ODHE Advanced Title IX Coordinator Training

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Presenters - Jessica

Jessica L. Galanos

- Bricker & Eckler, Attorneys at Law, Columbus, Ohio
- Former Deputy Title IX Coordinator and litigator
- Contact:

Bricker & Eckler
100 South Third Street
Columbus, OH 43215 -4291
614.227.2341
jgalanos@bricker.com

Presenters - Rob

Robert T. Kent

- Bricker & Eckler, Attorneys at Law, Cleveland, Ohio
- Former General Counsel, Title IX Coordinator, & litigator
- Contact:

Bricker & Eckler
Cleveland, OH
517.208.1460
rkent@bricker.com

Disclaimers

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We can't help ourselves. We're lawyers.

- We are not giving you legal advice. Consult with your legal counsel regarding how best to address a specific situation.
- This training does not cover institution-specific grievance procedures, policies, or technology.
- Use the chat function to ask general questions and hypotheticals.
- This training is not being recorded, but we will provide you with a packet of the training materials to post on your websites for Title IX compliance.

Presentation Rules

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- Questions are encouraged!
- “For the sake of argument…”
- Be aware of your own responses and experiences
- Follow-up with someone if you have questions and concerns
- Take breaks as needed

Posting these Training Materials?

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YES – Post away!

- The “recipient” is required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website
- We know this and will make this packet available to you electronically to post.
- Watch for the “Thank you for attending” email and look for a link to download the slides

Aspirational Agenda

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1:00-2:00	Top Ten Issues for TIXCs unrelated to the new regs
2:00-3:00	Review of Exit Ramp/Dismissal Discussion and Preparation for Practice Session in Facilitated Groups
3:00-3:15	Break
3:15-4:00	Practice session in Facilitated Groups
4:00-5:00	Debrief and Q&A

Top Ten Issues for TIXCs

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That *AREN'T* the New Title IX Regulations

- Prevention Programming
- Clery/VAWA
- Staffing
- Office Structure
- Mandatory report v. mandatory support
- Working to correct known misperceptions about Title IX
- Policy review and updates
- Anticipating and addressing secondary effects on your campus
- Crisis management practices
- Working with stakeholders on your campus

Prevention Programming

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Prevention Education

- Electronic versus in person
  - Electronic
    - SUNY Spark, https://system.suny.edu/sparc/
    - ODHE resources, https://www.ohiohighered.org/ccc
  - In Person - Staffing model, connection points

Education as outcome of informal resolution

Use Clery/VAWA education language as a core, but consider expanding

Clery/VAWA

Where is conduct that now falls outside of Title IX sexual harassment going?

- What happens when jurisdiction-based TIX dismissals occur for conduct that could constitute a Clery Crime (domestic violence, dating violence, sexual assault, or stalking)?
- Moving to separate office?
    - Make sure they have required Clery/VAWA training

Are you a Campus Security Authority under Clery? How is mandatory reporting handled?

Staffing

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Do you have the people you need?

- Volunteers and voluntolds
- Consider grant opportunities for special projects (https://www.justice.gov/ovw/grant-programs)
- Internal versus external
- Qualifications

check out grant options

Are you taking care of you people?

Trustee training - not required but good to have Trustees be knowledgeable

TIX Office Structure

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Reporting and organization structure

- Who should the TIXC report to? (authority, knowledge)
- Should prevention education be part of the TIX office? (continuity, independence)
- Deputy TIXCs

Mandatory Reporting/Supporting

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Mandatory Reporting versus Mandatory Supporting

Mandatory reporting (NOTE: OH Felony reporting requirement)

- Risks of not doing it (liability, enforcement actions)
- Risks of doing it (loss of trust, re-traumatization)

Mandatory supporting

- Risks of not doing it (cold hand, re-traumatization)
- Risks of doing it (training, discretion)

Do both

Correcting Misperceptions

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Perception that because students know what is going in, all administrators know what is going on

Perception that the administration is using the TIX process to target/protect faculty and staff

How do you dispel myths about TIX?

- Not covering up complaints
- If we don't have information, we can't use it
- We listen, we care – Just because we don't talk about it, doesn't mean we are not doing anything
- You don't have to participate in an investigation

Policy Review and Updates

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When and how do I update our policy?

