



AGENDA

Thursday, October 17, 2024
8:30 a.m. – 5:00 p.m. EST

1. *Breakfast*
2. **Investigative and Adjudication Best Practices**
3. *Morning Break (15 mins)*
4. **Roundtable Sessions: Investigative/Adjudication Models**
5. *Lunch (1 hour)*
6. **Considerations for Informal Resolution Process**
7. *Afternoon Break (15 mins)*
8. **Threat Assessment Considerations**

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Investigative and Adjudication Best Practices

Session #3

Main Conference

October 17, 2024



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#1

Adjudication Models

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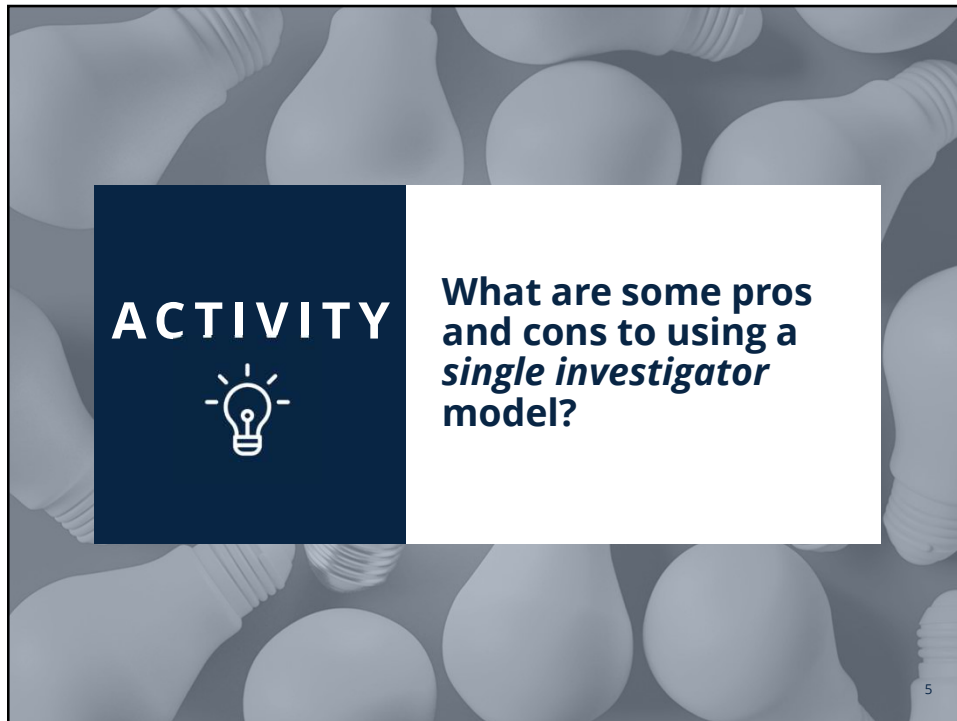
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A. Single Investigator Model

- Can be used for sex discrimination or sex-based harassment cases or both (as long as consistent principles are used)
- A single trained individual (including the T9C) can serve as BOTH the investigator and decisionmaker
- The investigator/decisionmaker determines credibility and makes the decision

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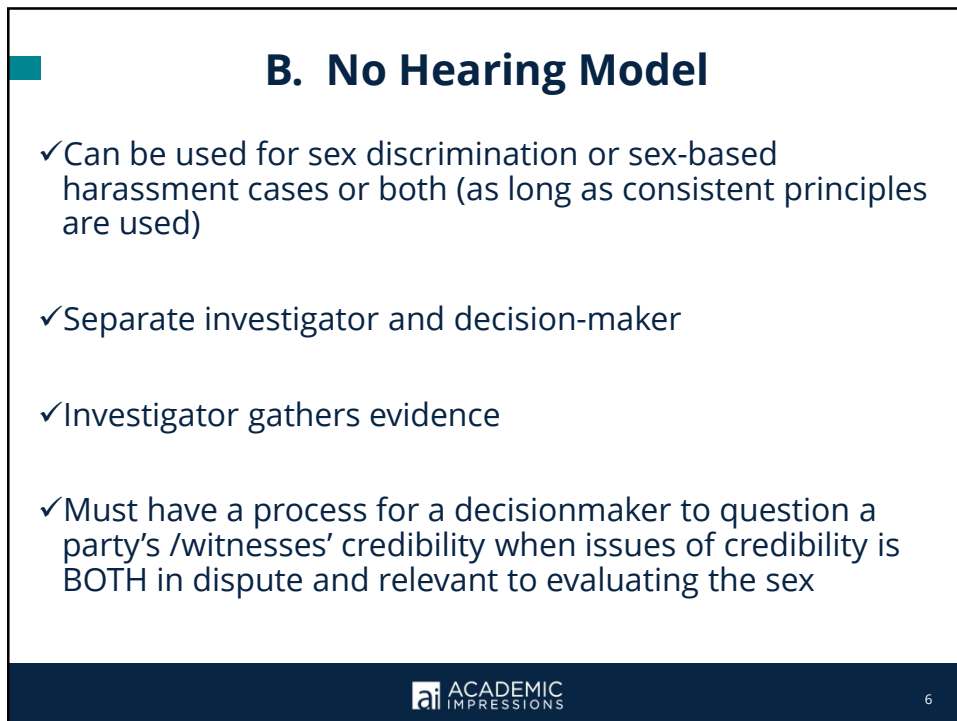
The slide features a background of various lightbulbs in shades of gray. A dark blue rectangular box on the left contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right of this box, the text "What are some pros and cons to using a *single investigator* model?" is displayed in a dark blue font. A small number "5" is visible in the bottom right corner of the slide.

ACTIVITY

What are some pros and cons to using a *single investigator* model?

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The slide has a white background with a dark blue footer. A teal square is positioned to the left of the section header. The header "B. No Hearing Model" is in bold dark blue text. Below it, four bullet points with checkmarks describe the model's features. The footer contains the "ai ACADEMIC IMPRESSIONS" logo and a small number "6".

B. No Hearing Model

- ✓ Can be used for sex discrimination or sex-based harassment cases or both (as long as consistent principles are used)
- ✓ Separate investigator and decision-maker
- ✓ Investigator gathers evidence
- ✓ Must have a process for a decisionmaker to question a party's /witnesses' credibility when issues of credibility is BOTH in dispute and relevant to evaluating the sex

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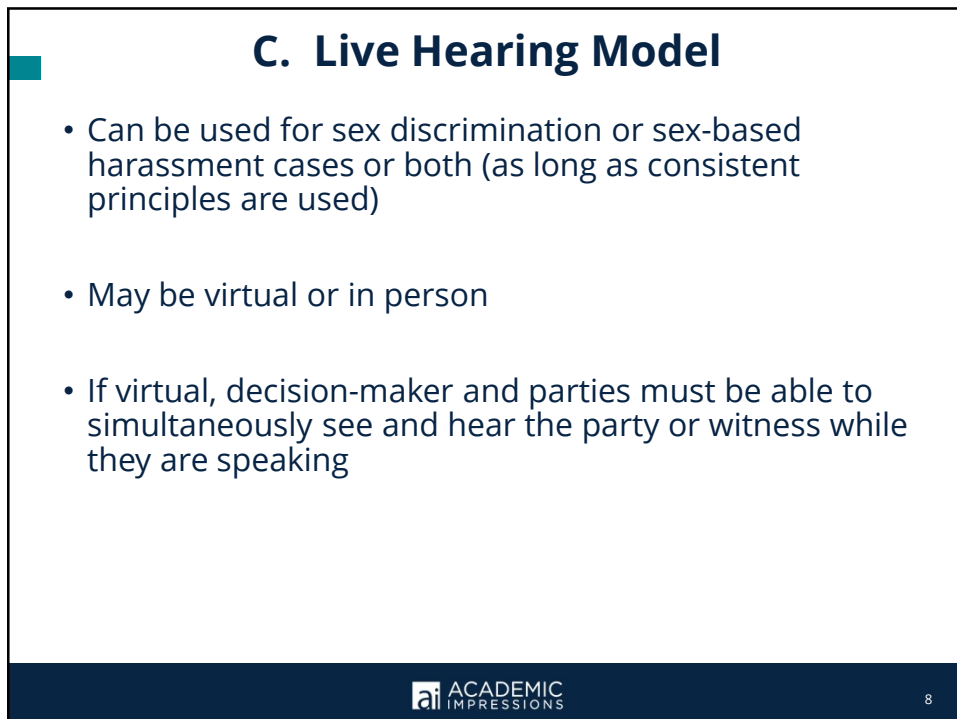
A slide with a background of various lightbulbs in shades of gray. A dark blue rectangle on the left contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right of this rectangle, the text "What are some pros and cons to using a *no hearing* model?" is written in dark blue. A small number "7" is in the bottom right corner of the slide.

ACTIVITY

What are some pros and cons to using a *no hearing* model?

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A slide with a white background and a dark blue footer. The title "C. Live Hearing Model" is in dark blue, bold font, with a small teal square to its left. Below the title are three bullet points in dark blue text. The footer contains the "ai ACADEMIC IMPRESSIONS" logo and a small number "8".

C. Live Hearing Model

- Can be used for sex discrimination or sex-based harassment cases or both (as long as consistent principles are used)
- May be virtual or in person
- If virtual, decision-maker and parties must be able to simultaneously see and hear the party or witness while they are speaking

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A slide with a background of various lightbulbs in shades of gray. A dark blue rectangle on the left contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right, a white rectangle contains the text "What are some pros and cons to using a *live hearing* model?" in dark blue, bold font.

ACTIVITY

What are some pros and cons to using a *live hearing* model?

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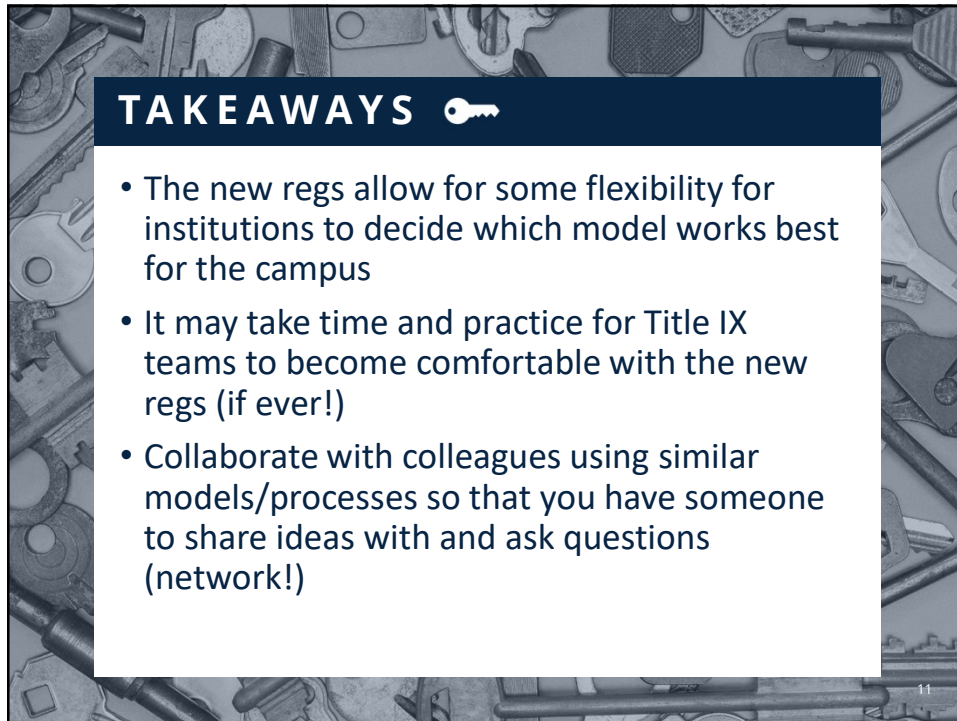
A slide with a background of various papers and documents in shades of gray. A dark blue rectangle on the left contains the words "GROUP DISCUSSION" in white, bold, uppercase letters, with a white speech bubble icon below it. To the right, a white rectangle contains the text "What are some additional issues not mentioned in any of the 3 models that you've identified?" in dark blue, bold font.

GROUP DISCUSSION

What are some additional issues not mentioned in any of the 3 models that you've identified?

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TAKEAWAYS

- The new regs allow for some flexibility for institutions to decide which model works best for the campus
- It may take time and practice for Title IX teams to become comfortable with the new regs (if ever!)
- Collaborate with colleagues using similar models/processes so that you have someone to share ideas with and ask questions (network!)

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#2

Title IX Investigations: Some Extra Nuts and Bolts

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POLL



Have you ever facilitated a Title IX investigation?

If so, what did you find most challenging in the investigation?

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Relevance:
What is it?



- Legal term
- Federal Rules of Evidence (FREs)
- FRE Rule 401. Evidence is relevant if:
 - the fact presented has a tendency to show it is more or less probable than it would be without the evidence; and,
 - the fact matters in determining the outcome


TITLE IX

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Relevant [34 CFR §106.2]

<div data-bbox="404 407 693 552"> <p>Questions</p>  </div>	<div data-bbox="841 407 1166 552"> <p>Evidence</p>  </div>
<p>Relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred</p>	<p>Relevant when they aid a decisionmaker in determining whether the alleged sex discrimination occurred</p>



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Impermissible (Questions & Evidence)

[34 CFR §106.45(b)(7)]

- Might not allowed, even though they may potentially be relevant
- 3 Types: [34 CFR §106.45(b)(7)(i-iii)]
 - i. Protected or recognized under state or federal law OR evidence provided to a confidential employee (need voluntary waiver or privilege)
 - ii. Party's or witness's treatment records (unless voluntary written consent for use in the grievance procedures)
 - iii. Sexual interests or prior sexual conduct UNLESS used to show someone other than respondent committed alleged conduct OR evidence about specific incidents of the complainant's prior sexual conduct with the respondent and is used to show consent


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■ Relevance (cont'd)

- Evidence must help to show that “something” is either true OR not true; or that it happened OR didn't happen.
- Administrative hearings (i.e., the Title IX grievance process) are not subject to the FREs unless they are adopted.
- However, FREs serve as a good way to understand how information may or may not be relevant.
- Both questions and information/evidence presented must be relevant

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■ Relevance (cont'd)

- What is “inculpatory” vs. “exculpatory” evidence? *[\$106.45(b)(5)(ii)]* Which one is “relevant?”
- Basically, know WHY you are asking a question and make sure your questions are related to whether the sex discrimination occurred.

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What About Hearsay?

- What is hearsay?
- An out-of-court statement offered by a party to establish the truth of the matter asserted.
- It can be a document or a witness telling you what another witness said.
- Hearsay evidence should have corroboration.
- Could a decision-maker consider hearsay?



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Hearsay: *What is it?*

Example 1:

Witness A says: "I was standing right there and saw Car A run the red light and hit Car B."

Example 2:

Witness B says: "My cousin told me that she was standing right there and saw Car B run the red light which caused Car A to hit them."

- Which one is hearsay?
- What is the problem with hearsay?
- Hearsay should be used to find actual witnesses or locate other information

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Relevant or Not Relevant?

Using the statements on the worksheet, determine if the statements or information is relevant or not relevant to the allegation of Hostile Environment Harassment.

Be prepared to discuss your answers with the group.

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Credibility [34 CFR §106.45(g)]

- Cannot be based on a person's status (complainant, respondent or witness)
- Includes questions asked of parties when evaluating and assessing credibility.
- Institutions must develop a process for assessing credibility
- A witness's credibility can be assessed if their credibility is in dispute and relevant to the allegations of sex discrimination
- Assessing credibility will usually be at issue (he/she said vs. she/he said)
- There must be a process that enables a decision-maker to adequately assess credibility of parties & witnesses

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■ Some Witness Credibility Considerations

- Demeanor
- Consistent information
- Perception
- Bias

Let's unpack each one....

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■ Credibility: Demeanor

- A person's outward behavior
- May be because of a question or a piece of information that was shared with the witness
- Does the person's behavior match their verbal response?
- Are they aggressive? Angry? Scared? Confident? Indifferent?
- Is their response reasonable given information you already have, if any?
- *What are some things you have experienced with regards to the demeanor of a witness?*

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■ Credibility: Consistent Information

- How information aligns with what other known facts have shown; consistency of detail
- Changes in facts, information, or details presented by a witness about an issue
- *How may inconsistent information provided by a witness affect their credibility? Does the inconsistent information have to be relevant to the sex-based discrimination in order to affect the overall credibility of a witness?*

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■ Credibility: Perception

- The ability to see, hear, or become aware of something through an individual's senses OR a way of regarding, understanding, interpreting or processing something; a mental impression
- Possible questions regarding accuracy (i.e., how far was the witness from the event when they saw it, etc.)
- Possible questions regarding understanding of a situation (i.e., seeing two individuals arguing — but not knowing what the argument is about)
- *What are other things that a witness may perceive in a sex-based harassment case?*

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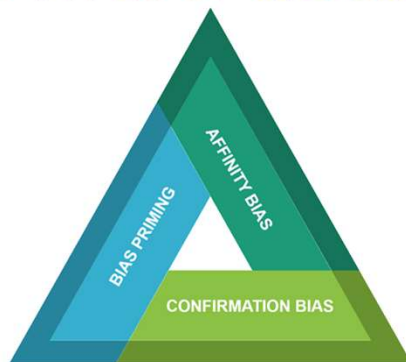
What is bias?

- Favoring or being against an idea or thing
- May be prejudicial or unfair
- Biases can be for or against an individual, a group, or a belief
- May be based on experiences
- What is "implicit bias?"

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Credibility: Bias

3 TYPES OF UNCONSCIOUS/IMPLICIT BIAS



- 01 **AFFINITY BIAS**
Favoring information by someone who is similar.
3 contexts: interviewer; interviewee; investigator evaluating representations of others location
- 02 **CONFIRMATION BIAS**
Natural tendency to favor information that confirms a preconceived notion
- 03 **BIAS PRIMING**
Asking questions or using words that may influence the way someone answers or responds to a question (like "leading" questions)

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Some Thoughts...

- Everyone has biases. Bias and stereotyping are based on personal experiences and opinions, and they are different for everyone.
- Not everyone will fit your expectations or preconceived notions; be careful of stereotypes.
- Identify and acknowledge your own personal biases; don't allow them to influence you during an investigation.
- Dealing with implicit bias takes a lot of practice.

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Some More Thoughts...

- Ask yourself: "Why do I think this way?"
- Bias can occur before your investigation starts, while gathering information, choosing witnesses, during interviews and while writing the report.
- Don't look for something that's not there (unless there is a reasonable basis to believe it exists and is relevant to your investigation).

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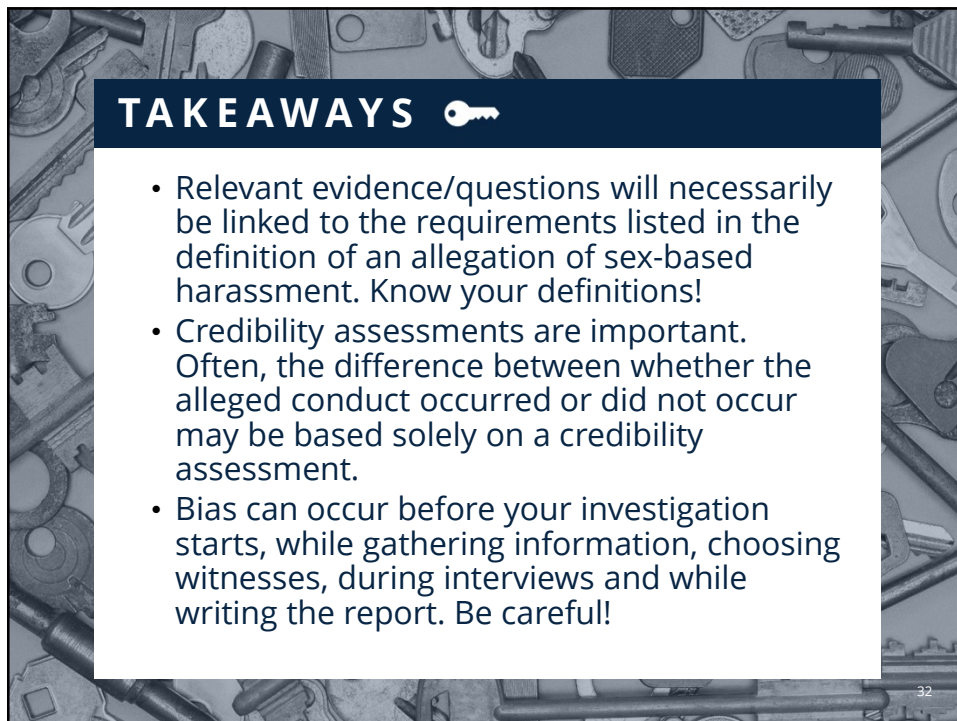
GROUP DISCUSSION

➤ What are some other things that should be considered when assessing credibility?

