#aiTIXAdvInvestigator

Advanced Title IX Investigator Training and Certification

June 24 - 26, 2020



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#aiTIXAdvInvestigator

ADVANCED TITLE IX INVESTIGATOR TRAINING AND CERTIFICATION

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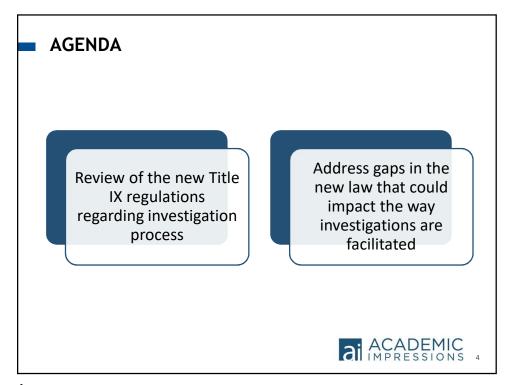
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June 24 - 26, 2020



NEW REGULATIONS AND THE TITLE IX INVESTIGATION PROCESS

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NEW REGS



>Overarching summary - a neutrally trained investigator must gather relevant evidence, including exculpatory and inculpatory (but not privileged material unless consent), and fairly summarize the case in a report

- ➤ Investigator training [§106.45(b)(1)(3)]
- ➤ Conflict of interest and bias [§106.45(b)(1)(iii)]
- ➤ "Not Responsible" Presumption [§106.45(b)(1)(iv)]
- ➤ Medical records [§106.45(b)(5)(i)]



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NEW REGS



- > Focus is "equity" for both parties.
- ➤ Advisor of choice [§106.45(b)(3)(iv)]
- ➤ Equal opportunity to present witnesses and offer information inculpatory and exculpatory info [§106.45(b)(5)(ii)]
- ➤ No gag orders on parties; ability to gather and present relevant information [§106.45(b)(5)(iii)]
- \triangleright Legal privileges; waiver [§106.45(b)(1)(x)]
- ➤ Right to inspect, review, access, and respond to information

 [§106.45(b)(3)(vi)]

 ACADEMIC

 IMPRESSIONS

NEW REGS



- Written communication will also be required throughout:
 - ➤ (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate



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NEW REGS Inspection of Evidence (vi):

WHAT - Equal opportunity to inspect and review any evidence

 inculpatory or exculpatory evidence whether obtained from a party or other source

WHO – Send evidence to each party and advisor, if any

WHY - Each party can meaningfully respond to the evidence prior to conclusion of the investigation.

HOW – electronic or hard copy

WHEN - Prior to completion of the investigative report...the parties must have at least 10 days to submit a written response

PURPOSE - the investigator will consider prior to completion of the investigative report

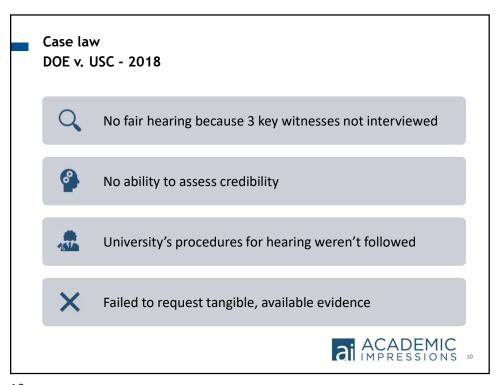


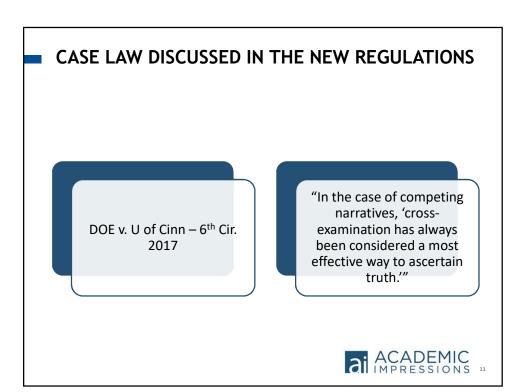
THE INVESTIGATIVE REPORT [§106.45(b)(3)(vii)]

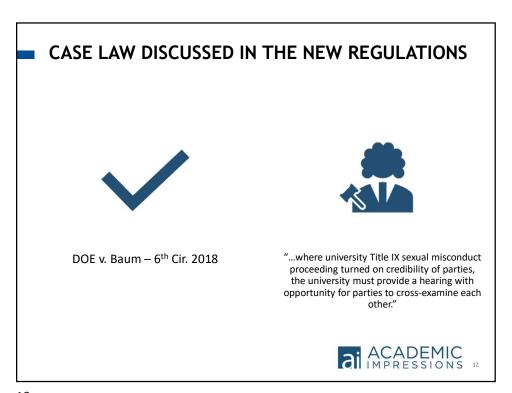
- > Must fairly summarize relevant info
- ➤ AGAIN Must be sent to both parties and advisors at least 10 days prior to scheduled hearing or time of determination regarding responsibility
- ➤ AGAIN Must be in electronic format or hard copy
- >AGAIN Allows for both parties to review and/or provide written response



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REASONABLE PERSON



...a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence) (m-w.com)



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CHAT

What gaps have you found in the new regulations regarding investigations?





RESOURCE

Office for Civil Rights

https://www2.ed.gov/about/offices/list/ocr/newsroom.html

- <u>Title IX Regulations Addressing Sexual Harassment</u> (unofficial copy)
- Title IX Regulations Addressing Sexual Harassment (Federal Register)
- Title IX: Fact Sheet: Final Title IX Regulations
- Title IX: U.S. Department of Education Title IX Final Rule Overview
- Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule
- OCR Blog



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QUESTIONS