- Wait for new regs?
- Summer or some other time

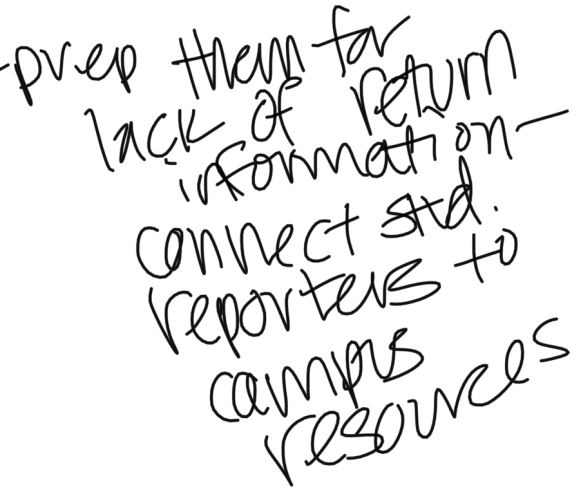
What do I need to know in order to update?

- Surveys
- Stakeholder meetings

Update committee

Secondary Impact

- Support for those who are supporting
- Support for witnesses - not getting direct supportive measures that parties and witnesses received
- Support for reporters/employees
- Supporting change:
  - Ally with advocates
  - Phoenix theory



Crisis Management

what is the plan?

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Who will you go to first?

- Police, president, PR/spokesperson, counsel, clergy…?

Next?

- Department, development…?

Talk to the Media?

- Media training
- Protecting the institution/yourself

Weathering the storm

De-briefing and preparing for the next storm

do a tabletop training

Identifying Stakeholders – Obvious

Identifying Stakeholders

- Obvious
  - Police, public safety, etc.
  - Human resources
  - Mandatory reporters
  - Student affairs/conduct
  - Residence hall staff

Identifying Stakeholders – Not-so-obvious

Identifying Stakeholders

- Not-so-obvious
  - Student/faculty govt.
  - Deans/chairs/directors
  - Advocacy/support services
  - Institution’s health services
  - Greek councils
  - Local attorneys/Institution’s counsel
  - Athletics

Stakeholders – Police, public safety, etc.

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Police, public safety, etc.

- How and when will you share information?
- Mode of communication, notice
- Warrants/subpoenas
- Timely warnings
- How/when matters move to prosecutor
- Collaboration on interviews?
- Enforcement of no contact

Stakeholders – Human Resources

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Human resources

- How and when will you share information?
- Mode of communication, notice
- Administrative leave decisions
- Sanctioning decisions
- Non-TIX problem conduct

Stakeholders – Mandatory Reporters

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Mandatory reporters

- How and when will you share information?
- Mode of communication, notice
- Training
- Compliant humanity – report AND support

Stakeholders – Student affairs/conduct

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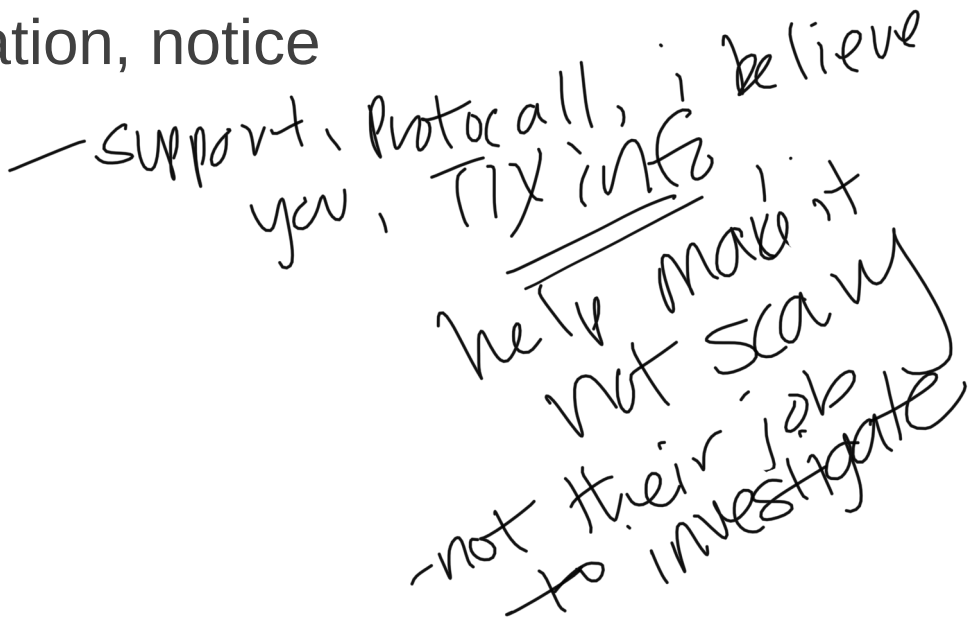
Student affairs/conduct

