K-12 Decision-Maker Training

Twin Rivers Unified School District
Our Goal

- Provide foundational knowledge about K-12 Decision-Makers
- Prepare you for your role and instill comfort and confidence
- Walk through your policy to ensure you become experts in your district
- Offer a round-table approach so your specific questions can be answered
Covered in this Training

- Role of the Decision-Maker
- Reviewing the Investigative Report and File
- Crafting Questions for Parties
- Facilitating the Twin Rivers Decision-Making Process
- Drafting the Determination
- The Appeal Process
Learning Outcomes

1. Understand your role in the overall grievance process

2. Develop relevant, thoughtful questions to aid in decision-making

3. Apply techniques to draft a comprehensive and policy-compliant written determination

4. Navigate Twin Rivers Unified School District policy to deliver the appropriate outcomes
Today's Speakers

Judge Michael T. Jamison

CJ Larkin, JD

Judge Patricia Riehl

Kenneth Chackes, JD
Twin Rivers Team
We know a little about you, but tell us more!

LARGE DISTRICT
You serve over 25,000 students in 52 schools and employee 3,095 individuals

DIVERSE POPULATION
Your students speak 46 different languages

EXPERIENCE WITH SUCCESS
Your district boasts a graduation rate of 85.2%

COMMITTED TO GETTING IT RIGHT
Your policies, procedures, and desire to learn show you care
Session 1- Role of the Decision-Maker
Removing Bias

**INDEPENDENT** so no claim can be made of bias. A legitimate claim of bias can be a basis for a successful appeal and the basis for a do-over.

1. Anticipate potential conflicts of interest when you assign the Decision-Maker
2. Allow a time prior to questioning for Parties to disclose potential conflicts of interest
3. Evaluate and assign a new Decision-Maker if conflicts are present
Decision-Maker Attributes

Your role is as a Decision-Maker and not as a Judge. The questioning process is not conducted pursuant to the rules of evidence, with the exception of the concept of relevance. Though you are not a Judge, many of the same qualities are needed to effectively carry out this role.

It is important to have the ability to:

- Understand law and policy, and apply it to decision-making
- Carefully evaluate evidence
- Use critical thinking to determine relevance of evidence and questions
- Craft professional and thorough written determinations
- Communicate effectively with Parties and Advisors
- Be comfortable making tough, but equitable decisions
We are not a court of law, but the outcome of any Title IX process has legal consequences, as well as personal consequences for the Parties.

Because the consequences can be great, ensure you:

- Allow policy to guide decision-making
- Uphold the integrity of the process
- Remain impartial (and recuse if you cannot)
Training Requirements

Title IX Regulations tell us Hearing Officers (or in the case of K-12, Decision-Makers) must be trained.

- Understand timelines you must operate under
- Familiarize yourself with relevance, practice with scenarios
- Seek trainings, webinars, articles to learn more
- Remain current on Title IX regulations and school policy
Title IX Cornerstones

- Independent
- Equitable
- Transparent
- Confidential
Additional Considerations in Your Role

Be mindful that there is a presumption that the Respondent is NOT responsible for the alleged conduct until the final determination is made. Remember this as you work through the process.

With that presumption of non-responsibility is a burden of proof standard. That burden of proof rests upon the school not either of the parties.
Evidentiary Standards

Preponderance of the Evidence
(Twin Rivers standard)
Anything that tips the scale to more than 50/50

Clear and Convincing
More probable to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt
Criminal court standard, overwhelming amount of evidence to support

Where does your needle point?

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false
Preponderance of the Evidence

- Must apply the same standard of evidence for formal complaints against students as well as complaints against employees

- Must apply the same standard of evidence for all types of complaints consistently

- Provide parties with a thorough understanding of the standard by which you will be making a decision
Possible vs. Probable

How would you define these terms?

What is the difference between them as they relate to making a Title IX decision?
Steps to Success as a Decision-Maker

**BREATHE**
Yes, the role carries a great deal of responsibility, but you are capable. You can do this!

**READ**
Read EVERYTHING! Policy, investigative reports, supplemental information. Be an informed Decision-Maker!

**FIND COMFORT IN DISCOMFORT**
You may have to use words like penis, vagina, penetration, condom. Do not be afraid to use those words. Be comfortable in allowing those words in the parties’ questions and answers.
Lessons Learned
Session 2- Reviewing the Investigative Report and File
What is an Investigative Report?

- Fairly summarizes relevant evidence and facts of the case
- Includes the following information:
  - Name of investigator, dates of investigation, parties involved (Complainant, Respondent, Witnesses), key dates, narrative summary, applicable policy, allegations and responses, Complainant/Respondent accounts, Witness accounts
- May include disputed vs. undisputed facts, discussion, assessment of credibility
What is the Investigative File?

Contains all evidence obtained during the investigation

Could include the following and more:
- Interview summaries, interview transcript, communication between the parties such as text messages, emails, direct messages via social media, photos, videos

May also include evidence collected from individuals aside from the Parties such as security footage, call logs, police reports, etc.
How do we review the information provided?

1. Read the investigative report and entire investigative file CAREFULLY
How do we review the information provided?

Consider key facts needed to determine responsibility. What are the elements of the alleged offense?
“Title IX Sexual Harassment is conduct on the basis of sex . . . that satisfies one or more of the following: . . . 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.”

(Twin Rivers Policy page 1)
Elements of the Offense

- Conduct on the basis of sex
- Unwelcome conduct
- So severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district’s education program or activity
Review the Elements

- Determine what facts (elements) are in dispute.

- Carefully study the evidence that is relevant to each disputed fact (element). In other words, what would prove or disprove the fact (element)?

- If the Investigation Report contains conclusions regarding disputed issues or credibility, determine if the evidence clearly supports those conclusions. *The Investigator is not the Decision-Maker!*
We have this...

Conduct on the basis of sex

+ Unwelcome conduct

But not this...

So severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district’s education program or activity
Lessons Learned
Session 3- Crafting Questions for Parties
Considerations When Crafting

- Depends on what kind of facts are in dispute
- Could be clear conflict between the parties - “he said, she said”
- Parties might agree on what happened but dispute whether it was based on sex or sufficiently severe, pervasive and objectively offensive
- If students are legally old enough to consent to sexual contact, dispute might center on consent
Guiding Questions

What information do I need to know to prove or disprove an element of the policy violated?

What is the best question to ask to generate an informative answer?

Who has this information?

Can this information be found anywhere in the Investigation Report or File?
One final time…..

Will this question help me gather information that proves or disproves a fact (element) of the policy?

(If yes, ASK!)

(If no, you may want to skip it!)
Crafting Your Questions

Good questions are:

- **Open-ended**: Open-ended questions prompt the Party to share more broadly.
- **Non-leading**: Do not guide your Parties to the answer you want to hear.
- **Singular**: Avoid complicated, multi-part questions.
- **Clear**: Ensure questions use the most clear, concise language aimed at arriving at the information needed.
- **Sensitive**: Though questions need to be direct, consider emotions that may be evoked by asking. Practice empathy.
Lessons Learned
Session 4- Facilitating the Twin Rivers Decision-Maker Process
K-12 Considerations

K-12 schools have the option to conduct a live hearing, however the Title IX Regulations do not require them to 

(a distinct difference from post-secondary)

Title IX Regulations stipulate K-12 schools must still allow for cross-examination by the Parties

Twin Rivers Policy requires this process be handled in writing, following the completion of the investigation and receipt of the investigation report/file
Goals of the Process

- Providing a neutral, third-party review of relevant facts aided by questioning from the Decision-Maker and Advisors
- Fills in gaps and provides clarification of the Investigative Report/File
- Providing due process for a policy-driven, equitable outcome
What does the policy say?

Let's study language taken directly from Twin Rivers' Unified School Districts' Title IX Sexual Harassment Complaint Procedures regarding your role as a Decision-Maker
Remind Parties of Informal Resolution options one final time before entering questioning process
Questioning Timeline

Review of Investigation File

Decision-Maker will afford each Party the opportunity to submit written, relevant questions that a party wants asked of any party or witness

7 CALENDAR DAYS
Questioning Timeline

Decision-Maker Evaluates Questions and Sends to Parties

Parties receive questions and are able to provide additional follow-up to be submitted in writing to the Decision-Maker

5 CALENDAR DAYS
Questioning Timeline

- Decision-Maker Sends Responses
- Parties

3 CALENDAR DAYS

Parties receive answers to their questions and are able to provide limited follow-up to be submitted in writing to the Decision-Maker.
Questioning Timeline

• Shall be issued within 120 calendar days of the receipt of the formal complaint

• Can be extended with good cause, but Parties must be notified in writing

• Good cause includes:
  ◦ absence of a party, witness, or party advisor;
  ◦ concurrent law enforcement activity;
  ◦ participation in the informal resolution process; or
  ◦ need for language assistance or disability accommodation
"Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence 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 the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent."
Sample Questions

Rule on the relevance of these questions

Isn’t it true that you have been accused of sexually assaulting other girls at school?

Didn’t you let the Respondent touch your breast when you were on the bus a week before the alleged sexual assault?

Didn’t you tell the Respondent you were taking birth control?

How many sexual partners do you have at the school?

Is there a family history of sexual violence?
"The district’s decisionmaker will not require, rely upon, allow, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under legally recognized privilege unless the person holding the privilege has waived the privilege."
Sample Questions

Rule on the relevance of these questions

Did your gynecologist find any damage to your vagina?

Did you tell your therapist that you needed to apologize to the Complainant?

Did you tell your priest in confession that you sexually touched the Complainant, but had not had sexual intercourse with him?

What was your grade in the class at the time of the incident?

What happened when you visited the school nurse?
Determining the Relevance of Questions

"The Decision-Maker will explain to the party proposing the questions any decision to exclude a question as not relevant."

- How will this be communicated?
- Will you seek to understand what was intended by the question?
- Will there be a deadline for response?
Lessons Learned
Session 5- Drafting the Determination
What Is the Written Determination?

- States whether the Respondent is responsible for the alleged conduct.

- Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process.

- Uses the preponderance of evidence standard to determine responsibility.
  
  *(recall our standard used- anything that tips scale over 50%)*
What Is the Written Determination?

Requires the objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and determinations of credibility in a manner that is not based on a person’s status as a Complainant, Respondent, or Witness.

<table>
<thead>
<tr>
<th>Inculpatory</th>
<th>Exculpatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any evidence favoring the Complainant</td>
<td>Any evidence favoring the Respondent</td>
</tr>
</tbody>
</table>
Goals of the Written Determination

Provide clear, concise analysis of the facts and their application to the Twin Rivers Unified School District Sexual Harassment Policy

"Twin Rivers Unified School District is committed to maintaining a learning environment that is free of harassment. We prohibit the unlawful sexual harassment of any student by an employee, student, or other person at school or at any school related activity. Any student who engages in sexual harassment of anyone at school or at a school-sponsored or school-related activity is in violation of this policy and will be subject to disciplinary action."
Additional Goals of the Written Determination

? Consider your audience. Who is reading the determination?

? The outcome you determine impacts the future of many individuals. Who will you be impacting?
Timeline For Sharing Determination

According to the Twin Rivers policy, it shall be issued within 120 calendar days of the receipt of the formal complaint.
Elements Included in the Determination

- Identification of the allegations potentially constituting Title IX Sexual Harassment

- A description of the procedural steps taken from receipt of the formal complaint through the written determination, including:
  - Notifications to Parties
  - Interviews with Parties and Witnesses
  - Site Visits
  - Methods to Gain Other Evidence

- Findings of fact supporting the determination
Elements Included in the Determination

- Conclusions regarding the application of the district’s code of conduct or policies to the facts
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the district’s educational program or activity will be provided by the district to the Complainant
- The district’s procedures and permissible bases for the Complainant and Respondent to appeal
Identification of the allegations potentially constituting Title IX Sexual Harassment

This information should be provided in the Notice of Allegations and Investigative Report. It can be copied directly from documents provided to you as the Decision-Maker.

It may be helpful to include additional elements of the policy such as the definition of consent, incapacitation, etc.
Drafting the Determination

A description of the procedural steps taken from receipt of the formal complaint through the written determination

This information will likely be provided to you because you have not been involved in the process.

Note procedural steps for the decision-making part of the process

- Dates you received questions from Parties
- Dates you shared questions with Parties
- Dates Parties submitted follow-up questions to you
- Dates you shared follow-up questions with Parties
Drafting the Determination

3

Findings of fact supporting the determination

What does this mean?

Findings used in the resolution of relevant facts

Review and lay out all relevant facts provided in the Investigative Report
Drafting the Determination

Conclusions regarding the application of the District’s code of conduct or policies to the facts

Pay attention to the details of the policy definitions. Do the facts support this definition?

Include the Decision-Maker's statement of the District's Sexual Harassment policies applicable to the case in view of facts found to be true

Strict application of the facts to the policy definitions.
Drafting the Determination

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the district’s educational program or activity will be provided by the district to the Complainant.

Statements must be drafted based upon an analysis of the facts, analyzed in the context of the preponderance of the evidence standard of what is more likely than not to have happened.

Consideration is given to the respective age of the Parties; motivation, opportunity, previous incidents and any other objective evidence.

Consistency of disciplinary sanctions

Other remedies provided.
Drafting the Determination

The District’s procedures and permissible bases for the Complainant and Respondent to appeal

This language can be copied directly from the District policy
Lessons Learned
Session 6 - The Appeal Process
Appeal Rights

Either party has the right to appeal the district’s decision or dismissal of a formal complaint or any allegation in the formal complaint.
Who is the Appeal Officer?

- Cannot be:
  - Title IX Coordinator
  - Investigator
  - Initial Decision-Maker

- Can be a dedicated individual or from a pool of Decision-Makers
  - Twin Rivers will have a dedicated Appeal Decision-Maker
Bases of Appeal

1. The party believes that a procedural irregularity affected the outcome

2. New evidence is available that could affect the outcome

3. A conflict of interest or bias by the Title IX Coordinator, investigator(s), or decision-maker(s) affected the outcome
Procedural Irregularities

- Can be any failure to follow the Twin Rivers District policy that affected the outcome
- Decision-Maker failed to consider the statement of certain witnesses or documents/evidence
- Decision-Maker relied on evidence that is not relevant or that is prohibited from consideration (such as sexual predisposition or disclosure of private and legally protected information)
New Evidence

- New witness(es) available who can provide information not previously known
- New evidence available to prove or disprove elements of the alleged offense (text messages, written communication, video, etc.)
- This evidence/witness was not available in the Investigation File and Report and only came available after the determination was issued. Cannot be intentionally withheld evidence.
Conflict of Interest/Bias

Ideally, this should be addressed prior to the questioning process. This ensures another Decision-Maker is selected.

However, if one of the Parties feel there was a bias on the part of the Decision-Maker, they can express this in the appeal.

Parties must be able to articulate how they believe bias affected the outcome.
**Appeal Timeline**

- **Determination is made**
  - Appeals could be made following dismissal of a complaint OR after a determination is rendered

- **Appeal is submitted**
  - Either party must provide written appeal to TIX Coordinator within 10 calendar days of receiving written determination or dismissal

- **Parties submit written statement**
  - Parties given 10 calendar days to submit a written statement in support of or challenging the outcome

(10 calendar days)
**Appeal Timeline**

- **Review by Appeals Decision-Maker**
  - Conduct a thorough review of initial investigative file as well as any new materials or information received

- **Decision is rendered by Appeals Decision-Maker**
  - Determination with rationale is made (e.g., affirms, reverses, remands, or amends the written determination regarding responsibility)

- **Provide written decision**
  - Written decision must be sent simultaneously within 5 business days of issuance of decision

*(20 calendar days) - (5 business days)*
Appeal Considerations

Appeals submitted after the 10-calendar day window WILL NOT be considered

Has the potential to take up to 45 days

Requires frequent communication with both Parties at multiple steps
Is the end of the appeal process the last we will hear of the complaint?

Potentially, however:

• Either Party has the right to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR) within 180 days of the date of the most recently alleged conduct.

• The Appeal Decision-Maker could remand the decision, requiring a new investigation or hearing.
Lessons Learned
Things to think about...

- Special needs of Parties (or parents)
- Language barriers/Literacy
- Technological barriers
- What other assumptions are we making about our students, parents, advisors?
- What do we lose in the written process? (body language, credibility assessment)
Steps to Success

- The written format of the process allows you to slow down. Use that to your advantage.
- Use your experiences as a TEAM to share and learn from each other.
- Anticipate issues that could *(and probably will)* arise and create solutions before they occur. Template everything!
- Revisit your process frequently and adapt to ensure it is working the way it should. Create workflows to maximize efficiency.
Thank you!

Twin Rivers Unified School District