



K-12 Title IX Investigator/ Decision-Maker Training Level 1

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Lesson 1

Introduction & Overview



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INTRODUCTION

Courtney Bullard

- Creator, Title IX U
- Education Law Attorney
- Founder, ICS



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Overview of the Course



- Lesson 1: Introduction & Overview
- Lesson 2: Title IX and the New Regulations
- Lesson 3: Sexual Harassment and Education Program or Activity
- Lesson 4: Serving Impartially
- Lesson 5: Title IX Process - Investigations
- Lesson 6&7: Investigative Techniques Overview and Witnesses/Evidence and Relevancy
- Lesson 8: Investigative Report Writing
- Lesson 9: Decision Making Responsibilities and Process
- Lesson 10: Wrap Up & Assessment

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Learning Outcomes

- Understand the law and regulations
- Explain Title IX process and your role in it
- Recognize and Evaluate Sexual Harassment and Program or Activity
- Identify conflicts of interest/bias
- Understand how to assess relevancy
- Identify and weigh evidence
- Requirements of investigative report and how to fairly summarize relevant evidence
- Understand requirements in a written determination

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Disclaimers

- Not legal advice
- Cannot possibly cover everything
- Level 1 Course

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See you in Lesson 2!



Lesson 2

Title IX and the New Regulations



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TITLE IX & THE NEW REGULATIONS

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THE LAW

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.

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TITLE IX IS:

- Federal law
- Enforced by the Office for Civil Rights (OCR)
- Prohibits Discrimination based on sex
- Historically viewed as simply requiring gender-equity in athletics

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**2020 REGULATIONS
REQUIRE THE FOLLOWING
TRAINING FOR TITLE IX
INVESTIGATORS**

- Definition of Sexual Harassment
- Scope of Education Program/Activity
- Investigation/Grievance Process
 - Hearing
 - Appeals
 - Informal Resolution Process
- How to Serve Impartially
 - Avoiding Prejudgment of the Facts
 - Conflicts of Interest / Bias
- Investigative Report Writing
- Fairly Summarize Relevant Evidence

A photograph of a man in a dark suit and tie standing in front of a whiteboard, pointing at a line graph. He is smiling and looking towards a group of people whose backs are to the camera. They are seated in a meeting room with large windows in the background.

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**2020 REGULATIONS REQUIRE
THE FOLLOWING
TRAINING FOR TITLE IX
DECISION MAKERS**

- Definition of Sexual Harassment
- Scope of Education Program/Activity
- Investigation/Grievance Process
 - Hearing
 - Appeals
 - Informal Resolution Process
- How to Serve Impartially
 - Avoiding Prejudgment of the Facts
 - Conflicts of Interest / Bias
- Technology at Hearing
- Relevant Evidence/Questions

