

Title IX Annual Training 2023

UNIVERSITY OF
LOUISVILLE[®]

Title IX and Trauma Informed Care (TIC)

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What is TIC?

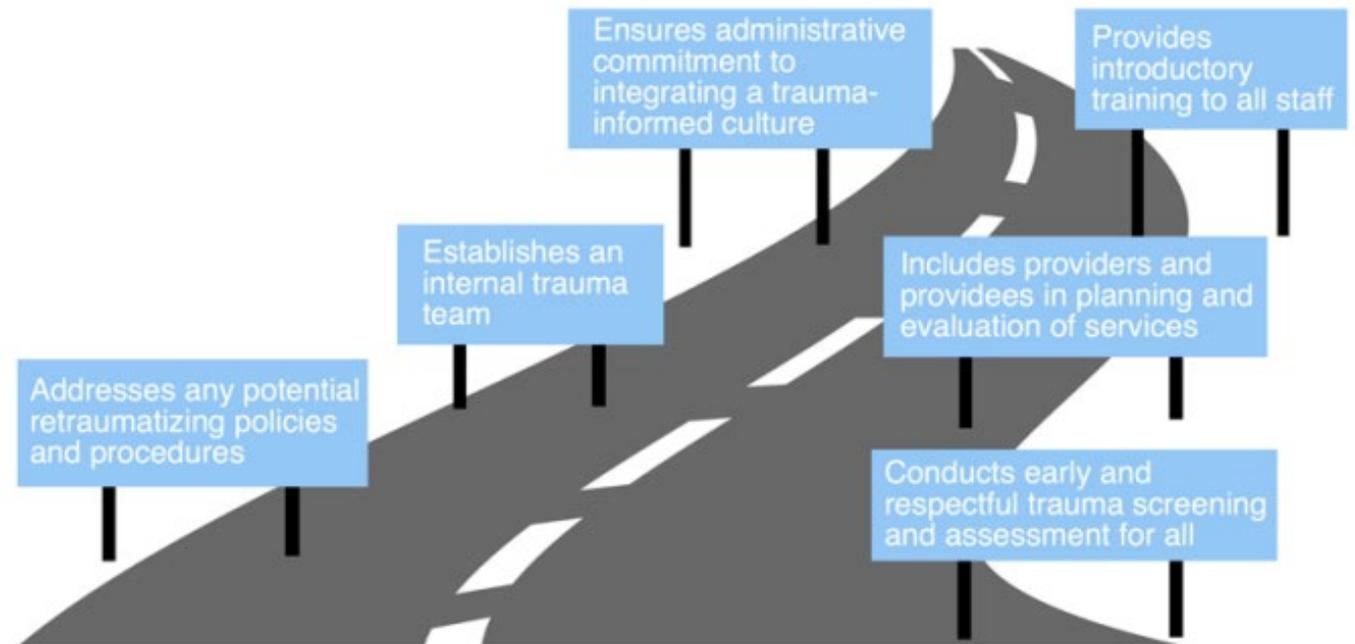
“Trauma-Informed Care (TIC) is an approach in the human service field that assumes that an individual is more likely than not to have a history of trauma. Trauma-Informed Care recognizes the presence of trauma symptoms and acknowledges the role trauma may play in an individual’s life-including service staff.”

The Institute of Trauma and Trauma-Informed Care (ITTIC)

The Road to Trauma-Informed Care (TIC)

Trauma-Informed Care calls for a change in organizational culture, where an emphasis is placed on understanding, respecting and appropriately responding to the effects trauma at all levels.

(Bloom, 2010)



(Fallot & Harris, 2001)



How Our Brains Respond to Trauma

Amygdala

- Controls emotions, survival instincts, and memory.
- This is the area of the brain responsible for our “fight or flight” response.

Hippocampus

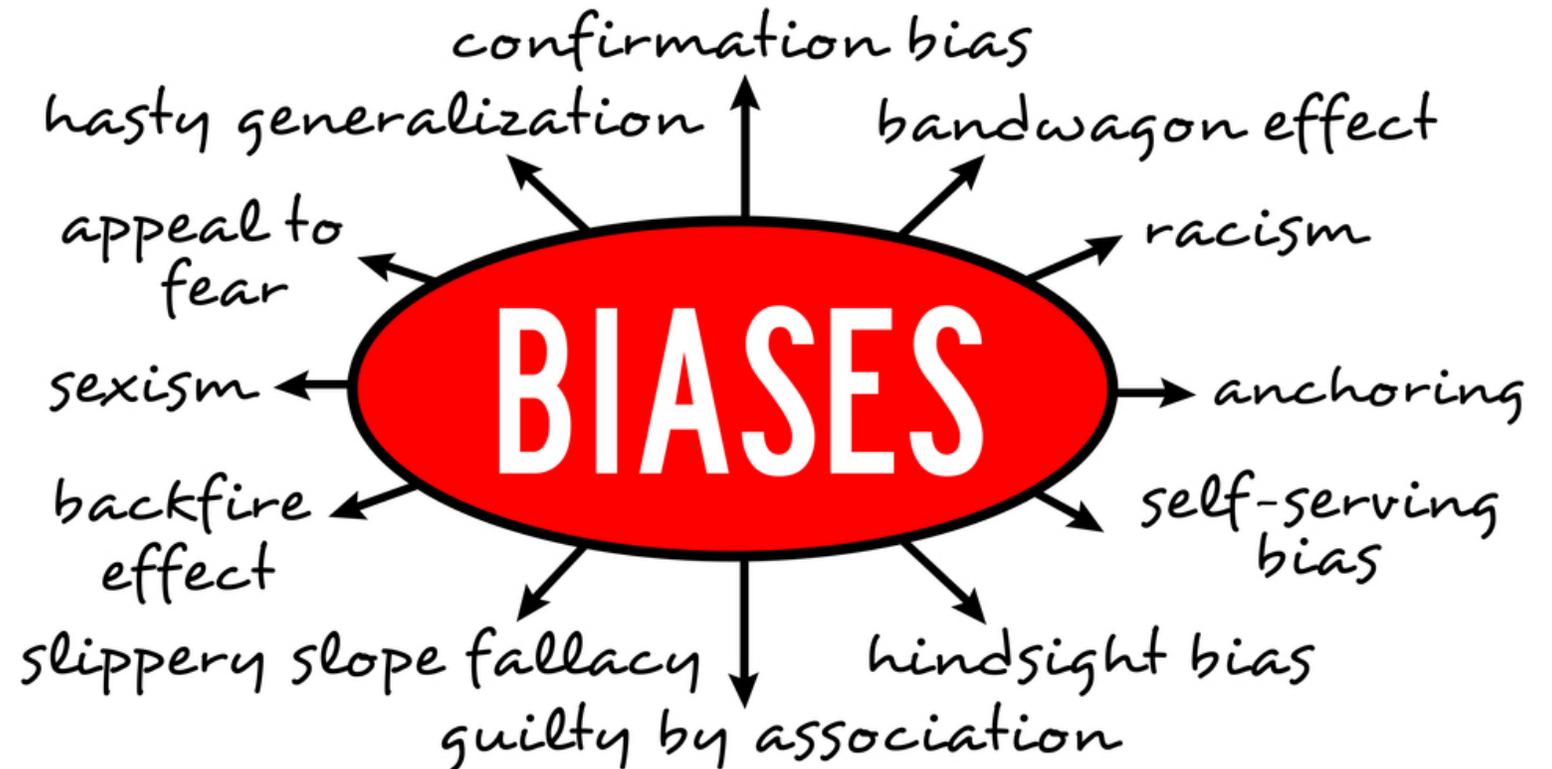
- Aids in learning and memory.
- Encodes emotional context to memories.

Prefrontal Cortex

- Planning.
- Moderating social behavior.
- Regulates emotions.

Biases

Reflection and Discussion



[Subconscious Bias in Virtual Interviews - HR Daily Advisor \(blr.com\)](#)

Title IX and Trauma-Informed Care



Why are we talking about this?

[Joint Guidance on Federal Title IX Regulations: Focus on Trauma-Informed Training Dtd:June 18th, 2020](#)

[2019-ATIXA-Trauma-Position-Statement-Final-Version](#)

Investigating Traumatized Interviewees

Investigative interviewing of traumatized victims should aim to

- (a) obtain as much information as possible about what happened,
- (b) reduce potential contamination of memory and
- (c) minimize the potential harm or distress experienced by the interviewee.

Be open and flexible

Tailor approach to each individual interview

Be noncoercive and nonjudgmental

Accommodate the interviewee's state and facilitate safety

Build rapport





Questions?

Investigation Reminders

General Investigation Principles

- Parties must have sufficient notice to prepare and meaningfully participate
- Investigator has an independent duty to collect relevant inculpatory and exculpatory evidence
- Parties have an equal opportunity to present their statements, evidence, and to identify witnesses
- Parties have equal opportunity to review and comment on evidence developed
- **Investigation is evidence-gathering;** not fact-finding

From Husch Blackwell Presentation 2020

Burden of Gathering Evidence

- The burden of gathering evidence must remain on schools not the parties
106.45(b)(5)(i)
- Both parties have the right to provide evidence and witnesses (both fact and expert), 106.45(b)(5)(ii) (but it is not their responsibility to do so)
- It is the school's job to conduct the investigation, track down and gather all of the evidence possible and interview witnesses
- The school is neutral during this process, they are not focusing on gathering evidence to prove respondent "guilty" or to prove respondent is not responsible; they are not "building a case"
- The goal is a truth-seeking mission; gather everything relevant so that a neutral decision maker can reach an accurate determination based on the information presented during a hearing.

How Do We Do This?

- Review Complaint:
 - Identify individuals mentioned who may be witnesses
 - Look for mentions of messages with others (Text, Snapchat, etc.) to ask for during interviews
 - Is the location one where we can obtain surveillance video?
 - Can we verify times/dates with card swipes into a building or parking area?
 - Were any other reports made?
- During Interviews:
 - Listen for mention of other people, messages, etc.
 - Ask directly about who else was there either involved or just around
- Review Materials:
 - Do messages refer to others not identified?
 - Are there any references to other materials not identified?
 - Are there any academic resources we can gather (Blackboard data, class attendance, etc.)

Case Study Practice

- Goal:
 - Practice Intakes with new resources to provide feedback
 - Opportunity to practice intake and interview skills and receive feedback from another member of the team
- Tasks:
 - First individually read through the case and identify who you will need to interview and/or what additional information you may need to seek and draft a few interview questions for the complainant
 - Second, practice an intake portion meeting with the “complainant” who is your buddy
 - Third, practice a brief interview with the complainant

Relevancy

Facts & Relevancy

- FACT in the law is defined as something that actually happened or is the truth
 - In TIX Cases, fact is determined by a Hearing Panel or Officer based on **relevant** information presented during a hearing
 - TIX investigators and reports do not determine facts
- RELEVANCE is the tendency of a given item of evidence to prove or disprove one of the elements in a case or to have the probative value to make one of the elements of the case likelier or not.
 - In TIX Cases, relevancy is determined by the Hearing Officer/Chair of the Hearing Panel and the investigator.

What Makes Something Relevant?

- Information is relevant if:
 - It has any tendency to make an allegation more or less probably than it would be without the information; and
 - It is of consequence in determining the action.
- There are two types of relevant information:
 - Inculpatory
 - Exculpatory

What is Inculpatory Evidence?

- Information tending to support the proposition a respondent committed sexual harassment as alleged

Example: A text message sent the day after an incident from the respondent stating: “I never should have forced you to have sex with me after you said ‘no. ’I’m so sorry for what I did.”

From Husch Blackwell Presentation 2020

What is Exculpatory Evidence?

- Information tending to support that the respondent did not commit sexual harassment as alleged

Example: A text message sent the day after an incident from the complainant stating: “I know that I said ‘yes’ at the time. And I knew what I was doing. But now I feel like you just used me as a one-night-stand.”

From Husch Blackwell Presentation 2020

Relevancy Determination Process

How to determine relevancy:

1. Review the evidence being offered
2. Consider the allegations of the Title IX sex harassment complaint
3. Ask yourself whether the evidence being offered has the potential to prove/explain or disprove an incident under investigation

Relevancy Determination Process: Pro Tip

The Relevancy Determination Process allows/requires you to apply your education, experience, training, and expertise to your decision-making process. When asked in an OCR Complaint Investigation or in litigation about how you reached a conclusion about relevancy (or anything else for that matter), your ability to demonstrate that you were reasonable (that is, you reasoned your way to a decision) by applying your education, experience, training, and expertise will serve as a protection for you.

Scenario: Is this Relevant?

A student complainant alleges sexual harassment from the respondent, who is a faculty member. The complainant alleges that they kept the relationship a secret from friends and family because the respondent might lose his job if it was known. The complainant suggests their mother as a witness to the investigation noting the mother can indicate the shift in mental health the complainant experienced during the time of the relationship

Scenario: Is this Relevant? (Continued)

A student complainant alleges sexual harassment from the respondent, who is a faculty member. The complainant suggests their mother as a witness to the investigation. The complainant notes their mother saw the respondent yelling at them and acting in a hostile way.

What is Rape Shield Protection?

- Title IX's rape shield protections provide that questions and/or evidence about the Complainant's sexual predisposition or prior sexual behavior **are presumptively not relevant**, unless they are offered under two limited exceptions.
 - The questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - The questions and evidence relate to specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent

Relevancy Determination Process (Continued)

How to determine relevancy:

1. Review the evidence being offered
2. Consider the allegations of the Title IX sex harassment complaint
3. Ask yourself whether the evidence being offered has the potential to prove/explain or disprove an incident under investigation
4. Consider whether the evidence falls into rape shield protections or rape shield exceptions

Scenario 1: Is this Relevant?

A student alleges that they were sexually assaulted by another student at a party. The complainant alleges that they were too intoxicated to consent. The respondent provided Snapchat videos of the complainant at the party talking about how hot they thought the respondent was and how they wanted to hook up. They also suggested witnesses who would state that the complainant tends to hook up with people at the parties on the weekends.

Scenario 2: Is this Relevant? (Continued)

The complainant, a student, alleges they were sexually assaulted by the respondent, also a student. The respondent submits copies of text messages discussing their agreement to be “friends with benefits” where the complainant outlines a desire for a “hook-up buddy” and the texts outline that the meet-up on the day in question was for that purpose.

Scenario 3: Is this Relevant? (Continued)

The complainant, a student, alleges they were sexually assaulted by the respondent, also a student. The respondent submits Snapchat videos sent by the complainant to a friend showing the complainant with another student in a bedroom and stating they were about to “hook up”. The video’s timestamp is the approximate date and time the complainant alleged the assault by the respondent.

Summary

- Information gathered in an investigation is relevant if it has any tendency to make an allegation more or less probable than it would be without it; and it is of consequence in determining the action.
- The hearing board/officer are **fact-finders**, but they are left to "find" facts only from **relevant** information presented at a hearing.
- The Investigator & Hearing Officer or Chair of Hearing Board are the only two individuals who determine relevancy.
- Determine relevancy by reviewing the evidence being offered, considering the allegations of the Title IX sex harassment complaint, asking yourself whether the evidence being offered has the potential to prove/explain or disprove an incident under investigation, and considering applicable rape shield protections.
- Reason your way to a relevancy decision by applying your education, experience, training, and expertise to your decision-making process.

Report Writing

Right to Inspect Evidence

- Schools must send the parties and their advisors:
- ALL evidence directly related to the allegations
 - will include relevant and irrelevant evidence including that which would otherwise be excluded under the rape shield protections
 - includes evidence the school will not use/rely in making a decision
 - includes inculpatory or exculpatory evidence whether obtained from a party or other source
 - electronic format or a hard copy, otherwise, method and format of delivery up to school
- Parties must have at least 10 days to submit a written response
- The investigator will consider parties' input prior to the completion of the investigative report
- **Relevant** evidence must be made available at the hearing

Goals of the Report

- The report has two main objectives:
 - Compile information gathered through the investigation
 - Communicate steps taken in the TIX Process
- The report should remain unbiased
- The report shares what information is gathered, but doesn't determine fact
- The report may note that some information is not relevant to the investigation and why

In short, it compiles the information and shows the investigator's work to gather it.

Report Sections

- Overview of Investigation
- Procedural History
- Interviews
- Witnesses Not Interviewed
- Additional Information Gathered
- Summary of Relevant Information
- Summary of Non-Relevant Information
- List of Appedixes

Report Section: Overview of Investigation

- This is a brief overview of the who, what, where, when, why & how of the complaint and investigation
- Includes a statement of fair and impartial investigation
- Is the only place we reference the full names of parties and witnesses:
 - Complainant: Jane Roe
 - Respondent: John Dow
 - Witness A: Jack Black
 - Witness B: Karen Jefferson

Report Section: Overview of Investigation Example

On January 22, 2021, Dr. Angela Taylor, University of Louisville Deputy Title IX Coordinator, received an informal complaint of sexual assault from Jane Roe (herein after “Complainant”). The Complainant alleged that John Doe (herein after “Respondent”) sexually assaulted her in her campus residence hall room on December 1, 2020.

On January 22, 2021, University of Louisville Title IX Investigator, Shirley Hardy, contacted the Complainant to discuss the Title IX Process, Support Measures and how to file a formal complaint. Ms. Hardy met with the Complainant on January 25, 2021 and received a formal complaint on January 26, 2021. At that time, Ms. Hardy initiated an investigation into the allegation. **The investigation was conducted in a fair and unbiased manner and concluded on February 16, 2021. This report summarizes information obtained over the course of the investigation.**

During the investigation, Ms. Hardy conducted interviews of (list them all)

Ms. Hardy also reviewed the formal complaint submitted by the Complainant, a written response submitted by the Respondent, statements provided by witnesses, text messages between the parties and security camera footage obtained from the Complainant’s residence hall.

Report Section: Procedural History

- The largest section, other than possibly interviews
- Shows the work of the investigation to illustrate steps taken by the investigator to gather information and compliance with the process
- Includes subsections:
 - Formal Complaint: States when received & what appendix it is found in
 - Jurisdictional Analysis: Outlines Jurisdictional requirements and how it is or isn't met
 - Required Notices & Supportive Measures: Provides dates of required notices, details which appendix found in, and outlines efforts to provide supportive measures
 - Informal Resolution: if this is attempted, should include details; if not attempted, can remove
 - Investigation Timeline: includes dates each step in the process was taken
 - Alleged Violation(s): outline what violations are alleged
 - Standard of Proof

Report Section: Dismissal Consideration

- This section outlines the 3 parts of Dismissal Consideration:
 - The conduct is alleged to have occurred on or after August 14, 2020;
 - The conduct is alleged to have occurred in the United States;
 - The conduct is alleged to have occurred in the University's educational program or activity in one or more of the following ways:
 - Any on-campus premises
 - Any off-campus premises that the University of Louisville has substantial control over
 - Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs and activities over which the University has substantial control

Report Section: Dismissal Consideration (Continued)

- TIX regs require we dismiss a complaint when the alleged behavior, if true, wouldn't constitute a violation of the policy
- We often refer to this as a part of the jurisdictional analysis, but it is separate

Report Section: Alleged Violation

- List each alleged violation separately
- Only allegations listed in the final report can be considered at the hearing

The alleged [conduct] occurred on [date] in [location]. Allegation 1, if proven, is a violation of the University of Louisville Student/Employee Sexual Misconduct Policy which provides that an act of [conduct] is a violation of the Policy. The Policy defines [conduct] as: [include definition from the policy]

Report Section: Standard of Proof

The University of Louisville Title IX Student Sexual Misconduct Policy states:

“The standard of proof for incidents of non-academic misconduct is a preponderance of evidence. Preponderance of evidence means that the evidence supports that a given allegation is more likely to be true than not true. The technical rules of evidence applicable to civil and criminal cases shall not apply when resolving incidents as outlined in this policy.”

-OR-

The University of Louisville Title IX Employee Sexual Misconduct Policy states:

“The Hearing Officer will make findings of fact and conclusions as to whether Sexual Misconduct or violations of University policy occurred using a preponderance of evidence standard. Preponderance of the evidence means that the evidence supports that a given allegation is more likely to be true than not true.”

Report Section: Witnesses

- Basic information and summary of all interviews completed
- Refer to parties as Complainant, Respondent, Witness A/B, etc.
- Includes these subsections:
 - Initial Interview: when and how it took place if they had an advisor
 - Interview Summary: Provide a straightforward summary
 - Information/Materials Supplied: if they provided any information for the complaint. If you identified, they may have something (like text messages, etc.) and asked for it but they were unable or unwilling to provide them note that as well. Indicate where to find in the appendix as well.

Report Section: Witnesses Not Interviewed

- Basic information and summary of all interviews not completed
- List who they were and how they were identified
- If the witness did not respond:
 - Provide time, date & manner of attempts to contact, and result
- If you elected not to interview the witness, note why

Report Section: Additional Information Gathered

- If you gathered information not included above, this should be included here
- This might include information about police reports, security footage, etc.
- This section can be removed if you don't gather anything else

Report Section: Summary of Relevant Information

- Provide a summary of information gathered that is relevant to the allegations
- You may want to reference if multiple parties corroborate any of the information
- May be beneficial to highlight what is in dispute vs those that are not in dispute
- How this is organized may differ depending on the case and the information gathered

Report Section: Summary of Relevant Information (Continued)

- The structure might look like this:
- Factual Issue:
 - Person 1 says this
 - Person 2 says this
 - Person 3 says this
 - Text messages received from Person 1 seem to align with what Person 1 says (reference place in appendix)

Report Section: Summary of Non-Relevant Information

- Provide a summary of information gathered that is determined not to be relevant to the allegations
- You should include what was submitted/gathered and why it was considered not relevant
- Parties must have the opportunity to disagree with relevancy in their review of the draft report
- Examples might include:

Complainant provided screenshots of social media posts alleged to be made by the Respondent representing various political viewpoints. These have no connection to the alleged behavior at question in this investigation.

Witness B Text messages from Complainant- these messages were provided to illustrate Complainant's sexual history, but do not go to prove either: someone other than the respondent committed the behavior in question, or that the Complainant & Respondent had a previously existing sexual history. For this reason, these are considered not relevant.

Report Section: Appendixes

- Parties must have access to all information gathered during the investigation.
- Much of this information is compiled in appendixes
- We share a copy of these with the parties through Box

Report Writing Tips

- Remember the purpose of the report- to show your work and compile information gathered
- Start the report as soon as you begin the investigation
- Complete each section as you go
- As soon as you receive a piece of information, assign it a place in the appendix and update the appendix list
- Write in a neutral, straightforward tone
- Don't make people search for information- if there is a key piece of evidence, put it in the report
- Try to write what happened chronologically, even if the parties did not share information in that way

Report Writing Tips #1

- Structure your report to remove the investigator from the story. For example- how would you restructure this to include in the report:

I asked her to provide me that text and she said she would do so that day. I have never received the text, although I sent a follow-up request several days later.

- Avoid writing in passive voice

Clothing got torn.

Examples from Academic Impressions

Report Writing Tips #2

- Define unclear words or words that are slang
- Avoid inferences

Inference: The witnesses said no one had more than two beers at the party, but they must have all been lying because the keg was empty by the end of the night.

Versus: Although no witness admitted to drinking more than 2 beers, the keg was full at the beginning of the party and by the end of the evening it was empty. The average keg of beer contains approximately 15.5 gallons or 165 12-ounce servings of beer. Thus, a keg would empty with 82 to 83 persons present, each having 2 beers. There were 40 present, of whom approximately 10 were not drinking. That averages 5 and $\frac{1}{2}$ 12 ounce servings of beer per drinker to empty the keg by the end.

Example from Academic Impressions

Report Writing Tips #3

- Avoid words or statements that might convey value
- If a witness or party uses a value statement or colloquial term that you feel is relevant or necessary to convey what they shared, quote them



Questions or Feedback?



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