

LINCOLN CONSOLIDATED SCHOOLS
Ypsilanti, Michigan
BOARD OF EDUCATION / REGULAR MEETING/BOARD WORKSHOP
February 11, 2019
6:00 p.m.
Media Center- High School

OFFICIAL MINUTES

BOARD MEMBERS PRESENT

Yoline Williams, President
Jennifer LaBombarbe, Secretary
Thomas Rollins, Treasurer
Connie Newlon, Trustee
Allison Sparks, Trustee
Laura VanZomeren, Trustee

ADMINISTRATORS PRESENT

Nicole Holden, High School Principal
Robert Jansen, Bishop Principal
Mary Aldridge, Childs Principal
Kerry Shelton, Model Early Childhood Center Principal
Robert Williams, Student Services Director

OTHERS PRESENT

Edgar Brown, Jim Harless, Jennifer Pocock, Tracy Lazarski, Paula Robinette, Karen Cook, Larry Vanderbergen, Amy Stamps and Charlotte Allum

1.0 CALL TO ORDER

President Williams called the meeting to order at 6:0 p.m. in the Media Center at the High School.

2.0 ROLL CALL

Roll call showed all Board Members were present with the exception of Jennifer Czachorski.

3.0 ESTABLISHMENT OF QUORUM

A quorum was established.

4.0 PLEDGE TO FLAG

The Pledge of Allegiance was recited by Board and audience members.

5.0 ACCEPTANCE OF AGENDA

It was moved by LaBombarbe and seconded by Rollins that we accept the agenda as presented.

Ayes: 6

Nays: 0

Motion carried 6-0

6.0 PUBLIC COMMENTS

Larry Vanderbergen addressed the Board of Education inviting them to attend Band and Orchestra Festival to be held March 2, 2019, at Lincoln High School, starting at 8:00 a.m.

7.0 BOARD WORKSHOP

7.1 Presentation #1

Restorative Practices (Power Point attached)

7.2 Recess

5-minute recess

- 7.3 Presentation #2**
Title IX (Power Point attached)

8.0 SUMMARY DISCUSSION

9.0 ADJOURNMENT

It was moved by LaBombarbe and seconded by Sparks that we adjourn the meeting at 8:13 p.m.

Ayes: 6

Nays: 0

Motion carried 6-0



MASB
Michigan Association of School Boards

**Lincoln Consolidated Schools
Board of Education**

Legal Workshop
February 11, 2019

*Presented by
Brad Baasik, Legal Counsel
Michigan Association of School Boards*



Why use Restorative Justice?

- Plays a key role in facilitating a student discipline system that is nondiscriminatory and fair.
- Data showing significant and unexplained racial disparities in student discipline, namely suspensions, give rise to concerns of racial discrimination that violate Title IV and Title VI.



Goals of Restorative Justice

- Can turn the discipline process into a learning opportunity and help build strong, lasting relationships between students, school staff, families, and members of the community.
- Keeps students in the educational setting, holding them responsible as members of their school community.



Overview

- Introduction to Restorative Justice /Practices
- Title IX Overview
- Questions and Conclusion



Why use Restorative Justice?

- Studies have shown that high suspension rates negatively impact students' academic progress and lead to lower test scores and higher dropout rates.
- With the restorative approach, student discipline is handled constructively rather than punitively, an approach much more likely to keep students in school.



Goals of Restorative Justice (cont.)

- Engaging in respectful discussion designed to explore what happened to create the harm, who has been affected and how and what is needed to heal the harm, students learn the impact of their actions and help decide how to make things right with the victim and any other affected.
- Students who participate in the process are more likely to gain positive attitudes toward authority and to the concepts of fairness and justice.



What is Restorative Justice?

- An approach to addressing conflict and misconduct that focuses on healing rather than punishment.
- Assumes that misconduct and conflict injure those directly involved as well as the broader community to which they belong.
- Rather than relying on punishment, it expects those who cause injuries to make things right with those they have harmed and with their community.



Why use Restorative Justice?

- Plays a role in enhancing students' experiences in public schools.
- Allows student offenders an opportunity to not only discuss what motivated their behavior, but also how their behavior negatively impacted themselves and others, increasing the wrongdoer's awareness and decreasing recidivism.



Comparisons

Punitive	Restorative
Misbehavior defined as breaking school rules or letting the school down	Misbehavior defined as harm done to one person/ group by another
Focus is on what happened and establishing blame or guilt	Focus on problem-solving by expressing feelings & needs -addressing future problems
Adversarial relationships and process - authority figure in power	Dialogue and negotiation, with everyone involved in the communication
Imposition of unpleasantness to punish and deter/prevent	Restitution as a means of restoring both parties - goal is reconciliation

Comparisons	
Punitive	Restorative
Attention to rules and adherence to due process	Attention to relationships and achievement of a mutually desired outcome
Conflict/wrongdoing represented as impersonal and abstract ("we v. them")	Conflict/wrongdoing recognized as interpersonal conflicts (learning opp.)
One social injury compounded by another	Focus on repair of social injury/damage
Accountability defined in terms of receiving punishment	Accountability = understanding impact of actions & suggesting solutions

Limitations on Use

- Restorative justice is seldom used in situations involving major offenses, particularly those that likely involve criminal offenses.
- Will not be used as an option in situations involving firearm or weapons possessions or violent sexual behavior.
- Because these offenses are the type controlled by federal or state statute, schools may have a Title IX duty or other legal responsibility to address them accordingly.

MCL 380.1310c – Conferences

Restorative practices may include victim-offender conferences that are:

- Initiated by the victim;
- Approved by the victim's parent or legal guardian or, if the victim is at least 15, by the victim;
- Attended voluntarily by the victim, a victim advocate, the offender, members of the school community, and supporters of the victim and the offender; or

Foundations for Restorative Justice

- Administrative support is necessary for successful implementation of restorative justice.
- Having qualified, well-trained staff is also important.
- Use a regular method to check-in with staff about regarding progress.
- Be prepared to collect data on discipline referrals as well as suspension and expulsions.

Restorative Practices- MI Law

- Legal Definition.** "Practices that emphasize repairing the harm to the victim and the school community caused by the pupil's misconduct." MCL 380.1310c
- Before suspending or expelling a student, a school board, school principal or other designee shall consider...whether restorative practices will be used to address the violation or behavior committed by the pupil. MCL 380.1310d

MCL 380.1310c – Conferences (Cont.)

- Conducted to provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the misconduct and to participate in setting consequences to repair the harm.

Process

- Everyone affected by the misconduct comes together and determines the best way to resolve the negative situation.
- An authority figure does not make the decision.
- Restorative Justice relies on school leadership choosing opportunities for healing instead of punishment.
- Can be implemented from a single program to a school-wide approach.

MCL 380.1310c – Restorative Practices

A school board or its designee...

- "...shall consider using restorative practices as an alternative or in addition to suspension or expulsion."
- "...shall consider using restorative practices in addition to suspension or expulsion."
- "...shall consider using restorative practices to address the disciplinary issue" if a school board or its designee decides not to suspend or expel.

MCL 380.1310c – Conferences (Cont.)

Restorative practices team may require the pupil to do one or more of the following:

- Apologize;
- Participate in community service, restoration, or counseling; or
- Pay restitution.

FERPA Compliance

- The conferences do present a student privacy concern.
- Under the Family Educational Rights and Privacy Act (FERPA), districts should seek written consent to disclose students' personally identifiable information.
- Conference members should be listed as "school officials" in FERPA notice.
- Consider having conference members sign nondisclosure agreements.



Implementation: 6 Steps

1. Assessing whether the restorative justice philosophy will work for your learning community and if leadership can shift paradigms from punishment to healing the harm.
2. Considering whether to implement one or all components of restorative justice.
3. Obtaining staff buy-in.
4. Identifying a core staff/team to ensure fidelity in implementation.
5. Training staff on restorative justice in schools.
6. Establishing a method for data collection.



Three-Tiered Model

- The prevention stage utilizes teachers, students, and the community to build and promote social and emotional skills that serve as an initial barrier to rules violations, conflict, or wrongdoing.
- The second tier of the model focuses on addressing rule violations with the wrongdoer in a constructive, non-punitive way.
- The supported reentry tier assists the student in reintegrating into the school environment in a way that sets the student up for success.



MCL 380.1310c – Offenses
Restorative practices should be the first consideration to remediate offenses such as:

- Interpersonal conflicts
- Bullying
- Verbal and physical conflicts
- Theft
- Damage to property
- Class disruption
- Harassment and cyberbullying



Challenges to Implementation

- Restorative practices may be seen as ineffective or too lenient on students who break the rules.
- Restorative programs take more time than the traditional disciplinary actions of suspension and expulsion.
- Restorative practices may also require a certain amount of funding, depending on the practices and programming.



Circles: Introduction

- Circles bring people together to talk about issues and resolve conflict.
- A trained facilitator, often called the "circle keeper," encourages willing participants to share information, points of view and personal feelings.
- The facilitator may use a *talking piece*, an object that allows the person in possession the opportunity to speak without interruption.



Scope of Implementation

- Schools may implement restorative justice gradually into the existing discipline process.
- Districts, schools, and educators can implement restorative justice on a variety of levels, including daily practices such as school-wide check-in circles, informal classroom applications to address misconduct, and more formal practices such as restorative circles and conferences.



Different Methods

- Some districts utilize a three-tiered model for restorative justice practices that focuses on prevention, intervention, and reentry.
- Other school districts focus more of their resources on training counselors to adequately address conflicts after they have occurred.
- Some schools have students and faculty jointly involved in restorative justice committee hearings, whereas other schools have mostly teacher-led and faculty-led justice hearings.



Circles: Introduction (cont.)

- By offering opportunities for safe and open communication, circles help resolve conflict, strengthen relationships between participants, emphasize respect and understanding, and empower all parties involved.
- Circle facilitators, with the permission of school administrators, can also invite family and community members to participate.
- May be used weekly in classrooms to build community and enhance communication.



Principles for Forming Circles

- Practice giving and receiving meaningful compliments.
- Create a student-generated agenda.
- Foster good communication skills.
- Learn, understand, and respect differences.
- Explore reasons for why people do what they do.
- Practice role-playing and brainstorming to solve problems.
- Focus on non-punitive solutions.
- Ensure confidentiality among participants.



Peer Mediation

- Peer mediation involves trained student mediators who assist their peers in settling disputes.
- Students are trained in mediation strategies and apply problem-solving techniques.
- Can help keep minor incidents from escalating into more serious incidents.
- Gives students a set of skills that can be applied to future conflicts.



Peer Jury: Case Study

- Brad threw his shoe across the auditorium at another student in front of both his music teacher and the school principal.
- The teacher referred Brad to the discipline office, where he was then referred to the school peer jury committee.
- As the jurors talked to Brad, they learned that he wanted to go to art school after graduation and was having problems with his music teacher.



Circles: Case Studies

- In the South St. Paul School District, MN., students in several schools experienced fewer suspensions, expulsions, and behavioral referrals, and greater overall attendance.
- Schools in Peoria, IL., implemented circles and experienced a 35% drop in referrals to detention, and a 43% drop in detention.



Peer Jury

- Is a youth-centered program in which student volunteers hear cases of minor delinquent acts or school offenses.
- Peer juries are overseen by an adult coordinator with youth volunteers acting as jurors.
- Police departments, community agencies and probation departments can assist school districts in coordinating peer jury programs.



Peer Jury: Case Study (cont.)

- The jurors decided with Brad that he would assist the teacher in setting up for a concert the following week so that he and the teacher could meet outside the classroom and get to know each other better.
- In addition, Brad agreed to use his artistic talents to make a poster to publicize and recruit students for the school jazz band club.



Mediation & Conferencing

- Mediation in schools typically resolve disputes between two students.
- Conferencing opens the process to other students, staff, and teachers.
- Both models are facilitated by a trained mediator and bring together affected parties to develop an appropriate response to the conflict.
- The programs teach students how to peacefully resolve conflict, hash out misunderstandings, and prevent further conflict.



Peer Jury: Process

- Students trained as peer jurors meet with the student referred for a school disciplinary issue.
- Together, jurors offer guidance and support to the referred student and develop an agreement that outlines actions needed by the student in order to repair harm.
- Referred students also may be connected with community resources to address root causes of their behavior.



Peer Jury: Case Study (cont.)

- The student and teacher made peace.
- Brad saw the error of his ways, and his talents were put to use in repairing harm done to the school and music program.
- The poster was later included in Brad's art portfolio and he was accepted by an art school upon graduation.

Submitted by Art Lobl, teacher and peer jury coordinator at Kelyvn Park High School in Chicago.



Best Practices

Recommendations to implement good restorative practices in schools include:

- Fostering awareness of how all have been affected by behavior and encourage expression of feelings.
- Avoiding scolding or lecturing.
- Allowing individuals to share with each other.
- Actively involving students.



Title IX Overview

- Common Title IX Enforcement Topics
 - Athletics
 - Sexual Misconduct
- Federal Government Expectations for Schools to Comply with Title IX



Athletics

Demonstrating Compliance

The Three-Part Test:

- The percentage of female athletes to male athletes is proportional to the percentage of female students to male students enrolled in the school.
- The school has a history and continuing practice of expanding opportunities for the underrepresented sex.
- The school is fully and effectively meeting the athletics interests and abilities of the underrepresented sex.



Best Practices (cont.)

- Accepting ambiguity. Fault and responsibility may be unclear.
- Separating the deed from the doer, recognize students' worth and disapprove of their wrongdoing.
- Seeing every instance of wrongdoing and conflict as an opportunity for learning.
- Turn negative incidents into constructive ones by building empathy and a sense of community.



History

- Signed into law in 1972.
- Now known as the Patsy Mink Equal Opportunity in Education Act.

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance"




History & Continuing Practice of Program Expansion

- If females are underrepresented, program expansion means the addition of girls' teams and/or an increase in quality opportunities for girls on existing teams.
- Failure to add opportunities for the underrepresented sex during the past several years, combined with no current plan for adding opportunities, would constitute failure to comply with test two.



Best Practices (cont.)

- Maintain data on referrals made, cases heard, agreements developed, and participants' academic performance.
- Real change is made through systemic adoption of restorative justice.
- Consider adopting a policy.
- A whole school approach is the best way to provide restorative justice, with the entire school community using restorative practices in its daily work.



Athletics

Equal Opportunities



- Facilities
- Equipment
- Coaching
- Participation Options
- Scheduling
- Scholarships

Girls make up 49% of the population but still only account for 41% of its high school athletes.



Athletics

Demonstrating Compliance

Part Three: "fully and effectively accommodating the athletic interests and abilities of the underrepresented sex:"

- Is there unmet interest in a particular sport?
- Is there sufficient ability to sustain a team in the sport?
- Is there a reasonable expectation of competition for the team?



Landow v Brevard County School Bd
132 F.Supp.2d 958 (M.D. Fla.2000)



- A Judge ruled that the school district violated Title IX when it provided better facilities for boys' baseball teams than girls' softball teams.
- The Judge pointed to such factors as on-campus lighted fields for boys, but not girls, more storage space for equipment for boys, inferior playing fields for girls and the fact that some of the girls team were forced to pick up garbage from the field that was left by transients.

Communities For Equity v MHSAA
459 F.3d 676 (6th Cir. 2006)



- The Sixth Circuit Court of Appeals found that the MHSAA's scheduling of sports seasons discriminated against female athletes on the basis of gender by violating the Equal Protection Clause of the U.S. Constitution, Title IX, and Michigan's Elliott-Larsen Civil Rights Act.
- Further, the Court affirmed that the District Court could retain jurisdiction in the case to supervise the new seasons schedule.

Outside Resources (Cont.)



- "Where booster clubs provide benefits that assist only teams of one sex, the institution shall ensure that teams of the other sex receive equivalent benefits."
- "If booster clubs provide benefits to athletes of one sex that are greater than what the institution is capable of providing to athletes of the other sex, the institution shall take action to ensure that benefits are equivalent for both sexes."

Title IX Athletics Investigator's Manual

Landow v Brevard County School Bd. (Cont.)

Girls' Facilities



Boys' Facilities





"Disadvantageous Seasons"



- Diminished opportunities for athletic scholarships.
- Decreased ability to be nationally ranked or obtain All-American honors.
- Inability to play on private club teams.
- Inferior playing conditions caused by weather conditions.

Focus on Sexual Misconduct

"Vigorous Enforcement"



"We will continue to enforce Title IX and vigorously address all instances where people fall short. Sadly, too many fall short when it comes to their responsibility under Title IX to protect students from sexual misconduct, acts of which are perpetrated on campuses across our nation."
(September 7, 2017)

Landow v Brevard County School Bd. (Cont.)



- School's Defense- Financial constraints & minor problems.
- Budget is not a justification for treating students differently.
- "Matters that might otherwise be accurately characterized as molehills can assume mountainous proportions when viewed from the perspective of someone who is already subjected to disparate treatment."

Outside Resources



- A school district that accepts outside financial assistance and allows vast gender differences to emerge at the hands of a third party (the private booster club) may face claims that it violated Title IX.
- Title IX regulations caution that to "aid or perpetuate discrimination" by providing "significant assistance" to any organization that provides benefits or services to students is a violation of Title IX.

Focus on Sexual Misconduct

An Emphasis on Balance and Fairness



On September 22, 2017 OCR withdrew the [April 4, 2011 Dear Colleague Letter on Sexual Violence](#) and the [April 29, 2014 Q&A On Title IX and Sexual Violence](#).

Most districts continued to rely on their current Title IX policies, which were often based on this guidance, however DUE PROCESS claims from the alleged perpetrator could now become an issue.

September 22, 2017 Dear Colleague Letter

Sexual Harassment
Unwelcome Conduct of a Sexual Nature

- The student did not request or invite the conduct.
- The student regarded it as "undesirable or offensive."
- Acquiescence does not equal "welcomed."
- With younger children, it may be necessary to determine to what degree they recognize conduct that they should reasonably object to and the degree to which they can articulate an objection.

January 2011 OCR Revised Sexual Harassment Guidance

Sexual Harassment
Harassment that Denies or Limits Student's Ability to Benefit from an Education Program

- Student to student
- Staff to student
- Third party to student
 - Dependent upon the level of "control" the district has over the third party

January 2011 OCR Revised Sexual Harassment Guidance

So What Are We Supposed to Do?

- If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits the student's ability to participate in or benefit from the education program. In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

January 2011 OCR Revised Sexual Harassment Guidance

Sexual Harassment
When Must the District Step In?

When sexual misconduct is so severe, persistent, or pervasive as to deny or limit a student's ability to participate in or benefit from the school's programs or activities, a hostile environment exists and the school must respond.

November 2011 OCR 60422.0000 Sexual Harassment

Sexual Harassment
Harassment that Denies or Limits Student's Ability to Benefit from an Education Program

- Quid-pro-quo propositions
 - Overt, easier to assess
- Hostile environment harassment
 - Harder to spot
 - May require further assessment as to whether it is of sufficient seriousness that it denies an educational right

January 2011 OCR Revised Sexual Harassment Guidance

Enforcement
The Progression of a Title IX Complaint

- Title IX Coordinator (*focal level*).
- United States Department of Education Office of Civil Rights Division (*government investigation*).
- Federal Court (*legal action*).

Legal action can sometimes occur simultaneously with a government investigation.



January 2011 OCR Revised Sexual Harassment Guidance

Sexual Harassment
Disparity in Authority
Harassment of a student by a district employee can be a Title IX violation.

- Sexual conduct is always viewed as "unwelcome" between an adult school employee and an elementary student.
- Sexual conduct between employees and "older" secondary students carries a "strong presumption" that it was not consensual.

January 2011 OCR Revised Sexual Harassment Guidance

Sexual Harassment
What is OCR Looking For?

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether:

- The school has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures.
- The school appropriately investigated or otherwise responded to allegations of sexual harassment.
- The school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.

January 2011 OCR Revised Sexual Harassment Guidance

Enforcement
Your Title IX Coordinator

- A Title IX coordinator is *required by law*.
- Students and staff must be notified of who this individual is and how to contact them.
- Should not be someone whose other job duties might create a conflict of interest.



January 2011 OCR Revised Sexual Harassment Guidance

Enforcement

What does the Title IX Coordinator do?

Handles Title IX complaints:

- Evaluates confidentiality requests.
- Develops interim measures for the complainant.
- Reviews the disciplinary consequences involved.
- Coordinates any investigations, records the process, and notes the outcome.
- Is in a position to recognize patterns and systemic issues and addresses them.
- Trains the staff and students.

September 2017 OCR GM in Campus Sexual Misconduct

Enforcement

Pre-Complaint

Good grievance procedures will:

- Designate and follow a reasonable and prompt time-frame for major stages of the process.
- Provide assurance that steps will be taken to prevent future recurrences and to remedy the effects.
- Ensure Title IX rights of the Complainant while providing due process rights to both parties.

September 2017 OCR GM in Campus Sexual Misconduct

Enforcement

Post-Complaint

Notice

- Written Notice must be provided to the alleged perpetrator ("responding party").
- Recount allegation in enough detail to provide an understanding.
- Allow for sufficient time to respond prior to any interview.
- Identify those involved.
- Provide date of alleged occurrence and cite the code of conduct at issue.

September 2017 OCR GM in Campus Sexual Misconduct

Enforcement

Pre-Complaint

A school must adopt and publish grievance procedures which provide for prompt and equitable resolutions regarding complaints of sex discrimination or sexual misconduct.

September 2017 OCR GM in Campus Sexual Misconduct

OCR Expectations

What constitutes "notice" of a potential Title IX issue?

- A grievance filed with the Title IX coordinator.
- A complaint made to a teacher or other responsible employee from the student or another individual.
- An employee witnesses the behavior.
- An employee hears that certain behavior has occurred.

January 2015 OCR Revised Sexual Harassment Guidance

Enforcement

Post-Complaint

The investigation

Prompt

- No set time-frame: Good faith effort to conduct fair and impartial investigation.



September 2017 OCR GM in Campus Sexual Misconduct

Enforcement

Pre-Complaint

Good grievance procedures will:

- Provide notice of the procedures to the district community.
- Explain how to file a complaint.
- Apply to those filing a complaint against students, staff or third parties.
- Ensure proper investigations, including the opportunity to present witnesses and evidence.
- Provide for notification to the parties of the outcome.

September 2017 OCR GM in Campus Sexual Misconduct

Procedures

Reports

- Anonymous reports of sexual harassment/abuse should always be examined. Consider:
 - Source and nature of the information?
 - Seriousness of the allegation?
 - Specificity?
 - Can we identify those involved?
- Based upon these factors it may be reasonable to conduct an investigation into complaints from an anonymous source.

January 2015 OCR Revised Sexual Harassment Guidance

Enforcement

Post-Complaint

The investigation

Equitable

- Trained investigator free of any actual or reasonable conflict of interest.
- All parties have the same rights and opportunities to explain/defend.
- No "gag orders."
- Take care not to apply stereo-types.



September 2017 OCR GM in Campus Sexual Misconduct

Enforcement
What about police investigations?

Statewide School Safety Information Policy

- Requires schools to report certain incidents to law enforcement.
- Requires district officials to notify a parent when their minor child is a potential victim or may have witnessed an incident and the police intend to conduct an interview.




Source: 2017-004 SSI in Campus Social Network

Procedures
Equity

- Any process made available to one party should be made available to all parties, i.e.
 - having an attorney or advisor present
 - right to cross examination
 - right to submit questions to witnesses



Source: 2017-004 SSI in Campus Social Network

Procedures
Reaching a Resolution

- Findings of fact and conclusions must be reached based upon a "preponderance of the evidence" or "clear and convincing" standard.
- Parties should have the opportunity to respond to any report in writing in advance of any final decision regarding responsibility.



Source: 2017-004 SSI in Campus Social Network

Enforcement
What about police investigations?

- Police investigations or reports may be useful for fact gathering but are not determinative of whether a party is guilty of harassment under Title IX.
- The police must pursue a "beyond a reasonable doubt" evidentiary standard. Schools usually use the "preponderance of evidence" standard."



Source: 2017-004 SSI in Campus Social Network

Procedures
Due Process

- OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees.
- Confidentiality demands of an accuser may prevent any investigation.
 - However, the district may still "look into" the matter to discover patterns of behavior, etc.
- Confidentiality concerns of the alleged perpetrator must be weighed against district safety concerns.



Source: 2017-004 SSI in Campus Social Network

Enforcement
Post-Complaint

Report

- A written report should be prepared that details inculpatory and exculpatory evidence.
- All parties must be granted equal access to information that may be used for any hearing.



Source: 2017-004 SSI in Campus Social Network

Enforcement
What about police investigations?

- Work with the police and communicate with them, but don't let the depth of their investigation unreasonably delay your own.
- Make sure that the police understand your obligations to conduct a prompt investigation under Title IX.



Source: 2017-004 SSI in Campus Social Network

Procedures
Due Process

- FERPA does not override federally protected due process rights.
- Providing "due process" should not restrict or unnecessarily delay the protections of Title IX.



Source: 2017-004 SSI in Campus Social Network

Procedures
Due Process

- The prior guidance emphasized protection for the victim prior to establishing whether or not the harassment actually occurred, including accommodations which could include placing the perpetrator under an extensive "no contact" order, including making the alleged perpetrator:
 - Park in a different lot
 - Attend a different class
 - Use alternative hallways
- Some of these measures may now give rise to due process claims.
- Examine your policies and tread carefully.



Source: 2017-004 SSI in Campus Social Network

Procedures
Notification of Outcome

- Both parties should receive notice of the outcome concurrently (parents if student is under 18).
- Notice should indicate whether there was a finding that the alleged incident did, or did not, occur.
- Notice should enumerate remedies/sanctions (if any).
- Notice should indicate what steps will be taken to address the situation.
- Content of the notice can vary depending upon the circumstances (age of the parties, nature of the allegations...).

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Enforcement
Post-Complaint

Support the Victim

- Follow-up.
- Explore counseling (for victim and harasser).
- Assess any effects the situation may have had on the victim academically and explore corrective measures.
- Make sure the victim knows how to report additional problems.

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Enforcement
Post-Complaint

Examine Policies, Train

If it appears as though the school or district has a "climate of harassment" take a look at policies that may need to be changed and explore awareness training for staff and students.

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Procedures
Imposing Discipline

- Discipline should be proportionate to the violation.
- Discipline determinations are made with the purpose of deciding how best to enforce the school's code of student conduct while considering the impact of separating a student from the educational environment.

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Enforcement
Post-Complaint

Take Corrective Action

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.

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Final Word

District staff are the "boots on the ground"

- Must keep their eyes and ears open: we know what constitutes appropriate conduct in the 21st Century and what does not.
- Turning a "blind eye" to inappropriate behavior is the same thing as condoning it.
- Cannot be concerned with labeling the behavior
 - "That was an assault!"
 - "That constitutes harassment!"
 - "That's just a little harmless hazing..."

Instead, they need to intervene and report.

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Procedures
Appeal

- Schools may elect to not offer an appeal right.
- Schools may elect to offer an appeal right to the respondent only or to both parties.
- If both parties have the ability to appeal, all appeal procedures must be equally available to both.

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Enforcement
Post-Complaint

Prevent Future Harassment

- Take steps to reduce the likelihood of retaliation.
- Communicate regarding how to report ongoing problems.
- Follow-up.

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Conclusion

- Questions?
- Phone: (517) 327-5900.
- Email: bbanasik@masb.org
kkefgen@masb.org
jgerring@masb.org

The MASB Legal Team

 Brad Banasik  Kacie Keefgen  Joel Gerring

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