

TITLE IX INVESTIGATIONS

Investigative Procedures

PURPOSE

- Overview of Title IX guidelines and requirements
- The Evidence
- Investigation Report
- Investigation Process



AGENDA

Overview of Title IX
guidelines & requirements

Investigative Report

1:15 – 1:30

1:50 – 2:15

1:00 – 1:15

1:30 – 1:50

The Evidence

Investigation Process





OVERVIEW OF TITLE IX GUIDELINES & REQUIREMENTS



Legal Mandates

- Incident – location & timeliness of response
- Formal vs. Informal complaint
- Complainant vs. Respondent
- Potential Title IX violation
- Investigation Process → **We are here**





PRESUMPTION OF NON- RESPONSIBILITY

- The investigation is a neutral, fact-finding process.
- The District presumes all reports are in good faith.
- The District presumes the Respondent is not responsible for the alleged conduct.
- The District makes its determination regarding responsibility at the conclusion of the grievance process.

Investigatory Process

- Assigning an investigator & responsibilities
- Appropriate notice
- Evidence gathering & review
- Witnesses (including experts) & supporting evidence
- Preliminary Investigation Report & Review
- Final Investigation Report
- Party actions & determinations



PREPONDERANCE OF THE EVIDENCE



“The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.”



Merriam Webster, 2020



ASSIGNING AN INVESTIGATOR

- **Investigations**

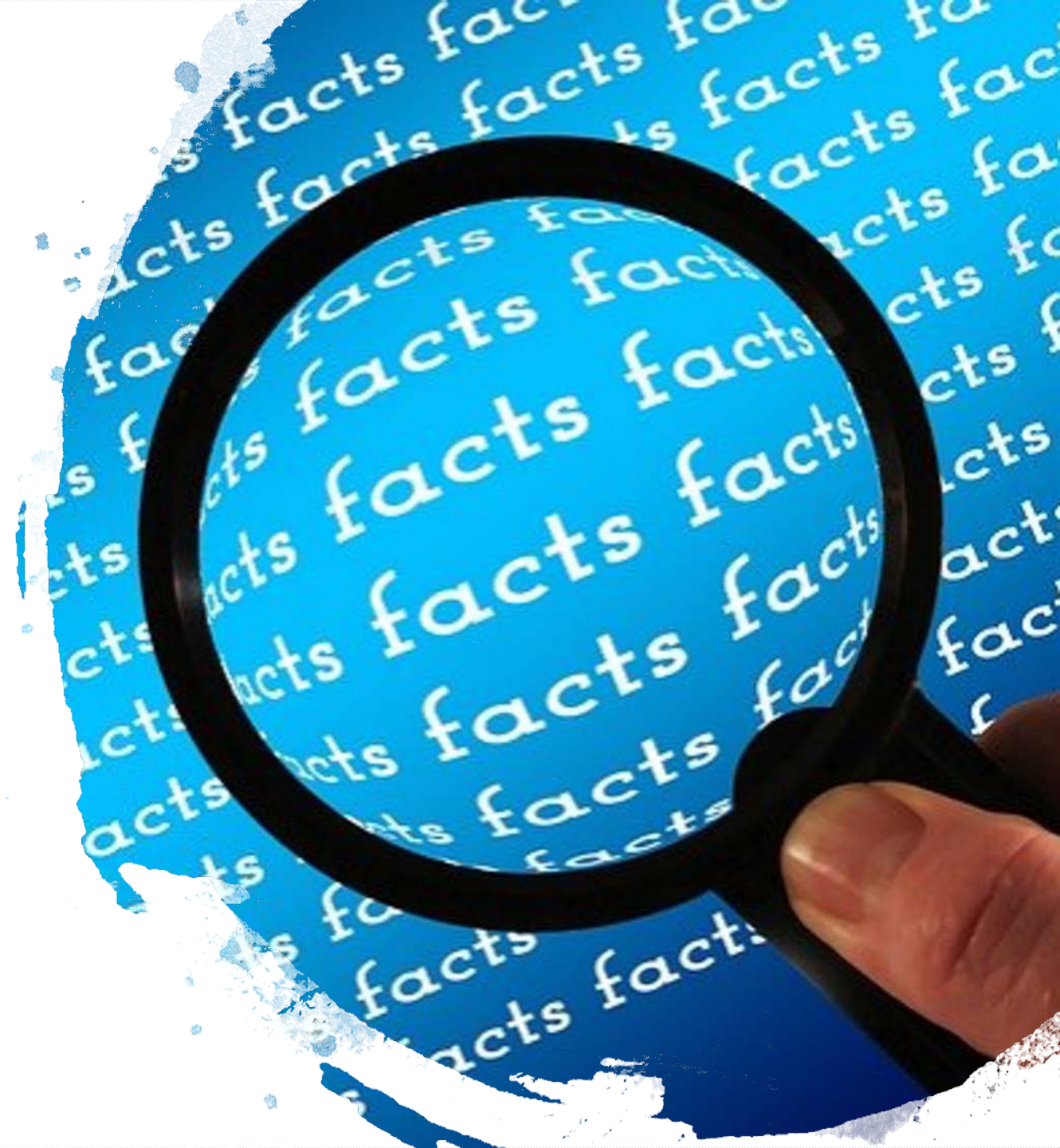
- The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.
- Both Parties have the right to have an Advisor present at every meeting.

- **Trained investigators**

- The District will investigate Title IX formal complaints fairly and objectively.
- Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the District's grievance procedures operate.
- The District will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

INVESTIGATOR RESPONSIBILITIES

- Investigators: Responsible for interviewing witnesses, collecting evidence, and preparing investigation report before hearing.
- May or may not also function as Title IX Coordinator.
- When the investigator evaluates the evidence, he/she/they will do so using the preponderance of the evidence standard.
- After considering all the evidence gathered, the investigator will decide whether it is more likely than not that the reported conduct occurred.





INVESTIGATORS RESPONSIBILITIES

- Be impartial throughout the investigation process (free from prejudgment of the facts, conflicts of interest, and bias).
- Provide equal opportunity for complainants and respondents to provide evidence.
- Be familiar with school policies related to non-discrimination in general, as well as Title IX requirements.
- Not issue “gag orders” that improperly restrict a party’s ability to discuss the issues being investigated.



APPROPRIATE NOTICE

- **Notice of Investigative Interview**
 - ✓ The District will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.



THE EVIDENCE

A wooden gavel with a dark handle and a light-colored head rests on a dark wooden surface. Next to it is a green rectangular tag with a gold border, featuring the words "EVIDENCE" and "GATHERING" in large, gold, serif capital letters. A semi-transparent white circle is overlaid on the left side of the image, containing the title and a bulleted list.

EVIDENCE GATHERING & REVIEW

- Both Parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint;
- The evidence includes information the District will rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source.



TYPES OF EVIDENCE

Demonstrative Evidence: Something that preserves physical evidence.

- Pictures of a physical injury.
- Security footage.

Circumstantial: Inference needed to show something happened. (*Ex. "I saw her running from the room crying with her blouse torn."*)

Documentary Evidence: written evidence (paper or electronic).

- Emails.
- Text messages.
- Attendance records (was the respondent at school or a school activity on the date in question?).
- Medical records.

TYPES OF EVIDENCE CONT.

Physical Evidence: Things or objects showing an incident occurred or did not occur.

- Emails
- Items (e.g., tangible)
- Copies of social media postings.

Verbal Evidence: Verbal report from a witness or party to the incident.

Direct: Witness to the event.



INCULPATORY VS. EXCULPATORY EVIDENCE

- **Inculpatory evidence:** Evidence that shows, or tends to show, a person's involvement in an act. (*Ex. Video showing respondent touching complainant*).
- **Exculpatory evidence:** Evidence that tends to excuse or justify an accused person's actions, or to show a person did not engage in the alleged behavior. (*Ex. Video showing another person, not respondent, touching complainant*).

RAPE SHIELD PROTECTION

- The Final Rule provides that questions / evidence about a complainant's prior sexual history / behavior is not relevant, unless it is offered:
- To prove that someone other than the respondent committed the conduct alleged by the complainant, or
- To provide details concerning the complainant's prior sexual behavior with the respondent to prove consent.





