

TITLE IX ESSENTIALS: COMPLIANCE TRAINING FOR KEY PERSONNEL

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OVERVIEW

- ✓ Scope of Title IX
- ✓ What Happened to the 2024 Title IX Regulations?
- ✓ Important Definitions
- ✓ Responsibilities of the Title IX Coordinator
- ✓ Responses and Grievance Procedures
- ✓ Policy and Notice Requirements
- ✓ Training and Recordkeeping





SCOPE OF TITLE IX

SCOPE OF TITLE IX

What is Title IX?

- "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." (20 USC § 1681; 34 CFR Part 106)
- How does Title IX define "sex"? (Hint: it doesn't!)

SCOPE OF TITLE IX

What is Title IX?

- Applies only to sex-based discrimination occurring in the U.S.
- Applies to recipients of Federal financial assistance operating education programs or activities
- Applies to students and employees and may also apply to third-party complaints



SCOPE OF TITLE IX

"Education program or activity"

- Locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs (including school-operated networks)
- All academic, educational, extra-curricular, athletic, and other programs of the school
- Not necessarily dictated by the geographic location of the incident; requires a fact-specific inquiry

SCOPE OF TITLE IX

Title IX Sexual Harassment Complaints Fall Under One of Three Categories:

- **Quid Pro Quo:** An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- **Hostile Environment:** 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 recipient's education program or activity; or
- **Sexual assault**, dating violence, domestic violence, or stalking.

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Unwelcome conduct that is:

- Severe;
- Pervasive;
- Objectively offensive; **and**
- Effectively denies a person equal access to a school program or activity.

What is a "reasonable person" standard?

SCOPE OF TITLE IX

What if Conduct is Not "Sexual Harassment" Under Title IX?

- Harassment Prevention Policies
- Uniform Complaint Procedures
- General/Internal Complaint Policies



WHAT HAPPENED TO THE 2024 TITLE IX REGULATIONS?

2024 Title IX Regs: What Happened?

- Initially effective August 1, 2024
- **Vacated** on January 9, 2025, by federal court in Kentucky (*Tennessee v. Cardona*)
- Court ruled that the 2024 Title IX Final Rule and Regulations were unconstitutional and exceeded the U.S. Department of Education's authority under Title IX.
    - ✓ Does not change the underlaying law – Title IX itself still exists.

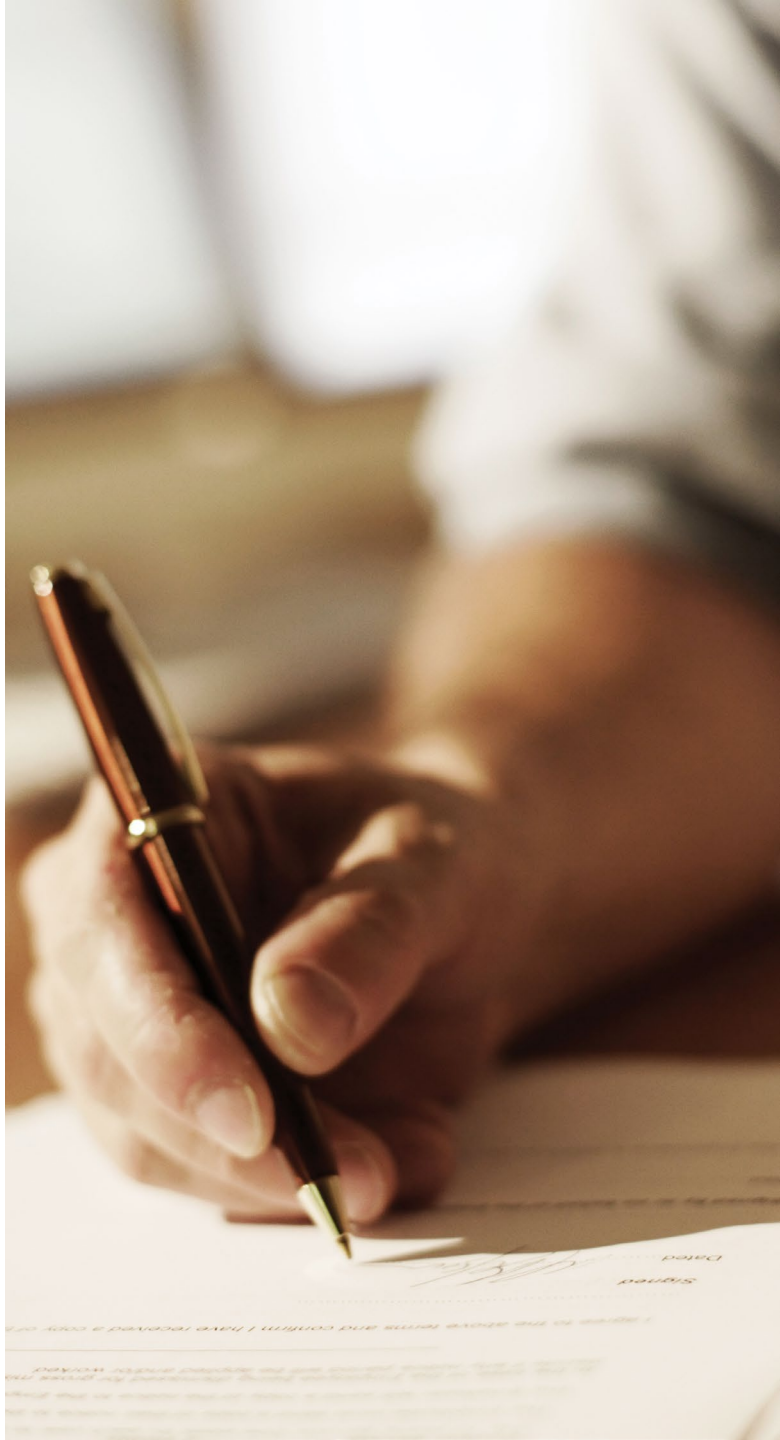



DEFINITIONS

WHAT IS A FORMAL SEXUAL HARASSMENT COMPLAINT?

A Formal Sexual Harassment Complaint:

- Is a document 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.
- Must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint, and may be submitted electronically.
- At the time of filing, the complainant must be participating in or attempting to participate in the education program or activity.



WHO IS THE COMPLAINANT?

The Complainant is:

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Not necessarily the person who reports the conduct.



WHO IS THE RESPONDENT?

The Respondent is:

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

SUPPORTIVE MEASURES

"Supportive Measures" are:

- Non-disciplinary, non-punitive, free individualized services offered to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint is filed.
- Designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party.

SUPPORTIVE MEASURES

- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus (as applicable), and other similar measures.
- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the School's ability to provide the supportive measures.


TITLE IX COORDINATOR

TITLE IX COORDINATOR

The School must designate and authorize at least one employee to serve as the "Title IX Coordinator." The Title IX Coordinator:

- Coordinates the School's efforts to comply with the requirements of Title IX and the regulations
- Receives reports of sex discrimination and sexual harassment, formal sexual harassment complaints, and inquiries about the application of Title IX

TITLE IX COORDINATOR

- May investigate complaints or reports but cannot serve as a decision-maker for formal complaints of sexual harassment
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Coordinates implementation of remedies and supportive measures

TITLE IX COORDINATOR

- Promptly contacts the complainant and informs them of the availability of supportive measures with or without the filing of a formal complaint
- Considers the complainant's wishes regarding supportive measures
- Explains to the complainant the process for filing a formal complaint





FORMAL SEXUAL HARASSMENT COMPLAINTS

RESPONSE TO SEXUAL HARASSMENT COMPLAINTS

- Any person may report sex discrimination, including sexual harassment, by reporting to the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- School's response must be prompt and not "deliberately indifferent" (i.e., not clearly unreasonable in light of the known circumstances).
- Follow steps outlined in grievance procedures for sexual harassment complaints



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GRIEVANCE PROCEDURES

The School must adopt and publish:

- Grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and the regulations; and
- A grievance process for formal complaints of sexual harassment that complies with 34 CFR § 106.45.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Basic requirements for the grievance process for formal complaints of sexual harassment:

- Treat complainants and respondents equitably.
- Respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the process.
- Remedies must be designed to restore or preserve equal access to the School's education program or activity. Remedies may include "supportive measures" and discipline.
- Title IX Coordinator, investigator, decision-maker, and any person designated to facilitate an informal resolution process must receive required training, must be impartial, and not have a conflict of interest or bias for or against complainants or respondents.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Basic requirements for the grievance process for formal complaints of sexual harassment (cont.):

- Include reasonably prompt time frames for the conclusion of the grievance process, appeal process, and any informal resolution processes.
- Allow for temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the parties. Good cause may be based on the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Basic requirements for the grievance process for formal complaints of sexual harassment (cont.)

- Include a list or describe the range of possible disciplinary sanctions, remedies, and supportive measures.
- State whether the standard of evidence will be the preponderance of the evidence standard or the clear and convincing evidence standard and apply the same standard to all formal complaints of sexual harassment.
- Include procedures and permissible bases for appeal.



FORMAL SEXUAL HARASSMENT COMPLAINTS

Summary of Steps in the Title IX Formal Sexual Harassment Complaint Process

- Review Complaint
- Supportive Measures
- Notice of Allegations
- Informal Resolution (voluntary and not for allegations that an employee sexually harassed a student)
- Dismissal of Complaint, if applicable
- Investigation
- Report of Evidence to Parties
- Written Response(s) from Parties
- Investigation Report
- Written Response(s) from Parties
- Hearing, if applicable
- Written Determination of Responsibility to Parties
- Appeal, if any

FORMAL SEXUAL HARASSMENT COMPLAINTS – NOTICE OF ALLEGATIONS

A notice of allegations must be sent to known parties upon receipt of a formal complaint including notice of:

- The School's grievance process, including any informal resolution process.
- The allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- The presumption that the respondent is not responsible for the alleged conduct until the conclusion of the grievance process.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Notice of Allegations (cont.)

- Their right to have an advisor of their choice and inspect and review evidence.
- Any provision in the School's code of conduct that prohibits knowingly making false statements or submitting false information during the grievance process.
- If additional allegations will be investigated, the School must provide notice of the additional allegations to the parties whose identities are known.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Informal Resolution

- Voluntary and may not be offered unless a formal complaint is filed.
- Must obtain the parties' voluntary, written consent to the informal resolution process.
- Must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



FORMAL SEXUAL HARASSMENT COMPLAINTS

Informal Resolution (cont.)

- Must provide written notice to the parties of:
  - ✓ The allegations
  - ✓ The requirements of the informal resolution process and when it may preclude the parties from resuming a formal complaint on the same allegations
  - ✓ That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process
  - ✓ Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

FORMAL SEXUAL HARASSMENT COMPLAINTS

Mandatory dismissal of a formal complaint

- The School must investigate the allegations in a formal complaint and dismiss a formal complaint if the conduct alleged:
  - ✓ Would not constitute sexual harassment even if proved
  - ✓ Did not occur in the School's education program or activity
  - ✓ Did not occur against a person in the U.S.



FORMAL SEXUAL HARASSMENT COMPLAINTS

Discretionary dismissal of a formal complaint

- Complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
- Respondent is no longer enrolled or employed by the School.
- Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Dismissals

- Upon a dismissal, the School must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- Dismissal does not preclude action under another provision of the School's code of conduct

FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint

- Burden of proof and of gathering evidence sufficient to reach a determination on responsibility rests on the School.
- School must have valid written, voluntary consent to access, consider, disclose, or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their capacity, or assisting in that capacity, and which are made and maintained for the provision of treatment to the party.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.)

- For Both Claimant & Respondent:
  - ✓ Do not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
  - ✓ Let the parties present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
  - ✓ Allow the parties to have others present during any grievance proceeding, including being accompanied by the advisor of their choice, and not limit the choice or presence of an advisor in any meeting or grievance proceeding. The School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, but such restrictions must apply to both parties.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.): Additional participants in the investigation

- Attorneys for parties
- Support people for parties (both non-employees and employees)
- Witnesses are not entitled to an advisor of their choice to be present for their interview (i.e., support persons, co-witness interviews, attorneys, etc.)

Practical considerations

- Code of Conduct
- Confidentiality
- Refusal to participate/Insubordination
- Lybarger Warning

FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.)

- Provide, to a party whose participation is invited or expected, 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 any evidence obtained in the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the School does not intend to rely and inculpatory or exculpatory evidence, so that each party can meaningfully respond prior to the conclusion of the investigation.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.)

- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - ✓ Avoid sex-based biases and stereotypes.
    - E.g., "Boys will be boys"
  - ✓ Whether bias exists is fact-specific, and schools should use a commonsense approach.
  - ✓ Do not make credibility determinations based on a person's sex or status as a complainant, respondent, or witness.
  - ✓ Treat complainants and respondents equitably.
  - ✓ Respondent is presumed not responsible until a determination is made at the conclusion of the grievance process.

INTERVIEWING WITNESSES

Investigation of a formal complaint (cont.)

- Obtain written statement(s) if possible, then meet to clarify.
- Build rapport by opening with low-stakes questions and providing assurance: “you're not in trouble — I'm gathering facts, not deciding today.”
- Be sensitive to topics of a sensitive nature. Listen carefully, no assumptions, no judgment.
- Ask open-ended questions; don't lead the witness.
- Use plain, relatable language; define terms; invite witness to ask if unclear.
- Separate what witness personally saw/heard from what others told them.
- Take detailed notes and use a chart or list of allegations to begin; avoid reflexive agreement.
- Suggested order: complainant/parent → respondent/parent → witnesses → complainant again→ respondent again, as needed.



INTERVIEWING WITNESSES

Investigation of a formal complaint (cont.)

- Looking for 5W1H formula: Who, What, Where, When, Why, How.
- **WHO**: Parties, Parents, Anyone Identified as Witnesses, Teachers, Administrators, People Known to be Present
- **WHAT**: Start with allegations. What happened? Gently probe when not getting straight answers.
- **WHERE**: Bathroom? Janitor rest areas? Playground?
- **WHEN**: Get dates and times where possible. Get specific. Before or after [what]?
- **WHY**: Prior relationship? To aggress or intimidate? Sexual gratification?
- **HOW**: Isolation? Adults or others present? Deliberate circumstances? Use of technology? Were there cameras or supervision employees in the area?
- Make sure to follow up on any leads that were unknown before and ask if there is any documents in support (emails, text messages, screen shots, etc.)!



FORMAL SEXUAL HARASSMENT COMPLAINTS

Investigation of a formal complaint (cont.)

- Prior to completion of the investigative report, the School 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 completion of the investigative report.
- Investigative report must fairly summarize relevant evidence and be provided in electronic or hard copy at least 10 days prior to any hearing or date of determination on responsibility to each party and the party's advisor, for review and response.

FORMAL SEXUAL HARASSMENT COMPLAINTS

Questions from the parties

- After the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



FORMAL SEXUAL HARASSMENT COMPLAINTS

Hearings

- Required of Colleges and Universities but not K-12 Schools
- Overview of Hearing Process
  - ✓ Identify Hearing Participants
  - ✓ Provide Parties Written Notice of Hearing
  - ✓ Protect Interests and Rights of Parties and Witnesses
  - ✓ Set Procedural Norms
  - ✓ Conduct Hearing
  - ✓ Post-Hearing

FORMAL SEXUAL HARASSMENT COMPLAINTS

Determination regarding responsibility

- Decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination and apply the standard of evidence specified.
- The written determination must:
    1. Identify the allegations potentially constituting sexual harassment
    2. Describe the procedural steps taken, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
    3. Include findings of fact supporting the determination

FORMAL SEXUAL HARASSMENT COMPLAINTS

The written determination must (cont.):

4. State the conclusions applying the school's code of conduct to the facts
5. State the result, rationale, and determination of responsibility as to each allegation and any disciplinary sanctions imposed on the respondent
6. State whether remedies will be provided to the complainant
7. Include the school's procedures and permissible bases for appeal
8. Be provided to the parties simultaneously
9. Become final on the date that the school provides the parties with the written result of any appeal, or the deadline for appeal

FORMAL SEXUAL HARASSMENT COMPLAINTS

Appeals

- Must offer both parties the option appeal a determination regarding responsibility or a dismissal of a formal complaint or any allegations therein, on the following bases:
  - ✓ Procedural irregularity that affected the outcome of the matter
  - ✓ New evidence that was not reasonably available at the time the determination of responsibility was made, that could affect the outcome of the matter
  - ✓ The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

FORMAL SEXUAL HARASSMENT COMPLAINTS

Appeals (cont.)

- Must notify the other party in writing and implement appeal procedures equally for both parties.
- Decision-maker(s) for an appeal cannot be the same as the initial decision-maker(s), the investigator(s), or the Title IX Coordinator and must comply with the required standards.
- Give both parties a reasonable, equal opportunity to submit a written statement.
- A written decision describing the result and the rationale must be provided simultaneously to both parties.



RELEVANCE OF EVIDENCE

RELEVANCE OF EVIDENCE

- Investigations and determinations of responsibility must include an objective evaluation of all relevant evidence. The investigative report must fairly summarize relevant evidence.
- Evidence is relevant if it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
- Investigator and decision-maker may give different weight to evidence or evaluate evidence differently.

RELEVANCE OF EVIDENCE

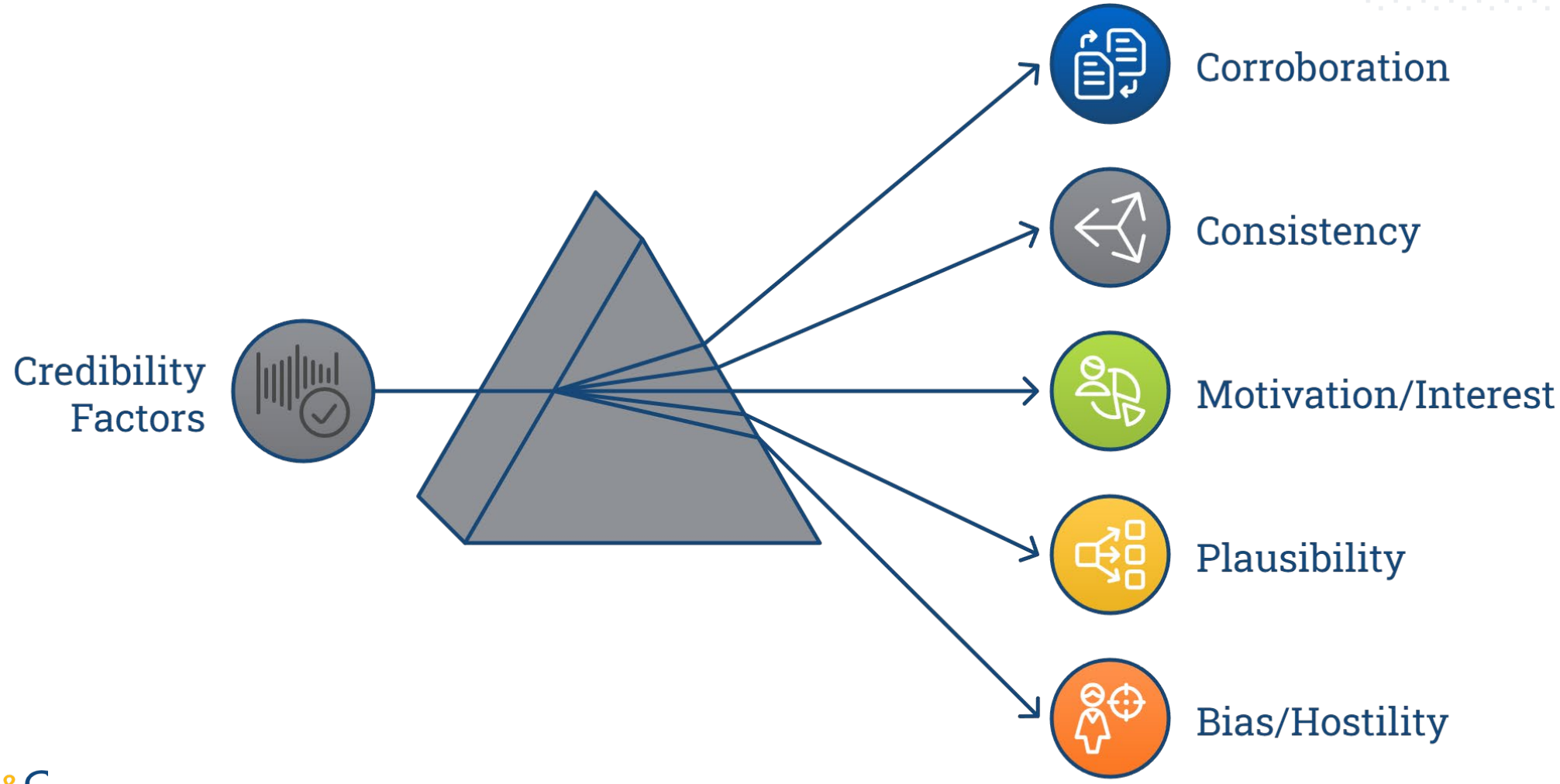
Factors that may affect weight given to relevant evidence:

- First-hand v. hearsay
- Direct evidence v. circumstantial evidence
- Physical or documentary evidence v. testimonial



RELEVANCE OF EVIDENCE

Credibility Factors:



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RELEVANCE OF EVIDENCE

Irrelevant evidence under Title IX includes:

- Information protected under a legally recognized privilege
- Evidence about the complainant's sexual predisposition
- Evidence about the complainant's prior sexual behavior except when:
  - ✓ Used to prove that someone other than the respondent committed the conduct alleged; or
  - ✓ Relating to specific incidents of the complainant's prior sexual behavior with respect to the respondent and used to prove consent.



POLICY, NOTICE AND TRAINING REQUIREMENTS

POLICY AND NOTICE REQUIREMENTS

- The School must provide notice of the School's Title IX policy and grievance procedures and process.
- Must prominently display the contact information for the Title IX Coordinator(s) and the School's Title IX policy on its website, if any, and in each handbook that it makes available to the stakeholders listed above.

TRAINING REQUIREMENTS

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on all the following:

- The definition of sexual harassment under Title IX
- The scope of the School's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

TRAINING REQUIREMENTS

- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.



RECORDKEEPING

The School must maintain the following records for a period of seven years–

- Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant (supportive measures);
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The training materials must be publicly available on the School's website.


QUESTIONS?
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