


Trauma-Informed Resolution Processes

Bricker 
Graydon
Title IX In Focus
August 29, 2024

Check In

- How are you doing?

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Disclaimers

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

- We are not giving you legal advice
- Consult with legal counsel regarding specific situations
- You should have received slides for today's presentation
 - If not, check the link in the chat box

And another one...

Specific to the Title IX In Focus Webinar Series

- The 2020 and 2024 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss *some* of the required subject matter, none of these one-hour webinars will cover *all* of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Can We Post These Materials?

YES – Post away!

Institutions subject to the 2020 Title IX Regulations are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.

Institutions subject to the 2024 Title IX Regulations are required to maintain training materials.



Agenda

- Discussion of trauma and being trauma-informed
- Title IX resolution basics under the 2020 Title IX Regs and the 2024 Title IX Regs
- Practical tips for a trauma-informed resolution process



Trauma Defined

- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines trauma as “a result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”
- The CDC defines trauma as "a physical, cognitive, and emotional response caused by a traumatic event, series of events, or set of circumstances that is experienced as harmful or life-threatening."
- See also, DSM-5 Diagnostic Criteria for PTSD



How people mentally process what happened to them, affects the way the brain encodes and decodes memories of what occurred.

Understand the Context

Our focus today: Trauma-Informed
Resolutions

Trauma-Informed Intake

Trauma-Informed medical care and
mental health support

Trauma-Informed Education

Trauma-Informed First Responders

Trauma-Informed Basics

- Assume all parties and witnesses may be dealing with trauma – from this or other incidents
- To the greatest extent possible, meet them where they are
- Help them tell their story as part of the process
- Signs of trauma ≠ policy violation
- No signs of trauma ≠ no policy violation
- If they didn't act the way you might have, that doesn't mean it isn't true.

Things that *Aren't* Trauma-Informed

- Multiple meetings to gain additional information
 - It is sometimes necessary – particularly if you are meeting the person where they are
 - But... getting everything you need in one meeting is best
- Shock
- Judgment
- Skepticism
 - "Why are you just now reporting this?"

A Note About Asking Questions...

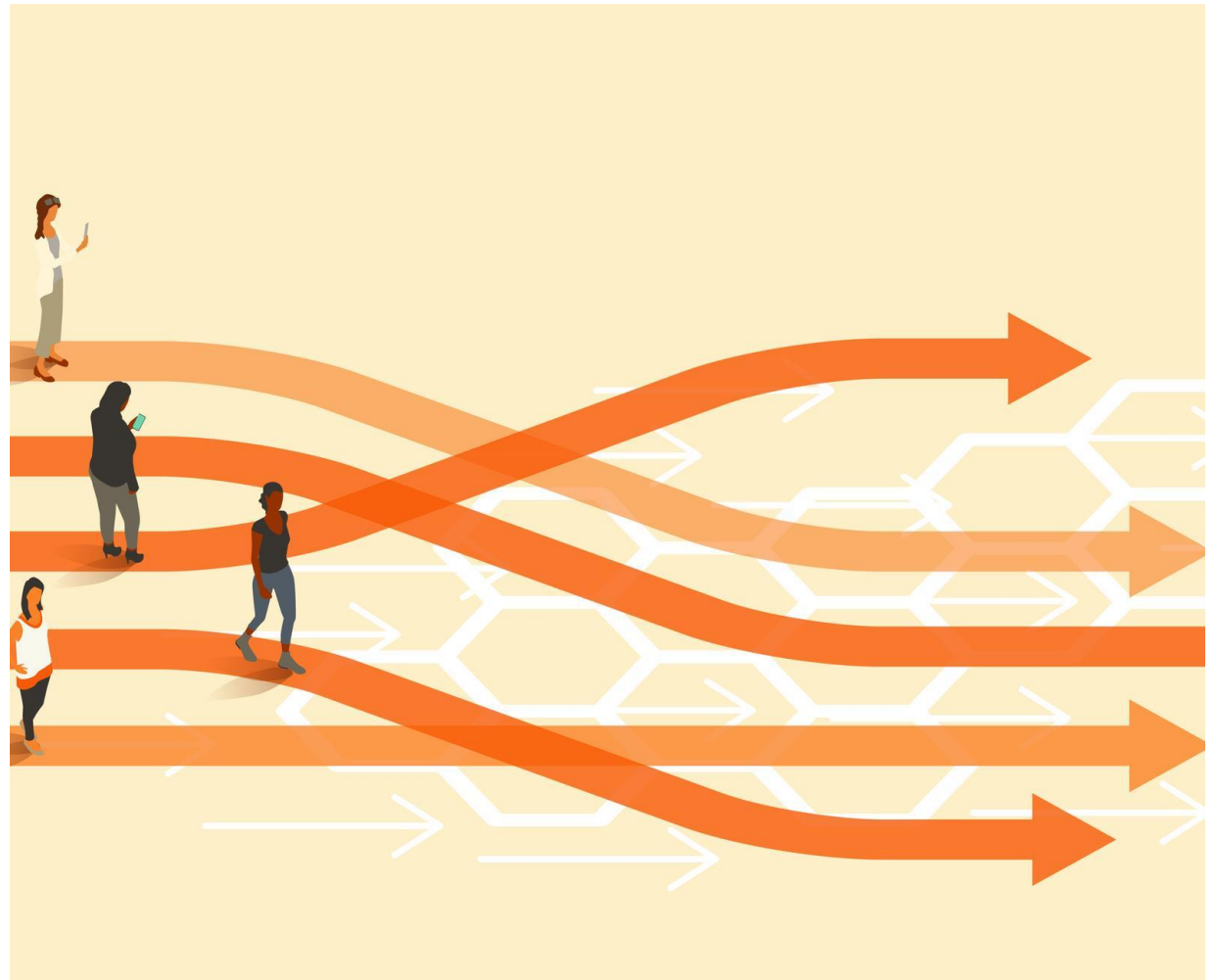
- ~~Avoiding hard questions~~
- Feels trauma-informed, but isn't
 - Can create the need for more interviews, hearings, appeals, and litigation
 - Consider the setting
 - Preferable to ask uncomfortable questions during an initial interview?
 - Later during a hearing?
 - Multiple times in the future by multiple people (hearing officer, appeals board, lawyers)

Poll #1

-
- Has your institution adopted a Policy that complies with the 2024 regulations?
 - If so, are you getting reports of post-August 1, 2024 conduct?

New (and Familiar) Resolution Processes under Title IX

What Process are You
Using?



"Regular" versus "Heightened"

- References to 106.45 and 106.46 in the next section and future trainings - two separate sections within the regulations
 - Preamble, p. 33633: "Section 106.45 of these final regulations specifies grievance procedures for the prompt and equitable resolution of complaints of sex discrimination generally, while [section] 106.46 specifies further grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving a student party in a postsecondary institution."
- 106.45: The decisionmaker **may** be the same person as the Title IX Coordinator or investigator

Which Grievance Process Applies? (Assuming Jurisdiction)

- Are you a postsecondary institution?
 - If yes: Go to next question
 - If no: Regular (106.45) applies
- Is one of the parties a student?
 - If yes: Go to next question
 - If no: Regular (106.45) applies
- Do the allegations include sex-based harassment?
 - If yes: Regular (106.45) + Heightened (106.46) apply
 - If no: Regular (106.45) applies

Assessing Credibility – Heightened Process 106.46(f) of the 2024 Regulations

- **Asynchronous process** – Parties submit questions, decision-maker asks questions and provides recording/transcript, parties submit follow-up questions, repeat
 - Investigator is permitted to conduct this process
- **Live Hearing** -
 - **Hearing Officer Led Process** – Decision-maker asks relevant, permissible questions submitted by parties
 - **Cross-Examination Process** (2020 Regs) – Advisors and decision-maker ask questions

Informal Resolution

- Rules are different for 2020 Regs versus 2024 Regs
 - Can you use IR for student/employee cases?
 - Is a Formal Complaint required?

Poll #2

-
- Which of these Heightened Processes is your institution currently using?
 - Asynchronous Process
 - Hearing Officer Led Process
 - Cross-Examination Process
 - More than one of these
 - Anyone keeping a cross-examination process when they are not required to do so?

Intersection of Process and Being Trauma-Informed - Themes

- Autonomy, when possible
- Consistency
- Transparency
- Language
- Support
- Neutrality
- Others?

Autonomy & Your Resolution Process

- How can you give maximum autonomy under your process?
 - Informal Resolution
 - Options for Heightened Procedures (but explain which options apply in your Policy)
 - Ex: Asynchronous unless one party requests a live hearing
- What if you can't give options?
 - Reinforce autonomy in participation, answering questions, choosing their advisor

Consistency & Your Resolution Process

- Is your process predictable?
 - A note about new policies
- Starts with intake – make sure staff is providing the same information
- Scripts, FAQs, Flow Charts
- Familiar Faces
- Meeting deadlines

Transparency & Your Resolution Process

- Starts with intake – make sure staff is providing the same information
- Scripts, FAQs, Flow Charts
- Evidence Review Process
- Individual meetings with TIXC before hearings
- Pre-hearing Conferences with decision-maker
- Live Hearings
 - 2020 Regs Cross-Examination Process – relevance rulings for every question asked by an advisor
 - 2024 Regs – Hearing Officer Led Process – must explain why questions proposed by a party are not asked
- Asynchronous Process – updates about progress and next steps

Language & Your Process

- "Cross-examination" - Talk to your legal counsel (this one is tricky)
- Charged words in your Policy, scripts, conversations
 - "Survivor"
 - "Perpetrator"
 - Attorney/Advisor

Support & Your Process

- Dedicated points of contact for support?
- Reinforcing the availability of supportive measures throughout the process
 - Initial conversations during intake
 - Ongoing discussions during the investigation
 - Support persons available at meetings and hearings
- Breaks freely given during hearings/IR
- Individual meetings with TIXC before hearings
- Pre-hearing Conferences with decision-maker

Neutrality & Your Process

- "What we do for one, we do for the other"
- Questioning under any of the Heightened Processes
 - Tone
 - Time limits
 - Substance

Be Aware of Secondary Trauma

- Check your institution's support resources for yourself and your Title IX team



Upcoming Title IX In Focus Webinars



September 26, 2024: Hostile Environment Basics

October 31, 2024: Common Issues in Investigating IPV

November 21, 2024: Title IX Litigation Update

February 27, 2025: Employee Sexual Misconduct Cases

March 27, 2025: The Romanticizing of Stalking Behavior

April 24, 2025: Sexual Misconduct Hearings

May 29, 2025: Title IX Litigation Update

Upcoming Higher Ed Webinars




- Higher Education Free Webinar Series:
 - Elections, Free Speech, and Academic Freedom (Higher Education Free Webinar Series) - September 19, 2024
 - Protecting Student Privacy in the Age of AI – January 15, 2025
- Title IX Trainings – late September/early October
 - On-Demand foundational sessions
 - Live Trainings via Zoom for Coordinators, Investigators, Informal Resolution Officers, and Hearing Officers

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