



# Title IX Coordinator & Administrator Training

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## Disclaimer



- This presentation and its accompanying materials provide general coverage of its subject area and is presented for informational purposes only.
- The information in this presentation is not a substitute for legal advice as the information may not be suitable in a particular situation.
- Consult your attorney for legal advice. No attorney client relationship is intended or implied by making this presentation.

## Agenda

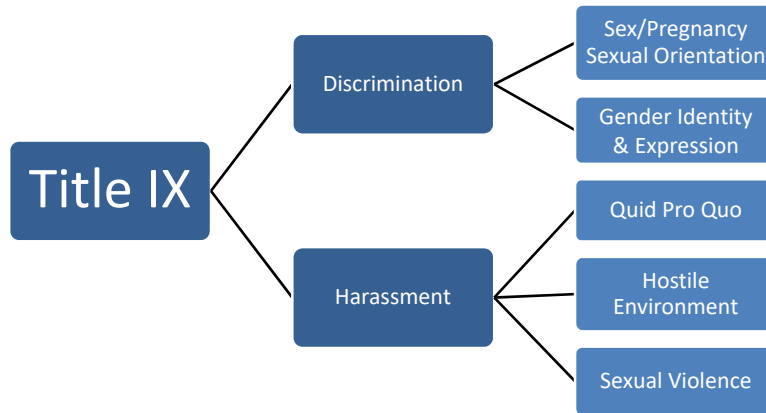


- Title IX Prohibition
- Title IX Definitions
- Title IX Complaint Process
- Retaliation
- Conducting an Investigation
- Avoiding Biases or Conflicts

## Title IX Prohibition

- “No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination **under any education program or activity** receiving Federal financial assistance.”
- **OCR:** The U.S. Department of Education Office for Civil Right (“OCR”) is the federal agency responsible for enforcing Title IX

## Title IX Prohibition



## Title IX Required Training



- **Required Participants:**
  - Title IX Coordinators, Investigators, Decision-Makers, Appeals Decision-Makers
- **Required Topics:**
  - Definition of Sexual Harassment
  - Scope of Educational Program or Activity
  - Title IX Formal Complaint Process
  - How to Conduct an Investigation
  - Informal Resolution Process
  - Avoiding Biases & Conflicts
  - No Retaliation

# Key Title IX Definitions



## Definition: Title IX Roles

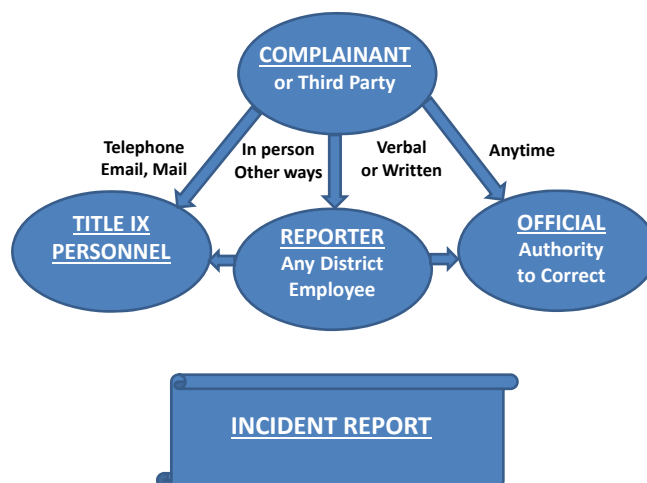


- Complainant
- Respondent
- Reporter
- Title IX Coordinator
- Area Title IX Administrator
- Informal Resolution Mediator
- Advisor
- Investigator
- Decision-Maker
- Appeals Decision-Maker

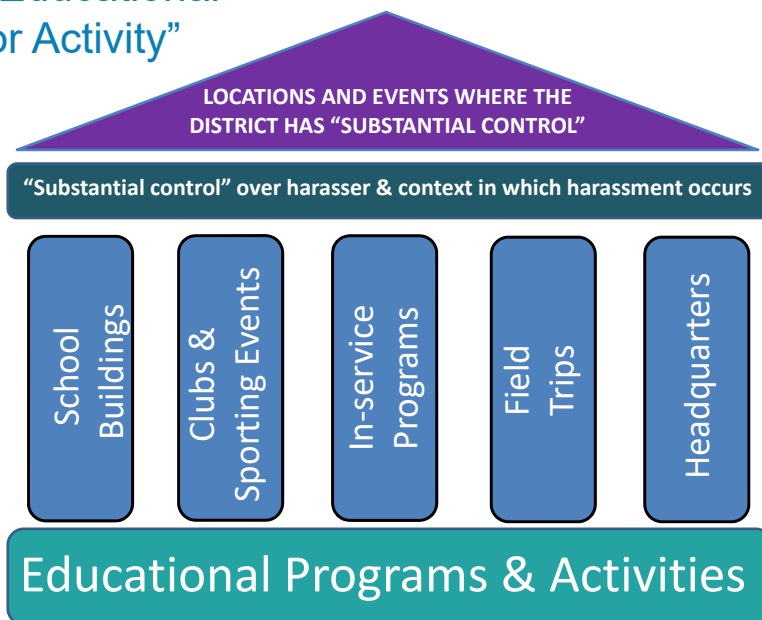
## Traits - Title IX Roles



## Definition: Actual Knowledge



## Definition: “Educational Program or Activity”



## Definition: Consent



- **Consent:** affirmative, conscious and voluntary agreement to engage in sexual activity, except when the Complainant is a minor and incapable of granting consent
- Consent is:
  - Free from coercion
  - Free from intimidation
  - Free from threats
  - Not assumed
  - Revocable

