# Title IX Sexual Harassment: Investigator

2026-2027

**Oregon Department of Education**

Civil Rights Unit

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# NOT LEGAL ADVICE

**This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.**

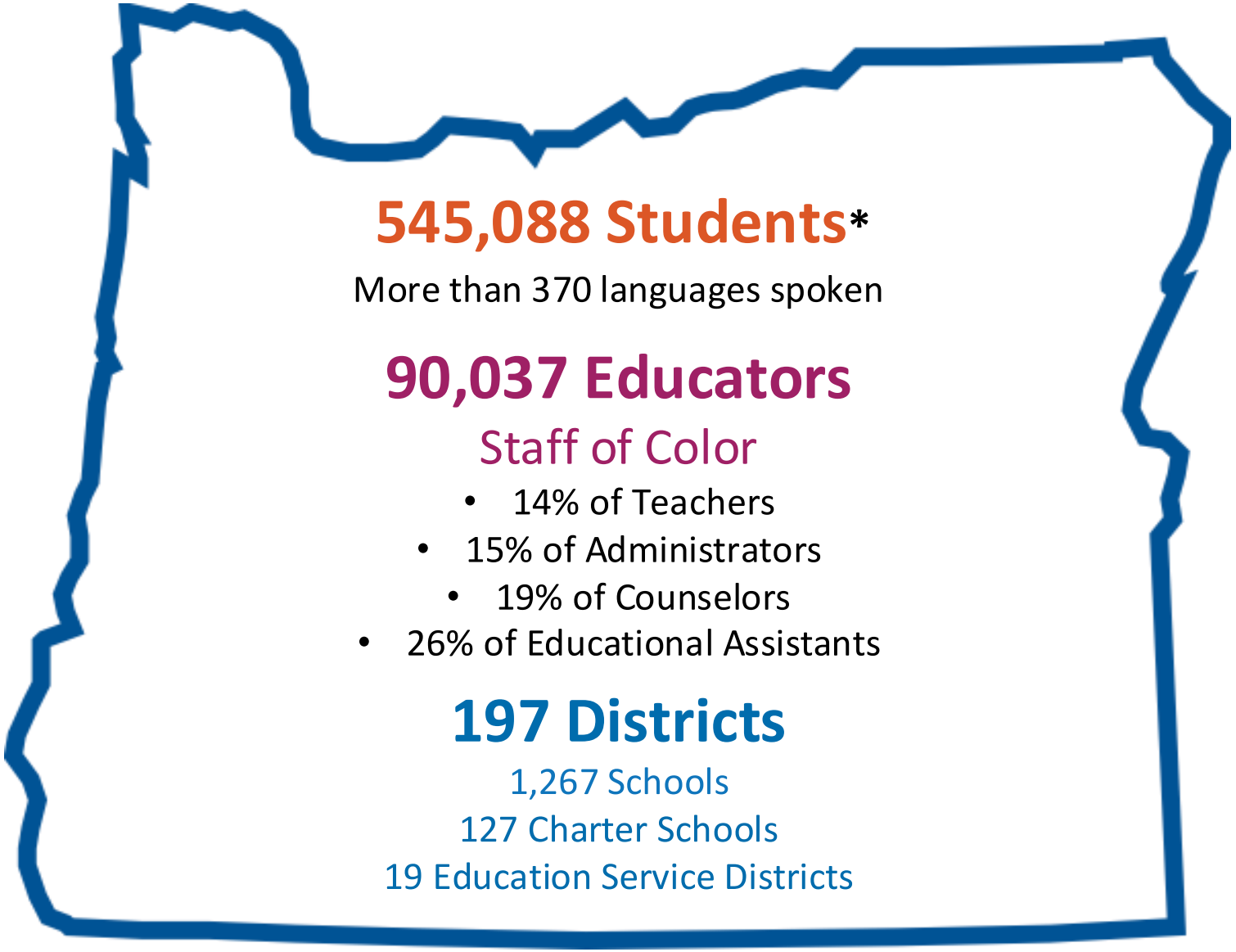
**This training is being provided on October 29, 2026. Subsequent changes to law and policy may impact the accuracy of information in this slide deck.**

**ODE is available to support with individual technical assistance following this training.**

# Who We Serve

"My vision is to make sure every child in Oregon is successful and has a safe place to receive a high-quality public education. I've seen firsthand how a positive student-teacher relationship can set a child on a successful path for the rest of their life. When we collaborate and build partnerships with students, educators and families we can advance equity and lead all students toward success."

*- Dr. Charlene Williams*



**545,088 Students***

More than 370 languages spoken

**90,037 Educators**

Staff of Color

- 14% of Teachers
- 15% of Administrators
- 19% of Counselors
- 26% of Educational Assistants

**197 Districts**

1,267 Schools

127 Charter Schools

19 Education Service Districts

*Numbers represent 2024-25

# Session Agenda & Materials

- Sexual Harassment Recap
- Title IX Investigation Requirements
- Role of the Investigator
- Interviews
- Evidence
- Credibility Assessments
- Investigative Report

*This session, **when combined with ODE's Title IX Sexual Harassment: Deep Dive training**, is intended to fulfill 34 CFR 106.45(b)(1)(iii) of the 2020 Title IX regulations, specifically requiring "…that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias."*

# Norms and Expectations

## Participants

Ask relevant questions as they arise

Remain engaged: complete polls, participate in breakout discussions

Be open to learning

Understand the limited scope and time for this training

Break as needed

## Presenters

Start and end on time

Answer questions as they arise

Keep to the content at a peppy-pace

Provide a copy of the slides and additional resources - Google Folder

Provide proof of attendance

Schedule technical assistance for individualized questions

# Content Note:

**This training discusses protected class discrimination. Explicit and discriminatory language is occasionally used. All examples are solely for educational purposes and are designed to contain elements of situations you may respond to in your school/district.**

