



Collegiate Academies

Investigator Training - Title IX



Understand how and when to conduct a Title IX investigation

- Understand where investigating falls in the Title IX Grievance process
- Understand the role of a Title IX Investigator
- Understand when a Title IX investigation can begin
- Know what tools you can use to investigate
- Understand how to classify evidence
- Understand what goes into an investigative report
- Understand what can be appealed
- Understand how to serve impartially

Agenda

1. Introduction to Title IX
2. Title IX Process Overview
3. Serving Impartially
4. Investigating
5. Evidence
6. Investigator Best Practice
7. Investigative Report





Introduction to Title IX



Introduction - What is Title IX

Title IX of the Education Amendments (Patsy Mink Act) signed into law in 1972.

It states:

“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 educational program or activity receiving federal financial assistance”

- 20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



Introduction: Title IX - Purpose

End sex based discrimination, including sexual harassment

Prevent it from recurring

Remedy the effects of sex based discrimination/harassment



2020 Regulatory Changes to Title IX

- New regulations focus on sexual harassment
- Protects Due Process for both parties involved
- Commitment to Transparency
- Assure investigations are thorough, reliable, and impartial
- Ensure we provide training to staff members involved in handling Title IX complaint.



Why Are We Here Today

Title IX mandates training for:

- Title IX Coordinator
- Investigators
- Informal resolution mediators
- Decision-makers
- Appeal decision-makers

Training must include:

- Definition of sexual harassment
- Scope of education program
- Information on serving impartially
- How to conduct your assigned parts of a grievance process (investigation)
- Relevance of questions and evidence



2020 Regulations - What is Sexual Harassment

Sexual Harassment - Defined

- Quid Pro Quo - I'll give you if you give me
or
- Severe, Pervasive, Objectively Offensive (hostile environment)
or
- Sexual Assault; Dating Violence; Domestic Violence; Stalking



2020 Regulations - What is Sexual Harassment

Quid Pro Quo:

An employee of the recipient (school) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

Employee to Student

Example: I'll give you an "A" on your test if you give me a kiss.



2020 Regulations - What is Sexual Harassment

Severe, Pervasive, and Objectively Offensive:

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.

Severe - The more severe the less it needs to be pervasive, especially if it is physical

Pervasive - Intensity and duration, well-known or openly practiced, public, occur with regularity

Objectively Offensive - reasonable person would find it offensive



2020 Regulations - What is Sexual Harassment

Sexual Assault:

Any sexual act directed against another person, without the consent of the complainant including instances where the complainant is incapable of giving consent.

Also includes:

- Forcible Rape
- Forcible Sodomy
- Sexual Assault With An Object
- Forcible Fondling
- Incest
- Statutory Rape



Scope of Educational Program

We have a responsibility to address sexual harassment that occurs in the Collegiate's "education program and activities".

Things to consider when determining if harassment happened in our "education program":

- Did it happen in buildings or locations we control or own
- Did it happen at an event we controlled
- Do we have control of over the harasser or context



Title IX Process Overview



Title IX Vocabulary

Take 3 mins to review this [vocabulary document](#).

