

TITLE IX SOLUTIONS, LLC

K-12 Decision-Maker Training

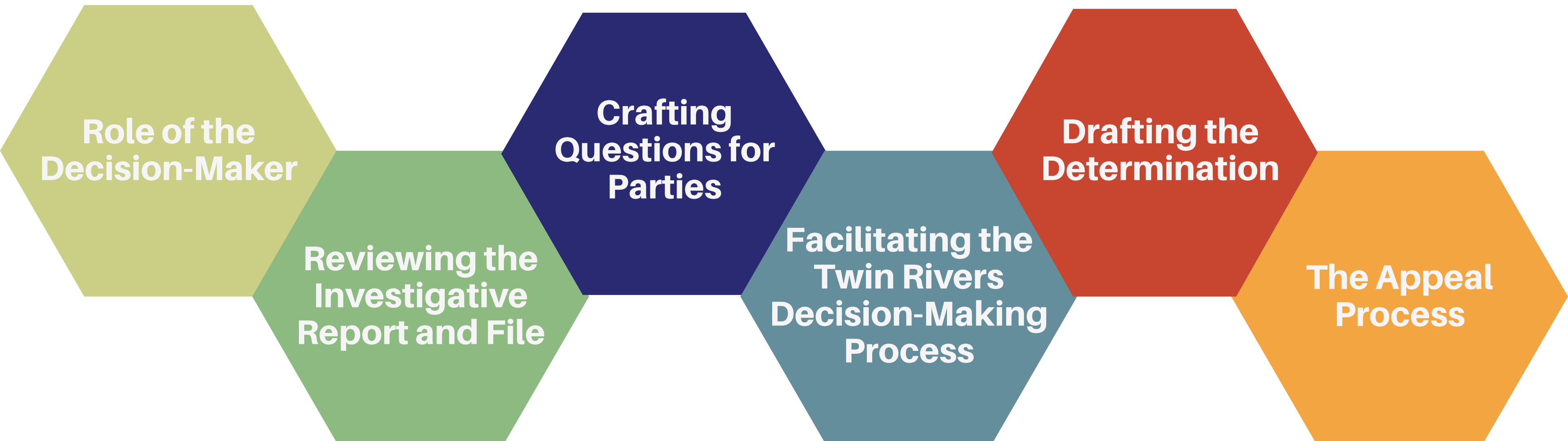
Twin Rivers Unified School District



Our Goal

- Provide foundational knowledge about K-12 Decision-Makers
- Prepare you for your role and instill comfort and confidence
- Walk through your policy to ensure you become experts in your district
- Offer a round-table approach so your specific questions can be answered

Covered in this Training



Learning Outcomes

Understand your role in the overall grievance process

1

Develop relevant, thoughtful questions to aid in decision-making

2

Apply techniques to draft a comprehensive and policy-compliant written determination

3

Navigate Twin Rivers Unified School District policy to deliver the appropriate outcomes

4

Today's Speakers



**Judge
Michael T.
Jamison**



**CJ
Larkin, JD**



**Judge
Patricia
Riehl**



**Kenneth
Chackes, JD**

Twin Rivers Team

We know a little about you, but tell us more!



LARGE DISTRICT

You serve over 25,000 students in 52 schools and employ 3,095 individuals



DIVERSE POPULATION

Your students speak 46 different languages



EXPERIENCE WITH SUCCESS

Your district boasts a graduation rate of 85.2%



COMMITTED TO GETTING IT RIGHT

Your policies, procedures, and desire to learn show you care

Session 1- Role of the Decision-Maker

Removing Bias

INDEPENDENT so no claim can be made of bias. A legitimate claim of bias can be a basis for a successful appeal and the basis for a do-over.

Anticipate potential conflicts of interest when you assign the Decision-Maker

Allow a time prior to questioning for Parties to disclose potential conflicts of interest

Evaluate and assign a new Decision-Maker if conflicts are present

Decision-Maker Attributes

Your role is as a Decision-Maker and not as a Judge. The questioning process is not conducted pursuant to the rules of evidence, with the exception of the concept of relevance. Though you are not a Judge, many of the same qualities are needed to effectively carry out this role.

It is important to have the ability to:

- Understand law and policy, and apply it to decision-making
- Carefully evaluate evidence
- Use critical thinking to determine relevance of evidence and questions
- Craft professional and thorough written determinations
- Communicate effectively with Parties and Advisors
- Be comfortable making tough, but equitable decisions

Guiding Principles

We are not a court of law, but the outcome of any Title IX process has legal consequences, as well as personal consequences for the Parties.

Because the consequences can be great, ensure you:

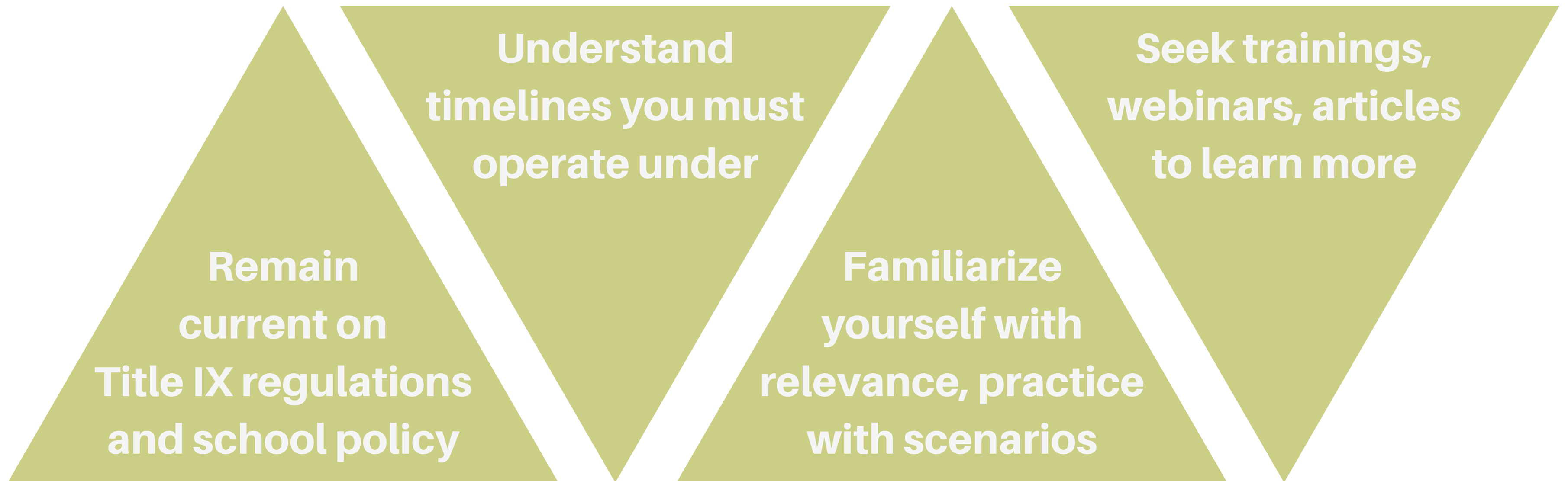
Allow policy to guide decision-making

Uphold the integrity of the process

Remain impartial (and recuse if you cannot)

Training Requirements

Title IX Regulations tell us Hearing Officers (or in the case of K-12, Decision-Makers) must be trained.



Title IX Cornerstones

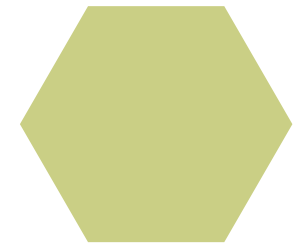
✓ Independent

✓ Equitable

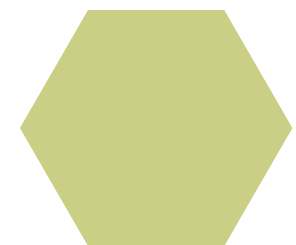
✓ Transparent

✓ Confidential

Additional Considerations in Your Role

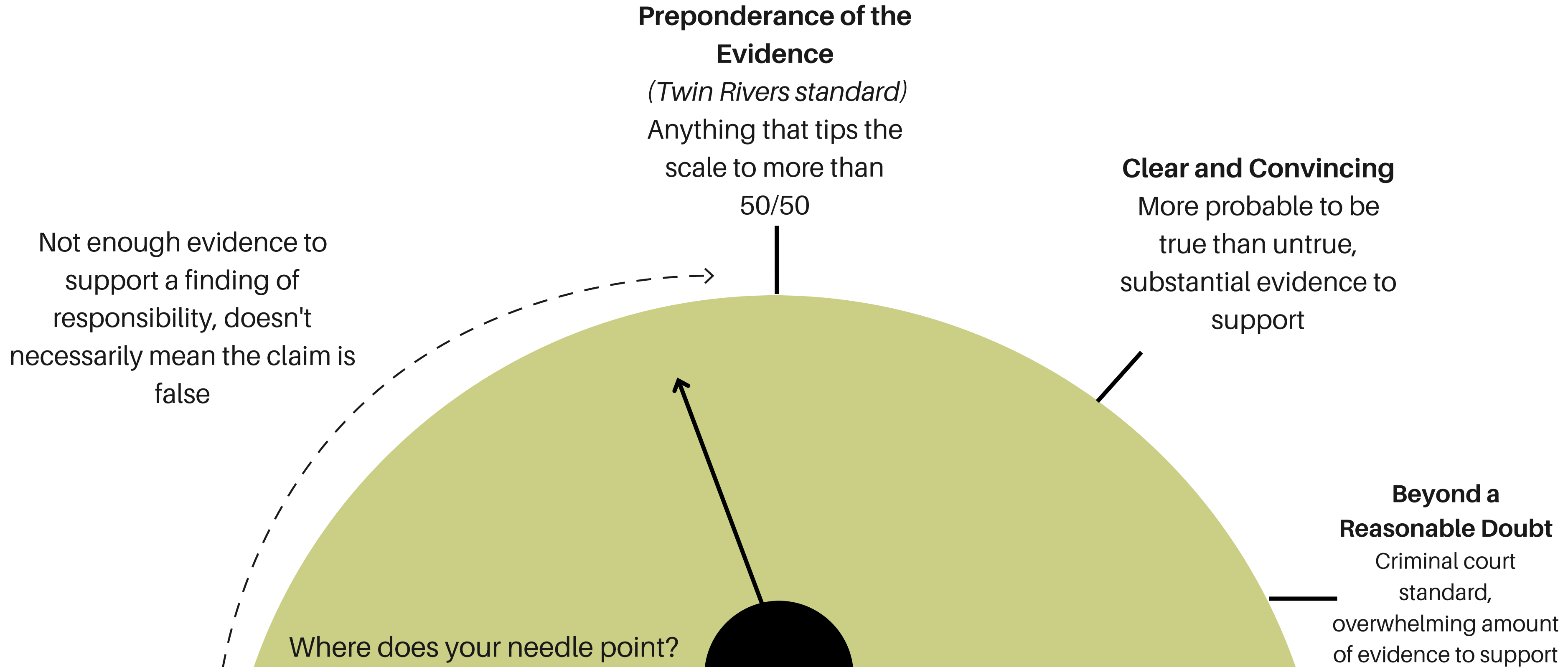


Be mindful that there is a presumption that the Respondent is NOT responsible for the alleged conduct until the final determination is made. Remember this as you work through the process.

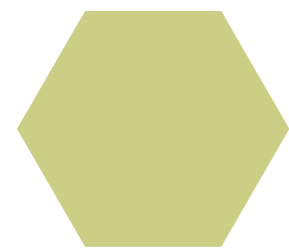


With that presumption of non-responsibility is a burden of proof standard. That burden of proof rests upon the school not either of the parties.

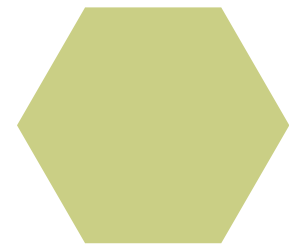
Evidentiary Standards



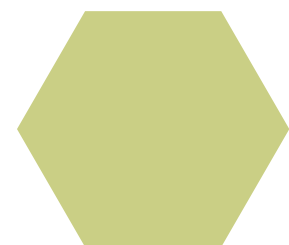
Preponderance of the Evidence



Must apply the same standard of evidence for formal complaints against students as well as complaints against employees



Must apply the same standard of evidence for all types of complaints consistently



Provide parties with a thorough understanding of the standard by which you will be making a decision

Possible vs. Probable

How would you define these terms?

What is the difference between them as they relate to making a Title IX decision?

Steps to Success as a Decision-Maker

BREATHE

Yes, the role carries a great deal of responsibility, but you are capable. You can do this!

READ

Read EVERYTHING! Policy, investigative reports, supplemental information. Be an informed Decision-Maker!

**FIND COMFORT
IN DISCOMFORT**

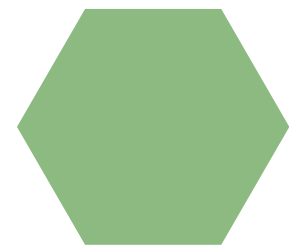
You may have to use words like penis, vagina, penetration, condom. Do not be afraid to use those words. Be comfortable in allowing those words in the parties' questions and answers.

Lessons Learned

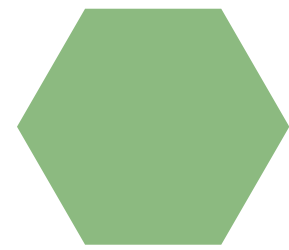


Session 2- Reviewing the Investigative Report and File

What is an Investigative Report?

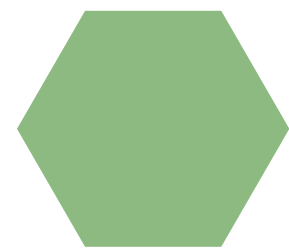


Fairly summarizes relevant evidence and facts of the case



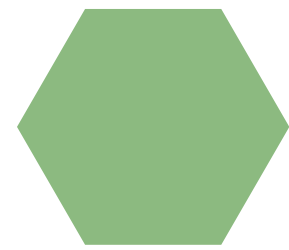
Includes the following information:

Name of investigator, dates of investigation, parties involved (Complainant, Respondent, Witnesses), key dates, narrative summary, applicable policy, allegations and responses, Complainant/Respondent accounts, Witness accounts

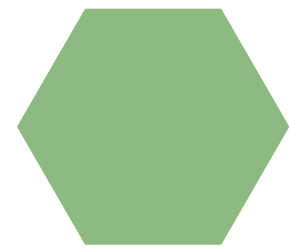


May include disputed vs. undisputed facts, discussion, assessment of credibility

What is the Investigative File?

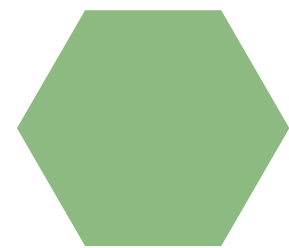


Contains all evidence obtained during the investigation



Could include the following and more:

Interview summaries, interview transcript, communication between the parties such as text messages, emails, direct messages via social media, photos, videos



May also include evidence collected from individuals aside from the Parties such as security footage, call logs, police reports, etc.

How do we review the information provided? ---



Read the investigative report and entire investigative file *CAREFULLY*

How do we review the information provided? ---



Consider key facts needed to determine responsibility. What are the elements of the alleged offense?

Example

“Title IX Sexual Harassment is conduct on the basis of sex . . . that satisfies one or more of the following: . . . 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 district’s education program or activity.”

(Twin Rivers Policy page 1)

Elements of the Offense

Conduct on the basis of sex

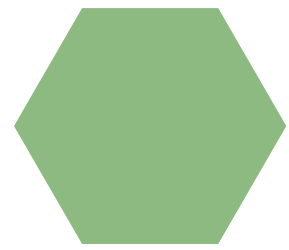
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Unwelcome conduct

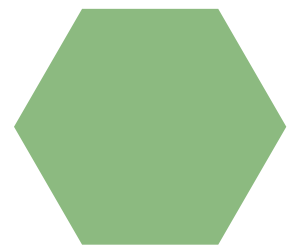
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So severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity

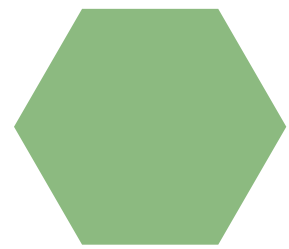
Review the Elements



Determine what facts (elements) are in dispute



Carefully study the evidence that is relevant to each disputed fact (element). In other words, what would prove or disprove the fact (element)?



If the Investigation Report contains conclusions regarding disputed issues or credibility, determine if the evidence clearly supports those conclusions. *The Investigator is not the Decision-Maker!*

What if?

We have this...

Conduct on the basis of sex

+

Unwelcome conduct

But not this...

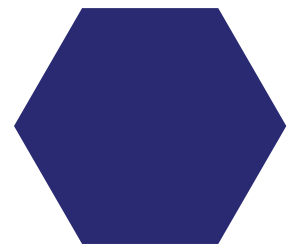
So severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity

Lessons Learned

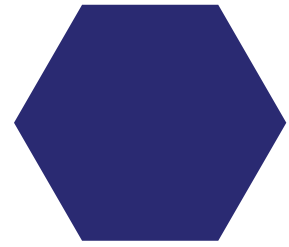


Session 3- Crafting Questions for Parties

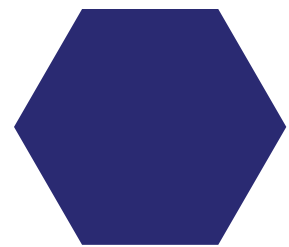
Considerations When Crafting



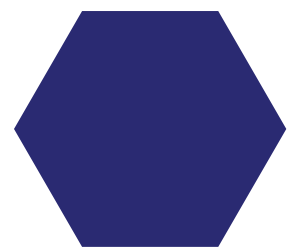
Depends on what kind of facts are in dispute



Could be clear conflict between the parties – “he said, she said”



Parties might agree on what happened but dispute whether it was based on sex or sufficiently severe, pervasive and objectively offensive



If students are legally old enough to consent to sexual contact, dispute might center on consent

Guiding Questions

- ? What information do I need to know to prove or disprove an element of the policy violated?
- ? What is the best question to ask to generate an informative answer?
- ? Who has this information?
- ? Can this information be found anywhere in the Investigation Report or File?

One final time....

Will this question help me gather information that proves or disproves a fact (element) of the policy?

(If yes, ASK!)

(If no, you may want to skip it!)

Crafting Your Questions

Good questions are:

Open-
ended

Open-ended questions prompt the Party to share more broadly.

Non-
leading

Do not guide your Parties to the answer you want to hear.

Singular

Avoid complicated, multi-part questions.

Clear

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

Sensitive

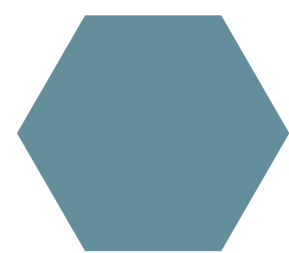
Though questions need to be direct, consider emotions that may be evoked by asking. Practice empathy.

Lessons Learned

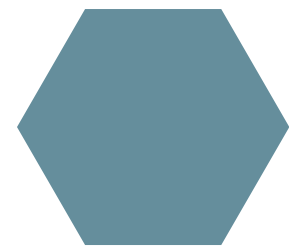


Session 4- Facilitating the Twin Rivers Decision-Maker Process

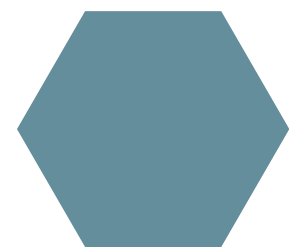
K-12 Considerations



K-12 schools have the option to conduct a live hearing, however the Title IX Regulations do not require them to
(a distinct difference from post-secondary)

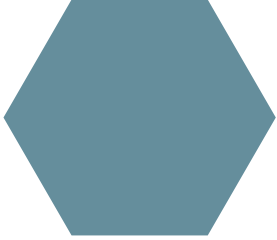
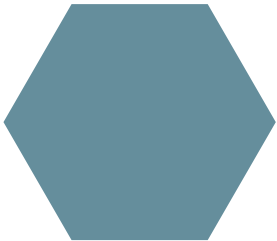
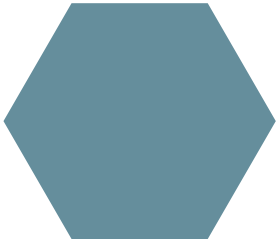


Title IX Regulations stipulate K-12 schools must still allow for cross-examination by the Parties



Twin Rivers Policy requires this process be handled in writing, following the completion of the investigation and receipt of the investigation report/file

Goals of the Process

-  Providing a neutral, third-party review of relevant facts aided by questioning from the Decision-Maker and Advisors
-  Fills in gaps and provides clarification of the Investigative Report/File
-  Providing due process for a policy-driven, equitable outcome

What does the policy say? ---



Let's study language taken directly from
Twin Rivers' Unified School Districts' Title
IX Sexual Harassment Complaint
Procedures regarding your role as a
Decision-Maker



Remind Parties of Informal Resolution options one final
time before entering questioning process

Questioning Timeline

**Review of
Investigation
File**

Decision-Maker will afford each Party the opportunity to submit written, relevant questions that a party wants asked of any party or witness

7 CALENDAR DAYS

Questioning Timeline

**Decision-Maker
Evaluates
Questions and
Sends to
Parties**

Parties receive questions and are able to provide additional follow-up to be submitted in writing to the Decision-Maker

5 CALENDAR DAYS

Questioning Timeline

**Decision-Maker
Sends Responses
Parties**

Parties receive answers
to their questions and
are able to provide
limited follow-up to be
submitted in writing to
the Decision-Maker

3 CALENDAR DAYS

Questioning Timeline

Decision-Maker Issues Determination

- Shall be issued within 120 calendar days of the receipt of the formal complaint
- Can be extended with good cause, but Parties must be notified in writing
- Good cause includes:
 - absence of a party, witness, or party advisor;
 - concurrent law enforcement activity;
 - participation in the informal resolution process; or
 - need for language assistance or disability accommodation

Determining the Relevance of Questions

"Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant 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."

Sample Questions

Rule on the relevance of these questions

Isn't it true that you have been accused of sexually assaulting other girls at school?

Didn't you let the Respondent touch your breast when you were on the bus a week before the alleged sexual assault?

Didn't you tell the Respondent you were taking birth control?

How many sexual partners do you have at the school?

Is there a family history of sexual violence?

Determining the Relevance of Questions

"The district's decisionmaker will not require, rely upon, allow, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under legally recognized privilege unless the person holding the privilege has waived the privilege."

Sample Questions

Rule on the relevance of these questions

Did your gynecologist find any damage to your vagina?

Did you tell your therapist that you needed to apologize to the Complainant?

Did you tell your priest in confession that you sexually touched the Complainant, but had not had sexual intercourse with him?

What was your grade in the class at the time of the incident?

What happened when you visited the school nurse?

Determining the Relevance of Questions

"The Decision-Maker will explain to the party proposing the questions any decision to exclude a question as not relevant."

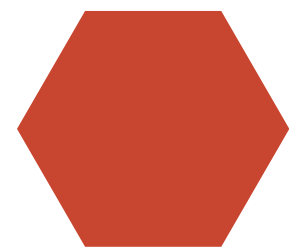
- How will this be communicated?
- Will you seek to understand what was intended by the question?
- Will there be a deadline for response?

Lessons Learned

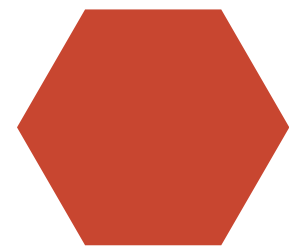


Session 5- Drafting the Determination

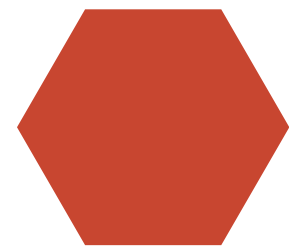
What Is the Written Determination?



States whether the Respondent is responsible for the alleged conduct



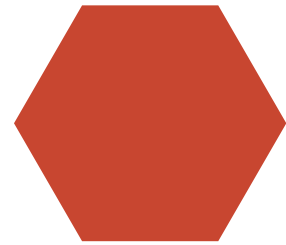
Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process



Uses the preponderance of evidence standard to determine responsibility

(recall our standard used- anything that tips scale over 50%)

What Is the Written Determination?



Requires the objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and determinations of credibility in a manner that is not based on a person's status as a Complainant, Respondent, or Witness.

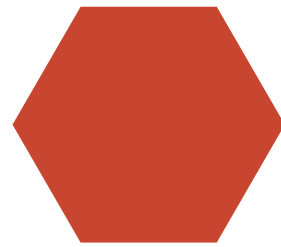
Inculpatory

Any evidence favoring the Complainant

Exculpatory

Any evidence favoring the Respondent


Goals of the Written Determination




Provide clear, concise analysis of the facts and their application to the Twin Rivers Unified School District Sexual Harassment Policy

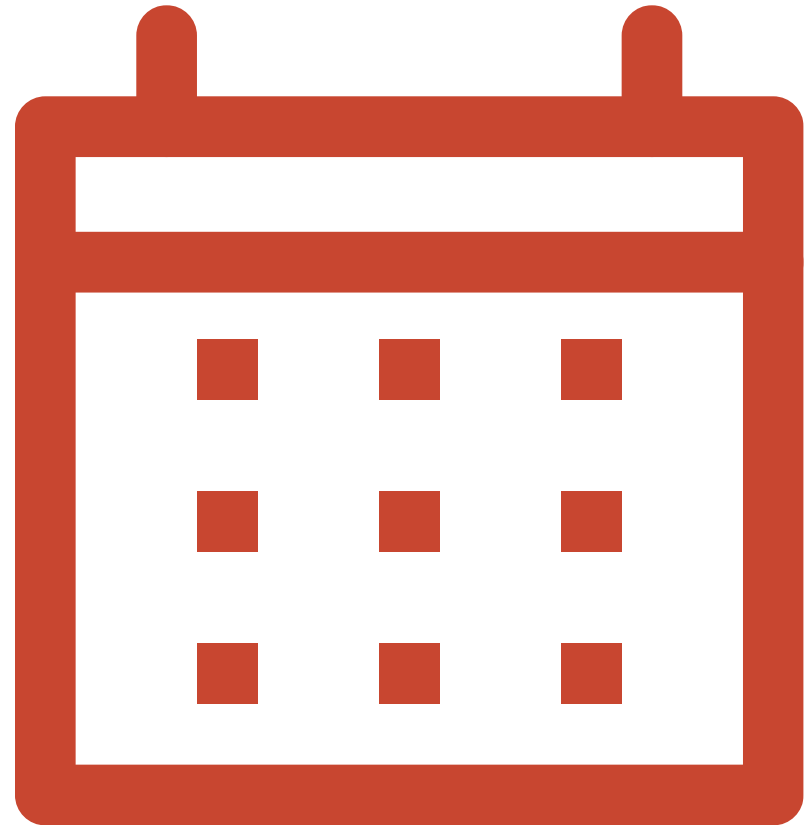
"Twin Rivers Unified School District is committed to maintaining a learning environment that is free of harassment. We prohibit the unlawful sexual harassment of any student by an employee, student, or other person at school or at any school related activity. Any student who engages in sexual harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and will be subject to disciplinary action."

Additional Goals of the Written Determination

 Consider your audience. Who is reading the determination?




 The outcome you determine impacts the future of many individuals. Who will you be impacting?

Timeline For Sharing Determination





According to the Twin Rivers policy, it shall be issued **within 120 calendar days** of the receipt of the formal complaint


Elements Included in the Determination

-  Identification of the allegations potentially constituting Title IX Sexual Harassment
-  A description of the procedural steps taken from receipt of the formal complaint through the written determination, including:
 - Notifications to Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods to Gain Other Evidence
-  Findings of fact supporting the determination

Elements Included in the Determination

 Conclusions regarding the application of the district's code of conduct or policies to the facts

 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the Complainant

 The district's procedures and permissible bases for the Complainant and Respondent to appeal

Drafting the Determination

1 Identification of the allegations potentially constituting Title IX Sexual Harassment

This information should be provided in the Notice of Allegations and Investigative Report. It can be copied directly from documents provided to you as the Decision-Maker.

It may be helpful to include additional elements of the policy such as the definition of consent, incapacitation, etc.

Drafting the Determination

2

A description of the procedural steps taken from receipt of the formal complaint through the written determination

This information will likely be provided to you because you have not been involved in the process.

Note procedural steps for the decision-making part of the process

- Dates you received questions from Parties
- Dates you shared questions with Parties
- Dates Parties submitted follow-up questions to you
- Dates you shared follow-up questions with Parties

Drafting the Determination

3

Findings of fact supporting the determination

What does this mean?

Findings used in the resolution of relevant facts

Review and lay out all relevant facts provided in the Investigative Report

Drafting the Determination

4

Conclusions regarding the application of the District's code of conduct or policies to the facts

Pay attention to the details of the policy definitions. Do the facts support this definition?

Include the Decision-Maker's statement of the District's Sexual Harassment policies applicable to the case in view of facts found to be true

Strict application of the facts to the policy definitions.

Drafting the Determination

5

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the district's educational program or activity will be provided by the district to the Complainant

Statements must be drafted based upon an analysis of the facts, analyzed in the context of the preponderance of the evidence standard of what is more likely than not to have happened

Consideration is given to the respective age of the Parties; motivation, opportunity, previous incidents and any other objective evidence

Consistency of disciplinary sanctions

Other remedies provided

Drafting the Determination

6

The District's procedures and permissible bases for the Complainant and Respondent to appeal

This language can be copied directly from the District policy

Lessons Learned



Session 6- The Appeal Process

Appeal Rights






Either party has the right to appeal the district's decision or dismissal of a formal complaint or any allegation in the formal complaint

Who is the Appeal Officer?

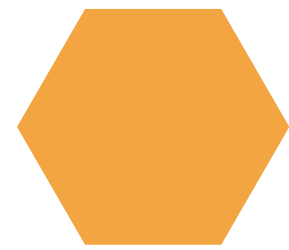


- Cannot be:
 - Title IX Coordinator
 - Investigator
 - Initial Decision-Maker
- Can be a dedicated individual or from a pool of Decision-Makers
 - Twin Rivers will have a dedicated Appeal Decision-Maker

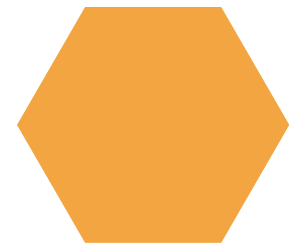
Bases of Appeal

-  The party believes that a procedural irregularity affected the outcome
-  New evidence is available that could affect the outcome
-  A conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome

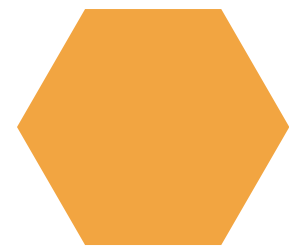
Procedural Irregularities



Can be any failure to follow the Twin Rivers District policy that affected the outcome

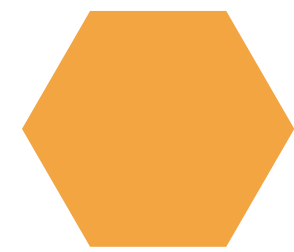


Decision-Maker failed to consider the statement of certain witnesses or documents/evidence

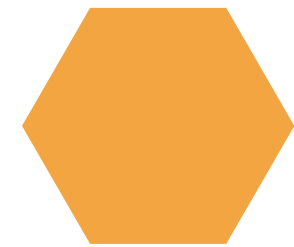


Decision-Maker relied on evidence that is not relevant or that is prohibited from consideration (such as sexual predisposition or disclosure of private and legally protected information)

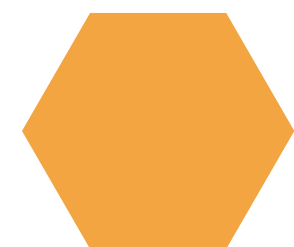
New Evidence



New witness(es) available who can provide information not previously known



New evidence available to prove or disprove elements of the alleged offense (text messages, written communication, video, etc.)



This evidence/witness was not available in the Investigation File and Report and only came available after the determination was issued. Cannot be intentionally withheld evidence.

Conflict of Interest/Bias

- Ideally, this should be addressed prior to the questioning process. This ensures another Decision-Maker is selected.
- However, if one of the Parties feel there was a bias on the part of the Decision-Maker, they can express this in the appeal.
- Parties must be able to articulate how they believe bias affected the outcome.

Appeal Timeline

**Determination
is made**

Appeals could be made following dismissal of a complaint OR after a determination is rendered

(10 calendar days)

**Appeal is
submitted**

Either party must provide written appeal to TIX Coordinator within 10 calendar days of receiving written determination or dismissal

(10 calendar days)

Must notify both parties an appeal has been submitted

**Parties submit
written
statement**

Parties given 10 calendar days to submit a written statement in support of or challenging the outcome

Appeal Timeline

**Review by
Appeals
Decision-
Maker**

(20 calendar days)

**Decision is
rendered
by Appeals
Decision-
Maker**

(5 business days)

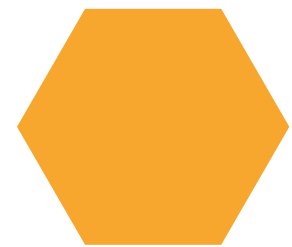
**Provide
written
decision**

Conduct a thorough review of initial investigative file as well as any new materials or information received

Determination with rationale is made (e.g., affirms, reverses, remands, or amends the written determination regarding responsibility)

Written decision must be sent simultaneously within 5 business days of issuance of decision

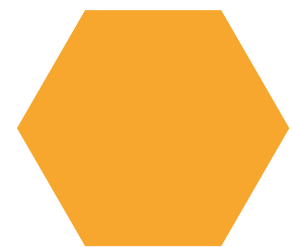
Appeal Considerations



Appeals submitted after the 10-calendar day window WILL NOT be considered



Has the potential to take up to 45 days



Requires frequent communication with both Parties at multiple steps

Is the end of the appeal process the last we will hear of the complaint?

Potentially, however:

- Either Party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR) within 180 days of the date of the most recently alleged conduct.
- The Appeal Decision-Maker could remand the decision, requiring a new investigation or hearing.

Lessons Learned



Things to think about...

Special needs of Parties
(or parents)

Language barriers/Literacy

Technological barriers

What other assumptions are we making
about our students, parents, advisors?

What do we lose in the written process?
(body language, credibility assessment)

Steps to Success

- The written format of the process allows you to slow down. Use that to your advantage.
- Use your experiences as a TEAM to share and learn from each other.
- Anticipate issues that could (*and probably will*) arise and create solutions before they occur. Template everything!
- Revisit your process frequently and adapt to ensure it is working the way it should. Create workflows to maximize efficiency.

TITLE IX SOLUTIONS, LLC

Thank you!

Twin Rivers Unified School District