# Sexual Harassment Recap

# Title IX Sexual Harassment

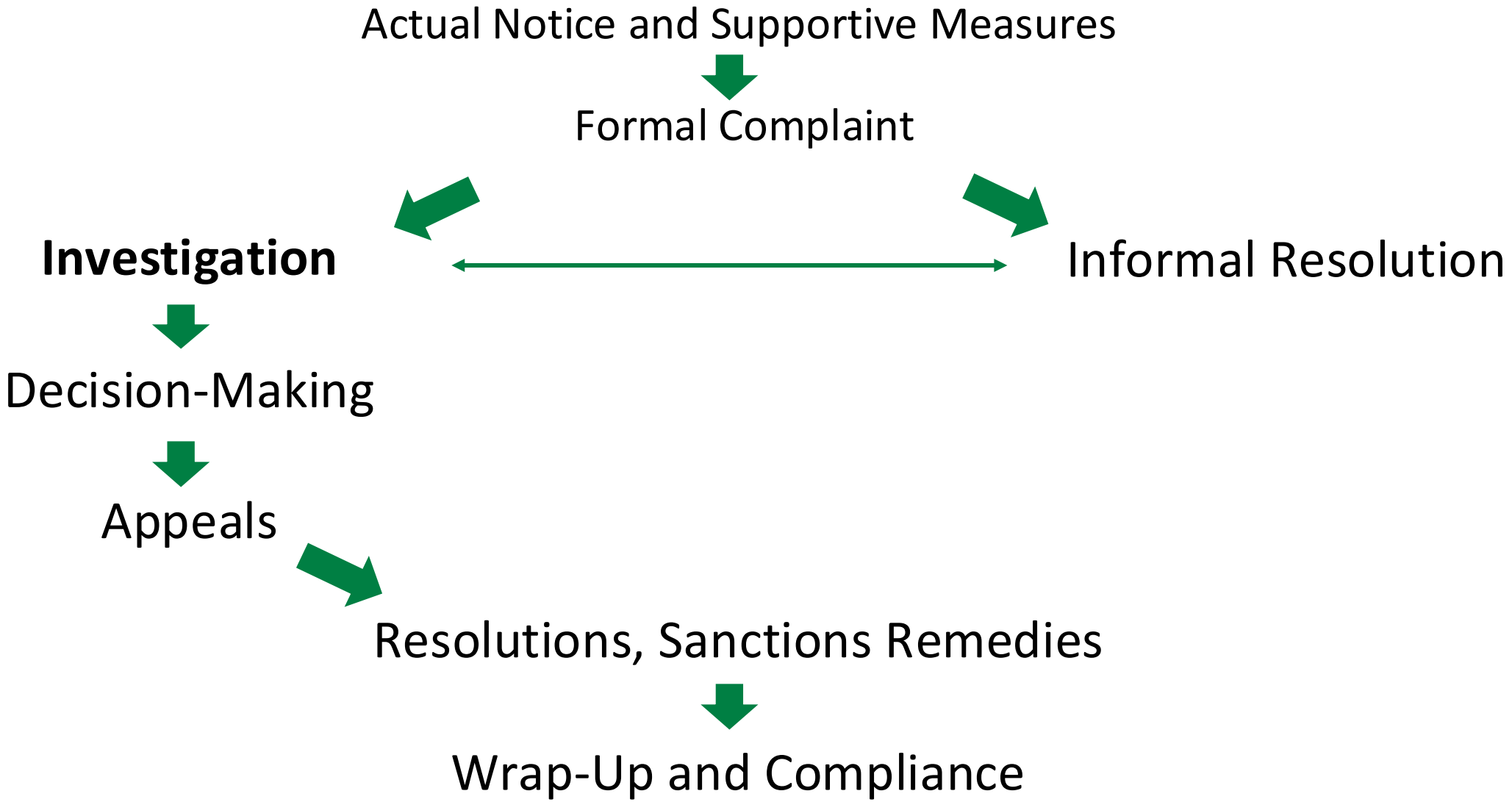
Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(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" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

**34 CFR Part 106.30(a)**


Actual Notice and Supportive Measures
Formal Complaint
Investigation
Informal Resolution
Decision-Making
Appeals
Resolutions, Sanctions Remedies
Wrap-Up and Compliance

# Title IX Investigation Requirements

# Investigatory Burden

Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties…

34 CFR 106.45(b)(5)(i)

What this means:

- The investigator, on behalf of the school, is responsible for conducting a thorough and impartial investigation.
- Investigators should not "sit back and wait" for parties to provide information and submit evidence; they should actively solicit and collect.

# Prohibited Information and Evidence

...the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section...

34 CFR 106.45(b(5)(i)

What this means:

- Certain types of information (*privileged records*) should not be used or solicited without explicit written consent

# Opportunity to Present Witnesses

Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

34 CFR 106.45(b)(5)(ii)

What this means:

- Parties should have an ***equal opportunity*** to present witnesses and evidence; any restrictions should be reasonable and apply to all parties
- Parties should be able to submit evidence, both inculpatory (assisting in proving allegations) and exculpatory (assisting in disproving allegations)

# Cannot Restrict Discussion

Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence

34 CFR 106.45(b)(5)(iii)

What this means:

- Schools cannot require confidentiality or place a "gag order" on students regarding the allegations at hand
- Intention is to allow parties to receive support, and to be able to gather information and evidence as needed
- However, this does ***not*** restrict a school from prohibiting retaliation, harassment, or further discrimination

# Advisors

Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

34 CFR 106.45(b)(5)(iv)

# Advisors, cont.

What this means:

- Parties must be allowed to be accompanied by an "advisor of choice" to any interviews or meetings.
- Schools may not restrict who can serve as an advisor. An advisor may be a lawyer, advocate, friend, counselor, teacher, etc.
  - Parents have an independent ability to accompany their minor children to meetings; parents need not be their child's official "advisor."
- Schools may place restrictions on ***how*** advisors participate in meetings, as long as those rules apply equally to all advisors.
- Any restrictions/allowances on others present must be applied equally to parties

# Written Notice of Meetings/Interviews

Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

34 CFR 106.45(b(5)(v)

What this means:

- Written notice must be provided with date, time, location, participants, and purpose.
- "Sufficient time" is not defined as a time frame. Consider the rights of parties (advisor, parental attendance) and consult your legal counsel to determine an appropriate standard.

