

Title IX Investigator Training – K-12 Public Schools (2020 Regulations)

October 27, 2026

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The 2020 Title IX regulations assign the investigator a neutral fact-gathering role. The investigator develops the evidentiary record and prepares an investigative report, but the investigator does not make the final determination regarding responsibility. The grievance process must provide an objective evaluation of relevant evidence, permit both parties to gather and present relevant evidence, treat the parties equitably, and separate the investigator from the decision maker.

The investigator must approach the matter impartially and without a conflict of interest or prejudgment. Although combining investigative and adjudicative functions does not invariably establish unconstitutional bias, the 2020 regulations avoid that concern by requiring the final decision maker to be someone other than the investigator or Title IX Coordinator. Withrow v. Larkin, 421 U.S. 35, 47 (1975), 34 CFR 106.45. The recipient must use the same announced standard of proof, either preponderance of the evidence or clear and convincing evidence, for all formal complaints of sexual harassment and for complaints against students and employees. 34 CFR 106.45.

I. Legal Standards

A. Governing Regulatory Framework

Title IX applies to education programs and activities receiving federal financial assistance. The Department of Education has enforced the 2020 regulations since January 2025 and formally restored them to the Code of Federal Regulations in a final rule published and effective September 29, 2026. Under the 2020 regulatory framework, a recipient with actual knowledge of sexual harassment in its education program or activity against a person in the United States must respond promptly and may not act with deliberate indifference. A response is deliberately indifferent when it is clearly unreasonable in light of the known circumstances. In an elementary or secondary school, actual knowledge includes notice of sexual harassment or allegations of sexual harassment to any employee of the school, not only to the Title IX Coordinator or an official with authority to institute corrective measures. 34 CFR 106.30.

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The regulation defines sexual harassment as conduct on the basis of sex that satisfies one or more of the following: (1) 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; (2) 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; or (3) sexual assault, dating violence, domestic violence, or stalking, as those terms are defined in the Clery Act and the Violence Against Women Act. 34 CFR 106.30. Investigators must be trained on this definition because it determines whether alleged conduct falls within the Title IX grievance process at all. 34 CFR 106.45(b)(1)(iii).

The covered education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context of the alleged harassment, as well as a building owned or controlled by an officially recognized postsecondary student organization. 34 CFR 106.44.

The recipient must treat complainants and respondents equitably. It must offer supportive measures to a complainant and must complete a grievance process complying with Section 106.45 before imposing disciplinary sanctions or other non-supportive measures against a respondent. The Title IX Coordinator, rather than the investigator, must promptly contact the complainant to discuss supportive measures, consider the complainant's wishes, explain that supportive measures are available with or without a formal complaint, and explain the process for filing a formal complaint. 34 CFR 106.44.

The regulatory definitions distinguish an elementary and secondary school, which includes a local educational agency, preschool, and private elementary or secondary school, from a postsecondary institution, which includes institutions of graduate, undergraduate, professional, and vocational education. 34 CFR 106.30. That distinction matters here because a no-live-hearing process corresponds to the elementary and secondary school branch of the 2020 framework. Following the vacatur of the later Title IX final rule, at least one court described the 2020 rule as again governing a university and requiring a live hearing in that postsecondary setting. Carroll Indep. Sch. Dist. v. United States Dep't of Educ., 2025 U.S. Dist. LEXIS 124113, 20 (N.D. Tex. 2025).

B. General Requirements Governing the Grievance Process

The grievance process must require an objective evaluation of all relevant evidence. It may not restrict either party's ability to discuss the allegations or to gather and present relevant evidence during the investigation or elsewhere in the grievance process. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022). Relevance, rather than whether evidence is favorable to one party, controls whether the evidence belongs in the process. A Texas federal court applying the regulation concluded that an institution could not exclude relevant exculpatory evidence merely because the institution considered

the investigation closed, because the prohibition against restricting the gathering and presentation of evidence applies throughout the grievance process. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022).

The process also must protect legally recognized privileges. It may not require, allow, rely on, or otherwise use questions or evidence seeking privileged information unless the privilege holder has waived the privilege. 34 CFR 106.45. Upon receipt of a formal complaint, the recipient must give known parties written notice of the grievance process, including any informal-resolution process, and written notice of the allegations, with sufficient details known at the time and sufficient time to prepare a response before any initial interview. The notice must state that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; inform the parties that they may have an advisor of their choice, who may be an attorney, and may inspect and review evidence; and identify any code-of-conduct provision prohibiting knowingly false statements or knowingly submitting false information during the grievance process. The investigator must conduct the investigation consistent with that presumption. 34 CFR 106.45.

