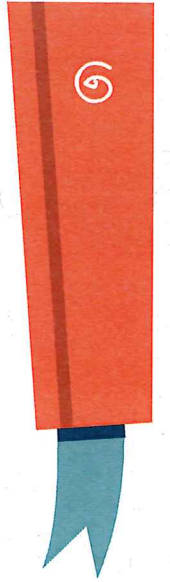
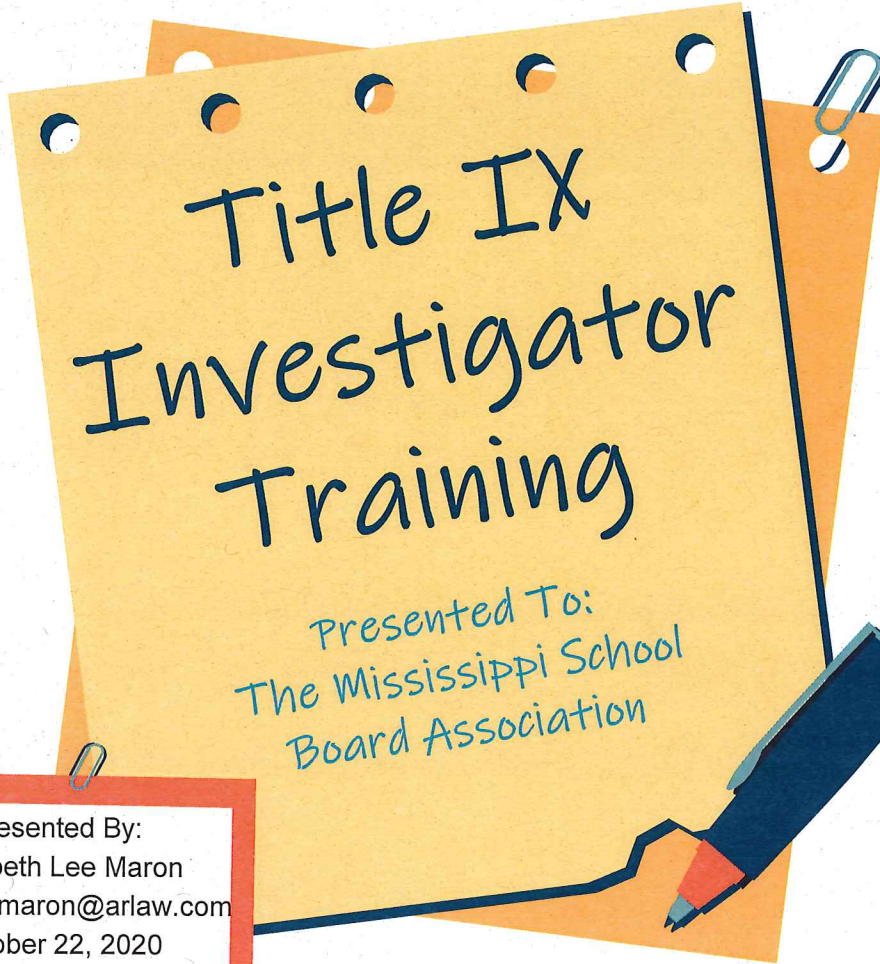
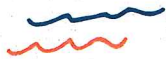


Title IX Investigator Training

Presented To:
The Mississippi School
Board Association

Presented By:
Elizabeth Lee Maron
elizabeth.maron@arlaw.com
October 22, 2020
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Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C 1681(a) Title IX Education Amendments of 1972

JOBS (Responsibilities) in the Title IX Processes

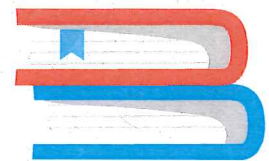
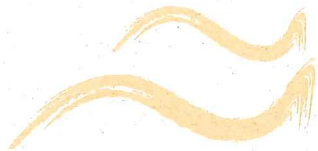
Determine who handles these jobs:

- Title IX coordinator
- Dismissals
- Facilitator
- Investigator(s)
- Initial decision maker (separate person(s))
- Appeal decision maker (separate person(s))



What Do These Jobs Entail? Dismissal of formal complaint

The person who handles this job evaluates the allegations to determine whether the formal complaint Must be dismissed or May be dismissed. The job could be held by a separate person or by the Title IX coordinator or the investigator.



