

Title IX Hearings and Adjudication – —

Ensuring Fair Resolutions

The Worst Hearing Ever

- Describe the most chaotic hearing or adjudication process you've observed.
- What made it so bad?
- What could we have done differently?



Pre-Hearing Conference

- Clarify logistics, timing, and technology for the hearing
- Review witness lists and anticipated evidence
- Address accessibility accommodations or language needs
- Ensure parties understand rules of decorum and cross-examination procedures
- **Emphasize Purpose**

Best Practices

- Hold at least 3–5 days before hearing
- Include all parties, advisors, and hearing chair/decision-maker
- Provide written summary of agreements and rulings afterward
- Document objections raised and resolved

“A well-run pre-hearing conference is the scaffolding of a respectful and lawful adjudication process.”

Kicking Off the Hearing

Opening Remarks Should:

1. Reiterate the purpose of the hearing
2. Emphasize the institution's commitment to fairness, neutrality, and respect
3. Identify all participants (Complainant, Respondent, Advisors, Witnesses)
4. Outline the order of proceedings
5. Set Ground Rules: Address expectations for decorum and conduct
6. Explain how cross-examination will proceed
7. Remind parties about recording, confidentiality, and procedural boundaries
8. Reaffirm that retaliation is prohibited

“How the hearing starts often shapes how the hearing goes. Authority, clarity, and empathy matter.”

Cross-Examination

- “Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,” — 34 C.F.R. § 106.45(b)(6)(i)
- Exceptions: (1) To prove someone else was responsible (2) To show consent re: prior relationship with respondent

Relevance

- “The Department acknowledges that determining relevance in real time during a live hearing may be difficult.” — 85 Fed. Reg. 30026, 30331 (May 19, 2020)
- My personal rule: When in doubt about relevance, I generally allow the question. Why?
- Relevance Is a Low Bar: Most relevance determinations should be quick and deferential. If a question might reasonably help assess credibility, bias, or facts at issue, it should be allowed.

Hypothetical Scenario

- Two students, Taylor (Complainant) and Jordan (Respondent), attended a late-night gathering in the campus commons.
- Both admit they drank alcohol.
- Taylor alleges that Jordan engaged in sexual activity without consent later that night in Jordan's dorm.
- Jordan claims the encounter was consensual.
- During the hearing, Taylor has testified about their memory of the evening, including what they drank, who they were with, and the moment they said "no."
- Jordan's advisor begins cross-examination.

Relevant Or Irrelevant?

- Question 1: “You said you had vodka, but isn’t it true you were also doing shots of Fireball before that?”
- Question 2: “Didn’t you tell your roommate earlier that week you were into Jordan?”
- Question 3: “Isn’t it true you kissed another person at the party before going upstairs with Jordan?”

Relevant Or Irrelevant?

- Question 4: “You’ve accused someone of sexual misconduct before, haven’t you?”
- Question 5: “You didn’t scream or fight back. Why not?”
- Question 6: “You and Jordan were flirting in your group chat earlier that day. Can you explain that?”

Disruptive Advisors

- Scenario: You're conducting a hearing. The respondent's advisor repeatedly objects mid-answer ("Objection! Hearsay!") and tries to coach responses.
- How do you respond in the moment? Do you stop the hearing? Do you warn them? What's your tone?

Disruptive Advisors

- Scenario: An advisor uses hostile tone and loaded questions during cross-examination (“Why are you lying about what happened?”).
- What’s the standard for intervention? How do you balance fairness with decorum?

What Can You Do?

