



Title IX & EEO INVESTIGATIONS

CIXE INVESTIATIONS, LLC

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JEFF LAMOUREAUX

BA Public Administration with an emphasis on
Criminal Justice

Masters in Organizational Leadership

2000-2002 - LASD Deputy Sheriff

2002-2016 – Burbank Police Department

2016-2017 - Deputy Title IX Coordinator @ UNL

2017-2020 - Title IX Coordinator/S.Investigator @
EWU

2019 to current - Consulting on Civil Rights / Title IX

2020-2021 – Director of Title IX Compliance @ App
State

2022-2022 – Director of Civil Rights @ GU & UB

2022-current – Title IX & EEO Investigator @ Auburn U



DISCLAIMER



I'M NOT AN ATTORNEY.



THIS PRESENTATION DOESN'T
GIVE LEGAL ADVICE.



THE PURPOSE OF THIS TRAINING IS
TO SHARE MY INVESTIGATIVE
EXPERIENCE, REQUIREMENTS, AND
BEST PRACTICES.

TRAINING AGENDA

DAY 1 (JUNE 21, 2023)

8:00-8:30 am (Check-in)

8:30-9:45 am (Title IX overview & Regulations)

9:45-10:00 am (break)

10:00-11:30 am (Title IX, Title VII, & EEO Civil Rights Laws)

11:30-12:30 pm (Lunch)

12:30-1:30 pm (Rights of parties & Neutrality & Bias)

1:30-1:45 (break)

1:45-2:45 (Case management & Fact Finding)

2:45-3:00 (break)

3:00-5:00 pm (Interviews & Report Writing)



TRAINING AGENDA

DAY 2 (JUNE 22, 2023)

8:00-8:30 am (Check-in)

8:30-9:45 am (Review of Day 1)

9:45-10:00 am (break)

10:00-11:30 am (Obtaining & analyzing evidence)

11:30-12:30 pm (Lunch)

12:30-1:30 pm (Credibility assessment & rational writing)

1:30-1:45 (break)

1:45-2:45 (Scenarios)

2:45-3:00 (break)

3:00-5:00 pm (Scenarios & prep for hearings & questions)





FLEXIBLE

TRIGGER WARNING



- Some content can be offensive, traumatic, or triggering.
- You may step out anytime.
- Slides, videos, and conversation is meant to create dialogue on serious topics.
- Respect each other.

TITLE IX OVERVIEW & REGULATIONS

The federal law

The history

What conduct is covered

Definitions

Jurisdiction

Best practices (floor vs ceiling)

Evidentiary standard

Neutrality & Equity

Title IX of the Education Amendment of 1972 (federal law)

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

“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 educational program or activity receiving federal financial assistance.”

The History

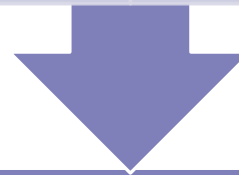
Office for Civil Rights | Department of Education

1972 - Sex Discrimination / Gender Equity (program & activities)

1997 - Sex Discrimination expanded to include forms of Sexual Harassment

2011 - "Dear Colleague" letters (Guidance) focus on Sexual Violence and support for Complainants

2020 - "Regulations" are a legal mandate which is more enforceable than "Guidance"



2020 Regulations

Focuses on due process rights

Standard procedures for all institutions to follow

Formally added Dating / Domestic Violence & Stalking

One process for students, faculty and staff (live hearing)

Right to Advisor

Right to cross-examination by Advisor only

Increased requirements for annual training

The History (upcoming changes)

Possible 2023 Regulations

Jurisdiction
includes off-
campus

Sexual Harassment
definition to align
with Title VII
(Pervasive **or**
Persistent)

Title IX
Coordinator able to
serve as decision-
maker and possibly
the Investigator

Option for live
hearing

Conduct Covered under Title IX

Sex/Gender-
based
Discrimination

Sexual
Harassment

Sexual Assault

Dating/Domestic
Violence

Stalking

Terms & Definitions

Complainant - The person that alleged they experience misconduct.

Respondent - The person that is alleged to have engaged in the misconduct.

Prohibited conduct under Title IX

Sexual Harassment is conduct on the basis of sex meeting one of the following conditions: ☐

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;

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

“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)

“Stalking” as defined in 34 U.S.C. 12291(a)(30)

Terms & Definitions (cont.)



“Hostile Environment Sexual Harassment”

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s education programs and activities.

Horrible Bosses - Hostile Environment



“Quid Pro Quo Sexual Harassment”

An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual contact.

Legally Blonde Quid Pro Quo



Terms & Definitions (cont.)

“Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory

“Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.

“Sodomy” is 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 their age or because of their temporary or permanent mental or physical incapacity.

“Sexual Assault with an Object” is using 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 their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.

“Fondling” is 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 their age or because of their temporary or permanent mental or physical incapacity.

“Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Alabama law.

“Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Alabama law

Terms & Definitions (cont.)

“Domestic Violence” is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Alabama.

“Dating Violence” is violence committed by a person – 1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and 2. Where the existence of such a relationship will be determined based on a consideration of the following factors: • The length of the relationship; • The type of relationship; and • The frequency of interaction between the persons involved in the relationship.

➤ One time hook-up doesn’t count.

Blades of Glory Stalker



Terms & Definitions (cont.)

“**Stalking**” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

Terms & Definitions (cont.)

§ Consent is: • knowing, and • voluntary, and • clear permission • by word or action • to engage in sexual activity.

§ Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

§ Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

§ Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason. This policy covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

