



TITLE IX INVESTIGATIVE PROCESS

- Bedford City School District

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Topics for Today

- Overview of Title IX Amendments
- When Does Title IX apply?
- Forms Used During Title IX Process
- General Principles to Keep in Mind
- Overview of the Investigative Process
- Sample Scenarios
- Additional Considerations
- Effective Investigations



Title IX Overview

- **Title IX** of the Education Amendments Act of 1972 is a federal law that states:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
- Title IX prohibits sex-based discrimination in educational programs and activities.
- Title IX requires school districts to respond to complaints of alleged sexual harassment in a way that is not deliberately indifferent.



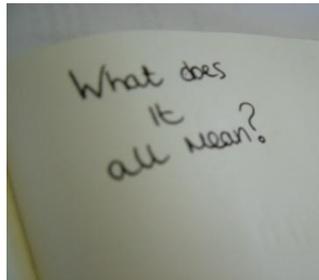
Applicability of Title IX

- Title IX impacts **many** aspects of school district operations
 - Not limited to athletics (although this is the context in which most people think of the regulations)
- Also has applicability to:
 - Recruitment, admissions and counseling
 - Funding (including booster groups)
 - Athletics and extra-curricular activities



What Does Title IX Cover In Schools?

- Discrimination
- Sexual Harassment





Title IX Overview Cont.

- In the summer of 2020, the federal DOE issued additional regulations about what school districts (and post-secondary institutions) must do to ensure they are not deliberately indifferent to sexual harassment.
- These regulations outline the steps of receiving and investigating sexual harassment complaints.
- These steps focus on impartiality, presumption of innocence, and various rights of the **complainant** (alleged victim) and **respondent** (alleged perpetrator).



Steps of Title IX Investigation Process

- Receiving and screening the complaint;
- Notice to both parties; (Notice of allegations form)
- Informal resolution (if appropriate and consent given); (Consent to informal resolution form)
- Interviews and evidence review for both parties; (Notice of interview and notice of opportunity to review evidence forms)
- Investigation report summarizing evidence; (Investigation report)
- Decision making process, including questions and written responses from both sides;
- Written Determination; (Written determination)
- Appeals process. (Appellate decision)



Title IX Overview Cont.:

- These Title IX regulations include detailed requirements and timelines.
- When misconduct implicates both Title IX issues and the school's code of conduct, deciding which regulations to apply and when can be confusing.
- This becomes even more challenging when suspension or expulsion under RC 3313.66 is contemplated or when special education students are involved.



Title IX Sexual Harassment Definition

- Defined as conduct on the basis of sex that satisfied one or more of the following:
 - Conditioning provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct; (Quid pro quo)
 - Unwelcome conduct that a reasonable person would determine to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the District's educational program or activity; (hostile environment) or
 - "Sexual assault" as defined in 20 USC 1092(f)(6)(A)(v), "dating violence" as defined in 34 USC 12291(a)(10), "domestic violence" as defined in 34 USC 12291(a)(8) or "stalking" as defined in 34 USC 12291(a)(30)



Other Important Definitions

- “Complainant”
 - Individual who is alleged to be the victim of conduct that could constitute sexual harassment
- “Respondent”
 - Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- “Actual Knowledge”
 - Notice of sexual harassment or allegations of same to the Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of any elementary or secondary school



When Does Title IX Apply? Three Categories:

- Allegation that District **employee conditioned school benefit, aid or service on an individual's participation in unwelcome sexual conduct. Quid pro quo.**
- Allegation of **unwelcome conduct** determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **denies a person equal access to school's educational program or activity.**
- Allegation of **Sexual assault** / dating violence/ domestic violence /stalking



When Does Title IX Apply? Category 1

Allegation that District employee conditioned school benefit, aid or service on **an individual's** participation in unwelcome sexual conduct.

- Individual can be student, other employee, parent, community member etc.
- Any time an allegation falls into this first category, use the Title IX process for investigation.



When Does Title IX Apply? Cat. 1 Cont.

Allegation that District employee conditioned school benefit, aid or service on an individual's participation in unwelcome sexual conduct.

- Allow for union representative to accompany employee to interviews.
- Wait to issue reprimand, warning, or discipline until Title IX Written Determination is issued.
- Termination proceedings under RC 3319.16 typically begin only **after** Title IX Written Determination is issued.



