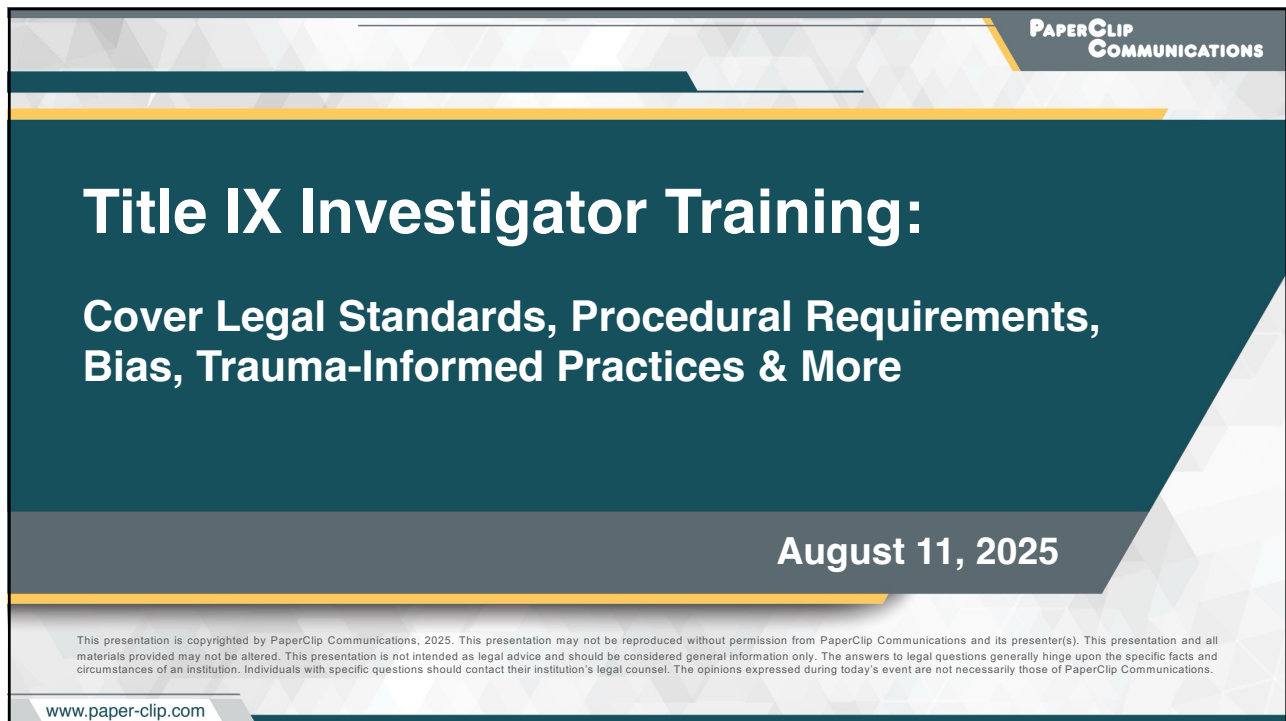




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Friendly Reminder

- As a reminder, nothing in this presentation should be taken as legal advice. Please consult your institution's general counsel to review your policies and procedures.

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THE LEGAL LANDSCAPE AND A BRIEF REVIEW OF TITLE IX

The Legal Landscape

- Title IX
- Violence Against Women Act (VAWA)
 - Campus SaVE Act
- Clery Act
- FERPA
- State Laws or Statutes
- Campus Codes and Policies

Introduction to the Topic

Title IX of the Education Amendments of 1972

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.”

20 U.S.C. § 1681; 34 C.F.R. part 106

Introduction to the Topic

2020 Regulations: § 106.45(b)(1)(iii) Investigators must be trained on:

- Definition of sexual harassment in § 106.30
- The scope of the institution’s education program or activity
- How to conduct an investigation and grievance process including:
 - Hearings
 - Appeals
 - Informal resolution processes
- How to serve impartially, including by avoiding prejudgment for the facts at issue, conflicts of interest and bias
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

Introduction to the Topic

- Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.
- All training materials must be maintained by the institution for seven years.
- Training materials must be publicly available on institution's website.

