

**TITLE IX TRAINING FOR
DECISION MAKERS**

Three Rivers College



AGENDA

- Definitions
- Decision-Maker on Dismissal
- Prior to Live Hearing
- Live Hearing
- Determination of Responsibility
- Decision-Maker on Appeal

DEFINITIONS

THREE RIVERS COLLEGE POLICY

Three Rivers College is committed to providing equal opportunity in all areas of education, recruiting, hiring, retention, promotion, and contracted service. The college further commits itself to the policy that there shall be no unlawful discrimination of race, color, religion, sexual orientation, disability, age, gender, or national origin.

THREE RIVERS COLLEGE POLICY

The College's equal opportunity policy extends to prohibitions against unlawful harassment of students or employees relating to the individual's race, color, religion, disability, age, sex, or national origin. This prohibition against harassment includes, but is not limited to, disparaging comments, written materials, physical assaults, sexual harassment, verbal threats, and offensive pranks.



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 college 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 college 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
 - 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 college.

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

OVERVIEW AFTER FORMAL COMPLAINT

Notices

Dismissal

Consolidation

Investigative Report

Exchange of Questions and Hearing

Determination Regarding Responsibility

MANDATORY
DISMISSAL

- If the conduct alleged would not constitute sexual harassment even if proved
- Did not occur in college'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 college from gathering evidence

APPEALING A DISMISSAL



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



Decision Maker hears the appeal.

PRIOR TO LIVE
HEARING

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 another decision-maker)

03

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

ELEMENTS

EQUITABLE TREATMENT

OBJECTIVE EVALUATION OF EVIDENCE

NO CONFLICT OF INTEREST OR BIAS

PRESUMPTION OF NOT RESPONSIBLE

PROMPT TIME FRAMES

BURDEN OF PROOF ON COLLEGE

BEFORE HEARING

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
- 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

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

LIVE HEARING

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



PURPOSE

RULES OF DECORUM

- A college may adopt rules of order or decorum to forbid badgering a witness
- May deem repetition of the same question to be irrelevant
- Can determine the time and length of breaks

MAJOR ROLE OF
DECISION-MAKER
IN HEARING

- Determine relevancy of evidence presented during hearing
- Determine relevancy of questions immediately before a party or witness answers

OVERVIEW OF HEARING

Plan & Organize

- Think through scope and order of possible relevant questions

Purpose

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

Role

- Decision-Maker rules on the relevancy of questions in live time

- Provide the parties with the same opportunity to have others present during the hearing
- Provide written notice to a party who is invited or expected to participate
- Provide the parties an equal opportunity to inspect and review any evidence
- Provide the parties an equal opportunity to present witnesses



EQUITABLE
TREATMENT

- Cross-examination must be done by an advisor, not the parties themselves
- Colleges must provide a party with an advisor if the party appears at the hearing without one free of charge
- Advisor may be an attorney



ADVISORS

CROSS EXAMINATION PRINCIPLES

- Must be conducted directly, orally, and in real time by the parties' advisors
- Can never be done by a party personally
- Only relevant questions may be asked

CROSS EXAMINATION VIA TECHNOLOGY

- At the request of a party, the college must allow the live hearing to occur with the parties located in separate rooms via technology
- The decision maker and parties must be able to simultaneously see and hear the party or witness answering questions
- College has discretion to allow all participants to appear at the live hearing virtually

RECORDING OR TRANSCRIPT

- Colleges must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and view

RELEVANCY



Parties' advisors 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



Also applies to questions in Exchange of Questions



RELEVANCY

- It has a tenancy 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

- The Decision Maker is required to make relevance determination in real time during the hearing

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

PROHIBITED EVIDENCE

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

DISCRETION

- A college cannot adopt rules excluding certain types of relevant evidence (e.g., lie detector test or rape kits)
- A college cannot adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence

- Colleges can work with witnesses regarding scheduling of a hearing and the ability to permit witnesses to testify remotely
- Colleges cannot retaliate against a party or witness for participating or not participating
- Witnesses cannot be compelled to appear at a hearing
- Parties must have an equal opportunity to present witnesses
- Both parties face the same limitations inherent in a lack of subpoena power



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 cross-examination
- “Submit to Cross-Examination” means *answering* those questions that are relevant
- If a party or witness was not called by a party’s advisor to be cross-examined, 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 be cross-examined



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, SANE 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 cross-examination.

WEIGHING THE EVIDENCE

- Colleges may decide how relevant evidence must be evaluated for weight or credibility by a recipient's Decision-Maker, and colleges have discretion to adopt and apply rules in that regard.
- The rules must apply equally to both parties
- This is not the same as determining admissibility. Colleges cannot adopt their own rules on admissibility.
- Any rules adopted must be publically available in college's training material

- Three Rivers College follows the Preponderance of the Evidence Standard
- The burden of proof is met when a reasonable person would accept as “more likely than not” that a fact is true or an incident occurred



STANDARD
OF
EVIDENCE



SANCTIONS

- Colleges can divide the hearings between a “responsibility” phase and a “sanctions” phase, and have different Decision-Makers for each phases

**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 college'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 college's procedures and bases for appeal



CONSEQUENCES

- If a determination of responsibility for sexual harassment is made, college will provide remedies to the complainant designed to restore or preserve equal access to the college'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

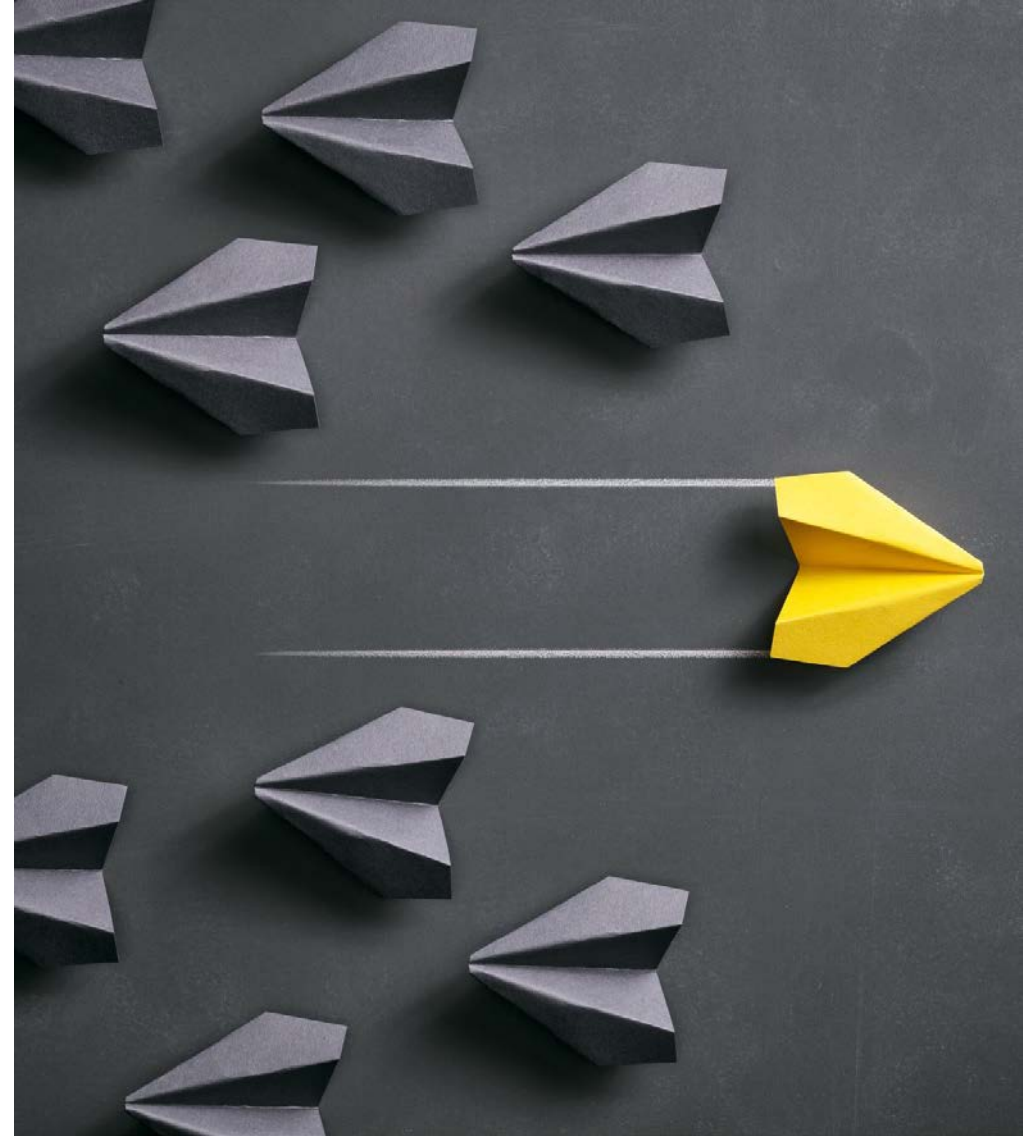
Must be provided to the parties
simultaneously

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

Both the determination of responsibility and
the determination of sanctions must be
included in the same written determination

APPEALS

Decision maker
on appeal must
be different than
original decision
maker



BASIS FOR APPEAL



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

TIMELY APPEAL

- Any party can appeal the determination of responsibility (or dismissal)
- Appeals for Three Rivers College shall be to the Title IX Coordinator within three (3) 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 statements 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?**



FINALITY

- The determination of responsibility becomes final either on the date that the parties receive the result of the appeals or the date on which an appeal can no longer be considered timely

QUESTIONS