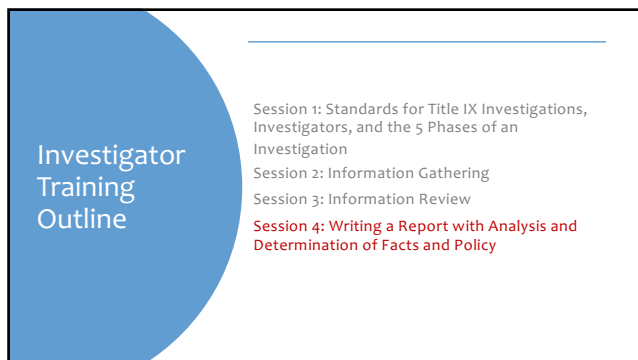
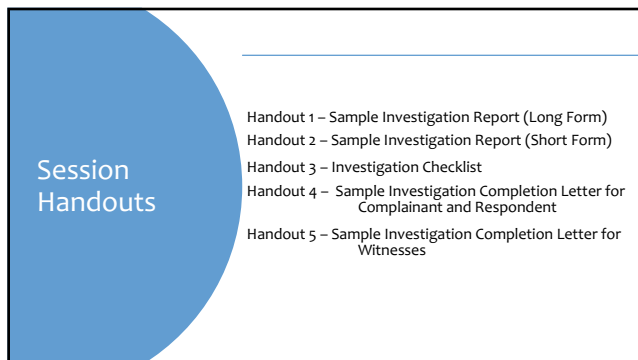


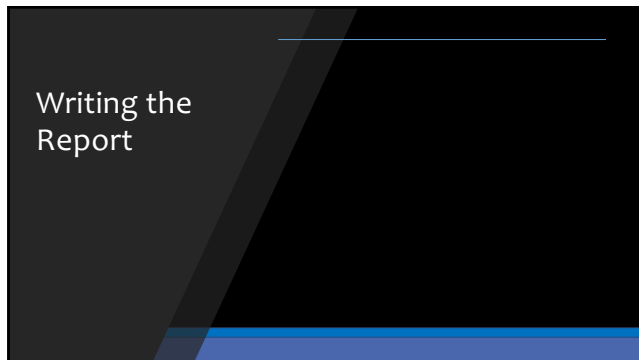
1



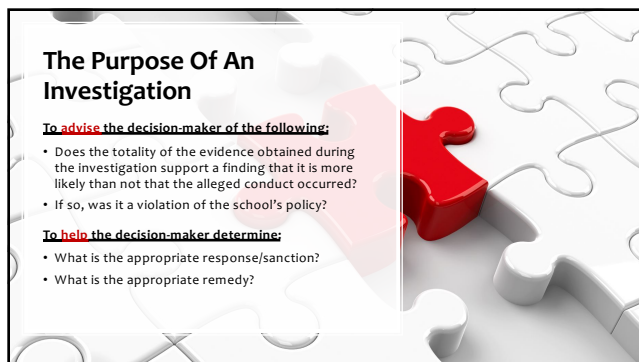
2



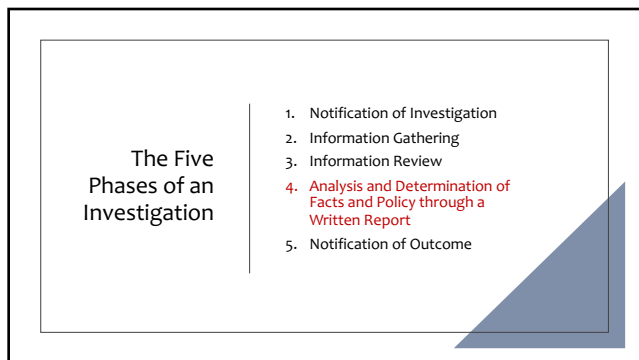
3



4



5



6

**Phase Four:
Analysis and
Determination
of Facts and
Policy through a
Written Report**

- The investigator reviews, weighs and analyzes the **totality of the evidence** using the **preponderance of the evidence** standard.
- This means the investigator reviews the information to determine whether it was more likely than not that the alleged conduct occurred.
- Most schools want the investigator to determine whether the facts show that there is a **policy violation**.

7

Totality of the Evidence

- The report is based on the totality of the evidence.
- Assessing the totality of the evidence is putting together a puzzle.
- Assess and analyze each piece of evidence and put it where it belongs in the puzzle
- Be sure to document everything you reviewed in the investigation even if you did not find it relevant or useful.
- If evidence is not referenced in the report, the investigation is vulnerable to criticism.

8

**Report
Evidentiary
Standards**

Preponderance of the evidence

- More likely than not
- Evidence on one side outweighs, however slight, the evidence on the other side – “50% + a feather”
- Standard used in all civil lawsuits
- Most common standard

Clear and convincing

- Substantially more probable than not
- Some schools have chosen this standard

Beyond a reasonable doubt

- Criminal standard
- Not appropriate in Title IX investigation contexts

9

**Phase Four:
Analysis and
Determination
of Facts and
Policy through a
Written Report**

- The investigator writes a formal investigation report that must contain:
 - the **allegations** that were investigated
 - the **applicable policy** against which the allegations were reviewed
 - the **individuals** contacted and interviewed
 - a summary of the **evidence** gathered, reviewed, and analyzed
 - **factual conclusions**
 - assessments of **policy violations**

10

**Report
Essentials**

11

**Phase Four:
Analysis and
Determination
of Facts and
Policy through a
Written Report**

General Report Format

- **Introduction**
- **Background**
(identifies parties and specifies allegations)
- **Jurisdiction and Procedural Background**
(outlines ability of the school to address issue)
- **Investigation Process Summary**
(how did the investigation process flow)
- **Summary of Evidence Collected and Reviewed**
- **Relevant Policies and Procedures**
- **Standard of Proof** used in Analysis
- **Factual Findings and Analysis**
- **Conclusion**

12

Essential Components of a Report

Introduction

- Identifies Investigator
- Addressed to appropriate decision-maker
- Identify anyone who receives a copy and separately document why
- Date
- Identify matter
 - Refer to matter by last name of Complainant or Respondent or both
 - Refer to Case Number
 - Refer to other identifier (e.g. Middle School Case #)

13

Essential Components of a Report

Background

- Explain how the school learned of complaint
- Brief description of complaint
- Describe steps Title IX Coordinator took
- Outline any supportive measures put in place, if applicable

14

Essential Components of a Report

School's Responsibility to Act

- Also known as **jurisdiction**
- Statement regarding why school had to investigate
 - Took place on school grounds
 - Involved a school employee
 - Happened within a school activity or program
 - Creating an environment that interferes with participation in educational programs or in employment

15

Essential Components of a Report

Investigation Process

- Date investigation started
- Date investigation ended
- Explain any delays
- Describe who was interviewed
- Outline information collected and reviewed

16

Essential Components of a Report

Policy Statement

- Reference sexual harassment policy
- Also identify any other policies or processes that could have been violated if the allegations are true (e.g. student conduct standards, staff handbooks, honor codes, etc.)
- It can be helpful to include quotes from the policies' language

17

Essential Components of a Report

Standard of Proof

- Reference the school's standard of proof
- Must be consistent with standards used in other conduct matters
- *"The standard of proof is the amount of evidence needed to establish that a policy violation has occurred. Pursuant to [School's Title IX Policy], the standard of proof used to assess whether the policy was violated is the **preponderance of evidence standard**. The preponderance of the evidence standard requires that the evidence collected during the investigation demonstrate that it is **more likely than not** that the alleged misconduct and/or policy violation occurred. I applied this standard in making the factual findings identified below.*

18

Essential Components of a Report

Standard of Proof

- "The standard of proof is the amount of evidence needed to establish that a policy violation has occurred. Pursuant to [School's Title IX Policy], the standard of proof used to assess whether the policy was violated is the **clear and convincing standard**. The clear and convincing standard requires that the evidence collected during the investigation demonstrates that **it is substantially more probable than not** that the alleged misconduct and/or policy violation occurred. I applied this standard in making the factual findings identified below."

19

Essential Components of a Report

Allegations & Findings

- Identify each allegation you investigated, even those that may not have been identified by the complainant
- Make a finding for each allegation
 - Do the facts establish that the allegations are accurate or not?
 - Do the facts establish that there was a policy violation?
- Make sure that you explain the support for your conclusions

20

Essential Components of a Report

Allegations & Findings

- **Finding of a Violation:** Based on the evidence collected in this investigation and applying the standard of proof, I find that it is more likely than not that the Respondent engaged in the alleged misconduct and violated [School's Title IX Policy]. In making this finding, I relied on the following evidence: [list evidence that supports finding]. I found the following evidence to be irrelevant and/or unreliable: [list evidence that you did not consider].

21

Essential Components of a Report

Allegations & Findings

- *Finding of No Violation: Based on the evidence collected in this investigation and applying the standard of proof, I find that it is less likely that the Respondent engaged in the alleged misconduct and violated [School's Title IX Policy]. In making this finding, I relied on the following evidence: [list evidence that supports finding]. I found the following evidence to be irrelevant and/or unreliable: [list evidence that you did not consider].*

22

Essential Components of a Report

Allegations & Findings

- *No Finding: Based on the evidence collected in this investigation and applying the standard of proof, I cannot make a determination of whether the Respondent engaged in the alleged misconduct and violated [School's Title IX Policy]. I cannot make a finding because of the following reasons: [list reasons for inability to reach a finding]*
- *Common reasons for no findings:*
 - Lack of evidence
 - Complainant does not participate
 - Accounts of both parties cannot be corroborated
 - Both parties lack credibility

23

Essential Components of a Report

Allegations & Findings

- *What if you believe the Complainant is credible but the evidence does not establish that the allegations occurred?*
 - State that you find the Complainant credible but identify the lack of evidence
- *What if the factual allegations are supported by the evidence but the conduct did not violate your school's sexual harassment policy?*
 - Make a factual determination with a credibility assessment
 - Identify that the conduct does not constitute a policy violation

24

Essential Components of a Report

Conclusion

- Summarize your findings
- Outline next steps in the Title IX process

25

Successful Investigations

- See Handout 3 – Investigation Checklist
- Did you follow your school's published policies & procedures?
- Was there consistent application of the policies & procedures to the parties?
- Did you provide equal notice to the parties?
- Were you consistent in your communications with all parties?
- Did your report include factual findings (including credibility determinations) and analysis that was supported by the evidence?
- Did your investigation address all allegations with explanations if you are not able to make conclusions?

26

After the Report

27

**Phase Five:
Notification of
Outcome**

- After the investigator completes the written report, the Title IX Coordinator sends formal written communication to both the Complainant and the Respondent about the outcome of the investigation (**Handout 4**).
 - The notice of outcome is accompanied by a redacted version of the investigation report.
 - The parties have **10 calendar days** to review and respond to the report. Responses should be directed to the Decision-Maker.
 - When appropriate, such as when the investigator determines that school policy has been violated, the notice of outcome letter will also include information regarding next steps in the Title IX process.

28

**Phase Five:
Notification of
Outcome**

- The Title IX regulations don't require witnesses be informed of the investigation's completion.
- In rare cases, witnesses may be provided with that information (**Handout 5**).
- Concerns about retaliation usually spur witness requests to be informed of when the investigation is done.
- Consider such requests carefully and be sure to include confidentiality expectations.

29

**After the
Report**

Who may question the investigation, the findings and/or analysis:

- The decision-maker
- Complainant and/or Respondent
- Attorneys for Complainant or Respondent
- Witnesses
- The media

30

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

31

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

32

SISU Investigations

Karin Ranta-Curran, JD
sisuinvestigations.com
303.947.0236
karin@sisuinvestigations.com

33
