

# Title IX Training

October 25, 2024

**Fredr kson**

The logo for Fredr kson features the name in a bold, black, sans-serif font. A red horizontal bar is positioned below the 'Fredr' portion of the name, extending from the left edge of the text.

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# Background

- Title IX of the Education Amendments Act of 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 education program or activity receiving Federal financial assistance, including admissions and employment.*

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# Background

- The U.S. Department of Education's current regulations implementing Title IX were published in the Federal Register on May 19, 2020, and became effective August 14, 2020.  
<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>
- On April 19, 2024, the DOE released the new regulations that were scheduled to become effective August 1, 2024.  
<https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>
- The DOE is currently enjoined from enforcing the 2024 regulations in the state of Iowa.

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# Features of the Currently Applicable Regulations

- Narrow definition of Sexual Harassment for Title IX to apply
- Jurisdictional Criteria for Title IX to apply
- The IHE need not investigate Title IX allegations unless a Formal Complaint is submitted
- Supportive Measures even without a Formal Complaint

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# Features of the Currently Applicable Regulations

- Grievance process requires live hearing and cross-examination
- Separation of investigator and decisionmaker roles
- Discretion regarding who is required to report
- Narrow definition of Actual Knowledge
- Availability of Informal Resolution

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# Agenda

- Requirements to Comply with Title IX Training Rules
- Terms to Know (and why they are important)
- Sexual Harassment Definition and Jurisdictional Requirements
- Reporting

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# Agenda

- Investigation
- Hearing
- Appeal
- Informal Resolution
- Serving Impartially
- Questions

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# Compliance with Title IX Training Requirements

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# Required Personnel

- Title IX Coordinator(s)
- Investigators
- Decision-Makers
- Any person who facilitates an Informal Resolution Process

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# Required Topics

- Definition of Sexual Harassment
- The scope of Educational Program or Activity
- How to conduct investigations, hearings, appeals, and informal resolution processes

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# Required Topics

- How to serve impartially including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Technology for live hearings

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# Required Topics

- Issues of Relevance:
  - Complainant's sexual predisposition and prior sexual behavior
  - Questions and evidence during hearings
  - Preparing an Investigative Report that fairly summarizes relevant evidence

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# Jurisdictional Requirements and Definitions

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# Terms to Know

- **Complaint:** There must be a Formal Complaint initiated by the Complainant or the Title IX Coordinator
- **Complainant:** Any individual who is alleged to be the victim of sexual harassment
- **Respondent:** Any individual who is reported to be the perpetrator of sexual harassment

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# Terms to Know

- **Confidential Employee:** An employee of a recipient whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.

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# Sexual Harassment Defined

Conduct based on sex that satisfies one or more of the following:

- (1) An employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct or
- (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 IHE's Education Program or Activity

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# Sexual Harassment Defined

- **Sexual Assault:** Any nonconsensual sexual act or any sexual act with a Complainant lacking capacity to consent including, without limitation:
  - Rape, sexual battery, sexual abuse, fondling, incest, statutory rape, and sexual coercion;
  - Any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force;

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# Sexual Harassment Defined

- **Sexual Assault (continued):**

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch a person or themselves with or on any of these body parts;
- Any sexual intercourse, however slight, with any object, by a person upon another person that is without consent and/or by force. Intercourse includes vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

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# Sexual Harassment Defined

- Dating Violence: Violence committed by a person—
  - Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
  - Where the existence of such a relationship shall be determined based on a 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

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# Sexual Harassment Defined

- **Domestic Violence**: 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 cohabiting with or has cohabited with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant, or by any other person against a Complainant who is protected from that person's acts under Iowa law.

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# Sexual Harassment Defined

- **Stalking**: When a person engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

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# Quick Review

- Title IX does not apply unless the conduct meets the Title IX definition for Sexual Harassment, which includes:
- Quid Pro Quo Sexual Harassment;
- Unwelcome Conduct Sexual Harassment;
- Sexual Assault;
- Dating Violence;
- Domestic Violence; and
- Stalking.

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# Retaliation is Prohibited by Title IX

- **Retaliation**: Intimidating, threatening, coercive, or discriminatory conduct directed to an individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing

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# Jurisdictional Criteria for Title IX Application

1. The conduct must have occurred against a person in the United States;
2. The conduct must have occurred within an Education Program or Activity of the IHE; and
3. The Complainant must be participating in or attempting to participate in an Education Program or Activity of the IHE at the time the complaint is submitted.

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# Reporting

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# Reporting Sexual Misconduct

- Confidential Resources cannot report to the Title IX Coordinator or anyone else
- Non-Confidential Resources are encouraged to report to the Title IX Coordinator
- Responsible Employees must report to the Title IX Coordinator

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# Responsible Employees

- IHEs are charged with Actual Knowledge of sexual misconduct if a Responsible Employee is aware of the sexual misconduct
- When the IHE has Actual Knowledge, it is required to respond in accordance with Title IX

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# Terms to Know

- **Actual Knowledge**: Notice of sexual harassment or allegations of sexual harassment to the IHE's Title IX Coordinator or to any official who has authority to institute corrective measures on behalf of the IHE ("Responsible Employee")

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# Terms to Know

- **Responsible Employee**: IHE employees who have the authority to institute corrective measures on behalf of the IHE. A Responsible Employee's knowledge of sexual harassment or allegations of sexual harassment constitutes Actual Knowledge by the IHE.

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# Pre-Investigation Activity

- Title IX Coordinator learns of alleged misconduct and meets with Complainant
- Complainant or Title IX Coordinator initiates Formal Complaint
- Title IX Coordinator sends parties notice of the allegations and appoints investigator(s) free of conflict or bias

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# Terms to Know

- **Advisor**: A person selected to provide advice to a party for all, or a portion, of the grievance process. Complainants or Respondents may be accompanied by one Advisor, who is not a witness, to any Title IX related proceeding. Advisors are not mandatory, except that only an Advisor may cross-examine other parties and witnesses during a live hearing. If a party does not have an Advisor for cross-examination, the IHE will provide one for the purpose of conducting cross-examination during a live hearing. Cross-examination is the only time an Advisor may speak for a party or directly address another party.

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# Terms to Know

- **Supportive Measures**: Services offered to a Complainant or Respondent to restore or preserve equal access to the IHE's Education Programs and Activities, protect the safety of any party or the IHE community, or deter sexual harassment. Supportive Measures are non-disciplinary, non-punitive, and confidential to the extent possible. Supportive Measures may be offered even if a Complainant does not submit a Formal Complaint.

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# The Informal Resolution Process

- Alternative path to resolution in some situations
- Initiated any time after a Formal Complaint is filed
- No investigation, hearing, determination of responsibility or appeal
- Both parties must agree in writing
- Facilitated by an individual trained in mediation or other comparable training
- Any party or the IHE may choose to resume the formal process at any time before agreement

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# Investigation

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# Starting Your Investigation

- Review the Formal Complaint, §106.45(b)(5) of the regulations, and the Investigation Process section of your Title IX Policy
- Discretion to investigate allegations with consideration of unique circumstances
- Develop an investigation plan for witness interviews and collecting/reviewing documents and other evidence

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# Keys to Your Investigation Process

- A college's grievance procedures must provide for
  - The “***prompt and equitable resolution*** of student and employee complaints alleging any action” prohibited by Title IX
  - “Any provisions, rules, or practices other than those required by” §106.45 that a college “adopts as part of its grievance process ***must apply equally to both parties.***”
  - ***Objective evaluation*** of all ***relevant evidence***
  - Presumption that a respondent is not responsible for alleged conduct until a determination regarding responsibility is made after the grievance process
  - Provide that ***credibility determinations*** may not be based on a person's status as a complainant, respondent, or witness

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# When Investigating a Formal Complaint You Must...

- Ensure the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties
- Not rely on documents or information that are privileged or confidential under law (lawyer, psychiatrist, psychologist, physician, or other recognized professional or para-professional in connection with treatment) without written consent
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

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# When Investigating a Formal Complaint You Must...

- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney,
- Not limit the choice or presence of advisor for either party in any meeting or grievance proceeding, however the college may establish restrictions regarding the extent to which the advisor may participate, as long as applied equally.
- Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meeting with sufficient time for the party to prepare to participate.

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# When Investigating a Formal Complaint You Must...

- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the college does not intend to rely in reaching a determination and inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation
- Prior to completion of the investigative report, the college must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to the completion of the investigative report
- Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination of responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy for their review and written response

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# Goals For An Investigation

- Get the Facts
  - Timeline
  - Relevant information
- Context
  - Fill in gaps
  - Corroboration
- Parties
  - Points of view, credibility
  - Needs and wants

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# What Does An Investigation Look Like?

- Interviews
  - Where to hold interviews?
  - Who? What order?
  - To record or not to record?
  - Any timeline concerns?
- Documents
  - Policies; emails; screenshots; social media, etc.
- What other information might be out there?
  - Physical evidence; video; key cards

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# Interviews

- Try to build rapport with parties and witnesses
- Be prepared for questions about the process
- Discuss concerns, protections over retaliation
- Acknowledge sensitive topics, explain need to ask
- Acknowledge the process can be difficult for all parties
- Listen vs. Interview vs. Interrogate
- Use the funnel technique
- Always ask for any witnesses, documents they think should be included
- Always ask if there is anything else they would like to tell you, things that you should know
- They should feel free to ask questions and take breaks

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# Let's Practice!

- Turn to someone at your table and role-play that you are the investigator – how do you get started with the complainant alleging sexual misconduct from a student at a formal dance last semester?
- Turn to someone at your table and role-play that you are the investigator – how do you ask the respondent about alleged harassing behavior during the formal, how do you get started?

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# Instead of “Did You Harass Sam?”

- Can you tell me about the formal you attended with complainant last fall?
- Who, what, where, how.....
- You mentioned....can you tell me more about that?
- What did you mean by.....
- What else happened?
- Did anything happen after dinner? (as opposed to “what happened next?”)
- What do you mean when you use the phrase...
- Is there anyone else who might know more about this?
- Anything else?



Don't Be Afraid of Silence

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# Emotional Intelligence in Interviews

- Creating an effective interview environment to get more information and encourage participation
- How does emotional intelligence impact interviews?

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# When Can You Tie A Bow On The Investigation?

- Do you feel you have each party's version of events? Any loose ends or nagging questions?
- Credibility will come into play – do you have enough information one way or the other
- Better to be thorough than to rush through it but leave open issues. The parties should feel their story was heard and considered
- Show your work

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# Prior to Completing Investigative Report

- Must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy
- Parties must have at least 10 days to submit a written response, which must be considered prior to completion of the investigative report
- If written responses are received, the Investigator(s) must carefully consider the responses and follow up with additional interviews and evidence-gathering if necessary before preparing the final report

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# What Are Common Mistakes or Concerns?

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# Reports

- The report must fairly summarize all relevant evidence
- This includes both inculpatory and exculpatory
  - No discretion to include only evidence that indicates the Respondent is responsible for the conduct, nor does the investigator have discretion to include only evidence that tends to show the Respondent is not responsible for the conduct
- The report should describe all procedural steps, including delays, taken in the investigation
- The report should include all witness, documents, standard of proof used in the investigation
- Must be impartial and unbiased
- Send to each party and their advisors at least 10 days prior to a hearing or determination on responsibility for their review and written response—electronic format or hard copy

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# More Tips on Reports

- “Show Your Work”
- Be clear and specific
- Reader needs to be able to fully understand the facts identified during the process
- This is especially true when making any type of credibility determination or when documenting evidence excluded as irrelevant

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# What is Credibility?

- Not defined by regulations
- Black's Law Dictionary: Credibility is the quality that makes someone or something (a witness or some evidence) worthy of belief
- Credibility is determined by logic and comparisons to evidence in the Record, not based on a hunch or a feeling
- Credibility cannot be based on a person's status as a complainant, respondent, or witness, nor should it be based on stereotypes

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# Credibility Determinations

- In making weight and credibility determinations, factors the decision-maker might consider include whether:
  - The evidence is corroborated,
  - There is a reason that the source of the evidence may or may not be reliable, and/or
  - The evidence is logical given the other established facts
- Corroborating evidence is the strongest indicator of credibility

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# Credibility Determinations

- Credibility issues should be assessed when:
  - The parties disagree on the materially relevant facts of the case and there is no external evidence that supports one of the parties' version of events over the others;
  - A person makes statements that are self-inconsistent;
  - A person makes statements that are inconsistent with the Record;
  - A person makes statements that are implausible or incoherent in light of the Record;
  - There is existence of evidence of a motive by a person to lie; and/or
  - A person engages in personal attacks or other “defenses” that are not supported by the record.

