Title IX
Hearing Officer Training
Online
INSTRUCTOR: JACKIE SANDMEYER

Jackie Sandmeyer is the Founder and Principal of TIX Education Specialists. They received their Bachelor of Science from University of Idaho and Juris Doctor at Willamette University of Law. After creating the country's first statewide Title IX training and technical assistance program for colleges and universities, Jackie sought to fill the need for further capacity in training and consultation related to sexual harassment and interpersonal violence nationally. They have worked with colleges and universities, law enforcement, prosecutors, and community-based service providers to identify and create some of the nation's leading models in Title IX and student victim services. From pioneering education-based legislation that spread to other states to developing new and emerging campus-based investigation techniques, Jackie and their team bring this experience and more to TIX and its clients.

Jackie Sandmeyer, JD
founder | principal

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Phone: 503-709-8848
MOVING BEYOND COMPLIANCE.
EMERGING BEST PRACTICES.

TRAINING
Cutting edge training integrating up to date mandates as well as emerging best practices. Each curriculum tailored to meet your needs.

CONSULTATION
Customized consultation in all forms including policy audits and review, case consultation, program review, climate surveys and more.

INVESTIGATION
Let our team of highly trained and experienced investigators help you stay on top of challenging cases and expanding case loads.
ABOUT: TIX EDUCATION SPECIALISTS

About TIX Education Specialists

TIX Education Specialists sets itself apart from other training and consultation bodies in that it offers guidance and training on not only what is compliant, but what is known to be best practice and trauma-informed. We don't believe that one model fits all. Instead, TIX brings years of expert experience to identify solutions that serve you and your community best.

Our Mission - Bridging Compliance & Best Practice

Successful responses by schools take not only compliant policies and strategies, but must also include techniques rooted in emerging best practice. While many firms solely provide schools with what the law requires, TIX Edu goes a step further by ensuring that schools understand what implementation looks like, and how mandates integrate with institutional missions. Schools are tasked with the safety of students as well as creating and fostering an environment for students to reach their fullest potential. Let TIX Edu assist with the hard work of identifying the path to get there.

Email: admin@tixedu.com
Phone: 503-960-8261
Web: tixedu.com
NEED ADDITIONAL HELP?

WEBINARS
Keep up to date through short training episodes covering emerging topics with live and recorded webinars. Don't be left behind.

RESOURCES & TOOLKITS
Stop recreating the wheel and take advantage of our templates, one-pagers, toolkits and other resources covering all areas.

TRAININGS & COURSES
From topic specific certification to courses on larger Title IX and related fields we have curriculum offered both in person and online.

MEMBERSHIP
Become a member of TIX Edu's network and receive email alerts, resources, networking opportunities, technical assistance and more.
STATUTORY REQUIREMENTS

A review of basic federal requirements including notice of non-discrimination, grievance procedure and scope of Title IX Coordinator's role. Integration of relevant state law.

Learning Objectives:
- clear understanding of requirements of Title IX
- identifying roles of Title IX coordinator in relation to written procedure
INTRO TO TITLE IX

WHAT COMES TO MIND WHEN PEOPLE HEAR "TITLE IX"?

MAIN AREAS OF TITLE IX:
1.
2.
3.
4.
5.
6.

GUIDANCE THAT GOVERN RESPONSE PROCESSES:

State Law

Title IX, VAWA
Dear Colleague Letter
OCR Resolutions
LANGUAGE OF TITLE IX:

reporting party/complainant
adjudicatory process
investigation
finding

victim
investigation

COMPLAINANT:

"[I]ndividual who is alleged to be the victim of conduct that could constitute sexual harassment."

Title IX:

“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States to respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances."

Students/staff have a right to:
TITLE IX IN THE COURTS:

MAIN RESPONSIBILITIES UNDER TITLE IX:

EXEMPTIONS TO TITLE IX:

ENFORCEMENT OF TITLE IX:

OCR COMPLAINTS:
New Regs:

- p. 1-104 – The Department’s interpretation of Due Process, institutional liability and defining sexual harassment.
- p. 96-99 – Institutional response
- 2008-2033 – Regulatory language
SEXUAL HARASSMENT:
"Unwelcome conduct that a reasonable person would
determine is so severe, pervasive and objectively offensive that
if effectively denies person's equal access to education.

