MODULE 2
Understanding the Title IX Process: From Institutional Requirements through Investigation
Agenda

- Institutional Requirements
  - Notice
  - Recordkeeping
  - Ways to Report
- Responding to Sexual Harassment
  - General Response
  - Responding to Formal Complaint
- Dismissal Process
  - Mandatory and Permissive
- Grievance Process
- Conducting an Investigation
- Report Writing
Institutional Requirements
• Every “recipient” (e.g., school division) must take the following actions:
  • Designate an employee as the “Title IX Coordinator.” 34 CFR § 106.8(a).
  • Have a “policy” stating that the school division does not discriminate on the basis of sex in the education program or activities it operates. 34 CFR § 106.8(b)(1).
  • Prominently display on its website and include in any handbook or catalog the contact information for the Title IX Coordinator and the policy of non-discrimination. 34 CFR § 106.8(b)(2).
  • Adopt a grievance procedure that provides for the prompt and equitable resolution of student and employee complaints alleging prohibited sexual harassment and a process for formal complaints. 34 CFR § 106.8(c).
Notice Requirements

• Who gets notice?
  • Applicants,
  • Students, parents, or legal guardians,
  • Employees, and
  • All unions or professional organizations holding collective bargaining or professional agreements with the school board.
• What is the content of the notice?
  • The name or title, office address, email address, and telephone number of the Title IX Coordinator
  • The fact that the school board does not discriminate on the basis of sex in the education program or activities it operates and that it is required by Title IX and the regulations not to discriminate on the basis of sex.
  • The fact that the requirement not to discriminate extends to employment and that inquiries about the application of Title IX and the regulations to the school system may be referred to the Title IX coordinator, Assistant Secretary (for Civil Rights at US DOE) or both.
  • Notice of the grievance procedure and process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.
• [https://wjccschools.org/about-wjcc/title-ix/](https://wjccschools.org/about-wjcc/title-ix/)
Four types of records must be maintained for at least seven years:

1. Records of every sexual harassment investigation including any determinations, disciplinary sanctions, and remedies.

2. Records of any appeal or any informal resolution and the result.

3. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
   a. The records must document the basis for any conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient’s education program or activity.
   b. If no supportive measures are provided, then you must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The training materials must be made publicly available on the school division website and/or must be available upon request for inspection by members of the public.
Ways Sex Discrimination and Harassment Can be Reported 34 CFR § 106.8(a)

- **Any person** may report sex discrimination and harassment in any of the following ways:
  - in person,
  - by mail,
  - by telephone,
  - or by electronic mail

- A report can be made using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

- A report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.
Responding to Sexual Harassment

The Title IX regulations contemplate two types of responses to sexual harassment:

1. General response to sexual harassment
2. Response to a formal complaint
TYPE 1: GENERAL RESPONSE
• The Title IX regulations provide that a “recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.”
  • “A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.” 34 C.F.R. § 106.44(a).

• What triggers the need to make a “general response”?

• What is a “general response”? 
What triggers the need to make a “general response” to sexual harassment?

1. Actual knowledge
2. Of sexual harassment
3. In an education program or activity of the recipient
4. Against a person in the United States
1. Actual Knowledge

• Actual knowledge
  • For purposes of K-12, “actual knowledge” of sexual harassment is notice of sexual harassment or allegations of sexual harassment to any employee. 34 C.F.R. 106.30(a).
  • This does not require the filing of a formal complaint, or even a written complaint. This could be something that an employee observes or that is reported to an employee.
2. Of Sexual Harassment

- Actual knowledge
- Of sexual harassment
  - Three-prong definition of “sexual harassment”
    - Quid pro quo
    - “Unwelcome conduct” (or “Hostile environment”)
  - Sexual violence as defined by Federal law
3. In an Educational Program or Activity

- Actual knowledge
- Of sexual harassment

In an education program or activity of the recipient. The “education program or activity” includes locations, events, or circumstances over which the school division exercised substantial control over both the respondent and the context in which the sexual harassment occurs and, in the K-12 context, would include the following:

- Regular school day and after school activities
- On the school bus
- School-sponsored extracurricular activities, sports, and fieldtrips (within the U.S.)
- Recognized school clubs
- Virtual/remote instruction
- Regional program/school that is not part of the main campus
- Participation in dual enrollment courses at a community college sponsored by the school division
- Private or residential placements
- Going to and from school
- Employment context
4. Against a Person in the United States

- Actual knowledge
- Of sexual harassment
- In an education program or activity of the recipient
- Against a person in the United States
  - This means that the conduct must occur in the U.S.
If all four factors are satisfied

- If the school division has
  - Actual knowledge
  - Of sexual harassment
  - In an education program or activity of the recipient
  - Against a person in the United States
- Then the school division must make a “general response.”
What is a “general response” to sexual harassment?

