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TITLE IX INVESTIGATOR

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LESSON ONE

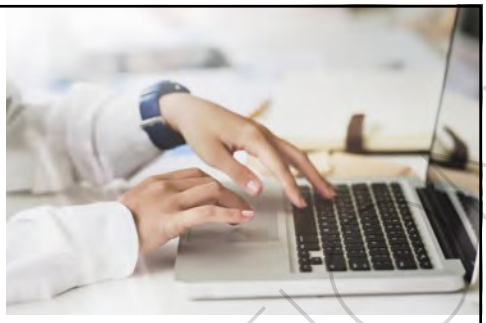
WELCOME AND REMINDERS



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AGENDA



- Lesson One — Welcome and Reminders
- Lesson Two — Role and Scope Overview
- Lesson Three — Before the Investigation
- Lesson Four — Prepping for the Investigation
- Lesson Five — Investigation - Interviews
- Lesson Six — Investigation - Gathering Evidence
- Lesson Seven — Investigation - Follow Up
- Lesson Eight — Investigation - Identifying and Interviewing Witnesses
- Lesson Nine — Investigation - Building and Maintaining Your File
- Lesson Ten — Evidence Review
- Lesson Eleven — Report Writing and Review
- Lesson Twelve — After the Investigation
- Lesson Thirteen — Wrap-Up and Assessment of Knowledge

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COURSE APPROPRIATE FOR:

- Title IX Coordinators
- Deputies/Designees
- Title IX Investigators
- Title IX Decision-Makers
- Others involved in Title IX matters

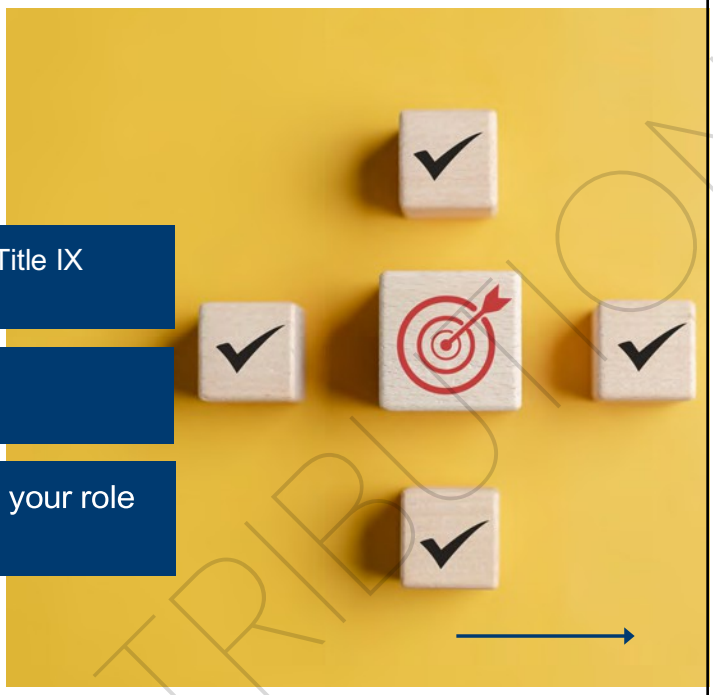
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COURSE OBJECTIVES

- Understand the role and scope of the Title IX Investigator
- Learn best practices for your role
- Explain the grievance process and your role in it



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REMINDERS!

- You must still receive training on your policies and procedures
- Title IX Coordinator is your ultimate resource
- Review definitions from Introduction and Overview Course

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PARTIES

COMPLAINANT
Individual who has allegedly been sexually harassed, regardless of whether they were the reporter

RESPONDENT
Individual who has allegedly committed the sexual harassment

PARENT/LEGAL GUARDIAN





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SEE YOU IN LESSON 2!

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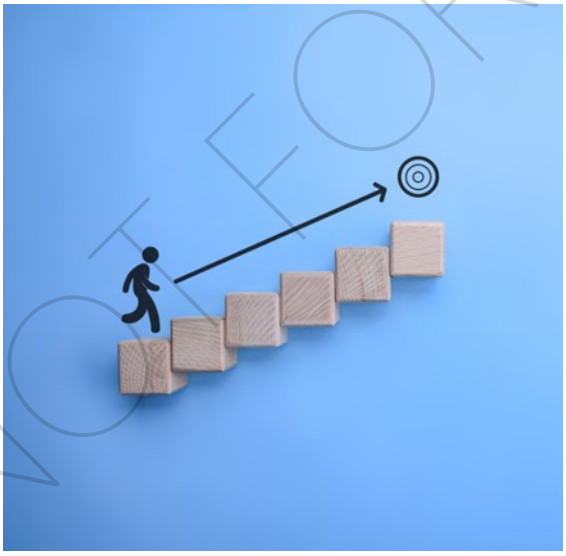
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LESSON TWO

ROLE AND SCOPE OVERVIEW



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WHAT IS THE ROLE/PURPOSE OF A TITLE IX INVESTIGATOR (WHY ARE WE DOING THIS WORK?)