QUESTION 1:
Does your institution want to create a policy to respond to the
"other" types of sexual harassment and sex discrimination?

QUESTION 2:
If you capture "other" types of conduct, do you use one process
provided by the federal regulations or do you use two?
SCOTUS FRAMEWORK:
1. actionable definition of sexual harassment
2. actual knowledge
3. deliberate indifference -

DELIBERATE INDIFFERENCE + RESPONSE:
- support measures offered
- contact complainant and process counsel
- follow grievance procedures
- investigate formal complaints
- respect complainant wishes (with exception)
- dismiss complaints that don't fall under Title IX
TITLE IX COORDINATOR:

TRAINING:

NOTICE OF NON-DISCRIMINATION:
“[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment. Inquiries about the application of title IX and this part to such recipient may be referred to the recipient’s Title IX Coordinator, to the Assistant Secretary, or both.”

DISSEMINATION:
GRIEVANCE PROCEDURE:

Title IX Coordinator

Non-Discrimination Policy

Grievance Procedure

Is it a Title IX issue?
Look at response starting with notice to finding, what is required in a Title IX investigation and what are the different models and practices for accomplishing them.

**Learning Objectives:**
- understand what stages of Title IX investigation and adjudication are from disclosure to finding and sanctions
- identify rights of parties and requirements under Title IX
- look at role of investigator, Title IX Coordinator and other actors within an investigation and adjudication
STAGES OF AN INVESTIGATION:

1. Notice
2. Formal Complaint
3. Jurisdiction
4. Investigation
5. Formal v. Informal
6. Post Investigation

DECISION MAKER:

- Title IX Coordinator: Receive Complaints, Triage Complaints
- Investigator: Interviews, Report
- Decision Maker: Review Report, Finding

NOTES:
“[A]ctual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient”
PROCESS COUNSELING:

SUPPORT MEASURES:
“individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”

SUPPORT MEASURES:

Title IX Co. “official with authority”  →  Process Counsel Complainant  →  Report Made
FORMAL COMPLAINT REQUIREMENTS:

- 
- 
- 
- 
- 
- 

“[D]ocument filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.”

FORMAL COMPLAINT:

- INCIDENT
- JURISDICTION
- ACTUAL KNOWLEDGE
- CONDUCT
JURISDICTION:
- type of conduct
- educational program or activity
- person in the United States

“Clery Act/VAWA offenses are NOT evaluated for severity, pervasiveness, offensiveness or denial of equal educational access ... because such conduct is sufficiently severe...”

SEXUAL HARASSMENT:
“Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person’s equal access to education.”

EDUCATION PROGRAM OR ACTIVITY:
PERSON IN THE UNITED STATES:

INCIDENT

JURISDICTION

- Person in U.S.
- Education program or activity

ACTUAL KNOWLEDGE

- Title IX Coordinator (or)
- Official with authority
- Formal complaint

CONDUCT

- Sexual harassment
- Sexual assault, dating violence, domestic violence, stalking

INFORMAL V FORMAL COMPLAINT:
INFORMAL PROCESS:

INVESTIGATION:

DISMISSAL OF COMPLAINT:
- If conduct definition or jurisdiction not met
- If complainant no longer accessing educational program or activity

MAY DISMISS WHEN:
- If complainant desires to withdraw complaint
- If respondent no longer enrolled or employed
- If school can't gather sufficient evidence to reach determination

CONSOLIDATE COMPLAINTS:
APPEALS:

- procedural irregularity
- newly discovered evidence
- conflict of interest or bias
- other*

INTERIM MEASURES:


WRITTEN NOTICE:

ongoing notice requirement - additional allegations

ADVISOR OF CHOICE:

OPT-OUT APPROACH:
INTERVIEWS:

EVIDENCE:

Preponderance of evidence
Clear and convincing

REPORT:
“[Title IX] evaluates a school’s selection of supportive measures and remedies based on what is not clearly unreasonable.... And does NOT second guess a school’s disciplinary decisions...”
DYNAMICS OF INTERPERSONAL VIOLENCE ON CAMPUSES

A look at sexual harassment, sexual assault, stalking and dating and domestic violence as it affects students on campus.

