Lesson 1

Introduction & Overview

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Introduction

Courtney Bullard

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



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Overview of the Course



Lesson 1: Introduction and Overview
Lesson 2: Sexual Harassment/Scope of Program/Activity
Lessons 3: Title IX Process/Serving Impartially
Lesson 4: Your Role as an Appellate Decision Maker
Lesson 5: Wrap Up and Assessment of Knowledge

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Learning Objectives



- ✓ Understand the law and regulations
- ✓ Explain Title IX process and your role in it
- ✓ Recognize and Evaluate Sexual Harassment and Program or Activity
- ✓ Understand serving impartially in your role
- ✓ Understand grounds for appeal under Title IX
- ✓ Explain the role of an appellate decision maker in a Title IX grievance process

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Disclaimers



- ✓ Not legal advice
- ✓ Cannot possibly cover everything
- ✓ Designed to provide you with options so that you can make the decisions that make the most sense for you/your district
- ✓ Most decisions will be district specific and the regulations allow for flexibility

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See you in Lesson 2!



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Lesson 2

Sexual Harassment/Scope of Program and Activity

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THE LAW

TITLE IX

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 education program or activity receiving Federal financial assistance.

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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

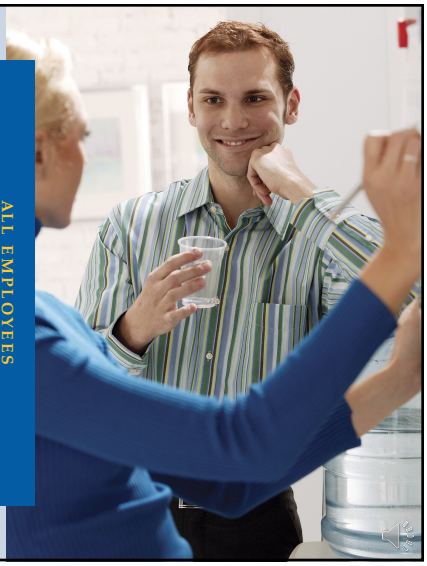
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Title IX Applies to...

- Student on Student Sexual Harassment
- Employee on Employee Sexual Harassment
- Employee on Student Sexual Harassment (Educator Sexual Misconduct)
- Student on Employee Sexual Harassment

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ALL EMPLOYEES



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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.

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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.

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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.

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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.

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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.

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Conduct + Education Program or Activity

IT'S MORE THAN THE BEHAVIOR...
MUST EVALUATE
LOCATION/ JURISDICTION AS WELL

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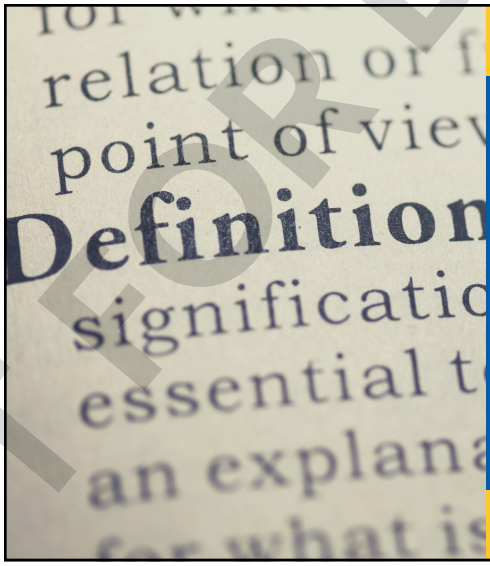
JURISDICTION

Education Program or Activity

- Locations, events, or circumstances (operations) over which the district exercised substantial control
  - over both the respondent AND the context in which the sexual harassment occurs

- 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/property" and "on campus/property," and does not create a distinction between sexual harassment occurring in person versus online.

