

# WELCOME!

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# Civil Rights Investigator Three: Practical Skills

Training & Certification Course



Strategic Risk  
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.



# CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

# AGENDA

Days 1 & 2

## Interviewing Skills Practice

- 1 Bias & Prejudice Exercise
- 2 Logistics Review
- 3 Explaining Your Process
- 4 Interviewing the Complainant
- 5 Respondent Interview Exercise



# **Title IX Notices of Proposed rulemaking 2022 & 2023**

# TITLE IX REGULATIONS

- **1972:** Congress passed Title IX of the Education Amendments
- **1980:** the Department of Education's Office for Civil Rights (OCR) given primary responsibility for enforcing Title IX
- **November 2018:** OCR proposed the most detailed and comprehensive Title IX regulations to date, which focused on sexual harassment response
- **August 2020:** Significantly amended, due-process oriented Regulations took effect (proposed in Nov. 2018)
- **June 2022:** OCR published a Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations focused on sexual harassment response and pregnancy and related conditions

# NPRM PROCESS TIMELINE

- **July 2022:** NPRM published in the Federal Register and the 60-day public comment period began
- **September 2022:** Review and comment period ended
  - Received 240,000+ comments
- **April 2023:** OCR published a separate NPRM outlining proposed changes to the Title IX regulations focused on gender identity and athletic participation; 30-day public comment period
  - Received 150,000+ comments
- **October 2023:** Anticipated publication of both the sexual harassment and athletics Title IX Final Rules
- **OCR has not yet announced an implementation deadline or timeline for either set of new regulations.**



# PREPARING FOR IMPLEMENTATION

- Continue to fulfill obligations under the current regulations for the start of the 2023-2024 academic year.

## Steps to Take Now:

- Educate yourself on the proposed regulations
- Prepare to educate your community on the changes
- Identify stakeholders that will need to be involved in making policy decisions (e.g., whether to have hearings)
- Determine how you will manage policy changes
- Plan for the training needs for your community
- Consider state laws, court decisions, and other regulations that may affect your institutional approach

# TITLE IX

*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 IX COMMANDMENTS

## INVESTIGATION

(plus **prompt** & **fair** per VAWA Sec. 304)



**Thorough**

**Reliable**

**Impartial**

## PROCESS



**Prompt**

**Effective**

**Equitable**

## REMEDIES



Act reasonably to stop discrimination

Act reasonably to prevent recurrence

Act equitably to remedy effects

# BIAS & PREJUDICE

- Definitions
- Exercise



# “BIAS” DEFINED

- Inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (merriam-webster.com)
- “Biased” – To cause partiality or favoritism; influence, especially unfairly (dictionary.com)
- Tendency to believe that some people, ideas, etc. are better or worse than others which may result in treating some people inequitably

# “PREJUDICE” DEFINED

- Feeling of like or dislike for someone or something especially when it is not reasonable or logical  
(merriam-webster.com)
- Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com)
- An illogical feeling of like or dislike for a person or group because of some characteristic or perceived characteristic and preconceived notion(s) about that characteristic (e.g., race, gender, ethnicity, etc.)

# BIAS & PREJUDICE

- Conscious vs. Unconscious
- Positive vs. Negative
- Social & Cultural Capital
- Stereotyping
- Cultural Competence
- Multi-partiality
- Social Justice
- Victim Blaming
- Assuming/Presuming “Guilt” of Respondent
- Driven by Context: Fear of Litigation or Reputational Damage

# BIAS & PREJUDICE – TYPES OF BIAS

- Conformity Bias
- Beauty Bias
- Affinity Bias
- Halo Effect Bias
- Horns Effect Bias
- Similarity Bias
- Contrast Effect Bias
- Attribution Bias
- Confirmation Bias



# BIAS AND PREJUDICE (CONT.)

- Common hot-button areas of bias & prejudice:
  - Sexual orientation
  - Gender, gender identity, and gender expression
  - Racial and interracial
  - Ethnicity
  - Religion or religious beliefs
  - Political views
  - Athletes
  - Fraternity and sorority life
  - Alcohol or drug use
  - Sexual freedom/preferences
  - Disability
  - Appearance/education/class

# THE START OF THE MEETING



- The Environment
- The Process Explanation

# THE ENVIRONMENT

- Where will the interview take place?
  - Personal office
  - Conference room
  - Are there options?
- Videoconference, phone, and email interviews
- Important aspects:
  - Neutral environment
  - Minimize distractions
  - Sit in their chair - Literally
  - Check lobby/waiting area for distractions and hidden messages

# MANAGING EXPECTATIONS

- Sometimes, no one is happy at the end of these cases; you are helping to **manage the parties' frustration**.
- People who conduct investigations with skill rest secure in the knowledge that all involved, including witnesses, are treated objectively and fairly.
- Provide ample opportunity for interviewee – especially the Complainant and the Respondent – to ask questions.
- Be sure Complainant and Respondent understand parameters of the policy, what it does and does **not** cover, how the process may play out, and what the process **can and cannot** accomplish through outcomes.

# EXPLANATION OF ROLES

- Explanation of Investigator role in the process
  - Neutral fact-finder
- Explanation of others' roles in the process
  - Decision-makers
  - Appeal Decision-makers
  - Advisors (for all parties)
- A few comments about Advisors:
  - Who can be an Advisor?
    - Lawyers, faculty, parents, victim's advocates, coaches, friends, roommates, etc.
  - How many?

# THE PROCESS (SIMPLIFIED)



# EXPLAINING EVIDENTIARY STANDARDS

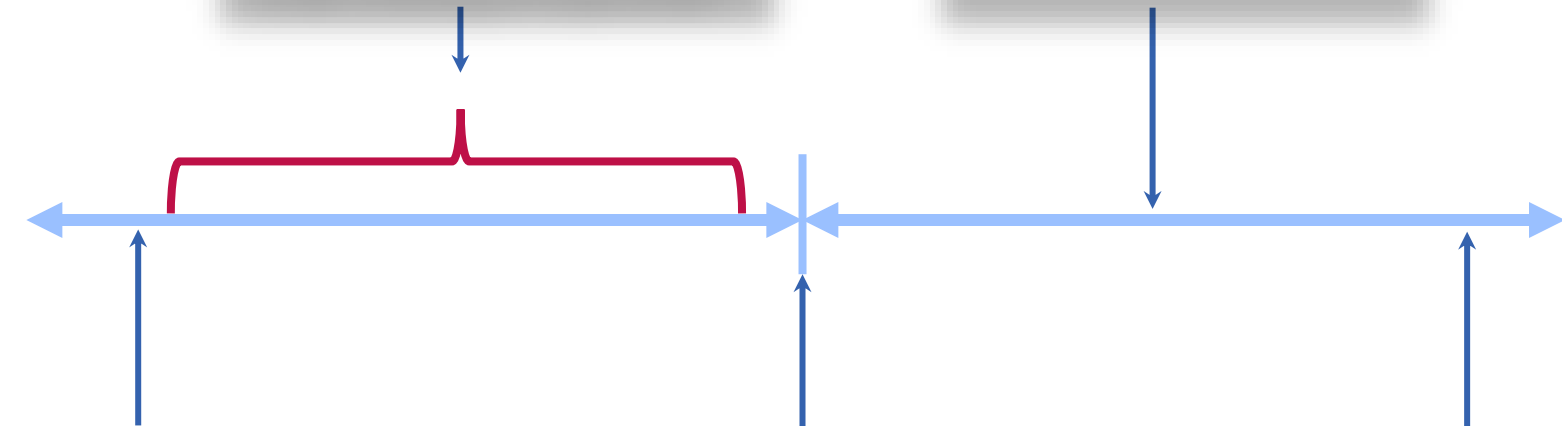
“HOW WE MAKE DECISIONS” - Use words they can understand

## Insufficient Information

- Less than this and the case does not proceed
- “No reasonable person could make a finding of responsible”

## Clear and Convincing

- Very sufficient evidence



## No Evidence

- Non-case
- False Claim

## Preponderance of the Evidence

- More likely than not
- 50% plus a feather

## Beyond a Reasonable Doubt

- Overwhelming Evidence

# PRACTICE EXERCISE

- Break into small groups of 3-4 and have 1 or 2 individuals practice your opening spiel – explain your process, what will happen, etc.