RELEVANT EVIDENCE

-
- Facts that could potentially explain or describe the incident under investigation.
 - Does this evidence have the potential to prove or disprove an allegation in the formal complaint?
 - Is the Title IX rape shield protection implicated by this evidence, or is there an exception to the rape shield protection?

PRIVILEGED RECORDS

- Certain privileged records include:
 - Medical / treatment records.
 - Attorney-client communications.
 - Implicating yourself in a crime (5th Amendment)
 - Confessions to clergy members or other religious figures.
 - Spousal testimony in criminal matters.
- Investigation must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding the privilege has waived it.





INVESTIGATION REPORT

PRELIMINARY INVESTIGATIVE REPORT

- Prior to the investigator preparing an investigative report, the District will send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- The Parties will have at least ten days to submit a written response.
- The investigator must consider this written response prior to completing the investigative report.

REDACTIONS



- The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information he/she/they do not produce to the Parties.
- The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.
- At least ten days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review and written response. The Parties will have at least ten days to submit a written response.

FINAL REPORT REVIEW (BOTH PARTIES)

- At least ten days prior to a hearing or other time of determination regarding responsibility, the District will send the investigative report to each Party and their Advisors, if any, the investigative report in an electronic format or a hard copy, for review and written response. The Parties will have at least ten days to submit a written response.



FINAL INVESTIGATIVE REPORT

- The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:
- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the District.

The investigator will not make a determination regarding responsibility.

CONCLUSION OF INVESTIGATIVE FINDINGS



- After completing an investigation and prior to completing a determination regarding responsibility, the District will hold a live hearing, if requested, to provide the Complainant and Respondent an opportunity to respond to the evidence gathered before a Decision-Maker.
- Neither Party may choose to waive the right to a live hearing, but the Parties can choose whether to participate in the hearing or answer some or all cross-examination questions.



INVESTIGATION PROCESS

The Investigatory Process



ASSESSING THE
EVIDENCE



STRUCTURED TIMELINE
(INCLUDING
INTERVIEWS)



QUESTION
DEVELOPMENT



EMOTIONAL-
REACTIONAL
QUESTIONS



ISSUES OF CREDIBILITY

Drafting the Report



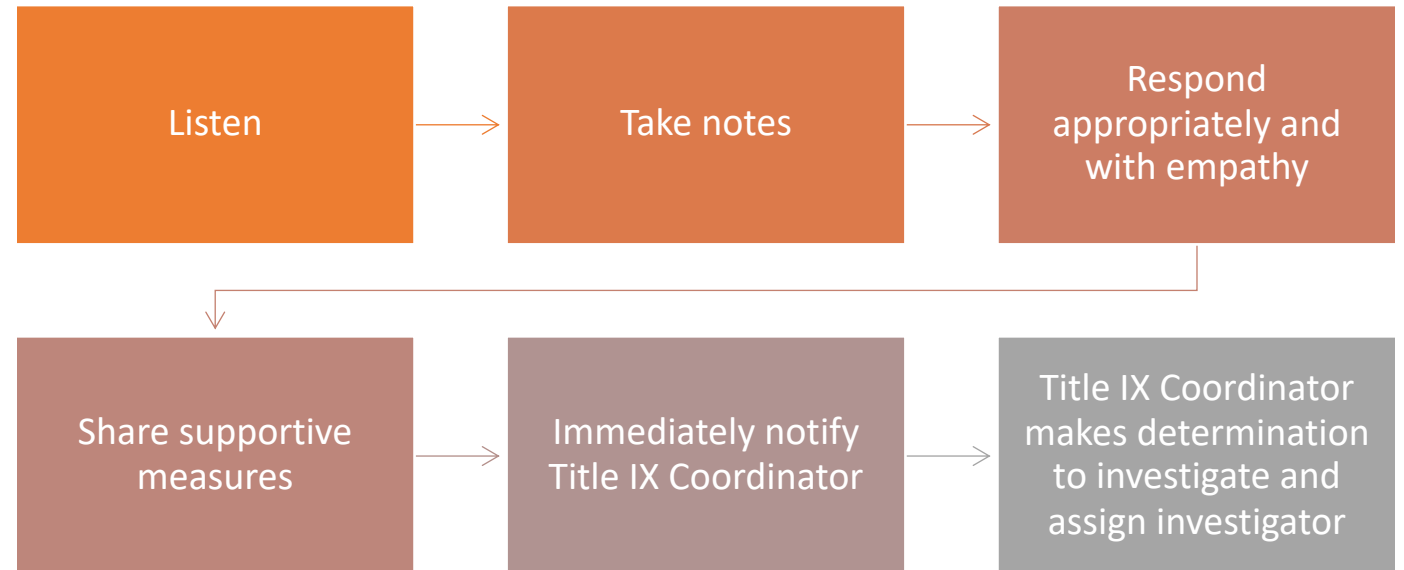
- Cover Page
- Table of Contents (10+ pages)
- Executive Summary (Key aspects & determinative decisions)
- Scope of the Investigation
- Methodology
- Complainant and Respondent
- Rules
- Witnesses
- Credibility
- Investigative Summary (embeds analysis of evidence)
- Findings/Outcomes