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DEFINED TERMS

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

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Check Your District's Policies and Procedures

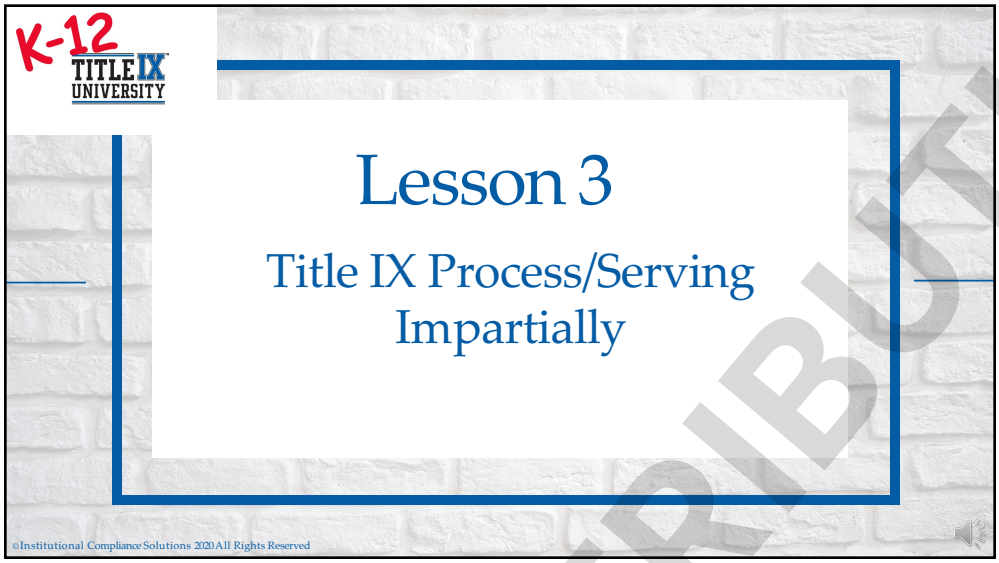
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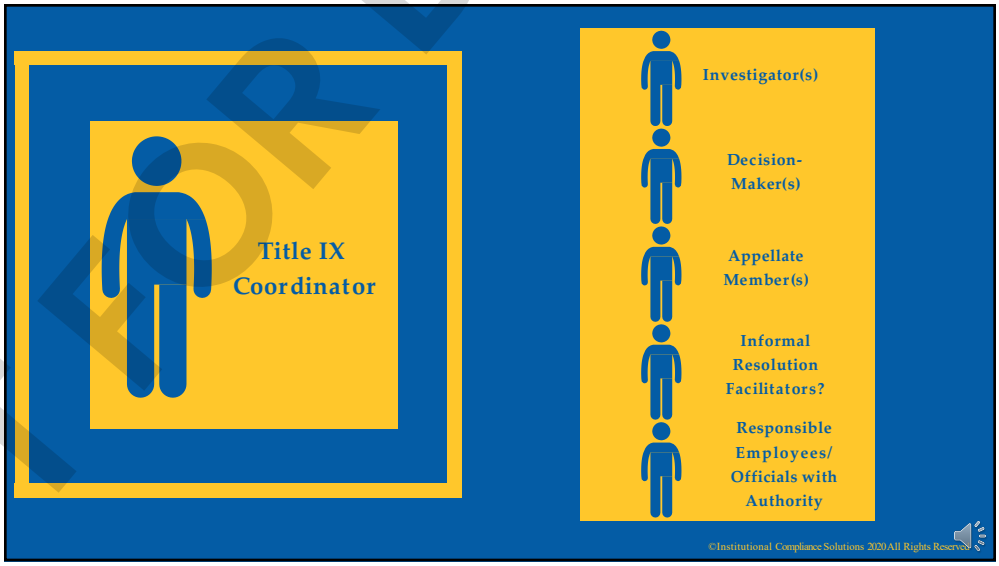
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See you in Lesson 3!

