TITLE IX INVESTIGATOR TRAINING

TITLE IX REGULATIONS
34 CFR PART 106

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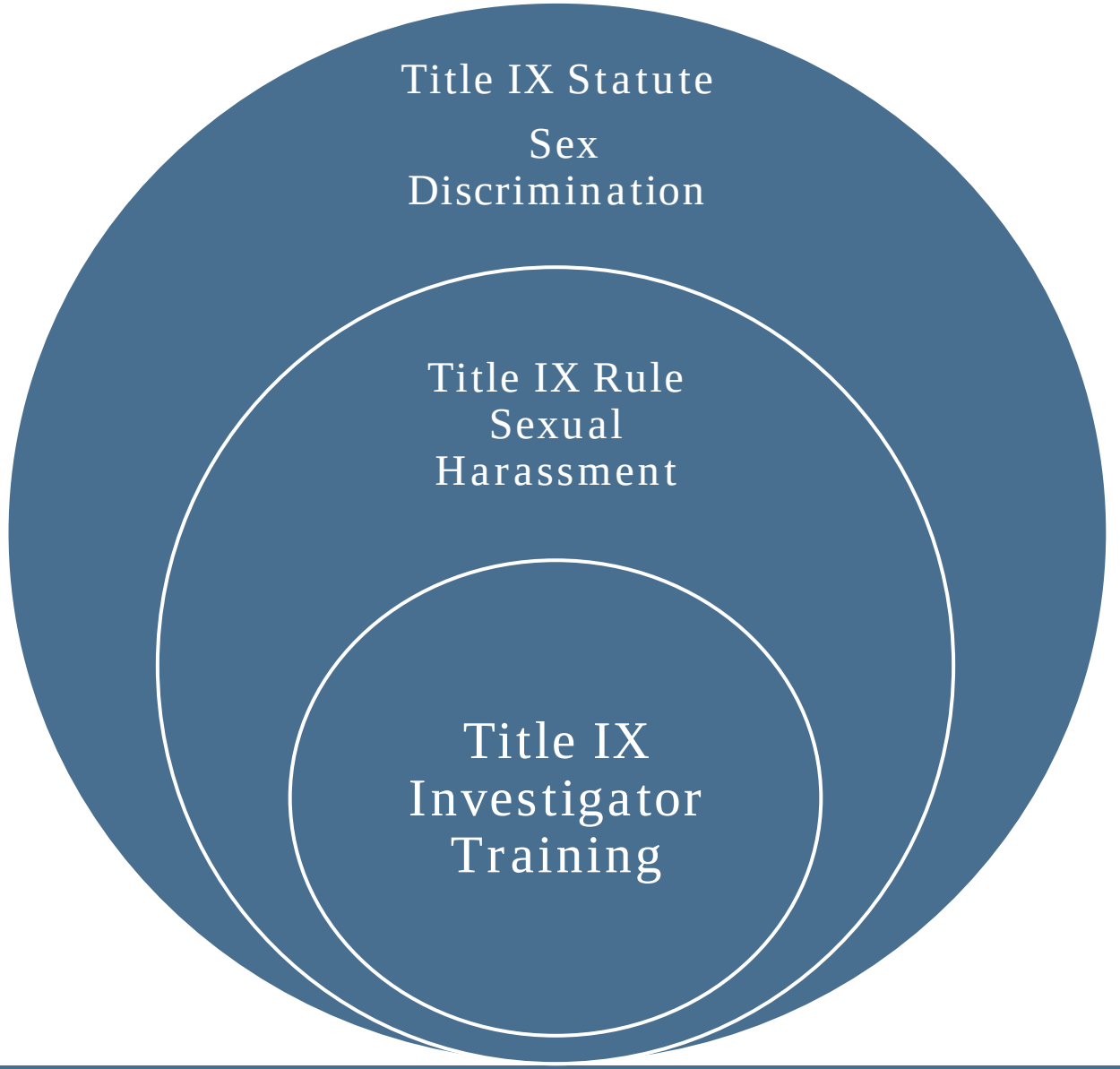
Title IX Basics: Title IX Personnel

Title IX Basics: Investigator Training



Definition of Sexual Harassment: 3-Prongs

Quid Pro Quo	Employee **Conditions Something of Value for Sexual Favor**
Davis Standard	**So Severe, Pervasive and Objectively Offensive**
Clery/VAWA Crimes	**Sexual Assault, Stalking, Dating & Domestic Violence**

Sexual Harassment: Quid Pro Quo

- Applies solely to an employee respondent
- Involves an abuse of authority by an employee
- Doesn’t require a showing of severity, pervasiveness or offensiveness
- Need not be explicit, could be implied
- Not subject to informal resolution option

Sexual Harassment: Clery/VAWA Crimes

- “sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v),
- “dating violence” as defined in 34 U.S.C. 12291(a)(10),
- “domestic violence” as defined in 34 U.S.C. 12291)a)(8),or
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Domestic Violence

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking

- stalking means engaging in a course of conduct directed

Dismissals

FORMAL GRIEVANCE PROCESS

Grievance Process Basic Requirements

- **Treat parties equitably**
- **Require objective evaluation of all relevant evidence**
- **Train Title IX personnel & post all training on web-site**
- **Include a presumption that respondent is not responsible**
- **Include reasonably prompt time frames**
- **Describe the range of, or list, possible disciplinary sanctions and remedies**
- **State standard of evidence: preponderance or clear and convincing**
- **Include process and bases for appeals**
- **Exclude privileged evidence**

Investigators

Investigators Must:

- o

How to Serve Impartially & Objectively

Require on objective evaluation of all relevant evidence-including both inculpatory and exculpatory evidence-and that provides credibility determinations may not be based on a person's status as a complainant, respondent or witness

Conflicts of Interest and Bias

REASONABLY PROMPT TIMEFRAME

Reasonably Prompt Timeframes

- Administrative Delay
  - School's inefficiency not good cause
- Availability of Parties & Witnesses
- Law Enforcement Activity
- Accommodations for Disabilities
- Language Assistance

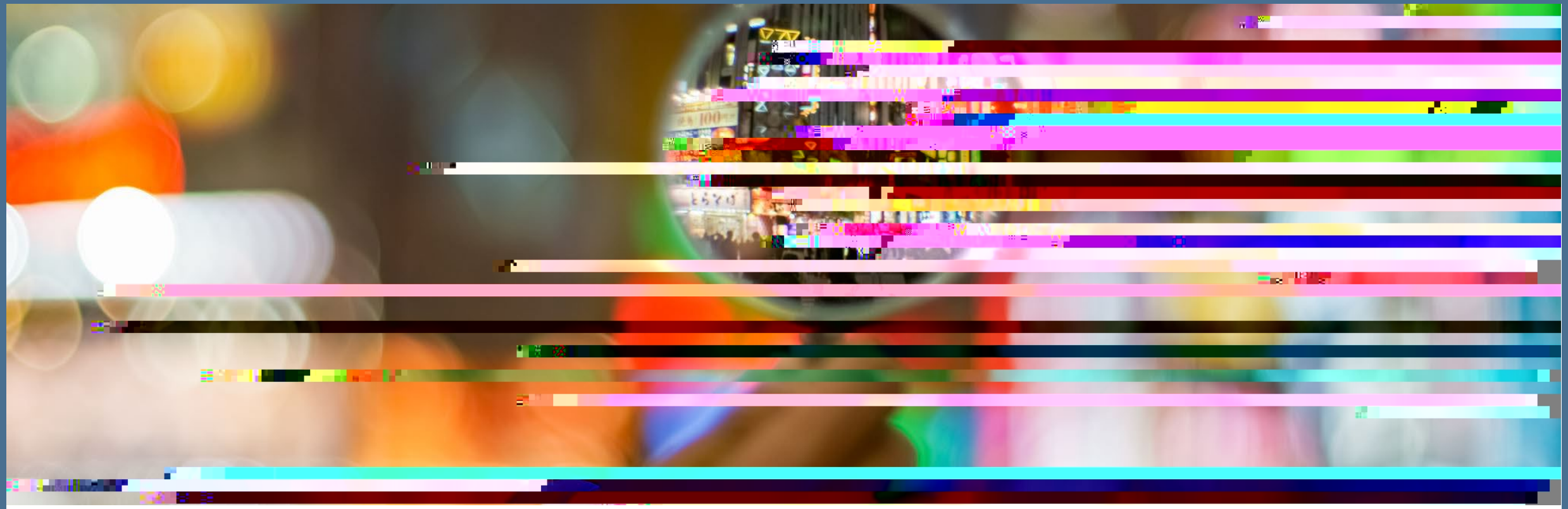
Reasonably Prompt Timeframes

Concurrent Law Enforcement Activity

- distinct, separate and independent processes
- obligated to respond to T9 allegations irrespective of criminal matter
- law enforcement investigation could justify a delay or extension
- delay cannot be protracted or open-ended

Availability of Parties & Witnesses

- must try to accommodate individuals' schedules to allow their meaningful participation
- parties may participate remotely
- a party or witness cannot indefinitely delay the grievance process by refusing to cooperate
- the process can proceed even in the absence of a party or witness
- must keep nonparticipating party informed



THE INVESTIGATION

Right to Discuss the Allegations & Gather Evidence

- Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (no gag orders)

- Parties have the right to discuss the allegations with anyone they choose with limited exceptions:
  - no-contact directive
  - retaliatory manner

Right to an Advisor

Parties must have the same ability to select an advisor of choice, who may be, but need not be an attorney

- Parties can choose anyone to be their advisor
  - friend, parent, classmate, attorney
- Role of advisors
  - provide support, accompany party to meetings/interviews
  - adversarial with respect to their role in the hearing and in conducting cross examination
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Written Notice

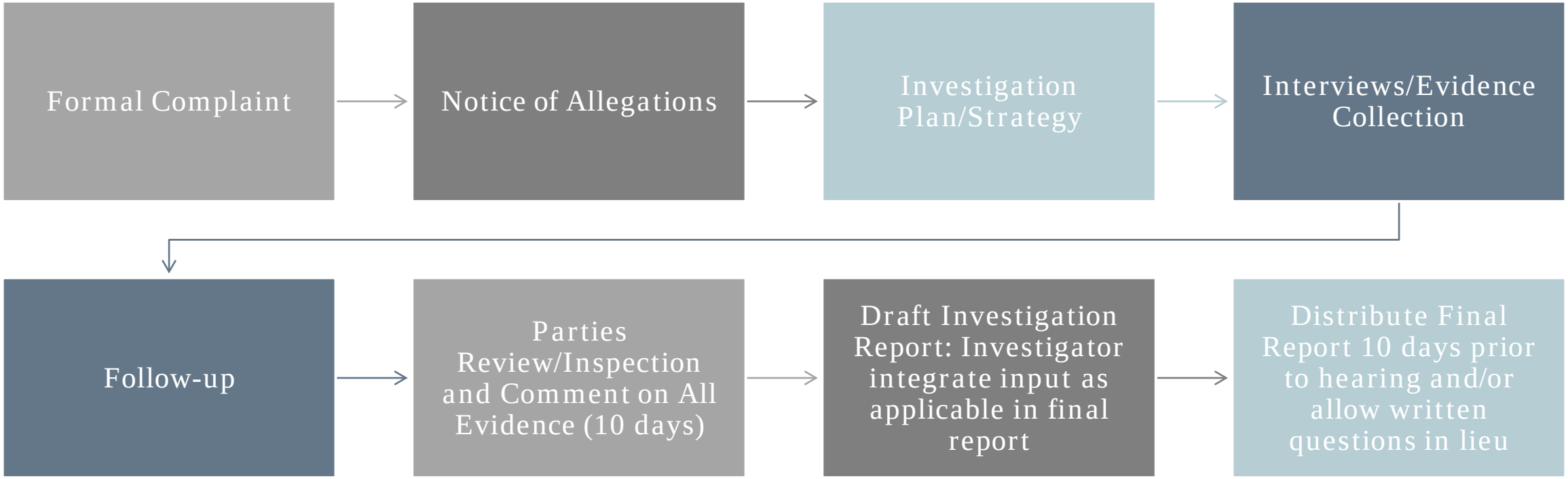
Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

Burden of Proof

*The burden of gathering evidence and the burden of proof must remain on schools not the parties

- Both parties have the right to provide evidence and witnesses, but it is not their responsibility
- It is the school's job to conduct the investigation, track down and gather all of the evidence possibly and interview witnesses…
- The school is neutral during this process, they are not focusing on gathering evidence to prove respondent "guilty" or to prove respondent is not responsible; they are not "building a case"
- The goal is a truth-seeking mission; gather everything so that a neutral decision maker can reach an accurate determination based on the facts

Steps in the Investigation Process



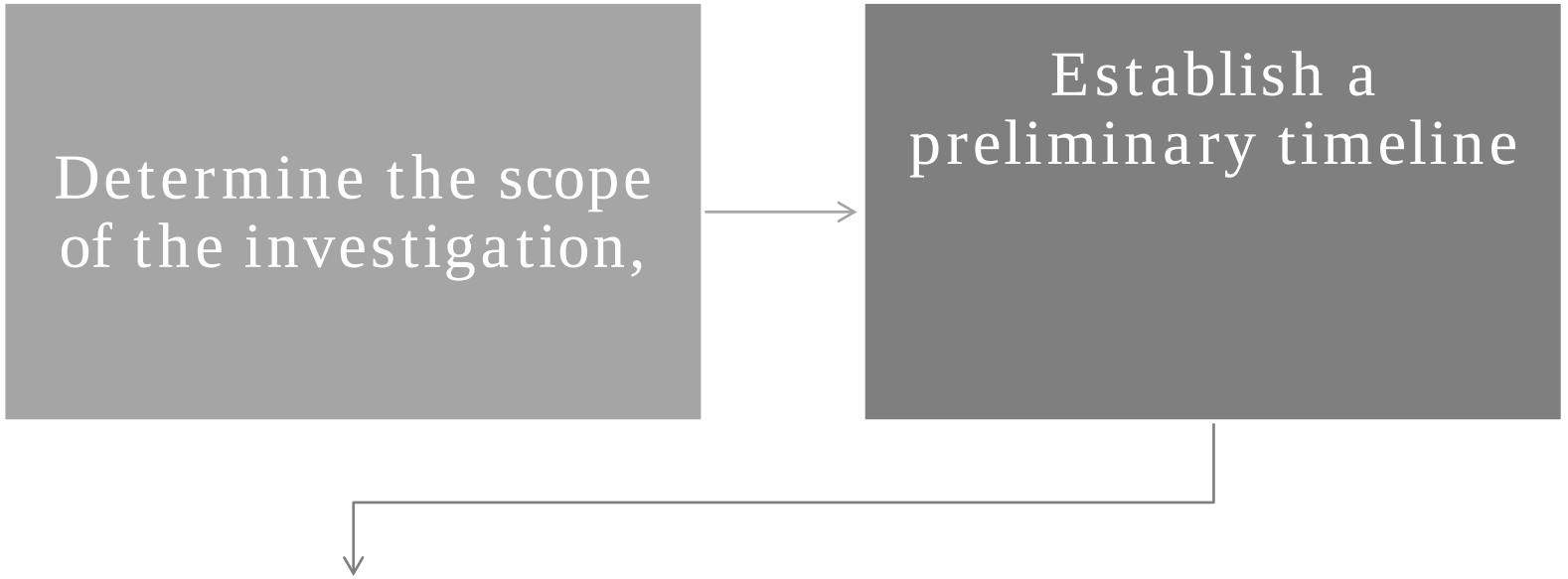
Notice of Allegations (NOA)

Notice of allegations —(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(A)Notice of the recipient's grievance process that complies with this section, including any informal resolution process.

(A)Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.

Investigation Plan



INTERVIEWING PARTIES & WITNESSES

Interviews

Dos and Don’ts of Interviewing

Don’t: Use overly “legalistic” or formal language

Do: Balance empathy with objectivity; establish rapport while maintaining professionalism

Dos and Don’ts of Interviewing

Don’t: Avoid difficult or embarrassing questions because they are uncomfortable

Do: Use tact and sensitivity, but can’t skip important details

Dos and Don’ts of Interviewing

Don’t: Ask leading

Dos and Don’ts of Interviewing

Dos and Don’ts of Interviewing

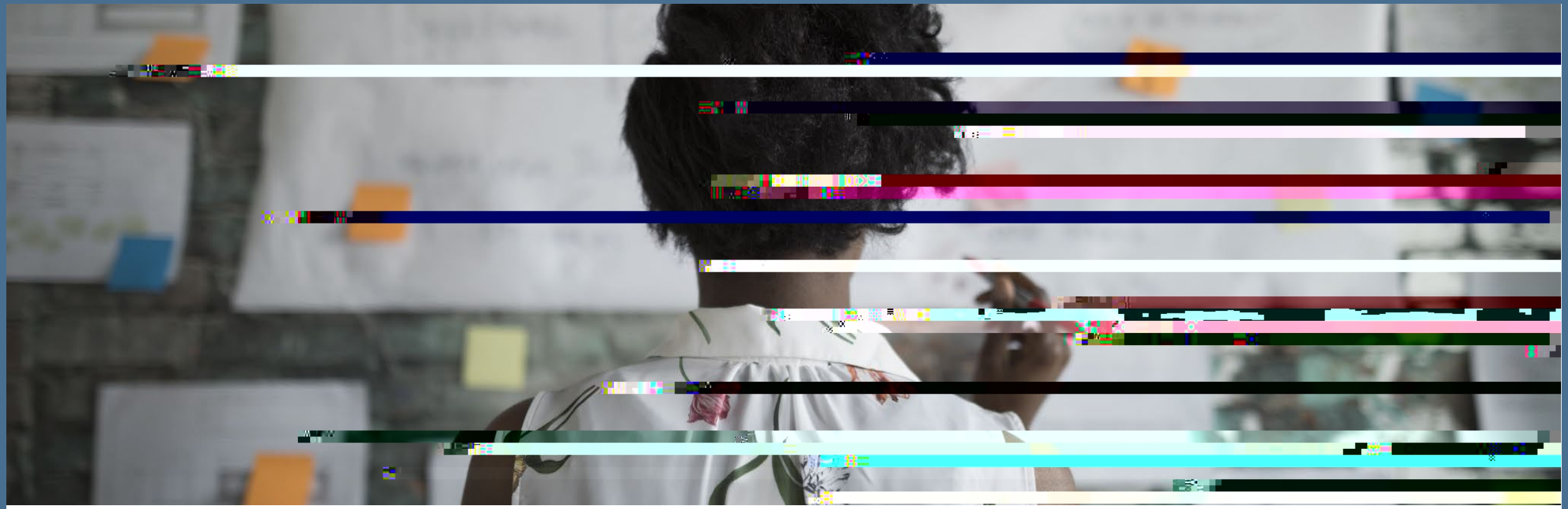
Don’t: Interrupt, ask “blaming” or biased questions, or fill in the gaps with your own assumptions

Do: Ask open ended questions and Allow Interviewee to provide their story in their own words…allow space to let them speak

Dos and Don’ts of Interviewing

Don’t: Treat the interview like an interrogation or inquisition

Do: Ensure you remain objective and keep your role in context, this is an administrative process, not a law enforcement investigation.



EVIDENCE

Evidence

Related-to vs. Relevant

Related-to

Investigator must collect all evidence that is related to the allegations whether or not relevant (excluding evidence subject to privilege, medical records)

Relevant

Relevant evidence is all evidence related to, except that which is protected under the rape shield provisions (and not otherwise privileged, medical records)

Relevancy, Rape Shield Protections & Exceptions

- Questions and evidence about the complainant's sexual predisposition are NEVER RELEVANT; questions about prior sexual behavior are NOT RELEVANT, unless :
  - offered to prove
    1. "Mistaken Identity"
    - that someone other than the respondent committed the conduct alleged by the complainant, or

Privileged

Other Inadmissible Evidence

Opportunity to Review Evidence & Investigative Report

Prior to completion of investigative report, school must send to parties and their advisors, all evidence gathered that is directly related to the allegations, inculpatory & exculpatory, and provide at least 10 days to review and respond in writing

Final investigation report must fairly summarize relevant evidence and be provided to party and the party's advisor at least 10 days prior to a hearing with an opportunity to review and respond

Submission of Written Questions

Right to Review Evidence & Investigation Report

EVIDENCE

Before Report Finalized

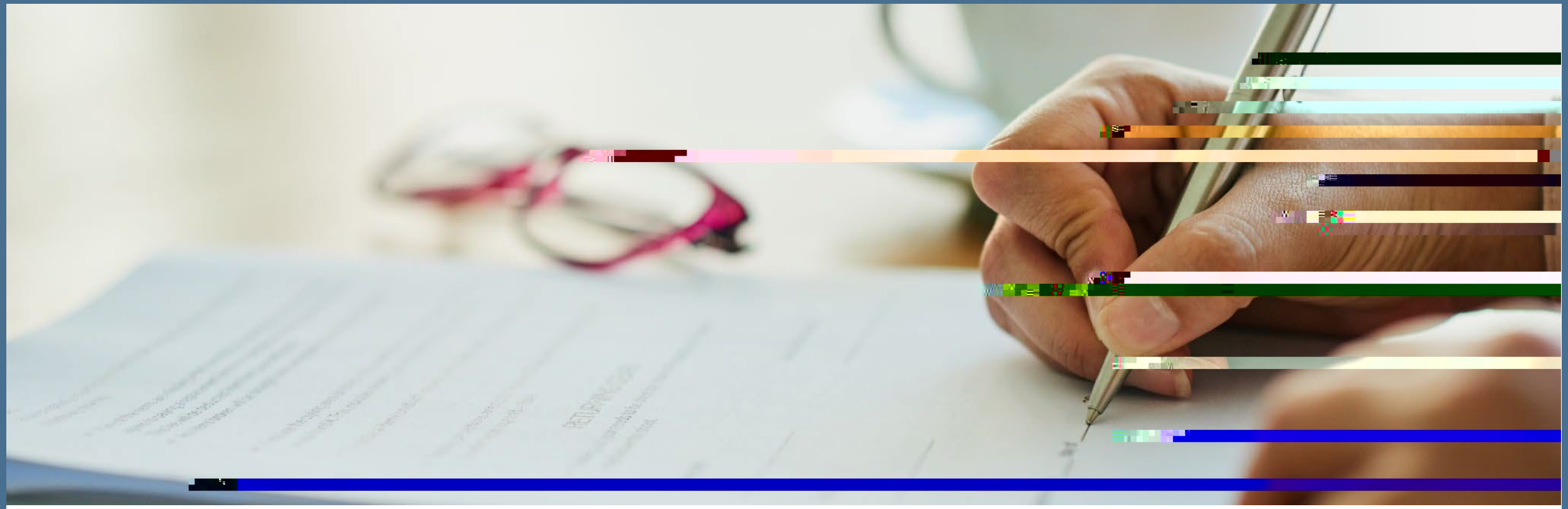
ALL evidence “related -to”

Send to Both to Party & Advisor

Electronic or Hard Copy

10-day Review

Must



INVESTIGATIVE REPORT

Investigative Report

Must fairly summarize the relevant evidence

- Have discretion to determine what format or what other elements to include if any
- Decision-maker must independently reach conclusions
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Resources

Department of Education Office for Civil Rights (“OCR”)Web-page: https://www2.ed.gov/about/offices/list/ocr/index.html

OCR Title IX Videos: