

HIGHER EDUCATION



TITLE IX INVESTIGATOR



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LESSON ONE

WELCOME AND REMINDERS



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AGENDA

- Lesson One Welcome and Reminders
- Lesson Two Role and Scope Overview
- Lesson Three Before the Investigation
- Lesson Four Prepping for the Investigation
- Lesson Five Investigation - Interviews
- Lesson Six Investigation - Gathering Evidence
- Lesson Seven Investigation - Follow Up
- Lesson Eight Investigation - Identifying and Interviewing Witnesses
- Lesson Nine Investigation - Building and Maintaining Your File
- Lesson Ten Evidence Review
- Lesson Eleven Report Writing and Review
- Lesson Twelve After the Investigation
- Lesson Thirteen Wrap-Up and Assessment of Knowledge



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COURSE APPROPRIATE FOR:

- ☒ Title IX Coordinators
- ☒ Title IX Investigators
- ☒ Deputies/Designees
- ☒ Title IX Decision-Makers
- ☒ Others involved in Title IX matters



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COURSE OBJECTIVES

Understand the role and scope of the Title IX Investigator

Learn best practices for your role

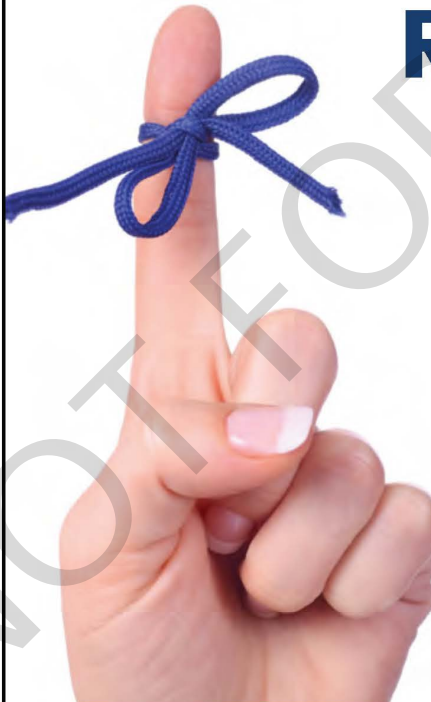
Explain the grievance process and your role in it



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REMINDERS!



You must still receive training on your policies and procedures



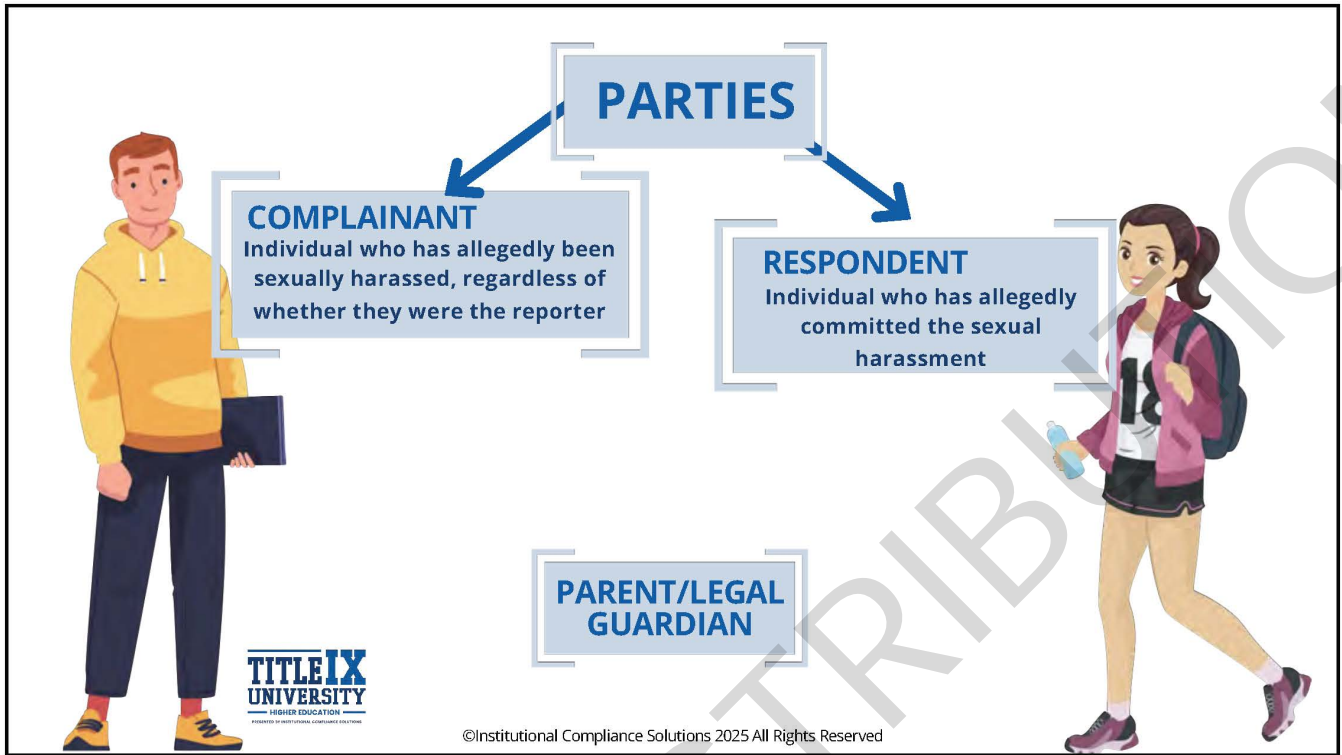
Title IX Coordinator is your ultimate resource



Review definitions from Introduction and Overview Course



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LESSON TWO

ROLE AND SCOPE OVERVIEW



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**WHAT IS THE
ROLE/PURPOSE OF A TITLE
IX INVESTIGATOR (WHY
ARE WE DOING THIS
WORK?)**



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YOUR ROLE AND SCOPE



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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
- Decision-Maker
- Appellate Decision-Maker
- Informal Resolution Facilitator

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GIANT REMINDER!!!

