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Title IX Decision-Maker Training for K-12 Districts & COEs



SESSION ONE

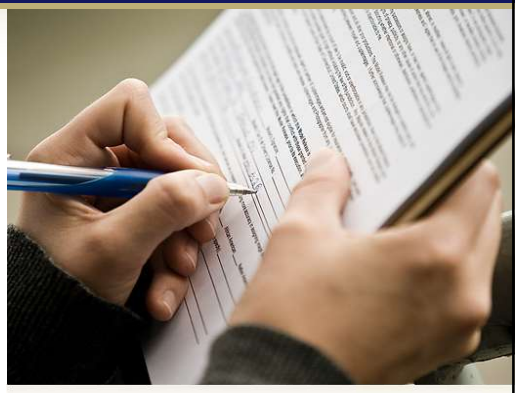
PRESENTED BY:
DeAnna Solina, Partner
Rebeca Quintana, Senior Counsel

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Agenda

- Definitions for Training
- Review Title IX Decision-Maker Role
- Review Final Investigative Report
- Facilitate Written Questions for the Parties
- Review Hypothetical "Cross-Examination" Questions
- Preparation for Session 2



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Definitions for Training

- Complainant/Respondent
- Parties
- Witness
- Advisor
- Grievance Process
- Final Investigative Report
- Written Cross-Examination Questions
- Determination of Responsibility

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Title IX Team: Decision-Maker

Decision-Maker Role:

- Reviews Final Investigative Report with "fresh eyes" to see if information is missing or incomplete
- Facilitates relevant written questions & "cross-examination" from parties for parties and witnesses; must be trained on issues of relevance
- Reviews all evidence, identifies the disputed issues, and weighs the evidence

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Title IX Team: Decision-Maker

Decision-Maker Role:

- Makes conclusions about whether alleged conduct occurred and determines responsibility
- Prepares written determination with findings of fact, policy conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant
- Provides written determination and appeal rights to the parties/advisors simultaneously

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REVIEW FINAL INVESTIGATIVE REPORT

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Review Final Investigative Report

- **Review your Title IX Board Policies and/or Administrative Regulations**
  - Look at the policies and regulations cited in the Final Investigative Report and the Notice of Allegations
  - Review your role as Decision-Maker, and determine the scope of your decision
    - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, fondling, stalking, and/or dating violence, etc. under the Title IX administrative regulations? (Federal Law)
    - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, and/or sexual battery, etc. under the Board Policies prohibiting sexual harassment? (State Law)

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Review Final Investigative Report

- **Read Final Investigative Report and Review Attachments**
  - Take notes, highlight important areas, and create a list of questions (if any)
- **Calendar timelines to accommodate these phases**:
  - Time to ask questions of Parties and exchange written "cross-examination" questions between Parties or from the Parties to witnesses
  - Time to analyze the evidence, write the decision, and allow Title IX Coordinator, administrator or legal advisor to review the decision for procedural compliance, thoroughness and readability
  - Deliver written decision to the Complainant, Respondent, Advisors (if any), and Title IX Coordinator with notice of appeal rights
- **Plan and Schedule the Process with the Parties**
  - If needed, seek help from Title IX Coordinator to schedule and plan logistics

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Discuss *Hypothetical* Final Investigative Report

- Review Table of Contents for Roadmap
- Read the Notice of Allegations and Formal Complaint
- Tips for what to look for in the Investigative Report
  - Note the steps taken in the Title IX complaint process ***for this matter*** because that information will likely be "copied" into your decision
  - Note where Complainant or others describe an ***impact on the educational environment*** (e.g., how did the matter affect Complainant's access to or actual education?)
  - Note where Complainant or others describe the ***desired remedy*** (e.g., what result does the Complainant want from the formal complaint?)

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Discuss *Hypothetical* Final Investigative Report

- Tips for what to look for in the Investigative Report, continued :
  - Note the evidence received from Complainant and Respondent
    - Pay attention to the ***timing*** of statements (e.g., What's in the NOA vs. the Formal Complaint? When did Respondent know of allegations?)
    - Pay attention to the ***content*** of statements (e.g., vague, offering too much or too little information, full or partial denial, conditional denial - "I would never…")
    - Pay attention to where the parties ***disagree*** about what happened
    - Pay attention to what makes one person more ***credible*** than another person
      - Credible: The person offers reasonable grounds for being believed
      - You must articulate your credibility observations in a deliberate, systematic, and objective process (e.g., look at corroboration; consistency/inconsistency; admissions against interest; plausibility; motive to lie/falsify, etc.)

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FACILITATE WRITTEN QUESTIONS BETWEEN PARTIES OR FOR WITNESSES

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Written Questions Between Parties

Before making a decision about responsibility, the Decision-Maker must facilitate a question process:

The Decision-Maker must afford ***each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness***, provide each party with the answers, and allow for additional, limited follow-up questions from each party. (34 CFR 106.45(b)(6)(ii).)

Purposes for the questions may include:

- The opportunity for the parties to seek information that may shed light on someone's credibility
- The opportunity for the Decision-Maker to ask questions and observe the credibility of Complainant, Respondent and witnesses, since the Decision-Maker did not conduct the investigation

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Written Questions Between Parties

Requirements for Questions

- Questions must be **relevant**
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are **not** relevant…
  - Unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  - If the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- You must explain any decision to ***exclude*** a party's question as irrelevant

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Written Questions Between Parties

Definition of Relevance

- Having significant and demonstrable bearing on the matter at hand
- Affording evidence tending to prove or disprove the matter at issue or under discussion
- Synonyms: applicable, material, pertinent

(Merriam-Webster)

- Legalistic definition of relevance:
  - That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters at issue between the parties.

(*Black's Law Dictionary, Sixth Edition*)

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Written Questions Between Parties

Guidelines for Questions

- Questions should not be repetitive
  - Ask the party to ask another question intended to elicit different information
- Questions should be clear
  - Ask the party to clarify the question
- Avoid compound questions
  - Ask the party to separate the questions
- Avoid questions with difficult words
  - Ask the party to rephrase the question
- Avoid argumentative questions
  - Ask the party to rephrase the question

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Trauma Informed Interview Caveat

- The research and literature concerning the impact of trauma on behavior and memory is not settled. There are differences of opinion in the scientific community regarding the issues we will discuss. Investigators should collect ALL evidence related to the incident and should not rely on a scientific theory to avoid collecting certain evidence.
- Decision-makers should consider the standard credibility factors when determining credibility. Scientific theories about trauma responses and memory are not going to be determinative.

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Avoiding Victim-Blaming and Leading Questions

- Avoid questions that ask the victim to explain why they did not take a certain action, such as why they did not "fight back" or "why they did not report the conduct immediately"
  - You can collect related information without using this phrasing
- Ask open-ended questions of both parties to allow them to tell their story in the order they wish to tell it

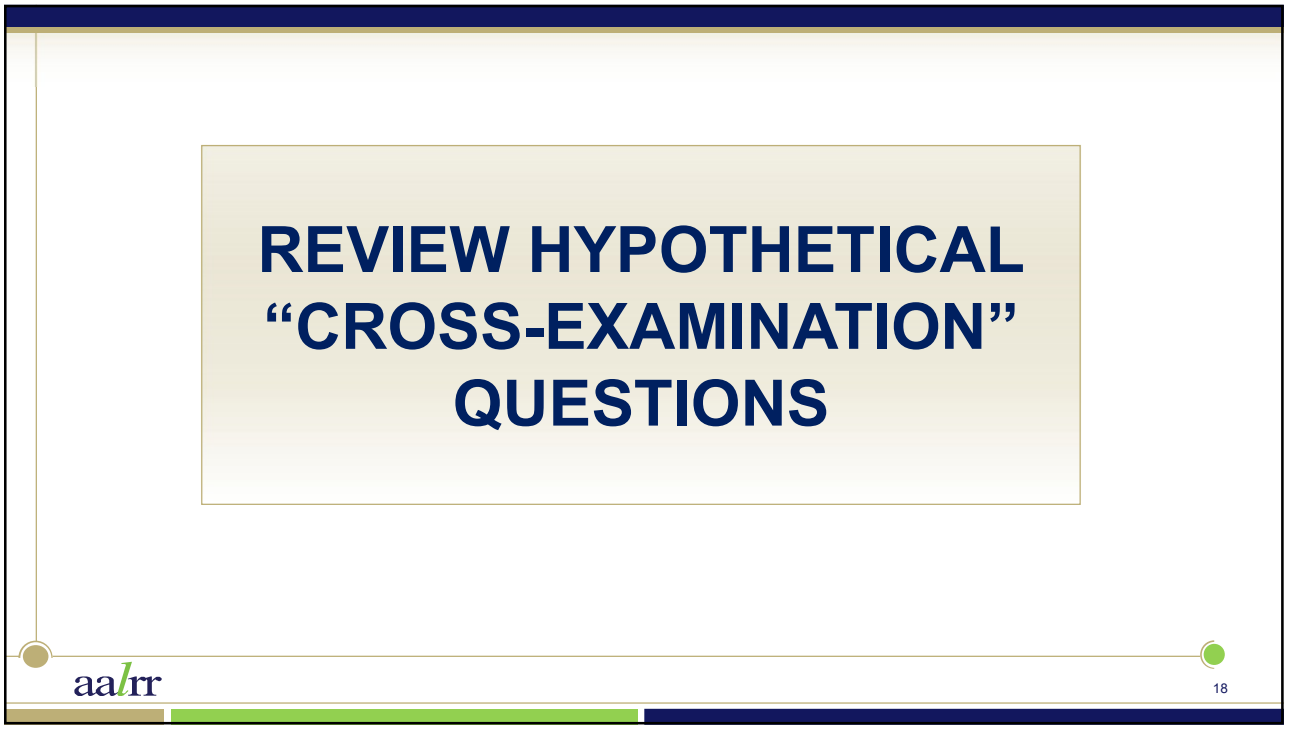
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Memories: What to Expect

