

Higher Education




TITLE IX DECISION- MAKER

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LESSON ONE

WELCOME AND REMINDERS





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AGENDA

- Lesson One Welcome and Reminders
- Lesson Two Role and Scope Overview
- Lesson Three Title IX Grievance Procedures
- Lesson Four Grievance Procedures (cont'd)
- Lesson Five Pre-Hearing Preparation
- Lesson Six Hearing
- Lesson Seven Determination
- Lesson Eight Determination (cont'd)
- Lesson Nine Wrap-Up and Assessment of Knowledge



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COURSE APPROPRIATE FOR:

- ☒ Title IX Decision-Makers ☒ Title IX Coordinators Title IX
- ☒ Deputies/Designees ☒ Investigators Others involved in
- ☒ Title IX matters



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COURSE OBJECTIVES

Understand the role and scope of the Title IX Decision-Maker(s)

Learn best practices for your role


Explain the grievance process and your role in it



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REMINDER!!!

 You must still receive training on your policies and procedures

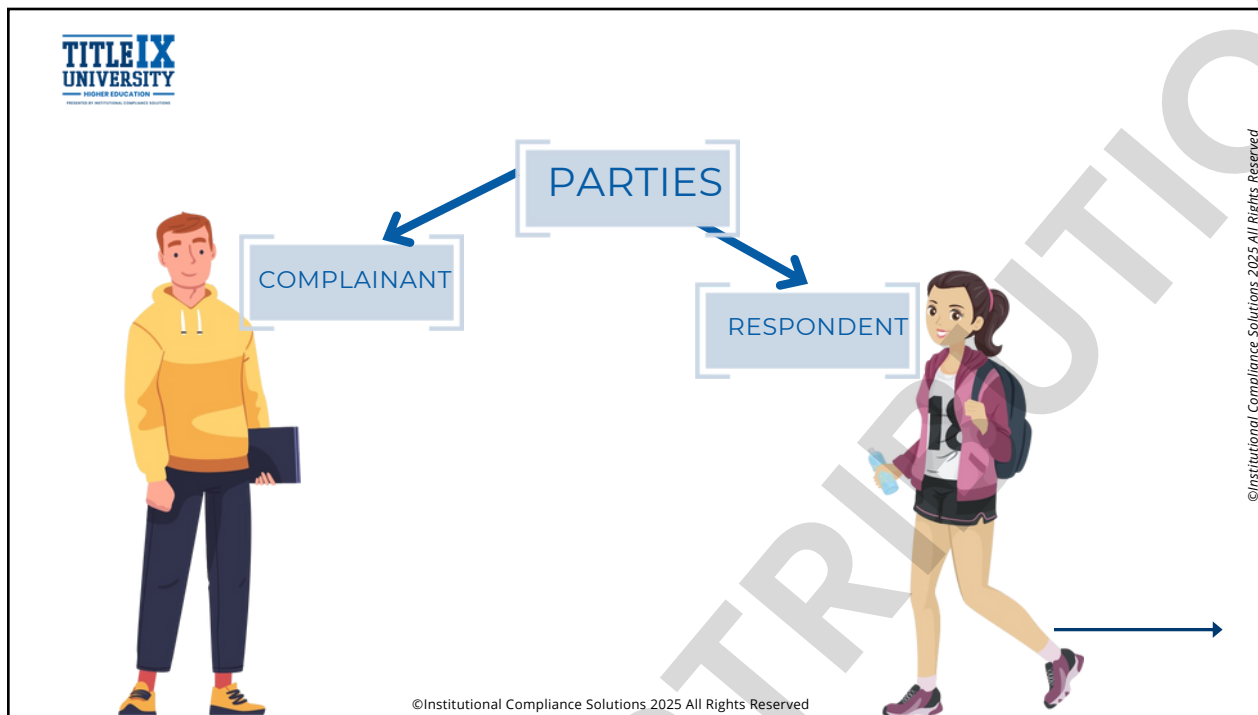
 Title IX Coordinator is your ultimate resource

 Review definitions from Introduction and Overview Course



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LESSON TWO

ROLE AND SCOPE OVERVIEW



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YOUR ROLE AND SCOPE



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NOT YOUR ROLE:

- Investigate
- "Prosecute"
- Make a determination for behavior outside of the scope of the investigation



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REMINDER!!!

👉 Investigator cannot serve as the Decision-Maker



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Note:

You are part of the Title IX Team at your institution.
Title IX Coordinator is leader of that team.
Also on the team:

- Deputies/Designees
- Investigator
- Appellate Decision-Maker
- Informal Resolution Facilitator

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Avoiding Conflicts of Interest and Bias

AVOID



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WHAT TYPES OF CASES?


- Who are the parties involved?
- What is the conduct at issue?

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PARTIES INVOLVED:



- 01 Student on student
- 02 Employee on employee
- 03 Student on employee
- 04 Employee on student

*WILL YOU BE ONLY HANDLING STUDENT CASES OR ONLY EMPLOYEE CASES?

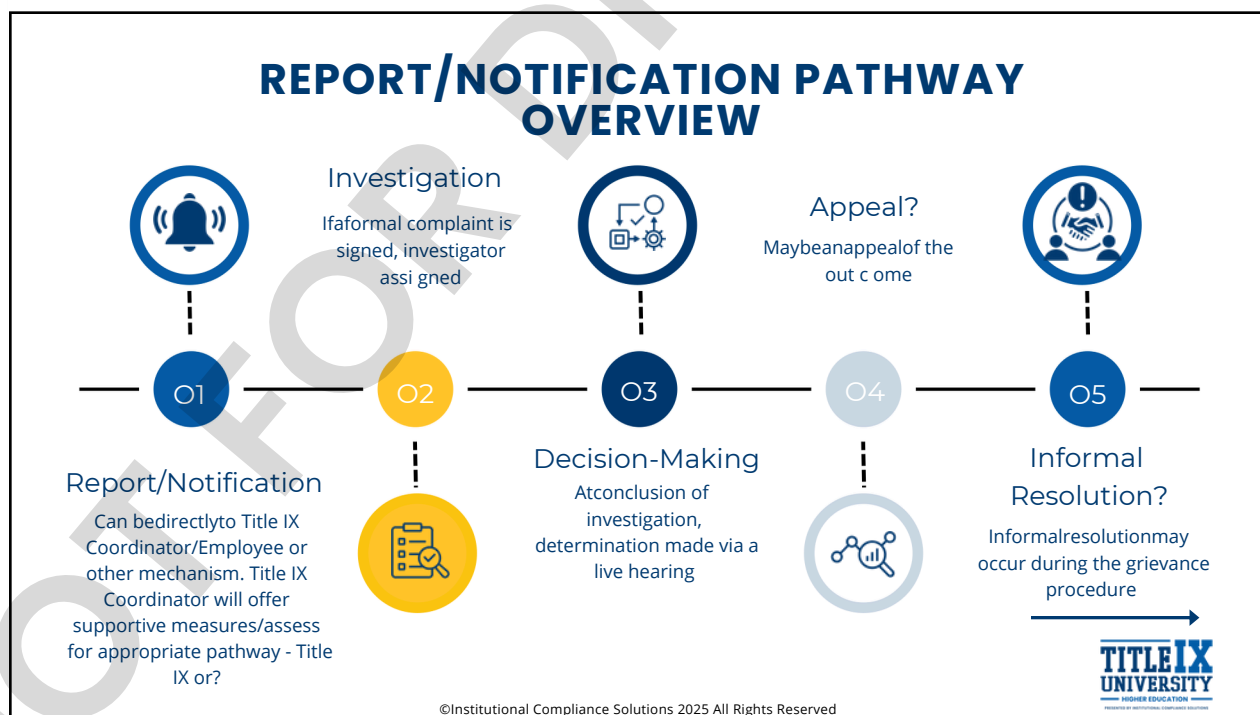
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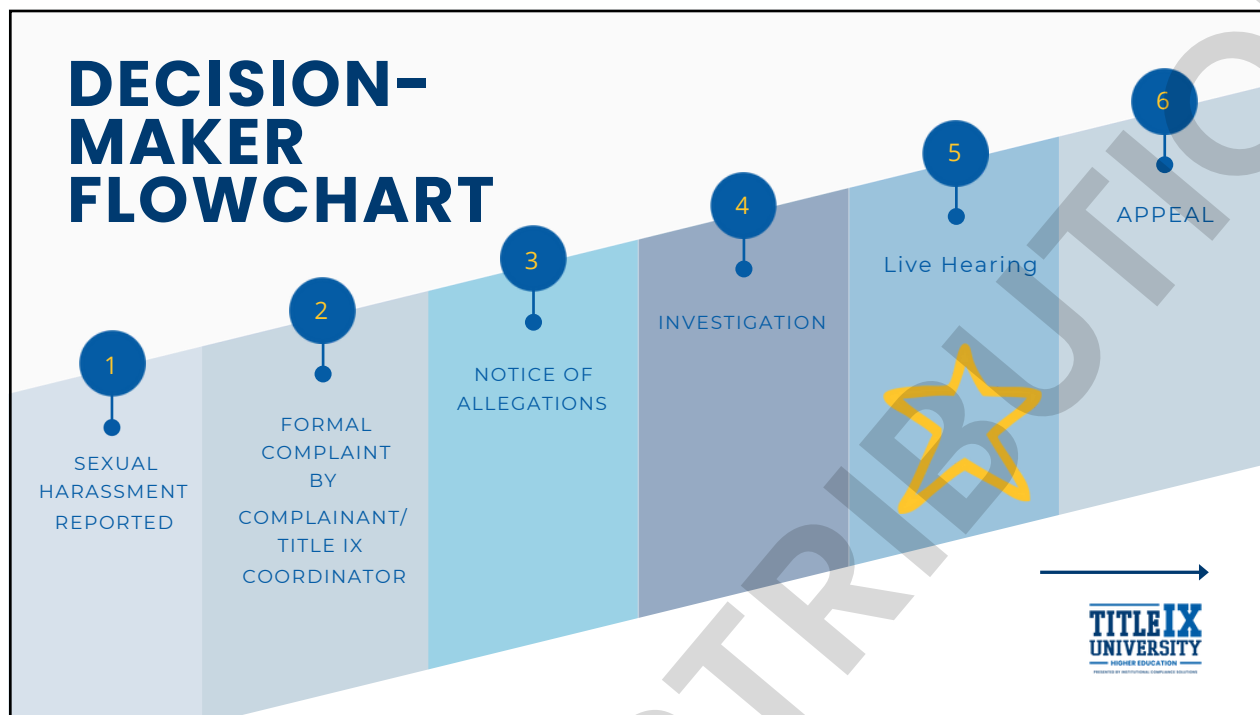
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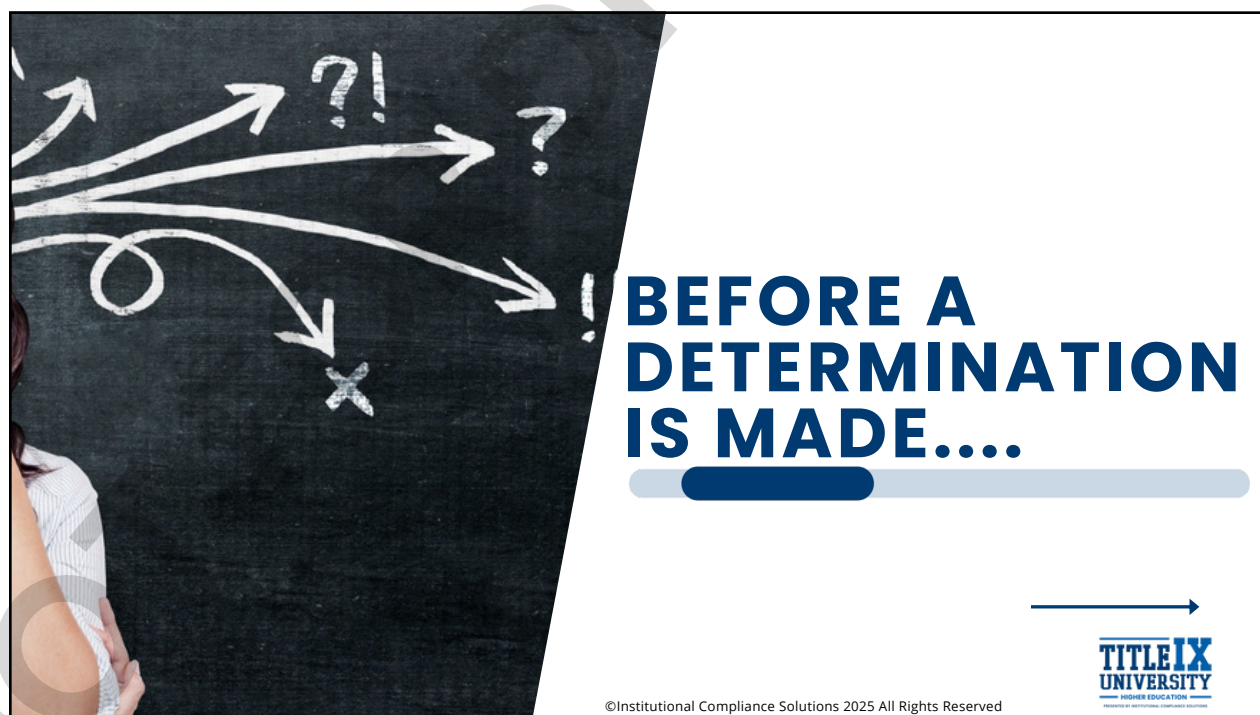
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TITLE IX COORDINATOR WILL:

- Offer Supportive Measures
- Triage/evaluate conduct for Title IX
- Determine if initiating a Formal Complaint
- Consider Emergency Removal/Admin Leave of Respondent

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IF A COMPLAINANT DOES NOT WANT TO INITIATE A COMPLAINT:

- Title IX Coordinator may sign a Formal Complaint
- Title IX Coordinator does not become the Complainant/a party
- Provide all notices as DM as if Complainant is participating

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CONSOLIDATION OF COMPLAINTS

SchoolMAY consolidate:

- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party (cross-complaint).



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If a Formal Complaint is signed, an investigator and decision-maker will be assigned, and an investigation will begin.



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Notice of Allegations tells investigator WHAT they are investigating, and it should be updated if needed. It also tells the decision-maker what you are making a determination on!



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NOTICE OF ALLEGATIONS

- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
 - Identities of the parties
 - Conduct constituting Sexual Harassment
 - Date of incident
 - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after Grievance Process
- Right to Advisor of choice
- Code of Conduct provision(s) prohibiting false statements or false information in process



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9/24/25


**INSTITUTIONAL
COMPLIANCE SOLUTIONS**

Notice of Allegations Checklist

☐ Notice of Grievance Process; Including Informal

☐ Allegations Potentially Constituting Sexual Harassment

- Identities of the Parties
- Conduct Constituting Sexual Harassment
- Date of Incident
- Location of Incident

☐ Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process

☐ Right to Advisor of Choice

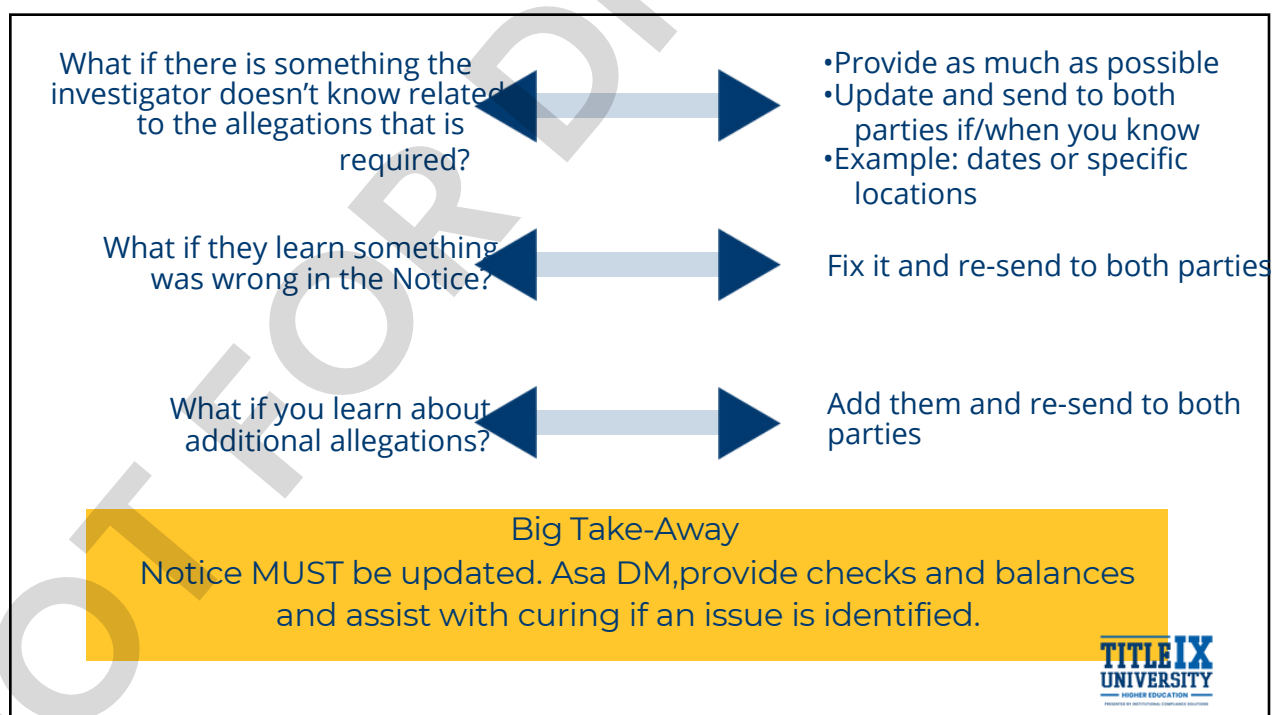
☐ Code of Conduct Provision Prohibiting False Statements or False Information in Process





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CONDUCT AT ISSUE

*Review definitions from Introduction and Overview Course and your policies and procedures

*Reminder that you need a definition of consent in your policies and procedures



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OTHER TITLE IX CONDUCT SUBJECT TO GRIEVANCE PROCEDURES



Discrimination based on "sex"

Failure to provide pregnancy accommodations

Discrimination based on pregnancy

Gender-equity in athletics

Big Take-Away:

Gain clarity now and in each case on your role if there are multiple policies at issue and/or whether you will be a DM on matters outside of Title IX Sexual Harassment.



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WHEN YOU ARE ASSIGNED AS A DECISION-MAKER, CONSIDER:

Student/Employee? **1**

What policies may be implicated? **2**

Capacity **3**

When did the conduct occur **4**

5 Add Disability Resource involvement?

6 Notice of Allegations

7 Conflict of interest/bias?

8 Timeframes outlined in your policies/procedures

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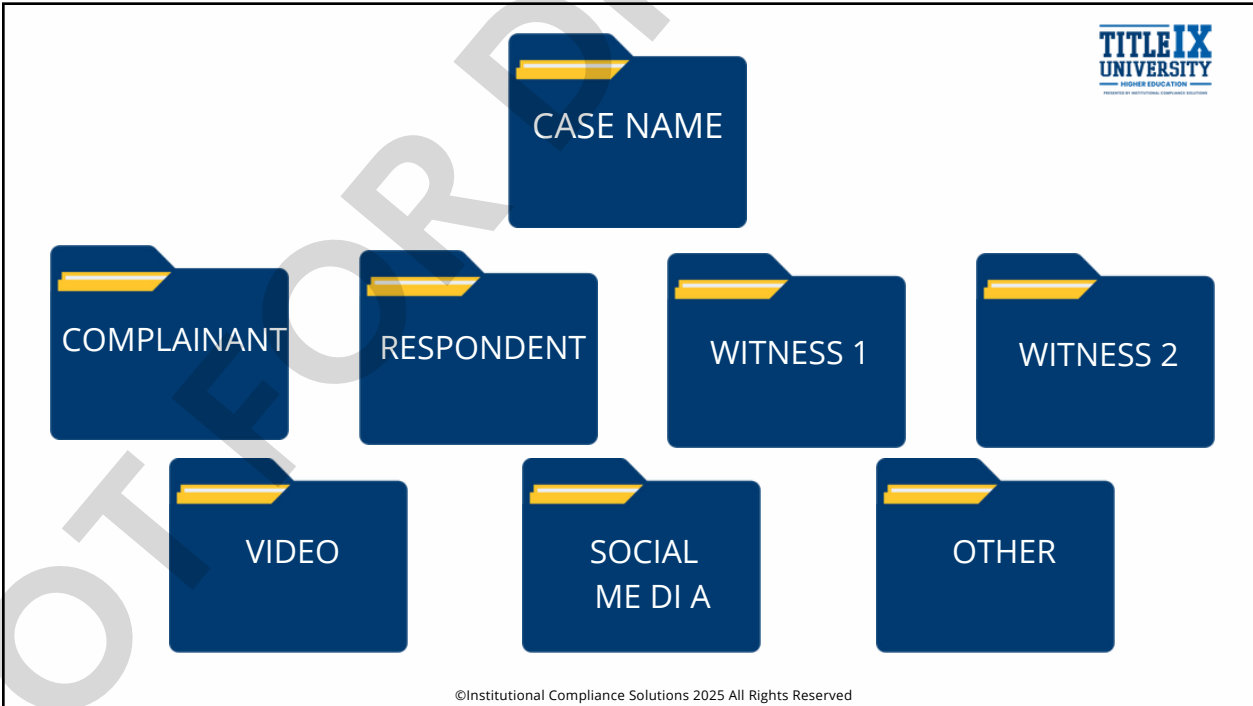


THE CONTENTS OF AN INVESTIGATORY FILE



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CASE NAME

COMPLAINANT

RESPONDENT

WITNESS 1

WITNESS 2

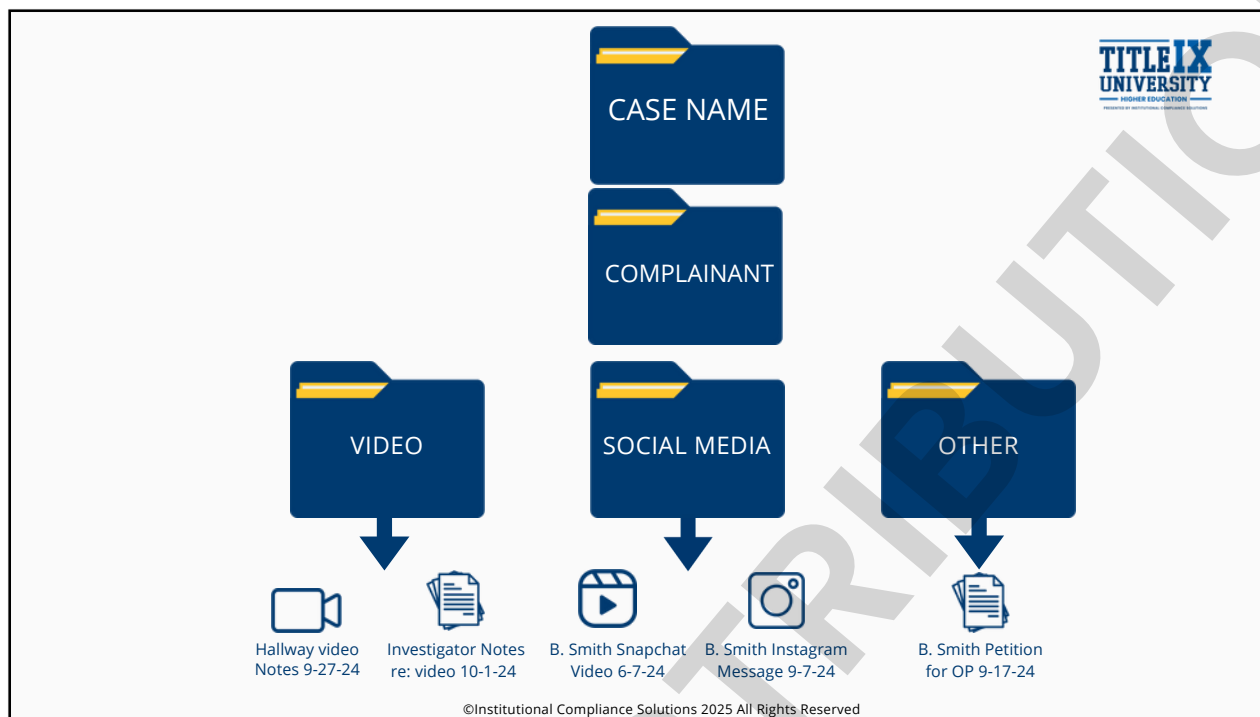
VIDEO

SOCIAL
ME DI A

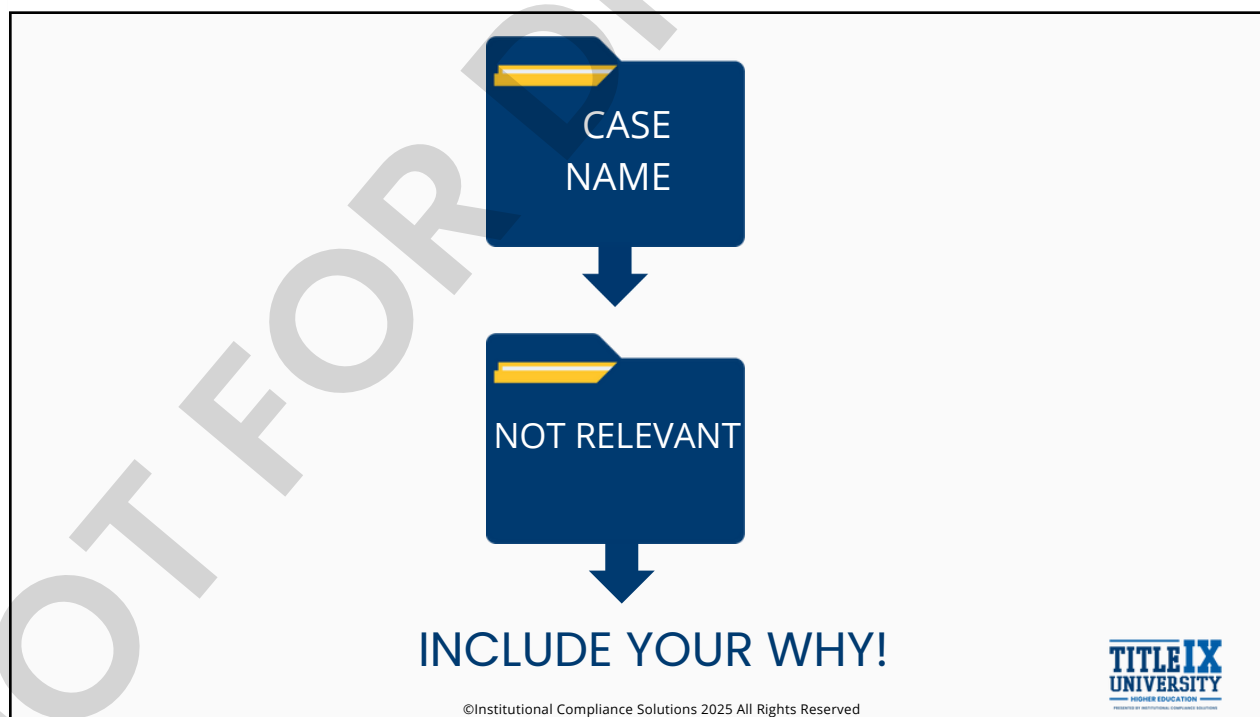
OTHER

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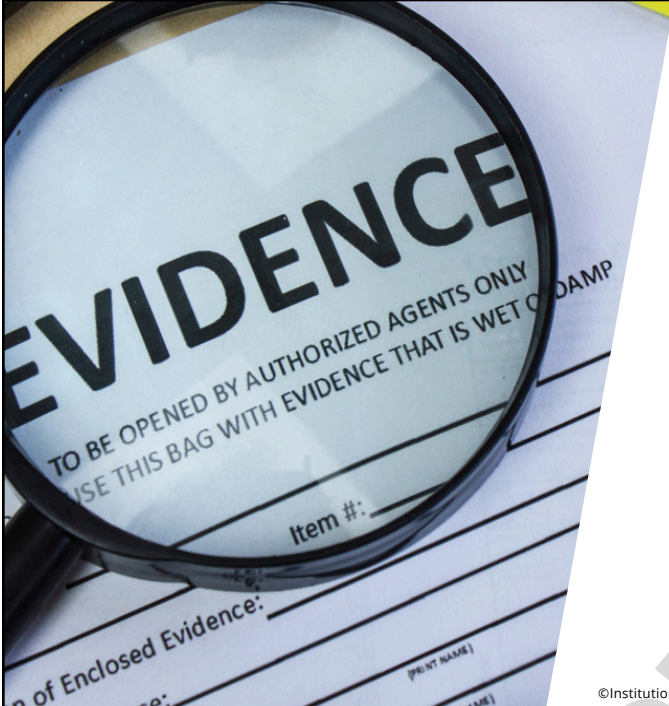
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EVIDENCE REVIEW: THE IMPORTANCE OF ACCESS TO INFORMATION

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MUST: PROVIDE BOTH PARTIES AN EQUAL OPPORTUNITY TO INSPECT AND REVIEW ANY EVIDENCE OBTAINED AS PART OF THE INVESTIGATION THAT IS DIRECTLY RELATED TO THE ALLEGATIONS INCLUDING:



The evidence upon which the school does not intend to rely in reaching a determination

Inculpatory or exculpatory evidence

The purpose is so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.



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REMINDER!!!

👉 How Long?

- Ø10 days
- Ø(business or calendar)
- ØDefine in policy

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THE INVESTIGATIVE REPORT

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WHAT YOU SHOULD RECEIVE...



Easy to Follow,
Clear, Concise
Can the reader
follow the report
and understand
who reported/said
what?



Roadmap for the
Decision-Maker

This report will
guide the decision-
maker, help them
ask questions, and
provide a roadmap
for their process



Includes the
Basics
Assume the reader
knows NOTHING



Reviewed by
Colleague
Trusted
counterpart



Consistent but
Not Identical
There is room for a
little flexibility



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A TITLE IX REPORT IS A SUMMARY OF RELEVANT EVIDENCE

THIS IS NOT A DUMP OR COPY OF INVESTIGATOR
NOTES.



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MUST: PROVIDE BOTH PARTIES AN EQUAL OPPORTUNITY TO INSPECT AND REVIEW THE REPORT



Required 10-day review and response period (before determination)

Encourage schools to wait on response before sending to DM

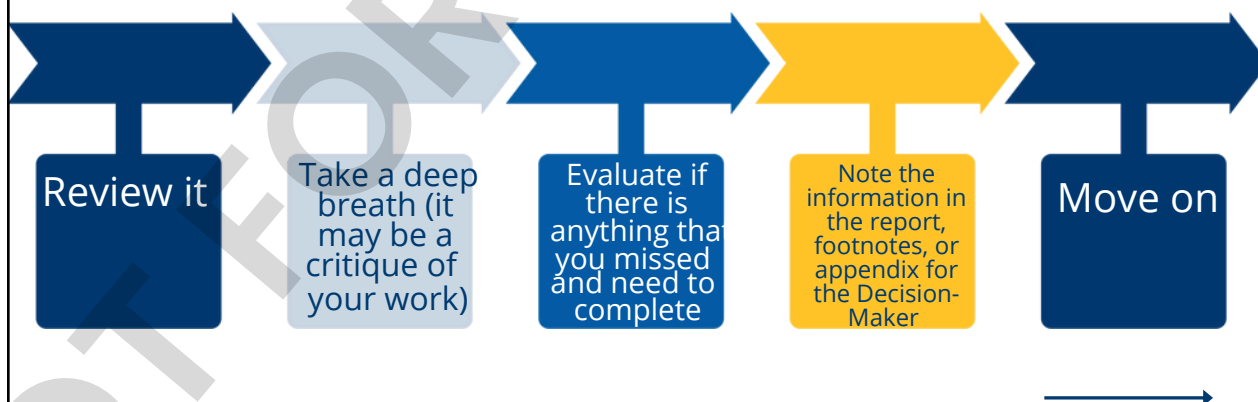


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WHAT TO DO WITH THEIR RESPONSE

(if any)



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NOTICE OF HEARING

Must “provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants and purpose of all hearings, investigative interviews, and other meetings, with sufficient time for the party to participate.”

- Ø How long? Not specified; recommend 10 days minimum
- Ø States name of DM in order to ensure no objections/conflict
- Ø Who issues the notice?

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NOTICE CONTENTS

- Ø Date of the hearing
- Ø Location (virtual/in-person)
- Ø Decision-Maker appointed
- Ø Opportunity to challenge for conflict (within a specified timeframe)
- Ø Disability accommodations
- Ø Retaliation reminders
- Ø Copy advisors

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**BEFORE YOU START...
THE IMPORTANCE OF PREPARATION**

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ARE YOU MAKING A DETERMINATION ON MORE THAN JUST TITLE IX?

Title IX Title VI Title VII Code of Conduct Ot her ?

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WHAT INFORMATION DO YOU HAVE?

- Is there anything missing?
- Were procedures followed?
- Reminder: You are a check on the process






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CHECK YOUR BIASES

-  Where are your potential biases in the case?
-  Can you overcome any biases that exist?
-  Is your mind in a neutral position?

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INTRODUCTION

Who are you?



What is your responsibility?

What policy/policies & procedures are you using?



Something to connect you with the party or witness



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MAKE SURE YOU ARE USING:

The name they prefer

Their correct title

Their correct pronouns--example some names could be used for both males and females (Jordan)

Their correct email addresses



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DEVELOPING A PLAN



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Pre-Hearing Preparation



- Review all documents, evidence, statements, information provided to you, as the Decision-Maker prior to the hearing.
- Do not pre-judge, keep an open mind.
- Review resolution/hearing process, rules of decorum, role of advisor.
- Test technology prior to the hearing or resolution (if emailing, triple check email addresses).
- Do not discuss the case.
- Give the process your full, undivided attention.
- Use a script if conducting a hearing.

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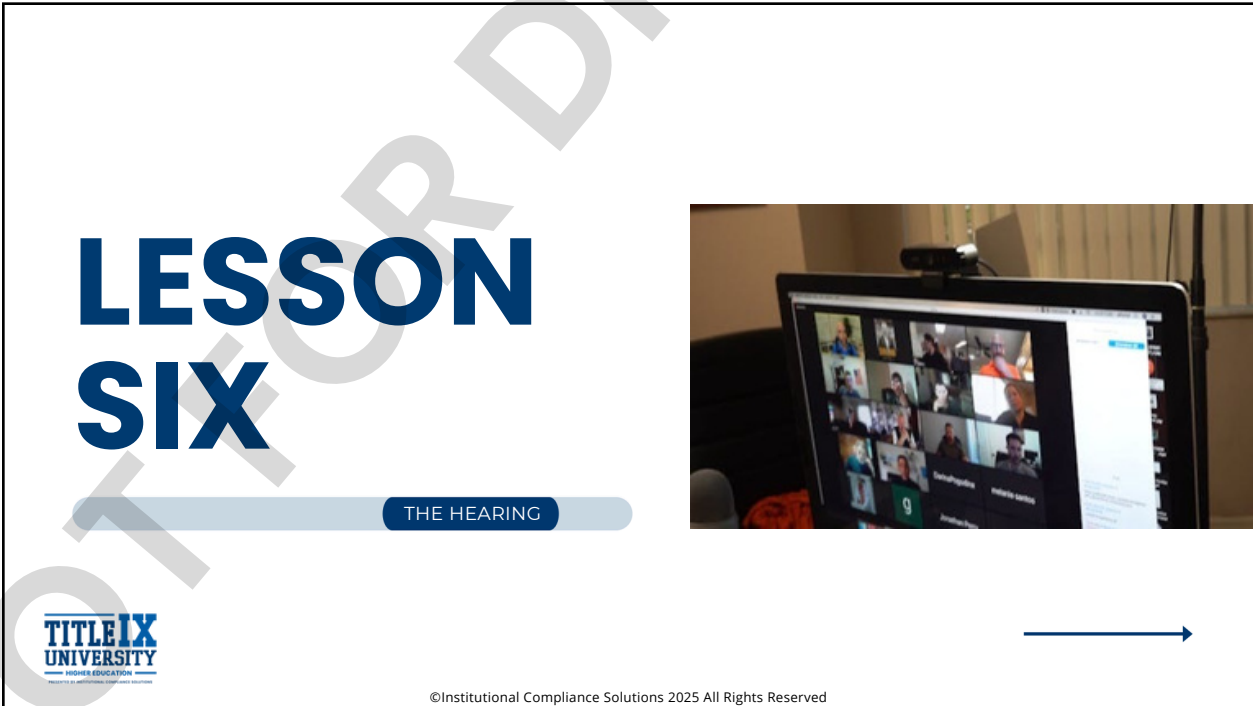


SEE YOU IN LESSON 6!

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LESSON SIX

THE HEARING

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Pre-Hearing Checklist:

- Introduction of Hearing Officer or Panel
- Introduction of the Parties and Advisor
- Explain the Purpose of the Hearing- Due Process
- Explain Role of Advisors
- Address Any Conflicts of Interest
- Explanation of Process per the Policy
- Explain How Breakout Rooms Will Work
- Coordination of Witnesses
- Confirmation of Zoom Link and Privacy
- Access to Evidence?
- Procedural Questions



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Be Prepared for Delays

- Party doesn't appear/participate
- Advisor doesn't appear/dismissed
- Parties move to informal resolution
- Witness doesn't appear/participate
- Technology issues
- Illness
- Emergency
- Other



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Other Considerations:

- ☑ Translation Services
- ☑ Time Zone Considerations
- ☑ Supportive Measures
- ☑ Modifications or Other Accommodations
- ☑ Transcription Services



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Create a Comfortable Space

- Private space
- Comfortable
- Quiet
- Convenient
- Access to technology (internet connection)
- Desk/table space
- Sufficient space between parties
- Private room for breaks/discussion with advisor
- Waiting room for witnesses (and virtual waiting rooms if appearing virtually)



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Hearing Process

- Panel/Hearing Officer Role
- Breakout Rooms created; who is handling witnesses
- Recording turned on
- Introductions
- Discuss schedule/breaks
- Allegations/Policy Violations read into the record (Acceptance?)
- Opening Statements (Limit?)
- Cross-Examinations and Relevancy Determinations
- Evidence Issues
- Witnesses
- Closing Statements

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SET THE TONE, ENFORCE THE RULES

- The parties and advisors must abide by the rules of decorum set by the institution
 - Provide the rules to the parties prior to the hearing
- The decision-maker must:
 - Set the tone for the process
 - Ensure that the rules are clearly outlined
 - Ensure that the rules are explicitly followed
 - Have the ability to take breaks as necessary

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MUST PROVIDE AN ADVISOR IF A PARTY DOES NOT HAVE ONE

- Ø Of choice through the process
- Ø Must be provided to the parties at a hearing if they do not have one
- Ø Must be provided and present even if the party is not
- Ø Nothing in the regulations that allows an advisor to “object”



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RELEVANCY DETERMINATIONS

ON THE RECORD

MUST EXPLAIN REASON FOR
DETERMINATION
ALLOW OPPORTUNITY TO REPHRASE?

HOW MUCH FOLLOW-UP?

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RELEVANT

related to the allegation of sex discrimination


*From 2024 Regulations but still appropriate

- Questions are relevant when they seek evidence that may aid in showing whether the alleged sexual harassment occurred.
- Evidence is relevant when it may aid a Decision-Maker in determining whether the alleged sexual harassment occurred.

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Require objective evaluation of ALL RELEVANT evidence	Relevant	Exclude the following types of evidence as not relevant
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in knowing whether the alleged sexual harassment occurred.*	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decision-maker in determining whether the alleged sexual harassment occurred.*	A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness - unless the school obtains the party's or witness' voluntary, written consent for use in the grievance procedures.
	*Specific to vacated 2024 regulations but still instructive	<p>Evidence that relates to the COMPLAINANT'S prior sexual conduct – UNLESS:</p> <ul style="list-style-type: none"> ◦Evidence about the Complainant's prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR ◦Evidence about specific incidents of the Complainant's prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sexual harassment. <p>▪Prior consensual sexual conduct between the parties does NOT, by itself, demonstrate or imply consent to the alleged sexual harassment OR preclude determination that sexual harassment occurred.</p>

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As the Decision-Maker, you can and should also ask questions of the parties or any witnesses.



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Consider your words:

Guilty v. Not Responsible

You did not prove

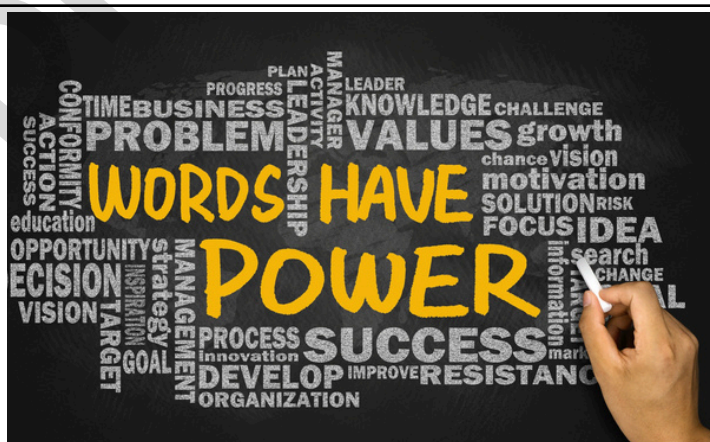
v.

The evidence does not support

You lied when you said . . .

v.

You were inconsistent when you said . . .

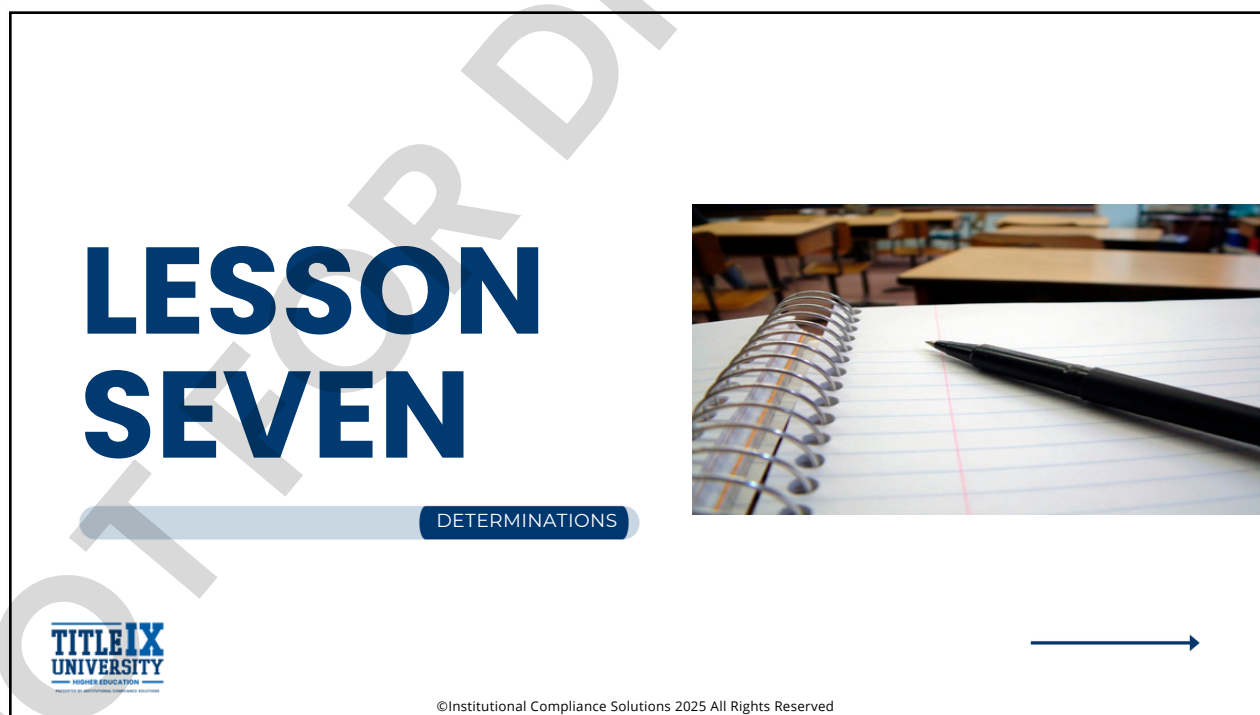


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BURDEN


The burden is on the INSTITUTION...NOT the parties.

-  No ONE has to “prove” anything
-  Does the information you have SUPPORT a finding of responsibility
-  Be careful with your language

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Evaluating Witnesses/ Reviewing Evidence

- Focus on behavior, not character.
- What information is known?
- What information is unknown?
- What questions could clarify your unknowns?

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REMINDER!!!


-  Parties/witnesses may not show up for the hearing
-  In those circumstances, you can still consider information from those parties/witnesses in your determination
-  How you weigh that information is within your discretion



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INSTITUTIONAL COMPLIANCE SOLUTIONS

Decision-Maker Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site visits
 - Methods used to gather other evidence
 - Hearings held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary sanctions
 - Whether remedies designed to restore or preserve equal access to education program or activity provided to the Complainant
- ☐ Procedures and Permissible Bases for Appeal



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DROP IN YOUR TIMELINES:

- You should have them from the investigative report (procedural steps taken)

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USE THE ALLEGATIONS

- WHAT DO THEY SAY?
- DROP THEM IN THE REPORT
- INCLUDE THE DEFINITIONS
- BREAK THEM INTO ELEMENTS
- THEN- PUT THE PIECES TOGETHER

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EXAMPLE:



Allegation: On January 7, 2025 Laura grabbed Phil's genitals over his shorts and squeezed while making a sexual comment.

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 incapacitation.

Elements:

- Touching
- Of a private body part
- Of another person
- For the purpose of sexual gratification
- Consent



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IMPORTANT UPDATE

In June 23, 2025, the FBI issued its annual update to the National Incident-Based Reporting System (NIBRS) User Manual. This update broadens the Title IX definition of "fondling" to "criminal sexual contact". The new definition is:

- The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim, for the purposes of sexual degradation, sexual gratification, or sexual humiliation.
- This includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

****Talk with your Coordinator and review your policies and procedures regarding your school's response to this change****



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DEVELOPING FINDINGS OF FACT:

What is uncontested?

What is a fact that has developed through consistencies and inconsistencies despite being contested?

What is still unclear despite ALL of the information?

F A C T
K E



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USE THE EVIDENCE

USE THE SUMMARIES IN THE REPORT; NOTES FROM THE INVESTIGATOR; TRANSCRIPT FROM THE HEARING



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Evaluating Evidence



Don't just rely on the description of a video, audio recording, or other evidence



Watch it--Review it--Multiple times



Look for consistencies and inconsistencies



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SOCIAL MEDIA

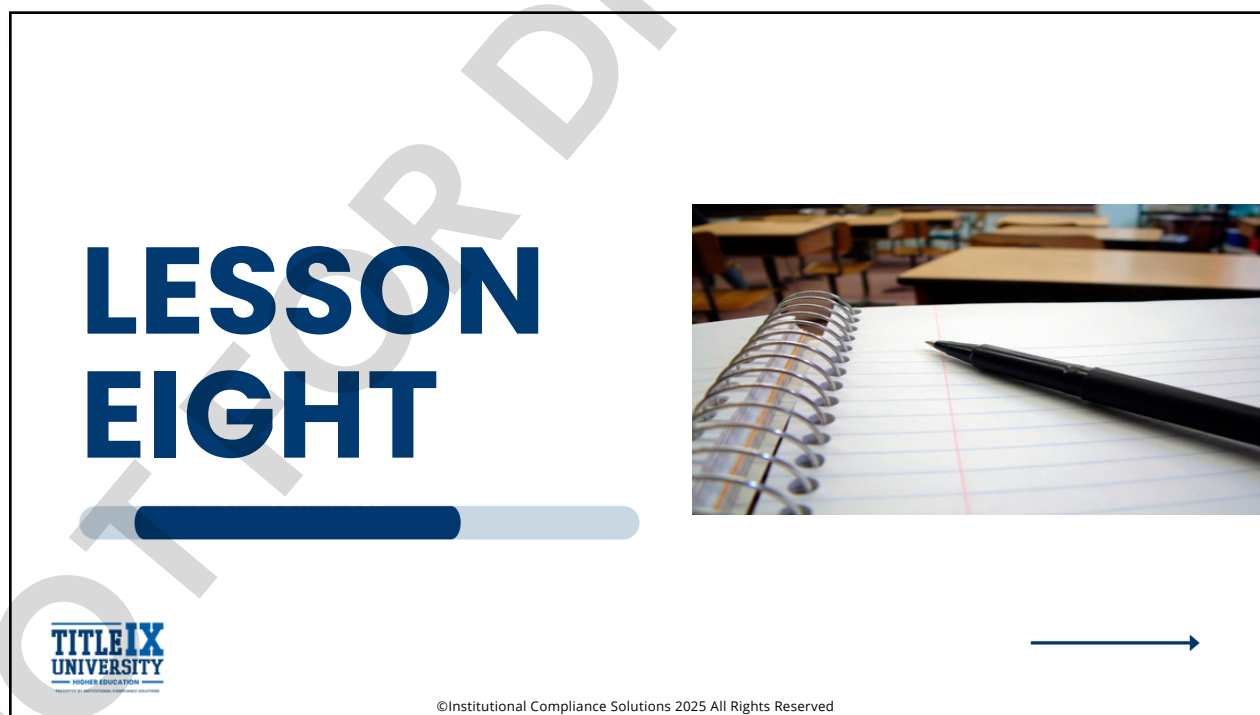


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Connect the facts to the elements

This is your opportunity to connect the dots...or... put the puzzle together.

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DETERMINE RESPONSIBILITY

Using Preponderance of the Evidence or Clear and Convincing

- Example Language: A preponderance of the evidence supports (or does not support) a finding of responsibility for fondling.
- NEVER: The Respondent did not prove...
- Make sure to include your WHY--summarize your rationale

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INCLUDE THE SANCTIONS IF THERE IS A FINDING OF RESPONSIBILITY

1

WITHIN THE
PARAMETERS OF
YOUR CODE



2

IF A FINDING,
REVIEW PRIOR
DISCIPLINE

3

DISCUSS WITH
ADMINISTRATORS
OR HUMAN
RESOURCES TO
ENSURE YOUR
SANCTIONS CAN BE
CARRIED OUT

4

MAKE SURE TO BE
EQUITABLE (WOULD
YOU INCLUDE THE
SAME SANCTION IF
THE SEX OF THE
RESPONDENT WAS
DIFFERENT?)

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CONSIDER MORE THAN PUNITIVE ACTIONS...

INCLUDE:

- EDUCATIONAL OPPORTUNITIES
- RESTORATIVE PRACTICES



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Appeal Options

Need to be included in the determination



Link to policy, who to appeal to, etc.



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DETERMINATION MUST HAVES

Page

numbers

Footnotes?

- Investigation
- Timeline(s)
- Events



Appendix/Attachments WITH PAGE NUMBERS

- Table of Contents for appendix/ attachments



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WHO IS YOUR AUDIENCE?



Judge



Family



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DELIVERY OF THE REPORT... THE IMPORTANCE OF SUPPORT



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THE DELIVERY OF THE REPORT CAN BE TRAUMATIC



Witnesses may say things that are surprising to the parties



Changing the trajectory of individual's lives



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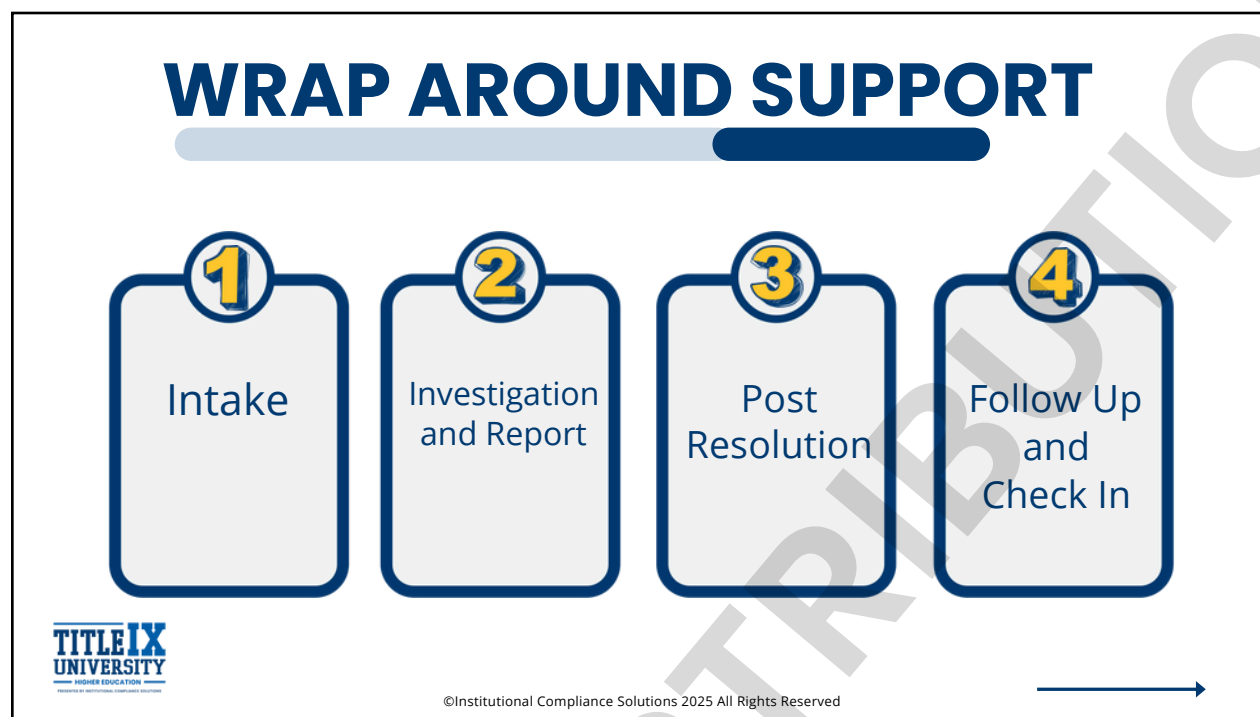
CONSIDERATIONS



- WHAT IS THE BEST WAY TO DELIVER THE REPORT
- ARE THERE SUPPORT RESOURCES IMMEDIATELY AVAILABLE
- DO YOU NEED TO PROVIDE A HEADS UP THAT IT IS COMING
- NEXT STEPS APPEAL OPTIONS

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SUSTAINABILITY

PLANNING

If you were to hand over your Title IX role starting tomorrow, would the person picking up the file know what had been done and what is left to do?



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REMINDER!!!

Information for case needs to
be saved for 7 years



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COMMON DEFICIENCIES

Failure to include appeal options in determination

Failure to provide advisors

Failure to give adequate hearing notice

Not assisting with curing procedural issues (i.e., no notice; NOA is inaccurate or not updated)

Not documenting the "why" or rationale for decision

Allowing parties to conduct cross



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FINAL THOUGHTS

Need to follow grievance procedures and policies/ procedures; single adjudicator, panel, etc.

Clarity on your role is critical

Written determination takes time - template

Presumption of not responsible - make sure clear through entire process



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TRAINING PATHWAY

Title IX Decision-Maker



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REMINDER!!!

Do not forget your course downloads
and other resources within Title IX
University

Survival Kit



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QUESTIONS?

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CONGRATULATIONS!!



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Notice of Allegations Checklist

- ☐ **Notice of Grievance Process; Including Informal**

- ☐ **Allegations Potentially Constituting Sexual Harassment**
 - Identities of the Parties
 - Conduct Constituting Sexual Harassment
 - Date of Incident
 - Location of Incident

- ☐ **Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process**

- ☐ **Right to Advisor of Choice**

- ☐ **Code of Conduct Provision Prohibiting False Statements or False Information in Process**



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Notice of Hearing Checklist

A specific Notice of Hearing is not a required under the Title IX Regulations. However, it is required that you provide notice of ANY meeting which a party is invited to participate, including the live hearing (§106.45(b)(5)(v)). This checklist provides you with the best practice for drafting this notice for hearings.

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Purpose of the hearing

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Date, time, and location of the hearing

- If the hearing will take place virtually, provide the link to the appropriate paltform (e.g., Google Meet, Zoom, Teams)
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Participants in the hearing

- Provide a list of individuals who have confirmed they will attend the hearing as well as their role
 - Provide the names of the Hearing Officer(s)
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Opportunity to raise a concern regarding the Hearing Officer(s) bias or conflict of interest

- Specify the process by which a party can object to the Hearing Officer(s)
- Note the deadline by which a party must submit their concern



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Notice of Hearing Checklist

Additional items to consider including:

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Call for accommodations

- **Allow parties the opportunity to request special accommodations, if needed**
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Links to important documents

- **Relevant policies**
 - **Investigation report**
 - **Evidence file**
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Statements regarding:

- **Retaliation**
- **Confidentiality/Privacy**

As always, please draft using language that is consistent with your institutional policy.

Use of this checklist does not guarantee compliance with the Title IX Regulations.



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Pre-Hearing Meeting Checklist

The pre-hearing meeting is an optional brief meeting with the Parties and their Advisors to prepare the participants for the upcoming live hearing. It is your opportunity to clarify expectations, confirm logistics, and address any final questions. Use the checklist below to guide the structure of your pre-hearing meeting and ensure consistency across cases.

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Introduction of the Hearing Officer or Panel

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Allow Party and Party's Advisor to introduce themselves

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Explain the purpose of the hearing

- **Affords due process**
 - **Allows for live cross-examination of Parties and witnesses through an Advisor**
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Explain the role of Advisors

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Address any potential conflicts of interest or biases Parties may raise regarding the Hearing Officer(s)

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Walk through procedures and expectations

- **This will be informed by your policy**
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Coordination of witness attendance



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Pre-Hearing Meeting Checklist

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Discuss logistical considerations

- Breakout rooms or physical space
- Breaks
- Plan for multi-day hearings, if needed
- Confirm meeting platform
- Technology needs and/or troubleshooting

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Questions from the Party and their Advisor

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Reconfirm the date, time, and location of the hearing

Use of this checklist does not guarantee compliance with the Title IX Regulations.



Decision-Maker Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations

- ☐ Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site visits
 - Methods used to gather other evidence
 - Hearings held

- ☐ Findings of Fact Supporting Determination

- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts

- ☐ Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary sanctions
 - Whether remedies designed to restore or preserve equal access to education program or activity provided to the Complainant

- ☐ Procedures and Permissible Bases for Appeal