# Review of Evidence

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 raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least **10 days** to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination

34 CFR 106.45(b(5)(vi)

# Review of Evidence

What this means:

- Parties are entitled to review all collected evidence that is directly related to the allegations, even if that evidence is not relevant to reaching a determination.
  - This right allows students to view a variety of information about other parties and witnesses, including personally identifiable information (PII). It does not violate FERPA to do so (see 34 CFR 106.6(e)).
- Parties and their advisors must be provided with a physical or electronic copy of the evidence.
- Parties must be given **10 days** to review the evidence and provide a written response before the Investigator finalizes the investigative report.

# Review of Investigative Report

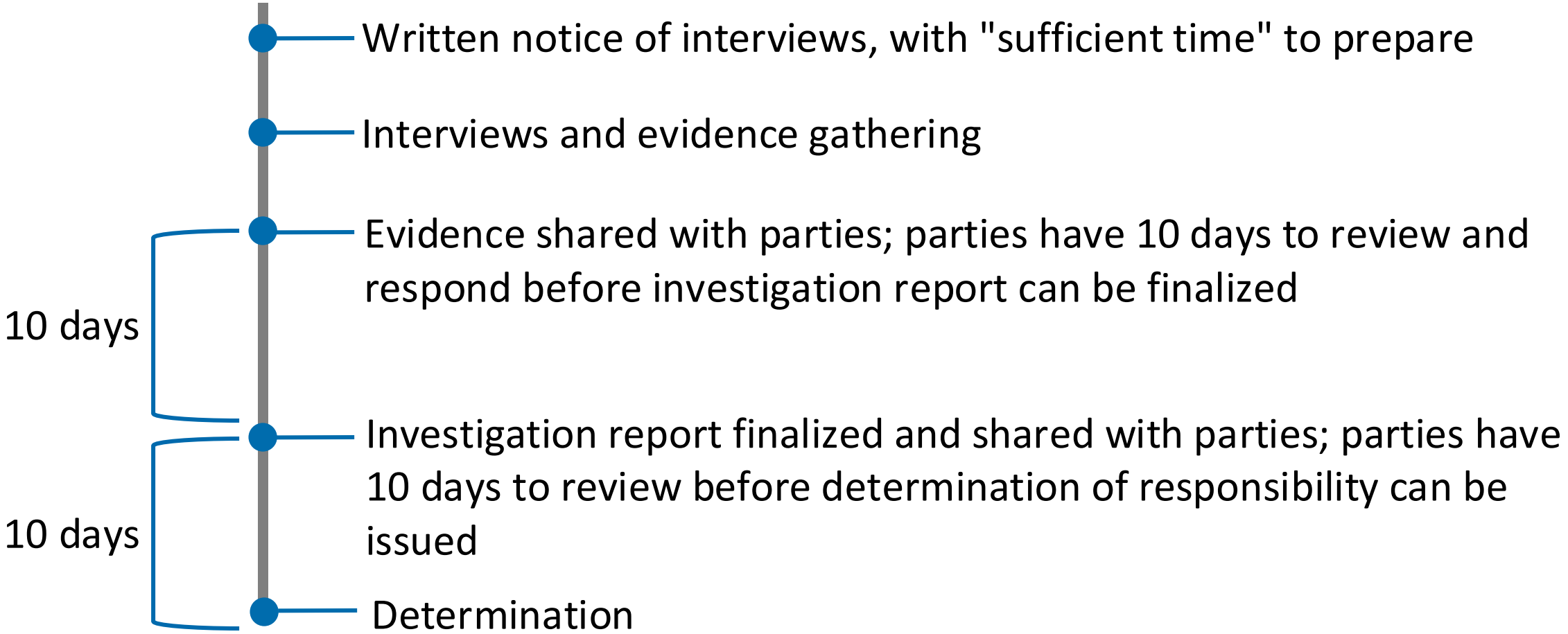
Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 CFR 106.45(b)(5)(vii)

What this means:

- Parties and their advisors must be provided with physical or electronic copy of the investigative report
- Parties must have 10 days to review and respond

# **Investigation:** Timeline



# *Scenario: Janet and Alex*

As part complaints regarding harassment and bullying, Janet, an 8th grader, is being investigated for potential sexual harassment against Alex, also an 8th grader. The allegations of sexual harassment include:

- On at least two occasions during PE, Janet blocked the exit of the communal locker room, refusing to let Alex leave while making explicit, repeated demands to see the cup size of the bra Alex was wearing, touching her breasts on one occasion.
- Janet hung a bra up on the class bulletin board between classes with a note saying, "Love, Alex the big boobed slut." Alex and several students saw it before it was taken down. When Alex read the note, she immediately started crying, ran out of the room, and went home early that day.
- Janet spread a malicious rumor to a group of students that Alex was flashing boys behind the school gym to get answers for the upcoming Social Studies test. Alex was absent the day of the test.

***We'll use this scenario to practice Title IX investigations today.***

# *Scenario: Janet and Alex*

- What evidence can we look for?
- How do we handle a situation where there are no direct eyewitnesses to the underwear demands, but classmates testify that Alex suddenly started avoiding the locker room or changing in restroom stalls?
- How do we establish a timeline for when the bra might have been placed on the board?
- How can we use circumstantial evidence to connect Janet to the note?
- How do you interview the students without inadvertently spreading the rumor further or affecting the witness pool?
- How does a rumor about flashing boys impact Alex's access to their education, even if the alleged acts never happened?

# Role of the Investigator

# Who's Involved?

| | Notice and Triage | Formal Complaint | Informal Resolution | Investigation | Decision-Making | Appeals | Resolutions, Sanctions, and Remedies |
|---|---|---|---|---|---|---|---|
| Title IX Coordinator | X | X | | | | | X |
| Informal Resolution Facilitator | | | X | | | | |
| Investigator | | | | X | | | |
| Decision-Maker | | | | | X | | X |
| Appeals Decision-Maker | | | | | | X | X |

# Role of the Title IX SH Investigator

- ***Neutral/Impartial*** factfinder
  - Title IX specifically prohibits Investigators from holding any **bias or conflict of interest** (34 CFR 106.45(b)(1)(iii))
- Gather evidence and conduct interviews sufficient to reach a determination
  - Burden is on the school, represented by the Investigator, to conduct an investigation and collect evidence sufficient to reach a determination
- Ensure compliance with applicable laws and policies
  - Title IX rights include advisors, evidentiary review, etc.
- Retain appropriate documentation for recordkeeping purposes

# Investigation Overview: Process and Steps

**Pre-Investigation**

- Evaluating and triaging complaints
- Planning your investigation

**Investigation**

- Interviews
- Gathering evidence

**Investigation Report**

- Conduct evidentiary reviews
- Write investigation report

# Investigation Planning

- ❑ What are the allegations currently known? Title IX Notice of Allegations should outline these.
- ❑ Who will be conducting the investigation?
  - ❑ Are there any concerns with bias or conflict of interest?
- ❑ What evidence is already available?
- ❑ Who do you need to interview?
  - ❑ In what order will you interview them? Where?
- ❑ Are there any barriers to your investigation or to party participation?

# Interviews

## Purpose of Interviews IS to:

- learn the facts
- establish a timeline
- use your standard of evidence to establish what occurred
- learn impacts on individuals and school community
- discover enough information to reach a determination

## Purpose is NOT to:

- satisfy your curiosity
- punish parties
- get a parent off your back
- prove or disprove a particular side (neutral/impartial)
- chase the story for excessive information

# Who Are We Interviewing?



photo from Absolut Vision; Unsplash.com

**Complainant(s)**, who experienced the discrimination.

**Respondent(s)**, who are accused of committing the discrimination.

**Witnesses**, who provide important information and context about the discrimination.

**What about cases where there is no respondent, such as structural or district-based discrimination?**

You'll still interview complainant(s) and witnesses.

# Setting Up Interviews

**Notice.** Must provide written notice to parties which includes the date, time, location, participants, and purpose, giving enough advanced notice for parties to prepare

**Location.** Select a safe and private location. If your interview will be virtual, consider advising the party on privacy considerations on their end. Can you offer options or choice?

**Attendees.** If parents, advisors, or others will be attending, plan accordingly. Share any rules of decorum ahead of time.

**Supplies.** Handouts, copies of evidence. Notepads, coloring books, fidgets, or other similar supplies. Having snacks or water available may be helpful, and a box of tissues can be a lifesaver.

# Title IX Sexual Harassment Advisors

Complainants and Respondents may be accompanied by an advisor of choice. Schools cannot restrict who can serve as an advisor but may restrict how advisors participate in meetings/interviews, as long as those restrictions apply equally to all parties.

- Examples of restrictions: how and when an advisor may ask questions or answer questions on the student's behalf, what constitutes inappropriate conduct in meetings
- If you are setting any restrictions on how advisors participate, you may want to have a clear list of rules, communicate those rules in advance, and re-iterate them at the start of meetings
- Figure out what will happen if advisors violate the rules in advance.
- But what if the advisors don't cooperate? Apply equally to all parties.

# Starting the Interview: Introductory "Boilerplate"

Consider sharing standardized introductory information or setting the “ground rules” at the start of the interview:

- Introduce yourself (to everyone) and your role
- Thank the parties for their participation
- Share the purpose of the interview
- Recording or note-taking; how will documentation be stored; who may have access to what they share
- Discuss breaks and interview length
- Let the party or witness know it’s ok to say “I don’t know”
- Discuss any amnesty policies
- Discuss rules of decorum for advisors and parents, if any
- Ask if there are any questions

Adjust as needed to be developmentally appropriate (and check for understanding as needed).



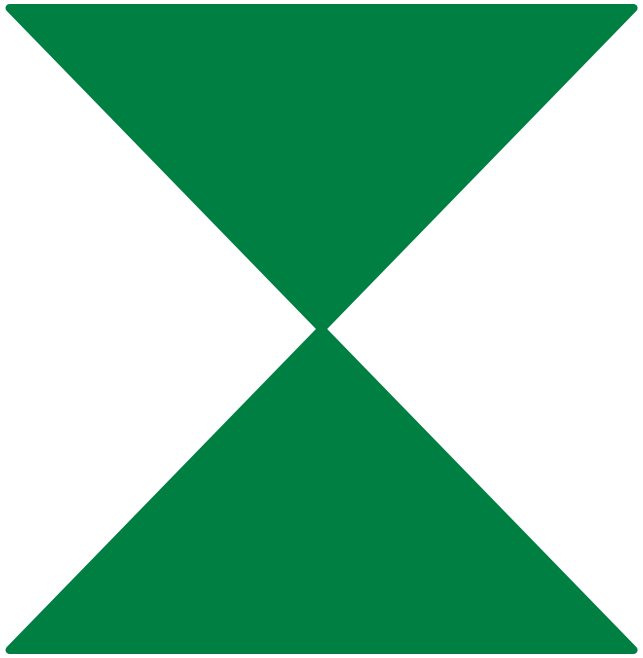
photo from Natasha Hall; Unsplash.com

# Interview Questions

Draft a list of questions ahead of time, but be flexible.