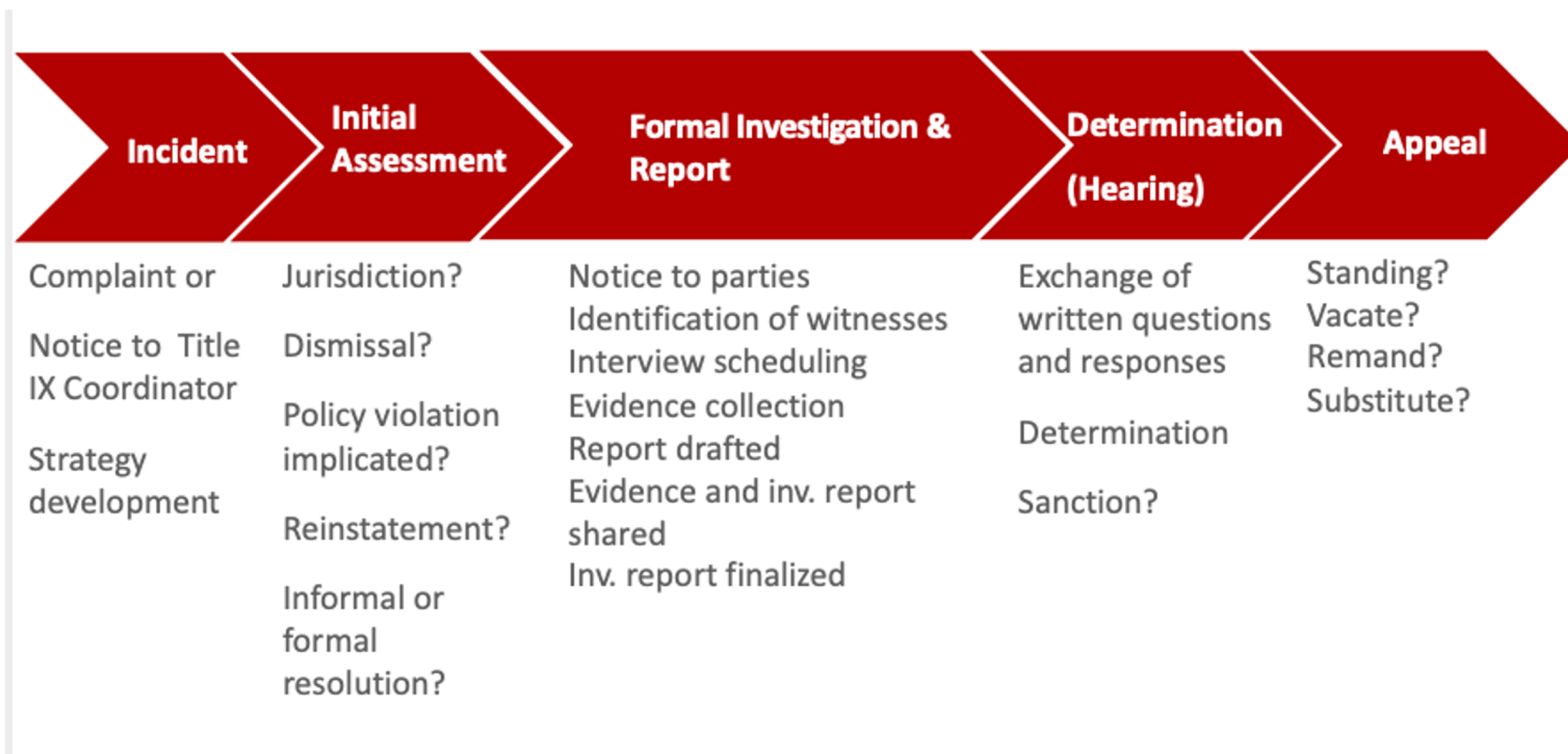


Pop Quiz

You have 2 minutes to complete this [vocabulary quiz](#).

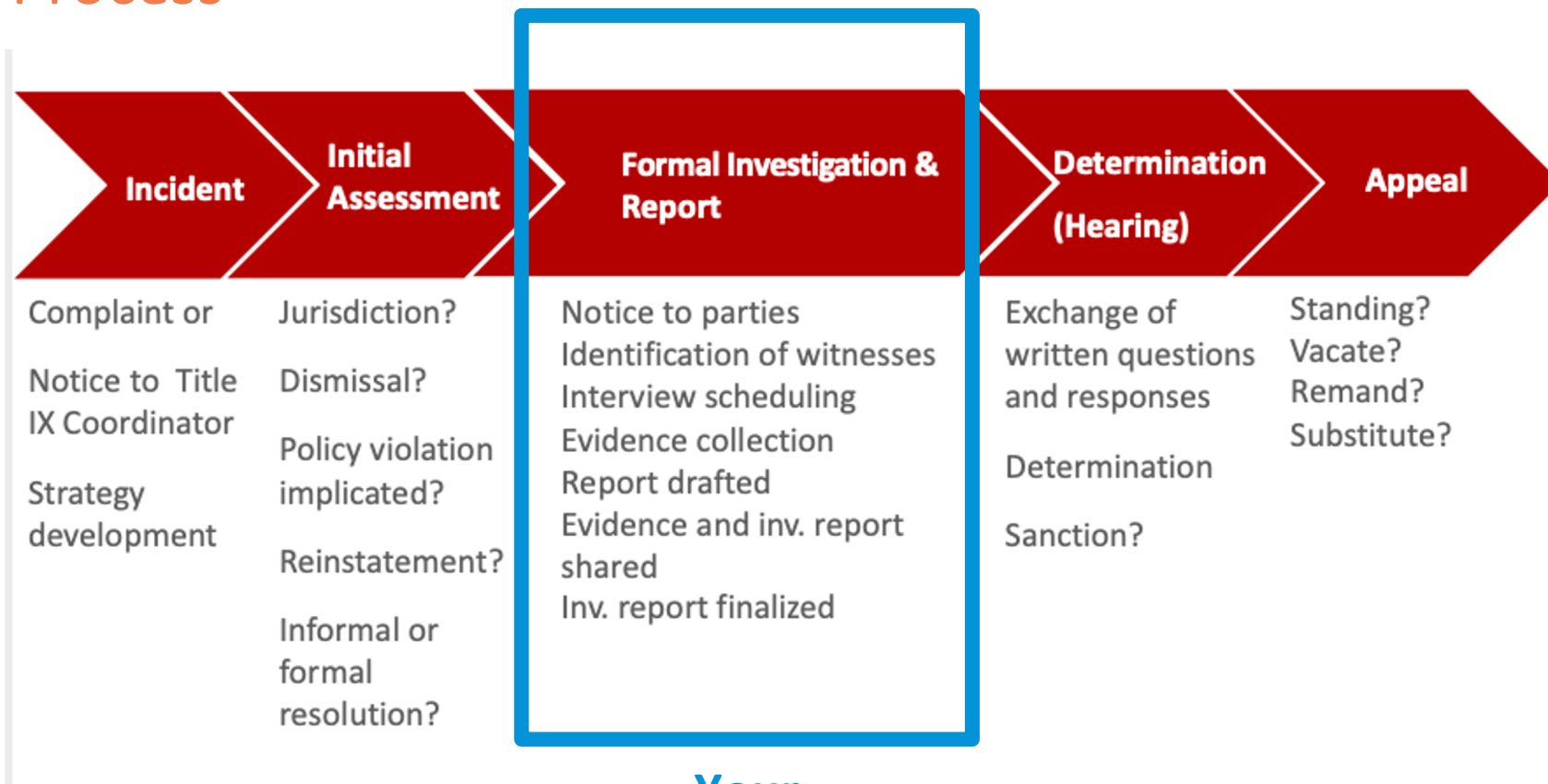


2020 Regulations - Formal Grievance Process





2020 Regulations - Formal Grievance Process



**Your
Involvement as
Investigator**



Role of Title X Coordinator

- Oversee CA compliance with Title IX
- Ensuring all necessary training
- Ensure policies of CA are aligned with Title IX
- Conduct initial assessment of any allegation of sexual harassment or sex discrimination
- Formal complaints are filed with the Title IX Coordinator
- Designate a mediator for informal resolutions
- Designate an investigator*
- Cannot serve as decision-maker or appeal decision-maker
- Ensure supportive measures, sanctions, remedies, and informal resolutions are implemented
- Ensure completion and storage of all necessary documents.



Serving Impartially



Conflict of Interest and Bias

“Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a **conflict of interest or bias for or against complainants or respondents** generally or an individual complainant or respondent”



Presumption of Non-Responsibility

“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”

"The presumption does not imply that the alleged harassment did not occur; the presumption ensures that recipients do not take action against a respondent as though the harassment occurred prior to the allegations being proved."



Sex Stereotyping

Check yourself for sex stereotyping in the way you view, handle, and document a complainant.

Examples of how this might impact a Title IX complaint

Holding a belief that all sexual assault victims are women and all assaulters are men

Holding a “boys will be boys” mentality



Investigating



Role of Investigator

As an investigator, you will always be working under the supervisor of LaBostrie/Welch and with support from Motley.

Communication with them before action is imperative.

This is a highly regulated process with lots of hoops to jump through.



Role of Investigator

**You are not making a
determination or assigning
responsibility!**

That is the role of the Decision Maker

You are just Investigating (Gathering
Evidence)



Guidance, Templates, Resources

Title IX Folders

- [Title IX Training & Guidance](#) - Templates, PDs, and Guidance Docs we created for CA staff
- [Title IX Resources](#) - Resource guides from other agencies we reference.

