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# K-12 & Title IX: What You Need to Know

Part II

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## Meet Your Facilitator

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.



**Jody Shipper**

*She/Her/Hers*

Co-Founder and Managing Director

# About Us

## Vision

We exist to help create safe and equitable work and educational environments.

## Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity



# Basic Interviewing Principles & Writing Interview Summaries

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# Interviewing Children

“Why” did you do that?

Asking the second time

Using unfamiliar language

“Translating” (bathing suit parts, etc.)

Parental Pressure

Peer Pressure

# Interviewing Tips

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Clear expectations and communication about process

Kind interviewing

Watch your language

Asking sensitive and difficult questions

Request documentary evidence (and confirm if necessary)

Last question is a catch-all

# Issues Particular to Interviewing Children



Who should ask the questions and where should the interview take place?

Parent/witness present in the room

Use of non-leading questions

# Specific to Witnesses



Advise witnesses of neutrality, lack of confidentiality and retaliation

Ask about relationship to parties/conversations about interview

Give the witness very little specific information about the allegations

Last question is a catch-all



# Interview Structure & Summarizing Interview

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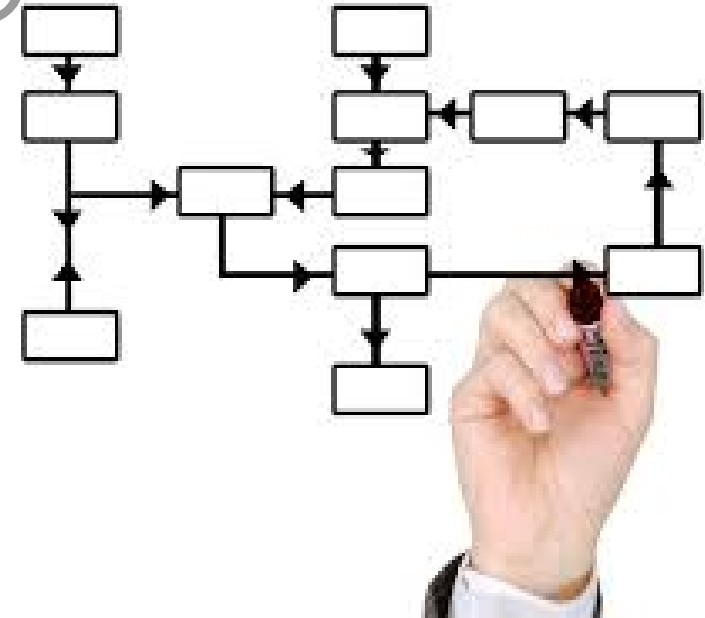
Chronology of conversation  
v. order of summary

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Notes re: demeanor and  
physical observations

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Use of direct quotes and  
interviewee's own language



# Other Evidence

- Texts/emails/voicemails
- Social media posts
- Police reports
- Photos
- Medical records
- Phone records



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- Social media posts
- Police reports
- Photos
- Medical records
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# Gather All Your Evidence

Statements

Emails

Photos, screenshots, video

School records

NOT: Medical records

NOT: Mental health information



# You Gathered All of the Evidence

Now What?

# Sharing the Evidence (10 days) that is DIRECTLY RELATED

- The parties and their advisors have 10 days to review
- You cannot summon them in to view the file, you must disseminate it to them, either email, hard copy, or secure server
- Final opportunity to provide new evidence, request additional investigation
- How meaningful is a child's participation in the evidence review process?



# Responses to Evidence Review

Additional investigation as  
needed

Authentication as needed

Prepare to write report

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# Summary of Relevant Evidence Report

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Make sure the report “tells the story”

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Stand-alone document

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No findings of fact, no policy determination,  
no credibility determination

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Pros and cons of preliminary findings



# Dismissing Complaints

## MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

## DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

# Weighing Evidence and Making a Determination

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# Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and Remedies
- Procedure for appeal



# Decision-Maker

Reviews the evidence

Final determination on factual findings

Policy determination

Sanctions?

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Logical connection between the evidence and facts at issue

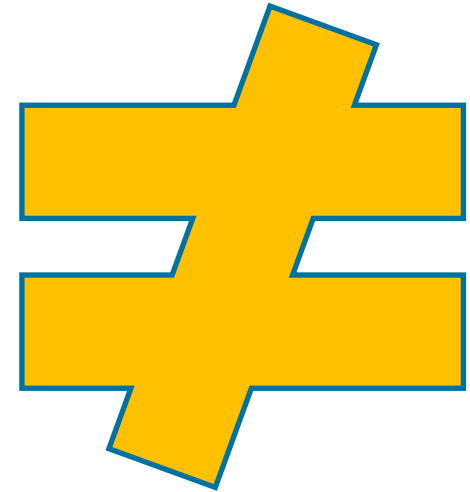
Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



# Relevance is Not...

- Strength of the evidence
- Believability of the evidence
- Based on type of evidence: circumstantial, direct
- Based on complicated rules of court



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# Is This Relevant?



1. Transcript
2. Letter from aunt that the complainant or respondent has always been nice kid
3. Polygraph exam
4. Photos of respondent making crude gestures
5. Photos of complainant drinking alcohol at a party

# General Rules About Evidence in Title IX Investigations

1) Rule about a categories of evidence ?

2) Past conduct of respondent?

3) Past conduct of complainant?



# Draft Report – What is in it?

Report contains only facts gathered, **OR**

Report contains recommended **factual findings**

**EITHER WAY**, report then goes to the **Decision-Maker**

# Weighing the Evidence and Making a Determination

1) Evaluate the evidence collected to determine what factually is more likely to have occurred, and then

2) Analyze whether the conduct that happened constitutes a violation of the school's policies

# How to Reconcile Conflicting Information

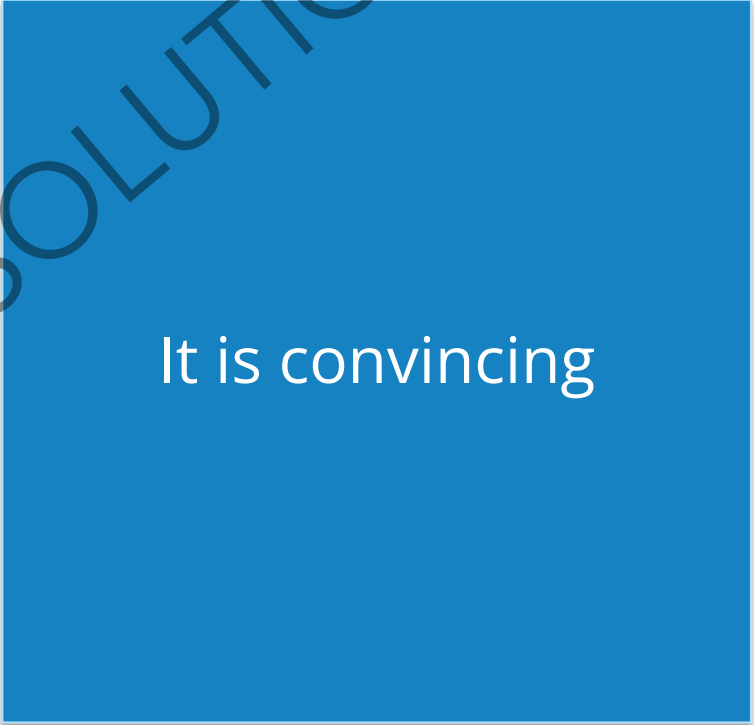
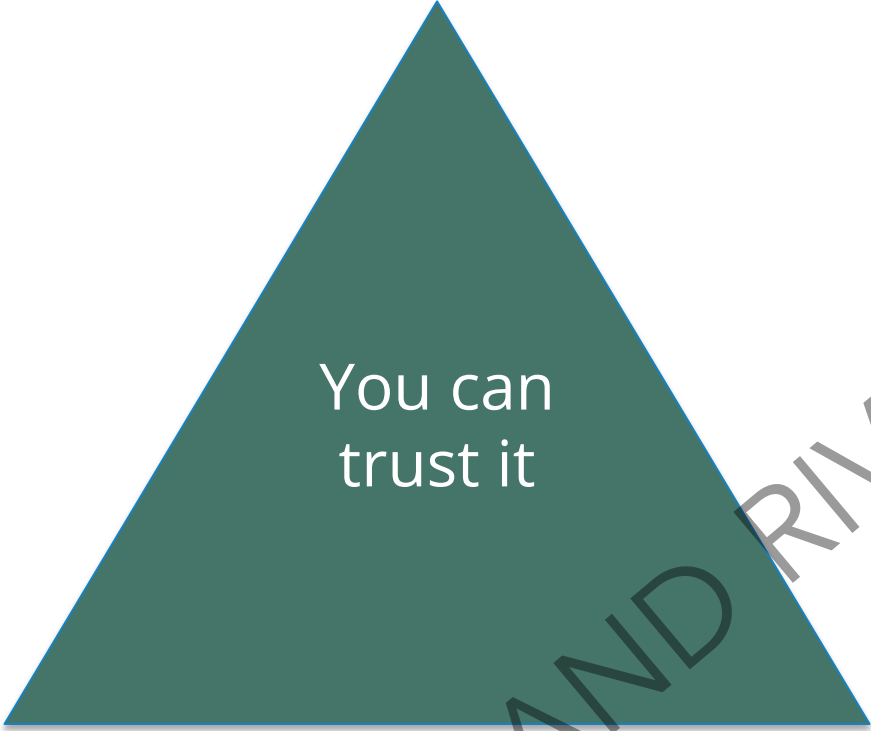
Credibility

Reliability

# How to determine if a person is credible?

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:**
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?
- **Logic**
- **Bias**

# Reliable or Credible?



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# Credibility, Age, Maturity, Parental Pressure

- **Inherent plausibility:** Children and their truth
- **Demeanor:** Fidgeting, crying, not crying
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:**
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?
- **Family story**
- **Backstory**

# Credibility versus Reliability

## Reliable evidence:

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

## Credibility:

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

# I Just KNOW They Are Not Telling the Truth

Bias

Can you really spot a liar?

Understanding clues that are culturally different from your own

~~HOW TO SPOT  
A LIAR~~



# Assessing Credibility

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past? (Would you ever look at history of complainant?)

# Model Jury Instructions

- 1.7 CREDIBILITY OF WITNESSES
- In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.
- In considering the testimony of any witness, you may take into account:
  - (1) the witness's opportunity and ability to see or hear or know the things testified to;
  - (2) the witness's memory;
  - (3) the witness's manner while testifying;
  - (4) the witness's interest in the outcome of the case, if any;
  - (5) the witness's bias or prejudice, if any;
  - (6) whether other evidence contradicted the witness's testimony;
  - (7) the reasonableness of the witness's testimony in light of all the evidence; and
  - (8) any other factors that bear on believability.

# Do you need to see, or question, the witness?

- Reliability?
- Plausibility?
- To find corroborating evidence?
- Motive to lie?
- Past record?

**NO**

# Trauma

- What are the effects of trauma on the brain?
- How is it manifested?
- What does that mean for the investigators?
  - Weighing evidence
  - Asking questions
  - Understanding delays



# Common Myths About Sex Assault

Why didn't you just run out?

Why couldn't you just scream "No"?

Why were you even sitting in the room alone?

Behavior consistent with common (mis)perceptions of trauma

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# Things to Keep in Mind

Being the victim of child sexual abuse doubles the likelihood of adult sexual victimization

PTSD could give the victim the appearance of vulnerability in dangerous situations and effect the ability of the victim to defend themselves

Women who were victimized more than once or in both childhood and adolescence had a higher risk for adult revictimization and more PTSD

Women who have been sexually assaulted in the past are 35 times more likely than other women to be sexually at some point in the future. ”

# A Person Sexually Assaulted

May be hysterical, may be stoic

May be overwhelmed by questions

May need multiple questions to express what took place

May hate you for asking questions

May need some "control" (where to sit, what to drink)

# Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate

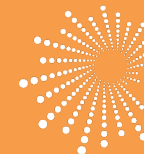




# Definition of Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

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# Elements of this Definition of Sexual Harassment

1. Unwelcome conduct (subjective and objective)
2. Severe
3. Pervasive
4. Objectively offensive
5. Effective denial of equal access to school's education program or activity

# Sanctioning in K-12



State law



Learning environment



What other measures can be put in place?

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# Goals of Sanctions/Discipline

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End the harassment, prevent its recurrence, remedy the harm

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What steps would be reasonably calculated to end harassment and prevent recurrence?



Prevention

# There are 5 Sanctioning Models

- Start from scratch each time – no system
- Expel for all violations
  - Variation: Expel only for those that are in most egregious category
- Never expel; this is a learning environment
- Start at expulsion as default and work down
- Start at some floor (1 semester? 2 years? 5 years?) and work up

# The Sanction Does Not Undo the Finding



No lesser sanction if  
you disagree with  
findings



Sanctioning officer  
must assume findings  
are correct

# Determining the Proper Sanction

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?

# Aggravating Circumstances

Premeditation

Predation

Physical violence

Repeated violation

Multiple policy violations in one incident

Harm to others, impact on complainant and/or community

Did the behavior continue after intervention?

Effort to conceal or hide the incident?

Refusal to attend past trainings

Past failures to comply with directives



# Appeals: Mandatory Grounds

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(A) Procedural irregularity that affected the outcome of the matter;

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(B) 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/or

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(C) The Title IX 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.

# Weighing the Evidence and Making a Determination

1) Evaluate the evidence collected to determine what factually is more likely to have occurred, and then

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# Elements of this Definition of Sexual Harassment

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# Thank You!

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