



TWIN RIVERS UNIFIED SCHOOL DISTRICT

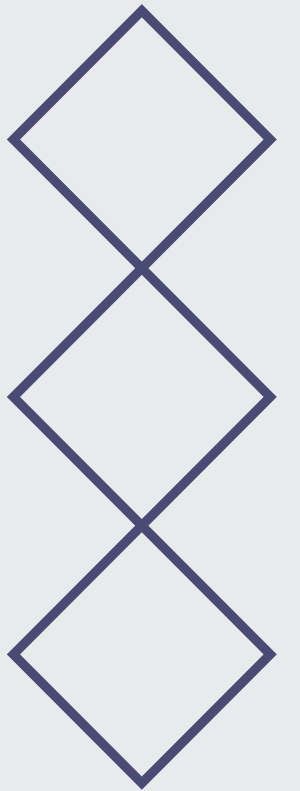
PART ONE: THE DECISION-MAKING PROCEDURE AND RELEVANCE

HON. PATRICIA RIEHL

ANN SHIELDS, JD



INTRODUCTIONS



HON. PATRICIA RIEHL



PROF. ANN SHIELDS, JD

LEARNING OBJECTIVES

As a result of this training, participants will be able to:

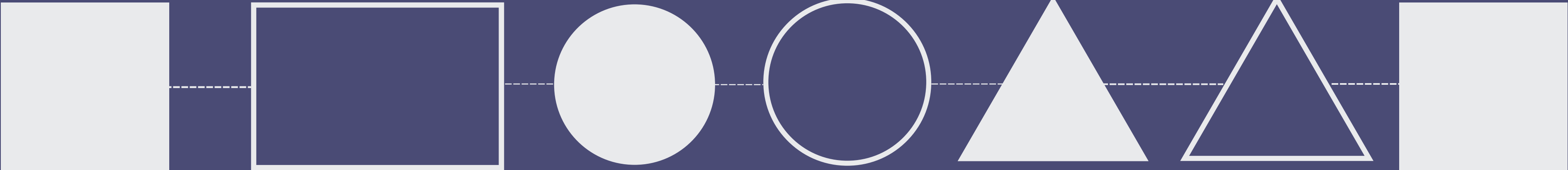
Execute the decision-making process set forth in Twin Rivers Unified School District's Sexual Harassment Policy.

Evaluate questions submitted by parties to make determinations of relevance.

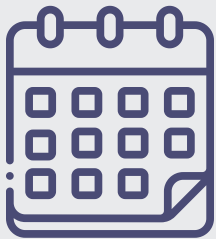
Apply lessons learned in scenario-based practice to Title IX decisions in Twin Rivers Unified School District.



THE TWIN RIVERS DECISION-MAKING PROCEDURE



PRIOR TO THE DECISION-MAKING PROCESS

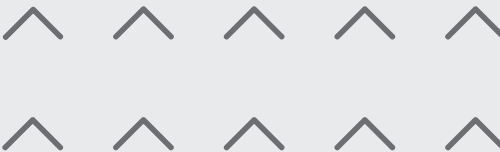


"Within fifteen (15) business days after the Title IX Coordinator receives the complaint, the Title IX Coordinator shall begin an investigation into the complaint."

(if the Title IX Coordinator's gatekeeping determines the conduct alleged could violate Title IX)



"Unless extended by written agreement with the complainant, the investigator shall prepare and send to the complainant, and respondent if there is one, a written report within sixty (60) calendar days of the district's receipt of the complaint."



THE BEGINNING OF THE DECISION-MAKER'S ROLE —————

Receipt and
review of
Investigation
Report and File

THE INVESTIGATION REPORT AND FILE

Contents include:

- The complaint and alleged violation(s) of school policy
- All available documents, records, notes, statement of witnesses, private interview of the parties
- Physical evidence, such as text messages, social media messages, emails, call logs, and video
- Police reports or court action, if party seeks an order of protection from a court
- All other evidence that a Decision-Maker should rely on to make a fair and equitable decision

THE INVESTIGATION REPORT AND FILE

It should not contain:

- Opinions or findings
- Prior sexual predisposition of the Complainant unless used to demonstrate consent
- Medical records of any party or witness unless privilege is waived in writing
- Psychological records of any party or witness unless privilege is waived in writing
- Statements made to clergy

THE INVESTIGATION REPORT AND FILE

Potential challenges in this stage:



Credibility determinations made by the investigator



Insufficient or incomplete information



THE INVESTIGATION REPORT AND FILE

Best practice includes:



Organization



Creation of questions

THE SUBMISSION OF QUESTIONS BY THE PARTIES

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

REQUEST FOR QUESTIONS

"The parties have 7 calendar days to submit their questions to the Decision-Maker after receiving notice of the opportunity to submit questions from the Decision-Maker"

- Template for the notice of opportunity to submit questions
- Ensure you have provided the same timeline and communication for both parties
 - Email, hardcopy
 - Is it coming from the Title IX Coordinator or the Decision-Maker?

REQUEST FOR QUESTIONS

Potential challenges in this stage:



Barriers to communication with parties, parents, and/or guardians



Potential for back and forth with parties, parents, and advisors, **AVOID!** Refer communications to Title IX Coordinator.



REQUEST FOR QUESTIONS

Best practice includes:



Clear and concise instructions



Strict adherence to timelines



RELEVANCE DETERMINATIONS BY THE DECISION-MAKER

Decision-Maker
Evaluates Questions
and Sends to
Parties

REVIEW OF QUESTIONS

"When providing the questions and responses to both parties, the Decision-Maker will explain to the party proposing the questions any decision to exclude a question as not relevant."

- Recall the information under Title IX that is NEVER relevant
 - *sexual predisposition, prior sexual behavior, with the exception of that information which could prove someone other than respondent was responsible or which could demonstrate respondent had consent*
 - *legally-privileged information*
- Communicate decisions to exclude with grace, kindness, and equity

REVIEW OF QUESTIONS

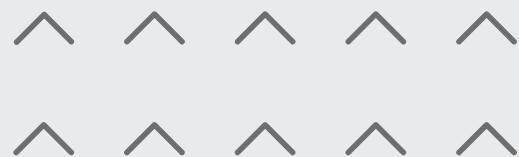
Potential challenges in this stage:



Understanding and application of relevance



Filtering of collateral sources



REVIEW OF QUESTIONS

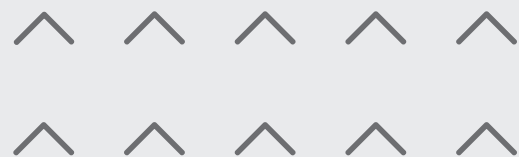
Best practice includes:



When in doubt, include the question as long as it is not threatening, harassing, or against Title IX rules of relevance



Keep relevance explanations succinct



REVIEW AND RESPONSE BY THE PARTIES

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

5 CALENDAR DAYS

PARTIES' RESPONSES

"After receipt of the questions, the parties and witnesses will have 5 calendar days to submit their responses to the questions to Decision-Maker."

- Similar to the first waiting period of 7 days for the submission of questions, the Decision-Maker will await responses from the parties
- Continue to work through the investigation report and file to stay on track, you can always add the information gained from these responses as they arrive

PARTIES' RESPONSES

Potential challenges in this stage:



Consider the same communication challenges and recognize this is an even shorter turnaround for the parties.



PARTIES' RESPONSES

Best practice includes:



Provide both parties with their approved list of questions which will be sent, as well as the list of questions asked of them for transparency

FORWARDING RESPONSES TO THE ORIGINAL PARTIES



Decision-Maker
Sends Responses to
Parties

SHUTTLING THE RESPONSES

- There are no explicit instructions for this stage in Twin Rivers Policy
- You will simply exchange the responses simultaneously

SHUTTLING THE RESPONSES

Potential challenges in this stage:



Inflammatory, harassing, or threatening responses received



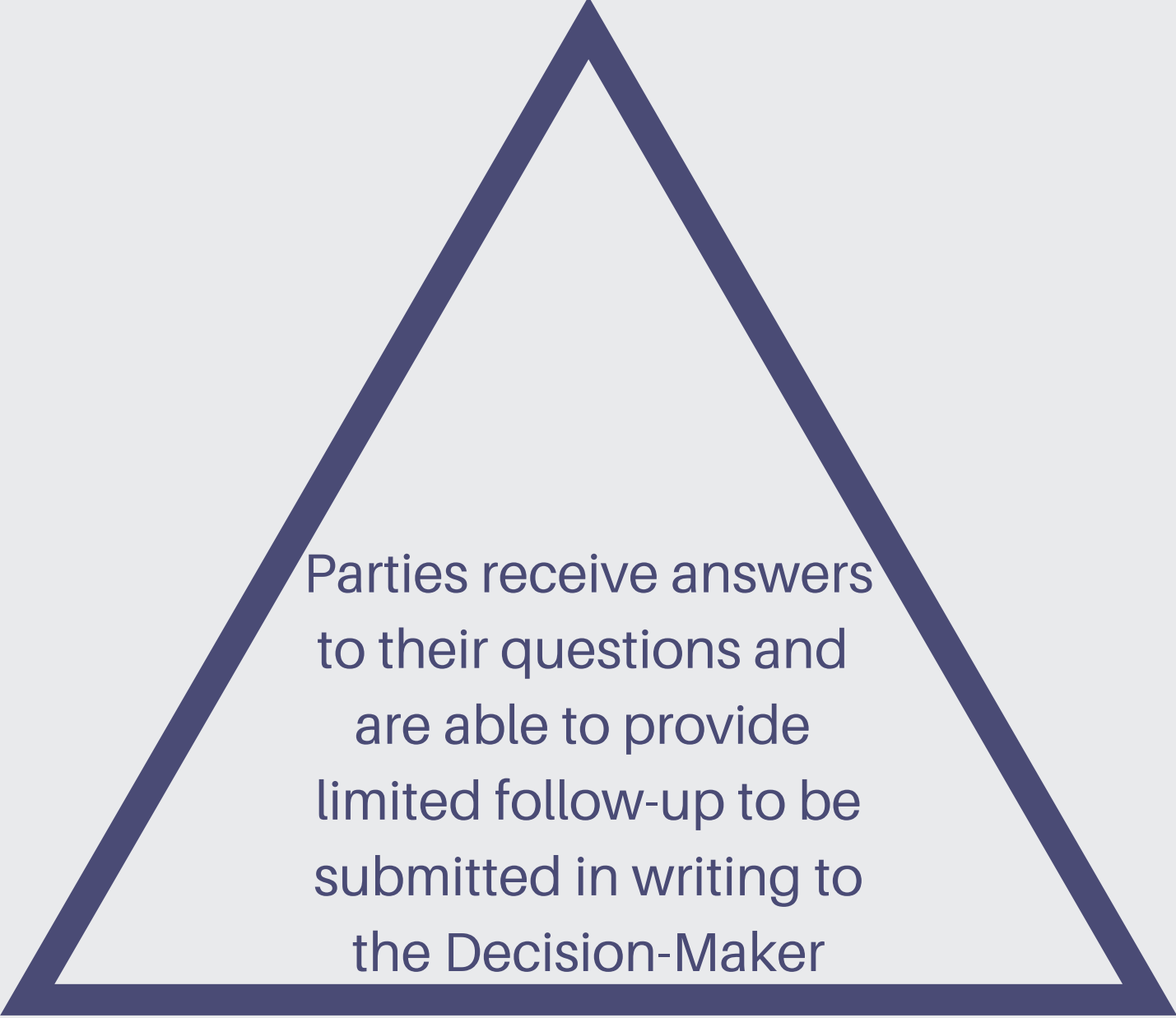
SHUTTLING THE RESPONSES

Best practice includes:



Be the conduit of this information. Do not alter responses in any way. These are the parties statements, not questions. Treat them as the Investigator treated the interview transcripts or recordings.

ALLOWING THE PARTIES TO FOLLOW-UP TO THE RESPONSE



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

3 CALENDAR DAYS

FINAL QUESTIONS

"Upon receipt of the responses to the questions, the parties will have 3 calendar days to submit limited follow-up questions."

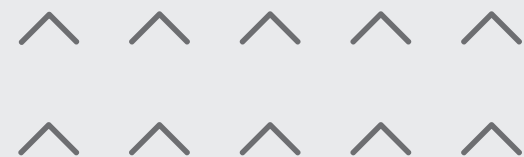
- Discussion- What happens after you receive follow-up questions
 - Will they receive another 5 days to respond?
 - What if this elicits more questions?
- This is another round of potential relevance decisions

FINAL QUESTIONS

Potential challenges in this stage:



The potential for an infinite loop



FINAL QUESTIONS

Best practice includes:



Limited means limited. Parties had the opportunity to submit a longer list. The follow-up should not be longer than the initial set of questions.



Just as the Decision-Maker is the authority in the live hearing, you are in this process. Do not be afraid to exercise authority to prevent never-ending back-and-forth



MAKING AND ISSUING THE DETERMINATION

Decision-Maker
Issues
Determination

THE DECISION-MAKER'S ULTIMATE RESPONSIBILITY

- 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
- What constitutes good cause?
- We will cover the specifics of drafting the written determination regarding responsibility in our next training

SCENARIO PRACTICE



THE CASE

Sarah is a freshman student at Sample High School. She made a formal complaint of sexual assault to the Sample High School Title IX Coordinator.

Sarah reported that she and **Blake**, a sophomore student, were walking in the stairwell of the school during their lunch time. Right before lunch, they were in English class with Ms. Kahn, and during class Blake threw his phone at Sarah. Sarah placed Blake's phone under the strap of her shirt. The bell rang for lunch.

THE CASE

Sarah left with Blake's phone as he followed her. While walking in the stairwell, Blake attempted to retrieve his phone from inside Sarah's shirt, and touched Sarah's breast while doing so. Sarah reported that they reached a landing and she tried to run down the stairs. Sarah stated that Blake grabbed her neck and pulled her back onto the landing. While holding Sarah by the neck, Blake exposed his penis and forced Sarah to touch his penis.

The growing noise of students shuffling to the cafeteria startled Blake and he ran down the stairs, away from Sarah.

THE INVESTIGATION REPORT AND FILE

- As the Decision-Maker, you receive the final Investigation Report and File from the primary Investigator on the case.
- The Investigation Report is extremely thin on details and only includes the following:
 - Allegations
 - Policy implicated and offense
 - In this case, the Sample High School Sexual Harassment Policy 237
 - Sexual Assault, Forcible Fondling
 - Procedural steps
 - Summaries of the singular interviews from the Sarah and Blake

FACTS

UNDISPUTED

- Both parties acknowledge Sarah took the phone
- Both parties agree that Blake put his hand in Sarah's shirt to retrieve the phone

DISPUTED

- Blake states any contact with Sarah's breast was incidental and not sexual in nature
- Blake denies exposing himself and making Sarah touch his penis
- Blake states he was not startled by anyone and simply walked away when he regained possession of his phone

NOTABLY MISSING

- There are no interview transcripts or summaries from potential witnesses. It would appear the parties are the only individuals who have been interviewed.
- There is no physical evidence in the investigation file
- There does not appear to be any statements regarding Blake placing his hands around Sarah's neck

How comfortable would you feel about receiving this file? Would you want to proceed with your decision-making duties?

QUESTION EXERCISE



Take 5 minutes to jot down every question you would want to ask about this case following receipt of this report and file.

Sarah is a freshman student at Sample High School. She made a formal complaint of sexual assault to the Sample High School Title IX Coordinator.

Sarah reported that she and **Blake**, a sophomore student, were walking in the stairwell of the school during their lunch time. Right before lunch, they were in English class with Ms. Kahn, and during class Blake threw his phone at Sarah. Sarah placed Blake's phone under the strap of her shirt. The bell rang for lunch.

Sarah left with Blake's phone as he followed her. While walking in the stairwell, Blake attempted to retrieve his phone from inside Sarah's shirt, and touched Sarah's breast while doing so. Sarah reported that they reached a landing and she tried to run down the stairs. Sarah stated that Blake grabbed her neck and pulled her back onto the landing. While holding Sarah by the neck, Blake exposed his penis and forced Sarah to touch his penis.

The growing noise of students shuffling to the cafeteria startled Blake and he ran down the stairs, away from Sarah.

RELEVANCE DETERMINATIONS

You receive the following list of questions from Sarah:

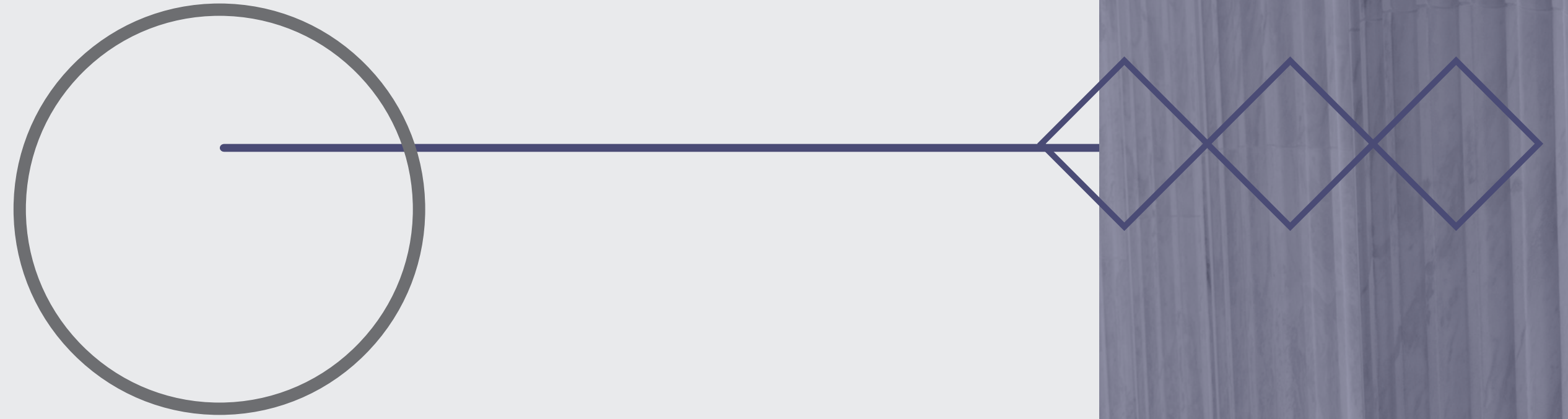
- *Which friends did Blake discuss the incident with?*
- *Have you ever exposed yourself to other students?*
- *Why did you get in-school suspension last month?*
- *Did you see Amanda Jones standing behind us in the stairwell?*
- *Why didn't you ask me nicely for the phone during class?*
- *If you only wanted your phone back, why did you put your hands around my neck and expose yourself?*
- *Isn't it true that you went to a counselor last summer for a porn addiction?*

RELEVANCE DETERMINATIONS

You receive the following list of questions from Blake:

- *Do I wear boxers or briefs?*
- *Is my penis circumcised or not?*
- *Why did you steal my phone if you didn't want my attention?*
- *How was I supposed to get my phone back when you put it in your shirt?*
- *What was your purpose for keeping the phone when you left the classroom?*
- *If you were bothered by this interaction, why were you laughing the whole time?*
- *Why didn't you tell the investigator that we were dating and have had a sexual relationship?*
- *Why didn't you report this to anyone until I broke up with you?*
- *Do you think if you were less focused on flirting with everyone, you'd do better in school?*





THANK YOU!

WE WILL SEE YOU SOON FOR PART TWO:
MAKING DETERMINATIONS OF RESPONSIBILITY





TWIN RIVERS UNIFIED SCHOOL DISTRICT

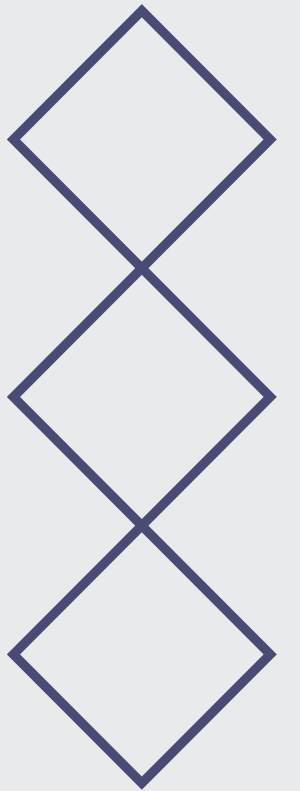
PART TWO: DRAFTING THE DETERMINATION REGARDING RESPONSIBILITY

HON. PATRICIA RIEHL

C.J. LARKIN, J.D.



INTRODUCTIONS



HON. PATRICIA RIEHL



C.J. LARKIN, J.D.

LEARNING OBJECTIVES

As a result of this training, participants will be able to:

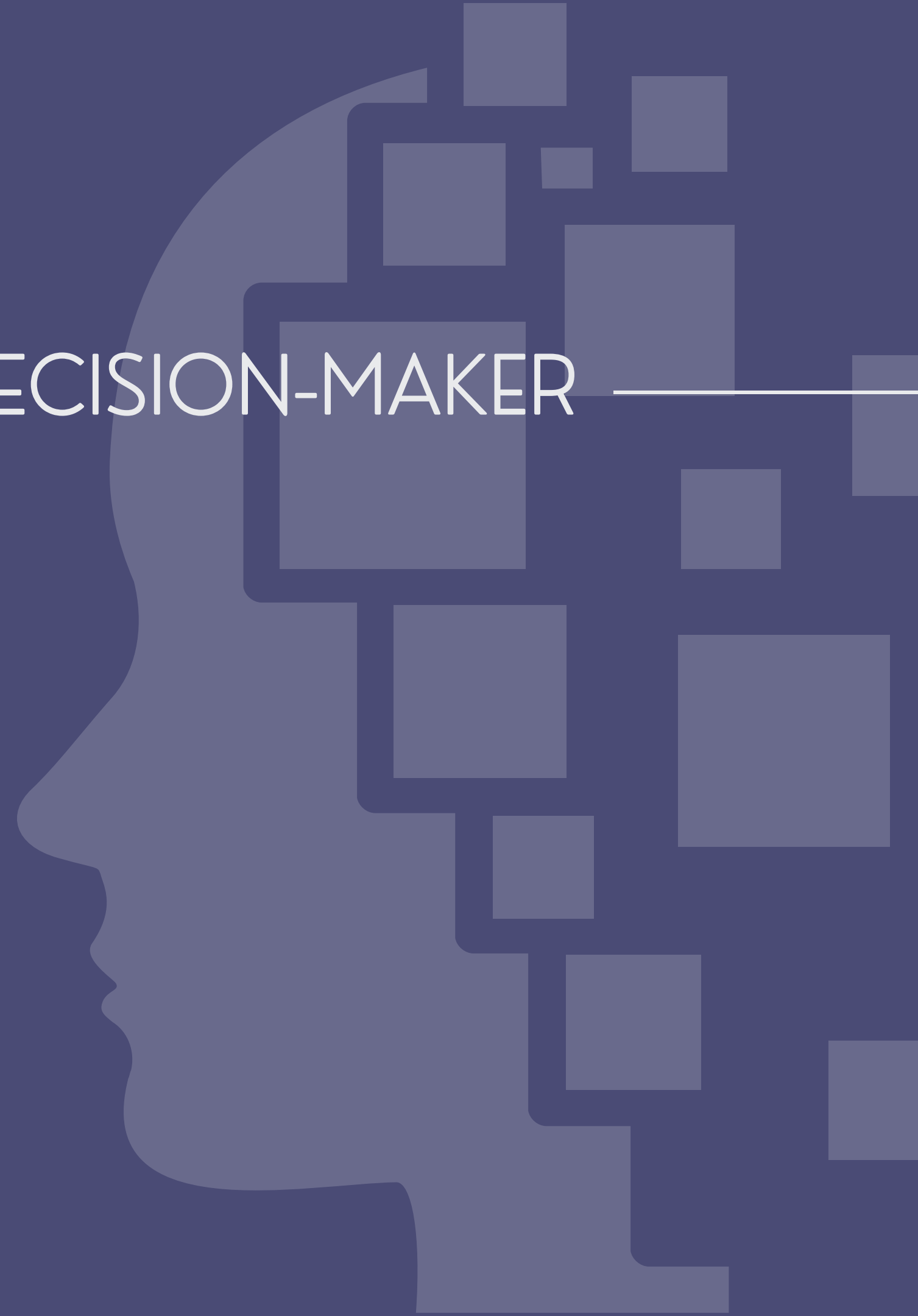
Understand the thought processes needed as the Decision-Maker prepares to render a decision.

Outline the required elements of the written determination regarding responsibility.

Analyze facts and communicate rationale for findings regarding policy violations under Title IX.



GETTING INSIDE THE MIND OF THE DECISION-MAKER



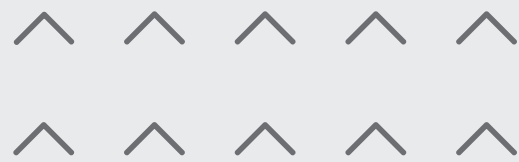
1

INVENTORY THE
DECISION-MAKING
MATERIALS





ESTABLISH THE
FOUNDATION OF THE
WRITTEN
DETERMINATION





ORGANIZE THE
DECISION-MAKING
MATERIALS



4

ANSWER THE
ESSENTIAL
QUESTIONS



5

TELL THE STORY



SCENARIOS

> Scenario One

> Scenario Two

> Scenario Three





GUIDANCE FOR DECISION-MAKERS

STARTING THE WRITTEN DETERMINATION



BEFORE STARTING THE DETERMINATION, CONSIDER THE FOLLOWING: _____



Is there a determination a template or previous Determination to review?



Have you accessed and thoroughly reviewed all information gathered during the investigation and decision-making process?



Have you reviewed the policy one more time to review the determination requirements and timeline for issuing the determination?



GETTING STARTED: DRAFTING A WRITTEN DETERMINATION

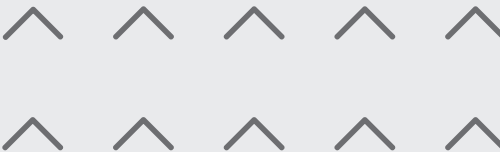
Consider starting your Written Determination by inserting the following information:

Title

Introduction

School
Policy

Section
Headers



ELEMENTS OF THE DETERMINATION REGARDING RESPONSIBILITY

Title IX and Twin Rivers policy state that the written determination must include:

1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX.

2 Description of the procedural steps taken from receipt of formal complaint through the determination.

ELEMENTS OF THE DETERMINATION REGARDING RESPONSIBILITY

Title IX and Twin Rivers policy state that the written determination must include:

3 Findings of fact supporting the determination.

4 Conclusions regarding the application of school's code of conduct to the facts.

ELEMENTS OF THE DETERMINATION REGARDING RESPONSIBILITY

Title IX and Twin Rivers policy state that the written determination must include:

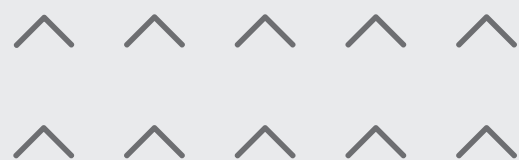
5 A statement of, and rationale for, the result as to each allegation, including:

A determination regarding responsibility

Any disciplinary sanctions the school imposes on the Respondent

Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant

6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.



DRAFTING THE WRITTEN DETERMINATION

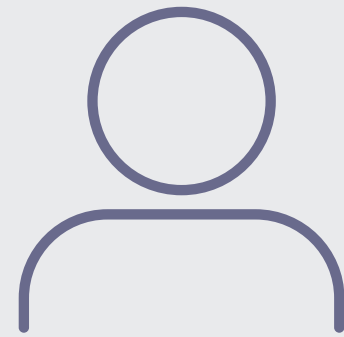


UNDERSTANDING THE AUDIENCE

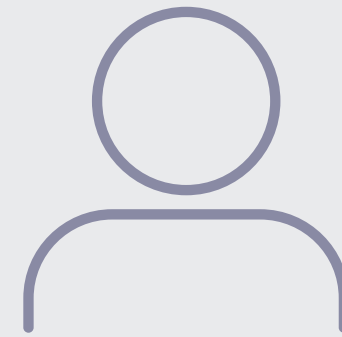
The intended audience includes:



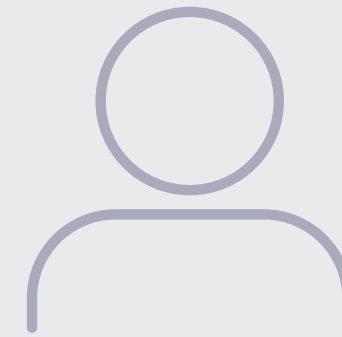
Complainant,
Respondent, and
Advisors



Appellate Officer
(if appeal is filed)



Title IX
Coordinator



School's
Legal
Counsel



Parents
and/or
Guardians
(if applicable)



The determination will also be a part of the school's
Title IX records and retained for seven years



APPLYING THE FACTS TO THE STANDARD OF PROOF

Decision-Makers must remain objective and clearly explain their rationale as to the result of each allegation.



What does this mean?

FINDINGS OF FACT SUPPORTING THE DETERMINATION



CONCLUSIONS REGARDING THE APPLICATION OF SCHOOL'S CODE
OF CONDUCT TO THE FACTS



A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

A determination regarding responsibility



A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

Any disciplinary sanctions the school imposes on the Respondent.

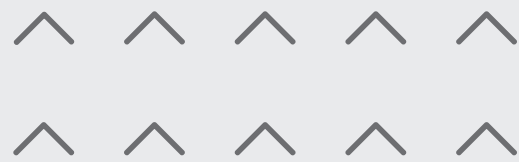


A STATEMENT OF, AND RATIONALE FOR, THE RESULT AS TO EACH ALLEGATION, INCLUDING:

Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant.

LIFELONG IMPACT OF WRITTEN DETERMINATIONS —————

EXAMPLES



Allegations

The Allegations made by Complainant to Twin Rivers Unified School District's Title IX Office were made in person on September 1, 2022, giving rise to potential violations of Twin Rivers Unified School District's Title IX Sexual Harassment Policy by Respondent, which prohibits sexual harassment. The Allegations are as follows:

- A. On the afternoon of August 25, 2022, Complainant alleges that Respondent touched her breasts in the stairwell of Sample High School without her consent.
- B. On the afternoon of August 25, 2022, Complainant alleges that Respondent exposed his penis to her, without her consent.
- C. On the afternoon of August 25, 2022, Complainant alleges that Respondent grabbed her hand, using force, causing her to touch his penis, without her consent.

Applicable Twin Rivers Unified School District Policy

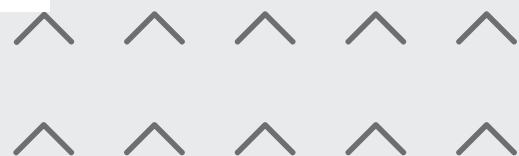
The alleged conduct may potentially violate the following sections of Twin Rivers Unified School District's Title IX Sexual Harassment Policy:

Sexual Harassment: 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

Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will in instances where the victim is incapable of giving consent.

Additional definitions contained in Twin Rivers Unified School District's Title IX Sexual Harassment Policy relevant to the allegations are as follows:

Consent: "positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 287, or 289, or former Section 288a."



Chronology & Procedural Steps

On September 2, 2022, the Title IX Coordinator met with the Complainant to review the relevant policies and procedures and discuss resources and supportive measures and answer any questions. Complainant had a parent present who will also serve as the advisor.

On September 5, 2022, Complainant submitted a formal complaint to the Title IX Coordinator via email.

On September 10, 2022, the Title IX Coordinator sent a Notice of Allegations to the Complainant and Respondent, advising the parties that a formal complaint had been filed by Complainant against Respondent alleging violations of Twin Rivers Unified School District's ("TRUSD") policies and procedures. The Notice stated that a Title IX investigator would be assigned to the case to investigate the allegations in accordance with Twin Rivers Unified School District's Title IX Sexual Harassment Policy ("Policy"). The specific allegations were included, and the parties were directed to the relevant sections of the Policy. The Notice specifically stated:

Sexual Harassment: 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

Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will in instances where the victim is incapable of giving consent.

On September 11, 2022, the Title IX Coordinator met with Respondent to review the relevant policies and procedures and discuss resources and supportive measures and answer any questions. The Respondent was accompanied by a parent and an attorney advisor.

On September 17, 2022, Title IX Investigator Smith interviewed Complainant about the allegations with Complainant's parent-advisor present.

On September 18, 2022, Title IX Investigator Smith interviewed Respondent about the allegations with Respondent's parent and advisor present.

The following facts are undisputed by the parties and by the evidence:

- Complainant is a freshman at Sample High School.
- Respondent is a sophomore at Sample High School.
- Respondent met Complainant in 2020, when he was an eighth-grade student at Twin Rivers Middle School. The Complainant was a seventh-grade student at the time.
- Complainant and Respondent are both enrolled in the fourth period English Literature class taught by Mrs. Sandra Kahn.
- On August 25, 2022, Complainant took Respondent's iPhone 11, placed it in her bra, and left the classroom to travel to the cafeteria for the lunch period.
- On August 25, 2022, Respondent followed Complainant into the south stairwell and attempted to retrieve his iPhone 11 by placing his hands inside Complainant's shirt.

The following facts are undisputed by the parties and by the evidence:

- Complainant is a freshman at Sample High School.
- Respondent is a sophomore at Sample High School.
- Respondent met Complainant in 2020, when he was an eighth-grade student at Twin Rivers Middle School. The Complainant was a seventh-grade student at the time.
- Complainant and Respondent are both enrolled in the fourth period English Literature class taught by Mrs. Sandra Kahn.
- On August 25, 2022, Complainant took Respondent's iPhone 11, placed it in her bra, and left the classroom to travel to the cafeteria for the lunch period.
- On August 25, 2022, Respondent followed Complainant into the south stairwell and attempted to retrieve his iPhone 11 by placing his hands inside Complainant's shirt.

- **Allegation #1 On the afternoon of August 25, 2022, Complainant alleges that Respondent touched her breasts in the stairwell of Sample High School without her consent.**

The Complainant and the Respondent agree on some facts related to the allegation of forcible fondling but fundamentally disagree on whether it was consensual and for the purpose of sexual gratification. The Complainant stated that the fondling of her breasts occurred in the south stairwell of Sample High School while she was alone with the Respondent. Respondent stated that he was attempting to retrieve his property, an iPhone 11, which the Complainant took without his consent in their fourth period English class. Complainant does not dispute taking Respondent's phone without consent and stated she was joking with the Respondent.

Complainant stated she entered the south stairwell at 1:00 PM, following the dismissal bell for the lunch period. Complainant stated Respondent followed her, asking her to return his property. Respondent stated he saw the phone sticking out of the neckline of Complainant's shirt and reached to grab the phone using his left hand. Respondent stated his fingers went approximately three inches into Complainant's shirt. Respondent stated he had incidental contact with Complainant's left breast as he pulled the phone from her shirt. Respondent stated he removed his hand from the Complainant's shirt as soon as he took possession of his iPhone 11.

[ADDITIONAL CONTEXT/FINDINGS OF FACT]

Based upon the evidence and statements provided during the investigation and written decision-making process, the Decision-Maker is able to determine that, by a preponderance of the evidence standard, the Respondent touched Complainant's breasts in the south stairwell of Sample High School. However, the evidence and statements pertaining to the purpose of the Respondent's actions (which is a key element of the Policy's definition of forcible fondling) does not reach the threshold of proof by a preponderance of the evidence that the Respondent's conduct constituted forcible fondling and consequently violated the TRUSD Title IX Sexual Harassment Policy, based on the credibility of the following:

- [PROVIDE ADDITIONAL STATEMENTS AND RATIONALE FOR THE DETERMINATION BASED UPON CASE-SPECIFIC FACTS]

Therefore, the Decision-Maker determines that the Respondent is not responsible for violating the school's Title IX Sexual Harassment Policy.

Although the Respondent has not been found responsible for violating the TRUSD Title IX Sexual Harassment Policy and is therefore not subject to sanctioning, the Adjudicator recommends TRUSD provide supportive measures to the Complainant in order for her to feel safe on campus and obtain equal access to her education.

Sanctions

In accordance with Twin Rivers Unified School District Title IX Sexual Harassment Policy, upon making a determination that the Respondent is responsible for the alleged policy violation, the Decision-Maker is required to determine a disciplinary sanction that is appropriate to the violation. In this case the Respondent has been found responsible for a very serious form of sexual harassment, forcible fondling, as he used force to grab the Complainant's hand, placing it on his exposed genitals without her consent.

[INSERT CONSULTS WITH DISCIPLINARY ADMINISTRATORS, RATIONALE FOR DETERMINATION OF SANCTION, AND ANY OTHER INFORMATION RELEVANT TO THE SANCTIONING PROCESS.]

Therefore, I have determined the Respondent shall serve a period of suspension from Sample High School, effective December 1, 2022, and continue through the last day of the Spring 2023 semester. Enclosed with alongside this Determination in a separate document are the terms of the suspension, including guidelines for seeking reenrollment following the termination of the suspension.

Remedies

In accordance with Twin Rivers Unified School District Title IX Sexual Harassment Policy, the Decision-Maker recommends TRUSD provide the Complainant with remedies designed to restore or preserve equal access to the District's educational programs or activities in order to return Complainant to an employment environment free of Respondent's sexual harassment.

Appeals

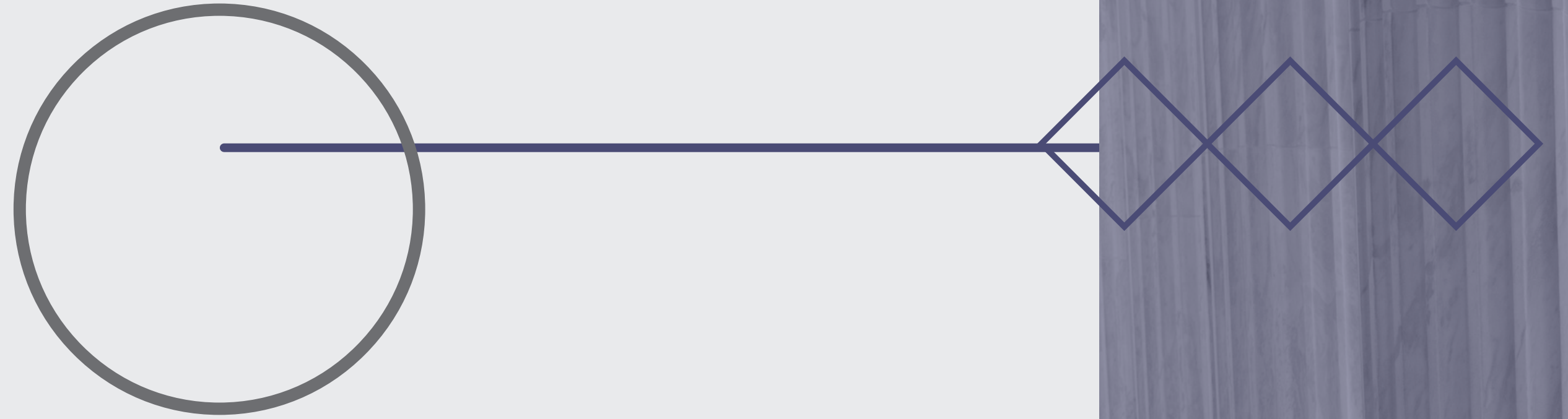
In accordance with the Twin Rivers Unified School District Policy, either complainant or respondent may file a written notice of appeal of a determination or dismissal of a formal complaint within seven days after receiving the written determination or notice of dismissal. The notice of appeal must be delivered to the Title IX Coordinator within such seven-day period by email, personal delivery, certified mail or overnight delivery service.

Either party may appeal the district's decision or dismissal of a formal complaint or any allegation in the formal complaint, if: (1) the party believes that a procedural irregularity affected the outcome, (2) new evidence is available that could affect the outcome, or (3) a conflict of interest or bias by the Title IX Coordinator, investigator(s), or decisionmaker(s) affected the outcome.

An appeal must be filed in writing with the Title IX Coordinator within 10 calendar days of receiving the written determination or dismissal, stating the grounds for the appeal, and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

[CONTINUED...INSERT FULL "APPEALS" SECTION FROM THE POLICY]





THANK YOU!

