the office, and/or changing a student's classroom-seating assignment. These simple classroom disciplinary measures can help maintain order, protect students and modify behavior.

The Right to Appeal

Schools must offer both parties the opportunity to appeal a determination regarding responsibility. There are three bases on which an appeal can be made:

- A procedural irregularity that resulted in the failure to evaluate all relevant evidence objectively.
- New evidence that was not previously available.
- A Title IX official's bias or conflict of interest, which affected the outcome of the previous grievance process.

The decision-maker for the appeals process cannot be:

- The Title IX coordinator;
- The investigator; or
- The decision-maker who previously determined responsibility.

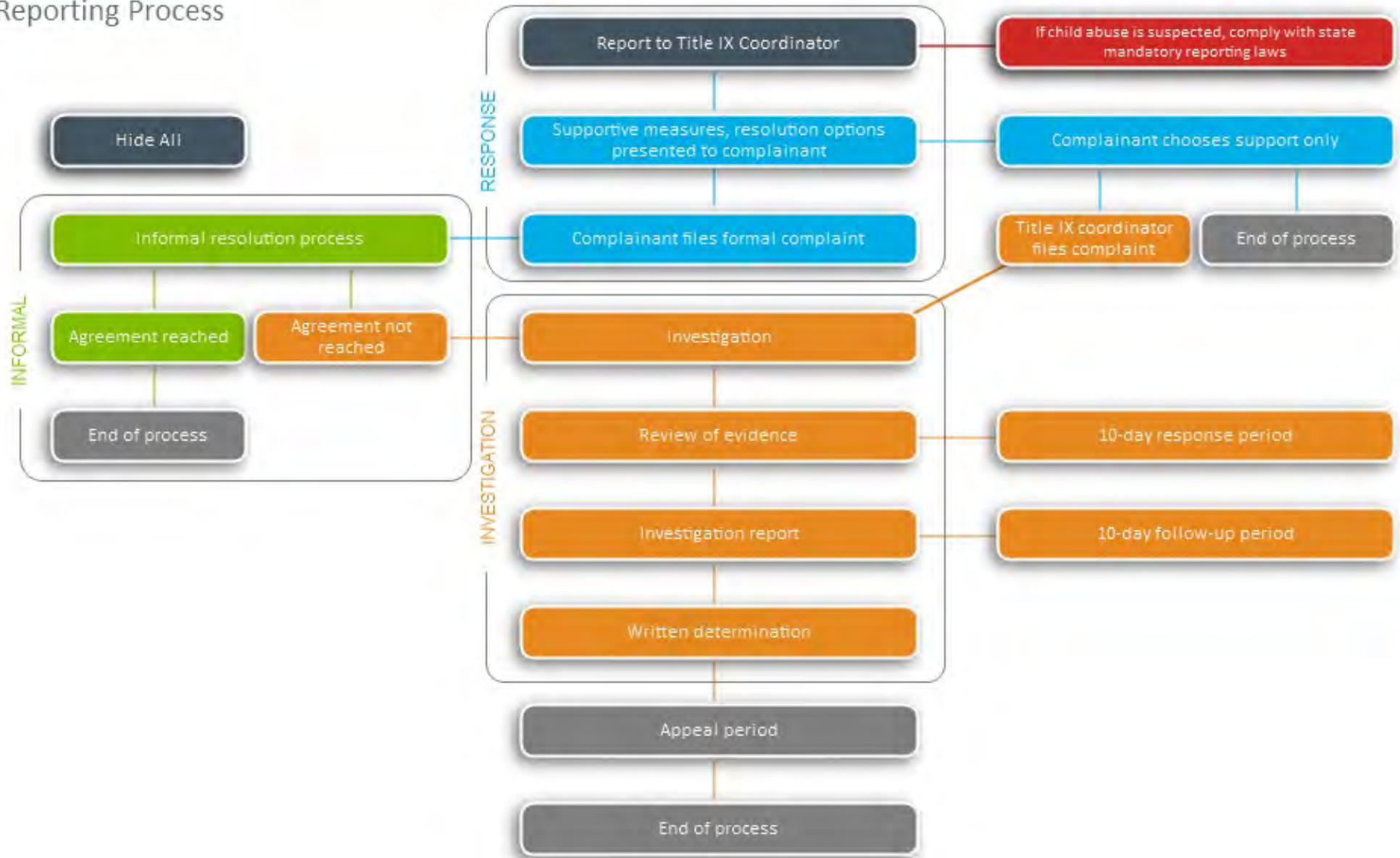


Retaliation

Title IX regulations expressly prohibit retaliation against anyone involved in a report, investigation, proceeding or hearing. Intimidation, threats, coercion and discrimination are all forbidden.



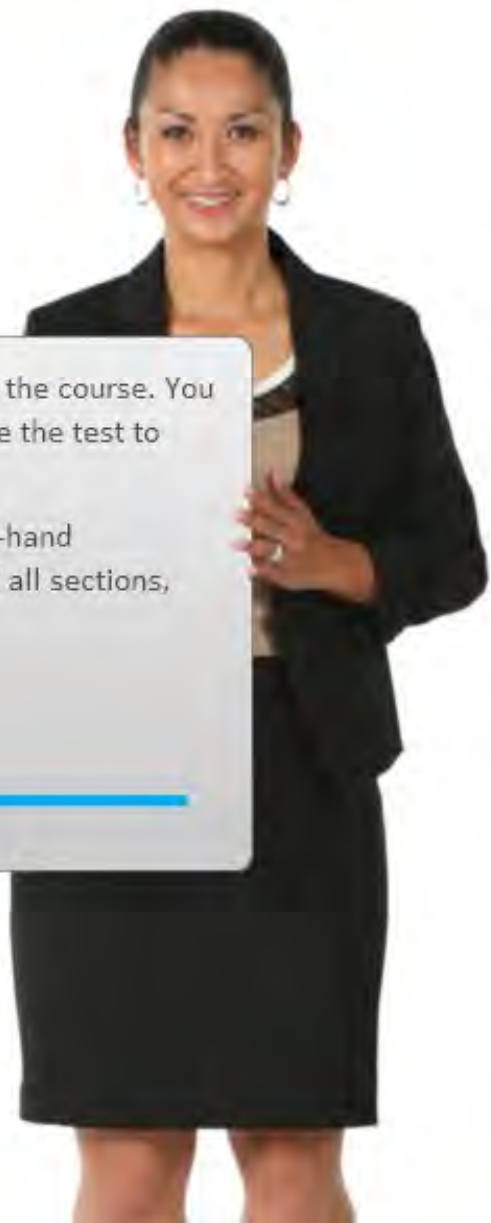
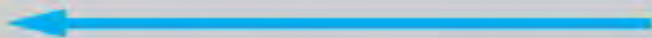
Reporting Process



End of Section

You have completed this section of the course. You must complete all sections and take the test to receive credit for this course.

Click on the next section in the left-hand navigation bar. If you've completed all sections, please click "Take Test."





Title IX: Additional Information
for Coordinators, Investigators
and Decision-Makers

Overview

The first Title IX course you were assigned, **Title IX: Protecting Students and School Employees from Sexual Harassment**, defined sexual harassment, discussed school obligations and outlined the grievance procedure.

This course covers many of same topics in the first course, but takes an even deeper dive into them. The information presented herein comes from the [U.S. Department of Education](#).

This course should be taken prior to the course, "Title IX: How to Investigate and Adjudicate Formal Complaints." In addition to these courses, your district should provide training on the specific policies it has adopted to comply with Title IX regulations.



Objectives

The chapters of this course are:

1. School Obligations under Title IX
2. Title IX Grievance Process



1 Chapter

School Obligations under Title IX

Topics in this chapter include:

- "Deliberate Indifference" Standard
- Title IX Personnel
- Notification
- Supportive Measures
- When Supportive Measures Cannot be Provided
- Unreasonable Burden
- Disciplinary or Punitive Prohibition

"Deliberate Indifference" Standard

When considering sexual-harassment allegations, a school must employ the **deliberate indifference standard**. Alluded to in the first Title IX course, but not stated explicitly, this standard requires that a school treat complainants and respondents equitably during the grievance process. Furthermore, a school should not treat either party differently because of sex-based stereotypes.



Title IX Personnel

As you learned in the first course, a school's **Title IX personnel** include:

- A **Title IX coordinator** who reports misconduct; contacts the complainant; and coordinates supportive measures and remedies;
- An **investigator** who collects evidence and writes the investigative report; and
- A **decision-maker** who evaluates relevant evidence; determines responsibility; and assigns remedies and sanctions.

Title IX personnel might also include:

- Deputy Title IX coordinators;
- People who facilitate informal resolution processes; and/or
- People who process the appeals process.

Districts have some flexibility regarding the number of Title IX personnel they have. For example, a district might have one Title IX coordinator for the entire school system, or a district could have a coordinator at each school building. Schools are also allowed to outsource Title IX investigation and adjudication responsibilities.



Notification

A school must provide the Title IX coordinator's contact information to all students, parents and guardians, school employees, unions, applicants for admission and job applicants. Specifically, these people must be told the coordinator's:

- Name and/or title;
- Office address;
- E-mail address; and
- Telephone number.

The above information must be prominently displayed on the school's website and in each handbook and catalog.

A school must also disseminate its non-discrimination-on-the-basis-of-sex policy and sex-discrimination and sexual-harassment grievance procedures. Although Title IX does not prescribe how this information must be disseminated, it cannot only be posted on the school's website.



Supportive Measures

As you learned previously, a Title IX coordinator must offer every complainant individualized services designed to restore or preserve equal access to education, protect safety and deter sexual harassment. These **supportive measures** must be offered even if the harassment is only alleged, even if the complainant is not the person who reported the sexual harassment, and even if an investigation does not occur.

Other important considerations about supportive measures are listed below:

- A school's grievance process must describe the **range** of supportive measures available to complainants and respondents.
- Because an elementary-school student may not be able to make appropriate decisions regarding supportive measures, her/his parent or guardian may need to be involved in the process.
- Although a Title IX coordinator is responsible for coordinating supportive measures, a school may authorize other officials to help implement those measures.
- A Title IX coordinator may modify supportive measures as circumstances change. For example, a supportive measure might initially prohibit a respondent from directly communicating with a complainant. However, a class-schedule change could then require both students to be in the same classroom. The coordinator might choose to modify the supportive measure so that the two students can be in the classroom at the same time, but require the teacher to seat the students far away from one another.
- At the conclusion of the grievance process, if a respondent is determined to be "not responsible," a school can choose to continue, modify or cease any supportive measures being offered to the complainant, to the respondent, or to both parties.



When Supportive Measures Cannot be Provided

There may be a situation in which a school cannot provide supportive measures. For example:

- A complainant may request supportive measures that are unavailable or inappropriate; or
- A complainant may refuse to accept — or even discuss — the supportive measures offered by the Title IX coordinator.

In such situations, a school must document why it cannot provide supportive measures.



Unreasonable Burden

Schools must carefully craft supportive measures so that they help a complainant, but do not impose an **unreasonable burden** upon the respondent. Supportive measures can impose a reasonable burden on the respondent, however.

For instance, a complainant may want to avoid contact with a respondent while a Title IX investigation is pending. The school should work to make this happen, but in a way that does not put an unreasonable burden on the respondent:

- **Scenario 1** — If the complainant and respondent are in the same section of a class, removing the respondent from the class would be considered an unreasonable burden, especially if the respondent needs the course for graduation. Instead, the school could transfer the respondent to a section of the class offered at a different time. If the class is not offered at any other time, the school could offer the complainant an approved withdrawal from the class, with permission to take it again in the future. If the complainant, like the respondent, cannot withdraw from the class without delaying progress toward graduation, the school could:
 - Implement a **no-contact order** that restricts the respondent from communicating directly with the complainant during class;
 - Counsel the respondent about the school's anti-sexual harassment policy and anti-retaliation policy; and
 - Instruct the teacher to enforce the no-contact order and monitor the situation for further harassment or retaliation.



Unreasonable Burden, continued



- **Scenario 2** — If a complainant and respondent are members of the same team, club or extracurricular activity, removing the respondent from that group would likely be considered an unreasonable burden. Instead, the school could:
 - Implement a no-contact order that restricts the respondent from communicating directly with the complainant during team functions;
 - Counsel the respondent about the school's anti-sexual harassment policy and anti-retaliation policy; and
 - Instruct team coaches, trainers and staff to enforce the no-contact order and monitor the situation for further harassment or retaliation.

Disciplinary or Punitive Prohibition

Supportive measures cannot be disciplinary or punitive to either party. Speaking with a respondent about the school's anti-sexual harassment policy and the school's code of conduct can help modify her/his behavior, but is not considered disciplinary, punitive or an unreasonable burden. Therefore, doing so is an appropriate supportive measure.

Examples of actions that are inherently disciplinary, punitive and/or unreasonably burdensome — so they cannot be used as supportive measures, but can be used as sanctions — include:

- Removing a student from a team, activity or extracurricular program
- Suspending or expelling a student
- Terminating an employee



2 Chapter

Title IX Grievance Process

Topics in this chapter include:

- Formal Complaints
- Written Notice
- Informal Resolutions
- Investigation
- Advisors
- Evidence
- False Statements
- Evidentiary Review
- Gag Order
- Evidentiary Standard
- Investigative Report
- Questions of Relevance
- Evaluating Relevant Evidence
- Determination of Responsibility
- Remedies and Sanctions
- The Appeals Process
- Retaliation
- Reasonable Time Frame
- Recordkeeping

Formal Complaints

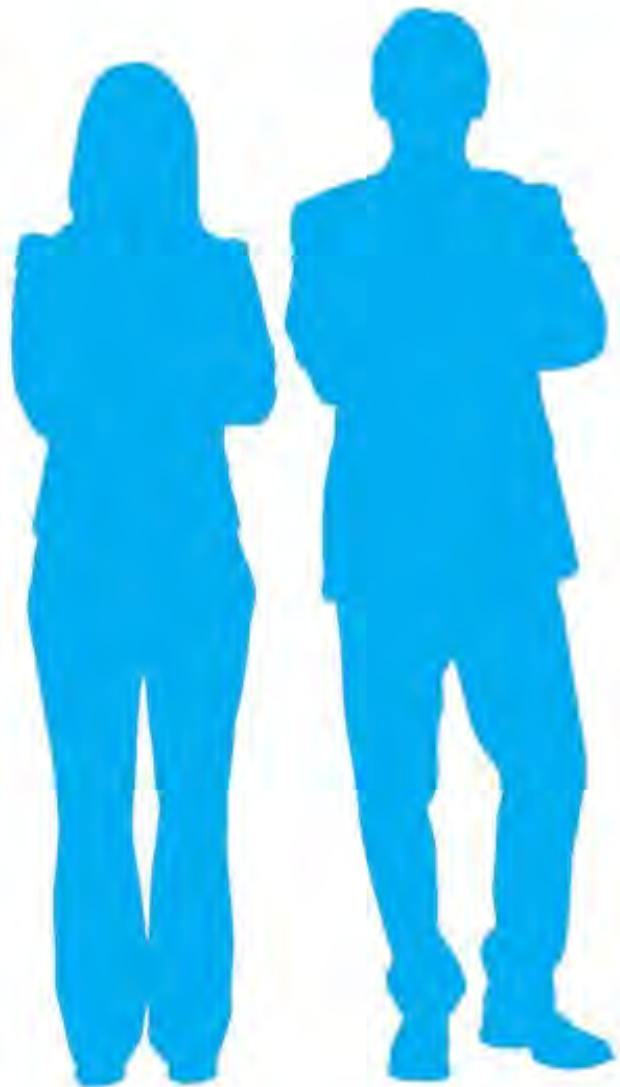
As discussed in the first Title IX course, a **formal complaint** is a written document requesting that the school investigate alleged sexual harassment. A school must investigate and adjudicate an allegation as soon as a formal complaint is filed.

Other important considerations regarding complaints are as follows:

- **The paperwork**
 - A student can only file a formal complaint with a school where s/he is participating in an education program or activity, or where s/he is attempting to participate in a program or activity.
 - A complaint must contain some details of the harassment allegations so that the school can prepare a written notice of allegations.
 - A complaint cannot be filed anonymously. However, a complaint can be filed about a respondent whose name is not known by the complainant.
 - A complaint must contain the complainant's physical or digital signature. If the complainant cannot provide a signature (e.g., because of her/his age or disability), the complaint must otherwise indicate the complainant is the person filing it.
 - A complaint can be filed electronically via email or an online portal. A complaint cannot be filed by telephone.
 - A school cannot refuse to investigate a complaint because of improperly filled-out paperwork. Instead, the school must seek out the complainant to correct any such errors.
 - There is no time limit or statute of limitations during which a complaint must be filed. However, the longer it takes for a sexual-harassment complaint to be filed, the harder it is to collect evidence about the incident in question.



Formal Complaints, continued



- **The complainant's parent or guardian**
 - In an elementary school, a young student's decision about whether to file a formal complaint requires the involvement of a parent or legal guardian. A parent or legal guardian may file a formal complaint on behalf of their child; however, the child is still considered the complainant.
 - The extent to which a school must abide by the wishes of a parent (especially if/when the student and parent disagree) depends on the parent's legal right to act on behalf of the child.
- **The school**
 - A school cannot forgo a formal grievance process, even if it feels the allegations in a formal complaint are without merit or frivolous.
 - A school is expressly forbidden from threatening, intimidating, coercing or discriminating against any complainant for the purpose of interfering with or discouraging her/his right to file a complaint.
 - When there are multiple complainants and one respondent, a school may consolidate the complaints if the allegations result from the same facts or circumstances. However, the school must treat each party as an individual and not as a group.

Formal Complaints, continued 2

- **The Title IX coordinator**

- A Title IX coordinator may help a complainant complete a formal complaint, but may not pressure her/him to do so.
- The only person who can file a complaint are a complainant and the Title IX coordinator; a third party cannot file.
- A Title IX coordinator can decide to sign a complaint only after s/he has contacted the complainant to discuss the availability of supportive measures, considered the complainant's wishes with respect to supportive measures, and explained to the complainant the process for filing a complaint.
- By signing a formal complaint, the Title IX coordinator does not become a party to the grievance process.
- A complainant has the right to refuse to participate in a grievance process. If this is the case:
 - The Title IX coordinator may **decide to sign** a formal complaint against the wishes of the complainant. The school should document the reasons why doing so is not unreasonable and how the school is meeting its responsibility to provide the complainant with a non-deliberately indifferent response. Furthermore, the complainant should still be treated as a party throughout the grievance process and receive all required notifications.
 - The Title IX coordinator may **decide not to sign** a formal complaint because doing so is not in the best interest of the complainant and/or because doing so is not needed to provide a non-deliberately indifferent response.



