

# **TITLE IX COMPLIANCE TRAINING**

## **Practical Solutions for a Complex Process**

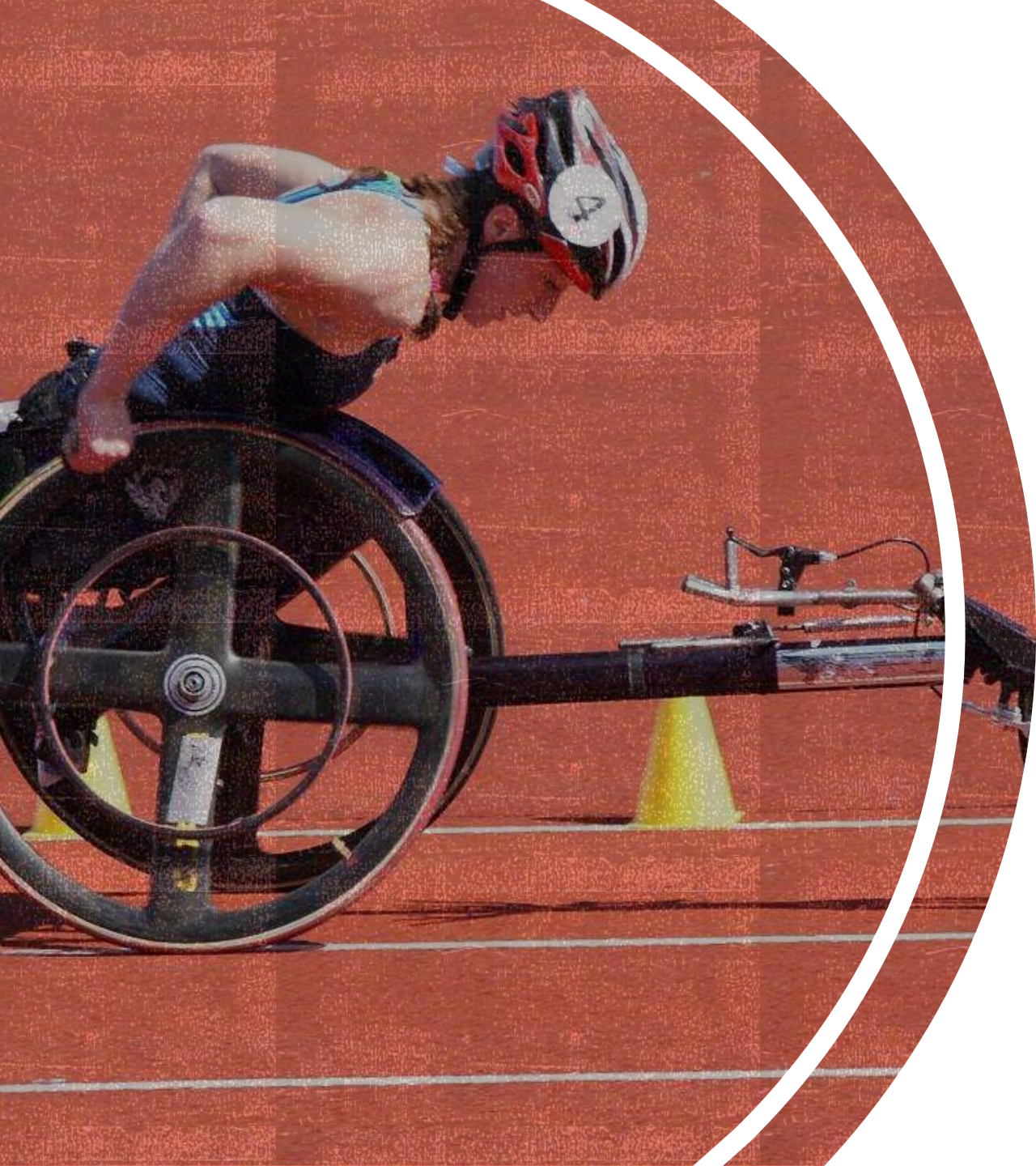
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**WELCOME!**





# TITLE IX

What do you think of when you think about Title IX?



