SOUTH SUMMIT TITLE IX TRAINING

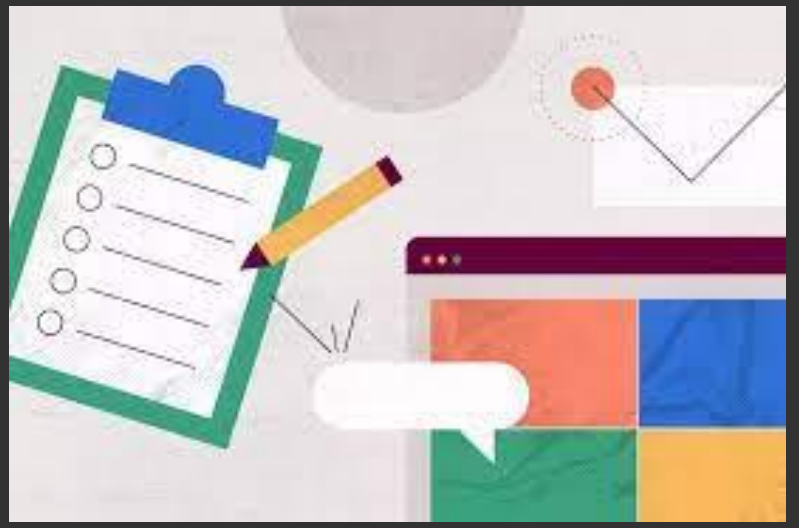
Heidi Alder

ALDER EDUCATION LAW

August 16, 2023

AGENDA

- Overview of Process—a Step-by-Step Overview
- Investigation Training
  - Avoiding Bias and Conflict of Interest
  - Working with Law Enforcement
  - Tips for Interviewing
  - Credibility and Reliability
- Walking through a scenario with the investigative report—if time permits



TITLE IX STATES:

"No person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

TITLE IX FEDERAL REGULATIONS

34 CFR Subpart D - Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

CFR

prev | next

§ 106.30 Definitions.
§ 106.31 Education programs or activities.
§ 106.32 Housing.
§ 106.33 Comparable facilities.
§ 106.34 Access to classes and schools.
§ 106.35 Access to institutions of vocational education.
§ 106.36 Counseling and use of appraisal and counseling materials.
§ 106.37 Financial assistance.
§ 106.38 Employment assistance to students.
§ 106.39 Health and insurance benefits and services.
§ 106.40 Marital or parental status.
§ 106.41 Athletics.
§ 106.42 Textbooks and curricular material.
§ 106.43 Standards for measuring skill or progress in physical education classes.
§ 106.44 Recipient's response to sexual harassment.
§ 106.45 Grievance process for formal complaints of sexual harassment.
§ 106.46 Severability.

TITLE IX COORDINATOR OVERSEES:

- Claims of discrimination based on sex
- Pregnancy discrimination
- Retaliation as a result of any of these
- Bullying/Cyberbullying when there's a sexual component
- Hazing when there's a sexual component
- Gender equity in athletics
- Sexual harassment

SEXUAL HARASSMENT UNDER TITLE IX FROM THE COURTS

- 1992 Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992)
  - Sexual harassment constitutes sex discrimination under title IX
  - Title IX not only provides equitable remedies to require fair treatment, it also provides for damages awards (i.e., District can be sued for money)
- 1998 Gesber v. Lago Vista Independent School Dist., 524 U.S. 274 (1998)
  - A school is not liable for monetary damages for teacher-student sexual harassment unless a school district official who "at a minimum has authority to institute corrective measures on the district's behalf" has ***actual notice*** of, and is ***deliberately indifferent*** to, the teacher's misconduct.
- 1999 Davis v. Monroe County Board of Education 536 U.S. 629 (1999)
  - A school board may be held liable in cases of ***student-on-student harassment***, but only where the district is ***deliberately indifferent to sexual harassment***, of which the district has ***actual knowledge***, and that harassment is so ***severe***, ***pervasive***, and ***objectively offensive*** that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.

DEPARTMENT OF EDUCATION
THE OFFICE FOR CIVIL RIGHTS

OCR GUIDANCE

- From 2001-2017, OCR issued several guidance documents regarding sexual harassment and Title IX
- Schools were required to engage in prompt, thorough, and impartial investigation.
- Victim was the focus.

CHANGES TO THE REGULATIONS

- Responding to complaints that the Department of Education's guidance did not adequately protect the rights of those accused of sexual harassment or sexual violence, in 2017, the U.S. Department of Education Secretary Betsy Devos rescinded the Obama-era guidelines which encouraged colleges and universities to more aggressively investigate campus sexual assaults.
- In October, 2018, DOE proposed new regulations for the first time since 1997.
- The regulations were open to public comment, and the DOE received over 124,000 responses.
- The regulations were published May 6, 2020, and made effective August 14, 2020.

OVERVIEW OF THE 2020 REGULATIONS

- Definition of sexual harassment has changed—it is reserved for only very serious sexual conduct
- Respondents will get written notice before first investigative interview
- Parties will be able to have a parent and/or attorney at interview (an "advisor")
- Gag orders prohibited
- The person who investigates the allegation and the person who makes the final decision must be different people
- Both parties have extensive opportunity to respond to evidence presented against them
- Appeal must be offered

PREVIEW OF 20222 REGULATIONS

- Scope of the regulations expanded
- Mandated training expanded
- Additional/modified definitions
- Sexual harassment will be “sex based harassment”
- Less prescriptive grievance process
- Informal Resolution can be initiated without a formal complaint
- Retaliation protections
- Discrimination based on pregnancy
- Expends recording-keeping

But that’s for another day…

BREAKING DOWN THE **CURRENT** REGULATIONS

NEW DEFINITION OF SEXUAL HARASSMENT

Quid Pro Quo	Hostile Environment	Violence Against Woman Act Big 4
• When an employee conditions some benefit in exchange for unwelcome sexual conduct	• Conduct that is so ***severe***, ***pervasive***, AND ***objectively offensive*** that • It denies equal access to educational program	• Sexual assault • Dating violence • Domestic violence • Stalking