 Investigator cannot
be a decision-maker

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SEE YOU IN LESSON 3!



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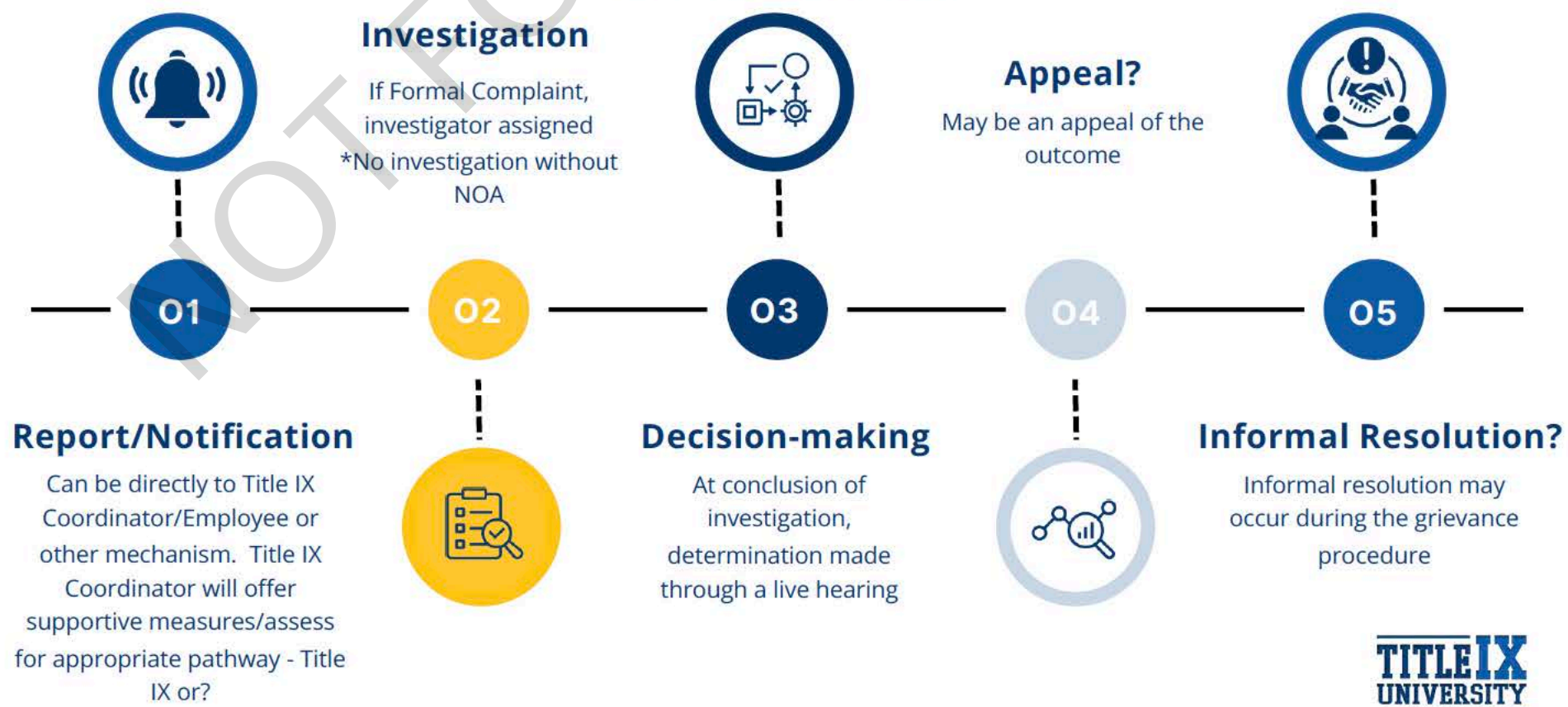
LESSON THREE

BEFORE THE INVESTIGATION



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REPORT/NOTIFICATION PATHWAY OVERVIEW



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BEFORE A MATTER IS INVESTIGATED...