Understanding Title IX

- Define Title IX and how it applies to educational institutions
- Explain the scope of prohibited conduct
 - Sexual harassment
 - Quid pro quo
 - 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 institution's education program or activity; or
 - Sexual assault - 20 U.S.C. 1092 (f)(6)(A)(v)
 - Dating violence – 34 U.S.C. 12291(a)(10)
 - Domestic violence – 34 U.S.C. 12291(a)(8)
 - Stalking – 34 U.S.C. 12291(a)(30)

Equitable Processes

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- How to avoid pre-judgement
- Explain components of the right to an equitable grievance process
 - Simultaneous notice of an investigation
 - Opportunity to be heard (which includes the opportunity to submit evidence)
 - Right to review and respond to evidence (min. 10 days)
 - Right to review and respond to written report (min. 10 days before a hearing)
 - Presentation of evidence
 - Cross-Examination
 - Written Outcome
 - Right to at least one level of appeal

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Institutional Policies and Procedures

- Review the institution's policies and procedures
- Review the grievance process including:
 - Receipt of a signed complaint
 - Investigation process
 - Hearing process
 - Timelines
 - Evidence submission
 - Questioning
 - Communication to parties including investigation updates
 - Evidence review and report review
- Review the role of advisors and support individuals
- Standard of evidence

Defining Prohibited Conduct

- Provide detailed definitions
 - Sexual harassment - § 106.30(a)
 - Quid-pro quo
 - Sexual assault - 20 U.S.C. 1092(f)(6)(A)(v)
 - Dating violence - 34 U.S.C. 12291(a)(10)
 - Domestic violence - 34 U.S.C. 12291(a)(8)
 - Stalking - 34 U.S.C. 12291(a)(30)
 - Retaliation
 - Consent
 - Incapacitation
 - Power dynamics
- Use case studies and examples to highlight the definitions

Language in the Process

- Complainant
- Respondent
- Witness
- Advisor
- Supportive measures
- Program or activity
- Complaint
- Report
- Amnesty

INVESTIGATIONS

Bias and Conflict of Interest

- Discuss implicit bias and how it can impact an investigation.
- Review how to identify and address potential conflicts of interest.
 - Do you know either party or their family members?
 - Have you any type of relationship with either party or family members (working, instruction, familial relationship, etc.)
 - Have you been contacted by third-party about the allegations?
 - Do you have any pre-conceived ideas about who is credible or who is responsible?
 - Do you have any implicit bias against complainants or respondents?

Interviewing Skills

- Review effective questioning techniques
- Discuss the importance of asking neutral and unbiased questions
- Practice the fine art of interviewing
 - Practice creating non-leading questions
 - Practice “non-complex” questioning
- Review when questions are not relevant
 - Questions about complainant’s sexual predisposition*
 - Questions about complainant's prior sexual behaviors*

Don't Forget

- The institution bears the burden of gathering evidence sufficient to reach a determination of responsibility, *not the parties*.
- Institutions cannot restrict the ability of parties to discuss the allegations or to gather and present evidence.
- The institution cannot require, allow or rely upon that seeks disclosure of privileged evidence unless the person holding the privilege has waived their right to that privilege.
 - Train investigators on how to manage questioning and evidence related to privileged information

Now it's time for
a short break.

THE HEARING PROCESS

The Hearing Process

- Review the flow of a hearing
- Review the role of the hearing chair or hearing officer
- Practice answering the questions of a hearing officer or party advisor
- Conduct a mock hearing if you can (practice for investigators and decision-makers!)

The Hearing Process

- Review the standard of proof
 - Use case-studies to practice decision-making using the applicable standard of proof
- Discuss findings of fact
- Avoiding pre-determination or “jumping to conclusions”

Credibility

- Review factors to consider in credibility assessment
 - Consistency over time
 - Demeanor
 - Corroboration
- Review factors NOT to consider in credibility assessment
 - Stereotypes
 - Vibes
- Review the sanctions and remedies available at your institution

Grounds for Appeal

- Procedural irregularity that effected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination was made that could affect the outcome.
- The Title IX Coordinator, investigator, or decision-makers had a conflict of interest or bias for or against the parties that affected the outcome.

