



TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

TITLE IX COMPLIANCE SERIES

Part 3: The Decisionmaker

Presented by:
Michelle Basi
Merry Rhoades

Date:
October 16, 2020

DIFFERENT
BY DESIGN

CPDU

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Disclaimer

The materials available in this Guidance are for informational purposes only. You should contact legal counsel to obtain advice with respect to any particular issue or problem, as student discipline matters are all unique and specific.



TUETH KEENEY
COOPER MOHAN JACKSTADT P.C.

DIFFERENT
BY DESIGN

Presenters

Kylie Piatt

Kylie practices primarily in the areas of K-12 education law, school litigation, and labor and employment law, representing school districts and private schools throughout Missouri. Kylie also specializes in intellectual property matters affecting school districts, helping schools districts protect their assets and defending districts against copyright infringement claims. Prior to joining the Firm, Kylie practiced community association law where she represented numerous condominium and homeowners associations throughout the greater St. Louis area.

A Texas native, Kylie obtained her B.A. with honors from Southern Methodist University in Dallas, Texas, before moving to St. Louis to teach seventh- and eighth-grade Communication Arts at a downtown charter school through Teach for America. Kylie's experience in the classroom provides a unique perspective on her practice of education law. Kylie earned her J. D. from Saint Louis University School of Law.

Presenters

Michelle Basi

Michelle is a shareholder and practices in the areas of school law, special education, school litigation, and labor and employment law. Michelle represents school districts with respect to employment and termination matters, special education, Section 504, student discipline and student rights, civil rights, and church/state issues. Michelle has successfully represented school districts in student and employment matters before various federal and state courts and administrative agencies, including the EEOC, Missouri Commission on Human Rights, and the Office for Civil Rights. She is a member of the Missouri Council of School Attorneys, Illinois Council of School Attorneys, and is a regular speaker at statewide and regional school law conferences. She has also authored chapter updates for the Missouri Bar School Law CLE Deskbook. As the daughter of a long-time special education teacher and the wife a high school math teacher turned administrator, Michelle is proud to represent schools and be a small part of the good work done for students in schools each day!

Michelle received two bachelors' degrees simultaneously from Saint Louis University, each *summa cum laude*. She earned her J.D., *Order of St. Ives*, from the University of Denver College of Law.

Presenters

Merry Rhoades

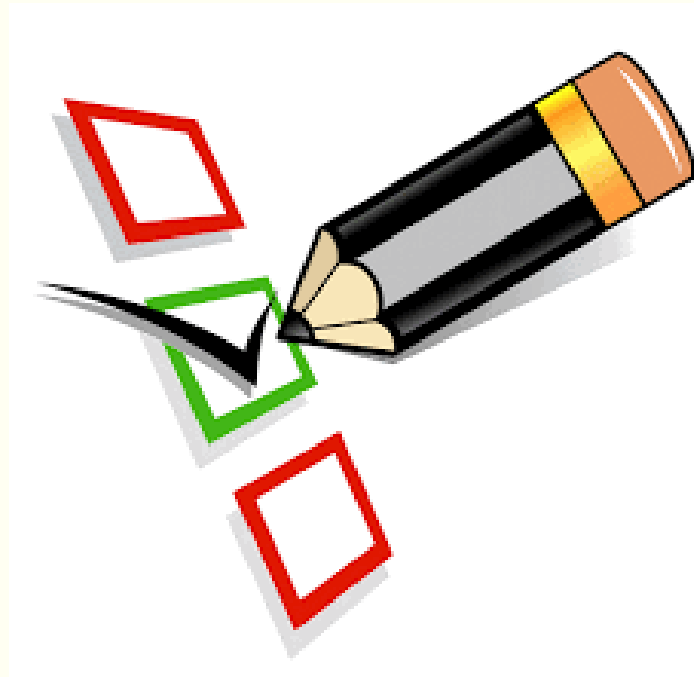
Merry has more than 30 years of experience representing Illinois public education institutions. In her practice as an education law attorney, Merry regularly advises clients on all facets of school law, ranging from annexation and detachment matters to the employee/employer relationship to tax and finance matters.

She has been asked to speak for organizations such as the Illinois Association of Administrators of Special Education (IAASE), the Illinois Association of School Administrators (IASA), the Illinois Principal's Association (IPA) and the Illinois School Boards Association (IASB) on special education issues. She also participates in the Illinois Council of School Attorneys' Special Education Concerns Committee. In addition to her work on student-related matters, Merry is also well-versed in the non-renewal of probationary employees, the termination of the educational support person and the dismissal of the long-standing tenured teacher. Her experience includes providing up-to-date advice on employee due process rights when disciplining or terminating the school district employee. Merry has a particular interest in advising clients on the American with Disabilities Amendment Act and the corresponding Illinois Human Rights Act.

Because of Merry's 30-plus years of experience in representing Illinois public school districts, she has key insights regarding the day-to-day operation of the school district. That experience includes school district compliance with the Illinois Open Meetings Act (OMA), the Freedom of Information Act (FOIA), and other laws governing board of education operation. Most recently, Merry represented several school districts in the first court challenge to the 1% School Facility Occupation Tax.

Merry is an active member of several school related organizations. She is a member of the Illinois Council of School Attorneys Executive Committee and served as a past Chairperson. She serves as an Illinois Association of School Boards (IASB) PRESS advisory committee.

Poll Time!



Title IX

Title IX of the Education Amendments of 1972 provides that:

“[n]o 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...”

- Protected persons:
 - Students of all genders
 - Staff of all genders
- Applies only to sexual harassment as defined by the August 14, 2020 regulations

Title IX

Principles Underlying New Regulations:

- Ensure prompt response to individuals who are alleged to be victims of sexual harassment by offering supportive measures
 - Supportive measures offered whether or not formal complaint filed
 - Offered to both parties
 - Designed to ensure equal access to program / activity
 - May not be disciplinary

Title IX

Principles Underlying New Regulations:

- Follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the district's behalf that an investigation is necessary
 - Due process considerations
- Provide remedies to victims of sexual harassment
 - No discipline of respondents until a determination of responsibility has been made following the grievance process

Title IX Definitions

Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

Title IX Definitions

- **Complainant** – individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent** – individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Actual knowledge** – notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary or secondary school

Title IX Definitions

- **Formal Complaint** – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. 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 recipient with which the formal complaint is filed.

Title IX Key Terms

Formal Resolution is the processing of a complaint from intake by the Title IX Coordinator, to investigation by an Investigator, to decision by a Decision-Maker and appeal to an Appeals Officer, if requested.

Informal Resolution is the process to resolve a complaint without resorting to the formal resolution procedures. This may include the use of mediation or other restorative justice measures.

Title IX Key Terms

Informal Resolutions:

- Not allowed for allegations of an employee sexually harassing a student
- Parties must consent in writing to participate in an informal resolution process
- School must provide written notice disclosing the allegations and the requirements of the informal resolution process (including when the informal process precludes resuming the formal complaint process)
- At any time prior to agreeing on a resolution, either party can withdraw from the informal resolution process

Title IX Key Terms

Title IX Personnel:

- Title IX Coordinator

- Policy implementation
- Complaint intake
- Supportive measures implementer
- Can be investigator

- Investigator

- Implement grievance procedures
- Fact finder
- Credibility determination maker
- Report writer

Title IX Key Terms

Title IX Personnel:

- **Decisionmaker**

- Facilitate the opportunity for parties to provide written, relevant questions and provision of answers
- Make written determination of whether sexual harassment under Title IX occurred
- Is respondent responsible for violation of Title IX?
- Notice of appeal rights

- **Appeals officer**

- Review determination of decisionmaker if appeal

- **Informal Resolution Facilitator**

- Facilitate informal resolution process

Grievance Process

Initial Steps:

- Title IX Coordinator intake of formal complaint
- Notice of formal complaint
- Implementation of supportive measures, as appropriate
- Assign investigator (could be Title IX Coordinator)
- Appoint decisionmaker

Investigation Process

1. Notice of formal complaint to parties
2. Equal opportunity for the parties to present witnesses and evidence
3. Cannot restrict either party's ability to discuss the allegations or gather and present evidence
4. Provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor (for any part of the grievance process) who may but is not required to be an attorney

Investigation Process

5. Provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview, hearing, or other meeting with enough time to allow the party to prepare to participate
6. Provide both parties and advisors equal opportunity to review all evidence on which recipient does not intend to rely and any exculpatory or inculpatory evidence from any source, prior to the completion of the final investigation report and in time to give parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report
7. Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility

Decisionmaker Qualifications

- Cannot be Title IX Coordinator or investigator
- Cannot have a conflict of interest
- Cannot have any bias for or against complainants or respondents generally
- Cannot have any bias for or against an individual complainant or respondent

Decisionmaker Qualifications

Avoiding Biases

- Goal is preservation of integrity of process
- Everyone has biases, but as a Decision Maker, you must learn to recognize what those biases are, and ensure they do not influence your decision making
- Be aware of implicit bias
- Keep an open mind as a Decision Maker
- Objectively review the investigative reports
- Remember that each case is unique.

Decisionmaker Qualifications

Avoiding Biases

A Decision Maker must not rely on sex stereotypes

Examples of sex stereotype in comments:

- Women have regrets about sex and lie about sexual assault.
- Men are more sexually aggressive and likely to have perpetrated a sexual assault.

Decisionmaker Qualifications

- Must be trained:
 - Definition of sexual harassment in regulations
 - Scope of the district's education program or activity
 - How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
 - Technology to be used at a live hearing
 - Issues of relevance of questions and evidence

Decisionmaking Process

1. Obtain Investigative Report

- Investigator's report → Findings of Fact, Credibility Determinations
- Parties have had opportunity to review evidence and provide comments before report is finalized

Decisionmaking Process

- 2. Each party & advisor can review the investigative report and provide written response**
 - After report is finished by investigator, but **BEFORE** determination by decisionmaker, parties and advisors have opportunity to review report
 - At least 10 days before determination

Decisionmaking Process

3. Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow up questions from each party

- Have clear process
- Equal opportunity to both parties
- You may have questions as well
- Make sure questions are relevant and consistent with regulatory restrictions

Complainant's Questions

Subject Jane Doe Investigation - Follow Up Questions

Dear Ms. Decision-maker,

On behalf of my daughter, Jane Doe, I would like the following questions to be answered before you make your determination.

- Based on a review of Trevor's discipline records, we noted that Trevor received prior discipline when he kissed another male student in elementary school. Is Trevor bisexual? Gay? Or is he straight?
- In Jane's experience, Coach Frye does not like Jane and may not like girls generally. How can Coach Frye be a reliable witness when she is biased against Jane?
- Did Ms. Investigator talk to Paul Smith and Tom Baker about what they were discussing with Trevor before Trevor assaulted Jane?

Sincerely,

John

JOHN Q. DOE
789 Appletree Drive
Fictional, IN 12345
555.867.5309

Respondent's Questions

Subject Title IX Investigation - Follow Up Questions for Trevor Morris

Good afternoon, Ms. Decision-maker:

My name is Tony Morris, and I am Trevor's uncle. I am also an attorney in the community, and my sister (Trevor's mom) asked me to step in as Trevor's advisor. My understanding is that we have the opportunity to submit additional questions to be presented to the Complainant. Accordingly, please obtain answers to the following questions:

Question 1: Is it true that Trevor and Jane had been on three dates prior to the cheerleading trip?

Question 2: Is Jane sexually active, or has she been sexually active prior to this alleged incident?

Question 3: A review of Coach Frye's testimony suggests that other boys on the cheerleading squad have engaged in similar or worse behavior. Why has Jane not reported those incidents to Coach Frye or the Title IX coordinator?

Question 4: What was the lighting on the bus at the time of the alleged incident? What time of day did the incident occur? If it was dark on the bus, how did Jane know if it was really Trevor and not one of the other boys who have harassed girls in the past?

Question 5: If Jane did not think Trevor meant any harm by his alleged action, what result does she want to see come out of this investigation?

Very truly yours,

Tony
Anthony J. Morris, Esq.
The Morris Law Firm, LLC

Decisionmaking Process

4. Issue written determination

- Include all required elements of written determination** (will discuss more later!)
- Evaluate evidence
- Decide if evidence is relevant
- Reach conclusions regarding whether respondent is responsible
- Determine if remedies need to be offered
- Determine if any disciplinary actions are necessary; and
- Write decision

Decisionmaking Standards

- Regulations require a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- Regulations require district to use one of two standards of evidence:
 - Preponderance of the evidence
 - Clear and convincing evidence
- Always use the same standard

Decisionmaking Standards

- Three Standards in the United States:
 - Beyond a Reasonable Doubt
 - Clear and Convincing Evidence
 - **Preponderance of the Evidence**: A reasonable person, after a careful balancing of available information, would conclude that it is *more likely than not* that a violation of policy occurred and that the responding party is responsible for the violation

Decisionmaking Standards

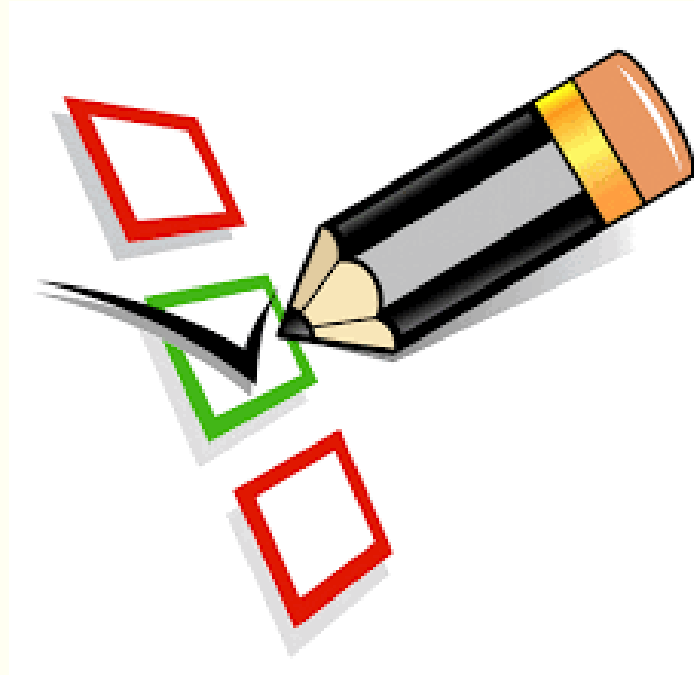
➤ What does this mean?



➤ Or what DOESN'T it mean?

- Beyond a Reasonable Doubt → *"firmly convinced of the defendant's guilt"*
- Clear and Convincing Evidence → *"substantially more likely than not"*

Poll Time!



Decisionmaking Standards

Standard of Review for District's Response (including your decision!)

Deliberate Indifference → a failure to respond reasonably in light of known circumstances.

Decisionmaking Standards

Relevance of Evidence

- When is evidence relevant?
 - it has any tendency to make a fact more or less probable than it would be without the evidence
 - the fact is of consequence in determining the action

Decisionmaking Standards

Relevance of Evidence

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

Decisionmaking Standards

Relevance of Evidence

- Cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege
 - Medical / treatment records
 - Attorney-client communications
 - Confessions to clergy
 - Criminal implications
 - Spousal testimony in criminal matters
 - Confidentiality / Trade Secrets
- Decisionmaker must explain to the party proposing the questions any decision to exclude a question as not relevant

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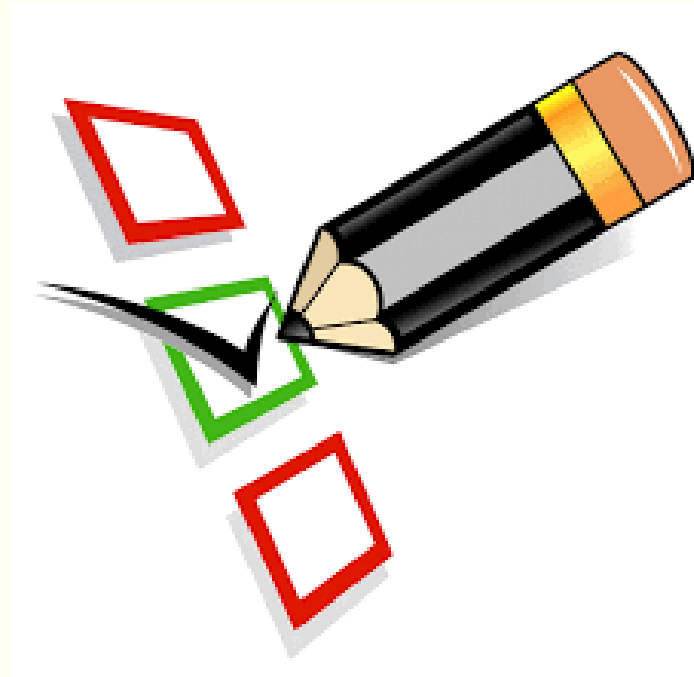
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Poll Time!



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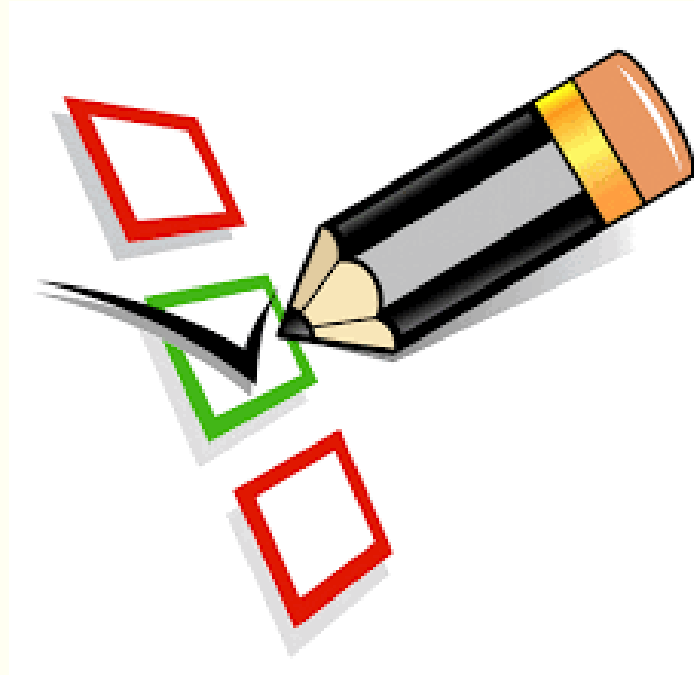
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Question 5: If Jane did not think Trevor meant any harm by his alleged action, what result does she want to see come out of this investigation?

Very truly yours,

Tony
Anthony J. Morris, Esq.
The Morris Law Firm, LLC

Poll Time!



Break time – we will return
in 5 minutes.

What Is the Decision?

Is the Respondent responsible for sexual harassment under Title IX?

What Is the Decision?

- **Did the alleged conduct occur in a district education program or activity?**
 - “Education program or activity” → any location, event, or circumstance over which the district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred
- **Did alleged sex discrimination occur against a person in the United States?**
- **At the time the complaint was filed, was complainant participating in or attempting to participate in the education program or activity of the district with which the complaint is filed?**

If NO to any of these, DISMISS!

What Is the Decision?

- **Does the conduct, if true, rise to the level of “sexual harassment” under Title IX?**

What Is the Decision?

Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; or

What Is the Decision?

Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

- 2) 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 recipient's education program or activity; or

What Is the Decision?

Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

- 3) "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

What Is the Decision?

Sexual Assault → An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
20 U.S.C. § 1092(f)(6)(A)(v)

- Currently includes any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of consent.

What Is the Decision?

Sexual Assault specifically includes:

- **Rape** (Except Statutory Rape) – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
- **Sodomy** – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

What Is the Decision?

Sexual Assault specifically includes:

- ***Sexual Assault with an Object*** – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
- ***Fondling*** – The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

What Is the Decision?

Sexual Assault specifically includes:

- ***Incest*** – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.
- ***Statutory Rape*** – Nonforcible sexual intercourse with a person who is under the statutory age of consent pursuant to state law.

What Is the Decision?

Domestic Violence → includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction..., or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction
34 U.S.C. § 12291(a)(8)

What Is the Decision?

Stalking → engaging in a course of conduct directed at a specific person that would cause a reasonable person to –

(a) fear for his or her safety or the safety of others; or

(b) suffer substantial emotional distress

34 U.S.C. § 12291(a)(30)

Written Determination

Required Elements of Written Determination

- Notification of the allegations potentially constituting sexual harassment as defined in regulations
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the district's code of conduct to the facts

Written Determination

Required Elements of Written Determination

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant
- The district's procedures and permissible bases for the complainant and respondent to appeal

Written Determination

Appeals

- The district must offer both parties an appeal from a determination regarding responsibility, and from a district's dismissal of a formal complaint or any allegations therein
- Bases for Appeal:
 - Procedural irregularity that affected the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter

Written Determination

Appeals

- Bases for Appeal:

- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

Written Determination

Decision Writing Hints

- Review relevant policies first
 - Title IX policy
 - Student Code of Conduct or Employee Code of Conduct
 - Other non-discrimination policies
- Make sure you have information needed
 - Completed investigation report
 - Follow up questions/answers from parties/advisors
- Ask your own clarifying questions if needed

Written Determination

Decision Writing Hints

- Use clear organization
- Include both exculpatory and inculpatory evidence & explain reasons for determination
- Identify evidence deemed irrelevant and why
- If witness was not contacted or did not participate, explain why
- Be as specific as possible – avoid vague terms like “some,” “many,” “a lot”
- Use consistent terminology throughout
- Focus on the facts and avoid subjective terms

Recordkeeping Requirements

- Records related to alleged sexual harassment must be maintained for at least 7 years.
 - Investigation records
 - Discipline/Remedies
 - Appeal records
 - Supportive measures
- Need to document for every claim:
 - Proof that response was not deliberately indifferent
 - What measures were taken to restore or preserve equal access to education
 - If no supportive measures, why that was not deliberate indifference

K-12 Title IX Compliance Training 2020

Hypothetical

Let's apply the rules!

K-12 Title IX Compliance Training 2020

Hypothetical

Procedural History

Hypothetical – Procedural History

- When was the Formal Complaint received?
- When were the parties notified about the Complaint?
- When did the investigation begin? Who investigated?
- When were interviews conducted? With whom?
- Did parties have advisors?
- What methods were used to gather evidence?
- Did parties submit written response to evidence?

Hypothetical – Procedural History

- When did the Investigator forward the Investigation Report?
- Did the parties submit a written response to the Investigation Report?
- When did you notify the parties of their right to submit written questions?
- Did the parties submit written questions? Were any questions deemed irrelevant?
- Did you ask follow-up questions?

K-12 Title IX Compliance Training 2020

Hypothetical

Identify Each Allegation

Hypothetical - Allegations

- What were the allegations included in the Formal Complaint?
 - **Formal Complaint:** Trevor Morris placed his hand underneath Jane Doe's sports bra without consent.
 - **Determination Report:**
 - Whether Trevor Morris placed his hand underneath Jane Doe's sports bra?
 - If so, whether Mr. Morris did so without consent?
 - Did this action constitute sexual harassment under Title IX?
 - Did this action violate the District's code of conduct?

K-12 Title IX Compliance Training 2020

Hypothetical

Findings of Fact for Each Allegation

Hypothetical – Findings of Fact

- Did Trevor Morris place his hand underneath Jane Doe's sports bra?
 - **Summarize the facts that parties agreed upon:**
 - *Both Miss Doe and Mr. Morris agree that they were both on the charter bus driving from Orlando to Fictional.*
 - *Both Miss Doe and Mr. Morris agree that Miss Doe fell asleep in a row of seats in the back of the charter bus, nearby where Mr. Morris was sitting with friends.*

Hypothetical – Findings of Fact

- Did Trevor Morris place his hand underneath Jane Doe's sports bra?
 - **Summarize the facts that most likely occurred, given the available evidence:**
 - *Miss Doe stated, and Mr. Hafley confirmed, that she took a nap around mid-afternoon after the team stopped to eat lunch. Mr. Morris could not remember when he saw Miss Doe taking a nap.*
 - *Mr. Morris denied moving seats to sit by Miss Doe. However, Mr. Hafley (who the Investigator found to be very credible) stated he saw Mr. Morris and Miss Doe both get up from the same row of seats.*

Hypothetical – Findings of Fact

- Did Trevor Morris place his hand underneath Jane Doe's sports bra?
 - **Describe and reference exculpatory and inculpatory evidence:**
 - *Mr. Morris initially denied placing his hand underneath Miss Doe's sports bra. However, Mr. Morris later admitted in response to a question from Miss Doe that he was playing "Truth or Dare" with fellow teammates.*
 - *While Miss Doe asked for more information regarding Mr. Morris's sexual orientation, such question is irrelevant to this determination. Accordingly, the question was not provided to Mr. Morris for follow-up.*

K-12 Title IX Compliance Training 2020

Hypothetical

Conclusion(s)

Hypothetical - Conclusions

- **Reference your standard of evidence:**

- *I reviewed the Investigation Report and all relevant evidence under a "preponderance of the evidence" standard. Accordingly, based on a review of available evidence, I determined whether it is more likely than not that a violation of policy occurred and whether Mr. Morris is responsible for the violation.*

Hypothetical - Conclusions

- **Clearly state determination of responsibility:**

➤ *Based on my review of the Investigation Report, the relevant evidence, and the additional evidence provided to me by the parties, it is my determination that Mr. Morris did place his hand underneath Miss Doe's sports bra without her consent. However, Mr. Morris's conduct does not constitute sexual harassment as defined by Title IX because Mr. Morris did not touch Miss Doe's breast for the purposes of sexual gratification. Instead, he was acting in response to a "dare" from his friends. The one-time incident, while wholly inappropriate, does not rise to level of severe and pervasive. Nevertheless, Mr. Morris's conduct is wholly inappropriate and unacceptable for the school environment. It is a clear violation of the District's student code of conduct.****

****This is an **EXAMPLE** of a **POSSIBLE** conclusion. Actual conclusions will always depend on the specific factual circumstances.*



Hypothetical - Conclusions

- **State disciplinary sanctions:**

- *Respondent's conduct violated District Board Policy EFG-1, Student Discipline, including provisions prohibiting assault and harassment. Because this is Mr. Morris's first offense, he will be suspended for 10 days. He will also be suspended from the cheerleading squad for the remainder of the year.*

- **State the remedies:**

- *Complainant's and Respondent's class schedules will be adjusted to allow Complainant to not have classes with Respondent in the future.*

Summary

- **Be familiar with the relevant district policies**
- **Check your biases**
- **Be thorough and thoughtful**
- **Be objective**
- **Seek advice of legal counsel**
- **Document your decision, including the reasons**

Questions??

CPDU

Reminder:

To obtain IL CPDU Credit, please complete the information requested at:

<https://forms.gle/9uYuzkDj6urRhsvA6>