Old School Incapacitated Frank the Tank



TITLE IX REGULATIONS

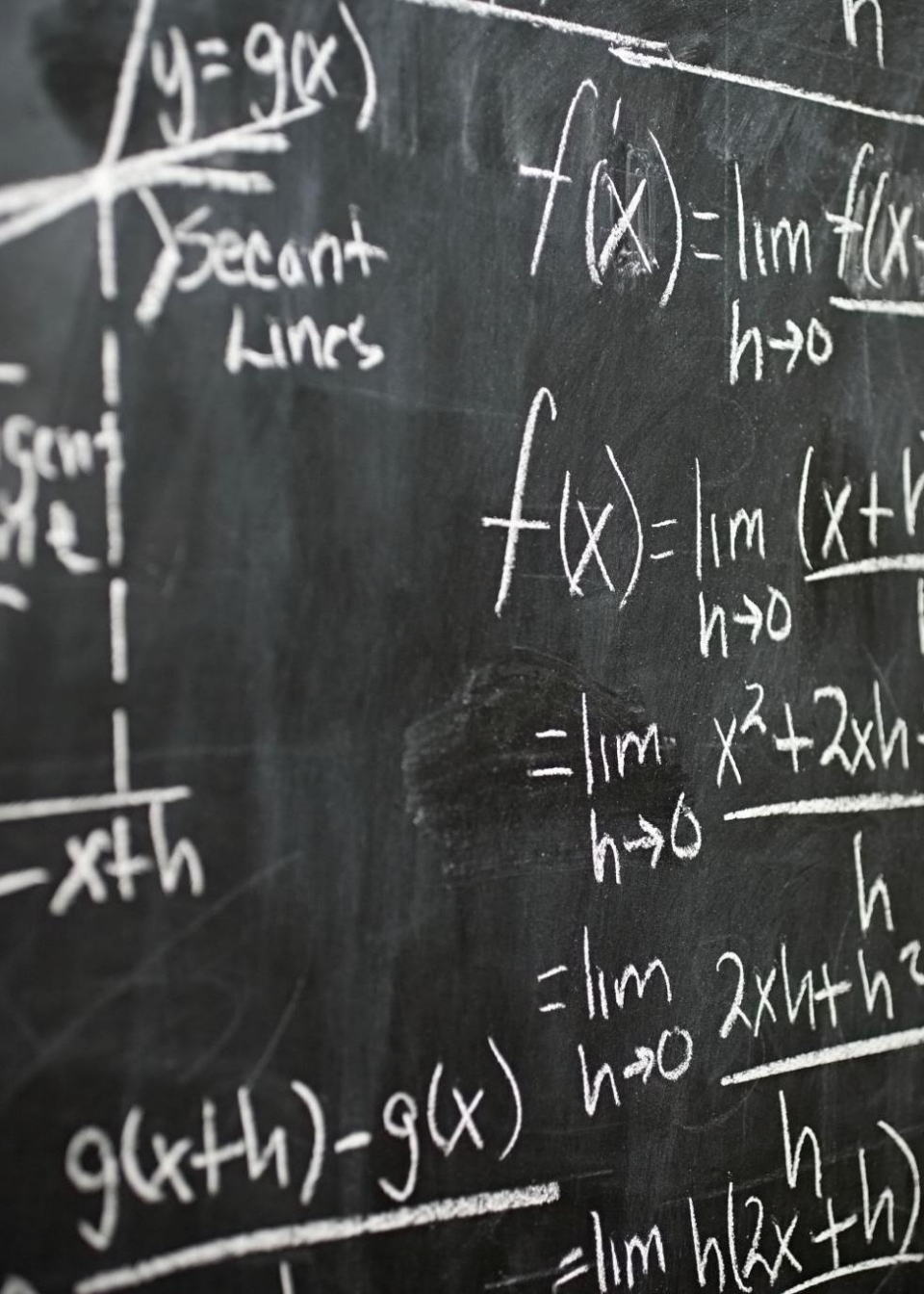
Title IX Regulations



Lack of Compliance
& Liability
Lawsuits, Federal
Fines, Lack of trust,
Loss of jobs

MISSOULA

RAPE AND THE JUSTICE



Title IX / Civil Rights Investigations

Definitions of prohibited conduct

Scope of Recipient's education program or activity

How to conduct an investigation & grievance process

How to serve impartially (avoid bias & conflicts of interest)

Understanding "relevant evidence"

Title IX Investigations

Investigation process (neutral, unbiased, & fact finding)

- NOI already sent to both parties (complainant & respondent)
- Review policy definitions (elements)
- Game plan
- Schedule interviews
- Conduct interviews
- Write summaries of the interview
- Allow parties to review their summary for accuracy
- Follow up questions
- Draft Investigation Report (10-day review)
- Final Investigation Report (2nd 10-day review)

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)

106.45(b)(5)(vi) [evidence collection]

Review any evidence “directly related to the allegations,” including 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.

- Recommendation, collect all items submitted and determine what is relevant and what is not relevant. Items not relevant you keep in the file but you let the party know why you believe the item is not relevant and allow them an opportunity to challenge. If they believe it is relevant they can explain why and you can decide. Either way, you must document so that later on you share with the hearing panel / decision-maker(s).

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

Collection of evidence

- Types of evidence – email, photo, reports, recordings, reports, statements, observations

Review of evidence

- Sorting, identifying relevance, and labeling evidence

Recommendation - Categorize as Relevant or Not relevant

- Relevant evidence – related to the case and would help the decision-maker(s)
- Not relevant evidence – Even if related, it would not help the decision-maker(s)
- In between evidence – Evidence that could go into either category, I recommend including as relevant.

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

Collection of evidence - purpose

Establish credibility

Establish timeline

Establish facts

Examples:

- **Email, text, or message admitting to conduct.**
- **Photo or video of alleged conduct or photo or video to confirm parties were together.**
- **Social Media Posts before or after the incident to verify a relationship or lack of.**
- **Statements of consistency (understanding that lack of minor facts is not as big of a deal versus someone changing the details of what actually happened (kiss vs no kiss, oral sex vs penetration, location of incident)).**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

Review of evidence - purpose

- **Required to determine relevance**
- **Sort through each item and determine the relevance**
- **Identify as relevant to be included in your report**
- **Identify as not relevant to be included in your case file but not report**
- **Only share relevant evidence**
- **Anything you determine not to be relevant you need to be able to explain why to the party that submitted it**
- ***Reason for appeal is not considering evidence (I lean on inclusion if the evidence is in between)**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

Review of evidence – Not relevant explanation

- **Write a response as to why you don't believe it is relevant.**
- **Examples:**
 - **The photo you submitted about how you hung out with the Complainant and their friends prior to the alleged sexual assault does not support whether or not you had consent to have sex with the Complainant on the night in question. The photo simply supports that you hung out with the Complainant prior to the night in question. There is no dispute that you both spent time together prior to the alleged incident.**
 - **The statements from your five friends that all indicated they previously had sex with the Complainant does not support whether you had consent to have sex with her. The Complainant's past sexual partners has no relevance in determining whether they provided you consent the night of the alleged incident.**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

Recommendation - Categorize as Relevant or Not relevant

- **Label all relevant evidence that you believe should be considered by the decision-maker(s) as attachments or appendices and provide to both parties later (draft/final).**
- **Create a folder with all the other items submitted you don't believe are relevant.**
 - **This is done in case at the prehearing conference or if they file an appeal stating they believe these items should have been included.**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [evidence collection]

- A. The following documents and information were prepared/gathered and reviewed in the course of the investigation and determined to be relevant to the alleged prohibited conduct:
- Attachment A: Incident Report submitted by Security Officer Smith.
 - Attachment B: Complainant formal complaint submitted 7/18/2022.
 - Attachment C: Notice of Investigation (NOI) sent 7/20/2022.
 - Attachment D: Policy Against Discrimination and Harassment.
 - Attachment E: Text between Respondent and Complainant about getting an uber after the bar.
 - Attachment H: Text between Respondent and Complainant about how the Complainant was passed out when the Respondent had sex with them.
 - Attachment K: Sexual Assault Exam Report

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)

106.45(b)(5)(vi) [1st 10 day review]

Prior to the completion of the (draft) investigative report, the recipient must send to each party, and the party's advisor, if any, the evidence subject to inspection and review (this refers to the evidence in the section above) and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to the completion of the investigation report.

*(The parties can waive the 10 day period)

*(Always keep the original draft as an appendix)

- If the parties want to comment or add evidence they can. You would determine the relevance and appropriateness. If you believe it is relevant and appropriate you would amend the report to include it. If you don't believe it is relevant or appropriate, you let the party know and explain why. Example is the Respondent sends you a photo of how the Complainant was dressed implying that they dressed provocatively and therefore they wanted to have sex. Or they share that the Complainant has a history of having a lot of sexual partners implying that they have sex with everyone therefore they had to of consented.