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YOUR ROLE AND SCOPE

Notice of Allegations?
Issued by Coordinator or Investigator

Conduct Interviews
Interview parties/witnesses (with notice)

Collect Information/Evidence
Collect information/evidence, inlcuding from parties

Follow Prescribed Timeframes
Timeframes set forth under regulations/policy

Prepare Investigative Report
Draft investigative report and provide to parties for review

Oversee Review of Report/Evidence
Oversee review of report/evidence by parties

Impartial/Unbiased

Supportive Measures
Evaluate/assist with supportive measures as needed

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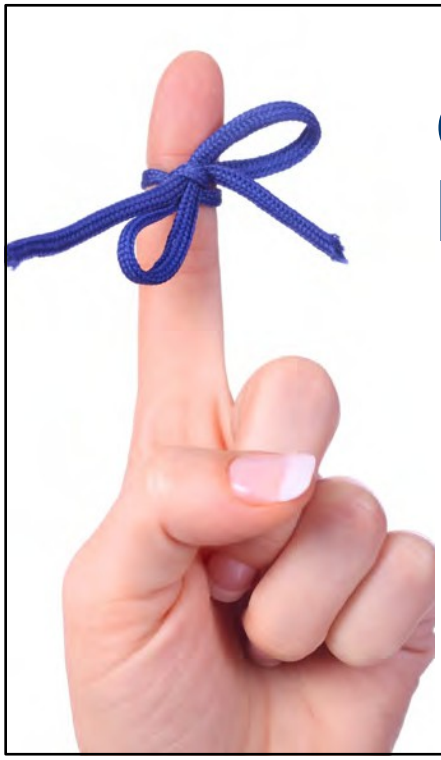
Note:

You are part of the Title IX Team at your school.
Title IX Coordinator is leader of that team.
Also on the team:

- Deputies/Designees
- Decision-Maker
- Appellate Decision-Maker
- Informal Resolution Facilitator

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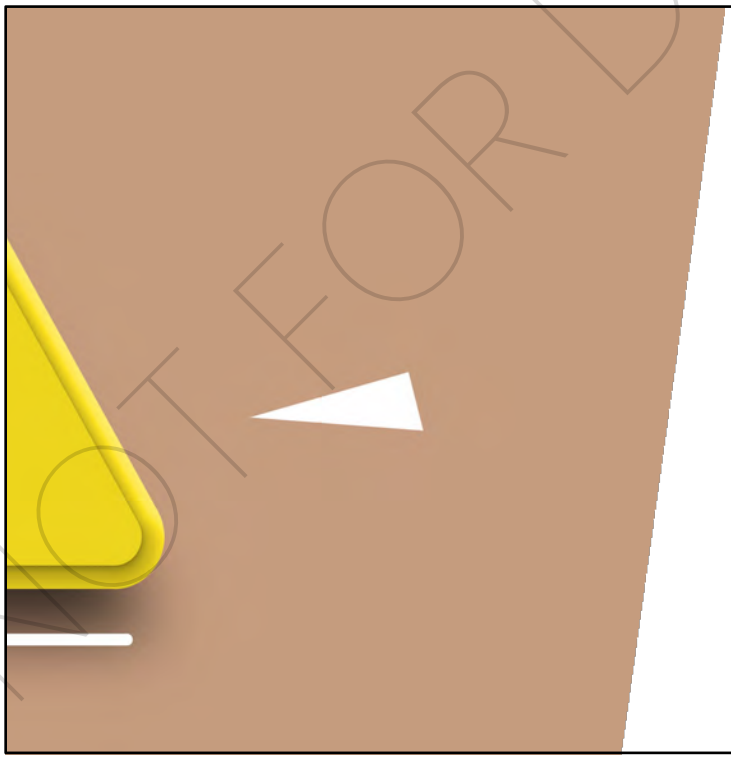
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GIANT REMINDER!!!

- Investigator cannot be a decision-maker

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REMINDER!!

K-12: **ALL EMPLOYEES** (who are not confidential) **SHOULD** notify Title IX Coordinator when they have information about conduct that REASONABLY MAY constitute sexual harassment.

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LESSON THREE

BEFORE THE INVESTIGATION



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REPORT/NOTIFICATION PATHWAY OVERVIEW

O1 — Report/Notification
Can be directly to Title IX Coordinator/Employee or other mechanism. Title IX Coordinator will offer supportive measures/assess for appropriate pathway - Title IX or?

O2 — Investigation
If Formal Complaint, investigator assigned
*No investigation without NOA

O3 — Decision-making
At conclusion of investigation, determination made

O4 — Appeal?
May be an appeal of the outcome

O5 — Informal Resolution?
Informal resolution may occur during the grievance procedure

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BEFORE A MATTER IS INVESTIGATED...

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TITLE IX COORDINATOR WILL:

- Offer Supportive Measures
- Triage/evaluate conduct for Title IX
- Determine if signing Formal Complaint, if necessary
- Consider Emergency Removal/Admin Leave of Respondent

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TITLE IX SEXUAL HARASSMENT ⊕ **EDUCATION PROGRAM OR ACTIVITY** = **FORMAL GRIEVANCE PROCESS**

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GIANT REMINDER!!!

- No Investigation before or without a Formal Complaint

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ROLE OF INVESTIGATOR WITH SUPPORTIVE MEASURES?



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IF A COMPLAINANT/PARENT/LEGAL GUARDIAN DOES NOT WANT TO FILE A FORMAL COMPLAINT:

- Title IX Coordinator may initiate/sign
- Title IX Coordinator does not become the Complainant/a party
- Provide all notices as Investigator as if Complainant is participating

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CONSOLIDATION OF COMPLAINTS

School MAY consolidate:

- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party.

