



Investigative Mechanics

WTCS Compliance Collaborative Symposium

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This permission does not extend to this manual, which is considered a resource and reference guide to accompany the training.

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AGENDA

1	Introduction
2	Legal Overview
3	TT Interview Model—Part 1
4	TT Interview Model—Part 2
5	Report Writing

PROGRAM GOALS

- **Understand the different types of investigations and their legal basis**
 - *Students don't violate Title IX or Title VI — institutions do, when we fail to properly investigate and adjudicate misconduct.*
- **Master of interviewing techniques for campus investigations.**
 - *Interviews are the primary means of gathering information. Do them well and the decision-maker's job is easy; do them poorly and you'll be litigating for years.*

WINDOW[®] Interviewing Model

Quick Reference Guide

The WINDOW[®] Model is designed to elicit the most accurate, complete, and uncontaminated account possible by creating conditions that support strong memory retrieval and reduce external influence. It also provides a structured pathway for identifying and exploring credibility-relevant issues in a fair, neutral, and non-confrontational manner.

Overall Principles

- Do not interrupt free narrative
- Use silence strategically
- Begin open-ended; narrow at end
- Demonstrate empathy with neutrality
- Remain flexible while keeping organized
- Avoid introducing info not already volunteered

WINDOW[®] Stages

W	Reduce stress, establish psychological safety, and create a calm, predictable environment that starts to build rapport.
I	Clarify roles, expectations, the interview structure, and participant rights to promote transparency and continuing building rapport.
N	Obtain an uninterrupted free-recall account in the individual's own words—the most reliable and least contaminated form of memory retrieval.
D	Explore details, clarifications, and context using non-leading questions that expand upon the initial narrative.
O	Invite discussion of uncertainties, differences in recollection, and alternative interpretations in a neutral, non-adversarial way to identify credibility/relevancy issues.
W	Provide closure, check for completeness, invite additional information, and outline next steps or follow-up communication.

Alternative Memory Retrieval & Cognitive Load Techniques

Context Reinstatement

Encourage mental return to the environment of the event (sensory, spatial, and emotional cues); Closing eyes can help.

Varied Recall Pathways

Asking for the sequence from another starting point, in reverse order or imagining exact course of movement.

Sensory and Spatial Prompts

Invite recall of sounds, lighting, distance, movement, or positioning to engages different memory systems.

Sketching or Spatial Mapping

Bring paper to allow for drawing a scene, route, or layout, diagram a room or position people and objects.

Cognitive-Load Expansion

When appropriate, increasing cognitive demand—such as asking for precise sequencing or describing simultaneous actions—can make inaccuracies or rehearsed accounts more apparent without accusatory questioning. Ask unanticipated questions.

These tools supplement the WINDOW[®] structure and should be applied **during Step O (Opposition)** after free narrative has been fully completed.

WINDOW® Model – Investigator Template

WELCOME

Meet Needs

- Where would you like to sit?
- Before we begin, is there anything you need to feel comfortable?
- Can I get you some water?

Break Ice

- Tell me about yourself.
- What year are you, what are you studying?
- What drew you to attend this school?

INTRODUCTION

Investigator Credentials

- Who you are
- Job title on campus
- Credentials to do work

Logistics & Scope

- Asked to conduct and audit/investigation/to examine issues ...
- Factfinder only **or** factfinder and decisionmaker
- Will put together a report that will go to _____
- Here is how this process works and what we will cover today.
- Applicable amnesty rules

Safeguards

- The institution prohibits retaliation-report any concerns. (both directions)
- Promise to keep things private, but cannot promise confidentiality\

NARRATIVE

The big ask

- **Please walk me through what happened from your perspective.** Take your time. Give me as much detail as you can. I want to clarify what are your memories and what are the memories of others. If you know something because someone told you it is fine to share, just let me know where you got the information.
- **Start wherever it makes the most sense to you.**

Prompts

- Why don't you start _____.
- And then what happened?

DEEP DIVE

- | | |
|------------------------|---|
| Confirm | <ul style="list-style-type: none">• Help me understand the sequence a little more.• Tell me more about [topic]—whatever details you recall are helpful.• When you said X, what do you mean?• I want to make sure I heard correctly...• What stands out most clearly in your memory? |
| Clarify | <ul style="list-style-type: none">• Who was...?• What did you mean...?• Where did that happen?• Why did you...?• When did they...? |
| Policy Elements | <ul style="list-style-type: none">• Location• Impact• Incapacitation• Consent |

OPPOSITION

- | | |
|-------------------------|---|
| Opposing view | <ul style="list-style-type: none">• What do you think witnesses, X, would say?• Were there parts you're unsure about or that feel less clear?• Is there anything you did or said that could have been misconstrued?• I heard from another witness... |
| Alternate theory | <ul style="list-style-type: none">• What do you think X's motivation is for lying/reporting?• Why would someone say that or bring this case? |

WRAP-UP

- | | |
|-------------------|---|
| Final asks | <ul style="list-style-type: none">• Let me review my notes and make sure all topics have been covered.• What have we not talked about that you think is important?• Anything I didn't ask that you thought I would? |
| Check in | <ul style="list-style-type: none">• Any follow up questions?• Anything you need? |
| Next steps | <ul style="list-style-type: none">• Here are next steps• Reminder about retaliation |

Ann Todd, J.D.