- Remind them of ground rules at the outset
- Interrupt and redirect when needed
- Issue clear, progressive warnings
- Document disruptive behavior
- Remove an advisor only as a last resort

Report Writing Common Pitfalls

Failure to Adequately Explain Findings

- Courts consistently criticize reports that contain conclusory statements with no rationale.
- Common issue: Findings of responsibility or non-responsibility are stated without explaining why evidence was credited or discounted.
- Example: “The panel found the complainant not credible,” but provided no reasoning, leaving the court unable to assess whether the decision was arbitrary.— *Doe v. Univ. of Denver*, 952 F.3d 1182 (10th Cir. 2020)

Report Writing Common Pitfalls

Ignoring or Mischaracterizing Evidence

- Decision-makers sometimes omit key evidence or misstate what was said or submitted, raising concerns of bias or procedural irregularity.
- Common issue: Not addressing documentary or witness evidence that contradicts the conclusion.
- Example: In *Doe v. Purdue Univ.*, 928 F.3d 652 (7th Cir. 2019), the university expelled a student without considering his version of events or exculpatory evidence.

Report Writing Common Pitfalls

Insufficient Analysis of Credibility

- While credibility is often central, many reports fail to explain why a party or witness was or was not credible.
- Common issue: Boilerplate language such as “The panel found the respondent more credible,” without connecting it to specific facts.
- Courts expect: Acknowledgement of inconsistencies; evaluation of corroboration, motive, or plausibility; be careful about trauma-informed factors

A Moment On Sanctions

Purpose of Sanctions

- Restore or preserve equal access to the education program
- Address the harm caused and prevent recurrence
- Sanctions are not punishment for punishment's sake—they serve institutional equity

Considerations When Determining Sanctions

- Nature and severity of the misconduct
- Impact on the complainant and broader campus community
- Whether the respondent poses an ongoing risk
- Prior misconduct history (if any)

“Design the Ideal Hearing”

- Share creative or unusual ideas that worked for your institution

Challenges

- Retaliation
- Disabilities and Intersectionality
- Bias and Conflict of Interest
- Coordinating with Law Enforcement

Informal Resolution

The planet does not need more successful people. The planet desperately needs more peacemakers, healers, restorers, storytellers and lovers of all kinds.

~ *Dalai Lama*



First Principles: Overarching Title IX Duty

Prevent/**Remedy** Sex Discrimination!

1. Supportive measures
2. Equitable treatment
3. Respond to known acts of sexual harassment in a manner that is not “clearly unreasonable”

Generic Hypo: Your president has asked you to explain to him why the university’s response to a report of sex harassment was not clearly unreasonable.

What facts would you want to be able to cite?



The Regulations In A Nutshell

1. An *optional* institutional alternative (should, when, how, & by whom)
2. Guidance paperwork (how does process work & consequences of participating in the process)
3. Voluntary *for both sides* (how to assess & demonstrate)

In The Courts

- Very few reported cases analyzing informal resolution practices
 - Why?
- Federal courts have been reluctant to allow deliberate indifference claims based on an institution's use of an informal resolution process in general
- Key issues: voluntariness, timeliness, and remedies/enforcement
- Communicate with parties about status (where are we)
- If the institution follows policies and procedures, courts appear to be reluctant to second-guess the decision or outcome.

Hypothetical: The Case of the Class Project Pairing

Jordan (they/them), a junior, alleges that Alex (he/him), a senior, made unwelcome sexual advances during a group meeting, including comments and touching. Jordan does not want a hearing but is open to informal resolution with conditions.

Alex denies the allegations but is open to “resolving it quietly.”

You’re the Title IX Coordinator. Should informal resolution be offered?

Would You Offer Informal Resolution?

Work in small groups or at your table. You'll have 10 minutes to review the case and decide:

- Is this matter eligible for informal resolution under your policy?
- Would you offer it?
- What would you want to see in the terms?
- What concerns might lead you to say no?

Group Discussion Prompts

- Is the allegation (unwanted touching, suggestive comments) eligible under your policy?
- Are both parties truly engaging voluntarily?
- Would informal resolution preserve educational access and safety?
- What safeguards or terms would make you more comfortable proceeding?
- What are the risks—either of proceeding or declining?

Threshold Question: Should Informal Resolution Even Be An Option?

- The Easy “No”: allegations that an employee sexually harassed a student
- The Complicated: **Are there situations where informal resolution would be not appropriate (or “clearly unreasonable”)?**
- One potential guidepost: if allegations are true, would it be appropriate for accused to remain on campus (on-going threat to campus community → gravity of the alleged offense, repeat offender, risk of repeating, weapons, minor victim, etc.)

