



WAUKESHA  
COUNTY TECHNICAL  
COLLEGE



# Title IX Training: A Comprehensive Overview of the New Regulations

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Understanding the New Title IX Regulations

# Road Map

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- Key Concepts
- Basic Procedural Requirements
- Informal Reporting
- Formal Complaint
- Preliminary Inquiry
- How to Serve Impartially
- Informal Resolution
- Investigation
- Relevant Evidence
- Live Hearing
- Determination Regarding Responsibility
- Appeals
- Questions?

# WCTC Title IX Policies and Procedures

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- ***HUM 602-01 Procedure for Investigating and Resolving Sex Discrimination and Sexual Harassment***
  - Formal grievance process for sexual harassment
  - Key terms
  - Available supportive measures and sanctions
- ***HUM 602 Policy Prohibiting Sex Discrimination and Sexual Harassment***
  - Prohibition on sexual harassment
  - Key terms
  - On-campus and off-campus resources

# Key Concepts: What is Sexual Harassment?

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- One of the most important terms you must understand as part of Title IX complaint process is what constitutes ***sexual harassment*** that would give rise to an investigation and potential disciplinary action under WCTC's Title IX Procedures.

# Key Concepts

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- ***Sexual harassment*** is broadly defined as any of the following:
  - *Quid pro quo* harassment
  - Unwelcome conduct so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to WCTC's education program or activity
  - ***Sexual assault***, dating violence, domestic violence, or stalking

# Key Concepts

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- WCTC has jurisdiction over claims of sexual harassment when such conduct occurs in its ***education program or activity***
  - This includes all locations, events and circumstances over which WCTC exercised substantial control, as well as all buildings owned or controlled by student groups
- ***Actual knowledge*** of sexual harassment obligates WCTC to respond promptly and in a manner that is not ***deliberately indifferent***

# Key Concepts

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- Thus, to the extent a sexual assault is reported in the context of any of WCTC's educational programs or activities, it will be covered by the Title IX procedures
- Now, let's talk about the relevant parties to a potential Title IX formal grievance proceeding

# Key Concepts

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- **Complainant** refers to an individual who is alleged to be the victim of sexual harassment, and **Respondent** refers to an individual who has been reported as a perpetrator of sexual harassment
- The **Title IX Coordinator** is the official who coordinates WCTC's efforts to comply with Title IX requirements
  - Contact information for this official must be online and published in various locations, so that individuals know where to report sexual harassment
  - The Title IX Coordinator is different from the Investigator, Decision-Maker, and Appeal Officer

# Basic Title IX Procedural Requirements

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- The new Title IX Regulations require WCTC to:
  - Treat the complainant **and** respondent *equitably*
  - Objectively evaluate all relevant evidence
  - Title IX Coordinator, investigator(s), decision-maker(s), or any person who facilitates an informal resolution process may not have a conflict of interest or bias and also must receive requisite training
  - Presume that the respondent is **not responsible** for the alleged conduct until a determination regarding responsibility is made (*e.g.*, avoid terms like "victim" or "survivor")
  - Conduct the grievance process according to "**reasonably prompt**" time frames

# Basic Title IX Procedural Requirements

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- Inform the parties of the range of possible disciplinary sanctions, remedies, and various supportive measures
- State whether the standard of evidence to be used for **all** formal complaints is the "preponderance of the evidence" or the "clear and convincing evidence" standard
  - WCTC uses the ***preponderance of the evidence*** standard: it is more likely than not that the conduct occurred
- Include the procedures and permissible bases for appeals
- Protect evidence protected under a legally recognized privilege (i.e., attorney-client privilege), unless such privilege is waived

# Reporting Sex Harassment

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- Now that we have an understanding of the key terms and procedural expectations of the Title IX process, let's discuss how a Title IX sex harassment grievance is initiated
- This is done through *reporting* – and the Department of Education's new Title IX regulations recognize different types of reports (which trigger different types of required responses)

# Informal Reporting

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- **Anyone** can make an informal report of sexual harassment
- Informal reports can be made to the Title IX Coordinator or other WCTC officials, who must then work with the Title IX Coordinator to respond to the report
- Informal reports can be made verbally or in writing, at any time (including during non-business hours)
- Informal reports can also be submitted anonymously

# Informal Reporting

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- Once WCTC has received an informal report of sexual harassment, the Title IX Coordinator *must* then contact the complainant and:
  1. Offer *supportive measures* to the complainant and/or respondent
  2. Determine whether the complainant wants to file a *formal complaint*, and explain how to do so