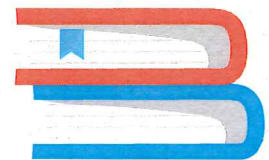
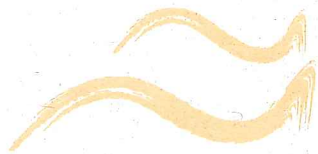
Mandatory and Discretionary Dismissal

Evaluated After Formal Complaint Filed

1. A complaint must be dismissed if the allegations do not constitute Title IX sexual harassment as defined, did not occur in the District's program or activity, or did not occur against a person in the United States.
2. A complaint may be dismissed if complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation, if the respondent's enrollment or employment ends, or if specific circumstances prevent the District from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.).
3. Notice of dismissal must be provided to both parties, including the reasons for dismissal and right to appeal the dismissal.

What Do These Jobs Entail? Facilitator of informal resolution

The person who conducts the informal resolution process. Also referred to as a mediator. This job could be handled by a separate person, by the Title IX coordinator or by the investigator. If the investigator handles the informal resolution, remember that either party can withdraw from informal resolution and resume the grievance process wherever it was left, which could be in the investigation stage.



Informal Resolution [K12 not required to offer this]

Formal Complaint Must Have Been Filed

- Can be offered at any point during the formal complaint process
- District may offer to facilitate an informal process that does not require a full investigation
- Both parties receive written notice of their rights and provide written, voluntary consent.
- Cannot require the waiver of the right to an investigation/decision as a condition of employment, continuing employment, enrollment or continuing enrollment.
- Cannot be offered if allegations are made against an employee by a student.
- Right to withdraw from the informal resolution process and resume the grievance process at any time with respect to the formal complaint.

What Do These Jobs Entail?

Investigator

--investigates the allegations in the formal complaint under the seven components outlined in the Title IX regulations.

--districts can have more than one person trained as an investigator and trained to prepare an investigation report. Title IX coordinator (but not decision-maker) can also serve as the investigator.

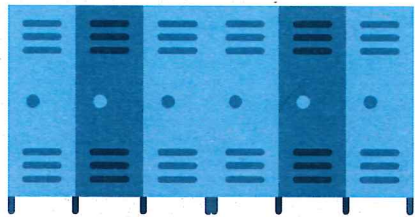
Decision maker

Two types of Decision-makers:

- 1) Initial decision-maker - makes decision regarding the determination of responsibility.
- 2) Appeal decision-maker - the responsibility to decide any appeal of the Initial decision makers' determination of responsibility or any appeal of a dismissal.

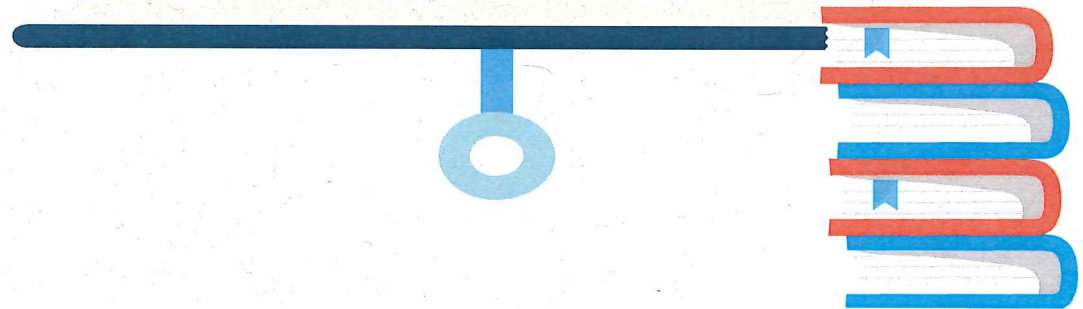
DMs can't be TIX coordinator or investigator

On What do Investigators Need to Focus?