Three Suggested Best Practices

1. Clear policy language is important -- Make sure the policy reflects (a) **who** needs to consent to an informal resolution and (b) **what factors** university officials will consider
2. Show your work -- document your analysis (sorry)
3. Monitor for consistent application and implicit bias (*i.e.*, similar fact patterns should be handled consistently)

You Say Yes! Now to Complainant

- Discuss options with Complainant
 - Explain the IR process in writing
 - Form document that satisfies regulatory requirements ☐ Have a non-lawyer human being read this for clarity
 - If Complainant says “no,” that’s a wrap
1. What do you say about IR?
 2. What are pros & cons to mention?
 3. What should you avoid?
 4. Timing?
 5. What are some of the questions you may get from the Complainant?

Complainant Say Yes! Now to Respondent

- Discuss options with Respondent
 - Explain the IR process in writing
 - Form document that satisfies regulatory requirements ☐ Have a non-lawyer human being read this for clarity
 - If Respondent says “no,” that’s a wrap
1. What do you say about IR?
 2. What are pros & cons to mention?
 3. What should you avoid?
 4. Timing?
 5. What are some of the questions you may get from the Respondent?
 6. *** can this be used against me in a subsequent proceeding?
Sent to subsequent schools?
Part of education record?

How Do We Ensure Voluntary Participation?

1. Clear communications (can't stress this enough)
 2. Be timely, but don't rush
 3. Require parties to sign a clear Participation Agreement
 4. Periodic check-ins and monitoring (Who? How?)
 5. Reiterate where appropriate that either party can stop the process
- What would be a red flag about a party's voluntary participation?
 - **Rule** ? when in reasonable doubt, put concern on table/stop the process
 - Show your work (again – sorry)
 - What if...once you're done, a party objects that they didn't, in fact, voluntarily participate?

Types of Informal Resolution

1. Administrative adjudication
2. Facilitated conversations
3. Restorative justice
4. Mediation

Mediation



What Makes A Good Mediator?

- Reasonable participants
- Ability to establish rapport
- **Listening** for Understanding/Establishing trust (what can I share?)
- Soliciting what parties want & setting expectations
- Creativity

EFFECTS OF ACTIVE LISTENING, REFORMULATION AND IMITATION ON MEDIATOR SUCCESS: PRELIMINARY RESULTS

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Abstract

An experiment with 212 students (100 men, 112 women; M age = 18.3 yr, SD = 0.9) was carried out to compare the effect of four techniques used by mediators on the number of agreements contracted by negotiators. Under experimental conditions, mediators were asked either to rephrase (reformulate) negotiators' words or to imitate them or to show active listening behavior, or finally, to use a free technique. More agreements were reached in the active listening condition than in both free and rephrase conditions. Furthermore, mediators in the active listening condition were perceived, by the negotiators, as more efficient than mediators using other techniques, although there was no significant difference observed between the active listening and imitation conditions.

Four Items For Preparation Of Mediator

1. Reasonable summary of report and status
2. Background information on parties and advisors
3. Information for assessment of potential conflicts
4. Summary of concerns raised (if any) in screening process

My Personal Preference for Process Steps

1. Send an introductory communication where I discuss process and begin scheduling meetings
2. Meet with complainant (listen primarily & get a sense of remedies sought)
3. Meet with respondent (listen primarily & get a sense of willingness to address harm)
4. Assess and plot next steps

Some General Question Possibilities

- “I’ve read the materials in this matter and am familiar with the report, is there anything else you think is important to share with me?”
- “Can you walk me through what you would like to achieve through this process?”
- “Are there things you are willing to do remedy the harm Complainant has expressed?”

How Long Should Process Take?

