

TIXEdu

TITLE IX INVESTIGATOR TRAINING

JUNE, 2022

PROVIDED BY:
TIX EDUCATION SPECIALISTS

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INSTRUCTOR: JACKIE SANDMEYER

Jackie Sandmeyer is the Founder and Principal of TIX Education Specialists. They received their Bachelor of Science from University of Idaho and Juris Doctor at Willamette University of Law. After creating the country's first statewide Title IX training and technical assistance program for colleges and universities, Jackie sought to fill the need for further capacity in training and consultation related to sexual harassment and interpersonal violence nationally. They have worked with colleges and universities, law enforcement,



state agencies, and community based service providers to identify and create some of the nation's leading models in Title IX and student services. From pioneering education based legislation that spread to other states to developing new and emerging school based investigation techniques, Jackie and their team bring this experience and more to TIX and its clients.

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founder | principal

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MOVING BEYOND COMPLIANCE. EMERGING BEST PRACTICES.



TRAINING

Cutting edge training integrating up to date mandates as well as emerging best practices. Each curriculum tailored to meet your needs.

CONSULTATION

Customized consultation in all forms including policy audits and review, case consultation, program review, climate surveys and more.

INVESTIGATION

Let our team of highly trained and experienced investigators help you stay on top of challenging cases and expanding case loads.

ABOUT: TIX EDUCATION SPECIALISTS

About TIX Education Specialists

TIX Education Specialists sets itself apart from other training and consultation bodies in that it offers guidance and training on not only what is compliant, but what is known to be best practice and trauma-informed. We don't believe that one model fits all. Instead, TIX brings years of expert experience to identify solutions that serve you and your community best.

Our Mission - Bridging Compliance & Best Practice

Successful responses by schools take not only compliant policies and strategies, but must also include techniques rooted in emerging best practice. While many firms solely provide schools with what the law requires, TIX Edu goes a step further by ensuring that schools understand what implementation looks like, and how mandates integrate with institutional missions. Schools are tasked with the safety of students as well as creating and fostering an environment for students to reach their fullest potential. Let TIX Edu assist with the hard work of identifying the path to get there.

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TIX Education Specialists

"Bridging compliance and best practice."

NEED ADDITIONAL HELP?

WEBINARS

Keep up to date through short training episodes covering emerging topics with live and recorded webinars. Don't be left behind.

RESOURCES & TOOLKITS

Stop recreating the wheel and take advantage of our templates, one-pagers, toolkits and other resources covering all areas.

TRAININGS & COURSES

From topic specific certification to courses on larger Title IX and related fields we have curriculum offered both in person and online.

MEMBERSHIP

Become a member of TIX Edu's network and receive email alerts, resources, networking opportunities, technical assistance and more.



Foundations of Title IX

An overview of the tenants of Title IX including the purpose of Title IX and how to navigate guidance and resources provided by the USDOE and OCR. A look at how schools can bridge compliance with Title IX with best practices in serving students and staff and building better processes.

Learning Objectives:

- Develop a clear understanding of foundation of Title IX
- Understand the scope and limitations of Title IX and how that intersects with best practices
- Identify where regulations begin and end and where institutional discretion can guide school's decisions

Title IX encompasses more than just sexual harassment.

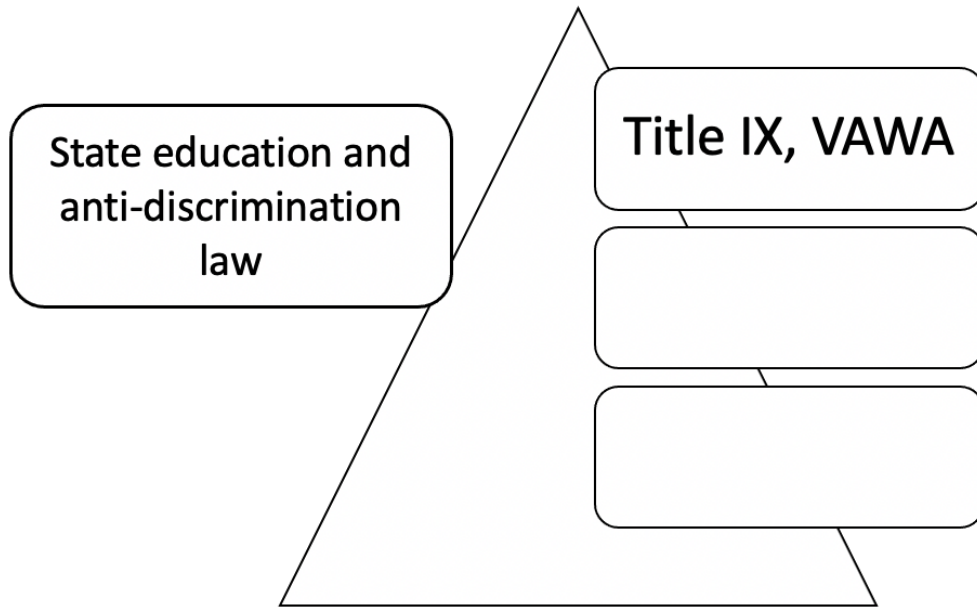
Main areas of Title IX: **not exhaustive list*

- sexual harassment
- retaliation
- athletics
- single sex programs
- gender identity and gender expression
- pregnant and parenting students

Notes:

Non-Sexual Harassment Topics:

"Prompt and equitable response"



Notes:

Sex based discrimination

- 1. Sexual harassment
- 2. Sexual Assault
- 3. Domestic Violence
- 4. Dating Violence
- 5. Stalking

"Equitable access to education program or activity."

