

TITLE IX COMPLIANCE TRAINING

Practical Solutions for a Complex Process

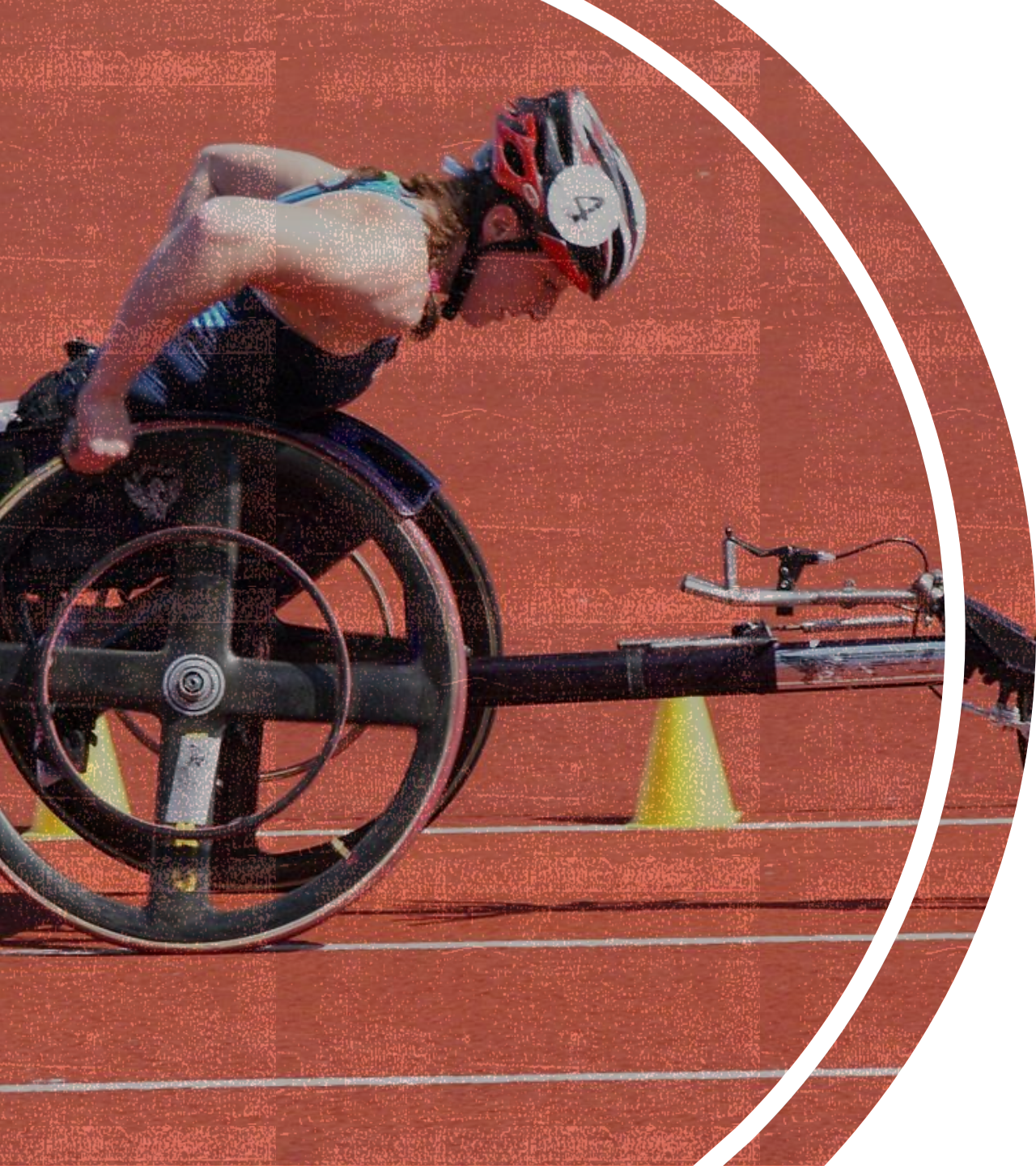
**Laura Tubbs Booth
Megan J. Renslow
Christian R. Shafer**





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



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



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..

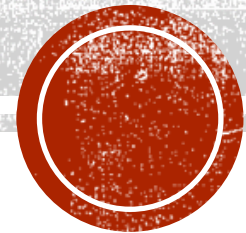




of Federal Funds

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



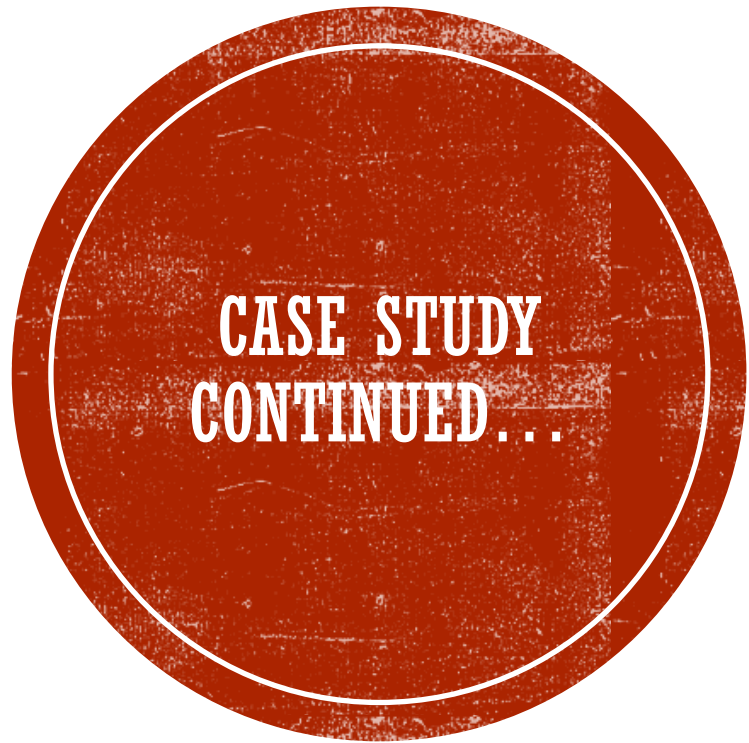
**RESPONSE:
NOT
DELIBERATELY
INDIFFERENT**

- *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



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)

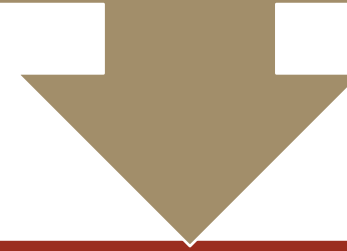
DELIBERATELY INDIFFERENT

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/Acitivites 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.



A top-down view of a desk with a spiral notebook, a coffee cup, and a keyboard. The notebook is open to a page titled 'CHECKLIST' with three checkmarks. The coffee cup is in the top left, and the keyboard is in the top right. The desk surface is dark wood.

CHECKLIST

**RESPONSIBILITIES WHEN
DISMISSING A COMPLAINT**

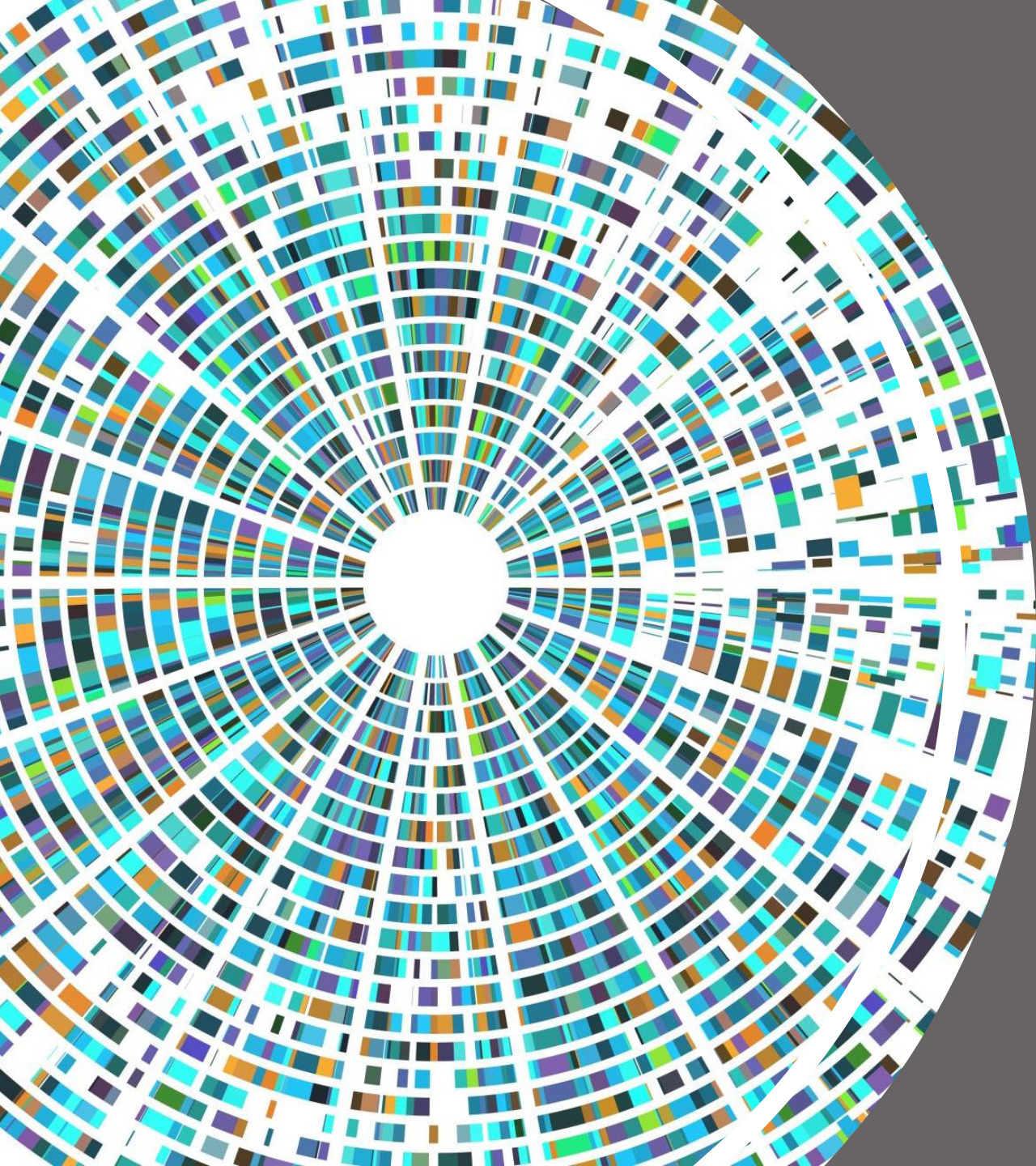
KEEP IN MIND...

- 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 in a dark suit and glasses is seated at a table, pointing his right index finger towards the left. He is looking towards another person whose back is to the camera. The setting appears to be a professional meeting or conference. The background is slightly blurred, showing other people and a window.

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

FOR ALL

COM



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

18

21

22

AHEAD

25



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





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







**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...**



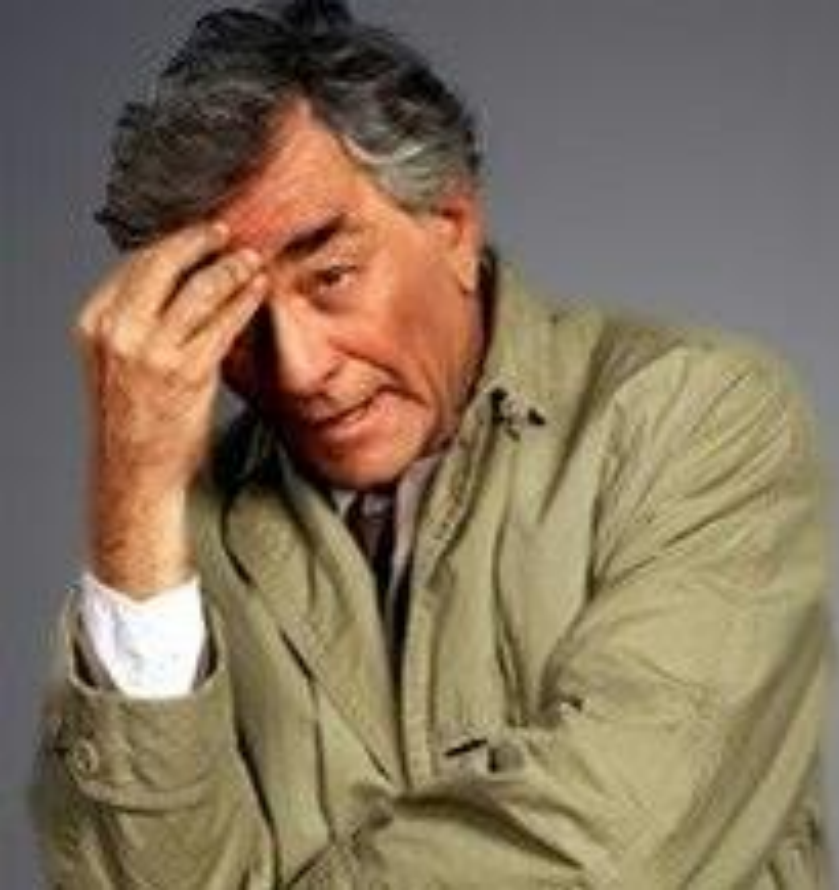
**...WATCH OUT
FOR BIASES!**



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





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



SPECIFIC STRATEGIES FOR INTERVIEWING THE COMPLAINANT





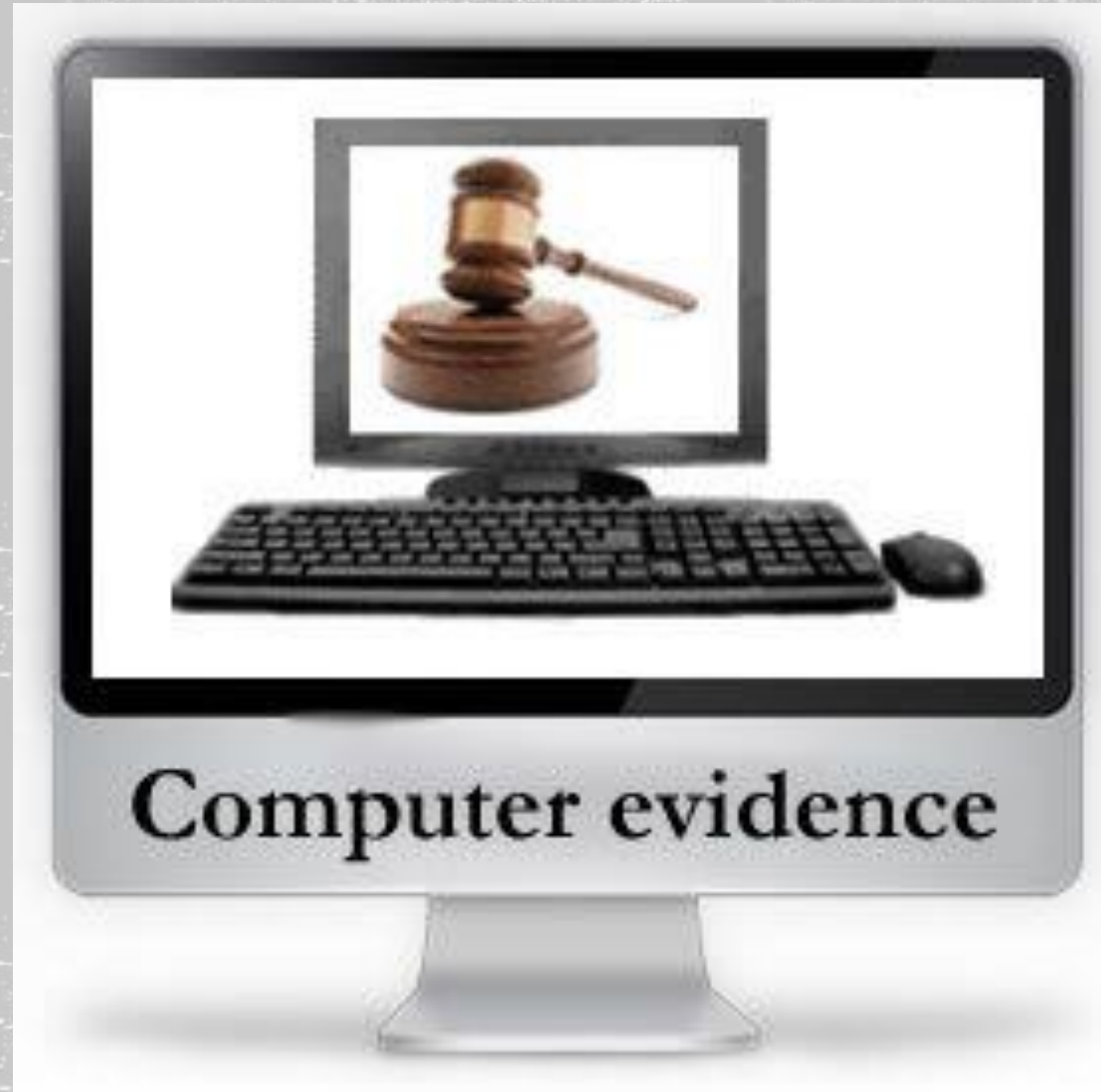
**BACK TO LASHONDA: WHAT KINDS OF
QUESTIONS MIGHT THE INVESTIGATOR ASK?**



A close-up photograph of a person's hand holding a small white 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?**





**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, resting on a dark wooden surface. In the foreground, a green rectangular sign with a wooden border is placed diagonally. The sign has the words "CONFLICT OF INTEREST" embossed on it in a serif font. The background is a dark wooden surface.

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

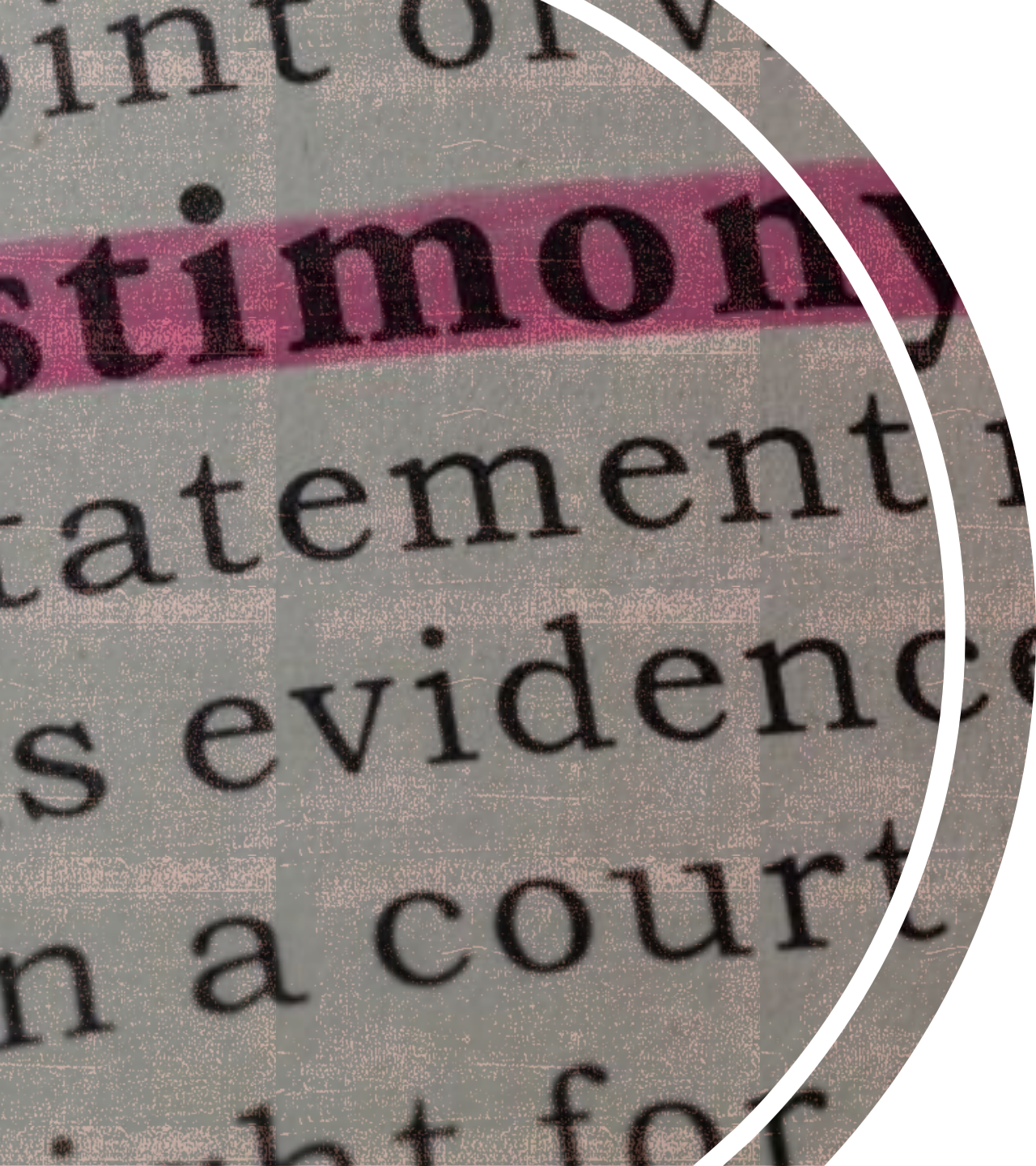
All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.



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



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





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