Learning Objectives:
- prevalence rates on campuses and nationally
- types of interpersonal violence included in Title IX, VAWA and Clery
- dynamics of stalking on campus
- identifying and eliminating barriers to reporting within the Title IX process
DYNAMICS OF VIOLENCE

"INTERPERSONAL VIOLENCE" AND OTHER TERMS:

TYPES OF IPV UNDER TITLE IX:

PREVALENCE RATES IN SCHOOLS:

Nationally:
_____ in _____ women will be sexually assaulted in their lifetime.

Nationally on Campuses:
_____ in _____ women will be sexually assaulted by time they finish college.
### VULNERABLE POPULATIONS ON CAMPUSES:

<table>
<thead>
<tr>
<th>LGBTQ students</th>
<th>students of color</th>
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<tr>
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<td></td>
<td></td>
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<tr>
<td>deaf and hard of hearing</td>
<td>housing instability</td>
</tr>
<tr>
<td></td>
<td>immigrant and refugee</td>
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</tbody>
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### INTERSECTIONS OF VIOLENCE:
INTERSECTIONS OF VIOLENCE:

The Power and Control Wheel

Adapted from the Domestic Abuse Intervention Project, Duluth, MN

Physical Abuse
- making threats to harm you or your family
- threatening or abusing pets
- displaying weapons
- unwanted tickling or rough wrestling
- driving dangerously with you in the car
- punching, strangling, slapping, pushing, or pinching you
- cornering you or blocking your way
- getting in your face

Economic Abuse
- preventing you from getting or keeping a job
- trying to control your money
- making you pay for everything
- making you late for work
- showing up unexpectedly at your job

Emotional/Psychological
- putting you down
- making you feel bad about yourself
- calling you names
- making you think you’re crazy
- playing mind games
- humiliating you in private or public
- intimidating you
- making you feel guilty
- making threats to hurt or kill yourselves

Sexual Assault/ Coercion
- manipulating, pressuring, guilting
- or forcing you to engage in sexual activities/have sex
- raping you
- trying to get you drunk or drugged
- to have sex
- cheating on you, and then blaming you
- refusing to have sex

Using Technology
- breaking into online accounts
- expecting you to give them your passwords
- pressuring you to send photos of yourself
- getting angry when you don’t answer texts or calls
- texting excessively
- posting/sending private pics of you
- always checking up on you through social networking sites

Minimize/ Deny/ Blame
- making light of the abuse
- not taking your concerns seriously
- blaming you
- saying the abuse never happened
- always having an excuse for their behavior
- giving gifts to make up for the abuse
- trying to convince you and others that it’s all your fault

Isolation & Permission Giving
- using jealousy as an excuse for abuse
- telling you what to wear or not to wear
- trying to limit who your friends are
- getting angry when you talk to an ex
- saying they do it because they love you so much

Using Jealousy
- controlling what you do, who you talk to
- what you watch, where you go
- getting annoyed/angry when you spend time with friends/family
- making you check in with them all the time
- thinking they have the right to make decisions about your life
WHY DON'T WE SEE MORE STUDENTS COMING FORWARD?

MESSAGING ABOUT VIOLENCE:

MESSAGING ABOUT CONSENT:

MESSAGING ABOUT VICTIMIZATION:

MESSAGING ABOUT THE CRIMINAL JUSTICE SYSTEM:

MESSAGING ABOUT CAMPUS RESPONSE SYSTEMS:
INSTITUTIONAL BARRIERS TO REPORTING:

- Amnesty clauses
- Two click rule
- Lack of transparency around the process
- Student conduct policy language
- Limited reporting options

ELIMINATING BARRIERS TO REPORTING:
BIAS, EQUITY & RESPONDENTS

Identifying personal bias as an investigator, equity as defined by Title IX in both investigations and policies as well as best practices in serving respondents.

Learning Objectives:

- develop clear understanding of different types of bias that may affect an investigation.
- respondent rights within an equity lens
- definition of equity within Title IX
- best practices in striving for equity within Title IX
BIAS, EQUITY & RESPONDENTS

RECENT GUIDANCE:

2011 DCL  2014 Q&A  '01 SH Guidance  2006 DCL  Title IX

2017 DCL CALL TO ACTION:

"[Procedures] lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused..."

WHAT IS EQUITY?

EQUITY NOT EQUALITY:

1. individualized
2. appropriate
EQUITY VERSUS EQUALITY:

QUESTIONS TO ASK:
1. access to the process
2. long-term support and "success"

OTHER VARIABLES:
Race and ethnicity, institutional knowledge, generational knowledge, resources, familial support, peer group support.