**TITLE IX  
PROVIDES....**

“[n]o person in the United States shall, on the basis of sex, 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.” 20 U.S.C. § 1681(a).



**PROHIBITS  
DISCRIMINATION  
ON THE BASIS OF  
SEX**

- Discrimination includes harassment
- Requires equity in treatment of complainant/respondent

# NEW REGS EFFECTIVE 8/14/2020

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USDOE ISSUED NEW  
REGULATIONS  
IMPLEMENTING TITLE IX



NEW DEFINITIONS



NEW INVESTIGATION  
REQUIREMENTS



# **GENERAL RESPONSIBILITIES**

**For Public Elementary/Secondary Schools**



# SCHOOLS MUST:

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1

Have a  
policy

2

Identify Title  
IX  
Coordinator

3

Offer  
Supportive  
Measure

4

Have a  
grievance  
process



# DEFINITIONS



# RESPONSE TO SEX HARASSMENT

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent..





of Federal Funds

# SEX HARASSMENT IS...

Conduct based on sex  
and ...



# SEX HARASSMENT IS...

Conduct based on sex :

1. And a school employee **conditions** receipt of a benefit on participating in unwelcome sexual conduct or
2. Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity; or
3. **Sexual assault**, dating violence, domestic violence, or stalking, as those terms are defined by federal law.

■



# **ACTUAL KNOWLEDGE**

- If an employee of the school knows of sex harassment or
- Allegations of sex harassment the district has “actual knowledge”



**EDUCATION PROGRAM OR ACTIVITY**





# PERSON IN THE UNITED STATES



**RESPONSE:  
NOT  
DELIBERATELY  
INDIFFERENT**

- *Davis v. Monroe  
County Bd. of Ed.*



# CASE STUDY

- LaShonda was a fifth grade student
- Reports to parents & teacher three incidents during school by a classmate named Kim
- Mom speaks to teacher
- Eventually parents speak to principal



**CASE STUDY  
CONTINUED...**

LaShonda reports to physical education teacher when Kim put a door stop in pants and motions toward LaShonda

P.E. teacher reports to principal

Another student asks to speak to principal but is denied

LaShonda's grades plummet, does not want to attend school, suicide note.

*\* Davis v. Monroe Cty. Bd of Education, 526 U.S. 629 (1999)*

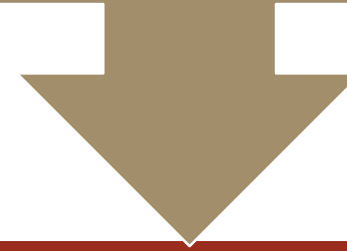
# DELIBERATELY INDIFFERENT

School is deliberately  
indifferent if it acted  
unreasonably in light of  
the known  
circumstances





Previously, a formal complaint was not required



Now a “formal complaint” is required and means:

The Complainant files a written complaint or

The Title IX Coordinator files a written complaint

No third party complaints

# REPORT VS. FORMAL COMPLAINT

## Report

- Actual knowledge by school employee of harassment or
- Actual knowledge by employee of report or
- Complainant reports to Title IX Coordinator but no formal report