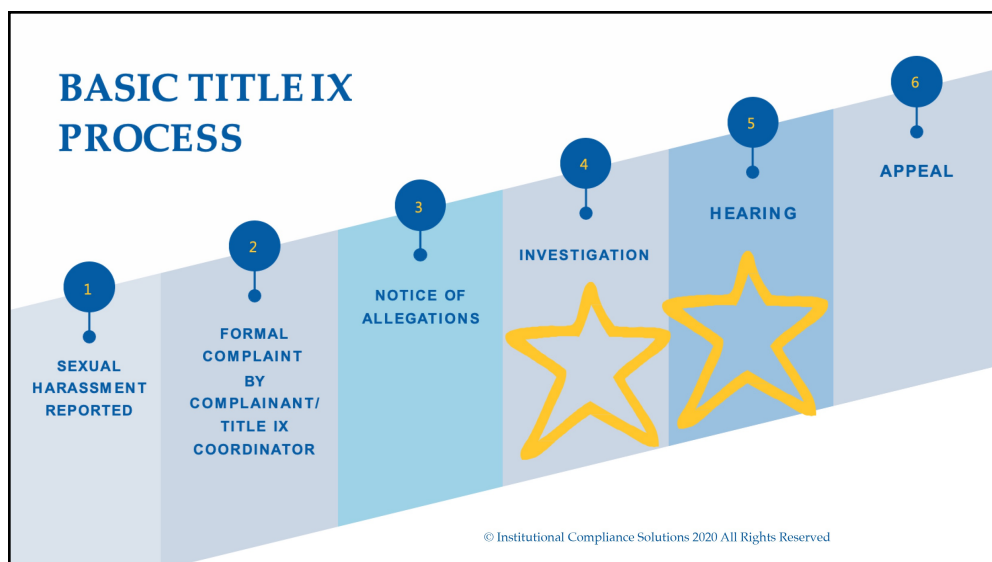
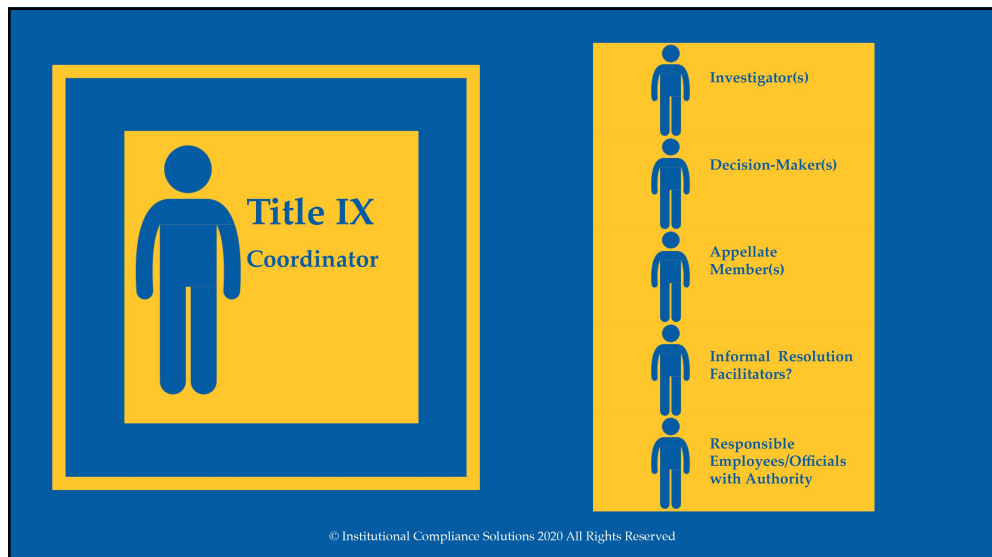



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**OVERALL PROCESS
AND YOUR ROLE**

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LANGUAGE

Guilty

Responsible

Trial

Hearing

Crime

Violation

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PARTIES IN AN INVESTIGATION


COMPLAINANT/
REPORTER


RESPONDENT


ADVISOR
VS.
ADVOCATE


WITNESSES


OTHER

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See you in Lesson 3!

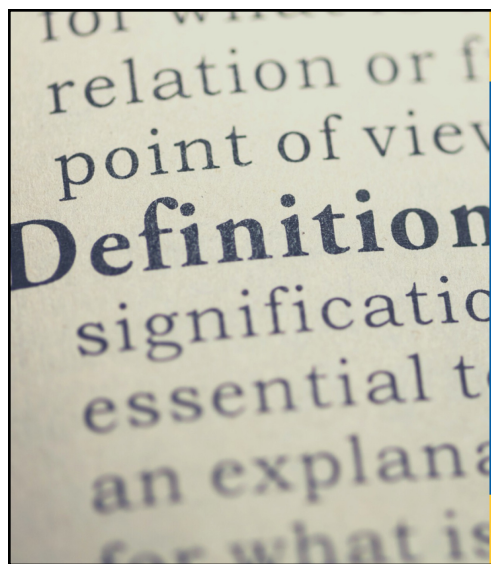


Lesson 3

Sexual Harassment and
Education Program
or Activity



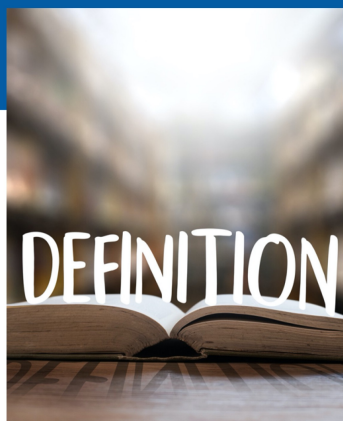
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DEFINED TERMS

