

TITLE IX TRAINING FOR DECISION MAKERS



AGENDA

- Definitions
- Formal Complaints
- Decision-Maker on Dismissal
- Exchange of Questions
- Determination Regarding Responsibility
- Final Report
- Decision Maker on Appeal

DEFINITIONS



New Sexual Harassment Definition

- Quid Pro Quo Harassment
- Hostile Environment
- Harassment under the Violence Against Women Act & Clery Act

QUID PRO QUO HARASSMENT

- An employee conditioning an aid, service, or benefit of the school district on an individual's participation in unwelcome sexual conduct
- Does not need to be evaluated for “severity, pervasiveness, and objective offensiveness”
- Expressed or implied

HOSTILE ENVIRONMENT

- Unwelcome conduct
- Reasonable person
- So severe, pervasive, and objectively offensive
- Effectively denies a person's equal access to education program or activity

HARASSMENT UNDER VAWA & CLERY ACT

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



SEXUAL ASSAULT

- Rape
- Sodomy
- Sexual Assault with an Object
- Fondling
- Incest
- Statutory Rape

DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Existence of relationship determined based on consideration of the length, type, and frequency of interaction
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence



DOMESTIC VIOLENCE

Felony or misdemeanor crimes of violence committed by:

- Current or former spouse or intimate partner of the victim
- Person with whom the victim shares a child in common
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- Person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri
- Person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri

STALKING

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress



LOCATION

- In an educational program or activity-locations, events, or circumstances over which the school district exercised substantial control over both the Respondent and the context in which the sexual harassment occurs



CONSENT

- Consent is informed, actively given, and mutually understood and accepted
- Coercion, intimidation, incapacity prevent consent
- Consent to one form of conduct does not imply consent to any other form of conduct
- Consent can be withdrawn

RETALIATION

Adverse treatment in response to seeking protection under Title IX

May be independent basis for charge or litigation

Examples include harassment in educational program, discipline, denial of participation



FORMAL COMPLAINT

- Written & Signed by Complainant
 - Parent/legal guardian may file on behalf of student
 - Title IX Coordinator may sign a formal complaint, potentially over the alleged victim's objections
- No other third party can file a formal complaint
- Description of allegation (date, location, witnesses)
- As practical, in Complainant's own words

FORMAL COMPLAINT

Complainant is participating or attempting to participate in the education program or activity of the school district.

Alleged violation must have occurred against a person located within the United States.

- Advisor receives notices and reports
- Advisor may be an attorney
- School districts are not required to provide advisors



ADVISOR

OVERVIEW AFTER FORMAL COMPLAINT

Notices

Dismissal

Consolidation

Investigative Report

Exchange of Questions

Determination Regarding Responsibility

MANDATORY DISMISSAL

- If the conduct alleged would not constitute sexual harassment even if proved
- Did not occur in school district's education program or activity
- Did not occur against a person in the United States

DISCRETIONARY DISMISSAL

A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint

The Respondent is no longer enrolled or employed

The specific circumstances prevent the school district from gathering evidence

APPEALING A DISMISSAL



Parties can appeal a mandatory or discretionary dismissal of a formal complaint.



Decision Maker hears the appeal.

ELEMENTS

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graph TD; A[ELEMENTS] --> B[EQUITABLE TREATMENT]; B --> C[OBJECTIVE EVALUATION OF EVIDENCE]; C --> D[NO CONFLICT OF INTEREST OR BIAS]; D --> E[PRESUMPTION OF NOT RESPONSIBLE]; E --> F[PROMPT TIME FRAMES];
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EQUITABLE TREATMENT

OBJECTIVE EVALUATION OF EVIDENCE

NO CONFLICT OF INTEREST OR BIAS

PRESUMPTION OF NOT RESPONSIBLE

PROMPT TIME FRAMES

WHO SHOULD BE A DECISION MAKER

01

Decision-Maker must be unbiased and without conflict of interest to both complainant and respondent

02

Consider outside decision-maker if conflict of interest (e.g., if complaint against Superintendent)

03

Title IX Coordinator, Investigator, and Original Decision-Maker and Decision-Maker on Appeal must be different

PREPARING FOR EXCHANGE OF QUESTIONS

BEFORE
EXCHANGE OF
QUESTIONS

Review

Policies

- Reminder of timelines and provisions related to specifics of current investigation

Review

Allegations

- Reminder of specific allegations (e.g., comments or actions) and relevant facts (e.g., dates and witnesses)

Review

Investigative Report and
Parties' Responses

- Reminder of potentially independent facts and relevant information

REVIEW INVESTIGATIVE REPORT

- The decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report
- Inculpatory and Exculpatory Evidence

REVIEW PARTIES' RESPONSE TO INVESTIGATIVE REPORT

- The parties have an equal opportunity to review and respond to the investigator's investigative report
- Allows the parties to advocate to the decision-maker regarding the relevance of evidence and omission of relevant evidence
- Parties can provide input and make arguments about the relevance of evidence, evidence they believe was overlooked in the investigative report, and how a Decision-Maker should weigh the evidence

EXCHANGE OF QUESTIONS

OVERVIEW OF EXCHANGE OF QUESTIONS

Plan & Organize

- Think through scope and order of possible relevant questions

Purpose

- Used to provide the parties the opportunity to probe the credibility and reliability of statements asserted by witnesses or parties

Questions

- Decision-Maker rules on the relevancy of questions

SUBMISSION OF QUESTIONS

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

Must provide each party with the answers

Must allow for additional, limited follow-up questions from each party

RELEVANCY



Parties must be permitted to ask all relevant questions and follow-up questions



Decision-Maker determines relevancy of questions



Decision-Maker provides an explanation for excluding any question deemed to be not relevant



Investigator will distribute list of questions



RELEVANCY

- It has a tendency to make a fact more or less probable than it would be without the evidence
- Fact is of consequence in determining the action or conduct
- Relevant evidence goes towards proving whether a fact of consequence to the actual allegations are more or less likely to be true



RELEVANT QUESTIONS

- Party must be permitted to ask all relevant questions and follow-up questions
- No irrelevant questions are allowed
- Decision-Maker must explain any decision to exclude a question as non-relevant

PROHIBITED QUESTIONS

- No questions or evidence on Complainant's prior sexual history or behavior unless:
 - Offered to prove that someone other than the Respondent committed the conduct
 - If the evidence of specific incidents of prior sexual conduct between the Respondent and Complainant is offered to prove consent
 - No seeking privileged information or records unless privilege is waived by the party

PROHIBITED EVIDENCE

- Treatment records, without the party's prior written consent
- Information protected by legally recognized privilege: attorney-client, clergy-communicant, marital confidences, and therapist-patient

- School District cannot retaliate against a party or witness for participating or not participating in Exchange of Questions
- Witnesses cannot be compelled to answer questions



WITNESSES

DETERMINATION
REGARDING
RESPONSIBILITY

RELIANCE ON STATEMENTS

- The Decision-Maker cannot rely on the statements of a party or witness who does not submit to exchange of questions
- “Submit” means *answering* those questions that are relevant
- If a party or witness was not asked questions, or was not asked a particular question about a particular statement in the investigative report, the Decision-Maker is not precluded from relying on a statement by a party or witness who was not given the opportunity to answer written questions



INFERENCES

- Decision-maker cannot draw an inference regarding responsibility based solely on a party or witness's absence from formal resolution process or a refusal to answer a question during an exchange of questions

RELIANCE ON EVIDENCE

- The prohibition on reliance of statements does not include evidence (such as videos) that do not constitute a person's intent to make factual assertions or do not contain a person's statements
- But police reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to questioning

STANDARD OF EVIDENCE

- Must apply same standard for all formal complaints and publish the standard in their grievance process
- Most Districts selected “Preponderance of the Evidence”- A measure of proof that a reasonable person would accept as “more likely than not” that a fact is true or an incident occurred

WRITTEN
DETERMINATION
DECISION



WRITTEN DETERMINATION



Allegations that potentially constituted sexual harassment



Findings of fact supporting the determination



Description of the procedural steps taken since receipt of formal complaint (notifications to the parties, interviews, site visits, methods used to gather evidence)



Conclusions regarding the application of the BOE's code of conduct to the facts

WRITTEN DETERMINATION



Determination of responsibility as to each allegation and rationale for the result



Any discipline sanction imposed



Whether remedies will be provided to the Complainant



The BOE's procedures and bases for appeal



CONSEQUENCES

- If a determination of responsibility for sexual harassment is made, District will provide remedies to the complainant designed to restore or preserve equal access to the District's education program or activity
- Consequences for violations may have educational, restorative, rehabilitative and/or punitive components
- Conduct constituting sexual harassment or related retaliation will be subject to discipline

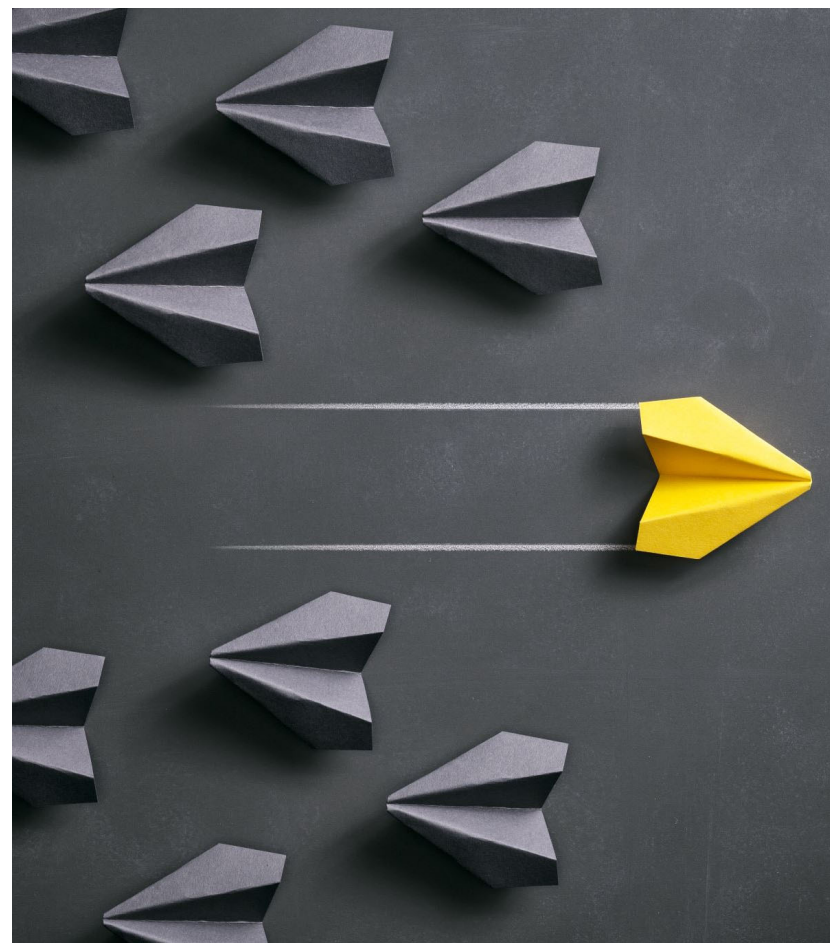
RELEASE OF
WRITTEN
DETERMINATION

Must be provided to the parties
simultaneously

Must be done as one collective
determination, cannot be in parts

DECISION MAKER ON APPEAL

Decision maker
on appeal must
be different than
original decision
maker



Procedural irregularity that affected outcome

New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal and that would have affected the outcome

Conflict of interest or bias

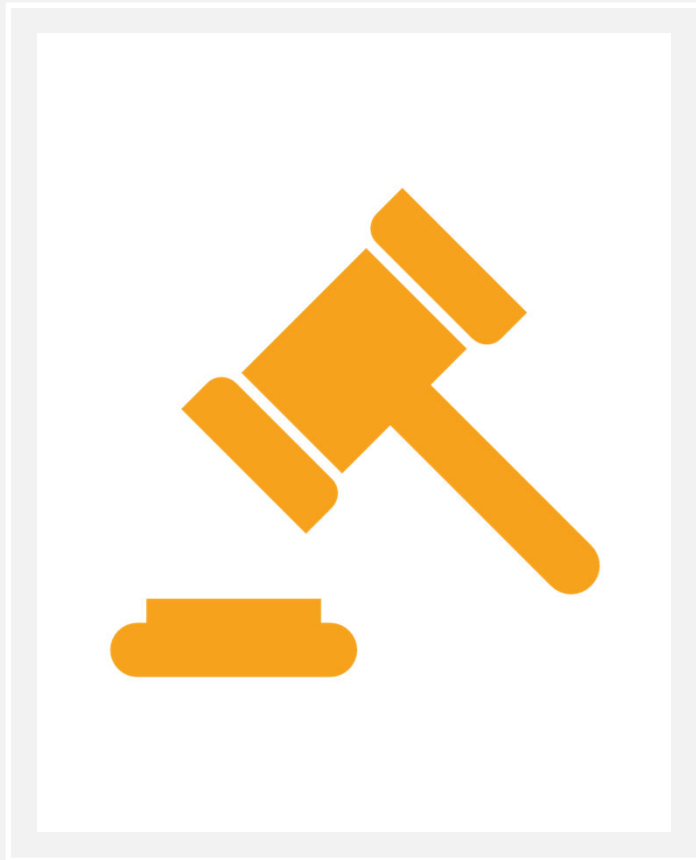
BASIS FOR APPEAL

TIMELY APPEAL

- Any party can appeal the determination of responsibility (or dismissal)
- Appeals shall be to the Title IX Coordinator within five (5) days of a determination of responsibility.
- If an appeal is not timely submitted, the determination of responsibility or the dismissal of a formal complaint (or any allegation therein) becomes final

WRITTEN STATEMENTS ON APPEAL

- Upon receipt of an appeal, the Title IX Coordinator shall provide written notice of the appeal to the complainant and the respondent.
- The Parties may submit written statements in support of or in challenge of the appeal to the designated decision-maker on appeal.
- Both the complainant and the respondent are limited on appeal to submission of only written statements. - no live or oral testimony.



DOCUMENTS REVIEWED

- Appeal documents, determination of responsibility, and any written statement submitted by the complainant and the respondent.

DETERMINATION ON APPEAL

Decision maker on appeal will issue a written decision and the reason for the decision on appeal.

Result on appeal will be given to both parties at the same time.

**WHAT ARE THE POSSIBLE
RESULTS ON APPEAL?**

QUESTIONS