

"Conducting A Title IX Investigation"



SASD Conference

October 9, 2018

SWIER LAW FIRM, P_{ROF.} LLC

Investigation Roadmap

1. Title IX Coordinator Responsibilities
2. 10 “Must Dos”
3. Investigation Checklist
4. Interviewing Witnesses
5. Completing & Documenting the Investigation

TITLE IX IN SOUTH DAKOTA

Title IX Coordinator Responsibilities

Title IX Coordinator Responsibilities

- ☐ Know the Law & Policies
- ☐ Provide Training to Staff & Students
- ☐ Conduct Investigations
- ☐ Make Disciplinary Recommendations

TITLE IX IN SOUTH DAKOTA

10 “Must Dos” For Every Title IX Investigation

10 “MUST DOS”

1. Select the Right Investigator

- Familiar With Board Policies and Procedures

10 “MUST DOS”

2. Plan the Investigation

- Who to Interview?
- Evidence Needed?

10 “MUST DOS”

3. Prepare a Strategy

- Most Efficient Investigation
- Minimal Disruption to School

10 “MUST DOS”

4. Prepare Questions in Advance

- Ask Witnesses Similar Questions
- Good Roadmap to Follow for Interview

10 “MUST DOS”

5. Interview Witnesses in Private

- “Need-to-Know” Basis
- Maintain Confidentiality

10 “MUST DOS”

6. Take Detailed Notes

- Who, What, Where, Why, How?

10 “MUST DOS”

7. Have Witnesses Write His/Her Own Statement

- Write It
- Sign It

10 “MUST DOS”

8. Assess Your Information

- Enough Evidence?
- Make a Fair and Reasonable Decision?

10 “MUST DOS”

9. Summarize Your Findings

- How You Handled Investigation?
- What Facts You Found Credible?

10 “MUST DOS”

10. Take Appropriate Action

- Consistent with Facts?
- Consistent with Policy and Past Practices?

TITLE IX IN SOUTH DAKOTA

Investigation Checklist

INVESTIGATION CHECKLIST

Scenario

- Quarterback Jack & Cheerleader Jane
- Sexual Assault After Football Game
- Written Report Filed With Mrs. Smith

INVESTIGATION CHECKLIST

Alerting Others to Allegations

☐ School SRO or School?

☐ Law Enforcement?

INVESTIGATION CHECKLIST

Interim Measures

- ☐ Should Be Done Immediately
- ☐ Make Accuser Award of Title IX Rights
- ☐ Must Protect Accuser
- ☐ Academic Accommodations

INVESTIGATION CHECKLIST

Choosing the Investigator

- ☐ Fair & Independent?
- ☐ Objective?
- ☐ Trained?
- ☐ Knowledgeable About Policy?

INVESTIGATION CHECKLIST

Choosing the Investigator

- ☐ Compassion & Professionalism?
- ☐ Knowledgeable About Resources Available?
- ☐ Competently Testify?

INVESTIGATION CHECKLIST

Preparing to Investigate

- ☐ Understand Scope of Investigation?
- ☐ Establish a Preliminary Timeline?
- ☐ Testimony Required to Confirm/Rebut the Allegation?

INVESTIGATION CHECKLIST

Preparing to Investigate

- ☐ Initial Witness List?
- ☐ Order of Interviews?

INVESTIGATION CHECKLIST

Gathering Materials

- ☐ Familiar with Policies?
- ☐ Videotapes or Audiotapes?
- ☐ Photos?
- ☐ Cellphone Information?

INVESTIGATION CHECKLIST

Gathering Materials

- ☐ Text Messages or Voice Mails?
- ☐ Student Records?
- ☐ Searches Needed?

INVESTIGATION CHECKLIST

Interview Locations

☐ Private Place?

☐ Safe Place?

INVESTIGATION CHECKLIST

Special Accommodations

- ☐ Translator?
- ☐ Assistive Devices for Disabled?
- ☐ Parents Present During Interview?

INVESTIGATION CHECKLIST

Potential Interviewees

- ☐ Anticipate Questions Witnesses May Ask?
- ☐ Request to Have Other's Present?
- ☐ Required to Cooperate?
- ☐ Request for Confidentiality?

INVESTIGATION CHECKLIST

Asking Good Questions

- ☐ Build Rapport?
- ☐ Open-Ended Questions?
- ☐ Avoid Leading Questions?

INVESTIGATION CHECKLIST

Asking Good Questions

- ☐ Use Short Questions?
- ☐ Request Clarification?
- ☐ Understand “Slang” Words?

INVESTIGATION CHECKLIST

Documenting the Interview

- ☐ Take Careful Notes?
- ☐ Review Notes with Interviewee for Accuracy?
- ☐ Need Another Person to Assist?

INVESTIGATION CHECKLIST

Documenting the Interview

- ☐ Video Record Interview?
- ☐ Audio Record Interview?
- ☐ Transcribe Interview Notes?

TITLE IX IN SOUTH DAKOTA

Interviewing the Accuser

Interviewing the Accuser

- ☐ Explain Importance of Confidentiality?
- ☐ Explain Importance of No Retaliation?
- ☐ Provide Brief Explanation of Process?

Interviewing the Accuser

- ☐ What Happened?
- ☐ When Did It Happen?
- ☐ Where Did It Happen?

Interviewing the Accuser

- ☐ Was Anyone Else There?
- ☐ Who Else Have You Told?
- ☐ Provide Written Statement to Anyone?

Interviewing the Accuser

- ☐ Post Anything Online?
- ☐ Kept Any Notes?
- ☐ Other Students With Similar Complaints?

Interviewing the Accuser

- ☐ How Do You Know Accused?
- ☐ Prior Interactions With Accused?
- ☐ Accused Use or Threaten to Use Force?

Interviewing the Accuser

- ☐ You or Accused Using Alcohol or Drugs?
- ☐ Why Did You Delay Reporting?
- ☐ Anything Else?
- ☐ Provide Written/Signed Statement?

Concluding the Accuser's Interview

- ☐ Remind About Confidentiality?
- ☐ Thank Person for Cooperating?
- ☐ Return to Provide Additional Information Later?

TITLE IX IN SOUTH DAKOTA

Interviewing the Accused

Interviewing the Accused

- ☐ Explain Importance of Confidentiality?
- ☐ Explain Importance of No Retaliation?
- ☐ Provide Brief Explanation of Process?

Interviewing the Accused

- ☐ Reason to Believe Investigator Cannot Be Impartial?
- ☐ Explain General Timeline of Investigation?

Interviewing the Accused

- ☐ What Happened?
- ☐ When Did It Happen?
- ☐ Where Did It Happen?

Interviewing the Accuser

- ☐ Was Anyone Else There?
- ☐ Who Else Have You Told?
- ☐ Provide Written Statement to Anyone?

Interviewing the Accused

- ☐ Post Anything Online?
- ☐ Kept Any Notes?
- ☐ Other Students With Similar Complaints?

Interviewing the Accused

- ☐ How Do You Know Accuser?
- ☐ Prior Interactions With Accuser?

Interviewing the Accused

- ☐ You or Accuser Using Alcohol or Drugs?
- ☐ Anything Else?

Concluding the Accused Interview

- ☐ Remind About Confidentiality?
- ☐ Thank Person for Cooperating?
- ☐ Return to Provide Additional Information Later?
- ☐ Provide Written/Signed Statement?

TITLE IX IN SOUTH DAKOTA

Documenting & Completing the Investigation

Documenting & Completing

- ☐ Review Written Policies?
- ☐ Review Videos, Audio, and Photos?
- ☐ Review Interview Notes and Written Statements?
- ☐ Understand Your Notes Are “Fair Game”?

Documenting & Completing

- ☐ Assess Witness Credibility?
- ☐ Assess Most Credible Evidence?
- ☐ Any “Follow Up” Necessary?

Documenting & Completing

In Making Your Decision, Have You Considered:

- ☐ Corroborating Evidence of Accuser's Claim?
- ☐ Any Witness Make Untrue Statements?
- ☐ Any Witness Story Differ From Other Witnesses?

Documenting & Completing

In Making Your Decision, Have You Considered:

- ☐ Witness Story Conflict With Written Evidence?
- ☐ Witness Appear Evasive?
- ☐ Any Witness Story Differ From Other Witnesses?

Documenting & Completing

Does Your Written Report:

- ☐ Summarize Interviews and Evidence?
- ☐ Assess Credibility of Witnesses?
- ☐ Contain *Factual* Conclusions (Not Presumptions or Speculation)?

Documenting & Completing

Does Your Written Report:

- ☐ Avoid Attorney-Client Privileged Information?
- ☐ Include Proposed Discipline or Other Remedy?

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