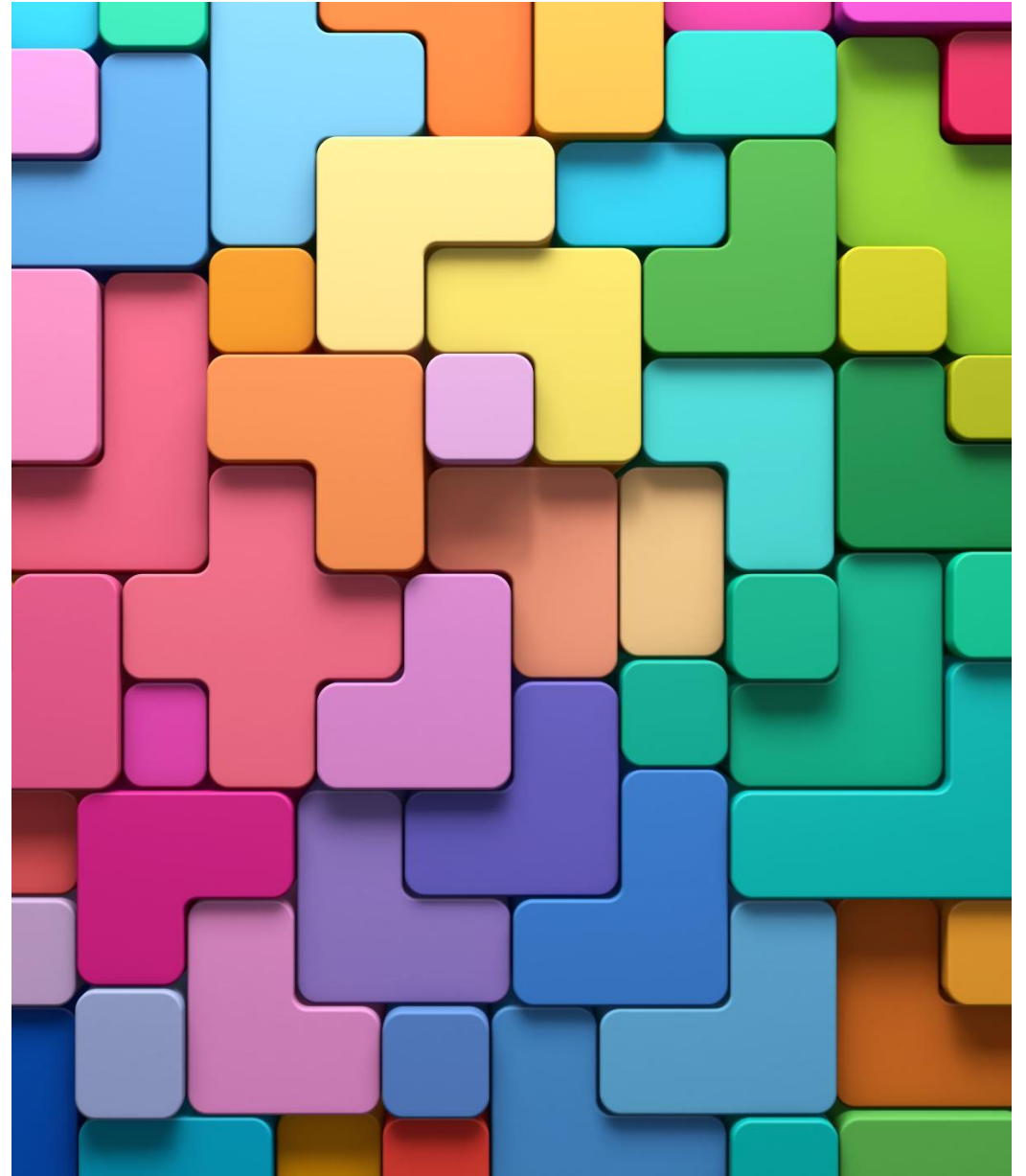


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# Title IX training for coordinators, investigators, and decision makers

*Presented by Amber DeCarli, Esq.*

*Member Attorney with the Charter  
School Law Group*



# Title IX

- No person in the United States shall, on the basis of 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.





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# School's responsibilities

- The Department's regulations impose important legal obligations on the school.
  - Notifications
  - Training
  - Appoint responsible parties including Coordinators
  - Respond according to the regulations.

# Grievance Process Policy Requirements

- Treat complainants equitably by providing remedies any time a respondent is found responsible, treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel must include training on the definition of sexual harassment, the scope of the school's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.
- A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Any provisions, rules, or practices other than those required by Title IX that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties

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# Sexual Harassment Definition under Title IX

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
  - (i) A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
  - (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
  - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VA WA).

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# Definitions

## Complainant

- an individual who is alleged to be the victim of conduct that could constitute sexual harassment. - The Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.

## Respondent

- an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

## Formal Complaint

- A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
    - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process and must comply with requirements for all Title IX personnel to be free from conflicts and bias.
  - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
  - A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method the school designates.
-



# School's Obligated to Respond

- Schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- School is deemed to have Actual Knowledge when allegations are made to the Title IX coordinator or to ANY employee of the school.



# Response must include:

- Offering supportive measures to the complainant (i.e., the person alleged to be the victim).
- 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.
- Following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- School must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.
- With or without a formal complaint, the School must comply with all the mandatory response obligations.



# Statement

Notice of nondiscrimination. A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

## 1) Contents of notice of nondiscrimination.

- i. The notice of nondiscrimination must include the following elements:
  - a) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission and employment;
  - b) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both;
  - c) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator;
  - d) How to locate the recipient's nondiscrimination policy and the recipient's grievance procedures; and
  - e) How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination.

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# Training requirements



- 
- The school must ensure training for:
    - employees
    - investigators
    - decisionmakers,
    - other persons responsible for implementing the school's grievance procedures
    - persons who have the authority to modify or terminate supportive measures
    - facilitators of informal resolution process
    - Title IX coordinator and designees
- Upon hiring or change of position that alters their duties under Title IX, and annually thereafter.

