

ASSOCIATION OF WORKPLACE  
INVESTIGATORS (AWI)

**TITLE IX INVESTIGATIONS  
FOR THE WORKPLACE  
INVESTIGATOR:  
KEY CONTRASTS AND 20/21  
TWEAKS**

**Presenter: Ryan Thompson**

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**NEW YORK METRO AREA  
LOCAL CIRCLE MEETING  
APRIL 7, 2021  
5-6:30PM EST**



**THOMPSON ESQUIRE  
PLLC**

# Presenter: Ryan Thompson, Esq.

After an extensive and diverse career as an attorney, journalist and higher education professional, Ryan Thompson established THOMPSON ESQUIRE PLLC in 2020, as the new Title IX Regulations caused sweeping changes across the educational landscape.

As the former Title IX Coordinator and Civil Rights Officer of Niagara University, Thompson has handled hundreds of cases, investigating or supervising dozens of sexual assault, misconduct and discrimination/harassment investigations into student and employee allegations. He has overseen investigations at the highest level, working with investigators and attorneys from firms across the United States, as well as directly with the U.S. Department of Education's Office for Civil Rights (OCR).

Prior to becoming the University's first full-time Title IX Coordinator and building the school's civil rights office, Ryan Thompson worked as the Assistant General Counsel, Niagara Law Center Co-Chair and Writing Professor, while teaching law at several other area colleges.

Before entering into higher education, Thompson was an investigative journalist and newspaper editor, working in both New York City and Boston, as well as litigating at a 5th Avenue law firm. At Brooklyn Law School, Thompson worked as a student prosecutor for the Kings County District Attorney's Office, as well as for an innocence project. He graduated from the University of Colorado at Boulder with degree in journalism.

Thompson currently is one of the only pre-approved sexual misconduct investigators for United Educators (UE) Insurance who has an office in Western New York. He is also an Affiliated Consultant and Publications Committee member with TNG/ATIXA.

For more on Ryan Thompson, go to <https://www.esqthompson.com/about> or contact Ryan Thompson at [ryan@esqthompson.com](mailto:ryan@esqthompson.com).



**SESSION DESCRIPTION: TITLE IX INVESTIGATIONS CAN POSE SOME UNIQUE CHALLENGES AND CONSIDERATIONS FOR ATTORNEYS AND INVESTIGATORS, SOME OF WHICH CAN BE IN SIGNIFICANT CONTRAST TO TRADITIONAL WORKPLACE INVESTIGATIONS. THIS IS ESPECIALLY TRUE WITH THE HIGHLY CONTROVERSIAL 2020 TITLE IX REGULATIONS THAT WENT INTO EFFECT LAST AUGUST. THERE IS PERHAPS NO OTHER INVESTIGATION TYPE THAT INVOLVES THE REQUISITE LEVEL OF TRANSPARENCY AND DUE PROCESS AS DO TITLE IX INVESTIGATIONS, WITH THE PARTIES BEING ENTITLED TO REVIEW ALL RELATED EVIDENCE, INCLUDING THEIR INTERVIEWS AND THE FULL INVESTIGATIVE REPORT. RYAN THOMPSON WILL DISCUSS SOME OF THE INTRICACIES AND NUANCES INVOLVED WITH CONDUCTING TITLE IX INVESTIGATIONS, AS WELL AS DISCUSS WHAT CHANGES ARE ON THE HORIZON UNDER THE BIDEN ADMINISTRATION.**

[LINK TO PAGE](#)

### TITLE IX TRAINING

In addition to the dozens of trainings he has administered himself over the years as a university Title IX Coordinator and Civil Rights Officer, Ryan Thompson has spent hundreds of hours undergoing training from a variety of professional organizations and institutions, including law enforcement, law firms, the U.S. Department of Education, the U.S. Office for Civil Rights, United Educators (UE) Insurance, the Clery Center, the State University of New York Student Conduct Institute (SUNY SCI), and the Association of Title IX Administrators (ATIXA).