The grievance process must identify its reasonably prompt time frames and permit temporary delay or a limited extension for good cause. Good cause may include the absence of a party, advisor, or witness; concurrent law-enforcement activity; a need for language assistance; or accommodation of a disability. 34 CFR 106.45. A concurrent criminal investigation therefore may affect scheduling, but the school remains responsible for its own Title IX response. A Texas federal court has recognized that a school may temporarily delay fact-gathering while law enforcement gathers evidence but must resume and complete its fact-finding after that impediment ends. I.F. v. Lewisville Indep. Sch. Dist., 2016 U.S. Dist. LEXIS 186671, 34 (E.D. Tex. 2016).

C. Separation Between Investigation and Decision

The decision maker cannot be the same person as the investigator or Title IX Coordinator. The separate decision maker must apply the institution's designated evidentiary standard and issue the written determination regarding responsibility. 34 CFR 106.45. That determination must identify the allegations; describe the procedural steps taken, including notices, interviews, site visits, and methods of gathering evidence; state findings of fact; apply the institution's code of conduct; explain the result and rationale for each allegation; identify sanctions and remedies as applicable; and state the procedures and permissible grounds for appeal. It must be provided to the parties simultaneously. 34 CFR 106.45.

The separation of roles places an important limit on the investigator's authority. The investigator develops and organizes the evidence. The decision maker decides responsibility, applies the code of conduct, and provides the rationale for the result.

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D. Standard of Proof

The recipient must state whether it uses the preponderance-of-the-evidence standard or the clear-and-convincing-evidence standard. It must apply the same standard to formal complaints against students and employees, including faculty, and to all formal complaints of sexual harassment. 34 CFR 106.45. The 2020 regulation therefore emphasizes consistency rather than assigning a special evidentiary burden to a particular category of respondent.

The preponderance standard is the ordinary standard in civil litigation, while a heightened standard generally applies only when required by statute, the Constitution, or certain uncommon circumstances. E.M.D. Sales, Inc. v. Carrera, 604 U.S. 45, 49 (2025). Within the Fifth Circuit, no majority decision has disallowed the preponderance standard in the Title IX context. Texas v. United States, 740 F. Supp. 3d 537, 556 (N.D. Tex. 2024). The investigator nevertheless does not ordinarily decide whether the selected standard has been met, because the regulations assign the responsibility determination to the separate decision maker. 34 CFR 106.45.

E. Impartiality and Constitutional Principles

An impartial process requires more than equal formal treatment; it requires objective consideration of relevant inculpatory and exculpatory evidence. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022). Due process also recognizes that a fair tribunal is a basic requirement and prohibits an intolerably high probability of actual bias in an adjudicator. But combining investigative and adjudicative functions does not, by itself, establish unconstitutional bias. Officials generally receive a presumption of honesty and integrity unless the circumstances demonstrate an unacceptable risk of actual bias or prejudgment. Withrow v. Larkin, 421 U.S. 35, 47 (1975).

The Fifth Circuit likewise has rejected the proposition that multiple institutional roles necessarily establish a constitutional violation. In *Plummer v. University of Houston*, the court concluded that allegations involving an investigator's additional role as a victim advocate and an office's advisory role did not establish a due-process violation absent a showing that the alleged conflicts undermined the integrity of the proceedings. The court emphasized the objective evidence supporting the result and the decision panel's authority to disagree with the investigator. Plummer v. Univ. of Houston, 860 F.3d 767, 777 (5th Cir. 2017).

Those constitutional principles do not eliminate the stricter structural requirement of the 2020 regulation. Whatever combination of administrative functions might survive constitutional review, the Title IX decision maker still cannot be the investigator or Title IX Coordinator. 34 CFR 106.45.

II. Investigations

A. The Investigator's Role Is to Develop a Complete, Neutral Evidentiary Record

The investigator's principal responsibility is to gather, assess for relevance, and organize evidence concerning the noticed allegations. The role is investigatory, not adjudicatory. Because the ultimate determination must come from a separate decision maker, the investigator should not present the investigative report as a final finding of responsibility. 34 CFR 106.45.

An investigation must account for evidence that supports and evidence that undermines an allegation. The objective-evaluation requirement is inconsistent with an approach that seeks only corroboration of the complainant or only exculpation of the respondent. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022). Likewise, the investigator cannot treat an internally selected cutoff as authority to prevent a party from presenting relevant evidence while the grievance process remains pending. In *Doe v. Texas Christian University*, a Texas federal court concluded that excluding relevant exculpatory evidence submitted after the institution claimed to have closed its investigation conflicted with the regulation's protection of the parties' ability to gather and present relevant evidence throughout the process. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022). The court later characterized the exclusion of substantial exculpatory evidence, contrary to both the regulations and institutional policy, as evidence supporting a claim of sex discrimination. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022).