## Definition: Relevance



- **Relevance** - having any tendency to make the existence of sexual harassment more probable or less probable than it would be without the evidence.
  - Must adhere to the rape shield law

## Standard of Liability



- **Deliberate Indifference**
  - Clearly unreasonable in light of the known circumstances
  - Once absolute knowledge exists

## Standard of Proof



- **Preponderance of the evidence** - more likely than not that the sexual harassment or violence occurred

## Definition: Sex/Gender Discrimination



- Treating someone (applicant, employee, admitting or current student) unfavorably because of that person's sex or gender.
- Includes, but is not limited to:
  - Pregnancy discrimination
  - Sexual orientation discrimination
  - Gender identity/expression discrimination
  - Sexual harassment



## Definition: Sexual Harassment

Quid Pro Quo

Sexual  
Violence

HWE  
Harassment

Educational Program or Activity

## Harassment: (Quid Pro Quo)



- **Quid Pro Quo** – Latin, “this for that”
  - Unwelcome sexual conduct
  - Submission to which is made either explicitly or implicitly
  - Affects a term or condition of an individual’s employment or access to educational program or activity
  - Can only be done by employees against students, or managers/supervisors against employees

## When is Conduct Unwelcomed?



- Voluntary ≠ Welcome (imbalance of power)
- What may have been welcome on one occasion (e.g. because of a prior consensual relationship) may not be welcome on another occasion.

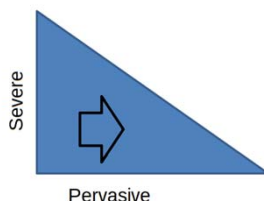
## Break



# Harassment (Hostile Work Environment)

- 1 • **Unwelcome conduct**
  - based on sex
- 2 • **Severe, pervasive, and objectively offensive**
- 3 • **Reasonable Person Standard**
- 4 • **Denies equal access to education program or activity**

## Severe, Pervasive and Objectively Offensive



- **Pervasive:** frequency of the conduct
  - generally, a single or isolated incident is not enough to establish harassment
- **Severe:** nature of the conduct
  - a single comment or misconduct may be sufficient to create harassment, particularly when the harassment is physical.
- **Objectively Offensive:** surrounding circumstances
  - Would a reasonable person in the position be offended

# Reasonable Person



- Judged from the perspective of:
  - Subjectively – from the perspective of the Complainant **and**
  - Objectively – from the perspective of a reasonable person in the Complainant's position
- NOT judged from the perspective of the alleged harasser

# Sexual Violence



- Sexual assault
  - Any sexual act directed against a person, without consent
  - Ex. rape, fondling, incest, statutory rape
- Dating violence
  - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Domestic violence
  - Violence committed by a spouse or former spouse, person with whom the Complainant shares a child, with whom the Complainant shares a residence, by persons covered by the domestic or family violence laws of the jurisdiction
- Stalking
  - Persistent watching, following, contacting or observing a person, motivated by what the stalker believes is love, sexual obsession or hostility, but would place a reasonable person in fear

## Harassment Includes:



- **Physical:** touching, fondling, hugging, massaging, sexual intercourse, unnecessary closeness
- **Written:** words (spoken or written), emails, social media
- **Verbal:** discriminatory comments, slurs, insults, jokes
- **Visual:** pictures, posters, cartoons, Snapchat, Instagram, indecent gestures or objects
- **Non-verbal:** actions, gestures, staring or leering

## Excuses that don't work



- I thought it was consensual
- I didn't mean to harass anyone
- I was only trying to be funny
- He/she never complained
- I didn't think anyone else would see that text or e-mail

# Title IX Formal Complaint Process



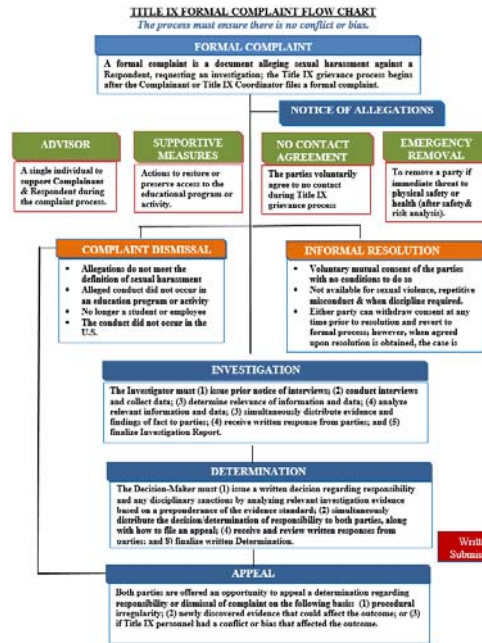
## Reporting Protocol

- All employees: all employees must report allegations of sexual harassment to the Title IX Coordinator or Title IX Administrator
- Potential violations of law: the Title IX Coordinator/Title IX Administrators must follow district protocol if the reporting allegations require contacting CPS or law enforcement (HISD PD)
- Anonymous reports – the Title IX Coordinator/Administrators should make a concerted effort to obtain as much information as possible to thoroughly investigate the allegations.

# Formal Complaint Process

Reasonably Prompt  
Time Frames

Allowances for short-term  
good cause delays



## 1. Incident Report → Formal Complaint → Notice of Allegations

**TITLE IX INCIDENT REPORT**

Title IX of the Education Amendments Act is a federal law that prohibits discrimination of students and employees, including sexual harassment and other sexual misconduct (such as sexual assault, stalking, and relationship violence). In compliance with Title IX and other federal laws, 2020 does not tolerate sexual harassment or sexual misconduct against students or employees in educational programs or activities experienced sexual discrimination, harassment or other sexual misconduct, the District wants to have an appropriate action. Please complete this form to the best of your ability, and return the form to the Title IX Coordinator below.

**TITLE IX FORMAL COMPLAINT**

Title IX of the Education Amendments Act of 1972 (Title IX) and 2020 Policy 1022 prohibit sexual harassment and sexual misconduct against students and employees in educational programs or activities. This process is designed to ensure a fair and equitable resolution of complaints. The process begins with a formal complaint filed by the Complainant or the Title IX Coordinator. The process must ensure there is no conflict or bias.

**TITLE IX NOTICE OF ALLEGATIONS**

The Title IX Coordinator will issue a Notice of Allegations to the Respondent. The Notice of Allegations will include the following information: the name of the Complainant, the name of the Respondent, the date of the alleged incident, the location of the alleged incident, the nature of the alleged incident, and the Title IX Coordinator's contact information. The Respondent will have 10 business days to respond to the Notice of Allegations. The Respondent's response will be reviewed by the Title IX Coordinator and the Decision-Maker. The Decision-Maker will issue a written decision regarding responsibility and any disciplinary sanctions. The Decision-Maker's decision will be final and binding on both parties.

**Form Fields:**

- NAME: \_\_\_\_\_ DATE: \_\_\_\_\_
- ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_
- HOME/WORK PHONE: ( ) \_\_\_\_\_ CELL PHONE: ( ) \_\_\_\_\_
- EMAIL ADDRESS: \_\_\_\_\_ OTHER EMAIL ADDRESS: \_\_\_\_\_
- STATUS: (Please check one) ☐ CURRENT STUDENT ☐ PARENT/LE ☐ CURRENT EMPLOYEE ☐ OTHER
- IF STUDENT: Student ID: \_\_\_\_\_ School: \_\_\_\_\_
- IF EMPLOYEE: Employee ID: \_\_\_\_\_ School Department: \_\_\_\_\_
- TYPE OF COMPLAINT (Check all that apply):
  - ☐ Sex Discrimination ☐ Sexual Harassment ☐ Sexual Assault
  - ☐ Domestic Violence ☐ Dating Violence ☐ Stalking
- PLEASE LIST THE NAME(S) OF ANYONE, INCLUDING THE COMPLAINANT, ABOUT THE ALLEGED MISCONDUCT: \_\_\_\_\_
- Name of person(s), school or department, job title (if any), education program and where the complaint occurred: \_\_\_\_\_

## 2. Other Considerations



- **Advisor**
  - A single individual to support Complainant & Respondent during the complaint process
- **Supportive Measures**
  - Actions to restore or preserve equal access to the educational program or activity
  - Without being disciplinary or punitive or unreasonably burdening the other party
  - Fact-specific analysis; consider Complainant's wishes
  - If not offered to Complainant, must document reason why not in writing
- **No Contact Agreement**
  - Mutually agreed upon
  - To restore or preserve access to the educational program or activity
  - A one-way no contact agreement may be appropriate under certain circumstances
- **Emergency Removal**
  - To remove a party if immediate threat to physical safety or health (after safety & risk analysis)
  - Removed party must receive notice and an opportunity to challenge once removed

## 3. Formal Complaint Dismissal?



- **Mandatory Dismissal**
  - Does not meet sex discrimination definition
  - Does not involve educational program or activity
  - Conduct did not occur in the U.S.
- **Discretionary Dismissal**
  - At Complainant's request
  - Respondent no longer enrolled/employed
  - Specific circumstances to prevent gathering sufficient evidence to reach a determination regarding allegations
- Requires written notice of dismissal and reason for dismissal to complainant and respondent
- Does not preclude taking action under the Code of Conduct