Who does Title IX apply to?

”[Title IX] shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization...”

Title IX Exemptions:

“program or activity,” as defined in 20 U.S.C. 1687, “does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.”

Changes to Title IX:

← Did conduct occur before or after August 14, 2020? →

Notes:

“The final regulations leave recipients flexibility in [responding to reports] and prescribe a particular grievance process only where allegations concern sexual harassment covered by Title IX.”

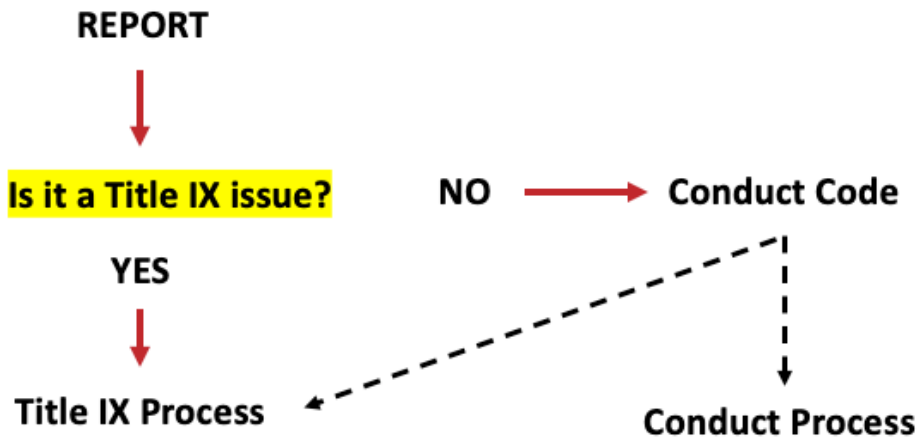
"Bridging the gap"



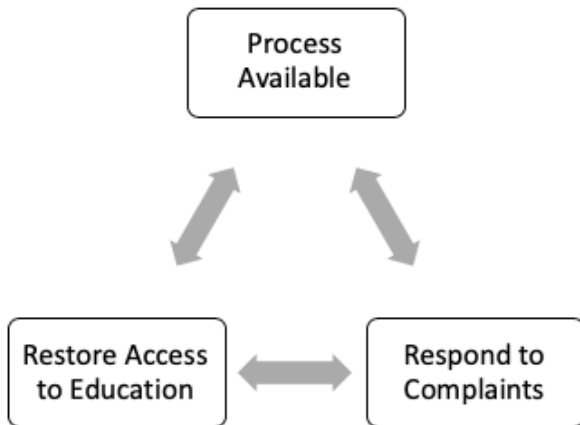
Language of Title IX:

Institutional Discretion:

“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.”



Notes:



General administrative requirements:

Grievance Procedure:

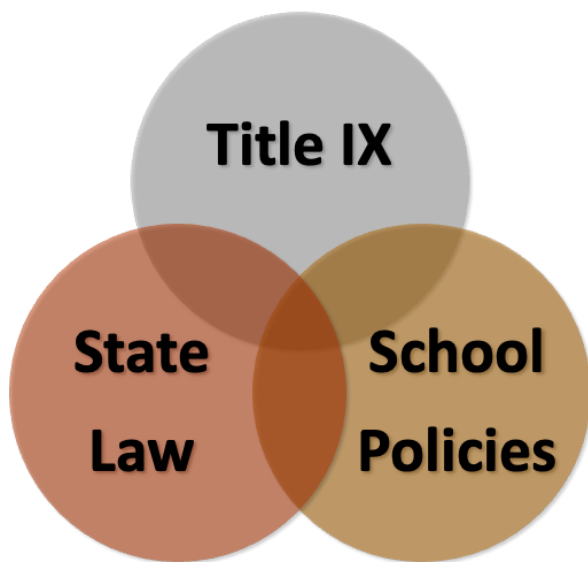


When is it Title IX? Scope and Jurisdiction of Title IX

An overview of what types of complaints fall under the scope of Title IX as well as other available types of jurisdiction such as mandated state law and institutional code of conduct policies.

Learning Objectives:

- Define types of conduct that constitute sex discrimination under Title IX
- Identify jurisdictional requirements including defining "educational program or activity"
- Understanding the standards and definitions applied to different terms within conduct definitions



Jurisdiction:

“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.”

Title IX Jurisdiction Considerations:

1. Type of conduct
2. Educational program or activity
3. Person in the United States

Non-Sexual Harassment:

“[T]he grievance process required for formal sexual harassment complaints does not apply to complaints alleging discrimination based on pregnancy, different treatment based on sex, or other forms of sex discrimination.”

Sexual Harassment

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

Notes:



Sexual Harassment:

1. Sexual harassment
2. "Quid pro quo" harassment
3. Sexual assault

"Quid Pro Quo" Harassment:

"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct." 34 CFR 106.30(a)(1)

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." 34 CFR 106.30(a)(2)

Using a reasonable person standard:

1. severe;
2. pervasive;
3. objectively offensive; AND
4. effective denial

Sexual Harassment:

Defining consent:

"Reasonable person"

“Reasonable person in the complainant’s position would find the conduct severe, pervasive, and objectively offensive such that it effectively denies equal access to the recipient’s education program or activity.”

"pervasive"

"effective denial"

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

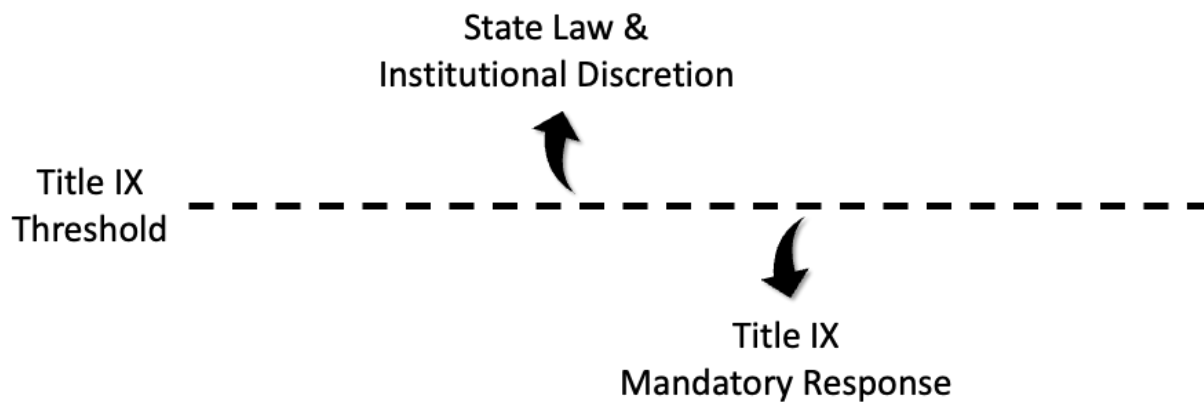
Notes:

Sexual Assault:

“[M]eans an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the [FBI]”

- | | |
|----------------------------------|-------------------|
| 1. Rape | 4. Fondling |
| 2. Sodomy | 5. Incest |
| 3. Sexual assault with an object | 6. Statutory rape |

“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.



Notes:

"Person in the United States"

"A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent." 34 CFR 106.44(a)

"Education program or activity"

1. School exercised substantial control over...

AND

2. School exercised substantial control over....

Types of dismissal:

1. Dismissal of complaint
2. Dismissal of allegation(s) within complaint

Must dismiss a complaint:

May dismiss a complaint if:

1. complainant wishes to withdraw complaint
2. respondent no longer enrolled/employed
3. not sufficient evidence to reach determination

Dismissal procedure:

SEXUAL HARASSMENT:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
or
3. "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

SEXUAL ASSAULT:

"[M]eans an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting [UCR] system of the Federal Bureau of Investigation [FBI]." 20 U.S.C. § 1092(f)(6)(A)(v)

****NOTE:** FBI switch from SRS to NIBRS January, 2021

FBI SEX OFFENSES (NIBRS)

Rape: The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

FBI SEX OFFENSES (NIBRS) Continued

Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

VAWA OFFENSES:

Dating violence 34 U.S.C. § 12291(a)(10)

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant; where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship (2) The type of relationship (3) The frequency of interaction between the persons involved in the relationship.

VAWA OFFENSES Continued

Domestic Violence 34 U.S.C. § 12291(a)(8)

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking 34 U.S.C. § 12291(a)(30)

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.



TITLE IX INVESTIGATOR: Roles & Scope of Responsibilities

A look at the larger role and responsibilities of the Title IX investigator. This section will look at the scope of the investigator's role starting with eligibility to investigate to the standard used to determine appropriateness of decisions and actions.

Learning Objectives:

- Understand the scope of the roles and responsibilities of the investigator in relation to the Title IX Coordinator and decision-maker.
- Identify expectations for appropriateness to serve as an investigator on any given case.

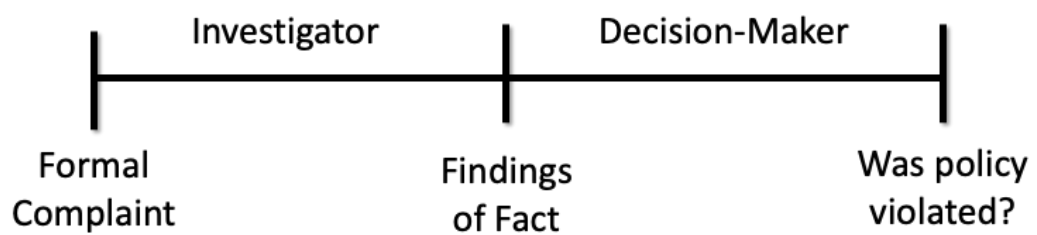
General roles & responsibilities:

Training:



Title IX Coordinator, Investigator, Decision-maker:

Investigator's scope:



School partnerships:

“The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.”

Conflict of interest and bias:

Enforcement of Title IX

Deliberate indifference:

"Clearly unreasonable in the light of the known circumstances."

