

Title IX Training

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Agenda

History

Definitions

Response to Notice or Report

Response to Formal Complaint

Investigative Process

Decision & Appeal

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Definition of Title IX Sexual Harassment

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Title IX 2020 Sexual Harassment

Quid Pro Quo
Harassment

Hostile
Environment

Harassment under
Violence Against
Women Act &
Clery Act

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Quid Pro Quo Harassment

- ▶ An employee conditioning an aid, service, or benefit of the 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

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Hostile Environment

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

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**Harassment
under VAWA
& Clery Act**

- Sexual Assault**
- Dating Violence**
- Domestic Violence**
- Stalking**

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Sexual Assault

Rape	Sodomy	Sexual Assault with Object
Fondling	Incest	Statutory Rape

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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

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Domestic Violence

Felony or misdemeanor 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

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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

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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

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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, or denial of participation

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Response to Report of Sexual Harassment

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What is the
difference?

Report

Formal Written
Complaint

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Report of
Actual
Knowledge

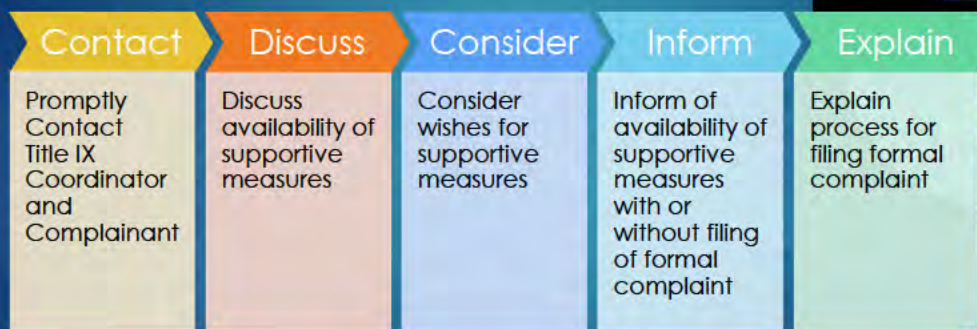
"Actual knowledge" is notice of sexual harassment or allegations of sexual harassment to any district employee

Any person may REPROT sexual discrimination (alleged victim or any third party)

Report to Title IX Coordinator in person, by mail, phone, or email

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Response after a Report



Supportive measures

-  Available any time throughout process
-  Available with or without filing of a formal complaint
-  Non-punitive
-  Record any supportive measures taken or why supportive measures were not taken

EXAMPLES of Supportive Measures

COUNSELING

1

EXTENSION OF DEADLINES

2

MODIFICATION OF CLASS SCHEDULES

3

MUTUAL RESTRICTIONS ON CONTACT

4

EXCUSED LEAVE

More EXAMPLES of Supportive Measures

CHANGE SEAT ASSIGNMENTS

1

REASSIGN LOCKER

2

FLEX PERIOD

3

PARENT/TEACHER MEETINGS

4

CHECK-INS

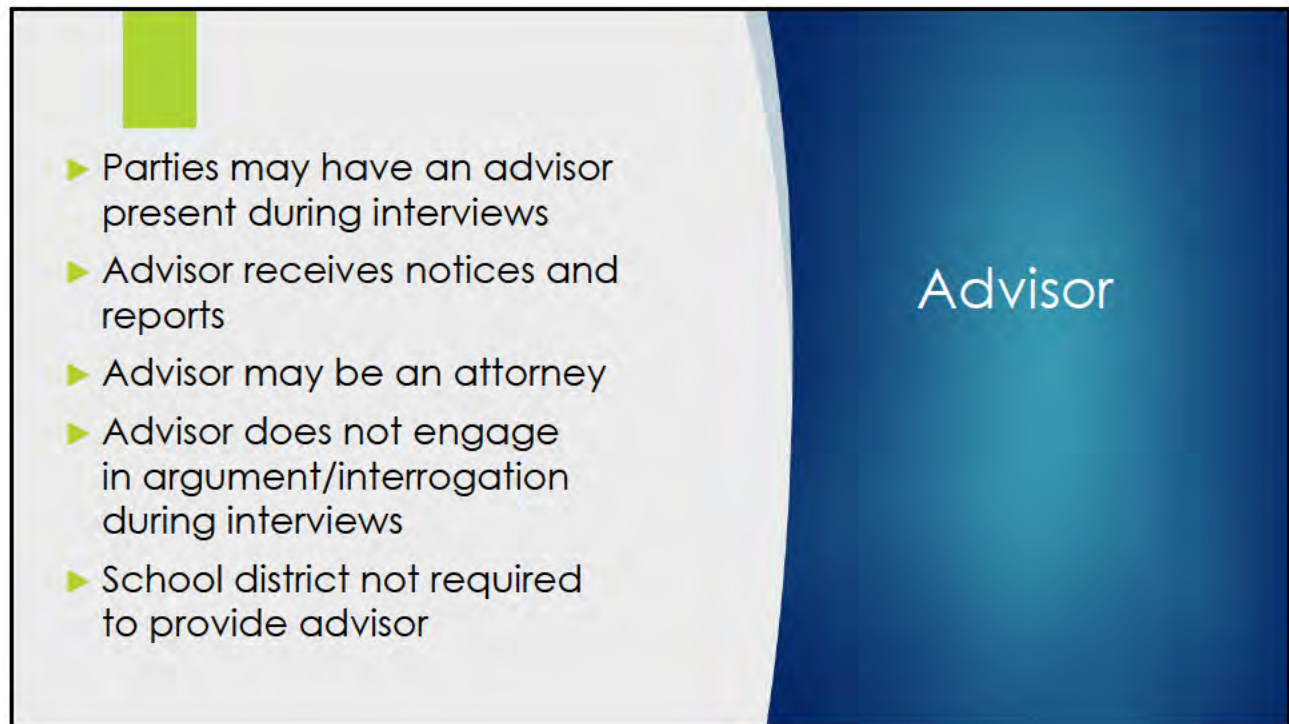
Response to Formal Complaint of Sexual Harassment

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FORMAL COMPLAINT

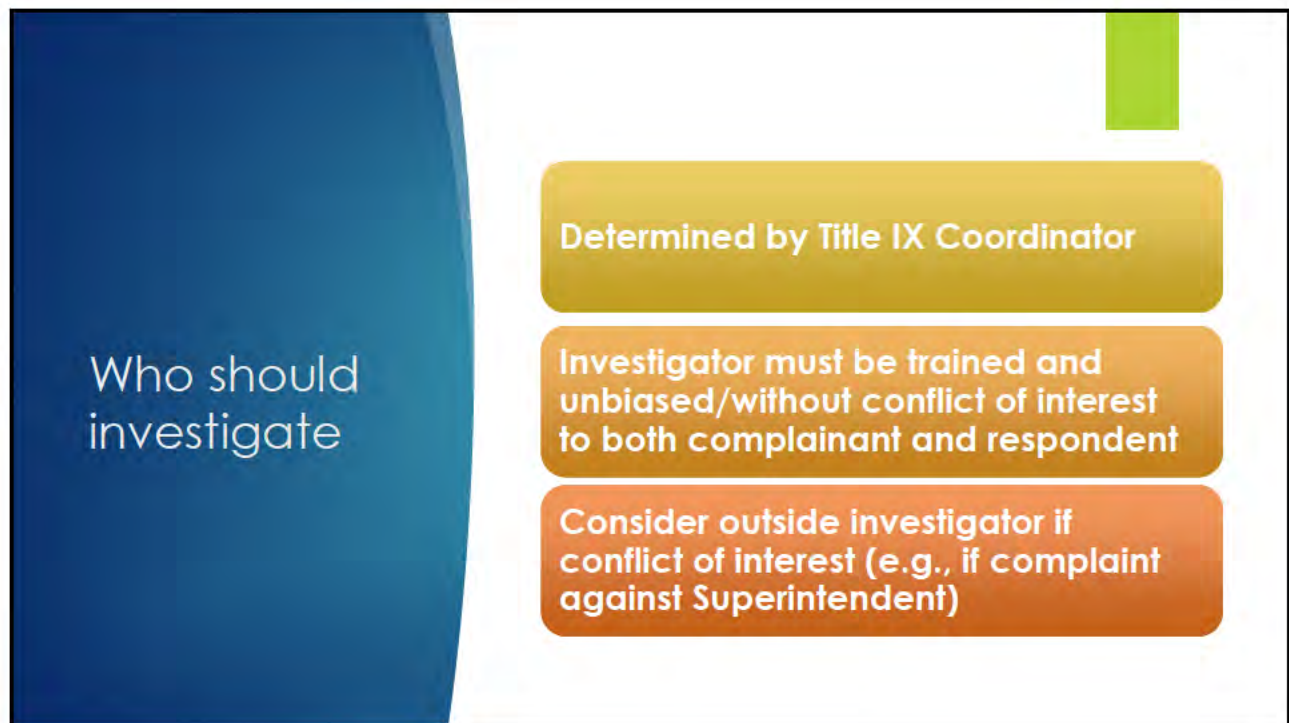
- ▶ Written & Signed by Complainant, Parent, Legal Guardian, or Title IX Coordinator
- ▶ No other third party can file formal complaint
- ▶ Description of allegation (date, location, witnesses)
- ▶ As practical, in Complainant's words

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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



Who should investigate

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

Investigation Process after a Formal Complaint is Filed

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Prompt & Serious

Investigate

Investigate efficiently and effectively

Take

Take allegations seriously

Do not refuse

Do not refuse investigation because of delayed timing

Overview of Process for Formal Complaint

Notices

Dismissal

Consolidation

Collection of Evidence

Review of Evidence by Parties

Investigative Report/Response/Exchange of Questions

Written Notice of Formal Complaint

Notice of district grievance process, including informal resolution process

Notice of allegations of sexual harassment (parties, date, location)

Statement that Respondent is presumed not responsible

Notice of right to an advisor

Notice of right to inspect and review evidence

Notice of prohibition on knowingly making false statements or submitting false information

Mandatory dismissal

- ▶ If 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

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

Collection of Evidence

Interview Guidelines



Possible Evidence



Relevance

- ▶ It has a tendency to make a fact more or less probable than it would be without evidence
- ▶ Fact is of consequence in determining action or conduct
- ▶ Relevant evidence goes towards proving whether fact of consequence to 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 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 party

Reminder

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

Sharing of Evidence



Before investigative report is complete, provide evidence to both complainant and respondent (and their advisors) for review



Allow parties 10 days to submit written response



Consider parties' response prior to completion of report; more investigation may be needed

Investigative Report

Investigative Report

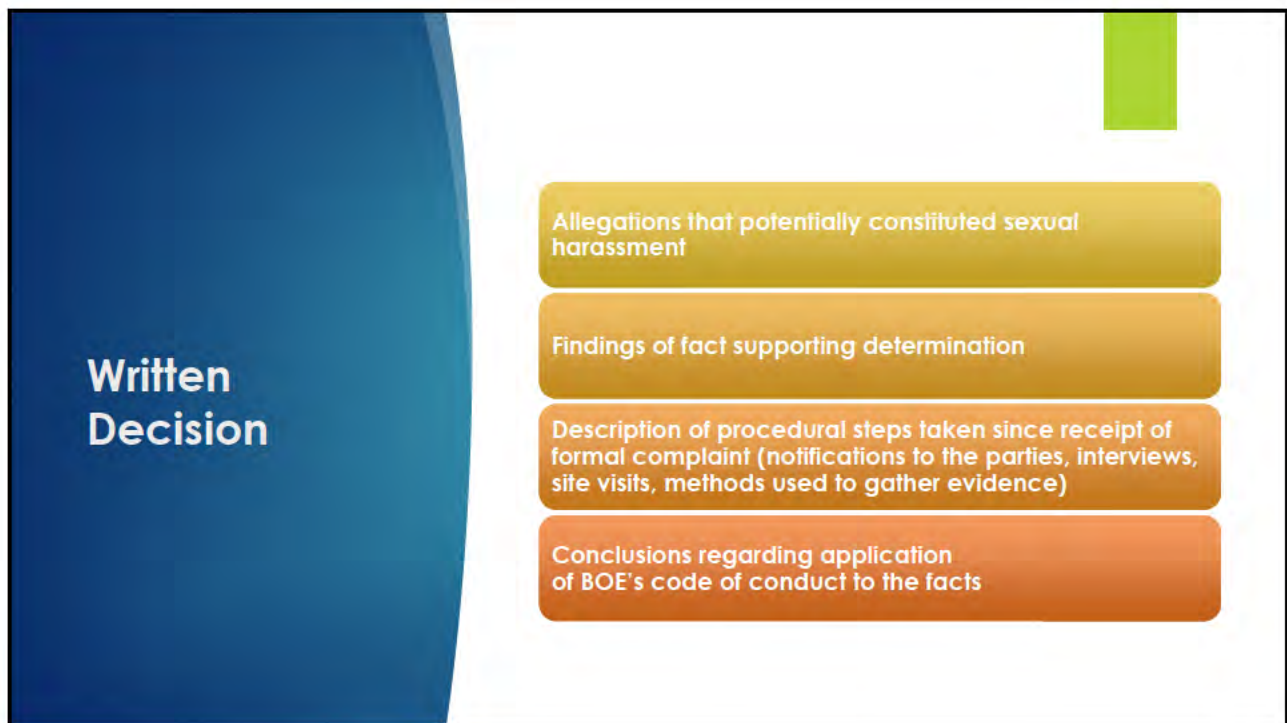
Create	School districts must create an investigative report that "fairly summarizes relevant evidence"
Send	Send to each party investigative report 10 days prior to a determination of responsibility
Allow	Allow parties to review and respond to investigative report
Exchange	Exchange of questions on behalf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

Exchange of Questions

Submission of Questions

- ▶ Decision Maker must afford each party opportunity to submit written, relevant questions that a party wants asked of any party or witness
- ▶ Must provide each party with answers
- ▶ Must allow for additional, limited follow-up questions from each party

Determination Regarding Responsibility



Written Decision

Determination of responsibility as to each allegation and rationale for result

Any discipline sanction imposed

Whether remedies will be provided to Complainant

BOE's procedures and bases for appeal

Decision Maker on Appeal

Basis for Appeal

- ▶ **Procedural Irregularity** that affected outcome
- ▶ **New Evidence** 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** that affected outcome

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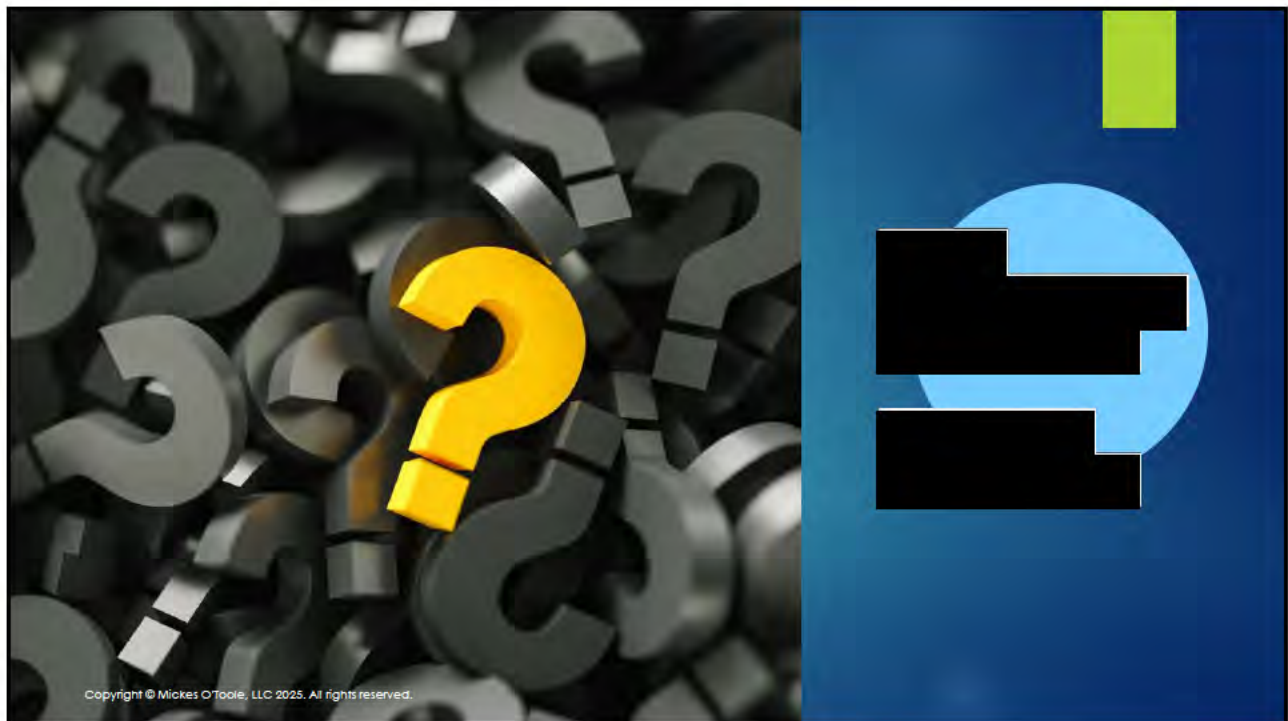
Determination on Appeal

Decision maker on appeal will issue written decision and reason for decision on appeal

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

Voluntary Process

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



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