FOUNDER & PRINCIPAL

Professional Summary

Ann Todd is the Founder and Principal of Terry-Todd Consulting, bringing over two decades of experience in higher education investigations, Title IX compliance, and civil rights law. A licensed attorney and certified private investigator, she has led hundreds of investigations involving student and employee misconduct, discrimination, and harassment. Ann is known for her research-rooted, trauma-informed approach to interviewing and analysis, ensuring fairness and consistency in every investigation. Her leadership emphasizes adult learning principles, institutional collaboration, and pragmatic compliance solutions.

Key Experience

- **Founder and Principal, Terry-Todd Consulting (2025–Present)**
Investigative services and training for colleges and universities across the U.S.; designs policies and protocols for Title IX, Title VII, and other civil rights compliance.
- **Senior Consultant, D. Stafford & Associates (2014–2024)**
Conducted Title IX, Clery, and discrimination investigations for more than 40 institutions; drafted institutional policies and conducted national trainings. Call-in support consulting for client schools.
- **Associate Director for Employee Relations, Davidson College**
Led internal investigations, oversaw policy development, and served as Title IX Deputy Coordinator for employees.
- **Attorney, Ferguson, Stein, Wallas, Adkins, Gresham & Sumter**
Represented educators and employees in civil rights and employment discrimination cases.

Frequent national presenter and keynote on a range of topics including investigative interviewing, hate crimes, the Clery Act, and Title IX.

Credentials

- Developer: WINDOWS Interview Methodology
- Certified Clery Compliance Officer
- Certified Facilitator—CCL 360° Assessment
- Co-Author of multiple articles in the *Journal of Clery Compliance Officers and Professionals*
- Author of multiple white papers for D. Stafford & Associates



Education

A.B., Psychology

Davidson College

Juris Doctor

University of Nebraska
College of Law

Expertise

- INVESTIGATIONS
- TITLE IX
- CLERY
- HIGHER ED
COMPLIANCE



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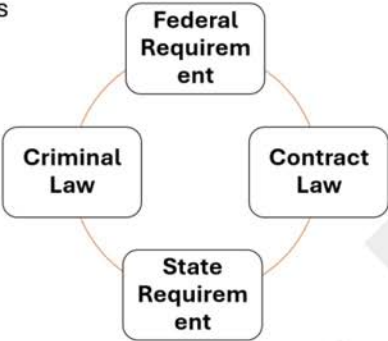
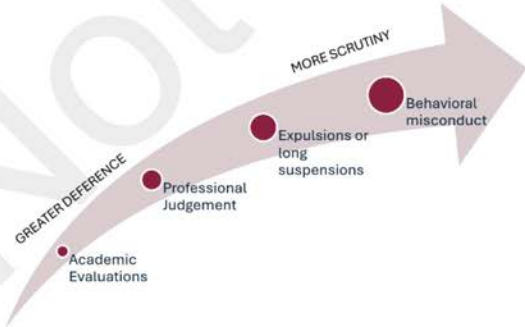
Investigative Mechanics Ann Todd, Esq. Owner and Principal, Terry-Todd Consulting, LLC	NOTES
1. Introductions	NOTES
Program Intro - Logistics - Intros - Trainer - Agenda - Program Goals - Additional Topics - Bias & Conflict of Interest - Terminology Name Job Title Role in Process Experience	NOTES

TRAINER: Ann Todd, Esq. • Degrees in Psychology, Education, Law • Civil Rights Plaintiff Work • Non-Profit Work • Davidson College (HR) • Title IX Consulting • Founded Terry-Todd Consulting in 2025 	NOTES
Agenda 1. Introduction 2. Legal Overview 3. TT Interview Model pt 1 4. TT Interview Model pt 2 5. Report Writing	NOTES
Program goals • Understand the different types of investigations and their legal basis • <i>Students don't violate Title IX or Title VI — institutions do, when we fail to properly investigate and adjudicate misconduct.</i> • Master of interviewing techniques for campus investigations. • <i>Interviews are the primary means of gathering information. Do them well and the decision-maker's job is easy; do them poorly and you'll be litigating for years.</i>	NOTES

Bias and Conflict of Interest	NOTES
 Bias: a predisposition for or against a party that interferes with impartiality, including bias based on sex, gender stereotypes, or status as complainant/respondent.  Conflict of interest: personal, professional, financial, or other interests or relationships that could reasonably be perceived to affect impartiality in a specific matter.	NOTES
Bias--Yes • Having a pre-determined outcome in mind • Holding stereotyped views about complainants or respondents as a group • Relying on sex stereotypes or generalizations • Allowing personal views control factual findings • Treating parties differently because one is a student and the other is an employee • Showing animosity or favoritism toward a party arising from prior interactions 	NOTES

Bias—No • Mere status as a Title IX Coordinator, investigator, or decision-maker • Having prior professional experience working in victim advocacy, criminal prosecution, or criminal defense • Using trauma-informed training or approaches • The fact that a decision-maker, investigator, or Coordinator is of a particular sex or gender • Disagreeing with, or having criticized, prior Department guidance • The mere fact that a recipient's grievance process often finds respondents responsible or not responsible	NOTES
Conflict of Interest--Yes • Having a personal relationship with a party • Having a financial or professional stake in the outcome of a case • Serving in a role that combines advocacy and adjudication for the same case • Being a direct subordinate or supervisor of a party 	NOTES
Conflict of Interest--No • Merely being employed by the same institution • A Title IX Coordinator's responsibility for compliance and policy oversight • The institution's general interest in avoiding liability, bad publicity, or OCR enforcement • Having previously handled other complaints	NOTES

Terminology	NOTES
The People Complainant Respondent Witness Investigator Decision-maker Advisor of Choice	NOTES
Actions Report / Complaint Incident Notice / Notice Document Review / Appeal Informal Resolution Supportive Measures/ Accommodations Dismissals	NOTES