# Informal Reporting: Supportive Measures

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- Supportive measures at WCTC may include:
  - Counseling
  - Extensions of deadlines or other course-related adjustments
  - Modifications of work or class schedules
  - Alteration of work arrangements for employees
  - Campus escort service
  - Mutual restrictions on contact
  - Leaves of absence
  - Referral to the Employee Assistance Program
  - Education to the community

# Informal Reporting: Decision to Proceed with a Formal Complaint

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- Complainants can choose whether or not to file a formal complaint
- Complainants **cannot** remain anonymous if they chose to file a formal complaint
  - Thus, you *cannot* assure a complainant anonymity and should inform them that if he/she proceeds with a formal complaint, it will not be anonymous

# Informal Reporting: Decision to Proceed with a Formal Complaint

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- Even if a complainant does not want to file a formal complaint, one may be filed by the Title IX Coordinator
- Should a Title IX Coordinator proceed with a formal complaint, a complainant can request that the Title IX Coordinator not share his/her identity or conduct an investigation at all
  - Such a request should be evaluated against the duty to ensure campus safety, comply with federal law, and conduct the investigation with limited involvement from the complainant

# Formal Complaint

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- A ***formal complaint*** of sexual harassment initiates the formal grievance process
- A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that WCTC investigate

# Formal Complaint

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- Complainants can file formal complaints with the Title IX Coordinator by either using a WCTC-provided form, or by physically or digitally signing a document
- WCTC ***cannot require*** that complainants utilize a college-provided form for a complaint to constitute a "formal complaint"

# Formal Complaint

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- At the time of filing a formal complaint, a complainant ***must be participating or attempting to participate*** in WCTC's education program or activity
- Thus, a complaint from an alumni relating to an incident while he or she was a student would not be covered or protected

# Preliminary Inquiry

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- Once a formal complaint is filed, WCTC must assign an investigator to the matter
- The investigator will determine whether WCTC should proceed further with the formal grievance process or dismiss the formal complaint
- The Department of Education's regulations provide *mandatory* and *discretionary* grounds for dismissal

# Preliminary Inquiry

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- **Mandatory Grounds for Dismissal of a Formal Complaint:**
  - The conduct alleged would not constitute sexual harassment under Title IX;
  - The conduct alleged did not occur in WCTC's education program or activity; or
  - The conduct alleged did not occur in the U.S.

# Preliminary Inquiry

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- **Discretionary Grounds for Dismissal of a Formal Complaint:**
  - The complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the formal complaint;
  - The respondent is no longer enrolled in or employed by WCTC; or
  - Specific circumstances prevent WCTC from gathering evidence sufficient to reach a determination as to the formal complaint

# Preliminary Inquiry: Appealing the Dismissal of a Formal Complaint

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- WCTC must offer both parties an appeal from an investigator's dismissal of a formal complaint
- Both parties must be notified in writing of such appeal rights
- Grounds for appeal include procedural irregularities, the discovery of new evidence, and any bias or a conflict of interest detected amongst any Title IX personnel

# Preliminary Inquiry: Notice to the Parties

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- If the formal complaint is not dismissed, WCTC must send the parties a notice containing:
  - An explanation of the grievance process
  - Notice of the sexual harassment allegations
  - A statement that the respondent is presumed not responsible for the alleged conduct
  - Notice that the parties may have an *advisor* of their choice
  - Any provision in WCTC's code of conduct that prohibits knowingly making false statements or knowingly submitting false information

# Preliminary Inquiry: Potential Suspensions

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- If the safety or well-being of anyone at WCTC may be jeopardized through the investigation process, temporary suspensions may be appropriate at the outset of the investigation
- Ensure that any such suspensions are done equitably (with the understanding that the respondent is presumed ***not responsible*** until a determination regarding responsibility is made)

# Quiz – Test Your Knowledge!

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- Sam sends an email to the Title IX Coordinator at 2:00 AM reporting that he was just sexually assaulted at one of the bars near campus. He provides the requisite details regarding the events, requests that WCTC investigate these allegations, and digitally signs the email.
- Does this constitute a ***formal complaint*** of sexual harassment, why or why not?

# Quiz – Test Your Knowledge!

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- **Answer:** No – Sam's email does not constitute a formal complaint of sexual harassment under Title IX.
- **Reasoning:** Although the nature of Sam's allegations and the form of his report comply with the requirements for a formal complaint, the conduct reported did not take place in WCTC's *education program or activity*, and therefore does not constitute sexual harassment under Title IX.

# How to Serve Impartially: Background

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- Impartiality is integral to the Title IX formal grievance process
- Serving *impartially* includes avoiding the following:
  - *Prejudgment of the facts at issue*
  - *Conflicts of interest*
  - *Bias*
- Impartiality also refers to consistent application of WCTC's standards like "**consent**"
- But what do each of these things mean (and how do you avoid them)?

# How to Serve Impartially: Prejudgment

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- **Prejudgment** refers to passing judgment prematurely or without sufficient reflection or investigation
  - **Example:** *A complainant was crying while making a sexual harassment report. You conclude that because the complainant was crying when describing the conduct at issue, the complainant must be telling the truth and the respondent must be responsible for the actions alleged.*
- Neither complainants reporting sexual harassment, nor respondents defending against allegations of sexual harassment, should be met with prejudgment throughout the Title IX process

# How to Serve Impartially: Prejudgment

- Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol use
  - **Example:** *The complainant was drinking at the time of the incident so the investigator presumes his/her recollection of an event is not accurate.*
  - **Example:** *The respondent and complainant were in a consensual relationship previously so the Title IX coordinator assumes consent to particular conduct was given.*
- Sex stereotypes also often lead to prejudgment – you need to check these at the door!
  - **Example:** *Women have regret about sexual experiences and are likely lying about sexual assault*
  - **Example:** *Men cannot be sexually assaulted*

# How to Serve Impartially: Prejudgment

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- How do you avoid prejudging facts?
  - Keep an open mind throughout the investigation process
  - Wait to hear *all* of the facts (there are two or more) sides to every story
  - Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts are your friends!
  - Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, or alcohol use

# Quiz – Test Your Knowledge!

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- **Hypothetical:** Allie is a mediator who conducts informal Title IX resolutions. Allie frequently makes statements to her colleagues regarding how provocatively female students on campus dress and that they are "asking" for others to catcall and give them attention. In the case at hand, a female complainant, who was wearing a crop top during class, reported that her lab partner made sexually harassing comments to her during a lab.
- In terms of *prejudgment of the facts*, would you be concerned about Allie's impartiality?

# Quiz – Test Your Knowledge!

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- **Answer:** Yes – Allie's belief that the way female students dress may inherently invite a certain type of response from other students (including catcalling) is a prejudgment based on a sex stereotype that women should dress a certain way or expect sexually harassing behavior. This belief and prejudgment could unfairly impact how she approaches a Title IX mediation, particularly based on the facts of this complaint.

# How to Serve Impartially: Conflicts of Interest

- A ***conflict of interest*** occurs when personal or private interests may compromise one's judgment, decisions, or actions.
- Conflict of interests may arise from family, friendships, faculty member relationships, financial investments, or other social factors
  - **Example of Potential Conflict:** *The Title IX coordinator is close family friends with a complainant's parents.*
  - **Example of Potential Conflict:** *The investigator and respondent are co-owners of a side business that resells textbooks on campus.*
- It is important to note that there are no *per se* conflicts of interest outlined in the Title IX regulations.

# How to Serve Impartially: Conflicts of Interest

- A conflict of interest that disqualifies you from the Title IX process is one that prevents you from being able to *impartially* participate
- Conflicts of interest can be:
  - **Actual:** A direct conflict between official duties and a competing personal interest or obligation
    - **Example of Actual Conflict:** *The Title IX decision-maker's daughter is the respondent in a sexual assault case.*
  - **Perceived:** A competing interest that could reasonably be perceived to improperly influence the performance of one's official duties and responsibilities
    - **Example of Perceived Conflict:** *The Title IX investigator previously had a relationship with the family member of the respondent.*
  - **Potential:** A personal interest or obligation that could conflict with one's official duties sometime in the future
    - **Example of Potential Conflict:** *The Title IX Coordinator and complainant co-chair a faculty committee and socialize outside of work on occasion.*

# How to Serve Impartially: Conflicts of Interest

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- How do you determine if a conflict (actual, perceived, or potential) is present that should disqualify you from involvement in a particular Title IX grievance?
- Apply the "***objective test***" and ask yourself the following questions:
  - Would I be happy if my colleagues became aware of the conflict?
  - Would I be happy if the conflict appeared in the media with respect to the grievance process?
  - If I saw someone else with the same potential conflict, would I think they should be barred from participating?