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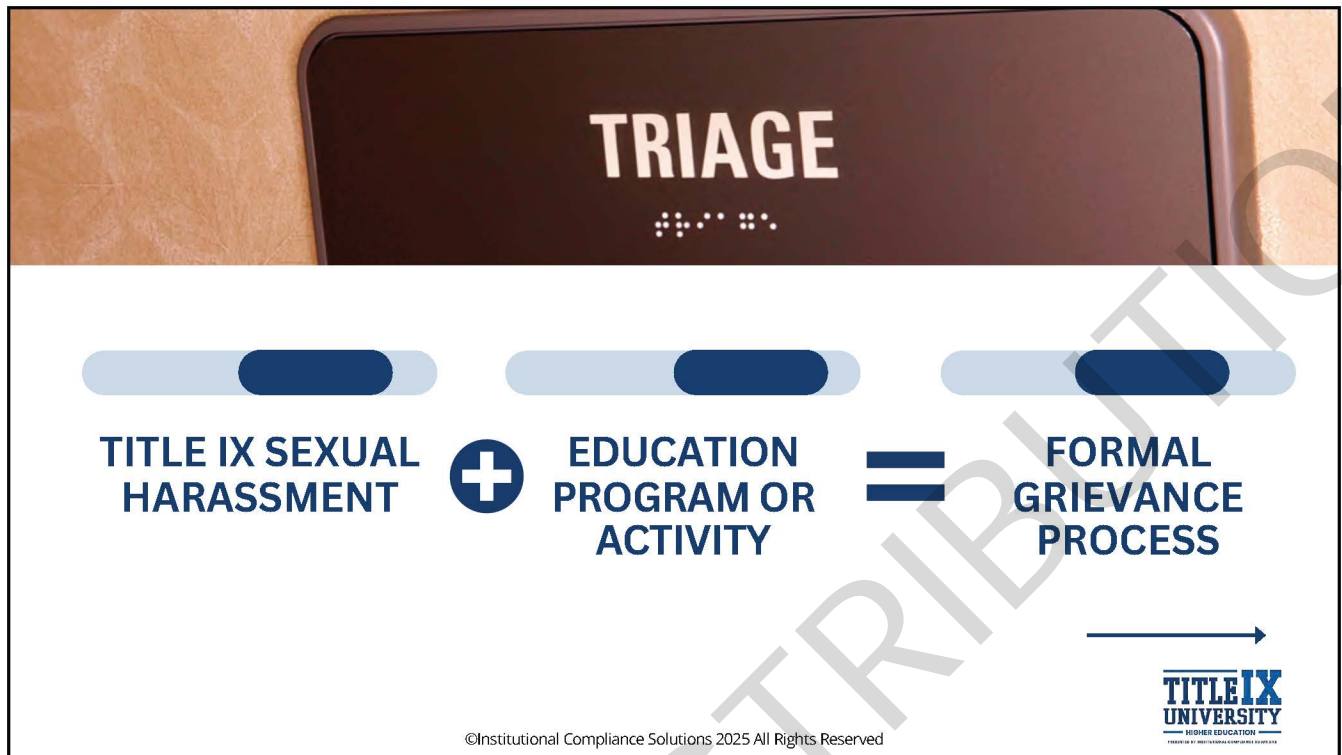


TITLE IX COORDINATOR WILL:

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

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GIANT REMINDER!!!

👉 No Investigation before or without a Formal Complaint

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ROLE OF INVESTIGATOR WITH SUPPORTIVE MEASURES?



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IF A COMPLAINANT DOES NOT WANT TO FILE A FORMAL COMPLAINT:



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

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CONSOLIDATION OF COMPLAINTS

School MAY 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.




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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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COMPLIANCE SOLUTIONS**

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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NOTICE

Notice of Allegations tells you
WHAT you are investigating, and
it should be updated if needed.
Do not investigate matters
outside of the NOA!

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THE TWO MOST IMPORTANT DOCUMENTS FOR AN INVESTIGATOR

- 1 Formal Complaint
- 2 Notice of Allegations

- Do not investigate matters outside of what is in the NOA
- If more information comes to light, you will need to update and redistribute the NOA

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SEE YOU IN LESSON 4!



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LESSON FOUR

PREPPING FOR THE INVESTIGATION



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If a Formal Complaint is signed, you will
be assigned as an Investigator.



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WHAT TYPES OF CASES WILL YOU BE INVESTIGATING?

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



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CONDUCT AT ISSUE

**Review definitions from Introduction and Overview Course and your policies and procedures*



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YOU MAY BE ASKED TO INVESTIGATE MATTERS OUTSIDE OF TITLE IX FORMAL GRIEVANCE PROCESS WITHIN THE SAME INVESTIGATION

- It should be included in the NOA (i.e., student conduct violations)
- Get clarity if you are unsure
- If parallel processes, confirm with Coordinator on most trauma informed approach



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NOTICE OF MEETINGS

MUST provide WRITTEN notice of the

- date
- time
- location
- participants
- purpose
- of all hearings, investigative interviews, or other meetings, with SUFFICIENT TIME for the party to prepare



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REMINDER!!!

👉 Don't forget to include advisors

*note: not required to provide notice to witnesses, but we recommend it

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IMPORTANT NOTES FOR INVESTIGATIONS:

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BURDENS

- Burden of gathering evidence on school - NOT the parties
- Burden/Standard of Proof - Preponderance of the Evidence (more likely than not) or Clear and Convincing Evidence
- May NOT access, consider, disclose, or use party's treatment records unless school obtains voluntary WRITTEN consent
- MUST provide equal opportunity for parties to:
 - Present witnesses (fact or expert--does not say character)
 - Gather and present relevant evidence
- May NOT restrict the ability of the parties to discuss the allegations or gather and present relevant evidence (no gag orders)

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BEFORE YOU START... THE IMPORTANCE OF PREPARATION

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WHAT INFORMATION DO YOU HAVE?

▶ Is there anything you need before you meet with parties and/or witnesses?



→

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DEVELOPING A PLAN



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SEE YOU IN LESSON 5!



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LESSON FIVE

INVESTIGATION - INTERVIEWS



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OPENING THE MEETING... THE IMPORTANCE OF TRANSPARENCY

Transparency

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YOU ONLY GET ONE FIRST IMPRESSION

*Before they "walk in" either in person or virtually,
CHECK YOURSELF*

-  Let go of whatever is happening outside that meeting
-  Refresh your mind with names and dates
-  Note your facial expressions
-  Prepare the room

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TRAUMA INFORMED MEETING NECESSITIES

THE 4 - C'S



Comfortable



Clear



Consistent



Convenient

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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

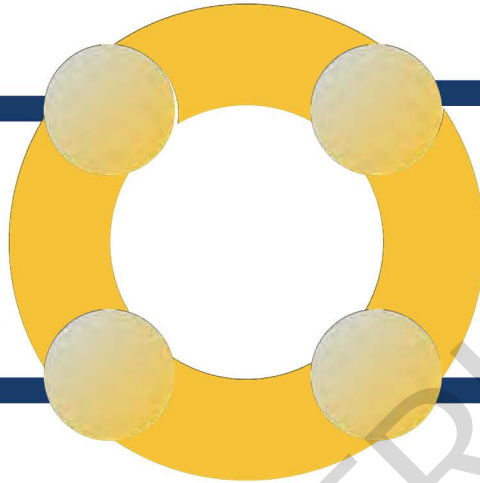
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GET TO KNOW THE PARTY/WITNESS



What name do they prefer?



Find a similarity

What is their position? (year in school, employment role, etc.)



Something to discuss?



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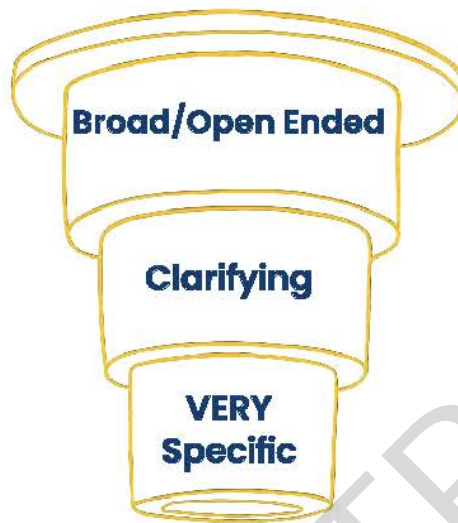


ASKING QUESTIONS... THE IMPORTANCE OF GAINING CLARITY



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FUNNEL METHOD



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THE NEED TO KNOW QUESTIONS

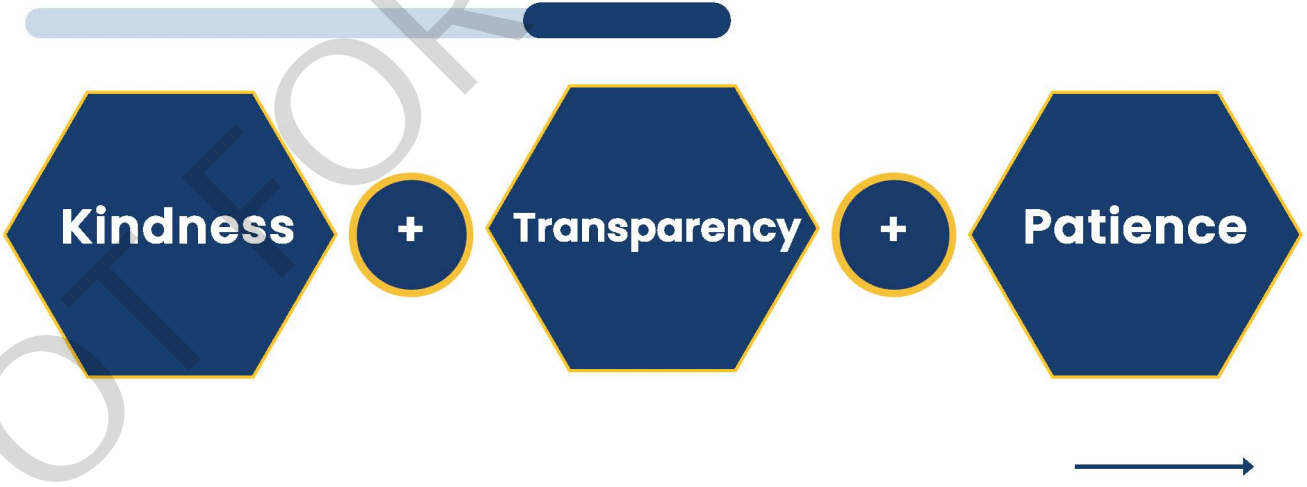


- What happened?
- How do you know about it?
- How did it happen?
- Who did it happen to?
- How do you know these parties?
- Who else was there?
- When did it happen?
- Where did it happen?
- Why – without saying WHY

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THE FORMULA FOR QUESTIONING



Kindness + Transparency + Patience

→

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CHALLENGING WITNESSES / PARTIES

The "Hulk"



The Rabbit Chaser



The "Turtle"



The Big Reveal



The Reluctant Participant



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NOTE-TAKING

Detailed, but not so much that it slows down the interview

Decide what is most important

Extra person in the room?

- Give notice and explain their role as note-taker

Use quotations if possible

Note-taker vs. dual investigator

Ask for a pause or clarification if necessary



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LESSON SIX

INVESTIGATION - GATHERING EVIDENCE



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THE IMPORTANCE OF CURIOSITY WHEN GATHERING EVIDENCE



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SLEUTH

Noun

a person who investigates a crime; a detective



Verb

carry out a successful investigation into a crime or mystery

"there's nothing you can do but sleuth around until you find the answer"



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VIDEO QUESTIONS



- ❓ Do you have access?
- ❓ Who else has access?
- ❓ How long is it stored?
- ❓ Do you know how to save it?
- ❓ Does someone make sure all cameras are working regularly?



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SOCIAL MEDIA

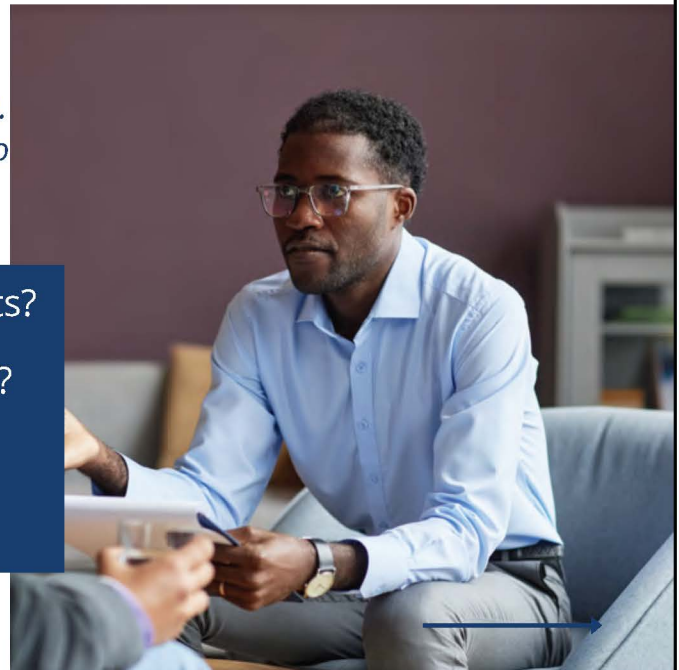


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BURDEN

*The burden is on you to ASK for information.
The burden is NOT on the party or witness to
"offer it".*

- ? Do you have any phone or texts?
- ? Was anything shared on social?
- ? Did you email about this?
- ? Is there any geo-tracking?



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INDEPENDENT INVESTIGATIVE ACTIONS

Think outside the box



Make the phone call



Find the witness



Visit the location



Google the term



Take the photo



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SEE YOU IN LESSON 7!



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LESSON SEVEN

INVESTIGATION - FOLLOW-UP



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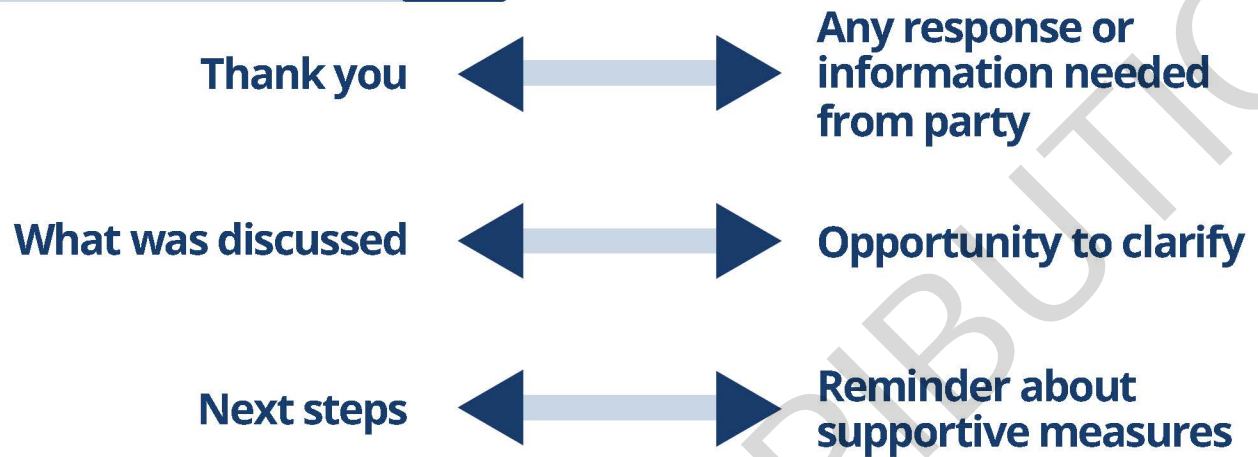
ASSESS SUPPORT NEEDS



- How was the party?
- Do they need additional support?
- Counseling?
- Academic support?
- No contact directives?
- Concerns about retaliation?

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EMAIL FOLLOW UP



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DOCUMENTATION

- ✓ Clean up notes
- ✓ Save notes
- ✓ Save evidence collected
- ✓ Create to do list
 - Witnesses to connect with
 - Evidence to collect
 - Follow up meetings to schedule



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If you were unable to continue with the investigation starting tomorrow, would the person picking up the file know what had been done and what is left to do?

Sustainability Planning

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REMINDER!



Information for case needs to be saved for 7 years



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LESSON EIGHT

IDENTIFYING AND INTERVIEWING WITNESSES



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WHO ARE YOUR WITNESSES AND WHO IDENTIFIED THEM?

Witnesses
identified by the
Complainant

Witnesses
identified by the
Respondent

Witness

Witnesses
identified by you

Witnesses
identified by other
witnesses



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TYPES OF WITNESSES



-  Eye Witnesses
-  Fact Witnesses
-  Expert Witnesses
-  Hearsay Witnesses
-  Character Witnesses



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MOST IMPORTANT QUESTIONS



- How do you know the Complainant?
- How do you know the Respondent?
- How do you know the other witnesses?
 - *How long?*
 - *In what capacity?*
 - *Describe your relationship with them*



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MEMORY

- How much do witnesses actually remember?
- What impacts memory?



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SEE YOU IN LESSON 9!



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LESSON NINE

INVESTIGATION - BUILDING AND MAINTAINING YOUR INVESTIGATIVE FILE



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CASE NAME

COMPLAINANT

RESPONDENT

WITNESS 1

WITNESS 2

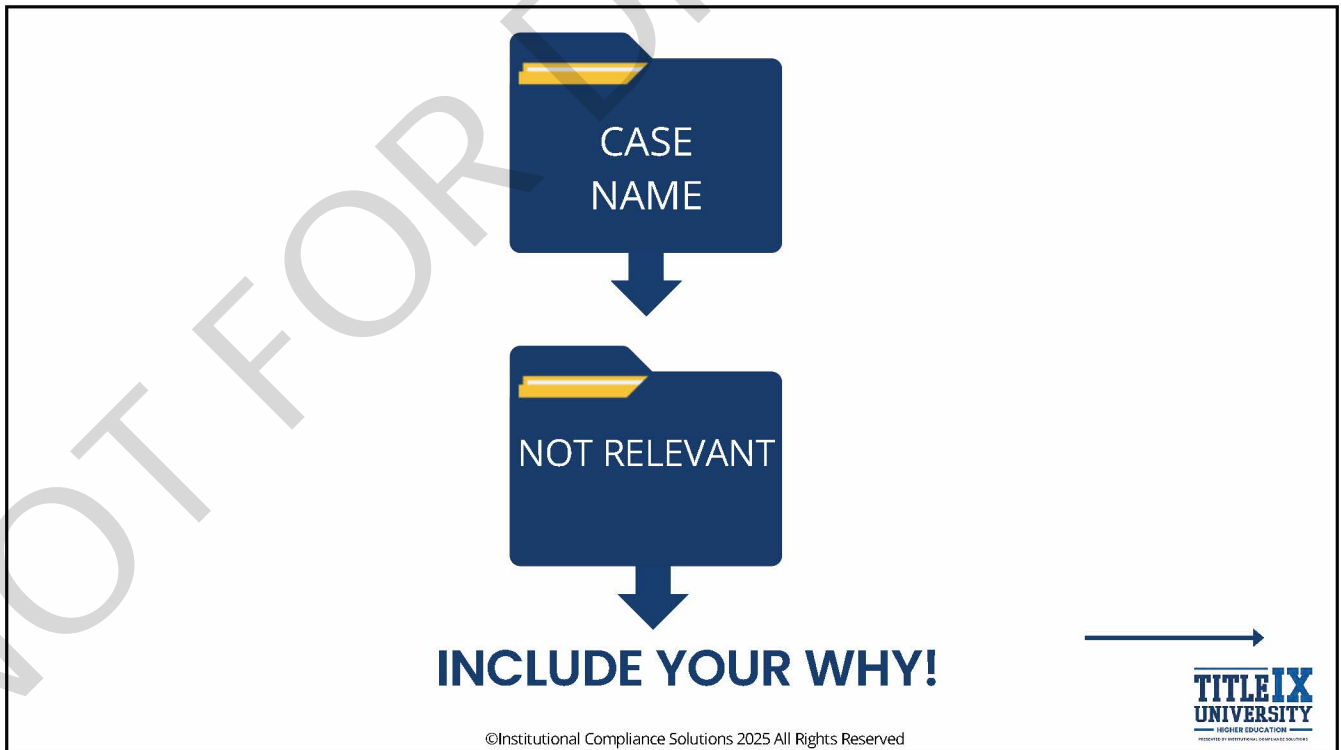
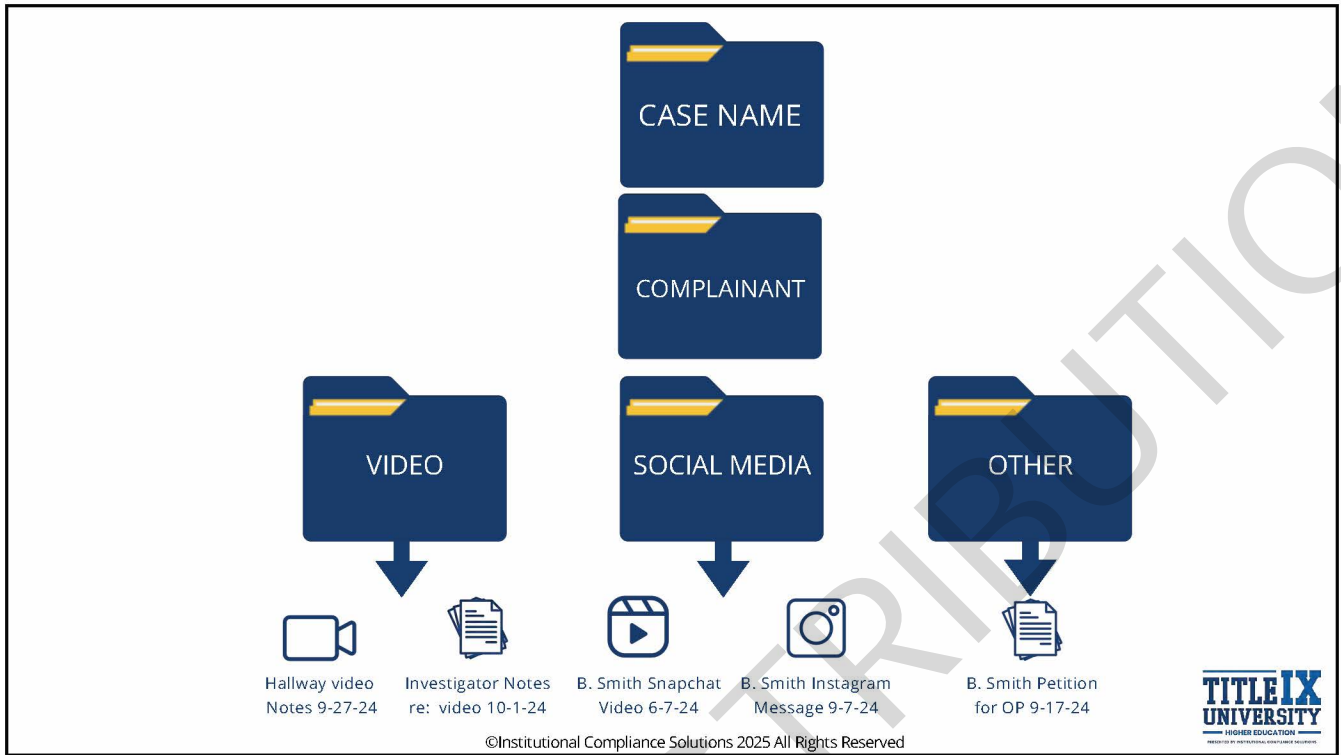
VIDEO

SOCIAL
MEDIA

OTHER



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SEE YOU IN LESSON 10!



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LESSON TEN



EVIDENCE REVIEW



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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



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CHALLENGES WITH REVIEW:



01

Sending securely

02

The anxiety it may cause *(PROVIDE SUPPORT)*

03

The VOLUME of information

04

Some of the information may not be "Relevant"



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REMINDER!



How Long?

10 days

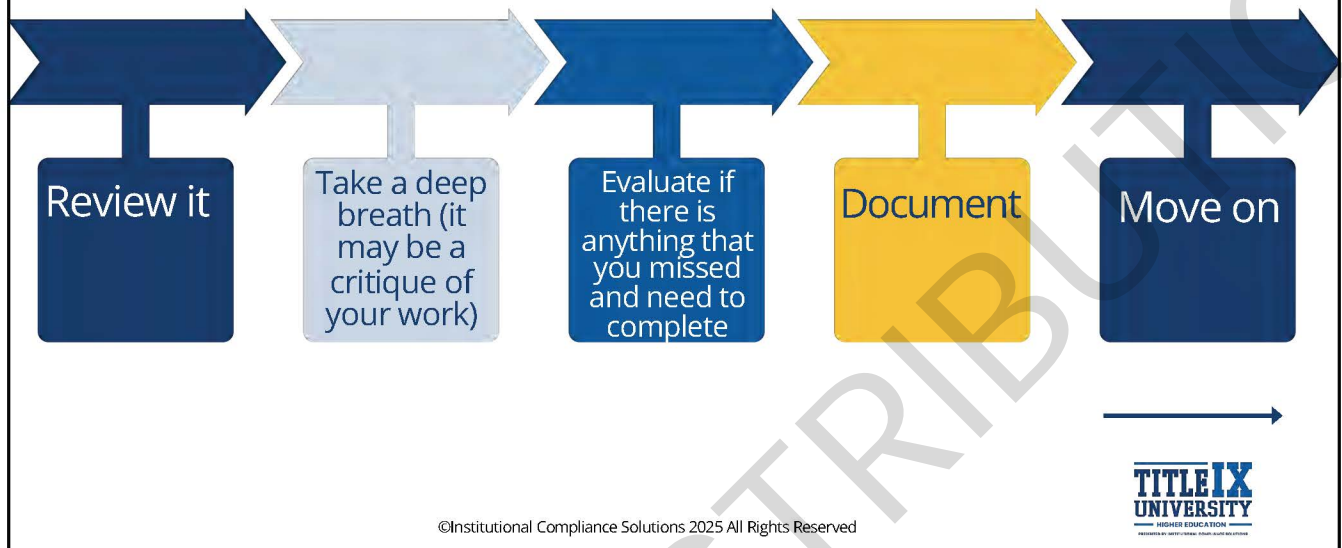
(business or calendar?)

Define in policy



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WHAT TO DO WITH THEIR RESPONSE *(if any)?*



SEE YOU IN LESSON 11!

LESSON ELEVEN

REPORT WRITING AND REVIEW



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A TITLE IX REPORT IS A SUMMARY OF RELEVANT EVIDENCE

THIS IS **NOT** A DUMP OR COPY OF YOUR NOTES.



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ORGANIZATION



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

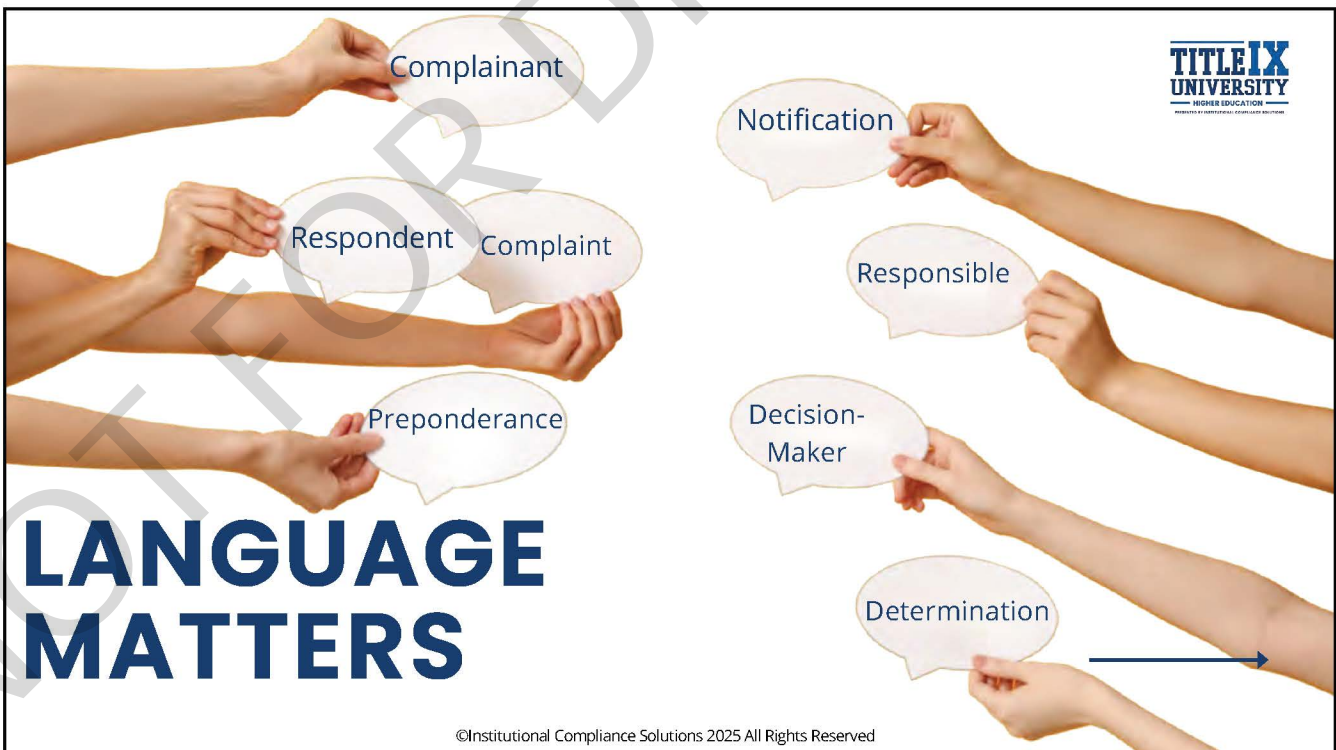


Consistent but Not Identical

There is room for a little flexibility



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WHO IS YOUR AUDIENCE?



Judge



Family



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THE ART OF SUMMARIZING



What is important?



What is relevant?



What is outside the scope?



What needs to be quoted?



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RELEVANCY

Information that has a tendency to make a fact more or less probable than it would be without the information—and the fact must be of consequence to the allegations.



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ORGANIZATION IS KEY



By party/witness?



By time/chronological?



By event?



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OTHER REPORT MUST HAVES

Page numbers

Footnotes?

Timeline(s)

- Investigation
- Events



Appendix/Attachments
WITH PAGE NUMBERS

- Table of Contents
for appendix/
attachments



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DELIVERY OF THE REPORT... THE IMPORTANCE OF SUPPORT



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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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REPORT REVIEW... THE IMPORTANCE OF NOT TAKING IT PERSONAL


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COMPLIANCE AND RISK MANAGEMENT

REVIEW OF REPORT

REQUIRED 10 DAY REVIEW AND RESPONSE PERIOD (BEFORE
DETERMINATION)

CONSIDER WAITING FOR RESPONSE BEFORE SENDING TO DECISION-
MAKER



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WHAT TO DO WITH THEIR RESPONSE

(if any) Similar to Evidence Review?



SEE YOU IN LESSON 12!



LESSON TWELVE

AFTER THE INVESTIGATION



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Live Hearing



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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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STANDARD OF PROOF

- Preponderance of Evidence unless Clear and Convincing for all other proceedings.
- Preponderance of the Evidence - 50% plus a feather - more likely than not
- School investigation vs. Criminal investigation



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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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SEE YOU IN LESSON 13!



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LESSON THIRTEEN

WRAP UP AND ASSESSMENT OF KNOWLEDGE



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BURDEN

Burden to collect/gather evidence is on the institution (investigator)... NOT THE PARTIES



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PAY ATTENTION TO THE TIMELINES REQUIRED BY YOUR POLICIES FOR THE INVESTIGATIVE STAGE



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FINAL THOUGHTS

Translation services

Accommodations



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FINAL THOUGHTS

Investigation skills take time to develop

No one way to conduct an investigation, but need to follow grievance procedures and policies/procedures

Clarity on your role is critical

Report writing takes time

Consider templates/process now before there is a matter



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REMINDER!!!

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



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TRAINING PATHWAY

Title IX Investigator

REQUIRED!

Title IX Introduction and Overview



Title IX Investigator Course



Other Fundamental Courses



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QUESTIONS?

Title IX Coordinator
info@titleixu.com



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CONGRATULATIONS!!



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