• The Title IX regulations provide that a “recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.” 34 C.F.R. § 106.44(a).

• The Title IX regulations outline specific steps that must be taken.
Steps that must be taken to comply with the “General Response” requirement

• The Title IX Coordinator must promptly take the following steps:
  • contact the complainant (alleged victim) to discuss the availability of supportive measures,
  • consider the complainant’s wishes with respect to supportive measures,
  • inform the complainant of the availability of supportive measures with or without the filing of a formal complaint,
  • explain to the complainant the process for filing a formal complaint.

34 CFR § 106.44(a).
Who is the Complainant?

Definition of Complainant and Respondent

• Complainant – “[A]n individual who is alleged to be the victim of conduct that could constitute sexual harassment.”
  • The Complainant will always be the victim even if the complaint was filed by someone else, including the parent on behalf of a student who is under 18.

• Respondent – “[A]n individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”
“Supportive Measures”

- What are “supportive measures”?
  - The term supportive measures “means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed”
  - Supportive measures are “designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.”
Supportive measures may include the following:

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- campus escort services,
- mutual restrictions on contact between the parties,
- changes in work or housing locations,
- leaves of absence,
- increased security and monitoring of certain areas of the campus,
- other similar measures

34 CFR § 106.30(a)
Supportive measures must be confidential to the extent that maintaining confidentiality does not impair the ability of the school division to provide the measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
“Supportive Measures”

- Supportive measures should generally be offered to a complainant and may also be offered to a respondent.
- If supportive measures are not provided to the complainant, the school division must document the reasons why that action is not clearly unreasonable in light of the known circumstances. That documentation must be maintained for a period of seven years. 34 CFR § 106.45(b)(10)(ii).
“General response” to sexual harassment

- The general response should be confirmed in writing for the school division’s records.
- May use FORM LETTER 1.
TYPE 2: FORMAL COMPLAINT
The Title IX regulations contemplate two types of responses to sexual harassment:

- General response to sexual harassment
- **Response to a formal complaint**
Responding to Formal Complaint

• In response to a “formal complaint” of sexual harassment, the school division must give notice of the allegations and then follow its Title IX grievance procedure, unless the formal complaint is subject to mandatory or permissive dismissal.
In response to a “formal complaint” of sexual harassment, the school division must give notice of the allegations and then follow its Title IX grievance procedure, unless the formal complaint is subject to mandatory or permissive dismissal.

- Define formal complaint.
- Notice of allegations.
- Dismissals – mandatory and permissive
- Grievance procedure
• “Formal Complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. 34 CFR § 106.3
  • If the formal complaint is filed by the complainant, it must be signed by the complainant either physically or digitally or otherwise indicate that the complainant is the person filing it.
  • If the formal complaint is filed by the Title IX Coordinator, it must be signed by the Title IX Coordinator.
Definition of Formal Complaint

- If the formal complaint is filed by the Title IX Coordinator, it must be signed by the Title IX Coordinator.
  - Why might the Title IX Coordinator file a Complaint if the Complainant does not want to move forward?
Definition of Formal Complaint

• At the time a formal complaint is filed, the complainant must be “participating in or attempting to participate in” the school division’s education program or activity.
  • If the complainant is a former student who has graduated or disenrolled, no formal complaint may be filed.
  • If the complainant is a former employee who has left the school division, no formal complaint may be filed.
• Upon receipt of a formal complaint, the school division must provide written notice to the known parties of the following:
  • Notice of the grievance process, including any informal resolution process
  • Notice of the allegations, with sufficient details known at the time and sufficient time to prepare a response before any initial interview, including the following:
    • The identities of the parties, if known.
    • The alleged conduct.
    • The date and location of the incident, if known.
Notice of Allegations
34 CFR § 106.45(b)(2)

Upon receipt of a formal complaint, the school division must provide written notice to the known parties of the following:

- A statement that the respondent is presumed not responsible and that responsibility will be determined at the conclusion of the grievance process.
- Notice of right to have an advisor (may be but not required to be an attorney) to inspect and review evidence.
- Notice of any Code of Conduct provision prohibiting false statements or the submission of false information.
- Availability of supportive measures.