Dismissal of a Formal Complaint

In the first course, you learned about reasons why a complaint might be subject to **mandatory dismissal** or **discretionary dismissal**. When it comes to dismissals, you should also understand the following:

- School personnel should not dismiss a complaint just because they are unsure they will be able to uncover enough evidence to meet the burden of proof.
- A school may opt to proceed with an investigation even if a complainant asks to withdraw her/his formal complaint.
- If a complaint is dismissed, either party can appeal the dismissal. For example, if an investigation does not yield enough evidence to determine responsibility, a complainant can appeal the dismissal if new evidence is discovered that supports the allegation.



Written Notice

As course 1 discussed, once a formal complaint has been filed, the school must provide both the complainant and respondent written notice, so that they can prepare to participate meaningfully in the grievance process. If the complainant and respondent are students, their parents should receive notice as well.

This written notice **must**:

- Specify the sexual-harassment allegations, including the alleged conduct, the date and time of the incident and the name(s) of the complainant(s). (The complainant's identity cannot be withheld from the respondent once a formal complaint is filed. However, a school is not required to provide the respondent the original complaint document.)
- Explain that each party may choose an advisor.
- Explain that parties are prohibited from knowingly making false statements or submitting false evidence during the investigation, and that making false statements violates the code of conduct. (If the code of conduct does not address submitting false information, then the written notice obviously would not say that doing so is a code violation.)
- Say that both parties will have equal opportunity to inspect and review relevant evidence obtained during the investigation.
- Explain the grievance process, including:
 - What supportive measures are being offered;
 - What standard of evidence will be used;
 - What the "presumption of non-responsibility" means; and
 - What disciplinary sanctions and remedies may be issued when the process concludes.
- Describe what an informal-resolution process is and offer it as an alternative to the grievance process.



Written Notice, continued



The written notice **must not**:

- List personal information about the complainant or the respondent — e.g., birthdates, home addresses, social-security numbers, etc.
- Include any facts unrelated to the allegation.

There is no specific time frame for sending notice. However, the notice should be promptly, so that both parties have time to collect evidence and prepare for interviews.

A school should also provide additional written notice during the grievance process whenever there are significant case developments. For example, the school should notify parties if:

- New allegations and potential violations are uncovered during the investigation;
- Any allegations are dismissed; and/or
- The grievance process must be delayed or extended for any reason.

A school may choose what delivery method it uses when providing written notice.



A school may choose to provide all parties regularly scheduled case updates as well.

Informal Resolutions

You may recall that a school is allowed to craft an optional, informal-resolution process — e.g., mediation, arbitration or restorative justice — providing the process is administered by a well-trained facilitator. You may also recall that a school may offer an informal-resolution process to complainants and respondents as an alternative to Title IX's formal grievance process, or that a school may choose not to offer any informal-resolution process whatsoever.

If a school does offer an informal process, the school must carefully explain:

- What the allegations entail; and
- How the informal-resolution process will work, including:
 - What will be required of the parties;
 - What records will be maintained and shared; and
 - Possible outcomes (e.g., remedies, sanctions, a resolution that may require a confidentiality agreement, etc.)



Informal Resolutions, continued

Neither party can be forced to participate in an informal-resolution process. A school must obtain the voluntary and written consent of both parties before the process begins. Additionally, a school cannot instruct parties to "work things out amongst themselves." The parties cannot be forced to confront one another, or to even be in the same room together.

As stated above, informal-resolution agreements may involve remedies and sanctions. If a party does not believe a proposed disciplinary action is appropriate, s/he can withdraw from the informal-resolution process and resume the formal grievance process.



A school may choose to allow an informal-resolution facilitator to serve as a witness as well. However, that allowance must be clearly disclosed to the parties in the written agreement.

Investigation



Title IX personnel must carefully, thoughtfully, and reasonably evaluate every sexual-harassment complaint through a formal investigation. The steps of the investigative process are as follows:

- An investigator gathers evidence.
- Both parties can present inculpatory and exculpatory evidence and fact and expert witnesses.
- Parties are given the opportunity to review and respond to evidence.
- The investigator summarizes the evidence in an investigative report.
- The parties are given the opportunity to submit a written response to the investigative report.
- The decision-maker issues a written determination of responsibility.

This investigation process applies to all schools, regardless of their size, and to all sexual-harassment complaints, regardless their severity.

Advisors

As you've learned, each party can choose her/his own advisor. An advisor:

- Provides support, advice and assistance throughout the grievance process.
- Can be anyone the party trusts — e.g., a parent, a guardian, a family member, a friend, a teacher, an advocacy-organization volunteer, a union representative, an attorney, etc.

If either party is disabled, s/he may have an advisor, as well as a second person to provide support and assistance throughout the grievance process.

A party's advisor should be fully informed throughout the investigation. Typically, a school should provide advisors evidence for inspection and the investigative report for review. However, a party may request that her/his advisor not receive such information.



Advisors, continued

A school may:

- Opt to copy advisors on all grievance-procedure-related correspondence. A school is not required to copy either advisor on all such correspondence, but if a school copies one advisor, it must copy the other.
- Require advisors to sign a non-disclosure agreement regarding the investigative report and any collected evidence.
- Establish standards of appropriate conduct for interviews, meetings, etc. — as long as the rules apply equally to all participants.

Although Title IX personnel are not allowed to have conflicts of interest with regard to the grievance process, advisors are allowed to have conflicts of interest. For example, an advisor might assist a student during the grievance process, and might also be called as a witness on her/his behalf. However, this conflict of interest may be taken into account by the decision-maker when s/he weighs the credibility and persuasiveness of the advisor's testimony.

Parents and guardians have a legal right to act on behalf of a student in any Title IX procedure. A student may select a parent or guardian as an advisor, or may use a parent or guardian in addition to an advisor. A parent or guardian must be allowed to accompany the student to meetings, interviews and hearings during the grievance process. Furthermore, a parent or guardian must be allowed to act on behalf of the student, just as the student's advisor does.



Evidence



Inculpatory evidence points toward a respondent's guilt. **Exculpatory evidence** is used to prove a respondent's innocence, or to justify her/his actions.

As part of its investigation, a school must collect physical evidence, conduct witness interviews and gather expert testimony (if applicable), even if a complainant is not cooperating with the process. The school must give both parties written notice about evidence-collecting interviews and meetings, so that the parties have sufficient time to prepare and participate. This written notice should list the interview's date, time, location, participants and purpose. Also, the school must provide both parties the opportunity to inspect, review and respond to all evidence.

Evidence, continued

In addition, a school must allow both parties equal opportunity to present their evidence. The school may determine the circumstances under which the parties can do so.

Examples of **admissible evidence** include, but are not limited to:

- Police-investigation files that directly relate to the investigation.
- Legally obtained social-media posts, profiles, videos, etc.
- Academic records relevant to the sexual-harassment allegation. (For example, if a complainant frequently missed classes because sexual harassment, her/his attendance records would be considered relevant.)

Title IX does not discuss standards for authentication of evidence. In addition, Title IX does not specifically reference the admissibility of hearsay, prior bad acts, character evidence, polygraph results, etc. A school may not exclude relevant evidence simply because the evidence may be unduly prejudicial, because it concerns previous bad behavior, or because it speaks to someone's character.




A school bears the burden of proof during the grievance process, but it does not have subpoena power.

False Statements

A school is allowed to take action against a party who makes a materially false statement, in bad faith, during the course of a grievance proceeding. Before taking action, however, a school needs to examine the content, purpose and intent of the false statement, as well as the circumstances under which the statement was made.

Determination of responsibility against a respondent, in and of itself, is not enough to justify punishing the respondent for making a materially false statement, in bad faith.



A school is allowed to take action against a party who makes a materially false statement

Evidentiary Review



As stated, both parties and their advisors must have time to review all evidence **directly related to allegations** so that they may prepare arguments and/or present additional facts and witnesses. In contrast, the investigative report (which will be discussed later in this course) should contain only **relevant** evidence.

"Directly related to the allegation" is a much broader term than "relevant." An investigator **cannot withhold** evidence directly related to the allegations from any party, even if the evidence includes information that is confidential, sensitive or private. However, an investigator **can redact** information from evidence if it is not directly related to the allegations — or if it is otherwise barred from use.

Evidentiary Review, continued

When parties are presented evidence for review, the evidence can either be provided electronically or in hard copy. A school may opt to present evidence via a file-sharing platform that restricts parties and advisors from downloading or copying the information, but the school is not required to do so.

Both parties must be provided at least 10 days to review the evidence and submit a written response to it. A school may opt to give the parties more than 10 days, providing that the grievance process can still conclude within the time frame chosen by the school.

If a grievance process involves multiple complainants or multiple respondents, a school must share the evidence with each person individually.



Gag Order

A school cannot impose a gag order upon the complainant, the respondent or their advisors. This is because:

- A gag order could inhibit the parties' ability to gather and present evidence. And it is important that the parties, not the school, decide who knows about the allegations.
- A gag order could limit the parties' ability to seek emotional support. Emotional support is important because the grievance process stressful, difficult and isolating.
- A gag order could limit the parties' ability to critique the school's handling of the investigation or its general approach to Title IX.

That said, a school can warn both parties not to discuss or disseminate the allegations in a malicious manner that constitutes retaliation or unlawful conduct.

Furthermore, neither party is allowed to discuss the allegations in a way that might constitute evidence tampering (for instance, by attempting to alter or prevent a witness' testimony).



Evidentiary Standard

As you learned in course 1, a school must notify students and employees in advance about which **evidentiary standard** it will always use for sexual-harassment grievances.

Typically, a school may choose whether to use a **clear and convincing evidence standard** or a **preponderance of evidence standard**. However, a school may have already bargained with unionized employees for a particular standard of evidence to be used in misconduct proceedings. Or state law may require that one standard or the other be used.



Investigative Report

After an investigator has collected and reviewed all evidence, s/he must write an investigative report. The purpose of the investigative report is to summarize relevant evidence. An investigator should redact any information or evidence that is not relevant or not being used.

In the investigative report, the investigator may also opt to include:

- The procedural steps s/he took during the investigation
- Her/his recommendations and conclusions

The investigator must allow both parties and their advisors to review the investigate report; that way, they will know what evidence the decision-maker will be using to determine responsibility.



Investigative Report, continued



! A school may opt to allow parties to present new evidence as part of their written responses. If this happens, the new evidence will be considered by the decision-maker when s/he determines responsibility, and cannot be considered grounds for an appeal.

When parties are presented the investigative report for review, the report can either be provided electronically or in hard copy. A school may opt to present the report via a file-sharing platform that restricts parties and advisors from downloading or copying the information, but the school is not required to do so. Per Title IX, the school may not limit parties or their advisors from accessing an investigative report. However, a school may prohibit parties from photographing, copying, saving or disseminating the report.

Parties and their advisors have 10 days to review the report and submit written responses to it. (This 10-day period is separate from the 10-day period they were granted earlier to review the evidence.)

A party's written response provides context for the information already in the investigative report. A school may choose whether to provide each party with the other party's written response. And a school may choose whether to give each party the opportunity to respond to any new evidence presented.

Questions of Relevance

After the school sends the investigative report to both parties, but before a decision-maker determines responsibility, the decision-maker must give each party the chance to submit **questions of relevance**. These are:

- Questions the party wants the other party and/or witness to answer; and
- Challenges about which evidence the investigator classified as relevant and which evidence the investigator deemed irrelevant.

A minor (i.e., a student under the age of 18) has the right to have a parent help pose questions and craft answers. Title IX regulations do not specify whether a parent writing out questions and answers on behalf of her/his child must consult the student. However, there are other laws that stipulate to what extent a parent can legally act on behalf of her/his child.



Questions of Relevance, continued

To ensure that questions of relevance are posed in a respectful manner, without profanity or ad-hominem attacks, a school may opt to adopt rules of decorum.

After reviewing the parties' questions of relevance, the decision-maker must determine whether s/he should consider any of this additional information when determining responsibility.



To avoid self-incrimination, a respondent may choose to remain silent when being asked a question. If a respondent chooses to remain silent and not answer questions, the decision-maker must not assume the silence implies guilt or responsibility.

Evaluating Relevant Evidence



After an investigator sends her/his investigative report to the decision-maker, the investigator's job is done and the decision-maker's job begins. The decision-maker must:

- Objectively evaluate the relevant evidence.
- Decide whether the school has met its burden of proof.
- Determine whether the respondent is or is not responsible for the alleged sexual-harassment. (Although the Title IX coordinator and investigator are allowed to offer the decision-maker recommendations regarding responsibility, the decision-maker must base her/his determination on the evidence review and not on the recommendations.)

A school can adopt rules for how a decision-maker should weigh and evaluate evidence, providing those rules apply to both parties. Title IX does not require corroborating evidence. The law only requires that a decision-maker evaluate evidence relevant to the case.

Evaluating Relevant Evidence, continued

One big challenge with Title IX proceedings is that they often involve allegations with competing plausible narratives and no eyewitnesses. In fact, in some cases, the only evidence that exists is the testimony of the parties themselves.

Neither decision-makers nor investigators should make assumptions about someone's credibility based solely on whether that person is a complainant or a respondent, or whether that person is a student or a teacher. Such assumptions can interfere with one's ability to evaluate a situation objectively.



Determination of Responsibility



The decision-maker must prepare a written **determination of responsibility**. The written determination must include the following:

- A description of the initial sexual-harassment allegation.
- The procedural steps taken by Title IX personnel during the grievance process — from the receipt of the formal complaint to the determination of responsibility.
- The facts and evidentiary basis that led to the decision-maker's determination.
- How the school's code of conduct applies to the facts of the case.
- A determination of responsibility that finds the respondent responsible or non-responsible for the sexual harassment.
- A statement about whether remedies will be provided to the complainant, and an explanation about those remedies will restore or preserve equal educational access.
- A list of disciplinary sanctions that will be assigned to the respondent. A school may craft a unique sanction specifically designed to address the circumstances surrounding a particular complaint — as long as the unique sanction falls within the school's standard range of sanctions.
- A description of the appeals process and acceptable bases for filing an appeal.

Determination of Responsibility, continued

The written determination must be sent simultaneously to both parties. If multiple complaints were consolidated into one formal complaint, a school can issue them the same written determination of responsibility. If there is more than one complainant and one respondent but the complaints were not consolidated, then each complainant should receive a written determination that addresses only that complainant's formal decision.

This written determination becomes final only after the time period to file an appeal has expired. (If an appeal is filed, the parties will receive a new written determination of responsibility.)



Remedies and Sanctions

When a respondent is not found responsible for sexual harassment, remedies are not provided to the complainant.

However, when a respondent is found responsible for sexual harassment, the school must provide remedies to preserve or restore equal access to education. These remedies may include the same supportive measures provided throughout the grievance process. The complainant should communicate to the Title IX coordinator what remedies are needed, and the coordinator must ensure the remedies are implemented.

In addition, a school may issue sanctions (e.g., behavior-modification tools and/or punitive disciplinary measures) to a respondent found responsible for sexual harassment.


Sanctions assigned to the respondent may occasionally overlap with remedies provided to the complainant. For example, a school may impose a unilateral no-contact order on the respondent.

Title IX does not require any particular remedies or sanctions, and leaves such decisions to the school.



The Appeals Process



 The constitutional prohibition of double jeopardy does not apply in Title IX proceedings.

Course 1 cited three bases on which a party can appeal a decision-maker's determination of responsibility:

- A procedural irregularity that resulted in the failure to evaluate all relevant evidence objectively.
- New evidence that was not previously available.
- A Title IX official's bias or conflict of interest, which affected the outcome of the previous grievance process.

A school may opt to allow additional grounds for appeal. For example, a school could decide that the severity of sanctions is an appropriate basis for an appeal.

Supportive measures (e.g., mutual no-contact orders, academic course adjustments, etc.) may remain in place throughout the appeals process.

The appeals process should be completed in a reasonably prompt time frame. A school must provide both parties a new written determination of responsibility and explain why that decision was made.

Retaliation

Title IX regulations expressly prohibit retaliation against anyone involved in a report, an investigation, a proceeding or a hearing. Using any means of communication a school deems appropriate, the school should let parties know that:

- Retaliation is prohibited.
- If they are retaliated against, they may file a complaint using the grievance procedures for sex discrimination.
- If they retaliate against someone else, they will be punished.

Examples of retaliation include:

- Charging someone with a code of conduct violation to interfere purposely with her/his rights under Title IX.
- Implementing "supportive measures" designed to penalize and discourage the complainant from exercising her/his Title IX rights.
- Threatening to take immigration action to interfere with any right or privilege under Title IX.
- Unnecessarily exposing the identity of — or leaking information about — anyone involved in Title IX proceedings.



Engaging in protected speech under the First Amendment does not constitute retaliation.

Reasonable Time Frame



A school must respond to a sexual-harassment allegation within a **reasonable time frame**, and must ensure the grievance process takes place as quickly as possible. Forty-five (45) to 60 days is a realistic time frame for the entire process. A school can define a "day" as a calendar day, a school day, a business day, etc.

A short-term delay is only permissible if it is based on "good cause," such as concurrent law enforcement activity.

Recordkeeping

Under Title IX, a school must maintain records about every sexual-harassment investigation — even investigations where no determination was made because the formal complaint was dismissed. A school must keep these records for at least seven years.



