



TITLE IX UNIVERSITY

Higher Education Investigator Training Level 1

Lesson 1

Introduction & Overview



Introduction

Courtney Bullard

- Creator, Title IX U
- Education Law Attorney
- Founder, ICS



©Institutional Compliance Solutions 2020 All Rights Reserved



Overview of the Course



- Lesson 1: Introduction & Overview
- Lesson 2: Nuts and Bolts
- Lesson 3: Sexual Harassment and Scope of Education Program/Activity
- Lesson 4: Title IX Investigation/Grievance Process
- Lesson 5: How to Serve Impartially
- Lesson 6: Investigative Techniques
- Lesson 7: Investigative Report Writing
- Lesson 8: Wrap Up & Assessment

©Institutional Compliance Solutions 2020 All Rights Reserved





Learning Outcomes



- ✓ Understand the law and regulations
- ✓ Explain Title IX process and y our role in it
- ✓ Analyze the definition of sexual harassment and scope of education program/activity
- ✓ Recognize conflicts of interest/bias and how to serve impartially
- ✓ Learn investigative report writing and how to fairly summarize relevant evidence

©Institutional Compliance Solutions 2020 All Rights Reserved 



Disclaimers



- ✓ Not legal advice
- ✓ Cannot possibly cover everything
- ✓ Level 1 Course

©Institutional Compliance Solutions 2020 All Rights Reserved 

See you in Lesson 2!



Lesson 2

Nuts and Bolts



TITLE IX & THE NEW REGULATIONS



THE LAW



Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.

© Institutional Compliance Solutions 2020 All Rights Reserved

TITLE IX
UNIVERSITY

TITLE IX IS:



- Federal law
 - Enforced by the Office for Civil Rights (OCR)
 - Prohibits Discrimination based on sex
 - Historically viewed as simply requiring gender-equity in athletics
-

© Institutional Compliance Solutions 2020 All Rights Reserved

TITLE IX
UNIVERSITY



REGULATIONS VS. GUIDANCE

[The] final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance... [and] focus on precise legal compliance requirements governing recipients. p. 18



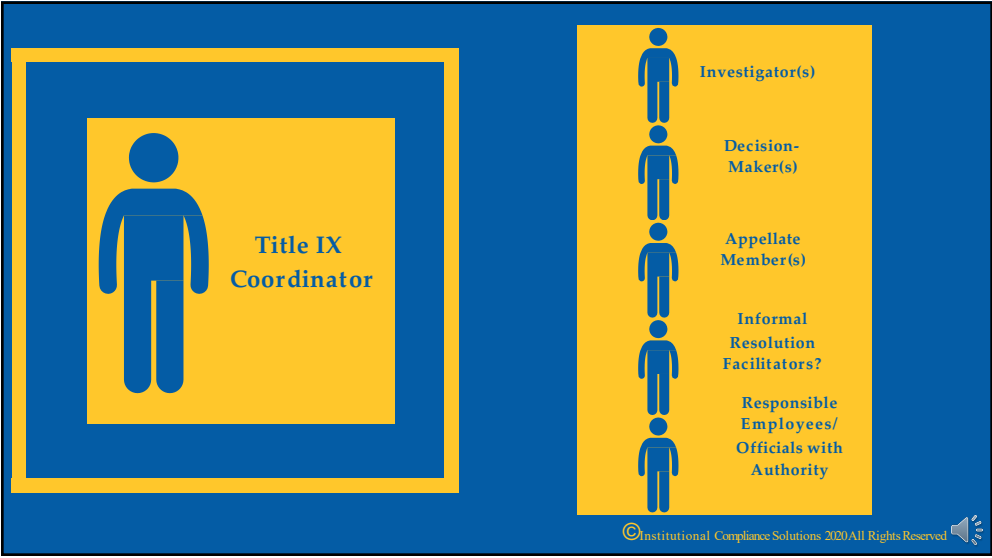
©Institutional Compliance Solutions 2020 All Rights Reserved



INVESTIGATOR'S ROLE IN COMPLIANCE

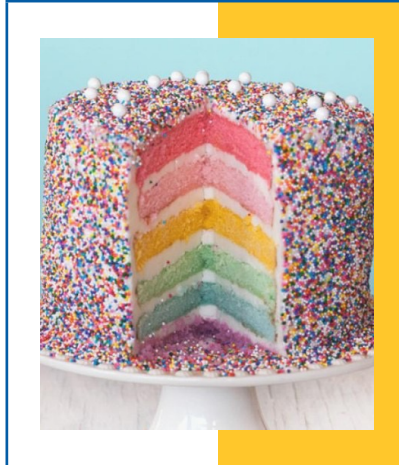


©Institutional Compliance Solutions 2020 All Rights Reserved



TITLE IX COMPLIANCE LAYERS

- Policy and Procedures
- Responding to complaints of sexual misconduct
- Education, training, prevention efforts



©Institutional Compliance Solutions 2020 All Rights Reserved



2020 Regulations Require the Following Training for Title IX

Investigators

- Definition of Sexual Harassment
- Scope of Education Program/Activity
- Investigation/Grievance Process
 - Hearing
 - Appeals
 - Informal Resolution Process
- How to Serve Impartially
 - Avoiding Prejudgment of the Facts
 - Conflicts of Interest/Bias
- Investigative Report Writing
- Fairly Summarize Relevant Evidence



©Institutional Compliance Solutions 2020 All Rights Reserved

Jeanne Clery Act



©Institutional Compliance Solutions 2020 All Rights Reserved



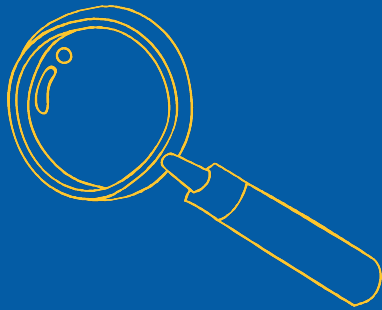
CLERY ACT & VIOLENCE AGAINST WOMEN ACT (VAWA)



- VAWA amended the Clery Act to add additional reportable crimes (including Sexual Assault, Dating Violence, Domestic Violence & Stalking)
- Campus SaVE Act refers to the recent VAWA amendments to the Clery Act = Campus SaVE is the Clery Act
- Enforced by the Department of Education
- Substantial fine \$\$ per violation and loss of eligibility for federal student aid programs



CLERY



Requires a prompt, fair and impartial process from the initial investigation to the final result.

This includes a requirement that any officials involved in the process are trained on issues related to dating violence, domestic violence, sexual assault, and stalking.

Additionally, officials must be trained "on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability."



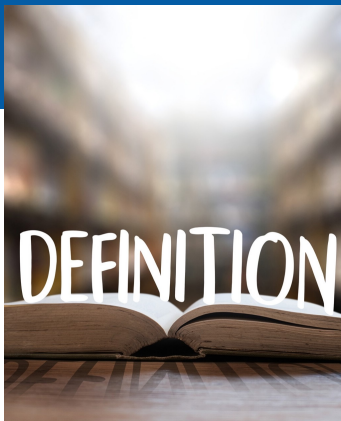
TITLE IX
UNIVERSITY

See you in
Lesson 3!



Lesson 3

Sexual Harassment and
Scope of Educational
Program/Activity



DEFINITIONS OF SEXUAL HARASSMENT






DEFINED TERMS

- Actual Knowledge
- Complainant/ Respondent
- Formal Complaint
- Sexual Harassment
- Supportive Measures

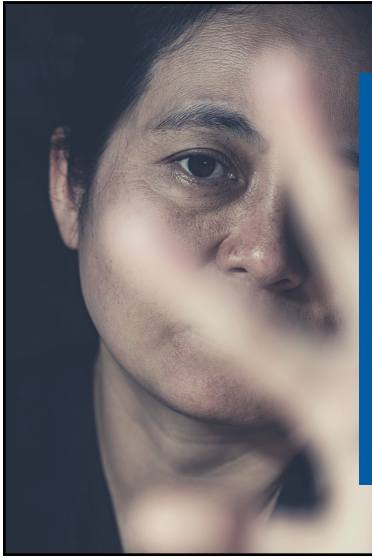
©Institutional Compliance Solutions 2020 All Rights Reserved



Sexual Harassment

- Conduct on the basis of sex that satisfies one or more of the following:
 - 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," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

©Institutional Compliance Solutions 2020 All Rights Reserved



SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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 incapacity.