- From regulations: “reasonably prompt” with extensions for “good cause” with written notice to parties
- Practical 1: comply with institutional policy
- Practical 2: I worry when I’m past 21 days from receiving file
 - Is there a reasonable basis for resolution?
 - Is it worth setting a firm deadline for a response?
 - Ensure parties and IX Coordinator are apprised of where things stand

Some Outcome Examples

- Administrative accommodations such as adjusting class schedules, changing sections, etc.
- Apologies
- Voluntary educational, mentoring, or coaching sessions
- Relocation or removal from a residence hall or other on-campus housing
- Verbal cautions/warnings
- Training
- Collaborative agreements on behavioral or institutional changes
- No on-going contact
- Voluntary withdrawal from university ***

Example Confidentiality Language in Agreements

- “I agree that to the extent permitted by law, I will not use information obtained and utilized during informal resolution in any other institutional process (including investigative resolution under the Policy if informal resolution does not result in an agreement) or legal proceeding, though information documented and/or shared during informal resolution could be subpoenaed by law enforcement if a criminal investigation or civil suit is initiated.”

Post-Conference: Monitoring

- This is mission critical!
- Clarity on who is responsible
- Hypo: Respondent becomes non-responsive and does not participate in agreed-to educational activities.
- How do we enforce?

Guideposts (One More Time)

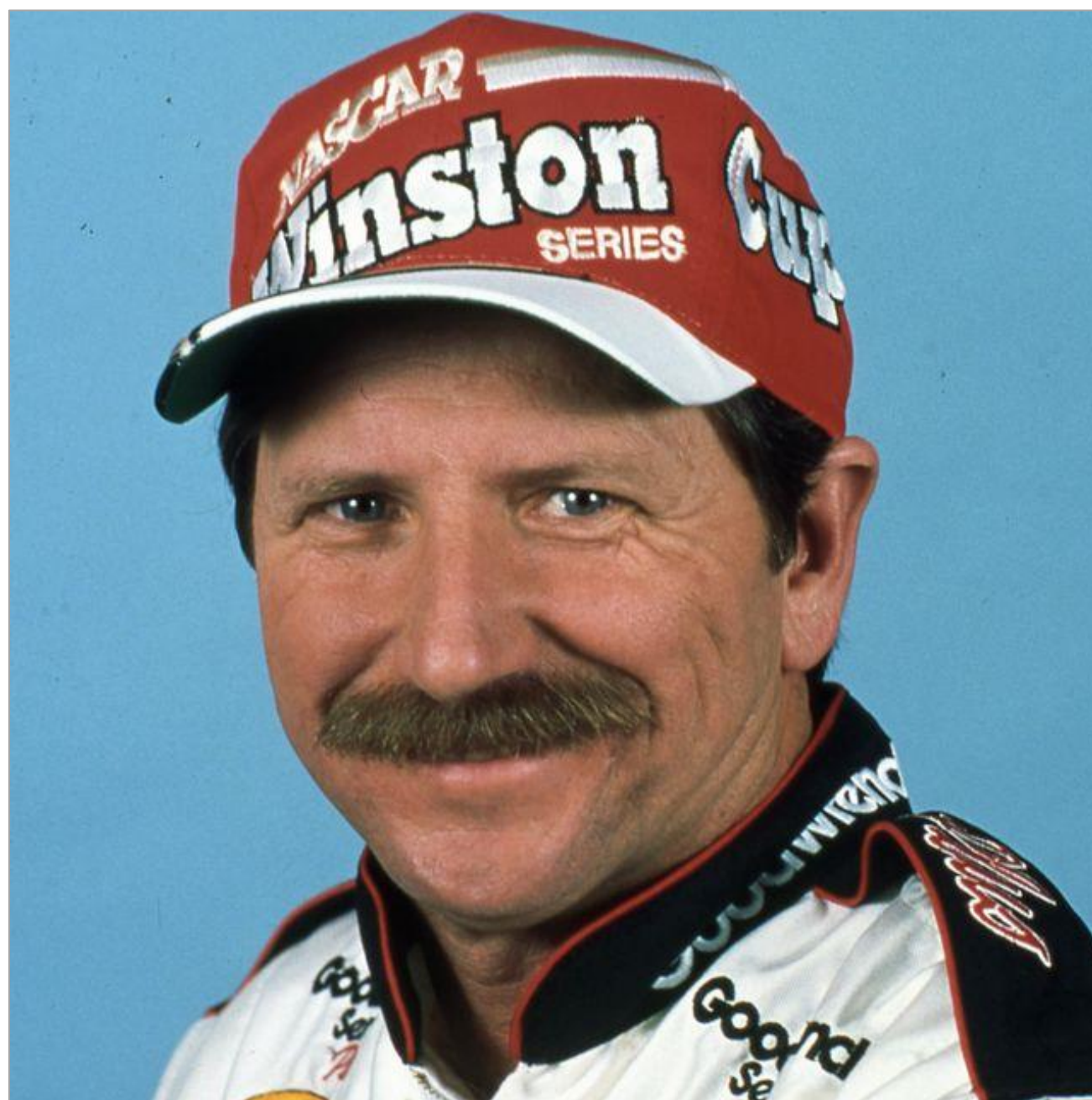
1. Respond to known acts of sexual harassment in a manner that is not “clearly unreasonable”
2. Complainant: Continue in educational program
3. Respondent: Continue in educational program so long as there is no harm to campus community
4. The perspective is peacemaking, supportive, and educational – it’s not confrontational, punishment-oriented, or overly legalistic
5. Keep the parties posted
6. Be honest with the parties but stress they control outcome (this is voluntary!)
7. Be timely

SCHNEIDER —
EDUCATION &
EMPLOYMENT
— LAW

Title IX & Title VI under the Trump Administration

—

**BIG
PICTURE**



Ideological Shift: From “Equity” to “Merit-Based Neutrality”

- Civil rights enforcement as a tool to combat “reverse discrimination”, racial preferences, and “radical DEI ideology.”
- Emphasizes colorblind constitutionalism and biological definitions of sex under Title IX.
- Asserts that many previous recommended civil rights practices (*e.g.* DEI programs, trans inclusion policies) are themselves discriminatory.

Executive Orders Dismantling DEI

- EO 14151: Abolished DEI infrastructure in federal agencies.
- EO 14173: Ended affirmative action-style mandates for federal contractors and required certification of race-neutral practices to receive federal grants.
- Federal contractors and grantees (including universities) must certify that they do not operate “unlawful DEI programs.”

Unprecedented Aggressive Use of Title VI and Title IX

- Title VI: Used to investigate and sanction institutions for alleged race- or ancestry-based preferences, especially in DEI, scholarships, and antisemitism cases.
- Title IX: Redefined by executive order to cover only biological sex, excluding gender identity and sexual orientation.
- OCR has issued over 100 letters of investigation and **imposed funding freezes when noncompliance is alleged.**

Funding as an Enforcement Weapon

- DOE and DOJ have paused or frozen billions in federal funds to public and private institutions (e.g., Penn, Harvard, Columbia) tied to alleged Title VI/IX violations or DEI practices.
- K–12 states like Maine and California have been threatened with full defunding over LGBTQ inclusion in athletics or curricula.
- This represents an unprecedented use of funding leverage as civil rights enforcement.

**Late
News**

**Associated Press
Leased Wires**

The Bee.

**FOR ALL DEPARTMENTS CALL
4500**

56th Year

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No. 12,926

Danville, Va., Monday Afternoon, May 17, 1954

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SEGREGATION IN PUBLIC SCHOOLS ENDED BY COURT

Ruled Unconstitutional By Supreme Court; Date To End Practice Not Set

Rules Separate Facilities Are Unequal

WASHINGTON (AP)—The Supreme Court ruled unanimously today that segregation of Negro and White students in public schools is unconstitutional. But it said it will hear further arguments this

Danville School Board Will Meet At Once To Study Court Decision

Officials Give Views On Matter; Call For Calm Study On All Sides

Robert P. McConnell, chairman of the School Board, on being in-

Good Progress

Firm Entered, Haul Is Made; Boy Wounded

Man Accidentally Shot In The Hand

A breaking and entering and an accidental shooting topped occurrences claiming police attention over the week-end.