- How and when will you share information?
- Mode of communication, notice
- Hand-off procedure
- Clery training
- No contact orders



Stakeholders – Residence hall staff

Residence hall staff

- How and when will you share information?
- Mode of communication, notice
- Hand-off procedure - see last slide
- Supportive measures implementation, including no contact and student moves

Stakeholders – Student/faculty govt.

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Student/faculty govt.

- TIX initiatives
- Opportunities for partnership
- Familiarity and trust
- Transparency

- cabinet
- division mtgs
- univ fac. mtg
- SG
- FSL councils

Stakeholders – Deans/chairs/directors

Deans/chairs/directors

- How and when will you share information?
- Mode of communication, notice
- Hand-off procedure
- Defining retaliation/interference
- Assistance with supportive measures

Stakeholders – Advocacy/support services

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Advocacy/support services

- Opportunities for collaboration during investigation
- Limits and boundaries
- Referral process
- Process feedback

Stakeholders – Health services

Health services

- Coordination and consistency of messaging
- Coordination of campus/community services
- Process feedback

Stakeholders – Greek councils

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Greek councils

- TIX initiatives
- Opportunities for partnership
- Familiarity and trust
- Transparency
- Process feedback

Stakeholders – Local attorneys/School Counsel

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Local attorneys

- Instruction on processes
- Process feedback

Institution's Counsel

- Instruction on processes
- Support re "what ifs"
- Process feedback

Stakeholders – Athletics

Athletics

- TIX initiatives
- Opportunities for partnership
- Familiarity and trust
- Transparency
- Process feedback
- Handling supportive/interim measures

Expectations of the TIXC

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Primary responsibility:

- Coordinate the recipient's efforts to comply with Title IX responsibilities

Specific expectations during the process:

- Implement a compliant process
- Respond when there's actual knowledge
- Contact the Complainant re: Supportive Measures
- Understand the process from report through resolution in order to shepherd the process and coordinate efforts
- Serve Impartially and without Bias

Areas of Expertise of the TIXC

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New definitions, new processes, new responsibilities

- Training
- “Actual Notice”
- Jurisdiction
- Mandatory and Discretionary Dismissal
- Supportive Measures
- Emergency Removal
- Formal Complaints
- Informal Resolution
- Advisors
- Recordkeeping
- Title VII

New Definition of Sexual Harassment

34 C.F.R. § 106.30(a)

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) 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;

(2) 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

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Sexual Harassment

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- **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - [***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
  - [**Clery crimes**] Sexual assault, dating violence, domestic violence, or stalking

Clery Crimes

- Refers to certain statutory definitions for sexual assault, dating violence, domestic violence and stalking
  - **Sexual assault** is defined as forcible and non-forcible sex offenses as defined in the FBI's Uniform Crime Reporting (UCR) database, which you can find in the National Incident-Based Reporting System (NIBRS) manual
  - **Dating violence, domestic violence,** and **stalking** definitions are from Clery statute (not regulations) as amended by VAWA
  - Remember – must be on the basis of sex to be Title IX Sexual Harssment

Sexual Assault

- Remember, this is definition used by the FBI for crime reporting
- Strict construction of the references in the regulations define Sexual Assault to include the following:
  - Rape
  - Sodomy
  - Sexual Assault with an Object
  - Fondling
  - Incest
  - Statutory Rape

Sexual Assault: Rape

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- The **carnal knowledge** of a person,
  - without the consent of the victim,
  - including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Carnal knowledge** is defined as the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).

Sexual Assault: Sodomy

- **Oral or anal sexual intercourse** with another person,
  - without the consent of the victim,
  - including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault: With an Object

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- To use an object or instrument to unlawfully **penetrate**, however slightly, **the genital or anal opening** of the body of another person,
  - without the consent of the victim,
  - including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- An object or instrument is anything used by the offender **other than the offender's genitalia**, e.g., a finger, bottle, handgun, stick.