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# Employees must be trained on:

The recipient's obligation to address sex discrimination in its education program or activity;

The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and

All applicable notification and information requirements

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# Title IX players

- In addition to the training requirements for employees, all investigators, decisionmakers, and other persons who are responsible for implementing the School's grievance procedures or have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities:
  - (i) The recipient's response obligations under Title IX;
  - (ii) The recipient's grievance procedures;
  - (iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
  - (iv) The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance.



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# Facilitators of informal resolution process

- In addition to the training requirements for staff, all facilitators of an informal resolution process must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

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# Informal Resolution

- A school, in its discretion, may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained.
- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.
- Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



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# Title IX Coordinator and designees

- In addition to the training requirements for staff, Title IX players, and facilitators, the Title IX Coordinator and any designees must be trained on their specific responsibilities, the school's recordkeeping system and the Title IX requirements of records retention, and any other training necessary to coordinate the recipient's compliance with Title IX.
- Quick note:
  - If a complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator must consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973, throughout the recipient's implementation of grievance procedures.





# Recordkeeping

- School must maintain for a period of at least seven years:
  - For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures, and the resulting outcome.
  - For each notification, the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, records documenting the actions the school took to meet its obligations.
  - All materials used to provide training. A recipient must make these training materials available upon request for inspection by members of the public.

# Investigations

- The School must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.
- During the grievance process and when investigating:
  - The burden of gathering evidence and burden of proof must remain on schools, not on the parties.
  - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
  - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
  - Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.
  - Schools must send written notice of any investigative interviews, meetings, or hearings.
  - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
  - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
  - Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
  - Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
  - Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
  - Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
  - The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so

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# Rape Shield Protections

- Title IX provides protections for complainants deeming irrelevant questions and evidence about a complainant's prior sexual behavior, unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.



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# The Decision-Maker

- Must issue a written determination regarding:
  - responsibility with findings of fact,
  - conclusions about whether the alleged conduct occurred,
  - rationale for the result as to each allegation,
  - any disciplinary sanctions imposed on the respondent, and
  - whether remedies will be provided to the complainant.
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

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# Appeal

- School must offer both parties an appeal from a determination regarding:
  - responsibility,
  - a school's dismissal of a formal complaint or any allegations therein, on the following bases:
    - procedural irregularity that affected the outcome of the matter,
    - newly discovered evidence that could affect the outcome of the matter, and/or
    - Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.



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# Staff member responsibilities:

1

Always record meetings or pull another person into the meeting.

2

Take detailed notes

3

Notify the Title IX Coordinator and forward all notes and statements

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# Title IX Coordinator



Begin a communication log and fill out a notice report form.



Contact the Complainant to provide supportive measures, information about the grievance process, and an opportunity to submit a [formal complaint](#).



Once a formal complaint has been received, the Title IX Coordinator conducts an initial assessment of the allegation and identifies any necessary immediate steps and supportive measures (e.g., timely warning, no contact orders, or compulsory notification to a child welfare agency or law).



If emergency removal is being considered, an individualized safety and risk assessment is conducted, and the Respondent is provided an opportunity to challenge the decision immediately following the removal. The Complainant may also participate in any meeting regarding challenge to an emergency removal at the discretion of the Title IX Coordinator.



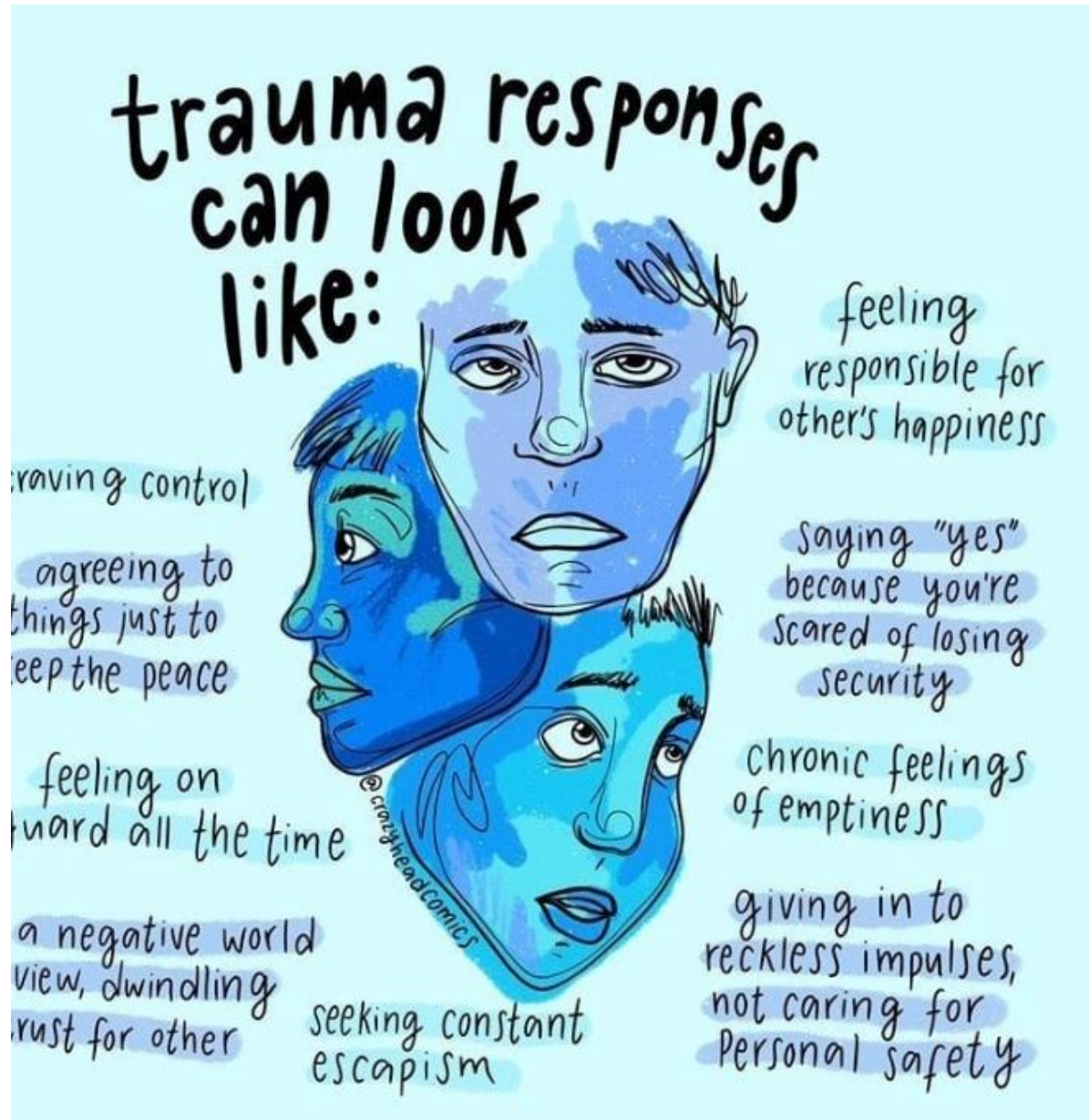
# Initial Response to Sexual Harassment Emergency Removal

- A School may remove a respondent from the School's education program or activity on an emergency basis, provided that the School:
  - undertakes an individualized safety and risk analysis,
  - determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
  - provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- This has to be taken in conjunction with the rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

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# Initial assessment and jurisdiction determination

- If the Complainant did not report the incident directly, or provided only limited information, then typically the next step is to contact the Complainant and conduct an intake interview.
- An intake interview should provide the interviewer — often the Title IX Coordinator — with enough information to help the interviewer sufficiently understand the allegations and ascertain jurisdiction, and should:
  - Ensure the Complainant has an Advisor or access to an Advisor
  - Provide Complainant with written notice of rights and options, including the right to an Advisor (this may take the form of your VAWA Brochure)
  - Discuss with the Complainant the available supportive measures
  - Explain applicable policies, procedures, and resolution options
  - Answer any questions and discuss any concerns the Complainant might have related to a formal investigation and resolution.



# Trauma-Informed Interviewing

- Part of your professional responsibility is to employ trauma-informed investigation techniques.
- You are responsible for understanding and using these techniques; awareness and appropriate implementation are part of the industry standard when investigating alleged sexual assaults and other potentially traumatic events.

---

## **Trauma-informed and cognitive interviewing techniques may help to resolve gaps in memory, so consider asking the individual to:**

- Recount the incident in reverse or non-sequential chronological order;
- Try to recall from a multi-sensory approach. Rather than ask what they recall, ask about sights, smells, tastes, touch, feelings, audibles, or other non-linear aspects of an incident that might evoke details that a linear recital of memory may not.
- Recount the incident from the perspective of what a neutral third-party observer of the scene would have recalled.
- Recount the incident while drawing a picture of the scene on paper.
- Revisit the location of the incident and walk you through what happened. This should only be done when a person is willing to do so, as it can be triggering. Only experienced and well-trained investigators should employ such an approach. Working with a trained advocate may also be beneficial.



# Create a comfortable interview environment by:



- Setting an informal and comfortable tone by choosing a neutral interview location, not sitting behind a desk, asking about biographical and other information from outside the context of the investigation, and adopting an approachable manner.
- Establishing rapport and a conversational tone. Avoid interrogation and adversarial approaches.
- Offering cold or hot beverages or small snacks (if available)
- Providing stress balls, stress toys, stuffed animals, etc.
- Finding a private (but not isolated) space for the interview
- Being transparent about your role and the process
- Offering breaks as needed
- Encouraging the parties to bring an Advisor/advocate to the interview

# Title IX Jurisdiction

1. Does the institution currently control the Respondent (e.g., student, employee, an individual otherwise subject to potential disciplinary action, etc.)
2. Is the Complainant currently participating—or attempting to participate in—the institution’s educational programs or activities?
3. Does the alleged misconduct, if true, potentially meet one or more of the definitions for misconduct covered by Title IX, according to §106.30 of the 2020 TIX regulations?
  1. Sexual Harassment (Quid Pro Quo OR Hostile Environment)
  2. Sexual Assault (rape, sodomy, assault w/ an object, fondling)
  3. Nonforcible Sex Offenses (incest, statutory rape)
  4. Dating Violence
  5. Domestic Violence
  6. Stalking
4. Does the institution control the context of the alleged harassment/misconduct?
  1. Did the misconduct occur:
    1. At a building or property owned or controlled by the institution, or by an officially recognized student organization;
    2. At a building or property used for a program or event sponsored by the school or an organization recognized by the school;
    3. At locations, events, or settings under substantial control of the institution, including certain online/electronic circumstances; or
    4. Outside of institutionally controlled programs, activities, or locations, BUT where the effect of such misconduct has in-program effects, and thus the effect falls within Title IX (e.g., hostile environment)?
5. Did the alleged misconduct against the Complainant occur within the United States?

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# Assess next steps based on the information provided by Complainant:

- If a formal complaint has been submitted, an investigation will follow, unless the allegations fall outside of the Recipient's jurisdiction and/or meet the grounds for dismissal.
  - The Title IX Coordinator will assign or engage the investigator(s). Investigators should review all preparation materials in this Plan.
  - Title IX Coordinator (or designee) sends [Notice of Investigation and Allegations](#) (NOIA) to the [parties](#), including anticipated timeline.
  - Title IX Coordinator (or designee) documents any supportive measures offered/taken
- An informal resolution may be pursued at any time prior to a final determination, with the voluntary, written consent of the parties and approval of the Title IX Coordinator.
  - In those cases, the Title IX Coordinator (or designee) will facilitate an effective informal resolution.

# Investigators



**Review all preparation materials in this Plan**



**Confer with Title IX Coordinator (or designee) on overall strategy and process for the investigation, identifying witnesses and evidentiary sources, preliminary timeline, etc.**



**Schedule interviews with Complainant, Respondent, and witnesses.**

Typically, the investigators should interview the Complainant first.

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# Your Role:



You are a neutral fact-gatherer/factfinder. You do not represent the complainant, the respondent, or the school/district.



You do not decide whether or not a policy was violated. When the investigation is complete, an independent decision-maker will determine if there is enough evidence to support a policy violation.



You don't have a stake in the outcome; your goal is to develop the most accurate understanding of all the facts and circumstances by interviewing each party and witness and collecting additional evidence as available.

