

CIVIL RIGHTS COMPLIANCE TRAINING

CIVIL RIGHTS DECISION-MAKER REFRESHER

Title IX Hearing & Determination Training

2-HOUR SESSION • ANNUAL DECISION-MAKER TRAINING • 34 CFR PART 106

120 MINUTES, TEN MODULES

Today's Agenda

1 **Welcome & Objectives**
5 min

3 **Role of the Decision-Maker**
12 min

5 **Evidence & Relevance Rules**
15 min

7 **Break**
10 min

9 **Determinations & Sanctions**
10 min

2 **Legal Foundation**
15 min

4 **Standard of Proof & Burden**
8 min

6 **Credibility Framework**
10 min

8 **Case Study Workshop**
25 min

10 **Knowledge Check & Close**
10 min

BY THE END OF THIS SESSION

Learning Objectives

1

Apply the current Title IX regulatory framework to real hearing decisions with confidence and precision.

2

Perform the decision-maker role independently from investigation and coordination functions.

3

Evaluate evidence using relevance, rape-shield, and credibility standards free of bias.

4

Draft legally sufficient written determinations and proportionate sanctions.

BEFORE WE BEGIN

Ground Rules



Confidentiality

Case examples used today are hypothetical composites. Do not reference active or identifiable cases from your institution.



Full Participation

This refresher satisfies your annual decision-maker training requirement under 34 CFR 106.45(b)(10) -- engage fully with the workshop.



No Legal Advice

This training addresses policy application and regulatory standards, not case-specific legal counsel.



Parking Lot

Institution-specific questions go to your Title IX Coordinator after this session, or to Distinct Consulting directly.



MODULE 2 of 10

LEGAL FOUNDATION

15 MINUTES

- What Title IX requires, and who it covers
- The regulatory timeline -- how we got to today's rules
- Key definitions: what counts as sexual harassment
- Jurisdiction and mandatory dismissal grounds

What Title IX Requires

“No person 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.”

- Applies to virtually all K-12 schools, colleges, and universities that receive federal funding
- Sexual harassment, including sexual violence, is a recognized form of sex discrimination
- Enforced by the Department of Education's Office for Civil Rights (OCR)
- Institutions must designate a Title IX Coordinator and maintain grievance procedures

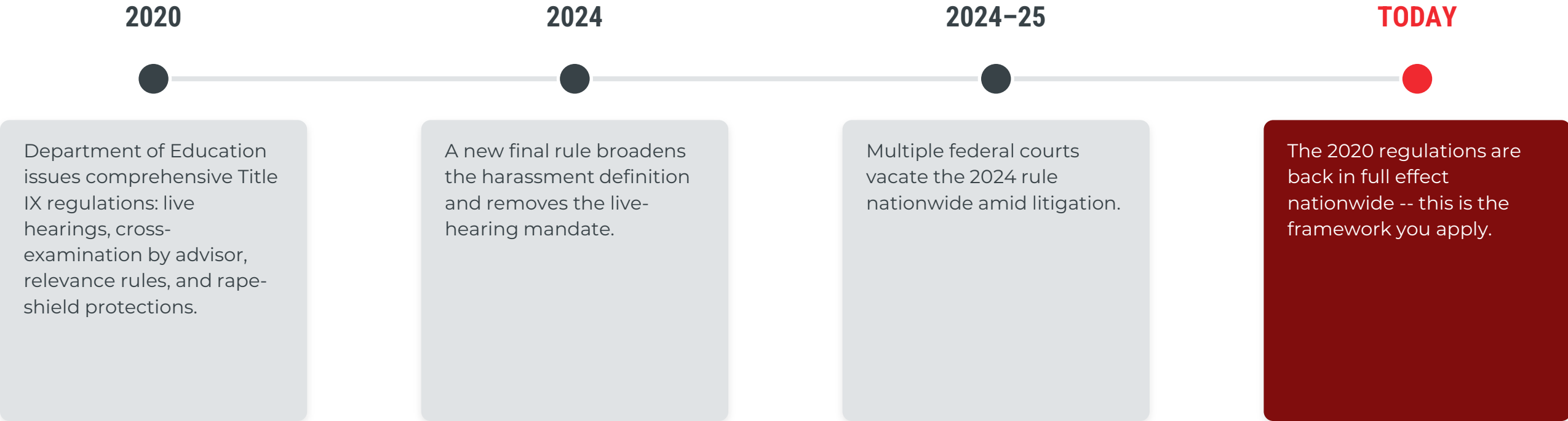
34 CFR

PART 106

The implementing regulation you apply
in every hearing you conduct today.

HOW WE GOT HERE

Regulatory Timeline



Watch for updates: a new rulemaking is not expected before late 2026 at the earliest. Confirm current status with your Title IX Coordinator before each hearing cycle.

Key Definitions

1

Quid Pro Quo

An employee conditioning an educational aid, benefit, or service on a person's participation in unwelcome sexual conduct.

2

Hostile Environment

Unwelcome conduct a reasonable person would find so severe, pervasive, AND objectively offensive that it denies equal educational access. All three elements are required.

3

Clery / VAWA Offenses

Sexual assault, dating violence, domestic violence, or stalking, as defined by the Clery Act and the Violence Against Women Act.

Jurisdiction & Dismissal Grounds

Jurisdiction Requires

- Conduct occurred within the institution's education program or activity
- Conduct occurred against a person located in the United States
- Complainant was participating in, or attempting to participate in, the institution's program at the time the formal complaint was filed

Mandatory Dismissal If

- The conduct wouldn't meet the Title IX definition even if every fact alleged were proven
- The conduct didn't occur in the institution's education program or activity
- The conduct didn't occur in the United States

Note: institutions may still address dismissed conduct under a separate code of conduct -- Title IX dismissal is not a finding on the merits.



ROLE OF THE DECISION-MAKER

12 MINUTES

- Four distinct roles, and why separation matters
- Your core responsibilities on hearing day
- Conflict of interest and bias standards

Four Distinct Roles

1

Title IX Coordinator

Oversees the process and ensures compliance. Cannot decide the case.

2

Investigator

Gathers evidence, interviews parties and witnesses, writes the investigative report.

3

Decision-Maker (You)

Holds the hearing, evaluates evidence, issues the written determination.

4

Appeal Decision-Maker

Reviews procedural or substantive challenges after the determination is issued.

No single person may serve in more than one of these roles for the same case -- and none of them may also be the complaint's Title IX Coordinator.

Core Responsibilities

- 1 Convene and control a live hearing with both parties present (or remotely, if either party requests it)
- 2 Permit each party's advisor to conduct live cross-examination -- never the parties directly
- 3 Rule in real time on relevance objections before a question may be answered
- 4 Objectively evaluate all evidence -- inculpatory and exculpatory alike
- 5 Issue a written determination applying your institution's designated standard of proof
- 6 Refrain from any role in the investigation, coordination, or appeal of the same matter

Conflict of Interest & Bias Standards

- Decision-makers must be free of conflicts of interest or bias for or against complainants or respondents generally, and for or against the individual parties
- Annual training on the definition of sexual harassment, jurisdiction, relevance, and impartiality -- like this session -- is a regulatory requirement, not optional professional development
- Training materials used to prepare decision-makers must be published or made available upon request
- Prior involvement with either party outside the case, a financial interest in the outcome, or a personal relationship with a party or witness all require recusal

ASK YOURSELF

Could a reasonable observer, knowing what I know about my relationship to this case, question whether I can be neutral?

If yes, disclose and recuse.



STANDARD OF PROOF & BURDEN

8 MINUTES

- Preponderance vs. clear-and-convincing evidence
- Consistency requirements across cases
- Where the burden of proof rests -- and the presumption of non-responsibility

Choosing -- and Applying -- the Standard

Preponderance of the Evidence

“More likely than not” -- greater than 50% probability that the alleged conduct occurred.

Clear and Convincing Evidence

A higher threshold -- the evidence must show it is highly probable that the alleged conduct occurred.

Your institution selects ONE standard and applies it consistently -- to all formal complaints, and equally to students and employees. You do not choose case-by-case.

Burden of Proof & Presumption

- The burden of gathering evidence and proof rests on the institution -- never on either party
- Respondents are presumed not responsible for the alleged conduct until a determination is reached at the conclusion of the grievance process
- You may not draw an adverse inference solely from a party's or witness's silence or non-participation in the hearing
- That said, unanswered cross-examination does limit what statements you may rely on -- covered in the next module



EVIDENCE & RELEVANCE RULES

15 MINUTES

- The relevance standard, and how to rule in real time
- Rape shield protections and their two narrow exceptions
- Privileged records and unanswered cross-examination

The Relevance Standard

- Relevance means the evidence makes a fact of consequence to the determination more or less probable than it would be without it
- You must permit each party's advisor to ask relevant questions and follow-up questions, including those challenging credibility
- Before a party or witness answers a cross-examination question, you must first determine whether it is relevant, and explain any exclusion on the record
- Evidence and questions about a complainant's sexual predisposition are never relevant -- full stop

Rape Shield Rule -- Two Narrow Exceptions

GENERAL RULE

Questions and evidence about a complainant's prior sexual behavior are off-limits.

1 Exception 1

Offered to prove that someone other than the respondent committed the alleged conduct.

2 Exception 2

Offered to prove consent -- but only for specific incidents of prior sexual behavior with the respondent.

Everything else about sexual history -- reputation, general predisposition -- stays out.

Privileged Information & Cross-Examination Gaps

Privileged Records Excluded

(absent voluntary written consent)

- Treatment records (medical, psychological, counseling)
- Attorney-client communications
- Other legally recognized privileges

If a Witness Won't Submit to Cross-Examination

- You cannot rely on that person's statement to reach your determination
- You may not draw an adverse inference based solely on their absence
- This applies even to statements already summarized in the investigative report

MODULE 6 of 10

CREDIBILITY FRAMEWORK

10 MINUTES

- Objective evaluation factors -- and the ones that don't count
- Trauma-informed neutrality: there is no 'ideal victim'

OBJECTIVE, NOT ASSUMED

Credibility: Do This, Not That

DO EVALUATE

- Consistency across a person's own statements over time
- Corroboration with other evidence in the record
- Opportunity to perceive the events described
- Plausibility given the full record, not just one statement

DON'T RELY ON

- Assumptions based on a person's status as complainant, respondent, or witness
- Demeanor or visible emotion as a stand-alone proxy for truthfulness
- Delayed reporting alone, without other evidence, to judge credibility

COMMON MISPERCEPTIONS

There Is No 'Ideal Victim'

- Trauma responses vary widely: calm recounting, visible distress, fragmented memory, and flat affect can all be genuine
- Delayed reporting is common and does not, by itself, undermine or confirm credibility
- Ground every credibility judgment in the specific evidence in front of you -- not in assumptions about how a "real" victim or a "wrongly accused" respondent is supposed to behave



10-MINUTE BREAK

We resume with the Case Study Workshop.

CASE STUDY WORKSHOP

25 MINUTES

- Two hypothetical scenarios, worked in small groups
- Apply jurisdiction, relevance, rape shield, and credibility standards
- Full-group debrief after each scenario

HOW THIS WORKS

Workshop Instructions

1

Work in the pairs or small groups assigned by your facilitator

2

Read each scenario and apply the standards from Modules 2-6: jurisdiction, relevance, rape shield, and credibility

3

Prepare to share your group's reasoning -- there is no single "correct" answer for every judgment call, but there is a defensible process

4

You'll have roughly 10 minutes per scenario, followed by a full-group debrief

SCENARIO 1

The Delayed Disclosure

HYPOTHETICAL COMPOSITE -- NOT AN ACTUAL CASE

A complainant reports an incident that allegedly occurred four months earlier, disclosed only after seeing the respondent at a campus event. The investigative report notes the complainant was calm and precise during the interview, while the respondent grew visibly upset when questioned. During the hearing, the respondent's advisor seeks to ask the complainant about a prior dating relationship with someone other than the respondent.

Scenario 1 -- Discussion Questions

1

Is the delayed disclosure, by itself, relevant to your credibility analysis? Why or why not?

2

Does demeanor during the investigation interview tell you anything reliable about credibility?

3

Is the proposed cross-examination question about the complainant's other relationship relevant, or does it run into the rape shield rule? Explain your ruling.

SCENARIO 2

The Unanswered Cross-Examination

HYPOTHETICAL COMPOSITE -- NOT AN ACTUAL CASE

A witness who provided a detailed statement to the investigator declines to appear for the live hearing. The complainant's advisor asks you to admit the investigative report's summary of that statement anyway, noting it corroborates the complainant's account. Separately, the respondent's advisor asks a series of questions that appear relevant only to the complainant's general reputation for promiscuity.

Scenario 2 -- Discussion Questions

1 Can you rely on the absent witness's statement to reach your determination? What does the regulation require here?

2 How should you rule on the reputation-based questions, and what do you say on the record?

3 What's the difference between excluding evidence and drawing an adverse inference -- and why does that distinction matter for this witness?

Debrief: compare your group's reasoning with the facilitator's guidance before moving on.



DETERMINATIONS & SANCTIONS

10 MINUTES

- The seven required elements of a written determination
- Proportionate sanctions and remedies for the complainant

Required Elements of the Determination

- 1 Identification of the allegations potentially constituting sexual harassment
- 2 A description of the procedural steps taken, from receipt of the complaint through the determination
- 3 Findings of fact supporting the determination
- 4 Conclusions regarding which code-of-conduct provision(s), if any, the facts establish were violated
- 5 A rationale for the result as to each allegation, including the evidence relied upon and credibility determinations
- 6 Any disciplinary sanctions imposed on the respondent
- 7 Whether remedies will be provided to the complainant to restore or preserve equal access

Sanctions & Remedies

Sanctions Must Be

- Proportionate to the violation found
- Consistent with how your institution has handled comparable conduct
- Free of any influence from the length or difficulty of the process itself

Remedies for the Complainant

- Are separate from sanctions and may be provided regardless of outcome
- Are designed to restore or preserve equal access to education, not to punish
- Are decided by the Title IX Coordinator, not the decision-maker, once the determination is final

MODULE 9 of 10

KNOWLEDGE CHECK & CLOSE

10 MINUTES

- Four true/false questions covering today's material
- Key takeaways and closing resources

TEST YOUR UNDERSTANDING

Knowledge Check

1

A decision-maker may also serve as the Title IX Coordinator for the same case, as long as they disclose it.

TRUE / FALSE

2

Evidence of a complainant's general reputation for promiscuity is admissible to assess credibility.

TRUE / FALSE

3

If a witness refuses cross-examination, you may still rely on their prior statement if it's detailed and corroborated.

TRUE / FALSE

4

Your institution may apply preponderance to student cases and clear-and-convincing to employee cases, based on case complexity.

TRUE / FALSE

What to Carry Forward

- 1 FALSE -- no single person may hold more than one of the four roles in the same matter.
- 2 FALSE -- reputation and predisposition evidence is barred outright by the rape shield rule.
- 3 FALSE -- you cannot rely on a statement from anyone who doesn't submit to cross-examination.
- 4 FALSE -- the standard must be applied consistently across all formal complaints, not varied by case.

REMEMBER

Keep your role separate. Rule on relevance in real time and explain it. Never rely on an untested statement. Judge credibility on evidence, not assumptions. Write all seven required elements, every time.



THANK YOU

Questions on today's material? Bring them to your Title IX Coordinator or to Distinct Consulting.

WWW.DISTINCTCONSULTING.COM

This training reflects the 2020 Title IX regulations (34 CFR Part 106) in effect as of the session date. Regulatory status can change -- confirm current requirements with your Title IX Coordinator before each hearing cycle.