QUID PRO QUO

- Principal promises bad evaluation if teacher doesn't give him massage
- Teacher offers student higher grade if student kisses her
- Coach implies athlete will start if she lets him sit close and rub her legs
- *MUST BE BY AN EMPLOYEE*

HOSTILE ENVIRONMENT

MUST MEET ALL FOUR ELEMENTS

- Severe = reasonable person considers it severe
  - Most physical contact will be considered severe
  - Non-physical contact associated by threats of violence
- Pervasive = pattern or widespread dissemination
- Objectively Offensive = reasonable person is offended
  - "I know it when I see it"
- Denies Access = undermines or detracts from educational experience
  - Could include dropping out of activities, grades dropping, skipping certain classes (or all classes), staying in for lunch, opting for online school

FIGURING OUT "SPOO

- This conduct is NOT conduct that would otherwise meet the definition of sexual assault. If the conduct meets the definition of sexual assault, no need to go through this analysis.
- **Severe**: Consider the age, the impact on the Complainant, and the school community at large
- **Pervasive:** Could mean it happened multiple times, could mean something was disseminated to multiple people, or it could mean the impact was widespread
- **Objectively Offensive:** If 9 out of 10 people in a room find it offensive, it probably is.
- SPOO + deprives the Complainant equal access to educational opportunities. = Title IX route.
- **NOTE:** This is typically behavior that is *really* bad ("shocks the conscience") and would generally result in long-term removal from school.

VIOLENCE AGAINST WOMEN ACT BIG 4

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

SEXUAL ASSAULT DEFINED

"any sexual act directed against another person, without the consent of the that person including instances where the person is incapable of giving consent, such as forcible rape, forcible sodomy, sexual assault with an object, forcible fondling*."

*NOTE: Fondling requires that the touching be ***for the purposes of sexual gratification***.

SEXUAL ASSAULT IN SCHOOLS

- Butt slaps ("Ass Grab Game")?
- Playing doctor?
- Crowded hallway?
- Squirrel tapping (grabbing or touching male genitalia over the pants in a joking manner)?

SEXUAL INTENT?

Factors In Determining Intent:

- Age and maturity of students?
- Disability?
- Experience or understanding?
- Control or coercion?
- Attitude of both students?
- Concealment?
- Where did it happen?
- How long did it last?

DATING VIOLENCE

"violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship"

***For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Importantly, sexual harassment under the dating violence prong does not have to be sexual in nature.**

STALKING

"engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress"

- **Must be two or more acts (on district property or during school sponsored activities), including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.**

LET'S WALK THROUGH A FEW

- Student exposes himself in front of a teacher and begins to masturbate. At school.
- 9th grade boy and 10th grade girl have consensual sex off campus. Boy films he and girl having sex, with girl's knowledge and reluctant consent. Boy promises to erase video, but instead takes it to school and shows 5-7 kids at lunch and 2 others in math class. Girl goes to different school but decides that she can't go to school in person anymore and opts for online.
- 8th grade girl reports that 8th grade boy has touched her private parts in art class several times over the course of one week. She reports that he reaches under the table and puts his hand on her thigh, moving it up until he is touching her crotch area, and that he has reached around her shoulders and put his hand down her shirt and grabbed her breast.

- Three different girls report that boy harassed them by engaging in the following conduct:
  - Girl 1 reported boy messaged her, called her names, used swear words, stated he was watching her, sometimes repeating messages within a short time or blaming girl for boy's depression and suicidal thoughts.
  - Girl 2 reported boy sent ongoing direct messages, emails and texts to her and classmates at times containing inappropriate comments such as "nice ass", and telling girl she looked pretty when she was home and not in the vicinity of the boy, and reporting to classmates that he'd had sex with the girl
  - Girl 3 reported that boy sent a message to a peer stating that they had slept together. When girl emailed boy and asked him to stop, he said he wouldn't and was going to commit suicide. Girl also said boy is telling peers that she and another girl (Girl 2) got him suspended.
- 4th grade boys playing "squirrel tap" repeatedly at recess. Boy #1 asks boy #2—the ring-leader of the squirrel tapping—to stop and boy #2 instead amps his game.

- Girl #1 showed friends at school pictures of the breasts of Girl #2 taken during a sleepover. Both girls are in high school.
- Boy #1 grabbed and twisted the penis of Boy #2. Both boys are in elementary school.
- Boy #1 peeked over the bathroom stall and watched Boy #2 urinating. Boy #1 then commented on the size of Boy #1's penis to the class. Both boys are in elementary school.
- High school boy cornered high school girl in the band practice room, asked to see her breasts, she refused and he groped her.
- Girl send inappropriate sexual messages through text to boy. Boy opened and reviewed the messages at school.
- Notification by police that they are investigating possible rape by boy at the high school against girl at the high school. No indication the rape took place at school or at a school-related activity.

THE PLAYERS

- Title IX Coordinator
- Investigator(s)
- Decision Maker(s)
- Informal Resolution Facilitator
- Appellate person

NOTE: Your Title IX Coordinator MAY also be an investigator, but you cannot have your investigator or the Title IX Coordinator be the decision-maker. The Informal Resolution Facilitator could also take on any of the other roles but best practice is not to share roles of Investigator/IRF or Decision-Maker/IFR. The person reviewing appeals should also be independent.

TRAIN YOUR STAFF TO REPORT

- Previously, a school was not deemed to have "actual knowledge" of sexual harassment unless someone with authority knew.
- Now, the new regulations impute actual knowledge to an LEA when **ANY EMPLOYEE** knows.
- Make sure your employees know:
  - What to report
  - When to report it (immediately!)
  - And to whom they report

- You may train your staff on the new definition of sexual harassment, OR you may just tell your staff if you know of or even suspect ***any*** conduct that is sexual in nature occurring at our schools, report it!