[Title IX Regulations](#) - The grievance process for sexual harassment is section 106.45



When Can you Investigate?

After a formal complaint has been filed
(LaBostrie/Welch will handle this)

After Notice has been sent to the Complainant and
Respondent (you may be asked to help)



How Long Should An Investigation Take?

“Promptly but Thoroughly”

As quickly as you can.

Ideally 30-60 days.

But you need to be thorough. Your job is to find all the relevant evidence and try to uncover the truth.



Role of Investigator

The investigator's job is to:

1. Gather all the evidence in regard to the complaint
2. Determine what evidence is relevant, and therefore necessary, to include
3. Assess the credibility of the evidence
4. Figure out where the evidence agrees and disagrees
5. Share the evidence with the parties
6. Map all this out in a report that is given to the decision-maker and the parties



Gathering The Evidence

Types of Evidence Include:

- Interviews - Witnesses, Parties, Experts
- Emails/Texts/Communications/Chats
- Social Media posts
- Video Footage (security, zoom)
- School Records
- Photos

Which types do you think are best?



A student at ASA, Jamie, reports to her teacher that another student, Donnie, has approached her several times during over the last two months to ask her to hook up and go out with him. This happens a lot, when the two are on the bus coming to and from school. Jamie has told Donnie that she has a boyfriend and is not interested. More than once, on the bus, Donnie convinced Jamie to unlock her phone and give it to Donnie. Donnie has then used Jamie's phone to text Jamie's boyfriend, telling him she wants to break up. Donnie has also used her phone to get access to Jamie's email account. Donnie then sent emails to Jamie's boyfriend using Jamie's email account saying she wants to break up.

Donnie also has repeatedly texted Jamie asking her to send nude photos of herself, asking her to hook up with him, and telling her he is into her.

Lately, both Jamie and her boyfriend have been getting emails, text messages, and facebook messages from someone they don't know using an alias threatening both of them.



Evidence You Can't Gather

- Privilege information without consent of party (doctor's records, counseling notes, etc).
- Rape Shield - Information about Complainant's sexual history unless
 - It proves consent between the parties
 - It proves that someone other than the Respondent committed the alleged behavior



Interviews - Notice

You must give witnesses notice.

We have a [template](#).

If the party is under 18 check with LaBostrie/Motley because you will likely have to go through the parents.



Advisor

The Complainant and Respondents are allowed to have an advisor and that advisor is allowed to be present during interviews you conduct with their advisee.

The Advisor cannot speak for the Advisee

Here is our [policy](#) for Advisors



Rights of Parties during Investigation

- The right to present gather and present evidence
- The right to present witnesses
- The right to have their advisor present at meetings
- The right to review all the evidence gathered
- Notice of all interviews and/or meetings (time, locations, dates, participants) with sufficient time to prepare.
- The right to discuss the allegations



Confidentiality

We ask all parties to maintain confidentiality and their are retaliation clauses within Title IX. Here are some things to know:

1. Parties are legally allowed to discuss their case with whomever they choose.
2. Limit information you share with witness and pertinent staff members. Only tell them what they need to know.
3. Staff and Title IX Staff are held to strict confidentiality.



Investigative Best Practices

10 Steps of Investigation



1. Establish basis for investigation (Incident, Pattern, and/or Culture/Climate)
2. Notice of Investigation/Notice of Formal Allegation(s) to Parties (NOIA)
3. Establish investigation strategy
4. Formal comprehensive investigation
 - a. Witness interviews
 - b. Evidence gathering
5. Draft investigation report
 - a. Gather evidence
 - b. Assess credibility and evidence
 - c. Synthesize areas of dispute/agreement and all questions asked

10 Steps of Investigation



6. Meet with Title IX Coordinator (and/or legal counsel) to review draft report and evidence
7. Provide all evidence directly related to the allegations to parties and their Advisors for inspection and review with 10 days for response
8. Revise (as needed) and finalize investigation report
 - a. Gather, assess, and synthesize relevant evidence
9. Meet with Title IX Coordinator (and/or legal counsel) to review final investigation report
10. Send final report to Decision-maker and parties/Advisors for review and written response at least 10 days prior to Decision-maker making their determination of responsibility



Investigation Game Plan

Determine the strategy for the investigation

- Witness interviews
- Evidence gathering
- Intended timeframe to complete the investigation
- Evidence review
- Report writing and review



Interviews

Interviews will be an essential part of most investigations.