# Template Questions

- Identify and consider the source.
  - Direct Witness
  - Outcry Witness
  - Indirect Witnesses
  - After-the-Fact Witnesses
  - Character Witnesses
  - Expert Witnesses
- Start with open ended prompting questions.
  - Can you tell me more about where you were?
  - Walk me through what happened after she made that statement?
  - How did you feel at that time?
    - Has that changed? How do you feel now?
- Then ask more direct questions as needed?
  - You stated that you did not tell her it made you feel uncomfortable, why did you not tell her that you were uncomfortable?
  - Did you make a sexual advance on her the day prior by stating that you wanted to



# Interview Outline

- Thank the interviewee for meeting with you.
- Introduce yourself (yourselves). Regardless of any other institutional role, your only role in that room is that of investigator. Introduce yourself as such, not with your other title(s). Omit such titles from email correspondence related to the investigation to minimize any assertion of conflict of interest with your other institutional role/roles, if any.
- Indicate what your role is as an investigator and how it differs from others with whom they may have interacted (e.g., impartial investigator vs. advocate). Indicate that your role necessitates asking difficult or sensitive questions to thoroughly perform your role and that you will be professional and direct in your questioning.
- Explain that you will be taking notes (or someone else will — and if so, introduce the note-taker), or that you are recording the interview so that you get all the information summarized accurately.
- Explain your process for transcription and interview verification.
- Before questioning begins, ask the person being interviewed if they have any questions about the process (sometimes Advisors may have questions about the process and you can permit those at your discretion).
- Explain the process of investigation and address any concerns they have in order to foster the person's cooperation.
- Attempt to build rapport, establish trust, and create comfort.
- If the person brought an Advisor, reinforce the role of the Advisor as an observer, not a participant (ideally, you went over this with the Advisor before the interview).
- Explain your policies/expectations around privacy, confidentiality, and information sharing. Reassure the interviewee that all information will be kept confidential by the institution to the extent possible, but that the parties will be informed of the information gathered.
- Explain the retaliation policy and that no retaliation will be permitted.
- Make sure witnesses understand what you will use their testimony for.
- In emotional situations, be sympathetic in a neutral manner using statements such as, "This can be hard to talk about," or "I know this is difficult for you." You can be trauma-informed without being biased or showing bias. Some of your witnesses may also be survivors themselves, so also be trauma-informed, even when not interviewing the Complainant. Don't let being trauma-informed compromise your need to get answers and information but choosing the right time and place for tough or sensitive questions should be a strategic decision. If you do not ask the difficult questions, you are not fulfilling your role as an investigator.

# Interview Outline

- Ask the parties and all witnesses if they know of anyone who might be a witness to the incident(s) or who may have relevant knowledge about the incident(s).
- Ask the parties and all witnesses if there are any documents, photos, videos, texts, postings, receipts, emails, etc., that might be helpful, such as journals, diaries, other written descriptions, calendar entries, or notes.
- Gather any evidence, documents, and items that are submitted. Originals are preferred to copies, and all materials should be in unaltered form. Log them in your evidence log including when, from whom, and in what manner you obtained each.
- Give all those interviewed an opportunity to ask questions. Record the questions asked in your notes.
- Ask interviewees if there is anything else you should be asking them, if there is any information they wish to volunteer, or if there is anything they thought you would ask about but did not.
- Ask the parties if there are specific questions they would like you to ask the other party or a specific witness.
- Review the next steps in the process and any follow-up that may be necessary before the interview is complete.
- Invite interviewees to supplement their statements if they think of anything else important to share with you. Offer your own contact information. Use a professional (not personal) phone number and/or e-mail address.
- Ask interviewees to provide the best way for you to contact them, should you have any follow-up questions or issues to address; make sure they are aware that follow-up questions or a second interview may be necessary.

# Interview Outline

- The identities of and relationships between the parties
- The identities of and relationships between witnesses and the parties (and often, witnesses and other witnesses. Your witness flowchart can be used to create a pictorial relationship web). You are trying to ascertain whether the witnesses are neutral; have loyalties to one or all parties; or have animus toward one or all parties that may bring bias to their statements, subtly or overtly, consciously or subconsciously.
- Details of the alleged misconduct, including date(s) and time(line), place(s), circumstances, witnesses, and available corroborating and/or triangulating evidence.
- Effect of the alleged conduct on the Complainant and others.
- Response to the incident by the Complainant before and after filing the formal complaint.
- Reasons or motives for the Complainant to make the allegations about the Respondent.
- E-mails, text messages, social media communication or postings, photos, audio or video recordings, and conversations between the parties themselves, between the parties and witnesses, and between witnesses.
- Reconciling disparities or discrepancies between witness testimony or indications of evidence .
- Predation. Patterns or behaviors that suggest grooming, isolation, and/or other indicators of potential predation can be difficult to identify and require advanced analysis skills. If the evidence suggests such patterns or behaviors, predatory indicator questions such as those suggested below can be addressed to the Respondent. They are not litmus tests, and the answers do not afford proof of predation but may help an investigator decide that a deeper inquiry may be needed.
  - If the Complainant was here right now, what would you say to them if you could say anything you wanted?
  - If you could do anything differently with respect to the incident now, looking back on what has happened, what would you change?
  - How do you think this incident has impacted the Complainant?
  - Has anyone accused you of anything similar before?
  - Will I come across anyone in my interviews who will accuse you of conduct similar to the Complainant's accusation(s)?

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# Investigator's Investigation file



Communication Log



Investigation Timeline



All relevant evidence (interview transcripts/summaries, emails, text messages, etc.)



Copies of all relevant institutional policies and procedures in investigations file



Notice of Investigation and Allegations for the Complainant, Notice of Investigation and Allegations for the Respondent



Any relevant supportive measures

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# First Review

Send the parties and their Advisors all directly related evidence, allowing ten days for any review and comment, which should be considered in the completion of the report.

Materials can be sent as a draft report and separate file of directly related evidence that was excluded from the report as not relevant. This is the most efficient approach to organizing evidence.

