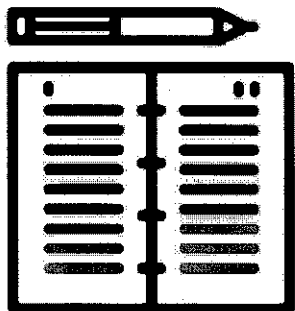


TITLE IX TRAINING FOR DECISION MAKERS

SUMMER 2023

AGENDA



- Definitions
- Formal Complaints
- Decision-Maker on Dismissal
- Exchange of Questions
- Determination
- Final Report
- Decision Maker on Appeal
- Regarding Responsibility



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 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

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 school district exercised substantial control over both the Respondent and the context in which the sexual harassment occurs

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

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

ELEMENTS

- Equitable Treatment
- Objective Evaluation Of Evidence
- No Conflict Of Interest Or Bias
- Presumption Of Not Responsible
- Prompt Time Frames

FORMAL COMPLAINT

- Written & Signed by Complainant
 - Parent/legal guardian may file on behalf of student
 - 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

FORMAL COMPLAINT

-
- Complainant is participating or attempting to participate in the education program or activity of the school district.
 - Alleged violation must have occurred against a person located within the United States.

ADVISOR

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

OVERVIEW AFTER FORMAL COMPLAINT

Notices

Dismissal

Consolidation

Investigative Report

Exchange of Questions

Determination
Regarding Responsibility

MANDATORY DISMISSAL


- If the conduct alleged would not constitute sexual harassment even if proved
- Did not occur in school district'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 school district from gathering evidence

APPEALING A DISMISSAL

 **Final** – can appeal a mandatory or discretionary dismissal

 **Discretionary** – can appeal a discretionary dismissal

HOW TO HANDLE AN APPEAL FROM A DISMISSAL



WHO SHOULD BE A DECISION MAKER

- Decision-Maker must be unbiased and without conflict of interest to both complainant and respondent
- Consider outside decision-maker if conflict of interest (e.g., if complaint against Superintendent)
- Title IX Coordinator, Investigator, and Original Decision-Maker and Decision-Maker on Appeal must be different



BEFORE EXCHANGE OF QUESTIONS

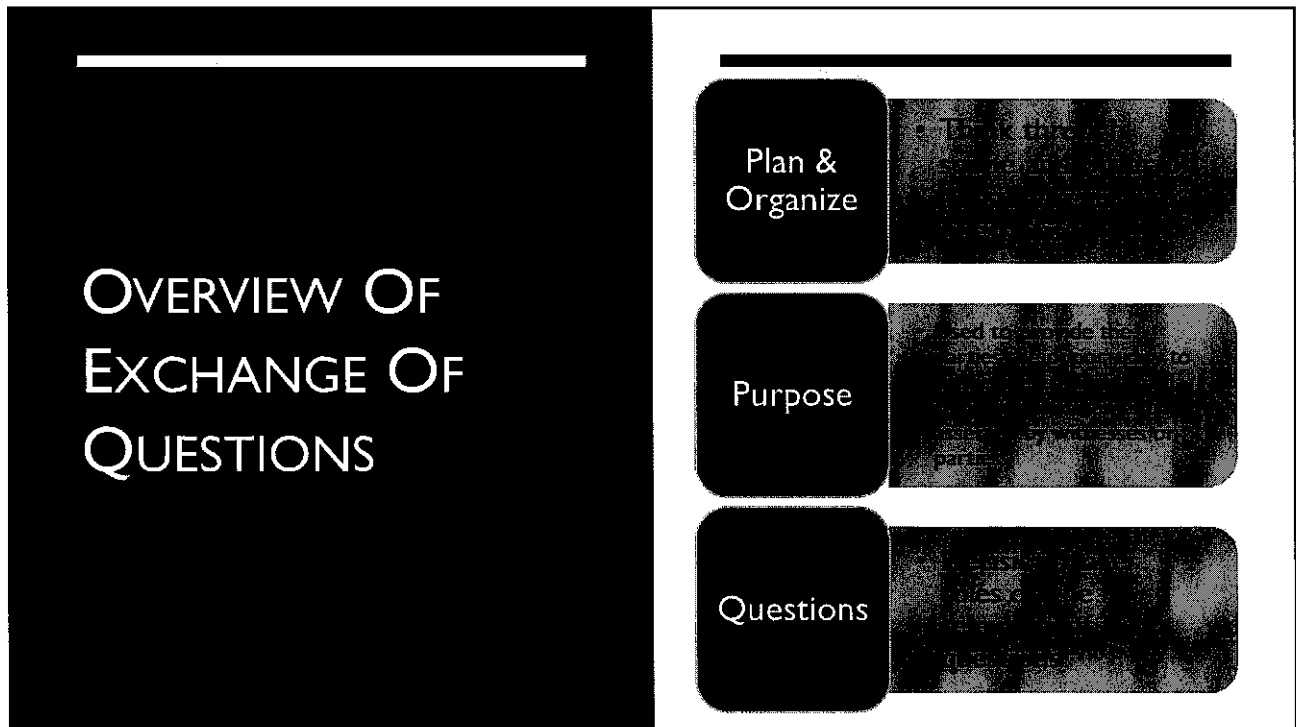
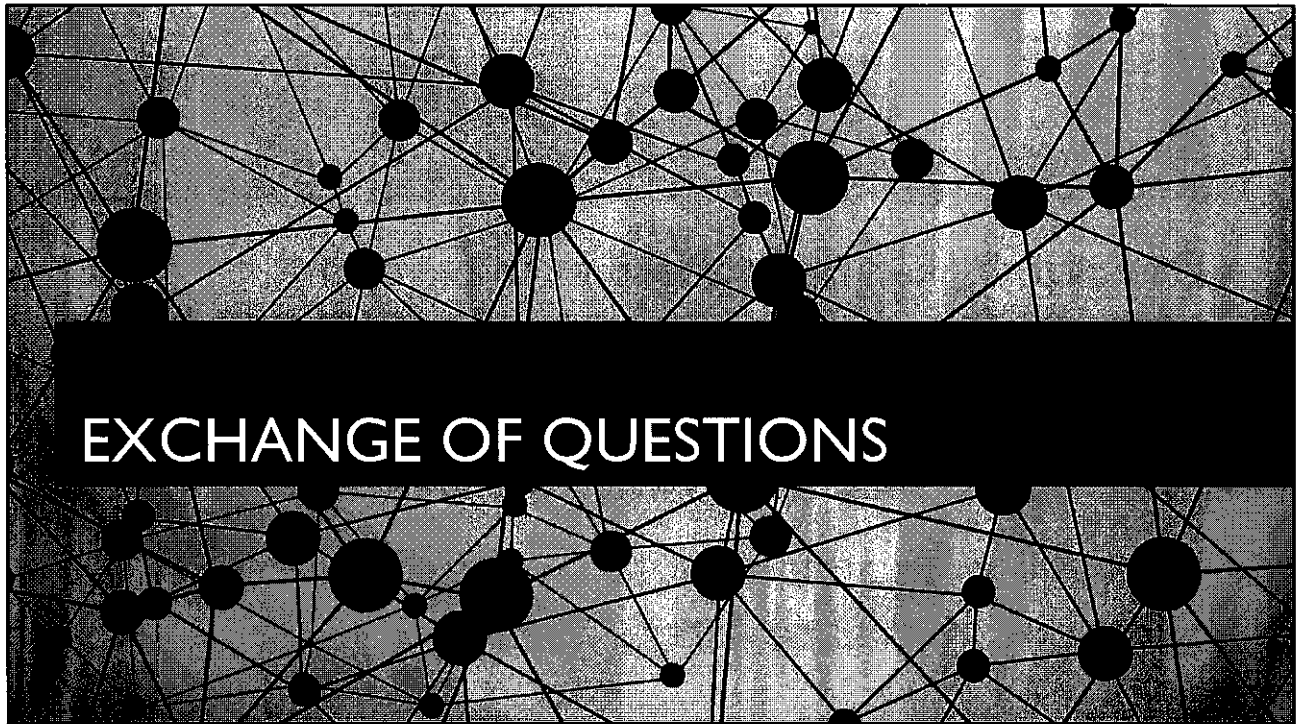
Review	Policies <ul style="list-style-type: none">• Reminder of timelines and provisions related to specifics of current investigation
Review	Allegations <ul style="list-style-type: none">• Reminder of specific allegations (e.g. comments or actions) and relevant facts (e.g. dates and witnesses)
Review	Responses <ul style="list-style-type: none">• Reminder of specific responses and relevant information

REVIEW INVESTIGATIVE REPORT

- The decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report
- Inculpatory and Exculpatory Evidence

REVIEW PARTIES' RESPONSE TO INVESTIGATIVE REPORT

- The parties have an equal opportunity to review and respond to the investigator's investigative report
- Allows the 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



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

RELEVANCY

Parties 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

Investigator will distribute list of questions

RELEVANCY

- It has a tendency 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

RELEVANT QUESTIONS

- Party must be permitted to ask all relevant questions and follow-up questions
- No irrelevant questions are allowed
- Decision-Maker must explain any decision to exclude a question as non-relevant

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
- No seeking privileged information or records unless privilege is waived by the party

PROHIBITED EVIDENCE

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

WITNESSES

-
- School District cannot retaliate against a party or witness for participating or not participating in Exchange of Questions
 - Witnesses cannot be compelled to answer questions



DETERMINATION REGARDING RESPONSIBILITY

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

STANDARD OF EVIDENCE

- Must apply same standard for all formal complaints and publish the standard in their grievance process
- Most Districts selected "Preponderance of the Evidence"- A measure of proof that a reasonable person would accept as "more likely than not" that a fact is true or an incident occurred

WRITTEN DETERMINATION DECISION



WRITTEN DETERMINATION



Allegations that potentially constituted sexual harassment



Findings of fact supporting the determination



Description of the procedural steps taken since receipt of formal complaint (notifications to the parties, interviews, site visits, methods used to gather evidence)



Conclusions regarding the application of the BOE's code of conduct to the facts

WRITTEN DETERMINATION



Determination of responsibility as to each allegation and rationale for the result



Any discipline sanction imposed



Whether remedies will be provided to the Complainant



The BOE's procedures and bases for appeal

CONSEQUENCES

- If a determination of responsibility for sexual harassment is made, District will provide remedies to the complainant designed to restore or preserve equal access to the District's education program or activity
- Consequences for violations may have educational, restorative, rehabilitative and/or punitive components
- Conduct constituting sexual harassment or related retaliation will be subject to discipline

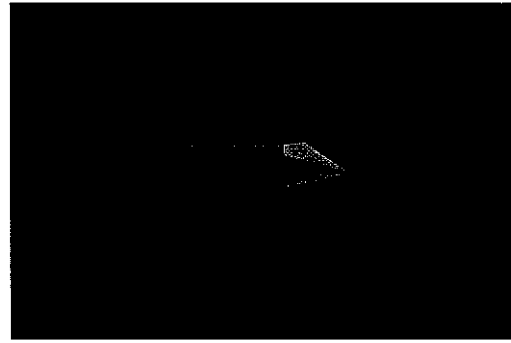
RELEASE OF WRITTEN DETERMINATION

-
- Must be provided to the parties simultaneously
 - Must be done as one collective determination, cannot be in parts



DECISION MAKER ON DIRECT APPEAL

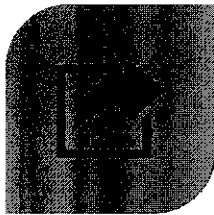
DECISION MAKER
ON APPEAL MUST
BE DIFFERENT
THAN ORIGINAL
DECISION MAKER



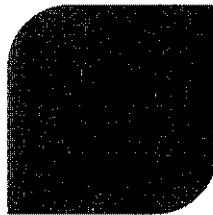
BASIS FOR APPEAL

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

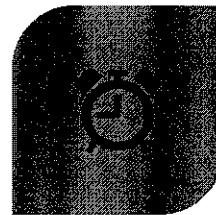
TIMELY APPEAL



Any Party Can Appeal The
Determination Of Responsibility
(Or Dismissal)



Appeals Shall Be To The Title IX
Coordinator Within Five (5) Days Of A
Determination Of Responsibility.



If An Appeal Is Not Timely Submitted,
The Determination Of Responsibility
Or The Dismissal Of A Formal
Complaint (Or Any Allegation Therein)
Becomes Final

WRITTEN STATEMENTS ON APPEAL

- Upon receipt of an appeal, the Title IX Coordinator shall provide written notice of the appeal to the complainant and the respondent.
- The Parties may submit written statements in support of or in challenge of the appeal to the designated decision-maker on appeal.
- Both the complainant and the respondent are limited on appeal to submission of only written statements. - no live or oral testimony.

DOCUMENTS REVIEWED

-
- Appeal documents, determination of responsibility, and any written statement submitted by the complainant and the respondent.

DETERMINATION ON APPEAL

Decision maker on appeal will issue a written decision and the reason for the decision on appeal.

Result on appeal will be given to both parties at the same time.



WHAT ARE THE POSSIBLE
RESULTS ON APPEAL?



THANK YOU

Form E: Notice of Dismissal

Dear [Complainant/Respondent],

As you are aware, the [XYZ] School District received notice of a formal complaint of sexual harassment pursuant to Board Policy and Regulation [§]. The complaint was submitted by [name] regarding [summary of allegations].

At this time, the District has completed its review of the formal complaint. In accordance with Board Policy and Regulation [§] and based on the information provided as part of the formal complaint, the District has determined the complaint should be dismissed.

[insert one or more of the following]

[The conduct alleged in the formal complaint would not constitute sexual harassment even if proved.]

[The conduct alleged in the formal complaint did not occur in the District's education program or activity.]

[The conduct alleged in the formal complaint did not occur against a person in the United States.]

[The Complainant has notified the District in writing that the Complainant would like to withdraw the formal complaint or any allegations.]

[The Respondent is no longer enrolled or employed by the District.]

[Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint.]

Under Board Policy and Regulation [§], a party may appeal this dismissal. If you would like to submit a written appeal, please contact me directly.

[NAME]

Date

[POSITION/JOB TITLE]

Title IX Investigator

Form I: Determination of Responsibility

Dear [Complainant / Respondent],

Pursuant to grievance process outlined in Board Policy and Regulation [§], below you will find the written determination regarding responsibility concerning an allegation potentially constituting sexual harassment by [name] received on [date].

A. THE ALLEGATIONS

The allegations potentially constituting sexual harassment are as follows:

- I. Allegation 1: [insert same allegation description from Notice of Formal Complaint, Form D]
- II. Allegation 2: [insert same allegation description from Notice of Formal Complaint, Form D]

B. PROCEDURAL STEPS

The procedural steps taken from the receipt of the formal complaint through the determination regarding responsibility include:

I. RECEIPT OF FORMAL COMPLAINT

- a. On [date], [name] received a formal complaint potentially constituting sexual harassment by [name], herein Complainant, regarding [name].
- b. This formal complaint was received in writing and signed by [name], thereby initiating the Formal Complaint Grievance Process.
- c. Complainant was provided with supportive measures, including [insert supportive measures offered].

II. WRITTEN NOTICE

- a. On [date], notification was provided to the parties of the formal complaint potentially constituting sexual harassment.

III. INVESTIGATION

- a. As part of the investigation, the following individuals were interviewed by [name]:
 - a. On [date], [name] was interviewed
 - b. On [date], [name] was interviewed
- b. As part of the investigation, the following documents and evidence were reviewed by [name]:
 - a. [short description of reviewed documents, e.g. witness statement, emails, texts, social media, video footage, student discipline file, personnel file]

IV. EXCHANGE OF QUESTIONS

- a. Each party was provided the opportunity to submit written, relevant questions that parties wanted asked of any party or witness.
- b. Respondent's initial questions were received on [date].

Complainant's initial questions were received on [date].

- c. On [date], Respondent was provided with the written, relevant questions requested by Complainant.
- d. On [date], Complainant was provided with the written, relevant questions requested by Respondent.
- e. Respondent's initial answers were received on [date].
- f. Complainant's initial answers were received on [date].

V. FOLLOW-UP QUESTIONS

- a. Each party was provided with the opportunity to submit additional, limited follow-up questions from each party.
- b. Respondent's follow-up questions were received on [date].
- c. Complainant's follow-up questions were received on [date].
- d. On [date], Respondent was provided with the written, relevant follow-up questions requested by Complainant.
- e. On [date], Complainant was provided with the written, relevant follow-up questions requested by Respondent.
- f. Respondent's follow-up answers were received on [date].
- g. Complainant's follow-up answers were received on [date].

C. FINDINGS OF FACT

[Insert summary of evidence from investigation, including information from individual interviews as well as documents reviewed]

D. APPLICATION OF CODE OF CONDUCT

[Insert summary of how code of conduct applies to factual findings]

E. RESULT OF EACH ALLEGATIONS

After reviewing the relevant evidence contained in the investigative report by the Title IX Investigator, the written information provided by Complainant and Respondent, and the responses to the additional questions offered by Complainant and Respondent, I have made the following determinations regarding responsibility:

I. Allegation 1:

- a. Result: The Complainant has been found to be [RESPONSIBLE/NOT RESPONSIBLE] for [QUID PRO QUO HARASSMENT, HOSTILE ENVIRONMENT, HARASSMENT UNDER VIOLENCE AGAINST WOMEN ACT, SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING].
- b. Rationale: [Insert summary]
- c. Disciplinary Sanctions for Respondent: [Insert summary]

Form I: Determination of Responsibility

d. Remedies Available to the Complainant: [Insert summary]

F. PROCEDURES AND BASES FOR APPEAL

- I. Under Board Policy and Regulation [§], either party may request an appeal from this determination of responsibility.
- II. An appeal is mandatory if one of the following bases is alleged by a party:
 - a. Procedural irregularity that affected the outcome of the matter;
 - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

This written determination is being provided to both parties simultaneously. Please contact me directly if you wish to request an appeal or if you have questions.

[NAME]

Date

[POSITION/JOB TITLE]

APPEAL REQUEST FORM

I, _____, am filing an appeal of the determination of responsibility issued on _____ [INSERT DATE] concerning an allegation determined to constitute / to not constitute [CIRCLE ONE] sexual harassment.

I am requesting a mandatory appeal of the determination of responsibility based on [SELECT ONE OR MORE OF THE FOLLOWING]:

- ☐ Procedural irregularity that affected the outcome of the matter.
- ☐ New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- ☐ The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

On appeal, both parties will have a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome of the original grievance process.

Name

Signature

Date

Name of Parent or Legal Guardian
(Optional)

Signature of Parent or Legal Guardian Date
(Optional)

Email Address: _____

Phone Number: _____

Dear [Complainant / Respondent],

On [date], the [XYZ] School District received notice of an appeal by [name] regarding the determination of responsibility issued on [date] concerning a formal complaint of sexual harassment. The alleged basis for this appeal is [insert one or more of the following bases to match what was marked on the Appeal Form].

[Procedural irregularity that affected the outcome of the matter]

[New evidence was discovered that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the matter]

[The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter]

In response to appeal, the District will follow the appeal process outlined in Board Policy and Regulation [§§], a copy of which is enclosed with this notice.

Parties may submit a written statement in support of, or challenging, the outcome of the original grievance process.

The decision-maker on appeal will issue a written decision describing the result of the appeal and the rationale for the result. This written decision will be provided to both parties simultaneously. This determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal.

[NAME]

Date

[POSITION/JOB TITLE]

Title IX Coordinator

