

Trauma-Informed Intake Meetings

Bricker 
Graydon
Title IX In Focus
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Disclaimers

We can't help ourselves. We're Lawyers.

- We are not giving you legal advice
- Consult with legal counsel regarding specific situations
- You should have received slides for today's presentation
 - If not, check the link in the chat box

And another one...

Specific to the Title IX In Focus Webinar Series

- The 2020 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss *some* of the required subject matter, none of these one-hour webinars will cover *all* of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Can We Post These Materials?

YES – Post away!

Institutions subject to Title IX are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.

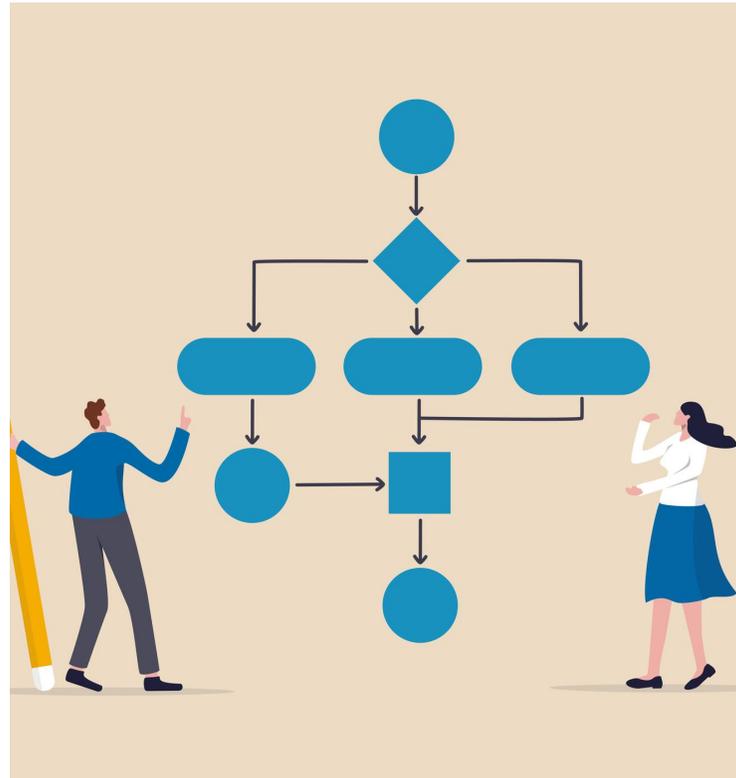


Agenda

- Three components of intake
- Discussion of trauma and being trauma-informed
- Title IX intake basics & practical extensions
- Practical tips for trauma-informed intake meetings
 - Supportive Measures
 - Process Discussion
 - Gathering Necessary Information
- Initial meetings with Respondents

Three Components of Intake

Supportive Measures, Process, Gathering Necessary Information





Trauma Defined

- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines trauma as “a result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”
- The CDC defines trauma as "a physical, cognitive, and emotional response caused by a traumatic event, series of events, or set of circumstances that is experienced as harmful or life-threatening."
- See also, DSM-5 Diagnostic Criteria for PTSD



How people mentally process what happened to them, affects the way the brain encodes and decodes memories of what occurred.

Understand the Context

Our focus today: Trauma-Informed Intake

Trauma-Informed medical care and mental health support

Trauma-Informed Education

Trauma-Informed First Responders

Trauma-Informed Investigation

Trauma-Informed Resolutions

Trauma-Informed Basics for Intake Meetings

- Assume all parties and witnesses may be dealing with trauma – from this or other incidents
- Meet them where they are
- Help them tell their story as part of the process
- Signs of trauma ≠ policy violation
- No signs of trauma ≠ no policy violation
- If they didn't act the way you might have, that doesn't mean it isn't true.

Title IX Intake Framework

Institutional response to a report:

- Actual knowledge (defined 34 CFR 106.30)
- "Must respond promptly in a manner that is not deliberately indifferent."
- Response to actual knowledge must be equitable
- 34 CFR 106.44(a):
 - The Title IX Coordinator must promptly contact the complainant to discuss:
 - the availability of supportive measures...,
 - consider the complainant's wishes with respect to supportive measures,
 - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint,
 - And explain to the complainant the process for filing a formal complaint.

Takeaways from the 2020 regulations: **Supportive Measures and Process for Filing a Formal Complaint**

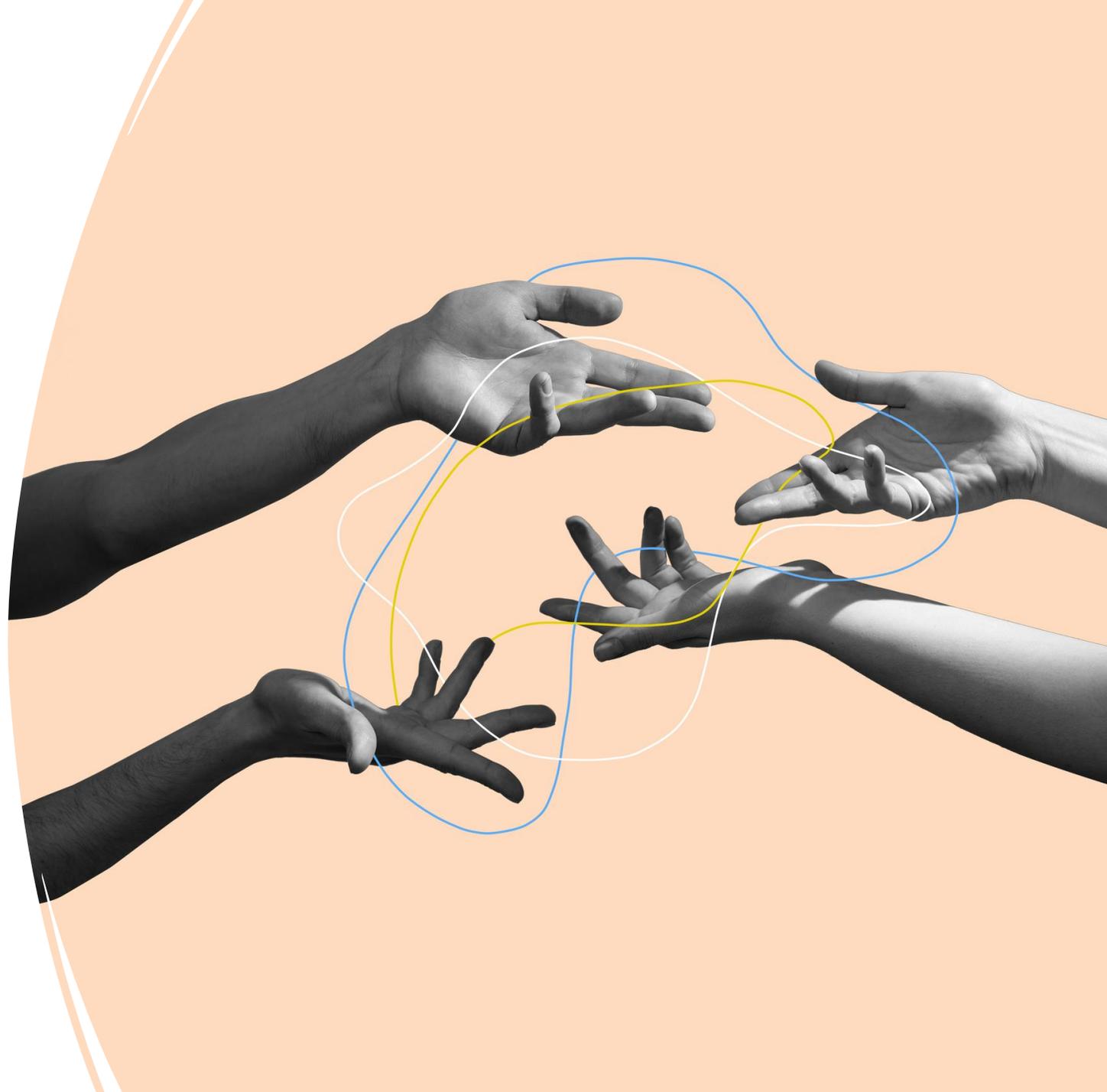
Practical Extensions of this Framework

- **Information about the resolution process**
 - Necessary for informed decision-making
- **Discussion of Title IX Jurisdiction**
 - Necessary to discuss the applicable process and potential for Exit Ramps
- **Potential discussion of definitions**
 - Necessary to discuss the applicable process and potential for Exit Ramps
- **Information about the interactions between the parties**
 - May be necessary to consider supportive measures



Give and Take

- "I need to provide you with information, and I need you to provide me with information."
- Autonomy whenever possible
 - "Would you like me to talk about the process first? Or would you like to share your concerns with me first? Either is fine, and if you can't decide, I'm happy to help."



Big Picture Concepts



Give autonomy whenever possible



Remember the context

You are not the decision-maker

This is not an investigative interview

Give the benefit of the doubt to both parties



Remember what you know about
trauma

Memories might be encoded in non-linear ways

There may be gaps

Self-blame

Why it is
Important to
NOT make
assumptions?



Why Don't People Tell Right Away

- The Preamble to the Title IX Regulations suggests:
 - Shame
 - Fear of retaliation
 - Fear of not being believed
(Preamble p. 30081)



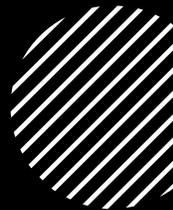
Why Don't People Always Remember

- A party should not be “unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory” (Preamble, p. 30323)





Structuring Your Intake Meetings



Use a list of talking points or a checklist, but...



Be mindful of the human in front of you



Be flexible and willing to change direction



Have your policy close by



Talk about your process



Talk about your definitions (if necessary)

Supportive Measures

- What does your policy say?
- Create a list and use it during every intake
 - Both Complainants and Respondents
 - Put it out there – the person may not realize what they need or what's available to them
- Don't overpromise (ex: housing)
- Must not unreasonably burden the other party
- Confirm the discussion and next steps in a follow-up email after each intake meeting
- If a requested supportive measure is not available, explain the rationale and document the decision



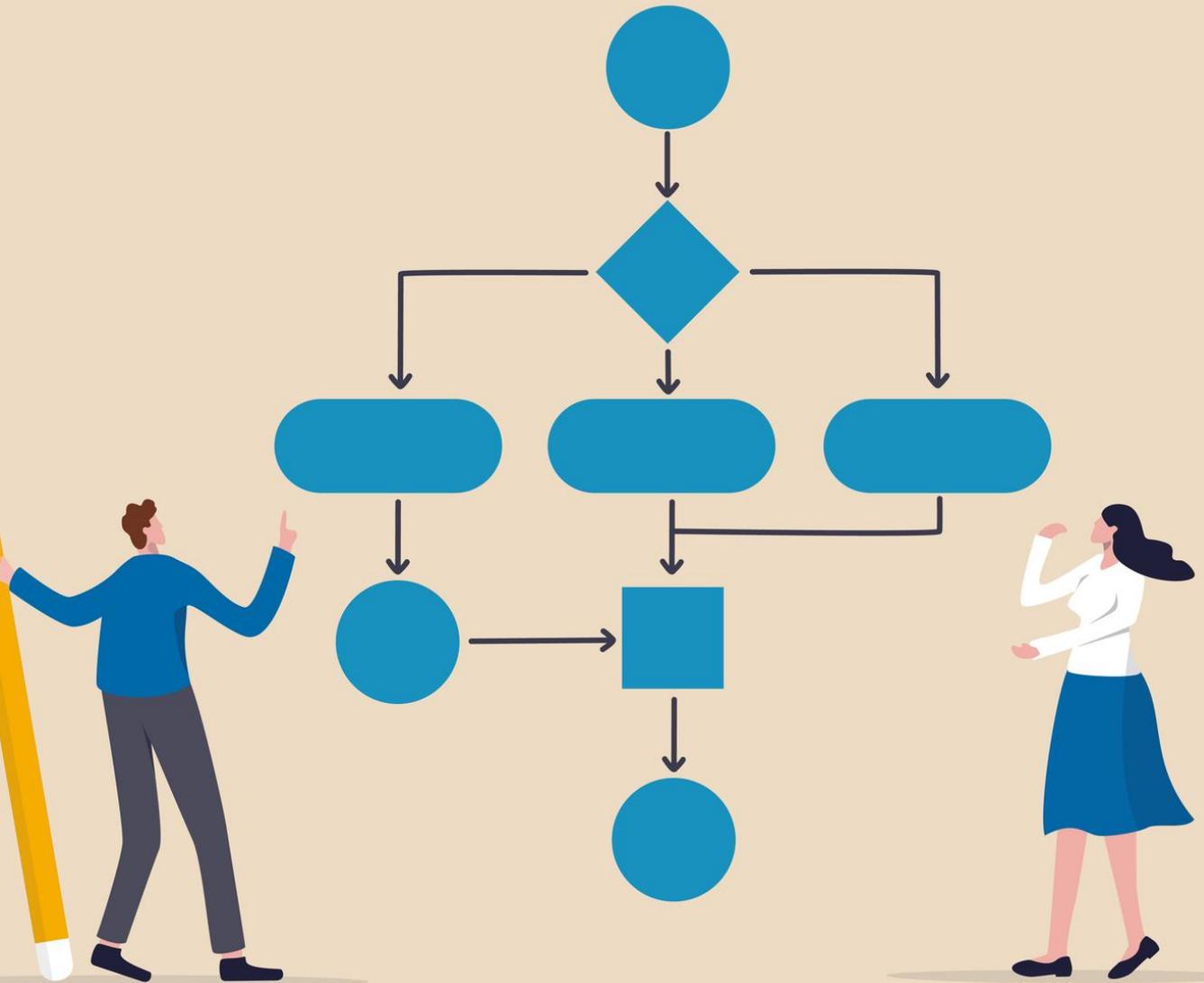
Supportive Measures (2020 Title IX Regs)

34 CFR 106.30(a)

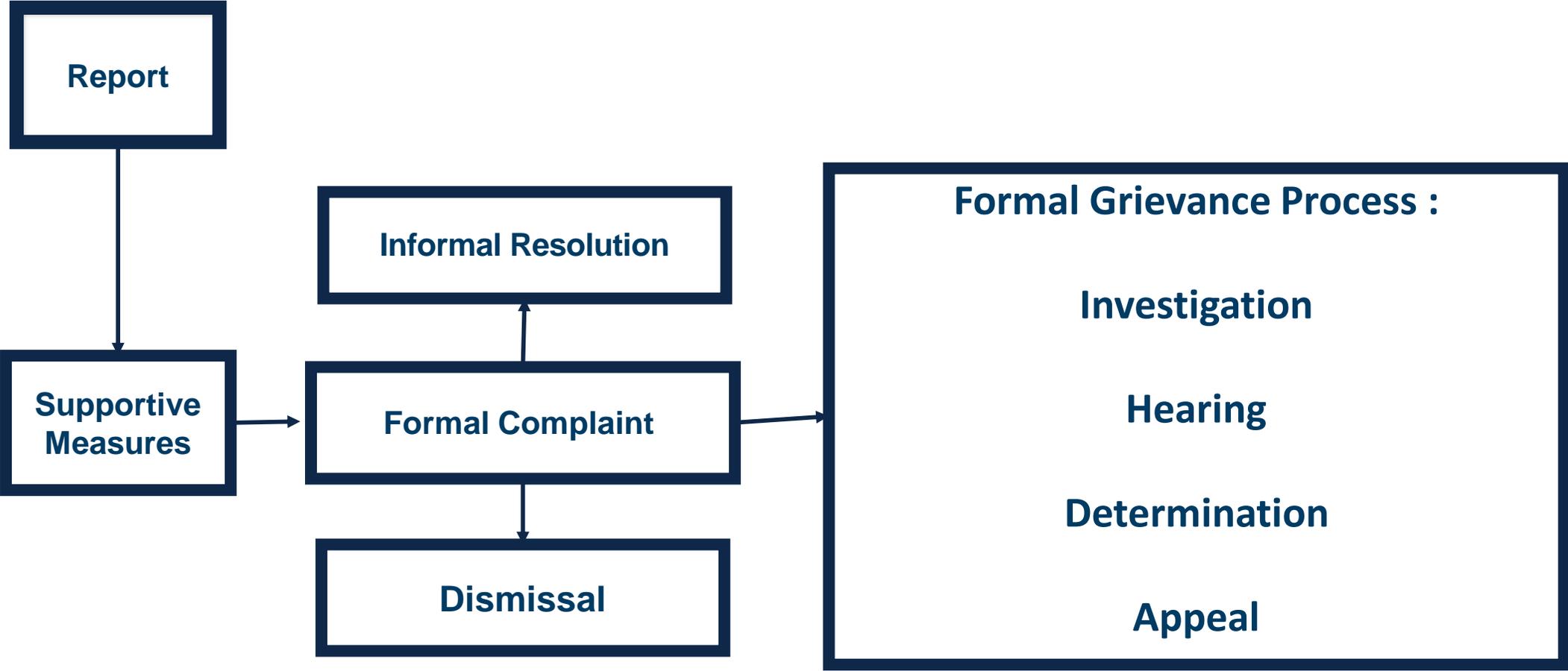
- Non-disciplinary, non-punitive
- Individualized services
- Offered as appropriate, as reasonably available, without fee or charge
- Available before or after the filing of a Formal Complaint
- Available if no Formal Complaint is filed
- "Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party"
 - May include measures designed to protect safety of the parties and the educational environment, or deter sexual harassment

Process Discussion

- What does this look like for you?
 - Review of Policy language
 - Step 1, Step 2, Step 3...
 - Flowchart
- How do you describe the investigation?
- How do you describe the hearing process?
 - Cross-examination
- How do you describe informal resolution?
 - Mutual, informed, written consent
 - Respondent-employees



Process Flow Chart



Process Discussion about Jurisdiction

- What does your Policy say about jurisdiction for Title IX matters?
- Discussion regarding referral/"dismissal"
 - If you know this belongs elsewhere, be transparent
 - If you don't know – you can follow-up later
 - Remember: If a Formal Complaint has been filed, the case must be "dismissed"
 - Notice of Dismissal required for both parties
 - Show your work!
 - Make sure the Notice of Dismissal is NOT the first time the person learns of the dismissal

Gathering Necessary Information

- Remember the goal – to determine where this report fits and what might be done about it
- Think of the basic "W" questions – who, what, where, when, why
- Same level of detail needed for an investigative interview?
 - What if you are the TIXC *and* the investigator?
 - If not, is it better to get fewer details?
 - Remember – meet the person where they are





Gathering Necessary Information (cont.)

- In most cases, you will need to ask for information
 - "And then he did it."
 - "They were toxic."
- What are the required elements in your policy?
 - Understand the definition
 - Break it down

Breaking the Conduct into Elements

1. Review the **definition**.

2. **Break down** the definition into elements by making a checklist.

- Make sure that each element is independent of the others. Don't put multiple elements into one, as it makes the analysis more difficult.
- Make it clear when there are multiple options for an element. For example, "Must have one of the following..."

3. Re-read the definition. Have you accounted for **all of the language** in the definition?

4. Are there any **other definitions** that should be included in your element checklist?
Examples: consent, incapacitation, etc.

Example Analysis – Title IX Stalking

Policy definition:

The term “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person with similar characteristics under similar circumstances to fear for their safety or the safety of others; or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the Complainant, or interferes with the Complainant’s property. Stalking governed by Title IX refers to stalking that is based on sex or gender.

Elements of Title IX Stalking

- Course of conduct
 - 2 or more acts
 - Direct or Indirect acts of:
 - Following OR monitoring OR observing OR surveilling OR threatening OR communicating to or about the Complainant, OR interfering with the Complainant's property
- Directed at a specific person
- Based on sex
- Impact to a reasonable person
 - Would cause a reasonable person
 - with similar characteristics under similar circumstances
 - to fear for their safety or the safety of others; or,
 - To suffer substantial emotional distress

Things that *Aren't* Trauma-Informed

- Multiple meetings to gain additional information
 - It is sometimes necessary – particularly if you are meeting the person where they are
 - But... getting everything you need in one meeting is best
- Shock
- Judgment
- Skepticism
 - "Why are you just now reporting this?"

Initial Meetings with Respondents

“What we do for one, we for the other”

- Will look a bit different,
- But should mirror your Complainant intake as much as possible
- Supportive measures
 - Document
- Process Discussion
- Gathering Information (?)
 - Less necessary than with the initial report
 - Meet people where they are
- Confirm the discussion and next steps in a follow-up email after each intake meeting



Upcoming Title IX In Focus Webinars



April 25, 2024: Weighing the Evidence in Sexual Violence Cases

May 10, 2024: Title IX Litigation Update (11:00 a.m. CT/12:00 p.m. ET)

August 29, 2024: Trauma-Informed Resolutions

September 26, 2024: Hostile Environment Basics

October 31, 2024: Common Issues in Investigating IPV

November 21, 2024: Title IX Litigation Update

February 27, 2025: Employee Sexual Misconduct Cases

March 27, 2025: The Romanticizing of Stalking Behavior

April 24, 2025: Sexual Misconduct Hearings

May 29, 2025: Title IX Litigation Update

Upcoming Higher Ed Webinars



- Higher Education **Free** Webinar Series:
 - Athletics Hot Topics – April 12, 2024
 - Title IX Litigation Update – May 10, 2024
- New new regs?
 - Watch for a **Free** webinar around the release of the new Title IX regulations

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