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VIII. Title IX Investigations, generally:

A. Situations not rising to the definition of being “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program”.

1. Follow BP 3207 and normal progressive discipline.

B. Informal Resolution process: where the complainant does not want to go through the Formal Complaint Title IX process.

1. Under 3205, see the Informal Resolution process and 34 C.F.R. § 106.45(9).
2. At the very least, document in the Electronic Student Information System (ESIS).

C. Note and meet any CBA requirements.

1. Timelines
2. Notice requirements.

D. What if the complainant will not put their sexual complaint in writing?

1. For 3205, 3207, 3210, and 3211 matters, as well as site administration or the Civil Rights/Title IX person should put it in writing.
2. Investigate anyway.

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IX. Investigation Organization:

(Follow 34 C.F.R. § 106.45(b)(5), .)

A. Title IX Coordinator: Overseeing an investigation (Tab 12).

- a. **Recommend this be the Title IX Coordinator's job.**
- b. *See* Tab 12 for general tips on overseeing investigations.
- c. Assure that Title IX/BP 3205 procedures are followed and documented.
- d. If the situation is a student complainant/"victim" and an employee/adult respondent, always use the **Professional Boundaries Checklist** in the investigation (Tab 15).
- e. Make sure that proper Title IX written notifications are sent to the complainant and respondent.

B. Plan the investigation.

1. Attorney, site administrator, Title IX Coordinator.
 - a. Determine who will investigate.
 - b. Determine who will be the primary contact with the investigator.
 - c. Determine the scope of the investigation.

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Scope of the investigation: _____

C. Get documents, records if any, to the investigator:

1. Make sure the investigator has the records necessary to conduct the investigation. Consider:
 - a. Board policies and procedures
 - b. CBA
 - c. Personnel file or excerpts
 - i. Evaluations
 - ii. Clock Hours (re training)
 - iii. Prior discipline or direction

D. Whom to interview:

1. Complainant
2. Witnesses around the situation
3. The person accused
4. Additional witnesses the complainant and person accused name.
5. Follow up interviews

Order of interviews _____

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X. Conducting the Investigation:

A. Consider piggy-back training with an experienced Investigator.

B. Investigation Interview Tips:

1. Dress appropriately (for the *comfort or discomfort* of the person you are interviewing).
2. Have as much background about the situation as feasible, especially when questioning anyone accused of anything.
3. Be courteous and somewhat friendly with witnesses.
4. Interview witnesses individually and as privately as possible.
 - You may want someone else with you.
 - Let the complainant and respondent have an “advisor” present during the interview. (34 C.F.R. § 106.45.(b)(2)(i)(B).).
 - Otherwise, the witness should not have another person with them unless it is a parent or school counselor for a student you are interviewing
 - Employee respondents may have union representation (Weingarten rights). Sometimes this may be an attorney.

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5. Begin with “Preliminaries”:

- i. Request confidentiality
- ii. But do not guarantee confidentiality
 1. Use initials, etc.
 2. At some point the witness may need to testify.
- iii. No retaliation
- iv. Report anything that seems like retaliation immediately

6. Throughout the interview, listen and watch.**7. Almost always: *General-to-specific.***

- Have an outline for your questioning
- Ask background questions to begin with, questions no one would lie about or feel nervous about in order to **establish a baseline** for how they normally respond to questions in the situation they are in with you.
- With most witnesses, questions should be general at first and then specific
 - Let the person ramble
 - Don't interrupt for clarification

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- Get clarification after they have told you their story from their point of view
 - Specific questions would be follow up to obtain clarification of what you heard
 - Specific questions would relate to other things you want to know about.
 - After asking the question, listen to the entire answer, especially the end of the answer. If a person is nervous, that is the place they may slip something in that they have been thinking about which they would like not to tell you.
8. *Non-leading, general questions are brilliant* at the beginning:
- i. Do you know why you are here?
 - ii. Tell me about it.
 - iii. Then what happened?
 - iv. What happened next?
 - v. Then ask the more specific questions in follow up.



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9. *What body language means.*

1. The person has a headache or their feet hurt.
2. The person just remembered they have a commitment they can not break and it happens in five minutes.
3. Your question for some reason unknown to you, struck an emotional nerve unrelated to the case.
4. The person just lied to you.

10. *Reading body language:*

- i. Through questions the person would not lie about, determine their **baseline** demeanor, expression, and body language.
- ii. When the person **deviates** suddenly from that baseline, seeming to be responding to the question with new and different body language, **go into terrier mode**.

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11. Terrier mode: Chase the rabbit like a terrier:

i. If an *admission* is made, or a *constellation of body language* goes off, or the answer *sounds like a lie*, or the person is *responding to the most important question* in the interview,

- immediately, and without changing your demeanor, pursue the topic with follow up questions, one after another, without allowing the person time to think.
- Then when your questions are exhausted, immediately go to another topic asking fast questions.

ii. Later circle back to the earlier topic for more details.

iii. Often your next question is in the last part of the person's answer.

iv. Circle back one more time and do the same.

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12. Abandon the outline and follow where the answers are taking you elsewhere productively, but come back to the outline later to make sure you are thorough.

13. Be able to **listen, type, and watch at the same time** and fix your typos later. Or have someone take notes.

- i. Typing notes.
- ii. Handwriting notes.
- iii. Someone else taking notes.
- iv. Court reporters, tape recorders, video.

14. ***Credibility determinations:*** See: ***6/18/99 EEOC 915.02 excerpt.***

15. ***Recommended readings:***

- ***What Every Body is Saying*** by Joe Navarro. (Good on autonomic body language identification.)
- ***Three Minutes to Doomsday: An Agent, a Traitor, and the Worst Espionage Breach in U.S. History*** by Joe Navarro.
- ***Spy the Lie*** by Houston, Floyd, and Carnicero.



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16. Document your investigation and maintain the documentation.
 - i. Retain for at least 7 years. (34 C.F.R. § 106.46(b)(10).)
 - ii. For matters involving sexual misconduct of an employee against a student, retain the documentation for the length of the life of the student.
17. BP 5352 **Professional Boundary Investigations**
 - a. Use the Inappropriate Boundary Invasions Checklist

IX. Investigation Reporting – Useful Outline

A. Investigation Report Template

1. **Intro paragraph:** Identifying when the investigator was contacted and by whom, the number of witnesses interviewed and documents reviewed, and **why** the investigation is taking place. Identify any legal or board policy requirements the investigation is to accomplish.
2. **Scope of the Investigation:** One or two sentences which state **what** is being investigated.
3. **CPS or law enforcement reporting:** Was a report required and made. Many investigations do not include this if a child was not involved.
4. **List of Witnesses Interviewed:** Name and title.

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5. List of Records Reviewed: Include everything including witness statements, school records, personnel file records, board policies, etc.

6. Conclusions of fact. List them in numbered, often short paragraphs (as if in a pleading) telling the story in logical fashion and answering each of the topics that were to have been investigated.

7. Finding of responsibility or non-responsibility:

(See 34 C.F.R. § 106.46(b)(7) for what this finding must include.)

8. Witness interview summaries: Use headings in each summary such as: The witness; The Incident; After the Incident. These headings are like sign-posts for your reader.

9. The fifty-years-from-now-and-we're-all-dead evidence paragraph. The following is a report retention section relating to alleged **sex abuse** of a child where there were no findings of abuse.

Report Retention

Though this investigation related to alleged inappropriate boundary invasions of an employee and failing to adhere to professional boundaries, it is necessary to retain this report permanently for the following reasons. There have been no findings of sexual molestation or sexual misconduct with any staff member in this investigation. However, where allegations of

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inappropriate boundary invasions are made, it is possible that someone many years later may allege more serious misconduct. In Washington State, the statute of limitations for child sexual molestation is technically three years after an individual comes to know that a molestation done to them in the past has caused them a particular kind of harm. (RCW 4.16.340(1)(a).) The courts have construed the statute of limitations so liberally that it is conceivable for a person 50 or 60 years after a molestation occurs to conclude that the molestation had caused the person sufficient harm that they would then be able to file a lawsuit.

Should this report become relevant to any future action against the District or its employees, the attorney handling the matter may wish to consider whether it would be admissible as evidence under hearsay exceptions for business records. (Fed. R. Evid. 803(6) and 803(8); RCW 5.45; Uniform Business Records As Evidence Act; RCW 5.44.040.)

10. If you can, after writing the report, let it sit several days or a week and then finalize it.

11. Note bene: As you are writing the report you may see follow up which is needed. Promptly pick up the phone and do that follow up.