# T9C Checklist



TITLE IX COORDINATOR CHECKLIST			
The checklist below is not exhaustive, but includes recommended actions that most likely should be taken during the Title IX grievance process. Additional action items may be necessary, on a case-by-case basis.			
Incident/Complaint No.:		Date:	
Complainant (Name & ID#):		Respondent (Name & ID#):	
YES	NO	AFTER RECEIPT OF FORMAL COMPLAINT	DATE
<input type="checkbox"/>	<input type="checkbox"/>	Obtain completed formal complaint from Complainant or Title IX Coordinator and assign a complaint number.	
<input type="checkbox"/>	<input type="checkbox"/>	Determine if the formal complaint requires mandatory Title IX dismissal based on: <ul style="list-style-type: none"> <li>Allegations do not meet the definition of sexual harassment</li> <li>Alleged conduct did not occur in an education program or activity</li> <li>Alleged conduct did not occur in the U.S.</li> </ul> Confer with Legal before any mandatory Title IX dismissals. If a mandatory dismissal of a Title IX formal complaint <u>is</u> issued, decide if the allegations indicate a potential Code of Conduct violation and whether further actions are needed.	
<input type="checkbox"/>	<input type="checkbox"/>	If the formal complaint <u>is not dismissed</u> , issue the notice of complaint.	
YES	NO	NOTICE OF ALLEGATIONS	DATE
<input type="checkbox"/>	<input type="checkbox"/>	Distribute Notice of Complaint to Complainant and Respondent. Remember: The district cannot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.	
<input type="checkbox"/>	<input type="checkbox"/>	Provide a copy of the Title IX Grievance Process Booklet to Respondent, which includes: <ol style="list-style-type: none"> <li>Title IX &amp; HISD policy prohibitions against sex discrimination;</li> <li>No retaliation for reporting incident;</li> <li>Overview of Title IX grievance process: <ol style="list-style-type: none"> <li>How to file a formal complaint;</li> <li>Presumption Respondent is not responsible until determination regarding responsibility</li> <li>Informal resolution option (if eligible);</li> <li>Confidentiality parameters;</li> <li>Overview of investigation phase, relevance and preponderance of the evidence standard</li> <li>Overview of Determination and Appeal phase; and</li> <li>Range of possible remedies and/or disciplinary sanctions</li> </ol> </li> </ol> Obtain signed acknowledgment that booklet has been received.	
<input type="checkbox"/>	<input type="checkbox"/>	Did Respondent have an opportunity to provide a written response to the Formal Complaint? If not, inform the Respondent that he/she may respond if he/she chooses	

# T9C Checklist



<input type="checkbox"/>	<input type="checkbox"/>	Explain availability of Supportive Measures with or without filing a formal complaint. (Supportive measures are appropriate and reasonably available measures to preserve or restore access to educational programs and activities; may include counseling, extensions of deadlines, course-related adjustments, modification of work or class schedules, no contact between the parties, leaves of absence, increased security or monitoring, or similar measures; <u>non-disciplinary and non-punitive; consider Complainant's wishes</u> )	
<input type="checkbox"/>	<input type="checkbox"/>	Explain availability of an Advisor (an advisor is a single individual to support Complainant & Respondent during the Title IX process)	
<input type="checkbox"/>	<input type="checkbox"/>	Select Advisor and arrange for Advisor to connect with Respondent. If the Respondent is a student, obtain a completed FERPA permission form, to obtain permission for the advisor to attend the interviews and be privy to information communicated to the parties during the grievance process.	
<input type="checkbox"/>	<input type="checkbox"/>	Decide appropriate supportive measures and/or delegate others to initiate them. Request confirmation when supportive measures are in place.	
<input type="checkbox"/>	<input type="checkbox"/>	Determine if No Contact Agreement is necessary ((Parties agree to have no contact during the Title IX Grievance Process). If so, obtain NCA from the parties.	
<input type="checkbox"/>	<input type="checkbox"/>	Determine if Emergency Removal is necessary (after an individualized safety/risk analysis, is necessary due to an immediate threat to the physical health or safety of any individual arising from the alleged incident). Inform the Complainant when in place.	
<input type="checkbox"/>	<input type="checkbox"/>	Determine if a leave of absence is necessary for an employee, if any, during the <u>pendency of the Title IX complaint?</u>	
<input type="checkbox"/>	<input type="checkbox"/>	Determine if the formal complaint requires discretionary Title IX dismissal based on: <ul style="list-style-type: none"> <li>Complainant's request</li> <li>Respondent is no longer enrolled/employed</li> <li>Specific circumstances to prevent gathering sufficient evidence to reach a determination regarding allegations</li> </ul> Confer with Legal before any discretionary dismissals. If a discretionary dismissal of the Title IX formal complaint <u>is</u> issued, decide if the allegations indicate a potential Code of Conduct violation and whether further actions are needed.	

## 4. Informal Resolution

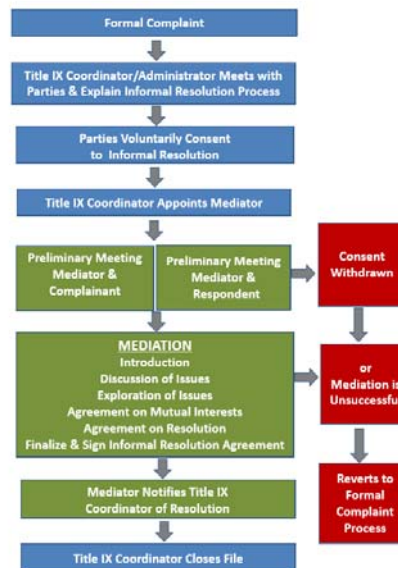


- Not available for:
  - (1) any allegations of sexual assault, domestic violence, and/or sexual harassment by an HISD employee involving a student;
  - (2) repetitive misconduct found to violate Title IX and HISD's anti-discrimination and anti-harassment policies; and
  - (3) misconduct that requires a disciplinary action.
- Requires voluntary, written consent from both Complainant and Respondent
- Failure to consent will not result in punitives
- After consent, a mediator will attempt to resolve the complaint, resulting in an informal resolution agreement
- The formal complaint will revert back to the formal complaint process if either party withdraws consent or if mediation is unsuccessful

## Informal Resolution Process



**TITLE IX INFORMAL RESOLUTION FLOW CHART**



# T9C Checklist

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The checklist below is not exhaustive, but includes recommended actions that most likely should be taken during the Title IX grievance process. Additional action items may be necessary, on a case-by-case basis.			
Incident/Complaint No.:		Date:	
YES	NO	INFORMAL RESOLUTION	DATE
<input type="checkbox"/>	<input type="checkbox"/>	If the formal complaint is <u>not dismissed</u> , determine if the alleged incident is eligible for informal resolution (not available for sexual violence, repetitive misconduct or conduct that warrants disciplinary sanctions). Consult with Legal before requesting informal resolution.	
<input type="checkbox"/>	<input type="checkbox"/>	If eligible for the informal process, provide parties with the Informal Resolution Request form and explain the informal resolution process. Emphasize nothing punitive will happen, if they decide to forgo this option.	
<input type="checkbox"/>	<input type="checkbox"/>	If both parties voluntarily agree to informal resolution, obtain completed and signed forms from each party.	
<input type="checkbox"/>	<input type="checkbox"/>	Select mediator. Establish the mediator does not have a bias or conflict. If there is a conflict or bias, select another mediator. Ensure the mediator will not participate as an investigator, decision-maker or appeals panelist for the same complaint.	
<input type="checkbox"/>	<input type="checkbox"/>	Periodically check with the mediator for status. If the timeline is different from what <u>was initially provided</u> to the parties, provide an updated timeline or ask the mediator to do so. [Delays for good cause allowed with written notice to the complainant and respondent of the delay and the reason for the delay. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities]	
<input type="checkbox"/>	<input type="checkbox"/>	If the informal resolution process is successful, obtain the completed and signed informal resolution agreement from each party for your files. Explain the grievance process is now closed. Advise them to contact Title IX Coordinator if any party fails to adhere to the agreement.	
<input type="checkbox"/>	<input type="checkbox"/>	If the informal resolution process is not available, not successful or any party withdraws consent before an agreement <u>is reached</u> , revert the complaint to the formal Title IX grievance process, requiring an investigation.	



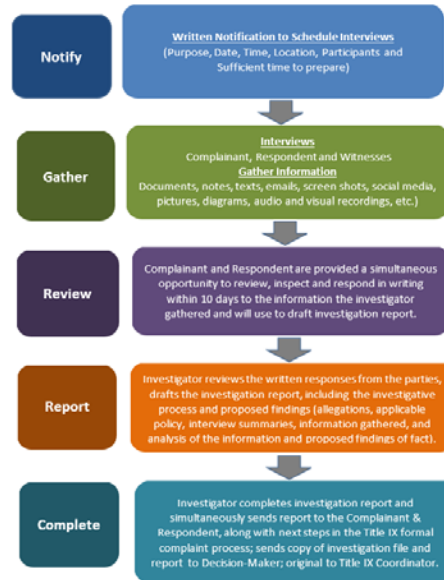
## 5. Investigation



- Requires equitable treatment of Complainant and Respondent equitably
- District has the burden of gathering evidence
  - the parties may also gather evidence
- Must provide notice of interviews with sufficient time to prepare
- Investigator:
  - conducts interviews & collect data
  - evaluates relevant evidence,
  - drafts investigation report
  - simultaneously distribute draft report and evidence to Complainant and Respondent
  - allows Complainant and Respondent 10 days to provide a written response
  - review written responses to determine if report should be revised
  - finalize the investigation report after reviewing the written responses

## Title IX Investigation

### TITLE IX INVESTIGATION FLOW CHART



## Investigation



- 1. Investigation Plan
- 2. Review/Analyze Documents
- 3. Interview Complainant
- 4. Interview Witnesses
- 5. Interview Respondent
- 6. Finalize Investigation

## Sample Questions



- What happened? (Describe what was said/done in order of how it was said/done)
- When and where did this happen? Why do you believe it happened?
- What were the circumstances leading up to the incident?
- Was there physical contact? Describe it.
- What did you do in response to the incident? What did you say in response to the incident?
- Did anyone else see or hear what happened? Who? How? What did they do/say?
- Is there any other evidence (documents, text messages, photos, emails, Instagram, etc.) to support your account of what happened?
- Is there anyone else we should talk to who had knowledge of the incident or the circumstances surrounding it?
- Have you talked to anyone about the incident? Who? When? Where? What did you tell them? What was their response?
- Has the incident impacted your job/school activities in any way? How?
- What do you want to see happen as a result of this investigation
- Is there anything else I need to know?
- Is there anything else you want to tell me that I haven't asked you?
- Please let me know if you think of additional information that will be helpful in this investigation.

## T9C Checklist



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Complainant (Name & ID#):		Respondent (Name & ID#):	
YES	NO	INVESTIGATION	DATE
<input type="checkbox"/>	<input type="checkbox"/>	Select an investigator. Establish the investigator does not have a bias or conflict in conducting the investigation. If there is a conflict or bias, select another investigator. Remember the investigator cannot act as a decision-maker or appeals panelist for the same complaint.	
<input type="checkbox"/>	<input type="checkbox"/>	Ensure investigator possesses the following at the onset: Title IX Grievance Process Booklet, Incident Report, Formal Complaint, Notice of Complaint, Respondent's Response to Complaint, Investigator Checklist and link to Investigation Report Template	
<input type="checkbox"/>	<input type="checkbox"/>	Provide the name and contact information of the investigator to the parties and their advisors.	
<input type="checkbox"/>	<input type="checkbox"/>	Periodically check with Investigator to determine status. If the timeline is different than what was initially provided to the parties, provide an updated timeline. [Delays for good cause allowed with written notice to the complainant and respondent of the delay and the reason for the delay. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.]	
<input type="checkbox"/>	<input type="checkbox"/>	Ensure complainant and respondent are provided written notice of any interviews or meetings during the process, including the date, time, location, participants, and purpose of the interview or meeting, with sufficient time for the party to prepare to participate.	
<input type="checkbox"/>	<input type="checkbox"/>	Remind the investigator that (a) he/she may consult with Legal if necessary (ex. need to clarify what is relevant); (b) he/she should contact the Title IX office if the advisor becomes disruptive to the process.	

## 6. Determination



- Determination - written decision regarding responsibility, with remedies (including disciplinary sanctions, if appropriate)
- Decision-maker will:
  - Affirm or dispute proposed findings of fact
  - Apply policy to affirmed facts
  - Review relevant evidence under a preponderance of the evidence standard
  - Recommend disciplinary sanctions, if required
  - Simultaneously distribute draft determination to Complainant & Respondent
  - Allow the parties an opportunity to provide a written response within 10 days
  - Finalize Determination
  - Provide information on how to appeal

## Determination



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  - Affirm or dispute proposed findings of fact
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  - Review relevant evidence under a preponderance of the evidence standard
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  - Simultaneously distribute draft determination to Complainant & Respondent
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  - Provide information on how to appeal

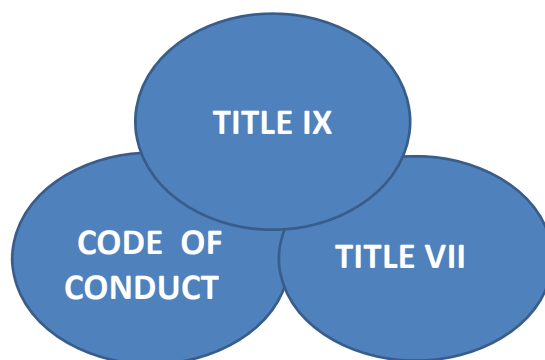
## Evaluate Evidence



- **Evidence Analysis**

- Credibility
- Motive
- Facts vs. Rumors/opinions
- Inconsistencies vs. corroborated facts
- Reasonable & logical conclusions?

## Factors to Consider



## Report & Determination



- Issue Investigation Report or Determination
- Provide report and determination, basis of outcome to Complainant and Respondent
- Review written response from Complainant and Respondent
- Finalize report and determination

## Possible Determinations



- More likely than not the event happened
- More likely than not that the event did happen, for the most-part, as described
- More likely than not that the event did not happen to any reasonable extent as described
- More likely than not the event did not happen ▫



## Remedies



To restore/preserve access to educational programs and activities

- Continue with Support Measures
- No contact agreement
- Adjust class/work schedule
- Counseling
- Adjust reporting lines
- Other academic accommodations
- Increased monitoring
- Leave of absence
- Increased security
- Escort services
- Expulsion/Termination
- Other disciplinary sanctions

# T9C Checklist



TITLE IX COORDINATOR CHECKLIST		
<p>The checklist below is <b>not</b> exhaustive, but includes recommended actions that most likely should be taken during the Title IX grievance process. Additional action items may be necessary, on a case-by-case basis.</p>		
Incident/Complaint No.:		Date:
Complainant (Name & ID#):		Respondent (Name & ID#):
YES	NO	DETERMINATION
<input type="checkbox"/>	<input type="checkbox"/>	Select a decision-maker. Establish the decision-maker does not have a bias or conflict in making the determination. If there is a conflict or bias, select another decision-maker. Remember the decision-maker cannot act as an appeals panelist for the same complaint.
<input type="checkbox"/>	<input type="checkbox"/>	Provide the name of the decision-maker and contact information to the parties and their advisors. Issue a modified timeline, if necessary. [Delays for good cause allowed with written notice to the complainant and respondent of the delay and the reason for the delay. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.]
<input type="checkbox"/>	<input type="checkbox"/>	Ensure the decision-maker possesses the following at the onset: Title IX Grievance Process Booklet, Incident Report, Formal Complaint, Notice of Complaint, Respondent's Response to Complaint, Investigation file and decision-maker checklist.
<input type="checkbox"/>	<input type="checkbox"/>	Periodically check with decision-maker to determine status. If the timeline is different from what <u>was initially provided</u> to the parties, provide an updated timeline. Delays for good cause allowed with written notice to the complainant and respondent of the delay and the reason for the delay. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.]
<input type="checkbox"/>	<input type="checkbox"/>	Remind the decision-maker that (a) he/she may consult with Legal if necessary (ex. need to clarify what is relevant, preponderance of the evidence standard, etc.).
<input type="checkbox"/>	<input type="checkbox"/>	Once the determination <u>has been made</u> , obtain a copy of the determination file (ex. investigation file, draft determination, the parties' response to the draft determination, final determination, and recommended remedies). Ensure the file is complete.
<input type="checkbox"/>	<input type="checkbox"/>	The original determination file remains in the Title IX office. If a party wants to appeal, a copy of the determination file in its entirety (with the exception of privileged communications), is maintained in the Title IX office, unless there is an appeal.

## 7. Appeals Process



- **Mandatory appeal:**
  - Procedural irregularity
  - New Evidence
  - Bias or Conflicts
    - Reasonable Person Standard**BUT ONLY IF IT AFFECTS THE OUTCOME**
- **Discretionary Appeal**
  - By written submission, appealing the remedies (including disciplinary sanctions) only

## Appeals Process

- Review Formal Complaint & Respondent's Response
- Review Investigation File (including Investigation Report, the parties' responses and related evidence)
- Review Decision-Maker's File (including Determination, the parties' responses and related evidence)
- Review remedies, including disciplinary sanctions
- Issue Appeals Decision either affirming or rejecting Determination

# T9C Checklist

TITLE IX COORDINATOR CHECKLIST			
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Incident/Complaint No.:		Date:	
Complainant (Name & ID#):		Respondent (Name & ID#):	
YES	NO	APPEAL	DATE
<input type="checkbox"/>	<input type="checkbox"/>	Obtain request to appeal (by mail, email, telephone, in person or other means) from either party. If request is verbal, obtain signed request to appeal form.	
<input type="checkbox"/>	<input type="checkbox"/>	Grant request for appeal if the following: <ul style="list-style-type: none"> <li>Procedural irregularity that affected outcome;</li> <li>Newly discovered evidence that could affect the outcome;</li> <li>Title IX personnel had a conflict or bias that affected the outcome.</li> </ul> Confer with Legal before granting an appeal.	
<input type="checkbox"/>	<input type="checkbox"/>	If request for appeal is granted, suspend implementation of remedies. Inform the parties that an appeal is underway and advise time line for completion of appeal.	
<input type="checkbox"/>	<input type="checkbox"/>	Select appeals panel. Establish the appeals panel does not have biases or conflicts in conducting the investigation. If there is a conflict or bias, select another panelist or panel. Ensure each panelist has not participated in any other aspect of the grievance process for the same complaint.	
<input type="checkbox"/>	<input type="checkbox"/>	Ensure the panel possesses investigation file, determination file, request for appeal, grant of appeal documents, including reason for grant.	
<input type="checkbox"/>	<input type="checkbox"/>	Provide the Complainant and Respondent been an opportunity to submit a written statement in support of or challenging the determination.	
<input type="checkbox"/>	<input type="checkbox"/>	Appeals panel reviews and analyzes the process utilized and the investigation file, the parties' written responses to support or challenge the determination and either affirm or reject the determination, along with rationale for the result.	
<input type="checkbox"/>	<input type="checkbox"/>	Ensure Appeals panel has conferred with Legal before issuing decision.	
<input type="checkbox"/>	<input type="checkbox"/>	If appeals panel affirms the determination, inform the parties of the decision: <ul style="list-style-type: none"> <li>If appeal granted due to procedural irregularity, it did not affect the outcome</li> <li>If appeal granted due to newly discovered evidence, it did not affect the outcome</li> <li>If appeal granted because Title IX personnel had a conflict or bias, it did not</li> </ul>	



## 8. Document Retention



- **Seven Years**
  - Investigation records
  - Determinations
  - Remedies provided
  - Disciplinary sanctions imposed
  - Appeal records
  - Training Materials

## Break



## Retaliation



## Retaliation

	Three Prongs in Retaliation Claims
Phase 1	Complainant engages in protected activity by either (1) <u>opposition</u> – good faith complaint about an alleged discriminatory practice or action or (2) <u>participation</u> – assisting or participating in any manner in an investigation under an anti-discrimination statute
Phase 2	After engaging in protected activity, Complaint suffers a <u>materially adverse employment action or denial to access to educational program or activity</u>
Phase 3	Complainant demonstrates <u>a causal connection</u> between alleged materially adverse action and the protected activity

## Retaliation

- Discipline for materially false information is not retaliation
- Punishing a party for false statement solely on the determination may be retaliation
- Charging a code of conduct violation that do not involve sex discrimination or sexual harassment, but arise out of the same fact or circumstances as the formal complaint
- Charging a code of conduct violation for making a materially false statement in bad faith in the course of the formal complaint process does not constitute retaliation.
- Punishing a party for making false statements in the course of the formal complaint process would constitute retaliation where the conclusion that false statements were made is based solely on the determination regarding responsibility.

