

Title IX Investigator & Decision Maker Overview



Kenowa Hills Public Schools
Education inspired.



Oct. 25, 2022 - Ad Team Meeting

Learning Targets

Goal today: Awareness & Clarification

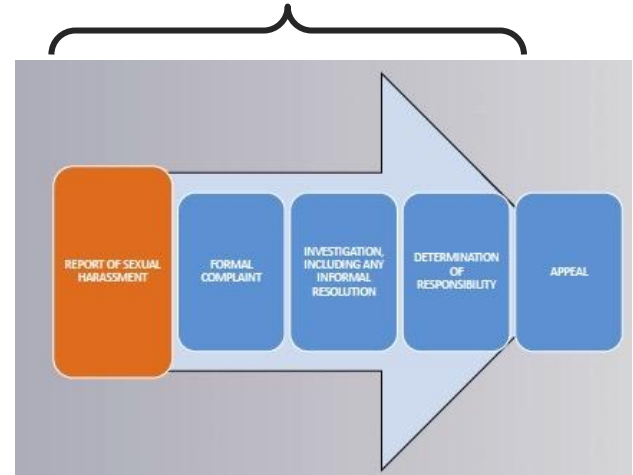
- **I can explain key Title IX terminology**
- **If assigned as an investigator, I can conduct an investigation with support**
- **If assigned as a decision-maker, I can make a determination of responsibility with support**



Review of Aug. 5 Content

- Key terminology and process changes
- Review of five stages model
 - Report of Sexual Harrassment
 - Formal Complaint
 - Investigation*
 - Determination of Responsibility*
 - Appeal
- Key points from first two stages

Goal: 60 days per
BoE Policy 2266



Kahoot!



New Terminology

- Alleged Victim → **Complainant**
- Alleged Perpetrator/Alleged Harasser
→ **Respondent**
- Complaint, Investigation, and Resolution
→ **Grievance Process**
- Educational Institution → **Recipient**
- Interim Measures → **Supportive Measures**



What is Sexual Harassment?

Conduct **on the basis** of sex that satisfies one or more of the following:

- Employee *quid pro quo*;
- Sexual assault, dating violence, domestic violence, stalking (definitions from Violence Against Women Act); and
- Hostile environment (new stricter definition)



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Hostile Environment

Unwelcome conduct determined by a reasonable person to be:

Old Definition

Severe, pervasive, or *persistent*, and to *interfere with or limit* a student's *ability to participate* in or benefit from school services, activities, or opportunities.