2. Legal Overview	NOTES
Legal tracks  <pre>graph TD; A[Federal Requirement] --- B[Contract Law]; B --- C[State Requirement]; C --- D[Criminal Law]; D --- A;</pre>	NOTES
Student Conduct Codes  <pre>graph LR; A[Academic Evaluations] -- "GREATER DEFERENCE" --> B[Professional Judgement]; B -- "MORE SCRUTINY" --> C[Expulsions or long suspensions]; C -- "MORE SCRUTINY" --> D[Behavioral misconduct];</pre>	NOTES

Student & Employee Conduct Codes • Breach of Contract • Aspirational language (“we strive to...”) creates fewer obligations • Mandatory language (“will,” “shall”) creates enforceable expectations • Fundamental Fairness • Follow process? • Was process non-arbitrary and even-handed? • Meaningful opportunity to respond? • Discrimination • Discrimination in <i>application of process</i>	NOTES
Due Process & Fundamental Fairness Risk Avoidance for Policies • Has reasonable due process • Is fundamentally fair • Compliant with federal and state laws • Is implementable Risk Avoidance for Investigators • Following the policy as written • Documenting why decisions were made • Treating parties consistently • Avoiding outcome-driven shortcuts	NOTES
Title VI of the Civil Rights Act of 1964 Race Color National Origin	NOTES

Title VI The Statute (42 USC 2000d) <i>No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.</i>	NOTES
Defining Race and Color Ancestry racial ancestry or ethnic lineage Physical traits hair texture, facial features, or other race-linked characteristics. Skin tone/complexion pigmentation, complexion or lightness and darkness, of skin Perception <i>belief</i> that someone is of a certain race, even if wrong Association relationship with a person of a particular race	NOTES
Defining National Origin Country or region of origin actual or perceived birthplace, country, or region of origin Shared ancestry or ethnic characteristics actual or perceived shared ancestry, ethnicity, or ethnic characteristics Language limited English proficiency, English learner status, or speaking a language other than English Accent or manner of speech accent or speech patterns associated with national origin Name surname or other name associated with a national origin group Citizenship or residency perception actual or perceived citizenship or residency in a country with a dominant religion or distinct religious identity.	NOTES

Title VI—Defining Discriminatory Actions The Regulations (34 C.F.R. § 100). (b) <i>Specific discriminatory actions prohibited.</i> (i) <i>Deny any service, financial aid, or benefit under the program.</i> (iv) <i>Restrict enjoyment of any advantage or privilege others receive under the program.</i> (v) <i>Apply admission, enrollment, eligibility, or membership requirements unequally.</i>	NOTES
Title VI—Grievance Procedures Sub-regulatory Guidance Hostile environment legal analysis 1) a hostile environment based on race, color, or national origin existed; 2) the school had actual or constructive notice (i.e., the school knew or should have known) of the hostile environment; and 3) the school failed to take prompt and effective steps reasonably calculated to: i. end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. REASONABLE TIMELY EFFECTIVE Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses (July 2, 2024)	NOTES
Title VI ■ Does NOT include employment practices unless employment is “primary objective” (otherwise use Title VII). ■ “Expanded” protections on “actual or perceived shared ancestry or ethnic characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics, (May 7, 2024).	NOTES

TITLE VII of the Civil Rights Act of 1964 RACE COLOR NATIONAL ORIGIN RELIGION SEX	NOTES
Title VII The Statute (42 USC 2000e) <i>It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.</i>	NOTES
Title VII, ADA etc. The Regulations (29 C.F.R. § 1600... • Part 1604: Guidelines on Discrimination b/c of Sex • Part 1605: Guidelines on Discrimination b/c of Religion • Part 1606: Guidelines on Discrimination b/c of National Origin • Part 1620: Procedures—the Equal Pay Act • Part 1626: Procedures—Age Discrimination in Employment • Part 1630: Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act • Part 1635: Genetic Information Nondiscrimination Act of 2008 • Part 1636: Pregnant Workers Fairness Act	NOTES

Title VII ■ Covers all races, sexes etc. ■ Applies to all employers with 15 or more employees ■ Enforcement rests with the EEOC ■ Religion includes “reasonable accommodation” obligation	NOTES															
Comparing Title VI and VII <table><tr><th>Feature</th><th>Title VI</th><th>Title VII</th></tr><tr><td>Scope</td><td>No discrimination in programs/activities</td><td>No discrimination in employment</td></tr><tr><td>Covered Entities</td><td>Federally funded programs/activities</td><td>Employers with 15+ employees</td></tr><tr><td>Protected Classes</td><td>Race, color, national origin</td><td>Race, color, religion, sex, national origin</td></tr><tr><td>Enforce</td><td>U.S. Department of Education (OCR)</td><td>Equal Employment Opportunity Commission (EEOC)</td></tr></table>	Feature	Title VI	Title VII	Scope	No discrimination in programs/activities	No discrimination in employment	Covered Entities	Federally funded programs/activities	Employers with 15+ employees	Protected Classes	Race, color, national origin	Race, color, religion, sex, national origin	Enforce	U.S. Department of Education (OCR)	Equal Employment Opportunity Commission (EEOC)	NOTES
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TITLE IX of the Education Amendments of 1972 of 1964 SEX	NOTES															

