

**TIX**Edu

# **TITLE IX INVESTIGATOR TRAINING**

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**MAY, 2021**

**PROVIDED BY:  
TIX EDUCATION SPECIALISTS**

**WWW.TIXEDU.COM  
503-960-8261**

# 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.

**Jackie Sandmeyer, JD**

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.



## OVERVIEW OF Title IX: Understanding The Purpose

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

### Learning Objectives:

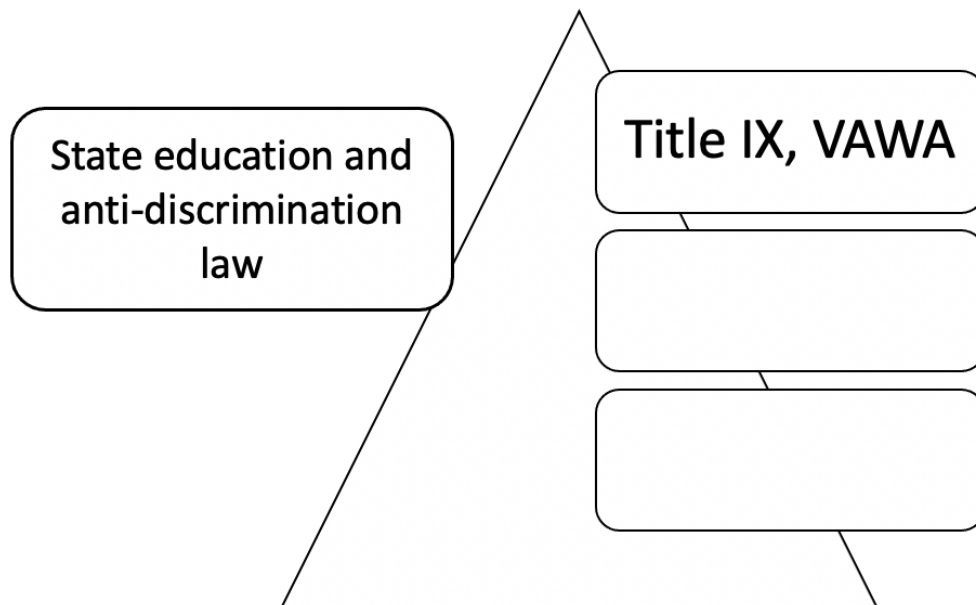
- Develop a clear understanding of requirements of Title IX
- Understand the scope and limitations of Title IX and how that intersects with best practices
- Identify where regulations begin and end and where institutional discretion can guide school's decisions

Title IX encompasses more than just sexual harassment.

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

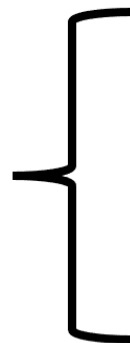
- sexual harassment
- retaliation
- athletics
- single sex educational programs and activities
- gender identity and gender expression
- pregnant and parenting students

**Notes:**



Language and Title IX:

Sex based  
discrimination

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

Notes:

Who does title IX apply to?



## Religious 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.”

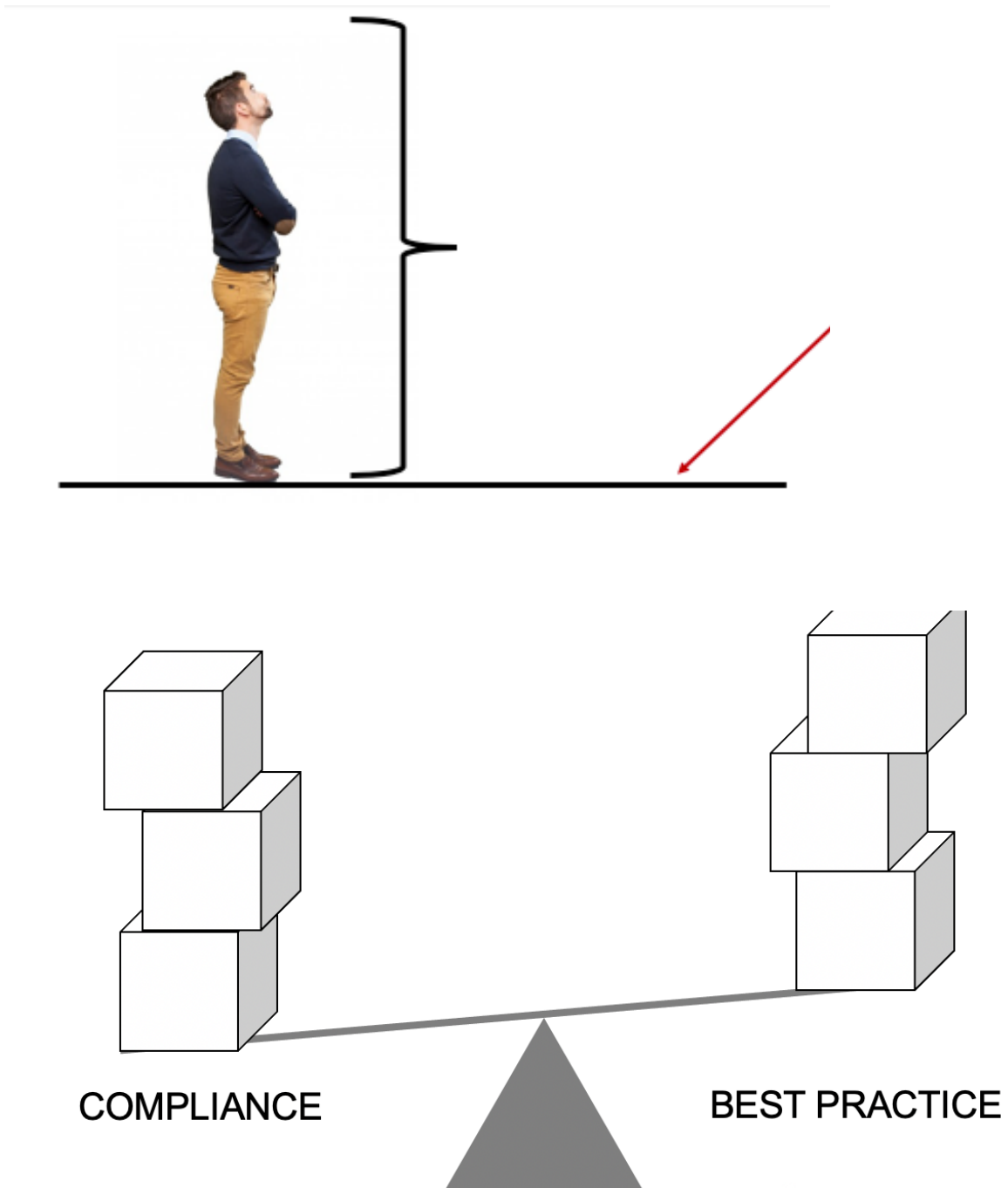
## Office for Civil Rights:

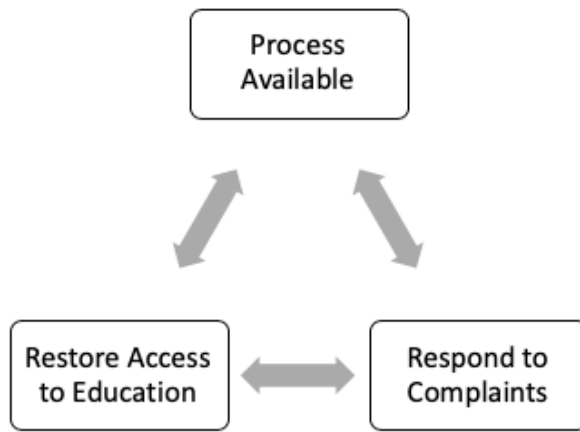
Title IX regulations effective August 14th, 2020.

New Title IX regulations are not retroactive in their application.

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

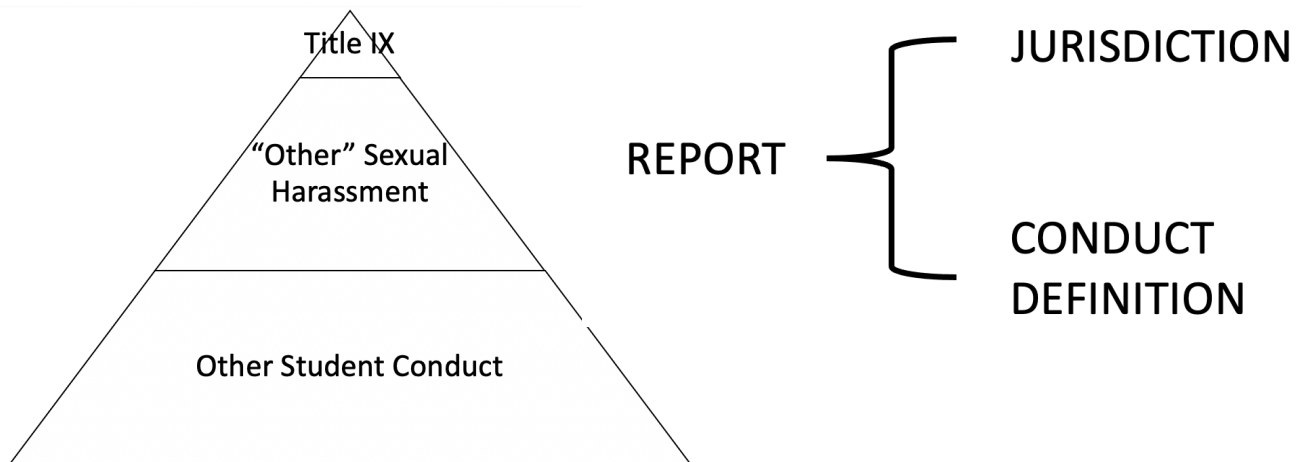
Institutional discretion:





## Narrowing of Title IX:

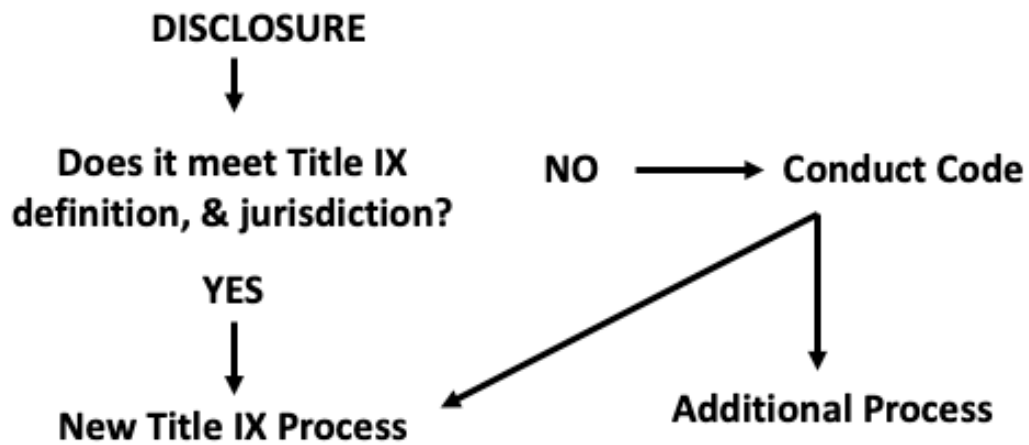
“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.”



1. Does your institution want to create policy to respond to “other” types of sexual harassment and sex discrimination?

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

“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.”



Deliberate indifference:

#### DELIBERATE INDIFFERENCE + RESPONSE:

- support measures offered
- contact complainant and process counsel
- follow grievance procedures
- investigate formal complaints
- determine if formal complaint will be filed
- dismiss complaints that don't fall under Title IX

Basic administrative requirements:

- 1.
- 2.
- 3.

**TITLE IX COORDINATOR:**

Training Considerations:

**NOTICE OF NON-DISCRIMINATION:**

“[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment...”

Notice of non-discrimination:

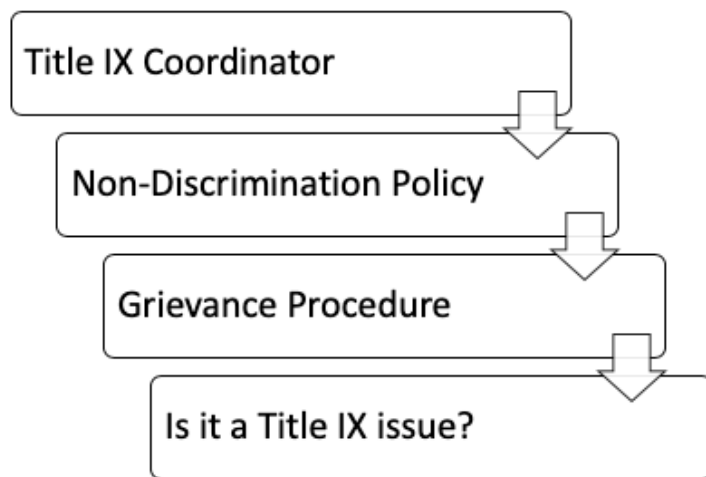
Grievance procedure:

## Grievance procedure requirements:

- Definitions
- How to file a complaint
- Contact information of Title IX Coordinator
- Process available
- Prohibition of retaliation
- Evidence standard used
- Scope of sanctions
- Appeals process
- Impartial investigations
- Support measures
- Party notice
- Whether informal process offered
- Presumption that respondent not responsible
- Reasonably prompt timeframes
- Range of remedies
- Whether sanctions for providing false information

All non-Title IX mandated policies must be applied equitably to all parties.

Dissemination:



**Notes:**



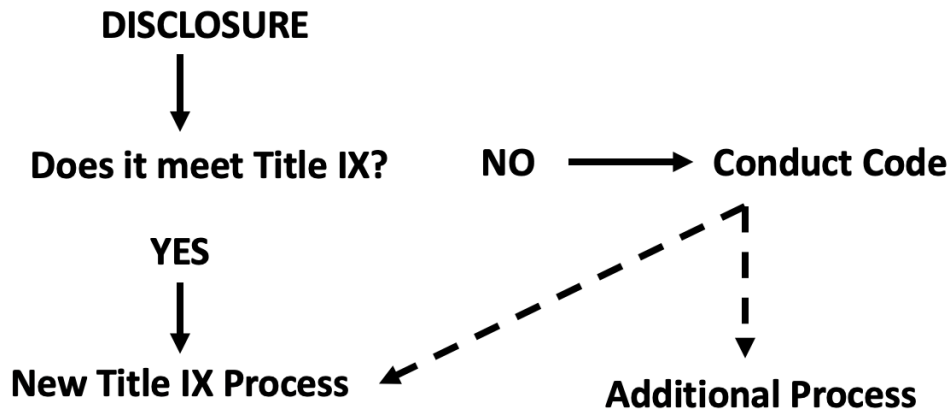


## Knowing When Title IX is Triggered: Conduct, Jurisdiction, and Notice

An overview of what types of reports or notice trigger a district's responsibilities under Title IX including types of conduct, jurisdiction of Title IX and notice.

### Learning Objectives:

- Define types of conduct that constitute sex discrimination under Title IX
- Identify jurisdictional requirements including defining "educational program or activity"
- Understand what constitutes "actual knowledge."



Notes:

### Response Requirements:

- ✓ Offer supportive measures to complainant
- ✓ Contact complainant and process counsel
- ✓ Follow grievance process
- ✓ Determine if formal complaint filed
- ✓ Investigate all formal complaints
- ✓ Dismiss complaints that fall outside Title IX

**Deliberate Indifference**

Determining when Title is triggered:

1.

2

**Types of conduct:**



**Sexual Harassment:**

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

**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.”

**Reasonable person standard:**

**Pervasive:**

## Effective denial

### "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.”

### Notes:

### Sexual Assault:

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

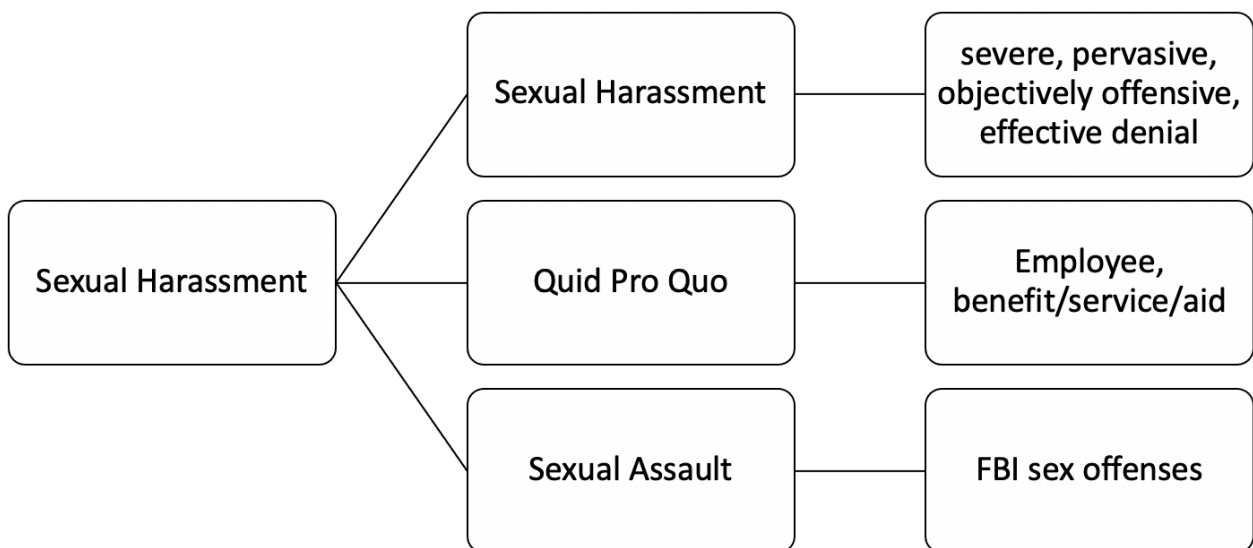
- |                                  |                   |
|----------------------------------|-------------------|
| 1. Rape                          | 4. Fondling       |
| 2. Sodomy                        | 5. Incest         |
| 3. Sexual assault with an object | 6. Statutory rape |

## FBI definitions:

### Attempted Rape:

“FBI has stated that the offense of rape includes attempts to commit rape.”

## VAWA Offenses:



**Free Speech:**

**Jurisdiction:**

1. educational program or activity
2. person in the United States

**Educational Program or Activity:**

1.

**AND**

2.

**Employees:**

**“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.”**

**Notes:**

**Person in the United States:**

**Actual Knowledge:**

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



## **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)**

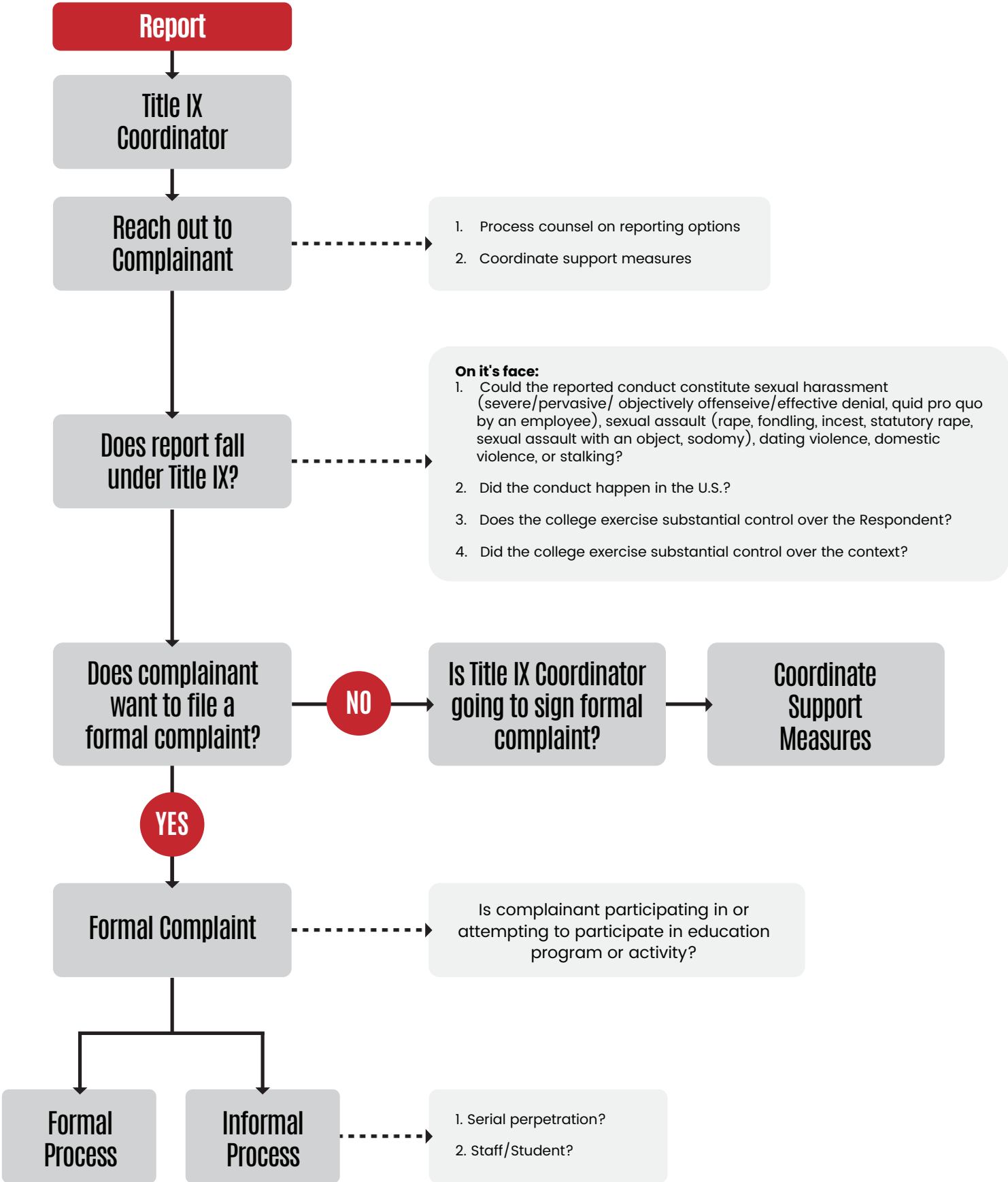
Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person 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.

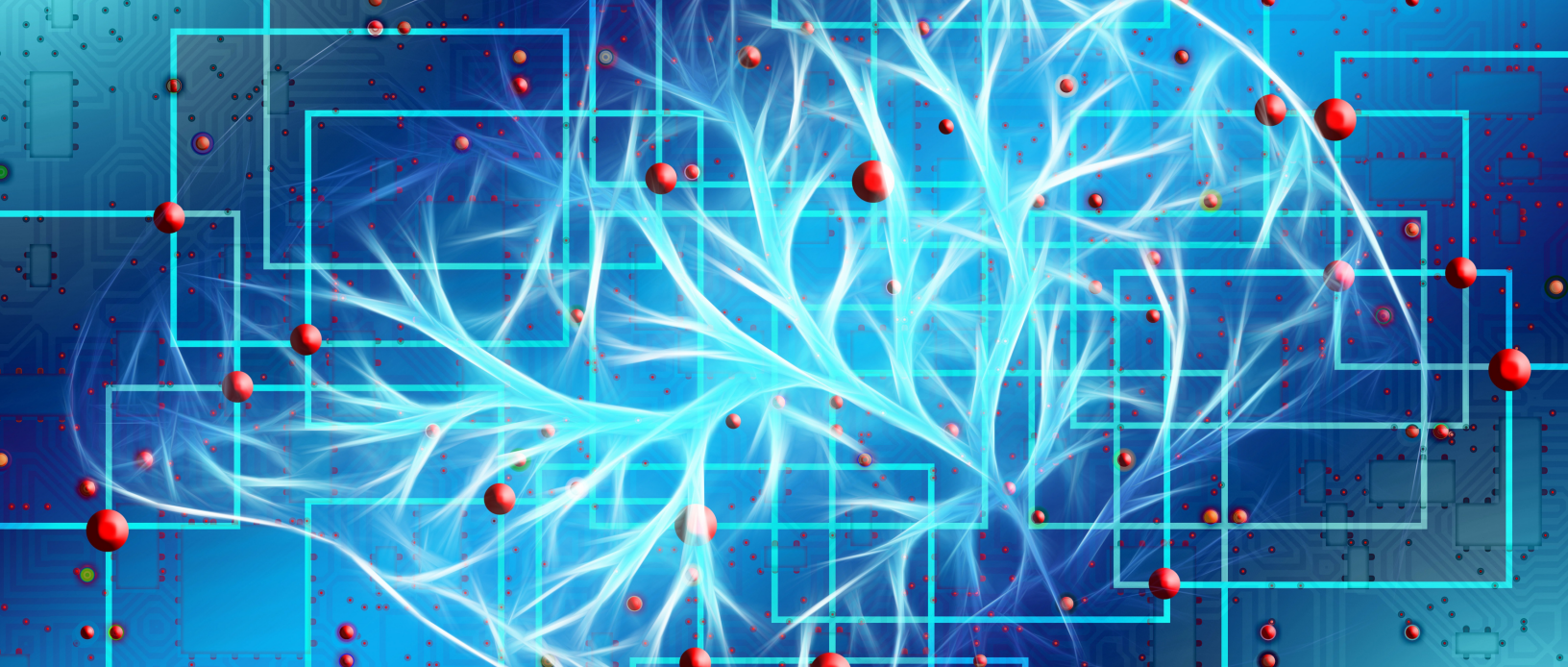
### **Stalking 34 U.S.C. § 12291(a)(30)**

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.

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# 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

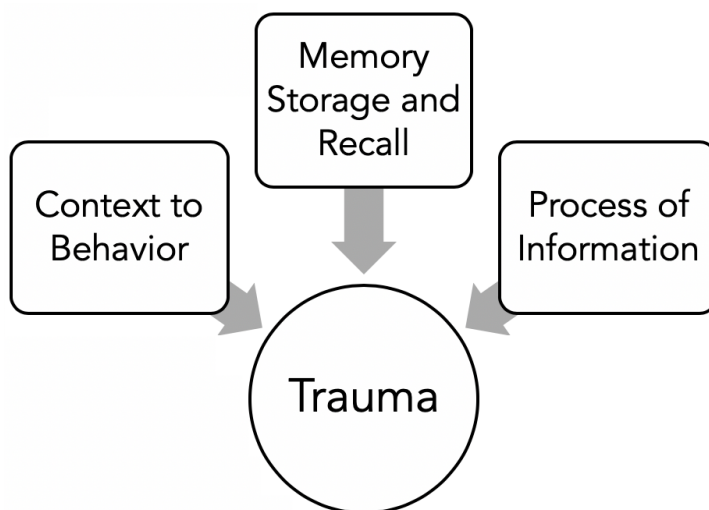
## MYTHS TO AVOID:

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<br>(including Oregon) |     |
|--------------------------------------|-----|
| White NH                             | 63% |
| Black NH                             | 51% |
| Asian NH                             | 75% |
| Other NH                             | 59% |
| Hispanic                             | 53% |

### HOW ACE's AFFECT OUR STUDENTS:



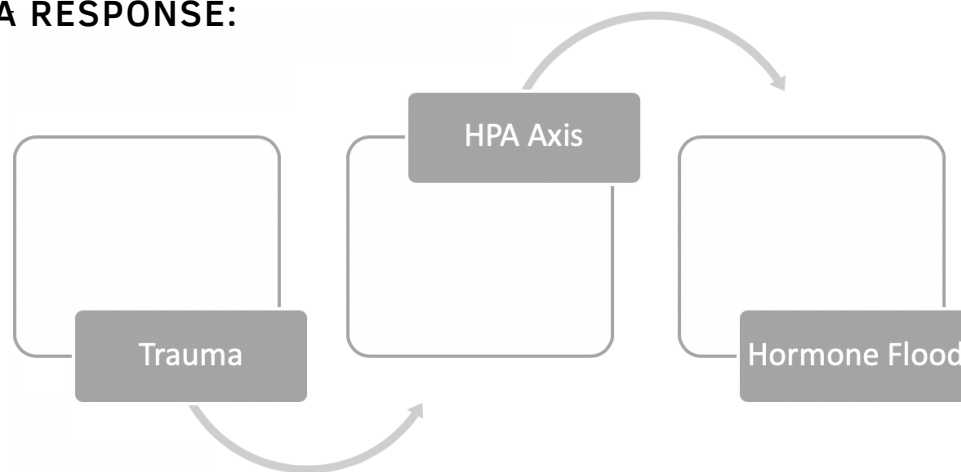
## 6 PRIMARY CAUSES OF TRUAMA:

- 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:

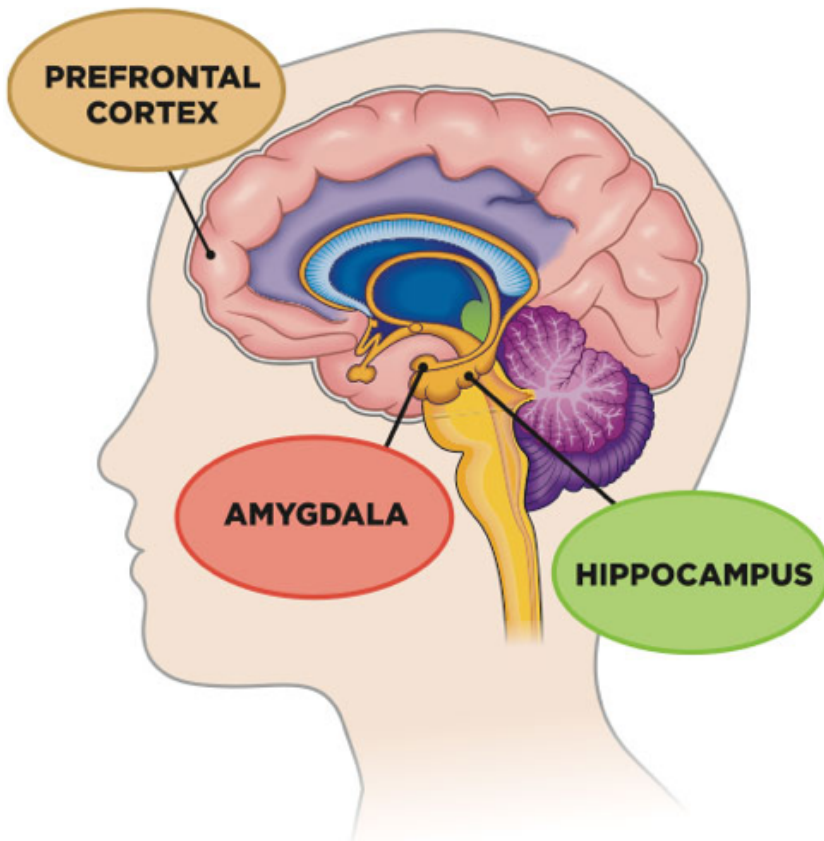


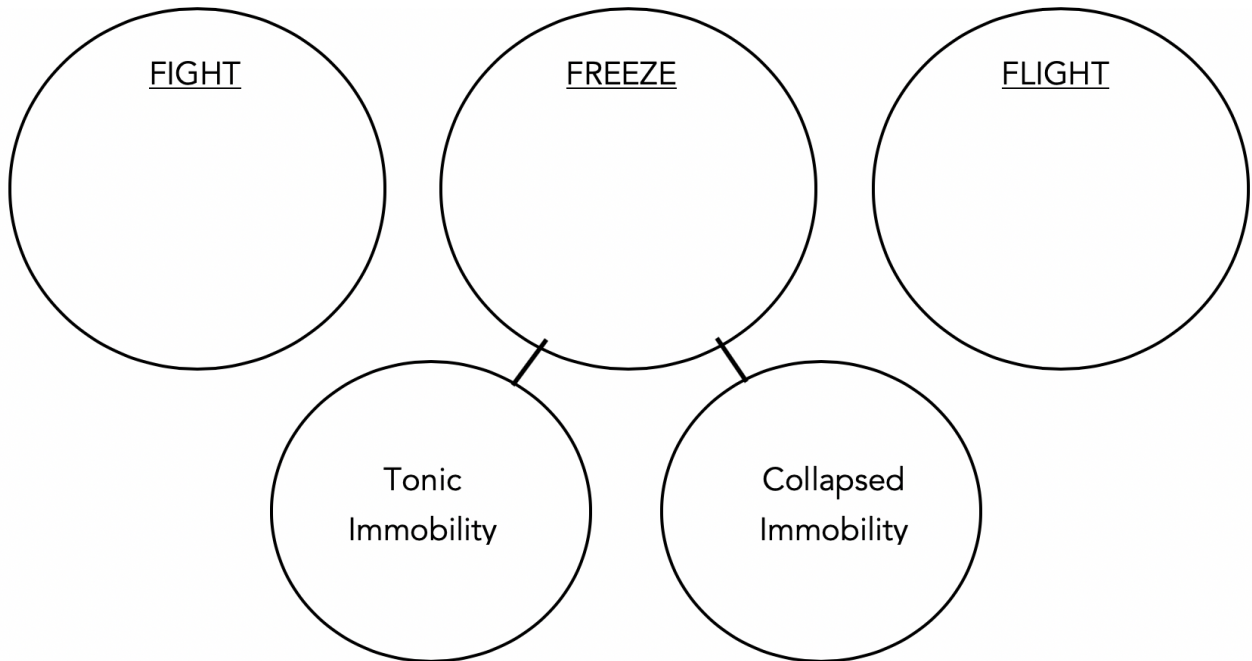
## Physiological Response:

# TRAUMA AND THE BRAIN

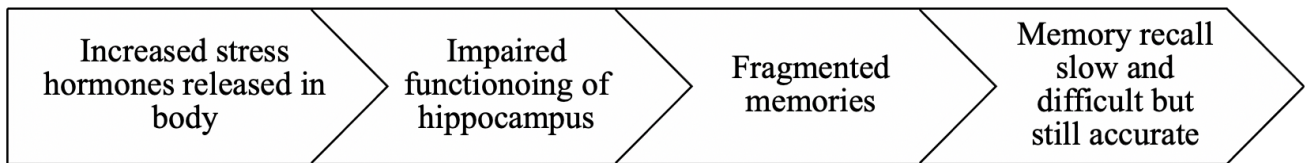


→ Prefrontal cortex  
P.F.C.  
"THE WISE LEADER"





**TRAUMA AND MEMORY:**



**PUTTING TOGETHER A PUZZLE:**

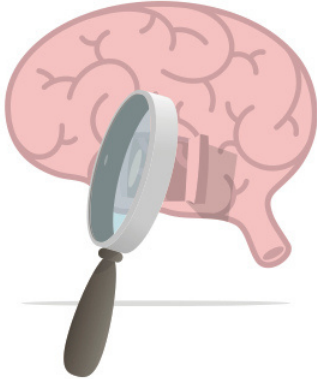


**PUTTING TOGETHER A PUZZLE:**

# TIX Education Specialists

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## Trauma and the Brain



### Why learn about trauma and the brain?

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

### Adverse Childhood Experiences

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

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

Vicarious Trauma

Historical Trauma

Institutional Trauma

Cultural Trauma

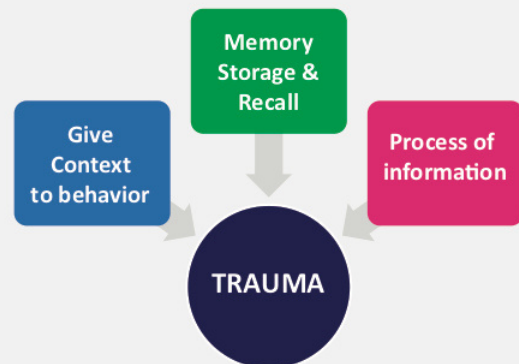


Prefrontal Cortex  
"THE WISE LEADER"



"Flipped Your Lid"

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



### Tips to mitigate institutional trauma triggers:

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

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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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## TITLE IX INVESTIGATIONS

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

### Learning Objectives:

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

**INSTITUTIONAL RESPONSE:**

1. Title IX Coordinator must reach out to a "complainant" every time the district is on notice.

2.

2. District must investigate ALL formal complaints.

Investigation Models:



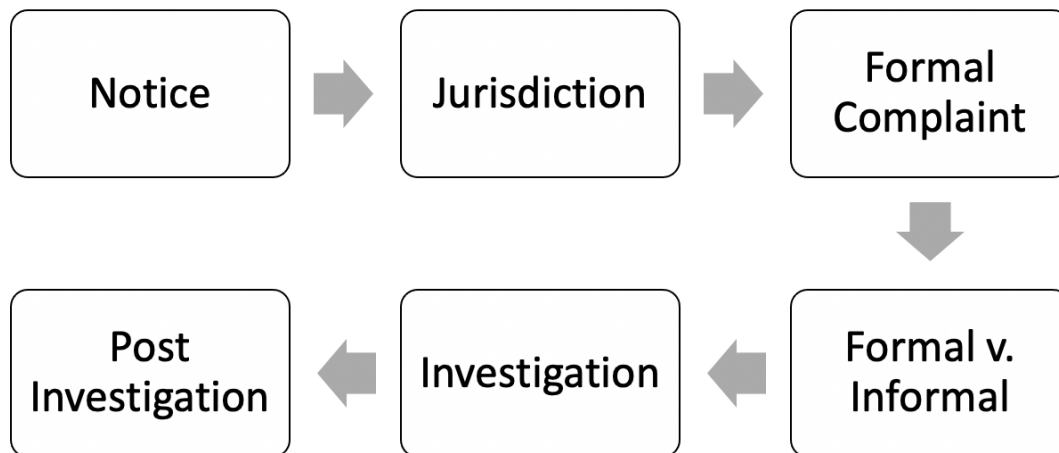
Regional Centers & Consortia:

**Required Training:**

- Title IX Coordinator
- Decision-maker(s)
- Investigator(s)
- \*Third-party contractors and regional centers

**Equity & Rights:**

How do we investigate instances of sexual harassment?



**School on notice:**

**notice = Title IX response responsibilities**

**Jurisdiction:**

**Title IX Coordinator must make contact with the complainant and process counsel them about their options and support measures available.**

**Process counseling & support measures:**



## **Formal Complaint:**

### **Formal versus informal process:**

- complainant wishes
- serial perpetration
- student/staff

**Title IX Coordinator determines that initiating an investigation over the wishes of the complainant is not clearly unreasonable in the light of known circumstances.**

## **Informal Process:**

## Formal versus informal process:

- complainant wishes
- serial perpetration
- student/staff

Title IX Coordinator determines that initiating an investigation over the wishes of the complainant is not clearly unreasonable in the light of know circumstances.

### Informal Process:

## Consent to participate:

- Can't compel students to engage in informal process before entering formal process
- Voluntary participation of both parties required (in writing)
- Can not make informal process part of employment contract or enrollment

### Written notice:

“Either party has the right to withdraw from informal resolution and resume a § 106.45 grievance process at any time before agreeing to a resolution.”

**Confidentiality:**

**Appropriateness:**

“Nothing in §106.45(b)(9) requires an informal resolution process to involve the parties confronting each other or even being present in the same room.”

**Outcomes:**

“The Department expects informal resolution agreements to be treated as contracts; the parties remain free to negotiate the terms of the agreement and, once entered into, it may become binding according to its terms.”

**Expulsion:**

**Recordkeeping:**

**Models to learn from: \*no one specific model is recommended**

- arbitration
- mediation
- restorative justice

**Arbitration:**

**Mediation:**

**Restorative Justice:**

## Investigation:

### Must Dismiss:

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

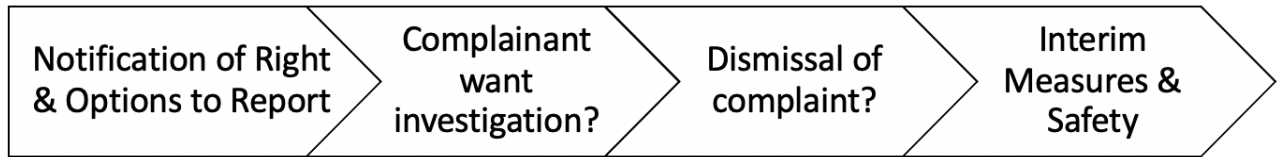
### May Dismiss:

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

## Consolidation of Complaints:

### Appeals:

- Procedural irregularity
- Newly discovered evidence
- Conflict of interest or bias
- Other\*



### Interim Measures:

### No-Contact Orders:

School can not implement sanctions or punitive actions until grievance procedure executed. ex: transcript hold or graduation.

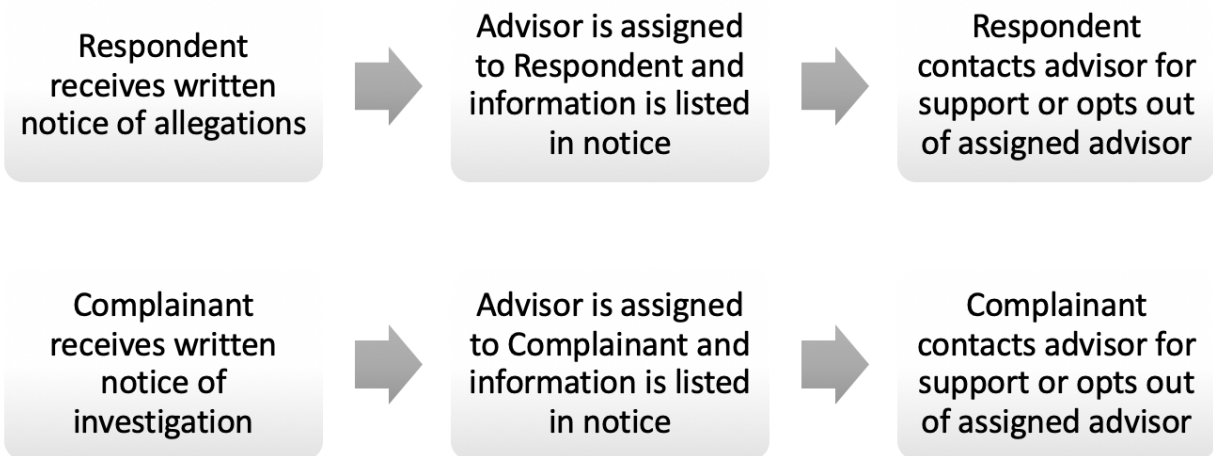
### Notice of investigation:

- Not restrict ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- Written notice of any interviews, meetings, or hearings
- Must inform parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or providing false information
- All parties have a right to be free of retaliation
- Complainant has a right to be free of retaliation initiated by the district for making a report

## Notice of investigation:

## Advisor of Choice:

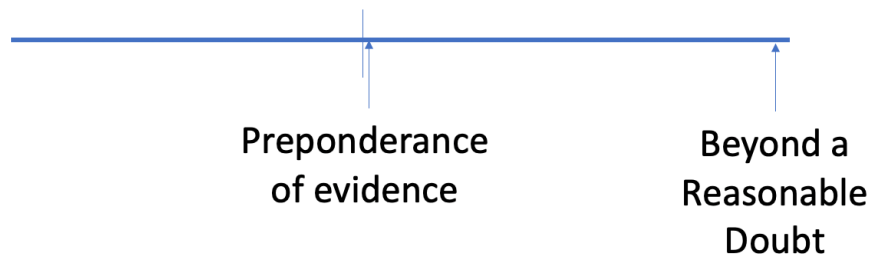
## "Opt-Out" Approach:





## Investigative Interviews:

## Standard of Evidence:



## Investigative Report:

**Post Investigation:**



## 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?

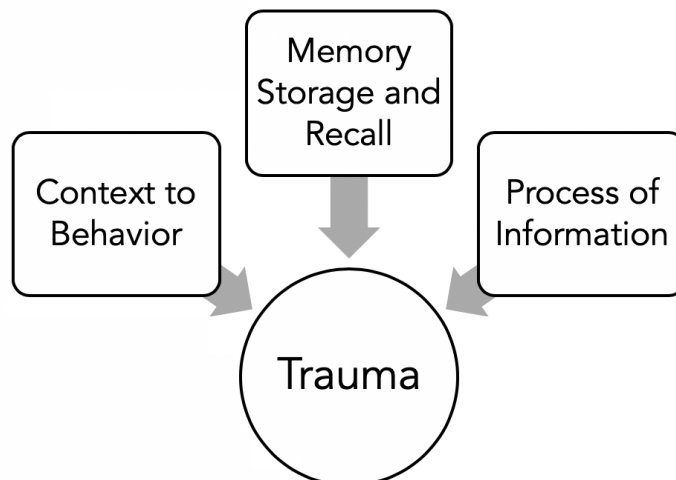
WHAT DOES AN INTERVIEW LOOK LIKE?

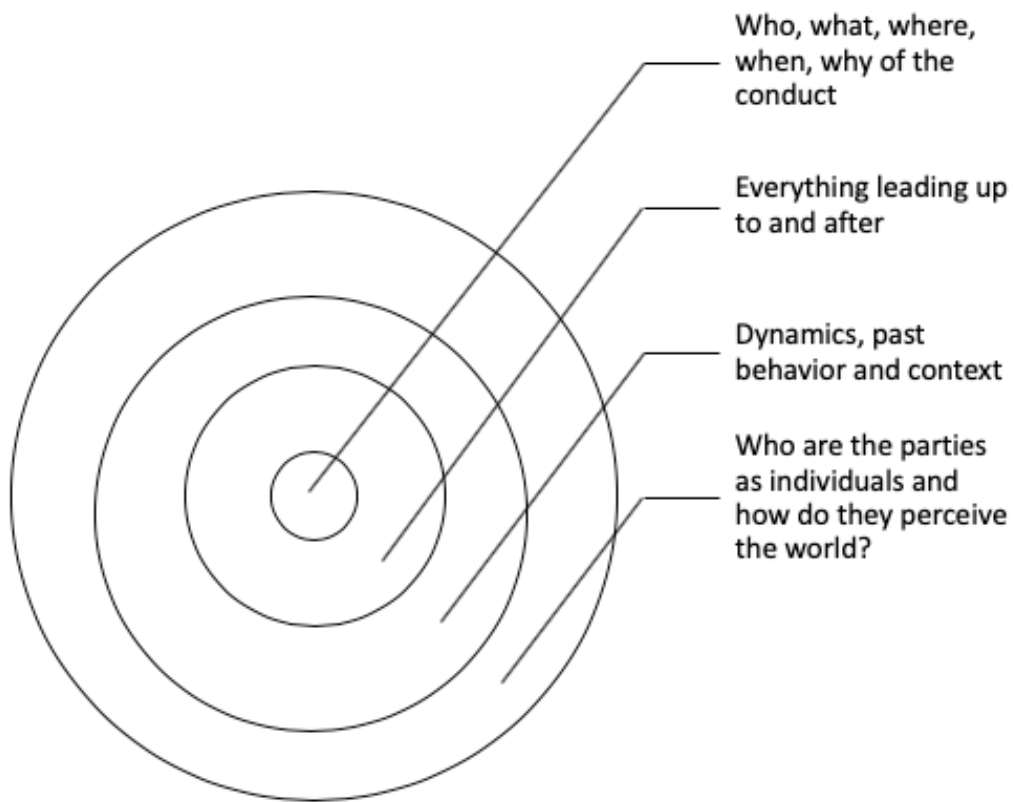
WHAT ARE THREE SIGNS OF DECEPTION?

- 1.
- 2.
- 3.

THREE THINGS WE EXPECT A WITNESS TO KNOW:

- 1.
- 2.
- 3.





### **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

## **"WHAT CAN'T YOU FORGET?"**



## EVIDENCE COLLECTION:

| 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:



## INVESTIGATING CONSENT

A look at campus policy, federal and state definitions of consent as well as challenges to investigating consent.

### Learning Objectives:

- develop skills in how to interview when trying to identify whether consent was present in a case
- clear language relating to consent for report writing
- better understand consent and what consent may look like in a Title IX case

# CONSENT

## WHAT IS CONSENT?

### CASE STUDY:

Complainant: Professor reporting about student

A professor comes to your office to report an incident with a student named Michael. Michael is an exchange student. Michael reported to his professor that upon arrival in the U.S. 9 months ago, his host family took his passport, claiming they needed it to complete paperwork related to his stay. After several weeks, Michael asked to have his passport returned but his host family refused.

His host family owns a local family restaurant where he works as a dishwasher when not attending school. Michael initially was glad for the job and hopeful for the opportunity to earn money. After Michael recently missed several classes in a row, the professor asked him why he had not attended. Michael reported to the professor that he had to pick up extra shifts in the restaurant. When he picks up additional shifts the host family does not pay him, keeping his pay to cover “additional costs” related to his room and board.

He also knows that his family has sent him money in letters addressed to him that arrive at the house, but he has never received any of it. He is usually at school when the mail arrives, and when he returns home, the letters from his family have been opened and the money removed. Although the professor has noticed a deterioration in Michael over the past 8 months, Michael is just now telling him all of this. The semester is almost over, and Michael is worried that he won't make his required GPA minimum.

**INVESTIGATION STANDARDS:**

- prompt
- equitable
- objective
- independent
- document reasonable delays

**ISSUING NOTICE OF INVESTIGATION:**

**ADVISOR OF CHOICE:**

**WITNESSES AND EVIDENCE:**

**NOTES:**

WHAT DOES COSENT LOOK LIKE?

WHAT DOES LACK OF CONSENT LOOK LIKE?

HOW WE VIEW CONSENT:

- institutional policy
- personal bias



INVESTIGATING CONSENT:

