

# TITLE IX and INVESTIGATIVE TRAINING

Kirkwood School District  
August 4, 2021



# AGENDA

- BOE Policies AC and ACA
- Definitions
- Investigation Basics and Process
- Collection of Evidence
- Scenario
- Investigative Report
- Investigative Basics
- Decision/Appeal

# BOARD POLICIES

## BOE POLICIES FOR NON-DISCRIMINATION

- *AC – Prohibition Against Illegal Discrimination, Harassment and Retaliation*
- *ACA – Sexual Harassment under Title IX*

AC

Compliance Officer for Personnel:

**Dr. Howard Fields III**  
**Assistant Superintendent for Human Resources**

Compliance Officer for Students:

**Dr. Matt Bailey**  
**Assistant Superintendent for Data, Intervention and Support**

ACA

- Title IX Coordinator:

**Dr. Howard Fields, III**  
**Assistant Superintendent for Human**  
**Resources**

# 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

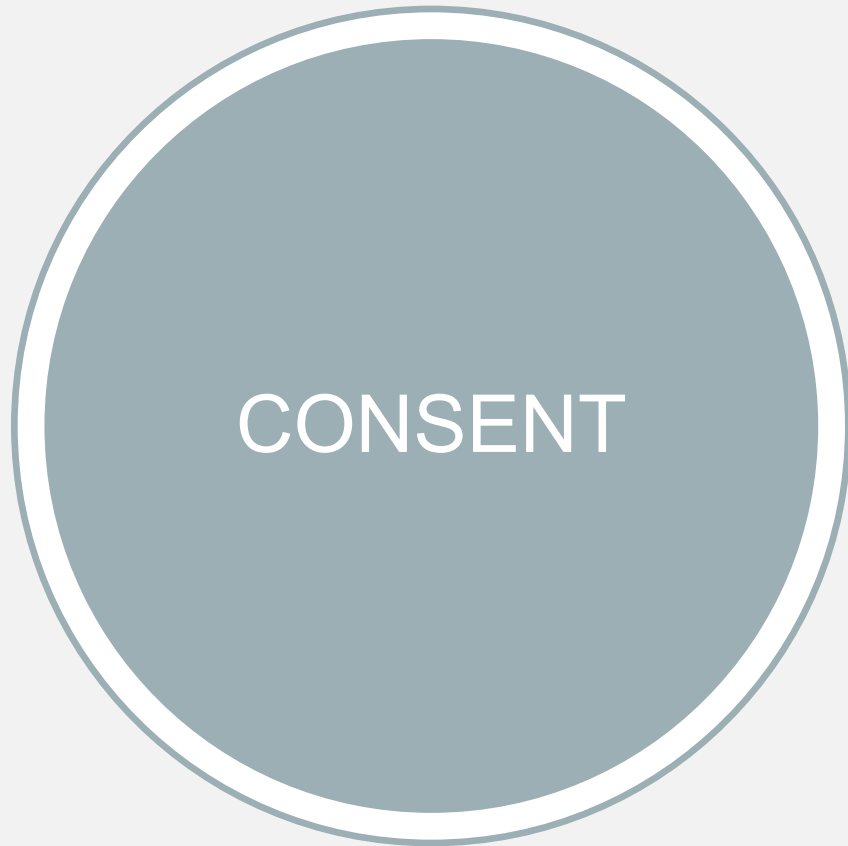
- In an educational program or activity- locations, events, or circumstances over which the school district exercised substantial control over both the Respondent and the context in which the sexual harassment occurs



- 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



## HARASSMENT SITUATIONS



- Consent is informed, actively given, and mutually understood and accepted
- Coercion, intimidation, or 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, or denial of participation

# RESPONSE TO NOTICE OF SEXUAL HARASSMENT



## 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



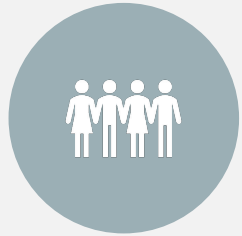
## SUPPORTIVE MEASURES

- 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,
- 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/Response/Exchange of  
Questions



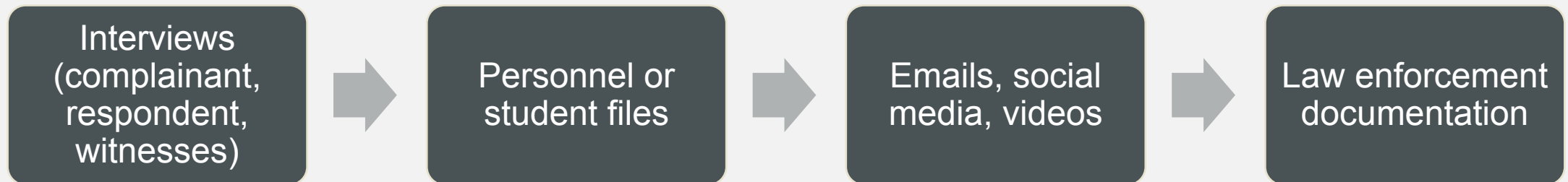
## FORMAL COMPLAINT

- 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



# COLLECTION OF EVIDENCE

# POSSIBLE EVIDENCE






# RELEVANCE

- 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

# 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, or retaliate
- Monitor situation during investigation

- 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



EQUITABLE  
TREATMENT &  
NOTICES

# SCENARIO

# 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 evidence

- 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

- 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



## SHARING OF EVIDENCE

# 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

# QUESTIONS