➤ Are there specific credibility types that may be better than others? Which ones are they? Why?

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TAKEAWAYS 🔑

- Relevant evidence/questions will necessarily be linked to the requirements listed in the definition of an allegation of sex-based harassment. Know your definitions!
- Credibility assessments are important. Often, the difference between whether the alleged conduct occurred or did not occur may be based solely on a credibility assessment.
- Bias can occur before your investigation starts, while gathering information, choosing witnesses, during interviews and while writing the report. Be careful!

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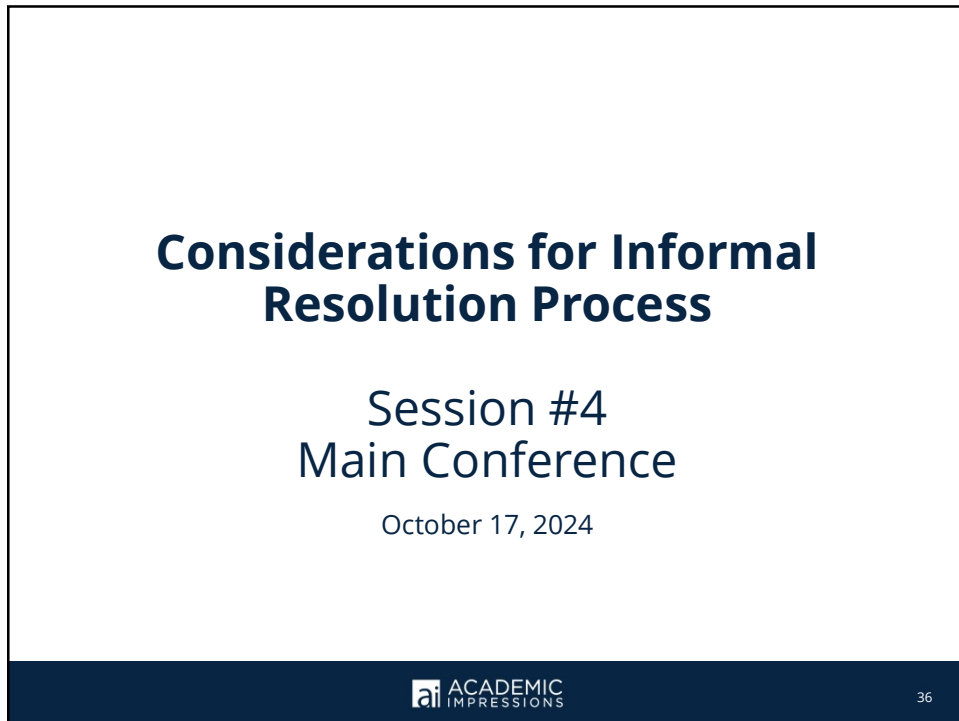
A slide with a background of various lightbulbs in shades of gray. A dark blue rectangle on the left contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right of this rectangle, the text "Roundtable Sessions: Investigative - Adjudication Models" is displayed in a dark blue, sans-serif font.

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**Roundtable Sessions:
Investigative -
Adjudication Models**

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A white slide with a dark blue footer. The main text is centered and reads "Considerations for Informal Resolution Process" in a large, bold, dark blue font. Below this, "Session #4" and "Main Conference" are written in a smaller, dark blue font. The date "October 17, 2024" is centered below that. The footer contains the "ai ACADEMIC IMPRESSIONS" logo on the left and the number "36" on the right.

**Considerations for Informal
Resolution Process**

Session #4
Main Conference

October 17, 2024

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#1

Informal Resolution, Generally

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■ Informal Resolution, Generally

- The 2020 and 2024 Title IX regulations offer an alternative, less adversarial, process to resolve allegations of sex-based conduct.

Informal Resolution



- Informal resolution options *may* be offered *any time* before a determination regarding responsibility.

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■ Applicability

- Informal resolution options may be appropriate to resolve allegations of:

Sex Discrimination

Retaliation

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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■ Types of informal resolution

- Types of informal resolution processes include, but are not limited to:
 - Remedies-based resolution
 - Respondent accepts responsibility
 - Alternative dispute resolution: mediation or restorative justice
- All types must have reasonably prompt timeframes.

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GROUP DISCUSSION

What cases do you believe are generally appropriate for informal resolution?

What cases do you believe are generally inappropriate for informal resolution?


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■ Allegations *generally* conducive to IR

Cases *generally* amenable to Informal Resolution:

- Hostile environment sexual harassment cases between employees or between students.
- Non-sexual harassment cases:
 - Retaliation
 - Sex discrimination (including pregnant and parenting discrimination)

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■ Examples of allegations *generally* conducive to IR

- Lower-level sexual assault cases.*
- Sexual assault cases resulting from miscommunication.*
- Dating/domestic violence cases alleging mutual harm.*
- Stalking related to a mental health or personality disorder.



Sexual/dating/domestic violence cases are the most challenging to informally resolve due to the nature and intimacy of the harm and the power imbalances often associated with these offenses. Accordingly, proceed with caution.

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■ Allegations *generally* not conducive to IR

Cases *generally not* amenable to Informal Resolution:

- Alleged offenses involving:
 - Physical or threatened violence.
 - Predation.
 - Intimidation.
 - A dangerous pattern of conduct.
 - Future risk of harm to others. §106.45(b)(9)(ii) (2024 regs).
 - Where the power differential between the parties, under the circumstances, could exacerbate the harm.

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GROUP DISCUSSION

What do you believe are the potential benefits of informal resolution?

What do you believe are the potential drawbacks of informal resolution?

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#2

Requirements, Limitations, and Disclosures

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2020 v. 2024 Regulations

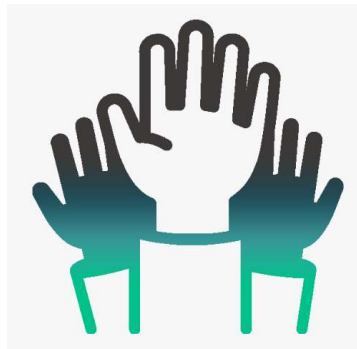
- Applicable after a formal complaint alleging sexual harassment is filed. §106.45(b)(9)
- Parties' written consent required. §106.45(b)(9)(ii)
- Not applicable to allegations alleging an employee sexually harassed a student. §106.45(b)(9)(iii)



- Applicable at anytime, even before a formal complaint. §106.44(k)
- (K-12 only) Not applicable to allegations alleging an employee sexually harassed a student. §106.44(k)

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Voluntariness



- Both parties must agree to engage in an informal resolution process (unless the complainant seeks a remedial resolution only). §106.45(b)(9)(ii) (2020 regs)/ §106.44(k)(2)
- Can't require or pressure the parties to participate in IR. §106.45(b)(9) (2020 regs) / §106.44(k)(2)
- Must not require a waiver of the right to an investigation and determination as a condition of initial or continuing enrollment or employment, or exercise of any other right. §106.45(b)(9) (2020 regs)/ §106.44(k)(2)

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Practice introducing informal resolution with a party.


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Disclosures

Before initiating an informal resolution process, the parties must receive notice explaining:

- The allegations.
 - §106.45(b)(9)(i) (2020 regs)/ §106.44(k)(3)(i) (2024 regs)
- Requirements of the informal resolution process (policy).
 - §106.45(b)(9)(i) (2020 regs)/ §106.44(k)(3)(ii) (2024 regs)
- That, prior to agreeing to a resolution, any party can withdraw from IR and initiate or resume formal grievance procedures.
 - §106.45(b)(9)(i) (2020 regs)/ §106.44(k)(3)(iii) (2024 regs)

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■ Disclosures (cont'd)

- That the parties' agreement to a resolution precludes the parties from initiating or resuming formal grievance procedures arising from the same allegations.
 - §106.45(b)(9)(i) (2020 regs)/ §106.44(k)(3)(iv) (2024 regs)
- The potential terms that may be requested or offered in an agreement, including notice that an agreement is binding only on the parties.
 - §106.44(k)(3)(v) (2024 regs)
- What information the school will maintain and whether and how the school could disclose such information, including if formal grievance procedures are initiated or resumed.
 - §106.45(b)(9)(i) (2020 regs)/ §106.44(k)(3)(vi) (2024 regs)

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■ Additional Disclosure Recommendations

- Whether there is confidentiality within the informal resolution process.
- A facilitator's right to end the mediation for good reason.
- Title IX Coordinator authority to reject agreed-upon terms if they are unreasonable, unenforceable, or inequitable.
- No right to challenge agreed upon resolution.

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GROUP DISCUSSION



Why might a party want to challenge an agreed-upon resolution after the fact?

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RESOURCE



Template

Voluntary Consent to Informal Resolution

(for a negotiated resolution process involving a neutral third-party facilitator)

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Facilitators of informal resolution

"The Neutral"

- Impartial
- Equitable
- Fair
- Bias and conflict free

Employs skills to facilitate discussions with the parties that:

- Allow the parties to feel heard.
- Learns the parties' underlying needs and interests.
- Solicits and suggests resolution options.
- Guides them toward a mutually acceptable resolution.

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Facilitator training

2020

- The §106.30 definitions of sexual harassment.
- The scope of the institution's program or activity.
- How to conduct an informal resolution process.
- The §106.45 formal grievance process.
- The Institution's policy against sexual harassment and discrimination (generally).
- Institution's definitions of "consent," "incapacitation," and "retaliation."

§106.45(b)(1)(iii)

2024

- The school's obligation to respond and address sex discrimination in its programs and activities.
- Scope of conduct constituting sex discrimination, including the definition of sex-based harassment.
- Grievance procedures
- How to serve impartially
- How to conduct an informal resolution process.
- The meaning and application of "relevant," and "impermissible evidence."

§106.8(d)

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A presentation slide with a background of overlapping grey papers. On the left, a dark blue rectangle contains the text "GROUP DISCUSSION" and a white speech bubble icon. On the right, a white rectangle contains the text "What attributes should an informal resolution facilitator possess?". A small number "61" is in the bottom right corner of the slide.

GROUP DISCUSSION

What attributes should an informal resolution facilitator possess?

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A presentation slide with a background of overlapping grey papers, many of which have question marks on them. A dark blue rectangle in the center contains the text "QUESTIONS?". At the bottom center, there is a logo for "ACADEMIC IMPRESSIONS" and a small number "62" in the bottom right corner of the slide.

QUESTIONS?

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#4

Critical Steps and Considerations

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GROUP DISCUSSION



**Can/should a Title IX
Coordinator serve as an
informal resolution
facilitator?**

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■ Establishing Credibility

- The facilitator
- The process
- The agreement

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■ Joint Sessions with the Parties?

1. Total Joint Session: Parties are together throughout the entirety of the negotiated resolution.
2. Partial Joint Session (1): Begin with a joint session where facilitator goes over the rules and expectations. May allow the parties to provide their point of view. Facilitator then separates the parties and shuttles back and forth.
3. Partial Joint Session (2): Facilitator separates the parties until close to the end of the process and then brings the parties together for "closure."
4. Separate sessions throughout: Parties are never together.

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■ Framing the Issues

- What are the issues to resolve?
- Communicate the issue is not whether complainant can prove their allegations.
- Probe whether the parties can achieve an "agreed" outcome.
- Facts are important to an extent.

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■ Establishing Common Grounds

- What do parties individually hope to accomplish?

"What is the best result for you?"

"If you couldn't achieve the best result, what will you need to feel comfortable about resolving the allegations?"

- Why is it important to reach an agreement?

"How would you feel if we are unable to reach an agreement?"

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■ Maintaining Confidence

- It is a process, not an event.
- Patience is key.
- Compromise is essential.
- Facilitator should report where progress is being made.
- Share positive aspects of what the facilitator has heard and observed.

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■ Techniques for continuing the informal process when stalled

- Bracketing issues
- Mediator's proposal
- Time to consider
- Risks of no agreement
 - Initiation of or resuming the formal grievance procedure
 - No control over outcome
 - Time considerations
 - Emotional considerations

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■ Party Advisors

- Advisors:
 - Victim advocates, parents, roommates, friends, school employees, or lawyers
- Role can be restrictive
 - A role of support and collaboration
- Aider v. barrier
 - Using an advisor to benefit the process
 - Handling the challenge
- Communication with Advisors outside of parties

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QUESTIONS?

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#5

Resolution Terms and Agreement

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■ Terms for Resolution

- Terms/outcome of the resolution are negotiable.
- May result in party-imposed corrective or punitive measures for a Respondent (including disciplinary sanctions).
- Terms within resolution agreements are binding according to their terms (i.e., contractual in nature).
- Outcome should be enforceable by the institution.

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■ Preparing the Resolution Agreement

Resolution Agreements should be in writing signed by both parties (and Title IX Coordinator).

- Acknowledgements:
 - The parties enter into the Resolution Agreement freely, voluntarily, and because each party believes entering into the agreement is in their best interest.
 - The parties' participation in the informal resolution process was not required, not a product of coercion, nor was it a condition of continued enrollment or employment, or enjoyment of any other right.
 - The parties agree to waive right to the formal grievance procedure.

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■ Agreement Preparation (cont'd)

- The agreed-to terms of resolution.
- Consequences for breach of the agreement.
- Facilitator remained neutral, objective, and unbiased.
- Institutional record-keeping responsibility and possible disclosure of information.
- Title IX Coordinator will facilitate the agreed-upon outcomes.
- Non-disclosure/non-disparagement clauses?

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GROUP DISCUSSION

What are some possible terms for resolution?

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Corrective or Punitive Term Options

Types of corrective or punitive measures may include :

- Suspension from extra-curricular activities (athletics, student groups, Greek life, etc.)
- Restriction from campus activities (athletics events, programs, concerts, etc.)
- Enter counseling or other educational programming relating to alleged misconduct.
- Temporary withdrawal from the institution
- Permanent withdrawal from the institution

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■ Remedy options

Types of remedies may include:

- Complainant or respondent relocate their housing.
- Each party is assigned to a different dining hall, workout facility, area of library.
- Complainant/respondent withdraws from a class that they have together.
- Respondent writes an apology letter to the complainant acknowledging harm caused.
- Indefinite mutual no-contact order

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RESOURCES



Template
Resolution Agreement
(for a negotiated resolution process involving a neutral third-party facilitator)

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**Title IX Threat Assessment
Considerations**

Session #5
Main Conference

October 17, 2024

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POLL



**Have you ever
been trained on
threat assessment?**

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POLL


Does your institution have a threat assessment team?

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POLL


If so, are you a member of the threat assessment team?

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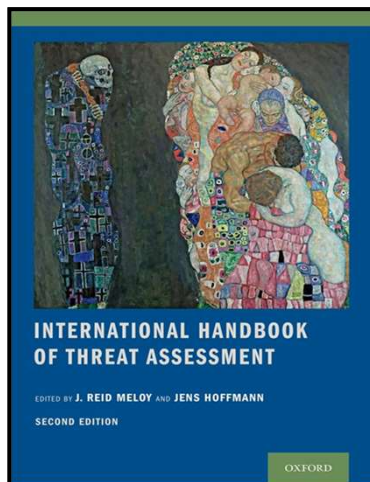
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Threat Assessment Basics

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Violence: Recent Trends



Meloy, J. Reid, and Jens Hoffmann (eds), International Handbook of Threat Assessment, 2 edn (New York, 2021; online edn, Oxford Academic, 1 Apr. 2021).

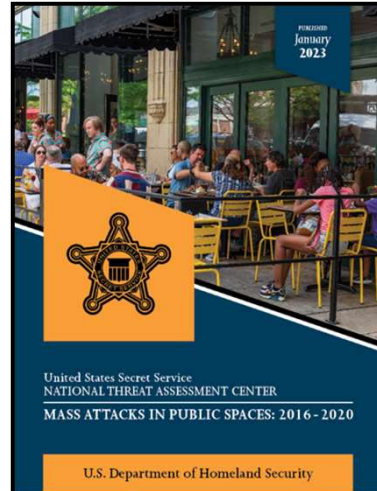
- Steady increase of mass violence in public spaces (Trend 1)
- Growth and use of social media seems paralleled with increase in mass violence (Trend 2)
- Increase in level of fear and disruption resulting from a workplace report of "Threat" (Trend 3)
- Threat assessment and management protocols to become a national best practice

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Violence: Recent Trends (cont'd)

- Demeanor and mental well-being (58%)
- Disturbing communications and threats (49%)
- Physical violence (46%)
- stalking/harassment (22%)
- Weapons-related actions (21%)
- Violent or unusual interests (21%)
- Self-harm (18%)
- Behavior changes (16%)
- Isolating or withdrawing (10%)

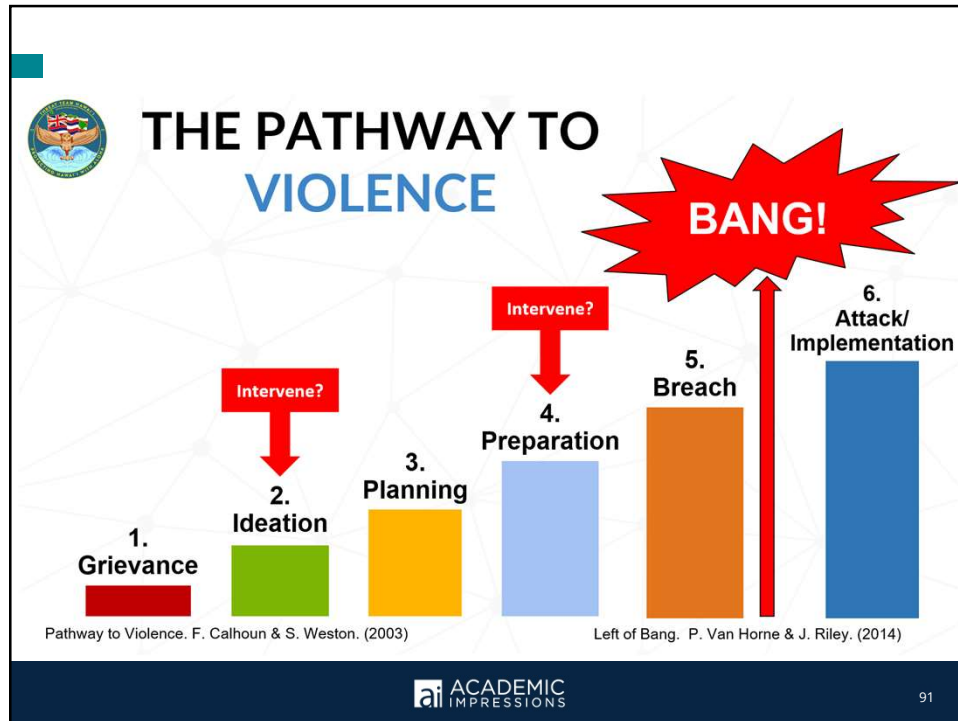


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Pathway to Violence




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So, What IS Behavior Threat Assessment and Management (BTAM)?



- ✓ A systematic, fact-based process approach which includes the pathway to Violence considerations and various SPJs
- ✓ Involves a multidisciplinary team approach
- ✓ Identifying, assessing, and managing
- ✓ Used to prevent targeted violence
- ✓ Applicable and appropriate for also addressing “concerning behaviors” on campus
- ✓ “Concerning behaviors” may include sex-based harassment behaviors (T9 issues!)

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■ Behavior Threat Assessment and Management (BTAM*) Process Generally...

1 IDENTIFY

2 INVESTIGATE

3 ASSESS

4 MANAGE

“risk mitigation”

*Term referred to by the U.S. Department of Homeland Security’s Threat Assessment Model

ACADEMIC IMPRESSIONS 93

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■ How do BTAM Teams “assess” behavioral concerns?

1. Risk Factors

2. Triggers/Stressors

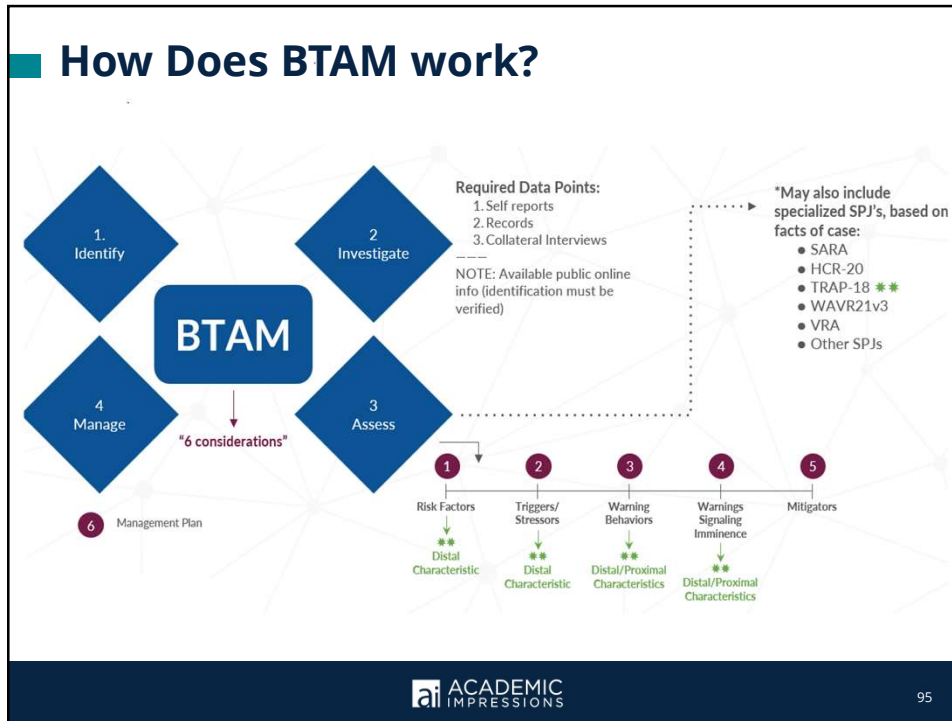
3. Warning Behaviors

4. Warning Signaling Imminence

5. Mitigators

ACADEMIC IMPRESSIONS 94

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There's a Difference!

"Making a threat"

- May have been said out of emotion or anger
- Some people who "make" threats may pose a threat later
- Making a threat does not mean an individual is posing as threat

"Posing a threat"

- Some individuals who actually pose a threat, never make a threat
- Some people who make threats ultimately pose threats.
- For the purposes of T9, make sure the threat ONLY relates to the sex-based harassment specified in the complaint
- Threat must be "imminent and serious"

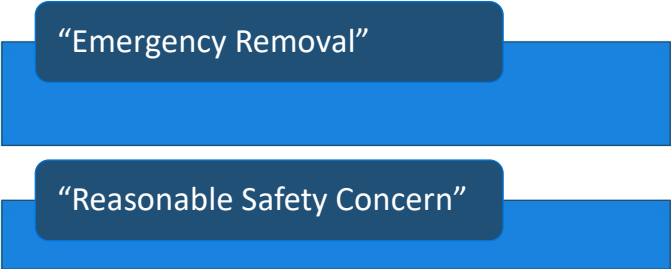
ACADEMIC IMPRESSIONS 96


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**Two BTAM Applicable Title IX
“Safety” Provisions**


“Emergency Removal”

“Reasonable Safety Concern”



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#2

A. Emergency Removal

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■ Emergency Removal Provision*

“(h) *Emergency Removal*. Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an **imminent and serious threat to the health or safety** of a complainant or any student, employees or other person arising from the allegations of sex discrimination justifies removal...”

[*§106.44(h) which is under the section “Recipient's response to sex discrimination”]

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■ Emergency Removal Requirements

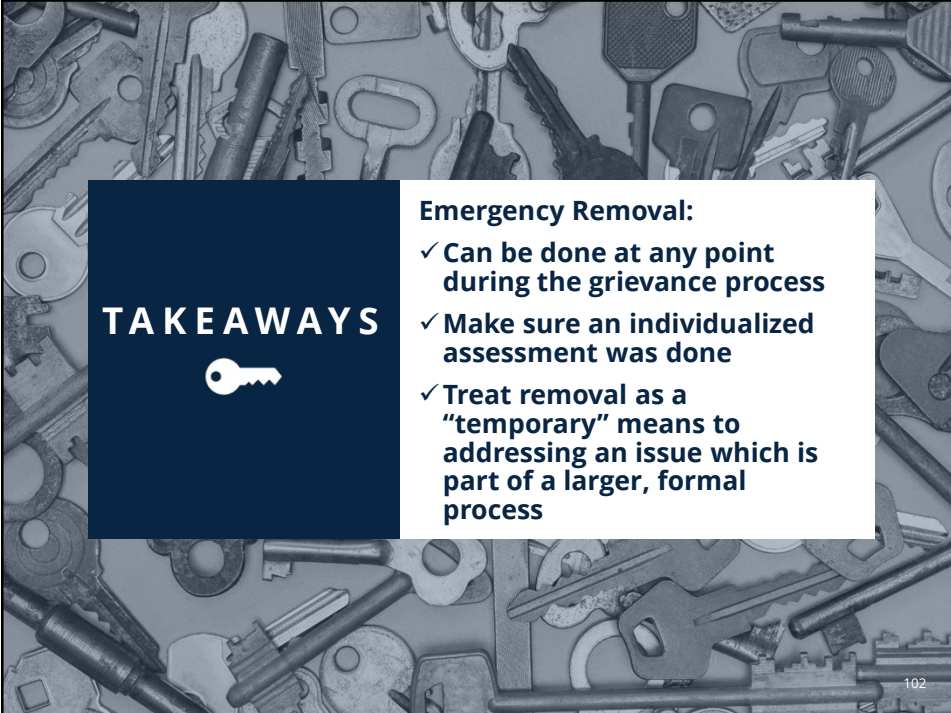
- Must do an individualized safety and risk (threat) analysis
- Must have determined an **imminent and serious threat to health and safety**
- Administrative leave can be used for employees, subject to policies/cba’s (if any)

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Emergency Removal Requirements (cont'd)

- Imminent and serious do not mean ONLY a physical threat
- Threat must be to the health and safety of a complainant or any students, employees, or other persons
- Threat must arise from the allegations of sex discrimination and justifies removal
- Must immediately provide notice and opportunity to challenge the decision to remove

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TAKEAWAYS



Emergency Removal:

- ✓ Can be done at any point during the grievance process
- ✓ Make sure an individualized assessment was done
- ✓ Treat removal as a "temporary" means to addressing an issue which is part of a larger, formal process

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#3

B. Pre-Notification: Reasonable Safety Concerns

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Reasonable Safety Concerns*

“(3) To the extent the postsecondary institution has reasonable concerns for the safety of any person as a result of providing [this] notice, the postsecondary institution may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately...”

[*34 CFR §106.46(c)(3) under the sex-based harassment grievance procedures involving a student complainant or student respondent)

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■ Reasonable Safety Concern Requirements

- Specific to pre-notice (written) consideration
- Applies to “reasonable concerns for the safety of **any person**” because of providing notification
- Allows for **reasonable delay**

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■ Reasonable Safety Concern Requirements (cont'd)

- Delay in providing the notification **MUST** be because the institution is addressing the “Safety concerns” appropriately
- Must be based on individualized safety and risk (threat) analysis
- Ask: Is there a possibility of retaliation when the notification is provided? [If yes, what is the concern, by whom and why?]

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GROUP DISCUSSION

- ❑ *How might a “reasonable concern” resulting from a potential notification be identified?*
- ❑ *What are some things your institution might do if you identified a reasonable concern pre-notification involving an individual on your campus?*

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Remember, *Retaliation!

*“Retaliation means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient’s education program or activity **for the purpose of interfering with any right or privilege secured by Title IX...because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate** in any manner in an investigation, proceeding, or hearing under this part ...”*

[*34 CFR §106.2 Definitions]

 **ACADEMIC IMPRESSIONS**

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■ Don't Forget the Possibility of Retaliation:

- Intimidation, threats, coercion or discrimination are considered "retaliation" by definition
- May pose reasonable concerns for the safety of any person



ai ACADEMIC IMPRESSIONS 109

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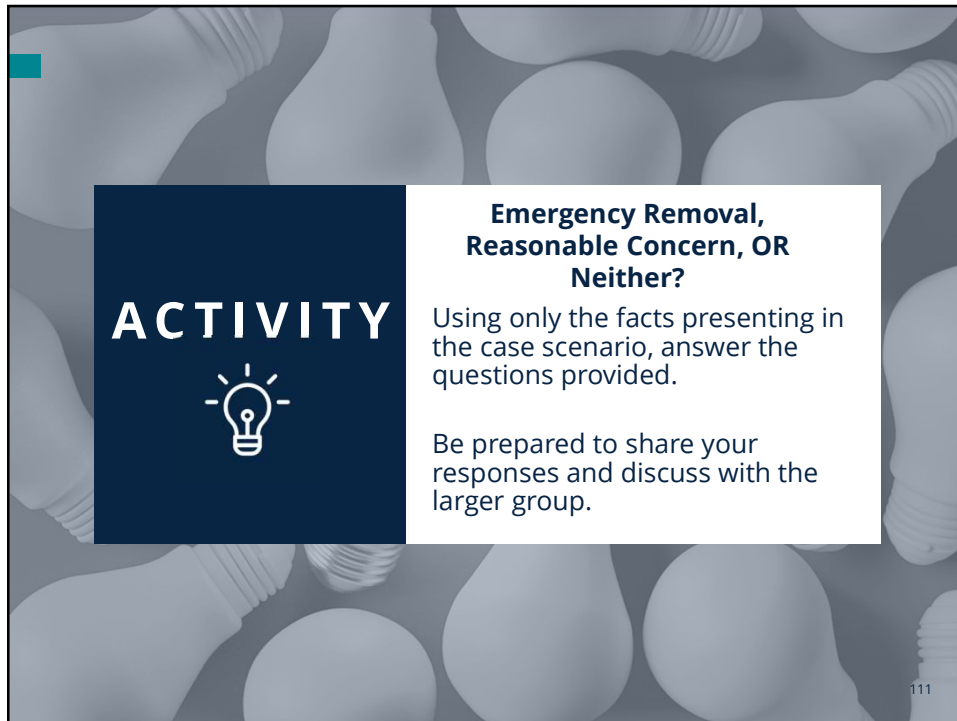


#4

Putting It All Together

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The slide features a background of various lightbulbs in shades of gray. A dark blue rectangular box on the left contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right of this box, the text is white on a light gray background.

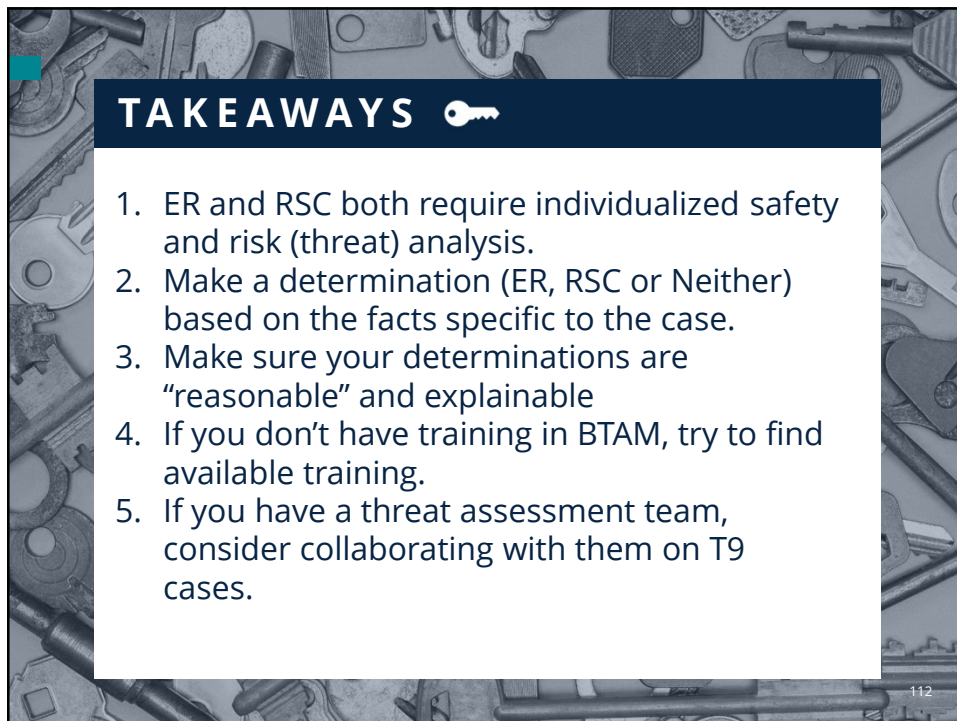
**Emergency Removal,
Reasonable Concern, OR
Neither?**


Using only the facts presenting in the case scenario, answer the questions provided.

Be prepared to share your responses and discuss with the larger group.

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The slide features a background of various tools and keys in shades of gray. A dark blue rectangular box at the top contains the word "TAKEAWAYS" in white, bold, uppercase letters, followed by a white key icon. Below this box, the text is white on a light gray background.

TAKEAWAYS 

1. ER and RSC both require individualized safety and risk (threat) analysis.
2. Make a determination (ER, RSC or Neither) based on the facts specific to the case.
3. Make sure your determinations are "reasonable" and explainable
4. If you don't have training in BTAM, try to find available training.
5. If you have a threat assessment team, consider collaborating with them on T9 cases.

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RESOURCES

- Free US DHS online Bystander Awareness elearning module: <https://www.dhs.gov/foundations-targeted-violence-prevention>
- NTAC 2023 Mass Attacks In Public Spaces: <https://www.secretservice.gov/sites/default/files/reports/2023-01/uss-ntac-maps-2016-2020.pdf>
- Amman, M., Bowlin, M., Buckles, L., Burton, K. C., Brunell, K. F., Gibson, K. A., & Robins, C. J. (2017). Making prevention a reality: Identifying, assessing, and managing the threat of targeted attacks. U.S. Department of Justice. <https://www.fbi.gov/file-repository/making-prevention-a-reality.pdf/view>

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RESOURCES

- Brief Spousal Assault Form For the Evaluation of Risk (B-SAFER): https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/rr05_fv1-rr05_vf1/rr05_fv1.pdf
- NTAC 2022 Hot Yoga Tallahassee Misogynistic Extremism Case Study: https://www.secretservice.gov/sites/default/files/reports/2022-03/NTAC%20Case%20Study%20-%20Hot%20Yoga%20Tallahassee_0.pdf

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