Documentation & recordkeeping:

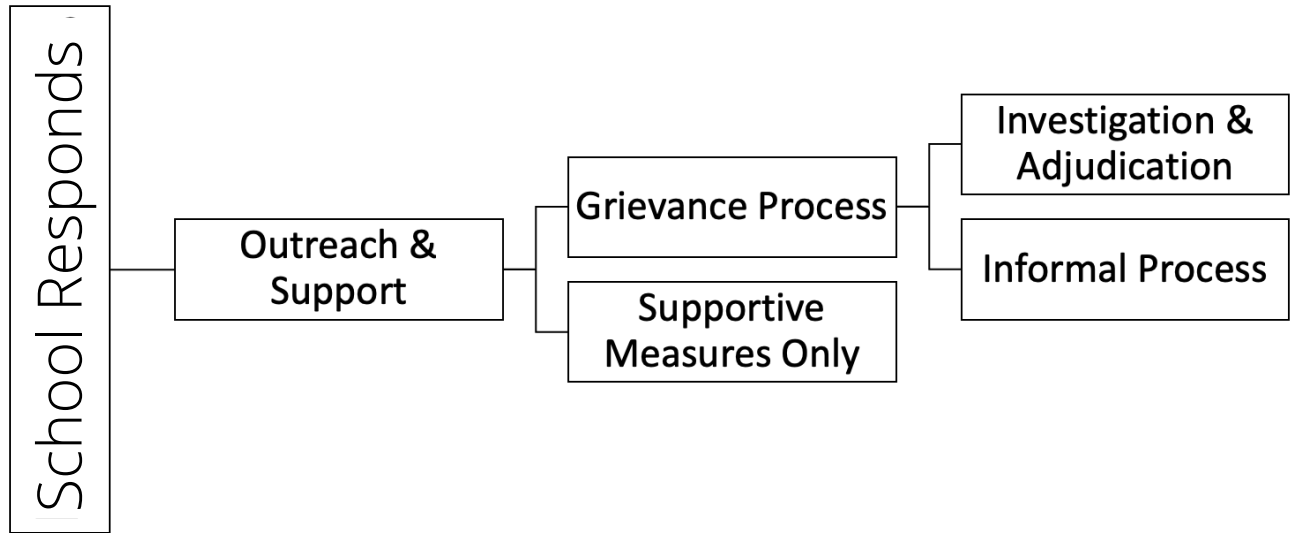


PRE-INVESTIGATION TITLE IX RESPONSE PROCESS

A look at the larger Title IX response process starting with determining when a school is considered on "notice," as well as initial response responsibilities that may be triggered.

Learning Objectives:

- Understand and define "actual knowledge"
- Identify guiding frameworks for the grievance process provided by Title IX
- Outline initial steps that a Title IX Coordinator may be required to take
- Review reporting options and formal complaints



Notes:

General guiding principles:

- "written grievance procedure"
- "deliberate indifference"
- Equitable treatment

Respondent considerations:

- no sanctions or punitive actions (exception: emergency removals)
- presumption of not responsible

“presumption does not imply that the alleged harassment did not occur.” “or that the respondent is truthful or a complainant is untruthful.”

Simultaneous investigation by law enforcement:

"Reasonably prompt"

"Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence."
34 CFR 106.45(b)(5)(iii)



Roles and phases of the process:

“Actual 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, or to any employee of an elementary and secondary school.” - 34 CFR 106.30(a)

Actual knowledge:

“[S]chool has a Title IX obligation to provide all students, not just the complainant, with an educational environment that does not discriminate based on sex.”

Notes:

Initial Response - Title IX Coordinator:

- ✓ Evaluate if the issues may fall under Title IX
- ✓ Make contact with the complainant
- ✓ Discuss supportive measures
- ✓ Determine if complaint will move to formal process

“The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, 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.” 34 CFR 106.44(a)

Notes:

Formal complaint: "A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment." 34 CFR 106.30(a)

Formal Complaint:

Notice of Allegation:

Informal Resolution Process:

“If the allegations in a formal complaint do NOT meet the definition of sexual harassment, or [jurisdiction], ... the school must dismiss such allegations for purposes of Title IX.... BUT may still address allegations in any manner the school deems appropriate under the school’s own code of conduct.”

Dismissals:



Title IX Investigation Process

A look at the Title IX investigation process including the steps necessary as well as the rights and options of parties to the complaint.

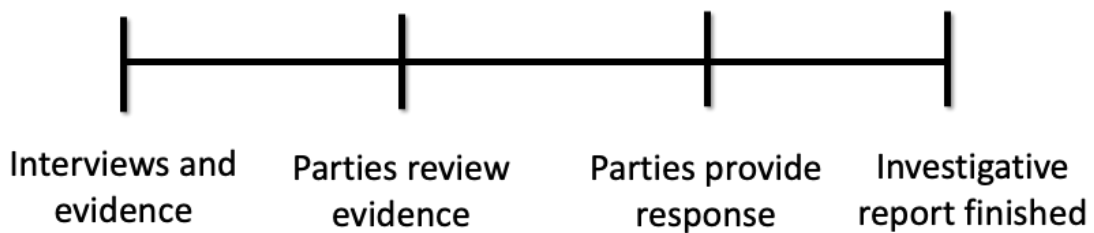
Learning Objectives:

- Develop an understanding of the investigation process as a whole.
- Understand mandated timelines and steps within the investigation process.
- Identify rights and options of parties to the investigation.

Investigation models:

“[P]rohibit Title IX systems in K-12 and colleges and universities from using a ‘single-investigator’ or ‘investigator-only model.’”

Overview of the investigation:



Investigator assignment conflicts:

"Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties..." - 34 CFR 106.45(b)(5)(i)

Evidence:

False Information:

"The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process."