INFORMAL RESOLUTIONS

Informal Resolution

- Process for your institution
- Can be offered at any point after a complaint is filed and before a finding of responsibility
- Cannot be used if an employee sexually harassed a student

LAST BUT NOT LEAST...

Supportive Measures

- No contact orders
- Class schedule changes
- Safety planning
- Housing relocation
- Academic adjustments
- Leave of absence
- Employment modifications
- Etc.

Trauma Informed Practices

- Review the impact of trauma on individuals impacted by sexual misconduct
- Review and practice trauma informed interviewing skills
- Review the importance of creating a safe and respectful environment for all participants in an investigation process including parties, witnesses and advisors
- Trauma informed practices should be used for all participants

Accessibility and Investigations

- Review ways to make investigations accessible for all
 - Refrain from asking complex questions
 - Provide opportunities for questions to be re-worded
 - Use clear and concise language
 - Provide time to think about response
 - Provide an opportunity to provide written statements that can be read into the record
 - Provide translators for individuals for whom English is not their first language

Documentation

- Have a process by which investigators document their process for obtaining information.
 - How can this process be transparent for the parties and their advisors?
- Review records retention policy. How long are records maintained and where are the records stored? What do you constitute as records for an investigation?
- Maintain a record of any trainings (post to website or store in the event that documentation is requested).

Technology

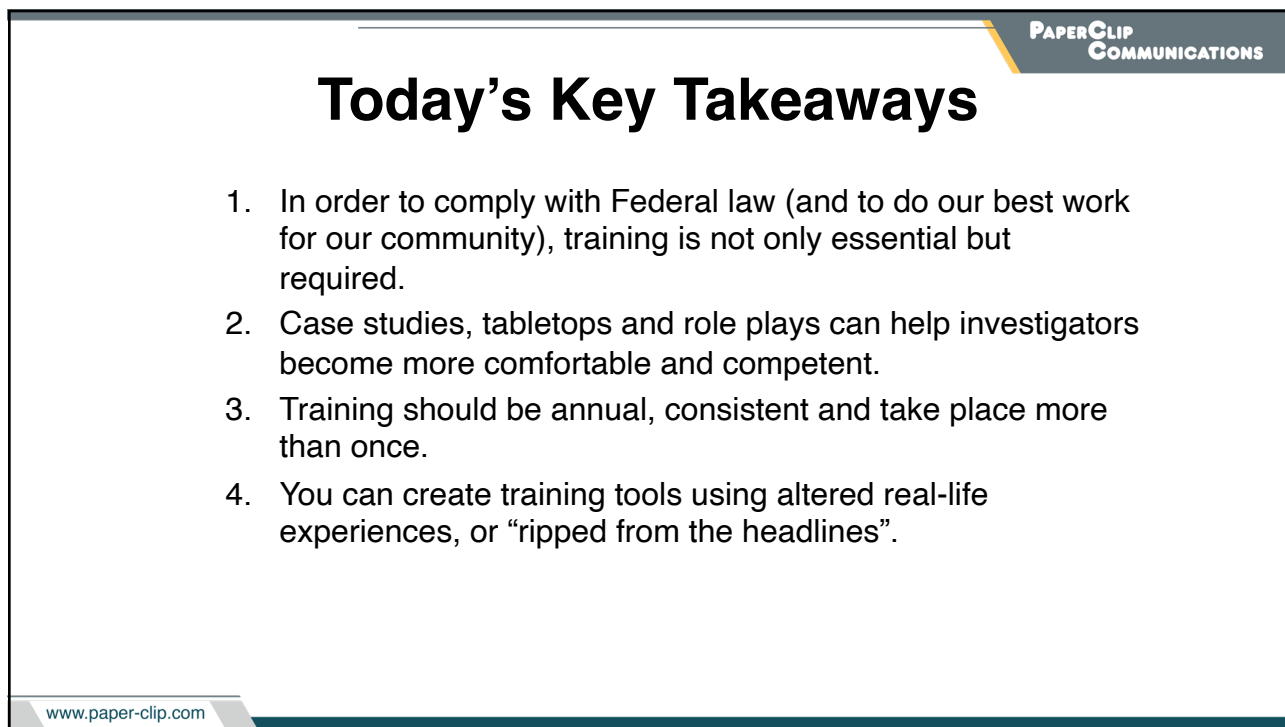
- Train investigators on how to use any technology prior to an investigation or an evidence review
 - File share technology
 - Zoom
 - Electronic forms
 - Audio/video equipment
 - Transcription services

Practice, Practice, Practice

- Create opportunities for investigators to practice their knowledge and skills:
 - Conduct mock interviews
 - Role play challenging situations with interviewees and advisors
 - Create fake case files and have investigators review for practice on how they would obtain information, who they would want to interview, what questions they would ask
- Training should occur regularly, not just once a year
- Provide opportunities for feedback and to “unpack” cases
- Provide updates on any legal changes



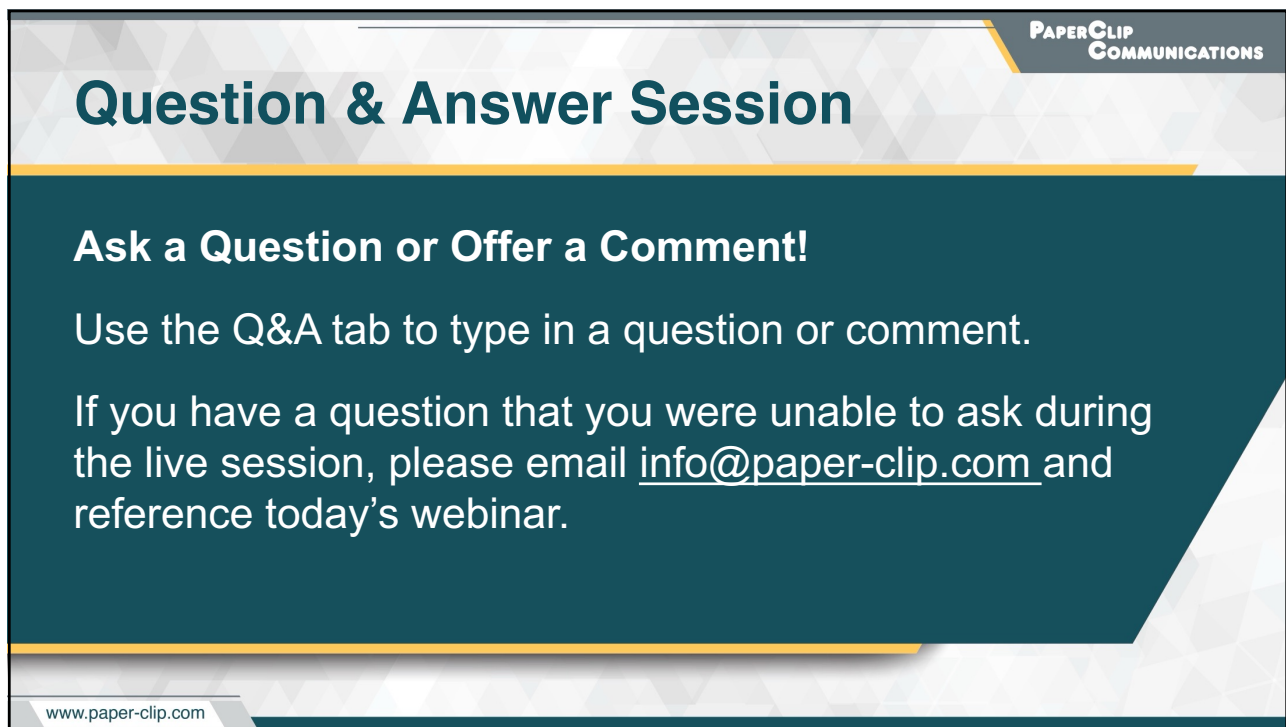
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Questions and Feedback

Please email us at info@paper-clip.com with any questions or feedback you may have and reference today's webinar.

Thank you for your participation,

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