# INTERVIEWING THE COMPLAINANT

- Elements of Interview
- Questioning Guidelines
- Small Group Exercise
- Large Group Exercise



# QUESTIONING GUIDELINES

## What are the goals of questioning?

- Learn the facts
- Establish timeline(s)
- Understand each party's perception
  - Incident(s), relationships, and the process
- Gather enough information to determine facts and their relative importance and relevance
- Try to learn what is more likely than not to have happened
- Use questions to elicit details, eliminate vagueness, and fill gaps where information is missing

# QUESTIONING GUIDELINES

- **WHAT DO I WANT TO KNOW?**
- **WHY DO I WANT TO KNOW IT?**
- **WHAT IS THE BEST WAY TO ASK IT?**
- **AM I THE BEST PERSON TO ASK IT?**  
(if there is a second Investigator)

# RESTATE/REFRAME

- Restate/summarize what is said
- Launder the language (but don't change the meaning)
  - Remove negative or inflammatory language and emotions unless such words/terms advance the investigation and/or enhance authenticity
- Helps validate that you are listening
- Helps ensure you understand what is being said
- “So, it sounds like...”
- “Tell me more...”

# COMPLAINANT STATEMENT

- Respondent (Rob) met Annie at a party.
- Rob convinced Annie to come to his house after a party.
- At the house, there was consensual making out.
- Rob held Annie down and raped her. When he was done, he got up and went to the bathroom to shower.
- As she was leaving, Annie noticed a light on by Rob's webcam in his room.
- The next morning, Annie also found BDSM porn in Rob's Twitter likes, with bondage and rape fantasies.

# CHARACTERS

- **Annie (Complainant)**
  - 21 years old, Junior, Transfer to Northern State College, new to campus, met Brittany & rooming together, living in on-campus apartment
- **Rob (Respondent)**
  - 22 years old, Senior, Traditional student, athlete on the rugby team and friends with Evan

# CHARACTERS

- **Brittany (Roommate)**
  - 21 years old, Junior, Traditional student, Annie's roommate who she had met up with a few times before they moved in together, knows Evan and is the reason they get invited over for the party.
- **Evan (Party Host)**
  - 22 years old, Senior, lives at the Rugby house, friends/teammates with Rob
- **Billy (Roommate)**
  - 22 years old, Senior, Rob's roommate, on the Rugby team

# STRATEGY FOR COMPLAINANT INTERVIEW

## **In small groups, discuss the following:**

- What information do you have?
- What information do you need?
- Start to formulate questions for the Complainant, including how you might ask them



# QUESTIONING EXERCISE

Using a case study, the faculty will play the role of Complainant and allow the participants to practice their questioning techniques



# STRATEGY POST-COMPLAINANT INTERVIEW

## **In small groups, discuss the following:**

- What information do you have?
- What information do you need?
- Who do you need to speak with?
- Who do you want to speak with next?
- Start to formulate questions for the Respondent, including how you might ask them.

# QUESTIONING EXERCISE

Using a case study, the faculty will play role of Respondent and allow participants to practice their questioning techniques



# QUESTION THE RESPONDENT

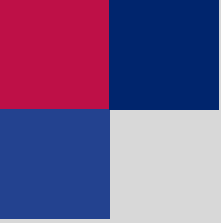
- Respondent (Rob) convinced Annie to come to his house after a party.
- At the house, there was consensual making out.
- Rob held Annie down and raped her. When he was done, he got up and went to the bathroom to shower.
- As she was leaving, Annie noticed a light on by Rob's webcam in his room.
- The next morning, Annie also found BDSM porn in Rob's Twitter likes, with bondage and rape fantasies.

**Combine with your notes from Annie's interview.**

# ADDITIONAL INTERVIEW EXERCISES

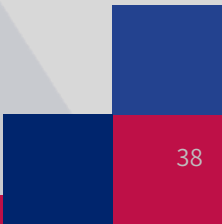
## Time Permitting

- Interview additional witnesses
  - Who?
- Re-interview Complainant
- Practice telling the Respondent and Complainant that the investigation is terminating



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# Questions?



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**Thanks for joining us today.**

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