



COLORADO LEAGUE *of*
CHARTER SCHOOLS



Title IX Investigator Training
Session 3
October 21, 2021

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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 Analysis and Determination of Facts and Policy

Session Handouts

Handout 1 – Sample Complainant Review Communication

Handout 2 – Sample Respondent Review Communication

Handout 3 – Evidence Tracking Form

Pre-Work Materials for Session 3

Bree Benson Statement

Daniel Dale Statement

Jonah Jones Statement

Marcus Miller Statement

Taylor Tomkins Statement

Email from School Resource Officer (SRO)

Goals for Phase Three: Information Review

Investigator Goals for Phase Three: Information Review

Organize and analyze all information collected and makes determinations based on that analysis.



Draw conclusions regarding conflicting information.



With Title IX cases, there are often different interpretations of the same event.



How to reconcile differing versions is one of the biggest challenges for investigators.

Process Goals for Phase Three: Information Review by the Parties

At the close of the information gathering phase, both the Complainant and the Respondent (as well as their parents/guardians/advisors) must be provided an opportunity to review and respond to the information that the investigator has gathered.

The regulations state: *“Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.”*

Reviewing the
collected
information
with the
parties



Parties in an Investigation

Only the parties to a complaint are entitled to review the materials.

- **The Complainant** - the person(s) making the complaint with their parent/guardian/advisor
- **The Respondent** - the person(s) who has been identified as engaging in misconduct and their parent/guardian/advisor

Witnesses are not entitled to review any materials and often are not informed of the final outcome of the investigation.

Process Goals for Phase Three: **Information Review by the Parties**

- The Complainant and the Respondent (as well as their parents/guardians/advisors) need to be provided notice of this information review.
- The notifications must be sent at or near the same time.
- See **Handouts 1 & 2 – Sample Review Communications**

Process Goals for Phase Three: Information Review by the Parties

- Will you send the materials **via email**?
 - Risks: possibility of the materials being forwarded intentionally or unintentionally
 - Consider using document-sharing programs
- Will you send the materials in **hard copy**?
 - Can you duplicate everything (any voicemails, security footage, etc.)
- Choose a method and be consistent within the case and within your process!

Process Goals for Phase Three: Information Review by the Parties

- Communicate that the materials are confidential and that the school may consider the disclosure of the materials to others will be retaliatory.
- Outline that you expect the parties to submit written responses unless other arrangements are made.

Assessing Credibility



Phase Three: **Assessing Credibility**

- What does it mean to assess credibility?
- Most investigations involve different versions of the same event.
- Title IX investigations frequently involve Complainant and Respondent offering different versions of the same event.
- Almost every investigation will require an analysis and determination regarding which individuals are more credible.
- How should credibility be determined?

Phase Three: Common Credibility Factors

Corroboration

- Existence of corroborating evidence
 - Other witnesses provide information that is consistent
 - Otherwise neutral information (id card swipes, security footage) provides corroboration
- Lack of corroboration where it should exist
 - Systems
 - Records

Phase Three: Common Credibility Factors

Plausibility

- How likely is it that this description of events occurred?
- Does the explanation make sense to you?
- Do you need additional information to determine plausibility?
- Be careful about your own assumptions. Make sure you are not relying on what you believe or understand to be true.

Phase Three: Common Credibility Factors

Actual Knowledge versus Hearsay

- **Actual Knowledge**: the person personally observed (saw or heard) the events take place
- **Hearsay**: the person heard about the events after they occurred
- Investigations are not a court!
- Do not automatically reject hearsay evidence.

Phase Three: Common Credibility Factors

Actual Knowledge and Hearsay

- Both have value but you weigh them differently.
- Information based on actual knowledge is often more valuable than hearsay BUT
 - Hearsay is not always unreliable.
 - Hearsay can provide information about other relevant evidence.
 - *"Caitlyn told me a few weeks ago that Jacob gave her a neck rub during a break in class and that he often gives her compliments about how she looks."*

Phase Three:
**Common
Credibility
Factors**

Timing of the parties' actions

- Creating a timeline of events can help your documentation and analysis

Phase Three: Common Credibility Factors

Demeanor

- Relying on a person's demeanor during an investigation interview is tricky.
- Relying on descriptions of someone's demeanor during an event are also tricky.
- We react to stressful circumstances in different ways (example: freeze, fight, flight).
- Make note of unexpected reactions or responses but be wary about basing a conclusion solely on demeanor.

Phase Three: **Common Credibility Factors**

Conflict of Interest or Bias

- Title IX cases often involve interviewing friends or witnesses with potential for conflict or bias.
- Look to details & consistency of the accounts provided to bolster information that could have been influenced by conflict or bias.

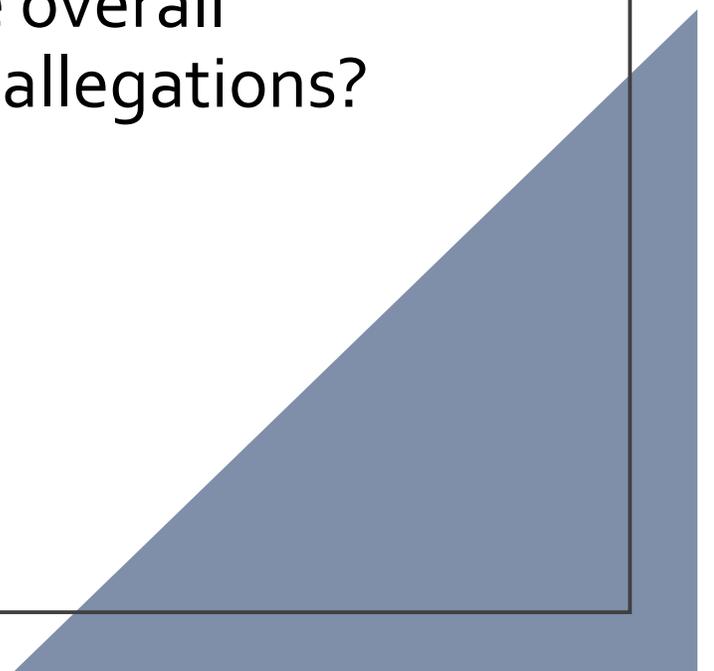
Phase Three:
**Common
Credibility
Factors**

**Complainant's Role in Making
the Complaint**

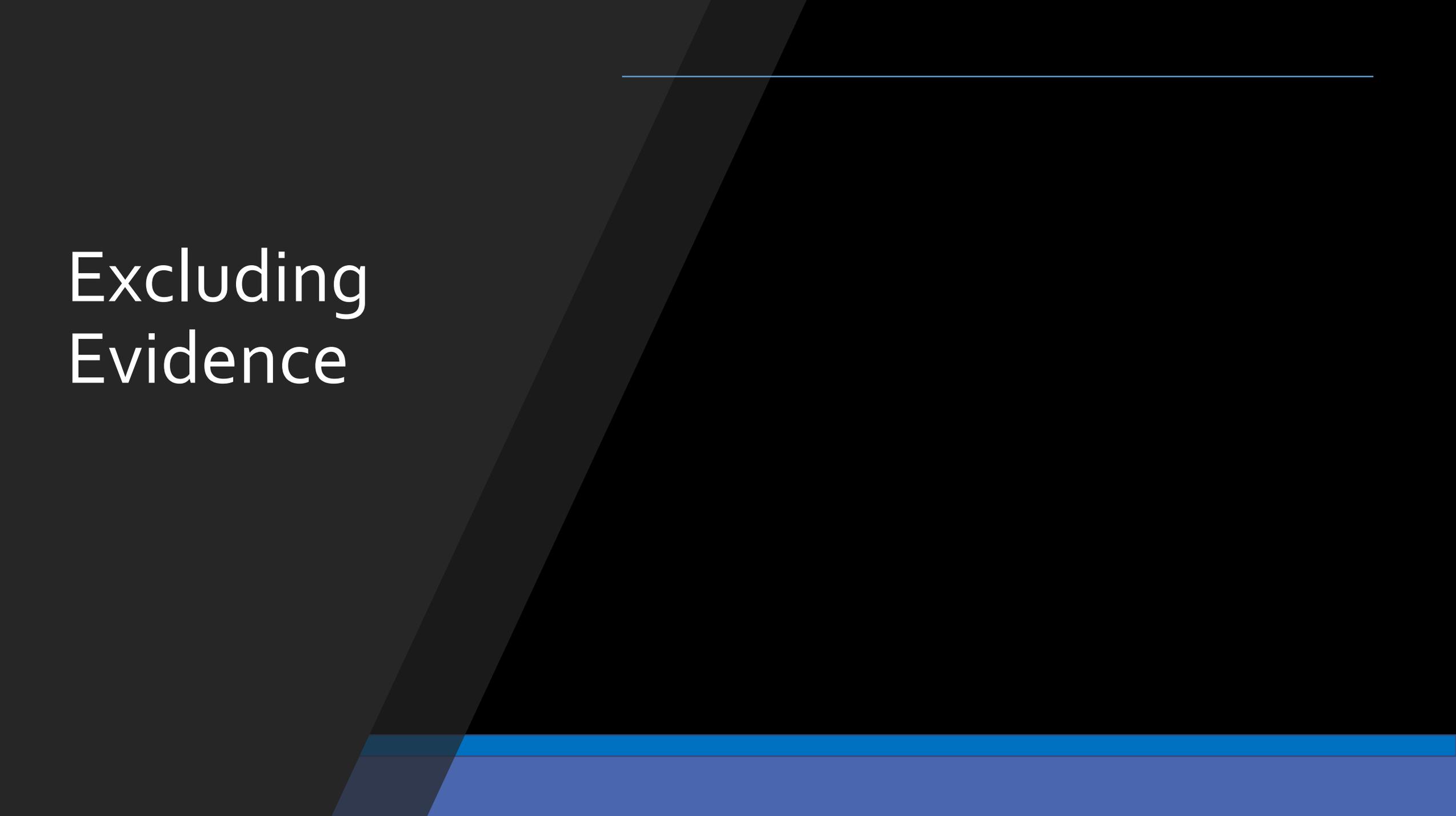
- Files a complaint directly
- A third-party report with Complainant's knowledge
- A third-party report without Complainant's knowledge
- School becomes aware of issue by other means

Phase Three:
**Common
Credibility
Factors**

How does all the information fit together to establish the overall context surrounding the allegations?



Excluding Evidence



Phase Three: **Excluding Evidence**

When should you consider excluding evidence?

- You suspect that the evidence is incomplete or has been modified.
- The source of the information is unknown or unreliable.
- The evidence does not provide any information about the specific allegations.
- The information provided was improperly gathered.

Phase Three: **Excluding Evidence**

- Document why you have excluded evidence
 - Was it irrelevant?
 - Was it unreliable?
 - Was it incomplete?
- See **Handout 3 – Evidence Tracking Form**

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 & Last Session October 28

~~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 Analysis and
Determination of Facts and Policy