Summary

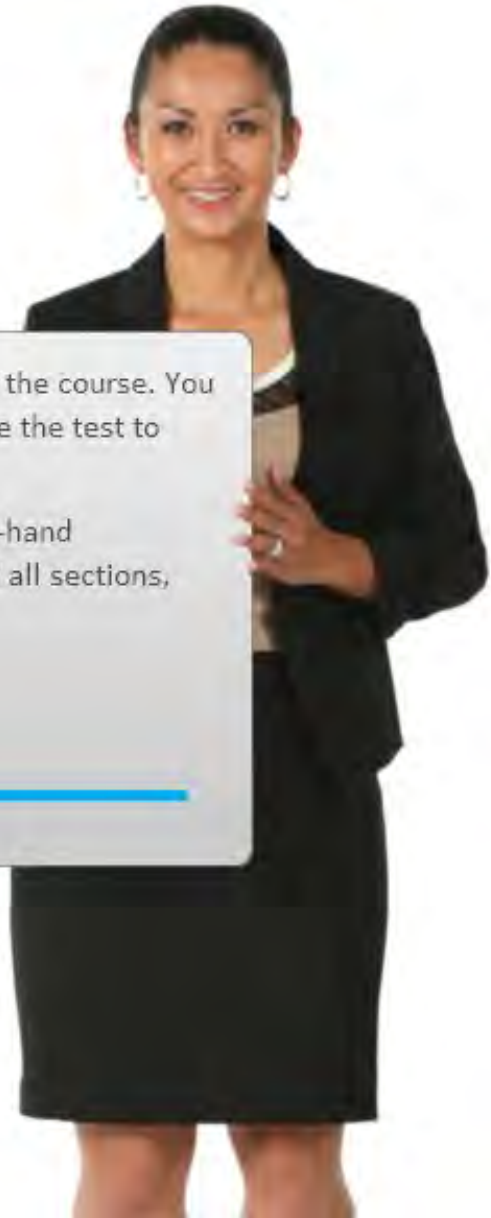
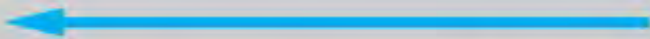


Title IX is by no means the only remedy for addressing sexual conduct. Nothing in the law precludes a school from vigorously addressing misconduct that occurs outside the scope of Title IX. Similarly, nothing prevents a school from offering supportive measures to students and employees traumatized by sexual misconduct.

End of Section

You have completed this section of the course. You must complete all sections and take the test to receive credit for this course.

Click on the next section in the left-hand navigation bar. If you've completed all sections, please click "Take Test."





Title IX - How To Investigate And Adjudicate Formal Complaints

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Overview

The first Title IX course you were assigned, **Title IX: How the Act Protects Students and School Employees from Sexual Harassment**, defined sexual harassment, discussed school obligations and outlined the grievance procedure.

The second Title IX training you took — **Title IX: Additional Information for Title IX Coordinators, Investigators and Decision-Makers** — covered many of same topics in the first course but took an even deeper dive into them.

This course — intended for Title IX coordinators, investigators, decision-makers and appeals decision-makers — has two sections. Section 1 discusses how to:

- Be sensitive to the effects of trauma;
- Conduct an investigation, collect evidence and conduct interviews;
- Consider relevancy, credibility and the weight of evidence; and
- Apply a standard of evidence.

Section 2 explains how to:

- Serve impartially by avoiding conflicts of interest, bias and sex-based stereotypes;
- Recognize and address implicit bias.

In addition to these three courses, your district should train you on the specific policies and guidelines it has adopted to comply with Title IX.



Objectives

The following course provides an overview of school responsibilities and the grievance process pursuant to Title IX of the Education Amendments of 1972. It is not offered as legal advice. Anyone involved in the investigation and resolution of Title IX complaints should seek counsel for any legal questions.

The chapters of this course are:

1. Title IX Investigations
2. Evidence
3. Searches & Student Rights
4. Interviews
5. Review of Evidence & Investigative Report
6. Response to the Written Response
7. Making a Final Determination
8. Appeals
9. Conflicts of Interest & Transparency
10. Schemas, Stereotypes & Bias
11. How to Minimize Bias



1 Chapter

Title IX Investigations

Topics in this chapter include:

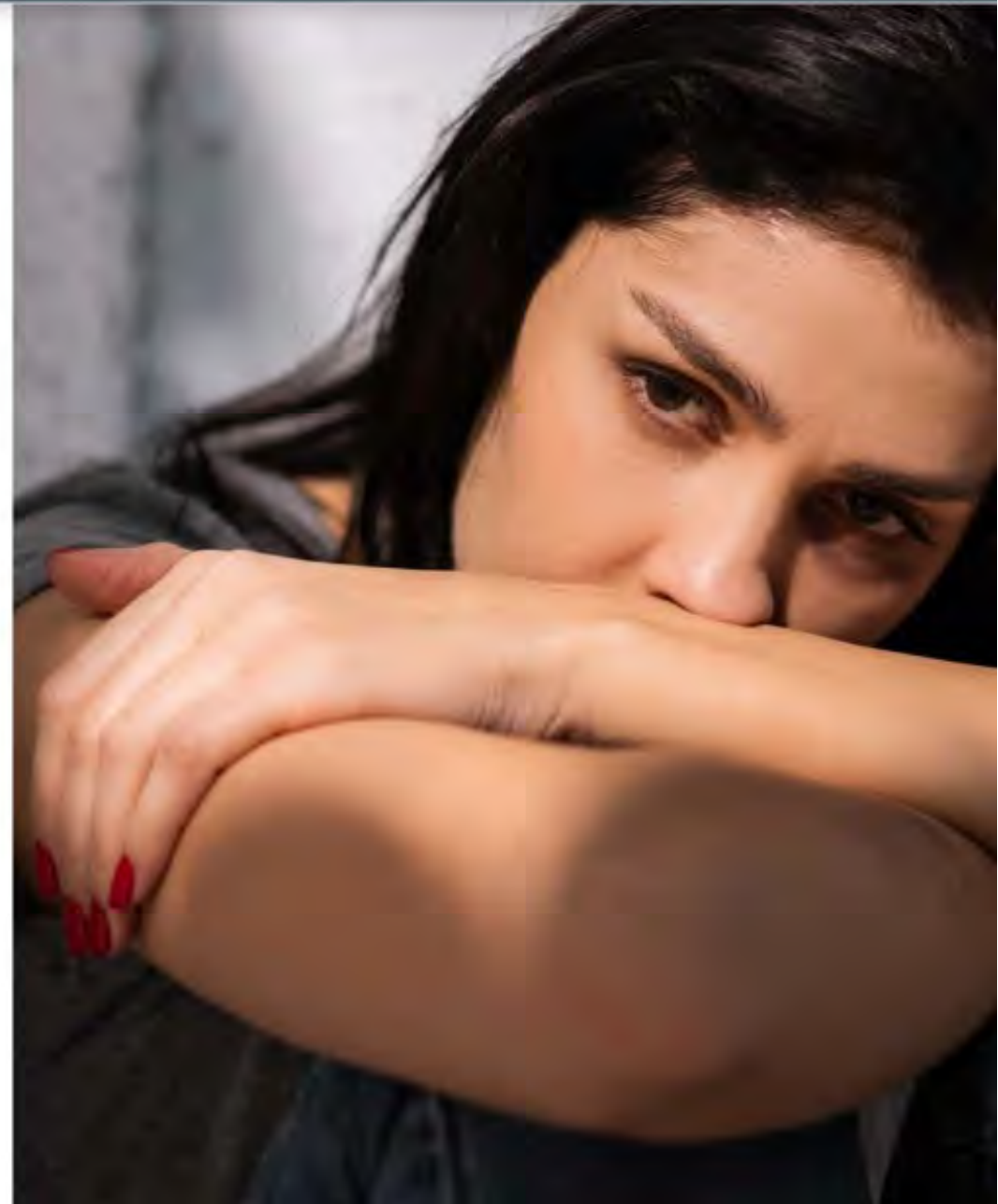
- Trauma-Sensitive Investigative Approach
- Formal, Organized, Careful Investigative Process
- Who, Where and What to Investigate
- Chain of Custody
- Investigation Scope vs. Time Frame
- Other Investigative Agencies May Impact Time Frame

Trauma-Sensitive Investigative Approach

Stalking, sexual assault, sexual violence and harassment can result in trauma.

During a traumatic experience, the body often releases a surge of chemicals. These chemicals can impact one's fight-or-flight response, which explains why some people freeze during an assault and don't attempt to escape or fight back.

These chemicals can remain in someone's body for up to four days and can affect an individual's emotional state.



Trauma-Sensitive Investigative Approach, continued

Someone who is traumatized may seem flat or disinterested and may even laugh at inappropriate times. While natural and uncontrollable, these responses can undermine the person's credibility when they're interviewed about the harassment they experienced.

Someone who has suffered extreme trauma may also:

- Have impaired, distorted, delayed and/or incomplete memories
- Remember an experience in discrete snapshots, rather than in one cohesive, linear timeline
- Recall false details
- Take more than six months for their brain to make sense of the traumatic memories

During a Title IX investigation, it's crucial that you and your fellow Title IX personnel be sensitive to a complainant's trauma and how it can impact their behavior. Also be aware that other participants in the Title IX process may have experienced trauma related to — or unrelated to — the complaint being investigated.

To ensure an impartial grievance process, treat all participants with dignity and respect.



Formal, Organized, Careful Investigative Process



! Title IX neither requires nor recommends specific investigative techniques. Schools are given the flexibility to choose investigative procedures that fit their unique needs.

As you've learned in previous Title IX courses, a school is obligated to investigate a formal complaint and search for evidence related to the allegation. Although the school bears the burden of proof, both parties may gather and present evidence and testimony.

A school must never investigate a Title IX sexual harassment complaint in an informal, haphazard or negligent manner. A thorough investigation is important because:

- It helps the school reach an accurate determination of responsibility; and
- It may eventually be subject to the scrutiny of a civil or criminal trial.

In fact, if an incident does result in legal action, you and your fellow Title IX personnel may have to provide outside attorneys every document related to your investigation. You may also be called to testify.

Who, Where and What to Investigate

If you serve as a Title IX investigator, you must collect and compile all evidence that directly relates to a complaint's allegations, regardless of whether you personally believe the evidence to be relevant, credible or important.

The information contained in the formal complaint serves as your starting point when determining:

- **Whom to interview** — In addition to interviewing complainants and respondents, you should speak with anyone who has first-hand knowledge of the incident. Ask each interviewee to describe what happened, in detail. Ask follow-up questions, when appropriate. And ask each interviewee to identify other potential respondents and witnesses. Your interviewees' answers will guide your next investigative steps.
- **Where to look for physical evidence** — Visit the site where the incident is alleged to have taken place. Some sites' physical layout may support the allegation; other sites' physical layout may cast doubt. For example, a site may or may not be visible to potential witnesses.
- **What documents to collect** — Document every aspect of your investigation, including its timeline. Enter all information into an investigative file and keep the file at a secure location. The file should be updated regularly, so that another person can assist with the investigation — or take it over, if necessary.



Chain of Custody

Create a chain of custody for all evidence you collect. Document:

- When and how each piece of evidence was collected;
- The names of anyone who accesses the evidence and why they're doing so; and
- The date and time any transfer of evidence takes place.



Only people who truly need to know about the evidence should have access to it.

Investigation Scope vs. Time Frame



An investigation may grow and evolve as new facts about an allegation are uncovered. The depth of an investigation should be tempered by the need to complete the grievance process within a reasonably prompt time frame. You may limit the scope of an investigation by excluding issues that are undisputed or that have been previously investigated.



You and your Title IX colleagues should seek advice from your school's legal counsel throughout the grievance process.

Other Investigative Agencies May Impact Time Frame

Because a school's Title IX obligations are separate and distinct from any other concurrent investigation, some sexual-harassment allegations may be investigated by multiple agencies simultaneously. For example, alleged sexual abuse may be investigated by the school and Child Protective Services. And alleged criminal sexual misconduct may be investigated by the school and law enforcement.

Even if law enforcement is investigating the sexual assault of a student by a school employee, a school must adhere to Title IX's grievance process. The school cannot defer its own investigative responsibilities to the police.

That said, a concurrent law-enforcement investigation may justify short-term delays or limited extensions of the school's investigation.

A time delay or extension can only be implemented after both parties have received initial written notice. Concurrent law enforcement activity is not sufficient cause for delaying the written notice itself.



If law enforcement provides the school information that directly relates to a sexual-harassment allegation, the school must provide that evidence to both parties for inspection and review.



2 Chapter Evidence

Topics in this chapter include:

- Categories of Evidence
- Types of Evidence
- Title IX Evidentiary Rules
- Evidence that's not Admissible
- Rape-Shield Protection

Categories of Evidence

Evidence is the vehicle through which allegations are proved or disproved. The type and extent of evidence differs for every investigation. Categories of evidence include:

- **Inculpatory evidence** points toward a respondent's guilt.
- **Exculpatory evidence** can prove a respondent's innocence or justify their actions.
- **Direct evidence** links a respondent to the allegations without any need for inference. One common type of direct evidence is eyewitness testimony.
- **Circumstantial evidence** implies a fact without proving it. For example, a witness might not have seen a respondent committing a crime but might have observed the respondent fleeing the scene of the crime.



Types of Evidence

Types of evidence include:

- **Physical evidence** — Any material or object that: (1) establishes that a crime was committed; (2) creates a link between a crime and its perpetrator; or (3) creates a link between a crime and its victim. Physical evidence can help confirm a participant's testimony. Crime scenes are searched for physical evidence such as blood, weapons, footprints, damaged property, etc.
- **Trace evidence** — Comes from contact between: (1) a person and an object; (2) two people; or (3) two objects. Trace evidence includes forensic evidence, such as DNA, fingerprints, hair strands, fibers, etc.
 - If a sexual assault has occurred, a Title IX coordinator should discuss with the complainant the option of a medical exam. During an exam, a medical professional can work to recover and preserve forensic evidence, such as blood, semen, saliva, etc. Ideally, an exam should take place as soon as possible; the likelihood of recovering forensic evidence greatly diminishes 72 hours after an assault.
- **Documentary evidence** — Includes photographs, seating charts, attendance records, discipline records, personnel files, emails, computer-access logs, social-network pages and text messages. Documentary evidence submitted by Title IX participants should be verified for authenticity.



Types of Evidence, continued



- **Digital evidence** — Any information found on a computer hard drive, a cell phone, a flash drive, etc.
 - Consult with IT experts and legal counsel to ensure all digital evidence is properly and legally extracted, catalogued and stored. Various programs are available to assist with this task.
 - As a school employee, you must never print, copy or transfer sexually explicit photos onto school or personal devices — even as part of an investigation you're conducting. Possessing, distributing and producing child pornography are felonies under state and federal laws. It's much safer for you to describe — in writing — any salacious photographic evidence you uncover.
- **Testimonial evidence** — A statement made by a party or a witness. In courts, testimonial evidence is given when a witness is called to speak under oath. Types of evidence that help corroborate testimony include:
 - Telling someone else about the incident;
 - Writing about the incident in a diary;
 - Behaving differently (e.g., avoiding the respondent, withdrawing socially, changing one's physical appearance, etc.); and/or
 - Corresponding with the respondent about the allegations.

Types of Evidence, continued 2

- **Hearsay evidence** — A statement made by a third party.
- **Expert witnesses** — Testimony from someone in their area of expertise.
- **Character evidence** — Testimony that describes a person's positive or negative character traits. Character evidence might include proof that a person engaged in past bad behavior.
- **Habit evidence** — Shows that a person has a habit, routine or practice that is similar to, connected to, or otherwise related to some aspect of the allegation. Habit evidence can demonstrate how a person is likely to act in certain situations; it may be relevant if those situations are similar to the allegation at hand.
- **Incriminating behavior** — May show that someone behaved as if they had a guilty conscience or something to hide with regard to the allegation. Examples of incriminating behavior include:
 - A respondent taking flight after an alleged act of harassment
 - A person intentionally destroying or suppressing evidence
 - Someone manufacturing false or fake evidence
 - One party threatening the other party
 - Someone threatening a witness

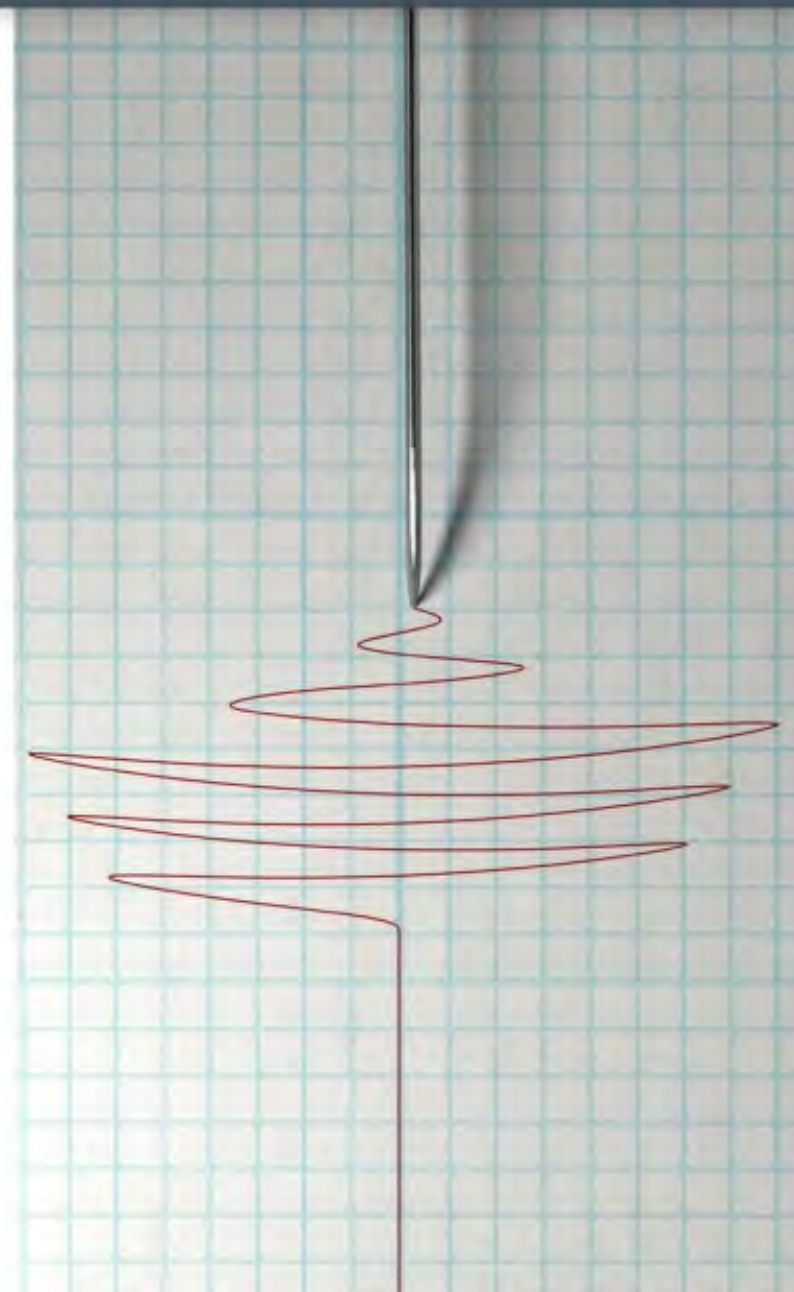


If any person is threatened or retaliated against by another party, they can file a complaint with the school. The school must have procedures in place for a prompt and equitable resolution.

