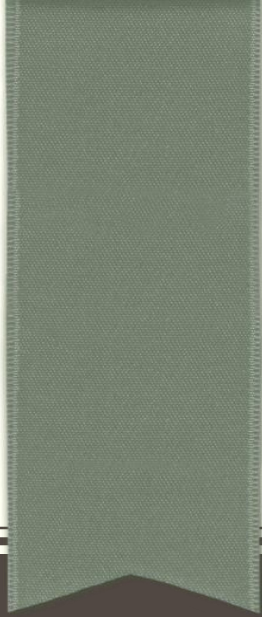




# TITLE IX INVESTIGATIONS TRAINING

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# THE TITLE IX INVESTIGATION

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## Sexual Harassment and Title IX

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- If a District has **actual knowledge** of sexual harassment it must take steps to address it. In our schools “actual knowledge” means that any employee who has knowledge - including custodians, secretaries, food service workers, paraprofessionals, etc. Once the district has knowledge, it must act in a way that is not deliberately indifferent to the alleged harassment.

## Sexual Harassment and Title IX

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- The **Title IX Grievance Process** requires an equitable, impartial, thorough and prompt sexual harassment investigation.
- An investigation is only allowed if a formal written complaint is filed requesting an investigation.

# Sexual Harassment and Title IX

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- What is a formal complaint?
- Policy – Page 6
  - Formal Complaint
  - A document filed by a Complainant, the Complainant's parent or guardian or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the administration investigate the allegation of sexual harassment. A “document filed by a Complainant” means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint

## What is an Investigation?

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- An investigation is the process of actively gathering information to determine if a school's policies have been violated.
- An investigation must be **Thorough, Reliable, Prompt, Impartial and Fair.**
- Competent, professional investigations do not happen by chance, but result from careful planning, strategic practices, patience, diligence, and strong report writing skills.

## Presumption of Non-Responsibility

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- The Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

## Presumption of Non-Responsibility

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At the outset, there is a presumption of non-responsibility.



## Standard of Proof: Preponderance of the evidence standard

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- CTECS utilizes the “preponderance of the evidence” standard
- Preponderance of the evidence: It is “more likely than not “ that the district’s Title IX policy was violated.
- More likely than not to be true – 50% plus a feather

## Serving Impartially

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- Investigators, decision makers, Title IX coordinators, equity coordinators, informal resolution facilitators and appeals officers must:
  - Be free from conflict of interest
  - Be free from bias; and
  - Be trained to serve impartially and without prejudging facts

## Investigation Step 1

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- Review applicable statutes, regulations, and school district policies and procedures. Follow all applicable policies and procedures throughout the investigation.
  - ✓ As investigator, your first step is to review the district's policies and procedures. (Review Title IX Grievance Procedures)
  - ✓ Follow those procedures throughout your investigation. (Keep a separate copy on hand)

## Investigation Step 2

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- Review the written complaint – the formal written complaint signed by the complainant (or the complainant’s parent) or the Title IX Coordinator that alleges sexual harassment and requests an investigation.
- Only a formal complaint can lead to a Title IX investigation.
- Send out Notice of Allegations
- Make an investigation plan

## Investigation Step 3

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- Review student/staff files of individuals allegedly involved in the incident.
  - ✓ Why? Reviewing the files will provide you with key background facts that can inform your questioning of the Complainant, the Respondent and witnesses.

## Investigation Step 4

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- Schedule a day and time to meet with the Complainant.
- Give at least one day's notice to allow the Complainant to have their advisor present.
- Ask the Complainant for a full narrative of the facts.
  - ✓ The investigator should double-check (and triple-check) to ensure that the Complainant has provided all relevant information, including:
    - ✓ Who, what, when, where;
    - ✓ Race, ethnicity, and gender of victim;
    - ✓ Students, teachers, and other staff involved;
    - ✓ Witnesses to the incident; and
    - ✓ The specific nature of the allegations
  - ✓ Review the Complainant's responses carefully before conducting any further interviews.

## Investigation Step 5

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- **Interview all alleged victims (which may or may not include the Complainant).**
  - ✓ In addition to the standard factual information listed above, the investigator should consider asking the victim(s) the following questions:
    - ✓ How did you react to the harassment?
    - ✓ How has the alleged harassment affected you and your experience at school?
    - ✓ Are there any other students, teachers, or staff that might have relevant information?
    - ✓ Do you have any notes, emails, text messages, documentation, or other physical evidence related to the incident?
    - ✓ How would you like to see this situation resolved?
- Note: Hold separate interviews with each alleged victim.
- Provide interviewees – whether they are the victim, a witness, or the alleged harasser – with appropriate translation services if the interviewee is an English Language Learner.

## Investigation Step 6

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- Interview other witnesses individually.
- A full investigation includes interviews with **all potential witnesses**, even if the first few witnesses interviewed have provided identical information.
- The investigator should explain briefly the reasons for the interview and ask whether the witness has any relevant information about the alleged incident.



## Investigation Step 7

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- The investigator should consider asking the following questions:
  - ✓ Describe the Respondent's general behavior toward the Complainant.
  - ✓ What, if anything, did the Complainant tell you about the incident?
  - ✓ Do you know of anyone else who might have relevant information?
  - ✓ Are you aware whether the Respondent has ever engaged in similar conduct in the past?
- Be sure that you have captured all potential witnesses by encouraging your interviewees to list any other students or school personnel who could possibly have information about the incident.

## Investigation Step 8

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- Interview the Respondent
- The investigator should inform the Respondent of the allegations against him or her.
- The investigator should ask the Respondent about the basic facts surrounding the incident and give the Respondent an opportunity to explain the reasons for his or her actions.
- Note: Hold separate interviews with each Respondent.
- Remember at least one day's notice

## Investigation Step 9

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- Interview any witnesses identified by the Respondent

## Investigation Step 10

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- Review the notes from the interviews.
  - ✓ Follow up on any factual inconsistencies. Re-interview witnesses as necessary.
  - ✓ If the Respondent says something that directly contradicts what the Complainant reported to you, circle back with the Complainant to clarify the Complainants version of the events.

## During the Investigation

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- It may be appropriate for a school to take interim measures (referred to as supportive measures) during the investigation of a complaint. Examples:
  - ✓ Rearrange schedules;
  - ✓ Provide counseling, medical services, and academic support (tutoring); and
  - ✓ Remove negative grades or evaluations that resulted from the harassment from the student's record, or allow a student to retake a test or class.

## Role of Advisors

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- **Must provide Complainant and Respondent with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any interview or related meeting or proceeding by the advisor of their choice.**
  - ✓ An advisor may be an attorney but need not be.
  - ✓ Cannot limit the choice or presence of advisor for either party in any meeting or grievance proceeding.
  - ✓ May establish restrictions regarding extent to which advisor may participate in the proceedings, as long as applies equally to both parties.

## Notice of Interviews

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- Provide written notice to individuals who you intend to interview (including Complainant, Respondent, and witnesses) which must contain the following information:
  - ✓ Date, Time, Location, Participants, and Purpose of Interview.
  - ✓ Must provide sufficient time for the individual to prepare to participate.

## Interview Preparation

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- ✓ Carefully prepare a list of questions in advance for each interview
- ✓ Be prepared to review questions as you learn more from the party or witness during the interview.
- ✓ Select a neutral, comfortable setting for the interview(s).



## Interview Tips

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- ✓ Introduce yourself and explain your role.
- ✓ Develop a rapport.
- ✓ Explain why they are being interviewed
- ✓ Explain the district's retaliation policy
- ✓ Ask if they have any questions

## Interviewing the Complainant

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- ✓ Don't guide the interview unless necessary. Allow the Complainant to narrate without interruption.
- ✓ Use trauma informed interview techniques
- ✓ Speak carefully and accurately.
  - ✓ Avoid words that imply consent
  - ✓ Do not victim blame

## Interviewing the Respondent

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- Remember at the outset, a Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

## Parties' Opportunity to Review Evidence and Respond

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- Prior to the completion of investigative report, must provide Complainant and Respondent (and advisors) equal opportunity to inspect and review any evidence that is directly related to the allegations.
  - ✓ Electronic or paper copy
  - ✓ Includes inculpatory and exculpatory evidence, from all sources
  - ✓ Parties must have at least 10 days to submit a written response
  - ✓ The investigator must consider the written responses prior to completion of investigative report.

# Investigative Report

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- Prior to report writing, consider:
  - ✓ Has all evidence been examined?
  - ✓ Have all leads been exhausted?
- The investigative report must fairly summarize all relevant evidence.
  - ✓ Summarize the facts (Both disputed and undisputed)
  - ✓ Do not make determinations
  - ✓ Investigator may provide credibility determinations although the decision maker is not bound by those determinations.

## Opportunity to Review/Respond to Investigative Report

- Must send the Complainant and the Respondent (and any advisors) the investigative report, at least 10 days prior to hearing or other time of determination regarding responsibility.
  - ✓ Electronic or hard copy
- The Complainant and the Respondent must have opportunity to review and respond.

## Opportunity to Review/Respond to Investigative Report

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- Once the investigation report is completed and comments have been received from both sides, the entire file should be provided to the decision-maker.

# Informal Resolution

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- CTECS can always offer an informal resolution process for issues between students or between employees.
- Before doing so, CTECS must provide the parties with a written notice disclosing:
  - The allegations
  - The requirements of the informal process including circumstances under which it would preclude a party from resuming the formal complaint process from the same allegations
  - Any party has a right to withdraw from the informal resolution at any time, and
  - Any consequences from engaging in the informal resolution process including whether records from it will be maintained and/or shared in the formal complaint process.
  - Informal resolution process is NOT available for complaints that an employee harassed a student.



# Appeal Process

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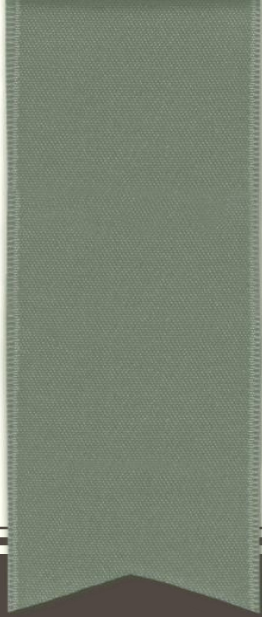
- Is available to both parties
- Must be decided by a different decision-maker
- Only bases for appeal:
  - Procedural irregularity that affected the outcome of the matter;
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - The Title IX Coordinator, Equity Coordinator, investigator(s) or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

## Appeal Process

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- The other party must be notified in writing if an appeal is filed.
- Both parties must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging the decision.
- The decision maker must issue a written decision describing the results of the appeal and the rationale for the result.
- The decision must be given to each party simultaneously.



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# INVESTIGATION REPORTS

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## Investigation Report

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**Regulations mandate creation of an investigation report that “fairly summarizes all relevant evidence.”**

# Relevance

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## What is relevant?

- Black's Law Dictionary defines "relevant" to mean
- "Logically connected and tending to prove or disprove a matter in issue; having appreciable probative value – that is, rationally tending to persuade people of the probability or possibility of some alleged fact."
- Material that is not relevant to the allegations in the complaint should not be included in the report.

## Relevance

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- **FRE 401 – Evidence is relevant if:**
  - **(a) it has tendency to make a fact more or less probable than it would be without the evidence; and**
  - **(b) The fact is of consequence in determining the action.**

## Relevance

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Every Title IX investigation involves the collection and review of “evidence” from the Complainant, the Respondent, and often times other witnesses.

## Determining Relevancy of Evidence

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- While there are many types of evidence that may be presented during the course of a Title IX investigation, only relevant evidence should be considered when issuing a determination regarding a Title IX complaint.
- Relevant evidence: Facts that potentially describe or explain an event or incident under investigation.
- Irrelevant evidence: Facts that do not have the potential to describe or explain an incident under investigation.



## Determining Relevancy of Evidence

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### Initial Steps:

- Step 1: Review the evidence being offered
- Step 2: Consider the allegations of the Title IX complaint
- Step 3: Ask yourself whether the evidence being offered has the potential to prove/explain or disprove an incident under investigation

## Title IX Rape Shield Protections

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**Every relevance analysis in a Title IX investigation MUST also include a consideration of Title IX's rape shield protections.**

## Title IX Rape Shield Protections

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**Title IX's rape shield protections provide that questions and/or evidence about the Complainant's sexual predisposition or prior sexual behavior are presumptively not relevant, unless they are offered under two limited exceptions.**

## Title IX Rape Shield Protections

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Rape Shield Exceptions: Evidence/questions regarding a Complainant's sexual predisposition or prior sexual behavior may be deemed relevant only if:

1. The questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
2. The questions and evidence relate to specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

# Importance of Investigation Reports

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**Investigation reports provide evidence of investigations.**

- In particular, reports:
  - ✓ Detail the processes of the investigation;
  - ✓ Organize and present the factual information collected;  
and
  - ✓ Provide specific factual support for conclusions and remedies.
  - ✓ Writing the investigation report requires the investigator to evaluate the evidence.

## Importance of Investigation Reports

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- Reports help ensure that all participants in the investigation – including the Complainant, the Respondent, and other witnesses – receive a fair process by:
  - ✓ Encouraging thorough investigations;
  - ✓ Giving district officials an opportunity to analyze the information collected to determine whether facts support the allegations; and
  - ✓ Providing rationale for district decisions.

## Report Components

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What should be in an investigation report?

## Report Components - Introduction

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### Introduction:

- Name of the Complainant and the Respondent and Date of Complaint
- Brief summary of allegations
- List of supportive measures implemented at the outset.



## Report Components – The Policy

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- CTECS' Student Grievance Procedures for Sexual Harassment Pursuant to Title IX
- Citations to the relevant portion of policy and excerpts of relevant provisions

# Report Components – Investigative Procedure

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- Scope of Investigation.
- A summary of the investigation process, including names of all witnesses and identifying documents, etc.
- Explain how you conducted the investigation
- Identify the documents you reviewed, including:
  - written complaints,
  - emails,
  - interview notes,
  - school policies and regulations,
  - incident reports,
  - online photos and posts, and
  - other documentary or physical evidence.
- **Attach key documents to the end of the report.**

## Report Components – Statement of Facts

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- The allegations in the formal complaint
- The respondent's response to each allegation
- The facts relevant to each allegation, including other witness's statements and documents, etc., that support or refute the allegation
- Any information that the complainant or the respondent submitted after their opportunity to review the evidence.
- Describe each allegation in detail.
- State each as succinctly and clearly as possible.
- For each allegation, cite the statutory or regulatory claim and grounds upon which the allegation is based.
- Describe actions the school has taken prior to your involvement.

# Report Components – Statement of Facts

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- **Should rely upon clear, accurate, factual evidence**
- **Describe facts relevant to the analysis, conclusions, and recommendations, including:**
  - ✓ Who, what, where, when, why, how;
  - ✓ Specific actions / incidents that occurred;
  - ✓ Dates;
  - ✓ Locations of incidents;
  - ✓ Specific quotations of words used (evidence of motivation, but not statements about motivation);
  - ✓ Ages of students;
  - ✓ Specific actions the district has already taken to investigate (but not conclusions the district has drawn);
  - ✓ Impact of incident on complainant, others, and school;
  - ✓ Students' prior relationships and interactions;
  - ✓ Students' prior incidents; and
  - ✓ Position of actors (e.g. student, principal).

## Report Components – Statement of Facts

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**Present the facts in a logical sequence.**

- ✓ If some fact is disputed, use the relevant documents and testimony to include sufficient factual material to resolve the dispute.
- ✓ Be objective; do not use subjective characterizations.
- ✓ Cite to specific evidence for support.
- ✓ Do not analyze the facts or draw conclusions in the Facts section.
  - This section is intended only to establish the factual and logical basis for the analysis and conclusions.

## Report Components: Conclusion

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- Reach a conclusion as to each allegation and explain how the conclusion was reached.
- Explanation of credibility determinations
- Explain how conflicts were resolved

## Report Components: Conclusion

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- Analyze the facts presented, restating the critical facts and resolving factual disputes.
- Include reasons for accepting or rejecting the allegations.
- Draw conclusions
  - Use the facts!
  - All conclusions must be logical and reasonable reflections of the facts.
  - The purpose is to determine if the alleged acts occurred and why the alleged acts occurred (i.e. motivations).
  - Do NOT make legal conclusions

## Report Components

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- Each of the components should be a separate section in the report.



## Importance of Investigation Reports

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An investigator must consider any information that the Complainant or the Respondent submitted after their opportunity to review the evidence so be sure to include a summary of any such information in the report.

# Tips for Writing an Effective Investigation Report

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- Be Impartial
  - Do not use biased language
  - Beware of language that downplays, has certain connotations, etc.
  - If available, use the specific language of the actors

## Tips for Writing an Effective Investigation Report

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- Do not mischaracterize facts.

## Tips for Writing an Effective Investigation Report

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- Be thorough.
  - ✓ Do not leave out facts that appear damaging to CTECS. This undermines both the credibility of the report and your credibility as an investigator.
  - ✓ Sometimes, you might need to explain that CTECS made a mistake.

## Tips for Writing an Effective Investigation Report

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- Be specific.
  - ✓ Do not be vague. If you do not know a particular fact, find it out.
  - ✓ When possible, do not allow witnesses to be vague.

## Tips for Writing an Effective Investigation Report

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- Confirm that the investigation was done appropriately.
  - ✓ Interview appropriate witnesses.
  - ✓ Substantiate claims, investigate credibility, and do not accept statements at face value.
  - ✓ Use supporting documents and corroborating evidence.
  - ✓ Follow up on all leads.

## Tips for Writing an Effective Investigation Report

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- Be prompt.
- ✓ Follow the district's policy with regard to deadlines

## Tips for Writing an Effective Investigation Report

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- Give yourself enough time!
- ✓ Allow an appropriate amount of time to conduct a thorough investigation and write an effective report



# Tips for Writing an Effective Investigation Report

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- Write effectively.
  - ✓ Use short sentences, active voice, and words that convey full and appropriate meaning.
  - ✓ Proofread.

## Tips for Writing an Effective Investigation Report

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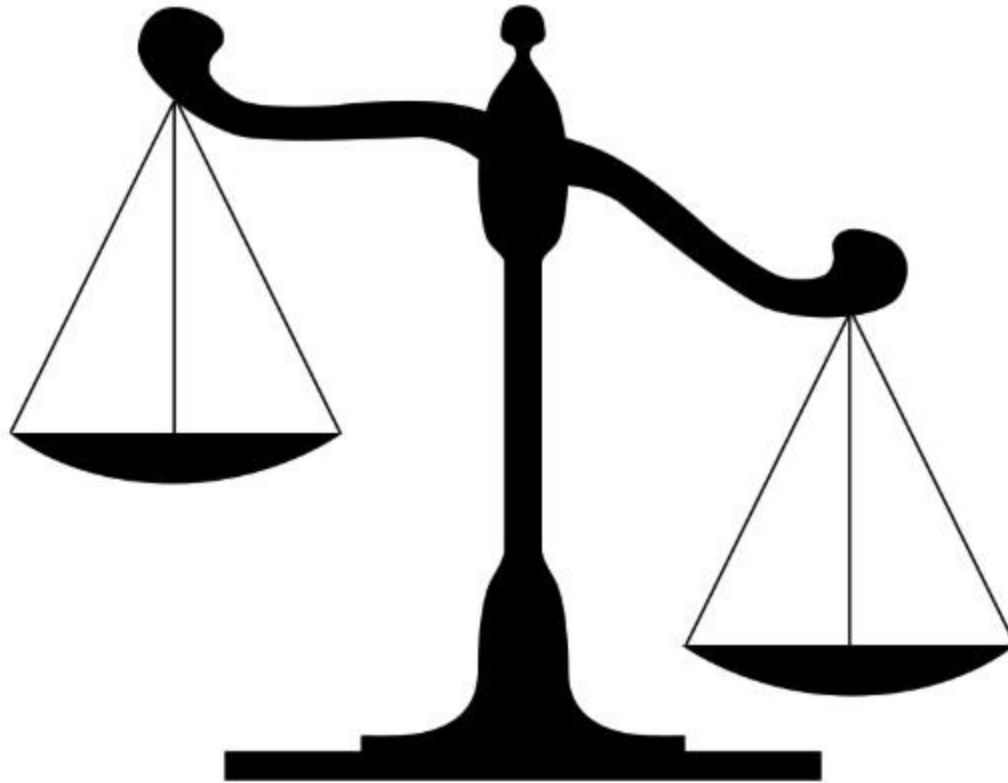
Attach key documents to the end of the report.



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PREPONDERANCE OF THE EVIDENCE

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# Preponderance of the Evidence as Burden of Proof

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- The standard is “the preponderance of the evidence,” that is, given the preponderance of evidence, a reasonable person would conclude that the event(s) in question occurred (or did not occur).

# Preponderance of the Evidence as Burden of Proof

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- A preponderance has been alternatively described as the greater weight of evidence (picture the scales of justice, tipped slightly one way or the other), as what is more likely than not, 50.01 percent, or 50 percent plus a feather.



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# AVOIDING BIAS, CONFLICT OF INTEREST, AND PREJUDGMENT OF FACTS

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- The Title IX Grievance Process requires that Investigators, Decision Makers, Title IX Coordinators, Equity Coordinators, Informal Resolution Facilitators and Appeals Decision Makers i.e., EVERYONE:
    - Be free from bias;
    - Be free from conflict of interest
    - Be trained to serve impartially and without prejudging facts



## What is Bias?

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- A bias is a tendency, inclination, or prejudice toward/against something or someone.
  - Biases are often based on stereotypes, rather than actual knowledge of an individual or a particular circumstance.
  - In effect, biases are cognitive “shortcuts” our mind makes that can result in prejudgments, which lead to improper decisions or potentially discriminatory practices

# What is Bias?

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- Bias is often characterized as stereotypes about people based on the group to which they belong and/or based on an immutable physical characteristic they possess such as their gender, ethnicity, or sexual orientation.

# Bias

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- You may or may not be aware of your biases.
- Bias can be (and are often) implicit, meaning that certain attitudes and stereotypes can affect understanding, actions, and decisions in an unconscious manner.

# Bias

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- Favoritism is also bias.

# Bias

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- To combat bias you must pay attention to your language, avoid generalizations, question your thinking, challenge your assumptions and listen.

# Conflicts of Interest

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- A conflict of interest occurs when personal or private interests may compromise one's judgment, decisions, or actions.
- Conflicts of interests may arise from family, friendships, faculty/staff relationships, or other social factors.

# Conflicts of Interest

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- A conflict of interest exists that disqualifies you from the Title IX process is one that prevents you from being able to impartially participate.

# Conflicts of Interest

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- Conflicts of interest can be:
  - Actual,
  - Perceived or
  - Potential



# Conflicts of Interest

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- An actual conflict of interest is a direct conflict between one's official duties and responsibilities, and a competing personal interest or obligation.

# Conflicts of Interest

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- A perceived conflict of interest is a situation where it could reasonably be perceived that a competing interest could improperly influence the performance of one's official duties and responsibilities.

# Conflicts of Interest

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- A potential conflict of interest arises where a personal interest or obligation could conflict with one's official duties and responsibilities in the future.
- Any concerns about potential conflicts of interest should be immediately discussed with the Title IX Coordinator.

# Conflicts of Interest

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- Any concerns about potential conflicts of interest should be immediately discussed with the District's Title IX Coordinator.

# Conflicts of Interest

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- How do you determine if a conflict (actual, perceived, or potential) is present that should disqualify you from involvement in a particular Title IX grievance?

# Avoiding Prejudgment of Facts

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- Prejudgment refers to passing judgment prematurely

# Avoiding Prejudgment of Facts

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- Or without sufficient reflection or investigation.
- Prejudgment often occurs when allegations involve sexual conduct, sexual history, drugs, and/or alcohol abuse.
- Sex stereotypes also often lead to prejudgment.

## Avoiding Prejudgment of Facts

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- How do you avoid prejudging facts?
  - Keep an open mind throughout the investigation process.
  - Wait to hear all of the facts (there are two or more) sides to every story.
  - Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts are your friends.
  - Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, alcohol use.



## Avoiding Prejudgment of Facts

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Wait to hear all of the facts multiple sides to every story.

## Avoiding Prejudgment of Facts

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- Seek out additional facts and/or witnesses if you feel yourself jumping to conclusions – facts are your friends.
- Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, alcohol use.

## Avoiding Prejudgment of Facts

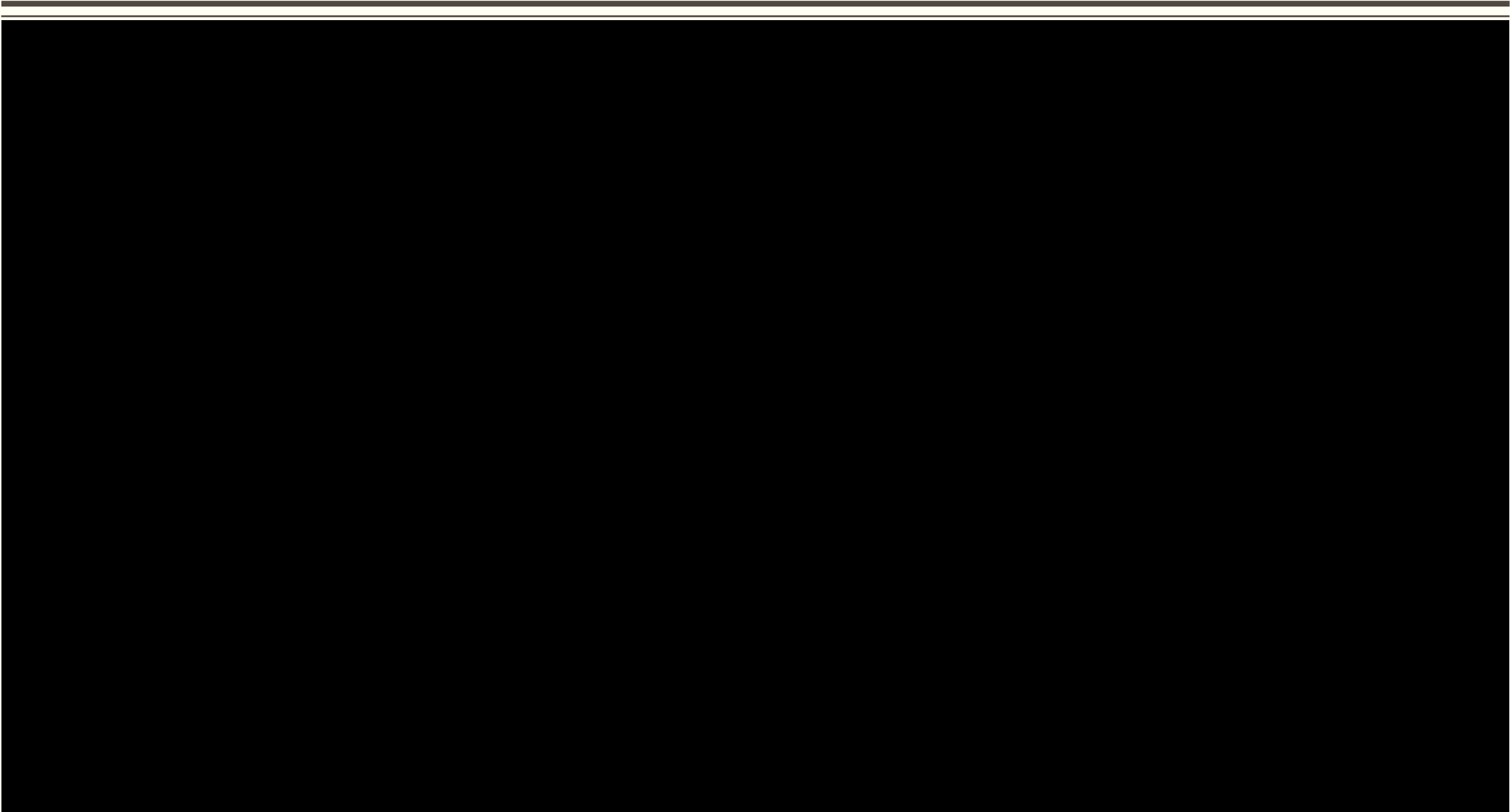
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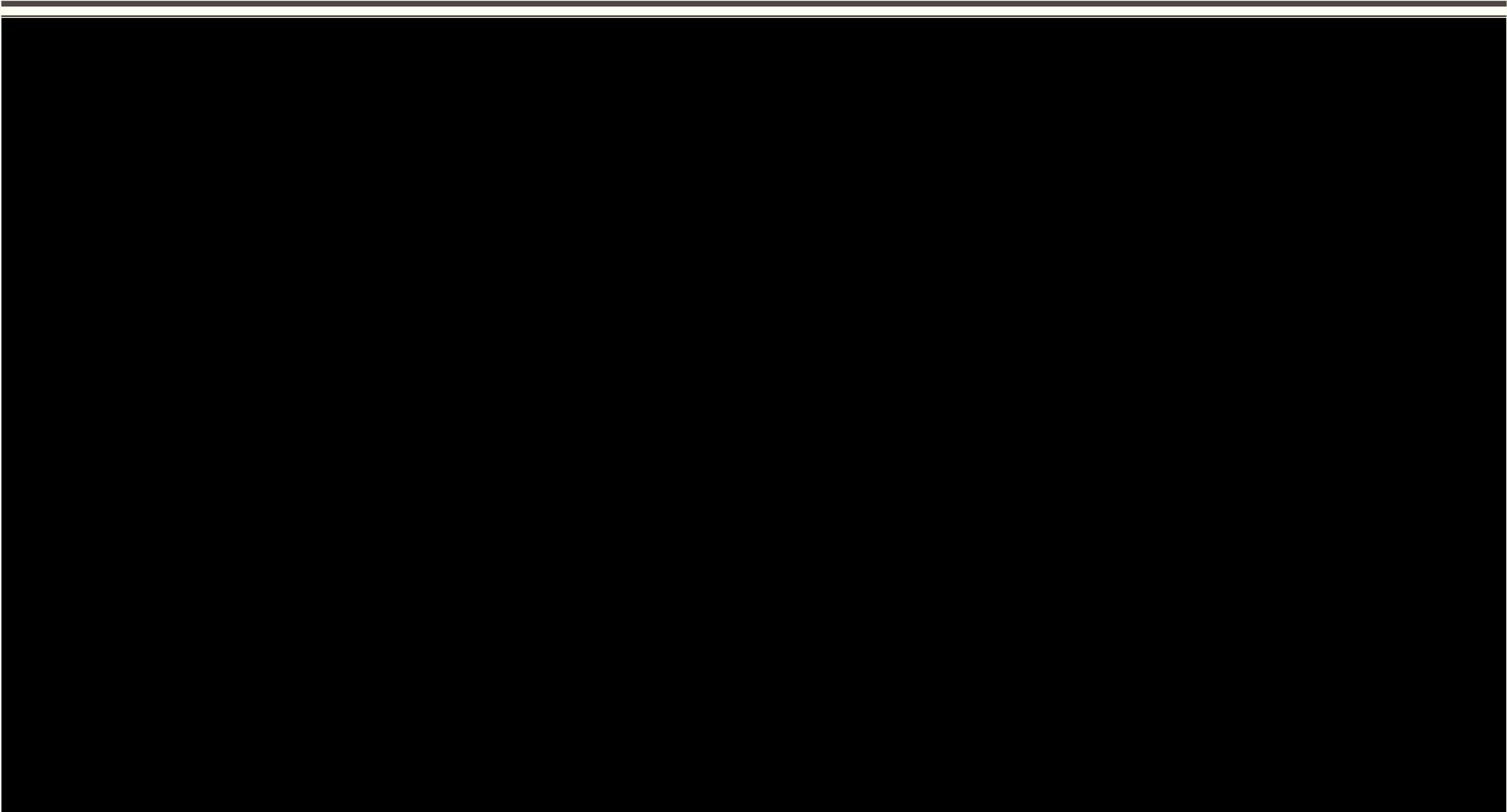
Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, alcohol use.

# Questions???

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- <https://ktla.com/video/report-of-sexual-assault-prompts-investigation-at-hamilton-high-school-in-west-l-a-area/7099428/>