

K-12 Virtual Title IX Decision-Maker Training



About Us



OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.



GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.



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BEFORE WE GET STARTED...

- ✓ Not legal advice
- ✓ Materials
- ✓ Questions
- ✓ Repetition
- ✓ Breaks
- ✓ Posting link
- ✓ No recording

Training Agenda

01 The What, Who, Where, & When of Title IX

02 Investigation

03 Prep for Decision Making

04 Q & A

05 Determinations

06 Appeals and Other Considerations

07 Questions

TRAINING OBJECTIVES

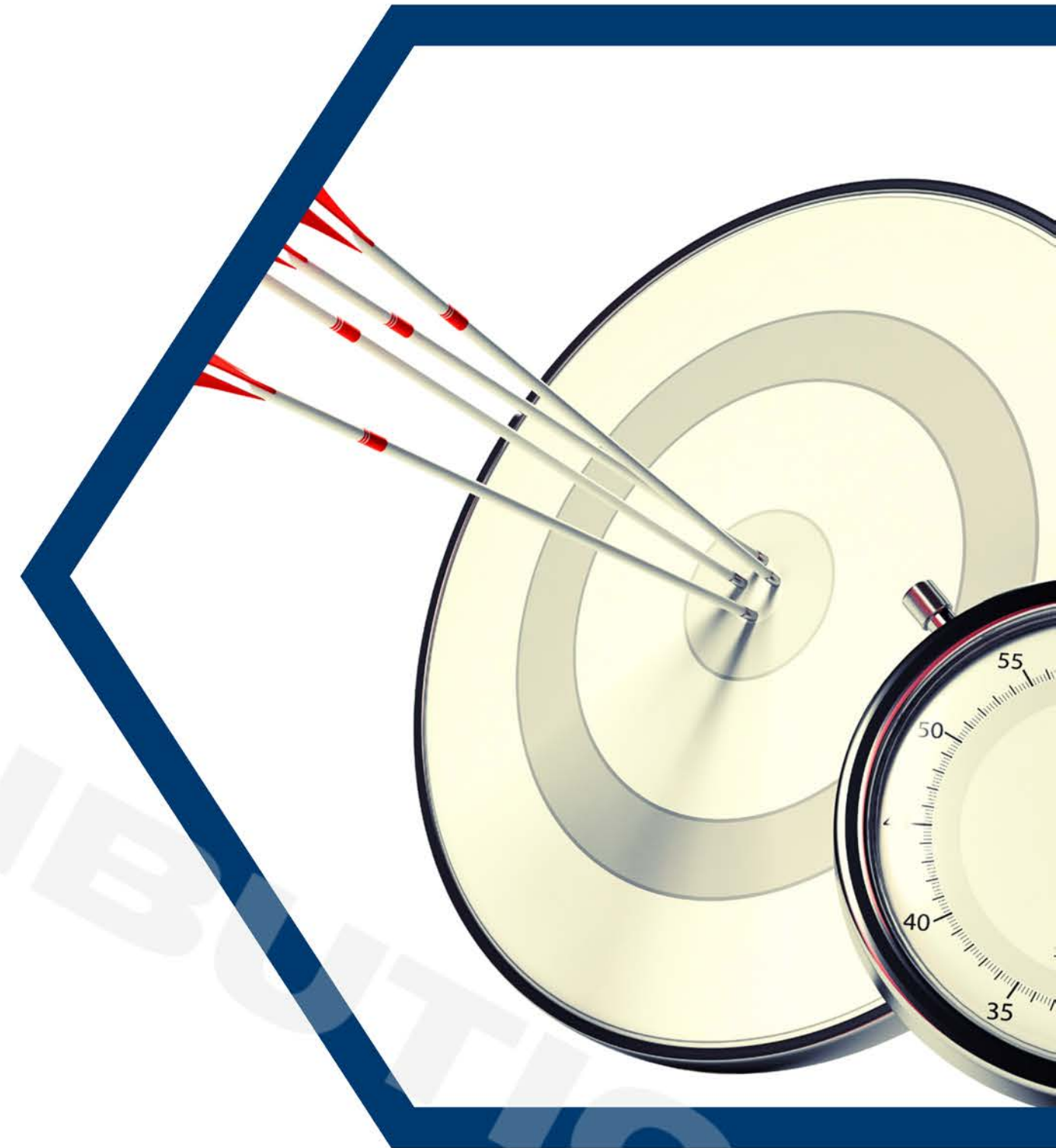
Understand the Title IX grievance process

Understand the role and scope of the Title IX Decision-Maker

Learn best investigative techniques for your role

Learn best practices for determination writing

Learn how to incorporate trauma-informed practices into your work



The “What”

The “Where”

The “Who”

The “When”





What Are You Making a Determination About?

What is 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.”



Access

**Sexual
Harassment**

**Athletics &
Programs**

Pregnancy

Title IX

Today's Focus

- Sexual Harassment Due Process
- Formal Procedures & prescriptive process
- Narrow definitions
- The importance of location
- Making determinations

2020 Sexual Harassment



Quid Pro Quo



1. An employee of the school
2. Conditioning the provision of an aid, benefit, or service of the recipient
3. On an individual's participation in unwelcome sexual conduct

*only change between 2020 and 2024, 2024 adds
“explicitly and impliedly”.

Bucket 1 Example:

Amber has coached basketball at the middle school for years. She has applied for the job at the high school. Following her interview, the high school athletic director invites her to his office. He hugs her, grabs her butt, and tells her that she is sure to get the job and his door is always open...





Hostile Environment Harassment

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

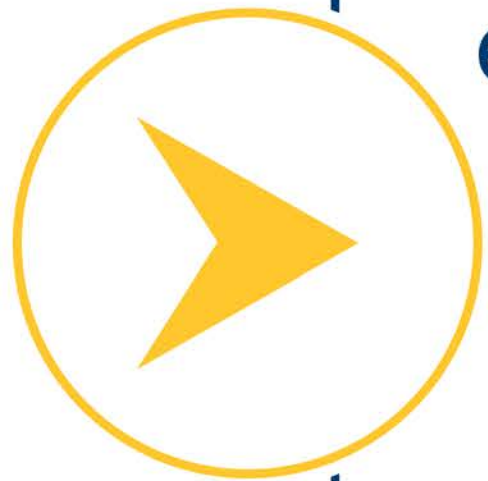
1. **Severe** - can be non verbal through sexual assault (touching/fondling)
2. **Pervasive** - how often and how widespread
3. **Objectively Offensive** - behavior that would be offensive to a reasonable person under the circumstances

Bucket 2 Example:

Lucy makes comments every day for two weeks about Jenny's body—some in writing and some verbally—examples:

- "look at your boobs"
- "those jeans look great on your butt"
- "I wish I could hit that"
- makes sexual noises when she passes in the hallway

Jenny is uncomfortable and has started skipping school to avoid Lucy.





Specific Offenses

Specific Offenses

1. Sexual Assault

- a. Rape
- b. Fondling
- c. Incest
- d. Statutory Rape

2. Dating Violence

3. Domestic Violence

4. Stalking

Sexual Assault Definitions

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.



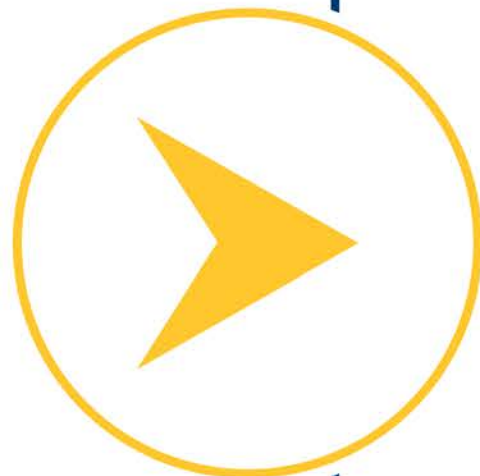
Bucket 3 Sexual Assault Examples:

Rape: Thomas pulls down James pants in the locker room and puts a pen in James' rectum.

Fondling: Laura grabs Phil's genitals over his shorts and squeezes while making a sexual comment.

Incest: Ms. Jones has been sleeping with her nephew, a 17 year old student. Some of the behaviors occurred in her classroom.

Statutory Rape: Adam, an 18 year old senior, is caught in a sexual act with Dina, a 7th grade student.



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; Including physical abuse or sexual abuse and threats of abuse **and**

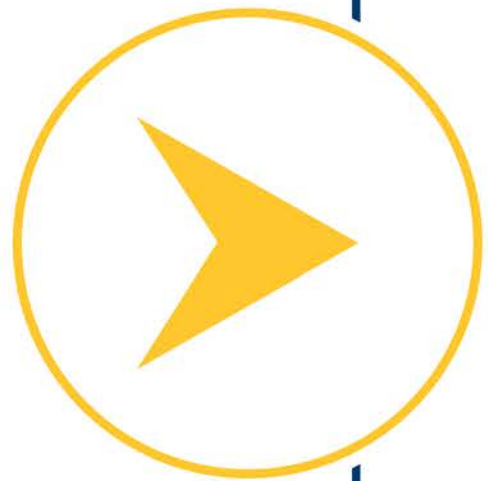


Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- 1.Length of relationship
- 2.Type of relationship
- 3.Frequency of interaction between the persons involved in the relationship

Bucket 3 Dating Violence Example:

Aria and Blake were in a dating relationship for about 6 months. After they broke up, Aria slammed Blake against a locker.