*For Title IX training services offered by THOMPSON ESQUIRE PLLC, go to the [Services](#) page.*



The 2020 Title IX Regulations 34 CFR §106.45(b)(10) “requires recipients to publish materials used for training Title IX Coordinators, investigators, decision-makers, and persons who facilitate informal resolutions on the recipient’s website or make these materials available upon request for inspection by members of the public.”

This mandate also applies to recipient institutions that hire external investigators, decision-makers or other personnel. As such, Ryan Thompson’s training credentials, along with links to available training materials, are published below. While only those trainings (and accompanying materials) that were taken post August 14, 2020, are required to be posted, Thompson’s trainings from 2018 through 2020 are posted below (in reverse chronological order):

- 12.9.2020 – ATIXA: [SPOO or Not SPOO? That Is the Question](#), online webinar co-presented by Ryan Thompson (2.0 hours)  
[Link to Materials\\*](#)
- 11.13.2020 – Harter Secrest & Emery LLP: [Effective Use of External Investigators/Adjudicators in the Title IX Grievance Process](#), online webinar (1.0 hour)  
[Link to Materials](#)
- 10.28.2020 – Dan Schorr LLC, [Misconduct Complaints: The First 48 Hours](#), online webinar co-presented by Ryan Thompson (1.5 hours)  
[Link to Materials](#)
- 8.26.2020 – ATIXA: [Title IX Hearing Chairs One-Day Training & Certification Course](#), online webinar (7.0 hours)  
[Link to Materials\\*](#)
- 8.21.2020 – ATIXA: [Title IX Hearing Officer & Decision-Maker Interactive Mock Hearing Training Day](#), online webinar (7.0 hours)  
[Link to Materials\\*](#)
- **8.14.2020 TITLE IX REGULATIONS COMPLIANCE DEADLINE**
- 8.11.2020 – Tully Rinckey PLLC, [Last Minute Considerations for Title IX Compliance](#), online webinar presented by Ryan Thompson (1.0 hours)
- 3.4.2020 – State University of New York Student Conduct Institute (SUNY SCI): [Title IX Investigator Training](#), Hilbert College, Hamburg, NY (8.0 hours)
- 3.3.2020 – State University of New York Student Conduct Institute (SUNY SCI): [Basic Compliance Training III](#), Hilbert College, Hamburg, NY (8.0 hours)
- 11.13.2019 – State University of New York Student Conduct Institute (SUNY SCI): [Basic Compliance Training II](#), Buffalo State College, Buffalo, NY (8.0 hours)

# IX

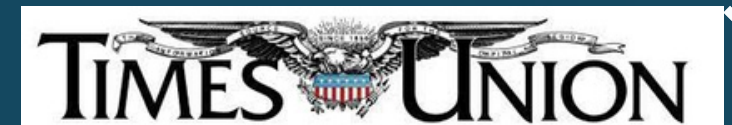
## **TITLE IX OF THE EDUCATION AMENDMENTS OF 1972:**

*NO PERSON IN THE UNITED STATES SHALL, BASED ON 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.*

*“IT SEEMS LIKE THE DEPARTMENT OF EDUCATION DID NOT FORESEE THE LEVEL OF UNINTENDED COMPLEXITIES THESE REGULATIONS CREATE,” THOMPSON SAID.*

*“IT'S AS IF THE DEPARTMENT DESIGNED A NEW AND EXPERIMENTAL AIRPLANE ON PAPER, AND THEN MANDATED ALL THE AIRLINES USE IT, YET HAS NOT ONLY NOT TESTED THE PLANE TO SEE IF IT FLIES, BUT HASN'T EVEN PUT IT THROUGH THE FLIGHT SIMULATOR.”*

**Albany Times Union, Oct. 26, 2020**



# THE 2020 TITLE IX REGULATIONS COVER SEXUAL HARASSMENT, WHICH THE REGS DEFINE AS EXISTING UNDER THREE PRONGS:

## 1. Quid Pro Quo

## 2. Sexual Assault, Dating Violence, Domestic Violence, Stalking *(also covered under VAWA and New York's Article 129-B)*

## 3. SPOO Sexual Harassment

- A. Severe, and;
- B. Pervasive, and;
- C. Objectively Offensive



# 1. QUID PRO QUO

# **2. SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING**

(also covered under VAWA and New York's Article 129-B)



# 3. SPOO SEXUAL HARASSMENT

- A. Severe, and;
- B. Pervasive, and;
- C. Objectively Offensive

# JURISDICTION

- 1. 106.30:** The alleged conduct meets the definition of “sexual harassment” as defined by 106.30 of the Title IX Regulations (QPQ, Big 4/VAWA Sexual Violence Categories, SPOO Sexual Harassment), and
- 2. CONTROL:** The alleged conduct occurred in the recipient’s education program or activity; and
- 3. U.S.:** The alleged conduct occurred against a person in the United States, and
- 4. P/ATP:** At the time of filing a formal complaint, the complainant was participating in or attempting to participate in the recipient’s education program or activity.

# Some Title IX/Sexual Misconduct/Civil Rights Investigation Formats:

\*1. Investigator gathers/synthesizes facts and evidence, with no "findings" based on preponderance of the evidence (or clear & convincing), and makes no recommendations, but "analyzes" the supporting and contradicting evidence to a minor/moderate degree;

\*2. Investigator gathers/synthesizes facts and evidence, with no "findings" based on preponderance of the evidence (or clear & convincing), and makes no recommendations, but "analyzes" the supporting and contradicting evidence to a much greater extent;

3. Investigator gathers/synthesizes facts and evidence, makes "findings of fact" based on preponderance of the evidence (or clear & convincing), and makes no recommendations;

\*4. Investigator gathers/synthesizes facts and evidence, with no "findings" based on preponderance of the evidence (or clear & convincing), but makes recommendations;

5. Investigator gathers/synthesizes facts and evidence, makes "findings of fact" based on preponderance of the evidence (or clear & convincing), and also makes recommendations as to whether the found facts constitute policy violations;

6. Investigator gathers/synthesizes facts and evidence, makes "findings of fact" based on preponderance of the evidence (or clear & convincing), and then also makes findings on whether policy was violated based on preponderance of the evidence (or clear & convincing).

\*Title IX Regs-compliant (though #4, and to a lesser degree #2, could pose compliance/liability concerns)

# Interview Summaries & Transcripts

**1. Audio/Video Recordings &  
Interview Transcripts**

**2. Interview Summaries**  
*(in topical order)*

**3. Interview Summaries**  
*(in chronological order)*

**4. Hybrid Transcript-Style  
Summaries**

# 1. AUDIO/VIDEO RECORDINGS & INTERVIEW TRANSCRIPTS



# 2. INTERVIEW SUMMARIES

(IN TOPICAL ORDER)



# **3. INTERVIEW SUMMARIES**

**(IN CHRONOLOGICAL ORDER)**

The image features a modern architectural background with a dark blue geometric overlay on the left side. The text is white and bold, set against the blue background. A white diagonal line is visible in the upper right quadrant of the blue area.

# **4. HYBRID TRANSCRIPT- STYLE SUMMARIES**



**When asked how much he had to drink on Thursday night, the Witness said, “seven or eight shots, maybe a little more.”**

**When asked if he felt drunk, the Witness said, “I’m maybe a little buzzed at best.”**

**...**

**When asked when the Complainant first realized the Respondent was in bed with her, the Complainant said, “When I felt his hand on my stomach.”**

**When asked if either of them said anything at this point, the Complainant said that she said, “This isn’t a good idea. You have a girlfriend” to the Respondent.**

**“But I really didn’t care that he had a girlfriend. I just wanted him to leave me alone, and I didn’t know what to say,” the Complainant said. “Does that sound crazy? Should I have been more clear?”**

# NYS Education Law Article 129-B

## § 6441. Affirmative consent to sexual activity.

1. Every institution shall adopt the following definition of affirmative consent as part of its code of conduct: **"Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression."**

2. Each institution's code of conduct shall reflect the following principles as guidance for the institution's community:

- a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c. Consent may be initially given but withdrawn at any time.
- d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f. When consent is withdrawn or can no longer be given, sexual activity must stop.