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [1st 10-day review]

- **This is a draft of your entire investigation report.**
- **Includes all statements and evidence identified as relevant.**
- **Consider listing the not relevant evidence that way if they want to object to something not being included you can respond to it then instead of waiting for an appeal.**
- **The parties have the opportunity to comment on statements, evidence, or identify additional witnesses or evidence. You then determine what if any is relevant.**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [1st 10-day review]

- **Determining relevance of new comments or evidence submitted after the draft review.**
- **Same process for you.**
- **Determine if it is relevant or not.**
- **If it is include it.**
- **If it isn't explain to the party why it is not relevant.**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)(vi) [1st 10-day review]

- **Changes made to your draft**
- **I recommend adding at the bottom of your report in a “draft review” section**
- **I would identify the comments in response to the topic they are bringing up so the decision-maker(s) can see what they are trying to change or add.**
- **If you decide something was not relevant you could add a comment about it in this section.**
- **Keep your original draft and add it to your attachments or appendices with your final report.**
- **Any changes you make to the draft will become your “final” report.**

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5)

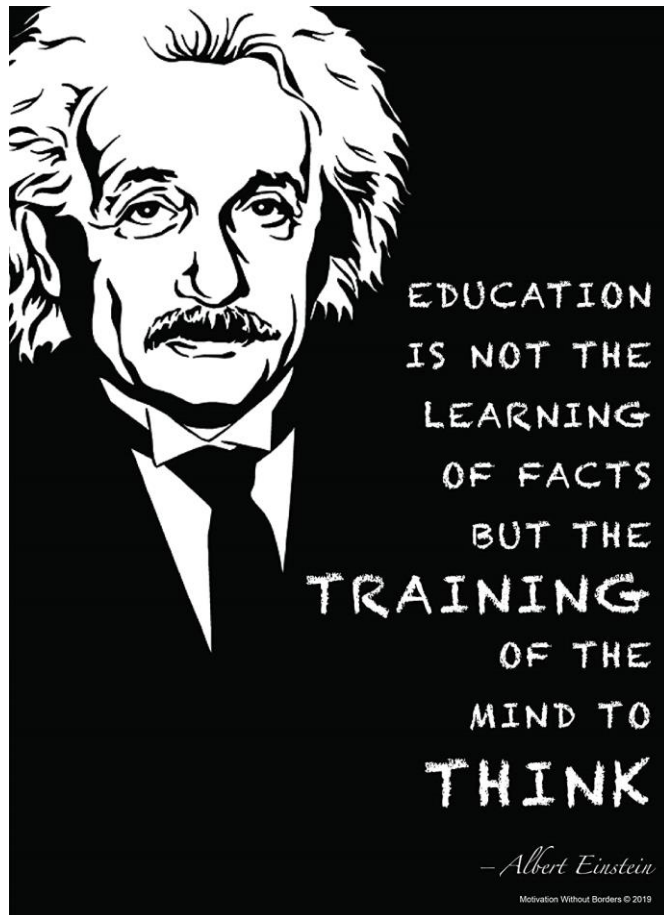
- **106.45(b)(5)(vii)** [2nd - 10 day review)
- Create an (final) investigation report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party the investigation report, and the party's advisor, if any, for their review and written response.
- This report is the final report that has included any changes or additions after the draft review.
- ❖ The Title IX Coordinator or Hearing Officer will most likely be the one that receives any comments after the final report is shared.

TITLE IX INVESTIGATIONS

Regulations 106.45(b)(5) [2nd – 10 day review]

- **The requirement is at least 10 days prior to the start of the hearing.**
- **You can provide them more if you want.**
- **Must be shared with the parties & their advisors.**
- **This includes:**
 - **Final report**
 - **All evidence (relevant & not relevant)**
 - **Attachments**
 - **Relevant evidence**
 - **Draft report**
 - **Appendix**
 - **Not relevant**

BREAK



EEO Laws





Title IX Investigation vs EEO Investigation

Title IX

Preponderance

Complaint in writing

NOIA needs specifics

Formal or Informal

2 - 10 day reviews

Required hearing

Hearing for finding

EEO

Preponderance

Complaint in writing

NOIA needs specifics

Formal or Informal

No 10-day review

No hearing requirement

Finding w/out hearing

EEOC Discrimination Type

Notice of rights and regulations 29 C.F.R. § 1614.105(b)

AGE

DISABILITY

EQUAL PAY

GENETIC INFORMATION

HARASSMENT

NATIONAL ORIGIN

PREGNANCY

RACE / COLOR

RELIGION

RETALIATION

SEX

SEXUAL HARASSMENT

SEXUAL ORIENTATION AND GENDER IDENTITY

OCR Civil Rights Laws (educational campuses)

Title II of the Americans with Disabilities Act of 1990 (ADA) & **Section 504** of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity.

Title VI Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities.

EEOC Civil Rights Laws

Equal Pay Act (EPA) of 1963

Title VII of the Civil Rights Act of 1964 (Race, Color, & Sex)

Age Discrimination in Employment Act (ADEA) of 1967

Title I of Americans with Disabilities Act (ADA) of 1990. amended in 2008

Rehabilitation Act of 1973 (Sections 501 and 504)

Genetic Information Nondiscrimination Act (GINA) of 2008

Pregnant Workers Fairness Act

AGE DISCRIMINATION

- Age (40 or older).
- Covers offensive or derogatory remarks about their age but must be so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (fired or demoted).

DISABILITY DISCRIMINATION

- Has a physical or mental condition that substantially limits a major life activity.
 - Such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function, such as brain, musculoskeletal, respiratory, circulatory, or endocrine function.
- Has history of disability.
- Medical condition does not need to be long-term, permanent, or severe.

EQUAL PAY

- Requires that Men and Women in the same workplace be given equal pay for equal work.
- Job must be “substantially” equal.
- Job content (not title) determines if jobs are equal.
- Measured by experience, ability, education, and training required to perform the job.
- *Two bookkeeping jobs could be considered equal even if one as a master’s degree since that degree would not be required.*

GENETIC INFORMATION

- Genetic information used to make employment decisions.
- Information about an individual's genetic tests and genetic tests of an individual's family.
- Information about manifestation of a disease or disorder in an individual's family (medical history).
- Medical history used to determine someone has an increased risk of getting a disease, disorder, or condition in the future.

HARASSMENT

- Unwelcome conduct based on a protected status.
- Enduring the offensive conduct becomes a condition of employment or;
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

NATIONAL ORIGIN

- Treatment of applicants or employees from a particular country or part of the world,
- Because of ethnicity or accent or;
- Because they appear to be of a certain ethnic background (even if not).

PREGNANCY

- Current pregnancy;
- Past pregnancy;
- Potential pregnancy;
- Medical condition related to pregnancy or childbirth including breastfeeding/lactation;
- Having or choosing not to have an abortion;
- and birth control (contraception).

RACE / COLOR

- Personal characteristics associated with race (such as hair texture, skin color, or certain facial features).
- Color is based on skin complexion.
- This includes someone who is married to (or associated with) a person of a certain race or color.

RELIGION

- Religious beliefs
- Ethical beliefs
- Moral beliefs
- Also includes someone who is married to (or associated with) an individual of a particular religion.
- Employers must provide a religious accommodation if it will not impose more than a minimum (de minimis) cost or burden on business operations.

SEX-BASED

- Sex
- Sexual orientation
- Gender identity
- Pregnancy
- Transgender status
 - *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020)

SEX HARASSMENT

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- The comments don't have to be sexual in nature (Offensive comments about a women in general).

Philadelphia

The Essence of Discrimination



DISCRIMINATION

- Treated unfavorably because of actual or perceived protected status.
- Includes hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- Limiting equal access to programs or activities at educational institutions.
 - Denying any services, financial aid, or other benefit provided under the program.
 - Examples, Admissions, enrollment, membership.

