

TITLE IX COMPLIANCE TRAINING

Practical Solutions for a Complex Process

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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
DISCRIMINA
TION 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



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..

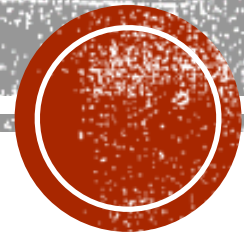




of Federal
Funds

SEX HARRASS MENT 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.

■



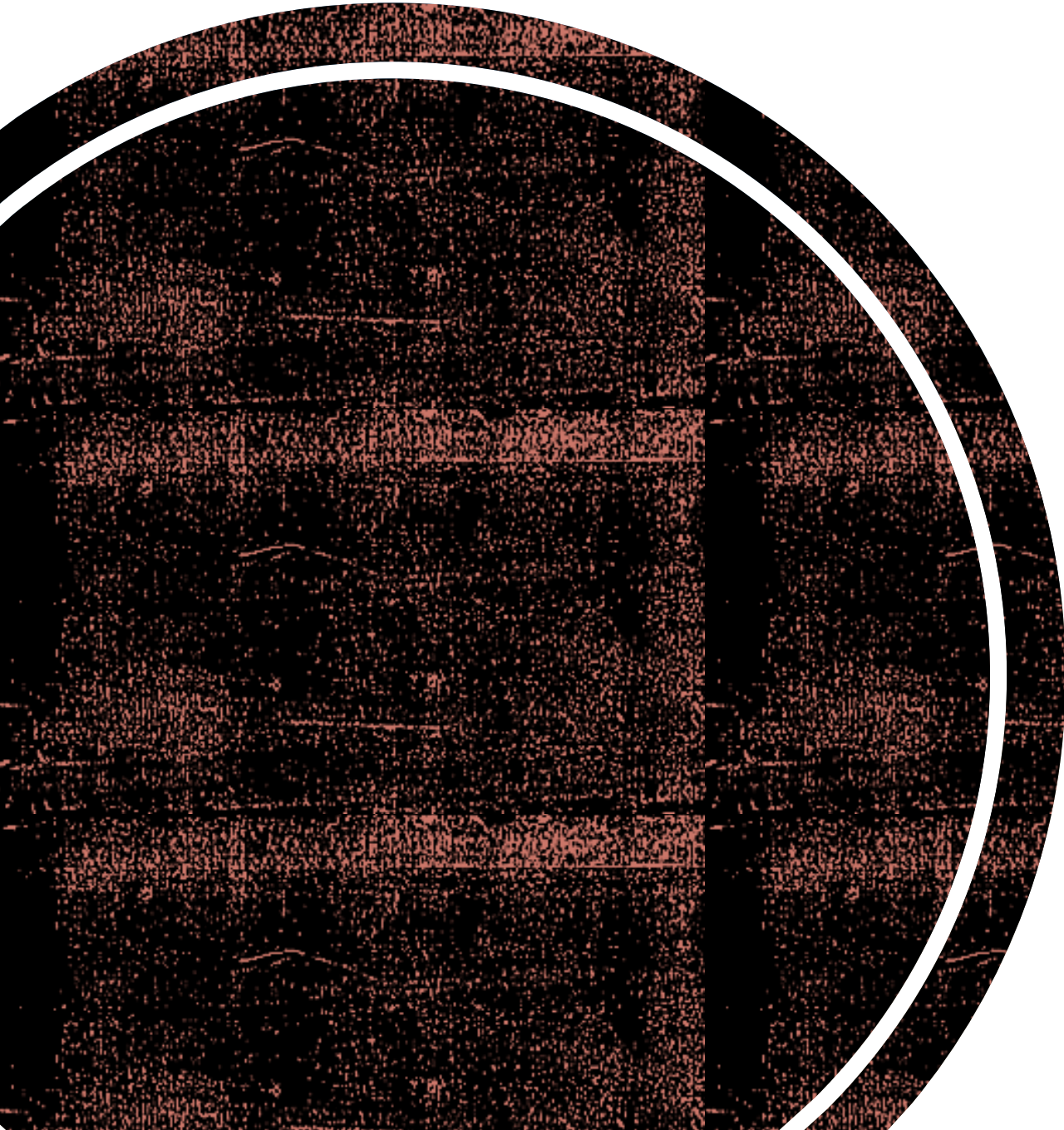
ACTUAL KNOWL EDGE

- 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



RESPONS
E:
NOT
DELIBERA
TELY
INDIFFER
ENT

- *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



**CASE STUDY
CONTINUED**

...

Teacher assures parents that she has spoken with 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

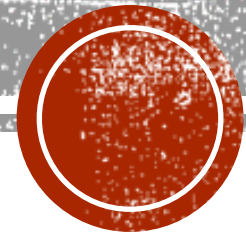
Another student asks to speak to principal but is denied

LaShonda's grades plummet, does not want to attend school, suicide note.

* *Davis v. Monroe Cty. Bd of Education*,
526 U.S. 629 (1999)

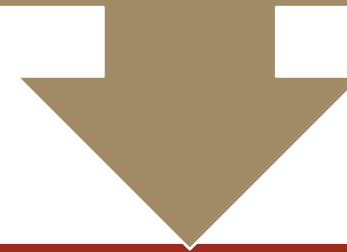
DELIBERATELY INDIFFERENT

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





**REMEDIAL
MEASURES/
SELF
EVALUATIO
N**

- If the USDOE determines a school engaged in discrimination, school can be ordered to take remedial action
- Schools should review the policy and MEASURE whether its being equitably enforced on an annual basis



New regulations require that each school district have:

Title IX Coordinator

Investigator

decision-maker

Appeal Decision-Maker

TITLE IX COORDI NATOR

- Understands law and policy – trained
- 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



STEP ONE
ROLE OF THE TITLE IX
COORDINATOR

ACTIONS TO TAKE UPON RECEIPT OF A COMPLAINT

Receipt of a
“Formal
Complaint” from
LaShonda/Parents

Next Step



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



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.

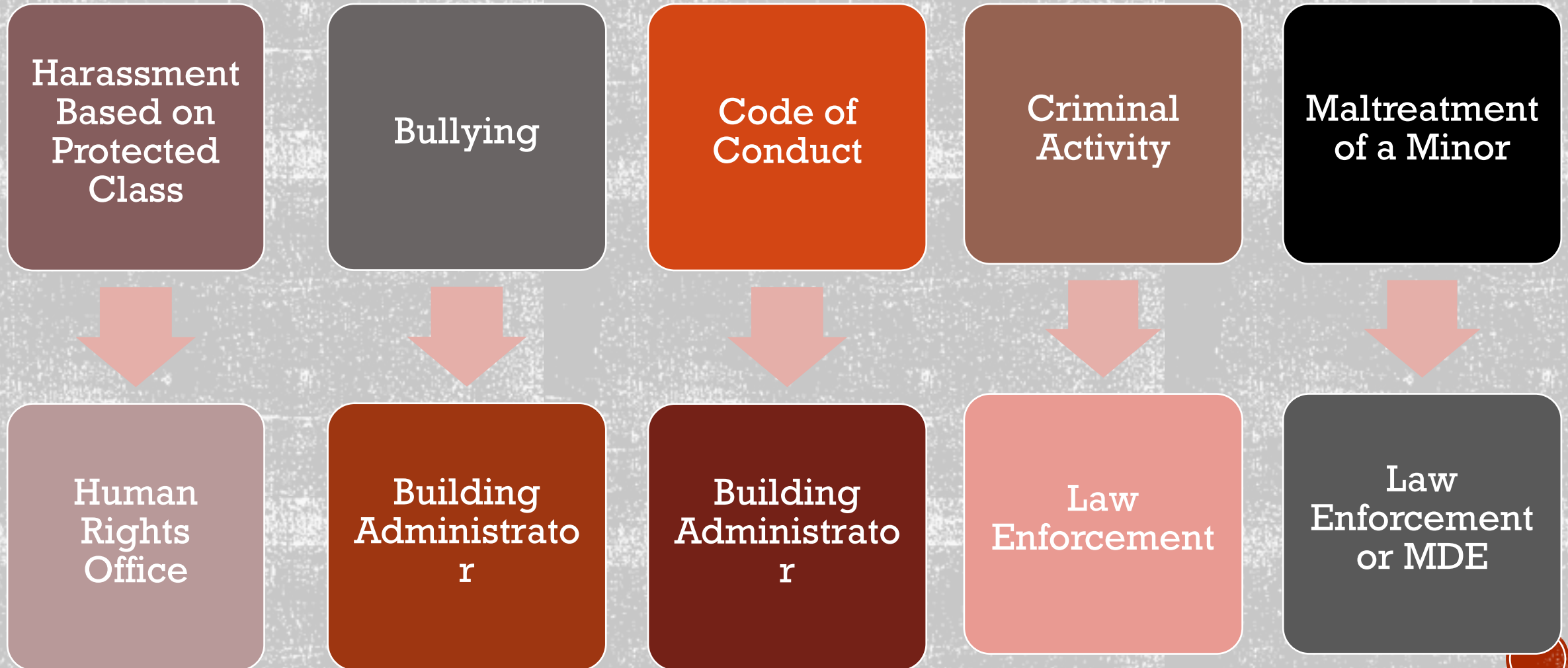


A top-down view of a desk with a spiral notebook, a coffee cup, and a keyboard. The notebook is open to a page with the word 'CHECKLIST' written in large, bold, black letters. Below the word, there are three handwritten checkmarks. The desk is made of dark wood, and the keyboard is white. A white coffee cup with a saucer is visible in the top left corner.

CHECKLIST

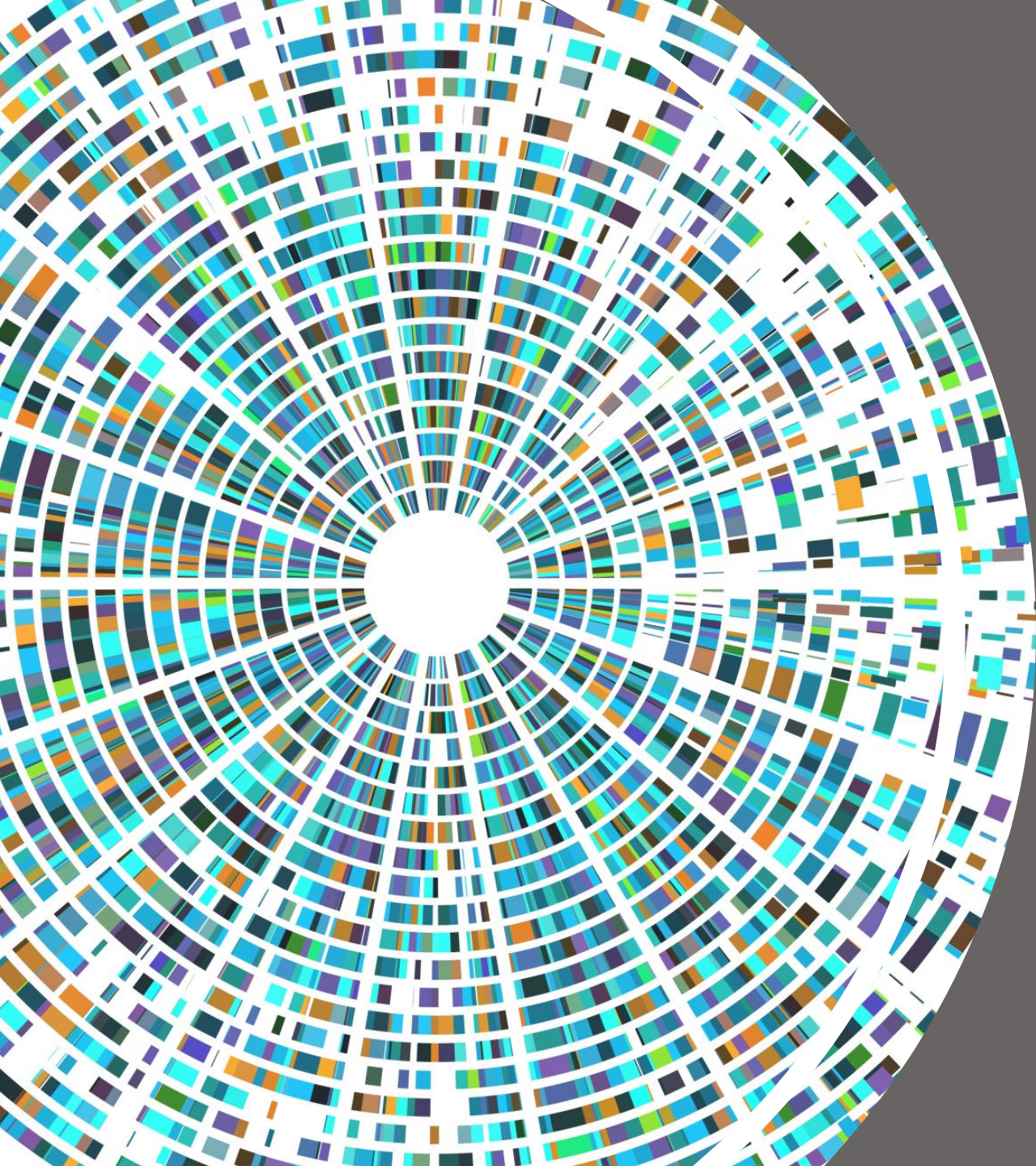
**RESPONSIBILITIES WHEN
DISMISSING A COMPLAINT**

REFERRAL OF COMPLAINT TO OTHER STAFF OR ENTITIES





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



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



INVESTIG ATION REPORTS



HOW TO KEEP TRACK OF CONDUCTING AN INVESTIGATION



INITIAL CONSIDERATIONS: EXTERNAL REPORTS



- Remember to make any mandated reports under the Maltreatment of Minors Act
- Potential referrals to law enforcement



A close-up, angled view of a red computer keycap. The keycap features a white padlock icon in the upper left corner and the text 'Protect Data' in white, sans-serif font, arranged diagonally across the center. The background shows other dark grey keycaps on a keyboard.

Protect Data

A BRIEF DATA PRACTICES INTERLUDE



8

9

10

11

4

15

PLAN

18

AHEAD

21

22

—

25

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



DISTRACTIONS



ACT NOW



INTERVIE W BASICS





**REQUIR
ED
INTERV
IEW
NOTICE**



OPENING REMARKS



Explaining

Explaining the purpose of the interview



Explaining

Explaining the investigation process
and your role as investigator

Explaining the *Tennessee* Warning







**DO NOT
GUARANTEE
RESULTS**



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



INTERVIEWING THE COMPLAINAN T 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

Administerin
g *Tennessee*
or *Garrity*
Warnings

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 RESPONDENT





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 background is blurred. The card has the words "Trust me." written on it in a casual, handwritten style.

Trust me.

**WAS THE WITNESS OR
PARTY CREDIBLE?**





SURVEILLANCE FOOTAGE

SOCIAL MEDIA IN INVESTIGATI ONS



**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 INVESTIGA TION REPORTS



STRATEGIES FOR WRITING AN INVESTIGATION REPORT



A wooden gavel with a black handle and a dark wooden head is positioned diagonally across the upper half of the image. The gavel's head is resting on a dark brown 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 dark, serif font. The background is a dark brown wooden surface with a visible grain.

AVOIDING CONFLICTS OF INTEREST

CONFLICT OF INTEREST



ONE MORE WORD ABOUT BIASES





STEP THREE
ROLE OF THE TITLE IX
DECISION MAKER

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.



RELEVANC Y

“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)



**POTENTIAL
REMEDIES**

May include but are not limited to:

Education

Continued supportive measures

Discipline

Restorative Justice

APPEAL

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





**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**



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....**





Questions