

Title IX Investigators: Running an Investigation

Presented by Brittany Reiner | Udall Shumway PLC | August 27, 2026

Disclaimer & Learning Objectives



The information provided is for informational purposes only and should not be used in place of legal advice.

01

Review Coverage & Definitions

Understand Title IX's scope, key terms, and what conduct triggers obligations.

02

Detail Investigator Procedures

Walk through the step-by-step procedural requirements for Title IX investigators.

03

Apply to Real-World Scenarios

Put procedures into practice using realistic Title IX investigation scenarios.



THE FOUNDATION

What Is Title IX?

"No 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."

— U.S. Congress, 1972



The Three Types of Title IX Sexual Harassment

Understanding which category applies is the first step in every investigation.





TYPE 1

Quid Pro Quo

An employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

Key Element

Must involve a school or district **employee** — not a student.

Reminders

The act doesn't have to be engaged in to be sufficient quid pro quo.

TYPE 2

Hostile Environment

Unwelcome conduct determined by a **reasonable person** to be so severe, pervasive, and objectively offensive that it effectively denies equal access to education.

Severe

Serious enough in nature to cross a meaningful threshold.

Pervasive

Repeated or widespread — not an isolated incident.

Objectively Offensive

A reasonable person would find the conduct offensive.

⚠️ All three elements must be present — meeting only one or two is insufficient.



TYPE 3

Sexual Assault or Violence

This category covers the most serious offenses, each defined by federal statute:

Sexual Assault

As defined in **20 U.S.C. 1092(f)(6)(A)(v)**

Dating Violence

As defined in **34 U.S.C. 12291(a)(10)**

Domestic Violence

As defined in **34 U.S.C. 12291(a)(8)**

Stalking

As defined in **34 U.S.C. 12291(a)(30)**

Core Procedural Reminders

Presumption of Innocence

The respondent is presumed **not responsible** throughout the process — until a final determination is made.

No Retaliation

Disciplining a respondent for conduct **directly connected** to the Title IX matter constitutes retaliation.

Equal Opportunity

Both parties must have **equal opportunity** to present witnesses and evidence — no exceptions.



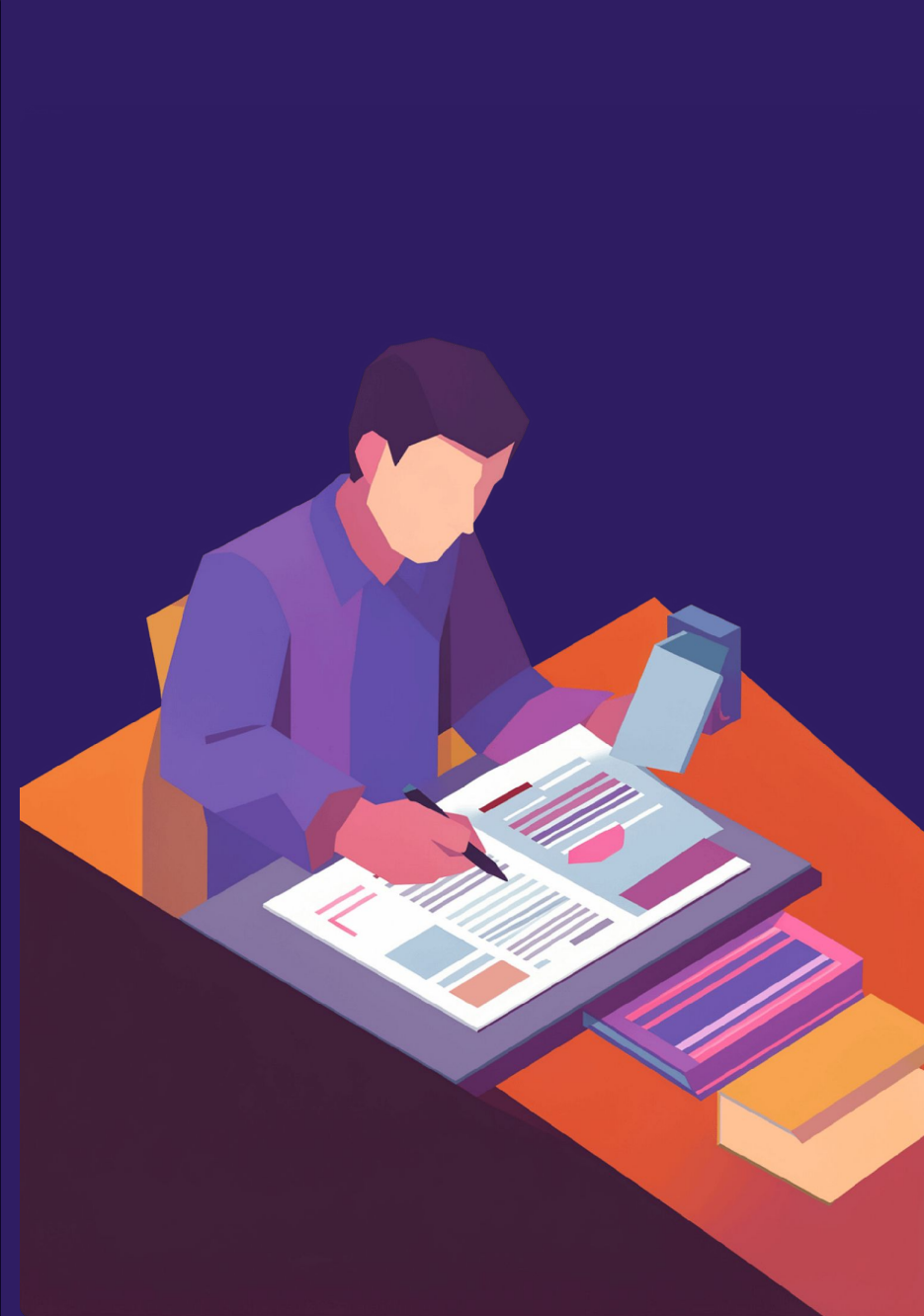


Advisors & Parties' Rights

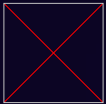
- Parties may choose **any advisor** — attorney or otherwise.
- Parents of minor students are **not** advisors but have the right to be present. A minor may have both a parent *and* a separate advisor.
- Parties have the right to inspect and review **all evidence collected**; both should sign a non-disclosure agreement (NDA).

Investigator Requirements & Pre-Planning

Before the first interview is scheduled, the groundwork determines the quality of the entire investigation.

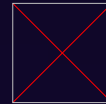


Who Can Be the Investigator?



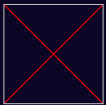
Trained on Title IX

Must be trained on current Title IX regulations before conducting any investigation.



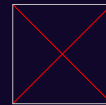
Role Separation

May be the Title IX Coordinator, but **may not** also serve as the decision-maker.



Third-Party Option

Can be an external party specifically hired to conduct the investigation.



No Conflict of Interest

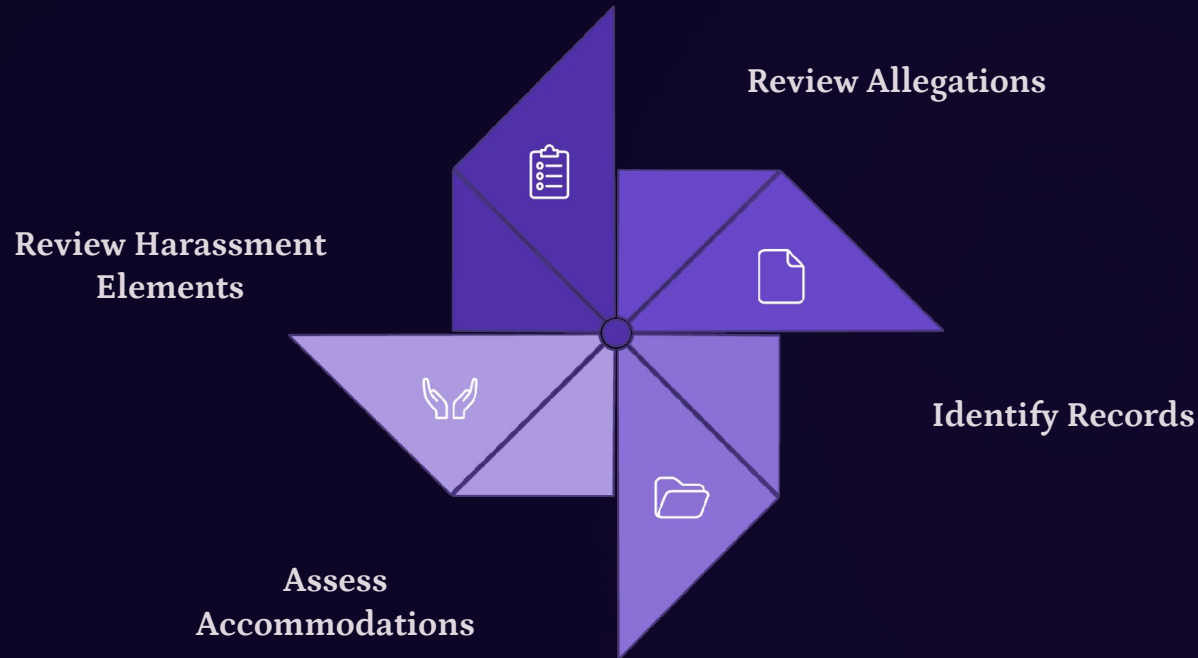
Must be free from any bias or conflict of interest toward either party.

Pre-Planning the

Investigation

Thorough pre-planning is the foundation of a defensible investigation. Before any interviews begin:

- Review the elements of each harassment type: Quid Pro Quo, Severe/Pervasive/Objectively Offensive, Sexual Violence
- Review the specific allegations in the matter
- Identify documents, records, surveillance footage, police reports, and interpreter needs
- Understand any disabilities of persons involved



Physical Evidence to Gather

School Records

Attendance records, class schedules, and discipline history.

Medical & Counseling

Medical or counseling information — only with written consent.

Digital Evidence

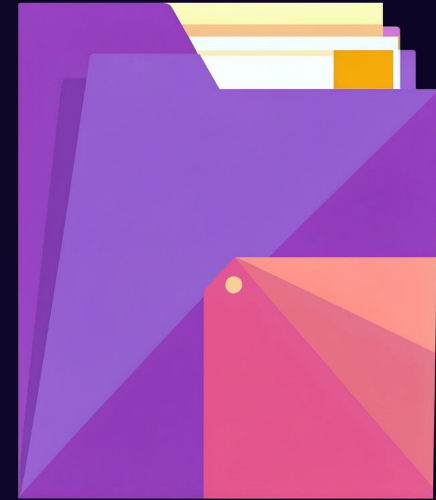
Social media posts, screenshots, and videos relevant to the allegations.

- ⊗ **Important:** Compromising images or videos (e.g., nude photos) must be **redacted and summarized** — never reproduced in the investigation record. Rely on law enforcement.



Sexual History: What's Relevant?

A complainant's sexual predisposition and prior sexual behavior are **not relevant** to a Title IX investigation — with two narrow exceptions:



Exception 1: Third-Party Conduct

Needed to prove someone **other than the respondent** committed the alleged conduct.

Exception 2: Consent

Specific prior sexual behavior with the respondent is needed to prove **consent**.

Activity

Using the Scenario, plan your investigation.



Interviews

Who would you interview in this Title IX Investigation.

Documents

What documents might exist that you would want to obtain in this Title IX investigation.

Collecting Evidence & Interviews

How you gather evidence and conduct interviews determines the integrity — and legal defensibility — of your entire investigation.



Collecting Evidence: Key Rules



You Do the Gathering

Do not require parties to anticipate and provide evidence — that responsibility belongs to the investigator.



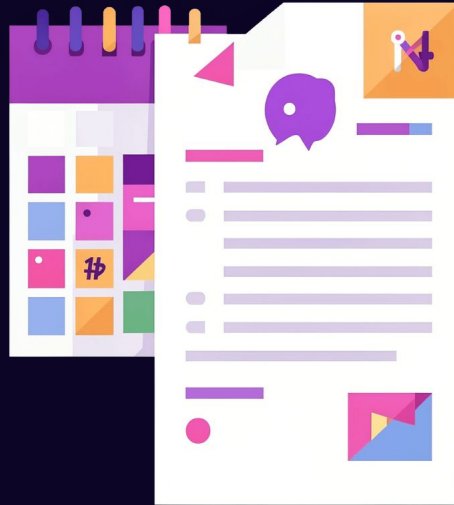
Respect Privilege

You may **not** require evidence protected by attorney-client, doctor-patient, or spousal privilege.



Written Consent for Voluntary Disclosures

If a party voluntarily shares privileged information such as medical records, obtain written consent before including it in the investigation record.



Interview Notice Requirements

Every party interview requires proper advance written notice. Skipping this step can invalidate your process.

- Provide **written notice** for all interviews: date, time, location, participants, and purpose
- Give parties **enough advance notice** to prepare — don't schedule interviews on short notice
- Use the district's **template forms** for consistency across all interviews

Preparing Interview Questions

Plan in Advance

Use checklists from the forms packet to build your question outline before the interview.

1

2

Consistent Core Questions

Ask both parties the same core questions, then follow the conversation where it leads.

Witness Consistency

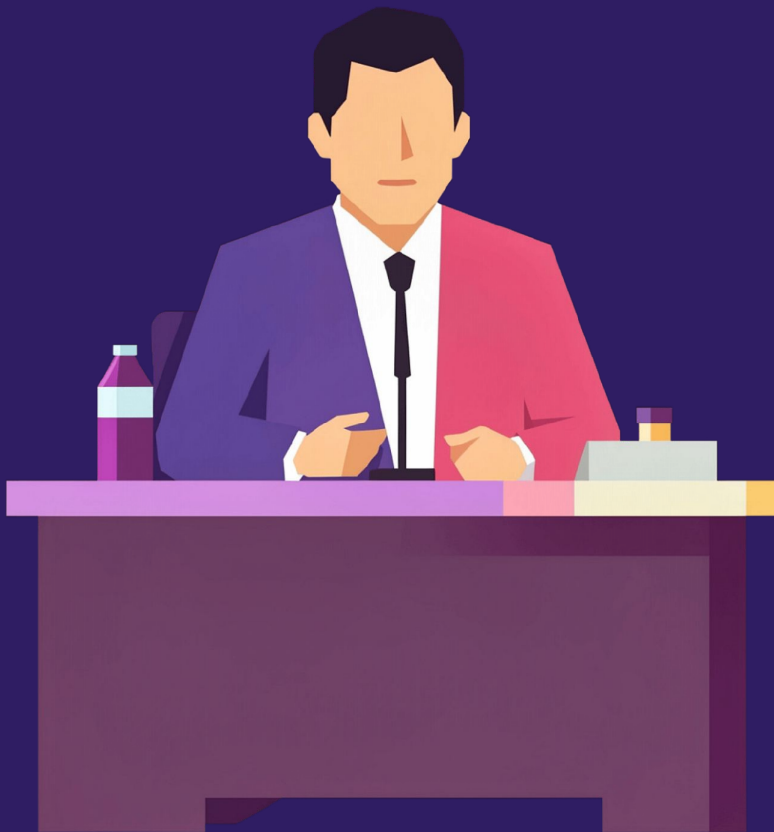
Ask witnesses the same or similar questions to allow for meaningful comparison.

3

4

Stay Flexible

Go with the flow — let the interview organically guide you to new information.



Interview Question Style

✓ Do Ask: Open-Ended

"How did ____'s behavior make you feel?"

Open-ended questions allow the witness to describe their experience in their own words, yielding richer and more reliable information.

✗ Don't Ask: Leading

"Did ____'s behavior upset you?"

Avoid leading questions, "why" questions, compound questions, conclusion questions, and any phrasing that puts words in the witness's mouth.

Setting the Stage for the Interview

- Summarize Title IX and explain the process and your role as investigator in Complainant and Respondent Interviews
- Choose a **private, safe, comfortable** location — have tissues available as needed
- Reassure the interviewee there will be **no retaliation** for participating
- Put the interviewee at ease — but remember you are wearing your investigator hat at all times

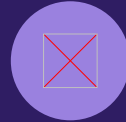


Explain Expectations Upfront



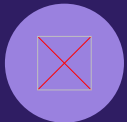
Recording Rules

Clarify whether recording is permitted — the investigator decides.



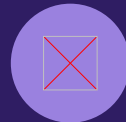
Truthfulness Required

Require truthfulness; explain the rules for advisors in the room.



Virtual Interviews

For virtual interviews, confirm who is present before the session begins.



Zero Tolerance

No one may threaten, intimidate, or harass any participant in the process.



Questioning Pitfalls to Avoid

Bias & Improper Conduct

Arguing, showing bias, or making promises to any party undermines the investigation's integrity.

Rushing the Interview

Hurrying, interrupting, or accepting one-word responses without follow-up misses critical information.

Leading Questions

Example to avoid: "When you touched her arm, did you..." — this assumes facts and contaminates testimony.

Losing Focus

Losing track of the definition's required elements or over-weighting minor inconsistencies skews your analysis.



Effective Techniques

- **Monitor body language** of the witness and any parent present — nonverbal cues matter.
- **Take notes** — slows the process naturally and provides a reliable reference record.
- Ask **one question at a time** and wait for a complete response before moving on.
- **Don't fill the silence** — pauses often yield the most important information.

Questioning Children

1

Start Broad

"I heard some students don't feel safe at school — have you heard that?"

2

Then Narrow

"Have you ever felt unsafe at school?"

3

Follow the Child's Lead

Do **not** use names of parties, witnesses, or potential victims unless and until the child does first or if the broad questions are not working and you know they witnessed something.



Open-Ended Questions That Work

“ Explain what happened during third hour. ”

“ What are some experiences you've had with...? ”

“ Tell me more about... / What are some other details? ”

The technique: **start broad, narrow down, then paraphrase back** to the interviewee to confirm accuracy before moving on.

Activity

Conduct an Interview where you draft some questions and role play practicing open-ended questions with the broad-to-narrow technique.

Closing Interviews with Parties

01

Set a Timeline

Explain when you expect to conclude all interviews and send evidence to the parties.

03

Don't Make Promises

Remind them you are not the fact finder, but a neutral person gathering evidence.

02

Remind Them They Can Submit Evidence

Remind Parties they can submit documents/evidence to you and verify if they have any people they think you should speak with.

04

Direct to the Coordinator

Direct parties to the Title IX Coordinator for any questions beyond your role as Investigator.

Managing the Investigation

Keeping the investigation on track requires disciplined communication, clear documentation, and prompt coordination with the Title IX Coordinator.



Investigation Tips: Communication

Document Everything

Keep written documentation of **all** communications — assume every document may be reviewed later.

Keep Parties Informed

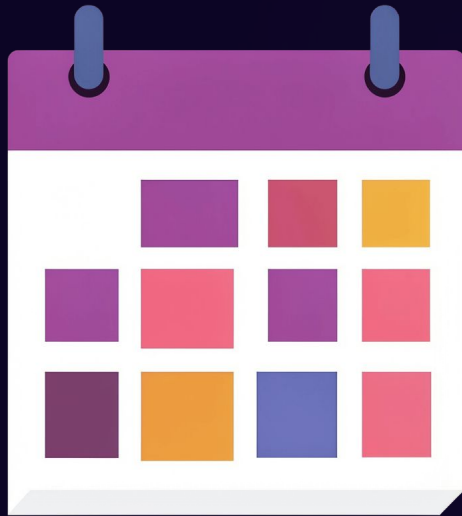
Periodically update complainant and respondent on progress — share **no** details or investigative insights.

Separate Communications

Copy both parties **separately** on responses or notifications — never in the same email thread.

Report Serious Matters Immediately

Report any child abuse information or possible crimes to DCS *and/or* law enforcement, and let Title IX Coordinator know.



Good Cause Delays

Notify the Title IX Coordinator, who will then notify both parties. Valid reasons for delay include:

- Concurrent law enforcement activity, witness unavailability, or illness
- School breaks, absence of a party or advisor, or need for language/ADA accommodations



Not a valid reason: Overburdened school administrators — this does not constitute good cause.



When to Alert the Title IX Coordinator

Supportive Measures

Additional supportive measures are needed or existing measures must be modified.

New Allegations

New allegations arise that were not included in the original notice of investigation.

Dismissal Grounds

A new mandatory or permissive dismissal basis comes to light during the investigation.

Party Requests

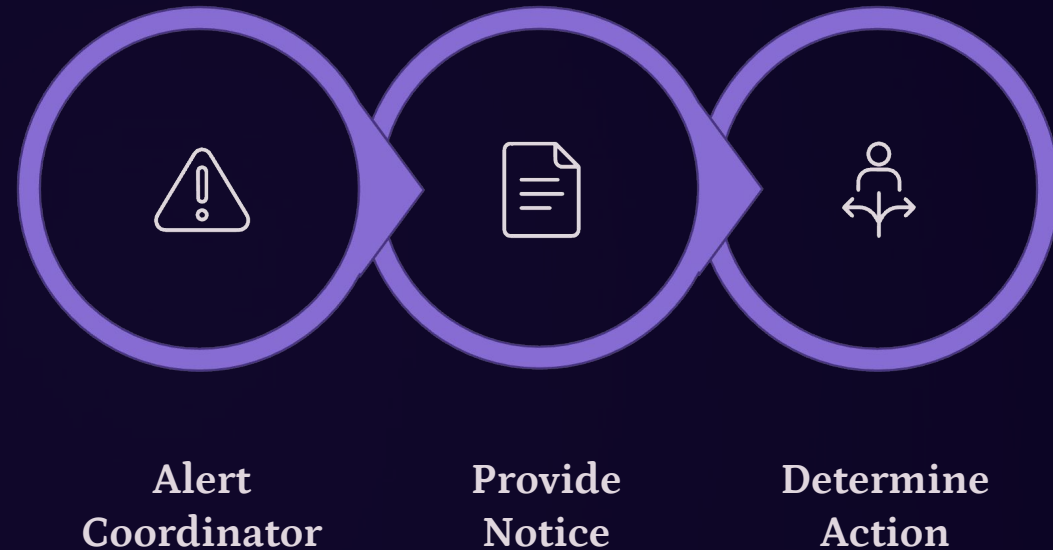
Either party requests informal resolution or an expansion of the investigation's scope.

Expanding the Investigation

If new allegations surface during the investigation, alert the Title IX Coordinator **immediately**. Do not proceed on new allegations without authorization.

The Coordinator will then:

- Provide **written notice** of the additional allegations to both parties
- Determine the **course of action** for investigating the new allegations



Sharing Evidence & Writing the Report

How you share evidence and structure your report defines the quality of the decision-making process that follows.



What Evidence to Share with Parties

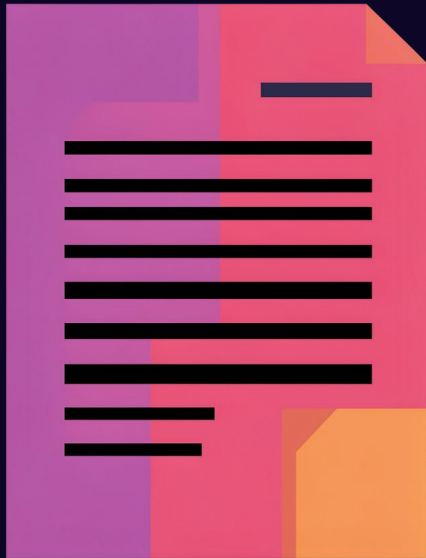
Must Share

Statements, interview summaries, documents, and records — including evidence you do **not** intend to rely on in your report.

Not Included

Your personal notes or reference materials used in completing the report are **not** subject to disclosure.

 The obligation to share extends to all gathered evidence — not just the evidence that supports your opinion.



Redactions

- **Student Witness names:** Redact — check with the Title IX Coordinator for case-specific guidance.
- **Privileged information:** Must redact out unrelated information from the records, such as medical information that is not directly related.
- **Unrelated information:** May redact information not directly related to the allegations.
- **504/IEP disability information:** Always redact — provide a summary of relevant facts instead of the underlying records.

Evidence Sharing: With NDA

1

Send Simultaneously

Send evidence to both parties at the same time.

2

10-Day Response Window

Provide 10 days for parties to review evidence and submit a written response.

3

Format

Deliver via electronic and/or hard copy — use whichever format is accessible.

4

Begin Drafting

You may begin **drafting** the investigation report during this 10-day window but cannot finalize it until response time passes.

Evidence Sharing: Without NDA

If the NDA has not been returned, the process shifts:

- Inform the **Title IX Coordinator** immediately.
- Provide opportunity for **in person review of evidence only** — no copies or photographs permitted.
- Notify parties of their right to access evidence and how to schedule their review within the **10-day window**.



Reviewing Written Responses

Treat as Evidence

Written responses from parties are evidence — address them directly and specifically in your report.

Consider Inclusion of Late Evidence

If additional evidence is shared after initial disclosure (where permitted), you may want to factor it into your analysis.

Forward Questions

Forward questions submitted for the other party to the decision-maker — and note them explicitly in your report.



Writing the Investigation Report

1

Use a District Template

A template ensures all required elements are present and the format is consistent and defensible.

2

Be Thorough

Include credibility observations, witness details, and a full account of all evidence gathered.

3

Think Like the Decision-Maker

Ask yourself: "If I were deciding this case, what would I need to know?" Then write to that standard.

4

No Follow-Up Should Be Needed

The decision-maker should **never** need to contact you for clarification after receiving your report.

Submitting the Report



- Email **separately** to both parties (with read receipt) and copy the Title IX Coordinator on each.
- Send to both parties **at the same time** — use scheduled or delayed send features in Outlook or Gmail to ensure simultaneous delivery.



Simultaneous delivery is essential — staggered delivery can create claims of procedural inequity.

After the Report: Decision & Remedies

The investigation is complete — now the decision-making process begins.



After Submitting the Report

1 Investigator's Role Ends

The investigator's active role is largely complete once the report is submitted.

2 10-Day Review Period

Each party has at least 10 days to review the report and submit a written response to the decision-maker.

3 Questions to the Decision-Maker

Parties may submit relevant questions to the decision-maker. Any excluded questions must be explained.



THE STANDARD

The Decision-Making Standard 50% + a feather

Preponderance of the Evidence — the conduct is more probable than not to have occurred.

The decision-maker weighs the plausibility, consistency, and validity of all evidence before reaching a determination.

Decision & Remedies

Finding of Violation

Discipline is determined for the respondent. The nature and severity of discipline is calibrated to the findings.

No Violation Found

If conduct did not occur, no discipline is imposed. If conduct occurred but doesn't meet the Title IX definitions, matter may return to admin. to address under district's standard discipline policy.

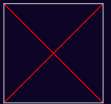
Supportive Measures

Supportive measures may continue regardless of the outcome — they are not contingent on a finding of responsibility.

Questions?



Contact Information



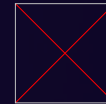
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