When Does Title IX Apply? Category 2

Allegation of **unwelcome conduct on the basis of sex** determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **denies a person equal access to school's educational program or activity.**

- Unwelcome conduct by anyone- staff or student
- Denial of equal access can look like: missing class, decline in gpa, difficulty concentrating in class, missing activities.



When Does Title IX Apply? Cat. 2 Cont.

Allegation of **unwelcome conduct on the basis of sex** determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it **denies a person equal access to school's educational program or activity.**

- Use Title IX investigation process when allegations include sexual comments or gendered slurs that affected victim's education in any way.



When Does Title IX Apply: Category 3

Allegation of **Sexual assault** / dating violence/ domestic violence /stalking

- Any allegation of nonconsensual sexual contact, including: rape, attempted rape, fondling, etc.
- Any allegation of violence in a relationship.
- Stalking – conduct that would cause reasonable person to fear for their own safety or safety of others or suffer substantial emotional distress. Includes cyberstalking.



When Does Title IX Apply: Locations

The quid pro quo / sexual harassment / sexual violence allegations described above are only subject to Title IX regulations when they occurred:

- In the United States **and**
- Within the school's buildings or part of school operations, including remote learning platforms **or**
- Off campus if the school exercised "substantial control over the respondent and the context where sexual harassment occurred." i.e. field trip.



When Does Title IX Apply: Locations Cont.

- If the quid pro quo / sexual harassment / assault did not occur in the United States or did not involve an education program/activity of the school or was outside of the school's jurisdiction, **do not use Title IX investigation process.**
- Continue, with caution, to your standard code of conduct disciplinary procedures, if applicable.
- Consult with counsel before disciplining for conduct outside of school jurisdiction as may implicate First Amendment.



Title IX Complaint - Dismissal

Even when a complaint starts out as a Title IX investigation, this may be dismissed if:

- Respondent (alleged perpetrator) no longer employed by or enrolled in District.
- Complainant withdraws allegations.
- Specific circumstances prevent District from gathering enough evidence to make decision.



Forms Required During Title IX Process

- Notice of Allegations
- Dismissal of Complaint
- Consent to Informal Resolution
- Notice of Interview
- Notice of Opportunity to Review Evidence
- Investigation Report
- Written Determination
- Appellate Decision



General Principles to Keep in Mind:

- Keep these processes separate.
- Title IX can be seen as an extended and detailed investigation. Disciplinary proceedings for the Title IX conduct under RC 3313.66 and 3319.16 begin after the Title IX investigation ends.
- When Title IX does not apply, use code of conduct and standard disciplinary procedures.



General Principles Cont.

- If Title IX does apply, use only Title IX procedures until the Written Determination is issued.
- If Written Determination recommends suspension or expulsion, move to standard notice and hearing under RC 3313.66 or for employees 3319.16.
- If Title IX does not apply, the administrator should use the district's code of conduct and discipline as usual.



Overview of the Investigative Process

- The Respondent is presumed not responsible at the outset of the investigation
- The Investigators must remain impartial and be free of conflicts of interest or bias
- Consistent investigation process for student-on-student and employee-on-student sexual harassment



Investigation 34 C.F.R.106.45(b)(5)

- Burden of proof (to show discipline is warranted is on the school).
 - Check your policy (2266) to see what evidentiary standard is used
 - Bedford’s is a preponderance of the evidence standard
 - This means it is “more likely than not (more than 50%)
- Certain treatment records cannot be obtained without voluntary, written consent.
- There is no restriction of the rights of parties to discuss allegations or gather or present evidence.
- Same opportunities for others to be present (e.g., attorney or non-attorney advisor).
- Equal opportunity to present witnesses and evidence at interviews/meetings.



Investigation 34 C.F.R.106.45(b)(5)

- Written notice to parties of date, time, participants, purpose, and location of each that gives sufficient time to prepare **before** investigative interview.
- All evidence provided to parties and their advisors at least 10 days before the investigator completes a written investigative report to allow time for each party to respond.
- Written investigative report must “fairly summarize the relevant evidence” and be provided to parties and advisors at least 10 days before determination of responsibility – so each party may review and respond (i.e. ask written and relevant questions).



Interviews

- School must provide parties written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time to prepare
- No surprise interviews!
- Must provide parties with equal opportunity to present evidence and identify fact and expert witnesses



Standard of Evidence

- The District's Title IX process uses the preponderance of the evidence standard; or
 - It is “more likely than not” that the perpetrator committed the action. Used in civil context. Also known as the more than 50% rule.
- Must apply the same standard of evidence for formal complaints against students as for formal complaints against employees.



Reviewing the Evidence

- Must provide the parties and advisors an opportunity to inspect and review the evidence
 - Evidence that is directly related to the allegations raised in the Formal Complaint
 - Statements, notes of interviews, and other types of evidence the school plans to use before reaching a determination and evidence the school doesn't think it will use
 - Provide the evidence in electronic or hard copy format
- The parties must be given at least 10 days to review all the evidence and submit written responses about the evidence to the investigator



Evidence

- Relevant - Evidence pertinent to proving whether facts material to the allegation are more or less likely to be true and that do not relate to complainant's sexual predisposition or prior sexual acts (with two exceptions)
 - Rape shield - prevents the admission of evidence concerning the sexual predisposition and behavior of an alleged victim of sexual misconduct, subject to certain exceptions
 - Questions about a complainant's prior sexual behavior or sexual predisposition only permitted to establish that another person committed the alleged conduct or that the conduct was consensual
 - Privilege, medical records
- Decision-maker must determine relevancy of every question – explain rationale of why any question is not relevant
 - Could be appealable (procedural irregularity/error)



Assessing Credibility/Weighing Evidence

- Credibility assessments must be bias free, and cannot be made based on sex stereotypes, or on the basis of a party's status as a complainant or status as a respondent.
- Schools are free to provide additional training on these topics, and may adopt specific guidelines for use by decision makers, as long as they do not conflict with the regulations.



Drafting the Investigation Report

- Must fairly summarize the evidence the school gathered about the alleged sexual harassment incident
 - No length requirement
 - Report should show that the investigator considered the parties' written response regarding the evidence, and address whether it comports with or contradicts other evidence
- **Investigator does not** make a finding of responsible or not responsible



Finalizing the Investigation Report

- Investigator must share the final Investigative Report with both parties and their advisors
- Both parties must be given at least 10 days to review and submit a written response regarding the investigation report to the decision-maker before any final determination of responsibility



Sample Scenario No.1

After the high school French class returns from a week-long trip to Paris, a student reports that she was sexually assaulted by a classmate during their stay in France.

- Does Title IX apply?
- What investigative steps should administration take?
- Can the district apply its own code of conduct separate from Title IX process?



Sample Scenario No. 1

- Does Title IX apply?

No. Outside United States.

- What investigative steps should administration take?

**Title IX Coordinator meets with complainant re: supportive measures, documents same, then dismisses the complaint.
(Use Dismissal Form)**

- Can the district apply its own code of conduct separate from Title IX?

Yes, after dismissing Title IX complaint.



Sample Scenario No.2

Jennifer reports that over the weekend, a group of girls used social media to send her harassing messages including gender based slurs such as slut, bitch, whore and suggesting she kill herself.

- Does Title IX apply?
- What investigative steps should administration take?
- Can the district apply its own code of conduct separate from Title IX?



Sample Scenario No.2

- Does Title IX apply? **May not apply if no school devices used and school did not exercise substantial control over respondents.**
- What investigative steps should administration take? **Title IX Coordinator meets with complainant re: supportive measures, documents same, then dismisses the complaint if Title IX does not apply.**
- Can the district apply its own code of conduct separate from Title IX? **Yes, after dismissing Title IX complaint. Consult with counsel re: First Amendment concerns.**



Sample Scenario No.3

Parents report that a fifth grade boy in their daughter's self-contained special education class has been touching and slapping her behind while repeating sexual-content lines from TV shows.

- Does Title IX apply?
- What investigative steps should administration take?
- Can the district apply its own code of conduct separate from Title IX?
- Other considerations?



Sample Scenario No.3

- Does Title IX apply? **Yes.**
- What investigative steps should administration take?
 - File reports with law enforcement and CPS as required by law.
 - Forward Complaint to Title IX Coordinator who must meet with parents and student to discuss supportive measures and then begin formal complaint process by issuing notice to both parties. **(Use Notice of Allegations Form)**
 - Decide whether to offer informal resolution. **(Notice of Consent to Informal Resolution)**
 - Schedule interviews. **(Notice of Interviews)**
 - Evidence Review **(Notice of Opportunity to Review Evidence)**
 - Investigative Report **(Investigation Report)**
- Can the district apply its own code of conduct separate from Title IX? **These allegations are all sexual harassment related with no collateral conduct so the Title IX process must be used and discipline should not occur until the end of that process.**



Sample Scenario No.3

- Other considerations?
 - Discipline may not be permissible if student's misconduct was manifestation of his disability.
 - Manifestation determination review timelines can get complicated.
 - One option is to suspend and refer to MDR only after written determination that sexual harassment did in fact occur.



Sample Scenario No.3

- Other considerations continued:
 - Title IX process does not require a particular form of discipline or any discipline at all, even if the sexual harassment is substantiated.
 - This allows teams flexibility in deciding how to handle complicated situations when perpetrator is disabled. E.g. Behavior Intervention Plan instead of discipline.



Sample Scenario No.4

Student who identifies as MTF transgender gets into a fight with male student A in the hall. Anti-trans comments made during assault. Male student A wields a knife capable of causing serious bodily harm during the fight but does not use it.

- Does Title IX apply?
- What investigative steps should administration take?
- Can the district apply its own code of conduct separate from Title IX?
- Other considerations?



Sample Scenario No.4 cont.

- Does Title IX apply? **Yes. Title IX covers harassment and violence based on gender identity.**
- What investigative steps should administration take?
 - **Forward Complaint to Title IX Coordinator who must meet with student to discuss supportive measures and then initiates formal complaint process by issuing notice to both parties. (Use Notice of Allegations Form)**
 - **Decide whether informal resolution is appropriate. (Probably not appropriate given circumstances of allegations but if appropriate, Notice of Consent to Informal Resolution)**
 - **Schedule interviews. (Notice of Interviews)**
 - **Evidence Review (Notice of Opportunity to Review Evidence)**
 - **Investigative Report (Investigation Report)**



Sample Scenario No.4 cont.

- Can the district apply its own code of conduct separate from Title IX for fighting and knife possession?
 - Only if there is a zero-tolerance or similar consistent policy for imposing discipline for fighting or knife possession.
 - Otherwise could be seen as retaliation against respondents for participating in Title IX investigation.
 - But if the district has zero tolerance and punishes consistently for fighting and knife possession, you can sever the collateral conduct from the Title IX investigation and proceed accordingly.



Sample Scenario No.5

Parents report their 16 year old son's grades have dropped and he has begun skipping school. After going through his cell phone, parents found inappropriate messages between son and calculus teacher, including content with sexual innuendo.

- Does Title IX apply?
- What investigative steps should administration take?
- Other considerations?



Sample Scenario No.5

- Does Title IX apply? **Yes.**
- What steps should administration take?
 - **Take all legally required steps:**
 - **Contact law enforcement**
 - **Contact CPS**
 - **Report to OPC**
 - **Forward Complaint to Title IX Coordinator who must meet with student to discuss supportive measures and then initiates formal complaint process by issuing notice to both parties. (Use Notice of Allegations Form)**
 - **Teacher should be offered union representative as per CBA.**



Sample Scenario No.5

- What investigative steps should administration take?
 - District cannot offer informal resolution because staff-student sexual harassment allegations involved.
 - Schedule interviews. **(Notice of Interviews)**
 - Evidence Review **(Notice of Opportunity to Review Evidence)**
 - Investigative Report **(Investigation Report)**



Sample Scenario No.5

- Can the district discipline teacher outside Title IX process?
 - **The Title IX process should be followed first.**
 - **Consult with legal counsel for nuanced situations.**
- Other considerations? **Teacher may be placed on administrative leave while Title IX process is pending.**



Additional Considerations

- View Title IX as “extended investigation” process. Disciplinary piece begins only after investigation ends and written determination is issued.
- Be prepared to offer compensatory education for respondents who were excluded from school if special education timelines not followed.
- Consult counsel when possible.



Effective Investigations



Investigation Standards Reminders

- The burden of proof is on the school, not the parties
- The investigator must be a person without any perceived conflicts of interests and biases for or against any party
- The investigation should remain equitable



Investigator Dos

- Presume innocence throughout the process
- Be open and receptive to the complaint
- Take the complaint seriously even if it sounds far-fetched or frivolous
- Reserve judgment on whether you believe the complainant
- Follow Board procedures for gathering evidence and conducting interviews
- Respond promptly. Do not wait to undertake an investigation
- Take steps to prevent threats or acts of violence even if the investigation is pending



Investigator Don'ts

- Make light of a complaint
- Show bias when conducting witness interviews
- Discuss the investigation with individuals who do not have a “need to know”



Effective Investigations

- Review all available documentation and Title IX procedures as the first step in the process
- Review and document all relevant evidence at investigation outset and each step during the process
- Prepare in advance for interviews – general questions first, and then drill down to specifics
- Adjust for new information gathered during the investigation and properly document evidence
- Consider relevant witnesses and individuals who need to be interviewed, as well as individuals who should not be interviewed
- Remain flexible throughout the process to ensure the investigation is thorough
- Take caution to avoid prejudgment with regard to guilt or innocence, stereotyping, bias, etc.
- Use the information gathered at this stage to craft questions for witnesses



Investigatory Interviews

- Provide written notice to parties of date, time, participants, purpose, and location of each investigative interview, with sufficient time to prepare
- Have necessary documentation on hand during the interview for reference
 - Relevant documentation related to questions/circumstances to show witnesses
 - Questions prepared for the witness
 - Relevant policies and procedures
 - Allegations
 - Summaries of your documentation for your reference
- Be prepared with necessary resources to take thorough notes during the interview
 - Try to capture exact quotes to the extent possible



Investigatory Interviews

- Be persistent in scheduling witness interviews
- Prepare questions in advance of the interview
 - Tailor questions to each witness
 - Think about what information the witness is likely to have with regard to the facts of the situation
 - Plan to begin with open-ended questions that allow the witnesses to speak in narrative form
 - Gradually narrow questions, with most specific, pointed questions reserved for last
 - Adjust questions as necessary to address information gathered during the interview
 - Think about what information would be beneficial to the decision-maker in making his/her decision



Conduct the Interviews

- Goal: get the interviewee to share information with you





Ask Open Ended Questions

- Describe what happened?
- What was the context? Who was there? Where were they? What were they doing? Why were they there?
- When did the incident occur?
- What did you hear? What did you see?
- What did you do at the time?
- What, if anything, did you tell others (staff, parents, students) about the incident?
- Has anyone else discussed the incident? What did you hear?
- **Anything else I should know?**



Conduct the Interviews

- Start as a discussion, not an interrogation
- Interview individuals separately
- Allow the interviewee to speak freely
 - Do not interrupt
 - Do not tell them they are being irrelevant
 - Let them volunteer information
 - **Listen for contradictions**



Conduct the Interviews

- Script or no script?
 - At least outline the major themes and general facts to address
 - Do not allow the commitment to the script to prevent you from responding to the conversation
 - Need to be able to follow-up on points that may not nicely fit your plan



Conduct the Interviews

- Consider your order of witnesses
- Start with witnesses and then the complainant
 - If you have already received a report
- Interview the “accused” last
 - However, each situation is different
- When interviewing the accused, make sure you tell him/her that they have to answer the questions asked and failure to do so will be treated as insubordination which will result in disciplinary consequences



Conduct the Interviews

- Ensure your questions are answered
 - Ask the question clearly
 - Make sure the answer is responsive
 - Re-ask if necessary
 - **Be sensitive to carefully worded answers**
 - Ask the tough question if necessary
 - **Don't allow the witness to answer a different question than the one you asked**



Conduct the Interviews

- Ensure your questions are answered
 - Follow the non-verbal cues
 - Watch the body language
 - Monitor eye contact
- **Document any behaviors during the interview which impact credibility (e.g. failure to make eye contact, change in pitch/tone of voice)**



Interview Questions

- Ask very broad questions at first
 - “Tell me what happened on [insert date].”
- Narrow your questions slightly, but remain aware of words used and resist the urge to get too specific too quickly
 - “You mentioned that you saw the Respondent on [insert date]. Where did you see Respondent on this day? **OR** When did you see Respondent? **OR** What was Respondent doing?”
- Reserve the most pointed questions for last
 - “Did you see the Respondent interact with the Complainant on [insert date]?”
 - Did you see the Respondent [insert alleged conduct] on [insert date]?”



Interview Questions

- Include questions that illustrate credibility
 - E.g. ask them about an objective fact
- Don't make assumptions and don't rely on stereotypes; remain impartial
- Be conscious of your tone and choose your words wisely
- Ensure that questions are adjusted for age appropriateness and sensitivity to trauma
- Take notes while the witness is speaking and adjust your subsequent questions to follow-up on new and/or unexpected information
- Ask for documentation of evidence discovered during the interview



Trauma and Credibility

- It's important to note that trauma responses can cause individuals to behave differently, which sometimes can be confused with lack of credibility
- Trauma can manifest in different ways and impacts brain processing. For instance, in the form of memory issues or forgetfulness, confusion, hesitancy to report, etc.
- Don't assume that a lack of trauma indicators means that an incident didn't occur
- Likewise, if trauma indicators are present, be cautious to avoid prejudice by assuming that the underlying trauma was caused by Respondent



Trauma-Informed Approach

- Be aware of the impact trauma can have
- Choose your words carefully
 - Use policy and procedure terminology – complainant and respondent
 - Consider the impact of references to a complainant as a “victim”



Investigatory Interviews Takeaways

- Clearly communicate all details regarding the interview process
- Remain polite and unbiased during the interviews
- Encourage the witness to ask questions and provide as much detail as possible
- Communicate next steps to the witness at the end of the interview
- Address confidentiality without prohibiting a party from discussing the allegations
- Update your documentation with notes from interviews, including additional information received or incoming evidence you're expecting from interview
- Adjust questions for other witness as necessary based on gathered evidence



Investigation Finalization

- Prior to investigative report finalization, each party and his/her advisor must receive evidence to inspect and review in electronic format or hard copy
 - All evidence directly related to the allegations must be provided
- Parties must be provided 10 days to submit written responses
 - Follow-up on submitted responses as needed
- The investigator must consider these written responses prior to completion of the investigative report



The Investigative Report



Investigative Reports

- The investigative report must fairly summarize the relevant evidence
 - Who, what, when, where, why?
- As with all other steps, take caution to avoid bias in determining which evidence is relevant and properly documenting such information
- **Remember, the investigative report should not include a determination with regard to the matter**
- **Investigative reports only summarize facts and relevant evidence collected during the investigation**



Investigative Reports

- Avoid conclusory statements
 - Consider the following:
 - “Teacher X seemed hostile toward constructive criticism”

OR

- “Teacher X raised her voice and slapped Principal Y during the conference”



Investigative Reports

- Stand alone document
 - Write for a third-party to understand with no knowledge of the facts
 - Assume that the reader does not understand any of the background
- Not a creative writing exercise
 - Be careful with adjectives



Investigative Reports - Content

- This report is meant to be a summary of the evidence
- Refer to statements and exhibits for full document
- What should be in the report?
 - Description of charges
 - How the charges reached the point of an investigation
 - Witnesses interviewed
 - Witnesses not interviewed (and why)
 - Any procedural or other issues that need explained
 - E.g. police investigation



Investigative Reports - Content

- What should be in the report?
 - Applicable policy provisions
 - Definition of prohibited conduct alleged
 - Related definitions as appropriate (e.g. consent, incapacitated)
- How to organize the report:
 - Chronologically
 - By witness summary
 - By allegation/topic
- Include citations to the record



Investigative Reports - Content

- Give an overview of evidence collected
 - Attach any statements and important evidence as exhibits
- Identify disputed and undisputed facts
 - He said/she said
 - X claims but was unable to provide evidence to support
- Make sure you have facts for each element of charge or explain why you don't



Investigative Report Timeline

- The investigative report must be provided to both parties and their advisors
- Parties must be provided ten (10) days after receipt of the investigative report to submit a written response
- The investigative report also is submitted to the decision-maker who is prohibited from holding a hearing or making a determination in the matter until ten (10) days from receipt of the investigative report by the Complainant and Respondent
- Opportunity to submit written, relevant questions and for reasonable follow-up must be provided prior to a determination of responsibility in the matter



Determinations of Responsibility 34 C.F.R. 106.45(b)(7)

- Decision-maker cannot be the investigator or the Title IX Coordinator
- Must issue written determination addressing:
 - Allegations
 - Procedural steps taken
 - Findings of fact
 - Application of code of conduct to facts





Determinations of Responsibility

- Statement of and rational for result as to each allegation including:
 - Determination of responsibility
 - Any disciplinary sanctions
 - Whether remedies to restore or preserve equal access to the educational program or activity will be provided
- Procedures and bases for appeals
- ❖ Provide to all parties simultaneously
- ❖ Becomes final after appeal time has passed or when appeal result is provided
- ❖ Title IX Coordinator is responsible for ensuring implementation of the remedies.

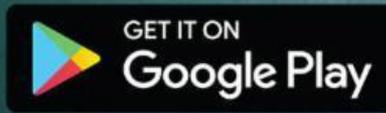


Elements of “Good” Documentation

- Written and dated
- Contemporaneous
- Objective
- Factual and specific
- Consistent



Class Act: Updates in Education Law





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