Start with the Complainant and Respondent.

Ask them who you should talk to.



Interviews - Preparing

- Outline your interview questions in advance but be flexible. If you need to deviate from your script and insert a logical follow-up question, be prepared to do so.
- Plan the order of interviews
- Most beneficial to conduct interviews in person, if conditions permit
- Interviews should be conducted in a neutral, quiet, and private setting with no or minimal likelihood of interruptions



Interviews - Handling Parents

Set a boundary at the beginning of the interview that you are interviewing their child not them, and that the child should answer the questions.

You may have to reinforce this.



Interviews - How Much Info to Give

Decide how much information you will share in advance of each interview and have a rationale for what information will be shared and what will not be shared

- Remember that prior to a decision, the parties must have an opportunity to review all “directly-related” evidence
- You may be challenged on a decision not to share, so have a rationale
- When in doubt, provide the parties with evidence



Interviewing Skills

Check out this [slide show](#) (slide 105 - 121) to get more knowledge about the following:

- Interviewing skills
- Your Demeanor
- Building Rapport
- Setting Expectations
- Anticipating Witness Questions



Documentations

[Call Logs](#)

Interview Notes

Evidence Appendix



Evidence



Role of Investigator

The investigator's job is to:

1. Gather all the evidence in regard to the complaint
2. Determine what evidence is relevant, and therefore necessary, to include
3. Assess the credibility of the evidence
4. Figure out where the evidence agrees and disagrees
5. Share the evidence with the parties
6. Map all this out in a report that is given to the decision-maker and the parties



Examples of Evidence

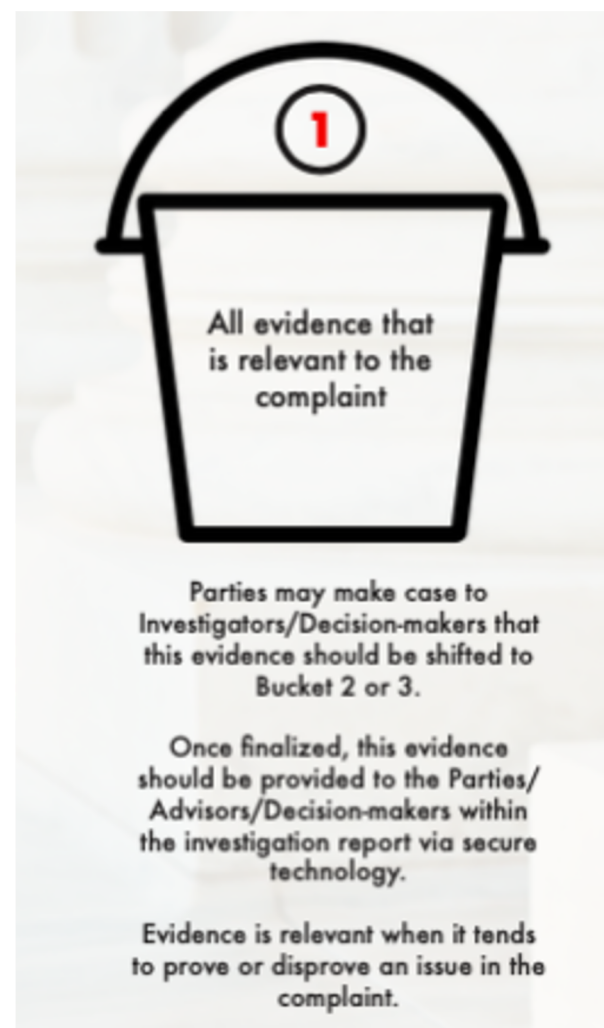
- Interviews with complainant and respondent
- Interviews with witnesses
- Interviews with expert witnesses
- Video camera footage
- Emails/Text messages
- Photos
- Chats from zoom classes

Organizing Evidence

Three Types of Evidence to Consider

1. **Relevant - Tend to prove or disprove the complaint**
2. Related
3. Not Relevant or Related

Example: Video footage of a teacher grabbing the student's breast.