- Actual Knowledge
- Complainant/Respondent
- Formal Complaint
- Sexual Harassment
- Supportive Measures

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DEFINITIONS OF SEXUAL HARASSMENT

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Sexual Harassment 106.30

Conduct on the basis of sex that satisfies one or more of the following:

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- 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 recipient's education program or activity; or
- "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

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Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- (i) The length of the relationship
- (ii) The type of relationship
- (iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

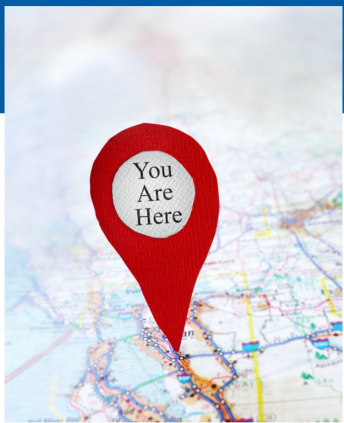
Definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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WHERE CONDUCT OCCURS

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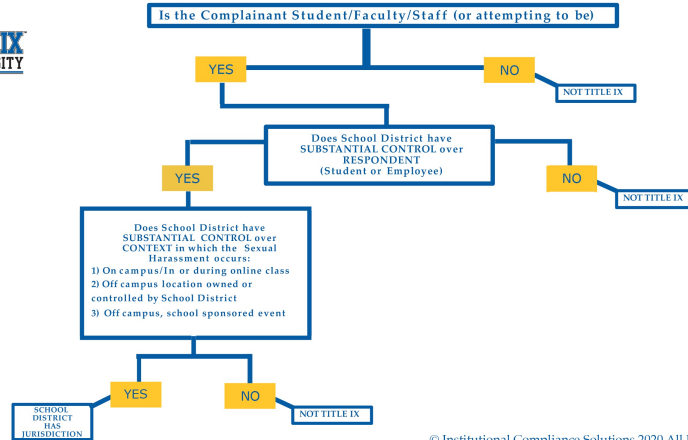
**SEXUAL
HARASSMENT
+
PROGRAM
OR ACTIVITY
=
FORMAL TITLE IX
PROCESS**

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Jurisdiction/Education Program or Activity

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SCOPE OF EDUCATION PROGRAM/ACTIVITY

EDUCATION PROGRAM/ACTIVITY

- Locations, events, or circumstances (operations)
- recipient exercised substantial control over both the respondent AND the context in which the sexual harassment occurs
- Includes any building owned or controlled by student organization that is OFFICIALLY RECOGNIZED by school district
- Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity
- Does not create or apply a geographic test, does not draw a line between "off campus" and "on campus," and does not create a distinction between sexual harassment occurring in person versus online.

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Jurisdiction Continued

- No single factor to determine exercise of substantial control
- May require organization to abide by Title IX policies and procedures
- May have to bifurcate conduct

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See you in Lesson 4!



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Lesson 4


Serving Impartially

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CONFLICTS OF INTEREST/BIAS/ RESERVING JUDGMENT

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RECOGNIZE CONFLICTS OF INTEREST/BIAS

- Generally toward Complainants/
Respondents
- In a specific case

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EXPLICIT BIAS

“Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously

Example: Statement - “I don’t think a woman would make a good CEO... Women are too emotional.”



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IMPLICIT BIAS

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

- Expressed indirectly
- Unaware of bias
- Operates subconsciously

Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.

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CONFLICTS OF INTEREST

SUSPEND YOUR MIND

- Daily Choice
- Reserve judgments until all facts are gathered

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REMINDERS!

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KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies
- Use policy consistent language
- What are your findings?
- Where do your findings go?
- Who is the point of contact for complainant/respondent?
- Who is the point of contact re: retaliation?
- What it is the hearing and/or appeal process?
- Informal resolutions?



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DURING THE INVESTIGATION:

STAY IN YOUR LANE

- Your role as fact gatherer
- Burden on you to gather information - not on parties to provide it
- Investigating violations of specific policy: not law or policies outside of your charge/responsibility

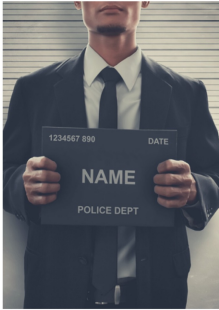
Ex: Discovering a management issue while investigating harassment complaint

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END GAME



CIVIL
LAWSUIT



CRIMINAL
INVESTIGATION



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On to . . .
Lesson 5!