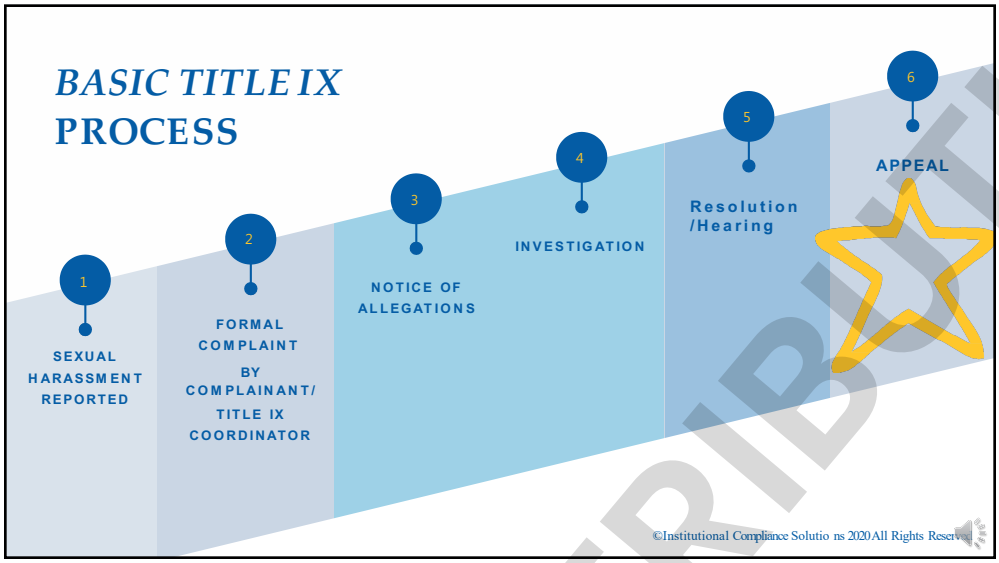
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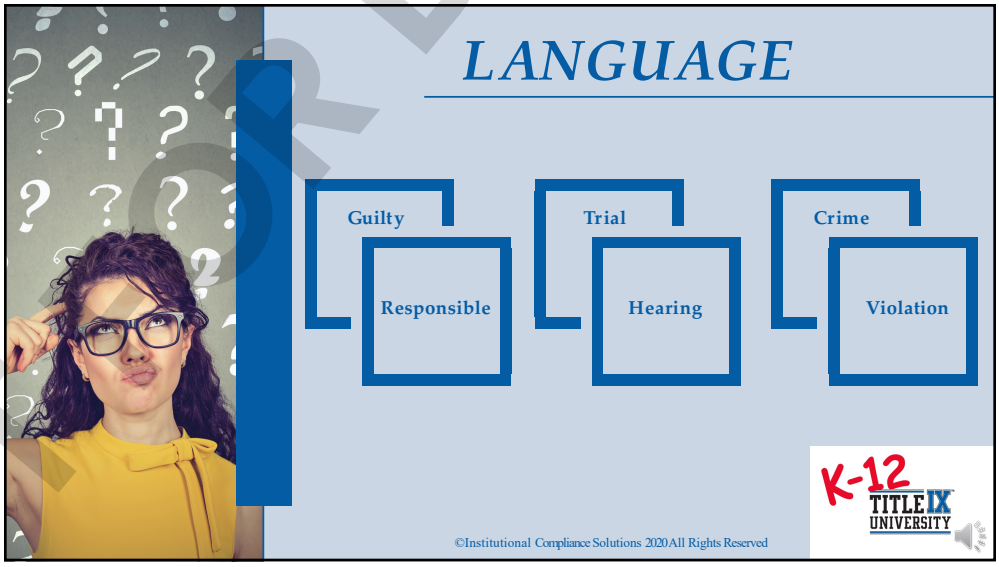
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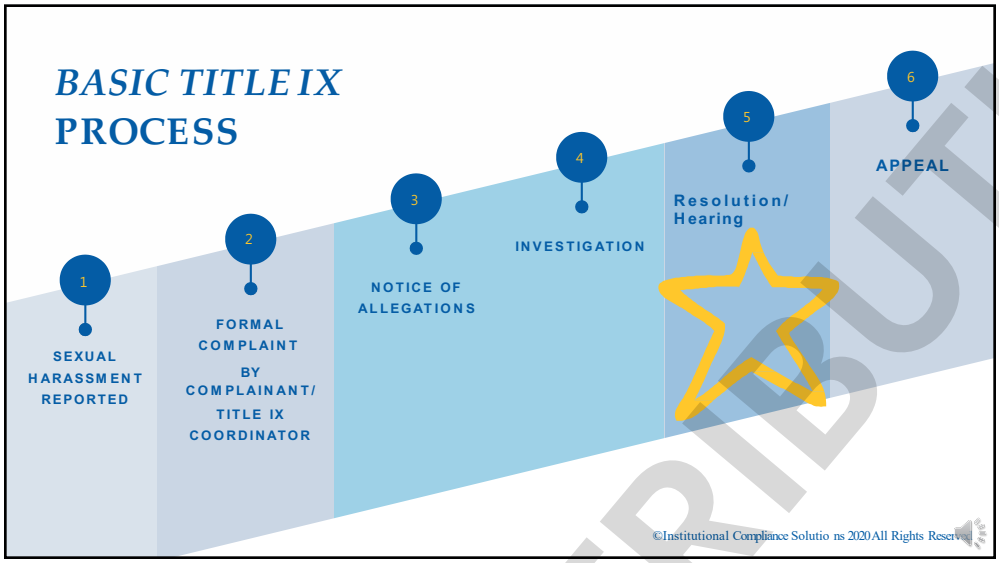


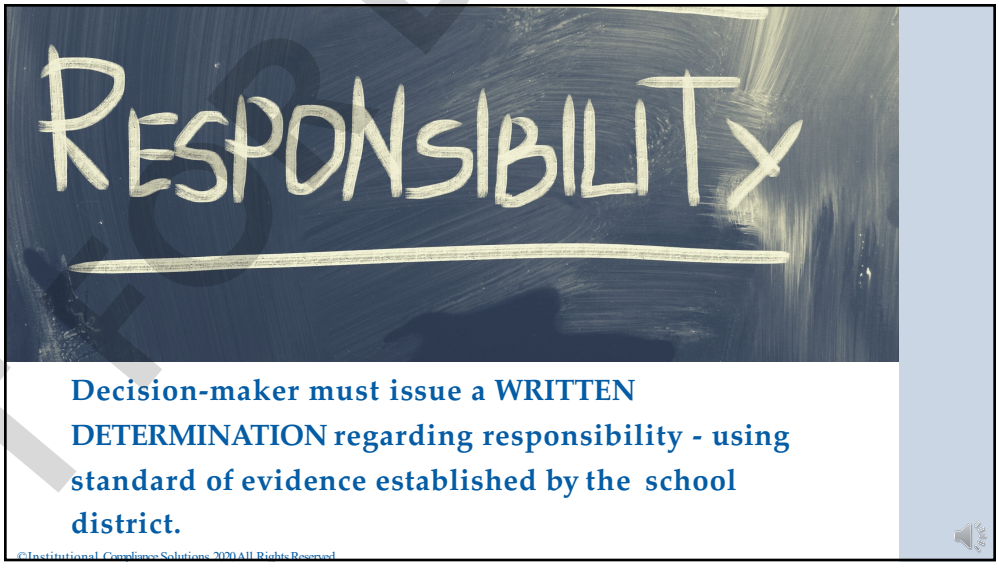
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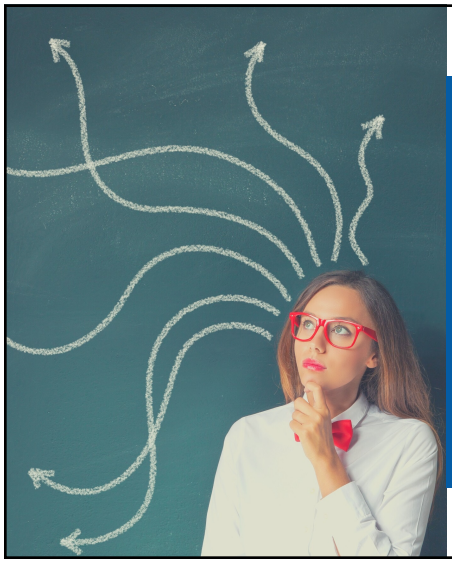


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DECISION-MAKER

- Question and Answer
  - Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party
  - Hearing?
  - Written Determination regarding Responsibility/Sanctions/ Remedies

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ARTICULATING DECISION/RATIONALE

- Articulate what you believe happened based on:
  - Standard of evidence
  - Elements of alleged violation
    - Connect rationale to each element
    - Identify facts supporting each element(s)
    - Identify facts that do not support the element(s)
  - Include any admissions that occur during the hearing
  - If using a formula to weigh evidence/information, make sure to follow explicitly

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Decision-Maker Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site Visits
  - Methods Used to Gather Other Evidence
  - Hearings Held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ ~~Result of Each Allegation Including Rationale~~
  - Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- ☐ ~~Procedures and Permissible Bases for Appeal~~

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APPEALS

- MUST offer both parties an appeal re: responsibility, recipient dismissal of formal complaint, or any allegations on following bases:
  - Procedural irregularity that affected the outcome of the matter
  - New Evidence
  - Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s)- generally toward complainants or respondent or toward specific party
  - May include additional bases
- Most be included in Written Determination



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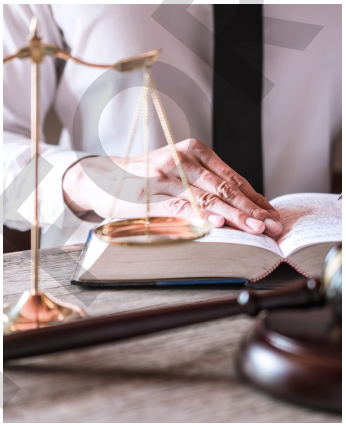
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Appellate Decision Makers

- *Understand District Specific Process*
- *Review Appeals*
- *Make Timely Decisions and Simultaneous Notifications*

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CONFLICTS OF INTEREST/ BIAS/ RESERVING JUDGMENT

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RECOGNIZE CONFLICTS OF INTEREST / BIAS

- Generally toward Complainants/Respondents
- In a specific case

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Explicit Bias

"Explicit bias" refers to the attitudes and beliefs we have about a person or group on a conscious level.

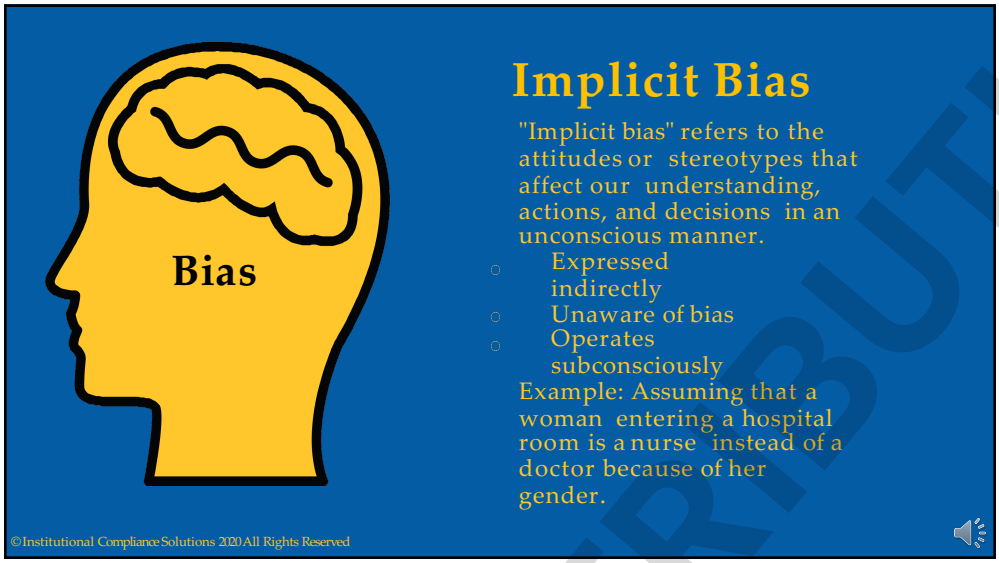
- Expressed directly
- Aware of bias
- Operates consciously

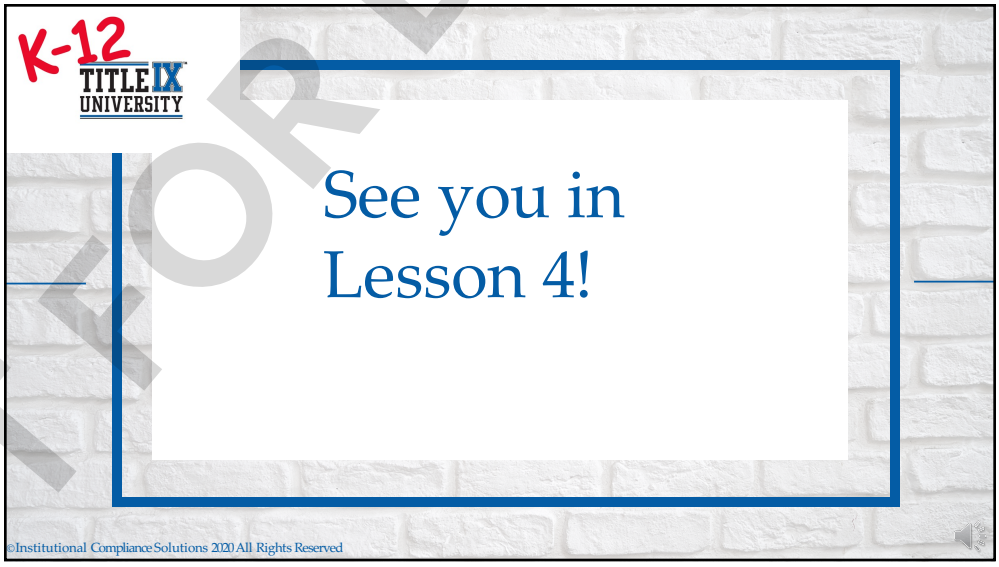
Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."



