



**Title IX  
Coordinator,  
Investigator,  
Decision Maker, and  
Informal Resolution  
Facilitator Training**

# Today's Agenda

- What Must Be Investigated
- When You Must Investigate
  - How You Must Investigate
- Other Need to Know Information

# What Must Be Investigated

# Title IX Basic Law

“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 Prohibits Sexual Harassment

## Multiple Definitions of Sexual Harassment Under Title IX:

- ▶ Conduct on the basis of sex that satisfies one of the following:
  - ▶ Quid Pro Quo Harassment
  - ▶ Hostile Environment
  - ▶ Harassment Under Violence Against Women's Act (VAWA) and Clery Act

These are the forms of sexual harassment that are subject to Title IX investigation

# What is to be investigated?

## Quid Pro Quo:

An employee expressly or implicitly conditioning an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct

# What is to be investigated?

## Hostile Environment:

- ▶ 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 district's education program or activity.

# What is to be investigated?

## **Harassment Under VAWA & Clery Act:**

- ▶ “Sexual Assault” under 20 USC 1092(f)(6)(A)(v)
- ▶ “Dating Violence” under 34 USC 12291
- ▶ “Domestic Violence” under 34 USC 12291
- ▶ “Stalking” under 34 USC 12291



# What is to be investigated?

## Clery Act - Sexual Assault

20 USC 1092(f)(6)(A)(v)

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

## FBI NIBRS - Sexual Offenses

<https://le.fbi.gov/file-repository/nibrs-user-manual-063023.pdf/view>

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Inability to consent Includes instances when the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age.

# What is to be investigated?

## Sexual Assault

### FBI NIBRS - Sexual Offenses

**Rape** - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object.

**Sodomy** - Oral or anal sexual intercourse with another person.

**Sexual Assault With an Object** - Use of an object to penetrate, however slightly, the genital or anal opening of the body of another person, where “object” is anything other than the offender’s genitalia (e.g. finger, bottle).

**Fondling** - Touching private body parts of another person for the purpose of sexual gratification.

**Incest** - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** - Nonforcible sexual intercourse with a person who is under the statutory age of consent.

# What is to be investigated?

## **VAWA - Dating Violence**

34 U.S.C. 12291(a)

Violence committed by a person who is or has been in a romantic or intimate relationship with the victim.

The existence of that relationship must be based on the consideration of the following factors:

- ▶ The length of the relationship
- ▶ The type of relationship
- ▶ The frequency of the interaction between the persons involved in the relationship

# What is to be investigated?

## VAWA - Domestic Violence

### 34 U.S.C. 12291(a)

Felony or misdemeanor crimes of violence committed by:

- ▶ Current or former spouse or intimate partner of the victim;
- ▶ Person similarly situated to a spouse of the victim;
- ▶ Person who is or has cohabitated with the victim as a spouse or intimate partner;
- ▶ Person who shares a child with the victim; or
- ▶ Person who commits acts against a child or adult victim who is protected from the person's acts under the family or domestic violence laws of Missouri

# What is to be investigated?

## **VAWA - Stalking**

**34 U.S.C. 12291(a)**

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

# What is to be investigated?

## VAWA - Stalking

### Additional Definitions

**Course of conduct** - Means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

**Reasonable person** - A reasonable person under similar circumstances and with similar identities to the victim.

**Substantial emotional distress** - Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

# What is to be investigated?

## Consent Recap

- ▶ Quid Pro Quo & Hostile Environment - “unwelcome”
- ▶ Sexual Assault under Clery Act - “without victim’s consent”
- ▶ Dating Violence & Domestic Violence - acts of “violence”
- ▶ Stalking - causes fear of safety or emotional distress

## Takeaway

Conduct that is consented to likely is not sexual harassment under Title IX.