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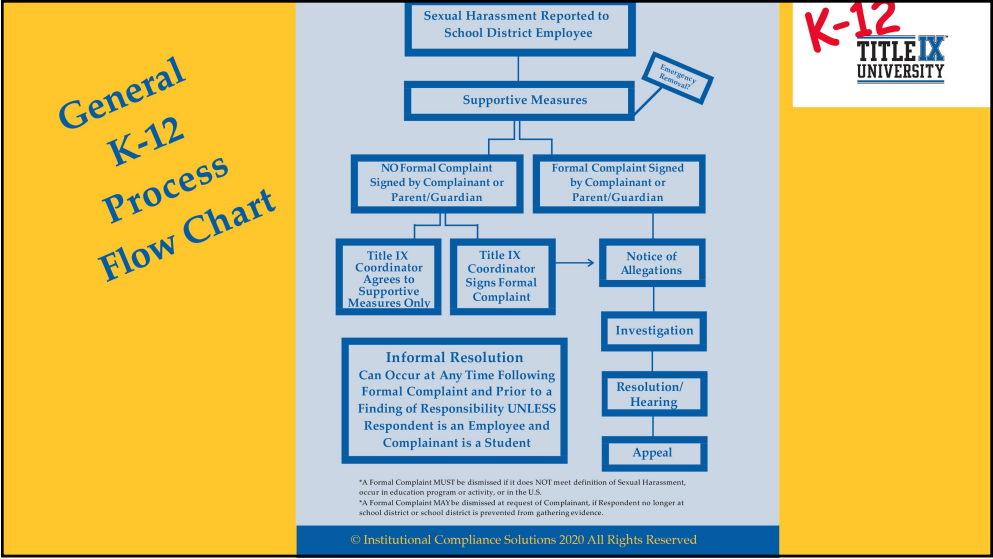
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Lesson 5

Title IX Process – Investigations



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SUPPORTIVE MEASURES

Purpose:

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

Burden: remains on the school district not the parties

Not: punitive or disciplinary

Confidential: as much as possible

Document: when provided, when not provided and why

Title IX Coordinator: ultimately responsible for effective implementation, but others can also implement

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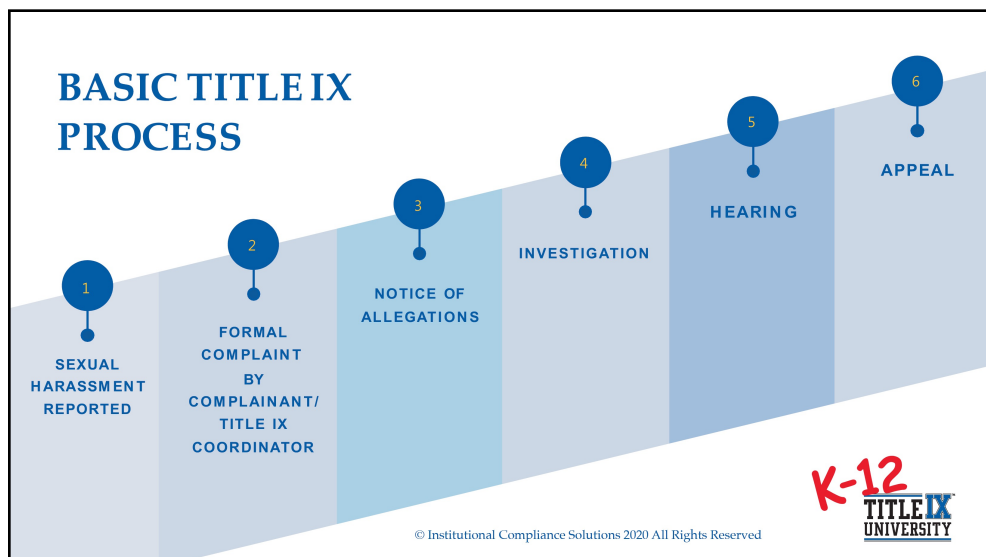
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RESPONSE TO A FORMAL COMPLAINT (GRIEVANCE PROCESS) 106.45(B)(1)(I)-(X)

- Treat parties equitably
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process
- Trained Title IX Team
- Presumption that respondent is not responsible
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability)
- Describe range of sanctions and remedies
- Standard of evidence (same for students and employees)
- Procedures and permissible bases for appeals
- Notice of Allegations containing specific information as outlined in regulations

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FORMAL COMPLAINT (106.45(B)(3)(I))

- Document (paper, email, or online submission)
- Signed by Complainant (digital signature is okay) or Title IX Coordinator
 - Alleging sexual harassment, against the respondent AND requesting that school district investigate
- Complainant must be participating in or attempting to participate in an education program or activity of the district with which the formal complaint is filed

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DISMISSAL OF A FORMAL COMPLAINT

MUST Dismiss if:

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

**May act under another provision of code of conduct*

May Dismiss if:

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complainant or allegations
- Respondent is no longer enrolled or employed by school
- Specific circumstances prevent the school from gathering evidence sufficient to reach a determination

**Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties*

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RESPONSE TO A FORMAL COMPLAINT (GRIEVANCE PROCESS) 106.45(B)(1)(I)-(X)

MUST

- Ensure that burden of proof and burden of gathering evidence with school district, not parties (no medical or counseling records w/o written consent of party)
- Provide equal opportunity to present witnesses (including EXPERT), and inculpatory/exculpatory evidence
- Not restrict ability of either party to discuss the allegations or to gather/present relevant evidence
- Provide opportunity for both parties to have advisor (can be attorney and can restrict the extent to which advisor can participate in the process)
- Provide written notice of date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare to participate
- Provide equal opportunity to inspect and review evidence obtained as part of investigation (even if not relied on) - sent to party AND advisor (electronic or hard copy) with 10 days to respond prior to completion of investigative report
- Create investigative report that fairly summarizes relevant evidence
- Provide report to parties AND advisors 10 days prior to hearing for review and written response

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- Parents/Guardians potentially have a legal right to act on behalf of minor Complainants, Respondents, and/or Witnesses during a Title IX grievance process
- Entitled to an advisor regardless of whether parents or guardians are supportive/involved.

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See you in Lesson 6!



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Lesson 6

Investigative Techniques Overview



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THEMES/END GAME



Fair/Balanced approach



Uncover all relevant facts/information
• stone analogy



Common sense approach-
beware of rabbit holes

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BE CURIOUS

It is one of the most important skills for an investigator.

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ORGANIZATION & PROMPTNESS

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PROMPT TIMELINES

- Policy must designate reasonably prompt timeline
- Interview witnesses as soon as possible
- Unavoidable delays
- Notice of extensions
- Addressing delays in record keeping/report

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Organize

- Plan order of interviews/when to interview respondent
- In person vs. virtual vs. phone
- Explaining process and your role
- Reassurance/retaliation

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There is more than one “right way”
to investigate.

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INTERVIEW SKILLS

- Develop rapport
- Observe
- Be professional
- Outline questions/flexibility

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THE ATMOSPHERE MATTERS

- Consider the look and feel of the office/interview location
 - not too formal but still professional
 - not intimidating

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**INVESTIGATE AS
THOUGH YOU WILL
BE INVESTIGATED**

- Have a clear/organized plan - but remain flexible
- Document Document Document (delays, objections EVERYTHING)
 - Duplication of documentation
 - To record or not to record?
 - Inclusivity vs. Exclusivity

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See you in Lesson 7!



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Lesson 7

Investigative Techniques...

Working with Witnesses
and Evaluating Evidence



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INTERVIEW TECHNIQUES & CONSIDERATIONS/ RELEVANCY


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COMPLAINANTS

- Trauma informed information
- Managing expectations
- Reluctant complainants and retaliation
- Interim/support measures
- Next Steps
- Bias/Conflict of Interest

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RESPONDENTS

- Trauma informed information
- No presumption of responsibility
- Managing expectations
- Interim/support measures
- Simultaneous and ongoing criminal investigations
- Next Steps
- Bias/Conflicts of Interest

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Types of Questions

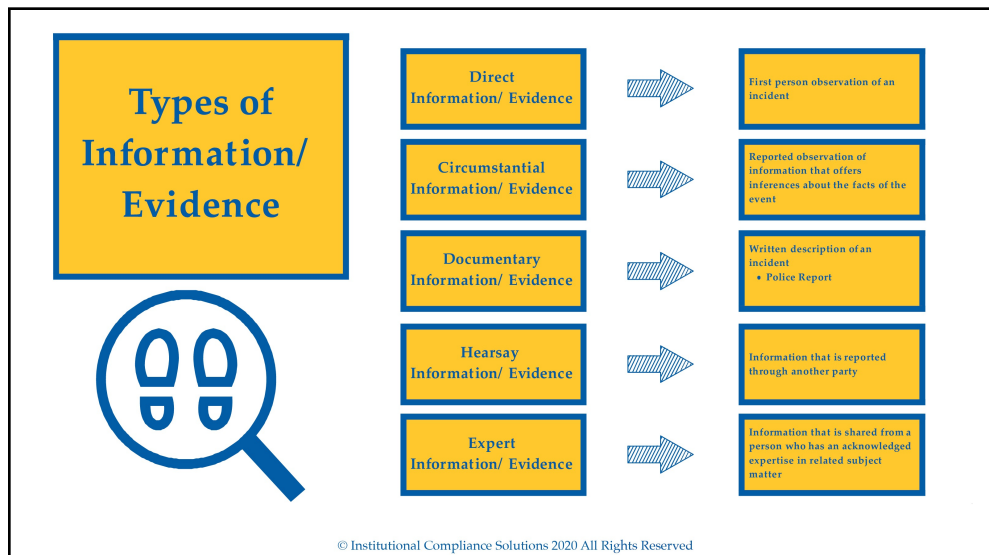
- Who, what, when, where, why
- Open ended
- Repeat, repeat, repeat
- Circling techniques
- Clarity on timelines/who is involved etc.
- Openings
- Closing questions
- Opportunity to provide clarification after interview

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IDENTIFYING & WEIGHING EVIDENCE

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WITNESSES

- Eye Witness
- Character Witnesses???
- Hearsay issues
- Witnesses identified by the parties
- Experts

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IDENTIFYING OTHER EVIDENCE

- Videos
- Social Media
- Text Messages
- Physical Evidence
- Applications
- SANE Exam

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RELEVANCY

- Regulations do not define relevancy
- Regulations define some things that are not relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent.

Ir relevant

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Relevancy Continued

- Ordinary Meaning (Not a legal term)
- Does the evidence tend to make a fact more or less likely to be true

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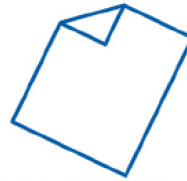
On to Lesson 8!



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Lesson 8

Investigative Report Writing



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REPORT CONTENT

- How reported
- Date of Formal Complaint
- Who investigated
- Policy
- Timelines (of events and of investigation)
- Information from parties and witnesses
- Information not included or witnesses not interviewed and why
- Physical Evidence
- Summary of Relevant Evidence



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WHO IS YOUR AUDIENCE?



What is the intent of the report/ Who needs to understand/ Use it Where/ How it be used

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ORGANIZATION IS KEY

- By party/witness?
- By time/chronological?
- By event?



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REPORT MUST

- Fairly summarize relevant evidence
- Be provided to parties AND advisors
- Hard copy or electronic

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BURDEN OF PROOF

Always with the School District!

Make it clear in your report

NEVER- the respondent did not prove

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REPORT CONTENT CONSIDERATIONS

- Connect the fact of the case to your policy/definition
- Include elements of the policy section at issue
- Credibility?

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DOCUMENT DOCUMENT DOCUMENT

- CONSISTENT
- THOROUGH
- CLEAR
- TIMELY

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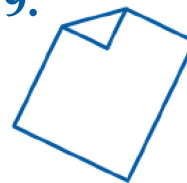
K-12 INVESTIGATION FLOW CHART



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Almost there!
See you in Lesson 9.



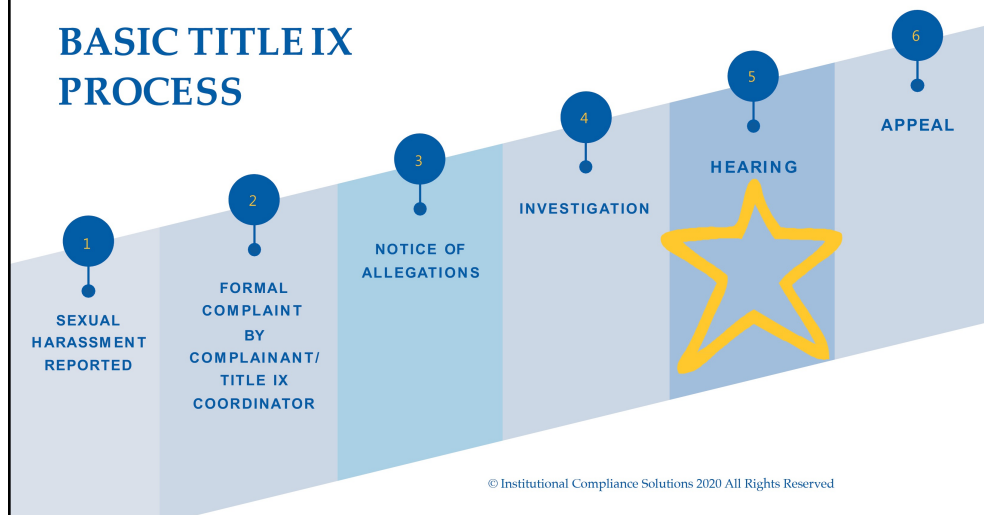
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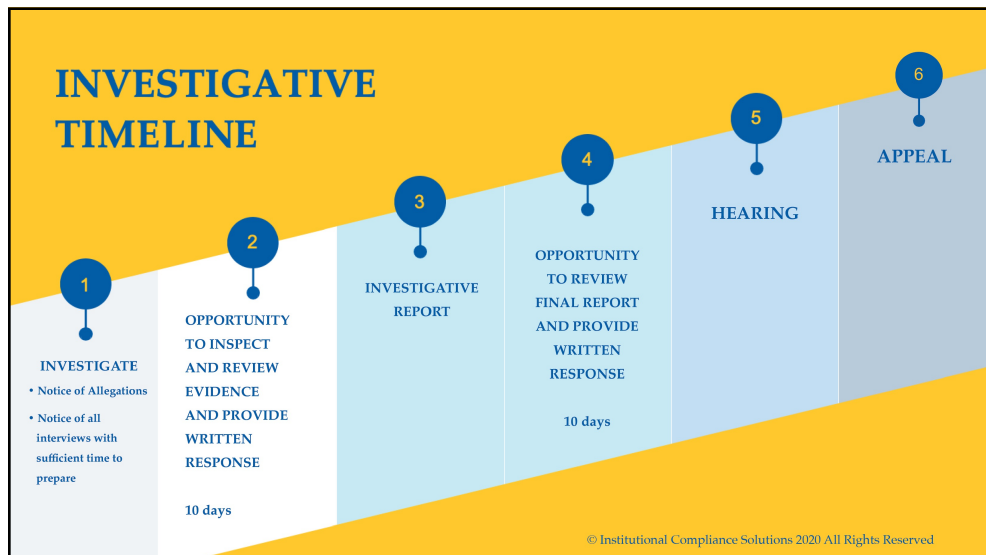
Lesson 9: Title IX Process/ Decision Making

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BASIC TITLE IX PROCESS



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THE LAW

- No Hearing?
- Live Hearing?
- Live Hearing under Regulations

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Other Processes to Consider:

- IDEA
- 504
- ADA

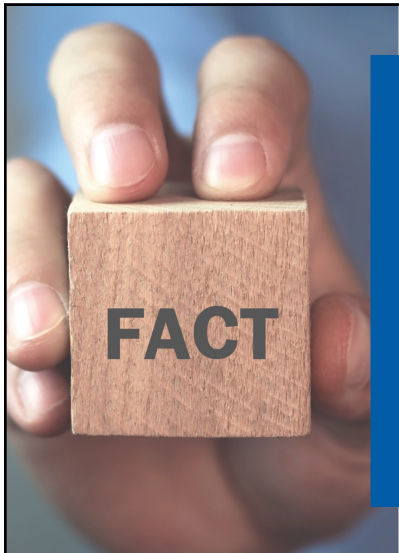
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THE Q & A PROCESS