The regulation also prescribes specific investigative procedures. The burden of proof and the burden of gathering evidence sufficient to reach a determination rest on the recipient, not on the parties. The investigator may not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional in connection with the party's treatment, unless the party provides voluntary, written consent. 34 CFR 106.45(b)(5)(i). The parties must have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. 34 CFR 106.45(b)(5)(ii). Each party must have the same opportunity to be accompanied by others at any related meeting or proceeding, including an advisor of the party's choice, and any restriction on advisor participation must apply equally to both parties. 34 CFR 106.45(b)(5)(iv). A party whose participation is invited or expected must receive written notice of the date, time, location, participants, and purpose of each investigative interview or other meeting, with sufficient time to prepare. 34 CFR 106.45(b)(5)(v).

Accordingly, the investigator's role includes:

1. Identifying the allegations within the formal complaint and written notice;
2. Seeking evidence relevant to those allegations from both parties and other available sources;
3. Providing an equal and meaningful opportunity for the parties to identify witnesses and present relevant inculpatory and exculpatory evidence;

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4. Respecting legally recognized privileges unless waived;
5. Documenting interviews, site visits, notices, and other methods used to obtain evidence; and
6. Transmitting a neutral evidentiary record and investigative report for consideration by the separate decision maker.

   The investigator does not control supportive measures merely by virtue of conducting the investigation. The regulation assigns initial responsibility for discussing and coordinating supportive measures to the Title IX Coordinator. 34 CFR 106.44. Nor may the investigator impose discipline before completion of the compliant grievance process.

B. The Investigator's Authority Is Limited by the Allegations, Relevance, Privilege, and Role Separation

The investigator's authority extends to obtaining evidence reasonably connected to the allegations under investigation. It does not extend to deciding responsibility, imposing discipline, determining remedies, or resolving an appeal. Those functions lie elsewhere in the grievance structure. 34 CFR 106.45.

Relevance defines the permissible scope of fact-gathering. An institution may not exclude relevant evidence solely because it is prejudicial to one party or inconvenient to the institution's theory of the case. The Texas federal court in *Doe v. Texas Christian University* treated relevance as the governing standard and rejected the exclusion of relevant evidence merely because it was submitted after the institution's investigative cutoff. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022).

Privilege supplies a separate limit. Even if information appears factually relevant, the process may not require or use information protected by a legally recognized privilege unless the privilege holder waives it. 34 CFR 106.45. The investigator therefore must distinguish between relevance and legal permissibility.

The regulation also limits relevance directly. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless they concern the complainant's prior sexual behavior and are offered to prove that someone other than the respondent committed the alleged conduct, or they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 CFR 106.45(b)(6). The investigator should apply that limit both in gathering evidence and in determining what the investigative report summarizes as relevant.

The investigator also should remain within the allegations properly included in the grievance process. The 2020 regulation permitted consolidation where allegations arose from the same facts or circumstances, but not merely because the same parties were involved. A Texas federal court concluded that the existence of a prior relationship and overlapping evidence

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did not, without more, establish that separate alleged incidents arose from the same facts or circumstances. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022). This limitation reinforces that an investigator may not expand a case simply because other allegations involve the same individuals.

Some allegations fall outside the Title IX process altogether. The recipient must dismiss a formal complaint, or the affected allegations, if the alleged conduct would not constitute sexual harassment as defined in Section 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States; such a dismissal does not preclude action under another provision of the recipient's code of conduct. The recipient may dismiss a formal complaint if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw it, if the respondent is no longer enrolled in or employed by the recipient, or if specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination. Upon any dismissal, the recipient must promptly send the parties simultaneous written notice of the dismissal and the reasons for it. 34 CFR 106.45(b)(3). An investigator who learns facts bearing on these grounds should report them to the Title IX Coordinator rather than act on them unilaterally.

Informal resolution is likewise limited. A recipient may offer it only after a formal complaint is filed and only with the parties' voluntary, written consent; it may not require participation, or a waiver of the right to a formal investigation and adjudication, as a condition of enrollment, employment, or any other right; and it may not use informal resolution for allegations that an employee sexually harassed a student. 34 CFR 106.45(b)(9).

The investigator also must guard against retaliation. Neither the recipient nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with a Title IX right or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing. The recipient also must keep confidential the identity of any individual who has made a report or complaint, any complainant, any respondent, and any witness, except as permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. 34 CFR 106.71.

C. Independence, Impartiality, Bias, and Conflicts of Interest

The investigator must be institutionally capable of conducting an objective evaluation. At minimum, that requires freedom from a personal, financial, or professional interest likely to influence the collection or treatment of evidence. It also requires an open mind about disputed facts and evenhanded application of relevance criteria.

Not every asserted conflict establishes unlawful bias. Under *Withrow v. Larkin*, combining functions does not itself overcome the presumption that officials act honestly and with integrity; the circumstances must show a constitutionally intolerable risk of actual bias or

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prejudgment. Withrow v. Larkin, 421 U.S. 35, 47 (1975). Under Fifth Circuit authority, a claimant challenging multiple institutional roles also must connect the asserted conflict to an impairment of the proceeding's integrity. Plummer v. Univ. of Houston, 860 F.3d 767, 777 (5th Cir. 2017).

The regulatory separation between investigator and decision maker nevertheless serves as an independent safeguard. An investigator may assess whether evidence is relevant and may organize conflicting accounts, but may not become the final adjudicator. 34 CFR 106.45. The separate decision maker must remain free to accept or reject the investigator's characterization of the evidence.

An investigator's prior involvement can create a more substantial concern when the investigator later serves in a function requiring fresh neutrality toward the same dispute. A recent Texas federal complaint alleged that using an investigator to facilitate an informal resolution created prejudgment concerns because the investigator had interviewed witnesses and evaluated evidence. The court's description of those allegations is not a merits holding, but it illustrates the practical conflict that can arise when an investigator is reassigned to a role requiring distinct neutrality. Haley Just. v. Bd. of Regents of Tex. Tech. Univ. Sys., 2026 U.S. Dist. LEXIS 214846, 5 (N.D. Tex. 2026).

D. Training and Qualifications

The investigator must possess sufficient competence to collect evidence fairly, identify relevant information, respect privilege, distinguish fact-gathering from adjudication, and prepare a neutral report usable by the parties and decision maker. Those competencies follow from the objective-evaluation, privilege, evidentiary-access, and role-separation requirements. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022); 34 CFR 106.45; 34 CFR 106.45.

The 2020 regulations require the recipient to ensure that every Title IX Coordinator, investigator, decision maker, and person who facilitates an informal resolution process receives training on (1) the definition of sexual harassment in Section 106.30; (2) the scope of the recipient's education program or activity; (3) how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. 34 CFR 106.45(b)(1)(iii). Investigators also must receive training on issues of relevance so that they can create an investigative report that fairly summarizes relevant evidence. 34 CFR 106.45(b)(1)(iii), (b)(5)(vii). Because the investigator's relevance judgments shape the report, that training should include the limits on evidence of a complainant's sexual predisposition or prior sexual behavior discussed in Part B of this Section.

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All training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. 34 CFR 106.45(b)(1)(iii). The recipient must make the materials publicly available on its website or, if it does not maintain a website, available upon request for inspection by members of the public, and must retain them for seven years. 34 CFR 106.45(b)(10)(i)(D).

In addition to completing that mandatory training, the investigator must be able to perform the following regulatory functions:

1. Evaluate inculpatory and exculpatory evidence objectively;
2. Apply relevance consistently without foreclosing either party's presentation of relevant evidence;
3. Recognize and protect legally privileged information;
4. Conduct and document interviews and other investigative steps;
5. Maintain the distinction between investigation and final adjudication; and
6. Prepare a report that allows the separate decision maker to evaluate the evidence under the institution's announced standard of proof.

A job title or general investigative experience, standing alone, does not establish those competencies. The institution's assignment and training records should demonstrate that the investigator was prepared to perform the functions required by the grievance process.

E. Criteria for an Adequate Investigative Report

The investigative report should fairly organize the relevant evidence without purporting to issue the determination reserved to the decision maker. At a minimum, it should allow the decision maker to identify the allegations, understand the investigative steps taken, locate the relevant evidence, compare conflicting accounts, and apply the designated standard of proof.

The regulation's requirements for the final written determination help define what the investigative record must enable the decision maker to do. The determination must identify the allegations; describe notices, interviews, site visits, and methods of evidence collection; make findings of fact; apply the conduct code; and explain the result and rationale for each allegation. 34 CFR 106.45. An investigative report that omits material investigative steps, disregards relevant exculpatory evidence, or presents disputed assertions as established facts would impair those required functions.

