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TacTIXs Recap



Single Investigator Model



Investigation & Determination Stages




Title IX Tip Jar



Informal Resolution




## TacTIXs Recap



**TacTIXs Webinar January 2024**

***A Cruel Summer is Coming***  
*Are You Ready For It?*


▶ [thlaw.com/CruelSummer](https://thlaw.com/CruelSummer)



**TacTIXs Webinar March 2024**

***Title IX Tactical Maneuvers:***  
*Building Capacity*

▶ [thlaw.com/Tactical](https://thlaw.com/Tactical)

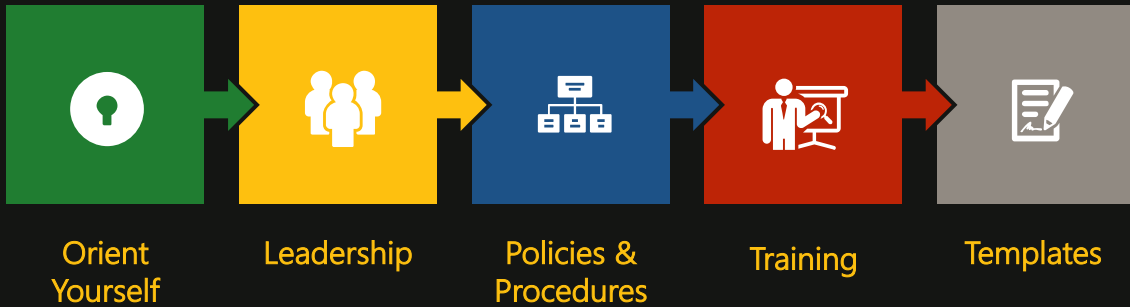


**TacTIXs Webinar April 2024**

***Run the World***  
*(Policy & Procedure Writers)*

▶ [thlaw.com/RunTheWorld](https://thlaw.com/RunTheWorld)

# Preparing for Implementation



## THOMPSON & HORTON TACTIXS RESOURCES



Blog

### Title IX Tips

▶ [titleixtips.com](https://titleixtips.com)



Webinars

### T&H Webinars

▶ [vimeo.com/thompsonhorton](https://vimeo.com/thompsonhorton)

Check These Out for Prior TacTIXs Webinars & Slides



# A Sneak Preview of the New Title IX Rules

[thlaw.com/SneakPreview](http://thlaw.com/SneakPreview)

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**The New Rules  
are NOT the  
Bogeyman!**

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**Streamlined Title IX  
Grievance Process**

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**Single  
Investigator  
Model**

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## What Is The Single Investigator Model?

- ▶ A single individual investigates allegations of misconduct and also makes a determination or finding of whether there was a policy or rule violation
  - ❑ In the Title IX context, the investigator reaches a determination of whether sex discrimination occurred
- ▶ This is not a new model or practice; it is method used by many educational institutions address other types of misconduct

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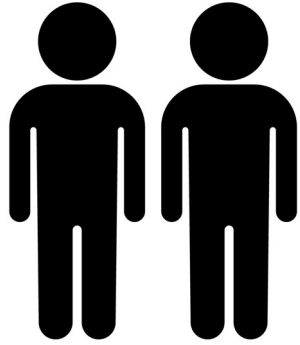
## The Single Investigator Model for Title IX

- ▶ The 2020 rules prohibited the single investigator practice in Title IX complaints
  - ❑ The investigator and decisionmaker could not be the same person
- ▶ The new rules allow the investigator and decisionmaker to be the same person
  - ❑ Alleged sex discrimination that occurred *after* August 1, 2024
  - ❑ For all K-12 Title IX complaints
  - ❑ For complaints of *sex discrimination* and some complaints of sex-based harassment in higher education (depending on your process and state law)

Be mindful of state laws and due process requirements that may impact when you can use this practice