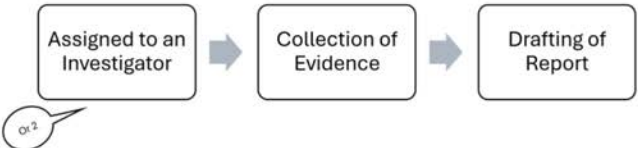
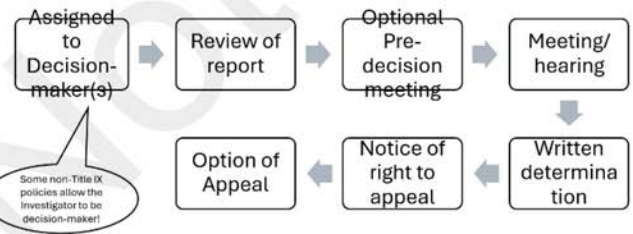
Title IX STATUTE (20 U.S.C. § 1681) <i>No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.</i>	NOTES
Title IX Regulations (34 C.F.R. § 106.8(c)). <i>Designation of coordinator. Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part...</i> <i>A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.</i>	NOTES
Title IX ▪ Covers both sexes ▪ Includes gender and pregnancy discrimination ▪ Applies to K-12 as well ▪ Protects students and employees ▪ Heightened grievance process if SEXUAL HARASSMENT	NOTES

Title IX <table border="1" data-bbox="110 302 800 623"> <tr> <td>Feature</td><td>Title VI</td></tr> <tr> <td>Scope</td><td>No discrimination in programs/activities</td></tr> <tr> <td>Covered Entities</td><td>K-12 schools, college and universities receiving federal funding</td></tr> <tr> <td>Protected Classes</td><td>Sex</td></tr> <tr> <td>Enforcement</td><td>U.S. Department of Education (OCR)</td></tr> </table>	Feature	Title VI	Scope	No discrimination in programs/activities	Covered Entities	K-12 schools, college and universities receiving federal funding	Protected Classes	Sex	Enforcement	U.S. Department of Education (OCR)	NOTES
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Protected Classes	Sex										
Enforcement	U.S. Department of Education (OCR)										
SECTION 504 of the Rehabilitation Act of 1973 DISABILITY	NOTES										
Section 504 STATUTE (29 U.S.C. § 794) <i>No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.</i>	NOTES										

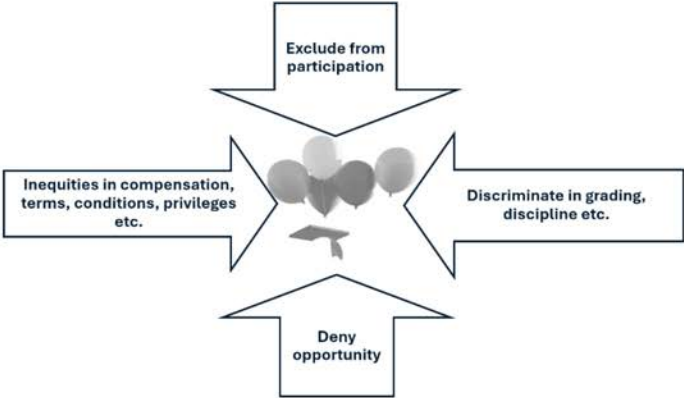
Section 504 The Regulations (34 C.F.R. § 106.8(c)). Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part. Adoption of grievance procedures. A recipient ... shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.	NOTES
Section 504 ■ Applies to students and employees ■ For employees—can ALSO use the ADA ■ Non-discrimination and program accessibility standards ■ EMPLOYEES: Requires reasonable accommodation to known limitations of qualified employees unless can demonstrate undue hardship ■ STUDENTS: Guidance refers to “reasonable modifications” and “fundamental alteration.”	NOTES
AMERICANS WITH DISABILITIES Act of 1990 DISABILITY	NOTES

ADA Statute (42 U.S.C. § 12101...) No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.	NOTES																									
ADA ■ Covers disability in employment ■ Requires an “interactive process” with employees requesting accommodations. ■ No requirement for internal grievance procedures unless public (then “adopt and publish grievance procedures for prompt and equitable resolution of complaints...”) ■ Publics must also have an ADA Coordinator... (DOJ requirement)	NOTES																									
Comparing 504 and the ADA <table><tr><th>Feature</th><th>Section 504</th><th>ADA Title I</th><th>ADA Title II</th><th>ADA Title III</th></tr><tr><td>Covered Entities</td><td>Federally funded programs</td><td>Employers with 15+ employees</td><td>State and local gov (public colleges)</td><td>Private business, (private colleges)</td></tr><tr><td>Scope</td><td>All operations (education, employment, services)</td><td>All aspects of employment</td><td>All programs and activities</td><td>Goods, services and facilities open to the public</td></tr><tr><td>Enforcement</td><td>Department of Education (if school)</td><td>EEOC</td><td>Department of Justice</td><td>Department of Justice</td></tr><tr><td>Reasonable Accom.</td><td>Required unless would fundamentally alter program</td><td>Required unless would cause undue hardship</td><td>Required unless would fundamentally alter program</td><td>Required unless would fundamentally goods/service</td></tr></table>	Feature	Section 504	ADA Title I	ADA Title II	ADA Title III	Covered Entities	Federally funded programs	Employers with 15+ employees	State and local gov (public colleges)	Private business, (private colleges)	Scope	All operations (education, employment, services)	All aspects of employment	All programs and activities	Goods, services and facilities open to the public	Enforcement	Department of Education (if school)	EEOC	Department of Justice	Department of Justice	Reasonable Accom.	Required unless would fundamentally alter program	Required unless would cause undue hardship	Required unless would fundamentally alter program	Required unless would fundamentally goods/service	NOTES
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PUTTING IT TOGETHER IN A POLICY 46	NOTES
Intake stage <pre> graph LR A[Report received by a Reporter] -- "Could also go directly to Coordinator" --> B[Routed to the Coordinator] B --> C[Coordinator Intake with Complainant] C -- "Also given option to report to police (if crime)" --> D[Complainant Offered Supportive Measures] D -- "Kept confidential" --> E[Complainant given options for Formal Resolution] E --> F[Complainant given options for Informal (if appropriate)] G["Might not be appropriate due to severity or harassment by an employee"] -.-> F </pre>	NOTES
Assessment stage <pre> graph LR subgraph Path1 [1] A1[Complainant signs Formal Complaint] --> B1[Coordinator assesses for dismissal] B1 -- "Could be dismissed under one policy but still be Prohibited Conduct" --> C1[Is it Prohibited Conduct even if proven?] C1 --> D1[NO: Dismiss and refer elsewhere] C1 --> E1[YES: Notice of Allegation & Investigation] end subgraph Path2 [2] A2[Complainant does not sign Formal Complaint] --> B2[Coordinator assesses for "Coordinator initiated Complaint"] B2 --> C2[Is the situation serious enough to warrant action?] C2 --> D2[NO: Dismiss but provide support] C2 --> E2[YES: Coordinator drafts complaint; Notice of Allegation & Investigation] F2["Complainant does NOT have to participate but maintains rights"] -.-> E2 end </pre>	NOTES

