

KASB Learning Series



TITLE IX SEXUAL HARASSMENT RESPONSE

Training for Title IX Coordinators,
Investigators and Decision– Makers

KASB LEGAL SERVICES

8/6/2020

Kansas Association of School Boards
1420 SW Arrowhead Road
Topeka, Kansas 66604
785.273.3600 | 800.432.2471
www.kasb.org

New Title IX Regulations

Training for Title IX
Coordinators, Investigators
and Decision-Makers
August 6, 2020

Ashley Rohleder-Webb
KASB Staff Attorney

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX of the Education Amendments Act of 1972

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Today



- New Title IX Regs**
 Summary of the new regs and changes.
- Investigation Process**
 Description of the stages of investigation, from the initial complaint to the determination regarding responsibility.
- Roles in the Investigation Process**
 Description of the role of the Investigator, Decision-Maker and Title IX Coordinator.
- Decision-Makers and Investigators**
 Additional information required for Decision-Makers and Investigators
- Rights of Investigation Participants**
 Information about rights guaranteed for complainants, respondents and witnesses.
- Post-Determination Issues and Informal Resolution**
 Details of everything that comes after the determination regarding responsibility.

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Summary of Changes

- No changes to existing regulations related to athletic participation, employment, or single-sex education
- Defined sexual harassment in regulation for the first time.
- Provides due process rights to accusers and accused persons in sexual harassment investigation and decision-making:
- Provides terminology and definitions for use in Title IX complaints
- Requires response when district has "actual knowledge" of sexual harassment
- Specific roles of Title IX Coordinator, Investigator, Decision-Maker and the steps of the investigation process
- Mandates provision of supportive measures during investigation process
- Requirements of Determination of Responsibility
- Prohibits retaliation

3

Required Training

- Training is required for all Investigators and Decision-Makers
- Training materials must be available for the public:
 - From Regulations:
 - All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.
 - Today's materials will have to be posted.
- If you need to arrange for additional training for your district, please contact KASB Legal.

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Sexual Harassment Definition

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;
 - Quid pro Quo
- (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
 - Hostile Environment
- (3) sexual assault, dating violence, domestic violence, or stalking.
 - VAWA definitions

5

Quid pro Quo

- a district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct

Hostile Environment

- Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to work/education.

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VAWA “Big Four”

Sexual Assault

an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

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 where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

Domestic Violence

includes crimes of violence committed by a person who is a current or former spouse, partner, person with whom the victim shares a child, or who is or has cohabited with the victim as a spouse or partner, by a person similarly situated to a spouse of the victim under Kansas or applicable federal law, or by any other person against an adult or youth victim having protection from such person's acts by Kansas or applicable federal law.

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 to suffer substantial emotional distress.

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Other Definitions

Complainant: An individual alleged to be the victim of sexual harassment

Not necessarily the individual who reports or who files formal complaint

Respondent: An individual alleged to be the perpetrator of sexual harassment

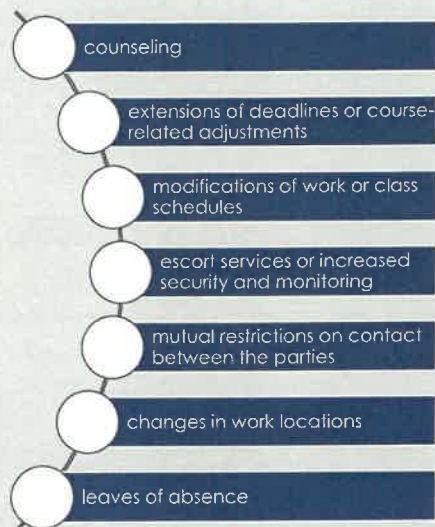
Formal Complaint: A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the school investigate the allegation of sexual harassment

Supportive Measures: Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome, to the other party while designed to ensure equal educational access, protect safety or deter sexual harassment.

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Supportive Measures

- The district will treat the complainant and respondent equitably by offering supportive measures.
- These non-disciplinary and non-punitive measures will be offered as appropriate, as reasonably available, and without cost to the complainant or the respondent.
- Supportive measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party.
- "Supportive Measures" shall include, but not be limited to, measures designed to protect the safety of all parties, to protect the district's educational environment, or to deter sexual harassment.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



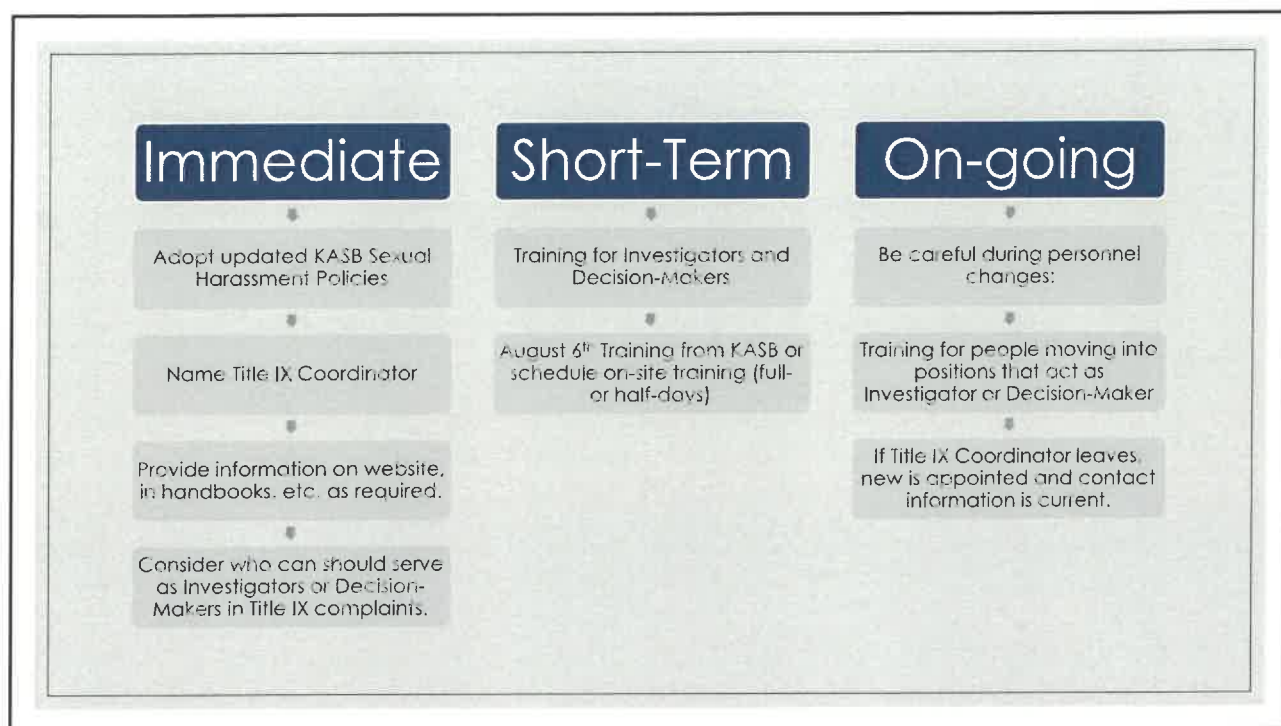
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Pending Court Cases

- Since these new regulations were announced in May, several lawsuits have been filed, and requests for a stay have been made over the past months – none successful yet.
- Effective August 14 unless a court issues injunction.



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Questions?

TO PROVIDE FEEDBACK ABOUT TODAY'S TRAINING, PLEASE COMPLETE THE EVALUATION:
[HTTPS://KASB.ORG/TITLE_IX_20200806](https://kasb.org/title_ix_20200806)

IF YOU HAVE ADDITIONAL QUESTIONS, PLEASE SEND TO:
LEGAL@KASB.ORG
 1-800-432-2471

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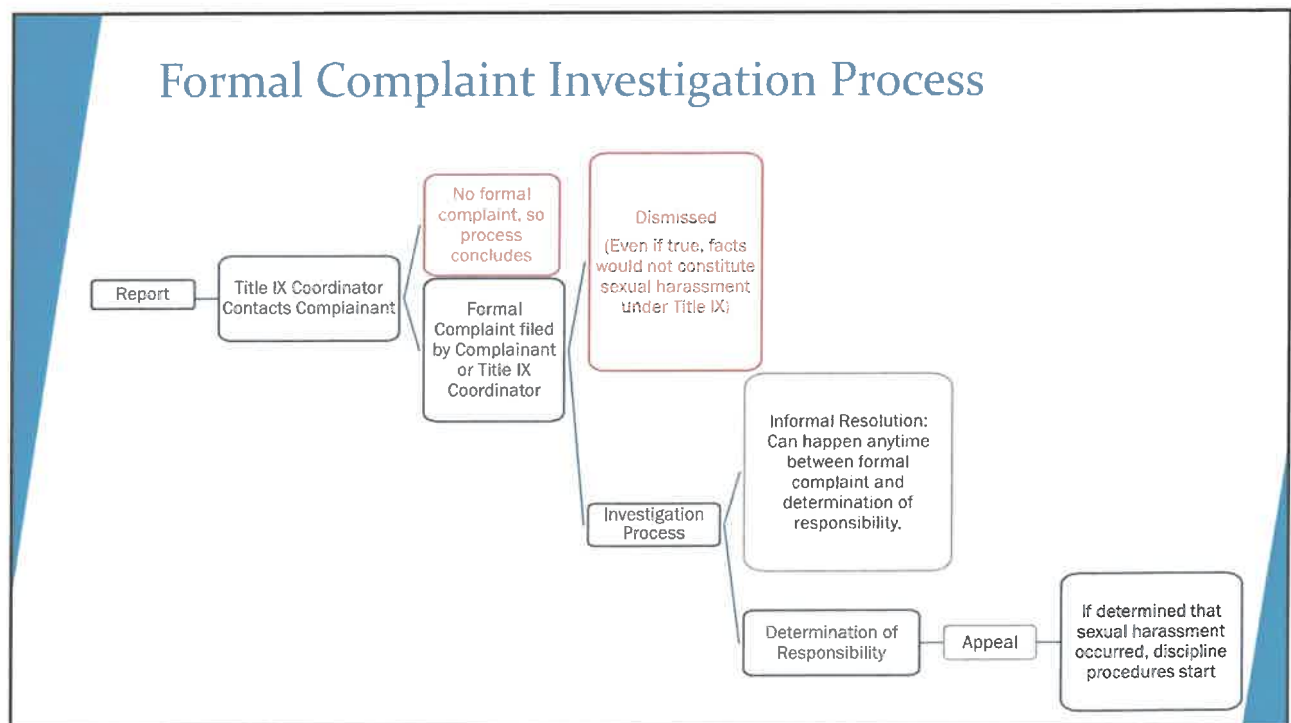
LEGAL/POLICY

KASB SERVICES

Investigation Process

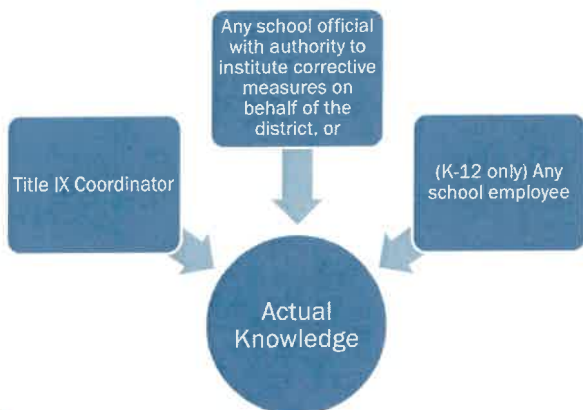
Angie Stallbaumer
 KASB Assistant Executive
 Director for Legal Services
 August 6, 2020

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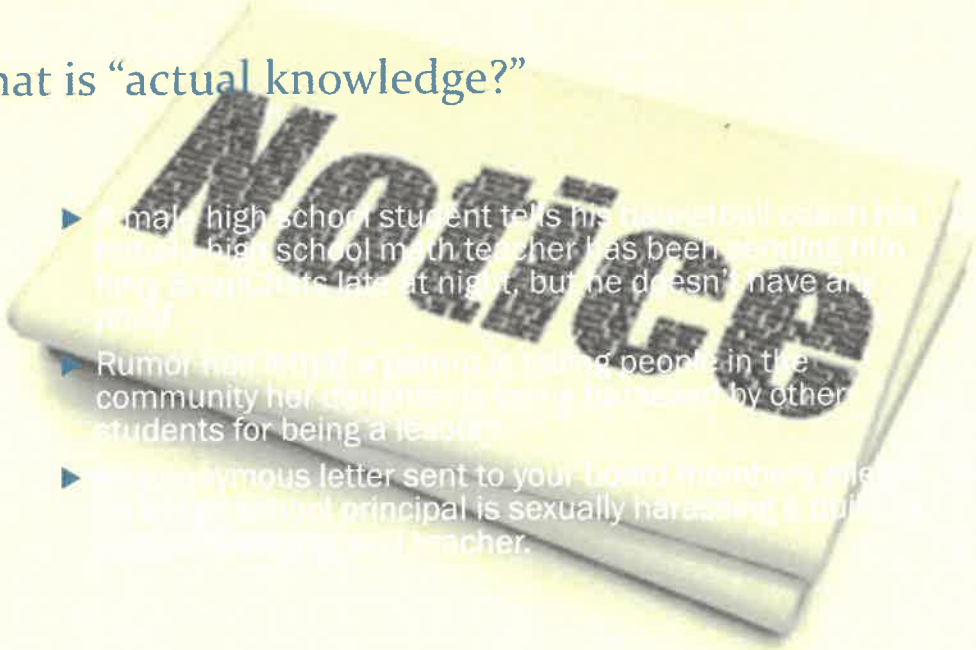
Report of Sexual Harassment



- ▶ District must respond when it has “actual knowledge” of sexual harassment.
- ▶ Actual knowledge:
 - ▶ Notice of sexual harassment, including claims of sexual harassment
- ▶ Other school employees report claims to Title IX Coordinator.

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What is “actual knowledge?”

- 
- ▶ A male high school student tells his basketball coach his female high school math teacher has been sending him flirty emails late at night, but he doesn't have any proof.
 - ▶ Rumor has it that a parent is leaving people in the community her daughter is being harassed by other students for being a lesbian.
 - ▶ An anonymous letter sent to your board members alleges that your school principal is sexually harassing a female teacher and a male teacher.

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Title IX Coordinator Contacts Complainant

- ▶ Response must not be “deliberately indifferent”
 - ▶ Clearly unreasonable in light of known circumstances
- ▶ Promptly contact complainant, and meet confidentially:
 1. To discuss availability of supportive measures,
 2. Consider the complainant's wishes with respect to supportive measures,
 3. Inform the complainant of the availability of supportive measures with or without a formal complaint, and
 4. Explain the process for filing a formal complaint.
- ▶ KASB Policy Recommendation: 10 days, unless good cause for delay.
- ▶ Should respect complainant's wishes regarding whether or not a school investigates, unless the Title IX Coordinator determines that signing a formal complaint over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

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So, when should the Title IX Coordinator file in absence of a Complainant willing to do so?

- ▶ For liability purposes, it matters:
 - ▶ What do you know?
 - ▶ When did you know about it?
 - ▶ What did you do with that information?

Does anyone have a hypothetical, they are willing to share?

6

Formal Complaint

- ▶ At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District where the formal complaint is filed.
- ▶ A formal complaint may be filed with the Title IX Coordinator in person, by mail, by email, or by any other means that results in the Title IX Coordinator receiving the report.
- ▶ A formal complaint contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint (unless signed by the Title IX Coordinator).
- ▶ A complaint should be filed as soon as possible after the conduct occurs, but not later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct forming the basis for the complaint is ongoing.

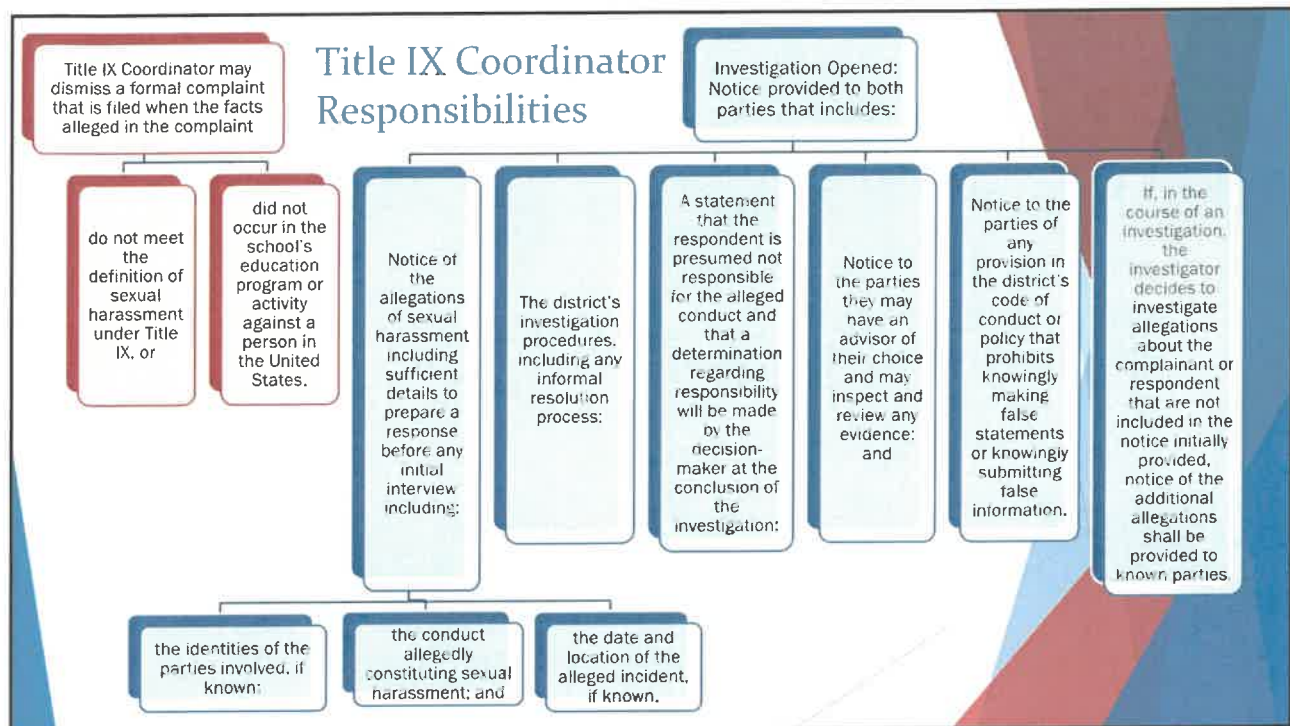
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What if there is no formal complaint?

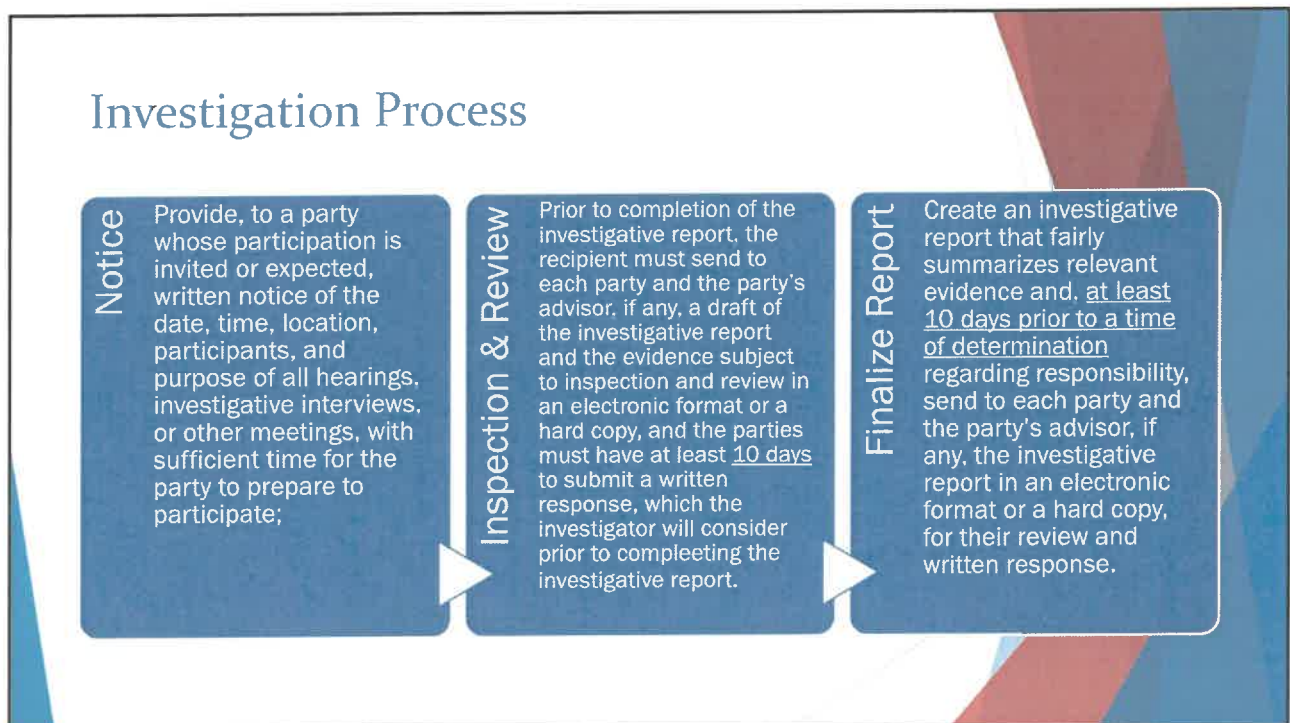
- ▶ Supportive measures may be provided to both parties regardless
- ▶ Document what happened
- ▶ Close the file



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Investigative Report

- ▶ The investigator shall prepare an investigative report that fairly summarizes relevant evidence and share the report with the parties and their advisors for review and response.
- ▶ The investigator's written report shall include an objective evaluation of all relevant evidence using a preponderance of the evidence standard to determine responsibility.

11

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.
- ▶ The determination of responsibility must be provided in writing to the parties simultaneously.
- ▶ 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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Informal Resolution Option



- ▶ If an informal resolution is desired, the parties are to be provided written notice disclosing:
 - ▶ The allegations,
 - ▶ The requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations),
 - ▶ That at any time prior to agreeing on a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
 - ▶ Any consequences resulting from participating in the informal resolution process, including any records that will be maintained or could be shared.

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- ▶ I'm going to need some volunteers:
 - ▶ Title IX Coordinator
 - ▶ Investigator
 - ▶ Decisionmaker
- ▶ The female manager for one of your junior high football team comes to the counselor (played by yours truly) and says that she needs to talk about something that's been going on between her and the head coach. More details to follow...
- ▶ Let's walk through the timeline together with help from the audience.

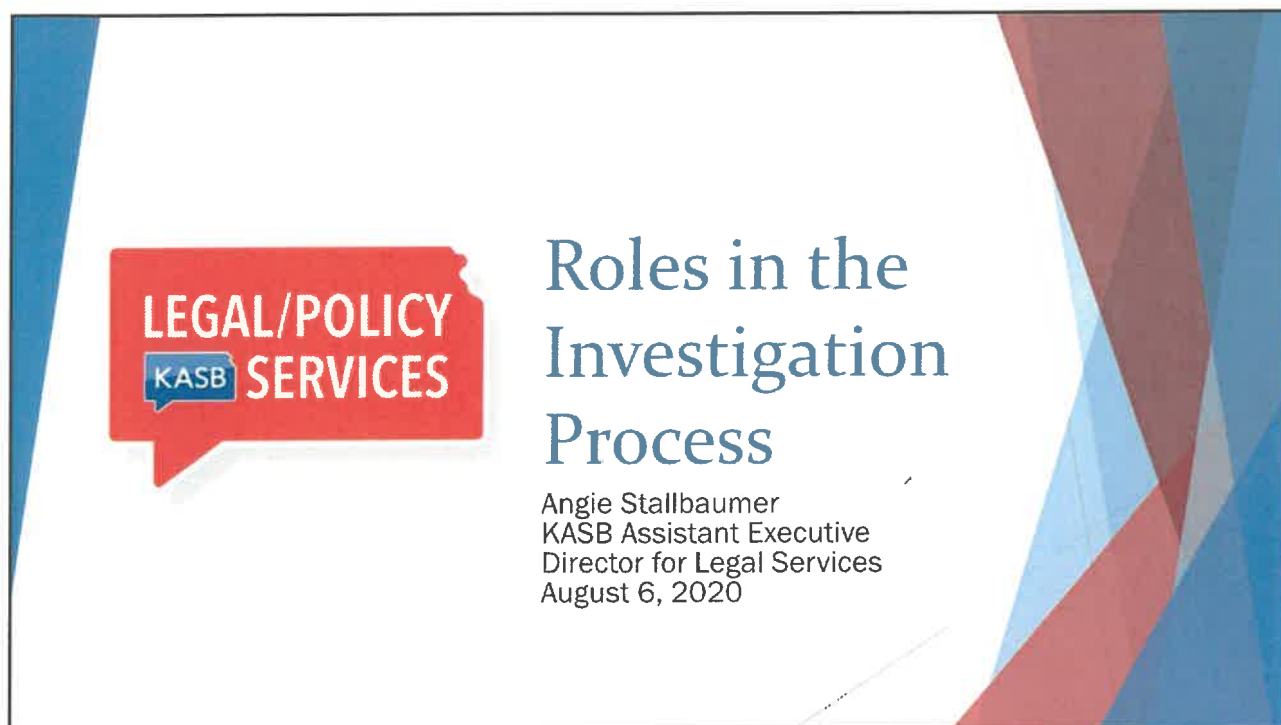
Pop Quiz: Let's put our new knowledge to work in a real-life scenario

14

Questions?



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



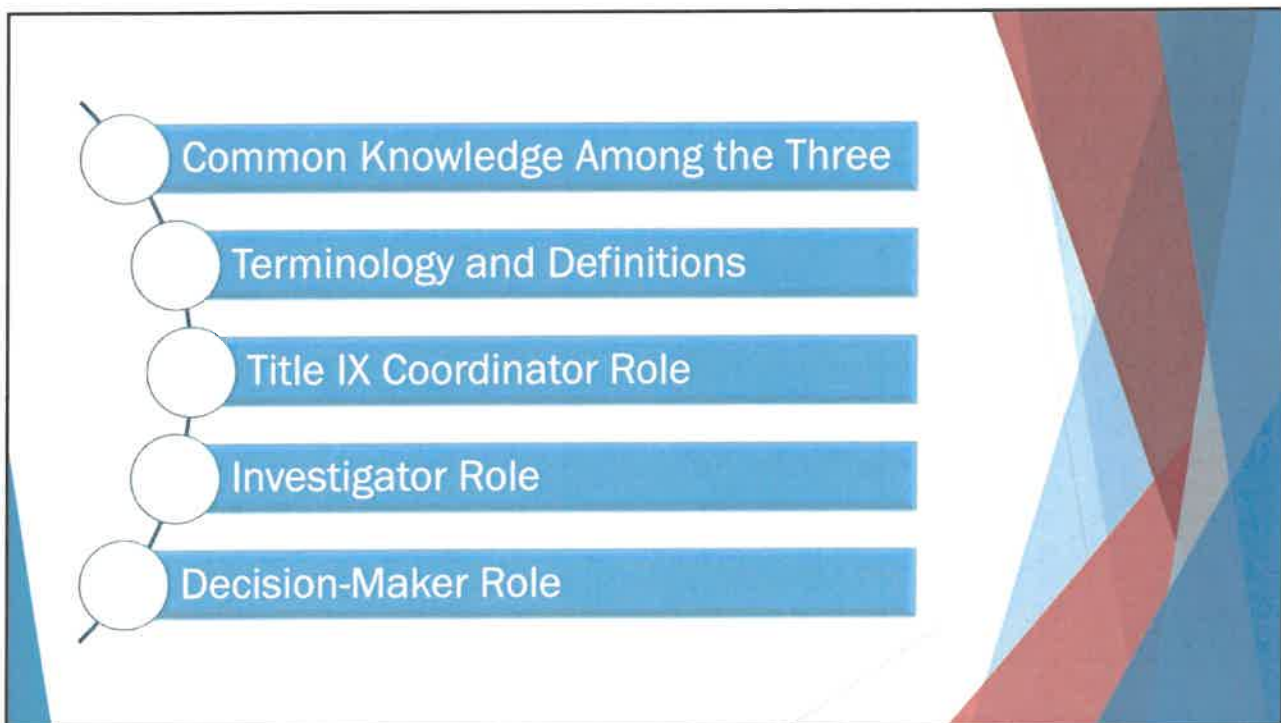
LEGAL/POLICY SERVICES
KASB

Roles in the Investigation Process

Angie Stallbaumer
KASB Assistant Executive
Director for Legal Services
August 6, 2020

This slide features a red speech bubble logo with the text 'LEGAL/POLICY SERVICES' and 'KASB'. The title 'Roles in the Investigation Process' is in a large, dark blue serif font. Below the title, the presenter's name and title are listed in a smaller, dark blue sans-serif font, followed by the date 'August 6, 2020'. The background has abstract blue and red geometric shapes on the left and right sides.

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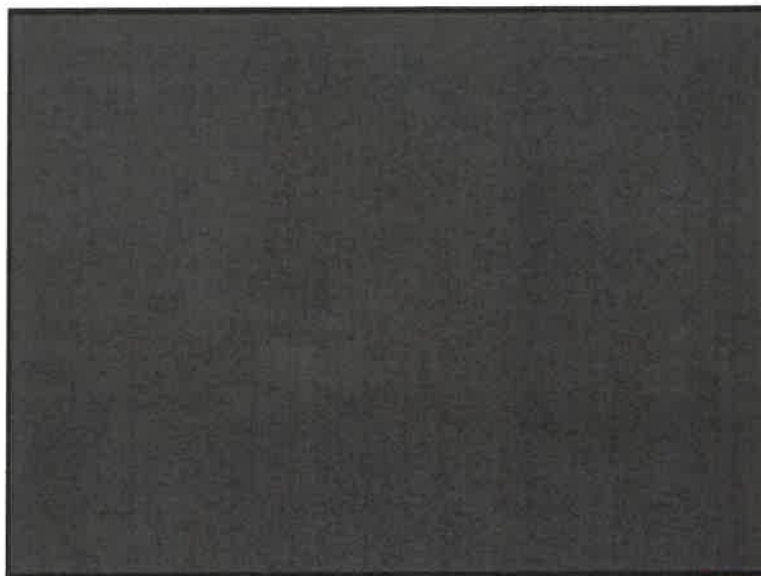


- Common Knowledge Among the Three
- Terminology and Definitions
- Title IX Coordinator Role
- Investigator Role
- Decision-Maker Role

This slide displays a vertical list of five topics, each preceded by a white circle and connected by a thin black line. The topics are: 'Common Knowledge Among the Three', 'Terminology and Definitions', 'Title IX Coordinator Role', 'Investigator Role', and 'Decision-Maker Role'. The text is in a dark blue sans-serif font. The background features the same abstract blue and red geometric shapes as the first slide.

2

A Tutorial



3

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.

4

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

Quid Pro Quo
“This for That”

More Common in
Employment

Especially Heinous with an
Imbalance of Power

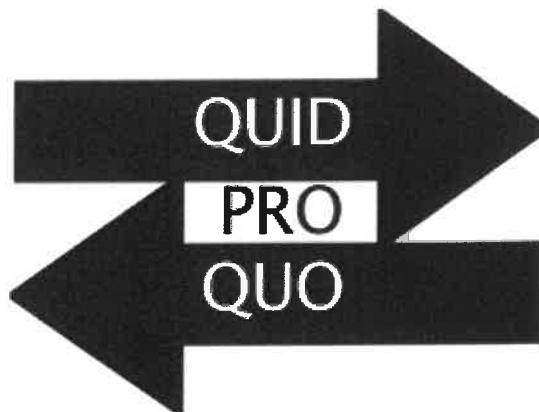
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Quid Pro Quo

► 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**

9

**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.

10

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.

11

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)

- ▶ 14th 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

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

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Appropriate Relationships with Students (Parents)

		
Professional	Cultural	NOT NECESSARILY FRIENDLY
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



20

- ▶ 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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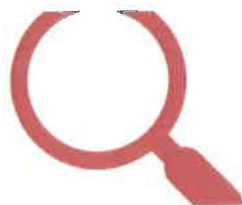
3 Roles in Formal Complaint Investigation Process



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

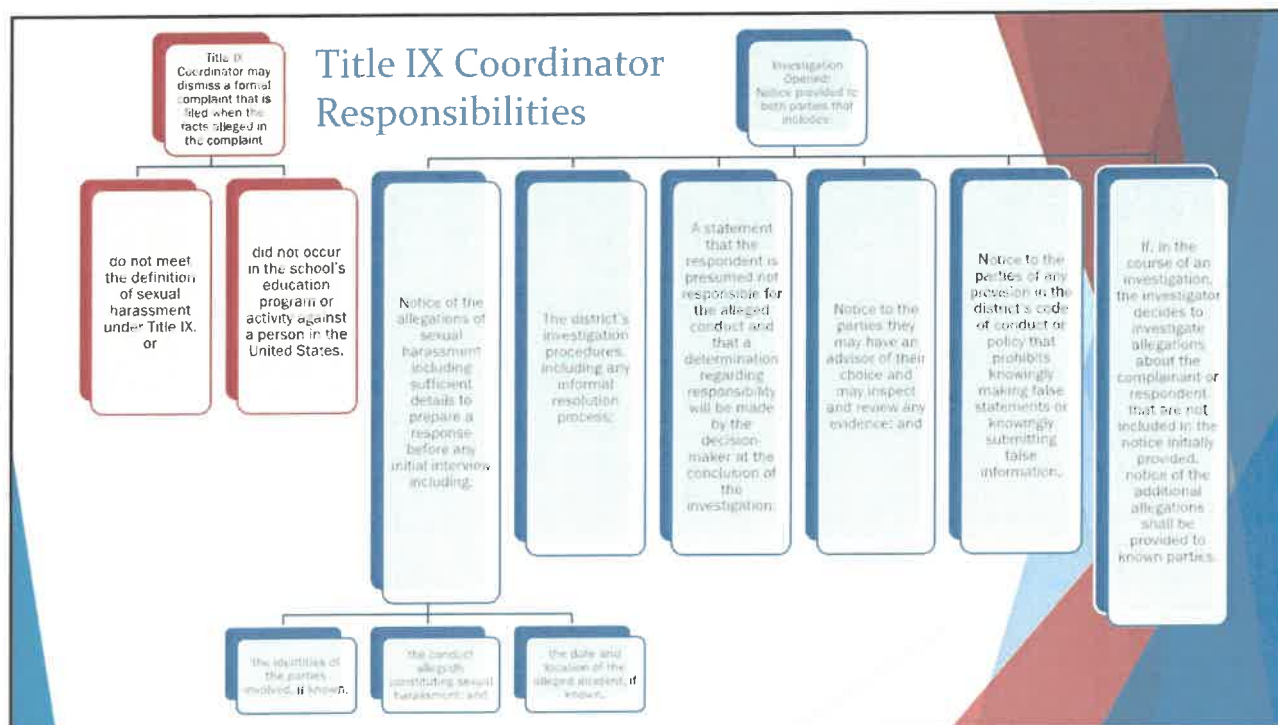
Carries out the investigation after the formal complaint is filed and conducts interviews of the witnesses, collects and documents evidence, and drafts an investigative report



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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Important

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.

26

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
1-800-432-2471

Decision-Makers and Investigators

Ashley Rohleder-Webb
August 6, 2020

1

Training Requirements from Regulations

- A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on
 - the definition of sexual harassment in Title IX,
 - the scope of the recipient's education program or activity,
 - how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section.
- A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.
- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

2

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;

Quid pro Quo

(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

Hostile Environment

(3) sexual assault, dating violence, domestic violence, or stalking.

VAWA definitions

3

Education Program and Activities

- "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution"
- Think similar to "nexus to school" consideration in student discipline.
- "In the United States"

4

Investigation Tips

- Ask open ended questions.
- Remain impartial, but build rapport and try to create comfortable environment for those you interview.
- Remember all evidence has to be shared with both parties.

5

Impartiality

- Avoid Prejudgment of the Facts at Issue
 - Title IX Coordinator's initial determination to dismiss/not dismiss not prejudgment
 - Cannot have
- Conflicts of Interest
 - Family member, etc.
 - Past Dealings
- Bias
 - Personal bias or bias for certain parties, by virtue of their status as complainant/respondent/witness.
- Cannot Rely on Sex-Stereotypes

6

Relevance and Evidence

- Look to initial complaint to develop questions.
- Consider all information that supports either parties' position, or in contradiction to them.
- Try to focus investigation on the complaint, but if additional issues arise, provide parties with the required notice.
- Be cautious of any evidence related to the sexual predisposition or sexual history of the complainant.
- In questions exchanged by parties in lieu of hearing, all questions must be relevant.

7

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Sexual Predisposition of Complainant

8



Investigators

9



Investigative Report

- The investigator shall prepare an investigative report that fairly summarizes relevant evidence and share the report with the parties and their advisors for review and response.
- The investigator's written report shall include an objective evaluation of all relevant evidence using a preponderance of the evidence standard to determine responsibility.

10



Decision-Makers

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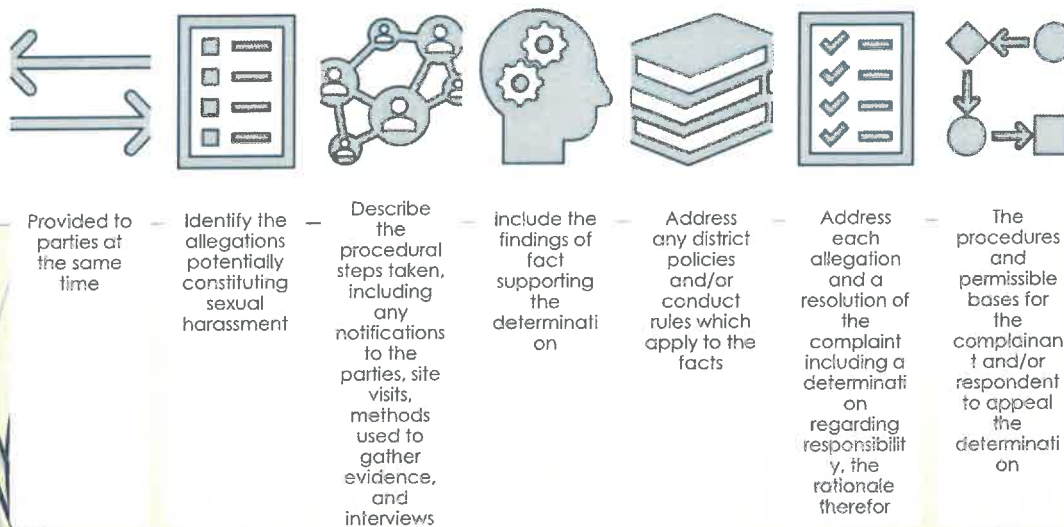


Technology Issues

- If performing a hearing, it must be recorded. Be sure to work with district technology staff ahead of hearings to be prepared.
- Ensure the hearing space can accommodate equipment: Access to outlets, sound quality, etc.

12

Written Determination of Responsibility



13

Questions?

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If you have additional questions, please send to:
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LEGAL/POLICY
KASB SERVICES

14

RIGHTS OF INVESTIGATION PARTICIPANTS

TRAINING FOR TITLE IX COORDINATORS, INVESTIGATORS AND DECISION-MAKERS – AUGUST 8, 2019

ASHLEY ROHLER-WEBB, KASB STAFF ATTORNEY

1

Constitutional Rights

Other Federal Laws

Parental
Rights

Notice &
Publication

Supportive
Measures

Retaliation
Protections

1st
Amendment

Due Process

FERPA

Title VII –
Civil Rights

LEGAL PROTECTIONS

2

CONSTITUTIONAL RIGHTS

1st Amendment

Free speech – just like outside of school, free speech has limits, but even in school, students and staff retain their constitutional rights.

Due Process

Before a state/government actor can deprive an individual of a right or something that has been guaranteed to that person, the government has to provide a basis for the movement.

3

FEDERAL PROTECTIONS

- Federal laws
 - Title VII and other federal laws:
 - Actions could be in violation of more than one law.
 - Must still follow requirements in Title VII.
 - FERPA: Student records and PII may only be shared
 - Clash of required information in investigations

4

PARENTAL RIGHTS

- Parents maintain right to act on behalf of their child, whether complainant, respondent, party, etc.

5

NOTIFICATION

- Districts must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator.
- Each district must notify persons entitled to a notification that the district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner.
- Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX and this part to such district may be referred to the district's Title IX Coordinator, to the Assistant Secretary, or both.

6

PUBLICATION

- Districts must prominently display the contact information required to be listed for the Title IX Coordinator on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification.
- Districts must not use or distribute a publication stating that the district treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by Title IX.
- Districts must adopt and publish formal complaint investigation procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and a process that complies with the regulations.
- Districts must provide persons entitled to a notification notice of the district's formal complaint investigation procedures, including:
 - how to report or file a complaint of sex discrimination,
 - how to report or file a formal complaint of sexual harassment, and
 - how the district will respond.

7

NOTIFICATION & PUBLICATION SUMMARY

- Provide notice of
 - Nondiscrimination Policy,
 - Formal Complaint Investigation Process,
 - Title IX Coordinator's Contact Information, and
 - Name/Title, Office Address, Phone Number, Email
 - that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Assistant Secretary, or both.
 - Training Materials must be shared on website – or otherwise be available if no website.
- On website, in handbooks or other materials available to:
 - applicants for admission and employment,
 - students,
 - parents or legal guardians of elementary and secondary school students,
 - employees,
 - and all unions or professional organizations holding collective bargaining or professional agreements with the district

8

SUPPORTIVE MEASURES

Provided
Equitably

Non-Disciplinary

Non-Punitive

Restore/Preserve
Equal Access

9

SUPPORTIVE MEASURES - EXAMPLES

counseling

extensions of
deadlines or
course-
related
adjustments

modifications
of work or
class
schedules

escort
services

mutual
restrictions
on contact
between the
parties

changes in
work
locations

leaves of
absence

increased
security and
monitoring

and other
similar
measures

10

Complaints alleging retaliation may be filed according to the formal complaint investigation procedures for sex discrimination.

- No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, as required by law, or to conduct any investigation, hearing, or judicial proceeding arising thereunder.

RETALIATION
PROHIBITED

11

- The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a formal complaint investigation proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

RETALIATION
PROHIBITED

12

DON'T FORGET THE RIGHTS GRANTED IN THE PROCESS

- Ensure that the preponderance of the evidence 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 investigative report, and 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.
- Providing parties with reports/decisions at the same time.

13

Questions?



TO PROVIDE FEEDBACK ABOUT TODAY'S TRAINING,
PLEASE COMPLETE THE EVALUATION:
[HTTPS://KASB.ORG/TITLE_IX_20200806](https://kasb.org/title_ix_20200806)

IF YOU HAVE ADDITIONAL QUESTIONS, PLEASE SEND TO:
LEGAL@KASB.ORG
1-800-432-2471

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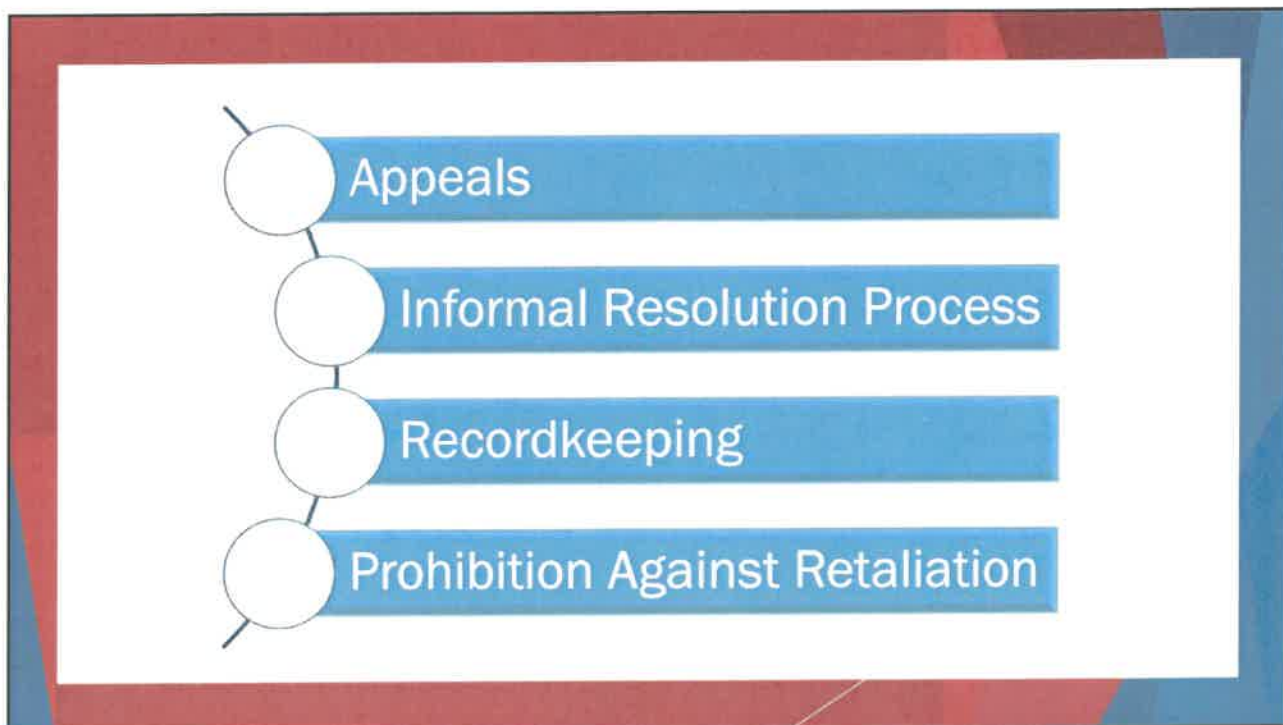


LEGAL/POLICY
KASB SERVICES

Post-Determination: Appeals and Recordkeeping

Angie Stallbaumer
KASB Assistant Executive
Director for Legal Services
August 6, 2020

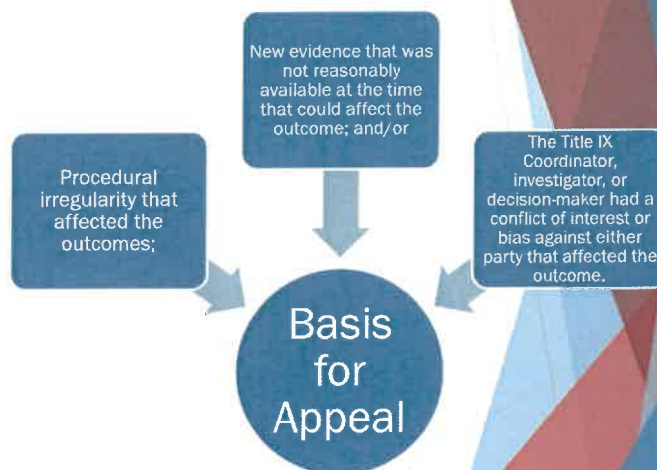
1



2

Appeals

- ▶ The complainant or respondent may appeal the decision-maker's determination regarding responsibility or a dismissal of a formal complaint.
- ▶ Request for appeal shall be made in writing within 20 days after the date of the written determination regarding responsibility.
- ▶ Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- ▶ Provide the written decision simultaneously to both parties, giving a rationale for the finding.



3

Appeal Decision-Maker Responsibilities



Review the evidence gathered by the investigator, the investigator's report, and the original decision-maker's determination;



Notify both parties in writing of the filing of an appeal and give them 10 days after the appeal is filed to submit further evidence in writing;



Not have a conflict of interest or bias for or against complainant or respondent and receive the required training;



Issue a written decision and the rationale for the decision within 30 days after the appeal is filed;



Describe the result of the appeal and the rationale for the result in the decision; and



Provide the written decision simultaneously to both parties and to the Title IX Coordinator.

4

Who is the hearing officer on appeal?

- ▶ Appeals shall be on the record and heard by an attorney, an independent hearing officer appointed by the board, or the board. The appeal decision-maker may not be the Title IX Coordinator, the Investigator, or the decision-maker from the original determination.



5

Time Out for a Game of “Who’s That Hearing Officer?”

6

- ▶ At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility.
- ▶ If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the proposed resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator.
- ▶ Within 20 days after the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution of the matter remains acceptable.
- ▶ If the matter is not resolved, or if the individual does not believe the resolution remains acceptable within 20 days after the informal resolution document is executed, the individual or the Title IX Coordinator may proceed with the formal complaint process.

Informal Resolution Process

7

How do we get the informal resolution process started? And by whom?

- ▶ The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:
 - ▶ The parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, information on when it may preclude the parties from resuming a formal complaint arising from the same allegations;
 - ▶ At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation of the formal complaint and be informed of any consequences resulting from participating in the informal resolution process;
 - ▶ The parties voluntarily and in writing consent to the informal resolution process; and
 - ▶ The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

8

Requirements for Recordkeeping and Prohibition on Retaliation

9

Recordkeeping Requirements



10

Retaliation Prohibited

Complaints alleging retaliation may be filed according to the formal complaint investigation procedures for sex discrimination.

- ▶ No district or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
- ▶ Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- ▶ The district must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA, as required by law, or to conduct any investigation, hearing, or judicial proceeding arising thereunder.

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Scenario: A Shy Source

- ▶ A male bus driver came to the Title IX Coordinator alleging that the female transportation director has been calling him pet names and finding times while he's bent over checking tires and fluid levels to brush up against him or give him "atta boy" smacks on the hindquarters.
- ▶ He is uncomfortable with this continuing, but he's not willing to file a complaint if it means she will know he is the one who complained.
- ▶ Can you keep his identity a secret during this process?

12



Retaliation Prohibited

- ▶ The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.
- ▶ Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a formal complaint investigation proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

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Scenario: Singing Like a Canary



- ▶ One of your teachers was the Respondent in a Title IX investigation, which culminated in a negative finding, as well as his receiving a written reprimand and being placed on a plan of improvement.
- ▶ He now takes to Facebook and posts his frustrations with the process, the finding, and his coworkers who participated in the investigation.
- ▶ What, if any, recourse do you have in this situation?

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Questions?



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