DOMESTIC VIOLENCE

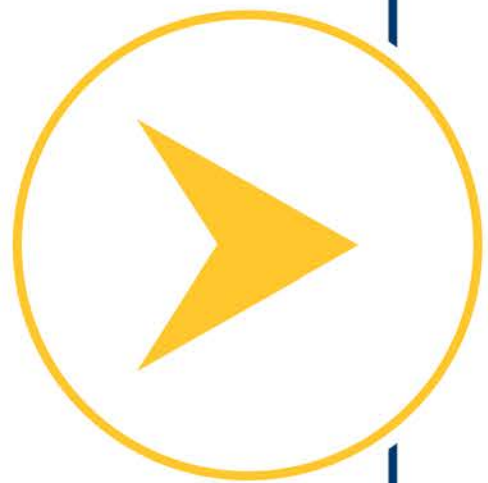
A FELONY OR MISDEMEANOR CRIME OF VIOLENCE COMMITTED BY A:

- Current or former spouse or intimate partner of the victim.
- Person with whom the victim shares a child in common.
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.
- 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 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.



Bucket 3 Domestic Violence Example:

Mr. Smith and Mr. Adams live together and are in a romantic relationship. One day after school, Mr. Adams sees Mr. Smith flirting with another teacher in the hallway. After school, Mr. Adams goes to Mr. Smith's room yelling excessively. Mr. Adams flips Mr. Smith's desk and kicks him. Then, Mr. Adams leaves the school leaving Mr. Smith without a ride home.



Stalking:

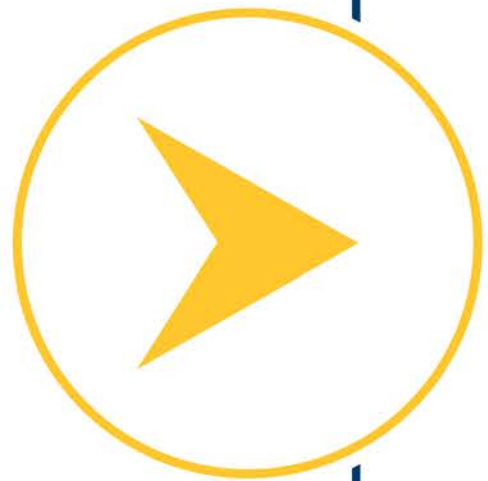


Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- ☒ Fear for the person's safety or the safety of others OR
- ☒ Suffer substantial emotional distress

Bucket 3 Stalking Example:

Landry leaves notes in Lindsay's locker (after breaking into it) professing his love for her. He sits one table over from her at lunch every day. Landry calls her phone at all hours (during and after school) from multiple numbers. Landry doesn't have a car but he stands in the parking spot assigned to Lindsay every morning. She ignores him, but feels anxious.





**DON'T
FORGET**

Reminder:
**You NEED a Definition of
CONSENT.**

**Some states have a
required definition**



The “Who”



CONDUCT THAT INVOLVES



STUDENT ON STUDENT



STUDENT ON EMPLOYEE



EMPLOYEE ON STUDENT



EMPLOYEE ON EMPLOYEE

“Parties” in Title IX Matter

2020

COMPLAINANT

an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

RESPONDENT

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



The “When”





THERE IS NO STATUTE OF LIMITATIONS...



The “Where”



Jurisdiction 2020

Education Program or Activity



Locations, events, or circumstances (operations) over which the school or district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.



Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

Must be in the U.S.



Does not create or apply a geographic test, does not draw a line between "off campus/property" and "on campus/property," & does not create a distinction between sexual harassment occurring in person vs online.

The Big Question Is

Does the District have control?

- Control over the location/event
- Did the conduct occur in the U.S.?
- Control over the Respondent (employee or student)

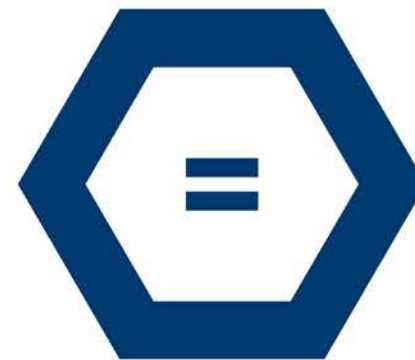
3 BUCKETS



CONTROL OVER RESPONDENT



CONTROL OVER LOCATION / EVENT



TITLE IX



Before a Matter Gets to YOU...



Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

Unclear

Meet with Complainant / Guardian
to gather more information

Not Title IX

High kick to appropriate process



No Formal
Complaint

- Supportive
Measures Only

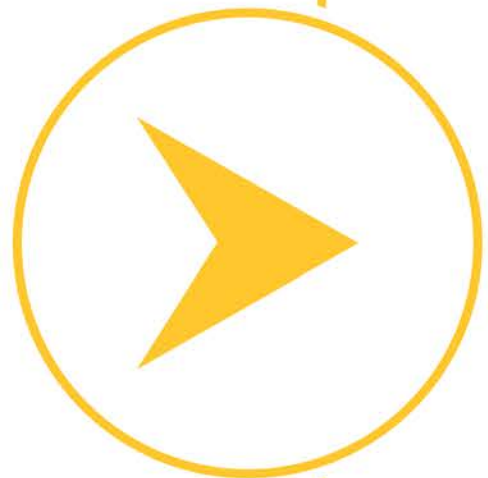
Formal
Complaint

- Signed by
Complainant / Guardian
or Cu



GIANT REMINDER!!!

*No Investigation before or without a
Formal Complaint*



Notice of Allegations



Report / Notice Received



Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

No Formal Complaint

- Supportive Measures Only

Formal Complaint

- Signed by Complainant / Guardian or Coordinator

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX

High kick to appropriate process

When: After **FORMAL COMPLAINT** & with sufficient time to prepare for any interview

What is Included:

- Notice of the school's grievance process
 - Notice of the allegations of sexual harassment
- Sufficient details
 - Identities of the parties
 - Conduct that occurred
 - Date
 - Location
- Respondent is presumed not responsible
 - Determination is made at the end of the grievance process
- Opportunity to have an **advisor** of choice (may be an attorney)
 - Parties will have opportunity to inspect and review evidence
 - Code of Conduct provisions related to false statements or false information

ANYONE

- **ATTORNEY**
- **PARENT**
- **WITNESS---** MOST CHALLENGING---
NOT PROHIBITED. NOT
RECOMMENDED.

What is their purpose?

- **Support**
- **Understanding**
- **Extra ears**
- **Should be copied on written correspondence
and permitted to attend all meetings**
- **Potted plant**



What if there is something the investigator doesn't know related to the allegations that is required?

- **Provide as much as possible**
- **Update and send to both parties if/when you know**
- **example: dates or specific locations**

What if they learn something was wrong in the Notice?

- **Fix it and re-send to both parties**

What if you learn about additional allegations?

- **Add them and re-send to both parties**

***Big Take-Away---Notice MUST be updated. It is your perimeter as Decision-Maker.**



Investigation Opened & Investigator Assigned

**IT'S YOUR
TIME!**

Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

No Formal Complaint

- Supportive Measures Only

Formal Complaint

- Signed by Complainant / Guardian or Coordinator

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX

High kick to appropriate process



Notice of Allegations

Investigation

- Interview Parties / Witnesses
- Gather Evidence

Informal Resolution

Important Notes for Investigations:

- **Burdens**

- **Burden of gathering evidence on School – NOT the parties**
- **Burden/Standard of Proof – Preponderance of the Evidence (more likely than not) or Clear and Convincing Evidence**

- **May NOT** access, consider, disclose or use party's treatment records unless School obtains voluntary WRITTEN consent

- **MUST** provide equal opportunity for parties to:
 - Present witnesses (fact or expert--does not say character)
 - Gather and present relevant evidence

- **May NOT** restrict the ability of the parties to discuss the allegations or gather and present relevant evidence (no gag orders)

NOTICE OF MEETINGS

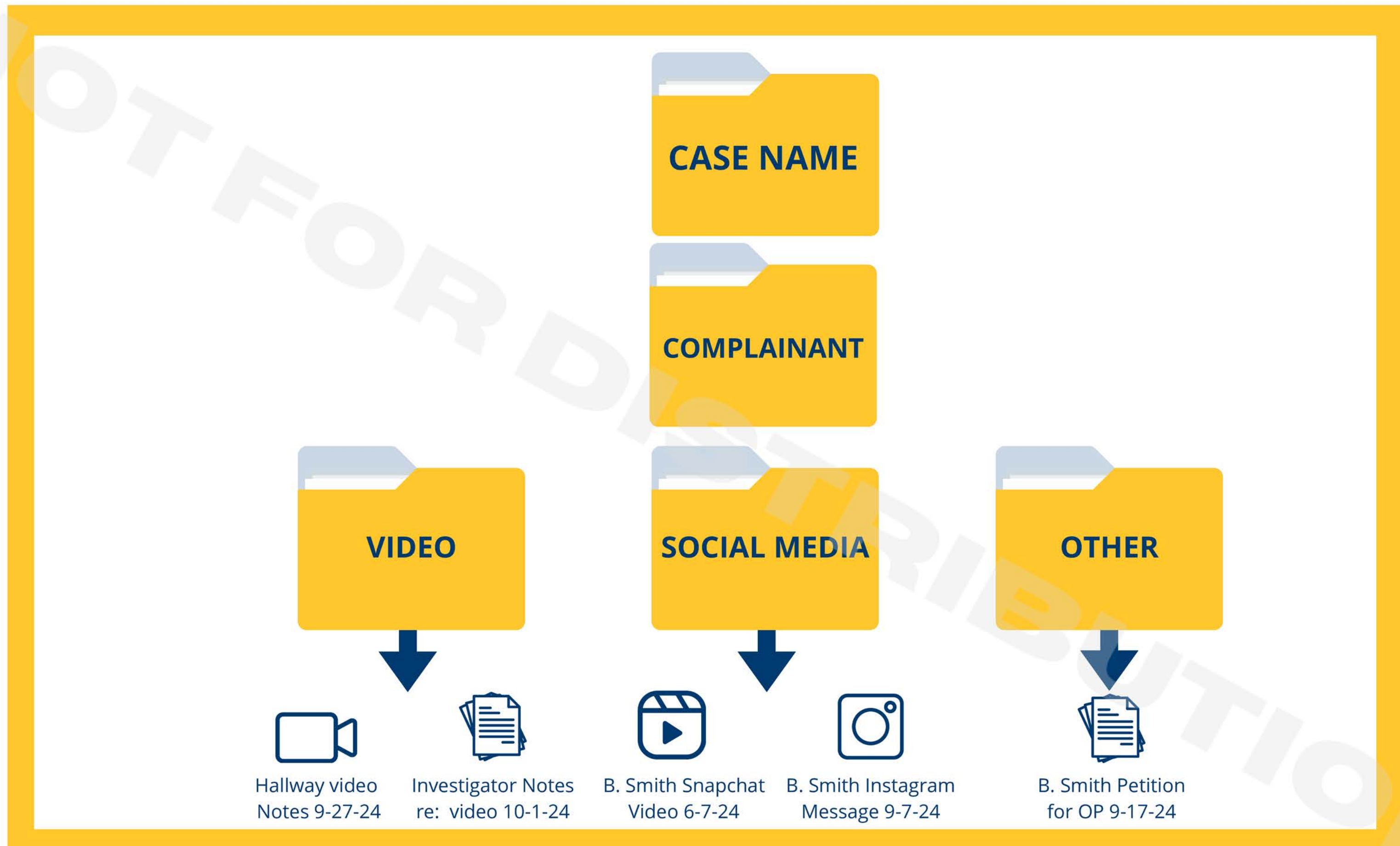
MUST provide WRITTEN notice of the

- date
- time
- location
- participants
- purpose
- of all hearings, investigative interviews, or other meetings, with SUFFICIENT TIME for the party to prepare

The Contents of an Investigatory File







CASE NAME



**NOT
RELEVANT**



INCLUDE YOUR WHY!



Evidence Review

*The importance of
access to information*



Notice of Allegations

Investigation

- Interview Parties / Witnesses
- Gather Evidence

Informal Resolution

Evidence Response



MUST: Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is DIRECTLY RELATED to the allegations Including:

- The evidence upon which the school does not intend to rely in reaching a determination
- inculpatory or exculpatory evidence

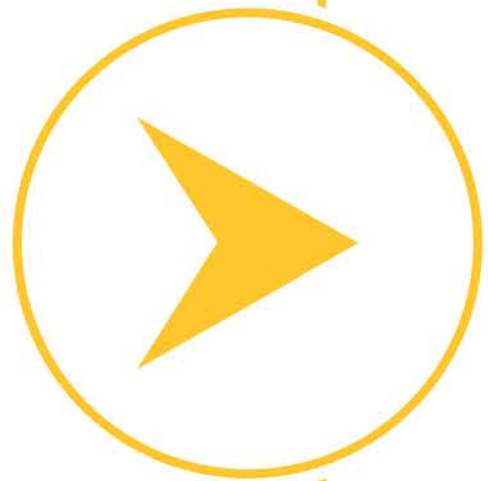
so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Reminder: How Long?

10 days

(business or calendar)

Define in policy



Burden

The burden is on the district...NOT the parties.

No ONE has to “prove” anything

Does the information you have
SUPPORT a finding of responsibility

Be careful with your language





The Investigative Report



Notice of Allegations

Investigation

- Interview Parties / Witnesses
- Gather Evidence

Evidence Review & Response

- Directly Related
- 10 Days

Informal Resolution

R

**A TITLE IX REPORT IS A
SUMMARY OF RELEVANT
EVIDENCE**

**THIS IS NOT A DUMP OR
COPY OF INVESTIGATOR
NOTES**



What you should receive...