Sexual Assault: Fondling

- The **touching of the private body parts** of another person for the **purpose of sexual gratification**,
  - without the consent of the victim,
  - including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault: Incest

- Sexual intercourse **between persons who are related** to each other within the degrees wherein marriage is prohibited by law

Sexual Assault: Statutory Rape

- Sexual intercourse with a person who is **under the statutory age of consent.**

In Ohio:

- Under 13 → can't consent
- Under 16 → can't consent to those older than 18

Dating Violence

- Act of **violence** committed by a person who is or has been in a romantic or intimate relationship with the complainant.
  - The existence of such a romantic or intimate relationship is determined by:
    - the length of the relationship,
    - the type of relationship,
    - and the frequency of interactions between the individuals involved in the relationship.

Domestic Violence

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- Act of **violence** committed by:
  - A current or former spouse or intimate partner of the complainant;
  - A person with whom the complainant shares a child in common;
  - A person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
  - A person similarly situated to a spouse of the victim under the domestic/family violence laws of the jurisdiction;
  - Any other person against an adult or youth victim who is protected from that person's acts under the domestic/family violence laws of the jurisdiction

Stalking

- Engaging in a **course of conduct**
  - directed at a specific person
  - that would cause a reasonable person with similar characteristics under similar circumstances to:
    - Fear for the person's safety or the safety of others; or
    - Suffer substantial emotional distress.
- It must be sex-based stalking to fall under the Title IX definition (Preamble, p. 30172 fn. 772) – Think "celebrity stalking"

Stalking: Course of Conduct

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"Course of Conduct"

- Under VAWA **regulations**: means **two or more acts**, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Stalking: Reasonable Person

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"Reasonable person"

- Under VAWA **regulations**: means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking: Substantial Emotional Distress

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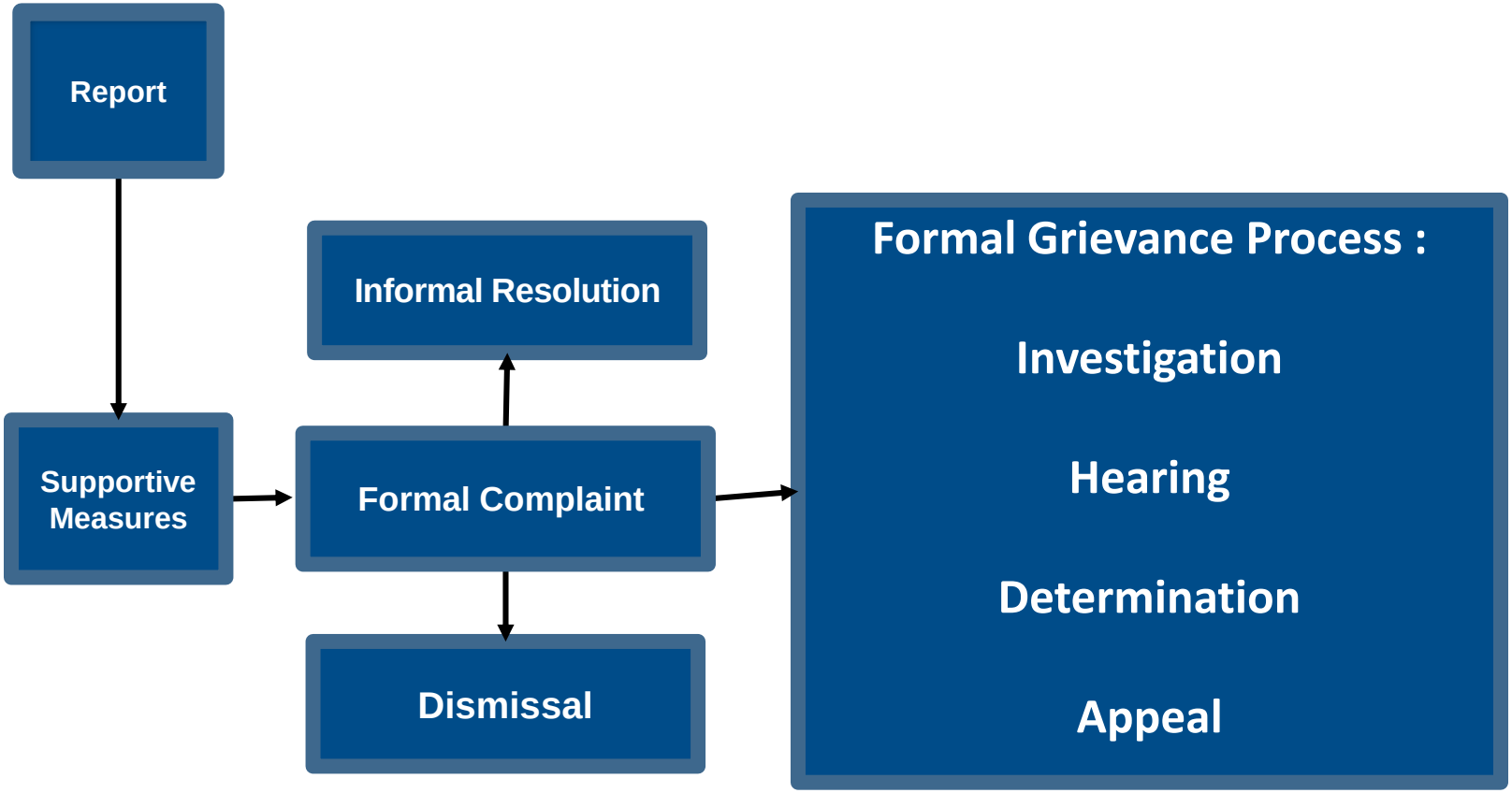
"Substantial emotional distress"

