TITLE IX TRAINING FOR INVESTIGATORS & FACILITATORS

AGENDA

- Definitions
- Reminders
- Investigation Basics
- Investigation Process
- Collection of Evidence
- Investigative Report
- Informal Resolutions

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

SEVERE, PERVASIVE & OBJECTIVELY OFFENSIVE

- Frequency
- Severity
- Context
- Physically threatening or humiliating
- Impact on access to educational program or activity

HARASSMENT SITUATIONS

- Between students, between employees, between student and employee
- Between different or same genders
- Involving third-party (visitor, vendor)
- Switch from welcomed to unwelcomed
- Welcomed by one person but not another

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

REMINDERS

RESPONSE OF DISTRICT

- Must be prompt
- Must not be "deliberately indifferent"
- "Deliberately Indifferent" means clearly unreasonable in light of the known circumstances

ACTUAL KNOWLEDGE

- "Actual knowledge" is notice of sexual harassment or allegations of sexual harassment to any district employee
- Any person may report sexual discrimination (alleged victim or any third party)
- May report to Title IX Coordinator in person, by mail, phone, or email
- District must respond promptly

SUPPORTIVE MEASURES

- Available before or after a formal complaint or when no complaint has been filed
- Discuss availability of supportive measures, with or without the filing of a formal complaint
- Explain the process for filing a formal complaint
- Record any supportive measures taken, or why supportive measures were not taken

INVESTIGATION BASICS

ELEMENTS



EQUITABLE TREATMENT



OBJECTIVE EVALUATION OF EVIDENCE



NO CONFLICT OF INTEREST OR BIAS



PRESUMPTION OF NOT RESPONSIBLE



PROMPT TIME FRAMES

WHO SHOULD INVESTIGATE

- Determined by Title IX Coordinator
- Investigator must be unbiased and without conflict of interest to both complainant and respondent
- Consider outside investigator if conflict of interest (e.g., if complaint against Superintendent)

PROMPT & SERIOUS

- Investigate efficiently and effectively
- Take allegations seriously
- Do not refuse investigation because of delayed timing of complaint

REQUIREMENTS

- Ensure that the burden of proof and the burden of gathering evidence rest on the school district and not on the parties, except certain records
- Provide an equal opportunity for parties to present witnesses and evidence
- Not restrict the ability of either party to discuss the allegations or gather and present evidence

INTERVIEW GUIDELINES

- Face-to-face
- Relaxed, respectful atmosphere
- Brief introduction to explain purpose of interview
- Obtain signed and dated written statement
- Open-ended v. closed questions
- Identify specifics (e.g., dates, locations, people)
- Take thorough notes (possibly third person in room)
- Do not promise complete confidentiality
- Don’t offer your opinion

INVESTIGATION PROCESS

OVERVIEW AFTER FORMAL COMPLAINT

Notices | Dismissal | Consolidation

Collection of Evidence

Review of Evidence by Parties

Investigative Report

FORMAL COMPLAINT

- Written & Signed by Complainant
  - Complainant must be participating in the education program or activity at time of filing
  - 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

WRITTEN NOTICE

- Notice of the school districts' grievance process, including informal resolution process
- Notice of the allegations of sexual harassment (parties, date, location)
- Statement that Respondent is presumed not responsible
- Notice of right to an advisor
- Notice of right inspect and review evidence
- Notice of prohibition on knowingly making false statements or submitting false information

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

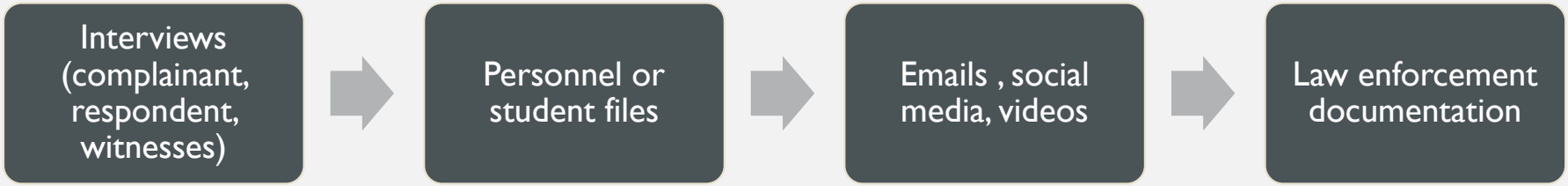
- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
- The Respondent is no longer enrolled or employed
- The specific circumstances prevent the school district from gathering evidence

CONSOLIDATE

- Can consolidate formal complaints if the allegations arise out of the "same fact or circumstances" AND:
  - Allegations against more than one Respondent, or
  - Allegations by more than one Complainant against one or more Respondents, or
  - By one party against the other party,

COLLECTION OF EVIDENCE

POSSIBLE EVIDENCE



RELEVANCE

- 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

PROHIBITION

- No questions 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 privilege information or records unless privilege is waived by the party

REMINDER

- Parties are not restricted in discussing allegations with others
- Parties have right to gather evidence favorable to their position
- No party can intimidate, harass, retaliate
- Monitor situation during investigation

BEFORE INTERVIEWS

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 Documents

- Reminder of potentially independent facts and relevant information

EQUITABLE TREATMENT & NOTICES

- Provide the parties with the same opportunity to have others present during the proceeding
- 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

OVERVIEW OF INTERVIEWS

Plan & Organize

- Think through scope and order of possible interviews

Purpose

- Used to discover information, corroborate facts, or determine credibility

Questions

- Sometimes beneficial to draft out specific questions or topics to address in each interview

OVERVIEW OF INTERVIEWS

Complainant	• Conduct a thorough interview (even if multiple times) to gain complete understanding of specific allegations
Witnesses	• Identified by complainant or respondent, or discovered during investigation
Respondent	• Timing of interview & discovery of relevant facts

INTERVIEWS OF COMPLAINANT & RESPONDENT

- Listen
- Try to accept confusing emotions
- Recognize possibility of secondary trauma
- Avoid judgment
- Get specifics
- Focus on inculpatory and exculpatory

ADVISOR

- Parties may have an advisor present during interviews
- Advisor receives notices and reports
- Advisor may be an attorney
- Advisor does not engage in argument/interrogation during interviews
- School district not required to provide advisor

INVESTIGATIVE REPORT

SHARING OF EVIDENCE

- Before the investigative report is complete, provide evidence to both complainant and respondent (and their advisors) for review
- Allow the parties 10 days to submit a written response
- Consider the parties' response prior to completion of report; more investigation may be needed

INCULPATORY & EXCULPATORY

- Must share inculpatory and exculpatory evidence, even if District does not intend to rely on it in reaching a determination on responsibility

- Evidence that is favorable to the Complaint and shows the Respondent is responsible v. Evidence that is favorable or exonerates the Respondent

INVESTIGATIVE REPORT

- School districts must create an investigative report that "fairly summarizes relevant evidence"
- Send to each party the investigative report 10 days prior to a determination of responsibility
- Allow parties to review and respond to investigative report
- Exchange of questions on behalf of 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

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INFORMAL RESOLUTIONS

VOLUNTARY PROCESS

- Informal Resolution is a voluntary process that the Parties can engage in after a formal complaint of sexual harassments has been filed
- Aim is to resolve the formal complaint without formal investigative process
- Informal Resolutions can occur within the District or with use of a 3rd party mediator, attorney, or other dispute resolution process
- Title IX Coordinator can facilitate an Informal Resolution

AVAILABILITY



Only available when a formal complaint is filed



Not available for complaints alleging an employee harassed a student

TIMING

- After filing of a formal complaint (not available outside of grievance process)
- Before Determination of Responsibility
- Participating in Informal Resolution process tolls the investigation

- Need written, voluntary consent
  - Notice of allegations
  - Requirements of the process
  - Right to withdraw
- Document beginning of resolution process
- Document agreed-upon resolution
- Parent signatures, where appropriate



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QUESTIONS