- With or without a hearing
- Before reaching determination
- Written, relevant questions a party wants to ask to any party and/or witness
- Provide the answers
- Provide limited opportunity for follow-up from each party
- Relevance determinations = must be explained to the party proposing the questions if question is excluded


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FACT FINDING

- Was the information a fact?
- Was the information disputed?
 - If no-- this information can be considered "fact"
- Did other evidence corroborate the information?
 - Consistencies
 - Inconsistencies


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EVALUATING WITNESSES/ REVIEWING EVIDENCE

- Focus on behavior, not character
- What information is known?
- What information is unknown?
- What questions could clarify your unknowns?

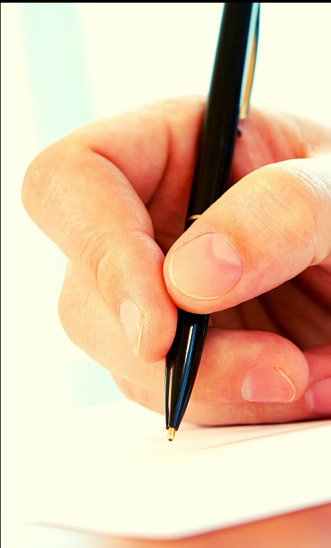
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RESPONSIBILITY

Decision-maker must issue a WRITTEN DETERMINATION regarding responsibility - using standard of evidence established by the school district. 106.45(b)(7)

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WRITTEN DETERMINATION MUST INCLUDE 106.45(B)(7)(II):

- Identification of ALL allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of formal complaint through the determination including:
 - notice to parties
 - interviews with parties and witnesses, site visits
 - methods used to gather evidence, hearings held
- Findings of fact supporting the determination
- Statement of, and rationale for the result as to each allegation including:
 - determination regarding responsibility
 - any disciplinary sanction
 - whether remedies designed to restore or preserve equal access to the school district's education program or activity will be provided by the school district to the Complainant.
- School district's procedures and permissible bases for the Complainant and Respondent to appeal

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ARTICULATING DECISION/RATIONALE

Articulate what you believe happened based on:

- Standard of evidence
- Elements of alleged violation
 - Connect rationale to each element
 - Identify facts supporting each element(s)
 - Identify facts that do not support the element(s)
- Include any admissions that occur during the hearing
- If using a formula to weigh evidence/information, make sure to follow explicitly

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APPEALS 106.45(B)(8)

- **MUST** offer both parties an appeal re: responsibility, recipient dismissal of formal complaint, or any allegations on following bases:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence
 - Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s) - generally toward complainants or respondent or toward specific party
 - May include additional bases
- **Most be included in Notice of Outcome**

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INFORMAL RESOURCES

May NOT:

- Be required/condition of enrollment or employment
- Be offered unless Formal Complaint is filed
- Be offered or facilitated when allegations of employee sexually harassing student

May:

- Be facilitated at any time after Formal Complaint and prior to determination regarding responsibility
- Expel if agreed to in Informal Resolution
- Provide Informal Resolution Process (NOT REQUIRED TO PROVIDE)

Must:

- Provide information regarding Informal Resolution Process in initial Notice of Allegations
- Provide parties written notice of informal resolution with
 - allegations
 - requirements of process (including what information/documents will be shared)
 - circumstances which presume Formal Complaint arising from same allegations
 - right to withdraw/resume grievance process
 - consequences-including records kept/shared
- Obtain voluntary, written consent
- Have reasonably prompt time frames

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Congrats! See you in Lesson 10!

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Wrap Up and Assessment



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Wrap Up

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Learning Objectives

- Understand the law and regulations
- Understand Title IX process and your role and responsibilities
- Recognize and Evaluate Prohibited Conduct and Jurisdiction
- Identify conflicts of interest/bias
- Understand how to assess relevancy
- Identify and weigh evidence
- Recognize role of advisor/witnesses/parties in a hearing
- Understand requirements in a Notice of Outcome and Determination

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Questions???

- ❖ We are here for you!
(info@titleixu.com)
- ❖ Contact your Title IX Coordinator

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ASSESSMENT OF KNOWLEDGE

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