- Under VAWA regulations: means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

New Required Processes

Process Overview



Changes to Jurisdiction

Actual Knowledge of SH → Educational Program or Activity → Against a Person in the United States

- A recipient with **actual knowledge** of sexual harassment in an **educational program or activity** of the recipient **against a person in the United States**, must respond promptly in a manner that is not deliberately indifferent.
- "includes **locations, events, or circumstances** over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. " 34 C.F.R. §106.44(a)

Jurisdiction and Mandatory Dismissal (1 of 2)

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Dismissal of a formal complaint per §106.45(b)(3)(i)

- The recipient **must** investigate the allegations in a formal complaint,
- **(BUT)** If the conduct alleged in the formal complaint:
  - **would not constitute sexual harassment** as defined in §106.30 even if proved,
  - did not occur in the recipient's **education program or activity,**
  - or **did not occur against a person in the United States,**

    …

Jurisdiction and Mandatory Dismissal (2 of 2)

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(Cont.)… then the recipient **must** dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part;

- such a dismissal does not preclude action under another provision of the recipient's code of conduct."
- **When and Where are your exit ramps?**

TIXC: Discretionary Dismissals

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Discretionary Dismissals

- Complainant notifies TIX Coordinator in writing they would like to withdraw the formal complaint
- Respondent is no longer enrolled or employed by the recipient
- Specific circumstances prevent the recipient from gathering sufficient evidence

Dismissal/Referral ≠ Merit

Preamble, p. 30214

- Don’t base this decision on your opinion of the merits
- Permitting recipient to dismiss because they deem allegation meritless or frivolous without following grievance procedure would defeat the purpose of the regulations

Notice & Timing

34 C.F.R § 106.45(b)(3)

- Must promptly send written **notice** of dismissal/**reasons** simultaneously to the parties
- Jurisdictional issues can arise **at any time**, even during the investigation

Preparation for Practice Session in Facilitated Groups

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Referral of Wendy's Report (1 of 3)

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Review Title IX Memo re: Intake Meeting with Wendy

Next steps for report re: Wendy?

- Supportive Measures
  - Counseling appointment?
  - Room change for Cody?
  - No Contact Order?

Referral of Wendy's Report (2 of 3)

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Review Title IX Memo re: Intake Meeting with Wendy

Next steps for report re: Wendy?

- Process Discussion
  - Initial discussion with the Deputy
  - Explanation re: need to determine if this is Title IX misconduct
  - Explanation re: possible referral to other office on campus

Referral of Wendy's Report (3 of 3)

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Review Title IX Memo re: Intake Meeting with Wendy

Next steps for report re: Wendy?

