"Conducting A Title IX Investigation"



SASD Conference

October 9, 2018

Investigation Roadmap

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

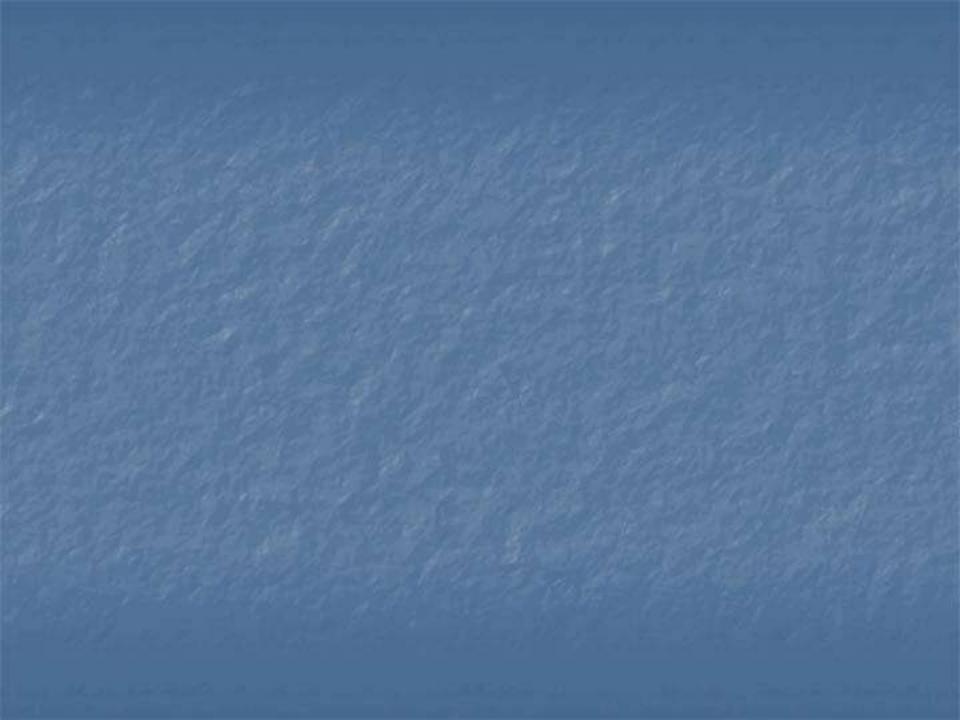
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TITLE IX IN SOUTH DAKOTA

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

1. Select the Right Investigator

Familiar With Board Policies and Procedures

2. Plan the Investigation

■ Who to Interview?

■ Evidence Needed?

3. Prepare a Strategy

Most Efficient Investigation

Minimal Disruption to School

4. Prepare Questions in Advance

Ask Witnesses Similar Questions

Good Roadmap to Follow for Interview

5. Interview Witnesses in Private

"Need-to-Know" Basis

Maintain Confidentiality

6. Take Detailed Notes

■ Who, What, Where, Why, How?

7. Have Witnesses Write His/Her Own Statement

Write It

Sign It

8. Assess Your Information

Enough Evidence?

Make a Fair and Reasonable Decision?

9. Summarize Your Findings

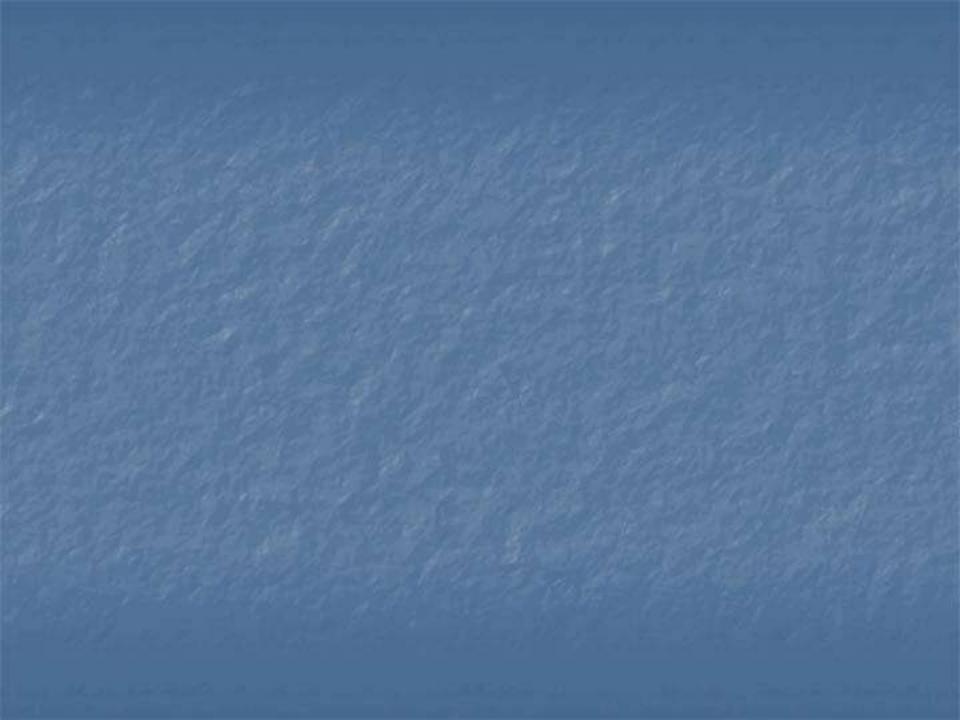
How You Handled Investigation?

■ What Facts You Found Credible?

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

Alerting Others to Allegations

☐ School SRO or School?

□ Law Enforcement?

Interim Measures

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

Choosing the Investigator

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

Choosing the Investigator

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

Preparing to Investigate

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

Preparing to Investigate

☐ Initial Witness List?

☐ Order of Interviews?

Gathering Materials

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

Gathering Materials

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

Interview Locations

☐ Private Place?

☐ Safe Place?

Special Accommodations

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

Potential Interviewees

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

Asking Good Questions

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

Asking Good Questions

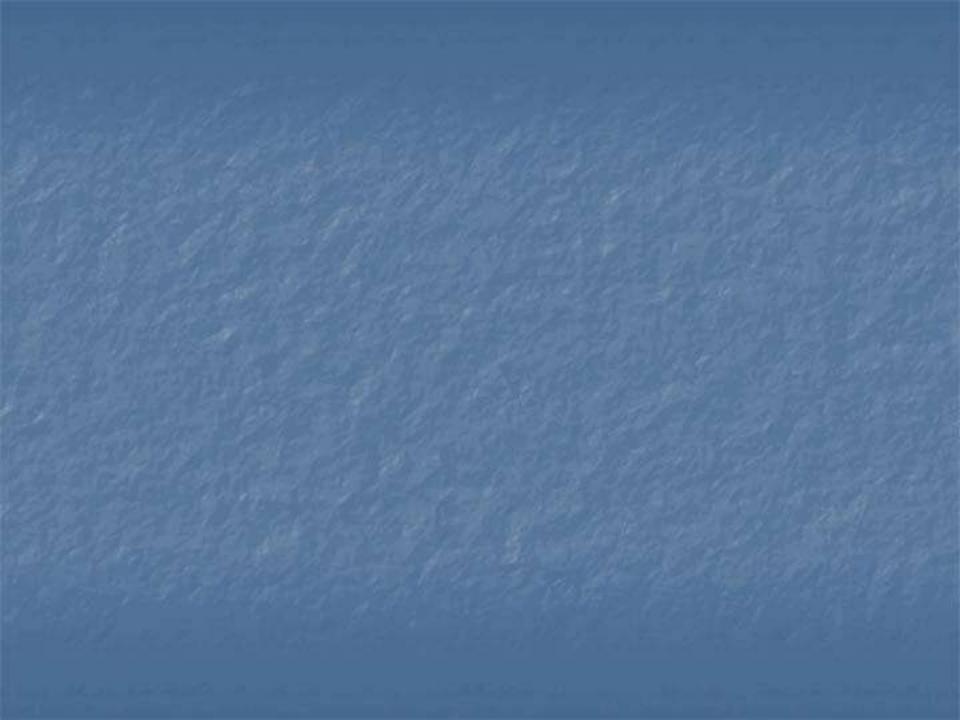
- ☐ Use Short Questions?
- □ Request Clarification?
- ☐ Understand "Slang" Words?

Documenting the Interview

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

Documenting the Interview

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



TITLE IX IN SOUTH DAKOTA

Interviewing the Accuser

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

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

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

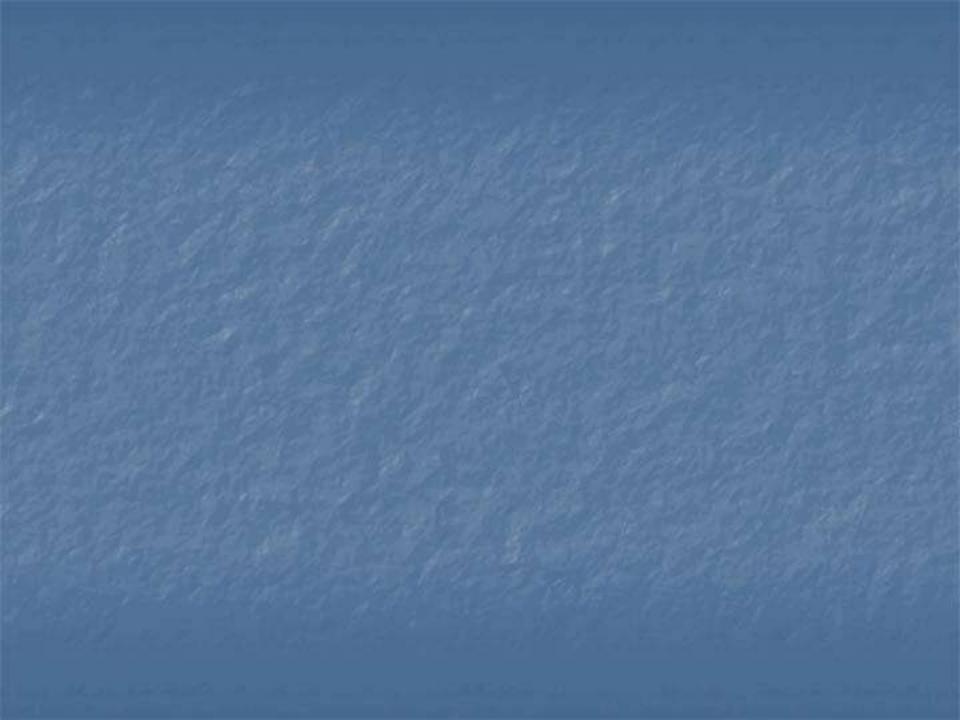
- ☐ Post Anything Online?
- ☐ Kept Any Notes?
- ☐ Other Students With Similar Complaints?

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

- ☐ 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

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

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

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

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

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

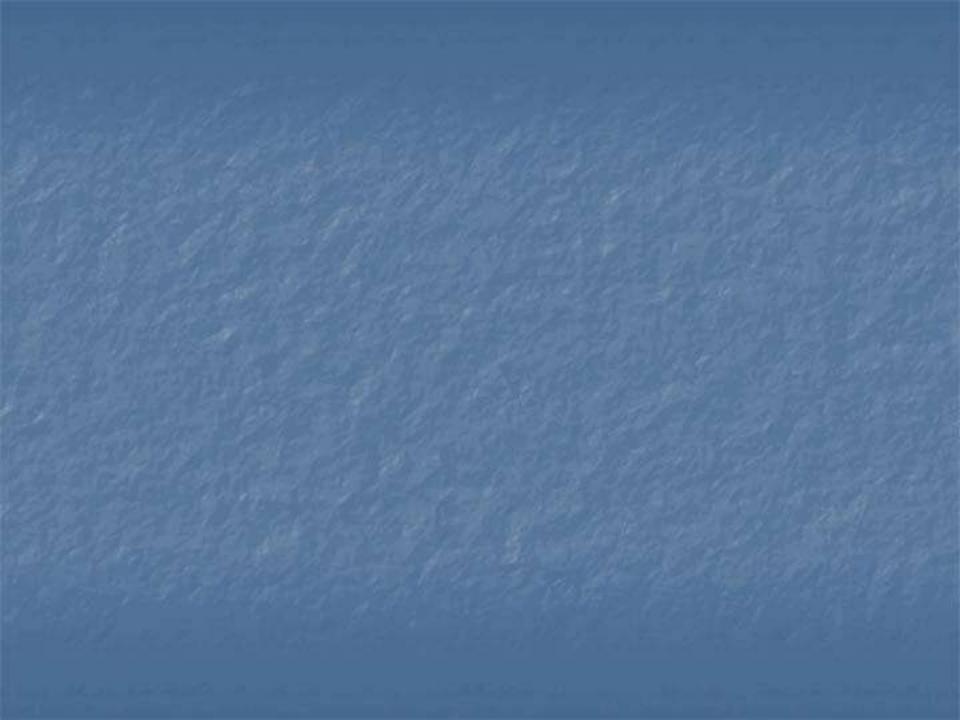
- ☐ How Do You Know Accuser?
- ☐ Prior Interactions With Accuser?

☐ 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

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

☐ Assess Witness Credibility?

☐ Assess Most Credible Evidence?

☐ Any "Follow Up" Necessary?

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?

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In Making Your Decision, Have You Considered:

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

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Does Your Written Report:

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

Does Your Written Report:

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

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