## Formal Complaint

- By the complainant in writing or
- By the Title IX Coordinator

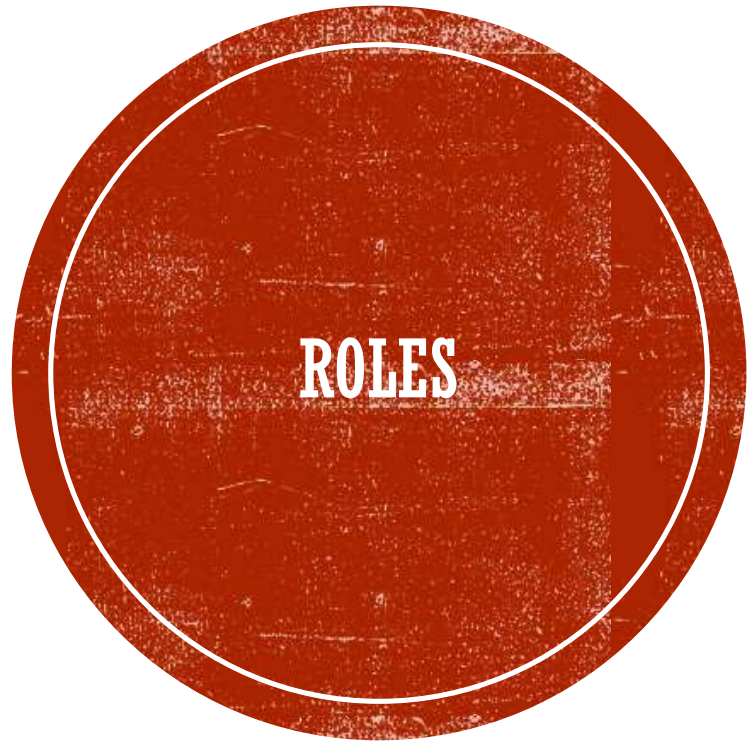


# SUPPORTIVE MEASURES



School must offer the complainant supportive measures regardless of formal complaint





New regulations require that each school district have:

Title IX Coordinator

Investigator

decision-maker

Appeal Decision-Maker

# **TITLE IX COORDINATOR**

- Understands law and policy – trained
- Must be an employee
- Can also be investigator
- May facilitate informal resolution
- MAY NOT be decision maker or appeal decision maker
- Responsible for coordination of grievance process & implementation of remedies

# INVESTIGATOR

- Understands law and policy-trained to investigate
- May not be biased or have conflict of interest
- Must summarize findings in objective way
- May make recommendation but not required

# DECISION- MAKER

- Understands law and policy – trained
- May not be biased or have conflict of interest
- Must issue written report in compliance with requirements
- May not be Title IX investigator and may not decide appeal

# **APPEAL DECISION- MAKER**

- Must allow for written statement
- Be unbiased and have no conflict of interest
- May not be Title IX Coordinator or Decision-Maker

# PRACTICALLY SPEAKING...

- Title IX Coordinator can also be the investigator & facilitate informal resolution
- Title IX Coordinator can't be decision-maker or appeal decision maker
- Each role must be trained
- Who might be one of the three-four roles:
  - Superintendent
  - HR Professional
  - Assistant Principal
  - Athletic/Activities Director
  - Dean
  - Social Worker
  - Counselor etc.





# **STEP ONE**

## **ROLE OF THE TITLE IX COORDINATOR**

# ACTIONS TO TAKE UPON RECEIPT OF A REPORT

Receipt of Report  
from a Witness

Content of Report is  
“Actual Knowledge”

Deliberate  
Indifference Standard  
Requires Contact with  
Complainant

Complainant Files  
Complaint

Next Step

Content of  
Complaint  
Results in  
“Actual  
Knowledge”

Title IX  
Coordinator  
Files Complaint

Next  
Step



# ACTIONS TO TAKE UPON RECEIPT OF A COMPLAINT

Receipt of a “Formal Complaint”

Next Step



# MANDATORY DISMISSAL

A formal complaint ***must*** immediately be dismissed if:

- a. The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by these regulations;
- b. The conduct alleged in the formal complaint did not occur in the school or school district's education program or activity; or
- c. The conduct alleged did not occur against a person in the United States.



# PERMISSIVE DISMISSAL

A formal complaint ***may*** be dismissed if:

- a. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- b. The respondent is no longer enrolled at or employed by the school; or
- c. Specific circumstances prevent the school or school district from gathering evidence sufficient to reach a determination as to the complaint.