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

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

©Institutional Compliance Solutions 2020 All Rights Reserved



Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- (i) The length of the relationship
- (ii) The type of relationship
- (iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

©Institutional Compliance Solutions 2020 All Rights Reserved



Domestic Violence

Domestic Violence: A felony or misdemeanor crime 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 the jurisdiction in which the crime of violence occurred; 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 the jurisdiction in which the crime of violence occurred.

©Institutional Compliance Solutions 2020 All Rights Reserved



STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

For purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

©Institutional Compliance Solutions 2020 All Rights Reserved



WHERE CONDUCT OCCURS



Scope of Education Program/Activity

Education Program or Activity

- Locations, events, or circumstances (operations)
- recipient exercised substantial control
 - over both the respondent AND the context in which the sexual harassment occurs
- Includes any building owned or controlled by student organization that is OFFICIALLY RECOGNIZED by institution
- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity
- Does not create or apply a geographic test, does not draw a line between "off campus" and "on campus," and does not create a distinction between sexual harassment occurring in person versus online.

Jurisdiction Continued

- No single factor to determine exercise of substantial control
- Distinguishable from Clery definitions of non-campus building or property
- May require organization to abide by Title IX policies and procedures
- May have to bifurcate conduct

©Institutional Compliance Solutions 2020 All Rights Reserved



TITLE IX
UNIVERSITY

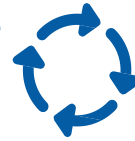
See you in Lesson 4!



©Institutional Compliance Solutions 2020 All Rights Reserved

Lesson 4

Title IX
Investigation/Grievance
Process

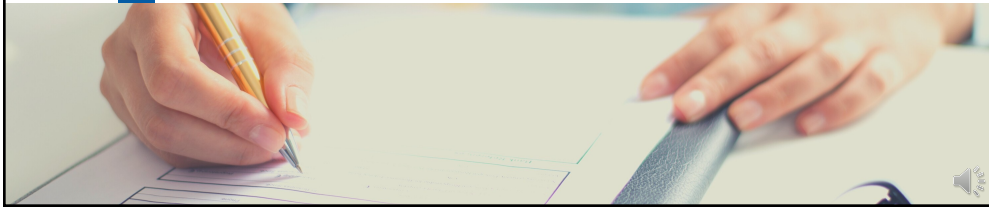


TITLE IX PROCESS

Formal Complaint

- Document (paper, email, or online submission) Signed by
 - Complainant (digital signature is okay)
 - or Title IX Coordinator
 - Alleging sexual harassment, against the respondent AND requesting that institution investigate.
- Complainant must be participating in, or attempting to participate in an education program or activity of the institution/district with which the formal complaint is filed.

© Institutional Compliance Solutions 2020 All Rights Reserved



DISMISSAL OF A FORMAL COMPLAINT

MUST Dismiss if:

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.
 - *May act under another provision of code of conduct

May Dismiss if:

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by institution
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

*Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties

© Institutional Compliance Solutions 2020 All Rights Reserved



Response to a Formal Complaint (Grievance Process)

- Treat parties equitably
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process
- Trained Title IX Team
- Presumption that respondent is not responsible
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability)
- Describe range of sanctions and remedies
- Standard of evidence (same for students and employees)
- Procedures and permissible bases for appeals
- Notice of Allegations containing specific information as outlined in regulations