An adequate report therefore should:

1. Identify each allegation within the scope of the formal complaint;
2. Describe the procedural and investigative steps taken;
3. Summarize relevant inculpatory and exculpatory evidence evenhandedly;
4. Identify material conflicts in the evidence without resolving responsibility;

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5. Distinguish direct evidence, witness accounts, documentary evidence, and undisputed information;
6. Exclude or appropriately segregate privileged information that may not be used;
7. Avoid sex stereotypes, advocacy, and conclusory credibility judgments unsupported by the evidence; and
8. Provide an intelligible record from which the separate decision maker can make findings and explain the result.
   Before the investigative report is completed, the recipient must send each party and the party's advisor, if any, the evidence directly related to the allegations, including evidence on which the recipient does not intend to rely, in electronic or hard-copy form. The parties must have at least 10 days to submit a written response, which the investigator must consider before completing the report. 34 CFR 106.45(b)(5)(vi). The investigator then must create a report that fairly summarizes the relevant evidence and, at least 10 days before any hearing or other time of determination regarding responsibility, send it to each party and advisor for review and written response. 34 CFR 106.45(b)(5)(vii).

Because an elementary or secondary school need not provide a live hearing, the regulation substitutes a written-question procedure. After the report is sent to the parties and before reaching a determination, the decision maker must afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow additional, limited follow-up questions from each party. The decision maker must explain to the questioning party any decision to exclude a question as not relevant. 34 CFR 106.45(b)(6)(ii). The investigator should prepare the report and evidence file with that exchange in mind.

F. Application of the Standard of Proof

The institution must select either preponderance of the evidence or clear and convincing evidence and announce that choice in its grievance process. It must then use the same standard for complaints against students and employees and across all formal sexual-harassment complaints. 34 CFR 106.45.

Under the required division of roles, the investigator's task is to compile the evidence to which that standard will be applied. The separate decision maker applies the standard and determines responsibility. 34 CFR 106.45. The investigator therefore should not shape the report to reach a preferred burden-of-proof outcome or omit evidence viewed as unlikely to change that outcome. Evidence may remain relevant even when the investigator believes it is not dispositive.

A preponderance standard is not impermissible merely because the allegations are serious. Available authority recognizes preponderance as the ordinary civil standard, and no cited Fifth Circuit majority decision has prohibited its use in Title IX proceedings. E.M.D. Sales, Inc.

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v. Carrera, 604 U.S. 45, 49 (2025),Texas v. United States, 740 F. Supp. 3d 537, 556 (N.D. Tex. 2024). But whichever standard the recipient selects must be applied consistently; the institution may not use a lower or higher burden based on the identity of the complainant, respondent, or investigator.

G. Recordkeeping Requirements

The investigative record should preserve the materials necessary to show what the institution knew, what steps it took, what evidence it considered, and whether it followed its stated grievance process. This includes the formal complaint and notices, communications concerning scheduling or extensions, interview records, documentary and physical evidence, the investigative report, party submissions, and the final determination.

The regulation requires the recipient to maintain for seven years the records of each sexual harassment investigation, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed, and any remedies provided; any appeal and its result; any informal resolution and its result; and all materials used to train Title IX Coordinators, investigators, decision makers, and informal-resolution facilitators. The recipient also must retain for seven years records of any actions, including supportive measures, taken in response to a report or formal complaint, documenting the basis for its conclusion that its response was not deliberately indifferent. 34 CFR 106.45(b)(10).

The need for such documentation is reinforced by the regulation requiring the final determination to describe the notices, interviews, site visits, and methods used to gather evidence. 34 CFR 106.45. Documentation also permits review of whether the institution allowed relevant evidence and conducted an objective evaluation, issues that proved material in *Doe v. Texas Christian University*. Doe v. Texas Christian Univ. & Victor J. Boschini, 601 F. Supp. 3d 78, 91 (N.D. Tex. 2022).

III. Conclusion

Under the 2020 Title IX regulations, an investigator serves as a neutral fact-gatherer, not the final adjudicator. The investigator must develop an objective record of relevant inculpatory and exculpatory evidence, permit both parties a meaningful opportunity to gather and present relevant evidence, protect privileged information, document the investigative steps, and prepare a balanced report suitable for review by a separate decision maker.

The investigator's authority is limited by the noticed allegations, relevance, privilege, procedural fairness, and the mandatory separation between investigation and final decision-making. Bias is not established merely because an official has performed more than one administrative function, but personal interests, prejudgment, advocacy, selective evidence gathering, or reassignment to an incompatible role may undermine the required impartiality.

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The recipient must designate and apply consistently either the preponderance or clear-and-convincing standard, while leaving the responsibility determination to the decision maker.

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