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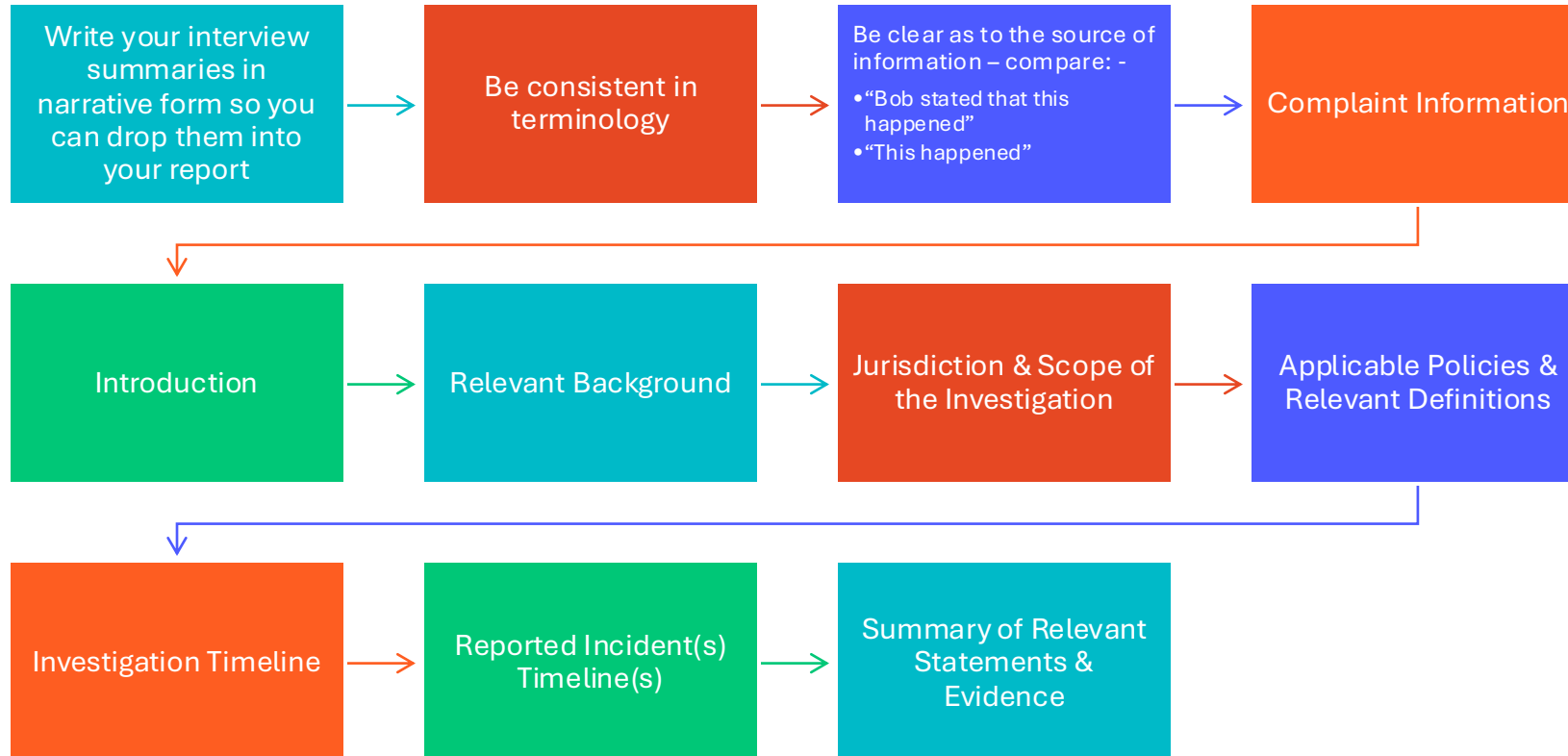
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# Investigation Report

- Investigators prepare an investigation report that summarizes relevant evidence, and, ten days prior to sending to the decision maker, send the report to the parties/Advisors, providing them yet another opportunity to review and comment.



# Report Contents





# Complaint Information

[RECIPIENT] INVESTIGATION REPORT

CONFIDENTIAL

Complaint Date: [Date]

Complainant: [Complainant's Full Name] ([RecipientID])

Initial Notice Date:  
(if different) [Date]

Initial Notice Received From:  
(if different) [Third Party's Full Name] ([RecipientID])

Respondent: [Respondent's Full Name] ([RecipientID])

Date Assigned: [Date]

Investigator(s): [Investigator(s)' Full Name(s) and Titles]

Investigation Report Date: [Date]

- Complaint date
- Complainant's name
- Initial notice date
- Initial notice received from
- Respondent name
- Date assigned to Investigator(s)
- Assigned Investigator(s)
- Notice of the investigation and allegations date
- Final investigation report date

# Introduction

## **[RECIPIENT] INVESTIGATION REPORT**

CONFIDENTIAL

Complaint Date:	<u>[Date]</u>
Complainant:	<u>[Complainant's Full Name] ([RecipientID])</u>
Initial Notice Date: (if different)	<u>[Date]</u>
Initial Notice Received From: (if different)	<u>[Third Party's Full Name] ([RecipientID])</u>
Respondent:	<u>[Respondent's Full Name] ([RecipientID])</u>
Date Assigned:	<u>[Date]</u>
Investigator(s):	<u>[Investigator(s)' Full Name(s) and Titles]</u>
Investigation Report Date:	<u>[Date]</u>

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# Jurisdiction

According to available information, the Respondent is currently a full-time teacher at Brookside High School, and the Complainant is currently a sophomore student at the same school. Both parties maintained the same school affiliations at the time of the reported incident.

The reported incident occurred in the photography lab at Brookside High School in Mukiteo, Washington, United States. If true, the reported incident would constitute sexual assault under District policy and Title IX.

The District controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the District's educational program as a student; therefore, the District has jurisdiction over this complaint pursuant to District Policy 2.2.

