Foundations of Title IX Investigations: Training & Certification

Welcome & Faculty Introductions

Rabia Khan Harvey, M.Ed., MSHR
Senior Program Manager
Academic Impressions
rabia@academicimpressions.com

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ACADEMIC IMPRESSIONS 1

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The Big Why!

ACADEMIC IMPRESSIONS 2

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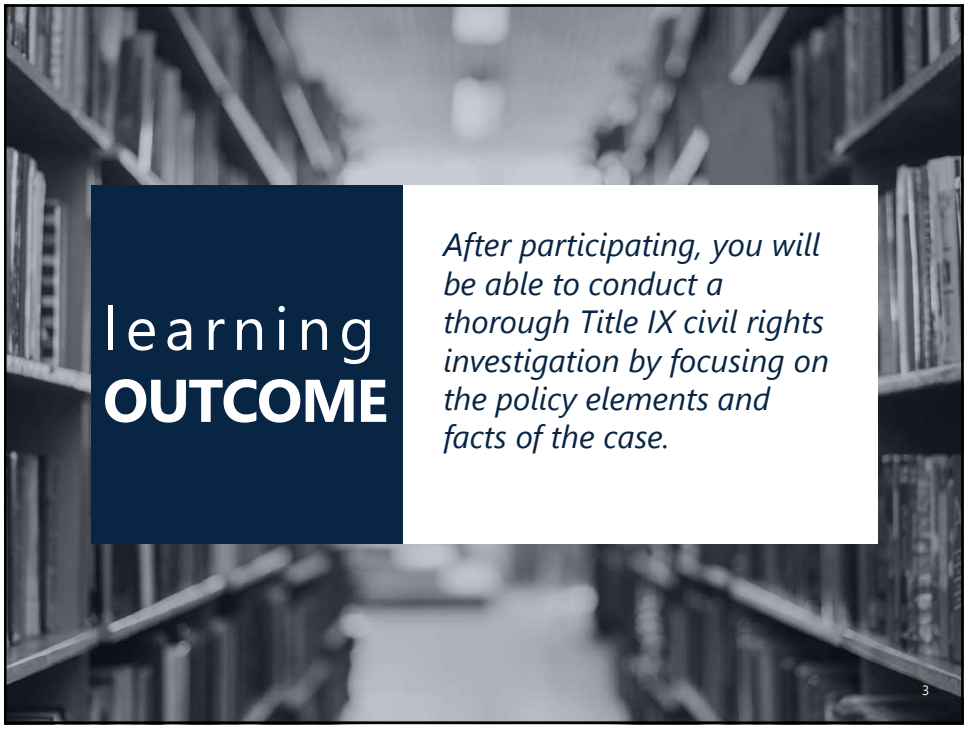

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RESOURCES

Welcome to Zoom and its features:

A. Mics (keep muted please)
B. Camera (option to keep on or off)
C. Gallery vs. Speaker View
D. Participant List with Emoji's
E. Chat Box
   - Use whenever you need it to ask questions or respond
   - Look here for downloadable files during the presentation
   - Option to send private messages to each other or host
   - Chats will be transcribed (not private ones)
F. Close windows (e.g., polls)
G. Recording (except during breaks or in small groups)
H. Changing your name option (hover over your name, select "more" then "rename" to change your name)

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Meet Your Expert Faculty

Bev Baligad, J.D.
Director of Compliance/Title IX Coordinator
University of Hawaii, West O'ahu
bevbaligad@gmail.com

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ACADEMIC IMPRESSIONS

#1

Introduction to Mock Complaint

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The "Mock" Formal Complaint

- Designed to get new investigators to think about "how" they might move forward, when assigned an investigation
- Throughout the conference, information provided is meant to build upon previous info discussed
- Keep all the pieces together and use everything you are provided as you work through the mock investigation

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ACTIVITY

I. Review the Mock Complaint

1. You've been assigned to this case. Thoroughly read the Mock Complaint.
2. Using Worksheet 1 entitled "Review Complaint," write down the first five (5) things you would do immediately after being assigned to this case.
3. Be prepared to share your responses with the group.

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#2

Your Role as Investigator

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Title IX Review

The Federal Law

"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..."

20 U.S.C. §1681, et seq.

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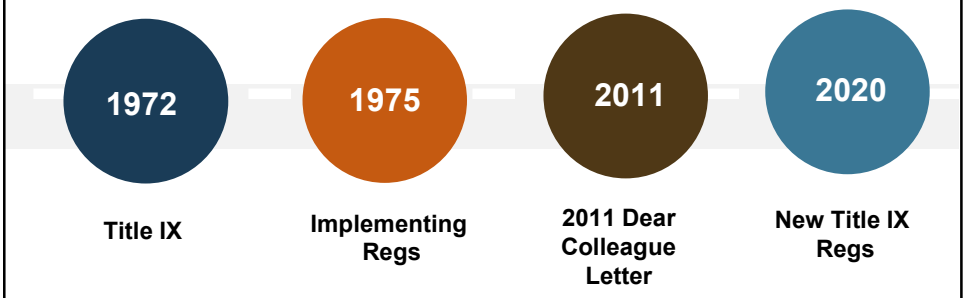
Quick Title IX Regulations Background



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The Code of Federal Regulations (CFRs):

- Jurisdiction/authority
- What are CFR's?
- Previous requirements (pre-May 2020)
- New federal regs (May 2020; implementation date August 14, 2020).
- "Grievance process"

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Grievance Process

- Previous Title IX Regulations required a "grievance process" but never described what the process should look like
- Process must adhere to the new Title IX regs (as of August 14, 2020)
- Provides information regarding general requirements all institutions must have within their grievance process
- Process must be fair and equitable (for complainants and respondents)
- Describes expectations for investigators and investigations

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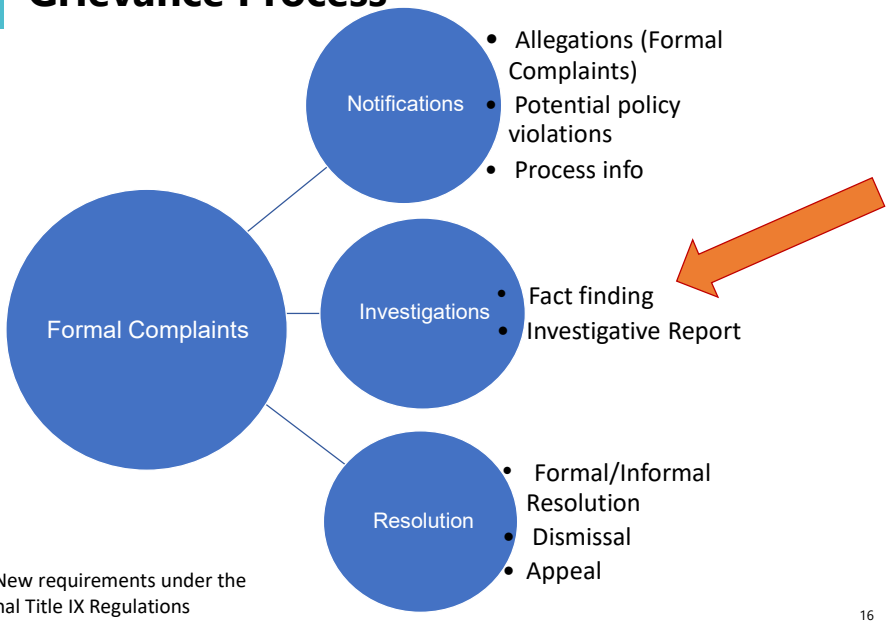
Grievance Process



*New requirements under the final Title IX Regulations

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Investigations: Generally

- New regulation requirements continue "civil rights" investigation model
- Investigator Training *[§106.45(b)(1)(3)]*
- Conflict of Interest and Bias *[§106.45(b)(1)(iii)]*
- "Not Responsible" Presumption *[§106.45(b)(1)(iv)]*
- Supplemental Notice *[§106.45(b)(2)(ii)]*
- Discretionary Dismissal *[§106.45(b)(3)(ii)]*

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Investigations: Rights of Parties

- Focus is "equity" for both parties
- Advisor of choice [*§106.45(b)(3)(iv)]*
- Equal opportunity to present witnesses and offer information inculpatory and exculpatory info *[§106.45(b)(5)(ii)]*
- No gag orders on parties; ability to gather and present relevant information *[§106.45(b)(5)(iii)]*
- Legal privileges; waiver *[§106.45(b)(1)(x)]*
- Right to inspect, review, access, and respond to information *[§106.45(b)(3)(vi)]*

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Investigations: Other Key Requirements

- "Relevance" will be key to evidence gathering process
- Burden of Proof and Gathering Evidence *[§106.45(b)(5)(i)]*
- Medical Records *[§106.45(b)(5)(i)]*
- Inclusion of Inculpatory and Exculpatory Info *[§106.45(b)(5)(ii)]*

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The Investigation Report *[§106.45(b)(3)(vii)]*

- Must fairly summarize relevant info
- Must be sent to both parties and advisors at least 10 days prior to scheduled hearing or time of determination regarding responsibility
- Must be in electronic format or hard copy
- Allows for both parties to review and/or provide written response to info presented
- Investigator's reports, and the way in which they conduct their investigations, are extremely important!

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The Investigator's Role

- Remain fair and equitable during the entire process when dealing with both parties and all witnesses.
- Gather "relevant" and "sufficient" information as they relate to the allegations and potential prohibited conduct.
- Understand and analyze the institution's policy.
- Write an investigative report that fairly summarizes relevant evidence.
- **"Whether more likely than not" an individual violated an institution's policies** (investigation focus!).

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Expectations and Requirements

- Reasonable, not judgmental
- Empathetic, not gullible
- Comfortable asking extremely personal questions in a non-judgmental (yet appropriate) way (e.g., "Can you tell me if the respondent ejaculated while he was still inside of you?")
- Understands (and respects) the rights of both parties
- Does not dictate the outcome of an investigation through coercive questioning and "selective" fact-finding
- Gathers facts as the witnesses present them; does not insert personal opinions and assumptions

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Expectations and Requirements (cont.)

- Skilled and well-trained in civil rights investigations
- Detail-oriented
- Organized and flexible
- Appropriately identifies and deals with their own personal stereotypical thoughts and/or biases
- Good writing skills
- Able to analyze information according to the institution's policies and/or procedures
- Meets deadlines
- Capable of understanding "relevance" and "sufficiency"

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Civil Rights Investigation	Criminal Investigation
• Investigator open to all information – Should remain unbiased • Distinction between a preliminary and a full-blown investigation • Determines if college policy was violated • "Preponderance of the evidence" (low standard) -51%	• Investigator looking more specifically for evidence of guilt • May appear somewhat biased (more building prosecutor's case) • Determines if law was violated • "Beyond a reasonable doubt" (high standard)

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3 Standards of Proof

1. Beyond a reasonable doubt
2. Clear and convincing
3. Preponderance of the evidence

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Preponderance of the Evidence

- Standard of evidence used in civil courts
- Less rigorous than the other two (2) standards of proof
- "More likely than not"
- Also described as "50% plus a feather"
- Standard required by Title IX in sexual misconduct cases to determine whether behavior is considered "prohibited" by an institution

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ACADEMIC IMPRESSIONS

#3

Factual Analysis – Intro to Policy Grids

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An Analysis Story: Tom's Lunch

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Which dish is a "Loco Moco?"

A Loco Moco is a popular dish in Hawaii made of rice, a hamburger patty, brown gravy, and eggs. Macaroni salad is optional.

