



Higher Education





Decision-Maker

**TITLE IX  
DECISION-  
MAKER**

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**LESSON  
ONE**

WELCOME AND REMINDERS



WELCOME



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1

# AGENDA



<a href="#">Lesson One</a> <a href="#">Lesson Two</a> <a href="#">Lesson Three</a> <a href="#">Lesson Four</a> <a href="#">Lesson Five</a> <a href="#">Lesson Six</a> <a href="#">Lesson Seven</a> <a href="#">Lesson Eight</a> <a href="#">Lesson Nine</a>	Welcome and Reminders Role and Scope Overview Title IX Grievance Procedures Grievance Procedures (cont'd) Pre-Hearing Preparation Hearing Determination Determination (cont'd) Wrap-Up and Assessment of Knowledge
---	--



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## COURSE APPROPRIATE FOR:

<input checked="" type="checkbox"/> Title IX Decision-Makers	<input checked="" type="checkbox"/> Title IX Coordinators	Title IX
<input checked="" type="checkbox"/> Deputies/Designees	<input checked="" type="checkbox"/> Investigators	Others involved in
	<input checked="" type="checkbox"/> Title IX matters	



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# COURSE OBJECTIVES

Understand the role and scope of the Title IX Decision-Maker(s)

Learn best practices for your role

Explain the grievance process and your role in it



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## REMINDER!!!

You must still receive training on your policies and procedures

Title IX Coordinator is your ultimate resource

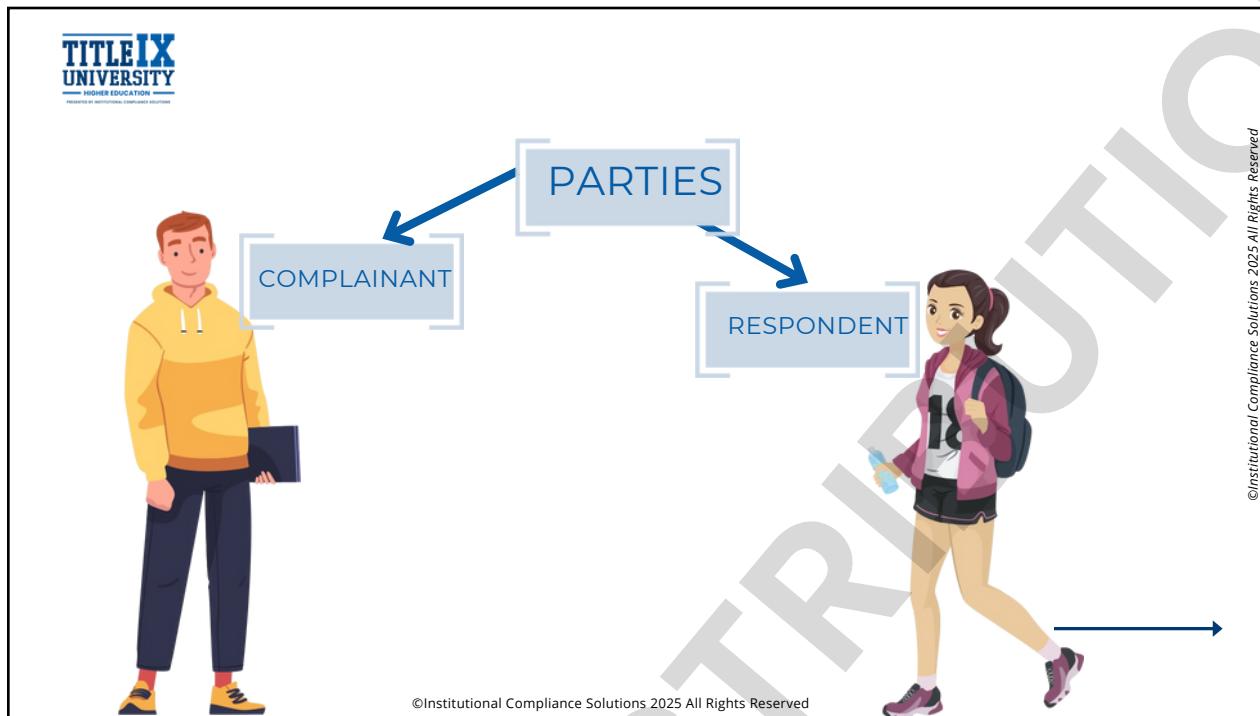
Review definitions from Introduction and Overview Course

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7



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# LESSON TWO

ROLE AND SCOPE OVERVIEW



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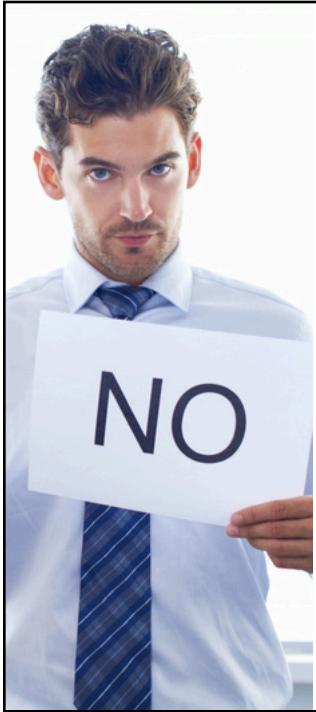
## YOUR ROLE AND SCOPE



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**NOT YOUR  
ROLE:**

- Investigate
- "Prosecute"
- Make a determination for behavior outside of the scope of the investigation

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**REMINDER!!!**

👉 Investigator cannot serve as the Decision-Maker

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**Note:**

You are part of the Title IX Team at your institution.

Title IX Coordinator is leader of that team.

Also on the team:

- Deputies/Designees
- Investigator
- Appellate Decision-Maker
- Informal Resolution Facilitator

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# Avoiding Conflicts of Interest and Bias

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SEE YOU IN LESSON 3!

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# LESSON THREE

RELEVANT PROCEDURES

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## WHAT TYPES OF CASES?

- Who are the parties involved?
- What is the conduct at issue?



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## PARTIES INVOLVED:



- 01 Student on student
- 02 Employee on employee
- 03 Student on employee
- 04 Employee on student

\*WILL YOU BE ONLY HANDLING STUDENT CASES OR ONLY EMPLOYEE CASES?

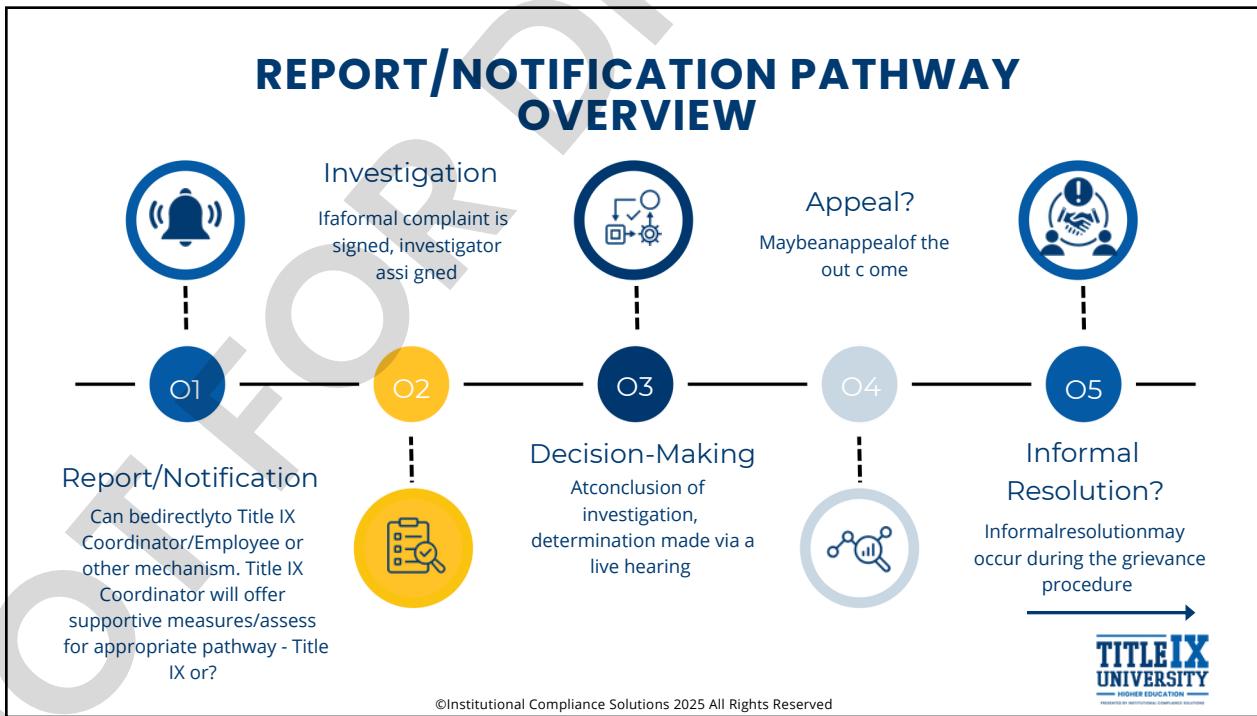


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18



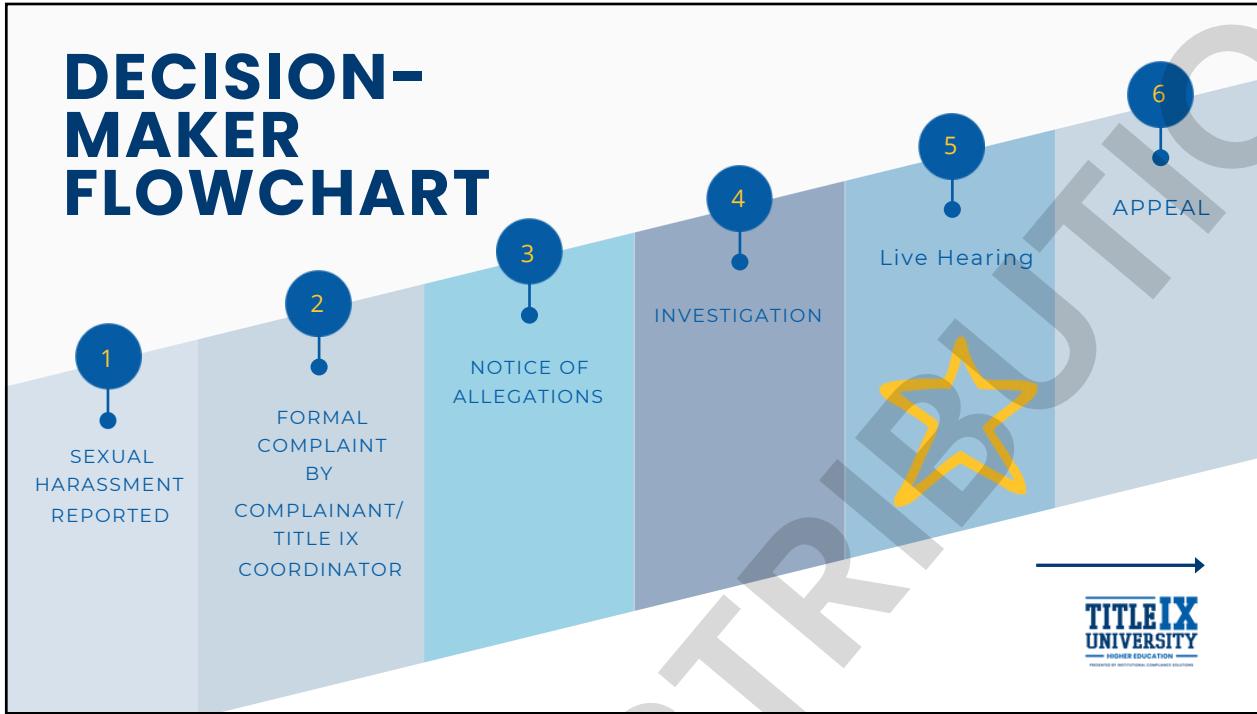
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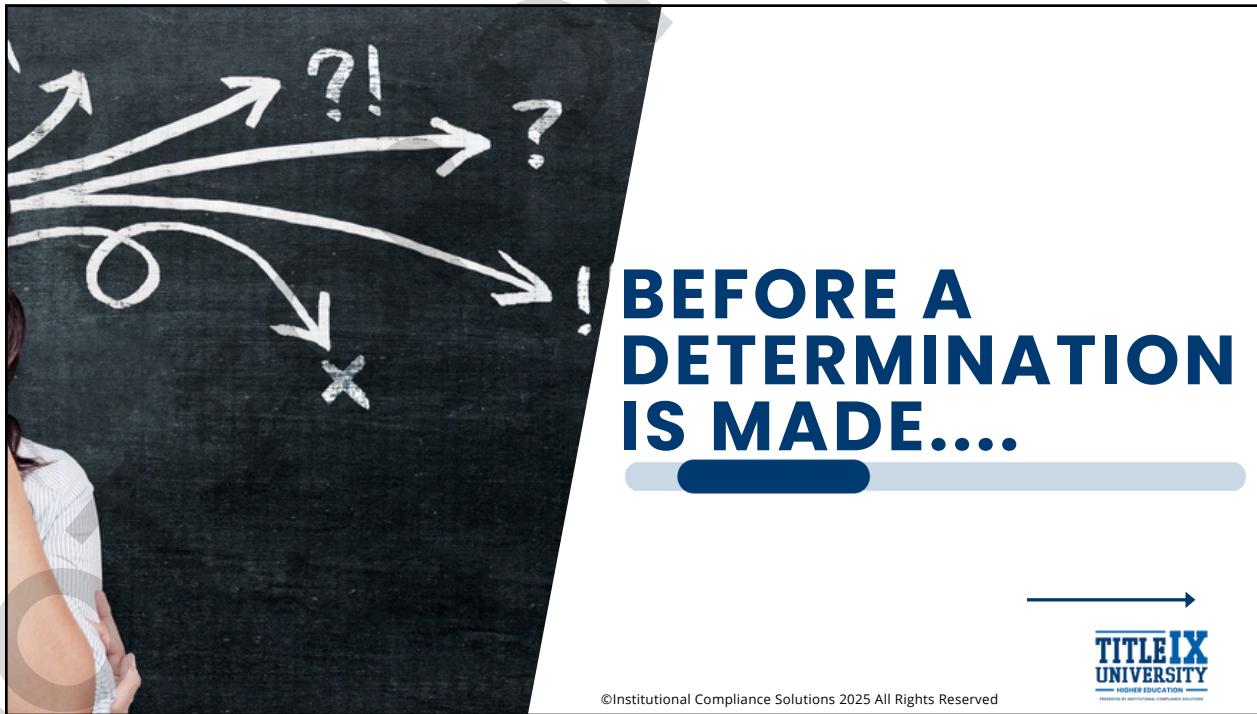
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# DECISION-MAKER FLOWCHART



21



22



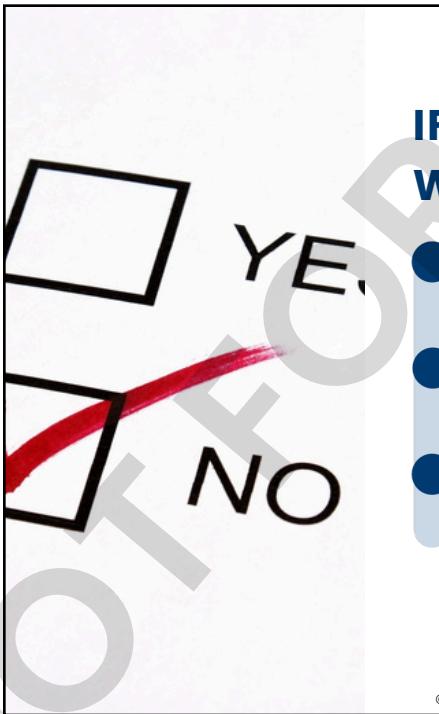
**TITLE IX  
COORDINATOR WILL:**

- Offer Supportive Measures
- Triage/evaluate conduct for Title IX
- Determine if initiating a Formal Complaint
- Consider Emergency Removal/Admin Leave of Respondent

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**IF A COMPLAINANT DOES NOT  
WANT TO INITIATE A COMPLAINT:**

- Title IX Coordinator may sign a Formal Complaint
- Title IX Coordinator does not become the Complainant/a party
- Provide all notices as DM as if Complainant is participating

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## CONSOLIDATION OF COMPLAINTS

SchoolMAY consolidate:

- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party (cross-complaint).



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If a Formal Complaint is signed, an investigator and decision-maker will be assigned, and an investigation will begin.



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Notice of Allegations tells investigator **WHAT** they are investigating, and it should be updated if needed. It also tells the decision-maker what you are making a determination on!



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## NOTICE OF ALLEGATIONS

- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
  - Identities of the parties
  - Conduct constituting Sexual Harassment
  - Date of incident
  - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after Grievance Process
- Right to Advisor of choice
- Code of Conduct provision(s) prohibiting false statements or false information in process



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## Notice of Allegations Checklist

- Notice of Grievance Process; Including Informal
- Allegations Potentially Constituting Sexual Harassment
  - Identities of the Parties
  - Conduct Constituting Sexual Harassment
  - Date of Incident
  - Location of Incident
- Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- Right to Advisor of Choice
- Code of Conduct Provision Prohibiting False Statements or False Information in Process

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What if there is something the investigator doesn't know related to the allegations that is required?

What if they learn something was wrong in the Notice?

What if you learn about additional allegations?

- Provide as much as possible
- Update and send to both parties if/when you know
- Example: dates or specific locations

Fix it and re-send to both parties

Add them and re-send to both parties

**Big Take-Away**

Notice MUST be updated. As a DM, provide checks and balances and assist with curing if an issue is identified.



30

15

SEE YOU IN LESSON 4!

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# LESSON FOUR

GRIEVANCE PROCEDURES CONTINUED

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## CONDUCT AT ISSUE

- \*Review definitions from Introduction and Overview Course and your policies and procedures
- \*Reminder that you need a definition of consent in your policies and procedures



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## OTHER TITLE IX CONDUCT SUBJECT TO GRIEVANCE PROCEDURES



Discrimination based on "sex"

Failure to provide pregnancy accommodations

Discrimination based on pregnancy

Gender-equity in athletics

### Big Take-Away:

*Gain clarity now and in each case on your role if there are multiple policies at issue and/or whether you will be a DM on matters outside of Title IX Sexual Harassment.*



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**INVESTIGATION**



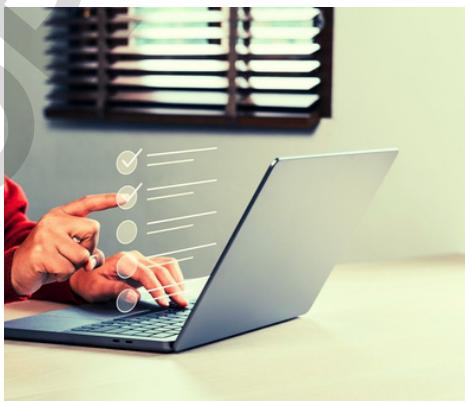
**DECISION-MAKING**

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**WHEN YOU ARE ASSIGNED AS A DECISION-MAKER, CONSIDER:**



Student/Employee? 1

What policies may be implicated? 2

Capacity 3

When did the conduct occur 4

5 Add Disability Resource involvement?

6 Notice of Allegations

7 Conflict of interest/bias?

8 Timeframes outlined in your policies/procedures

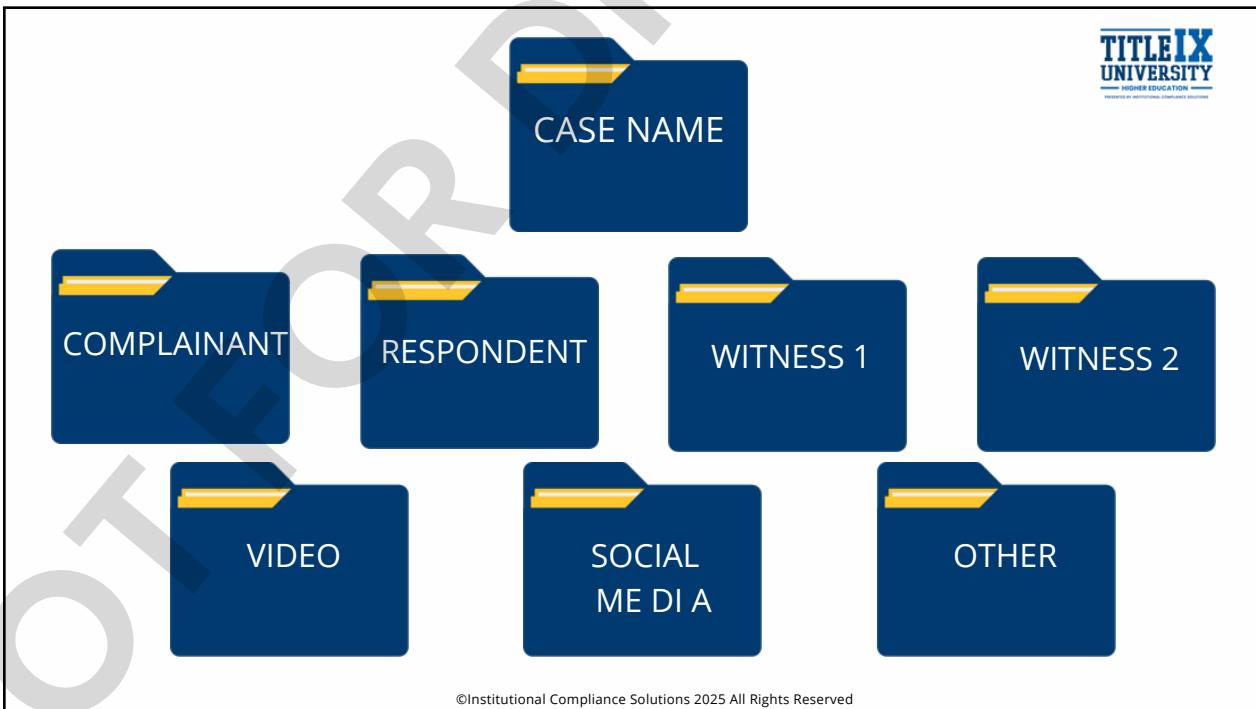
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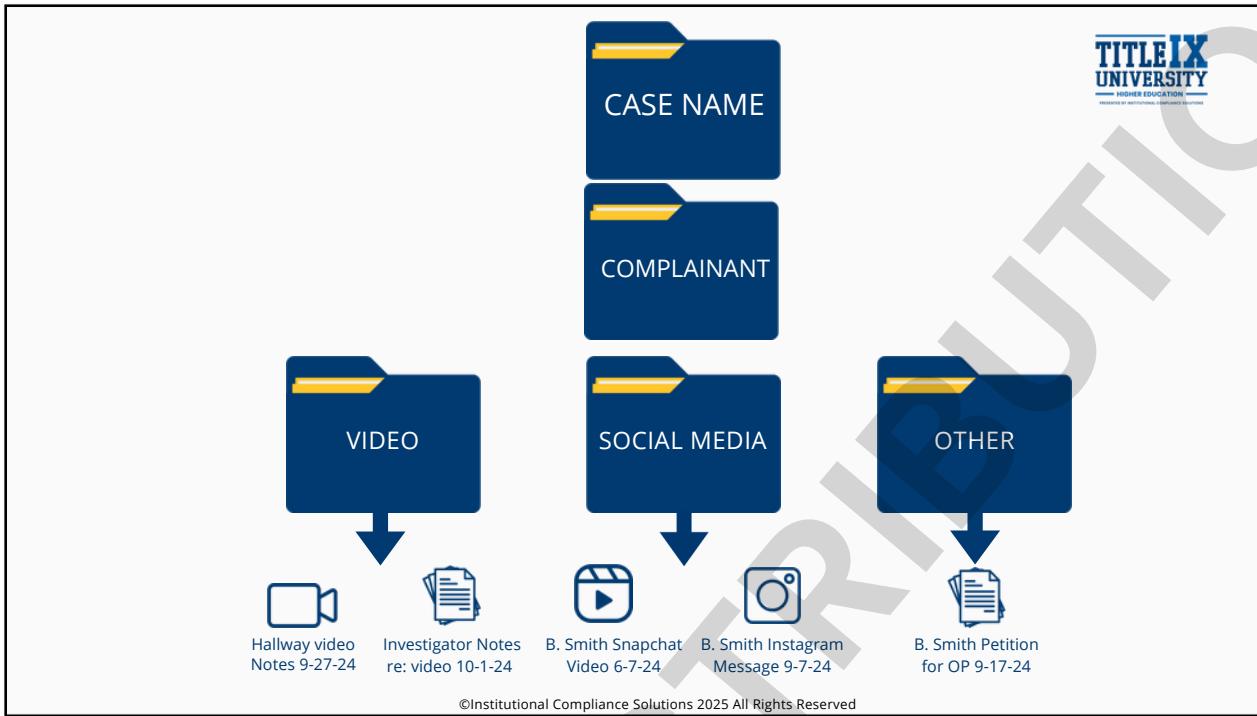
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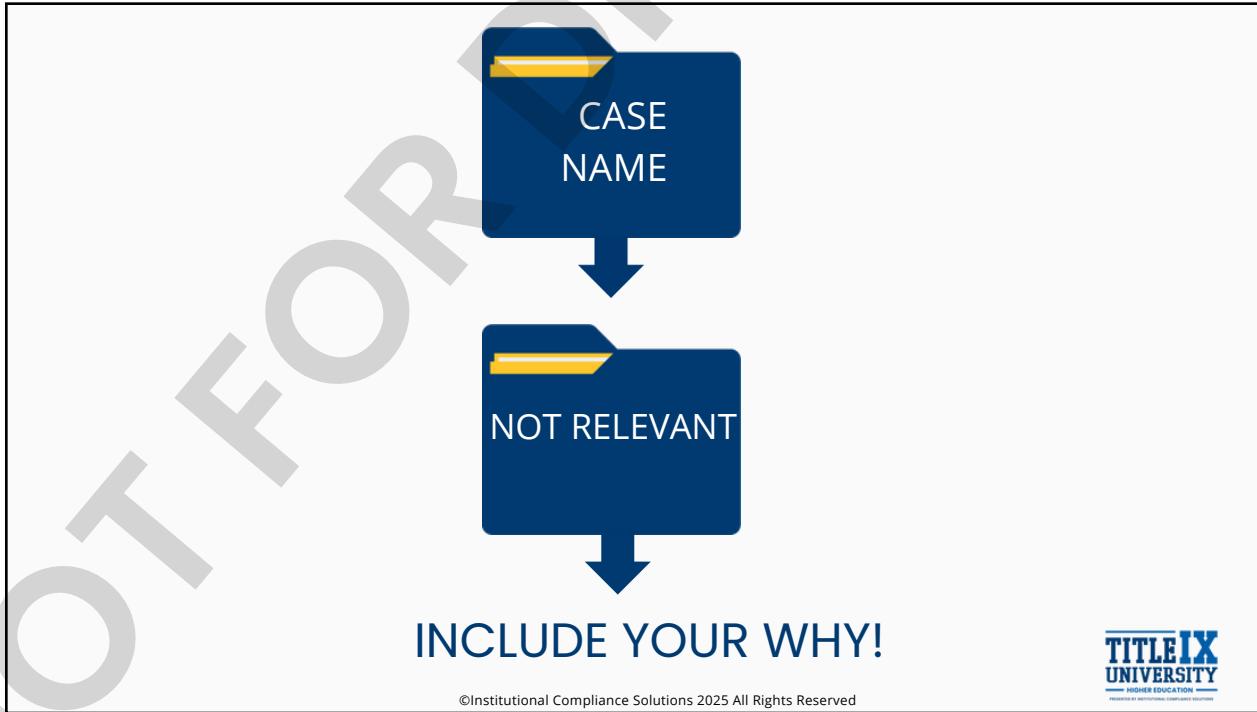
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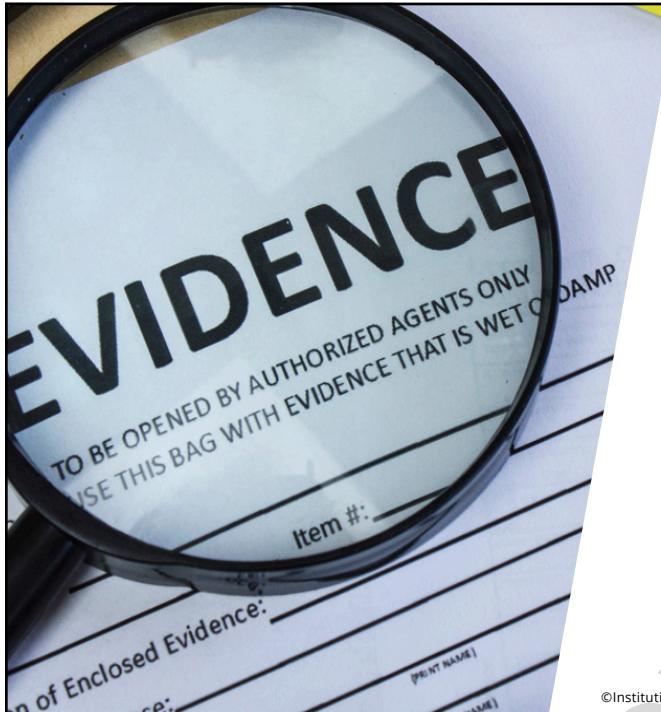
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40



## EVIDENCE REVIEW: THE IMPORTANCE OF ACCESS TO INFORMATION



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MUST: 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 INCLUDING:



The evidence upon which the school does not intend to rely in reaching a determination

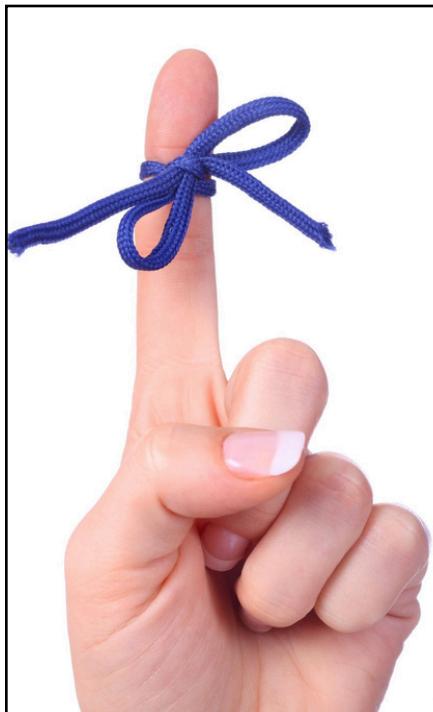
Inculpatory or exculpatory evidence

The purpose is so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.



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**REMINDER!!!**

How Long?

- Ø10 days
- Ø(business or calendar)
- ØDefine in policy

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**THE**  
**INVESTIGATIVE**  
**REPORT**

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## WHAT YOU SHOULD RECEIVE...



Easy to Follow,  
Clear, Concise  
Can the reader  
follow the report  
and understand  
who reported/said  
what?



Roadmap for the  
Decision-Maker  
  
This report will  
guide the decision-  
maker, help them  
ask questions, and  
provide a roadmap  
for their process



Includes the  
Basics  
Assume the reader  
knows NOTHING



Reviewed by  
Colleague  
Trusted  
counterpart



Consistent but  
Not Identical  
There is room for a  
little flexibility

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## A TITLE IX REPORT IS A SUMMARY OF RELEVANT EVIDENCE

THIS IS NOT A DUMP OR COPY OF INVESTIGATOR  
NOTES.



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## MUST: PROVIDE BOTH PARTIES AN EQUAL OPPORTUNITY TO INSPECT AND REVIEW THE REPORT



Required 10-day review and response period (before determination)

Encourage schools to wait on response before sending to DM



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## WHAT TO DO WITH THEIR RESPONSE (if any)

Review it

Take a deep breath (it may be a critique of your work)

Evaluate if there is anything that you missed and need to complete

Note the information in the report, footnotes, or appendix for the Decision-Maker

Move on

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48

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## NOTICE OF HEARING

Must "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, and other meetings, with sufficient time for the party to participate."

- Ø How long? Not specified; recommend 10 days minimum
- Ø States name of DM in order to ensure no objections/conflict
- Ø Who issues the notice?

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## NOTICE CONTENTS

- Ø Date of the hearing
- Ø Location (virtual/in-person)
- Ø Decision-Maker appointed
- Ø Opportunity to challenge for conflict (within a specified timeframe)
- Ø Disability accommodations
- Ø Retaliation reminders
- Ø Copy advisors

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51



52



## BEFORE YOU START... THE IMPORTANCE OF PREPARATION

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## ARE YOU MAKING A DETERMINATION ON MORE THAN JUST TITLE IX?

Title IX

Title VI

Title VII

Code of  
Conduct

Or other?

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# WHAT INFORMATION DO YOU HAVE?

- ▶ Is there anything missing?
- ▶ Were procedures followed?
- ▶ Reminder: You are a check on the process



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# CHECK YOUR BIASES



Where are your potential biases in the case?



Can you overcome any biases that exist?



Is your mind in a neutral position?

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# INTRODUCTION

Who are you?



What is your responsibility?



What policy/policies & procedures are you using?



Something to connect you with the party or witness



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## MAKE SURE YOU ARE USING:

The name they prefer



Their correct title

Their correct pronouns--example some names could be used for both males and females (Jordan)

Their correct email addresses

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29

# DEVELOPING A PLAN



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## Pre-Hearing Preparation



- ◊ Review all documents, evidence, statements, information provided to you, as the Decision-Maker prior to the hearing.
- ◊ Do not pre-judge, keep an open mind.
- ◊ Review resolution/hearing process, rules of decorum, role of advisor.
- ◊ Test technology prior to the hearing or resolution (if emailing, triple check email addresses).
- ◊ Do not discuss the case.
- ◊ Give the process your full, undivided attention.
- ◊ Use a script if conducting a hearing.

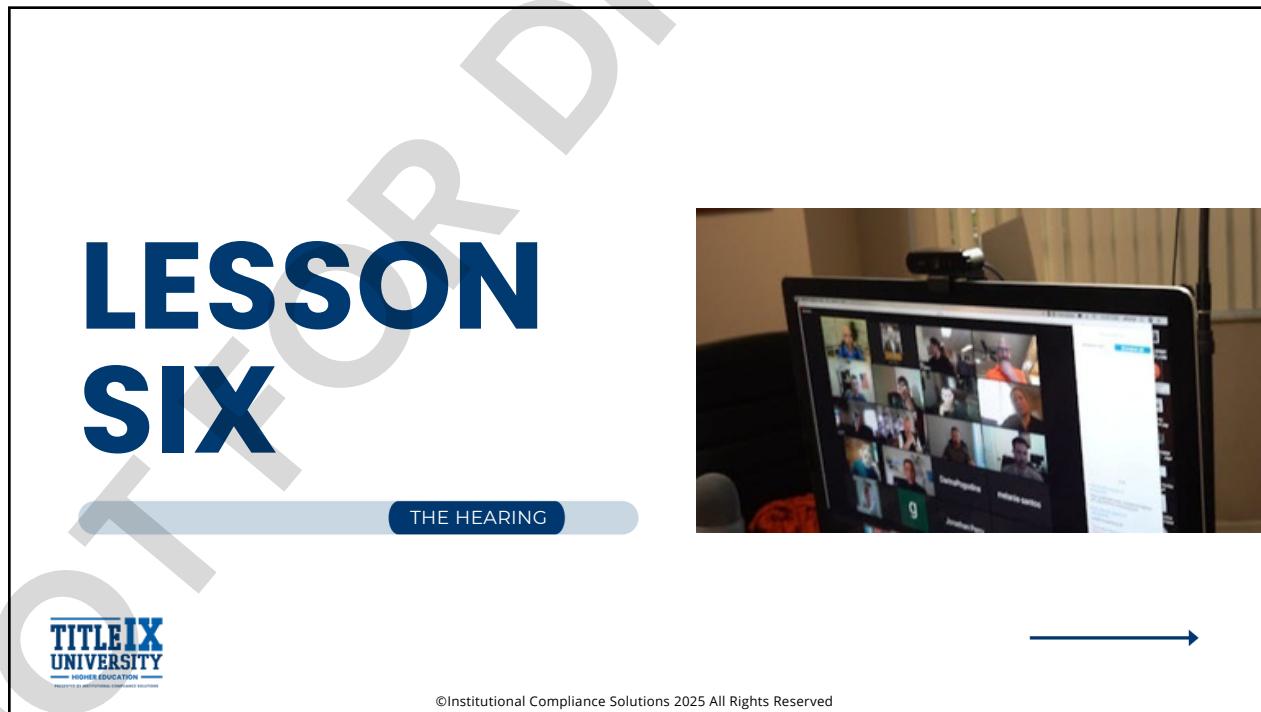
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61



62

# Pre-Hearing Checklist:

- ❖ Introduction of Hearing Officer or Panel
- ❖ Introduction of the Parties and Advisor
- ❖ Explain the Purpose of the Hearing- Due Process
- ❖ Explain Role of Advisors
- ❖ Address Any Conflicts of Interest
- ❖ Explanation of Process per the Policy
- ❖ Explain How Breakout Rooms Will Work
- ❖ Coordination of Witnesses
- ❖ Confirmation of Zoom Link and Privacy
- ❖ Access to Evidence?
- ❖ Procedural Questions



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63

## Be Prepared for Delays

- Party doesn't appear/participate
- Advisor doesn't appear/dismissed
- Parties move to informal resolution
- Witness doesn't appear/participate
- Technology issues
- Illness
- Emergency
- Other

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## Other Considerations:

- ▢ Translation Services
- ▢ Time Zone Considerations
- ▢ Supportive Measures
- ▢ Modifications or Other Accommodations
- ▢ Transcription Services



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## Create a Comfortable Space

- ▢ Private space
- ▢ Comfortable
- ▢ Quiet
- ▢ Convenient
- ▢ Access to technology (internet connection)
- ▢ Desk/table space
- ▢ Sufficient space between parties
- ▢ Private room for breaks/discussion with advisor
- ▢ Waiting room for witnesses (and virtual waiting rooms if appearing virtually)



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## Hearing Process

Panel/Hearing Officer Role

- Breakout Rooms created; who is handling witnesses
- Recording turned on
- Introductions
- Discuss schedule/breaks
- Allegations/Policy Violations read into the record  
(Acceptance?)
- Opening Statements (Limit?)
- Cross-Examinations and Relevancy Determinations
- Evidence Issues
- Witnesses
- Closing Statements

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## SET THE TONE, ENFORCE THE RULES

- The parties and advisors must abide by the rules of decorum set by the institution
  - Provide the rules to the parties prior to the hearing
- The decision-maker must:
  - Set the tone for the process
  - Ensure that the rules are clearly outlined
  - Ensure that the rules are explicitly followed
  - Have the ability to take breaks as necessary

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## MUST PROVIDE AN ADVISOR IF A PARTY DOES NOT HAVE ONE

- Ø Of choice through the process
- Ø Must be provided to the parties at a hearing if they do not have one
- Ø Must be provided and present even if the party is not
- Ø Nothing in the regulations that allows an advisor to “object”



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Ir relevant



## RELEVANCY DETERMINATIONS

ON THE RECORD

MUST EXPLAIN REASON FOR DETERMINATION  
ALLOW OPPORTUNITY TO REPHRASE?

HOW MUCH FOLLOW-UP?

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**RELEVANT**  
related to the allegations of sex discrimination

\*From 2024 Regulations but still appropriate

- Questions are relevant when they seek evidence that may aid in showing whether the alleged sexual harassment occurred.
- Evidence is relevant when it may aid a Decision-Maker in determining whether the alleged sexual harassment occurred.

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Require objective evaluation of ALL RELEVANT evidence	Relevant	Exclude the following types of evidence as not relevant
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in knowing whether the alleged sexual harassment occurred.*	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decision-maker in determining whether the alleged sexual harassment occurred.*	A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness - unless the school obtains the party's or witness' voluntary, written consent for use in the grievance procedures.
	*Specific to vacated 2024 regulations but still instructive	<p>Evidence that relates to the COMPLAINANT'S prior sexual conduct – UNLESS:</p> <ul style="list-style-type: none"> <li>◦Evidence about the Complainant's prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR</li> <li>◦Evidence about specific incidents of the Complainant's prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sexual harassment.</li> </ul> <p>▪Prior consensual sexual conduct between the parties does NOT, by itself, demonstrate or imply consent to the alleged sexual harassment OR preclude determination that sexual harassment occurred.</p>

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**As the Decision-Maker, you can and should also ask questions of the parties or any witnesses.**

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Consider your words:

Guilty v. Not Responsible

You did not prove

v.

The evidence does not support

You lied when you said ...

v.

You were inconsistent when  
you said ...



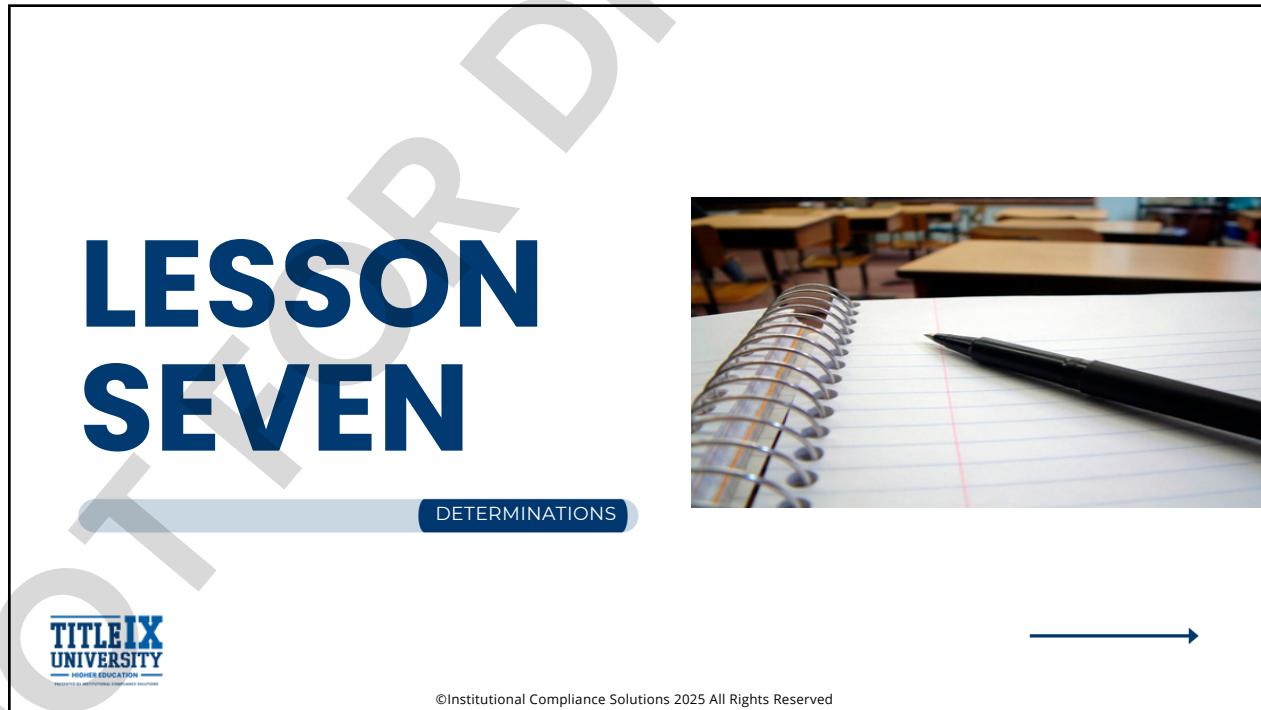
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75



76



**BURDEN**  
The burden is on the INSTITUTION...NOT the parties.

- No ONE has to “prove” anything
- Does the information you have SUPPORT a finding of responsibility
- Be careful with your language

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**Evaluating Witnesses/  
Reviewing Evidence**

- Focus on behavior, not character.
- What information is known?
- What information is unknown?
- What questions could clarify your unknowns?

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39



# REMINDER!!!

 Parties/witnesses may not show up for the hearing

 In those circumstances, you can still consider information from those parties/witnesses in your determination

 How you weigh that information is within your discretion

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79



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### Decision-Maker Determination Regarding Responsibility Checklist

- Identification of the Allegations
- Description of Procedural Steps Taken
  - Notifications to the Parties
  - Interviews with Parties and Witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearings held
- Findings of Fact Supporting Determination
- Conclusions Regarding the Application of the Code of Conduct to the Facts
- Result of Each Allegation Including Rationale
  - Determination Regarding Responsibility
  - Disciplinary sanctions
  - Whether remedies designed to restore or preserve equal access to education program or activity provided to the Complainant
- Procedures and Permissible Bases for Appeal

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**DROP IN YOUR TIMELINES:**

- You should have them from the investigative report (procedural steps taken)

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**USE THE ALLEGATIONS**

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- WHAT DO THEY SAY?
- DROP THEM IN THE REPORT
- INCLUDE THE DEFINITIONS
- BREAK THEM INTO ELEMENTS
- THEN- PUT THE PIECES TOGETHER

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82

# EXAMPLE:



Allegation: On January 7, 2025 Laura grabbed Phil's genitals over his shorts and squeezed while making a sexual comment.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacitation.

Elements:

- Touching
- Of a private body part
- Of another person
- For the purpose of sexual gratification
- Consent



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## IMPORTANT UPDATE



*In June 23, 2025, the FBI issued its annual update to the National Incident-Based Reporting System (NIBRS) User Manual. This update broadens the Title IX definition of "fondling" to "criminal sexual contact". The new definition is:*

- The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim, for the purposes of sexual degradation, sexual gratification, or sexual humiliation.
- This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

**\*\*Talk with your Coordinator and review your policies and procedures regarding your school's response to this change\*\***



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# DEVELOPING FINDINGS OF FACT:

What is uncontested?

What is a fact that has developed through consistencies and inconsistencies despite being contested?

What is still unclear despite ALL of the information?



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## USE THE EVIDENCE

USE THE SUMMARIES IN THE REPORT; NOTES FROM THE INVESTIGATOR; TRANSCRIPT FROM THE HEARING



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# Evaluating Evidence



Don't just rely on the description of a video, audio recording, or other evidence



Watch it--Review it--  
Multiple times



Look for consistencies  
and inconsistencies



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87

## SOCIAL MEDIA



Facebook



Snapchat



Discord



Instagram



X- formerly  
known as  
Twitter



YikYak



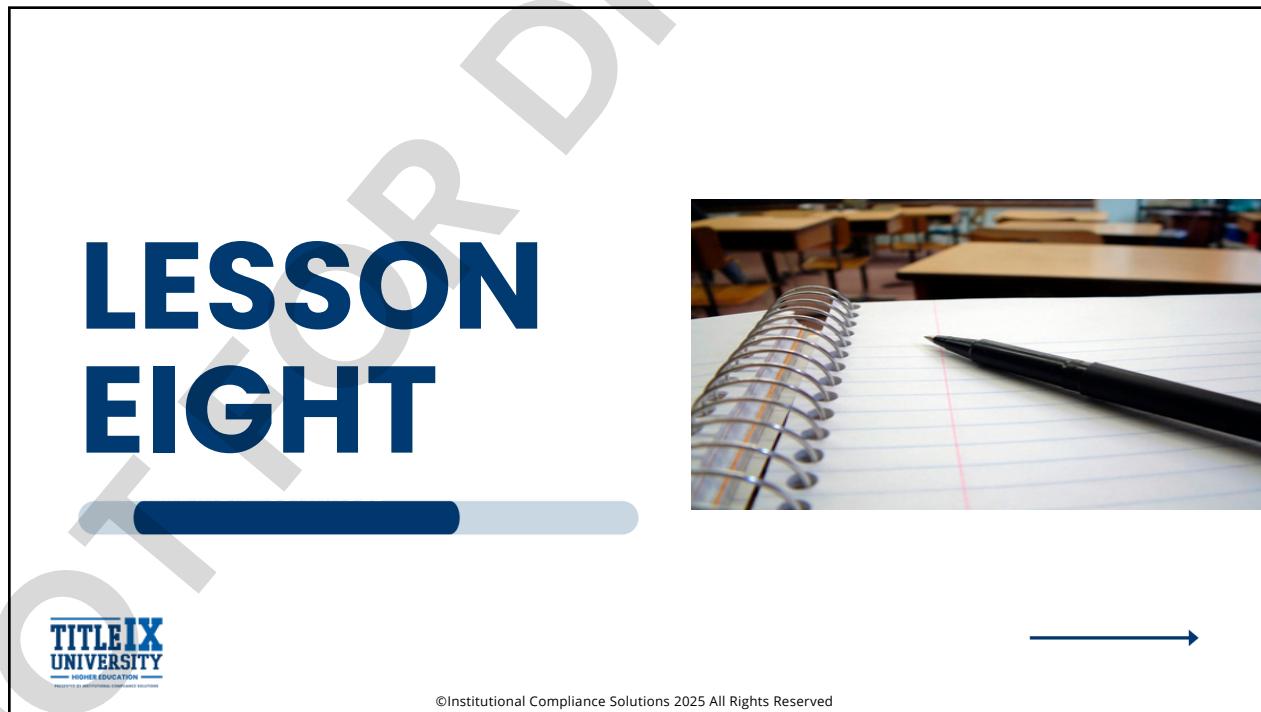
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88

44



89



90



# Connect the facts to the elements

This is your opportunity to connect the dots...or... put the puzzle together.

→

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91



## DETERMINE RESPONSIBILITY

Using Preponderance of the Evidence or Clear and Convincing

- Example Language: A preponderance of the evidence supports (or does not support) a finding of responsibility for fondling.
- NEVER: The Respondent did not prove...
- Make sure to include your WHY--summarize your rationale

→

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92

## INCLUDE THE SANCTIONS IF THERE IS A FINDING OF RESPONSIBILITY

1

WITHIN THE PARAMETERS OF YOUR CODE

2

IF A FINDING, REVIEW PRIOR DISCIPLINE

3

DISCUSS WITH ADMINISTRATORS OR HUMAN RESOURCES TO ENSURE YOUR SANCTIONS CAN BE CARRIED OUT

4

MAKE SURE TO BE EQUITABLE (WOULD YOU INCLUDE THE SAME SANCTION IF THE SEX OF THE RESPONDENT WAS DIFFERENT?)



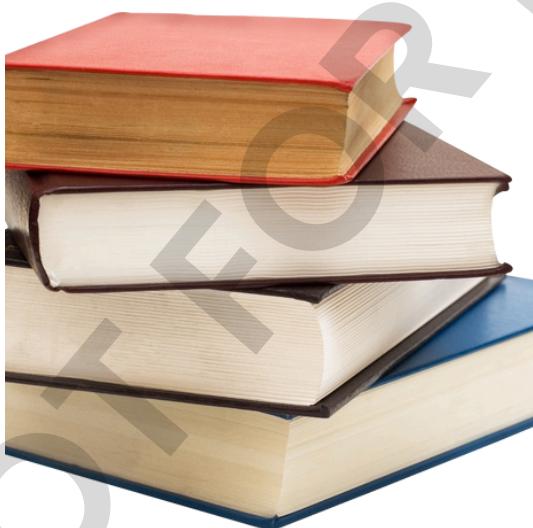
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93

## CONSIDER MORE THAN PUNITIVE ACTIONS...

### INCLUDE:

- EDUCATIONAL OPPORTUNITIES
- RESTORATIVE PRACTICES



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47

# Appeal Options

Need to be included in the determination



Link to policy, who to appeal to, etc.



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# DETERMINATION MUST HAVES

Page

numbers

Footnotes?

- Investigation Timeline(s)
- Events



Appendix/Attachments  
WITH PAGE NUMBERS

- Table of Contents for appendix/attachments
- 



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96

## WHO IS YOUR AUDIENCE?



Judge



Family

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DELIVERY OF THE  
REPORT...  
THE IMPORTANCE  
OF SUPPORT

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49

## THE DELIVERY OF THE REPORT CAN BE TRAUMATIC



Witnesses may say things that are surprising to the parties



Changing the trajectory of individual's lives



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## CONSIDERATIONS



- WHAT IS THE BEST WAY TO DELIVER THE REPORT
- ARE THERE SUPPORT RESOURCES IMMEDIATELY AVAILABLE
- DO YOU NEED TO PROVIDE A HEADS UP THAT IT IS COMING
- NEXT STEPS APPEAL OPTIONS

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# WRAP AROUND SUPPORT

- 1 Intake
- 2 Investigation and Report
- 3 Post Resolution
- 4 Follow Up and Check In



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101

# APPEALS



Offered to both parties

Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility  
On the following basis:

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
- Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
- Additional bases if offered equally to both parties

Notify the other party in writing when an appeal is filed

Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome

Written decision describing the result and rationale for the result

Provide written decision simultaneously to both parties



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102



A slide with a blue banner in the center containing the text "SEE YOU IN LESSON 9!". Above the banner, a large, semi-transparent watermark reads "TITLE IX UNIVERSITY". In the bottom left corner, there is a small logo for "TITLE IX UNIVERSITY HIGHER EDUCATION" and a copyright notice at the bottom: "©Institutional Compliance Solutions 2025 All Rights Reserved".

**SEE YOU IN LESSON 9!**

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A slide featuring the text "LESSON NINE" in large blue letters on the left. Below it is a blue button with the text "WRAP UP AND ASSESSMENT". On the right is a black alarm clock with the word "END" written in red above the 12 o'clock position. The clock has black hands and is set to approximately 10:10. A large, semi-transparent watermark reading "NOT A PIRATED PRODUCT" is diagonally across the slide. In the bottom left corner is the "TITLE IX UNIVERSITY" logo, and in the bottom center is a copyright notice: "©Institutional Compliance Solutions 2025 All Rights Reserved".

**LESSON  
NINE**

WRAP UP AND ASSESSMENT

**TITLE IX**  
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# SUSTAINABILITY

## PLANNING

If you've had a continuing role starting tomorrow, would the person picking up the file know what had been done and what is left to do?



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## REMINDER!!!

Information for case needs to  
be saved for 7 years



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# COMMON DEFICIENCIES

- Failure to include appeal options in determination
- Failure to provide advisors
- Failure to give adequate hearing notice
- Not assisting with curing procedural issues (i.e., no notice; NOA is inaccurate or not updated)
- Not documenting the "why" or rationale for decision
- Allowing parties to conduct cross



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# FINAL THOUGHTS

- Need to follow grievance procedures and policies/procedures; single adjudicator, panel, etc.
- Clarity on your role is critical
- Written determination takes time - template
- Presumption of not responsible - make sure clear through entire process



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108

# TRAINING PATHWAY

## Title IX Decision-Maker



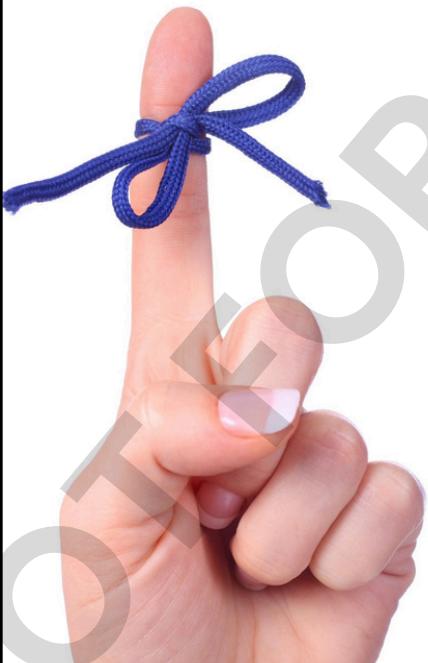
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## REMINDER!!!

 Do not forget your course downloads  
and other resources within Title IX  
University

 Survival Kit



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# QUESTIONS?

Title IX Coordinator  
info@titleixu.com



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# CONGRATULATIONS!!



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112