



## **Title IX Coordinator Training Online Course**

### **Class Two: Conducting a Title IX Investigation**

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Training Course Does Not Constitute Legal Advice

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## **Class Overview:**



- President Biden's March 8 Executive Order
- Investigations Involving Employees
- Investigating a Formal Complaint
- Impartiality/Conflicts of Interest
- Relevance
- Violations of Other Policies



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# March 8 Executive Order

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## The President's Executive Order on *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*

- **Section 1. Policy.** It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Biden will begin undoing Trump's changes to Title IX, including how colleges investigate sexual assault.



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The screenshot shows the NPR website interface. At the top, there are logos for 'npr' and 'wnyc', along with navigation links for 'SIGN IN', 'NPR SHOP', and 'DONATE'. Below the navigation bar, there are menu options for 'NEWS', 'ARTS & LIT', 'MUSIC', 'SHOWS & PODCASTS', and 'SEARCH'. The main headline reads 'Biden Begins Process To Undo Trump Administration's Title IX Rules'. Below the headline is a video player showing a man in a suit speaking at a podium with an American flag in the background. The NACUA logo and name are visible at the bottom left of the screenshot.

- The order requires the Department to review and reconsider all existing regulations and guidance, and issue new guidance as needed to carry out this policy and Title IX's commitment.
- Within 100 days of the date of this order, the Secretary of Education, in consultation with the Attorney General, shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that are or may be inconsistent with the policy set forth in section 1 of this order, and provide the findings of this review to the Director of the Office of Management and Budget.
- As soon as practicable, and as appropriate and consistent with applicable law, the Secretary of Education shall review existing guidance and issue new guidance as needed on the implementation of the rule described in subsection (a)(i) of this section, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.
- The Secretary of Education shall consider suspending, revising, or rescinding — or publishing for notice and comment proposed rules suspending, revising, or rescinding — those agency actions that are inconsistent with the policy set forth in section 1 of this order as soon as practicable and as appropriate and consistent with applicable law, and may issue such requests for information as would facilitate doing so.

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The image features the NACUA logo in the top right corner, which consists of a stylized 'N' symbol followed by the text 'NACUA'. Below the logo, the title 'Investigations Involving Employees' is written in a large, bold, black sans-serif font. The background is a dark, abstract pattern of vertical lines that appear to be part of a flag or a similar design.

**NACUA**

**Investigations  
Involving  
Employees**

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## The Basics:

- Remember that the regulations also apply to employees – both as those allegedly subject to Title IX sexual harassment and as those accused of engaging in Title IX sexual harassment.
- Investigations of formal complaints of conduct potentially constituting Title IX sexual harassment involving employees must comply with the regulations.
- Institutions must use the same procedures for employee and student allegations of Title IX sexual harassment.

## However:

- Title VII also applies.
- Collective bargaining and other contractual obligations might also apply.
- OCR expects institutions to comply with *all* requirements.

## Title VII Requirements



- **Standards**
  - Submission becomes a term or condition
  - Unreasonably interferes with work performance or creates a hostile environment
  - Employer knew or should have known
- **Immediate and appropriate corrective action**
  - End the harassment and prevent recurrence

## Special Considerations

- Collective bargaining rights
- Administrative leave
- “Reasonably prompt timelines”  
vs.  
“Immediate and appropriate corrective action”



## Investigating a Formal Complaint

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## Conducting an Investigation



- Investigator must be free from bias and conflict of interest.
- Don't restrict the ability of either party to discuss allegations or gather evidence.
- Provide parties written notice sufficient to prepare.
- Allow parties an equal opportunity to identify witnesses, and other inculpatory and exculpatory evidence.
- Allow parties to have advisors.
- Don't access, consider, disclose or otherwise use a party's records prepared by a professional in a treatment capacity without voluntary, written consent.

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## Interviewing



Consider in advance whether interviews will be:

- Recorded or not recorded.
- followed with written statements or summaries.

In interviewing, the investigator must:

- Be prepared.
- Be objective and unbiased, free from stereotypes.
- Be free of conflict of interest.
- Avoid any prejudging of the parties or responsibility.
- Demonstrate respect.
- Take the lead in seeking evidence (inculpatory and exculpatory) – it is not the parties' responsibility to investigate.
- Be alert to non-verbal communications.

## Review of Evidence

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- Parties must have equal opportunity to inspect and review *all* evidence directly related to the allegations.
- Provide access to evidence to both parties and their advisors.
- Ten days prior to completion of the investigative report
- Consider parties' written response before completing report.

## Investigative Report



- Complete an Investigative Report that fairly summarizes relevant evidence.
- Provide to parties and their advisors for review and response at least 10 days before hearing.

## Impartiality & Conflicts of Interest