# What is to be investigated?

## Consent

### Definition of “consent”

- ▶ Title IX - silent
- ▶ 1301 - silent
- ▶ ACA - consent that is freely given without coercion



# What is to be investigated?

## Consent

Reminders regarding consent:

- ▶ Consenting to one conduct does not equate to consenting to other conduct
- ▶ Consent can be withdrawn
- ▶ Consent does not exist if there is incapacity (age, intoxication, etc.)
- ▶ It is not consent if it is the result of coercion or intimidation

# What is to be investigated?

“In any education program or activity”

Locations, events, or circumstances over which the school district exercises substantial control over **both**:

- ▶ The alleged harasser; and
- ▶ The context in which the sexual harassment occurs

# When Must You Investigate?

# When must you investigate?

## Understanding the parties...

**Complainant** - the alleged victim of conduct that could constitute sexual harassment

- ▶ True even if “complaint” was brought forward by someone else, including Title IX Coordinator

**Respondent** - the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

**Party** - Complainant(s) and Respondent(s) collectively

# When must you investigate?

## Two Paths That Require Action

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**Actual  
Knowledge**

**Formal  
Complaint**

# When must you investigate?

## Actual Knowledge

“Actual knowledge” is notice to any employee of elementary and secondary schools of:

Sexual harassment

OR

Allegations of sexual harassment

# When must you investigate?

## Actual Knowledge

- ▶ Reports of sexual harassment or alleged sexual harassment can be made:
  - ▶ By anyone (e.g. alleged victim, parent/guardian, staff, other third party)
  - ▶ By any method (e.g. verbal, email, phone)
  - ▶ At any time (e.g. during school or non-school hours)

# When must you investigate?

## Formal Complaint

“A document filed by the Complainant or signed by the Title IX Coordinator that alleges sexual harassment against a Respondent and requests that the allegation of sexual harassment be investigated.”

- Complainant must be or trying to participate in the District’s education program or activity at the time of filing the complaint
- Complaint may be filed with the Title IX Coordinator by email, mail, in person, or any other method listed in your policy (ACA/1301)



# When must you investigate?

## Formal Complaint by Title IX Coordinator

- ▶ Title IX Coordinator can sign a formal complaint even if the Complainant does not.
- ▶ This initiates the Title IX formal grievance process.
- ▶ Can occur over the Complainant's objection.

# How You Must Investigate

The background features abstract geometric shapes in shades of blue and orange. On the right side, there are overlapping triangles and polygons in various tones of blue and orange, creating a dynamic, layered effect. The rest of the background is plain white.

# How you must investigate...

## Understanding the District roles...

### Title IX Coordinator

- ▶ Receives complaints, handles supportive measures, and coordinates District's efforts to comply with Title IX.
- ▶ Ensure your name or title, office address, email address, and phone number are listed in your Policy.

### Investigator

- ▶ If formal complaint is filed, performs investigation, handles exchange of evidence, and drafts report

# How you must investigate...

## Understanding the District roles...

### Decision Maker

- ▶ Handles question exchange, reviews and weighs evidence and investigator report, and issues written determination of responsibility.

### Facilitator

- ▶ If Complainant and Respondent both consent to information resolution, this individual facilitates that informal process.

# How you must investigate...

## Response Overview

### Supportive Measures

- ▶ Regardless of formal complaint.

### Grievance Process

- ▶ Only if there is a formal complaint.
- ▶ If no formal complaint yet, confirm if Complainant or Title IX Coordinator wish to file one.

# How you must investigate...

## General Response Requirements (regardless of formal complaint)

- ▶ Response must be:
  - ▶ Prompt
  - ▶ In a manner that is not deliberately indifferent
    - ▶ (i.e. the response cannot be “clearly unreasonable in light of the known circumstances”)
  - ▶ Treat Complainant and Respondent equitably

# How you must investigate...

## Supportive Measures

### Meeting:

Title IX Coordinator must promptly contact Complainant to discuss:

- ▶ Availability of supportive measures;
- ▶ Complainant's wishes regarding supportive measures;
- ▶ That supportive measures will be made available regardless of whether a formal complaint is filed;
- ▶ Explain the process for filing a formal complaint (if one is not already filed)
- ▶ Give copy of District Policy (ACA/1301)

# How you must investigate...

## Supportive Measures

### Legal Requirements:

- ▶ Available regardless of whether a formal complaint is filed
- ▶ Offered free of charge
- ▶ Must be offered to Complainant; may also be offered to Respondent
- ▶ Non-disciplinary, non-punitive, individualized services
- ▶ Purpose - restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party



# How you must investigate...

## **Supportive Measures**

### **Legal Requirements:**

- ▶ Title IX Coordinator is responsible for implementing them.
- ▶ Keep them as confidential as possible while still providing them.
- ▶ Keep written record of supportive measures implemented/offered.
- ▶ If no supportive measures, record why

# How you must investigate...

## Supportive Measures

### Options:

- ▶ Counseling
- ▶ Extensions of deadlines
- ▶ Other course-related adjustments
- ▶ Modifications of work or class schedules
- ▶ Campus escort services
- ▶ Mutual party contact restrictions
- ▶ Location changes
- ▶ Leaves of absence
- ▶ Increased monitoring

# How you must investigate...

## Supportive Measures

### Practical Application:

Title IX Coordinator needs to:

- ▶ Identify appropriate supportive measures
- ▶ Hold supportive measures meeting with Complainant (and parents/guardians?)
- ▶ Confirm desire to file formal complaint if not already filed
- ▶ Send follow up letter

# How you must investigate...

## Grievance Process

### Basic Legal Requirements:

- ▶ Treat Complainant and Respondent equitably
- ▶ Objectively evaluate all relevant evidence
- ▶ Avoid prejudgment of the facts at issue
- ▶ Do not make credibility determinations based on a person's status as Complainant, Respondent, or witness

# How you must investigate...

## Grievance Process

### Basic Legal Requirements:

- ▶ Those in all 4 Title IX roles cannot have conflict of interest or bias
- ▶ Must presume Respondent is not responsible until grievance process is complete
- ▶ Prompt timeframes for grievance process and appeal
- ▶ Describe the range of or list the possible disciplinary sanctions or remedies the District can implement

# How you must investigate...

## Grievance Process

### Basic Legal Requirements:

- ▶ State the standard of evidence to be used to determine responsibility
  - ▶ ACA and 1301 state the standard is preponderance of the evidence
- ▶ Provide procedures for Complainant and Respondent to appeal
- ▶ Describe the range of supportive measures available
- ▶ Do not seek or use legally privileged information (e.g. doctor/patient; attorney/client)

# How you must investigate...

## Grievance Process

### Step 1 - Written Complaint:

If an individual wishes to file a formal Title IX complaint, have the complaint:

- ▶ In writing
- ▶ Detailed (conduct, date, location, parties involved/present)

# How you must investigate...

## Grievance Process

### Step 2 - Notice of Allegation:

When there is a formal complaint, Title IX Coordinator must provide written notice to the known Complainant(s) and Respondent(s) with the following:

- ▶ Notice of the District's grievance process, including informal resolution process
- ▶ Notice of the alleged sexually harassing conduct
  - ▶ Include date, location, and parties involved if known
- ▶ A statement that Respondent is presumed not responsible and that determination is made at the end of the grievance process



# How you must investigate...

## Grievance Process

### Step 2 - Notice of Allegation:

When there is a formal complaint, Title IX Coordinator must provide written notice to the known Complainant(s) and Respondent(s) with the following:

- ▶ Advisement that they have the right to an advisor of their choice who can, but does not have to be an attorney
- ▶ Advisement that they have the right to inspect and review evidence
- ▶ Notice of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information through the grievance process

# How you must investigate...

## Grievance Process

### Step 2 - Notice of Allegation:

If, during the course of the investigation, additional allegations about the Complainant or Respondent are learned that were not included in the initial Notice of Allegation, notice of the additional allegations must be provided to the Complainants and Respondents who are known.

# How you must investigate...

## Grievance Process

### Step 2 - Notice of Allegation:

Timing→

- ▶ Title IX - “reasonably prompt timeframes”
- ▶ 1301- promptly upon receipt of formal complaint
- ▶ ACA - silent

# How you must investigate...

## Grievance Process

### Step 3 - Dismissal Determination:

#### Mandatory Dismissal

- ▶ If the conduct alleged:
  - ▶ Would not constitute sexual harassment even if proven;
  - ▶ Did not occur in the District's education program or activity; or
  - ▶ Did not occur against a person in the United States

These allegations in a formal complaint **must** be dismissed

# How you must investigate...

## Grievance Process

### Step 3 - Dismissal Determination:

#### Discretionary Dismissal

- ▶ If the Complainant notifies the Title IX Coordinator that he/she wishes to withdraw the formal complaint or any allegations therein
- ▶ If the Respondent is no longer an employee or student of the District
- ▶ If specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

In these instances, the formal complaint or allegations therein may be dismissed

# How you must investigate...

## Grievance Process

### Step 3 - Dismissal Determination:

Timing → at any point throughout the formal grievance process.

Scope → the formal complaint in its entirety or only certain allegations therein.

Authority →

- ▶ Title IX - silent
- ▶ 1301 - Title IX Coordinator
- ▶ ACA - Title IX Coordinator, Investigator, or Decision Maker

# How you must investigate...

## Grievance Process

### Step 3 - Dismissal Determination:

Notice → If there is a dismissal (mandatory or discretionary; entire formal complaint or part thereof) written notice must:

- ▶ Be sent to the Parties promptly
  - ▶ Be sent to the Parties simultaneously
  - ▶ State the reason(s) for the dismissal
- Suggestion - also notify of appeal rights

# How you must investigate...

## Grievance Process

### Step 4 - Consolidation

#### Determination:

The following formal complaints may be consolidated IF they arise out of the same facts and circumstances:

- ▶ Complainant makes claims against more than one Respondent
- ▶ More than one Complainant makes claims against one or more Respondents
- ▶ By one Party against the other Party



# How you must investigate...

## Grievance Process

### Step 4 - Consolidation

### Determination:

#### Authority to Consolidate:

- ▶ Title IX - silent
- ▶ 1301 - Title IX Coordinator
- ▶ ACA - silent

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

Legal requirements for the District that apply to entire grievance process, but have most relevance during investigation:

- ▶ Ensure the burden of proof and burden of gathering evidence rests on the District and not on the Complainant/Respondent.
- ▶ Do not access, consider, disclose, or otherwise use records or information from the Complainant or Respondent's physician, psychiatrist, psychologist, or other professional who has provided treatment to the Party unless the Party provides voluntary, written consent.
- ▶ Provide an equal opportunity for the Parties to present witnesses (fact and expert) and evidence.

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

Legal requirements for the District that apply to entire grievance process, but have most relevance during investigation:

- ▶ Cannot restrict the Party's ability to discuss the allegations or gather and present relevant evidence.
- ▶ Provide the Parties the same opportunity to have others present during any grievance proceeding.
  - ▶ Advisor or others

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

Legal requirements for the District that apply to entire grievance process, but have most relevance during investigation:

- ▶ For all hearings, investigative interviews, or other meetings that the Party is invited to or expected to participate in, provide the Party written notice of the date, time, location, participants, and purpose with sufficient time for the Party to prepare to participate.
- ▶ Provide the Parties an equal opportunity to inspect and review any evidence.

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### Basic Investigative Steps

- ▶ 1) Investigate
- ▶ 2) Evidence Distribution
- ▶ 3) Evidence Response
- ▶ 4) Investigative Report Preparation
- ▶ 5) Investigative Report Distribution
- ▶ 6) Investigative Report Response

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 1) Investigate

- ▶ Review formal complaint
- ▶ Conduct interviews and gather evidence
  - ▶ Order of interviews
  - ▶ Place of interview
  - ▶ Question outlines
  - ▶ Record vs take notes
  - ▶ Method to retain evidence
  - ▶ Necessary follow up

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 1) Investigate

- ▶ Investigation recommendations:
  - ▶ Complainant first
  - ▶ Introduction
  - ▶ Conversational, not confrontational
  - ▶ Open-ended to closed questions
  - ▶ Who, What, Where, When, How, and Why
  - ▶ Obtain discrete details (how long, frequency, distance, etc.)
  - ▶ Note key quotes

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 1) Investigate

- ▶ Investigation recommendations:
  - ▶ Witness drawings
  - ▶ Note witness credibility
  - ▶ Seek inculpatory and exculpatory evidence
    - ▶ Inculpatory - shows Respondent is responsible
    - ▶ Exculpatory - shows Respondent is not responsible
  - ▶ Have Complainant and Respondent identify all relevant witnesses and documents and explain relevance
  - ▶ End with “Any other information to share that we haven’t covered?” and invite follow up if recollection after interview



# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 1) Investigate

##### ▶ Timing

▶ Title IX - “reasonably prompt timeframes”

##### ▶ 1301

▶ Investigation initiated within 5 days of receipt of formal complaint.

▶ Investigative report completed within 30 days of the initiation of the investigation.

▶ ACA - Evidence to be sent within 20 business days of the Parties receiving the Notice of Allegation

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 2) Evidence Distribution

- ▶ Before completing the investigative report, must send both Parties and their advisors the evidence so the Parties can review and respond.
- ▶ Must provide any evidence that was obtained as part of the investigation that is directly related to the allegations in the formal complaint regardless of whether the District is relying on the information to reach a decision about responsibility.

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 3) Evidence Response

- ▶ Must give the parties at least 10 days from date of evidence distribution to provide a written response to the evidence.
  - ▶ 1301 - Parties have 10 days
  - ▶ ACA - Parties will be given at least 10 business days
- ▶ Response is optional
- ▶ Investigator must consider the written responses (if any) prior to completion of the investigation report.

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 4) Investigative Report Preparation

- ▶ Investigator must prepare/finalize an investigative report.
- ▶ The report must fairly summarize relevant evidence

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 5) Investigative Report Distribution

- ▶ Finalized investigative report must be given to the Parties and their advisors.
- ▶ It must be sent at least 10 days prior to a decision being made regarding responsibility.
  - ▶ 1301 - at least 10 days prior to determination
  - ▶ ACA - no later than 10 business days prior to determination

# How you must investigate...

## Grievance Process

### Step 5 - Investigation:

#### 6) Investigative Report Response

- ▶ Must allow the Parties to review and provide a written response to the finalized investigative report.
  - ▶ 1301 - 10 days from receipt of investigative report to respond
  - ▶ ACA - silent
- ▶ Response is optional
- ▶ Send the finalized investigative report, evidence, and any written response from the Parties to the Title IX Decision Maker

# How you must investigate...

## Grievance Process

### Step 6 - Question Exchange:

- ▶ After the Investigator has sent the Parties the investigative report, and before the Decision Maker has made a decision regarding responsibility, the Decision Maker must give each Party an opportunity to submit written, relevant questions to be asked of any Party or witness.
  - ▶ 1301 - 10 days from receipt of investigative report to submit questions
  - ▶ ACA - silent
- ▶ The Party or witness to whom relevant questions are directed must provide the Decision Maker with answers to the questions.

# How you must investigate...

## Grievance Process

### Step 6 - Question Exchange:

- ▶ The Decision Maker must send the answers received to all the Parties.
- ▶ The Decision Maker must allow for additional, limited follow-up questions from each Party.
- ▶ If the Decision Maker excludes a question as irrelevant, the Decision Maker must explain that decision to the Party who asked the question.



# How you must investigate...

## Grievance Process

### Step 7 - Determination:

- ▶ The Decision Maker must issue a written determination as to responsibility.
- ▶ To reach a determination, per ACA/1301, the Decision Maker must apply the “preponderance of the evidence” standard (i.e. more likely than not).
- ▶ The Decision Maker cannot be the same person as the Coordinator or Investigator.

# How you must investigate...

## Grievance Process

### Step 7 - Determination:

The written determination must include -

- ▶ The allegations
- ▶ Description of all procedural steps taken (i.e. Party notices, interviews, site visits, methods used to gather evidence)
- ▶ Findings of fact supporting the determination
- ▶ Conclusions regarding application of the facts to the District's Code of Conduct
- ▶ For each allegation: the determination; reason for same; discipline imposed on Respondent; and remedies to Complainant
- ▶ Bases and procedures for Complainant and Respondent to appeal

# How you must investigate...

## Grievance Process

### Step 7 - Determination:

- ▶ The written determination must be provided to the Parties simultaneously
- ▶ Timing→
  - ▶ 1301 - within a reasonably prompt timeframe
  - ▶ ACA - within 20 business days after closing of the questions period

# How you must investigate...

## Grievance Process

### Step 8 - Appeals:

**Must** offer both Parties the right to appeal from either dismissal of a formal complaint (in whole or in part) or the determination of responsibility, on the following grounds:

- ▶ Procedural irregularity that affected the outcome of the matter.
- ▶ New evidence not available at time of dismissal or determination that could affect the outcome.
- ▶ Coordinator, Investigator, or Decision Maker had conflict or bias of Complainants or Respondents in general or the Parties individually that affected the outcome.

**May** offer appeal on other ground (1301 and ACA do not)

# How you must investigate...

## Grievance Process

### Step 8 - Appeals:

Timing→

▶ 1301

- ▶ Within 5 days of determination of responsibility or dismissal

▶ ACA

- ▶ Within 5 business days of receipt of notice of dismissal or the written decision from the Decision Maker

# How you must investigate...

## Grievance Process

### Step 8 - Appeals:

If a Party appeals, the District must:

- ▶ Give written notice of the appeal to the other Party.
- ▶ Implement appeal procedures equally for both Parties.
- ▶ Ensure the appeal decision maker is not the same person as the Coordinator, Investigator, or initial Decision Maker.
  - ▶ *i.e.* Districts need at least 3 Title IX trained individuals

# How you must investigate...

## Grievance Process

### Step 8 - Appeals:

If a Party appeals, the District must:

- ▶ Give both Parties an equal opportunity to submit a written statement supporting or challenging the outcome.
- ▶ Issue a written decision stating the appeal decision and rationale for same.
- ▶ Provide the written appeal decision simultaneously to both Parties.

# Other Need To Know Information





# Other Need to Know Information

## Informal Resolutions

What is it?

- ▶ A process that does not involve a full investigation and adjudication
- ▶ Can occur internally at the District or via third party outside the District
- ▶ Example is mediation
- ▶ Facilitated by:
  - ▶ Title IX - silent
  - ▶ 1301 - silent
  - ▶ ACA - Title IX Coordinator

# Other Need to Know Information

## Informal Resolutions

When is it permitted?

- ▶ Can only be offered by the District if a formal complaint is filed.
- ▶ Cannot be offered for allegations of employee sexually harassing a student
- ▶ When the Parties voluntarily agree in writing to it; cannot be mandated
- ▶ Only available prior to determination of responsibility being reached

# Other Need to Know Information

## Informal Resolutions

What are the notice requirements?

- ▶ Must provide written notice to the Parties stating:
  - ▶ The allegations
  - ▶ The requirements of the informal resolution process, including the impact it has on the ability to resume a formal complaint that arises out of the same allegations
  - ▶ That any time prior to an agreed upon resolution, the Parties can withdrawal from the informal process and resume the formal grievance process
  - ▶ The consequences of participating in the informal process including the records that will be maintained or could be shared

# Other Need to Know Information

## Timeline Extensions

- ▶ Can extend Title IX timeframes for good cause
- ▶ Must send written notice to the Complainant and Respondent regarding the extension and reason for same
- ▶ Good cause includes:
  - ▶ Absence of a party, advisor, or witness
  - ▶ Concurrent law enforcement activity
  - ▶ Need for disability accommodations

# Other Need to Know Information

## Retaliation Prohibition

It is illegal to intimidate, threaten, coerce, or discriminate against any individual:

- ▶ For the purpose of interfering with Title IX rights
- ▶ Because the person made a report or filed a formal complaint
- ▶ Because the person assisted or participated in any manner in a Title IX investigation, proceeding, or hearing
- ▶ Because the person refused to participate in a Title IX investigation, proceeding, or hearing

Retaliation complaints are addressed under Title IX grievance process

# Other Need to Know Information

## Confidentiality

Must keep confidential the identify of:

- ▶ Person who made the report
- ▶ Complainant(s)
- ▶ Respondent(s)
- ▶ Witnesses

Except:

- ▶ As permitted by FERPA
- ▶ As required by law
- ▶ As required to comply with Title IX

# Other Need to Know Information

## Relevancy

Information is relevant if...

- ▶ It has some value or tendency to prove or disprove a fact that has significance to the matter at hand
- ▶ It makes a fact more or less likely than it would be without the evidence
- ▶ Examples:
  - ▶ The fact that it was raining heavily may have a tendency to prove why a student was late to school
  - ▶ The fact that the student wore a blue shirt that day has no tendency to prove why the student was late to school

# Other Need to Know Information

## Relevancy

Questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless:

- ▶ That information goes to prove that someone other than Respondent committed the conduct alleged by the Complainant; or
- ▶ It concerns specific incidents of the Complainant's prior sexual behavior with the Respondent and goes to prove consent.



# Other Need to Know Information

## Discipline

Respondent is presumed not responsible until the grievance process is complete.

Supportive measures cannot be punitive.

If there is a formal complaint, no discipline for sexual misconduct until grievance process is complete.

# Other Need to Know Information

## Emergency Removal

Can remove the Respondent on an emergency basis, but must:

- ▶ Conduct an individualized safety and risk analysis;
- ▶ Determine an immediate threat to the physical health or safety of anyone arising from the allegations of sexual harassment justifies removal; and
- ▶ Provide Respondent with:
  - ▶ Notice; and
  - ▶ Opportunity to immediately challenge the decision
- ▶ Must still comply with IDEA, Section 504, and ADA

# Other Need to Know Information

## Administrative Leave

If the Respondent is an employee, the District may place the Employee on administrative leave while the Title IX grievance process is conducted.

But cannot restrict the employee's ability to discuss the allegations or gather and present relevant evidence

# Other Need to Know Information

## Record Keeping

The District must maintain records of the following for 7 years:

- ▶ Investigation records
- ▶ Determination regarding responsibility
- ▶ Disciplinary sanctions imposed on Respondent
- ▶ Remedies provided to Complainant
- ▶ Appeal and results of Appeal
- ▶ Informal resolution and results of same
- ▶ Title IX training material
- ▶ Any action taken in response to a report or formal complaint

# Other Need to Know Information

## Required Documentation & Record Keeping

The District's records of actions taken must include documentation of the following:

- The basis for its conclusion that its response was not deliberately indifferent (i.e. why the District's response was reasonable in light of the known circumstances)
- That it has taken measures designed to restore or preserve equal access to the District's education program or activity (i.e. supportive measures and remedies)

# Brittany Newell



[brittany@moedsolutions.com](mailto:brittany@moedsolutions.com)  
[www.missourieducationsolutions.com](http://www.missourieducationsolutions.com)  
**(573) 768-1554**