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Idaho K-12 Title IX PLC #3

Investigations 101

November 10, 2026



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Investigator Training Requirements



- **Scope of Title IX**: programs and activities
- 2020 **definition of sexual harassment**
- **grievance process**—complaints, investigations, hearings/decision making process, informal resolution and appeals
- **Impartiality**: impartial service without prejudgment, conflicts or bias.
- **Relevance:** what not to investigate

- **Sound familiar?** Coordinators, investigators, decision-makers and informal-resolution facilitators have the same requirements.

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Grievance Process

- Sexual Harassment reported
- Formal complaint
- Notice of allegations
- Investigation
- Informal Resolution?
- Decision
- Appeal



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Investigation Procedure

- **Written Complaint**
- **Notice of Allegations**
  - Wait ”reasonable time” to interview Respondent
- **Investigation**
- **Review Evidence**
  - 10 days to respond to evidence
- **Investigation Report**
  - 10 days to respond to report
- **Decision Maker**



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Investigator Builds the Record; Decision-Maker Decides

The investigator does

- Gather inculpatory AND exculpatory evidence
- Give both parties equal opportunity
- Follow relevance and privacy limits
- Document the process
- Prepare a fair summary of relevant evidence

The investigator does not

- Decide responsibility
- Advocate for either party

Keep an open mind. The Coordinator may serve as investigator — but never as the decision-maker in the same case.

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Supportive Measures

- **Fluid**
- **Bilateral**
- **Preserve equal access to education**
- **Individualized, non-punitive, no fee**
- **No formal complaint needed**
- **Don’t unreasonably burden the other party**
- **No Contact Orders**
- **Change of Classes**
- **Can’t be disciplinary**
- **Removal from School?**
  - Immediate threat of physical health or safety to others
  - Individualized safety and risk analysis
  - Right to appeal



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Investigation

- **Burden of Proof is on the School**
  - Seek inculpatory AND exculpatory evidence
- **Equal opportunity to present witnesses and evidence**
  - Either party may submit whatever they wish
- **Witnesses**
  - Can’t force interviews
  - No subpoena power
  - Contact parents first
- **Equal opportunity to review all evidence**
  - 10 days to review all evidence
- **Investigation Report**
  - 10 days to comment on report



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Before Interviews: Confirm the Scope, Then Plan

1. Confirm the complaint, scope and notice

- Identify each allegation: parties, conduct, date and location
- Confirm the federal scope analysis
- Review the notice of allegations

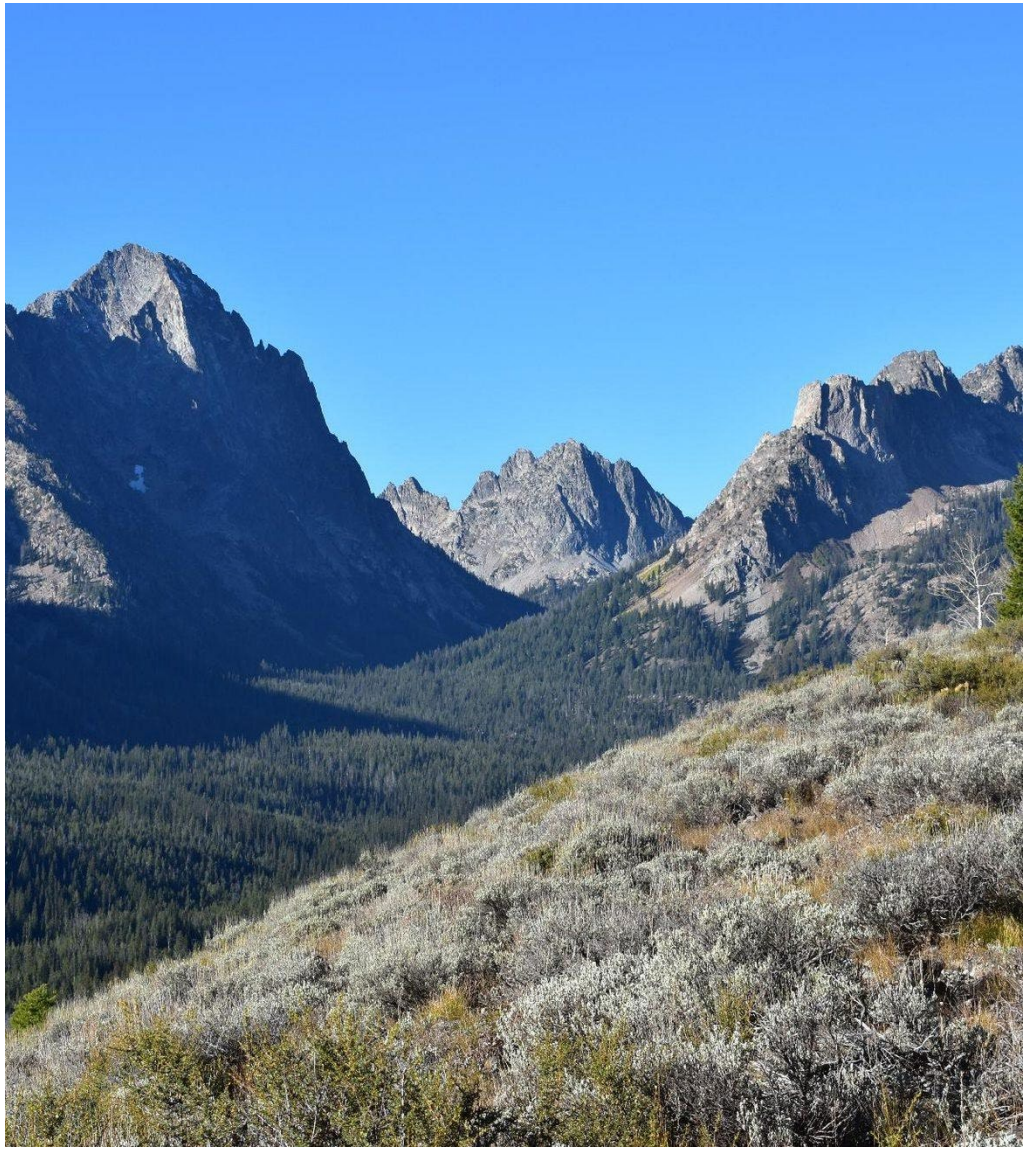
2. Build an investigation plan — for each allegation, map:

- Policy elements and disputed facts
- Potential witnesses and documents
- Digital, video and communication evidence
- Interview order and logistics
- Known privilege, treatment-record or sexual-history issues
- Target dates and required party notices

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Nonparticipation Does Not End the Investigation

- The district cannot compel an interview or manufacture subpoena power
- Document your contact efforts
- Protect against retaliation
- Evaluate the evidence that is available
- Avoid unsupported assumptions from silence or incomplete participation BUT
    - You can infer from the decision not to participate.



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Impartiality — The Core Duty

34 C.F.R. § 106.45(b)(1)(iii)

No prejudgment

Presume the Respondent is not responsible until the process concludes.

No conflicts of interest

No financial, personal, or professional stake in the outcome.

No bias

Not for or against complainants or respondents — generally, or in this specific case.

Applies to every role: Coordinator, investigators, decision-makers, facilitators, appeal officers.

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Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo
2. 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; or
3. "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

Sexual Assault: rape, fondling, incest, statutory rape



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Definitions of Sexual Assault

Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling – Criminal Sexual Touching

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent under Idaho law.

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Dating Violence, Stalking, Domestic Violence

Read the definitions carefully.

Dating violence

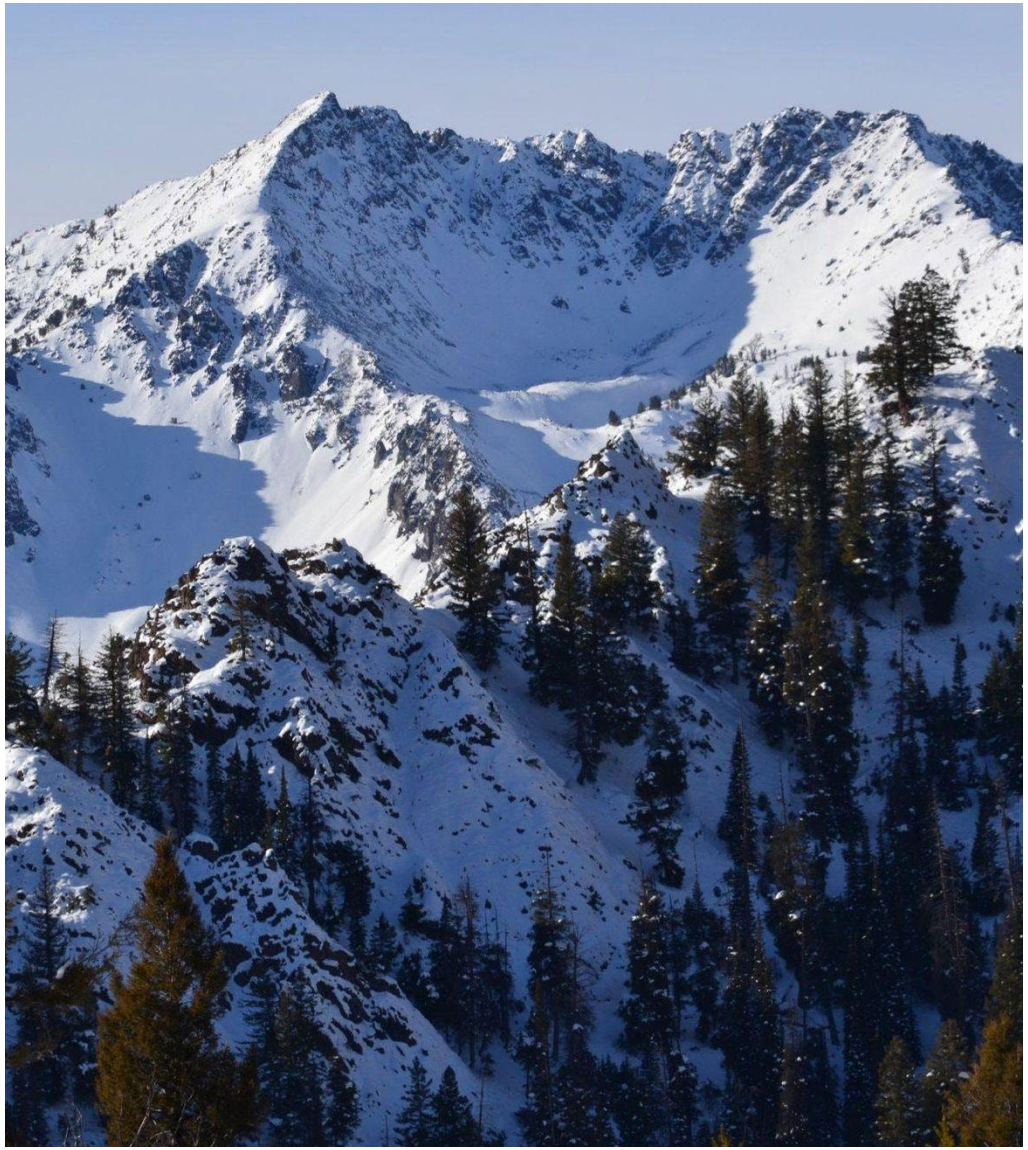
Prior dating relationship?

Stalking

Is it based on sex?

Domestic violence

Do they live together?



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Interviews - Practical Tips

- **Record**
  - Use AI to transcribe
- **Impartial**
  - Don’t prejudge facts
  - No conflict of interest
  - No leading questions
- **Either party allowed to present any evidence they wish**
  - But DON’T interview the whole team.
- **Parties:**
  - Parents present - or not
  - Counselor present if not a parent
- **Use one email string throughout.**
  - Save all communications
- **No Character Evidence**

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Interview: From Open Narrative to Focused Clarification

1 → 2 → 3 → 4 → 5

Explain the process

What will happen and what you do with the information

Start broad

Open narrative:
“Tell me what happened”
“Why are we here?”

Ask necessary specifics

Test the facts with focused clarification

Stay neutral

Avoid leading questions and prejudgment

Preserve

Approved recordings, notes and communications

Allow an advisor under equal rules for both parties.

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Trauma Informed Tools

- **Find common ground**
- **Start broad**
  - Tell me what happened
- **Don’t interrogate**
  - Do ask the key questions
  - Did you consent?
- **Empathize**
- **Stereotypes are True…**
    - For victims of sexual assault, not gender based roles.
- **Offer supports**
  - Counselling
  - Safe person at school
- **Mandatory Reporting**
  - Tell people what you have to do with information.



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Trauma-Responsive Practice Must Remain Outcome-Neutral

- **Explain what will happen**
- **Offer breaks and supports**
- **Use developmentally appropriate questions**
- **Avoid assumptions about how a person "should" behave**
- **Ask the questions needed to test the facts**
- **Beware of implicit bias**
  - "They would have…" / "They should have…"
  - Fragmented memories, delayed reporting

Empathy is compatible with neutrality.
Sex stereotypes are not.



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Relevance Is Not Defined by Title IX

Idaho Rule of Evidence 401 — evidence is relevant if:

(a)

it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b)

the fact is of consequence in determining the action.

Focus on relevance — not character or propensity. The investigator needs relevance to write a fair summary of the relevant evidence.

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Off Limits Evidence

- **Medical/mental health treatment records without voluntary written consent**

- **Privileged communications — unless waived**
  - Attorney-client, doctor-patient, clergy

- **Prior Sexual Activities:** Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are **offered to prove consent**.

Practice point: don't go there.



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Informal Resolutions –

can't be facilitated by the investigator, but can be offered

Allowed:

- Must agree in writing to try - both parties
- Any time after complaint, before final decision
- Withdraw from informal resolution process at any time
- Must agree to all terms
- Written notice of the process and what records are kept
- Trained, neutral facilitator — not the investigator, decision-maker or a witness

Not Allowed:

- Informally resolve complaint by student against staff person
- Informally resolve without formal complaint.
- Require participation, or condition enrollment or employment on waiving the formal process



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Evidence Review and the Report Are Separate Quality Checks

Evidence review

- Give both parties and advisors the directly related evidence
- Allow at least 10 days for a written response
- Consider responses before completing the report

Investigation report

- Fairly summarize the relevant evidence
- Identify procedural steps and allegations
- Include party responses as appropriate
- Avoid a responsibility conclusion

Practice point: do NOT provide a draft report. Don’t let parties or witnesses edit your work.

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Investigation Report

- **Neutral**
- **Allegations**
- **Charge and policy at issue**
- **Check verifiable facts**
- **Procedural history**
  - Complaint
  - Interviews
  - Evidence provided to parties
- **Summary of all interviews**
- **Summary of documentary evidence**
- **Include comments from parties**
- **No conclusions on responsibility**
- **Provide to Decision Maker**
  - 10 days to review



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Questions?



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Next Training:

Advisors - December 8, 2026