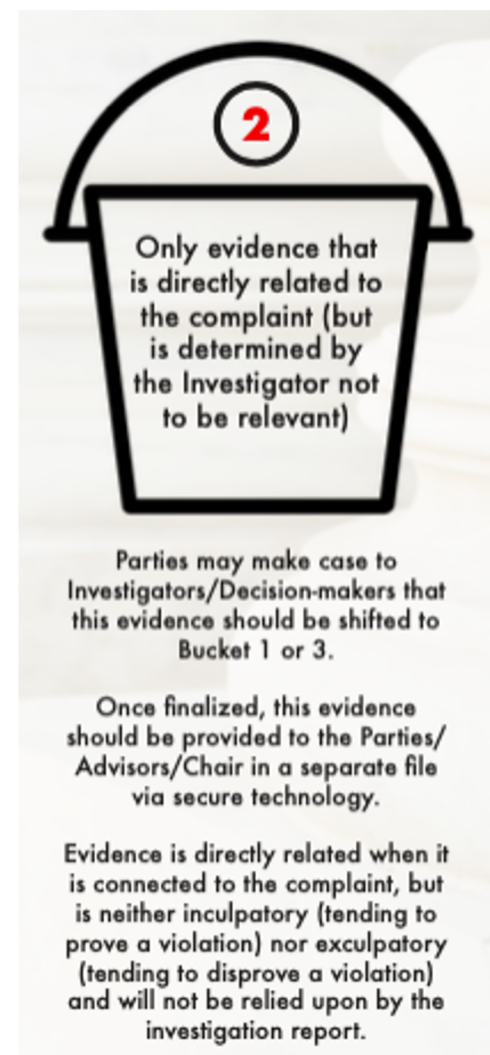
Organizing Evidence

Three Types of Evidence to Consider

1. Relevant
- 2. Related - When it is connected to the complaint but doesn't prove or disprove the complaint**
3. Not Relevant or Related

Complaint: Teacher is sexually harassing a student.

Example: The student once drew a heart and the teacher's name in her notebook in class.



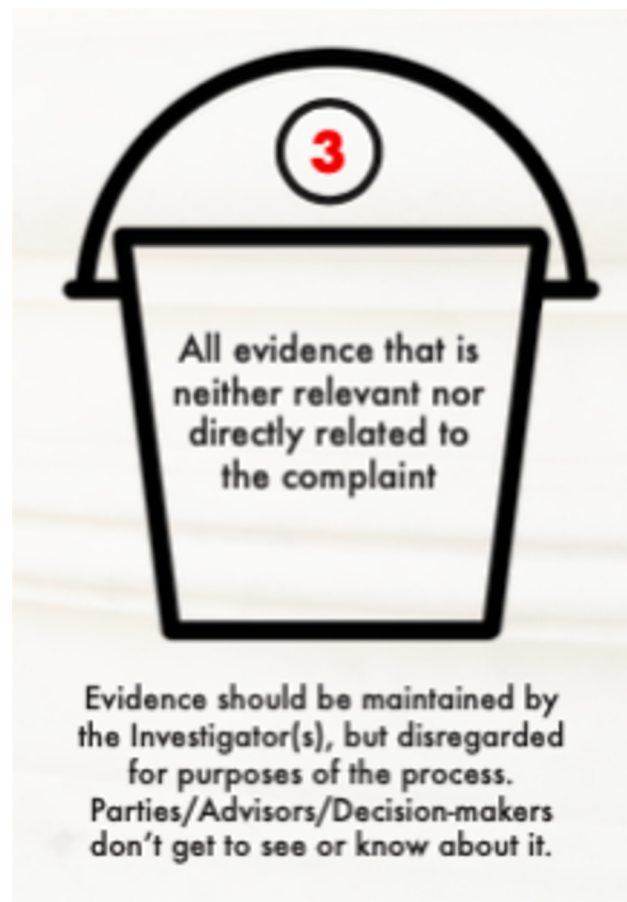
Organizing Evidence

Three Types of Evidence to Consider

1. Relevant
2. Related
- 3. Not Relevant or Related - When it isn't relevant or related**

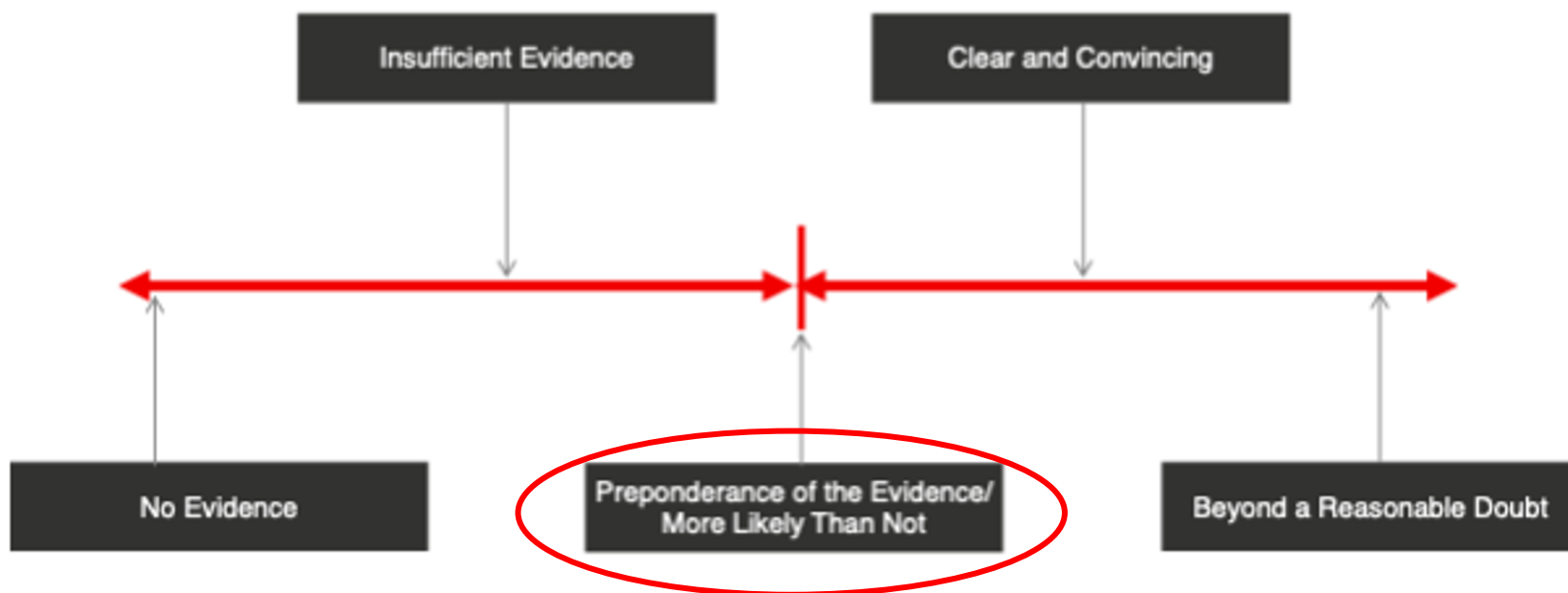
Complaint: Teacher is sexually harassing a student.

Example: The student is left-handed.



Standard of Evidence

EVIDENTIARY STANDARDS





Standard → Preponderance of Evidence

Evidentiary standards establish the threshold for what degree of proof is needed to make a determination of a party's responsibility

- Ex: the criminal standard of proof “**beyond a reasonable doubt**” requires near-certainty
 - ◆ Can also think of this as requiring a finding that, even if there is not conclusive/indisputable evidence, there is no other logical or reasonable explanation other than the alleged conduct occurred.
 - ◆ This is the highest burden of proof.
- The next lower burden of proof is known as the “**clear and convincing**” evidence standard
 - ◆ It requires a finding that something is substantially more likely than not to be true, or there is a high probability that it is true.
- Our burden of proof is the “**preponderance of evidence**” standard, which requires finding that the alleged conduct is more likely than not to have occurred
 - ◆ This standard of proof is lower than both “beyond reasonable doubt” and “clear and convincing” evidence
 - ◆ Can also think of this as 51% or greater likelihood
 - ◆ Under this standard, if the relevant evidence demonstrates that the alleged conduct is more likely than not to have occurred, you are required to find that the party is responsible; otherwise, you are required to find that they are not responsible.



What Evidence Is Not Allowed

The investigator is not entitled to information that is privileged (medical files, therapy notes, etc) unless the party consents to sharing that information.

