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## **TITLE IX COMPLIANCE TRAINING: NAVIGATING THE TITLE IX FINAL RULE**

### **Putting Knowledge Into Practice**

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NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2024 Ratwik, Roszak & Maloney, P.A.

## A. Initial Investigation Preparation

1. Suppose your Title IX Coordinator receives a complaint from three Complainants alleging that a Respondent has engaged in an escalating pattern of sitting too close to the Complainants, grabbing them without permission, groping them, and licking them. The Complainants indicate that telling the Respondent to stop has been ineffective, and has only resulted in further escalation. The Complainants originally brought their complaint to two teachers, who remembered their training and contacted the Title IX Coordinator. The alleged incidents reportedly occurred in the hallway, the lunchroom, at theater rehearsal, and in math class. The students' math teacher is not one of the two teachers who contacted the Title IX Coordinator. One Complainant alleges that the Respondent groped her in the lunchroom on September 13, 2024. All three Complainants say they have talked to their friends about these incidents, both in person and via text or social media messages.

In pairs or small groups, take some time to identify:

- a. Who is on your initial list of interviewees;
  - b. What source(s) of evidence, besides interview testimony, are likely to be involved;
  - c. What steps need to be taken to preserve evidence;
  - d. Who, if anyone, needs to be notified that is not already aware of the report (e.g., other staff, parents, etc.); and
  - e. Any other steps that you believe should be taken prior to commencing the investigation.
2. You are investigating a complaint where Student Y allegedly sexually assaulted Student Z in a school bathroom after the end of the school day. The Title IX Coordinator learned of this complaint from the principal and school resource officer, who in turn found out about the allegations when Students E, F, G, H, I, J, K, and L went to confront Student Y and disrupted art class. The principal provided the following descriptions:
    - a. Student E found Student Z crying in the locker room and learned of the allegations directly from Student Z.
    - b. Students F and G are friends with Student Z, but were not present in the locker room and learned of the allegations from Student E.
    - c. Student H is friends with Student E and was present in the locker room for Student E's conversation with student Z, but is not friends with Student Z.
    - d. Students I and J are friends with Student E but were not present in the locker room for the conversation between Students E and Z.

- e. Student K briefly dated Student Y earlier in the school year and the relationship did not end amicably. Student K heard other students were going to confront Student Y and decided to join in. Student K does not know Student Z.
- f. Student L was in the back of the group and believed they were confronting a completely unrelated student.

In pairs or small groups, discuss amongst yourselves the pros and cons of interviewing each of students E through L, and whether you would include them on your initial list of interviewees based on the information you currently have.

- 3. In pairs or small groups, take turns being the investigator and each of the following roles:
  - a. The lawyer who demands that the complaint be dismissed because these allegations would never result in criminal charges;
  - b. The parent who asks to be interviewed instead claiming they “already got all the answers” from their child;
  - c. The union representative who insists that if their member refuses to be interviewed you cannot proceed with the investigation; and
  - d. The non-school counselor/therapist/psychologist who insists that they be given the opportunity to review all of the investigator’s questions before the interview commences.

If you are working in small groups, anyone who is not role-playing as the investigator or distractor should keep track of any responses by the investigator that you thought were particularly effective or ineffective. The distractor and any observer(s) should provide feedback on how they might have responded differently if they were in the investigator’s shoes.

## **B. Interviewing Complainants and Witnesses**

- 1. In pairs, interview your partner about what they did for the Fourth of July this past summer (Summer 2024). Get the basic facts — who, what, when, where, and why — as well as any other information you can out of your partner. When it is your turn to be interviewed, you must be honest, but should be as unhelpful as possible. The interviewer should practice asking broad questions that get narrower as they gather information, and practice asking follow-up questions. As you are being interviewed, keep track of questions your partner asks you that

you feel were particularly helpful or particularly unhelpful. Share them with your partner once you have both had the opportunity to be interviewed.

2. During their interview, a student-Complainant tells you that the teacher-Respondent makes him or her “uncomfortable.” Assume you have no information besides this statement. In pairs or small groups, brainstorm follow-up questions that you would ask the Complainant.
3. In pairs or small groups, take turns interviewing each other about something the witness is unlikely to recall (such as what they ate for each meal last Tuesday, or the theme of their junior prom, or the first song they ever sang at karaoke). The investigator should practice asking follow-up questions to gather as much details as they can, even if the interviewee is unable to recall the exact answer by the end of the exercise.

### C. **Interviewing Respondents**

1. In pairs or small groups, brainstorm responses and potential follow-up questions for a Respondent who can remember specific details of everything except the facts relevant to the alleged incident(s) that is/are the subject of the complaint. When does it make more sense to pursue follow-up questions, and when does it make more sense to call out the Respondent’s apparently selective memory?
2. Suppose you are investigating allegations that the Respondent has been making homophobic and transphobic comments toward the Complainant at recess last Wednesday, and about the Complainant to the Respondent’s friends during fourth period social studies class last Monday and during lunch last Tuesday. The recess incident was allegedly a one-on-one conversation. During the social studies and lunch incidents, the Respondent was allegedly sitting with friends at a table adjacent to the table where the Complainant was seated.

Take turns in pairs or small groups role-playing as the Investigator and as the Respondent. The Respondent begins the interview by saying “I have read the allegations in the Notice of Complaint, and none of them are true.” Practice asking follow-up questions to this general denial. Keep track of questions or areas of questioning that are particularly helpful or unhelpful in your investigation.

3. Brainstorm potential reasons why it could be harmful to the investigation to tell who the Respondent who you have interviewed. Even though they may ultimately learn the identities of the witnesses you interviewed, there are reasons why disclosing their identities in the interview can make your interview less effective. What do you think those reasons might be?

**D. Credibility Determination**

1. Think of a time, whether during an investigation or in your own life, when you could tell, or thought you could tell, that someone was lying to you. In pairs or small groups, discuss how you were able to determine that the other person was lying. What were the signs? What other information, if any, helped you determine that this person was lying?
2. Think of the worst liar you know or have known (“worst” meaning “least effective,” not “most frequent/prolific”). What makes/made them a bad liar? Are/were they a bad liar because of knowledge you acquired over time, or could anyone tell that this person was bad at lying?
3. Now think of the best (most effective) liar you know or have known. Although that person is effective, you still know that they have lied to you. How did you figure that out? What types and sources of information made you realize that you were being lied to?
4. Identify sources of potential information, other than witness testimony, that are common in school investigations and that could refute or disprove a party or witness’s interview statements. In pairs or small groups, come up with as many examples as you can and how they would be used.