Title IX Evidentiary Rules

Civil and criminal courts have a detailed, complex set of rules for collecting, authenticating and handling evidence. Title IX's evidentiary rules are created for the school environment, so they're not nearly as complicated:

- Both parties must have equal opportunity to locate and present evidence.
- A school can define the circumstances in which the parties may offer or present evidence.
- A school should neither encourage nor discourage either party from gathering and presenting evidence that furthers their own best interest.
- Because Title IX has no authentication standards for evidence, any evidence presented does not need to be supported or corroborated by other evidence.
- A school may not adopt rules to exclude evidence whose probative value is substantially outweighed by the danger of unfair prejudice. (Probative value describes the ability of evidence to prove something that is material to a crime.) For example, a school may not adopt rules that exclude:
 - Evidence that may be unduly prejudicial
 - Evidence of previous bad behavior
 - Character evidence
 - Lie-detector test results
 - Rape kits



Evidence that's not Admissible



! A school is allowed to use and disclose academic records, but only if the records directly relate to the allegation at hand. For example, if a student alleges they were sexually harassed by a school employee while on a field trip — and there is testimony that one of the parties was not on that trip — then the attendance record for that field trip can be submitted as evidence.

Information protected under a legally recognized privilege is not allowed as evidence without the party's voluntary, written consent. This applies to the party's medical, psychological, counseling and similar records — even if that information is already part of a student's official education record.

Similarly, a school cannot release any information from an Individualized Education Plan (IEP) or Section 504 Plan — even if information in the plan directly relates to the allegation at hand. The only way such information is admissible is if:

- A party offers up their own IEP or Section 504 plan as evidence; or
- A party consents to the school's using the IEP or Section 504 plan as evidence.

If one of these situations arises, the opposing party then has the right to inspect and review this evidence as it directly relates to the allegation. (This does not apply to information shared for the purpose of grievance-procedure disability accommodations.)

Rape-Shield Protection

Title IX includes **rape-shield protection** for complainants. In other words, all questions and evidence about a complainant's sexual history and/or sexual behavior are deemed irrelevant unless:

- The evidence is offered as proof that someone other than the respondent committed the alleged act; or
- The question or evidence is offered to prove consent.

Because a significant number of sexual assaults are committed by intimate partners, the first exception listed above is not a common defense.

The second exception above does not allow a complainant's past sexual encounters with the respondent — or with anyone else — to be presented as evidence. In other words, a respondent cannot imply that a complainant's extensive sexual history means the complainant probably consented to sexual activity. Past sexual encounters are irrelevant when it comes to consent because consent can only be given in the particular moment.



Rape-Shield Protection, continued

Outside of consent, Title IX does not allow questions about whether conduct was "welcome." All that's needed to prove that conduct was unwelcome is for a complainant to say it was unwelcome.

Title IX does not provide rape-shield protection to respondents, unless an incident involves counterclaims between two parties. In such situations, both parties are simultaneously complainants and respondents, so rape-shield protection is afforded to both individuals.



Under Title IX, a school must adopt a definition of consent that decision-makers can understand and apply. Many schools adopt the definition of consent used by their state.

3 Chapter

Searches & Student Rights

Topics in this chapter include:

- Searching a Student's Belongings
- Searching a Student's Personal Electronic Devices
- Searching School Property
- Searches by Law Enforcement

Searching a Student's Belongings

The Fourth Amendment of the U.S. Constitution protects individuals against unreasonable search and seizure. The U.S. Supreme Court has held that students have a reasonable expectation of privacy while at school. However, a student's privacy rights are more limited than an adult's privacy rights.

Generally, public-school officials cannot search a student or a student's personal belongings unless they have **reasonable suspicion** that:

1. The student has broken a school rule or has violated the law; and
2. The search will reveal evidence of wrongdoing.



Searching a Student's Belongings, continued



! Searching a student's body via a pat down is much more intrusive than searching a student's belongings. Thus, a school must meet stricter standards before it can legally pat down a student. (Conducting a strip search is almost never justifiable.)

Other points worth noting:

- Title IX does not define "reasonable suspicion," although "reasonable suspicion" presumably involves more than just a hunch or a rumor.
- Searches cannot be arbitrary or discriminatory. An anonymous tip isn't usually enough to justify a search unless the tip can be corroborated.
- The extent of a search must be related to its purpose and must not be "excessively intrusive."
- A student's age — and the severity of the student's alleged wrongdoing — should be factored into how a search is conducted.
- Schools have more leeway to search a student's belongings when a situation is potentially dangerous (e.g., there's a weapon involved).
- School officials may ask a student's permission to search through their belongings — even in the absence of reasonable suspicion. However, the student has the right to refuse the search. Any evidence found during a voluntary search can be used during disciplinary or legal proceedings.

Searching a Student's Personal Electronic Devices



Searching a student's personal electronic device involves privacy issues that are far more sensitive than those pertaining to the search of a student's backpack or purse. This is because smart phones, tablets and laptops often contain highly personal, sensitive information.

The question of when school officials can search electronic devices is a developing area of law. If you believe a student's phone might contain pictures, text or data directly related to a sexual-harassment allegation, consult a legal expert to make sure your search of the device is conducted legally.

Searching School Property

Students have less of a reasonable expectation of privacy when it comes to school property. For the most part, desks, lockers, computers, online accounts and other school-owned materials can be inspected by school officials at any time. This is especially true if students are provided advance notice of the school's right to search.



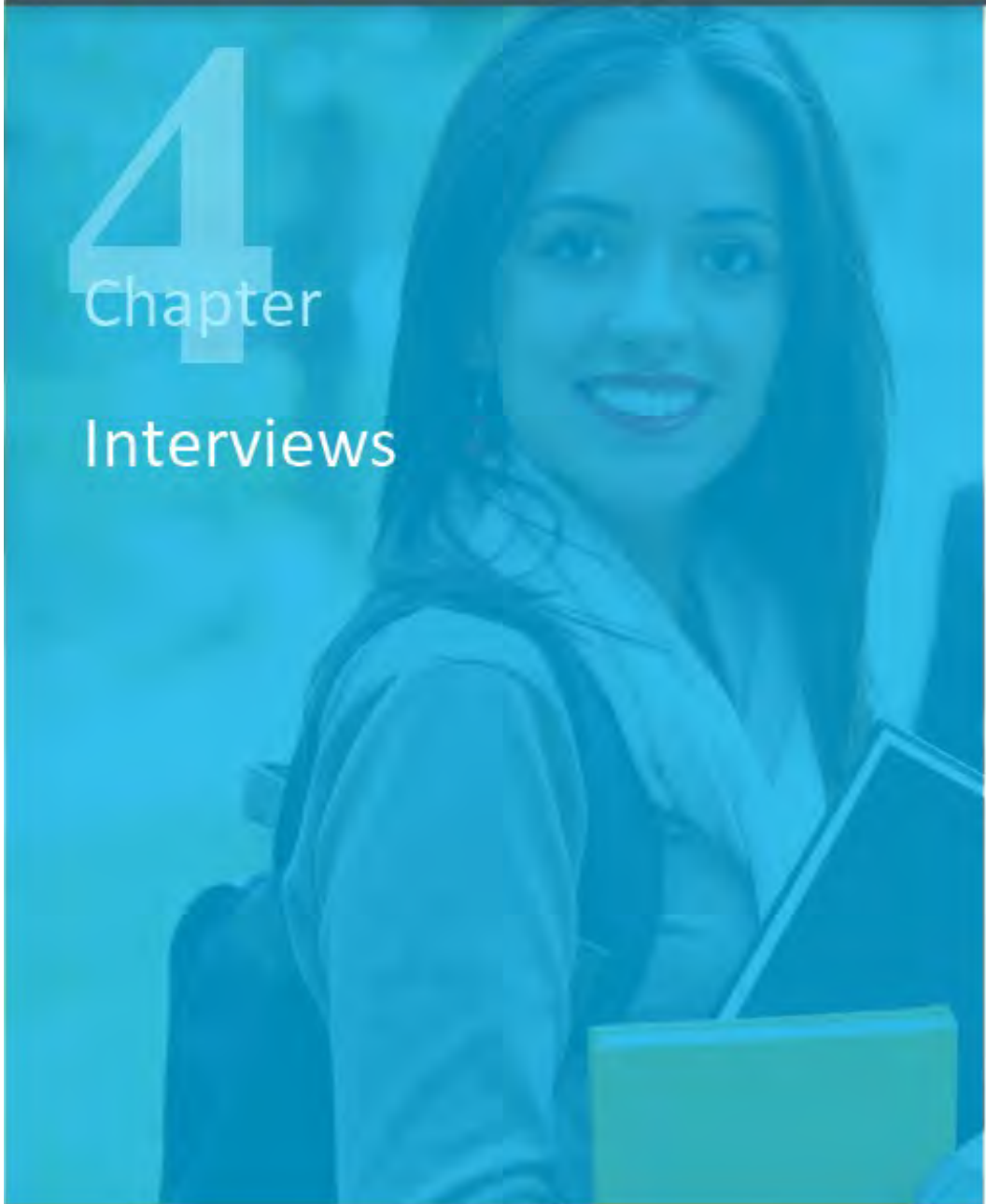
Searches by Law Enforcement

As stated, a school need only "reasonable suspicion" to search a student's belongings.

Law-enforcement personnel, however, must adhere to a stricter standard before they can search a student's thing. Unless there's an emergency situation, law enforcement must have **probable cause** or a **search warrant**.



Some courts have ruled that school resource officers are like school staff, so they only need "reasonable grounds" to search student belongings. Other courts have ruled that school resource officers are like law enforcement, so they must have "probable cause" before conducting a search.



4 Chapter Interviews

Topics in this chapter include:

- Students' Rights
- The Purpose of an Interview
- Interviewing Young Children and Teens
- Interviewing LGBTQ Individuals
- Interviewing Persons with Disabilities
- Interviewing Persons from Other Cultures
- Interviewing Survivors of Trauma
- Building Rapport with an Interviewee
- Starting the Interview
- Continuing the Interview
- Interview Do's
- Interview Don'ts
- Honesty

Students' Rights

School officials have the right to detain and question students, as long as the questioning is not arbitrary or a form of harassment. Any information a student provides school officials can be used against them in a school-discipline case, a sexual-harassment grievance procedure or a legal proceeding.

If and when law enforcement is involved in the questioning of a student, however, things change.

Law enforcement must inform someone of their rights before they're interrogated while in custody. Generally speaking, a person is considered in custody when they don't feel free to leave the setting.

When police officers question a student in school, the situation is likely to be considered custodial. Thus, law enforcement must inform a student of their Miranda rights prior to the interview.



Students' Rights, continued

A minor who understands their Miranda rights has the right to waive those rights and proceed with the interview. However, courts often frown upon any situation where law enforcement interrogates a student at school without a parent present. This is especially true if a student's age or developmental ability make it difficult for them to understand the concept of Miranda rights.



School personnel do not have to read a student Miranda rights unless the school is questioning the student on behalf of law enforcement or *with* law enforcement.

The Purpose of an Interview



You and your Title IX colleagues must conduct professional, effective, trauma-sensitive interviews with students and adults of all ages — from five-year-old kindergarteners to 65-year-old superintendents.

The purpose of an interview is to collect information. It is not to obtain a confession. And it is not to test whether a complainant's allegation can withstand intense scrutiny.

In this chapter of the course, as we discuss interviews, we'll use the term "**subject**" when referencing the person being interviewed — regardless of whether the interviewee is a complainant, a respondent or a witness. And even though all Title IX personnel may ask questions of interviewees, we'll assume "you" are the **investigator/interviewer**.

Interviewing Young Children and Teens

Interviewing a young child can prove challenging. An interview involves a conversational pattern unfamiliar to a child, requires focus that a child may not yet possess, and demands details about an experience a child may remember, but may not be able to describe. Furthermore, a child may not grasp the implications of the answers they're providing.

Interviewing adolescents can also be difficult. Teens' immaturity and impulsivity may cause them to provide unreliable answers to any questions they're asked — especially if an investigator is using coercion or threats.

Thus, it's important for you to shape all interviews and questions in a way that's appropriate for a subject's age and development level.



Interviewing LGBTQ Individuals



Sexual harassment is not limited to bi-directional harassment (i.e., male-to-female or female-to-male). Anyone may experience sexual harassment as a form of sex discrimination, regardless of their sexual orientation or gender identity.

Individuals who are gay, lesbian, bisexual, transgender or questioning often have a history of being bullied, teased, and treated poorly. Be sensitive to this fact. Don't automatically assume a person's sexuality or gender is relevant to an investigation.

Interviewing Persons with Disabilities

A school must comply with all disability laws that protect the rights of — and accommodate the needs of — students and employees with disabilities. This may require that you:

- Consult with a special educator prior to interviewing a student with a disability. Try to gain insight into the person's skillset and learn what accommodations may be necessary. (Keep in mind that not every student with a diagnosed physical or mental condition is identified by the school as having a disability. For example, a student may have an anxiety disorder.)
- Allow a student with a disability to have an advisor-of-choice and a support person accompany them throughout the grievance process.
- Provide evidence in an accessible format.



A person's disability may prevent them from describing an act of sexual harassment and providing credible testimony.

Interviewing Persons from Other Cultures



Culture encompasses the various "people groups" to which someone belongs — be it race, ethnicity, religion, social circle, etc. Culture comprises beliefs, values, thoughts, customs, language, communication and actions, and it influences how you perceive and interact with the world.

When interviewing someone whose culture differs from your own, consider how their culture might be influencing their perception, memory formation, language and linguistic style.



A person's culture can also impact the way they experience sexual harassment. Under Title IX, any misunderstandings due to cultural or other differences do not excuse an act of sexual harassment.

Interviewing Survivors of Trauma

When interviewing a survivor of trauma, do so in a safe, non-stressful environment. Be patient. Recognize that their recall may be slow and difficult.

Never question a survivor in an aggressive, intimidating or disrespectful way. Doing so could:

- Retraumatize them;
- Cause them to invent story details just to seem believable; and/or
- Bring the interview to a quick end.

By being sensitive to the effects of trauma, you can create a supportive setting and conduct an interview that yields complete and detailed information.



Building Rapport with an Interviewee



Begin every interview by building rapport with your subject. Doing so will help you gain insight into their developmental, cultural and emotional needs.

Invite your subject to share some general information, such as what they like to do for fun, what they like about school, or even something as simple as what they had for breakfast.

You can also share information about yourself. Be cordial, but don't create a false appearance of friendship or mistakenly convey that you're on the subject's "side."

To build trust, be honest about the purpose of the interview. Briefly preview what will be discussed. In an age-appropriate and developmentally appropriate way, explain that the subject is expected to provide complete and accurate information. A child is less likely to make false statements if they agree to be truthful in the interview. You should say things like:

- "I only want you to talk about things that really happened"; and
- "It's okay to say, 'I don't know.'"

It's critical that you maintain a sense of rapport throughout the interview. If you use a questioning style that's threatening, accusatorial or antagonizing, you might make the subject shut down or provide false information.

Starting the Interview

To begin the discussion, ask the subject to share everything they know about the allegation. You might say, "Can you tell me everything you know about the incident in question? Please don't leave anything out."

After that, continue asking open-ended, free-recall questions. Questions that produce a narrative answer have been shown to elicit the most extensive, most accurate information. Broad, open-ended questions also provide an interviewee a sense of control. This is important if the individual has been affected by trauma.

Don't interrupt a subject as they answer you. Listen intently. Check your understanding by summarizing and repeating what the subject says.

Many subjects omit details they consider unimportant or embarrassing, or that they believe paint themselves in a bad light. However, these additional details are often needed for a complete account. If an answer needs to be expanded, prompt the interviewee by saying, "Tell me more," or "What happened next?"



Continuing the Interview



During the next stage of the interview, encourage the subject to clarify any confusing or conflicting information. Ask "who," "what," "when," "where" and "how" questions to elicit further detail.

To focus a question on a specific topic, build context into it. For example, ask:

- "What happened after [a specific event, action or point in time]?" or
- "Where was it that [a specific topic or action] happened?"

Contextual questions can also be used with interviewees who struggle to answer broad, open-ended questions.

Continuing the Interview, continued

Conversations about sexual harassment are likely to include uncomfortable subject matter that must not be avoided; avoidance will create a gap in information.

When broaching a difficult topic, be transparent. Explain why you're asking the question.

Keep your opinions private, even while listening to upsetting details about alleged behavior, and even while listening to seemingly implausible statements.

You may feel the urge to support and comfort a distraught or frightened complainant. Show a sensitive and empathetic demeanor, but don't express a preference for or against the subject.

If an interviewee becomes upset or anxious, take a break from the interview. You can rephrase your question and ask it at a later time.

Most children can handle about an hour of questioning before they need a breather. If you allow an interview to go on too long, the interviewee may become confused and provide inaccurate information.



Interview Do's

These interview tips detail what you should and shouldn't do.

Do:

- Make the subject feel as comfortable as possible.
- Establish a framework for questioning based on the topics that need to be explored. For particularly sensitive and important issues, write out questions prior to the interview.
- Reflect upon personal issues and beliefs that could impact how you treat the subject.
- Enter the interview free from assumptions of responsibility or non-responsibility.
- Ask open-ended questions that encourage an interviewee to use their own words.
- Use simple language and neutral terms.
- Maintain a calm, neutral tone of voice and facial expression.
- Take accurate notes. Write down the questions asked, and the answers given.
- Continue the interview, even if the subject admits they're responsible for the incident.
- Ask all subjects for the names of anyone who may be able to corroborate information.
- Allow an interviewee to provide a written statement (based on the subject's age, ability and need).
- Review your notes at the end of the interview and determine whether another interview is necessary. A follow-up interview may afford a reluctant, young, traumatized subject another chance to share information clearly and completely.



