

Title IX Training for Investigators

Train the Trainer Oregon School Personnel Administrators Fall 2023 Conference

Thompson & Horton

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Join the K-12
Title IX Leadership
Alliance

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Handouts!

bit.ly/OSPA2023






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OSPA Title IX Training Fall 2023

<p>Today</p> <p>8 a.m.-Noon</p> <p>Compliance Certification (All Roles)</p> <p>2:30-3:45 p.m.</p> <p>Investigation Training</p> <p>3:45-5 p.m.</p> <p>Coordinator Training</p>	<p>Tomorrow</p> <p>9:30-11:30 a.m.</p> <p>Decision-Maker Training</p> <p>Noon-1:30 p.m.</p> <p>Informal Resolution Training</p>
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Ground Rules

- ✓ Ask questions/share perspective
- ✓ Not legal advice/keep it hypothetical
- ✓ Materials will be available for website posting

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What is the first word (one word, no spaces) you think of when you hear "Title IX Investigation"?

Nobody has responded yet.

Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

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A man in a pink shirt and a woman in a patterned dress are standing in a meeting room, looking at a whiteboard covered in pink sticky notes. The man is pointing at one of the notes. There are blue chairs and a wooden table in the foreground.

Train the Trainer
Tip

Investigator Required Training (covered in our Compliance Certification Training):

- What is "Sexual Harassment" under Title IX?
- What is the scope of the educational institution's "education program or activity"
- What are the steps in the Title IX sexual harassment grievance process?
- How do you serve impartially without bias?

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Train the Trainer Tip

Investigator Required Training
(covered in this training):

- ✓ How to conduct an investigation under Title IX
- ✓ Issues of relevance

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Our Scenario

Student Riley reports that while alone with Teacher Thompson at school, Teacher Thompson kissed Riley on the cheek and rubbed Riley on the behind.



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2020
Title IX
Rules

✔ Issued by the Trump administration’s Office for Civil Rights

✔ Effective August 14, 2020

✔ Will be in effect at least until December 2023

✔ Include significant requirements for handling complaints of sexual harassment under Title IX

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Two Parts of the Analysis

What Conduct is Covered?

✔ "Title IX Sexual Harassment"*

❑ "The Big Five"*

❑ "Title IX Hostile Environment Harassment"*

✔ "In an Educational Program or Activity"

✔ "Against a person in the United States"

* Not regulatory terms

What Process Applies to Covered Conduct?

✔ Supportive Measures/Notice of Process to Complainant

✔ Formal Complaint

✔ Notice to Parties*/Supportive Measures to Respondent

✔ Informal Resolution*

✔ Investigation*

✔ Hearing*

✔ Decision*

✔ Appeal*

* Only if a formal complaint is on file

T&H

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First Steps in the Investigation Process

- Verify impartiality
- Administrative steps
- Review Notices of Allegations
- Introduce yourself to the parties
- Review file
- Investigation planning


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The Investigator’s Roadmap – The NOI/NOA

Notice of Investigation or Notice of Allegations

- ✓ Typically sent before the investigator is assigned
- ✓ Must contain sufficient details known at the time and with sufficient time to prepare before any initial party interview
 - Identities of the parties involved in the incident, if known
 - The conduct allegedly constituting sexual harassment
 - The date and location of the alleged incident, if known

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Anatomy of an Allegation

It is alleged that in August 2023, Teacher Thompson rubbed Riley Complainant, a District student, on the buttock and kissed Riley Complainant on the cheek while the two were alone in the school building.

The conduct alleged, if substantiated, would be:

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The conduct alleged, if substantiated, would be (vote for all that are correct)

Employee quid pro quo

0%

Fondling

0%

Stalking

0%

Unwelcome sex-based conduct that is severe, pervasive, and objectively offensive

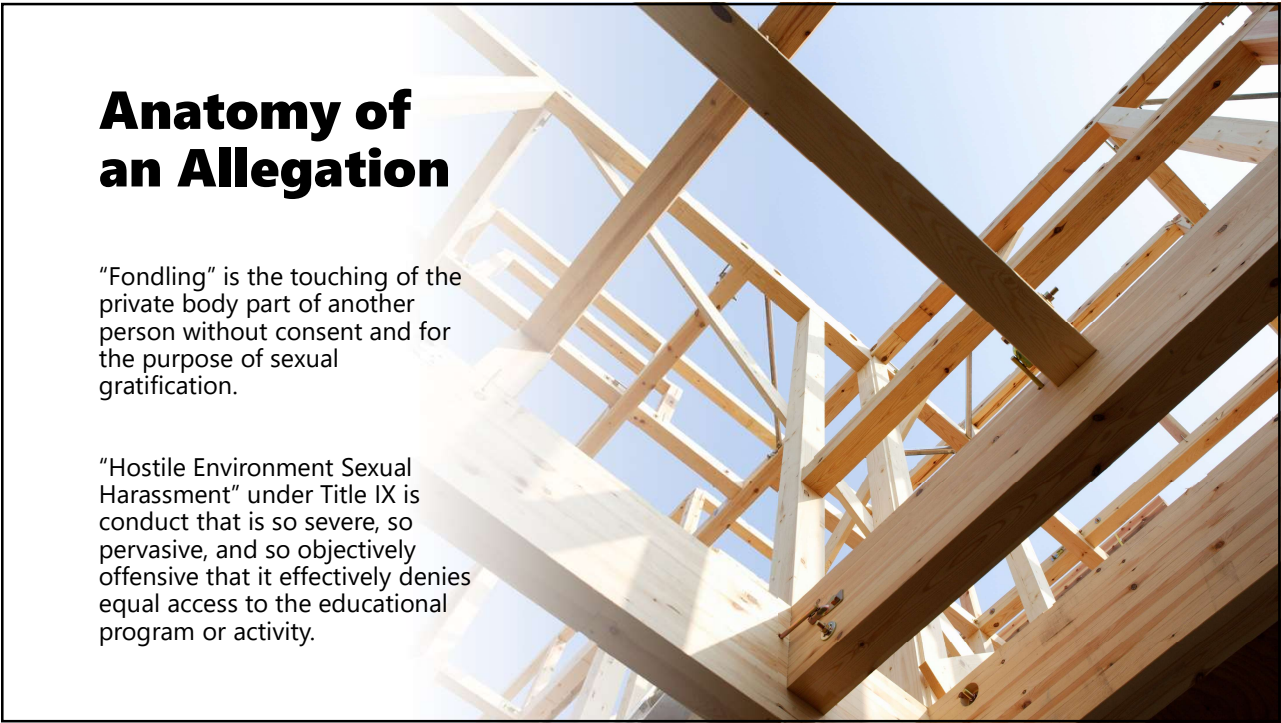
0%

Not Title IX sexual harassment because neither severe nor pervasive

0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

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Anatomy of an Allegation

“Fondling” is the touching of the private body part of another person without consent and for the purpose of sexual gratification.

“Hostile Environment Sexual Harassment” under Title IX is conduct that is so severe, so pervasive, and so objectively offensive that it effectively denies equal access to the educational program or activity.

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The Constellation of Circumstances, Expectations, and Relationships

- ✓ Impact on CP
- ✓ Type, Frequency, Duration
- ✓ Ages, Roles, Previous Interactions, Other Factors re Parties
- ✓ Location, Context, Control Over Respondent
- ✓ Other Sex-Based Harassment in the Ed Program or Activity

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Train the Trainer Tip

- ✔ Title IX investigators need hands on training on how to complete the investigation process
- ✔ The T&H Guidebook is a great on-the-job training tool for investigators (email mirvin@thlaw.com and mention the OSPA discount)

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Next Steps in the Investigation Process

- Notices of interviews to parties
- Notices of interviews to witnesses?
- Interview planning
- Conduct interviews
- Update investigation plan, considering factual and chronological gaps *considering the elements of the allegations and disputed/undisputed facts*



