



**HUSCH BLACKWELL**

# **Title IX Investigator Training**

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# Host

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# Training Schedule

- Module 1: Overview of Title IX Obligations, Scope, Definitions and Jurisdiction
- Module 2: Receiving and Documenting a Complaint or Report
- Module 3: Preparing for and Conducting an Investigation
- Module 4: Completing Investigation and Appeal

# Introductions

- Position
- Building
- Experience as an investigator
- Questions/difficult aspects of conducting investigations

# Poll Question:



What is the most difficult aspect of conducting investigations?



# Module 1: Overview of Title IX Obligations, Scope, Definitions & Jurisdiction





# Title IX



# Not just athletics, not just sexual misconduct

- Athletics
- Counseling
- Discipline
- Employment
- Single-sex classes
- Investigations
- Retaliation
- Sexual violence and harassment
- Pregnant and parenting students



# Fundamental Language

“[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.”

32 C.F.R. § 106.31



# Title IX Fundamentals

- No sex discrimination in educational programs and activities
- Institutional obligation to prevent, investigate, and redress
- Non-institutional conduct can result in sex discrimination



# Sources of Obligation

- Statute
- Regulation
  - Designated employee
  - Grievance procedures
- Case law
  - Deliberate indifference
- Enforcement Guidance
- Policy AC



# Enforcement Guidance

- 2001 Revised Sexual Harassment Guidance
- 2008 Sexual Harassment: “It’s Not Academic” Pamphlet
- 2010 Dear Colleague Letter on Harassment and Bullying
- 2015 Dear Colleague Letter on Title IX Coordinators



# 2017 Withdrawal Letter and New Q&A

- Withdrew 2011 & 2014 guidance
- Intent to undergo a new public rulemaking process on Title IX
- Key reforms
  - Standard of evidence
  - Investigation timeline
  - Off campus conduct
  - Notice
  - Confidentiality
  - Response to report & appeals





# Proposed Regulation: Nov. 18, 2017

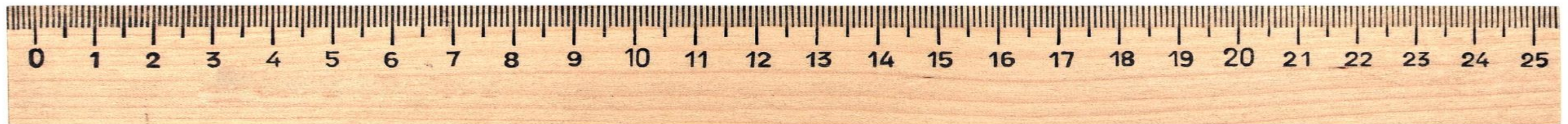
**Secretary DeVos: Proposed Title IX Rule Provides Clarity for Schools, Support for Survivors, and Due Process Rights for All**

**Department of Education Welcomes Public Comment on Draft Rule**

NOVEMBER 16, 2018

# The Proposed Regulation: New Rules for Schools

- Department of Education's Proposed Standard
- Definitions: "Sexual Harassment," "Deliberate Indifference," and "Actual Knowledge"
- Investigation and Adjudication
- Administrative Requirements



# Department of Ed's Proposed Standard

- Proposed § 106.44(a): A school with “**actual knowledge** of sexual harassment in an education program or activity . . . must respond in a manner that is not **deliberately indifferent**.”
- A school “is **deliberately indifferent** only if its response to sexual harassment is **clearly unreasonable** in light of the known circumstances.”

# Definition: “Actual Knowledge”

- “**Actual knowledge**” is defined as “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.**”
- Replaces Obama-era “Responsible Employee” concept





# Actual Knowledge

- Remember: Title IX Coordinator is always a person with authority.
- But: “the mere ability or obligation to report sexual harassment does not necessarily qualify an employee, even if that employee is an official, as one who has authority to institute corrective measures on behalf of the recipient.”





# Covered Misconduct Includes

- Sex discrimination
  - Disparate treatment on the basis of sex
  - Pregnancy discrimination
  - Harassment
    - Hostile environment
    - Quid pro quo
    - Sexual violence
    - Gender-based harassment
- Retaliation



# Scope – Institutional Responsibilities

- Prevent
- Immediately and appropriately investigate
- Promptly and effectively
  1. End the situation
  2. Stop recurrence
  3. Remedy effects



# Scope – Covered persons

- Everyone protected
- Anyone may file a complaint
  - With school or district
  - With U.S. Department of Education Office for Civil Rights (OCR)



# Scope – Outsiders

- Volunteers
- Former students
- Alumni
- Retirees
- Guests
- Visitors
- No relationship/contact with institution



# Bullying v. Harassment

- 2010 Dear Colleague Letter on Harassment and Bullying
- Steps to reduce bullying in schools
- Some student misconduct that falls under a school's anti-bullying policy may also trigger responsibilities under federal antidiscrimination laws
- Be aware of cases that overlap
- Coding is key



# Definitions – Sexual Harassment

- “Any unwelcome conduct of a sexual nature.”
- Includes:
  - Sexual violence/sexual assault
  - Gender-based harassment/stereotyping

# Discrimination and Harassment

- *Discrimination* – Conferring benefits upon, refusing or denying benefits to, or providing differential treatment to a person or class of persons in violation of law based on race, color, religion, sex, national origin, ancestry, disability, age, genetic information or any other characteristic protected by law, or based on a belief that such a characteristic exists.
- *Harassment* – A form of discrimination, as defined above, that occurs when the school or work environment becomes permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive enough that it unreasonably alters the employment or educational environment.

