



**TITLE IX COMPLIANCE TRAINING**

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R|R|M Ratwik, Roszak & Maloney, P.A.

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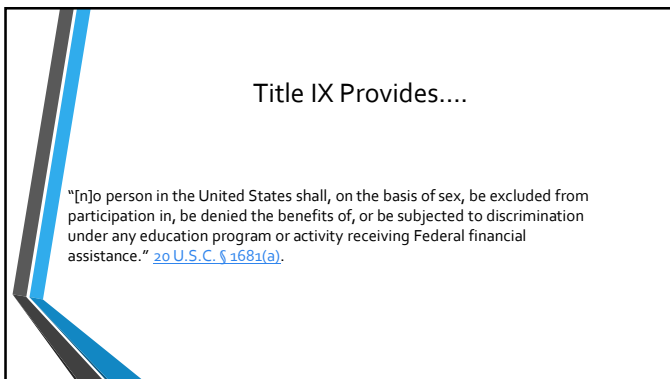
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Title IX Provides...

"[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." [20 U.S.C. § 1681\(a\)](#).

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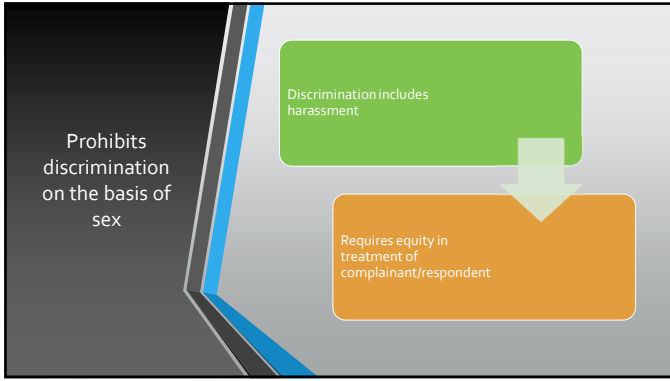
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Prohibits discrimination on the basis of sex

Discrimination includes harassment

Requires equity in treatment of complainant/respondent



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New Regs effective 8/14/2020

USDOE ISSUED NEW REGULATIONS IMPLEMENTING TITLE IX

NEW DEFINITIONS

NEW INVESTIGATION REQUIREMENTS



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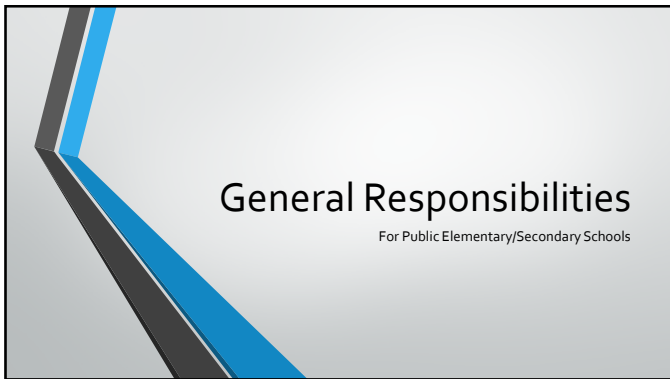
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General Responsibilities

For Public Elementary/Secondary Schools



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Schools must:

- 1 Have a policy
- 2 Identify Title IX Coordinator
- 3 Offer Supportive Measure
- 4 Have a grievance process

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Response to Sex Harassment

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent..

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Recipient of Federal Funds

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1. A school employee **conditions** receipt of a benefit on participating in unwelcome sexual conduct or

2. The conduct is unwelcome and is determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity; or

3. The conduct is **sexual assault**, dating violence, domestic violence, or stalking, as those terms are defined by federal law.

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- If an employee of the school knows of sex harassment or
- Allegations of sex harassment the district has "actual knowledge"

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Education Program or Activity

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Response:  
not  
deliberately  
indifferent

- *Davis v. Monroe County Bd. of Ed.*

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**Deliberately  
indifferent**

School is deliberately indifferent if it acted unreasonably in light of the known circumstances

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Previously, a formal complaint was not required

As of August 14, 2020, a "formal complaint" is required and means:

The Complainant files a written complaint or	The Title IX Coordinator files a written complaint	No third-party complaints, except parents may file a complaint on behalf of a minor child
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**Formal complaint**

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### Report vs. formal complaint