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NOTICE OF ALLEGATIONS

- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
  - Identities of the parties
  - Conduct constituting Sexual Harassment
  - Date of incident
  - Location of incident
- Statement: Respondent presumed not responsible, and responsibility is determined after Grievance Process
- Right to Advisor of choice
- Code of Conduct provision(s) prohibiting false statements or false information in process

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INSTITUTIONAL COMPLIANCE SOLUTIONS

Notice of Allegations Checklist

- ☐ Notice of Grievance Process; Including Informal
- ☐ Allegations Potentially Constituting Sexual Harassment
  - Identities of the Parties
  - Conduct Constituting Sexual Harassment
  - Date of Incident
  - Location of Incident
- ☐ Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- ☐ Right to Advisor of Choice
- ☐ Code of Conduct Provision Prohibiting False Statements or False Information in Process

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WHAT IS YOUR ROLE RE: NOTICE OF ALLEGATIONS AS INVESTIGATOR?



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Notice of Allegations tells you WHAT you are investigating, and it should be updated if needed. Do not investigate matters outside of the NOA!

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THE TWO MOST IMPORTANT DOCUMENTS FOR AN INVESTIGATOR

1. Formal Complaint
2. Notice of Allegations

- Do not investigate matters outside of what is in the NOA
- If more information comes to light, you will need to update and redistribute the NOA

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SEE YOU IN LESSON 4!



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LESSON FOUR

PREPPING FOR THE INVESTIGATION



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If a Formal Complaint is signed, you will be assigned as an Investigator.

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WHAT TYPES OF CASES WILL YOU BE INVESTIGATING?

- Who are the parties involved?
- What is the conduct at issue?

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CONDUCT AT ISSUE

**Review definitions from Introduction and Overview Course and your policies and procedures*

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YOU MAY BE ASKED TO INVESTIGATE MATTERS OUTSIDE OF TITLE IX FORMAL GRIEVANCE PROCESS WITHIN THE SAME INVESTIGATION

- It should be included in the NOA (i.e., student conduct violations)
- Get clarity if you are unsure
- If parallel processes, confirm with Coordinator on most trauma informed approach

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NOTICE OF MEETINGS

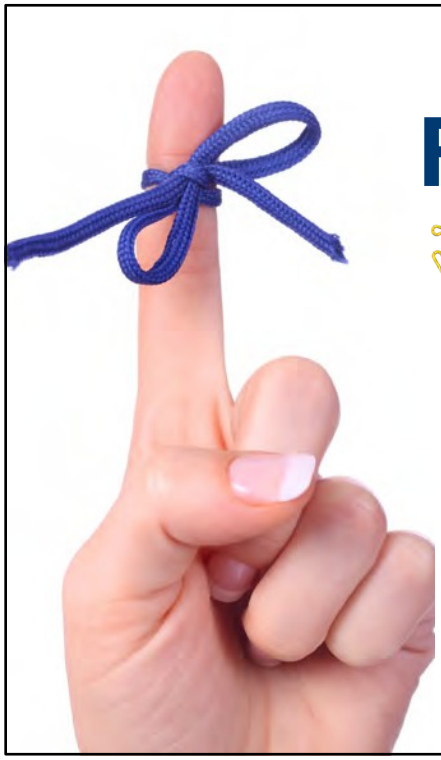
MUST provide WRITTEN notice of the

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



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REMINDER!!!

- Don't forget to include advisors and parents/legal guardians if applicable

*note: not required to provide notice to witnesses, but we recommend it

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IMPORTANT NOTES FOR INVESTIGATIONS:

BURDENS

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

- May NOT access, consider, disclose, or use party's treatment records unless school obtains voluntary WRITTEN consent
- MUST provide equal opportunity for parties to:
  - Present witnesses (fact or expert--does not say character)
  - Gather and present relevant evidence
- May NOT restrict the ability of the parties to discuss the allegations or gather and present relevant evidence (no gag orders)

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BEFORE YOU START... THE IMPORTANCE OF PREPARATION

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WHAT INFORMATION DO YOU HAVE?



- Is there anything you need before you meet with parties and/or witnesses?

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DEVELOPING A PLAN

1. Order of interviews (be prepared to pivot)
2. Communicating with parties and witnesses
3. The role of advisors
4. Evidence to be collected prior to meetings (video)
5. Outline of questions (to be edited as information develops)

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SEE YOU IN LESSON 5!

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LESSON FIVE

INVESTIGATION - INTERVIEWS



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OPENING THE MEETING... THE IMPORTANCE OF TRANSPARENCY

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YOU ONLY GET ONE FIRST IMPRESSION

Before they "walk in" either in person or virtually, CHECK YOURSELF

- Let go of whatever is happening outside that meeting
- Refresh your mind with names and dates
- Note your facial expressions
- Prepare the room

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TRAUMA INFORMED MEETING NECESSITIES

THE 4 - C'S



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CHECK YOUR BIASES

- Where are your potential biases in the case?
- Can you overcome any biases that exist?
- Is your mind in a neutral position?

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INTRODUCTION

Who are you?

What is your responsibility?



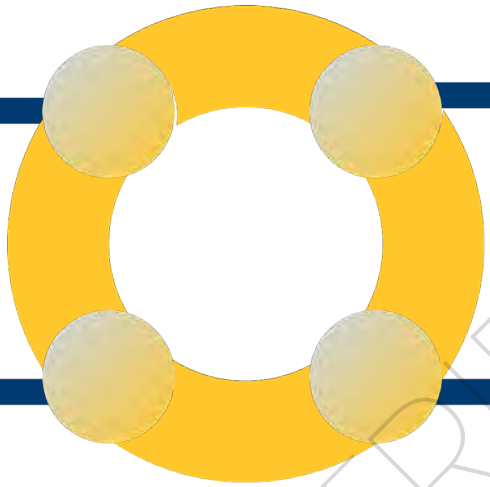
What policy/policies & procedures are you using?

Something to connect you with the party or witness

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GET TO KNOW THE PARTY/WITNESS



What name do they prefer?

Find a similarity

What is their position? (year in school, employment role, etc.)

Something to discuss?

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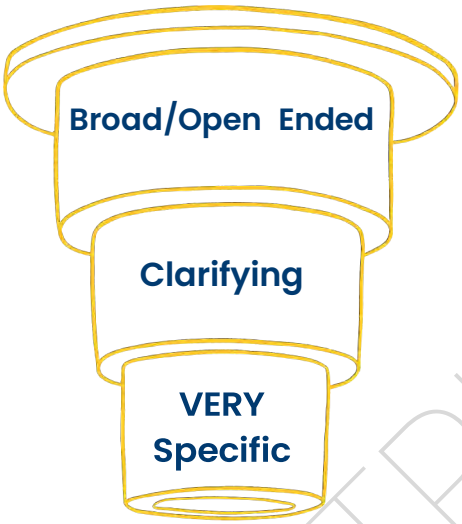


ASKING QUESTIONS… THE IMPORTANCE OF GAINING CLARITY

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FUNNEL METHOD



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THE NEED TO KNOW QUESTIONS

- What happened?
- How do you know about it?
- How did it happen?
- Who did it happen to?
- How do you know these parties?
- Who else was there?
- When did it happen?
- Where did it happen?
- Why - without saying WHY



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THE FORMULA FOR QUESTIONING

Kindness + Transparency + Patience

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CHALLENGING WITNESSES / PARTIES

The "Hulk"





The Rabbit Chaser

The "Turtle"





The Big Reveal



The Reluctant Participant

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NOTE-TAKING

- Detailed, but not so much that it slows down the interview
- Decide what is most important
- Extra person in the room?
  - Give notice and explain their role as note-taker
- Use quotations if possible
- Note-taker vs. dual investigator
- Ask for a pause or clarification if necessary

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SEE YOU IN LESSON 6!

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LESSON SIX

INVESTIGATION - GATHERING EVIDENCE



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THE IMPORTANCE OF CURIOSITY WHEN GATHERING EVIDENCE



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SLEUTH

Noun
a person who investigates a crime; a detective

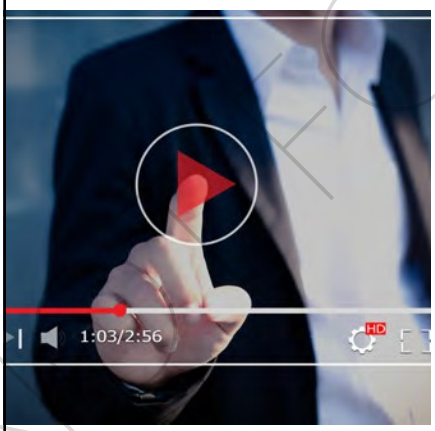


Verb
carry out a succesful investigation into a crime or mystery

"there's nothing you can do but sleuth around until you find the answer"

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VIDEO QUESTIONS



- Do you have access?
- Who else has access?
- How long is it stored?
- Do you know how to save it?
- Does someone make sure all cameras are working reguarly?

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SOCIAL MEDIA



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BURDEN

The burden is on you to ASK for information. The burden is NOT on the party or witness to "offer it".

- Do you have any phone or texts?
- Was anything shared on social?
- Did you email about this?
- Is there any geo-tracking?



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INDEPENDENT INVESTIGATIVE ACTIONS



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LESSON SEVEN

INVESTIGATION - FOLLOW-UP



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ASSESS SUPPORT NEEDS

- How was the party?
- **Do they need additional support?**
- Counseling?
- Academic support?
- No contact directives?
- Concerns about retaliation?

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EMAIL FOLLOW UP

Thank you	Any response or information needed from party
What was discussed	Opportunity to clarify
Next steps	Reminder about supportive measures

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DOCUMENTATION

- Clean up notes
- Save notes
- Save evidence collected
- Create to do list
  - Witnesses to connect with
  - Evidence to collect
  - Follow up meetings to schedule



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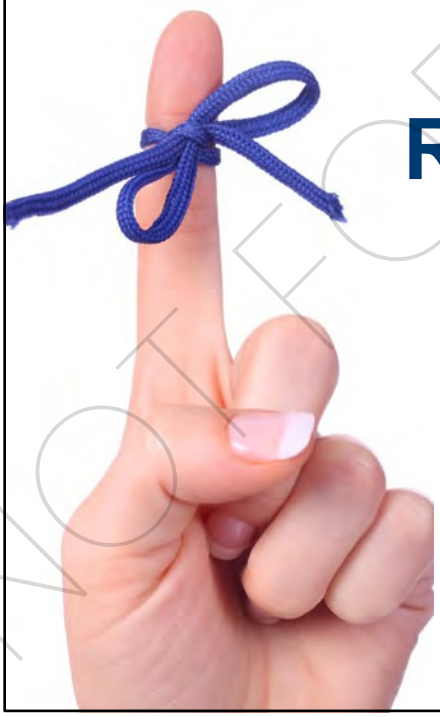
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If you were unable to continue with the investigation starting tomorrow, would the person picking up the file know what had been done and what is left to do?

Sustainability Planning

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REMINDER!

- Information for case needs to be saved for 7 years

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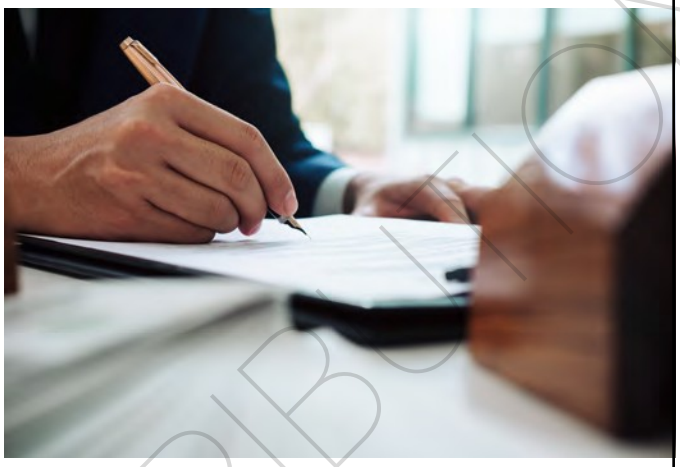


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LESSON EIGHT

IDENTIFYING AND INTERVIEWING WITNESSES



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WHO ARE YOUR WITNESSES AND WHO IDENTIFIED THEM?

Witnesses identified by the Complainant

Witnesses identified by the Respondent



Witnesses identified by you

Witnesses identified by other witnesses

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TYPES OF WITNESSES

- Eye Witnesses
- Fact Witnesses
- Expert Witnesses
- Hearsay Witnesses
- Character Witnesses

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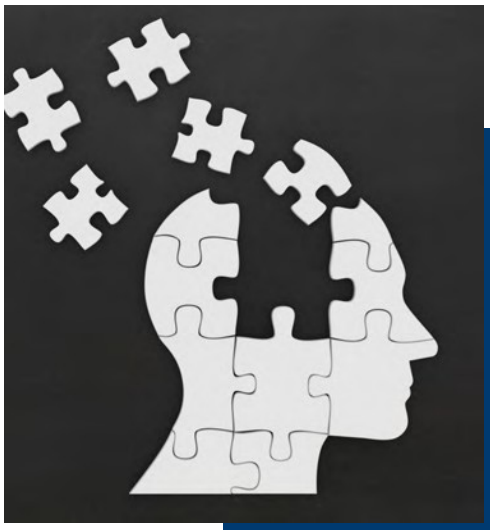


MOST IMPORTANT QUESTIONS

- How do you know the Complainant?
- How do you know the Respondent?
- How do you know the other witnesses?
  - *How long?*
  - *In what capacity?*
  - *Describe your relationship with them*

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MEMORY

- How much do witnesses actually remember?
- What impacts memory?

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SEE YOU IN LESSON 9!

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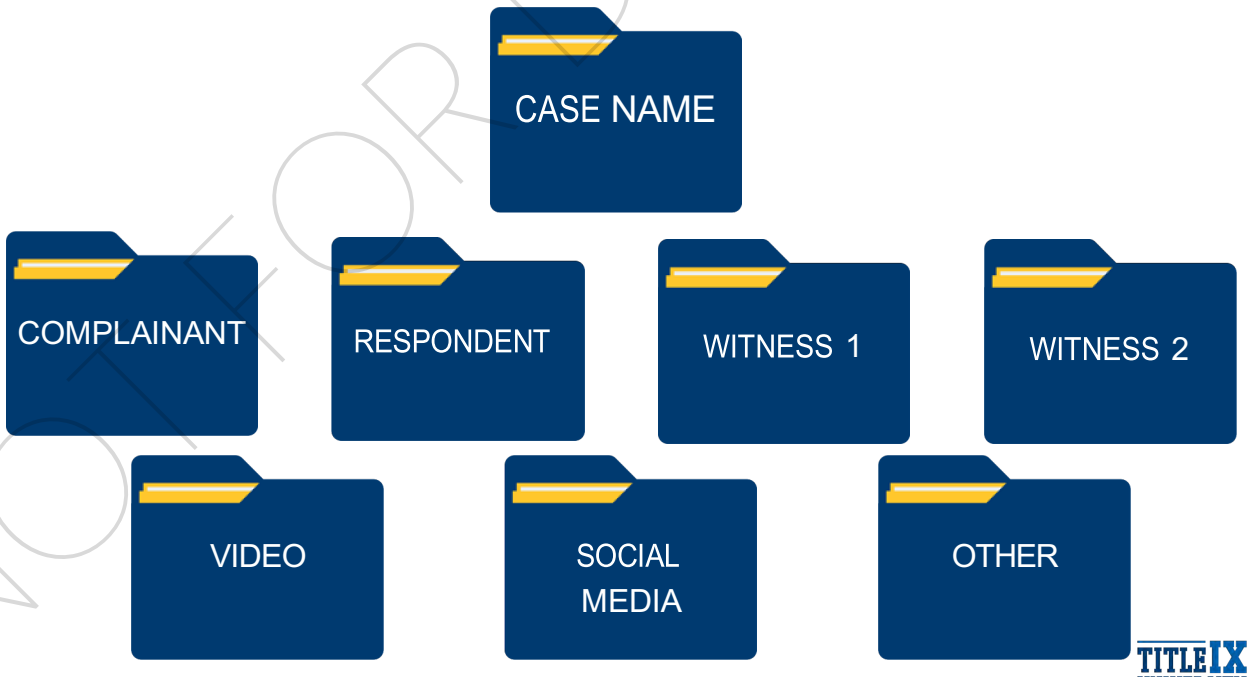
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LESSON NINE



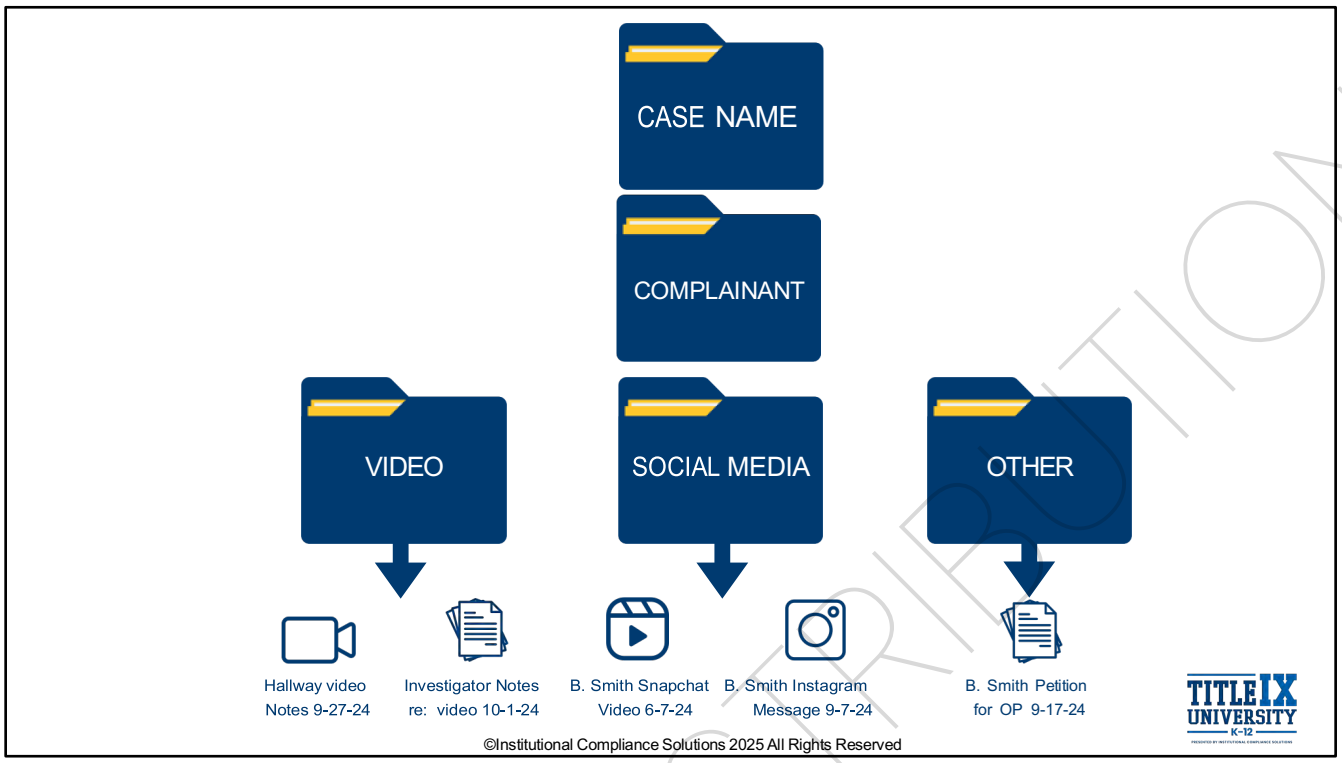
INVESTIGATION - BUILDING AND MAINTAINING YOUR INVESTIGATIVE FILE

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LESSON TEN



EVIDENCE REVIEW

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MUST: PROVIDE BOTH PARTIES AN EQUAL OPPORTUNITY TO INSPECT AND REVIEW ANY EVIDENCE OBTAINED AS PART OF THE INVESTIGATION THAT IS DIRECTLY RELATED TO THE ALLEGATIONS INCLUDING:

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

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CHALLENGES WITH REVIEW:



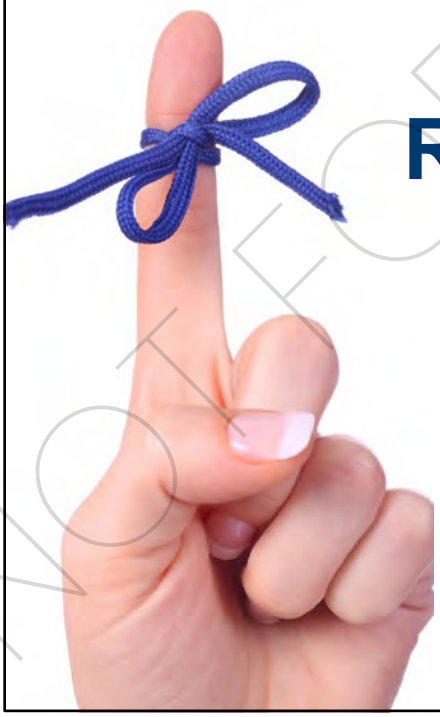
01 Sending securely

02 The anxiety it may cause *(PROVIDE SUPPORT)*

03 The VOLUME of information

04 Some of the information may not be "Relevant"

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REMINDER!

How Long?
10 days
(business or calendar?)
Define in policy

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WHAT TO DO WITH THEIR RESPONSE *(if any)?*



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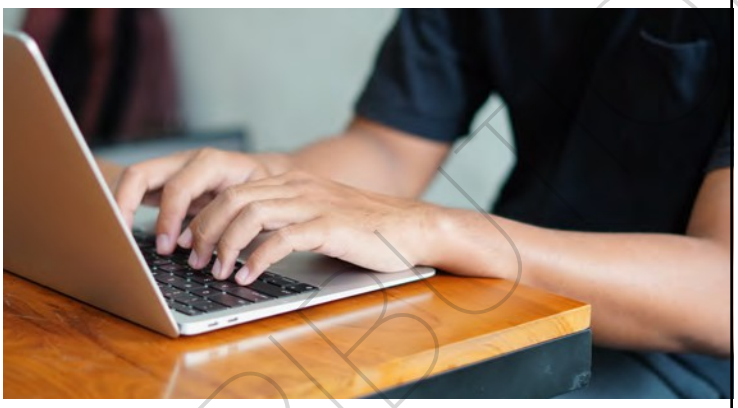
SEE YOU IN LESSON 11!



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LESSON ELEVEN



REPORT WRITING AND REVIEW

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A TITLE IX REPORT IS A SUMMARY OF RELEVANT EVIDENCE

THIS IS **NOT** A DUMP OR COPY OF YOUR NOTES.



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ORGANIZATION

Easy to Follow, Clear, Concise

Can the reader follow the report and understand who reported/said what?

Roadmap for the Decision-Maker

This report will guide the decision maker, help them ask questions, and provide a roadmap for their process

Includes the Basics

Assume the reader knows NOTHING

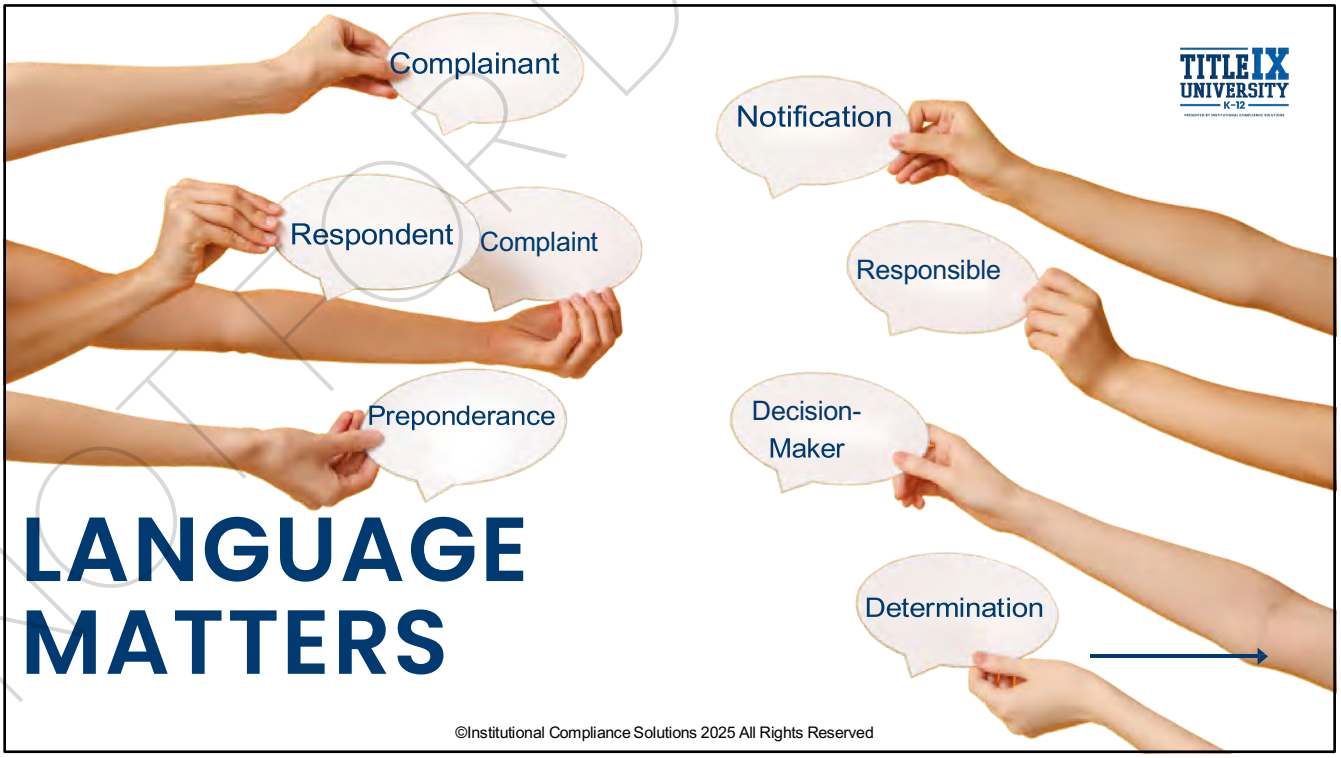
Reviewed by Colleague

Trusted counterpart

Consistent but Not Identical

There is room for a little flexibility

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LANGUAGE MATTERS

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WHO IS YOUR AUDIENCE?



Judge



Family

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THE ART OF SUMMARIZING

- What is important?
- What is relevant?
- What is outside the scope?
- What needs to be quoted?

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RELEVANCY

Information that has a tendency to make a fact more or less probable than it would be without the information—and the fact must be of consequence to the allegations.

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ORGANIZATION IS KEY

- By party/witness?
- By time/chronological?
- By event?

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OTHER REPORT MUST HAVES

Page numbers

Footnotes?

Timeline(s)
- Investigation
- Events



Appendix/Attachments WITH PAGE NUMBERS
- Table of Contents for appendix/ attachments

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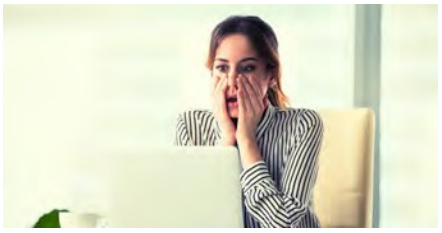
DELIVERY OF THE REPORT… THE IMPORTANCE OF SUPPORT

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THE DELIVERY OF THE REPORT CAN BE TRAUMATIC



Witnesses may say things that are surprising to the parties



Changing the trajectory of individual's lives

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CONSIDERATIONS

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

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REPORT REVIEW… THE IMPORTANCE OF NOT TAKING IT PERSONAL

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REVIEW OF REPORT

REQUIRED 10 DAY REVIEW AND RESPONSE PERIOD (BEFORE DETERMINATION)

CONSIDER WAITING FOR RESPONSE BEFORE SENDING TO DECISION-MAKER

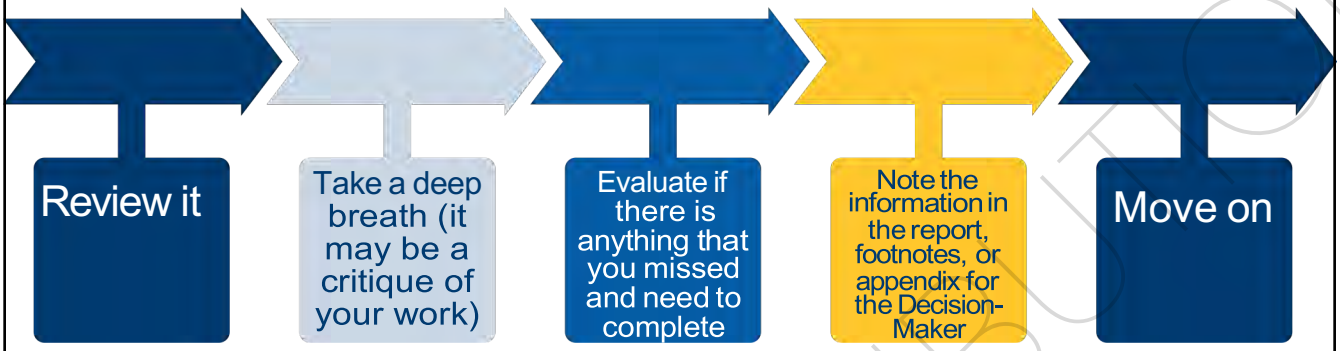


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WHAT TO DO WITH THEIR RESPONSE

(if any) Similar to Evidence Review?



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LESSON TWELVE

AFTER THE INVESTIGATION



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DECISION-MAKER FACILITATES Q&A



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INSTITUTIONAL COMPLIANCE SOLUTIONS

Decision-Maker Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearings held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary sanctions
  - Whether remedies designed to restore or preserve equal access to education program or activity provided to the Complainant
- ☐ Procedures and Permissible Bases for Appeal

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STANDARD OF PROOF

- Preponderance of Evidence unless Clear and Convincing for all other proceedings.
- Preponderance of the Evidence - 50% plus a feather - more likely than not
- School investigation vs. Criminal investigation

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APPEALS



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

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SEE YOU IN LESSON 13!



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LESSON THIRTEEN

WRAP UP AND ASSESSMENT OF KNOWLEDGE



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K-12 INVESTIGATION FLOWCHART

Notice of Allegations

Investigation
Notice to parties of all meetings and interviews with time to prepare.

Review
Opportunity for parties to inspect, review, and respond to all evidence directly related to allegations- relevant or not
Written Response: 10 days

Investigative Report
- Considers responses to evidence
- Determines what evidence is relevant
- Summarizes the relevant evidence
- May include recommended finding

Review
Opportunity for parties to review the investigative report. Can provide written response.
10 days

Resolution/Hearing

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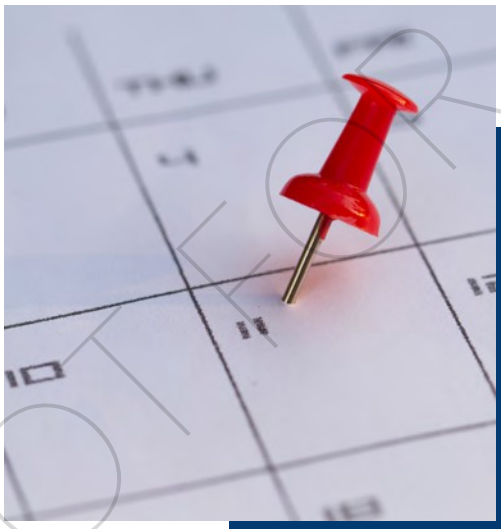
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BURDEN

Burden to collect/gather evidence is on the school district (investigator)... NOT THE PARTIES

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PAY ATTENTION TO THE TIMELINES REQUIRED BY YOUR POLICIES FOR THE INVESTIGATIVE STAGE

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FINAL THOUGHTS

Translation services

IEP/504 Overlap Identified Early



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FINAL THOUGHTS

Investigation skills take time to develop

No one way to conduct an investigation, but need to follow grievance procedures and policies/ procedures

Clarity on your role is critical

Report writing takes time

Consider templates/process now before there is a matter



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REMINDER!!!

- Do not forget your course downloads and other resources within Title IX University
- Survival Kit

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TRAINING PATHWAY

Title IX Investigator

REQUIRED!

Title IX Introduction and Overview

Title IX Investigator Course

Other Fundamental Courses

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QUESTIONS?

Title IX Coordinator
info@titleixu.com



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CONGRATULATIONS!!

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