When questioning...

- Start broad, and work your way in
- Use open-ended questions
- Use the terminology and language of the person you're talking to



# Helpful Questions

**Open-Ended**

- “Can you help me understand...”
- “Tell me more about...”
- “Describe...”

**Experience-Based**

- “What did you notice...”
- “What was going through your mind...”
- “What did you see/hear/etc…”

**Clarification**

- "Let's go back a bit..."
- “You mentioned X, can you tell me more about that?”
- “When you said X, what does that mean to you?”

# Less Helpful Questions

**Forced-Choice**

- “Were you scared, or did you feel ok?”

**Leading**

- “Had you been drinking a lot?”

**Multiple/Compound**

- “Tell me everything that happened after that, and what were you thinking or feeling at the time?”

**Closed-Ended**

- “Were you alone?”

**Blaming Questions**

- “Why would you say yes in the first place?”
- "Why didn't you say you were uncomfortable?"

# Impermissible Questions



photo from fotos; Unsplash.com

...the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section...

34 CFR 106.45(b(5)(i)

# Impermissible Questions, cont.

questions and evidence about the ***complainant's sexual predisposition or prior sexual behavior*** are not relevant, unless such questions and evidence about the 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 the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

34 CFR 106.45(b)(6)(ii)

# *Allowable?*

Are the following questions for Alex allowable or impermissible under Title IX's requirements?

- Tell me more about the rumors Janet has been spreading. Can you tell me the names of other students who might have heard these rumors from Janet ?
- You mentioned the rumor you'd heard from other students that you "flashed" boys behind the school gym. Is there any truth to these rumors?
- About the note left on the bulletin board, has anyone in class ever said anything like "big boobed slut" to you before?
- Your parents told me you'd been seeing a therapist about the bullying. What kinds of things do you talk about with your therapist?

# Questioning about Sensitive Topics

Many sensitive topics can come up in sexual harassment investigations: abusive language, physical violence and harm, sexual activity, drug or alcohol use, dating and relationships, gender identity and sexual orientation, illegal behavior or behavior that violates school rules, events that might be embarrassing, etc.

When preparing to question around these topics:

- Be clear at the start of the interview the scope of the conversation
- Provide context, as needed
- Clearly communicate amnesty policies
- Maintain appropriate and professional boundaries

**Remember:** topics that are sensitive for one individual may not be for another.

# Note-taking and Recording

## Note-taking

- Explain that you'll be taking notes to interviewees
- Note important quotes
- It is good practice to check your notes with your interviewee to confirm
- Any notes (or recordings) will become a part of the record

## Will you record?

- There are pros and cons of recording; recording provides an accurate transcript and allows you to focus your attention, but could be intimidating or distracting
- Check with your legal counsel and establish a consistent protocol
- How will you respond to requests to not record?

# Wrapping up Interviews

“Is there anything else you think I need to know?”

Similar to your introductory "boilerplate" language, consider what wrap-up information you'll want to consistently share:

- Recap any plans or agreements (evidence they will submit, information or connections you will provide), including how to request supportive measures
- Discuss privacy and retaliation; remember parties cannot be unilaterally prohibited from discussing the allegations
- Share what happens next in the process, including any possibility of follow-up interviews
- Explain how to get in contact with additional questions or information
- Anything else for your specific school/district

# Witness Interviews

Title IX entitles parties to an equal opportunity to present witnesses, including (but not limited to) fact witnesses and expert witnesses.

**Do I need to interview every witness a party wants me to?**

- Not necessarily. Which witnesses will provide relevant evidence? Will witnesses duplicate each other?
- Any restrictions must be applied equally to all parties.

**What about expert witnesses?**

- Expert witnesses may not have evidence of the allegations, but may provide evidence relevant to establishing the facts or patterns of a case.
- Examples: child behavioral experts, SANEs

# Expert Witnesses

*"An expert witness is a person with specialized knowledge, skills, education, or experience in a particular field who is called upon to provide their expertise in legal proceedings to assist the court with understanding complex technical or scientific issues."*

- Cornell Law School

Expert witnesses are intended to assist the factfinder in reaching a decision. The expert witness clarifies, explains, and provides opinions on complex matters that the average layperson would not typically understand. Expert witnesses can take jargon, and complicated situations, and explain them in a way others can understand. Experts can also evaluate potential hypotheticals, as well.

# Parents in Interviews

*…[a] parent or guardian must be permitted to accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student…*

-pg. 30453 Title IX 2020 Final Rule, Federal Register

**What would you do if:**

- A student did not want their parent to be present in the interview?
- An interview with a student and their parent consisted of sensitive topics?
- A parent would not let their child answer questions and consistently answered on their behalf?

# Tricks of the Trade for Developmentally Appropriate Interviewing

- Consider other response methods:
  - Written responses
  - Text to speech or other communication tools
  - Visual cues or organizers
  - Nonverbal systems – pointing, sticky notes



- Visual organizing to establish time or cause and effect
  - Sequencing X -> X -> X
  - Cause -> Event -> Effect

# When a Party Won’t Participate…



Image by Safi.71; Unsplash

Students cannot be compelled to participate in a Title IX sexual harassment investigation. Students or their families may decline all participation or refuse to answer specific questions.