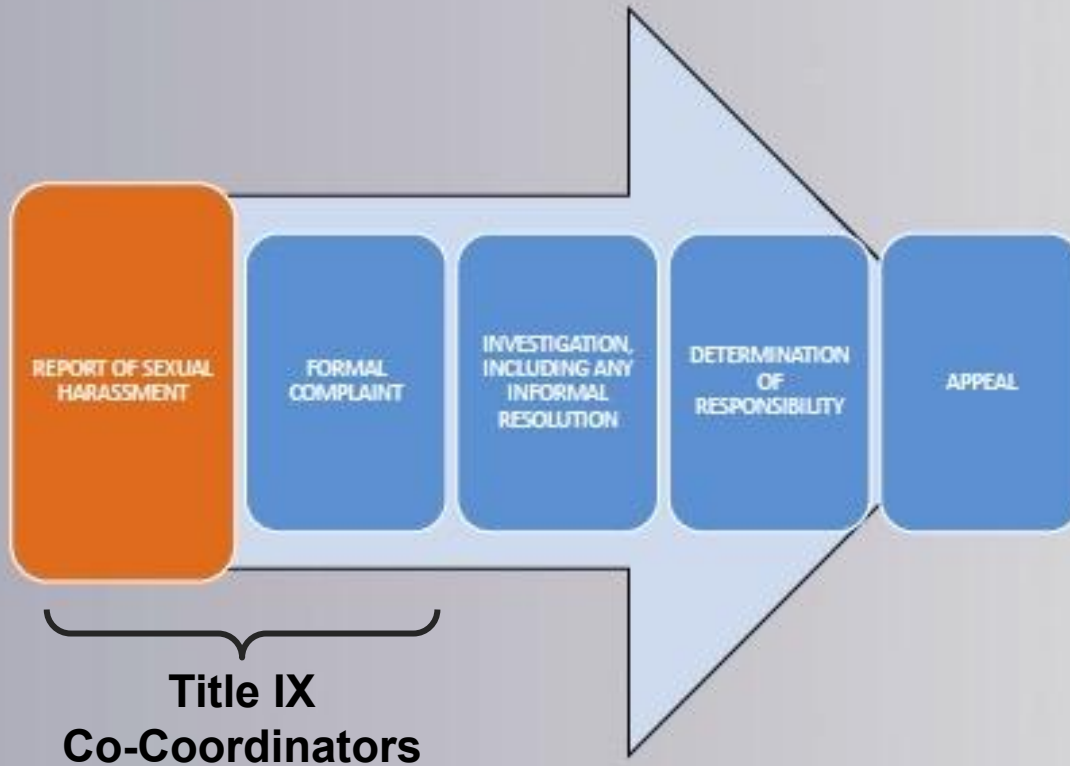
New Definition

To be so severe, pervasive, *and objectively offensive* that it *effectively denies* a person's *equal access* to the recipient's education program or activity.

SP&OO
= higher
standard



Title IX Grievance Process



Making a Report

- Any person can make a sexual harassment report
- Reports can be made verbally, in writing, or electronically at any time to any school employee or the Title IX Coordinator
- Anonymous reports are permissible
- Report of sexual harassment \neq Formal Complaint



Responding to Report



- Title IX Coordinator must, upon receipt of report:
 - Contact Complainant (alleged victim) to discuss “supportive measures”
 - Inform Complainant of “supportive measures” available
 - Explain process for filing Formal Complaint
- Failure to do the above = deliberate indifference



Supportive Measures

- Must be non-disciplinary, non-punitive, and individualized
- Offered as appropriate, as reasonably available, and without fee or charge to parties
- Available before, during, and after Formal Complaint is filed, or when no Formal Complaint is filed
- Designed to restore or preserve equal access to education program or activity without “unreasonably” burdening other party



Conducting Title IX Investigations

- Explore specific issues of concern and suggestions for Investigators
 - Legal concerns
 - Rights of all parties
 - Documentation guidance



Key Title IX Roles

- Title IX Coordinator: oversees school's Title IX compliance and is a school employee
- Investigator: Conducts investigation and issues investigation report
- Decision-Maker: Makes determination of responsibility
- Appeals Officer: Hears appeals
- Informal Resolution Facilitator: assists parties in reaching informal resolution, if applicable
- Investigator, Informal Resolution Facilitator, Decision-Maker, and Appeals Officer must be different persons and appropriately trained
- Title IX Coordinator may also serve as investigator or IRF



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General Considerations

- School has burden of proof and burden to “gather evidence sufficient to reach a determination of responsibility”
- Parties must be treated equally
- Standard of evidence must be same for all complaints (employee and student)
- Reasonably prompt timeline
- Respondent presumed not responsible
- Consult your policy for specific procedures!



Initial Steps

- If students are involved - contact parents/guardians
- Consider Mandatory Reporting Requirement & report to law enforcement
- Don't promise confidentiality!
- Secure evidence
 - Physical
 - Documentary
 - Electronic & Video

Co-Coordinator
will have
already
contacted*



CAUTION: **Photos and Videos of Students**



- If allegation involves sexting or other photos or videos of students that could possibly be considered child pornography,
CALL LAW ENFORCEMENT
- Do not view, save, copy, disseminate, handle or maintain photos and videos of students that could be considered child pornography
- Legal exposure for employee & school



Law Enforcement Involvement



- Does *not* relieve school of Title IX obligation to investigate
- Do *not* use police involvement as excuse not to investigate
- Do *not* wait for criminal conclusion
- Can **briefly** delay Title IX investigation for concurrent criminal investigation



OCR: Law Enforcement

“Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation.”

LaPorte Comm Sch Corp (OCR, 2015)



**Key is to
maintain
separate
investigation
from legal
efforts...
Why???**



Advisors



- Parties may be accompanied by an advisor of their choice in any meeting or grievance process proceeding
- Advisors can be parents, staff members, attorneys, friends, or other persons -- the party is in the best position to decide who serves in this role
- School may not restrict who serves as advisor



Investigation Tips

- Create investigation plan based on what you know from Formal Complaint
- Interview Complainant first to gather more information about the allegations
- Use information from Complainant's interview to determine who to interview next and what evidence to secure
- Conduct site visits, if applicable
- Secure evidence (physical, documentary, electronic, *i.e.*, video, digital, social media)
- Usually interview Respondent last



Notice of Interviews

- Must provide date/time/location, participants, and purpose of all hearings (if any), investigative interviews, and meetings, to party whose participation is invited or expected, in writing
- Notice must be given a sufficient time in advance so that a party may prepare for interview



Establish Ground Rules

- May set ground rules for interviews so long as rules apply equally to both parties
- Examples:
 - Be honest and forthright
 - Abusive, disruptive behavior or language will not be tolerated
 - Advisor may not interrupt the interview but will be given an opportunity to provide additional information at end of interview
- Cannot restrict parties from discussing allegations or gathering/presenting relevant evidence



Questions?



Do's and Don'ts

- DO: Give parties equal opportunity to present witnesses, evidence
- DON'T: Use questions or evidence that constitute, or seek disclosure of, legally-privileged information
- DON'T: access, consider, disclose, or otherwise use a party's medical records, including mental health records without voluntary, written consent to do so



Notice of Additional Allegations



- If investigation reveals additional allegations not in original notice to parties and investigator decides to investigate those allegations, must provide notice of additional allegations to both parties
- Additional notice must:
 - Identify date notice of the additional allegations given to the parties, and
 - Describe additional allegations
- If additional allegations are made or discovered and will **not** be investigated, investigator must state basis for decision not to investigate in investigation report

~ May call for additional supportive measures



Evidence Review




- Before the investigation report is completed, the investigator must send (in electronic or hard copy) the parties and their advisors all evidence obtained in the investigation so that they can respond to the evidence before the investigator finalizes the report
- Parties must be given **at least 10 days** to submit a written response to the evidence
- Investigator must consider any responses received before completing the report



What Evidence?

- **ALL** evidence, including:
 - Evidence upon which the District does not intend to rely in reaching a determination regarding responsibility; and
 - Inculpatory or exculpatory evidence obtained from any source.
- Consider reminder to parties that redisclosure of evidence outside of Title IX grievance process is prohibited



**Inculpatory =
evidence that
may show fault
or blame**

**Exculpatory =
evidence that
may clear or
excuse**



Final Tips

- Report must fairly summarize relevant evidence
- Use witness quotes, specific dates, times, and locations in the report when possible
- Check for correct spelling of names
- Cite other applicable Board policies, code of conduct provisions, RSC Sections
- Ensure report is clear, concise, and complete
- Assume either party may release report



Transmittal of Final Report



- Investigator should send (electronic or hard copy) investigation report to the parties and any advisors for review and response unless your policy provides a different process
- Report also should be sent to:
 - Title IX Coordinator
 - Decision-Maker
- Receipt of the report by the parties starts the Decision-Maker's timelines



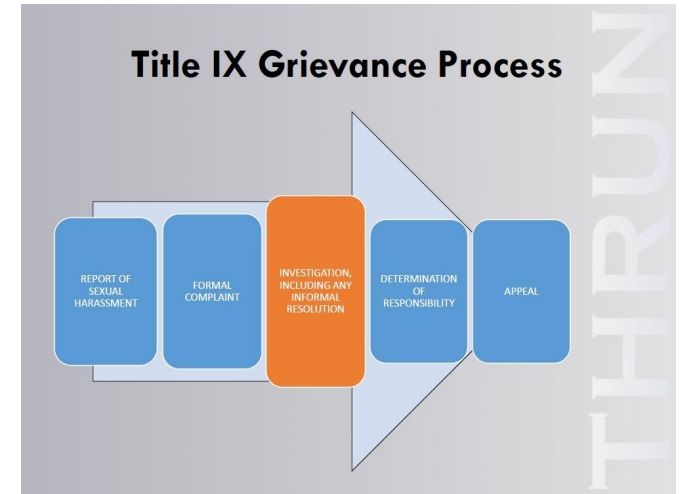
Questions?



Conducting Title IX Investigations

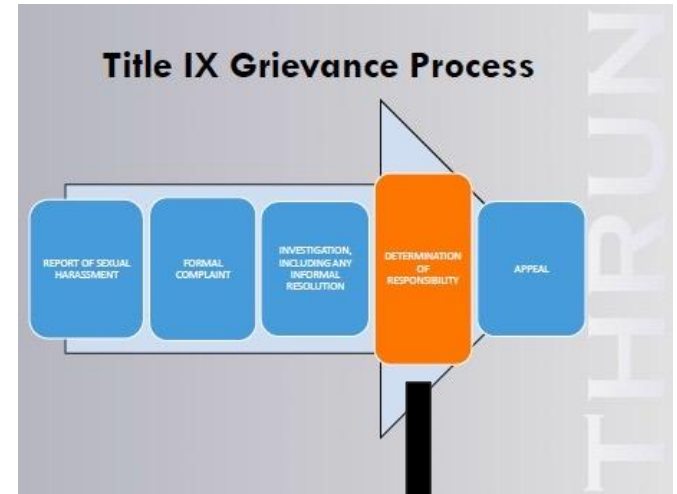
- **Review process templates**
 - Formal Complaint & Investigation Form
 - Investigation Report Outline

- **Link to Title IX Process Folders**



Determining Responsibility

- Explore specific issues of concern and suggestions for Decision Makers
 - Legal concerns
 - Rights of all parties
 - Documentation guidance



**Assigned
Decision-Maker**



Decision-Maker's Role



- Has independent obligation to:
 - Evaluate relevance of available evidence including evidence summarized in investigation report, and
 - Consider all relevant evidence
- Make determination of responsibility



Right to Submit Questions

After the parties receive the investigation report but before the Decision-Maker makes the responsibility determination, the Decision-Maker must:

- Allow each party **the opportunity** to submit written, relevant questions for any party or witness to answer;
- Provide each party the answers to the questions; and
- Allow for limited follow-up questions from each party
- Explain to party submitting question basis for excluding any questions



Evidence Standard

- Decision-Maker makes finding(s) based on policy's standard of evidence or proof
 - District may select the standard, but must use same standard for *all* Title IX sexual harassment investigations
 - Recommend: “preponderance of evidence”
 - More likely than not
 - 51%



**Preponderance
of Evidence per
BoE Policy 2266**





Confidentiality

- Schools must keep confidential the identity of reporter, person who files Formal Complaint, and the parties and witnesses except as permitted or required by law or to carry out any provision of Title IX
- Supportive measures must also be kept confidential



Record Keeping



- Records relating to Title IX reports must be maintained for at least seven years
 - Applies to investigation records, disciplinary sanctions, remedies, appeals, and records of any action taken (*i.e.* supportive measures)
- Must retain any materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeals Officers, and Informal Resolution Facilitator
 - This PowerPoint!



Questions?



Next Steps & Actions

- **All participants today = Complete individual assessment on today's content to inform next steps (utilizing slides for reference)**
- **Co-Coordinator: Develop sample investigation and decision making report (goal = model appropriate report writing)**