Common Theories of Discrimination

Disparate
Treatment

Disparate
Impact

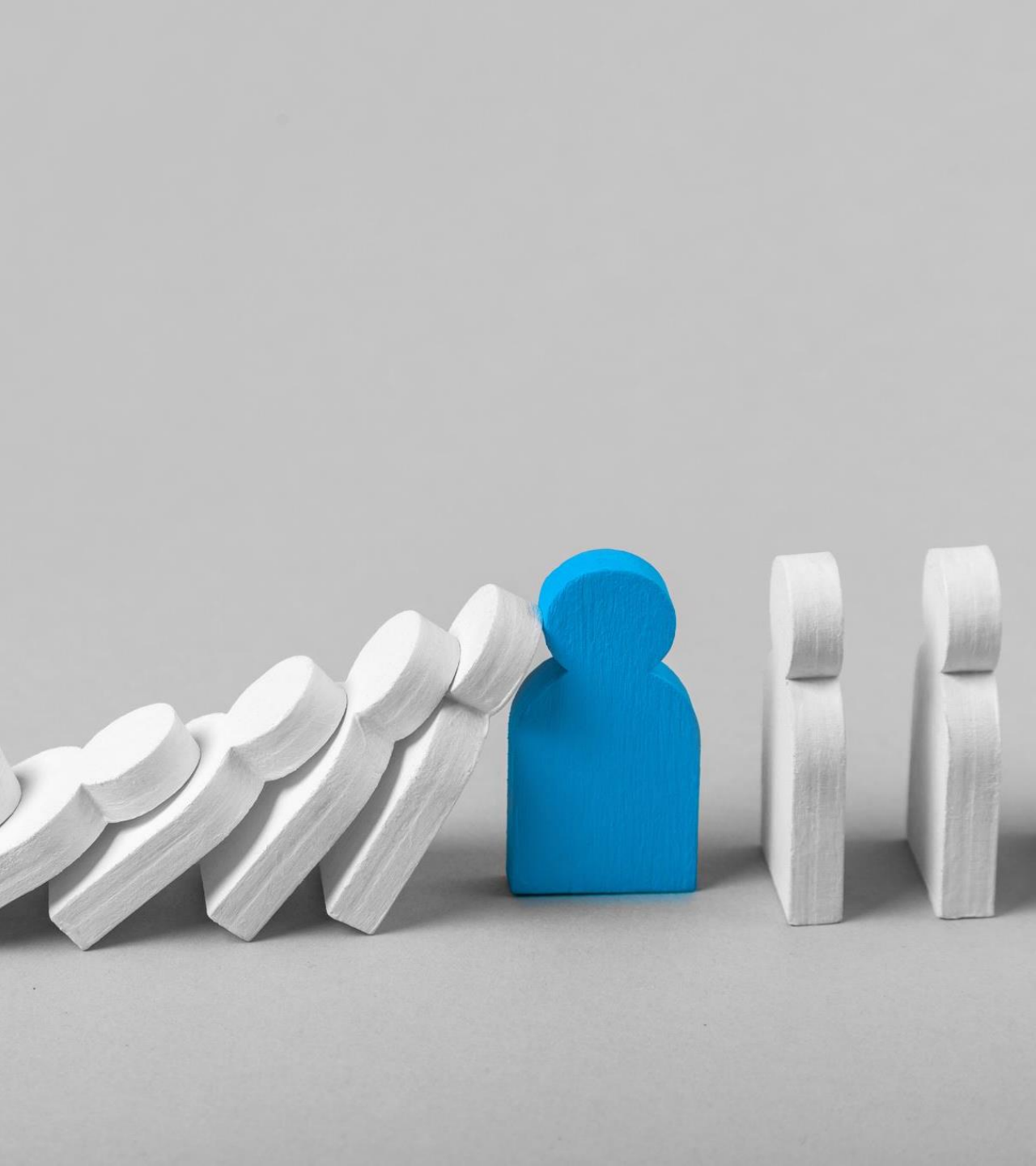
Harassment

Retaliation

EPA

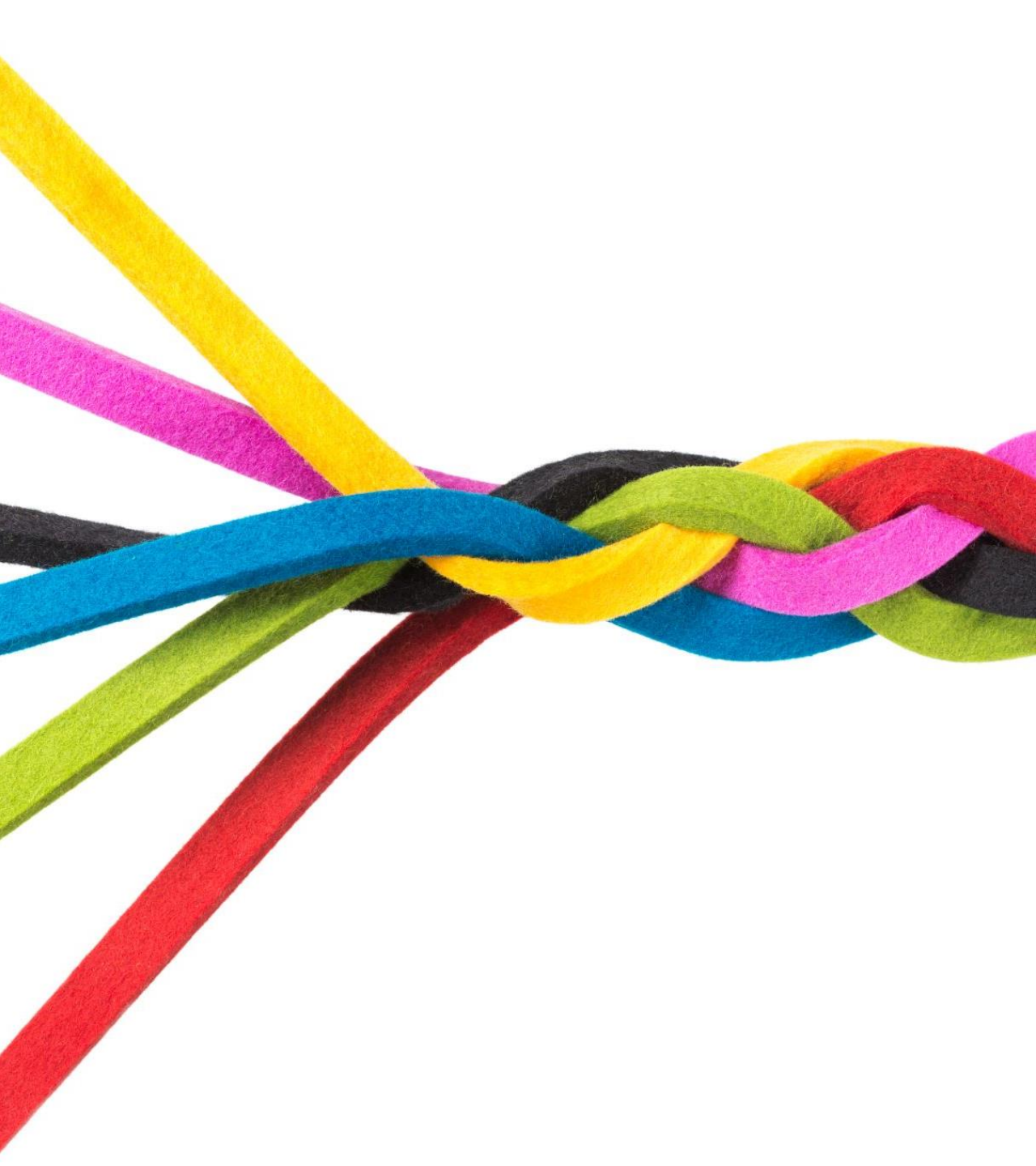
ADA
Accommodation

Religious
Accommodation



Disparate Treatment

AN EMPLOYEE OR APPLICANT IS TREATED DIFFERENTLY BECAUSE OF A PROTECTED STATUS



Disparate Impact

FACIALLY NEUTRAL POLICY OR
PRACTICE THAT
DISPROPORTIONALITY EXCLUDES
MEMBER OF A PROTECTED GROUP

RETALIATION

Most frequently alleged basis of discrimination (EEOC)

- Applicant or employee that assert their rights to be free from discrimination or harassment
- Filing or being a witness in a EEO charge, complaint, investigation, or lawsuit
- Communicating with a supervisor or manager about employment discrimination, including harassment
- Refusing to follow orders that would result in discrimination
- Resisting sexual advances, or intervening to protect others
- Requesting accommodation of a disability or for a religious practice
- Asking managers or co-workers about salary information to uncover potentially discriminatory wages

ADVERSE ACTION

- ❖ Harassment or intimidation
- ❖ Negative Job reference
- ❖ Denial of employment benefits
- ❖ Discharge, discipline, demotion, reassignment, transfer
- ❖ Unjustified evaluations/reports
- ❖ Accelerated disciplinary action
- ❖ Any adverse treatment likely to deter a reasonable person from engaging in protected conduct



**Change is a process,
not an event.**



LUNCH



Rights of Parties

- **Due process (Title IX & EEO)**
- **Consistent standard of evidence (Title IX & EEO) - best practice preponderance**
- **Emergency removal for students (Title IX)**
- **Administrative paid leave for employees (Title IX & EEO)**
- **Detailed Notice of Investigation/Allegation (Title IX & EEO)**
- **Investigation and evidence review (Required by Title IX best practice for EEO)**
- **Live hearing with cross examination (Title IX)**
- **Advisor of their choice (Title IX & EEO)**
- **Equitable & unbiased process (Title IX & EEO)**
- **Presumption of not responsible (Title IX & EEO)**

TITLE IX (grievance process) Rights

106.45



COMPLAINT
ALLEGING
MISCONDUCT
SUBMITTED



BOTH PARTIES
GIVEN NOTICE
OF
INVESTIGATION
/ ALLEGATION
(NOIA)



BOTH PARTIES
ADVISED OF
RIGHT TO
CHOOSE
ADVISOR



MUST ASSIGN AN
ADVISOR IF
REQUESTED



THEY CAN
PARTICIPATE
WITHOUT AN
ADVISOR UNTIL
THE HEARING.



AT THE
HEARING, IF
THEY DON'T
HAVE AN
ADVISOR YOU
MUST ASSIGN
ONE.



POSSIBLY
CONSIDER
ASSIGNING AN
ADVISOR AT THE
BEGINNING SO
THAT THEY ARE
FAMILIAR WITH
THE
ALLEGATION IN
CASE THEY ARE
ASKED TO STEP
IN AT THE
HEARING.

TITLE IX (grievance process) Rights 106.45

- Protect a party's privacy by obtaining written consent for personal records such as but not limited to; FERPA (student records) or medical records & treatment.
 - ❖ FERPA is the Family Educational Rights Privacy Act (protects students records)
- Obtain written consent from both parties if you attempt to resolve informally.
- Informal resolution is confidential so whatever is discussed can't be brought up in the investigation or at the hearing.
- Consider having on the consent form a line that has the parties acknowledge that anything discussed in the mediation / informal resolution is confidential.

TITLE IX (grievance process) Rights

- You must have a “live hearing” to formally resolve a complaint.
- The “live hearing” means that the complaint is being heard in real time and not recorded.
- This can be either in-person or virtual.
- Recommendation is virtual (zoom) to minimize conflict and hostility.
- Must protect the Complainant from being asked about prior sexual history “rape shield”
- The prehearing conference can help with minimizing inappropriate questions.

Glory Inequity

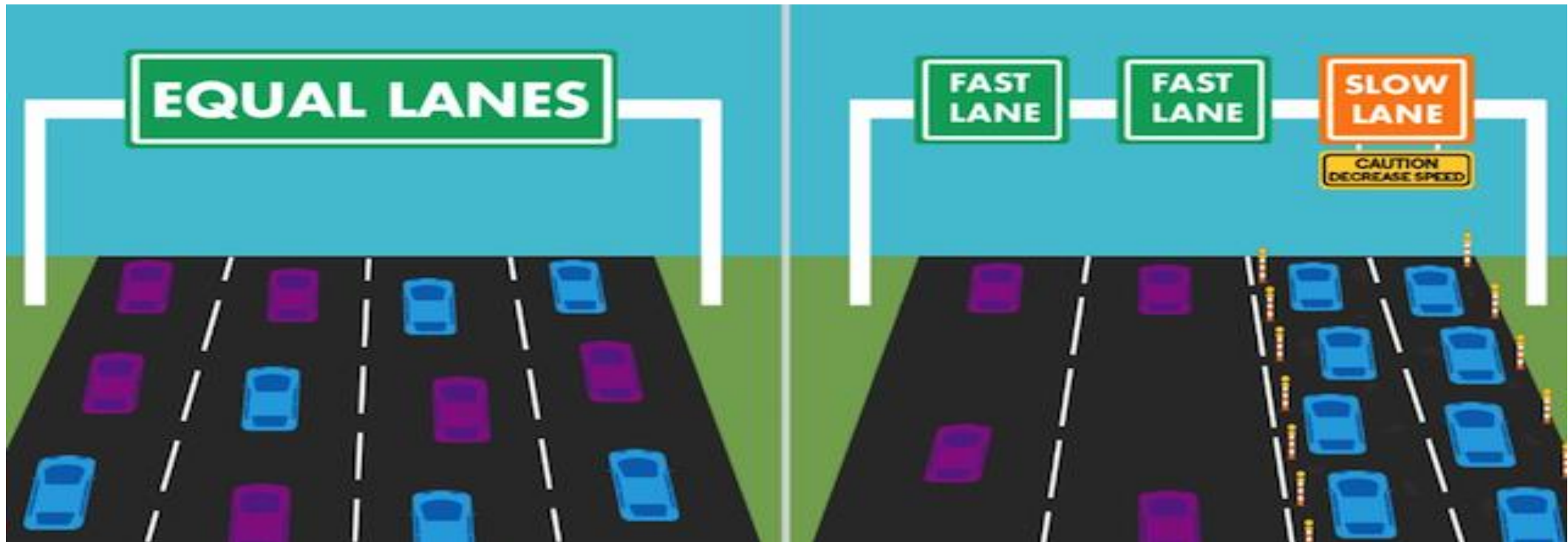


Neutrality and Equity

The role of the Investigator

- FACT FINDER
- ELIMINATE CONFLICTS OF INTEREST
- REMAIN NEUTRAL
- NO PREDETERMINED DECISIONS
- BE HONEST WITH YOURSELF
- Allow the facts & evidence at the conclusion of the investigation to determine the outcome

Neutrality and Equity





Ensuring Equity

How?

Equity vs Equality?

Avoiding bias influence

Examples of Confirmation Bias



Not seeking out objective facts



Interpreting information to support your existing belief



Only remembering details that uphold your belief

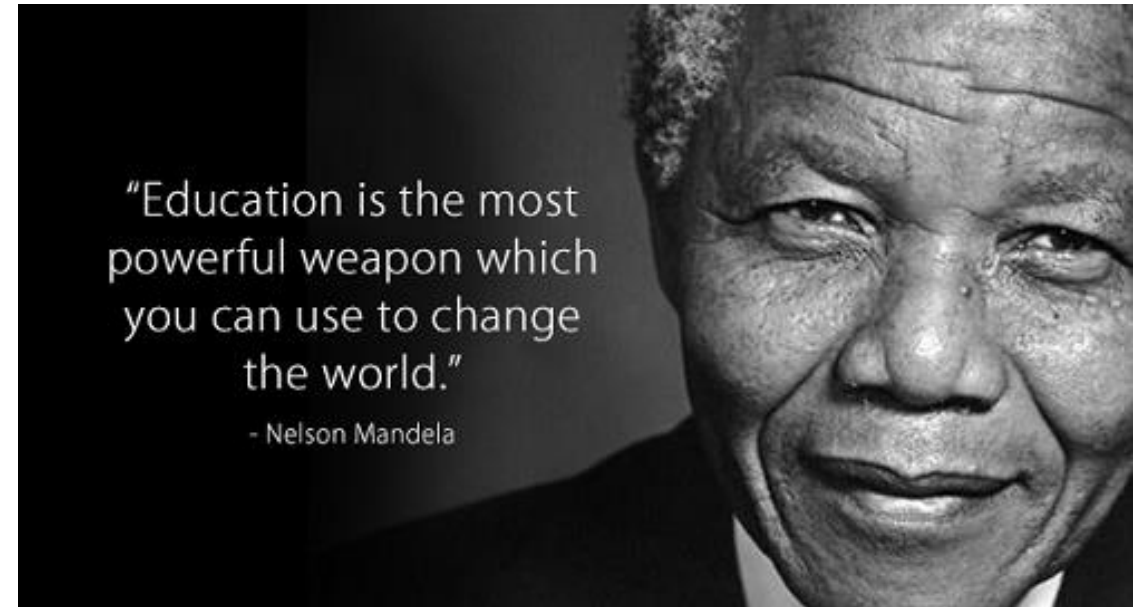


Ignoring information that challenges your belief



Opinion?





BREAK

CASE MANAGEMENT

INVESTIGATIVE FILES

- Create an investigation file
- Templates
- Forms
- Policies and Procedures
- Clery form
- Check list

CASE MANAGEMENT

Folder for each year

- All files cases for that year
- All policies and procedures for that year
- Case Log for each year

Fact Finding

Statements

Text messages

Emails

Photos

Videos

Fact Finding

Social Media posts

Observations

Injuries

Medical reports

Witnesses

Fact Finding

Timelines

Weighing evidence

Preponderance

Consistency



BREAK

Interviews

Check list

Review all materials

Identify witnesses

Review Prohibited Conduct definitions for the elements

Establish a game plan

Pre-Interview - Complainant

Both parties should have received the NOIA

Identify specific questions

Review check list

Make sure all forms are signed (FERPA, waivers, etc.)

Scheduled plenty of time for the interview

No distractions

Interview - Complainant

Review all options with Complainant

Allow the Complainant to provide a summary

Follow up with specific questions (elements)

Consider recording / transcription

Review the investigation process

Post Interview Complainant

Review of summary

Identify any points of clarification to follow up (elements)

Ask follow up questions

Verify all witnesses and evidence

Allow the Complainant to review their statement

Establish a plan with questions to ask the Respondent or witnesses

Update your TIXC / SUPERVISOR

Pre-interview Respondent

Identify specific questions (elements and Complainant interview)

Review check list

Review IR's and check in with LW for additional information

- Updates, new evidence, statements

Make sure all forms are signed (FERPA, waivers, etc.)

Schedule plenty of time for the interview

Make sure there are no distractions for your interview

Interview Respondent

Review the NOIA and their rights to respond or not

Remind Respondent of option for Advisor (delay if needed)

Allow the Respondent to provide summary

Follow up with specific questions (elements and Complainant's interview)

Consider recording/transcript interview (if you do it for one do it for the other)

Share your investigative process

Post Interview Respondent

Review of transcription / summary

Identify any points of clarification to follow up (elements)

Ask follow up questions

Verify all witnesses and evidence

Allow the Respondent to review their statement

Establish a plan with questions to ask the Complainant or witnesses

Update the TIXC / SUPERVISOR

Interviews – Witnesses and follow up

Interview all relevant witnesses

Follow up interviews with Complainant and Respondent

Review and remember the elements

Identify all evidence and ask questions related to evidence

Review all statements with anyone interviewed

Incorporate into report

Investigative Report

Report requirements

The importance of a quality report

Essential elements of a report

Structure of a report

Investigative report

Summarize the relevant evidence

Ensure the burden of gathering evidence is on you (institution)

Provide adequate time to review and prepare for the hearing.

Evidence

Identify all evidence but may separate out into categories

Relevance

Relevance standard

Relevant evidence

Irrelevant evidence

Prior history

Legal privilege

Redactions

Sexual Assault exam

Recordings

Transcripts

Draft report

Draft report summarizes everything but excludes your analysis.

All evidence considered

All statements obtained

Share draft report with parties and their advisors and allow at least 10 days for review

Amended draft

After the review of the draft

Additional interviews

Adjusting evidence

Adding comments

Final report

Includes everything from your draft edits plus your analysis

Analysis includes creditability assessment (optional -Title IX cases)

All attachments / appendices

Stand along document to pain the picture

Title IX cases – allow 10 day review for both parties prior to hearing

Final report

Be prepared for who will see your report

The parties

Hearing / Decision-Maker(s)

Appeal Panel

Social Media

Media

Law Enforcement

Judges

Essential Elements of a Quality Report

Summary of the investigation in a neutral and un-bias view

Overview of the policy and objective of the report

Consistent format

Intentionally organized to enhance comprehension

Factually accurate

Concise simple language (slangs or abbreviations explained)

Avoid editorial or opinion

Report should stand alone and easy for everyone to read

Evidence

Organized intentionally and consistently

Divided into appendices / attachments

Attached to the report

Includes a procedural timeline (including requests for extensions)

Appendices (considerations)

Appendix A: witness testimony

Appendix B: relevant documentary evidence (texts, SANE report, photos)

Appendix C: remaining evidence deemed irrelevant but related

Appendix D: remaining evidence deemed irrelevant and not related

Appendix E: procedural timeline

Structure of report

Overview of investigation

Statement of the jurisdiction

Identify investigators

Objective of investigation / report

Prohibited conduct alleged / policy

Statements

Witnesses

Evidence collected

Summary of evidence

Conclusion

Overview

Brief overview of the case, include:

Names of parties,

Policies,

Prohibited conduct,

Date, time, and location of alleged conduct,

Brief description of the misconduct

Similar to formal complaint / NOIA

Jurisdiction

Cite jurisdiction elements

All grounds for jurisdiction

Identify investigators

Identify by name

State specific training for investigator

List training, cite documents in the record

Objective of the investigation / report

Language should mirror the language in your policy or procedures

State the objective of investigation (why they did what they did)

Briefly state that all procedural steps were followed

Describe the purpose of the report

Alleged prohibited conduct

List all allegations

Include all definitions

Conclusion

Next steps in the procedural process

List witnesses

Witnesses interviewed

Witnesses identified but were not interviewed (reason why)

Evidence collected

Require all evidence obtained

Appendices with itemized list

Corroborating evidence – separate consistent accounts, independent witnesses, texts, videos

Bias witnesses – Says exactly what party says and seems practiced / fake

Summary of evidence

Clearly and accurately without opinion

Credibility Assessment

Consistency

Witnesses

Evidence

Weighing evidence

Patterns of conduct

Finding



Preponderance of the evidence
(50.1% / great than a feather)



Weighing factual evidence

Draft Report Template



Investigative Draft Report Template Review

Date(s) of Alleged Incident:

Date of Formal Complaint:

Date of NOIA:

Complainant:

Respondent:

Investigator(s):

Investigative Draft Report Template Review

- I. SCOPE OF REPORT:** The purpose of this investigative report is to gather facts associated with the alleged incident so that the decision-maker(s) can render a decision based on a preponderance of the evidence. This report does not include legal conclusions or determinations as to whether University policy has been violated or misconduct has occurred. This report will be forwarded to the decision-maker(s).

Investigative Draft Report Template Review

II. SUMMARY OF COMPLAINT:

Example. It is alleged that on June 21, 2023, around 8:30 am, while on the Southern Union State Community College campus, inside classroom XYZ, that Jane sexually harassed John. Specifically, John alleged that Jane told John he had a nice ass and then proceeded to grab it. John and Jane are both students at Southern Union State Community College and John alleged that because of this incident, he is uncomfortable being anywhere near Jane. John alleged that he now misses a class that Jane attends because he doesn't want to see her.

The alleged conduct may be a violation of ABC University's Policy Against Title IX or Discrimination & Harassment.

Investigative Draft Report Template Review

III. SUMMARY OF PROCEDURES:

A. The following individuals were interviewed in person via zoom, email, or telephone:

- Complainant – John Doe, date of interview, Zoom.
- Respondent –Jane Doe, date of interview, In-person.
- Witness 1 – Fresh Prince, date of interview, Zoom.
- Witness 2 – Will Smith, date of interview, Zoom.

A. The following documents and information were prepared/gathered and reviewed in the course of the investigation:

- Attachment A: Video surveillance
- Attachment B: Text message on 6/21/23 from Jane to John apologizing.

Investigative Draft Report Template Review

IV. SUMMARY OF COMPLAINANT, WITNESSES, AND RESPONDENT INTERVIEWS:

The following information was gathered in response to the complaint:

Interviews:

Complainant (John Doe):

Summary of interview.

Respondent (Jane Doe):

Summary of interview

Investigative Draft Report Template Review

V. CONCLUSION:

Allegation: It is alleged that on June 21, 2023, around 8:30 am, while on the Southern Union State Community College campus, inside classroom XYZ, that Jane sexually harassed John when she told John he had a nice ass and then grabbed it.

Undisputed facts:

- Jane Doe and John Doe are students at Southern Union State Community College.
- On June 21, 2023, Jane and John attended the same class located at classroom XYZ.
- Fresh Prince and Will Smith are students at Southern Union State Community College and attended the same class on June 21, 2023, as Jane and John inside classroom XYZ.

Investigative Draft Report Template Review

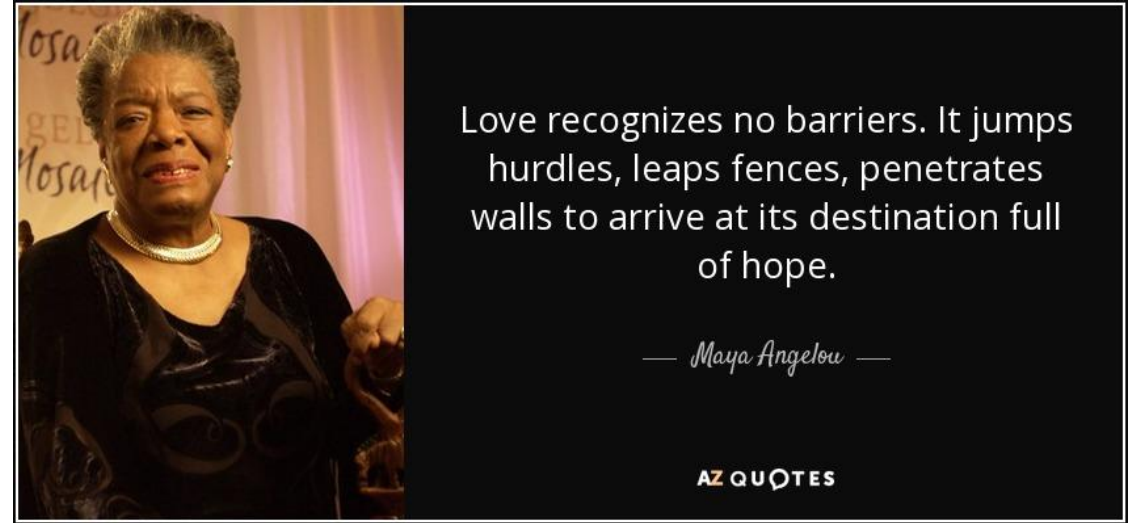
V. CONCLUSION:

Disputed facts:

- Jane disputed making the alleged comment and grabbing John's buttock.

Analysis and Credibility: (Review sample reports)

Credibility assessment: (Review sample reports)



End of Day 1



**COMMUNICATION
IS THE KEY
TO SUCCESS**

Review of Day 1



Break

Obtaining & Analyzing Evidence (3A's)

- **Ask** for evidence (texts, photos, videos, emails, call logs, GPS logs, witnesses)
 - Involved parties, witnesses, internal sources (faculty, other offices involved), external sources (police, medical reports, businesses), internet (always check their social media)
- **Assess** for relevance and give weight
 - Evidence can help prove or disprove
 - Text between parties with an admission of incident (a lot of weight)
 - Image of parties together looking happy (not much weight by itself)
- **Authenticate** inspect the evidence (apps can create fake things, alter images, etc.)
 - Case with texts and call logs (Visual inspection)
 - Does the other party dispute the authenticity?

Lecturers

SUMMARY OF COMPLAINT: The Complainants alleged Cartoon University /Office of the Provost engaged in Age Discrimination when their contracts were not renewed as existing faculty lecturer positions in the ELCT and replaced them with new instructional staff positions to teach ELCT courses and credits. The Complainants alleged Cartoon University / Office of the Provost did not renew their contracts so that they could hire younger employees with different job titles at a lower salary. Specifically, the Complainants alleged that in late February or early March 2023, they went through the reappointment process and were recommended for reappointment by their department committee. The Complainants alleged that their Department Dean also “signed off” on this reappointment. However, around March 3, 2023, the Complainants were called into a meeting with the Dean (Dora Explorer) and the Chair (Boots) and stated that their contracts were not being renewed and they were speaking on behalf of “the Office of the Provost.”

LECTURERS CASE - WHAT DO WE PROVE OR DISPROVE?

Issue - AGE
discrimination

Discrimination
type -
Disparate
Treatment

Adverse Action
- Loss of job

Obtaining & Analyzing Evidence (3A's)

1

Ask - What are you asking for?

2

Assess - How are you weighing the evidence?

3

Authenticate - How are you validating the evidence?

Group Discussion

- Share your thoughts on what evidence asked to examine.
- Share your thoughts on how you assessed the evidence to determine relevance.
- Share your thoughts on what steps you took to authenticate the evidence.



CASE CONSIDERATIONS

- All forms of communication between lecturers and those discussing jobs
- Copies of contracts for lecturers
- Copies of contracts for younger lecturers
- Past job posting
- Current job posting
- Historical hiring or non-contract renewal situations
- Interviews of everyone involved in the decision-making
- Performance evaluations
- Salary for new job postings
- Review of applicants selected to be interviewed for the new positions

The old way
isn't always
best.

LUNCH

CREDIBILITY ASSESSMENT & RATIONAL WRITING

Consistency

Witnesses

Evidence

Weighing evidence

Patterns of conduct

Assessing Credibility

The EEOC lists the following five factors to consider when evaluating the credibility of a party or witness

(<http://www.eeoc.gov/policy/docs/harassment.html>).

1. Inherent plausibility

- Is the statement believable on its face? Does it make sense?

2. Demeanor

- Does the person seem to be telling the truth or lying?

3. Motive to falsify

- Does the person have a reason to lie?

4. Corroboration

- Are there witness statements that corroborate? (eyes witness, camera, text).

5. Past record

- Does the alleged have a history of similar conduct?

Thor vs. the Hulk



Assess Thor's claim he is friends with the Hulk

Plausibility: Does it make sense he is friends with him, why?

Demeanor: What did you notice about Thor's demeanor that made you believe he was telling the truth?

Motive: Does Thor have a reason to lie, what is the benefit?

Corroboration: Can the alleged friendship be corroborated?

Past: Is there past history of Thor fighting and claiming the person he got into a fight with was actually his friend?

SCENARIO – Dancing Machine

GROUP DISCUSSION

Respondent (male / 30's) attends a new student dance. At the “silent disco” dance, meets several freshman students and begins “grinding” on them after he said he asked them to dance but the complainants allege he never asked them and he did not have permission to “grind” on them. One complainant even alleged feelings the respondent’s erect penis pressed against her thigh and intimate area. Several students report the Respondent’s conduct as unwanted. The campus staff security are involved and city police.

SCENARIO – Dancing Machine

GROUP DISCUSSION

GROUP BREAK OUTS

- **Identify a spokesperson**
- **Review report**
- **Identify violations & elements**
- **Identify a game plan (who will you interview & what evidence do you want)**

SCENARIO – Dancing Machine

GROUP DISCUSSION

EVIDENCE:

ASK for what?

ASSESS for relevance!

AUTHENTICATE any evidence.

SCENARIO – Dancing Machine

GROUP DISCUSSION

Credibility Assessment

- Consistency, witnesses, evidence, pattern of conduct
- Plausibility, demeanor, motive, corroboration, past

Who do you find credible and why?

Identify your facts to support your determination.

SCENARIO – Dancing Machine GROUP DISCUSSION

Determination

What is your finding?

Why?

GROUPS SHARE



BREAK



Scenario 2 – Brock Turner 2.0

GROUP DISCUSSION PART 1 & 2

Respondent is a student-athlete on the men's soccer team. The men's soccer team and the women's soccer teams often get together for parties. At the parties, the Respondent consistently gets drunk and walks around grabbing women on their buttock and engaging in non-consensual sexual activity. The following alleged conduct occurred by 4 different women during different times:

Complainant 1: Alleged the Respondent approached her at a party and rubbed her leg and grabbed her buttock without consent.

Complainant 2: Alleged the Respondent had consensual sexual intercourse with her but had non-consensual anal sexual intercourse with her during the same sexual incident.

Complainant 3: Alleged based on witnesses that the Respondent had non-consensual sexual intercourse due to incapacitation with this woman. Complainant 3 refused to participate.

Complainant 4: Alleged the Respondent had non-consensual sexual intercourse with her and then later on a different date had consensual sexual intercourse with her. This is the only allegation that did not involve the soccer team.

SCENARIO – Brock Turner 2.0

GROUP DISCUSSION

GROUP BREAK OUTS

- **Identify a spokesperson**
- **Review report**
- **Identify violations & elements**
- **Identify a game plan (who will you interview & what evidence do you want)**

SCENARIO – Brock Turner 2.0

GROUP DISCUSSION

EVIDENCE:

ASK for what?

ASSESS for relevance!

AUTHENTICATE any evidence.

SCENARIO – Brock Turner 2.0

GROUP DISCUSSION

Credibility Assessment

- Consistency, witnesses, evidence, pattern of conduct
- Plausibility, demeanor, motive, corroboration, past

Who do you find credible and why?

Identify your facts to support your determination.

Additional Considerations

Brock Turner 2.0

Complaints involving the same Respondent

Separate investigations and reports while conducting one investigation?

Scheduling interviews to talk about multiple complaints

Combining complaints for credibility (pattern)

FERPA

Completing the investigations at the same time

Sexual Assault - Incapacitation

Consent? Yes or No

Force? Yes or No

Incapacitation? Yes or No

Definition?

Alcohol

How much alcohol?

What type of alcohol?

What time did they start drinking?

What time did they stop drinking?

Any food?

Incapacitation - observations

Knew or should have know:

Vomiting

Balance

Coordination

Slurred speech

Etc.

SCENARIO – Brock Tuner 2.0

GROUP DISCUSSION

Determination

What is your finding?

Why?



GROUPS SHARE



BREAK

Group Discussion Lecturers report

Three faculty have worked at the university for over 15 years on a “rolling three” contract. They sign a 3 year contract to teach and at the end of the first year, they sign a new 3 year contract. In 2020, they sign their 3 year contract which is set to expire in 2022 and were advised that this would be the last 3 year contract because of restructuring. In 2022, they signed another contract for one additional year to expire in 2023 and again reminded that they contract will not be renewed. Their contract expires in 2023 and they file complaints alleging age discrimination because similar jobs were posted and the years of experience were lowered to 3-5 years of experience and therefore the complainants believe the university did that to hire a younger less experienced lecturer.

SCENARIO – Lecturers

GROUP DISCUSSION

GROUP BREAK OUTS

- **Identify a spokesperson**
- **Review report**
- **Identify violations & elements**
- **Identify a game plan (who will you interview & what evidence do you want)**

SCENARIO – Lecturers GROUP DISCUSSION

EVIDENCE:

ASK for what?

ASSESS for relevance!

AUTHENTICATE any evidence.

SCENARIO – Lecturers GROUP DISCUSSION

Credibility Assessment

- Consistency, witnesses, evidence, pattern of conduct
- Plausibility, demeanor, motive, corroboration, past

Who do you find credible and why?

Identify your facts to support your determination.

GROUP SHARE



Group Discussion - Dumpster Report

SUMMARY OF COMPLAINT: Smith alleged that during the month of October 2022, she was inside King's dorm room located inside Dumpster Hall along with Show, Chop, and King. While inside the room, Smith alleged King slapped her buttocks without her consent. Smith alleged she was upset with King and told him to not do that again. Smith said after this incident, she avoided being anywhere around King and she eventually moved off campus. Smith declined to file a formal complaint, however, the Interim Title IX Coordinator Sandy Morris signed the formal complaint due to the fact this was the 6th alleged incident involving King.

Title IX Hearings

Hearing Officer or Hearing Panel (Hearing Chair is identified for panels) is assigned.

Prior to the Hearing, a best practice is allowing a pre-hearing conference to discuss challenges or concerns by the parties. The Hearing Panel / Chair decides relevance and responds to concerns.

Hearing Officer / Hearing Chair runs the hearing.

Hearing must be live (in real time) but can be virtual and typically recorded.

Hearing Officer / Hearing Chair decides what witnesses to call.

Investigator is typically the first witness called.

After the Hearing

A written explanation of the decision is sent to both parties.

The explanation must include if the Respondent is found responsible or not.

If found Responsible, also include the sanctions along with an explanation.

The notice will also include the party's right to appeal and an explanation on how to appeal.

Best Practice for Preparing for a Hearing

Read investigative report several times at least a day before.

Read the report again the day of the hearing.

Identify areas of significance (relevant evidence).

Review undisputed facts.

Familiarize yourself with where statements or evidence are in your report.

Have your report with you for the hearing to review but highlight or mark it.

Anticipate questions.

Office for Civil Rights U.S. Department of Education

[Department of Education OCR](#)

[OCR Sex Discrimination](#)

[Current Title IX Regulations](#)

Family Educational Rights Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

[FERPA](#)

The Clery Center

CleryCenter

Jeanne Clery was 19 years old when she was raped and murdered in her college dormitory. Her parents, Connie and Howard Clery, could not have known the danger she was in; standards for campus crime reporting simply did not exist in 1986. So they lobbied for change! [The Jeanne Clery Act](#)

Compliance, reporting of crimes, publish an Annual Security Report (ASR), Timely Warnings (U of Idaho ²⁰²²), Victims Rights, Options, and Resources, Prevention Education requirements, Student and Employee Rights in writing, and Training requirements.

Title IX overlap!

Violence Against Women Act (VAWA)

OVW

White House VAWA Fact Sheet

- Requires coordinated response to victims of sexual assault, dating/domestic violence, and stalking.
- Provides grants/financial support
- Requires education and prevention efforts

U.S. Equal Employment Opportunity Commission

<https://www.eeoc.gov/>

<https://www.eeoc.gov/laws-guidance>

<https://www.eeoc.gov/discrimination-type>