PART 1
Title IX Overview

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Lesson 1
Introduction to Title IX

Welcome to Title IX Background and History training. Knowing how to thoroughly conduct an investigation without bias will be critical to your success. An investigation must be fair for all parties involved. Title IX requires that schools investigate incidents as a critical component of stopping the harassment, preventing its recurrence, and remedying any ongoing effects.
Let's review the objectives for this lesson. By the end of this lesson, you should be able to:

- Discuss the mission and history of Title IX.
- Understand the core components of a school's necessary response.

BACKGROUND

Early History
Title IX was enacted in 1972 to resolve a gap left by the passage of the Civil Rights Act of 1964. Title VI of the Civil Rights Act prohibited discrimination on the basis of race, color, or national origin in education settings. Title VII of the Civil Rights Act prohibited discrimination on the basis of race, color, religion, sex, or national origin in employment.
Although the passage of these two laws was a step in the right direction, it left a gap in federal law regarding protection on the basis of sex in education settings. Title IX filled that gap by expressly prohibiting sex discrimination in federally funded education programs.

Breaking down the Title IX Statute
We will begin this lesson by analyzing the Title IX statute line by line. The statute reads:
"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."
Although the statute comprises only thirty-seven words, every word has meaning, with requirements that are constantly being shaped and interpreted by court decisions, federal regulations, and other federal guidance.

No Person
'No person' is important to note because the Title IX statute applies to employees in addition to students. Title VII also applies alongside Title IX to prohibit discrimination on the basis of five protected classes, including sex, in employment settings. The second part of this phrase "in the United States" specifies that the harassment must take place in the U.S. for Title IX to apply.
On the basis of sex
Title IX prohibits discrimination when it is based upon a person's sex, including discrimination on the basis of their gender. Courts have considered in recent years whether the term "on the basis of sex" should be interpreted to include sexual orientation, gender identity, and gender expression. The federal government now interprets Title IX to protect LGBTQI+ individuals, following a U.S. Supreme Court decision that extended protections under Title VII.
Excluded
The next section of the statute we will examine is "excluded from participation in, be denied the benefits of, or be subjected to discrimination." This means a person has to suffer some sort of

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adverse action or impact as a result of that discrimination or harassment in order for Title IX to apply.

Education program
The Title IX statute applies to all federal funding recipients, and its reach extends to all of a school or district's entire education program and all activities. It does not matter whether or not the particular program receives the federal funding. One "penny" of federal funding to a school or district results in Title IX's application to the entire program or activity, including employment.

TITLE IX APPLICATION: CORE CONCEPTS FROM CASE STUDIES

Case Introduction: Alida Gebser
We will begin this lesson by analyzing the case involving our student, Alida Gebser, and a teacher, Frank Waldrop.

Alida Gebser was an 8th grade student who participated in a book group discussion led by a high school teacher, Frank Waldrop. During the book group discussions, Waldrop made sexually suggestive and other inappropriate comments, resulting in complaints from other students' parents. After the principal advised Waldrop to cease any inappropriate behavior in the book group, Waldrop narrowed his focus to Gebser. By this time, Gebser had transitioned to the high school and was in his class. Waldrop visited her at home, under the pretense of giving her a book, where he kissed and fondled her. During the remainder of the school year, they had sexual intercourse on several occasions, often during class time, though not on school property.

Who's Responsible
If we return to our breakdown of the statute, specifically "on the basis of sex," Waldrop's behavior toward Gebser was on the basis of her sex and was sexual and thus could be considered sexual harassment, or discrimination on the basis of her sex. The key question for the Supreme Court, though, is whether under circumstances like these, the school district should be responsible under Title IX for Waldrop's behavior.

Case Study: Gebser v. Lago Vista Independent School District
Alida Gebser was conflicted about what to do and did not report any of this behavior to her parents or school officials. Several months later, a police officer discovered Waldrop and Gebser engaging in sexual intercourse in a car off-campus, but near the school. Waldrop was arrested, the school district terminated his employment, and he eventually lost his teaching license.

Title IX's Three-Part Analysis
The Gebser family filed a lawsuit against the school under Title IX. Does the district have liability under Title IX here? The Supreme Court established a three-part analysis for Title IX. First, whether the school had notice of the harassment; second, whether the official had the authority to correct the situation, and third, what, if anything, did the school do in response?

Do you recall the beginning of the story where other parents complained about Waldrop's inappropriate comments in the book group? Did you think this would be enough to constitute "actual notice" of the sexual harassment that Gebser experienced? Ultimately, the Court ruled this was not enough to

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constitute notice of Gebser's sexual harassment, because the school must have had actual notice of the sexual harassment that Gebser experienced in order to take specific steps to stop it. While agencies like OCR have historically applied a "should have known" standard, that is not the standard adopted by the Supreme Court.

Case Study: Davis v. Monroe County Board of Education

Let's move into our next case, Davis versus Monroe County Board of Education, which clarified the open question left by the Supreme Court in the *Gebser* decision, which is 'what does it mean to "fail to adequately respond?"'

> *Lashonda Davis was a 5th grade student who suffered from persistent sexual advances from a male classmate. He attempted to touch her breasts and genital area and made vulgar statements about wanting to engage in sexual activity with her. There were prompt reports to the teacher and her parents notified the school principal. Little disciplinary action was taken. The harassment occurred for many months. The classmate continued to engage in sexually suggestive comments and behaviors, along with physical harassment. All incidents were reported to teachers or administrators either by the student or her parents. When Lashonda's parents realized that their daughter's grades were suffering, she was unable to concentrate on her studies, and had written a suicide note, they finally decided to take the matter to local law enforcement. The Davis family eventually reported the incidents to law enforcement because they believed the school was unwilling to take any effective action. For example, Lashonda had requested to change her classroom seat, but the school refused to do so for several months.*

Case Analysis

In this case, the Supreme Court applied the *Gebser* framework to Davis' claims and expanded its analysis of how a school or district may be responsible for how it responds to student-on-student harassment. The Court said that in order for a school or district to be liable under Title IX, the school must have known of the harassment, the harassment must have been sufficiently severe, pervasive, and objectively offensive such that it deprived the victim of the educational opportunities and services to which they were otherwise entitled, and the school's response must have been deliberately indifferent. In the *Davis* case, the Supreme Court did find that the failure of the school to stop the harassment constituted deliberate indifference. The school's ineffective response was not reasonable.

Putting it Together: Scope of Title IX

Title IX's scope - meaning the full picture of the behaviors and circumstances covered by Title IX - derive from the relevant court decisions, federal regulations, and guidance from OCR. Those behaviors and circumstances break into two broad categories: discrimination and harassment.

> **Discrimination**
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> Discrimination is broken down into two categories. The first is sex or gender discrimination, or preferences expressed in decisions to allow or deny participation on the basis of a person's sex. The second category considers equity issues in a school's program. For example: Title IX requires that schools provide balanced, equitable participation opportunities, such as in athletic programs or academic enrichment programs for students, so that participation is not precluded for a person on the basis of their sex.
>
> **Harassment**
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> The harassment prong addresses interpersonal behaviors in a school's program. We saw examples of types of interpersonal conduct in *Gebser*, which addressed teacher-on-student

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harassment, and *Davis*, which dealt with student-on-student harassment. Harassment is broken into three broad categories – quid pro quo harassment, sexual harassment, and retaliation.

THE OFFICE FOR CIVIL RIGHTS (OCR)

The Role of the Office for Civil Rights (OCR)
In addition to foundational court decisions, the Office for Civil Rights, or OCR, developed a library of regulatory and sub-regulatory guidance to give further clarification and practical, technical assistance to schools to develop compliant policies and procedures to address sex discrimination.

- OCR administratively enforces Title IX by conducting investigations of complaints filed by an individual, a representative, or a group.
- OCR administratively enforces Title IX by engaging in compliance reviews.
- OCR publishes specific topical guidance and attempts to fill in the gaps left by court decisions.
- OCR sponsors initiatives to combat sexual misconduct in K-12 public schools (i.e., compliance reviews, public awareness campaigns, data collection, and reviews).
- OCR guidance has been shifting quite a bit due to political changes over the past several years and those changes will likely continue.

The Title IX Commandments
The IX commandments are a compilation of the key requirements and obligations under Title IX. They reference lessons from case law, guidance from OCR, and established best practices that have emerged over the past several decades of Title IX practice. Read the following to learn how these administrative professionals navigate these issues.

Investigation: Thorough, Reliable, and Impartial
"I'm Sarah, principal of a large middle school. I ensure all our school's investigations are thorough, reliable, and impartial. When an allegation is made, an investigator at my school makes a good-faith effort to gather all required information needed to fully understand what is alleged to have happened and to document their efforts to do so. An investigation must focus on gathering available relevant evidence that comes from credible and reliable sources. The investigator must be impartial to ensure fairness. Any and all individuals involved in the process must not have any particular bias that may affect the outcome."

The Resolution Process
"I'm Garrett, a leader at the local high school. I've been an investigator for about a year now. The first thing I can tell you about the overall process is that the process, from beginning to end, must be conducted promptly. Secondly, the process has to be effective, in that it has the intended effect of stopping the harassment, preventing its recurrence, and remedying any effects of the harassment. Oh, and one more thing, the process must be equitable. This means it must be characterized by fairness under the circumstances, it must be just, and definitely reasonable — meaning you are meeting the needs of the specific parties."

The Duty to Remedy Effects
"I'm Marisol. As a district-level Title IX Coordinator overseeing investigations under Title IX, I need to ensure the school did not act unreasonably in its efforts to stop the discrimination or

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harassment. Also, the district must not have acted unreasonably in its efforts to prevent any recurrence.
When I'm reviewing our school district's response under Title IX, I ask myself two questions:

- *Did the school implement remedies that were tailored to the circumstances and that were effective?*
- *Did those remedies consider not only the individual person who has experienced the harassment, but also the school community at large, where needed?*

If I can answer yes to those questions, I know our efforts to provide remedies were equitable."

Conclusion
You've reached the end this lesson. After completing this lesson, you should now be able to:

- Discuss the mission and history of Title IX.
- Understand the core components of a school's necessary response.

Lesson 2
Title IX Process & Roles Overview

The Title IX process occurs in five phases to ensure that an equitable and fair grievance process is provided to all individuals involved. As the investigator, you'll want to understand how the overall process works and know the roles of individuals who will be working or participating in the process. This lesson will provide an overview of the process and the people involved.

After completing this lesson, you will be able to:

- List and describe the five phases of the Title IX grievance process.
- Identify key roles involved in the process.

THE PROCESS

The Title IX Grievance Process
When an incident or circumstance occurs in a school or district that may be a potential violation, a process must be used to determine if a policy was violated, and if that violation was against federal Title IX regulations. This process is the Title IX grievance process or the Title IX process. The five phases of the Title IX grievance process allow those individuals involved on the Title IX team to carry out the process in a thorough, fair, and prompt manner. It allows the investigation within the process to be handled appropriately and provides due process protections for the parties.

Five Phases of the Process
The Title IX grievance process occurs in five phases. The first phase is the incident and notice to the school or district. This is followed by an initial assessment. Next, an investigation is conducted, which is followed by a determination. The final phase of the process is the appeal, if necessary or requested.

1. **Incident -** Once the Title IX Coordinator, or another school employee, becomes aware of an incident, the school has notice and has a responsibility to respond with outreach and

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supportive measures. Supportive measures are non-disciplinary, individualized services designed to restore or preserve access to education, protect safety, or deter harassment. The complainant or their parent or guardian may wish to file a formal complaint initiating the formal Title IX investigation process. A formal complaint outlines the allegations and requests, in writing, that the school investigate the allegations.

Sometimes, notice of the incident may be a formal complaint, but there are other ways to give notice, too, including a verbal report or reporting on an online form. Notice alerts the Title IX Coordinator to an incident, but a formal complaint officially requests a formal investigation. Lastly, a Title IX Coordinator may file a formal complaint on behalf of the school in some circumstances, even if the complainant does not wish to do so.

2. **Initial Assessment -** Following a formal complaint, the Title IX Coordinator performs an initial assessment. In this stage of the process, the Title IX Coordinator will determine if the incident falls under the jurisdiction of Title IX or whether it must be dismissed under Title IX and addressed under another school policy. They'll also determine which policy violation, if any, was potentially violated based on the allegations.
3. **Formal Investigation**: The next part of the grievance process is to conduct the formal investigation. In this stage, the assigned investigator uses the information provided by the Title IX Coordinator from their initial assessment and strategy development to identify witnesses, schedule interviews, and collect evidence. The investigator is also responsible for drafting the investigation report and sharing it and the evidence with the Title IX Coordinator, then the parties and their advisors. Finally, the investigator will finalize the investigation report and share it with the parties, advisors, and the decision-maker.
4. **Determination** - During this part of the process, the parties may exchange written questions and responses before a determination is made. This stage may consist of a live-hearing, as well, but a live hearing is not a requirement for a K-12 school or district. Sanctions and/or remedies are also determined during this stage.
5. **Appeal** - Appeals provide an opportunity to correct any errors or issues with the process. If an appeal is requested, the appeal decision-maker will review the investigation report, evidence, and the previous determination. A successful appeal could result in changes to sanctions or remedies, or possibly additional investigation of the matter. The review of the determination is limited to the grounds in the appeal.

THE ROLES

Overview of Roles

As we've learned, there are several phases of the Title IX grievance process that allow for an equitable, fair and prompt resolution. Various members of the Title IX team all play a role in ensuring the success of the grievance process. The Title IX Coordinator appoints or assigns individuals to the Title IX team and is responsible for training them. Additionally, there are others who are involved with the process who'll work directly with the parties to assist them with the process.

