

# TITLE IX TRAINING FOR DECISION MAKERS

SUMMER 2023

## 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

## ELEMENTS

- Equitable Treatment
- Objective Evaluation Of Evidence
- No Conflict Of Interest Or Bias
- Presumption Of Not Responsible
- Prompt Time Frames

## 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

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

## 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.

## HOW TO HANDLE AN APPEAL FROM A DISMISSAL



Mandatory Appeals



Discretionary Appeals

## WHO SHOULD BE A DECISION MAKER

- Decision-Maker must be unbiased and without conflict of interest to both complainant and respondent
- Consider outside decision-maker if conflict of interest (e.g., if complaint against Superintendent)
- 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

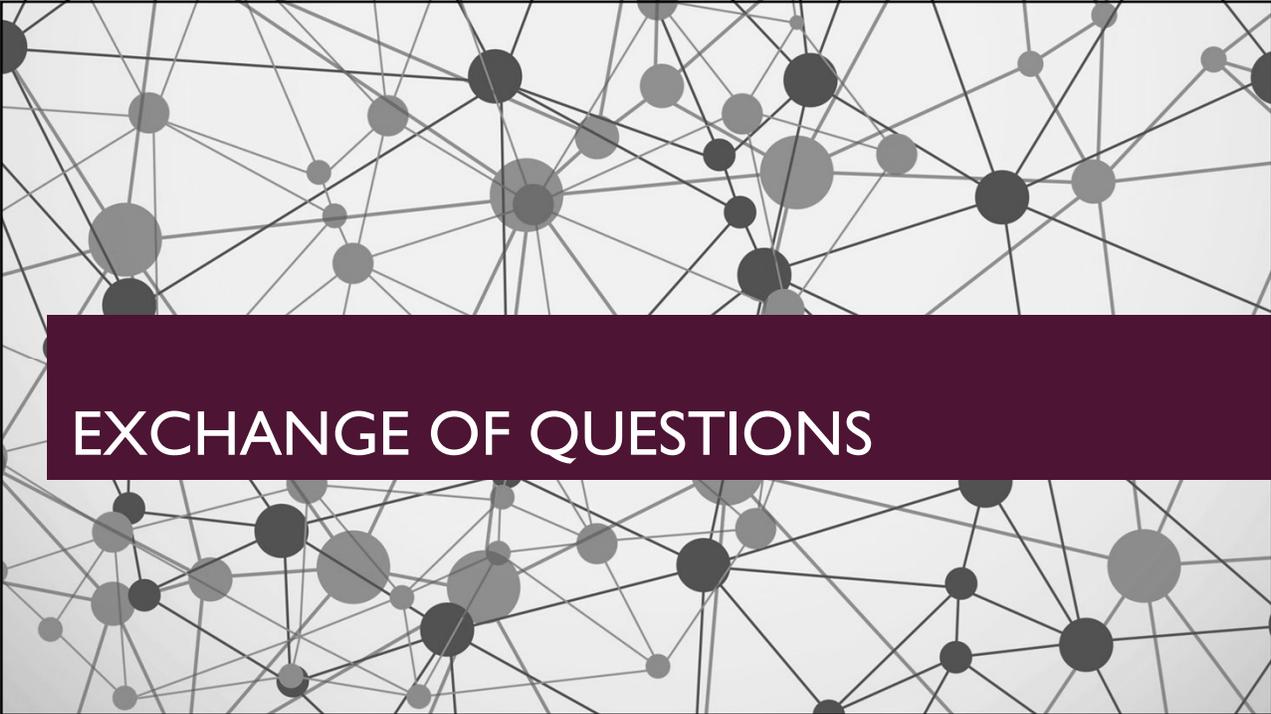
- Reminder of potentially independent facts and relevant information

## 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

## WITNESSES

- 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



## DETERMINATION REGARDING RESPONSIBILITY

## 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

## 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 DIRECT APPEAL

---

DECISION MAKER  
ON APPEAL MUST  
BE DIFFERENT  
THAN ORIGINAL  
DECISION MAKER

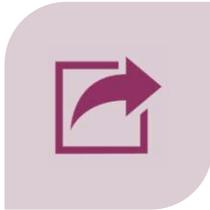


---

## BASIS FOR APPEAL

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



THANK YOU