Easy to Follow, Clear, Concise

You can follow the
report and
understand who
reported/said
what



Roadmap for the Decision-Maker

The report is your
roadmap



Includes the Basics

Written to
assume you
know nothing
about the matter



Reviewed by Colleague

Someone caught
the typos



Consistent but Not Identical

Won't always look
exactly the same



Before You Start...

*The importance of
preparation*

PREPARATION
IS THE KEY

Are you making a determination on **MORE** than just Title IX?

Title IX

Title VI

Title VII

**Code of
Conduct**

Other?

**What
information
do you have?**

- **Is there anything missing?**
- **Were procedures followed?**
- **Reminder: You are a check on the process**

Check Your Biases



Where are your potential biases in the case?



Can you overcome any biases that exist?



Is your mind in a neutral position?

EMAIL INTRODUCTION TO PARTIES, GUARDIANS, and Advisors

Who are you?



What is your responsibility?



**What policy/policies &
procedures are you using?**



What are the timelines?



Make sure you are using:

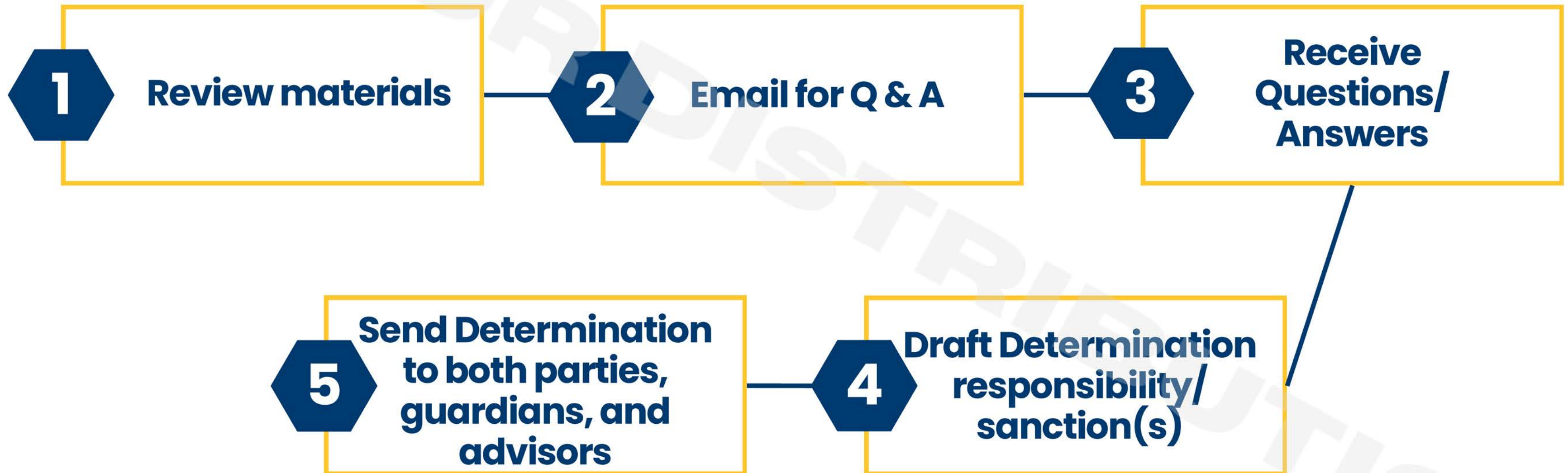
**The name they
prefer**

Their correct title

**Their correct
pronouns--example
some names could
be used for both
males and females
(Jordan)**

**Their correct email
addresses**

Developing a Plan





Question & Answer



Question &



Question & Answer

- Parties **MAY** submit WRITTEN questions to the Decision-Maker
- Questions **MAY** be posed for other party(s) and/or witnesses
- Questions **MUST** be RELEVANT
- Decision-Maker **MUST** determine whether Relevant
- If relevant, Decision-Maker **MUST** submit the question to party or witness
- If NOT relevant, Decision-Maker **MUST** notify the party who asked the question why it is not relevant.
- **Must** allow time for participants to answer question(s)
- **Must** provide responses to the party who asked the question(s)
- **MAY** allow limited follow up (discretion of Decision-Maker)


RELEVANT

Relevant: related to the allegations of sex discrimination.

***FROM 2024 REGULATIONS BUT STILL APPROPRIATE**

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.

Evidence is relevant when it may aid a Decision-Maker in determining whether the alleged sex discrimination occurred.