Key Roles in the Process

Each individual that works or participates in the process has a specific role in ensuring that the process is carried out equitably and in a timely manner. The people involved in the Title IX process outside of the parties include:

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- Title IX Coordinator
- Investigator
- Decision-maker
- Appeals decision-maker
- Informal resolution facilitator
- Advisor of Choice

These individuals each participate in a different phase of the process as the Title IX Coordinator oversees the entire thing. Hover over each role to view the phase of the process in which they're involved. Click on the individual to learn more about their role.

Title IX Coordinator
The Title IX Coordinator is the district employee who's been tasked with overseeing the district's entire compliance with Title IX. This individual is often a district-level employee but can also be a school-based employee. The Title IX Coordinator receives notice and conducts the initial assessment to determine how the report or complaint should be handled. They could determine to move forward with an investigation, even if the complainant does not request that the district investigate, but this is not common.

The Title IX Coordinator is responsible for providing interim and supportive measures and also determines if an informal resolution is appropriate. Under the regulations, the Title IX Coordinator may serve as the investigator. Also, it's become increasingly common for school districts to appoint others to serve as deputy Title IX Coordinators to help support the compliance effort.

Investigator
The investigator is a person or pair of people assigned to conduct an investigation under a formal Title IX resolution process. It's expected that the investigator will conduct a neutral investigation. This individual gathers evidence and drafts an investigation report, but does not ultimately decide whether a policy violation has occurred. An investigator must be properly trained prior to conducting an investigation. The Title IX Coordinator may serve as an investigator in addition to their role.

Required Training Topics for Investigators
- *Definition of sexual harassment*
- *Scope of school or district's education program or activity*
- *How to serve impartially and avoid prejudgment, conflicts of issues, or bias*
- *Issues of relevance of questions and evidence*
- *Understanding relevant evidence to fairly summarize it in the investigation report*

Decision-Maker
The decision-maker is a person or panel who take the report created by the investigator and make a determination of whether the district's policy has been violated. They'll provide a written determination to both parties. The Title IX Coordinator cannot serve as the decision-maker or be a part of the panel.

Informal Resolution Facilitator

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Title IX regulations allow for an informal resolution in limited circumstances, if the parties agree, and the Title IX Coordinator agrees the situation is appropriate. Although it's not a specific process, it provides an opportunity to use informal resolution means such as mediated conversation and/or restorative practices. The Informal Resolution Facilitator must be trained in how to effectively conduct alternate resolution practices if an informal resolution is agreed upon. Informal resolution can be used any time following a formal complaint and prior to a final determination.

Appeal Decision-Maker
Under the Title IX regulations, both parties are permitted to request an appeal. The appeal decision-maker or panel should not have been previously involved in the investigation or determination. The appeal decision-maker makes a determination on a party's request for an appeal, reviews written submissions from parties, and may review the investigation report or other evidence gathered during the investigation and/or hearing.
The appeal decision-maker may need to speak with the investigator, original decision-maker, the parties, or the witnesses. Their review of the case should be limited to the grounds noted in the appeal request. They will draft a written determination that outlines the rationale for the outcome.

Advisor
Due process protections are an important part to ensuring the Title IX process is equitable. One important right that due process affords both parties is the right to an advisor of choice. Advisors can be selected by the parties to assist them throughout the process, which includes attending meetings, interviews, and any hearings.
As you continue through Title IX investigator training, you'll find that advisors have an active role with the party they're assisting in several phases of the process. Advisors can be anyone, including an attorney, and can be selected and present in addition to the party's parent or guardian.

Conclusion
You've reached the end of Title IX Process & Roles. After completing this lesson, you should now be able to:

- List and describe the five parts of the Title IX grievance process.
- Identify key roles who are part of the process.

Lesson 3
Determining Jurisdiction

Before a formal investigation can begin, the Title IX Coordinator must first determine if an allegation in a complaint falls under the jurisdiction of the Title IX regulations. The allegation is reviewed against certain jurisdictional elements to determine if it should be investigated under Title IX, or another conduct policy held by the school or district. As the investigator, you should be aware of the components used in determining jurisdiction under Title IX regulations. This lesson provides an overview of jurisdiction under Title IX.

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After completing this lesson, you will be able to:

- Explain jurisdiction under Title IX.
- Describe the elements of determining jurisdiction.

Applicable Policies

After receiving a report or complaint of sexual harassment, the school or district must first review the policies that could apply to the allegation. Policies that address sex- or gender-based discrimination under Title IX are one set of policies and procedures that might apply, but they're likely not the only ones. Schools and districts also enforce student and employee conduct policies, as well as other policies that address the behavior of members of the school community.

When Does Title IX Apply?

The first question after receiving a report or complaint of sexual harassment is "Does Title IX apply here?" or "Is there jurisdiction under Title IX?"

The answer to this question matters because if an allegation or incident falls under the applicability of Title IX regulations, it's important that the Title IX process be closely followed. When an incident is outside of Title IX jurisdiction, the school or district has the flexibility to address the behavior under another applicable policy, such as a student or employee conduct policy.

The Title IX Coordinator

When a Title IX Coordinator is evaluating a complainant's formal complaint that triggers the start of an investigation, the Title IX Coordinator must first determine whether there is jurisdiction under Title IX. The Title IX Coordinator assesses Title IX jurisdiction by looking at a few key factors:

- Who is the complainant?
- Who is the respondent?
- Where did the conduct occur?
- Does the conduct meet one of the definitions of sexual harassment under Title IX?

Who is the Complainant?

For Title IX to apply, the complainant must be a person who is participating in or attempting to participate in the educational program or activity. The Title IX regulations apply a fairly broad definition of what could be included in attempting to participate, such as applicants for employment, incoming students, or alumni trying to participate in school programming.

Who is the Respondent?

The Title IX Coordinator must also evaluate the respondent who is named in the formal complaint. Does the district exercise control over this person because it's a district student or employee? For Title IX to apply, the school or district must have a degree of control over the individual.

A related question that the Title IX Coordinator might ask is, Does the school or district have authority to take disciplinary action against this person? This can be very fact-specific when dealing with individuals like vendors, guests, or former students or employees. Sometimes schools lack disciplinary authority – for example, the school typically lacks disciplinary authority if a student is sexually harassed by a student from another school. Another example occurs when an employee resigns before the school can investigate.

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Where did the Conduct Occur?
The Title IX Coordinator must assess where the conduct occurred. They'll review the location of the incident to identify if it occurred on:

- Property that is owned or controlled by the school
- Property that is being used by a school-sponsored program or event, OR
- Property that is owned or controlled by an organization recognized by the school. This category may be very rare in K-12 settings, though it's more common in universities.

The root of this part of determining jurisdiction is whether the school had control over the context of the harassment. A common question with technology-related issues is whether school-sponsored technology was involved. Examples of school-sponsored technology includes devices or networks provided by the school or district.

In-Program Effects
Some incidents are a mix of in-program and out-of-program conduct. The school will have jurisdiction over the portion of events that occurred in school. Additionally, sometimes a report or complaint is made about an incident that occurs entirely out-of-school. An example would be a sexual assault that happens over the weekend at an event that has no connection with the school at all, but because two students are involved, there are in-program effects when the students return to school. Title IX requires us to deal with those effects, even though they may be likely addressed through providing supportive measures rather than investigating the underlying incident.

Outside of the United States
Title IX's application is also limited to incidents that occurred inside the United States. Even if an international trip is sponsored by the school, any sexual harassment that occurs on that trip would be outside of Title IX per the specific terms of the Title IX regulations. This essentially gives schools or districts the flexibility to address an incident through its regular student conduct process, rather than using the Title IX process. For employees, an employee disciplinary process can be used.

Does Conduct Constitute Sexual Harassment?
For Title IX to apply, the alleged behavior must constitute behavior that would meet one or more of the definitions of sexual harassment. If the allegation describes behavior that wouldn't constitute sexual harassment under those definitions, then the Title IX process does not apply. The school or district has the flexibility to address the behavior through the student or employee conduct process.

Categories of Sexual Harassment

- *Quid Pro Quo*
- *Hostile Environment*
- *Sexual Assault*
- *Domestic Violence*
- *Dating Violence*
- *Stalking*
- *Retaliation*

Conclusion
You've reached the end of Determining Jurisdiction. After completing this lesson, you should now be able to:

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- Explain jurisdiction under Title IX.
- Describe the elements of determining jurisdiction.

Lesson 4
Defining Sexual Harassment

The Title IX regulations mandate a six-part definition of the types of conduct that can constitute "sexual harassment." The six-part definition of what constitutes "sexual harassment" includes:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Discrimination and abuse allegations involving teachers, staff, and students must be addressed with care. To meet your obligation under Title IX, which includes providing a thorough, reliable, and impartial investigation of allegations, you must understand how "sexual harassment" is defined.

After completing this lesson, you will be able to:

- Identify the elements and components of the different forms of sexual harassment and retaliation.
- Summarize the district's responsibility to respond to a Title IX retaliation.

QUID PRO QUO & HOSTILE ENVIRONMENT

Defining Quid Pro Quo
Under Title IX, Quid Pro Quo harassment is defined as, "An employee of the recipient conditioning the provision of an aid, benefit or service of the recipient on an individual's participation in unwelcome sexual conduct." It is important to recognize that this definition only applies to an employee's conduct; therefore, only an employee can be the respondent in complaints alleging quid pro quo harassment.

Many times, the power dynamics between individuals are an important element of quid pro quo allegations for the investigator to probe, such as when:

- A senior employee harasses a more junior employee.
- An employee harasses a student over whom they have authority.

Important Elements
Quid Pro Quo complaints involve unwelcome sexual conduct or advances. In Quid Pro Quo complaints, the affected person (or complainant) may be offered an advantage or suffer a deprivation of some sort if they reject sexual advances, (like a promotion, an earned grade, or a letter of recommendation), or the "deprivation" could be that they are avoiding something.

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Here's an example:

> *Katelyn has recently stopped participating in the Spanish Club because the staff advisor propositioned her to engage in sexual activity at the last meeting, stating that she would not advance in Club leadership unless she "played nice."*

Defining Hostile Environment

The second part of the sexual harassment definition is hostile environment harassment. Under Title IX, hostile environment harassment is defined as:

> *"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."*

This definition reflects both case law and under the federal Title IX Regulations requiring schools to look at the circumstances as a whole and gather evidence about all components of the definition. A hostile environment creates the effect of denying someone access to the district's education program or activity - whether they are a student or an employee.

- All three elements – severe, pervasive, and objectively offensive – must be present for hostile environment sexual harassment.

KNOWLEDGE CHECK

Q. Which situation do you think could create hostile environment? Select all that may apply.

A. Student-on-student harassment
B. Student-on-staff harassment
C. Staff-on-staff harassment
D. Staff-on-student harassment

Correct answer: *All of the scenarios listed could create a hostile environment. There's no 'bright line' definition for when harassment creates a hostile environment. It's a 'totality of the circumstances' analysis that requires an evaluation of everything that occurred in context.*

Breaking Down the Definition

Let's continue with our analysis of what constitutes a hostile environment. There are five components we will examine more closely for the remainder of this lesson:

- Unwelcome,
- Reasonable Person,
- Severe,
- Pervasive, and
- Objectively Offensive

Unwelcome

Unwelcome is evaluated from the subjective perspective of the complainant, unless the complainant is younger than the age of consent

Reasonable Person

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Gathering evidence for the remaining components of the hostile environment definition will require you to look at the evidence from the perspective of a fictional 'reasonable person.' Ask the following question to guide your investigations: Would a reasonable person in the same or similar circumstances as the complainant, consider this behavior to be creating a hostile environment for them, such that they are denied equal access to their education or employment?

The consideration of whether the conduct was "severe," "pervasive," and "objectively offensive," is evaluated from the perspective of a fictional "reasonable person." This objective lens is important because different complainants will vary in how they experience the same incident. Remember, the evidence will allow the decision-maker to determine by this "reasonable person" standard whether conduct meets the hostile environment definition.

Severe
Title IX covers only harassing behavior that is severe. When the alleged conduct includes egregious verbal behavior or is physical in nature, it could be seen as severe.

Context - Context matters. What might not seem severe for one age group might seem severe for another.
Characteristics - "Severe" may also take into account the characteristics of a particular complainant, such as that person's age, disability status, sex, religion, and other characteristics. For example, minor sexualized conduct, such as a student exposing themselves or touching themselves might be developmentally normal for a six-year-old, but severe when exhibited by a seventh grader.
Non-Physical Conduct - Some forms of non-physical conduct can also be severe, especially if they are accompanied by threats of violence of any kind, or by the presence of weapons. This can include actions that are implied or acted upon.

Pervasive
The next criterion for hostile environment is that it must be "pervasive." This is indicative of the kind of persistent behavior that is widely known, repeated often, in the school setting or has a far-reaching impact for the complainant. For example, a student shows a nude photo of the complainant to their classmate, who takes a screenshot of the picture. The picture is now being spread to other students throughout the school via texts and social media. The complainant is too embarrassed to return to school and has not been in classes for a week.

Questions to consider when determining if conduct is pervasive:

- *Is the behavior widespread?*
- *Is it openly practiced?*
- *Is it well-known among students or employees?*
- *Does a person or department or organization have a reputation for creating discomfort?*
- *Is there behavior (words or conduct) that is occurring in public spaces?*
- *Is the impact of the conduct known in a somewhat widespread way among students or employees?*
- *Is there a concerted pattern or behavior of a repeated, routine or generalized nature?*
- *Does the conduct impact broadly on the complainant's behavior and educational access?*

KNOWLEDGE CHECK
Q: Which of the following statements are **true** regarding what can be considered as severe conduct?
A. What might not seem severe for one age group might be severe for another.

