

TITLE IX
TRAINING

Three Rivers College
October 4, 2021





AGENDA

- Definitions
- Actual Knowledge
- Investigation
- Collection of Evidence
- Investigative Report
- Live Hearing
- Appeal

DEFINITIONS

NEW SEXUAL HARASSMENT DEFINITION

- Quid Pro Quo Harassment
- Hostile Environment
- Harassment under the Violence Against Women Act & Clery Act

QUID PRO QUO HARASSMENT

- An employee conditioning an aid, service, or benefit of the college on an individual's participation in unwelcome sexual conduct
- Does not need to be evaluated for “severity, pervasiveness, and objective offensiveness”
- Expressed or implied

HOSTILE ENVIRONMENT

- Unwelcome conduct
- Reasonable person
- So severe, pervasive, and objectively offensive
- Effectively denies a person's equal access to education program or activity

HARASSMENT UNDER VAWA & CLERY ACT

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



SEXUAL ASSAULT

- Rape
- Sodomy
- Sexual Assault with an Object
- Fondling
- Incest
- Statutory Rape

DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- Existence of relationship determined based on consideration of the length, type, and frequency of interaction
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence



DOMESTIC VIOLENCE

Felony or misdemeanor crimes of violence committed by:

- Current or former spouse or intimate partner of the victim
- Person with whom the victim shares a child in common
- Person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- Person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri
- Person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri

STALKING

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress



LOCATION

- In an educational program or activity-locations, events, or circumstances over which the college exercised substantial control over both the Respondent and the context in which the sexual harassment occurs

RETALIATION

- Adverse treatment in response to seeking protection under Title IX
- May be independent basis for charge or litigation
- Examples include harassment in educational program, discipline, denial of participation

ACTUAL
KNOWLEDGE



RESPONSE
OF
COLLEGE

- Must be prompt
- Must not be “deliberately indifferent”
- “Deliberately Indifferent” means clearly unreasonable in light of the known circumstances



ACTUAL KNOWLEDGE

- “Actual knowledge” is notice of sexual harassment or allegations of sexual harassment to any college employee
- Any person may report sexual discrimination (alleged victim or any third party)
- May report to Title IX Coordinator in person, by mail, phone, or email
- College must respond promptly



SUPPORTIVE MEASURES

- Available before or after a formal complaint or when no complaint has been filed
- Discuss availability of supportive measures, with or without the filing of a formal complaint
- Explain the process for filing a formal complaint
- Record any supportive measures taken, or why supportive measures were not taken

INVESTIGATION BASICS

ELEMENTS



EQUITABLE
TREATMENT



OBJECTIVE
EVALUATION OF
EVIDENCE



NO CONFLICT
OF INTEREST OR
BIAS



PRESUMPTION
OF NOT
RESPONSIBLE



PROMPT TIME
FRAMES



REQUIREMENTS

- Ensure that the burden of proof and the burden of gathering evidence rest on the college and not on the parties, except certain records
- Provide an equal opportunity for parties to present witnesses and evidence
- Not restrict the ability of either party to discuss the allegations or gather and present evidence

INVESTIGATION PROCESS

OVERVIEW AFTER FORMAL COMPLAINT

Notices

Dismissal

Consolidation

Collection of Evidence

Review of Evidence by Parties

Investigative Report



FORMAL COMPLAINT

- Written & Signed by Complainant
 - Complainant must be participating in the education program or activity at time of filing
 - Title IX Coordinator may sign a formal complaint, potentially over the alleged victim's objections
- No other third party can file a formal complaint
- Description of allegation (date, location, witnesses)
- As practical, in Complainant's own words

- Notice of the college's grievance process, including informal resolution process
- Notice of the allegations of sexual harassment (parties, date, location)
- Statement that Respondent is presumed not responsible
- Notice of right to an advisor
- Notice of right inspect and review evidence
- Notice of prohibition on knowingly making false statements or submitting false information



WRITTEN
NOTICE

MANDATORY DISMISSAL

- If the conduct alleged would not constitute sexual harassment even if proved
- Did not occur in college's education program or activity
- Did not occur against a person in the United States

DISCRETIONARY DISMISSAL

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint
- The Respondent is no longer enrolled or employed
- The specific circumstances prevent the college from gathering evidence

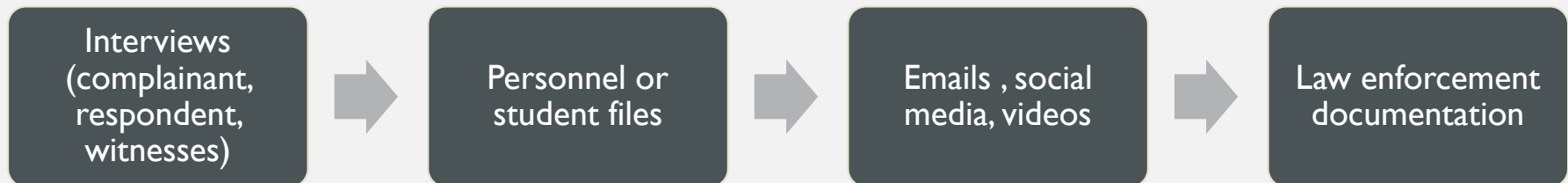


CONSOLIDATE

- Can consolidate formal complaints if the allegations arise out of the “same fact or circumstances” AND:
 - Allegations against more than one Respondent, or
 - Allegations by more than one Complainant against one or more Respondents, or
 - By one party against the other party,

COLLECTION OF EVIDENCE

POSSIBLE EVIDENCE





RELEVANCE

- It has a tenancy to make a fact more or less probable than it would be without the evidence
- Fact is of consequence in determining the action or conduct
- Relevant evidence goes towards proving whether a fact of consequence to the actual allegations are more or less likely to be true

REMINDER

- Parties are not restricted in discussing allegations with others
- Parties have right to gather evidence favorable to their position
- No party can intimidate, harass, retaliate
- Monitor situation during investigation

- Parties may have an advisor present during interviews
- Advisor receives notices and reports
- Advisor may be an attorney
- Advisor does not engage in argument/interrogation during interviews
- College required to provide advisor at hearing



INVESTIGATIVE REPORT

INCULPATORY & EXCULPATORY

- Must share inculpatory and exculpatory evidence
- Evidence that is favorable to the Complaint and shows the Respondent is responsible v. Evidence that is favorable or exonerates the Respondent

- Before the investigative report is complete, provide evidence to both complainant and respondent (and their advisors) for review
- Allow the parties 10 days to submit a written response
- Consider the parties' response prior to completion of report; more investigation may be needed



SHARING OF EVIDENCE

INVESTIGATIVE REPORT

- College must create an investigative report that “fairly summarizes relevant evidence”
- Send to each party the investigative report 10 days prior to a determination of responsibility
- Allow parties to review and respond to investigative report

LIVE HEARING

RULES OF DECORUM

- A college may adopt rules of order or decorum to forbid badgering a witness
- May deem repetition of the same question to be irrelevant
- Can determine the time and length of breaks

- Provide the parties with the same opportunity to have others present during the hearing
- Provide written notice to a party who is invited or expected to participate
- Provide the parties an equal opportunity to inspect and review any evidence
- Provide the parties an equal opportunity to present witnesses



EQUITABLE
TREATMENT

MAJOR ROLE OF DECISION-MAKER IN HEARING

- Determine relevancy of evidence presented during hearing
- Determine relevancy of questions immediately before a party or witness answers

- Cross-examination must be done by an advisor, not the parties themselves
- Colleges must provide a party with an advisor if the party appears at the hearing without one free of charge
- Advisor may be an attorney



ADVISORS

CROSS EXAMINATION VIA TECHNOLOGY

- At the request of a party, the college must allow the live hearing to occur with the parties located in separate rooms via technology
- The decision maker and parties must be able to simultaneously see and hear the party or witness answering questions
- College has discretion to allow all participants to appear at the live hearing virtually

RECORDING OR TRANSCRIPT

- Colleges must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and view

RELEVANCY



Parties' advisors must be permitted to ask all relevant questions and follow-up questions



Decision-Maker determines relevancy of questions



Decision-Maker provides an explanation for excluding any question deemed to be not relevant



Also applies to questions in Exchange of Questions



RELEVANCY

- It has a tenancy to make a fact more or less probable than it would be without the evidence
- Fact is of consequence in determining the action or conduct
- Relevant evidence goes towards proving whether a fact of consequence to the actual allegations are more or less likely to be true

PROHIBITED QUESTIONS

No questions or evidence on Complainant's prior sexual history or behavior unless:

- Offered to prove that someone other than the Respondent committed the conduct
- If the evidence of specific incidents of prior sexual conduct between the Respondent and Complainant is offered to prove consent

PROHIBITED EVIDENCE

- Privileged information or treatment records, without the party's prior written consent
- Information protected by legally recognized privilege: attorney-client, clergy-communicant, marital confidences, and therapist-patient

DISCRETION

- A college cannot adopt rules excluding certain types of relevant evidence (e.g., lie detector test or rape kits)
- A college cannot adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence

- Colleges can work with witnesses regarding scheduling of a hearing and the ability to permit witnesses to testify remotely
- Colleges cannot retaliate against a party or witness for participating or not participating
- Witnesses cannot be compelled to appear at a hearing
- Parties must have an equal opportunity to present witnesses
- Both parties face the same limitations inherent in a lack of subpoena power



WITNESSES

DETERMINATION
REGARDING
RESPONSIBILITY

RELIANCE ON STATEMENTS

- The Decision-Maker cannot rely on the statements of a party or witness who does not submit to cross-examination
- “Submit to Cross-Examination” means *answering* those questions that are relevant
- If a party or witness was not called by a party’s advisor to be cross-examined, or was not asked a particular question about a particular statement in the investigative report, the Decision-Maker is not precluded from relying on a statement by a party or witness who was not given the opportunity to be cross-examined



INFERENCES

- Decision-maker cannot draw an inference regarding responsibility based solely on a party or witness's absence from formal resolution process or a refusal to answer a question during an exchange of questions

RELIANCE ON EVIDENCE

- The prohibition on reliance of statements does not include evidence (such as videos) that do not constitute a person's intent to make factual assertions or do not contain a person's statements.
- But police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination.

WEIGHING THE EVIDENCE

- Colleges may decide how relevant evidence must be evaluated for weight or credibility by a recipient's Decision-Maker, and colleges have discretion to adopt and apply rules in that regard.
- The rules must apply equally to both parties
- This is not the same as determining admissibility. Colleges cannot adopt their own rules on admissibility.
- Any rules adopted must be publically available in college's training material

- Three Rivers College follows the Preponderance of the Evidence Standard
- The burden of proof is met when a reasonable person would accept as “more likely than not” that a fact is true or an incident occurred



STANDARD
OF
EVIDENCE



BASIS FOR APPEAL

- Procedural irregularity that affected outcome
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal and that would have affected the outcome
- Conflict of interest or bias

QUESTIONS