Interview Don'ts

Don't:

- Use facial expressions (e.g., frowning, eye-rolling, smiling, etc.) and body movements (e.g., arm folding, leaning into the subject) that could interfere with the quality of your interview.
- Ask leading questions. Leading questions may cause a subject (especially a child subject) to adjust their answers to match the information in the question and, therefore, provide false testimony.
- Ask multiple-choice questions, as they imply that one of the answers is correct. They also contain information about the incident, which makes it impossible to know if the information provided in the interview came from the subject or the investigator.
- Make coercive statements — even subtle ones — such as, "If you tell me what happened, I can make things better."
- Promise leniency in an exchange for someone admitting responsibility and/or minimizing the seriousness of the allegation.
- Accuse an individual of being responsible for an allegation.
- Make direct or indirect threats, such as, "If I find out you're lying, I'll make sure you get kicked out of school," or "After we talk, I'm calling your parents and I will tell them if you lie."
- Allow a parent, a guardian or an advisor-of-choice to exert pressure on a subject or to otherwise interfere with the interview.



Honesty



Assessing whether someone is telling the truth is challenging. There is no single behavior that accurately indicates a person is lying.

Research shows that most people think they can spot when a person is lying — but they can't actually do so. What many people mistake for signs of deception are actually indicators of stress.

A Title IX interview can be stressful for anyone — especially given the power imbalance between a student and the adult in charge. A child subject may exhibit behaviors associated with deception, even though they're telling the truth. For example, a stressed child may breathe heavily, blink frequently, sweat profusely, have poor posture and avoid eye contact.

A young child may provide you incorrect information, but is not doing so to be deceptive:

- A child may try to guess the answers they think you want to hear.
- A child may believe that an inaccurate version of an incident is true. So, they're being honest, even as they're sharing incorrect information with you.

Honesty, continued

It's difficult for someone to lie persuasively. To truly deceive, an interviewee must:

1. Construct a story consistent with what you (the investigator) currently know or may soon discover,
2. Remember every lie they tell,
3. Anticipate future questions and
4. Avoid providing too much information.

The more evidence you uncover during your investigation, the more likely you'll be able to spot a liar and weed out any testimony that lacks credibility.



It's difficult for someone to lie persuasively.

5 Chapter

Review of Evidence & Investigative Report

Topics in this chapter include:

- 10-Day Allowance
- Summarizing Relevant Evidence
- Relevant Evidence, Defined

10-Day Allowance

Both parties must be given at least 10 days to review and inspect all evidence. This includes, but is not limited to:

- Confidential, sensitive or private information that **directly** relates to the allegation; and
- Evidence of the complainant's sexual behavior or predisposition that **directly** relates to the allegation.

Both parties must also have the chance to submit a written response to the evidence after they've reviewed it. In their responses, they explain which evidence they believe is relevant, and which is not.



Summarizing Relevant Evidence

After both parties have submitted their responses to the evidence, an investigator must read and consider the arguments presented and determine what evidence is relevant.

The investigator then summarizes the **relevant** evidence in an **investigative report**. An investigative report must contain **only** relevant evidence.



Rape-shield protection applies to the investigation report.

Relevant Evidence, Defined



Title IX does not dictate strict rules of evidence. **Relevance** is the only standard that applies. In addition, Title IX does not define "relevance"; the word's ordinary meaning applies. **Relevant evidence** proves or disproves any aspect of an allegation. It does not have to be strong evidence, but it must be more than just casually related to the allegation.

Determining relevance does not require legal expertise. Relevance is largely determined through logic and common sense. All relevant evidence must be considered, except for:

- A complainant's prior sexual behavior
- Information protected by a legally recognized privilege
- Treatment records without a party's voluntary, written consent

Title IX regulations do not allow a school to make rules that exclude any other types of relevant evidence. However, a school may exclude duplicate evidence.

6 Chapter

Response to the Written Response

Topics in this chapter include:

- Questioning Relevance

Questioning Relevance

After the investigator's investigative report has been written and submitted to the decision-maker, the complainant and respondent have 10 days to review and respond to it. Both parties may:

- Submit questions they want the other party and/or witnesses to be asked to reveal inaccuracies, inconsistencies or false statements;
- Address the importance of the evidence;
- Challenge determinations of relevance; and/or
- Voice their support of the report.

After the decision-maker determines which of the parties' questions are relevant, the decision-maker must submit all relevant questions to the other party and/or to witnesses, as appropriate. If the decision-maker deems a question irrelevant, they must explain to the party who submitted the question why it was excluded. A lengthy or complicated explanation is not needed. It is sufficient, for example, to explain that a question is irrelevant because it references prior sexual behavior, or because the question asks about facts or evidence not related to the allegation.

Both parties may then submit additional, follow-up questions, for which a school can set reasonable limits. A school may also adopt and enforce rules of decorum that require all questions be asked in a respectful manner



Questioning Relevance, continued



In a case that involves a young student, parents may help their child write out questions and craft answers. Title IX does not address whether parents may consult with their child when writing questions or answers. This matter is addressed by other laws that enable a parent to act on behalf of a child.

7

Chapter

Making a Final Determination

Topics in this chapter include:

- The Decision-Maker's Primary Job
- Special Considerations for Students with Disabilities
- Assessing the Credibility of Testimony
- Weight of the Evidence
- Credibility of Testimony and the Weight of Evidence
- Written Determination of Responsibility

The Decision-Maker's Primary Job

A decision-maker must objectively evaluate and weigh the relevant evidence summarized in the investigative report — as well as the parties' responses to that report — to reach a determination of responsibility.

In some situations, there may be little evidence outside of both parties' conflicting accounts of the incident, so the decision-maker must consider whose testimony is the most credible.



Special Considerations for Students with Disabilities

If a complainant has a disability, a decision-maker should take that disability into consideration when determining responsibility. Students with disabilities are often victims of sexual abuse because they don't realize they have a right to say "no," and don't realize when they've been sexually harassed.

Conversely, a student with a disability may inadvertently sexually harass someone because they don't understand that certain types of touching are inappropriate. Just because a respondent has a disability doesn't mean their behavior should be excused. However, their disability may be a factor when considering:

- Whether to use a formal sexual-harassment grievance process to address the sexual-harassment complaint or whether to use an informal-resolution process.
- What sanctions are appropriate. For example, counseling or behavioral intervention might be more appropriate than other, harsher disciplinary measures.



Regardless of whether a complainant — or a respondent — has a disability, a school must still offer the complainant remedies designed to restore or preserve their equal access to education.

Assessing the Credibility of Testimony



If a fact or statement seems to be true and accurate, it's considered **credible**. If a fact or statement seems out of context or false, it's lacking credibility. Specialized legal training is not needed to determine credibility. Many criminal and civil court trials rely on jurors with no legal training to determine the facts of a case, including the credibility of witnesses.

In sexual-harassment cases that lack conclusive evidence, credibility is crucial in determining responsibility. There are five factors that can help assess the credibility of testimony:

1. Inherent plausibility
2. Motive to falsify
3. Corroborative evidence
4. Internal consistency
5. Demeanor

These will be discussed on the next two slides.

Assessing the Credibility of Testimony, continued

Determining **inherent plausibility** involves asking whether the story makes sense, at face value. Ask, "Is the story believable?" and "Does the version of events seem reasonable?" Common sense should be used to determine whether testimony is probable and not inherently absurd.

Considering one's **motive to falsify** involves asking whether someone has a reason to be misleading. Title IX investigations can be emotionally charged. They often involve high stakes and potentially severe consequences. Whether a party has something to gain or lose can influence their motivation to deceive.

For example, a witness' background impacts the credibility of their testimony. The more loyal a witness is to one party, the more likely they are to provide favorable and corroborating testimony for that party. Neutral witnesses with no connection to either party — and with no vested interest in the outcome of the investigation — often have greater objectivity and therefore more credibility.



Assessing the Credibility of Testimony, continued 2



Inconsistency is correlated with deception. **Corroborative evidence** is physical evidence or witness testimony consistent with one another.

Determining **internal consistency** involves asking, "Does the respondent have a history of similar behavior in the past?" Evidence of prior acts should only be considered credible when there is evidence to corroborate that the respondent has behaved in this manner before.

Considering **demeanor** means asking, "Did the person seem to be telling the truth or lying?" Of the five factors, demeanor is the least reliable.

Parties can be credible yet provide information that is not reliable. Inaccurate statements should not destroy a participant's credibility. The adage, "If you lie about one thing, nothing else you say will be believed," is unreasonable and should not apply. Instead, consider:

- To what extent does the misinformation undermine the credibility of the story?
- How crucial was the inaccurate information to the overall testimony?

Weight of the Evidence

Evidence must be weighed to establish its importance in relation to other evidence. Some evidence is more reliable than others and should be given greater consideration:

- **Direct evidence** is generally afforded significant weight. Direct evidence is testimony or evidence that speaks directly to the allegation and involves no inferences.
- **Circumstantial evidence** relies on inferences. Therefore, it carries less weight than direct evidence.
- Direct, unrefuted evidence should be given more weight than indefinite, vague or improbable evidence.
- Personal observation should be given more weight than hearsay.



Title IX does not prescribe how relevant evidence should be evaluated; it leaves those decisions to the school. A school can adopt rules regarding the credibility of testimony or the weight of evidence, providing the rules are applied to both parties equally.

Credibility of Testimony and the Weight of Evidence

Consider these issues when determining the credibility of testimony and the weight of evidence:

- **Physical evidence** — Physical evidence is generally more reliable than testimony and may be assigned greater weight. Many formal sexual-harassment complaints involve plausible, competing narratives. Physical evidence can corroborate testimony or prove it false.
- **Distance in time or place** — Evidence should have some connection to the time and location of the event in question, and to the person making the allegation. Distance in time or place may reduce the weight of the evidence. For example, a photo of the respondent with the complainant is more relevant if it's taken the day of the alleged incident rather than a month before.
- **Hearsay evidence** — Hearsay evidence should be weighed with caution. In particular, anonymous hearsay evidence raises a serious question of credibility.



Credibility of Testimony and the Weight of Evidence, continued



! Be careful when weighing bad acts. A respondent shouldn't be held responsible for sexual harassment because they're perceived to be a bad person. The facts of the sexual-harassment allegation at-hand should always receive more weight.

- **Prior bad acts** — Allegations of prior bad acts can be introduced to illustrate someone's character; these alleged prior bad acts carry more weight when they're corroborated by other victims. Prior bad acts based on hearsay should not receive much weight.
- **Indirect evidence** — Evidence that has only a slight or indirect connection to the allegations carries little weight.
- **Circumstantial evidence** — The more circumstantial the evidence, the less weight it should receive.
- **Character evidence** — Character evidence invites judging a party based on their reputation, not the facts of the allegation-at-hand. Because it's at high risk for bias, character evidence should be weighed with caution.
- **Other party responsible** — A respondent may offer evidence that another party is responsible for the alleged harassment. Such evidence is relevant when it reduces the likelihood that the respondent is responsible. However, without evidence to show some connection between the third party and the allegations, the claim may be too speculative to carry weight.

Written Determination of Responsibility

After a decision has been reached, a decision-maker must issue a written determination of responsibility. The determination must include:

- The allegations that potentially constituted sexual harassment.
- A description of the procedural steps taken, from the time of the formal complaint through the final determination. (An investigator may wish to include these steps in the investigative report but is not required to do so.)
- Findings of fact that support the determination of responsibility, including an analysis of how each conclusion/ruling for each allegation was reached.



A determination of responsibility should be written in a neutral and impartial manner with conclusions and findings tied directly to the greater weight of evidence. The report should not be looked at as a "teachable moment" or as a forum in which to share opinions, beliefs or personal feelings.



8

Chapter
Appeals

Topics in this chapter include:

- Three Bases for Appeals
- Appeals Personnel

Three Bases for Appeals

As you've previously learned, there are three bases for which a complainant or respondent can appeal a determination of responsibility:

- Procedural irregularities
- Newly discovered evidence
- Conflict of interest or bias

If the third basis is alleged, an appeal should not be granted unless a party can demonstrate that the conflict of interest or bias materially affected the outcome of the grievance procedure.

A school should apply an objective, common sense approach when determining whether a Title IX coordinator, investigator or decision-maker had a conflict of interest or was biased. The school should not apply generalizations that might unreasonably conclude that bias existed. For example, the school should not assume a male was incapable of being sensitive to the experiences of a female, or vice versa.

Furthermore, a school should not assume you or your fellow Title IX personnel were biased in the case-at-hand simply because many of your past grievance-procedure decisions resulted in a determination of responsibility (or, conversely, because many of your previous decisions resulted in a determination of non-responsibility).



Appeals Personnel



The appeals decision-maker cannot be the Title IX coordinator, the investigator or the decision-maker from the original grievance procedure.

A school must provide both parties a written explanation of the appeals result and the reasons for the decision.

If the appeals process reveals that the initial determination of responsibility was inaccurate, a school can correct it. A written determination becomes final only after the time period to file an appeal has expired, or after an appeals decision has been sent to both parties.

9

Chapter

Conflicts of Interest & Transparency

Topics in this chapter include:

- The Responsibilities of Title IX Personnel
- Conflicts of Interest and Transparency

The Responsibilities of Title IX Personnel

As a member of your school's Title IX team, you must stay focused on the facts surrounding a complaint, not the attributes of the participants involved. If you're a Title IX investigator, you must:

- Conduct a thorough search for evidence related to the allegations; and
- Objectively evaluate the evidence for relevance.

If you're a Title IX decision-maker, you must:

- Objectively evaluate the evidence for relevance; and
- Reach an impartial conclusion based on what the body of evidence dictates.

Regardless of your Title IX role, you must not:

- Prejudge the facts of an allegation;
- Prejudge the credibility of a complainant; or
- Prejudge the credibility of a respondent.

Because conflicts of interest and bias can inhibit you from performing your Title IX job successfully, these topics will be discussed in this course.



Conflicts of Interest and Transparency



As you've learned in previous Title IX courses, a **conflict of interest** occurs when your personal (or self-serving) interests clash with your professional duties. Because the mere perception of a conflict of interest can undermine the integrity of a Title IX grievance process, it's crucial that you avoid such conflicts.

If it's not possible to avoid a conflict of interest, **transparency** is critical. To achieve transparency and avoid ethical and legal dilemmas, you must disclose actual — and potential — conflicts of interest. Disclosure does not always resolve the conflict of interest, but disclosure allows the conflict to be addressed properly and productively.

10

Chapter

Schemas, Stereotypes & Bias

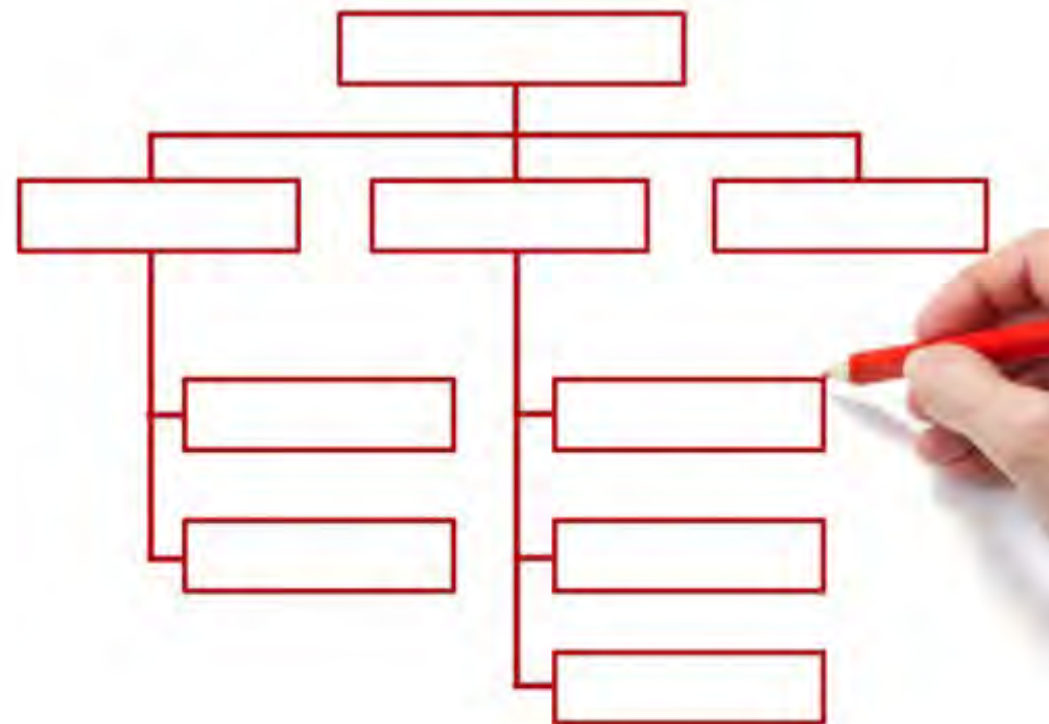
Topics in this chapter include:

- Schemas
- Stereotypes
- Bias
- Explicit Bias
- Implicit Bias
- Confirmation Bias
- Party Bias
- Sex-Based Bias
- Other Group-Based Bias

Schemas

Schemas are mental shortcuts that your brain uses to process information quickly and organize it into categories, based on relationships among that data.

Our brain is wired to sort people into groups based on easily recognizable characteristics like age, gender, race and the like. These oversimplified generalizations about people are called **stereotypes**.



Stereotypes



All people stereotype others in some way. Your stereotypes have developed over the course of your lifetime, beginning at a very early age. They've been formed by:

- Direct and indirect messages that have imprinted on your memory
- Your experiences
- Your observations
- Your parents and family members
- Your friends
- Your schooling
- Media (e.g., music, videos, video games, movies, apps, advertisements, books, articles, etc.)

Stereotypes are not necessarily negative. However, even seemingly positive stereotypes can have unintended consequences.

