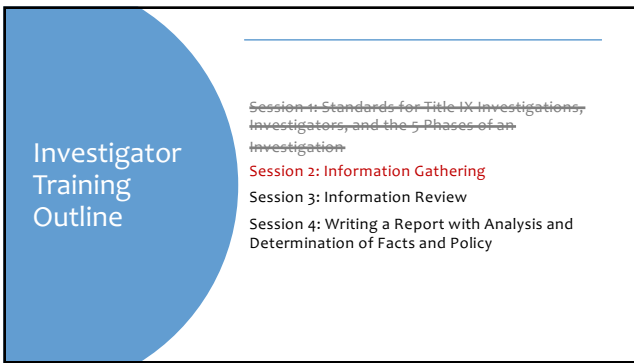
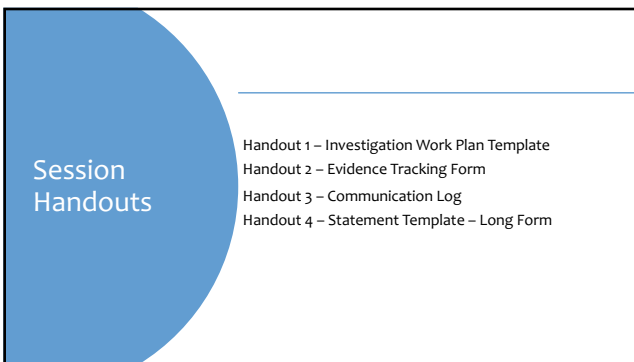


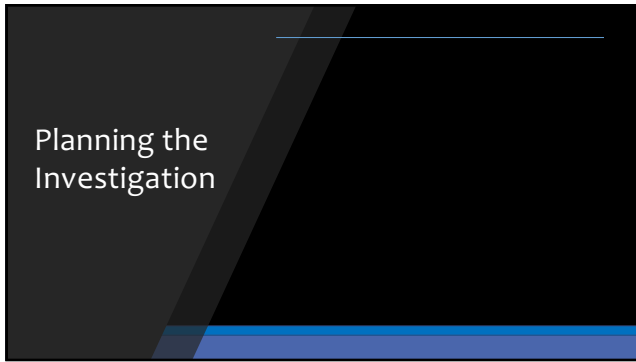
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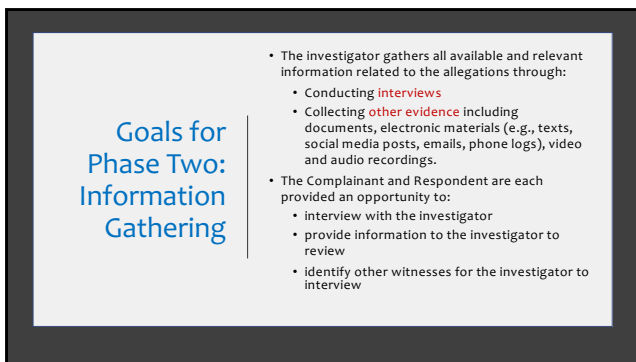
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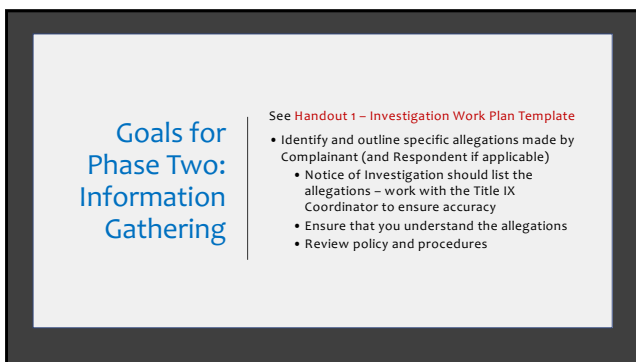
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6

Identifying What Is Being Alleged

- Misconduct towards another because of:
 - **protected class** (discrimination or harassment)
 - **someone reporting wrongdoing** (retaliation)
- Does the misconduct violate:
 - Title IX law or regulations?
 - A school policy?
- How big is the problem?
 - How many people have been accused?
 - How many people have been affected?
 - Was this a single incident or pattern of behavior?

7

Goals for Phase Two: Information Gathering

- Interview Complainant and Respondent
- Identify and interview witnesses
- Identify and collect documents or other relevant information
- Explore whether there may be information available that the parties may not know about (e.g. security footage, police reports, etc.)
- Once you have collected the evidence, provide Respondent and Complainant with opportunity to respond to allegations and identify witnesses and provide additional information

8

Information Gathering Phase: Collecting Evidence

9

Forms of Evidence

- **Documentary** (police reports, medical reports, etc.)
- **Physical evidence** (letters, site visits, property damage, etc.)
- **Demonstrative** (photographs, diagrams, security footage, etc.)
- **Electronic evidence** (text messages, emails, time records, etc.)

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Categories of Evidence

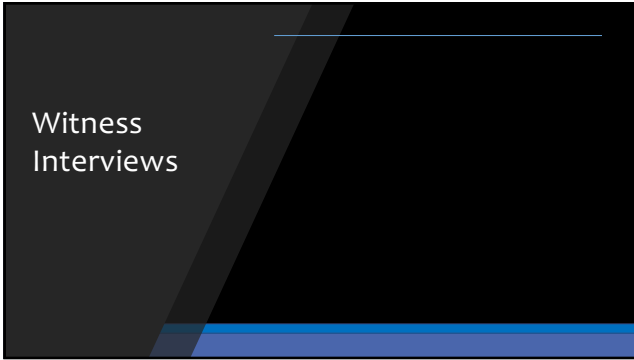
- **Direct:** The most powerful type of evidence, direct evidence requires no inference. The evidence alone is the proof.
- **Demonstrative:** An object or document that directly demonstrates a fact. Examples of this kind of evidence are photographs, video and audio recordings, charts, etc.
- **Circumstantial:** used to infer something based on a series of facts separate from the fact is trying to be proven. It requires a deduction of facts from other facts that can be proven.
- **Corroborating:** evidence used to confirm an assertion of a witness

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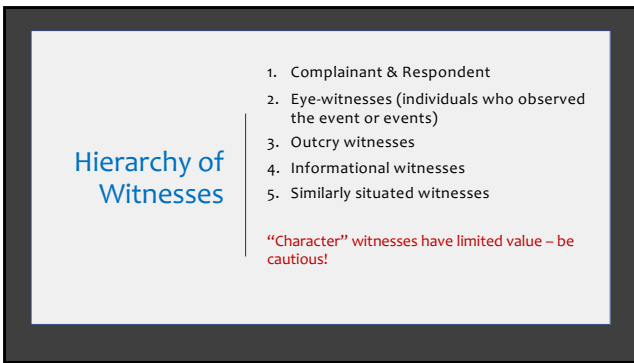
Collecting Evidence

- Consider reviewing any school-sponsored email systems for communications between the party.
- Become social media savvy (if you aren't already), particularly social media platforms that your school community uses.
- Make sure you have some way to track evidence you collect (see **Handout 2 – Evidence Tracking Form**).

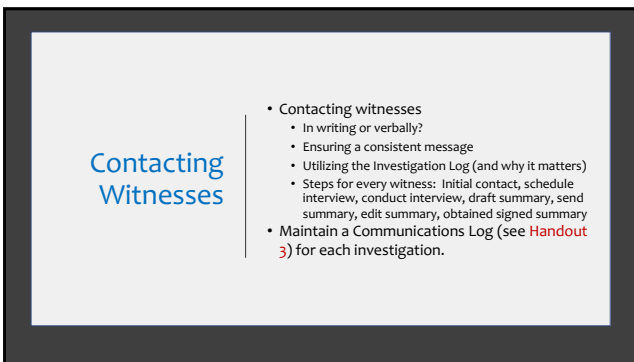
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Witness Interviews

- Order of interviews depends on the circumstances
- Typical approach:
 - Interview Complainant first
 - Two theories concerning Respondents
 - Interview them after Complainant
 - Gather information from witnesses first and then interview the Respondent
 - Repeat interviews are encouraged

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Documenting Witness Interviews

- See **Handout 4 – Witness Statement Form**
- Witness summaries:
 - Provide an overview for the witness to include:
 - The Purpose of the Investigation
 - Request they maintain confidentiality
 - Explain the retaliation protections
 - Ask them to be truthful and complete in their answers
 - Explain that you will create a summary that they will review (if they are able to) and they will be expected to sign after review

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Interviewing Strategies

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Plan the Interview

- Order of questioning can be important – organize your questions ahead of time
- Start with broad open-ended questions and keep narrowing
- Plan how you will approach sensitive subjects very carefully
- Try not to make assumptions
- Remember to capture the basics:
 - Who
 - What
 - Where
 - When
 - How

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Create a distraction-free environment

- Create conditions that feel safe and comfortable.
- Choose a convenient time to meet. Avoid scheduling a Title IX meeting between existing meetings so you do not feel rushed.
- Find a suitable meeting location and make any adjustments to the room.
 - A quiet place to reduce distraction.
 - Cover or minimize obvious distractions like televisions, windows, computers, etc.

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Create a distraction-free environment

- Consider where you sit. Sitting directly across the table, interrogation-style, can be perceived as threatening and creates a barrier. If possible, sit next to the person you are speaking with.
- Look at any materials together.
- Consider the impact your body language has on the meeting environment and tone.
- Crossing your arms, frowning, looking down over your glasses, checking e-mail or text messages, and other body language sends the message that you are not interested.

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Keep it Simple

- Avoid long and complicated sentences.
- Avoid frequent or rapid switches of topic.
- Keep the meeting short.
- Repeat important points several times.

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Use Active Listening

- Ask clarifying questions
- Use empathic statements at appropriate times.
- Repeat what has been said to signal that you understand.
- Make brief, affirming comments throughout a story to let them know that you're hearing them, e.g., *'That sounds really frustrating'* or *'Wow, that must have been really hard'*
 - BUT avoid language that suggests you have made a conclusion, e.g., *'Sure sounds like you were sexually harassed'*

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Opened-ended questions

- Use open-ended questions to optimize the ready exchange of information.
- Be mindful of your phrasing, making modifications as needed.
- Be aware when you are receiving limited, brief, yes-or-no responses, and ask questions that require greater responses.
- Use informal prompts (e.g., 'tell me more') to encourage more information, including key facts.

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Quantify Broad Statements

- When someone says, "He does that all the time."
Ask, "How often?"
- When someone says, "I've never seen him do that."
Ask, "How long have you known him?"
- When someone says, "He was angry"
Ask, "What does angry look like?"
Look for behaviors, not conclusions

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Breakdown Conclusory Statements

When someone says, "She was totally drunk."
*Ask, "What made you think she was drunk?"
"What behaviors did you observe that made you think that?" "How much did you see her drink?"*

When someone says, "I think this happened because he's a boy."
Ask, "What made you think it was related to his gender?" "Did anyone every make comments about his gender?"

Look for objective facts – observations, statements, actions

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Interviewing Tips

- Try never to interrupt or suggest an answer.
- Document if a witness shows emotions, like anger or tears, or uses grunts or gestures to respond to a question.
- Remain neutral in your questions and demeanor.
- Use silence to draw out information

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Closing Questions: Complainants & Respondents

- Allow them to provide all the information he/she wanted to provide
- Give them an opportunity to provide any documents he/she wanted investigator to consider
- Provide the opportunity to identify witnesses
- Opportunity to ask any questions about the investigation and adjudication process
- Identify specific allegations and obtain confirmation that there are no other issues related to the investigation

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Closing Questions for Witnesses

- Is there anything else that you think we should know that we have not discussed?
- We do not want to miss something simply because we did not ask the right question
- Is there anyone else that you think we should interview that we have not discussed?
- Are there any documents, text messages, pictures or any other things that you think might be relevant to what we discussed today?

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When Is Enough Enough?

- How many witnesses should you interview?
- What about other witnesses identified by Complainant, Respondent and other witnesses:
 - Probe: what will this person tell me?
 - Decision regarding usefulness of the information is up to you

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**Remember:
Hierarchy of
Witnesses**

1. Complainant & Respondent
2. Eye-witnesses (individuals who observed the event or events)
3. Outcry witnesses
4. Informational witnesses
5. Similarly situated witnesses

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**Interviewing
Young Children**

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**Considerations
for
Interviewing
Children**

- Use language the child understands
- Be attentive to the child's language, phrasing, terms, and names of important people, places, or things. Use the terms and names they use.
- Use casual conversation at the beginning of an interaction to draw a sample of the child's language so you can mirror it.
- Get the child to discuss a neutral topic to put the child at ease with the situation.
- Err on the side of using language below or at a child's grade level and become more elaborate if you feel the child understands.

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Considerations for Interviewing Children

- Have objects available that a child can hold or manipulate during the conversation.
- Avoid assuming children cannot comprehend relevant information. Children usually understand more than adults give them credit for understanding.
- Children, especially those with trauma histories, are adept at reading adults and can see when someone is not being truthful or may be withholding information.
- Young children tend to focus on one aspect at a time in conversation. Simple sentence structure with a subject, a verb, and an object will be most successful. This pattern is recommended until at least age ten.

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When Parents or Guardians are Involved

- Always seek parental permission when the child is a complainant or a respondent regardless of their age.
- Witnesses who are over the age of 13 may not need parental permission but it's a good idea to follow up with an email to the parent to let them know the child was interviewed.
- When parents are present, make sure that they understand you need information from the child not the information filtered through the parent.
- If a parent does not want their child to be interviewed, consider getting the information in a written statement.

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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

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Next Session

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

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