

TITLE IX COMPLIANCE TRAINING

Practical Solutions for a Complex Process

Laura Tubbs Booth
Megan J. Renslow
Christian R. Shafer



1



2



TITLE IX

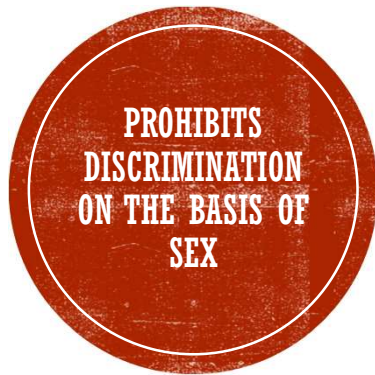
What do you think of when you think about Title IX?

3



"[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\(a\)](#).

4



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

5

NEW REGS EFFECTIVE 8/14/2020



USDOE ISSUED NEW
REGULATIONS
IMPLEMENTING TITLE IX



NEW DEFINITIONS



NEW INVESTIGATION
REQUIREMENTS



6

GENERAL RESPONSIBILITIES

For Public Elementary/Secondary Schools



7

SCHOOLS MUST:

1

Have a
policy

2

Identify Title
IX
Coordinator

3

Offer
Supportive
Measure

4

Have a
grievance
process



8

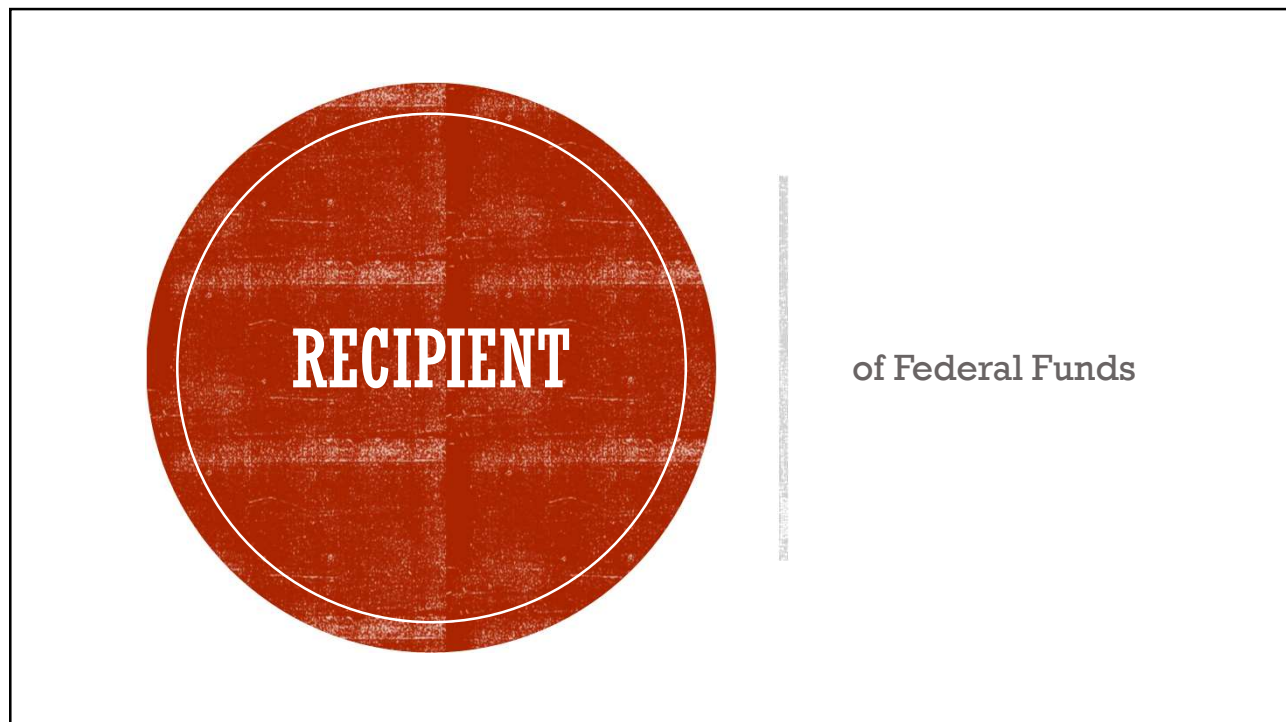
DEFINITIONS

9

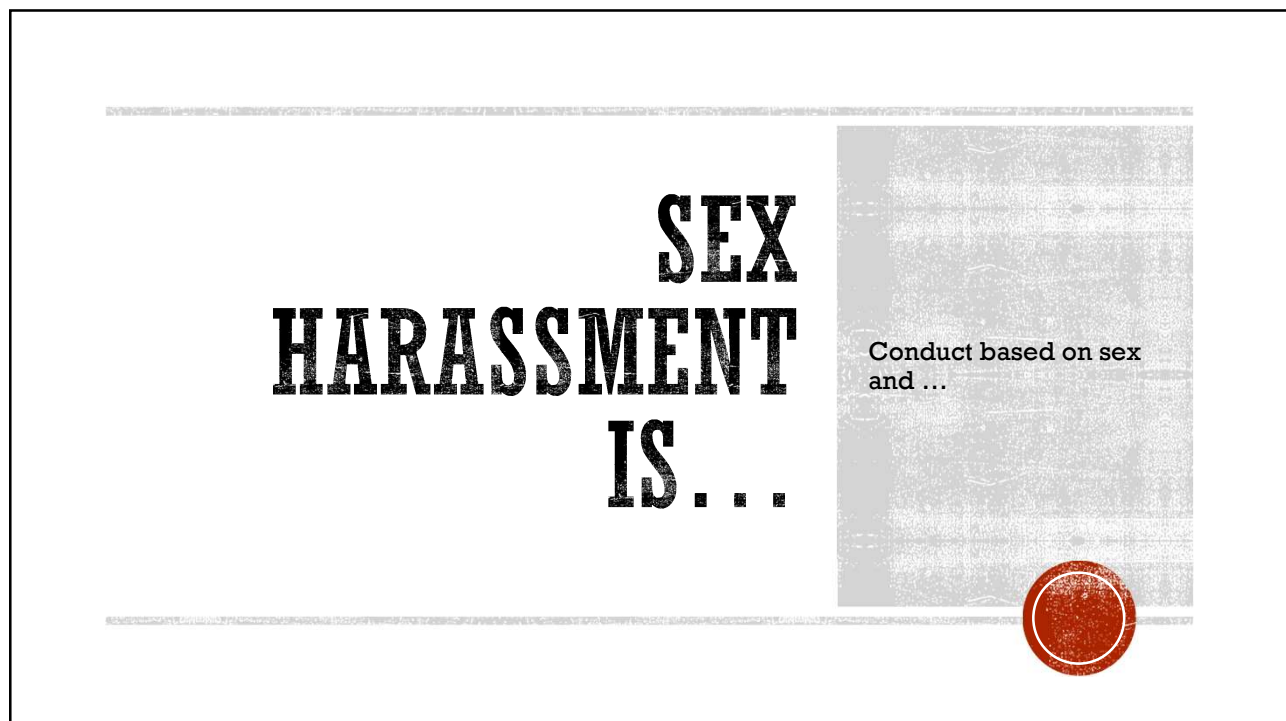
RESPONSE TO SEX HARASSMENT

- 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..

10



11



12

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.

▪



13

ACTUAL KNOWLEDGE

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

14



EDUCATION PROGRAM OR ACTIVITY



15



PERSON IN THE UNITED STATES



16

RESPONSE: NOT DELIBERATELY INDIFFERENT

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

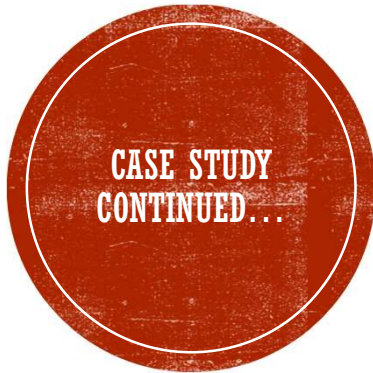


17

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

18



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)

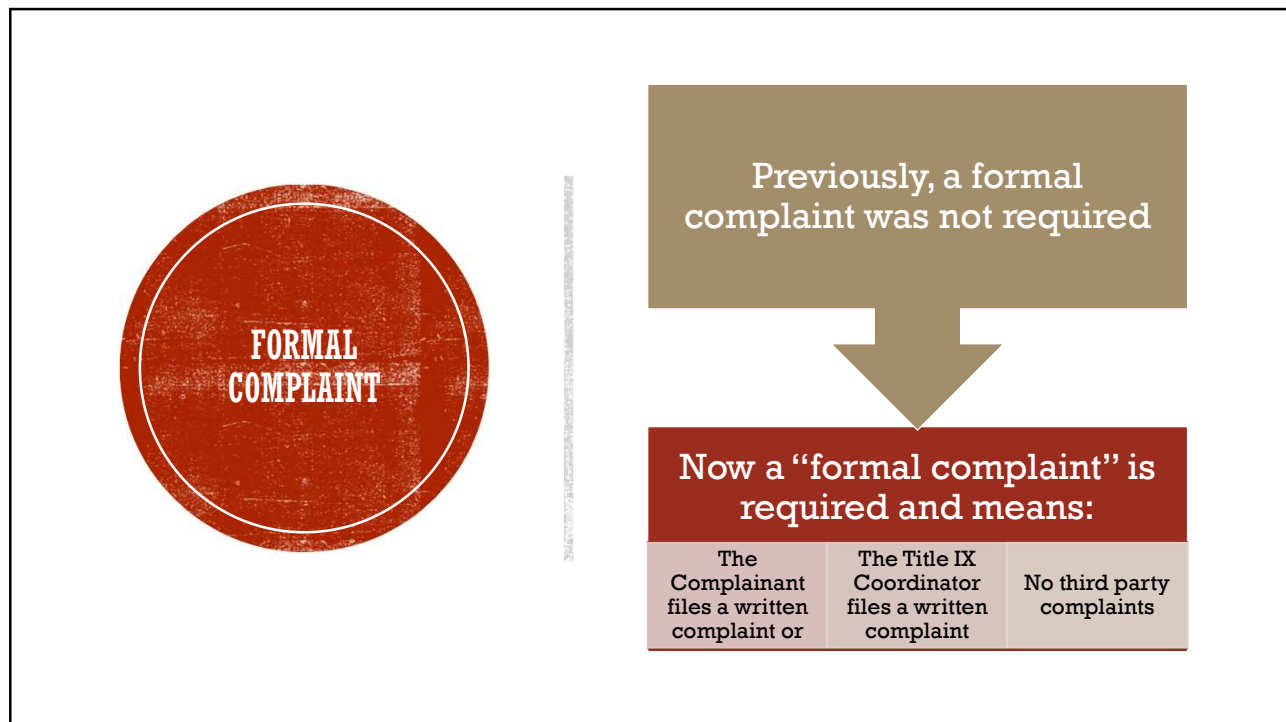
19

DELIBERATELY INDIFFERENT

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



20



21

REPORT VS. FORMAL COMPLAINT

<p>Report</p> <ul style="list-style-type: none"> ▪ 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 	<p>Formal Complaint</p> <ul style="list-style-type: none"> ▪ By the complainant in writing or ▪ By the Title IX Coordinator
--	--

22

SUPPORTIVE MEASURES



School must offer the complainant supportive measures regardless of formal complaint



23



New regulations require that each school district have:

Title IX Coordinator

Investigator

decision-maker

Appeal Decision-Maker

24

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

25

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

26

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

27

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

28

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.

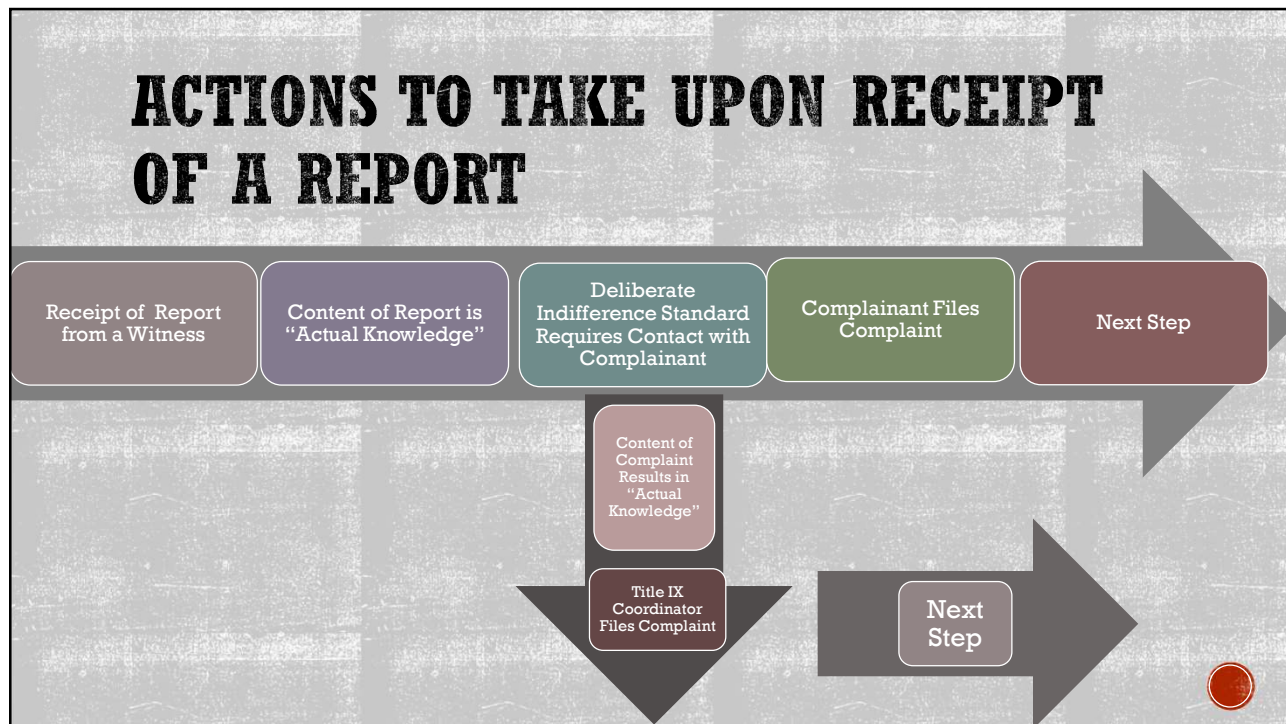


29

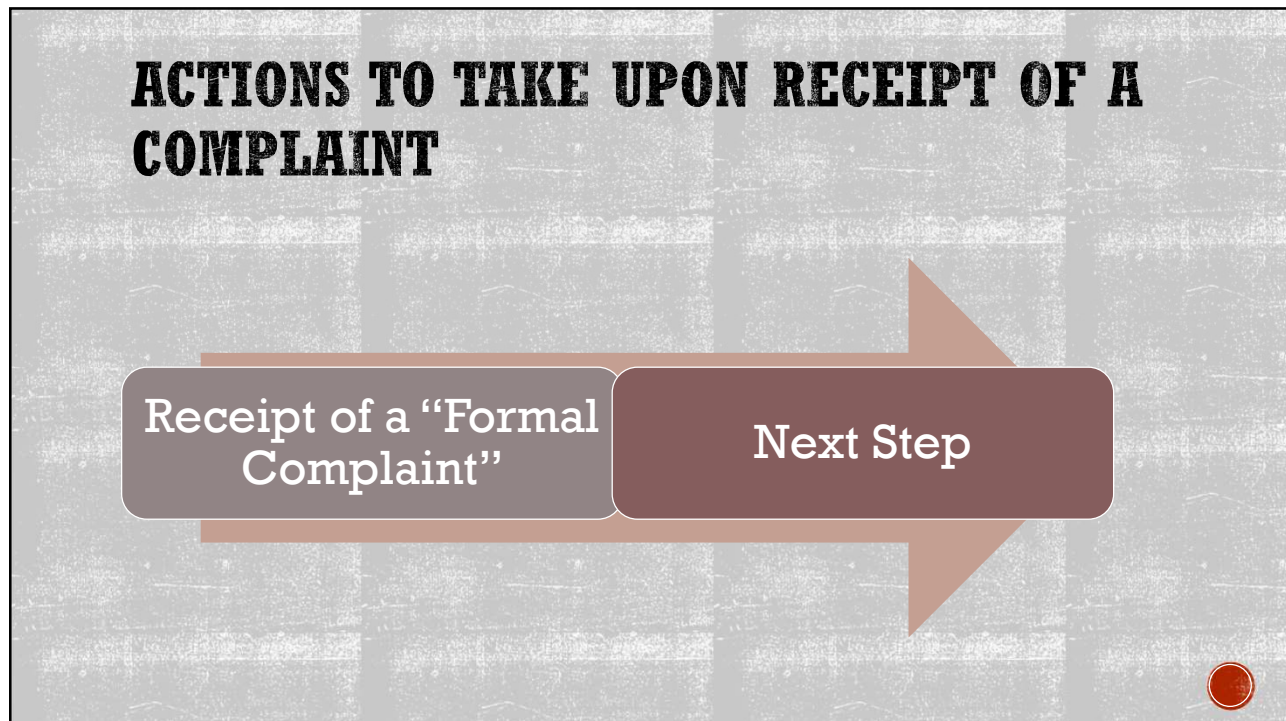


STEP ONE ROLE OF THE TITLE IX COORDINATOR

30



31



32

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.



33

PERMISSIVE DISMISSAL

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

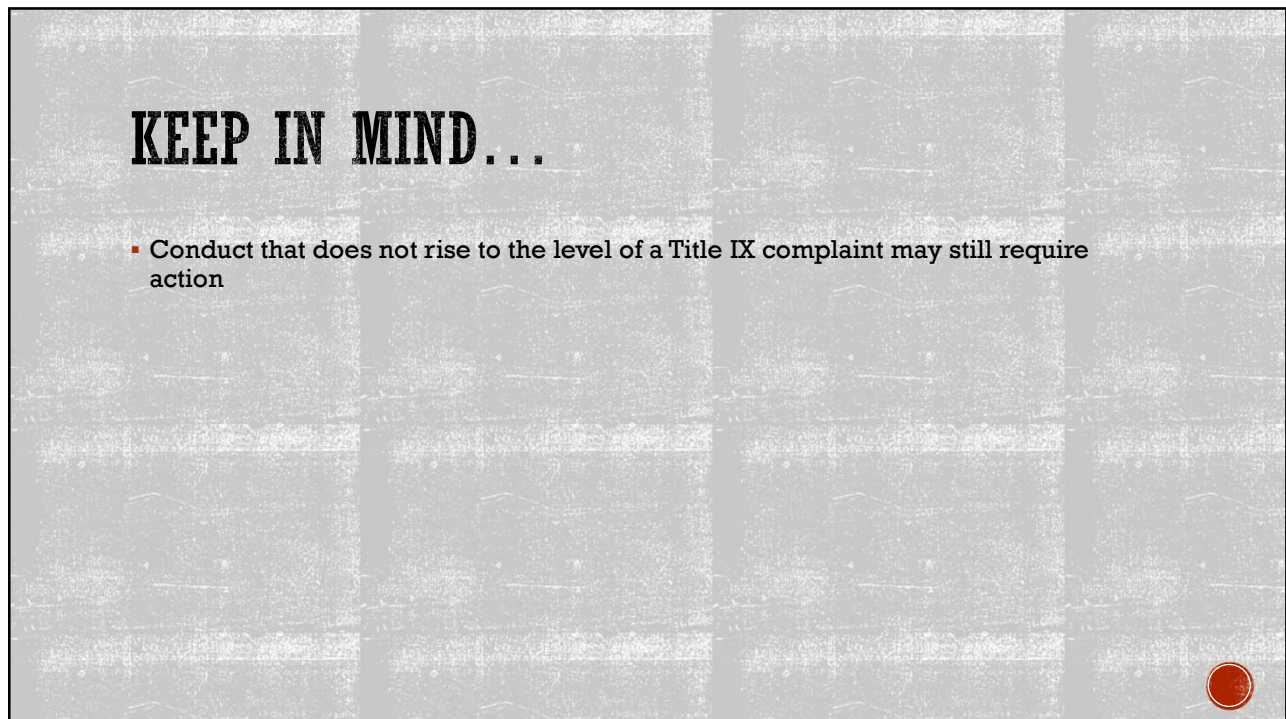
- a. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- b. The respondent is no longer enrolled at or employed by the school; or
- c. Specific circumstances prevent the school or school district from gathering evidence sufficient to reach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



34



35

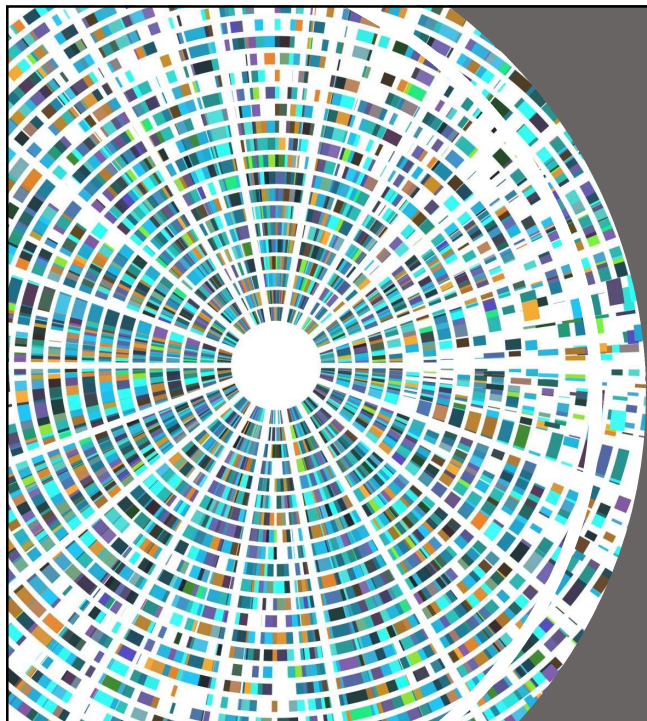


36



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.

37



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

38

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



39

INTERIM EMERGENCY REMOVAL OF EMPLOYEES

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

40



Talk

Listen

Resolve

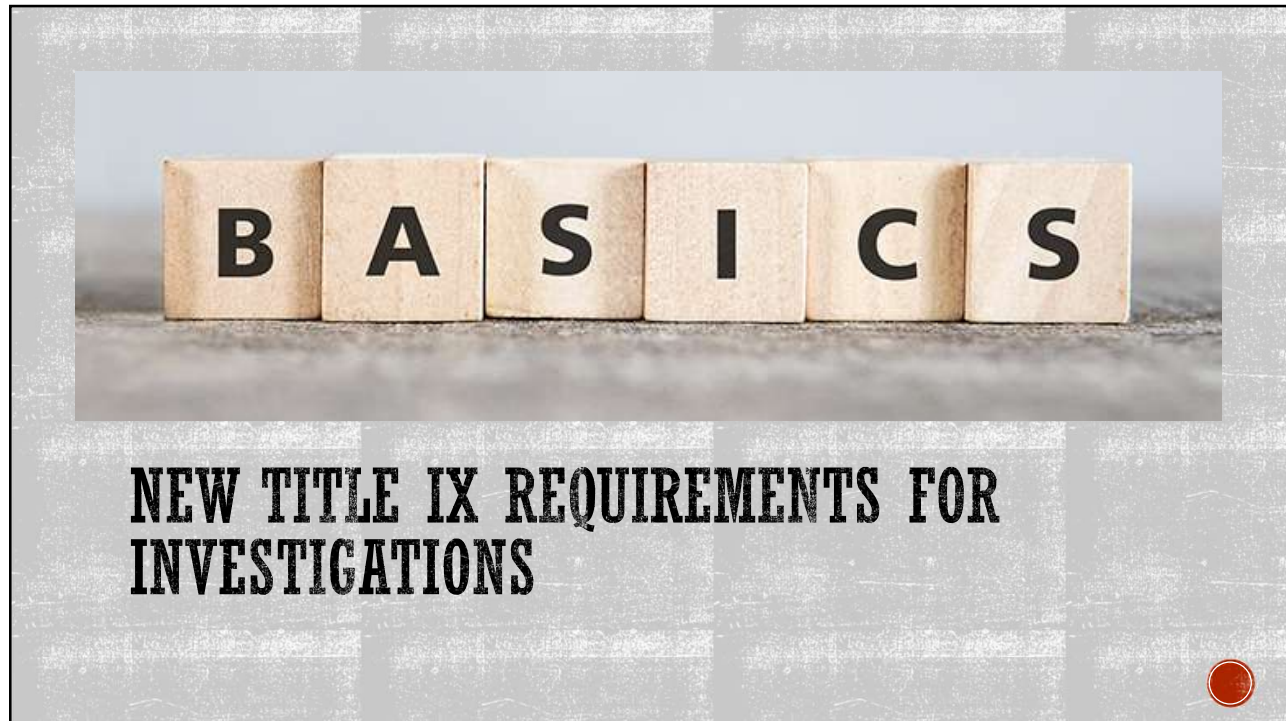
**INFORMAL
RESOLUTION**

- Timing
- Notice
- Non-Applicability to Employees

41



42



43



44



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



45

**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



46

PRACTICAL CONSIDERATIONS

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

47



TIME FOR REVIEW

NOTICE

REQUIRED NOTICES AND OPPORTUNITY TO REVIEW EVIDENCE

48



49



50

INITIAL CONSIDERATIONS: EXTERNAL REPORTS



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

51

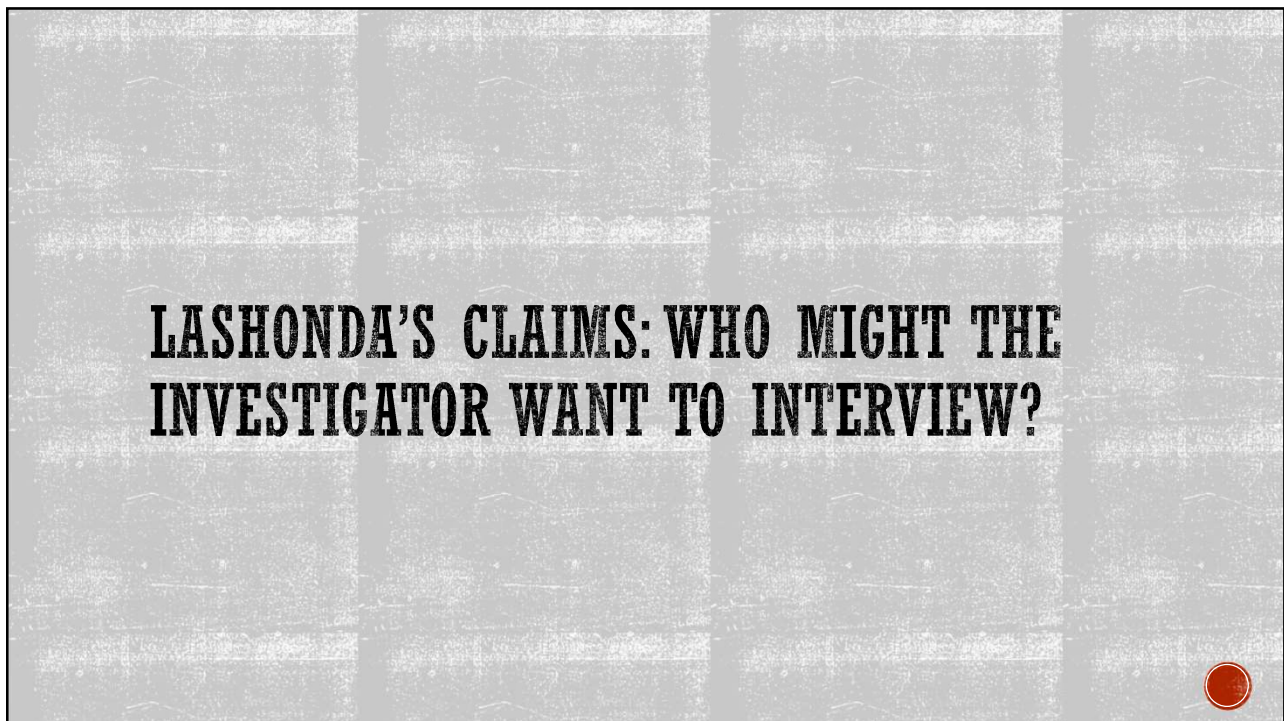


A BRIEF DATA PRACTICES INTERLUDE

52



53



54



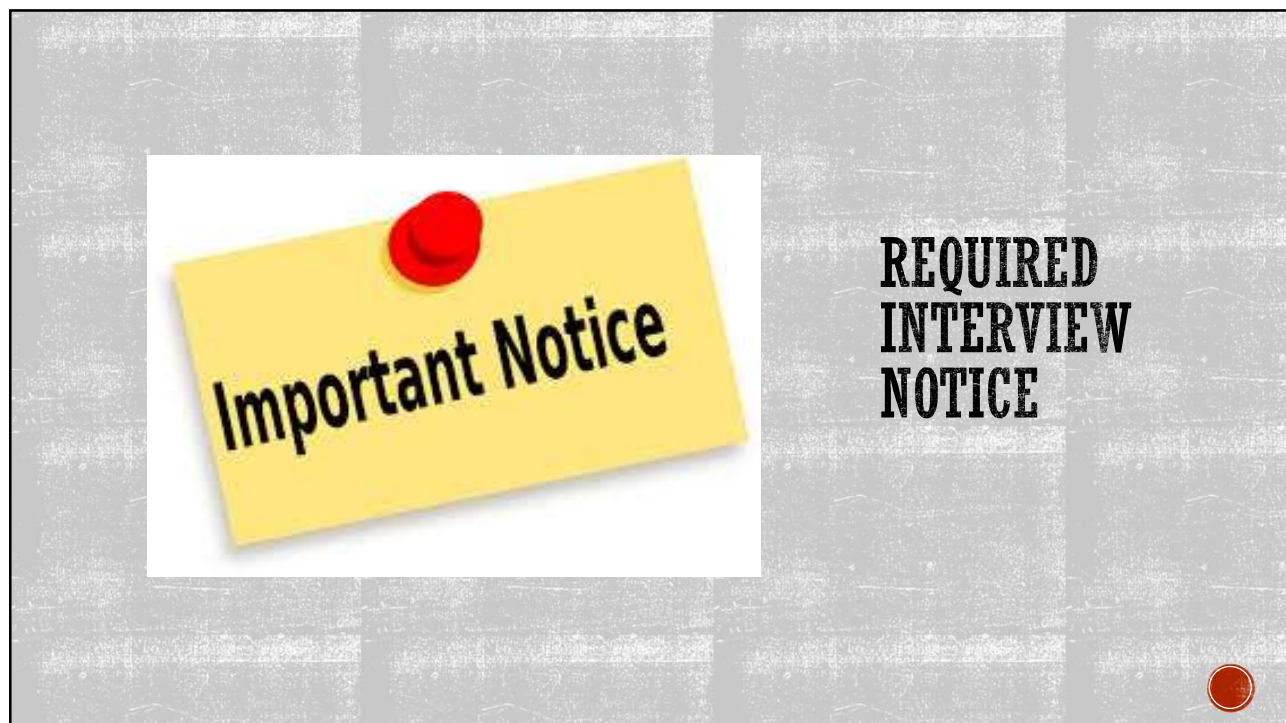
55



56



57



58

OPENING REMARKS



Explaining

Explaining the purpose of the interview



Explaining

Explaining the investigation process and
your role as investigator



59



60



61



62

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



INTERVIEWING THE COMPLAINANT AND FACT WITNESSES

63

INTERVIEWING THE COMPLAINANT AND WITNESSES



- Short, open-ended questions

64

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



65

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



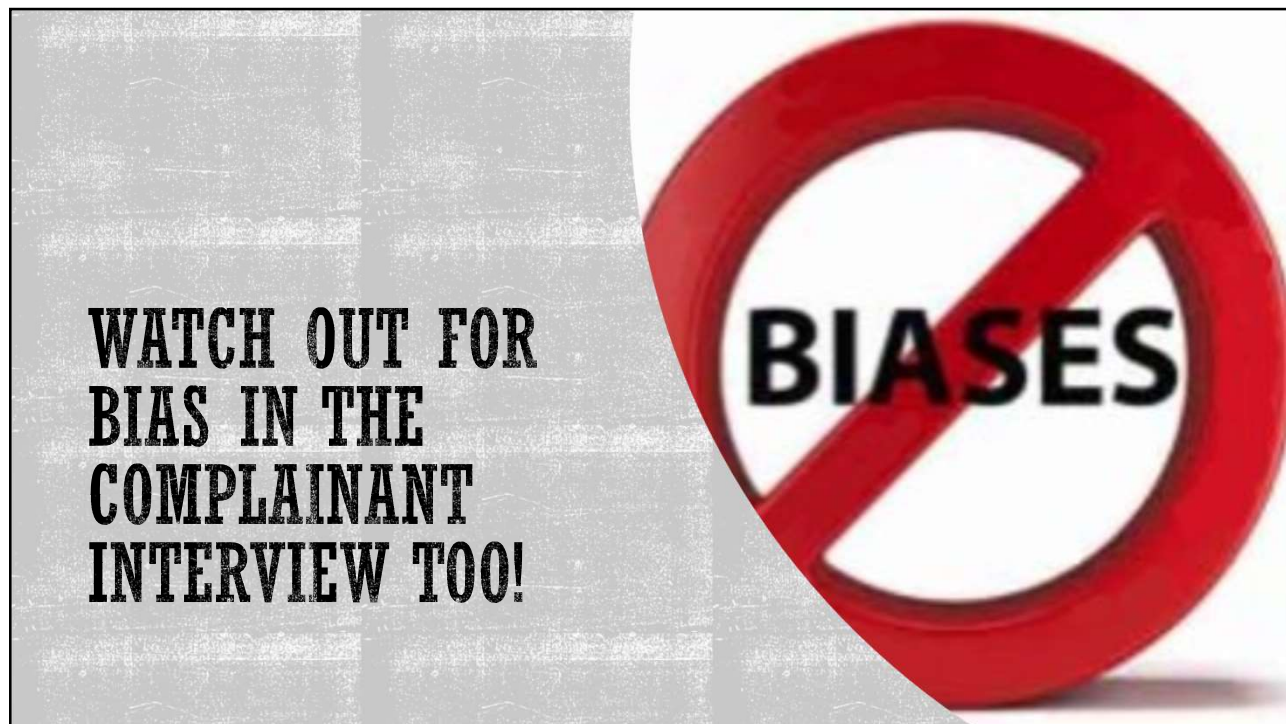
66



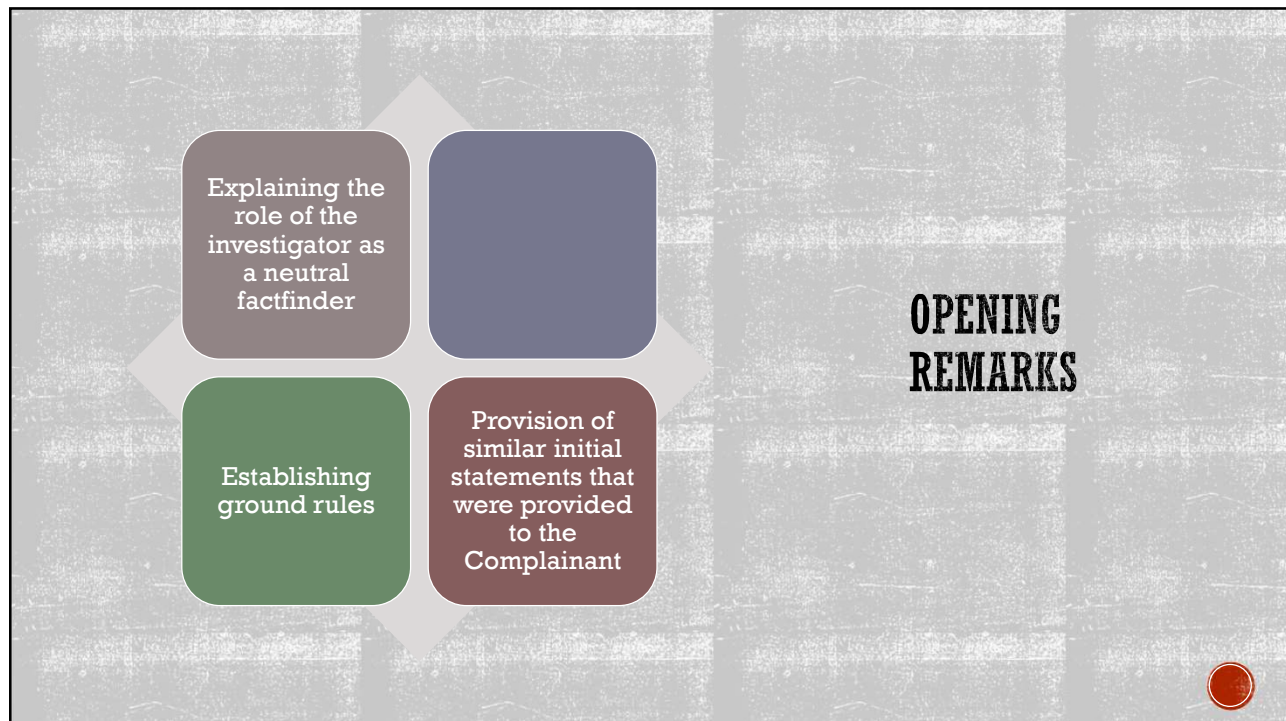
67



68



69



70



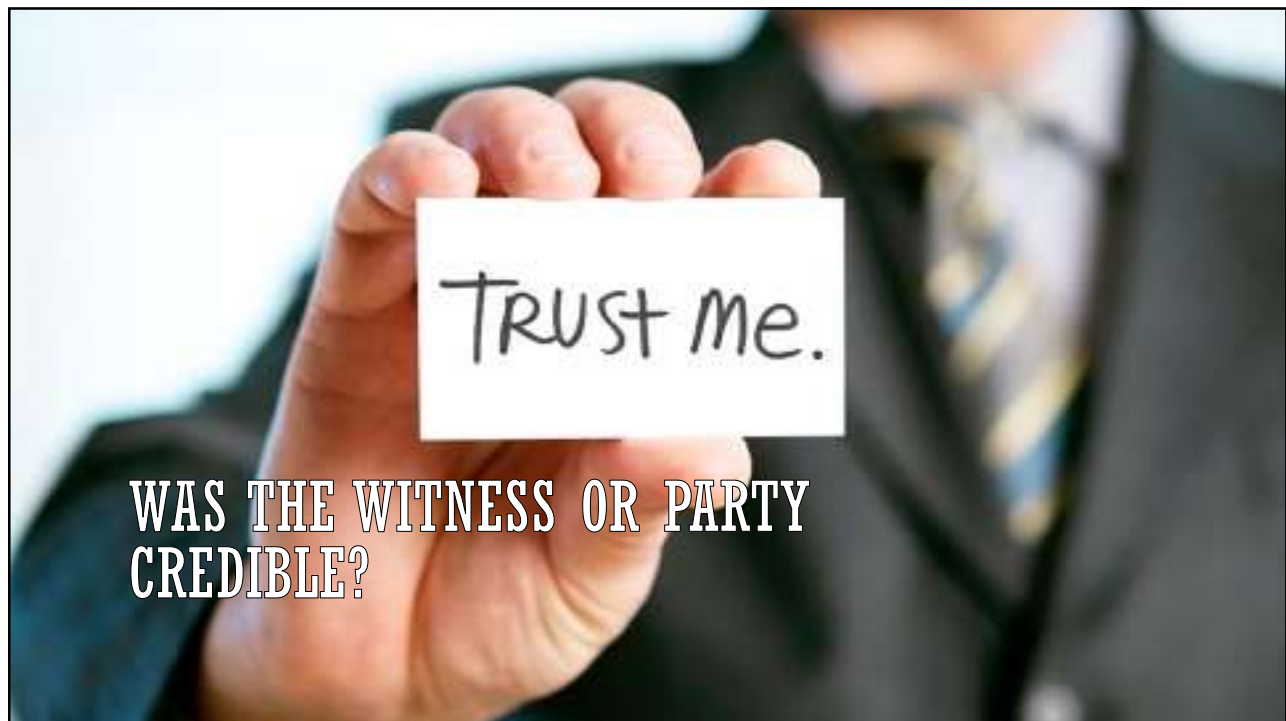
71



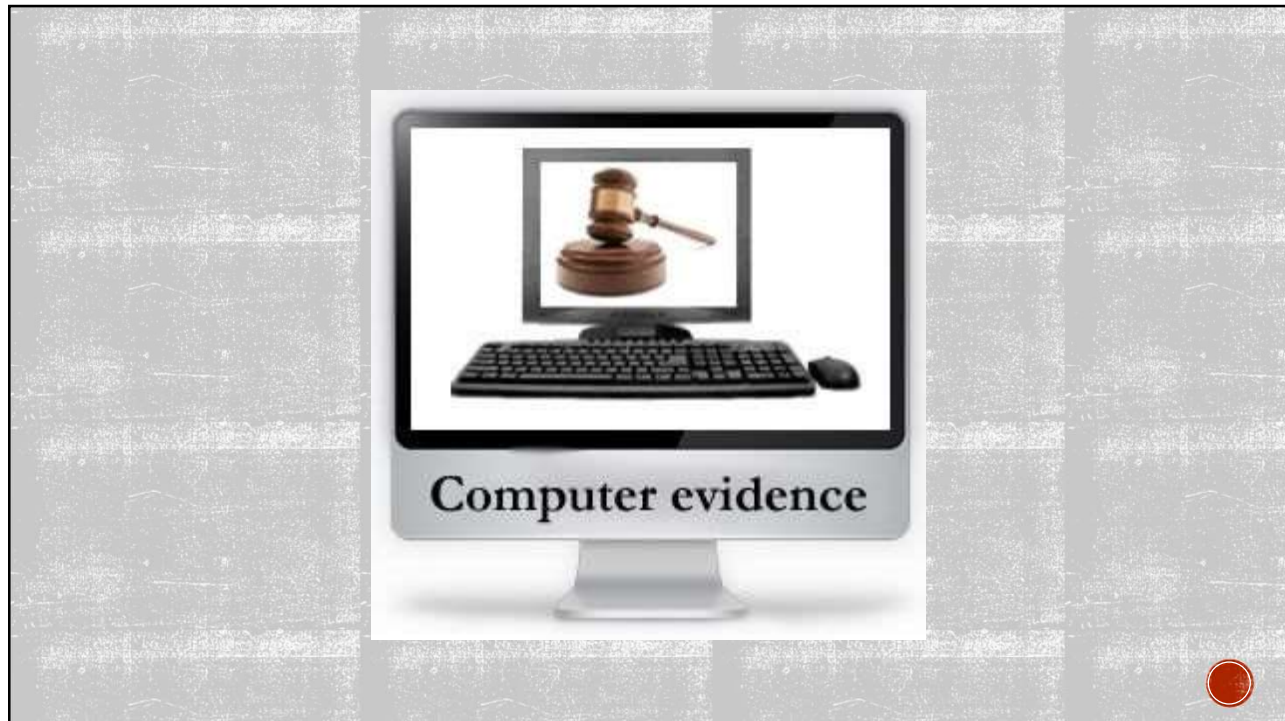
72



73



74



75



76

SOCIAL MEDIA IN INVESTIGATIONS



77

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

78




79



80


**WRITTEN
INVESTIGATION
REPORTS**

- 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 occurred



81

**STRATEGIES FOR
WRITING AN
INVESTIGATION
REPORT**



82



83



84




85

SELECT A STANDARD OF REVIEW


<p>Preponderance of the Evidence</p> <p>“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.</p>	<p>Clear and Convincing Evidence</p> <p>“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.</p>
---	---

86

A large, stylized orange gavel icon is positioned on the left side of the slide, set against a dark gray circular background with a white border. The gavel is angled diagonally, with its head pointing towards the top right and its handle extending towards the bottom left. Below the head of the gavel are two horizontal orange bars.

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**

A small orange circle with a white border is located in the bottom right corner of the slide.

87

SUBMISSION OF WRITTEN QUESTIONS

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

A small orange circle with a white border is located in the bottom right corner of the slide.

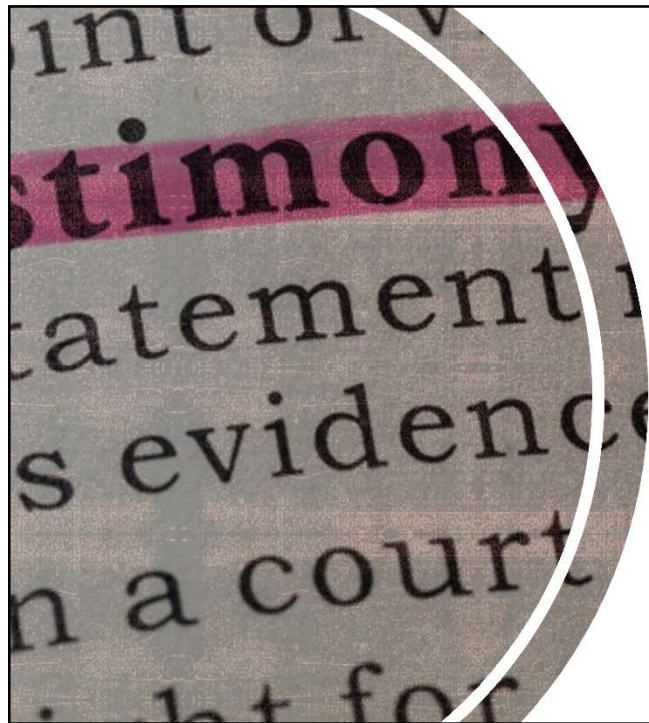
88

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.



89



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

90

LIVE HEARINGS



Recording



**Appointment of
Advisor**



Questioning



91

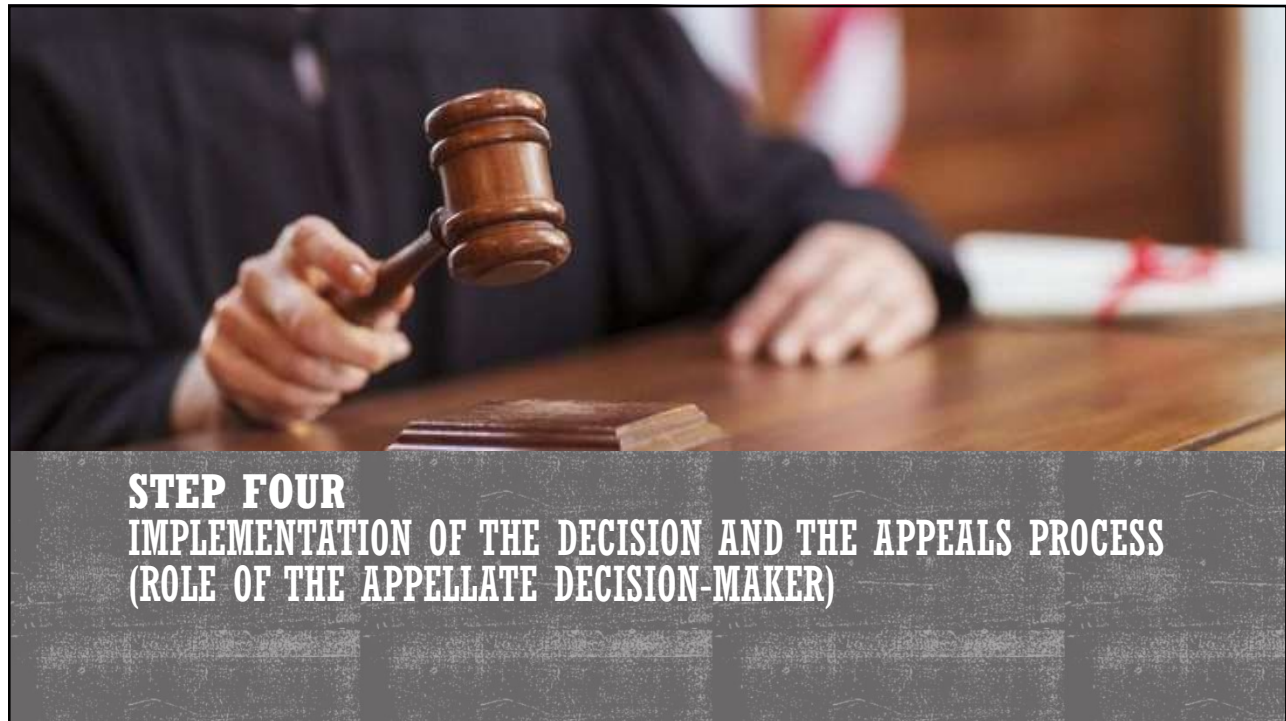


THE DETERMINATION

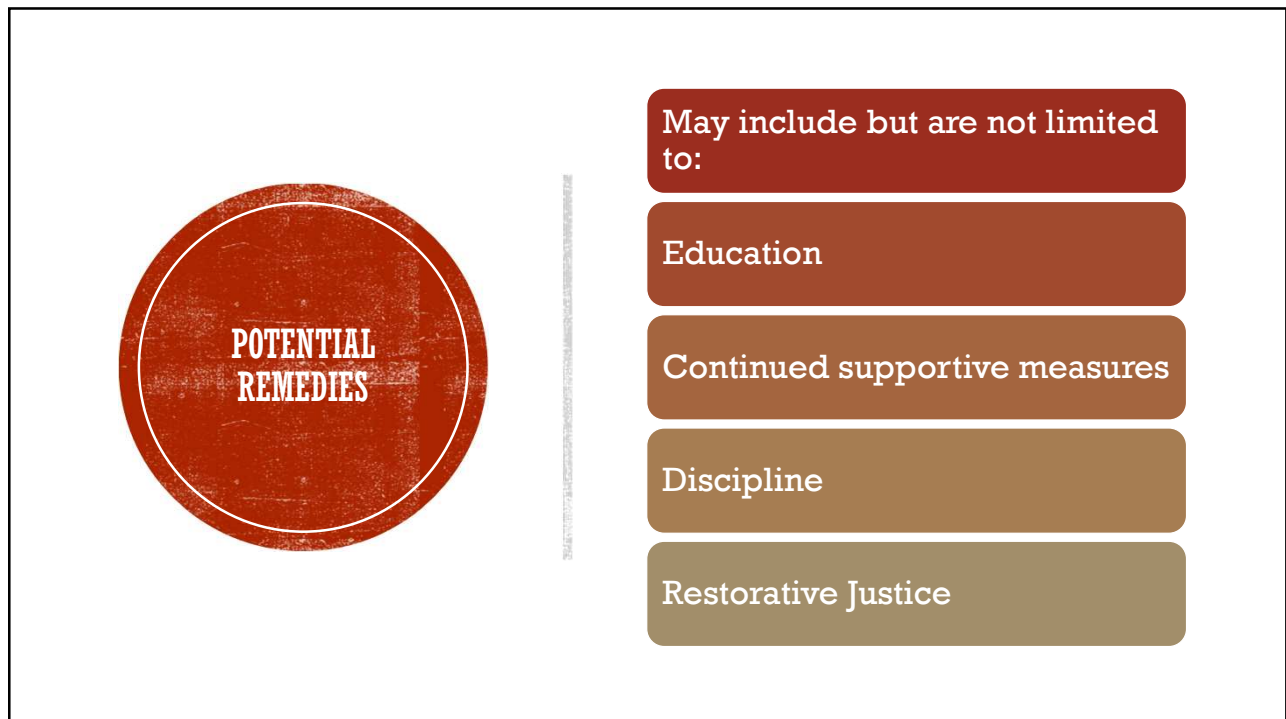
- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact
- Conclusions applying the code of conduct/policy
- Assignment of responsibility, rationale, sanctions and remedies
- The procedure for appealing the determination of responsibility



92



93



94



APPEAL

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



95



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...

96




OR ANY OTHER BASIS FOR APPEAL





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




97



SCHOOL MUST....

-  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



98

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

99



100