



TITLE IX TEAM TRAINING

Ventura County Schools Self-Funding Authority

October 1, 2020

DAN SCHORR, LLC

OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Policy and Program Reviews
- Trainings

MORE INFO AT [DANSCHORRLLC.COM](https://danschorrllc.com)

DAN SCHORR

President
New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 20 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and decision maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

ALYSSA-RAE MCGINN

Vice President, Investigations
Boston



Alyssa-Rae McGinn has extensive experience leading a variety of complex investigations, with particular expertise in conducting investigations at educational institutions and corporations into allegations of sexual misconduct and identity-based harassment involving students, faculty, staff, and corporate leadership. Alyssa-Rae was previously a Senior Associate at Ankura, where she and Dan established the firm's Title IX and Civil Rights Investigations practice and grew it to assist institutions nationwide. Prior to Ankura, Alyssa-Rae was an Associate Director in Kroll's Business Investigations & Intelligence practice.

DAN SCHORR, LLC

POLICIES

LEA SEXUAL HARASSMENT POLICY

- Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature, regardless of whether or not the conduct is motivated by sexual desire. Conduct is considered to be sexual harassment when made...under the following conditions:
 - Submission to the conduct is made explicitly or implicitly a term or condition of employment
 - Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual
 - The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive environment
 - Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district

LEA SEXUAL HARASSMENT POLICY

- Title IX procedures must be followed if allegations arise that a student or employee was subjected to the following conduct by another student or employee:
 - A district employee conditioning the provision of district aid, benefit, or service upon the person's participation in unwelcome sexual conduct
 - Unwelcome 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 education program or activity
 - Sexual assault, dating violence, domestic violence, or stalking
- School must respond if it receives "actual knowledge" of an allegation, which consists of the receipt of a report of allegations by any school employee

LEA SEXUAL HARASSMENT POLICY

For such allegations, the general procedures are as follows:

1. Complainant makes a report with the Title IX Coordinator
2. Title IX Coordinator informs complainant of formal report process
3. Title IX Coordinator offers complainant supportive measures and informal resolution process
4. Title IX Coordinator provides all parties with a written notice of investigation, including:
 - Description of the process
 - Detailed allegations
 - Statement that respondent is not presumed responsible
 - Opportunity to have an advisor of choice
 - Opportunity to review evidence
 - Prohibition against knowingly making false statements
 - Names of the investigator(s) and decision maker(s)

LEA SEXUAL HARASSMENT POLICY

5. Investigator(s) interviews all parties and relevant witnesses and gathers relevant evidence
6. Investigator(s) sends all relevant evidence to the parties, and parties have 10 days to respond
7. Investigator(s) creates and sends an investigative report, and parties have 10 days to respond
8. Decision maker(s) conducts on-paper cross-examination, and provides answers to each party
9. Decision maker(s) makes a determination regarding responsibility using preponderance of the evidence standard and issues a written decision, including:
 - Description of the allegations
 - Description of the procedural steps taken
 - Findings of fact supporting the decision
 - Conclusions applying code of conduct to the facts
 - Statement of and rationale for the result as to each allegation
 - Appeals procedures

LEA SEXUAL HARASSMENT POLICY

- Additional guidance:
 - All reported cases, investigations, determinations, and sanctions must be kept on record for seven years
 - Materials used to train officials must be made publicly available online and kept for seven years
 - No disciplinary measures may be imposed on respondents until after a finding of responsibility is made
 - The burden of proof rests on the district, not the parties
 - The written decision should be issued within 45 days of the receipt of the complaint, according to California School Boards Association recommendations

LEA SEXUAL HARASSMENT POLICY

- Other allegations of sexual harassment must be investigated according to the following procedures:
 - For students, refer to the Uniform Complaint Procedures
 - For employees, refer to the Nondiscrimination in Employment policy

INITIATING THE PROCESS

TITLE IX ROLES

- Title IX Coordinator
 - Initiate the Title IX process
 - Oversee the process
- Investigator
 - Independent fact-finder
 - Evaluate, compile, and present evidence in report
- Decision-Maker
 - Review all evidence
 - Compare to policy and determine responsibility for alleged policy violation
 - Assign sanctions if there is a finding of responsibility
- Advisor
 - Support, guide, and assist parties through the process

GENERAL GUIDANCE

- Be fair and objective
- Do not pre-judge
- Avoid conflicts of interest (including the *appearance* of a conflict)
- Maintain independence
- Stay professional
- Do not discuss opinions or conclusions
- Words matter
- Listen, listen, listen!
- Protect confidentiality
- Be prompt, but take the needed time
- Prevent retaliation
- Treat all parties equally

BEWARE OF BIAS

- Beware of sexual assault myths
 - There is not one way to respond to experiencing sexual assault
 - It is not unusual for a complainant to appear numb, detached, or unaffected; delay reporting; blame themselves; express denial, confusion, or fear; minimize their experience; recant some or all of the allegations made; or interact with the respondent after the alleged incident(s)
- Recognize the privilege and power positions you bring into the room
- Assess where you might have unconscious bias toward or against someone
- Be aware of stereotypes
- Cannot evaluate through “that wouldn’t bother me”
- Be aware that your social media can be cited as evidence of bias

UNDERSTANDING CONSENT

- Mutual and voluntary
- Affirmative
- Revocable
- Past consent does not imply current/future consent
- Consent to certain acts does not imply consent to other acts
- Power dynamics
- Age of consent
- Forcible compulsion
- Threats – actual or implied
- Expressed lack of consent
- Incapacitation

AN ALLEGATION LANDS ON YOUR DESK...

- Listen carefully and with compassion
- Provide access to needed services
- Explain process, your role, and complainant's right to independently involve law enforcement
- Gather basic information: Who? What? When? Where? How?
- Identify an initial list of potential witnesses
- Identify steps needed to obtain evidence
- Understand context to the allegations, relationship between the parties, and motivation for coming forward
- Assure the complainant that you take the matter seriously
- Explain confidentiality
- Do not express opinions or comment on character of others
- How to handle an anonymous report

EVALUATE THE REPORT

- Search files of past reports or investigations
- Review school policy
- Determine whether an investigation is necessary
- If so, determine whether the complaint falls under Title IX definitions or other policies
- If allegation involves potential child abuse, report to authorities in accordance with law **regardless of your determination of credibility**

INFORMAL RESOLUTIONS

- Some allegations may be resolved without a formal investigation, excluding Title IX allegations brought against an employee
- If you offer an informal process, do not pressure complainant into it
- Informal resolutions may take the form of:
 - Mediation
 - Restorative circles or conferences
 - Agreement to measures that alleviate issues
- When facilitating an informal process, follow basic principles:
 - Listen actively to and be guided by what parties need and want
 - Allow space for airing harms and apologies
 - Consider repairing individual *and* community harms
 - Ensure willing and voluntary agreement to informal measures by all parties

INTERIM MEASURES

- Can implement any time during investigation when needed
- May include accommodations (scheduling, excused absences) or measures to ensure safety (no contact orders, interim suspension)
- Document justification for interim measures
- Do not undertake actions that may be perceived as punishment or unequal without documenting justification

PLANNING THE INVESTIGATION

- Who will conduct the investigation?
- Scope of investigation
- Key fact issues
- Who needs to be interviewed?
- In what order?
- What evidence needs to be collected?
- Who needs to be notified?

COMPLAINANT WITHDRAWAL

- New regulations provide option for a complainant to withdraw from a formal complaint, at which time the Title IX Coordinator may dismiss the investigation or may continue to investigate
- According to policy, an investigation must be initiated without a complainant if a safety threat exists

ROLE OF THE ADVISOR

- Parties may choose who serves as their advisors
- Schools can place reasonable limits on the role of the advisor
- An advisor typically acts as:
 - Emotional support
 - Assistance in understanding the process
 - Guidance in preparing statements, evidence, cross-examination questions, and other materials
 - A second perspective on the matter
- The advisor's key role is to attend interviews with the party and consult with the party in navigating the process
- When interviewing minors, allow parents to attend interview even if they are not serving as advisors

INITIAL MISTAKES

- Taking too long to respond to notice of a potential issue
- Acting too aloof, uncaring, or dismissive
- Overpromising
- Expressing judgments or opinions
- Explaining the process poorly or not at all
- Misrepresenting parties' rights
- Failing to offer needed services
- Gathering too little information
- Failing to inform appropriate administrators or authorities
- Discussing the matter with inappropriate people
- Not considering necessary interim measures
- Assigning inappropriate investigators (conflict of interest, bias, inexperience)
- Failing to follow school policies and local, state, and federal law

EXAMPLE: INITIATION

You receive the following email from tenth grader, Ava Alexander:

I've been avoiding writing this, but I want to let you know that last week, at a welcome party for French Club, Nick Brooks grabbed my crotch area and butt a few times. He was laughing like it was a joke, but it made me feel really uncomfortable and seeing him in the hallways has been hard since then. I don't want him to get kicked out of the club, especially since he's running for president, but I'm really anxious about it and it's been really tough focusing on my classes. Can we meet to talk about this?

Ava Alexander

CONDUCTING INTERVIEWS

WHO TO INTERVIEW

- The complainant
- The respondent
- Anyone who was present for and observed a relevant incident
- Other witnesses with relevant information
- Outcry witnesses
- People with whom the respondent has spoken about alleged incidents
- People who you have been asked to interview

INTERVIEWING BASICS

- Ask questions to elicit detail
- Understand who, what, when, where, how
- “How do you know that?”
- Clarify facts and discrepancies
- Ask for relevant names, especially potential witnesses
- Ask for relevant documents
- Maintain confidentiality of past interviews

INTERVIEWEES MAY BE RELUCTANT

- **Mistrust** of the organization, investigation process, interviewers, or social systems
- **Discomfort** with strangers/interviewers or subject matter
- **Fear** of retaliation, not being believed, retraumatization, getting in trouble
- **Concerns** about being cross-examined during an adversarial hearing

BE TRANSPARENT

- Clearly introduce yourself and your role as an independent investigator
- Explain how you will be conducting a comprehensive, prompt, and fair investigation
- Be clear that you are there to listen to everything they have to say, review their evidence, and speak with their witnesses
- Do not make promises you cannot keep and keep your promises
- Set realistic timelines and keep them apprised of the process as it progresses
- State upfront that you may need to follow up with them or re-interview them
- Be clear about policies regarding activities such as drug/alcohol use

BE KIND

- Treat the interviewee with **respect, empathy, and kindness**
- Recognize that this is difficult for all involved
- Offer services/resources to both parties, as well as witnesses if needed
- Be open-minded and non-judgmental
- Remember that many cases are in gray areas, and most people are telling you some version of their truth
- Make your body language reflect your listening stance
- If an interviewee becomes confrontational, don't mirror their demeanor – keep calm, take a break, redirect
- **ENSURE YOU ARE EQUALLY KIND TO ALL PARTICIPANTS**

BE COMFORTABLE

- Be/act comfortable with sexual terms, behaviors, and choices
- In video interviews, be/act comfortable with videoconferencing
- If you are uncomfortable, they will be uncomfortable
- Allow them to speak in their own language (crude language, etc.), but clarify
- If there is something that makes you uncomfortable:
 - Do research
 - Practice talking about it
 - Re-evaluate whether you are the right person for the interview
- Be aware of unconscious bias and the power positions & identities you bring into the room

HAVE A REAL CONVERSATION

- Bring your real personality into the interview and engage in a conversation: **listen** and **respond**
- Don't be afraid to be personal
- Be true to your own style of speaking
- Be flexible and let the conversation take its natural course
- Guide the conversation, but let them set their own pace and tell their story in their way
- Utilize silence, especially when you ask hard questions
- In cross-examination, make those questions part of the conversation

ASKING THE HARD QUESTIONS

- Wait to push back until they have finished telling their story
- **“Let’s go back through that slowly:”** Return to parts of their story that require clarification or questions or that are disputed by physical evidence
- Wait to confront with adverse evidence – may make an interviewee less willing to continue talking
- When asking the hard questions:
 - Phrase your questions so that they are respectful of the story you’ve heard
 - Don’t be accusatory
 - Explain the motivation for your question
- Let them know that as an investigator, you are trying to figure out what doesn’t track and why

EXERCISE: INTERVIEWING

Senior Jane Thompson reports to you that her math teacher has been acting inappropriately toward her. You interviewed Jane and she told you the following:

Since the beginning of the year, Mr. Becker has been staring at my breasts sometimes, especially when I don't wear a bra. A couple of weeks ago, I was talking to him before class when I got there early, and he told me, "You should really wear a bra because teenage boys always have dirty things on their mind." A few days later, I saw him when I was waiting for my mom to pick me up, and he asked me if I had a boyfriend and said that he wanted to take a picture of me to show his son, who is my age. He also asked me if I'm a virgin. I kind-of laughed it off but felt really weird. Last week, he sent me a text message saying that because I haven't been doing well in the class, he wanted to tutor me one-on-one after school. I replied that I had to be home right after school so he'd leave me alone, but I'm nervous around him now.

COLLECTING EVIDENCE

TWO TYPES OF EVIDENCE

DIRECT

Supports the truth of an account directly

CIRCUMSTANTIAL

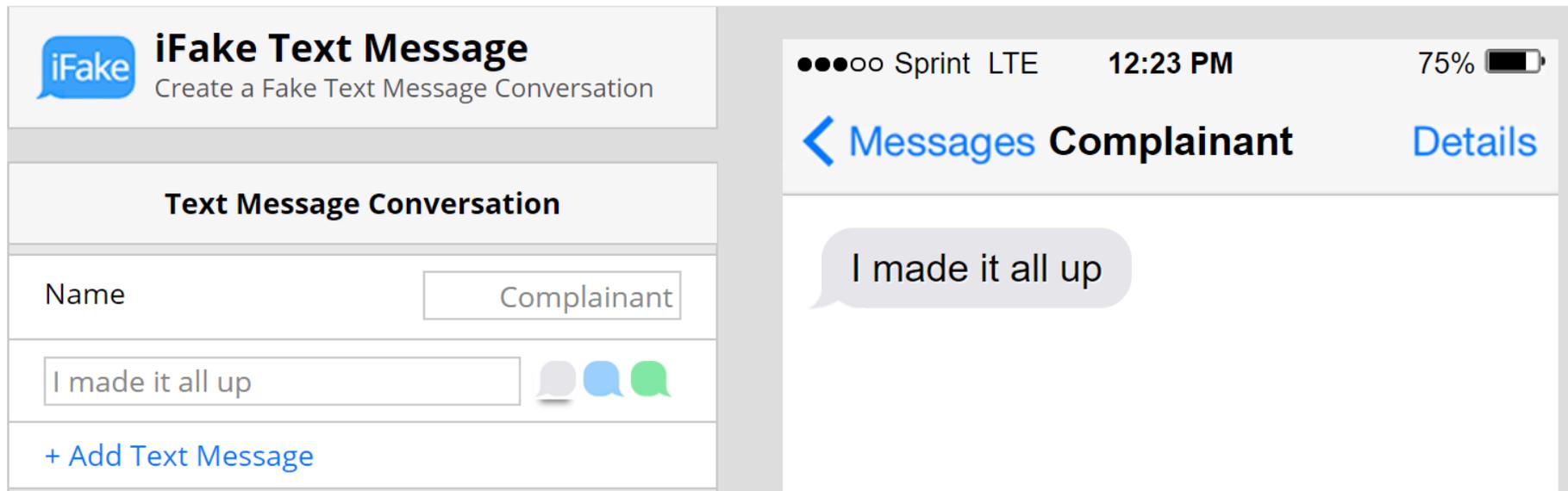
Relies on inference to support a conclusion of facts

EVIDENCE EXAMPLES

- Text messages
- Social media
- Emails
- Memos or other documents
- Photographs
- Receipts
- Device logs
- Surveillance video
- Building access records
- WiFi connection records
- Other sources

OBTAINING EVIDENCE

- Instruct parties and witnesses to preserve evidence
- Go to the source and get primary documentation when possible
- Deleted items may still exist
- Be aware of fakes



ASSESSING CREDIBILITY

CREDIBILITY FACTORS

- Inherent plausibility and logic of story
- Consistency
- Demeanor
- Level of detail provided
 - Beware of the “categorical denial”
- Past record and pattern behavior
- Cross-corroboration
- Corroboration by evidence
- Not a moral judgment on honesty
- Evaluating credibility is a continuous process

DOCUMENTING THE INVESTIGATION

DOCUMENT EVERYTHING

- Memorialize everything that happens in emails, notes, or interview summaries
- When communication happens via phone call or in person, note the content of the conversation

DOCUMENTING INTERVIEWS

- Convert interview notes into narrative summary of interview
- Include basic information: date, location, names of all in attendance
- Introductory language: indicate that summary is not verbatim
- Include summary of information and explanations provided to interviewee

Schorr and McGinn introduced themselves and explained that they had been hired by the School to independently investigate O'Reilly's complaint against Samuels. Schorr described the investigation process and explained the scope of confidentiality for the interview. Schorr stated that the parties to this investigation will see the final investigative report, which will include Smith's name and what is said in this interview.

Schorr informed Smith that she will have the opportunity to review this interview memorandum. Schorr stated that School policy prohibits any retaliation as a result of Smith's participation in this investigation and asked Smith to please communicate any potential retaliation to the investigators or the School.

DOCUMENTING INTERVIEWS

- Summary should reflect the narrative told by the interviewee
- Does not need to be in the order of the interview (can be chronological or in another logical order)
- All statements should be sourced, to the interviewee and to their source
 - Did they see this firsthand or did someone else tell them this information?
- Use fact-based, “dry” language; avoid “colorful” language
- Write in a formal, professional manner
- Use direct quotes where available and to add “color”
- Goal is to present the interviewee’s voice from your objective perspective
- Well-written summaries allow you to pinpoint outstanding gaps and needed follow-up
- Summaries will become building blocks of investigative report

DOCUMENTING INTERVIEWS

Smith said that she knew Robertson and that he was “more a friend of [Johnson’s].” She said in the first few weeks of the Fall 2019 semester, Robertson would come to the office and spend time talking with Johnson at her desk. Smith said that Johnson told her that she spent time with Robertson outside of work on several occasions, but they were “never that serious.” Smith also stated that she was aware that Johnson and Robertson frequently communicated via text message during the day.

DOCUMENTING INTERVIEWS

Jones stated that during the party, he believed Hill “got some wrong signals” from McCall because Hill said to Jones, “This new girl Laura [McCall], she’s pretty.” Jones said that he determined from Hill’s tone that “[Hill] was thinking, ‘Maybe she likes me,’ or something like that.”

Jones stated that McCall is “very openly friendly,” and that Hill “[took] it the wrong way and thought she wanted more.” Jones said that he “saw [Hill] might’ve been thinking something would happen,” but Jones knew that McCall “was just being polite.”

DOCUMENTING INTERVIEWS

What's wrong with these summaries?

- *Rodriguez said he couldn't see what was going on with Murphy and Novak, but Novak was always acting weird with kids in the hallway. Novak made inappropriate comments to Murphy.*
- *Ibrahim said that Rossi touched her and her friends' boobs and butts.*
- *Persaud said that he asked Wilson not to mock him in front of the class. Persaud exclaimed, "I told her not to, but she did it anyway!"*
- *Miller said that prior to the incident involving Devi, he had sent an e-mail to Williams, in which he wrote about other incidents when Devi touched him inappropriately. He said that Devi touched his penis over his pants and that he was upset about this.*

BUILDING THE INVESTIGATIVE REPORT

- **Scope:** a clear description of the scope and procedural history of the investigation
- **Executive Summary:** bulleted high-level facts, findings, recommendations, and conclusions, but do not overgeneralize or misrepresent facts
- **Summary of Evidence:** relevant parts of interview summaries and other relevant evidence, synthesized to create one narrative that flows and highlights areas of corroboration and discrepancy
- **Summary of Findings:** overall summary of evidence and analysis of evidence, including credibility assessments, discussion of discrepancies, and comparison to policy
 - May also include conclusions or recommendations regarding finding of responsibility of respondent
 - Should continue writing style from prior sections – formal, objective, fact-based
 - Includes judgments, but **all judgments must be defensible and based in evidence and policy**
 - Avoid personal or moral judgments

SUMMARY OF EVIDENCE

Brown said that Leland tried to “create a negative narrative” about her and was “very forceful in doing so,” so that if people in the school did not have the opportunity to get to know Brown themselves, they would have believed Leland’s narrative. Roux said that Leland frequently complained to him about Brown. He said that Leland would make comments such as, “She’s a liar,” “You can’t trust her,” and “Don’t trust her.”

When asked whether she ever spoke negatively about Brown to Roux, including calling Brown a “liar,” Leland stated that she spoke with Roux about her problems with Brown’s performance but never used that specific language.

SUMMARY OF EVIDENCE

Mendel and Aguero both reported that they then entered a smaller stairwell, which Aguero described as “colder” than the first one. They both stated that Mendel sat on the stairs and Aguero stood by the door, which was closed.

Aguero reported that Mendel then asked her if she wanted to sit down and said, “I can make room,” and she told him, “No, I’m going to go.” Both parties reported that Mendel stood up and said, “I can warm you up.” Aguero said that Mendel then started to touch her buttocks. Mendel also reported that he touched Aguero’s buttocks.

Aguero explained, “I don’t know, I just froze because I didn’t know what to do.” She said that she told Mendel, “Maybe we should go. I’m tired. You have a girlfriend.” Aguero said that Mendel responded, “It’s fine. She’s not going to find out,” and kept repeating this statement and touching her.

SUMMARY OF FINDINGS

Riley stated that he did not ask for or receive verbal consent to touch Hansen's breasts and vagina. He stated that he "felt" that he had consent based on several factors, including that Hansen had engaged in consensual kissing with Riley.

However, the School's policy states, "Consent to some sexual contact should not be presumed to be consent for other sexual activity." Therefore, Hansen's consenting to kissing, if this occurred, did not imply consent for other sexual touching.

SUMMARY OF FINDINGS

Jensen also alleged that because of Popa's negative opinion of Jensen and Popa's friendship with Li, Li was not supportive of Jensen's implementation of the new software system. Li stated that she was supportive of the new system and Jensen's other initiatives. The investigators found Li credible in this account based on the overall consistency in her narrative and cross-corroboration with other witnesses. Based on the available evidence and by a preponderance of the evidence standard, Li's actions did not constitute harassment, discrimination, or otherwise inappropriate behavior toward Jensen.

CROSS-EXAMINATION

CROSS-EXAMINATION PROCEDURES

- The new regulations do not require hearings in K-12 schools, but schools may opt to hold hearings
- After each party is given the opportunity to review the report, they may submit written, relevant questions to be asked of the other party or witnesses
- Decision maker(s) determines the relevance and appropriateness of these questions
- Decision maker(s) asks relevant and appropriate questions of the parties or witnesses
- Decision maker(s) provides written documentation of the answers to these questions to all parties
- Each party may submit “additional, limited follow-up questions”
- If additional questions are submitted, the decisions maker(s) repeats the process above

OMITTING QUESTIONS

- Decision maker(s) must prohibit certain types of questions from being asked of parties and witnesses:
 - Questions that contain or seek disclosure of information under legally recognized privilege
 - Questions about the complainant's sexual predisposition or prior sexual behavior
 - Irrelevant questions
- Other types of questions that may be omitted include:
 - Character questions
 - Speculative questions
 - Questions about which the party or witness has no knowledge
 - Questions that were already asked explicitly, clearly, and in the same form
- If the decision maker(s) decides to omit any question from a party's list, the reason for the omission must be documented in writing and provided to the party

EVALUATING THE EVIDENCE

- Hearing panel or decision-maker must consider the evidence presented in the investigative report and/or the hearing if one is held
- Evaluation of the evidence includes credibility assessment, analysis of discrepancies and corroboration, and comparison to policy
- **All judgments must be defensible and based in evidence and policy**
- Determine responsibility based on a preponderance of the evidence
- Determinations and reasoning must be documented in a letter or report

DETERMINING SANCTIONS

- Sanctions should be appropriate considering **severity** and **pervasiveness** of behavior
- May also consider complainant's requests regarding sanctions, as well as respondent's demonstration of accountability and remorse
- Sanctions must be defensible according to evidence and policy
- Sanctions decisions must be consistent

FINAL CONSIDERATIONS

HOW DO SCHOOLS GET IN TROUBLE?

- Lack of promptness
- Displays of partiality or bias
- Inequitable treatment of parties
- Compromising confidentiality
- Poor planning
- Failure to thoroughly evaluate all relevant witnesses and evidence
- Offering opinions
- Overpromising
- Not consistently and equitably following policies and procedures
- Failure to maintain relevant documents and evidence
- Not including exculpatory information in the investigative report
- Failure to properly document and justify conclusions and actions
- Not consulting counsel when potential legal issues / litigation arise

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