

Trauma-Informed Practices

PRESENTERS:

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- This training does not constitute legal or mental health advice.
- Trainers are not medical or mental health experts.
- While we are happy to answer questions seeking clarity or addressing hypotheticals, we cannot give legal advice in this context.
- Please consult with your excellent legal counsel for advice on any particular situation.

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Training Topics

- 2020 Regulations
- What is Trauma?
- Principal Implications of Trauma
- Roles in the Title IX Process
- Best Practices for All Interactions
- Effective Intake Meetings
- Investigation
- Hearing Officer Considerations
- Key Takeaways



2020 Regulations

2020 Regulations (Preamble)(1 of 2)

- “Recipients have discretion to train Title IX personnel in **trauma-informed approaches** or practices, so long as all requirements of these final regulations are met... which requires recipients to train Title IX personnel... to:
 - **serve impartially**, without prejudging the facts at issue
 - using materials **free from reliance on sex stereotypes**, and
 - requires Title IX personnel to **avoid conflicts of interest** and bias for or against complainants or respondents generally or an individual complainant or respondent.” 85 FR 30026, 30537 (May 19, 2020).

2020 Regulations (Preamble)(2 of 2)

2020 Regulations Preamble: “Because decision-makers must be trained to serve impartially without prejudging the facts at issue, the final regulations protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.” 85 FR 30026, 30323 (May 19, 2020).

What is Trauma?

What is Trauma? (cont.)

- The Substance Abuse and Mental Health Services Administration (SAMHSA) defines trauma as “a result from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life-threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”
- The CDC defines trauma as "a physical, cognitive, and emotional response caused by a traumatic event, series of events, or set of circumstances that is experienced as harmful or life-threatening."

Trauma and the Brain: During the Incident

- Trauma affects the ways in which the brain responds to incidents **in the moment.**
 - Fight
 - Flight
 - Freeze
 - Fawn



Trauma and the Brain: After the Incident

- Trauma affects the way the brain **encodes and decodes memories** of what occurred, impacting **recall after the fact**.
 - Chronology
 - Names
 - Dates
 - Words
 - Details
 - Emotions



Trauma and the Brain: Scope and Purpose

- Be cautious about incorporating information that might require medical or psychological expertise.
- Trauma-informed practices are about finding effective ways to gather necessary information, not about diagnosing or treating trauma.



Practical Implications of Trauma

Parties Impacted by Trauma

Complainant

Respondent

Witnesses

Advisors

Support
Persons

Others?

Considerations: Potential Responses to Trauma

- Delayed reporting
- Difficulty remembering specifics (could also be due to drugs/alcohol)
- Reluctant reporting
- Remaining in a relationship or living arrangement with the respondent
- Being calm and composed after an assault
- Failing to identify the accused

Trauma-Informed Processes

- This information provides **context for what may or may not be someone's internal dialogue**, to help you ask sensitive and effective questions.
- Both parties may be traumatized – and the trauma may be **completely unrelated** to the incident you're investigating.
- Do **not** assume that because there are signs of trauma, the trauma was caused by the respondent and therefore the respondent violated the policy.
- Do **not** assume that because there are no signs of trauma, nothing happened.

Takeaway on Trauma Behavior

- A wide variety of responses are normal for those who experience trauma (e.g., calm, hysterical, angry, in denial, detached, withdrawn, or in shock).
- Trauma causes unexpected behavior; do not make assumptions about how they “should act.”

Roles in the Title IX Process

Roles in the Title IX Process (cont.)

- Each role interacts with parties and witnesses in different ways.
- Interaction with trauma may be direct or indirect.
- All interactions may influence participants' experiences, which may impact willingness to participate, volume and quality of evidence available, and credibility of the process.

Title IX Coordinator

- Oversees process.
- Responsible for policy.
- May conduct intake.
- May investigate.
- Ensures personnel receive appropriate training.

Investigator(s)

- Gathering facts.
- Interviewing parties.
- Summarizing information.
- Determining which information to pursue.

Hearing Officer or Decision Maker

- Synthesizing information.
- Posing questions.
- Determining relevance.
- Controlling hearing decorum.
- Assessing evidence.
- Final determination.

Also consider: Support Staff; Advisors; Appellate Officers

Best Practices for All Interactions

Trauma-Informed Basics for Interactions

- Assume all parties and witnesses may be dealing with trauma.
 - May be from this incident, or others.
 - Process itself may also be distressing.
- Meet them where they are.
- Help them tell their story as part of the process.
- Signs of trauma ≠ policy violation.
- No signs of trauma ≠ no policy violation.
- If they didn't act the way you might have, that doesn't mean it isn't true.

Big Picture Concepts

- Give autonomy whenever possible
- Remember the context
 - Intake?
 - Interview/Investigation?
 - Hearing?
- Remember what you know about trauma
 - Memories might be encoded in non-linear ways
 - There may be gaps
 - Self-blame

Empowerment and Autonomy (1 of 7)

- How can you empower the participants to engage on the terms that are most conducive to them?
 - Meeting place
 - Room setup
 - Individuals present
 - Beginning the conversation
 - Discussing the experience
 - Follow-up questions

Empowerment and Autonomy (2 of 7)

- Considerations for the meeting place
 - Communicate details in advance
 - In-person or virtual?
 - Personal office, or neutral space?
 - Visible location on campus?
 - Seating arrangements?
 - Selecting a seat?
 - Positions of authority?
 - Distance?
 - Space?
 - Decorations and representations in the room?
 - Artwork, books, posters, memorabilia, photos?

Empowerment and Autonomy (3 of 7)

- Individuals present
 - Facilitator
 - Participant
 - Advisor?
 - Support person?
 - Others present or in earshot?

Empowerment and Autonomy (4 of 7)

Beginning the conversation:

- Explain the purpose.
- Offer a roadmap for the conversation.
- Explain what, if anything, is not going to be discussed.
- Explain how any information shared during the conversation will be maintained, used.

Practice Tip: Use a script or checklist!

Empowerment and Autonomy (5 of 7)

Describing the experience.

Which of these do we think is most effective?

- “What happened first?”
- “How would you like to begin?”
- “Where would you like to start?”
- “What are you able to share with me about your experience?”

Empowerment and Autonomy (6 of 7)

Asking follow-up questions.

Which of these do we think is most effective?

- “Why did you do that?”
- “You shared that you did _____. Can you tell me more about that?”

Empowerment and Autonomy (7 of 7)

Asking follow-up questions.

Which of these do we think is most effective?

- “What were you thinking?”
- “You shared that you did _____. Can you share more about your thought process when that was happening?”

Note-Taking and Documentation

- How are you documenting the interaction?
 - Audio or Video Recording?
 - Writing Notes?
 - Is the participant aware?
 - Does the participant know how the record(s) will be used?
 - Does the method of documentation detract from your attention? Or does it detract from the participant's attention?

Why is it important to NOT make assumptions?

- Reporting delays
 - Shame
 - Fear of retaliation
 - Fear of not being believed (Preamble p. 30081)
- Memory lapses
 - A party should not be “unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory” (Preamble, p. 30323)

Things that *Aren't* Trauma-Informed

- Multiple meetings to gain additional information
 - It is sometimes necessary – particularly if you are meeting the person where they are.
 - But... getting everything you need in one meeting is best.
- Shock
- Judgment
- Skepticism
 - "Why are you just now reporting this?"
- Old Gumshoe Tells

Conducting Effective Intake Meetings

Initial Interactions

- How you handle a person in your first meeting can make the difference between:
 - Cooperation in the investigation **vs.** refusal to cooperate
 - Re-traumatization **vs.** supportive environment
 - Putting off other potential complainants or witnesses from coming forward **vs.** encouraging future reports
 - Lawsuit or OCR complaint (or both) **vs.** supportive and cooperative relationship



Trauma-Informed Intake

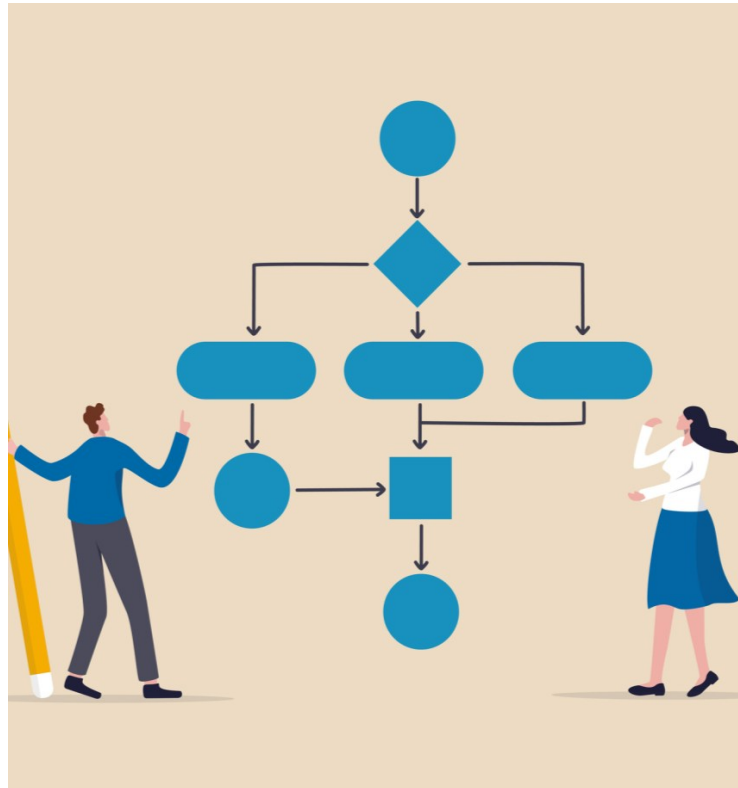
- Invite the participant to bring an advisor.
- Limit the number of times a person is required to tell their story. Initial assessment doesn't require all the details.
- Offer autonomy whenever possible.
- Take breaks when needed.
- If the meeting is in person, have water, snacks, and tissues available.
- Take excellent notes and give the person the opportunity to review and suggest revisions after the meeting.
- Document what is discussed and send it in a follow-up email to the person.

Intake for Respondents?

- Yes – this typically occurs once Respondents are aware of the situation. (They are not usually notified until a no-contact order or notice of allegations is issued.)
- What is the difference between intake for complainants and respondents? From a trauma-informed perspective, there isn't any difference!
 - Respondents may have experienced trauma as a result of the same incident.
 - Respondents may have prior trauma that affects the way they respond to this incident.
 - Respondents may have claims against the Complainant for sexual harassment.
 - Respondents may have claims that can be reported to law enforcement.
 - Etc.

Three Components of Intake

- Supportive Measures, Process, Gathering Necessary Information



Title IX Intake Framework

- Institutional response to a report:
 - from this or other incidents
 - Actual knowledge (defined 34 CFR 106.30)
 - "Must respond promptly in a manner that is not deliberately indifferent."
 - Response to actual knowledge must be equitable
 - 34 CFR 106.44(a):
 - The Title IX Coordinator must promptly contact the complainant to discuss:
 - the availability of supportive measures...,
 - consider the complainant's wishes with respect to supportive measures,
 - inform the complainant of the availability of supportive measures with or without the filing of a formal complaint,
 - And explain to the complainant the process for filing a formal complaint.
- Takeaways from the 2020 regulations: **Supportive Measures and Process for Filing a Formal Complaint**

Practical Extensions of this Framework

- Information about the resolution process
 - Necessary for informed decision-making
- Discussion of Title IX Jurisdiction
 - Necessary to discuss the applicable process and potential for Exit Ramps
- Potential discussion of definitions
 - Necessary to discuss the applicable process and potential for Exit Ramps
- Information about the interactions between the parties
 - May be necessary to consider supportive measures

Give and Take

- "I need to provide you with information, and I need you to provide me with information."
- Autonomy whenever possible
 - "Would you like me to talk about the process first? Or would you like to share your concerns with me first? Either is fine, and if you can't decide, I'm happy to help."

Structuring Your Intake Meetings

- Use a list of talking points or a checklist, but...
- Be mindful of the human in front of you
- Be flexible and willing to change direction
- Have your policy close by
- Talk about your process
- Talk about **your** definitions (if necessary)

Supportive Measures

- What does your policy say?
- Create a list and use it during every intake
 - Both Complainants and Respondents
 - Put it out there – the person may not realize what they need or what's available to them
- Don't overpromise (ex: housing)
- Must not unreasonably burden the other party
- Confirm the discussion and next steps in a follow-up email after each intake meeting
- If a requested supportive measure is not available, explain the rationale and document the decision



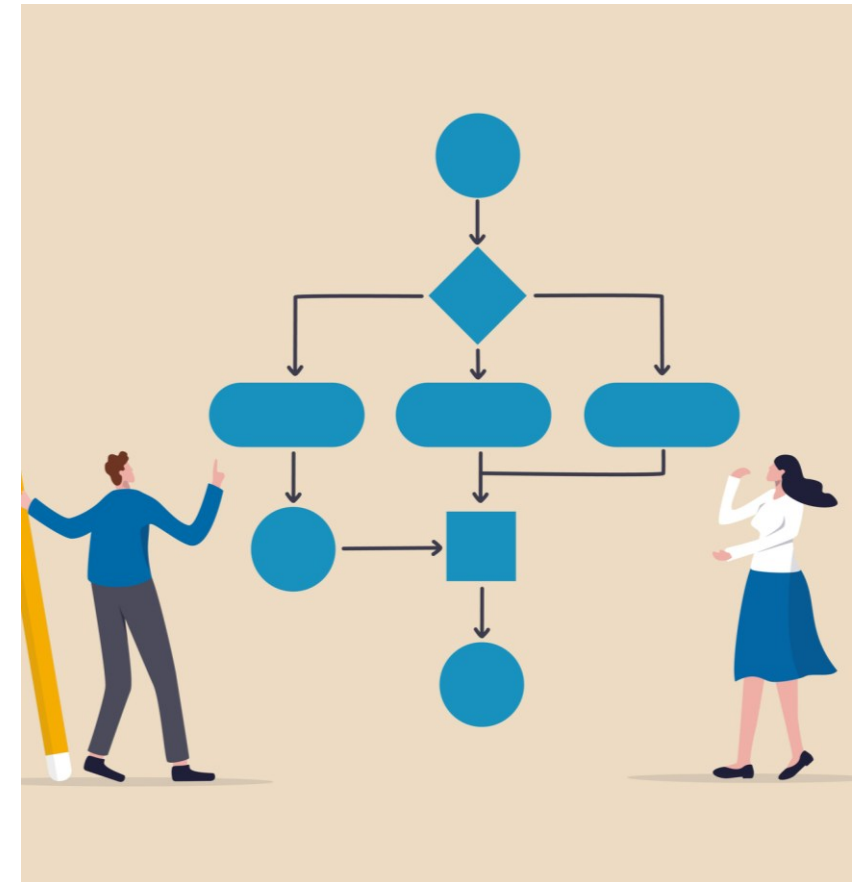
Supportive Measures (2020 Title IX Regs)

34 CFR 106.30(a)

- Non-disciplinary, non-punitive
- Individualized services
- Offered as appropriate, as reasonably available, without fee or charge
- Available before or after the filing of a Formal Complaint
- Available if no Formal Complaint is filed
- "Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party"
 - May include measures designed to protect safety of the parties and the educational environment, or deter sexual harassment

Process Discussion

- What does this look like for you?
 - Review of Policy language
 - Step 1, Step 2, Step 3...
 - Flowchart
- How do you describe the investigation?
- How do you describe the hearing process?
 - Cross-examination
- How do you describe informal resolution?
 - Mutual, informed, written consent
 - Respondent-employees



Process Discussion About Jurisdiction

- What does your Policy say about jurisdiction for Title IX matters?
- Discussion regarding referral/"dismissal"
 - If you know this belongs elsewhere, be transparent
 - If you don't know – you can follow-up later
 - Remember: If a Formal Complaint has been filed, the case must be "dismissed"
 - Notice of Dismissal required for both parties
 - Show your work!
 - Make sure the Notice of Dismissal is NOT the first time the person learns of the dismissal

Gathering Necessary Information (1 of 2)

- Remember the goal – to determine where this report fits and what might be done about it
- Think of the basic "W" questions – who, what, where, when, why
- Same level of detail needed for an investigative interview?
 - What if you are the TIXC and the investigator?
 - If not, is it better to get fewer details?
 - Remember – meet the person where they are



Gathering Necessary Information (2 of 2)

- In most cases, you will need to ask for information
 - "And then he did it."
 - "They were toxic."
- What are the required elements in your policy?
 - Understand the definition
 - Break it down



Breaking the Conduct into Elements

1. Review the definition.
2. Break down the definition into elements by making a checklist.
 - Make sure that each element is independent of the others. Don't put multiple elements into one, as it makes the analysis more difficult.
 - Make it clear when there are multiple options for an element. For example, "Must have one of the following..."
3. Re-read the definition. Have you accounted for all of the language in the definition?
4. Are there any **other definitions** that should be included in your element checklist? Examples: consent, incapacitation, etc.

Investigators

Investigators: Being Trauma Informed

- Remember your ABCs: Advisor, Breaks, Comfort.
- Be curious, not judgmental.
- If you sense a question may be misread, explain why you are interested before you pose the question.
 - What were you wearing?
 - Had you been drinking or doing drugs?
- Not asking the difficult questions now may make the process harder down the road.
- If information doesn't make sense, ask more questions.

Meeting Environment

- Same considerations described previously re:
 - Communication of meeting details in advance
 - Virtual or in-person meeting
 - Visibility of location
 - Personal or neutral meeting space
 - Seating arrangements
 - Participants
 - Space
 - Comfort
 - Representation and décor

Setting Expectations

- Clear communication in advance of the meeting re:
 - Day and time
 - Location/format
 - Purpose
 - Participants
- Duration?
- Cadence, breaks?
- How information will be documented and used? Who will see the information?
 - May be differences between the investigative process and the intake meeting that the participant experienced first.

Seeking Information

- Remember: autonomy and empowerment
 - Important for all participants
- After preliminary discussion, how do you start the substantive interview?
 - “I’d like to begin by starting wherever you would like to start.”
 - “What are you able to tell me about your experience?”
- Using prior statements as a prompt.
 - “You shared earlier that _____ happened. What else are you able to share with me about that?”

Curious, Not Judgmental

- Investigation requires asking questions about difficult topics.
- Ask questions that invite explanation rather than judgment.
 - “Help me understand...” rather than “why”
 - Describing actions rather than using labels
- Explaining the purpose for a question.
 - “The reason it’s important for me to know more about this is ____.”

The Power of “I don’t know.”

- Empower the participant to respond with “I don’t know” or “I don’t remember” if that is the truthful response to any question.
- Invite participants to return to questions when information comes to them after the fact.
- Allows for processing time, and an accurate record.
- No pressure to provide information, preserving the integrity of the process.

Consider Sensory Inputs

- Sensory inputs can interact with memory and trauma in unusual ways.
- The details that participants remember best might be unexpected or counterintuitive.
- Consider asking about sensory inputs that they failed to describe in their initial recount of the interaction.
 - Sight, smell, sound, feel, taste.
- No single sensory detail is dispositive, not indicative of trauma; merely offers additional information to corroborate or dispute the claim.

Advisors and Support Persons

- Generally permitted by policy.
 - Parity for parties.
- Can increase comfort for participants.
- Make expectations clear for all involved.
- Addressing disruptions to the process.

Hearing Officer

Facilitating the Hearing

- Same considerations as above regarding clearly communicating date, time, forum.
- Pre-hearing conference?
- Setting expectations at beginning of hearing.
- Bear in mind the scope.
 - Typically not conducting the investigation all over again.
 - Seeking confirmation, clarity.

Considerations for Hearing

- Hearing Officer may ask questions.
 - Same considerations as above regarding trauma-informed questioning.
 - Questions may be different in scope and purpose.
 - Using elements of policy definitions as a guide can help structure the questions, and help participant understand purpose.
- Advisors may also ask questions.
 - Little control, other relevance and decorum.
 - Setting expectations for advisors.

Accounting for Trauma in Decisions (1 of 3)

- **Plausibility** – Is the story possible, accounting for potential effects of trauma?
- **Consistency** – Is the story consistent over multiple retellings?
- **Corroboration** – Can the story be corroborated by other evidence?
- **Reliability** – Was the person in a good position to witness what they are sharing, and to remember it accurately?

Credibility is a determination that can be made statement by statement.
It is not necessary to call someone a liar to make a credibility determination.

Accounting for Trauma in Decisions (2 of 3)

- Credibility is a determination that can be made statement by statement.
It is not necessary to call someone a liar to make a credibility determination.
- Misremembering information is not indicative of honesty; but it does impact whether the information should be relied upon.
 - Reliability of information in assessing the preponderance of the evidence.

Accounting for Trauma in Decisions (3 of 3)

Trauma-informed practices guide the inquiry, and aid information-gathering process.

- Trauma does not necessarily explain away gaps in evidence.
- Considering trauma as one piece in a preponderance of the evidence analysis.
- Be cautious about explanations of trauma that would require medical or psychological expertise.

Key Takeaways

Key Takeaways for Trauma-Informed Practice

- Trauma may impact all individuals involved in all interactions throughout the process.
- Trauma response may cause individuals to behave in unexpected ways, both during the incident and during the Title IX process.
- Strive to provide autonomy and empowerment for participants.
- Avoid re-traumatization.
- Tailor the practices to the role of the facilitator and stage of the process.

Thank You

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