- Process Discussion After Getting More Detail
  - First – determine whether this belongs with another office – is it possible this conduct might violate your student code of conduct?
  - Second – meet with Wendy to discuss the referral
    - Remember, if there's a formal complaint – there must be notice of dismissal and the reason

Explaining Your Process

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Practice Session in Facilitated Groups

Your mission – should you choose to accept it

- Explain to Wendy why her report isn't Title IX
  - Be sensitive – the "Title IX" label may be important
  - Be transparent – show Wendy the relevant definitions
  - Be forward-thinking – explain what happens next

Practice Session in Facilitated Groups

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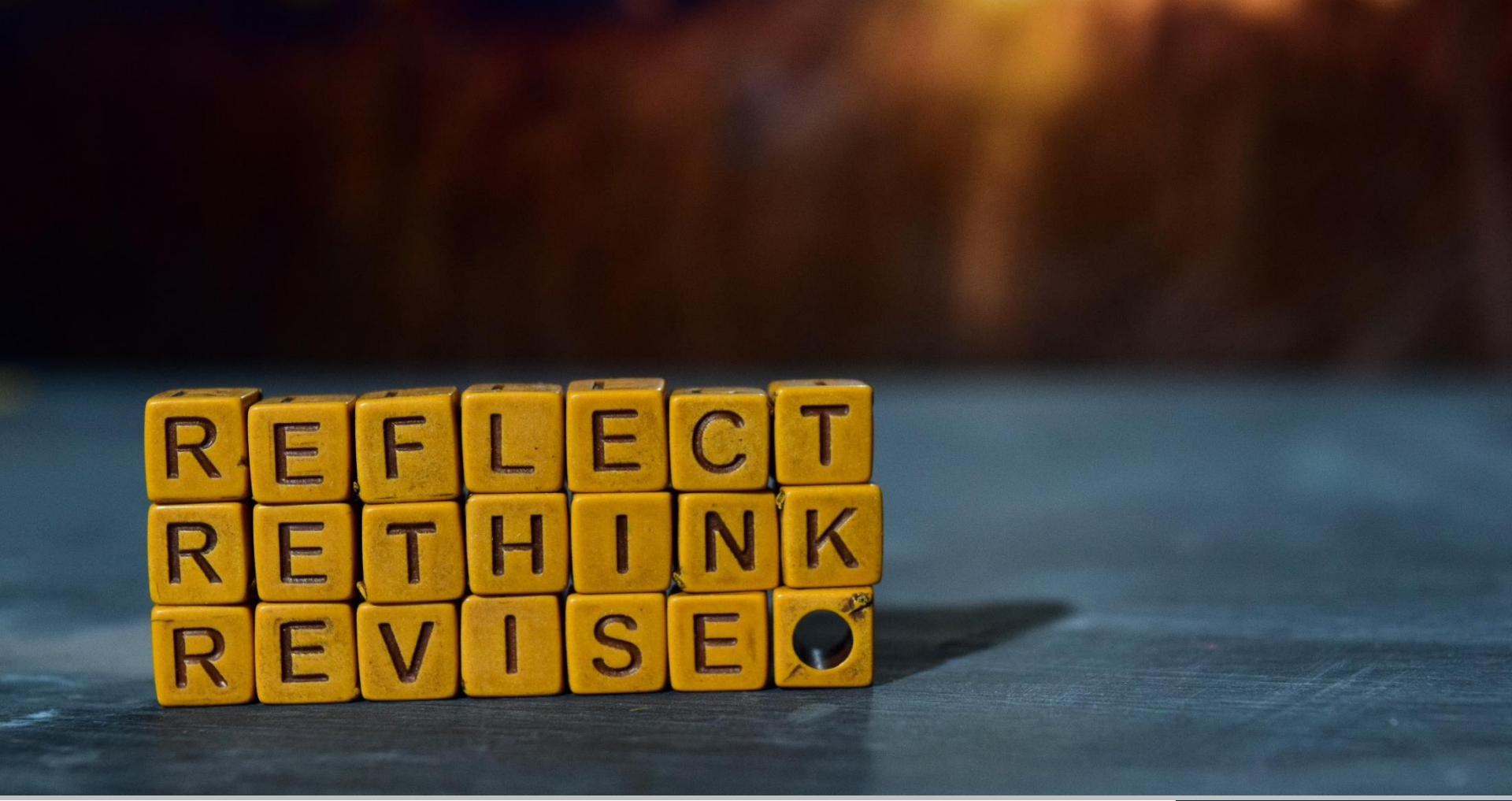

Debrief and Q&A

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Where to Find Additional Information

Bricker's Title IX Resource Center Website:
www.bricker.com/titleix

You can also find us on **Twitter** at
@BrickerHigherEd

Questions?