Fresno Unified School District
Title IX Decision-Maker Training
October 12, 2022

SESSION ONE

PRESENTED BY:
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Cerritos • Fresno • Irvine • Marin • Pleasanton • Riverside • Sacramento • San Diego
Agenda

- Definitions for Training
- Review Title IX Decision-Maker Role
- Review Final Investigative Report
- Facilitate Written Questions for the Parties
- Review Hypothetical “Cross-Examination” Questions
- Preparation for Session 2
Definitions for Training

- Complainant/Respondent
- Parties
- Witness
- Advisor
- Grievance Process
- Final Investigative Report
- Written Cross-Examination Questions
- Determination of Responsibility
Title IX Team: Decision-Maker

Decision-Maker Role:

- Reviews Final Investigative Report with “fresh eyes” to see if information is missing or incomplete
- Facilitates relevant written questions & “cross-examination” from parties for parties and witnesses; must be trained on issues of relevance
- Reviews all evidence, identifies the disputed issues, and weighs the evidence
Title IX Team: Decision-Maker

**Role:**

- Makes conclusions about whether alleged conduct occurred and determines responsibility
- Prepares written determination with findings of fact, policy conclusions, and rationale for the result as to each allegation
- If applicable, recommends sanctions for Respondent and remedies for Complainant
- Provides written determination and appeal rights to the parties/advisors simultaneously
REVIEW FINAL INVESTIGATIVE REPORT
Review Final Investigative Report

- Review your Title IX Board Policies and/or Administrative Regulations
  - Look at the policies and regulations cited in the Final Investigative Report and the Notice of Allegations
  - Review your role as Decision-Maker, and determine the scope of your decision
    - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, fondling, stalking, and/or dating violence, etc. under the Title IX administrative regulations? (Federal Law)
    - Are you deciding if there is a preponderance of evidence to find quid pro quo sexual harassment, hostile environment sexual harassment, sexual assault, and/or sexual battery, etc. under the Board Policies prohibiting sexual harassment? (State Law)
Review Final Investigative Report

• **Read Final Investigative Report and Review Attachments**
  – Take notes, and create a list of questions (if any)

• **Calendar timelines to accommodate these phases:**
  – Process to ask questions of Parties and exchange written “cross examination” questions between Parties or from the Parties to witnesses
  – Decision-Maker analyzes the evidence, writes the decision, and Title IX Coordinator, administrator or legal advisor reviews for thoroughness and readability
  – Deliver written decision to the Complainant, Respondent, Advisors (if any), and Title IX Coordinator with notice of appeal rights

• **Plan and Schedule the Process with the Parties**
  – If needed, seek help from Title IX Coordinator to schedule and plan logistics
Discuss *Hypothetical* Final Investigative Report

- Review Table of Contents for Roadmap
- Read the Notice of Allegations and Formal Complaint
- Tips for what to look for in the Investigative Report
  - Note the steps taken in the Title IX complaint process *for this matter* because that information will likely be “copied” into your decision
  - Note where Complainant or others describe an *impact on the educational environment* (e.g., how did the matter affect Complainant’s access to or actual education?)
  - Note where Complainant or others describe the *desired remedy* (e.g., what result does the Complainant want from the formal complaint?)
Discuss *Hypothetical* Final Investigative Report

• Tips for what to look for in the Investigative Report, continued:
  – Note the evidence from Complainant and Respondent
    • Pay attention to *timing* of statements (e.g., What’s in the NOA vs. the Formal Complaint? When Respondent know of allegations?)
    • Pay attention to *content* of statements (e.g., vague, offering too much or too little information, full or partial denial, conditional denial - “I would never”)
    • Pay attention to where they *disagree* about what happened
    • Pay attention to what makes one more *credible* than the other
      – Credible: The person offers reasonable grounds for being believed
      – You must articulate your credibility observations in a deliberate, systematic, and objective process (e.g., look at corroboration; consistency/inconsistency; admissions against interest; plausibility; motive to lie/falsify, etc.)
FACILITATE WRITTEN QUESTIONS BETWEEN PARTIES OR FOR WITNESSES
Written Questions Between Parties

Before making a decision about responsibility, the Decision-Maker must facilitate a question process:

The Decision-maker must 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. (34 CFR 106.45(b)(6)(ii).)

Purposes for the questions may include:

• The opportunity for the parties to seek information that may shed light on someone’s credibility

• The opportunity for the Decision-Makers to ask questions and observe the credibility of Complainant, Respondent and witnesses, since they did not conduct the investigation
Written Questions Between Parties

Requirements for Questions

• Questions must be relevant

• Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant…
  – Unless such questions and evidence about 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 Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

• You must explain any decision to exclude a party’s question as irrelevant
Written Questions Between Parties

Definition of Relevance

- Having significant and demonstrable bearing on the matter at hand
- Affording evidence tending to prove or disprove the matter at issue or under discussion
- **Synonyms**: applicable, material, pertinent  
  *(Merriam-Webster)*

- Legalistic definition of relevance:
  - That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters at issue between the parties.  
  *(Black’s Law Dictionary, Sixth Edition)*
Written Questions Between Parties

Guidelines for Questions

• Questions should not be repetitive
  – Ask the party to ask another question intended to elicit different information

• Questions should be clear
  – Ask the party to clarify the question

• Avoid compound questions
  – Ask the party to separate the questions

• Avoid questions with difficult words
  – Ask the party to rephrase the question

• Avoid argumentative questions
  – Ask the party to rephrase the question
REVIEW HYPOTHETICAL “CROSS EXAMINATION” QUESTIONS
PREPARATION FOR SESSION 2
Homework Between Sessions

**Hypothetical** Investigative Report

- Weigh the evidence and determine by a preponderance of the evidence whether Respondent was flirty or friendly with Complainant before the August 21 incidents.

- If you find that Respondent was flirty, write factual findings to demonstrate the flirting.

- If you find the Respondent was friendly in a non-sexual way, write factual findings to demonstrate the non-sexual friendliness.

- Your factual findings should include who, what, where, when, why & how of what happened that was flirty or friendly.

- Explain why you made that finding; what was your rationale.

- **GOAL:** We may disagree, but did you adequately explain your rationale?
Homework Between Sessions

*Hypothetical* Investigative Report

- Review the definition of sexual fondling (pg. 4 of Report)
- Review the evidence in the Investigative Report related to touching the Complainant’s groin, crotch, or private parts
- Weigh the evidence and determine by a preponderance of the evidence whether Respondent touched Complainant’s groin area
- If you find that Respondent touched Complainant’s groin, determine what kind of physical touch *and* if Complainant permitted *and* was touch for sexual gratification
- Write a factual finding (who, what, where, when, why & how of the allegation)
- Explain why you made that finding; what was your rationale
- **GOAL:** We may disagree, but did you adequately explain your rationale?
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