©Institutional Compliance Solutions 2020 All Rights Reserved



Investigation of Formal Complaint

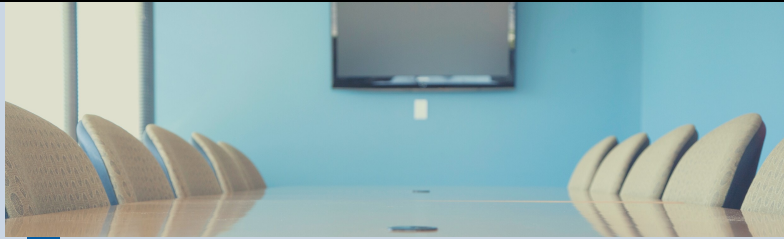


MUST

- Ensure that burden of proof and burden of gathering evidence with institution, not parties (no medical or counseling records w/o written consent of party)
- Provide equal opportunity to present witnesses (including EXPERT), and inculpatory/exculpatory evidence
- Not restrict ability of either party to discuss the allegations or to gather/present relevant evidence
- Provide opportunity for both parties to have advisor (can be attorney and can restrict the extent to which advisor can participate in the process)
- Provide written notice of date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare to participate
- Provide equal opportunity to inspect and review evidence obtained as part of investigation (even if not relied on)- sent to party AND advisor (electronic or hard copy) with 10 days to respond prior to completion of investigative report.
- Create investigative report that fairly summarizes relevant evidence
- Provide report to parties AND advisors 10 days prior to hearing for review and written response.

©Institutional Compliance Solutions 2020 All Rights Reserved





Hearings

- Live Hearing (in same room or using technology in separate rooms- not only via telephone) Permit
 - ADVISOR to ask the other party and witnesses RELEVANT questions (including those challenging credibility)
- Cross-Examination
 - Directly, orally, in real time by ADVISOR
 - If a party or witness does not submit to cross-examination, the decision-maker(s) must not rely on any statement of that party or witness
- Recording (audio, visual, or transcript) made available to parties for inspection and review
- Written determination regarding responsibility and sanctions with rationale
- Decision provided to parties simultaneously
- Effective implementation of remedies (Title IX Coordinator)

©Institutional Compliance Solutions 2020 All Rights Reserved

General Process Flow Chart



*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.
 **A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at institution or institution is precluded from gathering evidence.



Institutional Compliance Solutions 2020 All Rights Reserved





DIFFERENCE BETWEEN TITLE IX PROCESS & OTHER PROCESSES

©Institutional Compliance Solutions 2020 All Rights Reserved



Campus Process vs. Law Enforcement

©Institutional Compliance Solutions 2020 All Rights Reserved



SUPPORTIVE MEASURES

Purpose:

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

Burden: remains on the institution not the parties

Not: punitive or disciplinary

Confidential: as much as possible

Document: when provided, when not provided and why

Title IX Coordinator: ultimately responsible for effective implementation, but others can also implement

Examples: in section 106.3

© Institutional Compliance Solutions 2020 All Rights Reserved



TITLE IX UNIVERSITY

See you in Lesson 5!

© Institutional Compliance Solutions 2020 All Rights Reserved


The slide features a white background with a blue border, set against a light grey brick wall. In the top left corner, the text 'TITLE IX UNIVERSITY' is displayed in a bold, blue, serif font. The main text 'See you in Lesson 5!' is centered in a large, blue, serif font. To the right of the text are two icons: a yellow emoji with its arms raised holding a sign that says 'GOOD JOB!' and a blue circular arrow icon. At the bottom left, there is a small copyright notice: '© Institutional Compliance Solutions 2020 All Rights Reserved'. At the bottom right, there is a small speaker icon.

Lesson 5

Serving Impartially




CONFLICTS OF INTEREST/ BIAS/ RESERVING JUDGMENT



RECOGNIZE CONFLICTS OF INTEREST/BIAS

- Generally toward Complainants/Respondents
- In a specific case

©Institutional Compliance Solutions 2020.All Rights Reserved



Explicit Bias

- “Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.
 - Expressed directly
 - Aware of bias
 - Operates consciously
- Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."





Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.

©Institutional Compliance Solutions 2020 All Rights Reserved



CONFLICTS OF INTEREST

- **conflict of interest**
conflict of interest [\ 'kɒn- flikt- \]
Legal Definition of conflict of interest
1: a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
- 2: a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

©Institutional Compliance Solutions 2020 All Rights Reserved





BIAS AND/OR CONFLICT OF INTEREST = BASIS FOR APPEAL!

©Institutional Compliance Solutions 2020 All Rights Reserved



During the Investigation: SUSPEND YOUR MIND

- Daily Choice
- Reserve judgments until all facts are gathered

©Institutional Compliance Solutions 2020 All Rights Reserved



REMINDERS!


©Institutional Compliance Solutions 2020 All Rights Reserved

KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies
- Use policy consistent language
- What are your findings?
- Where do your findings go?
- Who is the point of contact for complainant/respondent?
- Who is the point of contact re: retaliation?
- What it is the hearing and/or appeal process?
- Informal resolutions?



©Institutional Compliance Solutions 2020 All Rights Reserved




During the Investigation: STAY IN YOUR LANE


- Your role as fact gatherer
- Burden on you to gather information- not on parties to provide it
- Investigating violations of specific policy: not law or policies outside of your charge/responsibility
 - Ex: Discovering a management issue while investigating harassment complaint

© Institutional Compliance Solutions 2020 All Rights Reserved


END GAME



**CIVIL
LAWSUIT**



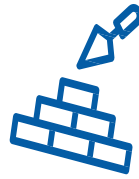
**CRIMINAL
INVESTIGATION**



**TITLE IX
INVESTIGATION**

© Institutional Compliance Solutions 2020 All Rights Reserved

On to...
Lesson 6!



Lesson 6

Investigative Techniques...

Working with Witnesses and
Evaluating Evidence



INTERVIEW TECHNIQUES & CONSIDERATIONS/ RELEVANCY





THEMES/END GAME



Fair/Balanced approach



Uncover all relevant facts/information
• stone analogy



Common sense approach- beware of rabbit holes



BE CURIOUS

It is the number one skill for an investigator.

© Institutional Compliance Solutions 2020 All Rights Reserved



Timeliness

- Policy considerations
- Interview witnesses as soon as possible
- Unavoidable delays
- Notice of extensions
- Addressing delays in record keeping/report

© Institutional Compliance Solutions 2020 All Rights Reserved



Organize

- In person v Plan order of interviews/when to interview respondents.
- virtual vs. phone
- Explaining process and your role
- Reassurance/retaliation

© Institutional Compliance Solutions 2020 All Rights Reserved



INTERVIEW SKILLS

- Develop rapport
- Observe
- Be professional
- Outline questions/flexibility



© Institutional Compliance Solutions 2020 All Rights Reserved



Types of Questions

- Who, what, when, where, why
- Open ended
- Repeat, repeat, repeat
- Circling techniques
- Clarity on timelines/who is involved etc.
- Openings
- Closing questions
- Opportunity to provide clarification after interview

©Institutional Compliance Solutions 2020 All Rights Reserved



Relevancy

- Regulations do not define relevancy
- Regulations define some things that are not relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent.

©Institutional Compliance Solutions 2020 All Rights Reserved



Relevancy Continued

- Ordinary Meaning (Not a legal term)
- Does the evidence tend to make a fact more or less likely to be true

©Institutional Compliance Solutions 2020 All Rights Reserved



Note Taking

- Explain your role as note taker
- Note taker vs. dual investigator
- Use quotations if possible
- Ask for a pause or clarification if necessary

©Institutional Compliance Solutions 2020 All Rights Reserved





Complainants

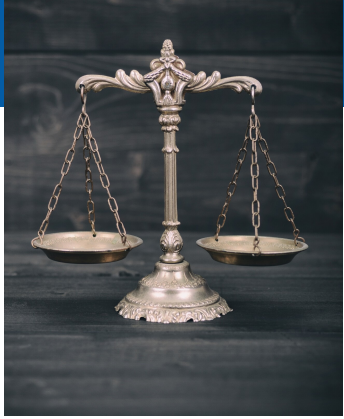
- Trauma informed information
- Managing expectations
- Reluctant complainants and retaliation
- Interim/support measures
- Soft front, strong back
- "In a perfect world"
- Next Steps
- Bias/Conflict of Interest



Respondents

- Trauma informed information
- No presumption of responsibility
- Managing expectations
- Interim/support measures
- Simultaneous and ongoing criminal investigations
- Soft front, strong back
- Next Steps
- Bias/Conflicts of Interest





IDENTIFYING & WEIGHING EVIDENCE

©Institutional Compliance Solutions 2020 All Rights Reserved 

IDENTIFYING OTHER EVIDENCE

- Videos
- Social Media
- Text Messages
- Physical Evidence
- University ID Activity
- Applications
- SANE Exam



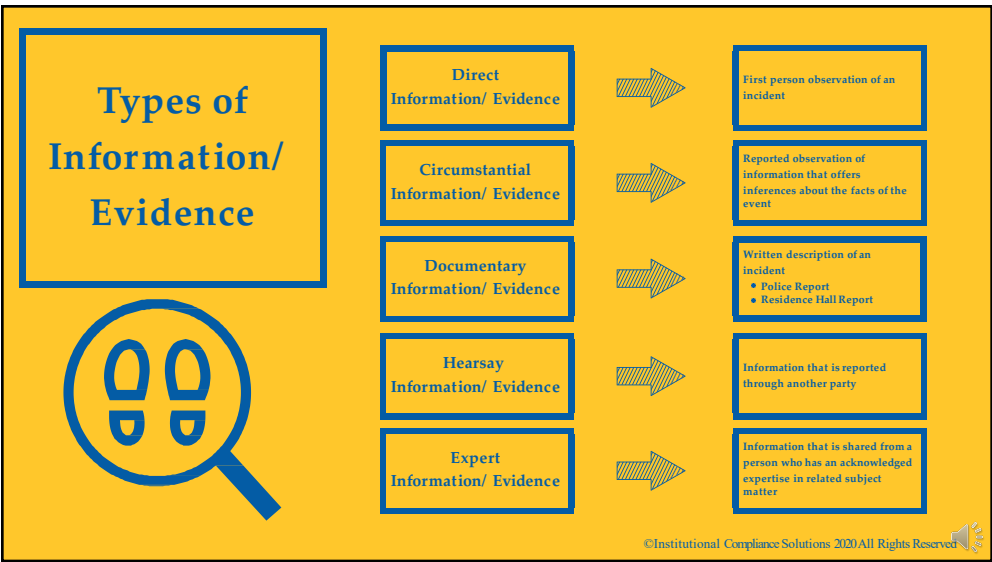
©Institutional Compliance Solutions 2020 All Rights Reserved 

Witnesses

- Eye Witness
- Character Witnesses???
- Hearsay issues
- Witnesses identified by the parties
- Experts



©Institutional Compliance Solutions 2020 All Rights Reserved

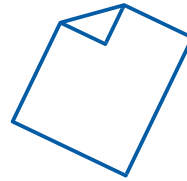


On to Lesson 7!



Lesson 7

Investigative Report Writing

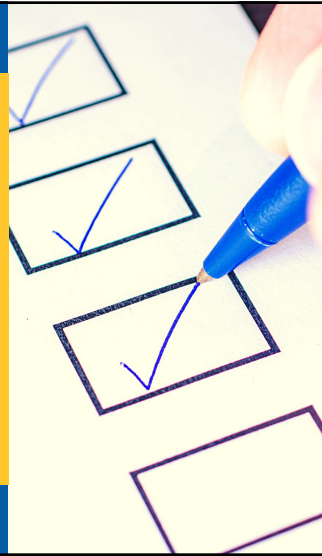


REPORT CONTENT



REPORT CONTENT

- How reported
- Date of Formal Complaint
- Who investigated
- Policy
- Timelines (of events and of investigation)
- Information from parties and witnesses
- Information not included or witnesses not interviewed and why
- Physical Evidence
- Summary of Relevant Evidence



©Institutional Compliance Solutions 2020 All Rights Reserved



WHO IS YOUR AUDIENCE?



