

TITLE IX and INVESTIGATIVE TRAINING

Southern Boone County R-I School District
August 17, 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 and for Students:

Dr. Tim Roth – (573) 657-2147
Assistant Superintendent
troth@ashland.k12.mo.us

ACA

- Title IX Coordinator:

Dr. Tim Roth – (573) 657-2147
Assistant Superintendent
troth@ashland.k12.mo.us

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



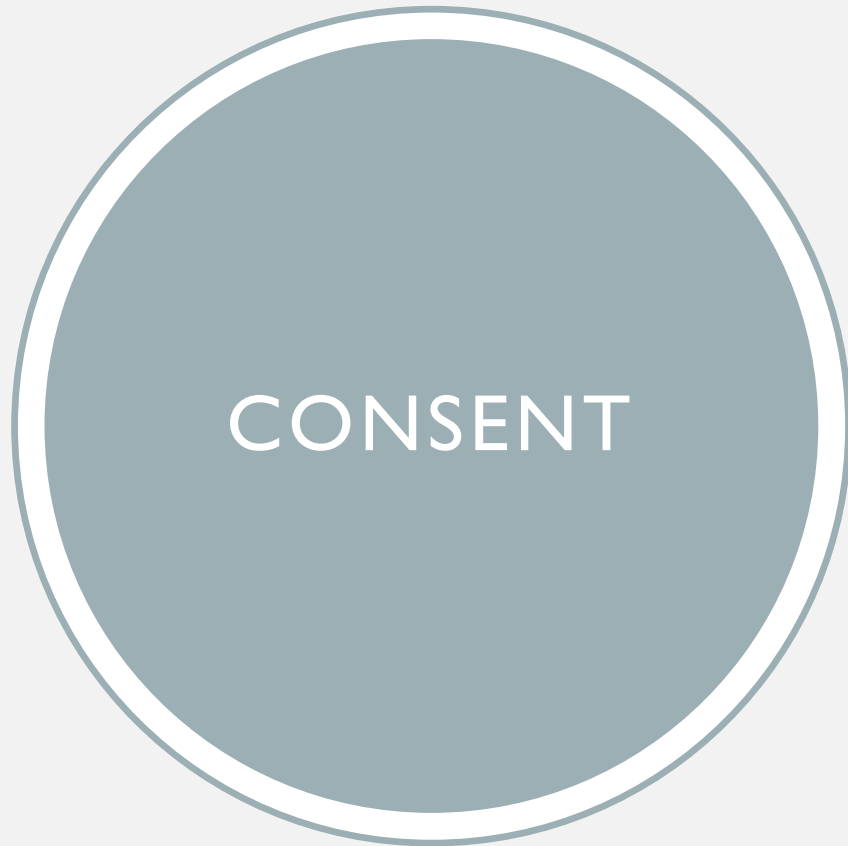
LOCATION

- 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

SCENARIO

INVESTIGATION PROCESS

OVERVIEW AFTER FORMAL COMPLAINT

Notices

Dismissal

Consolidation

Collection of Evidence

Review of Evidence by Parties

Investigative Report/Response/Exchange of Questions

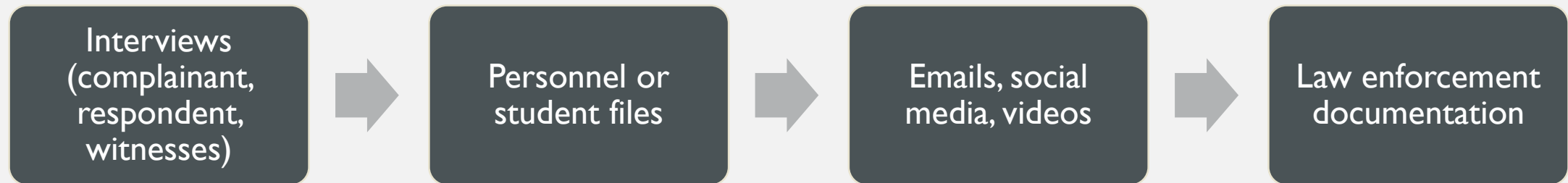


FORMAL COMPLAINT

- 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 tenancy 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

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