Require objective evaluation of ALL RELEVANT evidence and not otherwise impermissible	Relevant	Exclude the following types of evidence (Impermissible evidence)
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in knowing whether the alleged sex discrimination occurred.*	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.*	A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness - unless the school obtains the party's or witness' voluntary, written consent for use in the grievance procedures.
<div><p>TITLE IX UNIVERSITY K-12 <small>PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS</small></p></div>	*Specific to 2024	<p>Evidence that relates to the COMPLAINANT'S sexual interests or prior sexual conduct – UNLESS:</p> <ul style="list-style-type: none">◦ Evidence about the Complainant's prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR◦ Evidence about specific incidents of the Complainant's prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sex-based harassment.<ul style="list-style-type: none">▪ Prior consensual sexual conduct between the parties does NOT, by itself, demonstrate or imply consent to the alleged sex-based harassment OR preclude determination that sex-based harassment occurred.

In Real Life (IRL)



No one asks questions

or



One party asks 17 pages worth of questions

or



A party sends hateful feedback instead of questions



How many days to ask questions?



How many days to respond?



What follow up will you permit?



How will you incorporate answers in your determination

**Set
Parameters on
the Q & A**



Determinations



Investigation

- Interview Parties / Witnesses
- Gather Evidence

Evidence Review & Response

- Directly Related
- 10 Days

Report Review & Response

- Summary of Relevant Evidence
- 10 Days

Question & Answer By Decision Maker

Det



Informal Resolution

Notification

Complaint

Respondent

Complainant

Responsible

Preponderance

Decision-Maker

Determination

Language Matters



Decision-Maker Determination Regarding Responsibility Checklist:

- **Identification of the Allegations**
- **Description of Procedural Steps Taken**
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held
- **Findings of Fact Supporting Determination**
- **Conclusions Regarding the Application of the Code of Conduct to the Facts**
- **Result of Each Allegation Including Rationale**
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- **Procedures and Permissible Basis for Appeal**



**Easy
Button**

Drop in your timelines:
You should have them
from the investigative
report (procedural steps
taken)

USE THE ALLEGATIONS



WHAT DO THEY SAY?



DROP THEM IN THE REPORT



INCLUDE THE DEFINITIONS



BREAK THEM INTO ELEMENTS



THEN- PUT THE PIECES TOGETHER

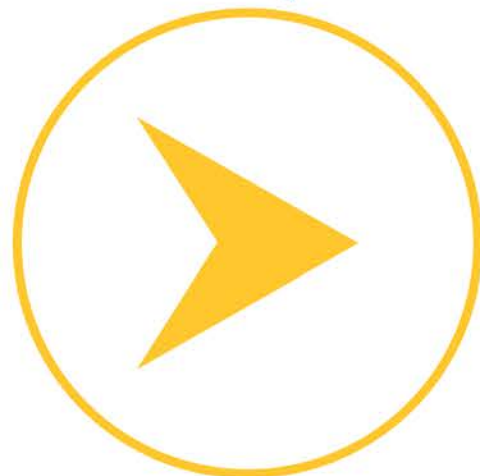
Example:

Allegation: On January 7, 2025 Laura grabbed Phil's genitals over his shorts and squeezed while making a sexual comment.

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.

Elements:

Touching
Of private body part
Of ANOTHER person
For the purpose of sexual gratification
Consent



DEVELOPING FINDINGS OF FACT:

- **WHAT IS UNCONTESTED?**
- **WHAT IS A FACT THAT HAS DEVELOPED THROUGH CONSISTENCIES AND INCONSISTENCIES DESPITE BEING CONTESTED**
- **WHAT IS STILL UNCLEAR DESPITE ALL OF THE INFORMATION**

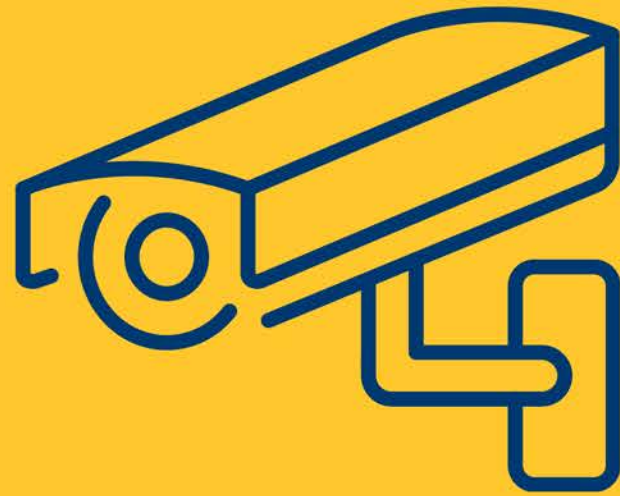
**Use the
Evidence**

**Use the
summaries in
the report
and notes
from the
investigator**





Evaluating Evidence



- **Don't just rely on the description of a video, audio recording, or other evidence**
- **Watch it--Review it--Multiple times**
- **Look for consistencies and inconsistencies**

Social Media



Independent Investigative Actions– – Did the investigator...

Think outside the box



Make the phone call



Find the witness



Visit the location



Google the term



Take the photo



Who are the witnesses and who identified them?

Witnesses identified by the Complainant



Witnesses identified by the Respondent



Witnesses identified by you



Witnesses identified by other witnesses



Types of Witnesses



Eye Witnesses



Fact Witnesses



Expert Witnesses



Hearsay Witnesses



Character Witnesses

Memory

**How much do
witnesses
actually
remember?**

**What impacts
memory?**

MOST IMPORTANT QUESTIONS Regarding Potential Bias

 **HOW DO WITNESSES KNOW THE COMPLAINANT?**

 **HOW DO WITNESSES KNOW THE RESPONDENT?**

 **HOW DO WITNESSES KNOW THE OTHER WITNESSES?**

How long?

In what capacity?

Describe your relationship with them



**Connect the
facts to the
elements**

**This is your opportunity to
connect the dots...or... put
the puzzle together.**



DETERMINE RESPONSIBILITY USING **PREPONDERANCE OF THE EVIDENCE** **OR** **CLEAR AND CONVINCING**

- Example Language: A preponderance of the evidence supports (or does not support a finding of responsibility for fondling.
- NEVER: The Respondent did not prove...
- Make sure to include your WHY--Summarize your rationale



Include the Sanctions if there is a Finding of Responsibility



Within the parameters of your code



IF a finding, review prior discipline



Discuss with administrators or human resources to ensure your sanctions can be carried out



Make sure to be equitable (would you include the same sanction if the sex of the Respondent was different??)

Consider more than punitive sanctions...include:

- Educational opportunities
- Restorative practices



Appeal Options



Need to be included in the determination



Link to policy, who to appeal to, etc.

Determination MUST Haves

- Page numbers
- Footnotes?
- Timeline(s)
 - Investigation
 - Events
- Appendix/Attachments WITH PAGE NUMBERS
 - Table of Contents for appendix/attachments

Reminder: Who is the audience for your Determination?



Judge



Family



Delivery of the Determination...

The importance of support



THE DELIVERY OF THE DETERMINATION CAN BE TRAUMATIC



**It will impact BOTH parties,
regardless of the outcome**



**Changing the trajectory of
individual's lives**

CONSIDERATIONS

- **WHAT IS THE BEST WAY TO DELIVER THE DETERMINATION**
- **ARE THERE SUPPORT RESOURCES IMMEDIATELY AVAILABLE**
- **DO YOU NEED TO PROVIDE A HEADS UP THAT IT IS COMING**
- **NEXT STEPS**
- **APPEAL OPTIONS**

WRAP AROUND SUPPORT

1.
INTAKE

2.
INVESTIGATION
&
REPORT

3.
POST
RESOLUTION

4.
FOLLOW UP
&
CHECK IN



Other Considerations



Sustainability Planning

If you were unable to continue with your role starting tomorrow, would the person picking up the file know what had been done and what is left to do?

(Reminder)

**Information for case needs
to be saved for 7 years**



Appeal



Investigation

- Interview Parties / Witnesses
- Gather Evidence

Evidence Review & Response

- Directly Related
- 10 Days

Report Review & Response

- Summary of Relevant Evidence
- 10 Days

Question & Answer By Decision Maker

Determination

Appeal

Informal Resolution

APPEALS

- Offered to both parties.**
- Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility.**
- On the Following Basis:**
 - Procedural irregularity that affected the outcome of the matter.
 - New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
 - Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
 - Additional basis if offered equally to both parties.
- Written decision describing the result and rationale for the result.**
- Notify the other party in writing when an appeal is filed.**
- Provide written decision simultaneously to both parties.**
- Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome.**



Avoiding Conflicts of Interest/Bias

B i a s

Title IX Team Must Serve Impartially In Their Role and Avoid:

- Prejudgment of the facts at issue
- Conflicts of interest
- Bias





**Conflict of interest or bias
cannot be for or against
complainants or respondents
generally or the individual
complainant or respondent in a
matter.**



Family friend is a
witness in a matter.



Child is a party
in a matter.



You are a witness in
a matter.



Close relationship
with a party.

Why is this Important?



Erodes trust in grievance procedures/creates barriers.



Decreases ability to ensure a fair and reliable outcome.

1

EVALUATE WHETHER A CONFLICT OF INTEREST/BIAS EXISTS AT THE OUTSET OF A MATTER.

2

CHECK BIASES THROUGHOUT A MATTER.

3

NOTIFY THE TITLE IX COORDINATOR IF A BIAS/CONFLICT OF INTEREST ARISES.

****WHAT IF YOU ARE THE COORDINATOR?**

**IN EVERY
CASE:**





**YOU'VE
GOT THIS!**





TITLE IX UNIVERSITY

K-12

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS