

# SEXUAL HARASSMENT INVESTIGATIONS UNDER TITLE IX



Sexual harassment allegations are among the most sensitive issues that an investigator may encounter. And conducting one of these investigations in an institute of higher education that receives government funding adds to the sensitivity with legal requirements under Title IX, which prohibits sex-based discrimination in education.

Among the requirements under Title IX are that an institution must have are:

- A clear procedure for reporting
- A Title IX coordinator
- Proper training for all employees who address sexual violence

It's important for investigators, therefore, to have deep knowledge of best practices for investigating sexual harassment and the extra requirements dictated by Title IX.

## Substantiating Allegations

Three concepts that are important in substantiating sexual harassment allegations under Title IX are force, incapacitation and consent.

Investigators need to be properly trained and have a full understanding of these three concepts in order to investigate sexual harassment claims effectively and in compliance with Title IX requirements.

### Force

Force is the use of physical, threats, intimidation or coercion. If there's evidence of force, the allegations are considered to be substantiated.

### Incapacitation

Someone who is incapacitated due to alcohol or drugs cannot consent to sexual acts. It must be established that the respondent knew or should have known that the complainant was incapacitated.

### Consent

If your institution has an affirmative consent policy, consent is demonstrated through clear actions or words. The absence of "no" does not equal consent.

## Rights Under Title IX

Under Title IX, both the accuser and accused have the right to:

- Timely access to information to be presented at the hearing
- Present their own witnesses and evidence
- Bring a support person or adviser to investigative proceedings (including an attorney if permitted by the school's)
- Attend pre-hearing meetings that allow them to present their testimony
- Receive written notice of the final hearing decision at the same time as the other party
- Refuse to sign a non-disclosure agreement
- Appeal the final decision

## Standard of Proof

Educational institutions may choose to use the "preponderance of the evidence" or the "clear and convincing evidence" standard of proof for Title IX cases. However, they are required to select one standard and apply it across all formal proceedings evenly.

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