The investigator is not allowed to include evidence of the complainant's past sexual history except when:

- It proves consent between the complainant and the respondent

Or

- It proves that someone else beside the respondent committed the alleged conduct



Investigative Report



Role of Investigator

The investigator's job is to:

1. Gather all the evidence in regard to the complaint
2. Determine what evidence is relevant, and therefore necessary, to include
3. Assess the credibility of the evidence
4. Figure out where the evidence agrees and disagrees
5. Share the evidence with the parties
6. Map all this out in a report that is given to the decision-maker and the parties



Investigative Report Template

Take 3 minutes and review the [Investigative Report](#) template.

Here are some questions to guide your review:

What are the sections?

What goes in each section?



Investigative Report Sections

1. Title IX Sexual Harassment Investigation
2. Summary of Allegations and Parties Involved
3. Procedural Notices and Communications
4. Complainant Interviews and Submitted Information
5. Respondent Interview(s) and Submitted Information
6. Witness Interviews and Submitted Information
7. Additional Relevant Information
8. Summary of Relevant Evidence
9. Certification of Evidence Shared with the Parties for Inspection and Review



Section	Description	Investigator Information Needed
1. Title IX Sexual Harassment Investigation	Generic procedural information and description of report	2 Minor edits that are specific to case.
2. Summary of Allegations and Parties Involved	Procedural information that is specific to your investigations.	You will be filling in this whole sections. This is basically a synopsis of incident response and the filing or the formal complaint.
3. Procedural Notices and Communications	Procedural information that is specific to your investigations.	Information about who you gave notice to parties and witnesses



Section	Description	Investigator Information Needed
4. Complainant Interviews and Submitted Information	Procedural information that is specific to your investigations. Including interview synopsis and evidence gathered.	You will fill in the whole section including interview information and synopsis and description of other evidence gathered from Complainant
5. Respondent Interview(s) and Submitted Information	Procedural information that is specific to your investigations. Including interview synopsis and evidence gathered.	You will fill in the whole section including interview information and synopsis and description of other evidence gathered from Respondent
6. Witness Interviews and Submitted Information	Procedural information that is specific to your investigations. Including interview synopsis and evidence gathered.	You will fill in the whole section including interview information and synopsis and description of other evidence gathered from Witness Collegiate Academies



Section	Description	Investigator Information Needed
7. Additional Relevant Information	Evidence based information that is specific to your investigation	You will fill in the whole section and describe any other evidence you collected not through Complainant, Respondent, or Witnesses.
8. Summary of Relevant Evidence	<p>This is where you map out the evidence and essentially tell the story of your investigation.</p> <p>This is the heart of the report and what the decision-maker uses to determine responsibility.</p>	<p>You will write the whole sections:</p> <ul style="list-style-type: none">• Map out relevant evidence• Connect facts• Assess credibility• NOT MAKING A DETERMINATION OR ASSIGNING RESPONSIBILITY



Section	Description	Investigator Information Needed
9. Certification of Evidence Shared with the Parties for Inspection and Review	Procedural information specific to your investigation.	A few minor edits and your signature



Credibility Assessment

Guidance can be found [here](#).

- **Plausibility.** Is the witness's version of the facts believable? Does it make sense?
- **Demeanor.** Does the witness seem to be telling the truth?
- **Motive.** Does the person have a reason to lie?
- **Corroboration.** Are there documents or other witnesses that support the witness's version of events?
- **Past record.** Does the alleged wrongdoer have a past record of inappropriate conduct?



Evidence Appendix

All related and relevant evidence is outlined in the evidence appendix.

The parties have a right to review this evidence and is the basis for their ability to comment on the report before the final draft is submitted.

Relevant evidence must be addressed in the report itself.



Draft Report

- HR/Legal should review the report before it goes out.
- A draft of the report and the evidence appendix must be sent to both parties simultaneously.
- Must send a notice (here is the [template](#)) with the draft report.



Draft Report

- Once sent both parties have 10 days to review and submit comments.
- This is there chance to question how evidence is categorized and used.
- These comments should be noted in the final report.



Final Report

Review comments from review period.

Finalize report.

Send to parties and decision-maker simultaneously.

Your work is done!



Collegiate Academies