TITLE IX DECISION-MAKER TRAINING

Davis School District

Educational Equity

TITLE IX GRIEVANCE PROCESS

- Formal complaint or complainant notifies district employee of incident
- Anyone can put district on notice
- Supportive Measures offered to complainant and respondent

Incident Reported

Initial Assessment

 Incident must be checked to determine if it meets the definition of sexual harassment Sent to both respondent and complainant and details the incident and any other possible student code of conduct violations

Notice of Allegations

TITLE IX GRIEVANCE PROCESS (CONTINUED)

- Parties can also decide to complete an informal investigation
- Admin will conduct the investigation at their sites
- Evidence sent **simultaneously** to both parties

Formal Investigation and Notice of Evidence

Final Investigation Report

- Drafted by Title IX Coordinator detailing all elements of the investigation
- Sent to both parties
- After 10 days, sent to District Review Committee

- District Review Committee reviews investigation report.
- Affords both parties opportunies to submit written, relevant questions (10 days)
- Makes determination of responsibility including any disciplinary sanctions imposed.

Determination Regarding Responsibility

THE DECISION- MAKERS RESPONSIBILITY

Findings of Fact Conclusions of Make the Decision Law **Determination** of Responsibility

- PRIMARY RESPONSIBILITY:
 Determine whether a respondent is
 RESPONSIBLE or not for engaging in
 sexual harassment.
- To do this, you must determine:
 - Are the allegations raised by the complainant true?
 - If they are true, do they amount to a violation of the LEA's sexual harassment policy?

CROSS EXAMINATION

Parties receive Investigation Report

10 days to submit relevant questions to the other party

Begin drafting Final Determination

RELEVANCE

- Relevance means something that has probative value (the ability
 of a piece of evidence to make a relevant disputed point more or
 less true).
- Directly Related Evidence: evidence connected to the complaint but is not inculpatory or exculpatory, and/or which is explicitly excluded by the regulations.

RELEVANCE (CONTINUED)

- Evidence of the complainant's prior sexual behavior is explicitly and categorically not relevant except:
 - •When it is offered to prove that someone other than the respondent committed the alleged conduct
 - •When it concerns specific incidents of the complainant's sexual behavior with respect of the respondent and is offered to prove consent.

EXAMPLES OF POTENTIALLY RELEVANT QUESTIONS

From Respondent to Complainant

How many times have you been disciplined for lying?

From Complainant to Respondent

 Weren't you suspended three times this year for grabbing girls on the butt?

EXAMPLES OF IRRELEVANT QUESTIONS

From Respondent to Complainant

- How many sexual partners have you had?
- Isn't it true that you have a reputation for being the school slut?
- What color shirt were you wearing?

From Complainant to Respondent

- How many times have you been disciplined for smoking?
- Where do you live?

ASSESSING CREDIBILITY

Corroboration

Aligned testimony and physical evidence

Inherent Plausibility

- "Does this make sense?"
- Beware of bias

Motive to Falsify

Do they have a reason to lie?

Past Record

Is there a history of similar behaviors?

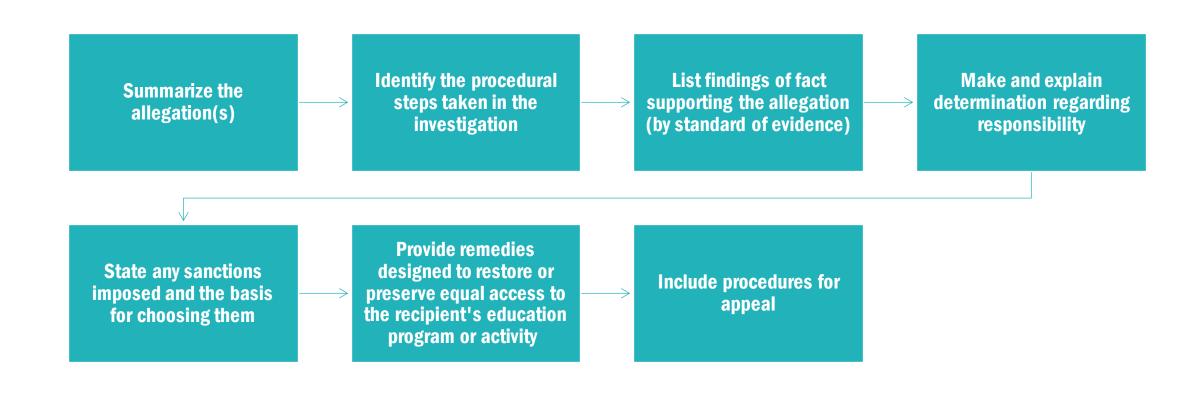
Demeanor

Do they seem to be lying or telling the truth?

Enforcement
Guidance on
Vicarious Employer
Liability for
Unlawful
Harassment by
Supervisors

EEOC (1999)

FINAL DETERMINATION COMPONENTS



DRAFTING THE RATIONALE FOR DETERMINATION AND SANCTIONS

- Appoint a writer from the panel to draft the rationale.
- All members of the Decision-Making Committee should review and sign off on the final version of the report.
- The rationale can/should be reviewed by the Title IX Coordinator or legal counsel prior to issuance.

DRAFTING THE RATIONALE FOR DETERMINATION AND SANCTIONS

- Don't issue dissents or indicate what the vote was.
- Commonly 1-15 pages in length, depending on complexity.
- Write in active voice.
- If more than one respondent, write a separate rationale for each one.
- Don't just cut and paste the rationale from the investigation report (biased).
- Include a rationale for each policy violation.
- Decision Making Committee must arrive at the rationale independently and impartially.

TIPS FOR BIAS-FREE WRITING

- 1. Know your own biases
- 2. Focus on what's relevant
- 3. Recognize and acknowledge differences
- 4. Avoid Labels: Describe identities and group connections as the individuals have described them
- 5. Use nouns, objectives, and adjectives properly: Avoid using language that refers to people in objectifying ways
- 6. Specificity is preferred over generalization
 - Example: Avoid using "students of color" generally when you are really referring to a specific racial group

KEEP YOUR AUDIENCE IN MIND

Title IX Coordinator or legal counsel

The parties (and their advisors)

Parents/guardians

Office of Civil Rights

Reporters

Judges/ Juries

The public