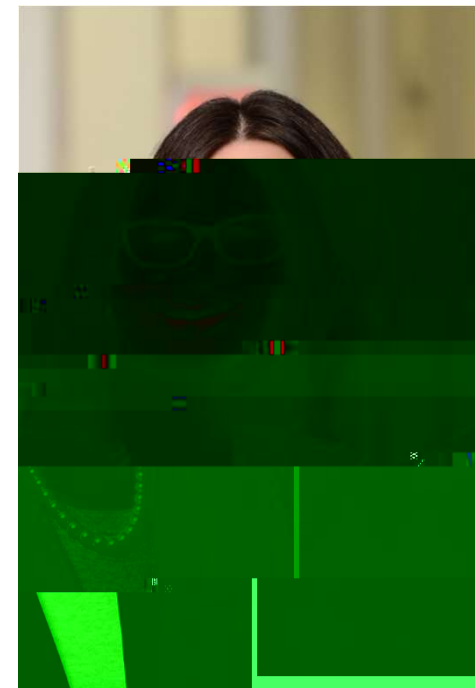


## Jessica L. Galanos

- **Bricker & Eckler, Attorneys at Law Columbus, Ohio**
- **Former Deputy Title IX Coordinator; Interim Title IX Coordinator; and Litigator**

- **Contact:**

**Bricker & Eckler**  
**100 South Third Street**  
**Columbus, OH 43215-4291**  
**614.227.2341**  
[\*\*jgalanos@bricker.com\*\*](mailto:jgalanos@bricker.com)

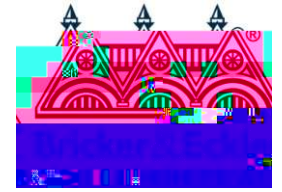




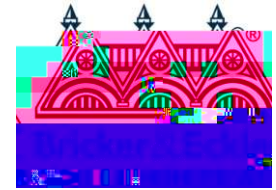
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**We can't help ourselves. We're lawyers.**

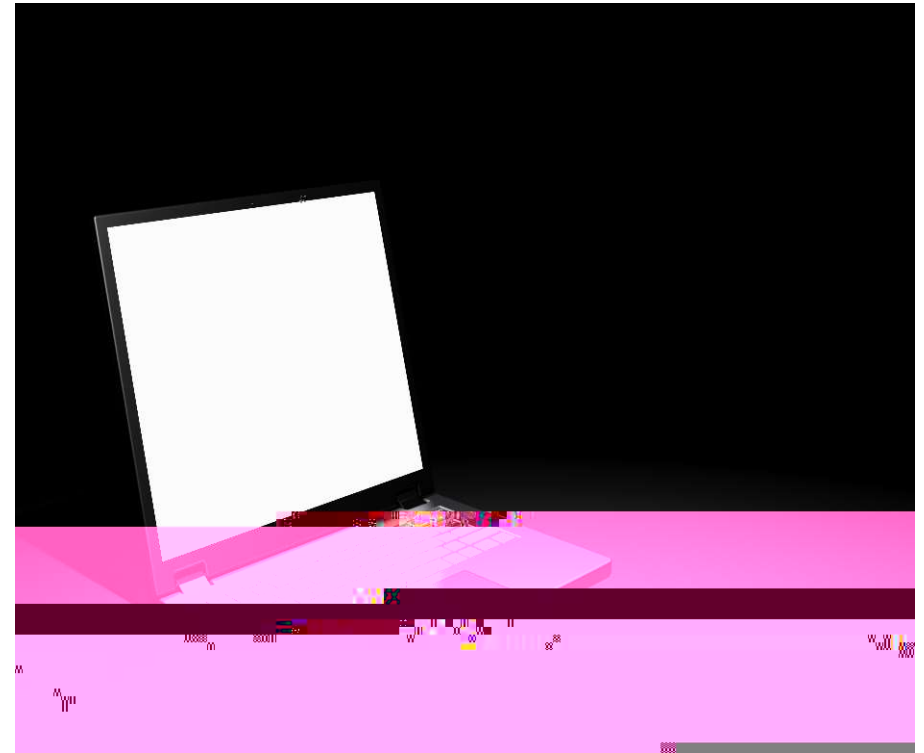
- **We are not giving you legal advice. Consult with your legal counsel**



- 
- **Questions are encouraged!**
  - **‘For the sake of argument..’**
  - **Be aware of your own responses and experiences**
  - **Follow up with someone if you have questions and concerns**
  - **Take breaks as needed**



- **The “recipient” is required by 10645(b)(10)(i)(D) to post materials used to train Title IX personnel on its website**
- **We know this and will make this packet available to you electronically to post**
- **Watch for the “Thank you for attending” email and look for a link to download the slides**



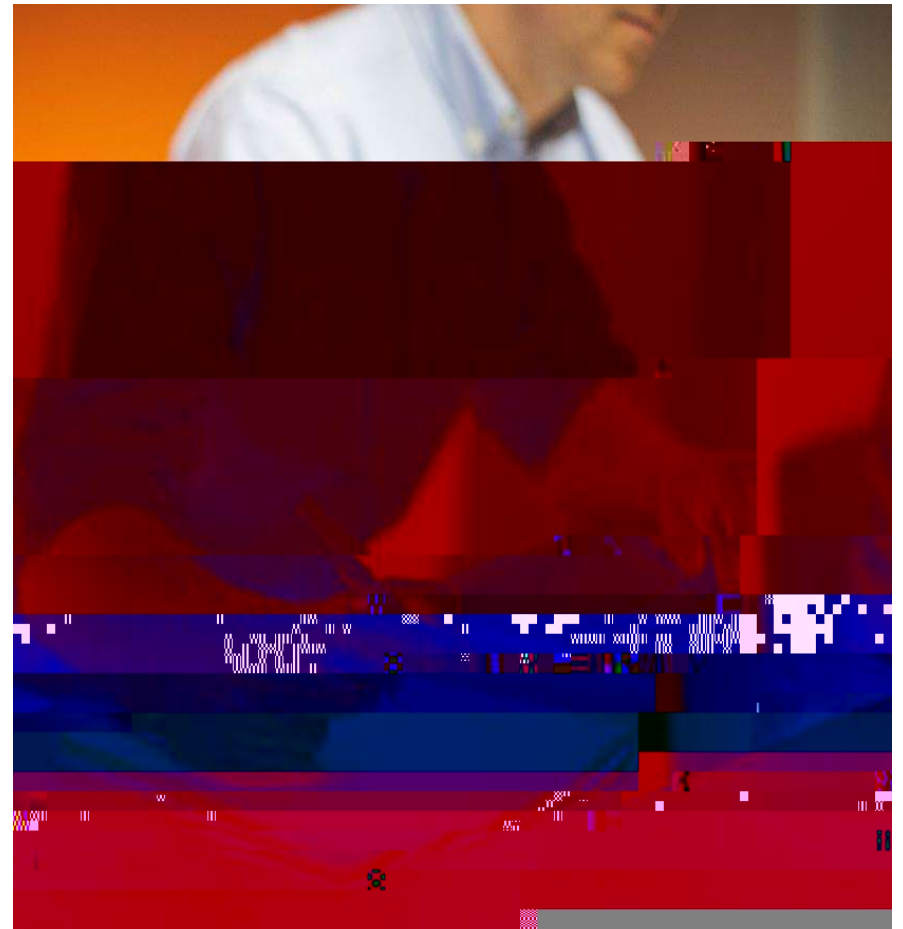




- **Technology to be used at a live hearing**
- **Issues of relevance of questions and evidence**
  - **Including rape shield provisions in 10645(b)(6)**



- **Issues of relevance to create an investigative report that fairly summarizes relevant evidence**

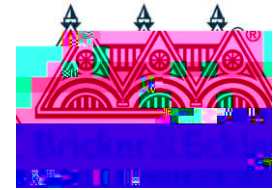






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<b>1:00 1:45</b>	<b>Top Ten Issues for TXCs that <u>aren't</u> the 'new' regs</b>
<b>1:45 2:45</b>	<b>Title IX updates and process potpourri</b>
<b>2:45 3:15</b>	<b>Preparation for Practice Session</b>
<b>3:15 3:30</b>	<b>Break</b>
<b>3:30 4:15</b>	<b>Practice session</b>
<b>4:15 5:00</b>	<b>Debrief and Q&amp;A</b>



---

## **Primary responsibility:**

- **Coordinate the recipient's efforts to comply with Title IX responsibilities**

## **Specific expectations**





# AREN'T

- **Prevention Programming**
- **Cery/VAWA**
- **Staffing**
- **Office Structure**
- **Mandatory report v  
mandatory support**
- **Working to correct known  
misperceptions about Title IX**
- **Policy review and updates**
- **Anticipating and addressing  
secondary effects on your  
campus**
- **Crisis management practices**
- **Working with stakeholders on  
your campus**



---

## **Prevention Education**

- **Electronic versus in person**

### **Electronic**

**SUNY Spark, <https://systemsunyed.edu/sparc/>**

**ODHE resources,**

**<https://www.chidighered.org/ccc>**

**In Person- Staffing model, connection points**

**Education as outcome of informal resolution**

**Use Clery/VAWA education language as a core, but consider expanding**





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## **Do you have the people you need?**

- **Volunteers and volunteers**
- **Consider grant opportunities for special projects**  
(<https://www.justice.gov/oww/grant-programs>)
- **Internal versus external**
- **Qualifications**

## **Are you taking care of your people?**



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## **Reporting and organization structure**

- **Who should the TIXC report to? (authority, knowledge)**
- **Should prevention education be part of the TIX office?**

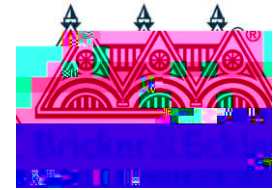




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## Mandatory Reporting versus Mandatory Supporting

- Mandatory reporting (NOTE: OH Felony reporting  
c2 c2 kd



- 
- **Perception that because students know what is going on, all administrators know what is going on**
  - **Perception that the administration is using the TIX process to target/protect faculty and staff**
  - **How do you dispel myths about TIX?**

**Not covering up complaints**

**If we don't have information, we can't use it**

**We listen, we care – Just because we don't talk about it, doesn't mean we are not doing anything**

**You don't have to participate in an investigation**



---

## **When and how do I update our policy?**

- **Wait for newiegs?**
- **Breaks/Summer**
- **Before our BOT meeting?**

## **What do I need to know in order to update?**

- **Surveys**
- **Stakeholder meetings**
- **Legal Advice**

**Update committee**



- 
- **Support for those who are supporting**
  - **Support for witnesses - not getting direct supportive measures that parties are entitled to receive**
  - **Support for reporters/employees**
  - **Supporting change:**  
**Ally with advocates**



---

## **Who will you go to first?**

- **Police, president, PR/spokesperson, counsel, clergy..?**

## **Next?**

- **Department, development..?**

## **Talk to the Media?**

- **Media training**
- **Protecting the institution/yourself**

## **Weathering the storm**

## **De-briefing and preparing for the next storm**



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# Identifying Stakeholders

- **Obvious**

**Police, public safety, etc.**

**Human resources**

**Mandatory reporters**

**Student affairs/conduct**

**Residence hall staff**



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# Identifying Stakeholders

- **Not so obvious**

**Student/faculty govt**

**Deans/chairs/directors**

**Advocacy/support services**

**Institution's health services**

**Greek councils**

**Local attorneys/Institution's counsel**

**Athletics**



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## **Police, public safety, etc.**

- **How and when will you share information?**
- **Mode of communication, notice**
- **Warrants/subpoenas**
- **Timely warnings**
- **How/when matters move to prosecutor**
- **Collaboration on interviews?**
- **Enforcement of no contact**

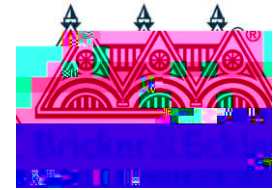




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# Human resources

- **How and when will you share information?**
- **Mode of communication, notice**
- **Administrative leave decisions**
- **Sanctioning decisions**
- **Non-TIX problem conduct**



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## **Mandatory reporters**

- **How and when will you share information?**
- **Mode of communication, notice**
- **Training**
- **Compliant humanity – report AND support**



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## **Student affairs/conduct**

- **How and when will you share information?**
- **Mode of communication, notice**
- **Hand-off procedure**
- **Clergy training**
- **No contact orders**



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## **Residence hall staff**

- **How and when will you share information?**
- **Mode of communication, notice**
- **Hand-off procedure**
- **Supportive measures implementation, including no contact and student moves**



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## **Student/faculty govt**

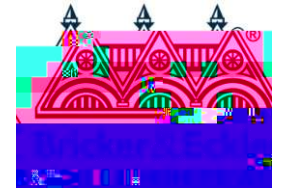
- **TIInitiatives**
- **Opportunities for partnership**
- **Familiarity and trust**
- **Transparency**



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## **Deans/chairs/directors**

- **How and when will you share information?**
- **Mode of communication, notice**
- **Hand-off procedure**
- **Defining retaliation/interference**
- **Assistance with supportive measures**



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## **Advocacy/support services**

- **Opportunities for collaboration during investigation**
- **Limits and boundaries**
- **Referral process**
- **Process feedback**



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## **Health services**

- **Coordination and consistency of messaging**
- **Coordination of campus/community services**
- **Process feedback**

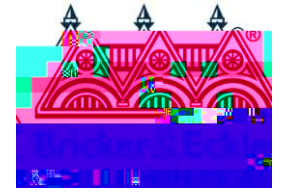




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# **Greek councils**

- **TX initiatives**
- **Opportunities for partnership**
- **Familiarity and trust**
- **Transparency**
- **Process feedback**



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## **Local attorneys**

- **Instruction on processes**
- **Process feedback**

## **Institution's Counsel**

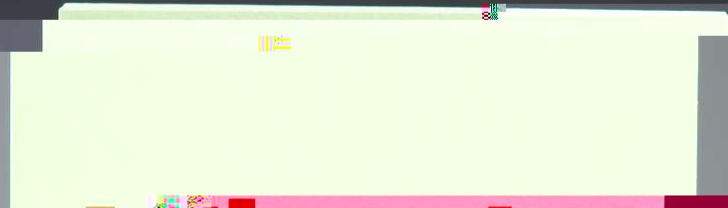
- **Instruction on processes**
- **Supportie "what ifs"**
- **Process feedback**



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# **Athletics**

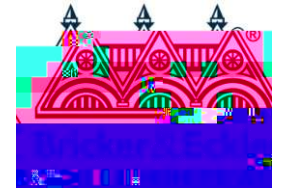
- **TIInitiatives**
- **Opportunities for partnership**
- **Familiarity and trust**
- **Transparency**
- **Process feedback**
- **Handling supportive/interim measures**



# What's new?







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## Question 13

**What is the appropriate standard for evaluating alleged sexual harassment that occurred before the 2020 amendments took effect?**



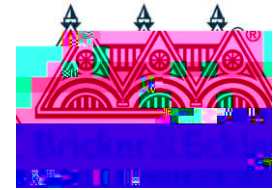
- 
- **August 5, 2020 Blog Post– “The Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred.”**







- 
- **‘[A] school must follow the requirements of the Title IX statute and the regulations that were in place at the time of the alleged incident.’**
  - **2020 amendments do not apply to SH occurring before August 14, 2020, even where the complaint is filed after that date**
  - **Our question is this meant to include procedures as well as substance?**



## **Question 24:**

**If a complainant has not filed a formal complaint and is not participating in or attempting to participate in the school's education program or activity, may the school's Title IX Coordinator file a formal complaint?**

- **YES – it may be a violation if the Title IX Coordinator does not do so**
- **Example in the Answer:**
  - **Actual knowledge of a pattern of alleged SH by a perpetrator in a position of authority**



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## **Per the most recent guidance:**

**‘Put simply, there are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant’s relationship with the school or interest in participating in the Title IX grievance process.’**



## **In previous trainings...**

- **Advised that support persons were not permitted in hearings based on Preamble**
- **“The sensitivity and high stakes of a Title IX sexual harassment grievance process weigh in favor of protecting the confidentiality of the identity and parties to the extent feasible (unless otherwise required by law), and the Department thus declines to authorize that parties may be accompanied to a live hearing by persons other than the parties’ advisors, or other persons for reasons ‘required by law’...” (Preamble, p 30339)**



## **Example Language in July 20, 2021 Q&A (p 46)**

- **Example Policy 2 The decision maker will discuss measures available to protect the well-being of parties and witnesses at the hearing. These may include, for example, use of lived names and pronouns during the hearing including names appearing on a screen,**

**and a hearing participant's ability to request a break during the hearing except when a question is pending (Emphasis added).**





## **Arbitrary & Capricious**

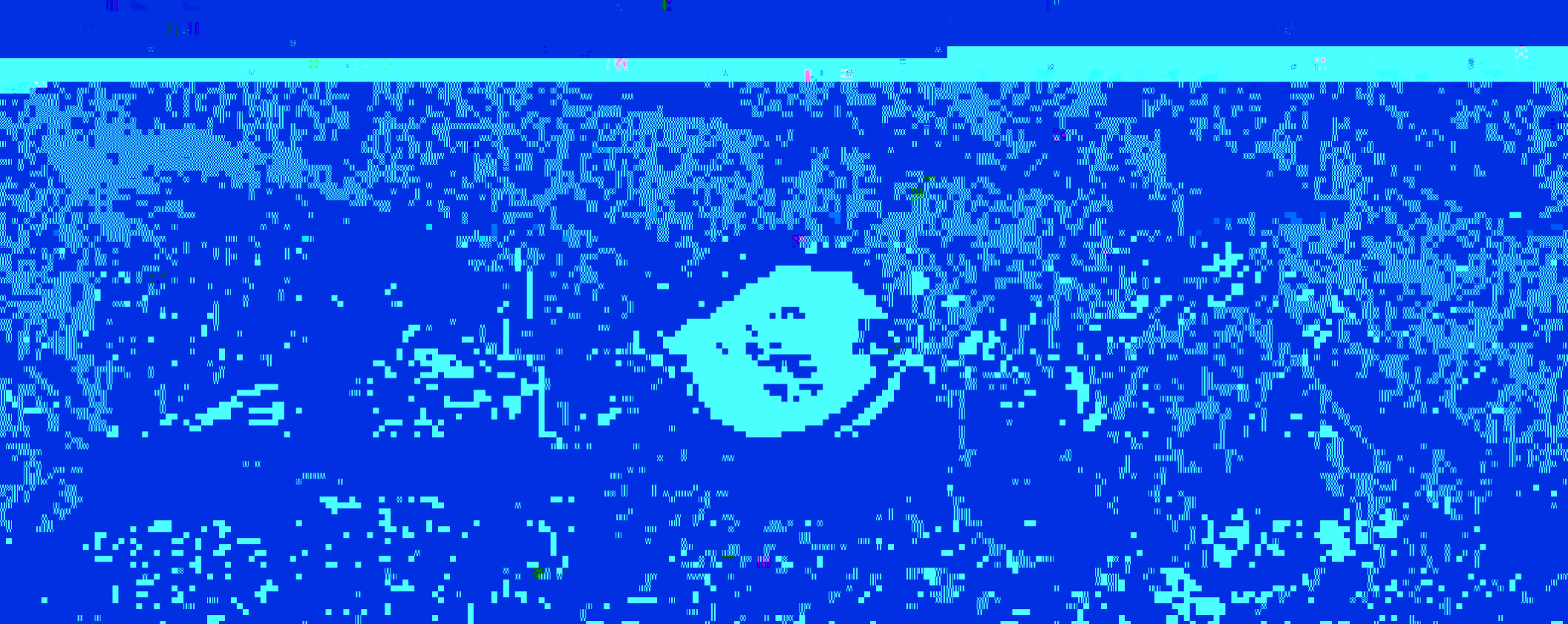
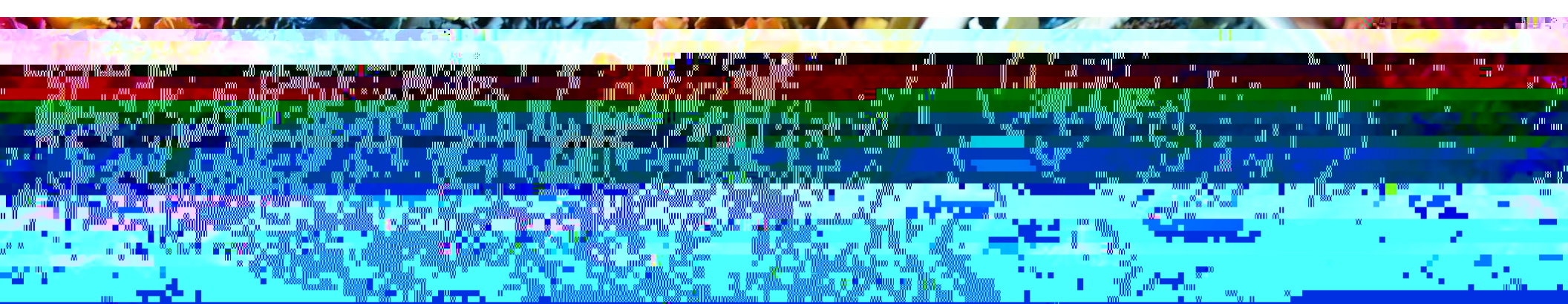
- **Mass. Federal decision vacated regulation requiring submission to cross-examination for consideration of statements (VRLC v Cardna, June 28, 2021)**
- **August 24, 2021 letter providing guidance that, pursuant to VRLC decision, OCR will ‘immediately cease enforcement’ of this specific provision in 34 CFR 106.45(b)(b)(i)**

