



COLORADO LEAGUE *of*
CHARTER SCHOOLS



Title IX Investigator Training
Session 1
October 7, 2021



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- 20+ years of employment law and human resources experience
- 7+ years managing Title IX compliance and investigations for K-12 and higher educational institutions
- Former Title IX Coordinator for a prominent Colorado research university, a private university, and K-12 charter schools
- Certified Title IX Administrator (NACUA)
- Forensic Experiential Trauma Interview (FETI) certified



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Investigator Training Outline

Session 1:
Standards for Title IX Investigations,
Investigators, and the 5 Phases of an
Investigation

Session 2:
Information Gathering

Session 3:
Information Review

Session 4:
Writing a Report with Determinations of
Facts and Policy

Session Handouts

Handout 1 – May 2014 Dear Colleague Letter (DCL)

Handout 2 – Summary of Major Provisions of Title IX
regulations in effect August 14, 2020

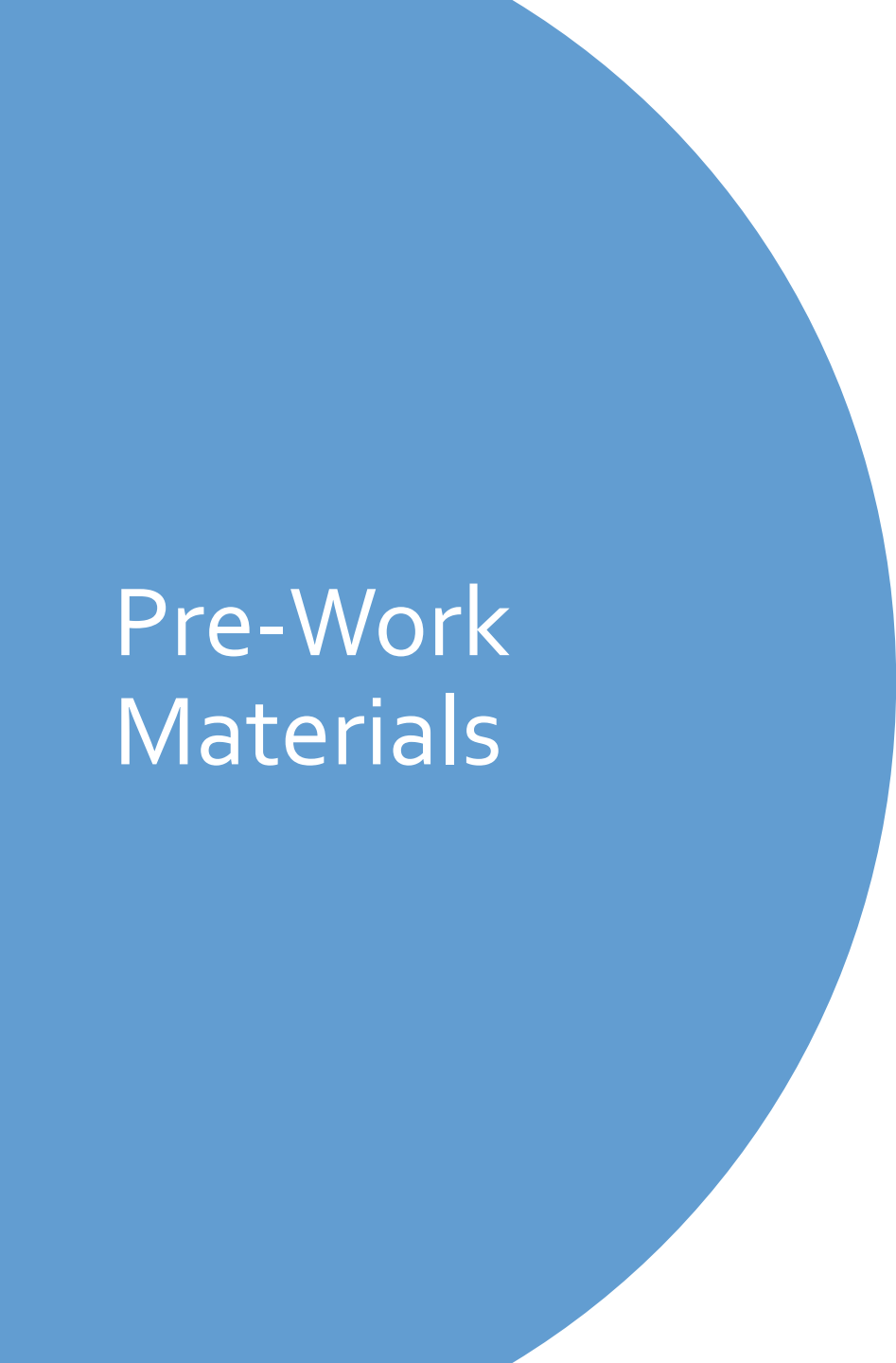
Handout 3 – Sample Sexual Harassment Policy and
Complaint Procedure

Handout 4 - Sample Complainant Notice of Investigation

Handout 5 – Sample Respondent Notice of Investigation

Handout 6 – Sample Witness Notice of Investigation

Handout 7 – Sample Investigation Process Explanation



Pre-Work Materials

Awesome Charter School Sexual Harassment
Policy & Procedures


Complaint

Texts messages from Complainant

Investigation Work Plan

**** Review for Session 2 ****

Standards for conducting Title IX Investigations



Title IX of the Civil Rights Act

"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."

- Passed in 1972 as a part of Educational Amendments to the 1964 Civil Rights Act
- Protects students, employees, applicants for education programs, applicants for employment, etc.
- Applies to academic and non-academic activities, such as sports and extra-curricular programs
- Prohibits harassment and discrimination on the basis of sex and gender, including sexual harassment and sexual violence.

Title IX of the Civil Rights Act

*"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**."*

- *"Receiving Federal financial assistance"*
 - Does not require direct payments from federal government
 - All public schools, including charter schools (see **Handout 1**)
 - Enforced by the US Department of Education (DOE)
 - Between 1972-2020, the DOE relied on "Dear Colleague Letters" and enforcement actions to ensure schools complied with Title IX.
 - The Trump administration took a different approach and issued Title IX regulations which went to effect on August 14, 2020.

Title IX of the Civil Rights Act

- During this training, I may refer to the Obama and Trump administration's approaches to Title IX enforcement. My comments are meant to be informative and not political.
- The Obama administration developed an enforcement structure that was based on Dear Colleague Letters (DCLs) which are statements of how the Department of Education interprets and enforces Title IX. (Note: the Bush administration relied on a similar structure.)
- The Trump administration revoked the Obama-era DCLs and went through a rule-making process to enact regulations for Title IX enforcement. These went into effect on August 14, 2020.
- See [Handout 2](#) for a summary of the major provisions of these regulations.
- I expect that there will be significant changes in Title IX interpretation and enforcement under the Biden administration under the direction of Education Secretary Miguel Cardona.

Prompt and Equitable Investigation

DOE requires a “prompt” and “equitable” investigation

Prompt

- Previous guidance was 60 days absent extraordinary circumstances
- Current guidance: School engages in a good faith effort to conduct a fair, impartial investigation in a timely manner

Prompt and **Equitable** Investigation

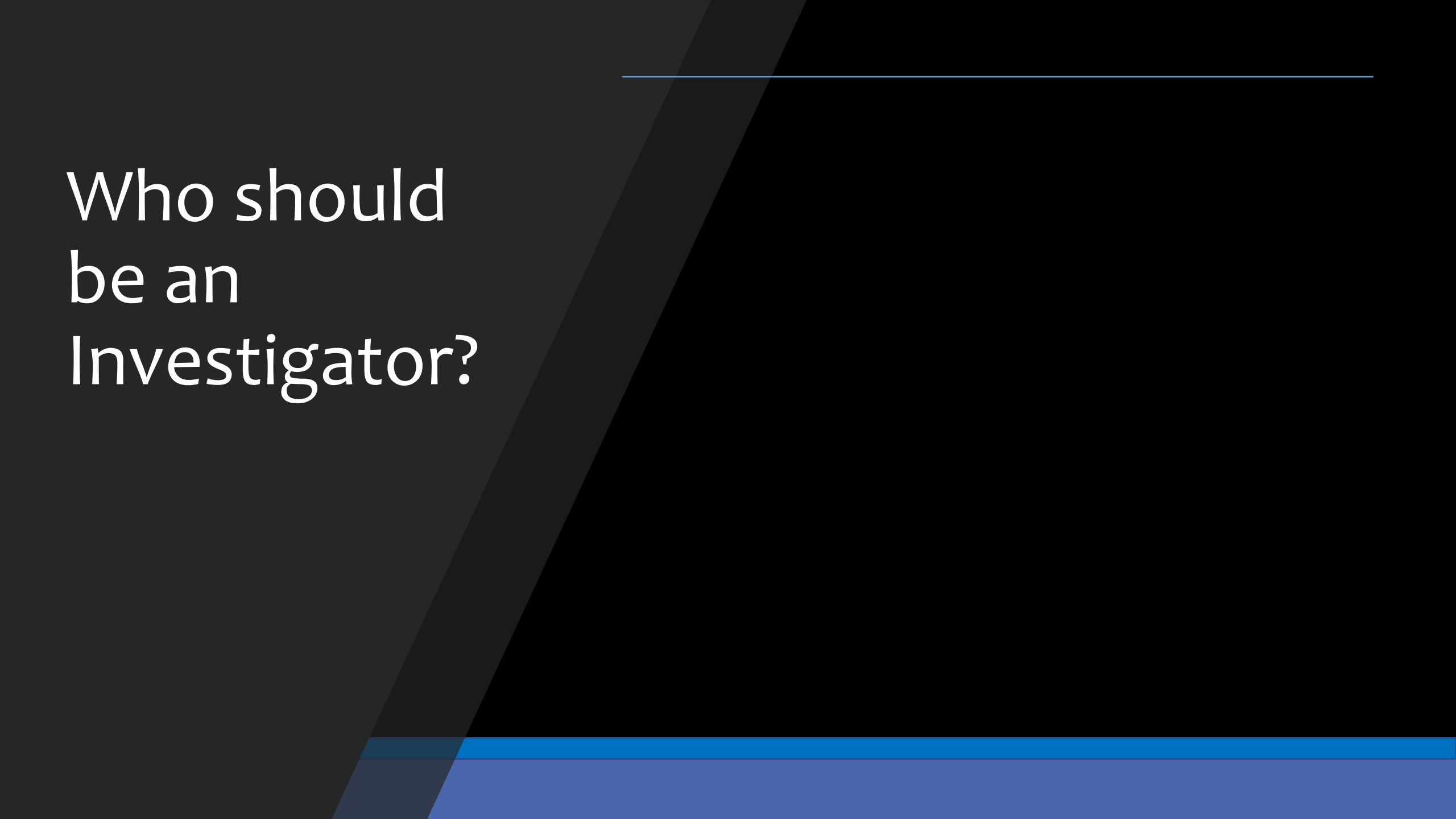
Equitable

- Obtain sufficient evidence to reach a fair, impartial determination
- Use a trained investigator who is free of actual/perceived conflicts/bias for or against any party or outcome
- Rights/opportunities provided to one party must be made available to other party on equal terms
- Must provide written notice of investigation
- Opportunity to identify witnesses and present evidence
- Written report summarizing all evidence and making factual findings
- Reporting and responding parties have timely and equal access to information used in disciplinary decisions
- Both parties receive the Report at the same time

March 8, 2021 Executive Actions – Title IX Reviews

- Directs the Department of Education to review existing regulations, orders, and guidance and ensure they are consistent with Biden administration's commitment that all students are guaranteed education free from sexual violence.
- Explicitly directs the department to evaluate Title IX changes by former Education Secretary Betsy DeVos, including the August 2020 regulations.
- Executive Action: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity/>

Who should
be an
Investigator?

The background is dark blue with a diagonal split. A thin white horizontal line is positioned near the top. A solid blue horizontal bar is at the bottom.

Schools
must have
appropriate
investigation
resources.

Internal Resources:

- Best practice: not the Title IX Coordinator, a principal, or person with disciplinary authority
- Trained and to the extent possible, experienced
- Someone with the emotional intelligence to investigate issues involving sexual misconduct

External Investigators:

- An attorney or other professional with experience in civil rights matters.
- Someone with experience in trauma-informed investigation techniques.

Title IX Coordinator & Investigator?

A Title IX Coordinator can be an investigator BUT:

- Recognize the difficulty in managing the Title IX process as well as conducting the investigation.
- Consider delegating other Title IX Coordinator duties, such as having another school staff member provide and implement supportive measures.
- Be mindful of concerns or perceptions of bias or lack of objectivity.

Choosing an Investigator

Fair, impartial and trained

Independent

Free of conflicts of interest

Able to discuss difficult topics with compassion

Effective listener

Good communication skills

Comfortable making credibility assessments

Ideally not involved in other aspects of the Title IX Process

Unbiased

Understanding Bias

Step 1: Gut Check

Is there any reason you might be biased in this investigation?

Conflict?

Knowledge of individuals involved?

Personal experiences?

Step 2: No Bias?

You may still be biased.

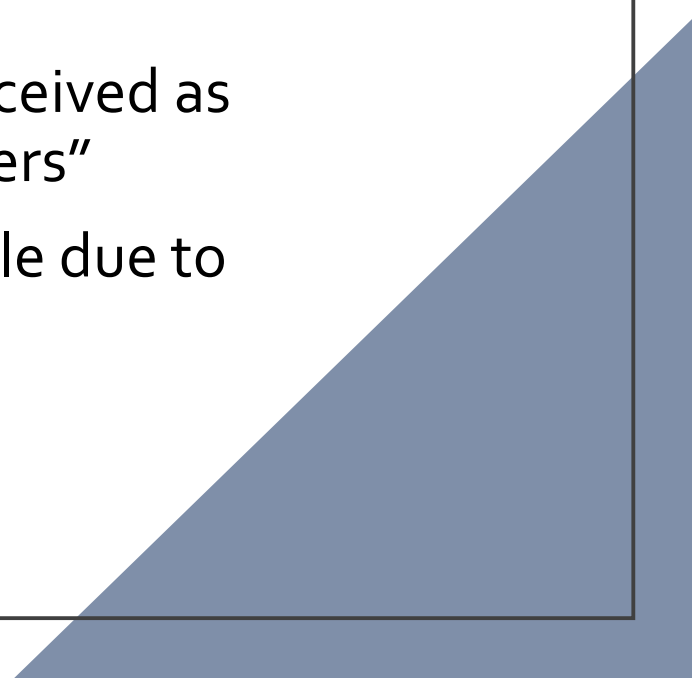
Understanding Bias

We all have biases and we act from these biases in unconscious ways.

This does not make us “bad” people. Our biases are often derived from experiences we have had in the past.

The more open we are to thinking about our own biases, the more likely we are to overcome them.

Understanding Bias: Common Investigator Biases

- Bias *towards* my employer or one of the parties
 - Bias against delivering bad news
 - *Don't shoot the messenger*
 - Conflict avoidance
 - Bias against people perceived as "complainers" or "whiners"
 - Bias against or for people due to previous interactions
- 

The 5 Phases of An Investigation



Parties in an Investigation

The person (or persons) making the complaint is typically called a **Complainant**. Other terms are: impacted party, reporting party, etc.

The person who has been identified as engaging in misconduct is typically called a **Respondent** or a Responding Party.

Witnesses are persons who have information about the matter being investigated.

In an investigation, use the terms that your policies & procedures use.

The Purpose Of An Investigation

To **advise** the decision-maker of the following:

- Does the totality of the evidence obtained during the investigation support a finding that it is more likely than not that the alleged conduct occurred?
- If so, was it a violation of the school's policy?

To **help** the decision-maker determine:

- What is the appropriate response/sanction?
- What is the appropriate remedy?



Overview of the Investigation Process

1. Intake **by Title IX Coordinator**
2. Determination of whether an investigation is appropriate **by Title IX Coordinator**
3. Supportive Measures implemented **by Title IX Coordinator**
4. Notices of Investigation sent **by Title IX Coordinator (or Investigator)**
 - Identify parties, policies allegedly violated, specific conduct constituting alleged violation and date/time/location of the alleged incident
 - Notices to complainant, respondent, and witnesses (see **Handouts 3-5**).

Overview of the Investigation Process

5. Investigation conducted **by Investigator**

Outline specific allegations and related P&Ps

Identify and interview witnesses

Identify and retain documents or other relevant information

Review documents and/or other relevant information

6. **Investigator** provides Respondent and Complainant with opportunity to respond to allegations and opportunity to identify witnesses and provide additional information

Investigation Process

-
7. **Investigator** concludes all outstanding investigation issues.
 8. Report is prepared **by Investigator**
 9. **Investigator provides report** to Title IX Coordinator who checks the report for sufficiency
 10. **Title IX Coordinator** provides report to **Decision-maker**.
 11. **Decision-maker** assesses the report and determines what, if any, action on the school is required. This can include discipline, training, restorative justice measures, etc.
 12. The parties may pursue appeals under certain circumstances.

The Five Phases of an Investigation

1. Notification of Investigation
2. Information Gathering
3. Information Review
4. Analysis and Determination of Facts and Policy through a Written Report
5. Notification of Outcome

Phase One: Notification of Investigation

- In this phase, the Complainant, the Respondent, and witnesses receive formal notice of the investigation.
- Notice can be sent by an investigator, but best practice is to have the **Title IX Coordinator** send formal notice in a written communication such as a letter or email.

Phase One: Notification of Investigation

Notices to **Complainants** and **Respondents** - includes information about:

- the investigation process including the allegations
 - implicated sections of the school's Title IX policy
 - the name of the investigator
 - the rights the Complainant and Respondent have throughout the investigation process
 - a caution regarding retaliation
 - any other information that is pertinent to the investigation of the case
 - See **Handouts 3 and 4** for examples.
- Notice to relevant **witnesses** is less detailed (see **Handout 5**)

Phase Two: Information Gathering

- The investigator gathers information related to the allegations.
- May include documents, electronic materials (e.g., texts, social media posts, emails, phone logs), video and audio recordings, and interviews with witnesses.
- During this phase of the process, the Complainant and Respondent are each provided an opportunity to:
 - interview with the investigator,
 - provide information to the investigator to review
 - identify other witnesses for the investigator to interview.

Phase Three: Information Review

- At the close of the information gathering phase, both the Complainant and the Respondent (and their advisors) must be provided an opportunity to review and respond to the information that the investigator has gathered.
- The regulations require that the parties have **10 calendar days** to review the materials.

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

- The investigator reviews, weighs and analyzes the information using the appropriate standard of evidence.
 - Preponderance of the Evidence
 - Clear and Convincing
- **Preponderance:** The information shows it is more likely than not that the alleged conduct occurred (more than 50% likely)
- **Clear and Convincing:** The information shows it substantially more probable that the alleged conduct occurred (substantially more than 50%)
- Most schools also want the investigator to determine whether the facts show that there is a policy violation.

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

- The investigator writes a formal investigation report that must contain:
 - the allegations that were investigated
 - the applicable policy against which the allegations were reviewed
 - the individuals contacted and interviewed
 - a list of the documents and materials gathered, reviewed and analyzed
 - a summary of information collected through materials and interviews

Phase Four: Analysis and Determination of Facts and Policy through a Written Report

General Report Format

- Introduction or Background (identifies parties and specifies allegations)
- Jurisdiction and Procedural Background (outlines ability of the school to address issue)
- Investigation Process Summary
- Summary of Evidence Collected and Reviewed
- Relevant Policies and Procedures
- Standard of Proof used in Analysis
- Factual Findings and Analysis
- Conclusion

** The report is based on the totality of the evidence.

Phase Five: Notification of Outcome

- After the investigator completes the written report, the Title IX Coordinator sends formal written communication to both the Complainant and the Respondent about the outcome of the investigation.
- The notice of outcome is accompanied by a redacted version of the investigation report.
- The parties have **10 calendar days** to review and respond to the report. Responses should be directed to the Decision-Maker.
- When appropriate, such as when the investigator determines that school policy has been violated, the notice of outcome letter will also include information regarding next steps in the Title IX process.

After the Report

- Report sent to Complainant, Respondent and Decision-Maker
- Complainant and Respondent have **10 calendar days** to submit written response to Decision-Maker
- Decision-maker will issue sanctions if appropriate
- School must offer both parties an appeal from a determination regarding responsibility and from a school's dismissal of a formal complaint.

Successful Investigations

- Follow your school's published policies & procedures
 - **#1 issue** identified by the Department of Education is a school's failure to follow its own policies & procedures
- Consistent application of the policies & procedures
- Equal notice and communications with all parties
- Transparency – provide updates even if there is nothing to report
- Factual findings (including credibility determinations) and analysis detailed in report and supported by evidence
- Complete investigation of all allegations with explanations if you are not able to make conclusions

Helpful Links

The Title IX Law:

<https://www.justice.gov/crt/title-ix-education-amendments-1972>

US Department of Education Site:

<https://sites.ed.gov/titleix/>

Colorado Department of Education Resources:

https://www.cde.state.co.us/cde_english/titleix

Next
Session:
October 14

~~Session 1: Standards for Title IX Investigations,
Investigators, and the 5 Phases of an
Investigation and Notifications~~

Session 2: Information Gathering

Session 3: Information Review

Session 4: Writing a Report with Analysis and
Determination of Facts and Policy