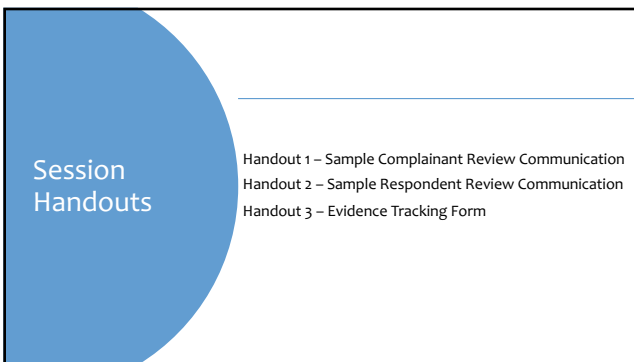


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Goals for Phase Three: Information Review

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Remember 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?

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Process Goals for Phase Three: Information Review by the Parties

- 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 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."

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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."

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Investigator Goals for Phase Three: Information Review

- The investigator organizes and analyzes all of the information collected and makes determinations based on that analysis.
- This includes drawing conclusions regarding conflicting information.
- With Title IX cases, you are often confronted with different interpretations or versions of the same event.
- One of the biggest challenges for investigators is reconciling these different versions through **credibility assessments**.

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Reviewing the collected information with the parties

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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.

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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**

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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!

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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.

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Assessing Credibility

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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?

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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.

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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.

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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."*

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Phase Three:
**Common
Credibility
Factors**

Timing of the parties' actions

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

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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.

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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.

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**Phase Three:
Common
Credibility
Factors**

Corroboration

- Existence of corroboration
 - 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

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**Phase Three:
Common
Credibility
Factors**

Complainant's Role in Making the Complaint

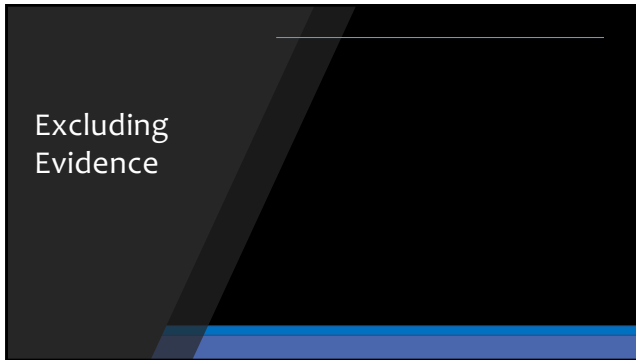
- Files a complaint directly
- A third-party report with Complainant's knowledge
- A third-party report without Complainant's knowledge
- School becomes aware of issue by other means

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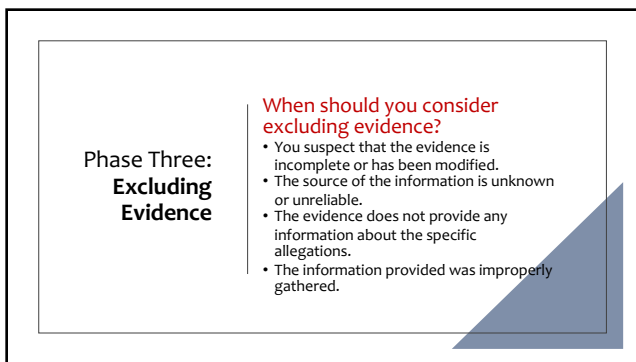
**Phase Three:
Common
Credibility
Factors**

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

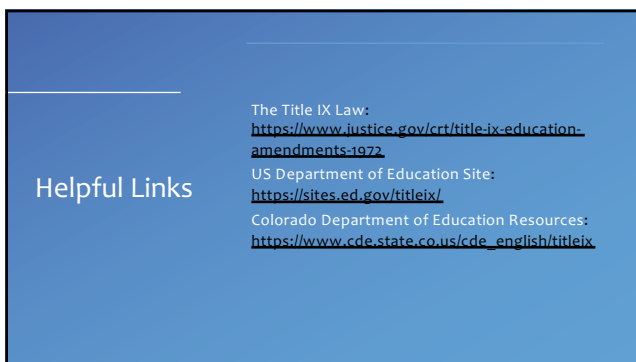
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Next Session

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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