If a student declines to participate:

- Respect their decision and respond similarly to other parties of the investigation.
- Inform them of the possible outcomes of their decision.
- Still keep them informed throughout the process through updates and notifications.

# Trauma-Informed Investigations: Small Steps

- Be **open and transparent** about the process (Trustworthiness and Transparency).
- Provide information about the process in **multiple, accessible formats** (Cultural Awareness).
- **Be kind and empathetic** while maintaining and reiterating the neutral/impartial role of the investigator (Safety).
- **Connect parties to support** - counseling, trusted friends and community, family, peer support networks (Peer Support).
- Offer **options and choices**, where available (Empowerment, Voice, and Choice).
- **Do what you say you will do** - adhere to timelines, communicate delays, etc. (Trustworthiness and Transparency).

# Evidence

# What is evidence?

Evidence is *"an item or information proffered to make the existence of a fact more or less probable."*

- Cornell Law School

Evidence can include, but is not limited to:

- testimony;
- documents;
- photographs;
- videos;
- social media posts;
- voice recordings; or
- tangible objects

# Different Kinds of Evidence

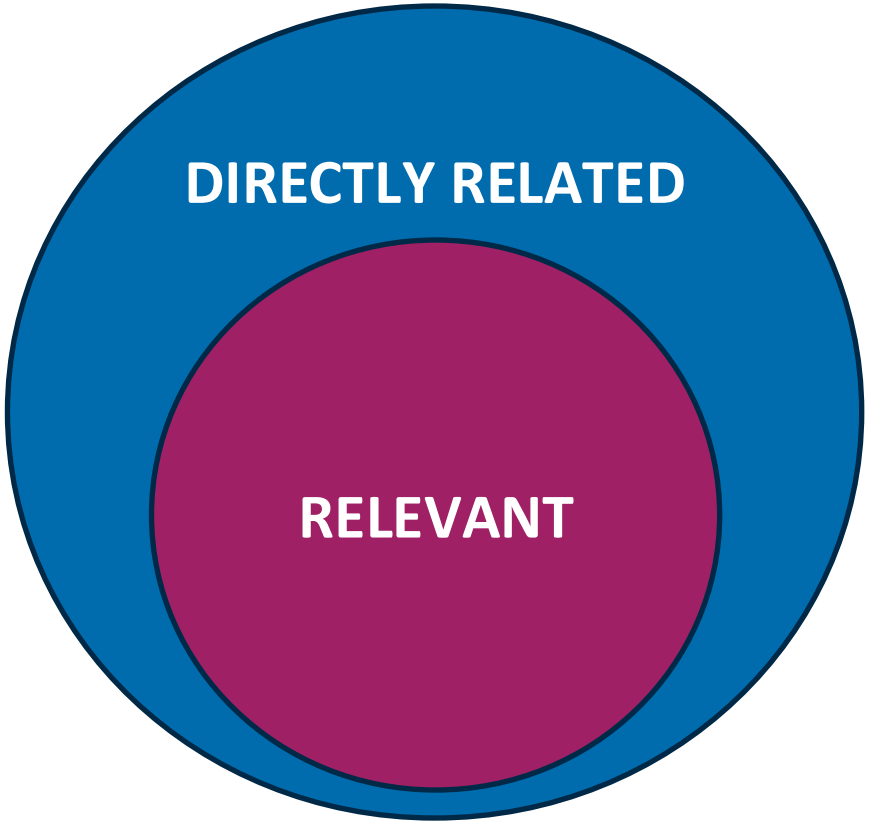
- **Inculpatory Evidence:** Evidence that shows, or tends to show, a person's involvement in an act or evidence that can establish a respondent's responsibility.
- **Exculpatory Evidence:** Evidence that shows, or tends to show, things to excuse, justify, or absolve the responsibility of a respondent.
- **Corroborating Evidence:** Evidence that strengthens or confirms already existing evidence.
- **Circumstantial Evidence:** Indirect evidence that does not, on its face, prove a fact in issue but gives rise to a logical inference that the fact exists.

# "Relevant" and "Directly Related"

The Title IX regulations don't specifically define these terms.

**Relevant:** evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the responsibility for an allegation.

**Directly Related:** evidence is "directly" related if it is connected to any of the allegations. Directly related evidence may or may not be relevant.




For further discussion see Preamble to the 2020 Title IX regulations, p. 30304, and Federal Rules of Evidence (FRE) definition of "relevant."

# *What kind of evidence?*

For each of these evidentiary examples, is the evidence relevant, directly-related (but not relevant), or neither?

- A student's parent comes forwards and shares that their child and another 8th grade student were discussing they heard Alex was "flashing" boys at school. There was no discussion about who started the rumor.
- One of Janet's teachers, who is also Alex's Social Studies teacher, shared in an email that she has never witnessed Janet engage in any bullying or otherwise inappropriate conduct towards other students, and that Alex is currently doing well in her class.
- Two girls who are in Janet and Alex's PE class said they once heard Alex yelling at Janet to "get out of the way," and saw that Janet was blocking the door to the locker room.

# Evidentiary Review

Parties must be provided a copy of all ***directly related*** evidence and given 10 days to review it and respond before the investigation report is finalized.

What about student information (PII), privileged information, and other sensitive content?

- Schools cannot redact or withhold information that is **directly related or relevant**. This may include names of other students, party and witness interviews, video footage, etc.
- "The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99." (see 34 CFR 106.6(e)).
- Information protected by a legally recognized privilege cannot be collected and used without voluntary, written consent from the person holding the privilege. In providing consent, they are also consenting to evidentiary review.
- Schools should connect with legal counsel with specific application questions.

# Storing Evidence

Evidence needs to be retained and stored using a method and manner that is secure and maintains parties' right to privacy. In any sexual harassment investigation, much of the evidence will be sensitive in nature.

**Reminder: Do NOT accept evidence that is illegal to possess**, such as drugs or images of children engaged in sexual activity or in states of undress. Contact law enforcement and/or your legal counsel if you become aware of such evidence.

# Privacy and Best Practices

**Some evidence best practices include:**

- Maintaining an evidence and privilege log that includes:
  - ❑ a brief description of the evidence;
  - ❑ the source;
  - ❑ whether the evidence is directly related and/or relevant;
  - ❑ any redactions;
  - ❑ reasons for any redactions.
- Using a secure cloud-based network
- Avoiding intentionally soliciting or acquiring evidence that is unrelated and not relevant to the allegations
- Identifying a consistent practice in how to save sensitive student information (e.g. photos, medical records)

# Credibility Assessments

# What is Credibility?



Image by Joshua Hoehne; Unsplash

Credibility helps a fact-finder or decision-maker determine what is plausible (which is different than believable). Credibility should be assessed when it is in dispute and relevant to evaluating the allegations.

It should **not** be based on a person's status as a complainant, respondent, or witness.

# Why Assess Credibility?

Credibility assessments are intended to help the fact-finder determine *plausibility*, not determine *character*. In cases where credibility is at issue, conducting a credibility assessment can help a fact-finder or investigator make determinations on what is **more likely than not** (i.e. a preponderance of the evidence).

**Important:** The purpose of a credibility assessment is not to determine whether a student is a "liar." Inconsistencies happen, for a variety of reasons. Credibility assessments help determine whether events are *likely* to have occurred.

# Assessing Credibility is a Critical Thinking Process

An investigator should be considering each person interviewed, each piece of evidence, and all information collected during an investigation. Investigators should do more than just ask “do I trust this person?” They should also assess:

- Why they do or do not trust a person, evidence, and information
- What supporting evidence there is
- How the evidence supports the findings

Credibility assessments are **not** a "*gut feeling*" or a "*hunch*."

# Barriers in Assessing Credibility

- Bias
- Conflicts of Interest
- Lack of understanding regarding the impact of trauma on responses and behavior
- Belief that a statement requires full corroboration to be credible (remember: preponderance of evidence standard)
- Failure to document reasoning
- Failure to adequately prepare before conducting interviews

# Keys to Credibility Assessments

- Preparation
- Plausibility
- Capacity to Observe
- Consistent Statements
- Bias (Motive to Fabricate or Exaggerate)
- Omissions
- Corroboration
- “The Big Picture”

# Trauma Can Lead to Inconsistencies

Trauma can impact a person's memory and the chronology of events. Inconsistencies may be part of a trauma response. Interviewing alleged victims with a trauma-informed lens may result in better investigations. Investigators should:

- be mindful of how trauma can impact an alleged victim's retelling of events;
- remember that you are determining *plausibility*, not *believability*
- be mindful of other factors, such as disability status, that may impact how things are recounted;
- try to avoid requiring a victim to repeat the details of a traumatic incident over and over; and
- Use open-ended questions to solicit answers.

# Putting the Pieces Together

- When credibility is at issue (e.g. in "they said this, they said that" cases) then a credibility assessment can help the fact finder come to a determination about what is plausible.
- Credibility assessments are not "gut instincts." Rather, a credibility assessment should be an analytical process that considers the totality of the circumstances using several factors.
- Remember, a credibility assessment is not a determination of "truth." Students may have gaps or inconsistencies in their stories for many reasons, including trauma. It is a process to figure out what is more likely to have happened.

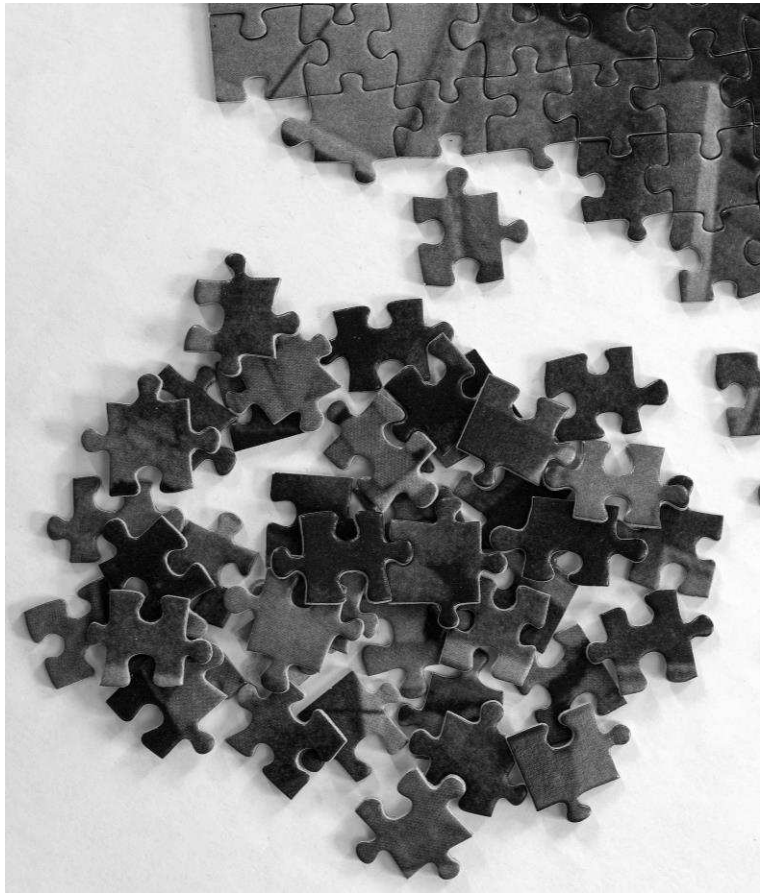


Image by Markus Kammermann; Unsplash

# Investigative Report

# When is Your Investigation “Done”?

The burden is on the school to gather enough information to make a determination, not on the parties to provide this information. **This means you should:**

- Actively solicit information from the complainant and the respondent, including making multiple attempts if needed.
- Actively seek inculpatory and exculpatory evidence about the allegations.
- Look for and make a reasonable attempt to mitigate any barriers to participation.

**This does not mean you have to:**

- Hassle the complainant or respondent if they don’t want to participate.
- Interview every single witness.
- Drag out your investigation for weeks or months waiting on information.

# Check-In: Due Diligence

- ❑ I interviewed or attempted to interview the complainant and respondent
- ❑ I actively solicited information from the complainant, respondent, and their families, including:
  - ❑ Letting them know they may submit evidence and witnesses
  - ❑ Informing them of the process and timeline
  - ❑ Informing them of possible outcomes
- ❑ If a party chose not to participate, I informed them of the possible outcomes related to that decision
- ❑ I have reviewed the evidence provided and followed up on any missing information as needed

# Investigative Report Requirement

Create an investigative report that fairly summarizes relevant evidence...

34 CFR 106.45(b)(5)(vii)

- The Title IX regulations do not provide specific requirements for the investigative report beyond requiring a summary of relevant evidence
- Relevant evidence that is summarized but not wholly included can be attached to the report or stored safety elsewhere, but must be made available to parties during evidentiary review stage, and to the Decision-Maker during the next phase.

# Common Elements of an Investigative Report

Your school/district should develop a template that works best for your community. Common elements of an investigative report include:

- Introductory information (complaint info, investigator info)
- Background
- Jurisdictional statement and scope of investigation
- Policies (attach copy or cite explicitly)
- Timelines - reporting timeline, incident timeline
- Summary of Evidence
- Findings of Fact
- (MAYBE) Conclusions applying standard of evidence to findings of fact – *note that Title IX does not prohibit the investigator from making recommendations, but the Decision-Maker must still come to an independent decision*

# Reports should be…

- **Clear.** The evidence and facts should be clear; parties should not be left wondering what the investigatory process looked like or what evidence showed.
- **Accessible.** Consider the reading and comprehension levels of your document. Consider the audience. Minimize "legalese" as much as you can.
- **Thorough.** Reports should balance privacy and confidentiality (including legal limitations and requirements) with transparency and thoroughness. Remember requirement to summarize relevant evidence.
- **Unbiased.** All evidence should be weighed appropriately. Be aware of how word choice, structure, or inclusions/exclusions might influence readers.

# Writing Best Practices

- Use formal writing
  - Avoid jargon and “writing how you speak”
  - Use medically accurate terminology
  - Avoid over-use of legalese - the report should be accessible
- Use neutral language
  - Word choice reflects the bias of the author
  - Don’t imply feelings or dispositions that weren’t explicitly stated
  - Avoid use of unnecessary adjectives or descriptors
- De-identify (use “Complainant, Respondent, Witness 1” instead of names)
- Define terms for readers; if a colloquial phrase is used in a quote, clarify what it means

# Using Quotes

Quotes are an important and powerful tool in reports.

- What information is important to communicate with quotes? **Feelings, impact statements, direct evidence**?
- Does any part of the quote need to be **redacted**? Why or why not? How will it change the meaning?
- **Colloquial or offensive language** - what does it add? What will redacting it take away?
- If using part of a quote, ensure that the context and information remains the same

# Review of Investigative Report

...at least **10 days** prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 CFR 106.45(b)(5)(vii)

- Parties and their advisors must be provided with physical or electronic copy of the investigative report
- Parties must have 10 days to review and respond
- Once the report is sent, the process is handed over to the Decision-Maker

# *What Happens Next?*

- The process now flows through the Decision-Maker, who will review the report and evidence, conduct a question-and-answer opportunity for parties, and reach a determination of responsibility.
- Decision-Makers may have questions for the Investigator as the process continues. If the Decision-Maker believes they do not have sufficient evidence to reach a conclusion and that more could be collected, the Investigator may be asked to do additional information gathering.
- All evidence collected and records created (including notes, emails, and interview records) should be sent to the Title IX Coordinator for recordkeeping purposes.

# Upcoming Title IX Sexual Harassment Trainings

**Title IX Sexual Harassment: Deep Dive**

- ☐Thurs, Aug 20, 9:00 am-12:00 pm
- ☐Tues, Sept 15, 12:30-3:30 pm
- ☐Fri, Oct 30, 9:00 am-12:00 pm
- ☐Wed, Jan 27, 12:00-3:00 pm
- ☐Thurs, Apr 15, 12:30-3:30 pm

**Title IX Sexual Harassment: Investigator**

***Requires Deep Dive Training Prerequisite***

- ☐Thurs, Aug 27, 9:00-10:30 am
- ☐Tues, Sept 22, 12:30-2:00 pm
- ☐Fri, Nov 6, 9:00-10:30 am
- ☐Wed, Feb 3, 1:30-3:00 pm
- ☐Thurs, Apr 22, 12:30-2:00 pm

**Title IX Sexual Harassment: Decision-Maker and Appeals**

***Requires Deep Dive Training Prerequisite***

- ☐Thurs, Aug 27, 1:00-2:30 pm
- ☐Tues, Sept 22, 3:00-4:30 pm
- ☐Fri, Nov 6, 1:00-2:30 pm
- ☐Wed, Feb 3, 3:30-5:00 pm
- ☐Fri, Apr 23, 1:00-2:30 pm

# Scan and Join!

**Need to fulfill your Coordinator training requirements?**

Seeking more information?

We have the listservs for you!

Title IX Listserv

Section 504 Listserv

Title VI Listserv

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EDUCATION

# CONTACT US

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