

TITLE IX COMPLIANCE TRAINING

Practical Solutions for a Complex Process

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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



USDOE ISSUED NEW
REGULATIONS
IMPLEMENTING TITLE IX



NEW DEFINITIONS



NEW INVESTIGATION
REQUIREMENTS



GENERAL RESPONSIBILITIES

For Public Elementary/Secondary Schools



SCHOOLS MUST:

1

Have a
policy

2

Identify Title
IX
Coordinator

3

Offer
Supportive
Measure

4

Have a
grievance
process



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 HARRASSMENT 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...**

Teacher assures parents that she has spoken with principal

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)

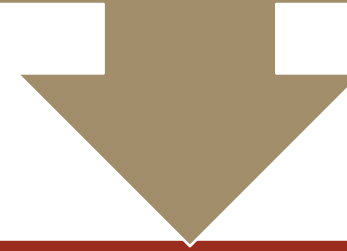
DELIBERATELY INDIFFERENT

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

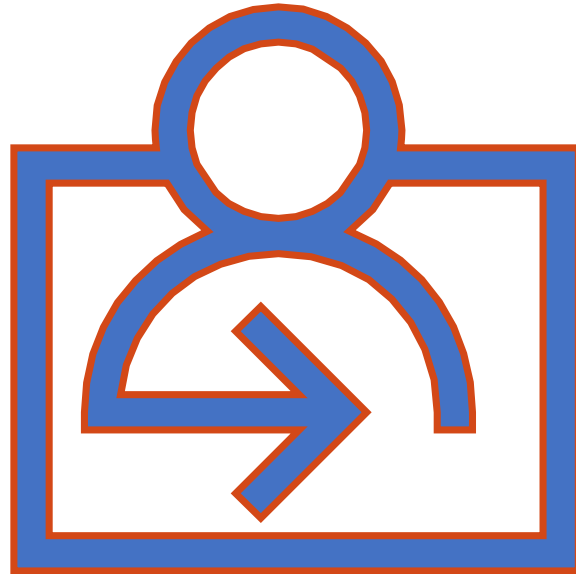
- Actual knowledge by school employee of harassment or
- Actual knowledge by employee of report or
- Complainant reports to Title IX Coordinator but no formal report

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





**REMEDIAL
MEASURES / SELF
EVALUATION**

- If the USDOE determines a school engaged in discrimination, school can be ordered to take remedial action
- Schools should review the policy and MEASURE whether its being equitably enforced on an annual basis



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
- 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



STEP ONE

ROLE OF THE TITLE IX COORDINATOR

ACTIONS TO TAKE UPON RECEIPT OF A COMPLAINT

Receipt of a “Formal Complaint” from LaShonda/Parents

Next Step



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



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.

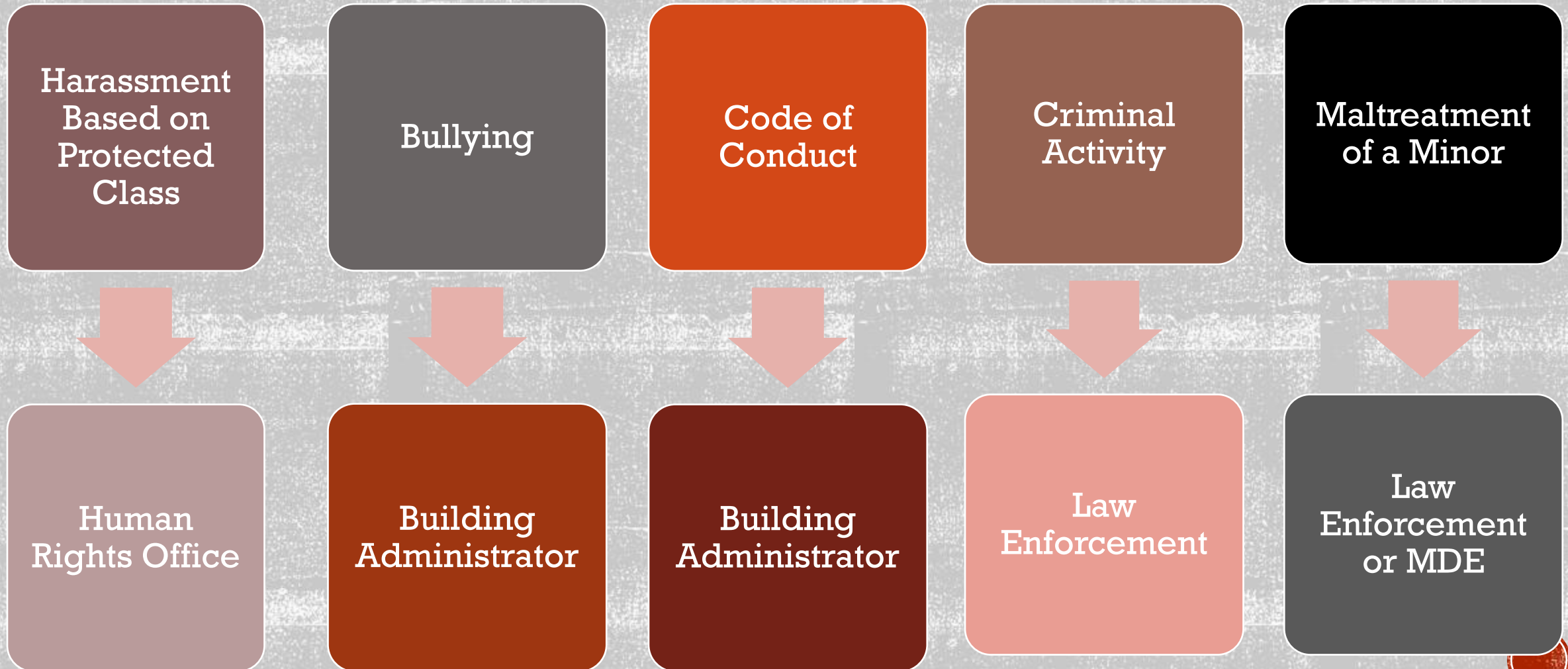




CHECKLIST

**RESPONSIBILITIES WHEN
DISMISSING A COMPLAINT**

REFERRAL OF COMPLAINT TO OTHER STAFF OR ENTITIES





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. The background is blurred, showing an indoor setting. The text is overlaid on the lower left portion of the image.

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



ATTENTION
BEFORE
TURNING
ON



INITIAL CONSIDERATIONS: EXTERNAL REPORTS



- Remember to make any mandated reports under the Maltreatment of Minors Act
- Potential referrals to law enforcement



A close-up, angled shot of a red computer keyboard key. The key features a white padlock icon in the top left corner and the words 'Data Protection' printed in white, sans-serif font across its surface. The key is set against a dark grey background of other keyboard keys.

Data Protection

A BRIEF DATA PRACTICES INTERLUDE



8

9

10

11

4

15

PLAN

18

AHEAD

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

Explaining the *Tennessee* Warning





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...**



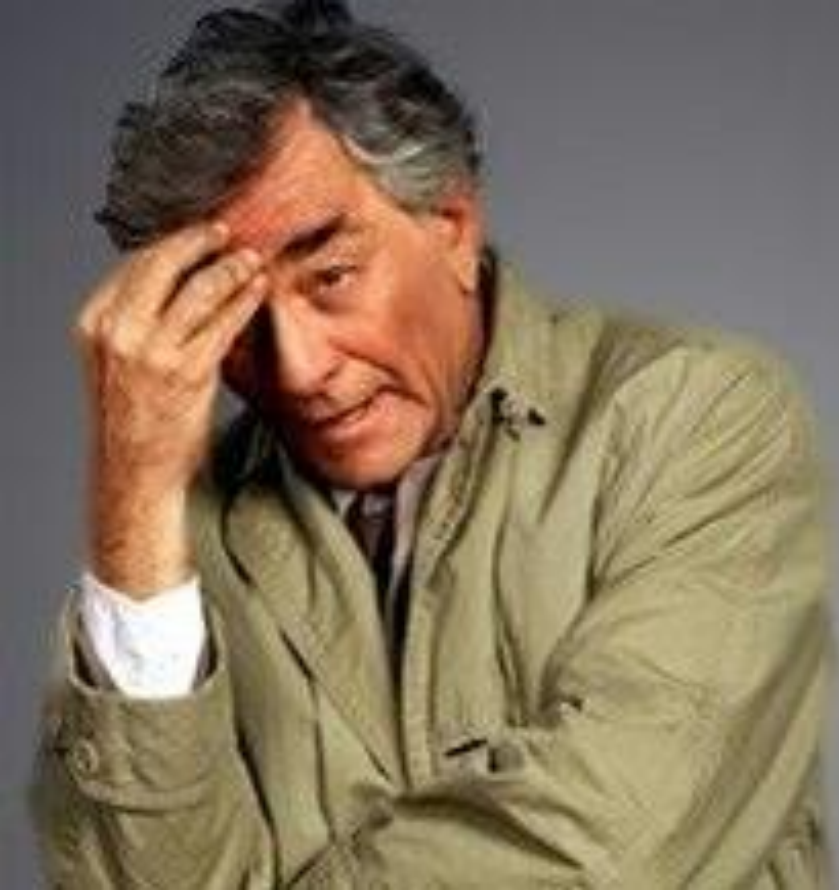
**...WATCH OUT
FOR BIASES!**



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

Administering
Tennessee or
Garrity
Warnings

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 RESPONDENT





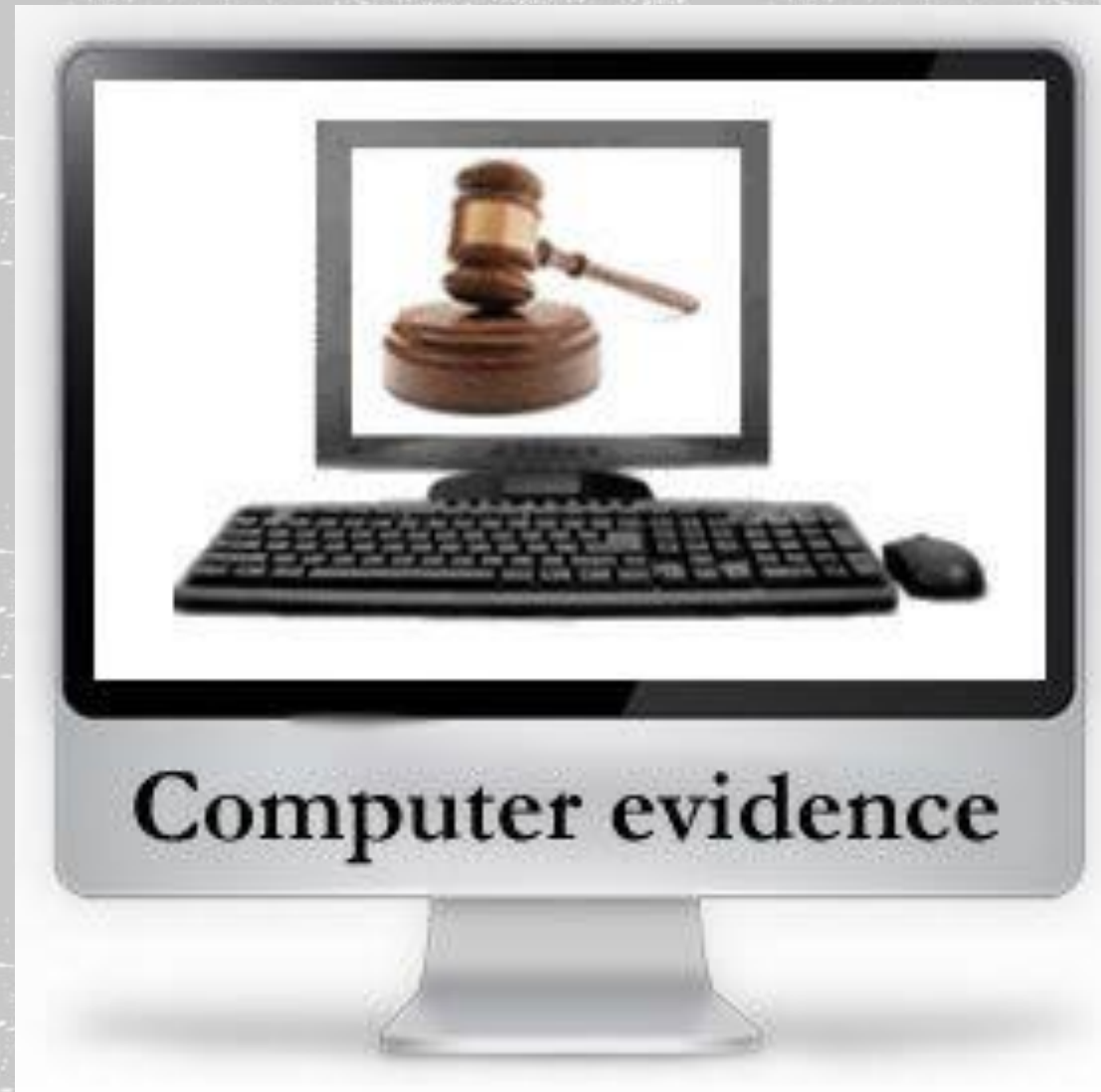
**BACK TO LASHONDA: WHAT KINDS OF
QUESTIONS MIGHT THE INVESTIGATOR ASK?**



A close-up shot of a person's hand holding a small white card. The person is wearing a dark suit jacket, a light-colored shirt, and a patterned tie. The card has the words "Trust me." written on it in a casual, handwritten style. 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 roof, 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 rests on a dark wooden surface. In the foreground, a rectangular sign with a green background and a wooden border is placed diagonally. The sign has the words "CONFLICT OF INTEREST" written in a dark, serif font. Overlaid on the top half of the image is the text "AVOIDING CONFLICTS OF INTEREST" in a large, white, bold, sans-serif font.

AVOIDING CONFLICTS OF INTEREST

CONFLICT OF INTEREST



ONE MORE WORD ABOUT BIASES





STEP THREE
ROLE OF THE TITLE IX
DECISION MAKER

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

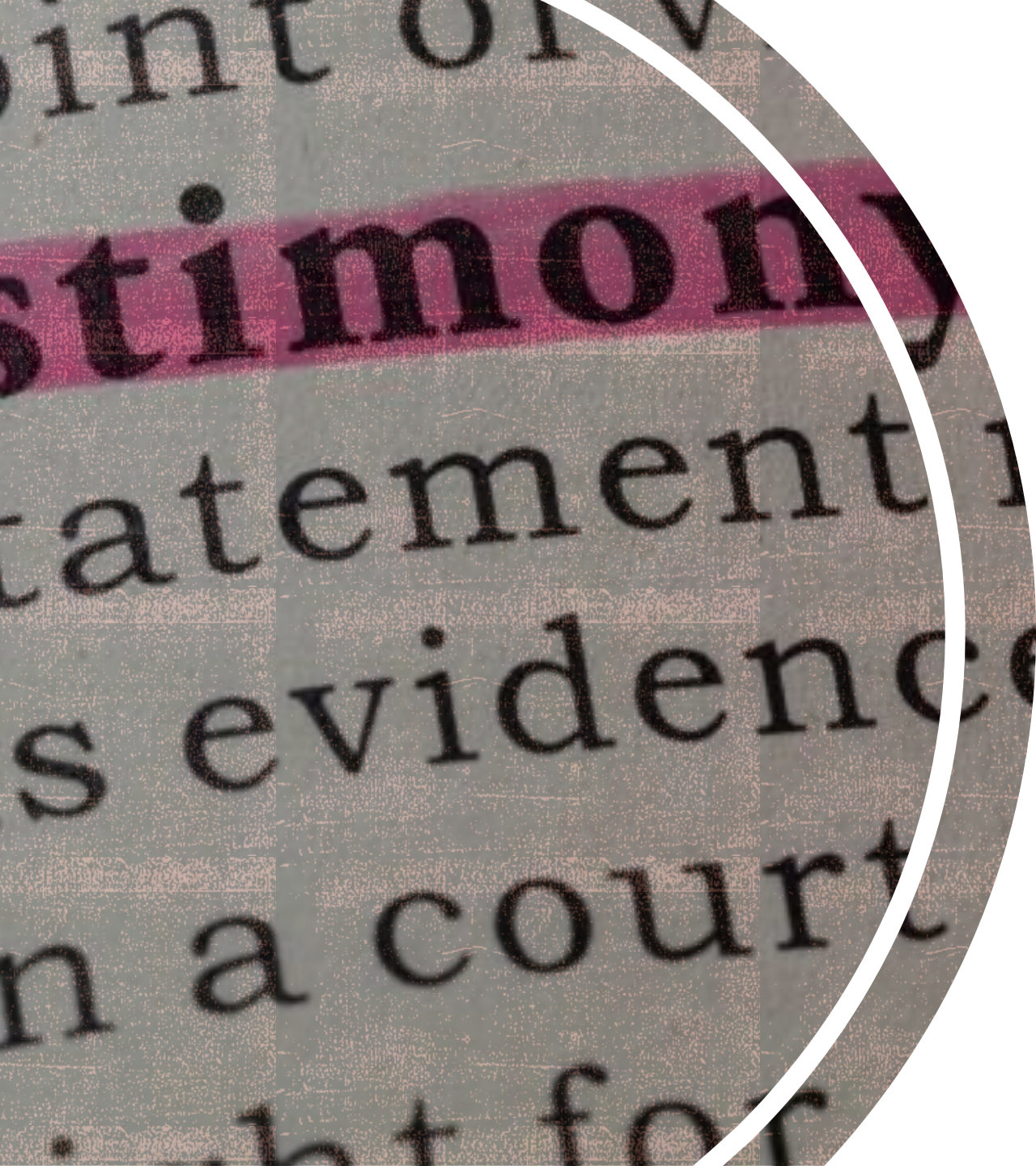
All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.



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



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)



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



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....**





Questions