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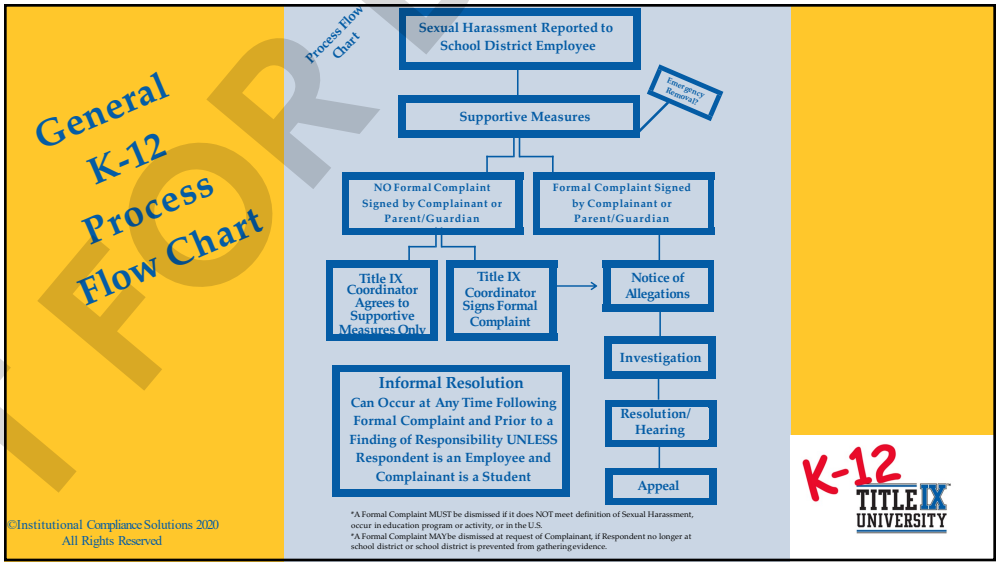


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Lesson 4

Your Role as an Appellate Decision Maker

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Formal Complaint Analysis



- ✓ Is Complainant a Participant in Education Program or Activity?
- ✓ Does the report meet the definition of Sexual Harassment?
  - -Based on Sex
    - -Quid pro quo
    - -Severe, pervasive and objectively offensive
    - -Sexual Assault, Domestic Violence, Dating
    - -Violence, Stalking
- ✓ Education Program or Activity/Jurisdiction?
  - -Does district have substantial control over the Respondent
    AND
  - -Does district have substantial control over the context in which the conduct occurred (on district property or during sponsored event)
- ✓ Conduct occur against a person in the U.S.

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Formal Complaint Analysis



Title IX Coordinator may:

- ✓ Dismiss the Formal Complaint in its entirety
- ✓ Dismiss certain allegations within the Formal Complaint that do not meet definition Sexual Harassment and/or fall within scope or activity of district and allow the remaining allegations to proceed to investigation

*Either way, appeal must be offered

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Permissive Dismissal of a Formal Complaint

- ✓Complainant no longer wishes to go forward and wants to withdraw the Formal Complaint (must notify Title IX Coordinator in writing)
- ✓Respondent no longer enrolled or employed by the institution
- ✓Specific circumstances that prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

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INVESTIGATIVE TIMELINE

1. **INVESTIGATE**
   - Notice of Allegations
   - Notice of all interviews with sufficient time to prepare
2. **OPPORTUNITY TO INSPECT AND REVIEW EVIDENCE DIRECTLY RELATED TO ALLEGATION & PROVIDE WRITTEN RESPONSE**
   10 days
3. **INVESTIGATIVE REPORT**
4. **OPPORTUNITY TO REVIEW FINAL REPORT AND PROVIDE WRITTEN RESPONSE**
   10 days
5. **Q&A RESOLUTION/ DETERMINAITON/ HEARING**
6. **APPEAL**

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YOUR ROLE APPEALS

- Review the appeal
- Review the record: file, hearing, investigation, etc.
- Make determination regarding the appeal
- Provide your determination and rationale simultaneously to the parties

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POSSIBLE BASES FOR APPEALS

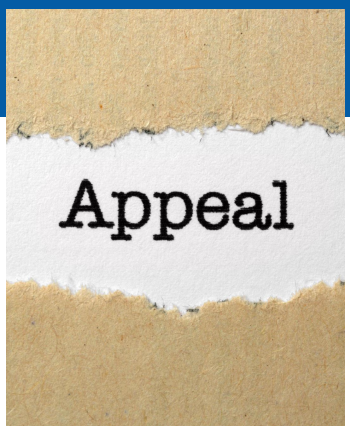
MUST offer appeals to both parties regarding 1) responsibility, or 2) dismissal of Formal Complaint or any allegations within the Formal Complaint, on the following bases:

1. Procedural irregularity that affected the outcome of the matter
2. New Evidence
3. Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s)- generally toward Complainants or Respondents or toward specific party

MAY offer additional bases for appeal- district specific

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PROCEDURAL IRREGULARITY

- Regulations require specific procedures in a formal Title IX grievance process, and each step has specific requirements - be sure to familiarize yourself with those processes!
- Irregularity alone not enough - must also have affected the outcome
- Focus on due process rights of Respondent - improper notice, insufficient time to prepare, for example
- Similarly, must also have same for Complainant

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NEW EVIDENCE

New evidence not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.

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Conflicts of Interest/Bias

✓ Title IX Coordinator
✓ Investigator
✓ Decision-Maker

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Review of the Record

- Formal Complaint
- Notice of Allegations
- Notice of Meetings
- Evidence Directly Related to the Allegations (10 Days for Parties to Review and Respond)
- Written Responses to Evidence Directly Related to the Allegations
- Investigation Report that Fairly Summarizes Relevant Evidence (10 Days for Parties to Review and Respond)
- Written Responses to Investigative Report from both parties
- Q&A by Parties
- Notice of Hearing (if one occurred)
- Hearing Transcript/Audio/Audiovisual Recording (if one occurred)
- Written Determination by Decision-Maker

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NOT YOUR ROLE

- Re-investigate the matter
- Re-interview parties or bring in additional witnesses to interview
- Re-hear the matter or to re-do the determination

Review is limited to the record unless otherwise stated in your policy/procedure

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Equal Appeal Procedures for Both Parties

- Appellate decision-maker cannot be the same as the decision-maker regarding responsibility, or the Title IX Coordinator
- Appellate decision-maker must be trained
- Parties must have a reasonable, equal opportunity to submit written statement in support of or challenging the outcome

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WRITTEN DECISION

1. Appellate decision-maker must issue a written decision describing the result of the appeal and the rationale for the result
2. Appellate decision-maker must provide the written decision simultaneously to both sides/parties
3. Appeal information (and the entire Title IX file) must be maintained for at least 7 years

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Possible Outcomes

- ✓Uphold the entire determination made by the Decision-Maker
- ✓Uphold a portion of the determination and overturn/remand a portion
- ✓Overturn the determination made by the Decision-Maker in its entirety and/or remand
- ✓Send the matter back to the Decision-Maker/Investigator/Title IX Coordinator for reconsideration due to new evidence/procedural error/conflict of interest/bias (remand)
- ✓Overturn Formal Complaint Dismissal and remand back to Title IX Coordinator
- ✓Any others dictated by your policy/procedure

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Appeals Checklist

- [ ] Provide Equal Opportunity to Appeal
  - Determination of Responsibility
  - Dismissal of Formal Complaint
- [ ] Based Upon Proper Grounds
  - Procedural Irregularity that Affected Outcome
  - New Evidence that Was Not Reasonably Available at the Time of the Determination that Could Affect Outcome
  - Conflict or Bias by Title IX Coordinator, Investigator, or Decision-Maker
- [ ] Notify the Other Party in Writing
- [ ] Decision-Maker NOT Same as Prior Decision Makers, Investigators, or Title IX Coordinator
- [ ] Provide Equal Opportunity to Submit Written Statement
- [ ] Issue Written Decision and Rationale
- [ ] Provide the Written Decision Simultaneously

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See you in Lesson 5!



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Lesson 5: Wrap Up & Assessment

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Learning Objectives



- ✓ Understand the law and regulations
- ✓ Explain Title IX process and your role in it
- ✓ Recognize and Evaluate Sexual Harassment and Program or Activity
- ✓ Understand serving impartially in your role
- ✓ Understand grounds for appeal under Title IX
- ✓ Explain the role of an appellate decision maker in a Title IX grievance process

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Questions???



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

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ASSESSMENT OF KNOWLEDGE

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