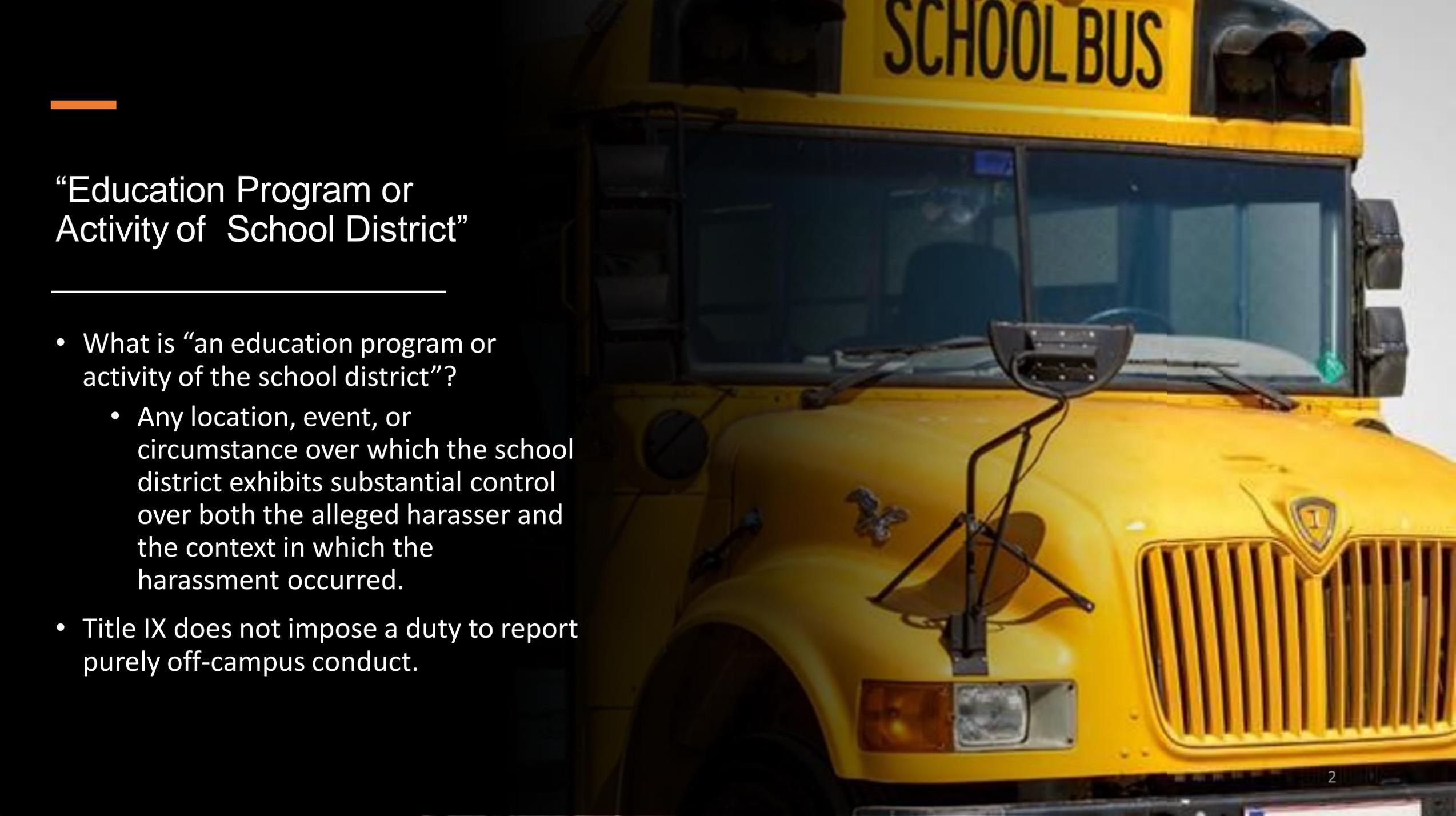




Supplementary
Training for
Decision Makers

Poteau Public Schools

A close-up, front-quarter view of a yellow school bus. The words "SCHOOL BUS" are printed in large, black, sans-serif capital letters on a yellow sign above the windshield. The bus features a large, prominent chrome grille with vertical slats and a central emblem. A side mirror is mounted on a black arm extending from the front fender. The bus is parked on a dark surface, and the background is a plain, light-colored wall.

“Education Program or Activity of School District”

- What is “an education program or activity of the school district”?
 - Any location, event, or circumstance over which the school district exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- Title IX does not impose a duty to report purely off-campus conduct.

“Education Program or Activity of School District”

- If conduct occurs in a building owned or controlled by a student organization that is officially recognized by Poteau School, this qualifies as an “activity of the school district.”
- If conduct occurs on an international field trip or at any location outside the United States, it is excluded from this definition.



Three Categories of Sexual Harassment

- There are three categories that meet OCR's definition of sexual harassment and must be reported
 - Quid pro quo
 - Sexual assault, dating violence, domestic violence, stalking
 - "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 recipient's education program or activity"

Sexual Harassment:

Category 1

- “Quid pro quo”
- If an **employee** of the school district conditions the provision of an aid, benefit, or service of the school district on an individual’s participation in **unwelcome** sexual conduct, this is sexual harassment.
- This conduct must be reported.

Sexual Harassment:

Category 2

- “Sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v)
- “Dating violence” as defined in 34 U.S.C. § 12291(a)(10)
- “Domestic violence” as defined in 34 U.S.C. § 12291(a)(8)
- “Stalking” as defined in 34 U.S.C. § 12291(a)(30)

- Conduct that falls within any of these definitions must be reported.

Sexual Harassment:

Category 3

- “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 recipient’s education program or activity.”
- This conduct must be reported.

What happens upon report of sexual harassment?

Poteau School Grievance Policy must
be followed.

What about other sexual misconduct ?

- Poteau School is committed to providing an education environment that is free from sexual discrimination, misconduct, and harassment.
- Any sexual misconduct that does not rise to the level of “sexual harassment” (as defined by the U.S. Department of Education) or that does not meet Title IX’s jurisdictional requirements will be investigated and addressed pursuant to Poteau’s disciplinary code of conduct.

Poteau School Grievance Process: Definitions

- Complainant - an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX.
- Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.
- Supportive Measures - non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent.
- Formal Complaint - a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school investigate the allegation of sexual harassment.



Supportive Measures

- Can be provided to Complainants, Respondents, and any other member of the Poteau School community who is affected by sexual misconduct.
- May be sought or provided before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment.
- Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence for student Complainants or Respondents, increased security and monitoring of certain areas of the campus, and other similar measures.

Steps in Grievance





STEP 1: Formal Complaint

- Must be filed in person, by mail, by email, or through the online portal.
- Must contain the Complainant's physical or digital signature.
- If no Formal Complaint is filed, the grievance process cannot start.
- **All Poteau School employees are mandated reporters of child abuse, including sexual abuse.**
- **If an Poteau School employee is aware of sexual harassment, the employee should report it to the appropriate Title IX Coordinator.**

STEP 1: Formal Complaint

- Formal Complaint can be withdrawn at any time, resulting in dismissal of the grievance process.
- Poteau School may consolidate Formal Complaints arising from the same factual circumstances IF:
 - There is more than one Complainant or Respondent; or
 - A cross complaint has been filed by a Respondent against a Complainant.
- Mandatory / Discretionary Dismissal:
 - Mandatory: If conduct alleged does not meet the scope requirements for the grievance process, Poteau School must dismiss the Formal Complaint.
 - Discretionary: Respondent is no longer enrolled or employed.
 - Discretionary: Specific circumstances prevent school from gathering evidence sufficient to reach a determination.

STEP 2: Written Notice

- Upon receipt of a Formal Complaint, Poteau School must provide written notice to known parties of the following:
 - Notice of formal grievance process;
 - Notice of the allegations potentially constituting sexual harassment, including:
 - The identities of the parties involved in the incident, if known;
 - The conduct allegedly constituting sexual harassment; and
 - The date and location of the alleged incident, if known.
- The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.
- If, at any point during the course of the investigation, Poteau School decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.



STEP 2: Written Notice

- The written notice must include the following statements:
 - The Respondent is presumed not responsible for the alleged conduct.
 - A determination regarding responsibility is made at the conclusion of the grievance process by the decision maker.
 - The parties may have an advisor of their choice and at their own expense, who may be, but is not required to be, an attorney.
 - The parties may inspect and review evidence.
 - The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

STEP 3:

Investigation

- The investigation may include:
 - Interviewing the Complainant, the Respondent, and any witnesses;
 - Reviewing law enforcement investigation documents;
 - Reviewing relevant student or employment files; and
 - Gathering and examining other relevant documents, social media and evidence.



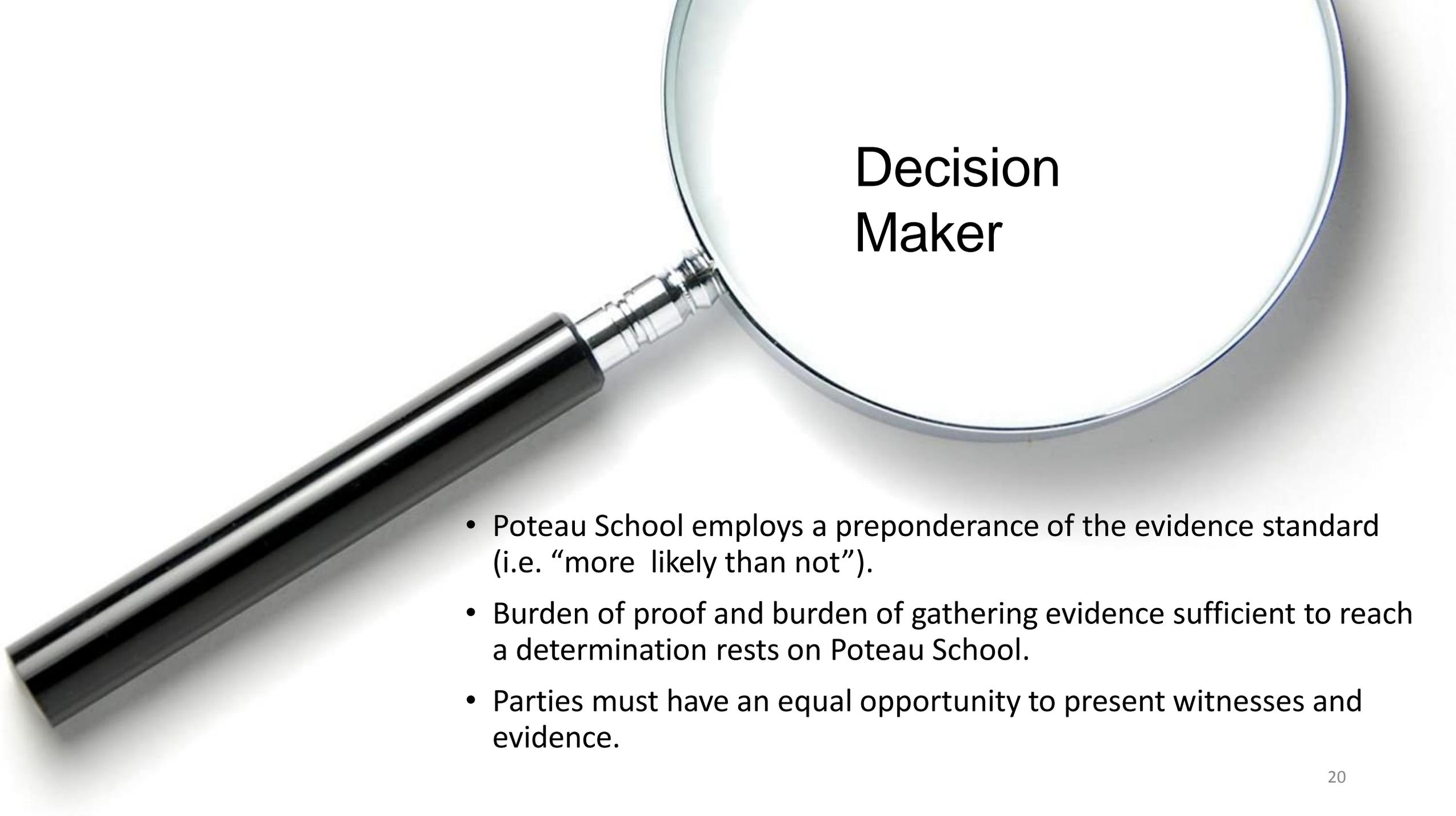


STEP 3: Investigation

- The investigator bears the burden of gathering evidence and will attempt to collect all relevant information and evidence.
- Parties can (and should) present evidence and identify witnesses to the investigator so that they may be considered during the investigation.
- The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct (i.e. the investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant or not pertinent to the facts at issue).

A magnifying glass with a black handle and a silver frame is positioned over the text. The lens is focused on the words "Decision Maker", which are centered within the lens. The background is a plain, light-colored surface.

Decision
Maker



Decision Maker

- Poteau School employs a preponderance of the evidence standard (i.e. “more likely than not”).
- Burden of proof and burden of gathering evidence sufficient to reach a determination rests on Poteau School.
- Parties must have an equal opportunity to present witnesses and evidence.



STEP 3: Investigation

- The investigator must conduct an objective evaluation of all relevant evidence.
 - Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true.
- Parties cannot be restricted from discussing the allegations under investigation or gather/present evidence.
- Parties may not retaliate against any person because they participate or refuse to participate in any part of the school district's sexual misconduct process.
- Anyone who receives another person's confidential information as a result of participating in the grievance process is prohibited from using/disclosing such information outside of such forums without express consent or for any improper purpose.

STEP 3:

Investigation

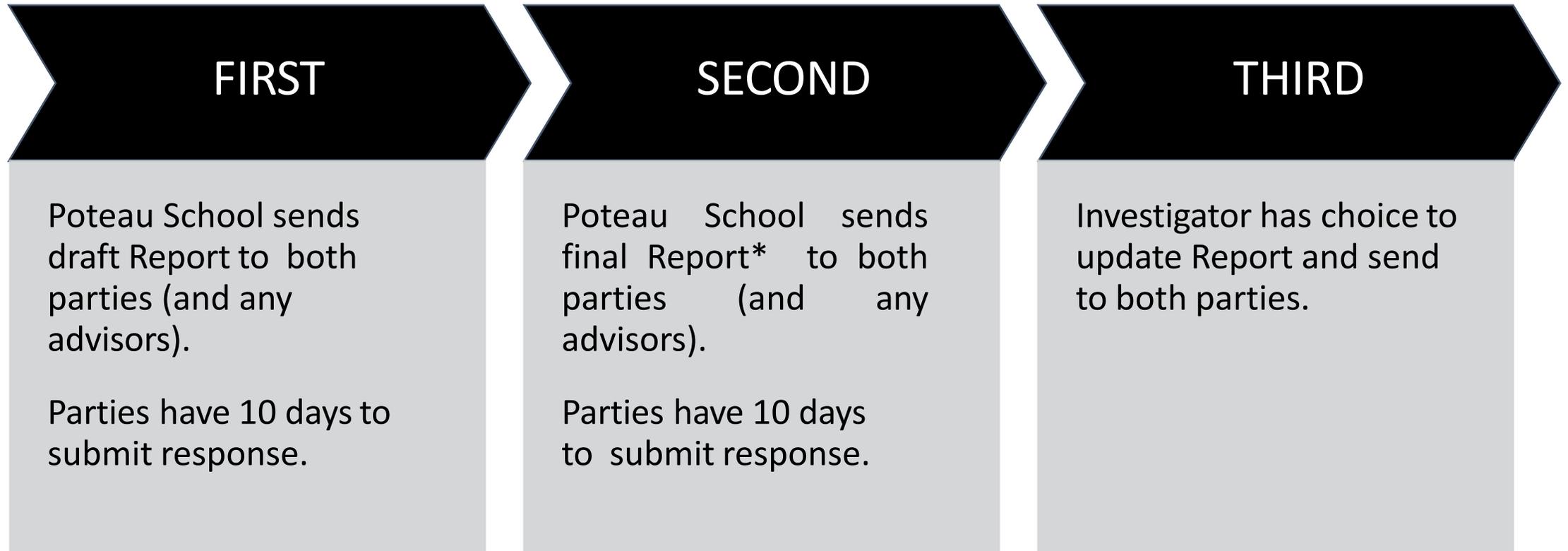
- Parties must have equal opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied by an advisor of their choice (at the party's expense).
 - The advisor may be – but is not required to be – an attorney.
- Investigative meetings
 - Parties must receive written notice before any such meeting.
 - The notice must provide the date, time, location, participants, and purpose of the investigative meeting.
 - The notice can be provided by email.



STEP 3: Investigation

- Both parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation.

Investigative Report

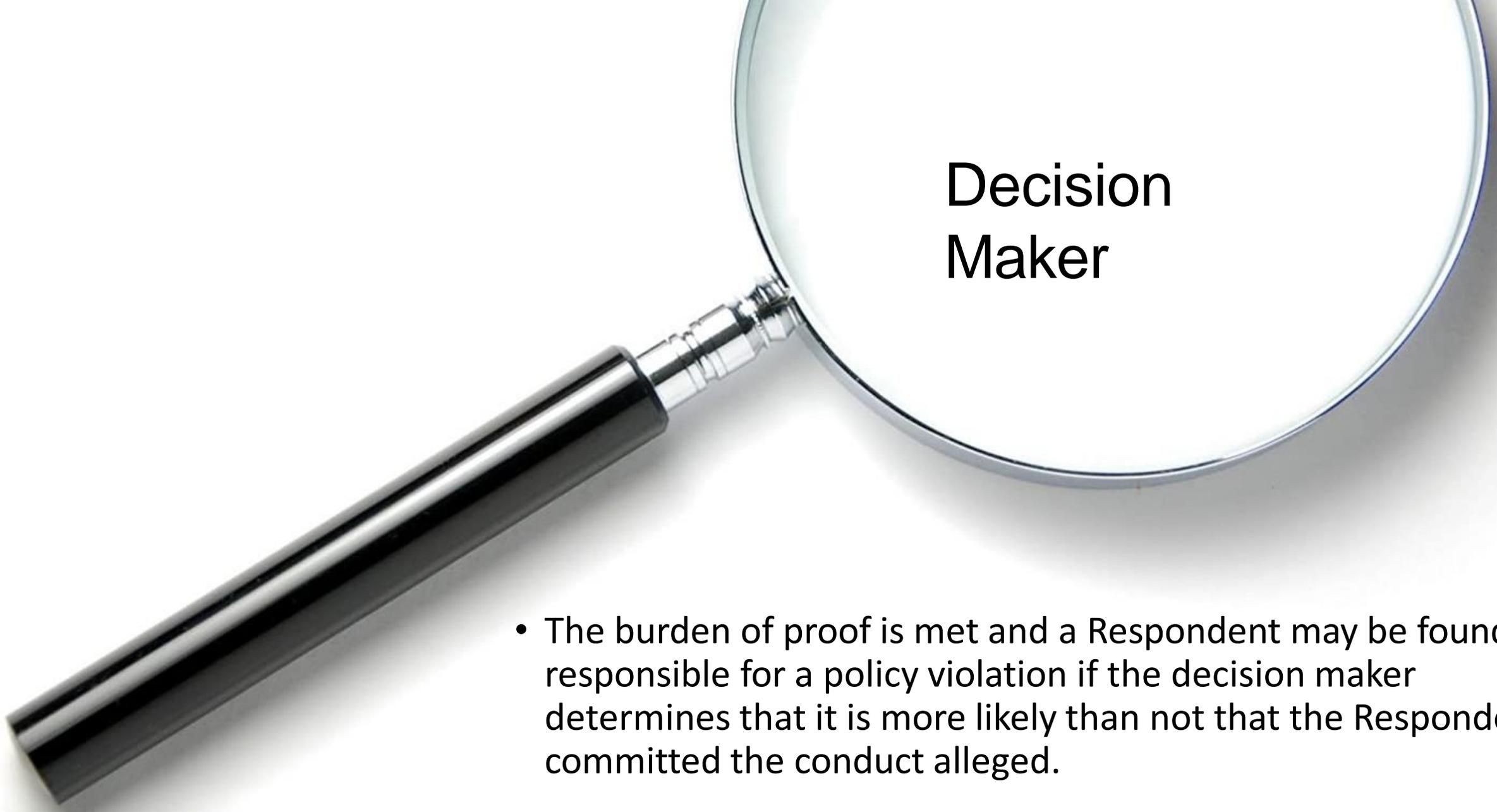


* The final Report should summarize all relevant evidence but should not make recommendations regarding whether a Title IX violation occurred or potential sanctions.



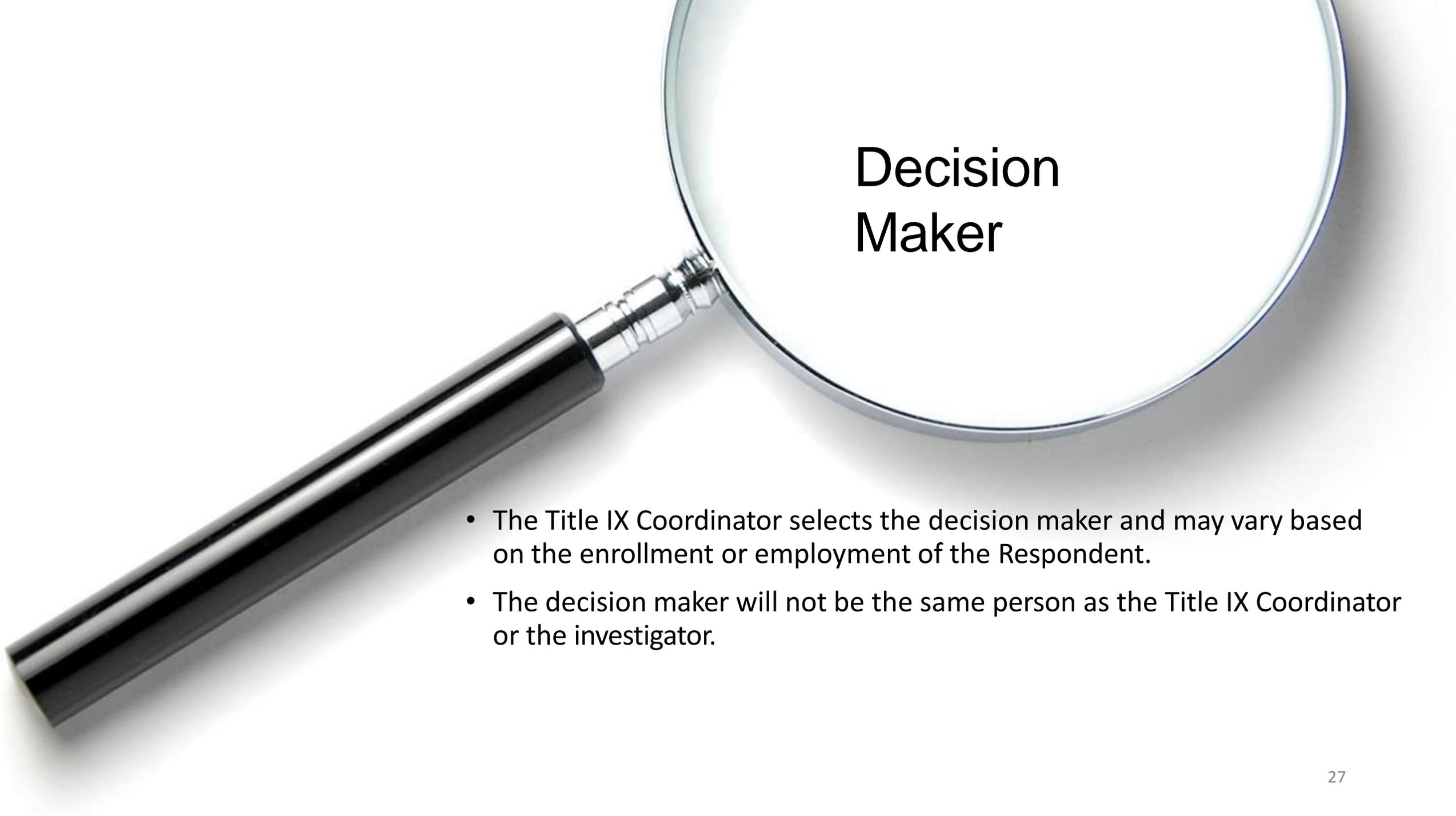
STEP 5: Decision

- The grievance process concludes with a written decision making process before the decision makers, who determine whether a Respondent is responsible for a violation, based on a preponderance of the evidence.
- There is a presumption that Respondents are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued.



Decision Maker

- The burden of proof is met and a Respondent may be found responsible for a policy violation if the decision maker determines that it is more likely than not that the Respondent committed the conduct alleged.



Decision Maker

- The Title IX Coordinator selects the decision maker and may vary based on the enrollment or employment of the Respondent.
- The decision maker will not be the same person as the Title IX Coordinator or the investigator.

STEP 5:

Decision

- The decision is based on all relevant evidence.
- Credibility determinations cannot be based on status as Complainant, Respondent, or witness.
- The decision maker will give parties the following opportunities:
 - Submit written, relevant questions that a party wants asked of any party or witness;
 - Provide each party with the answers;
 - Allow for additional, limited follow-up questions from each party.
- Questions/evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - Offered to prove that someone other than the Respondent committed the conduct alleged; or
 - If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

STEP 5: Decision

- The written determination must include:
 - Identification of the allegations potentially constituting sexual harassment;
 - A description of the procedural steps taken;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the grievance process to the facts;
 - A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility;
 - Any disciplinary sanctions the decision maker imposes on the Respondent; and
 - Whether remedies designed to restore or preserve equal access to Poteau School' education program or activity will be provided to the Complainant; and
 - Procedures and permissible bases for the parties to appeal the determination.



STEP 5: Decision

- The written determination will be provided to the parties simultaneously.
- Supportive measures also may be provided to the Complainant.
 - If the Supportive Measures do not impact the Respondent, they should not be disclosed in the written determination.
 - Instead, the written determination should simply indicate that “remedies will be provided to the Complainant.”
- The determination becomes final:
 - If an appeal is filed, on the date that Poteau School provides the parties with the written determination of the result of the appeal; or
 - If an appeal is not filed, the date on which an appeal would no longer be considered timely.

STEP 5: Decision- Keep an Open Mind

- Keep an open mind until all evidence has been heard.
- Don't come to any judgement, opinion, conclusion or belief about any aspect of this matter until you've reviewed or heard all evidence AND consider only the evidence that can remain.

STEP 5: Decision- Sound, Reasoned Decision

- You must render a sound, reasoned decision on every charge.
- You must determine the facts in the case based on the information presented.
- You must determine what evidence to believe, the importance of the evidence, and the conclusion to draw from that evidence.

STEP 5: Decision-Consider All/Only Evidence

- You must make a decision based solely on the relevant evidence obtained in THIS matter.
- You may consider nothing but THIS evidence.

STEP 5: Decision-Be Reasoned and Impartial

- You must be impartial when considering evidence and weighing the credibility of parties and witnesses.
- You should not be swayed by prejudice, sympathy, or a personal view that you may have of the claim or any party.
- Identify any action or perceived conflict of interest.

STEP 5: Decision-Weight of Evidence

- The quality of evidence is not determined by the volume of evidence or the number of witnesses or exhibits.
- It is the weight of the evidence, or its strength in tending to prove the issue at hand that is important.
- You must evaluate the evidence as a whole based on your own judgement.

STEP 5: Decision-Witness Credibility

- Credibility is determined fact by fact , not witness by witness
- Evaluate witness credibility by considering:
 - The reasonableness or unreasonableness, or probability or improbability, of the testimony
 - Does the witness have any motive?
 - Is there any bias?
 - As indicated above, the regulations provide consideration of consistency, accuracy, memory, credibility, implausibility, inconsistency, unreliability, ulterior motives, lack of credibility.
 - You must give the testimony and information of each party or witness the degree of importance you reasonably believe it is entitled to receive.
 - Identify all conflicts and attempt to resolve those conflicts and determine where the truth lies.

STEP 5: Decision-Draw Reasonable Inferences

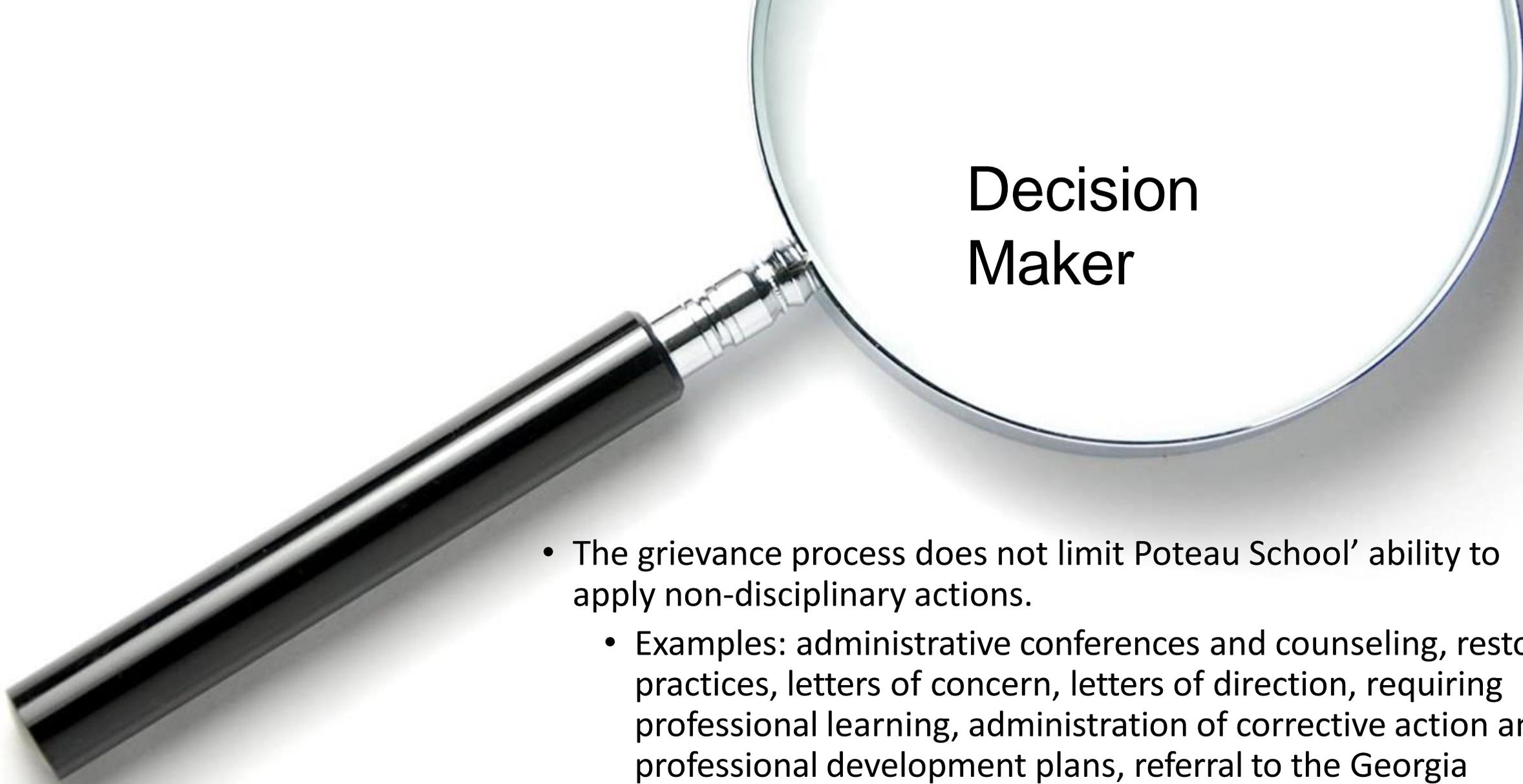
- Inferences are sometimes called circumstantial evidence.
- It is the evidence that you infer from direct evidence that you reviewed during the course of reviewing evidence.
- Inferences only as warranted and reasonable.

STEP 5: Decision-Standard of Evidence

- Look at all the evidence in total, make judgements about the weight and credibility, and then determine whether or not the burden has been met.
- Any time a decision is made the decision maker will employ a preponderance of the evidence standard (i.e. “more likely than not”).
- Preponderance of evidence: decision-maker must determine whether it is more likely than not true that the respondent engaged in the alleged misconduct.

STEP 5: Decision-Maker-Don't Consider Impact

- The decision maker will not consider the potential impact of their decision on either party when determining if the charges have been proven.
- Focus only on the charge or charges brought in the case and whether the evidence presented is sufficient to persuade the decision-maker that the respondent is responsible for the charges.



Decision Maker

- The grievance process does not limit Poteau School' ability to apply non-disciplinary actions.
 - Examples: administrative conferences and counseling, restorative practices, letters of concern, letters of direction, requiring professional learning, administration of corrective action and/or professional development plans, referral to the Georgia Professional Standards Commission, referral to law enforcement authorities, and/or referral to child protection agencies.



STEP 6:

Appeal

- Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint or any allegations therein, on the following bases:
 - A procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available to the appealing party at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainant or respondent that affected the outcome of the matter.



STEP 6:

Appeal

- Appeals must be submitted in writing and received by the Title IX Coordinator within 5 calendar days (including weekends, but excluding days on which Poteau School is closed due to a holiday) of the date that the written decision is provided to the parties.
- The written appeal must state:
 - Grounds for the appeal
 - Name of the appealing party
 - Evidence that it was submitted by the appealing party
 - Sufficient description supporting the grounds for appeal
 - If applicable, information about new evidence that could affect the outcome of the matter



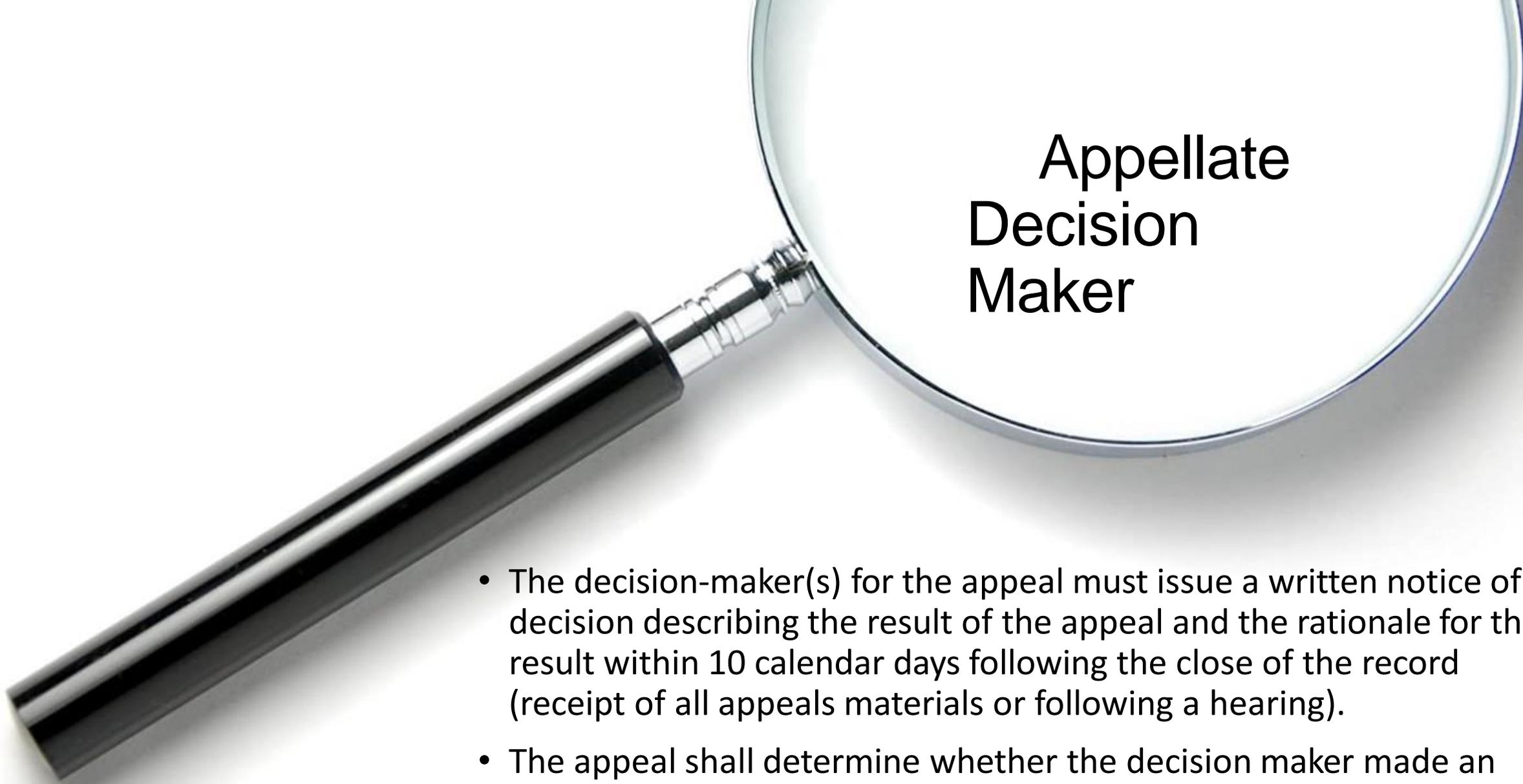
STEP 6: Appeal

- Upon receipt of an appeal, Poteau School will:
 - Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the decision-maker.
- Poteau School will provide a copy of the appeal to the non-appealing party.



Appellate Decision Maker

- The appellate decision maker cannot be the same person as the decision maker(s) that reached the original determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.
- The appellate decision maker cannot have a conflict of interest or bias.
- The appellate decision maker must have received appropriate training.



Appellate Decision Maker

- The decision-maker(s) for the appeal must issue a written notice of a decision describing the result of the appeal and the rationale for the result within 10 calendar days following the close of the record (receipt of all appeals materials or following a hearing).
- The appeal shall determine whether the decision maker made an error on the grounds alleged in the appeal statement.



STEP 6: Appeal

- The appeal decision will be given simultaneously to both parties.
- No further appeal is available under Title IX.

Retaliation

- No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this grievance process, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding.
- Poteau School will keep the identity of any person who has made a report or complaint of sex discrimination confidential.
- The identity of any Complainant, Respondent, or witness will also be kept confidential except as required by law.
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation.
- A determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

Questions
?