Bias

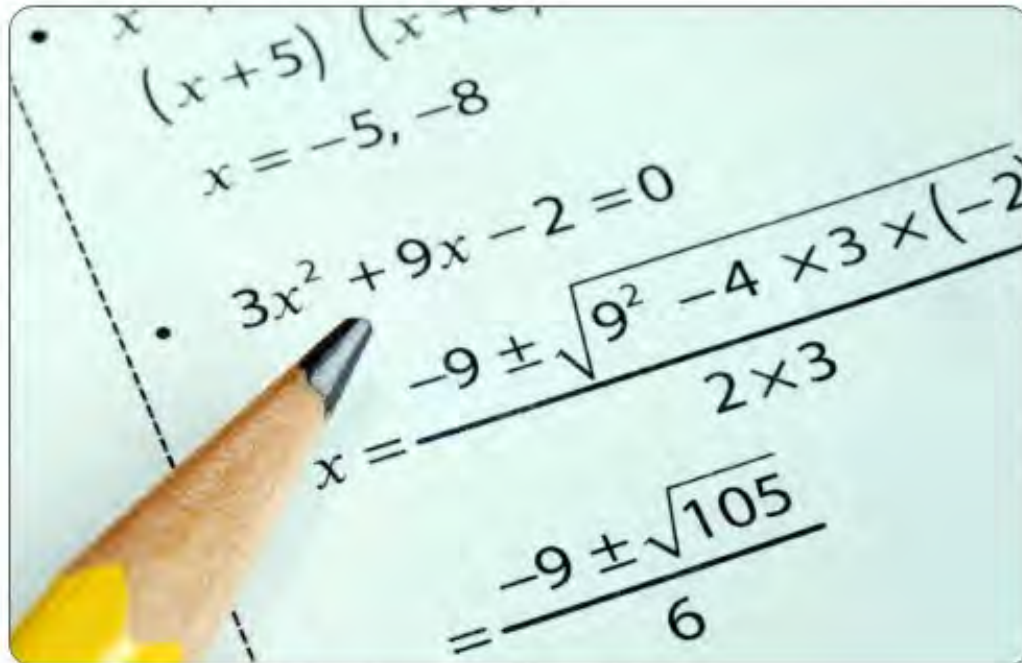
Bias involves attributing stereotypical beliefs about a group of people to an individual associated with that group. Such inclinations and preferences can interfere with your making impartial judgments about someone. Everyone has biases that cause them to be more tolerant and accepting of certain types of people than others. There are three components of bias:

- The **cognitive** component includes your thoughts, beliefs and ideas about something or someone.
- The **affective** component encompasses your emotional reactions to different types of people.
- The **behavioral** component involves how you act toward certain people.

All three components collectively affect how we relate to and treat others. If you judge people through a biased lens, you can miss the chance to appreciate their talents.



Explicit Bias



Explicit bias is the type of bias that gets the most attention. Explicit bias involves attitudes that shape what someone believes about a group of people. Overt racism and sexism are examples of explicit biases.

With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups. Thus, explicit bias can be measured with straightforward questions, such as, "Do you agree or disagree with the statement, 'Boys are better than girls at math?'"

Implicit Bias

Implicit bias comprises the unconscious, subtle associations you make among people. It's your automatic, positive or negative preference for someone, based on your perception of that person's race, gender, age, ethnicity and abilities. Implicit bias impacts how stereotypes shape your understanding, decisions and actions toward members of diverse groups. It does not require an angry or spiteful disposition; it only requires not being aware of how your positive or negative stereotypes influence your thoughts and actions.

Even the most well-intentioned person experiences some degree of implicit bias; in fact, implicit bias may actually conflict with your explicit beliefs and values.

You can truly believe everyone should be judged based on the merit of their character, yet unwittingly stereotype someone.

Implicit bias can be just as problematic as explicit bias, because both can produce discriminatory behavior. Any bias interferes with creating a positive classroom climate.

Because implicit bias is deeply entrenched and operates outside your conscious awareness, combating it is challenging. Fortunately, stereotypes formed over a lifetime can be purposely unlearned. To counter implicit bias, train your mind to recognize stereotypes for what they are. Consciously and consistently evaluate your thought processes and judgment.



Confirmation Bias

Confirmation bias occurs when you search for, interpret, focus on and favor information that aligns with your pre-existing beliefs, opinions or expectations.

Most people are unaware of how confirmation bias affects their actions. They may even perceive their biased thoughts to be intuition or common-sense, and not realize how their bias hampers objectivity. In fact, research shows that people often hold onto a faulty opinion even after being shown proof their opinion is flawed. The stronger someone's beliefs, the more likely they are to ignore facts that don't align with those beliefs.

Below are examples of how confirmation bias can adversely impact Title IX's grievance process:

- If you make a snap judgment that results in a premature hypothesis, you create a blurred lens through which you view information. Instead of searching for the truth, your focus becomes proving your hypothesis, which, in turn, taints the final determination of responsibility. This deprives a respondent the right to a presumption of non-responsibility.
- In a case that's lacking evidence, your confirmation bias can subconsciously "fill in" the gaps of missing information. If weighted evidence results in a 50/50 split, your bias could be the plus-one-percent that tips the scale.
- If confirmation bias causes you to fail to identify and report incriminating evidence, complainants may not receive remedies to which they're entitled.
- When a case is riddled with complicated variables and contradictory information, data can be interpreted in many ways. Confirmation bias about a party's behavior, background or personal attributes can profoundly impact how you evaluate and assess evidence.



Party Bias

Party bias occurs exists if you're biased toward someone — or against someone — just because they happen to be a complainant, or just because they happen to be a respondent.

Work to eliminate any party bias you may have. Similarly, never assume teachers and staff members are always more credible than students... or vice versa.

In addition, don't let your judgment be clouded because of the emotions associated with a case. In situations that involve sexual assault or other serious injury, it's natural to want to hold someone responsible. Nevertheless, you must remain objective. Refrain from evaluating evidence, assessing credibility or passing judgment until the investigation has concluded.



Sex-Based Bias



The topic of sexual harassment inherently includes issues of sex and sexual dynamics. Thus, **sex-based bias** is a particular risk to Title IX proceedings. A school must not allow sex-based biases, stereotypes or generalizations to influence Title IX procedures. Doing so would further inject sexual discrimination into the situation.

You must not apply "profiles" or "predictive behaviors" to sexual-harassment cases. Instead, you must adopt a **sex-neutral approach** that prohibits sexual-harassment generalizations about "women as victims" and "men as perpetrators."

However, you can consider studies and statistical generalizations in an informative, impartial way, providing they don't compromise your objective evaluation of the facts surrounding a particular case.

If you treat either party differently in Title IX proceedings because of their sex, you're violating Title IX's non-discrimination mandate.

Sex-Based Bias Example

For example, you and other Title IX personnel cannot allow stereotypes regarding men to influence your investigation or decision. You cannot assume males are innately sexually aggressive or that a culture of "toxic masculinity" makes them more likely to engage in sexual violence.

Similarly, you cannot decide to investigate sexual-harassment complaints from females but not investigate complaints from males. And you cannot offer different remedies or sanctions based on whether someone is a female or a male.

Sexual harassment affects students throughout the country. Anyone, regardless of gender, can be a sexual-harassment complainant or respondent. However, the following groups are sexually harassed more than other populations:

- Persons of color, particularly females with intersecting identities
- Girls and women who are immigrants (e.g., persons whose national origin is outside the United States)
- Individuals with disabilities
- Lesbian, gay, bisexual, transgender and/or queer and intersex (LGBTQI) individuals



Other Group-Based Bias



Just as sex-based bias against a particular gender, so too does bias exist against other groups with which a complainant, a respondent or a witness may identify.

You and your Title IX colleagues must not allow bias against a party's race, ethnicity, sexual orientation, gender identity, disability, immigration-status, socioeconomic status — or any other characteristic — impact the grievance process.



Group-based bias often presents itself in the form of microaggressions. Hurtful and exclusionary, microaggressions are belittling and demeaning messages you consciously — or subconsciously — send to someone because of their perceived association with a certain group.

11

Chapter

How to Minimize Bias

Topics in this chapter include:

- Five Strategies
- Strategy 1: Stereotype Replacement
- Strategy 2: Counter-Stereotypic Imaging
- Strategy 3: Individuation
- Strategy 4: Perspective Taking
- Strategy 5: Increased Positive Contact
- When You Inadvertently Say the Wrong Thing

Five Strategies

To reduce the impact of bias, implement one of the following five strategies:

- Stereotype replacement
- Counter-stereotypic imaging
- Individuation
- Perspective taking
- Increased positive contact

These will be discussed in detail on the six slides that follow.



Strategy 1: Stereotype Replacement

The first strategy you should consider implementing is **stereotype replacement**. To replace stereotypes:

- Acknowledge that you sometimes respond to people based on your pre-conceived notions about them.
- Identify when, where and how your reactions derive from such stereotypes.
- Consider why you respond in that manner.
- Choose to respond to people in a way that reflects non-stereotypical beliefs.

Consider this hypothetical situation:

A fellow educator who works in a disadvantaged, inner-city district shares how happy she is that her favorite student received a full college scholarship. If you reply, "That's great!

In what sport?" you may have inadvertently displayed bias. You've assumed that a pupil from a disadvantaged school did not excel in academics and that the teen's only "ticket out" was athletics — which is a common stereotype.

As such, consider why you responded the way you did. Then, do some research. See if you can find information that supports or challenges the assumption you made.



If the information you find contradicts your previous belief, replace your old stereotype with your new frame of reference. Keep that new data in mind the next time you face a similar situation and respond differently.

Strategy 2: Counter-Stereotypic Imaging



A second strategy, **counter-stereotypic imaging**, involves you challenging your stereotype by making a positive association with an image that's the exact opposite of your stereotype.

For example, if you typically stereotype doctors as men and typically stereotype stay-at-home parents as women, think about exceptions to that stereotype — e.g., a female friend who is a doctor and married to a stay-at-home dad.

Strategy 3: Individuation

A third strategy, **individuation**, involves obtaining information about individual members of a group instead of generalizing about that group.

Make a conscious effort to avoid making quick decisions based on stereotypes. Gather information about a person before judging that individual. And purposely form meaningful relationships with people different than you.



Strategy 4: Perspective Taking



Perspective taking, a fourth strategy, involves walking a proverbial mile in another person's shoes. Before judging someone, consider that individual's perspective. Doing so will help you empathize with people you tend to stereotype.

For instance, if you tend to stereotype based on gender, try imagining what it would feel like to be deemed unqualified for a position because of your gender. For example, consider how a man might feel were he denied the opportunity to teach kindergarten because he's perceived as less nurturing than women applicants.

Strategy 5: Increased Positive Contact

Increased positive contact is a fifth strategy you should consider employing. Spending time with diverse groups of people is a powerful way to counter false stereotypes. By meeting individuals who don't conform to your pre-conceived notions, your stereotypic thoughts and beliefs will dissipate.

Furthermore, when you interact with the community where your students live, you forge positive relationships with the kids and their families.



When You Inadvertently Say the Wrong Thing

Even if you sincerely try to be culturally considerate, you may say something that you consider benign, but that others consider racist, sexist, homophobic or otherwise insensitive.

If they accuse you of bias or prejudice, you may feel hurt, frustrated, angry, resentful or guilty. You may want to respond, "That's not what I meant," or "You're taking it the wrong way."

However, try to avoid becoming defensive. Instead:

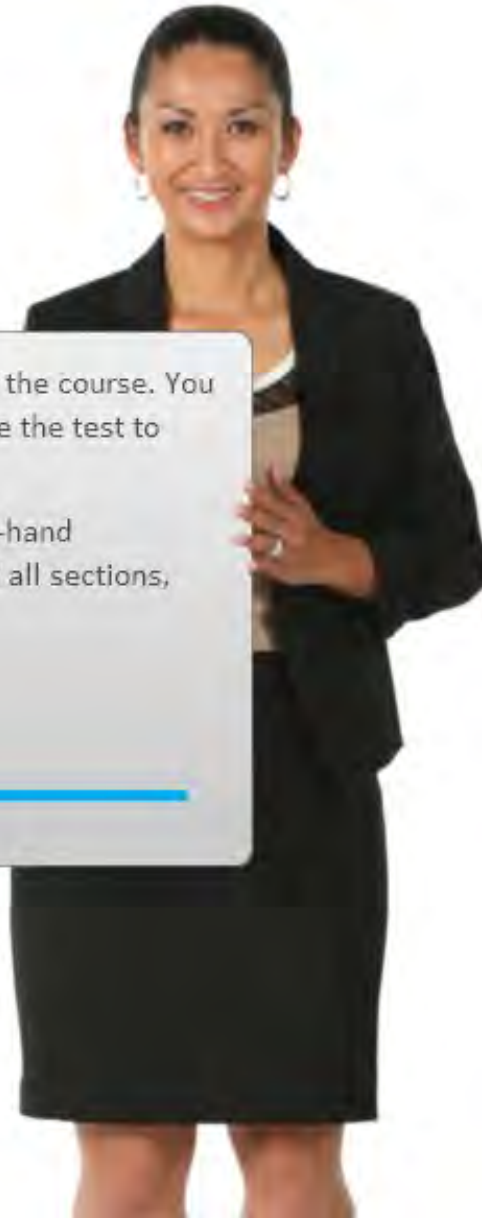
- Calmly and honestly examine the situation and what you said. Everyone has biases, so be willing to admit that you were wrong. Doing so can establish trust with students and promote a respectful, inclusive environment.
- Respond with respect. Acknowledge the other person's feelings; doing so can help resolve any conflict. Say something simple but kind, such as, "I understand you feel my words were prejudiced or unfair, and that concerns me."
- Gather information. Try to understand the other person's point of view. The effects of prejudice are cumulative. Chances are, the person's reaction isn't just because of what you said, but because they've faced a long history of prejudice.
- Acknowledge what happened and modify your behavior accordingly. If your behavior was consciously or unconsciously prejudicial or unfair, avoid repeating your mistake.



End of Section

You have completed this section of the course. You must complete all sections and take the test to receive credit for this course.

Click on the next section in the left-hand navigation bar. If you've completed all sections, please click "Take Test."





Title IX - Informal Resolution

Overview

The first Title IX course you were assigned, *Title IX: How the Act Protects Students and School Employees from Sexual Harassment*, defined sexual harassment, discussed school obligations, and outlined the grievance procedure.

The second Title IX training you took — *Title IX: Additional Information for Title IX Coordinators, Investigators and Decision-Makers* — covered many of same topics in the first course but took an even deeper dive into them.

This course — intended for Title IX informal-resolution facilitators — discusses:

- How to determine whether informal resolution is a suitable alternative to the formal grievance process;
- How to implement an informal-resolution process; and
- How to facilitate:
 - Mediation;
 - Arbitration; and
 - Restorative justice.

The latter portion of the course explains how to:

- Serve impartially by avoiding conflicts of interest, bias and sex-based stereotypes; and
- Recognize and address implicit bias.

In addition to these online courses, your district should train you on the specific policies and guidelines it has adopted to comply with Title IX.



Objectives

The following course provides an overview of school responsibilities and the informal resolution process pursuant to Title IX of the Education Amendments of 1972. It is not offered as legal advice. Anyone involved in the informal resolution process of Title IX should seek counsel for any legal questions.

The chapters of this course are:

1. Informal Resolution
2. Mediation
3. Arbitration
4. Restorative Justice
5. Informal Resolution Agreements
6. Conflicts of Interest & Transparency
7. Schemas, Stereotypes & Bias
8. How to Minimize Bias



1 Chapter

Informal Resolution

Topics in this chapter include:

- About Informal Resolutions
- Benefits of Informal Resolution
- Offer to Participate
- Consent to Participate
- Informal Resolution Appropriateness
- Cases that Involve Violence
- Opting for the Grievance Process
- Sanctions/Disciplinary Measures
- School Participation
- Facilitators

About Informal Resolutions

If a respondent does not wish to dispute the allegations in a formal complaint — and is willing to take responsibility for the impact the allegations had on the complainant — a full grievance process may not be necessary. Schools can offer and facilitate informal resolution instead. Examples of informal-resolution strategies include:

- Mediation;
- Restorative justice; and
- Arbitration.

Each of these strategies will be discussed later in this course.



Benefits of Informal Resolution



Compared to a formal grievance process, the benefits of informal resolution include:

- A shorter overall time frame
- Greater flexibility
- Greater party control over the outcome(s), which may improve the parties' sense of justice
- Remedies and sanctions personalized to meet the needs of unique situations
- Increased compliance with outcomes

Informal-resolution strategies can potentially educate students and change behavior in a way that the formal-grievance process cannot. Respondents are encouraged to accept responsibility for the incident that led to the formal complaint, and complainants are invited to express their feelings about that incident.

Offer to Participate

A school can only offer parties the chance to participate in informal resolution after a formal complaint has been filed. To ensure both parties make an informed decision and are not forced into the process, a school must provide written notice of:

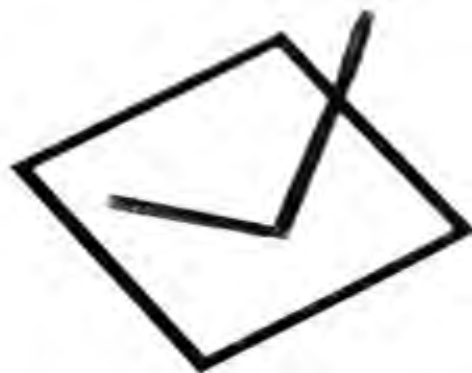
- The allegations
- The requirements of informal resolution
- Any consequences that can result as part of an informal resolution
- Records that could be kept or shared in the process
- Whether a facilitator can also serve as a witness
- Confidentiality requirements



Consent to Participate

A school must obtain the voluntary written consent of both parties prior to beginning informal resolution. In addition, the school must explain to both parties the parameters, the process, the possible consequences and the confidentiality implications of informal resolution.

The parties' consent to take part in informal resolution must be made free from coercion or undue influence. A school cannot intimidate, threaten or force anyone to participate. In fact, Title IX expressly forbids schools from making participation a condition of admission, a condition of employment or a condition of any other right.



Informal Resolution Appropriateness

A school must first decide if informal resolution is appropriate.

Due to the power differential between the parties, schools cannot offer informal resolution in cases alleging that an employee sexually harassed a student. However, informal resolution can be used to resolve sexual-harassment allegations between two employees or between two students.



A school's informal-resolution process must be sensitive to the dynamics of sexual harassment. A school cannot require parties to: (1) confront one another, (2) meet in the same room or (3) work things out without a neutral party facilitating the process.

Cases that Involve Violence



Informal resolution is never a good option for allegations that involve current or past dating-violence allegations between the parties.

Dating violence involves a pattern of deceit, intimidation and manipulation. The pattern of abuse in most dating-violence situations means there's a power balance that inhibits effective communication and the ability to reach a mutually agreed upon solution. No informal-resolution strategy can negate this imbalance.

