



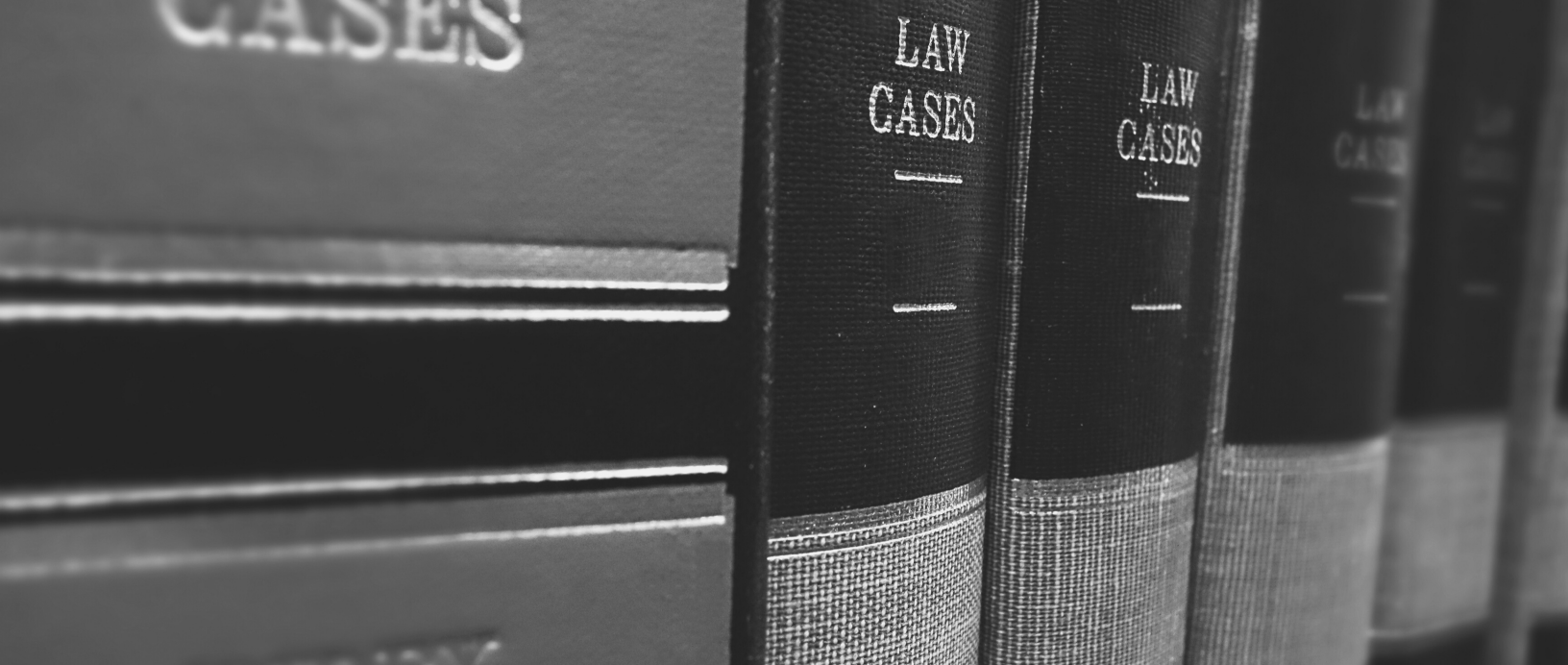
TIX Education Specialists

“Bridging compliance and best practice.”

2020 Title IX Hearing Officer Training Online

Overview of Title IX & the Law





STATUTORY REQUIREMENTS

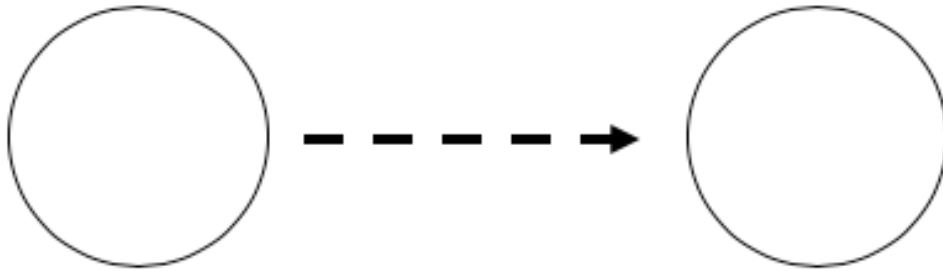
A review of basic federal requirements including notice of non-discrimination, grievance procedure and scope of Title IX Coordinator's role. Integration of relevant state law.

Learning Objectives:

- clear understanding of requirements of Title IX
- identifying roles of Title IX coordinator in relation to written procedure

INTRO TO TITLE IX

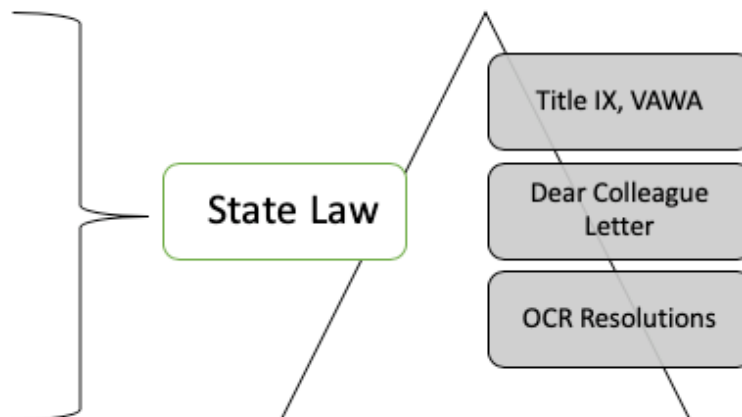
WHAT COMES TO MIND WHEN PEOPLE HEAR "TITLE IX"?



MAIN AREAS OF TITLE IX:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

GUIDANCE THAT GOVERN RESPONSE PROCESSES:



LANGUAGE OF TITLE IX:

reporting party/complainant

adjudicatory process

investigation

finding

victim

investigation

COMPLAINANT:

"[I]ndividual who is alleged to be the victim of conduct that could constitute sexual harassment."

Title IX:

"A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances."

Students/staff have a right to:

TITLE IX IN THE COURTS:

MAIN RESPONSIBILITIES UNDER TITLE IX:



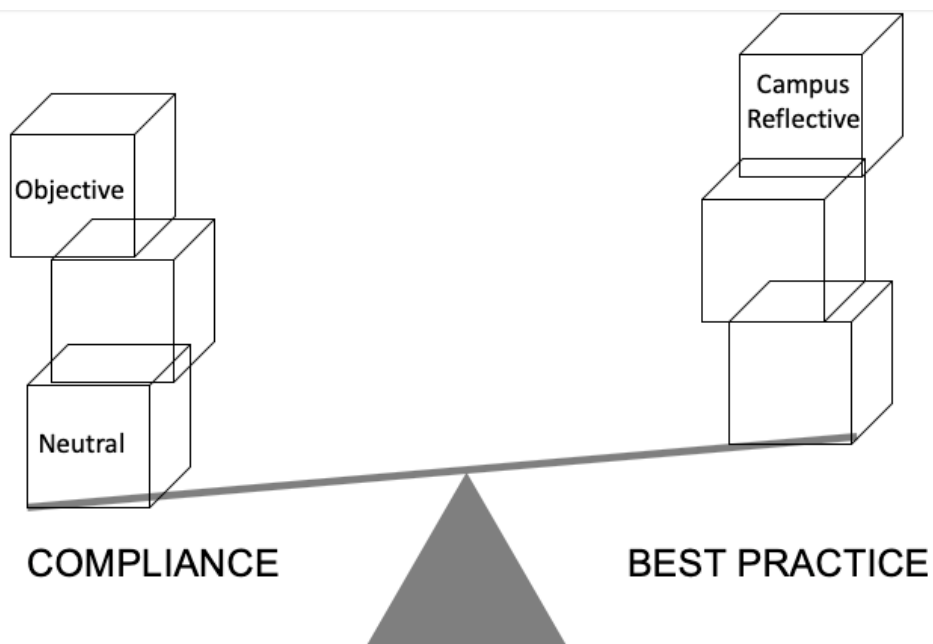
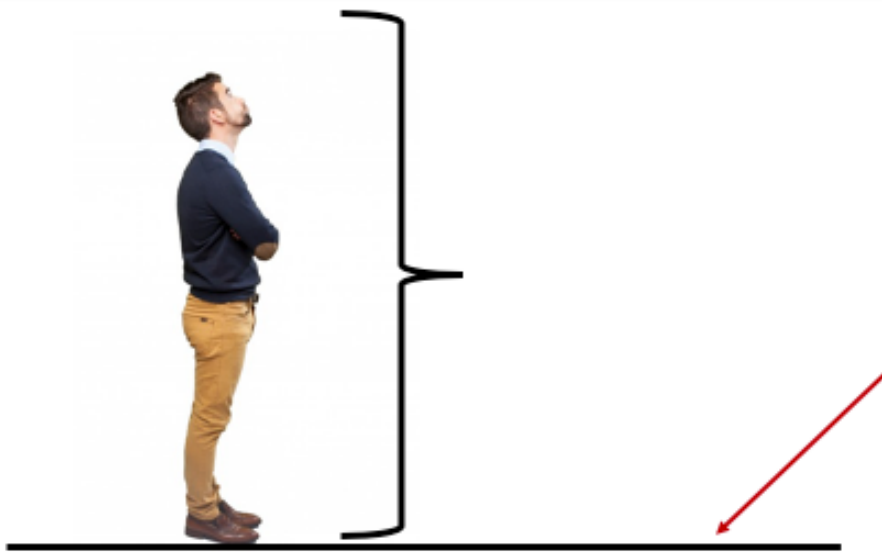
EXEMPTIONS TO TITLE IX:

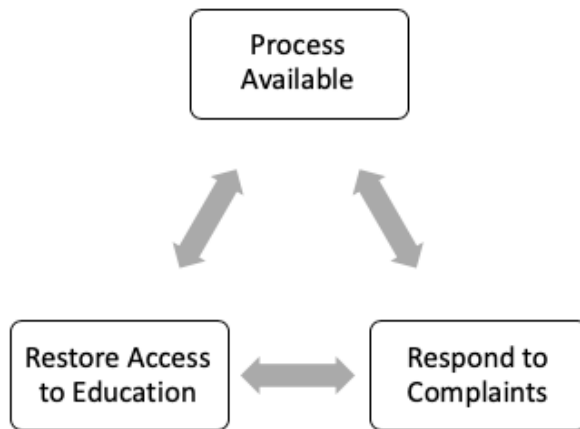
ENFORCEMENT OF TITLE IX:

OCR COMPLAINTS:

New Regs:

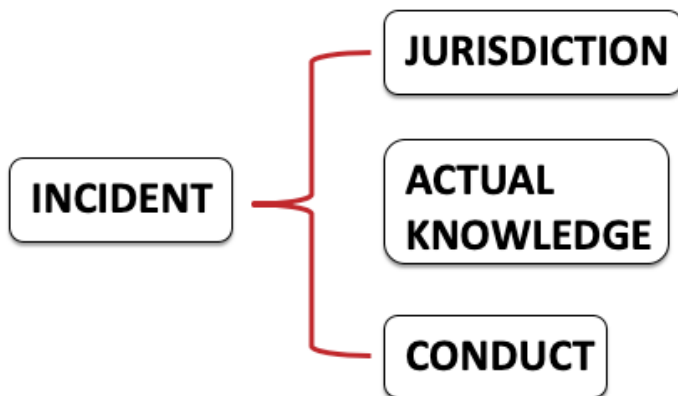
- p.1-104 – The Department’s interpretation of Due Process, institutional liability and defining sexual harassment.
- p. 96-99 – Institutional response
- 2008-2033 – Regulatory language





SEXUAL HARASSMENT:

"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person's equal access to education.

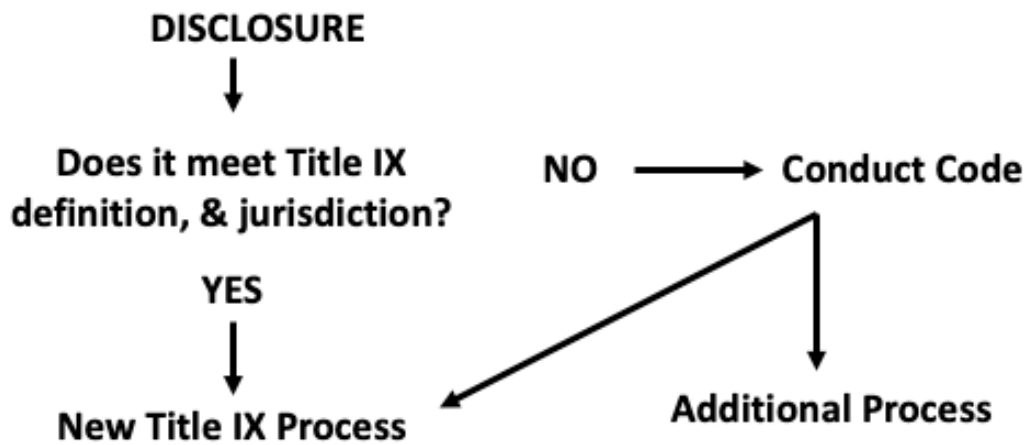


QUESTION 1:

Does your institution want to create a policy to respond to the "other" types of sexual harassment and sex discrimination?

QUESTION 2:

If you capture "other" types of conduct, do you use one process provided by the federal regulations or do you use two?



SCOTUS FRAMEWORK:

1. actionable definition of sexual harassment
2. actual knowledge
3. deliberate indifference -

DELIBERATE INDIFFERENCE + RESPONSE:

- support measures offered
- contact complainant and process counsel
- follow grievance procedures
- investigate formal complaints
- respect complainant wishes (with exception)
- dismiss complaints that don't fall under Title IX

TITLE IX COORDINATOR:

TRAINING:

NOTICE OF NON-DISCRIMINATION:

“[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment. Inquiries about the application of title IX and this part to such recipient may be referred to the recipient’s Title IX Coordinator, to the Assistant Secretary, or both.”

DISSEMINATION:

GRIEVANCE PROCEDURE:





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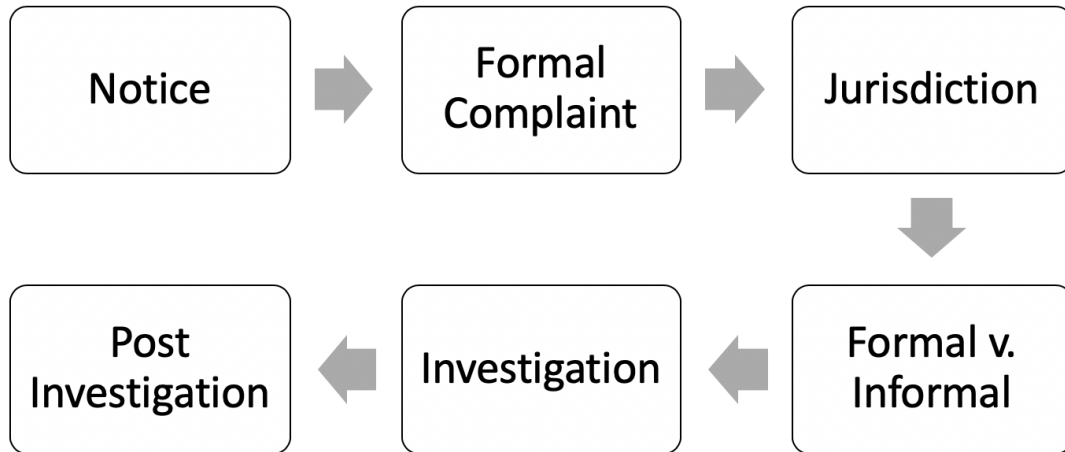
TITLE IX RESPONSE

Look at response starting with notice to finding, what is required in a Title IX investigation and what are the different models and practices for accomplishing them.

Learning Objectives:

- understand what stages of Title IX investigation and adjudication are from disclosure to finding and sanctions
- identify rights of parties and requirements under Title IX
- look at role of investigator, Title IX Coordinator and other actors within an investigation and adjudication

STAGES OF AN INVESTIGATION:

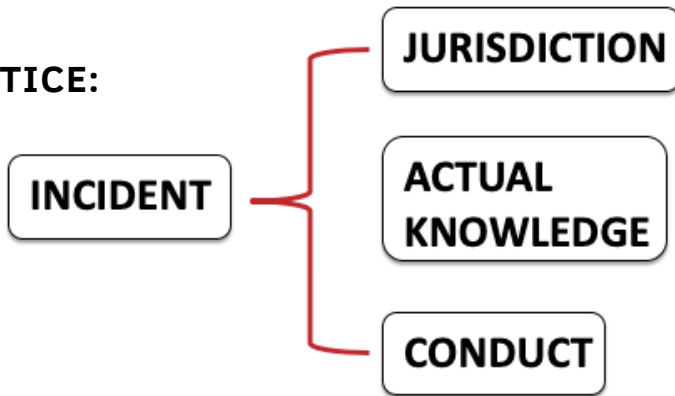


DECISION MAKER:



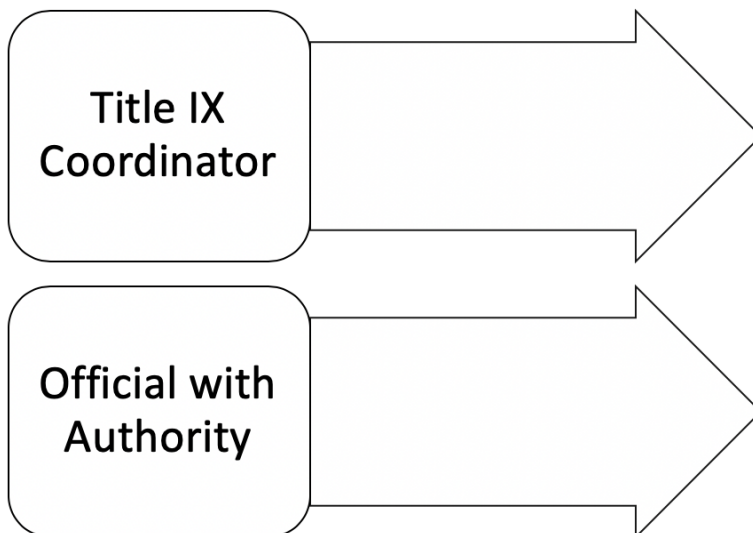
NOTES:

NOTICE:



ACTUAL NOTICE:

“[A]ctual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient”

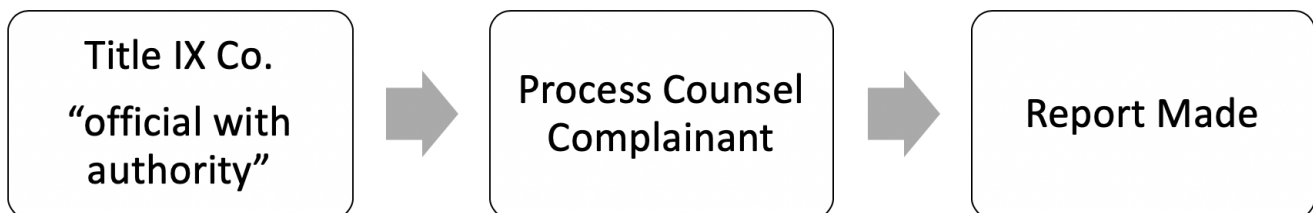


PROCESS COUNSELING:

SUPPORT MEASURES:

“individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”

SUPPORT MEASURES:

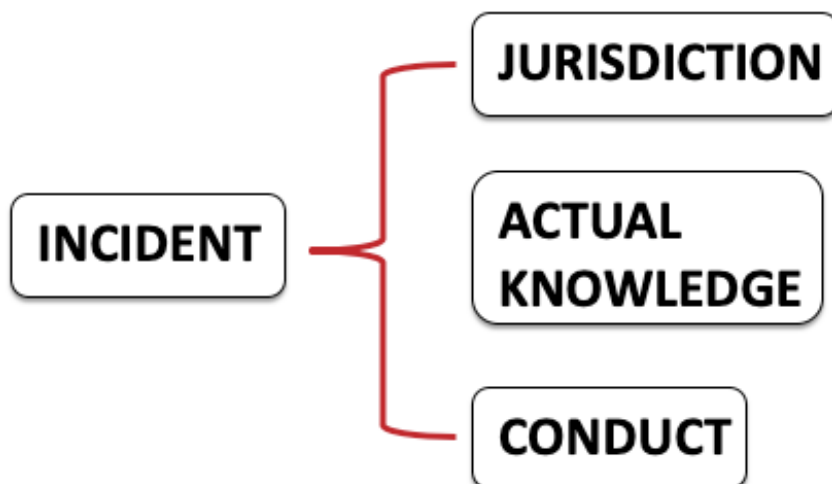


FORMAL COMPLAINT REQUIREMENTS:

-
-
-
-
-

“[D]ocument filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.”

FORMAL COMPLAINT:



JURISDICTION:

- type of conduct
- educational program or activity
- person in the United States



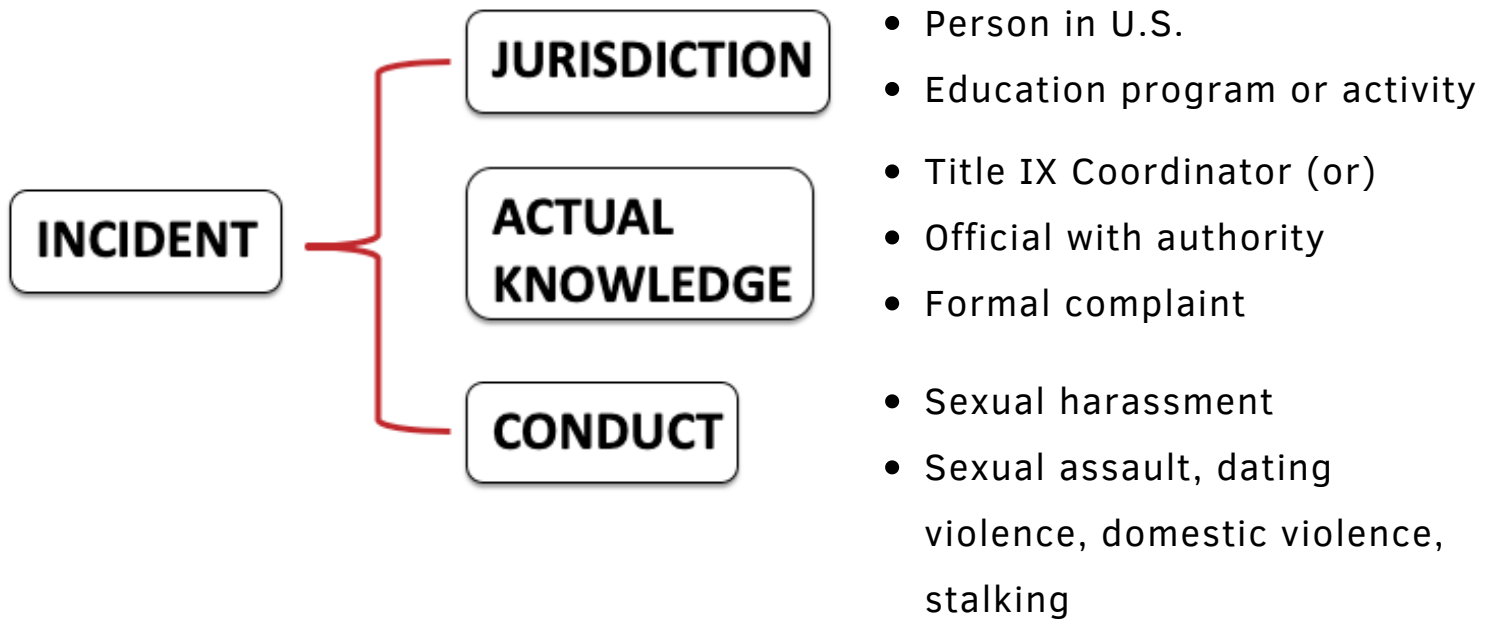
“Clery Act/VAWA offenses are NOT evaluated for severity, pervasiveness, offensiveness or denial of equal educational access ... because such conduct is sufficiently severe...”

SEXUAL HARASSMENT:

“Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person’s equal access to education.”

EDUCATION PROGRAM OR ACTIVITY:

PERSON IN THE UNITED STATES:



INFORMAL V FORMAL COMPLAINT:

INFORMAL PROCESS:

INVESTIGATION:

DISMISSAL OF COMPLAINT:

- If conduct definition or jurisdiction not met
- If complainant no longer accessing educational program or activity

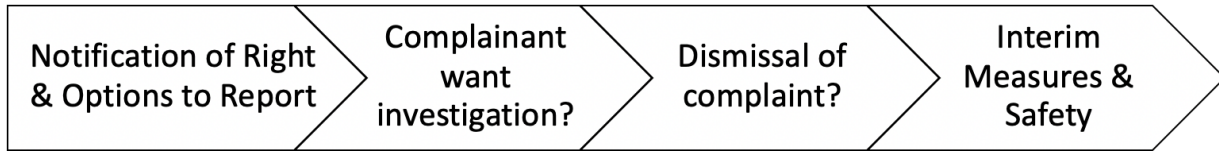
MAY DISMISS WHEN:

- If complainant desires to withdraw complaint
- If respondent no longer enrolled or employed
- If school can't gather sufficient evidence to reach determination

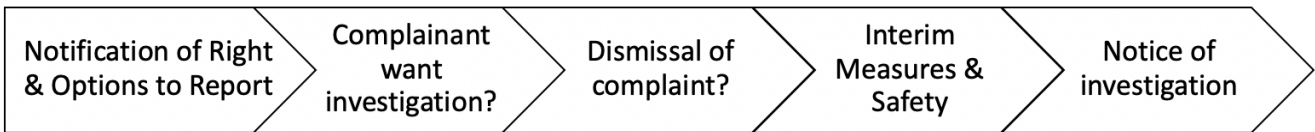
CONSOLIDATE COMPLAINTS:

APPEALS:

- procedural irregularity
- newly discovered evidence
- conflict of interest or bias
- other*



INTERIM MEASURES:

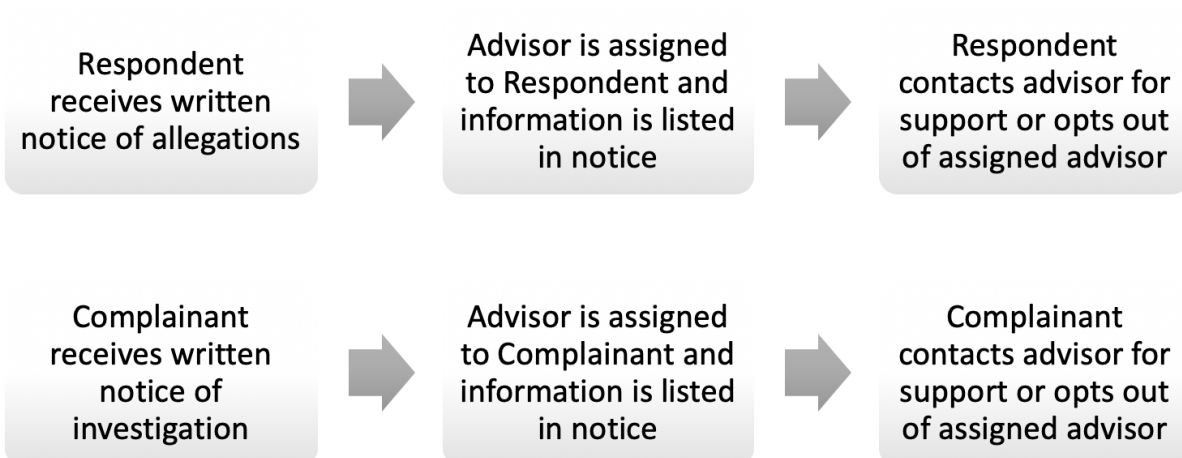


WRITTEN NOTICE:

ongoing notice requirement - additional allegations

ADVISOR OF CHOICE:

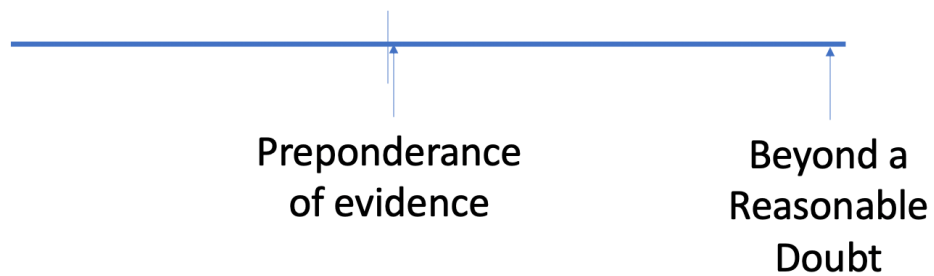
OPT-OUT APPROACH:



INTERVIEWS:

EVIDENCE:

Preponderance of evidence
Clear and convincing



REPORT:

HEARINGS:

REMEDY:

“[Title IX] evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable.... And does NOT second guess a school’s disciplinary decisions...”

FINAL REPORT:

CLOSING A CASE:



DYNAMICS OF INTERPERSONAL VIOLENCE ON CAMPUSES

A look at sexual harassment, sexual assault, stalking and dating and domestic violence as it affects students on campus.

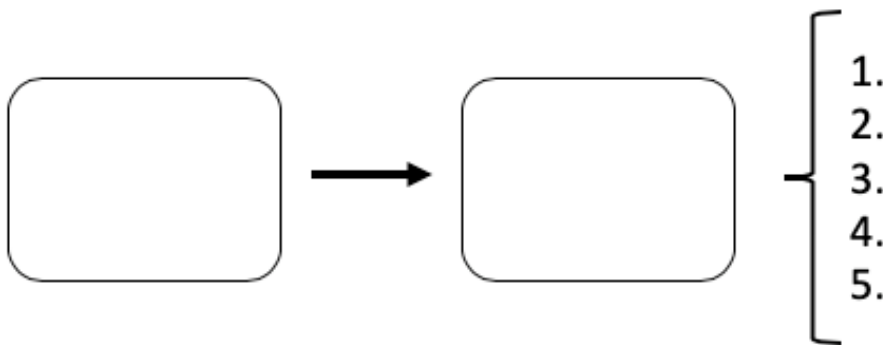
Learning Objectives:

- prevalence rates on campuses and nationally
- types of interpersonal violence included in Title IX, VAWA and Clery
- dynamics of stalking on campus
- identifying and eliminating barriers to reporting within the Title IX process

DYNAMICS OF VIOLENCE

"INTERPERSONAL VIOLENCE" AND OTHER TERMS:

TYPES OF IPV UNDER TITLE IX:



PREVALENCE RATES IN SCHOOLS:

Nationally:

_____ in _____ women will be sexually assaulted in their lifetime.

Nationally on Campuses:

_____ in _____ women will be sexually assaulted by time they finish college.

VULNERABLE POPULATIONS ON CAMPUSES:

LGBTQ students

students of color

deaf and hard of hearing

housing instability

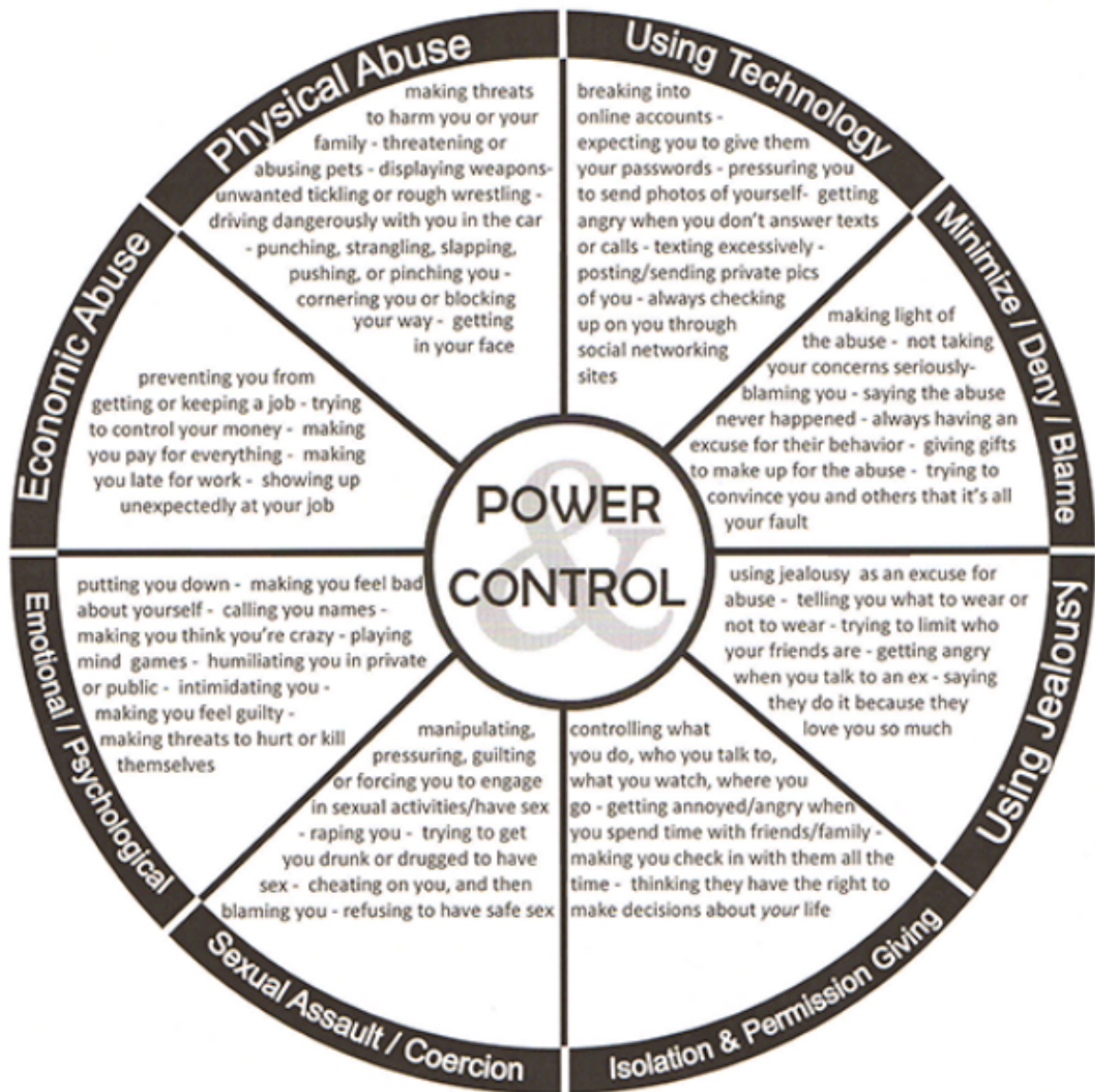
immigrant and refugee

INTERSECTIONS OF VIOLENCE:

INTERSECTIONS OF VIOLENCE:

The Power and Control Wheel

Adapted from the Domestic Abuse Intervention Project, Duluth, MN



WHY DON'T WE SEE MORE STUDENTS COMING FORWARD?

MESSAGING ABOUT VIOLENCE:

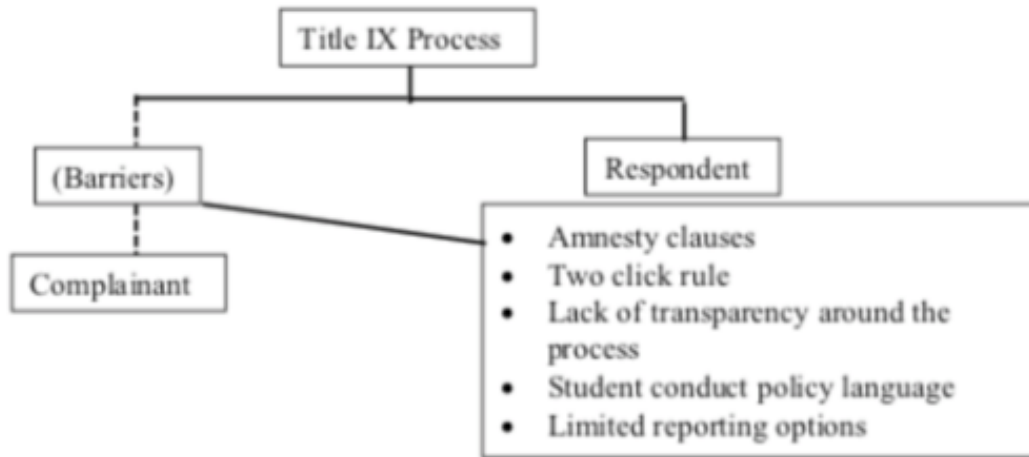
MESSAGING ABOUT CONSENT:

MESSAGING ABOUT VICTIMIAZATION:

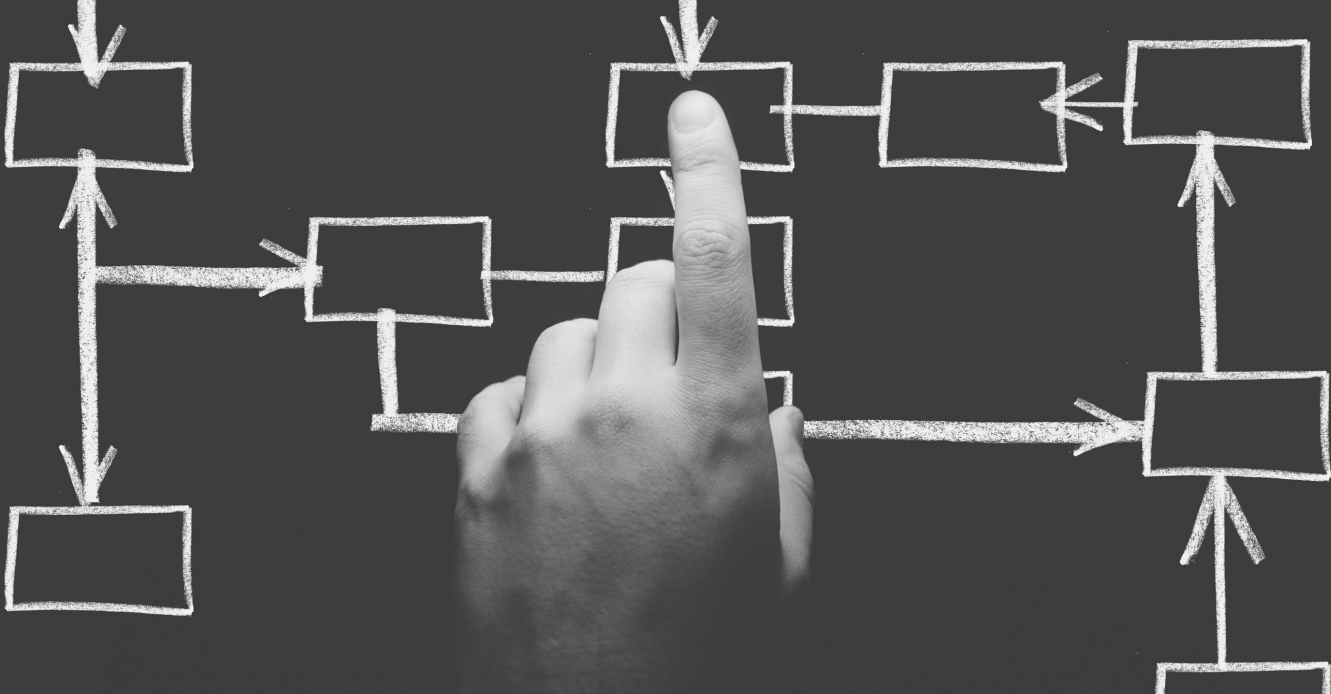
MESSAGING ABOUT THE CRIMINAL JUSTICE SYSTEM:

MESSAGING ABOUT CAMPUS RESPONSE SYSTEMS:

INSTITUTIONAL BARRIERS TO REPORTING:



ELIMINATING BARRIERS TO REPORTING:



BIAS, EQUITY & RESPONDENTS

Identifying personal bias as an investigator, equity as defined by Title IX in both investigations and policies as well as best practices in serving respondents.

Learning Objectives:

- develop clear understanding of different types of bias that may affect an investigation.
- respondent rights within an equity lens
- definition of equity within Title IX
- best practices in striving for equity within Title IX

BIAS, EQUITY & RESPONDENTS

RECENT GUIDANCE:



2017 DCL CALL TO ACTION:

"[Procedures] lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused..."



WHAT IS EQUITY?

EQUITY NOT EQUALITY:

1. individualized
2. appropriate

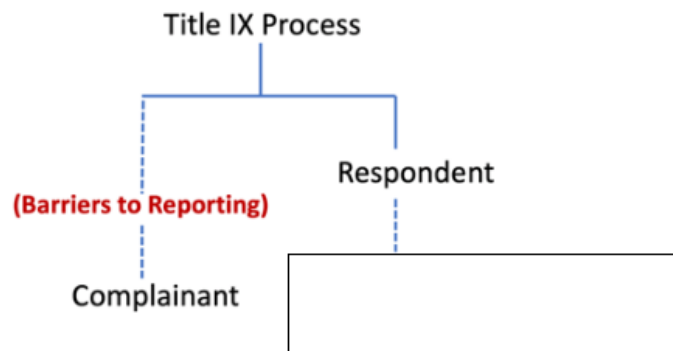
EQUITY VERSUS EQUALITY:

QUESTIONS TO ASK:

1. access to the process
2. long-term support and "success"

OTHER VARIABLES:

Race and ethnicity, institutional knowledge, generational knowledge, resources, familial support, peer group support.



REPORTING PARTY RIGHTS:

RESPONDING PARTY RIGHTS:

EQUITY IS FACIAL AND ABSTRACTLY INDIVIDUALIZED:

1. policies and protocols
2. support services

FRAMEWORKS TO UTILIZE:

- student-centered
- trauma-informed
- critical race theory
- restorative justice

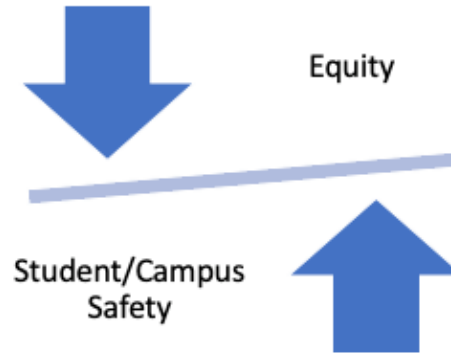
WHAT IS BIAS?

TYPES OF BIAS:

FACIAL EQUITY FOR RESPONDENTS:

- interim measures
- appeals
- advisors
- opportunity to provide evidence and witnesses
- written notice

CHALLENGES TO EQUITY:



NOTIFICATION OF RIGHTS:

ADVISOR OF CHOICE:

"OPT-OUT MODEL"



OUTSIDE ADVISORS:

SUPPORT SERVICES:



THE NEUROBIOLOGY OF TRAUMA

How trauma affects the brain including acute trauma, memory recall, long term effects of trauma, reporting and process of information.

Learning Objectives:

- identify types of trauma and their effects on students
- understand how trauma affects memory and impacts physiological changes
- adopt trauma-informed skills to mitigate impacts of trauma on students within the Title IX process

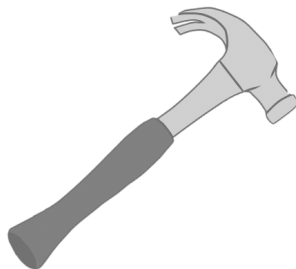
NEUROBIOLOGY OF TRAUMA

WHY LEARN ABOUT TRAUMA?

"A BRAIN IN TRAUMA IS NOT A LEARNING BRAIN."

EVIDENCE-BASED INVESTIGATIONS:

TRAUMA-INFORMED INVESTIGATIONS:



- Trauma-informed**
- Services
 - Interviews
 - Processes & policies

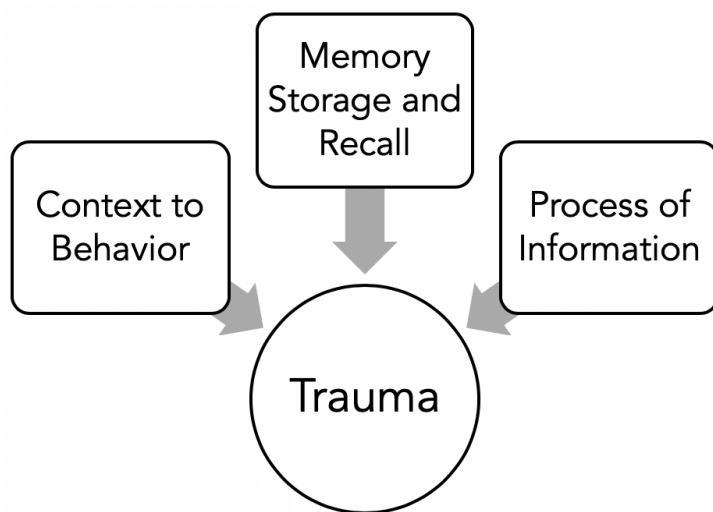


Evidence-based

- Objective
- Fact finding
- Neutral

WHY UTILIZE TRAUMA-INFORMED PRACTICES?

"A BRAIN IN TRAUMA IS NOT A LEARNING BRAIN."



WHAT IS TRAUMA?

A more extreme version of stress, perceived as life threatening and evoking fear, helplessness and even horror.

COMMON TYPES OF TRAUMA

1. Secondary Trauma:
2. Vicarious Trauma:
3. Historical Trauma:
4. Institutional Trauma:

MAIN TAKEAWAYS:

ADVERSE CHILDHOOD EXPERIENCES

The prevalence of adverse childhood experiences, nationally, by state and by race or ethnicity, by Vanessa Sacks and David Murphey, Feb 12, 2018. Study based on the 2016 National Survey of Children's Health (NSCH).

ADVERSE CHILDHOOD EXPERIENCE: Potentially traumatic experiences and events, ranging from abuse and neglect to living with an adult with a mental illness.

NATIONALLY:

- 1 in 10 U.S. children have experienced at least one traumatic experience.
- 1 in 4 U.S. children live in families that find it hard to pay for necessities like food or housing very or somewhat often.

Identity and ACE's:

Pacific Region (including Oregon)	
White NH	63%
Black NH	51%
Asian NH	75%
Other NH	59%
Hispanic	53%

HOW ACE'S AFFECT OUR STUDENTS:

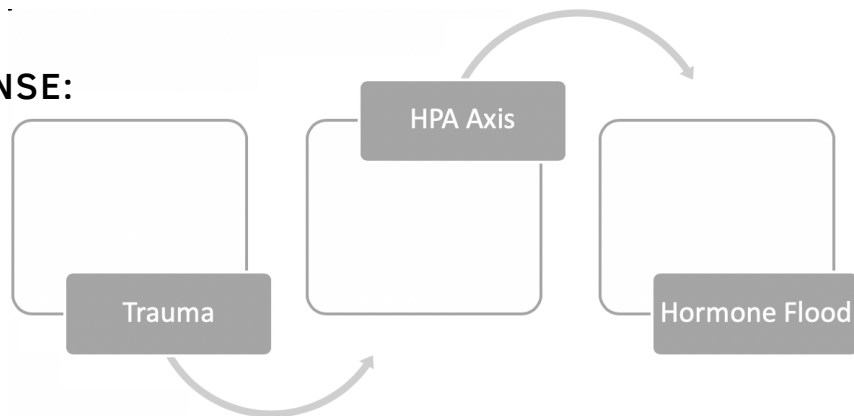
6 PRIMARY CAUSES OF TRUAMA:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

WHAT HAPPENS IN THE BODY?

- physiological changes
- complex thought and decision making
- memory affected
- fight or flight

TRAUMA RESPONSE:

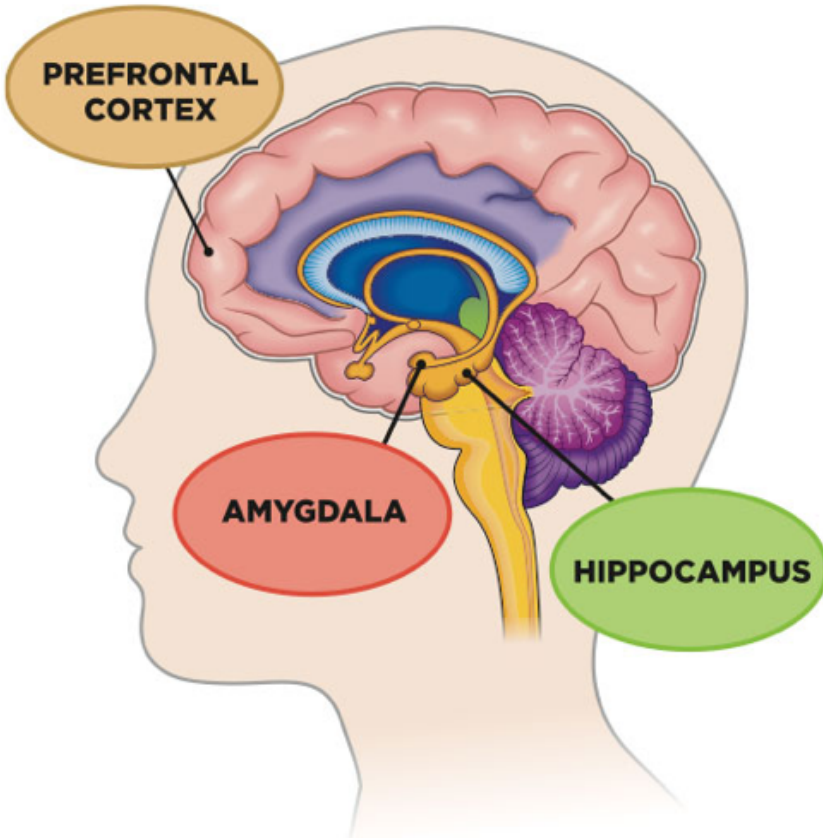


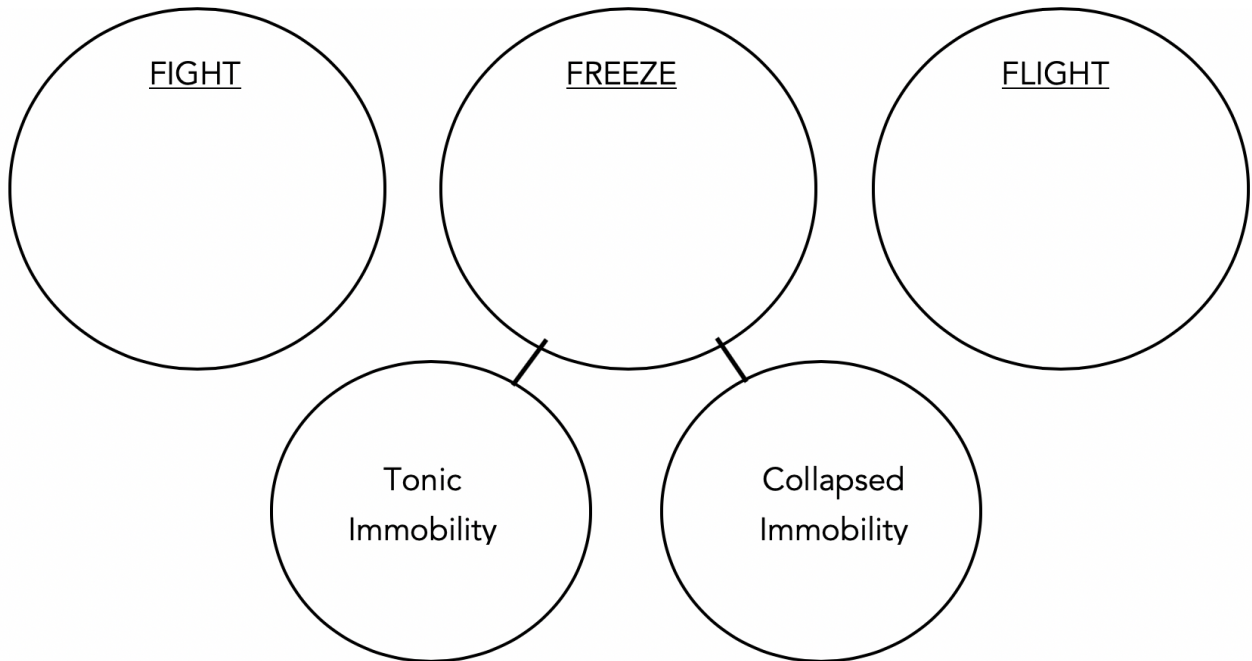
Hormone Flood		
Hormone	Hormone Function (+)	Hormone Function (-)
Catecholamine (adrenaline)		Too much causes hyperventilation, high blood pressure, impaired rational
Cortisol (hydrocortisone)		
Opioids	Prevents anticipated pain; natural morphine	Numbs the body to pain, cause flat affect, slows memory. Too much will conflict with catecholamines and cortisol. Could cause frozen fright.
Oxytocin	Promotes good feelings/manage emotions	

TRAUMA AND THE BRAIN

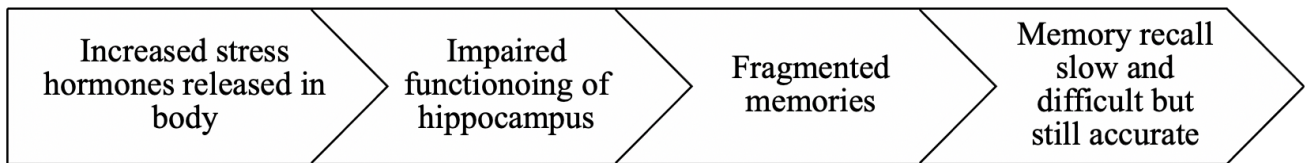


→ Prefrontal cortex
P.F.C.
"THE WISE LEADER"





TRAUMA AND MEMORY:



PUTTING TOGETHER A PUZZLE:



PUTTING TOGETHER A PUZZLE:

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Trauma and the Brain



Why learn about trauma and the brain?

Integrating trauma-informed practices into our policies and everyday practices is critical to creating a process that not only responds to complaints of harassment and violence, but serves people best.

Adverse Childhood Experiences

Nationally, 1 in 10 children have experienced at least one traumatic experience according to the National Survey of Children's Health.

We often discuss trauma in terms of acute trauma after an assault. It's important to know that students can experience a wide spectrum of traumas that can intersect with each other.

Vicarious Trauma

Historical Trauma

Institutional Trauma

Cultural Trauma

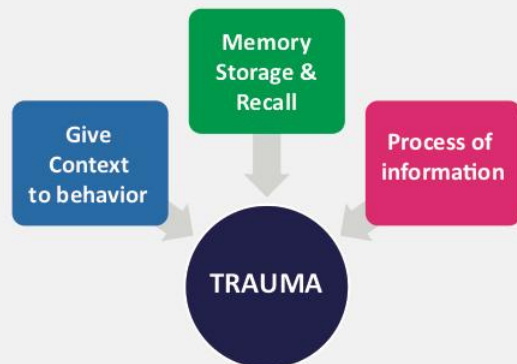


Prefrontal Cortex
"THE WISE LEADER"



"Flipped Your Lid"

Better understanding trauma and how it affects the brain gives us an additional tool to better serve students and staff through the Title IX process. Trauma can affect the brain in many ways.



Tips to mitigate institutional trauma triggers:

- Check website search keywords to include common terms for Title IX conduct such as "sexual assault" and "rape"
- Ensure that Title IX Coordinator contact information and reporting information is easily accessible
- Use vacation responders on email to let students know if you are absent from email or if you frequently have delayed email responses
- Write down information given verbally in meetings including dates and times of next meeting
- Avoid terms such as "remember," "why," and "alleged" that might have negative connotations

I Web: tixedu.com | Phone: 503-960-8261 | Email: admin@tixedu.com |

This resource is not intended as legal advice nor should it be treated as such. This resource is meant to provide an overview for the 'Neurobiology of Trauma' webinar provided by TIX Edu. For questions please contact us.

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CONDUCTING HEARINGS

How to conduct hearings including conducting cross-examination and determining relevance and reaching determinations, remedies and sanctions.

Learning Objectives:

- determining relevance in cross-examination
- understand rights and options related to hearing
- identify roles and responsibilities of decision-maker(s)
-

CONDUCTING HEARINGS

"LIVE" HEARINGS

CREATING A RECORDING:

- VIDEO
- AUDIOVISUAL
- TRANSCRIPT

VIRTUAL HEARINGS:

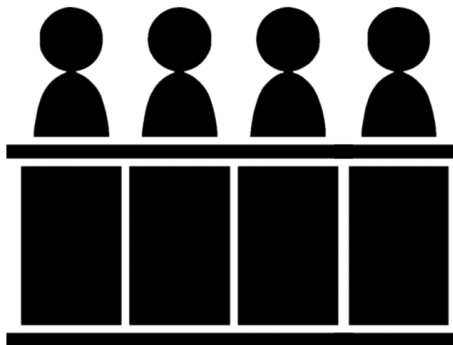
WRITTEN NOTICE OF HEARING:

SCHEDULING HEARING:

SINGLE DECISION-MAKER MODEL:



DECISION-MAKER(S) PANEL:



DECISION-MAKER(S):

- Can't be Title IX Coordinator
- Can't be investigator

ADVISOR OF CHOICE:

“[NOTWITHSTANDING THE DISCRETION OF THE RECIPIENT... TO OTHERWISE RESTRICT THE EXTENT TO WHICH ADVISORS MAY PARTICIPATE IN THE PROCEEDINGS.]”

If party doesn't have advisor at hearing:

- Institution must provide free of charge
- advisor of institution's choice
- May be but does NOT need to be attorney
- Party can NOT waive having an advisor

SEPERATION OF PARTIES:

EVIDENCE:

Make all evidence subject to the parties' inspection and review available at the hearing to give parties opportunity to refer to evidence during hearing.

Exception to evidence:

- Medical or psychological records can only be used with the party's voluntary consent.
- Privileged materials

INVESTIGATIVE REPORT:

“The Department notes... [the regs] contemplates parties’ equal right to cross-examine any witness, which could include an investigator and.... Grants parties equal opportunity to present witnesses including fact and expert witnesses, which may include investigators.”

CROSS-EXAMINATION:

“[A]ll relevant questions and follow-up questions, including those challenging credibility.”

- Question asked of parties and witnesses
- Directly, orally and in real time
- By party’s advisor of choice – NEVER by party
- “relevant, respectful and non-abusive”

RULES OF DECORUM:

RETALIATION:

RELEVANCE:

A question that goes to prove or disprove an outcome determinate fact.

REDUNDANCY:

"RAPE SHIELD":

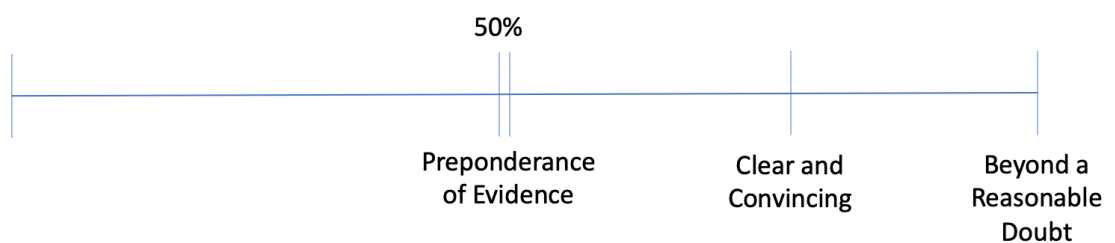
Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are offered to prove that:

- someone other than the respondent committed the conduct alleged (OR)
- complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

DETERMINATION OF RESPONSIBILITY:

STANDARD OF EVIDENCE:

Standard of evidence:



DECISION-MAKER(S) REPORT:

- Allegations
- Procedural steps taken from receipt of complaint– determination
 - Notifications to parties
 - Interviews with parties
 - Methods used to gather evidence
 - Hearings held
- Findings of fact that support determination
- Conclusions regarding application of institution’s code of conduct to the facts
- Statement of rationale for result of each allegation
 - Sanctions
 - Remedies
- Permissible bases for appeal available



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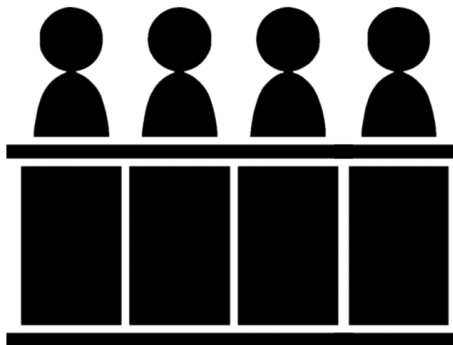
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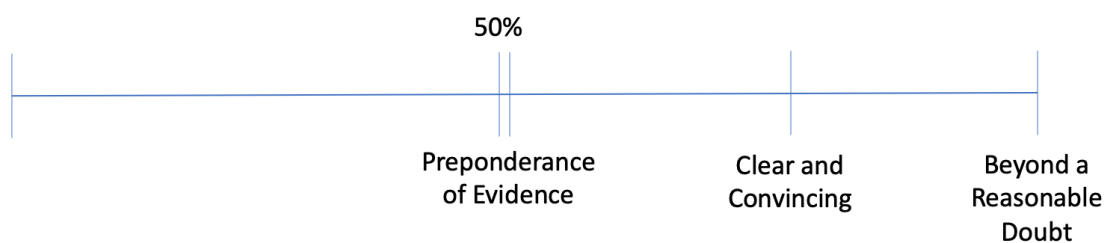
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