- May use FORM LETTER 2.
Mandatory and Permissive Dismissal 34 CFR § 106.45(b)(3)

- Mandatory Dismissal
  - The school division must dismiss a formal complaint (or allegations therein) if:
    - The alleged conduct would not constitute sexual harassment even if proved,
    - The alleged conduct did not occur in the educational program or activity, or
    - The alleged conduct did not occur against a person in the United States.
Permissive Dismissal.

The school division **may** dismiss a formal complaint (or allegations therein) if at any time during the investigation or hearing:

- The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint,
- The respondent is no longer enrolled or employed in the school division, or
- Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination.
The dismissal of a formal complaint does not prevent the school division from proceeding under another policy or code of conduct.

If a formal complaint is dismissed, the school division must provide prompt written notice to the parties of the dismissal and the reason(s).
The school division’s grievance process must meet these ten basic requirements:

1. Treat both parties **equitably** by providing remedies to a complainant when a determination of responsibility is made against the respondent and by following the grievance process **before any disciplinary sanction or action other than supportive measure** is taken against a respondent.

   • **Note: This has implications for student disciplinary actions. [But see Emergency Removals, next session]**

2. Requires an objective evaluation of all available evidence including inculpatory and exculpatory evidence and provide that credibility determinations may not be based on status as complainant or respondent.
3. Requires that the Title IX Coordinator and any investigator, decision maker, or person facilitating informal process not have a conflict of interest against complainants or respondents generally or individually and that all these individuals receive training.

4. Includes a presumption that the respondent is not responsible until a determination is made at the conclusion of the grievance process.
5. Requires reasonably prompt timeframes for conclusion of the grievance process and also allows for a temporary delay or extension of time limits for good cause with written notice to both parties.
   • Good cause may include the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

6. Describe or list possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility.
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<td>Adopt and state a standard of review – preponderance of the evidence or clear and convincing evidence – which must be used for all formal complaints.</td>
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<td>• Preponderance of the evidence means more likely to be true than not.</td>
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<td>• Clear and convincing evidence means highly and substantially more likely to be true than not.</td>
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<td>8.</td>
<td>Include the procedures and permissible bases for the complainant and respondent to appeal.</td>
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9. Describes the range of supportive measures available to both parties.

10. Does not allow questions or evidence that seeks privileged information unless the privilege is waived.
Investigation of Formal Complaint
34 CFR § 106.45(b)(5)
The school division must investigate all formal complaints (except those that are dismissed) consistent with seven requirements. The school division must:

1. Ensure that the burden of proof and the burden of gathering evidence rest on the school division and not on the parties.

2. Provide an equal opportunity for both parties to present witnesses and inculpatory and exculpatory evidence.

3. Not restrict the ability of either party to discuss the allegations under investigation and gather and present evidence.
The school division must investigate all formal complaints (except those that are dismissed) consistent with seven requirements. The school division must:

4. Provide both parties equal opportunities to participate and be represented throughout the process. Any restrictions on the extent to which an advisor may participate in the proceedings must apply equally to both parties.

5. Provide written notice of all hearings, interviews, or other meetings with sufficient time to prepare.
Investigation of Formal Complaint 34 CFR § 106.45(b)(5)

The school division must investigate all formal complaints (except those that are dismissed) consistent with seven requirements. The school division must:

6. Provide equal opportunity to inspect and review any evidence so that both parties can respond. This includes evidence on which the school division does not intend to rely. The evidence must be provided to both parties at least 10 days prior to the completion of the written report and both parties must be given at least 10 days to respond, which response must be considered.

7. Create a written report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if any) or determination, provide the report to both parties and their advisors for their review and written response.
Who conducts the investigation?

• The Investigator may be the Title IX Coordinator or another employee.

• The Investigator cannot be the Decision-Maker or the Appeal Decision-Maker.

• Anyone who conducts investigations must be trained.

• The investigator “must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest or bias.”
  • Impartiality, prejudgment, conflict of interest and bias are all related concepts.
Investigation of Formal Complaint 34 CFR § 106.45(b)(5)

• The investigator “must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest or bias.”

• What does it mean to be impartial?
  • Impartial: unbiased, disinterested (Black's Law Dictionary)
  • Impartial: treating all sides in a dispute, etc., equally, unprejudiced, fair (The Oxford Dictionary and Thesaurus)
  • Impartial: not partial or biased, treating or affecting all equally (Merriam Webster Online Dictionary)

• An impartial investigator will listen to the information provided by each party with equal consideration and without making judgments until the investigation is completed.
Investigation of Formal Complaint 34 CFR § 106.45(b)(5)

- The investigator “must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest or bias.”

- What does it mean to prejudge the facts?
  - Prejudging the facts would be making factual determinations before completing the investigation.
  - Investigators must not reach conclusions before reviewing all the evidence.
Investigation of Formal Complaint 34 CFR § 106.45(b)(5)

• The investigator “must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest or bias.”

• What does it mean to have a “conflict of interest”?
  • The Title IX regulations do not provide a definition of conflict of interest.
  • The commentary states that school, divisions “have significant control, and flexibility” in this area.
  • Conflict of interest: a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties (Black’s Law Dictionary)
  • Conflict of interest: a conflict between the private interests and the official responsibilities of a person in a position of trust (Merriam-Webster Online Dictionary)
Investigation of Formal Complaint 34 CFR § 106.45(b)(5)

- The investigator “must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest or bias.”

- What does it mean to have bias?
  - Bias: inclination; prejudge (Black’s Law Dictionary)
  - Bias: predisposition or prejudice (The Oxford Dictionary and Thesaurus)
  - Bias: a. an inclination temperament or outlook especially: a personal and sometimes unreasoned judgment; prejudice; b. an instance of such prejudice; c. bent, tendency (Merriam-Webster Online Dictionary)
Conducting Effective Investigations

- Who should conduct the investigation?
  - Title IX Coordinator should make this determination.
  - Consider nature of the complaint, complexity, experience of potential investigators.
  - Investigator must be objective and unbiased.
  - Consider existing relationships that may impact (or be perceived as impacting) objectivity or bias.
Conducting Effective Investigations

• Before you start - plan your investigation
  • Review formal complaint
  • Review notes from any initial conversations with complainant/reporter
  • Review applicable policies (and follow them)
  • Determine extent of relevant documents, videos, social media posts, etc.
    • To the extent possible, collect and review relevant documents, videos, social media posts, etc. prior to conducting witness interviews.
  • Determine who to interview and the order in which you plan to interview witnesses
Conducting Effective Investigations

• Determining who to interview
  • Complainant
  • Respondent
  • Eyewitnesses
  • Others with relevant information
  • Witnesses the complainant identifies
  • Witnesses the respondent identifies

• Determining order of interviews
  • Generally, the complainant will be interviewed first and the respondent last.
  • Consider whether there is any benefit to strategically ordering other interviews.
Witness Interviews

Generally

• All interviews should be conducted in a private space and should be discreet.
• Conduct interviews promptly, while memories are freshest.
• Interview each witness separately.
• Listen more than you talk.
• Begin by briefly explaining the purpose of the interview, without too much detail.
• Explain the process and your role and that no conclusions have been reached.
Witness Interviews

Generally

- Ask open-ended questions.
  - Who, what, when, where, why, and how
- Follow up and get the details
  - Tell me more about …
  - What happened next?
  - What else?
- But, after asking open-ended questions, don’t be afraid to ask direct questions.
  - Did you say …?
  - Did you do …?
Witness Interviews Generally

• Take detailed notes of every interview.
  • Consider having a second person designated to take notes.
  • Complete your notes immediately following the interview when the details are still fresh.
Witness Interviews
Generally

• Take detailed notes of every interview.
• In addition to making note of the witness’s answers, also make note of the witness’s demeanor during the interview – but do not make credibility determinations yet.
  • For example, did the witness appear calm and collected or fidgety and sweaty? Did the witness answer each question promptly and look you in the eye or take a long time to come up with answers and display signs of distress?
  • Be careful not to mistake signs of trauma and memory recall with credibility signals
Witness Interviews
Generally

• Get it in writing.
  • But avoid just asking all the witnesses to give a written statement. You must sit down with each witness and ask probing questions.
  • After interviewing the witness, prepare a written statement or notes and have the witness read and sign the notes.
Witness Interviews
Generally

• You cannot promise anonymity or complete confidentiality.
  • You can assure that witness that you will maintain confidentiality to the extent possible and that the investigation is handled on a need-to-know basis.

• Explain prohibition on retaliation and how the witness can report retaliation.

• Each interview should be planned in advance but should not be “scripted.”
Interviewing the Complainant

- Set the tone.
  - Explain the purpose of the interview and the process.
  - Explain your role as objective fact finder.
  - Be courteous but try not to imply that you are a friend.
- Confirm that the complainant believes you can be fair and objective.
- Start with the written, formal complaint and have complainant confirm the completeness of complaint.
- In an orderly fashion, ask questions to elicit the details of each allegation or incident in the complaint.
  - Chronological order is often best.
Interviewing the Complainant

- Focus on one incident or allegation at a time. Get all the details before moving to the next incident or allegation.
- Oftentimes, the complainant will move forward to other events or circumstances that may or may not be relevant to the current incident or allegation being discussed.
  - Listen carefully and take notes. If unclear what the connection is, ask clarifying questions.
  - If complainant provides no connection, direct the complainant back to the incident or allegation you are currently on.
Interviewing the Complainant

• For each incident, attempt to get the following details:
  • Date and time
  • Location
  • Names of everyone present
  • Detailed description of the events
  • Exact words said or gestures used, get quotes whenever possible
  • Reactions of all parties and witnesses
  • Any impact on school environment from the incident
  • Any effort by complainant or others to stop the incident/behavior
Interviewing the Complainant

• Request copies of any documents, video, text messages, social media posts, etc. that the complainant has that are relevant.
  • If the complainant did not keep the messages, etc., ask why not. Explore other avenues to obtain copies. Did the complainant send screenshots to anyone else at the time? Can phone records corroborate that the messages were sent, etc.
  • Consider requesting copies before the interview, so that you can ask questions about them. Otherwise, a follow up interview may be necessary.
Interviewing the Complainant

- Once you have gotten all the details, ask whether there is anything else that the complainant wants you to know. Follow up as appropriate.
- Ask who else you should speak with. Who are the vital witnesses.
- Ask the complainant how the issue could be resolved. Is there a preferred resolution?
- To conclude the interview, describe the procedure that you will follow and expected timelines.
Interviewing the Complainant

• Have the complainant review your notes, make any changes, and sign.

• Advise the complainant to notify you immediately of any retaliation or additional incidents of harassment.

• Consider whether additional supportive measures are appropriate based on information learned during the interview.
Interviewing Witnesses

• Set the tone.
  • Explain the purpose of the interview and the process.
  • Explain your role as objective fact finder.
  • Be courteous but try not to imply that you are a friend.

• Start with general questions and follow up to get details regarding anything relevant shared in response to general questions.

• Then specifically ask about the incidents the person allegedly witnessed. Again, start generally and then more toward the specific.

• Ask questions to confirm the details of the incident, even if the witness did not observe the alleged incident. For example, can the witness confirm that the parties were present?
Interviewing Witnesses

- For each incident the witness is alleged to have witnessed, attempt to get the following details:
  - Date and time
  - Location
  - Names of everyone present
  - Detailed description of the events
  - Exact words said or gestures used, get quotes whenever possible
  - Reactions of all parties and witnesses
  - Any impact on school environment from the incident
  - Any effort by complainant or others to stop the incident/behavior
Interviewing Witnesses

• Does the witness have any relevant documents, videos, messages, etc.? Get copies or ask that the witness follow up with you.

• Ask whether the witness is aware of any other similar incidents involving the respondent. If so, get details.

• Once you have gotten all the details, ask whether there is anything else that the complainant wants you to know. Follow up as appropriate.

• To conclude the interview, ask the witness to maintain confidentiality, to notify you if there is any additional information that comes to light, and to notify you promptly of any retaliation.

• Have the witness review your notes, make any changes, and sign.
Interviewing the Respondent

• Preparation is key.
• Set the tone.
  • Explain the purpose of the interview and the process.
  • Explain your role as objective fact finder.
  • Be courteous but try not to imply that you are a friend.
• Start generally and move to more specific questions. (However, the Respondent will have received advanced notice of the allegations.)
• Ask the respondent about each incident or allegation and get the details of each.
Interviewing the Respondent

• Focus on one incident or allegation at a time. Get all the details before moving to the next incident or allegation.

• For each incident, attempt to get the following details:
  • Date and time
  • Location
  • Names of everyone present
  • Detailed description of the events
  • Exact words said or gestures used, get quotes whenever possible
  • Reactions of all parties and witnesses
  • Any impact on school environment from the incident
  • Any effort by complainant or others to stop the incident/behavior
Interviewing the Respondent

- Request copies of any documents, video, text messages, social media posts, etc. that the respondent has that are relevant.
- Is there anyone else the respondent thinks you should interview.
- Ask the respondent about any possible motives for the complaint. If so, get details.
- To conclude the interview, describe the procedure that you will follow and expected timelines.
- Explain the prohibition on retaliation.
- Have the respondent review your notes, make any changes, and sign.
Completing the Investigation

• Review all interview notes and documents collected.
• Consider whether any additional or follow up interviews are necessary.
  • If so, identify the specific information needed to keep the additional interviews on target.
• Consider whether there are any other documents, videos, etc. that have not already been collected.
Completing the Investigation

- **Remember** that once the investigation is complete but before the report is finalized, both parties must be given the opportunity to (1) inspect and review any evidence that is “directly related to the allegations raised in the formal complaint, including evidence upon which the recipient does not intend to rely and inculpatory and exculpatory evidence” and (2) respond.
  - 34 CFR § 106.45(b)(5).
- The evidence must be sent to both parties and their advisors, if any, in electronic format or hard copy.
Writing the Report

• The Title IX regulations require that the investigator create a written report that “fairly summarizes relevant evidence.” 34 CFR § 106.45(b)(5).

• The regulations do not set forth any other required elements for the report but see requirements for decision-maker’s written decision. 34 CFR § 106.45(b)(7).
What does relevant mean?

Black’s Law Dictionary defines “relevant” to mean “logically connected and tending to prove or disprove a matter in issue; having appreciable probative value – that is, rationally tending to persuade people of the probability or possibility of some alleged fact.”

Material that is not relevant to the allegations in the complaint should not be included in the report.
Writing the Report

• The investigator **must** consider any information that the complainant or respondent submitted after their opportunity to review the evidence so be sure to include a summary of any such information in the report.

• Writing the investigation report requires the investigator to evaluate the evidence.
What should be in a report?

• Introduction
  • Name of the complainant and respondent and date of complaint
  • Brief summary of the allegations
  • List of supportive measures implemented at the outset.

• Applicable School Board Policy
  • Citation to the relevant policies and excerpts of relevant provisions, if appropriate

• Investigative Procedure
  • A summary of the investigation process, including names of all witnesses and identifying all documents, etc.
What should be in a report?

• Statement of Facts
  • The allegations in the formal complaint
  • The respondent’s response to each allegation
  • The facts relevant to each allegation, including other witness’s statements and documents, etc. that support or refute the allegation
  • Any information that the complainant or respondent submitted after their opportunity to review the evidence

• Conclusions
  • Reach a conclusion as to each allegation and explain how the conclusion was reached.
  • Explanation of credibility determinations
  • Explain how conflicts were resolved
Writing the Report

• Evaluating Evidence
  • Credibility determinations
  • Determine the weight to give each witness’s statements and other pieces of evidence
  • Consider the following
    • Consistency
      • Was the person’s statement internally consistent?
      • Was it consistent with other witness’s statements?
    • Bias
      • Does this person have any biases?
    • Personal relationships
      • What is the person’s relationship to the complainant/respondent and how might that impact the weight you give their statements?
    • Motive
Writing the Report

• General Tips:
  • Write clearly and succinctly.
  • Use proper grammar and write professionally.
  • Use the active voice and provide necessary details.
    • COMPARE: “The victim was called derogatory names. The incident was reported to the gym teacher the next day.”
    • WITH: “Sarah reported that on November 10, 2020, Joe repeatedly called her derogatory names, including ‘bitch,’ ‘slut,’ and ‘whore.’ Sarah verbally reported this incident to Mrs. Smith, the gym teacher, the following day, on November 11, 2020.”
Questions?

Contact Info

Pakapon Phinyowattanachip
pakaponp@haneyphinyo.com
804-500-0302

Stacy Haney
shaney@haneyphinyo.com
804-500-0301