Opting for the Grievance Process

At any time, either party has the right to withdraw from informal resolution and resume the formal-grievance process. If this happens, the written agreement must clearly disclose to the parties if and how a facilitator could serve as a witness in the grievance process.



Sanctions/Disciplinary Measures



As part of an informal-resolution agreement, the parties may voluntarily accept supportive measures, sanctions and disciplinary measures.

Both parties must agree to the proposed disciplinary actions. If a respondent does not agree with a proposed disciplinary action, they can withdraw from informal resolution and resume the formal grievance process.



Participating in informal resolution does not prevent a school from suspending or expelling a respondent.

School Participation

A school is free to craft an informal resolution process to serve its unique educational needs. Title IX allows schools to decide certain measures to apply to informal processes, such as whether to:

- Require a safety and risk analysis prior to offering informal resolution
- Refuse to use an informal process that involves direct interaction between the parties
- Prohibit a facilitator from directly questioning the parties

When parties participate in informal resolution, a school is still legally required to protect a complainant from any further harassment by the respondent. In addition, the school must complete the informal-resolution process within a reasonably prompt time frame.




Schools also have the right to not offer informal resolution. Schools without adequate resources to manage such a process need not provide it as an option.

Facilitators

Informal resolution facilitators must be well-trained in the process(es) they use. Facilitators must be free from conflicts of interest and bias, and must be trained to serve impartially.

The remainder of this course explains the mediation process, arbitration and restorative justice. Mediation is explained in greater detail because aspects of it apply to the many collaborative processes that can be used for informal resolution.





2 Chapter Mediation

Topics in this chapter include:

- What is Mediation?
- The Benefits of Mediation
- The Work of Mediators
- Impartial and Bias-Free Process
- The Mediation Process
- Pre-mediation
- Caucus
- Beginning the Mediation
- Problem Identification
- Summarization
- Options for Resolution
- Ask Questions to Generate Options
- Reaching an Agreement
- Follow-up

What is Mediation?

As an informal resolution, **mediation** is a cooperative and collaborative alternative to the grievance process. In mediation, a trained, neutral, third party (the mediator) helps two or more parties resolve a dispute. It can be thought of as a mutual agreement between the parties to settle a dispute through compromise.

The purpose of mediation is not to find fault. Mediation does not require an admission of guilt or responsibility; it only requires that the participants agree to work together to develop a final resolution.



The Benefits of Mediation

Complainants are empowered to voice what harm was caused by the alleged actions of the respondent. When a respondent understands how their behavior impacted the complainant, they may feel empathy, which in turn, may reduce recidivism.

And, in some cases, a respondent accepting responsibility is more meaningful to a complainant than sanctions assigned to the respondent as part the agreement.



Several studies have found that parties are more satisfied with mediated, rather than adjudicated, results. When parties play an active role in the development of a solution, they are more apt to abide by its terms

The Work of Mediators



A **mediator** is a neutral third-party with no stake in the outcome. The role of a mediator is to:

- Assist and empower both parties to express their feelings and needs
- Encourage the parties to listen to one another
- Facilitate the development of solutions that are acceptable to both parties



Mediators manage the process. The process is guided on the principle of party self-determination. **Self-determination** is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices.

Impartial and Bias-Free Process

Mediators must be **impartial**. In other words, they must be free from favoritism, bias or prejudice. You should decline to mediate any cases for which you feel you cannot listen carefully to both parties and provide them equal opportunities to voice their concerns.

As a mediator, it's important you establish a positive connection with the parties. You must:

- Balance your control of the process with the parties' ownership of the process.
- Phrase questions in ways that are neither critical nor judgmental.
- Refrain from making verbal and non-verbal reactions that suggest a particular view.
- Refrain from assigning blame, taking sides, making decisions or imposing your values on either party.
- Safeguard the confidentiality of the process, as well as the confidentiality of both parties.



The Mediation Process

Victim-offender mediation provides a structured setting in which a trained mediator collaborates with the parties to develop an agreement acceptable to both sides.

The steps in the mediation process are well-established and fairly standard, although the mediation process can be tailored to fit the needs of the parties and the situation. Mediators should remain flexible and not adhere to rigid procedures or specific, one-size strategies for resolution.

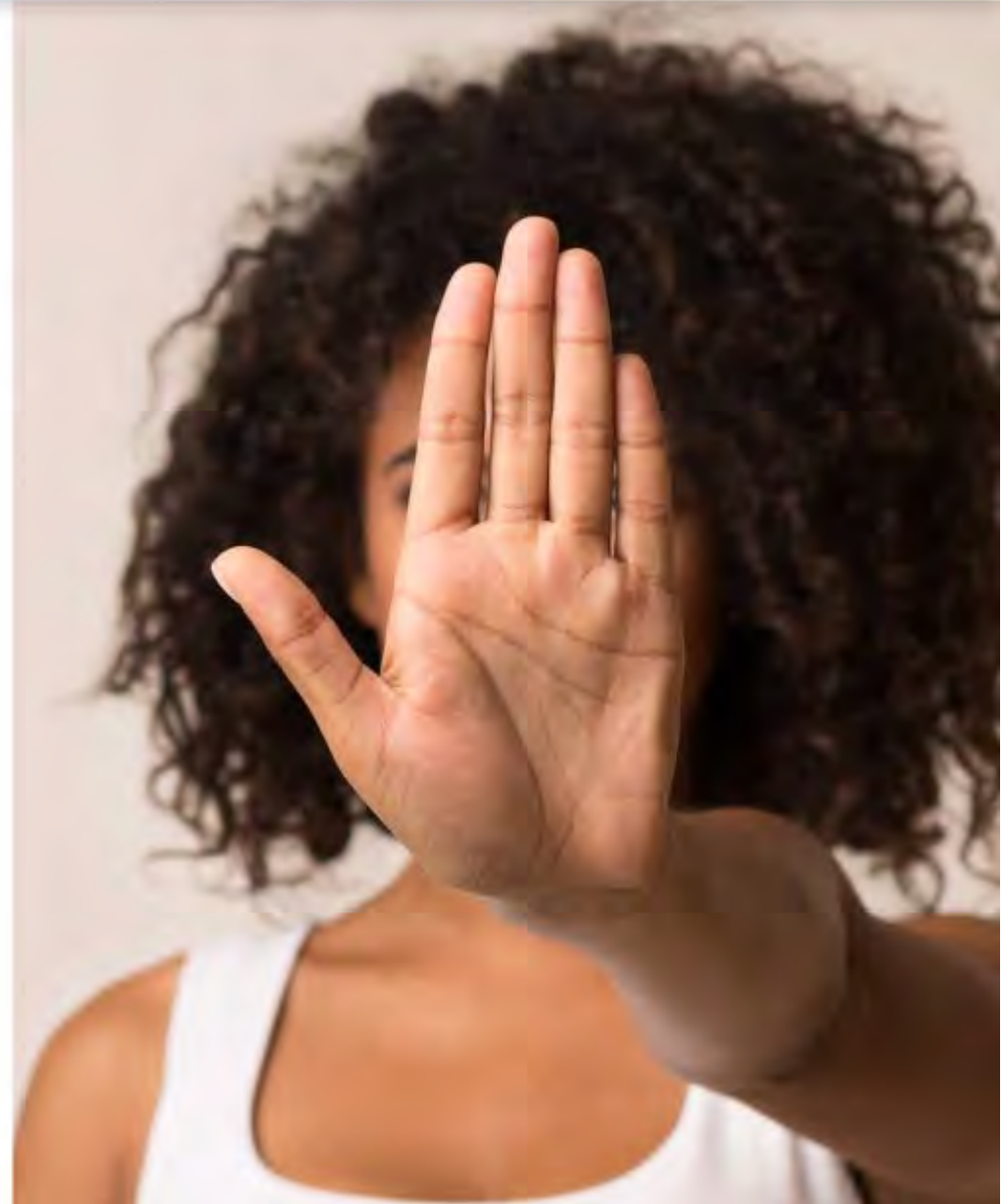
Begin the mediation process by meeting separately with each party in a neutral setting to discuss the issues at hand and the overall process.



Pre-mediation | Safety

You must first determine if mediation is a safe and suitable way to resolve the allegations. The most crucial time to exclude a case from the informal-resolution process is in the pre-mediation stage.

To start pre-mediation, explore whether any history of dating violence or chronic conflict exists between the parties. If such conflict does exist, the power imbalance would make reaching a mutually beneficial agreement impossible. As such, a formal-grievance process should be used instead.



Pre-mediation | Select How to Meet



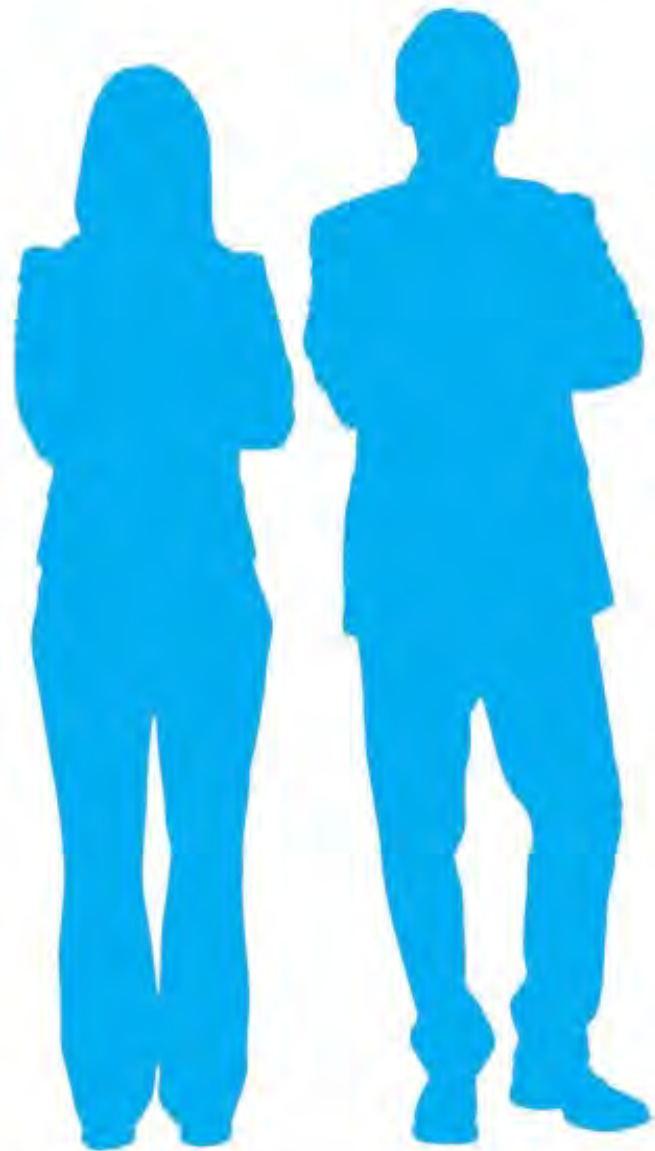
Discuss with complainants and respondents whether they wish to:

- Meet one another in person, with you facilitating the interaction;
- Meet one another via conference call or video conferencing, with you facilitating the interaction; or
- Avoid interacting with one another and instead speak with you separately and privately.

Pre-mediation | Attendants and Confidentiality

Most mediations include outside participants such as advisors, parents/guardians and general supporters. This is left mostly to the discretion of schools.

Before beginning mediation, find out who will be attending. Make sure all participants understand that information discussed during mediation is confidential. If there are any limits and exceptions to confidentiality, describe those limitations to the participants.



Pre-mediation | General Information

To ensure both parties are well prepared and capable of making informed decisions, a mediator should:

- Confirm that the parties understand what mediation involves.
- Encourage participants to speak honestly and candidly about their interests. The more candid and honest the parties are, the more likely they are to resolve the allegations.
- Ask participants about any needs they may have. For example, ask the participants if they have any disabilities that require accommodations.
- Establish ground rules and provide guidance. State that each side will be allowed to speak without interruption. Create a foundation that allows for positive, respectful interaction between the parties.
- Clearly communicate that mediation will be terminated if any threatening language or derogatory statements are made.
- Explain that the parties are allowed to present tangible items that help express their viewpoints or feelings, should they choose to do so. However, tell them they should share these items with you before presenting them to the other party during mediation.
- Discuss the range and list of acceptable actions that can be part of the final agreement.
- Clarify that the purpose of the mediation process is not to agree on everything. Explain that if a party is preoccupied with placing blame and imposing strict consequences — or is preoccupied with absolutism and avoiding consequences — they should opt for the grievance process.
- Explain that either party can, at any time, end mediation and return to the grievance process.



Caucus



There may be times when you need to meet with one party away from the other. This is known as a caucus. There are a few reasons why you may wish to caucus with one of the parties:

- To generate options without commitment
- To discuss information that a party is not ready or willing to share in front of another
- To ask critical questions that may be interpreted as partial
- To seek answers to questions that the other party has no reason to hear

Let the parties know that information shared in caucus is private, and that you will ask permission before sharing information with the other party.

As much as possible, you should caucus with both sides equally. Meeting in private with only one party might appear suspicious.

Beginning the Mediation

When arranging the room prior to meeting with both parties, you should:

- Group the parties with their supporters.
- Make sure that everyone has enough space at the table.
- Ensure that the parties can easily hear each other.
- Make certain that neither party appears more physically aligned to you than the other.



Problem Identification

Open the meeting with introductions. Then, explain that you expect openness and candor, review the mediation process, and establish ground rules.

Next, allow each party to explain — from their own perspective — the incident(s) that led to the allegation(s) in the formal complaint. Encourage each party to consider the other party's point of view.

Give the complainant the first opportunity to share how the incident has affected them. The complainant may also ask the respondent questions (if both parties agree to allowing questions at that point).

Next, give the respondent a chance to speak. The respondent may choose to take responsibility for the harm they caused, but they are by no means required to admit responsibility.



If a respondent uses their chance to speak to deny responsibility vociferously or to argue excessively with the complainant, both parties may need to return to the grievance process.

Summarization



After each party shares their story, as a mediator, you should summarize what each person has said. Make sure that everyone heard and understood the same thing. Clarify the issues involved, address them all, and give both parties the chance to share additional concerns.

Parties may ask you to suggest a solution. You can comment on a particular issue without sharing personal opinions. You should remain neutral.

Options for Resolution

With mediator facilitation, the complainant and respondent should explore possible solutions. Resolutions for agreements could include:

- An apology;
- Components of reconciliation;
- Restitution for the complainant;
- Rehabilitation for the respondent (as needed and agreed to);
- An acceptance of responsibility; and/or
- Disciplinary sanctions.

It is up to you to ensure the parties understand their choices and are free to express what's in their best interests.



Ask Questions to Generate Options



During mediation, you should ask open-ended questions to help parties bypass roadblocks and explore their options. Open-ended questions cannot be answered with "Yes," with "No" or with a discreet piece of information. Also, ask question that focus on what parties do want and do like, as opposed to what they don't want and don't like. For example, ask:

- What would you like to see happen?
- What is most important to you?
- What is the worst outcome you can imagine?
- What is the best outcome you can imagine?
- What do you need to help you decide?
- What do you think the other party needs to hear from you?
- What do you need to hear from the other party?
- If you were in the other party's shoes, how might you feel?
- If you were in the other party's shoes, what might you want to happen?

Reaching an Agreement

A mediator then facilitates negotiation by encouraging the parties to select the most important and practical ideas to include in an agreement.

The parties are less likely to be satisfied with an agreement they feel pressured to accept. If the parties cannot reach an agreement, do not impose a solution. Either party has the right to return to the grievance process to adjudicate the allegations if they strongly disagree with the solution(s) offered.

Upon reaching a mutually acceptable resolution, you should clarify the solution to ensure both parties understand the components of the agreement. Confirm the agreement by putting it in writing and obtain each parties' commitment to it with signatures

The written agreement should use simple, straightforward language and — as much as possible — using the parties' own words. The agreement can specify that it was designed and agreed to by the parties and not the mediator.



Follow-up

Conduct follow-up with both parties to ensure the parties follow through with the agreement.



3

Chapter
Arbitration

Topics in this chapter include:

- Arbitration

Arbitration

Arbitration is another tool for informal resolution.

Arbitration describes a range of alternative dispute resolutions. Although it takes many forms, arbitration resembles a trial-like format. Evidence is presented, witnesses are called, arguments are made, and so forth. The arbitrator can ask questions of the parties and the witnesses.

Like mediation, arbitration must be facilitated by a trained, neutral party. One significant difference is that where a mediator doesn't make decisions for the parties, an arbitrator has the authority to make decisions over both parties without their consent, similar to a judge.

To conclude the proceedings, the arbitrator typically issues a written decision.



Arbitration should be more streamlined than the Title IX grievance process.

4 Chapter

Restorative Justice

Topics in this chapter include:

- What is Restorative Justice?
- Benefits of Restorative Justice
- An Inclusive Process
- Admitting Responsibility
- Restorative Practices
- Restorative Conferences
- Scripted Conferences

What is Restorative Justice?

Restorative justice is an evidence-based practice used to reduce suspensions, expulsions and disciplinary referrals. Restorative justice focuses on righting a wrong, ensuring accountability, repairing any damage done and mending damaged relationships.



Often, students are unaware how their behavior affects themselves — let alone how their behavior affects other people. Restorative practices restore a sense of well-being to the people who were harmed, and to the respondent as well.

Benefits of Restorative Justice



! Restorative practices can involve all types of students — from students who are struggling to those who are highly engaged.

For a respondent, restorative justice practices can help to:

- Increase pro-social skills.
- Address underlying factors that led to the behaviors related to the allegations.
- Build on the respondent's strengths.

Restorative practices help develop conflict resolution and critical-thinking skills in all participants.

An Inclusive Process

Restorative discipline practices tend to be more supportive, inclusive and educational than other disciplinary approaches.

Inclusion in the disciplinary process is a basic tenet of restorative justice. The complainant has the opportunity to explain the harm that was caused by the respondent's actions. Respondents can then accept responsibility for their behavior. Taking responsibility requires:

- Understanding how their behavior affected someone else.
- Acknowledging that the behavior was a result of a choice.
- Acknowledging that the behavior caused harm.
- Taking action to repair the harm.
- Taking steps to ensure different choices are made in the future.



Admitting Responsibility



As previously stated, in mediation, an admission of guilt is not required. Restorative justice is different because its critical feature is that a respondent accept responsibility for their actions and take steps to correct the harm they caused.

However, accepting responsibility for the purpose of restorative justice does not mean the school considers the student responsible under Title IX standards.

Schools can specify the circumstances under which a respondent's admission of responsibility would or would not be used, should either party withdraw from informal resolution and return to the formal grievance process.

Restorative Practices



Restorative justice includes a variety of practices, ranging from informal to formal. On a continuum, as restorative practices become more formal, they involve more people, require more planning and time, and are more structured and complete.



Nothing in Title IX dictates the form of disciplinary sanctions a school may or must impose on a respondent. Therefore, a school could use restorative justice as a sanction in the grievance process.

Restorative Conferences

Restorative conferencing is a victim-sensitive, straight-forward, problem-solving method that encourages participants to resolve their problem(s) constructively.

A restorative conference is a structured, face-to-face meeting among offenders, victims and supporters (e.g., family members and friends) to deal with an act of harassment openly, and to decide how best to repair any harm caused.

Led by a trained facilitator whose job it is to focus the discussion — but not actively participate in it — a conference allows a complainant to express their feelings to a respondent, ask questions and have a say in the outcome. A respondent then hears firsthand how their behavior affected the complainant.

The process is designed to:

- Identify actions that caused harm;
- Explore the nature and effects of the harm;
- Decide what actions will repair the harm; and
- Determine how similar actions can be prevented in the future.



Scripted Conferences

Some conferencing models are scripted, while others allow for a more organic approach. In conferences that do not rely on a script, a facilitator provides an opportunity to each participant to speak, beginning with asking open-ended, affective, restorative questions of the respondent.

If using a script, the complainant can ask the respondent questions, such as:

- "What is your version of the incident that led to the formal complaint?"
- "What were you thinking about at the time?"
- "What have you thought about since?"
- "Who has been affected by what you have done?"
- "What do you think you need to do to make things right?"

In turn, the respondent can ask the complainant questions, such as:

- "What did you think when this happened?"
- "How has this incident impacted you, your family, your friends and others?"
- "What has been the hardest thing for you?"
- "What do you think needs to happen to make things right?"

Finally, the complainant is asked what outcome they hope for. A discussion can follow and, after an agreement is reached, a simple contract is written and signed.



5

Chapter

Informal Resolution Agreements

Topics in this chapter include:

- Informal Resolution Agreements

Informal Resolution Agreements



All informal-resolution agreements should be specific, measurable, attainable, relevant and time-based (i.e., "S.M.A.R.T.):

- **Specific:** The agreement should specify what will happen to resolve the situation, where it will happen, when it will happen and how it will happen.
- **Measurable:** Everyone should know when the situation is resolved, and there should be a metric by which the resolution's completion can be determined.
- **Attainable:** All items agreed upon should be realistic and achievable.
- **Relevant:** The agreed-upon solution should be directly related to cause of the allegations and the harm caused by the incident.
- **Time-based:** A deadline should be set for completing the terms of the agreement.

6 Chapter

Conflicts of Interest & Transparency

Topics in this chapter include:

- Conflicts of Interest and Transparency

Conflicts of Interest and Transparency



As you've learned in previously, a **conflict of interest** occurs when your personal (or self-serving) interests clash with your professional duties. Because the mere perception of a conflict of interest can undermine the integrity of a Title IX informal-resolution process, it's crucial that you avoid such conflicts.

If it's not possible to avoid a conflict of interest, **transparency** is critical. To achieve transparency and avoid ethical and legal dilemmas, you must disclose actual — and potential — conflicts of interest. Disclosure does not always resolve the conflict of interest, but disclosure allows the conflict to be addressed properly and productively.

7

Chapter

Schemas, Stereotypes & Bias

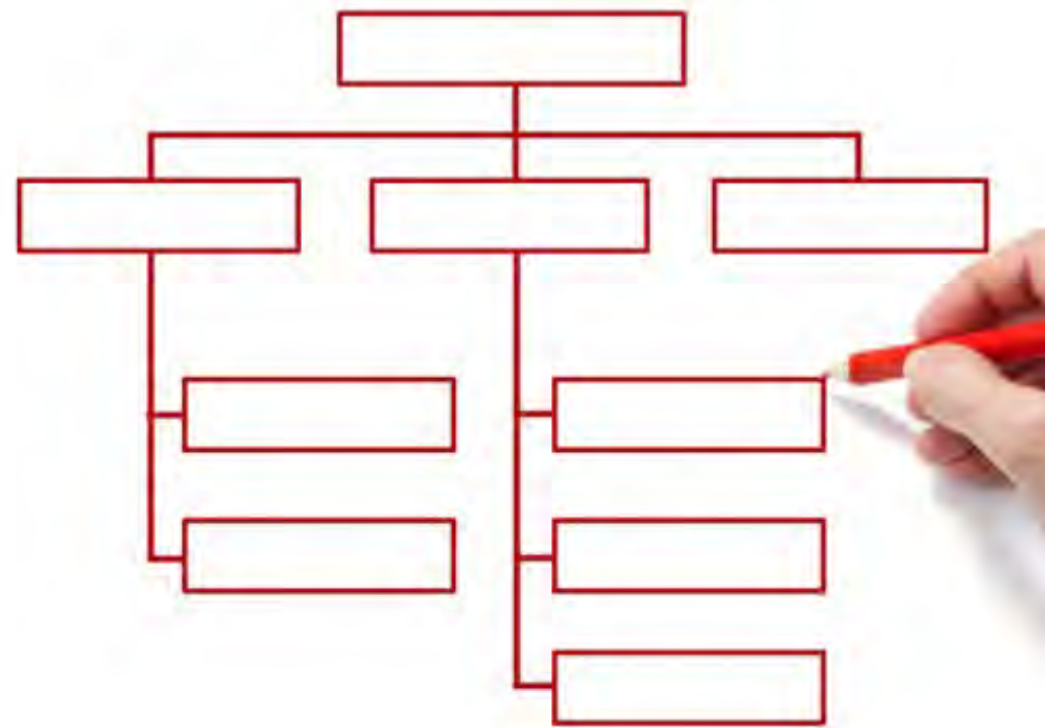
Topics in this chapter include:

- Schemas
- Stereotypes
- Bias
- Explicit Bias
- Implicit Bias
- Confirmation Bias
- Party Bias
- Sex-Based Bias
- Other Group-Based Bias

Schemas

Schemas are mental shortcuts that your brain uses to process information quickly and organize it into categories, based on relationships among that data.

Our brain is wired to sort people into groups based on easily recognizable characteristics like age, gender, race and the like. These oversimplified generalizations about people are called **stereotypes**.



Stereotypes



All people stereotype others in some way. Your stereotypes have developed over the course of your lifetime, beginning at a very early age. They've been formed by:

- Direct and indirect messages that have imprinted on your memory
- Your experiences
- Your observations
- Your parents and family members
- Your friends
- Your schooling
- Media (e.g., music, videos, video games, movies, apps, advertisements, books, articles, etc.)

Stereotypes are not necessarily negative. However, even seemingly positive stereotypes can have unintended consequences.

Bias

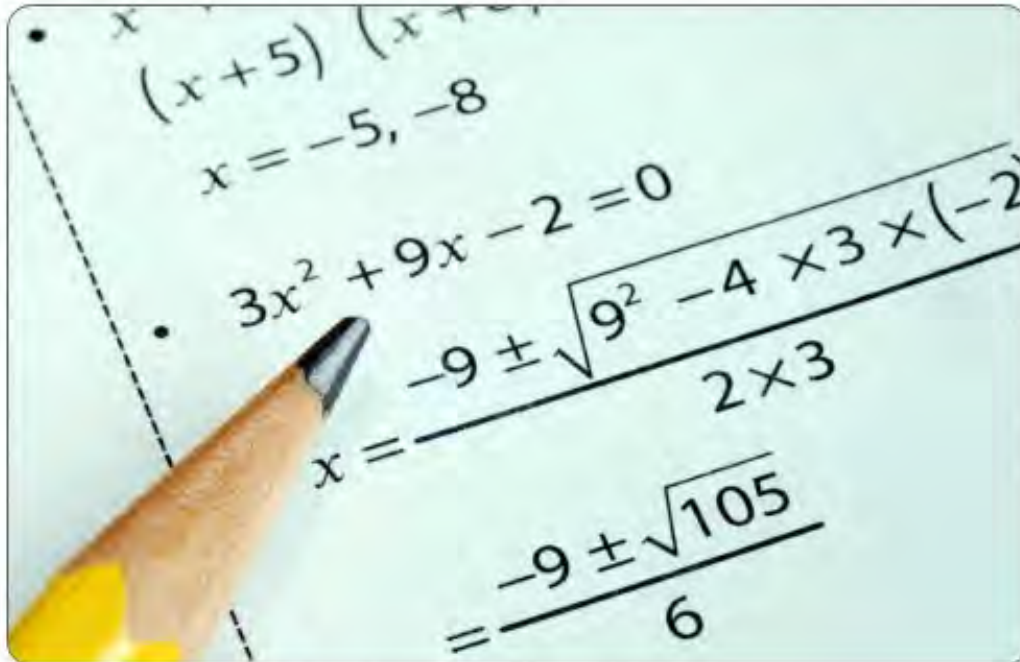
Bias involves attributing stereotypical beliefs about a group of people to an individual associated with that group. Such inclinations and preferences can interfere with your making impartial judgments about someone. Everyone has biases that cause them to be more tolerant and accepting of certain types of people than others. There are three components of bias:

- The **cognitive** component includes your thoughts, beliefs and ideas about something or someone.
- The **affective** component encompasses your emotional reactions to different types of people.
- The **behavioral** component involves how you act toward certain people.

All three components collectively affect how we relate to and treat others. If you judge people through a biased lens, you can miss the chance to appreciate their talents.



Explicit Bias



Explicit bias is the type of bias that gets the most attention. Explicit bias involves attitudes that shape what someone believes about a group of people. Overt racism and sexism are examples of explicit biases.

With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups. Thus, explicit bias can be measured with straightforward questions, such as, "Do you agree or disagree with the statement, 'Boys are better than girls at math?'"

Implicit Bias

Implicit bias comprises the unconscious, subtle associations you make among people. It's your automatic, positive or negative preference for someone, based on your perception of that person's race, gender, age, ethnicity and abilities. Implicit bias impacts how stereotypes shape your understanding, decisions and actions toward members of diverse groups. It does not require an angry or spiteful disposition; it only requires not being aware of how your positive or negative stereotypes influence your thoughts and actions.

Even the most well-intentioned person experiences some degree of implicit bias; in fact, implicit bias may actually conflict with your explicit beliefs and values.

You can truly believe everyone should be judged based on the merit of their character, yet unwittingly stereotype someone.

Implicit bias can be just as problematic as explicit bias, because both can produce discriminatory behavior. Any bias interferes with creating a positive classroom climate.

Because implicit bias is deeply entrenched and operates outside your conscious awareness, combating it is challenging. Fortunately, stereotypes formed over a lifetime can be purposely unlearned. To counter implicit bias, train your mind to recognize stereotypes for what they are. Consciously and consistently evaluate your thought processes and judgment.



Title Confirmation Bias

Confirmation bias occurs when you search for, interpret, focus on and favor information that aligns with your pre-existing beliefs, opinions or expectations.

Most people are unaware of how confirmation bias affects their actions. They may even perceive their biased thoughts to be intuition or common-sense, and not realize how their bias hampers objectivity. In fact, research shows that people often hold onto a faulty opinion even after being shown proof their opinion is flawed. The stronger someone's beliefs, the more likely they are to ignore facts that don't align with those beliefs.



Party Bias

Party bias occurs exists if you're biased toward someone — or against someone — just because they happen to be a complainant, or just because they happen to be a respondent.

Work to eliminate any party bias you may have. Similarly, never assume teachers and staff members are always more credible than students... or vice versa.

In addition, don't let your judgment be clouded because of the emotions associated with a case. In situations that involve sexual assault or other serious injury, it's natural to want to hold someone responsible. Nevertheless, you must remain objective.



Sex-Based Bias



The topic of sexual harassment inherently includes issues of sex and sexual dynamics. Thus, **sex-based bias** is a particular risk to Title IX's informal-resolution process. A school must not allow sex-based biases, stereotypes or generalizations to influence mediation, arbitration or restorative justice. Doing so would further inject sexual discrimination into the situation.

You must not apply "profiles" or "predictive behaviors" to sexual-harassment cases. Instead, you must adopt a **sex-neutral approach** that prohibits sexual-harassment generalizations about "women as victims" and "men as perpetrators."

However, you can consider studies and statistical generalizations in an informative, impartial way, providing they don't compromise your objective evaluation of the facts surrounding a particular case.

If you treat either party differently during the Title IX informal-resolution process because of their sex, you're violating Title IX's non-discrimination mandate.

Sex-Based Bias Example

For example, you and other Title IX personnel cannot allow stereotypes regarding men to influence the process. You cannot assume males are innately sexually aggressive or that a culture of "toxic masculinity" makes them more likely to engage in sexual violence.

Similarly, you cannot offer different remedies or sanctions based on whether someone is a female or a male.

Sexual harassment affects students throughout the country. Anyone, regardless of gender, can be a sexual-harassment complainant or respondent. However, the following groups are sexually harassed more than other populations:

- Persons of color, particularly females with intersecting identities
- Girls and women who are immigrants (e.g., persons whose national origin is outside the United States)
- Individuals with disabilities
- Lesbian, gay, bisexual, transgender and/or queer and intersex (LGBTQI) individuals



Other Group-Based Bias



Just as sex-based bias against a particular gender, so too does bias exist against other groups with which a complainant, a respondent or a witness may identify.

You and your colleagues must not allow bias against a party's race, ethnicity, sexual orientation, gender identity, disability, immigration-status, socioeconomic status — or any other characteristic — impact the informal-resolution process.



Group-based bias often presents itself in the form of microaggressions. Hurtful and exclusionary, microaggressions are belittling and demeaning messages you consciously — or subconsciously — send to someone because of their perceived association with a certain group.

8 Chapter

How to Minimize Bias

Topics in this chapter include:

- Five Strategies
- Strategy 1: Stereotype Replacement
- Strategy 2: Counter-Stereotypic Imaging
- Strategy 3: Individuation
- Strategy 4: Perspective Taking
- Strategy 5: Increased Positive Contact
- When You Inadvertently Say the Wrong Thing

Five Strategies

To reduce the impact of bias, implement one of the following five strategies:

- Stereotype replacement
- Counter-stereotypic imaging
- Individuation
- Perspective taking
- Increased positive contact

These will be discussed in detail on the six slides that follow.



Strategy 1: Stereotype Replacement

The first strategy you should consider implementing is **stereotype replacement**. To replace stereotypes:

- Acknowledge that you sometimes respond to people based on your pre-conceived notions about them.
- Identify when, where and how your reactions derive from such stereotypes.
- Consider why you respond in that manner.
- Choose to respond to people in a way that reflects non-stereotypical beliefs.

Consider this hypothetical situation:

A fellow educator who works in a disadvantaged, inner-city district shares how happy she is that her favorite student received a full college scholarship. If you reply, "That's great!

In what sport?" you may have inadvertently displayed bias. You've assumed that a pupil from a disadvantaged school did not excel in academics and that the teen's only "ticket out" was athletics — which is a common stereotype.

As such, consider why you responded the way you did. Then, do some research. See if you can find information that supports or challenges the assumption you made.



If the information you find contradicts your previous belief, replace your old stereotype with your new frame of reference. Keep that new data in mind the next time you face a similar situation and respond differently.

Strategy 2: Counter-Stereotypic Imaging



A second strategy, **counter-stereotypic imaging**, involves you challenging your stereotype by making a positive association with an image that's the exact opposite of your stereotype.

For example, if you typically stereotype doctors as men and typically stereotype stay-at-home parents as women, think about exceptions to that stereotype — e.g., a female friend who is a doctor and married to a stay-at-home dad.

Strategy 3: Individuation

A third strategy, **individuation**, involves obtaining information about individual members of a group instead of generalizing about that group.

Make a conscious effort to avoid making quick decisions based on stereotypes. Gather information about a person before judging that individual. And purposely form meaningful relationships with people different than you.



Strategy 4: Perspective Taking



Perspective taking, a fourth strategy, involves walking a proverbial mile in another person's shoes. Before judging someone, consider that individual's perspective. Doing so will help you empathize with people you tend to stereotype.

For instance, if you tend to stereotype based on gender, try imagining what it would feel like to be deemed unqualified for a position because of your gender. For example, consider how a man might feel were he denied the opportunity to teach kindergarten because he's perceived as less nurturing than women applicants.

Strategy 5: Increased Positive Contact

Increased positive contact is a fifth strategy you should consider employing. Spending time with diverse groups of people is a powerful way to counter false stereotypes. By meeting individuals who don't conform to your pre-conceived notions, your stereotypic thoughts and beliefs will dissipate.

Furthermore, when you interact with the community where your students live, you forge positive relationships with the kids and their families.



When You Inadvertently Say the Wrong Thing

Even if you sincerely try to be culturally considerate, you may say something that you consider benign, but that others consider racist, sexist, homophobic or otherwise insensitive.

If they accuse you of bias or prejudice, you may feel hurt, frustrated, angry, resentful or guilty. You may want to respond, "That's not what I meant," or "You're taking it the wrong way."

However, try to avoid becoming defensive. Instead:

- Calmly and honestly examine the situation and what you said. Everyone has biases, so be willing to admit that you were wrong. Doing so can establish trust with students and promote a respectful, inclusive environment.
- Respond with respect. Acknowledge the other person's feelings; doing so can help resolve any conflict. Say something simple but kind, such as, "I understand you feel my words were prejudiced or unfair, and that concerns me."
- Gather information. Try to understand the other person's point of view. The effects of prejudice are cumulative. Chances are, the person's reaction isn't just because of what you said, but because they've faced a long history of prejudice.
- Acknowledge what happened and modify your behavior accordingly. If your behavior was consciously or unconsciously prejudicial or unfair, avoid repeating your mistake.



End of Section

You have completed this section of the course. You must complete all sections and take the test to receive credit for this course.

Click on the next section in the left-hand navigation bar. If you've completed all sections, please click "Take Test."