# Scenario #1

- Ms. Smith is a social studies teacher. Some of her female colleagues frequently engage in sexual jokes at the beginning of their professional development meetings. They often share stories about their sexual exploits, joke about their sexual prowess, and at times make sexually suggestive gestures. Ms. Smith is very upset and uncomfortable with this conduct.

# Poll Question:



Is the behavior of Ms. Smith's female colleagues unwelcome?

A. Yes

B. No

# Discussion

- Would this conduct be considered sexual harassment?
- Why or why not?



# Answers to Scenario #1

- **Yes.** Based on the information in the example, it appears the conduct is unwelcome.
- **Probably, yes.** To constitute sexual harassment the conduct must not only be unwelcome, but it must also be severe and pervasive.

## Scenario #2

- Now, assume that after interviewing all of the individuals named by Ms. Smith as her harassers, you find credible information indicating that Ms. Smith has joined in the sexual banter and jokes on multiple occasions.
- You follow up with Ms. Smith and she states that she made the jokes to “fit in” with her colleagues.

# Poll Question:



Is the conduct of Ms. Smith's colleagues still unwelcome?

A. Yes

B. No

## Poll Question:



Another male faculty member in Ms. Smith's department has been subjected to this conduct by Ms. Smith and his other female colleagues. Has Ms. Smith sexually harassed her male colleague?

A. Yes

B. No



# Discussion

- Is the conduct of Ms. Smith's colleagues still unwelcome?
- Another male faculty member in Ms. Smith's department has been subjected to this conduct by Ms. Smith and his female colleagues. Has Ms. Smith sexually harassed her male colleague?

# Answers to Scenario #2

- **No.** By joining in and participating in the conduct, Ms. Smith has demonstrated that the conduct is not unwelcome to her.
- **Yes.** The sex of the individuals is not a factor.

# When is sexual harassment discriminatory?

- Sexual harassment is discriminatory when:
  - It creates a hostile environment
  - It is “quid pro quo”
- It denies or limits the person’s ability to participate in or to receive benefits, services, or opportunities in the District’s program
- Student Sexual Harassment Video Clip

# Definition: Hostile Environment

- Sufficiently severe that it affects a person's ability to participate in the program or activity in question
- Creates an intimidating, threatening, or abusive environment



# Reasonable Person Standard

- From the perspective of a reasonable person in the victim's position
- Considering the totality of the circumstances





# Factors You Should Consider



- Type of Conduct
- Age of the alleged victim
- Duration
- Number of perpetrators
- Pattern/repeated
- Location of the misconduct
- Power disparity

# Definition: Quid Pro Quo

- “This for that” harassment
- Direct connection between submission to unwelcome conduct and participation in program or activity
- *Per se* sex discrimination
- Quid Pro Quo Clip



# Definition: Unwelcome Conduct

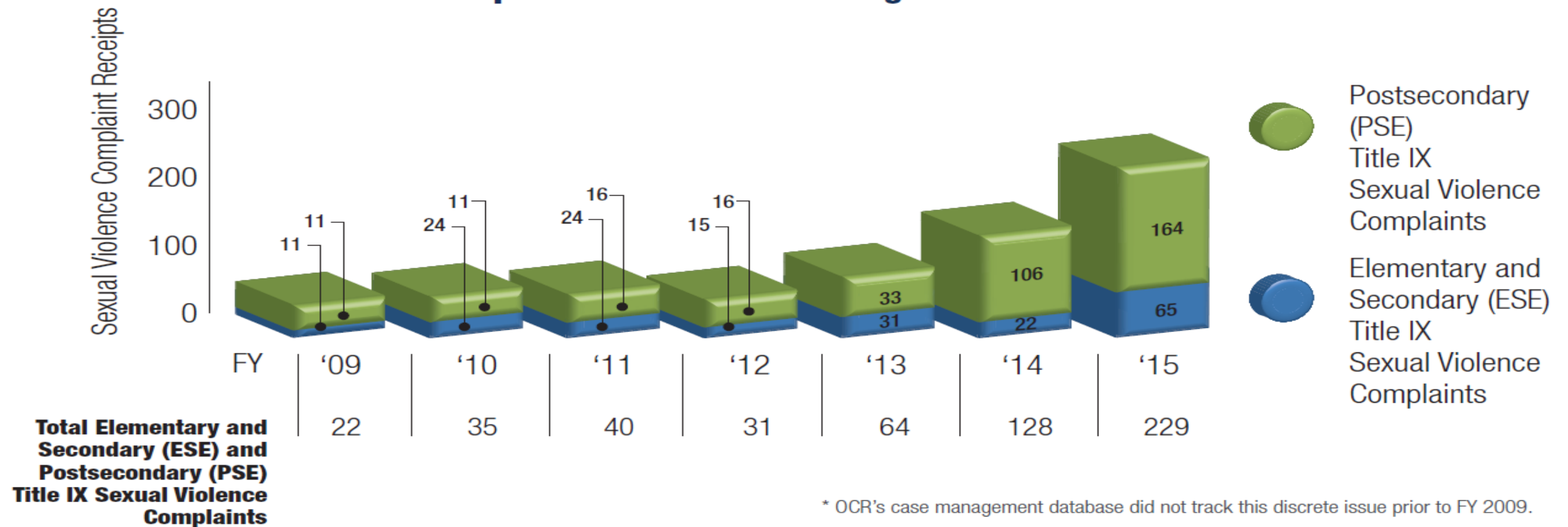
- Conduct is considered “unwelcome” if the student or employee did not request or invite it and considered the conduct to be undesirable or offensive.
  - Various forms: E.g., name calling, graphic/written statements (including mobile/internet communications), physically threatening, harmful, humiliating
  - Need not include intent to harm, specific target, or repeated
  - Failure to complain does not equal welcomeness
  - Welcoming some conduct does not welcome all conduct
  - [Unwelcome Conduct Video Clip](#)

# Definition: Sexual Violence

- Sexual violence is a severe form of sexual harassment
  - Physical contact or touching of a sexual nature, including touching of intimate parts and sexually motivated or inappropriate patting, pinching or rubbing.
  - Physical sexual acts of aggression, assault or violence, including criminal offenses (such as rape, sexual assault or battery, and sexually motivated stalking) against a person's will or when a person is not capable of giving consent due to the person's age, intellectual disability or use of drugs or alcohol.

# Sexual Violence and ESE

**Number of Complaints Over Time Involving Sexual Violence\***





# Consent

- Express or implied
- Words or actions
- No duress
- No incapacity
- Specific to conduct and time
- Consent PSA



# Consent & Disparity of Power

- “OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state.”
- “In cases involving a student who meets the legal age of consent in his or her state, there will still be a *strong presumption* that sexual activity between an adult school employee and a student is unwelcome and nonconsensual.”

*Questions and Answers on Title IX & Sexual Violence*  
U.S. Department of Education, 2014

# Definitions: Gender Based Harassment

- **Gender stereotypes** refer to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one's gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.



# Pregnancy Discrimination

- Pregnancy discrimination is a form of sex discrimination because only women can become pregnant
- District cannot deny the benefits of its educational programs and activities to pregnant women
- Pregnant women must be treated the same as other students with temporary medical conditions that require treatment
- District cannot unilaterally presume what limitations (if any) should be placed on a pregnant woman's participation





# Coursework accommodations

- The Department of Education places a burden on schools to accommodate students, going so far as to say that schools should “advise [pregnant students] of the importance of staying in school...[and] let them know of any school assistance that may be available to them.”
- Any separate accommodations must be “comparable.”



# Module 2: Receiving and Documenting a Complaint or Report



# Reporting: The Basics

- District must implement effective procedure for members of the District community to report sexual misconduct
- Title IX Coordinator is an essential reporting mechanism
- District should strive to create a culture that favors reporting and removes barriers to reporting
- District must distinguish between confidential and non-confidential reporting options

# Who has a duty to report?

- All employees **must** report sexual misconduct
  - They observe
  - That is reported to them
  - That they overhear
  - Or that they otherwise reasonably believe may have occurred
- Counselors and medical professionals (acting in their professional capacity) are exempt
  - All employees, students and visitors **must** immediately report
  - District employees will instruct persons seeking to make a grievance to communicate directly with the compliance officer

# Remember Other Reporting Obligations

- If you hear a minor has been a victim, report it immediately because you are a “mandatory reporter” under state law
- Make a hotline call (or make sure one gets made)
- Investigation may not begin prior to mandatory report
- If a student alleges sexual misconduct on the part of any district employee to any person employed by the district, that person will immediately report the allegation to the Kansas Department of Children and Families (DCF)



# Sources of Report or Complaint

- Student
- Parent
- Building administrator
- Teacher
- Counselor
- Fellow student
- District security



# The Reluctant Complainant

- If a complainant asks for partial or complete confidentiality after making a non-confidential report
  - Take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality
  - Consider whether to proceed with the investigation in spite of the request for confidentiality



# Factors to Consider



- Seriousness of the alleged conduct
- The age of the complainant
- Whether there have been other complaints against the same alleged perpetrator
- Whether facts suggest a pattern of conduct
- Whether alleged perpetrator has a history
- The rights of the accused
- Analysis of factors must be documented

# Conduct Constituting a Crime

- District should encourage a victim to also report to law enforcement
- District should assist victim in contacting law enforcement
- District should not contact law enforcement without the victim's permission except in case of emergency/threat to others or where state law requires otherwise



# Documentation: The Basics

- Each sexual misconduct investigation must be systematically and carefully documented
- The Title IX Coordinator, investigator, and appellate officer all have responsibility for documenting
- Case files should be stored in a secure and easily retrievable manner
- Use forms for consistency





# Why document?

- Results in more reliable investigation
- Needed to assess District climate
- OCR compliance audit
- Potential discovery in litigation



# Collective Responsibility



- Documentation is a team approach
- But one person must be responsible for making sure all necessary documentation is included in the case file
- Investigator should have primary responsibility for ensuring the file is complete

# Documentation checklist

- Report form
- Investigation log
- Notification of investigation
- Interim measures documentation
- Witness list
- Copy of sexual misconduct policy
- Interview forms
- Evidence forms
- Determination document
- Discipline addendum
- Appellate documentation
- Any other party correspondence



# Do NOT Include

- Internal emails between members of the investigation team
- Reports from local papers
- Evidence that wasn't relied on and wasn't shown to the parties
- Speculation of any kind
- Privileged communications (segregate them)



# Should I email?

- Communications between members of investigation team should generally be by phone or in person
- Emails exist for a long time and are discoverable by OCR and private litigants
- Don't email about problems or mistakes in the investigation; communicate orally

# Attorney-client privilege

- Communications between attorney and client that:
  - Convey legal advice
  - Seek legal advice
  - Supply information requested or needed by the attorney for the provision of legal advice
- Merely copying an attorney on any correspondence does not create privilege
- Talking internally about what the attorney said may or may not be privileged

# Storing files

- Develop a number system and index for your files
- Store them in a secure place
- If you use electronic files, implement effective password protocols
- Limit access to the files



# Documentation practices to avoid



- Allowing different investigators to use different documentation methods
- Arbitrarily purging files too soon
- Having a “thin” file, depending on allegations
- Storing files in different places



# Be Discrete

- District must still be discrete in its handling of information
- Information shared only with those whose participation is necessary for a compliant response
- Information may be disclosed if necessary to further the investigation



# Little “i” investigations



- Purpose: Determine whether misconduct is covered by Title IX policy
- Evaluate information provided in complaint or report
- Document decision factors
- Maintain central file



# Module 3: Preparing for and Conducting an Investigation



# Investigation Basics

- District has an independent obligation to investigate reports of sexual misconduct
- Investigation must be prompt, impartial, adequate, reliable, and thorough
- Purpose of the investigation is to determine whether misconduct occurred under a “preponderance” standard
- Investigators must be trained on District policy and conducting investigations



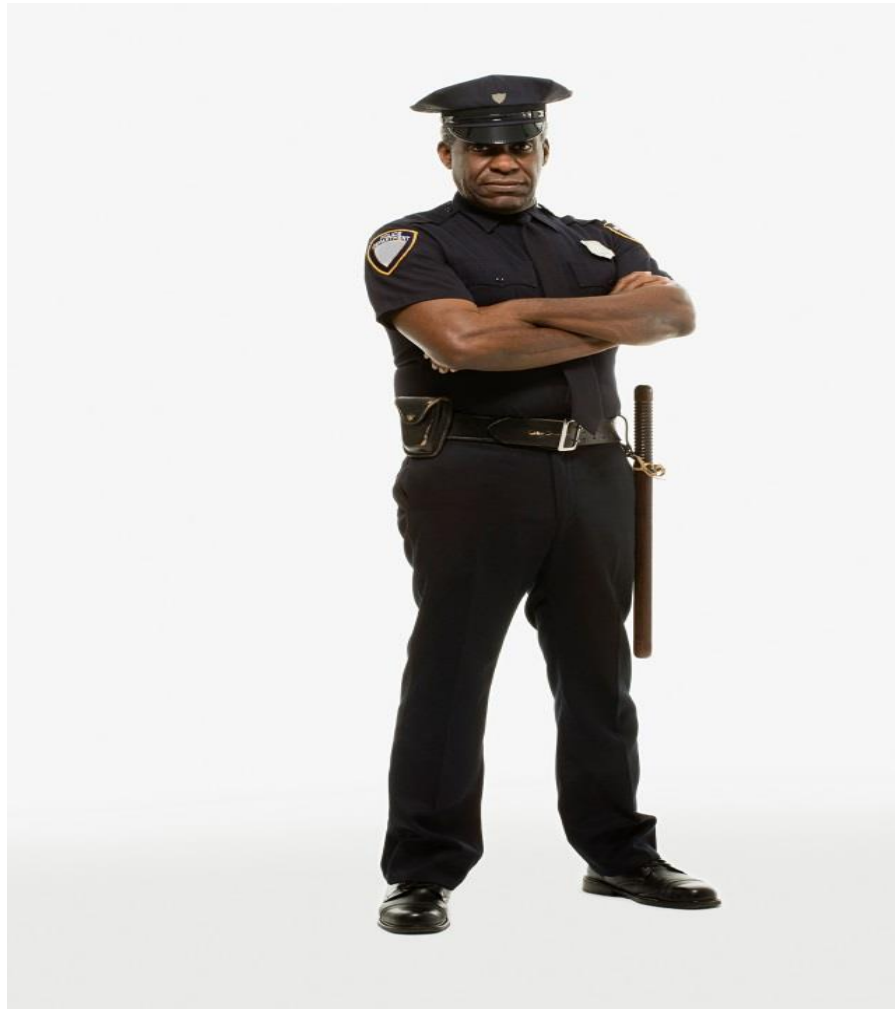
# Purpose of the Investigation

- To determine, under a preponderance of the evidence standard, whether sexual misconduct occurred
- Based on facts and surrounding circumstances
- Identify remedial action, as necessary





# Independent Obligation



- District cannot rely on law enforcement to resolve reports of sexual misconduct
- Outcome of criminal proceedings is never determinative of institutional investigation unless there is a conviction
- District may temporarily delay investigation to avoid interfering with law enforcement

# Adequate, Reliable, and Impartial

- Both sides have the opportunity to present evidence and witnesses
- Opportunity to respond to evidence
- Investigator should develop other sources of evidence
- Interviews should be documented and evidence collected in a professional manner



# Promptness



- Investigations must be reasonably prompt
- General rule is 60 days between complaint and determination
- Circumstances may vary time period

# Interim Measures

- Temporary measures to protect against further harm while investigation is pending
- Need to be re-assessed
- Can't tolerate non-compliance
- Not a finding of guilt
- Largely compliance officer duty, but you can check in
- Consult with compliance officer





# Informal Resolution



- May be highly appropriate for issues at your schools
- If both parties agree
- Not required to work out problem directly between complainant/respondent
- Complainant/respondent can always suspend and move to formal resolution
- Never in cases of sexual violence



# Avoid Conflicts/Appearance of Impropriety

- Compliance officer assigns individual to conduct the investigation
- Avoid conflicts
- Recuse if necessary
- Don't investigate friends, family, direct or indirect reports, enemies, prior romantic interests, etc.



# Effective Investigators...



- Document all steps taken throughout investigation
- Act promptly (eye on timeframes)
- Keep parties informed
- Treat each investigation as if work will be scrutinized by an outside third party
  - (OCR, court, opposing counsel, etc.)

# Investigation checklist

- Investigation checklist
  - Ensures you conduct consistent investigations
  - Ensures steps are not missed



# Typical Investigation Structure

- Complaint evaluation
- Meet with potential victim (i.e., “complainant”)
- Meet with potential perpetrator (i.e., “respondent”)
- Meet with witnesses
- Meet with complainant and respondent again
- Throughout: Collect non-testimonial evidence
- Prepare report/findings



# Non-testimonial Evidence



- Emails
- Security Camera Footage
- Text Messages
- Social Media Posts
- Police Reports
- Web-postings
- Medical records
- Clothing



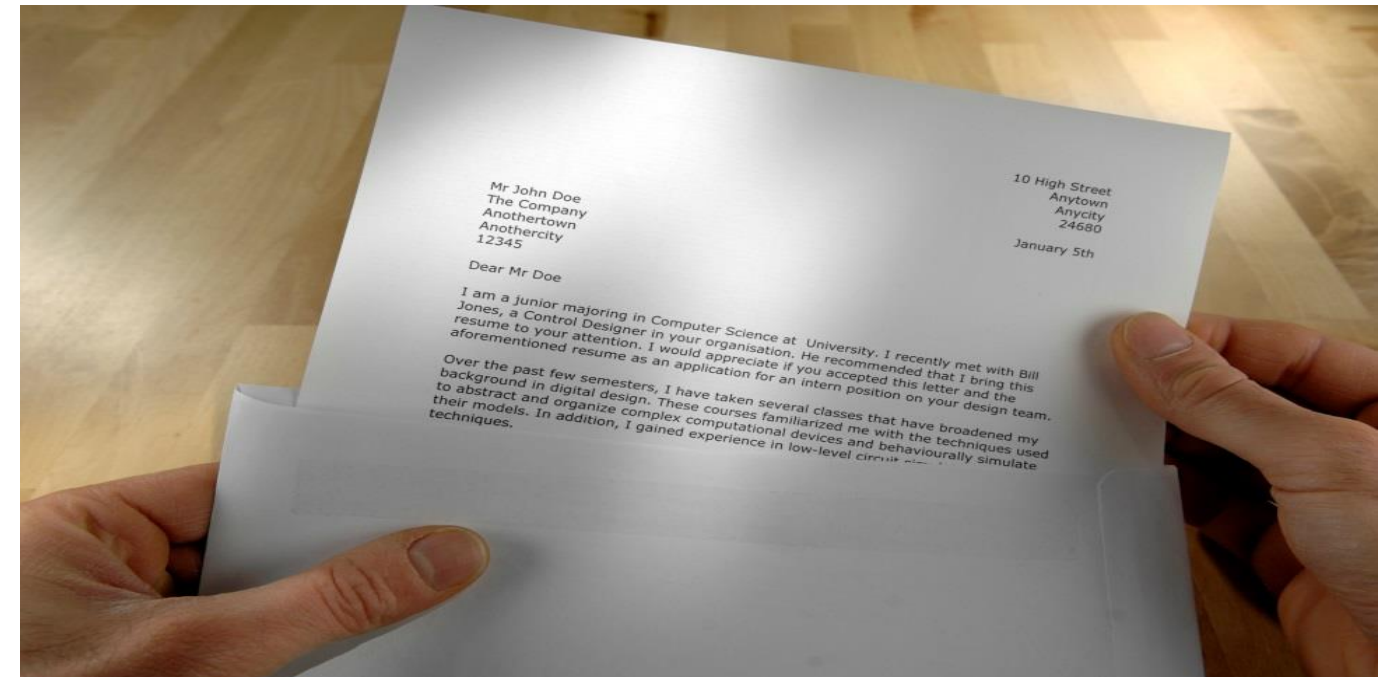
# Communicating with the Parties

- Absolutely critical to success of investigation
- Dispel any misunderstandings
- Apprise of progress
- Communicate equally
- Preserve sense of objectivity
- Explain process again, and again, and again



# Evidentiary Issues for Sexual Violence

- Evidence preservation
- Police reports
- Medical records
- Effects of trauma



# The Impacts of Trauma



- Flashbacks
- Anxiety
- Self-blame
- Inability to Concentrate
- Trouble sleeping
- Depression
- Delayed Recollection
- Minimization
- Social Withdrawal
- Non-linear recollection

# Students with disabilities and Title IX

- Unique issues are presented for students with disabilities in the context of Title IX sexual misconduct
- Section 504 of the Rehabilitation Act and the ADA prohibit disability discrimination
- In order to avoid disability discrimination, special considerations may be required when a student with a disability is involved in an alleged incident of sexual misconduct

# Potential Considerations

- Process
  - Additional assistance in understanding concepts related to sexual misconduct
  - Taking the time to ensure an individual understands the process
  - Accessible communication of reporting options and resource information
  - Ensure individuals with disabilities can access training provided by the District (i.e. sign language interpretation at live training, captioning for on-line training)



# Potential Considerations, cont.

- Supports
  - Accommodations may be required during investigation process
  - Services and supports following an incident of sexual misconduct
  - Newly-developed mental health issues as a result of an incident of sexual misconduct may require interactive process
  - Provide information about Student Services
  - Continue to offer interim measures to avoid complaints at the conclusion of an investigation related to academics

# Grievance Process

- Investigator appointed
- Investigation commences within five (5) days
- Complete report within 30 working days
- Notify parties within five (5) working days



# Gathering Materials



- Prohibition Against Discrimination, Harassment and Retaliation Policy
- District security reports
- Local police reports
- Photos or videos from other sources, such as cell phones
- Voicemail messages, emails or text messages
- Social media posts
- Personnel files if an employee is involved
- Witness list

# Storing Evidence

- Have a protocol for storing evidence
- Do not allow other students to have access to evidence
- Use a numbering system
- If you use electronic storage, password protect





# Interview Best Practices





# Interview

- Discussion

# Documenting Interviews

- At a minimum, investigator should prepare an interview summary that describes content of each interview
- Investigator may ask complainant, respondent, and witnesses to sign written statements

# Interview setup



- Pick an inviting and comfortable location
- Be willing to go to the party/ witness
- Choose location where confidentiality can be maintained

# Essential Groundwork

- Plan your sequence
- Prepare your “must ask” questions
- Bring materials
- Take inventory of previous communications
- Know who’s coming
- Anticipate questions from the party



# Anticipate Frequently Asked Questions



## Complainant

Question: Who is going to be told about this incident?

Answer: The District cannot promise confidentiality. However, we do our best to remind all parties involved in the investigation of their obligation to keep the information private.



# Poll Question:



If someone wants to speak off the record, can I stop taking notes?

A. Yes

B. No

# Anticipate frequently asked questions

Anyone

Question: I want to tell you something off the record, can you stop taking notes?

Answer: No. I cannot do that. It is important that you are honest and complete. It is the right thing to do.



# Anticipating Concerns



- What might interviewee be wondering
  - Do I need a lawyer?
  - What happens if I don't cooperate?
  - Why should I give you my text messages?
  - Are you going to share what I say with the police? My parents?
  - Will I be disciplined if I tell the truth?
  - When will this be over?

# Beginning – Demeanor and Tone

- Establish rapport
- Acknowledge that the process can be difficult
- Talk about your experience conducting investigations
- Where possible, offer choices
- Questions welcome
- Breaks as needed





# Topics

- Timelines
- Relationships
  - Meeting
  - History
  - Parallel/divergent interests
- Setting/circumstances
- Information about previous reports
- Bias/motive
- Description of witness information
- Other sources of evidence





# Questioning



- Ask open-ended questions with prompts
- Ask more specific questions later (funnel analogy)
- Chronology can be useful
- The goal is to get the witness to tell as much as possible
- Refocus the witness gently if he or she gets off track
- Don't ask leading questions

# Questioning Tips

- Use policy language when discussing allegations
- Neutral language
  - Avoid labels/judgments
- One question at a time
- Rephrasing
- Open-ended vs. leading questions



# The Funnel Technique



- Tell me more about [topic]
  - You mentioned .... Can you explain more about that?
  - What do you mean when you say you thought it was weird?
  - Did you do or say anything after that?
- Tell me about [next topic]
- [Question Funnel Clip](#)

# Silence



# Questioning Tips (cont.)

- Encourage the witness to volunteer information without prompting
- Encourage the witness to report all details, even if they seem trivial
- Ask the witness to mentally recreate the circumstances of the event





# Poll Question:



This is an appropriate question to ask during an interview: *Denise told you she was subjected to sexually explicit jokes from Keith, didn't she?*

A. Yes

B. No

Discuss how to make this question better:

Denise told you she  
was subjected to  
sexually explicit  
jokes from Keith,  
didn't she?



# Example of leading question

- Leading: Denise told you she was subjected to sexually explicit jokes from Keith, didn't she?
- Non-Leading: What did Denise tell you about Keith? Did you ever hear Keith interact with Denise? What did you hear?



# Poll Question:



This is an appropriate question to ask during an interview: *Did you ever hear Jeremiah tell a joke to other co-workers about Lucy's breasts?*

A. Yes

B. No



Discuss how to make this question better:

Did you ever hear  
Jeremiah tell a joke  
to other co-workers  
about Lucy's  
breasts?





# Questioning based on another witness's testimony

- Improper: Did you ever hear Jeremiah tell a joke to other co-workers about Lucy's breasts?
- Proper: Did Jeremiah ever talk about Lucy? What did he say? Did he ever tell any jokes?



# More questioning

- Don't accept non-responsive answers
- Keep asking the question different ways until you get an answer to the question you are asking
- Don't avoid the hard or uncomfortable questions
- Don't ask conclusory questions
- Don't be satisfied with conclusory answers

# Example of conclusory questions

Q. Did Grant kiss you?

Q. Did you give him consent to do that?

Q. Was your consent effective?

Q. Did you feel like this created a hostile environment?

# Example of conclusory answers

Q. What happened when Mr. Jefferson shut the door to his office behind you?

A. He sexually assaulted me.

Q. How did it make you feel when Rebecca text messaged the picture to her friends?

A. I felt sexually harassed.

# Closing the Loop



- Ask “close the loop” questions to make sure there isn’t any more information the witness is withholding
- Example: “Is there anything else you can remember about what he said that you haven’t told me?”



# Credibility Factors

- Inherent plausibility
- Demeanor
  - Verbal
  - Non-verbal
- Motive to falsify
- Level of detail
- Internal consistency
- Corroboration
- Past record



# Closing the Interview



- Leave the door open for further contact
- Tell them to contact you if they think of anything else
- Be sure to get contact information
- You may ask them if they are willing to review and sign a statement

# Special Tips for Interviewing the Complainant

- It is important not to re-traumatize the alleged victim
- Do everything possible to make the complainant comfortable (i.e., breaks)
- Consider whether parent should be involved in interview
- Consider having a counselor or crisis advocate present for sexual assault cases (if allowed, allow support person for respondent as well)
- Consider multiple interviews if complainant is unable to complete the interview in one sitting

# Two-person interview

- Consider using this format for high profile cases
- Role of backup person is to take notes, make sure interviewer covers key points
- Backup person serves as a “witness” if respondent later complains about process

# Poll Question:



During the interview, it is important to promise that the district will make sure to get whoever did this to you:

A. Yes

B. No



# Interview pitfalls

- Indicating you are biased (“We’re going to get him . . . I promise!”)
- Giving legal advice to the witness
- Being judgmental
- Becoming the interviewee
- Avoiding uncomfortable questions



# Interview

- Discussion

# Questions

## Module 4: Completing the Investigation and Appeal



# Preponderance of the Evidence Standard

- Lower standard of proof
- Means it is “more likely than not” that the proposition occurred
- Has been described as:
  - 50.01%
  - 50% + a feather
- We can't decide is never an option
  - If 50/50 preponderance has not been met



# Evidence

- Party and witness statements: Interview summaries, written statements, journals, correspondence
- Documentation
  - Police/security reports, 911 tapes
  - Student/employment records
  - Medical records
  - Texts/email/voicemail
  - Social media
  - Videos, video surveillance, photographs
  - Key card or pay stub time stamps
  - Receipts, phone bills
- Non-documentary physical evidence
- Prior allegations or bad acts
- Expert evidence

# Analysis

- Timeline of investigation
- Communication/evidence log
- Diagram of scene
- Witness diagram
- Chronology of incident(s)
- Investigator evaluation of evidence (notes, reports)
- Include previous incidents, as necessary

# Written Report

- Investigation history
- Summarize the interviews and other evidence gathered
- Outline factual conclusions, including undisputed and disputed facts
- If necessary, assess the credibility of the complainant, respondent, and any witnesses, including the basis for the investigator's judgments
- Make conclusion about whether the facts constitute a violation of the policy

# Evidence considered



- Include a summary of evidence collected and reviewed during investigation
- Lean towards being over-inclusive

# BEWARE!

- Don't include speculation
- If you have to speculate, investigation probably isn't complete





# Notification of outcome



- What to include
  - Summary of allegations and scope of investigation
  - Determination of whether a policy violation occurred
    - Specifically express preponderance of evidence standard
  - Sanctions and remedial measures imposed, if any
  - Notification of right to file appeal and procedures for doing so
  - Non-retaliation reminder

# Notification of outcome (cont.)

- Must provide simultaneously in writing to both parties
- Redact information that pertains to one party but not the other
  - Examples
    - The respondent should not be informed that the complainant will be provided ongoing counseling
    - The complainant does not need to know the academic consequences related to respondent's suspension
- Notify District official and administrators, as needed

# Note additional prohibited behavior

- What if sexual misconduct is not found, but evidence indicates other policy violations by one or both parties?
- Behavior may not rise to the level of discrimination but may be unacceptable for the workplace or educational environment



# Are any other policies applicable?

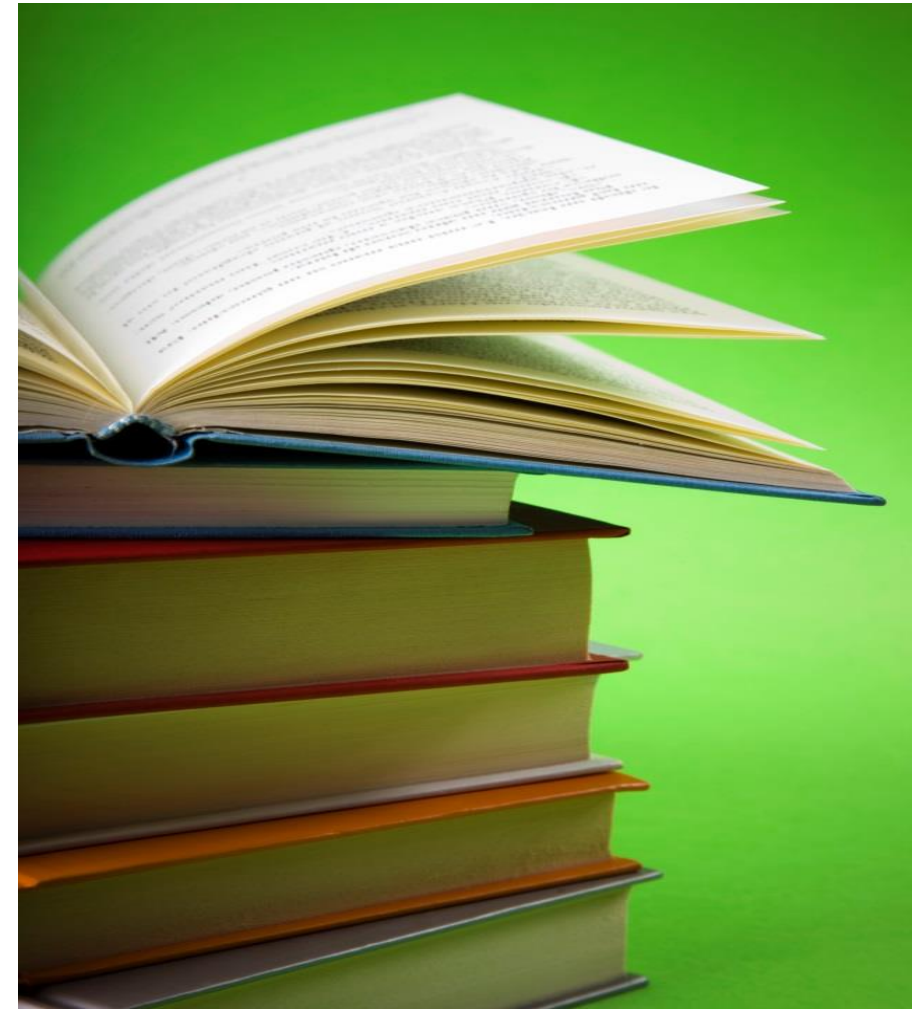


- Consider
  - Student Code of Conduct
  - Specific policies related to inappropriate use of computers, hazing, etc.
- Discuss role of investigation/report in administering those policies



# Discipline

- Written reprimand
- Probation
- Suspension
- Demotion
- Expulsion
- Termination





# Other remedial measures

- Monitoring
- Counseling
- Providing access to community services
- Training
  - Individual, group, school, District
- Separation of parties
- Escort between classes
- Allowing student to retake or withdraw from a class
- Other steps to ensure that sexual misconduct does not continue



# Questions