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B. Some forms of non-physical conduct can also be severe.
C. Only the complainant's age and sex affect the 'severe' criteria.
D. Non-physical conduct can be severe if there is a weapon involved.

The correct response is A, B, and D. "Severe" could take into account the characteristics of a complainant, such as the person's age, disability, status, sex, religion and other relevant characteristics.

Objectively Offensive
There is no bright-line rule as to what creates a hostile environment. Investigators gather evidence regarding what occurred so that the decision-maker can look at the totality of the circumstances, through the eyes of a reasonable person, to determine whether the elements of a hostile environment are all present.

Not only must you gather evidence about whether the conduct was unwelcome, severe and pervasive, but you should also gather evidence about whether the conduct was objectively offensive. The reasonable person is necessary as an objective standard to ensure we don't overreact to one particular person's hypersensitivity to something said or done.

Here is a list of factors to consider when gathering evidence to evaluate if conduct is objectively offensive.

1. The frequency, nature and severity of the conduct.
2. The degree of a physical threat involved, if any.
3. The degree of any humiliation experience by the complainant.
4. The identify of and relationship between the respondent and the complainant.
5. The ages of the individuals involved.
6. Size of the school, location of the incident(s), and the physical context in which the conduct occurred.
7. Whether the conduct was directed at more than one person.

Overlap of State Laws
A common issue for school administrators, particularly in light of how sexual harassment is defined, is that there can sometimes be an overlap of state criminal laws and Title IX. However, as a civil rights investigator, your obligation is to address violations of your school policy. Don't focus on trying to analyze issues as 'crimes.' Instead, focus on your obligation to address policy violations.

The bottom line is that your approach will be governed by the terms as defined in your school policy and not state law.

SEXUAL ASSAULT

Defining Sexual Assault
Federal Title IX regulations define Sexual Assault as, "Any sexual act directed against another person (the complainant), without the consent of the complainant, including instances where the complainant is incapable of giving consent." The Title IX regulations make clear that when a sexual assault occurs

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within the school's education program or activity, schools may need to investigate under Title IX, regardless of whether law enforcement is also investigating.

For example, an assault that occurs in school during the school day, or on a bus provided by the district. If the school and law enforcement are investigating the same allegations, it is typical to sequence/coordinate when possible to ensure your efforts do not impede the law enforcement investigation.

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

The Six Subparts of Sexual Assault
There are six subparts to the definition of sexual assault:

- **Rape**
  Rape is defined as 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 complainant.
- **Sodomy**
  Sodomy is defined as oral or anal sexual intercourse with another person, forcibly, and/or against that person's will, or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. Many schools interpret the language "against the person's will" to mean "with resistance or without the consent of."
- **Sexual assault with an object**
  Sexual assault with an object is defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Fondling**
  Fondling is defined as the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. The qualifier "for purposes of sexual gratification" requires the investigator, to try to collect evidence that speaks to the motivation for the touching. Understanding the circumstances can help us to assess a respondent's motivation.

  <u>ASSESSING THE RESPONDENT'S MOTIVATION:</u> Did you know that assessing the respondent's motivation may help distinguish forcible fondling cases from touching cases that do not require a Title IX-compliant response?

  For example, inadvertent contact, such as accidentally brushing against someone's buttocks in a crowded hallway, involves the necessary contact elements but may lack evidence of motivation for the purpose of sexual gratification. Students may also engage in conduct, such as slapping a peer on the buttocks that may be inappropriate but would not constitute forcible fondling. In these cases, the school could choose to address

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those behaviors informally or through a traditional student conduct process rather than engaging in a formal Title IX investigation.
CONSENT: it is important to understand the element of consent. ATIXA's model definition is presented here. Remember to refer to your school or district policy for the applicable definition of consent:

> *Consent is knowing, voluntary and clear permission by word or action to engage in sexual activity.*

Did the complainant give consent for the sexual contact to occur? Did the complainant know what was occurring and was their participation voluntary? Was consent clear and understandable to the parties?

When evaluating these issues, remember:

- A person who is incapacitated is not capable of giving consent.
- Incapacity could result from age, mental illness, disability, medication, alcohol or other drugs.
- Sleeping or unconscious people cannot give consent.
- Consent cannot be obtained through force or coercion.

Pay particular attention to information related to capacity and consent when gathering information for the decision-maker.

- Consent-based investigations should gather evidence from the parties and any witnesses relevant to capacity and what clear words or actions indicated consent to the sexual activity. This information will be critical for the decision-maker when determining whether sexual assault occurred.

ACTIVITY: SCENARIO
Two students, Cara and Dai, are both 18 years old. They skipped class and "hooked up" in a parked car in the school parking lot. Cara told Dai that she wanted to "make out." As things progressed, Dai also began to squeeze Cara's breasts and put his hands down the back of her leggings to caress her buttocks. Cara was frozen and scared and didn't know how to respond. She managed to extract herself from the car and faked an illness so the school nurse would let her go home for the day. She decided to quit the school play to avoid Dai as much as possible.

Q. Does this investigation involve allegations of touching of private parts?

- ☐ Yes
- ☐ No

Response: This answer to this question is Yes. Breast and buttocks are body parts specified in the fondling definition.

- **Statutory Rape & Incest**
  A common concern in K-12 settings is that some school officials aren't accustomed to viewing certain criminal behaviors as potential Title IX issues, too. In other words, incidents that are otherwise consensual and in which a party is under the age of consent are often not investigated as a sexual assault under Title IX. Administrators often address them under a student conduct policy or defer completely to an investigation by law enforcement. It is important to note that both statutory rape and incest include intercourse only, not other

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sexual behaviors. If these offenses involve forcible behaviors, the sexual assault definitions discussed earlier would apply instead.

STATUTORY RAPE: Non-forcible sexual intercourse with a person who is under the statutory **age of consent** established by your state's law. *Some states set a standard age across-the-board, such as 16 or 18. Other states have a close-in age exception that looks to the age difference between two teens to determine whether the minors could legally consent.*

INCEST: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited under your state law.

INTERPERSONAL VIOLENCE & RETALIATION

Dating Violence

Dating violence is defined as violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the complainant. Did you know that unhealthy relationships between students may constitute dating violence if all of the elements are present? Behaviors rooted in power and control in a relationship may be abusive and may be considered, or lead to, dating violence.

Investigating Dating Violence

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Therefore, it covers more than just physical behaviors. Additionally, it does not include acts covered under the definition of domestic violence. Sometimes, the parties do not consider themselves to be "dating" as defined in this policy. Instead, information gathered in the investigation can be used to evaluate whether the parties are in a relationship that meets this definition.

Review these three elements that will assist with a determination of whether the relationship meets the definition of "dating" for purposes of applying this offense.

1. The **length** of the relationship.
2. The **type** of relationship interactions between the parties.
3. The **frequency** of interaction between the parties.

Domestic Violence

The definition of domestic violence is "violence, on the basis of sex, committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the complainant under your state's domestic or family violence laws, or by any other person against an adult or youth complainant who is protected from that person's acts under your state's domestic or family violence laws."

To categorize an incident as domestic violence, the cohabitation between the respondent and the complainant must be more than just two people living together as roommates.

- The people cohabitating must be more than roommates – current or former spouses or have an intimate relationship.
- Domestic violence could arise with two employees who are spouses or, in some states, where other family relationships (parent/child) are present together in a school setting.

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- If domestic violence occurs, it may be outside of the school setting, but could have in-school effects that would need to be addressed through supportive measures.

Stalking
Stalking is defined as engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, the safety of others; or suffer substantial emotional distress.

What behaviors are indicators of potential stalking? The term "course of conduct" can guide us. Course of conduct means two or more acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or interferes with a person's property.

Substantial Emotional Distress – Significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

Commented [IP1]: Looks like the rest of the sentence or para is missing.

Commented [TJ2R1]: @Ilene Persin This has been updated!

Retaliation
Retaliation exists when an individual harasses, intimidates or takes other adverse actions against a person because of that person's participation in an investigation, or because of their support of someone involved in an investigation. Title IX also prohibits retaliation against a person for engaging in activity that is protected under Title IX. Under Title IX, "protected activity" could include making a report or formal complaint or serving as a witness or supporting a party in a Title IX resolution process.

Even though the school or district itself may not retaliate, it must also ensure individuals are not retaliated against by the other party or any other individual. As an investigator, it is important for you to note that when a school has a report of retaliation, it must effectively respond, just as it would to reports of sexual harassment itself.

Conclusion
You've reached the end this lesson. After completing this lesson, you should now be able to:

- Identify the elements and components of the different forms of sexual harassment and retaliation.
- Summarize the district's responsibility to respond to a Title IX retaliation.

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END OF PART 1

PART 2
Overview of the Investigation

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Lesson 1
Overview of the Investigation Process

As an investigator, you must know the steps and requirements of an investigation. In this lesson, we'll discuss the steps of a Title IX investigation. We'll also discuss the information that must be included in the Notice of Investigation and Allegations, which is a letter sent to both parties. We will also cover the concept of due process and the rights of the parties, and supportive measures that may be provided during the investigation.

After completing this lesson, you will be able to:

- Describe the steps of an investigation,
- Review a Notice of Investigation and Allegations (NOIA) letter.
- Explain due process, the rights of the parties and supportive measures.

STEPS OF AN INVESTIGATION

10 Seps of an Investigation
ATIXA outlines a 10-step investigation process to comply with Title IX.

1. Establish a basis for investigation.
2. Send Notice of Investigation/Notice of Formal Allegations to the parties (NOIA).
3. Establish the investigation strategy.
4. Conduct the formal comprehensive investigation.
5. Draft investigation report.
6. Meet with the Title IX Coordinator to review draft report and evidence.
7. Share draft report and evidence with parties and advisors for 10-day inspection, review, and response period.
8. Revise, as needed, and finalize investigation report.
9. Meet with Title IX Coordinator to review final investigation report.
10. Send final report to decision-maker and parties/advisors for review and written response.

Investigation Basis
After receiving a formal complaint, the Title IX Coordinator and investigator determine the basis of the investigation. Most investigations focus on one or more incidents of behavior. In certain circumstances, investigations can also focus on a pattern of behavior or a climate or culture issue within the school or district.

Examples:
Incident(s) of behavior – A student is alleged to have engaged in a single incident of forcible fondling in a school bathroom.
Pattern of behavior – Several students have come forward to report that a specific student respondent has grabbed their breasts and buttocks in the hallway between classes. There are a series of reported incidents spanning two months.
Climate or culture – Students complain that they are not comfortable participating in athletic programs because of the frequency of sexual jokes and sexual innuendos that come from coaches and captains.

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Notice of Investigation and Allegations
Once the basis of the investigation is determined, the Title IX Coordinator or a designee will send all parties who are known a Notice of Investigation and Allegations letter, or NOIA. This letter must be provided to the parties prior to any investigation interviews, and it must allow for sufficient time for the parties to prepare a response to the allegations. As an investigator, it is important to confirm that the NOIA letters have been sent before scheduling any interviews.

Investigation Strategy
The third step is to establish a strategy for the investigation. As the investigator, you'll work with the Title IX Coordinator to plan the investigation strategy. This strategy will include an anticipated timeline for the investigation, keeping in mind planned school breaks and the availability of students, staff, and others.

Another component of planning the strategy is identifying initial witnesses and determining when and how to contact them. You'll also want to brainstorm potential sources of evidence or information and determine how to go about gathering that information. Depending upon the allegations and the involved parties, additional administrators may need to be briefed on the investigation. This is especially true when the media may become aware of the investigation.

Formal Investigation
The fourth step in the ATIXA 10-step investigation model is to conduct the formal investigation. Now, the investigator implements the investigation strategy. This includes interviewing the parties and witnesses and collecting the evidence. The investigation should be conducted as closely to the anticipated timeline as is possible, with brief delays only for reasonable and legitimate circumstances.

Draft Investigation Report
The next step in the process is for you to draft the investigation report. The investigation report is the one comprehensive document that summarizes the investigation. The report includes:

- The results of the interviews with the parties and witnesses.
- A summary of all relevant evidence gathered by the investigator.
- Documentation of the efforts made by the investigator to run a thorough, reliable and impartial investigation.

The investigator should include all evidence they consider relevant in the draft investigation report. Any directly related evidence should be compiled into a separate evidence file to share with the parties and their advisors.

Investigation Report Draft Review
Once the draft report is complete, ATIXA recommends that the investigator meet with the Title IX Coordinator and/or legal counsel to review the draft report and the directly related evidence file. Their review will help to identify any areas where the report draft is unclear or other drafting issues before the draft report and evidence file is shared with the parties and their advisors.

The Title IX Coordinator and legal counsel should be advisory and ask questions related to the relevance decisions and issues of writing clarity. They should not make any substantial revisions of the investigation report.

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First 10-Day Period
The Title IX regulations provide for two 10-day review periods prior to the point when the decision-maker decides whether the district's policy has been violated by the respondent.

The first 10-day review period allows the parties and their advisors to review the investigator's draft report. During this review period, the parties and their advisors must receive all evidence that the investigator has gathered that is directly related to the allegations. The parties are permitted to respond in writing to the investigator to ask questions about the draft report, suggest any additional witnesses, or to submit any additional information. It's a "last chance" for the parties to review the investigator's work and to participate in the investigation phase of the process.

Revise, Finalize, and Review Report
The seventh and eight steps in ATIXA's 10-step investigation process model are for the investigator to revise and finalize the investigation report, then review the final report with the Title IX Coordinator and/or legal counsel. You'll review the information and/or questions that the parties communicated to you during the first 10-day review period and determine whether there is additional investigation work to do or whether you intend to make revisions to the report. Then, you'll finalize the investigation report to share with the parties, their advisors, and the decision-maker. Once the report is finalized, you'll meet with the Title IX Coordinator and/or legal counsel again to review the final report before you determine it to be complete.

Second 10-Day Period
Lastly, the Title IX regulations require a second 10-day review period. You must provide the parties and their advisors the final investigation report and the directly related evidence file a minimum of 10 days prior to the time when the decision-maker will determine whether the respondent is responsible for violating the district's policy.

Under Title IX, K-12 districts have the option to conduct the decision-making phase with or without a live hearing. Even without a hearing, the decision-maker must facilitate an opportunity for the parties to exchange relevant written questions and responses. This exchange may also take place in conjunction with the second 10-day review period.

NOTICE OF INVESTIGATION AND ALLEGATIONS

Receipt of Formal Complaint
When discussing the steps of an investigation, we learned that once a basis of investigation is established, the Title IX Coordinator or a designee must send all parties a Notice of Investigation and Allegations, or an NOIA letter. Remember, the NOIA letter must be provided to the parties prior to any investigation interviews and allow for sufficient time for the parties to prepare a response to the allegations. Two or three days is typically sufficient for most schools or districts.

Components of an NOIA Letter
The NOIA must include notice of the grievance process. This includes any informal resolution processes that may be available to the parties such as mediation, facilitated dialogue, or restorative practices. It

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should also include the identities of the parties and a description of the alleged misconduct with the date and location. There should also be a statement that the respondent is presumed not responsible for violating policy until the process is concluded and a determination of responsibility has been reached.

Additional Inclusions
The NOIA letter must notify the parties that they may have an advisor of their choice. The advisor may or may not be an attorney and can be selected in addition to parents or guardians being present at various points in the process. The NOIA letter should notify parties that parties and advisors may inspect and review evidence prior to the completion of the investigation report.

If the school or district's code of conduct prohibits knowingly making false statements or providing false information in the investigation, the NOIA letter must include a reference to that policy provision. Finally, if additional allegations come to light after sending the initial NOIA letter, the Title IX Coordinator or designee should provide an updated NOIA that includes the additional allegations.

DUE PROCESS IN INVESTIGATIONS

Rights of the Parties
The Title IX regulations provide for the parties to have specific procedural rights during the grievance process. These rights are intended to ensure that the parties are able to equitably and fully respond to the allegations and participate in the process. During this lesson, we previously outlined the first right, which is the right to written notice of the investigation and allegations. We also discussed the rights of the parties to review all relevant and directly related evidence.

Additional Rights of the Parties
Witnesses and Evidence - The parties have an opportunity to present relevant evidence without restriction. This may include suggesting fact and expert witnesses and providing both inculpatory or exculpatory evidence to the investigator for consideration. Inculpatory evidence supports a finding that the respondent violated policy. Exculpatory evidence supports a finding that the respondent did not violate policy.

- Fact witnesses are individuals who saw, heard, or experienced something and have relevant information to share regarding the incident.
- Expert witnesses are rare but are allowable under Title IX regulations. Their expertise would help the decision-maker determine whether a policy violation occurred.

Discussion of Allegations - The school or district may not restrict the parties from discussing the allegations under investigation. However, it is advisable for the parties to speak with their advisors before discussing the investigation to make informed decisions about what information and to whom that information is shared. Although there aren't restrictions on discussing the investigation, retaliation is prohibited by Title IX and the parties may not engage in communication that would be retaliatory in nature.
Advisors of Choice - Students also have the right to be accompanied by an advisor of their choice in addition to the support and involvement of their parents or guardian in the investigation and resolution process. Depending upon the terms of their agreements, unionized employees may also be entitled to a union representative in addition to their advisor of choice.

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Supportive Measures
Lastly, Title IX requires the provision of supportive measures. Supportive measures are put in place on an interim basis to allow both parties to effectively access the educational program and activities while the investigation is underway. They're available to both parties and must be individualized and tailored to the specific circumstances. They must be non-disciplinary and non-punitive. The Title IX Coordinator is responsible for determining and implementing appropriate supportive measures.

The Investigator's Role in Supportive Measures
Although you are not responsible for supportive measures as the investigator, you should be aware of the measures available for the parties. As the investigator, you should communicate with the Title IX Coordinator if:

- You identify a need during the investigation that should be addressed with supportive measures, or
- You become aware that a supportive measure is not meeting its intended purpose.

Conclusion
You've reached the end of Overview of the Investigation Process. After completing this lesson, you should now be able to:

- Describe the steps of an investigation.
- Review a Notice of Investigation and Allegations (NOIA) letter.
- Explain due process, the rights of the parties, and supportive measures.

END OF PART 2

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PART 3
Getting Started with the Investigation

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Lesson 1
Developing Your Investigation Strategy

Title IX regulations require the Title IX process to be equitable, thorough, and prompt; this includes the formal investigation. Developing a good investigation strategy can assist in complying with the regulations and conducting a thorough investigation. This lesson outlines what's needed to develop an investigation strategy for a comprehensive formal investigation.

After completing this lesson, you will be able to:

- Describe key elements needed to strategize for your investigation.
- Develop an investigation strategy.

Getting Started

As the assigned investigator, you'll want to start by figuring out a strategy for your investigation. You'll meet with the Title IX Coordinator to begin developing your strategy. You'll want to be clear on the scope of the investigation before you begin. You should know if this investigation is based on an incident or if it's due to a patter or climate issue within the school or district. During this time, you and the Title IX Coordinator will figure out what's needed to conduct a comprehensive investigation.

Questions for Strategizing

To help you begin strategizing, review these common questions:

- Was notice already sent to the parties?
- What is the timeline for the investigation?
- Who should be interviewed?
- When should the interviews be scheduled and in what order?
- What information or evidence is provided?
- What information or evidence would you like to be able to obtain?
- How and when are witnesses notified?
- Who needs to be aware of the investigation?
- When and how should evidence or information be shared with parties?

Notice Letter (NOIA)

You can begin with developing your strategy by asking, "Was notice already sent to the parties?"

A formal investigation can only begin when the parties have received notice in the form of an NOIA letter. As the investigator, you must ensure that all parties have been properly noticed before you begin your interviews. The parties will need sufficient time to prepare under the regulations. This is typically two to three days' time.

It's important for you to note as an investigator that the timeframe between notice and the start of the formal investigation differs from traditional conduct work in a K-12 setting. Most school administrators are accustomed to meeting with students on the same day that a report is received.

Investigation Timeline

The next question you'll need to consider when developing your strategy is: "What is the investigation timeline?"

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As the investigator, you want to be aware of the timeframe you have to complete the investigation. Think about how quickly you can conclude a comprehensive investigation without compromising any parts. Also, keep in mind other possible interruptions or delays. Factor vacations, winter or summer breaks, or any other interruptions that may occur into your planning. If there are going to be breaks or delays, ensure they are properly communicated to all individuals involved.

Interviews

Investigators can identify and collect large amounts of information through interviews. As such, developing a strategy for your interviews can help you reach your desired outcomes, obtain relevant disclosures, and identify other forms of evidence that you can collect. Interview coordination should be strategic; important questions to help you strategize include:

- Who should you interview?
- When should they be interviewed?
- In what order should the interviews occur?

When to interview Parties and Witnesses

Your investigation strategy should include when and in what order you plan to interview parties and witnesses. Although investigation strategies differ based on the circumstances of each case, you'll typically interview the complainant first. Continue your strategy development with the Title IX Coordinator to plan when to interview the respondent. Your strategy should include asking the complainant and respondent for a witness list. The strategy you develop around interviews should include when you'll contact witnesses, the order in which you'll contact them, and how to prevent contact between them when necessary.

Evidence

Although interviews will provide a large amount of evidence, you should still develop a strategy around the collection of information and evidence. This includes what can be collected during interviews and from other sources. Develop your strategy around gathering evidence using these questions:

- **What evidence is available or has already been provided?**
  Some evidence may already be available in the form of information or data from the school or district. Video camera footage, security or access logs, and class schedules are examples of evidence you can identify in your strategy that you may need to gather. Likewise, you may have already received a picture, social media post, text or email as part of the complaint that triggered the investigation.
- **What information do I need to obtain from parties or witnesses?**
  This part of your strategy may overlap with your interview strategy. You'll identify what information you're looking to gather from parties and witnesses in interviews and develop questions and prompts for you interviews in an attempt to obtain relevant evidence.

Additional considerations: If you need to ask a witness about the content of a text or email, you need to strategize how to obtain that text or email first. Your strategy should include consideration of how to obtain evidence before it may be destroyed, and how to obtain evidence that a party or witness may be motivated to conceal.

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Sharing Information
You'll have to strategize about whether to share information with parties when you conduct your interviews. Decide how much information you'll share and have a rationale for what will and will not be shared. You may be challenged on evidence you decide to share.

You'll also need to decide when to share information or evidence with each party. How much information will you share before each interview? Remember, parties must have an opportunity to review all directly related evidence prior to a final decision. If you're ever unsure of whether information should be shared, provide the parties with the evidence.

Team Investigations
A final consideration to your strategy is whether to use a pair or team of investigators. Although it may require a larger investment of resources from the school or district, team investigations provide many benefits to the Title IX process. Remember, investigations must be prompt, thorough and impartial. A team of investigators may help to ensure that your investigation meets those requirements. Additionally, a team of investigators allows for alternates to be available in the case of recusal or illness.

Investigators must be thorough in collecting relevant evidence available to help the decision-maker make a determination and a pair or team of investigators can make this process more manageable. Lastly, a team investigation can help reduce the impact of bias on an investigation with the benefit of more than one perspective on the evidence and parties.

Conclusion
You've reached the end of Developing Your Investigation Strategy. After completing this lesson, you should now be able to:

- Describe key elements needed to strategize for your investigation.
- Develop an investigation strategy.

CASE STUDY
PLANNING AN INVESTIGATION

Read this case study and think about how you'd respond to the questions as an investigator. Then, review a response from one of our experts.

Ivan and Juanita – Developing your Strategy

Juanita, a freshman member of the girls' soccer team, made a Title IX report directly to the Vice Principal. On the morning of October 11, her teammate, who was checking her email in the school computer lab, yelled for Juanita and the other teammates to come look at something on the computer. Juanita saw an email sent from the boys' soccer team email address, boyssoccer@school.k12.us, which said:

> "*Greetings new freshman, meet the girl next door.*"

The email included a photo of Juanita's face photoshopped onto an image of a naked woman's body with huge breasts. Everyone in the room laughed and Juanita ran from the room crying, embarrassed that others would think it was her. She immediately contacted Ivan, a member of

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the boys' soccer team, who she believed sent the email. Earlier in the year, Ivan asked Juanita out several times, but she didn't like him. She found him really annoying, and while she knows it wasn't nice, she called him a total loser in front of his friends. She knows that he sent the email to hurt and embarrass her.

How Would You Respond

What key elements should you consider as part of your investigation strategy? Who should initially be interviewed? What evidence should be gathered initially?

From an Expert

Read though this response from Joe Vincent, M.L.S. of ATIXA:

In the case of Ivan and Juanita, you start off with very little information provided in the formal complaint. That's not all that uncommon, and it does create a little bit of additional obligation for the investigator to fully flesh out the statement that Juanita really needs to make in order to facilitate your investigation moving forward.

To the question of who we should interview, typically the default response is the complainant. We'll use the information that the complainant shares to help us frame up the rest of the investigation based on what she, in this case, identifies as the critical information that speaks to the allegations. To the question of the allegations themselves, hopefully you are not having to develop in isolation the specific alleged violations of the school's policy. That is typically the Title IX Coordinator's responsibility, and you may be doing that in conjunction with the Title IX Coordinator, or the coordinator may be distributing a document that we call the Notice of Investigation and Allegations (NOIA) prior to even assigning the investigation to you.

Regardless of how that document is developed, there's going to be a formal notice to both Ivan and Juanita indicating to them that a formal Title IX complaint has been filed, and it's also going to outline the specific allegations and the policies that are implicated by those allegations. That will be a useful document for you that you'll want to obtain right away as you begin to develop your strategy for approaching the complaint and conducting the investigation; that's what answers the question regarding investigative strategy.

In this case, the scant amount of information that we do have seems to indicate that there is a photo, or at least an image, according to Juanita's information. It's an image that's been doctored or manufactured in some way, and it was e-mailed. We know that there's a photo out there in the world somewhere. We know that there's likely an email record of that image. When we're identifying evidence that we want to attempt to gather either before or during our conversation with Juanita, that rises to the top of the list, clarifying how this image was transmitted and who might have been the recipients of that image.

Where do we obtain a copy of that image so that we can review it for ourselves? Because the formal complaint provides so little information, which is not uncommon, a full narrative, robust interview with Juanita is really going to be the best first step to help us answer some of these outstanding questions about how we strategize this

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investigation. What other information is out there that we need to get? What additional people are we going to want to interview after we complete the interview with Juanita?

Key Takeaway
While a lot of information and evidence has been provided in this investigation, there may still be more to do. Think about how you'll use your strategy effectively during the investigation.

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PART 4
Conducting Interviews

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Lesson 1
Preparing for the Interview

Before conducting your interviews, it's important to properly prepare for each interview. Preparing for your interviews will help you achieve your desired outcomes for each interview. Interviews can be tricky; the coordinating and conducting of them should be strategic and timely. You'll want to make sure you can get the most out of each interview and that you interview the individuals who can provide you with the most complete relevant evidence in your investigation. This lesson will outline important objectives in creating your interview strategy and forming useful questions.

After completing this lesson, you will be able to:

- Create an effective interview strategy.
- Apply your strategy for interview preparation.
- Construct effective questions for your interviews.