# Conflicts & Biases



SpencerFane®

CONFLICT  
OF INTEREST



## Definition: Conflicts of Interest



SpencerFane®



- When an individual has a personal interest (whether actual, potential or perceived) that compromises or conflicts with the interests of his or her responsibilities in the Title IX process or with the district
- Eliminate conflicts to avoid compromising the integrity of the formal complaint process
- Some COI examples:
  - The complainant or respondent is or was a supervisor or friend
  - The complainant or the respondent is a family member, dating a family member or married to a family member
  - You were hired by the complainant or respondent
  - Your best friend is dating the complainant or respondent
  - You have a personal stake in the outcome

# Types of Conflicts



- Direct
  - an interest directly tied to the individual, his or her family or career
- Indirect
  - the interest of a group, person or business the employee is or was closely connected to (ex. a friend of a friend, the employee's fraternity, the employee's previous employer)
- Financial
  - monetary gain or loss
- Non-financial
  - favoritism or prejudice resulting from friendship, animosity, or other personal involvement with another person or group

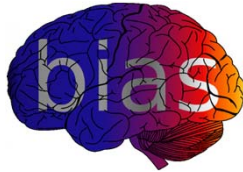
# Conflicts



- Failure to immediately disclose a conflict may result in disciplinary action, up to and including termination.
- Title IX Coordinator is required to immediately disclose conflicts to the Superintendent
- Other Title IX personnel are required to immediately disclose conflicts to the Title IX Coordinator
- If there is a conflict, transfer the formal complaint to Title IX personnel without a conflict

# Implicit Bias

*if you have a brain,  
you have bias*



- The brain takes in 11 million bits of information at any one point in time but
- The brain can process only 40 bits of information per second
- Therefore, we take mental shortcuts (or make quick judgments) based on our experiences
- No one is immune from bias

# Implicit Bias

- I cnduo't bvlleiee taht I culod aulacly uesdtannrd waht I was rdnaieg. Unisg the icndeblire pweor of the hmuam mnid, aocdcnig to rseecrah at Cmabrigde Uinervtisy, it dseno't mtttaer in waht oderr the lterets in a wrod are, the olny irpoamtnt tihng is taht the frsrit and lsat ltteer be in the rhgit pclae. The rset can be a taotl mses and you can sitll raed it whoutit a pboerlm. Tihs is bucseae the huamn mnid deos not raed ervey ltteer by istlef, but the wrod as a wlohe. Aaznmig, huh?



# Implicit Bias

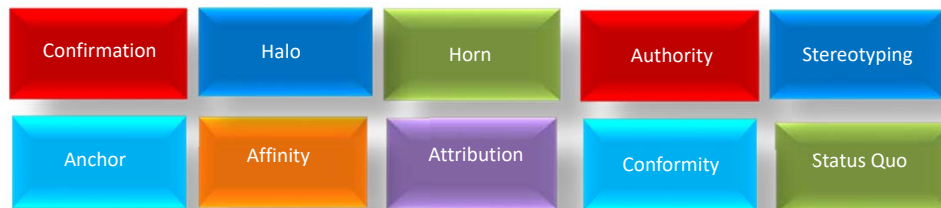


# Implicit Bias



- What might we use to fill in the blanks?
  - Family history
  - Personal experiences
  - Personal values
  - Educational experiences
  - Historical influences
  - Cultural influences – e.g., in media
- In some cases, the filters may be helpful
  - (i.e. smoke may mean fire)
- In some cases, the filters may be harmful
  - (stereotyping)

# Types of Implicit Biases



# Implicit Bias

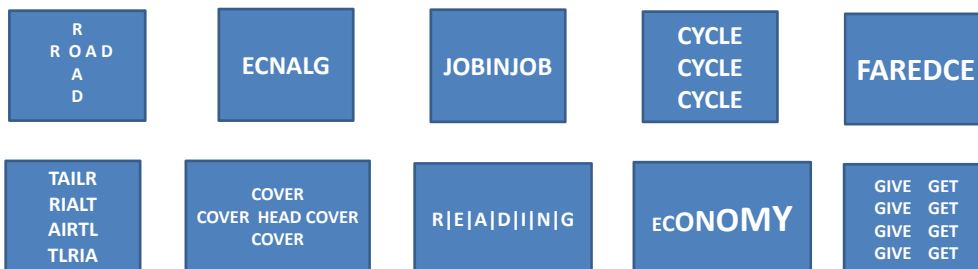


# Implicit Bias



- A man buys a new car and goes home to tell his wife. He goes the wrong way up a one-way street, nearly runs into 7 people, goes onto the sidewalk, and takes a shortcut over the median. A policeman sees all this and still doesn't arrest him. Why not?
- One house is made of red bricks, one of blue bricks, one of yellow bricks, and one of purple bricks. What is the green house made of?
- You drive past a bus stop and see 3 people waiting for the bus: an old lady who is about to die, an old friend who saved your life, and your perfect partner. Knowing you can only have one passenger in your car, what would you do?
- How much dirt is there in a hole 3 feet deep, 6 feet long, and 4 feet wide?
- Your friend says he can predict the exact score of every football game before it begins. He's right every time. How is that possible?

# Implicit Bias



# Implicit Bias



# Bias Busters



- Avoid snap judgments – put first impressions aside
  - If I put aside my first impressions, would I make the same decision?
- Focus on the facts
  - Make conclusions after you have explored the facts
- Challenge yourself to slow down and make measured decisions
- Harvard Implicit Association Test ([implicit.harvard.edu](https://implicit.harvard.edu)).
  - 76% associate men with career and women with family
  - 75% prefer white people over black people (half are black)

Thank you!