**\*\*\*Work with legal counsel to assess risk\*\*\***

**Pending cases**

**Breach of contract concerns**

- **Texas has been permitted to appeal this decision, along with several individuals who have an interest in the outcome**









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**(Cont)... then the recipient \_\_\_\_\_ dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part;**

- **such a dismissal does not preclude action under another provision of the recipient's code of conduct' Mhe fduMss**



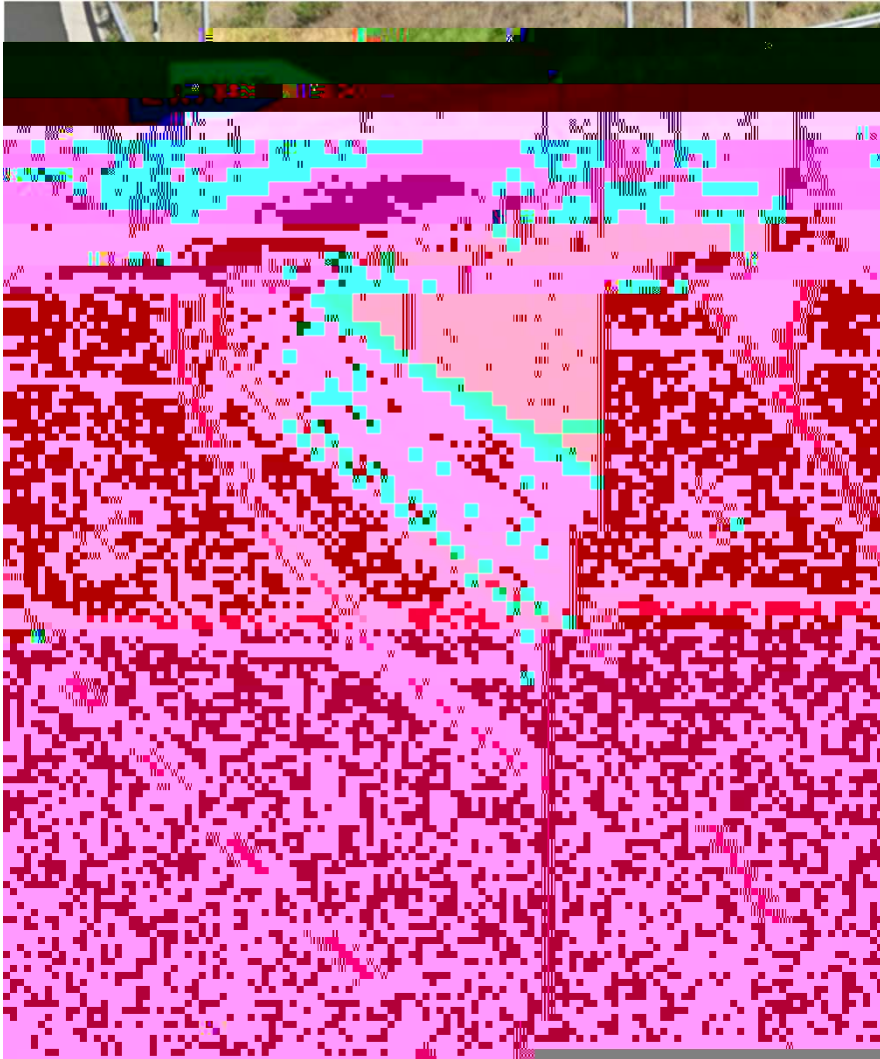
## **Dismissal of a formal complaint per 10645(b)(3)(ii)**

- **“The recipient dismiss the formal complaint or any allegations therein, if at the time during the investigation or hearing**
  - **A complainant notifies the TIXC in writing that**  
**or any allegations therein,**
  - **The** **by the**  
**recipient; or**
  - **prevent the recipient from gathering**  
**evidence sufficient to reach a determination as to the formal**  
**complaint or allegations therein**



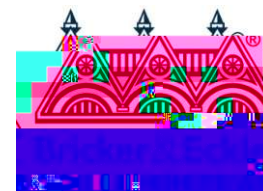


- 
- **Documentation of the dismissal**
    - **Internal or shared with the parties?**
      - **Depends on FC and your process**
    - **Meeting with the parties to explain the dismissal**
  - **Consistency with prior dismissals**
    - **Substantively and Procedurally**
    - **Watch for this with discretionary dismissal**



## **34 CFR 10645(b)(3)(ii)**

- **Must promptly send written of dismissal/ simultaneously to the parties**
- **Jurisdictional issues can arise , even during the investigation**





## **Additional provisions that require documentation of decision making**

- **Demonstrating a lack of deliberate indifference generally**  
**34 CFR 106.44(a) General response to sexual harassment**
- **The “result” of an institutional disciplinary proceeding under Clery**  
**34 CFR 668.46(k)(2)(v) and (k)(3)(iii)**  
**“Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution.. the result must include the rationale for the result and the sanctions.”**

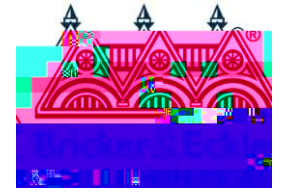




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## **Must show the basis for not providing certain supportive measures**

- **34 CFR 106.45(b)(10)(D)(ii)**
- **“must document the reasons why such a response was not clearly unreasonable in light of known circumstances”**



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# Dismissal of a Formal Complaint

- **34 CFR 106.45(b)(3)(ii)**



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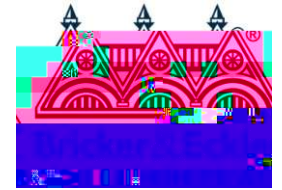
## **Determination Regarding Responsibility**

- **34 CFR 106.45(b)(7)(ii)(A)-(E)**
- **5 topics required in order to explain the decision, including**

**Findings of facts**

**‘Astat**

**po**



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## **Determination Regarding Responsibility**

- **34 CFR 106.45(b)(8)(iii)(E)**
- **“Issue a written decision describing the result of the appeal and the rationale for the result..”**



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## **No “result” or “finding” to be explained, but..**

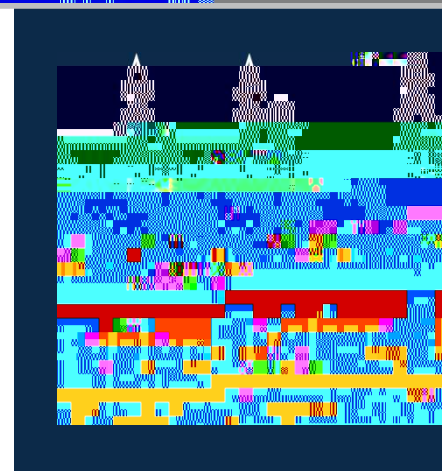
- **Best practice to document the resolution reached**
- **And the steps that got you there**

**Adequate notice**

**Voluntary written consent**

**Does not involve allegations that an employee sexually harassed a student**



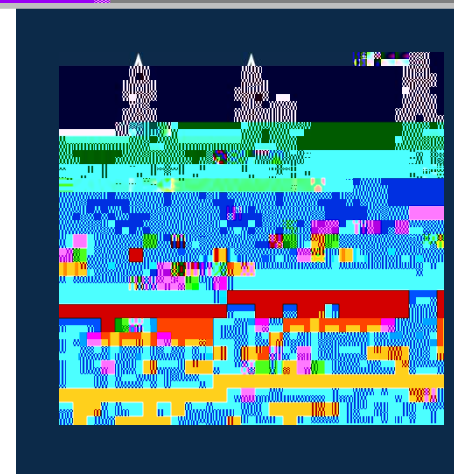


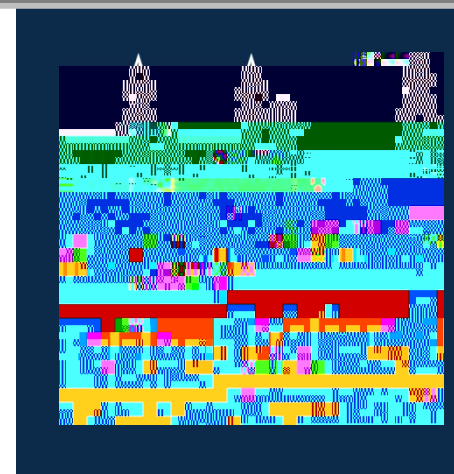


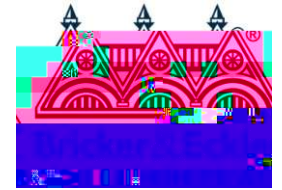




- 
- **Goals for your intake interview?**
    - **Supportive Measures**
    - **\*\*Explanation of the Process (including jurisdiction/referral)**
    - **\*\*Details about the assault?**
  
  - **Anyone want to practice?**
    - **I will play the role of Tessa**







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- **What did Tessa tell us?**

**Counseling**

**Housing**

**Academics**

**Work**





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## **Some details are needed to determine jurisdiction**

**Who**

**What**

**Where**

**When**

**Why**

- **Same level of detail as an investigative interview?**
  - **What if you are the TIXC and the investigator**
  - **If not, is it better to get fewer details?**

**Meet the person where they are**

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**Bicker's Title IX Resource Center Website:**

**You can also find us on                      at**



[Redacted text block]