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Definition: A Loco Moco is a popular Hawaii dish made of rice, a hamburger patty, brown gravy, and eggs. Macaroni salad is optional.

Elements:	Lunch A (Tom's Lunch)	Lunch B
Rice		
Hamburger patty		
Brown gravy		
Egg(s)		
Optional: Macaroni Salad		

Was Tom's Lunch a "Loco Moco?"

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Understanding the Importance of an "Analysis"

- Investigative reports must link the institutional policies/procedures to the facts.
- Shows "elements" of the alleged sexual harassment (What kinds of facts should the investigator focus on?)
- Assists the investigator in focusing on the right questions to ask
- Helps to show the "relevancy" of the facts that are presented, as they relate to the policy (also helps with showing the information collected is "sufficient")
- "Gridding" helps to demonstrate the "reasonableness" of the investigation and supports the decision that a Decision Maker may make ("reasonable minds may differ").

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Factual Analysis: The Importance of the "Grid"

- "Gridding" is a methodical way of determining which information is necessary and relevant
- Witness narratives may contain information that may be relevant and irrelevant to the allegations; gridding often help to keep information in order
- Relevant facts (no matter the source) should support the elements of the policy ("gridding")
- It helps determine relevance and sufficiency of the evidence
- Gridding helps the investigator stay focused and on task

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Factual Analysis: The Importance of the "Grid" (cont.)

- When the facts are insufficient to show a policy violation, <u>there is no policy violation.</u>
- When the quality/quantity of the facts appear equal (one party witness vs. one party witness), a credibility assessment may become extremely important. (Remember the Standard of Proof?)

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Anatomy of an "Analysis" Approach

- Make sure you use the correct institutional policy/policies or process(es).
- Based on the information contained in the complaint, what potential type(s) of sexual harassment might you have? What makes you think that? *(e.g., "If it looks like a duck, waddles like a duck, and quacks like a duck, it MIGHT be a duck.")*
- How does the policy ***define*** the specific behavior?
- Break down the definition and list each "element." (Think: Loco Moco ingredients!)

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Some "Gridding" Suggestions

- For each grid worksheet, focus on only ONE thing (i.e., primary type of sexual harassment, sub analysis of a required term mentioned in the primary type, etc.) on a single worksheet.
- Place a single element in each row; don't overcrowd information within a single row. Give yourself a lot of space.
- Use only relevant elements mentioned in a definition; don't grid seemingly inapplicable portions of the definition(based on the facts as they are presented).
- Learning how to grid (i.e., elemental breakdown, assigning notes, etc.) takes practice!

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Some "Gridding" Suggestions (cont.)

- Some institutions create "Gridding" worksheets so that the investigators won't have to create a grid for the same definitions listed in a policy.
- Use a clean grid for **each** witness; this will help investigators keep their information straight.
- Ask yourself: According to the definition, what kinds of relevant information would I need to collect?
- Once you get comfortable with gridding, you can design your own grid so that it will better assist you in your investigation!

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Grid Example

Definition: Sexual Assault is defined as_____.

Element	Supporting Facts	Interview Questions
Element 1		
Element 2		
Element 3		
Element 4		
Element 5		

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Sub-Analysis Example:

[Sub-analysis is used when the primary definition requires a further analysis of a term essential to the primary definition.]

Element	Supporting Facts	Interview Questions
Element 1		
Element 2		
Element 3		
Element 4		
Element 5		

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ACTIVITY

II. Gridding: Analyzing the Potential Sexual Harassment

Using the attached Sample State College Title IX Policy Prohibited Conduct Definitions sheet, use sexual assault as the potential primary "type" of sexual harassment the formal complaint might be describing (and which you should focus on).

On the "Gridding Worksheet," write down the type of sexual misconduct you chose to analyze. Fill in the elements (one per row, use as many sheets as you need) based on the definition as it is written. When you have completed your Grid, please send it to the instructor for review.

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QUESTIONS?

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