<p><b>Report</b></p> <ul style="list-style-type: none"> <li>Actual knowledge by school employee of harassment or</li> <li>Actual knowledge by employee of report or</li> <li>Complainant reports to Title IX Coordinator but no formal report</li> </ul>	<p><b>Formal Complaint</b></p> <ul style="list-style-type: none"> <li>By the complainant in writing or</li> <li>By the Title IX Coordinator</li> </ul>
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### Supportive Measures



School must offer the complainant supportive measures regardless of formal complaint

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### Remedial Measures & Self- Evaluation

If the USDOE determines a school engaged in discrimination, school can be ordered to take remedial action

Schools should review the policy and MEASURE whether its being equitably enforced on an annual basis

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### Roles

Each school or school district must have:

- \_\_\_\_\_ Title IX Coordinator
- \_\_\_\_\_ Investigator
- \_\_\_\_\_ Decision-maker
- \_\_\_\_\_ Appeal Decision-Maker

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### Title IX Coordinator

- Understands law and policy – trained
- Can also be investigator
- May facilitate informal resolution
- MAY NOT be decision maker or appeal decision maker
- Responsible for coordination of grievance process & implementation of remedies

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**Investigator**

- Understands law and policy-trained to investigate
- May not be biased or have conflict of interest
- Must summarize findings in objective way
- May make recommended or proposed findings, but is not required to do so

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**Decision-Maker**

- Understands law and policy – trained
- May not be biased or have conflict of interest
- Must issue written report in compliance with requirements
- May not be Title IX Investigator and may not decide appeal

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**Appeal Decision-Maker**

- Must allow for written statement
- Be unbiased and have no conflict of interest
- May not be Title IX Investigator or Decision-Maker

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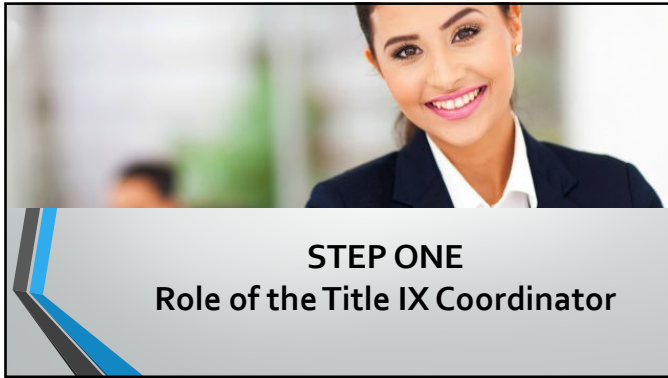
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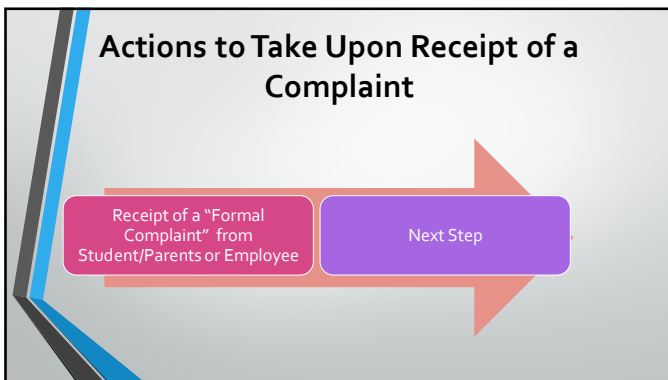
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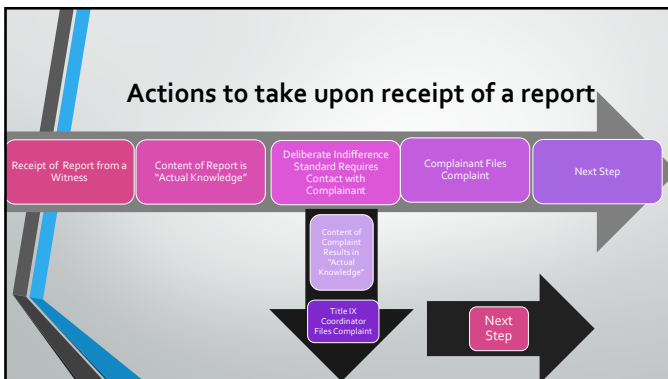
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**MANDATORY DISMISSAL**

A formal complaint **must** immediately be dismissed if:

- a. The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by these regulations;
- b. The conduct alleged in the formal complaint did not occur in the school or school district's education program or activity; or
- c. The conduct alleged did not occur against a person in the United States.

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**PERMISSIVE DISMISSAL**

A formal complaint **may** be dismissed if:

- a. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- b. The respondent is no longer enrolled at or employed by the school; or
- c. Specific circumstances prevent the school or school district from gathering evidence sufficient to reach a determination as to the complaint.

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**RESPONSIBILITIES WHEN DISMISSING A COMPLAINT**

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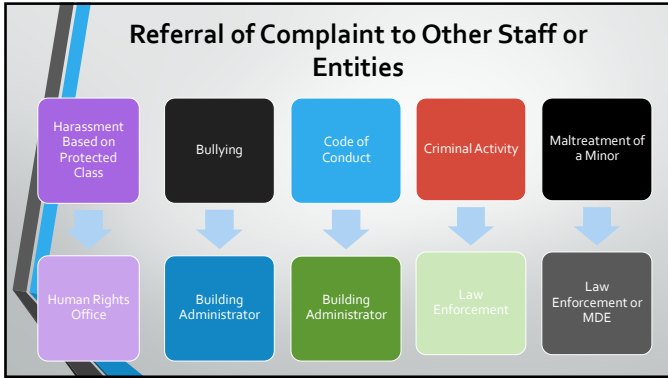
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Notice to parties

1. Grievance/Informal Resolution Process;
2. Allegations;
3. Presumption Respondent Is Not Responsible;
4. Right to an Advisor; and
5. Code of Conduct Prohibits False Statements or Information.

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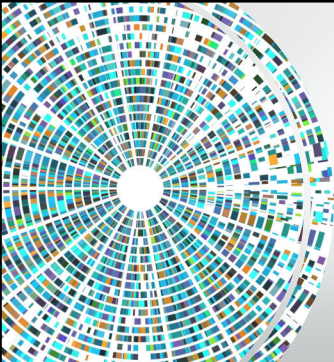
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### Interim support measures

Supportive measures, offered equally to both parties, are non-disciplinary measures including:

- Counseling
- Modification of deadlines/other adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between parties
- Changes in work or school locations
- Leaves of absence
- Increased security and monitoring

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**Interim emergency removal of student Respondents**

- Mandatory individualized safety and risk analysis
- Immediate threat arising from the allegations of sexual harassment
- The threat must relate to the physical health or safety of any individual
- Requires notice to the respondent and an opportunity for challenge immediately following removal
- The respondent bears the burden of proving the removal decision was incorrect
- Not applicable to offenses outside Title IX

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**INTERIM REMOVAL OF EMPLOYEES**

- Factors to Consider
- Possible Directives to Employees

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**Informal resolution**

- Timing
- Notice
- Non-Applicability to Employees who are alleged to have harassed students

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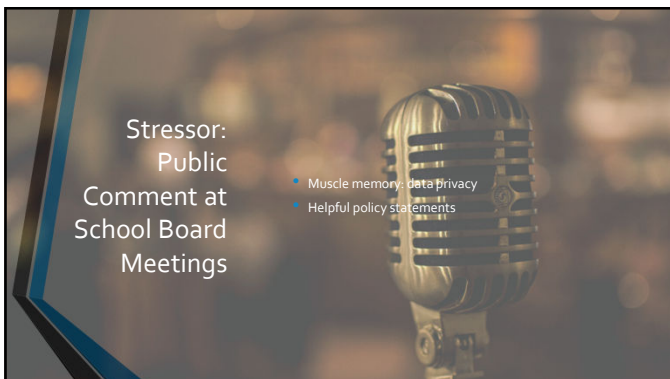
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### Stressor: Media Attention

Muscle memory: data privacy.  
FERPA, the MGPPA, and the Title IX Regulations themselves make almost all the information related to the investigation confidential



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### Stressor: Restraining Orders



Muscle Memory: presumption of non-responsibility      Impact on Supportive Measures?

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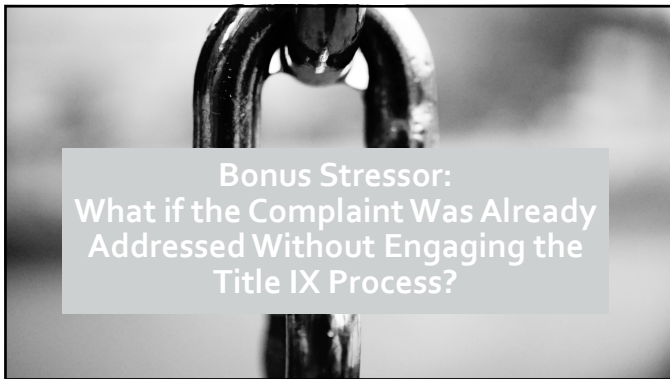
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Bonus Stressor:  
What if the Complaint Was Already Addressed Without Engaging the Title IX Process?

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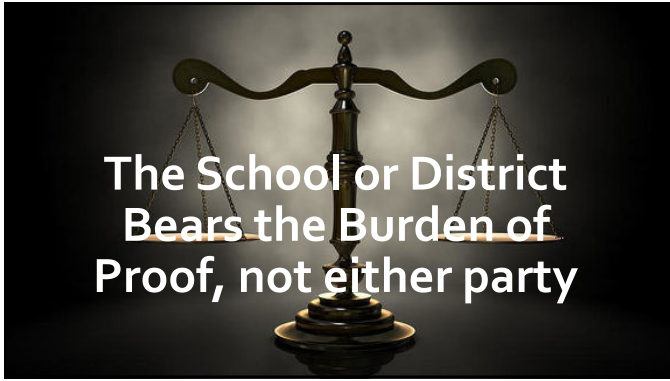
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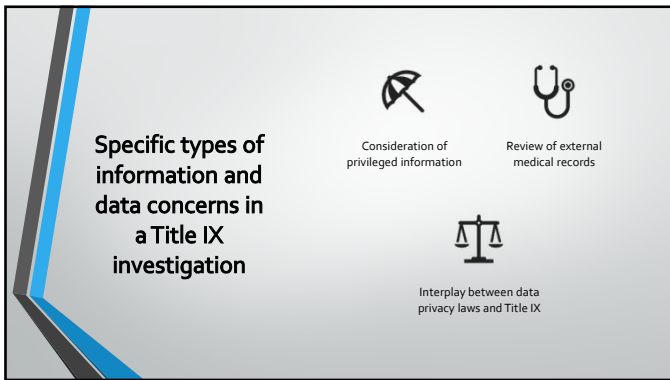
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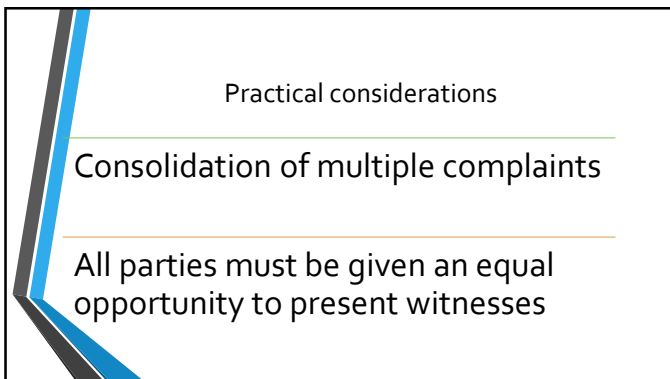
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Initial considerations: External reports



- Remember to make any mandated reports under the Maltreatment of Minors Act
- Potential referrals to law enforcement

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A brief data practices interlude

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PLAN AHEAD

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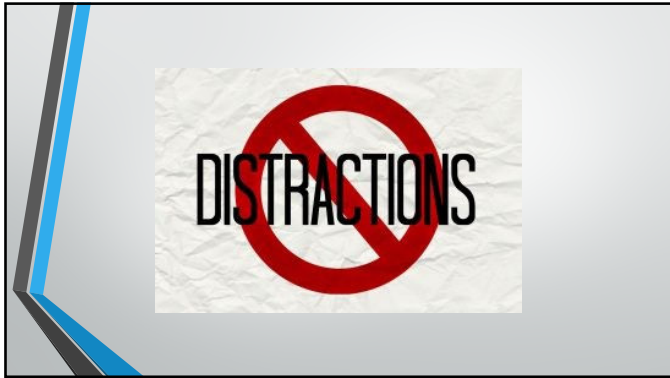
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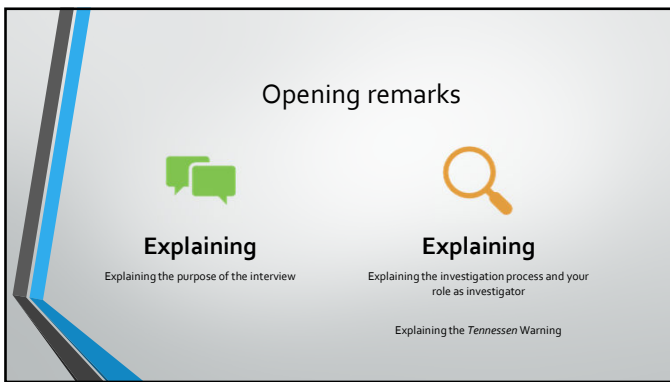
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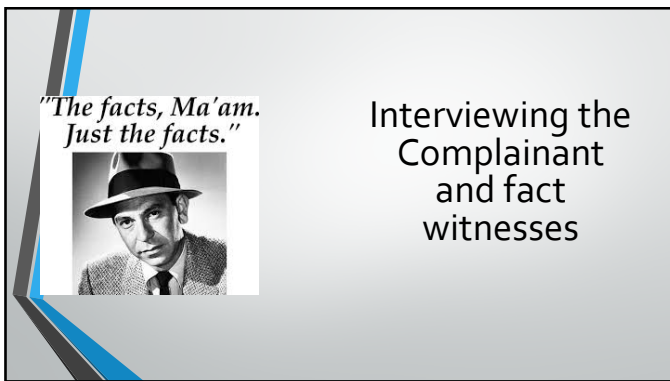
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Interviewing the Complainant and fact witnesses

- Short, open-ended questions



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The investigator might have to defend the interview questions, so...



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...Watch out for biases!



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Some specific tips for interviewing witnesses and complainants

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*“Ahhh... Just one more thing...”*

Special considerations for interviewing the respondent

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Watch out for bias in the Respondent interview too!



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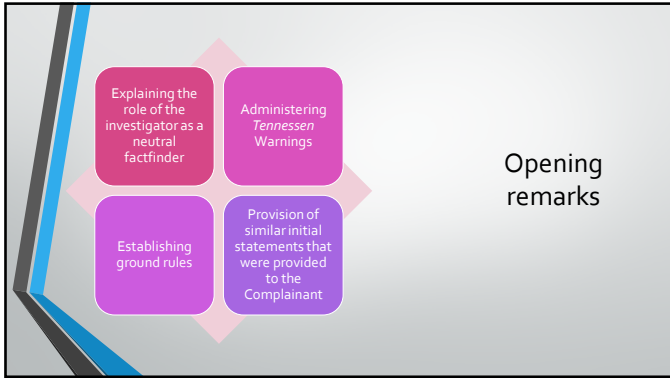
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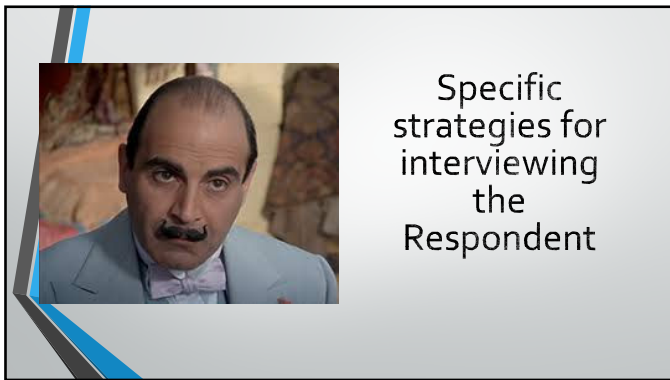
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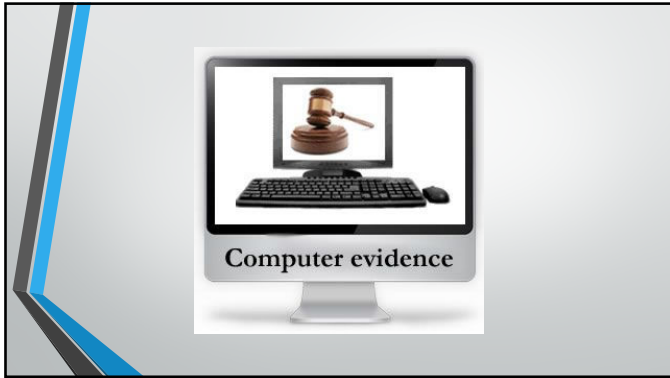
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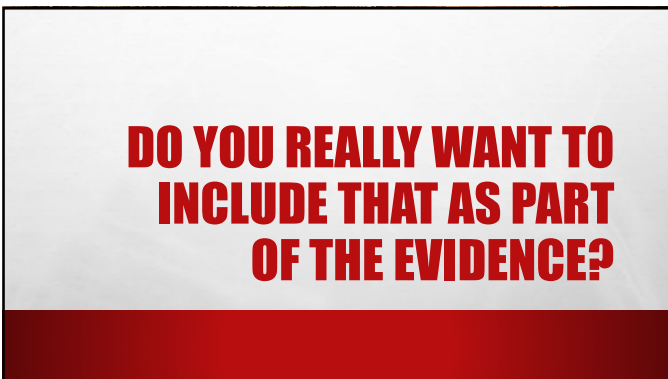
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Written investigation reports

- Time frame for completing investigation reports
- Time frame for providing investigation reports to parties
- An investigation must "fairly summarize" the relevant evidence
- The investigator does not decide if harassment occurred

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Strategies for writing an investigation report

Helpful Tips

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AVOIDING CONFLICTS OF INTEREST

CONFLICT OF INTEREST

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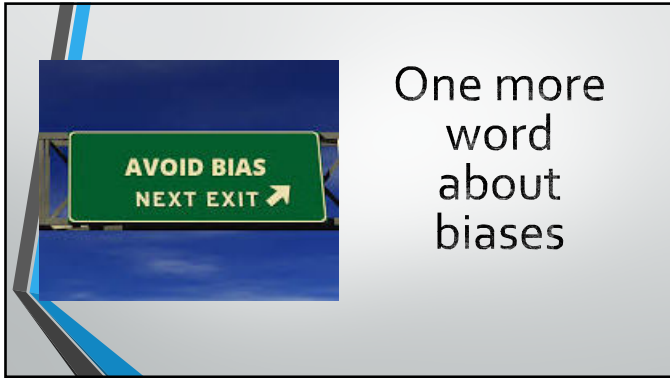
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**Stressor:  
Advisors who  
are Likely  
Witnesses**

Technically, no right to limit  
who can be an advisor



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**Step Three:**



**Role of the Title IX decision-maker**

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**STANDARD OF REVIEW**

<p><b>Preponderance of the Evidence</b> "Preponderance of the evidence" means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment.</p>	<p><b>Clear and Convincing Evidence</b> "Clear and convincing evidence" means that the respondent will be found responsible only if it is highly more likely to be true that the respondent engaged in the conduct constituting sexual harassment.</p>
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**Procedures required prior to A decision**

- Opportunity for Parties to Respond to the Report
- Notification of the Right to a Hearing and/or Written Questions

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**Submission of Written Questions**

All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.

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**relevancy**

"Relevant evidence" means evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.



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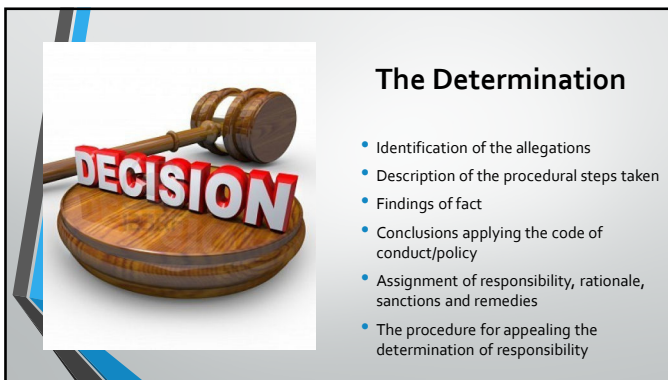
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POTENTIAL REMEDIES

- May include but are not limited to:
- Education
- Continued supportive measures
- Discipline
- Restorative Justice

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Advanced Maneuvers III:  
High-Stress Scenarios for  
Title IX Decision-Makers

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Stressor: Cross-Examination

Muscle Memory: Is it Relevant?

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Stressor:  
Investigator  
Errors



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Step Four: Appeals



- Either party may appeal:
  - Determination of Responsibility or
  - Dismissal

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Appeal on the basis of...

- Procedural irregularity that impacted outcome
- New evidence not available at the time of investigation that could impact outcome
- Conflict of Interest or Bias on part of investigator, Title IX Coordinator

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Ensure appeal decision maker is not the investigator or Title IX Coordinator And employs same standards as decision maker

Provide notice to both parties

Ensure each party has reasonable opportunity to submit written statement

Issue a written decision

School Must....

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**Bonus Stressor:  
Allegations of Submitting  
Materially False  
Information**

The fact that a complaint was or was not substantiated does not *per se* mean that one of the parties lied.

- Generally, school will want to have some objective, concrete evidence.

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Legal Update

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