Investigation stage (non-Title IX cases)  <pre> graph LR A[Assigned to an Investigator] --> B[Collection of Evidence] B --> C[Drafting of Report] </pre>	NOTES
Investigation stage for Title IX  <pre> graph LR A[Assigned to an Investigator] --> B[Collection of Evidence] B --> C[Sharing of evidence that is Directly Related] C --> D[Parties have option of written response to evidence] D --> E[Sharing of Investigation Report Summarizing Relevant evidence] E --> F[Parties have option of written response to report] D -.-> G([Title IX requires 10 days for each review period]) G -.-> F </pre>	NOTES
Decision-making stage  <pre> graph LR A[Assigned to Decision-maker(s)] --> B[Review of report] B --> C[Optional Pre-decision meeting] C --> D[Meeting/hearing] D --> E[Written determination] E --> F[Notice of right to appeal] F --> G[Option of Appeal] </pre>	NOTES

Institutions MUST investigate formal complaints unless...  Informal Resolution  Dismissals <i>But what about reports?</i>	NOTES
3. Defining Discrimination	NOTES
Defining Discrimination Discrimination  Harassment  Retaliation 	NOTES

Defining Discrimination 	NOTES
Disparate Treatment vs. Disparate Impact	NOTES
Intent is the Dividing Line Disparate Treatment An individual is treated differently because of a protected characteristic. Motive is the central issue. Intent Required Disparate Impact A facially neutral with a discriminatory effect. Outcome is what matters. No Intent Required	NOTES

Intent Required Disparate Treatment McDonnell-Douglas 3-Step (1973) - Protected characteristic must be a motivating factor in the decision - Evidence Direct evidence: explicit statements, slurs, written bias → skips burden-shifting Circumstantial evidence: comparators, timing, pretext - Harassment is a form of Disparate Treatment 1 • Prima Facie Case Protected class + qualified + adverse action + circumstances suggesting discrimination (e.g., a comparator treated better) 2 • Legitimate Reason Respondent articulates a non-discriminatory reason — burden of production only, not persuasion 3 • Pretext Complainant shows the reason is false, inconsistently applied, or a cover for discriminatory motive. Ultimate burden stays with complainant.	NOTES
No Intent Required Disparate Impact - Established by <i>Griggs v. Duke Power Co.</i> (1971) — unanimous Supreme Court decision - Policy is facially neutral but produces a statistically significant disparity - Evidence is statistical — outcome data, demographic analysis, expert testimony - Institution can defend with business or educational necessity — practice must be rationally related to legitimate goal The Three-Part Test 1 • Statistical Adverse Impact Show the practice disproportionately burdens a protected group — typically <5% probability the disparity is random 2 • Educational/Business Necessity Institution shows the practice rationally serves a legitimate educational purpose — burden shifts to institution 3 • Less Discriminatory Alternative Complainant prevails if an equally effective practice with less disparate impact could serve the same goal	NOTES
Shifting legal ground June 2023 <i>SFFA v. Harvard / UNC</i> — race-conscious admissions = intentional discrimination under Title VI (disparate treatment) April 23, 2025 EO 14281 — Directs all federal agencies to eliminate disparate impact liability "to the maximum degree possible" June 5, 2025 <i>Ames v. Ohio</i> (9–0) — same prima facie burden for all Title VII disparate treatment plaintiffs; no extra hurdle for majority-group claimants Sept. 30, 2025 EEOC closes all pending Title VII disparate impact charges; issues right-to-sue letters; no longer investigates disparate impact claims Dec. 10, 2025 DOJ Final Rule eliminates Title VI disparate impact (Dec.) - DOJ OLC memo calls EEOC's Title VII DI guidelines unconstitutional (June) — administration position, not yet law	NOTES

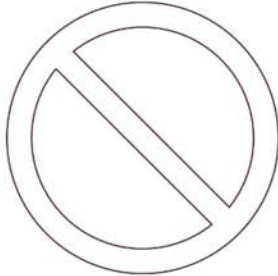
<table><tr><th></th><th>Disparate Treatment</th><th>Disparate Impact</th></tr><tr><td>Core Question</td><td>Was this person treated differently because of a protected trait?</td><td>Did a neutral policy produce disproportionate harm on a protected group?</td></tr><tr><td>Intent</td><td>Required — motive is central</td><td>Irrelevant — effect/outcome is what matters</td></tr><tr><td>Key Evidence</td><td>Statements, comparators, differential treatment records, inconsistent application</td><td>Statistical outcome data, demographic analysis, expert reports</td></tr><tr><td>Title VI (Campus)</td><td>✓ Fully intact — OCR enforces; your investigations apply this</td><td>X Eliminated — DOJ final rule Dec. 10, 2025; only intent = liability</td></tr><tr><td>Title IX (Campus)</td><td>✓ Fully intact — primary theory for sexual misconduct investigations</td><td>⚠ Recognized in law; agency enforcement curtailed; no separate DOJ rule yet</td></tr><tr><td>Private Suit?</td><td>Yes — private right of action under both Title VI and Title IX</td><td>No private right under Title VI (Sandoval); limited under Title IX</td></tr></table>		Disparate Treatment	Disparate Impact	Core Question	Was this person treated differently because of a protected trait?	Did a neutral policy produce disproportionate harm on a protected group?	Intent	Required — motive is central	Irrelevant — effect/outcome is what matters	Key Evidence	Statements, comparators, differential treatment records, inconsistent application	Statistical outcome data, demographic analysis, expert reports	Title VI (Campus)	✓ Fully intact — OCR enforces; your investigations apply this	X Eliminated — DOJ final rule Dec. 10, 2025; only intent = liability	Title IX (Campus)	✓ Fully intact — primary theory for sexual misconduct investigations	⚠ Recognized in law; agency enforcement curtailed; no separate DOJ rule yet	Private Suit?	Yes — private right of action under both Title VI and Title IX	No private right under Title VI (Sandoval); limited under Title IX	NOTES
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Takeaways Disparate Treatment —Core Theory - Fully intact under both Title VI and Title IX - Investigate motive: comparators, statements, inconsistent application - Apply the same investigation rigor to all complainants — majority and minority groups alike - Hostile environment harassment = disparate treatment (intentional sex- or race-based conduct) Disparate Impact —Changed, Not Gone - Federal enforcement under Title VI eliminated - Title IX agency enforcement curtailed - But: - Private litigation under Title VII still possible - Outcome data still valuable to build intentional discrimination cases - State civil rights laws may still impose disparate impact liability	NOTES																					
Defining Harassment - unwelcome conduct (verbal, written, physical) - based on protected class - subjectively offensive - objectively offensive and - severe or pervasive - limits or denies a person's ability to participate = Hostile Environment	NOTES																					

Retaliation Title IX: No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.	NOTES
Let's Discuss • Discrimination • Harassment • Retaliation • Conduct Violation • Who is the bad actor? • Who is the victim?	NOTES
Unpacking Elements & Topics	NOTES

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 education program or activity.	NOTES
Hostile Environment (Non-Title IX) Title VI: Unwelcome conduct based on race, color, or national origin that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from a school’s education program or activity. U.S. Department of Education, Office for Civil Rights. (2024, May 7). <i>Dear colleague letter: Protecting students from discrimination, such as harassment, based on race, color, or national origin, including shared ancestry or ethnic characteristics.</i>	NOTES
Pre-Investigation Documentation/Evidence  Notice of Allegation and Investigation  Pre-Submitted Evidence  Formal Complaint  Incident reports and Other statements  What else?	NOTES

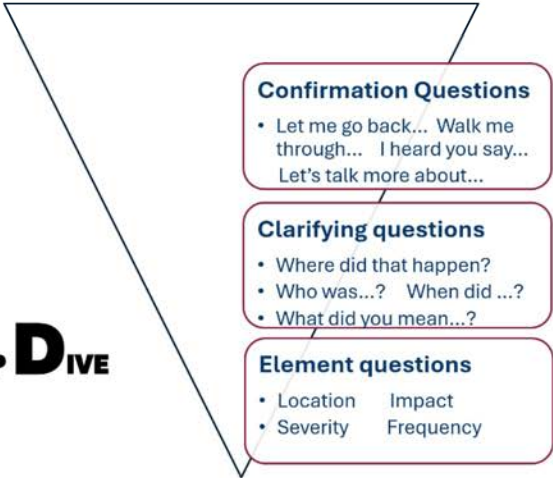
4. TT Interviewing Model (Pt 1)	NOTES
Q. What if an employee who complains about harassment has no evidence, beyond their own statements, to prove that the harassment occurred? A. Not all harassment occurs in the open. . . . In these types of cases, the employer will need to make credibility determinations. Sometimes the victim's testimony alone will be enough for an employer to conclude that harassment has occurred. Summary of Key Provisions: EEOC Enforcement Guidance on Harassment in the Workplace. Retrieved at https://www.eeoc.gov/summary-key-provisions-eeoc-enforcement-guidance-harassment-workplace.	NOTES
Deception Detection	NOTES

INTERROGATION • Accusatorial and confrontational • Presumption of guilt • Interviewer does most of the talking • Typically Respondent only • Psychological manipulation – Custody and isolation – Close-ended questions – Overwhelm by maximizing culpability – Minimization of behavior and punishment – Confession	NOTES
INTERROGATION • Increase in false confessions – Multiple choice questions can “create” memories – 25% of DNA exonerations involved false confessions – Problematic for juveniles and mentally impaired • Training is poorly given and received – Trained investigators perform only slightly better than laypersons – Trainees of techniques misunderstand and misuse at excessive rates 	NOTES
Kinesic Techniques • Create Stress • Strategic questions • Establish baseline • Identify clusters of nonverbal cues • Note timing and context of changes	NOTES

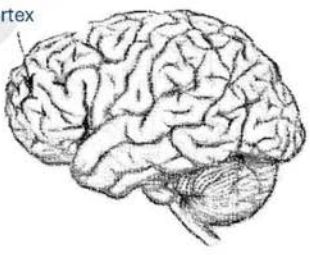
Kinesic Techniques 1) There is no one behavior cue that is definitely indicative of deception 2) People perform no better than chance at detecting deception 3) Police officer trained in these techniques were less accurate than untrained interviewers in assessing false statements (but more confident they were right). 	NOTES
 Witness/Victim Q & A 	NOTES
A better way... 	NOTES

Models PEACE Framework <table border="1"> <tr><td>P</td><td>Preparation and Planning: Thorough case review and strategic planning</td></tr> <tr><td>E</td><td>Engage and Explain: Building rapport and setting clear expectations</td></tr> <tr><td>A</td><td>Account, Clarification, and Challenge: Structured information gathering</td></tr> <tr><td>C</td><td>Closure: Summarizing and confirming understanding</td></tr> <tr><td>E</td><td>Evaluation: Post-interview assessment and planning</td></tr> </table> Cognitive Interview Introduction Open-Ended Narration Follow up questions Review Closing	P	Preparation and Planning: Thorough case review and strategic planning	E	Engage and Explain: Building rapport and setting clear expectations	A	Account, Clarification, and Challenge: Structured information gathering	C	Closure: Summarizing and confirming understanding	E	Evaluation: Post-interview assessment and planning	NOTES
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 The Terry-Todd WINDOW: Investigative Interview Model W • Welcome I • Introductions N • Narrative D • Deep Dive O • Opposition W • Wrap-up	NOTES										
FUNDAMENTALS Talk Less and be... Open-minded Non-judgmental Empathetic Flexible Organized	NOTES										

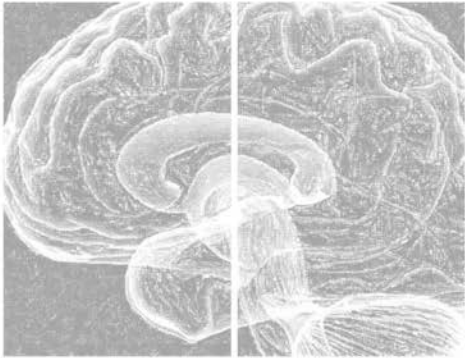
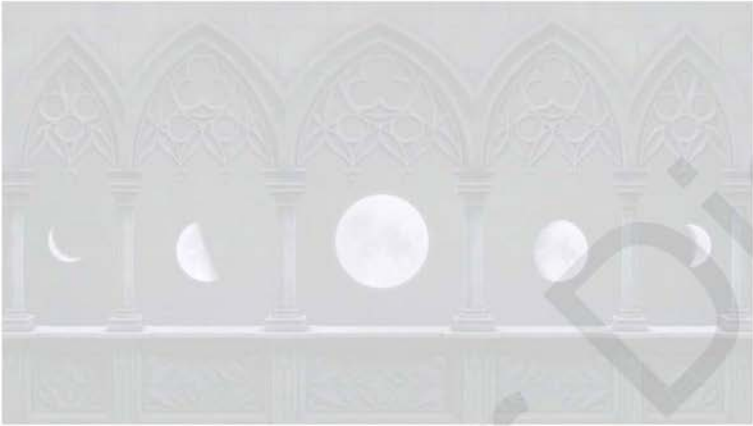
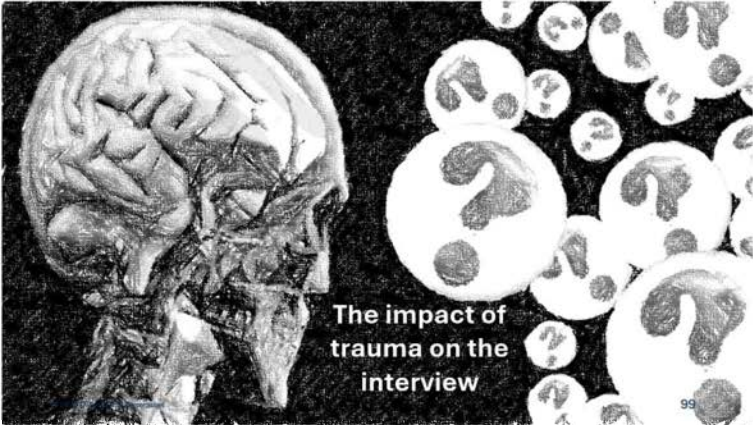
 Design Comfort Create a safe, non-threatening atmosphere encouraging truth and reducing defensiveness WELCOME Build Rapport Get them talking. Weather, classes, “why here?” hometown, rush process...   Establish Trust Non-confrontational and comfortable. End this phase when you feel comfortable.	NOTES
INTRODUCTIONS Establish foundation Outline credentials, attendee roles, agenda, and expected duration. Create safeguards Clarify scope, confidentiality, and amnesty while addressing any immediate concerns or questions. Introduce Narrative State opening narrative question. Encourage patience, detail, and source of information.	NOTES
NARRATIVE <pre> graph TD A[Do. Not. Interrupt.] --> B[Let the silence sit.] B --> C["and then what...?"] C --> A </pre>	NOTES

DEEP DIVE  Confirmation Questions • Let me go back... Walk me through... I heard you say... Let's talk more about... Clarifying questions • Where did that happen? • Who was...? When did ...? • What did you mean...? Element questions • Location Impact • Severity Frequency	NOTES
OPPOSITION  Inconsistencies Changes throughout interview or based on previous statements Witness statements Responses to statements by others witnesses that conflict with statements today Challenges Issues that may make proof difficult; other theories of the case. Evidence on file Wait to share what YOU have until the end	NOTES
WRAP UP  Review Interview Take time to reread notes and make sure all questions asked Final question Anything I didn't ask? Any other information important for me to know?  Questions & Next steps Address questions, discuss timing and review next steps in process.	NOTES

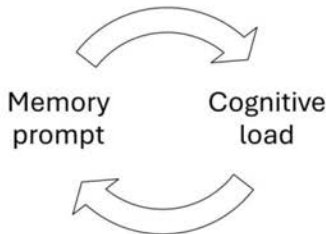
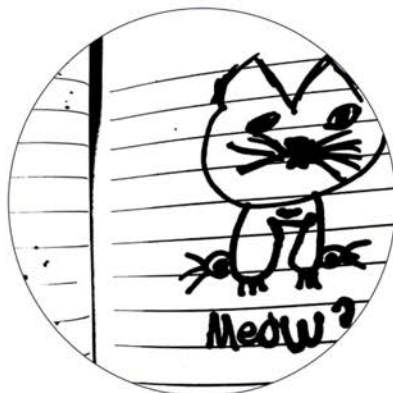
5. TT Interviewing Model (Pt 2)	NOTES
Location, Location, Location  No distractions  No barriers  No power plays  Confidentiality  Privacy  Choice	NOTES
Open-ended questioning  NO JUDGEMENT  PROMPTS ONLY  AVOID LEADING  GET DETAIL  PATIENCE	NOTES

Do we need different models depending on the party? The allegation? The fact pattern?	NOTES
92 NEUROBIOLOGY	NOTES
_____ Prefrontal Cortex The Prefrontal Cortex _____ 	NOTES

The Limbic System	NOTES
95 MEMORY	NOTES
Understanding Memory	NOTES

How We Encode 	NOTES
	NOTES
 The impact of trauma on the interview	NOTES

Research on Trauma and Memory  • Encoding and Recall Disruption • Delayed reports are common • Loss of peripheral details • Possible re-traumatization • Ease of memory creation  • Trauma memories often more vivid and emotional • Central details are better remembered • Delayed recall better than immediate • Memory remains accurate over time • Details may come and go • Sensory memories often vividly retained	NOTES
Two hurdles: Memory recall and detecting deception	NOTES
There are no cues to deception— Liars and truth-tellers look the same. SO...WE NEED TO MAKE THE DECEPTION MORE OBVIOUS. Eyewitness memory can be unreliable because it is malleable and can diminish over time. SO...WE NEED TO RETRIEVE AND PRESERVE IT WITHOUT CONTAMINATION.	NOTES

Overcoming the Hurdles 	NOTES
 Drawing/Sketch	NOTES
  Visual Aids	NOTES

Memory Prompts/ Cognitive Load  Visualization  Emotional and Sensory questions  Probing questions  Reverse chronology  Calendar Review  Unanticipated questions	NOTES
6. Report Writing	NOTES
Considerations in Drafting  Institutional Policy Preliminary vs. Final Process for comment Mandated sections  Who views? Parties Decision-makers Advisors  How shared Electronic format Hard copy	NOTES

What is OUR job? <i>Title IX from the regs...</i> “burden of gathering evidence sufficient to reach a determination regarding responsibility” “equal opportunity for parties to present evidence: • fact witnesses • expert witnesses • inculpatory evidence • exculpatory evidence	NOTES
Report Musts Legally and policy compliant Useful to the decision-maker Accurate and complete Neutral and objective Easy for audience to understand	NOTES
Useful to Decision Maker: Written Determination for Title IX (A) Allegations potentially constituting sexual harassment (B) Description of the procedural steps taken from the receipt of complaint through determination: • notifications to the parties • interviews with parties and witnesses • site visits • methods used to gather other evidence • hearings held (C) Findings of fact supporting the determination (D) Conclusions regarding the application of code of conduct to the facts (E) A statement of, and rationale for, the result as to each allegation • determination regarding responsibility, • disciplinary sanctions on the respondent, • remedies to the complainant (F) The recipient’s procedures and permissible bases for appeal	NOTES

Start from the End  EVIDENCE PACKET • Directly Related Evidence INVESTIGATIVE REPORT • Scope & Methodology • Summary of Relevant Evidence WRITTEN DETERMINATION • Scope & Methodology • Summary of Evidence • Results	NOTES
Report Writing • “Each time I see . . . the unnecessary use of passive voice, I blister.” Hon. Sonia Sotomayor • “To write well, express yourself like the common people, but think like a wise man.”- Aristotle • “Too many lawyers believe that it is essential to legal English that one write as pompously as possible, using words and phrases that have long since disappeared from normal English discourse.” Hon. Antonin Scalia	NOTES
Primary Components Compilation of Evidence Summary of Facts Documentation of Process	NOTES

Quality of Evidence Types of Evidence  Testimonial  Documentary  Direct  Indirect	NOTES
Documentation of Process: Conflict of Interest and Bias  Investigator background  Training  Acknowledge any relationship to parties  Opportunity to request new investigator	NOTES
Thank You!  Ann Todd, Esq ann@terry-todd.com	NOTES