YOUR INTERVIEW STRATEGY

Getting Started

When it's time for you to conduct your interviews, there will be a lot of moving pieces to get into place before the interviews occur. First, you'll want to decide the following things:

What is the order of interviews?
Review the list of individuals you've selected to interview. Is there a desired order of interviews? Friendships, group memberships, and other associations between parties and witnesses may require carefully scheduling and sequencing interviews to avoid gossip, rumors, and other complicating disclosures prior to an individual's interview.

Who should be interviewed?
Who do you want to interview? Identify parties, relevant or key witnesses, and any other individuals who may be indicated by the information gathered during intake, in the formal complaint, or otherwise suggested by the Title IX Coordinator.

How will interviews be conducted?
Think about how you will conduct interviews. What method should you use to conduct them? Depending upon the situation and location of the individuals, think about which option may yield the best results. Possibilities include in-person, video conference, or phone interviews. Considering availability and access to appropriate technology can assist with overcoming scheduling and access challenges.

Interview Timing

Another aspect to consider when creating a strategy for meeting outcomes is the amount of time each interview will take. You might not have a great idea about this in the beginning, but as the investigation unfolds, you'll be able to guess more accurately. Schedule more time than you think you'll need – initial party interviews can often take two hours or more. Avoid scheduling-back-to-back. You'll need some time to take stock of what you've learned and how it may impact the next interview, complete your documentation and make notes to yourself about next steps.

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PREPARING FOR YOUR INTERVIEWS

Preparing for the Interview
Successful interviews also include some preparation about how the interviewee experiences the interview. Think about the interview space. Ideally, your interview space should be private, quiet, and neutral. Try to view your space from the interviewee's perspective and remove distractions from the room or your background.

Consider removing things that communicate authority or emphasize the imbalance of power between you and the interviewee. Examples of these items include diplomas, trophies, or items that may indicate bias toward a certain group.

The Interview Environment
Ensure you've selected a setting and time in which there won't be any interruptions or distractions. In an office setting, for example, consider closing the door – if that's comfortable for the interviewee – and putting a Do Not Disturb sign on the door to discourage disruptions. In a virtual setting, ensure that you and the interviewee are both in spaces with little to no additional noise or background disruptions and that, to the best of your ability, your connections via internet or phone are stable and clear. In an interview, make sure to minimize notification distractions from devices such as phones, laptops, or tablets.

Interview Ground Rules
The NOIA must include notice of the grievance process. This includes any informal resolution processes that may be available to the parties such as mediation, facilitated dialogue, or restorative practices. It should also include the identities of the parties and a description of the alleged misconduct with the date and location. There should also be a statement that the respondent is presumed not responsible for violating policy until the process is concluded and a determination of responsibility has been reached.

Advisors and Other Individuals
Make sure the interviewee is clear on the role of an advisor during the interview and if there can or will be other individuals involved in the interview. Examples of other people who may be involved in the interview include parents or guardians, union representatives, or a person providing interpretation services or disability accommodations, all in addition to an advisor. Lastly, ensure that expectations for privacy and confidentiality related to the investigation and the records of the interview have been communicated to all individuals who will be present.

Outlining Questions
Preparation includes outlining the questions you intend to ask your interviewee. Be prepared to be flexible, but make sure you've identified the central questions that must be answered based on the allegations and underlying circumstances. Sometimes you'll get an answer from an interviewee before you ask the question, a question you planned can become irrelevant, or other questions will emerge for which you didn't plan.

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INTERVIEW QUESTIONS

Interview Style Considerations
Before preparing questions, understand that an interview is not an interrogation. An interview is a conversation designed to elicit information in a non-accusatory manner. Shifting to an interrogation approach is not recommended. The goal of questioning should be to learn the facts, establish a timeline of the events or incidents, and understand each person's perception of what happened. The questions used in the interview should avoid attempting to get a confession, judgment or moralization, or satisfying your curiosity.

Preparing Your Questions
When constructing questions, there are some questions you'll want to keep in mind as you're creating your interview questions to ensure you're asking relevant and effective questions.

Review the questions on this list.

- What are the relevant issues? Will this help me understand or clarify a relevant issue?
- What do I need to know?
- Why do I need to know it?
- What is the best way to ask the question?
- Am I minimizing the re-traumatization potential for all parties?
- Am I avoiding blaming or biased questions?
- Am I the right person to ask this?

Construct Your Questions
When constructing your questions, make sure to consider a few things about the structure and tone of the questions.

1. To start, make your questions clear and concise – complex questions are hard to follow. Don't ask more than one question at a time – break it down, ask each question separately, and allow the interviewee to answer completely before answering your next question.
2. Avoid being accusatory or argumentative. It's not your role to make determinations regarding policy violations – you have no stake in the outcome. Remember that sometimes things do not go as expected. If you ask a bad question or say something inappropriate, apologize, take it back, and begin again.
3. Don't dive into detailed questioning right away. Interviews with parties should start with open-ended prompts that invite the party to share a narrative of what happened.
4. Ask them to tell you their story, and then listen actively and intently without interrupting. You can make notes to yourself about things you want to follow-up on later.

Question Types
It's helpful to know the types of questions available when preparing questions for your interviews.

Open-Ended Questions
Open-ended questions prompt a narrative response and give the interviewee room to answer a question in a way that feels most appropriate to them. They feature language like "What happened when…?" or "Tell me about…"

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Close-Ended Questions
Close-ended questions prompt for more specific or discrete details. Often, they yield very direct and short answers. Use them to drill down on a specific issue, but don't ask a close-ended question when a narrative-response is needed or expected. An example of a close-ended question is, "When you were in the hallway, was there anyone else around?"

Compound Questions
Compound questions seek two or more distinct responses in one question, which may be hard for the interviewee to follow. They can lead to inaccurate responses when the interviewee is confused about which question to answer. An example of a compound questions is: did you plan to meet after school, go to the gym, or did you want to do something else? Try to avoid them and instead, invite a narrative by asking "What did you plan to do after school?"

Multiple-Choice Questions
Multiple Choice questions suggest several possible responses which can have the effect of leading the interviewee. The question may be presented during an interview like this: were you a) happy, b) sad, or c) scared? They don't allow for the interviewee to provide a response that may be different than the choices that are provided and should be avoided, too.

Leading Questions
Leading questions prompt or encourage the desired answer. When using leading questions, you're taking an oppositional stance and directing the interviewee's answer. These questions are not appropriate in a neutral interview and should be avoided. An example of a leading question is one that begins with the phrase, 'Isn't it true that …?'

Additional Question Considerations
Finally, make sure to include these additional considerations when creating and asking questions. Be sure to listen carefully and adapt follow-up questions. Avoid evaluative responses to a person's answers. An example of an evaluative response is saying "That's too bad" or I'm glad you said that." Think about whether you're conveying empathy or sympathy.

Don't try to moralize or sanitize language or encourage the interviewee to, either. Seek to clarify terms and phrases that can have multiple meanings or a spectrum of meanings. Examples of these terms include:

- Hooked up
- Drunk
- Sex
- Fooled around
- Had a few drinks
- Was acting weird

Be cautious with questions that invite parties to second-guess their actions. This may be perceived as blaming. The issue of a person's motivation may be important to know, but the way the information is solicited makes all the difference.

Here is an example that displays the importance of carefully crafting questions:
✗ Why did you go with them alone into the music room?
✓ Tell me what was going through your mind at the point that you entered the music room.

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KNOWLEDGE CHECK

Review five examples of questions that may be used in an interview and decide if it's appropriate for an interview.

1. What was the purpose of your behavior?
2. Why did you decide to go to the music room after school? Isn't it true that you reserved the room the day before the incident?
3. First, do you know what consent means? Second why did you continue to touch him when he seemed like he didn't want you to?
4. Tell me what happened when you arrived at the party.
5. Do you believe you should have a) said no, b) avoided physical contact, or c) reported it to your supervisor?

Consider your responses and compare to the information below:

1. *This question is not appropriate. It implies that the interviewee did something wrong for which they need to apologize. If an answer won't be relevant or help you as an investigator to evaluate whether a policy has been violated, consider rephrasing your question.*
2. *This question Is not appropriate. It is a leading question, and it implies blame, potentially inviting the interviewee to second-guess their actions. Even though it may be asking for relevant information, it's better to invite a narrative response by using an open-ended question.*
3. *This question is not appropriate. It is a compound question and should be avoided because they can confuse interviewees. Both questions imply the interviewee may be to blame for the situation and don't invite the interviewee to tell their story.*
4. ***This question is appropriate**. This is an open-ended question that invites a narrative response from the interviewee without implying blame, sounding judgmental, or leading the interviewee to a desired response.*
5. *This question is inappropriate. It is a multiple-choice question that suggests specific responses for the interviewee that may not match their experience. This type of questioning is less helpful in obtaining relevant information and can come across as judgmental.*

Conclusion

You've reached the end of Preparing for the Interview. After completing this lesson, you should now be able to:

- Create an effective interview strategy.
- Apply your strategy to interview preparation.
- Construct effective questions for your interviews.

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Lesson 2
Conducting the Interview

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Commented [TJ4R3]: @Ilene Persin I updated this, Preparing for Your Interviews should have been Lesson 1 in Part 4.

Once you've strategized for your interviews by constructing questions and preparing your interview space, it's time to begin conducting interviews. Interviews are the most common way to collect evidence. A well-conducted interview can provide vital information for the investigation and help identify other evidence that you should collect or other witnesses you should interview. In this lesson, we'll discuss creating a framework for your interviews.

After completing this lesson, you will be able to:

- Describe the process of conducting interviews for your investigation.

Interview Reminders

Now that you've identified and scheduled your interviewees and prepared your meeting space, it's time to conduct your interviews. Before beginning, here's a checklist of reminders to make sure you and the parties are ready:

- Each party should have received and reviewed the applicable policies and procedures.
- Each party should have received the NOIA letter.
- Each party should understand their right to an advisor. Parties should know their advisor can be anyone, even an attorney, and can accompany them to any interview, meeting or hearing related to the investigation.

Beginning the Interview

The beginning of each interview should be well thought out. Planning and organizing helps convey a degree of professionalism and ensures all necessary disclosures occur. It also establishes a baseline of rapport and trust and shows the interviewee that you've anticipated common areas of confusion and questions related to the process.

ATIXA has created a worksheet that can help you with beginning your interviews. The worksheet is titled ***Getting Started with the Interview*** and can be found in the appendix.

Demeanor in the Interview

After you've structured the beginning of your interview, you'll want to think about your demeanor during the interview. Establish a baseline for relaxed conversation. Maintain good eye contact, use active listening skills such as nodding and good posture, and provide the appropriate verbal and non-verbal feedback when necessary.

Try to minimize writing while the interviewee is talking. Listen intently – try not to think about your next question while the interviewee is responding to the current one. Ask questions in a straightforward, non-accusatory manner. Avoid verbal and non-verbal reactions that convey emotion or judgment.

Using Your Interview Framework

Next, begin the interview using the framework you prepared. Let the interviewee lead the conversation initially by beginning to tell their story in a place that feels most natural to them. Remember, questioning in the beginning of the interview should be more like prompting and less like questioning. Your goal is to get the interviewee to tell you their story.

Prompting Questions - Ask broad, prompting questions until the interviewee has narrated the incident or circumstances to their satisfaction. There may be times that you may need to gently

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redirect or ask clarifying questions if the interviewee gets off-subject but be careful about interrupting.
Probing Questions - Ask probing questions that center around the allegations to clarify the most important portions of the incident or circumstances with a sufficient degree of specificity and to establish a discernable timeline of events. Don't leave gaps or unanswered questions.
Key Information - If it's relevant, pay attention to the timing stated of any drug and alcohol consumption. Ask close-ended questions to establish discrete details around the order of events, locations, or specific parts of the narrative.

Interview Considerations
When interviewing the parties, take into account these important considerations.

Acknowledge the difficulty of participating in the process and thank the party for investing the time. Ask each party for a complete account – basically, a 'tell-me-what-happened' open-ended question – and allow them to respond. Avoid interruptions as much as possible until they've concluded. Find out if they've spoken to others about the incident or circumstances. These additional individuals may be contemporaneous or outcry witnesses that should be interviewed.

- An outcry witness is the person who first hears about the incident from the complainant, usually close in time to the incident itself. Depending upon the circumstances, information provided by an outcry witness can be helpful to learn about the initial incident, evaluate credibility, and gather other relevant information.

Capturing Information
Additionally, make sure to capture key details from the complainant and the respondent. Be sure to clarify what happens after the interview, including how to contact you if they have additional information they want to share. Let the interviewees know when they will hear from you next and what stages in the investigation happen after this.

Closing the Interview
The end of the interview should also be planned – just like the introduction was. Ask each party if there is anyone else with whom they believe you should speak. Ask if there are any additional questions that weren't asked that they thought should have been or were going to be asked. Find out if there is anything additional they'd like to share with you or think you'd need to know and if there are any questions they'd like you to ask other parties or witnesses.

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The end of the interview should also include:

- **Reminders** of the non-retaliation policy and expectations.
- A **statement** about the importance of maintaining the confidentiality of the investigations.
- A **review** of the protocol for post-interview review and verification of the accuracy of the interview notes or transcripts by the witnesses.

Conclusion
You've reached the end of Conducting the Interview. After completing this lesson, you should now be able to:

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- Describe the process of conducting interviews for your investigation.

END OF PART 4

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PART 5
Gathering and Managing Other Forms of Evidence

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Lesson 1
Understanding and Processing Evidence

Gathering evidence and managing the file of evidence are key tasks for the investigator. As the investigator, you must be aware of the different types of evidence that exist, how to gather evidence, and how to analyze that evidence, and document your efforts to investigate thoroughly. In this lesson, we'll discuss the different types of evidence that can be collected, and what you'll need to do to analyze and document the evidence for the investigation.

After completing this lesson, you will be able to:

- List and describe different types of evidence,
- Explain methods of identifying and collecting evidence.
- Analyze the evidence to determine relevance to the allegations.

TYPES OF EVIDENCE

Sources of Evidence
As an investigator in a Title IX investigation, you should already have a strategy for gathering and analyzing evidence in place. Interviews are a great place to begin, but you shouldn't stop gathering evidence after they're done. There may be additional sources or forms of evidence that may provide relevant information to the investigation, depending upon the type of incident that was reported. You'll want to have a clear understanding of gathering and processing evidence for the investigation.

Burden of Proof
The burden of proof and the burden of gathering evidence is on the school or district, not the parties. Neither the complainant nor the respondent must "prove their case." Instead, the school or district has the burden to gather all available relevant evidence in order to determine whether or not a policy violation occurred.

At the conclusion of the investigation, the decision-maker will apply the evidentiary standard in district policy, typically preponderance of the evidence. That standard was also communicated to both parties at the start of the investigation. Each party has an equal opportunity to suggest witnesses, provide evidence for the investigator to consider, and review all of the evidence during the review periods built into the process.

- The evidentiary standard is determined by the district policy and communicated in the NOIA letter. Most schools use the preponderance of the evidence standard.

Testimonial Evidence
Evidence can take many different forms. Testimonial evidence is the most common form of evidence. It refers simply to the information that parties or witnesses tell the investigator in their interview, their recollections of what they saw, heard, or experienced. Evidence is given to the investigator during the interviews and is then captured in written notes, summaries made by the investigator or transcriptions of recorded interviews. Your notes or transcripts are the record of this testimonial evidence. Often during an interview, you'll identify and receive other forms of evidence, such as photos or text messages, that are shared with you by the interviewees.

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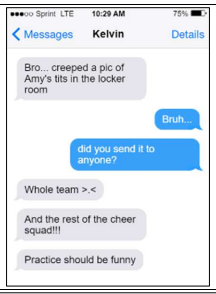
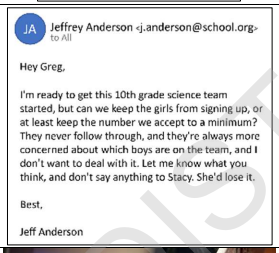
Other Forms of Evidence
Besides party or witness statements made in interviews, investigators may collect other kinds of evidence.

Evidence Type	Example
Text Messages	
Emails	
Photos/Videos	
Social Media Posts/Direct Messages	
Other Evidence	Additional types of evidence include: • Security footage • Recent call logs/phone statement logs • Keycard/passcode access logs Parties and witnesses are not likely to give these three items. They usually come to you from the school or district's records. You can attempt to gather these items in the front end of the investigation because they can help to inform strategy for interviews.

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GATHERING EVIDENCE

Evidence Collection
Once the investigation begins, you should be actively engaging in gathering evidence. Evidence can be collected by you from parties or witnesses, from records already maintained by the school, from law enforcement if they will provide it to you, or from any other source. Remember, the burden of gathering evidence is on the school or district, including when you are working with contract or outsourced investigators.

Evidence from Interviews
Your notes or transcripts of the interviews are the record of the evidence provided during the interviews.

Plan to use a technique called "verification" to validate your notes. You can do so easily by providing your notes, a written summary of the interview or a copy of the interview transcript to the interviewee. Ask the interviewee to make any comments, clarifications or contextual observations and return them to you. All of their proposed changes should be tracked.

Save the finalized version of the notes or transcripts, including any responses from the interviewee, as the official representation of the evidence gathered from that interview. This entire process should ideally happen within two to three days following an interview.

Evidence from Other Sources
Testimony is the most common form of evidence, but you'll collect and evaluate other types of evidence using a similar process. You must actively identify, collect, and examine evidence before and during an investigation. Once a potential source of evidence is identified, efforts to collect and analyze must begin promptly. Any delays can result in misplacing or corruption of otherwise helpful evidence.

Activity: Evidence Identification

Evidence identification may happen during the formal complaint, strategy, or interview phases. Review these examples and responses about the evidence to collect in each one.

1. **Example:** Complainant wrote in the formal complaint that respondent hugged complainant, pinched complainant's butt, and rubbed respondent's groin against complainant's hip while complainant was trying to get into their locker in the B building hallway. What can you identify as a potential way to gather evidence?
    - **Response:** *You identify surveillance cameras at each end of the B building hallway and centered on the row of lockers that may contain video footage of the incident.*

2. **Example:** Complainant indicated in the formal complaint that respondent approached complainant while both were in the locker room after practice, pulled complainant's towel off complainant's body, and called the rest of the team's attention to the complainant while making fun of them. What can you identify as a potential way to gather or collect evidence and for help in identifying potential witnesses?
    - ***Response:*** *In a strategy meeting with the Title IX Coordinator, you decide to interview the coaching staff first to get an idea of the locker room's physical*

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arrangement, the ability of coaches to see what was going on, and for help for identifying potential witnesses.

3. **Example:** Respondent said during the interview that the complainant sent respondent a suggestive text message without respondent requesting or expecting it on a particular day. What can you identify as a potential way to gather or collect evidence?
    - ***Response:*** *You ask respondent for a screenshot of the text. You confirm receipt of the screenshot and authenticate it by asking to see the text on the student's phone to confirm that screenshot is what was actually sent.*

MANAGING EVIDENCE

Verifying Evidence
Proper evidence gathering involves verifying the date, time, source and content of the evidence. Evidence like security camera footage and access logs record time and date information. Access logs and other credential-based verification will indicate the owner of the credentials. Most evidence must be verified by establishing several important characteristics of the evidence. As the investigator, there are steps you can take to properly analyze and verify your evidence.

To establish these characteristics, you'll want to use the following questions as a guide:

- **Who or what is the source?**
  If a username or contact number is indicated, is that username or number associated with the implicated individual? Look at the contact name, username or number associated with the evidence. Establish a connection between credential and individual(s). Note who provided the information and in what form.
- **Is the date or time recorded on the original source information? How is it recorded?**
  Note any date or time stamps when they are present. Use contextual evidence – like prior or subsequent messages or other information – to establish a date or time if neither is present. Ask questions to help place evidence in the incident timeline. If the date or time is not visible, additional evidence may need to be collected.
- **Is the collected evidence a copy or screenshot?**
  If so, obtain or verify the original so it can be compared against the copy to confirm accuracy. Take notes about the nature of the copy and its relationship to the original. If the original is not available or cannot be collected, obtain and verify an accurate description to be included in the evidence record.
- **Is the content consistent with the original and/or other sources of the same information?**
  Note areas of consistency and/or contradiction with other evidence. For messages, obtain identical records from all involved individuals to confirm accuracy and completeness.

Relevant Evidence
Evidence is generally considered relevant if it has value in proving or disproving a fact at issue or speaks to the credibility of other evidence. The investigator makes initial relevance decisions by including evidence in the investigation report.

Examples of relevant evidence include:

- Video footage of someone getting on a bus,

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- Camera footage showing the time someone went into a bathroom, or
- Text messages detailing a time and place to meet on a certain day.

Text messages may include several unrelated, non-relevant pieces of information, with relevant details mixed with the conversation. These pieces should be separated out, if possible, to only include those pieces that are relevant to the allegation.

Decisions of Relevancy
The relevance of any piece of evidence is ultimately up to the decision-maker, who won't be bound by your initial determination as investigator. All relevant evidence must be objectively evaluated and considered – inculpatory and exculpatory. If the investigator indicates an opinion on credibility, outcome, whether policy was violated, or how evidence should be weighted, that opinion or recommendation is not binding for the decision-maker. They may consider it but must be objective and independent. The decision-maker is free to accept or reject any recommendations from you or any other investigators or ask you to not make them.

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- **Inculpatory evidence**: supports finding that respondent violated policy.
- **Exculpatory evidence**: supports finding that respondent did not violate policy.

Categorizing Evidence
As the investigator, it's your job to sift through all the evidence. You should be able to analyze whether evidence is relevant, directly related to the allegations but not relevant to the question of whether the policy was violated or not relevant at all. ATIXA tends to describe these three categories as "buckets" that hold different kinds of evidence that is gathered in the investigation.

Bucket 1: Relevant Evidence
The first bucket should be for all evidence that is relevant to the allegations. This is typically a fairly big bucket, because in most investigations, most of what you gather is relevant to answer the question about whether the respondent violated school or district policy. Remember that evidence is relevant when it it tends to prove or disprove an issue in the allegation, or when it speaks to the credibility of other evidence.

The "relevant evidence" concept describes the investigation report. Remember that through the two 10-day review periods, the parties can argue that evidence that was not included in your draft or final report should be considered by the decision-maker.

Bucket 2: Directly Related but Not Relevant
This bucket should contain all evidence that is directly related to the allegations but is not relevant to the question of whether the policy has been violated. Just like in Bucket One (relevant evidence), parties may argue that something is relevant and should be included in the report. Alternatively, they might argue that something is not even directly related and should be excluded altogether.

Bucket 3: Neither Relevant or Directly Related
The third and final bucket should contain evidence that is neither relevant nor directly related to the complaint. You should maintain this evidence for your records, but it is not provided to the decision-maker, and it is disregarded for the purpose of the process. Parties, advisors and decision-makers do not get to know about this bucket of evidence.

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Prior Sexual History & Sexual Predisposition
Although there is no limit to the evidence that can be offered by the parties, the inclusion of any evidence regarding a complainant's sexual history is subject to a specific set of rules. Title IX has a version of what is typically called a 'rape shield provision.' With this provision, the complainant's sexual predisposition is never relevant.

The complainant's prior sexual behavior is also not relevant except for two limited exceptions:

- The evidence is offered to prove that someone other than the respondent committed the alleged conduct.
- The evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent.

Outside of these two limited exceptions, these types of evidence are not relevant, even if offered or admitted to by the complainant. This provision does not apply to the respondent's prior sexual behavior or sexual predisposition.

Evidence Subject to Privilege
Another specific type of evidence that has specific rules is any evidence that is subject to a privilege, like information from a party's health provider. These additional permissions would be required for records maintained by a physician, psychiatrist or psychologist, for example, and can only be requested and considered with written permission. Additionally, questions or evidence that seek disclosures of information protected under a legally recognized privilege must not be asked without permission.

Conclusion
You've reached the end of Understanding and Processing Evidence. After completing this lesson, you should now be able to:

- List and describe different types of evidence.
- Explain methods of identifying and collecting evidence.
- Analyze the evidence to determine relevance to the allegations or incident.

CASE STUDY
INTERVIEWS & EVIDENCE

Read this case study and think about how you'd respond to the questions as an investigator. Then, review a response from one of our experts.

Ivan and Juanita – Interview & Evidence

From Juanita, you identify the following pieces of evidence:

- The email
- The picture

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You decide to interview Ivan next. Ivan believes Juanita is blowing the whole matter out of proportion. He admits to creating the photo for a class project. He reports:

> *"It was only meant to be a joke. I never put her name on it, so what's the big deal? This is a work of art that I created for my class. I only showed my artwork to a few of my teammates."*

The email account is for official team business. The coaches and team captains have the password. The captains have shared the password with other seniors on the team.
Ivan says Juanita "always flashes her breasts" at him and told him she wanted breast implants.

From the information you gathered from Ivan's interview, you decide to also interview John, the Assistant IT Director of the school. John was able to confirm that someone using the school computer lab sent the picture from the boys' soccer team email account. The picture was inserted into the email via a flash drive, but he was unable to determine which student had logged into the computer. John received Ivan's consent to inspect his personal laptop. The photo was on Ivan's hard drive but was not sent out via email to anyone. John said Ivan told him when he doesn't have his laptop with him, it is typically inside his locker, and he hasn't given anyone else his laptop password.

How Would You Respond
Who else might you interview? What other evidence do you want to gather? What additional questions might you ask?

From an Expert
Read though this response from Joe Vincent, M.L.S. of ATIXA:

> *At this phase in the process, we've got fairly robust information from Juanita, from Ivan and from John, who runs the information technology department at the school. We've learned some really useful things. We know from Ivan's testimony that Ivan wasn't the one that actually emailed the photo; that's what he said. John also told us that he can nail down that it was sent from a computer in the computer lab at school, but because the account that was used to transmit the image isn't a personalized one, we still don't really know who actually emailed the photo.*
>
> *Of course, we have Juanita's allegation that it was Ivan, and that's evidence, but it's not really been clarified to the extent that we're really satisfied with at this point in sending it off in a report for the decision-maker to hash out. There are some more folks that we can interview. We know the timeframe that the image was sent in, John can tell us that, and that we know where it was sent from, which John can also tell us, and maybe even we know which machine in the computer lab was used to transmit the image, which John can also likely tell us. It sort of narrows our focus, at this point, down to what was going on in that computer lab at that time. You probably already realized this, but there may be some ways for us to sort through the number of likely individuals who were in the lab at that time.*
>
> *Is there surveillance video footage that shows maybe the front door to the lab or maybe there's a camera inside the lab? Is there any sort of permission-based access to the lab*

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itself? Do you have to have a card? Do you have to enter a code? Is there a schedule for a class that was in the lab during that time or certain people that are allowed to be in there? At the very least, even though the sender of the image used a general account, that boys' soccer account doesn't give us a hint of that person's identity.