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# Hearsay

- Hearsay is a legal term, meaning a statement provided by someone who does not testify in the hearing
- Hearsay is not excluded solely because it is hearsay but the decision-maker should assess it for credibility and weight

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# Final Tips

- Keep parties informed
- Listen to everyone and everything—don't pre-judge
- Stay objective—facts only, not assumptions or inferences
- Document both your questions and their responses (and vice versa)
- Document all steps, including delays, barriers, deviations, witnesses or documents not used
- Act promptly, careful of delays
- Set aside more time than you think
- Stick with your policy
- Accommodations in the interview process
- Keep separate file including policy at the time



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# What Are the Key Takeaways?

- Neutrality and Impartiality
- The IHE bears the burden of gathering evidence (documents, witness statements)
- Timelines
- Transparency in procedures and updates to parties involved
- Are Supportive Measures needed for either or both parties?

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# Hearing

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# Pre-Hearing Activity

- The final investigative report and all evidence is provided to the Title IX Coordinator, the parties, and the parties' advisors
- The Title IX Coordinator designates one or more individuals free of conflicts of interest and bias to serve as decisionmakers
- The Title IX Coordinator consults with the parties, advisors, and decisionmakers and determines the hearing date
- The Title IX Coordinator provides written notice of the hearing date no less than 10 days prior to the hearing

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# Technology for Live Hearings

- Title IX hearings must be live, recorded, and may be held in-person or remotely using videoconferencing that allows the parties to simultaneously see and hear the party or the witness answering questions
- The decisionmaker(s) must promptly consult with the Title IX Coordinator and the IHE's technology personnel to determine the appropriate and available videoconferencing technology
- Decisionmaker(s) are responsible for learning or arranging training to enable recording and operation of the videoconferencing platform

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# Relevance, Impartiality, and Bias in the Process

- Title IX Coordinators, Investigators, Decision Makers, Appeal Officers, and individuals responsible for handling the informal complaint resolution process must understand all of these concepts throughout the process

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# Relevance

- Both investigators and decision-makers need to understand the concept of relevance
  
- What does it mean to you?

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# Why Do We Worry About Relevance

- What happens if we include information that is not relevant?
  - What happens if we exclude information that is (or may be) relevant?
  - What if the information is ambiguous?
  - What if the information is “prejudicial”?
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- Always ask if it will help prove or disprove a fact in issue in your complaint!

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# Relevance

- **Legal Standard:** Information is considered relevant if it relates directly to the allegations involved in the complaint
- **Scope of Relevance:** Includes evidence that helps establish facts in dispute, corroborates (or not) testimony, or adds context to the alleged behaviors
- **Standard of Proof:** Differentiating between “preponderance of evidence” and “clear and convincing evidence,” does it impact the relevance standard?

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# What Does Title IX Say About Relevance?

- “These final regulations require a recipient to investigate and adjudicate a complaint in a way that gives both parties a meaningful opportunity to participate, including by requiring the recipient to **objectively evaluate relevant evidence**, permitting parties to inspect and review evidence, and providing the parties a copy of an investigative report prior to any hearing or other determination regarding responsibility.”
  
- There is no definition

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# Other Definitions of Relevance

- **Black's Law Dictionary:** applying to the matter in question; affording something to the purpose
- **Webster's Dictionary:** having significant and demonstrable bearing on the matter at hand; evidence tending to prove or disprove the matter at issue or under discussion.
- **Cambridge Dictionary:** connected with what is happening or being discussed.

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# From the Title IX Comments and Discussion

- Relevance includes both inculpatory and exculpatory evidence
- What evidence schools cannot consider:
  - Can't inquire about complainant's past sexual history (with exceptions)
  - Can't inquire into privileged information
- Schools can't adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence
- A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant

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# Types of Evidence

- **Direct Evidence:** Testimonies, documents, and physical evidence directly related to the complaint
- **Circumstantial Evidence:** Information that, while not directly proving the case, provides insight into the context
- Does the type of evidence affect relevance?

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# Who Needs to Worry About a Conflict of Interest?

