

"Conducting A Title IX Investigation"



SASD Conference

October 9, 2018

SWIER LAW FIRM, PROF. LLC

Investigation Roadmap

1. Title IX Coordinator Responsibilities
2. 10 “Must Dos”
3. Investigation Checklist
4. Interviewing Witnesses
5. Completing & Documenting the Investigation

TITLE IX IN SOUTH DAKOTA

Title IX Coordinator Responsibilities

Title IX Coordinator Responsibilities

- ☐ Know the Law & Policies
- ☐ Provide Training to Staff & Students
- ☐ Conduct Investigations
- ☐ Make Disciplinary Recommendations

TITLE IX IN SOUTH DAKOTA

10 “Must Dos” For Every Title IX Investigation

10 “MUST DOS”

1. Select the Right Investigator

- Familiar With Board Policies and Procedures

10 “MUST DOS”

2. Plan the Investigation

- Who to Interview?
- Evidence Needed?

10 “MUST DOS”

3. Prepare a Strategy

- Most Efficient Investigation
- Minimal Disruption to School

10 “MUST DOS”

4. Prepare Questions in Advance

- Ask Witnesses Similar Questions
- Good Roadmap to Follow for Interview

10 “MUST DOS”

5. Interview Witnesses in Private

- “Need-to-Know” Basis
- Maintain Confidentiality

10 “MUST DOS”

6. Take Detailed Notes

- Who, What, Where, Why, How?

10 “MUST DOS”

7. Have Witnesses Write His/Her Own Statement

- Write It
- Sign It

10 “MUST DOS”

8. Assess Your Information

- Enough Evidence?
- Make a Fair and Reasonable Decision?

10 “MUST DOS”

9. Summarize Your Findings

- How You Handled Investigation?
- What Facts You Found Credible?

10 “MUST DOS”

10. Take Appropriate Action

- Consistent with Facts?
- Consistent with Policy and Past Practices?

TITLE IX IN SOUTH DAKOTA

Investigation Checklist

INVESTIGATION CHECKLIST

Scenario

- Quarterback Jack & Cheerleader Jane
- Sexual Assault After Football Game
- Written Report Filed With Mrs. Smith

INVESTIGATION CHECKLIST

Alerting Others to Allegations

☐ School SRO or School?

☐ Law Enforcement?

INVESTIGATION CHECKLIST

Interim Measures

- ☐ Should Be Done Immediately
- ☐ Make Accuser Award of Title IX Rights
- ☐ Must Protect Accuser
- ☐ Academic Accommodations

INVESTIGATION CHECKLIST

Choosing the Investigator

- ☐ Fair & Independent?
- ☐ Objective?
- ☐ Trained?
- ☐ Knowledgeable About Policy?

INVESTIGATION CHECKLIST

Choosing the Investigator

- ☐ Compassion & Professionalism?
- ☐ Knowledgeable About Resources Available?
- ☐ Competently Testify?

INVESTIGATION CHECKLIST

Preparing to Investigate

- ☐ Understand Scope of Investigation?
- ☐ Establish a Preliminary Timeline?
- ☐ Testimony Required to Confirm/Rebut the Allegation?

INVESTIGATION CHECKLIST

Preparing to Investigate

- ☐ Initial Witness List?
- ☐ Order of Interviews?

INVESTIGATION CHECKLIST

Gathering Materials

- ☐ Familiar with Policies?
- ☐ Videotapes or Audiotapes?
- ☐ Photos?
- ☐ Cellphone Information?

INVESTIGATION CHECKLIST

Gathering Materials

- ☐ Text Messages or Voice Mails?
- ☐ Student Records?
- ☐ Searches Needed?

INVESTIGATION CHECKLIST

Interview Locations

☐ Private Place?

☐ Safe Place?

INVESTIGATION CHECKLIST

Special Accommodations

- ☐ Translator?
- ☐ Assistive Devices for Disabled?
- ☐ Parents Present During Interview?

INVESTIGATION CHECKLIST

Potential Interviewees

- ☐ Anticipate Questions Witnesses May Ask?
- ☐ Request to Have Other's Present?
- ☐ Required to Cooperate?
- ☐ Request for Confidentiality?

INVESTIGATION CHECKLIST

Asking Good Questions

- ☐ Build Rapport?
- ☐ Open-Ended Questions?
- ☐ Avoid Leading Questions?

INVESTIGATION CHECKLIST

Asking Good Questions

- ☐ Use Short Questions?
- ☐ Request Clarification?
- ☐ Understand “Slang” Words?

INVESTIGATION CHECKLIST

Documenting the Interview

- ☐ Take Careful Notes?
- ☐ Review Notes with Interviewee for Accuracy?
- ☐ Need Another Person to Assist?

INVESTIGATION CHECKLIST

Documenting the Interview

- ☐ Video Record Interview?
- ☐ Audio Record Interview?
- ☐ Transcribe Interview Notes?

TITLE IX IN SOUTH DAKOTA

Interviewing the Accuser

Interviewing the Accuser

- ☐ Explain Importance of Confidentiality?
- ☐ Explain Importance of No Retaliation?
- ☐ Provide Brief Explanation of Process?

Interviewing the Accuser

- ☐ What Happened?
- ☐ When Did It Happen?
- ☐ Where Did It Happen?

Interviewing the Accuser

- ☐ Was Anyone Else There?
- ☐ Who Else Have You Told?
- ☐ Provide Written Statement to Anyone?

Interviewing the Accuser

- ☐ Post Anything Online?
- ☐ Kept Any Notes?
- ☐ Other Students With Similar Complaints?

Interviewing the Accuser

- ☐ How Do You Know Accused?
- ☐ Prior Interactions With Accused?
- ☐ Accused Use or Threaten to Use Force?

Interviewing the Accuser

- ☐ You or Accused Using Alcohol or Drugs?
- ☐ Why Did You Delay Reporting?
- ☐ Anything Else?
- ☐ Provide Written/Signed Statement?

Concluding the Accuser's Interview

- ☐ Remind About Confidentiality?
- ☐ Thank Person for Cooperating?
- ☐ Return to Provide Additional Information Later?

TITLE IX IN SOUTH DAKOTA

Interviewing the Accused

Interviewing the Accused

- ☐ Explain Importance of Confidentiality?
- ☐ Explain Importance of No Retaliation?
- ☐ Provide Brief Explanation of Process?

Interviewing the Accused

- ☐ Reason to Believe Investigator Cannot Be Impartial?
- ☐ Explain General Timeline of Investigation?

Interviewing the Accused

- ☐ What Happened?
- ☐ When Did It Happen?
- ☐ Where Did It Happen?

Interviewing the Accuser

- ☐ Was Anyone Else There?
- ☐ Who Else Have You Told?
- ☐ Provide Written Statement to Anyone?

Interviewing the Accused

- ☐ Post Anything Online?
- ☐ Kept Any Notes?
- ☐ Other Students With Similar Complaints?

Interviewing the Accused

- ☐ How Do You Know Accuser?
- ☐ Prior Interactions With Accuser?

Interviewing the Accused

- ☐ You or Accuser Using Alcohol or Drugs?
- ☐ Anything Else?

Concluding the Accused Interview

- ☐ Remind About Confidentiality?
- ☐ Thank Person for Cooperating?
- ☐ Return to Provide Additional Information Later?
- ☐ Provide Written/Signed Statement?

TITLE IX IN SOUTH DAKOTA

Documenting & Completing the Investigation

Documenting & Completing

- ☐ Review Written Policies?
- ☐ Review Videos, Audio, and Photos?
- ☐ Review Interview Notes and Written Statements?
- ☐ Understand Your Notes Are “Fair Game”?

Documenting & Completing

- ☐ Assess Witness Credibility?
- ☐ Assess Most Credible Evidence?
- ☐ Any “Follow Up” Necessary?

Documenting & Completing

In Making Your Decision, Have You Considered:

- ☐ Corroborating Evidence of Accuser's Claim?
- ☐ Any Witness Make Untrue Statements?
- ☐ Any Witness Story Differ From Other Witnesses?

Documenting & Completing

In Making Your Decision, Have You Considered:

- ☐ Witness Story Conflict With Written Evidence?
- ☐ Witness Appear Evasive?
- ☐ Any Witness Story Differ From Other Witnesses?

Documenting & Completing

Does Your Written Report:

- ☐ Summarize Interviews and Evidence?
- ☐ Assess Credibility of Witnesses?
- ☐ Contain *Factual* Conclusions (Not Presumptions or Speculation)?

Documenting & Completing

Does Your Written Report:

- ☐ Avoid Attorney-Client Privileged Information?
- ☐ Include Proposed Discipline or Other Remedy?

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