# CHECKLIST

**RESPONSIBILITIES WHEN  
DISMISSING A COMPLAINT**

# KEEP IN MIND...

- Conduct that does not rise to the level of a Title IX complaint may still require action





1. Grievance/Informal Resolution Process;
2. Allegations;
3. Presumption Respondent Is Not Responsible;
4. Right to an Advisor; and
5. Code of Conduct Prohibits False Statements or Information.



# INTERIM SUPPORT MEASURES


Supportive measures, offered equally to both parties, are non-disciplinary measures including:

- Counseling
- Modification of deadlines/other adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between parties
- Changes in work or school locations
- Leaves of absence
- Increased security and monitoring

# **INTERIM EMERGENCY REMOVAL OF STUDENT RESPONDENTS**

- Mandatory individualized safety and risk analysis
- Immediate threat arising from the allegations of sexual harassment
- The threat must relate to the physical health or safety of any individual
- Requires notice to the respondent and an opportunity for challenge immediately following removal
- The respondent bears the burden of proving the removal decision was incorrect
- Not applicable to offenses outside Title IX





# INTERIM EMERGENCY REMOVAL OF EMPLOYEES

- Non-Applicability of Title IX Procedures
- Factors to Consider
- Possible Directives to Employees



## **INFORMAL RESOLUTION**

- Timing
- Notice
- Non-Applicability to Employees



A man with glasses and a dark suit is seated at a table, gesturing with his right hand while speaking. He is looking towards the left. In the foreground, the back of a person's head is visible on the left, and a white coffee cup sits on the table to the right. The background is blurred, showing an office setting.

# **STEP TWO ROLE OF THE TITLE IX INVESTIGATOR**

**B A S I C S**

# **NEW TITLE IX REQUIREMENTS FOR INVESTIGATIONS**



**INDEPENDENT  
INVESTIGATION**





**THE SCHOOL OR  
DISTRICT BEARS  
THE BURDEN OF  
PROOF, NOT  
EITHER PARTY**



# **SPECIFIC TYPES OF INFORMATION AND DATA CONCERNS IN A TITLE IX INVESTIGATION**



Consideration of  
privileged information



Review of external  
medical records



Interplay between data  
privacy laws and Title IX



# PRACTICAL CONSIDERATIONS

- Consolidation of multiple complaints
- All parties must be given an equal opportunity to present witnesses





# REQUIRED NOTICES AND OPPORTUNITY TO REVIEW EVIDENCE



# INVESTIGATION REPORTS





CAN BE FOR

THE

ON

# INITIAL CONSIDERATIONS: EXTERNAL REPORTS



- Remember to make any mandated reports of maltreatment
- Potential referrals to law enforcement





# **A BRIEF DATA PRACTICES INTERLUDE**



8

9

10

11

4

15

PLAN  
AHEAD

18

21

22

25

**LASHONDA'S CLAIMS: WHO MIGHT THE  
INVESTIGATOR WANT TO INTERVIEW?**



**NO**  
**DISTRACTIONS**



**ACT NOW**



# INTERVIEW BASICS





**REQUIRED  
INTERVIEW  
NOTICE**



# OPENING REMARKS



## **Explaining**

Explaining the purpose of the interview



## **Explaining**

Explaining the investigation process and  
your role as investigator





NOT CONFIDENTIAL





**DO NOT  
GUARANTEE  
RESULTS**



*"The facts, Ma'am.  
Just the facts."*



# INTERVIEWING THE COMPLAINANT AND FACT WITNESSES



# INTERVIEWING THE COMPLAINANT AND WITNESSES

- Short, open-ended questions



**THE INVESTIGATOR MIGHT HAVE TO  
DEFEND THE INTERVIEW QUESTIONS, SO...**



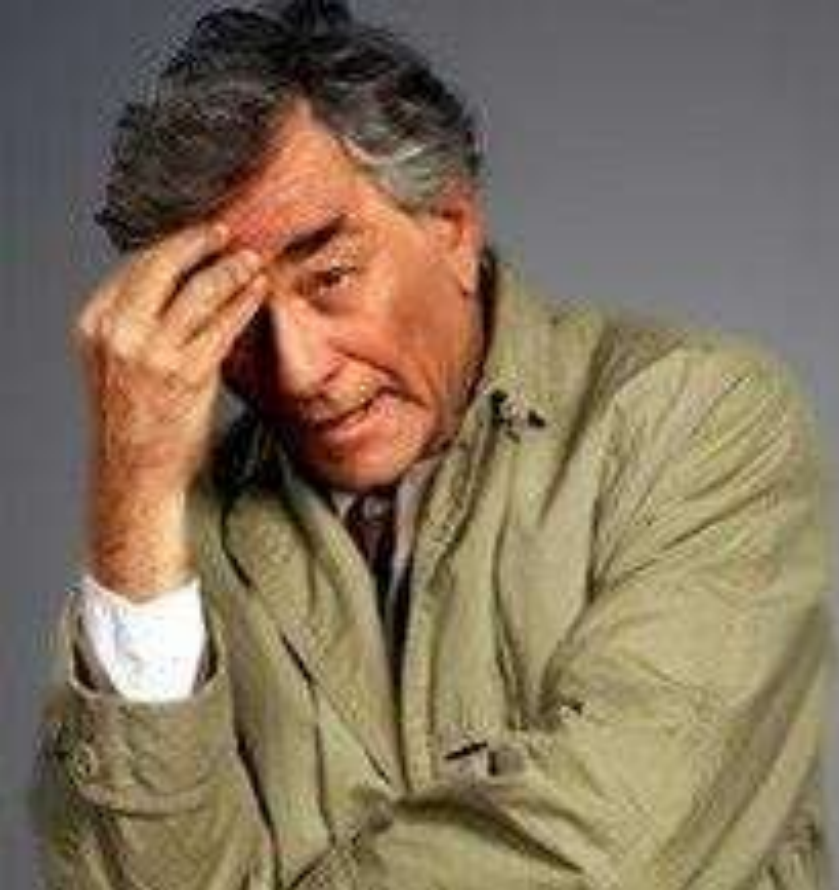
**...WATCH OUT  
FOR BIASES!**



INTERVIEWS  
101

**SOME SPECIFIC  
TIPS FOR  
INTERVIEWING  
WITNESSES AND  
COMPLAINANTS**





*“Ahhh...  
Just one more  
thing...”*

## **SPECIAL CONSIDERATIONS FOR INTERVIEWING THE RESPONDENT**



**WATCH OUT FOR  
BIAS IN THE  
COMPLAINANT  
INTERVIEW TOO!**



Explaining the  
role of the  
investigator as  
a neutral  
factfinder

Establishing  
ground rules

Provision of  
similar initial  
statements that  
were provided  
to the  
Complainant

## **OPENING REMARKS**



A large, yellow, 3D-style emoji of a face with its hand to its chin in a thinking pose. The emoji is centered in the background.

**WHAT IF THE COMPLAINANT  
REFUSES TO ANSWER?**



# **SPECIFIC STRATEGIES FOR INTERVIEWING THE COMPLAINANT**





**BACK TO LASHONDA: WHAT KINDS OF  
QUESTIONS MIGHT THE INVESTIGATOR ASK?**



A close-up photograph of a person's hand holding a small, white rectangular card. The card has the words "Trust me." written on it in a black, handwritten-style font. The person holding the card is wearing a dark suit jacket, a white shirt, and a patterned tie. The background is blurred, showing more of the person's attire and a hint of a light-colored wall.

Trust me.

**WAS THE WITNESS OR PARTY  
CREDIBLE?**





**SURVEILLANCE FOOTAGE**

# SOCIAL MEDIA IN INVESTIGATIONS



**IS THERE ANY TYPE OF ELECTRONIC  
EVIDENCE THAT THE INVESTIGATOR  
MIGHT CONSIDER IN THE LASHONDA  
INVESTIGATION?**



A close-up, low-angle shot of a police car's emergency lights at night. The blue lights are the primary focus, glowing brightly and casting a strong blue hue over the scene. To the left, a red light is partially visible, and further back, a yellow light can be seen. The lights are mounted on a dark, reflective surface, likely the car's hood, which shows some reflections. The background is dark with some blurred city lights in the distance.

COORDINATING ANY INVESTIGATION  
WITH LAW ENFORCEMENT



Relevance

**INVESTIGATION CONCLUSIONS MUST  
BE BASED ON RELEVANT EVIDENCE**

Time frame for  
completing  
investigation  
reports

Time frame for  
providing  
investigation  
reports to parties

An investigation  
must “fairly  
summarize” the  
relevant evidence

The investigator  
does not decide  
if harassment  
occured

# WRITTEN INVESTIGATION REPORTS



# STRATEGIES FOR WRITING AN INVESTIGATION REPORT



A wooden gavel with a dark handle and a light-colored head is positioned diagonally across the upper left portion of the image. It rests on a dark, polished wooden surface. In the lower right, a rectangular green sign with a thin orange border is placed at an angle. The sign features the words 'CONFLICT OF INTEREST' in a dark, serif, all-caps font. Overlaid on the upper half of the image is the text 'AVOIDING CONFLICTS OF INTEREST' in a large, bold, white, sans-serif font.

# AVOIDING CONFLICTS OF INTEREST

CONFLICT OF INTEREST



# ONE MORE WORD ABOUT BIASES





# **STEP THREE**

## **ROLE OF THE TITLE IX**

### **DECISION MAKER**

# SELECT A STANDARD OF REVIEW

## Preponderance of the Evidence

“Preponderance of the evidence” means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment.

## Clear and Convincing Evidence

“Clear and convincing evidence” means that the respondent will be found responsible only if it is highly more likely to be true that the respondent engaged in the conduct constituting sexual harassment.





# **PROCEDURES REQUIRED PRIOR TO A DECISION**

- **Opportunity for Parties to Respond to the Report**
- **Notification of the Right to a Hearing and/or Written Questions**



# SUBMISSION OF WRITTEN QUESTIONS

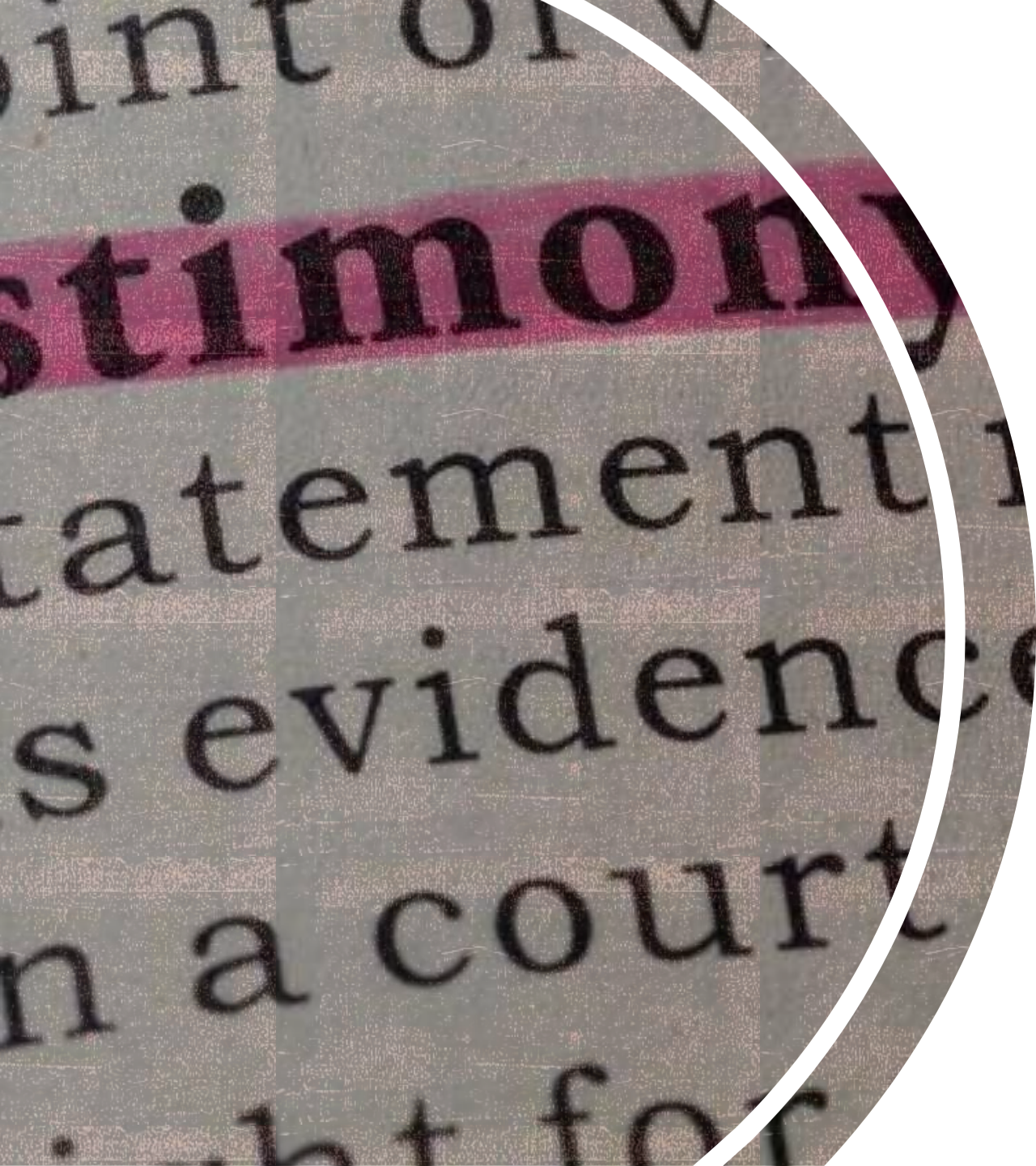
All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.



# RELEVANCY

“Relevant evidence” means evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.





**WHAT EVIDENCE MAY  
BE APPROPRIATE TO  
EXCLUDE OR ALLOW  
IN LASHONDA'S CASE?**

# LIVE HEARINGS

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**Recording**



**Appointment of  
Advisor**



**Questioning**





# THE DETERMINATION

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact
- Conclusions applying the code of conduct/policy
- Assignment of responsibility, rationale, sanctions and remedies
- The procedure for appealing the determination of responsibility





**STEP FOUR**  
**IMPLEMENTATION OF THE DECISION AND THE APPEALS PROCESS**  
**(ROLE OF THE APPELLATE DECISION-MAKER)**



**POTENTIAL  
REMEDIES**

May include but are not limited to:

Education

Continued supportive measures

Discipline

Restorative Justice



# APPEAL

- Either party may appeal:
  - Determination of Responsibility or
  - Dismissal





**APPEAL ON THE  
BASIS OF...**

Procedural irregularity that impacted outcome

New evidence not available at the time of investigation that could impact outcome

Conflict of Interest or Bias on part of investigator, Title IX Coordinator or...



# OR ANY OTHER BASIS FOR APPEAL

- As long as both parties have the right to appeal on that basis





Ensure appeal decision  
maker is not the  
investigator or Title IX  
Coordinator

And employs same  
standards as decision  
maker



Provide notice to both parties



Ensure each party has reasonable opportunity to  
submit written statement



Issue a written decision

**SCHOOL  
MUST....**



# TRAINING MATERIALS

- Must train the three roles at a minimum
- Must ensure employees know their responsibility to report = actual knowledge
- Must retain training materials for 7 years
- Must retain complaints, investigation, decision, appeal decision for 7 years
- Must review policy annually





**Questions**