

Title IX Investigators Training for Higher Education

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Background: Changes to Investigations



Colleges can no longer use a “single investigator” model

An investigator assigned to a formal complaint may not serve as a decision-maker for that complaint.



Title IX Coordinator may serve as an investigator, but not as a decision-maker



Colleges must provide the parties with equal access to inspect and review the evidence

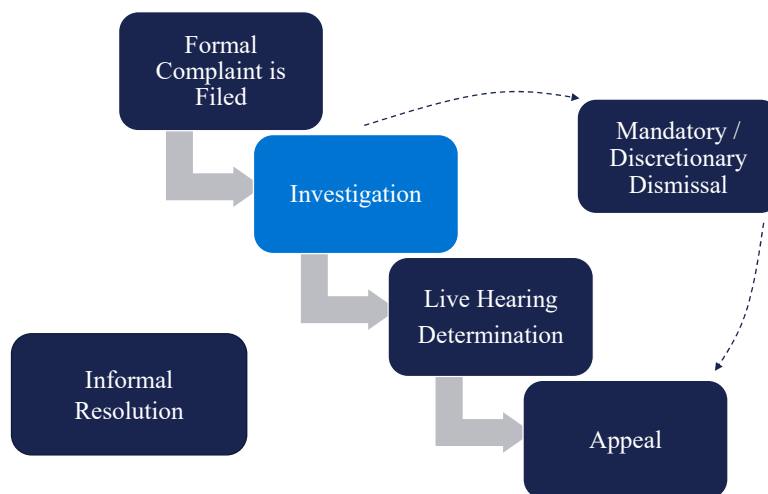


Investigator must submit an investigation report summarizing the relevant evidence

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Grievance Process

Overview



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Title IX Sexual Harassment

- 1 Quid pro quo harassment by a College employee
- 2 Unwelcome conduct on the basis of sex that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- 3 Any instance of sexual assault, dating violence, domestic violence, or stalking

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Title IX Jurisdiction

- The Title IX regulations apply only to alleged sexual harassment that occurs in the College's "education program or activity, against a person in the United States."



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Title IX Jurisdiction

“Education Program or Activity”

Locations, events, or circumstances over which the College exercised substantial control over both:

- the Respondent and
- the context in which the sexual harassment occurred.



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Reporting

More Key Definitions

Complainant:

- Individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent:

- Individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment



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Conflicts of Interest & Bias

- Title IX Regulations provide that any individual designated to serve as the Title IX Coordinator, **INVESTIGATOR**, decision-maker, or appellate decision-maker must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Can be a basis for appeal if the conflict of interest or bias affects the outcome.

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Conflicts of Interest

The PSVHEA requires that an institution have a sufficient number of individuals trained to resolve complaints so that:

- A substitution can occur in the case of a conflict of interest; and
- An individual with no prior involvement in the initial determination or finding hear any appeal brought by a party.

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Conflicts of Interest



- Key question:
 - Does the Investigator's prior or existing relationship with or knowledge of a party prevent the Investigator from serving impartially?

Conflicts of Interest

- Where you self-identify a conflict of interest, notify the Title IX Coordinator that you will need to recuse yourself.
- Where a party believes that you have a prohibited conflict of interest, the party must contact the Title IX Coordinator to request a substitution.
 - The Title IX Coordinator may request information from you to help them evaluate the claim.

Hypothetical

- You serve on the College's Behavioral Intervention Team. At a BIT meeting, you took part in a decision to remove a Respondent from the College's educational program on an emergency basis. The College subsequently conducted a Title IX investigation with respect to that Respondent, and you have just been appointed to serve as an Investigator for the case.
- Do you have a conflict of interest?

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How to Address Implicit Bias



- More deliberate or conscious thinking
 - Allow time to fully think through a scenario before coming to a decision / conclusion
- Create and follow checklists
 - Procedural requirements
 - Allegations to be proven / disproven
- Document treatment of both parties and ensure it remains equitable
 - Opportunities to provide evidence
 - Details of the parties' interviews (time to prepare, breaks, advisors' roles, etc.)
 - Access to relevant evidence
 - Offering flexibility or granting requests for accommodations

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Title IX Sexual Harassment: Quid Pro Quo

- When accepting or performing unwanted sexual conduct is required:
 - To access some benefit, or
 - To avoid some negative consequence
- Key elements:
 - Employee Respondent
 - Exchange of “this for that”
- Can be explicit or implicit



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Hypothetical

- Carlie alleges that the professor Smith started giving them lower grades on their assignments after turning down a requests to go on a date.
- What specific information and evidence would you want to gather?
- What steps would you take to investigate these allegations?



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Title IX Sexual Harassment: “Hostile Environment”

Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to the education program or activity



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Title IX Sexual Harassment: “Hostile Environment”

- Key elements:
 - Unwelcome conduct
 - Severe and pervasive and offensive
 - Severity factors: age of Respondent, relationship of the parties, physical contact, etc.
 - Pervasiveness factors: affecting other school/work relationships, incidents in multiple contexts, conduct repeated over time, etc.
 - Offensiveness: humiliation, threats, physical safety, interference with work/learning, “hostile or abusive,” etc.
 - Denial of equal access
 - Examples: falling grades, limiting enrollment in classes, student group participation, positions or assignments, job benefits, etc.

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Hypothetical

- A custodian, alleges that a coworker regularly slapped them on the butt with an “atta boy” at the end of their shifts. The custodian says that they asked the coworker to stop, but the custodian responded, “You should enjoy it,” and now often comments on the custodian’s sexuality and tries to slap their butt unexpectedly.
- What specific information and evidence would you want to gather?
- What steps would you take to investigate these allegations?



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Title IX Sexual Harassment: Sexual Assault

• Sexual Assault

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting program
- Generally, forcible sexual contact or sexual contact without consent due to incapacitation, intoxication, or age
- Incest: sexual contact between individuals with a familial relationship of a degree prohibiting marriage



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Title IX Sexual Harassment: Dating Violence & Stalking

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.



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Title IX Sexual Harassment: Domestic Violence

- 1) Felony or misdemeanor crimes committed by a current or former spouse or intimate partner under the laws of the jurisdiction and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse.
- 2) A pattern of any other coercive behavior (not necessarily criminal) committed, enabled, or solicited to gain or maintain power and control over a victim, by a person who:
 - is a current or former spouse or intimate partner, or person similarly situated to a spouse of the victim;
 - is cohabitating or has cohabitated with the victim as a spouse or intimate partner;
 - shares a child in common with the victim; or
 - commits acts against an adult or youth victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



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Hypothetical

- A student alleges that her partner, who is also a student, physically abused them while they were on campus.
- What specific information and evidence would you want to gather?
- What steps would you take to investigate these allegations?

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Conducting Investigatory Interviews



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Investigatory Interviews: Title IX Requirements

- Send notice of any interview or meeting and give each party sufficient time to prepare.
- Give the parties an equal opportunity to select advisor of their choice.
- Provide equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Avoid “gag orders.”
 - The college must not restrict the ability of either party to discuss the allegations.



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Investigatory Interviews: Preparation

- Review:
 - The allegations
 - Relevant policies and procedures
 - Relevant student or employee records
 - Any documentary evidence received so far
- As applicable, check for employee notice or union representation requirements
- Decide whether to conduct the interview by videoconference, in person, or by phone
- Schedule meetings promptly
 - Notice Letter of Investigative Interview



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Hypothetical

- You are trying to schedule interviews with a student, a faculty member, and a community member. All three are either not responding to you or outright refusing to participate.
- What can you do to try to convince them?
- If they still will not participate, how do you proceed?



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Investigatory Interviews: Preparation

Plan your questions, considering:

- Specific parts of the relevant definition(s) of sexual harassment and other misconduct
- How to ask about the specific allegations objectively and equitably
- What additional facts might be helpful
- “Point me in the right direction” questions

Plan how to begin and end the interview



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Investigatory Interviews: Advisors

Both parties may select an advisor of their choosing

- May, but need not be, an attorney

Advisor's role is to provide support, guidance, advice

- May not answer on behalf of the party

Parameters for both parties' advisors must be the same



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Hypothetical

- You are interviewing an employee who has been accused of sexual harassment. They brought an attorney as the advisor, and the attorney is making the interview difficult.
- What should you do if the attorney:
 - repeatedly answers for the employee or “clarifies” the testimony?
 - objects to most of your questions and tells the employee they don’t have to answer?
 - demands to see evidence or have questions answered before the employee answers?

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Investigatory Interviews: Questioning

- Open-ended questions are best

- Closed-ended:

Q: “Were you in Frank’s office when the phone rang?”

A: “No.”

- Open-ended:

Q: “Where were you when the phone rang?”

A: “I was in the hallway outside Frank’s office.”



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Investigatory Interviews: Questioning

- Avoid multiple choice questions

- Bad Example: “Where were you when the phone rang—in Frank’s office, in the hallway, or in the stairwell?”

- Avoid compound questions

- Bad Example: “Where were you and who were you with when the phone rang?”



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Investigatory Interviews: Questioning

- The interviewee must fully understand the question to give a reliable answer
- If the interviewee asks you to repeat or rephrase a question, you should do so
- Give the interviewee time to think and respond before asking the next question



Investigatory Interviews: Questioning



Complete a line of questioning before moving on to questioning about a different issue



When possible, clarify issues on which there is conflicting testimony before concluding the interview

Investigations: Questioning

- Allow the interviewee to respond to each factual allegation
- Do not hesitate to ask follow-up questions
- Ask whether any witnesses can confirm the interviewee's testimony
- Obtain names and, if necessary, contact information for witnesses

Investigatory Interviews: Credibility

Factors for determining credibility of a witness:

- Does the witness have personal knowledge of the facts?
- Does the witness have any reason to be untruthful?
- Does the witness have a bias, hostility, or some attitude that affected the truthfulness of their testimony?
- Does the witness have a special relationship with a party?
- Was the witness's testimony consistent with other testimony or the evidence presented?
- Has the witness made inconsistent statements?
- Is there evidence of trauma that could impact the witness' testimony?



Investigatory Interviews: **Credibility**

- Quality over quantity: the testimony of a single, disinterested witness is more reliable than the testimony of multiple biased witnesses
- Example:
 - The college's baseball coach is the Respondent and is alleged to have sexually assaulted the Complainant in the athletic training room immediately after a game
 - Which testimony is more reliable in an interview:
 - The testimony from 4 players stating that they were with the Respondent at a restaurant immediately after the game, or
 - The testimony from a waiter at the restaurant stating he served the Respondent at the restaurant immediately after the game



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Investigatory Interviews: **Employee Respondents**



As applicable, include the right to union representation in the notice and check other CBA requirements



Request that they document testimony by a written, signed statement or fact chronology



Document union representation, any critical factual admissions, and the opportunity to respond to allegations



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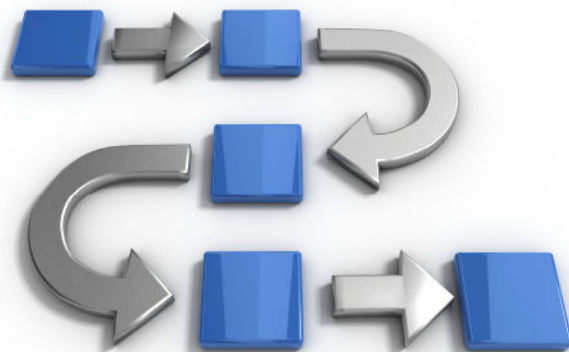
Investigatory Interviews: Other Best Practices

- Avoid volunteering information
- Never promise confidentiality
- Have a second investigator or administrator/non-union employee present to help with notetaking
 - Take your own notes at or immediately afterward
 - Give a basis for your credibility assessments
- Advise that retaliation is prohibited
 - “Gag orders” vs. prohibiting harassment, discrimination, or retaliation



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Evidence and Investigatory Report Procedures



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Investigation: **Relevant Evidence**

- “Relevant” includes relevant to determining:
 - The truth or falsity of specific factual allegations
 - Evidence about nature and circumstances of misconduct
 - Evidence affecting credibility
 - Whether the facts establish an element of the relevant type(s) of sexual harassment
 - Evidence about intent or consent
 - Evidence about impacts of any misconduct
 - Other evidence that would inform a reasonable person’s perception of the conduct
 - What potential sanctions/discipline or remedies are appropriate



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Investigation: **Relevant Evidence**

- Generally irrelevant:
 - Information protected by a legally recognized privilege
 - A party’s medical, psychological, or other similar treatment records (without written consent)
 - Prior disciplinary history (except to determine potential sanctions/discipline)
 - A Complainant’s sexual predisposition or sexual history



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Investigation: Rape Shield Protections

- During the live hearing, certain questions are irrelevant and not permitted. As a result, investigators also should consider evidence about the following topics irrelevant:
 - the Complainant's sexual pre-disposition, and
 - the Complainant's prior sexual behavior, unless:
 - the evidence is offered to prove that someone other than the Respondent committed the alleged conduct; or
 - the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent



Investigation: Access to Evidence

- Both parties must have equal access to inspect and review all evidence that is directly related to the complaint allegations.
 - Be mindful of FERPA and other privacy considerations
 - Consider whether redactions are necessary
 - Notify parties of parameters/limitations on re-disclosure of records and evidence

Investigation: **Access to Evidence**

At the end of the investigation and before completing the investigator's report, the investigator must send both parties a copy of all relevant evidence.

- Notice Letter to Complainant/Respondent of Investigation Evidence and Right to File Response



Investigation: **Preparation of Investigation Report**

- The parties will have 10 school business days to submit a written response to the evidence, which the investigator must consider prior to completing the investigative report.
- The investigator must create an investigative report that fairly summarizes the relevant evidence and forward the report to the decision-maker.
 - Investigation Report Template

Investigation: Preparation of Investigation Report

- Parts of an investigation report:
 - Summary of complaint allegations
 - Definition(s) of sexual harassment and any other misconduct at issue
 - Description of steps in the investigation process
 - Summary of supportive measures, emergency removal, and/or administrative leave
 - Summaries of relevant evidence from:
 - Interviews
 - Documents
 - Written responses



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Key Takeaways and Recommendations for Investigators



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Takeaways and Recommendations

1) “Begin with the end in mind”

Think about what the decision-maker will need

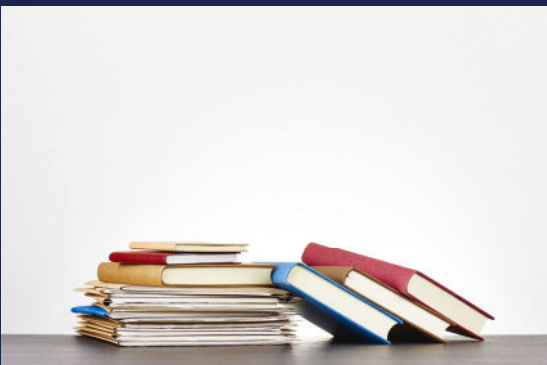
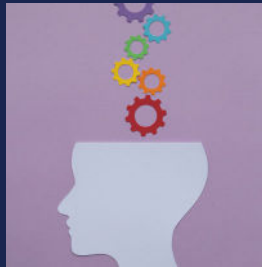
Prepare outlines for interviews

2) Break it down

Consider what facts are most important for each part of an alleged policy violation



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Takeaways and Recommendations

3) Show your work...

Document the steps you take

Take interview notes, including about your credibility determinations

Keep copies of or notes on communications with the parties

4) ...but not confidential records.

Don't share irrelevant evidence.

Redact when necessary.

5) Treat the parties equitably.



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Kevin P. Noll's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, park districts and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

As an attorney, Kevin strives to cut through complexity to provide clients with practical answers and pragmatic solutions.

Beyond his legal work, Kevin's interests include golf and spending quality time with family and friends.

Recognitions

Illinois Emerging Lawyers

Illinois "Rising Star," by Super Lawyers Magazine

Publications

Contributing author, "Employee Discrimination," *Illinois School Law: Personnel and Student Issues*, IICLE (2021, 2024)

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

Presentations

Collective Bargaining/Contract Negotiations: Best Practice Strategies and Trends, ISDLAF+ School Finance Seminar (January 2026)

Federal Reform Initiatives: Updates and Guidance, Illinois Council of Community College Presidents Annual Retreat (October 2025)



ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

LEADERSHIP

Higher Education Team
Leader

Calculating Overtime & FLSA Update, Illinois ASBO Bookkeepers Conference (March 2025)

Addressing Employee Mental Health Conditions, IAPD/IPRA Soaring to New Heights Conference (January 2025)

Hiring Employees in an Age of New Regulations: Salary and other Job Posting Requirements, Application and Interview Do's and Don'ts, Background Screening Parameters, and More, IAPD Legal Symposium (November 2024)

Benefit or Burden: Navigating Ever-Expanding Employee Leave Rules, IAPD Legal Symposium (November 2023)

Managing Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Best Practices for Responding to Harassment and Discrimination Complaints, IAPD/IPRA Soaring to New Heights Conference (January 2023)





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Elizabeth (Liz) J. Becker focuses her practice on labor and employment, education, student rights, and board governance. She advises educational and public-sector employers on workplace investigations, discipline, and campus climate issues, and helps institutions align their policies, contracts, and handbooks with complex federal and state regulations, including Title IX, Title VII, the ADA, and the FMLA.

Before entering private practice, Liz built a career in higher education administration, association governance, and public service. Her roles with the National Panhellenic Conference, the NCAA, and a congressional district office provided her with a strong understanding of governance and compliance, as well as community expectations in educational and nonprofit settings. This experience shapes her practical, relationship-focused approach to client advising and sensitive investigations.

Liz earned her J.D. from Loyola University Chicago School of Law, where she took on leadership roles as Managing Editor of the Loyola University Chicago Law Journal and as a member of the Deans' Advisory Committee. She also holds a master's degree in Postsecondary Administration and Student Affairs from the USC Rossier School of Education and a B.A. in Political Science and History from the University of California, Davis.

Liz is a long-time fraternity/sorority volunteer and serves in leadership roles with Kappa Alpha Theta Fraternity, supporting collegiate chapters on policy, governance, and student leadership development. Outside of work and volunteering, she enjoys walking her dog along the Chicago lakefront and following Formula One racing. Despite living in the Midwest for a decade, this native Californian will never adjust to Chicago winters.

Presentations

Navigating Payroll Laws, Illinois ASBO Bookkeepers Conference (March 2026)



ORGANIZATIONS

Illinois State Bar
Association

Women's Bar Association
of Illinois

LEADERSHIP

Kappa Alpha Theta
Fraternity, Vice President