There are likely others that were logged in to computers using personalized account access during the same time. The goal here is to try to nail down who sent it, and if we can't nail down exactly who sent it, we can at least identify some people who may have been in the area at the time we know the image was sent. That's part one of our focus for who else do we interview. I would attempt to identify some of those people who were in the computer lab at the time it was sent. If I even know the location of the computer that it was sent from, I can start asking questions about who else was in there, who was sitting where in the room, just to help me sort of narrow down the number of people that I'm looking for.

Commented [IP11]: This entire section is all very wordy but I wasn't sure if I should edit or not since it is quoted from Joe. Please advise.

Also, you may have noticed in the interview results with Ivan that we didn't ask Ivan a specific and probably really helpful question: if he didn't send it, who does he think did? Now it may be that Ivan's not going to sell out his friends or his teammates, but it's at least a question worth asking. And if it hasn't been asked up to this point, we should consider going back to Ivan and asking for his best guess about who might have sent it. And you never know what sort of information you might turn up by asking that question.

In all, the investigation at this point is really narrowing down to a focus of who sent that image and thinking about answering that question using available evidence that might still be out there uncollected will help you focus on what sort of people should I be talking to. What sort of other evidence should I be looking at? And should help you sort of wrap up at least this phase of the investigation in pursuit of answering those questions?

Key Takeaway

Keep in mind the strategy you created for conducting interviews and gathering evidence as you conduct your formal investigation.

END OF PART 5

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PART 6
INVESTIGATION REPORT AND DOCUMENTATION

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Lesson 1
Investigation Report and Documentation

Title IX has specific requirements regarding documenting the school or district's efforts to stop the harassment, prevent its recurrence, and remedy any effects. Investigators play a pivotal role in properly documenting the investigation. As an investigator, you'll need to know and understand what's required under Title IX when writing the investigation report and documenting the investigation as you do your work. This lesson will outline the important role you'll play in documenting the investigation. It will also identify what's needed to properly compile the investigation report and help you manage the two 10-day review periods.

After completing this lesson, you will be able to:

- Explain the importance of the investigator's role in documenting the investigation.
- Identify necessary and required components of a written investigation report.
- Manage both periods of report and evidence review by the parties effectively.

INVESTIGATION DOCUMENTATION

Investigation File
You should know about the information you'll need to collect or create as an investigator to document the investigation. The first few items that you should collect are copies of policies and procedures and copies of the original NOIA letter. The investigation file should also contain a record for each party and witness.

Policies and Procedures
You should retain a copy of the policies and procedures to add to the investigation file. These documents should be copies of the policies and procedures that were in place at the time of the investigation. Depending upon the timing of the complaint, more than one policy or set of procedures may be implicated.

Don't just rely on the link that is on your website or handbook. Remember that there may be a need to revisit this investigation years later. This makes it important to retain a copy of the applicable policies and procedures for each investigation.

NOIA Letter
Maintain copies of the original Notice of Investigation and Allegations, or NOIA letter, as well as any subsequent updated NOIAs. The NOIA will serve as the roadmap for the collection of evidence for the investigation.

Party and Witness Records
You should also have a record in the file for each party and witness. ATIXA recommends using an electronic case management database, which can be helpful in sorting and storing information in this manner.

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For each party or witness, you should include the following:

- Approved interview transcripts or summaries.
- Any additional evidence provided by that individual, including documentation of how the evidence was authenticated.
- Copies of any email or other communication with you, the investigator.

You may also collect background information related to education or employment, such as class or work schedules that can be included in your documentation maintained for each party and witness. Don't forget to include a copy of the complaint.

Incident Timeline

Timelines are vitally important to cataloging and understanding when different actions or events took place and their relation to one another. Timelines can also be helpful in outlining where evidence supports or conflicts with a party's or witness's testimony, which is very helpful to analyzing credibility issues. Some investigators prefer a visual timeline while others use a list format. You should develop one timeline for the reported incident or incidents based on all the information collected during interviews and submitted as evidence.

- Timelines are crucial in allegations of stalking.
- Although less common in K-12 settings, timelines are pivotal in investigations that involve alcohol or drug use because timelines help investigators and decision-makers to analyze whether incapacitation is an issue depending on a person's drug or alcohol use over time.

Investigation Timeline

Another type of timeline documents the process overall. Near the end of the process, the Title IX regulations require the decision-maker to include in the final determination letter a comprehensive summary of the steps taken during the investigation and resolution process. When writing the final determination letter, the decision-maker typically draws from the investigation timeline section of the investigation report.

The investigation timeline should include:

- When NOIA letters were sent and other important notifications to the parties.
- Interviews with the parties and witnesses.
- Site visits (if any).
- Methods used to gather other evidence.
- Other meetings held with the parties (if any).

You should also note any process delays, including a justification for the delay. This includes delays caused or requested by law enforcement or a state child welfare agency, the parties or witnesses, or school administrators, including yourself and/or other investigators themselves.

Witness Flowchart

Investigations range from simple to very complex. There are several organizational documents that you can create that will help you track the individuals and issues involved in a specific investigation. Creating a witness flowchart is an effective way to document and track how witnesses were identified and their relationships, if any, to the parties and other witnesses.

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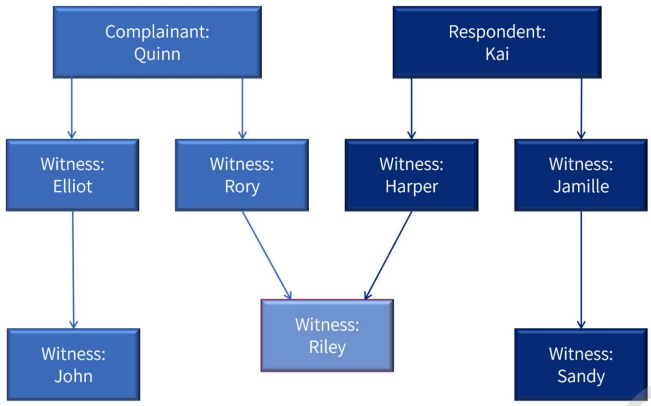
Example of a witness flowchart:



Issue Tracking List
Although it's not required, some investigators find it helpful to maintain an issue tracking list in the investigation file. An issue tracking list are short bullet points that should be created during or after an interview to remind you of what information was shared by each party or witness related to the key elements of the alleged violations. This could include newly- identified witnesses or evidence, reminders for you to follow up with a party or witness about a specific topic, or future lines of questioning or evidence to gather.

The issue tracking list will help you stay focused on the alleged policy violations and provide a starting point for synthesizing the evidence you've gathered in the investigation report. It will remind you where information came from throughout the investigation.

Contact Log
A contact log is a record of all contact that you have with the parties and witnesses for an investigation. This includes in-person, electronic and telephone communication. You should note who initiated the contact, the means of contact, the general substance of the communication and any action items or decisions made as a result of the contact.

Documentation to the Title IX Coordinator
When you complete an investigation, you'll need to ensure that the Title IX Coordinator receives these documents:

- Copies of the policies and procedures in place at the time of the incident and at the time of the investigation.
- The NOIA letters and any subsequent updates.
- The information related to each party and witness, including interview transcripts, background information, and evidence provided.
- The contact log.

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With the exception of the Issue Tracking List, all of the other documents that we've covered will be included in the investigation report. They don't need to be provided to the Title IX Coordinator separately.

COMPONENTS OF A WRITTEN REPORT

The Written Investigation Report
The Title IX regulations contain few specific requirements for the format of an investigation report, but it must summarize relevant evidence. The work of writing a good investigation report requires the investigator to gather all the available relevant evidence, assess the credibility of the evidence that has been gathered, and synthesize areas of dispute/agreement regarding the underlying incident.

Some Title IX Coordinators will provide investigators with a report template to use. Ask your Title IX Coordinator if they have a template from which they'd like for you to work. ATIXA's investigation report template can be accessed in the Title IX Toolkit or in the appendix.

Report Sections
To ensure your report is comprehensive, ATIXA has developed a recommended framework for your report's sections and the information to include in each.

Complaint Information
This should include:

- The identities of the parties.
- The date of the formal complaint.
- The date the investigator was assigned.
- The identities of the investigators.
- The date of the final investigation report.

Executive Summary
Next, consider providing the reader with an executive summary. The executive summary should include:

- A brief summary of how the formal complaint was received.
- The allegations contained within the formal complaint.
- An overview of the steps taken in the investigation.
- An overview of the disputed and undisputed facts.
- The status of the formal complaint.
- A table of contents for the remainder of the investigation report.

Relevant Background
In some cases, such as in a more complex investigation, a section outlining the relevant background for the allegations and the investigation may be helpful to provide the reader with context that serves as a backdrop for the investigation. In some investigations, this section might not be necessary. Complex investigations are typically those related to the culture or climate of the school or district. The relevant background may include historical context of a group or department, relationships of the parties and witnesses, or any other relevant contextual information.

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Jurisdiction & Scope of the Investigation
An investigation report must clearly describe the school's jurisdiction under Title IX, as well as articulate the scope of the investigation. The jurisdiction statement summarizes the basis for the school's authority to assert jurisdiction over the formal complaint under Title IX. Separately, but related, the report should also document the scope of the investigation by identifying the specific allegations being investigated and the individuals involved.

Applicable Policies & Relevant Definitions
Make sure that the applicable policies and relevant definitions that are cited in the report align with the references cited in the Notice of Investigation and Allegations letter.

Timelines
The next two sections of the report are the Investigation Timeline and the Reported Incident Timeline. Both timelines are developed throughout the course of the investigation. They can appear either in the main body of the investigation report or in an appendix to the report.

Summary of Relevant Statements & Evidence
When tackling the bulk of the investigation report, meaning the summary of all relevant evidence gathered by the investigator, you must consider what organizational structure makes the most logical sense. Often, the substance of the investigation may dictate the structure for the Summary of Relevant Statements and Evidence section. Three common approaches are:

- Chronological by interview
- Chronological by incident timeline
- Parties first, then witnesses

Credibility Assessment
You should provide a specific and detailed credibility assessment for each party, each witness, and any other relevant evidence for the decision-maker to consider. Due to the division of roles between the investigator and the decision-maker, ATIXA recommends that you refrain from making conclusions about credibility. Instead, highlight what the key issues regarding credibility are for the decision-maker to consider in your analysis.
Note: Some polices may permit investigators to make conclusions about credibility.

Discussion & Synthesis
One of the final components of the written investigation report is the Discussion and Synthesis. In this section, your job as an investigator is to examine and integrate the relevant evidence that you have gathered in the investigation. In doing so, you'll:

- Work from the elements of each policy provision alleged to have been violated.
- Cite to relevant evidence that was gathered.
- Refer to credibility issues.
- Summarize all areas of contested and uncontested evidence or issues.

Conclusion
An investigation report ends with a conclusion that provides a summary for the decision-maker by highlighting areas of agreement and disagreement that are critical to either assessing credibility or determining if the respondent violated policy.

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SHARING THE DRAFT REPORT AND EVIDENCE

Completing the Report
Once you've completed a draft of your investigation report, you must provide the draft and any directly related evidence to the parties and their advisors for their review and comment. The materials must be sent in electronic or hard copy format. This review period must be a minimum of 10 days.

First 10-Day Review Period
During this review period, the parties may respond in writing to the investigator to ask questions about the investigation and suggest additional witnesses or additional questions for witnesses or the other party. The parties may challenge your determination of whether a piece of evidence is relevant and therefore included in the draft report. Similarly, they may challenge whether evidence that does not appear in the report should be included there. They may also provide additional evidence that they did not provide before but has become newly available to them or rebuts something they have seen in the report or evidence.

Finalized Report
Once you've received written feedback from the parties and their advisors, you'll finalize the investigation report. The final report is provided to the parties and their advisors for a second review period. This review period is also a minimum of 10 days and occurs prior to a policy violation determination being made.

> **Before You Finalize the Report**: Once the review is submitted, the investigator should re-open the investigation if needed, update the report, and/or respond to the review and comment in an appendix to the report.

Conclusion
You've reached the end of Investigation Report and Documentation. After completing this lesson, you should now be able to:

- Explain the importance of the investigator's role in documenting the investigation.
- Identify necessary and required components of a written investigation report.
- Manage both periods of report and evidence review by the parties effectively.

CASE STUDY
FIRST 10-DAY REVIEW AND RESPONSE PERIOD

Read this case study and think about how you'd respond to the questions as an investigator. Then, review a response from one of our experts.

Ivan and Juanita – Review & Response

> You've shared the investigation draft report and directly related evidence with Ivan and Juanita and have received responses from both during the 10-day review period.

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Juanita's response:

Juanita tells you that she read what Ivan said in his interview about having to create the photo for his art class. She knows Ivan is not telling the truth because she took the same class last year, and she never had an assignment like that for class.

Ivan's Advisor's response:

Ivan's advisor tells you that he has a new witness he wants you to interview. He wants you to interview Ivan's friend Alan, who'll tell you that Juanita isn't really bothered by the photo because previously she flashes her breasts at Ivan a few times and told Ivan she wanted breast implants.

How Would You Respond

1. Does Juanita's response to the draft report evidence provide any additional relevant information to the case? Is additional action required?
2. Does Ivan's response to the draft report evidence provide any additional relevant information to the case? Is additional action required?

ATIXA's Responses:

1. *Yes, Juanita's response does provide additional relevant information to the case. Based on her response, the art teacher can provide additional information about the class assignment for which Ivan claimed he created the picture. You should make a plan to interview the art teacher*
2. *No, Ivan's advisor's response does not provide additional relevant information to the case. The information he provided is not relevant to the incident you are investigating. As investigator, you may decide to take no action on this response, but you should document your reasoning for this conclusion.*

Key Takeaway

Managing the two 10-day review and response periods during the investigation is an important part of your role as an investigator.

END OF PART 6

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Part 7
Managing the Process

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Lesson 1
Managing the Process

Your job as investigator includes managing and handling several facets of an investigation that may directly affect the investigation. You should also know what happens after the formal investigation concludes so that you are able to answer basic questions from parties, witnesses, or advisors.

This lesson addresses other aspects of the process to increase your awareness and build your confidence in how to handle them. It provides information on dealing with parents and guardians, delays that may occur while you are conducting your investigation, and key issues associated with privacy and confidentiality. It also outlines the steps of the grievance process that occur after the formal investigation is concluded.

After completing this lesson, you will be able to:

- Recognize and manage additional facets of the investigation.
- Describe what happens after the formal investigation is complete.

OTHER FACETS OF THE PROCESS

There are many facets of the process that require attention and may need to be managed throughout the investigation. Part of this lesson will explore how to handle these items as they happen. They may or may not cause or present issues during the investigation but it's best to be as prepared as possible for what may come.

To begin, we'll start by discussing three topics:

- Privacy, Confidentiality, and FERPA.
- Managing parents and guardians.
- Investigation Timelines and Delays.

These topics are important to review to ensure that these additional facets are addressed and managed, as needed. This information will be helpful facilitating an equitable, thorough and prompt investigation.

PRIVACY, CONFIDENTIALITY, AND FERPA

A common question that surrounds Title IX investigations is whether the investigation is confidential, how FERPA and other privacy laws apply and what privacy rules apply to the documents that are gathered and written by you as the investigator. One helpful place to start is to differentiate between the concepts of confidentiality and privacy.

Confidentiality

Parties and witnesses will often ask if the Title IX process is confidential. Confidential information should only be shared as permitted by law. The only individuals who typically operate with pure confidentiality inside of Title IX systems are those who have some confidentiality obligation that is required by law.

Privacy

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Despite the often-limited application of strict confidentiality, Title IX investigations are always conducted with a high degree of privacy. The professionals assigned to work on Title IX matters will only share information about the investigation with individuals who need to know the information in order for the school or district to do its work. For example, the very nature of the Title IX process makes it necessary for investigators to share information with the parties and their advisors to allow these individuals to effectively participate in the Title IX process.

Discussion of Allegations
A common privacy concern associated with investigations in K-12 schools occurs when parties and advisors discuss the allegations with other members of the school community. Individual parties or witnesses may need to talk about the incident, allegations or information that they have with advisors, parents or guardians, and others in order to effectively participate in the Title IX process.

Under Title IX, there is no restriction on what individuals can share. However, you absolutely can and should encourage individuals to respect the private and sensitive nature of the Title IX process and to use signification discretion in what, how and with whom they choose to share information. Often advising a party to consult with their advisor before making disclosures can help the individual to make such disclosures carefully.

Retaliation
It's helpful to continuously remind individuals that sharing information must be done in good faith to permit them to effectively participate in the Title IX process. If it becomes clear that public disclosures are being made with an intent to be retaliatory against the other party or a witness, notify the Title IX Coordinator, who may need to determine whether an issue of retaliation needs to be addressed separately under Title IX.

FERPA
FERPA is the federal law that exists to maintain the privacy of education records that are maintained by the school. Under FERPA, a school may not share the contents of a student's education records with anyone other than the student or their parent or guardian unless the parent or guardian has provided written consent to do so or one of the many recognized exceptions is present.

- **FERPA** stands for the Family Educational Rights and Privacy Act.
- In K-12 settings, when a student turns 18, FERPA right transfers directly to the student.
- Typically, state law and/or district policy govern privacy rights for employee records.

Investigator Records
Records maintained by you about students who participate in Title IX processes are typically considered education records under FERPA. Of course, as you have already learned, the Title IX regulations have specific requirements governing the parties' ability to review that evidence that you have collected and the investigation report. Within passing these regulations, the U.S. Department of Education has determined that this information sharing is consistent with FERPA.

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A common issue that arises are the records that are created when a student is a witness. Some schools ask the parents or guardians of student witnesses to provide signed written consent to allow the records of evidence gathered from those student witness interviews to be shared as part of the investigation report and evidence file. You should check with your Title IX Coordinator to determine whether your district has adopted this practice.

MANAGING PARENTS AND GUARDIANS

Title IX gives a parent or guardian of a minor the right to be present with their child during all interviews and other meetings as part of the Title IX process. In many cases, it may be that the parent or guardian serves as the advisor, which is now a specific role in a Title IX process. However, when a student has designated an advisor who is not their parent or guardian, the parent or guardian also has a right to be present. In some circumstances, parents or guardians may conclude that it would be best for their child to participate in an interview with just the advisor present and may decline to sit in on your interview.

Parent/Guardian Participation

Just like advisors to the parties, parents and guardians do not have any right to demand a specific remedy in the process. They may not be disruptive to the process or during interviews and should not actively participate in an interview. It's important that you hear information and answers to your questions directly from the student. Parents and guardians should not answer any questions on behalf of their student, but this may vary for younger students or students with a disability, where the conversation could be made easier with a parent or guardian's assistance.

INVESTIGATION TIMELINES AND DELAYS

Our obligation under Title IX is that the grievance process and the investigation be handled promptly. What exactly does this mean? What's a standard timeline, and how do you handle delays? Your goal is to avoid any undue delay. When you have a delay, you need to make sure that you clearly communicate about the delay to both parties in writing. This should also include why the delay is necessary and when they can expect the investigation to resume.

Other Investigations

One common delay occurs when another agency is investigating the same underlying incident. This may happen when law enforcement is conducting a criminal investigation or when your state's child protection agency is conducting its own investigation. In those circumstances, it's not unusual for the Title IX Coordinator and/or the investigator to coordinate with those outside agencies and determine how the timeline for the Title IX investigation will be slightly modified to accommodate the other investigation.

Coordinating with Law Enforcement

Some law enforcement agencies understand and anticipate that a school has an independent responsibility to conduct its own investigation under Title IX. However, some law enforcement agencies might find it unusual that the school is conducting its own investigation regarding the same underlying incident. ATIXA recommends working collaboratively with the detective or other investigator to understand the timeline they've developed for their investigation.

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Investigation Delays
If a law enforcement agency requests that you pause your investigation to allow theirs to proceed, it's certainly appropriate to delay your Title IX investigation for a short time to accommodate this request. ATIXA typically recommends that a delay be no more than a few weeks. If you're asked to pause your investigation completely until the other investigation concludes, you may need to explain that the school has an independent duty to investigate. The school's duty under Title IX to be prompt means that the school cannot wait entirely for the conclusion of the other investigation.

- The Title IX Coordinator may also navigate conversations with law enforcement explaining that an investigation cannot be completely paused.

Other Delays
Other circumstances could also possibly delay the investigation. For example, you may have a party who is unavailable to you for a time that may prevent you from moving forward. You may need to identify a competent translator to allow a party or witness to effectively participate in an interview. You may also need to arrange accommodations for an interview participant due to a disability. These are examples of circumstances that may be reasons for a valid delay.

Your obligation under Title IX is to keep things moving forward as much as possible and to provide clear written communication to the parties about the delay and when they can expect the investigation to resume.

BIAS AND CONFLICT ISSUES

Impartial Investigations
The Title IX regulations prohibit investigators and others involved in the process from exhibiting any bias that would affect the process. Additionally, investigators may not have any conflicts of interest that would affect their ability to be impartial. This means that you can't have a conflict of interest or bias for or against any specific party who you're investigating. You also may not have a bias in favor or against complainants or respondents generally.

Bias and Conflict of Interest
Bias involves any prejudice or unfair preference that improperly influences an investigation. A conflict of interest exists when you're unable to remain truly neutral due to some other interest. This can be caused by an allegiance you may hold, either because of your role or due to some other circumstances. If a party or advisor believes that an investigator has exhibited some form of bias or conflict of interest, your district policy should afford the right to appeal the outcome of the case; this right is required under the Title IX regulations.

Forms of Bias
There are many forms of bias that can impact investigations. Examples of bias include:

- Coming to an investigation with a predetermined idea of what the outcome should be.
- Asking questions and writing report in a way that suggests favoritism toward one party or the other.

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- Allowing senior level administrators to intervene into the investigation.
- Improperly applying the procedures and policies that govern our investigations.
- Animosity or hostility toward any particular party or witness.
- The implicit biases that you may carry with you into interviews.

These are examples of the types of issues that you'll need to protect against in how you conduct your investigations.

Pre-Existing Relationships
Investigators often ask whether they can serve in the role when they already know one or both of the parties. Does that pre-existing relationship create enough of a bias or conflict of interest to prevent the investigator from serving? In most situations, just knowing a person is not enough to create an issue if you can conduct the investigation impartially. For example, if you are a school administrator who has had interaction with a student before regarding minor disciplinary issues, this would likely not be enough of a conflict to prevent you from serving as investigator, so long as you can be impartial.

Investigator Considerations
Each situation needs thoughtful consideration, though, based upon the circumstances. You will need to judge for yourself whether you believe you can conduct the investigation impartially, and you'll need to consider this for each investigation that you do. If you ever have a question or concern about whether you can serve impartially, speak with your Title IX Coordinator as soon as possible so they can determine whether you're able to serve as the investigator.

Your district policy may also have specific procedures around conflict or bias issues, including what to do as an investigator if you need to recuse yourself or how a party would raise a concern about bias or conflict of interest with an investigator. The Title IX Coordinator typically determines whether the investigation should be assigned to a different investigator.

Hear from an Expert: Kim Pacelli, TNG Partner

Hi, I'm Kim Pacelli, and I'm one of the experts here at TNG and ATIXA. I just wanted to discuss issues of bias and conflict of interest. These are areas where we are seeing some scrutiny of our work as investigators. We are increasingly having some processes within our policies and procedures that allow us to recuse ourselves when we feel like we are not in a position to serve impartially.

Title IX's mandate is that everyone involved in the process is impartial, and so that means as an investigator, we need to feel comfortable and confident in our role as neutral and impartial investigators. It means that we can't have a particular conflict of interest. We can't have some personal outcome or some personal stake in the outcome of a matter, whether it's a personal stake or a professional stake. The substance of our investigation needs to have no particular bearing in our particular lives. It also means that we can't hold or exhibit any bias either in favor or against any particular party that we may be investigating, and also the rules themselves.

We can't have any particular bias or impartiality in favor of or against complainants or respondents, generally; that's something to have in mind. We can anticipate increasing scrutiny over our work and our roles. The Title IX regulations really invite parties and advisors to ask questions about our training and our impartiality. If that happens, don't take it personally. It's sort of a standard or common part of Title IX investigations right now.

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If you ever have any questions about these issues or are wondering yourself whether you're in a situation where you may need to recuse yourself and not serve as an investigator in a particular case, talk with your Title IX Coordinator. They are prepared and well equipped to think through these issues of bias and recusal that may come up for you from time to time in your work as an investigator.

AFTER THE FORMAL INVESTIGATION

Concluding the Investigation
You may wonder what happens after you complete the formal investigation. After the conclusion of the investigation, your final investigation report moves to the decision-maker for a final decision.

Remember, the Title IX regulations require that there be a separate person or panel to serve as an independent decision-maker in every Title IX case. As investigator, you should not be in a position of making a decision about whether school or district policy has been violated by the respondent. Instead, your work – in the form of the investigation report – is handed off to an independent and neutral decision-maker to decide.

Evidentiary Standard
One important concept to understand in the decision-making process is what standard of evidence is applied under your district's policy. What amount of evidence is required for the decision-maker to determine whether the respondent violated district policy? Title IX regulations require that each school or district's policy choose between one of two standards of evidence. The two standards of evidence are preponderance of the evidence and clear and convincing evidence.

> **Preponderance of the Evidence** – A standard of evidence that means that it is more likely than not that the respondent violated district policy.
>
> **Clear and Convincing Evidence** – A standard of evidence under which the evidence must show that it is highly likely that the respondent violated policy. This is the higher standard of evidence.

Evidence in Your Investigation
As the investigator, it's helpful to know which standard your school or district uses under its policy. Knowing which standard of evidence your decision-maker will be applying will help you as you're conducting your investigation. Most schools or districts will use the preponderance of the evidence standard, which is also the standard of evidence that ATIXA recommends adopting.

The Decision-Maker
Most of the decision-maker's work will not involve you. When a Title IX case goes into the decision-making phase, the investigator and the decision maker should avoid any outside discussions of the case. This could give the perception that there was some bias or influence by the investigator into the decision-making phase.

The Decision-Making Phase

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The decision-making phase provides opportunities for the parties and their advisors to ask relevant questions of each other and any witnesses in writing, exchanged through the decision-maker. This is an important part of the "due process" provided under Title IX to allow the parties to further probe the evidence that you've gathered in the investigation and to ask questions about it, as well as to raise relevant questions about the credibility of the other party or a witness.

The decision-maker typically makes the determination of whether district policy has been violated, and if so, what sanctions or remedies are provided. Then, a detailed, written determination letter is provided to both of the parties. Although you don't have a role in this phase of the process, you may get questions from parties about when they'll get an answer or about an outcome.

The Appeal Process
Lastly, Title IX now requires that an appeal process be provided in all Title IX cases. It should be available to both parties regardless of the outcome of the case. As the investigator, it's likely that you won't have a role in the appeal process. However, this process exists to determine whether some error or issue occurred during the original handling of the investigation or the original decision. In certain circumstances, it's possible for the case to return to you following an appeal for further investigation.

- Appeal decision-makers may have written questions for you, as the investigator, during the appeal process.

Conclusion
You've reached the end of Managing the Process. After completing this lesson, you should now be able to:

- Recognize and manage additional facets of the investigation.
- Describe what happens after the formal investigation is complete.

END OF PART 7
END OF TRAINING

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