Charlie's Place on Riverside Drive was broken into by way of a rear window and a sizeable quantity of cigarettes, cigars, candy and chewing gum taken. The discovery was made during a routine check by Lieut. Curtis Fields shortly after last midnight. Patrolmen J. B. Walton and J. B. Gardner conducted the initial investigation and this morning turned the case over to the detective division.

Paroled Slayer Captured After Bizarre Deaths

Held For Four Brutal Killings

MOULTREE, Ga. (AP)—Capture of a paroled Georgia convict wanted in connection with four brutal slayings ended three days of terror today and brought sighs of relief to this South Georgia community.

Tom Williams, a 45-year-old paroled murderer, was taken on the edge of a swamp east of the city last night. Lt. W. E. McDuffie of the Georgia Bureau of Identification made the capture. He hustled Williams off to his auto-

McCarthy-Army Hearings' Future Thrown In Doubt

Presidential Order Shutting Off Inquiry Denounced By Sen. McCarthy

WASHINGTON (AP)—The future of the McCarthy-Army hearings was thrown in doubt today by a presidential order—denounced by Sen. McCarthy as an "iron curtain"—shutting off inquiry into whether "higher-ups" directed the charges against the senator.

The Senate investigations subcommittee recessed its public hearings at 11:55 a. m. (EDT) to consider in closed session what stand it might take on Eisenhower's order.

McCarthy, claiming that "this cover up" made it impossible to get at the truth, declined to say, when asked by

Suit Being Tried

ALEXANDRIA, Va. (AP)—A suit by John Locke Green to force his recognition as a Democratic candidate for Congress went to trial before a three-judge federal court here today.

Green, a Republican when he held office as Arlington County treasurer, brought the suit against Virginia's 10th District Democratic Committee after it refused to accept him as a party candidate for the forthcoming congressional election.

Funds Requested

WASHINGTON (AP)—President Eisenhower asked Congress today for an extra \$34,100,000 to help areas crowded by federal workers or workers on federal projects with school construction.

The request, in a letter to Speaker of the House Martin, is for funds for the next fiscal year beginning July 1. The extra money is in addition to 40 million dollars already in the budget for the same purpose for the fiscal year ahead.

Considering Violations

WASHINGTON (AP)—Atty. Gen. Brownell said officially today the Justice Department is considering "possible violations of the criminal law" in the preparation and dissemination of a document Sen. McCarthy presented May 4 in the McCarthy-Army hearings.

Brownell made the disclosure in ruling that no part of the document should be declassified from its confidential category.

Strike Called

Certification of Compliance

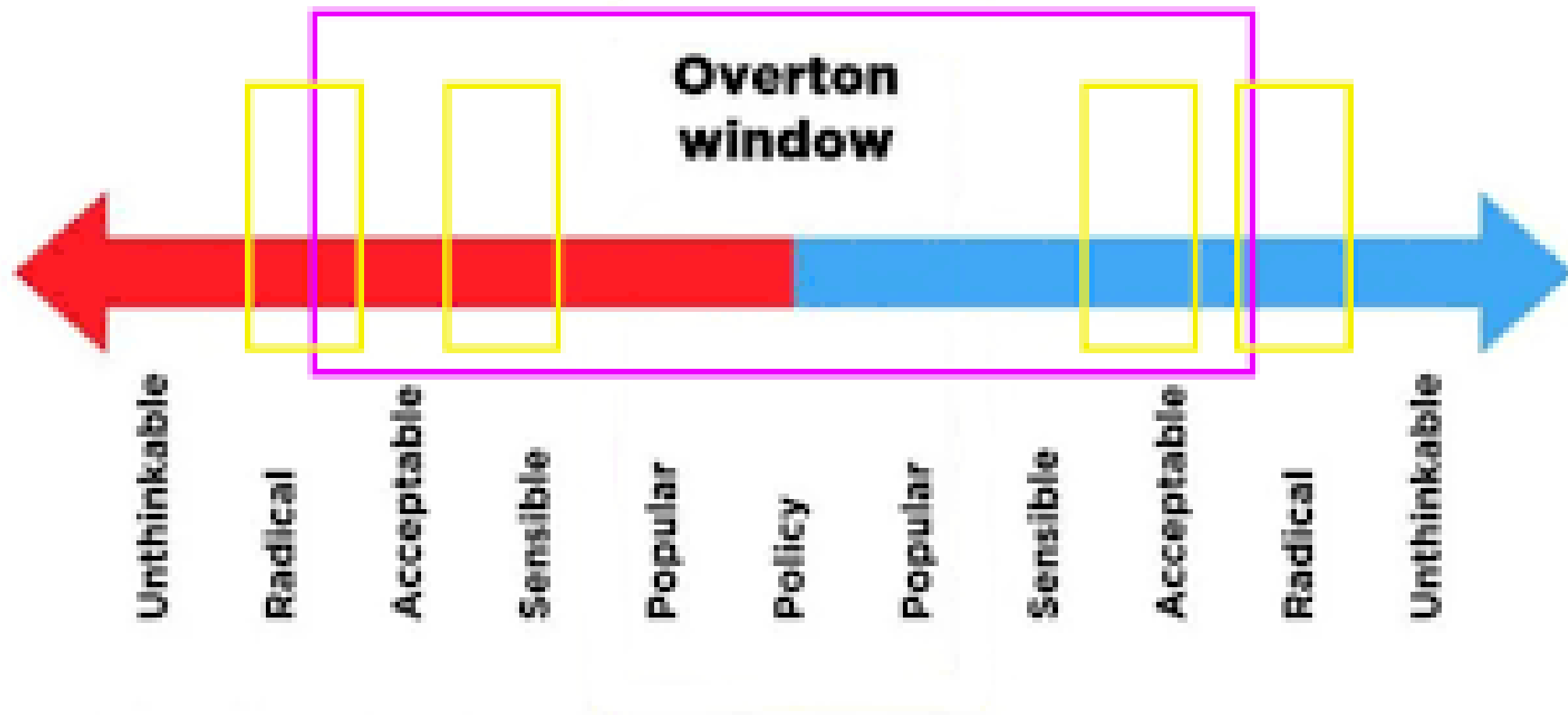
- The same executive order requires that federal grants and contracts include certifications from recipients that they do not operate DEI programs that violate anti-discrimination laws [whitehouse.gov](https://www.whitehouse.gov).
- Compliance with civil-rights laws is declared “material” to receiving federal funds— signaling that if a school is found to have, for example, a scholarship or program restricted by race, it could be deemed noncompliant and risk a False Claims Act violation or loss of funding.



Whistleblowers and the False Claims Act

What happens when DEI programs meet
whistleblowers and federal investigations?
Higher ed may be about to find out.

[Listen](#)



Legal and Policy Whiplash

- Rapid swings in federal enforcement priorities—from expansive equity-focused mandates under Biden to targeted rollbacks under Trump—signal that civil rights in education will remain a deeply polarized, unstable policy arena.
- Institutions must now pivot with each administration, creating compliance fatigue, legal uncertainty, and risk of inadvertent violations as definitions of discrimination shift.

Fragmented Legal Landscape

- As courts issue conflicting rulings on what Title VI and Title IX require (e.g., transgender inclusion, race-conscious aid, DEI programming), schools and colleges face a patchwork of legal obligations.
- Example: A DEI practice legal in California may be banned in Texas.
- Title IX now means different things in different circuits—particularly regarding LGBTQ+ protections.

Conditional Federal Funding as Enforcement Weapon

- The Trump administration's use of funding freezes and certification requirements to enforce ideological alignment signals a new era of coercive compliance.
- Institutions must now weigh mission integrity vs. financial survival, especially when DEI, LGBTQ+, or anti-racist practices are core to campus culture.
- Future administrations—of either party—may expand this precedent, using Title VI and Title IX as blunt fiscal tools.