- Title IX Coordinators, Investigators, Decision Makers as well as individuals who facilitate the Informal Resolution Process
- Why?
- Requirement to have a fair and impartial process
- Conflict of Interest can be grounds for an appeal if it affected the outcome

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# What Is a Conflict of Interest

- No definition in the Title IX regulations
- School has discretion to decide

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# Definitions

- **Black's Law Dictionary:** a situation that can undermine a person due to self-interest and public interest. 2. a situation when parties discharge responsibility to a third party.
- **Webster's Dictionary:** a conflict between the private interests and the official or professional responsibilities of a person in a position of trust; : a conflict between competing duties (as in an attorney's representation of clients with adverse interests)
- **Cambridge Dictionary:** a situation in which someone's private interests are opposed to that person's responsibilities to other people

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# Types of Conflicts

- A conflict may be:
  - Actual: a direct conflict exists between professional responsibilities and a personal interest
  - Perceived: no actual conflict exists, but one could reasonably perceive that one does
  - Potential: no actual conflicts, but one could develop in the future

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# How To Evaluate Potential Conflicts

- The Department of Education “encourages” the adoption of objective standards for determining potential biases and/or conflicts of interest. An “objective” standard, according to the Department, “is whether a reasonable person would believe bias exists.”

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# Impact of Conflicts; Managing Conflicts

- **Impact on Fairness:** How conflicts can lead to biased investigations
- **Legal Consequences:** Potential violations of due process and Title IX regulations
- **Reputation Risks:** Damage to the institution's credibility and trust
- **Recusal:** When to step back from a case
- **Independent Review:** Engaging third-party investigators
- **Policy Development:** Creating comprehensive conflict of interest policies
- Disclosure and opportunity to raise conflicts are key!

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# What is Bias?

- No definition in Title IX
- Black's Law Dictionary: a particular influential power, which sways the judgment; the inclination of the mind towards a particular object
- Webster's Dictionary: an inclination of temperament or outlook. Especially : a personal and sometimes unreasoned judgment : prejudice
- Cambridge Dictionary: an inclination of temperament or outlook. Especially : a personal and sometimes unreasoned judgment : prejudice

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# Where Do Biases Come From?

- Biases are often based on stereotypes, rather than actual knowledge of an individual or circumstance
- Biases are cognitive shortcuts that can result in prejudgments that lead to rash decisions or discriminatory practices

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# What Does Title IX Say About Bias?

- Cannot have “bias for or against complainants or respondents generally or an individual complainant or respondent.”
- What does this look like?
- What types of bias allegations might be raised?

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# What About Other Types of Bias?

- Title IX is “grounded in principles of due process to promote equitable treatment of complainants and respondents and protect each individual involved in a grievance process without bias against an individual’s sex, race, ethnicity, socioeconomic status, or other characteristics, by focusing the proceeding on unbiased, impartial determinations of fact based on relevant evidence.”
- Title IX also requires that individuals and school “avoid injection of sex-based biases and stereotypes into Title IX proceedings.”

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# What About Training?

- Training materials, both internal and external, must not be biased for or against complainants or respondents
- What might that look like?
- What types of bias allegations might be raised in training?

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# Avoiding/Managing Bias

- Recognize that we all have them
- Treat people as individuals and not members of a class
- Do not make assumptions based on the race, national origin, religion, sex, age, or disability status of an individual
- Think about your own biases and leave them out of your thought process. Dig down into your conclusions or reactions when not based on facts presented

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# Final Thoughts on Bias from the Comments

- “In the words of the Honorable Ruth Bader Ginsburg, Associate Justice, discussing the #MeToo movement and the search for balance between sex equality and due process, **“It’s not one or the other. It’s both.”**
- The Department wishes to emphasize that **treating all parties with dignity, respect, and sensitivity without bias, prejudice, or stereotypes** infecting interactions with parties fosters impartiality and truth-seeking.”

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# What is Impartiality?

- No definition in Title IX
- Blacks' Law Dictionary: the term used for something unbiased, fair and unprejudiced
- Webster's Dictionary: not partial or biased : treating or affecting all equally
- Cambridge Dictionary: the fact of not supporting any of the sides involved in an argument (or, "Impartial," able to judge or consider something fairly without allowing your own interest to influence you)

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# What About “Partial”?