34 CFR 106.45(b)(2)(i)(B)

Investigative interviews:

Written notice of interview:

- date and time
- location
- purpose
- participants

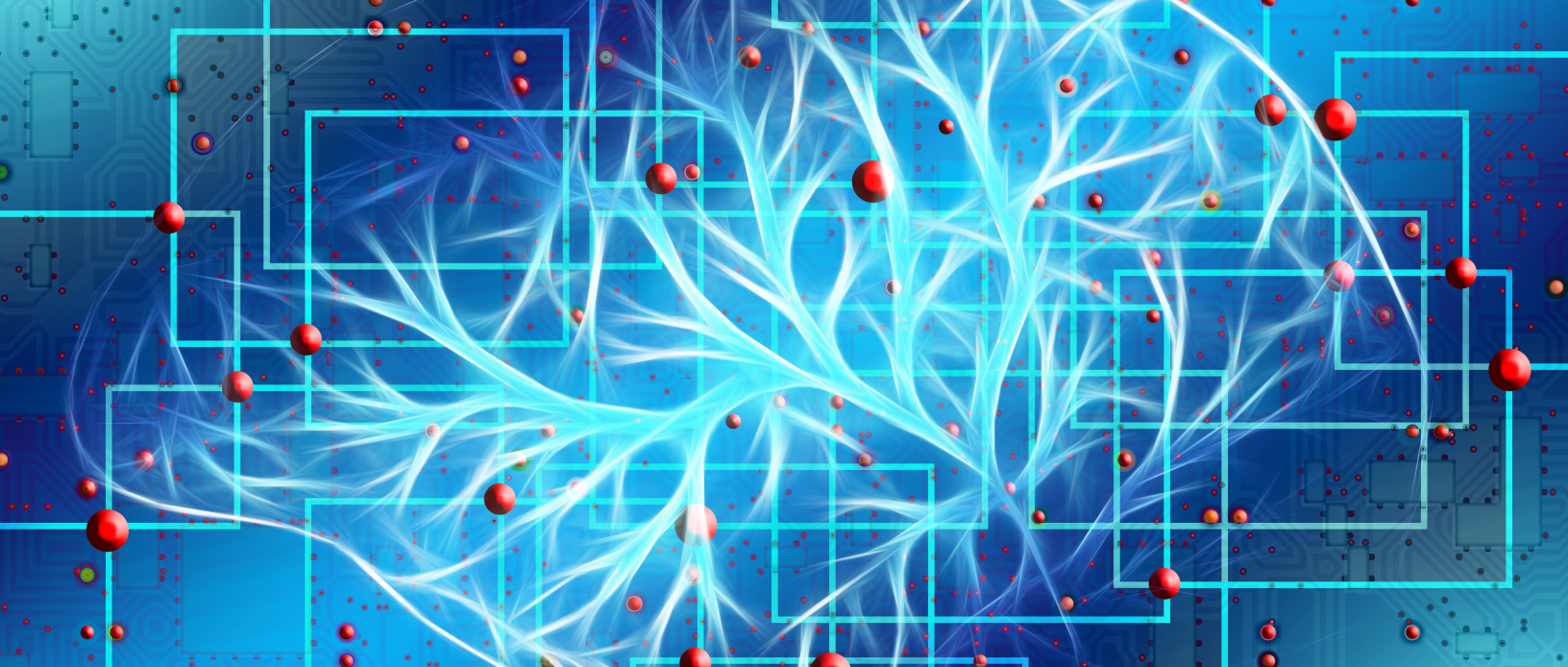
Advisor of choice:

“[H]owever, 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.” - 34 CFR 106.45(b)(5)(iv)

Restrictions on advisor of choice:

Party inspection of evidence:

Investigative report:



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 the 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?

EVIDENCE-BASED INVESTIGATIONS:

TRAUMA-INFORMED INVESTIGATIONS:



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



Evidence-based

- Objective
- Fact finding
- Neutral

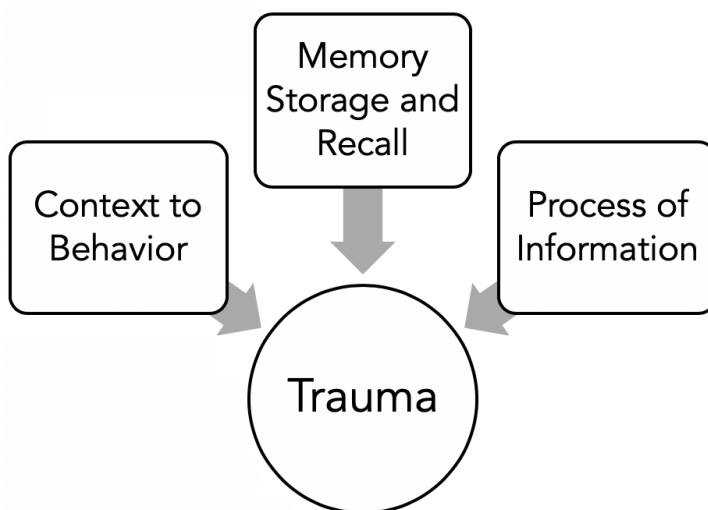
MYTHS TO AVOID:

TRAUMA IS NOT SPECIFIC TO A SINGULAR PARTY.

