



INSPECTION AND REVIEW OF EVIDENCE PROCEDURES (Section 106.45(b)(5)(vi))

Title IX regulations require both Parties have:

- *An equal opportunity to inspect and review*
 - *any evidence obtained as part of the investigation*
 - *that is directly related to the allegations raised in a formal complaint*
 - *including the evidence upon which the CAC does not intend to rely in reaching a determination regarding responsibility*
 - *and inculpatory or exculpatory evidence whether obtained from a party or other source,*
- *The opportunity to meaningfully respond to the evidence prior to the conclusion of the investigation.*

The type of evidence that must be shared is

- Media (photos, videos, recordings)
- Communications (email, text, written statements, phone transcripts, receipts, letters)
- Interview questions and notes
- Incident reports
- Any information provided by the parties or witness(es)
- Other information collected by the investigators

Collecting and safekeeping of evidence

- In safekeeping evidence, an Evidence Tracking and Privilege Log need to be created for each investigation. This log keeps track of all information produced and not produced as evidence. Please follow the Evidence and Privilege Log templates.
- It is important to remember that in collecting evidence, CAC Title IX Investigators “should not obtain as part of an investigation any evidence, directly relating to the allegations in a formal complaint, that cannot be legally shared with the parties.” 85 Fed. Reg. at 30,435.
- Another important concept in collecting evidence in an investigation is the notion that our Investigators must undertake a thorough “search for relevant facts and evidence pertaining to a particular case, while operating under the constraints of conducting and concluding the investigation under designated, reasonably prompt time frames and without powers of subpoena.”

- All evidence the parties want the Investigators to consider in the case MUST be provided to the Investigators before the first inspection period begins. Any additional evidence offered by either party WILL NOT BE ADMISSIBLE.

Inspection and Review of Evidence--Two inspection periods. [Please see the Inspection of Records Flowchart]

- First Inspection Period: At the end of the investigation, BUT BEFORE a report is drafted, the Parties have 10 days to review all of the evidence collected during the investigation. The Parties must be able to review the evidence the Investigators are going to use as well as the evidence they are not going to use in drafting the Investigative Report. In that 10-day review period, both Parties have equal opportunity to review and respond in writing to the evidence. The Investigators will “consider” the responses before completing the Investigative Report.
- Second Inspection Period: After the Final Investigative Report is written, BUT BEFORE the hearing where the determination of a possible violation of the Title IX policy will be made. The Parties can review the Final Investigative Report. This report DOES NOT have a determination. It just outlines the investigation. In that 10-day review period, both Parties have equal opportunity to review and respond in writing to the evidence.
- In addition to the review periods, all evidence must be available at the live hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Recommended Procedure for Inspection of Evidence:

- The assigned Investigators utilize the Evidence Tracking template and the Privilege Log template at the beginning of each investigation. Both should be uploaded to Maxient so they can be accessed and populated during the course of the investigation.
- Investigators log each item of evidence into the log as it is identified, regardless of whether or not the evidence is relevant to the investigation.
- Investigators also log information that is not produced and provide the reasons why it was not produced.
- If it is determined that an item of evidence will not be shared with the Parties, the piece of evidence and the explanation for the decision not to share the evidence needs to be documented in the Privilege Log.
- Prior to the first inspection of records, Title IX investigators must consult with the Office of General Counsel to review both the Evidence Log and the Privilege Log.

- Prior to the first inspection period, the Parties shall sign a Non-Disclosure Agreement related to the information they will be reviewing. The Non-Disclosure Agreement shall be kept in the Title IX file uploaded to Maxient.
 1. Two days after the emailing and mailing of the first inspection letter, the 10-day inspection period begins.
 2. Both parties should begin the inspection period on the same date.
 3. No additional evidence may be provided to the investigators (beyond the written response) once the first inspection period begins.
- The investigators will share the written responses submitted by the parties with the other party on the eleventh (11th) day after the inspection period begins.

RECOMMENDED REVIEW OF EVIDENCE PROCEDURES

- Evidence for the first inspection will only be shared in electronic format, using a Nexcopy flash drive that is copy, print, and download protected. (<https://www.nexcopy.com/usb-copy-protection/>). The flash drive must be returned to the Title IX Coordinator after the ten (10) day inspection period is finished.
- No investigator shall require a party to sit in a room for a set amount of time in order to inspect the evidence. [The Department of Education is critical of policies requiring parties “to sit in a certain room in the recipient’s facility, for only a certain length of time, with or without the ability to take notes while reviewing the evidence, and perhaps while supervised by a recipient administrator”; such practices “have reduced the meaningfulness of the party’s opportunity to review evidence and use that review to further the party’s interests.” 85 Fed. Reg. 30,026, 30,307 (May 19, 2020).]
- The investigative report for the second inspection will only be shared in electronic format, using a Nexcopy flash drive that is copy, print, and download protected. The flash drive must be returned to the Title IX Coordinator after the ten (10) day inspection period is finished. The parties should receive the flash drives on the same day.
- The parties shall have all evidence and the investigative report loaded on the flash drive prior to the hearing for use during the hearing. When the case is closed (either after an appeal or the expiration of the time period in which to request an appeal), the flash drive will be wiped clean of information. Such action will be documented in the file.
- Failure to return the flash drive will result in a reimbursement charge to replace the flash drive against the non-returning party.