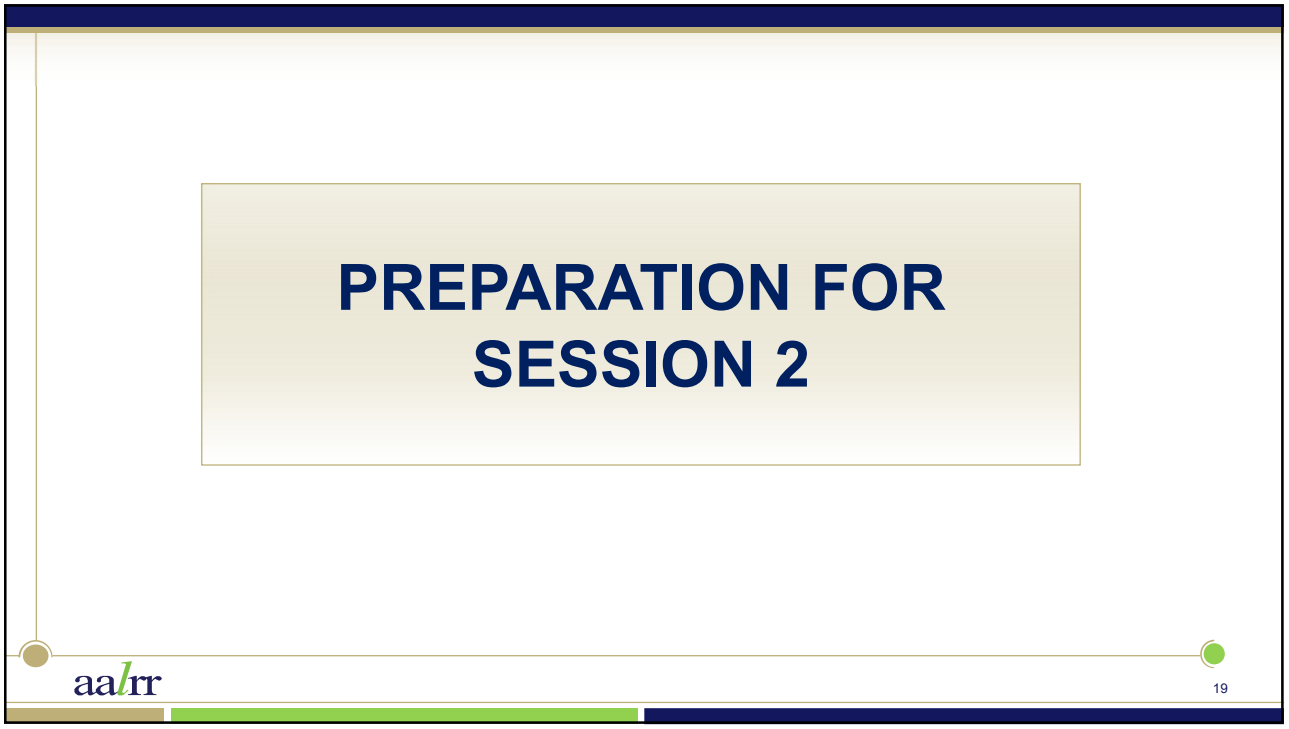
- Memories are not videotape recordings; they are always reconstructed from a core event—and we fill in the details
- We generally retain the gist, except:
  - Events that occur in the first year or two of life; or
  - When the victim suffers brain damage
- Extreme stress enhances memory for the central aspects of an overwhelming emotional experience
- The central features of a stressful event are recalled better than peripheral details
- People are easily influenced by what others tell them

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Discussion of Homework for Session 2

Hypothetical Investigative Report

- Weigh the evidence and determine by a preponderance of the evidence whether Respondent was flirty and/or friendly with Complainant before the October 1, 2026, incident.
- If you find that Respondent was flirty, write factual findings to demonstrate the flirting.
- If you find the Respondent was friendly in a non-sexual way, write factual findings to demonstrate the non-sexual friendliness.
- Your factual findings should include who, what, where, when, why & how of what happened that was flirty and/or friendly.
- Explain why you made that finding; explain your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

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Discussion of Homework

Hypothetical Investigative Report

- Review the evidence surrounding the touching of Complainant's groin area and determine if the touch was based on "sex."
- Review the evidence related to Respondent touching the Complainant's groin area and determine whether that touching occurred.
- If you find that Respondent touched Complainant's groin, determine (1) if the touch was sexual in nature ***and*** (2) if Complainant permitted the touch ***and*** (3) if the touch was for the purpose of sexual gratification, sexual degradation, or sexual humiliation.
- Write factual findings about the touching of the knee and whether or not the Respondent touched the Complainant's groin for sexual gratification, sexual degradation, or sexual humiliation.
- Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

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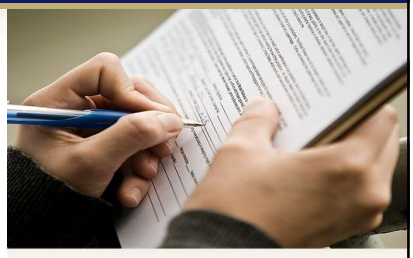
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Question & Answer Session

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