

Title IX Decision-Maker Training for K-12 Districts & COEs

Title IX Decision-Maker Training
November 6, 2023 – 9:00 a.m.

SESSION ONE

PRESENTED BY:

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Agenda

- Definitions for Training
- Review Title IX Decision-Maker Role
- Review Final Investigative Report
- Facilitate Written Questions for the Parties
- Review Hypothetical “Cross-Examination” Questions
- Preparation for Session 2



Definitions for Training

- Complainant/Respondent
- Parties
- Witness
- Advisor
- Grievance Process
- Final Investigative Report
- Written Cross-Examination Questions
- Determination of Responsibility

Title IX Team: Decision-Maker

Decision-Maker Role:



- Reviews Final Investigative Report with “fresh eyes” to see if information is missing or incomplete
- Facilitates relevant written questions & “cross-examination” from parties for parties and witnesses; must be trained on issues of relevance
- Reviews all evidence, identifies the disputed issues, and weighs the evidence

Title IX Team: Decision-Maker

Decision-Maker Role:



- Makes conclusions about whether alleged conduct occurred and determines responsibility
- Prepares written determination with findings of fact, policy conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant
- Provides written determination and appeal rights to the parties/advisors simultaneously

REVIEW FINAL INVESTIGATIVE REPORT

Review Final Investigative Report

- **Review your Title IX Board Policies and/or Administrative Regulations**

- Look at the policies and regulations cited in the Final Investigative Report and the Notice of Allegations
- Review your role as Decision-Maker, and determine the scope of your decision
 - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, fondling, stalking, and/or dating violence, etc. under the Title IX administrative regulations? (Federal Law)
 - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, and/or sexual battery, etc. under the Board Policies prohibiting sexual harassment? (State Law)

Review Final Investigative Report

- **Read Final Investigative Report and Review Attachments**
 - Take notes, highlight important areas, and create a list of questions (if any)
- **Calendar timelines to accommodate these phases:**
 - Time to ask questions of Parties and exchange written “cross examination” questions between Parties or from the Parties to witnesses
 - Time to analyze the evidence, write the decision, and allow Title IX Coordinator, administrator or legal advisor to review the decision for thoroughness and readability
 - Deliver written decision to the Complainant, Respondent, Advisors (if any), and Title IX Coordinator with notice of appeal rights
- **Plan and Schedule the Process with the Parties**
 - If needed, seek help from Title IX Coordinator to schedule and plan logistics

Discuss *Hypothetical* Final Investigative Report

- Review Table of Contents for Roadmap
- Read the Notice of Allegations and Formal Complaint
- Tips for what to look for in the Investigative Report
 - Note the steps taken in the Title IX complaint process ***for this matter*** because that information will likely be “copied” into your decision
 - Note where Complainant or others describe an ***impact on the educational environment*** (e.g., how did the matter affect Complainant’s access to or actual education?)
 - Note where Complainant or others describe the ***desired remedy*** (e.g., what result does the Complainant want from the formal complaint?)

Discuss *Hypothetical* Final Investigative Report

- Tips for what to look for in the Investigative Report, continued :
 - Note the evidence received from Complainant and Respondent
 - Pay attention to the **timing** of statements (e.g., What's in the NOA vs. the Formal Complaint? When did Respondent know of allegations?)
 - Pay attention to the **content** of statements (e.g., vague, offering too much or too little information, full or partial denial, conditional denial - "I would never...")
 - Pay attention to where the parties **disagree** about what happened
 - Pay attention to what makes one person more **credible** than another person
 - Credible: The person offers reasonable grounds for being believed
 - You must articulate your credibility observations in a deliberate, systematic, and objective process (e.g., look at corroboration; consistency/inconsistency; admissions against interest; plausibility; motive to lie/falsify, etc.)

FACILITATE WRITTEN QUESTIONS BETWEEN PARTIES OR FOR WITNESSES

Written Questions Between Parties

Before making a decision about responsibility, the Decision-Maker must facilitate a question process:

The Decision-Maker must afford *each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness*, provide each party with the answers, and allow for additional, limited follow-up questions from each party. (34 CFR 106.45(b)(6)(ii).)

Purposes for the questions may include:

- The opportunity for the parties to seek information that may shed light on someone's credibility
- The opportunity for the Decision-Maker to ask questions and observe the credibility of Complainant, Respondent and witnesses, since the Decision-Maker did not conduct the investigation

Written Questions Between Parties

Requirements for Questions

- Questions must be **relevant**
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are **not** relevant...
 - Unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - If the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- You must explain any decision to **exclude** a party's question as irrelevant

Written Questions Between Parties

Definition of Relevance

- Having significant and demonstrable bearing on the matter at hand
- Affording evidence tending to prove or disprove the matter at issue or under discussion
- Synonyms: applicable, material, pertinent
(*Merriam-Webster*)
- Legalistic definition of relevance:
 - That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters at issue between the parties.

(*Black's Law Dictionary, Sixth Edition*)

Written Questions Between Parties

Guidelines for Questions

- Questions should not be repetitive
 - Ask the party to ask another question intended to elicit different information
- Questions should be clear
 - Ask the party to clarify the question
- Avoid compound questions
 - Ask the party to separate the questions
- Avoid questions with difficult words
 - Ask the party to rephrase the question
- Avoid argumentative questions
 - Ask the party to rephrase the question

REVIEW HYPOTHETICAL “CROSS EXAMINATION” QUESTIONS

PREPARATION FOR SESSION 2

Discussion of Homework for Session 2

Hypothetical Investigative Report

- Weigh the evidence and determine by a preponderance of the evidence whether Respondent was flirty and/or friendly with Complainant before the August 21 incidents.
- If you find that Respondent was flirty, write factual findings to demonstrate the flirting.
- If you find the Respondent was friendly in a non-sexual way, write factual findings to demonstrate the non-sexual friendliness.
- Your factual findings should include who, what, where, when, why & how of what happened that was flirty and/or friendly.
- Explain why you made that finding; explain your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

Discussion of Homework

Hypothetical Investigative Report

- Review the evidence surrounding the touching of the knee and determine if the touch was based on “sex.”
- Review the evidence related to Respondent touching the Complainant’s groin area and determine whether that touching occurred.
- If you find that Respondent touched Complainant’s groin, determine (1) if the touch was sexual in nature **and** (2) if Complainant permitted the touch **and** (3) if the touch was for the purpose of sexual gratification.
- Write factual findings about the touching of the knee and whether or not the Respondent touched the Complainant’s groin for sexual gratification.
- Explain why you made that finding; what was your rationale.
- **GOAL:** We may disagree, but did you adequately explain your rationale?

Question & Answer Session

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Thank You

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