



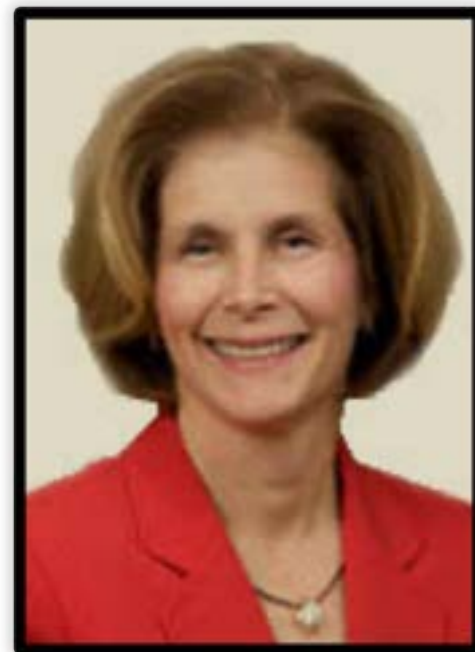
Title IX Investigator Training – Part II



Welcome.

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The only way to make sense out
of change is to plunge into it,
move with it, and join the dance.

Alan Watts

AGENDA

Informal Resolution

Investigative Process

Role of Advisor



INFORMAL RESOLUTION



Informal Resolution

“[T]he recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication [under the circumstances described in the regulations].”

- Sec. 106.45 (b)(9)



Informal Resolution - Not Permitted

A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints. . . Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.”

- Sec. 106.45 (b)(9)



Informal Resolution - Not Permitted Use

Recipients may not use “informal resolution to resolve allegations that an employee sexually harassed a student”

- Sec. 106.45 (b)(9)



INVESTIGATIVE PROCESS



No Conflict of Interest or Bias

“[A]ny individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, [must] not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”

- Sec. 106.45 (b)(1)(iii)



Reasonable Prompt Time Frames

“Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes.”

- Sec. 106.45 (b)(1)(v)



Written Notice Required

Written notice required

- Sec. 106.45(b)(2)



Presumption of Not Responsible

“Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.”

- Sec. 106.45 (b)(1)(iv)



Rights of Complainant and Respondent

- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- Inform have right to advisor
- May inspect and review evidence
- Inform that could be subject to Code of Conduct if false statements
- Written notice of any meetings, hearings, etc. with sufficient time to prepare
- Requirement to supplement if additional allegations.
 - Sec. 106.45(b)(5)(v) ; Sec. 106.45(b)(2)(ii); Sec. 106.45(b)(2)(B)



No Gag Order

“Recipient must [n]Not restrict the ability of either party to discuss the allegation under investigation or to gather and present relevant evidence.”

- Sec. 106.45(b)(5)(iii)



Inspect and Review Evidence

“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.”

- Sec. 106.45 (b)(3)(vi)



Preliminary Report

“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.”

- Sec. 106.45 (b)(3)(vi)



Investigation Report

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”

- Sec. 106.45 (b)(3)(vii)



ROLE OF ADVISOR



Advisor Choice

“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.”

- Sec. 106.45 (b)(3) (iv)



Restrictions?

“The recipient may not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.”

- §106.45 (b)(3) (iv)

“The recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.”

- §106.45 (b)(3) (iv)



Rules of Decorum

“Rules of Decorum: [T]he final regulations do not preclude a recipient from adopting and applying codes of conduct and rules of decorum to ensure that parties and advisors, including assigned advisors, conduct cross-examination questioning in a respectful and non-abusive manner, and the decision-maker remains obligated to ensure that only relevant questions are posed during cross-examination.”

- Pages 1149-50 and also pages 1114, 1114-15, 1145, 1150



RESOURCES

- OCR and Title IX
- https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
- Joint Guidance on Title IX -
- <https://system.suny.edu/sci/tix2020/>



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