REPORTING PARTY RIGHTS:

RESPONDING PARTY RIGHTS:
EQUITY IS FACIAL AND ABSTRACTLY INDIVIDUALIZED:

1. policies and protocols

2. support services

FRAMEWORKS TO UTILIZE:

○ student-centered
○ trauma-informed
○ critical race theory
○ restorative justice

WHAT IS BIAS?

TYPES OF BIAS:

FACIAL EQUITY FOR RESPONDENTS:

○ interim measures
○ appeals
○ advisors
○ opportunity to provide evidence and witnesses
○ written notice
OUTSIDE ADVISORS:

SUPPORT SERVICES:
THE NEUROBIOLOGY OF TRAUMA

How trauma affects the brain including acute trauma, memory recall, long term effects of trauma, reporting and process of information.

Learning Objectives:
- Identify types of trauma and their effects on students
- Understand how trauma affects memory and impacts physiological changes
- Adopt trauma-informed skills to mitigate impacts of trauma on students within the Title IX process
NEUROBIOLOGY OF TRAUMA

WHY LEARN ABOUT TRAUMA?

"A BRAIN IN TRAUMA IS NOT A LEARNING BRAIN."

EVIDENCE-BASED INVESTIGATIONS:

TRAUMA-INFORMED INVESTIGATIONS:

Evidence-based
- Objective
- Fact finding
- Neutral

Trauma-informed
- Services
- Interviews
- Processes & policies

TiX Edu | neuropsychology of trauma | Online Hearing
WHY UTILIZE TRAUMA-INFORMED PRACTICES?

"A BRAIN IN TRAUMA IS NOT A LEARNING BRAIN."

WHAT IS TRAUMA?
A more extreme version of stress, perceived as life threatening and evoking fear, helplessness and even horror.

COMMON TYPES OF TRAUMA

1. Secondary Trauma:
2. Vicarious Trauma:
3. Historical Trauma:
4. Institutional Trauma:

MAIN TAKEAWAYS:
ADVERSE CHILDHOOD EXPERIENCES

The prevalence of adverse childhood experiences, nationally, by state and by race or ethnicity, by Vanessa Sacks and David Murphey, Feb 12, 2018. Study based on the 2016 National Survey of Children's Health (NSCH).

ADVERSE CHILDHOOD EXPERIENCE: Potentially traumatic experiences and events, ranging from abuse and neglect to living with an adult with a mental illness.

NATIONALLY:

○ 1 in 10 U.S. children have experienced at least one traumatic experience.

○ 1 in 4 U.S. children live in families that find it hard to pay for necessities like food or housing very or somewhat often.

Identity and ACE's:

<table>
<thead>
<tr>
<th>Pacific Region (including Oregon)</th>
<th>63%</th>
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<tbody>
<tr>
<td>White NH</td>
<td>63%</td>
</tr>
<tr>
<td>Black NH</td>
<td>51%</td>
</tr>
<tr>
<td>Asian NH</td>
<td>75%</td>
</tr>
<tr>
<td>Other NH</td>
<td>59%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>53%</td>
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HOW ACE's AFFECT OUR STUDENTS:
6 PRIMARY CAUSES OF TRAUMA:

1. 
2. 
3. 
4. 
5. 
6. 

WHAT HAPPENS IN THE BODY?

○ physiological changes
○ complex thought and decision making
○ memory affected
○ fight or flight

TRAUMA RESPONSE:

<table>
<thead>
<tr>
<th>Hormone Flood</th>
<th>Hormone</th>
<th>Hormone Function (+)</th>
<th>Hormone Function (-)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catecholamine (adrenaline)</td>
<td></td>
<td>Too much causes hyperventilation, high blood pressure, impaired rational</td>
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<tr>
<td>Cortisol (hydrocortisone)</td>
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<tr>
<td>Opioids</td>
<td>Prevents anticipated pain; natural morphine</td>
<td>Numbs the body to pain, cause flat affect, slows memory. Too much will conflict with catecholamines and cortisol. Could cause frozen fright.</td>
<td></td>
</tr>
<tr>
<td>Oxytocin</td>
<td>Promotes good feelings/manage emotions</td>
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TRAUMA AND THE BRAIN

Prefrontal cortex
P.F.C.
"THE WISE LEADER"

Prefrontal cortex

Amygdala

Hippocampus
TRAUMA AND MEMORY:

- Increased stress hormones released in body
- Impaired functioning of hippocampus
- Fragmented memories
- Memory recall slow and difficult but still accurate

PUTTING TOGETHER A PUZZLE:

PUTTING TOGETHER A PUZZLE:
Trauma and the Brain

Why learn about trauma and the brain?
Integrating trauma-informed practices into our policies and everyday practices is critical to creating a process that not only responds to complaints of harassment and violence, but serves people best.

Adverse Childhood Experiences
Nationally, 1 in 10 children have experienced at least one traumatic experience according to the National Survey of Children’s Health.

We often discuss trauma in terms of acute trauma after an assault. It’s important to know that students can experience a wide spectrum of traumas that can intersect with each other.

Vicarious Trauma  Historical Trauma  Institutional Trauma  Cultural Trauma

Tips to mitigate institutional trauma triggers:
- Check website search keywords to include common terms for Title IX conduct such as “sexual assault” and “rape”
- Ensure that Title IX Coordinator contact information and reporting information is easily accessible
- Use vacation responders on email to let students know if you are absent from email or if you frequently have delayed email responses
- Write down information given verbally in meetings including dates and times of next meeting
- Avoid terms such as “remember,” “why,” and “alleged” that might have negative connotations
CONDUCTING HEARINGS

How to conduct hearings including conducting cross-examination and determining relevance and reaching determinations, remedies and sanctions.

Learning Objectives:
- determining relevance in cross-examination
- understand rights and options related to hearing
- identify roles and responsibilities of decision-maker(s)
CONDUCTING HEARINGS

"LIVE" HEARINGS

CREATING A RECORDING:
- VIDEO
- AUDIOVISUAL
- TRANSCRIPT

VIRTUAL HEARINGS:

WRITTEN NOTICE OF HEARING:

SCHEDULING HEARING:
SINGLE DECISION-MAKER MODEL:

DECISION-MAKER(S) PANEL:

DECISION-MAKER(S):
- Can't be Title IX Coordinator
- Can't be investigator

ADVISOR OF CHOICE:
“[NOTWITHSTANDING THE DISCRETION OF THE RECIPIENT... TO OTHERWISE RESTRICT THE EXTENT TO WHICH ADVISORS MAY PARTICIPATE IN THE PROCEEDINGS.]”

If party doesn’t have advisor at hearing:

- Institution must provide free of charge
- advisor of institution's choice
- May be but does NOT need to be attorney
- Party can NOT waive having an advisor

SEPERATION OF PARTIES:

EVIDENCE:

Make all evidence subject to the parties’ inspection and review available at the hearing to give parties opportunity to refer to evidence during hearing.

Exception to evidence:

- Medical or psychological records can only be used with the party’s voluntary consent.
- Privileged materials
INVESTIGATIVE REPORT:

“The Department notes... [the regs] contemplates parties’ equal right to cross-examine any witness, which could include an investigator and.... Grants parties equal opportunity to present witnesses including fact and expert witnesses, which may include investigators.”

CROSS-EXAMINATION:

“[A]ll relevant questions and follow-up questions, including those challenging credibility.”

- Question asked of parties and witnesses
- Directly, orally and in real time
- By party’s advisor of choice – NEVER by party
- “relevant, respectful and non-abusive”

RULES OF DECORUM:
RETAIATION:

RELEVANCE:

A question that goes to prove or disprove an outcome determinate fact.

REDUNDANCY:

"RAPE SHIELD":

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are offered to prove that:

- someone other than the respondent committed the conduct alleged (OR)
- complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent

**DETERMINATION OF RESPONSIBILITY:**

**STANDARD OF EVIDENCE:**

Standard of evidence:

| 50% | Preponderance of Evidence | Clear and Convincing | Beyond a Reasonable Doubt |
DECISION-MAKER(S) REPORT:

- Allegations

- Procedural steps taken from receipt of complaint—determination
  - Notifications to parties
  - Interviews with parties
  - Methods used to gather evidence
  - Hearings held

- Findings of fact that support determination

- Conclusions regarding application of institution’s code of conduct to the facts

- Statement of rationale for result of each allegation
  - Sanctions
  - Remedies

- Permissible bases for appeal available