

Title IX Decision- Maker Training 2024

PASCO COUNTY SCHOOL
DISTRICT

OFFICE FOR CIVIL RIGHTS
COMPLIANCE

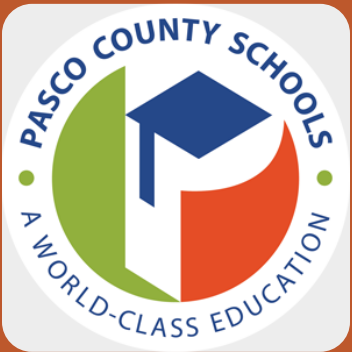


Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

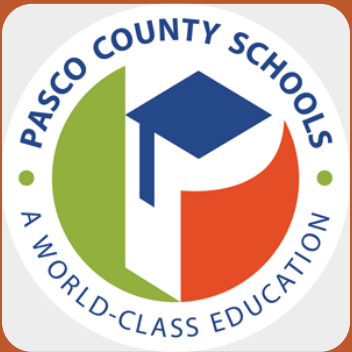
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TIX Decision Maker Training Objectives



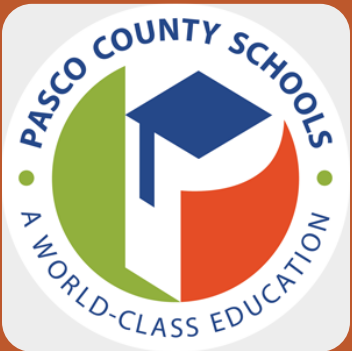
Understand	TIX Basics
Understand	Role of the Decision Maker
Understand	Due Process
Understand	Bias, Conflicts of Interest, and Recusal

TIX Decision Maker Training Objectives



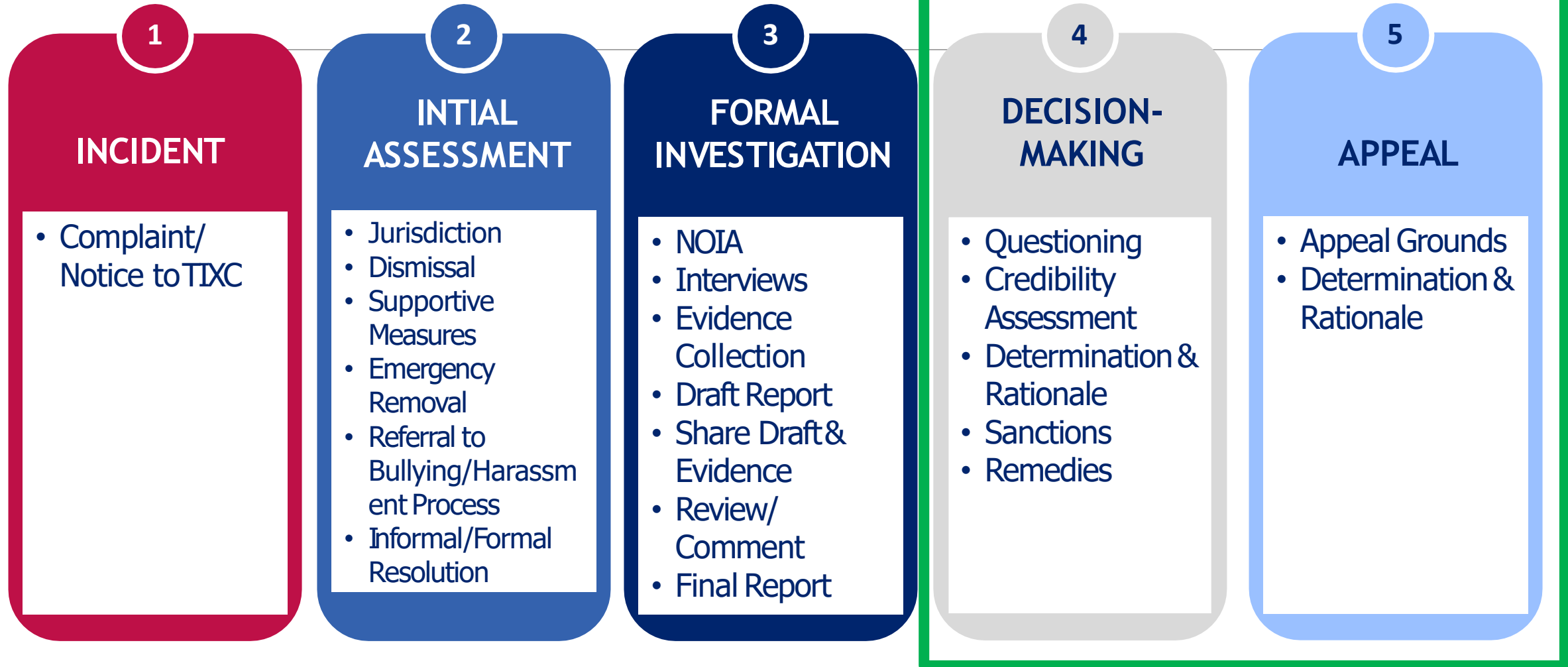
Understand	The Title IX Process
Understand	Preparing to Make a Decision
Understand	Questioning by the Decision Maker
Understand	Types of Evidence

TIX Decision Maker Training Objectives



Understand	Making a Decision
Understand	Appeals
Understand	Recordkeeping and Documentation

Title IX Grievance Process Overview





Title IX Team

- **District Title IX Coordinator and Investigator**

- Role mandated by Title IX regulations. Oversees District's Title IX compliance, Ensures the school/district response to reports of potential sex discrimination or sexual harassment is not deliberately indifferent

- **School-based Title IX Coordinator/Investigator**

- Responsible for coordinating Title IX compliance at an assigned school.
- Alternate school-based coordinator are recommended to assist with investigations, in case of absence, and or conflict of interest.
- Conducts investigations

- **Informal Resolution Facilitator**

- Facilitates a resolution to a formal complaint without completing the formal grievance process. Acts as a mediator between the parties.



Title IX Team Continued



Decision-Maker/Principal

Reviews the evidence, determines responsibility for all formal complaints, and provides a written determination to the parties

Cannot be the same person as the Title IX Coordinator/Investigator or appeals-decision maker



Appeals Decision-Maker

Responsible for reviewing the written determination and issuing a written decision describing the result and rationale for the appeal

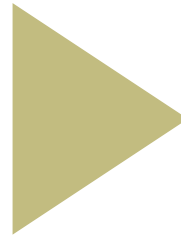
Cannot be the same person as the Title IX Coordinator/Investigator or decision-maker

Complainants and Respondents



Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment or discrimination.

- May be a student, an applicant, employee or anyone attempting to access an educational program or activity.



Respondent: an individual alleged to have violated TIX's prohibition of sexual harassment



Advisors

The Complainant and Respondent are entitled to have an advisor of their choosing. The advisor may attend any meeting or interview with their party.

- Examples:
 - Parent
 - Attorney
 - Family friend
 - Coach
 - Youth pastor

Advisors

The following restrictions are placed on advisors for both parties:

- Parties are allowed one advisor
- They may attend interviews with their party only at their party's request, unless the advisor is a parent or legal guardian
- Advisors shall not restrict access to their party
- Unable to advise their party to “avoid” the investigation
- Advisors are only permitted to use the investigative report and evidence received for inspection and review for purposes of the grievance process
- Advisors may not request educational records that are protected by FERPA
 - (i.e. prior discipline records of either party)



Rank Top 3 responsibilities for a Decision-maker. Then, identify what you consider least important.

- Finding the truth
- Providing a just result
- Providing an educational process
- Making a safe community
- Upholding the school's policy
- Ensuring a fair process
- Protecting the school from liability
- Punishing wrongdoing

DECISION-MAKER RESPONSIBILITIES

The Decision Maker's GOAL



AN EQUITABLE RESULT FROM AN EQUITABLE PROCESS



Role of the Decision-Maker

1. Serve as the decision-maker in Title IX matters
2. Conduct an independent assessment of the evidence
3. Remain free from conflict of interest and bias
4. Facilitate questions and answers from parties regarding the evidence prior to final determination
5. Determine whether school board policy has been violated based upon the preponderance of the evidence standard
6. Determine appropriate sanctions (discipline) when a Code of Conduct violation has been found
7. Draft a written determination that outlines the rationale for the finding(s)



Role of the Appeal Decision-Maker

1. Make determination on a party's request for an appeal
2. Review investigative report and all evidence from the underlying investigation
3. Case review is limited to the grounds listed in the appeal request
4. Draft a written determination that outlines the rationale for the outcome of the appeal

The Challenge for Decision Makers

- School/District policies and procedures identify what constitutes sexual harassment within your community
 - The definitions and procedures used are impacted by Title IX requirements
- It is not a question of right and wrong, but whether there has been a policy violation, proven by the standard of evidence
- Your role is to impartially uphold the integrity of the process
- You may not agree with your policy, but you must be willing to uphold it

What is Due Process?

- Rights-based protections that accompany disciplinary action by a school concerning students, employees, or others
 - Informed by law, history, public policy, culture, etc.
- DP in criminal and civil courts vs. DP within a school
- DP analysis and protections have historically focused on the rights of the Respondent
- A sexual assault can be a legal deprivation of a Complainant's substantive due process rights
- Perceptions of "due process" can be connected to perceptions of the legitimacy of a process's outcome



Procedural Due Process: Know and Follow

Procedural Due Process

- Consistent, thorough, and procedurally sound review of all allegations.
- Substantial compliance with written policies and procedures.
- Policies and procedures afford sufficient rights and protections to satisfy mandates of all applicable laws.
 - Clear, written notice of the allegations
 - Opportunity to present witnesses and evidence and be heard by the decision-maker



Due Process in the Decision Itself

- A decision must:
 - Be appropriately impartial and fair (both finding and sanction)
 - Be neither arbitrary nor capricious
 - Be based on a fundamentally fair rule or policy
 - Be made in good faith (without malice, ill-will, conflict, or bias)
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence



Due Process Procedural Rights in 2020 Title IX Regulations

Right to:

- Written notice of allegations, as well as notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Inspect and review evidence and draft investigation report before finalized
- Ask written questions of the other party and witnesses through the decision-maker
- Appeal a dismissal and/or outcome

Due Process Procedural Rights in 2020 Title IX Regulations

Right to:

- Present witnesses, including fact and expert witnesses
- Present and know inculpatory and exculpatory evidence
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Have others present during any grievance proceeding/meeting
- Be accompanied to any related meeting or proceeding by an Advisor of their choice, who may be, but is not required to be, an attorney



Conflict of Interest

- The decision-maker must also be free from a conflict of interest or bias toward either the complainant or respondent.
- If the decision-maker has a conflict of interest, they will need to contact the District Title IX Coordinator so that another decision-maker can be appointed to review the Title IX matter.
- Examples of conflict include:
 - Familial relationship
 - Additional professional relationship



BIAS

- Forms of bias and prejudice that can impact decisions:
 - Pre-determined outcome
 - Partisan approach by Investigators in questioning, analysis, or report
 - Partisan approach by decision-makers in questioning, findings, or sanctions
 - Intervention by senior-level administrators, or external sources



BIAS

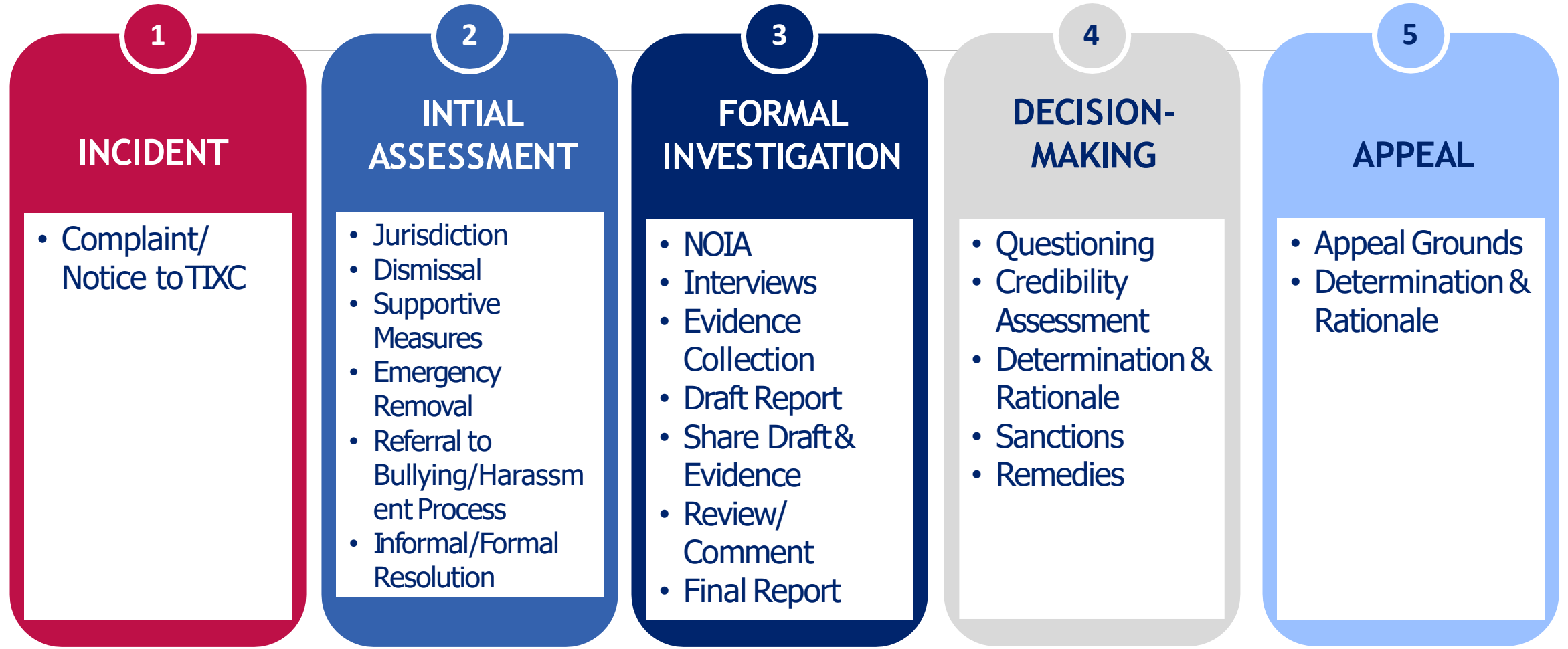
- Forms of bias and prejudice that can impact decisions:
 - Not staying in one's lane
 - Improper application of institutional policies or procedures
 - Confirmation bias
 - Implicit bias
 - Animus of any kind, including race, religion, disability, etc.



**REMEMBER, YOU
HAVE NO “SIDE”
OTHER THAN THE
INTEGRITY OF THE
PROCESS, AND YOU
REPRESENT THE
PROCESS.**



Title IX Grievance Process Overview





How does this model differ from the student conduct model?

- An active gathering of information by the Investigator(s); not intended to “build a case”
- Does not impact the implementation of informal or alternative dispute resolution approaches
- Enhanced due process
- Characterized by an intentional effort to make procedural and support mechanisms equitable
- Provides an appeal for all parties to the report, not just the Respondent



Evidence and Report Review: Step 1

Prior to the Completion of the final Investigation Report, the TIXC/Investigator will provide all relevant and directly related evidence to both parties. **The parties will have ten (10) calendar days to review the evidence and provide a response back to the investigator.**



The evidence provided must:

- Be sent to each party and Advisor
- Be in an electronic format or hard copy
- Include evidence upon which the Recipient does not intend to rely
- Include exculpatory and inculpatory evidence

Evidence and Report Review: Step 2

After the parties review the evidence and provide a response, the TIXC/Investigator shall create a final report summarizing his/her findings (both parties' responses will be included in the final report) within seven (7) calendar days. The TIXC/Investigator will then provide the final report to both parties and the decision maker .

The evidence provided must:

- Be sent to each party and Advisor
- Be in an electronic format or hard copy
- Include evidence upon which the Recipient does not intend to rely
- Include exculpatory and inculpatory evidence

Best Practice: Provide the draft investigation report to the District Civil Rights Compliance department for review for completeness before being shared with the parties.

Evidence and Report Review: Step 3



Both parties will have at least **ten (10) calendar days to review the final investigative report**, submit questions to parties and witnesses and receive answers to their questions.



The Responses will be provided to the Complainant and Respondent by the decision-maker.



If a response is not received within ten (10) calendar days, the decision-maker will deem the non-response as a waiver and continue with his/her determination of responsibility.



Decision-Maker Process

- Review of applicable policies and procedures
- Review of Investigation Report
- Review of file of evidence
- Exchange of questions, responses, and follow-up responses between parties/witnesses
- Preparation of any questions you have for parties/witnesses



Decision-Maker Must Review

- The Respondent's written notice of allegations and investigation (NOIA) to understand all allegations
- School/District policy alleged to have been violated
- Separate all the policy elements (what does it take to establish a policy violation?)
- Identify the elements of each alleged offense
- Review all the material (investigation report and investigation file) carefully and thoroughly – get a general overview of the complaint
- Note any areas of inconsistent information





Questioning by Decision Maker

- Parties must be given the opportunity to submit written questions for the other party and all witnesses, provide each party with the answers, and allowed additional, limited follow-up questions from each party
- Including questions challenging credibility

Questioning by Decision-Maker

Decision-maker should determine the relevance of written questions and explain the rationale for excluding/re-wording any questions submitted by the parties

Decision-maker may ask a party to explain why they think a question is relevant or will lead to a relevant answer

If the party submits a written question that is potentially answered in the investigation report, that question should typically be permitted, if relevant

The Decision-maker may deny the question as “irrelevant because it has already been answered,” or may ask the party why posing the question again is expected to lead to additional relevant evidence



Can the Decision Maker Ask Questions?

- ☐ The decision-maker may want to ask the parties and/or witnesses questions after reviewing the investigation report and documentation provided from the investigation.
- ☐ This can be done through an email exchange of written questions and responses.
- ☐ The decision-maker should first review the investigation report and documentation provided by the investigation to see if their questions have already been answered.



If you still have questions, ask yourself



- **Is the answer already provided in the report or documentation?**
 - If not, ask the investigator why not
 - If you still need to know the information
 - **What do I need to know?**
 - **Who is the best person to get this information from?**
 - Usually it will be the Investigator, first, and then the source, if available. It may be good to ask the Investigator if they asked it already and what answer they received previously.
- **Why do I need to know it?**
 - If it is not going to help you decide whether a policy was violated or not and you can explain how, then it is not a good question (though you may not know this until you hear the answer)



Tips for Asking Quality Questions

- Use open-ended questions (Who, what, how)
- Use close-ended questions to drill down on details (Did you, Were you)
- Don't ask Compound Questions
 - "I have two questions: First, Second,..."
- Don't ask Multiple Choice Questions
 - Were you A or B?
- Avoid suggesting an answer in your question
- Frame questions neutrally
- Don't ask blaming or judgmental questions
- Minimize the re-traumatization potential for all parties



Evidence

Equal opportunity to:

- Present witnesses, including fact and expert witnesses
- Present evidence, including inculpatory and exculpatory evidence
- Inspect all evidence, including evidence not used to support a determination



No Limits on types/amount of evidence that may be offered, except must be relevant and respect “rape shield” and privilege provisions.



Ask Yourself

- ☐ Is it relevant ?
- ☐ Is it reliable? (Is it credible?)
- ☐ Will we rely upon it as evidence as supporting a rationale/the written determination?

Types of Evidence

Relevant

- Evidence is relevant when it tends to prove or disprove an issue in the complaint.
- This evidence is to be provided to all parties.
- This evidence will be relied upon by the decision-maker.

Directly Related

- Evidence is directly related when it is connected to the complaint but is neither inculpatory nor exculpatory and will not be relied upon in the investigation report.
- Evidence should be provided to both parties/advisor/decision-maker.

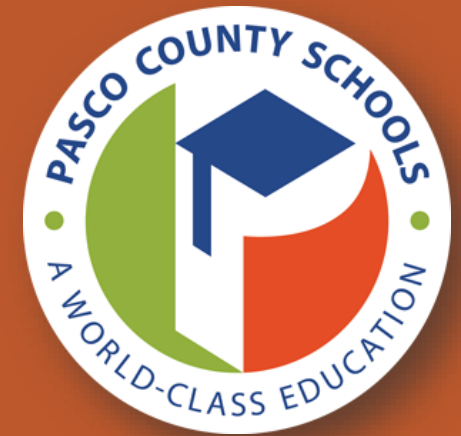
Irrelevant

- Evidence should be maintained by the investigator but disregarded for the purposes of the process.
- Parties/Advisors/decision-maker does not get to know about it.

Understanding Evidence

Decision-maker may consider and assign weight to different types of evidence, when relevant and credible:

- Documentary evidence (e.g., supportive writings or documents)
- Electronic evidence (e.g., photos, text messages, and videos)
- Real evidence (i.e., physical objects)
- Direct or testimonial evidence (e.g., personal observation or experience)
- Circumstantial evidence (i.e., not eyewitness, but compelling).
- Hearsay evidence (e.g., statement made outside of an interview but presented to investigator as important information)
- Character evidence (subject to the relevance determination, but often not probative of the underlying allegation)



Specific Evidence Issues under TIX

- Evidence of the Complainant's sexual predisposition is explicitly and categorically **not relevant**.
- Evidence of the Complainant's prior sexual behavior is **not relevant** except for two limited exceptions:
 - Offered to prove that someone other than the Respondent committed the conduct alleged; or
 - Concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent is offered to prove consent
 - Even if admitted/introduced by the Complainant
- Does not apply to the Respondent's prior sexual behavior or predisposition
- Remember that an Authorization of Medical Release will need to be obtained/signed by the parent if requesting medical records



Case Study: Ivan & Juanita

- Juanita, a freshman member of the girls' soccer team, made a Title IX report directly to the Vice Principal.
- On the morning of October 11, her teammate, who was checking her email in the computer lab, yelled for Juanita and the other teammates to look at something on the computer.
- Juanita saw an email sent from the boys' soccer team school email address, boyssoccer@school.com, which said "Greetings new freshman, meet the girl next door."
- The email included a photo of Juanita's face photoshopped onto an image of a naked woman's body with huge breasts.

Case Study: Ivan & Juanita Continued

- Everyone in the room laughed and Juanita ran from the room crying, embarrassed that others would think it was her.
- She immediately called Ivan, a member of the boys' soccer team, who she believed sent the email.
- Earlier in the year, Ivan asked her out several times, but she didn't like him.
- She found him really annoying, and while she knows it wasn't nice, she called him a total loser in front of his friends.
- She knows that he sent the email to hurt and embarrass her.



Case Study: Ivan & Juanita Continued

Ivan told the Investigator that he believes Juanita is blowing the whole matter out of proportion.

He admits to creating the photo for a class project. He reports:

- "It was only meant to be a joke. I never put her name on it, so what's the big deal? This is a work of art that I created for my class. I only showed my artwork, which by the way is protected by the First Amendment, to a few of my teammates. I know my rights very well since my dad is a lawyer."
- The email account is for official team business.
- The coaches and team captains have the password. The captains have shared the password with other seniors on the team.



Case Study: Ivan & Juanita

- The Investigator also interviewed John, Assistant Director of Information Technology.
- John confirmed that someone using the computer lab computer sent the picture from the boys' soccer team email account.
- The picture was inserted into the email via a flash drive, and he was unable to determine which student had logged in to the account.
- John received Ivan's consent to inspect his laptop. The photo was on his hard drive but was not sent out via email to anyone.
- John said Ivan told him when he doesn't have his laptop with him, it is typically inside his locker. Ivan also told John that he hadn't given anyone else his laptop password.

Exercise: Is it Relevant?

- Ivan was notified via the school's NOIA letter that it is alleged that he violated the school's sexual harassment policy, specifically the hostile environment provision.
- The definition of Sexual Harassment is unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, AND, objectively offensive, that it effectively denies a person equal access to the Recipient's education program or activity.



Warm-up: Is it Relevant?

You are the decision-maker. You must determine whether the following questions seek relevant information and/or whether the specific piece of evidence is relevant.

Warm-up: Is it Relevant?

- Let's start with some of the evidence from the investigation report. Is it relevant that:
 - Ivan is a member of the boys' soccer team
 - Juanita is a member of the girls' soccer team
 - There was "history" between Ivan and Juanita
 - Juanita called Ivan "a loser" earlier in the year in front of his friends
 - Ivan admitted to creating the image for his class
 - Ivan showed the image to a few teammates
 - The image was sent from a computer in the school's computer lab
 - Ivan consented to letting John from IT inspect his laptop



Is This Relevant?



Consider whether the following pieces of evidence, if part of the fact-pattern originally provided from the investigation report, would be relevant:

- Juanita's Advisor's daughter is in the same art class with Ivan and stated that she never had an assignment like that for class
- Ivan's friend, Alan, states that Juanita really is not bothered by the photo because he has observed occasions where Juanita flashed her breasts at Ivan a few times before. Juanita also told Ivan and Alan that she wanted breast implants.

Is This Relevant?



- Ivan's soccer coach has prepared a written character reference for Ivan, which states that he is an upstanding member of his high school team and community, a leader on the squad, and volunteered many times at the local YMCA youth program.
- Ivan stated that at the time that the email was sent, he was in his algebra class and had an in-class test on that day.
- Juanita provided a screenshot of Ivan's Twitter feed, which showed that he retweeted an announcement from his favorite band just two minutes prior to the precise time that the email was sent.
- Ivan's Advisor wants to ask Juanita about her academic progress during the first half of the school year. Ivan and his Advisor believe that Juanita was in danger of failing her chemistry class

Making a Decision Overview



Anticipate that you will have to clearly articulate the rationale for and evidence supporting your conclusions



Parse the policy again; remind yourself of the elements that compose each and every allegation



Determine the credibility of evidence and assess statements as factual, opinion-based, or circumstantial



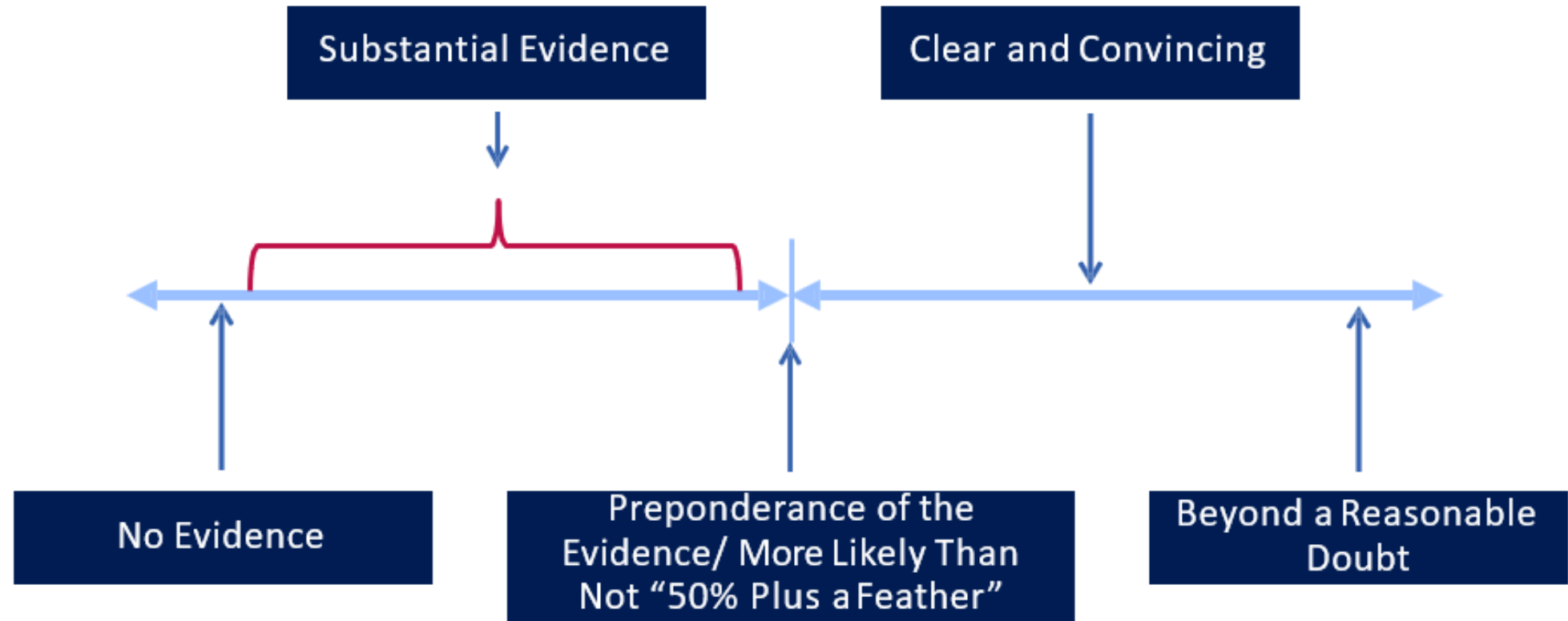
Determine whether it is more likely than not that policy has been violated



Ensure an impartial decision that is free of substantive bias

WITHHOLD JUDGEMENT UNTIL ALL THE EVIDENCE HAS BEEN CONSIDERED

EVIDENTIARY STANDARDS



Making a Decision

Foundation for Decisions

- Decisions must be based only upon the facts, opinions, and circumstances provided in the investigation report, or submitted in response to the written questions
- Do not turn to any outside “evidence”
- **Assess each element** in the policy (e.g., intent, sexual contact, consent, etc.), separate it out and determine if you have evidence that supports that a violation of that element is proven. Assess evidentiary weight.
 - **Measure with the following questions:**
 - Is the question answered with fact(s)?
 - Is the question answered with opinion(s)?
 - Is the question answered with circumstantial evidence?

Making a Decision

Findings, Impact Information, and Sanctions

- Separate the “Finding” from the “Sanction.”
 - Do not use impact-based rationales for policy violation findings (e.g., intent; impact on the Complainant; impact on the Respondent, etc.)
 - Use impact-based rationales may be considered for sanctions only
- Understand that the question of whether someone violated the policy should be distinct from factors that aggravate or mitigate the severity of the violation
- Be careful about not heightening the evidentiary standard for a finding because the sanctions may be more severe
- Recommendation of remedies, sanctions, and/or consequences will be provided to your Asst. Sup for review **prior** to completing a written determination.

Sanctioning in Sexual Misconduct Cases

Title IX and case law require:

- Decision-maker should also decide if credibility will influence the sanction
- Recipients to not act unreasonably to bring an end to the discriminatory conduct (**Stop**)
- Recipients to not act unreasonably to prevent the future reoccurrence of the discriminatory conduct (**Prevent**)
- Recipients to restore the Complainant as best they can to their pre-deprivation status (**Remedy**)

This may create a clash if the sanctions only focus on educational and developmental aspects

Sanctions for serious sexual misconduct should not be developmental as their primary purpose; they are intended to protect the Complainant and the school community

Common Student Sanctions

- Warning
- Detention
- Loss of privileges
- Counseling
- No contact
- Limited access to school activities
- Service hours
- Off Campus Instruction
- Discretionary sanctions
- Alcohol and drug assessment, and counseling
- Alternative Placement
- In-School-Suspension
- Out-of-School Suspension
- Expulsion



Written Determination

The decision-maker shall provide their recommendation to Asst. Sup **prior** to sending a written determination regarding the Respondents responsibility.

The written determination must apply the **preponderance of the evidence** standard

DM will provide the written determination to TIXC and both parties within 7 calendar days.

Written Determination

The written determination must include:

- Identification of the allegations potentially constituting sexual harassment, pursuant to the definition in this policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Code of Student Conduct to the facts;



Written Determination

The written determination must include:

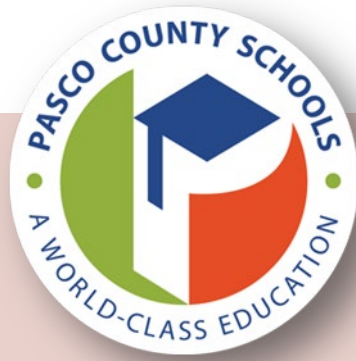
- The result and rationale as to each allegation;
- A determination regarding responsibility as to each allegation;
- Any disciplinary sanctions imposed on the respondent by the school;
- Whether remedies will be provided by the school to the complainant; and
- Permissible procedures and grounds for the complainant and respondent to appeal.
- The decision-maker should author the written determination and will follow the provided template.



Written Determination Logistics

- The written determination should be provided to the parties simultaneously via email.
- No discipline shall be issued until after the **5-day window for determination appeals has ended.**
- The determination becomes final either on the date that the school provides the parties with the written determination of the result of the appeal, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. (5 school days)



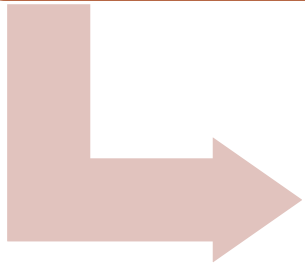


Finalizing the Determination
7 days

Appeal Process Overview

- Equal Opportunity for statements
 - Both parties may submit written statements supporting or challenging the outcome
 - Appealing party must include a written statement with notice of appeal
 - Non-appealing party has up to **five (5) school days** to respond.
- Appeal Decision
 - Appeal decision-maker will issue a written decision on appeal
 - Original determination will stand if appeal is untimely or lacks clear error and/or a compelling rationale
 - Decision will be provided to the Title IX Coordinator and both parties within **five (5) school days** of the parties' written statements submission
- Final Determination of responsibility becomes **final**:
 - After appeal deadline expires, or
 - Upon delivery of appeal decision to Complainant and Respondent
 - **No further review beyond the appeal is permitted.**
- **Disciplinary referrals are final and cannot be appealed once a determination has been made.**

Both parties must be given **five (5) school days** to submit a written statement in support of, or challenging, the outcome of the written determination



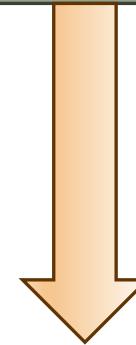
If an appeal is not filed, the determination regarding responsibility becomes **final five (5) school days** after issuance.



When no appeal received, DM may issue final sanctions, remedies, referral, etc.

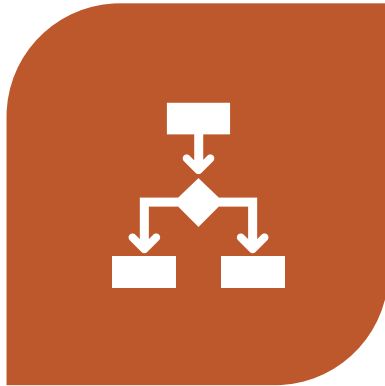


If an appeal is filed, the determination of responsibility (written by appeal decision-maker) becomes final on the date the school provides the written appeals decision.



The TIX decision is FINAL

An Appeal Will Be Granted ONLY If:



PROCEDURAL ISSUES AFFECTED THE
OUTCOME



NEW EVIDENCE THAT WAS NOT
REASONABLY AVAILABLE AT THE TIME
THE WRITTEN DETERMINATION OR
DISMISSAL WAS MADE BECOMES
AVAILABLE THAT COULD AFFECT THE
OUTCOME



THERE WAS A CONFLICT OF INTEREST OR
BIAS BY THE SCHOOL-BASED TITLE IX
COORDINATOR, INVESTIGATOR, OR
DECISION-MAKER, AGAINST ANY
COMPLAINANT OR RESPONDENT THAT
AFFECTED THE OUTCOME

Appeals Determinations



Appeal Decision-maker issues a written determination with rationale



Determinations may include:



Upholding the original determination and sanctions (if any)



Remanding the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation



Modifying the original determination and/or sanctions (if any)



Overturning the determination (not recommended)



Appeal Decision-maker **cannot** be TIXC or serve another role in the same complaint resolution

Written Determinations will only be overturned if...

- The allegations do not meet the Title IX definition of sexual harassment
- The allegations did not occur within a PCS education program or activity
- The complainant was not denied equal access to a PCS education program or activity
- If the Title IX coordinator and/or Decision Maker did not properly follow the Title IX procedures outlined in School Board Policy
- Including failure to recuse a Title IX Coordinator or Decision Maker from an investigation due to a conflict





Retaliation

No school or other person may intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing

Complaints alleging retaliation may be filed according to the grievance procedures for sexual harassment as outlined in School Board Policy 2266 or 5517

All threats should be referred to discipline for an discipline investigation

FERPA

PCS should interpret Title IX and FERPA in a manner to avoid any conflicts. Where a true conflict exists, the obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or federal regulations



Closed Title IX Case Records FERPA vs. Title IX

During an **OPEN** Title IX case, Title IX obligations **override** **FERPA** for: Notice, evidence sharing, and party access

✗ After the case is **CLOSED**, the file becomes an education record under FERPA:

Disclosure requires written consent (or a FERPA exception)

Public records requests must be redacted for all student PII

No automatic sharing with colleges or third parties without consent

Key Rule of Thumb: Title IX > FERPA while the case is active; FERPA controls once the case is closed.



Training

Training is mandatory for all school-based Title IX Coordinators, investigators, decision-makers, hearing officers, and appeals decision-makers.

All training materials must be available to the public on the PCS Office For Civil Rights website.





Recordkeeping and Documentation

Schools must maintain all records related to any investigation for a period of **seven (7) years** including records of:

- Any actions taken in response to a report of sexual harassment;
- Any actions taken in response to a formal complaint of sexual harassment;
- Each sexual harassment investigation;
- Any determination regarding responsibility;
- Any audio or audiovisual recording or transcript;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant;
- Any appeal and related result(s);
- Any informal resolution implemented;
- All materials used to train school-based Title IX Coordinators, investigators, decision-makers, and appeals decision-makers

Must document measures taken to preserve/restore access to education programs/activity

<https://pasco.focusschoolsoftware.com/focus/Modules.php?modname=sss/events/program/i/8>

Sexual Harassment

TIX Sexual harassment is defined as conduct on the basis of sex that satisfies one (1) or more of the following:

- A school employee conditioning the provision of aid, benefits, or services on the individual's participation in unwelcome sexual conduct (quid pro quo);
- Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, **AND** objectively offensive that it denies a person equal access to the education program or activity; or
- Sexual assault, as defined in the Clery Act, or dating violence, domestic violence, or stalking, as defined in the Violence Against Women Act.



Severe and Pervasive

Severity Analysis:

- Allegations of physical contact are more likely to be considered severe
- Accompanied by threats or violence.
- Circumstances:
 - Did the complainant have the ability to escape or remove themselves from the harassment?

Pervasive Analysis

- Determine if the conduct was widespread or openly practiced.
- Was it well-known among students and employees?
- Did it occur in public spaces?
- The frequency of the conduct is often a variable in assessing pervasiveness
 - Intensity
 - Duration
- Number of persons involved (Was it group harassment?)
- Was there an unreasonable interference with the educational program or activity

Objectively Offensive

- Reasonable person standard
- Age and relationship of complainant and respondent are always considered
- Number of persons involved
- Frequency
- Humiliation





Sexual Assault

An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:

- Rape
- Fondling
- Statutory Rape
- Incest

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 and where the existence of such a relationship shall be determined based on a consideration of the following:

- Length of the relationship;
- Type of relationship; and
- Frequency of interaction between the persons involved in the relationship

Dating violence includes sexual or physical abuse or the threat of such abuse

Examples: pushing, shoving, biting, punching holes in walls, covering mouth, using a weapon, threatening to use a weapon, demeaning, extortion.



**All threats
should be
forwarded to
discipline for
investigation**

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim,

By a person with whom the victim shares a child in common,

By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or

By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction



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**

For the purposes of this definition,

- Course of conduct means pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. This can be 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 means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Sexual Harassment Definition Comparison

SESIR DEFINITION

Sexual Harassment (SXH) - Level III

(undesired sexual behavior) Unwelcome conduct of a sexual nature, such as sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Harassing conduct can include verbal or nonverbal actions, including graphic and written statements, and may include statements made through computers, cellphones, and other devices connected to the Internet. The conduct can be carried out by school employees, other students, and non-employee third parties

TIX “UMBRELLA” DEFINITION

1. A school employee conditioning the provision of aid, benefits, or services on the individual's participation in unwelcome sexual conduct (quid pro quo);
2. Unwelcome conduct that a reasonable person would determine to be **so severe, pervasive, and objectively offensive that it denies a person equal access to the education program or activity**; or
3. **Sexual assault**, as defined in the Clery Act, or **dating violence, domestic violence, or stalking**, as defined in the Violence Against Women Act.

Education Program or Activity

Schools must address allegations of sexual harassment that occur in “the school’s education program or activity, against a person in the United States.”

- “Education program or activity” is broadly defined to include locations, events, or circumstances over which the school exercises **substantial** control over both the respondent **and** the context in which the sexual harassment occurs.

Examples:

- School-funded, -sponsored, or -promoted trips
- Sporting events
- School Dances
- Extracurricular programs or activities
- Virtual Learning

Buildings or other locations that are part of the school’s operations, including remote platforms

- The operations of a school may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the school.

Substantial Control

EXAMPLE SCENARIOS OF A SCHOOL EXERCISING SUBSTANTIAL CONTROL



Student is sexually assaulted at a hotel room while on a field trip or travel with the school's athletics team.



A student using a personal device to perpetrate online sexual harassment to another student during class time.



A teacher visits a student's home under the pretense to drop off a book, but instead engages in a sexual activity with the student.

Denying Equal Access to an Education Program or Activity

Examples of effectively denying equal access to a school's education program or activity:

- Skipping class to avoid a harasser
- A decline in a student's grade point average
- Having difficulty concentrating in class
- A third grader who starts bed-wetting or crying at night due to sexual harassment
- A high school wrestler who quits the team but carries on with other school activities following sexual harassment

Denying Equal Access to an Education Program or Activity



While the previous examples help illustrate an effective denial of access, no concrete injury is required to prove an effective denial of equal access.

- ❑ Complainants do not need to have dropped out of school, failed a class, had a panic attack, or otherwise reached a ‘breaking point’ or exhibited specific trauma symptoms
- ❑ A complainant does not need to have already suffered loss of education before being able to report sexual harassment
- ❑ Effective denial of equal access to education also does not require that a person’s total or entire educational access has been denied
- ❑ School officials turning away a complainant by deciding the complainant was “not traumatized enough” would be **impermissible**



Emergency Removal

A school may remove a respondent from an education program or activity on an emergency basis if the school:

- The School-Based Threat Assessment Chair must be notified, and you must contact Student Services.
- Undertakes an individualized safety and risk analysis (Threat Assessment);
- Determines an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal; and
- Provides the respondent with notice and an opportunity to challenge the decision. If the emergency removal exceeds one (1) school day, then a due process hearing will be held within three (3) school days after the removal is ordered.
- This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.
- When a respondent poses a risk to the educational environment for matters not arising out of sexual harassment, then a removal under Policy 5120 can be considered. Please contact the Title IX coordinator or Student Services for guidance under such circumstances.

A decorative graphic on the left side of the slide. It features several dark gray paper airplanes scattered across a dark gray background. One yellow paper airplane is positioned in the center, pointing towards the right, with two thin white lines trailing behind it to suggest motion.

Remedies

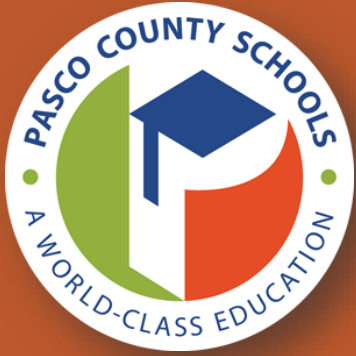
Issued at the conclusion of the grievance process

Designed to restore or preserve equal access to the school's education program or activity.

Similar to supportive measures, may be school-wide communications

Includes disciplinary action

- Changing a respondent's class schedule
- Removing a respondent from a team or extracurricular activity



Legal Department

Civil Rights Compliance

James P. Greene

- General Council to the Superintendent
- 813-794-2649

Sheila Blue

- CRC Manager/District TIX Coordinator
- 813-794-2679

Selina Perez

- Civil Right Compliance Investigator
- 813-794-2754