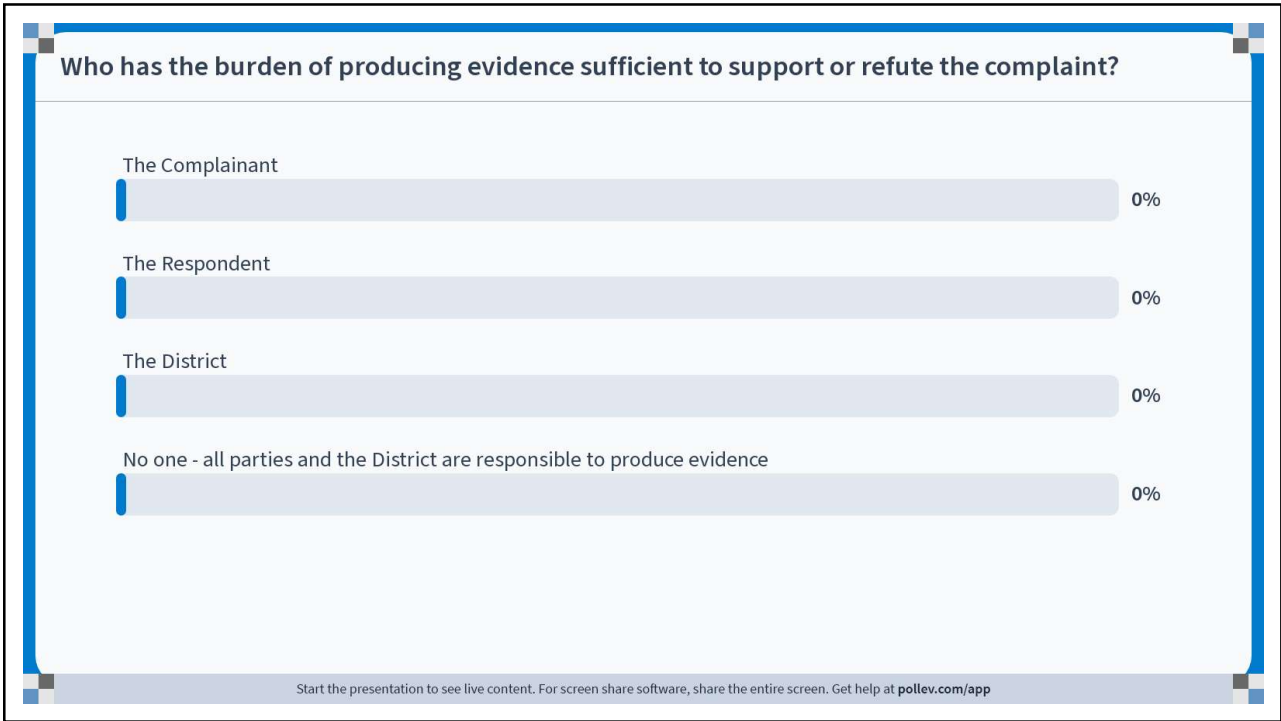
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Impartial Investigations

- Do not discourage a party from submitting certain evidence
- Do not use terms like “victim” and “perpetrator”
- Do not use sex stereotypes
- Do not make credibility determinations (that’s the decision-maker’s job)

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Next Steps in the Investigation Process


- Directly Related Evidence
- Parties have 10 days to respond to the DRE
- Investigation report summarizing relevant evidence
- Parties have 10 days to respond to report



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Directly Related Evidence

- Term is not defined
- Think broadly—probably includes almost everything collected in the investigation
- Responses to DRE are shared with the other party



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Investigation Report

- Fairly summarizes the “relevant evidence”
- Evidence is relevant if it makes a (1) **fact or issue in dispute** (2) **more or less likely to be true**

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Investigation Report

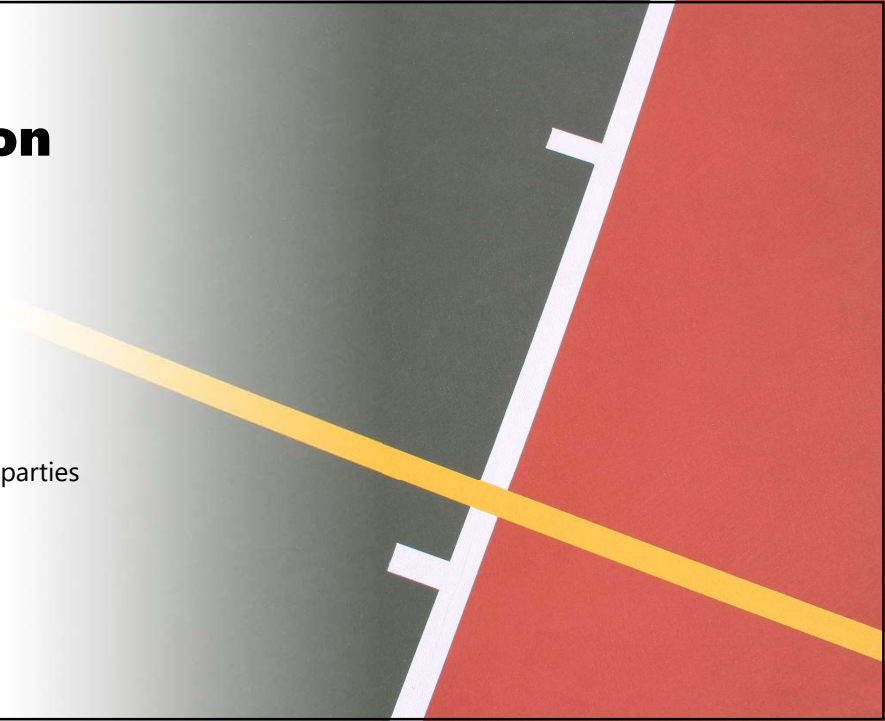
Conduct that is not relevant without written consent:

- Complainant's sexual behavior or predisposition unless used to show:
- Someone other than RP committed the conduct
- Past conduct between CP & RP to show consent
- Can't access, consider, disclose or use medical or psychological treatment records made/maintained re treatment
- Can't use questions or evidence that seek disclosure of legally privileged information unless waived

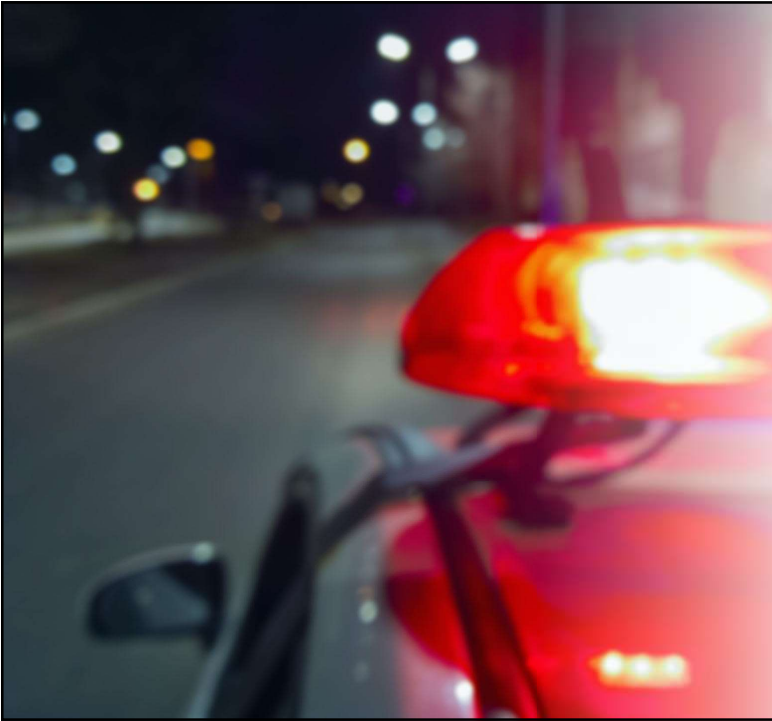
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General Investigation Rules

- Treat parties equally
- Burden of proof on the District
- No “gag orders”
- Advisors allowed
- Notice of interviews to parties



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What if the Police are Involved?

- Limited or temporary delay in timeframe is allowed, but not required
- Document, document, document

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Trauma Informed Investigations

- Do not use blaming, accusing, or judging language
- You can acknowledge the difficulty or both parties
- Use open-ended questions



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Retaliation

- The investigator should explain that retaliation is prohibited and will not be tolerated
- Give examples of retaliation between parties
 - Ostracizing someone
 - Spreading rumors or gossiping




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Trauma Informed Investigations

- Science shows trauma can have a neurological effect, particularly on memory
- Trauma can impact either party
- There is a difference between being trauma-informed and trauma-lenient – do not use apparent existence of trauma as *evidence* of alleged conduct

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Train the Trainer Tip

- ✓ Investigators should receive trauma-informed training to limit the risk of re-traumatizing parties during the investigation
- ✓ Investigators should be trained **not** to use a trauma-informed approach to evaluate the testimony of parties or witnesses or assess credibility
- ✓ Investigators should learn a trauma-informed approach to evaluating evidence can lead them to overlook significant inconsistencies on the part of complainants in a manner that is incompatible with due process protections for the respondent
- ✓ Investigators should document noteworthy inconsistencies (rather than ignoring them altogether) and must use approaches to trauma and memory that are well grounded in current scientific findings

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