# Scope

- [Charter School's] Title IX Coordinator, [Name], which oversees Title IX compliance, commenced an investigation to determine:
  1. If the Respondent engaged in behavior which constitutes sexual assault under the Charter Schools policy in a school facility on October 2, 2025
  2. If the Respondent engaged in behavior which constitutes sexual exploitation under the Charter School's policy in a school facility on October 2, 2025
- Investigator(s) Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education Office for Civil Rights for Title IX investigations and School policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students.
- This investigation was designed to collect all available information to allow a decision-maker to determine whether School policy was violated.
- The following individuals were interviewed for this investigation:
  - Complainant, current student
  - Respondent, current student
  - Witness 1, current student, Complainant's best friend
  - Witness 2, current student, teammate of Respondent

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# Report Contents Continued

- Summary of Information relevant statements and evidence:
  - Chronologically
  - By witness summary
  - By allegation/topic

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# Credibility Assessment

- Complainant stated that the Respondent began communicating with the Complainant via text message and social media in September 2020. After a few weeks, Complainant informed Witness 1 about the communication, including sharing screenshots of conversations between the Complainant and Respondent with Witness 1. Witness 1's statements are consistent with Complainant's, and screenshots provided by Complainant are consistent with both individuals' statements.
- Jen's testimony about Mark contrasts with Mariana's testimony about Mark, and the accounts of Witness 1 and Witness 7 aligned with Mariana's testimony, not Jen's, during the investigation. The decision-maker may benefit from looking carefully at Jen's assertions about having received consent.

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# Factors to include in a credibility assessment are:

- **Inherent Plausibility:** Is the testimony believable on its face? Does it make sense?
- **Motive to Falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incident(s); or people who discussed the incident(s) with the parties around the time that they occurred); or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Consistency:** Is the person's testimony materially consistent over time? Is it consistent between interviews? With witnesses? With law enforcement? Etc.
- **Past Record:** Does the Respondent have a history of similar behavior in the past?
- **Effect on the Complainant:** While not determinative, what is the effect of the incident(s) on the Complainant's behavior? How might a reasonable person react to the situation (Note that there is no "right way" to respond to an incident, but an adverse reaction by the Complainant immediately following an incident can bolster credibility).
- **Demeanor:** Did the person seem to be telling the truth or lying?



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# Discussion and Synthesis Example

The parties agree on the order of events on the date of the reported incident including sitting next to each other on the bus, the Respondent asking the Complainant for a blanket, the Respondent placing the blanket over the top of both parties, and the Respondent touching the Complainant's breasts under her shirt without consent. The parties disagree about the following:

- Whether the Respondent digitally penetrated the Complainant
- Whether the Respondent forced the Complainant to touch his genitals

During her interview, the Complainant reported that she was wearing a skirt at the time of the alleged incidents and the Respondent moved her underwear to the side in order to digitally penetrate her vagina despite the Complainant pushing his hand away and attempting to cross her legs while sitting in the bus seat. The Respondent denies these allegations. Witness 2 recalls observing the Complainant attempting to turn away from the Respondent in the bus seat and do what appeared to be pulling her legs up closer to her chest. The Complainant also reported that the Respondent grabbed her hand and placed it on his genitals without her consent. She stated that she pulled her hand away and said, "stop," after the first time it happened, and the Respondent then grabbed her hand more firmly and placed her hand on his genitals again. The Respondent denies these allegations. No evidence was provided or available to corroborate or refute this allegation.

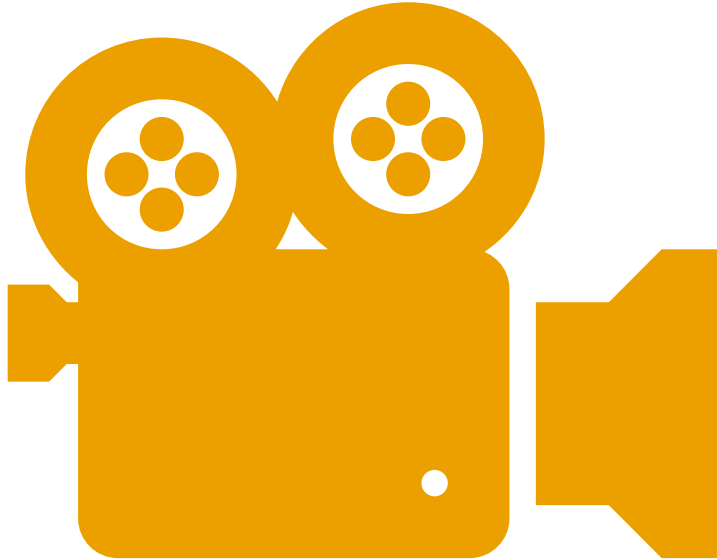
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# Recommended Findings

- This section is only applicable if permitted by school policy.
- Did the conduct occur as alleged?
  - List recommended findings by the standard of evidence for each alleged policy violation.
- Include a statement that the recommended findings are not binding on the Decision-maker(s).
- Did the conduct violate policy?
  - List recommended final determination by the standard of evidence for each alleged policy violation.
- Include a statement that the recommended determination is not binding on the Decision-maker(s).

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# Case Video Examples



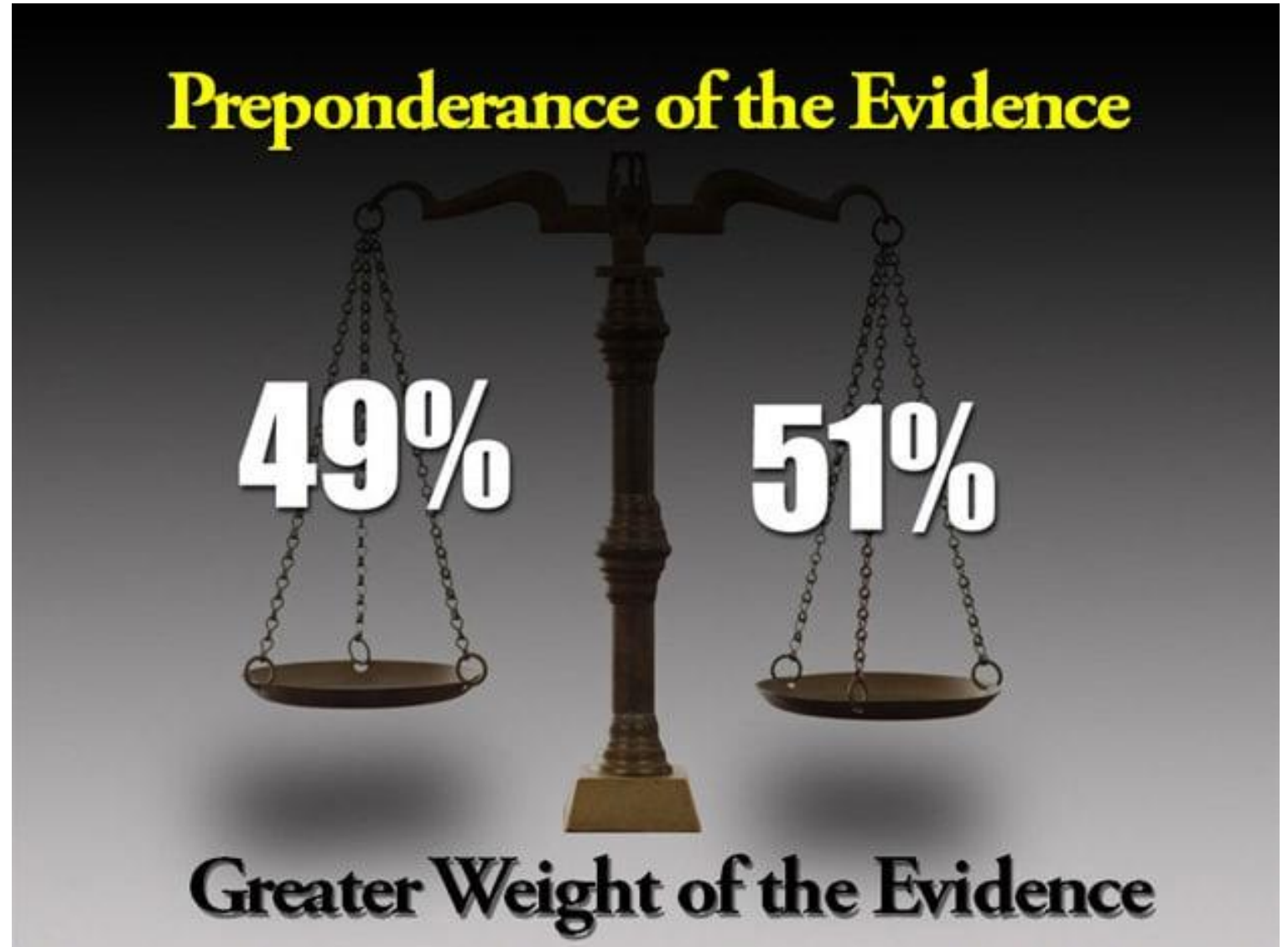
- Employee on Employee
  - [Video](#)
- Student on Student Example
  - [Video](#)
- School Example Culture
  - [Video](#)
- Tricky Current Example
  - [Video](#)

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# Decision Maker

- Before reaching a determination regarding responsibility, the decision-maker(s) must afford each party:
  - The opportunity to submit written, relevant questions that a party wants asked of any party or witness
  - The answers to those questions
  - Additional, limited follow-up questions

# Weighing Evidence and Assessing Credibility



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# Evidence types

- Bucket 1: All Relevant Evidence Relevant to the Complaint
- Bucket 2: Directly Related, but not Relevant Evidence
- Bucket 3: Evidence Neither Relevant nor Directly Related to the Complaint

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# Evidence Relevancy?

- Respondent wants to introduce evidence that the Complainant has only alleged sexual assault because she was failing three of her four classes and used the allegation as an excuse to obtain supportive measures to offset her bad grades. Should the investigator determine this evidence is relevant, directly related, or neither?



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# Helpful tips

- When reviewing all interview notes and materials, list the unanswered questions or information that needs clarification.
- Make a list of uncontested and contested information, then determine which of the uncontested information is most supported by the preponderance of the evidence.
- Obtain additional needed information if possible.
- List the facts relevant to the allegation(s) that must be true for the allegation(s) to be supported.
- Evidence presented by a person of authority such as an administrator or supervisor should be given no more credibility than evidence from a student or lower-level employee. Don't confuse seniority or hierarchy with expertise.
- An expert witness should only be permitted to testify on areas of their expertise. Experts can often disagree, so while an expert may be able to offer specialized expertise, their opinions do not have to be dispositive.

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# Explanations of why the harassment occurred, relevant or not?

- *“I didn’t know it was against the rules.”*
- *“I was just joking around.”*
- *“He flirts all the time.”*
- *“I was just flirting!”*
- *“She was asking for it. She was leading me on!”*
- *“You have to understand, we guys have special needs.”*
- *“It’s no big deal. I don’t know why he is so upset.”*
- *“I wasn’t lying. She really is a slut (bitch, whore, etc.).”*
- *“He’s a snitch for telling on me.”*

## K-12 STATEMENT OF FINDING, FINAL DETERMINATION, AND RATIONALE FORM

**Respondent:** [Respondent's Full Name]

[RecipientID]:

**Complainant:** [Complainant's Full Name]

[RecipientID]:

**Incident Date(s):** [Date(s)]

**Meeting Date(s):** [Date(s)]

**Witnesses:** [Witness(es) Full Name(s)]

**Allegation(s):** [Insert brief statement of allegations; can be copied from previous Notice of Investigation and Allegations (NOIA)].

**Charge(s)/Policy Violation(s):**

**[Full Text of Charge/Policy Violation 1; should match what is outlined in the NOIA]**

\_\_\_\_\_ Responsible \_\_\_\_\_ Not Responsible

**Evidence/facts which support finding:**

[Insert detailed statement of finding/final determination for Charge/Policy Violation 1]

**[Full Text of Charge/Policy Violation 2; should match what is outlined in the NOIA]**

\_\_\_\_\_ Responsible \_\_\_\_\_ Not Responsible

**Evidence/facts which support finding:**

[Insert detailed statement of finding/final determination for Charge/Policy Violation 2]

[Repeat for all additional charges/policy violations; should match what is outlined in the NOIA]

**Sanctions:**

[Insert detailed sanction information, including a rationale for each sanction. Recommend addressing: mitigating and/or aggravating factors, prior conduct/disciplinary history (if applicable), precedent/policy, severity and egregiousness, pattern behavior, cumulative violations, Complainant's input regarding sanctions, Respondent's ability to demonstrate understanding of their behavior and its impact on others, conditions for return (if applicable), etc.]

**Decision-Makers:** [Full Name for each Decision-Maker and any applicable affiliation information; note Chairperson, if any]

**Date:** \_\_\_\_\_

**[Chairperson/Decision-Maker] Signature:**

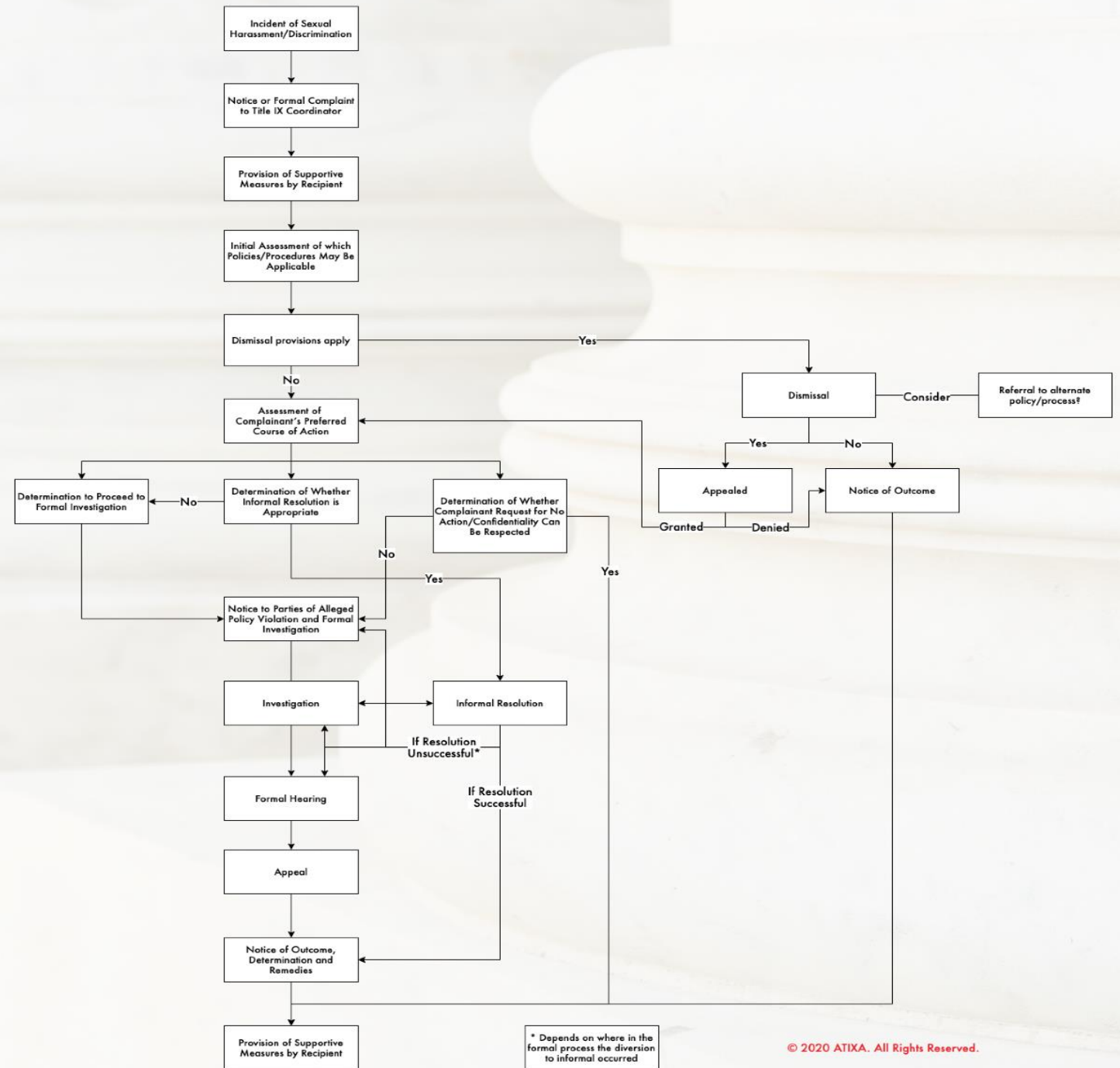


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# Process

- James Otto and daughter Jenna Otto call the office to meet with the Principal. The parent said that during practice for the Turkey Bowl event on school property, a male student and football player posted a short video clip of his daughter on Snapchat to a group of about 50 other high school boys, and in the post, he made the comment "Should I rape her?"
- According to the father, his daughter's boyfriend was part of the group message and showed the post to her.
- What now?

# Process Review



# Appeal

- The appeal request may be based on the following eligible ground(s):
  - Mandatory
    - A **procedural irregularity** affected the outcome of the matter.
    - There is **new evidence** that was not reasonably available when the determination regarding responsibility was made that could affect the outcome of the matter.
    - The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a **conflict of interest** or **bias** for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
  - Optional
    - The Decision-maker's Final Determination is substantially contrary to the weight of the evidence in the record (applicable to suspension, expulsion, or termination-level offenses only).
    - The sanctions fall outside the range of sanctions designated for this offense, considering the Respondent's cumulative conduct/disciplinary record (applicable to suspension, expulsion, or termination-level offenses only).
    - Any additional appeal grounds specified in School policy.



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# Relevant or not?







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# Case Studies

- An instructor is teaching a class on the Old Testament. A trans student taking the class has frequent friction with the instructor over the instructor's narrow interpretations of scripture and conservative beliefs about the value of religion as a tool of social control. In class, the instructor has twice failed to use the student's chosen name, and has defended herself, saying that she uses the name on the class registration roster for all students. The student finds out from classmates that the instructor misgenders the student in conversations with these classmates. The student approaches the instructor to address the misgendering and is told by the instructor that there are only two genders, and that the instructor only refers to students by their birth-assigned sex.



- Jane Doe was a freshman when four male upperclassmen subjected her to “unwelcome sexual activity” in the stairwell at her school. Unbeknownst to Jane Doe, a video of the incident was later made public.
- Similarly, in a different school in the same district, freshman Sally Doe was led to the bathroom by a male student, who pressured her into performing a sexual act. The male student recorded a video of the incident without her knowledge, which was later distributed to other students in the district.

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# Other examples:

- Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.
- Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex
- Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex
- Shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
- A School shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."