# Quiz – Test Your Knowledge!

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- John, a Title IX Coordinator, is a self-professed feminist, a former defense attorney, and a victim advocate. He has a Master's Degree in Gender Studies, and has supported organizations that work to prevent sexual assault for years.
- In terms of a ***conflict of interest***, would you be concerned about John's impartiality?

# Quiz – Test Your Knowledge!

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- **Answer:** Potentially – Although John's professional and educational background would likely not rise to the level of an **actual** conflict of interest, there may be a **perceived** conflict of interest.
- **Reasoning:** Conflicts of interest should be assessed using the objective test. A colleague may perceive that John has a conflict of interest because of his education and organizational affiliations; but, an actual conflict of interest likely does not exist. John (and the rest of the Title IX team) will need to make an assessment of whether he can impartially serve despite his background.

# How to Serve Impartially: Bias

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- A **bias** is a tendency, inclination, or prejudice toward/against someone
  - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance
  - They are frequently based on a person's gender, race, or sexual orientation
- In effect, biases are "shortcuts" our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices

# How to Serve Impartially: Bias

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- You may or may not be aware of your own biases – so you need to be vigilant about removing them from your thinking!
- Biases can be (and are often) *implicit*, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.
- **Example:** *When talking with female Title IX complainants, the Title IX coordinator begins each initial meeting by asking who the respondent is and what "he" did to the complainant (assuming the respondent is a male).*

# How to Serve Impartially: Bias

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- Ways to combat bias:
  - Pay attention to your language
  - Avoid generalizations
  - Question your thinking and challenge your assumptions
  - Listen!

# Quiz – Test Your Knowledge!

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- Betty is an investigator for the college's Title IX formal grievance process. Betty is also an academic dean for the college, who strives to uphold the school's academic reputation standing. A student (with a 2.1 average GPA) made a formal complaint alleging that his classmate (with a 3.99 GPA) sexually harassed him in the campus library while completing work on a group assignment.
- In terms of *bias*, would you be concerned about Betty's impartiality?

# Quiz – Test Your Knowledge!

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- **Answer:** Potentially – Betty's affiliation/concern with the school's academic reputation may create an *explicit* bias in favor of the higher achieving student. Her affiliation may also create an *implicit* bias of which she is not aware or it may not be present.
- **Reasoning:** Betty may have an explicit bias in favor of students with strong academic records, which could lead Betty to believe that students with good grades tell the truth, and students with bad grades do not tell the truth; and, she may not be able to serve impartially. Betty could also hold implicit biases against poor performing students due to her role as an academic dean without recognizing the impact the role may have had on her thinking. Nonetheless, she may also not believe that the credibility of students depends on their grades, and therefore may not have a bias issue on this topic.

# Informal Resolution

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- Throughout the course of an investigation, WCTC may offer the parties an informal resolution process that could potentially resolve a formal complaint
  - Informal resolution can occur at any time prior to WCTC reaching a determination regarding responsibility
- Both parties must voluntarily agree in writing to attempt informal resolution
- WCTC **may not** offer informal resolution to resolve allegations that an employee sexually harassed a student

# Informal Resolution

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- If the parties do consent to informal resolution, WCTC must provide the parties with written notice disclosing:
  - The allegations of the complaint
  - Requirements of the informal resolution process
  - What elements of the process will remain confidential (or not confidential) if the parties choose to participate
- At any time prior to agreeing to a resolution, either party has the right to withdraw from the informal resolution process and resume the formal grievance process

# Quiz – Test Your Knowledge!

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- Lindsey files a formal Title IX complaint alleging that her social sciences professor, Judi, subjected her to sexually harassing comments throughout the prior semester. Prior to the completion of the investigation, the Title IX coordinator offers both parties the opportunity to participate in mediation and they provide written consent to move forward with mediation. Is this permissible?

# Quiz – Test Your Knowledge!

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- **Answer:** No – Informal resolution *cannot* be offered in cases where a student has filed a Title IX complaint against an employee of the college due to the power differential.
- **Reasoning:** Even though the parties both consented to participate in mediation, the Title IX Coordinator should not have offered informal resolution as an option based on the nature of the case.

# The Investigation

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- The "investigation" phase of the grievance procedure entails interviews, obtaining evidence, and identifying sources of information related to the complaint
  - Interviews should be private and in person, when possible, and investigators should take detailed notes of facts
- Title IX investigations must be thorough, impartial, and completed in a timely manner
- The parties must have an ***equal opportunity*** to present witnesses and evidence during the investigation

# The Investigation

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- WCTC investigators must:
  - Ensure that the Title IX policy's burden of proof is applied properly
  - Provide an equal opportunity for the parties to present witnesses and evidence
  - Not restrict the ability of either party to discuss allegations or present relevant evidence
  - Provide the parties with the same opportunities to have advisors present during any investigation proceeding
  - Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
  - Provide both parties an equal opportunity to inspect and review certain evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
  - Assist the Title IX Coordinator with any necessary supportive measures
  - Identify all WCTC policies allegedly violated
  - Provide regular status updates

# The Investigation

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- After the investigation, the investigator(s) will prepare and send to the parties an ***investigative report*** containing only ***relevant*** evidence
  - Before this report is finalized, the investigator(s) will send to each party and his/her advisor the relevant evidence
  - The parties will have at least 10 days to submit a written response to this evidence, which the investigator(s) will consider while finalizing the report
- Investigator(s) will then distribute the final investigative report at least 10 days before a hearing
- An investigative report ***does not (and cannot)*** include a **determination of responsibility**

# Quiz – Test Your Knowledge!

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- Mike is preparing an investigation report regarding a claim of sexual harassment filed by a complainant, Will. In Mike's investigation report, he states the following:
  - *The complainant, Will, frequently contradicted himself with respect to his claims that he was sexually harassed. Will is lying about the conduct in question and his complaint should therefore be dismissed.*
- **Quiz: Is this acceptable language for the investigation report?**

# Quiz – Test Your Knowledge!

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- **Answer:** No – the language in the report contains a conclusion that Will is lying about the conduct in question and a recommendation with respect to the disposition of the complaint (i.e., that it be dismissed), which the investigation report *cannot* contain and is not for the investigator to decide.
- The investigator can note the instances when Will contradicted himself throughout the interview but should not include an opinion on his credibility or any conclusions in the report.

# Relevance: Background on Evidence

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- Every Title IX investigation involves the collection and review of "evidence" from the complainant, respondent, and often times other witnesses
- **Evidence:** The facts available to the Title IX investigator
- Examples of Potential Evidence:
  - Text messages between a complainant and respondent
  - Witness testimony from a classmate who observed a reported incident
  - Pictures of physical injuries from a complainant
  - Attendance records indicating a respondent was not in a particular location at the time of a reported incident
  - Testimony from a complainant or respondent

# Relevance: Types of Evidence

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- There are various "types" of evidence that may be brought forth through the Title IX complaint process. The types of evidence may include:
  - ***Physical Evidence***: clothing, physical injuries, weapons
  - ***Documentary Evidence***: emails, texts, medical records, police reports
  - ***Demonstrative Evidence***: date-stamped photos of injuries, security footage of a reported incident, a drawing of a purported respondent
  - ***Verbal Evidence***: oral report of memories of a witness' experiences or observations

# Relevance: Verbal Evidence

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- A type of verbal evidence is "***hearsay evidence***"
- **Hearsay Evidence:** The report of another person's words by a witness
- **Example of Potential Hearsay Evidence**
  - A classmate's testimony of what a complainant said to him about an incident with the respondent
- Relevant hearsay evidence may be gathered and included in a Title IX complaint investigation report
- The Department of Education has different rules regarding the admissibility/use of hearsay evidence in a hearing and final determination

# Relevance: Direct v. Circumstantial Evidence

- **Evidence in a Title IX Sex Harassment investigation can be "direct" or "circumstantial"**
- **Direct Evidence:** Doesn't require drawing a conclusion/inference to show that something happened
  - *"I was in the bedroom and saw Nolan push Kelly into the corner and try to kiss her. I heard Kelly say, "Stop," but Nolan just laughed. Then I saw Kelly smack Nolan and run out of the room crying."*
  - What the witness reports personally seeing and hearing is direct evidence that Nolan assaulted Kelly and she defended herself.
- **Circumstantial Evidence:** Requires drawing a conclusion/inference based the circumstances to show something happened
  - *"I was in the living room when I saw Nolan and Kelly go in the bedroom. A few minutes later, Kelly ran out of the bedroom crying. Then Nolan came out with a big red mark his cheek."*
  - The witness didn't see/hear what happened in the bedroom, but we could conclude/infer from what the witness saw/heard in the living room that Nolan assaulted Kelly in the bedroom, and she struck him in self defense.

# Relevance: Determining Relevancy

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- While there are many types of evidence that may be presented during the course of Title IX sex harassment investigation, only ***relevant evidence*** should be considered when issuing a determination regarding a Title IX complaint
- **Relevant Evidence:** Facts that *potentially* describe or explain an event or incident under investigation
- **Irrelevant Evidence:** Facts that do not have the potential to describe or explain an incident under investigation

# Relevance: Rape Shield Protections

- Every relevance analysis in a Title IX formal grievance process ***must*** also include a consideration of Title IX's rape shield protections
- Title IX's rape shield protections provide that questions and/or evidence about the complainant's sexual predisposition or prior sexual behavior are ***presumptively not relevant***, unless they are offered under two limited exceptions
  1. The questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
  2. The questions and evidence relate to specific incidents of the complainant's prior sexual behavior *with respect to the respondent* and are offered to prove consent.

# Relevance: Complete Relevancy Analysis Process

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- **Step 1:** Review the evidence being offered
- **Step 2:** Consider the allegations of the Title IX complaint
- **Step 3:** Ask yourself whether the evidence being offered has the potential to prove/explain or disprove an incident under investigation
- **Step 4:** Consider whether evidence falls into rape shield protections or rape shield exceptions

# Relevance: Complete Relevancy Analysis Process

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- **Scenario:** A complainant reports that his coach has subjected him to sexually harassing comments throughout the team's season.
- In support of his claim, the complainant presents witness testimony from two other teammates who state they heard the coach call players, including the complainant, "baby," "cutie," and "hottie" during practices throughout the season.

# Relevance: Complete Relevancy Analysis Process

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- **Step 1 (review the evidence being offered):** Testimony from teammates regarding what they heard the coach say to players, including the complaint, during practices (note: this is hearsay evidence)
- **Step 2 (consider the allegations of the Title IX complaint):** Complainant reported that coach repeatedly made sexually harassing comments to him throughout their season

# Relevance: Complete Relevancy Analysis Process

- **Step 3 (does the evidence have the potential to prove/explain or disprove an incident under investigation):** Testimony by players (that the coach called players names as such as "baby" and "hottie") has the potential to prove that coach made harassing comments to the complainant (and other players) throughout the season and is therefore relevant to the investigation
- **Step 4 (consider rape shield protections):** Complainant's sexual history not involved in this witness testimony— rape shield protections are therefore not implicated

# Quiz – Test Your Knowledge!

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- Megan files a Title IX sex harassment complaint alleging that her classmate, Henry, sexually harassed her by sending her sexually explicit pictures during classes. In response to the complaint, Henry presents evidence from another classmate, Dan, that Megan regularly exchanges sexually explicit pictures with him.
- Henry claims Megan's text messages with Dan prove that his (Henry's) messages were not harassing and that Megan was not offended/or harassed by sexually explicit messages he sent her.
- **Are Megan's text exchanges with Dan relevant to the investigation of her complaint against Henry?**

# Quiz – Test Your Knowledge!

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- **Answer:** No – Megan's text messages with Dan are not relevant to her complaint against Henry.
- **Reasoning:** The fact that Megan exchanged explicit texts with Dan doesn't mean she welcomed them from Henry, and Henry isn't offering Dan's texts to show that someone other than Henry sent the texts in question or that Megan engaged in prior "sexting" or other consensual sexual activity with Henry.

# The Live Hearing

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- WCTC's formal grievance process ***must provide*** for a live hearing led by a decision-maker
  - At the request of either party, WCTC must allow for the entire live hearing to occur with the parties located in separate rooms, with technology enabling them to simultaneously see and hear each other
- This live hearing must provide the opportunity for cross examination, to be conducted by the parties' advisors
  - Parties may be represented in cross examination by an advisor of their choice
  - However, if a party does not have an advisor present at the live hearing, the school must provide one

# The Live Hearing

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- The decision-maker(s) must allow the advisors to ask parties and witnesses all relevant questions and follow-up questions, including those challenging credibility
- Before a party or a witness answers a question, the decision-maker(s) must first determine whether the question is **relevant** and explain any decision to exclude a question that is not
- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility
  - The decision-maker(s) also cannot draw an inference based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
- Schools must create an audio or audiovisual recording or transcript of all live hearings, and make them available to the parties for inspection and review

# Quiz – Test Your Knowledge!

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- Hannah is a drama student who witnessed a sexual assault at the college's theater during a rehearsal. She reluctantly agreed to be interviewed as a part of the Title IX investigation. Hannah has been struggling since this investigation interview, and has sought professional help. For her own mental health, she refuses to appear as a witness at the live hearing.
- Can Hannah's investigation interview be relied upon by the decision-maker in making a determination regarding responsibility?

# Quiz – Test Your Knowledge!

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- **Answer:** No – Hannah's interview cannot be relied upon in the determination regarding responsibility.
- A decision-maker cannot rely on the statements that Hannah made during her investigation interview because she did not present herself for cross examination during the live hearing.
- The decision-maker-cannot draw an inference about Hannah's testimony based solely on Hannah's absence from the live hearing.

# The Live Hearing: WCTC Timeline

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- Fourteen (14) calendar days before a hearing, the decision-maker(s) will send the following to the parties:
  - Notice that the parties may have an advisor at the live hearing, and that WCTC will provide one to conduct cross-examination, if needed
  - The time, date and location of the hearing
  - A copy of the investigative report
- Seven (7) calendar days before the hearing, the parties will provide a list of proposed witnesses and copies of proposed evidence
- Five (5) calendar days before the hearing, the decision-maker(s) will make available to the parties the proposed witnesses and evidence
- Two (2) calendar days before the hearing, parties should request alternative attendance

# The Live Hearing: WCTC Conduct of Hearing

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- The decision-maker(s) will preside over the live hearing
  - The decision-maker(s) will first call the hearing to order, and then ascertain the presence of the investigator(s), the Title IX Coordinator, the complainant and respondent, and their advisors
  - Then, the decision-maker(s) will confirm receipt of the notice of hearing and report any extensions
- The remainder of the hearing will proceed as follows:
  - **Investigator(s) Report and Testimony**
  - **Complainant's Evidence**
  - **Respondent's Evidence**

# Determination Regarding Responsibility

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- (Within fourteen (14) calendar days of the hearing), the decision-maker will issue a written ***determination regarding responsibility***, which must include:
  - The allegations potentially constituting Title IX sexual harassment
  - A description of the procedural steps taken from receipt of the complaint through the determination regarding responsibility
  - Findings of fact supporting the determination

# Determination Regarding Responsibility

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- Additional requirements:
  - Conclusions regarding the application of WCTC's code of conduct to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions and remedies; and
  - Procedures and permissible bases for the complainant and respondent to appeal the determination.

# Determination Regarding Responsibility

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- This written determination regarding responsibility must be sent simultaneously to the parties
  - Title IX Coordinator is responsible for effective implementation of any remedies in the determination
- This determination becomes final:
  - If an appeal is not filed, the date on which an appeal would no longer be considered timely
  - If an appeal is filed, on the date that WCTC provides the parties with the written determination of the result of the appeal

# Appeals

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- Grounds to appeal (within ten (10) calendar days) a determination regarding responsibility and/or dismissal include:
  - A procedural irregularity that affected the outcome
  - New evidence that was not reasonably available at the time of the determination
  - The Title IX Coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter

# Appeals

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- When a complainant or respondent appeals, WCTC must:
  - Notify the other party in writing when an appeal is filed;
  - Ensure that the appeal officer is not the same person as the person who reached the determination regarding responsibility, the investigator(s), or the Title IX Coordinator;
  - Ensure that the appeal officer is not biased;
  - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - Issue a written decision describing the result of the appeal and the rationale for the result; and
  - Provide the written decision simultaneously to both parties

# Quiz – Test Your Knowledge!

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- After an investigation and live hearing, the decision-maker determines that the respondent, Charlie, engaged in sexual harassment under Title IX. As such, the decision-maker issues a suspension and other disciplinary sanctions. Charlie adamantly denies engaging in such conduct, and claims that the decision-maker just did not like him for some reason.
- Charlie wants to appeal this determination. Does he have grounds to do so?

# Quiz – Test Your Knowledge!

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- **Answer:** Yes – Charlie can try to prove that the decision-maker had a bias that affected the outcome of the hearing.
- **Reasoning:** One of the grounds for an appeal is that the Title IX Coordinator, investigator, and/or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

# QUESTIONS?

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