What is the intent of the report
Who needs to understand/ Use it
Where/How will it be used

©Institutional Compliance Solutions 2020 All Rights Reserved



ORGANIZATION IS KEY

- By party/witness?
- By time/chronological?
- By event?

©Institutional Compliance Solutions 2020 All Rights Reserved



REPORT MUST

- Fairly summarize relevant evidence
- Be provided to parties AND advisors
- Hard copy or electronic

©Institutional Compliance Solutions 2020 All Rights Reserved





Decision Maker's Written Determination MUST

Include (and therefore *your* report should include):

- Identification of ALL allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of formal complaint through the determination including:
 - notice to parties
 - interviews with parties and witnesses
 - site visits
 - methods used to gather evidence
 - hearings held

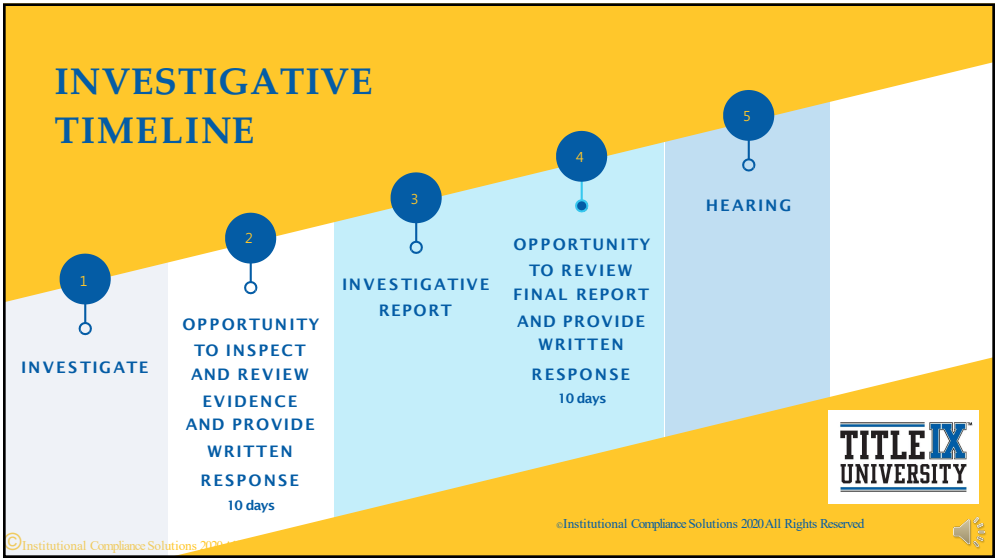
©Institutional Compliance Solutions 2020 All Rights Reserved



Document Document Document

- *CONSISTENT,*
- *THOROUGH,*
- *CLEAR,*
- *TIMELY*

©Institutional Compliance Solutions 2020 All Rights Reserved



Wrap Up and Assessment



Wrap Up



Learning Outcomes



- ✓ Understand the law and regulations
- ✓ Explain Title IX process and your role in it
- ✓ Analyze the definition of sexual harassment and scope of education program/activity
- ✓ Recognize conflicts of interest/bias and how to serve impartially
- ✓ Learn investigative report writing and how to fairly summarize relevant evidence

©Institutional Compliance Solutions 2020 All Rights Reserved



Questions???



- ❖ We are here for you!
(info@titleixu.com)
- ❖ Contact your Title IX Coordinator

©Institutional Compliance Solutions 2020 All Rights Reserved



ASSESSMENT OF KNOWLEDGE

© Institutional Compliance Solutions 2020 All Rights Reserved 