KNOW YOUR POLICY

South Summit Policy 3023

- A clear statement prohibiting sexual harassment at school and at school-related
- Definitions (see previous slides)
- General provisions (see next slide)
- Grievance procedures (see next few slides)
- Training requirements

SOUTH SUMMIT POLICY

GENERAL PROVISIONS

- Complainants and Respondents are to be treated equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following these grievance procedures before imposing any disciplinary sanction or other actions are taken against the Respondent.
- These grievance procedures require an objective evaluation of all relevant evidence, both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.
- All individuals designated as Title IX Coordinator, Investigator, Decision-Maker(s), or any person designated to facilitate an Informal Resolution Process shall not have a conflict of interest or bias, and shall receive training
- A Respondent is presumed not Responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- The District will ensure reasonably prompt timeframes for conclusion of the grievance process, including for filing and resolving appeals and informal resolution processes, HOWEVER, the process may be delayed for good cause, including, among other things, involvement of law enforcement
- The standard of evidence for all complaints of sexual harassment through this process is preponderance of the evidence.
- Both the Complainant and Respondent shall have the right to appeal the Decision-Makers' decision
- Supportive Measures will be made available to the Complainant and Respondent throughout the grievance process. Examples of Supportive Measures are listed in Section V.C of this Policy

GRIEVANCE PROCEDURES

"ACTUAL KNOWLEDGE"*

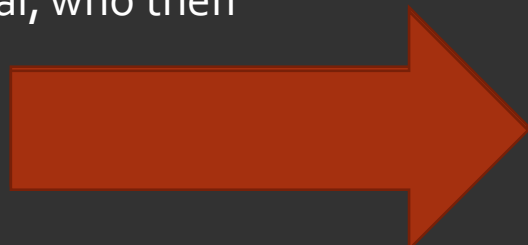
*ACTUAL KNOWLEDGE MEANS ANY INFORMATION THAT ANY EMPLOYEE HAS ABOUT POSSIBLE SEXUAL HARASSMENT.

There are two ways that this process will be triggered:

1. LEA employee becomes aware of conduct that could amount to Sexual Harassment through report or observation.
   - Student/witness reports what he saw or heard
   - Complainant/victim reports
   - Parent calls with a complaint
   - NOTE: **ANY** employee who becomes aware of conduct that COULD amount to Sexual Harassment—either through observation or a personal report—is **REQUIRED** to report to immediate supervisor who then reports to administrator.

OR

2. Formal Complaint filed
   - Student or employee files a Formal Complaint with the Title IX Coordinator or principal, who then forwards it to Title IX Coordinator



STOP EVERYTHING!

- Before proceeding with an investigation of any allegation of a sexual misconduct or a with suspension, STOP, and follow the next few slides.

INITIAL SCREENING

*THIS SCREENING PROCESS IS NOT REQUIRED IN THE REGULATIONS BUT A SUGGESTED GOOD PRACTICE

- Building Principal conducts screening interview with potential Complainant
  - What's the allegation?**
  - Where did it happen?
  - How many students were involved?
  - Has Respondent done this before? When and where?
  - Is student in a dating relationship with the Respondent?
  - Has student reported to police or Children's Justice Center?
  - Does student intend to? School may have to if student doesn't.
- ****This is NOT an investigative interview. This is just to determine which process we follow.**
- IMPORTANT: In consultation with your SRO, determine whether to involve law enforcement.
- These questions should be asked immediately upon receiving information of potential sexual harassment.

INITIAL SCREENING, CONT.

(SEE FORM #3)

1. Does the allegation involve an employee offering a benefit in exchange for a sexual favor?

   If yes→Call TIXC.; If no→Go to next question.

2. Does the allegation involve conduct that is severe*?

   If yes→Go on; If no→Go to question 6

3. Does the allegation involve conduct that is pervasive*?

   If yes→Go on; If no→Go to question 6

4. Does the allegation involve conduct that is objectively offensive*?

   If yes→Go on; If no→ Go to question 6

5. Is the complaint being denied access to educational benefits as a result of the conduct?

   If yes→Call TIXC; If no→Go to next question.

6. Is the alleged conduct sexual assault**?

   If yes→Call TIXC; If no→Go to next question.

7. Is the alleged conduct dating violence?

   If yes→Call TIXC; If no→Go to next question.

8. Is the alleged conduct stalking?

   If yes→Call TIXC; If no→Go to next question.

9. Is the alleged conduct domestic violence?

   If yes→Call TIXC.

   If no→HANDLE CONDUCT UNDER CODE OF CONDUCT POLICY. **DO NOT IGNORE!!!**

NOTE

*Severe, pervasive and objectively offensive are not clearly defined. For your purposes, if SOMEONE might think the conduct was severe or objectively offensive, report. If the conduct happened more than once and/or involved more than one person, report.

**Sexual assault: unwanted touching with an intent to receive sexual gratification

TITLE IX PRELIMINARY SCREENING QUESTIONS AND DEFINTIONS CHEAT SHEET

1. **Quid pro quo**: When an ***employee*** of the district conditions an aid, benefit, or service on an individual's participation in ***unwelcome*** sexual conduct.

2. **Severe, pervasive, and objective offensive ("SPOO")**: unwelcome conduct that effectively denies a person equal access to the school's education program or activity.

   - Severe: Consider the age, the impact on the Complainant, and the school community at large
   - Pervasive: Could mean it happened multiple times, could mean something was disseminated to multiple people, or it could mean the impact was widespread
   - Objectively Offensive: If 9 out of 10 people in a room find it offensive, it probably is.
   - SPOO + deprives the Complainant equal access to educational opportunities. = Title IX route.
   - NOTE: This is typically behavior that is really bad ("shocks the conscience") and would generally result in long-term removal from school.
   - ***HOWEVER, at this stage, err on the side of over-reporting conduct to the Title IX Coordinator and let the Title IX Coordinator determine if the conduct constitutes "SPOO".***

3. **Sexual assault**: Any sexual act directed against another person, without the consent of the person, including instances where the person is incapable of giving consent; forcible rape; forcible sodomy; sexual assault with an object; forcible fondling.

   - *Rape*— (Except Statutory Rape) The carnal knowledge of a person, 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 or physical incapacity.
   - *Sodomy*—Oral or anal sexual intercourse with another person, 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 or physical incapacity.
   - *Sexual Assault With An Object*—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.
   - *Forcible 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 of physical incapacity.

4. **Domestic Violence**: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. *For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Importantly, sexual harassment under the dating violence prong does not have to be sexual in nature.

5. **Stalking**: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress." Must be two or more acts (on district property or during school sponsored activities), including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

6. **Domestic Violence**: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

TITLE IX COORDINATOR (TIXC)

- TIXC confirms conduct meets the definitional elements of Sexual Harassment on its face (see next slide)
- TIXC confirms the District has jurisdiction under the regulations
  - at school or school program/activity or in route to school program/activity where District exercised substantial control over Respondent and the context in which the Harassment occurred.
  - off-campus conduct that has a clear nexus to school and which impacts a Complainant's ability to access and continue in his/her educational program
  - in the U.S.
  - Complainant must be enrolled or employed (or seeking enrollment or employment)
- If the conduct does not meet the definition or if no jurisdiction, TIXC either dismisses (if Formal Complaint has been filed) or sends back to school.
  - Written Notice of Dismissal (Form #9)
  - School will handle case under other student code of conduct policies

TITLE IX COORDINATOR

- If jurisdiction is met, TIXC meets with the Complainant/parent to offer supportive measures and to explain the process of filing a Formal Complaint (See Formal Complaint Template [Form #4])
  - **In order to investigate an allegation that clearly meets the definition of sexual harassment, a formal complaint MUST be filed**
  - Title IX Coordinator may file formal complaint if Complainant does not
- TIXC and school personnel offer Supportive Measures* (see next slide) to Complainant
- TIXC sends a Notice of Allegations (Form #5) (must include certain provisions) to both parties
- TIXC determines whether Emergency Removal* is warranted (see slide on Emergency Removal)

South Summit School District
Achieving Excellence

TITLE IX Formal Complaint Signed by Complainant

My name is _____. I am a student/employee at South Summit School District.

_____ sexually harassed me on or about

INSERT DATE/TIME _____

at INSERT LOCATION _____

INSERT ALLEGATIONS

_____
_____
_____
_____
_____
_____
_____
_____

I am requesting that _____ INSERT SCHOOL investigate these allegations.

Name
Signature

SUPPORTIVE MEASURES

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- altering work arrangements for employees or student-employees,
- school safety plan,
- mutual restrictions on contact between the parties,
- changes in work locations,
- leaves of absence,
- increased security and monitoring of certain areas of the school, and
- other similar measures

Respondent should also be offered Supportive Measures once the investigation begins.

DOCUMENT MEASURES OFFERED TO BOTH PARTIES. (See Supportive Measures Template* (Form # 21)

*Not required in the regs, but best practice to document

EMERGENCY REMOVAL

- **Emergency Removal** is appropriate when it is determined, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student justifies removal.
- These determinations will be made by _____
  - E.g., the Title IX Coordinator in consultation with the Building Principal and possibly Mental Health Specialist Supervisor on a case-by-case basis.
- The basis for removal must be documented.
- If Respondent is removed under the Emergency Removal Provision, a formal Notice of Removal (Form #10) must be sent to Respondent.
- NOTE: An employee may always be removed and placed on paid administrative leave pending the investigation, but be prepared to pay a long-term substitute. (Use Notice of Administrative Leave [Form #11])

INVESTIGATOR(S):

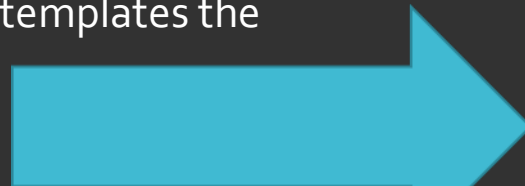
- Investigator sends Notice of Interview (Form #12) to Complainant and to Respondent, which includes:
  - Notice that an interview will be held within 2-3 days of the notification*, including date, time, and location of the meeting, the purpose of the meeting, the participants expected at the meeting, and that an advisor or attorney is allowed, and that the parties may bring any documents, evidence, or other information they would like the Investigator to consider.

- Any time an investigator meets with either party, the parties must receive written notice of the meeting with sufficient time* to prepare for the meeting, with the information listed above.

INVESTIGATOR(S):

- Meets with Complainant and asks for any documents or witnesses. Takes notes of interview.
- Meets with Respondent and asks for any documents or witnesses. Takes notes of interview.
- Collects all available evidence not submitted by parties (security camera, police reports, past disciplinary action of both parties, if applicable).
- Meets with witnesses. Takes notes of interview.
- Follows up with Complainant and/or Respondent if necessary. (Send follow-Up Notice of Interview)
- Compiles all evidence (notes of interviews, camera footage, police reports, past disciplinary actions, etc.) and send to both parties. (Use Cover Letter for Parties Receiving Evidence(Form #13))
- Allows 10 days for parties to respond to evidence.
- Considers parties' responses, and drafts Investigative Report which summarizes the evidence (Use Investigative Report Template [Form #14]. See Sample Final Investigative Report, Form #15)
- Send Investigative Report to TIXC who sends the report to both parties and Decision-Makers.*

*The regulations do not specify who sends the report to the parties, but the form in this packet contemplates the report coming from the TIXC.



DECISION-MAKER OR TEAM:

- Allows 10 days for parties to submit cross-examination questions in writing to the Decision-Making Team.
- Upon review for relevance, forwards cross-examination questions to each party and allows opportunity to respond. (You decide how long to allow for responses).
- Reviews responses.
- Writes Final Written Determination (Use Written Determination Template, Form #16; see also Sample Final Written Determination, Form #17).

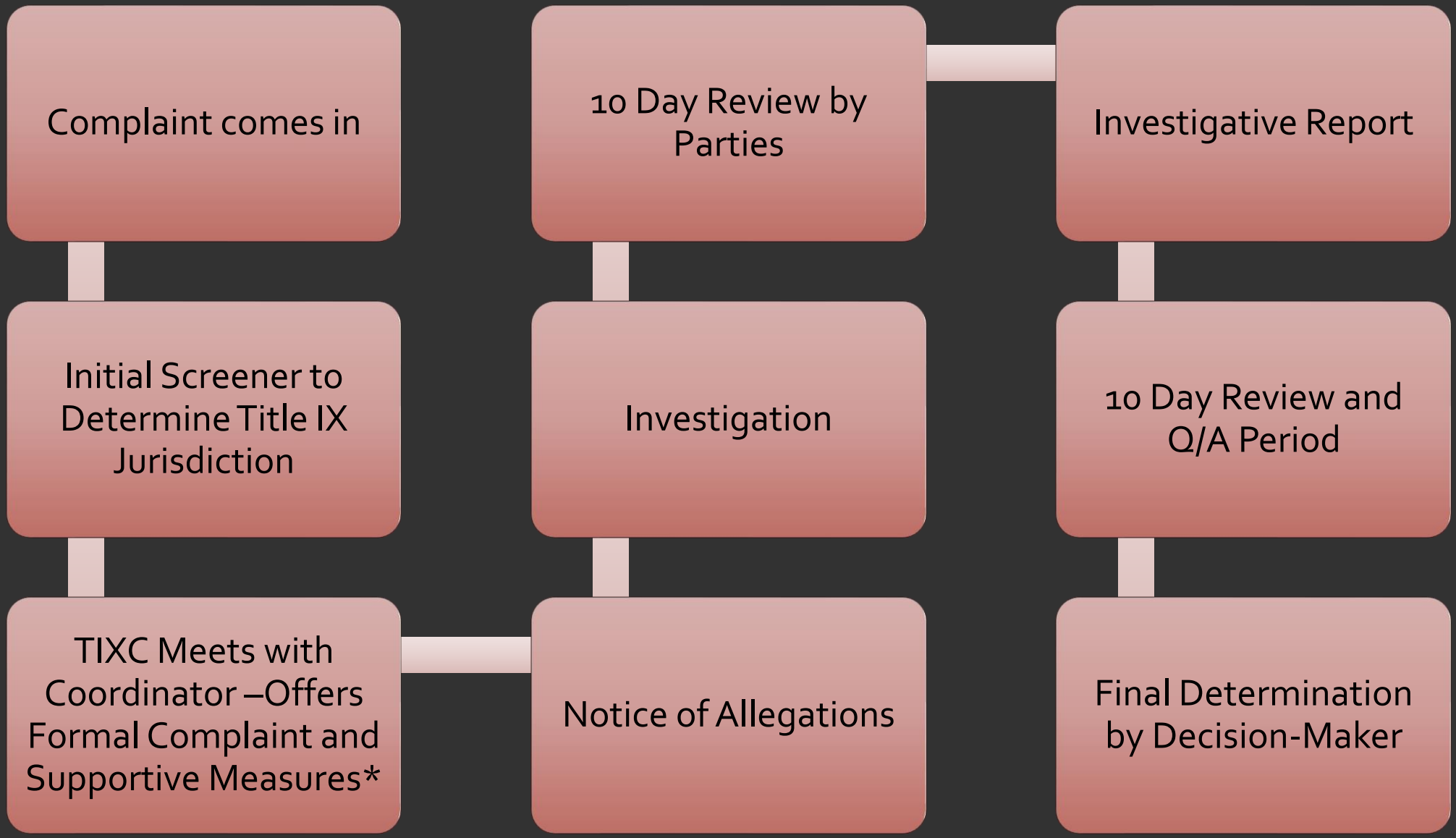
APPEAL

- An appeal must be made in writing to the Title IX Coordinator within 5 days of the Final Decision being issued. (Use Appeal Request, Form #18)
- Title IX Coordinator forwards appeals to appointed Appellate Officer (optional title), and Appellate Officer* sends Notice of Appeal (Form #19).
- Appeals MUST be granted IF
  - Procedural irregularities that affected outcome
  - Bias or conflict of interest
  - New information that would have changed the outcome
- Appeals MAY be granted within discretion of the Appellate Officer.
- If the appeal is granted, both parties submit written statements supporting or challenging the outcome.
- Appellate Officer will issue written decision affirming, repealing, or remanding the decision-maker's decision. (Use Appeal Decision Template, Form #20)

*The Notice of Appeal can come from the Title IX Coordinator, as well.

INFORMAL RESOLUTION PROCESS

- At any time BEFORE a final decision is reached, the parties may enter an Informal Resolution Process (IRP).
- Since the Notice of Allegations must include a paragraph about the IRP as an option, it is best practice to send information about the IRP with the Notice of Allegations.
- Both parties must provide written consent before moving forward with the IRP. (See Sample of Informal Resolution Process Notice and Consent. [Form #6.] This Sample is based on one idea for the IRP but may be modified to fit your LEA's process.)
- Allegations of a student Complainant against an employee Respondent DO NOT have the option of going through the Informal Resolution Process.
- The Informal Resolution Process Facilitator will work with the parties to resolve the allegations and document the resolution in an Informal Resolution Agreement (Form #8).


Complaint comes in
Initial Screener to Determine Title IX Jurisdiction
TIXC Meets with Coordinator –Offers Formal Complaint and Supportive Measures*
Notice of Allegations
Investigation
10 Day Review by Parties
Investigative Report
10 Day Review and Q/A Period
Final Determination by Decision-Maker

END OF PROCESS

QUESTIONS?

BREAK #1

PART II--INVESTIGATIONS

Investigation Agenda:

1. Bias and Conflict of Interest
2. Working with Law Enforcement
3. Tips for Investigations and Interviews
4. Investigating for Credibility, Reliability, and Relevance

CONFLICT OF INTEREST AND BIAS

CONFLICT OF INTEREST AND BIAS AS A BASIS FOR APPEAL

There are three bases for an appeal:

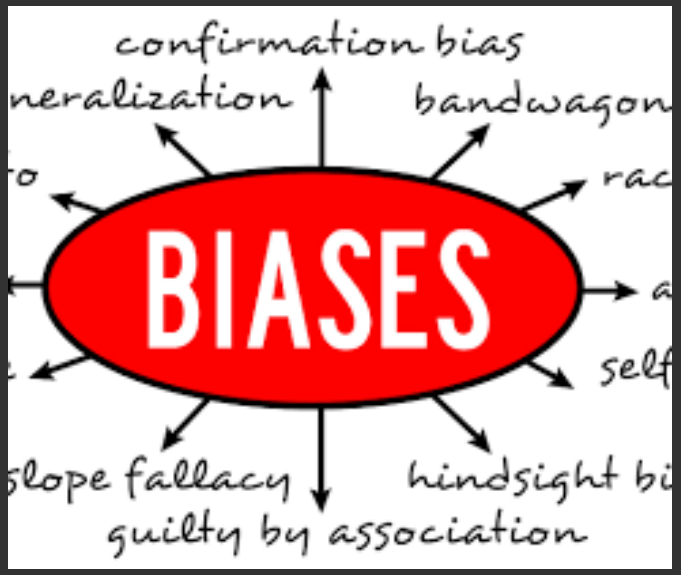
1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. ***The Title IX Coordinator, investigator(s), or decision-maker(s) 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.***

CONFLICT OF INTEREST

- Connection-free investigations are tough in a small community.
- You are not required to be a stranger to those you interview, but you have to be objective!
  - Can you be objective if the Respondent is your daughter's boyfriend?
  - Can you be objective if the Complainant is your next-door neighbor since she was born?
  - Can you be objective if the Respondent is your niece?
  - Can you be objective if the Complainant is a member of your congregation?

BIAS

- We all have biases.
- Be aware of your biases.
- There are different types of biases, for example:
  - Affinity Bias
  - Association Bias
  - Confirmation bias
  - "Like me" or Association Bias
  - Priming



ASSOCIATION BIAS

- Association bias is when you tend to believe those who you associate with someone you know or an experience you had
  - The complainant looks just like your nephew.
  - Your sister was sexually assaulted when she was in high school
  - Your father was accused of sexual assault and he lost his job as a result
  - The witness has the same mannerisms as your brother, who you do not get along with and find incredibly annoying

CONFIRMATION BIAS

- The natural tendency to give more weight to information that confirms a preconceived notion or belief.
  - Boys will take whatever they can get from girls.
  - Girls who wear short skirts and mid-riff shirts are asking for it, and likely consented to whatever they're complaining of
  - Boys will be boys and exploring sexual limits is part of growing up
  - Girls make things up and cause drama.

CONFIRMATION BIAS, CONT.

- Confirmation bias can influence who you interview and what evidence you seek.
  - If you believe boys will take whatever they can get, and the Respondent is a boy, there may be a tendency to review that student's disciplinary record with a fine tooth comb
  - If you believe girls like to make things up and cause drama, you may not interview individuals identified by a female Complainant, dismissing additional witnesses as lacking credibility.

"LIKE ME" BIAS (OR AFFINITY BIAS)

- The tendency for an investigator to favor information received from witnesses who are, in some respect, "like" the investigator.
  - If the investigator has a son who plays football and the Respondent plays football, there may be an unconscious tendency to believe the Respondent because of the common bond of football.
  - If the investigator is the only employee in the district who is not a member of the predominant faith and the Complainant is also not a member of the predominant faith, the investigator may tend to believe the Complainant based on the common bond of being an outsider.
  - Sometimes the very fact that the investigator is male can unconsciously lead him to tend towards believing the male party; same with females

PRIMING

- The tendency to phrase questions in such a way that elicits a certain response based on the investigator's bias (conscious or unconscious)
  - "What did you do when he attacked you?" v. "What did you do when he put his hands on you like that?"
  - "How did you feel when you found out you were being stalked?" v. "How did you feel when you found out Respondent was following you?"

BIAS IMPACTS INVESTIGATIONS AND DECISION-MAKING

- Affects the questions we ask
- Whether to add to the investigative report following information from one of the parties during the 1st 10 day Review Period
- Impacts the way investigative reports are written
- Influences decision-makers' assessment of credibility and reliability of parties and witnesses
- May influence the overall determination

MITIGATING BIAS

- Ensure there was equity throughout the process: both parties were given the same process
- Ensure questions to all parties were fair and asked in a neutral, non-leading way (more on this later)
- Information in an Investigative Report must be presented objectively—avoid unnecessary adjectives or descriptors. Report facts. "Complainant reported…" "Respondent stated…"
- Decision-makers need to consider ALL possible outcomes. Prior to finalizing a decision, consider the opposite of that decision and whether there is evidence to support a different conclusion

WORKING WITH LAW ENFORCEMENT

WORKING WITH LAW ENFORCEMENT

- The regs allow a reasonable delay for an ongoing law enforcement investigation.
- Start now to develop a positive relationship with law enforcement.
- CJCs may or may not allow the detective to listen in and document the interview in the police report.
- Re-interviewing the victim/complainant could re-traumatize the victim, so try to get reports from law enforcement.

WORKING WITH LAW ENFORCEMENT, CONT.

- Title IX Coordinator: Be patient but do continue to follow up on a regular basis. Put it on your calendar to check in with the detective every few days, and DOCUMENT that you're checking in.
- Communicate regularly with the family about where law enforcement is at.
- Failure to charge or prosecute does not mean you are relieved or your responsibility to investigate!

TIPS FOR INVESTIGATION AND INTERVIEWS

INVESTIGATIONS

- Step 1: Send both parties Notice of Interview. Be sure to include:
  - Where the interview will take place
  - What the interview is intended to cover
  - Who will be at the interview*
    - *NOTE: Consider having a male and female in all interviews, or at least on the investigative "team", so that a member of the same gender can conduct the interview.
  - That the party may bring an "advisor"—could be a parent, an attorney, another trusted adult (NOT another student)
  - That the party should bring any document that the party wants the investigator to consider.
- Notice should be sent 2-3 days in advance of any interviews with the parties.

BEST PRACTICE TIPS FOR INVESTIGATIONS

- **Step 2:** Interview the parties and witnesses.
  - Interview with Complainant should include trauma-informed interview techniques. See Trauma Informed Victim Interviewing (from the International Association of Chiefs of Police)
  - Interview with Respondent should avoid cross-examination style questions or questions intended to intimidate or "catch" someone in a lie. You're just getting this student's side of the story.
  - Take detailed notes of your interviews. Consider recording them, but let the parties know you are recording for your own recollection later. (If you record, delete the recording after taking notes of the interview so it does not become part of the evidentiary record.)
  - Always ask everyone you interview, "Can you think of anyone else who might have some information relevant to this discussion?"

INVESTIGATION PROCEDURES

- **Step 3:** Gather videos, documents, and other physical evidence (including text messages, snapchats, and whatever else the complainant provides to you
  - Ask police for a copy of the police report.
  - Watch security cameras.
  - Review text messages and social media posts. **NOTE: DON'T EVER REQUEST A STUDENT SEND YOU IMAGES OF NUDE PHOTOS. CONTACT SRO IF THE ALLEGATION INVOLVES NUDES.**
  - Pull class schedules.
  - Ask for seating charts (if teachers don't have one, ask students to draw one).
  - If relevant, look at disciplinary tags.
  - If relevant, review special education files (

Keep in mind all evidence obtained that is "directly related to the allegation" must be provided to both parties to review and inspect. Not all documents you look at will be directly related to the allegations.

- Not all evidence is going to tell you definitively yes this happened, or no, it didn't happen. A lot of documentary evidence may just be circumstantial or even tangential. For example, if a student witness claims to have seen Andy grope Charly inappropriately during the group photo of the choir class, ask for the group photo. While it is unlikely the photo will show Andy groping Charly, it will show where the student witness was in relation to Andy and Charly and you can get a sense of whether it is even possible for the student witness to have seen the incident.
- Gathering evidence should be happening throughout the process. If anyone—party or witness—mentions something that may be documented somewhere, ask for a copy of that. IT may not all be relevant, but gather it now, and sort that out later.

THE INTERVIEW

CREATE A SAFE ATMOSPHERE

- Have comfort items in your office (blanket, Kleenexes, water) to make the interviewee feel more comfortable.
- Avoid confrontation—sitting across from the witness v. sitting next to witness.
- Begin with an explanation about the interview
  - Build rapport
  - Explain the process and why you are interviewing this person.
    - *For complainant*: Allow the student to tell you what happened (per trauma-informed practices)
    - *For witnesses:* The reason you're here is we are investigating some allegations raised by a classmate of yours and I understand you might have some information that would be helpful to our investigation.
    - *For respondent:* So the reason you're here is because we are investigating allegations raised by a classmate that you [FILL IN THE BLANK]. We are trying to find out exactly what, if anything, happened.

SAFE ATMOSPHERE, CONT.

- Avoid "cross examination" techniques—we are not trying to catch someone in a lie, we are trying to understand what actually happened.
- When evidence you have contradicts something a witness is saying, be direct and tell the person: "Here's what I know so far (based on evidence like text messages). But you're saying it's something different. Is there something I'm missing?"
- When interviewing students, ask them to put phones on the desk so they cannot text/communicate with other students to corroborate stories.
- Avoid interruptions and allow pauses that encourage communication. Don't be afraid of the silence! Allow the person to talk.
- Avoid inflammatory words and phrases like "victim", "perpetrator".

SAFE ATMOSPHERE, CONT.

- Ask open-ended questions aimed at the What, When, Where, How.
  - **What** happened? What was said during the incident? Before the incident? After the incident? What did you see/hear?
  - **Who** was involved? Who else saw or heard it happen?
  - **When** did it happen?
  - **Where** did it happen?
  - **How** did it happen?
- Be cautious about the "why" when interviewing complainant. Avoid asking the complainant "Why did this happen to you?"
- Be sure the "why" matters before asking it. For example, you may ask the respondent, "Do you know why the complainant might lie about this allegation?" if the respondent denies the allegation.

SAFE ATMOSPHERE, CONT.

- Back-to-back interviews should be avoided—you don't want students crossing paths on the way to the office.
- Avoid expression sympathy for the Complainant. "Wow, that really sucks. What else did she do?" "Seriously? She did that during class?"
- Ask questions in a straightforward, non-accusatory manner.
- Do not ask leading questions!
  - Don't ask: "Did you see Sarah touch John under his pants?"
  - Instead: "Were you in the science class on October 25? Did you see or notice anything happening between Sarah and John? Can you tell me what happened?"
  - Ask the what, who, when, where, and how questions

CONDUCT A TIMELY INVESTIGATION

- Parties and witnesses should be interviewed as soon as possible.
- Solicit witness lists from people you talk to—who saw the incident, who did you tell about the incident, whose name have you heard in connection with this incident and contact those individuals as soon as possible.

GET THE MOST ACCURATE INFORMATION

- When witnesses write statements after telling you what happened, review the written statement with the student to ensure the written and verbal statement line up.
- Consider age of student and whether having student write his/her own statement is more effective than writing and reading back. Be sure what is written reflects what is intended.
- When taking notes, try to write exactly what the person said rather than characterize it after the fact. For example:
  - Terry said that "Jerry yelled 'Get off me !' to Kerry!" Don't write, Jerry told Kerry to get off of him.
- Anytime an interviewee mentions the name of another student who was present or may have heard or seen something, FOLLOW UP
- Anytime an interviewee tells you something that can be verified (ie, I was out of class that day because I had a doctor's appointment, so I couldn't have slapped that kid on the butt that day), VERIFY.
- Anytime a witness says something that is contradictory, ask for clarification. For example: "Yeah, I saw Johnny touch Isaac inappropriately. I was standing right there playing soccer and I heard Isaac say, He! Don't do that, and I turned around and Isaac was pushing Johnny away from him." DID WITNESS SEE JOHNNY TOUCH ISAAC OR NOT SEE IT?

GETTING ACCURATE INFORMATION, CONT.

- Leave some time between interviews to review your notes, and possibly type up a summary of what was said by the interviewee.
- Remember the goals of the interview: learn the facts, establish a timeline, understand each party's perception. Try to develop an understanding of what is more likely than not to have happened.
- Listen carefully and adapt follow-up questions. It's okay to have a script, but don't be afraid to veer from it based on the responses you get. Do not be thinking about your next question while the interviewee is talking.

GETTING ACCURATE INFORMATION, CONT.

- Ask clarifying questions about terms that can have multiple meanings or a spectrum of meanings, like a "few", "couple", "sometimes", "yelling/screaming", etc.
  - Other words without clear meaning: "bullying", "harassing", "ignoring", "stalking", "inappropriate"
- Ask witnesses for everything they saw, heard, and any other direct sensory perception. Then, it's okay to ask for their opinion and why. These can be indicators of other places to investigate.
- When the interviewee can't remember *when* exactly something happened, ask questions that might help trigger the memory:
  - Was it the fall or winter? (cold outside? Wearing coats yet? Snow on the ground?)
  - Do you have any scheduled event, like piano lessons or soccer after school on certain day? Do you recall if what you're telling me happened on one of those days? Did you go to piano lessons?
  - Was it during 1st semester or 2d? Think about what teachers and classes you had.
  - What else was going on in your life at the time? Can we you remember what that other life event occurred?

GETTING ACCURATE INFORMATION, CONT.

- Keep a poker face—don't roll eyes, or exhibit body language that suggests you don't believe the person
- Repeat what you're hearing them say in a non-judgmental, inquisitive way.
- Ask open-ended questions that cannot be answered with a simple "yes" or "no".
  - NOTE: It's okay to ask a yes/no questions as foundational questions. For example, "Were you in class today? Is Respondent in your class? Is Complainant in your class? Did you see or observe anything out of the ordinary occur between Respondent and Complainant?" **THEN** "Tell me about that."
- Get details: Where were you sitting in relation to Respondent/Complainant? Where was Who was sitting next to Respondent on the left, right, front, and back? What was going on in class that day? Where was the teacher? Did teacher say anything?

GETTING ACCURATE INFORMATION, CONT.

- **By the end of your interviews, you should have enough information to re-create the entire scenario through a screen play, complete with stage directions.**

- Always ask at the conclusion: "Is there anything else you think we should know, or is there anyone else you think we should talk to?"

???

ASSESSING CREDIBILITY AND RELIABILITY

ASKING QUESTION TO HELP ASSESS CREDIBILITY AND RELIABILITY

- What if there are no witnesses to the conduct, and it is a he-said, she-said situation? Lost cause?
- Rare to have a case where you cannot land on one side or the other
- Credibility is often the factor that pushes you to one side or the other
- As an investigator, you need to include details to allow the decision-maker to weigh credibility of evidence.
- Example: Carl reports that Rita touched Carl on the genitals and butt while making sexual comments to him during P.E. class. Carl reports that Wayne and Winona might be helpful witnesses because they were in the same P.E. class and were right next to Carl when it happened. You interview Wayne and Winona and they didn't hear or see anything. Does this mean it didn't happen and you're done?

PLAUSIBILITY

- In this situation, ask yourself, "Is it plausible that Carl's report is true and Winona and Wayne did not hear or see?"
  - Was the gym loud?
  - Where were Winona and Wayne in relation to Carl and Rita?
  - What was going on in the class? Were kids goofing around, not paying attention, or was everyone quiet and attentive when the incident allegedly occurred?
- Ask these follow-up questions to Winona and Wayne and if necessary go back to Carl and ask follow-up questions. Ask: describe the scene to me. Where you were in relation to X? What was going on in the background? Was it loud or quiet?
  - But remember—avoid asking questions that are leading and suggest the answer you are looking for
  - Also avoid asking the Complainant: How is it possible that no one saw or heard anything if they were really that close to you?

SOURCE: OPPORTUNITY, MOTIVE, AND STATUS

- Source opportunity:
  - How did the witness learn the information? If 1st hand, could the witness have seen/heard what they claim to have seen/heard?
  - If 2sd hand, who and how did that person obtain the information? Could THAT person have seen/heard what they claim from where they were?
- Source motive:
  - Does the witness have reason to lie or embellish?
  - Is the witness close friends or have a negative history with one of the parties?
  - Is there a vested interested in the outcome or will there be a negative impact on the witness?
- Source status:
  - How credible is the source based on the source's status? Ie, teacher with no dog in the fight versus student with history of lying and insubordination

BREAK #2

WALKING THROUGH A CASE

Case No.: 2025-10

Complainant: Natasha Romanoff

Respondent: Loki Odison

Complaint Filed: December 2, 2025