- Black’s Law Dictionary: this term applies to a jury that hears a case with no prejudice and will give a fair verdict
- Webster’s Dictionary: inclined to favor one party more than the other: biased
- Cambridge Dictionary: influenced by the fact that you personally prefer or approve of something, so that you do not judge fairly

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# Title IX Requirements

- Individuals must “serve impartially and avoid prejudgment of the facts at issue.”
- The regulations and commentary to the regulations indicate that Title IX considers “impartiality” to be the avoidance of:
  - Prejudgment of the facts at issue
  - Conflicts of interest
  - Bias

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# Prejudgment

- To judge beforehand without possessing adequate evidence; to pass judgment on prematurely or without sufficient reflection or investigation)
- Prejudgment can occur when investigators and decision-makers adhere to sex-based stereotypes about males and females
- Decisions should be made based on individual facts, not stereotypical notions of what males and females do or do not do
- How might this arise?

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# Can Title IX Coordinators be Impartial?

- Yes
- Training
- Comments: “deciding that allegations warrant an investigation does not necessarily show bias or prejudgment of the facts for or against the complainant or respondent.”
- Similarly, “Title IX Coordinator does not lose impartiality solely due to signing a formal complaint on the recipient’s [school]’ behalf.”

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# Serving Impartially

- Avoid prejudgment based on past conduct, appearance, academic or job performance
- Be aware of factors that create an appearance of bias or conflict of interest
- Take seriously the admonishments to treat all parties equitably and consider the timing, setting, and tone of all meetings, interviews, and pre-hearing activities
- Treat Advisors of Complainants and Respondents equally

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# Pre-Hearing Meeting

- Decisionmakers have discretion to require a pre-hearing meeting with the parties and their advisors to cover:
  - Role of Advisors
  - Order of Hearing
  - Hearing Rules
  - Standards for relevancy and admissibility
  - Other matters of concern

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# The Hearing Process

- Decisionmakers have discretion to determine the order of the hearing provided the parties are treated equally
- Considerations include:
  - Availability of witnesses
  - Type of evidence to be presented
  - Needs of the parties

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# The Hearing Process

- Suggested Hearing Order:
  1. Introductions and Order of Hearing
  2. Investigator presents the final investigative report and answers questions posed by the Decisionmaker(s) and Advisors
  3. Individuals present statements and answer questions posed by Decisionmaker(s) and Advisors in this order: Complainant, Complainant's witnesses, Respondent, Respondent's witnesses

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# Terms to Know

- **Preponderance of the Evidence**: The standard used by most IHEs to determine if a policy violation occurred. Preponderance of the evidence means that the information/evidence demonstrates that it is more likely than not that the alleged conduct or policy violation has occurred.

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# The Hearing Process

- Following presentations and questioning, the Decisionmaker(s) will dismiss the parties and deliberate
- The Decisionmaker(s) are to use Preponderance of the Evidence (at most IHEs) as the standard of proof to determine responsibility
- The Decisionmaker must provide the Title IX Coordinator a written decision and recommended Sanctions and Remedies, if any

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# Terms to Know

- **Sanctions**: Disciplinary action imposed upon a Respondent after a determination of responsibility following a grievance process that complies with this policy and Title IX
- **Remedies**: Measures to restore or preserve the Complainant's equal access to IHE's Education Programs and Activities

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# The Appeal Process

- Any party may appeal a finding regarding responsibility or a decision to dismiss allegations from the Title IX process
- Permissible bases for appeal:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available that could affect the outcome of the matter; and
  - Evidence of conflict of interest or bias that affected the outcome of the matter.

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# Dismissal of Formal Complaints

- At Complainant's Request
- If Respondent is no longer a student or employee
- If circumstances prevent IHE from gathering sufficient evidence
- Dismissal is appealable

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# False Statements

- False statements by participants may lead to discipline under the Code of Student Conduct or discipline of employees
- A determination regarding responsibility, alone, is not evidence of a false statement

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# Recordkeeping

- Records related to Title IX proceedings must be retained for 7 years
- Live hearings must be recorded or transcribed
- Training materials must be posted on IHE's website

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# Law Enforcement

- Differing standards for responsibility, prosecution, and conviction
- Processes may run concurrently and have different results
- Cooperation with law enforcement investigations
- Assistance for Complainants who wish to report to law enforcement

# Fredrikson



*Where Law and Business Meet*<sup>®</sup>