GROUP REVIEW: SAMPLE SCENARIO



Jaime walked into human resources toward the end of the day with two (2) friends and said she wanted to report being sexually harassed by an employee. Specifically, she stated that while she always felt uncomfortable around this employee given how he seems to always stare at her, it wasn't until they went to an off-campus excursion that he intentionally brushed up against her. He later asked if she would be interested in going out for dinner. When she suggested inviting friends, he told her no and that if she would go it would work out well for her future in his course.

Initial Stages: Intake Measures



COVER PAGE

Lorem Ipsum is simply dummy text of the printing and typesetting industry. Lorem Ipsum has been the industry's standard dummy text ever since the 1500s, when an unknown printer took a galley of type and scrambled it to make a type specimen book.

- Title of Organization
- Investigation title
- Investigator name and Title
- Location and contact information of investigator
- Date (optional) can be on executive summary page

TABLE OF CONTENTS



- Include all sections as defined:
 1. Executive Summary
 2. Scope
 3. Methodology
 4. Complainant and Respondent
 5. Rules
 6. Witnesses
 7. Credibility
 8. Investigative Summary
 9. Findings/Outcomes



EXECUTIVE SUMMARY



- Introduces allegations
- Complainant and Respondent named
- General overview of investigation with material evidence
- Concluding outcome

SCOPE OF THE INVESTIGATION



Allegations presented



Defining question(s) to
examine based on allegations



Identify all issues which may
be multiple



METHODOLOGY

- Process used to gather evidence
- Identify all aspects used relevant to the case presented
- Identify included information and/or excluded information if relevant
- Additional consideration provided by either party



COMPLAINANT & RESPONDENT


- A **Complainant** is an individual who is alleged to have been a victim of conduct that constitute sexual harassment, as defined by policy.
- A **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as defined by policy.





RULES

- Define potential Title IX violation
- Determine if other rules are relevant to include and investigate, albeit if not related to Title IX



press
accepted
ules. now
set of e
principi

WITNESSES



- Identify potential witnesses based on information presented
- Identify witnesses provided by both parties
- Determine relevance of witnesses based on information received

CREDIBILITY

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **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 incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

INVESTIGATIVE SUMMARY



DETAILS ALL THE FACTS
GATHERED IN SEQUENCE OF
EVENTS



IDENTIFY DATES OR
TIMEFRAME



INCLUDES EVIDENCE AS PART
OF EXPLANATION
(ATTACHMENTS)



IDENTIFIES CREDIBILITY WHEN
APPROPRIATE BUT EXCLUDES
PROTECTED INFORMATION.

A photograph of a stack of several flat, light-colored rocks balanced on top of each other. The stack is positioned on a larger, darker rock. The background features a dramatic sunset or sunrise with a bright sun low on the horizon, casting a warm glow across the sky. The sky is filled with wispy clouds, and the overall scene is set in a desert-like environment with distant hills visible on the horizon.

FINDINGS & OUTCOMES

- Provides brief concluding statement
- Embeds aspects of violation as it relates to allegation
- Provides outcome of substantiated or unsubstantiated of allegation(s).