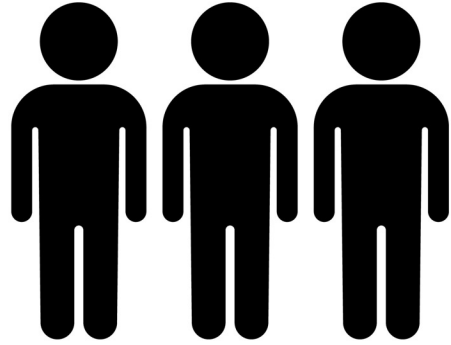


# 2020 Rules



Coordinator & Investigator      Decisionmaker

OR



Coordinator      Investigator      Decisionmaker

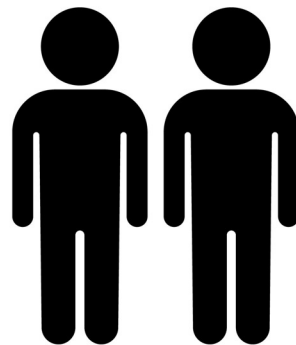
# New Rules

## *Single Investigator Model*



Coordinator,  
Investigator, &  
Decisionmaker

OR



Coordinator      Investigator &  
Decisionmaker

# Benefits of Single Investigator Model

- ▶ Feasibility
- ▶ Resources & Staffing
- ▶ Cost
- ▶ Efficiency
- ▶ Reduced timeframes

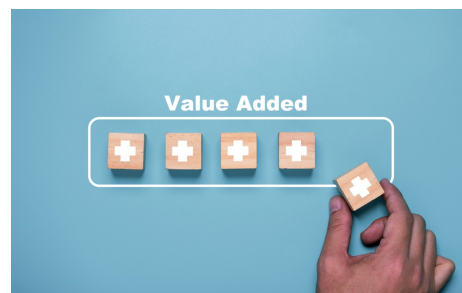


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## Other *Potential* Benefits

You *could* reach more reliable determinations:

- ▶ Investigator often has the most knowledge about the facts
- ▶ Investigator interviews the witnesses and can assess their demeanor and credibility
- ▶ Things can get lost in translation when a separate decisionmaker is reviewing documentation and information without much contact with the parties



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## ...The Other Side of the Coin

### Opponents of Single Investigator:

- ▶ Due process concerns
- ▶ Potential lack of objectivity
- ▶ Potential bias
- ▶ Lack of checks and balances
- ▶ Absence of review process

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## Safeguards

- ▶ Single investigator makes findings; institution makes decision regarding discipline/sanction
- ▶ Appeal process
- ▶ Strong policies and processes
- ▶ Well-trained and experienced investigators



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Should schools use the single investigator model?

***YES!***

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Should the Title IX Coordinator also serve as the Investigator & Decisionmaker?

***Maybe . . .***



**In a perfect world, your Title IX Coordinator would not serve as the investigator & decisionmaker.**

**But . . . it may be more practical, and even advantageous, to consolidate the roles.**



## **Reasons to Use a Separate Investigator/Decisionmaker**

### **The Title IX Coordinator's Role and Duties**

- ▶ Serves as a facilitator who manages the grievance process and can assist any party or witness and answer questions they have about the process
- ▶ Provides oversight of the process to ensure compliance with your grievance policy and procedures and can provide guidance to, and answer the questions of, Title IX investigators/decisionmakers and appeal officers
- ▶ Your Title IX Coordinator could be stretched thin
  - ❑ They must oversee your school's overall Title IX compliance, including the grievance process, which takes time and attention
  - ❑ What happens when there are multiple reports/complaints or investigations that are occurring around the same time?

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# Reasons to Use a Separate Investigator/Decisionmaker

## The Title IX Coordinator's Role and Duties

- ▶ Intake of reports/complaints
- ▶ Offering/coordinating supportive measures (a decision that can be challenged)
- ▶ Overseeing decisions regarding emergency removal (which can be challenged)
- ▶ Deciding whether to independently initiate a complaint
- ▶ Deciding whether to permissively dismiss a complaint (which can be appealed)
- ▶ Determining whether informal resolution is appropriate and offering the process

These are decisions that could make parties perceive a subsequent investigation & decision is not objective and impartial.

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# Benefits of Title IX Coordinator Serving As Investigator/Decisionmaker

- ▶ Resources & Staffing
- ▶ Cost
- ▶ Efficiency / reduced timeframes
- ▶ Title IX Coordinator's potential superior knowledge of the process
- ▶ Fewer personnel to train

Unlike the benefits to using the single investigator model, there is more downside

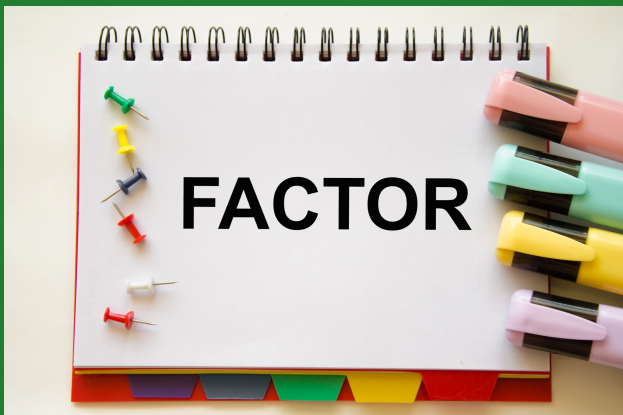
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# One Size Does Not Fit All



## Title IX Coordinator As Investigator/Decisionmaker?



- ▶ The size of your institution
- ▶ The nature/extent of Title IX issues you face each year, including the number of complaints
- ▶ The other duties assigned to your Title IX Coordinator
- ▶ Whether you have deputies or designees to assist the Title IX Coordinator

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# Title IX Coordinator As Investigator/Decisionmaker?



- ▶ Whether you have designated personnel with investigative duties, or a designated investigative unit/office/department
- ▶ Your policies and processes for other investigations
- ▶ Your policies and processes for decisionmaking regarding other complaints

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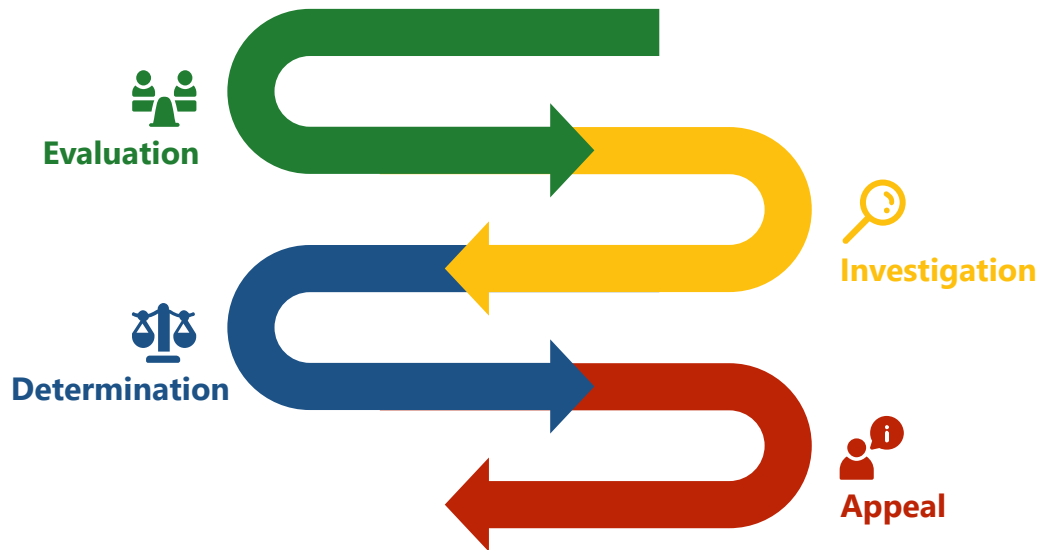
**The new rules give you flexibility.  
Use it to your advantage.**

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## Investigation & Determination Stage

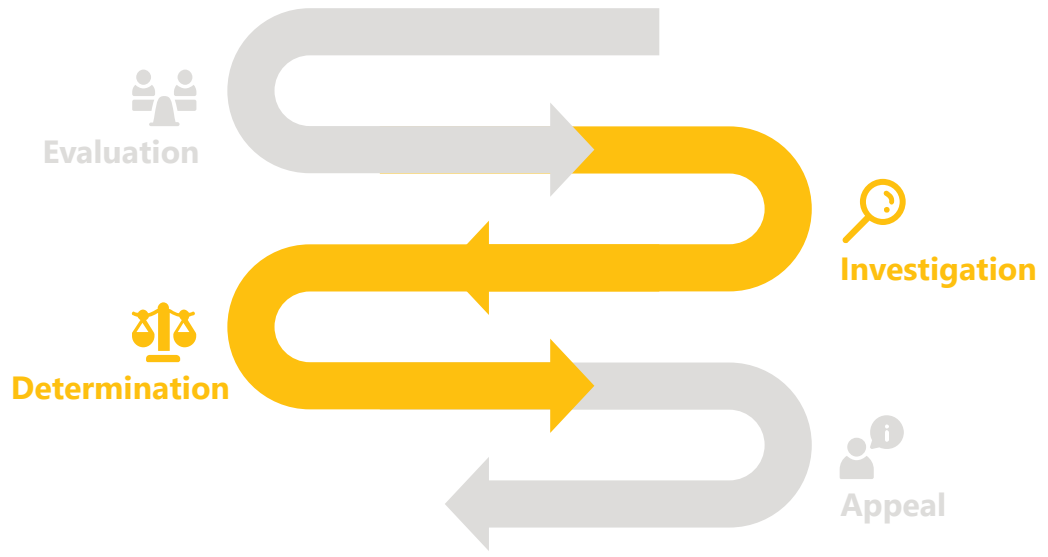


## Four Major Grievance Process Stages



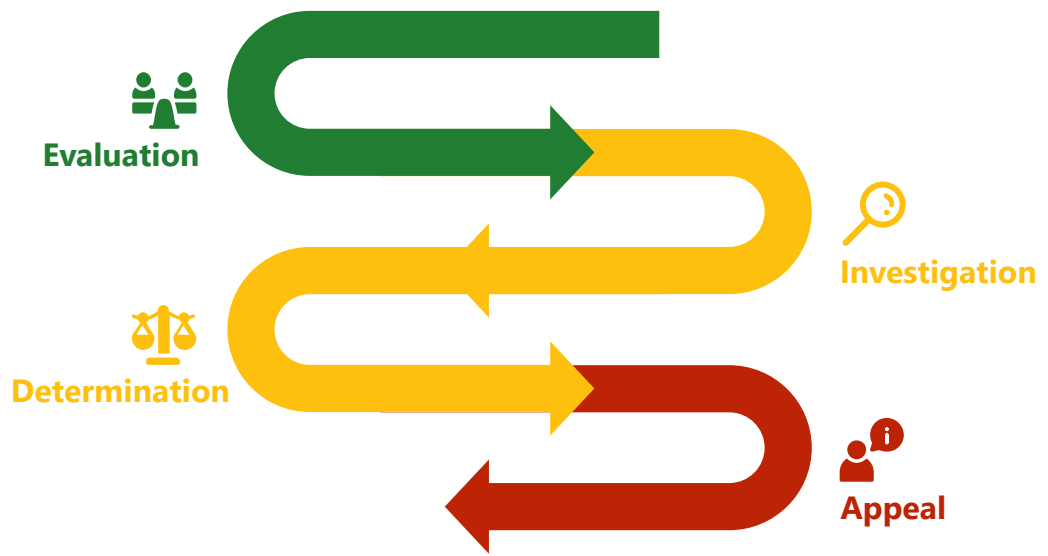
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# Under the Single Investigator Model



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# Under the Single Investigator Model



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## Increased Efficiency

- ▶ Do not have to hand off investigation file and relevant evidence to separate decisionmaker to review and reach determination
  - Reduces time because separate decisionmaker does not have to spend additional time reviewing the evidence
- ▶ Do not have to prepare an investigation report **and** written determination
  - The rules no longer require both, but if you use a separate decisionmaker a summary of the evidence or report would be helpful

## They-Said / They-Said *Credibility Determinations*



# Credibility Determinations

- ▶ The new rules require you to provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility if credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination
- ▶ If you use a single investigator/decisionmaker, that process may simply be an interview or follow-up interview conducted by the investigator
- ▶ If you have a separate investigator/decisionmaker, the process might involve continued use of a written question & answer process, or the decisionmaker conducting interviews of people already interviewed by the investigator

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## A K-12 Thank You, Department of Education!

- ▶ No requirement to provide a designated time to respond to directly-related evidence
  - Parties must be allowed to respond to a description of the relevant evidence (or the relevant evidence is requested) but there is no specific time frame
- ▶ No requirement for an investigation report
- ▶ No requirement for providing the investigation report to the parties and providing a designated amount of time for response
- ▶ No requirement for written question & answer process, including opportunity for follow-up questions





## K-12 Current Rules

- ▶ Investigation report that fairly summarizes the relevant evidence
- ▶ Written determination of responsibility
  - Sexual harassment allegations
  - Procedural steps taken from receipt of formal complaint through determination
  - Findings of fact supporting determination and conclusions regarding the application of the school's code of conduct to the facts
  - Statement and rationale for result for each allegation including: determination regarding responsibility; disciplinary sanctions; and remedies
  - The procedures and bases for appeal

## K-12 New Rules

- ▶ No investigation report required
- ▶ Notify parties in writing of the determination of whether Title IX sex discrimination occurred, the rationale for such determination, and the procedures and permissible bases for appeal



## Title IX Tip Jar

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# Notice of Interview

## ▶ Standard Process

- ▶ No formal Notice of Interview is required
- ▶ Consider including the information in the Notice of Allegations

## ▶ SSHIPS

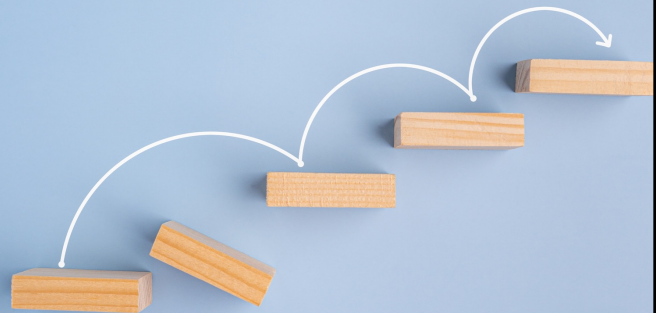
- ▶ Notice of Interview required
- ▶ Can be combined with Notice of Allegations



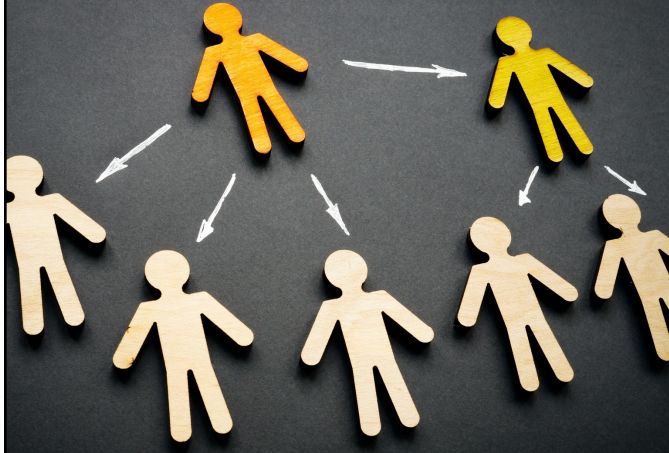
# No Directly Related Evidence

## ▶ Standard Process and SSHIPS

- ▶ The 2024 Rules do not include sharing directly related evidence
- ▶ Determine what evidence is RELEVANT
- ▶ Share relevant (not impermissible) evidence or a summary
- ▶ Allow for review and feedback



# Use Deputies and Designees

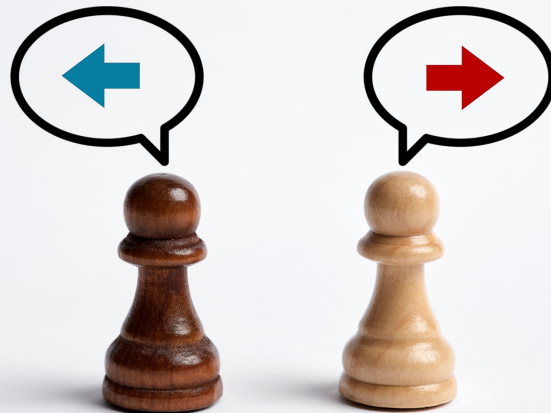


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- ▶ Consider having a deputy or designee make initial decisions related to:
  - ▶ Supportive Measures
  - ▶ Emergency Removals
  - ▶ Pregnancy Modifications
- ▶ Allows the Title IX Coordinator to hear challenges to supportive measures decisions and emergency removals
- ▶ Title IX Coordinator can oversee any grievance procedure related to alleged failure to provide appropriate pregnancy modifications

# Credibility

- ▶ **Standard Process and SSHIPS**
  - ▶ Questioning by the decisionmaker is required when credibility is in dispute and relevant
  - ▶ Identify disputed and relevant facts where credibility is at issue
  - ▶ Focus/limit questioning to these facts and issues



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# Oral Complaints

- ▶ Use a standard form letter (email) to document oral complaints
- ▶ Confirm any understanding that the complainant wanted to initiate an investigation and grievance process

Is that a complaint?

What happened when?

Do you want an investigation?

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# Supportive Measures

- ▶ Use standard forms:
  - ▶ Offer and suggest available supportive measures (include contact information for internal counseling services, free community services, and any external partners)
  - ▶ Document what measures are agreed upon
  - ▶ Party challenge to a supportive measure
  - ▶ Determination and reason for a decision on challenged measure
  - ▶ Document implementation

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**Thompson & Horton's**  
**2024 Title IX Guidebooks**  
[titleix@thlaw.com](mailto:titleix@thlaw.com)

**Informal Resolution**  
**The Secret Sauce of Your**  
**Title IX Grievance Process**



# Evolution of Informal Resolution



## New Title IX Regulations August 1, 2024



Informal resolution not available when complaint is employee-on-student sex-based harassment



Informal resolution not available when there is a conflict with local, state, or federal law



Does not require a formal complaint being filed first



Informal resolution may be offered at any time before final written determination is made

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# What is Informal Resolution?

- ▶ A voluntary procedure
- ▶ **Separate and distinct from** the formal investigation and decisionmaking procedures
- ▶ Limited in K-12 to matters involving student-on-student sexual misconduct

# Types of Informal Resolution

- ▶ Mediation
- ▶ Facilitated dialogue
- ▶ Facilitated/negotiated resolution or exchange of offers of resolution
- ▶ Restorative justice
- ▶ Transformative justice

**The new rules give your school flexibility  
to create a process that works for you!**



# Informal Resolution In a Nutshell

- ▶ School may offer informal resolution process, but is not required to do so
- ▶ Title IX Coordinator determines when informal resolution is appropriate (when allowed by rules and when there are no safety risks)
- ▶ Separate from grievance process
- ▶ No comprehensive investigation, decision, or appeal necessary, if successful
- ▶ Confidentiality can be maintained
- ▶ No disciplinary sanctions unless agreed to by the parties



But first...

## Getting to Informal Resolution

- Title IX Coordinator receives a report or complaint of alleged Title IX sex discrimination
- Title IX Coordinator determines if informal resolution is allowed by the rules and appropriate under the circumstances (i.e., safety/risk)
- Title IX Coordinator notifies the Complainant of the informal resolution process (can be in Notice of Allegations, but can occur before a Complaint is even filed)
- Title IX Coordinator notifies the Respondent of the informal resolution process
- If the Title IX Coordinator determined informal resolution is appropriate and both parties voluntarily consent to informal resolution, informal resolution can be initiated

# Informal Resolution Super Powers

- ▶ Student preference to avoid investigation and hearing process
- ▶ Avoids re-traumatization through more adversarial investigation & decisionmaking procedures
- ▶ Potential holistic approach through restorative justice
- ▶ Voluntary – student buy-in in the process and outcome



# Informal Resolution Super Powers

- ▶ Reduction of administrative burden  
(some estimate 1/3 of the time necessary for the investigation and decision process)
- ▶ Reduction in timeframes
- ▶ Potentially lowers risk of litigation



# Pros and Cons of Informal Resolution

## Pros

- ▶ Student-centered (student agency)
- ▶ Trauma-informed
- ▶ Trauma healing rather than inducing
- ▶ Reduced administrative burden
- ▶ Shorter timeframe than investigation/hearing
- ▶ Reduced stress for individuals involved
- ▶ Avoids investigation/hearing process
- ▶ Allows the parties to discuss allegations in a controlled environment
- ▶ Parties can express feelings; find closure
- ▶ Allows for creative, individualized outcomes


## Cons

- ▶ Not appropriate in all cases
- ▶ Perception that informal resolution does not provide "justice"
- ▶ An unskilled and untrained facilitator can frustrate the process

## Remedies Available in Informal Resolution


- ▶ Voluntary restrictions regarding participation in student organizations, extracurricular activities, or other school events
- ▶ Participate in educational trainings including consent & communication, use of alcohol or drugs, healthy interpersonal relationships, stress management and well-being
- ▶ Changes to on-campus housing, subject to availability
- ▶ Changes to dining facilities
- ▶ Availability to complainant to read "impact statement" to respondent
- ▶ Other measures deemed appropriate by the Title IX Coordinator

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## Non-Retaliation

- ▶ There is a strict prohibition on retaliation during the informal resolution process
- ▶ There can be no retaliation against any individual who participates (or declines to participate) in informal resolution



## The Informal Resolution Facilitator: Your Title IX Superhero



# Who is this Masked Hero?

- ▶ Not the Title IX Investigator
- ▶ Not the Title IX Decisionmaker
- ▶ Not anyone with a conflict of interest
- ▶ No bias for or against complainants/respondents
- ▶ Well-trained



# Informal Resolution Facilitator Training

## Required Training

- ▶ Title IX training required for all employees
- ▶ The rules and practices of your school's informal resolution process
- ▶ How to serve impartially, including by avoiding conflicts of interest and bias

**Recommended Training:** dispute resolution methods and techniques, including restorative and transformative justice



# Tips for an Effective Informal Resolution Process



- ▶ Well thought-out decisions by the Title IX Coordinator regarding whether informal resolution is appropriate and should be offered to the parties
- ▶ Make sure you have strong informal resolution procedures established
- ▶ Effectively communicate the informal resolution procedures to the parties
- ▶ Identify and designate personnel to serve as informal resolution facilitators who have the right demeanor, skillset, experience, and knowledge
- ▶ A well-trained informal resolution facilitator is the key to unlocking this superpower

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**August 20, 2024**

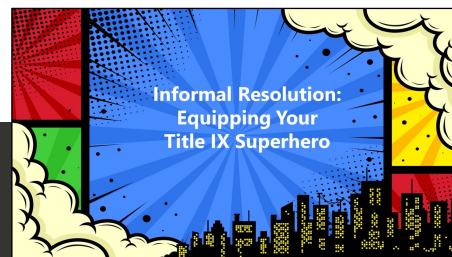
for K-12 Title IX  
Informal Resolution Facilitators



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**August 27, 2024**

for Higher Ed  
Informal Resolution Facilitators



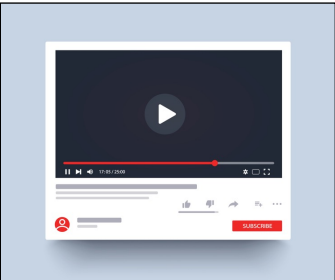
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**Thompson & Horton's**

# 2024 Informal Resolution Facilitator Title IX Virtual Training



**Video Training**



**Virtual Training**



**In-Person Training**



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**2024 Title IX Training**  
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# All Employee Video Training



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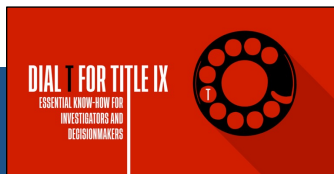
**June 17-18, 2024**

for Title IX  
Coordinators



**June 20, 2024**

for Title IX Investigators &  
Decisionmakers



**July 25, 2024**

for Title IX Investigators &  
Decisionmakers



Thompson & Horton's

# 2024 K-12 Title IX Virtual Training

**June 29-30, 2024**

Dallas, Texas  
Title IX Administrators



**TBD**

Houston/Austin  
Title IX Administrators



**Thompson & Horton's**

# 2024 K-12 Title IX In-Person Training



**Thompson & Horton's**

# 2024 Higher Ed Title IX Virtual & In-Person Training



## ABOUT THOMPSON & HORTON TRAINING



Title IX Tips

**Teamwork Makes the Dream Work: Complying with Title IX's New Mandate for Annual Training for All Employees**



Title IX Tips

**Register Now for Thompson & Horton's Virtual Training for K-12 Title IX Personnel**

## THOMPSON & HORTON RESOURCES

# Title IX Training

[thlaw.com/titleix](https://thlaw.com/titleix)

The screenshot shows the Thompson & Horton LLP website. The navigation bar includes links for ABOUT, PEOPLE, PRACTICE AREAS, THOUGHT LEADERSHIP, TITLE IX, LOCATIONS, CAREERS, and CONTACT. The main content area features a graphic with a clapperboard that says "TAKE TWO THE 2024 TITLE IX RULES PRESENTED BY THOMPSON & HORTON LLP". To the right of the graphic is the text "2024 Title IX Training and Resources". Below the graphic, there is a paragraph of text describing the training options: "Thompson & Horton has K-12 and Higher Education training options to meet your needs, whether you need to train one Title IX coordinator, your entire Title IX team, administrators, all personnel, or your school board. We provide training for schools seeking initial compliance with the 2024 Title IX Rules, intermediate and advanced role training to help your Title IX team develop practical skills for responding to complaints of sex discrimination and sex-based harassment, as well as 'add-on' courses that address key issues your institution may face when complying with Title IX. Our training is available in-person, online via Zoom, or in a hybrid model. We offer the trainings à la carte or in packages. We can also work with you to create a customized training package to meet your institution's unique needs." Below this is another paragraph: "Thompson & Horton also has New 2024 Title IX guidebooks for K-12 schools and Higher Education institutions that provide analysis, tips, checklists, and forms for the 2024 amendments to the Title IX regulations." At the bottom, it says: "For more information, you can contact your Thompson & Horton attorney or email us at [titleix@thlaw.com](mailto:titleix@thlaw.com)."





# Title IX Leadership Alliances

## K-12

**4<sup>th</sup> Tuesday** of the month

- ▶ Register at [thlaw.com/k12alliance](http://thlaw.com/k12alliance)
- ▶ Email [titleix@thlaw.com](mailto:titleix@thlaw.com)
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## Community College

**Last Wednesday** of the month

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## 4 Yr. College or University

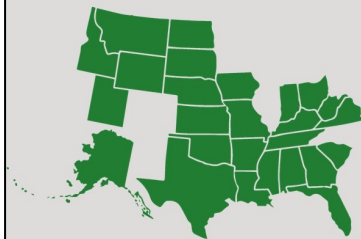
**Last Thursday** of the month

- ▶ Register at [thlaw.com/4yralliance](http://thlaw.com/4yralliance)
- ▶ Email [titleix@thlaw.com](mailto:titleix@thlaw.com)
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# June 29, 2024 TacTIXs Webinar

***Attorneys General Fought the New Title IX Rules:  
The Clash Between the States  
& the Department of Education***



**v.**



# Thank You!



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