

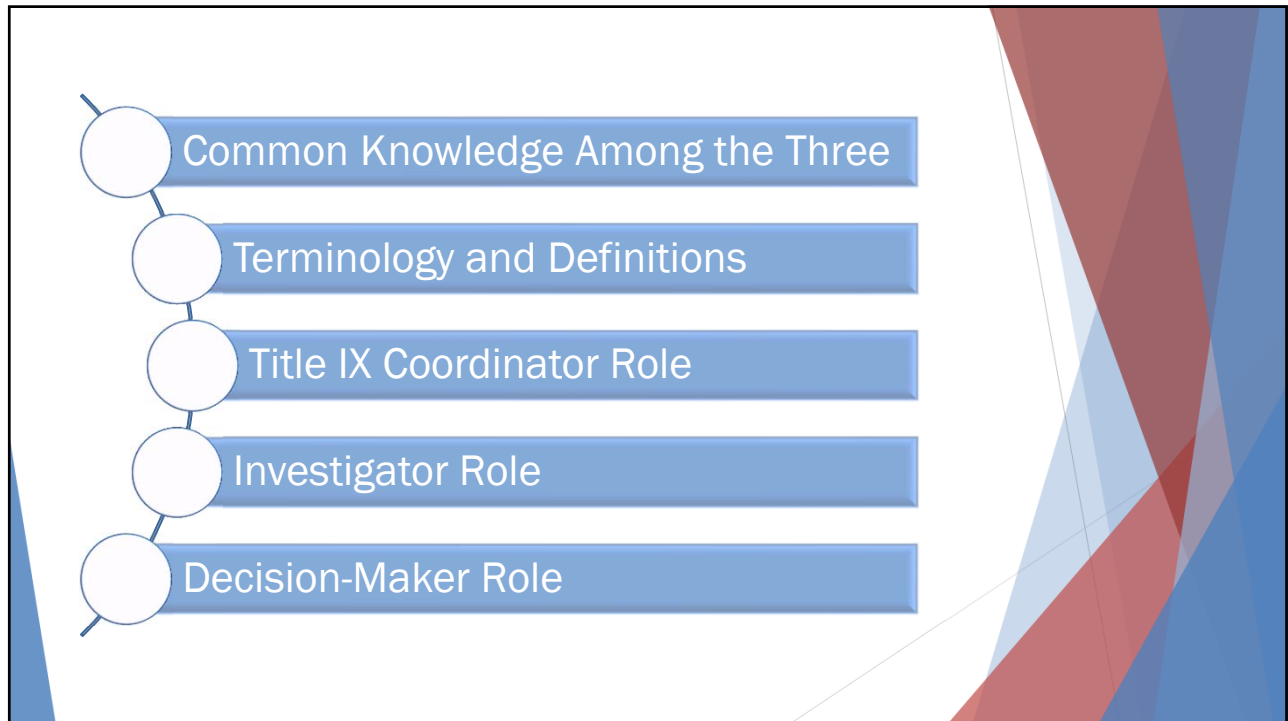


**LEGAL/POLICY SERVICES**  
KASB

# Roles in the Investigation Process

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Director for Legal Services  
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- Common Knowledge Among the Three
- Terminology and Definitions
- Title IX Coordinator Role
- Investigator Role
- Decision-Maker Role

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Anyone involved must understand what discrimination based on sex is.

Sexual harassment shall include conduct on the basis of sex involving one or more of the following:

- (1) A district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct;
- (2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's educational program or activity; or
- (3) sexual assault, dating violence, domestic violence, or stalking.

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Sexual harassment may result from verbal or physical conduct or written or graphic material. Sexual harassment may include but is not limited to: verbal harassment or abuse of a sexual nature; pressure for sexual activity; repeated remarks to a person with sexual or demeaning implication; unwelcome touching; or suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning an employee's job status.

What does sexual harassment look like?

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## Common Types of Sexual Harassment

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Quid Pro Quo  
"This for That"

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More Common in Employment

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Especially Heinous with an Imbalance of Power

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## Quid Pro Quo

▶ Definition:

Submission to the conduct is made a term or condition, explicitly or implicitly, of employment or receipt of education; or

Submission to or rejection of the conduct is used as the basis of employment or educational decisions affecting the individual.



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## Quid Pro Quo Example

▶ I'll Give You \_\_\_\_\_ If You...

- ▶ Supervisor – Employee
- ▶ Teacher – Student
- ▶ Student – Teacher
- ▶ Student – Student
- ▶ Parent – Teacher
- ▶ Teacher – Parent



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**Another  
Common  
Type of  
Sexual  
Harassment**

Hostile Work  
Environment

Often Unreported

Subjective Yet  
Objective

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**Hostile  
Working/Learning  
Environment**

Definition:

The conduct has the purpose or effect of substantially interfering with the individual's employment or education; or

The conduct creates an "intimidating, hostile or offensive" working or learning environment.

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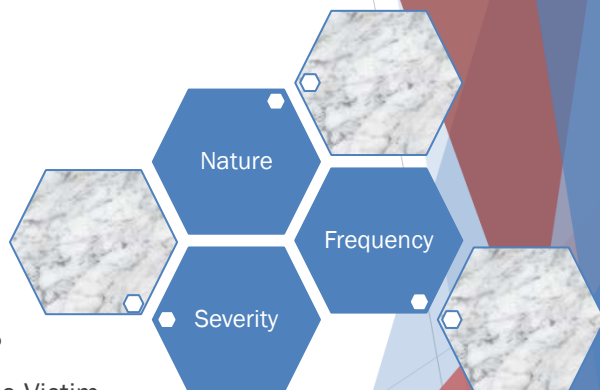
## Hostile Working or Learning Environment

- ▶ In determining if harassment has occurred, we look at the victim's interpretation, not the intent of the harasser.
- ▶ The victim feels the behavior is sexual harassment; and
- ▶ A reasonable person with the victim's perspective would consider it to be sexual harassment as well.
- ▶ There is no single test for distinguishing sexual harassment from merely offensive or inappropriate conduct.

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## Hostile Working or Learning Environment

- ▶ Factors to Consider
  - ▶ Nature of the conduct:
    - ▶ Verbal or Physical?
    - ▶ Patently offensive or hostile?
  - ▶ Frequency
  - ▶ Severity
  - ▶ Who was the conduct directed at?
    - ▶ Relationship of the Harasser to the Victim
  - ▶ A person other than the one the conduct was directed at may be offended by the conduct



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## Hostile Working or Learning Environment Examples

- ▶ Making Others Uncomfortable Through Actions
  - ▶ Unwanted Physical Contact
  - ▶ Unwanted Romantic/Sexual Advances
  - ▶ Jokes
  - ▶ Nicknames
  - ▶ Etc.



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## What Makes This Wrong? (Other Than Common Decency)

- ▶ 14<sup>th</sup> Amendment – Equal Protection
- ▶ Title VII Civil Rights Act – Sex Discrimination
- ▶ Title IX of the Education Amendments of 1972
  - Sex Discrimination

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## What Does it Take to Be Liable for Sexual Harassment?

### Harassment By Staff

- ▶ Actual Knowledge
- ▶ Authority To Correct
- ▶ Deliberate Indifference

### Harassment by Peers

- ▶ Severe, Pervasive, and Objectively Offensive Conduct
- ▶ Denial of Educational Benefits
- ▶ Actual Knowledge
- ▶ Deliberate Indifference

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## What should we tell employees and students to do if they are harassed?

Inform	Make Your Objections Known!
Report	Report Behavior That Makes You Uncomfortable
Consult	Follow Established Policy

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## Workplace Relationships Must Be

	<b>Professional</b>	Appropriate behavior in any environment based on position and employment
	<b>Culturally Appropriate</b>	Established interactions between coworkers that are appropriate based on group culture
	<b>Friendly</b>	Individual friendships determine the appropriateness of the interaction

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## Appropriate Relationships with Students (Parents)

		
<b>Professional</b>	<b>Cultural</b>	<b>NOT NECESSARILY FRIENDLY</b>
Appropriate behavior in any environment based on position and employment	Established interactions between coworkers that are appropriate based on group culture	

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## Appropriate Relationships with Students



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## Inappropriate Relationships with students




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- ▶ K.S.A. 21-5503 – Rape
- ▶ K.S.A. 21-5504 – Criminal Sodomy
- ▶ K.S.A. 21-5505 – Sexual battery
- ▶ K.S.A. 21-5506 – Indecent Liberties with a child
- ▶ K.S.A. 21-5507 – Unlawful Voluntary Sexual Relations
- ▶ K.S.A. 21-5508 – Indecent Solicitation of a Child
- ▶ K.S.A. 21-5509 – Electronic Solicitation
- ▶ K.S.A. 21-5510 – Sexual Exploitation of a child
- ▶ K.S.A. 21-5512 – Unlawful Sexual Relations
- ▶ K.S.A. 21-5513 – Lewd and Lascivious Behavior
- ▶ K.S.A. 21-5514 – Child Pornography

## Inappropriate Relationships with Students

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### K.S.A. 21-5512

- ▶ (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if...
  - ▶ (9) the offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of K.S.A. 2017 Supp. 21-5604(b), and amendments thereto, shall apply, not this subsection...
- ▶ (b) **Unlawful sexual relations** as defined in: (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12) or (a)(13) is a severity level 5, person felony.

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## 3 Roles in Formal Complaint Investigation Process



### Title IX Coordinator

Employee designated to coordinate its efforts to comply with Title IX

Appointed by board and always serves as Title IX Coordinator, cannot be Investigator or Decision-Maker in any case



### Investigator

Carries out the investigation after the formal complaint is filed and conducts interviews of the witnesses, collects and documents evidence, and drafts an investigative report

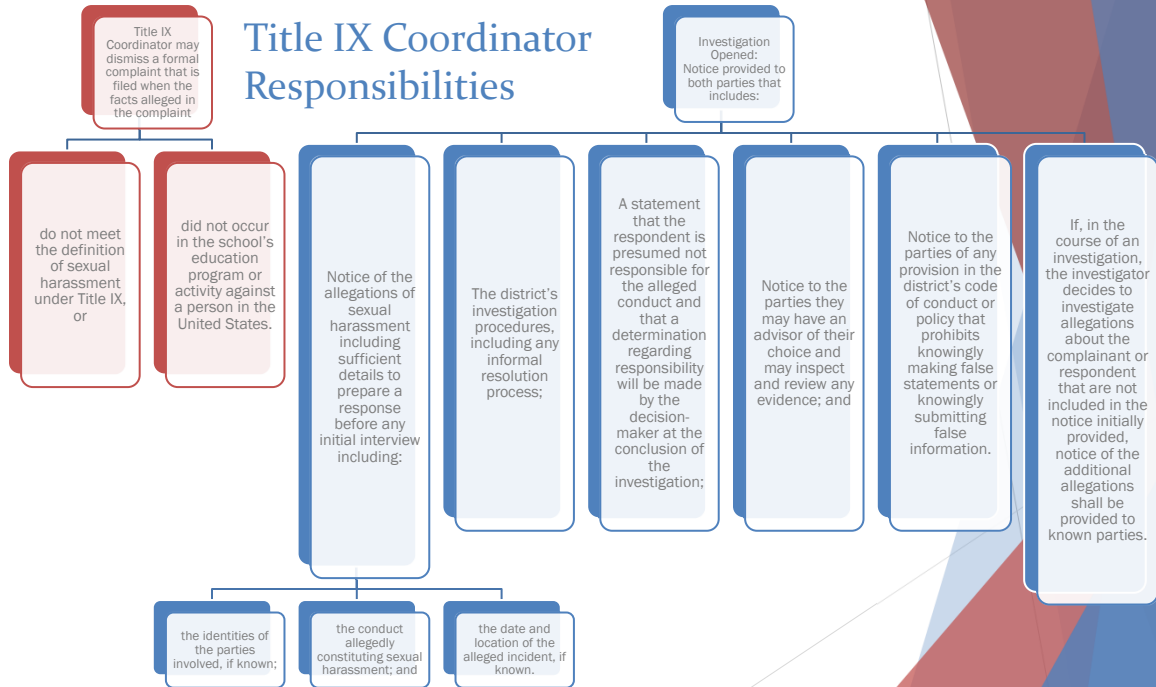


### Decision-Maker

Reviews all the evidence and prepares an impartial written responsibility determination as to whether the alleged conduct occurred and provides an opportunity for the parties and their representatives to prepare written questions to be answered by the other party

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## Title IX Coordinator Responsibilities



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## Title IX Coordinator

This person is not to be the investigator or decisionmaker.

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## Investigator's Responsibilities

Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the district and not the parties;	Provide an equal opportunity for the parties to present witnesses and evidence;	Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;	Allow the parties to be accompanied with an advisor of the party's choice;
Provide written notice of the date, time, location, participants, and purpose of any interview, meeting, or hearing at which a party is expected to participate;	Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint, including the investigation report	Provide the parties the opportunity to respond to that evidence before a determination is made;	Be impartial and objectively evaluate all relevant evidence without relying on sex stereotypes;
	Not have conflicts of interest or bias for or against complainants or respondent;	Not make credibility determinations based on the individual's status as complainant, respondent, or witness.	

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## Decision-Maker Responsibilities

Upon receiving the investigator's report, the decision-maker must make a determination regarding responsibility and afford each party the opportunity to submit written, relevant questions that the parties want asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions.

If determined that harassment occurred, disciplinary procedures are triggered.


The decision becomes final on the date the parties receive the results of an appeal, if any appeal is filed, or on the date the opportunity for an appeal expires.

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I'm going to guess you have questions concerning who you will plug into these roles.

Let's brainstorm!

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# Questions?

**LEGAL/POLICY**  
**KASB SERVICES**

If you have additional questions, please send to:  
[legal@kasb.org](mailto:legal@kasb.org)  
1-800-432-2471