

A presentation slide with a light green background. The title "Title IX Workshop" is centered in a large, dark font. To the right, the date "September 13, 2021" and the name "Mickes O'Toole" are listed. A thin vertical line is positioned to the left of the date and name. In the bottom left corner, there is a small copyright notice: "Copyright © Mickes O'Toole, LLC 2021. All rights reserved."

Title IX
Workshop

September 13, 2021
Mickes O'Toole

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A presentation slide with a light green background. The left side features a dark brown vertical bar with a red arrow pointing right and some faint, abstract line art. The word "Definitions" is centered in a large, dark font. In the bottom left corner, there is a small copyright notice: "Copyright © Mickes O'Toole, LLC 2021. All rights reserved."

Definitions

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Quid Pro Quo Harassment

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

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

Hostile Environment

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Harassment under VAWA & Clery Act

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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

Location

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- ▶ 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

Retaliation

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Actual Knowledge

"Actual knowledge" is notice of sexual harassment or allegations of sexual harassment to any district employee

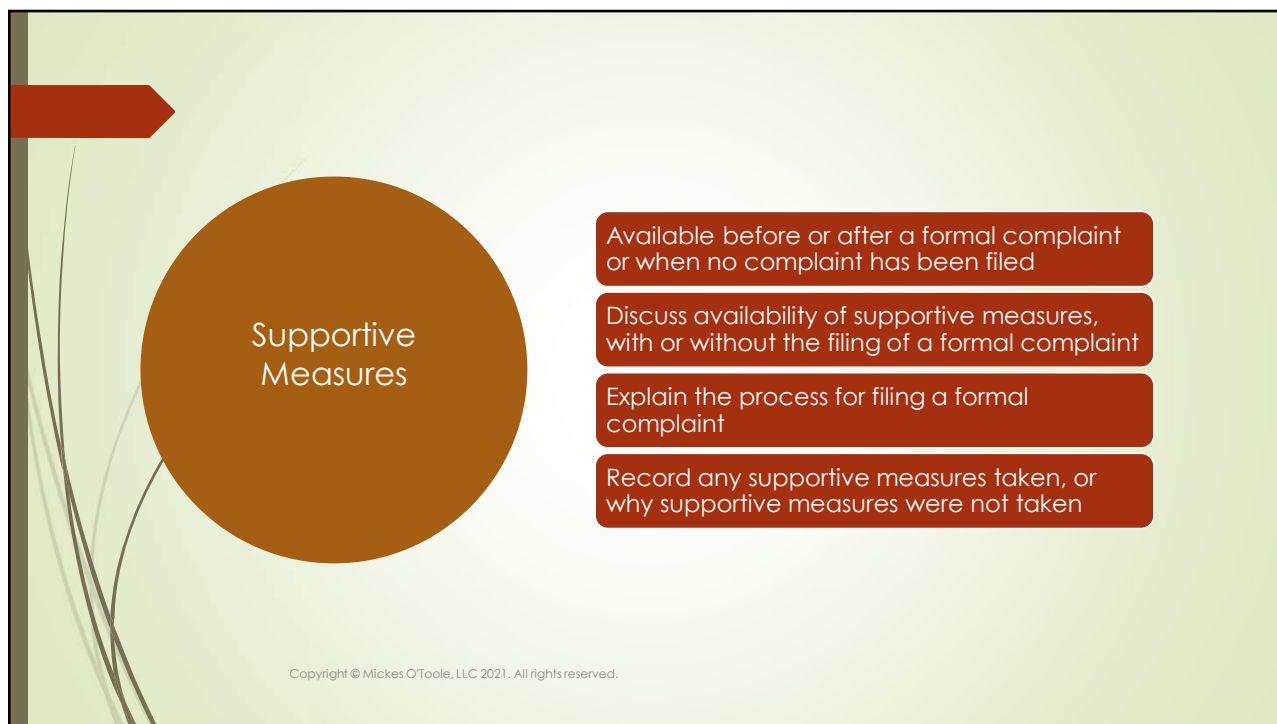
Any person may report sexual discrimination (alleged victim or any third party)

May report to Title IX Coordinator in person, by mail, phone, or email

District must respond promptly

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A presentation slide with a light green background. On the left, there is a dark brown vertical bar with a red arrow pointing right. A large brown circle is positioned in the center-left, containing the text "Supportive Measures". To the right of the circle are four stacked red rounded rectangles, each containing a bullet point. At the bottom center, there is a small copyright notice.

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

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A presentation slide with a light green background. On the left, there is a dark brown vertical bar with a red arrow pointing right. The word "Investigation" is written in a large, dark font in the center. Below it, in a smaller font, is the subtitle "Of a formal complaint of Title IX sexual harassment". At the bottom center, there is a small copyright notice.

Investigation

Of a formal complaint of Title IX sexual harassment

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Requirements

01

Ensure that the burden of proof and the burden of gathering evidence rest on the school district and not on the parties, except certain records

02

Provide an equal opportunity for parties to present witnesses and evidence

03

Not restrict the ability of either party to discuss the allegations or gather and present evidence

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Interview Guidelines

Face-to-face

Relaxed, respectful atmosphere

Brief introduction to explain purpose of interview

Obtain signed and dated written statement

Open-ended v. closed questions

Identify specifics (e.g., dates, locations, people)

Take thorough notes (possibly third person in room)

Do not promise complete confidentiality

Don't offer your opinion

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Overview after Formal Complaint

Notices

Dismissal

Consolidation

Collection of Evidence

Review of Evidence by Parties

Investigative Report

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- Advisor receives notices and reports
- Advisor may be an attorney
- School districts are not required to provide advisors
- Advisor does not engage during interview

Advisor

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Possible Evidence

- Interviews (complainant, respondent, witnesses)
- Personnel or student files
- Emails, social media, videos
- Law enforcement documentation

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-  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

Relevance

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Consent

- Consent is informed, actively given, and mutually understood and accepted
- Coercion, intimidation, incapacity prevent consent
- Consent to one form of conduct does not imply consent to any other form of conduct
- Consent can be withdrawn

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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

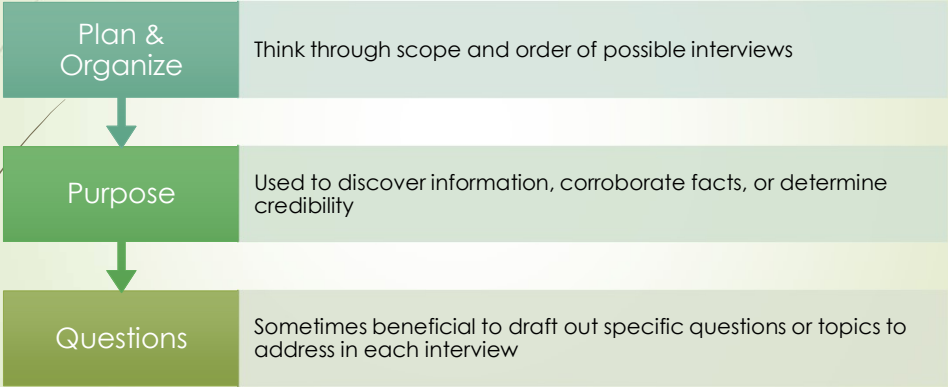
Monitor situation during investigation

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Overview of Interviews



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Investigative Report

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Review Investigative Report & Written Responses

Independent obligation to objectively evaluate all inculpatory and exculpatory evidence; cannot only rely on recommendation from investigator



Allow parties to advocate to the decision-maker regarding the relevance of evidence and omission of relevant evidence



Parties can provide input and make arguments about the relevance of evidence, evidence they believe was overlooked in the investigative report, and how a Decision-Maker should weigh the evidence

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Decision

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Submission of Questions

- ▶ Decision Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness
- ▶ Must provide each party with the answers
- ▶ Must allow for additional, limited follow-up questions from each party
- ▶ Determines relevancy of questions and provide written explanation for rejected questions

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Reliance on Statements

- ▶ The Decision-Maker cannot rely on the statements of a party or witness who does not submit to exchange of questions
- ▶ "Submit" means *answering* those questions that are relevant
- ▶ If a party or witness was not asked questions, 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 answer written questions

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Written Determination

Allegations Procedural Steps Findings of Fact Policy Application

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Written Determination

Determination Discipline Remedies Appeal

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NEW
EVIDENCE



CONFLICT OF INTEREST
OR BIAS



PROCEDURAL
IRREGULARITY



Basis for
Appeal

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