How to conduct an investigation in the Title IX grievance process.

How to prepare a Title IX investigation report.



Formal
Complaint
Process

**Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)**


**The following Provisions Govern the District's Title IX
Grievance Process.**

1. The district treats complainants and respondents equitably by
 - providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and
 - by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Remedies must be designed to restore or preserve equal access to the district's education program or activity.

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Remedies may include supportive measures, but may also include punishing respondent.

2. The district provides an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.
 3. The district ensures that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against either the complainant or the respondent.
- 

Formal
Complaint
Process

**Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)**

3. (cont.) The district further ensures that training has been provided individuals holding Title IX jobs re: definition of Title IX sexual harassment, scope of the district's program or activity, how to conduct an investigation and grievance process, hearings [hearings not required in K12 under TIX process], appeals and informal processes.

4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.



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5. The district provides reasonably prompt time frames for completing the grievance process, including a process to accommodate permissible delays.

6. The district identifies disciplinary sanctions and remedies that may be implemented. Employee sanctions - action up to and including suspension or termination. Student sanctions - student code of conduct consequences, up to and including suspension or expulsion. Student remedies – ex. no contact restrictions, extra-curricular prohibitions, schedule changes or class reassignments, limits on future class registrations, access restrictions



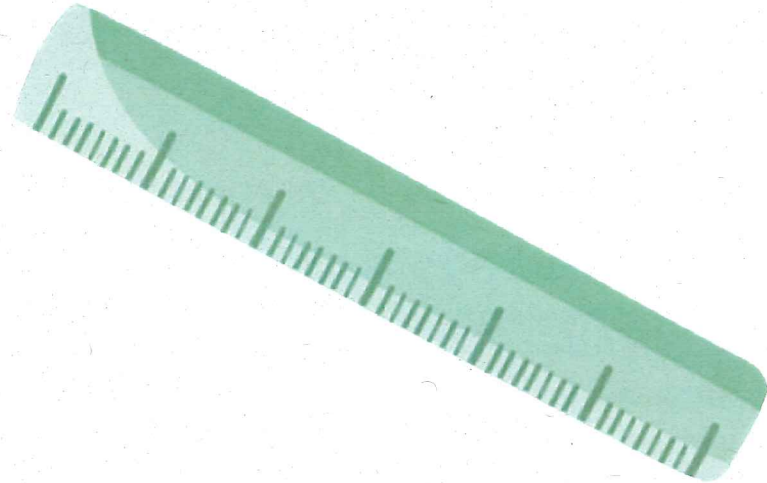
Formal
Complaint
Process

**Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)**

7. The district adopts an allowable standard to determine responsibility. [Either the preponderance of the evidence standard OR the clear and convincing standard].
8. The district provides an appeal option. Either party may appeal.
9. The district identifies a range of supportive measures.
10. The district disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.



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Which Standard of Evidence Does a District Chose?

Preponderance of the evidence requires that the evidence be "more likely than not" to prove the matter at hand. The party with the burden [district] must prove that there is a greater than 50% chance that the claim is true or is not true.

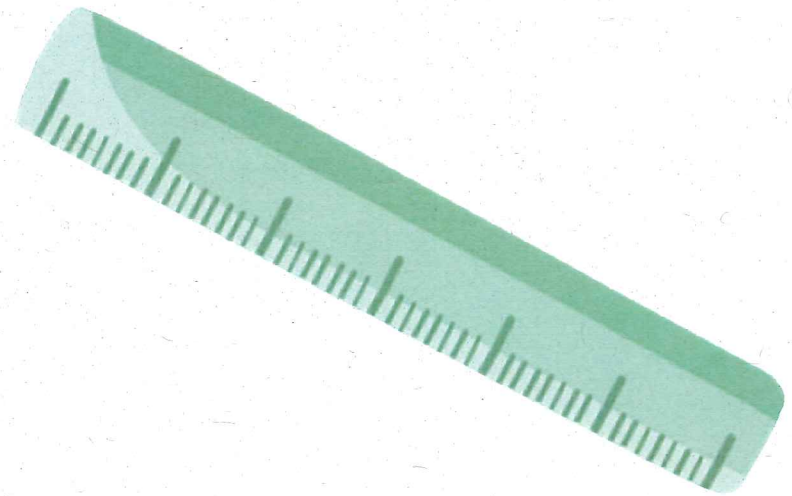
Clear and convincing evidence requires that the district must prove that there is a substantially greater than a 50% likelihood of the claim being true or not being true. The evidence is highly and substantially more likely to be true than untrue.

Formal
Complaint
Process

**Elements of Grievance Procedure
"Top Ten" List
34 C.F.R. § 106.45(b)(1)**

7. The district adopts an allowable standard to determine responsibility. [Either the preponderance of the evidence standard OR the clear and convincing standard].
8. The district provides an appeal option. Either party may appeal.
9. The district identifies a range of supportive measures.
10. The district disallows evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

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Formal
Complaint
Process

Your Job – Investigator

1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);

2. Providing an equal opportunity for both parties to present witnesses and evidence;

3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;



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4. Ensuring that the parties have the same opportunity to have an advisor (who may be an attorney) present during all interviews and proceedings; any restrictions on advisor participation apply equally to both parties – a student may have both a parent and advisor present;

5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;



Investigator Component One Deep Dive



"burden of proof" - duty to prove or disprove a disputed fact; neither of the parties has to prove anything – this is your duty. The standard of evidence (whether "preponderance" or "clear and convincing") established by district policy is what you are required to prove meet the burden of proof.

Formal
Complaint
Process

Your Job – Investigator

1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);
2. Providing an equal opportunity for both parties to present witnesses and evidence;
3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;

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5. With regard to an investigative interview or other meeting, providing written notice to a party who is invited or expected to attend and including the date, time, participants, purpose, and location and providing the notice with enough time to allow the party and advisor (if obtained) to prepare to participate;

Investigator Component Three Deep Dive



“parties have the ability to discuss the allegations or gather and present evidence” – cannot say “you can’t talk to anyone about this,” or restrict the parties from gathering evidence, but this right does not preclude the district from warning the parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct (ex. defamation, libel, slander).

Formal
Complaint
Process

Your Job – Investigator

1. Ensuring that the burden of proof and gathering evidence rests on the district (i.e. you) rather than the parties, i.e. complainant or respondent (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent must be sought under FERPA if applicable);
2. Providing an equal opportunity for both parties to present witnesses and evidence;
3. Making sure that both parties have the ability to discuss the allegations or gather and present evidence- for example, can't prohibit the parties from talking to witnesses to obtain evidence in support of their position;



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Formal
Complaint
Process

You're Job – Investigator

6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and

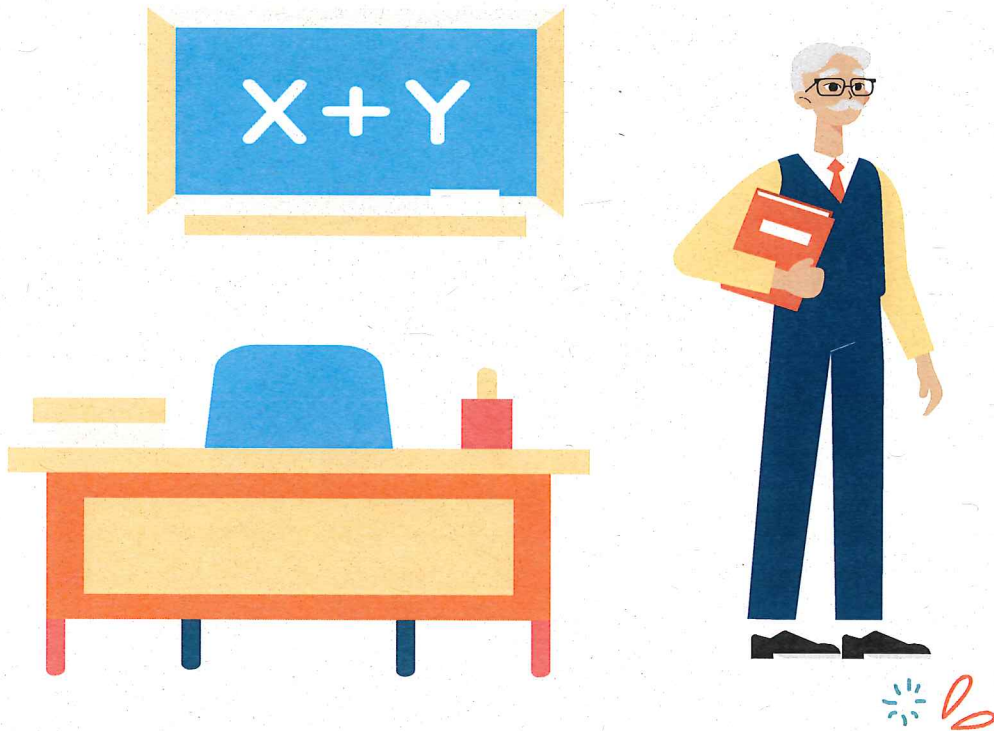


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7. Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.



Investigator Component Six Deep Dive




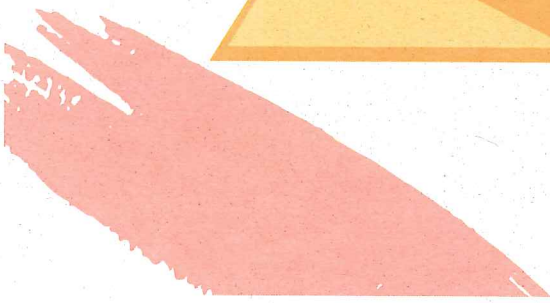

“evidence directly related to the allegations” – all evidence that involves in some way any part of any allegation.

- Both parties get all the evidence collected, though district has confidentiality responsibility.
- Title IX requires transparency and must be balance with FERPA concerns
- Establish best practices



"Evidence on Which the District Does Not Intend to Rely"



cannot leave out any information related to
the allegations, even if you do not think it is
important or probative





"Exculpatory Evidence"



tends to exonerate the respondent as to an allegation –can be as to some or all of the allegations






“Inculpatory Evidence”

tends to prove the respondent is
responsible for conduct alleged – can be as
to some or all of the allegations





Evidence "must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response"

parties must be given ten days to review the statements of witnesses or notes of your evidence gathered and provide a written response of their position for your consideration.



Ideal Investigation - Witness Statements

Follow up on witness statements that don't contain information initially stated in the interview

Follow up with parties/witnesses if you learn information from a later witness about which you need to ask someone you've already interviewed

Notify parents/guardians - parents/guardians have the "right to act" on behalf of all students who are parties

Detailed notes by the investigator of all interviews

Ideal Investigation – Notes and video footage



Investigator notes should include correct dates, times, locations, page numbers

Pretend that someone who does not know anything about the matter can read your notes and be able to understand all the information obtained

Immediately save any potentially applicable video footage

Be prepared to handle issues related to evidence on phones and legally securing phone evidence



Formal
Complaint
Process

You're Job – Investigator

6. Providing both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which the district does not intend to rely and any exculpatory or inculpatory evidence from any source; must be provided to both parties prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and



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7. Preparing a written investigation report that fairly summarizes the relevant evidence and providing the report to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.



Investigator Component Seven Deep Dive



“fairly summarizes the relevant evidence” - 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.



Ideal Investigation Report


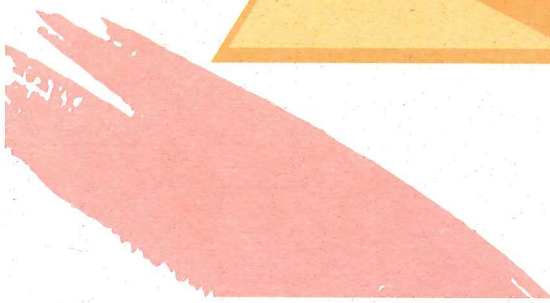

Summarizes the steps you took in the investigation;
Summarizes what you determine to be relevant evidence;
Includes relevant inculpatory and exculpatory evidence;
Shows that you considered parties' written response re evidence
and covers whether report comport with/contradict other
evidence;
Does not make finding of responsible/not responsible;
Can make credibility assessments by evaluation of evidence,
though the decision-maker is not bound by assessment

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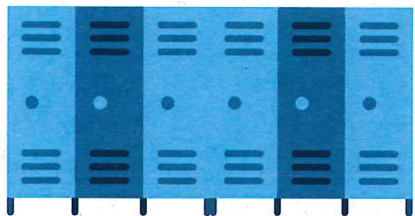


“providing the report to the parties/advisors at least 10 days before a determination of responsibility for review and written response”

Before the initial decision-maker determines whether the respondent is responsible, the parties have ten days to review the investigation report and prepare a written response to be provided to the initial decision-maker.



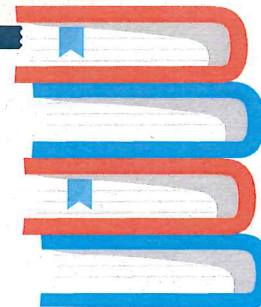
Reminder



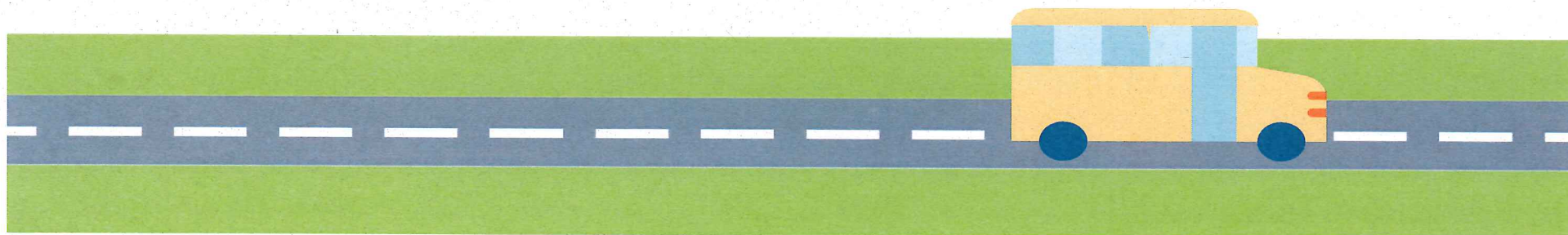
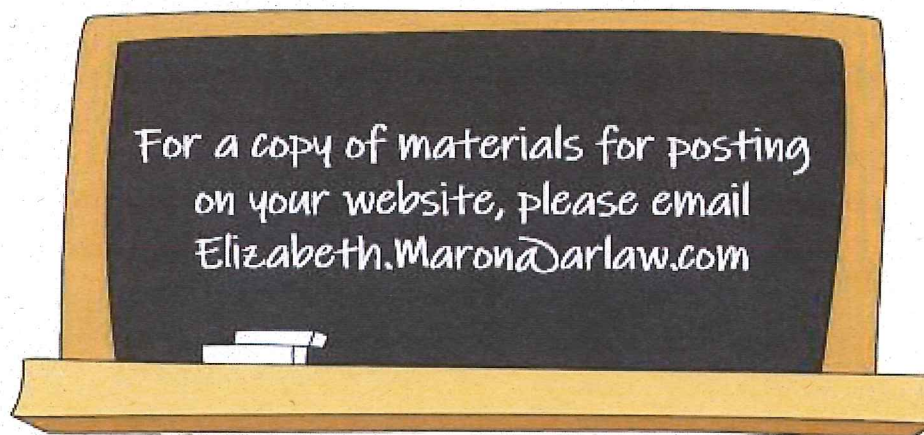
Strive to serve impartially

AVOID:

- prejudice of the facts at issue,
- conflict of interest and bias, and
- sex stereotypes



Questions??



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Thanks!

Elizabeth Lee Maron

Direct: (601) 292-0719
1018 Highland Colony Parkway
Suite 800
Ridgeland, MS 39157
Elizabeth.Maron@arlaw.com

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