SIGNS OF TRAUMA (OR LACK OF) IS NEVER "EVIDENCE" TO BE WEIGHED IN FINDINGS.

UNDERSTANDING THE IMPACTS OF TRAUMA LEADS TO BETTER POLICIES AND PROTCOLS FOR MORE EQUITABLE ACCESS AND OUTCOMES.

ALL PARTIES SHOULD BE MET WITH TRAUMA-INFORMED PRACTICES.



COMMON TYPES OF TRAUMA

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

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:

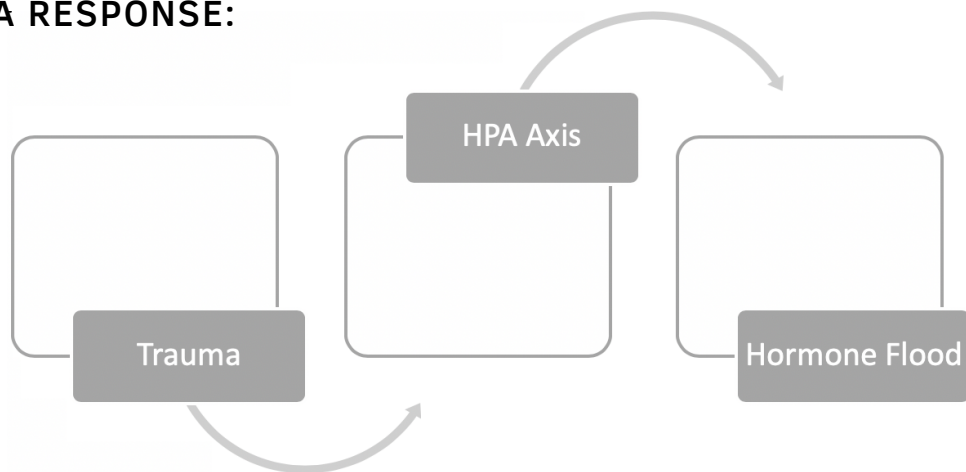
6 PRIMARY CAUSES OF TRUAMA:

- 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:

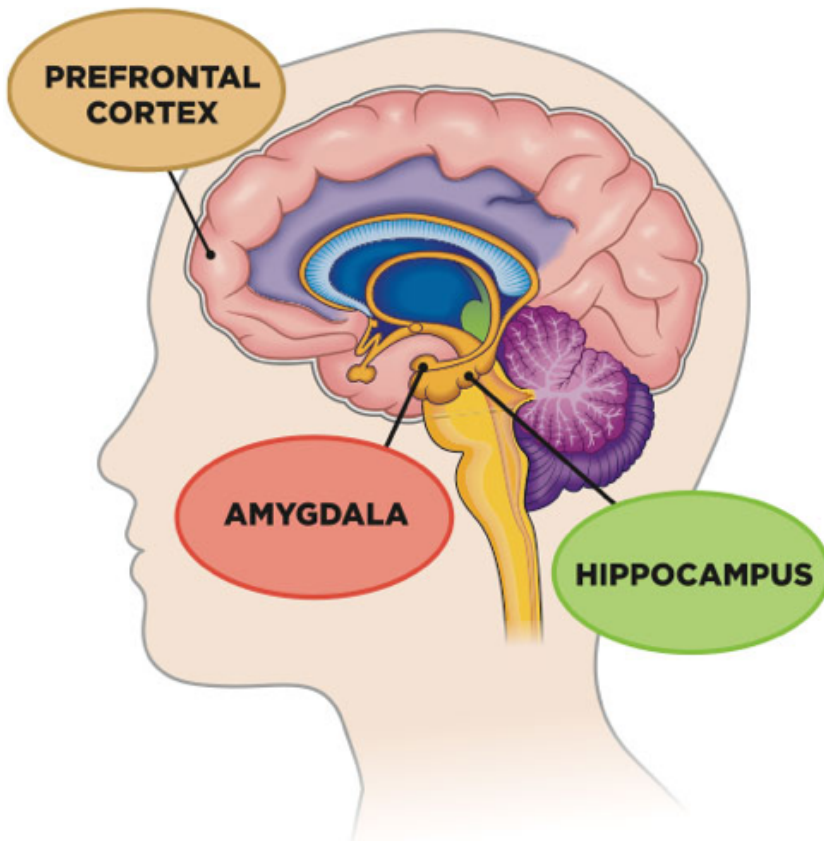


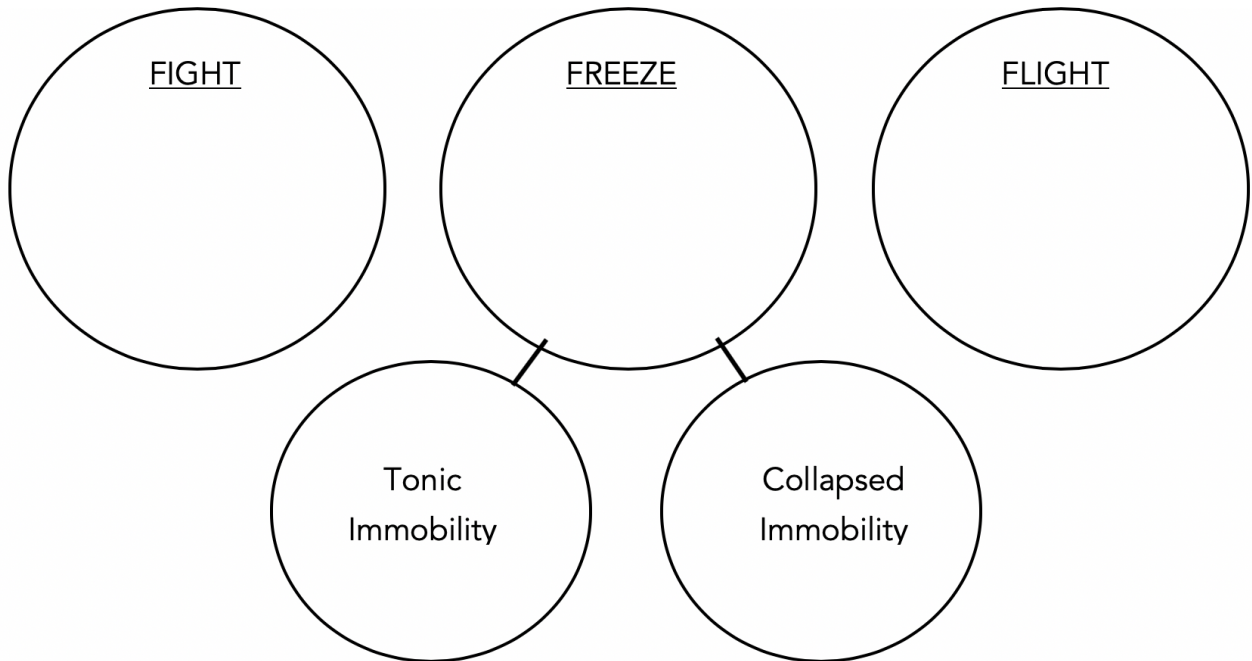
Physiological Response:

TRAUMA AND THE BRAIN

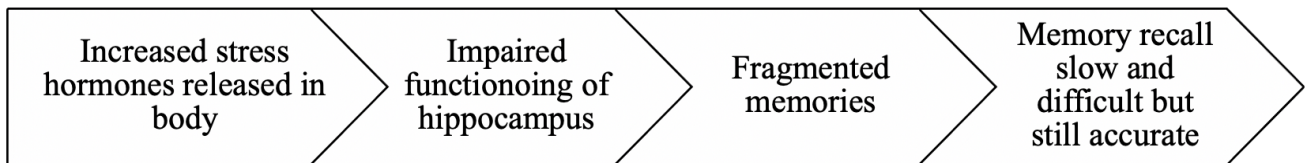


→ Prefrontal cortex
P.F.C.
"THE WISE LEADER"





TRAUMA AND MEMORY:



TIX Education Specialists

"Bridging compliance and best practice."

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

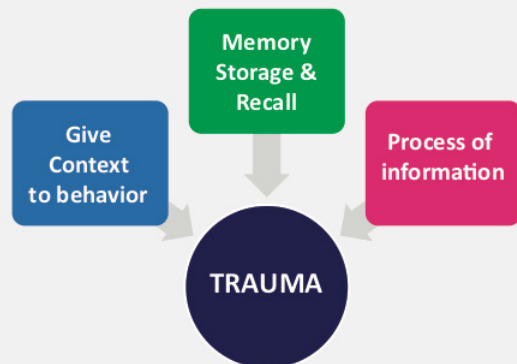


Prefrontal Cortex
"THE WISE LEADER"



"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

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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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INTERVIEWING & REPORTING WRITING

How to conduct complainant, witness and respondent interviews and best practices in better report writing and documentation.

Learning Objectives:

- understanding of preparation for interviews including scheduling and room selection
- best practices in interviewing techniques
- basics of a Title IX report

INTERVIEWING & REPORT WRITING

WHAT DOES AN INTERROGATION LOOK LIKE?

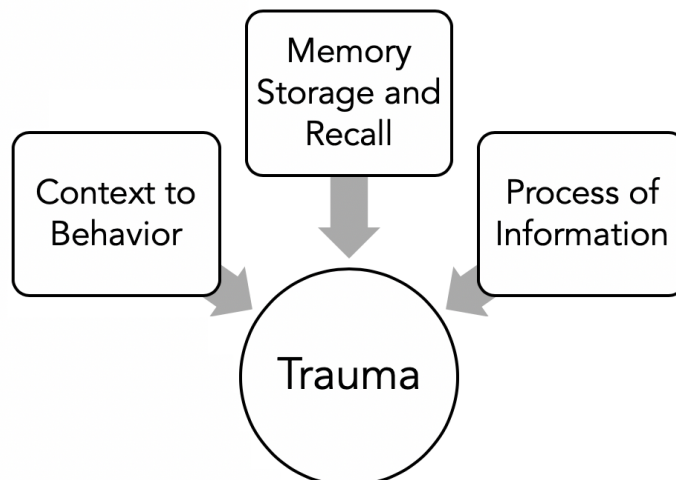
WHAT DOES AN INTERVIEW LOOK LIKE?

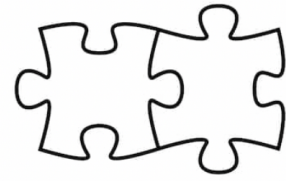
WHAT ARE THREE SIGNS OF DECEPTION?

- 1.
- 2.
- 3.

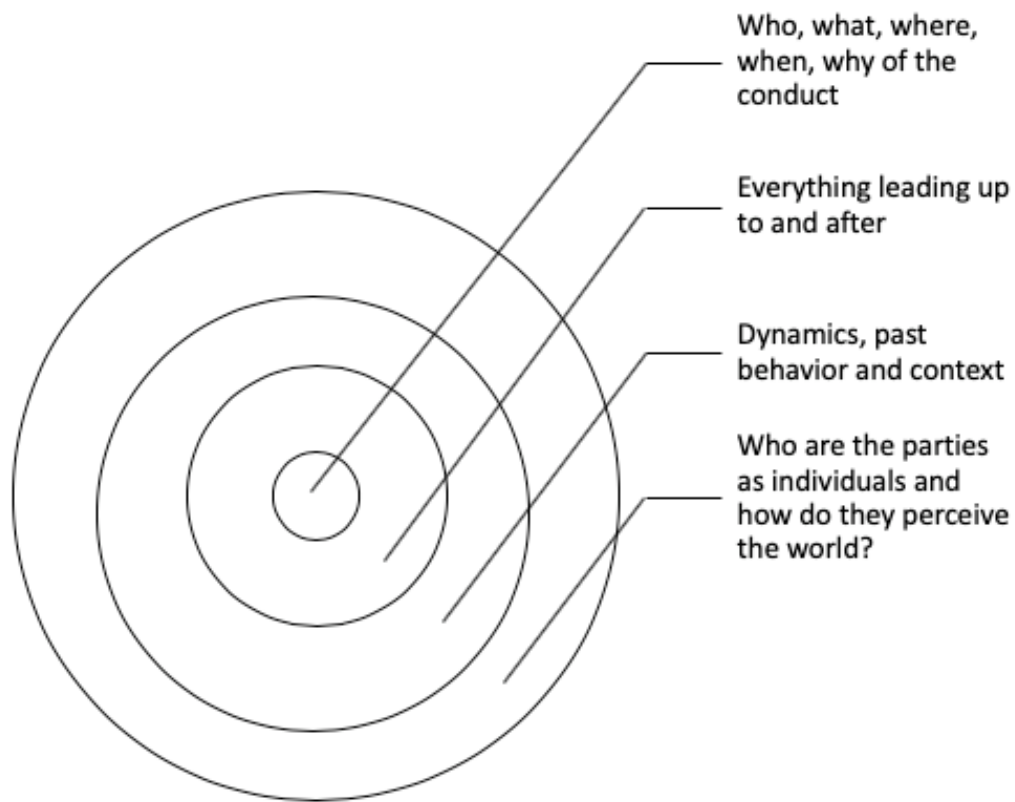
THREE THINGS WE EXPECT A WITNESS TO KNOW:

- 1.
- 2.
- 3.





Memory and investigator bias:



LANGUAGE:

- "why"
- "alleged"
- "remember"
- "claimed"

MIRROR LANGUAGE:

CLARIFYING LANGUAGE:

"We hooked up"

"When you say you 'hooked up,' help me better understand what you mean by that."

Report: "complainant stated that they had 'hooked up' with repondent. When asked what 'hooked up' meant, C stated...."

TRAUMA INFORMED INTERVIEWING:

WHERE TO DO INTERVIEW:

- privacy
- access to door
- limiting movement
- options in seating
- sit in interviewee seat
- personal photos
- interruptions
- accesibility of location

SCHEDULING INTERVIEWS:

BODY LANGUAGE:

HOW DO WE ASK QUESTIONS?

BETTER PRACTICES:

- where would you like to begin?
- do not interrupt or ask follow-up questions initially
- be patient
- awkward silences are ok

[experience based question] → [clarifying question]

THINGS TO AVOID:

"What happened, starting from the beginning." →

"Why did you...." →

"Who, what, where, when, why" →

CONTEXT TO BEHAVIOR:

- consent
- intoxication
- coercion, threats, fear
- power dynamics

COMMON TYPES OF BEHAVIOR:

1. tend and befriend
2. normalization of behavior
3. mitigation of harm

TONIC IMMOBILITY:

COLLAPSED IMMOBILITY:

SENSORY BASED QUESTIONS:

- smell
- taste
- hear
- see
- feel

Closing questions:

What is consent?

yes means yes v. no means no lens:

WHAT DOES COSENT LOOK LIKE?

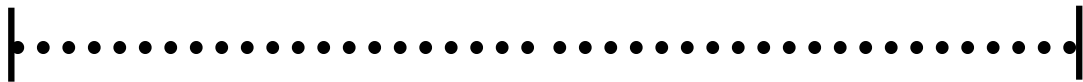
WHAT DOES LACK OF CONSENT LOOK LIKE?

HOW WE VIEW CONSENT:

- institutional policy
- personal bias



INVESTIGATING CONSENT:



Reports are:	Reports are not:
An accurate compilation of the facts	Your impression or takeaway of the facts
Interviews and evidence provided	Your analysis
Quotes or specific terms used	Paraphrases or synonyms
Clarifications and words defined by the parties	Your assumptions of the meanings of terms

BEST PRACTICES:

- keep your report up to date as investigation goes
- give yourself time
- re-read and proof read
- do not fill in "holes"
- correct transcripts if used
- quotes

NOTES:

Language:

Investigator report:

- jurisdictional statement
- scope of investigation: complaint & allegations
- current policy
- parties
- interviews
- evidence reviewed
- findings/conclusions of fact

Report format: